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Juan Sebastián Córdoba Carreño

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Abstract

In 2016, a peace agreement was signed between the Colombian state and the FARC guerrilla, which represented the hope of ending an armed conflict of more than half a century. However, the Peace Agreement scope and the bodies created by it have been the object of attacks by a sector of Colombian society led by former president Álvaro Uribe Vélez, and currently represented in the government of President Iván Duque.

This master's thesis explores the content of the final Agreement and its current state of implementation, in relation to the rights of victims, to justice, to truth and comprehensive reparation and ex-combatants, to life, personal integrity, and to access to economic, social and cultural rights in contexts of transitional justice. On the other hand, the thesis analyses the narrative used by the government and its political party regarding the peace agreement and its implementation. Finally, the thesis aims to establish a correlation between the official discourse and the lack of fulfilment of the human rights of both victims and ex-combatants of the armed conflict in Colombia.

The findings show that the implementation of the Agreement is not optimal, primarily thanks to the government's lack of political will and regular attacks, which ends up impacting the human rights of victims and ex-combatants who sees in the peace agreement the optimal mechanism to end the current state of systematic human rights violations. Nevertheless, thanks to the active participation of victims organisations, and the international community, the Agreement is working against all odds.

Abstrakt

Im Jahr 2016 wurde zwischen dem kolumbianischen Staat und der FARC-Guerilla ein Friedensabkommen unterzeichnet, das die Hoffnung auf die Beendigung eines bewaffneten Konflikts von mehr als einem halben Jahrhundert darstellte. Das Friedensabkommen und die damit geschaffenen Einheiten waren jedoch Gegenstand von Angriffen eines Teils der kolumbianischen Gesellschaft unter der Führung des ehemaligen Präsidenten Álvaro Uribe, der derzeit in der Regierung von Präsident Iván Duque vertreten ist.

Diese Masterarbeit untersucht den Inhalt des endgültigen Abkommens und seinen aktuellen Stand der Umsetzung in Bezug auf die Rechte der Opfer, auf Gerechtigkeit, auf Wahrheit und umfassende Wiedergutmachung sowie auf die Rechte von Ex-Kombattanten, auf Leben, persönliche Integrität, und Zugang zu wirtschaftlichen, sozialen und kulturellen Rechten im Kontext der Übergangsgerechtigkeit. Zum anderen analysiert die Arbeit das Narrativ der Regierung und ihrer politischen Partei bezüglich des Friedensabkommens und seiner Umsetzung. Schließlich zielt die Arbeit darauf ab, einen Zusammenhang zwischen dem offiziellen Diskurs und der mangelnden Erfüllung der Menschenrechte von Opfern und Ex-Kombattanten des bewaffneten Konflikts in Kolumbien herzustellen.

Die Ergebnisse zeigen, dass die Umsetzung des Abkommens nicht optimal ist, vor allem aufgrund des fehlenden politischen Willens der Regierung und regelmäßiger Angriffe, die sich letztlich auf die Menschenrechte von Opfern und Ex-Kombattanten auswirken, die wiederum im Friedensabkommen sehen der optimale Mechanismus, um den derzeitigen Stand der systematischen Menschenrechtsverletzungen zu beenden.

Dies hat Auswirkungen auf die Menschenrechte von Opfern und Ex-Kombattanten, die im Friedensabkommen den optimalen Mechanismus sehen, um den derzeitigen Stand der systematischen Menschenrechtsverletzungen zu beenden. Dank der aktiven Beteiligung von Opferorganisationen und der internationalen Gemeinschaft funktioniert das Abkommen jedoch allen Widrigkeiten zum Trotz.

List of Acronyms and Abbreviations

- ACHR- American Convention on Human Rights
- AUC- Auto Defensas Unidas de Colombia
- CAT- Convention Against Torture
- CD- Centro Democrático
- CEDAW- Convention on the Elimination of all Forms of Discrimination Against Women.
- CEV- Commission on Truth, Coexistence and Non-repetition
- CRC- Convention on the Rights of the Child
- CRPD- Convention on the Rights of Persons with Disabilities
- CSMLV- Follow-up and Monitoring Commission of the Victims' Law.
- DDR- Disarmament, Demobilization, and Reintegration
- DDR- Disarmament, Demobilization, and Reintegration.
- ELN- Ejército de Liberación Nacional
- ESCR-Economic, Social and Cultural Rights
- ETCR- Territorial Training and Reincorporation Areas
- FARC-EP- Fuerzas armadas Revolucionarias de Colombia- Ejército del Pueblo
- IACHR- Inter-American Commission on Human Rights.
- IACtHR- Inter-American Court of Human Rights.
- IASHR-Inter-American System of Human Rights
- ICC – International Criminal Court.
- ICCPR- International Covenant on Civil and Political Rights.
- ICL- International Criminal Law.
- IDDRS- UN adopted the Integrated Disarmament, Demobilization and Reintegration Standards
- IHL-International Humanitarian Law.
- JPAR- Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct.
- M-19- Movimiento 19 de Abril
- OAS-Organization of American States
- PA- Peace Agreement.
- PAPSIVI- Program of Psychosocial Care and Comprehensive Health to Victims
- RUV- Single Registry of Victims
- SPJ-Special Jurisdiction for Peace
- SVJNR- Comprehensive System for Truth, Justice, Reparation and Non-Repetition
- TJ-Transitional Justice
- UARIV-Unit for the Comprehensive Attention and Reparation of Victims
- UBPD- Special Unit for the Search for Persons deemed as Missing in the context of and due to the conflict
- UDHR- Universal Declaration of Human Rights
- UN-United Nations

- URT- Land Restitution Unit.
- ZVTN-Local Transitory Normalisation Zones

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1. Introduction and Problem Statement

This thesis seeks to unveil the hegemonic discourse in Colombia regarding the Final Peace Agreement (PA) and how it affects the human rights of the victims and ex-combatants of armed conflict. In 2016, the Colombian government headed by President Juan Manuel Santos and the '*Fuerzas Armadas Revolucionarias de Colombia- Ejército del Pueblo*' (FARC-EP) guerrillas signed a peace agreement to end the armed conflict and violence that had affected the country for more than 50 years¹. The PA that was reached, which included the demobilisation of the oldest guerrilla group on the continent, contained five points targeting the causes of structural armed conflict and the humanitarian and human rights crisis², with the final objective of achieving a positive peace, that is, a peace including social justice, beyond the laying down of arms.³

However, the PA's critical points were rejected by a large portion of society, specifically an important sector of the Colombian upper class led by the former president Álvaro Uribe Vélez and his political party '*Centro Democrático*' (CD). This political movement, which can be referred to as '*Uribismo*', is considered a conservative-neoliberal ideology⁴. After the PA was signed, President Santos sought to legitimise the agreement through a plebiscite. However, the *Uribismo* carried out an intense and effective political campaign against the PA⁵, which led to the accord's refusal by the people of Colombia, by a margin of 0.43%, and an abstention rate of 62% of the total electoral roll. This situation forced changes to the original agreement and Congress's approval under the Constitutional Court's control⁶. In 2018, CD candidate Iván Duque won the presidency, using the same discourse that gave him the victory in the plebiscite.⁷

¹ G Olave, 'Violencia verbal en debates públicos sobre la implementación del Acuerdo de Paz en Colombia', Universidad de los Andes (2021) 42, p. 29–49.

² Colombia's government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24 November 2016.

³ T Turan, *Positive Peace in Theory and Practice: Strengthening the United Nations's Pre-Conflict Prevention Role* (Leiden, BRILL, 2015), p.104.

⁴ B Kajsu, 'The Colombian Right: The Political Ideology and Mobilisation of Uribismo', (2019) 44 *Canadian Journal of Latin American and Caribbean Studies*.

⁵ Ibid, p.204.

⁶ S Botero, '*El Plebiscito y los Desafíos Políticos de Consolidar la Paz Negociada en Colombia*' *Revista Ciencia Política Universidad Católica de Chile*, 2017, Vol .37(2), p.369.

⁷ B Kajsu, p.204

With the return of the *Uribismo* to office, it was expected that Duque's government was not going to implement the PA, or at most would do so in a superficial manner. This is the situation that this research will analyse. The current crisis facing the implementation of the peace process has led to multiple murders of human rights defenders and social leaders as well as former FARC combatants who laid down their arms in good faith⁸. Further, the public policy of reparation for victims of the armed conflict has resulted in severe delays, both in the payment of administrative compensation and other forms of comprehensive reparation⁹. In the contexts of this master's thesis a human rights analysis will be conducted regarding the current state of the implementation of the peace agreement, particularly the (i) Comprehensive System for Truth, Justice, Reparation and Non-Repetition (SIVJNR); (ii) the Law on Reparation and Assistance to Victims and Land Restitution; (iii) the process of demobilisation and reintegration of the FARC ex-combatants.

