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Transitional Justice and Reconciliation amidst an Armed Conflict

Perspectives from Colombia's Magdalena Medio Region

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To Sandra Isabel

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Introduction

The Human Face of the Topic

It was an extremely hot day in a town with a population of around 50,000 close to the Colombia's Magdalena River. Only a few weeks before this meeting, civil society organizations had organized the first ever week to commemorate the town's victims of the armed conflict that has afflicted the country for around five decades. The demobilization process of the right-wing paramilitary groups had opened some space for people to remember those who had been killed over the last 20 years. In that time, such activities had not been possible due to paramilitary control. So it was in October 2006, when through several symbolic events, lectures, cultural presentations and marches the loss of life was commemorated and at the same moment a vision for the town based on non-violence and democratic participation created. A new organization representing the victims was founded after this week mainly by women in their 50s and 60s; the majority of them was of rural descent and had a rather low level of formal education and income.

Together with several colleagues I had the opportunity to support and accompany the process of this week and the creation of the new organization. I remember the meeting as a very special occasion for many people, who finally felt listened to and able to express feelings and reflections suppressed for too long. It was a moment of joy, movement to new horizons and debate, but also of doubts, whether the endeavor would be worth the time and the risks. This meeting was one of many to identify the main objectives of the organization and to gather the support of other organizations. This specific session was about victims' rights and both national and international instruments to safeguard them. The around 100 members of the organization, most of them from the countryside and rather uncomfortable in such a big meeting, were looking forward to a morning with a representative of an important Colombian human rights organization. When she entered the room and began to speak, the differences in age, education and language suggested that she was from a different planet. She was young, recently graduated from university and spoke the language of the well-resourced and educated urban population.

She first invited the participants to an exercise which, as it turned out immediately afterwards, had only one desired result. The facilitator asked people one question: How should

victims of the armed conflict react? The two options were: a) pursue the victims' rights or b) think about forgiveness and reconciliation. When she saw that around two thirds grouped themselves in the space destined for answer b), she told people somewhat startled that they still had much to learn and started her presentation on international norms and instruments.

Several impressions and questions have occupied my mind since then that have re-emerged on numerous other occasions: Are human rights and reconciliation two mutually exclusive goals? How should the discourse on transitional justice and victims' rights be adapted to fit the context of social marginalization and low education? Why are people only recognized as victims of an armed conflict and not of social exclusion and structural violence? And finally: Are human rights a topic for experts, while the "normal" population has to learn about it?

The Research Subject

Conflict management, human rights, conflict transformation, post-conflict reconstruction, peacebuilding, mediation, reconciliation, peaceful coexistence, transitional justice, truth, forgiveness, non-violence, justice, structural reforms, rule of law – these are only several of the many terms that emerge in conflict and post-conflict countries, usually as objectives, strategies or even ideologically biased discursive weapons. Each of them has specific connotations that may vary with the background of the person who looks at them.

This research is about the attempts of a society to come to terms with a violent past and present in order to end violence in its numerous manifestations. It addresses two terms that are intrinsically linked but, as the opening anecdote shows, often considered separate and even mutually exclusive: transitional justice and reconciliation. Both raise many expectations among which the hope to live in peace and to be recognized as the bearer of human rights that are guaranteed by the rule of law are essential to understand the tension between the two. The research is also about the frequent contradictions between governmental transitional justice programs and local needs in a region affected by armed conflict. This is most obvious in the official terminology that both in substance and complexity differs from how the population understands this same terminology.

Colombia is a South-American country of around 45 million that has experienced a five decade-long internal armed conflict with hundreds of thousands of fatalities. For a number of years now the before-mentioned terms have been publicly used to describe strategies to end violence. The demobilization of paramilitary groups that started in 2003 catalyzed the design of transitional justice programs that are intended to address victims' rights to truth, reparation and justice and to contribute to reconciliation and peace.

The Magdalena Medio region is certainly one of the most symbolic in Colombia. It is the home of several armed actors and the scene of numerous atrocities. But it has also seen the organization of strong civil society actors that have fought for human rights and peace despite the assassination of their leaders. The notion that "peace goes through Barrancabermeja" (the "capital" of the region) is frequently heard.

Thus this research addresses the question of how active civil society and community members in the Magdalena Medio region understand transitional justice and reconciliation. For that reason I will explore with what content people in the region fill these terms. This will lead to an understanding of the needs of people and communities that have suffered from violence. These insights serve to contribute to the debate on what transitional justice and reconciliation mean midst of an armed conflict.

The objective of the research is first to contribute to the conceptualization of keywords around transitional justice (Gready 2011: 3) by giving voice to the interpretation of people who have been directly affected by an armed conflict. Their understanding contributes important elements and additional meanings to transitional justice. Second, the research will show that official transitional justice programs that do not address these needs and concerns will not have the usually desired goals of strengthening democracy and initiating a process of reconciliation, the increase of the victims' perception of justice and a higher legitimacy of public institutions. On the contrary, they will further contribute to a sense of frustration toward "the state". Third, the study will highlight that transitional justice programs need to include systemic and structural issues such as inequality, the land issue and non-political violence in order to lead people to trusting in real change. Fourth, the field research shows the importance of terms such as respect,

dignity and participation related to the design and the implementation of transitional justice programs. This insight has significant practical consequences for transitional justice policies.

The literature on transitional justice is ample although the discipline is rather new. While case studies and the analysis of different instruments of transitional justice abound, there is still a lack in both studies on the perceptions of those who have been affected by violence, and on the contrast between official transitional justice programs and local dynamics. This research aims to contribute to the debate on transitional justice by addressing both shortcomings.

The Methodology

The wish to write a PhD-thesis emerged during the time I spent in the very conflictive Magdalena Medio region in Colombia where I worked on several issues, such as Disarmament, Demobilization and Reintegration (DDR), transitional justice and reconciliation. Then, I could not dedicate sufficient time to theoretical reflection on these issues. The fact that I consciously chose a Colombian organization that had gained significant trust in the region allowed me to build up valuable experiences and insights that inspired me to start a PhD-program.

My research question was nurtured by the reality I experienced on the ground which I had approached without a firm theory and significantly developed hypotheses. This was also the way I wanted to pursue my PhD-thesis. It was, however, important that the topic be relevant and directed towards application; and the methodology, understood as “a way of thinking about and studying social reality” (Strauss/Corbin 1998: 3), flexible enough to be able to really appreciate what people have to say. These premises discarded a deductive methodology that is based on a theory and uses the field research to verify or falsify it. The experiences and data collected on the ground should, on the contrary, inspire and build relevant theoretical conclusions.

This is why I finally chose the grounded theory as the methodological approach for my thesis. It offers, on the one hand, the advantages I have just described, and on the other hand qualitative research methods, conceived as “a set of procedures and techniques for gathering and analyzing data” (Strauss/Corbin 1998: 3) that “hat den Anspruch, Lebenswelten “von innen heraus” aus der Sicht der handelnden Menschen zu beschreiben. Damit will sie zu einem besseren Verständnis sozialer Wirklichkeit(en) beitragen und auf Abläufe, Deutungsmuster und

Strukturmerkmale aufmerksam machen.“ (Flick et al. 2009: 14) Social action and institutions can thus only be explained by reconstructing the process of interpretation that led human beings to act and create. This implies that qualitative research is skeptical regarding the assumption that there is the scientific truth. (Behnke et al. 2006: 14)

Barney G. Glaser and Anselm Strauss presented in their work “The Discovery of Grounded Theory” (1967) ideas on the link between theory-generation and empirical data. These should further inspire the researcher to put some thought into his/her methodological proceedings. Strauss/Corbin add that the objective was “... to acquire a way of thinking about the data and the world in which they live”. (Strauss/Corbin 1998: 8) The context of their reflections was two-fold. On the one hand, the authors criticized the distance between the then preferred “Grand Theories” and the empirical reality; on the other hand, they rejected the division of labor between quantitative and qualitative methodologies. While the first were considered standardized enough to test hypotheses, the latter only served as a supporting tool. (Przyborski/Wohlrab-Sahr 2010: 186f) The grounded theory stands in the tradition of the symbolic interactionism that stresses the changeability of social phenomena that must be responded to with a procedural methodology that looks at these changes. (Przyborski/Wohlrab-Sahr 2010: 193)

Despite its name, the grounded theory is not a theory but a methodology that helps to create a theory that “emerges from the data” (Strauss/Corbin 1998: 12). The authors’ main criticism is directed towards logical-deductive¹ theories that are distant from reality and thus not appropriate to reflect the study-object. They argue that the way a theory is constructed determines its usefulness: “... a theory ... today cannot be divorced from the process by which it is generated.” (Glaser/Strauss 1967: 5) As a consequence, they advocate for grounded theories that are based (grounded) on empirical data and insights, are more understandable and provide useful and adequate predictions and interpretations: “Generating a theory from data means that most hypotheses and concepts not only come from the data, but are systematically worked out in relation to the data during the course of the research.” (Glaser/Strauss 1967: 6) So while the ideas may stem from the biography of the researcher, the generation of the theory is linked to a

¹ In these years the authors emphasized the sharp contrast between deductive and inductive. Later, pragmatic philosophers such as John Dewey or Charles Sanders Peirce rather understand them as different phases in a research process. In the end, Glaser and Strauss also suggest an alternation between inductive (data collection, generation of hypotheses) and deductive (collection of new data based on temporary hypotheses) methodological steps. (Przyborski/Wohlrab-Sahr 2010: 191f)

process of research and, eventually, to concrete data. These data may be collected through a variety of ways (interviews, observations, documents etc.). (Przyborski/Wohlrab-Sahr 2010: 189) The objective is to develop “formal theories” that are characterized by an important degree of generalization and by being “middle range”-theories². (Von Oertzen 2006: 145f; Lamnek 2005: 100-116)

One of the most attractive attributes of the methodology is the position of the researcher in it. Strauss/Corbin summarize it in the following way:

“Researchers tell us that they really enjoy working with data, not simply with ideas in the abstract. They relish the interplay between themselves and the data... They are unafraid to draw on their own experiences when analyzing materials because they realize that these become the foundations for making comparisons and discovering properties and dimensions...” (Strauss/Corbin 1998: 5)

The researcher and the object of study enter an interactive relationship, an interplay that has effects on both. During the process both experience changes and add dimensions that have not been present before. It is the material that leads the research; the researcher is invited to pursue all the possible paths to reach an understanding of the material. This explains why despite the interaction the researcher does not lose his/her objectivity (Hildenbrand 2009: 33; Strauss/Corbin 1998: 58): “He [sic!] has been sufficiently immersed in this world to know it, and at the same time has retained enough detachment to think theoretically about what he has seen and lived through.” (Glaser/Strauss 1967: 226) This detachment prevents the researcher from “going native”, while the immersion provides him/her with sufficient trust to gather important information. The centrality of the researcher is why I am going to dedicate the next section to the analysis of my own background.

The method, however, does not provide clear rules about the procedures to create categories and theories; it is rather a framework, within which the researcher determines the instrument for the data collection, the degree of abstraction and the hermeneutical step. Originally it was developed for text-producing ways to collect data, such as interviews and

² “The interrelated jobs of theory in sociology are: 1) to enable prediction and explanation of behavior; 2) to be useful in theoretical advance in sociology; 3) to be usable in practical applications – prediction and explanation should be able to give the practitioner understanding and some control of situations; 4) to provide a perspective on behavior – a stance to be taken toward data; and 5) to guide and provide a style for research on particular areas of behavior.” (Glaser/Strauss 1968: 3)

observations. The strategies to interpret and understand the data are up to the researcher. (Von Oertzen 2006: 146f)

Since the creation of new theories is at the center of this approach and not the verification of existing ones, the researcher continuously develops new hypotheses and evaluates them using the new available data. Data collection is, therefore, not a separate step from the analysis of the obtained data. The focus hereby is not on one single hypothesis, which usually limits the openness towards new insights, but on considering additional elements that may enrich the theory. Thus, one of the differences of this approach to deductive procedures is that the evaluation is part of the ongoing process and not something that happens after the elaboration of the complete theory; thus the process is iterative, i.e. like a pendulum between the collection and the analysis of data. (Von Oertzen 2006: 147) Given that the focus is on the generation of a new theory, its elements must be falsified or verified continuously. This evaluation of the robustness of hypotheses is different from testing a hypothesis that was defined at the start of the research. (Przyborski/Wohlrab-Sahr 2010: 196f)

At the beginning of the research process the researcher should go into the field without any theoretical pre-concepts. This encourages an open attitude to absorb impressions related to the field of study. Ideally, according to Glaser, the researcher should even abstain from studying relevant literature before going to the field. However, Strauss/Corbin argue that openness for the new does not depend on ignorance of previous insights but more on the methodological design of the search for new findings. The reflection of the pre-knowledge and the choice of methods to discover the unexpected would be more appropriate than self-isolation from the existing literature.³ (Strauss/Corbin 1998: 47; Meinefeld 2009: 268ff; Von Oertzen 2006: 146)

The researcher collects data and analyzes it by asking questions (coding) about the actors, their strategies or the pre-conditions and consequences of a given material. In the coding process the researcher develops *concepts* and establishes relations among them. The coding of new data leads to an every time denser network of relations and interpretations that, eventually, produces categories and a theory. Thus the theory emerges according to the empirical analysis that

³ It is around the question, in how far the researcher is influenced by pre-concepts before going into the field, that Glaser and Strauss would later represent two separate streams of the Grounded Theory. Glaser particularly criticized Strauss/Corbin (1990) by insisting on the “emergence of theories” through the observation of data, thus ignoring the bias of the researcher. Strauss, on the contrary, later emphasizes the importance of studying the existing literature on a substantive topic. (Przyborski/Wohlrab-Sahr 2010: 188, 192)

basically shows the way to follow instead of defining it from the start. (Przyborski/Wohlrab-Sahr 2010: 177f; Hildenbrand 2009: 36f; Meinefeld 2009: 268; Böhm 2009)

The resulting theory is not considered as a definite product, but as a temporary outcome that is still in the process of being further developed. The terms of the theory should be formulated analytically, i.e. sufficiently generalized, but also illustrative so that the reader is able to relate the text to his/her own reality. Glaser/Strauss attribute four properties to a grounded theory: 1) It must fit to the substantive area where it would be applied; 2) It should be easily understandable; 3) It must be sufficiently general to be applied to a diverse set of situations within the area; and 4) It must leave significant control over the structure and process of situations to the user of the theory. This makes it worth being tried. (Glaser/Strauss 1967: 237, 245)

The Research

The Author

The elaboration of this thesis is motivated by personal experience in the field and the subsequent wish to further reflect on highly relevant topics to the conflict areas of our world. Since the research question, the choice of the methodology and the conclusions are mine, I also chose to use the first person in the course of this thesis, because the “author” shapes the content and the analysis and thus has to make himself/herself accountable for what he/she writes. This decision should not be considered as a sign of vanity, but as a logical consequence of how the interest in the topics of transitional justice and reconciliation developed and the role of the author in the chosen methodology.

In the following I am going to introduce this “I”, the background of whom has certainly had an impact on the research process. This may help the reader to understand, where I come from with regard to the topics at hand. It also emphasizes my conviction that academic research, at least in social sciences, is never a distant exercise, but usually involves persons of flesh and blood, who conduct it.

I am conscious that being a white, middle-class man from Central Europe I do not belong to sectors of the society that are usually considered as discriminated. I am also aware of the fact

that I have never lost a person close to me through violence and I have never suffered from poverty, hunger or lack of opportunity. Additionally, my Christian background allows me to consider reconciliation and personal and structural change as possible; together with the opportunities I had to educate myself through the formal educational system in Austria and partly the U.S., but also through people who significantly shaped my understanding of structural violence and personal effort to keep moving despite it, I am optimistic with regard to the possibility to have an impact on my environment through effort and persistence.

My relatively early exposure to a context in Ecuador that was completely different to Austria also helped me to question assumptions with regard to exclusion, poverty and violence. My subsequent academic focus on human development and particularly the work-experience in Colombia deepened my understanding of the interface between basic needs, the hopes and dreams of people and their frustration with a dominant exclusive system. That this dynamic causes (violent) conflict seems more logical to me than before. Thus, my biography certainly identifies me as an outsider to the country that is at the heart of this research, i.e. Colombia, and those who have suffered from different forms of violence. On the other hand, it also provides me with a broader perspective that is nourished by a deep-felt solidarity without being immersed in the cycles of pain, resignation and struggle to achieve a new start.

My History with Colombia

Colombia has been on my mind since 2002, though not necessarily as a researcher. In 2002 I interned with UNHCR in Northern Ecuador, which was the entry point for Colombian refugees that fled from the Southern part of the country due to massive confrontations between the military and the FARC guerrillas. It was then that Colombia obtained a human face for me, and I started to follow the analyses on the Colombian conflict. This was intensified when together with my Colombian fellow student Marcela Guerrero Casas I founded the “Colombian Conflict Caucus” at Syracuse University, a group of students of International Relations, who for a year came together in order to discuss Colombia-related issues such as the humanitarian crisis, the Uribe government and its security policies and increasingly the transitional justice framework for the paramilitary demobilization. The highlight of this activity was the organization of a peace

negotiation simulation at the University which was accompanied by the Colombian negotiator and politician José Noe Ríos.

After graduation I was invited first to know and then to work with the Development and Peace Program of the Magdalena Medio region (PDPMM), a then Jesuit led organization that was primarily funded by the European Union. Though I was not there as a researcher, in hindsight I was able to fulfill the criteria of Glaser/Strauss' first phase of data collection, i.e. the openness to learn, integrate into the context and absorb a variety of experiences without any rigid theoretical pre-considerations. Given my then year-long analysis of the Colombian conflict, this may sound surprising but despite the accumulated knowledge I was very clear that I did not know the region and the specific conflict dynamics suffered by the communities.

This insight and the distance from an ideological bias against certain actors had also been part of my personal preparation before getting involved with the PDPMM. The organization's methodologies and its conviction that peace is a matter for all actors also contributed to an openness, as did the space and time that was conceded to me by its director, Francisco de Roux, to listen and to learn before engaging in my own initiatives. This facilitated the process of travelling around, meeting people with different backgrounds, listening to community and organizational leaders, participating in a variety of meetings and finally choosing the areas and projects where I thought I could make a contribution.

In the three years from 2006 to 2009 that I worked with the PDPMM, I significantly changed my perspective on the conflict and possible strategies to resolve it. This change can be detected in the around 30 "newsletters" that I wrote to inform people about Colombia and my experiences. Although not systematic or theoretical documents in the strict sense, they constitute personal reflections on the reality of the context illustrated by anecdotes, encounters or developments in the region and beyond. Glaser/Strauss would call them "insights" that stem from practical experience and serve as "springboards to systematic theorizing" being then transformed into relevant categories (Glaser/Strauss 1967: 252, 254). Quoting the words of Strauss/Corbin these reflections also fulfill the function of descriptions that are meant

"... to convey believability and to portray images, it also is designed to persuade, convince, express, or arouse passions. Descriptive words can carry overt or covert moral judgments... It is important to understand that description is the basis for more abstract interpretations of data and theory development, although it might not necessarily have to. Description already embodies concepts, at least implicitly." (Strauss/Corbin 1998: 18)

There are written documents that are worth mentioning, for example the two studies on two different topics that I wrote as a contribution for the International Organization for Migration (IOM) and a community council in the Department of Santander. The first was about reconciliation in the middle of an ongoing conflict that presented a community-driven process of transitional justice and DDR in the Southern part of the Bolivar department, the other a first approach to “historic memory” with the objective to provide considerations on the question of how so much violence had been possible in this community⁴. The latter was based on a series of interviews with community members that are not part of this thesis but that merit a special mention because they shaped my understanding of the conflict and the strategies of communities to deepen or ease it.

During that time the idea of dedicating a PhD-thesis to the analysis of the topics in question appeared. In practice, I was involved with projects that circled around transitional justice, victims’ rights to truth, reparation and justice and reconciliation.

First Observations in the Field

This work provided me with first observations that oriented the subsequent literature-based research. First, I was startled by the fact that the overwhelming majority of initiatives undertaken with victims did so from the angle of human and victims’ rights and actively opposed the discourse of reconciliation, as was outlined in the anecdote at the beginning of this text. This reluctance to address reconciliation could be explained by the government’s abuse of the term that will be described later but also seemed to respond to the conviction that reconciliation would not suffice to put the violated harmony of things back in balance, or, more radically formulated, that someone, mostly the government and/or the paramilitaries, first had to do something painful in order to meet the criteria of satisfaction. Thus, there seemed to be an either-or between transitional justice and reconciliation despite the inclusion of the latter in the usual definitions of the former. Particularly remarkable was the use of the human rights language as a means to

⁴ In the course of this document I will refrain from naming people or exact places given my promise to keep the anonymity of both. This is certainly a reflection of the perceived and real insecurity in most communities and the delicacy of the contents of the conversations that will be manifest in the fourth chapter.

punish and to distinguish between good and evil; I had almost the impression that human rights were an instrument of war and revenge more than a concept based on common human dignity.

On the other hand, I was also surprised how people who openly rejected the notion of reconciliation actively engaged in an initiative on it that I promoted in the first half of 2009. This was an obvious contradiction that led me to the assumption that people themselves were torn between both, i.e. the feeling of needing some justice, but also the insight that society as such would not advance without reconciliation.

The second observation, therefore, is the stark contrast between a harsh discourse on reconciliation and the efforts of communities, to which demobilized paramilitaries returned, to come to terms with the past. In the absence of an efficient state it was the community that had to deal with issues related to justice, punishment, reconciliation and reintegration. Sometimes calling these efforts reconciliation, sometimes using a different term, these communities engaged in alternative forms of justice that included social sanctions and restorative justice. Thus, my assumption was that communities chose a variety of means oriented towards the future without neglecting the past. The clear discourse that equated justice with punishment tended to soften.

The third observation was related to the role of the state. It seemed to me that the official transitional justice measures and institutions, such as the Justice and Peace Law, the National Commission on Reparation and Reconciliation (CNRR) and the Presidential Agency for Reintegration (ACR) failed to address the needs and the visions of the communities. These entities arrived very late or were perceived as biased in favor of the demobilized. Thus, victims' organizations emerged and the communities began to undertake their own initiatives based on their needs. As a consequence, my observation was that top-down and bottom-up initiatives of transitional justice were important, but seemed uncoordinated and, therefore, did not utilize their synergies. This led to the widespread idea that the state pursues objectives different from those of the communities, which further undermined its legitimacy instead of strengthening it.

Fourth, I felt that reconciliation was very much identified as a Christian concept. Thus, the terminology of guilt, repentance and forgiveness was frequently used and put in direct relationship with reconciliation. This in part contrasted with the discourse and practice of the Church and its organizations. Depending on where they stood ideologically they actively promoted reconciliation or rejected it preferring the discourse on victims' rights. Nevertheless,

the attitude towards the term reconciliation was also shaped by people's attitude towards the Church, which sometimes complicated an independent appreciation of reconciliation.

Fifth, I realized that violence and peace were usually explained as manifestations of a certain political and economic system. Thus, inequality and exclusion usually figured among the so-called objective reasons of violence. This observation led me to include the structural dimension in both the chapters on transitional justice and reconciliation. People often told me that without structural changes violence will never end, and without hope for a better future, young people would continue to join the armed actors.

Sixth, I assumed that the demobilization of the paramilitaries would be of significant importance to the people because it was prominent on the national agenda and was hotly debated in civil society organizations. Furthermore, it was the demobilization that put transitional justice on the political agenda.

Seventh, it struck me that in the middle of an ongoing armed conflict between the government and several rebel groups, issues such as transitional justice and reconciliation were even addressed. The contrast between such post-conflict issues and the discourse of transition on the one hand and the perceived lack of change by the communities on the other hand suggested that there were different notions of time and certainly interests depending on the viewpoint.

The Structure of the Research

This set of observations informed the first two chapters on transitional justice and reconciliation respectively. Given the perceived polarization between the two I concentrated on literature that widened transitional justice beyond its important legal dimension. My goal was to study whether transitional justice and reconciliation are conceptually compatible. The literature that focused on bottom-up initiatives and the healing function of transitional justice was most helpful.

My main interest regarding reconciliation, on the other hand, consisted in exploring its political relevance. Usually reconciliation was seen as an interpersonal occurrence between the victim and the perpetrator stripped of its systemic relevance. The literature-based research added valuable elements that suggest reconciliation as a multi-level and multi-faceted process, at the core of which is the notion of transformation of unjust relationships.

As mentioned before, one important root of reconciliation stems from Christianity. In reality, this is manifested either through the imposition of the moral obligation to forgive and to reconcile or the insight that despite the committed crimes a human being keeps his/her dignity and is still able to convert, i.e. to transform positively. In either case reconciliation is not free of charge, neither for the victim nor the perpetrator, but connected to requirements such as recognition, repentance, will to convert, active reparation and forgiveness. Therefore, I also explored the Christian understanding of reconciliation.

Additionally, I assumed that reconciliation also has to do with restorative justice that looks at the context of a wrongdoing and is more focused on the relational aspect of crime, punishment and non-repetition in a given community. This assumption is based on concrete experiences of communities after the demobilization of the paramilitaries. In the virtual absence of the state these communities had to tackle the fact that victims and perpetrators and all the identities that lie between them lived side-by-side. Interesting dynamics of covering up the past, addressing the pain of the victims, sanctioning the perpetrators and defining together criteria for their reintegration took place.

Given the before-mentioned inversion of the usual sequence end of conflict → reconciliation, I was interested in the contribution of the conflict resolution and peacebuilding literature to the concept of reconciliation. The former is dedicated to resolve the root causes of conflict, while the latter has a systemic view of conflict and violence and asks how to transform conflict on a different level.

Thus, the research concentrated on deepening my understanding of the current state of thinking with regard to these topics keeping in mind my desire to contribute something new that is based on the experiences and insights of the communities and members of civil society in Colombia. I, therefore, abstained from choosing one specific theoretical approach to the topics that would lead me through the field research. On the contrary, I chose to keep pursuing the path of allowing myself to be influenced by “the field”.

The value of the analysis of the existing literature was not so much to provide me with a coherent theoretical approach for the field research, but to help me step back from the intense field experience and look at the topics in question from a more distant perspective. The literature gave me the opportunity to further reflect on what others found in similar contexts. It significantly broadened my horizon, without losing sight of my main concern, i.e. the insights of

the people personally affected by these issues. Furthermore, the just described assumptions had “emerged” from the field and were not extracted from the literature. The readings also increased my sensitivity towards certain aspects that I would later include in my field research, for example the failure of criminal justice to consider the heterogeneity of roles within a community beyond the victim/perpetrator dichotomy. (Strauss/Corbin 1998: 49f)

During my field research in the second half of 2011, which I conducted together with my wife, Sandra Isabel Restrepo, for reasons that will be made explicit in Chapter 4, we formulated open questions on the topics of transitional justice, peace and reconciliation in order to facilitate the collection of new data, though this time much more focused and systematically directed to the subject of my thesis. The results of the field research will be presented quite extensively. In compliance with my approach, i.e. putting the people in the center, I will offer extensive quotes on the categories that emerged from the interviews for the interpretation of the data: impact of violence, peace, truth/reparation/justice, and reconciliation. The assumptions that I described before had to be revised significantly, particularly with regard to the alleged relevance of the DDR process with the paramilitaries. Thus, the permanent rotation between data collection, its interpretation and the creation of new hypotheses that is an important part of the grounded theory turned out to be fundamental for my own reflections.

The year 2012 was dedicated to the design of a reconciliation-strategy for the Jesuit Refugee Service in Colombia. Despite the elaboration of two articles for a book and a journal, my work on the thesis did not advance well because it was simply not possible to advance a theoretical reflection after a full day of very intense stories told by internally displaced people. However, one part of the strategic work consisted of conducting dozens of informal interviews and many more conversations, workshops and encounters with internally displaced people, young people, representatives of organizations of all kinds and academics. Though, again not systematically implemented these elements provided me with valuable insights that to a large extent confirmed the chosen categories for the analysis of the field research. These data do not belong directly to the thesis because it covers the time from 2006 to 2011 but they obviously had an impact on my thinking on the topics in question.

Finally, my wife and I decided to spend 2013 in Vienna and concentrate on the thesis, particularly on the further analysis of the field research and the process of structuring it. This also gave me a useful distance from the interviews.

This procedure mainly corresponds to the inductive approach of the grounded theory, with obvious modifications. My first approach to the topics was professional and not academic. My decision to live in the context of the future research was thus not motivated by an academic goal, but by human and professional considerations. The criterion to live with the study-subjects was certainly fulfilled, as was the need to absorb a variety of impressions. This was facilitated by the access I had to circumstances, people and communities that is usually restricted to nationals. In this regard I was privileged and seized the opportunity. However, at that time I did not systematically engage in the formulation of hypotheses that may have determined the data collection by filtering it accordingly. Thus, the richness of insights and reflections is opposed by a lack of procedural elements, and the advantage of a relatively long time-span of observation in the region (2006 to 2011) potentially challenged by material that was produced under different qualitative criteria.

Despite these considerations I conclude that the time from 2006 to 2009 was central for my research and my approach to the topics. Without this practical experience in the field, I would not have written a PhD-thesis in the first place, would not have been able to elaborate a practical and relevant research design and would have had significant difficulties formulating the first hypotheses. The amount of experience, the establishment of trust with future interview partners, the knowledge of the region and its dynamics and finally the motivation to contribute something meaningful are owed to these first years of exposure to the topics at hand.

The Contents

As mentioned before, Chapters 1 and 2 are dedicated to analyzing the latest thinking regarding transitional justice and reconciliation respectively.

Chapter 3 analyzes the context of the research by giving an exhaustive overview of Colombia, its conflict-history, the parties, the DDR process of the paramilitaries and the transitional justice design up to 2011. This chapter also contains personal observations and experiences that illustrate the sometimes visible clash between discourse and reality.

The following chapter, Chapter 4, presents the field research and its results. This is the space in which people offer their interpretations on several issues directly related to this research. Given the methodology and the focus on “grounded” data, this chapter also contains rather extensive quotes that show the language and the terms used to address topics such as reconciliation and peace. Thus, it becomes clear that while transitional justice is officially considered a specific set of policies, people connect it to other areas of their lives, particularly to those that need change. As long as real improvements in their daily lives, such as an increase in security or more access to basic services, are not perceived, the terms transition, justice or peace lack relevance for the people. This chapter also shows that the demobilization of the paramilitaries that the government, with a significant investment tried to show to the world as exemplary was virtually absent from the respondents’ answers.

Chapter 5 is dedicated to the analysis of the research and draws several conclusions that contribute to the discussion on transitional justice and reconciliation. These insights are meant to summarize the main aspects and to reflect on potential consequences for the policy level.

In the course of this research new questions surged through the permanent exchange with other people. Transitional justice and reconciliation are also topics in constant flow, where ambiguities abound, changes happen and clarities about good and bad are very difficult to achieve. In the following chapters, however, I will address a variety of fundamental considerations that may serve in other temporal and geographic circumstances, as well.

1. Transitional Justice

1.1. Introduction

The history of transitional justice is usually related to transitions from authoritarian to democratic regimes and/or from war to peace. Thus, the Nuremberg and Tokyo tribunals are frequently mentioned as the first cornerstones in the development of transitional justice. They addressed “vertical violence” of the state-apparatus against the population and war crimes. Later “horizontal ... neighbor-against-neighbor violence” (Roht-Arriaza 2013: 384) resulted in transitions from armed conflict to peace and, therefore, new challenges for transitional justice emerged. While these two have interfaces, it is useful to assess the different affection of the population and, consequently, to assign appropriate priorities to transitional justice. However, there are cases of a rather recent origin in which transitional justice is applied without the existence of a clear transitional moment that separates the past from the present and the future. Colombia is a perfect example for these circumstances because instruments are applied while an armed conflict has not ended yet. Given the evolution of the discipline, Pablo de Greiff, one of its outstanding scholars, calls the application of transitional justice to cases different from post-authoritarian regimes an “expansion of the use by analogy” (De Greiff 2009: 30).

Transitional justice refers to the actual instruments applied in a given historical context to address the question of how the perpetrators of human rights violations have to atone for their acts, the victims’ rights to truth, reparation and justice are fulfilled, and society as a whole is transformed in order to prevent the recurrence of the atrocities. In hindsight, these instruments will be judged in accordance to higher goals such as peace, reconciliation and democracy. Thus, transitional justice is not only about analyzing and addressing past crimes; it is of utmost importance that the main focus remains on the present and the future. The fundamental goal is the transformation of a society that reproduces violence into one that resolves its conflicts without it. (Lyons 2010: 27)

Although transitional justice has had many manifestations throughout history⁵, the theoretical elaboration is still deficient. However, in recent years there has been a significant effort to fill the gap between practice and theory by advancing the conceptualization of certain

⁵ For an exhaustive analysis of how transitional justice instruments have been applied from the old Greeks onwards, compare: Elster (2004)

“keywords of transitional justice” (Gready 2011: 3) or introducing a holistic normative concept (De Greiff 2009). Transitional justice instruments usually emerge as “an answer to demands and interests of political and social actors” (Lecombe 2010: 213) and are, thus, part of political negotiations. This means that the construction of transitional justice theories frequently occurs a posteriori the empirical manifestations.

Yet, there are conceptual elements that are important to mention at the beginning: First, over the last years the analytical focus shifted from single instruments of transitional justice (trials, truth commissions, vetting) to a combination of several. Thus, the terms holistic and sequencing were put on the agenda. Second, de Greiff argues in his normative approach that the selective use of instruments does not satisfy the purpose of transitional justice; only the whole range of measures (trials, truth, reparations, institutional reform) manages to contribute to the recognition of the victims, to civic trust, i.e. the citizens’ trust in the state’s compliance with norms, and consequently to democracy and reconciliation. Third, in recent years local initiatives have become more prominent, thus leading to the assumption that both top-down and bottom-up strategies are essential for an efficient transitional justice design.⁶ Fourth, transitional justice is embedded in a broad agenda of issues in transitional countries, such as security, economic recovery and democratization. This underscores the need to consider transitional justice as broader than the focus on past crimes, which, in turn, converts it into an inter-disciplinary endeavor.

The term transitional justice includes at least two major dimensions that are worth mentioning. First, the word justice refers to an abstract value that has generally positive connotations despite its numerous interpretations; but it also means the concrete judicial reaction to actions that are socially rejected. In this regard the term suggests accountability and in the end punishment. This is why transitional justice is often considered as the field of international and national lawyers and judges who are the experts with regard to criminal law. Justice, however, has certainly other meanings and manifestations, too. In addition to the retributive dimension, there are, among others, distributive justice that emphasizes the need to better distribute resources, and restorative justice that is more focused on the improvement of social relationships. (Mani 2007) Additionally, Bloomfield points to regulatory justice that refers to the fairness of a

⁶ Compare for example: Mc Evoy/Mc Gregor 2008; Shaw/Waldorf 2010

system of rules that applies to everyone. (Bloomfield 2006: 21) Despite the prevalence of the retributive dimension through trials, the other levels of justice are significant parts of what is called transitional justice and will be part of this dissertation.

Second, there is the time perspective “transition” that implies the period between a negatively perceived past towards a better future. The main idea is that in this period it is necessary to address past crimes in order to prevent their recurrence and to improve the human rights situation. The assumption is that the existence of such a transition justifies special procedures and mechanisms that a society usually would not apply: reduction of prison terms for serious crimes, non-judicial instruments of truth-finding, reparations and reconciliation strategies are among the tools of a transition, whereas amnesties for crimes against humanity are widely discarded in the official discourse nowadays. However, I will argue that there are other goals of transitional justice, too, which are more related to the social fabric of a society that was severely affected by past violence⁷.

These aspects are included both in the definition offered by the UN Secretary General Kofi Annan, in his 2004 report *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Countries. Report of the Secretary General (S/2004/616)* and in the subsequent definition by the International Center for Transitional Justice (ICTJ):

“Transitional Justice comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”

“Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse.”⁸

I chose these definitions, because they are representative of the current thinking on transitional justice. They include several instruments but also the objectives of their implementation, among them being reconciliation. Both suggest that transitional justice reaches

⁷ If not specified, violence is used here in a broad sense, including structural, cultural, political and other forms of violence that go beyond the visible, physical violence.

⁸ International Center for Transitional Justice (ICTJ, 2009): What is Transitional Justice?: <http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>

beyond criminal accountability, thus reflecting the before-mentioned manifold meanings of justice in this context.

In the following I will outline the status quo of the research on transitional justice. In order to simplify, I will dedicate the first sections to those authors who emphasize the legal character of transitional justice, the main objective of which is to strengthen the rule of law and hold the perpetrators of severe human rights criminally accountable, and those who, without neglecting this aspect, go further and reflect on the goal of reconciliation and the recovery of the social fabric. This distinction facilitates a link between this conceptual chapter and the case study below in which the debate on the objectives of transitional justice has been controversial. As stated before, the sharp contrast between the rights-discourse that emphasizes the victims' rights and reconciliation was one of the strongest impressions of my first three-year stay in Colombia. On the other hand, I was also astonished by people's conviction that by claiming their rights they were part of a wider universal movement, which provided them with a sense of pride but also minimized their legitimate fears: "The prospect of harm or injury is clearly more salient to isolated individuals who weigh such costs solely in terms of their own individual utility than it is to people who view themselves as but a small part of a much larger and irrepressible movement." (Goodwin/Pfaff 2001: 293)

In her classical contribution to the then incipient research on transitional justice Martha Minow defined a range of instruments according to a scale from vengeance to forgiveness. (Minow 1998) This is a very useful approach because it takes as its starting point the variety of needs individuals and collectives have after atrocities have taken place. According to this scale trials and criminal prosecution are the more civilized, refined way of expressing vengeance based on a clear set of rules and norms, while public amnesia is the extreme form on the forgiveness end. The main message is that there is a variety of instruments that may be applied to address past atrocities respecting the specific context, but also taking into account that the extremes will not overcome the legacies of violence. Minow's quote, therefore, may articulate the two sections of this chapter:

"Without a personal transformation, the focus on prosecution can entrench an adversarial thirst for revenge. That kind of thirst is seldom satisfied by successful prosecutions, and failure in the prosecutorial structure can seem another betrayal." (Minow 1998: 7)

1.2. Transitional Justice as legal Accountability

1.2.1. The “Justice Cascade”

Kathryn Sikking’s work on the “justice cascade” (2011) summarizes the central arguments and historical milestones of the advancement of individual criminal accountability in transitional periods. She considers this punitive, legal dimension of transitional justice as a part of the wider process to globalize the international human rights regime. Despite the strength of sovereignty as a principle of international law, the conscience that crimes against humanity must be sanctioned, even if they are committed by state authorities, has increased. Her model to explain the process that has led towards stronger individual accountability for violations unites actor-centered elements by emphasizing specific people, who in certain historical moments understood the “window of opportunity” and pushed the limits of criminal prosecution of perpetrators, with normative and legal aspects that deepen these achievements by providing institutions and new benchmarks. Her stage-model that explains the creation of a norm and its internalization will later facilitate the analysis of the Colombian debate on transitional justice.

In her book *The Justice Cascade*, Kathryn Sikking expanded on a previous article that she had written together with Ellen Lutz. The main idea is that the trend to hold individual state officials, including head of states, accountable for their violations of human rights is on the rise. The term cascade indicates that all started with a small stream that favored criminal accountability such as illustrated by the Nuremberg and Tokyo trials, but gained momentum in the 1970s, when the Greek democratic government decided to put former state officials on trial. (Sikking 2011: 5)

In the meantime three presidents have been indicted for mayor crimes: Slobodan Milosevic who died before being convicted by the International Criminal Tribunal for the Former Yugoslavia (ICTY); Charles Taylor who fled to Nigeria after the defeat of his troops in Liberia and was extradited to the Special Court for Sierra Leone in 2006; and Omar al-Bashir of Sudan who was indicted for crimes against humanity in Darfur. In 2013, the first ex-president, Laurent Gbagbo from Ivory Coast, had to appear at the ICC due to allegations of crimes against humanity. (BBC 2013)

Sikking groups these criminal prosecutions into three different categories: *international* prosecutions such as the one against Milosevic, when an international tribunal was established;

foreign, when a state decides to use its judicial apparatus to try an official from another country under the principle of universal jurisdiction; and the majority that takes part in the national jurisdiction (*domestic*). (Sikking 2011: 5-7)

Finnemore/Sikking argue that international norms often started as domestic norms and then became international through the commitment of “norm entrepreneurs”, i.e. individuals who strive to transform an idea into a norm. These two levels – domestic and international – are interrelated; international norms are often used to promote certain norms on the domestic level. The authors describe a norm “life cycle” as a three-stage-process where the norm first emerges, then through a “tipping point” converts itself into a “norm cascade” and is, finally, internalized. In international relations this tipping point consists of sufficient state actors that adopt this new norm. In the first stage, norm entrepreneurs try to persuade others to embrace the new norm. The second stage is characterized by imitation, pressure for conformity and enhancing international legitimacy through the adoption of the new norm. Internalization takes place when norms are taken for granted and do not cause public debates any more. (Finnemore/Sikking 1998: 893-895)

For new norms to reach the “tipping point”, they require state support and some institutionalization, usually through international organizations or foreign policy practices of a number of states. There is not much empirical evidence on how many states must adopt a new norm in order to reach the tipping point. Taking women’s suffrage or the prohibition of land mines as examples, it seems that around a third of states are needed to accept the norm. However, it is also important what states adopt it. For example, landmine-producing states were more critical for the convention than others. (Finnemore/Sikking 1998: 896-902)

Once the second stage, the norm cascade, starts, another dynamic emerges. The socialization of the new norm, the regional contagion effect, and the combination of praise for norm compliers and rebuttal for norm violators help to spread the norm. For the Colombian case, for example, the experience of South American countries that overcame military regimes or armed struggles and applied transitional justice instruments still serve as references for the public debate. States, networks of norm promoters and international organizations are the main actors in this phase. The states’ identity is essential for their decision to adopt new norms or not. Conformity, esteem and legitimacy are important features to explain the leaders’ decision regarding the adoption.

The normative discussions stop in the last phase, the internalization of norms. At this stage, norms are so strong and unquestioned that their existence is not even perceived any more. The downside is that their legitimacy may no longer be debated either, which may weaken resistance in the case of a threat to them. (Finnemore/Sikking 1998: 902-905)

The ideational basis for the cascade consists of three convictions: First, that violations of human rights such as torture, mass executions or disappearance cannot be justifiable acts by state officials, but must be considered crimes. Second, that the perpetrators must be brought to justice. Third, that the accused also have the right to due process. It is this last point that distinguishes human rights trials from political trials that are traditionally applied to strengthen regimes against former leaders or internal enemies. One of the key terms in this context is accountability. Sikking understands it as “practices where some actors hold other actors to a set of standards and impose sanctions if these standards are not met.” (Sikking 2011: 13)

1.2.1.1. The Genesis of the Cascade

The impunity-model of dealing with human rights violations has been deeply rooted in history. Before World War II both the state and its officials were exempt from justice for various reasons. On the one hand, it was felt that the monarch could not do any wrong; on the other hand, immunity was meant to provide the necessary space to administer the state’s affairs. This model came to an end due to the effects of the holocaust. Both state officials and other individuals realized the level of atrocities that an unrestrained state is able to commit. The victorious allies initiated the Nuremberg and Tokyo trials as a first step to hold individuals accountable. In this historic context other instruments of transitional justice were tried in several countries. Thus, the big and prestigious trials were only one measure of de-nazification that was undertaken. Others consisted of the vetting from public service, loss of civil rights, or trials on regional or local levels. (Elster 2004: 54-60)

The 1948 Universal Declaration of Human Rights and the more specific treaties on civil and political rights and social, economic and cultural rights of 1966⁹ ended the state’s immunity

⁹ International Covenant on Civil and Political Rights (by General Assembly resolution 2200A (XXI) of 16 December 1966): <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (January 8, 2014) and International

by providing important instruments to hold the state as such accountable but not yet individual state officials. This contradictory model of universal human rights on the one hand and the impunity of individuals on the other hand was to be exposed in the coming decades. In the meantime the existing human rights instruments provided only scarce resources to actually sanction a violating state and left individuals beyond reach. This is not astonishing given the fact that trials question two of the most dearly held principles of international relations: sovereignty and sovereign immunity. The first refers to the opinion that it is nobody's business how a leader treats his/her own people; the second protects the state official from prosecution. (Sikking 2011: 15f)

However, from the late 1960s onwards several historical events challenged these principles and led to the development of the individual accountability for massive human rights violations.

1.2.1.2. Trials in Greece and Portugal, Impunity in Spain

The main cases that contributed to the development of transitional justice and criminal accountability are part of Samuel Huntington's third wave of democratization (Huntington 1991). Despite their temporal or geographical proximity countries such as Spain, Greece or the below-mentioned Argentina and Chile addressed past crimes in very different ways. Each of them, however, applied instruments specific to their context.

The first trials after the Nuremberg process against individual state officials took place in Portugal and Greece after the authoritarian regimes came down in April and July 1974 respectively. While Spain with its negotiated transition opted for an amnesty (Aguilar 2001), both Greece and Portugal prosecuted their state officials due to the ruptured transition they experienced. The European context also helped, because after World War II the continent created several human rights instruments that demonstrated its teeth: the European Court of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Commission of Human Rights. Greece itself had tested the

Covenant on Economic, Social and Cultural Rights (by General Assembly resolution 2200A (XXI) of 16 December 1966): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (January 8, 2014)

efficiency of the Convention by accusing the UK of torture in Cyprus in 1956 and 1957. In the end the case was dismissed, but it showed that the Convention can be used in such cases.

The 1967 coup in Greece was a shock for democrats around the world, particularly due to the prompt shut down of democratic institutions. In the early 1970s, however, the international context was very conducive to the promotion of the human rights' cause. The anti-Vietnam movement, the détente initiated by President Nixon with his travel to China and the rise of human rights movements, such as Amnesty International, created the necessary public pressure against human rights violations. However, the trials in Greece and Portugal were opened without having historic models of this kind. (Sikking 2011: 31-36)

Both the reports of Amnesty International on Torture and the use of the European system by the Scandinavian countries to file suits against the Greek military government at the European Commission on Human Rights prepared the floor to expose the regime's human rights violations. In 1970 the Council of Europe, eventually, issued a report stating that there is firm evidence that Greece used torture. This led to the withdrawal of Greece from the Council. The 1973 coup in Chile called further attention to the issue of torture. (Robertson 1999: 262ff) These regimes had in common that they were U.S. backed allies in the Cold War, received significant military aid and were supposed to eradicate Communist elements under the "National Security Doctrine". In December 1972, in its "Campaign for the Abolition of Torture" Amnesty International called for international tribunals; domestic courts still seemed too inefficient at that time.

Due to the military disaster in Cyprus, when the Greek army could not prevent the Turkish invasion of the island, the regime broke down and handed over its power to the prominent politician Constantine Karamanlis, whose reputation had been seriously affected by the murder of civil rights activist and MP Gregoris Lambrakis in 1963. One hypothesis is that Karamanlis only tolerated the trials against the junta to erase this stain on his career. (Sikking 2011: 36-42)

The Karamanlis government immediately issued an amnesty for the political detainees but was ambiguous on the question of whether it covered the members of the military regime, too. It was a civilian, Alexandros Lykourezos, who filed a suit for treason against the latter. Many other citizens followed suit, which motivated the government to clarify that the Amnesty Law did not cover the leadership of the regime, a position that was confirmed by the people in

the elections in November 1974. In that case the norm entrepreneurs acted on different levels with the population highly involved in advancing towards accountability.

Karamanlis was well aware of the Greek tradition of political trials that did not respect due process and basic rights of the defendants, such as the trials that led to the execution of five leading officials in 1922. So there was a pre-disposition of the people towards political trials that made them expect something similar in 1974. However, Karamanlis learnt the lesson from history and renounced death penalties that would promote martyrs; this is why he banned the death penalty from the outset. Furthermore, he was aware of the damage done to Greece by the European Commission report on torture, which explains his decision to pursue the officials not only for treason but also for torture. (Sikking 2011: 44-47)

The treason trials took place in July and August of 1975 and three of the main leaders were sentenced to death; Karamanlis, however, commuted this sentence to life in prison. This step was severely criticized by the left, but served as a signal towards Greece's European integration. In addition, 55 active and retired military people were tried for torture by a military court. Some of them were sentenced to significant prison terms. The most impressive aspect of these first trials against state officials for past human rights violations was the speed with which the courts proceeded. Within one year and a half the trials were finished without recurring to the old habit of politically motivated show trials. Widespread purges from public service complemented the transitional justice design in Greece. (Elster 2004: 60-62; Sikking 2011: 47-50)

After military officers undertook the revolution in Portugal in April 1974, the secret police (PIDE) and its net of informants became scapegoats for the population. This police had acted with particular brutality in the colonies, the status of which was at the core of the revolution. Many of PIDE's members were purged and detained, even under a retroactive law that from today's perspective would be unacceptable under the human rights perspective. In November 1975, Captain Sousa e Castro was appointed head of the Commission for the Extinction of PIDE, which was in charge of the investigation and prosecution of former PIDE-members. The trials started in 1976 with the result that most of the members had already served their terms without charge, even before the trials started. Their liberation, the brevity of the trials and Sousa e Castro's attempt to improve the prison conditions for the detainees was severely

criticized by the Portuguese public and resulted in many victims' decision not to support the prosecution. For lack of evidence many trials had to stop.

There is not much research on the trials available, particularly due to the public impression that not much has been achieved. The leniency of the results and the scarcity of the trials remained as the main characteristics of this period. However, both Greece and Portugal managed to introduce new instruments for the prosecution of human rights violations that had not been tried before. These countries also serve as examples for alliances between norm entrepreneurs, national activists, international civil society that put pressure on the officials at the right moment and human rights norms that support the practice. (Huntington 1991: 3ff; Costa Pinto, 2001; Sikking 2011: 50-56)

While in Greece and Portugal significant efforts were made to analyze and address past human rights violations, Spain decided to issue an amnesty law in 1977 that was approved not only by a democratically legitimate parliament but also by the vast majority of the population. One reason for that is the character of the transition that in part was carried out by still powerful remnants of the old Franco regime; it, therefore, falls under the category "pacted transition". The widespread fear of a relapse into an authoritarian regime that was reinforced by a coup attempt in 1981 did its part to convince the people to leave the past behind and indulge into a model of "disremembering" (Elster 2004: 62). Only in 2000, the Association for the Recuperation of Historical Memory was founded and estimated that around 30,000 bodies were still buried in anonymous mass graves. This contributed to the assessment that around 50,000 people had been killed after the Civil War. (Sikking 2011: 56-58)

On the normative level, which is obviously closely related to the practical judicial proceedings, significant developments took place in these years. Among the emerging justice norms it is essential to mention the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* ("Torture Declaration") approved by the UN General Assembly on December 9, 1975, a few months after the trials in Athens. As mentioned before, the widespread use of torture in Greece and Chile drew attention to the need of acting against this violation of Article 5 of the Universal Declaration of Human Rights. The declaration only included references to national legal

proceedings but lacked hints about the international involvement, which was consistent with the importance of sovereignty at those times. (Sikking 2011: 59)

This Declaration was further refined by the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* of 1984, Article 1 of which offers the following definition of torture:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

This Convention is explicit in requiring states to take legal action against torturers, even though they are not their nationals, thus establishing the principle of universal jurisdiction. As will be detailed below, the Pinochet case was one of the most famous applications of this principle. (Robertson 1999: 247-250)

1.2.1.3. Argentina and its environment

Around a decade later, two countries of the Southern Cone, Argentina and Uruguay, undertook two very different approaches to transitional justice. While Uruguay chose to enact an Amnesty Law in 1986 due to its “pacted transition”, Argentina took another direction. The military regime from 1976 to 1983 that had been installed under the guise of anti-communism and the re-establishment of order used widespread human rights violations such as torture and particularly disappearances. The human rights groups, such as the famous *Madres de la Plaza de Mayo* (Mothers (of the disappeared) of the May Square), actively searched for international solidarity and found it in international NGOs such as Amnesty International but also in the Carter administration that funded the OAS (Organization of American States) human rights regime in the Americas. Thus, the 1960 created Inter-American Commission on Human Rights (IACHR) got new teeth and was in the condition to do on the site research on violations.

When in 1980 the IACHR published its first report on the human rights situation in Argentina, it also recommended domestic trials for those responsible. This was in line with previous reports on Chile, El Salvador and Haiti. The first time the Commission recommended

such trials was in 1974, even before the Greek trials had started. Thus the IACHR was a main contributor to the justice cascade. Later in the 1990s it was also the IACHR that confirmed in several rulings the victims' rights to be repaired and to know the truth about the disappeared. (Barahona de Brito 2001: 138)

There were also significant discussions within the Argentinean human rights movement, where the demand for trials and accountability was hotly contested. Was it thinkable to ask for justice, while the regime was still in power? Was it too provocative? With the image of Nuremberg being very present in the 1970s, by 1983 the slogan that demanded trials and justice for the perpetrators was commonly acknowledged. The de-legitimization of the Argentinean military due to the disaster around the Falkland/Malvinas Islands contributed to increasing the confidence in these demands. The first president after the fall of the regime, Raúl Alfonsín, had been a member of one of the most prominent human rights organizations, the Permanent Assembly for Human Rights. However, he had to balance the pursuit of justice and the integration of the armed forces into the democratic system. Furthermore, the military government had signed a law for self-amnesty on September 23, 1983, that he condemned a week later.

Once in office, Alfonsín moved quickly to revoke the amnesty-law, to create the National Commission on the Disappeared (CONADEP) and to initiate trials against the militaries. According to his legal adviser, Carlos Nino, the motivations for the trials were retributive and preventive. They also kept in mind the limitations of what was politically possible.

When the military courts that were initially in charge of the human rights violations committed by military personnel did not show any initiative, the cases were passed to civilian courts. This happened in accordance with Decree Law 158 of December 1983 that stipulated that after six months of inaction civilian courts were in charge of further dealing with these cases. The prosecution, among them the then young Luis Moreno-Ocampo who later would be appointed the first prosecutor of the ICC (International Criminal Court) relied heavily on the reports produced by CONADEP¹⁰, which demonstrates that truth commissions and trials can be mutually enriching and not exclusive. One of the prosecution's first tasks was to convince a public that was still not able to believe that the military had been capable of these crimes against its own population. This is why they selected clear-cut cases of obviously innocent victims that

¹⁰ Its final report *Nunca Más* (Never Again) published in 1984 was based on 50,000 pages of testimony and confirmed the disappearance of around 9,000 people and the existence of hundreds of torture centers. CONADEP passed around 1,100 cases to the courts by the end of 1984. (Barahona de Brito 2001: 121f)

showed the responsibility of the military regime. The trials that were held in 1985 were thus directed to provide justice, but also to appeal to the public. This symbolism of judicial neutrality and the ritual of a trial are essential in human rights proceedings that always have the objective to prevent future crimes. The understanding of the past thus became an intrinsic value of the trials. In the end, five of the nine regime leaders were convicted; General Videla and Admiral Massera to life and other leading figures to long prison terms. (Barahona de Brito 2001: 120ff)

Against the intentions of the government, not only the highest ranking militaries were tried, but around 300 officers more. Many victims used the possibility of private prosecutions to put them to trial. This provoked unrest in the military and despite the massive popular support for the civilian government during several coup attempts, Alfonsín felt that it was necessary to give in to the requests of the military. Thus, he put himself in opposition to several human rights groups. Public protests, the increasing commitment of organizations and the courts to investigate human rights abuses and the discontent of the military led the government to pass a “Law of Statute of Limitation” in December 1986, which had not the desired effects. New rights’ protests and military rebellions led to the “Due Obedience Law” in June 1987 that blocked future trials against lower-ranking officials. This law stipulated that anyone under a certain military rank acted according to obedience and could not be held accountable for his actions; a decision upheld by the Supreme Court in 1987. Alfonsín’s successor, Carlos Menem, pardoned the convicted militaries and declared the cases of human rights violations during the regime closed (Roht-Arriaza 2006: 97f)

The human rights activists, being blocked domestically by the amnesties, searched for international venues to pursue the perpetrators. This was a clear example for “the boomerang effect” (Sikking 2011: 77).¹¹

Based on the new Constitution of 1994, the article 75 of which gave supremacy to the international human rights obligations over national laws, and the Priebke case¹² that established that crimes against humanity were subject to prosecution even though they may have happened long ago (Roht-Arriaza 2006: 100f), in the late 1990s innovative lawyers achieved the virtual

¹¹ “When channels between the state and its domestic actors are blocked, the boomerang pattern of influence that is characteristic of transnational networks may occur: domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside.” Keck, Margaret E. / Sikkink, Kathryn (1998): *Activists beyond Borders: Advocacy Networks*. Ithaca: Cornell University Press, 12

¹² Erich Priebke had participated in the 1944 massacre at the Ardeatine caves outside Rome where more than 300 civilians were slaughtered in reprisal for the assassination of German soldiers. He was, eventually, extradited to Italy, where he was sentenced to five years in prison.

annulment of the amnesty-laws. They resorted to a combination of national and international law, particularly the American human rights system. In 1998, the so-called “truth trials” started, basically in order to find out information about the disappeared. The legal capacities to prosecute perpetrators, however, were severely limited (Roht-Arriaza 2006: 104-107)

Another venue to prosecute perpetrators of serious violations was the crime of baby-snatching. In July 1998, Judge Roberto Marquovich ordered the arrest of Jorge Videla on the grounds that there was a systematic practice in maternity-centers, where “subversive” women had to give birth and were later disappeared. Their children were then transferred to loyal couples. More and more children questioned their identity and through DNA-tests discovered their true origins. Given the number of exceptions of the *punto final* and *due obedience* laws, the pressure to question the laws as such increased by 2001. (Barahona de Brito 2001: 137; Roht-Arriaza 2006: 108-113)

The breakthrough happened in the course of the *Poblete* case. Eight-months old Claudia Victoria Poblete was kidnapped from her parents and transferred to a police lieutenant. Her real parents were eventually killed. After restoring her identity, in March 2001 Judge Gabriel Cavallo declared the restrictive laws void under the argument that it made no sense stopping the investigations before shedding light on the deaths of Poblete’s parents. Two suspects were arrested but the laws prevented a full prosecution. In several other cases judges decided to push in the same direction. (Roht-Arriaza 2006: 114-117) In 2003, finally, President Nestor Kirchner declared the amnesty laws null and void, a step that is severely criticized by Snyder/Vinjamuri who consider amnesties as legitimate tools to strengthen the rule of law. According to them overriding amnesties potentially weakens the available bargaining instruments in times of a transition. (Snyder/Vinjamuri 2004: 14)

The 2005 decision of Argentina’s Supreme Court that disappearances are crimes against humanity and thus face restrictions with regard to amnesties led to the opening of hundreds of cases that had been blocked before. (Sikking 2001: 60-83; Barahona de Brito 2001)

It is difficult to overestimate the country’s importance for the development of transitional justice and the application of different instruments. Argentina opened the door for a number of truth commissions, since CONADEP was the first that issued a final and exhaustive report. Through the contagion-effect several other countries in the region established truth commissions with a diverse set of characteristics but all applying this instrument to foster the right to truth.

Argentina was also the Latin American country where the first trials against members of authoritarian regimes were conducted. Furthermore, it provided important lessons on the appropriate sequence of the instruments and on propitious circumstances for their application. With regard to the methodology of advancing the cause of justice, Argentina also showed the potential for coalitions between domestic and international actors. (Sikking/Walling 2006: 308ff, 313ff)

1.2.1.4. Characteristics of the Justice Cascade

In Argentina, Portugal and Greece the “ruptured transitions” and the discontinuities of elites were certainly factors that explained their transitional justice mechanisms in contrast to those in Uruguay. There was also the perception of political opportunities by the main human rights actors who helped to create them. The success of early trials changed the public perception of the efficiency of the judicial system and further encouraged citizens to pursue justice. In the 1990s, eventually, trials were not conditioned by the type of transition any more. Chile and Guatemala did not experience “ruptured transitions”; however, trials were pursued. The justice cascade has changed the people’s expectations and thus lowered the threshold to initiate trials. (Sikking 2011: 60-83)

For the justice cascade it was important to disseminate these early experiences of individual trials. Sikking argues that particularly the Argentinean cases found a vast diffusion due to a specific historical context and the initiatives of multiple human rights actors. First, the 1980s witnessed an increase in human rights organizations and activists, who were interested to analyze and replicate these experiences; in the 1970s, on the contrary, this movement had still been weak, particularly in the countries in question. Second, Argentina is located in a region that at that time moved from military regimes towards democracy, meaning that several countries simultaneously experienced transitional periods and were interested in learning from each other. Third, the private activities of victims, families and activists to increase the scope of the trials by adding international mechanisms also made them move around and communicate the domestic situation. Fourth, the transnational networks established by Argentinean activists helped to reach key institutions in the U.S. or Europe that supported them in innovating the transitional justice mechanisms. Most prominent was the IACHR with its report on the situation in Argentina and its

recommendation to conduct individual trials against the perpetrators. Fifth, many Argentinean activists got involved in other transitional justice processes around the world (El Salvador, South Africa, Peru etc.), thus contributing to the development of adequate instruments in other regions. (Sikking 2011: 87-95) This combination of private, regional, national and international actors, strengthened by a conducive environment, also played a decisive role in Colombia, as I will show in the respective chapters.

Sikking argues that the justice cascade nourished itself from two streams and a firm streambed that initially were separated from each other. The first stream consisted in the tradition of the Nuremberg and Tokyo trials that led to the international tribunals on Yugoslavia and Rwanda. The second, and practically independent of the first, stream consisted of the domestic trials that took power in Greece, Portugal and particularly Argentina. In the course of these two streams a new international legal framework was built to fortify the human rights related instruments. When in 1998 the delegates decided on the “Statute of Rome” that established the ICC, there was already a firm legal and practical base to further develop individual penal prosecution. Nevertheless, at every stage concrete human agency was necessary to evolve the cascade. (Sikking 2011: 96-98)

A central step in the creation of a streambed was the emphasis on individual responsibility for human rights violations, but also the concern for individual victims. It was the before-mentioned Convention Against Torture (CAT) that first shifted the focus from state to individual responsibility and established the principle of universal jurisdiction according to which torturers may be prosecuted in any country that ratified the Convention.

The new legal framework of the CAT became reinforced by international legislation on forced disappearance. Since Honduras had ratified the American Convention on Human Rights before around 180 disappearances were committed between 1981 and 1984, the Inter-American Court of Human Rights could exercise its jurisdiction. In 1988, it decided in the *Velásquez Rodríguez* case that states had to prevent, investigate and punish cases of forced disappearances, thus emphasizing the states’ duty to act. This was a landmark decision that led to the *Inter-American Convention on Forced Disappearance of Persons* that came into effect in 1996. This Convention contains similar language to the CAT, particularly with regard to universal jurisdiction.

A major step towards the individualization of criminal law was the integration of humanitarian law (“War Law”) into the human rights discourse. On the one hand it allowed human rights organizations such as the newly founded Human Rights Watch (HRW) to gain in neutrality criticizing both the governments and the guerrilla groups in internal armed conflicts, on the other hand it facilitated the eventual merging of these two branches in the international criminal tribunal on Yugoslavia and the ICC. By 1993, the individual prosecutions on the domestic level increased rapidly; it seems that the end of the Cold War accelerated the diffusion of the justice norm. However, human rights organizations such as HRW remained skeptical about the efficiency of domestic trials (second stream); thus, they kept pushing for international tribunals (first stream). (Sikking 2011: 98-109)

1.2.1.5. The Idea of International Courts

The idea of a Nuremberg-style tribunal re-emerged in the early 1990s when it was demonstrated that Saddam Hussein had committed genocide against the Kurds in the Anfal campaign, in which around 100,000 Kurds were killed, mostly through poison. However, there was no venue available to try Hussein then. The International Court of Justice (ICJ) addressed complaints against states but not against individuals and only received complaints of states. In 1993, finally, the idea of an international entity led to the establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) that tried war crimes in the region. The failure of domestic trials and the amnesty laws that blocked trials in Argentina, Chile and other countries facilitated the conclusion that it did not make sense to wait for internal tribunals in Yugoslavia. The decisive factors for the creation of the tribunal were the end of the Cold War, the documentation on genocide and widespread crimes against humanity and the success of the international NGOs’ campaign in favor of such a court. The ICTY had positive impacts on the creation of domestic courts but also of the International Criminal Tribunal for Rwanda (ICTR) in 1994¹³. These events helped to mobilize state support for the eventual creation of the ICC. It was also the time when transitional justice used to be understood as criminal justice only. (Robertson 1999: 303ff; Roht-Arriaza 2013: 388)

¹³ For a critical assessment of its impact on “social repair” compare chapter 1.3.4.

In the early phases of the discussion on an international criminal court, the U.S.' constructive role under the Clinton administration helped the idea gain momentum. The administration hoped that such a court would be a convenient instrument to try Somali warlords or cases such as the downing of the plane over Lockerbie. When it realized that the court would be more independent, it was too late to stop its development. However, the resistance against the court was significant. Only a handful of countries supported the idea wholeheartedly, while the permanent members of the UN Security Council opposed it adamantly. The work of the group of like-minded states supported by the Coalition for the International Criminal Court, a network of around 2,000 NGOs, was decisive to mobilize support for the idea. At the time of the Rome conference the group consisted of around 60 countries, though with a Western bias. The 1998 approved Rome Statute is firmly based on the individual criminal responsibility, explicitly including heads of states and state officials. The drafting of the statute united state representatives and an epistemic community of international lawyers and NGOs. In the end, a strong and independent court was created that was based on the notion that there are crimes that offend not only the victim but the entire humanity. Consequently, every state has jurisdiction independent of where the crime took place.

The statute was the result of two decades of work in favor of individual accountability. Despite the prominence of the international tribunals, the domestic trials and particularly specific people who participated in them had a momentous impact on the result. Thus, with the creation of the ICC the two streams converged into a court that would prosecute perpetrators regardless their position. In 2002, much earlier than expected, the treaty entered into force. By 2010, 110 states have ratified the statute. (Sikking 2011: 109-121; Robertson 1999: 346ff)

The ICC consists of a panel of 18 judges from around the world and a prosecutor's office that alongside the UN Security Council and a state party can decide to open investigations. While the Security Council can transfer to the ICC any case that falls into the court's mandate, the prosecutor or a state party can open investigations if the state where the crimes took place or the defendant has the nationality of a member country. There are no immunities or statutes of limitations in the Rome Statute.

In theory the ICC is much more victim-centered than the ICTY and the ICTR, particularly regarding the requirement to elaborate reparation programs. It remains to be seen, whether this results in a sentiment of agency on the victims' side, as felt in the transnational

prosecutions such as the Pinochet case that will be presented later. The establishment of a global institution is certainly a symbol for the globalization of international human rights norms; on the other hand it may be very distant to local realities and like other institutions constrained by its member states. (Roht-Arriaza 2006: 200-209; Fletcher/Weinstein 2004)

1.2.1.6. The Pinochet-Case and Universal Jurisdiction

It was the Pinochet-case that inspired the human rights community and became a symbol for universal jurisdiction. When the English police arrested General Augusto Pinochet in London in October 1998 due to a Spanish extradition warrant, it was a serious blow to the opponents of international jurisdiction. The main argument for universal jurisdiction in this case stemmed from the CAT that had never been applied after its ratification. The Law Lords decided that Pinochet can be tried for torture, even though he had been head of state; so it confirmed the validity of the Spanish proceeding. Although Pinochet was returned to Chile for alleged incapacitation, this case opened the horizon for many more criminal cases around the world. For the first time universal jurisdiction became real and viable. The reference to the CAT showed that the foundations of the streambed that had been laid since 1948 (Genocide Convention) consolidated the new tendency towards the international justice norm. However, by the start of the 21st century, there was a clear backlash against the ICC. It was accused of being a court of the North against the South and of causing more troubles than it resolves. (Sikking 2011: 121-125; Roht-Arriaza 2006)

The Pinochet-case was not the only attempt to strengthen universal jurisdiction. In 1999 and 2001 respectively, Rwandans were sentenced to jail terms in Switzerland and Belgium for genocide. (Des Forges/Longman 2004: 57)

1.2.1.7. International Standards for Transitional Justice Instruments

One element of the streambed that, to a large extent, influences a government's decisions with regard to transitional justice consists in victims' rights that are established in several international documents.

In 1997, the special rapporteur on impunity, Louise Joinet, established four obligations in transitional processes: the satisfaction of truth, reparation and justice and the guarantees of non-recurrence. This report was further refined with regard to the right to reparation by the so-called Bassiouni Report in 2000. The Joinet-Principles were updated in 2005 on the basis of a study by Diane Orentlicher. (UN Ecosoc 1997, 2000, 2005)

Without going into legal details, the United Nations have incorporated the practical and academic experience into their documents and consequently offer an elaborate framework for the observation of the victims' rights in transitional periods. These principles were adopted and applied by regional human rights mechanisms, such as the Inter-American Human Rights regime.

In the following, the rights to truth, justice and reparation are further detailed with several remarks related to Colombia. This serves to embed the case study into the international conceptual and normative framework.

As mentioned before, in 1997 the special rapporteur for impunity, Louise Joinet, established four obligations in transitional processes: the satisfaction of truth, reparation and justice and the institutional reforms as means of non-repetition. Following this report, among others the Inter-American Human Rights Commission has observed the compliance of the states with these principles. (Botero/Restrepo 2006: 52)

The Right to Justice: One source of limitations with regard to peace negotiations is the Inter-American system of human rights. The Inter-American Court of Human Rights defines impunity as “the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention”¹⁴. Both the American Declaration and the Convention on Human Rights require that states do everything to combat impunity, to re-establish law and to repair committed damages. Based on the Convention's Article 1 and the definition of impunity more specific obligations of the states have been developed through the Court's rulings: 1) sanctioning those who committed human rights violations; 2) inflicting adequate punishments on the responsible; 3) investigating everything related to these violations; 4) respecting the right of the victims to an efficient judicial recourse; and 5) respecting due process in all respects. (Botero/Restrepo 2006: 54)

¹⁴ Quoted from: Paniagua-Morales v. Guatemala, Inter-American Court of Human Rights (ser. C) No. 37, 4-12 (Mar. 8, 1998), 173: http://www.corteidh.or.cr/docs/casos/articulos/seriec_37_ing.pdf

Ad 1) These obligations also apply to the times of transition. The Inter-American Human Rights Commission explicitly demands to balance the requirements of peace with those of justice, thus ruling out blanket amnesties and underlining the international character of the most severe crimes. This is also important with regard to the principle of individual responsibility; an order to violate international norms is not a justification to commit these most severe crimes. Thus, international law puts mainly two restrictions on states in transition. First, an amnesty may only be applied as the ultimate and only alternative; second, it cannot be declared in cases of international crimes such as genocide, war crimes, crimes against humanity and severe violations of human rights such as displacement, disappearing, sexual violence and torture. Consequently, several states among them Spain consider universal jurisdiction for these crimes, i.e. the obligation to prosecute them independent of the nationalities of the victims and the perpetrators. (Botero/Restrepo 2006: 56-58)

In Colombia, this had the consequence that the Constitutional Court significantly limited the president's and the Congress' authority to declare amnesties, which are based on Articles 201-2 and 150-17 of the Constitution respectively. In compliance with international standards, these amnesties no longer apply to the before-mentioned crimes and are certainly restricted by the victims' rights to truth, justice and reparation. A similar example was the sentence of the Argentinean Supreme Court that on May 5th, 2005 declared invalid the amnesty and due obedience laws that impeded prosecutions against the military responsible for human rights violations. (Botero/Restrepo 2006: 59-61)

Ad 2) Every perpetrator must receive an adequate punishment for international crimes. With regard to the question of what constitutes an adequate punishment, it is most illustrative to consider the criteria of the International Criminal Court. These are the gravity of the crime, the interests of the victims and the age and the degree of participation of the perpetrator. The punishment may be reduced if two thirds of the punishment have been fulfilled, the perpetrator cooperates with the Court in its investigations, shows regret and categorically rejects his/her crimes and the reasons for it. (Botero/Restrepo 2006: 62-64)

Ad 3) The Inter-American Court of Human Rights is very clear in stating that the member states to the American Convention on Human Rights have the responsibility to seriously conduct the investigations with regard to violations of its norms. If not, their behavior even suggests support for the violations. A serious investigation requires the necessary means, a

reasonable time-frame and independence of those who conduct it. This aspect is closely related to the victims' right to know the truth about the crimes. (Botero/Restrepo 2006: 64-66)

Ad 4) The access of the victims to judicial resources is related to the states' obligations to legally protect human rights. Thus, the states have to make public all the available resources against human rights violations; to protect the victims and the witnesses in their security and intimacy; and facilitate all the resources and means to guarantee reparation for the victims. The right to have access to the justice system is also confirmed by Article 25 of the Inter-American Convention on Human Rights.

Ad 5) The guarantees related to due process consist of acting within the legal framework, in respecting the right of defense, the presumption of innocence, the burden of proof on the state, the prohibition of degrading treatment, the consideration of all the evidence in favor and disfavor of the accused and the proportionality of the sanction. Moreover, the tribunal must be independent and impartial and has to perform its duties within a reasonable time. However, the international criminal tribunals including the International Criminal Court open the possibility to re-indict a person who had already been tried by another court if this did not comply with international standards.

The Colombian Constitutional Court also permits re-opening the process that had resulted in an acquittal if new evidence appears. Furthermore, in certain cases the originally competent tribunal may be changed for another if the latter is able to act more independently and objectively. This is relevant for military tribunals that according to the Constitutional Court should limit themselves to infractions that are directly related to the military service but do not address human rights violations. (Botero/Restrepo 2006: 67-71)

The Right to Truth: According to the related principles of the Joinet-Report (1997) there are the "inalienable right to the truth" (Principle 1), "the duty to remember" (Principle 2), and "the victims' right to know" (Principle 3). This implies that truth has both an individual and a collective meaning. The former refers to the right of the victims and their relatives to know about the circumstances of the victimization. (Joinet 1997: Principle 3); the latter principle says:

"A people's knowledge of the history of its oppression is part of its heritage and, as such, must be preserved by appropriate measures in fulfillment of the State's duty to remember. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments." (Joinet 1997: Principle 2)

In this context the right of the victims to know the circumstances of what happened is closely related to their right to justice described above. The right to truth has to do with legal aspects although, as I will expose later, there are important non-judicial elements to truth, too. Several international tribunals also consider truth as a measure of reparation.

Truth's collective dimension has to do with the attempt to prevent the recurrence of atrocities and the re-construction of a collective identity through narratives that actually reflect the collective's past. There are important non-judicial instruments to achieve these objectives, such as truth commissions that are spaces to re-construct atrocious crimes that otherwise would remain in obscurity. (Botero/Restrepo 2006: 71-76)

The Right to Comprehensive Reparation: In compliance with the Joinet-report every violation of human rights leads to the right to reparation. (Principle 33) Reparation is directed towards the mitigation of the effects of the violation. It consists of restitution, compensation, rehabilitation, satisfaction and guarantees of no-repetition. (Rome Statute, Article 75.1.) Restitution "should ... restore the victim to the original situation before the violations of international human rights or humanitarian law occurred." (Bassiouni 2000: Art. 22) Compensation "should be provided for any economically assessable damage ..." (Art. 23). Rehabilitation "should include medical and psychological care as well as legal and social services." (Art.24). Satisfaction and guarantees of non-repetition include such diverse measures as the search for the bodies of the disappeared, the commemoration of the victims, sanctions for the responsible, an official declaration restoring the victim's dignity and institutional reforms of the security and judicial sectors. (Art. 25) It is important to keep in mind that reparations are not only material but include symbolic measures, as well.

Reparations should not discriminate and should be adequate, efficient, quick and proportional to the suffered damage. (Art. 15)

These legal clarifications can be considered as the "Justice Cascade's" practical materialization for crime victims that has flown from one region to another and managed to strengthen the discourse and normative framework of specific rights and their implementation. As will be outlined in the respective chapter, the claim for "Verdad, Justicia y Reparación"

(Truth, Justice, and Reparation) has also been at the forefront of the civil society commitment related to transitional justice in Colombia.

Despite its significant achievements in the struggle against impunity, individual accountability and the protection of victims the legal discourse alone is not sufficient to reconstruct a society in times of transition. The following sections, therefore, broaden the substance of transitional justice by including a variety of features that are neglected by an exclusive focus on legal norms.

1.2.2. Broadening the Perspective

1.2.2.1. First Institutions, then Accountability

Even within the mainly legal reasoning, the focus on criminal accountability has its critics, such as Jack Snyder and Leslie Vinjamuri who wrote one of the most influential articles in this regard basing their argument on the analysis of 32 civil wars between 1989 and 2003. They argue that the sequence of first claiming the implementation of universally accepted norms and then building the necessary rule of law institutions is flawed. Amnesties for past offenses, according to the authors, may be necessary to curb violations; international tribunals have proved to be unsuccessful in this respect. Thus, the first steps are political bargaining and effective coalition-building to limit the impact of the spoilers. (Snyder/Vinjamuri 2004: 5-7)

The logic of appropriateness, among others used by Sikkink, considers that “changes in behavior follow the adoption of new beliefs about appropriate standards of behavior” (Snyder/Vinjamuri 2004: 11). The authors, on the contrary, believe that normative persuasion is not enough to change behaviors that are, instead, fortified by a specific set of institutions and patterns of political power. Furthermore, the mere existence of international tribunals does not create a deterring effect. This is only achieved by the enforcement of norms. If these mechanisms are weak, “pragmatic bargaining” is in place to remove the perpetrators from power (Snyder/Vinjamuri 2004: 12). As a conclusion, the authors reject legalism in the absence of institutional and social preconditions.

Their logic of consequence considers that actors would rely on norms only if they are efficient in achieving the goal of reducing atrocities. This is guaranteed by effective institutions and strong political coalitions. Therefore, the sporadic punishment of past violations should be

secondary to the improvement of functioning legal institutions. The analysis should focus on the strength of potential spoilers. If they are too weak to derail a democratization process, they can be put to trial; if not, the institution-building must have precedence. So, the criterion, whether to prosecute or not, should be the strengthening of the rule of law. If amnesties are needed for this purpose, they should be applied. The consequence of considering the institutional and political framework may be an increase in violations through premature trials (Snyder/Vinjamuri 2004: 12-15).

According to the authors, the international tribunals for Yugoslavia and Rwanda did not achieve the goals that proponents of trials promote: the ICTY did nothing to deter future acts of violence, it did not strengthen the domestic judicial system and instead of individualizing guilt, it intensified ethnic stereotypes. Democratic progress in Serbia and Croatia was not promoted by the ICTY; it rather happened despite it. Even the KFOR troops seemed to take seriously the backlash-theory because they did not actively hunt down Karadzic or Mladic in the beginning. So the authors invert the argument by considering that the cooperation with the tribunal followed and was not the cause of democratization. The same applies to domestic trials that were successful, after institutions had been established but usually contributed to jeopardizing the new political order during democratic transitions. The quoted examples include Argentina, Ethiopia, Indonesia/East Timor and Kosovo. Their argument, however, is more anecdotic than the attempt to establish clear causal relationships. (Snyder/Vinjamuri 2004: 18-31)

Snyder/Vinjamuri are also skeptical about the alleged long-term effects of criminal trials. They cite the disenchantment of Serbian youth with the ICTY or the trend to reverse universal jurisdiction as could be seen in Belgium. Fletcher/Weinstein (2002) argue that the effects of trials depend very much on other environmental aspects, such as the ethnic origin or the personal involvement as victim. They show that the ICTY's role was perceived as further victimizing ethnic groups, thus aggravating the notion of collective guilt instead of individualizing it. (Fletcher/Weinstein 2002: 587-601)

However, Snyder/Vinjamuri partially acknowledge the role of the organized civil society in improving flawed "political bargaining" as in the case of the proposed amnesty for the paramilitary forces in Colombia in 2003. In the end, they conclude, the trend is towards the logic of consequences with the states as main actors. The decisions to put perpetrators to trial should be reserved to political actors. The authors insist that these decisions should be guided by a long-

term positive effect on the creation of legal institutions and the rule of law and not on “opportunistic deals with the devil” (Snyder/Vinjamuri 2004: 44). Finally, they prefer domestic trials that strengthen the legal system and forward-looking criteria that prevent future human rights violations. (Snyder/Vinjamuri 2004: 40-44)

Sikking counters these arguments by relying on empirical data, as well. She created a transitional justice database reflecting every prosecution cycle that includes investigation, detention, and trials regardless of the result. She bases this criterion on the fact that the mere prosecution, and not only a verdict, imposes costs both on the individual and the related system. With this database Sikking both confirmed the existence of the justice cascade and obtained more solid information on the effects of the prosecutions.

Taking Latin America as an example, Sikking undertook the task of reviewing the four main points made by detractors of prosecutions: that prosecutions may destabilize democracies; that they can increase human rights violations; that they can increase or prolong conflicts; and that prosecution may weaken the rule of law. Furthermore, she reviewed the two arguments that transitional justice instruments must happen quickly after the transition and that they are mutually exclusive instead of mutually beneficial, thus speaking of justice *or* peace, truth *or* justice.

The data does not confirm the opinion that instruments must be established immediately; quite on the contrary, in cases like Uruguay and Chile prosecutions happened years after the transition. Furthermore, the data show that there may be multiple paths to justice depending on the context and the availability of certain instruments. Latin American countries have used the instruments in a complementary way often creating both truth commissions and trials in addition to a range of other instruments.

The simultaneous increase of amnesties and prosecutions is difficult to explain. While some (for example Olsen/Payne/Reiter 2010) argue that it shows that there is no justice cascade but rather a “justice balance”, Sikking objects that, first, amnesty laws allow for prosecutions due to their often limited scope and, second, that they are direct answers to the justice cascade in so far as regime leaders try to protect themselves against trials by issuing amnesties. Furthermore, these laws have often been eroded by legal action against them initiated by a variety of actors: lawyers representing victims, the Inter-American Court of Human rights that, for example, in

2010 declared the Brazilian amnesty law invalid, or the Chilean Supreme Court that re-opened cases of disappearances. Amnesties are usually accompanied by other instruments, which makes it difficult to evaluate the impact of each one individually.

Sikking convincingly shows that Latin America gives some evidence to the notion that prosecutions do not harm newly founded democracies at all. It is the region with most prosecutions but also the most stable transition to democracy. Since 1983, there have been only a few coup attempts and they were not related to trials; all of them were reverted into democracy. Although there is not enough evidence to argue that prosecutions helped to consolidate democracies, the contrary is certainly not true. (Sikking 2011: 148-150)

Without going into too much detail, Sikking's data also refute the notion that transitional justice instruments contribute to more atrocities or lead to more conflict. With regard to the relation between transitional justice and the rule of law, Snyder/Vinjamuri asserted that first there has to be an established rule of law before initiating prosecutions. The Latin American example rather points to a mutual enrichment of transitional justice and the rule of law and certainly not to the rule of law being a pre-condition for the application of transitional justice instruments. (Sikking 2011: 151ff)

In an ample quantitative research Sikking and her colleagues tested four propositions about prosecutions: 1) that prosecutions are “associated with general improvements in human rights”; 2) whether prosecutions contribute to human rights due to the punishments they impose or due to socializing norms; 3) if prosecutions have an improving effect beyond the national borders; and 4) if prosecutions exacerbate the human rights situation in times of internal war. (Sikking 2011: 168)

The results are the following:

- Transitional countries with human rights prosecutions tend to have lower rates of repression¹⁵ than countries without such prosecutions. Countries with several prosecution years fare better than countries with only one prosecution year. So in addition to traditional variables such as democracy, civil war, economic standing and alike prosecutions have an important lowering

¹⁵ Here, Sikking applies the Political Terror Scale (PTS) that is based on data from the U.S. State Department and Amnesty International and “aims to measure the level of a core set of human rights violations – torture, summary execution, disappearances, and political imprisonment, which are often called “physical integrity right.” (Sikking 2011: 150)

impact on the level of repression. Furthermore, the persistence and frequency of prosecutions matter; the higher the number of years, the lower the level of repression.

- The creation of a truth commission has a positive effect on the repression level, too. If both trial and commission are established, the effect increases. It seems that both the deterrent effect of a prosecution, including the punishment, and the truth-telling effect through the communication of norms have an impact.
- The assumption that prosecutions in civil war countries exacerbate the level of repression cannot be verified. Prosecutions in such countries have no different impact than in other countries. The same applies to the creation of truth commissions in such contexts.
- The research also shows that countries that did not initiate their own prosecutions may enjoy positive effects from prosecutions in countries of the same region.

These results show that the main criticism that human rights prosecutions actually increase human rights violations is unfounded. Prosecutions increase the political, social and economic cost of repression thus influencing the choices of state officials and consequently leading to a reduction of crimes. They are certainly not a remedy against human rights violations but they contribute to institutional and political changes. (Sikking 2011: 183-188)

1.2.2.2. A Call for Realism

From a criminological perspective there are numerous dimensions that a comprehensive strategy of transitional justice should address. First, there is the capacity of the state to deliver justice. Justice has often been delegated to international, private or community actors; the monolithic nature of a state-centered transitional justice discourse does not exist anymore in reality. Taking into consideration a realistic analysis of what the legal system is able to do even in developed countries - McEvoy mentions the UK, where 3-4% of all crimes result in successful prosecutions -, the author concludes that “there is little point in promoting an ideal of state justice that does not work in the better resourced context of the developed world where “rule of law” norms have (arguably) had much longer to become embedded in the political and social fabric”. (McEvoy 2008: 41f) So the state has to learn to create alliances with communities, civil society and even the private sector in order to achieve comprehensive justice.

There is also the question of whom justice is made for. The retributive emphasis of international criminal justice almost automatically assumes that victims need to see their perpetrators punished; furthermore, severe punishment is associated with a deterrence effect that criminological literature cannot verify in reality. The fact that in the setting of an armed conflict individual violence is always embedded in collective factors is also generally neglected by the individual approach to justice. (McEvoy 2008: 38-45)

1.2.2.3. Absences and Invisibility

Feminist criticism on transitional justice practice illuminates fundamental aspects that I will further elaborate in the case study. While a transition has the potential to transform a society and put it on a new standing with regard to inclusion, non-discrimination and non-violence, the achievement of these goals depend on an accurate analysis of the shortcomings and the involvement of the relevant actors.

The analysis of transitional justice from a feminist perspective is closely linked to feminist work on the International Criminal Law (ICL) as such. One of the main motivations to get involved on this level is linked to the domestic level. Applying Keck and Sikkink's "boomerang pattern", the activists' hope consists in transferring achievements on the international level to their respective countries. (O'Rourke 2013: 22f)

Women remained virtually invisible in the early works about transitional justice, which was in line with the invisibility of forms of violence that affect women in the practices such as the Nuremberg process. Thus, the first goal of feminist scholars was to expose the harms that had not been included in the legal norms and the transitional justice instruments as used in South Africa or Chile. This lack was contrasted with the wide array of grassroots activism that pointed to the specific affection of women. Consequently, the transitional justice discourse reflected the premises of the dominant human rights discourse, particularly the concentration on the political and civil rights, but also the clear division between public and private. The usually male actors of transitions and the absence of women in the teams that negotiate peace deals perpetuate gender patterns. This strife for recognition of women as victims, however, tends to confirm frequent stereotypes about the inferior role of women, in this case as receivers of violence or even as

indirect victims with their male relatives as the direct victims of violence. (Ní Aoláin 2013: 45-51; Rooney 2013: 96)

The shocking reports of mass rapes as a weapon of war in the 1990s resulted in a first success through the inclusion and further definition of rape in landmark cases of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for Yugoslavia (ICTY)¹⁶ and its incorporation into the Statute of Rome in 1998. However, the criticism on the treatment of victims and operational concerns kept focusing on the legal level and the implementation of the norms. (O'Rourke 2013: 16)

The non-legal contributions of the feminist research become even more important in the context of this dissertation. There are a variety of aspects that are not captured by law and the postulate of criminal accountability. O'Rourke, for example, mentions the exclusive identity of women as victims of sexual violence. According to O'Rourke this is manifested in two ways: First, other forms of violence and victimization of women remain in the dark, particularly due to the distinction between political and domestic violence that is suffered on a daily base. But also the socio-economic circumstances of women's lives are not part of the transitional agenda. Second, women are not recognized as political actors but merely as victims who require protection. Both aspects lead to the silencing of individual accounts of women, who present themselves with different identities and as agents. It also conceals the more radical feminist critique of social and political realities. (O'Rourke 2013: 15-22)

Fionnuala Ní Aoláin opens the ground for arguing, why transitions are that significant for feminist research and activism:

“It is precisely because core assumptions, systems and institutions are up for re-negotiation that the transitional state offers a unique site for feminist intervention. Moreover, as feminist theorists have grappled with the ‘reality gap’ between theorizing and the stark realities of women’s daily lives marked by material inequality, transitional societies offer a redemptive site for the practical endeavor of advancing women’s material interests and equality.” (Ní Aoláin 2013: 54)

However, law only covers the areas that it considers; the harms suffered by women go far beyond this narrow space. This is why in transitional periods the understanding of justice as the recognition of women as rights-bearers, which is closely linked with the notion of respect, is of

¹⁶ Here the cases *Prosecutor v. Akayesu* (Case No. ICTR-96-4-A) and *Prosecutor v. Kunarac, Kovac and Vukovic* (Case No. IT-96-23 & IT-96-23/1-A) were of particular importance.

special importance. The daily humiliation, exclusion and social marginalization of women become a category for transitional policies. This focus on the hurt self and the individual level radically differs from a conception of transitional justice as a collective endeavor, in which the community or a collectivity is at the center: “By this I mean that in many contexts, the harm that is legally captured may merely be one piece of the overall macro-structure of harm, exclusion and discrimination that encapsulates the women’s interface with the state, an armed group, a military force and the broader civilian context in which she lives.” (Ní Aoláin 2013: 57)

Considering that these circumstances usually take place on the local level also suggests that the responses may differ from one society to another. This certainly contradicts tendencies to apply similar patterns of transitional justice independent of the affected area. But it also emphasizes that current transitional justice instruments are too narrowly focused on specific crimes and neglect other, more structural and systemic deficiencies. A new orientation towards concrete harms suffered – in this case – by women would help transitional justice to address the shortcomings of a given society. (Ní Aoláin 2013: 60-62)

1.2.2.4. Liberal Paradigm vs. Intersectionality

Shaw/Waldorf argue that the liberal vision that underpins traditional transitional justice instruments consists of a linear process of progress from violence towards the rule of law and the respect for human rights. This view sometimes clashes with local needs and priorities and is increasingly criticized by the survivors themselves. The authors argue that “... the very nature of transitional justice – its underlying teleology of evolution and progress, its dualistic moral vision, its dominant models of memory, speech and personhood, and its privileging of criminal justice and civil/political rights over other forms – is exposed, challenged, disassembled, and reconfigured precisely in its local engagements”. (Shaw/Waldorf 2010/2: 4)

Rosmary Nagy (2008), similarly, suggests a critical review of transitional justice that, according to her, has obtained widespread acceptance as a “global project” after its norms globalized. There is a consensus that past atrocities must be addressed; the discussion does not focus any more on *whether*, but on *how*. Formerly hotly debated issues such as the relation between peace and justice and truth and justice seem universally settled.

Nagy also critically revisits the premises of transitional justice such as its blindness towards gender or social injustice and its applicability in contexts outside its liberal origin. Human rights violations that are considered relevant for transitional justice instruments usually exclude structural and gender-based violence. It also focuses on legal considerations that are far away from life-realities. Nagy is particularly interested in looking at how the application of trials and truth-commissions influences the conceptions of justice and violence. Her starting point is that the liberal understanding of justice places more emphasis on freedom than on equality, thus tending to underrate gender and socioeconomic ramifications of violence. (Nagy 2008: 275-279).

Nagy elaborates on her assumptions using the categories “*when, to whom and for what* transitional justice applies”. She concludes that “the focus on specific sets of actors for specific sets of crimes channels transitional justice towards a fairly narrow interpretation of violence within a somewhat artificial time frame and to the exclusion of external actors.” (Nagy 2008: 279)

The notion that transitional justice takes place in a well defined transitional moment from war to peace or authoritarianism to democracy that separates a “now” from a “then” may obscure continuities of violence and repression. One example is the tendency that violence against women increases in “post-conflict” situations when, for instance, former combatants return home.

Due to its legalistic focus, transitional justice instruments address violations of political and civil rights and criminal offenses but neglect structural violence and social injustice. Nagy mentions the experience of the Truth and Reconciliation Commission (TRC) in South Africa. Focusing on bodily harm, it did not reveal the structural violence of the apartheid system but rather concentrated on single acts of violence. Everyday racism and poverty remained outside the scope of the TRC. Quoting Louise Arbour, Nagy makes the point that many root causes of conflicts can be found in the non-compliance with second generation human rights, the economic, social and cultural rights that are usually not addressed by transitional justice.

Women, for example, often appear only as secondary victims, as widows or mothers of killed men. “Truth” often neglects violence suffered by women in post-conflict and conflict situations, including the economic harms. Although the recognition of sexual violence as a crime against humanity is highly significant, the reference to this violence does not capture the whole extent to which women and girls are vulnerable both in times of peace and war. Truth

commissions may be better positioned to do that; the commission of Sierra Leone for example made recommendations regarding marriage age, discriminatory inheritance legislature and other aspects that affect women. (Nagy 2008: 283-287)

This requires a broader perspective on transitional justice than the narrow consideration of first generation human rights. This is why Rama Mani proposes three dimensions of justice to value the multi-faceted task of post-conflict reconstruction: legal, rectificatory and distributive justice. The first refers to the restoration of the rule of law, the second addresses the human consequences of direct human rights violations and the third political and economic discrimination that causes inequality. (Mani 2007: 5f; Lundy/McGovern 2008: 102f)

To take one example of such a structural element, corruption is certainly one of the issues that would be addressed by Mani's third dimension of justice. James L. Cavallaro and Sebastián Albuja argue in their article that the exclusion of economic crimes and corruption¹⁷ from transitional justice takes place despite the popular support for activities to hold state officials accountable. The main argument of the authors is that the inclusion of these crimes in transitional designs would consolidate the democratic transition and increase the legitimacy of the new order in the view of the people. An example for that is the case against Augusto Pinochet. When in 2005 he was arrested for corruption and tax evasion, people, who even may have justified his human rights violations for the sake of security and development, were outraged by the scale of corruption. Thus, authoritarian regimes could be significantly delegitimized by including economic crimes in transitional justice. (Cavallaro/Albuja 2008: 121-123, 135-137; also: McEvoy/McGregor 2008: 7-9)

In order to explain, why economic crimes are usually not included in transitional justice designs, the authors recur to the concept of "acculturation", which describes how international trends, among others in human rights, and institutions shape local policies through mimicry and status-related behavior. This leads to a "decoupling" between the adopted norms and the practice on the ground. According to the authors, this happens to transitional justice, too. Certain top-down schemes are imported and are not based on local needs. Since the international script of truth commissions that is considered successful usually includes only political and civil rights,

¹⁷ For the authors economic crimes are "acts by authorities in violation of generally applicable criminal law, such as large-scale embezzlement, fraud, and tax crimes such as evasion". While there are many definitions of corruption, the authors emphasize the distinction between public and private spheres. So the appropriation of public resources by state agents would be included in this characterization. (Cavallaro/Albuja 2008: 122)

the important economic crimes and corruption remain outside its scope. This diffusion of a specific configuration of truth commissions is closely related to well defined actors and organizations, such as the International Center for Transitional Justice (ICTJ) that fosters the exchange of experiences and of personnel between different transitional justice settings, thus promoting a certain homogenization of the designs. (Cavallaro/Albuja 2008: 123-126)

The non-inclusion of corruption into the investigations of truth commissions in Latin America caused the view that dictatorships had been less corrupt than democracies. Only often risky private investigations brought widespread networks of corruption to light, which uncovered the scale of corruption in Chile, Uruguay, Paraguay and other dictatorships in the 1970s and 1980s. In addition to illegal trade with weapons, the dictators and their families benefitted from privatization, public contracts and the sale of banks. (Cavallaro/Albuja 2008: 127-134)

The term intersectionality is usually related to feminist thinking on discrimination. It looks “at how different social categories, such as gender, race and class, interact in shaping subjective experiences, often experiences of discrimination, and how they are taken up in constructions of identity in different contexts. This provides a framework for the analysis of how gender relations, economic relations and configurations of ethnicity and race are interwoven in the structural make-up of a given society.” (Rooney 2013: 90f)

In her analysis that applies this approach to Northern Ireland’s transition she, for instance, addresses the “illusory sameness” (Rooney 2013: 91) that is suggested by terms like “Catholics” or “Protestants”. Behind these labels other sources of inequality are hidden and thus not addressed by transitional political designs. The before-mentioned absence regarding women in transitional negotiations also applies to ethnically or economically marginalized groups. This results in the exclusion of socio-economic deprivations from the transitional agenda. An intersectional perspective, however, also stresses the differences within the gender category. The mere participation of women, for example, may benefit those of a certain class but not the underprivileged. It also points to the inequality and discrimination among men. (Rooney 2013: 97-103)

1.2.2.5. Change and Continuity between Past and Present

Paul Gready (2011) comes to similar conclusions by researching the impact of the South African Truth and Reconciliation Commission (TRC) on the society.

In addition to his critique of the TRC's limited agenda by excluding criminal and structural violence such as poverty, he focuses on the interface between change and continuity with regard to the past and its impact on the present: "... the past often affects the present not as straightforward repetition – as suggested by the cry 'never again' – but in modified, evolving ways, through complex processes of continuity and change. For example, violence in South Africa was localized, privatized and depoliticized, rather than brought to an end." (Gready 2011: 11) This insight weakens the moral distinction between an evil past and a positive future by identifying systemic continuities that persist despite new faces and institutions.

Gready also stresses the need to broaden the usual perpetrator/victim dichotomy. Like feminist authors he also points to the invisibility of complex identities as both perpetrator and victim and, additionally, others such as political activist, member of a liberation movement and the like. The focus on multiple identities, however, may induce an identity transformation towards full citizenship. (Gready 2011: 164ff)

He advocates a rights-based participation by different constituencies and both top-down and bottom-up processes that would automatically broaden the agenda of truth commissions. This would also include a critical assessment of transitional justice's role as a part of globalization that often furthers neoliberal policies that increase tensions within a society. (Gready 2011: 8, 14)

1.2.3. Summary

This chapter has shown that individual criminal accountability has become an important tool for transitional justice. It also traced back the notion of universal jurisdiction in the case of crimes against humanity and gave several examples of the practical implementation of both principles. Since the achievements are based on long and tiresome struggles and on loss of human lives, it is understandable that in times of transition human rights organizations and lawyers adamantly insist on the fulfillment of the victims' rights and the accountability of the

perpetrators. Every hint that transitional justice may go beyond the legal dimension is considered a potential threat to the integrity of human rights. This explains the passion in the debates on the concrete design of transitional justice in countries such as Colombia. The mandate of the ICC to take over cases if national courts refuse to act further increases the stakes.

Governments find themselves in situations where they are not fully autonomous any more to enact legislation with regard to severe human rights abuses. The international context and the existence of international norms defined clear limitations with regard to amnesties, particularly in a region like Latin America where trials and other transitional justice instruments had had a strong tradition, as was shown through the cases of Argentina and Chile.

The diversity of critiques gives a sense for “awkward absences” (Rooney 2013: 97) of specific groups of the population and their needs. It also emphasizes the very narrow focus on first generation political and civil rights and the neglect of socio-economic considerations that are frequently at the root of violent conflicts. In addition to this substantial critique, a legal focus is necessarily state-centered, which ignores the multiple local transitional justice initiatives. These are usually motivated by specific needs and thus more legitimate on the community-level. They also hold the potential to contribute to reconciliation and the recovery of the social fabric.

The following section is dedicated to the expansion of transitional justice towards goals that go beyond the punishment of perpetrators. This is of particular importance in transitions from armed conflicts to peace, in which the clear distinction between perpetrators and victims is not always helpful to address the harms caused by violence. In the end, the legal procedure to address past abuses depends on the existence of these two groups in order to function. This distinction is certainly more obvious in the first set of transitions, to which transitional justice was applied, i.e. the transformation of authoritarian into democratic regimes.

Shaw/Waldorf, for example, take on this perpetrator/victim dichotomy and the ensuing moral attributions as innocent and evil. This view individualizes and depoliticizes both allegedly well-defined groups, thus forgetting the larger context of social and political injustice. In an armed conflict, however, this distinction becomes somewhat blurry and may lead to a simplified vision of victims who need to be repaired and demobilized combatants who need to be held accountable. Quoting the case of Sierra Leone, Shaw concludes that this link between transitional justice and DDR-programs may conduce to more exclusion of exactly those people

whose exclusion turned out to be one of the main reasons for the conflict in the first place. (Shaw/Waldorf 2010/2: 8-10)

1.3. Multifaceted and Multi-level Transitional Justice

I will first go into a broader argument put forward by Laurel Fletcher and Harvey Weinstein who argue that the basic assumptions of transitional justice are culturally biased, which results in a culturally inappropriate way of addressing past violations. This contradicts the confidence that the usual transitional justice instruments would work universally. Given this bias, transitional justice may clash with local needs and traditions. This leads to the discussion about the ownership of transitional justice and the impact of external actors such as donors.

The subsequent section on the “perspective from below” suggests a different view of transitional justice as a multi-layer endeavor. Shaw/Waldorf, for example, introduce a “place-based” approach that conceptualizes the “local” and its characteristics. Finally, I will return to Fletcher/Weinstein, who argue for an “ecological model” to respond to social breakdown. Thus, transitional justice is converted into a set of strategies to “socially repair” the damages caused by violence.

These considerations are supposed to contribute to a “thicker version” (McEvoy 2008) of transitional justice that includes multiple levels of society but also a variety of disciplines beyond jurisprudence.

1.3.1. Cultural Bias vs. Local Needs

Fletcher/Weinstein argue that the assumption that transitional justice is a “tool kit” of instruments (trials, truth commissions, reparations, truth-seeking, vetting ...) and that one of these would necessarily work is wrong. The authors see the main task in obtaining knowledge of the region and in asking whether and how transitional justice would function. This requires the effort to define success of a specific intervention. (Fletcher/Weinstein 2009: 170)

Fletcher/Weinstein identify eight factors that influence how states deal with past human rights abuses: 1) strength and legitimacy of legal institutions; 2) strength of democracy prior to the conflict; 3) legacy of colonialism; 4) character of the country as a failed state; 5) international

intervention; 6) commitment of the government to address past violations; 7) interventions since the transition to address underlying conflict-issues; and 8) time since the transition period and its relevance for victims. (Fletcher/Weinstein 2009: 190)

In their research on several transitional countries, they found that countries (Guatemala, Sierra Leone and East Timor) with a weak legal system that created a truth commission experienced no major transformations as a consequence of the commissions' findings. This suggests that the commissions primarily served symbolic functions. With regard to the legacy of colonialism, the authors found that Cambodia, Sierra Leone, Guatemala and East Timor suffer from a dualism between Western standards, particularly in the urban areas, and a traditional system in the rural areas that is not based on formal legal institutions. Consequently, one can speak of two distinct forms of law. The relative weakness of the state and the fragmentation of the populations led to the intervention of the international community, namely the UN, which undermined the state's authority to come to terms with past human rights violations, which did not happen in states like Argentina, South Africa or Northern Ireland. Not surprisingly, stronger states with stronger legal system have more leeway to organize their own mechanisms of transitional justice. Even if there was no direct international intervention, the almost universal impact of the criminal justice was felt in all states.

The political commitment of the governing parties proved to be a significant element to explain the use of specific transitional instruments. Both in Northern Ireland and South Africa, the political elites chose to emphasize a public acknowledgment of the wrongdoings rather than individual criminal responsibility. Over the course of the implementation of transitional justice the parties stayed on course and did not revisit the design, in contrast to the Argentinean elites. The findings also show that political commitment to trials at an early stage of the transition is more the exception than the rule.

One argument in favor of transitional justice is that it addresses the root causes of a conflict and thus initiates structural reforms. The authors did not find any correlation between the type of the conflict nor the instrument of transitional justice and the degree of conflict-resolution. They conclude that independent of the instrument it is the commitment to change that leads to a resolution.

Furthermore, the authors find that after a decade since the transition the studied countries started a shift in their transitional justice approach towards considering more the needs of the victims. (Fletcher/Weinstein 2009: 191-206)

The authors conclude that countries with a high economic level and strong legal systems are more likely to pursue their own transitional justice path. On the other hand, they did not find any connection between the type of conflict and how it was terminated and the instruments of transitional justice. Where the international community was involved, certain instruments were favored. Thus, there appear to be two major factors that determine the use of transitional justice: the strength of the rule of law and the existence of an international intervention.

Consequently, the authors make the point that the historic and contemporary context is important in the selection of potentially successful instruments; a mechanic application of tools will not lead to success. An international push for individual accountability, for example, often ignores the local limitations. It seems that specific tools such as trials and truth commission do not leave space for locally adapted instruments. The degree of autonomy in conflict-resolution expresses itself in a political consensus, strong legal institutions, a commitment to a negotiated solution and economic resources. The guarantee of basic social services and the implementation of transitional justice instruments contribute to the legitimacy; weaker countries with their state apparatus prone to corruption are easily pushed towards international actors. In this context, it is interesting that the capacity to conduct trials does not necessarily lead to using them. On the other hand, weak countries are more likely to prosecute criminals with international support. Here, the link between these “internationalized” trials and the strengthening of domestic legal institutions is crucial to avoid the accusation of “imperialist” justice.

The colonial heritage shapes the impact of international intervention on weak states. The international lobbying for specific instruments may convince the elites but may estrange the victims on the base, as well. So, disenchantment with the proposed instruments may start from below and further deepen the alienation between the elites and the base. (Fletcher/Weinstein 2009: 207ff)

This view is confirmed by Rosalind Shaw who in her analysis on the Truth and Reconciliation Commission in Sierra Leone describes the clash between local ideas of “social forgetting” as a means of reconciliation and the “truth-telling” approach of the commission that had been sponsored by several NGOs. She asks, whether truth-telling is an appropriate

instrument in environments where the mass killings have never been concealed unlike in many Latin American countries in the 1980s. Furthermore, the assumption that verbalizing past sufferings brings healing or that remembering prevents a repetition of the past stems from specific Western ideas of how to deal with the past: Catholic confession, Freud's uncovering of repressed memories or the practice of memories around the Holocaust.

Moreover, the parallel use of different transitional justice instruments such as the Commission and the Special Tribunal did not help to garner sufficient trust in the civilian population or the ex-combatants. The tribunal's decision to try only the leaders was much welcomed. Shaw recounts that most of those who witnessed the statements of the ex-combatants before the Commission felt more satisfied with signs of personal transformation than with confessions of guilt. (Shaw 2005)

With regard to truth-telling, Shaw expands her argument by pointing to the fact that making victims talk is not necessarily in their interest. The experience in several African countries shows that practices of secrecy or silence are considered important tools of protection in still violent contexts. Thus, the allegedly empowering power of speaking, which is an ideal in the predominant transitional justice discourse, does not necessarily satisfy the victims' needs. The issue of silence must be researched more neutrally instead of rejecting it altogether. In communities, truth-telling may be considered a threat to the living together and thus convert itself into an additional challenge to the victims' security. It seems that in these environments social repair and the reconstruction of relationships are by far more important than truth-exercises. In this context, the reintegration of ex-combatants often depends more on their commitment to reintegrate than their willingness to give information about specific acts of violence. (Shaw/Waldorf 2010/2: 10-14) My own experience in Colombia confirms this opinion. Members of affected communities attribute more importance to the current performance of demobilized fighters and their demonstrated change of behavior than their being forthcoming with information on past atrocities.

Weinstein et al. (2010) also caution that the seemingly logical argument that "revealing is healing" that the South African TRC promoted, that the assumption that justice and reconciliation are related, or that the view that transitional justice will lead to reconciliation thus deterring further abuses and ending impunity, must be questioned and confronted with the opinions and voices of those who were affected by the violence. (Weinstein et al. 2010: 30f)

Furthermore, several authors argue that there is no universal pattern of transitional justice instruments. It seems that time and political consensus are crucial in selecting the instruments. Transitional justice is, therefore, dynamic and evolutionary over time. This is why Fletcher/Weinstein and Shaw advocate immediate reactions based on the population's needs, which does not necessarily mean criminal accountability at whatever cost. (Fletcher/Weinstein 2009: 207-217; Shaw 2005: 12)

It may be necessary for the international community to step back if local needs tend to favor stability. Transitional justice may appear at a later stage, in particular once the legal institutions and the rule of law in a given country enjoy sufficient legitimacy. Finally, the authors also call for a careful approach by international actors and an emphasis on resolving the root causes of the conflicts that by far transcend the scope of transitional justice instruments. (Fletcher/Weinstein 2009: 217-220)

Weinstein et al. argue that the challenge consists in adapting the original idea of transitional justice as a means to convert authoritarian regimes into democratic to identity or communitarian conflicts. There are several critical issues to consider. First, that the conceptions of justice vary among individuals, communities and cultures; second, that the reactions to violence may be quite different to Western preferences; third, that time is a critical factor; and fourth, that the political context heavily influences the process. (Weinstein et al. 2010: 37) By that, the authors address a major issue for transitional justice: Is it possible to automatically transfer instruments that work in a transition from authoritarian regimes to democracy to a situation in which an armed conflict should be overcome? The harms caused by each are quite different, which implies the need to adapt the instruments. The main difference usually consists in the number of victims, the deeply harmed social fabric of communities, the difficulty to neatly distinguish between perpetrators and victims and the need to reintegrate ex-combatants in a transitional period. These differences are even more accentuated in the context of an ongoing conflict, as I will show in this thesis.

1.3.2. Ownership of Transitional Justice

For transitional justice to be legitimate in the eyes of the people, their participation in its design and implementation is crucial. However, in reality this insight is often sidelined. Too

often it seems that transitional justice and its values are determined by outsiders, international organizations or over-paid advisors. The term “industry” accurately describes this approach to transitional justice. (Gready 2011: 5) Remembering the comprehensive goals of transitional justice, the exclusion of the population from the fundamental debates surrounding the concept of justice is a significant obstacle to initiate real transformations of unjust structures and violent behaviors.

Transitional justice, moreover, is applied almost exclusively to non-Western countries. Consequently, the same criticism raised against the universalism of human rights comes up with regard to transitional justice, namely that the West imposes its values on other contexts. This argument is aggravated by the definition of what a transitional moment is. In Iraq, for example, the transition refers to the fall of Saddam Hussein’s regime but not to the illegal US-invasion or the subsequent outburst of violence. Transitional justice instruments, thus, converted themselves in educational tools for the Iraqi people but not the Western invaders. The external administrations in Bosnia and East Timor have also acted as though they dealt with regions without local traditions. The denial of the ICTY, for example, to investigate violations of international humanitarian law by the NATO bombing and that of the ICTR to look into allegations of war crimes committed by the ruling Rwandan Patriotic Front, confirmed suspicions of victor’s justice. (Nagy 2008: 280-282) Furthermore, studies suggest that most people are not familiar with the procedures and the contents of international law. According to Des Forges/Longman around 87% of the Rwandan population responded in February 2002 that they had virtually no information about the ICTR. (Des Forges/Longman 2004: 56)

Thus, according to Nagy it appears that transitional justice serves other ends than justice; Western powers only apply instruments of transitional justice notwithstanding their involvement in repressive systems or armed conflicts. This is particularly true for trials that are about individual responsibility; truth commissions would be more appropriate to investigate the larger picture but usually do not include “outsiders”. The recent commissions in Sierra Leone and East Timor, however, have named the responsibilities of the international community. (Nagy 2008: 281ff)

The “justice”-discourse in post-conflict settings gives outsiders significant space to get involved in political and social matters of a given society. This raises questions of the current power-relations in the world and the interest-structure of the actors. In the end the issue at stake

is the agency in transitional activities. Donors, certainly, have a massive impact on what is done in these settings and how. The number of “rule of law” and “human rights”-projects financed by international agencies have multiplied in the last 15 years. This is why the question of the agenda behind these initiatives is important. What template is used in transitional periods? Is the objective to simply copy Western societies or impose certain ideologies? The cases of East Timor or Bosnia where the international community virtually took over the countries’ administration with no accountability to the population increased the urgency of a profound debate on agency. In this context the local population is not considered as the owner of the process but more “as traumatized victims, lacking the ability to make decisions about their future ...” (Lundy/McGovern 2008: 106, 101-107).

1.3.3. Perspectives from Below

As presented in the last section, the critical questions around transitional justice focus on its perceived failure to address local needs, particularly due to its exogenous nature. Consequently, according to this argument it fails to address economic and structural forms of discrimination, which many consider as the main causes for violence. Furthermore, transitional justice is biased towards legal “solutions” emphasizing criminal accountability of a few and making the assumption that legal procedures somehow “repair” the harms caused by an authoritarian and/or violent past. This is why a different strand of literature increasingly focuses on the local level and its initiatives and the interfaces with the official transitional justice instruments.

These approaches usually emphasize the “contested space” (McEvoy/McGregor 2008: 2) in which transitional justice takes place. Transitional periods are times when different ideas on the future clash and contrasting interests are pursued. This is even clearer when the scope of analysis is broadened in order to include the different levels of society.

McEvoy/McGregor point to the importance that transitional justice stresses the role of actors on the grassroots-level. In areas where state institutions do not fulfill their functions communities and civil society organizations undertake creative initiatives in order to care for victims and initiate change. This perspective of change lies often at the heart of transitional

justice initiatives that attack systemic failures and hegemonic political, economic or social configurations. (McEvoy/McGregor 2008: 3-5)

Shaw/Waldorf use a place-based approach that is more differentiated than the often repeated clash-theory between international legal norms and local cultures. They are rather interested in the inter-relation and encounter between these levels. The authors, thus, try to understand justice more broadly and embedded in the context. To do that, it is important to define what “local” actually means. The development discourse used to imply that the local is trapped in tradition, while new thoughts necessarily have to come from outside. Furthermore, in a globalized world the local level is never isolated from other levels. According to the place-based approach, however, the local is transformed into a stand-point from which people who are affected by a conflict experience certain transitional justice instruments. This perspective offers the opportunity to compare their needs with the transitional justice’s priorities and goals, which sometimes leads to the recognition that they are quite distant from each other. (Shaw/Waldorf 2010/2: 6-8)

McGregor points to several downsides of state-centered transitional justice activities: the prevalence of blanket amnesties, the promotion of certain “truths” and the suppression of others, the presentation of the state as a neutral actor in the conflict, thus denying its responsibility or partiality, and the emphasis on a specific set of rights while ignoring others, such as the structural underpinnings of conflicts. (McGregor 2008: 54-59)

Despite the shortcomings of international law, such as its distance from the people, its clearly Western character and, thus, its lack of legitimacy in other regions, recent developments have converted it into a potential ally for local communities. The tendency to outlaw amnesties for certain crimes limits the space for states to determine transitional justice instruments, thus favoring the victims’ rights to truth, justice and reparation. In addition, the rather recent inclusion of gender-related crimes into the set of crimes against humanity through decisions of the ICTY is of major importance into drawing attention to the usually invisible victims of a conflict. However, international law must further develop in order to keep an eye on the structural discrimination of women, which points to the need to include social and economic rights. There is also an increasing recognition that outreach and the participation of victims in the procedures is central to the success of transitional justice. Both the UN Set of Principles against Impunity

and the Rome Statute of the ICC insist on the participation of broad sectors of society. (McGregor 2008: 65-72)

Community-based initiatives, on the contrary, have the potential to put local needs at the forefront of these activities. Argentina's Plaza de Mayo¹⁸, Guatemala's REMHI¹⁹ or Rwanda's gacaca²⁰ bring transitional justice close to the people. However, there is no need to romanticize these initiatives. They must comply with the same human rights standards as the official processes; furthermore, if not properly prepared, disenfranchised people will be further excluded on the local level where existing power relations may be consolidated by such initiatives. McGregor shows with the example of the gacaca-courts that several deficiencies of the official procedures are replicated by the community-exercises, for instance a bias with regard to who is on trial and who is not, the lack of accountability and the significant role of the state despite gacaca's allegedly civilian character. (McGregor 2008: 59-64; Shaw/Waldorf 2010/2: 14-20)

Lundy/McGovern put at the center of their analysis the term "agency". Based on their before-mentioned critique of donor-driven transitional policies, they recall former Southern criticism of development-models imposed by the West. Authors like Paolo Freire with his "conscientization"-approach that aims at the people's capacity to identify the aspects that oppress them and to change these, or Orlando Fals Borda who introduced the Participatory Action Research (PAR) the objective of which is the participation of the people in the design of aspects that affect their lives, can be named in this context. In the 1970s the key words participation and empowerment surged from there, which pointed to the need to democratize development processes and make them owned by the people. The same, in analogy, applies to human rights promotion. (Lundy/McGovern 2008: 108-111)

However, on the ground one realizes that there is frequently an interaction between international donors and alleged community or civil society representatives who live from being financed by international or national actors but do not represent anyone but themselves. They participate in every possible forum, learn the respective discourse by heart but are completely delinked from the communities. Thus, they give wrong information about the local needs, and

¹⁸ The Plaza de Mayo in Buenos Aires became famous because there the mothers of the disappeared regularly met to ask for information about the whereabouts of their loved ones.

¹⁹ REMHI (Recovery of the Historic Memory for its Spanish letters) was a Church-led effort to document the human rights violations in the course of the Guatemalan armed conflict.

²⁰ Gacaca is the adaptation of a traditional conflict resolution mechanism and denominates community-courts that should ease the burden on the state's judicial system.

their analysis has nothing to do with local dynamics. In the end, they further contribute to the exclusion of the people on the ground and put into doubt the main goals of empowerment and participation.

1.3.4. Transitional Justice as a Tool for “Social Repair”

Fletcher/Weinstein (2002) draw attention to the fact that “social reconciliation” is part of the mandate of several tribunals. The authors question this role of tribunals after mass violence by pointing to the fact that trials leave at least three groups untouched: 1) bystanders, 2) states that may have contributed to the outbreak of violence, and 3) non-indicted perpetrators like community-members who benefitted from violence. (Fletcher/Weinstein 2002: 578f)

With regard to the bystanders who contribute to criminal and violent structures by electing a war-criminal or cheering criminal action the authors question the sense of individualized justice: “Thus, we question, whether individualized guilt may contribute to a myth of collective innocence.” By singling out the leaders of actual perpetrators and leaving the healing of a “sick society” to others, trials are not integrated into the larger process of social reconstruction. Fletcher/Weinstein advocate an “ecological model” to understand the elements of social destruction and, consequently, of social reconstruction. (Fletcher/Weinstein 2002: 580)

Like McEvoy, the authors identify the legal community as the main promoter of the spread of human rights since World War II. The legal framework has become the crucial benchmark against which other forms of dealing with past atrocities, such as truth commissions, are measured. Criminal accountability is, therefore, seen as the ideal form of dealing with crimes. However, there are almost no empirical studies about the link of trials with social reconciliation. (Fletcher/Weinstein 2002: 581-585)

In the following, the authors analyze the claims about the positive effects of trials on the rebuilding of communities: According to the proponents trials 1) uncover and make public the truth about the atrocities; 2) punish perpetrators; 3) respond to the needs of the victims; 4) promote the rule of law; and 5) foster reconciliation. (Fletcher/Weinstein 2002: 586)

Transitional justice scholars assume that societies like individuals need the truth of what happened in order to heal. This curative effect of an impartial and official record and the subsequent acknowledgment of the suffering would contribute to a new national consensus.

Trials serve these functions by establishing the facts, diffusing them and thus preventing revisionism. Fletcher/Weinstein, however, question this logic. For them truth is composed of different factors, not only judicial verdicts. Moral, political and other interpretations may distort the facts according to specific interests. Based on a study among Bosnian legal professionals of all three ethnicities, the authors show that the “truth” about the genocide depends much on their ethnic origin and not so much on the findings of the international tribunal on Yugoslavia: “Each group sought from the court confirmation of its status as “victim”.” (Fletcher/Weinstein 2004: 39)

Another function of trials, according to the proponents, consists of punishing the perpetrators. The premise of desiring punishment is fairness towards the victims who through sanctions feel acknowledged. Furthermore, there is the belief that perpetrators deserve blame and punishment in proportion to the crime they committed. Thus the victims’ pain may be relieved by an adequate retribution. In times of transition the punishment of the perpetrators also has a deterring effect and re-establishes the normative base of the society according to this line of argument. However, there are virtually no studies that verify these effects.

Based on the literature on trauma, it is assumed that trials satisfy the needs of the victims by recounting the events in an atmosphere of acknowledgement. This, arguably, has a healing effect and supports the victims on their road towards closure. By stigmatizing the perpetrator, an official institution takes away from the victims every suspicion of guilt, thus restoring their dignity. According to Fletcher/Weinstein this view is based on the erratic assumption that catharsis through a trial is sufficient to promote a healing process. The authors seriously doubt the therapeutic effect of a trial. Catharsis may have a short-term emotional effect but should be embedded in a conducive environment and be part of a broader process. Furthermore, the proponents of trials completely neglect that different cultural traditions may interpret traumatic events differently, both individually and collectively.

Trials may also serve as symbols for a clear break with the past, thus demonstrating the new regime’s wish to substitute violence for the rule of law. In an atmosphere, however, where, as was the case in Bosnia, the “new” elites were the same as before and corruption widespread, it requires more than (international) trials to initiate a new period of history.

According to the proponents, transitional trials have the function to help society to come to terms with the past and get closure. Thus, they resemble purification rituals that purge the

leadership but also set the record straight. The individualization of guilt that is at the base of trials prevents collective scapegoating and distinguishes the perpetrators from the innocent masses. Consequently, trials facilitate the rebuilding of a society that has gotten rid of the violent elites, which fosters reconciliation. Fletcher/Weinstein, on the contrary, are not convinced by this argument, first and foremost, because the term “reconciliation” is lent from theology and is not empirically solid enough to build such an argument. Furthermore, their study among Bosnian legal practitioners show that the record of a trial may either strengthen the perception that a specific group is the victim of unfounded accusations or been interpreted selectively, discarding unpleasant elements. (Fletcher/Weinstein 2002: 587-601)

Fletcher/Weinstein (2002) argue that the contribution of trials to heal, reconcile, provide closure, strengthen democratic institutions and rebuild communities is largely overstated. There are other factors that must be included in the analysis, such as the proximity to violence or the role of political parties, the statements of which shape public opinion. The before mentioned study in Bosnia shows that the closer a respondent was to violence the more he/she insisted on criminal accountability. On the other hand, all national groups consider themselves as victims and, therefore, speak of atrocities only as far as their group was concerned: If the need for acknowledgment of the victimization prevails over the ability to recognize and condemn the horrors perpetrated by one’s own national group, then criminal trials will achieve only partial success, at best. (Fletcher/Weinstein 2002: 603)

The authors are particularly interested in the notion of collective responsibility that criminal justice explicitly tries to mitigate by trials against individuals. They argue that a legal approach to mass violence does not address the psychological dynamics that lead to mass participation in violence. It focuses on direct perpetrators and leaders but does not care about how people benefit from violence or collectively lose their refrain. These behavioral aspects are of particular relevance, when social reconstruction is at stake. Since those bystanders and beneficiaries are not challenged legally, myths of collective innocence emerge. The authors conclude that individual agency is superseded by a collective impact, which in turn is not considered by trials. (Fletcher/Weinstein 2002: 604-606)

The authors cite several socio-psychological findings and experiments that show the impact of the social setting and the group behavior on the individual. Starting with Gustav Le Bon, who concluded already in the 19th century that people behave differently when they are part

of a group²¹, Fletcher/Weinstein go through several experiments that demonstrate that normative convictions are somewhat shaded by authority and/or group pressure. Dehumanization of the other, authority, alliances, anonymity and the diffusion of responsibility for one's acts are particular incentives to put aside one's own principles. These findings seriously question the exclusive focus on individual accountability and imply the need to also address the effects of mass violence by collective action. Members of a community must analyze their roles during violence, even though they were not directly involved in violent action. But the participation in violence can be manifold. The principle of individual criminal accountability does not sufficiently address collective dynamics. (Fletcher/Weinstein 2002: 607-613)

Drawing lessons from the genocide-literature, the authors conclude that there is no clarity on how social breakdown comes across; consequently, the issue of social reconstruction may also need further reflection. The authors offer a three-stage model to explain social breakdown. At the first stage mass violence appears motivated by a set of economic and political causes. This leads to displacement, the loss of control and war crimes. At last, through diplomatic action steps are taken towards peace. (Fletcher/Weinstein 2002: 621) This model is rather disappointing, because, as the authors admit, it does not explain; it rather describes the obvious. So I cannot perceive an advance in comparison to previous attempts by theories of social breakdown, such as the resource mobilization theory that links violence to the pursuit of collective interests and group solidarity, or the culture theory that suggests that violence occurs, when the ordinary routine is not any longer perceived as leading towards a satisfactory future. (Fletcher/Weinstein 2002: 619)

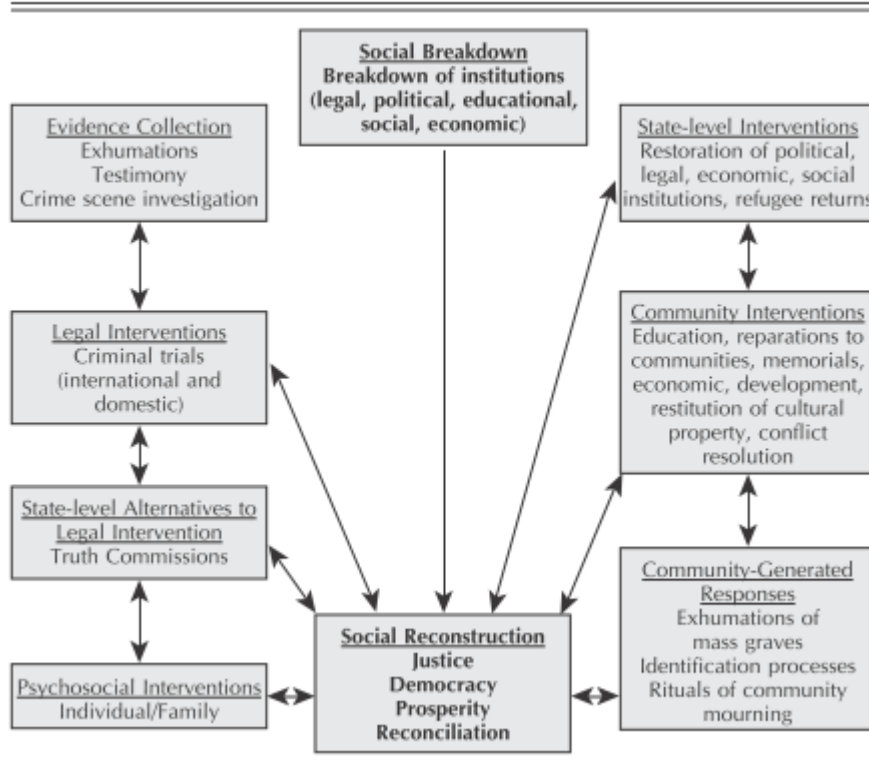
In addition, the authors present an “ecological paradigm” that was developed by community psychologists in order to explain social breakdown and reconstruction. It describes “the critical interrelationships that underlie social change by pointing out how reciprocal and mutual dependencies between and among individuals, institutions, community and societal groupings must be attended to in order to understand and influence social change.” (Fletcher/Weinstein 2002: 622)

²¹ Goodwin/Jasper/Polletta (2001: 4), however, state that “... what Gustave Le Bon thought he saw in crowds in 1895 ... was more a projection of their [Le Bon and Eric Hoffer, CW] own fears and anxieties than an accurate psychological portrait of protestors”, thus criticizing the lack of empirical research.

“Ecological theory postulates that analysis of a social system must attend to (1) a thorough understanding of the social, economic and political settings that make up the system; (2) the ways in which transactions are carried out across the boundaries of the components of the system as well as how these boundaries are established, maintained and modified; and (3) the resource potentials of the system components and the key individuals who influence policy and action.” (Fletcher/Weinstein 2002: 622)

This approach considers that a change in one part of the system causes reverberations in other parts. Since these parts are interdependent, the system must foresee the responses and address them. Based on this model, the authors propose another one to analyze the processes that contribute to peace and reconstruction. Such a model has to include at least three characteristics of an individual’s relationship to breakdown: perception of loss; loss of control over one’s own destiny; and the relationship to violence (victim, perpetrator, bystander, rescuer). The authors understand that violence causes not only harm to the physical infrastructure but also to the social fabric. However, re-construction does not mean a return to the same institutional or social framework as before the violence. Fletcher/Weinstein suggest that social reconstruction consists in the four elements justice, democracy, economic prosperity and transformation and reconciliation. According to the authors the latter happens on the individual level and cannot be mandated but only encouraged by interventions.

FIGURE 2
Ecological Model of Response to Social Breakdown



(Fletcher/Weinstein 2002: 624)

These interventions are interdependent, based on the perception of loss and oriented towards Abraham Maslow's pyramid of needs. If the basic, primary needs are not satisfied, those on the top such as love, esteem and self-actualization cannot be addressed. As illustrated by the figure, the interventions include state and community-based actions. According to the ecological framework these interventions are directed towards different features of social breakdown and have synergies. Since each intervention has effects on other parts of the system, a monitoring mechanism is crucial in order to make adaptations, whenever necessary. (Fletcher/Weinstein 2002: 620-626)

The authors distinguish state-level interventions that are in some cases supported by international resources, judicial action in the form of trials, non-judicial state-interventions such as truth commissions, psychosocial interventions, community-based interventions, and community-generated responses. Each of these has specific strengths and weaknesses. The truth commission, for example, has the advantage of being very flexible and oriented towards

repairing the state, while the individualized trial may satisfy the need to punish the most egregious perpetrators and to clarify facts about what happened. A truth commission, however, should be accompanied by some concrete action such as reparations and institutional reforms in order to be viewed as an efficient instrument to overcome the past. In this context it is important to tackle the losses and the pain of individuals and families through psychosocial interventions.

The role of these interventions for social repair is not entirely clear yet. Community-based interventions are far too often driven by outsiders and do not address the real needs of a post-violence community. Since these interventions should contribute to social reconstruction, it is essential to analyze the reasons for social fragmentation and base further activities on the results. If the community is not adequately involved in the design of these interventions, the sense of dependency may increase. Consequently, empowering the community to define its own needs and subsequently determine the necessary responses to violence would be likely to address the before mentioned three features of mass violence: loss, control and participation in violence. This process includes the creation of institutions and arrangements to manage conflicts. It is likely that after this process the community is not the same as before, which suggests that reconstruction actually is the construction of something new or the revitalization of neglected rituals of social repair. (Fletcher/Weinstein 2002: 627-635)

As a conclusion Fletcher/Weinstein emphasize that many responses to mass violence focus on the individual, both perpetrator and victim. The ecological model that they present has the objective to address the collective needs and roles played during the violence. Interventions need to take into consideration that they have effects on the system as such and not only on the specific element that they explicitly address. (Fletcher/Weinstein 2002: 635-639)

1.3.5. Conclusion

This chapter summarized the main discussions on transitional justice that reflect the state of the art: the role of criminal justice within the transitional justice framework; the responsibilities and opportunities of the local, regional, national and international levels; the agenda of transitional justice; the often divergent objectives of transitional justice; and the priorities of different actors such as donors, victims, perpetrators and communities.

While retributive justice based on the human rights norms and enforced by national or international trials is criticized for being state-centered, culturally biased, distant of the communities and the victims and blind towards structural issues that are at the root of violence, it is also obvious that the progressive refinement of the underlying international norms have dramatically contributed to reduce impunity and the sense that state-actors are free to act as they wish. The law's deficiencies with regard to social repair or the restoration of the social fabric do not ignore its achievements with regard to the rule of law and the strengthening of judicial institutions.

The last section aimed at distinguishing important elements that complement the overview of the legal perspective of transitional justice. These have in common that they question the universal applicability of narrow blueprints of rights-based approaches. They also put more emphasis on local activities and needs, thus inviting to complement the institutional efforts with bottom-up endeavors.

In the end, they all characterize transitional justice as broader than the legal analysis of past abuses and suggest the need of a more systemic approach to overcome violence. This insight leads to the next chapter on reconciliation in which the view of a society as a system of interdependent actors and activities is dominant.

2. Reconciliation

2.1. Reflection from Practice

It was one of the hottest days of the season and then electricity had broken down and with it the water supply. The closest river was the only alternative to take a bath with the downside that it was poisoned by the chemicals used in the illegal gold mines. Additionally, there came news from the mountains that the army waged an offensive against the guerrillas with several casualties on both sides. This was the context of one of a number of community-meetings sometime late 2007. Due to the demobilization of the paramilitary groups it was possible again to meet and collectively discuss and decide matters of importance for the community, though with significant mistrust of the volatile situation and with the demobilized former fighters as new inhabitants of the community. The dominance of the paramilitaries and their cruelty had been notorious; before them the guerrilla had had absolute power in the area. So for the civilians it was a rather uncommon opportunity to decide upon their own fate.

This day the reintegration of the former combatants was on the agenda; certainly a quite thorny issue. The motivation for the meeting was the initiative of a presidential agency that promoted reconciliation and joint activities between civilians and former combatants. According to the agency this would foster a sense of community and belonging. The community had to decide whether it takes up the offer of generous financial support and, if affirmative, under what conditions. The environment suggested that the endeavor was risky given the context of the armed conflict and the position of the guerrilla that the former paramilitaries still belonged to the imperialist structure of the state. On the other hand, most of the demobilized still justified their acts as necessary for liberty and only seemed concerned with their economic future. Since they had their families in the community, it was likely that they would stay in future, too.

The discussion included all the elements addressed in the first chapter, i.e. the need for justice, the whole truth and reparation. Without the fulfillment of these rights, argued one group, there would be no reintegration and reconciliation. Other leaders expressed the opinion that the combatants had already renounced their military activities and needed to be reintegrated into the community for the sake of security and to prevent the creation of new victims.

After several meetings and intense debates, the following was agreed: The community is willing to accept the former combatants under certain conditions. First, they must not undertake

illegal activities any longer. Second, they should demonstrate their good will by actively contributing to community life. Third, the state must address pressing social needs of the community and increase the presence of civilian authorities. Fourth, collective reparation in the form of income-generating projects should be initiated. Fifth, a center for reconciliation should be constructed in and by the community. Sixth, concrete activities with regard to the historic memory are required to prevent violence from occurring again.

This series of meetings left me with a number of questions about reconciliation and its relationship with other topics such as transitional justice, development, peace and social investment. But it also showed the overlapping time-dimensions of reconciliation. It seems to be not only about the past but to a significant extent about the future and the present. The presence of the demobilized led to the initial question about the convenience of this endeavor; and most considerations addressed the demobilized behavior and the fate of the community in the future. Thus, it appears that reconciliation in practical terms is to a certain degree an agreement about the future and not only a re-connecting after a traumatic event in the past. It may also be motivated by concrete circumstances in the present, such as pressing needs or insecurity.

The anecdote also shows the blurred lines between the issues at stake. While military confrontations were taking place only a couple of kilometers away, classic post-conflict issues such as reparation, reintegration and reconciliation were addressed. Much of the discussion was overshadowed by the lack of electricity and other social needs of the population. Thus, a project for reconciliation was also considered as an opportunity to finally get the social investment that the community felt entitled to. Therefore, it seems almost artificial to cleanly separate the concern for reconciliation from other related issues. And yet, to get a grasp about the essence of reconciliation, it is necessary to undertake this complex task.

2.2. Introduction

This chapter addresses the nature of reconciliation and the multiple meanings of one of the fundamental goals of transitional justice. The term evokes different associations and even

strong rebuttal²², particularly among those, who argue within a framework of human rights and their defense. Given the discourse of many governments on reconciliation, by which they usually mean turning the page and forgetting the past, this reaction is completely understandable. Thus, to victims the notion that reconciliation implies a harmonious relationship with the perpetrators is rather frightening. Another source of dissatisfaction with the term stems from the alleged exclusively religious connotation of reconciliation. This view is strengthened by the explicit emphasis that church representatives put on forgiveness and reconciliation. The South African Truth and Reconciliation Commission that put this discourse into practice also had a strong impact on the thinking on reconciliation.

David Bloomfield (2006) refers to the difficulty to define the term given the variety of disciplines concerned with reconciliation: psychology, law, theology, political science, history and anthropology. This also leads to a multitude of expectations and longings that tend to overstretch the term. In addition, there are several levels of reconciliation: with another person, with one's nation and state, with the international community, with oneself, with God and with and within groups. Finally, its proximity to other concepts such as forgiveness, justice, peace and truth is constantly under debate. (Bloomfield 2006: 3f)

Tamar Hermann (2004) adds several practical questions, on which there is no consensus: Who is to reconcile? Is reconciliation a spontaneous or an instrumental process? At what levels does it take place; do states or societies reconcile? Is reconciliation a process, an outcome or both? How is reconciliation evaluated? Does the syllable "re" mean a return to something? If affirmative, what does reconciliation mean in societies that had never been conciliated in the first place? In the following, most of these questions will be addressed; they are certainly a challenge for every theoretical and empirical student of reconciliation.

Bloomfield/Barnes/Huyse (2003: 12) initially define reconciliation very broadly as a "process through which a society moves from a divided past to a shared future" and "as a process that redesigns relationships". This minimal definition summarizes the gist of reconciliation but needs further exploration in this chapter.

²² For some reconciliation has an exclusively religious meaning. This together with the emotional overload and the seemingly ambitious goals characterized by harmony leads to a certain preference of the less overloaded term "coexistence". In its negative meaning it would suggest "not killing each other", in the more positive meaning it may include a measure of trust or shared values, thus recalling Galtung's distinction between negative and positive peace. I share Bloomfield's (2006: 16) conclusion that the term in itself does not much to contribute to conceptual clarity, since it only describes one stage of reconciliation.

In the following sections I will, therefore, approach the term reconciliation from different angles that I was able to distinguish in the Colombian discourse and practice. The first deeply disturbing feature of countries in or after conflict is the damage that has been caused by violence. Here, the psychological impact of violence on individuals and collectives will be addressed by analyzing the characteristics of trauma and people's recovery. The overwhelming incidence of distrust, fear, anger and strife for revenge are emotional and identity-based elements of the environment and the reality where reconciliation is longed for.

Colombia is a country with an ongoing armed conflict. This is why peacebuilding is a frequently used concept and strategy there. Sometimes its meaning includes or at least approximates reconciliation. In any case peace is considered a pre-requisite to reconciliation that, in turn, would strengthen peace. Therefore, it is fundamental to conceptually approach peacebuilding in this study. The respective section will be dedicated to the vast peacebuilding-literature that offers several very useful insights for the debate on reconciliation. I will focus on those approaches that view violence as a systemic dysfunction, thus following the reasoning of Fletcher/Weinstein (2002), who in their ecological model expand the vision from an individual towards a more collective perspective. Furthermore, it is important to get a comprehensive grasp of the efforts that would finally lead to peace. John-Paul Lederach has profoundly shaped the thinking on peacebuilding, which is why considerable space is dedicated to his reflections that stem from his experience as practitioner and academic in several countries with violent conflicts.

Before that, however, a variety of related considerations are presented that shed light to contextual issues of a society in conflict. Galtung's 3Rs, for example, embed reconciliation into endeavors of reconstruction and resolution. This is important in order not to neglect the fact that reconciliation is only one of many issues in a (post-) conflict setting. Another debate that confirms the value of a systemic approach to conflict is the one between the so-called liberal peace and alternative concepts that incorporate additional aspects. Gready, for example, advocates an "economic reconciliation" as part of a transition towards peace.

Given the importance of the Catholic Church in Colombia, I will address the specific religious meaning of reconciliation that certainly underpins the people's understanding of it. I will show that the Catholic interpretation of reconciliation includes all the elements that the human rights community usually emphasizes as the victims' rights to truth, reparation, justice

and non-recurrence. Ironically these principles gained international recognition only once lawyers incorporated them into international declarations, as mentioned in the last chapter. Given the long Catholic tradition with regard to these principles, this section also represents an argument in favor of inter-disciplinary openness to disciplines usually referred to as antiquated or irrelevant for social sciences. After exploring several biblical images of reconciliation I will analyze both the sacrament of reconciliation and the resources the Catholic Church is able to contribute to reconciliation. Among them the Theology of Liberation and the reflections on the structures of sin are of outstanding importance for the Latin American context.

Then, I will introduce a critical assessment of a non-punitive practice of justice, i.e. restorative justice. It is important to add, however, that the philosophical and theoretical literature on various approaches to justice is vast and not the topic of this thesis. When I address justice, I am interested in ways to deal with past crimes. The main objective is not to introduce new approaches to the meaning of justice but to present specific forms of justice in the moment of being confronted with perpetrators, individual and collective victims, communities that face the challenge to host both, and the mass of people who do not clearly belong to any of these groups. In the first chapter I considered retributive justice in the name of human rights and a clear distinction between legal right and wrong. I also identified several shortcomings of this approach. Restorative justice, on the other hand, is a concept that focuses on the repair of community bonds, on mutual responsibilities and the opportunity to amend wrongdoings. Together with retributive and redistributive justice, restorative justice is a consistent part of the discourse on transitional justice, in so far as it points towards reconciliation.

2.3. The Psychological and Emotional Context of Reconciliation

2.3.1. Introduction

Reconciliation always takes place in a specific environment, usually one that suffered from the tremendous impact of long-lasting violence. This is why the so-called trauma-work or socio-psychological attention to individuals and collectivities is an important foundation for the recovery of the social networks that are at the core of reconciliation.

Trauma has experienced a conceptual shift from a condition of an individual towards a phenomenon that points to major social distortions. Thus, trauma-research that first had focused

on women's "hysteria" later paved the way to the recognition of widespread abuse and taboos. This political dimension of trauma and the reflections on individual and collective recovery are the main topics of the following sections. With regard to the latter the three steps of safety-remembrance/mourning-reconnection are of fundamental value to sequence reconciliation work in a violent context.

2.3.2. The History of Trauma-Research

Judith Herman (1997) authored one of the standard books on trauma. The following paragraphs summarize her findings obtained over many years of practical therapy of trauma victims of different kinds.

The history of the research on trauma has been complicated by an unfavorable environment. While the perpetrators have relied on silence, the victims have usually struggled with a lack of credibility. For the rest of the population, it has been easier to side with the former because this frequently means allying with the powerful and avoiding necessary changes. Thus, trauma research is also a political issue. The feminist movement in the Western world achieved a high degree of sensibility towards trauma in the wake of sexual violence. In history, the same function had been fulfilled by research on the phenomena of hysteria and combat neurosis. (Herman 1997: 7-9)

Hysteria was first analyzed by the French neurologist Jean-Martin Charcot, who described the symptoms of hysteria as sensory loss, amnesia, convulsions and motor paralysis. This was in line with the political context, in which secular forces increasingly tried to prevail over the clergy; thus, hysterical symptoms such as convulsions gradually obtained scientific foundations instead of rather religious explanations such as witchcraft. Based on Charcot's work Pierre Janet and Sigmund Freud undertook the task of reaching beyond description and towards the root causes. Both started to listen to the predominantly female patients and came to the conclusion that the reconstruction of their past was the key to their healing.

Contrary to Janet, Freud found that hysteria was not a sign of psychological weakness but manifested itself in very intelligent and strong people, as well. This was the time when the patient and the conversation with, mostly, her were at the forefront of the doctor's activities. In these conversations Freud realized that at the beginning of most hysterical patterns stood an

experience of sexual abuse. In later days, however, Freud denied to accept the necessary conclusion that sexual abuse was widespread in the bourgeois Viennese society; so, he increasingly stopped listening to his patients and rejected earlier claims. The subsequent theory of psychoanalysis kept the focus on sexuality but ignored the vastly abusive context, in which it happened. It rather focused on desire and internal fantasies, which caused the study of psychological trauma to come to an end. (Herman 1997: 10-20)

It was World War I that brought hysteria back on the agenda. This time it was men who behaved like hysterical women, men who as soldiers had been exposed to violence over a long period. They faced a very skeptical environment because their breakdowns were considered a sign of weakness and lack of bravery. The physician W.H.R. Rivers, on the contrary, showed with his distinguished patient Siegfried Sassoon that a "talking cure" was in place in this kind of circumstances. Sassoon who still in uniform had denounced the war as a meaningless prolongation of suffering returned to the war after the therapy, out of, as Rivers showed, love for his fellow soldiers. This principle of loyalty together with the insight that the bravest men could succumb to fear and trauma is the base for today's military psychology.

During World War II efforts were dedicated to determining the protecting factors against war trauma. Once again, the degree of relatedness to one's peer group and its leader was identified as the main protective elements. Therefore, after a short treatment the soldier was considered recovered, once he joined his unit again. As usual, after the war the traumas of the returned soldiers fell into oblivion, which changed with the Vietnam War when affected soldiers themselves searched for help. The "Vietnam Veterans Against the War", a group of mostly distinguished veterans, spoke out against the war, gave back their medals and told about their war crimes. They also created "rap groups" where they invited other soldiers to talk about their traumatic experiences. These groups called public attention to the effects of war and achieved a legal mandate for psychological treatment of veterans within the formal structure. This also encouraged research on the wartime experiences, which demonstrated the post-traumatic stress disorder of home-coming soldiers. In 1980, finally, the American Psychiatric Association officially recognized the "post-traumatic stress disorder" in its manual of mental disorders. (Herman 1997: 20-28)

This formal recognition of trauma allowed the incipient women's movement to shed light on the daily exploitation of women in the private sphere, thus taking up a point that had deterred

Freud from further conducting research on the social environment of women's trauma. Like soldiers women began to form "consciousness-raising"-groups whose main purpose was to break the cycle of silence and secrecy. The organization of public fora, legal action and academic research followed suit. Again, researchers lent the victims their ear; this time female researchers who rejected the notion of emotional detachment and openly sympathized with the subjects of their research. For the first time the enormous occurrence of rape and sexual violence became evident. Research was followed by social action that, in turn, was channeled into rape centers that supported victims of rape outside the formal health structure. Gradually, the focus moved from rape to domestic violence and the sexual abuse of children. In the end, it was found that the traumatic symptoms of combatants were almost identically replicated by raped and abused women. Thus trauma connected the male world of politics and war with the female domestic world. The anti-war movement and the movement for women's liberation found a significant connecting-point. (Herman 1997: 28-32)

This short overview of the history of trauma research shows that trauma is not only an individual condition but tightly related to the structural environment. It also raises serious questions about social shortcomings and systems of abuse and oppression. On the other hand, trauma also motivates people to come together and try to overcome the symptoms and their causes. Consequently, trauma is also a political issue related to the historic moment under analysis.

2.3.3. Characterization of Trauma

When in 1980 traumatic events were included in the manual, they were described as "outside the range of usual human experience". This was soon considered inappropriate due to the widespread occurrence of rape, sexual abuse and war. Traumatic events rather "overwhelm the ordinary human adaptations to life". (Herman 1997: 33) Trauma is not the same as stress and is to determine individually, meaning that there is no universal definition of what triggers trauma in a specific person. According to Yoder, traumatic events include "threats to lives or bodies; produce terror and feelings of helplessness; overwhelm an individual's or group's ability to cope

or respond to threat; lead to a sense of loss of control; and challenge a person's or group's sense that life is meaningful and orderly." (Yoder 2005: 10)

Trauma results in loss of control, disempowerment, disconnection, extreme helplessness and fear. Other, more physical reactions consist of arousal, hyper-attention, and changes of perception. Since during a traumatic event the usual reactions to danger such as escape or resistance are of no avail, the physiological reactions persist over time in a transformed manner. Thus, traumatic symptoms become disconnected from the actual cause, long after the event occurred. This lack of coordination between memory, reactions and emotion is typical for a traumatized person. (Herman 1997: 33-35)

Without going into detail regarding the traumatic symptoms, I follow Herman who categorizes them into three main groups: "hyperarousal that reflects the persistent expectation of danger; intrusion reflects the indelible imprint of the traumatic moment; constriction reflects the numbing response of surrender." (Herman 1997: 35)

Levine (1997) elaborates more on the physical symptoms related to arousal. In normal times, arousal is the reaction to danger or even thrill. It mobilizes energy to confront a risky, thrilling or dangerous situation. Afterwards, the arousal goes down, and a sensation of satisfaction and relaxation emerges. This normal arousal-cycle is interrupted in the case of a traumatic event. The mobilization of energy gets stuck in the moment, when a person is paralyzed by fear. Levine concludes that "what goes up must come down"; in the case of traumatized people, however, the physical (increase in heart rate, rapid breathing, muscular tension ...) and mental signs (permanent worrying, intensification of thoughts ...) persist. The recovery of trauma has also this physical aspect of leading arousal to its peak in order to gradually bring it down again. (Levine 1997: 127-132; Yoder 2005: 19f)

Intrusion basically refers to the recurrence of the traumatic event even a long time after it occurred. This is related to traumatic memories that lack a verbal narrative and context. They get manifest in "vivid sensations and images". These "indelible images" create horror and physical sensations. Similar to memories in the waking state, during the night traumatic nightmares can appear even in phases when people usually do not dream. They are repetitive and include fragments of the traumatic event. (Herman 1997: 38f) Traumatized people also tend to relive the traumatic event, either involuntarily or actively searching for similar situations. Freud called this behavior "repetition compulsion". More recent research considers a healing power in these re-

enactments. However, traumatized people try everything to avoid reliving the events, to an extent that they withdraw from engagement with others. (Herman 1997: 36-42)

Constriction is manifested by numbness, indifference and surrender. It may be compared to the famous behavior of a rabbit facing a snake. The traumatized person becomes detached from what happens. If the dissociation from the event does not happen immediately, people try to achieve this effect by abusing drugs and alcohol. Even though this adaptive dissociation may be important at the moment of the event, in the post-traumatic period it prevents the healing and integration process. Amnesia or detached memories of the event are the consequences. This also has serious effects on the ability to plan and to think about one's future. Thus, the protection against reliving the event takes a huge toll with regard to life quality. (Herman 1997: 42-47; Levine 1997: 136ff)

Intrusion and constriction are obviously contradictory responses that somewhat struggle with each other, which Herman calls the dialectic of trauma. While the intrusive symptoms tend to fade with time, the constrictive elements persist. People appear to maintain their daily routine and superficially seemed healed, but the distance and detachment to their lives strengthen the sensation of numbness. (Herman 1997: 48-50)

These individual reactions to trauma have severe consequences for the social life of a person and thus for community-life as such. Trauma questions not only the image that the individual has made of him/herself but also the sense of security and basic assumptions about oneself, one's relations to others and the social order as such. Basic trust and, therefore, the foundation of a community is shattered and, eventually, also the belief in the divine. Traumatized people feel utterly alone and abandoned, not part of the community that failed to help him/her at the moment of emergency. Trauma causes uncertainty about oneself and his/her environment; but it is also followed by guilt for having survived without rescuing those who died or were harmed. (Yoder 2005: 24-27; Herman 1997: 51-56)

Although the degree of a person's affection mainly depends on the intensity of the traumatic events, studies show that individual traits of one's personality help to cope with these incidents. It appears that three sets of characteristics support people to limit the traumatic effects: high sociability, task-oriented coping strategies and an "internal locus of control", meaning a clear conviction that one's future can be influenced by oneself. The social context is of equal importance for a traumatized person. He/She desperately needs a sympathetic other, someone

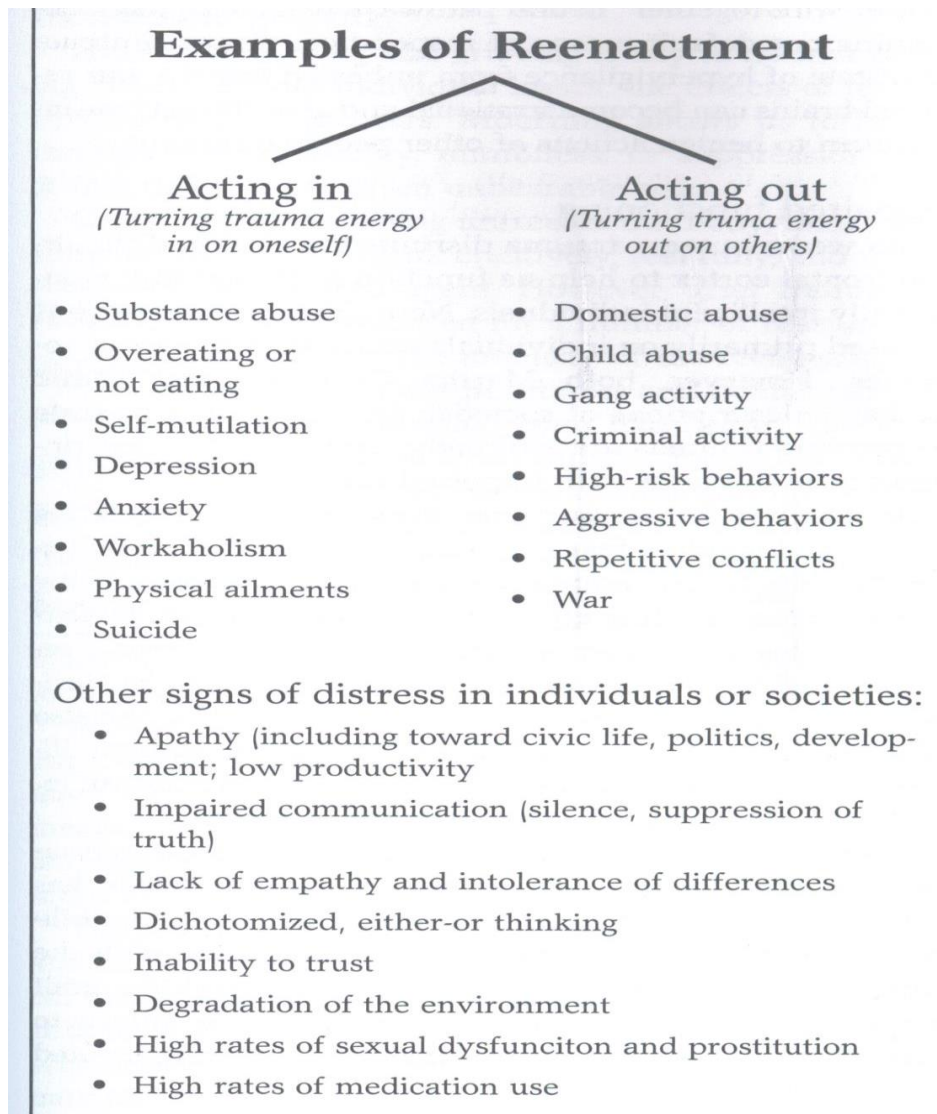
who helps the person to recover a minimum of trust and sense of protection and safety. However, often the perpetrator enjoys a higher status than the victim and/or is part of the immediate family, which makes it difficult to find a safe environment. In the case of soldiers in combat this function is fulfilled by the unit. The response of the community to traumatic events is essential for recovery. Basically two reactions should be present: acknowledgment of the harm and restitution with the objective to repair the harm. These are two of the responses that were recurrent in the first chapter and will be pointed out in the interviews of the field research. (Herman 1997: 57-62; 70-73)

Prolonged trauma is usually experienced by people who are held in captivity over a long time. In my context it is important to study the effects of dominance of an armed actor in a community. This actor exercises high degrees of pressure on the inhabitants to obey and even to accept him as the legitimate ruler. In communities it is obvious that people are used to guess what "el patrón" (the master) wants to hear. Indulgence of the oppressor's will is encouraged by the granting of small privileges in cases of compliance. Breaking the inner autonomy of the victim is the main goal here. This is even more efficiently implemented if the victim has severed all human relationships and is thus completely dependent on the perpetrator. Social disconnection is a pre-requisite for total control. The final stage of control consists in the surrender of the victim by violating his/her own moral principles. He/she is forced to do abhorrent things or helplessly witness atrocities. (Herman 1997: 74-83)

If people have to endure long-term oppression, a chronic trauma syndrome may be the consequence. The somatic symptoms of hyper-arousal and hyper-vigilance would never stop; insomnia and all kinds of pain are the physical effects. The before-mentioned intrusive symptoms persist even for years, but most notorious are the constrictive features that consist of narrowing every aspect of one's life: relations, emotions, memories and activities. This also applies to the sense of time and to the capacity to plan one's future; usually the future is limited to the next hours or days. The same applies to the past, which under extreme duress loses its meaning to people. Long-term and isolated prisoners, for example, recount a life in a timeless state or in the "endless present". (Herman 1997: 89) Even when the traumatic time has ended, the past often remains suppressed, which avoids its integration into the person's life story. (Herman 1997: 84-89)

These insights question the usual social reactions towards victims who are sometimes judged harsher than the perpetrators. Victims are blamed for their "strange" behavior, and justifications for the victimization are expressed. Alleged passivity and cooperation with the foe are at the forefront of people's judgments. However, they forget that these are categories that are related to attitudes of free choice and not of duress. Even psychological research has fallen into the trap of concentrating on alleged character traits of the victims. The focus on supposedly masochistic attitudes is the result of such a bias. This lack of understanding of the difference between anxieties or phobias of survivors and those of the ordinary type has led to an ignorance of the effects of trauma to the identity and the relational life of the victims. Much more promising is the focus on a spectrum of post-traumatic disorders that distinguishes between short-term and long-term traumatizations. This seems particularly important with regard to prolonged and complex post-traumatic stress disorders that frequently follow year-long exposures to totalitarian oppression in political, private or social contexts. (Herman 1997: 115-129)

Carolyn Yoder offers the following table to illustrate the effects of trauma. She distinguishes symptoms that are turned against oneself and those that are turned against others (Yoder 2005: 33):



The longer the trauma remains unaddressed, the more probable is the internalization of these behaviors and their normalization.

2.3.4. Recovery

Recovery from psychological trauma starts with empowerment and new connections to other people; it cannot be achieved in isolation or under the regime of a controlling therapy. A therapist who strengthens the victim's perception of helplessness by assuming the role of a rescuer actually deepens this feeling. There may also be another phenomenon, which is called traumatic countertransference when the therapist starts to feel the same symptoms as the

traumatized person. Therefore it is of utmost importance for a therapist to create a support network. If not, the bilateral feelings of abandonment may result in a mutually reinforcing vicious circle between the therapist and the patient. Also the contrary may be the case, namely that the therapist over-identifies with the perpetrator and starts to despise the victims and his/her reactions to the abuse. The third form of countertransference is the one identifying with the bystander. This usually results in the feeling of guilt for having been spared or not doing enough to better the world. This is quite common among people who work in communities afflicted by violence and after a while are not able to enjoy their own life and put into doubt their own commitment to the cause. (Herman 1997: 134-147) While Herman obviously refers to the clinical therapist, the same behavioral traits can be discovered in communities or organizations. On the one hand there are people who deny the victimization of their neighbor, justify it or are completely absorbed by the suffering of the other. On the other hand, in the name of assisting the victim, strong bonds of dependency are created, usually for political interests; the line between care for the victim and political goals are thus blurred.

The process of recovery can be described in three stages: safety, remembrance and mourning, and finally reconnection. Before thinking of restoring the victim's sense of control and power, the priority is to ensure his/her safety. This includes everything from regaining control over one's body and its functions to creating a safe environment, both physically and socially. The planning of the future steps, including a possible criminal prosecution of the responsible, is part of the recovery process. Self-care and self-protection increase the patient's sense of ownership of the process. In order to prevent further abuse, it is not the actions of the perpetrator that are essential but the victim's capacity to develop "a detailed and realistic contingency plan" (Herman 1997: 169), which she/he is also able to carry out. This stage is concluded when the patient is able to take good care of him or herself, being connected to other people in a reasonable balance of trust and self-protection. (Herman 1997: 159-174)

The second phase depends on a good timing and the balance between the achieved safety and taking the step towards memory-work. Reconstructing one's life story does not begin with the traumatic event as such but with remembering life before it, one's relationships and visions. Afterwards, the traumatic event is embedded in the whole life, giving a detailed account of what happened, including the reactions of important people, the physical sensations and the traumatic imagery. The reconstruction of the victim's feelings is of particular importance. He/she is also

invited to talk about the harm committed, the values violated and the damage caused by the trauma to his/her environment. This also includes a decision on how to proceed with regard to criminal action. This decision is part of the effort to reconstruct the sense of justice.

An essential part of this second stage of recovery is the mourning process. Many victims try their best to avoid it because they refuse to show weakness and thus granting the perpetrator a triumph. However, through mourning the revenge fantasies may be transformed into righteous indignation, and the pursuit of justice can start with the objective to hold the perpetrator accountable. The opposite fantasy, often cultivated to escape feelings of revenge, is unconditional forgiveness. The third fantasy, and probably the most attractive, is that of compensation to recover the loss caused by the traumatic event. Instead of mourning victims expect the perpetrator or others to grant some kind of compensation for the injustice. This way the victim becomes dependent on the actions and attitudes of a third party and thus loses autonomy. (Herman 1997: 175-195)

The third phase of recovery consists in the reconnection with life, integrating the traumatic experience and taking active steps to reconstruct relationships. The ideal outcome of this phase can be described as reconciling with oneself, being in control of oneself and not possessed by the traumatic event any longer. Sometimes this phase also sees a public testimony by the victim and thus a contribution to a larger cause. Social and political action may be one way of overcoming the traumatic event in order to help others. This is also the moment when the victim may consider legal action against the perpetrator, thus getting into a position of strength. Even though this battle may be lost, the sensation of standing up against injustice and expose the crime can contribute to recovery. (Herman 1997: 196-213)

Throughout the recovery process bonds to other people or groups are very important. Despite their potentially harmful dynamics, groups may contribute significantly in each stage of the recovery. Accordingly, groups may be categorized into three types depending on their primary task: safety, remembrance and mourning, and reconnection. These groups have different characteristics, structures and leadership-styles that are not the subject of this work but are important to consider in the recovery-process. Furthermore, a good balance between the individual needs that require a personalized treatment and the benefits of a group setting should be maintained. (Herman 1997: 215-236)

Finally, Herman draws a parallel between individual trauma and its collective manifestation in war-torn societies where entire communities show the symptoms of trauma. She concludes that also societies need remembrance and mourning, which is usually summarized by the claim of truth. As on the individual level, societies struggle with structures of dominance that avoid truth and accountability. However, as long as they are not exposed, a society will not find its peace, as is regularly shown by race riots in the U.S. (Herman 1997: 242ff)

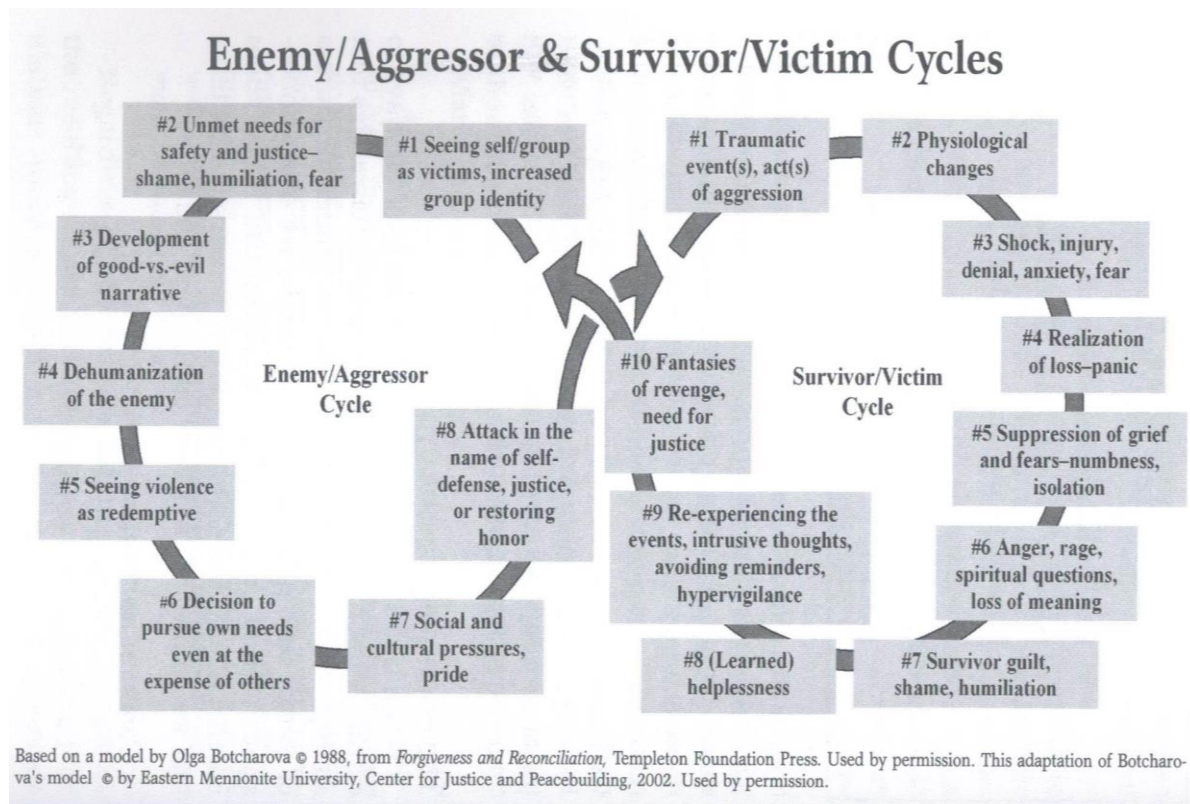
2.3.5. Collective Trauma

Trauma is not always induced by a single event; a series of events or structural violence, permanent insecurity or poverty may also cause individual or collective trauma. In these cases we may speak of multiple wounds of a society, cumulative trauma or chronic trauma. (Yoder 2005: 11f)

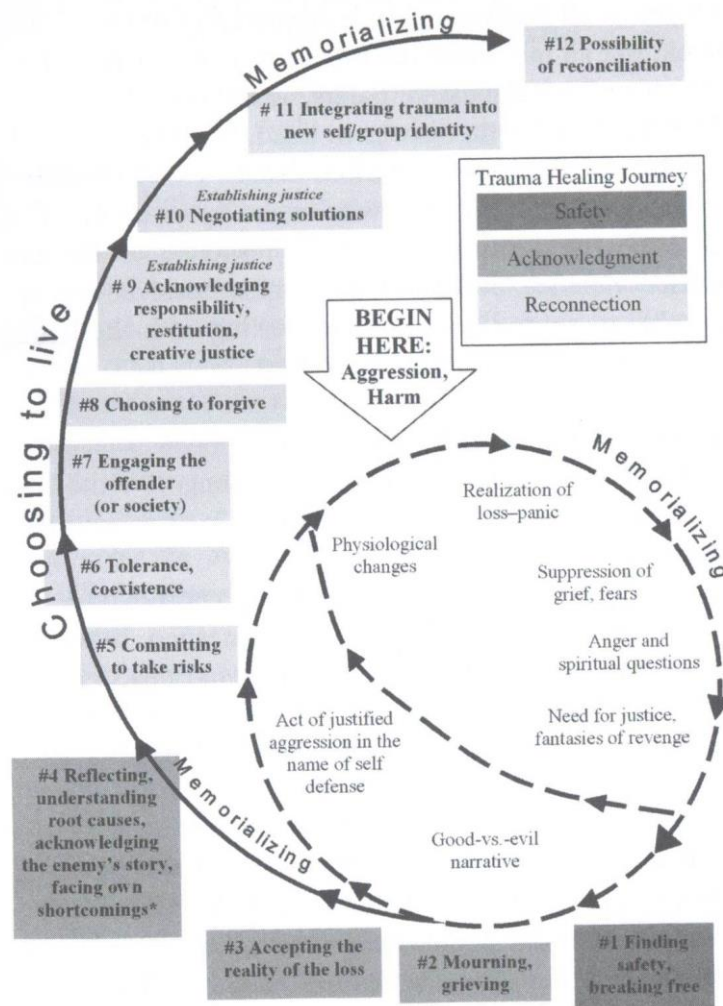
Yoder distinguishes several forms of trauma: societal/collective trauma when a group of people is affected by an event or a series of events; historical trauma, which is the "cumulative emotional and psychological wounding over the lifespan and across generations emanating from massive group trauma" (Yoder 2005: 13), may result from colonialism, slavery or genocide and has long-term effects in group attitudes and behaviors over generations; cultural trauma appears when a culture is threatened of eradication; secondary trauma may be felt by people who work with traumatized communities or individuals; and finally participation-induced trauma affects people who harmed others and may be as severe as the victim's trauma. (Yoder 2005: 12-15)

In societies that experience long periods of traumatic events, one can observe the "egoism of victimization"; trust, communication, empathy and tolerance significantly diminish and destructive behaviors such as violence, aggressiveness and suicides increase. These behaviors may be reinforced if a process of grieving and mourning is not possible. The reasons can be manifold: the traumatic events are ongoing, an acknowledgment of what happened may jeopardize the social order, or rituals such as a burial cannot be implemented. If justice needs are not met either, revenge and the conversion of victims into aggressors may take place. This, sometimes, leads to the conservation of the memory of the traumatic event; this "chosen trauma" may be kept alive for generations and possibly results in complementing cycles of victimhood and aggression (compare illustration "Enemy/Survivor Cycles": Yoder 2005: 38). Narratives of

violence and the dehumanization of the other prevail and can be manipulated by leaders. (Yoder 2005: 34-44; 29)



The STAR-Strategies for Trauma Awareness and Resilience program, developed at Eastern Mennonite University in Virginia, proposes a model to escape this apparently eternal trap of victimization and aggression (Yoder 2005: 47):



Trauma Healing Journey: Breaking the Cycles

*This does not apply in all cases, for example, child sexual abuse, where those traumatized have no responsibility for what happened.

This “trauma healing journey” is based on the previously described three elements of recovery: safety, acknowledgment and reconnection. Safety can even be achieved in an ongoing violent situation. It mainly depends on strategies that create an inner safe space amidst external turmoil. Practices that may help to facilitate them include sports, arts, prayer, meditation or singing. Thus, safety also has to do with the internal attitude towards external events or processes that potentially contribute to unrest and arousal. Acknowledgment begins with breaking the isolation around traumatic events. Story- or truth-telling gives way to mourning and grieving,

which helps to give meaning to what happened. The realization that life will never be as it was before gives way to a profound reflection on the future. (Yoder 2005: 45-55)

Davidovitch/Alberstein (2008) consider memory as one of the instruments to overcome trauma. They enumerate four aspects of collective memory. First, there is the obligation to remember through rituals, discourses or other practices. The second aspect refers to the contents of memory, what is remembered and what is not. Third, there is the question of how memory functions. The fourth aspect is related to the interpretation of memory. Usually there are at least two functions of memory: to heal trauma and to consolidate a collective identity by resisting a dominant pattern of silence. Memory also includes the acknowledgment of traumatic events and their interpretation; a mere recalling of them is not sufficient. Another stream of thought questions the notion that there is an obligation to remember and underlines the importance of a more differentiated approach towards remembering and forgetting, as was shown by Shaw's analysis of "social forgetting" in Sierra Leone.²³ (Davidovitch/Alberstein 2008: 46ff)

For Medina Domenech, memory is integrated into a "collective net of relations"²⁴ (Medina Doménech 2008: 17) with the objective to restore justice and thus an important element of peacebuilding. In this context, memory serves to uncover the mechanisms that led to violence but also strategies and practices of peace that had existed even in difficult times. It is thus an active strategy against forgetting, which she considers as "the disappearance of the experiences of the past, a disappearance that makes the communities more vulnerable to these forms of extreme violence"²⁵ (Medina Doménech 2008: 17). The objective is to initiate policies of a "just memory" that uses the past in a way that facilitates the construction of the present and future. Memory is not about idealizing the past but to create narratives to overcome painful collective experiences. (Medina Doménech 2008: 18f) It is, therefore, about reconstructing collective identities with the objective to prevent future violence. According to Resina this prevention is the centerpiece of reconciliation. For him "reconciliation supposes a decision to live together with the evil inside the riverbed of a social pact that guarantees the victims the end of the

²³ Compare Chapter 1.3.1

²⁴ "red colectiva de relaciones"

²⁵ "... una desaparición de las experiencias del pasado, una desaparición que hace a las comunidades más vulnerables frente a estas formas de violencia extrema."

victimization, and the oppressors their inviolability towards any strife of revenge."²⁶ (Resina 2008: 32)

2.3.6. Summary

The research on trauma revealed several elements that are important to keep in mind when reflecting upon reconciliation.

First, individual and collective traumas, i.e. overwhelming events that overstretch the person's coping mechanisms, are interlinked but comparable only by analogy. This suggests that a recovery may be actively pursued in the case of an individual but only indirectly on the collective level by applying assisting strategies such as memory-work and the creation of safe spaces.

Second, the recovery includes the passage from a disoriented, passive, isolated and helpless victim to a connected member of the community who has control over him/herself and his/her life. While the before analyzed steps of safety, remembrance/mourning, and reconnection are certainly overlapping, there is the obvious conclusion that it is not useful to skip a phase. Thus, to get involved politically before having addressed one's own traumatic experience is rather counterproductive and of no sustainable use for the community. There is rather the risk to act out negative and potentially aggressive reactions on the political level.

Third, research shows the importance of the context and the community. The creation of a safe space, the mourning together with other people and finally the involvement in community affairs are based on the existence of a positive social environment. This is directly related to the transformation of relationships that are at the center of reconciliation.