It is particularly interesting that, in the international sphere, the government presents the implementation of the PA and the full realisation of the focus groups under study as two of its goals and priorities. Meanwhile, domestically the government sends the message that the PA entitles 'fake peace'.¹⁰ Nonetheless, it could be said, a priori, that the dominant discourse exercised by the government and its political party and the mass media is based on human rights and democratic principles due to the conditions under which the SIVJNR was designed and, in particular, the Special Jurisdiction for Peace's (SJP) sanctions. The argument that has been established is that the transitional justice (TJ) model adopted by the PA establishes a system that promotes impunity for the most serious

⁸ Human Rights Watch. (2021). *Left Undefended-Killings of Rights Defenders in Colombia's Remote Communities* (Washington, USA, No. ISBN: 978-1-62313-890-5)

<https://www.hrw.org/sites/default/files/media_2021/02/colombia0221_web_0.pdf>

⁹ CSMLV, *Séptimo Informe de Seguimiento al Congreso de la República 2019 – 2020* (Bogotá, 2020)

<https://www.procuraduria.gov.co/iemp/media/file/img/noticias/S%C3%A9ptimo%20Informe%20sobre%20la%20implementaci%C3%B3n%20de%20la%20Ley%20de%20V%C3%A9ctimas%20y%20la%20Resti_.pdf>

¹⁰ El Tiempo, 'Tras anuncio de Márquez, Uribe propone quitar Acuerdo de Constitución' (2019) *El Tiempo*. <<https://www.eltiempo.com/politica/proceso-de-paz/alvaro-uribe-no-hubo-paz-sino-indulto-para-responsables-de-delitos-atroces-406318>> (accessed 9 April 2021).

crimes, given that those responsible for these atrocious acts would not necessarily be deprived of their liberty. In fact, they could ‘(...) avoid serving even a single day in prison’.¹¹ Under this interpretation, the design of the SJP’s sanctions, characterised by the use of restorative justice, would exceed the acceptable TJ formulas in international law, as it could leave the most serious crimes (e.g. war crimes and crimes against humanity) unpunished, thereby unduly sacrificing justice in the name of peace.¹²

Notwithstanding the above, the PA’s TJ model was endorsed by the UN, the Inter-American Commission on Human Rights,¹³ the International Criminal Court, the International Committee of the Red Cross and various civil society organisations.¹⁴ They recognised that the PA, faced with the evident tension between justice and peace, managed to establish a holistic system with the victims at the centre, emphasising their right to know the truth and to be fully compensated and instituting guarantees of non-repetition. Moreover, the SJP is a functional tribunal that can send a defendant to prison if it finds that exhaustive truth has not been obtained. Conversely, it can impose alternative sanctions to prison if it determines that full truth is given in the hearings. Sanctions can include participation in national reparation programs. Likewise, the international community has welcomed the PA because the lack of punitive justice is made up for by the restorative elements provided by the other two entities that make up the SIVJRNR: the Truth Commission and the Unit for the Search for Disappeared Persons.¹⁵

¹¹ JM Vivanco, ‘La promesa del acuerdo de paz en Colombia y sus graves defectos’, *Human Rights Watch, Human Watch*, 30 September 2016 <<https://www.hrw.org/es/news/2016/09/30/la-promesa-del-acuerdo-de-paz-en-colombia-y-sus-graves-defectos>> (accessed 7 April 2021).

¹² S Aponte and JS Córdoba, *Medidas Restrictivas de La Libertad y Acuerdo de Paz*. BA Thesis, Pontificia Universidad Javeriana (2017) 10 <<https://repository.javeriana.edu.co/handle/10554/34142>> (accessed 3 June 2021).

¹³ IACHR, ‘*La CIDH hace un llamado a Colombia para redoblar sus esfuerzos en la implementación integral del Acuerdo Final para la Paz*’ (2020) <<http://www.oas.org/es/cidh/prensa/comunicados/2020/185.asp>> (accessed 19 July 2021).

¹⁴ Rodeemos el Diálogo, ‘*El apoyo de la Comunidad Internacional a la Jurisdicción Especial para la Paz*’, 2020, <https://rodeemoseldialogo.org/el-apoyo-de-la-comunidad-internacional-a-la-jurisdiccion-especial-para-la-paz/>> accessed 19 July 2021.

¹⁵ S Aponte and JS Córdoba 10.

With that being said, it is important to mention that the *Uribismo* has the strong support of the Colombian upper class ¹⁶ This translates into the social sector, which manages the means of production, and the financial sector, which controls large portions of land and includes the traditional media. The latter had a significant influence on the national government's decisions regarding the implementation of the PA. It is notable that during the armed conflict 'the dynamics inaugurated by drug trafficking, mining and energy exploitation, agro-industrial models and criminal alliances between paramilitaries, politicians, public servants, local economic and business elites, and drug traffickers'¹⁷ allowed regional and national elites and other powers to carry out actions to prevent the state's own efforts to redistribute or transform inequitable and unproductive land patterns from being realised.¹⁸

Added to this conflict dynamic was the Democratic Security policy, promoted by President Alvaro Uribe during his administration. The basic assumption of his democratic security doctrine was that the traditional and existing political order in Colombia was 'profoundly' democratic and totally pluralist. Thus, it had to be defended from the terrorist threat of guerrilla subversion, which sought the radical transformation of this status quo. This idea was reproduced in the 2018 campaign of presidential candidate Iván Duque.¹⁹

This thesis will unveil the way this narrative is portrayed in society by analysing some official speeches, mass media outlets and interventions by senators and representatives on social media to establish a correlation with the human rights of two particular groups: victims and former combatants. The theoretical framework will explore how this political

¹⁶ B. Kajsu, p.204.

¹⁷ CNMH, '*!Basta ya! Colombia: Memories of War and Dignity*' [Book Report], 2016, Bogota p.27. <<http://centrodehistoriahistorica.gov.co/imagenes/informes2016/basta-ya-ingles/BASTA-YA-ingles.pdf>>

¹⁸ CNMH, '*!Basta ya! Colombia: Memories of War and Dignity*' [Book Report] (2016) Bogota 121. <<http://centrodehistoriahistorica.gov.co/imagenes/informes2016/basta-ya-ingles/BASTA-YA-ingles.pdf>>

¹⁹ B. Kajsu, p.204.

regime transforms the dominant discourse into non-compliance with human rights obligations by the Colombian state.

Each of the groups in this study has different rights that are at stake within the political strategy and agenda of the dominant social sector. These include victims' right to truth, access to justice and comprehensive reparation, which includes economic compensation, psychological assistance and other economic, social and cultural rights (ESCR). For ex-combatants, it includes the right to life and physical integrity, due process, political rights and ESCR.

To conclude, this thesis will study and identify the correlation between the political discourse of the ruling class and the implementation of the PA in Colombia, which resulted in the scenario where human rights of victims and ex-combatants are possible being violated. Based on the above, the following research question emerges: How is the Colombian mainstream discourse regarding the PA impacting the rights of victims and ex-combatants?

To address this question, this master thesis will first explore the history of the Colombian conflict and the previous PA experiences. Then, the concept of TJ will be analysed, followed by a presentation of international human rights standards for victims and former combatants, both at the universal and regional levels. The next chapters will focus on the PA and its implementation, focusing on the groups under study. Finally, a discourse analysis will be conducted on the current state of the PA implementation.

1.2 Methodology

1.2.1 Research design and analysis of data

This thesis adopted a qualitative approach and employed a case study research design, focusing on Colombian armed conflict and the transitional justice mechanism designed for this particular scenario, by answering the following questions:

Does the Peace Agreement violate victims' and ex-combatants' rights by itself?

This sub-question is fundamental, considering that the official narrative regarding the PA includes several criticisms that the PA provides impunity and thus violates victims' rights. Therefore, a legal analysis is crucial to validate the hegemonic narrative.

What is the current status of implementation of the Peace Agreement?

Once the first sub-question is answered, the thesis will analyse the current PA implementation to determine whether the initial objectives are being met in terms of fulfilling victims' and former combatants' rights.

In order to answer the questions above, the thesis adopted three disciplinary approaches: legal, public policy and political/discursive approaches. Regarding the legal approach, the international legal framework for victims' and ex-combatants' rights will be presented, prioritising the relevant rights for these populations in transitional contexts. Once the international human rights standards are established, the design of the PA will be presented to evaluate those for which the PA will be the main source. National legislation and jurisprudence will also be used to answer the first sub-question regarding victims' and ex-combatants' rights in the PA design.

Once the design of the PA is clear, the results of an analysis of the current state of implementation will be presented. This analysis required the collection of different sets of data. First, secondary data based on reports from a variety of organisations were collected, starting with the last quarterly report of the UN Mission in Colombia²⁰, the last quarterly report of the Organization of American States (OAS) mission and the 2020²¹ the annual report of the IACHR²² were used to provide an international perspective. For the state perspective, the last 2020 annual report of the Attorney General's Office²³ was

²⁰UNSC, United Nations Verification Mission in Colombia Report of the Secretary-General, Report S/2021/603.

²¹ MAPP/OAS. Twenty-Ninth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States. OEA/Ser. G CP/Doc.5668/20.

²² IACHR, Informe Anual 2020, Seguimiento de recomendaciones formuladas por la CIDH en el informe Verdad, Justicia y reparación: Sexto informe sobre la Situación de Derechos Humanos en Colombia.

²³ PGN, Segundo Informe al Congreso sobre el estado de implementación del Acuerdo Final (2020).

chosen. Finally, the last report of the CINEP,²⁴ an NGO based in Colombia, and the last report of the Kroc Institute of the University of Notre Dame²⁵ (Indiana USA) were used as examples of civil society and academic perspectives.