Fourth, the analyzed authors emphasize the importance of truth or memory for the recovery both on the individual and the collective levels. This confirms the value of the victims' right to truth, as explained in the first chapter, but also leads to the debate about the kind of truth that is necessary to recover and prevent the recurrence of violence. It seems essential that truth also refers to future arrangements and avoids exclusively sticking to the past.

²⁶ "La reconciliación supone una decisión de convivir con el mal dentro de los cauces de un pacto social que garantiza a las víctimas el fin de su victimización, y a los opresores su inviolabilidad frente a cualquier ambición de revancha."

The following analysis of peacebuilding that for my sake also includes conflict resolution mostly addresses issues of the context and environment of individuals and communities. Its systemic view of conflict and violence allows thinking about transformations that both address conflict issues and build a foundation for peace in the future.

2.4. Peacebuilding and Reconciliation

2.4.1. Introduction

In the Colombian context, there is frequent mention of the so-called objective reasons for the armed conflict: land, inequality and lack of access to health, education and political power. If, so goes the argument, Colombia is to pursue the path of peace and reconciliation, these issues have to be resolved. This would suggest the need to analyze the vast conflict-resolution literature²⁷ with its reflections on the role of third-parties, mediators, international organizations, power mediation and problem-solving workshops. Yacoov Bar-Siman-Tov, however, states: “Both scholars and practitioners realize that although conflict resolution terminates a conflict, it does not necessarily stabilize the peace or prevent the emergence of a new conflict in the future, which may even lead to renewed violence.” (Bar-Siman-Tov 2004: 4)

This is why I decided to go a step further and directly enter the larger perspective of the interface between conflict-resolution and peacebuilding. Choosing this stance I transcend the resolution of single conflicts and am more interested in a systemic view of society and its mechanisms to overcome past and prevent future violence. Transforming relations on different levels of society is at the core of these strategies; the substantial resolution of specific conflicts is an important part of this transformation.

Remembering the insights of the previous section on trauma I am going to start the chapter about peacebuilding and its contribution to reconciliation with several reflections on the

²⁷ For example: Bercovitch, Jacob (ed., 2002): *Studies in International Mediation*. New York: Palgrave MacMillan; Bercovitch, Jacob (ed., 1996): *Resolving International Conflicts. The Theory and Practice of Mediation*. Boulder: Lynne Rienner Publishers; Crocker, Chester A./Hampson, Fen Osler/Aall, Pamela (2004): *Taming Intractable Conflicts. Mediation in the Hardest Cases*. Washington DC: US Institute of Peace Press; Ramsbotham, Oliver/Woodhouse, Tom/Miall, Hugh (2011): *Contemporary Conflict Resolution. The Prevention, Management and Transformation of Deadly Conflicts*. Cambridge/Malden: Polity Press

necessary transformation of identities that have fostered violence in the first place. Here, reconciliation has a fundamental role to play.

2.4.2. The Role of Reconciliation for a Stable Peace

The following considerations are based on the assumption that violent conflicts frequently persist despite peace agreements that have been produced by a process of conflict resolution. This suggests that the mere resolution of issues is not sufficient to provide sustainable peace because it does not change “the old attitudes” and does not necessarily lead to considering the other as a “partner in peace” (Kelman 2004: 119). Reconciliation, on the contrary, addresses the underlying grievances and attitudes that still cause distrust and are the motives for more violence. Consequently, in line with this argument reconciliation plays a major role in the creation of a favorable environment for a lasting and stable peace. Lasting and stable peace refers to the justified expectation that the other side will not recur to violence in order to resolve conflicts.

In conformity with this introduction it is important to first address the relationship between reconciliation and peace. This is of particular relevance in cases like Colombia where a so-called intractable²⁸ conflict has had an impact on society for decades. In these conflicts a reconciliation process is necessary because “the societies involved evolve widely shared beliefs, attitudes, motivations, and emotions that support adherence to the conflictive goals, maintain the conflict, de-legitimize the opponent, and thus negate the possibility of peaceful resolution and prevent the development of peaceful relations.” (Bar-Tal/Bennink 2004: 13). Having achieved a successful resolution of a conflict in such a context, the question remains, what a society needs for a lasting peace:

“Reconciliation goes beyond the agenda of formal conflict resolution to changing the motivations, goals, beliefs, attitudes, and emotions of the great majority of the society members regarding the conflict, the nature of the relationship between the parties, and the parties themselves. These changes take shape via the reconciliation process, promote the peace as a new form of intergroup relations, and serve as stable foundations for cooperative and friendly acts that symbolize these relations.” (Bar-Tal/Bennink 2004: 12)

²⁸ Crocker/Hampson/Aall (2004: 7f) characterize an intractable conflict in contrast to other conflicts as a “difference in the willingness or susceptibility of parties to entertain political options other than violence.” They are usually long-lasting and as a consequence have caused psychological wounds and a high degree of victimization. These conflicts may vary in the intensity of violence, ranging from a “frozen” conflict to a high degree of escalation.

While conflict resolution is based on rational considerations of interest and compromise that are facilitated by negotiation or mediation, reconciliation addresses the emotional side of the conflict's impact on society. Consequently, the authors characterize the outcome of reconciliation as the "mutual recognition and acceptance, invested interests and goals in developing peaceful relations, mutual trust, positive attitudes, as well as sensitivity and consideration for the other party's needs and interests". (Bar-Tal/Bennink 2004: 15) Kelman highlights the transformative principles of "reciprocity and mutual responsiveness". (Kelman 2004: 119) He goes on by asserting that the essence of reconciliation "is that each party revises its own identity just enough to accommodate the identity of the other. As the parties overcome the negative interdependence of their identities, they can build on the positive interdependence that often characterize parties living in close proximity to each other". (Kelman 2004: 119f) This identity change is linked to a process of internalization, which means that the new identity is consistent with the person's or group's pre-existing value-system that, in turn, is then strengthened by the new identity. (Kelman 2004: 120) This reflection is rather interesting because even in long-lasting violent conflicts such as the Colombian people usually have a clear vision of what is right and wrong. Peaceful coexistence or partnership with the neighbor would, consequently, be considered the right order of relationships; the attitude of distrusting the neighbor would, therefore, be easily replaced by a more trustful attitude, once the circumstances change.

These elements complement the usual considerations about political and economic integration of the adversaries on an equal base. This structural interdependence is an important ingredient to a process of reconciliation in so far as it creates a favorable environment by allowing for a mutually acceptable settlement. The psychological changes and the underlying learning process that manifest themselves in beliefs and motivations are essential to understand the substance of reconciliation processes. Thus, peacebuilding always has to be palpable in the subjective realities. (Bar-Tal/Bennink 2004: 15-17; 24f; Bar-Siman-Tov 2004b: 69f; Kelman 2004: 117f)

The recognition that there are different valid narratives of the past and the transformation of a destructive view of past events are at the core of endeavors that strive for psychological change. This process has a variety of degrees, ranging from listening to the other side's story to a

direct encounter and the recognition of having harmed the other side in the past. The power of acknowledging suffering of the other side establishes first emotional connections, on which further steps may be sketched out. (Ross 2004: 209) If the responsibility for past grievances is asymmetrical, this process of social healing may include forgiveness and apologies. However, this view of healing is not shared by everyone, particularly by those who consider it too ambitious.²⁹ (Bar-Tal/Bennink 2004: 18-20)

In any case, the truth about the past and the attempt to reach common ground on what happened is at the core of reconciliation. Partial truth, i.e. the exclusive concentration on one's own truth, is usually the cause for more anger and resentment. There is a variety of means that may contribute to truth, such as novels, films or sermons. In addition to truth, Kriesberg identifies justice as a core element. What it means, is cause for debate, as this paper shows. Very interestingly, the author also mentions "regard" as fundamental to reconciliation. This has to do with appreciating the humanity of the other by showing respect and recognition. Since violence causes harms and significantly damages the person's integrity, "regard" is essential to promote the psychological changes required for reconciliation and may become manifest through an apology for past conduct. Often reparations are seen as the material side of an apology that confers more credibility to it. (Ross 2004: 206f) In line with the previous section on trauma-recovery, Kriesberg also emphasizes the need for comprehensive security that involves physical but also structural elements. These four aspects stand in a dynamic relationship with each other and are applied differently according to the context. It is even possible that well-intentioned actions disappoint the expectations of the other side or cause resentment. Trials, for example may reduce grievances of the victims but also anger others who consider them one-sided. (Kriesberg 2004: 83-85; 99f; 102)

The reflections on trauma also showed that sometimes the capacity to verbally express grievances is limited. In this case other means are available to create bonds or express solidarity with someone's pain. Like Schreiter, whose arguments will be extensively presented in the chapter on the Catholic contribution to reconciliation, Ross points to the importance of symbols and rituals for the acknowledgment of the other. These also address a person's or group's fear to be completely extinguished when the cultural heritage of symbols is attacked during a conflict.

²⁹ I will come back to the question of healing and forgiveness in the following section on the Catholic contribution to reconciliation.

Books and historic documents are burnt, national sites destroyed or religious buildings bulldozed, all of which transmits the message that the other should not exist any longer. The consecration and desecration of holy sites constitutes another important example of the power of symbols for a group's identity and integrity. The polarizing Loyalist marches in Northern Ireland that in some places were reconfigured to be more integrative are exemplary for the significance of rituals to divide or to connect. Symbols such as Willy Brandt on his knees in Poland or the Rabin-Arafat handshake are not reconciliation themselves but point to the potential of a transformed future. (Ross 2004: 211-220)

In addition to approaching the past there are other aspects of psychological change: the creation of new goals that replace those that led to violence; the legitimization, i.e. attribution of humanity, of the "enemy"; a differentiated perception of the own group; the belief in cooperation with the other group instead of confrontation; the sensitivity towards the other's needs; and a realistic assessment of resources, benefits and costs of future peace. According to Kelman "changing one's identity by removing the negation of the other from it implies a degree of acceptance of the other's identity". (Kelman 2004: 119) In the end, a profound transformation of societal attitudes is required that, if successful, results in new symbols, norms and ways of thinking about each other. (Bar-Tal/Bennink 2004: 20-22, 38; Bar-Siman-Tov 2004b: 73f) This process is necessarily long-lasting and includes both top-down and bottom-up initiatives. It is not a linear process that steadily goes in the right direction, rather there are frequent regressions towards traditional ways of thinking and speaking. (Bar-Tal/Bennink 2004: 27)

2.4.3. The Emergence of Peacebuilding

In official documents peacebuilding has often appeared in a simplified version. In "An Agenda for Peace" (Boutros-Ghali 1992), for example, peacebuilding is considered as "post-conflict-peacebuilding (Art. 56ff) with the goal to "prevent a recurrence" of violence (Art. 57). Put in the context of international conflicts post-conflict peacebuilding includes activities such as de-mining or mutually-benefitting projects between the countries in conflict. (Art. 56, 58) However, peacebuilding also adopts the meaning of confidence-building measures, thus conceptually pointing beyond these activities.

In the 1995 “Supplement to Agenda for Peace” (Boutros-Ghali 1995), peacebuilding is still referred to as “post-conflict peacebuilding”. According to article 49 it has the goal to “create structures for the institutionalization of peace”. It is still considered a public, meaning state or UN task that is related to security or institution-building.

This view of peacebuilding persisted when through UN Security Council Resolution 1645 (2005) the Peacebuilding Commission was created. The Commission was founded due to “the need for a dedicated institutional mechanism to address the special needs of countries emerging from conflict towards recovery, reintegration and reconstruction ...” and “the need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace” (Preamble). Thus, peacebuilding is limited to official activities that occur after the violent conflict has ended.

There have been a variety of critiques on this very narrow understanding of peacebuilding that also shaped several international peacebuilding initiatives. The main points made have been: too many one-size-fits-all approaches to peacebuilding; too paternalistic; neglect of society building and bottom-up approaches; too little focus on the population’s interests; and too little consideration of gender and culture. Overall, this critique suggests that peacebuilding depends on negotiation and is not the outcome of blueprints. Furthermore, the practice to call state-building or regime-change peacebuilding has been increasingly questioned. Thus, while 9/11 strengthened the stability-element of peacebuilding, research gradually has been coming back to considerations related to bottom-up and emancipatory forms of peacebuilding. (Ramsbotham/Woodhouse/Miall 2011: 227, 231f)

Authors such as Adam Curle and John-Paul Lederach elaborated peacebuilding-approaches that were based on the “principle of indigenous empowerment” and, therefore, built on local peacebuilding-capacities. However, at times the local level reflects the shortcomings of the elites and shows signs of patronage and corruption. Thus, the other extreme, i.e. romanticizing the local level, is not appropriate either. Consequently, a mid-way was designed that combines a cosmopolitan human rights agenda with local autonomy. Ramsbotham/Woodhouse/Miall call this model the “transformative cosmopolitan model” that offers sufficient space to negotiate peacebuilding and is based on a systemic view of conflict. It also includes regular evaluative and research loops to review the process and, if necessary, insert changes of the strategy. (Ramsbotham/Woodhouse/Miall 2011: 233-238)

Before analyzing the concept of “strategic peacebuilding” that has been significantly shaped by John-Paul Lederach in more depth the next section broadens the thematic spectrum addressed by peacebuilding. Johan Galtung’s 3Rs show the interdependence of Resolution, Reconstruction and Reconciliation, while the debate on the so-called “liberal peace” replicates the top-down vs. bottom-up discussion. Paul Gready’s and Jacky Smith’s considerations on the structural dimensions of peacebuilding set the stage for “strategic peacebuilding”.

2.4.4. Peacebuilding and its Context

Johan Galtung’s work on the 3Rs – Reconstruction, Reconciliation, and Resolution – addresses the interface between concrete conflict-resolution and the recovery of relations after violence occurred with the objective of preventing a relapse. While Galtung distinguishes a variety of approaches to reconstruction that include the physical rebuilding of infrastructure and the creation of a peace culture and structures, resolution is understood as the design of political institutions such as parliaments that would resolve conflicts peacefully.

Galtung (2001) enumerates twelve approaches to reconciliation that he defines as closure plus healing. He, thus, indicates that reconciliation has a variety of dimensions such as the theological, psychological and philosophical. Galtung limits reconciliation here to the relationship between perpetrator and victim, understood as both individually and collectively. This is an important level but does not satisfy the concern with the social level that, as mentioned before, consists of other roles and identities, as well. Nevertheless, his considerations open up an additional space that I will then expand to other levels.

Interestingly, the author addresses the importance of practices that have been already mentioned in the debate on the legal approach to transitional justice: truth, reparation, and punishment. Unlike proponents of the normative approach he rather describes the social impact of these elements on reconciliation. Furthermore, Galtung draws from practices of different cultures and connects the Buddhist meditation with the Christian absolution. By quoting a practice from Hawaii, he also introduces restorative justice as a way of combining the 3Rs by simultaneously reconstructing the committed wrong, resolving the underlying problems and reconciling the parties. Methodological considerations such as the use of theater as a means to

find alternative approaches to violence or joint sorrow-sessions to commemorate wars instead of glorifying the victorious “good” side complement his approximation to reconciliation. (also Galtung 1998: 54f)

For this research it is of utmost importance to keep in mind Galtung’s premise that the 3Rs interact with each other. Thus, wrongdoing is not only related to bad individual behavior but also to structures that make people act in certain ways. This is why reconstruction is not only composed of rebuilding (Galtung 1998: 56f) the physical infrastructure that Galtung calls the development-approach but also of rehabilitation (Galtung 1998: 54f) that heals individual and collective traumas and of restructuration (Galtung 1998: 58-60) that transforms marginalizing structures and, thus, the causes of polarization and distance between different sectors of society. The fourth element of rebuilding refers to reculturation (Galtung 1998: 61-63) and comprises activities to eliminate violence as a legitimate means to resolve conflicts. It is also about questioning simple good/evil dichotomies. (Bar-Tal/Bennink 2004)

Resolution addresses the concepts of cultural, direct and structural violence. According to Galtung a democratic system strengthened by human rights and a strong civil society and non-violent forms of protest contribute to the resolution of underlying structural issues. (Galtung 1998: 92-99)

These insights demonstrate the integration of reconciliation into a larger agenda of post-conflict activities. Together they address several of the issues already mentioned as significant, such as trauma or structural distortions. Most of them must be negotiated in a contested space of different interests and attitudes, i.e. a political space.

The need of negotiation becomes even clearer when David Bloomfield (2006:12) defines reconciliation as a “process of gradually (re)building broad social relationships between communities alienated by sustained and widespread violence, so that over time they can negotiate the realities and compromises of a new, shared socio-political reality.” This process includes the following four interlinked elements: justice that punishes violations and prevents recurrence; acknowledgement of different interpretations of what happened (truth); healing of the victims; and reparation. Since the first element includes the creation of the rule of law based on democracy and human rights, it suggests a political process that resembles Galtung’s phase of “resolution”. Bloomfield adds that a fifth element may be development that directly addresses the structural dimension of violence.

This reflection leads to Paul Gready's (2011) critique of the shortcomings of the South African Truth and Reconciliation Commission (TRC). According to the author it neglected the continuities between the past and the present and the structural reasons for violence in South Africa. His vantage point is that the "era of transitional justice" is firmly embedded in the liberal politics of globalization and democratization. Thus, human rights are usually defined as civil-political rights, omitting the importance of the so-called second-generation economic, social and cultural rights. (Gready 2011: 5, 13)

For Gready "the economic realm provides the structural underpinnings of sustainable reconciliation" (Gready 2011: 211). He confronts the paradigm of "liberal peace" that will be analyzed below and suggests that within this framework the rule of law mainly protects free markets. Market liberalization, however, increases social tensions due to its competitive nature. Suggesting that the simultaneous use of transitional justice instruments and neoliberal policies is counterproductive, he dedicates some space to consider "economic reconciliation" that is based on his assumption that reconciliation is relational. Poverty, therefore, should be seen as the result of distorted relationships. If there is no relational interpretation of inequality, there will be no sense of responsibility and thus no legal obligation for redress. Despite its initial focus on defining inequality in relational terms as "unjust enrichment", the TRC failed to insist on it. In the end it did not do enough to confront the shift from relational (redistribution) to non-relational (growth) economic policies. In this context, reparations and reconciliation are intensely interlinked, because the former contribute to the re-definition of economic relationships and patterns. (Gready 2011: 220-222)

The marginalization of economic issues from public debate prevents the mobilization of important sectors of the population for reconciliation. One result is that "there is the danger that South Africa will be, perhaps already has been, re-divided by language and the keywords of transition. Reconciliation becomes the vocabulary of perpetrators and beneficiaries, and reconstruction, reparation and transformation that of victims/survivors and the impoverished." (Gready 2011: 219) This also leads to the debate, whether reparation and transformation or reconciliation comes first, a well-known discussion in Colombia: Is reconciliation the beginning of a transformative process or does it follow transformation? The main point is that policies of

reconciliation that do not include structural aspects are doomed to failure because many people would not discover any change compared to the past. (Gready 2011: 219f)

Gready's considerations directly challenge the paradigm of liberal peace that seems dominant in the current reflections on the rule of law. It assumes that the creation of a liberal democracy based on the rule of law and the marketization of the economy significantly reduces the risk of being involved in wars. Consequently, international development should focus on liberalization and democratization. Roland Paris rightfully argues that this assumption, which goes back to the theories of John Locke and was highlighted by the policies of President Woodrow Wilson, does not address the relation between transformation and liberalization processes and internal and external conflict, which obviously constitutes a major shortcoming of the underlying assumptions. For example, the liberal economic adjustments in vulnerable countries contributed much to the increase of internal violence, as Paris points out using specific case studies of transitional countries. Furthermore, the liberalization strategy does not contemplate a context, in which there is no functioning state. In the liberal thinking, however, its existence is of paramount importance for implementing liberalism by establishing and enforcing a normative framework. (Paris 2004: 40ff; Philpott/Powers 2010: 4-8)

Paris identifies five pathologies of liberalization that are not considered by democracy-promoting initiatives: 1) the "bad civil society" that does not integrate society by cutting across social cleavages but, on the contrary, solidifies them by promoting hatred and intolerance, as was the case in Rwanda; 2) "ethnic entrepreneurs" who foster ethnic cleavages and appeal to ethnic unity; 3) the disruptive effect of elections; 4) "pseudo-democracies" of authoritarian elected leaders and saboteurs; and 5) the dangers of economic liberalization. These pathologies are related to the competitive nature of both market economy and democracy, a characteristic that turns out to be harmful in the context of states weakened by war when internal conflicts increase and channels to tackle them virtually cease to exist. (Paris 2004: 159-172)

However, Paris' recommendation to focus first on institutionalization before undertaking liberalization (Paris 2004: 179ff) is limited to the design of state institutions and does not include other levels of society. The basic assumption, however, that political stability requires "an effective administration over the territory" (Paris 2004: 187) is very relevant for the purpose of this paper because it directly addresses the identified pathologies of competition in adverse circumstances. Thus, he, for example, recommends to wait with elections until the conditions are

appropriate and to promote a “good civil society”, which transcends the lines of conflict and not deepens it.

Jackie Smith (2010), on the contrary, argues that Paris does not go far enough. She questions the assumed positive relationship between market liberalization and peace and insists on the necessity to analyze power relations both on the global and the local level. A systemic view of conflict, which is in line with strategic peacebuilding, has to take into account the dense web of relationships on each level. Asymmetries of power frequently conceal the structural sources of a conflict. If the fact is neglected that peacebuilding strategies are usually designed by rich for poor countries, it may be that they simply contribute to the persistence of unequal relationships, the expansion of the market and finally to the debilitation of the state in its capacity to administer and protect public goods: “Strategic peacebuilding approaches, therefore, require a critical analysis of how power is reflected and reproduced in the operation of peace intervention missions.” (Smith 2010: 249)

Smith makes her argument by refuting the idea that market liberalization leads to growth and shows that the involvement of the local entrepreneurship provides more sustainable results for peacebuilding regarding economic and political criteria. The mobilization of local resources and the increase in political legitimacy are the main beneficial factors. The other argument refers to the predominance of inequality as a cause for violent conflict. Smith suggests the inclusion of distributional aspects in peacebuilding designs. Mere policies of growth obviously do not lead to the “trickle down” effect of favoring the poor in the long run. Redistributive policies, however, imply a reasonably strong state that is also undermined by external conditionalities that result in the weakening of the regulatory capacities of the state by privatizing state functions or forcing the state to reduce public funding. These “neoliberal states” certainly satisfy market needs but enhance internal tensions in fragile environments and, thus, perpetuate the “conflict trap” characterized by increased concentration of goods and larger inequality. As a last step in her argument, Smith consequently questions the role of the global capitalist system, the competitiveness of which fosters conflicts in many parts of the world. Her logical question is, whether peace has even a chance in a global order that promotes profit maximization and undermines global governance institutions. (Smith 2010)

These political reflections are complemented by Peter Wallensteen (2010: 48) who identifies several objectives of state-related peacebuilding: state-building, democracy-building,

security-building, nation-building, and market-building. This list of tasks suggests how difficult it is to integrate even more than “only” the political dimensions of peacebuilding. Nevertheless, the model does not address the relationships and the harms to them inflicted by violence yet; hence it is not a holistic approach to peacebuilding that transcends the political level.

2.4.5. “Strategic Peacebuilding”

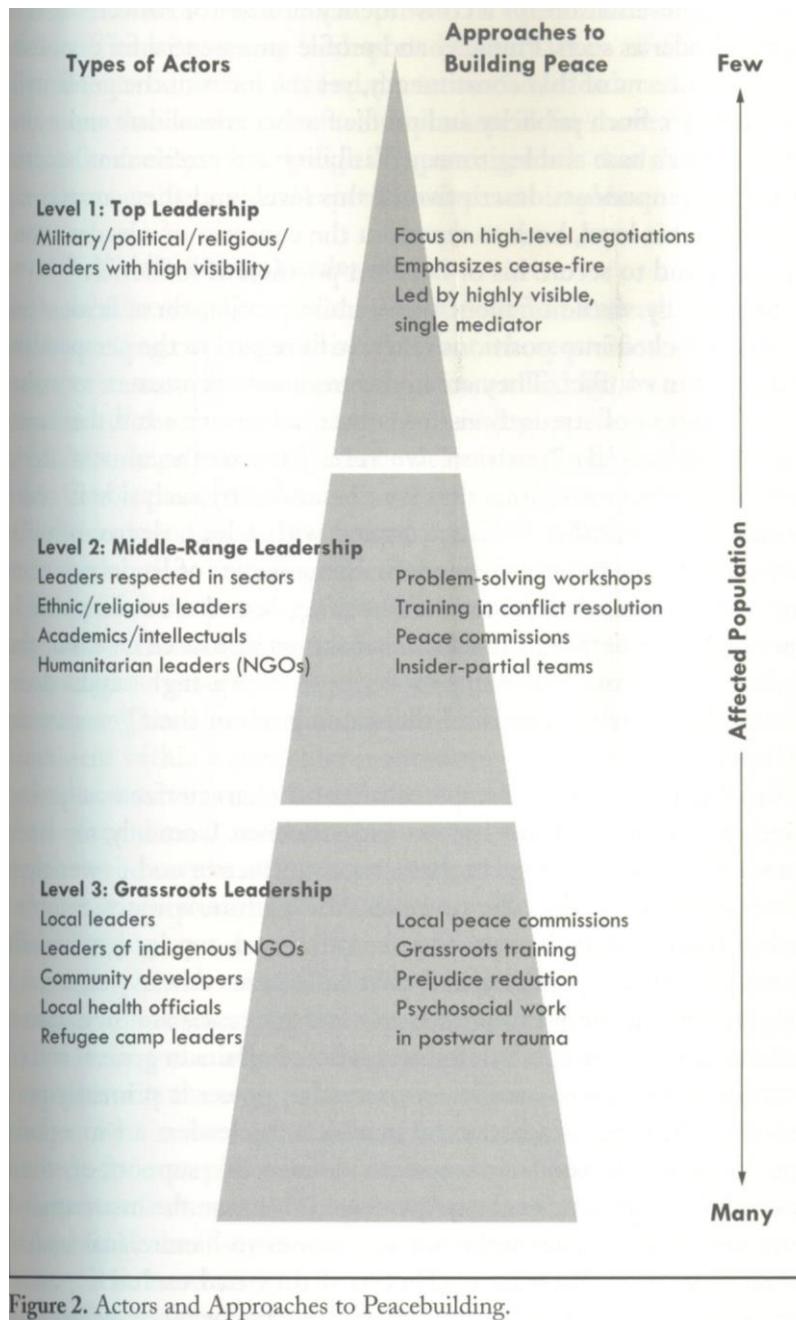
John-Paul Lederach (1998, 1999, 2005) can certainly be called the pioneer of a comprehensive view of peacebuilding that is based on a systemic approach to conflict, its transformation and the rebuilding of relationships. His analysis of societies trapped in so-called intractable conflicts led him to discover the shortcomings of peacebuilding that exclusively relies on diplomacy and on the post-settlement-phase. The focus on security in these societies motivates people to define identity and belonging each time in narrower terms, which together with the proximity of the experience of violence and social ruptures on the community-level causes profound stereotypes and “cycles of animosity” (1998: 23) that consolidate these identities. The notion of who belongs to whom cuts the society vertically and horizontally and contributes to the “reciprocal causation” (1998: 15) that perpetuates violence independent of the root causes of the conflict. The identification of a clear enemy, therefore, is essential for the internal cohesion of a group. These circumstances call for a more sophisticated analysis of the society as a whole and an approach to peacebuilding that decisively transcends the political level.

Therefore, Lederach (1998: 20) defines peacebuilding in the following way:

“Here, peacebuilding is understood as a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships. The term thus involves a wide range of activities and functions that both precede and follow formal peace accords. Metaphorically, peace is seen not merely as a stage in time or a condition. It is a dynamic social construct.”

This definition allows for peacebuilding-activities before, during and after violence and is open to what different actors may contribute to it. Most significantly, both peacebuilding and peace are understood as dynamic and not linear or static developments. This includes the possibility of moving forward and backward, of changing course, evaluating activities and redesigning them according to the identified needs and circumstances.

Based on this understanding of peacebuilding, Lederach designs his frequently used pyramid of society. (Lederach 1998: 39)



The gist of this illustration is that each level of society has specific strengths and resources to contribute. An exhaustive analysis of the people and organizations and their resources and capacities is crucial to advance in peacebuilding. This shifts the attention from a

society as a receiver of international expertise towards its own resources. Local capacities and resources for peace are at the core of Lederach's theory and practice. He, in particular, insists on the value of the mid-level that usually has relationships to the high level and the grassroots-level of a society. This function of connecting power with local expertise cannot be overestimated for the construction of sustainable peace. While the top-level is trapped in media-coverage and fixed positions, the mid-level is usually able to move more flexibly. (Lederach 1998: 41; 46-51)

The following illustration (Lederach 1998: 80) points to fundamental aspects of Lederach's considerations, i.e. the strategic timing and planning of appropriate activities on specific levels.

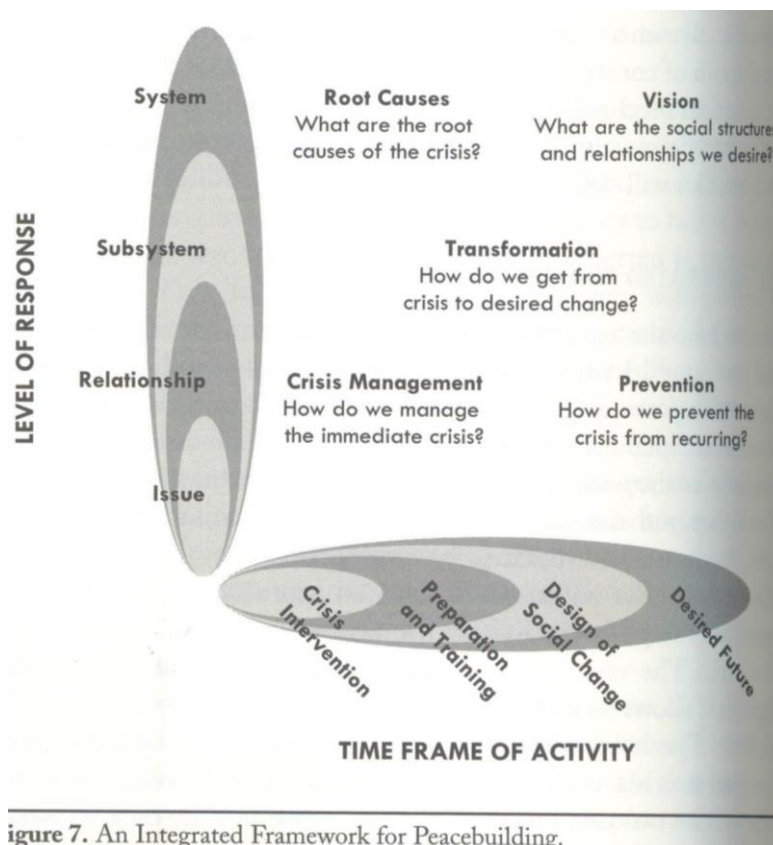


Figure 7. An Integrated Framework for Peacebuilding.

He suggests a shift from considering single issues to working with a systemic view, based on a vision of social change. This horizon of the future orients the coordination of responses to humanitarian crisis, activities to conflict management and development measures into a larger

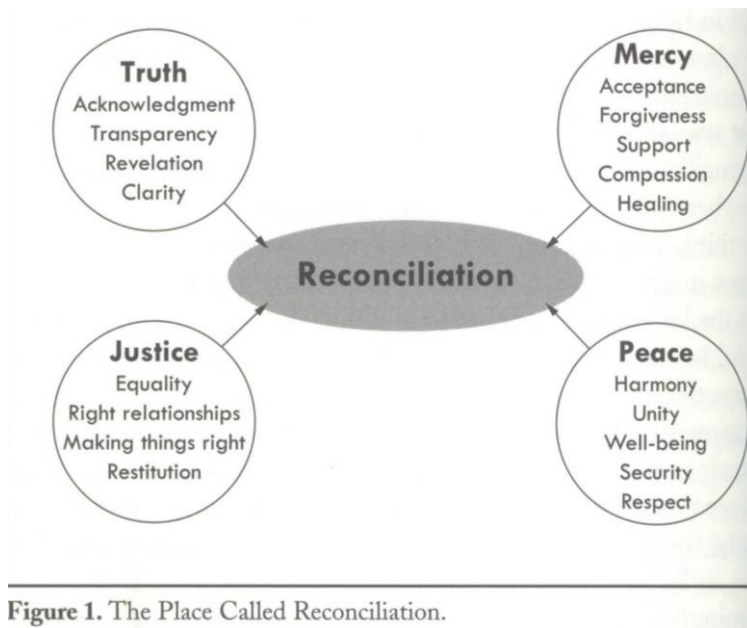
framework and strategy. It also details the character of social change that is required to build sustainable peace. (Lederach 1998: 55-86)

Given the characterization of societies affected by violence Lederach attributes special importance to reconciliation that focuses on the restoration and rebuilding of relationships. The immediacy of hatred, pain, distrust and emotions such as fear and anxiety together with the proximity of victims, perpetrators and others require a comprehensive approach toward the transformation of animosity that includes socio-psychological, spiritual and other elements. (Lederach 1998: 29)

Relationships are fundamental to understand a social system and its dynamics. Reconciliation is about creating a space for the encounter of the different, which makes mutual acknowledgment possible. Similar to the before-analyzed reflections on the need to change perceptions Lederach emphasizes the idea that reconciliation is actually a place to meet and to exchange and validate concerns of the past and visions for the future. (Lederach 1998: 26f)

Lederach elaborates more on the issue of timing and distinguishes the dimensions past, present and future. This is particularly interesting because this relates to the frequently expressed opinion that before talking about reconciliation complete truth and justice must have been accomplished. There are, however, situations, as the one described at the beginning of this chapter where this sequence of past-present-future is inverted, i.e. when it is not desirable to address the past. When former or present enemies are willing to sit together, they often do that for their children, thus thinking about the future and its needs. Based on the shared desire for a peaceful future, they are able to discuss problems of the present, even before going into the past. Consequently, the sequence may be future-present-past. (Lederach 1999: 65-77)

These sequences are accompanied by the four elements of a reconciliation process: justice, mercy, truth and peace. These together create the space of reconciliation, as illustrated in the following (Lederach 1998: 30):



The dynamic, interdependent and at the same time tense relationship between these four elements suggests the need to adapt them to the concrete situation and environment. There are different models applied by different countries. In the end a combination of them is not only necessary but also possible. (Lederach 1999: 55-60)

After this initial breakthrough of the idea of systemic peacebuilding, the concept has been further developed. Appleby, for example, alludes to the realities peacebuilding has to respond to by describing them as long-lasting, deadly, multi-level and multi-actor conflicts. He writes:

“It is precisely that mode of conflict transformation that strives to comprehend the *longue durée* of a conflict – its full temporal, trans-generational range – and forge “solutions” commensurate with the deep historical rootedness of the inhumane personal, social, economic, and political relationships fueling the deadly violence. Peacebuilders strive to address all phases of these protracted conflicts, in which pre-violence, violence, and post-violence periods are difficult to differentiate. Accordingly, peacebuilding engages all sectors of society and all the relevant partners ...” (Appleby 2010: 3)

Peace-building is not confined to the post-conflict period but has its importance during the whole conflict-cycle. Furthermore, it is not limited to specialized entities, organizations or people but involves everyone, given that an internal conflict affects everyone, though to varying degrees.

Based on Lederach's work, Appleby distinguishes three practices to build "a sustainable and just peace over time": conflict resolution, peacekeeping and postwar social reconstruction. The latter includes the topics that are most relevant for this thesis: transitional justice and reconciliation. (Appleby 2010: 11f)

This holistic approach is the objective of "strategic peacebuilding" as presented by a publication with the same title (Philpott/Powers 2010). Lederach/Appleby (2010) offer an overview of peacebuilding with its ultimate goal being a just peace, which addresses the grievances of the people and forms new relationships based on equality and fairness. This emphasis on the close relationship between justice and peace is going to be a recurrent topic in the following sections. Social justice is, thus, at the center of peacebuilding; this requires a clear understanding of social change.

The authors are very realistic about the required time-span to reach such a transformation; they consider that it takes an amount of time equal to the development of violence in a society. Peacebuilders work in alliances with a broad range of other professions and should respect the principle of subsidiarity. This attributes responsibility to every level of society and takes seriously the efforts that range from the grassroots to the government level. It is obvious that taking this principle into account also requires a local needs and capacity assessment in order to fully appreciate the existing resources on each level. (Lederach/Appleby 2010: 22-34; Schirch 2004: 64f)

Thus, the authors reach the following definition of peacebuilding:

"... a set of complementary practices aimed at transforming a society riddled by violent conflict, inequality, and other systemic forms of injustice into a society oriented toward forging a justpeace." (Lederach/Appleby 2010: 35)

Since this definition includes a vast array of actors and activities and draws on the insights of many disciplines such as security, human rights, spirituality, economics and cultural studies, the term strategic is essential to fill the word "complementary" with substance. In this regard the authors note:

"Peacebuilding becomes strategic when initiatives, whether from below, above, inside, or out, begin to link and coordinate with differentiated spaces and processes to effect the wider desired change. In a word, constructive transformation unfolds in relational spaces. Strategic peacebuilding requires the capacity to envision and encourage the intentional confluence – the

flowing together – of improbably related processes and people toward constructive change.”
(Lederach/Appleby 2010: 36)

This insight encourages the complex task of bringing together the different and trying to coordinate the most diverse activities. The forging of “improbable alliances” is exactly what Lederach in another piece called the “moral imagination” of peacebuilding (Lederach 2005). In addition to this flowing together of people who normally would not meet to coordinate, there are several central elements for strategic peacebuilding: a broad time horizon; research and practice that consider the larger history of the conflict in order to transform patterns of violence; an analysis of the effects of activities on other practices; and the integration of the societal levels. Thus the integrated vision of social change, the capacity to identify spaces and actors of change and to think simultaneously more than in sequences are qualities that need to be developed in the peacebuilding community. The authors conclude by enumerating the five principles of strategic peacebuilding: comprehensive (overall picture), interdependent (forging relationships between different actors, roles and activities), architectonic (building structures, spaces and institutions of change), sustainable (long-term thinking), and integrative (integrating immediate concerns and long-term visions). (Lederach/Appleby 2010: 37-41)

Lisa Schirch outlines the underpinning values of peacebuilding: human rights and security, interdependence, non-violence, and partnership. While the first value explicitly includes the different generations of rights, the second refers to the inter-relatedness of all people on earth, which postulates a shared responsibility for humanity. Schirch, therefore, also focuses on the effects of structural violence on other forms of violence, which constitutes one of the underlying assumptions and threads of this paper. (Schirch 2004: 13-17; 23f)

Schirch elaborates several practical strategies to promote peacebuilding, such as non-violent action or activities to reduce direct violence. For the purpose of this paper, her reflections on “transforming relationships” are most relevant. According to the fundamental values of peacebuilding she identifies three main pillars that strengthen this transformation: the healing of trauma, the transformation of conflicts and doing justice. All three are about identifying harms and their consequences and rooting out the causes for them. The author’s insistence on including symbols and rituals as possible ways of expressing oneself points to the need to develop methods that go beyond the rational dimension and include emotions. (Schirch 2004: 45-55)

2.4.6. Summary

The overview of the peacebuilding-literature highlighted several important insights that further help to understand the comprehensive nature of reconciliation. It outlined the number of disciplines that contribute to the understanding of peacebuilding, such as politics, psychology, theology, philosophy, economics, and cultural studies. It also emphasizes the non-linear character of peacebuilding, thus pointing to the difficulty to clearly separate stages with well-defined activities. Peacebuilding requires the formulation of a multi-level strategy that coordinates activities of a variety of actors with different responsibilities and capacities. The systemic approach to conflict also counters the concept that considers peacebuilding mainly as a set of post-settlement tasks undertaken by international missions.

The place of reconciliation within peacebuilding is firmly characterized as concerned with relationships and their transformation towards more justice. This includes the task of changing identities that perpetuate violence by strictly distinguishing between friends and enemies, of creating political and economic relationships that promote participation and the satisfaction of basic needs, and of applying instruments of transitional justice – or as Lederach would put it of truth, justice and mercy – to tackle past injustices in order to establish foundations for a shared future.

2.5. The Catholic Understanding of Reconciliation

2.5.1. Introduction

In this chapter I will address several aspects that significantly shape people's understanding and practice of reconciliation, forgiveness and justice in Colombia. The dominance of the Catholic Church and its rituals, images and vocabulary in these topics is palpable. This certainly provides the society with resources that can be used to promote reconciliation but it also allows for discrediting reconciliation as a merely religious and consequently naïve exercise. This view is countered by the explicit commitment to link the Gospel and the Church's teachings with the social reality of exclusion and exploitation, as suggested by the Theology of Liberation. The structural aspect, therefore, is firmly rooted in the Catholic interpretation of reconciliation.

I am conscious of the fact that in the context of this study the following considerations are a first approximation towards a Catholic understanding of the concepts of reconciliation, sin, forgiveness and justice. Important research on pastoral-theological aspects such as the impact of Catholic teaching on people's lives, the design and effects of the Church's peace activities or the extent of the Catholic socialization of people in Colombia has not been conducted in the context of this dissertation. However, this chapter's goal is to show that theological considerations and other aspects related to religion and the Catholic Church enrich the debate on transitional justice and reconciliation because for a long time they have contributed to the discussion and the people's understanding of ideas and concepts such as truth and justice, which are now used in a rights-based language. This suggests that the analysis of the topics under review would highly gain from an inter-disciplinary approach.

In the following, I will show that unlike the discourse that equates reconciliation with impunity the biblical foundations and the tradition of the sacrament of reconciliation are based on the requirements of justice, repentance and truth in order to achieve reconciliation. The Theology of Liberation that emerged in Latin America in the 1960s has been based on the insight that the Church and its teachings must have an impact on the social environment that in many countries is characterized by poverty and marginalization. Then, I will briefly explore the peacebuilding resources offered by the Catholic Church and, finally, go into Daniel Philpott's concept of political reconciliation.

2.5.2. Fundamentals from the Bible

2.5.2.1. Sin

The need for reconciliation stems from the existence of sin. Based on the three Hebraic terms that stand for distortion (*awon*), crime (*pesa*) and breach (*het*) Otto Hermann Pesch (1983) deducts the religious meaning of sin as a rupture of the community with God and as being different from how God wants someone to be. (Pesch 1983: 116f) Unlike the common understanding of sin as a conscious breach of a norm, the Hebraic terms did not emphasize the individual responsibility of the sinner yet. Thus, even wrong acts committed with the best of intentions had been called sins. Consequently, the "objective distortion" of an act did not depend on the will of the person.

Nevertheless, Pesch distinguishes four characteristics of the Old Testament's understanding of sin that point to its future interpretation: Sin is always related to the community; the community with fellow human beings is not separate from the community with God; the fundamental contrast regarding sin is that between just and unjust in the eyes of God; and the final source to identify sin is God's revelation. It is also Him who monitors human behavior and attributes positive or negative sanctions according to the deeds. Thus, the consequences of sin are felt by the sinner through inconveniences in his own life; there is a clear connection between one's deeds and one's own future. God, however, also offers the opportunity of repentance, which opens a way out of the permanent encirclement by sin and its effects. (Pesch 1983: 116-121)

Saint Paul keeps the fundamental understanding of sin as a breach of community but emphasizes more the individual responsibility for it. He puts the person in his/her struggle to fulfill God's will in the center of his reflection. In the end, the person's entire relationship with God is at stake, which is Paul's main interest. However, St. Paul further develops the understanding of the importance of the Law in the light of Christ's life, death and resurrection. Rom 5 highlights the reconciliatory significance of Jesus, through whom human beings got access to God's grace and, thus, to the hope of salvation from the power of sin and its lethal effects. (Pesch 1983: 123-128)

2.5.2.2. Reconciliation

The report of the Creation of the Human Being in the book Genesis provides us with important insights that are fundamental for the understanding of the topic. The human being was created as free and ethical, which implies that he/she is able to distinguish between right and wrong and to reconcile in the case of wrongdoing. The former is illustrated by the Fall of Mankind after the fruit of recognition was eaten despite God's explicit prohibition. The human being takes the free decision to choose distance from God. Thus, the act in itself demonstrates the ethical autonomy of the human being. (Schlögel 2007: 36-39)

In the Old Testament the idea that sin has a lasting adverse effect on the relationships between God and man and among human beings and that this effect can only be reversed by a change in behavior and attitude is recurrent. Thus, terms such as reconciliation, repentance,

conversion and sin are inter-related in so far as the Israelites repeatedly suffer from the consequences of sin, while God shows his constant willingness to reconcile. This is illustrated by God's reaction to the repeated misbehavior of the Israelites on their march through the desert (Ex 16f) or during the Babylonian Exile when the Book Deuteronomy was further refined in order to show that sin results in calamity, while change leads to God's benevolence and a new unity among his people. (Dt 30:1-10). God remains open to reconciliation, once conversion is undertaken, both in his relationship with human beings and to facilitate reconciliation among them, as shown in the episode between Jacob and Esau (Gen 33). (Kasper 2006: Vol. 10, Col. 720f)

Forgiveness and acknowledgement of sin are important pre-requisites for reconciliation. The prophets frequently refer to these criteria by emphasizing God's forgiveness in the case of conversion and the transformation of human behavior. (Jer 31:34; Ho 5:15; 2 Sam 12:13) They also highlight the importance of repentance for salvation. Turning away from sinful acts and towards God's will are frequent motives of the prophets. (Ezek 15: 5-9; Jer 29: 13f)

In the New Testament reconciliation is primarily possible due to the intermediary role of Jesus who through his life, death and resurrection prevails over sin: "And you, who once were estranged and hostile in mind, doing evil deeds, he has now reconciled in his body of flesh by his death, in order to present you holy and blameless and irreproachable before him, ..." (Col 1:21-22) Thus, reconciliation is a promise given by Jesus and later by the Church. Conversion and change are the reaction expected from human beings in order to re-orient towards his reign. (Kasper 2006: Vol. 10, Col. 652, 722). In a preparing step, however, John the Baptist focuses on God's judgment and suggests repentance and an existential transformation (*Metanoia*). (Mk 1:4; Lk 3)

Both in the Old and the New Testaments reconciliation is considered possible and desirable. Reconciliation with God (vertical), however, depends on the previous reconciliation with fellow human beings (horizontal). Matthew (5:23-26), for example, is very explicit on demanding reconciliation with one's brother before offering sacrifices to the altar. High Jewish days such as Yom Kippur are usually preceded by several days of conversion and reconciliation. (Schlögel 2007: 39-44)

2.5.2.3. Pedagogical Illustrations from the Bible

On a different level, Robert Schreiter presents Paul's teachings and uses them to illustrate practical issues related to reconciliation. The value of these reflections is not so much theological but pedagogical by connecting topics such as trauma, guilt and forgiveness to biblical episodes frequently heard in the Eucharist.

The author draws several conclusions: First, reconciliation is God's work within us through Christ. Given the enormity of the task, particularly in conflict-ridden environments, reconciliation would exceed human capacities by far. God initiates the work on reconciliation with the victim, for He has taken the side of the poor and oppressed. Christ as the ultimate victim undertook the task of reconciling the whole world. God acts through the human being, which reflects the intersection between the divine and the human.

Second, reconciliation is both spirituality and concrete action. This means that the relationship between God and humans is at the core of reconciliation. When the spirituality of reconciliation leads to concrete action, the two enter a mutually enriching relationship, in which spirituality keeps guiding action.

Third, reconciliation transforms the relationship between the parties involved without denying or forgetting the past. This restoration does not imply the return to a status quo ante but leads to transformation. Reconciliation is about moving forward and not backward by erasing the memory.

This motive is further strengthened by Jesus' practice to seek and prefer the company of socially marginalized groups: sinners, publicans and collaborators with the Roman Empire. He responds to public criticism that it is the sick who need the doctor; this is an invitation to change in order to achieve redemption. Jesus not only offers his presence but also promises that it is never too late to convert. (Schlögel 2007: 44-48)

Fourth, this new phase in a relationship manifests in the process of Christ's life, death and resurrection. While death is a warning example for the consequences of evil, resurrection is a symbol for the triumph of life over death and suffering. (Schreiter 1998: 14-19)

Schreiter (1998), therefore, considers the texts on Jesus' appearances after his resurrection as very illustrative for the issues of reconciliation, forgiveness and healing. The following table offers the main relevant insights for reconciliation:

Source	Story	Topics
Mark 16: 1-8; John 20: 1-18	Women arrived at the tomb of Jesus and realized that it was empty.	- Trauma of the execution that changed the whole life from one day to the other - Disappearance of the body and, thus, the violation of the place to mourn - Disappearance as absence and non-closure - Need to acknowledge loss, establish new relationships with the dead and create safe spaces to revisit the memories - Challenge to acknowledge the effects of the past and to build a new future - Women's experience of marginalization in society and their different form of power: <i>Madres de la Plaza de Mayo</i> in Argentina, <i>Peace Walls</i> in Croatia etc.
Luke 24:13-35	At the same day, two disappointed disciples of Jesus leave Jerusalem to undertake a seven miles walk to the village of Emmaus. They are accompanied by the resurrected Jesus without recognizing him. However, his interpretation of what had happened in these days gave them comfort. During the meal in Emmaus, finally, his disciples recognized him through his breaking the bread. Then he disappeared but the disciples hastened back to Jerusalem in order to tell the others.	- Fleeing the pain by heading anywhere (image for escaping the past and its images) - Importance of people who walk alongside others, listen to them and offer comfort - Being kept in the "treadmill" of the same thoughts and hopelessness - Need to re-orient one's story, give it a new interpretation and perspective ("moment of grace") - At first, Jesus is not recognized by the disciples, i.e. resurrection is a process of transformation - Restoration of trust in the other as one sign of reconciliation
Luke 24:36-49; John 20:19-23	The anxious disciples are listening to their fellows, who just returned from Emmaus. They are sitting in a hidden room because they are afraid of being condemned to death like their leader. Actually, was he really the Messiah? Suddenly Jesus appears among them, greeting them with "Peace Be with You", showing his marks and giving testimony that everything happens as predicted.	- Emotions of guilt for acts and omissions - Being in "Peace" (shalom as "the state in which the world is meant to be") with God after so much suffering - Importance to keep imagining what shape reconciliation can have - Forgiveness of wrongdoing, abandonment (compare below) - Eating together as a sign of peace (Eucharist as a symbol for reconciliation)
John 20:24-29	Thomas happens to be outside, when Jesus first appears among the disciples. He, therefore, doubts the presence of Jesus. When Jesus shows himself again, Thomas touches his marks and believes. Jesus praises those who believe without tangible	- Wounds as signs of the healing power of reconciliation - Vulnerability as the willingness to take risks for something higher, such as communion of love - Wounds as "repositories of memories of trauma" (Schreier 1998: 78)

	evidence.	- Wounds as knowledge of pain and connection points to the wounds of others
John 21:1-17	Several disciples of Jesus, one of them Simon Peter, unsuccessfully try to catch fish. Then Jesus appears and invites them to try again. They finally catch many. At the shore, Jesus prepares the meal for them and engages Peter in a conversation entrusting him the care of his church.	- Failed attempt to get back to one's normal life and forget the trauma - Moving away from the routine and the obsession to find explanations always at the same place allows for discovering new perspectives - Importance of hospitality (trust, kindness, safety) for the victims to share their burden - Reconnection to end the isolation from community (Jesus reconnects with Peter) - A new vocation arises out of reconciliation ("feed my lambs") - Importance of rituals that correspond to the wrongdoing (Jesus asks three times if Peter loves him recalling the three denials)
Acts 1:6-11	This is Jesus' last appearance to his disciples. Before being lifted up by a cloud, he charges his disciples to be witnesses to the resurrection around the earth.	- Conclusion of the healing process after the resurrection: from disappointment to the commitment to spread the message - Transformation of the memory of the suffering into a testimony of new life - Importance of truth for justice - Call to be communities of reconciliation in contemporary contexts of violence and exclusion

Interestingly this table takes up again the insights on trauma presented before. The traumatic act of the execution of the Messiah and the disciples' fall into despair, unsafety and isolation are addressed by Jesus following the three stages of recovery: He offers company and safety; he listens to the mourning and gives comfort; and, finally, he commits them to spreading the message and, thus, reconnects them with a larger community.

2.5.2.4. Excursus: Forgiveness and Healing

Jesus' appearances also address one of the most controversial issues in reconciliation, i.e. forgiveness. The disciples were assembled in Jerusalem and felt a deep-seated guilt because they had abandoned Jesus before his execution. It was Peter who symbolically reflected the disciples' cowardice by denying his support for Jesus three times before the cock crowed (Mt 26:69ff).

Thus, when Jesus appeared after his resurrection, they were ashamed and afraid of being reprimanded. However, he greeted them with peace, thus welcoming them with open arms.

Often, forgiveness is complicated by the fact that the perpetrator refuses to acknowledge his/her wrongdoing. While the victim expects repentance, the perpetrator keeps justifying the acts. Forgiveness in this context seems to be a betrayal of the past and the victims; this is why the negatively connoted terms “forgive and forget” are usually used together by the victims in order to emphasize their need of justice and acknowledgment.

The Christian understanding of forgiveness starts from God’s infinite love for humanity. This is why God is willing to forgive even the most atrocious trespass and sin in order to strengthen the communion with human beings. It is also clear that it is only God who is able to forgive sins for the sake of union (divine forgiveness). Human forgiveness, in turn, has a different vantage point. It is an act of freedom in order not to remain caught and controlled by the wrongdoings of the past. The decision to forgive is the tangible sign of having attained new freedom but is also the moment, in which the victim leaves passivity and takes an active step towards transforming the future – a fundamental element of the recovery from trauma. Forgiveness, thus, certainly does not forget or undo the wrongdoing but is about the liberation from the dominating effects of the traumatic act and about “remembering in a different way”. This is the moment when a victim still suffers from the trauma but discovers the opportunity to shape his/her future. (Schreiter 1998: 56-63, 66)

Individual forgiveness is usually understood as “the victim’s giving up resentment against the perpetrator, and then some measure of a restoration of social bonds between the two.” (Schreiter 2010b: 391) This act expresses a healing process of the victim who does not define him/herself exclusively as a victim any more. Thus, the future-orientation has prevailed over past offenses. Forgiveness does not necessarily imply the full restoration of the relationship to the perpetrator or the preclusion of punishment. On the contrary, the main difference between forgiveness and reconciliation consists in the potential unilaterality of forgiveness, while reconciliation suggests a bilateral process.

From a psychological perspective Robert Enright of the International Forgiveness Institute at the University of Wisconsin distinguishes four stages of interpersonal forgiveness: the uncovering phase when the victim explores feelings of resentment, anger and other emotions caused by the wrongdoing in order to acknowledge the suffering; the decision phase when the

victim decides to forgive; the work phase when the victim is moving towards forgiveness clarifying expectations and necessary changes; and the act of forgiveness.

Social forgiveness is also based on giving up resentment and the repair of relationships. It consists of the three steps acknowledgment, apology and atonement. It is necessary to acknowledge inflicted pain and taking responsibility for it. The apology is best elaborated in conjunction with the victim who, thus, has the opportunity to articulate the suffering. The ritual of an apology does not undo the past but reframes it in a way that makes new relationships possible. According to Tavuchis a sincere apology includes the acknowledgment of the fact of a wrongdoing, the acceptance of responsibility, sincere regret and the commitment not to repeat. (Tavuchis 1991: VII) Atonement is not necessarily a legal but certainly a moral liability for past wrongdoings. It may include reparations. (Schreiter 2010b: 391-393)

With regard to the related topic of punishment Jesus goes beyond the principles of the Old Testament: He suspends the talion-principle in accordance with which it is legitimate to respond to a wrongdoing with the same wrongdoing. He rather admonishes his disciples to refrain from revenge and offer mercy: "You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, Do not resist one who is evil. But if any one strikes you on the right cheek, turn to him the other also; and if anyone would sue you and take your coat, let him have your cloak as well; and if any one forces you to go one mile, go with him two miles. Give to him who begs from you, and do not refuse him who would borrow from you." (Mt 5:38-42) This frequently quoted paragraph is not only well known but constitutes a fundamental principle for the Christian understanding of reconciliation by breaking the chain of violence. By doubling the unjust claim, the original injustice becomes manifest.

Jesus' teachings about judging others reach a highlight when the crowd asks him what to do with a woman who committed adultery, which was then to be punished with stoning. He simply answered: "Let the one who is without sin among you be the first to throw a stone at her." (Jn 8:7) (Schlögel 2007: 48-51) The reality of universal sinfulness prevents people from condemning others; and mercy is offered instead of punishment.

A third aspect of reconciliation is described as healing. Since this term causes misunderstandings due to its associations with sickness and physical harms, it requires some further considerations. Healing is directed towards the past and the future. The first is related to loss, loss of loved ones or loss of homeland. Here, healing can help to re-direct one's energy

towards creating a new future and away from revenge. In its future-dimension, healing means to move forward without attaching oneself to a past that cannot be retrieved any more.

Healing is a complex process that includes physical, emotional and spiritual dimensions. It is linked to rebuilding and rehabilitation that are usually considered crucial elements of a post-conflict effort. It is also both individual and social. Individual healing “might be defined as restoring the dignity and humanity of the victims of violence”. (Schreiter 2010b: 376) Violence against individuals may be addressed as human rights violations in secular terms; for Christians they constitute violations of human dignity and thus transgressions against God, who created humanity in his image. This healing process returns agency to the victims and makes them feel that something that was taken away from them has been recovered.

Social healing has the quality of relationships as the cornerstone. It depends on a significant number of healed individuals, who can give testimony of their vision of a healing process, and consists of three inter-related phases: the dealing with the past, the diagnosis of the present and the vision for the future. The manner how the past is addressed and remembered gives a clue about the design of the future. Justice guarantees that wrongdoings will not be tolerated any longer. The second phase is mainly about mobilizing resources for social change. This also means to come to terms with existing trauma, individually and socially. Here, the change of narratives towards those that transmit hope and new opportunities instead of defeat and violation contributes to increase the potential for positive change. This narrative necessarily includes both victims and perpetrators and avoids further polarizations.

Both the healing of victims and perpetrators has a long Catholic tradition. The latter starts with the truth-telling about oneself, the acknowledgment and the recognition of the harm caused. The public admittance of wrongdoings by the perpetrator parallels the public sharing of suffering by the victims. Then, the demonstration of repentance is either followed by accepting punishment or rendering service to the community. The next step consists in offering an apology to the victims and, thus, requesting to rejoin the human family, which the perpetrator left due to his/her misdeeds. The victims will consider the apology and offer forgiveness if they are convinced by the authenticity of it. Finally, the perpetrator will lead a transformed life, thus publicly showing that he/she has changed. (Schreiter 2010b: 375-385)

This last thought on the reintegration of the perpetrator into the community is reflected by the tradition of the sacrament of reconciliation of the Catholic Church. However, the public

aspect of confessing one's wrongdoing and actively changing one's behavior has been gradually eclipsed by the intermediation of the priest at the expense of the community, as will be shown in the respective section.

2.5.3. "Social Sin", the "Structures of Sin" and the Theology of Liberation

The Catholic Church has a significant tradition of teachings on the social order³⁰. Topics such as poverty, exclusion and justice are recurrent. In this context, for example, the Pastoral Constitution *Gaudium et Spes* 69 says the following about the structure and limitations of property:

"Whatever the forms of property may be, as adapted to the legitimate institutions of peoples, according to diverse and changeable circumstances, attention must always be paid to this universal destination of earthly goods. In using them, therefore, man should regard the external things that he legitimately possesses not only as his own but also as common in the sense that they should be able to benefit not only him but also others. On the other hand, the right of having a share of earthly goods sufficient for oneself and one's family belongs to everyone."

The idea that property is not a goal in itself but more a means for the full development of the human dignity is a recurrent topic in papal teachings. Pope Pius XII had addressed this issue in his 1941 Pentecostal message by referring to the objective of the national economy:

"National economy, which is the fruit of the activities of men combining their work in the national community, tends to do nothing but to ensure, without interruption, the material conditions in which the individual life of the citizens will be able to develop fully."

In John Paul II's Apostolic Exhortation *Reconciliatio et Paenitentia* (1984) the Pope dedicates his reflections among others to "social sins", i.e. "certain situations or the collective behavior of certain social groups, big or small, or even of whole nations and blocs of nations" (16). On the one hand, every personal sin has effects on the community, which makes it social;

³⁰ Compare among others the following documents: *Rerum Novarum* by Pope Leo XIII (1891), *Quadragesimo Anno* by Pope Pius XI (1931), *Mater et Magistra* by Pope John XXIII (1961), *Pacem in Terris* by Pope John XXIII (1963), *Populorum Progressio* by Pope Paul VI (1967), *Laborem exercens* by Pope John Paul II (1981), *Sollicitudo rei socialis* by Pope John Paul II (1987), *Centesimus annus* by Pope John Paul II (1991), *Caritas in Veritate* by Pope Benedict XVI (2009), *Evangelii Gaudium* by Pope Francis (2014)

on the other hand the Pope emphasized that at the root of the social consequences of sins are personal decisions and failures: “The real responsibility, then, lies with individuals. A situation - or likewise an institution, a structure, society itself - is not in itself the subject of moral acts.” (16)

Pope John Paul II deepens his reflections on the “structures of sin” in his Encyclical *Sollicitudo Rei Socialis* (1987) and identifies the pursuit of profit and power as sources for wrong political and economic decisions that discriminate against groups of people (37). Thus, the before mentioned principle that sin is based on deliberate and free decisions against God and one’s fellow human beings is complemented by the consideration that structures and individual decisions are interlinked: “ ... it is not out of place to speak of ‘structures of sin’, which, as I stated in my Apostolic Exhortation *Reconciliatio et Paenitentia*, are rooted in personal sin, and thus always linked to the concrete acts of individuals who introduce these structures, consolidate them and make them difficult to remove. And thus they grow stronger, spread, and become the source of other sins, and so influence people’s behavior.” (36) While this characterization of structures is a clear evolution of the Pope’s thinking on social injustice, he still insists on personal responsibility as the only way to change them.

In his Apostolic Exhortation *Evangelii Gaudium*, Pope Francis (2014) underlines more clearly the structural dimension of sin by adamantly criticizing an “economy that kills” through inequality, indifference and exclusion. He insists that the financial system should not dominate but serve people and turns against the “idolatry of money” and the “dictatorship of an impersonal economy” (Pope Francis 2014: 53ff). The Pope also draws a connection between socio-economic injustice and social violence: “Just as goodness tends to spread, the toleration of evil, which is injustice, tends to expand its baneful influence and quietly to undermine any political and social system, no matter how solid it may appear. If every action has its consequences, an evil embedded in the structures of a society has a constant potential for disintegration and death. It is evil crystallized in unjust social structures, which cannot be the basis of hope for a better future.” (59)

He, thus, strengthens the idea that sin, while originally based on personal choice, creates structures that perpetuate it and are beyond the grasp of individuals. Pope Francis, therefore, re-balances the interface between individual responsibility and the “structures of sin” by

highlighting the damaging effects of the latter, though not neglecting the option to change the system through ethical decisions of political leaders (58).

For Latin America and beyond the Theology of Liberation has applied these teachings to its social environment and advocated social justice. In the wake of the Second Vatican Council the second General Assembly of Latin American Bishops in Medellín, Colombia, decried structural violence and injustice and adamantly stressed the need for social liberation. The Peruvian theologian Gustavo Gutiérrez identified three dimensions of liberation in his momentous work: 1) liberation as the goal of the oppressed social classes and people from their exploiters; 2) the history as a process of liberation of the human being who takes his fate into his own hands; 3) and the liberation from sin, which is the foundation for injustice, through Christ. (Gutiérrez 1971)

These ideas were further developed and channeled into the next General Assembly in Puebla, Mexico, in 1979. Given the historic context of the externally backed military regimes in the region, the political analysis was based on the dependency theory. Furthermore, the Bishops emphasized the “preferential option for the poor” and the promotion of so-called Christian Base Communities that create community in the light of the Gospel and the critical analysis of the social environment.

Despite the strong link of this movement with the social teachings of the Church, the Theology of Liberation was skeptically assessed by Pope John Paul II and Cardinal Ratzinger, then leader of the Congregation of the Doctrine. Two instructions – *Libertatis Nuntius* (Vatican 1984) and *Libertatis conscientia* (Vatican 1986) – critically analyzed several aspects of the Liberation Theology. While appreciating the notion of liberation, they firmly rejected possible interpretations of the social reality that resembled Marxism. (Anzenbacher 1997: 168f)

In Colombia, the intention of the Theology of Liberation, i.e. the insertion of the Gospel into social reality, is profoundly ingrained in communities in a socially strained context. The vocabulary of social justice, human rights, liberation and just peace is firmly rooted in most of the Church’s declarations. Nevertheless, the decision of Church representatives, such as the priest Camilo Torres, to join the armed struggle in Colombia against an unjust system also fuelled certain skepticism against this theological stream.

2.5.4. Theological Reflections on Reconciliation

The Latin term *reconciliatio* means the return of humans to friendship with God, after sin has converted them into God's enemy. God is the subject of reconciliation and acts through the intermediation of Christ. The soteriological category of reconciliation points to salvation and is, thus, focused on the future. There are, however, pre-requisites that consist of repentance and the acknowledgment of sin. Reconciliation and truth are closely linked in as far as sin has to be disclosed. Consequently, the denial of sin and guilt is not compatible with reconciliation and the healing of relationships. While reconciliation depends upon a relationship and God's grace, the necessary element of repentance is characterized by the human effort to change. (Kasper 2006: Vol. 10, Col. 723-726)

Theologically, repentance is understood as a requirement for justice and part of *satisfactio* that the sinner owes God. The acts of satisfaction should document contrition; both lead to the reconciliation of the sinner with God and the community. In the ecumenical dialogue one of the main debates circles around the role of *satisfactio* in the process of God's forgiveness of man's sins. Can it be facilitated through man's acts or is it exclusively God's grace that reconciles? Without elaborating on this debate, it has led to emphasize repentance as an important element of one's faith that re-opens the way towards God's love. (Kasper 2006: Vol. 2, Col. 827-830)

In practical terms, the process of reconciliation, repentance and forgiveness requires an inclusion of the emotions of revenge, guilt and pain. These aspects open new fields of work for Christians and the Churches. (Kasper 2006: Vol. 10, Col. 652f)

2.5.5. The Sacrament of Reconciliation of the Catholic Church

As mentioned before, repentance has a fundamental role in the Christian reflection on reconciliation. Therefore, it is not surprising that its substance and form have also been of significant concern for the Catholic Church throughout the centuries. Depending on the priorities and the concept of sin, the methodology how to address sin and to facilitate a return of the sinner into the community has changed. The Sacrament of Reconciliation, as a set of rituals and symbols that represent the invisible presence of God, unites the variety of elements that belong to

the process of reconciliation: repentance, reintegration, acknowledgment, reparation, transformation and finally reconciliation as God's act of grace.

In the following, I am offering a brief characterization of the evolution of this sacrament. It shows that the idea of repentance and the necessary requirements for reconciliation has experienced significant modifications throughout time. However, the close link between repentance, metanoia and reconciliation has remained intact.

The idea of a sequential handling of sin and repentance appears in Mt 18: 15-20:

“If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. But if he does not listen, take one or two others along with you, that every word may be confirmed by the evidence of two or three witnesses. If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector. Truly, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven. Again I say to you, if two of you agree on earth about anything they ask, it will be done for them by my Father in heaven. For where two or three are gathered in my name, there am I in the midst of them.”

This procedure includes different degrees of public disclosure and sanctions. It also emphasizes that an individual sin has effects on the community and is, thus, a matter of collective concern.

In the course of the time, however, the public character of repentance and reconciliation with God and the community has given way to the central role of the priest and his absolution after confession. The absolution, therefore, lost its symbolic power as the conclusion of a healing process that included repentance and ended with the re-admission of the sinner into the community. The previous steps of public acknowledgment of the sin (*Exhomolegese*), the acts of contrition and, finally, the *reconciliatio* as “Pax cum Deo et pax cum ecclesia” were gradually replaced by the idea that concrete sins require concrete acts that demonstrate the sinner's repentance. The so-called books of repentance enumerated in great detail what had to be done in order to show repentance for a specific sin.

Later, the question of the right balance between the sinner's acts of contrition and the acts of the Church in order to embrace God's offer of forgiveness led to the debate between Thomas Aquinas and Duns Scotus about the significance of the former. The Council of Trent (1545-1563), finally, decided this theological dispute by defining repentance as a sacrament and highlighting the central role of the priest's absolution.

In the time of the Second Vatican Council (1962-1965) the Liturgical Movement stressed the value of collective celebrations again. Thus, the question of the public and communitarian character of repentance re-emerged with the promotion of repentance services. While this form was not accepted due to the lack of personal acknowledgment and individual repentance, repentance as such has been increasingly reintegrated into collective practices of the Church. (Kasper 2006: Vol. 2, Col. 846-850)

2.5.6. Resources of the Catholic Church for Reconciliation

John Paul Lederach (Lederach 2010) identifies several characteristics of the Catholic Church that provide it with a privileged position to work for reconciliation in countries as Colombia. First, he points to the “ubiquitous presence” of the Church (Lederach 2010: 29). This refers to the Church’s capacity to transcend social cleavages by mobilizing adherents on all sides. This vertical (connecting of the top with the grass-roots) and horizontal (bridging social divisions) capacities to communicate with a variety of actors facilitate the Church’s different roles to contribute to peacebuilding and reconciliation, at least in countries like Colombia where the Church is predominant.

Furthermore, Lederach emphasizes the potential of the teachings, particularly those about the particular position of the poor, and the rituals and symbols as resources for healing. Like Schreiter he considers the Eucharist as a symbol for reconciliation with God and the community. But he also refers to the roles of the Church as pastor, i.e. accompanying and protecting the flock, and prophet, i.e. questioning an unjust order. This distinction, however, also leads to internal debates on the priorities for example in the case of the demobilization of an armed actor: Is it more important to reintegrate human beings into community (pastor) or to speak the truth about what they did to others in order to achieve some measure of justice (prophet)? (Lederach 2010: 50-52)

Schreiter identifies three levels of resources that the Church can offer: message, rituals and the creation of communities of reconciliation. The message, as was shown before, is drawn from a variety of testimonies in the Bible, of which I chose to illustrate the stories of Jesus’ appearances. There are also several rituals that can accompany processes of reconciliation, forgiveness and the transformation of memory. In addition to the Eucharist, there is the

Sacrament of Reconciliation that was analyzed before and other rituals that offer an environment conducive to individual and public acts of apology and healing. The Church is also able to provide a safe space for communities to engage in potentially risky processes of reconciliation. (Schreiter 1998: 127-130)

The Christian spirituality disposes of several rituals and forms that connect repentance, self-analysis, conversion and reconciliation with God in daily life. As an outstanding example the Ignatian spirituality may be mentioned that both in its spiritual exercises and its daily reflections include a sympathetic analysis of achievements and failures and one's reconciliation with oneself and the other. The time of fastening before Eastern is another example thereof.

Since symbols and rituals are fundamental elements of Christian spirituality, it is worthwhile to refer to Schreiter's (2010a) reflections on their characteristics.

Schreiter characterizes a ritual³¹ as being: patterned, meaning recurrent; only partially rational; as having performative valence that expresses itself in doing something; and provides cohesion for a group's imagery. Rituals in peacebuilding contexts are essential when words are no longer sufficient to reflect what happened; funerals, monuments or mourning days may be more appropriate to do that. The involvement of the body in drama, marches or gatherings is the point where people physically begin to feel their participation in something bigger. Rituals also have a temporal dimension that is able to move us back and forth in time. Days of remembrance, certain holidays but also future-related exercises to imagine other circumstances are valuable elements of rituals. (Schreiter 2010a: 224-226)

Rituals can be understood as "alternative social formations" in the sense that a) they point to the possibility to look at the world alternatively; b) they mobilize people of different origins and ideologies for a common cause; and c) they have symbolic and empirical significance. (Schreiter 2010a: 226-228) Lisa Schirch, however, adds that rituals may also fortify the status quo despite their potentially transformative value. (Schirch 2005: 17)

Finally, if reconciliation is conceived as a multi-level process that has the transformation of relationships at its center, the question arises where the different who may perceive each other as adversaries take their motivation from to start a new relationship-building activity. Here, the Christian principle of love towards one's enemies is fundamental to understand the need and the

³¹ The *Lexikon für Theologie und Kirche* understands a ritual as „die Gesamtheit der gottesdienstlichen Formen“. Rituals serve to strengthen the identity of a community by offering a common set of costumes, practices and vocabulary. They adapt to specific times and occasions. (Kasper 2006: Vol. 8, Col. 1210-1212)

requirement to consider re-approaching the enemy: “You have heard that it was said, ‘You shall love your neighbor and hate your enemy.’ But I say to you, Love your enemies and pray for those who persecute you” (Mt 5: 43f) This challenging postulate radically materializes in conflictive environments and questions simple black/white dichotomies.

2.5.7. Daniel Philpott’s “Political Reconciliation”

The political scientist Daniel Philpott’s concept of political reconciliation focuses on relations on different levels, including the interpersonal and the structural levels, and, therefore, appropriately summarizes several of the reflections of this chapter. According to Philpott, reconciliation is a “concept of justice and of peacebuilding that envisions a holistic and integrated repair of the wounds that war and dictatorship leave behind” (Philpott 2010a: 94).

Philpott puts the restoration of justice at the center of his concept. This includes a focus on relationships that transcends “liberal peace”, which is usually the basis for transitional justice instruments. “Liberal peace”, as presented before, consists of the idea that, after a conflict, rule of law, democracy and civil liberties have to be reinstated. The best way to achieve this is to prosecute and punish perpetrators, heal victims and tell the truth about what happened. Philpott agrees that these goals are of utmost importance but that they lack the relational and restorative aspects of apology, forgiveness and acknowledgement that are usually seen as conditional upon the fulfillment of the former elements. The term “holistic” refers to the insertion of these additional elements. Philpott, thus, combines the restorative justice approach of addressing harms with the before mentioned Catholic perspective on forgiveness.

The author bases his argument on the Biblical language that often uses “justice” and “righteousness” together. Particularly the Old Testament often interprets “righteousness” as “right relationship” between individuals, within a community and finally between an entire community and God. This concept of justice is both a state of affairs but also a “process of restoration involving rectifying the plight of the poor and the dispossessed ...” (Philpott 2010a: 96f) It is, therefore, a transforming process. This reflection leads Philpott to the conclusion that the concept of right relationship that is central to reconciliation can be understood both as the “process of restoring right relationship” and “the state or condition of right relationship that results from this restoration” (Philpott 2010a: 97) He further concludes that if justice means right

relationship, reconciliation would be a “process of restoring justice or the state of justice that results from this restoration. It is in these senses that reconciliation is a concept of justice ...” (Philpott 2010a: 97).

The wounds caused by political injustices, which “are defined as the violation of human rights or the laws of war” (Philpott 2010a: 102), sever right relationships. Among them are: the violation of basic rights and thus the person’s dignity by diminishing a person’s flourishing; the victim’s ignorance of the source and circumstances of the injustice; the denial of the law, a denial that becomes manifest in human rights violations; the lack of acknowledgment of the victim’s sufferings; the continuing victory of the perpetrator’s injustice and of the harm to the victim and the values that hold together a community; and the psychological damage for the perpetrator. If not addressed adequately, these primary wounds result in further violence and injustices, thus causing secondary wounds (Philpott 2010a: 102ff).

Philpott identifies six “practices of an ethic of political reconciliation” (Philpott 2010a: 106ff) that address these wounds and restore justice: the building of socially just institutions; acknowledgment; reparations; punishment; apology; and forgiveness. They are considered as interdependent and holistic and may cause dilemmas among each other.

(1) The first practice is based on the principles of “liberal peace” and promotes the rule of law, a democratic political system and accountable institutions.

(2) The lack of recognition of the injustice committed to the victims is in itself a primary wound but converts itself into a secondary wound by weakening the legitimacy of the political order in the name of which the injustice was committed. The acknowledgment of injustice satisfies the need of the victims to know what happened and delegitimizes the past order; it renovates the relation between the political community and the victims as citizens. Recognizing their suffering thus allows for their full restoration as citizens. Truth Commissions are good examples of instruments that analyze what went wrong and, therefore, contribute to the public acknowledgment of injustice. Their findings and reports are often accompanied by public debates, the construction of monuments or the re-writing of school textbooks.

The secondary effect of activities that lead to acknowledgment is the increase of legitimacy of the new political order and the victims’ forgoing of revenge. They also help to de-construct the favorable public discourse about the former regime and help to stabilize the new

order. This is politically important and symbolically essential because it ends the perpetrator's "message of victory". (Philpott 2010a: 110)

The dilemma of this practice is the risk to re-open wounds and to undermine stability. Furthermore, the term truth itself is controversial because critics of truth commissions would argue that there is no one single truth but several depending on the standpoint.

Philpott advocates as many personal testimonies as possible. This is why the decentralization of truth commissions as in the case of Guatemala's REMHI project and East Timor's Commission on Reception, Truth and Reconciliation is of utmost important to reach both victims and perpetrators in an effort to recognize their stories. (Philpott 2010a: 109-111)

(3) Reparations may be material or symbolic; in any case they contribute to address the loss suffered by the victim and recognize the wounds. While material losses may be compensated or even restored, the loss of loved ones poses a very complex challenge to the idea of reparation. How to measure the loss suffered and the material impact it had? The reasoning on the symbolic importance of reparations resembles that on the acknowledgment of wrongdoing. It is about the endorsement of the victims' citizenship and, by that, the award of legitimacy to the new order.

The dilemma arises when victims feel "paid off". Philpott argues that reparations work best if they are embedded in a set of practices, for example acknowledgment and apology that address different wounds simultaneously. (Philpott 2010a: 111f)

(4) Punishment and reconciliation usually constitute the two extremes in the public debates in transitional countries. As described before, the two terms are pitted against each other, put in temporal sequences or used as mutually exclusive approaches. According to the proponents of the "liberal paradigm" the punishment of the perpetrators is usually equated with retributive measures such as prison terms.

Philpott insists that punishment is not necessarily at odds with reconciliation as a concept of justice. Punishment as a practice of reconciliation adds the restorative dimension. While restorative justice, as will be described subsequently, includes aspects of proportionate punishment, deprivation and suffering, the idea of the restoration of persons, relations and political orders is at the forefront.

Like acknowledgment and reparations punishment is basically a communities' communication to the perpetrator that he/she has violated basic and common values. At the same

time he/she is invited to repent the crime and apologize. Punishment in this sense has the objective to restore the just order, reintegrate the condemned person into it and re-establish harmony in the relations that were disrupted by the crime.

In transitional contexts this means “accountability that repairs a whole array of wounds, reintegrates perpetrators into the community, involves victims and community members, and is integrated with other practices.” (Philpott 2010a: 114) This implies that for those responsible for atrocities long prison terms is the form to communicate the communities’ rejection of their acts. “Restorative scenarios”, as before mentioned, would be public forums that include the recognition of the victims, shaming and restoration.

The dilemmas of this approach are related to due process, human rights violations and the lack of judicial institutions in many countries, which makes punishment difficult. Amnesties pose another set of dilemmas. If ultimately necessary, they must be granted in exchange with truth or confession. (Philpott 2010a: 112-115)

(5) A public apology helps to delegitimize the previous regime and therefore confers legitimacy on the new order. An apology should directly address the injustice, show remorse and assume responsibility for it. It does not annul punishment. (Philpott 2010a: 115f)

(6) Forgiveness, finally, seems to be the most unusual and controversial element. It is a radical transformation of the relation between victim and perpetrator. Restorative forgiveness does not include forgetting the past or issuing amnesties for the perpetrators. Rather on the contrary, it names and condemns the past evil and as a voluntary act may even relieve the victim of bitterness and lead the perpetrator to repent his acts. Restorative forgiveness addresses several wounds: it recognizes evil, it defeats the discourse of injustice, the victims become restored in their agency and the perpetrator is invited to re-consider his/her acts.

Ideally, forgiveness would be accompanied by other elements such as punishment, reparation and apology.

According to Philpott, reconciliation is both the process of restoring justice by applying these strategies and the resulting state of justice itself, which he equates with peace (Philpott 2010a: 98). In a practical way, this means that reconciliation transcends by far the interpersonal level of victim/perpetrator and necessarily involves the state as an essential actor of

reconciliation. The active participation of the parties beyond the legal and institutional activities of the state is intrinsic to this concept (Philpott 2010a: 106).

Taking these elements together, political reconciliation is defined as a

“... concept of justice that involves the will to restore victims, perpetrators, members of the community, and states who have been involved in political injustices to a condition of right relationship in the political order [...] – a condition characterized [...] by the guarantee and recognition of basic rights. It comprises six practices that aim to restore persons and relationships with respect to the distinct wounds that political injustices have inflicted upon them. These restorations may in turn generate emotions and judgments that bequeath upon the political order legitimacy, trust, and national loyalty, forms of social capital that in turn promote the stability of just institutions, economic growth, peace among states, and other social goods” (Philpott 2010a: 105).

Philpott thus manages to apply a concept that is based on religious premises to political circumstances and gives concrete recommendations on how to implement it.

I would add two essentially methodological considerations that refer to the six practices. On the one hand, it is necessary to design their implementation using a maximum of communication. Victims and affected communities need to feel that they are not passive receivers of an apology or an acknowledgment but rather participate in its design and timing. On the other hand, it is important to stress that reconciliation is a multi-level process; the practices must be adapted to meet the specific expectations, language and needs of each of the levels.

2.5.8. Summary

This chapter on the Catholic contribution added several important dimensions to the topic of reconciliation:

First, the different levels, on which reconciliation takes place, are interrelated. Individual and social reconciliation depend on each other. The Church’s social teaching explicitly includes the structural level regarding the distribution of resources and opportunities.

Second, reconciliation is not about creating a perfect state of harmony detached from reality. It is a slow and profound process that includes transformation or conversion. Thus, it is not a return to a status quo ante but strives towards a new relationship or, as Schreiter puts it, a new creation.

Third, reconciliation includes the essential dimension of justice, thus does not mean impunity, “forgive and forget” or universal amnesty. It, however, considers justice broader than its punitive aspect.

Fourth, reconciliation is about the restoration of relationships, which is probably the main characteristic of reconciliation distinguishing it from an exclusive rights-approach.

Fifth, reconciliation is dependent on acknowledgment, repentance and transformation and has a profound spiritual dimension.

Sixth, on the individual level reconciliation is also about the recognition of human dignity both of the victims and the perpetrators.

Seventh, reconciliation is an important, relation-focused part of peacebuilding. It shares the basic principles of humanity, participation, restoration and dignity with this larger concept.

Revising the main debates on reconciliation, the Catholic heritage includes the most significant elements but adds one that causes most controversy and rejection of the term, i.e. forgiveness. As analyzed through the images of Jesus’ appearances forgiveness is essential for the Christian understanding of reconciliation and the Catholic sacramental practice in history. It is the forgiveness of evil and wrongdoing by God and the community that restores the wrongdoer’s place in the community after having offered acts of penance.

However, in a more secular and in particular political environment the term forgiveness immediately causes anxiety. For many it sounds too close to impunity and lack of justice or to the pressure on the victims to forgive. This was certainly the case in South Africa where many victims considered the focus on forgiveness as inappropriate and by far too early. Bloomfield (2006: 23ff), therefore, suggests to eliminate the requirement of forgiveness and thus detach reconciliation from it. This would reduce the victims’ objections to reconciliation and help to define it in a much more realistic way, i.e. without linking it to peace or harmony. It would also allow facilitating the identification of stages of reconciliation, thus approximating it more to peacebuilding and political reconstruction. Kriesberg (2004: 109) agrees, for forgiveness seems to be particularly related to Christianity and not that significant in other cultures.

When it comes to present the field research, the interviews will show the relevance of several of these elements with regard to the practical implementation of reconciliation. In particular, the struggle to face and acknowledge past injustice and to envision a future based on

transformed relationships is omnipresent. Key words like forgiveness and the need to humanize the enemy invite to reflect on one's own attitude regarding these challenges.

The next subchapter goes into more detail regarding a concept of justice that usually stands as a challenge to punitive justice. It stems from indigenous communities that insist on the value of the restoration of relations and is now applied as an alternative to or within the judicial system. The objective of analyzing this strategy is to consider the role of the community in a reconciliation process and to further explore the restoration of relations in the case of a wrongdoing.

2.6. Restorative Justice

2.6.1. The Concept

Unlike criminal justice as presented in the previous chapter, restorative justice has the following guiding questions: Who has been hurt? What are their needs? Whose obligations are these? Who has a stake in this situation? What is the appropriate process to involve stakeholders in an effort to put things right? These questions ideally allow for a broader participation of those involved in crime, a higher degree of healing through justice and, thus, the prevention of a recurrence of the crime. The needs of the parties, particularly of the victims are at the core of restorative justice and the responsibilities that arise from them. This central role of the involved parties is one of the main differences to trials that focus on crimes as violations of legal norms. (Zehr 2002: 37f)

The idea of restorative justice is based on the dissatisfaction with the usual way of dealing with wrongdoing. It emerged as a way of tackling minor frequently property-related crimes; now, restorative justice is even discussed in the context of severe crimes, such as sexual crimes. (compare Zinsstag 2013)

The relation between restorative justice and reconciliation is not straightforward. Zehr suggests that reconciliation may happen in a restorative justice setting, but this depends entirely on the participants. Restorative justice is rather based on certain needs that the common justice system does not meet. It is not necessarily meant to replace the usual retributive system but to

complement it by adding or modifying several features. The needs-approach contains several stakeholders whose needs remain unmet by legal procedures. Victims would need much more information than available during the trial or the plea-bargaining. The need to know what happened and why is certainly one of the first desires of a victim. Since crime usually turns the world-view of a victim upside down and puts her/him in a position of impotence and weakness, the telling and re-telling to a broader audience of what happened is as important to a victim as to feel empowerment and control. Restorative justice also permits a greater focus on appropriate forms of restitution that fulfill the need of vindication. In legal procedures the main idea is that the perpetrator violated norms and the foundation of a state. The direct relation, consequently, is between the perpetrator and the state, leaving the victim and his/her needs aside.

The same applies to the offender. While society puts its emphasis on punishment, the offender has no chance to realize the scope of the harm caused and to develop empathy with the victim. Quite on the contrary, the perpetrators have to take care of themselves and use every means to reduce the punishment. Restorative justice defines accountability differently focusing on harms and their consequences. It is a way of putting things right as much as possible, of encouraging empathy and personal transformation and taking care of the reintegration of perpetrators into society.

Another stakeholder is the community as such and most likely specific community members. Restorative justice encourages thinking about the strengthening of community bonds that through crime suffer. The community is considered a secondary victim but also responsible for failing to prevent the crime.

In the end, restorative justice focuses on the needs of a variety of stakeholders whose integrity and bonds with each other have been harmed by the crime and who are in the condition to take responsibility for the necessary transformation of the relations. (Zehr 2002: 3-18)

For my purpose in this thesis the main idea behind restorative justice is the interconnectedness of people in a community that expresses itself on different levels of relationships. Violence and crime in this view constitute serious harms for this web of inter-relations and tend to perpetuate crime. On the other hand violence in itself is always a symptom for a deficiency within the community. This perspective on wrongdoing permits to amend dysfunctions of a community.

In summary, Zehr introduces three major principles of restorative justice that highlight the difference to criminal justice. Restorative justice focuses on the harms caused by the crime and the needs of the victim, the community and the offender. It looks at obligations that arise from these harms and attribute responsibilities. Finally, it engages the stakeholders who have an interest in the resolution of the situation. The restorative value of the different practices that are usually summarized as restorative justice, such as family conferences, circles and victim-offender-encounters should be evaluated according to these principles. (Zehr 2002: 18-25; 55ff) These principles are based on certain values, such as the interconnectedness of people through a web of relationships. When this web is disrupted, it affects all of us. The interconnectedness is complemented by particularity. Each of us is different, and also situations and contexts require respect for diversity. This respect towards different worldviews is at the core of restorative justice. (Zehr 2002: 35f) Declan Roche adds additional values: personalism, which implies that crime violates people and their relationships; reparation of the harms; reintegration of the offender, which emphasizes the future-looking element of restorative justice; and the participation of the stakeholders. (Roche 2003: 26ff)

Finally, Zehr offers the following definition of restorative justice: “Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.” (Zehr 2002: 37) Roche recommends that the collective decision on how to deal with the wrongdoing is taken on a consensual basis. (Roche 2003: 30)

To address the harms means starting with the victims and their needs. The responsibility primarily lies with the offender but to a certain extent with the community, as well. Although in some cases reparation is necessarily incomplete, the offender has to work towards putting things right. In addition to that, there is the preventive aspect that usually depends on the community. Creating safer conditions or addressing injustices goes beyond reparation for a specific crime. This is related to the rather controversial issue of the offender’s needs. Zehr is explicit on the fact that most offenders had been victims before the crime. This obviously does not excuse their acts, particularly given the moral agency of every individual but emphasizes the need to think beyond the individual and include collective strategies. (Zehr 2002: 28-32)

Participation as a methodological premise is probably the key procedural difference to criminal justice. Restorative justice does not in any way exclude the state as an important

stakeholder but insists on other venues that guarantee the participation of those affected by the crime. The primary stakeholders should come to terms with the question on how to amend the wrong without the usual professional intermediaries, such as judges and lawyers. Johnstone emphasizes the differences between the criminal and the restorative procedures, which consist of the formality and technicality of the former and the ordinary language and emotional expressions of the latter. While the courtroom is the space for criminal justice, restorative justice takes place in appropriate settings embedded in the community. Roche, however, considers this informality as both a strength and a potential weakness given that it also leaves space for cruelty and attitudes of vengeance, while maintaining a reconciliatory discourse (Zehr 2002: 26ff; Johnstone 2011: 113ff; Roche 2003: 15) In any case, this recalls the place-based approach by Shaw/Waldorf³² described in the chapter on transitional justice. Restorative justice procedures have to adapt to the specific environment, including the setting, the language and the rituals. Thus, it distinguishes itself from the universal claim of criminal settings.

Restorative justice activities are sometimes categorized as mediation processes. This implies that crime and violence are seen as the consequences of concrete conflicts that must be dealt with. Quoting Robert A. Baruch Bush and Joseph P. Folger Johnstone states that mediation processes, of which restorative justice is one example, have two main objectives in a community: empowerment and recognition.

“Empowerment is achieved when disputing parties experience a strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face, regardless of external constraints. Recognition is achieved when, given some degree of empowerment, disputing parties experience an expanded willingness to acknowledge and be responsive to other parties’ situations and common human qualities. (Bush/Folger 1994: 84f quoted in Johnstone 2011: 120)

Translated into crime and violence, the purpose of restorative justice is to increase the communities’ capacity to tackle future trespasses and even prevent them through the positive experience of already having dealt with them successfully. Furthermore, recognition implies the ability to express understanding for differences and “the other”. Conflicts in general help to increase the self-reliance and to develop respect and concern for the other. Consequently, the goal is not to resolve it as quickly as possible but to seize this opportunity for growth. It is this

³² Compare Chapter 1.3.3.

transformational aspect of conflicts that is emphasized in restorative justice. Through the transformation of the self, the capacity to relate to others would be strengthened, so goes the argument, the base of which is a “relational worldview”. (Johnstone 2011: 120-123)

Johnstone criticizes that even in the restorative justice movement the goal to transform and thus to contribute to the moral development of those involved is occasionally neglected in favor of an agreement-producing process that basically satisfies the needs of the victim and the offender and somewhat contributes to reconciliation.

2.6.2. Community

There is much debate about the nature of the community, given the fact that strong, cohesive communities are not the norm. Zehr proposes that care for the people and/or the offense may be a criterion to select the stakeholders. (Zehr 2002: 28)

McCold recalls the origins of restorative justice that was confined to victim-offender-encounters in which a citizen mediator represented the interests of the society (macro-community). Through the spread of restorative justice practices in the 1990s wider families were involved through family circles. Then “communities of care” for the victim and the offender were encouraged to participate, which widened the scope of participation even more. The main criterion for participation seems to be the direct “relation” to the crime, either by being affected or having a legitimate interest (micro-community). (McCold 2004: 155)

While the impact of a specific crime on the macro-community causes indirect harm by increasing the citizens’ fear of certain places or the perception of insecurity, crime causes direct emotional pain to specific people of the micro-community. The latter consists of the web of people and relations that provide us with care and support in difficult situations and are, consequently, closely related to us. Both the victim’s and the offender’s family suffer under the effects of the crime. Thus restorative justice implies the restoration of the numerous relationships within and between both micro-communities. Justice with regard to the macro-community on the other hand requires broader activities of crime reduction and the protection of specific environments.

Based on these assumptions, McCold suggests the distinction between primary (micro-community) and secondary stakeholders (macro-community) considering their different needs. In

a grid that contains the harms, the needs and the necessary responses, both the scope and the objectives of the restorative justice interventions become more tangible. So while the victim suffered a loss of control, he/she has the need for the empowerment over the disposition of the case. The adequate response consists in seizing opportunities to exert influence. In the end, the process is certainly more specific and more open when it deals with micro-communities. The results of macro-community processes are more standardized and less focused on the process. The main feature of micro-community processes, however, is the direct participation of the primary stakeholders, ideally without intermediaries. (McCold 2004:158-172)

Paul Pavlich (2004) goes a bit further in the characterization of a community and the subsequent goals of restorative justice. Irrespective of the definition of community, the term is usually very positively connoted. It also highlights that crime and violence cannot be stripped of its collective aspect. However, Pavlich also stresses the totalitarian threat of a rigid image of community. If the dynamic character of a community is neglected, restorative justice does exactly what its name implies – restore a pre-defined pattern of exclusion, to which its members belong at the expense of outsiders. The responsibility in such an understanding is only towards the member but not towards the other. Consequently, the concept of community should be open to change and, subsequently, restorative justice interventions based on hospitality. This means that a welcoming host receives the other at the threshold of a given community and starts to negotiate the groundwork for future forms of the collectivity. The term restorative in such a setting adopts a clearly revisionary connotation, in so far as the other is not obliged to accept the pre-defined rules of a given community but engages in an exchange on how to tackle injustice. (Pavlich 2004)

Price Lofton (2004) points to a different set of criticism towards restorative justice. Due to its involvement in the criminal system it tends to define crime as an individual act and categorizes the participants in a process as victims and offenders. This is an incomplete interpretation given the fact that many offenders had been victims before and that society as such is flawed. If restorative justice does not address these issues more completely, it fails to become a compass towards a new and more just social order. (Price Lofton 2004) This emphasis on the structural dimension of crime resembles several of the critical assessments of transitional justice in the previous chapter. It also reiterates the importance of a systemic view of society and of comprehensive steps towards transforming structural distortions in a reconciliation process.

The rationale for community participation in restorative justice proceedings is twofold. On the one hand, the idea is that the community induces the offender to repair the harms and to refrain him/her from causing it again. On the other hand, the process empowers the community to handle conflicts, which is in the line with Bush/Folger's before-mentioned argument. In reality, however, the participation of the wider community is rather scarce, which may be explained by lack of time or the reluctance to take part in the "pain delivery" in the context of a criminal procedure. (Johnstone 2011: 124ff) This argument is confirmed by the analysis of the pilot phase of the Rwandan gacaca-community-tribunals, in which the participation of the community was not widespread. (Karekezi/Nshimiyimana/Mutamba 2004: 78)

2.6.3. Restorative vs. Retributive Justice

It seems that in the debate between the retributive and the restorative forms of justice accountability is the key word. Is accountability possible without punishment? Declan Roche identifies different meanings, principles and objectives of accountability that leave space for alternative understandings. The term suggests scrutiny, control, improvement of the performance, and legitimacy. Accountability should also be simple, timely, public, independent and motivating. Within these characterizations a wide range of options related to accountability is available. (Roche 2003: 42-57)

In this context it is important to further reflect upon the relationship between restorative justice and punishment through prison. Originally, one goal of restorative justice consisted in dramatically reducing the number of prisoners by offering alternatives. Russ Immarigeon, however, criticizes that this objective has become secondary, while restorative justice activities as such have flourished over time. The author fears that restorative justice develops into still another, though important in-prison method without any impact on the length of the term. (Immarigeon 2004)

The critique of many restorative justice authors is directed not against punishment as such but against the criminal system based on prisons. Howard Zehr argues that the main idea behind the criminal system is to inflict pain and, thus, to even out the balance that was violated by the crime. This method, however, does not lead to the individual's recognition that something wrong has been committed, to deterrence or personal growth and change. Quite on the contrary, the

offender will learn violent means to survive in prison, is rather obliged to deny every responsibility for the crime given the adversarial character of the legal proceedings and serves his/her term in an environment that promotes de-humanization by stripping people of their individuality. This limited form of accountability prevents people from learning and recognizing the human cost of their wrongdoings. Genuine accountability, on the contrary, would include this realization and the acceptance of responsibility for the harm. This would also lead to the real possibility that this person makes better choices in the future. (Zehr 2005: 33-42)

Consequently, a restorative response to an offense encourages the offender to recognize the truth, to repair the harm and to not commit it again. In exchange, the offender is not stigmatized forever and the threat of punishment at least diminished. It also assesses the responsibilities of the community for the crime, thus considering “the ambiguity of guilt”. While not being soft on the offender, the inflicted pain is different of that of the retributive system and much oriented towards preventing crime in future. This future-looking dimension is an additional aspect that distinguishes restorative justice from retributive justice that looks more at the past offense. (Johnstone 2011: 75ff)

However, there is significant debate within the restorative justice community, whether the ultimate goal is to replace retributive justice or not. It seems reasonable to consider both systems as complementary, while increasing the scope of restorative justice. Johnstone argues that several authors draw a rather arbitrary line between restorative and retributive justice by asserting that the latter is more about inflicting pain, while the former deliberately refuses to do that. He considers this argument flawed given the fact that in the public discourse the same authors present restorative justice as not being soft on offenders.

Declan Roche adds that restorative justice punishments can even be more cruel than prison, quoting cases such as making young thieves wear a T-shirt that says “I am a thief”. (Roche 2003: 1) He argues that restorative justice proponents do not sufficiently consider that the participants in circles or conferences may harbor thoughts and feelings of vengeance against the offender. So, how should the process be safeguarded against the abuse of power and humiliating behavior? Roche argues for accountability criteria that regulate these occasions, by which he understands the compliance with standards and values and the reporting of the decisions and the reasons for them. This would significantly increase the legitimacy, the quality of restorative justice procedures and, as a consequence, the trust in them. Furthermore, he suggests that

proponents of retributive justice do not view punishment and pain as a goal in itself but as serving other ends such as reintegration, education or evening the balance. Consequently, putting both into an opposition to each other is rather counterproductive. (Johnstone 2011: 88-93; Roche 2003: 41ff)

For the purpose of this paper the issue of punishment and its role in transitional justice and reconciliation is of utmost importance. Some authors consider that if restorative justice does not include any punishment, it cannot be considered a form of justice at all. Punishment is about deterrence on the one hand and a collective answer to the hostile, deliberate attitude of the offender towards the victims and in the end the community. Thus, punishment is important to distinguish criminal behavior from other, more careless actions. Only few restorative justice authors, however, would insist on a punishment-free approach to crime. It seems that the main discussion is about the method of punishment. While restorative justice rejects the modern prison system as not efficient to satisfy the needs of the stakeholders, there is the concept of restorative punishment that reduces the inflicted pain if the offender actively makes amends to repair the harm. (Roche 2007: 82ff; Johnstone 2007: 605)

In her article on the South African Truth and Reconciliation Commission Jennifer Llewellyn (Llewellyn 2007) argues in these terms by insisting that restorative justice is a concept of justice that transcends the individual character of crime and guilt and aims at restoring the harm done to relationships. Ann Skelton and Makubetse Sekhonyane make a similar argument by advocating a justice of right relationships that is oriented towards the quality of relationships instead of a justice based on individual rights. (Skelton/Sekhonyane 2007: 592)

The criticism on the individual character of guilt resembles one of the main foundations of Fletcher/Weinstein's ecological paradigm to overcome violence³³. Llewellyn, thus, challenges the public/private dichotomy regarding crime. She further insists that restorative justice is not about re-creating a status quo ante or a previous state of social equality. The objective is rather to get closer to the ideal of relationships of dignity, trust and respect that would help us to realize our full potential as humans. The South African example also showed that restorative justice is not a single act such as punishment but rather a process of sustainable and persistent strife towards just relationships. The author, finally, identifies several elements that the TRC converted into a valuable example of how to deal with the past: the perpetrators were included in the

³³ Compare Chapter 1.3.4.

process, which helped to recover the truth; the definition of victims included their relatives, which significantly broadened the involved community; the entire procedure was highly transparent, with the media covering the Commission's work; and the perspective was forward-looking by elaborating recommendations for the future. (Llewellyn 2007) Gready, however, criticizes that the TRC failed to address structural violence and the overlap between violence of the past and present, which obviously reduced its forward-looking effect. (Gready 2011)

2.6.4. Summary

The main principles of restorative justice, the inclusion of the stakeholders, the emphasis on the reparation and restoration of relationships and the typically non adversarial character of the procedure, are essential for a process of reconciliation. Thus, it offers significant elements for this research and addresses some of the shortcomings of retributive justice, as pointed out in the first chapter. The centrality of the victims' needs and particularly the importance of the community are valuable contributions to the debate. The concept of community, however, is not without ambiguities in the modern world, in which the criterion of affection certainly goes beyond a geographic space and may include people in other parts of the world. On the other hand, physical proximity does not necessarily lead to personal involvement in the affairs of the neighborhood. Nevertheless, the relational aspect of restorative justice certainly fills a void identified in the first chapter and directly leads to the term reconciliation.

Probably the main critique of restorative justice related to its value for transitional justice focuses on its alleged conservative character, claiming that it does not contribute to social change by solidifying unjust structures that are responsible for crime and violence in the first place. The syllable "re" suggests a return to a previous state of affairs, for many a situation that caused violent conflict in the first place. Obviously, reconciliation shares this circumstance but, as pointed out before, it includes and is based on the transformative dimension of structural change.

2.7. Conclusions

Several approaches to reconciliation have been chosen in this chapter to illustrate its multifaceted character. It appears that reconciliation should be analyzed through the lens of a

variety of disciplines and angles. Therefore, I looked at it from the perspective of a traumatized population and its journey towards recovery, both individually and collectively. I, then, addressed the environment of an armed conflict that in many countries harasses the population and causes numerous victims on a daily base. The relation between reconciliation and peacebuilding stood at the center of these considerations. Since for many people reconciliation has a profoundly religious and Christian connotation, especially in Colombia, I addressed the Christian understanding of it and detailed the Catholic practices around reconciliation. Finally, I approached reconciliation from the perspective of justice, entering the field of restorative justice that shares several objectives with reconciliation, most clearly the restoration of relationships.

Finalizing the conceptual parts of this dissertation, I am able to draw several tentative conclusions before approaching the case study Colombia.

First, reconciliation is one of the main objectives of transitional justice that offers several instruments to achieve it. If this is the relationship between both, the efficiency of transitional justice should also be measured against the progress in reconciliation.

Second, the essence of reconciliation is healing, restoring and transforming relationships on different levels and between different actors. Reconciliation, therefore, is a multilevel and multifaceted endeavor that comprises the whole society and requires a number of inter-related activities.

Third, reconciliation is both a result and a process that needs a horizon and a vision of the outcome. This also suggests that the coordination of the efforts and an elaborate strategy are necessary. Reconciliation is not sufficiently described as a set of well-intentioned activities.

Fourth, reconciliation is concerned about past injustices and the creation of just relationships for the future; it, therefore, has several time-dimensions ranging from the past to the future.

Fifth, since reconciliation is not only interpersonal, it is also political and includes the need for systemic transformations directed toward a just peace and the eradication of the causes of violence. It is not a static or reactionary concept or strategy.

Sixth, though Christianity in general and the Catholic confession in particular has elaborated concepts and practices of reconciliation and certainly shaped the debate on it, it is not

exclusively a religiously relevant category. Its significance for psychology, trauma-recovery, peacebuilding and economic justice has been outlined in the course of this chapter.

Seventh, in accordance with the systemic approach suggested in this chapter those strategies of transitional justice that cover broad sectors of society and address a variety of political, economic and social issues will contribute most to reconciliation.

Eighth, it appears as though at the core of reconciliation is the mutual acknowledgment of the humanity of the other. If this is true, reconciliation necessarily includes the strife for justice, human rights and living conditions that fulfill the requirements of human dignity. Since violence offends the humanity of a person and undermines the reliance on basic assumptions about other human beings, reconciliation is also about reconstructing trust and community-life.

Ninth, reviewing the literature on transitional justice and reconciliation it is obvious that there are certain shared tendencies in recent years. On the one hand, there is an increasing focus on bottom-up initiatives and the appreciation of local activities. This goes hand in hand with considerations that go beyond the state or international government organizations as the main actors. On the other hand, it is evident that the term “holistic” is gaining importance. This has led to more inter-disciplinary approaches to transitional justice and reconciliation and the attempt to escape narrow and potentially inappropriate one-size-fits-all concepts.

The following chapters are dedicated to the case-study. In the first step, Colombia will be presented as the space, in which transitional justice and reconciliation have been applied in the last years. This requires a characterization of the armed conflict and a historic overview. The focus is on the period from 2002 to 2011, which is the time-span covered by this dissertation. During these years the demobilization of the paramilitary groups made a transitional justice framework necessary, which was very contested and criticized.

The second step consists of the presentation of my field research in the Magdalena Medio Region that elaborates on several categories related to the topics of this thesis. It will show how people who live and work in communities and with people affected by violence conceive transitional justice, its constituting elements and reconciliation.

3. Colombia

3.1. Introduction

This chapter introduces the context of my field research. It presents the history of the armed conflict in Colombia and details the ongoing debate on transitional justice in the wake of the demobilization of the paramilitary groups. These groups whose origins are going to be characterized in the course of this chapter have been responsible for numerous crimes against humanity, massacres and other atrocities. Thus, they constitute a compelling case for the application of instruments that address past human rights violations. The debate has been situated between the extremes of punishment for everyone responsible and an almost universal amnesty. While the first proposed legal framework for the demobilization, the so-called *Ley de Alternatividad Penal* (Law for Alternative Punishment), tended towards the latter extreme, the actually approved law, the so-called *Ley Justicia y Paz* (Justice and Peace Law) that was issued in 2005 includes reduced punishments in exchange for truth and non-recurrence. In 2011, finally, the much lauded *Ley de Víctimas* (Victims' Law) focused on the restitution of land and the reparation of the victims.

In the course of more than ten years international experiences have been analyzed and a variety of different options discussed. This chapter also reflects the multi-level debate ranging from civil society actors to representatives of the International Criminal Court (ICC) who in decisive moments intervened to shape the contents of the legal framework in 2005. However, I would adamantly add that the subsequent analysis of the Colombian transitional justice framework considers only the official part of it. In accordance with my previous emphasis on the local level, I want to anticipate that the following chapter elaborates on the field research that reflects several more local assessments and responses to the reality of past and ongoing violence.

Transitional justice instruments have usually been applied as part of an effort to address the past after the fall of an authoritarian or totalitarian regime. This was the case among others in Argentina, Chile and Eastern Europe. Another set of cases were characterized by the end of an armed conflict that initiated the transition towards peace, such as in Central America or Northern Ireland. These cases have in common an at least theoretically clear break with the past and a

transitional moment that justifies the use of special instruments of justice to analyze and sanction past human rights violations. (Lyons 2010: 15-17)

The case of Colombia significantly changes this perspective and characterizes a different application of transitional justice instruments. While the armed conflict was still going on, one actor, the paramilitary groups, demobilized, which made a transitional justice framework necessary. This was criticized by many organizations as too early because there was no end of the conflict and, thus, no transition that would have justified extraordinary judicial measures. Though I share this argument, I will also point out that the debate on and the application of transitional justice instruments may lead to a transition, thus inverting the usual sequence. Furthermore, public controversies on rights, the opposing views on reintegration and reconciliation certainly increased the conscience that the pursuit of a just peace requires more than the mere disarmament of illegal groups and include structural issues like land. If rightly implemented the land restitution that is part of the Victims' Law certainly has the potential to contribute to peacebuilding and, consequently, to the approximation to a transitional moment in Colombia's history.

In this chapter I am going to summarize the relevant debates between 2002 when President Álvaro Uribe Velez came to power and immediately started negotiations with the paramilitaries and June 2011 when the new President Juan Manuel Santos signed the "Victims' Law" in the presence of UN-Secretary General Ban Ki-moon. This is the time-span covered by this dissertation and relevant for the field research that was undertaken from June to August 2011, which will be analyzed in the following chapter.

As a first step I will briefly introduce the reader to the historical context of the Colombian conflict, with an emphasis on the various origins of the paramilitary groups. It shows that the Colombian state has a special responsibility with regard to the healing of the sufferings caused by them, which is why I am focusing on the institutional side of transitional justice. Then, I am analyzing the demobilization process of the *Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia, termed AUC or paramilitaries) and its transitional justice framework. Here, the Justice and Peace Law and the discussion about a complementary Victims' law are of particular importance.

3.2. Historical Context

3.2.1. Overview

Depending on the interpretation Colombia's internal armed conflict started either with its independence from Spain in 1819, in 1948 or in 1964. While several commentators look on the history of independent Colombia as a sequence of internal wars³⁴, others consider that the assassination of the popular politician Jorge Eliecer Gaitán in 1948 triggered the current conflict. Still others, however, insist that it was caused by the emergence of the *Fuerzas Armadas Revolucionarias de Colombia* (Colombian Revolutionary Armed Forces, FARC) and the *Ejército de Liberación Nacional* (National Liberation Army, ELN) guerrilla groups in 1964.

In any case, it is a long lasting conflict with millions of dead, disappeared, displaced, raped, tortured, kidnapped and mistreated human beings. Only a few families have been spared from the many forms of violence. The actors involved in the armed conflict are the state, the guerrilla groups, among which the FARC and the ELN are the most significant, and the paramilitary groups and drug-related mafias, though there are significant overlaps between the latter two.

A decade-long confrontation between the Conservative and Liberal parties found its climax in 1948 when the liberal leader Gaitán was killed. This constituted a major blow to his reform agenda that included important socio-economic issues, among which the unequal distribution of land was the most prominent. His assassination resulted in riots in Bogotá (“*Bogotazo*”) and bloodshed in the rural areas. The security forces, supported by paramilitary units, deliberately attacked the opposition. Rural self-defense groups, linked to Communist political programs, were set up and simultaneously defended peasant communities against armed attacks.

This was the context of the surge in guerrilla activity the motivation for which consisted in a combination of self-defense, social misery and political grievances. In the 1950s the so-called Liberal Guerrillas gained in prominence and found some continuity in the 1960s with the creation of the FARC and the ELN. While the FARC is more rurally based, the ELN, with its roots in the union movement and the universities, could have attracted a more urban following; however, it has never achieved a significant military presence in the cities. (UNDP 2003: 27ff).

³⁴ Compare Pardo, Rafael (2004): *La Historia de las Guerras*. Bogotá, Ediciones B.

Furthermore the Maoist *Ejército Popular de Liberación* (Popular Liberation Army, EPL) created in 1967 and demobilized in 1991 gained some importance in the Urabá area. Probably the most popular guerrilla was the M-19 movement that was founded in the wake of an electoral fraud in 1970. It had firm urban roots and was particularly engaged in symbolic activities in order to obtain visibility. However, it also realized that its reputation would increase by renouncing violence. This is why it seized the opportunity and demobilized in 1990 in order to participate in the Constitutional Assembly, which will be further explained below. (UNDP 2003: 29) There were other smaller guerrilla groups, too, which shows that in fact the state's fear that the guerrillas would take over power was not entirely unfounded.

In 1957, the bipartisan violence was formally terminated by a rigid division of power between the Liberals and the Conservatives. This pact, called the *Frente Nacional* (National Front), virtually excluded all other political actors, which made legal opposition impossible. Together with the unresolved social issues this facilitated the territorial expansion of the guerrilla groups from the late 1960s onwards. They increasingly took control over entire regions, imposed taxes on the wealthy and administered the jurisdiction. In regions where the civil population was attacked or exorbitantly high "taxes" were levied, local self-defense groups and security firms came into existence. The former were usually organized by local people themselves and were defensive in nature with the objective to protect the communities; the latter were often financed by landowners.³⁵ These well-armed groups of mercenaries also attacked the alleged social base of the guerrillas, the opposition, the union movement and members of the organized civil society.

In the 1980s, the FARC gradually began to participate in the profitable cocaine business, in particular through the control of the cultivation areas and the levying of "taxes" on the plant. As a consequence, the guerrilla group found itself in competition with the big Medellín and Cali drug cartels, which recruited private armies to combat the FARC. These armed units became another precursor of the paramilitaries. (Medina 1990; Pardo 2007: 19ff).

In 1998 the FARC started peace negotiations with the government under President Andrés Pastrana. Pastrana conceded territory of the size of Switzerland where the FARC enjoyed a safe haven for the negotiations. The talks were characterized by a lack of strategy on the part of the government and a lack of will to seriously negotiate on the part of the FARC. On the contrary, the guerrilla used the territory as a retreat for its troops, as a cultivation zone for coca

³⁵ The nature of the paramilitary groups will be analyzed in the following section.

and a shelter for the kidnapped. In the end this process completely failed and led people to the assumption that it was necessary to militarily defeat the guerrillas, given their apparent lack of interest in a negotiated solution; thus, the conditions for strong arm policies were set.

During that time, not only did the FARC bolster its military capacities but the AUC, under the leadership of Carlos Castaño, also expanded by forging alliances against the peace process. These efforts, together with its anti-subversive and anti-communist propaganda, attracted significant support from several segments of the population that were not willing to tolerate the weakness of the state any longer (Garzón 2005: 79f). The political wing of the paramilitaries succeeded in mobilizing votes for “their” candidates and, thus, in increasing their influence in local, regional and national political institutions like the Congress. Most of these groups and individuals would later join the coalition of President Uribe. (López Hernández 2010: 29ff; Romero 2007).

This anti-subversive wave swept Álvaro Uribe Velez to the presidency. As Governor of the Department of Antioquia he had had a record of supporting the Convivir groups, private security units led by later paramilitary commanders (Romero 2003: 194). Despite being a rather unknown candidate, Uribe was elected president in the first round in 2002. In effect, his policy of “democratic security” included a strong military component against the guerrillas but also the inducement of the demobilization process of the AUC.

3.2.2. Security Policies in the Course of the Time

The miserable condition of the military and the security priorities have had a profound impact on the development of paramilitarism and its toleration by the state. In the following, I will show that for a long time the official military had not been able to confront the internal threat of a number of actors so that the creation and support of paramilitary units by disaffected social and frustrated military sectors was almost a logical consequence.

Leal Buitrago identifies as critical the principle established by the first elected President of the Frente Nacional, the liberal Alberto Lleras Camargo (1958-1962) who ruled that the military was not allowed to interfere with politics, while politics would not interfere with military affairs. This lack of civilian oversight and political directives explains the massive improvisation with regard to public order. In addition, the principle of national security

understood as total internal war against communism as opposed to national defense that traditionally limits the role of the military to the defense of a countries' sovereignty left an enormous leeway for the militaries to define their tasks and methods. However, the disorder, the lack of efficiency and the lack of social policies led to the emergence of the paramilitaries and an increase in coca cultivations. (Leal 2011: 43f)

Military affairs were usually organized by martial law ("state of siege") without almost any other norms in place. This is particularly important with regard to the repression of social movements that appeared legitimate under martial law. Several of these practices became part of the legislation, such as Article 33 of Law 48/1968 that regulated the private use of weapons and authorized the conformation of private self-defense groups. These were the seeds of the later paramilitary units.

Under President Julio César Turbay (1978-1982), military autonomy broadened and expanded several norms of the military jurisdiction to the civilian population. This was Colombia's closest approach to the doctrine of national security in the struggle against communism. (Leal 2011:47)

The contrast to the following government under President Belisario Betancur (1982-1986) could not have been more significant. Through policies of peace negotiations and processes that he conducted without the participation of the militaries, he basically limited their autonomy that had reached a peak during Turbay's government. Both the assassination of the Minister of Justice, Rodrigo Lara, by drug-lords in 1984 and the occupation of the Palace of Justice by the guerrilla movement M-19 and its violent recovery by the military demonstrated the lack of a strategy to ensure public order. The excessive use of force by the militaries in the attempt to retake the Palace has to be considered in this context. It was a convenient opportunity to show their leadership both to the President and the guerrilla. (Leal 2011: 47f)

Under President Virgilio Barco (1986-1990) a small incident with Venezuela proved that the military had lost the capacities to execute its main function, i.e. external defense. Barco's presidency also witnessed the escalation of the "dirty war" that was characterized by the consolidation of the drug-business, the extermination of the left-wing political party *Unión Patriótica* (Patriotic Union) and the increase in massacres committed by the paramilitaries. The anti-communist ideology of the military increasingly targeted not only the guerrillas but also the political opposition. In the presidential campaign for 1990, three candidates were killed: the

liberal Luis Carlos Galán, Bernardo Jaramillo of the Unión Patriótica and Carlos Pizarro of the M-19. 1990 also saw an intensification of the state's efforts to confront the drug-business and the multiplication of terrorist attacks against the state's institutions. At the same time a political project consisting of paramilitaries, the drug-business and parts of the military emerged with the objective to take power given the weakness of the state. (Leal 2011: 48-50)

Politically, the presidency of César Gaviria (1990-1994) brought transformations in the relation between military and civilian institutions of the state. In addition to facilitating the Constitution of 1991, he diminished the exclusive authority of the military in matters of security. He created the Presidential Council for Defense and Security in 1990 and appointed a civilian, Rafael Pardo, as the Minister of Defense, thus affirming that matters of security were political and not military matters. However, the vision of national security persisted. This became manifest when the government took *Casaverde*, the most important military base of the FARC, in contempt of what had been stipulated in the peace treaties of the Betancur government.

In the following years the fight against Pablo Escobar who had been captured and imprisoned but could flee from the high-security prison gained the center stage. This episode demonstrated the lack of capacity of the security forces and the high potential of corruption they suffered from. In December 1993, Escobar was killed. Nevertheless, the government policies to bring drug-lords to justice and the constitutional prohibition to extradite them to the U.S. caused harsh criticism by that country. Gaviria's *guerra integral* (comprehensive war) failed to produce the desired outcomes and resulted in a guerrilla offensive. (Leal 2011: 50-52)

Ernesto Samper's presidency (1994-1998) was severely affected by the funding that his campaign had received by Cali's drug-cartel. The so-called *Proceso 8000* that prosecuted important state officials for their links with the drug-business diminished the space of maneuver of the government. This period saw the fortification of the guerrilla, the unification of the paramilitary forces as AUC and the weakening of the military's operational capacity. Their failures confirmed the public image of being inefficient. While concentrating on the fight against the drug-business, the guerrilla did not receive the attention it would have deserved. It used this time to multiply and diversify its sources of income that consisted of drug-money, kidnappings and extortion. (Leal 2011: 52-54)

The presidency of Andrés Pastrana (1998-2002) saw significant and momentous developments that would have an impact on the following years. His attempt to conduct a peace

process completely failed despite the high political costs Pastrana had assumed. He even granted a 42,000 square kilometer large territory to the FARC; the guerrilla proved to be implacable and the government without any negotiating strategy. The public opinion reacted increasingly reluctant to continue this process, which multiplied paramilitary control in several territories. At the same time, however, Pastrana initiated serious changes in the military, allocated special troops against the drug-business and provided better equipment to the armed forces. This was possible due to the generous military aid by the U.S. that gained international attention under its name *Plan Colombia*. In total, it was a package of 1,319 million dollars distributed between Colombia (65.2%), its neighbors and specialized U.S.-agencies. These resources were used to strengthen the military and the police. This new program reflected a merely repressive approach towards drugs and led to massive external influence on security policies by the U.S. (Leal 2011: 54-56)

3.2.3. The Paramilitaries

3.2.3.1. Origins and Characteristics of the Paramilitaries

The term “paramilitary” uses to have a broad range of meanings. Michael Reed proposes to define “paramilitary” as “everything that takes place outside of the regular military controls, but fulfills military functions, i.e. it is auxiliary to its functions. Generally, the term is used to refer to the activity and the structures of internal security or public order that, being covered or parallel to the official activities, can be denied or demented by the authorities.” Consequently, this phenomenon becomes a nuisance, once it starts to publicly embarrass the government. (Reed 2010: 88f)

The previous historic summary shows that there were several precursors for the AUC. On the one hand local communities organized self-defense groups against the trespasses of the guerrilla. These were characterized by a high degree of initiative and self-organization of a given community; the weaponry was usually primitive, while their knowledge of the locality and the flow of information were assets. Their motivation consisted in the desire to keep living and working in their area without being affected by outsiders; consequently, these groups were defensive in nature and had no offensive goals.

Numerous interviews and conversations I had in the Magdalena Medio region showed that rural communities have been used to live side by side with armed actors. However, there seems to be a delicate balance that, if violated, induces the whole community to take measures against the respective actor. In the case of the guerrilla this shift of loyalties frequently depended on the character of the leader, the amount of revolutionary taxes and the discipline of the troops. There are multiple examples that a previous coexistence turned into resistance by the peasants whose efforts sometimes coincided with the emergence of paramilitary actors but usually developed independently of them.

On the other hand prosperous sectors of society financed and equipped self-defense groups of another sort. They disposed of modern weaponry but being mercenaries they lacked a personal relationship to the territory and the local population. The objective was the elimination of the enemy and his/her supportive environment, which they identified as trade unions, civil society organizations and the political opposition. Although not necessarily offensive, these groups applied social control for the apparent sake of their anti-subversive struggle.

These two kinds of armed actors were supported or at least tolerated by the military. Despite their frequently spontaneous emergence, the state obviously must assume responsibility for the violations of human rights. The state actively helped to undermine its own monopoly of force through arming and training them at a later stage.

Law 48 of 1968 legalized private armed groups for self-defense. In 1987, President Virgilio Barco repealed the law but President César Gaviria replaced it in 1994 by Decree 356 on the legal armament of security firms that should closely cooperate with the military (Ávila Martínez 2010: 113f). These firms obtained public attention as *Convivir* and constituted a tangible example for the mentioned self-defense groups.

A third element that explains the emergence of the paramilitaries was the connection with the drug-business. These violent actors had a completely different quality than the described above. Their objective was the elimination of competitors and the protection of routes of commerce and transport and the areas of cultivation. The anti-subversive discourse helped to create a sympathetic public image; furthermore, the competitor was often the guerrilla, indeed. From the start the strong roots in the drug-business have made available enormous resources for the expansion of paramilitary forces and provided specific AUC leaders with significant wealth. Several of these capos would eventually “purchase” paramilitary units in order to exercise

territorial control and turn into “political actors”, which usually results in legal benefits in the case of a demobilization process that are not attainable for “normal” criminals. This procedure may be called the transition from simple drug-lords to warlords and must be kept in mind when analyzing the demobilization of the paramilitaries. (Medina 1990; Pardo 2007: 19ff; Adams 2011: 70)

Finally, there was the political paramilitarism that was closely related to this third, drug-related element, though. Carlos Castaño led the AUC until his assassination by his own men in 2004 and presented the organization as an essentially anti-subversive political-military movement with the objective to liberate the nation from communism and terrorism. This discourse resonated with a significant part of the population, which facilitated the expansion of the paramilitaries’ political project. (Garzón 2005: 79f)

This project consisted of the cooptation of local, regional and national institutions and politicians to use them for the paramilitaries’ own interests. Claudia López and her team illustrated how hitherto unknown candidates from regions under paramilitary control suddenly achieved major electoral gains and, thus, accessed the Congress. Additionally, new parties outside the liberal-conservative scheme were founded and first emerged in the context of the 2002 elections. Surprisingly, candidates of these parties immediately gained sufficient votes for Congress. (López 2010: 29ff; Romero 2007)

The majority of these parties and the politicians supported by them joined the coalition of the Uribe government. It seems that also his campaign had been resolutely backed by the paramilitaries. In the communities I often heard reports of paramilitaries wearing Uribe’s campaign T-shirts and making clear who they consider “their” candidate.

3.2.3.2. The Castaño Family: Between Drugs and Politics

These ideal types of precursors to the paramilitaries obviously did not exist in pure form; they often merged or modified their strategies over time. This is why in the following I am going into more detail with regard to the biography of and the ruptures within the dominant family in the history of the paramilitaries, the Castaño family, the links between public institutions and the paramilitaries and their economic interests beyond the drug-trade. This draws a picture that turns

the demobilization of the paramilitaries and the subsequent transitional justice framework into a much more complex undertaking than the mere dismantling of an armed actor.

The relation between the brothers Castaño, Fidel, Carlos and Vicente, demonstrates the ambiguity of the paramilitary project and its proximity to drugs and politics. Their father Jesús had been killed by the FARC in 1981, which caused the creation of *Los Tangueros*, a death squad with the objective to take revenge. In 1982, Carlos and Fidel joined the *Muerte a Secuestradores* (Death to Kidnappers, MAS), a group that was created by the family Ochoa of the Medellín cartel in order to take revenge for the kidnapping of Martha Nieves Ochoa by the guerrilla M-19. The brothers were militarily trained by the Israeli mercenary Yair Klein in Puerto Berrío's battalion *Bomboná*. Although initially close to the drug-lord Pablo Escobar, they distanced themselves due to the assassination of two close collaborators that took place, while Escobar spent his prison term in 1991. Castaño and others feared that they would be next on the list and founded the *Perseguidos por Pablo Escobar* (Persecuted by Pablo Escobar, Pepes). This group united Escobar's numerous enemies, several death squads, the Cali cartel and even security forces of the state and the U.S. Drug Enforcement Administration (DEA). After the assassination of Escobar by security forces in 1993, the *Pepes* dissolved.

Although the Castaños maintained themselves in the drug-business, they increasingly worked with landowners in Córdoba where the guerrilla had become very involved in drugs, too. In 1994, Fidel died in a confrontation with the FARC; subsequently Carlos and Vicente created the *Autodefensas de Colombia de Córdoba y Urabá* (Colombian United Self-Defense Forces of Córdoba and Urabá, ACCU) that provided several similar regional groups over the country with an organizational example. Carlos assumed the political, Vicente the financial and *Doble Cero* the military leadership. It was financed by contributions of large international firms such as BP and Chiquita and landowners. Despite the group's anti-subversive mission, it never severed the links with the drug-business, especially due to Vicente's thirst for ever more money. The obvious justification for this ongoing business consisted of the need to fund the war against the insurgency. (Adams 2011: 70-74)

Another example for the overlap between paramilitaries and the drug-business was the career of Diego Montoya, *Don Diego*, within the *Cartel del Norte del Valle* (Cartel in the Northern part of the department Valle del Cauca). He and others gained sad prominence due to the massacre of around 340 people in and around the village Trujillo between 1989 and 1993 that

served to assert territorial control and purge the region of “leftist activists”. This cartel infiltrated the police and the prosecutor’s office very successfully so that its members were relatively safe of the state’s persecution. In 1998, the cartel merged its operations with those of the AUC after the FARC had rejected such an offer during the peace talks with the government. (Adams 2011: 74-76)

At that time the discrepancies between Carlos and Vicente became manifest; the first saw the AUC as a means to eliminate the guerrilla, the latter as a source to multiply his income. This is why Vicente started to sell franchises of the AUC to drug traffickers who, consequently, obtained a seat at the negotiation table with the government. According to declassified intelligence documents of the U.S., these drug lords also recruited unemployed Colombians to pose as paramilitaries during the demobilization ceremonies. As members of the negotiation team they hoped to be included in the legal benefits usually granted in a peace process, which range from amnesties to non-extradition. So, Diego Murillo, *Don Berna*, a notorious drug capo purchased around 60% of the AUC in the Valle department and conducted its operations from his home-town Medellín. Several of the most prominent AUC units, the *Bloque Central Bolivar*, *Bloque Pacífico* and the *Bloque de Vencedores de Arauca*, emerged as a consequence of these franchises and were, thus, commanded by capos. (Adams 2011: 76-78)

Carlos, on the other hand, pursued the course of political negotiations, which is why he urged the AUC to limit its involvement in the drug business. According to him this would put serious obstacles to the negotiations with the Uribe government. The U.S. pressure on Colombia to extradite the most notorious drug traffickers and the resulting obstacles for an eventual demobilization were the main arguments of those who discouraged the drug business. (Guáqueta/Arias 2011: 474f)

Internally, there were several deadly confrontations between the AUC and the capos. Distrust and accusations of being a traitor or informant of the DEA led to various assassinations. Carlos Castaño had always tried to present himself as an opponent of the drug business and established a relationship with the DEA that ultimately would lead to his surrender. This caused serious tensions in the organization and finally the assassination of Carlos on orders of his brother Vicente in 2004. (Adams 2011: 78f)

This brief description of the organizational environment for the demobilization negotiations shows the strong internal ruptures and clashes of interests between different wings

of the paramilitaries. The following examples emphasize this point and go further into the economic and financial interests of the paramilitaries.

3.2.3.3. The Public-Private Links and Interests of the Paramilitaries

Romero/Olaya/Pedraza (2011) point to the close connection between armed actors, corrupt politicians and public institutions that administer enormous sums of public money and, thus, attract the interest of semi-legal, legal and illegal actors. The authors describe one of the most notorious cases in recent years, the robbery of public health funds of the Caribbean departments under the doctrine of “everything goes” and the guise of an anti-subversive discourse. This was fostered by the privatization policies of the health system that started in 1993 with Law 100 and concluded under the presidency of Álvaro Uribe in 2003 when seven territorially defined health entities, the so-called *Empresas Sociales del Estado* (Social Companies of the State, ESE) were created. In total, in 2007 these entities administered an overall budget of around 600 billion pesos, then around 240 million euro, with the task of offering health services particularly to the poor population. The battle for sub-contracts in the health-sector created a set of new companies that fought for these contracts. Since the municipality through its health department was in charge of administering the subsidies for the poor, the rough electoral campaigns to get in control of the municipal level and, thus, the access to these funds appear under a different light. In the end the territorial entities were liquidated due to bad administration and corruption, the focus on private firms to administer health-funds, however, remained. (Romero/Olaya/Pedraza 2011: 18ff)

Exemplifying the development of criminal networks, the authors take a related example and analyze the situation in Colombia’s northern departments. There, another element that helped illegal actors to take control of public services through privatization was the change in the funding of these. Gambling and lottery had been the financial source for the health system for decades. Until 2001, both had been a state monopoly, which was changed to give third parties the opportunity to obtain concessions in this sector. In the following years the state-owned lottery was more and more limited in favor to the private gambling industry that had to transfer only 12% of their income to the state, which in turn served to finance the health-sector. The lack of oversight resulted in serious consequences for the funding of this sector, particularly through

the evasion of transfers and other frauds. This means that the legislation actively favored the private interests of a few and, thus, harmed the health services to the poorest Colombians.

Furthermore, the resources that were made available through gambling and lottery converted the negotiation of concessions into highly political matters in charge of the respective governor. Political agreements and a significant role for the operators in political campaigns were the consequence. The main objective, the funding of the health sector, became virtually irrelevant in this political and economic game. As a conclusion, the open question is whether the transformation of the gambling industry followed a strategy to re-organize the funding of local politics with the benefit to recycle illegal resources and use health-related funds for other causes. (Romero/Olaya/Pedraza 2011: 30-33)

These transformations of the health system and its funding were exploited by the paramilitary leader *Jorge 40*, himself a member of the elite of the César department. In 2001, he started to negotiate local deals with politicians with the objective to electorally gain control of the Northern region. (Romero/Olaya/Pedraza 2011: 20f)

This meant that paramilitary leaders put people of their trust in charge of the municipalities and the institutions responsible for offering health services. Through them they received the monetary benefits destined to provide services to disadvantaged sectors of the population. The before-mentioned creation of companies or cooperatives that could enter in a contractual relationship with the state's social security system to offer health-related services facilitated the expansion of the illegal networks that benefitted from these resources. It also allowed local political leaders to amplify their networks of patronage and clientelism in return for electoral support; thus a combination that favored corruption and illegal interests was in place. By 2005, the ESE in charge of the Northern coast region called *José Prudencio Padilla*, for example, negotiated 50% of its contracts with these new cooperatives. Around half of these contracts were signed with cooperatives that were run by family and friends of Senator Dieb Maloof who had been one of the promoters of Law 100 and was later condemned for his links with the paramilitaries. The value of these contracts amounted to around 23 billions of pesos (9.2 million euro), which is the equivalent of around 14% of the overall budget of this territorial ESE. In 2006, this particular ESE was closed due to mismanagement and lack of efficiency and transparency by governmental decree (Romero/Olaya/Pedraza 2011: 37-39).

The careers of two important representatives who stand for the link between illegal and legal actors may convert this analysis into more understandable illustrations of how greed, political interests and individual decisions came together to strongly undermine the state's legitimacy. The already mentioned Dieb Maloof was a doctor when he decided to offer his cooperation to the paramilitaries by denouncing the ELN's base in one of the region's municipalities. Enilse López, on the contrary, had been involved in a deadly conflict between her family and the FARC that cost the lives of three of her brothers and the destruction of several of their estates. She did not hesitate to join the paramilitaries under *Mancuso* and *Jorge 40*, which benefitted several members of her families who were "elected" mayors of a number of municipalities in the Bolivar department and members of Congress and her own business interests with regard to her gambling companies. Thus, the alleged anti-subversive struggle was directly linked to personal interests and political and economic benefits. (Romero/Olaya/Pedraza 2011: 40-42; Robinson 2013: 46f)

Dieb Maloof was elected for Congress on the list of the party *Colombia Viva*, one of the new parties for the 2002 elections. He was one of 13 members of Congress, all but one of whom were later investigated for their links with the paramilitaries. Furthermore, he supported Álvaro Uribe during his presidential campaign in 2002. Maloof also participated in multiple entities of the health sector in Barranquilla, which did not dissuade him to serve as a proponent of the reform of Law 100 in 2006. At this time, it was publicly known that Maloof was not only involved in the private companies that subcontracted health-services but also in widespread fraud at the expense of the regional ESE and the professionals that actually implemented the services. He also provided his family and other political allies with well remunerated management jobs in his firms. In 2007, Maloof resigned as a member of Congress and was later condemned to around seven years of prison for electoral fraud and his links with the paramilitaries; until now (2011) there have not been any charges for corruption and fraud with public money. (Romero/Oyala/Pedraza 2011: 43-47)

The story of Enilse López, *la Gata*, is different but points to the same direction. She benefitted from the before-mentioned legal changes with regard to the concessions of the gambling sector for private companies in 2001 and 2003. Within a short period of time she got into control of the gambling industry in the Caribbean states. At the same time the paramilitaries and their political allies exercised pressure in the course of the 2003 local elections to get in

control of regional posts that among others are in charge to expedite concessions. *La Gata*, named after the small lottery places called El Gato, even financed the Uribe's campaign in 2002.

In a report of the Office of the Ombudsperson in Colombia the transaction volume of the lottery business was described in impressive terms; it amounts to around 1.5% of Colombia's GNP in 2005, around 600 million euro, of which only 12% or around 68 million euro were paid to the health sector. From the additional illegal resources obviously none nourish the health-budget. These sums explain the enormous influence *La Gata* had in political and economic terms that resulted in the "election" of her sons and other family members to high political posts. Several of them are now investigated for fraud, her brother Arquímedes Segundo García Romero, former mayor of Montecristo/Bolívar, was condemned for embezzlement. She herself was absolved from the charges of money-laundering. Her business still holds the majority of the gambling concessions at the Coast. (Romero/Olaya/Pedraza 2011: 48-54; Robinson 2013: 46)

A third story complements the analysis of illegal networks in this region. It is about Edgar Fierro, *Don Antonio*, a former captain of the army who was dismissed in 2002 and joined the *Bloque Norte* of the paramilitaries in 2003. He was arrested in 2006 and his computer confiscated. Valuable information about assassinations, fraud and meetings with politicians to stage the electoral fraud in 2006 was found. This was when the negotiation process between the paramilitary leaders and the government was at its peak, which demonstrates that at least the *Bloque Norte* was in no mood for peace or change of behavior. Fierro demobilized in 2006, one day before the local elections, and was detained a week later.

As the commander of one of the paramilitary units he had tied a network in the municipality of Soledad that allowed him to take hold of health-related resources. Among others he positioned family members in the local hospital. This was possible because in 2003 his unit had assassinated the candidate for mayor with the most options, which was a blow to the political elite that had resisted the influence of the paramilitaries. In the end, they had to accept a 5% payment of every municipal contract due to permanent threats and pressure, not so much due to political consent. The contracts were negotiated with health-cooperatives that did not fulfill the legal requirements. Those who denounced this fraud were assassinated, the only rule for the paramilitaries of this unit being that they did not assassinate more than three people at the time in order to avoid media attention. (Romero/Olaya/Pedraza 2011: 55-59)

Vilma Liliana Franco (2008) goes a step further and summarizes this relation between paramilitaries and state-actors as "*criminalidad contrainsurgente*", as counter-insurgency criminality. This criminality takes place to defend the political order based on hegemonic power. It is also based on the desire for the accumulation of resources. As shown, the main actors are state officials, private mercenaries paid by them or units created outside the system but in line with its interests. In any case, she concludes, the targets consist of the political opposition and/or insurgents. It is this rationality that makes these crimes punishable because they were committed in the logics of the defense of a system, independent how irrational the use of extreme violence seems. Mutilation, torture and deprivation of humanity serves a clear end and is thus in line with the goals of counter-insurgency criminality. (Franco 2008: 217-224)

3.2.3.4. Summary

This short analysis of the situation in the Caribbean region leaves space for several reflections:

First, the paramilitary project under the guise of anti-insurgency has also been motivated by individual material interests and attracted many people with political and economic aspirations. This overlap between ideological motives and the "accumulation of capital" is a characteristic of "war economies" where the limits between illicit business, criminal activities and state institutions become fuzzy. (Franco/Restrepo 2011: 269f)

Second, the paramilitaries and their allies must be seen as much more than simple fighters against an internal enemy. The structures that nourished and sustained the demobilized military forces consisted in manifold political, economic and social institutional arrangements that fostered violence to achieve their goals and extend their power.

Third, during the negotiations between the Uribe government and the paramilitary leaders about their demobilization, which will be analyzed below, the system of illegal extraction of public resources came to its peak.

Fourth, the government turned a blind eye on these developments in order not to jeopardize the demobilization process.

Fifth, the measures of decentralization and privatization amidst an armed conflict favored the illegal acquisition of public goods by not creating sufficiently strong institutions of oversight.

Sixth, the impact that members of Congress who were elected with the direct help of the paramilitaries and who actively participated in the legislation favoring illegal interests was huge and must be further researched.

Seventh and most important, these are the same members of Congress who decided on the “Justice and Peace Law”, the transitional justice framework that regulated the paramilitary demobilization.

It is, therefore, important to carefully use the terminology and distinguish between “self-defense” and “paramilitary”. My argument is that the precursors of the AUC had characteristics of both, although in the first, second and fourth of the before analyzed types the paramilitary nature of the phenomenon had gradually increased. This aspect is important because in the 1990s the thesis of the “third actor” of conflict was promoted in order to deny the link between these groups and the state and assert the autonomy of this third actor in a conflict between the state and the guerrilla groups. The proponents of this thesis preferred to talk about “self-defense” groups to underline their spontaneous emergence and their distance to the state, which opposes the meaning of “paramilitary” that emphasizes the link with the state. In this tradition, the AUC were created to claim its popular origin by using the term self-defense in its name. This strategy was reinforced by the habile use of media that reiterated their autonomy and their internal cohesion.

In reality, however, despite the “constitution” that they had given themselves during their first national conference on April 18th, 1997 the AUC have never been a cohesive and internally united entity, which became very clear in the course of the negotiations that led to their demobilization. Many units did not demobilize and maintained their territorial control, among them *Martín Llanos* who controlled the states of Meta and Casanare, or *Cuchillo* who left the process to rejoin illegal groups. Several groups never participated in the negotiations and presented themselves as self-defense forces or private security firms outside the control-mechanisms. (Reed 2010: 90f) According to Reed the creation of the AUC and their demobilization responded to the objective of “plausible negation” of the paramilitaries’ links to the state. The repeated talk of self-defense and nowadays of criminal groups is meant to avoid the discussion about the real characteristics of the paramilitaries. Given this deficiency the demobilization even weakened more the state’s power and legalized several structures behind the paramilitaries. (Reed 2010: 92f)

Summarizing, one must conclude that the paramilitarism did not only consist of its armed groups that were in the focus during the demobilization process but also of a widespread and dense network of political, economic and criminal actors and interests. The interface between legal and illegal spheres is of particular interest, for example when legal institutions were infiltrated by illegal groups and used for their ends. Consequently, the armed part of the paramilitaries served as an instrument to eliminate rivals, civil society actors, the political opposition or peasants that resisted “superior” interests. In addition, they took care of the protection of the drug business and the control of the acquired goods. After the demobilization of these groups, however, the illegal structures in the background remained intact.

3.2.4. Disarmament, Demobilization and Reintegration (DDR)

3.2.4.1. The Process

Internationally the so-called DDR processes have received attention and caused academic research in the last years. This is to say that DDR is increasingly considered within a context of other related policies, such as Transitional Justice, Security Sector Reform and development.³⁶ Colombia is not exempt from this evolution of the term.

DDR is a complex procedure that is usually part of a peace process and requires sufficient planning and trust-building measures to be successful. International monitoring of the demobilization increases trust in the process; exact stipulations about the contingents and the area of assembly support the smooth proceeding of the disarmament and demobilization effort. Once disarmed, ex-combatants have specific needs that must be addressed by the underlying agreements, such as physical safety, emergency aid and measures that create employment for them. For this sake, the cooperation between national entities and international donors is of importance.

The first phase, disarmament, pursues not only the handover of weapons of a specific group but by that the larger goal to diminish the number of weapons in a given society. In order to achieve that, the registry, collection and destruction of arms are necessary elements of this

³⁶ Among other UNDP elaborated standards for DDR programs: <http://www.unddr.org/iddrs.aspx> (last visited: 2013/10/16)

phase. (Douglas et al. 2004: 29ff) Disarmament in the framework of a DDR process usually focuses on weapons in possession of combatants and not all weapons that exist in a given society. Despite this limited scope, many disarmament procedures suffer from wrong information about the quantity of weapons and the fact that old weapons are handed over, while the modern are kept in secret. (Swedish Ministry of Foreign Affairs 2006: 15)

Demobilization is about disbanding an armed group either individually or collectively. The combatants are registered, medically screened and prepared to return to civilian life, while concentrated in a specific area. There, a need assessment is undertaken to adjust the reintegration programs to the educational and professional level of the combatants. Ideally, this is done in a differentiated way of addressing the needs of a variety of groups such as men, women and minors. (Douglas et al. 2004: 44f) In the Colombian case there has been significant debate about the scope of demobilization in so far as the paramilitaries did not only consist of armed actors but created civilian political and economic structures that nurtured their armed activities, as was analyzed before.

The so-called discharge-phase (Douglas et al. 2004: 60), meaning the transition between demobilization and the return to civilian life is one of the most critical because the ex-combatant then realizes that his/her security-net, i.e. the unit, is not there anymore. Safety and the provision of basic goods may ease this recognition. With regard to the terminology it is possible to distinguish between a “transitional reintegration” or reinsertion and a “sustainable reintegration”. While the former focuses on the immediate, material needs of an ex-combatant and the assistance in humanitarian matters in the first weeks, the latter addresses the long-term perspective. (Swedish Ministry of Foreign Affairs 2006: 25)

The reintegration into civilian life is obviously a very challenging economic and social process. At the beginning the ex-combatant realizes that society has changed and that reintegration depends on adapting oneself to new circumstances. Furthermore, the requirements of the economic survival, including professional qualifications, and the stigmatization as a member of an armed actor constitute the main challenges in this phase. During reintegration the focus of the efforts shifts from the individual to the community level. It is the community that should be sensitized to receive former combatants, and, ideally, the skill set of him/her should fit the needs of the community. Government investment in a community’s infrastructure may facilitate the process; the reintegration of former combatants is one element of a comprehensive

strategy with the goal to reconstruct and recover the community. At the same moment, the political reintegration, i.e. the opportunity for the ex-combatant to participate politically, increases the ex-combatant's stake in the community. The link between DDR and transitional justice and reconciliation is highlighted in order to increase trust in the institutions and the legitimacy of the process. Since DDR is directed toward contributing to peace, the justice dimension cannot be neglected. In this regard, sequencing is of utmost importance in order not to create obstacles for future justice endeavors through false promises in the DDR process. (Caramés 2006: 2f; Douglas et al. 2004: 65ff; Swedish Ministry of Foreign Affairs 2006: 27ff)

A DDR process is, therefore, linked to the short-term goal of violence reduction and the long-term goals of peacebuilding and development. It is, therefore, seen as an element of a larger picture, which requires a comprehensive effort regarding the planning and coordination of activities. The Stockholm Initiative on DDR, however, considers that DDR as such is mainly directed towards the objectives of security and stability. This narrower view implies a more manageable approach than overloading DDR with the goals of societal transformations. (Swedish Ministry of Foreign Affairs 2006: 14f)

3.2.4.2. DDR in Colombia

Before going into the details of the paramilitaries' demobilization, I will briefly describe relevant features of similar processes in the past. This overview will show that past demobilization policies suffered from severe shortcomings, both with regard to safety of the former combatants and accountability for what they had done before. These experiences certainly created expectations towards similar processes in the future. However, the international environment and the capacities of the internal and external civil society had changed.

1953: In 1948, the liberal politician Jorge Eliécer Gaitán was killed, which provoked important uprisings in the country. The Conservative government with the support of the police seized the opportunity and launched attacks against the Liberals. In several parts of the country guerrilla units were organized in defense against these attacks.

The guerrilla offered negotiations to the Urdaneta government, which he refused. Subsequently, the armed forces took control of the country under the leadership of General Gustavo Rojas Pinilla. Within a short time, the different guerrilla groups that countrywide

counted 6,500 fighters demobilized. However, factions of the liberal guerrilla and the communist guerrilla did not formerly demobilize but remained in their armed struggle and converted themselves into rural self-defense forces.

This first experience of collective demobilization was characterized by its incompleteness and its lack of accountability for the acts committed in the past. It also showed serious shortcomings of the reintegration programs and lack of protection. One of the most important former guerrilla leaders, Guadalupe Salcedo, for example, was killed in 1957, as were others in these years. Interestingly, already then peace virtually consisted in demobilizing armed actors but not in structural transformations. (Vargas 1992: 141f; Villaraga 2006: 19-21)

1958: Given the excesses of the military government, the Liberal and Conservative leaders, Alberto Lleras and Laureano Gómez respectively, signed the Pacts of Benidorm and Sitges (Spain) in order to reach a political agreement that would be called *Frente Nacional* (National Front) later. A transitional military junta took over and refrained from further attacking the guerrillas. This facilitated the demobilization of several guerrilla units. However, the surging phenomenon of *bandolerismo* (inadequately translated as banditry) brought further atrocities to the rural areas.

The National Front tried to impose a regime of reconciliation based on collective amnesia. Neither the causes for the atrocities nor the perpetrators should be investigated, which initiated a chain of impunity and amnesties. Despite the lack of political opposition, not everyone shared this position towards the past. In 1962, the important work by Orlando Vals Borda, Monseñor Germán Guzmán Campo and Eduardo Umaña Luna on “Violence in Colombia” was published; this two-volume analysis shares important characteristics with contemporary reports of truth commissions. (Villaraga 2006: 21f)

1984: In 1982, President Belisario Betancur achieved the approval of Law 35 that provided the rebels with general amnesties and advanced a constitutional reform that led to the popular election of mayors. These amnesties were accompanied by the provision of land and credits for those who decided to demobilize. Furthermore, in 1982 the government started the “Plan of Rehabilitation” that promoted public investment in violence-affected regions of the country.

In 1984, the government signed several agreements with the FARC, the M-19 and the EPL. While the first led to the creation of the *Unión Patriótica* (Patriotic Union), a left-wing

party that would later gain majorities in several departments, the two latter insisted on the establishment of a Roundtable of National Dialogue. Given the resistance of the Congress and the economic entities, these initiatives failed, as did the Commission of Verification of the cease-fire. The spokesman of the EPL, Oscar Calvo, was assassinated, that of the M-19, Antonio Navarro, suffered an attack on his life. In the end, the M-19 decided to take the Palace of Justice, which led to the terrible intervention of the armed forces that resulted in the death of many high-court judges. Obviously, the cease-fire with the EPL and the M-19 came to an end, while the FARC signed a Protocol of Ratification with the Barco government in 1986. After several incidents, however, the FARC resumed military action and founded the *Coordinadora Nacional Guerrillera Simón Bolívar* (National Guerrilla Coordination Simón Bolívar) in 1987 that included FARC, ELN, EPL, PRT³⁷, MAQL³⁸ and *Mir Patria Libre*³⁹.

The balance of this reintegration attempt was rather discouraging. Around 70 leaders of the guerrilla groups were assassinated during the process, many had to leave the country due to threats on their lives. The most traumatic result was the systematic persecution and assassination of members of the *Unión Patriótica* that was founded in 1985 as a means for the political integration of the FARC. Despite the guarantees, the state did not protect the leaders nor did it prosecute the perpetrators of the violent acts. (Villaraga 2006: 22-25)

1990: Towards the end of the 1980s the country experienced a wave of violence due to the confrontation between the state and the guerrilla groups, the paramilitary activities and the bloody terrorism of the drug cartels that combated the clauses that would allow their extradition to the U.S.

Given this situation, several sectors of society, among them academics and political parties, asked the president to initiate negotiations with the guerrilla. The M-19 decided to start direct negotiations with the government, thus entering in disagreement with the members of the before-mentioned *Coordinadora*. After several partial agreements, the representatives of M-19, the government, political parties and social organizations reached a final treaty that included a number of legislative initiatives, measures to facilitate their reintegration and the recognition of the M-19 as a political party. Furthermore, they enjoyed an amnesty based on Law 77 of 1989

³⁷ Partido Revolucionario de Trabajadores de Colombia (Revolutionary Workers' Party of Colombia)

³⁸ *Movimiento Armado Quintín Lame* (Armed Movement Quintín Lame): 1984 founded indigenous guerrilla

³⁹ *Movimiento de Integración Regional – Patria Libre* (Regional Integration Movement – Free Fatherland)

that excluded pardons for “homicides outside combat and ferocious and barbaric acts”. So it was not an unconditional amnesty any more. (Villaraga 2006: 42)

Around 800 members demobilized and entered political life despite the assassination of their leader Carlos Pizarro. They founded the *Alianza Democrática M-19* (Democratic Alliance M-19, AD M-19) that won a large representation in the National Constitutional Assembly that elaborated the 1991 constitution. Later it lost its popularity and disappeared in 1998. However, many political representatives such as Antonio Navarro and the current mayor of Bogotá, Gustavo Petro, continued in politics and became important members of the left party *Polo Democrático* (PD). (Guáqueta 2007: 421f)

Since the M-19 is probably the most notable example for a process of political reintegration and has been controversially discussed during the paramilitary demobilization, it is worthwhile to immerse oneself more into the circumstances of their demobilization in 1990. This was a moment of national crisis given the intensity of violence and the visible incapacity of the state to tackle it and provide services. The society was, thus, prepared to try new ways to transform politics. The Constitution of 1991 was the most tangible result, and the AD M-19's participation in it was the evidence for the willingness to open up political space. Furthermore, the participation in the armed struggle was considered a legitimate expression of underlying grievances, which later would change dramatically by emphasizing the economic benefits of rebels and labeling them terrorists.

The way, in which the peace negotiations between the government under President Virgilio Barco and the M-19 were held, contributed to the legitimacy of the process. In public, the M-19 achieved the image of a group that is committed to peace and democracy by agreeing to painful concessions during the negotiations. In exchange, most of the combatants received full pardons despite the above-mentioned restrictions for about three percent of them. Their acts were mainly considered political crimes that were justified given the deficiencies of the state and the underlying grievances. Additionally, at that time human rights norms had not been so prominent on the agenda yet. The virtual absence of international actors during the negotiations further facilitated the exercise of leniency. However, it was also due to the political character of the M-19's actions. Instead of indiscriminate violence against the population or a radical discourse about the need to take over power and install a communist regime, M-19 concentrated on

symbolic actions with the objective to give voice to those who are excluded by the rigid political system. (Guáqueta 2007: 421-427)

The political reintegration was mainly achieved through the possibility to create a political party, which was eased by granting it two seats for the legislative period of 1990 to 1994. Its charismatic leader, Carlos Pizarro, won considerable sympathy as a presidential candidate but was assassinated in April 1990. His substitute, Antonio Navarro, won a 12.5% in the vote. Later, the party achieved the second largest representation in the Constitutional Assembly and shaped the process significantly. Several electoral successes followed on the national and local levels. By 1998, however, the party's support faded away; one reason was the vagueness of the political content due to the attempt to forge alliances and avoid radicalism. Several representatives kept playing an important role in consolidating a political alternative on the left. (Guáqueta 2007: 428ff)

1991: The peak of violence during the presidential campaign in 1990 that cost the lives of three presidential candidates⁴⁰ led important sectors of the society to claim political change. In this context three guerrilla groups, the EPL, the PRT and the MQL negotiated their demobilization and participation in the Constitutional Assembly. Former members of the M-19, the EPL and the PRT founded the before mentioned new party, the AD M-19, while the MQL contributed to the creation of the *Alianza Social Indígena* (Social Indigenous Alliance, ASI). These demobilizations of around 2,500 combatants were accompanied by amnesties, economic projects for the excombatants and investments in the affected regions. The amnesties were based on the same restrictions as the previous related to the M-19 with the additional crime of kidnapping excluded. (Villaraga 2006: 26, 43)

In the same year there was an attempt to demobilize and reintegrate several paramilitary groups in the Magdalena Medio and the Urabá regions. Ariel Otero was the commander of those in the Magdalena Medio region who saw themselves in an increasingly difficult position given the government policies to prosecute their leaders for numerous atrocities committed by this group located around Puerto Boyacá. It is important to remember that the *Autodefensas Campesinas del Magdalena Medio* (Rural Self-Defense Forces of the Magdalena Medio Region, ACMM) had been created with the support of local politicians, landowners and particularly the Battalion *Bárbula* of the National Armed Forces against the FARC and were considered the

⁴⁰ Bernardo Jaramillo (UP), Carlos Pizarro (M-19) and Luis Carlos Galán (Liberals)

pioneers of paramilitarism in the country. While their maximum leader Ramón Isaza remained in illegality, Ariel Otero and some 200 combatants decided to leave the group. It was not an official demobilization process but rather a handover of weapons to the Armed Forces. The combatants enjoyed legal benefits and simply returned to their civilian lives. Several of them, including Ariel Otero, were assassinated afterwards.

The demobilization of guerrilla groups and the constitutional process brought certain distension with regard to the armed conflict. This facilitated regional talks and partial demobilizations of paramilitary groups, for example in the Urabá region, the center of the influence of the Castaño-family. (Villaraga 2006: 27f)

In addition to these collective there were also partial demobilizations. Despite the negotiations between the guerrillas FARC and ELN and the government in Caracas, they did not achieve an agreement. In 1992, therefore, the hostilities reached another peak. In this context a splinter group of the ELN, the *Corriente de Renovación Socialista* (Current of Socialist Renovation, CRS) began to negotiate their demobilization with the government. Despite the assassination of their leaders Enrique Buendía and Ricardo González in 1993, the negotiations ended successfully in 1994. Around 433 combatants demobilized under the conditions of amnesties, political participation in the Congress, reintegration projects and the creation of a National Human Rights Commission that coordinated activities of government officials and social organizations with international accompaniment.

Furthermore, splinter groups of the EPL finally demobilized. These consisted of members who had not demobilized with the main group in 1991 or rejoined armed units afterwards. They benefitted from legal privileges and reintegration programs. (Villaraga 2006: 28)

There were also partial agreements with militias in Medellín that were predominantly composed by excombatants of guerrilla groups. These processes were motivated by amnesties and the political participation on the local level but, nevertheless, experienced important levels of violence against their members. (Villaraga 2006: 29)

3.2.4.3. Lessons Learned

The balance of the demobilizations of the 1990s is rather mixed. While the armed organizations actually dissolved, there were several problems in the reintegration processes,

some of them having to do with the context of an ongoing armed conflict. Numerous leaders were assassinated, many of them by the other guerrilla groups. The income-generating projects did not resolve the economic needs of the excombatants and the initiatives by the national government were not sufficiently responded to by regional and local state actors. In addition to that, the national and international monitoring mechanisms limited themselves to account for the disarmament events but were not committed to the follow-up with regard to the implementation of the terms of the agreements. This would be different after the demobilization of the paramilitaries when the *Misión de Apoyo al Proceso de Paz en Colombia* (Support Mission for the Peace Process in Colombia, MAPP-OEA), the observation mission of the Organization of the American States (OAS), got the explicit mandate to keep monitoring the reintegration process. On the other hand, in the 1990s the demobilized actively participated in social and political life on different levels, particularly in favor of peace, social justice and basic rights. While around 1,000 of 5,000 in total were killed by state actors, paramilitaries and the guerrilla, only a minority of the demobilized returned to the armed struggle. (Guáqueta 2007: 418; Villaraga 2006: 29-31)

Thus, the protection of demobilized fighters is a permanent challenge for the state. This is partly due to the ongoing armed conflict, in which accounts are settled, but also to the lack of the state's determination to guarantee the well-being of the ex-combatants. It may be that the high number of partial demobilizations has also to do with these circumstances that create internal disagreements on the desirability of the demobilization.

An important factor was the intermediation between the demobilized and the state through corporations and foundations created by them. The organization *Corporación Nuevo Arco Iris* that was founded in the course of CRS's demobilization is by far the most consolidated and still contributes valuable analysis on the armed conflict. Interestingly, Colombian society accepted the political reintegration and active participation of the former guerrillas. This took different shapes such as journalism, NGOs, political parties or academic institutions and usually promoted human rights or social justice issues. (Guáqueta 2007: 419)

The Uribe government decided to terminate the reintegration programs and pressured the representatives of the demobilized guerrilla movements into signing "agreements of Punto Final". This endeavor was welcomed by these but caused a set of practical difficulties with regard to income-generating projects, the dissolution of credits or security-protocols. This is why

the *Asociación de Constructores de Paz* (Association of the Peacebuilders, Asopropaz) was created as a representative body of the demobilized in charge of the re-negotiations with the government. These negotiations resulted in several improvements such as the continuing health services for the war-injured and the ongoing security-program for the leaders. (Villaraga 2006: 53ff)

Another factor was the impossibility for the demobilized population to exercise their political rights. Given the intensification of the armed conflict, the political and social spaces for participation were increasingly restricted and finally limited to few urban areas. This means that alternative political projects had no opportunity to flourish (Villaraga 2006: 60-62)

Furthermore, by Decree 1385 of 1994 the government created the opportunity to encourage individual demobilizations granting the excombatants amnesties and economic benefits. Around 2,000 combatants of the guerrilla demobilized without formal negotiations. Sometimes the Armed Forces used these demobilized to advance counterinsurgency activities, which obviously did not further the cause of peacebuilding. However, this practice has also been applied after the paramilitary demobilization. (Villaraga 2006: 31, 43)

3.3. The Demobilization of the Paramilitaries

3.3.1. Introduction

With these historic precedents and insights in mind I will now analyze the process that is widely known as the “demobilization”. It is rather interesting that in the public debates or the local assessments of the DDR process with the paramilitaries it seemed as though it had taken place in a historic void. There has been almost no mention of similar processes in the past and certainly hardly any comparison made with them. This points to an ahistorical approach to the demobilization of the paramilitaries that would explain that several of the faults of the past were committed again.

After an overview of Uribe’s security priorities I will go into the phase of the negotiations between the Uribe government and the paramilitary leadership. These were held simultaneously to the official ceremonies that accompanied the demobilization of the units and took several years. Finally, I will address the critiques on the DDR process.

3.3.2. The “Democratic Security Policies”

The main goal of Uribe’s “democratic security policies” (*seguridad democrática*) was the strengthening of the state’s authority throughout the country, a strategy that required the reinforcement of military and police action against illegal groups. From the start and in compliance with his electoral campaign his main enemy was the FARC. Simultaneously, Uribe started negotiations with the AUC about their demobilization. The reduction of the illegal armed groups was an explicit goal of Uribe’s security policy. (Villaraga 2006: 32; ICG 2003; Leal 2011: 57)

Uribe’s government broke with several peace-related practices that previous governments had maintained despite backlashes: the creation of spaces for dialogue; the establishment of an agenda related to the causes of the conflict; programs of investment in afflicted regions; and strategies of national and international mediation. While not always working, there had been a consensus that peace policies were important priorities for the government, the institutional expression of which was the creation of the *Concejo Nacional de Paz* (National Peace Council, CNP) by Law 434 of 1998.

The Uribe government, on the contrary, gave priority to the intensification of war and the demobilization of the armed actors without addressing structural issues. Consequently, Uribe denied the existence of an internal armed conflict and rather preferred to speak about a terrorist threat for the democratic state, thus denying the political character of the guerrillas and putting them on the same footing as the paramilitaries. Among others, the former EPL-combatant and academic Álvaro Villaraga adamantly defends the right to rebellion and distinguishes it from the undifferentiated use of violence to create an atmosphere of terror, which is the main characteristic of terrorism. He, therefore, advocates a more careful language with regard to the terms terrorism, rebellion, sedition and the criminalization of social protest.

Furthermore, he attributes a social base to the FARC, which consists in the disenfranchised peasants in recently colonized regions where the state failed to show active presence. This is why, according to this author, the political agenda of *El Caguán*, i.e. the peace negotiations with the FARC under president Pastrana, was not a “historical error” as asserted by the Uribe government but a list of topics to resolve. (Villaraga 2006: 35-38, 40ff)

This preference for military might and authoritarian measures to retake control of the territory found its legislative manifestation in Legislative Act 223 (House of Representatives) / 015 (Senate) that defined restrictions on civil rights in order to push forward the war against terrorism. The justice system would have lost large parts of its independence, the Public Ministry was questioned in its scope, detentions, phone-interceptions and searches would have been eased significantly. While this act was declared unconstitutional by the Constitutional Court, it demonstrated the direction of Uribe's security-policies. (Villaraga 2006: 39)

Militarily, Uribe complemented *Plan Colombia* with *Plan Patriota* that included a major offensive against the FARC, particularly at their strongholds in the South. This inhospitable area facilitated the guerrilla's resistance, which halted the impact of the offensive until 2006. Since the defense ministry was in the hands of politicians who did not know sufficiently about military matters a number of changes of personnel were implemented in the first years of Uribe's presidency; it also showed that in reality it was him who decided on security matters. However, several initiatives that would have strengthened even more the dominance of security failed, for example the "Antiterrorist Statute" in 2003 that was declared unconstitutional by the Court. (Leal 2011: 58f)

3.3.3. The DDR Negotiations

Although the government called them peace-process, the negotiations with the AUC, named Ralito-process according to the area where they took place, suffered from a lack of transparency and the society's participation in it. On the one hand it became clear that the AUC had accumulated significant power that put them in a very strong negotiating position; on the other hand the civil society did not trust the president because of his record. Therefore, it did not come as a surprise that the entire process, particularly the question of how to punish the most important paramilitary representatives, has been very controversial. From the beginning, the secrecy of the negotiations reduced the legitimacy of their results. The paramilitary leaders pursued their main goals: not to spend a single day in prison, not to be extradited to the U.S. and to maintain a large share of their illegally acquired goods. (Gómez Isa 2010: 192) Their relation to the drug business, however, was the center-piece of Washington's interest in the process. This

also played an important role in the decision to include the AUC in the U.S. terrorist list. (Leal 2011: 57)

The formal initiation of the negotiations was the declaration of the cease of hostilities, the so-called *Declaración por la Paz de Colombia* (Declaration for Peace in Colombia), in December 2002 that, initially, most paramilitary groups complied with; however, with time the paramilitary abuses against the civilian population increased in intensity. (Leal 2011: 59) Subsequently, the government asked for the support of the Catholic Church and created the Exploratory Commission that elaborated a report with ten recommendations, among them the verification of the end of hostilities, the demobilization of these groups as the main objective of the negotiations, and the holding of the negotiations at a single table. (Villaraga 2006: 45; Guáqueta/Arias 2011: 476)

Based on the Agreement of Santa Fé de Ralito of July 15th 2003, in which the government and the AUC agreed on a demobilization process, the disarmament was implemented in public ceremonies during the following years (Pardo 2007: 53ff; Reed 2010: 91). Furthermore, it stated that the paramilitaries support the government's objective to create a Colombia without drugs and that the commanders would be concentrated in a specific zone. In exchange, the paramilitaries hoped that the recommendations of the exploratory mission to find alternative legal frameworks and to prioritize regions of paramilitary presence with regard to development and security would be fulfilled. (Guáqueta/Arias 2011: 477)

The first was the demobilization of the *Bloque Cacique Nutibara* in November 2003, a group in Medellín under the command of the notorious capo *Don Berna*. The city's reintegration effort was considered an example for the engagement of local authorities. However, there was also criticism referring to the almost exclusive focus attributed to the demobilized, while victims had been left aside for a long time.

On the whole, 39 ceremonies of collective demobilizations took place between November 2003 and August 2006, in which officially 31.671 combatants demobilized and 18.051 weapons were handed over. (Reed 2010: 91f)

At the beginning of 2004, President Uribe and the Secretary General of the Organization of American States (OAS), Colombia's ex-president César Gaviria, signed an agreement on the creation of an OAS mission to monitor the peace process in Colombia; this gave birth to the

before-mentioned MAPP/OEA mission. Its mandate was to support and verify the cease of hostilities and the implementation of the DDR process.

On May 13th of 2004, the second Ralito Agreement was signed. It defined the negotiation zone, in which the paramilitary leadership under *Salvatore Mancuso* concentrated. On July 1st, the negotiation table was formally inaugurated by the Peace Commissioner Luis Carlos Restrepo who in his speech defined the objectives of the negotiations: complete demobilization of the paramilitaries; compromise between justice and peace; end of illegal activities; monopoly of force for the state; end of hostilities; and national and international accompaniment. (quoted in Villaraga 2006: 46; Guáqueta/Arias 2011: 479f)

In this period the negotiations suffered a significant crisis for several reasons. First, there were many reports from different regions that credibly informed about the continuation of hostilities by the paramilitaries. Second, a wave of criticism reacted to the legislative negotiations on a legal framework for the demobilization. According to the critics, the rights to truth, justice and reparation were not considered by the governmental proposals. Third and probably most severely, the links between the paramilitaries and the drug-traffic became more and more evident, particularly when nine negotiators of the paramilitaries appeared on a list of people demanded for extradition by the U.S. Fourth, the lack of transparency of the negotiations was questioned by large sectors of the society and the media.

As mentioned before, the paramilitaries' link to the drug-business caused most disturbances. While the U.S. Attorney General John Ashcroft had already solicited the extradition of Carlos Castaño, *Salvatore Mancuso* and *Juan Carlos Sierra* for drug-related issues in 2002, his successor, Mary Lee Warren, did the same in May 2004 with regard to other paramilitary leaders. (Guáqueta/Arias 2011: 475) Ambassador William Wood expressed his belief that the paramilitaries have no political agenda but “narco-terrorism”, a statement that responded to the AUC's desire for a political status. Consequently, the U.S. policy pushed for strict legal terms for the paramilitaries, the extradition of the commanders, a strong role of the OAS mission and the exclusion of the paramilitaries from politics. (Guáqueta 2007: 441)

This agenda triggered an intense discussion about the meaning of “cease of hostilities”. The paramilitaries repeatedly denounced the persistent weakness of the state as a reason for their continuing fight. Virtually confirming this criticism, on September 5th president Uribe publicly

declared that the guerrilla had occupied territories that had previously been under paramilitary control.

Furthermore, the internal campaigns of extermination against dissident paramilitary units that were supported by the military resulted in bloody confrontations and the death of hundreds of paramilitaries.

In the last months of 2004, the government, the paramilitaries and the OAS invested efforts to accelerate the demobilization. However, the important issues of further recruitment and the efficient monitoring of the hostilities were not resolved. The question of the end of hostilities had been certainly complicated by the failure to demand a concentration of all forces in certain regions, not only of the negotiating leadership. (Villaraga 2006: 44-48; Leal 2011: 59f)

Between November 2004 and February 2005 eight groups demobilized under an already established procedure: they concentrated in a specific zone for three months where they were registered and their identities verified. After enjoying basic medical service, they could return to their preferred municipalities, while they remained enrolled in the reintegration programs for the following 18 months. They would receive a monthly stipend, courses in democracy and human rights, vocational training and would remain in permanent contact with psychologists and social workers. Furthermore, the idea was to create large income-generating projects that would help to sustain the demobilized. Later the government extended the benefits in time in accordance with the needs. (Guáqueta/Arias 2011: 481f)

After the approval of the Justice and Peace Law in June 2005, additional units demobilized. The participation of *Don Berna*, however, caused repeated public debates about the legitimacy of the negotiations. In May 2005, it was established that he had been responsible for the assassination of Orlando Benítez, a representative of the Córdoba state in April 2005. This led to his imprisonment. However, through negotiations it was decided that he remained in the Justice and Peace process, thus keeping his legal privileges. In December 2005, the Supreme Court authorized the extradition of *Don Berna* to the U.S. for drug-related crimes. The government maintained the suspension of the extradition but transferred him to a high-security prison, which prompted the protest of the paramilitary leadership and a halt of the demobilizations. These obstacles caused the delay of the demobilizations, the termination of which would have been due by the end of 2005. Until April 2006, the last units finally demobilized. (Guáqueta/Arias 2011: 481-484)

In October 2006, Uribe was re-elected after a controversial procedure to change the constitution that originally prohibited a second term. In the same year the demobilization ceremonies culminated and important strategic changes were introduced to make the military operations more effective. Furthermore, a system of rewards for information and demobilizations was added to motivate members of the guerrilla to leave the armed struggle. The entire plan became known as *Plan Consolidación*. In 2008, it led to important successes in the war against the FARC; the military freed hostages, among them the former presidential candidate Ingrid Betancourt, and killed members of the guerrilla's secretariat. The attack on *Raúl Reyes* provoked a serious diplomatic crisis with Ecuador and Venezuela, which showed that Uribe was willing to subordinate other policies to those related to security. However, other events in the international sphere could not be neglected any longer; the discussion about the Free Trade Agreement in the U.S. that was blocked by the Democrats due to the human rights violations and particularly the repercussions of the so-called scandal of the *falsos positivos*, the killing of civilians by the military to obtain the before-mentioned material benefits for the elimination of "guerrilla fighters", led to serious consequences for the government's international reputation. Uribe responded as usual: he purged the military and continued to appear as the problem-solver instead of the responsible for security policies that caused such developments. In November 2012, the attorney-general's office was investigating 1,726 cases of extrajudicial killings by the armed forces since 1985. From January to November 2012, 70 members of the armed forces were sentenced for these crimes. (ICG 2013: 28)

Despite the setbacks for the guerrilla, it maintained its potential to cause harm, though diminished in its offensive capacities. This required a change in the strategy and the guerrilla's incorporation into a political approach that goes beyond mere repression. (Leal 2011: 64-66)

3.3.4. Critique of the DDR Process

The Stockholm Initiative on DDR emphasizes the need to obtain a maximum of information about the combatants and the "opportunity structure ... into which former combatants would be absorbed, as well as the international and national institutional capacity to plan and implement DDR programmes." (Swedish Ministry of Foreign Affairs 2006: 17). As described in the following, none of these aspects had been researched during the negotiations

with the paramilitaries, which resulted in a lack of accompaniment of the combatants and the communities in the starting phase of the process.

DDR is a very complex endeavor, which in Colombia is aggravated by the fact that the armed conflict has gone on despite the demobilization of one group. As a consequence, in addition to the usual issues of economic and social reintegration there were security concerns to resolve and the coexistence between victims and perpetrators to organize. This could not be handled by the previous institutional design that was in charge of individual demobilizations. The process with the paramilitaries that ended in 2006 virtually took place without having created a new institutional framework that had the capacities and resources to tackle the needs of around 32,000 demobilized. Only in September 2006, the Office of the High Commissioner for the Reintegration (*Alta Consejería para la Reintegración*, ACR) was created by presidential Decree 3043. This was by far too late given the fact that excombatants need a comprehensive accompaniment particularly in the first weeks after their demobilization. Furthermore, the lack of attention had already led to a high rate of re-incidence into violence, to considerable numbers of assassinated excombatants and to an adverse stigmatization of them as being unwilling to reintegrate. Therefore, both the government and the paramilitary leadership neglected the issue of reintegration and contributed to its partial failure by omitting the ground-rules for its successful implementation.

The initial exclusive focus of the ACR on the excombatants by not taking into account the social environment where they should reintegrate into also led to the dissatisfaction of communities that had suffered from paramilitary violence without ever receiving the State's attention. Thus, the multiple economic and educational opportunities for the excombatants and the simultaneous reduced interest for the victims were perceived as unjust. This together with the intransparent negotiations and the delicate security situation increased even more the people's disaffection with the demobilization process.

Very late, the ACR reacted to that by creating a community-unit that complemented the excombatant-focused approach by organizing community events, promoting joint activities of the excombatants with the civilian population and even by encouraging acts of reconciliation that usually consisted of public media events in which excombatants asked for forgiveness and offered some kind of reparation to the victims.