Additionally, as part of the primary data collection, two semi-structured interviews were conducted during the research. The first was with Elena Ambrosi. During the peace talks, she was on the government's team, and later she worked as the Attorney General's delegate for the PA implementation until January 2021. The second was with Patricia Linares, the former president and current judge of the SJP. These interviews, were done in Spanish, however as an annex an English summary translated by the author of this thesis was included.

Subsequently, a discursive analysis was performed. For this purpose, primary data were collected by organising tweets from President Duque, former President Uribe, the official Twitter account of the *Centro Democrático* political party and Congresswoman Paloma Valencia. Some YouTube videos that portrayed this narrative were also sampled and organised in a separate data set.

Once the discursive elements were collected, the analysis was performed in a longitudinal and contextual manner to understand the trends established by these elements. Finally, discourse analysis was used to examine the democratisation level of the Colombian political regime in order to understand how this discursive narrative has impacted some elements of democracy and consequently the human rights of the selected focus groups.

Finally, the correlation between the political discourse regarding the PA and the rights of the focus groups was analysed.

²⁴ CINEP, 'Noveno informe de verificación de la implementación del Acuerdo Final de Paz en Colombia' 2021.

²⁵ Paz Iniciativa Barómetro, Matriz de Acuerdos de, and Instituto Kroc de Estudios Internacionales. 'El Acuerdo Final de Colombia en tiempos del COVID-19: Apropiación institucional y ciudadana como clave de la implementación.' 21 May 2021.

1.2.4 Research experience

During the research, I encountered some difficulties that caused me to change my initial plans. As a first step in collecting the different tweets and speeches, I realised that without an analysis of the actual design of the PA it would not be possible to analyse this discourse. Accordingly, two new sub-questions were added.

Second, when I began to carry out the legal analysis of standards for victims and ex-combatants, I realised that I had to exclude human rights defenders as a study group, as space limitations would only allow me to do so superficially. As that would have been counterproductive to the research, some aspects of the final design of the thesis were changed, but its essence was maintained.

2. Background Context

2.1. Historical Context

Violence and conflict in Colombia can be traced back to its independence in 1819²⁶. Since the Republic was founded, the political and economic elites with political and economic power have been unable to reach an agreement, triggering the first stage of violence between centralists and federalists. Indeed, ‘Colombia’s nineteenth- and twentieth-century history is a case in point, where historical continuities and discontinuities can be seen in the several waves of civil wars that have engulfed the country’.²⁷

Later, during the early 20th century, when the longest period of peace in Colombia’s history was achieved and accelerated industrialisation occurred from some of the most important conflicts began to develop, which the nation has still not been able to overcome.²⁸

²⁶ J.O. Melo, ‘*Historia mínima de Colombia*’, El Colegio de México, 1 Ed, 2018, Chapter 6.

²⁷ N Richani, ‘Systems of Violence, Second Edition: The Political Economy of War and Peace in Colombia’ in *SUNY Series in Global Politics* (Albany: SUNY Press, Vol. 2, 2013) (accessed 1 April 2021).

²⁸ C.A. Rubiano Olivares, “‘Aquí Nada Cambió’”. Aproximaciones a Las Disidencias de Las FARC y Otros Saboteadores de La Implementación de Los Acuerdos de Paz En El Departamento Del Guaviare’. Master Thesis, Pontificia Universidad Javeriana (2018), p.2.
<<https://repository.javeriana.edu.co/handle/10554/38120>>

On April 9, 1948, Liberal presidential candidate Jorge Eliecer Gaitan was assassinated. His death led to a revolt that left 2000 dead in Bogotá and approximately 500 more in the rest of the country.²⁹ Following that revolt, a new period of conflict known as *La violencia* began, a civil war between partisans of the Liberal Party and Conservative Party. Between 1945 and 1958, more than 200,000 people died.³⁰

‘La violencia was the logical outcome of the socio-political crisis and the inability of the prevailing institutional arrangement to contain it. It was also a manifestation of a political realignment of the factions of dominant classes bent on repressing the peasant, labour and middle-class movements.^{31’}

After this period of violence and a brief dictatorship, the traditional parties created the *‘Frente Nacional’*, a strategy for interchanging power every four years and thus ending the political violence. This agreement lasted sixteen years.³² During this period of time and in the context of the cold war, political options other than the two traditional parties were excluded from the public debates.³³ Additionally, the elites’ refusal to make any effort to alter the distribution of resources (e.g. land) or to systematically increase the share of wages in national income helped to strengthen the communist guerrillas³⁴. This situation resulted in the Colombian state and US government agencies implementing strategies to contain communism, which combined military repression of insurgent groups with social reformism³⁵.

During the course of this conflict, other guerrillas emerged, such as the *Ejercito de Liberación Nacional* (ELN) and the *Movimiento 19 de Abril* (M-19). The arrival of drug trafficking perpetuated violence, financing all the armed actors. Paramilitary groups

²⁹ J.O. Melo, 2018, Chapter 11.

³⁰ N. Richani 23.

³¹ N. Richani 23.

³² CNMH, 2016, p. 121

³³ N. Richani, p.25.

³⁴ J.O. Melo, 2018, Chapter 12.

³⁵ CNMH, 2016, p. 121.

organised by landowners and drug traffickers grew disproportionately, bringing even more violence and inhumane methods of warfare. During the conflict, the National Army also grew in numbers thanks to US funding.³⁶

‘The impact of drug-trafficking was not limited to providing the armed conflict with resources or agents. Its social and cultural effects profoundly changed the environment in which all this occurred. The corrupting power of drug trafficking permeated the political class and various state institutions, creating a precedent for co-opting the state. This in turn paved the way for armed agents, as narco-politics preceded what was later known as para-politics, and in many ways the latter is a historical prolongation of the former’.³⁷

This conflict, which has been ongoing from 1985 to the present, has resulted in 9,146,456 people being victimised by all of the conflict armed actors.³⁸ Indeed, all armed actors have incorporated attacks on the civilian population as a war strategy. However, the violence modalities and the intensity of their actions differ based on each actor’s assessment of the territory, the moment of war and the strategies they employ related to the civilian population³⁹. For instance, from 1980 until 2012, paramilitary groups committed 1166 massacres, Guerrillas 343, the public force 158 and non-identified groups 295.⁴⁰ So far in 2021, the NGO Indepaz has reported 50 massacres with 189 victims.⁴¹

³⁶ J.O. Melo, 2018, Chapter 13.

³⁷ CNMH, 2016, p.151.

³⁸ UARIV, Victimization Statistics <<https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394>> accessed 8 July 2021.

³⁹ CNMH, 2016, p.40.

⁴⁰ CNMH, 2016, p.42.

⁴¹ Indepaz, *Informe de Masacres en Colombia Durante el 2020 y 2021* <http://www.indepaz.org.co/informe-de-masacres-en-colombia-durante-el-2020-2021/> (accessed 17 July 2021).

Meanwhile, guerrillas, especially the FARC, dedicated themselves to kidnapping civilians and security forces members. Luis Eladio Pérez, who was kidnapped for seven years by the FARC described the experience:

A kidnapped person is someone who is humiliated in the most intimate areas of his dignity, his body becomes merchandise to be exchanged, he has no rights, none, not even to go to the toilet. Above all, he doesn't just suffer because of the conditions he is subjected to, but also because he knows that his family suffers.⁴²

Moreover, one of the most significant consequences of the conflict in Columbia is the 8,143,758 internally displaced victims from 1985 until today.⁴³ As a result, displacement is considered to be a massive, systematic long-lasting phenomenon in the country linked to controlling strategic territories.

This indicates that, beyond the confrontation between armed agents, there are economic and political interests that pressure civilians to flee their land and territories. This is especially true of drug trafficking and its financial structures, which have been a decisive factor in sustaining and heightening the socio-political violence in different regions of the country.⁴⁴

During the conflict, systematic practices of forced disappearance⁴⁵ and selective assassinations were also employed.⁴⁶ Today, these practices can be seen in the killings of social leaders. According to data from the NGO Indepaz, from the beginning of 2021 until July 3rd, 86 social leaders and human rights defenders have been murdered in Colombia.⁴⁷

⁴² L.E. Pérez, '7Años Secuestrado por las FARC' in Bogotá, Eds. Aguilar, 2008, in Centro Nacional de Memoria Histórica (CNMH) (2016), p. 305.

⁴³ UARIV, Victimization Statistics <<https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394>> (accessed 8 July 2021).

⁴⁴ Centro Nacional de Memoria Histórica (CNMH) (2016) 76.

⁴⁵ CNMH 62.

⁴⁶ CNMH 49.

⁴⁷ Indepaz, Líderes Sociales, Defensores de DD.HH y Firmantes de Acuerdo Asesinados en 2021, <<http://www.indepaz.org.co/lideres-sociales-y-defensores-de-derechos-humanos-asesinados-en-2021/>> accessed 17 July 2021.

It is important to mention that the conflict has affected women,⁴⁸ children,⁴⁹ indigenous peoples and Afro-Colombian communities⁵⁰ disproportionately. In the same vein, while violence against the LGBTI community has been invisible, it has been perpetrated by all armed actors: paramilitary groups, the public force and FARC guerrillas.⁵¹

Despite this history of violence and conflict, society in general, the state and the actors in the conflict have sought to generate non-violent solutions to achieve peace and reconciliation for Colombians. The following sub-chapter will briefly review all the attempts at peace that have taken place in the country.