In the first years of DDR similar acts had usually been organized without the participation of the victims and had certainly not addressed their needs to know the circumstances of the crime and to perceive an effort for justice. The term “reconciliation” that was used for such events increasingly became hollow. One of the “highlights” I personally witnessed in this context took place in Puerto Berrío where in October 2006 the first “Week for the Victims” was organized in order to remember and honor them. The local association of the demobilized almost kidnapped the event by distributing leaflets that presented them as the organizers; then they took the stage and practically imposed a discourse of reconciliation and forgiveness on the startled victims.

Another example of “reconciliation” in the city of Barrancabermeja was the transfer by former paramilitaries of illegally seized buildings to the victims, obviously as a tangible sign of repentance and reconciliation. Victims had not participated in the design of the event. Later it turned out that the buildings were highly indebted, and the debts passed over to the victims. These and other activities shaped the understanding and interpretation the term reconciliation received at this time, making understandable the distrust of the communities in the ACR’s initiatives later.

Furthermore, the demobilization process raised strong doubts about its effectiveness. Civil society organizations have often criticized the fact that before the ceremonies the AUC had recruited poor youth to show up as paramilitaries, “demobilize” and, subsequently, enjoy the stipend, while the real paramilitaries kept their weapons and maintained themselves in illegality. According to these sources, the number of actual demobilized was far lower than the official figure of 31,671⁴¹, a number that doubled or even tripled (Guáqueta/Arias 2011: 476) the government’s initial estimations. (Leal 2011: 62)

The debate about the so-called *bacrim* (*bandas criminales*, criminal gangs) seems to give some credit to these claims, given the fact that most of their members were former paramilitaries (Semana 2009). The discrepancy between the government’s estimations and the actual number of demobilized may be explained by normal recruitment in the time-span between 2003 and 2006, the “strategic recruitment” during the negotiations to inflate the numbers, the inclusion of non-armed members of the paramilitaries such as informants, drivers or messengers and the inclusion of its social base to award their services. (Guáqueta/Arias 2011: 476)

⁴¹ According to the then Peace Commissioner Luis Carlos Restrepo quoted in Gómez Isa (2010): 191f (footnote 19)

Immediately after the demobilization, communities complained about the *Águilas Negras* (Black Eagles) and other illegal organizations. Even the *Comisión Nacional de Reparación y Reconciliación* (National Reparation and Reconciliation Commission, CNRR) found in its report (CNRR 2007) that there were around 34 new structures with up to 5,000 armed members. It has been controversially debated, whether these structures responded to a “recycling” of the demobilized combatants or to new recruitment. Probably it was a combination of both with the aggravation that mid-level commanders have never demobilized and now lead these groups. In the 2007 local elections it became clear that paramilitary structures still exercised significant influence in several regions. (Guáqueta/Arias 2011: 471f)

These *bacrim* were even considered the major threat to the implementation of the 2011 regional and local elections. Due to their interest in drug traffic they were mainly concentrated in drug producing areas and strategic corridors. The term *bacrim* has been controversially debated given their link to former paramilitary groups, both in strategy and in personnel. Therefore, some would prefer to call them neo-paramilitaries. In any case, they were increasing in numbers at a remarkable pace. (ICG 2011: 9ff)

Several of these new actors such as the *Organización Nueva Generación* (New Generation Organization, ONG) in Nariño apply the same repressive methods as the AUC. These groups have no longer ideological aspirations, are focused on the drug trade and even enter alliances with the guerrilla whenever deemed necessary. The dispute for territorial control between the diverse groups including the guerrilla has increased the murder rates significantly. Their drug-related interests do not mean that there are no links with state actors any more. The powerful *Don Mario* had obvious relations with Guillermo Valencia Cossio, the main prosecutor of Medellín and brother of the then Minister of Interior. (Adams 2011: 83-85) Adam's conclusion that there are no more paramilitaries and only drug traffickers (Adams 2011: 82) almost contradicts his own assumption that the paramilitaries of the AUC in large part consisted of capos. Independently of the name one attributes to these phenomena, the methodology, the financial interests and the links to the establishment are in line with the paramilitary tradition.

3.3.5. Summary

The DDR process of the paramilitaries demonstrated that the historical lessons have not been learned and that the lack of transparency of the negotiations between the government and the paramilitary leaders caused significant distrust. Thus, there are several observations to highlight:

First, the DDR process was not well prepared, which was reflected by the lack of an institutional framework that could have accompanied the process right from the start.

Second, the initial focus on the individual excombatant left out the environment, in which he/she would reintegrate. Thus, the respective community, the victims and the population at large felt that the demobilized received rewards for their acts, while the victims did not receive any recognition.

Third, this latter remark leads to the assumption that transitional justice and DDR are necessarily interlinked and provide each other with legitimacy.

Fourth, the emergence of “new” criminal organizations that have been nourished by excombatants of the paramilitaries either suggests that the positive incentives to return to civilian life were not sufficiently attractive or that the security situation and the threats of these groups convinced many demobilized to join them.

Fifth, the multiplication of these actors also shows that the approach to view the demobilization of armed actors in isolation from structural considerations such as the concentration of land and the disparities in the income distribution is highly deficient.

Sixth, the government policies on DDR, however, showed a certain degree of flexibility and institutional learning given the re-design of the ACR in order to add a unit that specifically addresses the community environment of reintegration.

The next section is dedicated to the debates on the transitional justice framework that mainly consisted of the Justice and Peace Law of 2005. This was preceded by governmental initiatives that had the purpose to limit the paramilitaries’ accountability to a minimum and to deny the role of the Colombian state in the creation and support of these armed actors. In the end, undesired side-effects of the law allow to attribute several positive developments in the country

to its implementation, particularly regarding the massive contribution to truth. The Victims' Law of 2011 with its focus on victims' rights, finally, complemented the first law.

3.4. The Transitional Justice Framework

3.4.1. Introduction

As pointed out in the first chapter, transitional justice refers to the actual instruments applied in a given historical context. In this case it addresses the question of how the demobilized AUC members have to atone for their acts, how the victims' rights to truth, reparation and justice are complied with, and how society as a whole is transformed in order to prevent a recurrence of the atrocities. These instruments will also be evaluated, in hindsight, according to their contribution to these objectives.

The previous sections were about the negotiations on the demobilization of the paramilitary groups and its implementation. Most noteworthy was the analysis of the political and social environment that showed significant continuities despite the term "transition" that was frequently used in debates about the legal framework. The unchanged security-situation, the dramatic increase in illegal groups, the blatant political crisis that emerged from the fact that around 35% of the Members of Congress had direct links with the paramilitaries and, therefore, had to resign and the obvious shortcomings regarding the civilian oversight of the military turned out to be symptoms of structural deficiencies that were not addressed by the DDR process or the legal framework. Unlike the conceptual chapters that highlighted a systemic view of conflict and peacebuilding, the narrow peace concept understood as disarming illegal groups rather contrasts with the transformative character of reconciliation and the pre-requisites for a stable peace. However, one may add that it is difficult to perceive a transition at the very moment. It may be that in 20 years from now the time from 2002 to 2011 will be called a transition, as the Constitution of 1991 is now characterized as a starting point for political change. This notwithstanding, politics is also about perceptions, and a transitional justice framework requires legitimacy that largely depends on the perception of change or continuity.

In this context I will shed some light into the opposing views on the term transition, bearing in mind that my own assumption is that the implementation of a transitional justice framework may lead to a transition, even though it is not based on one. This relies on the fact

that every legal act has desired and undesired consequences and its own dynamics that cannot be fully controlled by the government. This happened in the case of Colombia where much more truth and many more trials than imagined and officially desired resulted from the initially very weak Justice and Peace Law.

3.4.2. Is there a Transition?

The transition from war to peace is not easy to define due to the lack of a well-established transitional moment. (Lyons 2010: 18) This results in debates about the legitimacy of special transitional justice procedures to deal with those who committed atrocities. Those who refuse to speak of a transition, point to the lack of a real change in everyday life, particularly in the rural areas. In addition, they are suspicious about the persistence of the political, economic and social structures of the paramilitaries. In the end, there are too few changes to speak of a transition according to these voices (Diaz 2008: 195ff). In a broader perspective, however, the main argument is that the armed conflict is still ongoing, that there are no negotiations with other actors, thus creating a situation of a “fragmented peace”. (Uprimny/Saffon/Botero/Restrepo 2006: 14)

For those who consider that there is an actual transition, transitional instruments are justified in order to prevent future victims. The entire demobilization process of the paramilitaries has the goal of taking out huge numbers of fighters and, thus, reducing the risk of further civilian victims. They also assert that the current transitional justice instruments constitute a major improvement in comparison to previous efforts that resulted in amnesties, such as the demobilization of the M-19 guerrilla group in the 1990s.

The last argument, however, is not convincing, given the fact that the demobilization of the M-19 was part of a political process that resulted in the Constitution of 1991, whereas the demobilization of the paramilitaries simply consisted of negotiating legal privileges for the fighters. Additionally, international standards have changed significantly compared to 1991. Considering the ad-hoc tribunals for Yugoslavia and Rwanda and the establishment of the International Criminal Court (ICC), the tolerance for amnesties has diminished (Robertson 1999). The “international script” of transitional justice insists on accountability for atrocities, such as those committed by the paramilitaries. (Cavallaro/Albuja 2008: 124f)

Despite the lack of a clear transition, the vocabulary of transitional justice has been widely accepted. This has several reasons. First, the victims' rights to truth, justice, reparation and non-repetition have their origins in ethics and are not repudiated easily. Second, transitional justice is often defined by its objectives, as the before-mentioned UN definition demonstrates. Both the victims' rights and the goals of justice and reconciliation have so many meanings that proponents and detractors of a transition in Colombia are able to share them. Lecombe, therefore, talks about an "ambiguous consensus" on transitional justice that allows it to adapt to diverse political and cultural contexts. (Lecombe 2010: 215)

In the Colombian case it is also noteworthy that in the beginning transitional justice was not used in relation with human rights violations committed by the state, as is usually the case. The transitional justice instruments were introduced at the occasion of the paramilitary demobilization and addressed crimes committed by them and other illegal actors. (Lyons 2010: 19)

For the leader of the "Movement of Victims of State Crimes" (*Movice*), Iván Cepeda, however, the struggle against impunity promoted by the instruments of transitional justice should include five components: 1) satisfactory standards of justice that include the condemnation of the main perpetrators of the massive human rights violations; 2) the full dissolution of paramilitary structures and their economic and political base; 3) the non-repetition of the crimes against humanity; 4) a substantial change of the condition of the victims through comprehensive reparation with particular emphasis on land-restitution; and 5) the elaboration of a historic narrative that corresponds to the realities of violence. (Cepeda 2010: 227) This view offers concrete action steps that would convert the "ambiguous consensus" into a more cohesive strategy. Cepeda offers a definition of goals, the fulfillment of which would increase the legal framework's legitimacy among victims and their organizations.

3.4.3. The "Justice and Peace Law"

3.4.3.1. The Debate

For quite some time the legal framework for the demobilization was unclear. In 2002, Law 782/2002 was approved and further regulated by Decree 128/2002. Both had the objective to encourage demobilizations from all groups. While the law stipulated that everyone who

demobilized without having committed non-pardonable crimes, i.e. crimes against humanity, would not be indicted, the decree went further by changing the word “committed” into “being processed or condemned” for those crimes, which made a substantial difference. It also removed the requirement for the government to grant a political status to an armed actor before starting negotiations. (De Gamboa 2010: 62; Villaraga 2006: 43f; Leal 2011: 57; Uprimny 2011: 94f)

The government, however, searched for a different legal formula to promote the collective demobilization of the AUC and to offer privileges for those excluded from Law 782. Thus, in August 2003, Peace Commissioner Luis Carlos Restrepo launched a proposal for a *Ley de Alternatividad Penal* (Law for Alternative Punishment) that did not envisage prison terms for crimes against humanity or the involvement in the drug business. The alternative sanctions would have consisted in among others the disqualification for public office or the prohibition to carry weapons. With regard to crimes against humanity, the idea was to process the perpetrators according to ordinary law that foresees punishments up to 40 years for such crimes. After the verdict and based on the solicitation of the President, the judge would have had to suspend the prison term, first temporarily and afterwards permanently depending on the fulfillment of certain conditions. This project, however, could not be implemented due to massive national and international protest (Uprimny 2011: 94f; Pardo 2007: 60ff; De Gamboa 2010: 63).

The proposal, however, showed the government’s intention to comply with the before-mentioned goals of the paramilitaries: no prison, no extradition and the conservation of illegally acquired goods. This legal strategy was pursued in the guise of restorative justice and not so much of transitional justice, which changed afterwards given international criticism. It was then that both the government and the paramilitary leaders started to apply the discourse of balancing justice, peace and victims’ rights, i.e. the main contents of transitional justice. (Gómez Isa 2010: 192f)

In the second half of 2004, the negotiations with the AUC and the controversial appearance and apologetic discourse of the three AUC leaders, *Mancuso*, *Baez* and *Isaza* in Congress on July 28th of 2004 stimulated the debate on the legal framework. Nine projects of law were presented, though the discussion focused on the government project presented by Congressman Mario Uribe and an alternative project by Rafael Pardo and Gina Parody. The latter included stipulations that would have promoted the victims’ rights by adding legal instruments to implement them; the first gave much declaratory value to these rights without

contemplating the tools to make them reality. (De Gamboa 2010: 64f) The negotiations also showed the political power that the paramilitaries had achieved in Congress, which obviously reduced its legitimacy. Through their economic might that was based on land, forced displacement and extortion they managed to forge a dense political network of dependencies in local and regional politics. (Leal 2011: 61)

It was interesting to see how an “epistemic community” that consisted of like-minded human rights organizations, international organizations, state actors such as the Constitutional Court and political leaders such as the Liberal leader Rafael Pardo tried to influence the design of the legislation. They shared the belief that international norms and the victims’ rights are superior to other political considerations. From the beginning the main issues in the debate with the government circled around the definition of victims, the role of the state and the participation of victims in the process. Since the argument of the “epistemic community” emphasized the legal aspects, it suffered from a lack of mobilization. Its work to translate the technical and legal terms into the realities of the victims’ organizations was deficient, while the government managed to mobilize its allies around the demobilization of the paramilitaries and later the administrative reparation program that both were supported by the international community. (Lecombe 2010: 216ff)

However, the international reaction to the Colombian debate on the Justice and Peace Law left its marks on the process. According to Uprimny/Saffon transitional justice can serve as “virtuous restrictions” (Uprimny/Saffon 2009: 207) that define the limits of a peace process. Such a restriction certainly was the international legal system. On March 2nd of 2005, the prosecutor of the International Criminal Court (ICC), Luis Moreno Ocampo, sent a letter, in which he expressed his interest in the ongoing debate about the Justice and Peace Law. Furthermore, he asked for explanations regarding crimes against humanity committed since November 2002. That was the moment, when Colombia’s ratification of the Statute of Rome came into force. As well known, Colombia had not accepted the Court’s jurisdiction for war crimes (Art. 8 of the Statute) for a period of seven years, but this did not affect the crimes of genocide and against humanity, which is why Ocampo’s interest was quite relevant in 2005. He reiterated his concerns during his visit in Colombia in 2007. This is why Colombia needed a legal framework that satisfied the international standards. If the Court finds that the state is not

able or not willing to prosecute crimes against humanity, it would act according to its subsidiary competence.

Moreover, the crimes of the paramilitaries gained international attention because the Inter-American Court of Human Rights had repeatedly condemned the Colombian state for its omissions or active contributions to several massacres.⁴² (Gómez Isa 2010: 206f) Human rights organizations such as Human Rights Watch emphasized the need to efficiently dismantle the paramilitary structures and reminded the readers of the seriousness of the crimes committed by these units. Their reports shaped the public opinion in the international community and, thus, increased the pressure on the Colombian government to design a useful legal framework. (HRW 2005)

3.4.3.2. The Contents of the Law

In June 2005, Congress passed the government project as Law 975/2005, also called the Justice and Peace Law, which was intended to serve as a basis for the collective and individual demobilization of armed groups. According to this law, those who committed crimes against humanity and war crimes may apply for a special procedure that concedes them reduced prison terms in exchange for the whole truth about the candidate's acts, as well as reparation for the victims. The stipulated five to eight years for massacres, mutilations and the like seemed too mild to many detractors of the law; the government, on the contrary, defended it as being an internationally relevant example (Pizarro/Valencia 2009: 25). It must be reiterated that subsequent investigations and condemnations by the Supreme Court of dozens of members of Congress for their involvement with paramilitary groups further reduced the legitimacy of the law that benefitted the paramilitary leaders. (Reed 2010: 95)

Around 4,200 of the 31,000 demobilized paramilitaries applied for the special treatment under the law (Art. 12ff) because they had committed severe crimes. According to Law 782 of 2002, the remaining paramilitaries had to undergo a simple administrative procedure before returning to civil life. Yet, the Supreme Court stopped this practice by denying the demobilized paramilitaries the quality of "political criminals" and left thousands of demobilized in a judicial

⁴² A list of the cases against Colombia can be found at: http://www.corteidh.or.cr/pais.cfm?id_Pais=9 (23 August 2011)

limbo. Thus, they were neither pardoned nor subjected to the Justice and Peace procedure. (Lyons 2010: 19) This situation was later resolved by Law 1424/2010 that obliged those who had not committed crimes against humanity to contribute to the truth about the paramilitary crimes. (ICG 2013: 6)

The before-mentioned 13% of the demobilized have participated in proceedings that start with the so-called *versiones libres* (voluntary declarations, Art. 17) about their involvement in illegal activities. Provided that they submit the whole truth and are willing to make reparations to their victims, they receive reduced prison terms.

However, the version approved in Congress had left open the possibility to cover up crimes and still get the reduced prison term, even though they were discovered afterwards. Furthermore, the terms for the prosecutor to verify the statements of the candidates had been too short; with regard to the reparation of the victims the demobilized would have been only obliged to use illegally acquired goods and not all their assets. (Uprimny 2011: 98)

The law also enumerates the rights of the victims to truth and reparation. (Art. 6ff) While the former should be guaranteed by the paramilitaries' declarations, the victims may choose among different ways receive reparation. Although such reparation is part of the procedure under the Justice and Peace law, the *Fondo para la Reparación de las Víctimas* (Fund for the Reparation of the Victims) was established for cases with unidentifiable perpetrators. Finally, President Uribe issued Decree 1290/2008 that opened the possibility to victims to get administrative reparation without having to wait for the results of the protracted legal procedure.

In addition to its material and individual aspects, the law also characterizes reparation as symbolic and collective. Thus, groups or communities that were particularly harmed by violence could obtain reparations as a collective actor. This is of special relevance in the case of the left-wing party *Unión Patriótica* (Patriotic Union), which was exterminated by the paramilitaries.

Article 50 of the Law created a *Comisión Nacional de Reparación y Reconciliación* (National Commission for Reparation and Reconciliation, CNRR) that formally resembles Truth Commissions. In Article 51 it was charged with the monitoring of the DDR processes, the facilitation and evaluation of the reparation programs, the elaboration of a report on the emergence of the illegal armed groups and the promotion of activities directed towards reconciliation.

3.4.3.3. The Aftermath of the Law

There was an intense debate about the law that found its institutional manifestation in the confrontation between the President and the Supreme and Constitutional Courts.

The Constitutional Court in its decision of May 18th of 2006 (Sentence C-370) confirmed the constitutionality of the law and the principle of transitional justice for Colombia. This means that the reduction of punishment in exchange for the demobilization of armed actors and respect for the victims' rights was valid. However, it declared several stipulations unconstitutional because they did not fulfill the requirements of these rights. One of the most important modifications relates to the suppression of the characterization of the paramilitary activities as "sedition", which renewed the discussion about the alleged political quality of the paramilitaries' crimes. (Uprimny/Saffon 2006b: 203-206) This is very important with regard to the political reintegration of the paramilitaries, i.e. the opportunity to actively participate in politics. As described before, particularly the M-19 insisted on this political dimension in the course of the negotiations about their demobilization and was granted several political privileges in order to be able to participate in the 1990 elections.

Additionally, the Court annulled several articles of the law and, thus, guaranteed a better implementation of the victims' rights to truth, justice and reparation. Among other considerations, the time that paramilitaries had spent at the negotiation site in Ralito could no longer be deducted from the prescribed prison term; the judge had to mention the real prison term for the candidates of Justice and Peace before reducing it to five to eight years, which is symbolically important because it shows the severity of the crimes and the willingness of the state to sanction them; the demobilized now had to disclose the whole truth or risk losing their legal privileges even after the verdict; and they were obliged to make reparations using the totality of their assets and not only those acquired illegally. Indirectly this can be an important contribution to the dismantling of the economic power of the paramilitaries. With regard to the procedures, the Court facilitated the participation of the victims from the start by making available the relevant files for them and granted the prosecutors the necessary time to verify the candidate's declaration. In general, the Court's sentence made clear that the bestowal of legal benefits depends upon the fulfillment of certain conditions, the violation of which results in the suppression of the privileges. This sentence caused negative reactions, both from the President

and the paramilitary commanders. (Uprimny/Saffon 2006b: 208-230; Uprimny 2011: 102f; García/Revelo/Uprimny 2010: 324ff)

The Supreme Court, in turn, used declarations of the former paramilitaries as evidence against politicians accused of maintaining ties to illegal groups. (Lyons 2010: 21) This process known as *Parapolítica*, which will be described below, caused serious presidential criticism and even insults towards the Supreme Court. The majority of those accused belonged to the government coalition. Uribe's reaction was particularly strong when the Supreme Court stated in July 2007⁴³ that paramilitarism cannot be considered a "political crime" because its motivation was predominantly economic; even if it were political, its support for the existing system and the state deprives it of the political character. Therefore, contrary to the anti-systemic guerrilla groups the paramilitaries would not exercise the right to resistance, which is at the core of the "political crime". The consequence of this sentence was that around 29.000 demobilized paramilitaries could not benefit from the pardon of Law 782 that had been created for "political crimes". This meant that these people found themselves in a judicially unclear situation. It took until June 2009 (Law 1312/2009) to resolve this situation by granting them the "principle of opportunity", which suspends the implementation of the punishment under certain criteria, and to the before-mentioned Law 1424/2010 that regulates the demobilized' contribution to truth. Uribe, however, insinuated that the Court proved to be biased in favor of the guerrilla. (Uprimny 2011: 107f)

Additionally, the Inter-American Court of Human Rights issued its sentence about the massacre of La Rochela⁴⁴. Although it did not provide an opinion on the Justice and Peace Law, it maintained its long-standing doctrine⁴⁵ that it is not admissible to spare perpetrators of grave violations from being investigated or sanctioned. This is a clear statement against amnesties or pardons. (Uprimny 2011: 103f)

The government, however, tried its best to revert the Court's modifications of the law by issuing decrees that partly contradicted the Court's rulings. In its Decree 3391 of 2006, for example, it refused the state's responsibility to pay reparations if the demobilized were not able,

⁴³ Sala de Casación, sentence against Orlando César Caballero Montalvo on July 11, 2007 (Case: 26945): <http://www.defensoria.org.co/red/anexos/pdf/11/jur/jurisprudencia24.pdf> (last visited on March 5, 2014)

⁴⁴ Sentence of May 11, 2007 in the case Caso de la masacre de la Rochela contra Colombia

⁴⁵ It defined this doctrine in the famous *Caso Barrios Altos contra Peru* on March 14, 2001

asserting a lack of resources; it also revived the idea to discount the time the demobilized spent in the negotiation area from the final prison term. (De Gamboa 2010: 68; Uprimny 2011: 106f)

The fact that the law in its last version constitutes, at least on paper, an advance not only to the demobilization of the paramilitaries but also to the implementation of the victims' rights, owes not so much to governmental initiative but to the courageous decisions of the Courts and the protests of civil society actors and international organizations that gave a valuable practical example of the so-called "boomerang effect".⁴⁶ This describes the civil societies' option to recur to international entities when the national path is blocked. From the international sphere the issue at stake would then be brought back to the national level, obviously with more insistence and resources than before. (Keck/Sikking 1998).

However, many human rights organizations and several analysts consider the law a law of impunity. They point toward the rhetoric of transitional justice that in practice is not accompanied by action. The deficient dismantling of the paramilitary structures plays an important role in their argument. (Gómez Isa 2010: 195) Restrepo/Bagley, on the contrary, claim that after several years, many sectors that initially rejected the law came to appreciate it as an useful tool.

3.4.3.4. The Academic Debate on the Law

Uprimny/Saffon (2006a) argue that every transitional justice instrument has the double task of advancing the victims' rights to truth, justice and reparation and to guarantee that the atrocities will not happen again (non-repetition). An effective punishment of the perpetrators of crimes against humanity constitutes a social reproach for these atrocities and serves as the foundation for the non-repetition. Its symbolic value consists in the official rejection of these crimes and the will to base a new order on norms. Given the context of a negotiation with armed actors the scope of punishment will be limited to give incentives for their demobilization but there is still a difference between a limitation and full impunity. (Uprimny/Saffon 2006a: 177f)

In this regard, Restrepo/Bagley express a different argument emphasizing the need to apply a diverse set of measures in a transitional situation. They surprisingly perceived an over-emphasis on the punitive dimension of transitional justice in the law's implementation, while

⁴⁶ Compare Chapter 1.2.1.3.

other factors such as reparation and truth fell short of the expectations. According to the authors, a “complex conflict such as the Colombian requires multiple solutions”.⁴⁷ This opinion surprises because it is particularly the lack of punishment that has caused criticism. After more than seven years, the Justice and Peace process has produced only 14 verdicts (ICG 2013: 4); this is hardly an evidence for too much punishment. On the other hand, reparation programs and particularly the revelation of truth (*parapolítica*, private sector funding of the paramilitaries) significantly outnumbered the verdicts. The argument that the justice system has simply been overstretched may be true but in part because the government failed to allocate sufficient resources for the implementation of the law’s stipulations. Consequently, it is more a political than a question of capacity.

Another criticism was directed against the existence of a National Reparation and Reconciliation Commission (CNRR) in the context of an ongoing armed conflict. This may preclude the possibility of a future truth commission at a more appropriate time. Although the Commission has important tasks as mentioned above, these tasks do not correspond with the Commission’s authority. It is rather dependent on the good will of other institutions to receive the necessary information and their cooperation and, therefore, limited in its efficiency. (Uprimny/Saffon 2006a: 182f)

Despite the government’s goal to self-protect its interests and to avoid an analysis of the state’s role in the armed conflict, there are dynamics of transitional justice that cannot be controlled. They certainly constitute spaces of contest between several social actors who struggle about the nature and the scope of transitional justice in Colombia. (Lyons 2010: 26f)

This struggle has one important manifestation in the government’s lack of recognition of the state’s responsibility for the atrocities against the civilian population. This aspect may be seen as the cornerstone that attracts most criticism; for many it implies that the state has no interest in the truth, that reparation does not mean a real political will for change and that, as a consequence, the non-repetition is not guaranteed. Thus an apparently only symbolic element has an enormous impact on the transitional justice’s legitimacy. Given that a transition should at least eliminate the privileged position of the perpetrators in the institutional framework of a state, implement the victims’ rights and sanction the beneficiaries of the illegal activities, several authors come to the conclusion that the Justice and Peace law did not fulfill these expectations.

⁴⁷ Quoted in free translation from: Restrepo/Bagley 2011: 27

Quite on the contrary, according to these, the law further reinforced the inequalities between perpetrators and victims because of the discrepancy in resources available to both, the weakness of Colombia's penal judicial system that has been in charge of the investigation of the atrocities and the benefits for the perpetrators. (De Gamboa 2010: 73f)

Restrepo/Bagley, however, argue that during an ongoing conflict the state that defends its legitimate monopoly of force cannot equate itself with illegal actors. Consequently, the armed forces cannot be treated collectively like the former paramilitaries. Those who violated human rights and committed serious crimes should be sanctioned individually according to the ordinary justice that is competent for illegal activities of state agents, too. Furthermore, the state also responds materially in the case that former paramilitaries have no funds to repair their victims. This means that the state does assume its responsibility in various ways, though not explicitly. (Restrepo/Bagley 2011: 24-26) This argument does not convince because holding individual state agents accountable is one thing, while the other would be to admit institutional responsibility for actions and omissions by state institutions such as the armed forces, the justice system or other entities for the harm citizens suffered as a consequence. These are two completely different worldviews that clash: one that speaks of individual responsibility in an overall efficient and functioning system, and the other that assumes responsibility for systematic institutional failures of the state itself.

Reed points to the devaluation of the meaning of the victims' rights despite the discourse about their importance. He takes as an example for this the before-mentioned administrative reparation adopted by presidential Decree 1290 of 2008. International examples have shown that the way reparations are adopted and implemented influence how individual victims feel recognized as such. The promise to pay money in a potentially poor environment is in itself a challenge but if reparation is confined to this material aspect it does not fulfill the comprehensiveness of what reparation should be. It lacks the important symbolic element of the recognition of the atrocity.

Furthermore, according to Law 418 of 1997 the government is obliged to pay a humanitarian assistance for victims of violence. The administrative "reparation" is, therefore, a continuation of this practice under a different label. This significantly disturbs the process of re-dignifying the victims. "Humanitarian assistance is a temporary relief, while reparation should

contribute to the process of individual and social reconstruction.”⁴⁸ This is why reparation usually comes together with other measures of prevention, protection and humanitarian assistance for the victims.

Additionally, it is important to mention the tactics of some sectors of the government to neutralize the victims and the human rights organizations. Under the Uribe government they were often criticized as being “human rights fundamentalists” who by their insistence on the fulfillment of basic rights even perpetuate the conflict. So the focus shifted from the behavior of the perpetrators to that of the victims who allegedly did not contribute to reconciliation. Transitional justice, on the contrary, challenges this attitude and is meant to give voice to the victims. This is the pre-condition to diminish the illegal behavior in society. (Reed 2010: 108-113)

There is, however, a general criticism on the treatment of the paramilitaries that is related to their before-mentioned nature as a security force for illegal, drug-related interests. The application of transitional justice to legalize these activities and drug-lords like *Macaco* is one of the most controversial aspects of the law. Before and after the “demobilization” paramilitary groups exercised territorial control and served private ends. This obviously did not bother their relation with state-agents who used them for political objectives, as well. This combination of private and public interests makes an evaluation of the transitional justice instruments even more complicated. Several of the leaders recognized as paramilitary commanders had been notorious drug capos who “purchased” their inclusion in the negotiations with the government, particularly to avoid their extradition to the U.S. Among them were *Don Berna*, *Gordolindo*, *El Tuso*, *Hernán Giraldo* and others who had had a drug-history since the times of Pablo Escobar. (Reed 2010: 99ff; Villaraga 2006: 46)

Consequently, the Justice and Peace Law practically allows the inclusion of drug-related crimes, although it explicitly states that the demobilized group would only be considered if it was not created for the sake of illegal enrichment (Art. 10.5.). This side-effect is difficult to prove, and, in reality, it was sufficient to admit certain atrocities committed in paramilitary style to receive the benefits of the Justice and Peace Law. The involvement in the drug business could always be justified as a source of income to fund paramilitary activities. Given the importance of

⁴⁸ Quoted in free translation from: Reed 2010: 111

the drug business as an engine for the armed conflict, a broad discussion about the relation between transitional justice and these crimes would be desirable. (Reed 2010: 99ff)⁴⁹

In this context a comparative study by Alexandra Guáqueta on the topic of political reintegration is worth being mentioned. She traced back the respective developments related to the M-19 and the paramilitaries and concluded that there are four main elements that explain the difference in the acceptance of political participation between the two groups: the normative context; the nature of the group; the terms of the peace negotiations; and the practical dimensions of political participation.

The discussion about the political character of the paramilitaries was profoundly shaped by the involvement of its leaders in the drug business, which was shown at an earlier stage of this chapter, and the cruelty of their crimes and massacres. The massive wealth accumulated by the paramilitary leaders and their involvement in numerous forms of illegal enrichment distinguished them from the guerrillas. The intensification of the conflict and the multiplication of violent acts put punishment more prominently on the agenda and increased the threshold to reintegration into society as compared to the early 1990s. Additionally, both the human rights discourse and the respective institutions had taken firm roots in the Colombian state and society, which was also supported by national and international organizations. The international environment in general, particularly the U.S., the EU and the UN system was adamantly against leniency and insisted on a strict implementation of the Justice and Peace Law. Furthermore, the negotiations were considered flawed due to the perceived proximity of President Uribe to the paramilitaries. Unlike the negotiations with the M-19 described earlier there was no larger political process that would have allowed for a political participation of the paramilitaries afterwards despite their strong illegal presence in political institutions.

Furthermore, the fear of a “paramilitarization” of Colombian politics that was demonstrated by the *parapolítica*, i.e. the undermining of political institutions by the paramilitaries, closed the doors to legal political activity. In fact, for the 2006 elections the affected parties purged their candidate lists of demobilized paramilitaries and even of people who were only suspected to have links to the paramilitaries. This was a late reaction to the fact

⁴⁹ In the current peace negotiations with the FARC guerrilla, the cultivation of the coca leaf and the ensuing drug trade are on the agenda, thus recognizing their fundamental importance for sustainable peace.

that the paramilitaries had systematically influenced local politics by imposing their candidates and thus achieving control of around 11 of the 33 departments. (Guáqueta 2007: 434, 437ff)

Consequently, the discussion centered on the question whether the paramilitaries were disguised criminal organizations or political actors like the guerrilla groups. During the negotiations about the Justice and Peace Law and before paramilitary leaders had invested significant effort to present themselves as political and motivated by the state's failure to defend its citizens. By that they certainly hoped to benefit from the legal opportunities for political crimes. Guáqueta argues in favor of considering them political, though in a different sense than the guerrillas who opposed the political system and fought to establish a new order. "The political character of AUC stems from exercising power over important parts of the territory, mediating in disputes among inhabitants, providing security and regulating economic transactions." (Guáqueta 2007: 436) To a certain extent they established an alternative order and gained legitimacy through their administration.

The legal framework did not resolve the issue satisfactorily and remained ambiguous. On the one hand, demobilized paramilitaries were allowed to create NGOs, which they did in several regions, on the other hand, they were prohibited to create political parties. Furthermore, they were exempt from extradition, as long as they complied with certain rules, a privilege that had been applied to political actors. On the other hand, the Justice and Peace Law explicitly covered only groups that were not originally created for illicit enrichment. (Guáqueta 2007: 437)

Guáqueta expresses the interesting opinion that " ... the paramilitary may be better equipped to survive in politics than the M-19 was when it demobilized back in the early 1990s." (Guáqueta 2007: 446) By this she refers to the local networks created by the paramilitaries and the support base they enjoy in several regions. Thus, unlike the M-19 they were not new to politics. She argues that in the long run political reintegration would depend on a self-selection process, in which the more criminal elements are excluded from politics. At that moment, barring them from exercising legitimate power is likely to force them back into the sphere of illegality.

Conceptually, the Justice and Peace Law had several impacts on the meaning of transitional justice. As mentioned before, several groups with distinct interests (government and human rights organizations) used the term transitional justice for different ends. The

government's intentions to publicly show the application of international norms and its commitment to changing the situation became clear at the International Congress for DDR held in Cartagena in May 2009. This enormous event with hundreds of participants and the presence of all the relevant international actors offered a convenient stage for the government to introduce its "ambitious" transitional justice design as an international example. It also played with the feelings and in some cases ignorance of the international audience. Several demobilized members of armed actors presented themselves as victims of the circumstances and committed to peace. The fact that female members with tears in their eyes told the audience about their efforts in the process of reintegration and asked for help motivated several listeners to react with standing ovations. If they had known of the activities of at least one of them after her demobilization, as I do, they would have re-considered their enthusiasm. However, the goal to exclude the victims from speaking at the event and to show the government and the demobilized as the main actors of peace was completely fulfilled. Consequently, transitional justice and peace-building were virtually re-defined as a successful demobilization process. Topics such as justice, truth and reparation did not emerge and the distinction between the victims and perpetrators were blurred showing them singing together, obviously sponsored by the President's Office for Reintegration (ACR). In this context, it did not come as a surprise that the Uribe government showed no interest in advancing a Victims' Law.

The same procedure was repeated several times when civil society groups, international actors such as the EU, USAID, IOM and others were invited to big private meetings, several of which took place in costly resorts, to discuss the implementation of transitional justice. Only a few representatives of select civil society organizations obtained the right to speak, most space was dedicated to government representatives who skillfully presented their achievements, mainly through statistics.

Cepeda adds another reflection contrasting two models of justice, the one represented by the law ("justice for reconciliation") and the one he represents ("justice for "democracy"). The first model includes virtual impunity for those responsible for massive human rights violations, a historic interpretation without addressing the state's responsibility and humanitarian assistance sold as reparation. Reconciliation is imposed on the victims who remain in an underprivileged situation with regard to the perpetrators. The judicial investigations do not meet the requirements of systemic crimes and fail to address the involvement of the state. The underlying reason for

that is the persistence of the political and economic structures that sustained the paramilitary groups. Thus, Cepeda adopts the term “reconciliation” as it was used by the government and the ACR. It is obvious that the meaning of reconciliation significantly suffered under the narrow assumption that it consists of a simple act and not a long-lasting process.

The other model of justice, i.e. “justice for democracy”, is based on the impossibility that democracy strengthens itself by means of a process of false reconciliation. On the other hand, it is feasible that an authentic democratization results in real processes of reconciliation. This democratization would be based on the rights to truth, justice and reparation understood as transformative instruments. The victims would be recognized as political actors regaining their full citizenship. Given the atrocities they experienced they could contribute as actors for peace giving public testimony and, thus, participating in an effort of social pedagogy. This is why victims are crucial in breaking “chronic impunity” (Cepeda 2010: 231). This is in line with Movicé’s priority to politically empower the victims and create political platforms for them.

For Movicé a first step in the right direction would be an official recognition of the responsibility for criminal acts committed systematically by the state. This is important to understand the socio-political implications of the conflict. People were killed in order to eliminate the opposition, weakening the unions and displace communities for economic reasons.

Practical consequences of such a model of justice would be an alternative cadaster that illustrates the forced dispossession of land, citizen audiences that would provide space for communities to denounce violent acts that so far have not been investigated and to present projects of law that comply with the right to non-recurrence by completely dismantling the paramilitary structures. (Cepeda 2010: 230-232)

Gómez Isa, on the contrary, rightfully emphasizes that despite the deficiencies of the legal framework the emergence and fortification of victims’ organizations is a positive effect of the transitional justice instruments in Colombia. Although not intended at the beginning, the victims managed to put themselves at the center of the debate. Nowadays, it is unthinkable that debates about peace and justice take place without the participation of the numerous networks, organizations and initiatives of the victims. (Gómez Isa 2010: 199f)

They also advanced in designing strategies for truth, justice and reparation from below that often go beyond official initiatives. Here, the example of the community of Monterrey in the Southern part of the Bolívar department is an example of a community that after the

demobilization of the paramilitaries started a comprehensive process of creating new forms of community-organization, addressing basic needs such as food and designing a program of collective reparation. (Wlaschütz 2008a) This tendency is in line with a relatively recent stream of literature that looks at the development of norm based initiatives from below and their interaction with official processes and programs as shown in the first chapter. (Gómez Isa 2010: 201f; McEvoy/McGregor 2008)

Uprimny adds the question how it was possible that an alliance of human rights and victims' organizations, judges and sectors of the international community succeeded in significantly improving the legal framework considering the government's first draft in 2003 and referring to the before mentioned "epistemic community". It seemed rather unlikely due to the popularity of the Uribe government and the might of the paramilitaries but still it happened. The author argues that the victims' rights and the international standards against impunity had already achieved a dominant position that was impossible to break by the government. This resembles Kathryn Sikking's argument presented in the first chapter; there, the author discussed the emergence of a norm cascade to a point where it gained a critical mass and thus a self-sustaining momentum.⁵⁰

Furthermore, this alliance managed to convert these standards into relevant elements for the Colombian discussion and thus achieved public attention. With the help of international institutions, courts and sentences of the Colombian judicial system, these norms were ingrained in the debate and reality of Colombia. Consequently, the role of the Courts in Colombia was crucial and based on the sensitivity towards international standards and respect for human rights. Thus, they "disturbed" the agreements between the government and the paramilitaries and certainly introduced a dose of democratic transparency into these negotiations. (Uprimny 2011: 119-121)

On the whole, the transitional justice instruments and the participation of the victims define a framework, with which future peace processes in Colombia will have to comply. It will be very difficult to apply a narrower set of instruments with regard to truth, justice and reparation. (Gómez Isa 2010: 208)

Restrepo/Bagley enumerate several achievements of the demobilization of the paramilitaries and the ensuing legal framework. The first is rather arguable; it consists in the

⁵⁰ Compare Chapter 1.2.1.

assertion that the paramilitary structures demobilized, which resulted in a tangible reduction of violence in the country. This, as exposed before, is not entirely true. First, only the armed members of the paramilitaries demobilized and they did not do it entirely. Second, the reduction of violence can only be evaluated after observing the reintegration effort for several years. Organized crime, new/old groups such as the *Rastrojos*, the *Urabeños* or the *Águilas Negras* seem to be in line with the paramilitaries and even use the same tactics of social and territorial control. Third, it remains to be seen whether the political ramifications of the paramilitaries are really dismantled or only replaced by other illegal structures.

Their second point is that the main drug traffickers who had been occulted by the phenomenon of the paramilitaries were clearly exposed, which resulted in more clarity of the extent of the problem.

Third, the revelation of the links between politicians and paramilitaries, the so-called *parapolítica* can be described as an achievement, although there is still a lot to do.

Fourth, while the reintegration of former guerrilla combatants seems to be successful, the result with regard to the paramilitaries is mixed, as the emergence of the before-mentioned new groups shows.

The most important conclusion for them is to keep once established rules and not to impose too harsh conditions on former combatants. This may prevent the FARC from demobilizing in peace processes such as the current. (Restrepo/Bagley 2011: 29f)

3.4.3.5. The Impact of the Justice and Peace Law

The Justice and Peace Law was severely and rightfully criticized but had several unintended side-effects: the amount of truth that came up; the extradition of notorious paramilitary leaders to the U.S.; the assassination of thousands of demobilized paramilitaries; and the scandal caused by the analysis of the links between politicians and the paramilitary groups.

Of the 31,600 demobilized only around 4,200 applied for a treatment under Justice and Peace; this means that over 27,000 benefitted from the pardon according to Law 782. Only after several years of legal infighting the state decided to issue Law 1424/2010 that made them contribute to the truth. Furthermore, the resources of the prosecutor's office are too scarce to

investigate all the crimes and the allegations of the paramilitaries. (Uprimny 2011: 110f) The fact that by 2012 only 14 verdicts had been issued led to the adoption of Law 1592/2012 that attributed special priority to those in the “most responsible” category. This criterion of selectivity should lead to sentences that subsequently can be used against the subalterns of those commanders who orchestrated the most severe crimes. (ICG 2013: 4)

However, through several free declarations such as those of *HH* and *Mancuso* Colombia learnt about the cruelty of the crimes and the complicity of the armed forces. They also allowed for excavating numerous mass graves, identifying the victims and returning the remains to their relatives. This also helped to reverse the sometimes positive attitude towards the paramilitaries. (Uprimny 2011: 112ff) By December 2012 around 400,000 crimes had been acknowledged, 410,000 victims registered and 5,000 bodies recovered from mass graves. These figures indicate the monstrous level of violence over the past decades in Colombia. (ICG 2013: 5)

As mentioned, Article 50 of the law provided for the establishment of the *Comisión Nacional de Reparación y Reconciliación* (National Reparation and Reconciliation Commission, CNRR) in charge of the Vice-President. The Commission consisted of representatives of the government, the Public Prosecutor, the Ombudsperson and civil society. Its tasks included the observation of the demobilization effort, the promotion of reconciliation, the elaboration of individual and collective measures for reparation, and the historical analysis of crimes. The Commission utilized local offices in several regions of the country and is, consequently, able to get in direct contact with many victims.

Since in Colombia the armed conflict had still been ongoing, the Commission was the fruit of an “institutional transfer” to the Colombian reality (Lecombe 2010: 219) of Truth Commissions that in other countries had gained prominence. Its mandate, therefore, did not include the collection and diffusion of the “truth” by organizing public assemblies or identifying individual witnesses. The Commission’s internal structure with its five thematic areas justice, reparation, reconciliation, DDR and historic memory also shows a very interesting re-wording of the victims’ rights, from non-repetition into DDR and from truth into historic memory.

CNRR’s “historic memory” unit has attained public recognition for its analysis of the massacres of *Trujillo*, *Salado*, *Bojayá* and *La Rochela*, on which exhaustive reports were published. This group led by University professor Gonzalo Sanchez interpreted its mandate in such a way that it almost performed the role of a truth commission by basing its findings on the

declarations of victims. This shows that despite the narrow mandate with regard to truth it was possible to create some space for the victims' narratives and perform rather independent work. The reputation of its leader and the efficiency of its personnel made this contribution to truth possible and converted this unit into a "mechanism of empowerment for the victims". (Gómez Isa 2010: 202) The group was later re-named by the Victims' Law *Centro de Memoria Histórica* (Center for Historic Memory, CMH). It published a comprehensive analysis of the armed conflict and violence in July 2013, in which it presented the figure of 220,000 recognized assassinated victims, with many still in anonymity. (CMH 2013)

Politically, however, it seemed that the main planning and decisions on transitional justice took place outside the CNRR. Examples of this were the debates on the first version of the Victims' Law in 2009 and on the before-mentioned administrative reparation, a one-time payment for the victims of violence. In light of the very slow progress of the procedures under the Justice and Peace Law, President Uribe issued Decree 1290 in April 2008, thereby creating the opportunity for victims to receive money according to the degree of their victimization. As an example, a victim or his/her relative can receive 40 months' minimum wages, i.e. around 8,000 euros, in the case of assassination, disappearance or kidnapping.

A direct, though initially not intended, consequence of this law was the extradition of important paramilitary leaders to the U.S. Notorious commanders such as *Macaco*, *Mancuso*, *Jorge 40* and *Don Berna* were surprisingly extradited in May 2008. (Semana 2008) According to the government, they violated the stipulations of the Justice and Peace Law by committing criminal acts out of prison. It is to remember that the avoidance of extradition was one of the main objectives of the paramilitary leaders in the negotiations with the government. To achieve that, article 71 was added to the Justice and Peace Law that defined the membership to illegal armed groups as a political crime. Given that article 35 of the Constitution of 1991 prohibited the extradition of those who committed political crimes the plan was to create an impediment for extradition. In its sentence C-370/06, however, the Constitutional Court declared article 71 unconstitutional. In addition, the government had publicly declared that those paramilitaries who fulfilled the requirements of the law would not be extradited. So it came as a surprise when on May 13th of 2008, 14 leaders were sent to the U.S. (Gómez Isa 2010: 197f; Guáqueta/Arias 2011: 471)

This extradition caused intense debates due to the concern that the leaders would no longer contribute to the disclosure of truth. According to these critics, the government removed them just at the moment when they were about to reveal their links to the political and economic elite of the country. In contrast, it was claimed that in the U.S. they would be indicted only for drug-related crimes but not for crimes against humanity. (Reed 2010: 96)

This argument is not convincing because these commanders will spend significantly more time in prison than they were supposed to under the Justice and Peace framework. Furthermore, several of them only began to remember their past in the U.S., while in Colombia they had suffered from amnesia. Interestingly, paramilitary leaders and NGOs found themselves in an unlikely alliance; both criticized the extradition, the latter for the reasons just mentioned the first due to the fact that Uribe “betrayed” the tacit agreement reached in Ralito not to extradite them. (Restrepo/Bagley 2011: 19f)

However, Uprimny asks the important question why the leaders did not lose the privileges of Justice and Peace and were simply submitted to the ordinary penal law, which would have allowed for trying them in Colombia first and after their prison term extradite them to the U.S. In fact, the cooperation between the authorities in the U.S. and those in Colombia did not work well; most of the information delivered by the paramilitaries stayed in the U.S., which was severely criticized by the Supreme Court that conditioned further extraditions to the fulfillment of the victims’ rights (Uprimny 2011: 111f) This underlines the disturbance of the Justice and Peace procedures against the commanders despite the initial promise of the U.S. ambassador that the U.S. authorities would cooperate with their Colombian counterparts in this regard. (Leal 2011: 63)

On April 21st of 2009, *Don Berna* was sentenced to a prison term of more than 31 years and a financial sanction of around four million dollars in New York. His defense that the drug trade had the objective to fund the anti-communist struggle in Colombia did not convince the prosecutor. (Adams 2011: 80f)

Not directly linked to the law but still in relation to the efforts to come to terms with the past is another aspect that is worth mentioning: the *parapolítica*, the disclosure of the political supporters of paramilitarism. Several declarations of the demobilized paramilitaries, academics such as Claudia López and politicians like Gustavo Petro rendered outstanding service to the analysis of electoral manipulations in exchange for the political support of paramilitary leaders.

One member of Congress after another was either detained or subject to criminal investigations. “By February 2011, 121 members of Congress elected in 1998, 2002 and 2006 had come under investigation for alleged links to paramilitaries, 25 of whom have been sentenced”. (ICG 2011: 6) Though much slower, the regional and local levels also initiated their investigations of governors, local representatives and mayors involved with the paramilitaries. By 2010, the Justice and Peace authorities had passed evidence to the competent authorities about possible links with paramilitaries of 24 governors, 225 mayors and a significant number of local representatives. Furthermore, members of the armed forces were denounced for their cooperation with the paramilitaries and their active participation in massacres and other atrocities. (ICG 2011: 7; Leal 2011: 62)

The overwhelming majority of these representatives belonged to the parties of the governmental coalition such as the Conservative Party, *La U*, *Alas Equipo Colombia*, *Convergencia Ciudadana* and *Cambio Radical*. In addition, there were scandals involving the secret service *DAS*, the former director of which, Jorge Noguera, was seemingly involved in the assassination of trade unionists and members of the opposition in the Atlantic departments. These examples back the hypothesis that state institutions had been systematically infiltrated and transformed in favor of illegal interests (López 2010; Romero 2007).

On July 14th of 2011, President Santos introduced new legislation directed towards improving the mechanisms to impede the illegal actors’ influence on electoral politics. Statuary Law 1475 of 2011 regulates sanctions for parties that support candidates with links to illegal groups and limits private funding of the campaign. (ICG 2011: 8). This will probably result in a better selection process by the parties themselves. Moreover, the central party organizations should be more able to influence local decisions given the increase in party funding on the central level and, thus, the reduction of financial dependence from local candidates. However, the mere quantity of electoral posts available and the scarcity of talented politicians that usually results in appointments by family ties rather than skill are serious impediments for successful implementation of the new rules. Even if willing, most parties lack the structures to do sufficient research on their candidates who may even run as independents if really excluded from a party list. (ICG 2011: 13).

3.4.4. The Victims' Law

3.4.4.1. Initial Remarks

The last section presented the main debates on transitional justice in Colombia, the first expression of which was the Justice and Peace Law. This law covered the time-span of this thesis until July 2011 when I conducted my field research in Colombia. However, it is important to provide at least an overview of the so-called “Victims’ Law” of June 2011. It certainly fills several voids identified in the last section. In particular, it addresses the needs and rights of the victims and created an institutional framework on multiple levels to implement them. However, as will be shown in the next chapter, many feel that they had no chance to participate in the design of the law. Thus, the lack of participation and, therefore, the sense of not being heard have been identified as significant shortcomings.

In the following, I will briefly summarize the main contents of the law in order to provide the reader with an impression of its complementarity to the Justice and Peace Law.

3.4.4.2. The Contents

In September 2010, President Santos introduced a new legal project on the victims’ rights and the restitution of illegally acquired land. The difference to the first, failed version in 2009 is that the government actively supported this proposal. It was designed to complement the Justice and Peace Law. In December 2010 it passed the Chamber and in May 2011 the Senate⁵¹; on June 10th of 2011 the law was signed by the President in an official ceremony with the participation of UN-Secretary General Ban Ki-moon.

The main elements of the law refer to the rights of the victims of the armed conflict to reparation, justice and truth. Under President Uribe the term “armed conflict” was suppressed because he considered the armed actors as terrorists, thus stripping the conflict of its political meaning. The return to the language of an armed conflict is a major advance because the recognition of the existence of a conflict is the basis for a future peace process. Furthermore, the

⁵¹ The “Victims’ Law” has the following official denomination: Ley 1448/2011 “por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones”.

law considers victims of all the armed actors, including the military, which is a milestone in comparison to past debates.

Another important aspect is the issue of land restitution. For many analysts, the flawed distribution of land is one of the root causes of the conflict. In recent years, the displacement of peasants by armed actors reached dimensions that equated a “land counter-reform”, meaning a further concentration of land. The access and use of land would certainly ease the situation of the approximately four million displaced people and contribute to the development of the rural sector based on economic opportunities for the small-scale peasants. The victims who have lost their land since 1991 will be considered for restitution. Additional measures of reparation may be conferred to those who were victimized after 1985, which is an advance in comparison to the first version agreed upon in the Chamber.

There is another factor that facilitates the reparation of the victims, which is the reversal of the burden of proof in favor of the victims. Thus, it is the owner of a specific property who, in case of a dispute, has to prove that he/she acquired it legally.

Moreover, certain symbolic measures have been considered, such as the National Day of Victims (December 10th) and several initiatives to document what happened such as a Center and a Museum of Memory (Semana 2011).

The assassination of leaders who claim their lands, however, emphasizes the need for an efficient program to protect peasants who are willing to actually return to their lands (Lozano 2011). This is a topic of enormous importance for the implementation of the law.

There seems to be a major downside to the law, though. The state still does not assume responsibility for the victimization of large sectors of the population. It considers itself a subsidiary actor in the reparation effort, meaning that these measures should not be seen as an admission of responsibility. It is still too early to assess the impact of this refusal to accept the state’s responsibility but if there is no expression of regret or apology by the President, the psychological benefit of the law will certainly be reduced. Martha Minow states on the relation between reparation and apology:

“Perhaps, ironically, reparations without apologies seem inauthentic, and apologies without reparations seem cheap. Apologies are most meaningful when accompanied by material reparations; and reparations are most meaningful when accompanied by acknowledgement of their inadequacy in the effort to apologize and make amends. Yet taken separately, and, especially, taken together, apologies and reparations offer responses to mass atrocity that demand recognition of wrongs done without obliging survivors to forgive.” (Minow 2002: 23f)

3.4.5. The Role of Civil Society in Transitional Justice in Colombia

Civil society in contexts of violent conflict suffers from the same effects as communities in general. The fragmentation of society results in mistrust and, consequently, in the difficulty to pursue joint activities and strategies. This is also true with regard to the Justice and Peace Law. In Colombia the differences between the central and the regional levels further contribute to a diversity of agendas that are complicated to coordinate.

From the 1960s onwards civil society in Colombia has defended human rights, particularly in areas where the armed conflict has been notorious. Other groups presented themselves as victims' associations, still others as promoters of peace. These organizations would have had an important role to play in the aftermath of the adoption of the Justice and Peace Law in 2005. With the support of several European organizations, 105 Colombian citizens, partly in representation of their organizations, filed a legal action to declare the law unconstitutional. However, a significant sector of civil society had also allied itself with the government of President Uribe and showed some conformity with the government's language.

The spaces of coordination among the civil society actors have increased significantly in the last years. On the one hand the so-called process London-Cartagena-Bogotá promoted further exchange. This is a tripartite space shared by the government, civil society and the international cooperation created by the Declaration of London in 2003. The objective is to generate strategies for cooperation in the fields of human rights, peace and democratization. Increasingly, the Uribe government was also criticized for its strategy of war and the international cooperation because of the practice to finance government projects that are used for war. (Arias 2010: 238f, 250)

The government sent mixed signals to civil society organizations with regard to its willingness to negotiate. While the lower levels of the institutions showed some propensity, the higher levels were characterized by strong language against these organizations. Human rights defenders and victims organizations were repeatedly attacked by Uribe and other officials such as his advisor José Obdulio Gaviria as members of the FARC or "terrorists and cowards who hide their political ideas behind human rights"⁵². Given these declarations human rights organizations asked for the support of international agencies to promote their agendas and put

⁵² Quoted from: Arias 2010: 240/footnote 13

pressure on the government. However, the scenarios of dialogue persisted because neither of the actors wanted to assume the political costs of leaving the table. (Arias 2010: 239ff)

In this context, it was unfortunate that the legal framework for the demobilization of the paramilitary groups was negotiated without involving society. As mentioned before, this resulted in a lack of legitimacy of the Justice and Peace process that is best illustrated by the reluctance of several civil society actors to participate in it. For the victims this means that instead of being at the forefront of the events they were instrumentalized by all kinds of political discourse in favor or against the government. The victims' organizations that had been created were still not mature enough to represent their members in the judicial process. This means that the first steps of the implementation of the Justice and Peace process virtually took place without the main stakeholders, the victims. (Arias 2010: 241-244)

The international cooperation has a key role in the implementation of the Justice and Peace law. Arias asserts that without international support of the relevant state institutions, the system would collapse. This certainly has the risk of liberating the state from its responsibility towards the victims and the fulfillment of their rights.

On the other hand international agencies have been overwhelmed by project proposals with the objective to strengthen victims' organizations, to legally represent victims and to create income-generating projects that benefit them. There is a certain concern that victims are also used by others to receive resources and are, thus, violated in their dignity again. It is not always clear that organizations that claim to represent victims are really doing that.

With regard to the relation between government and civil society organizations, it is worth mentioning that the "Paris Declaration" of 2005 pointed towards the need to coordinate international cooperation and channel it through the respective governments. This may lead to the loss of autonomy of civil society organizations that are now frequently financed by the state itself. (Arias 2010: 245-247)

This was certainly the case with regard to the before-mentioned community of Monterrey. In a first phase the European Union actively supported a regional civil society organization that worked in the community to mitigate the effects of the demobilization on the civilian population. Suddenly, excombatants who had acted in the region demobilized and started to live in the community side by side with their former victims. Thus, the organization started to organize the community so that the civilians would define certain criteria under which the

excombatants may reintegrate into the community. Furthermore, a community council was created to lead the community into a self-defined future. The EU financed this endeavor to a large extent and also visited the place to show interest. After a while, however, the EU decided that the funds for a second phase would not go to the civil society organization but directly to the ACR, the presidential office for reintegration. This was in line with the Paris Declaration but caused serious inconveniences for the community given the fact that the government was still in war with the guerrilla groups close by who may have considered this funding as a taking side of the community in favor of the government. The dynamics of such a process change significantly, when a government agency leads it as opposed to a local civil society organization. This example shows the volatility of support of international organizations and the monopolization of international funds by the government.

3.4.6. Summary

This section on the transitional justice framework showed the evolution in the Colombian debate based on a history of impunity and non-analysis of the past towards a comprehensive approach that includes the victims' rights and even structural reforms regarding the concentration of land. It also addressed the government's attempts to circumvent the issue by initially proposing legislation that would have abused the term restorative justice. Under the disguise of "alternative punishment" even those paramilitaries who had committed crimes against humanity would have gone free; not to speak about the victims who would not have been considered at all. If one compares this starting point in 2002 with the Victims' Law of 2011 the advance is quite impressive.

This evolution is due to the involvement of a broad range of actors. While in the beginning, only the paramilitary leadership and the Uribe government under the silent observation of a few specialized organizations had negotiated the terms for the demobilization, in the subsequent years it was almost impossible to escape the public debate on issues such as the meaning of justice after decades of violence, the relationship between structural elements and the armed conflict, the responsibility of the state and the incredible number of affected people. Reflecting on this change, Kathryn Sikking's assumption comes to mind that it requires a critical mass to achieve a norm cascade. While she refers to the international arena, it seems that the

same mechanism applies to the national level, too. The massive public debate started when different proposals for the legal framework were presented in Congress in 2004. The clear contrast in the way the government proposal, as opposed to the proposal by Pardo/Parody, approached issues of the past and the design of the future facilitated a controversial debate and introduced public figures with which to identify. It also catalyzed civil society involvement and energized the activities of the victims themselves. The international attention with particular emphasis on the latent threat of the ICC to get involved also helped to increase the audience and shape the debate.

Interestingly, transitional justice, though initiated without a clear transition, seems to open the floor for significant reforms. This would confirm my initial assumption that transitional justice instruments may lead to a transition if well applied. The persistence of an armed conflict and the start of peace negotiations with the FARC in fall 2012 added an additional dimension to transitional justice, i.e. its contribution to peace. The agenda of these negotiations include substantial issues such as land, political participation and the drug trade. If successfully resolved, these policy-fields have the potential to significantly alter the relationship between state and society.

3.5. Conclusions

This chapter on Colombia, its armed conflict, the demobilization of the paramilitaries and the debates on the transitional justice framework provides us with several important insights for the exchange between theory and practice.

First, the intransparent negotiations between the government and the paramilitaries led to mistrust in the transitional justice framework. This was suspected to benefit the paramilitaries at the expense of the rest of the population.

Second, despite the important critiques on the Justice and Peace Law the political and social dynamics were such that this legislation also has had positive side-effects with regard to the search for truth, the purge of public officials who held links with the paramilitaries and the sensitization for the victims' rights. This aspect points to the impossibility for a government to exactly plan transitional justice instruments or limit their impact.

Third, the simultaneity of an armed conflict with typical post-conflict issues such as DDR, reconciliation and transitional justice led to confusions and the instrumentalization of transitional justice for security purposes. Thus, for example, the military used demobilized excombatants as informants, or incentives to demobilize were used as a weapon to weaken the guerrilla. Furthermore, in particular the Uribe government actively tried to discredit civil society organizations by declaring them the social base of the guerrilla. Uribe himself expressed the same suspicion even with regard to the justice system in Colombia. Thus, a discourse of war clashed with the alleged attempt to leave violence behind. The Uribe government always made it clear that security considerations would prevail over transitional issues. This is also why the National Peace Council was virtually suspended under Uribe. In the end, the president wanted to win the war and not peace. On the other hand, under the Santos government transitional justice may also be combined with reflections on the requisites for a sustainable peace. There are hints that the current peace negotiations with the FARC point to this direction.

Fourth, the government used the term reconciliation in a way that in the public it was equated with impunity and forgetting the past. Reconciliation as such was also construed as merely interpersonal and not systemic and even less structural. The only relevant actors for reconciliation should be the former paramilitaries and their victims. In this context, reconciliation was stripped of the dimension of justice and even of its political, i.e. public character. There was obviously the attempt to convert reconciliation into a private matter in order not to mobilize its transformative potential. Therefore, it does not come as a surprise that reconciliation obtained a bitter connotation for many victims' and human rights organizations.

Fifth, there are two circumstances mentioned in the conceptual chapters that also appeared in the case of Colombia: the perception that nothing has changed leads to a reluctance to talk about a transition or to justify special procedures by referring to a better future; and the exclusion of structural inequalities and the tradition of marginalization from transitional justice converts it for many people into a superficial and insufficient exercise. Scandals surrounding state institutions such as the *parapolítica* or the *falsos positivos* even increased the perception that a real change of the state's relationship with society is not intended.

Sixth, it seems that for the acceptance of specific instruments of transitional justice the process of how they are designed and developed is at least as important as their contents. Thus, the lack of participation of the population may disqualify even the best instruments. This recalls

the conceptual chapters that outlined the analytical shift from the macro-level of transitional justice to approaches “from below”. The local needs and efforts certainly increase the stakes of the population in transitional justice and the involvement of individuals and communities in the design of a different future.

Seventh, the state tried to appear as a neutral broker of a transition, denying its historical involvement in human rights violations. This strategy obviously failed completely and contributed to the assumption that everything would continue without change.

There are other elements that seem to confirm this view. As the presentation of the Colombian process suggests, the Colombian government has tried to satisfy the international demands for respect of international norms with as little effort as possible. My personal impression, having worked on these issues for several years and participated in government sponsored events, is that it quite successfully shaped the vision of many international and national actors. The government sold the demobilization of the paramilitaries as the contribution to peace and succeeded in getting significant resources from international organizations for this endeavor. Gigantic international conferences such as the before-mentioned in Cartagena in 2009 – the first International Congress on Demobilization – directed the attention towards a topic that, as we will see in the following chapter, has virtually no relevance in the communities or civil society organizations. Thus, the government equation that peace is successful demobilization of an armed actor seems to have an impact on donors and other international entities, consequently diverting attention from more structural and systemic issues. Concluding, one may argue that the Colombian government created several smoke screens to attract positive responses and to sell its product “demobilization” around the world. The flow of external resources to government agencies at the expense of other organizations can, thus, be seen as a reward for this strategy.

With these insights in mind, I now turn to my field research in the Magdalena Medio region. There, I will show how representatives of communities and civil society organizations fill the terms peace and reconciliation with meaning and reflect on the role of transitional justice instruments such as reparation and truth. The contrast to official policies presented in this chapter will be astonishing.

4. Field Research

4.1. Introduction

This chapter presents the field research that was conducted between June and September 2011 mainly in the Magdalena Medio region. After three years in the region and the subsequent analysis of the secondary literature this step constitutes the phase of collecting additional practical insights and identifies strengths and weaknesses of the previous steps. In accordance with the methodology, the first three years provided me with the opportunity to gain valuable but unsystematic impressions, to expose myself to the field and to be immersed in the realities of the study subject. Then, the analysis of the corresponding literature complemented the first practical assumptions on transitional justice and reconciliation. Thus, the field research already included certain preliminary tendencies such as the need to systemically address conflict and violence or to consider both bottom up and top down initiatives. However, the questions were targeted towards the main categories: effects of the violence, peace and reconciliation, and the importance of justice, truth and reparations. They were formulated sufficiently broadly in order to give people the opportunity to choose their own way of responding.

The field research as such should lead to the formulation of theoretical assumptions that contribute to the debates addressed in the two conceptual chapters. The “groundedness” of these insights, consequently, consists of giving voice to people who live and work in communities and organizations that are involved in a broad sense in transitional justice and reconciliation, either through their direct work with victims of the conflict (most of them) or even in initiatives that explicitly carry the term “reconciliation” in the title (a few). Their interpretations and analysis are at the core of this chapter.

In a first section I will briefly describe the Magdalena Medio region and its main characteristics. Then I am going to present the research by subdividing it into the chosen categories. Since the voice of the people is fundamental, there will be rather long quotes. This allows the reader to follow the ideas of the interviewees and also identify ways to correlate different categories.

4.2. The Magdalena Medio Region

4.2.1. Introduction

My field research was conducted in the Magdalena Media Region that according to several interviewees is one of the most symbolic in the country (9, 13, 24)⁵³. This is due to the richness in resources that transformed the region from one of the most abandoned into one of the most attractive for investment and illegal strife. On the other hand, it has a history of social struggle and civil society commitment to human rights, social justice and peace. Peasant marches, trade union strikes and mobilizations for a better infrastructure have been on the agenda for many decades. At the center of this polarized atmosphere, there have also been many organizations that have never lost sight of the objective to build peace. According to Alejo Vargas, this region has witnessed conflicts between civil society actors and the state with the increasing inclination by both sides to use coercive measures instead of dialogue and negotiation to tackle their differences. (Vargas 1992: 19f) This and the dense network of organized representations of the peasants, miners, oil workers, women and others converts it into an interesting place to analyze topics such as reconciliation that depend on dialogue and political interaction to resolve differences of interest non-violently.

In the context of this dissertation I will conceive the Magdalena Medio Region as a geographically delineated region that is composed of 31 municipalities⁵⁴ of the four departments Santander, Bolivar, Antioquia and Cesar. This corresponds to the concept of the *Programa de Desarrollo y Paz del Magdalena Medio* (Development and Peace Program of the Magdalena Medio Region, PDPMM), whose main goal has been to politically and socially integrate this region around its major city Barrancabermeja. The region is located in the North-East of Colombia and along the largest river of the country, the Magdalena river. Its extension is around 30,000 square kilometers, its population more or less 900,000 people. As mentioned before, it is rich in resources such as oil, gold and coal and is strategically located between the center of the

⁵³ In the following, the numbers in brackets without further information refer to the specific interview according to the below mentioned list.

⁵⁴ Barrancabermeja, Puerto Wilches, Sabana de Torres, Rionegro, Simatoca, Puerto Parra, San Vicente de Chucurí, El Carmen, Betulia, Cimitara, Landazuri, Bolívar and el Peñón (Santander); Aguachica, Gamarra, La Gloria, San Alberto and San Martín (Cesar); Regidor, Tiquisio, Río Viejo, Arenal, Morales, Santa Rosa del Sur, Simití, San Pablo and Cantagallo (Bolívar); Puerto Berrío, Puerto Nare and Yondó (Antioquia)

country and its Atlantic coast and as a corridor between the Pacific and the Venezuelan border. (Katz 2004)

I will first briefly highlight the major threads of the region's history and then further characterize it politically, economically and socially.

4.2.2. History

The region was populated by several indigenous tribes long before the Spanish colonists arrived. The Carares, Opones, Yariguies and Guanes formed two different cultures: the Caribes and the Chibcha. When the Spaniards arrived in the first decades of the 16th century, they seized the indigenous' territories. In 1536, a Spanish expedition under Gonzalo Jiménez de Quesada reached Lator, the precursor of the actual city of Barrancabermeja. The tribes adamantly resisted but in the end had to cede given the military superiority of the Spanish invaders. (Vargas 1992: 27ff) From then onwards the process of colonization was based on the extermination of the indigenous population; however, the multicultural composition of the region has remained a constant throughout history. (Villamarín 2004: 13)

In the 19th century, the commercial exchange with Europe increased the activity on the longest Colombian river, which led to the foundation of several portal towns, such as Puerto Berrio (1870) or Puerto Wilches (1882). (Bayona 2005: 10) Due to its harsh conditions the region was populated relatively late in the 19th century. One of the characteristics of the colonization was its dependence on economic "bonanzas" that attracted settlers. The Magdalena Medio region also served as a new home for those who fled the numerous armed conflicts in other regions of the country such as the *Guerra de los Mil Días* ("War of the 1,000 days") from 1899 to 1902. (Villamarín 2004; Vargas 1992: 36) These aspects are important to understand the cultural and social diversity of the region and its short history of colonization. This is why the territory has often been used to exploit its richness but only scarcely as a place to live, which has had a negative impact on its integration and infrastructure. (Vargas 1992: 42f)

The region and particularly Barrancabermeja gained in importance when in 1919 the Tropical Oil Company purchased the concession to explore and exploit the vast oil reserves. In 1921, the first oil was produced and in 1922 the refinery that now shapes Barrancabermeja was

constructed. In particular the years 1924 to 1928 brought significant investment and, thus, a high number of settlers to Barrancabermeja. (Molano 2010: 27f; Vargas 1992: 38)

The coincidence of American oil-companies and radical ideas stemming from the Russian revolution, converted Barrancabermeja into an ideal place to diffuse socialist ideas. In 1924, the first protest of oil-workers for better working conditions took place; it was violently subdued. This was the starting point for a series of organized protests and the strengthening of the union movement in the city. It also showed for the first time the separation between the “Colombian” and the “American” Barrancabermeja. The first consisted of shanty villages inhabited by the workers of the Tropical and administered by a mayor who required a special authorization by the Tropical’s director to get into the latter. The “American” Barrancabermeja was equipped with all the commodities that one needs in such a climate: air-condition, good meals, health-institutions and the like. This division to a certain extent still exists today. One can easily understand that anti-imperialist feelings came into existence given this inequality of conditions. Therefore, the local population demonstrated its solidarity with this and future strikes. Other characteristics have been the violent repression of protests by the state and its non-compliance with agreements with the union. Consequently, the distrust in the state’s intervention and its willingness to represent its citizens increased significantly. (Vargas 1992: 49-56)

In 1929, an important uprising, called the “Insurrection of the Bolsheviks”, organized by the newly founded *Partido Socialista Revolucionario* (Revolutionary Socialist Party, PSR) should take place in various regions on July 28th and thus coincide with a coup against the Venezuelan dictator Juan Vicente Gómez. The latter was cancelled but this news failed to reach Colombia. One of the main revolutionary sites was San Vicente de Chucurí, another town of the Magdalena Medio region. Interestingly, several of the involved leaders would later have sons with prominent roles in the liberal guerrilla of the 1950s and the foundation of the ELN in the 1960s such as Heliodoro Ochoa and Nicolás Rodríguez (*Gabino*). At the same time a strike of the railway-workers at Puerto Wilches drew much attention. Despite their failure these uprisings contributed to the narrative of the revolutionary character of the region and served as points of reference for future generations. The reactions of the political elites and the traditional parties showed again that they rejected the social and political grievances of the workers and considered the incidents as merely military, not taking into account among others the widespread electoral

fraud and exclusion. By that an atmosphere of mutual “irreconcilable” antagonism was created. (Vargas 1992: 56-62; 66ff; 72)

In 1935, there was another strike of the oil-workers organized by the *Unión Sindical Obrera* (USO). For the first time the Tropical was forced to sit with the workers’ representatives at the negotiation table and discuss increases of the salaries, reduction of the rents and improvements of the working conditions. The difference to previous strikes consisted in the role of the government; instead of exclusively taking repressive measures against the strikers, it combined mediation with some pressure on the workers to accept the outcome of its efforts. In 1938, however, the state returned to its repressive approach and dissolved a huge strike of the oil-workers that was backed by Barrancabermeja’s population. This hardened the attitude towards the state and strengthened the idea that the state took side with the powerful. Two characteristics appeared in this period: First, the communist party increased its influence on the workers-movement, and second, the strikes usually received the explicit support of the local population and peasants from the region who supplied the workers with food. The common enemy was the state due to its partiality in favor of the foreign company. (Vargas 1992: 73-88)

After the president of the liberal party, Jorge Eliécer Gaitán, was assassinated in Bogotá on April 9th of 1948, the period of bipartisan violence, called *La Violencia* began. This violence had a huge impact on the social struggles in Barrancabermeja. In a strike in 1948, the workers achieved nationalization of the oil company, since then called *Ecopetrol*. This step was later annulled, and important leaders of the USO detained.

Since the region was overwhelmingly liberal, armed militias and revolutionary councils were constituted. In Barrancabermeja “the first popular mayor”, Rafael Rangel Gómez, was appointed according to an agreement with the government that stipulated a political parity between the parties. As usual this agreement was not observed by the government, which further fuelled the people’s distrust.

Rafael Rangel had to flee and founded the liberal guerrilla; at the same time the governor of Santander armed the conservative civilians and dismissed the overwhelmingly liberal police. Thus, the state openly used its institutions to persecute and kill its liberal adversaries. These events constituted the starting point for widespread violence. Alejo Vargas distinguished several forms of violence at that time: the repression against the union movement and the assassination

of their leaders; violence against liberal civilians; the manifestations of guerrilla and counter-guerrilla groups; and the confrontations between villages.

The liberal guerrilla was of particular importance because it received widespread support from the population and counted on the political structures of the Communist Party. Several of those who integrated this guerrilla would later be among the founding members of the guerrilla ELN. This inter-generational link between the insurrection of the Bolsheviks in 1929, the liberal guerrilla and the ELN is particularly interesting because it shows that the causes for the uprisings persisted throughout decades.

The character of this armed group was more self-defensive and its ideology rooted in the liberalism of Gaitán. However, the guerrilla did not enjoy the support of the liberal party that under its label “*Fé y Dignidad*” (“Faith and Dignity”) preferred to abstain from backing armed actors. At the same time counter-guerrillas were formed that supported the conservative police (“*chulavitas*”) in eliminating and displacing liberal civilians. This phenomenon, which would be called paramilitaries later, also contributed to get in possession of valuable land. It was in this period when huge concentrations of land took place using repressive means. The bipartisan confrontation almost resembled a religious crusade with the objective to achieve an ideologically homogenous territory, thus purifying whole villages from members of the other party. (Vargas 1992: 91-147)

In May 1963, Barrancabermeja saw its first civilian strike to improve public services and equip the hospital; the results were encouraging. The conviction behind this activity was that the state would only invest if there was a mobilization of this kind. According to Alejo Vargas the state was not inclined to invest in regions that were considered rebellious in order not to remunerate this attitude. So, a vicious circle consisting of distrust in the state and the state’s refusal to invest in the region was perpetuated.

In the same year, there was another strike of the oil-workers; this time it did not achieve its objective. The aspect worth mentioning was the increasing impact of the Communist Party on the USO, the trade union of the oil workers, and the simultaneous acts of sabotage of several tubes that accompanied this strike. These concurrent strategies of strike and sabotage would be a frequently used instrument in the future. It also showed that neither Ecopetrol nor the state disposed of the channels of communication to address the workers’ demands timely and efficiently. The only way open for the workers to be heard was to strike. Similar developments

happened with regard to the political demands of the peasant movement. Consequently, the repressive state and the workers, peasants and local population viewed each other with distrust and open antagonism.

During the strike of 1971 that was one of the most violent the impact of the radical left and even the ELN was palpable. The space of negotiation between the USO and Ecopetrol narrowed down. Although the detentions and the use of force of the armed forces were widely condemned, there was also criticism of the guerrilla's influence on this strike.

In the 1960s, another political movement that opposed the system and particularly the electoral system came into existence; the priest Camilo Torres Restrepo led the *Frente Unido* (United Front, FN). It was seen by several leftist organizations as a source of hope and was very well received by the population of the Magdalena Medio.

The most momentous development for the country's future in the 1960s was certainly the creation of the guerrilla group ELN that to a certain extent integrated the above mentioned processes, including the student protests in Santander's capital Bucaramanga. It drew national attention with the occupation of the Simacota municipality in Santander in 1965 and the declaration of its nationalist manifesto. Unlike the liberal guerrilla the ELN did not surge from the inter-partisan violence but from opposition to the entire political and capital system. It, therefore, represents together with other groups the revolutionary violence that contradicts and confronts the system as such. The main demand was a profound transformation of the system, and the scope of its action was nation-wide. The ELN is probably the best manifestation of the region's history of confrontation, protests, strikes and repression by the state. This explains the sympathy towards this new actor.

At the same time, the counter-insurgency measures taken against the "independent republics" of Marquetalia, Riochiquito, El Pato and Guayabero that constituted the creational myth of the FARC helped to radicalize the student movement that subsequently would supply both guerrilla groups with militants and sympathizers. Many more moderate student leaders left the scenery despite their personal friendship with the more radical. Other leaders, most notably Camilo Torres, decided to join the ELN; Torres was killed in one of his first combats.

The creation of the ELN reflected several important dynamics of the region. First, its external inspiration is certainly based on the Cuban revolution. Several members of youth and student organizations travelled to Cuba to educate themselves in theory and practice of castrism.

Many leaders such as Jaime Arenas and Victor Medina Morón finally discovered in the new revolutionary project concrete practical features that were missing in the Communist party.

Second, the remnants of Rangel's liberal guerrilla that must be seen under the auspices of the inter-partisan violence joined the ELN with the prospect of the struggle for power. I have already mentioned the inter-generational links between the two guerrillas; however, the liberal guerrilla did not have this aspiration of power and was rather self-defensive.

Third, the region around Barrancabermeja had seen a history of social struggles and confrontation. This was a fertile ground for the development of an armed option, which was also facilitated by a confrontational pattern that favors weapons and rebellious behavior.

Fourth, the political student organizations were pools of recruitment for the ELN. There was a regular exchange between this guerrilla and the *Universidad Industrial de Santander* (Industrial University of Santander, UIS) in Bucaramanga.

Fifth, the radicalization of the USO due to the state's repression and the leadership's conclusion that strikes would not lead to success motivated many leaders to join the ranks of the ELN. The nationalization of the oil-company under the name Ecopetrol further facilitated this step because every strike at that time was also a protest against the state and the political system; the ELN only radicalized this goal.

Sixth, the liberation theology inspired a number of Catholics to join the ELN. (Molano 2010: 35) The critical analysis of the political and economic realities based on the Gospel and the before-mentioned declarations of the Latin American Bishop's Conferences in Medellín and Puebla shed light on injustice and discrimination.⁵⁵

These components converged into the foundation of the ELN that chose Santander's municipality San Vicente de Chucurrí as their habitat. This town with antecedents in several uprisings, among them being the liberal guerrilla, has important strategic advantages. It is very close to Barrancabermeja that due to its oil-industry is of utmost importance for Colombia. This area is also characterized by a partly mountainous, partly jungle topography, which makes it difficult to persecute the rebels. Additionally, the area offers an access to the Venezuelan border, which serves as a potential retreat area.

The guerrilla's discourse adapted Marxist ideology to Colombian realities by accusing the state of being an instrument of domination. It invited to struggle against both parties' oligarchic

⁵⁵ Compare Chapter 2.5.3.

leadership and advocated nationalist policies with regard to natural resources. Several elements of the so-called “Programmatic Declaration” resembled the “Programmatic Points” of Camilo Torres’ Frente Unido, thus drawing a political link to this movement, which further strengthened the bonds to the unions and the student movement. In this initial phase, the social movements were seen by the guerrilla as mere instruments of their political-military struggle, thus in a completely dependent relationship according to the Cuban doctrine of the guerrilla’s leadership in the revolutionary process. Consequently, they were considered as tools for the military component and, thus, deprived of their autonomy and their capacity to promote the cause politically, which in the end turned against the ELN itself. These organizations could have been mass organizations that mobilize people for certain political demands; in reality, the preponderance of the ELN discouraged many leaders who did not see any meaning in their political work and left the organizations. This provoked a massive crisis in the second half of the 1960s. By subordinating them to the military needs, civil society organizations also became the targets of counter-insurgency measures by the state that did not make any difference between the ELN and their “social base”.

At the same time, the FARC made their appearance in the Magdalena Medio, especially in the Puerto Boyacá and Cimitarra municipalities. The absence of a functional and responsive state encouraged FARC’s intrusion into the territory. During the following years it developed relations of rivalry with the ELN that occupied the neighborhood. The state did not achieve to generate a dynamic of positive attraction towards its citizens, which created a fertile ground for the guerrilla’s expansion. The military reaction consisted in a civil-military plan that combined psychological warfare and even mercenaries who later would be known as paramilitaries. These were responsible for the most serious atrocities against civilians.

In 1973, the National Front ended and left the country and the Magdalena Medio with certain characteristics that are worth summarizing:

First, the ideologies are based on clear friend/enemy-dichotomies. While the state portrays the guerrilla as part of the worldwide communist revolution, the guerrilla equates the state with the Batista dictatorship in Cuba, which in the end was removed by a revolutionary movement.

Second, the state kept using repression as the first means to confront protests and the expansion of the guerrillas.

Third, despite inter-generational links and geographic similarities to the liberal guerrilla of the 1950s and the uprising of the “bolsheviks” in 1929, the new guerrillas were not self-defensive any longer but had a clear nation-wide goal: the elimination of the political structure and the seizure of power. (Vargas 1992: 151-217)

In 1975, the second civil strike took place, this time addressing the topic of water and with the support of the clergy. Later in the 1980s civil strikes would be organized regularly to protest against the “dirty war” launched against leaders of the USO and the left-wing *Unión Patriótica*. Consequently, a culture of civil organization and protest emerged that has been characteristic for Barrancabermeja; each assassination of a civil leader resulted in marches and strikes. The political demands, however, became unclear; it seems that the protest as such was the goal.

With regard to the armed groups, the M-19 had never developed significant military force in the region; it was rather considered a recruitment zone to nourish the militarily important contingents in Caquetá. The political work, however, was particularly important in the South of Santander where after the group’s demobilization several mayors with the ideological background in the M-19 were elected.

The ELN suffered from a significant internal crisis after the disaster of *Anorí* in the year 1973 when it was almost exterminated by the military. Then, important leaders died and the organization lost its cohesion. Internal critique concerning the prioritization of the armed struggle at the expense of the political work led to an overhaul of the ELN’s strategy. Later, the ELN recovered and increased its presence in the region in the 1980s.

It is very noteworthy that the paramilitary groups had their pilot experience in the Magdalena Medio region, more concretely in Puerto Boyacá. There it was created by landowners, trained by the military and accompanied by a political project called *Movimiento de Restauración Nacional* (Movement of National Restoration, MORENA). As described in the third chapter, the paramilitary units were then expanded to the Urabá region and in 1997 united under the name AUC. (Vásquez 2006: 343)

In general, the 1980s saw a sophistication of the armed conflict given the diversity of the actors and their strategy to occupy political spaces. Particularly during the second half of this decade when the paramilitary units increased their activities the violent acts related to the conflict multiplied. The struggle for control between ELN and FARC also contributed to the

increased rate of violence in the region. Barrancabermeja became the center of the armed confrontation between the two guerrilla groups and the military. In San Vicente de Chucurrí the left-wing party *Unión Patriótica* came into existence as a political movement inspired by the FARC.

With the emergence of the paramilitaries, the confrontation between the state and the guerrillas got a new dimension. It gradually degenerated into violent attacks against what was considered to be the social base of the guerrilla or the paramilitaries respectively. Consequently, it became a war against the civilian population with only a few purely military confrontations. It also became clear that several units of the military either actively supported the paramilitaries or at least ignored their actions. The battalions of Puerto Berrío and Puerto Boyacá were notorious in equipping and training these groups. The massacre of *La Rochela* of 1989 where paramilitaries killed 12 civil servants of the Department of Justice prompted a change of attitude of the government with regard to these actors. It declared them illegal, which was a form of distancing itself from the dirty war. On the other hand, the guerrilla's use of acts of terrorism that did not discriminate between combatants and non-combatants reduced its credibility among the civilian population.

In the late 1990s, the paramilitary forces advanced significantly at the expense of the guerrillas. In 1998, finally, they took Barrancabermeja and committed the massacre of May 16th of 1998 when they killed seven people and disappeared 25 more. This was the starting point of a paramilitary offensive across the region.

Based on the extensively described demobilization process, in 2006, one of the most prominent units, the *Bloque Central Bolívar* (BCB) was demobilized, and the fighters returned to their communities, which was one of the motivating factors to write this dissertation. Right from the start the regional DDR process was put into question, even by the observation mission of the OEA.⁵⁶

This overview suggests the question about the role of the political parties in the confrontation between the government and the population. The parties lost their ideological orientation during the time of the National Front and converted themselves into electoral entities without identity and suppliers of clientelistic favors. They were replaced as mechanisms to

⁵⁶ Compare their reports at: www.mapp-oea.net

channel social interests by the armed actors who also administered justice in “their” territories. Considering the results of the first popular election of mayors in 1988, which had been made possible by law in 1986, a pluralization of the political representation can be seen. However, with the extermination of most of the *Unión Patriótica* that had won the mayor in Sabana de Torres in 1990, the tendency towards the two traditional parties prevailed.

The lack of social services for the region’s population, the absence of civilian institutions to tackle conflicts and channel social interests and the militarization of the region polarized and escalated the conflict more and more. It also meant that the interlocutor of the population was the military and the armed actors, which resulted in the virtual absence of civilian ways to negotiate a solution to the armed conflict. (Vargas 1992: 221-289)

In synthesis, the historic summary showed several characteristics of the Magdalena Medio region that are worth highlighting.

First, there have been two blocs in confrontation with each other; the state supported by economic elites and paramilitary groups, and the guerrillas with an overlap in objectives between a number of social organizations.

Second, the state tends to act in favor of the elites, a behavior that fortified the guerrillas.

Third, the characteristic of being a region of colonization with rich resources to extract caused several social conflicts: between oil-workers and the company, between palm-workers and agro-business, among settlers for land and between citizens and the state regarding public services.

Fourth, there has been a notable degradation of the conflict where the armed actors increasingly interfered with social movements and civil society actors. This reflects the preponderance of military over political considerations. The different goals seem irreconcilable, which fosters an enemy-friend-duality that is not conducive to negotiation.

Fifth, the civilian population has been frequently victimized by all the armed actors. The high degree of violence and the shifting spheres of influence of the armed actors have caused significant damage on the social fabric of the population. Nevertheless, only recently the capacity of political mobilization and the internal cohesion of civil society organizations have decreased.

4.2.3. Socio-economic Characteristics

Economically the region has been considered a space for the extraction of different resources. As mentioned before, Barrancabermeja refines around 70% of the nation's oil and the region hosts around 40% of Colombia's gold. In fact the San Lucas highlands in the Southern part of the Bolivar department are the biggest gold mine in Latin America. Therefore, the region is the target of national and international investment. Furthermore, the soil is very conducive to cultivate the African palm, and the plain land serves as pasture for the cattle. Ecopetrol and several international mining companies try to benefit from the energetic boom. This investment also leads to a variety of infrastructure measures, particularly with regard to roads that would connect the nation's center with the North and the Pacific with Venezuela. (CER 2011) These activities also attract criminal interests that illegally tax public contracts and rob resources.

This richness in resources and investment starkly contrasts with the high degree of poverty and the absence of positive social investment by the state. The so-called *Índice de Necesidades Básicas Insatisfechas* (Index of Unsatisfied Needs, INBI) clearly indicates that the material wealth has not trickled down to the population. The INBI in the case of the Magdalena Medio is in average 63%, while on the national level it figures at around 28%. In the Southern part of the Bolivar department it even climbs up to 84%. (OPI 2007)

This situation is reflected by a relatively low rate of primary schooling (75%) and high rates in analphabetism. Regarding the health system, around half of the population has no access to the health infrastructure. (Villamarín 2004)

The region is also a good example for the concentration of land. In an exhaustive study conducted in 1995 on the situation that since then has become even worse around 41% of the land was in the hands of 4% of the owners. This number has further increased due to the paramilitary incursion and its activities to clear land for the cultivation of drugs, cattle and other economic activities. The expansion of cash crops reduced the area available for food crops. Hunger and malnutrition are the logical consequences. (FIAN 2009: 34)

The concentration of land is related to the forced displacement of thousands of people in the region. The peasants are usually coerced to leave their land immediately or to sell it at a very cheap rate to landowners or illegal groups. The *Observatorio de Paz Integral* (Comprehensive Peace Observatory, OPI) stated that between January 1st of 1997 and December 31st of 2008

around 143,300 people were displaced from the region. (Dávila 2009: 7) If we remember that the total population is about 900,000, the sheer dimension of the humanitarian crisis is obvious. On a daily base other crimes such as extrajudicial executions, kidnappings, recruitment of minors, gender-based violence, threats and the setting of antipersonnel mines complete the picture of the situation in the region.

These inequalities and marginalizations led to the creation of a number of civil society organizations that have succeeded in mobilizing public discontent for concrete political action, which was presented in the historic section of this chapter. Organizations such as the *Asociación Campesina del Valle del Río Cimitarra* (Peasant Association of the River Cimitarra Valley, ACVC) that played a central role in the creation of especially protected areas for small peasant activities; the *Federación Agrominera del Sur de Bolívar* (Federation of the agro-miners in the Southern part of Bolívar, Fedeagromisbol) that represents peasants who are also engaged in small-scale gold mining; or the *Asociación de Trabajadores Campesinos del Carare* (Association of the Peasant Workers of the Carare Area, ATTC) that created a peace zone by prohibiting the armed actors to enter their area. In addition, there is a multitude of women's organizations such as the *Organización Feminina Popular* (Popular Feminine Organization, OFP), human rights and victims' organizations and finally the *Programa de Desarrollo y Paz del Magdalena Medio* (Development and Peace Program of the Magdalena Medio Region, PDPMM), which I worked for.

The Program⁵⁷ was founded by the Jesuits, the Diocese of Barrancabermeja, the USO, Ecopetrol and a regional economic consortium in 1995. It was based on a study that analyzed the reasons for widespread violence and poverty in the region. From 2001 to 2009, it was funded by the European Union (EU). It has pursued a broad peacebuilding concept including the defense of human rights and international humanitarian law; the strengthening of civil society organizations and the state's capacities to interact with society; and the creation of income-generating projects based on cooperatives. The Program has contributed significantly to creating a sense of belonging to the region and to putting it on the national agenda. It is certainly considered as one of the most prominent and efficient peacebuilding initiatives in the country. Due to the leadership of the Jesuit Francisco de Roux and the Bishop of the time, Jaime Prieto, a bigger bloodshed during the paramilitary incursion at the beginning of the century was avoided. But

⁵⁷ For an exhaustive analysis of the Program and the EU peace policies: compare Barreto (2012)

still, the indices of massacres and assassinations in the region have been one of the highest in the country.

This density of organizations and the high degree of mobilizing power explains why the Magdalena Medio region used to be symbolic for the Colombian armed conflict and its potential transformation. Despite frequent assassinations the political struggle – both violent and nonviolent – has been present in the region.

4.2.4. Summary

The Magdalena Medio region can, thus, be described as a contested territory that due to its richness in natural resources has attracted a diversity of interests and groups. The socio-economic marginalization stands in sharp contrast to the material wealth that has been a traditional characteristic of the region from the first settlements onwards. However, so was resistance, starting with the indigenous groups against the colonizers up to current mobilizations by peasant or human rights organizations.

The region was also the cradle of important armed actors such as the ELN and the paramilitaries. Other guerrilla groups like FARC, EPL and M-19 have had a significant presence in the region, which further deepened the humanitarian crisis of the population that is best described as the consequence of the lack of second generation human rights and crimes against humanity such as assassinations, disappearances and displacements.

The following sections will detail the experiences and thoughts of civilian members of the communities of the region. They will tell us what impact violence has had and how they construe the creation of a peaceful and just future.

4.3. The Field Research

4.3.1. Introduction

Based on initial assumptions from the field, Chapters 1 and 2 elaborated on the concepts of transitional justice and reconciliation respectively. In Chapter 3 I presented the specific Colombian situation and this country's effort to come to terms with past crimes. I explained what transitional justice instruments were applied and explored the main issues of the public debate. I

also showed that the discourse of transitional justice was used by the government as a means to justify minimal sanctions and a maximum of incentives for the paramilitary leaders to reintegrate into civilian life, while civil society organizations applied the transitional justice language with the objective to claim the victims' rights to truth, justice and reparation.

This chapter presents the results of my extensive field research that was conducted from June to August 2011, mostly in the Magdalena Medio region. Together with my wife, Sandra Isabel Restrepo, I interviewed 25 people using semi-structured interviews. The criteria to select the interviewees were the following: a proven record of having expertise or working experience in the fields of interest, i.e. transitional justice and/or reconciliation, either as a member of a community in a conflict-region or a civil society organization that works in this regard; age; and gender.

While the first criterion could easily be fulfilled given our experience in this region and the knowledge of and bonds of trust with people and organizations who specifically address these issues both gender and age balance was not as easy to achieve. In the course of our interviews we realized that in comparison to the average age of the population (median age around 28 years) the key representatives of the civil society organizations are rather senior. Furthermore, there are virtually no young people (20-30) who hold leadership positions within these organizations and were eligible for an interview. The gender balance turned out to be less of a challenge, although the final statistics in this regard show a clear bias towards male interviewees. The main reason for that was that the most prominent regional organization, the Development and Peace Program of the Magdalena Medio is severely male-dominated. In fact, it was not possible to have even one interview with a female representative of this organization. This certainly biased the gender balance significantly. However, we decided to include each of these interviews due to their substance and the insights regarding the issues under consideration.

The decision to conduct the interviews together with my wife showed positive results. On the one hand, we elaborated the fundamental questions together, which allowed to jointly preparing and thus debating the issues even before the interview. It also brought up topics that we would ask specific people. On the other hand, Sandra Isabel added two major aspects that turned out to be very valuable during the interviews. She is Colombian and a woman, thus perfectly complementing my own European and male origin. So while I could focus on the substance of the question, she would frequently take care of the relaxed atmosphere of the

interview, connecting to people, showing understanding and contributing humorous remarks or anecdotes when it was necessary. It goes without mentioning that particularly women would rather open up to Sandra Isabel, also given her professional experience with women in conflict areas.

I mentioned before that we chose the region Magdalena Medio due to our experience there. Given the risk that this also leads to a certain bias in the selection of the interviewees with regard to their worldviews or sympathy, we deliberately decided to choose organizations from different ideological backgrounds. In addition to that, we introduced ourselves explicitly as students of international universities (Vienna and Granada respectively) and refrained from attributing positive or negative connotations to the topics. This responded to our previous experience, later confirmed by one of the interviewees (7), that one of the effects of violence is the tendency of people to give answers that satisfy the person who asked the questions rather than reflecting their own opinions. This is a survival-strategy but makes it extremely difficult to really get into the essence of a person's views. Thus, the before mentioned fact that we both had personal knowledge of the people and experience in the region constitutes a potential source of bias but helped us to establish the necessary trust to address delicate issues related to violence and prevent other possible pitfalls such as the use of inappropriate or risky language, or language that directed people into a certain direction. It also allowed us to invite people to leave aside their institutional discourse in favor of their personal views.

4.3.1.1. Characterization of the Interviewees⁵⁸

No.	Sex	Age	Function	Date, Place
01	m	40-50	Educator	June 11 th , 2011 Bogotá
02	m	50-60	Director, international organization	June 13 th , 2011 Bogotá
03	m	50-60	Director, regional organization	June 29 th , 2011 Barranca

⁵⁸ Since we promised anonymity to our interviewees, I refrain from disclosing their names and organizational affiliations.

04	m	40-50	Leader, peasant organization	June 29 th , 2011 Barranca
05	f	30-40	Psychologist, regional organization	July 5 th , 2011 Barranca
06	f	60-70	Director, local organization	July 6 th , 2011 Barranca
07	m	40-50	Independent artist	July 7 th , 2011 Barranca
08	f	30-40	Independent artist	July 8 th , 2011 Barranca
09	m	40-50	Regional organization	July 11 th , 2011 Barranca
10	m	50-60	Regional organization	July 12 th , 2011 Barranca
11	m	50-60	Regional organization	July 13 th , 2011 Barranca
12	m	50-60	Regional organization	July 13 th , 2011 Barranca
13	m	50-60	Diocese Barrancabermeja	July 14 th , 2011 Barranca
14	m	30-40	Local community leader	July 16 th , 2011 Monterrey
15	m	30-40	Local community leader	July 16 th , 2011 Monterrey
16	f	30-40	Local community leader	July 17 th , 2011 Monterrey
17	m	60-70	Local community leader	July 17 th 2011 Monterrey
18	f	40-50	Leader, women's organization	July 23 rd , 2011 Barranca

19	f	40-50	Leader, women's organization	July 25 th , 2011 Barranca
20	m	50-60	Leader, victims' organization	July 25 th , 2011 Barranca
21	m	40-50	Regional organization	July 25 th , 2011 Barranca
22	m	50-60	Leader, regional think tank	July 26 th , 2011 Barranca
23	m	40-50	Regional organization	August 1 st , 2011 Barranca
24	m	60-70	Diocese Barrancabermeja	August 2 nd , 2011 Barranca
25	f	40-50	Regional organization	June 30 th , 2013 Vienna
Group			Collective Interview with Community Leaders	July 17 th , 2011 Magdalena Medio
	SEX		AGE	
	F	m	30-50	51-70
	7	18	14	11
	28%	72%	56%	44%

4.3.1.2. Methodology

After selecting the interviewees and setting an appointment for the interview, we prepared it considering specific elements we wanted to know from the respective person. However, there were elements that every interview had in common: an introductory question on the development of the personal thinking on war and peace; on the effects of violence; on the meaning of peace and reconciliation; and on the essence of truth, justice and reparations. The exact wording depended on the context because we decided to let people talk and choose their

own language but every interview resulted in clear answers on these elements that correspond to the theme of the thesis.

Furthermore, most interviews were concluded with several quantitative questions that could be answered by a number on a scale from 0 to 10. These questions were the following:

- On a scale from 0 to 10, where is Colombia with regard to peace? (10=perfect peace)
- On a scale from 0 to 10, how much trust do you feel towards state institutions? (10=perfect trust)
- On a scale from 0 to 10, how much trust do you feel towards international organizations? (10=perfect trust)
- On a scale from 0 to 10, how safe do you feel? (10=perfectly safe)
- On a scale from 0 to 10, how much optimism do you feel for the future? (10=complete optimism)
- On a scale from 0 to 10, where is Colombia with regard to democracy? (10=perfect democracy)
- On a scale from 0 to 10, where is Colombia with regard to reconciliation? (10=perfectly reconciled)

While these questions were not a direct part of the field research and thus only included when it seemed appropriate they provide the reader with an impression on fundamental attitudes towards the environment in which transitional justice and reconciliation take place. However, it is important to add that neither regarding the size of the sample or methodological considerations the results can claim scientific relevance.

The selected people were interviewed in a setting of their choice in order to guarantee their well-being and the required degree of confidence. The interviews were recorded with their permission; however, very rarely and at their request the recording was suspended due to the contents. Right after the interview Sandra and I sat together and analyzed the answers and the process of the interview. Sometimes adjustments for the following interview were made, which is how the idea of the quantitative questions emerged. The elaboration of a written summary concluded the interview cycle.

After the lapse of a certain time the analysis of the interviews started by carefully listening to them and structuring them according to the main topics. This was achieved by

precise and exhaustive notes that later served as the base for the elaboration of categories: 1) What damages were caused by violence?; 2) What is peace?; 3) What is reconciliation?; 4) What meaning have truth, justice and reparation, and how do they relate to peace and reconciliation?; and finally 5) What topics were absent in the interviews?

The first four categories corresponded to explicit questions that were included in the interview, while the last one – for reasons outlined below – had to be filtered from the answers of the interviewees. This responds to the fact that, for example, the role of the state for most of them was essential and appeared in answers to several questions, while the notion of “transitional justice” as such did not appear but once.

This methodology responds to the fundamental decision not to determine the answers by asking narrow questions, which possibly happens when the goal of an interview is limited to verify or falsify specific hypotheses. While this has the advantage to get clear answers, it certainly risks to leave out important topics for the interviewees and thus to streamline the interview according to one’s needs instead of reflecting the output of the people.

The next step was to organize the different opinions and statements regarding these categories in order to facilitate a comparative overview of the collected views. At last I transcribed the most significant statements or part of them. These often long excerpts serve to illustrate the replies and give a sense of how people reflected on the topics in question.

4.3.1.3. Quantitative Questions

The results of the quantitative questions provide the reader with a first impression on spontaneous reactions to certain contextual elements such as institutional trust and the perception of safety. This incomplete quantitative survey on the opinions of several respondents on the before mentioned topics suggest a deep mistrust in the state institutions. Compared with international organizations (in average: 6.83), trust in national institutions (3.26) is minimal. Another important dimension for a tangible transition is the perception of safety, the evaluation of which is also negative (3.53). This is contrasted with a high sense of optimism for the future (7.3), which is usually cited as one motivation to keep being committed to peace. When asked about the state of democracy (5.66), of peace (4.03) and reconciliation (3.5) in Colombia, the answers suggest a rather skeptical view of the current state of affairs. The subsequent analysis of

the reflections with regard to peace and reconciliation will show what understanding people attribute to these terms.

4.3.2. Violence and Damages

Chapter 3 described in some detail the effects of the decades-long armed conflict in Colombia. Whatever instruments of transitional justice are chosen, they should address the damages caused by violence in order to contribute to reconciliation. This is why the first category presented here is dedicated to the characterization of these damages forwarded by the interviewees.

The following quotes provide a good overview of the different impacts violence had on the community:

“The most elementary and sad is that it [violence, CW] destroys the social fabric. It makes that these networks that permit solidarity, meeting with neighbors, putting attention towards the other, are destroyed because violence puts everyone in the mode of suspicion. You never know who is who, you never know with whom you are talking, to which group this person pertains and what intentions he/she has. Having this insecurity, this fear, this distrust, well, it is not possible to generate a social fabric. It simply breaks down, all these processes break down that before had been natural. If we are in the same region, we have the same needs, even though some have more money than others but in the region the landscape does not change much for the one or the other. But feeling this fear each suffers from his/her own pain and has to take it on alone. The suspicion of who caused it, who said what, who denounced me or allowed it to happen or did not warn me at time. All of that is the destruction of the social fabric, and not only social but also of the family. Because, speaking concretely of the Colombian conflict, one of its main pathologies is that it is not a conflict that has to do with ethnic or religious terms, which would be easily identifiable but it is a conflict, in which the confronting groups defend their own interests but who are part of what we call the cannon fodder of the conflict, which are the ordinary people of the country; most of them of peasant origin with modest economic resources. And it is the same families, where they are; it is even anecdotic that the sons of one family are split between the guerrilla, the paramilitaries and the military; another may even be priest. It does not make any sense.”⁵⁹

“I am telling you what I found, what I suppose that the conflict has left ... a very strong element that we have found is that nobody tells you what he/she really thinks but everybody tries to intuit what you want him/her to tell you. This is a very strong thing. In each group, which we are working with, there is this tension or search for the own opinion and to make it public but there is a big preparation – one notes that there is a big preparation there – to understand what the other person wants you to tell him/her. Now, I think that this is an effect both of the conflict and the stratum that has to adapt itself to those who do have a voice. I think that this is why the Peace and Development Program attributes so much importance to give voice to the community. The topic here is that in this process of giving voice to the community,

⁵⁹ Quote 1: Respondent 25, 42.00-44.45 minutes

often we give our voice to the community, meaning the process that the community finds its real voice is complicated. This is a strong thing we have found in the post-conflict, this capacity to intuit what the other person wants me to say and to actually say it. This is on the one hand.

Though there is the notion that there are many organizations, that people show solidarity etc. what we have seen is a total absence of solidarity and a very strong, enormous individualism. And it is very intuitive, i.e. the feeling that one has to save himself, which is the word of the order and morally accepted. So, it is important that I save myself, my family. The effects of solidarity are in non-essential things but it is complicated. One of the biggest topics in the group that we still have is to base one's own possibility of life not in what you have but in what we have. This is a very complex concept in every society in the world, the concept of community, interdependence and the fact that if you save yourself, I will save myself, there is no possibility that I save myself ... meaning it is a tool of intuiting dependence, intuit how we resolve something together instead of you resolving your life, you resolving your life, you resolving your life with your salary, your salary, your salary. But we are very far from understanding; in fact the group has still decided your salary, your salary, your salary. Better not to receive it but to know that at the moment I receive it, it is my salary. There is a very strong and elaborate individualism, even in the group.”⁶⁰

“And then, the people and how afraid they were of them. The stigmatizations of the girls who because of living in the sector Esperanza were stopped at the bridge on the other side and were called *guerrilleras*; then they came home crying. Those whom they killed or threatened for having a friend from the military, a soldier ... and the conversations between them and their mothers. It was not about “my daughter, careful with the boy friend” and nothing but “once you go to the sector X, be careful” or “do not say that you are from sector X” ... sure and the shoot outs, having to learn to hide under the bed. When one went to buy milk, leave everything turned off because one did not know whether one returned soon or, as happened several times, one bought milk and took refuge for an hour or two in a shop close by until the shootout ended and until happened what had to happen. And having to live this reality with the people of the sector; the best that families could do was to send their youth away. This is why they were called the lost generations but the guerrilla took them because they seized the soccer fields, sport fields, at special dates. Everything communitarian, even though it came out of a small group, they finally became very interested. And then the transformations of what we lived at May 16th and then at February 28th [massacres, CW] with the entry of this *Panadero* [paramilitary commander, CW], which served to inform the people that they were there.”⁶¹

“In order to be consistent with what I have said since the beginning, one of the least commented or visible consequences is how violences [sic] have generated patterns of violence or habits of violence in the way how we make decisions, in everyday life and particularly regarding conflicts. This means that in the measure that we have lived in the middle of so many manifestations of violence, fruit of the armed groups, the drug trade, the state, a school of violence has been generated in the country, an informal school that leads us towards having to resolve things in this way. They have to be resolved by violence because this finally legitimated the way of confronting conflicts. This means, if it is not done this way, there is no other way; if it is not done by violent means, I do not manage to subsist, to survive. And this also generates other anti-values such as corruption in everyday life. If I do not take benefit from the circumstances, I will not advance. In the end, this seems to me the most severe, because there are obviously dead, hurt people, there is damage to the infrastructure, psychological damage and trauma due to the kidnapping etc. For me the most damaging is how in the cultural habits violence ends up legitimizing this same violence and the actual violence in everyday life. This is why we end up resolving the conflicts by means of more violence and this is why we keep confusing violence with conflict. And this is not what is most mentioned or published.

⁶⁰ Quote 2: Respondent 07, 34.53-39.09 minutes

⁶¹ Quote 3: Respondent 18, 02.30-04.42 minutes

However, when one works with communities on the difference between conflict and violence and the importance to handle conflicts by peaceful means and when one presents the topic in a role-play what can be seen in these games is that people resolve the situation with violence starting with the game. So, what I want to say is that violence has put itself into our skin, in our games in such a way that it seems to me that it is the biggest sequel because this allows perpetuating the scheme of violence.

For example, I have always said that one of the fuels for the violent actor both of domestic violence and the armed conflict is terror, fear. When one develops a non-violent practice, the first thing one has to overcome is fear. And the best ally of the violent is fear because it is fear that disconnects, that subjugates. So, having this fear and terror inside ourselves, this seems to me one of the worst sequels left by violence and it leads us to constantly reproduce and it keeps us from overcoming and finding peaceful ways out of the conflict. Putting fear away, taking away the power from the violent and being able to confront him in a peaceful way, it is difficult and it is even more difficult, when the example has always shown us that it has to be through the rigor of violence how things are resolved.”⁶²

These statements show that the damages of violence affected the population on different levels. On the one hand, one testimony tells us how the daily struggle for survival increases the individualism among the community members and their hesitation to express their own views, rather guessing what the interlocutor may want to hear. This responds to the experience that expressing an opposition to the dominant views is not advisable. The perceived lack of solidarity is obviously the consequence of politics of scarcity with regard to basic goods but also of war strategies that actively undermined the creation of groups or other collectivities, for example through the infiltration of society by informants.

On the other hand, several testimonies talked about the impact of violence on the social fabric or tissue that according to one contribution (25) consists of the relations that a human being needs for his/her survival given the fact that humans are social by nature. This set of damages are described in terms of distrust, stigmatization (18), violent conflict culture (1, 24), fear and terror (25, 1, 6, 18), the impossibility of political work (11, 18, 13, 14), distrust in state institutions (16, 23) and lack of development (22).

It is worthwhile to get into several of these issues in some detail. First, the term “culture of violence” or “mafia culture” appears in several interviews (1, 12, 17, 24) and is usually used as something that transcends momentary reactions or behaviors. It denominates habits and attitudes that have been engrained in the Colombian society by the length of the armed conflict. As one quote (1) tells us, it entered the sphere of children’s games, the way conflicts are “resolved” or violence itself justified. This is to remind us that for generations there have not been times of peace in Colombia, which is why other “cultures” are missing. Thus, many places

⁶² Quote 4: Respondent 01, 29.45-33.50 minutes

in Colombia have turned into “schools of violence” (1). This is complemented by the term “mafia culture” that indicates the impact of the drug business, in which profit justifies the use of violence. The apparent success of those involved in the business (buildings, women, motor bikes ...) serves as clear examples how one may escape poverty and misery. In such an environment violence seems to be a reasonable price to pay.

Another interlocutor used the term “violence as a method” and as a “means of communication” to describe the objective of violence (12). This refers to the reality that people get killed in order to transmit a message to the survivors, most frequently that a specific group is in charge and that opposition is not recommendable. But it also serves to normalize violence, considering it as a “normal” method to relate to others.

This reminds me of an anecdote of my work with the Jesuit Refugee Service in Barrancabermeja. I participated in a meeting with young people that had the purpose to draw a risk-map of their locality. This served to identify potential sources of danger for the youth such as accidents, places of drug-trade or potential recruitment. At this occasion I remember one boy of around 15 years telling the others: “In my *barrio* (district) everything is quiet. We have no security problems; we live in virtual peace. Well, last week two people were killed by gangs but nothing special. Everything is fine there.” For him violence has turned into an aspect of every day’s life that in the end is hardly worth being further discussed; it is simply normal.

In this context the representative of a victims’ organization (20) told us about the way assassinations are justified by the members of a community by saying that “probably they [the victims] did something to deserve it”.

A representative of the relatives of the disappeared put it this way:

“Unfortunately, the Colombian society has not been sensitized towards the big problem that exists in our country because unfortunately according to the prosecutor’s office, the prosecutor Mario Iguarán some two years ago ... the office has documented 51,000 cases of forced disappearance. This thing had a huge impact on me because on the level of organizations the number of 25 to 30,000 had been handled; if a state entity like the prosecutor’s office says that it has 51,000 documented cases, we are saying that in Colombia there are more cases of forced disappearance than in all countries of the Cono Sur that had this problem. We are doubling them, and those are the documented cases. And those who have never said anything, never denounced? Well, how much would the number increase? As the documentary [*Impunity*, CW] says: How many disappeared are there, and where are they? It seems very aberrant to me that Colombia does not react to such a cruelty because one says that the phenomenon of the forced disappearance is much more traumatic than murder ... because one’s son is killed and on Sunday or another day one goes to the grave, carries flowers and mourns. In the case of the

forced disappearance grief is somewhat frozen in time ... that perhaps it is no longer the same grief as at the moment of the act because over time one starts to learn to handle the pain, the same as handling fear ... it is a timeless pain, constantly there. Thus, forced disappearance is the biggest crime that exists among the crimes against humanity.”⁶³

He highlights that the Colombian society as such does not react any more to reports of victimization or violence. And indeed for a person from outside it is sometimes incomprehensible that the society does not mobilize after news of massacres. It seems that this “culture of violence” succeeded in de-sensitizing the society so that violence seems rather normal and integrated in public life. This has certainly severe consequences for political work and the desire of being recognized by the victims, as will be explored in the following.

Second, several interviews refer to the impact of violence on organizations and their (political) work (10, 11, 7, 18, 13, 14). For an outsider one of the most amazing features of Colombians is their capacity to lead. Despite the fact that many leaders have been killed over the years, there seem to be no lack of people who take the risk and assume a leadership role. There are different models of leadership; several organizations trying to put a collective leadership in place, most, however, keeping a single person as the leader. However, it is visible that the leadership of most organizations has been around for many years and frequently blocks the generational change. If this is due to the desire to stay in charge or to the lack of formation of future leaders given the violent environment (14) has remained unclear to me. However, the before mentioned individualism and growing up in a violent and profit-greedy context certainly do not help to develop the wish to lead “complex” initiatives.

This leads to another relevant point regarding political work. Several responses indicated the difficulty to work on certain issues, particularly once the paramilitary groups have grasped for power since the end of the 1990s. These were topics usually associated with the guerrilla such as poverty, social justice (11, 13) and particularly human rights (10, 11) and peace. From outside one tends to evaluate this restriction on certain topics very simply as the reaction to a violent and authoritarian actor. Analyzing it more profoundly, it is obvious that the mentioned topics have to do with a substantial criticism directed towards “the system”, thus being in line with the reasons of why the guerrilla appeared in the 1960s in the first place. The paramilitaries, on the contrary, are usually considered as those who defend “the system” and the dominant establishment. Thus, they are not interested in a discourse that questions social exclusion,

⁶³ Quote 5: Respondent 20, 02.58-06.15 minutes

discrimination or the concentration of land. This line of argument would coincide with the opinion that the paramilitaries are violent and thus against an opposition that is founded on human rights.

Looking at it from a military-political perspective, i.e. considering the fact that the guerrilla defines itself as a political-military or military-political organization, it quickly becomes clear that political terms such as social justice or human rights are connected to the armed struggle. Adding to that the fact that the guerrilla insists on “the struggle with all available means”, this connection is even more difficult to deny. This certainly does not justify the persecution of human rights defenders or the identification of civil society groups as the forefront of the guerrilla but it renders the analysis much more complex, particularly in a context of war. The following quote illustrates that:

“At least in my case, of course, the strategy of human rights used to be almost a strategy of war, considering it ... and in several sectors of the exercise of rights they are understood as a way of defeating the enemy state. The judicial scenario is understood as a scenario of confrontation, not for the achievement of justice but for applying a strategy to defeat the other. And considering case by case this is very easy to see. There is a criminal and the revenge is considered as the most appropriate instrument through a judge and a sentence. And then the claim for human rights, if considered from this point of view, it can easily be understood why a human rights organization or a human rights defender can ask for a condemnation of a civil servant against all odds but when a fellow of his sector whom he considers a friend, commits a crime, so every manifestation of justice is a manifestation of persecution of the leaders etc. This means that in this scenario the exercise of human rights is stripped of its real dimension becoming a strategy of confrontation. Now, if someone is at this point, it is very difficult to build peace. When someone radically claims the application of justice for one party and impunity for the other, it is very difficult to understand how the rights, the exercise of the rights or the validity of comprehensive human rights can constitute themselves as a fundamental element of peacebuilding. I am saying this out of my experience, more than as doctrine but in the concrete experience as I see it; there is clearly a radical transformation between one thing and another. Sure, they evidently seem incompatible but if considered from a certain distance, one realizes that they are absolutely necessary and complementary – the validity of the human rights and the implementation of peacebuilding.”⁶⁴

Another respondent confirms that human rights have often been used as a weapon against the state (11). This selective use of human rights and justice against one actor of the conflict contributes to discredit both terms. It has also a damaging effect on those who consistently defend the rights of every human being against infringements by the armed actors. In an environment, though, that is impregnated by a “culture of violence” as described above the differentiation between truthful and manipulating actors is put aside in favor of a simple

⁶⁴ Quote 6: Respondent 09, 06.15-09.08 minutes

black/white interpretation of the reality. Consequently, those who defend human rights and talk of social justice, immediately are seen as the civilian branch of the guerrilla and may be “legitimately” persecuted and killed.

This infiltration of war into a civilian terminology is complemented by the guerrilla’s insertion into civil society organizations:

“This means, what happens is precisely what has always been called the diverse forms of struggle, which is the strategy of the guerrilla. The guerrilla says that ‘well, if I can win spaces and even military advantages through non-armed spaces, I will do it’ and therefore the guerrilla put itself into the university, companies, trade unions but never in function of the people or the people’s options but in function of its revolutionary cause and the power of the weapons. In this topic unfortunately ... precisely in the 1950s, 60s, 70s and even 1980s the guerrilla struggle was ‘claiming the people’s rights’ and the people stood up. The guerrilla found that there was a space in which it could enter to work and link itself to the movements in order to take political benefit and to a certain extent position itself ideologically in the region and gain a favorable position with the people.

So, what happened? It is not that the movement and the social base of the Magdalena Medio are part of the guerrilla as a civilian arm or social arm to work for the guerrilla regarding its position. The guerrilla has always applied the strategy to infiltrate these spaces and use them; the needs of the community – because I am sure that the leaders of that moment ... were conscious that the guerrilla would infiltrate them or that it was infiltrating them but they could not act. This strike could not be reversed because it was about something vital. They were vital rights because the water is a vital right. This is why the organizations had to know that they had to keep their process and that they had to handle two in one problem: one problem of a state that would declare them illegal, an illegal strike, an unjust strike and that would repress them; and on the other hand the curse of having to deal with people who would be there and would not be easily detectable and could not be easily neutralized. And, therefore, in each of these processes ... even when I entered in the year 1998 to strengthen after the massacre, the first we tried to clarify was that this is a movement of the civil society; that here, we are not guerrilleros and do not support the guerrilla.”⁶⁵

This church leader who for decades has supported and protected human rights defenders summarizes the dilemmas of working on human rights in conflict areas: Is it appropriate to mobilize the public in favor of basic rights knowing that the guerrilla would infiltrate the protest, or should the mobilization be cancelled? He goes on by saying that the guerrilla even captured the names of civilians to denominate their war fronts like the ELN that named one front according to a trade union leader. Together with the previous quote, it becomes clear that the before-mentioned effects of violence on the social fabric, i.e. fear, terror and distrust, are caused by a wide range of war strategies. This explains the often heard notion that “it is difficult to know who is who”, which has a devastating effect on designing and implementing collective initiatives. It also makes it easier for the government to discredit civilian political manifestations

⁶⁵ Quote 7: Respondent 13, 01.11.43-01.14.25 minutes

as infiltrated by the guerrilla, not considering the sequence of events, i.e. that frequently the initiative came from the civilians and the guerrilla took benefit afterwards.

Regarding the political level, the consequences of violence for the relation between civil society and the state and its institutions are devastating. It is blamed to have neglected the rights of the population, not only by not protecting them but also to prevent development in areas that are considered of strategic importance (11, 20, 13, 24, 23, 22, 16, 2). The state is usually seen as the promoter of the paramilitaries, thus violating the obligation to protect its citizens. The lack of schools, hospitals and other basic services like electricity serves as evidence that the state is simply not interested in promoting rural areas, thus contributing to the perpetuation of violence. One respondent goes so far as to conclude that the state maintains the armed conflict in order to keep displacing peasants from their lands; a reasoning that may have some logic considering the economic policies that are based on cash crops. (23)

Third, there are several statements that hint at the totalitarian power of violence that permeates every dimension of one's life and even penetrates the skin of people, as one respondent put it. (8) It is worthwhile reflecting on the following response:

"It has not touched us but we saw how it touched others, for example the relatives of those of May 16th [day of the massacre in Barrancabermeja, CW], and how they wisely overcame – because the truth is that I do not know if I could have been able to survive this violence – all the violence that they did to them in their bodies, in their children, in their communities, in their projection into the future, in their memory. And accompanying this people – because what we have done has been accompanying them – has been our confrontation with violence, surely an accompaniment rather of past times because these times are in the present; the fear is in the skin. The most dangerous, which seems the weakest point of the young people with whom we are working, is their fear regarding their projection into their future. They are not able to project themselves into the future because they have no memory to project. This is the biggest violence that we have accompanied. I do not know if it is easier than surviving a shootout; for me it seems more cruel that a young person, a child is not able to project himself/herself into the future because they did not even hurt them. They hurt their parents, their grandparents, their community. So, they have nowhere to pull and it is a very fragile person before the world. Thus, I feel that this is the violence that we have lived. This is the post-war that we have lived or the war because in a certain sense it is present."⁶⁶

This reflection comes from a foreign woman who applies arts as a means for young people to express themselves. The image that "fear is in the skin" of these people further illuminates what was mentioned before in a more rational way, i.e. that violence is part of culture, the attitudes and the body of people who suffer from it. It is hardly imaginable that the

⁶⁶ Quote 8: Respondent 08, 09.00-10.45 minutes

effect of violence goes beyond that. She also hints at the connection between past and future, which will concern us in the respective subchapter. Here, it is sufficient to emphasize her opinion that young people are not able to envision their future because they lack a firm rooting in the past. Violence had abused their relatives in a way that they had not been able to transmit a vision for the future to the next generation.

One of the quotes at the beginning of this chapter (18) points to a different set of affectations by the violence. It has to do with public space that was invaded by the armed actors. It is well known that soccer fields or bridges were often used as execution sites. The transformation of public space and life veins into spaces of death and fear obviously affected the capacity of people to meet each other or of groups to enjoy social and sports activities. This strategy of spatial control was complemented by the control of movement. The respective statement of the women's leader clearly indicated that every step was controlled by the armed actor and every trip to a different sector was looked at with suspicion. This complicated visits to relatives or friends and even the necessary contacts with authorities. Thus, it was an additional way of isolating people from each other and stigmatizing sectors of the city as being close to the guerrilla or to the paramilitaries respectively. The same strategy could be found in rural areas where entire villages were forbidden areas, even though they traditionally had economic or family links (Group).

In a different study on historic memory in a number of villages, I even identified how these isolation strategies were reflected by daily language. For example, one of the small restaurants on the way from the main road to the first village in the mountains, which took three to seven hours depending on the state of the path, was called "no te pases" ("do not go further"). This name stems from the fact that the restaurant once delimited the areas of influence of the paramilitaries and the guerrillas. Crossing this invisible line resulted at least in intense questioning by the other side. (Wlaschütz 2008b)

Fourth, it became clear that violence affects differently depending on the analyzed group. I thoroughly described the affectation suffered by politically active civil society organizations. There are other categories of people who suffer in their specific way. Young people are restricted in what they are allowed to wear, what music they can listen to, where they can meet or rather not meet, and what activities they are permitted to undertake. They, furthermore, lack perspectives on the labor market, particularly if they live in rural areas.

Women and men are affected differently (5, 8, 18). While some men either voluntarily or obligatorily join armed or other illegal actors or are physically harassed by them, women are often reduced to their physical attraction. Child and youth prostitution is widespread, and the attractiveness of the body becomes one of the ways to apparently climb up the social ladder. They must also be very careful not to relate to the wrong man, meaning the wrong armed actor, which may put her whole family into danger (18). This adds up to the “normal” gender gap regarding opportunities. According to 8) a significant number of families encourage the male to go to school, while they consider that the girls will get pregnant soon, which makes the investment in education rather useless. This recalls the reflection of Rosmary Nagy (2008) who adamantly criticizes the focus of transitional justice on war-related violence, thus neglecting the ordinary structural violence that limits the opportunities of vast sectors of society.

Fifth, violence left an enormous number of victims of different natures: relatives of killed and disappeared people; mutilated; raped; kidnapped; displaced, etc. These victims have kept silence on what had happened to them, which made it difficult to address their trauma. A psychologist (5) who works with victims provided us with some insights on their psychological state. They harbor feelings of guilt, sometimes revenge and suffer from the disintegration of their families. Particularly the children of those who had been affected by violence generate negative feelings such as stigmata, revenge and hatred. She agrees with an analyst of transitional justice (2) that the category “victim”, though politically important, may be counterproductive for their recovery. It has the connotation of passivity and even motivates people to remain in this state in order to receive material benefits. As 2) puts it, “the state arrives only through the category victim”, which is very complicated for the relation between state and citizens.

7) and 8) add that they refuse to work with “victims” and rather concentrate on human beings. According to 7) “the term victim would prevent me from relating to society”:

“I was once in Bolivia’s Amazonian region and had a big problem ... because I said that I completely refuse to work with indigenous people. And everybody came upon me. Therefore, I said ‘You did not understand me. For me everybody is a human being. And I will not work with indigenous; I will work with Mar and with Alex or with another person, without categories. I do not work with indigenous. I work with people who have their history, their origin, their problematic that stems from their place of origin etc. etc.’ This is talking about categories.

The other is that ... the best for the victims is not being any longer a victim and start to live. I think that the topic of reconciliation has much to do with that, without losing memory, without forgetting, which is a complicated issue. Without forgetting this is already an ideological question ... speaking on a human level, this had to do with the people’s opportunity to enjoy

life. Therefore, it would be good if there is a pill for Don X to forget: Therefore it may be that the place of these people – in order not to use the term victim – to whom this happened - and this happened in the name of the whole society – is a place of not being a victim or a pedagogic place in society. This topic is even more complicated when there are benefits for being a victim. There starts this world, this step because it is a terrible topic because one is not able to give one's opinion. Certainly, what happened, happened. It is very complicated to do demagoguery, work something

In the Comuna 7 [district of Barrancabermeja, CW] it is not possible to see victims. The situation of the memory is much more alive here than there ... it is much stronger for an external observer than for a person who lives internally. For example, after four years we are touching, we are starting a work that has to do with memory because before it was unthinkable because nobody was interested. It is not part of one's panorama. The young people of the Comuna 7 do not want to count all the victims, they want to count on their future. This is more than understandable. It is more our need than theirs. Pedagogically, for example, for me it seems very interesting that they related to what happened, with the relatives of those affected because I think that this converts them into conscious human beings. It points to the future because it assumes the past of their community but it is complicated because things keep happening ...

With people who worked in social organizations or NGOs or in victims' organizations they had to be victims in order to assume this discourse and the fact of being a victim. While our point of view has been 'take them out this. Do not use this word.' We are looking at it from a different perspective ... Particularly because from a human perspective it is difficult to leave this role; ... Who am I? A victim, wow. How am I looking at the world as a victim? I know that everything that I can see is because I am not a victim. Whatever occurs to me in life, I am escaping this place because it would prevent me from seeing, it would prevent me from projecting, it would prevent me from relating to the society."⁶⁷

This quote shows the ambiguity of the understandable fight for the recognition of the victims. While politically important, the connection between the category "victim" and tangible benefits may have serious consequences for the self-image of millions of people and their relation to the rest of society. According to this quote the term victim includes a passive connotation and something that determines one's life and standing in a society. This is contrasted with the vision of young people who this interviewee is working with. They are more interested in their options for the future than in the memory of what happened. Thus, 7) defines one objective in liberating people from being victims instead of deepening this condition.

This analysis of the first category, i.e. damages of the violence, leads to several lessons that are of utmost importance to the topics of transitional justice and reconciliation. If their purpose is to address the harms committed by violence, they must be flexible and multifaceted enough to work on several levels. The affectations concern individuals, families, neighborhoods, communities, organizations, the state and others but also includes impersonal factors such as

⁶⁷ Quote 9: Respondent 07, 54.50-1.01.51 minutes

public spaces or political work and specific political issues. As an example, the analysis of the status quo of “social organizations” by the leader of a cultural group:

“The social organizations that the conflict leaves behind are organizations that were born in the conflict and are not prepared to be outside the conflict. This is a complicated point because the conflict – and this is obviously a verbal provocation – stimulated and helped that people would meet. It was a big factor of union for the people. In the absence of the conflict – and when I say absence of the conflict, I am talking about this direct sensation of the skin, not of the political conflict as a vision for Colombia but direct. The sensation that the neighbor would receive a bullet tomorrow, in this sense, or that they would oblige me to do things that I do not want to do, an appreciation about the human. In this moment it is not there. First, the conflict leaves a completely de-structured social fabric and on the other hand social organizations that have to re-encounter. We have fallen, let’s say, in luckily, this I have to say – these are always very strong things ... we are good friends with the relatives of the 16th of May and we have a very, very strong relation with them. And it is terrible to think that my possibility to express who I am, comes from pain ... this is very strong to talk with a person who suffered what Don X suffered, and my unconsciousness or ignorance or that of the group with regard to the relation with pain.”⁶⁸

This quote connects very appropriately the individual suffering with the individualism and isolationism within the community and the lack of preparation of the organizations for the times of peace. According to this interviewee they are not prepared to exist outside the conflict, i.e. their discourse, mind set and activities are related to violence and war. What are they going to do in their absence? These are the effects of the armed conflict that efficient policies of transitional justice and reconciliation must have in mind.

It also seems that the usual methodology, i.e. designing projects of a more or less quick impact, would not suffice. The analyzed interviews insinuate a very profound and long-term process to address the identities and attitudes towards the other.⁶⁹ As presented in the interviews, violence permeated every sphere of life in a community. Projects of quick impact will certainly not address the profound consequences of violence at each level of society. Again, the initiatives should bear in mind the multiple features of the endeavor.

The following category on the diverse perspectives on peace will shed some light into the nature of future-looking strategies.

⁶⁸ Quote 10: Respondent 07, 06.36-08.55 minutes

⁶⁹ For conceptual reflections on the importance of identity and attitudes compare Chapter 2.4.2.

4.3.3. Visions of Peace

The analysis of the interviews shows that peace is considered on two dimensions. On the one hand, there abounds the rational approach on what must happen in order to achieve peace. This relates particularly to the necessary structural changes in Colombian society (4, 3, 6, 10, 11, 20, 19, 13, 23, 12). On the other hand, several respondents characterize peace as an emotional state (25, 15, 16, 22, 23, 21, 5).

In the following I will supply several examples for these visions of peace:

“Peacebuilding is the development of the people’s life projects, it is the whole dynamic that allows that people construct their lives in dignity. Therefore, all things mean: the construction of relations, the way in which the territory evolves according to its needs, how the state is constructed and re-interpreted, the way how authority is understood, relations of negotiations etc. This is almost like the development of people’s life in general; this is peacebuilding that is ongoing, that does not depend on junctures but is a thing that is done on a daily base, very much day by day to the degree as organizations strengthen their capacity to adapt to things and render much less traumatic a clash with things. This starts to generate peace scenarios to the extent that people, for example, learn the topic of dialogue. This is a very stable thing; it is not cyclical. This is a fundamental thing and in general it is not top-down. It is not a thing by decree but the people take initiatives, the people, all the actors. It is not a claim or a thing taken by the social sector. This is a matter in which all the actors start to find the gift to construct themselves in these conditions, conditions different to confrontation and defeat and the exclusion of the other. This is an important thing. Now, it is obvious that there are actors who have a very profound ethical sense and who are more prepared than others but in general it is a gift found by a diversity of actors.”⁷⁰

“I consider that, if the young people of this community had a space where their bad thoughts would be taken care of or where they could be busy with other things, or that other guys would tell them ‘ay, what stupidity’, I think they would be more contained. It seems to me that, if one considers the community at this moment and this context, one has to make peace but not call it this way until it recovers its good name. It used to have it but lost it until But there are many spaces of peace. There are young people who dance, there are young people who play in the soccer-field, there are people who come together and try to change ... certain things that pave the way. I think that also peace has to take a group-path. I think that people, while they were here in war, were more united than now ... in the mood of survival. I think that now people have become more individual because perhaps also the survival had to be more individual ... Therefore, I think that, if at this moment one has to work with peace, it has to be again from the community perspective. It is more difficult because one has to disarm the bad habits.”⁷¹

“I think that it is necessary to reflect and start to give back the real tranquility to the people. And this tranquility is not possible if we see that the actors - especially one actor of the conflict - have transformed. Therefore, if people are not completely calm in Southern Bolivar because, despite the fact that it is not any longer the modus operandi from the past when there they saw

⁷⁰ Quote 11: Respondent 09, 33.15-35.26 minutes

⁷¹ Quote 12: Respondent 08, 41.54-44.00 minutes

the actor with arms, with the gun and the uniform, nowadays it is a different *modus operandi*. This, however, generates fear. To a certain extent people did not live together – in certain cases they did - but they saw him/her there; how good, when he/she committed an action, at least I know, what it was but when people do not know who is going to commit it ... In order to say it this way, if this chain of re-organization of the old paramilitaries continues, or how they are called today, these intentions of peace will certainly not prosper.

And this intention of peace would not materialize if there is no real commitment with two things: simply strong arm against the generators of violence, which is not sufficient. It is also necessary to strengthen the civil institutions. Let's render account. There are at least 25 or more members of the military in each municipality, if we make this account, and there is only one single ombudsperson for the 33 municipalities in the case of the Magdalena Medio, in the case of the Cesar department for almost 23 municipalities. Therefore, if the civilian institutions are not strengthened, particularly those that keep watch of the breaches, the violations of the human rights in the case of the ombudsperson ...

I think that it is also necessary to politicize the institutions that belong to the public ministry like the *personerías municipales* that do not fulfill their role, for which they had been conceived. But I also think that if these aggressive strategies that lead to the wellbeing of the communities, the family, of the people, i.e. the development of the civilian state, are not designed, the results will certainly not be flattering either. If the education keeps being absent, as health, ways, housing, not only in the countryside but also in the urban zones, the aspirations for peace, i.e. if one understands that peace is also a state of tranquility, then even in the absence of the armed conflict, even if there are no paramilitaries or guerrillas, people cannot sleep calmly because they run the risk that someone who had left a group would rob the belongings, this is not peace either because peace, one understands, is also a state of tranquility, to which different aspects contribute.”⁷²

These quotes show the variety of approximations to the topic of peace. They range from methodological considerations, i.e. from what perspective peace should be approached, to the clear link between peace and structural policies in rural areas. It is also interesting that most respondents consider peace as a process and rather refer to the “construcción de paz”, peacebuilding, while others concentrate on how peace would be like.

Although the before-mentioned rational and emotional spheres cannot be separated as the last quote shows, in which a peasant leader speaks of “tranquility” that can only be reached if human security is achieved, I will analytically consider them one after the other in order to elaborate on both lines of argument.

The call for structural reforms as a base for an authentic transition from violence to peace corresponds with the frequently heard concept of “positive peace” as opposed to a negative peace. Johan Galtung’s distinction between different forms of violence, i.e. physical, cultural, structural, requires multifaceted action to initiate a peace process. In this context the mere absence of physical violence, i.e. the demobilization of armed groups, is not sufficient. Unlike President Uribe who favored disarmament over a more comprehensive approach President

⁷² Quote 13: Respondent 23, 56.30-1.01.02 minutes

Santos recognized that several structural questions are at the core of the armed conflict. This coincides with the understanding of many civil society actors and people, who live in conflict areas. However, the closer one lives to violence, the more people argue for the reduction of direct, physical violence as a first step. Considering this, Whitmore advocates a greater appreciation of the importance of negative peace, which at a minimum means that the killing should cease. (Whitmore 2010) (18)

Regarding the concrete contents of these structural measures, the respondents coincide in emphasizing the human rights of the second generation. Thus, economic and social transformations are at the forefront of the claims. Consistent with the assessment that the root causes of the armed conflict have mostly to do with land concentration, income inequality and the lack of social investment and professional perspectives, the interviewees focus on a land reform, the access to the health and education systems and “life with dignity” in rural areas, which implies investment in infrastructure such as roads, electricity and access to clean water.

In this context it is interesting to add that the terms development and peace are usually used in the same phrase or at least in close proximity to each other. On the one hand, this may be explained by the fact that the Program for Development and Peace is well known and has had a significant impact on the discourse in the region. On the other hand, it may also be due to the decade-long effort of the organized civil society in the region to achieve second generation human rights. In any case, this link between development and peace is significant considering the usual argument that there must be first (military) security before social investment makes sense. According to the respondents this view fosters the recruitment of ever more fighters for the armed actors or drug-related groups.

A church leader provides us with the following analysis of the link between the armed conflict and the dominant development model in Colombia:

“The origin of the conflict in Colombia – and this is why I speak about the historic memory – was not due to poverty but due to richness. The Colombian conflict is not about the lack of bread but because bread is accumulated in very few hands. And the conflict was initiated to hoard bread, to hoard richness that generated conflict situations that in turn generated a violent reaction of the displaced, i.e. the peasants who did not find a state that responded for their land ... This is why I consider that a social pact is required because the problem of the conflict is not resolved only by the state or only by mechanisms of repression. The solution to the conflict is achieved by a shared initiative of all actors who have participated in the conflict. And the economic actors have been an escalating factor of the conflict.”⁷³

⁷³ Quote 14: Respondent 13, 37.20-39.03 minutes

This interpretation of the emergence of the armed conflict in Colombia has momentous consequences for the design of measures that contribute to peace. If the concentration of richness is at the core of the conflict, the contrary should be the base for peace policies. Before taking up this discussion, voice will be given to two civil society leaders, who express their opinions on the necessary “conditions for peace” (12, 23).

As a female social leader points out:

“Well, for me peace is that we all have something to be busy about because if people live busy, they do not have time not even to think about stealing or doing bad things because they have their food and their livelihood. This is why we aim at giving work to many people and today we are achieving it ...”⁷⁴

And in the words of a peasant leader:

“Sure, it is necessary to develop the countryside but taking into account that the implemented development stems from a vision nourished by the perspective of the peasant. We cannot, for example, arrive, finish with the small-scale land and insert a large plot with two workers, no. It is necessary to respect that the peasant has his plot ... According to this fertility and this vision of the peasant that has to be taken into account and his empirical knowledge ... and make these lots work based on the needs of the demand, of course but fundamentally permitting the independence and the autonomy of this peasantry. We have said that there are zones that can be used for pastry because crops do not work. Therefore, well, these zones are dedicated to pastry and cattle but there are also zones that can be used for perennial crops and fruits, cacao ... We share the concept of sustainable development, completely agreed but incorporating this empirical knowledge. We strongly defend that things are done by debating with the people ... this theory must be elaborated with the contribution of the people there ... totally in disagreement with the monocultures because they generate dependency. If they are cultivating everything in cacao, what are we going to eat? Well, cacao ... The culture of what we can denominate social and political subject of the peasant is going to disappear ... there are going to be workers of these crops.”⁷⁵

These quotes are related to an important debate on which development model would further peace and inclusion. The government policies are based on the extraction of natural resources and the promotion of export-oriented crops. Consequently, small peasants and even entire populations in areas close to those sites are negatively affected by land concentration and displacement. Going more into detail, the effects are also felt in the banking system where small-scale peasants are very unlikely to obtain credits necessary for investment. Many civil society organizations, on the contrary, argue that this model based on a minority and the exclusion of the majority further deepens the armed conflict in the country. Their preferred model includes

⁷⁴ Quote 15: Respondent 06, 44.00-45.06 minutes

⁷⁵ Quote 16: Respondent 04, 36.37-39.53 minutes

aspects such as enumerated above: participation, autonomy, satisfaction of local needs and the creation of employment. Particularly the first, rather methodological element, seems essential for the dignity of human beings who are used that they have no voice in the design of development or other policies.

These elements would lead to “life in dignity”, which introduces the second group of answers with regard to peace. Several respondents used the word “tranquilidad” (tranquility) to describe one of the main characteristics of a peaceful environment. The last of the before-mentioned quotes (23) speaks of “returning the tranquility to people” and qualified it by connecting it to structural reforms. A woman from a rural community and a social leader respectively put it the following way:

“Peace is what we all are dreaming about. Peace is where, for example, people die old, where one says ‘calm, I can go outside’, where one can live well with one’s children, when the grandchildren arrive. I do not know, being fine with everybody. That all the dreams that one has can be fulfilled, that nobody comes and truncates them. This is peace.”⁷⁶

“Regarding peace, it is about discovering that peace is an aspiration that has come much time ago, that has been the aspiration of my family after having lived displaced by violence and it is the aspiration of all men and women. But peace is not a moment of history, peace is a process, peace is the creation of conditions, and that we are going to advance it is like saying ‘We as human beings will always have conflicts but we always have to create the conditions that allow us to overcome the conflicts and to finally reach peace. Therefore, my attitude towards peace is not the tranquility of the cities, nor the militarization of the cities, nor the police at every corner. Peace is a way of feeling of every citizen. This means that peace is almost ... when it exists, one almost does not feel it, it is almost the disappearance of the term, i.e. I do not need to speak about peace because I live it every day. I feel it.”⁷⁷

The first quote is interesting for different reasons. On the one hand it shows that even this younger woman is used to an environment where people die before their time. Thus, “dying old” is an objective for peaceful times. Together with the notion “to live well with one’s children and grandchildren” it refers to a normal sequence of generations. On the other hand, she emphasizes the possibility to move around without insecurity. As mentioned before, the restriction on this liberty has been extremely felt by communities that are situated in the middle of different armed actors.

Extremely interesting is the last characteristic of peace mentioned by the woman: the pursuit of one’s dreams without being negatively affected by others. Considering the context of

⁷⁶ Quote 17: Respondent 16, 22.19-22.59 minutes

⁷⁷ Quote 18: Respondent 21, 06.30-07.51 minutes

the interview, she certainly does not exclusively refer to the armed actors but also the community and her neighbors. This reflects the point made in the first category, i.e. the damages to the social fabric committed by the violence. A psychologist (5) who works with victims uses a similar language and says that victims want to live in tranquility, meaning in their case living like before the victimizing facts. This is interesting in so far as the environment before the incidents is described as calm, which objectively was certainly not the case given the existence of a violent conflict.

The second quote regards peace as a “... way of feeling”. It is explicitly not the absence of conflict, which will always exist among humans but according to the interviewee it is an emotional state that would not be explicitly recognized as such when it is present. Only its absence is perceived. Consequently, he seems to define peace as a normal state, while its absence is strongly felt by those affected.

There are, however, a few respondents who find it difficult to come up with a clear discourse on the term “peace”. The first misses the human connotation of peace and regrets that science took over the reflection on peace. The second contemplates the substance of peace in difference to aggression, coming up with the expression of “programed aggression”, the prevention of which characterizes peace:

“This whole world of systematization of reality, of the scientific understanding of reality is complicated because the art is not scientific. It is the antipode of science. Therefore, this dialogue between science that for people is very important ... this dialogue is very complicated in the vision of peacebuilding, fundamentally because peacebuilding at this moment ... like religion grabbed belief, science grabbed peacebuilding. This is complicated because it is obvious that there is no peace only with science ...

I do not know what building peace means; this is a thing with which we terribly clash. Sometimes it chills us because it is easy to use this term, peacebuilding. It is too easy to find your way of sustainability by using this word. There are many factors, for which we are very afraid of the word peacebuilding or making it our flag ... It is obvious that we insert a big provocation. The scientific thinking is not able to resolve that, economy does not resolve it, diplomacy does not resolve it but there is the need of other ingredients ... the essence of the human is not explained by science and when we talk about peace, we have to talk about the essence of the human, we have to talk about love. Therefore, we obviously cannot resolve, or how do you make a person understand love pedagogically? What do you explain him/her what do you teach, and what do you make him/her read? If it is not a path of internal questions, of more profound questions that may lead to a bigger question that he/she cannot answer with a foreseeable action because love is not foreseeable ... we are used to create foreseeable models and I believe that the foreseeable does not include the human. This is a quite strong affirmation but well. I allow myself this imprudence. Because when one sees collective constructions – in the art it is easier to see it – that have no previous plan ... this has a lot to do with a thematic

provocation ... How would a society constructed in this way look like? It could be interesting.”⁷⁸

“What happens is that for me peace does not exist. I do not understand the concept of peace ... that is something that is not necessarily the absence of conflict but it is about reaching a minimum of tranquility, of relaxedness, of a not programed aggression. There are always aggressions but the programed aggression can be the whole night, the father and the mother fighting ... this is not peace. Well, what is peace? It is something that does not exist or exists only for moments but is not programed in a permanent way because nobody can stand it. Therefore, the concept peace, I do not understand it and what I believe is that it seems to me that in no society peace exists, in no one. I think that there is no peaceful society in the sense that all societies are formed by humans; as humans we are biologically competitive, aggressive, fighters, conquerors. And where is no bullet, well the neighbor wants to sleep with the wife of the neighbor; consequently, there will be a conflict. This means, peace is not the absence of conflict but peace is the absence of a programed and repetitive aggression.”⁷⁹

The first statement is an implicit criticism on how peace is reflected and worked. The interviewee added later his profound skepticism towards the NGO community, particularly those that appear in a region to “build peace”. They usually administer projects and leave people behind when they deem it necessary. The human element comes short and is completely missing in the administrative procedures of project management. Furthermore, the mere term peace has lost much of its credibility given the many experiments with communities and people under the guise of promoting peace. (7, 8) He, on the contrary, would rather prefer to implant provocations, new ideas and an attitude of love, i.e. an emotional component.

My interpretation of this idea is that there is certainly exhaustion with the academic discourse on the root causes of the conflict, surveys on people’s needs, national and international “expertism” that usually costs a lot of money without changing anything. At the same time there are only a few people who actually show an interest in the participation and ideas of those who live in violence-affected areas. Thus, it seems that this interviewee reflects the fundamental criticism on the methodology of peace-organizations that focuses more on procedures and formalities than on the substance and solidarity. This reminds Whitmore’s reflections on true solidarity that accompanies people in emergency-situations without being the first to leave when a conflict escalates, as international organizations usually do. (Whitmore 2010)

The second statement questions the meaning of the term peace as such. While the before-mentioned approaches are based on the possibility to create peace, this one prefers the notion of “minima of tranquility” and the absence of “programed aggression”, i.e. permanent aggression.

⁷⁸ Quote 19: Respondent 07, 19.18-24.54 minutes

⁷⁹ Quote 20: Respondent 22, 03.50-07.00 minutes

This corresponds to his view of humans in general, since he describes them as “biologically competitive and aggressive”. In such a context his goal related to the minima is understandable. This leads to a conclusive quote that constitutes an enormous challenge for those interested in peace. It does not claim less than a re-signification of the term “peace” by giving a practical example:

“In one of the marches, perhaps in the one against kidnapping or I do not know in which we participated, someone cried ‘no more peace’. And it got my attention and I also started to cry this ‘no more peace’ because this concept of peace like the existence of violence or the laying down weapons has not led to laying down weapons but precisely to an increase of the investment for war, i.e. in the increase of more war, of more escalation and violence. Therefore, as this has been the discourse of peace, the re-signification would be that there is not more peace, i.e. that it is necessary to create, to re-invent this, ... perhaps the answer is very profound, it is even in the simplest things, in the humblest people, in the wisest people who are also the most senior.

Therefore, I would like to resume the slogan ‘no more peace’ because we were taught peace as the absence of conflict, which is almost the same as the absence of recognizing the different. The more we recognize differences, the more this will also allow for strengthening democracy. I think it is Sabadell who said that it is precisely democracy that makes conflicts evident. The more democracy, the more conflicts there have to be because it is about accommodating conflicts, that people express what is different. This is a vantage point for me regarding peace, the recognition of diversity, the respect for difference, the living together in the middle of difference that leads us to creative and imaginative solutions in which we can include other people in order to advance with regard to problems and to transform conflicts. This may sound very simple or even ethereal. But I think that there may be a new re-signification of peace. In fact, these terms are also almost consumed, that of respect for diversity but perhaps it has not reached the profoundness to be understood.”⁸⁰

This practitioner of peace pedagogy and conflict management repeats a view that I have already mentioned with regard to the term “human rights”. The simultaneous use of the term peace and the increase of military expenses and, thus, violence to a certain extent discredited the concept of peace. Therefore, it is necessary to “re-invent” it. His ideas on the elements of this new concept of peace would rather avoid speaking of peace as the absence of conflicts. Peace in this context would mean respect for diversity, difference and conflict transformation. Understood in these terms peace would imply the consolidation of democracy “that puts conflicts into evidence” instead of suppressing them. This meaning would provide peace with fresh energy and prevent it from becoming consumed entirely. It would also generate new interest of the masses in peace and counter the monopolization of peace work by specialized minorities.

⁸⁰ Quote 21: Respondent 01, 55.10-58.20 minutes

In this subchapter it became clear that the visions of peace to a certain extent correspond to the diagnosis of the damages caused by violence. These visions are structural, emotional, analytical and politically very transformative. In the following paragraphs I will point out what the interviewees expect from the transitional justice instruments of truth, justice and reparation. If applied appropriately, they should at least contribute to the path towards the visions of peace.

4.3.4. Truth, Justice, Reparations

4.3.4.1. Introduction

I focus on these three instruments of transitional justice because according to the definitions presented in the first chapter, they are those that are most frequently used in transitional moments. Furthermore, the discussion in Colombia circled around these three terms, both in the legal framework and the civil society claims. “Verdad, Justicia, Reparación” became the slogan of many public manifestations. They are usually considered as rights, as pointed out in the first chapter. I have also described the characteristics that are attributed to them by different official documents. This subchapter is meant to qualify these abstract notions by providing several ideas of affected people. Thus I will show that the issue of addressing past human rights violations is far more complex and multifaceted than simply referring to rights.

The following two quotes introduce the topic, the first being from a victims’ psychologist and the second from a leading representative of an international organization that deals with issues of transitional justice. While the first response is about the victims’ claims, the second fundamentally questions the clear and rather simplistic distinction between victims and perpetrators and refers to collective responsibility (not guilt!) and the denial of essential aspects that also led to atrocities:

“We have spoken much about this and sometimes in several works it is also paradoxical because some say, several people who come from outside and ask us, well the perception is that it is an economic reparation and something very big. No, the victims whom we have attended have ... sometimes it is necessary to tell them ‘you have the right to have a life in more dignity, too’. The majority only wants, particularly those of the crime of forced disappearance, the truth, the truth about the facts, the exact point where they can find the body in order to do their process of grief; and justice. And those of the other types of crime like homicide, sexual abuse are already a bit more delicate and reparation is a bit different but also justice and that many also have a relation with third parties, so that it is necessary to investigate

those third parties and not only limit oneself to investigate the armed actor, the material actor.”⁸¹

“We do not believe that there is a transitional justice process in Colombia, and I believe that there are many of the topics that you are presenting that are the conditions sine qua non in order to lead there. I agree with you, I think that the focus has to be communitarian. The problem is how you achieve a communitarian focus when you cannot work in the community. This is a very serious topic. In the Southern part of Bolívar it is much more peaceful than it was in 1998, 1999, 2000 but it is not completely peaceful nowadays, and this has generated political changes or transformations through members of the Councils, through the assignation of land. Where the manifestations of participation become significant, we have again the same problems of rejection. For me this is the aspect of concern.

The other thing that you said is effectively a debt of transitional justice. I know only a few works of the micro level. I know one that had an impact on me, which is the one written by Kimberly Theidon in Peru with the title “Entre prójimos”, which is exactly to study ‘well, people, you talk about the Truth Commission in Peru and the impact it had and its multiple volumes, the diffusion of the work and more. This is in Lima for a sector of the society, which is from here to the top. What are the effects of it in Ayacucho?’ She went there and had a look. Which were the official programs? What happened between the communities? What happened to the MRT-fighters or those of the “Shining Path” who returned to their zones? What happened to those of the *Rondas*? Nothing, cero discussion in the community, cero elements to do nothing else as a neighbor than saying ‘uy, the son of Juan came back’. No other element, and everybody knew that Juan’s son had been a murderer or perhaps still was, which is a bit of a doubt for the community.

If we do not contribute to something that ... because you know Southern Bolívar that is a very, very pending discussion. Yes, there were paramilitaries, ELN-fighters, those of the FARC and the military but there is also something that was fundamental when I was there: without communitarian dynamics violence would never have made sense. How should we talk about that? Because it is a state responsibility, perhaps the state’s responsibility to the extent that there were no guarantees and actions of armed people in the zone but here the rumors but here the instrumentalization of the armed group had a fundamental role. The power to justify the death of Juanito or Pepito was very important and necessary after this terrible wave of massacres that took place in the beginning that simply was the generation of terror ... but afterwards, what was that? Well, the paramilitary project in my perspective in Southern Bolívar made only sense when those people said very skillfully ‘Here, I will not annihilate the social movement. I will make that this social movement works with me and me for it.’ I do not think that the answer is the hen or the egg. They were simply sufficiently skillful after the terrible killing to say ‘here are several leaders who remain with me, historical leaders.’

I met people who told me the story when they were relatives of the liberals or the conservatives who came from Boyacá and ended up there; afterwards those who had traditionally been of the ELN and very quickly turned into social agents of the paramilitaries and managed to explain the violence. Several died betrayed because they did not earn everything they earned and furthermore tried to take benefit. But I am convinced that we have to get there. Well, talking of this, you know, is much more painful than whatever other issue. The state cannot do it well from the center because it has to understand the local logics, and there have to be local agents of change who are prepared to take the blows. Because it seems to me that for a community this discussion is as serious as for a president who had been minister of defense to accept the state’s responsibility for the *falsos positivos*. This can fragment and destroy a community when things are recognized.”

“When the reparation file of *Juancho Dique* and *Diego Vecino* for the Mapuján massacre was worked on, there were 11 dead ... in a very small village. And in the reparation file after the confessions, when it was obvious, the information surged – and *Juancho Dique* was even present because he commanded a group of 20 paramilitaries. And there was talk of another

⁸¹ Quote 22: Respondent 05, 26.00-27.21 minutes

dead. There was a 12. killed, and nobody talked about him. Finally, it appeared that this dead one was the hooded; the dead man was a member of the community who pointed fingers in the middle of the massacre and whom nobody claimed but who was a member of the community. This is for me the discussion of reconciliation. And this, although there could be a public policy that favors this type of discussion, that even sponsors and supports this type of work, for me this work has to be very, very local, very careful, very participatory and with a minimum of guarantees because for me nowadays recognizing that Doña Florinda, in order to say a name, was particularly prone to spying and that D. Florinda is still alive, I do not want that a discussion in a community-session concludes that D. Florinda was the responsible person for transmitting precise and active information that the killed people had been guerrilleros, that those who had to be killed were guerrilleros; I do not want that D. Florinda ends up dead the next day for this type of things. To the extent that the resource of violence is still there so easily, I am very afraid to promote this type of dialogues there. Now, the communities perfectly know that; this is why they are making gradual steps, they insinuate. I think that is the magic of social control and the dynamic to know how far one can move. The problem is that, if it is the social relations that have to be broken, the cost of the loss is not so big but if it is a human life that can be broken, if the resource of violence is still there, for me it is very, very difficult to advance in this. And there are many zones of the country, in which I honestly do not dare.”⁸²

These examples show the complexity of the issues at stake. The first response addresses the pyramid of the victims’ needs, who at a first stage are mainly interested in truth and only later shift towards reparation. The second quote opens up a very sensitive field of work for transitional justice, i.e. the reflection of one’s own role in the armed conflict and violence, both as an individual and as collectivity. The interviewee draws attention to the role of communities in the expansion of violence and its perpetuation through rumors and active support; he also mentions the incentives that seduced community leaders to become part of the social base of an armed actor. He highlights the risks of addressing the issues of betrayal in the middle of an ongoing conflict where the resources of violence are easily available. However, it is not surprising that this potentially self-critical perspective of a community’s role in the conflict was raised by a representative of an international organization. In no other interview this perspective was mentioned.

Truth, justice and reparation are considered obligations of the state towards the victims, which is understandable given the damages caused by the lack of protection by the state and the frequent human rights violations committed by state agents, not to mention the at least tacit support for the paramilitary groups in many cases. With regard to the participation of the community or community members in violence, I came to the same conclusions as the second interviewee, i.e. that in several cases the armed environment was used to settle private accounts or to benefit from the loss of life. This is a reality that is still (September 2013) not discussed in

⁸² Quote 23: Respondent 02, 1.13.50-1.21.06 minutes

the Colombian society. The direction of the claims is community → state, which also determines the responses of the interviewees with regard to truth, justice and reparations.

4.3.4.2. Truth and Historic Memory

The before-mentioned circumstances and limitations of the debate obviously have an impact on how people contemplate truth, memory and their potential achievements. While truth is repeatedly considered as something that “others” have to tell or as the “objective” recount of what happened, memory seems to be more the individually and collectively subjective side. 7) distinguishes between truth that is usually in function of something (justice system) and the more subjective memory that with its beliefs and symbols is the base for the construction of society. The first quote below refers to this distinction. The rest of the quote hints at probably the most reiterated dimension of both truth and memory, i.e. its usefulness to prevent future violations. Truth/memory, thus, become important tools for another element of transitional justice, i.e. non-recurrence:

“In fact, they are two quite different words and frequently one has not to do with the other. I think that every type of projection towards the future requires the same quantity of past memory; as I also think that whatever type of research or of assuming the past has to do with the same quantity of projection towards the future. This means that “God past” is not of interest to me. It is more the intellectual part of the world that dedicates itself to study the past and afterwards there is the ... part that is dedicated towards generating future. I think that, if these wheels are not put together, we are going nowhere ... one requires the other. If not, both are dangerous.”⁸³

The main function of both is also expressed by the leader of a women’s organization:

“This is permanent and furthermore based on the reality, not to enslave us in the memory because if not, we are never advancing if not to learn from there and from what we are able to. And to construct a real plan of life that is based on the reality of the majority because we are not as unrealistic either to say that everybody is walking equally. But yes, that this should respond to the expectations of many, of the majority. And that it should be adjusted to the real possibilities of each one. Yes, we know that we should not be slaves of the memory and the remembrances and what he/she did to me.” ...
“In my opinion, the memory is basic because it generates the lesson of what we have lived and in what we have to improve. Each experience should bring a lesson, a teaching that should help us to build a better future. And if we do not learn that killing each other leaves poverty, bleakness and that nobody takes benefit, we are tainted.”⁸⁴

⁸³ Quote 24: Respondent 07, 1.05.50-1.06.52 minutes

⁸⁴ Quote 25: Respondent 18, 26.53-28.45 minutes

This statement that is shared by almost all respondents who expressed an opinion on this topic (10, 11, 7, 23, 13, 21), implies the premise that the knowledge about what happened in the past could contribute to the non-repetition of the same in the future. Consequently, human beings are considered able to learn and to draw the right conclusions. However, the lack of self-reflection in most responses also implies that the learning process must be undertaken by others, most likely the state. This is why it is so important to reconstruct the process how the armed groups entered the communities and co-opted their leaders. Knowledge about these processes together with an end of impunity would lead to non-recurrence. (10)

In order to happen, this sequence requires complete truth, meaning the collective construction by different actors, including the victims (19, 21). The idea that everyone has a piece of the truth and that together they would create “the” truth is recurrent. On the one hand, it serves as a reminder that the Colombian “Justice and Peace” process (compare above) is based on the contributions by the demobilized paramilitaries and excludes those of the victims. On the other hand, the notion of an inclusive truth leaves a door open to later modify the before-mentioned lack of self-reflection.

This link between the past and the future does not exclude the conviction that truth is a value in itself. Knowing the patterns of the armed conflict and violence and the identity of the promoters is important for a citizen and usually considered a right.

There is another dimension of truth, which circles around the personal situation of people. Particularly in the case of the relatives of the “disappeared”, truth serves as the means to relieve them of uncertainty and pain not to know the whereabouts of the missed family member. The lack of “closure” by burying their loved one also prevents many of them to live their lives. (6, 5)

Only one respondent questioned the desirability to know everything (24) but did not elaborate on this argument.

4.3.4.3. Reparation

The following quote by a female psychologist who has significant experience in community-related processes, probably best summarizes the expectations toward reparations:

“Changes. It is a bit like Saint Thomas d’Aquin, who said ‘see in order to believe’. The communities are tired that analyses of the analyses of what happens are elaborated, of the reasons, of where they come from and where they go and the consequences. I think that regions such as the Magdalena Medio, as someone has rightly said, are over-diagnosed. But these diagnoses are required to produce answers and say ‘it is necessary to implement these and these methods’ and what the communities want to see are works. What they are saying the popular saying ‘works are loves and not good reasons’.

Yes, this means changes in the social structure, in the structural violence that we have been living historically in this violence that excludes millions and converts them into cannon-fodder in order to go to war because they have no other choice. Because the young who nourish the guerrilla, the paramilitaries and the military are the poor young who have no other choice and see in this almost a working option ... it is a structural problem that needs to transform the society that excludes millions, that does not provide them with an access to education and health. This, we know. But if these changes do not exist, this keeps being an eternal self-reproducing exercise, that in Colombia up to now these changes have not taken place or the really required transformations.”⁸⁵

Reparations, whether financial or immaterial, are expected to change patterns of exclusion, of violence and of relations that led to the armed conflict in the first place. What I just described in relation to the issue of truth, is also true regarding reparations, i.e. that the dimensions of past and future are closely related. Thus, while reparation in theory tries to address past injustice and violations, the respondents in practice also tend to emphasize its significance for the future. One may even conclude that reparations are part of the tangible results of the learning curve initiated by truth and memory, as previously presented. This, in turn, suggests that reparations without change are close to being meaningless.

There is another recurrent pattern of argument that we already discovered in the subchapter on the visions of peace. Several respondents stress the material and economic aspect of it, while others argue for a more comprehensive approach. However, it seems that the overarching goal for both groups is, either implicitly or explicitly, “dignity”. This applies to the living conditions (16, 10), the good name of the assassinated son (8, 13) or the participation of the individual and collective victims in the policy design of reparations (9, 7, 18, 19, 21, 23).

The following quotes highlight the complexity of designing reparation programs and give examples for factors that would enhance individual and collective dignity:

“Well, I would personally say because the fact that they contribute money so that people can advance seems very good. But the problem is that nobody accompanies this poor people and when the pesos are eaten or they invest them badly, they remain the same and keep begging. This is not pedagogic, not for them, not for the society. Therefore, for example, here they come and tell me: because the programs here also benefit the victims, the displaced. They come here

⁸⁵ Quote 26: Respondent 25, 54.30-56.25 minutes

and tell me: Well, and we who are suffering and enduring hunger due to unemployment, we have to remain this way because we are not displaced, we will have to put ourselves into a group of displaced in order to be supported with something. This is the daily bread of the rest of the community. But this poor people, this of justice and reparation, yes, they are going to receive something but how are we repairing a dead one, three dead people in the family? There is no reparation.”⁸⁶

“Comprehensive reparation leads to many aspects, and it is possible that several are only thinking in this reparation as economic indemnification. Therefore, there is no relation between cost and benefit. I think that reparation cannot be seen as this ... For example, collective reparation cannot be seen in this perspective. I am completely sure that even if there are many efforts and the best will of the government and the state, there are some reparations that are not going to be possible. And we have to be conscious of that because here the first that is necessary to see is that life-projects have been truncated. And how do you analyze quantitatively and qualitatively the people’s life-project, and not only of people but of communities, of families? Therefore, regarding this, there is not going to be a reparation but I do think that there are intentions directed in this direction. It is therefore necessary every time that one speaks about collective reparations, they should necessarily focus on stimulating the processes that are led by the communities today, how the communities can again receive sufficient stimulus or take up the course of a dynamic again, not the same but a similar that they had had before suffering from the conflict. This is the most important in a reparation process.”⁸⁷

The first quote expresses a concern that is frequently repeated, i.e. that reparations create new dependencies instead of contributing to overcome them. There are many social programs that simply define categories of people who are entitled to regularly receive certain amounts of money and start depending on them. The mentioned case of the displaced people is probably the most visible example of the effects of paternalistic programs. They contributed to public contempt towards this group as parasites and the perception that they make a good living by claiming to be displaced. The new, more universal category of victims threatens to have a similar impact and discredit the legitimate claims of those who suffered from violence. The first quote mentions the dilemma that those who are recognized as victims may enter into a destructive competition with those who live in the same conditions but are not recognized, either because they are not victims in the first place or did not obtain this status. In an environment of poverty and scarcity material reparation can have an explosive potential by pitting one group against another.

Respondent 6) also stresses the need of a material base to develop one’s own life project. Interestingly, she is very coherent as regards preferring employment over the provision of basic goods by the state. In her discourse, but also through her organization, the ability to provide for oneself through work would be an appropriate reparation and increase the sense of dignity.

⁸⁶ Quote 27: Respondent 06, 49.45-51.28 minutes

⁸⁷ Quote 28: Respondent 23, 1.10.55-1.13.08 minutes

The second quote by an expert in rural communities provides us with a first impression of the concerns regarding reparations, particularly those of the collective type. If, as prescribed by theory, reparations are directly linked with past injustice, they have to address the damage caused to social processes, organizations and life projects. He comes to the obvious conclusion that it will be almost impossible to repair these damages satisfactorily. And he adds a methodological requirement of reparation programs, which consists of the participation of the communities in their design. Today's processes of the community, as he puts it, must be contemplated. Again, here appears the dimension of respect and dignity, the first consequence of which is that the targeted individuals and communities must be involved in the planning of measures that are of their concern.

Both statements, however, share the interpretation that reparation has to do with tangible change, as was also pointed out by the first remark. Thus it is not enough to simply pay off the victims, although the material dimension is very important given the context of poverty.

At last, there is an important concern to the category "victim" as such. This doubt has different manifestations. On the one hand, as was mentioned in the section on the damages caused by violence, the term "victim" has the connotation of passivity and of a deplorable condition. This often prevents society from seeing them as agents of their lives and puts them almost into a different human category. On the other hand, I just described the opinion that the category "victim" creates more dependencies by the provision of material goods.

There is, however, a more political concern that is related to the role of the state and its relation with its citizens. Here, the corresponding point of view:

"There is something of concern in the long run, which is the creation of the judicial category or the image of the 'victim' or of a species of victim image, in which the state apparatus reaches the Colombian region through the victim. In the big picture, the same as in the case of the displaced will happen again. In order that the Colombian state starts to care for what happened in the Simití municipality, it had to think about what happened in the Municipal Committee of Attention [committee in charge of the displaced, CW] in Simití, San Pablo/Bolívar. I am afraid that with this of the victim ...

I had a displaced person the other day, who told me 'Doctor, it is necessary to calm that with the displaced and get on the discourse of the victims.' Therefore, this also generates an exercise of social identification. Though the recognition and assertion is very precious, I think that in the long run it may have a damaging effect of categories, of loss of political identity because this of the victims means many things. But I am afraid that we are going there and I think that there will be many state actions around the victims' law and positively so but if it is not well handled, we could perpetuate something that has already happened with the displaced. These are a bit those cycles of 'I only receive attention through a process of displacement.' It would seem painful to me to enter in this cycle, in which we entered at the end of the 1990s with

regard to the occupation of public installations by the displaced, legitimate – I do not want to condemn them due to their despair - but very unfortunate in the end regarding their civil relationship with the state apparatus. And I am afraid that we are heading there. With the Victims' Law there will be much more public money, also private and of the international cooperation. There will be much more middle-person, social intermediaries. The regions are already, there is more conscience in the different places ... The Colombian region is more explicit. Therefore, this is also a terrifying package, towards which we are heading.”⁸⁸

It is interesting that the responses on truth, justice and reparation with regard to the role of the state suggest that the state is only considered as a “provider of ...”. The increase of political participation, political reforms such as the revision of the party and the electoral system or federalism is not mentioned at all. Only a few times, the word “democracy” appears, one of them being the quoted understanding of democracy as the respect for diversity. The state only appears as perpetrator of crimes against humanity, as supporter of the paramilitaries and as a negative actor due to the lack of social services or the state’s absence in rural areas. There seems to be virtually no positive concept of the state as such and, consequently, much less an elaborate concept of the role of the citizens in it.

Therefore, it is not surprising that it is the representative of the international organization again who raises the issue of the relation between the state and its citizens. It seems that the citizens are only relevant for the state as members of a category, e.g. as victims. The respondent implies major consequences for Colombia’s political development if the only way of getting in touch with the state is by benefitting from one of its social or reparative programs. This together with the before mentioned lack of self-reflection and the strong sense of entitlement to receive benefits is a potentially explosive combination that undermines an active participation in the design of the desired political system.

4.3.4.4. Justice

The call for an end of impunity and the reign of justice is widespread and very outspoken. It is not difficult to perceive the desire of victims, community members and civil society organizations that justice is done to those who planned, financed, authorized and implemented atrocities. Thus every respondent voices the need to punish the perpetrators in one way or the other. In an environment, in which even the most violent crimes used to remain in impunity, this

⁸⁸ Quote 29: Respondent 02, 33.55-36.45 minutes

answer is very comprehensible. In particular, the victims express their hope that the material and intellectual perpetrators will be prosecuted and punished accordingly. (5) However, going into detail, the respondents show a more multifaceted approach towards justice.

Here are two testimonies, the first from a female community member, the second from the psychologist working in violence-affected communities:

“The word just – equity, this it is equity, just. Life in dignity is just for everyone. This is justice, I do not see it as ... at this moment I do not emphasize that those who have done bad things, pay, no. Therefore, the just is that something bad happened, therefore I judge it, and justice is that we do not have to live it again, that we are fine, that we live in tranquility. For me this would be justice. If there was a time of war, well, that now there is a time of tranquility, of peace. It is very difficult to talk about peace but, yes, of tranquility, that one lives in tranquility. Well, there will be problems, there always will be problems but it is different. This would be justice for me, from the just.”⁸⁹

“This is a word that generates much conflict, more than it resolves. It is a word that generates much controversy and pain. It has multiple interpretations. My personal experience and in the accompaniment of communities have taught me that the talion law does not work. That of an eye for an eye, tooth for a tooth does not work, does not resolve pain. Even though a family knows that the criminal has been condemned to 60 years in prison, their pain is still there. Nor forgive and forget, which is another topic; it is very complicated in Colombia to talk about forgiving and reconciliation.

In my very, very personal opinion I think that justice has to do with what Christianity defines as mercy. There is this feeling, ok what happened must be recognized because it is important to know what happened to the people who have been victims, they always want to know what happened. That they are told the truth and then there is this exercise, if we really want not to reproduce these cycles of pain and suffering, let’s cut these chains: they caused pain to me, I will continue to cause pain or I need that someone dies in a prison to pay this.

First, up to which point am I as human being able to know what happened, to know the truth and decide up to which point it is enough with this history? I have not found in the literature that I have read so far, in what the different authors say, what my life itself has taught me one word that can better describe than mercy, which is the only one that can say ‘let’s break this cycle and let’s continue in this setting as human beings’.”⁹⁰

While the first statement refers to what would be just for people who for years have lived under pressure and violence, the second questions the usefulness of punishment regarding the reduction of pain and grief. The interviewee goes on by saying that truth is very important for victims but also that the cycles of pain must be interrupted if the community intends to live in peace. For her the term “mercy” would best describe what she means. She is very explicit that this does not include forgetting and forgiving. It must be added, though, that the Spanish “perdón

⁸⁹ Quote 30: Respondent 16, 09.47-10.48 minutes

⁹⁰ Quote 31: Respondent 25, 1.03.45-1.06.23 minutes

y olvido” does not necessarily suggest the conscious decision to forgive but rather the imposed attitude of impunity that is manifested in future-looking discourse that does not consider the past.

There is a range of shades with regard to the opinions on the usefulness of punishment. As we saw in the first chapter, punishment also depends on whom we find guilty of what. If guilt is individualized, it is likely that the community singles out the perpetrator and punishes him/her. If, on the contrary, a collective responsibility for what happened is perceived, punishment includes a self-reflection on what went wrong in the community. The following statement gives us an idea of that:

“Therefore, it seems to me the best with regard to punishment – I feel that it is necessary to apply punishment, in order to be very clear ... but more as an example that this is not worth it, as a mechanism of social sanction. There is an indigenous community in Mexico ... they have a problem with their language; they cannot say – for them it is an advantage – ‘Pedro caused this damage’, i.e. it is him who is guilty of the damage caused by him. In their language they cannot say the same as we do. Their language says ‘Pedro caused this damage and he made us all responsible for the damage’. It is immediately translated into a collective responsibility. An individual affectation is translated into collective responsibility. I like this very much and I present this example when I am talking about this topic of the possibility ... this means, instead of thinking if some of us here ... fall into an activity of corruption. We employ someone and this someone gives me two pesos; instead of ‘it is necessary to dismiss this someone’, we have to say ‘as Program, what is happening to us that someone of us falls into this. Let’s evaluate ourselves, something is happening ... Thanks to this incident we have the opportunity to put the topic on the table in order to reflect and build and strengthen us as a group.’ This is a bit the lesson of this language. Therefore, I think that punishment in terms of social punishment, to understand that what was done is not worth it and to ask ourselves ‘what is happening to us that we fell into this?’ It is worth doing it. What happened to the Magdalena Medio that allowed the guerrilla to enter?”⁹¹

The idea of punishment as a social sanction is central in the argument of the proponents of punitive justice. It would re-establish the distinction between right and wrong and good and evil that was lost due to impunity. Sanctions would also deter people from repeating the same crime or wrongdoing.