2.2 Peaceful Solution Attempts

2.2.1. 1991 New Constitution and amnesty

At the end of the 1980s and the beginning of the 1990s, the governments of former presidents Betancur, Barco and Gaviria granted amnesty to several active guerrillas' organisations, most significantly the M-19, the guerrilla group that took over the Justice Palace in 1985.⁵² The demobilisation of this armed group took place on 8 March 1990.⁵³ However, amnesty was not granted until the issuance of Decree 213 of 1991, which allowed the extinction of sentences and granted amnesty for political and related crimes.⁵⁴

These amnesty processes co-occurred with an escalation of violence related to both the internal armed conflict and drug trafficking, which sparked massive protests calling for an end to the war. In this context, a student movement called the 'Seventh Ballot Paper' emerged, which sought to change the 1886 constitution. The movement's success led to

⁴⁸ CNMH 310.

⁴⁹ CNMH 319.

⁵⁰ CNMH 284.

⁵¹ Colombia Diversa, *Los órdenes del prejuicio Colombia* (Bogotá, 2020) 83.

⁵² F. Barbosa, '¿Justicia transicional o impunidad? La encrucijada de la paz en Colombia', Bogotá, Ediciones B (2017) p. 56 in Aponte and Cordoba, p.17.

⁵³ El Espectador '¿Para qué sirvió la paz con la guerrilla del M-19? - Hagamos Memoria- El Espectador' <<https://www.youtube.com/watch?v=c6v1y1CvKx0>> (accessed 2 April 2021).

⁵⁴ Presidency of Colombia, Decree 213 of 1991.

the election of a constituent assembly in December 1990 and the proclamation of a new constitution on 4 July 1991.⁵⁵

The M-19 received 30% of the vote, the most for any political organization in the constituent assembly, as well as representatives from indigenous and afro-Colombian communities, which was considered pluralist under the time standards.⁵⁶ The constitution includes a broad catalogue of rights, including Article 22, which states that peace is a right and a duty that must be fulfilled.⁵⁷

2.2.2. Peace and Justice

Law 975 of 2005, or the Justice and Peace Law, is the closest predecessor to the current Peace Accord. This law resulted from negotiations between the government of former President Álvaro Uribe Vélez and the paramilitary groups then known as the United Self-Defence Forces of Colombia (AUC).⁵⁸ This law also represents the first effort by the Colombian state to implement a justice model that considers international human rights standards and international humanitarian law in terms of victims' rights.⁵⁹

Consequently, for the first time in Colombia's history, peace through the demobilisation of armed groups and the ceasefire was balanced with the right of victims to obtain justice for the serious crimes committed. However, the law at the time sparked debate for several reasons:⁶⁰ a) it imposed sentences of only five to eight years for the most heinous crimes committed by the AUC; b) it granted political rights to the paramilitaries although they did not oppose the constitutional order and even, on many occasions, operated with the acquiescence of the public forces;⁶¹ c) there were no incentives for an exhaustive

⁵⁵ CNMH, 2016, pp.155–6.

⁵⁶ Universidad Nacional de Colombia '30 años de la Constitución del 91' <<https://www.youtube.com/watch?v=8vmcwjz3P3M>> (accessed 17 April 2021).

⁵⁷ Colombian Political Constitution 1991, article 22.

⁵⁸ Centro Nacional de Memoria Histórica (CNMH), *Justicia: Balance de la Contribución del CNMH al Esclarecimiento Histórico*, Bogotá, 2018, p.12.

⁵⁹ Congress of Colombia Law 975 of 2005, article. 1.

⁶⁰ CNMH, 2018, p.16.

⁶¹ H.V. Villa *La ley de Justicia y Paz de Colombia a la luz del Derecho Internacional de los derechos humanos*. Bogotá, Centro de Investigación para la Paz, Fundación Hogar del Empleado, p.20.

confession; d) the institutional mechanisms that were created lacked; e) there were short deadlines and procedural stages in the internal legal mechanisms for investigating and prosecuting demobilised combatants, who benefitted from the law; and f) there were deficiencies in the reparation mechanisms.⁶²

Consequently, the law's constitutionality was challenged, and it had to be analysed by the Constitutional Court in Ruling C-370 of 2006,⁶³ which represented a milestone in Colombia's conception of JT.⁶⁴ First, the Court accepted the law's constitutionality based on the importance of obtaining peace as a purpose of the law, based on Articles 2 and 22 of the Colombian Constitution, which establish that 'peace is a right and a duty of obligatory compliance'⁶⁵. Second, the Court accepted the application of alternative sentences, with the understanding that they could be applied under a conditionality criterion, where convicted individuals had to meet specific requirements to be eligible for sentences of five to eight years.⁶⁶

The requirements consisted of fulfilling victims' rights in accordance with international standards, resorting to international criminal law, international humanitarian law and international human rights law at the universal and regional levels.⁶⁷ These standards will be analysed in depth in the following chapter. However, the Court concluded that the central rights victims have in TJ contexts are justice, truth, reparation and measurements of non-repetition.⁶⁸ Furthermore, under a proportionality test, the right to justice is fulfilled if the victim obtains exhaustive truth, a comprehensive reparation is given and there is the certainty that similar events will not happen again. Finally, the perpetrators are individualised and sanctioned with alternative sentences under conditionality.⁶⁹

⁶² IACHR, Verdad, Justicia y Reparación: Cuarto Informe Sobre la Situación de Derechos Humanos en Colombia, OEA/Ser.L/V/II. Doc. 49/13, 31 December 2013, p.133.

⁶³ Constitutional Court of the Republic of Colombia, (18 May 2006) Sentencia C-370-06.

⁶⁴ CNMH, 2018, p.25.

⁶⁵ Colombian Political Constitution 1991

⁶⁶ A Guerrero, 'Ley 975 de 2005 a través de la Sentencia C-370 de 2006: un enfoque del proceso transicional en Colombia', in A. Forer and C. López, *et.al, Colombia: un nuevo modelo de Justicia Transicional* (Bogotá, Deutsche Gesellschaft für Internationale Zusammenarbeit [GIZ] 2011) p.197.

⁶⁷ A Guerrero 187.

⁶⁸ Constitutional Court of the Republic of Colombia (18 May 2006) Sentencia C-370-06.

⁶⁹ Constitutional Court of the Republic of Colombia (18 May 2006) Sentencia C-370-06.

Sometime later, Law 1592 of 2012, which modified the Justice and Peace law, introduced substantial adjustments to the judicialization model, such as the prioritisation criteria and the assumption of a general macro-criminality perspective, which have led to far-reaching innovations in the legal culture of judicial operators while also imposing new requirements.⁷⁰

Despite the advances achieved by the law regarding TJ, its implementation did not respond to victims' needs. In the opinion of Francisco Barbosa, the law was an instrument that did not produce results in the areas of TJ, terms of truth, guarantees of non-repetition or comprehensive reparation for victims.⁷¹ However, perhaps the most harmful outcome of this process was the limitations on paramilitary demobilisation, which led to the imminent rearmament of the groups. This situation 'accelerated during 2008 and 2010 and registered a significant upturn in their criminal activities between 2011 and 2012'.⁷² These groups were simply considered drug trafficking gangs by the government, but in reality they represented a third generation of paramilitary structures.⁷³

2.2.3. Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace

After four years of peace talks in Havana, Cuba, the government of former president Juan Manuel Santos and the FARC-EP guerrillas reached a peace agreement, which was signed in Cartagena on 26 September 2016.⁷⁴ The event was attended by the entire international community, which, along with the signatories, celebrated having reached a consensus. However, there was still one more step to make the AP official: it required approval by the people through a plebiscite.

⁷⁰ Observatorio Internacional, Centro Internacional de Toledo para la Paz, (2016) *Séptimo Informe marzo de 2016*, Bogotá, Citpax 2016, p.15.

⁷¹ F. Barbosa, p. 65.

⁷² CNMH, 2016, p.192.

⁷³ CNMH, 2016, p.193.

⁷⁴ 'Firma del Acuerdo de Paz entre el Gobierno colombiano y las FARC'

<<https://www.youtube.com/watch?v=u8eOcntXCx4>> accessed 14 April 2021.

A plebiscite is an election called by the President to allow citizens to directly support or reject a decision of the executive power. In this case, the question offered for citizen consideration to vote on 2 October 2016 was a yes or no decision about the approval of the peace agreement with FARC-EP. It was a deeply contentious issue given that, during the four years of negotiations that led to the accord, a sector of society led by prominent political figures, such as former president of Colombia, Álvaro Uribe Vélez, was harshly opposed to the talks.⁷⁵

The details of the plebiscite campaign will be analysed in Chapter 7. The political faction that opposed the PA obtained victory by a minimum margin of 0.43%.⁷⁶ According to judgment C-379 of 2016, the Constitutional Court required that the agreement as it stood could not be incorporated into national law.⁷⁷ This led to a new period of negotiations between the FARC-EP guerrillas and the government. Finally, a new PA was reached on 24 November 2016.⁷⁸ While some elements of the new peace agreement⁷⁹ were changed, the main pillars of the first agreement remained.⁸⁰ The PA was endorsed by the Congress and obtained the authorisation of the Constitutional Court through judgment C-630 of 2017⁸¹, which approved Legislative act 02 of 2017.⁸²

In 2018, President Duque, Alvaro Uribe's candidate, was elected with a campaign that used the same strategy as the one used for the plebiscite.⁸³ Therefore, in 2021 President Duque has one more year left in the government. In the following chapters, the design and implementation of the PA and the discourse established during these campaigns will

⁷⁵ D Dajer, 'Colombia: The Use of Social Media in Democratic Spaces: A Double-Edged Sword', in L Schirch (Ed.) *Social Media Impacts on Conflict and Democracy*, New York, Routledge, 2021, p. 61.