Additionally, the aspect of self-reflection and collective responsibility of what happened appears. This resembles the approach of restorative justice, as described in the second chapter. Wrongdoing is not attributed only to the direct perpetrator but to his/her context, too. Thus, the main question is not “What did the person do, and how will he/she be punished?” but “How can we address the damages of the wrongdoing and prevent them from recurring?”, which is also at the core of this chapter. Before, I asserted that in the responses there is virtually no self-reflection

⁹¹ Quote 31: Respondent 32, 1.05.44-1.08.20 minutes

on one's own role in the commitment of violence. This last statement, however, at least opens a door towards asking the hard questions about direct and indirect participation in violence. The respondent draws on the experience of an indigenous community in Mexico. Their language makes it impossible to attribute the responsibility for a wrongdoing only to one person but includes the whole community. Thus, the community also has to ask itself about its role in the commitment of injustice.

A leader of the Catholic Church raises the point of practicability of punitive justice in times of transition. He goes so far as to consider it being based on feelings of vengeance:

"In terms of justice, there must be justice ... I think that the solution is not punitive justice. Here, restorative justice and transitional justice have an important role. I think that transitional justice has not been sufficiently understood. Therefore, it is seen as impunity but I try to understand that this transitional justice allows me to go beyond the situation. There is nobody who would surrender in order to spend 50 years in prison. This is what I think. These generals surrender because there are some advantages for them because for them 'coming back so that they put you 50 years in prison', well, they will not surrender. They remain in the subversive process or in secrecy. Therefore, what transitional justice does, it seems to me, is a transition and in this transition we are looking at what is best. But the best is peace, the best is that people surrender, that they receive a punishment but the punishment can often be symbolic, well, it should allow to repair. And it is very important that the other recognizes 'I was wrong' and when the person says 'I forgive you because you were wrong'. And this cycle closes. I have the impression that for example what was achieved in many places, achieving peace was because there was transitional justice. What is the problem now that I see regarding peace processes? It is that the international justice has interfered and the international justice in hands of people such as Garzón, the Spaniard whom I consider as revengeful. He has to pay and pay till the end, regardless if he keeps killing people; this is the problem, no. If this person surrenders, he stops killing, he probably will not remain his whole life in prison because there is a transition, there is a symbolic punishment, there is a restoration, truth, justice and reparation to the victim. And often, if there is no hatred, one succeeds to heal, and when there is hatred what they want is revenge. But when healing is achieved, I do not want revenge, it is sufficient for me that it is recognized. The fact of asking for forgiveness, of saying 'I was wrong, I am terribly sorry and I want to repair in any way' but who is part of the line of revenge, of punishment, says 'this is not important to me, what happens is that this guy stays in prison'. Therefore, he would not surrender and keeps killing. It seems to me that the international criminal justice has a very important aspect of protecting the weakest on the one hand but on the other hand it has turned revengeful."⁹²

This is obviously a clear statement for restorative justice by, in particular, facing the alleged dilemma between justice and peace. The leader's priority is that the killing is stopped, while he accuses those who insist on punishment at whatever cost, to neglect this dimension. Furthermore, he suggests that the international criminal justice, in Colombia most visibly expressed by the Spanish judge Baltasar Garzón, rather pursues the path of revenge than that of a

⁹² Quote 33: Respondent 24, 27.48-31.48 minutes

restoring justice. Here, the crucial question is to determine when punishment turns into revenge. However, at another moment of the interview he does not exclude punishment for those who are not recoverable and would constitute a permanent danger for society. In any case, punishment should serve the goal of restoration, which given the state of Colombia's prisons is a rather unlikely objective to achieve. (24)

4.3.4.5. Summary

This subchapter was about the views on the right of truth, justice and reparation that are usually mentioned together. It became clear that the respondents perceive many overlaps between them or even highlight them by considering justice as the best reparation (5) or truth as the base for justice and reparation (20). Thus, there is a link between the three, which implies that one without the other would have a diminished value. This becomes most obvious in the case of material reparations that are seen as paying off the victims if not accompanied by concrete measures of justice. (20)

There are two aspects, however, that stand out most: the notion of dignity and the overarching objective of non-recurrence. As pointed out, dignity is probably the single aspect that is most claimed by those directly or indirectly affected by violence. It is mentioned with the meaning of having a minimal material base to "live in dignity" but also in the context of being recognized as a human being or as a victim. The other aspect, non-recurrence, expresses the desire to live in "tranquility" and to be able to pursue one's goals without fear and constant terror, which resembles the understanding of peace, as analyzed before. Often enough this desire is accompanied by doubts and skepticism that stem from past experiences.

Having addressed the elements of transitional justice, I will now focus on reconciliation and its meaning for the respondents.

4.3.5. Reconciliation

While the opinions on truth, justice and reparation were expressed in the interviews without hesitation, reconciliation caused doubts in more than one respondent. There were those, who explicitly rejected the term as "utopic" (20) or "we do not believe in reconciliation" (19).

These replies should be seen in the context of the perception that nothing has changed and that the victims' rights have not been accomplished yet, which does not allow for even considering reconciliation. In addition to that, the term reconciliation was abused by the Uribe government as a strategy to forget the past and concentrate exclusively on the future.

In this context it is interesting to consider what this leader of a women's organization has to tell us. She presents the victims' rejection of the term reconciliation but at the same time gives us a hint at what they consider fundamental for them. Right in the beginning she also mentions one of the characteristics of reconciliation, i.e. respect for diversity, which we have already analyzed in the context of the term democracy:

"I consider reconciliation within the transformation of conflicts ... it is the result when two people meet again in their differences and come out unharmed when being human prevails. For me, sometimes I believe in it and sometimes I do not but for example looking at how the victims' organizations confronted me because I frequently used the word reconciliation. One day they stopped me and told me 'X, when you speak with us, do not use this word. We do not believe in this. It is only used by organizations but not by us.' I said 'Yes, it is true ...' But there is a key word, which I sometimes think that I have learned from them, which has nothing to do with money or reparation. Someone came to me and told me 'That they respect me, that I feel that what they did to my son, to my wife – in this case it was to the son – that they respect him, his memory, respect me. That they do not come and tell me that they would give me 18 million because this is not respect.' This is why I understood that when we respect – but in the real sense of what respect wants to say ... it is to look at the other again and value him. This is a word of Juan Pablo Lederach. Be attentive to what the other says. But when this gentleman told me 'that they respect me, the memory of my son and that they do not keep justifying what they did because if not, they will have me always there; they can give me every million they want but what I want is respect. Give me respect and not a peso'. This is dignity ... On the day that we respect each other, in the ideas, in the differences, in the private property, in one's belongings, in one's wisdom, for me reconciliation has to do with respect towards the other."⁹³

The essence of this quote is the enumeration of several ingredients necessary to change the quality of the relationship between victims and the rest of society: respect, acknowledgment of the victimization, dignity, and stopping to justify the crime. Thus, while the term reconciliation frequently raises doubts, the phrase "they should respect me and the memory of my son and stop justifying his assassination" hints at what may be fundamental for this person. However, it seems that reconciliation is not identified with these notions but with something else or even with the contrary of them.

⁹³ Quote 34: Respondent 18, 20.30-23.42 minutes

The following statement by the victims' psychologist can help us to understand the dynamics between internal processes (overcoming grief and pain) and external processes (reparation, truth), which together would lead to reconciliation. However, in reality the internal dimension, i.e. the disposition of the victims to open up for processes such as reconciliation, was not in the center of public policies. Thus, the reason why reconciliation as a term is rejected has not so much to do with the contents but more with the moment in time, public priorities and, consequently, with the lack of preparation for these challenges:

"I think that several things are necessary but to the extent that they [the victims, CW] accept the process as this measure of symbolic reparation, that this truth is useful for them to elaborate, to start elaborating all these feelings that they have there frozen, they will start to see forgiveness and reconciliation as the process that is searched for in the framework of justice and peace, the re-socialization and everything else ... They have to be alternating, the individual and the collective processes of the whole information because it is possible that the latter takes place independently but if I am not prepared, what is going to happen? There will be no acceptance of the process. But if I have already elaborated my fears, my insecurities, my affectations, I am prepared to understand the whole process from a better optic ... this has also been a bit of a problem, first it took place from outside towards inside and what the society did, was not accepting it, rejecting it. How is it going to be possible that many guarantees are attributed to the armed actors and we have not even had the truth? Therefore, I think that if the state had better planned from both optics, the result would not have been so much resistance, in particular with the demobilized and the work of the demobilized with society."⁹⁴

The rejection of reconciliation has also to do with the imbalance between the benefits for excombatants (stipends, training, legal privileges) and the lack of activities in favor of victims. This had certainly a very discouraging effect on early attempts of reconciliation. In fact, the perception that the legal framework Justice and Peace was made for the demobilized and not for the victims was fortified by the lack of an institutional framework for the implementation of the victims' rights. While in the end representatives of the ACR, the presidential agency for reintegration, visited the communities and specifically the demobilized, nobody seemed to care for the victims.

After having addressed the negative reactions and their possible causes, I will now shift to the interpretations of the term provided by the respondents. The last paragraphs showed that the notion of dignity and respect that also appeared in other sections has re-emerged here. Another, though related feature that has direct political connotations is that of diversity and the

⁹⁴ Quote 35: Respondent 05, 31.07-33.14 minutes

desire to agree on not killing each other for having different point of views; here, a statement by a human rights defender and political candidate, and a second by the representative of the international organization:

“One of the key aspects of reconciliation in my opinion is when the Colombian society or at least the society in the regions where the process is advancing defines some minima, with which it identifies and with which it commits itself to work for the sake of no-repetition of the acts, thus overcoming the decision and the will of the [armed, CW] actors. For me when these commonly agreed minima start to appear, then the element of reconciliation starts to emerge with much force.

... I think that these minima where we succeed in reaching agreements, it seems to me, will show the possible horizon of reconciliation. You know that the topic of reconciliation is not easy but in my opinion it passes by there, it passes by establishing these minima in the civil society, not with the actors or by the actors. I think that this topic of the actors is an overcome case. Oh, well, the demobilized and reincorporated actors, if they are on the height of the challenge, they are part of the minima, if not, well, they are not but it is not a process that has directly to do with the actors.”⁹⁵

“What I can tell you there is that I am not very reconciliatory because I do not succeed in understanding this term much nor can I see where we stand in this topic. For me in a country like Colombia, though I am happy that there are people who work towards the ideal of reconciliation and that they understand it in the need to put people to work together who before would not have worked together, I am much more interested in working towards the respect for dissent where we can recognize that we are in confrontation where we have a strong political contention but where violence has no role in the solution of our disputes. Perhaps I would be satisfied with this. I do not know if this is less or more than what you propose but when you precisely defined it as a more just society, for me it is this.

I do not believe that here we have to think everybody the same, I do not believe that everybody has to think that paramilitarism is shit. What I need is that who thinks that the paramilitarism was necessary for the country, thinks it without a threat to his life and without imposing his position simply because he thinks that it is the right one, that one is able to discuss this type of things. I think that the country has been so polarized and so politicized during so much time that for me it would be sufficient to be able to extend scenarios of contention where the resource of violence is not an option any more ... and where dissent and contention are handled in this way again.

But in Colombia, at least for me, the expression reconciliation has a clear religious notion. This is not bad because I believe that the majority, a big part of the population understands the notion of suffering, the notion of the just deserved, the notion of guilt through the religious conceptual tools, although they do not consider them as conceptual instruments, the notion of punishment that they experiment from the start as little ones, we all experiment through religion in one way or the other. Therefore, it is necessary to get there but I am the worst person to talk about reconciliation.”⁹⁶

The idea of minimal agreements that consist of not killing each other due to political differences alludes to the stages of reconciliation mentioned in the second chapter. There, I briefly mentioned the distinction between coexistence and reconciliation, the former being

⁹⁵ Quote 36: Respondent 03, 27.47-30.15 minutes

⁹⁶ Quote 37: Respondent 02, 1.09.05-1.12.33 minutes

exactly this minimal agreement. In a society, in which people get killed only for belonging to the “wrong” political group or expressing unpleasant political opinions, this agreement would be an important step towards political respect. However, the first point of view also emphasizes the need to negotiate such agreement without the “actors”, obviously referring to the armed actors. Remembering the statements regarding the infiltration of political organizations and political work as such, this emphasizes the requirement to engage in exclusively civilian, i.e. unarmed, political activity by gaining autonomy of the armed actors. In the first interview the idea that the civil society is at the forefront of such agreements is clearly highlighted.

The second interviewee repeats this view but radicalizes it by specifically including in this agreement those who advocate for groups (the paramilitaries) that are opposed to a pluralistic, liberal democracy; even those should be free to express their views. The respondent, however, does not consider that as reconciliation, which in his view is obviously limited to the interpersonal dimension between the victims and the perpetrators. This is interesting, in so far as it demonstrates that for him reconciliation takes place only on one of the many levels, i.e. the interpersonal level, identified in the conceptual chapter.

This statement provides us with another important stream of argument, i.e. that reconciliation is a religious term and, thus, invokes religious aspects such as punishment or suffering. This leads me to address the most delicate issue related to reconciliation, i.e. forgiveness. Most respondents when asked about reconciliation linked it to some extent to the topic of forgiveness (6, 5, 11, 7, 18, 19, 13, 21, 24, 23, 1). Given its political dimension in transitional contexts, i.e. amnesties, it is obvious, why forgiveness raises many concerns. In addition to that, the phrase “*perdón y olvido*” (“forgive and forget”) had entered the ordinary language and represents what civil society organizations most fear, i.e. that the past is concealed by a veil of amnesia and amnesty.

The following quote by the women’s leader illustrates the main concerns around the concept of forgiveness. It was made briefly after the priest Manuel Narvaez, who is the director of the *Fundación de Reconciliación* in Bogotá, made his appearance in Barrancabermeja at the occasion of an international theater festival. He uses to speak about a duty to forgive and repeatedly finds himself in opposition to victims, as is expressed by the following:

“When I am free, then I forgive. I do not know if I forgive and forget but at least I do not have these charges against the person. Now, that there was this International Festival of Theater, one

of the talks was that of this gentleman of the Institute of Reconciliation, Father Narvaez. And he talked about forgiveness, everything of forgiveness and how important that the victim forgives. If not, there will not be development. I asked him a question: In the middle of my ignorance, I told him what relation he sees between forgiving someone and deserving forgiveness or asking for forgiveness. And he told me that as he was a theologian he gave me the example of Jesus and the prodigal son, that Jesus did not ask that the other converts himself, well, and he presented to me the example of the prodigal son. I told him that there was the intention of change because according to his presentation the whole responsibility falls back to the affected. I told him that let's not talk about affectations but of caused damages because I would not minimize the damage in this way

... and he presents as example for his expositions and his theories the conversation he had with *Tirofijo* ['sure shot', military name of Manuel Marulanda, traditional leader of the FARC, CW], whom he always told that he should forgive, forgive, forgive, that *Tirofijo* at the end of his days told him 'Yes, Father, you are completely right, it is necessary to forgive.' And I told him '*Tirofijo* was one of the men who caused most damage; he is the beneficiary, if everybody comes and forgives him, that he has not deserved forgiveness' because he has never said what for because they took away his cows and everything they did to him because he always started his discourse that 'I lived on my small farm with my cows and they came and etc.etc.', which is the same discourse of the *Mancusos* [Mancuso was one of the main paramilitary leaders, CW] etc.etc.

When I asked him this because this does not only come from responsibility, I know that it also comes from a personal intimate and individual process. When the person feels respected, valued that they at least say 'Yes, I caused this damage', not as I saw it in the public audiences of 'again I am asking the victims for forgiveness', which they have in their libretto there. For me forgiveness depends on the personal situation ... once we are two persons who feel healed of the caused damage, perhaps forgiveness becomes collective and that it arrives and transforms. But this is a responsibility of everyone in the middle of what is and it deserves a bigger and more profound reflection.

Forgiveness can also be the power of the victims. It is the power that the victims have. There are many that I have seen in an audience ... when one of them said how it was that he participated in the killing of several of May 16th [massacre in Barrancabermeja, CW]. And he cried asking for forgiveness and in reality he wanted forgiveness and to reach the person, the father, the mother and everyone who was present there and for his tranquility would have been that the other says 'Yes, I forgive you'. But this is in the power of the other, the victim. He/She has the power to forgive or not. Therefore, when I oblige a victim who for moral reasons has to forgive the one who had caused the impact I am taking away his/her power ... not even God forgave without asking for a transformation."⁹⁷

This quote analyzes very appropriately the multiple dimensions of forgiveness that were described in the conceptual chapter on reconciliation. Is forgiveness a voluntary personal process or a Christian obligation towards the other? Is it dependent on what the other does or autonomous of it? The leader also expresses the requirement to transform in order to deserve forgiveness. She mentions the "free versions" of the demobilized paramilitaries under the "Justice and Peace" Law, in which many of them ask for forgiveness without showing repentance and remorse. Given this attitude the victims consider the request only as a means to reduce the prison term and not as a sign of acknowledgment of the injustice done to them. For

⁹⁷ Quote 38: Respondent 18, 11.10-16.15 minutes

her forgiveness is also one of the few instruments of power of victims. In her words “to morally oblige the victim to forgive” means to take away his/her power.

In this context it is necessary to allude to a community member who actually forgave one of the paramilitary leaders in such a “free version”. He explained his decision in the following words:

“When one has not the capacity to forgive, he/she limits the option of happiness. Anger is definitely a container that corrodes, corrodes, it is an acid that only corrodes the container that contains it. Therefore, as long as one is not able to take out this anger and this rage, he/she is almost not able to reason.”⁹⁸

Here, resentment and anger appear in the metaphor of an acid that gradually corrodes the recipient from inside. Thus, forgiveness equates rooting out the negative sentiment. He further said that this specific paramilitary leader showed signs of change, thus confirming the before mentioned requirement of transformation. Interestingly, he insisted that his forgiveness did not bind the other community members. He explicitly forgave in his name and not in the name of the whole community whose representatives were also present at the event. This response clearly stresses the focus on the benefits for the forgiving person who decides to free himself/herself from the inner bitterness and, as the person goes on, hatred.

But what has forgiveness to do with reconciliation? In the following, a priest and social leader provides us with some hints by making a distinction between them and attributing to reconciliation the added value of re-creating trust between the parties:

“I always distinguish between forgiveness and reconciliation. I never mix them up, for me they are always two dimensions that go articulated. We human beings have the need to forgive. If someone does something wrong to me, I desire it and can give it to him. I can forgive, therefore I forgive. But forgiving is not necessarily forgetting. Reconciliation is one dimension ... let's say, I can forgive but finally I say ‘I forgive you but I will never again be with you but I forgive you.’ This is to say when someone forgives, he does not desire any more ... in the forgiveness there is a dimension that goes beyond punishment. I am not even interested if they punish you, this will be justice that punishes you but I forgive you, independently if they punish you, independently if you pay for what you did or you repair, I forgive you. Forgiveness is one dimension of that. But forgiveness does not mean reconciliation.

Reconciliation is the process of returning trust. In the discussion of couples it is very easy to see it because normally I told the couples ‘one's problem is, I forgive you but every time that I am in rage, I remember and I confront you.’ Reconciliation is a dimension to say again ‘you know what, I do not only forgive you but I trust you again. I can trust you again and entrust you with my life.’ This is a dimension of believing that this is not only not happening again ‘I forgive you and this is not going to happen again, not only because I took distance but because

⁹⁸ Quote 39: Respondent 14, 13.40-14.19 minutes

I believe so much in you that I put my life in your hands again.’ Reconciliation is a dimension of trust. I believe in you as a person again. What you did, was bad, and I have already forgiven you but beyond forgiving you, I can say ‘I put my life and I trust you again. You are going to demonstrate with the way of proceeding that this trust is worth it.’ And this is reconciliation, this is one dimension.

It is a bit when people say ‘yes, we have already forgiven, they even live with us there. They are there.’ But when I say ‘well, let’s build together. We are going to do this, I will give you what you took of me one day, I will give it to you again, let’s see ...’ It is a change of attitude between the person who forgives and the one who is forgiven in order that they are building in trust again, being able to build in trust.”⁹⁹

His experience in counseling spouses underlines that forgiveness as such does not mean that the relation is repaired or that the respective effort will be undertaken. Reconciliation, on the contrary, does include this aspect. He is very explicit by alluding to the usual community situation in which victims and perpetrators live side by side and decide to “construct together”. While forgiveness seems to be an individual act that is even possible without tangible interaction and knowledge of the other side, reconciliation includes an exchange, a phase of negotiation and a common project for the future.

A community advisor adds an anthropological argument to that:

“I have a profound idea regarding the topic of reconciliation. It is about recognizing that as a human being I cannot be without the other. I depend on the other in all my areas. But furthermore, everything I do and produce, I do not produce it for me but for the others. This aspiration of everyone of us to have an apartment, it is not only an apartment for me. I want to have a house for me because one day I want to invite somebody to share a movie with me, a meal, a dinner, a glass of wine. I think that nobody has a house if it is only for oneself; in this case it would be sufficient to have a room with two beds or, if we are five, with five beds ... We are human to the extent that we are in relation with others. This is why the human being has a language because he/she needs to get in relation with the others.”¹⁰⁰

According to him the inter-dependence of each other is the element that makes reconciliation possible. It also allows for amending mistakes and failures in order to get re-integrated into the human community.

This social character of human beings also motivates to think of reconciliation as happening on different levels, thus beyond the interpersonal process between the victim and the perpetrator. A very experienced peace educator who works in communities to promote non-violence and constructive conflict management presents several insights from his work:

⁹⁹ Quote 40: Respondent 21, 10.15-13.15 minutes

¹⁰⁰ Quote 41: Respondent 10, 1.12.00-1.13.18 minutes

“In my work but obviously not because I invented it, we speak about personal reconciliation, for example, that implies an auto-exam on my conflict and its sequels that violence has left on me. Then, social reconciliation according to my analysis, is my re-encounter, that is my forgiving myself because this violence also has generated internal damages inside me, guilt because it has caused damages to other people or because others have damaged me or because I have damaged myself. There, this implies a personal reconciliation, a transcendental reconciliation if I am a believer; implies reconciliation with the others or social reconciliation in order to start again to build relations with others.

Now, achieving to build relations with whom I have hurt, I will also achieve that even with those who have not hurt me or with those whom I have not hurt, i.e. by improving my relationships of peaceful coexistence with the next. There, I am undertaking a journey in order to reach reconciliation with those who have hurt me. Perhaps I do not succeed in confronting who hurt me and in achieving a hug but this is part of the path. It is possible that I end up forgiving him or asking for forgiveness, perhaps not directly, perhaps even based on my reconciliation with myself.

There are many experiences in peoples’ lives when they tell you ‘I have already forgiven him’, though this person does not even know that I have forgiven him. Therefore, reconciliation, as I said, between these people who are so distant but people are also a social group, movements, many things; it is not only a loose individual but also what we are going to build as individuals, which is the social fabric, which are groups, which is unity.

Thus, when in a village that has been damaged, destroyed by violence, by forced displacement, by drug-trafficking etc., when in this village joy starts to come back, when people start again to work in community, to rebuild this value of society, to recover elements of cultural identity, there reconciliation is present, because the wounds are healing, though there is no encounter with those who went there to rob, shoot or cause damage ... the fact that these people have hope again, reconstruct their roads, there is also reconciliation present.”¹⁰¹

This quote draws our attention to a few aspects that are essential to understand the complexity of reconciliation processes. First, the respondent emphasizes the need to work on the reconciliation with oneself to achieve a “re-encounter with myself”. This includes facing the internal damages and feelings of pain and guilt. Based on that, reconciliation with other people or groups is possible. Second, reconciliation has also a social dimension regarding the reconstruction of the social fabric. The inter-dependence between the individual and the social process reflects the insights on the damages gained in the analysis of the first category.

It seems that one difficulty of thinking about reconciliation consists precisely in the syllable “re”. “Re” usually means that a previous state of affair is re-established. In this sense reconciliation would suggest that the goal is to return to a once existing but in the meantime lost golden era, in which people lived together in harmony. Given Colombia’s history of repeated internal wars, people legitimately question this use of the term. A community advisor explains the meaning of reconciliation by giving an example from his work:

“After the sequels of violence, one never returns to the same; it is about creating something different, this ‘re’ alludes to re-create, to creating again, to build again but in a different way

¹⁰¹ Quote 42: Respondent 01, 1.08.25-1.11.53 minutes

because the years go by because we have different ideas because we have other generations because we have different dreams. This 're-'conciliation is about re-creating dreams ... It is an exercise that you take a clay vase, you let it fall ... the ritual that I did because in reconciliation also the rituals are important: I was talking with the people and first we had done a different act of personal reconciliation and it was that I wrote on a paper a dream that I have or an aspiration, something that I want to achieve in life. And you take it and tear it apart, so now that you tear it apart, you have to help me to recover the sheet of paper in order that you know what I had written there as my dream. We are going to talk about what we are going to do in order to achieve this dream that has broken, that you have broken but not only you but that many situations symbolically have broken. Thus, this is an exercise of reconciliation in the sense: this dream is not going to be the same again, it will be another but it will be another constructed by us in the middle of pain and difficulties.

After I did this exercise for couples, I take a clay vase and go around the circle of people. I tell them that in this vase all these dreams are summarized that you had but you have also reconstructed. There are the dreams of the country, there are many things that we in this country wanted to achieve. And in a moment of the discourse I let the vase fall, the vase falls and breaks with a sound; since everybody was listening to me very concentrated, this makes a sound that has an impact on people such as violence has an impact, it hits you, such as the kidnapping or sexual violence or the strike that your husband gives you, etc. And then I invite them to paste the vase again ... the people paste the vase with tape.

Thus, what I want to say is that when you finally see the vase, you see it with a lot of patches; you see it with all these bandages. This vase is a symbol for reconciliation, it is about reconstructing life and reconstructing dreams but it is not about returning to the original vase because this original vase will never exist again. This is a new vase but what it has new and rich is that it is a vase constructed by a collective. It is not any more that only one artist built but it was the collective that constructed it due to the wish to advance, due to sadness, pain but also forgiveness or the search for forgiveness and work in a team.

Therefore, reconciliation is also this and when I talk about the people, it is not about returning again, not that everything that was, was better but it is about doing again amidst pain and sadness. This is why I said one-armed, lame, physically incomplete either in the family or in the heart but this means to construct it again because if there is no reconciliation in this sense, there would not be any sense to continue to live. Life would not have any sense; therefore, a dream for the country, for the nation would not have any sense."¹⁰²

Reconciliation, thus, becomes an exercise to adapt one's dreams and projects to a changed environment, after having overcome the effects of violence. This is, again, an individual and social process of mourning and creating and not of returning to a given time of the past. Several authors refer to this process as an art, which makes the just quoted methodological example of the vase that was broken but reconstructed even more accurate. In this context, reconciliation is considered an opportunity for society to think about the desired quality of the relations in the future.

Finally and connecting this category to the previous on truth, justice and reparation, it was rather surprising for me that no respondent insisted on the frequently heard sequence "first truth, justice and reparation, then perhaps reconciliation". While several interviewees certainly linked reconciliation to the three victims' rights (1, 24, 20, 5), the absence of the rigid sequence

¹⁰² Quote 43: Respondent 01, 1.13.16-1.17.53 minutes

means that there is some flexibility to undertake initiatives of reconciliation, even though the rights are not 100% fulfilled. This is a sharp contrast to the public discourse of many civil society groups, particularly during the years of President Uribe.

While also connecting reconciliation to truth, justice and reparation, the following Church leader sharply criticizes the focus on punitive justice. This is in line with his emphasis on the victims' needs of being listened to and getting a response from the state.

“The processes of reconciliation are very difficult because they are moving on paradigms of revenge. Therefore, while there is resentment, hatred, what is searched for are processes of punitive justice and an eye for an eye and a tooth for a tooth, if possible, a bit more. Thus, it is punitive violence and punitive violence that is accompanied by social justification. This seems very serious to me because it is about justifying hatred, justifying violence that is within one's own heart. And reconciliation asks to go far beyond that. The processes of reconciliation, I think, are very complex because they partly touch cultural elements. And this is very anchored in the most profound, to charge everything.

On the other hand, there is a lesson of the classical type, of psychology, the classical lesson is the lesson that is linked to the physiological reactions and this means that who witnessed the killing of one's father and mother, saw it and experimented it, keeps it on record, on record with an answer of very strong anxiety, with some very strong answers of anguish. Therefore, this very strong reaction of anxiety and anguish generates processes of paralysis, of impotence because there is no environmental answer. Impunity is rampant. Therefore, the victim in a certain measure, was not only victim in a determined moment but keeps being a victim of the state. ‘I do not care, it does not interest me, I do not believe you.’ Therefore, victims find themselves completely unprotected. This is why the processes of reconciliation have to be enshrined in truth, justice and reparation. Nowadays, in many fields also forgiveness is introduced; forgiveness does not mean forgiving and forgetting but means transcending and entering a type of justice that would be restorative. But for this one needs that the victims can close the cycle, can exhaust their grief; in order to be able to reconcile, they need to know, to know what happened and where they are.

Now, on the one hand this knowledge is not perfect. It is not possible to have all the information of what happened. And many times wishing to obtain the whole information of what happened, is not the best but, yes, the victims have the right to know, for example, where their loved ones are. This can give closure to grief.”¹⁰³

This quote illustrates the intense intellectual and emotional struggle to come to terms with the past in order to create a better future between those who are focused on overcoming pain and grief, and those who emphasize the need to punish the perpetrator. It also shows the importance of acknowledging injustices committed by a range of actors including the state. Non-recurrence in this context refers to not repeating atrocities but also to not re-victimizing people by ignoring their sufferings or denying crimes.

It seems as though the respondents agree on this ultimate goal but differ in the methodology how to get there. Several interviewees concur that reconciliation is a process

¹⁰³ Quote 44: Respondent 24, 23.50-27.44 minutes

oriented towards the future, i.e. that its main benefit still lies ahead and not in the past. Expressions describing reconciliation such as “keep walking” (25), “dreaming” (1), “willing to change” (25), “utopia” (20), “creating together” (21), “closing cycles” (24), “matter of generations” (16) underline this orientation. 25) also expresses that it is not a linear process but full of challenges and potential relapses.

I would like to add a personal remark on this category. It is obvious that in the time of the field research in summer 2011, the attitude towards the issue of reconciliation had changed dramatically in comparison to five years before. Merely mentioning the term to the same people in 2006 had still been accompanied by the risk of being declared ignorant or adverse to the goals of justice. Even in 2009, the fact that I led a reconciliation-project was not without critics in the Development and Peace Program. My interpretation for this overall more relaxed attitude in 2011 is the change of government and the more moderate and conciliatory discourse of President Santos on the one hand but even more importantly concrete steps towards strengthening justice (*parapolítica*) and addressing the root causes for the armed conflict (land restitution law). On the other hand, however, the last years also saw an internal discussion process within many, not all (!) civil society groups that reacted to doubts whether their black/white discourse was still appropriate. This obviously did not lead to the automatic acceptance of new topics but to intense and healthy debates about them.

4.3.6. What is missing? Transitional Justice, DDR, transition

4.3.6.1. Introduction

The choice of the case study Colombia for the analysis of the link between transitional justice and reconciliation is based on the assumption that this country has something to contribute to the international debate. And indeed, the political, legal and financial investment in the demobilization of the paramilitary groups has been quite impressing. The previous chapter summarized the debates about the legal framework “Justice and Peace”, the criticism on it and the elaboration of the “Victims’ Law” but also the difficulties to reintegrate former combatants. It also showed how many efforts the Colombian government undertook to present Colombia as an example for transitional justice and the fulfillment of the victims’ rights. The DDR-Congress in Cartagena in 2009 was only one of the events that were staged to convince the international

community of Colombia's path towards peace. Personal experiences and meetings with representatives of World Bank, USAID and other international entities both in Bogotá and abroad confirmed the impression that the government did an efficient job in presenting itself as empathic with its people and a pioneer in the promotion of victims' rights.

In addition to the importance attributed to the demobilization, the term transition played an important role in the discourse, either by calling the legal framework transitional justice or by suggesting a substantial change towards peace. This was essential to legitimate the reduced prison terms for the paramilitaries that in "normal" circumstances would have been even more controversial than they actually were. I am highlighting that because one of the major findings of the field research is that both the demobilization and the idea of a transition is virtually absent from the responses of the interviewees. They are only mentioned if specifically addressed in the question. The findings go even further in so far as they suggest that only a few of the respondents even perceive the beginning of a change, not to mention the systemic and structural improvements that the term "transition" would insinuate. If this is true, the conclusion must be that the public discourse and the efforts of the government are not in line with the reflections and the emotional state of people who live in conflict-zones.

4.3.6.2. Absences

In the following I will elaborate on this argument that has several aspects. When asked about Colombia's role in the international debate and practice on transitional justice, the expert of the international organization offers the following reflection:

"I would first highlight the differences because I believe that this is easier. There is not the least doubt that in Colombia instruments of transitional justice are used; this is not to say that in Colombia there is a process of transitional justice. I believe that this is a very important point. Particularly due to the existence of the armed conflict and outside the existence of the armed conflict I would particularly highlight the extension of the coercive effect of violence and, therefore, a big limitation on the freedom of expression and thought in the territory. Thus, to the extent that there are no minimal conditions of respect for human rights or guarantees granted to victims, social leaders, human rights defenders to put things in evidence and talk about them, it is sufficiently difficult that there really exists a process of transitional justice, generally qualified as the space in which one can face the past, recognize it, face the negation, make exercises of attributing responsibilities and establishing responsibilities but obviously

hopefully in a context where contest and dissent do not meet violence. I believe that this continues to be a very serious problem in Colombia.”¹⁰⁴

His response alludes to an important discussion caused by the formulation of the “Justice and Peace Law”. Does the demobilization of the paramilitary groups give way to a post-conflict phase? If not, is it legitimate and even possible to implement instruments of transitional justice midst of an ongoing conflict? The political opposition to the Uribe government, most civil society organizations and academics refused to accept that Colombia had entered a post-conflict period. This expert agrees and underlines the existence of an armed conflict but also the lack of minimum requirements necessary to address past injustices and crimes. He specifically asserts that there are no guarantees for social leaders and no safe spaces to discuss the corresponding topics. He, thus, voices similar opinions as other respondents with regard to the existence of post-conflict and the subsequent security-issue (3, 6, 23). Concluding, he differentiates between the implementation of certain transitional justice instruments and the existence of a transitional justice process, which he defines as a space of analysis, recognition and exercise of responsibilities towards what happened in the past.

Another line of argument questions the veracity of the process with the paramilitaries as such. Based on the assumption that the paramilitaries had been an invention of the state, several respondents (4, 19, 20) have serious doubts about the effects of the demobilization and even declare that the paramilitaries have not ceased to exist. The latter argument, by the way, is in one way or the other, shared by many community members, too, who argue that the structures and promoters of the paramilitaries are still in place. They even report several of the same practices that had already been used by the paramilitaries, e.g. social cleaning, threats, or check points.

The clearest statement with regard to the paramilitaries and the role of the state in their functioning is provided by a peasant leader, the organization of whom had lost several members through assassinations:

“The accumulated [experience, CW] that was delivered to us here is that paramilitarism was an invention of the state. They invented it in the year 1968, they made it illegal again in the year 1989, Uribe tried to legalize them with the *Convivir* [armed self-defense forces, CW] in Antioquia and all the commanders of the *Convivir* that Uribe legalized in Antioquia became afterwards commanders of the paramilitary blocs of the country. This is a reality that nobody admits. Therefore, for us paramilitaries have never existed ... it is the state that acts in illegality

¹⁰⁴ Quote 45: Respondent 02, 0.32-2.12 minutes

... the state acts in illegality in order to wash its face by saying that the extreme right is doing that. But paramilitarism was an invention of the state ...”¹⁰⁵

Since, according to the peasant leader, the state invented the existence of paramilitaries, while in reality it had always acted legally through its military and illegally disguised as paramilitaries, the demobilization must be a farce. A leader of a women’s organization points out that through the demobilization and the subsequent legal framework the state legalized the paramilitaries but did nothing to eliminate their structures. Both statements have in common that the state and the paramilitaries represent two sides of the same coin with the consequence that there was no tangible change in the relation state-society or in the security situation of civil society organizations. Several respondents concur in the opinion that the “Justice and Peace Law” promoted impunity and was made for the perpetrators and not the victims (5, 20, 19, 22).

A slightly different view is offered by the member of a social research institution who agrees that the state and the paramilitaries used to have close links but also asserts that the demobilization responded to a change of the government’s strategy in favor of the nation’s reputation:

“It turns out that in my point of view the demobilization is also a desperate strategy of the Colombian state and to a large extent of the Colombian entrepreneurs to say ‘we cannot continue with them because this is going to represent for us very serious problems in the future with the World Bank, with the Inter-American Bank for Development, with the European Union because we are remaining the most savage country of South America’. Therefore, this has to stop ...

... I can remember when they denied a visa for a general in Germany due to accusations regarding crimes against humanity ... this was a scandal ... they were shocked because they began to understand that, yes, he had participated in this. Thus, they complained that the government did not defend him but there were also lucid people who said ‘listen, this was mad. Good that the government defended him but this is a stupidity. How did they do it?’

These voices emerged there inside; they started to ask where they put themselves, how far they got. This is not the order of the military; we cannot act like this. Thus, there comes the whole process to say that this goes nowhere ... Uribe’s project has already been advancing and Uribe did not want to govern a country with massacres of the paramilitaries because it also was a way of turning him illegitimate. He said ‘I am already in power, I add the military that has the power to become the constitutional force but legitimately.’ And, thus, came the whole incentive of payments for who kills and this ends up in the *falsos positivos* [youth killed by the military, who were then presented as rebels killed in combat, CW], which is another distortion. Let’s come back to efficiency, let’s be more efficient than the paramilitaries and if you are more efficient than the paramilitaries respecting human rights, I am paying you more, I am paying more ...”¹⁰⁶

¹⁰⁵ Quote 46: Respondent 04, 40.35-41.43 minutes

¹⁰⁶ Quote 47: Respondent 22, 44.13-50.00 minutes

If this opinion accurately reflects reality, the repeated international questions about human rights violations and the corresponding role of the military had a positive impact. And it confirms the view that the Colombian government has been increasingly aware of the link between reputation and foreign investment. The decision to demobilize the group that had been most notorious for human rights violation, thus, would be a logical consequence of this reasoning. On the other hand, it would be a pragmatic decision in order to achieve other goods, such as reputation and investment, and rather not a reflection of an attitudinal change as postulated in the conceptual chapter on reconciliation.

However, there are two other respondents who analyze the essence and the impact of the demobilization of the paramilitaries in different terms (3, 9). They are cautiously optimistic that a transition is actually taking shape, at least a regional one:

“I believe that there is a regional process that shows us scenarios of a transition, certainly, with instruments of a transition. I believe that those who academically assert that there is no process of post-conflict in Colombia are generally right. There are manifestations of the conflict and I repeat that even the government accepts it but also advances in the regions. I want to quote the Magdalena Medio. The Magdalena Medio has actors of the conflict; the FARC and the ELN remain in the region but are in the last spurs of the mountains ... but the human conglomerates, municipalities where around a million people live in the region, there is not even a minimal presence of the insurgency. The same applies to the criminal groups whose presence is rather marginal in these municipal capitals and what is advancing is the re-establishment of civil actors with a lot of force, be it socio-economic productive unions or NGO that defend human rights, trade unions with a tendency to fortify etc. and political parties that recover their role ... there is, if you want, a process in which society returns to self-determine itself and where the population returns to gain elements of trust and security ... Thus, there I discover elements of a post-conflict and elements of a transition, concretely in the Magdalena Medio ...”¹⁰⁷

This human rights defender considers that the decrease of the presence of illegal actors in the region is a clear hint at the beginning of a transitional phase. This together with an increase in the activity of both civil society and political parties explains his hope that society would finally be able to self-determine itself, a postulate that we had already found in the analysis of the damages.

This rather political analysis is complemented by a humanizing element, i.e. that the demobilized paramilitaries suddenly got a human face, lost their war-names and obtained a biography that resembles that of most Colombians with the exception of their years in the war:

“First, it put a human face to the extreme right; for the whole barbarity that was generated in the 1990s onwards these groups were considered in the collective imaginery as monsters. I

¹⁰⁷ Quote 48: Respondent 03, 23.42-26.27 minutes

believe that the fact that public servants were designated and that they stepped into the light in general, photos and things, even the photos presented by the prosecutor that say ‘Mr. X, this and that’, I think that for the people this meant a very strong thing because it is the personal name, it is a person and much more for the people of the ACR [presidential agency for the reintegration, CW], for the people who had contact ‘no, it is a high-school graduate; no, it is a guy who did his primary, who was attacked, who has children’; there the topic of dignifying these people started to generate itself. I believe that this impact is very strong. For example for Don X when he touches the issue and then ‘they are not people’ being in a situation convenient to ‘they do not exist for me, they are not human’. Therefore I said, well, more or less the whole society was in this condition: ‘They are a squad of killers’. Obviously the people of the countryside, they consider them as another actor. They are an actor of war like the others. But in the city, for the common people I believe that this was very important.”¹⁰⁸

As mentioned in the quote, this humanization of combatants is a significant challenge for a society that has been used to view the paramilitaries as bloodthirsty monsters only. It is even more challenging for the victims as pointed out in the comment of this human rights defender. However, given his biography it is quite amazing that he comes to such conclusions. His previous comments on the abuse of human rights as weapons against the state were the results of his personal reflections on the time when he had started his career. He freely admitted that he used to instrumentalize them in the same way, before engaging in peace and dialogue initiatives. Thus, his argument about the humanization of former paramilitaries who killed several of his colleagues constitutes an important insight into his personal evolution. In the end, it boils down to the thread that connects this category with the others – dignity and respect.

This last point is confirmed by two other responses that demonstrate that the perception of tangible change is decisive for a transition’s credibility. The first stems from the victims’ psychologist who describes the behavior of public official towards the victims who, in the framework of the Justice and Peace procedure, get registered and solicit the official status as a victim:

“Well, due to the versions that the users [i.e. the people frequenting her office, CW] have communicated to us we have found a big difficulty partly by the civil servants of the state’s institutions and partly by some organizations because the rehabilitation process is not very well determined. Therefore, there is no healthy attention for the users and several feel re-victimized, several feel that the affectation by the entities or the organizations that take care of them was greater than the original violent act of which they had to be victims and which they had to face in their life. Therefore, several prefer ‘no, I do not go there or I do not participate’ because they are going to ask me things and they are going to treat me in a way that is not the most sensitive for what they are looking for ... this is the big majority and in one way or the other because

¹⁰⁸ Quote 49: Respondent 09, 39.12-41.10 minutes

sometimes when I go and ask for information, and they treat me like that, I do not imagine how they act with the users.”¹⁰⁹

Notwithstanding the rather unfortunate denomination “users” that is meant to substitute the term “victim” the quote clearly shows that people, in this case the victims, will not perceive a transition if the relation between state officials and citizens continues to be that of arbitrariness and disrespect. Beyond the conciliatory discourse of the government, it is these direct encounters in which people feel or not that different times have come.

This is confirmed by the view of a female community leader who participated in the before mentioned “free version” of the paramilitary leader who had harassed the community for years. She describes how the community representatives were treated before the hearing started:

“You know, when we arrived, we were sitting there everyone very punctually and then the moment ... something happened that caused me curiosity. They tell us to leave in order to search us. This means that they protected him from us, and who protected us from him? They took away bags and everything from us, when he entered. They inspected the room and all the seats. What irony of life, no! The state, well these things, I do not understand. There the term justice – this is not just.”¹¹⁰

There are numerous examples of similar incidents that profoundly affected not only victims but also peasants who claimed their land or human rights defenders who denounced violations. As long as this happens, it is not surprising that people react rather skeptically even regarding initiatives that – sufficiently or not remains to be seen - address their claims such as the “Victims’ Law”. Several respondents are very cautious and doubt that the implementation fulfills the expectations raised by this law; some of them also sharply criticize that the state refuses to take responsibility for its acts and omissions (6, 3, 5, 20, 18, 19, 13, 22, 2). This suggests that a transition must be felt and cannot be imposed or simply announced. Once people feel that their state actually provides them with the necessary services and treats them with respect, a transition may become reality.

In this context, the more long-term view of the human rights defender sounds very realistic who cautions not to expect a transition of several years but insists on a long-term perspective starting with the new Constitution of 1991 that was the result of a rather broad process in the context of a peace treaty between the government and the guerrilla movement M-19:

¹⁰⁹ Quote 50: Respondent 05, 07.40-09.05 minutes

¹¹⁰ Quote 51: Respondent 16, 14.45-15.28 minutes

“Yes, it is still very slow but it has happened. In fact it has happened, gradually but it did not start in 2005. The transition of the Colombian state is prior to that, the Colombian state, for example, enters in 1991 in a very important milestone of linking the exercise of power with human rights, with the integrity of human rights for the people, the collective, the common good ... the previous constitution was based on the strength of the Catholic religious beliefs of the country. This was another thing. For me this is a very important scenario of transition, beyond that based on the citizen’s initiative. I think that we are in a much longer transitional time, of 20 or 30 years, in which the state starts to understand the world of international law and human rights, the standards, that way how it has to behave. There the oligarchy undertakes some efforts to legitimize itself ... In general the thing is that there are several scenarios of economic and political power that have been transforming in these 20, 30 years in their rules, how they function, in constitutionality, although – I am talking from the political perspective – the line of poverty, the issue of violence have other lines. I am telling you that in a political perspective, the way how one understands the state and the way how people understand the state and assume it. For example, a central transformation has been the creation of citizenship and the understanding of it in the cities.

The fact that we moved from a rural world ... to a cosmopolitan world, a citizen who transcends boundaries with the internet, who has a youth every time more involved in the college ... this also causes a transformation in society that causes a transition and makes the armed conflict every time rarer. While you construct society, while one is constructing society, the armed conflict is losing thickness in the impact caused for the life of the common people with several peaks. We are talking about the peaks of the narco-terrorism, there are some big take-overs ... but the rest, tourism, daily life of the people is being constructed. And therefore, this makes that the transition is not even decreed but is happening, is unfolding and this last thing called transitional justice is only a small point, in which they said ‘uy no, with the extreme right let’s not get involved any more.’

The state makes a complete U-turn and says ‘we do not want to see more paramilitarism as it was. We close the doors there, we stop the stream, we do not want to legitimate the self-defense, *convivires* any longer, nothing of that sort. We want that the public force is the force. And therefore, you who were there have to resolve your judicial situation. There you have the Justice and Peace Law and look, how you proceed’.”¹¹¹

This perspective accurately distinguishes between macro-changes in the institutional and legal design of the political system and “every day’s life”. However, if these two dimensions do not coincide, the best constitution will not bring about the change that people need to feel safe and in dignity. The quote also puts the paramilitary demobilization and the debate on transitional justice into a larger historic perspective, thus contextualizing the effort of the government that I mentioned introducing this category.

4.3.6.3. Summary

This subchapter showed that the interviewees do not attribute so much importance to issues such as the demobilization of armed actors or specific transitional policies as the

¹¹¹ Quote 52: Respondent 9, 44.05-48.52 minutes

government would like to show to the outside world. While this may be explained by the immediacy of the damages and the ongoing conflict on the local and regional level, it also stresses what people consider as essential for a transitional period, i.e. substantial and tangible change in their concrete lives and living conditions.

The previous quotes also reflect a variety of ways to interpret the term transition and its political ramifications. While the long-term meaning of it includes the new political constitution of 1991, most people connect transition to the disappearance of illegal structures. One respondent specifically highlights the increasing political space and the participation of civil society and its organizations as an essential ingredient for a transition.

At any rate, there is no cheap transition, as presented by the government. The mere demobilization of an armed actor as such is not considered sufficient by the interviewees and does not change the relation between the state and its citizens.

4.4. Conclusions

The Magdalena Medio region is for many a symbol for the state of war and peace in Colombia. Its contested history, the richness of resources on the one hand, widespread poverty and exclusion on the other hand, the emergence of many armed actors in the region but also the determined social struggle for rights and inclusion makes it an interesting site to analyze the dynamics of the last years. It is, thus, an enriching endeavor to ask representatives of communities and organizations to express their views on the recent political, economic and social developments that have circled around peacebuilding, DDR, transitional justice and reconciliation.

Based on the damages of violence that were identified both on the individual and the collective level, the interviewees were asked to develop their visions of peace. While many structural elements appeared, peace was also presented as a concept that had been abused by different institutions and organizations for their own interests. The need to re-invent the term and fill it with new contents was repeatedly stressed.

The findings of this field research that was based on previous experiences in the region and the research of secondary literature on the concepts of transitional justice and reconciliation indicate that both topics are multifaceted and multi-layered. They require a variety of approaches

that are not limited to the state level with its respective policies, although the state, its policies and institutions play a major role in the reflections of the interviewees. Reconciliation is, however, a task of the wider society, in which a multitude of actors participates. The overcoming of trauma, the change of perceptions and attitudes, the tangible change of the security situation and transformations of the socio-economic structure are at the forefront of people's reflections. Truth, justice and reparations are considered fundamental elements for reconciliation; the interpretations regarding their shape differ, though.

There is, in particular, one recurrent dimension: Reconciliation and the perception of change have to do with a humanization on several levels. This seems to be in line with the reflections on trauma in the second chapter and the comprehensive healing of wounds. But it also has to do with the requirements of dignity and respect, both terms that appear in multiple contexts, such as the respectful treatment of the citizens by civil servants or the improvement of living conditions.

The last and concluding chapter is going to present the theoretical insights of the last chapters and beyond that contribute additional elements to the debate on the impact of transitional justice on reconciliation.

5. Insights

5.1. Instead of a Summary

In 2008 a group of villages that belong to a municipality in the Santander Department created the Comprehensive Development Zone. When I first went there it had rained the night before; so it took around six hours by car to reach the main village. I had been invited to undertake a first approach to the topic of historic memory, more specifically the question of how it was possible that violence had reached such intensity during the previous years. The region used to be a stronghold of the paramilitaries, but also an important strategic corridor for the guerrilla groups FARC and ELN. Both sides had their sympathizers and detractors, and both sides had established an efficient intelligence network amongst the population.

The first thing I was shown was the residence of the last paramilitary leader, who had left a couple of years before as part of the demobilization process. It was the biggest and obviously richest building in the village with a nicely decorated balcony. There, I was told, he received his women and girls, ordered executions and organized military expeditions to the surrounding areas.

In the course of the interviews people told me numerous stories about the past including different assessments of the paramilitary and guerrilla leaders and a wide range of interpretations of what had happened. For some, the paramilitary leader ‘was a good guy, but negatively influenced from outside’. Others praised ‘his generosity’, while still others highlighted ‘the brutal tortures he ordered’. For some the guerrilla ‘was much better because it fought for the people’. For others ‘they were the cause of the violence’, while others considered a specific guerrilla leader ‘who asked for too much money and was very abusive’ as the reason why the self-defense forces were created in a village nearby that ‘later became the paramilitaries’. People told me stories about young men, and to a lesser extent women, who became involved in the armed conflict and developed leadership skills or war-related capacities such as torture and spying. Almost every one of them suffered a violent death at an age that is usually dedicated to education or founding a family.

When going into more detail, community members also told me, how ‘a neighbor denounced my son as a rebel, which is why the paramilitaries killed him’, or how being a

member of a minority church 'the neighbors disseminated dangerous rumors about us in order to call the paramilitaries' attention'. Since the armed actors also fulfilled the function of judges, they were frequently called in cases of domestic violence or disputes. More than once a spouse got rid of the partner by denouncing him/her as a spy; the same happened when someone was keen to get the wife or the property of a neighbor. One's own active role in the past was never addressed; virtually no self-reflection took place. Responsibility was attributed to the armed actors, the state, the community or specific people. Sometimes God was blamed, because He had abandoned the community or the victim.

Many respondents automatically referred to certain places by giving them specific war-related meanings. One small restaurant on the way to the village was called 'no te pases' (do not go beyond) because it used to mark the border between the paramilitary and the guerrilla lands. Rivers were remembered as execution sites and certain points in history always related to a date when someone was killed.

This way of remembering and of reflecting the past contrasted with the strategies of the Comprehensive Development Zone. Theater served as a tool to get young people involved and to broaden their horizons. Children learnt to observe their environment by drawing items that got their attention. Women organized themselves and created a small cooperative to sell agricultural products, and people reflected on a way to increase the political clout of these villages within their municipality. To a certain extent, the past and the future were happening simultaneously, while the present remained somehow intangible. The dream of a better future was motivated, yet obstructed, by the violent past that rhetorically included the present, while the communities' activities were different from before.

This reminds me of another village in a different region, where during a meeting on a local peace plan a senior community leader stood up and said: "I was part of the group that founded this village some 40 years ago. There was nothing around, but within a year the guerrilla arrived and spoke about revolution and asked for a tax. Later the paramilitaries arrived and explained their struggle for freedom and against communism. At last the police arrived and talked about the law. I have never experienced peace in my life. I had to flee twice, lost members of my family and was threatened. So, tell me 'What is peace?'."

5.2. Transitional Justice

These anecdotes illustrate several topics of transitional justice that have been addressed in the course of this research.

First, if in people's minds the temporal dimensions of past-present-future are blurred, the term transition is difficult to grasp. In the absence of a moment or an evolution that clearly separates the past from the present, people either meet transitional justice with indifference or reject it as inappropriate and imposed from above. As shown in the analysis of the field-research the terms "transition" or "transitional justice" did not appear once, nor did the idea that something extraordinary had happened in Colombia that would justify special procedures of justice. The demobilization of the paramilitaries that was so prominent on the government's agenda and led to the organization of massive international events and conferences failed to mobilize most of the civil society for a "transitional project". My initial assumption that the demobilization would be top on people's agenda or at least significantly shaping their reflections on transitional justice and reconciliation turned out to be largely wrong. In the interviews it was not considered a source of substantial change.

Those who detected changes either considered them in a larger historical perspective, thus going beyond the time-frame of transitional justice activities, or identified them on a regional level. The feeling that a transition suggests tangible changes in daily life is widespread and also illustrated by the before-mentioned *Comprehensive Development Zone* that was organized based on a needs assessment of the community and interestingly funded under the term "transitional initiative" by an international organization. Recalling the analysis of the first chapter, it seems as though structural transformations together with a combination of top-down and bottom-up initiatives are crucial for transitional justice to be perceived as relevant.

The absence of these ingredients has had serious consequences for the legitimacy of transitional justice in several regions of Colombia. On the one hand, it has led to the perception that transitional justice is one element of a secret deal with the paramilitaries in order to facilitate their demobilization; on the other hand, the non-inclusion of the individual and collective victims has been seriously criticized. However, given the answers to the questions related to justice, truth and reparation it seems that an efficient implementation of the respective measures may lead to a transition and to the perception that actual change in the behavior of the state towards the victims

is happening. Thus, one conclusion of the field-research is that in the case of Colombia transitional justice activities may lead to a transition, thus inverting the usual sequence. The amount of truth discovered in the course of the “free versions” of the paramilitary leaders within the framework of the Justice and Peace Law, the mobilization of numerous civil society organizations to break the silence and the trials against members of the political and economic elite involved with the paramilitaries (*parapolítica*) may create an unstoppable avalanche towards change, which was certainly not intended by the Uribe government in 2005.

Second, the victim-perpetrator dichotomy is seriously questioned, particularly if one goes beyond the political discourse. In practice, communities seem to deal with issues of justice and reintegration rather pragmatically if the security situation allows for it. In private, as the anecdote suggests, people usually have a very realistic appreciation of the past and the variety of shades between the identities of a perpetrator and a victim without neglecting the different degrees of responsibility. The literature review also showed that there are multiple roles beyond the perpetrator-victim-dichotomy that are necessary to take into account (e.g. Fletcher/Weinstein 2002).

The interviews for the field research, however, generally offer an ambiguous perspective. While the categories ‘perpetrator’ and ‘victim’ are firmly maintained, there is virtually no trace of reflection about one’s own role in the conflict or in overcoming the past. This is certainly due to the political struggle to obtain official recognition of the victims, as is frequently expressed by the respondents, but also insinuates that the security-situation is still such that the daily external threat of an armed actor is felt more strongly than the need to clarify internal responsibilities. Respondent 2), therefore, suggests that communities gradually address the issues of responsibility, but at a pace that would not damage its members or the community in general. In the end, as he adamantly stressed, in this process ‘lives are at stake’.

Third, both the length of the armed conflict and the number of victims have a significant impact on people’s expectation as to whether change is actually possible. Both in the responses to the interviews and in private conversations the assumption that everything remains the same and that there will always be groups that dominate others by force is widespread. This contrasts with initiatives such as the above-mentioned that actively try to shape the future.

Chapter 2.4.2 showed how important it is to be able to trust in the non-violent behavior of a neighbor or the larger community for a sustainable transformation of attitudes and beliefs

towards peace. If, as it appears in the interviews, the narratives on peace are rather abstract and do not include the active involvement of the speaker, one may conclude that peace is still not part of the emotional tool box of the people or at least hidden behind the interpretation of the world as violent and distrustful.

Fourth, it seems that the interviewees' expectations towards the state sharply contrast with their attitude towards it. On the one hand, it has to provide people with truth, reparation, justice and structural reforms, while on the other hand it does not instill trust in people, as demonstrated by the responses to the quantitative and qualitative questions in the interviews. This is a consequence of Colombia's history, in which the state has rarely appeared as a positive and constructive actor. It has been perceived as either absent in large portions of the territory or as unable or unwilling to provide justice or positive services such as health and education, which are generally perceived as the state's function. Thus, the visible and tangible element of the state has been reduced to the military that in Colombia assumes internal responsibilities that in many other countries are reserved to the police. Since people and communities in conflict areas such as the Magdalena Medio usually do not feel protected by the state, it has even failed to create an atmosphere of security. The assassination of civilians, who were later presented by the military as rebels killed in combat, was only a climax in a series of similar abuses.¹¹²

As analyzed in the previous chapter, however, there is virtually no understanding that the state may be shaped by one's own initiative. This has to be further researched, but it is striking that for many citizenship seems to be reduced to being a bearer of rights without taking an active part in the state's evolution or even taking responsibility for it. The sharp separation between one's immediate environment (community or civil society organization) and the state institutions also point to the distance from the state. Thus, it seems that for the interviewees the state is a rather abstract entity that through multiple forms of violence enforces the interests of the few at the expense of the overwhelming majority. It is, therefore, almost a nuisance that must be avoided rather than a means to support one's development. According to this view, the state in Colombia does not fulfill its functions, such as protection, welfare or the provision of justice. The obvious reaction of the people is indifference at best, but usually animosity and passivity. Without going into detail here, this also has serious consequences for the legitimacy of the state's institutions and its norms.

¹¹² Compare Chapter 3.3.3

Fifth, regarding the expectations for transitional justice activities, it is noteworthy that, as Pablo de Greiff claimed in his ‘holistic approach’ to transitional justice¹¹³, the respondents consider truth, reparation and justice as a whole, though with different priorities depending on their situation. Thus, while the financial reparation is important to some, it is considered as merely a pay-off in the absence of truth and justice. On the other hand, truth without change remains incomplete and unsatisfactory.

The nature of justice that was addressed in the first chapter got a surprising twist in the interviews. My initial assumption was that most people would adamantly insist on punishment as the most important resource of justice. And indeed the public discourse of civil society organizations clearly claims punishment and prison-terms for the perpetrators. However, the respondents, while confirming the need for punitive sanctions, proffered differentiated opinions. Punishment was clearly seen as a means and not a goal in itself. The requirement of social sanctions to put things back into order or to indicate that specific activities are wrong was repeatedly underlined. But so was the need to move on, to break the cycles of violence and to reintegrate the perpetrator. It seems that the more practice-oriented the interviewee was, the more he/she tended towards a comprehensive set of justice related measures such as restorative justice, forgiveness and compensatory activities. Several respondents (e.g. 24 and 25) openly criticized the focus of criminal justice on punishment, while at the same time insisting on the protection and implementation of human rights.

Finally, it is important to stress that everybody endorsed the concept of human rights or the desirability of a functioning justice system that sanctions the perpetrator of crimes on a normative basis. It seems that the “justice cascade”, and its principles as presented by Kathryn Sikkink¹¹⁴, have been firmly internalized by the respondents. For them it is without any doubt that those who are responsible for crimes against humanity, even though they are powerful or even the country’s leaders, must be brought to justice and sanctioned. It rather seems that the respondents were able to value a sequence of certain tools depending on specific moments of history, and to balance the important goods of criminal justice on the one hand and “social healing” on the other (10, 24, 25).

¹¹³ Compare Chapter 1.1.

¹¹⁴ Compare Chapter 1.2.1

There is obviously plenty of space for further research. Does this willingness to select an adequate tool of justice different from punishment in order to achieve a social goal depend on one's own situation or a certain satisfaction with the state's activities in the justice field? One may assume that the extradition to the U.S. of the main paramilitary leaders in 2008 and the indictment of a significant number of political leaders for their links with the paramilitaries helped decrease the perception of impunity, which, in turn, allowed people to shift their focus from punishment to other forms of justice.

Sixth, the idea that a transition without structural changes appears void is of such importance that it must be analyzed in more detail. On the one hand it has to do with tangible improvements in quality of life, as stated before. This includes opportunities for education and a public health system that deserves this name. Several interviewees referred to these aspects as 'a life in dignity', which suggests that a citizen legitimately expects a variety of minimal services from the state. In rural areas this also includes a basic infrastructure that would allow people to trade their products, which subsequently would lead to a decrease in coca-cultivation. On the other hand, structural changes also refer to the political system that for many favors a limited number of families that administer power more than actively promoting people's participation. The absence of this is directly linked to the before-mentioned lack of self-identification with the state. This brings into serious question the almost exclusive focus of transitional justice on human rights violations related to the armed conflict. As shown before¹¹⁵, issues such as corruption, gender-related violence and economic exclusion are usually not on the transitional justice agenda. Its scope, therefore, is often considered too narrow and too reduced to certain crimes to actually result in a sustainable transformation of a system that has caused violence. This is why Paul Gready (2011) focuses his analysis of the legacy of the South African Truth and Reconciliation Commission on both the changes and continuities regarding the past and the present.

In this context, it becomes clearer why terms such as dignity, respect and participation are fundamental to understand that a transition goes beyond rational considerations regarding the history of a country and has much to do with the emotional side of it, i.e. the feeling of being excluded or continuously ill-treated despite the declaration of a transition.

¹¹⁵ Compare Chapter 1.2.2.4 and 1.2.2.5

This leads me to the seventh, and methodological, conclusion. Stories such as the one offered by the victims' psychologist (5) hint at a crucial aspect of transitional policies. For people who are accustomed to disrespectful and potentially violent behavior from state officials, the process, how transitional policies are implemented, is at least as important as the content. This means that the best reparation program loses its attraction if the public servant at the victims' office treats the victim without respect or as someone who has to prove his/her condition as a victim. "The state" has the opportunity to show itself as useful and helpful to its citizens; if its officials fail to appropriately address their concerns through transitional policies, the state's legitimacy will not increase.

In addition to the treatment by state institutions, there is the fundamental question of how transitional justice programs are designed. It seems that the participation of the victims, the excluded and the marginalized could be a tangible sign off substantial change in the relationship between the state and its citizens. This, however, implies that programs should not respond to blueprints that are formulated in the capital or even worse in international organizations. The participatory approach, on the other hand, also leads to numerous and apparently endless discussions on needs and ethical and political dilemmas between peace and justice and the like. Participation may also cause serious internal tensions within a particular group, such as the victims, whose different categories (displaced, disappeared, kidnapped etc.) may compete for leadership and representation, as is currently illustrated, when "the" victims are invited to participate in public fora.

The last conclusion seems specific for the Colombian case, but may be appropriate for other contexts, too. The interviews showed the profound rootedness of the interviewees in "their" region, Magdalena Medio. They are adamant about highlighting regional characteristics and historical circumstances that are particular to the Magdalena Medio. Indeed, analysts agree that Colombia is a highly regionalized country. It seems, therefore, that transitional justice programs have to "earn" legitimacy by addressing regional concerns, which again speaks against programs that are too broad and general. While it is certainly too ambitious to formulate programs for every village, it is, however, essential that the diversity of conflict dynamics, victimization and political and economic developments in the various regions are sufficiently reflected by transitional programs. As noted before, regional consultations and the participation of the local

population enhance the relevance and the legitimacy of programs. This is also an opportunity for the state to establish a closer relationship with areas that have been neglected throughout history.

The methodological choice of the Grounded Theory aimed at elaborating theoretical insights that are based on empirical data and, therefore, help to better understand how people interpret transitional justice and reconciliation. In addition to fitting to the area of study, according to Glaser/Strauss these insights should be understandable, sufficiently abstract to apply to other than the researched cases and not too narrow in order to leave future researchers with sufficient control over the research design. (Glaser/Strauss 1967: 237, 245)

In the following, I am going to condense my findings by formulating new definitions of these two terms.

Recalling the two definitions of transitional justice¹¹⁶ at the beginning of Chapter 1 and the previous reflections, several challenges arise.

First, both definitions apply transitional justice to past abuses, assuming that the transitional moment is rather well defined. Thus, they fail to address cases such as Colombia, where this transition is at best in the making, but certainly not complete due to the ongoing armed conflict.

Second, the two definitions are not clear with regard to the efforts required at different levels of society including state institutions. Considering the previous reflections, it seems indispensable to emphasize the responsibilities and opportunities of a multi-level approach towards transitional justice. This requires a differentiated and needs-based concept of transitional justice that adapts itself to distinct cultural environments.

Third, despite the mention of reconciliation they fail to establish the link between the application of certain instruments of transitional justice and the emergence of reconciliation or

¹¹⁶ Compare Chapter 1.1.: “Transitional Justice comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.” (UN Secretary General Kofi Annan)
“Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse.” (International Center for Transitional Justice)

social repair. The definition must be more explicit with regard to the specific contribution of transitional justice to reconciliation.

Fourth, both definitions present transitional justice as a tool box, from which certain instruments may be chosen according to the needs. They do not consider transitional justice as a “contested space”, where different interests clash and may even question the utility of transitional justice as such.

Fifth, the definitions suggest a linear process from war to peace, from injustice to rule of law and from violence to peace if transitional justice is consciously applied. Thus, transitional justice is converted into a tool that, once implemented, remains unchanged. Reality, however, shows that in the course of its application new needs arise and require adaptation of the instruments. Consequently, a more dynamic feature must be added to the definition.

Sixth, and probably most important, transitional justice should be embedded in an environment of clear and tangible transformation. If there is the sense that its tools are implemented in a context of ongoing structural or physical violence, transitional justice will be perceived as a “placebo” to satisfy the international community and pay off the victims.

Based on these considerations, I offer the following definition of transitional justice that is in line with the findings of this research:

“Transitional justice denominates a set of multi-level instruments, activities and processes that a society applies in a period of real or desired transformation from a negative past towards a more positive future. It addresses the causes and effects of violence on society and the state and adapts itself to its specific context. The elements of transitional justice, such as truth, reparation and justice, are in a dynamic relationship with each other and are constantly modified through an inclusive public debate in order to be in line with the needs of the society. Its objectives consist, among others, of the respect for international norms, the removal of systemic causes of violence and comprehensive reconciliation.”

5.3. Comprehensive Reconciliation

This definition of transitional justice requires several complementary reflections on the term “comprehensive reconciliation” in order to be fully relevant. The field-research showed that

reconciliation is not only complex regarding its substance, but also politically very controversial. In Colombia these disputes are due to the equation reconciliation = impunity. The Uribe government actually used reconciliation in this sense by focusing on personal reconciliation and contrasting it with the analysis of the past. ‘Miremos adelante’ (let’s look forward) was meant to neglect both the prosecution of perpetrators and the profound transformation of past abuses and structural elements such as inequality that contributed to violence. In this context reconciliation turned into an instrument to legitimate the present order and to reduce transitional activities to ‘hugging the former enemy’.

The field-research clearly showed that reconciliation is considered a multi-level endeavor that should be focused on concrete relationships and most significantly should include a transformation of the foundations of these relationships.

The interviews consistently refer to the terms respect and dignity. These terms are used in different contexts, as I have mentioned before. They related to living conditions and thus to the expectations towards the state. But they were also used with regard to the acknowledgment of wrongdoings, to “respect the memory of my son” (18), to “respect each other” (18), or to refer to minimal agreements to guarantee pluralism and differences of political attitudes (2, 3). Furthermore, the strong and explicit Christian background of several interviewees and the corresponding understanding of reconciliation led me to think that reconciliation addresses the totality of the human being and not only one dimension. Reconciliation is, therefore, about the physical, psychological, emotional and spiritual dimension of the human being. This suggests the enormity of the task and the fragility of the process that is constantly exposed to new challenges.

Reconciliation is also a process that involves several levels of relationships. As indicated by respondent 5), the first and basic level is the reconciliation with oneself, one’s role in history and one’s failures and sentiments of guilt and pain. During my work with the Jesuit Refugee Service several workshops with internally displaced people started with exercises that asked people to reflect on their lives and incidents that occurred to them. It seems as though a safe space to recall good and bad times and also moments of impotence and failure helped to re-establish a relationship with themselves, without which reconciliation on other levels seems elusive. In this regard, the psychologist (5) told us that without the creation of internal pre-conditions a societal process of transitional justice or reconciliation would be rejected.

Based on this personal work on the relationship with oneself and one's own history, other levels of reconciliation can be addressed, such as family, neighborhood, community, village, nation, and God.

One of the initial observations was that reconciliation often appears as a Christian concept that, outside a narrow understanding of religion, is complicated to implement or even irrelevant. The chapter on the Catholic understanding of reconciliation¹¹⁷ contains several fundamental considerations about the source of and the reason for the need for reconciliation that are essentially Christian: the nature of sin, God's willingness to forgive and reconcile, and Jesus' death and resurrection as an act of reconciliation. However, despite the difference in terminology it was shown that the Christian and a more secular tradition overlap with regard to the ingredients of reconciliation: repentance, acknowledgement, conversion, forgiveness, reparation, change and contrition. Since the interviewees, independent of their ideological background, referred to the same elements of reconciliation, though with different terms, it seems that the stark contrast between reconciliation as a Christian concept and the needs of human beings in general with regard to reconciliation is exaggerated. The difference consists more in the foundation and motivation of these reflections. For some it is the relation between God and humanity, for others it is a profound humanism, while others base their assumptions on specific needs.

The transformational aspect of reconciliation is fundamental to understand its potential to create something new, both in personal relationships and in the larger society. Respondent 1) illustrates this idea by describing how a destroyed vase is re-configured by the group afterwards. Thus, the "re" in reconciliation turns out to be more a hint at an attempt for something new than a return to something known. The idea to create something new together is recurrent in the answers to reconciliation. This means that the time-dimension is also essential to understand reconciliation. It seems as though the respondents connect the past with the future through reconciliation. While the healing of past wounds is important, the focus is very much on future conditions and the requisites for change. Therefore, reconciliation, though necessary due to a past infringement, seems firmly rooted in the option to live together in the future.

Politically, this change is often related to respect for dissent and pluralism. The idea that certain minimal agreements to not kill each other for thinking differently would constitute an

¹¹⁷ Compare Chapter 2.5.

important step towards reconciliation was articulated (2, 3). Based on these fundamentals, political participation and pluralism could be developed. Interestingly, 2) considers these guarantees of personal safety and protection by the state as a pre-requisite for a transitional justice process. This suggests that the initial role of the state in reconciliation is the creation of a framework, within which other types of relationships can grow safely. This is reflected in the public discourse on the “lack of guarantees” that prevents the Victims’ Law from being implemented. Peasants are not able to claim their lands due to the lack of personal safety.

This shows that reconciliation is linked to attitudes towards the other¹¹⁸, which do not change through a discourse of reconciliation, but through an efficient and respectful daily interaction with the other, in this case with the state. Pablo de Greiff’s concept of “civic trust”, i.e. the expectation of the citizens that the state’s behavior would be based on a normative foundation and that their rights would be accomplished, suggests the importance of a consistently respectful treatment of the citizens by the state institutions. (De Greiff 2008: 126)

Thus, according to the findings of the research comprehensive reconciliation may be defined as follows:

“Comprehensive reconciliation is directed towards the healing and transformation of relationships. It is a multi-level process that includes the physical, psychological, emotional and spiritual dimension. Reconciliation necessarily involves a counterpart. This distinguishes it from forgiveness, which effectuates an attitudinal change towards the other, but possibly without his/her active participation. Reconciliation requires the acknowledgment of past wrongs and the will to change the foundations, upon which a relationship is grounded.”

5.4. The Relation between Transitional Justice and Reconciliation

These considerations suggest that transitional justice and reconciliation have more in common than the public discourse insinuates: the need for profound transformation; the reflection of how wrongdoing is acknowledged, damages repaired and non-recurrence fostered;

¹¹⁸ Compare Chapter 2.4.2.

the idea that both are processes that consist of specific elements that must be adapted to the context and the moment; and the requirement of persistence and participation. Furthermore, both transitional justice and reconciliation consider truth, justice and reparation as essential. While the former regards them as rights, they are important requisites for the latter. These commonalities certainly suggest that contrary to the initially quoted discourse that pits human rights against reconciliation, transitional justice and reconciliation are compatible.

Nevertheless, there are also significant differences that are important to take into account in order to use both terms appropriately. The focus of reconciliation is a concrete relationship; a counterpart is required. This counterpart can be individual, collective or institutional, as suggested by the assumption that reconciliation is a multi-level process. Together, the participants in a process of reconciliation address the past, analyze the reasons for wrongdoings and work on an improvement of the relationship or the creation of a new one. While on the interpersonal level, this occurrence is more straightforward and simple to perceive, even the rather abstract relationship between citizens and state responds to this procedure. As a consequence, reconciliation also includes a sense of determination and involvement in the process that are necessary in order to mobilize the energy to transform and create. Free-riding seems almost impossible in an authentic process of reconciliation. The interviews are very clear that acknowledgment, justice, forgiveness and change are fundamental characteristics of reconciliation, all of which imply the need to be involved.

Transitional justice seems to be more a collective effort to create a framework, within which reconciliation can happen. If this is right, transitional justice is a set of tools and means to achieve certain goals, reconciliation being one of them. It, therefore, does not require a concrete counterpart, but necessarily clear principles that determine the space, within which the past is analyzed and the sources of injustice addressed. This is why the state has an important function, because it is one of the main rule-setters and sources of justice. The interviewees adamantly emphasize the state's role and its failures towards its citizens and, therefore, its obligations to establish just rules for the future. So it seems that despite the variety and richness of informal initiatives, transitional justice needs the state's participation, while reconciliation can take place on levels different from the state. This is confirmed by the nature of many informal initiatives that emerge from local needs, but usually include demands that only the state is able to fulfill: the search for the disappeared, the respect for human rights, official apologies, the creation of a

national and/or regional truth commission etc. Thus, the state tends to be the main point of reference for many transitional justice initiatives.

The focus on the state has significant repercussions for transitional justice with regard to its time dimension. While informal initiatives are more independent of political circumstances, official instruments require the political will of the government and other state institutions. As analyzed, in the case of Colombia, government priorities and approaches may shift over a relatively short period of time. Therefore, consistency and persistence on topics that require a long span of time, both politically and financially, constitute serious challenges for transitional justice. Factors such as public opinion, the strength and internal cohesion of victims' movement, or dynamics related to the armed conflict determine the fate of specific transitional justice instruments and render long-term planning extremely challenging. The same applies to reconciliation in as far as state institutions are involved, but, nevertheless, reconciliation seems more independent of financial resources and developments beyond the actual relationships or persons that undertake such a process. The probability to consistently work on a relationship that is of value is higher than to implement a comprehensive and long-term transitional justice program that survives changes of government.

The interviews, furthermore, showed that the discourse on reconciliation and the corresponding expectations are clearer than those related to transitional justice. One conclusion may be that people have an idea of what a concrete relationship would need for reconciliation, while the term justice remains to be further defined.

Finally, despite these differences in scope and strategy between transitional justice and reconciliation, I have not found anything that would lead to the conclusion that the implementation of certain rights forecloses the promotion of reconciliation. On the contrary, reconciliation itself includes and depends on truth, justice, reparation and change.

5.5. A Glimpse into the Future

This dissertation is based on field research that was conducted in the second half of 2011. Since then, important events and processes have taken place, although this does not necessarily mean that the context “in the field” has substantially changed. Nevertheless, on the institutional level the difficulties of land restitution in the framework of the “Victims’ Law” became evident,

in particular the security-related challenges. The enormous number of registered victims – in August 2014 more than 6.6 million – points to the vast legacy of violence from the past and the significant task ahead. Unfortunately, as foreseen by several interviewees (e.g. 2) and those, who work in the field, the categorization into different kinds of victims (victims of the paramilitaries, the state, the guerrilla, disappeared, displaced, killed, kidnapped etc.) is leading to internal divisions between and among victims' organizations. The question of who is the more legitimate victim and who represents whom becomes obvious whenever invitations to public fora are issued.

The peace negotiations between the government and the FARC that officially started in September 2012 and according to the president should have concluded in a matter of months, not of years, continue, now strengthened by Santos' re-election in May 2014. Currently, the transitional justice design for the guerrilla leaders is debated and circles around issues of their participation in politics and accountability for crimes against humanity.

These challenges are a sign that transitional justice and reconciliation will be topics on the agenda for some time in the future. Despite the problems, it is also important to note that the debate has changed significantly as compared to five years ago. Victims and their rights are part of the national debate, the monstrosity of past crimes is not concealed any longer and the people's preference for political over military solutions to the armed conflict was expressed by the re-election of President Santos against the candidate of former president Uribe.

I have had the privilege to dedicate a dissertation to a current and ongoing topic that has evolved in the last years. At the same time the literature on transitional justice has multiplied, and the tendency to analyze its potential from different angles beyond the legal approach has gained force, as did the appreciation of informal initiatives. Since the topics of transitional justice and reconciliation have been at the center of my professional life and the academic research for years, I am looking forward to further study of them. Based on this dissertation, it seems very worthwhile to continue to focus on the transformational character of transitional justice and highlight the question of what is actually addressed and changed by its instruments. The analysis of continuities and changes and the substantial absences on transitional agendas around the world certainly remains an inspiring field of research for political science and international relations.

Annex: Transcripts

Quote 1

“Lo más elemental y triste es que destruye el tejido social. Genera que estas redes que permiten la solidaridad, el encuentro con los vecinos, el estar atento a las necesidades del otro, se destruyen porque la violencia lo que hace es poner a todo el mundo en términos de sospecha. Nunca se sabe quién es quién, nunca se sabe con quién se habla, a qué grupo pertenece, qué intenciones tiene y al tener esta inseguridad, este miedo, esta desconfianza, pues no se puede generar tejido social. Simplemente se rompe, se rompen todos estos procesos que antes se daban naturalmente. Si estamos en la misma región, tenemos las mismas necesidades así que unos tengan más dinero que otros, pero igual la región en sí, el paisaje no cambia mucho para el uno o para el otro. Pero al tener este miedo, cada cual sufre sus dolores y los tiene que asumir solo. La sospecha de quién sabe, quién fue que me hizo, me dijo o me denunció o permitió que estas cosas pasaran o no me avisó a tiempo. Todo lo que es destrucción de la red social y no solamente es social, sino familiar porque hablando en el caso concreto del conflicto colombiano, pues una de sus mayores patologías es que no es un conflicto que tenga que ver con términos étnicos o religiosos, algo que puede ser fácilmente identificable, sino es un conflicto donde los grupos en enfrentamiento defienden sus propios intereses, pero quienes forman parte – lo que llamamos la carne del cañón del conflicto son las gentes más humildes del país, la mayoría de origen campesino o rural con pocos recursos económicos. Y son en las mismas familias donde se encuentran o incluso es hasta anecdótico que los hijos de una familia uno a la guerrilla, otro a los paramilitares, otro al ejército, otro pueda ser incluso religioso. No tiene sentido.”

Quote 2

“Yo digo lo que encontré, después uno supone que es lo que deja el conflicto ... Una cosa fortísima que hemos encontrado es nadie dice lo que piensa sino todo el mundo intenta intuir qué es lo que quieres que diga. Es una cosa fortísima. En todos los grupos con los cuales trabajamos está esta tensión o sea una búsqueda de la opinión propia y de poner pública la opinión propia sino gran preparación, se ve que hay una gran preparación allí, de entender lo que el otro quiere lo que diga. Ahora creo que es un efecto tanto del conflicto como de ser un estrato que tiene que acomodarse a los que sí tienen voz. Y creo que del por qué también eso de importancia de dar voz del Programa de Desarrollo y Paz a la comunidad. El tema es que en este proceso de dar voz a la comunidad, muchas veces le damos nuestra voz a la comunidad o sea que el proceso de que la comunidad encuentre su voz real es complicado. Es una cosa fuerte que encontramos del pos-conflicto, esta capacidad de intuir que es lo que quieren que yo diga y decirlo. Eso es uno.

A pesar de que se habla que hay muchas organizaciones, que la gente es solidaria etc. etc., lo que nosotros hemos visto es una total ausencia de solidaridad y un individualismo muy fuerte, enorme. Y es bastante intuible o sea el sentir que uno tiene que salvarse es ese es la palabra del orden y moralmente aceptada, entonces es importante que yo me salve, que se salve mi familia. Los efectos de solidaridad son en cosas no esenciales, pero eso es digamos complicado. Uno de los temas grandes en el grupo que tenemos todavía es esto de no basar la propia posibilidad de vida en lo que tu tienes sino en lo que tenemos. Es un concepto complicadísimo en toda sociedad del mundo, es el concepto de comunidad, de interdependencia y del hecho que si te salvas tu, me salvo yo, no hay posibilidad de que me salve yo ... O sea es una herramienta de poder intuir la dependencia, intuir como junto resolvemos algo en lugar que tu te resuelves tu vida, tu te resuelves tu vida, tu resuelves tu vida con tu sueldo, tu sueldo, tu sueldo. Pero

estamos lejísimos de entendimiento, de hecho todavía el grupo decidió tu sueldo, tu sueldo, tu sueldo. Mejor no recibirlo, pero saber que en un momento en que lo recibo, es mi sueldo. Hay un individualismo elaborado muy fuerte, inclusive en el grupo.”

Quote 3

“Ya después la gente y el miedo que les tenía. Las estigmatizaciones de las niñas que por ser del barrio de la Esperanza, entonces las paraban del puente para allá y les tildaban guerrilleras, que llegaban las niñas llorando. A las que mataban o amenazaban por tener un amigo militar, soldado ... y las conversaciones que había entre ellas y sus mamás. Ya no era “mi hija, cuidado con el novio” ni nada, sino “cuando vaya al barrio tal, tenga cuidado” o “no diga que es de tal barrio” ... claro y las balaceras, tener que aprender a esconderme debajo la cama. Como si uno va para comprar la leche, entonces dejar todo apagado porque uno no sabía si llegaba rápido o como varias veces pasó que compra uno la leche y reguárdese en la tienda allí cerquita una hora, dos horas mientras que pasaba la balacera, pasar lo que tenía que pasar. Y tener que vivir esta realidad con la gente de los barrios, familias lo mejor que podían hacer era sacar a sus jóvenes. Por esto les decía las generaciones perdidas, sino que las guerrillas los cogían porque ellos se adueñaban de los espacios de fútbol, de deporte, de las fechas especiales. Todo lo comunitario, así saliera de un grupito, después resultaban ellos muy interesados. Y luego las transformaciones de lo que vivimos el 16 de Mayo y luego el 28 de Febrero con la entrada de este *Panadero* [comandante paramilitar, CW] que era para anunciar a la gente que ellos ya estaban aquí.”

Quote 4

“Para ser consecuente con lo que he dicho desde un principio, una consecuencia que de pronto es la menos comentada o visible, es como las violencias han generado precisamente patrones de violencia o de hábitos de violencia en la forma como tomamos las decisiones, en la vida cotidiana y sobre todo frente a los conflictos. Es decir que en la medida que hemos vivido en medio de tantas expresiones de violencia, fruto de los grupos armados, del narcotráfico, del estado, se genera una escuela de la violencia en el país, una escuela informal en la que nos lleva a que las cosas hay que resolverlas de esta manera. Hay que resolverlas con violencia porque es lo que termina legitimando la forma de enfrentar los conflictos. Es decir si no es por las malas, no hay otra forma; si no es a través de la violencia como que no logro subsistir, no logro sobrevivir. Y eso también genera otros antivalores como el de la corrupción en la vida cotidiana. Si no me aprovecho de las circunstancias, no voy a salir adelante. Entonces eso me parece que es lo más grave porque obviamente hay muertos, hay heridos, hay daños a la infraestructura, hay daños psicológicos y traumas por el secuestro, en fin. A mí lo que me parece más dañino es como en los hábitos culturales la violencia termina legitimando esta misma violencia, y esta actual violencia en la cotidianidad. Por esto terminamos resolviendo los conflictos a través de más violencia y por esto seguimos confundiendo violencia con conflicto. Y eso no es lo que más se menciona o se publicita. Sin embargo, cuando uno va a trabajar con las comunidades sobre la diferencia entre conflicto y violencia y la importancia de tramitar los conflictos por vías pacíficas y pone allí el tema en un juego de roles lo que ve uno a través de los juegos es que la gente resuelve la situación desde el juego con violencia. Entonces lo que quiero decir es que la violencia se nos haya metido en la piel, se nos haya metido en los juegos de tal manera que me parece a mí que es la mayor secuela porque esto permite perpetuar el esquema de la violencia.

Por ejemplo, al fondo, yo siempre he dicho que uno de los alimentos del actor violento sea de la violencia intrafamiliar o del conflicto armado interno, es el terror, el miedo. Cuando va a

desarrollar una práctica no-violenta, lo primero que tiene que superar es el miedo. Y el mejor aliado del violento es el miedo porque el miedo es que desconecta, es el que subyuga. Entonces el tener el miedo y el terror tan adentro de nosotros, me parece que es de las peores secuelas que nos ha dejado la violencia y que es lo que nos lleva a seguir reproduciendo y nos impide como superar y encontrar salidas pacíficas al conflicto. Dejar el miedo al lado, quitarle poder al violento y poderlo enfrentar de manera pacífica, es difícil y es mucho más difícil cuando el ejemplo siempre nos ha mostrado que tiene que ser a través del rigor de la violencia como se resuelven las cosas.”