⁷⁶ S. Botero, 'El Plebiscito y los Desafíos Políticos de Consolidar la Paz Negociada en Colombia' (2017) 37(2) *Revista Ciencia Política Universidad Católica de Chile*, p.373.

⁷⁷ Constitutional Court of the Republic of Colombia (18 Julio 2016) Sentencia C-379-2016.

⁷⁸ 'Firma del Nuevo Acuerdo de Paz en el Teatro Colón' <<https://www.youtube.com/watch?v=NWIbNwBN20Y>> (accessed 8 May 2021).

⁷⁹ Colombia's Government and FARC-EP, *Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*, Bogotá, 24 November 2016.

⁸⁰ N. Cosoy, '¿En qué se diferencia el nuevo acuerdo de paz entre el gobierno de Colombia y las FARC del que fue rechazado en el plebiscito?', BBC-News, 13 November 2016 <<https://www.bbc.com/mundo/noticias-america-latina-37965382>> (accessed 8 May 2016).

⁸¹ Constitutional Court of the Republic of Colombia (11 October 2017) Sentencia C-630 - 2017.

⁸² Congress of Colombia, Legislative Act, December 02, 2017.

⁸³ B Kajsiu, p. 204.

be analysed in order to determine whether victims' and former combatants' rights are being respected, protected and fulfilled.

3. Transitional Justice

3.1 Historical Approach

The field of TJ emerged in the late 1980s in Argentina.⁸⁴ However, some authors trace TJ mechanisms to the ancient human civilizations, like John Elster.⁸⁵ Conversely, others like Teitel⁸⁶, Bell⁸⁷ and Arthur⁸⁸ relate TJ with 20th and 21st century issues.⁸⁹ In order to understand how the concept of TJ has evolved, Ruti Teitel presents a four-phase historical approach to the evolution of TJ.

The (i) first phase corresponds to the post-war period of the 20th century, that is, the time when the concern for justice was related to retributive notions. The moment that defines this phase is the Nuremberg trials, which aimed to ensure accountability for the horrendous crimes committed by the Nazi regime. Thus, the first phase's main contribution to TJ was establishing international judicialisation to impose punitive justice. The concept of the rule of law in universal terms has been fundamental in the subsequent TJ debates.⁹⁰

The (ii) second phase of the JT coincides with the political transitions from military dictatorships to liberal democracies in the most southern Latin American countries. In addition, this phase also includes the transitions from armed conflict to peace processes in Central American countries and the end of the apartheid regime in South Africa.⁹¹ At

⁸⁴P. Arthur, 'How "Transitions" reshaped human rights: A Conceptual History of Transitional Justice', (2009) 31(2) *Human Rights Quarterly*, p.321–67.

⁸⁵J Elster, *Closing the Books: Transitional Justice in Historical Perspective*, Cambridge, Cambridge University Press, 2004, p.3-26.

⁸⁶R Teitel, *Transitional Justice Genealogy*, Harvard Human Rights Journal, 2003, p.69–94.

R Teitel, *Globalizing Transitional Justice: Contemporary Essays*, New York, Oxford University Press, 2014.

⁸⁷C Bell, 'Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"' (2008) 3 *International Journal of Transitional Justice* 5–27.

⁸⁸P. Arthur 359.

⁸⁹S Aponte and JS Córdoba, p.10

⁹⁰Teitel, 2003, p. 76.

⁹¹P. Arthur 359.

this point, TJ was focused on domestic justice systems, whereas the first phase was focused on the international level. This phase is significant because it is when the tension between justice, reconciliation, truth and historical memory emerged.⁹² The truth commission in South Africa is an excellent example of a TJ mechanism that searched for a different type of justice in favour of reconciliation and the victims' right to truth.⁹³

The (iii) third phase of the JT went from being unusual to becoming a recurrent way of dealing with periods of political transition. As a result, the use of TJ became generally accepted. Accordingly, the most visible symbol of the normalisation of TJ was the creation of the International Criminal Court as a permanent tribunal with the task of bringing to justice those responsible for committing genocide, war crimes and crimes against humanity.⁹⁴ Thus, the notion of TJ became permanent and fused with international human rights law.⁹⁵

The fourth (iv) phase is characterised by the global normalisation of a discourse that differed from the one that prevailed in the last decades of the twentieth century concerning justice during times of political transition. This new universality meant that TJ was so normalised that it exceeded its temporary and exceptional nature, resulting in two models: a) the international law model and b) the bureaucratic model. Regarding the latter model, the work of the United Nations Security Council and, in general, the UN, through its guidelines on best practices in TJ, has played a major role.⁹⁶ Specifically, this led to the conception of a holistic model of TJ with pretensions of universality, that is, transitional formulas that should be applied indiscriminately in all contexts. Nevertheless, previous experiences show that no formula is applicable in every situation. Although the objective of TJ is to balance justice and peace, TJ formulas must be specific for each context.⁹⁷

⁹² Aponte and Córdoba, p.12.

⁹³ C. Bell, p.7.

⁹⁴ R. Teitel, 2003, p.90.

⁹⁵ R. Teitel, 2003, p.92.

⁹⁶ R. Teitel, 2014, xiv.

⁹⁷ R Shaw and L Waldorf, *Introduction: Localizing Transitional Justice: Interventions and Priorities after Mass Violence* (2010) 82 Stanford University Press, pp.323–4.

3.2 Concept of Transitional Justice

Analysing all the elements that were introduced into the TJ mechanisms in the four phases, TJ can be defined as follows:

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. In some cases, these transformations happen suddenly; in others, they may take place over many decades.⁹⁸

In this sense, to focus on the Colombian context the Constitutional Court established that TJ consists of those judicial and extra-judicial mechanisms that various societies in transitional contexts have designed to seek the following:

1. accountability for human rights violations committed by the previous political regime or by actors involved in a conflict;
2. to obtain as much truth as possible;
3. to achieve as much reconciliation as possible;
4. to apply restorative justice measures that comprehensively redress victims; and
5. to re-establish or strengthen democratic institutions.⁹⁹

4. Human Rights Standards - Victims and Perpetrators.

As explained in the previous sub-chapter, ‘TJ refers to the ways countries emerging from periods of conflict and repression address large-scale or systematic human rights violations that are so numerous and so serious that the normal justice system is unable to provide an adequate response’¹⁰⁰. In other words, TJ has two objectives that, in appearance, contradict themselves. The first is achieving reconciliation, a lasting peace,

⁹⁸ International Center for Transitional Justice’ What is Transitional Justice?’ [Factsheet] (2009) <<https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>> (accessed 12 March 2021).

⁹⁹ Constitutional Court of the Republic of Colombia (18 May 2006) Sentencia C-370-2006.

¹⁰⁰ ‘International Center for Transitional Justice’, What is Transitional Justice?’ <<https://www.ictj.org/about/transitional-justice>> (accessed 21 April 2021).

democracy and the rule of law, while the second addresses the violations that occurred during the conflict. As the evolution of TJ shows, in some cases the end of the conflict was achieved by military victory. For example, in the Nuremberg trials the accountability of the perpetrators was the primary goal¹⁰¹. In other cases, complete amnesty was given so that the atrocities would end, at the expense of accountability and victims' rights.¹⁰²

International law proscribed blank amnesty while agreeing that gross human rights violations need to be addressed and the victims and their families taken into account while allowing societies to transition to peace and democracy. Therefore, this chapter will analyse the scope of victims' rights in international law at the international and regional levels. Once victims' rights are established, this thesis will study ex-combatants' rights, a topic that has been developed under international security parameters rather than under a human rights approach.

4.1. Victims' Human Rights

4.1.1. Universal Human Rights System

The Universal Human Rights System has a variety of resources to analyse victims' rights in TJ contexts. The United Nations (UN) system incorporates legally binding treaties, soft law instruments and special procedures statements. For this analysis, the focus will be on the rights: access to justice, truth and reparation.

- Right to Justice

To understand the nature and scope of the right of access to justice in times of transition, one must first look at the applicability in times of normality and then analyse it under the TJ basis. Starting with the International Covenant on Civil and Political Rights (ICCPR) Article 2(3), there is a right to an effective remedy, which means that every person has the right to use the judicial system when a human right has been violated.¹⁰³ The former

¹⁰¹ R. Teitel, 2003, p.76.

¹⁰² P. Arthur, 359.

¹⁰³International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 2(3).

UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, holds that:

states have a duty to investigate and prosecute violations of human rights and humanitarian law that constitute crimes under national or international law, in particular genocide, war crimes, crimes against humanity or other gross violations of human rights, including summary or extrajudicial killings, torture and other forms of cruel, inhuman or degrading treatment, slavery, enforced disappearance, rape and other forms of sexual violence as well as other serious violations of international humanitarian law. Failure to investigate and prosecute such violations gives rise to a separate breach of human rights treaty law.¹⁰⁴

The ICCPR article 2(3) means that, in the case of a gross human right violation, a war crime, or a crime against humanity occurs, the state must not only allow access to justice without barriers but also has an obligation to investigate, prosecute and punish those responsible for these atrocities. In addition, to the ICCPR, other legally binding treaties also include the duty mentioned above,¹⁰⁵ the Convention on the Prevention and Punishment of the Crime of Genocide (Articles, 4, 5 and 6),¹⁰⁶ the International Convention for the Protection of All Persons from Enforced Disappearance (Articles 6 and 7)¹⁰⁷ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 4 and 12).¹⁰⁸

In addition to the legally binding treaties, there are soft law instruments that broaden the scope of the right to justice. For example, the most recent UN Approach to TJ guidelines state that TJ processes must include

¹⁰⁴ UNGA, Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, A/HRC/27/56, 2014, para 27.

¹⁰⁵ Aponte and Córdoba, p. 32–5.

¹⁰⁶ Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948 entered into force 12 January 1951) United Nations, Treaty Series, vol. 78.

¹⁰⁷ International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006 entered into force 23 December 2010).

¹⁰⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984 entered into force 26 June 1987).

prosecution initiatives to ensure that those responsible for committing crimes, including serious violations of international humanitarian law and gross violations of international human rights law, are tried in accordance with international standards of fair trial and, where appropriate, punished. To ensure the credibility and legitimacy of prosecution initiatives, they must be conducted in a non-discriminatory and objective manner, regardless of who the alleged perpetrators may be. States have the primary responsibility to exercise jurisdiction over these crimes.¹⁰⁹

Now that the scope of the obligation to investigate, prosecute and punish gross human rights violations is clear, it is crucial to understand that victim's role in TJ is not passive; victims are not merely spectators or 'recipients of benefits'.¹¹⁰ Victims must be protagonists in the design of TJ mechanisms and have an active role in the trials and non-judicial mechanisms. In this regard, the former UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan Mendez, explains that 'the requirement of victim participation has become a well-established norm, perhaps not as a *sine qua non* obligation on the part of states that embark on TJ exercises, but certainly as a measuring stick for their effectiveness and as predictors of their chances of success'.¹¹¹

- Right to truth

The UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, in principle 2, declares 'the inalienable right to truth about past events of heinous crimes and the circumstances and reasons that led to massive or systematic violations'¹¹². Moreover, principle number 4 recognizes that, regardless of the outcome of any legal processes, victims and their families have an inalienable right to

¹⁰⁹UNSG 'Guidance Note of the Secretary-General' United Nations Approach to Transitional Justice. 2010 https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf

¹¹⁰J.E. Méndez, 'Victims as Protagonists in Transitional Justice' (2016) 10(1) *International Journal of Transitional Justice*, p.1–5.

¹¹¹ Ibid, p.1–5.

¹¹² UNCHR, 'UN. Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity' (8 February 2005) E/CN.4/2005/102/Add.1.

know the truth about the conditions in which violations occurred as well as the victims' fate in the event of death or disappearance.¹¹³

Since the right to the truth was initially related to cases of enforced disappearance, it focused on knowing the fate and whereabouts of missing persons. However, international law has evolved concerning the right to truth to cover all situations of gross human rights violations, and the material scope of those rights have also expanded to include other elements. These include the right to seek and obtain information on the following: the causes giving rise to the victim's unjust treatment; the causes and conditions relating to gross violations of international human rights law and grave breaches of international humanitarian law; the progress and results of the investigation; the circumstances and reasons why the criminal acts in international law and gross violations of human rights were perpetrated; the circumstances in which the violations occurred; in the case of death, disappearance or enforced disappearance, the fate and whereabouts of the victims; and the identity of the perpetrators.¹¹⁴

- Right to Reparation

Restitution methods aim to return the victim to the circumstances the victim was in before the violation, which is nearly impossible in the case of major infractions. Restitution may entail a return to one's home, restoration of liberty or the return of property. Additionally, compensation should be paid for harm that can be measured economically, and it should be commensurate to the severity of the breaches and rehabilitation, which includes assisting medically and psychologically as well as legal counselling and social services.¹¹⁵ This particular right can be found in the ICCPR in Article 2(3), which refers to the right

¹¹³ Ibid.

¹¹⁴ UNCHR, 'Report of The Office of The United Nations High Commissioner for Human Rights', 'Promotion and Protection of Human Rights Study on the Right to the Truth' 8 February 2006, E/CN.4/2006/91, para 38.

¹¹⁵ C. Evans, 'Human Rights Jurisprudence on Reparations, International and Regional' in *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge, Cambridge University Press, 2012, pp.44–5.

to remedy. Meanwhile, the Human Rights Committee in the General Comment 31¹¹⁶ links this right to an effective remedy to reparation.

Another key element of the right to reparation can be found in the UN Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, particularly in principle 32, which first ensures that victims have the right to be repaired by criminal, civil, administrative or disciplinary proceedings. In addition, reparation can also be provided through ‘programmes based upon legislative or administrative measures and funded by national or international sources, targeting individuals and communities’.¹¹⁷

4.1.2 Inter-American Human Rights System

The Inter American Human Rights System (IAHRS) has developed several international standards regarding victims’ rights in the context of TJ. In particular, the Inter-American Court of Human Rights (IACtHR) has analysed the scope of the right of access to justice, the right to truth and reparation.

- Right of access to justice

In the IAHRS, the right to justice in the context of TJ derives from the right to access to justice and judicial protection under Articles 8(1)¹¹⁸ and 25(1)¹¹⁹ of the American Convention on Human Rights (ACHR)¹²⁰ and its relation to Article 1(1). This right

¹¹⁶ Human Rights Committee ‘General comment No. 31’ CCPR/C/21/Rev.1/Add. 1326 May 2004.

¹¹⁷ UNCHR, ‘UN. Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity’ (8 February 2005) E/CN.4/2005/102/Add.1, principle 32

¹¹⁸ **Article 8. Right to a Fair Trial** (1). Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹¹⁹ **Article 25. Right to Judicial Protection** (1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹²⁰ OAS, *American Convention on Human Rights, ‘Pact of San Jose’*, Costa Rica, 22 November 1969.

implies that the facts must be investigated and that the responsible party or parties are identified, prosecuted and punished.¹²¹ The IACtHR jurisprudence focuses on the right to justice, and eradicating impunity has been fundamental for JT in the hemisphere. According to the Court, this obligation must be fulfilled objectively and requires a serious and reasonable effort, not merely a formal one. ‘Nevertheless, at the same time does not require specific results. In this sense, it is an obligation of means and not of result’.¹²²

As mentioned above, the jurisprudence of the IACtHR aimed to eradicate impunity after periods of systematic and gross human rights violations. When the Court started building the scope of the international obligation to investigate, prosecute and punish serious human rights violations and war crimes, it encountered amnesty laws that sought to exonerate all perpetrators.¹²³ The first landmark case to be decided by the Court in this matter was *Barrios Altos vs. Peru*, in 2001, where the IACtHR established that:

[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.¹²⁴

In the cases that followed, the Court established that the obligation to investigate, prosecute, and punish applies not only in TJ scenarios but also in regular times.¹²⁵ Moreover, the Court established rigorous standards considering that the TJ cases involved a blank amnesty or a complete inefficacy of the judicial system that resulted in impunity.

¹²¹F. Sersale, ‘Justicia Transicional en las Américas. El Impacto del Sistema Interamericano’ (2013) 57 *Instituto Interamericano de Derechos Humanos*, p.126.

¹²²F. Sersale, p.126 and I/A Court H.R., *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, par. 184.

¹²³A. Micus, *The Inter-American Human Rights System as a Safeguard for Justice in National Transitions*, Boston, BRILL, 2015.

¹²⁴I/A Court H.R., *Case of Barrios Altos v. Peru*. Merits. Judgment March 14, 2001. Series C No. 75.

¹²⁵Aponte and Córdoba, p.40.

In *Gelman vs. Uruguay*,¹²⁶ the Court dealt with a new dilemma: two referendums adopted the amnesty law after the dictatorship. Nevertheless, the Court said that even though the law was voted on two occasions by the majority of the Uruguayan people, the amnesty still violated Articles 8(1) and 25 (1), in relation to Article 2 of the ACHR, which establishes that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.¹²⁷

Another IA Court landmark case was the *Massacres of El Mozote and surrounding areas vs. El Salvador*,¹²⁸ where amnesty was given after an armed conflict. The Court reaffirmed its case law, concluding that this norm was contrary to the ACHR. However, the Court used IHL in the judgment analysis by referring to other international instruments, such as the Protocol II Additional to the Geneva Conventions,¹²⁹ Article 6(5), which addresses the possibility of states to grant the broadest possible amnesty to persons who have taken part in armed conflict upon the end of hostilities. In other words, this case did not entirely rule out the possibility of using amnesty to end an armed conflict and move toward a transition to a more just and lasting peace. Nevertheless, it did make necessary clarifications and delimitations regarding the use of such article according to the Court, implying that such amnesty could not be applied to crime wars and crimes against humanity.

¹²⁶I/A Court H.R., *Case Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011 Series C No. 221.

¹²⁷ I/A Court H.R., *Case Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011 Series C No. 221.

¹²⁸I/A Court H.R., *Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs*. Judgment of October 25, 2012. Series C No. 252.

¹²⁹ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609.

Nonetheless, in addition to the content of the judgment itself, it is essential to mention the concurring opinion of Judge Diego García Sayán, which was seconded by other judges, which stated that because the case occurred during an armed conflict, the tension between peace and justice had to be addressed. Sayán explained that while the obligation to investigate, prosecute and punish is important, it is not absolute within the Inter-American legal framework:

A negotiated solution to the internal armed conflict raises several issues regarding the weighing of these rights, within the legitimate discussion on the need to conclude the conflict and put an end to future serious human rights violations'¹³⁰. Hence, 'Peace as a product of a negotiation is offered as a morally and politically superior alternative to peace as a result of the annihilation of the opponent. Therefore, international human rights law should consider that peace is a right and that the State must achieve it'.¹³¹

Sayán also argued that in order to balance the lack of application of proportionate punishments with the gravity of the violations, the transitional model should guarantee to the fullest two fundamental victims' rights: truth and reparation. This means that the state can fulfil its international obligation to ensure the right of access to justice if it investigates and establishes individual responsibility for the gross human rights violations, is able to provide truth to the families of victims in both the judicial and historical spheres and repairs victims in a comprehensive way.

- Right to Truth

Accordingly, it can be said that the right to truth is subsumed by the victim, that is, his or her family's right to obtain truth from competent state bodies. This includes the clarification of acts that violate rights and corresponding responsibilities through the

¹³⁰ I/A Court H.R., Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, opinion of García Sayán, para 31, p.8.

¹³¹ I/A Court H.R., Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, opinion of García Sayán, para 31, p.8.

investigation and prosecution provided by conventional Articles 8 and 25.¹³² However, experts like Melanie Klinkner, Howard Davis and the Inter American Commission on Human Rights (IACHR) suggest that the right to know should be a right of its own. In other words, the suffering inherent in not knowing and its impact on achieving effective social reconstruction should be enough to ground an individual right.¹³³ In fact, the in its merit report for the case *Barrios Altos vs. Peru*, the IACHR linked the right to truth to the right of freedom of expression. The IACHR asked the Court to acknowledge that the essence of the right to truth was found in Article 13's right to 'seek' and 'receive' public information. In response, the Court maintained its position while not dismissing the possibility of Article 13's applicability to the right to truth.¹³⁴

The bodies that compose the IASHR have recognised that the right to the truth has two aspects: an individual dimension related to the direct victim and his or her relatives as well as a public one, as the whole of society has the right to know the truth of what happened.¹³⁵ However, this thesis will only focus on the individual aspect of the right to truth for victims.

Both the Commission and the Court approached the right to truth for the first time in light of the reality of enforced disappearance. This is a scenario that has occurred systematically throughout the region and infringes various rights on a continuous and permanent basis¹³⁶. Responding to this situation, the IACHR 'underscored the right of the families of victims of forced disappearance to know the truth of what happened to their

¹³² Sersale, p.132 and I/A Court H.R., Case of *Barrios Altos v. Peru*. Merits. Judgment March 14, 2001. Series C No. 75, para. 90.

¹³³ M. Klinkner and H. Davis, *The Right to the Truth in International Law: Victims' Rights in Human Rights and International Criminal Law*, London, Routledge, 2019, pp.118–22.

¹³⁴ M.Klinkner and H. Davis, pp.118–22.

¹³⁵ IACHR, Annual Report of the Inter-American Commission on Human Rights 1985-1986, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, September 26, 1986, Chapter V.

¹³⁶ Inter alia, I/A Court H.R., Case of *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paras 155-157; Case of the *Río Negro Massacres v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 4, 2012 Series C No. 250, para.112.

loved ones as well as the state's obligation to provide a simple, rapid and efficient form of recourse that enables it to comply with that obligation'.¹³⁷

As a result, the right to the truth first emerged as a right of families of victims of enforced disappearance. Therefore, the state is obligated to take all necessary steps to determine what occurred and locate and identify the victims. Furthermore, according to the IACtHR finding the final locations of the disappeared victim alleviates the grief and suffering caused by family members' concern about the fate of their missing relative¹³⁸. Obtaining the body of their deceased family members is essential to their closest relatives, as it allows them to bury the victim according to their traditions while also bringing some closure to the years-long grieving period.¹³⁹

Besides enforced disappearance, the right to truth in Articles 8 and 25 of the ACHR¹⁴⁰ entails a judicial process and individual responsibilities as well as structural truth.¹⁴¹ In this case, the fundamental emphasis on the effectiveness of the proceedings is in alignment with the need to conduct due diligence investigations. According to this obligation, the entity investigating a human rights violation shall use all available means to carry out all acts and inquiries required to provide truth to the victims within a reasonable time frame. Given the gravity of the offences committed and the nature of the rights violated, this obligation takes on further significance. Consequently, all essential

¹³⁷ Cf. IACHR, Report No. 10/95, Case 10.580, Manuel Stalin Bolaños, Ecuador, September 12, 1995, para. 45 AND IACHR, *The right to Truth in the Americas*, Washington D.C., OAS/Ser.L/V/II.152, 2014, para 10, p.9.

¹³⁸ Inter alia, I/A Court H.R., Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 191, para. 155; Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 25, 2010. Series C No. 212, para. 222.

¹³⁹ Inter alia, I/A Court H.R., Case of Trujillo Oroza v. Bolivia. Merits. Judgment of January 26, 2000. Series C No. 64, para. 114; Case of González Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 270; Case of Contreras et al. v. El Salvador. Merits, Reparations and Costs. Judgment of August 31, 2011. Series C No. 232, para. 123.

¹⁴⁰ OAS, *American Convention on Human Rights*, 'Pact of San Jose', Costa Rica, 22 November 1969, arts. 8 and 25.

¹⁴¹ M. Klinkner and H. Davis, p.10.

steps must be taken to bring to light the systematic patterns that permitted major human rights violations to occur.¹⁴²

Nevertheless, judicial truth is not the only mechanism that satisfies the right under study. Particularly in TJ contexts, due to the systematicity and number of human rights violations, the IAHR bodies have recognised the importance of truth commissions.¹⁴³ One of the objectives of truth commissions is to obtain all the relevant information to fulfil their mandate. Thus, they must have full access to the archives covering the period to be investigated, including ‘access to ‘secret’ or ‘confidential’ information about ‘the human rights violations committed during that time. In principle, access to that information must be governed by the same conditions that ensure access by members of the judiciary investigating human rights violations’.¹⁴⁴ However, the mere establishment of a truth commission is not a substitute for the obligation to provide truth within the judicial system.¹⁴⁵

Finally, the IACtHR and the IACHR have recognised the right to truth as a form of reparation, in the sense that ‘knowledge of the circumstances of manner, time and place, motives and the identification of the perpetrators are fundamental to provide full reparations to victims of human rights violations’.¹⁴⁶ For that reason, the Court also considers other types of reparations: assigning the name of the victim to a street or school, the construction of monuments,¹⁴⁷ the publication of the ruling, public acts of acknowledgement of responsibility and apologies, the creation of foundations or

¹⁴² I/A Court H.R., Case of the Rochela Massacre v. Colombia. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of January 28, 2008. Series C No. 175.

¹⁴³ F. Sersale, p. 134

¹⁴⁴ IACHR, Application before the Inter-American Court of Human Rights in Case 12.590, José Miguel Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala, February 18, 2011, para. 464.

¹⁴⁵ I/A Court H.R., Case of Vásquez Durand et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 332. Para 114-116

¹⁴⁶ IACHR, *The right to Truth in the Americas*, Washington D.C, OAS/Ser.L/V/II.152, 2014, p.59.

¹⁴⁷ I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77 and F. Sersale, p 134

schools¹⁴⁸ and locating the bodies of individuals who have disappeared and returning them to their families.

- Right to Reparation

As previously stated, the right to truth is recognised as one of the reparation remedies mandated by the IACtHR in its judgements within the scope of ACHR Article 63.1. In addition, in the case *Rochela Massacre v. Colombia* the Court noted that the state has the unavoidable duty to make direct and fundamental reparation for human rights violations for which it is responsible, according to the standards of attribution of international responsibility and reparation established in the jurisprudence of the Court.¹⁴⁹ Moreover, the IACHR has acknowledged that states might use various reparations measures, including judicial and non-judicial mechanisms,¹⁵⁰ especially in TJ contexts where the number of victims exceeds the capacity of the judicial power. However, victims should have always the ability to seek judicial reparation without barriers.¹⁵¹

Finally, the IACtHR has been emphatic in affirming that reparation for serious human rights violations cannot consist merely of payment as compensation.¹⁵² In the same vein, it argues that, within the framework of the Convention, adequate reparations require measures of rehabilitation, satisfaction and non-repetition guarantees.¹⁵³

4.1.3. International Humanitarian Law

¹⁴⁸ I/A Court H.R., Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C No. 77.

¹⁴⁹ Inter alia, I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Reparations and Costs (Art. 63.1 American Convention on Human Rights). Judgment of July 21, 1989. Series C No. 7, para. 25.