Quote 5

“A la sociedad colombiana desafortunadamente como que no se ha sensibilizado del problema tan grande que hay en nuestro país, porque desafortunadamente según decía la fiscalía, el fiscal Mario Iguarán hace como dos años ... la fiscalía tenía documentado 51.000 casos de desaparición forzada. A mí esta vaina me impactó porque a nivel de organizaciones se manejaba un promedio de 25 a 30.000 y resulta que si un ente estatal como la fiscalía sale a decir que tiene documentados 51.000 casos, pues estamos hablando de que en Colombia hay más casos de desaparición forzada que en todos los países del Cono Sur que tuvieron este problema. Los estamos doblando, y estos los que están documentados. Y ¿los que nunca han dicho nada, los que nunca han denunciado? ¿Entonces a cuanto ascendería? Como dice el documental [“Impunity”] cuantos desaparecidos hay y dónde están? A mí me parece muy aberrante de que Colombia no reaccione ante semejante crueldad porque es que uno dice que el fenómeno de la desaparición forzada es mucho más traumático que el homicidio, que el asesinato porque es que a uno le matan un hijo y va el domingo o el día que sea a su tumba, le lleva flores y elabora un duelo. Con la desaparición forzada es que el duelo está congelado en el tiempo Que de pronto ya no es el mismo dolor del momento de los hechos porque con el tiempo uno empieza a aprender y a manejar el dolor, lo mismo como manejar el miedo ... es un dolor perenne en el tiempo, allí constante. Entonces la desaparición forzada para mí es el crimen más grande que hay entre los crímenes de lesa humanidad.”

Quote 6

“Por lo menos en mi caso desde luego que la estrategia de los derechos humanos era casi una estrategia de guerra al considerar y en algunos sectores del ejercicio de derecho se entiende así de cómo derrotamos al enemigo estado. El escenario de lo jurídico se entiende como un escenario de confrontación, no de consecución de justicia sino de aplicación de una estrategia para derrotar al otro. Y eso visto caso por caso es muy sencillo de verlo. Hay un criminal y la venganza se constituye en el instrumento más adecuado a través de un juez y una sentencia. Y entonces la reivindicación de derechos humanos, si uno la ve desde este punto de vista, fácilmente puede entender por qué una organización de derechos humanos o un defensor de derechos humanos puede irse en parte civil denotadamente pedir contra todos los pronósticos condenan contra un funcionario público, pero cuando los camarillas de su sector del que considera amigo comete un delito, entonces toda manifestación de justicia es una manifestación de persecución a líderes de etc. Es decir en este escenario el ejercicio de derechos humanos se desnuda de su verdadera dimensión de estrategia de confrontación. Ahora, cuando uno está en este punto, es muy difícil que pueda construir paz. Cuando uno está reivindicando a ultranza la aplicación de justicia para los unos e impunidad para los otros, pues difícilmente puede entender como los derechos o el ejercicio de derechos o la vigencia de derechos humanos integrales pueden constituirse en un elemento de construcción de paz fundamental. Esto lo digo desde mi experiencia, más que doctrina, sino en la concreta como yo la veo, pues claro allí hay una transformación radical entre una cosa y otra. Pues obviamente

parecerían incompatibles pero si uno la ve de lejos se da cuenta que son absolutamente necesarias y complementarias – la vigencia de los derechos humanos y la realización de la construcción de la paz.”

Quote 7

“Es decir lo que pasa es que precisamente lo que se han llamado siempre las diversas formas de lucha que es la estrategia de la guerrilla. La guerrilla dice que “hombre, si yo puedo ganar espacios y puedo ganar ventajas incluso militares por la vía de los espacios no-armados, lo hago” y por esto la guerrilla se mete en la universidad, se mete en las empresas y se mete en los sindicatos pero siempre en función no del pueblo y de las opciones del pueblo, pero en función de su causa revolucionaria y el poder por las armas. En ese tema lamentablemente, pues, si precisamente en los años 50, 60, 70 y hasta 80 la lucha de la guerrilla era “reivindicadora de derechos de los pueblos” y el pueblo se levantaba, la guerrilla encontraba que allí había un espacio en que ella podía entrar a trabajar y vincularse a estos movimientos para sacar ventaja política y hasta cierto modo posicionamiento ideológico en la región y ganar un posicionamiento de favor del pueblo. ¿Entonces qué pasa? Que no es que el movimiento y la base social del Magdalena Medio formaran parte de la guerrilla como brazo civil y como brazo social para hacerle el trabajo a la guerrilla de posicionamiento, no. Es que la guerrilla siempre ha tomado como estrategia infiltrarse en estos espacios y utilizarlos pero son tales las necesidades de la comunidad – porque estoy seguro que los líderes de ese momento ... eran conscientes de que la guerrilla los iba a infiltrar o los está infiltrando pero ellos no podían no actuar. Ese paro no se podía echar para atrás porque se estaba jugando con algo vital. Eran derechos vitales porque el agua es un derecho vital. Entonces las organizaciones tenían que saber que tenían que seguir su proceso y que tenían que capotear dos en un problema: un problema de un estado que los iba a declarar ilegales, un paro ilegal, un paro injusto y que los iba a reprimir; y por otro lado el sanbenito de tener que lidiar con unos tipos que iban a estar allí y que ellos no podían detectar fácilmente y que no se los podían quitar encima. Y por eso de todos estos procesos, incluso en eso cuando yo entro a fortalecer en el año 1998 la masacre, lo primero que tratábamos de poner en claro es este es un movimiento de la sociedad civil, aquí no somos guerrilleros ni apoyamos a la guerrilla.”

Quote 8

“Justamente que no nos tocara y ver como a otros los tocó, por ejemplo a los familiares del 16 de Mayo y como sabiamente superaron – porque la verdad que yo no sé si yo hubiera podido sobrevivir a esta violencia – toda la violencia que les hicieron en sus cuerpos, en sus hijos, en sus comunidades, en su proyección de futuro, en su memoria. Y justamente como acompañar a esta gente – porque lo que hemos hecho es acompañarla – ha sido nuestra confrontación con la violencia, un acompañamiento seguramente mucho más de épocas pasadas que obviamente estas épocas pasadas están en el presente, el miedo está en la piel de todos modos. Lo más peligroso, lo que me parece más débil es que el miedo sobre todo en los chicos con los que trabajamos en la proyección de futuro. No pueden proyectar en el futuro porque no tienen memoria para proyectarlo. Esto es la más grande violencia que nosotros hemos acompañado. No sé si sea más fácil que sobrevivir a los balazos, me parece más cruel que un joven, un niño no pueda proyectarse al futuro porque ni siquiera lo lastimaban. Lastimaban a sus padres, sus abuelos, su comunidad. Entonces no tiene para donde jalar y es una persona superfrágil ante el mundo. Entonces siento que ésta es la violencia que nosotros hemos vivido. Esta es la posguerra que hemos vivido o la guerra porque en algún sentido es presente.”

Quote 9

“Una vez estuve en la Amazonía boliviana, tuve un gran problema ... porque yo dije que yo me rehusó totalmente a trabajar con indígenas. Y me saltaron todos encima. Entonces dije “No me entendieron. Para mí son todos seres humanos. Yo no voy a trabajar con indígenas. Voy a trabajar con Mar y voy a trabajar con Alex o trabajar con esta persona, sin rótulos. Yo no trabajo con indígenas. Trabajo con personas que tendrán su historia, su lugar de proveniencia, su problemática que viene de su lugar de proveniencia etc. etc.”. Esto uno hablando de rótulos. El otro es que ... lo mejor para las víctimas es no ser más víctimas y empezar a vivir. Y creo que el tema de la reconciliación tiene que ver mucho con esto sin perder la memoria, sin olvido que es un tema complicado. Sin olvido es una cuestión ya ideológica ... hablando propio así a nivel de humanidad, sería que la gente pudiera gozar la vida. Entonces sería bueno si hay una píldora a Don X y se olvida. Entonces puede ser que el lugar de estas personas – para no usar el término víctima – a las cuales ocurrió eso y les ocurrió eso en nombre de la sociedad entera que encuentre un lugar de no-víctima o encuentre un lugar pedagógico en la sociedad. Se complica nuevamente el tema cuando empieza a haber beneficios por este tema de ser víctimas. De allí empieza este mundo, este paso porque es un tema y un tema terrible porque uno tampoco puede opinar. Es cierto que pasó todo lo que pasó. Es complicadísimo de hacer demagogia, trabajar cualquier cosa ... Lo que sí en la comuna 7 no se ven víctimas. La situación de la memoria es mucho más viva aquí que allá ... es mucho más fuerte para un observador externo que para una persona que vive interna. O sea por ejemplo para nosotros después de cuatro años estamos tocando, empezamos a trabajar una obra que tiene que ver con la memoria porque antes era impensable porque a nadie le importa. No es parte de su panorama. Los jóvenes de la comuna 7 no quieren contar todas las víctimas, quieren contar con su futuro. Es más que entendible. Es más una necesidad nuestra que de ellos. Pedagógicamente por ejemplo a mí me parece muy interesante que ellos se relacionen con lo que pasó, con los familiares de los que ocurrieron cosas porque creo que eso hace unos humanos conscientes. Apunta al futuro porque asume el pasado de su comunidad, pero es complicado porque las cosas pasan

Con personas que trabajaban en organizaciones sociales o en ONGs o en cooperaciones de esto de las víctimas tenían que ser víctimas para asumir todo este discurso y de asumir el hecho de ser víctima. Mientras que de nuestro punto era “sáquenlos de allí. No usen esta palabra”. La vemos desde otro lado ... Sobre todo porque humanamente es difícil salir de este rol; ¿quién soy yo? Una víctima, wow, ¿cómo veo el mundo siendo una víctima? Yo sé que todo lo que puedo ver es porque no soy una víctima. Cualquier cosa que me ocurre en la vida, me escapo de este lugar porque me impediría ver, me impediría proyectar, me impediría relacionarme con la sociedad.”

Quote 10

“Las organizaciones sociales que deja el conflicto que son organizaciones que nacen en el conflicto y no están preparadas para estar fuera del conflicto. Eso es un punto complicado porque el conflicto – y es obviamente una provocación con la palabra – favoreció y ayudó que la gente se encontrara. Fue un gran factor de unión de la gente. En ausencia del conflicto – y cuando digo ausencia del conflicto, estoy hablando de esta sensación de piel directa, no del conflicto político como visión sobre Colombia, sino directo. Sensación de que el vecino ya recibiría una bala mañana, en este sentido, o que me obliguen a hacer cosas que yo no quiero hacer, una apreciación sobre lo humano. En este momento no está. Uno, el conflicto deja un tejido social completamente de-estructurado y por el otro lado organizaciones sociales que tienen que re-encontrarse. Nosotros hemos caído, digamos, en afortunadamente, esto tengo que decirlo – siempre son cosas muy fuerte ... nosotros somos muy amigos de los familiares del 16 de Mayo y tenemos una relación muy, muy fuerte con ellos. Y es terrible pensar que la

posibilidad mía de expresar quien soy viene del dolor ... es muy grosso esto de estar hablando con una persona que sufrió lo que sufrió Don X y la inconciencia o la ignorancia de parte mía o de parte del grupo de la relación con el dolor.”

Quote 11

“La construcción de paz es el desarrollo de las apuestas de vida de la gente, es toda dinámica que permite que la gente vaya haciendo su vida en dignidad. Todas las cosas significan entonces: la construcción de relaciones, la manera como se desenvuelve el territorio de acuerdo con sus necesidades, como construye y re-significa el estado, la manera como entiende autoridad, relaciones de negociación etc. Eso es casi como el desarrollo de la vida en general de la gente; eso es la construcción de paz que va en marcha, que no atiende coyunturas ni nada, sino es un asunto que se hace muy del día a día, muy de la cotidianidad en la medida en que por ejemplo organizaciones se fortalecen en adaptarse a cosas y que hacen mucho menos traumático el choque con cosas. Eso comienza a generar escenarios de paz en la medida en que la gente por ejemplo aprende el tema del diálogo. Eso es una cosa muy estable; esto no es coyuntural. Esto es una cosa fundamental y generalmente no es de arriba abajo. No es una cosa que se decreta, sino que la gente toma iniciativas, la gente, todos los actores. No es una reivindicación ni una cosa tomada por el sector social. Esto es un asunto en el que todos los actores comienzan a encontrar un don a construirse en otras condiciones, condiciones distintas a la confrontación y a la derrota y a la exclusión del otro. Eso es una cosa importante. Ahora, obvio que hay unos actores que tienen un sentido ético muy profundo y que están más predispuestos que otros, pero en general es un don que van encontrando diversos actores.”

Quote 12

“Veo que si un par de chicos de esta comunidad tuvieran un espacio donde se les vayan los malos pensamientos o se preocupen por otras cosas, que otros chicos les puedan decir “ay, qué estupidez”, se las pasan saltando como chapolines. Creo que los contuviera más. Me parece que en este momento si uno ve la comuna y el contexto, sí uno tiene que hacer pero no tiene que llamarlo paz hasta que vuelva a tener un buen nombre. Lo tuvo, lo perdió hasta que agarre solita su camino. Pero sí hay muchos espacios de paz. Hay chicos que bailan, hay chicos que juegan en la cancha, hay gente que se reúne e intenta cambiar ... ciertas cosas que le pavimente una calle. Creo que la paz también tiene que tomar un camino grupal. Creo que la gente cuando estaba acá en guerra estaba más unida que ahorita ... en el ámbito de sobrevivir. Creo que ahora se volvió también como más individual porque a lo mejor también la sobrevivencia tuvo que ser más individual ... Entonces creo que si en este momento se tiene que trabajar con la paz, tiene que ser otra vez desde la comunidad. Es más difícil porque hay que desarmar los vicios.”

Quote 13

“Yo creo que necesariamente hay que pensar y empezar por devolverle la tranquilidad real a la gente. Y esa tranquilidad no es posible si estamos viendo que los actores, especialmente un actor del conflicto, se ha transformado. Entonces si la gente no sigue todo tranquila en el Sur de Bolívar porque aunque ya no es el modo operandi de antes que lo veían al actor allí con armas, con el fusil, con el uniforme que ya hoy es un modo de operar distinto. Eso por el contrario genera miedo. De alguna manera la gente no convivía – en algunos casos sí convivía

– pero lo veía allí; que bueno si comete la acción, ya por lo menos sé que es esto, pero cuando la gente no sabe quien es el que va a cometer eso. Para así decirlo, si se sigue esa cadena de re-organización de los antiguos paramilitares, hoy como le denominen, muy seguramente no va prosperar estos propósitos de paz. Y este propósito de paz no sería posible materializarlo si no hay un compromiso real con dos cosas: sencillamente mano dura contra con los generadores de violencia pero que no es suficiente eso. Es necesario también fortalecer la institucionalidad civil. Aquí si hacemos cuenta. Por lo menos hay 25 o más miembros de las Fuerzas Militares por municipio, si hacemos estas cuentas, y existe solamente un defensor del pueblo para 33 municipios en el caso del Magdalena Medio, en el caso del departamento del Cesar como para 23. Entonces si no se fortalece instituciones civiles que velan por incumplimiento, por la no violación de los derechos humanos como en el caso de la Defensoría del Pueblo ...

Yo pienso que se tienen que politizar también instituciones que hacen parte del ministerio público como las personerías municipales y luego las personerías municipales no están cumpliendo con el rol para el cual han sido concebidas. Pero creo también que si no se diseña y se abordan estas estrategias agresivas, que conllevan al bienestar de las comunidades, de la familia, de las personas, es decir del desarrollo de este estado civil, seguramente tampoco van a ser halagadores los resultados. Si sigue faltando la educación, la salud, las vías, las viviendas, no solamente en el campo, sino también incluso en la zona urbana, los anhelos de paz, es decir si uno entiende que la paz también es un estado de tranquilidad, entonces aún en ausencia de conflicto armado, muy seguramente el hecho que si bien existen paramilitares, ni exista guerrilla, pero la gente no puede dormir tranquilo porque corre el riesgo que el quien salió del grupo le puede robar sus pertenencias, eso tampoco es paz porque la paz, uno entiende, es también un estado de tranquilidad al que contribuyen diferentes aspectos.”

Quote 14

“El origen del conflicto en Colombia y por esto digo la memoria histórica no fue por la pobreza, fue por la riqueza. El conflicto en Colombia no es por falta de pan, es porque el pan está acumulado en pocas manos. Y el conflicto inició para acaparar el pan, para acaparar las riquezas que generaron situaciones de conflicto, que a su vez generó una reacción de los desplazados violenta quienes fueron los campesinos a no encontrar un estado que les respondiera por sus tierras. ... Por esto yo sí considero que se requiere este pacto social porque es que el problema que el conflicto no se soluciona sólo desde el estado o sólo desde los mecanismos de represión. El conflicto se logra desde la puesta en común de todos los actores que han participado para el conflicto. Y los actores económicos han sido factor de agudización del conflicto.”

Quote 15

“A ver, para mí la paz es que todos tengamos como en qué ocuparnos porque si la gente vive ocupada no tiene tiempo ni de pensar en robar ni hacer malas cosas porque tiene su alimentación tiene como solventarse la vida. Y por esto es que también nosotros apuntamos a que podamos darle trabajo a mucha gente y ya hoy lo estamos logrando...”

Quote 16

“Claro, hay que desarrollar el campo, pero teniendo en cuenta que el desarrollo que se lleve es de una visión desde cómo ve el campesino este tipo de cosa. No podemos por ejemplo llegar y acabar con el minifundio y poner una gran parcela y colocar dos manos de obra al campesinado, no. Hay que respetar que el campesino tiene una parcela De acuerdo con esta fertilidad y a esta visión del campesino que debe ser tenido en cuenta, que es conocimiento empírico ... y poner estos lotes a funcionar en base de unas necesidades de las demandas obviamente, pero fundamentalmente que permita la independencia y la autonomía de ese campesinado. Nosotros hemos dicho que hay zonas que se pueden utilizar para pasto porque no funcionan cultivos. Entonces, listo, estas zonas se dediquen a pasto y ganadería, pero también hay zonas que se pueden utilizar para cultivos perennes y frutales, cacao Nosotros compartimos el concepto del desarrollo sostenible, totalmente de acuerdo, pero incorporar este conocimiento empírico. Nosotros defendemos mucho que las cosas que se hagan se hagan con el debate de la gente ... esta teoría tiene que elaborarse con el aporte de la gente allá ... Totalmente en desacuerdo con los monocultivos porque esto genera dependencia. Si nos van a cultivar todo en cacao, ¿y qué vamos a comer? Pues cacao La cultura de lo que podemos denominar como sujeto social y político al campesino desaparece ... va a haber obreros de estos cultivos.”

Quote 17

“Paz es lo que todos soñamos. Paz es donde por ejemplo uno se muera de viejito, donde uno diga “tranquilo, yo pueda salir”, donde uno pueda vivir bien con sus hijos, cuando vienen los nietos. No sé, estar bien con todo el mundo. Que todos los sueños que uno tenga, se puedan cumplir, que nadie venga a truncárselos a las malas. Esto es paz.”

Quote 18

“Entorno a la paz, es descubrir, que la paz es una aspiración que viene de mucho tiempo, que ha sido la aspiración de mi familia, después de haber vivido desplazamiento por la violencia y que es la aspiración de todo hombre y de toda mujer. Pero que la paz no es un momento de la historia, la paz es un proceso, la paz es una construcción de condiciones y que lo que vamos avanzando es como diciendo “Los seres humanos siempre tendremos conflictos, pero siempre tenemos que creando condiciones que permitan superar los conflictos y al final poder alcanzar la paz. Por esto también la actitud mía de la paz no es la tranquilidad de las ciudades, ni la paz es la militarización de las ciudades, ni la paz es la policía en cada esquina. La paz es un modo de sentirse de todo ciudadano. Es decir casi que la paz ... cuando existe la paz casi no se nota, casi es la desaparición de la palabra, es decir yo no tengo que hablar de la paz porque la paz la vivo en la cotidianidad. Es que la siento.”

Quote 19

“Todo este mundo de la sistematización de la realidad, de entendimiento científico de la realidad es complicado porque el arte no es científica. Es la antípoda de la ciencia. Entonces este diálogo entre ciencia que para la gente es importantísima ... es un muy complicado este

diálogo en la visión de la construcción de paz, fundamentalmente porque la construcción de paz en este momento como la fe la agarró la religión, la construcción de paz la agarró la ciencia. Y es complicado porque es obvio que no hay paz sólo con la ciencia...

No lo sé lo que significa construir la paz, es una cosa que estamos chocando terriblemente. A veces nos da escalofrío porque es fácil usar esta palabra – construcción de paz. Es demasiado fácil encontrar tu camino de sostenibilidad usando esta palabra. Hay muchos factores por los cuales tenemos mucho miedo a la palabra construcción de paz, o sea de hacerla nuestra bandera ... Es evidente que nosotros insertamos una gran provocación. El pensamiento científico no puede resolver esto, la economía no resuelve esto, la diplomacia no resuelve eso, sino que hace falta otro ingrediente ... la esencia de lo humano la ciencia no la explica y si hablamos de paz tenemos que hablar de la esencia de lo humano, tenemos que hablar de amor. Entonces obviamente no podemos resolver, o sea ¿cómo haces para que una persona entienda el amor pedagógicamente? ¿Qué le explicas, qué le enseñas, qué le haces leer? Si no es un camino de preguntas internas, de preguntas más profundas que le pueden llevar a una pregunta más grande que no puede contestar con una acción previsible, porque el amor no es previsible ... estamos acostumbrados a crear modelos previsibles y creo que lo previsible no incluye lo humano. Es una afirmación un poco grossa pero bueno. Me permito esta imprudencia. Porque cuando uno ve construcciones - en el arte es más fácil verlo – colectivas que no tienen un plan previo ... tiene mucho que ver con la provocación temática ... ¿Cómo sería una sociedad construida así? Podría ser interesante.”

Quote 20

“Lo que pasa para mí la paz no existe. Yo, el concepto paz no lo entiendo ... que es algo que no es necesariamente ausencia de conflicto, sino es como lograr unos mínimos de tranquilidad, de frescura, como de una agresión no programada. Agresiones siempre hay pero la agresión programada puede ser toda la noche, el papá y la mamá peleando ... eso no es paz. ¿Entonces qué es paz? Es algo parecido a que esto no exista sino por ratos o por momentos, pero no programado de manera permanente porque nadie se lo aguanta. Entonces el concepto paz, no lo entiendo realmente y yo lo que creo es que me parece que en ninguna sociedad existe paz, en ninguna. Creo que haya ninguna sociedad pacífica en el sentido de que todas las sociedades son formadas por humanos; los humanos somos biológicamente competitivos, agresivos, peleadores, conquistadores. Y donde no hay plomo, pues el vecino está queriendo acostarse con la señora del vecino, entonces hará un conflicto. Es decir, la paz no es la ausencia del conflicto, sino la paz es ausencia de una agresión programada y repetitiva.”

Quote 21

“En alguna marcha, talvez en una de éstas contra el secuestro o contra no sé cual que salimos que caminar o participar en esta marcha, alguien gritaba “no más paz”. Y a mí me llamó la atención y también empecé a gritar eso “no más paz” porque este concepto de paz como la existencia de la violencia o como el dejar las armas no ha llevado a buscar que se depongan las armas pero precisamente con una mayor inversión para la guerra, es decir al incremento de más guerra, de más escalamiento de la violencia. Entonces como esto ha sido el discurso de la paz, el resignificar ya sería porque no haya más paz, es decir porque hay que crear, reinventar eso, ... de pronto la respuesta está muy adentro, está incluso en las cosas más sencillas, más simples, en las personas más humildes, en las personas más sabias que también son las mayores. Entonces quería retomar eso de “no más paz” porque nos han enseñado esa paz como la ausencia de conflicto que es casi como la ausencia de reconocer al diferente. Entre más reconozcamos la diferencia, eso también va a permitir fortalecer la democracia. Creo que es

Sabadell que decía que precisamente la democracia es la que evidencia los conflictos. Entre más democracia, más conflictos tendrá que haber porque es dar cabida a las diferencias, a que se exprese lo que es distinto. Entonces ese es un punto de partida para mí de la paz, el reconocimiento de la diversidad, el respeto por la diferencia, la convivencia en medio de la diferencia que nos lleve a salidas creativas, imaginativas en la que podamos incluir a las otras personas para salir adelante frente a los problemas y para transformar los conflictos. Eso puede sonar muy sencillo o también muy etéreo. Pero yo creo que allí puede haber una nueva resignificación de la paz. De hecho también estos términos están ya desgastándose, lo del respeto por la diversidad, pero quizás no ha llegado adentro en el fondo como para entenderlo.”

Quote 22

“Esto hemos hablado mucho nosotros y algunas veces en algunos trabajos es como también paradójico porque algunos dicen, algunas personas que vienen de fuera que nos preguntan, no la percepción que es una reparación económica o algo muy grande. No, las víctimas que nosotros hemos atendido tienen ... a veces nos toca decirles “Ustedes tienen derecho a tener una vida más digna también”, la mayoría solamente quiere, sobre todo los del delito de desaparición forzada, la verdad, la verdad de los hechos, el punto exacto donde pueden encontrar el cuerpo para hacer su proceso de duelo. Y justicia. Y los de los otros tipos de delitos como homicidio, los de la violación sexual ya son un poco más delicados y la reparación es un poco diferente pero también la justicia y que también muchos hay relación de terceros que investigue a estos terceros y no solamente se limite a indagar o investigar al actor armado, al actor material.”

Quote 23

“ ... Nosotros no creemos que haya un proceso de justicia transicional en Colombia y creo que hay muchos de estos temas que estás planteando que son condiciones sine qua non para poder desembocar en esto. Coincido contigo, yo creo que el enfoque tiene que ser comunitario. El problema es cómo haces un enfoque comunitario cuando no puedes trabajar en la comunidad. Es un tema bastante serio. En el Sur de Bolívar está bastante más pacífico que estaba en el 1998, 1999, 2000, pero no está del todo pacífico hoy en día, y esto en efecto ha generado cambios o transformaciones políticas a través de concejales, a través de la dedicación de vocación de la tierra para ver como. En donde la manifestación de una participación se vuelva significativa, volvemos a tener los mismos problemas de rechazo. Para mí éste es el punto de preocupación.

Lo otro que dices es una deuda de la justicia transicional en efecto. Conozco pocos trabajos de esta naturaleza micro que se han hecho. Conozco uno que a mí me ha marcado mucho que es que hizo Kimberly Theidon en Perú que se llama “Entre prójimos” que es justamente estudiar “listos, señores, ustedes hablan de la Comisión de la Verdad en Perú y el impacto que tuvo y sus múltiples volúmenes, la difusión del trabajo y más. Eso es en Lima para un sector de la sociedad que está para aquí hacia arriba.” ¿Qué implicó esto en Ayacucho? Entra ella a ver. ¿Cuáles fueron los programas oficiales? ¿Qué pasó entre comunidades? ¿Qué pasó con justamente los MRTistas o los Senderistas que regresaban a su zona? ¿Qué pasó con los de las Rondas? Nada, cero discusión en la comunidad, cero elementos para hacer nada distinto como vecino que decir “uy, regresó el hijo de Juan”. Ningún otro elemento, y todo el mundo sabía que el hijo de Juan había sido un asesino o de pronto todavía lo era, que es un poco la duda de la comunidad.

Si no aportamos a algo que nuevamente porque conociste el Sur de Bolívar lo sabes, que es una discusión que está muy, muy pendiente. Sí, aquí hubo paracos, elenos y FARC y ejército, pero

hay algo que fue fundamental, cuando yo lo viví: sin dinámicas comunitarias la violencia nunca hubiera podido tener sentido. ¿Cómo hablamos de eso? Porque es una responsabilidad estatal, de pronto la responsabilidad estatal en la medida en que no hubo garantía y había actos de armados en la zona y demás, pero aquí el chisme, pero aquí la instrumentalización del grupo armado cumplió un papel crucial. Que el poder justificar la muerte de Juanito o Pepito era muy importante y necesario después de esta ola tan horrible de masacres que hubo al comienzo que sencillamente era la generación del terror ... pero ya después ¿qué fue de eso? Pues el proyecto paramilitar a mi manera de ver en el Sur de Bolívar sólo tuvo sentido que esta gente de manera muy hábil dijo “Aquí no voy a aniquilar movimiento social. Yo voy a hacer que este movimiento social trabaje conmigo y yo para él”. No creo que la respuesta es del huevo y la gallina. Sencillamente fueron suficientemente hábiles después de una matazón olorosa de decir “aquí hay unos líderes que se quedan conmigo, líderes históricos”.

Yo conocí a gente que me contó la historia de cuando eran familiares de liberales o conservadores que venían de Boyacá que terminaron allí, luego los que fueron tradicionalmente elenos y muy rápidamente se volvieron agentes sociales paracos que lograban explicar la violencia. Algunos murieron traicionados porque no ganaron todo lo que ganaron y trataron de aprovecharse además. Pero yo sí estoy convencido de que tenemos que llegar a eso. Ahora, hablar de esto, sabes, es mucho más doloroso que cualquier otra cosa. El estado no lo puede hacer muy bien desde el centro porque tiene que comprender y entender las lógicas locales y tiene que haber agentes de cambio a nivel local que estén dispuestos además a recibir los golpes. Porque a mí me parece que para una comunidad esa discusión es tan seria como por un presidente que fue ministro de defensa que tiene que aceptar responsabilidad estatal por los falsos positivos. Puede fragmentar y destruir la comunidad tanto cuando se reconozcan las cosas.”

“Cuando se llevó el incidente de reparación de “Juancho Dique” y de “Diego Vecino” por la masacre de Mapuján. Fueron 11 muertes ... de un corregimiento muy chiquito ... Y en el incidente de reparación después de las confesiones cuando ya era evidente además, surgió la información – y Juancho Dique además estaba presente porque el comandaba un grupo de 20 paracos. Y ese hablando que sale, hay otro muerto. Hay un décimosegundo muerto y nadie hablaba de ese verraco muerto. Por allá salió, el muerto era el encapuchado; el muerto era miembro de la comunidad que fue a dar dedo en la mitad de la matanza y que nadie reclamó pero quien era un miembro de la comunidad. Ésa es para mí la discusión de la reconciliación. Y eso, si bien pueda dar una política pública que favorezca que este tipo de discusión se dé, que inclusive auspicie y apoye este tipo de trabajo, para mí este trabajo tiene que ser de manera muy, muy local, muy cuidadosa, muy participativa y con mínimas garantías porque para mí hoy en día reconocer que Doña Florinda para ponerle un nombre era particularmente sapa pero si D. Florinda todavía está viva yo no quisiera que una discusión en una sesión comunitaria termine en que D. Florinda era la responsable de haber dado la información además precisa y activa de que los muertos eran guerrilleros, que los que hay que matar eran guerrilleros, yo no quisiera que D. Florinda terminara muerta mañana por este tipo de cosas. En la medida en que el recurso de la violencia sigue estando allí tan fácil, me da mucho miedo auspiciar este tipo de diálogos allá. Ahora, las comunidades lo saben perfectamente, entonces lo que hacen es dar pasos graduales, insinúan. Creo que es la magia del control social y de la dinámica de saber hasta donde se mueve uno. El problema es que si lo que hay que para quebrar son las relaciones sociales, el costo de pérdida no es tan grande, pero si lo que se puede quebrar es una vida humana, cuando el recurso de la violencia está allí, para mí es muy, muy difícil avanzar en eso. Y hay muchas zonas del país en las cuales yo sinceramente no me atrevo.”

Quote 24

“De hecho son dos palabras bien distintas y muchas veces no tienen nada que ver una con la otra. Yo creo que cualquier tipo de proyección al futuro necesita la misma cantidad de memoria pasada. Como creo que cualquier tipo de investigación o de asumirse el pasado tienen que ver

con la misma cantidad de proyección al futuro. O sea el Dios “pasado” no me interesa. Es más la parte intelectual del mundo que se dedica a estudiar el pasado y después está la parte [no entendible] que se dedica a generar futuro. Creo que si no se ponen las ruedas juntas, vamos a ningún lado ... uno necesita el otro. Si no, son peligrosos los dos.”

Quote 25

“Esto es permanentemente y además desde la realidad, no para esclavizarnos en el recuerdo porque si no nunca avanzamos, si no para aprender de allí y de lo que somos capaces. Y construir un plan de vida de verdad que parta de la realidad de la mayoría, porque tampoco somos irrealistas en eso de decir que todos caminamos igual. Pero sí que corresponda a las expectativas de muchos, de la mayoría. Y que se ajuste a las posibilidades reales de cada uno. Sí sabemos que no debemos ser esclavos de la memoria y del recuerdo y qué me hizo.”

“En mi opinión, la memoria es básica porque nos genera el aprendizaje de lo que hemos vivido y en lo que debemos mejorar. Toda experiencia debe traer un aprendizaje, una enseñanza que nos debe ayudar a construir un mejor futuro. Y si no aprendemos que matarnos entre nosotros lo que deja es pobreza, desolación y a nadie beneficia, estamos viciados.”

Quote 26

“Cambios. Es un poco aquello de Santo Tomás de Aquino “Ver para creer”. Las comunidades están cansadas de que se hagan diagnósticos de los diagnósticos de lo que pasa, de las causas, de donde vienen y para donde van y las consecuencias. Creo que en regiones como el Magdalena Medio, como alguien lo bien decía, está sobre-diagnosticada. Pero se requieren estos diagnósticos arrojan respuestas y dicen “se necesita poner en práctica estos y estos métodos” y lo que las comunidades quieren ver son obras. Lo que dicen en el refrán popular “obras son amores y no buenas razones”. Si esto significa cambios en la estructura social, en la violencia estructural que vivimos históricamente en esta violencia que excluye millones y los hace carne de cañón para irse a la guerra porque no tienen otra opción. Es que los jóvenes que alimentan la guerrilla, los paramilitares y el ejército son los jóvenes pobres que no tienen ninguna otra opción y ven en eso mucho de ellos casi una opción laboral... es un problema estructural que necesita transformar la sociedad que excluye a millones, que no le da acceso a la educación y a la salud. Esto lo sabemos. Pero si no existen estos cambios, esto seguirá siendo un ejercicio de reproducirse eternamente que hasta el momento Colombia no se han dado los cambios y las transformaciones que realmente se requieren.”

Quote 27

“Allí sí yo le diría como personal porque que le colaboren a la gente con un dinero para que la gente pueda salir adelante me parece muy bien. Pero el problema es que a esta pobre gente no le hacen seguimiento ni nada y ya que se comen los pesos que le damos y los malgastan y quedan igual y siguen pidiendo. Eso como no es educativo ni para ellos ni para la sociedad. Entonces por ejemplo aquí vienen y me dicen: porque los programas aquí también favorecen a los damnificados, a los desplazados. Entonces vienen y me dicen: Bueno y los que estamos sufriendo y aguantando hambre por el desempleo, entonces nos toca seguir allí porque no somos desplazados, nos tendremos meter a un grupo de desplazados para que nos ayuden con algo. Esto es el pan de cada día del resto de la comunidad. Pero esta pobre gente, esta de

justicia y reparación, sí les darán algo pero como reparamos un muerto, tres muertos en la familia. No hay reparación.”

Quote 28

“La reparación integral llevaría a muchos aspectos y es posible que algunos están pensando solamente en esa reparación tipo indemnización económica. Entonces aquí no es la relación de costos y beneficios. Pienso que la reparación no se puede ver sobre esta ... Por ejemplo la reparación colectiva no se puede ver de esta perspectiva. Estoy completamente seguro que por más se esfuerce y por más buena voluntad que haya por parte de un gobierno y un estado, hay unas reparaciones que no van a ser posibles. Y de esto tenemos que ser conscientes porque aquí lo primero que hay que ver que se han truncado proyectos de vida. Y como se analiza cualitativa- y cuantitativamente el proyecto de vida de las personas y no solamente las personas, sino las comunidades, de las familias. Entonces frente a eso no va a haber reparación, pero yo sí pienso que si hay propósitos encaminados hacia allá, necesariamente entonces deben pasar por, cada vez que se hable de reparaciones colectivas, necesariamente deben propender por estimular los procesos que llevan las comunidades hoy, como las comunidades pueden nuevamente recibir el estímulo suficiente o para enrutarse en una dinámica no la misma, pero sí similar a la que traían antes de padecer el conflicto. Esto es lo más importante en un proceso de reparación.”

Quote 29

“Preocupa algo a largo plazo, es la creación de la categoría jurídica o del imagen “víctima” o de una especie de imagen víctima en donde el aparato público del estado llega a la región colombiana a través de la víctima. En grande va a pasar lo mismo que pasó con los desplazados nuevamente. Para que el gobierno colombiano empezara a preocuparse por lo que pasaba en la alcaldía de Simití, tuvo que pensar en lo que pasaba en el Comité Municipal de Atención a Simití, San Pablo/Bolívar. Me temo que con esto de víctima ... tuve un desplazado el otro día que me decía: “Dotor“, hay que bajar esto de los desplazados y hay que montarse en la carreta de las víctimas.” Entonces también genera un ejercicio de identificación social. Por más que rico el reconocimiento y la afirmación, creo que a largo plazo puede tener un efecto nefasto de rótulos, de pérdidas de identidad política porque eso de ser víctimas es muchas cosas. Pero me temo que estemos yendo hacia allá y creo que va a haber muchas acciones estatales entorno a la ley de víctimas y afortunadamente, pero si no está bien manejada podemos perpetuar algo que ya pasó con los desplazados. Son un poquito estos ciclos de “yo sólo recibo atención a través de un proceso de desplazamiento”. Me parecería oloroso entrar en este ciclo en cual entramos a finales de los 1990 de las tomas de instalaciones públicas por los desplazados, legítimas – eso no quiero condenar por su desesperación – pero muy desafortunadas al fin de cuentas en cuanto a la relación ciudadana con el aparato estatal. Y me temo que vamos para allá. Con la ley de víctimas va a haber mucho más dinero público, privado y de cooperación internacional de por medio. Va a haber mucho más mediador, agente social intermediario. Las regiones ya son más ya que hay más conciencia en los diferentes sitios ... La región colombiana es más explícita. Entonces eso es también un bulto aterrador hacia donde vamos.”

Quote 30

“La palabra justa – equidad, eso equidad, justo. La vida digna es justa para todos. Es justicia, no lo veo como que ... en este momento yo no lo enfatizo que aquellos que hicieron mal que

paguen, no. Entonces ya lo justo es que pasó algo malo, entonces lo juzgo, y la justicia es que ya no tengamos que repetir vivir eso, que estemos bien, que vivamos tranquilos. Para mí sería esto la justicia. Si un tiempo de guerra, entonces ahora que sea un tiempo de tranquilidad, la paz. Es muy difícil hablar de paz, pero sí de tranquilidad, que se vive tranquilamente, igual problemas habrán, siempre habrán, pero es diferente sí. Esto sería para mí justicia, de justo.”

Quote 31

“Esa es una palabra que genera mucho conflicto, más del que resuelve. Es una palabra que genera mucha controversia y mucho dolor. Tiene múltiples interpretaciones. La experiencia personal y de acompañamiento con comunidades a mí me ha enseñado que la ley del talión no funciona. Aquello de ojo por ojo, diente por diente no funciona, no resuelve el dolor. Por más que una familia sepa que al victimario le aplicaron una pena de 60 años de cárcel, no le quita su dolor. Tampoco el perdón y olvido que es ya otro tema, que sí es complicado en Colombia hablar de perdón y de reconciliación. En mi opinión personal, muy, muy personal creo que justicia tiene que ver con lo que el cristianismo se define con misericordia. Allí es este sentir, ok lo que pasó reconocerlo porque sí es muy importante saber lo que pasó a las personas que han sido víctimas siempre quieren saber por qué pasó. Qué les digan la verdad y ya es este ejercicio, si queremos realmente no reproducir estos ciclos de dolor y sufrimiento, cortemos como esas cadenas: a mí me hicieron daño, voy a seguir haciendo daño o necesito que una persona muera en una cárcel para que pague eso. ¿Hasta qué punto puedo yo como ser humano saber qué pasó primero, conocer la verdad y decidir hasta qué punto es suficiente con esta historia? Yo no he encontrado en la literatura que hasta ahora he leído, en lo que dicen los diferentes autores, que la misma vida me ha enseñado una palabra que pueda mejor describir que la misericordia, que es lo único que puede decir “rompamos este ciclo y sigamos en esta puesta como seres humanos”.

Quote 32

“Entonces me parece que lo mejor en este caso del castigo que siento que sí hay aplicar castigo para ser muy claro ... pero más como ejemplo de que esto no vale la pena, como mecanismo de sanción social. Hay una comunidad indígena en México ... ellos tienen un problema con el lenguaje; ellos no pueden decir – para ellos es una ventaja – “este daño lo hizo Pedro” en términos de que él es el culpable del daño que hizo. Ellos más o menos, el lenguaje no puede decir así como hacemos nosotros. Su lenguaje dice “Pedro hizo este daño y nos hizo responsable a todos por el daño”. Se traduce inmediatamente en una responsabilidad colectiva. Una afectación individual se traduce en una responsabilidad colectiva. Me gusta mucho y pongo este ejemplo cuando hablo de este tema de la posibilidad ... es que en lugar de pensar si algunos de nosotros aquí ... cayéramos en una actividad de corrupción. Contratamos a fulanito y fulanito me da a mí dos pesos en lugar “Hay que echar a fulanito”, tenemos que decir “como Programa qué nos está pasando para que alguien de nosotros cayera en esto. Evaluémonos, algo está pasando.... Gracias a este incidente tenemos la oportunidad de poner el tema sobre el tapete para reflexionar y construir y nos fortalecemos como grupo”. Este es un poco la enseñanza de este lenguaje. Entonces yo creo que castigo en términos de castigo social, de comprender de que lo que se hizo no vale la pena y nos preguntemos “qué nos está pasando para que caíamos en esto? Vale la pena hacerlo. Qué le pasó al Magdalena Medio que permitió que entrara la guerrilla?”.

Quote 33

“En la línea de la justicia, tiene que haber justicia ... yo pienso que la solución no es la justicia punitiva. Aquí juega un papel importante la justicia restaurativa y la justicia transicional. En la justicia transicional, yo creo que no ha sido suficientemente entendida. Entonces se ve como impunidad, pero es que yo trato de entender que esta justicia transicional me permite ir más allá de la situación. No hay quien se va a entregar a pasar 50 años en la cárcel porque sí. Es eso lo que pienso, no. Estos generales se entregan porque hay unas ventajas para ellos porque decir ahorita “usted regrese para que lo meten a 50 años a la cárcel ...”, ellos no se entregan. Sigue en el proceso subversivo o sigue en la clandestinidad. Entonces lo que hace la justicia transicional, me parece a mí, es decir, es una transición y en esta transición buscamos qué es lo mejor. Pero lo mejor es la paz, lo mejor es que las personas se entreguen, que reciban un castigo pero el castigo muchas veces puede ser simbólico, pues que sea el que permita resarcir. Y es muy importante cuando el otro reconoce “yo me equivoqué” y cuando la persona dice “te perdono porque te equivocaste”. Y se cierra este ciclo.

Tengo la impresión que por ejemplo lo que se logró en muchos sitios de lograr la paz porque hubo una justicia transicional. ¿Cuál es el problema ahora que yo veo con los procesos de paz? Es que se metió la justicia internacional y la justicia internacional en manos de personalidades como Garzón, el español, creo que son vengativas. Tiene que pagar y pagar hasta las últimas, no importa si sigue matando a gente; es el problema, no. Si este bisco se entrega, deja de matar, probablemente no va a pasar toda la vida en la cárcel porque hay una transición, hay un castigo simbólico, hay una restauración, hay verdad, justicia y una reparación también de la víctima. Y muchas veces cuando no hay odio, cuando logra sanarse y cuando hay odio, lo que quieren, es venganza. Pero cuando se logra sanar, yo no quiero venganza, me basta con que se reconoció. El hecho de pedir perdón, de decir “me equivoqué, lo lamento profundamente y yo quiero de alguna manera resarcir”, pero el que está metido en la línea de venganza, en la línea punitiva, dice “eso a mí no me importa, lo que pasa es que el tipo siga en la cárcel”. Entonces que no se entrega y siga matando. A mí me parece que la justicia penal internacional que por un lado tiene un aspecto muy importante para proteger a los débiles, pero por el otro lado se ha vuelto venganza.”

Quote 34

“La reconciliación, yo la veo dentro de la transformación de conflictos ... es resultado que será cuando dos personas se re-encuentren en las diferencias y salen ilesas, como que prima el ser humano. Para mí, a veces creo en ella y a veces no creo en ella pero mirando por ejemplo la confrontación que me han hecho los de las organizaciones de víctimas porque yo utilizaba mucho la palabra reconciliación. Un día me pararon y me dijeron “X, si va a hablar con nosotros, no utilice esta palabra. Nosotros no creemos en eso.” Sólo la utilizan las organizaciones pero no nosotros. Yo dije “Sí, es verdad”... Pero hay una palabra clave que a veces pienso que yo aprendí de ellos que no es cuestión de plata, ni reparación ni nada. Uno llegó y me dijo “Qué me respeten, que yo sienta que lo que hicieron a mi hijo, lo que hicieron a mi esposo – en ese caso fue al hijo – que lo respeten, respeten la memoria, me respeten a mí. No vengan y me digan que me van a dar 18 millones porque eso no es respeto.” Entonces fue que entendí que en el día que respetemos – pero dentro del verdadero sentido de lo que quiere decir respeto ... es volver a mirar al otro y valorarlo. Es una palabra de Juan Pablo Lederach. Estar expectante de lo que dice el otro. Pero cuando este señor me dijo “que a mí me respeten, respeten la memoria de mi hijo y no sigan justificando lo que hicieron porque si no me van a tener allí siempre, me pueden dar todo lo que quieran de millones, pero lo que quiero es respeto. Deme respeto y no de un peso.” Eso es dignidad ... El día en que nos respetemos, en las ideas, en las diferencias, en su propiedad privada, en sus pertenencias, en sus saberes, para mí la reconciliación tiene que ver con el respeto hacia el otro o la otra.”

Quote 35

“Yo creo que hace falta, faltan varias cosas, pero a medida en que ellos [las víctimas, CW] vayan aceptando el proceso como esta medida de reparación simbólica de que esa verdad le sirve para que elaboren, empiezan a elaborar todos estos sentimientos que tienen allí congelados, van a empezar a ver el perdón y la reconciliación como el proceso que se está buscando en el marco de justicia y paz, la resocialización y todo lo demás ... Se deben dar como alternos, el proceso individual y el proceso colectivo de toda la información porque puede que se dé por fuera pero si yo no estoy dispuesta qué va a pasar? No va a haber ninguna aceptación al proceso. Pero yo ya he elaborado también mis miedos, mis inseguridades, mis afectaciones, estoy dispuesta a entender también desde una mejor óptica el proceso... esto ha sido un poco también el problema, primero se dio de afuera para dentro y lo que hizo la sociedad fue no aceptarlo, repulsarlo. ¿Cómo va a ser posible que se den muchas garantías a los actores armados y nosotros no hemos tenido ni siquiera la verdad. Entonces yo creo que si el estado hubiera planeado un poco mejor desde ambas ópticas, el resultado no hubiera sido tanta resistencia, sobre todo con los desmovilizados y con el trabajo de los desmovilizados con la sociedad.”

Quote 36

“Uno de los elementos de reconciliación clave a mi juicio es cuando la sociedad colombiana o por lo menos la sociedad de las regiones donde va avanzando el proceso defina unos mínimos con los cuales identifica y con los cuales se compromete a trabajar en pos de no-repetición de los hechos superando la decisión y la voluntad de los actores. Para mí, cuando empiecen a aparecer estos elementos de los mínimos acordados por todos y todas, allí empieza a aparecer el elemento de reconciliación con mucha fuerza.... Yo pienso que estos mínimos donde nosotros logramos ponernos de acuerdo, me parece van mostrando el posible horizonte de reconciliación. Usted sabe que el tema de la reconciliación no es fácil pero a mi juicio pasa por allí, pasa por establecer estos mínimos entre la sociedad civil, no con los actores ni por los actores. Creo que el tema de los actores es un caso superado. Ah bueno, los actores desmovilizados y reincorporados, si están en la altura del reto, pues, hacen parte de los mínimos, si no, pues, no, pero no es un proceso que tenga que ver directamente con los actores.”

Quote 37

“ ... Lo que te puedo decir allí es que yo no soy muy reconciliador por que no logro entender mucho el término ni lo logro ver por donde vamos en el tema. A mí en un país como Colombia, si bien me alegro que haya gente que trabaja hacia el ideal de reconciliación y que eso lo entiendan en la necesidad de poner a trabajar a personas que antes no trabajarían juntas, a mí me interesa mucho más es trabajar hacia el respeto de disensos en donde podemos reconocer que nos enfrentamos, tenemos contención política fuerte pero en donde ya la violencia no juega en la resolución de nuestras disputas. Yo de pronto me contento con eso. No sé si sea menor o mayor a lo que propones pero cuando lo definías justamente como una sociedad más justa, para mí es eso. Yo no creo que aquí todos tengamos que pensar igual, yo no creo que todos tengamos que pensar que el paramilitarismo es una mierda. Yo lo que necesito es que quien piense que el paramilitarismo era necesario en el país, lo piense sin la amenaza de muerte y sin imponer su posición sencillamente por que cree que es la correcta, que ese tipo de cosas se pueda debatir. Creo que el país ha estado tan polarizado y tan politizado durante tanto tiempo

que para mí sería suficiente justamente el poder extender escenarios de contención en donde el recurso a la violencia ya no es una opción ... y en donde nuevamente el disenso y la contención son tratadas de esta forma. Pero claramente en Colombia la expresión reconciliación al menos para mí tiene una noción religiosa. Eso no está mal particular porque creo que la mayoría, gran parte de la población entiende la noción del sufrimiento, la noción de los justos merecidos, la noción de las culpas a través de herramientas conceptuales religiosas aunque no las consideren como herramientas conceptuales, la noción de castigo de entrada que experimentan como chiquitos, todos experimentamos a través de la religión de una manera u otra. Entonces hay que llegar allá pero yo soy la peor persona para hablar de reconciliación.”

Quote 38

“Cuando ya estoy libre, yo perdono. No sé si lo perdono y lo olvido pero al menos ya no tengo estas cargas contra la persona. Ahorita cuando fue esto del festival internacional de teatro, una de las conferencias fue de este señor del Instituto de Reconciliación, el Padre Narvaez. Y él hablaba del perdón, todo del perdón y lo importante que la víctima perdonara. Si no, no iba a haber desarrollo. Yo le hice una pregunta a él: En medio de mi ignorancia, le dije qué relación veía él entre darle el perdón y merecer el perdón o pedir el perdón. Y me dijo que como él era teólogo me puso el ejemplo de Jesús y del hijo pródigo que Jesús no pedía que el otro se convirtiera, cierto, y me pone a mí el ejemplo del hijo prodigo. Le dije allí hubo intención de cambio porque de acuerdo a su exposición toda la responsabilidad recae sobre el afectado. Yo le dije no hablemos de afectaciones sino de daños causados porque no voy a minimizar el daño en el modo ... y él pone el ejemplo para sus exposiciones, sus teorías la conversación que tuvo con Tirofijo que a él le decía siempre que había que perdonar, que perdonar y perdonar que al final de sus días Tirofijo le dijo “Sí, Padre, tiene usted toda la razón, hay que perdonar”. Yo le decía “Tirofijo fue uno de los hombres que causó más daño”, él es beneficiado si todo el mundo le viene y lo perdona, que no se ha merecido el perdón porque jamás dijo de que porque le quitaron las vaquitas y todo lo que le dieron porque siempre empezaba su discurso que “yo viví en mi finquita con mis vaquitas y llegaron y tatata”, que es el mismo discurso de los Mancusos o de los tatata. Cuando yo le pregunté eso, porque eso no viene solamente de la responsabilidad, yo sé que viene de un proceso personal íntimo, individual. Ya cuando la persona se siente respetada, valorada que al menos digan “Sí, yo le causé este daño”, no como yo lo he visto en las audiencias públicas de “nuevamente le pido perdón a las víctimas” lo que tienen allí en el libreto. Para mí el perdón eso depende de la situación personal ... una vez que somos dos personas que nos sentimos sanadas en el daño causado, puede que el perdón se vuelva colectivo y que llegue y transforme. Pero es una responsabilidad de todos y todas en medio de lo que es y se merece una reflexión más grande y más profunda.

También puede ser el perdón el poder de las víctimas. Es el poder que tienen las víctimas. Hay muchos que yo he visto en una audiencia ... cuando uno de ellos decía cómo fueron que él participó en el asesinato de varios del 16 de Mayo. Y él lloraba pidiendo el perdón y en verdad quiere el perdón y él quería llegarle a la persona, al papá, a la mamá y los que estaban allá y para la tranquilidad de él hubiera estado en que el otro le dijera “Sí, lo perdono”. Pero está en el poder del otro, de la víctima. Tenía el poder de perdonar o no. Entonces cuando yo obligo a una víctima que por cuestiones morales tiene que perdonar que causó el impacto, estoy quitando su poder ... Ni siquiera Dios perdonó sin pedir una transformación.”

Quote 39

“Cuando uno no tiene la capacidad de perdonar, limita la opción de la felicidad. Definitivamente la ira es un envase que sólo corroe, corroe, es un ácido que sólo corroe el

envase que lo contiene. Entonces mientras que uno es capaz de sacarse esta ira y esta rabia, no es capaz casi ni de razonar.”

Quote 40

“Siempre distingo entre perdón y reconciliación. Yo nunca los mezclo, para mí siempre son dos dimensiones que van articuladas. Los seres humanos tenemos la necesidad de perdonar. Si alguien me hace un mal, yo deseo y puedo darlo. Yo puedo perdonar, entonces perdono. Pero perdonar no necesariamente es olvido. La reconciliación es una dimensión ... digamos yo puedo perdonar pero finalmente digo “yo te perdono, pero nunca más volveré a estar contigo, pero te perdono.” Es decir cuando uno perdona, uno ya no desea ... en el perdón hay una dimensión que está más allá de castigar. Ni estoy interesado, si te castigan, será la justicia que te castiga pero yo te perdono, más allá que te castiguen, más allá que pagues por lo que hiciste, más allá que me retribuyas, yo te perdono. El perdón es una dimensión de esa. Pero el perdón no significa reconciliación.

La reconciliación es un proceso de retornar la confianza. En la discusión de pareja es muy fácil verlo porque normalmente yo les decía a las parejas “el problema de uno es, yo te perdono, pero cada vez que tengo rabia, me recuerdo y vuelvo y te saco”. La reconciliación es una dimensión de volver a decir “sabe qué, no solamente te perdono, sino que vuelvo a confiar en ti. Yo puedo volver a confiar en ti y confiar mi vida en ti.” Es una dimensión del creer que no solamente esto no se va a repetir “Yo te perdono y no se va a repetir no solamente porque tomé distancia, sino que yo creo tanto en ti que vuelvo a colocar mi vida en tus manos.” La reconciliación es una dimensión de la confianza. Yo vuelvo a creer en ti como persona. Esto que hiciste fue mal, y yo ya te perdoné, pero además de perdonarte, yo puedo decir “vuelvo a colocar mi vida y vuelvo a confiar en ti. Tu demostrarás con la manera de proceder que esa confianza valió la pena.” Y esta es la reconciliación, es una dimensión.

Es un poco cuando la gente dice “sí, ya los perdonamos, ya hasta viven con nosotros allí. Allí están”. Pero cuando yo digo “bueno, vamos a construir juntos. Vamos a hacer esto, te vuelvo a dar eso que tu me quitaste un día, te lo vuelvo a dar, a ver ...” Es un cambio de actitud entre quien perdona y el que es perdonado en que vuelven a construir en la confianza, ser capaces de construir en la confianza.”

Quote 41

“Tengo una idea como profunda en el tema de la reconciliación. Es el reconocer de que como ser humano no puedo ser sin el otro. Dependo del otro en todos mis campos. Pero además todo lo que hago y produzco, no lo produzco para mí sino para los otros. Esta aspiración de cada uno de nosotros de tener una vivienda, no es sólo una vivienda para mí. Yo quiero tener una casa porque algún día quiero invitarlo para que compartan conmigo una película, una comida, una cena, nos tomemos un vino. Yo creo que nadie tiene una casa, si fuera sólo para uno, sería suficiente con tener una pieza con dos camas o si somos cinco con cinco camas ... Somos humanos en tanto estamos en relación con otros. Por esto el ser humano tiene lenguaje porque necesita entrar en relación con otros.”

Quote 42

“Yo en mi trabajo pero no porque me lo haya inventado yo obviamente, hablamos de una reconciliación personal por ejemplo que implica un auto-examen mío frente a mi conflicto y a

las secuelas que me ha dejado la violencia. Entonces una reconciliación social que es mi análisis, que es mi re-encuentro, que es mi perdonarme conmigo mismo porque esta violencia también lleva a generarme daños interiores, a generarme culpas porque ha ocasionado daños a otros o porque otros me han dañado a mí o porque yo a mí mismo me he dañado. Entonces implica una reconciliación personal, una reconciliación trascendente si yo soy creyente, implica una reconciliación con los demás o una reconciliación social que yo empezar como otra vez a construir relaciones con los demás.

Ahora, este llegar a construir relaciones con el que yo he herido la voy logrando incluso con los que no me hirieron o con los que yo no he herido, es decir en mejorar mis relaciones de convivencia pacífica con mis próximos. Allí voy como haciendo un camino para llegar a una reconciliación con el quien me hirió. Puede que no llegue a enfrentarme con el que me hirió y a llegar a un abrazo pero forma parte del camino. Puedo llegar yo a perdonarlo o pedirle perdón, puede no directamente, puede que incluso desde mi reconciliación conmigo mismo. Hay muchas experiencias en la vida de la gente, cuando te dicen “Yo ya le perdoné” aunque esta persona incluso no sepa que yo lo perdoné. Entonces reconciliación como decía entre estas personas que están tan apartadas pero personas también es grupo social, es movimientos, es muchas cosas, no es sólo individuo suelto, sino también lo que vamos construyendo los individuos que es tejido social, que son grupos, que es unidad. Entonces cuando en un pueblo que ha sido dañado, que ha sido destruido por la violencia, por el desplazamiento forzado, por el narcotráfico etc., cuando en este pueblo empieza nuevamente a retornar la alegría, empieza la gente a trabajar otra vez en comunidad, a reconstruir este valor de la sociedad, el volver a recuperar los elementos de la identidad cultural, allí se está dando reconciliación también, porque están sanando las heridas así que no haya un encuentro con los que fueron allá a robar o a dar plomo o hacer daño ... el hecho que estas personas vuelvan a tener esperanza, a reconstruir sus vías, allí se está dando también reconciliación.”

Quote 43

“Es que nunca se vuelve después de las secuelas de la violencia a lo mismo, es crear otra cosa, ese “re” hace alusión a re-crear, a volver a crear, a volver a construir pero de manera diferente porque los años pasan, porque tenemos otras ideas, porque tenemos otras generaciones, porque tenemos otros sueños. Ese “re-“conciliar es como volver a crear sueños ... Es un ejercicio que tu coges una vasija de barro, la dejas caer – el rito que yo hacía porque en la reconciliación también los ritos son importantes: estaba hablando con la gente y primero habíamos hecho otro acto de reconciliación personal y era que yo escribo en una hoja un sueño que tengo o una aspiración, algo que quiero lograr en la vida. Y tu lo tomas y lo rompes, y entonces tu lo rompes y ahora resulta que tu debes ayudarme a mí armar otra vez la hojita para que tu te enteres qué era lo que había escrito allí como mi sueño. Vamos hablando de como vamos a hacer para lograr este sueño que se rompió, que tu rompiste pero no sólo rompiste tu, sino que rompieron muchas situaciones simbólicamente. Entonces este es un ejercicio de reconciliación en el sentido: este sueño ya no va a volver a ser el mismo, va a ser otro, pero va a ser otro construido entre nosotros en medio del dolor y de las dificultades.

Después de que yo he hecho este ejercicio por parejas, cojo una vasija de barro y voy andando por el contorno del círculo de las personas. Les digo, en esta vasija están resumidos todos estos sueños que ustedes tenían pero también han reconstruido. Están los sueños del país, están muchas cosas que en el país hemos querido lograr. Y en un momento del discurso dejo caer la vasija, la vasija cae y se rompe además con un, como todo el mundo está escuchándome muy concentrado, eso hace un sonido que la gente queda impactada así cuando la violencia te impacta, te golpea, el secuestro o la violación sexual o la golpiza que te da el marido, lo que sea. Y luego les invito que entre todos peguen esa vasija nuevamente ... la gente pega la vasija con cinta. Entonces a lo que yo voy es que cuando tu ves finalmente la vasija, la ves con muchos parches, la ves con todas estas vendas. Esa vasija es un símbolo de la reconciliación, es como volver otra vez a reconstruir la vida y volver a reconstruir los sueños, pero no es volver a

la vasija original porque la vasija original ya nunca más será. Ésta es una nueva vasija, pero lo que tiene de nuevo y rico es que ha sido una vasija construida por un colectivo. Ya no es la vasija que construyó sólo un artesano sino que este colectivo la construyó por el deseo de salir adelante, por la tristeza, por el dolor, pero también por el perdón o por la búsqueda del perdón y el trabajo en equipo. Entonces la reconciliación también es eso y cuando yo hablo del pueblo, no es que volvamos otra vez, no es todo tiempo pasado fue mejor, sino es como volver a hacer nuevamente en medio del dolor y de la tristeza. Por esto decía mancos, cojos, incompletos físicamente o en la familia o en el corazón, pero eso es volverlo a construir porque si no hubiera reconciliación en este sentido, no tendría sentido seguir viviendo. No tendría sentido la vida, entonces no tendría sentido un sueño de país, un sueño de nación.”

Quote 44

“Los procesos de reconciliación son difícilísimos porque se mueven sobre paradigmas de venganza. Entonces mientras que haya resentimiento, haya odio, lo que se busca es que los procesos sean de justicia punitiva y ojo por ojo y diente por diente si se puede un poquito más. Entonces es una violencia punitiva y una violencia punitiva que está acompañada de una justificación social. Esto me parece muy grave, porque es justificar el odio, justificar la violencia que está dentro del propio corazón. Y la reconciliación pide ir mucho más allá. Los procesos de reconciliación, yo creo, que son muy complejos porque toca por una parte elementos culturales. Y eso está muy anclado en lo más profundo de cobrarlo todo. Por el otro lado, hay un aprendizaje de tipo clásico, de psicología, el aprendizaje clásico es el aprendizaje que está unido a las reacciones fisiológicas y eso está quién vio matar a su papá y su mamá, lo vio, lo experimentó, quedó grabado, quedó grabado con una respuesta de ansiedad muy fuerte, con unas respuestas muy fuertes de angustia. Entonces esta reacción muy fuerte de ansiedad y de angustia viene a generar procesos de parálisis, de impotencia porque no hay ninguna respuesta ambitológica. La impunidad es campante. Entonces la víctima en alguna medida no sólo fue víctima en un momento determinado, sino sigue siendo víctima del estado. “No me importa, no me interesa, no te creo”. Entonces las víctimas se encuentran totalmente desprotegidas. Por eso que los procesos de reconciliación tienen que estar marcados en verdad, justicia y reparación. Hoy en día se introduce en muchos campos también el perdón que el perdón no significa borrón y cuenta nueva, sino significa trascender, entrar en un tipo de justicia que sería restaurativa. Pero para eso se necesita que las víctimas pueden cerrar el ciclo, pueden agotar su duelo, para poderse reconciliar, necesitan saber, saber qué fue lo que pasó y saber donde está.

Ahora, este saber necesariamente por una parte no es perfecto. No se puede tener toda la información de lo que pasó. Y muchas veces también querer obtener toda la información de lo que pasó, tampoco es lo mejor, pero sí las víctimas tienen el derecho de saber por ejemplo dónde están sus seres queridos. Puede cerrar el duelo.

Quote 45

“Resaltaría primero las diferencias porque creo que es más fácil. No hay la menor duda de que en Colombia se estén utilizando herramientas de justicia transicional; eso no quiere decir que en Colombia haya un proceso de justicia transicional. Y creo que es un punto bien importante. Particularmente por la existencia del conflicto armado y al margen de la existencia del conflicto armado yo resaltaría sobre todo la extensión del efecto coercitivo de la violencia y por lo tanto una gran limitación de libertad de expresión y pensamiento en el territorio. Entonces en la medida en que no hay condiciones mínimas de respeto a los derechos humanos o garantías otorgados a víctimas, líderes sociales, defensores de derechos humanos para manifestar y hablar las cosas, es bastante que exista realmente un proceso de justicia

transicional, por lo general calificado como el espacio en que uno puede encarar el pasado, hacer reconocimientos, encarar la negación, hacer ejercicios de responsabilización y establecimientos de responsabilidades, pero obviamente ojalá en un contexto en donde la contienda y el disenso no son encontrados por la violencia. Yo creo que esto en Colombia sigue siendo el problema muy serio.”

Quote 46

“Nosotros, el acumulado que nos han entregado acá es que el paramilitarismo fue una invención del estado. Lo inventaron en el año 1968, lo ilegalizaron nuevamente en el 89, Uribe los intentó legalizar con los Convivir en Antioquia y todos los comandantes de los Convivir que Uribe legalizó en Antioquia posteriormente fueron los comandantes de los bloques paramilitares del país. Ésta es una realidad que nadie la admite. Entonces para nosotros nunca ha existido el paramilitarismo ... es el estado actuando en la ilegalidad ... El estado actúa en la ilegalidad para lavarse la cara diciendo esto es la extrema derecha haciendo esto. Pero es que el paramilitarismo fue una invención del estado.....”

Quote 47

“Resulta que la desmovilización a mi modo de ver es una estrategia también desesperada del estado colombiano y de buena parte del empresariado colombiano de decir “no podemos seguir con estos porque ya esto nos va a representar a futuro problemas muy graves con el Banco Mundial, con el Banco Interamericano de Desarrollo, con la Unión Europea porque estamos quedando como el país más salvaje de Sudamérica”. Entonces esto hay que pararlo ... Yo me puedo acordar cuando le negaron a un general la visa en Alemania por acusaciones de crimen de lesa humanidad ... eso fue escandaloso ... ellos aterrados porque ellos comenzaron a entender que sí, que él había participado en eso. Entonces quejaban que el gobierno no lo defendía, pero había lúcido ... que decía “oiga, esto fue una locura. Qué bueno que el gobierno lo defienda y todo, pero esta es una estupidez. ¿Cómo hicieron esto?”. Salían estas voces allá dentro, comenzaban a decir dónde nos metimos, hasta donde llegamos. Esto no es la orden del ejército; nosotros no podemos actuar así. Entonces viene todo el proceso de que esto no va para ningún lado ... el proyecto de Uribe ya iba avanzando y Uribe no quería gobernar un país con masacres de paramilitares. Porque también era una manera de que se ilegitimara. Él decía “yo ya en el poder, yo pongo al ejército que sí tiene la potestad de hacer la fuerza constitucional, pero legítimamente”. Y entonces viene todo el incentivo de pagos a quienes maten y terminan en falsos positivos, que es otra distorsión. Volvemos a la eficiencia, seamos más eficientes que los paramilitares y si ustedes son más eficientes que los paramilitares respetando los derechos humanos, yo le pago, le pago más ...”

Quote 48

“Yo creo que hay un proceso regional que nos muestra escenarios de transición con instrumentos, por supuesto, de transición. Yo creo que quienes plantean desde la academia que no hay un proceso de pos-conflicto en Colombia en general tienen razón. Hay manifestaciones del conflicto y repito el mismo gobierno lo acepta ... pero avances en regiones. Yo quiero citar el Magdalena Medio. Magdalena Medio tiene actores del conflicto, las FARC y el ELN siguen estando en la región pero están en las últimas estribaciones de las serranías ... pero los conglomerados humanos, municipales donde viven aproximadamente un millón de personas en

la región no hay la más mínima presencia de insurgencia. Es igual la presencia de bandas criminales es bastante marginal en estas cabeceras municipales y lo que avanza es un re-establecimiento de actores civiles con mucha fuerza, sean ellos gremios socio-económicos de producción, sean ellos ONGs defensoras de derechos humanos, movimientos sindicales con tendencia fortalecimiento etc. y partidos políticos recuperando su rol ... hay, si se quiere, un proceso donde la sociedad vuelve a auto-determinarse y donde la población vuelve a ganar elementos de confianza y seguridad ... Entonces allí yo advierto elementos de pos-conflicto y elementos de transición en el Magdalena Medio concretamente ...”

Quote 49

“Lo primero es que puso un rostro humano a la extrema derecha por toda la barbarie que se generó del 90 y pico hacia adelante estos grupos eran tenidos en el imaginario colectivo como monstruos. Y creo que el hecho de que se han asignado funcionarios públicos y hayan salido a la luz en general, fotos y cosas e incluso las fotos que presenta la fiscalía diciendo “el señor X tal” para la gente creo que esto significó una cosa muy fuerte porque es el nombre propio, es una persona y mucho más para los de la ACR, para la gente que tuvo el contacto así, “no, es un bachiller; no, es un tipo que hizo su primaria, que fue agredido, que tiene dos hijos” comienza generarse el tema de la dignificación de esos personajes. Creo que este impacto es muy fuerte. Por ejemplo para Don X cuando le toca el tema y entonces “ellos no son personas” estando en una situación previa de “ellos no existen para mí, ellos son no-humanos”. Por esto decía, claro, más o menos toda la sociedad estaba en esta condición: “Son un equipo de matones”. Obviamente la gente del campo, ellos los suman como otro actor. Es un actor de la guerra tal cual como los otros. Pero la ciudad, para el común de la gente creo que esto fue muy importante.”

Quote 50

“Bueno en eso hemos encontrado por las versiones que nos manifiestan los usuarios una gran dificultad por parte de algunos funcionarios de las instituciones del estado y por parte de unas y otras organizaciones porque el proceso de rehabilitación no está muy bien determinado. Entonces no hay una atención sana para los usuarios y algunos se sienten re-victimizados, algunos sienten que ha sido más la afectación por parte de las entidades o las organizaciones que los atienden que por el mismo hecho violento del cual tuvieron que ser víctimas y afrontaron en su vida. Entonces algunos prefieren “No, no voy allá o no participar porque me van a preguntar cosas y me van a tratar de una forma que no es la más sensible para lo que ellos van buscando ... es la gran mayoría y de una u otra forma porque a veces cuando uno va y pide la información y con uno lo dicen, no me imagino como son con los usuarios.”

Quote 51

“Sabes que cuando llegamos, estábamos allí todos sentaditos muy puntuales, y cuando en el momento ... pasó algo que me causó curiosidad. Nos sacan a nosotros a requisarnos. Sea lo estaban protegiendo de nosotros, y ¿quién nos protegió a nosotros de él? Bolsos, y todo nos sacaron, mientras que él entraba. Revisaron la sala y todas las sillas. Qué ironía de la vida, no! El estado, pues estas cosas, no entiendo. Allí la palabra justicia – eso no es justo.”

Quote 52

“Sí todavía es muy lento, sí se dio. De hecho se ha dado, poco a poco, pero no inicia en el 2005. La transición del estado colombiana es anterior, el estado colombiano entra por ejemplo en el 1991 en un hito muy importante de vinculación del ejercicio del poder con los derechos humanos, con la integralidad de los derechos humanos para la gente, al colectivo, desde el bien común ... la constitución anterior estaba basada en la fortaleza de las creencias religiosas católicas del país. Era otra cosa. Para mí éste es un escenario de transición muy importante, encima de eso a partir de la iniciativa ciudadana. Yo pienso que estamos en un tiempo de transición mucho más larga, de 20 o 30 años, en el cual el estado comienza a entender el mundo del derecho internacional y de los derechos humanos, los estándares, la manera como debe comportarse. Allí hace unos esfuerzos por legitimarse, sí, la oligarquía En general el asunto es, hay unos escenarios de poder económico y político que han venido transformándose en estos 20, 30 años en asuntos de reglamentos de como funciona, constitucionalidad aunque – estoy hablando desde lo político – la línea de pobreza, el tema de violencia tengan otras líneas. Yo te lo digo desde el punto de vista político, la manera como se comprende el estado y la manera como la gente comprende el estado, lo asume. Por ejemplo una transformación central ha sido la construcción de ciudadanía y la comprensión de eso en las ciudades.

El hecho de que pasamos de un mundo rural ... a un mundo cosmopolita, ciudadano que trasciende fronteras con el internet, que tiene una juventud cada vez más involucrada en el colegio ... eso hace una transformación también en la sociedad que hacen transición y que hacen cada vez más desueto el conflicto armado. Mientras tu construyes sociedad, mientras se va construyendo sociedad, el conflicto armado va perdiendo grosor en el impacto que ocasiona para la vida de la gente común y corriente con algunos picos. Estamos hablando de los picos del terrorismo del narcotráfico, hay algunas tomas grandes ... pero el resto, el turismo, la vida cotidiana de la gente se va construyendo. Y entonces eso hace que la transición incluso no se decreta sino que va sucediendo, se va desplegando y esto último que se llamó justicia transicional es sólo un pequeño punto en el cual dijeron “uy no, con extrema derecha no metamos más.” El estado ¿? (48.26) completo y dice “nosotros no queremos ver más paramilitarismo como estaba. Cerramos las puertas allí, paramos el chorro, ya no queremos legitimar autodefensas, convivires, nada de esto. Queremos que quien tenga la fuerza sea la fuerza pública. Y por tanto, ustedes que estaban allí, tienen que resolver su situación jurídica. Allí tienen la ley de Justicia y Paz y miran a ver que hacen.”

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Abstract (English)

Colombia is still mired in an armed conflict. Nevertheless, the Uribe government used the demobilization of the paramilitary units as the motive to begin applying instruments that are usually part of a post-conflict context. From this point in 2003 onwards there have been intense debates on truth, reparation, reconciliation and trials for the perpetrators. In 2005 the legal framework for this demobilization, the so-called Justice and Peace Law, was approved and severely criticized for the minimal prison terms for crimes against humanity. Yet, and against the original intention of the government, it led to an analysis of the relations between the country's elite and the paramilitaries. What relevance do these developments have for people far from the political center?

Through a comprehensive field-research based on qualitative interviews, the author, who lived and worked several years in Colombia, tried to understand how people who are actively involved in civil society activities in the conflictive Magdalena Medio Region understand the terms transitional justice and reconciliation.

The results show that the demobilization of the paramilitary units is, at most, relevant as a historic incident but not as the foundation of a "transition". People in this region perceive too few tangible changes in the systemic deficiencies such as inequality, corruption and violence, which also points to weaknesses of transitional justice. Only if transitional justice consistently names and eliminates structural conflict causes, may it produce a process that, eventually, leads to reconciliation on multiple levels. The interviewees clearly highlight justice, truth and profound political and economic transformations as the foundation for such a process.

The attitude towards the state is almost exclusively characterized by distrust. For too long, people have perceived the state as the source of insecurity and as an actor of violence. Provided that the 2011 approved "Victims' Law" with its stipulations regarding the return of land and reparation of victims is efficiently implemented, it may help to improve relations between the state and its citizens. Overall the results of this research show that reconciliation is considered a long-lasting and politically ambitious process that cannot be reduced to superficial and, for the media, orchestrated "reconciliation ceremonies" between individual victims and perpetrators.

Abstract (Deutsch)

Kolumbien befindet sich zwar weiterhin in einem bewaffneten Konflikt, die Regierung Uribe allerdings nahm die Demobilisierung der paramilitärischen Einheiten zum Anlass, klassische Post-Konflikt-Instrumente anzuwenden. So gibt es in diesem Land seit 2003 intensive Debatten über Wahrheitsfindung, Entschädigung, Versöhnung und Strafprozesse für die TäterInnen. Der 2005 verabschiedete gesetzliche Rahmen dieser Demobilisierung (Gesetz „Gerechtigkeit und Frieden“) wurde wegen seiner geringen Strafen für Verbrechen gegen die Menschlichkeit heftig kritisiert, führte aber entgegen der eigentlichen Intention der Regierung zu einer Auseinandersetzung mit der Beziehung zwischen den Eliten und den Paramilitärs. Welche Relevanz aber haben diese Entwicklungen für Menschen fernab des politischen Zentrums?

Mittels einer umfangreichen, auf qualitativen Interviews aufgebauten Feldforschung versucht der Autor, der selbst mehrere Jahre in Kolumbien tätig war, herauszufinden, mit welchen Bedeutungen zivilgesellschaftlich engagierte Menschen in der Konfliktregion Magdalena Medio die Begriffe Transitional Justice und Versöhnung füllen.

Die Ergebnisse zeigen, dass die Demobilisierung der paramilitärischen Einheiten höchstens als punktuelles historisches Ereignis, nicht aber als Grundlage für eine „Transition“ relevant ist. Zuwenig wird eine spürbare Veränderung systemischer Missstände wie Ungleichheit, Korruption und Gewalt erkannt, was auch auf inhärente Schwächen der Transitional Justice hindeutet. Erst wenn sie konsequent strukturelle Konfliktursachen benennt und behebt, könnte Transitional Justice einen Prozess hervorrufen, der letztlich zur Versöhnung auf mehreren Ebenen führt. Die Interviewten bezeichnen eindeutig Gerechtigkeit, Wahrheit und tiefgreifende politische und ökonomische Veränderungen als Grundlage eines solchen Prozesses.

Dem Staat wird fast einheitlich ein großes Misstrauen entgegen gebracht; zu lange nahmen die Menschen in ihm eine Quelle für Unsicherheit und einen Gewaltakteur wahr. Das 2011 verabschiedete „Opfergesetz“ mit seinen Bestimmungen zur Landrückgabe und der Entschädigung der Opfer könnte bei einer effizienten Umsetzung zu einer Veränderung der Beziehung zwischen Staat und BürgerInnen führen. Daraus zeigt sich, dass Versöhnung als ein langandauernder und politisch ambitionierter Prozess gesehen wird, der sich nicht auf medienwirksame und oberflächliche „Versöhnungszeremonien“ zwischen einzelnen Opfern und TäterInnen beschränken lässt.

Curriculum Vitae

PROFILE

MA Political Science (Vienna), MA International Relations (Syracuse University, USA); PhD candidate Political Science (Vienna); publication of articles in journals and frequent speaker on Latin America, and post-conflict issues

Trainer, consultant and advisor in civil society and community processes, peace-building, transitional justice, post-conflict reconstruction, reconciliation, DDR and conflict management - professional mediator

Extensive field-experience in regions of armed conflict and social tensions in South America; proven expertise in design, implementation and evaluation of projects with international and national organizations (EU, government, GIZ, USAID, civil society); participated in election-observation missions

PROFESSIONAL EXPERIENCE

University Lecturer

- Vienna University, Political Science Department: Seminar “International Relations” (March-June 2014)
- Javeriana University – Cali/Colombia: MA Module “Introduction to Peace Education and Transitional Justice” (September 2012)

Freelance Works – Consulting, Mediation and Teaching Assignments

Since 2008 – ongoing: Austria, Colombia, USA

- GFA Consulting Group, International Organization for Migration (IOM), Institute for Religion and Peace, Peace University Schlaining, Austrian Association for Mediation, University of Krems, University of Vienna, ARGE Bildungsmanagement, Viennapartners, DKA Austria, Conciliation Resources etc.

Jesuit Refugee Service Colombia - Coordinator "Reconciliation"

January – December 2012: Colombia

Archdioceses of Vienna – Horizont 3000 (Austrian Development Cooperation)

October 2010 – December 2011: Barrancabermeja/Bogotá, Colombia

Archdioceses of Vienna - Horizont 3000: Political Advisor, Development and Peace Program of the Magdalena Medio - PDPMM (EU-Peace Laboratory)

September 2006 – September 2009: Barrancabermeja, Colombia

GTZ: Project-Leader for “Promotion of Reconciliation in the City of Barrancabermeja. Recommendations for Public Policies”

December 2008 – July 2009: Barrancabermeja/Bogotá, Colombia

Secretary General of the Austrian Justice and Peace Commission

Institution of the Catholic Bishop’s Conference

October 2002 – March 2004: Vienna, Austria

Election Monitoring/Observation Missions

- Organization for Security and Co-operation in Europe: Kosovo (November 2001)
- European Union: Ecuador (November 2002), Bolivia (June-July 2006), El Salvador (March 2009)

ADDITIONAL EXPERIENCE

Internship with Human Rights Watch, Americas Division

September – December 2005 · Washington, DC, United States

Internship with the International Crisis Group, Andean Program

June – July 2005 · Quito, Ecuador

Internship with United Nations High Commissioner for Refugees

July – September 2002 · Ibarra, Ecuador

Voluntary Year in Ecuador

March 1997 – February 1998

EDUCATION

University of Vienna, Austria

PhD, Political Science (in progress)

Dissertation: Transitional Justice and Reconciliation in amidst an Armed Conflict. Perspectives from Colombia's Magdalena Medio Region

Maxwell School of Citizenship and Public Affairs, Syracuse University, New York

Master of Arts, International Relations – Fulbright Scholarship · December 2005

University of Vienna, Austria

Magister (equivalent to Master) of Political Science · June 2001

LANGUAGES

German (native) · English (negotiation) · Spanish (negotiation) · French (good) · Portuguese (average)

SELECT PUBLICATIONS AND CONFERENCES

Publications (select)

- Wlaschütz, Christian: Review of: Gready, Paul (2011): The Era of Transitional Justice. The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond. Oxfordshire: Routledge. In: *Restorative Justice. An International Journal* Vol. 2/2 (2014), 245-248
- Wlaschütz, Christian: Transitional Justice und Versöhnung. In: Gauster, Markus/Hensellek, Benedikt (Hrsg.): Internationales Krisen- und Konfliktmanagement 2.0. Gesamtstaatliche Herausforderungen für kleinere Akteure (Wien, 2014), 85-88
- Wlaschütz, Christian: Transitional Justice in Kolumbien. Ein Mehrebenen-Prozess. In: Wiener Blätter zur Friedensforschung (2014/01), 41-49
- Wlaschütz, Christian: Die Unterstützung zivilgesellschaftlicher Konfliktbearbeitung durch die EU – Überlegungen aus der Praxis, In: Roithner, Thomas / Frank, Johann / Huber, Eva (Hrsg.): Werte, Waffen, Wirtschaftsmacht. Wohin steuert die EU-Friedens- und Sicherheitspolitik? (Wien, 2014), 150-163
- Wlaschütz, Christian: Die Rolle der Katholischen Kirche im bewaffneten Konflikt Kolumbiens, In: Wagnsonner, Christian / Bsteh, Petrus (Hrsg.): Der gefallene Gott? Religion und Atheismus im Gefolge bewaffneter Konflikte (Wien, 2013), 79-98
- Wlaschütz, Christian: The Globalization of the International Human Rights Norms through Transitional Justice and Its Critics, In: Philipp Strobl/Manfred Kohler (Hrsg.): The Phenomenon of Globalization. A Collection of Interdisciplinary Globalization Research Essays (Frankfurt/Main, 2013), 237-248
- Wlaschütz, Christian: Review of Schreiter, Robert J./Appleby, R. Scott/Powers, Gerard F. (eds.): Peacebuilding. Catholic Theology, Ethics, and Praxis (Maryknoll, 2010): Notre Dame University, *Blog Contending Modernities*: <http://blogs.nd.edu/contendingmodernities/2012/03/>
- Wlaschütz, Christian: Top-down und Bottom-up Prozesse der Transitional Justice in Kolumbien – gegenseitige Blockade oder Ergänzung?, In: Halbmayer, Ernst/ Karl, Sylvia (Hrsg.): Die erinnerte Gewalt. Postkonfliktdynamiken in Lateinamerika (Bielefeld, 2012), 141-170
- Wlaschütz, Christian: Transitional Justice in Colombia – Does it Contribute to Reconciliation?, In: *Journal für Entwicklungspolitik*, 27 (3, 2011), 88-108.

- Ardila, Leonardo/Paez, José Antonio/Wlaschütz, Christian: Promoción de la Reconciliación en Barrancabermeja. Diagnóstico y Recomendaciones (Barrancabermeja, 2009)
- Wlaschütz, Christian: Reconciliación en Medio del Conflicto, *Cien Días/Cinep* (Forschungszentrum der Jesuiten) No. 67/August 2009: <http://www.cinep.org.co/node/729>
- Columnist for the Colombian Magazine *Semana*

Conferences (select)

- Debate: “**The Participation of Civil Society is Indispensable for Sustainable Peace**” (Austrian Institute for International Affairs, January 2014)
- Presentation: “La Reconciliación como Estrategia de la No-Repetición”. **Forum “Las Garantías de No-Repetición desde una Perspectiva Comparada: Retos y Desafíos para el Caso Colombiano**” (Universidad de los Andes/Fundación Social, Bogotá, November 2012)
- Presentation: “El Perdón en la Reconciliación Política”. **International Congress “Perspectivas Filosóficas, Teológicas y Políticas del Perdón**” - (Universidad Javeriana/Bogotá, DePaul University/Chicago, Universidad Católica de Rio de Janeiro, March 2012)
- Presentation: “Searching for the Truth in Colombia. Objectives and Impact of Transitional Justice”. **Congress of Scholars on South America and the Caribbean** (Marburg, September 2010)
- Presentation: “Dealing with the Past in the middle of the Conflict? Truth, Reparation and Reconciliation in Colombia”. **Summer Academy “Forgotten Wars”** (Schlaining, July 2010)
- Lecture: “**Reconciliation after War and Genocide? Methods to Overcome Violence and Injustice.**” Theological Courses. (Vienna, April 14, 2010)
- Presentation: “Justice and Peace – a contradiction?”. **Congress “Alone against all Threats? Political Balance and Preview after eight years of President Alvaro Uribe Velez”** (Diplomatic Academy, Vienna, January 25, 2010)
- Participation: Roundtable on “Transitional Justice”. **Congreso Internacional de Desarme, Desmovilización y Reintegración** (Cartagena/Colombia, May 2009)
- Presentation: “Retos y Oportunidades para la Reintegración de ExCombatientes en el Magdalena Medio”. **Encuentro Nacional de DDR de la Comisión Nacional de Reparación y Reconciliación**. National Meeting on DDR, National Commission for Reparation and Reconciliation. (Bogotá/Colombia, Oct. 2008)

SELECT ADDITIONAL EDUCATION

- **Eastern Mennonite University** – Harrisonburg/Virginia - May/June 2012
Summer Peacebuilding Institute 2012: Courses on Restorative Justice, Reconciliation, Trauma Awareness
- **ESDC** (European Security and Defense College) – Schlaining, Austria - September 2010
Seminar “Peacebuilding”
- **WIFI Austria** - Vienna, Austria - February to June 2010
Diploma Course “Project Management”
- **Network of Europeans for Electoral and Democracy Support (NEEDS)** – Brussels - September 2009
Long Term Observer (LTO) Beginners Training
- **University of Oslo** - July 2004
Summer Academy “Transitional Justice”
- **European Training and Research Centre for Human Rights and Democracy (ETC)** – Graz, September 2003
Certificate “Human Rights and Human Security with a Special Focus on South Eastern Europe”

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