¹⁵⁰ IACHR, Principal Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131, Doc. 1, February 19, 2008.

¹⁵¹ I/A Court H.R., Case of García Lucero et al. v. Chile. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267.

¹⁵² I/A Court H.R., Case of the Mapiripán Massacre v. Colombia. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134.

¹⁵³ I/A Court H.R., Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148.

As stated earlier, victims' rights to justice, truth and reparation are fundamentally interrelated and central to transitional contexts, such as the Colombian case. As a result, the IHL in its four conventions (Arts. 49,¹⁵⁴ 50,¹⁵⁵ 129¹⁵⁶ and 146,¹⁵⁷ correspondingly) and additional protocol I Article 8¹⁵⁸ includes relevant provisions regarding TJ, essentially stating that states are obliged to impose effective penal sanctions on those responsible for IHL breaches in international conflicts. However, under customary IHL this also applies to non-international conflicts.¹⁵⁹

Nevertheless, the most relevant article applicable to the Colombian context is Article 6(5) of the Additional Protocol II to the Geneva Convention, which establishes that 'at the end of hostilities the authorities in power shall grant the broadest possible amnesty to persons who have participated in the armed conflict',¹⁶⁰ as mentioned above. However, the customary IHL rule 159 excludes amnesty to 'any person suspected of, accused of or sentenced for war crimes.'¹⁶¹ The rule further states that 'In addition to war crimes, amnesties cannot apply to genocide, crimes against humanity, torture and other gross violations of international human rights law'.¹⁶²

4.1.4 International Criminal Law

¹⁵⁴ICRC, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (I Geneva Convention), (adopted 12 August 1949, entered into force 21 October 1950) 5 UNTS 31.

¹⁵⁵ICRC, Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (II Geneva Convention), adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85.

¹⁵⁶ICRC, Geneva Convention Relative to the Treatment of Prisoners of War (III Geneva Convention), (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135.

¹⁵⁷ICRC, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention), (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287

¹⁵⁸ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609.

¹⁵⁹ICRC Advisory Service on International Humanitarian Law, 'Amnesties and International Humanitarian Law: Purpose and Scope', Cambridge, Cambridge University Press, 2019, 101 International Review of the Red Cross 357, p.359.

¹⁶⁰ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609.

¹⁶¹ICRC, Customary IHL Database, Rule 159 of the ICRC customary IHL <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule159>

¹⁶²ICRC (2019) 361.

At first glance, it can be said that the Rome Statute,¹⁶³ due to its nature, does not establish an obligation for states to protect human rights. On the contrary, it is an International Criminal Law (ICL) instrument that contains a list of crimes, criminal responsibility attribution principles and a tribunal with international jurisdiction to prosecute and sanction individuals¹⁶⁴. Nevertheless, there are two elements that indicate that this obligation exists within the ICL framework: (i) the purpose of the ICL and, (ii) concerning the international criminal court, the principle of complementarity.¹⁶⁵

Regarding the purpose of the ICL, the goal of ending impunity is evident in the preamble:

Affirming that most serious crimes of concern of the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation¹⁶⁶. This preamble means that the state parties to the Rome Statute have the duty to investigate, prosecute and punish domestically.¹⁶⁷

Moreover, the ICC jurisdiction operates under the complementary principle, which means that under Rome Statute Article 17 regarding admissibility issues, the ICC only has jurisdiction when a state party is incapable or unwilling to investigate, prosecute and sanction war crimes and crimes against humanity. In other words, the state must diligently ensure justice for these serious crimes, with the consequence of initiating the jurisdiction of the ICC if it fails to do so.¹⁶⁸

4.1.5. Victims' Rights Overview

¹⁶³Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002).

¹⁶⁴ J. Acosta and A.M. Idárraga, 'Alcance del deber de investigar, juzgar y sancionar en transiciones de conflicto armado', *Revista Derecho del Estado*, 2020, Vol.45, pp. 55–99.

¹⁶⁵ J. Acosta and A.M. Idárraga, p.65.

¹⁶⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002).

¹⁶⁷ Aponte and Córdoba 48.

¹⁶⁸ J. Acosta and A.M. Idárraga 70.

It is clear that ensuring victims' rights after massive and systematic human rights violations is fundamental for the success of TJ mechanisms. Moreover, international standards have been established through several legal frameworks, both universal and regional. It is clear that victims' rights to justice, truth and reparation are interrelated and part of the obligation to investigate, prosecute and punish international war crimes and crimes against humanity. Therefore, blanket amnesty and impunity is not an option in any circumstance.

However, prosecuting all the conflict actors individually would exceed the capacity of any state, and it is likely that no PA would have been signed in the first place because it would imply surrender.¹⁶⁹ Moreover, as Judge Sayán implied, it is within the scope of the human rights framework to achieve peace via a PA rather than as a result of the annihilation of the opponent.¹⁷⁰

In sum, to fulfil victims' rights in TJ scenarios, justice and reconciliation must be approached from a proportionality perspective. In other words, the standard rights to comprehensive reparation, truth, investigation and individualising those responsible for grave human rights violations in a criminal court must be fulfilled entirely. However, it might be possible to grant some criminal benefits on the condition that the armed conflict is stopped.

4.2 Human Rights Standards for Ex-Combatants

Once it is understood that the scope of the right to justice and the obligation to investigate, prosecute and punish in JT contexts is in conflict with achieving peace and reconciliation and consequently ending the constant human rights violations resulting from armed

¹⁶⁹ R Uprimny, LM Sánchez and NC Sánchez, *Justicia para la Paz*, Bogotá, Colección Dejusticia, 2013, p.122.

¹⁷⁰ I/A Court H.R., Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, opinion of García Sayán, para 31, p.8

conflicts,¹⁷¹ it is important to assess ex-combatants' human rights. This is because ex-combatants, in most cases, are the perpetrators during an armed conflict. Moreover, as was analysed above, blank amnesty is impossible when establishing TJ mechanisms, but so is incarcerating whole armies.¹⁷² Therefore, this sub-chapter will analyse the rights that are particularly relevant for ex-combatants in post-conflict contexts.

The UN Observer Group in Central America in 1989 introduced a concept Called Disarmament, Demobilization, and Reintegration (DDR)¹⁷³ for armed groups. Nevertheless, DDR was not initially conceived as a human rights matter but rather as an international security and peacebuilding one¹⁷⁴. Human rights prioritises justice for victims, while DDR was perceived as 'as a short term and mainly technical process involving the counting of weapons and the establishment of demobilisation camps'.¹⁷⁵ However, in the year 2006 the UN adopted the Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)¹⁷⁶, which is a rights approach to DDR.¹⁷⁷ Subsequently, in 2009 the Inter-Agency Working Group updated the IDDRS and then after performing a comprehensive review presented the revised UN approach to DDR in 2019.¹⁷⁸ However, before analysing the interrelation between DDR and human rights, it is essential to understand what each individual DDR stage entails.

- 'Disarmament 'is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and

¹⁷¹ I/A Court H.R., Case of the Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, opinion of García Sayán, para 31, p.8

¹⁷² S.J. Grilc, 'The Social Reintegration of ex-Combatants in Postconflict Societies – A Discussion About a Possible Harmonisation of Transitional Justice and Integrated DDR Programs' (2012) 3 *International Journal on Rule of Law, Transitional Justice and Human Rights* 111–26. (Accessed May 24 2021).

¹⁷³ Ibid, p.112.

¹⁷⁴ L. Waldorf, 'Getting the Gunpowder Out of Their Heads: The Limits of Rights-Based DDR', *Human Rights Quarterly*, 2013, Vol 35(3), pp. 701–719.

¹⁷⁵ S.J. Grilc 112.

¹⁷⁶ S.J. Grilc, p. 113.

¹⁷⁷ L. Waldorf, p.701–19.

¹⁷⁸ Inter-Agency Working Group on DDR, 'The Integrated DDR Standards' (2019) <<https://www.unddr.org/the-iddrs/>> (accessed 14 June 2021).

often of the civilian population as well. Disarmament also includes the development of responsible arms management programs.’¹⁷⁹

- ‘Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. It involves two stages. The first can include the processing of individual combatants in temporary centres to the massing troops in camps designated for this purpose. The second stage is called reinsertion, which consists of offering assistance to ex-combatants during demobilisation but prior to the longer-term process of reintegration. Reinsertion is a form of transitional assistance to help cover the basic needs of ex-combatants and their families and can include transitional safety allowances, food, clothes, shelter, medical services, short-term education, training, employment and tools. Reinsertion is short-term materials and/or financial assistance to meet immediate needs and can last up to one year’.¹⁸⁰
- ‘Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time frame, primarily occurring in communities at the local level. It is part of the general development of a country and a national responsibility and often necessitates long-term external assistance. Recognising new developments in the reintegration of ex-combatants and associated groups since the release of the 2005 Note, the Third Report of the Secretary-General on DDR (2011) included revised policy and guidance. It observed that, ‘in most countries, economic aspects, while central, are not sufficient for the sustainable reintegration of ex-combatants. Serious consideration of the social and political aspects of reintegration ... is [also] crucial for the sustainability and success of reintegration programs’, including interventions such as psychosocial support, mental health counselling and clinical treatment and medical health support, as well as reconciliation, access to justice/ transitional justice and participation in political processes. Additionally, it emphasised that while ‘reintegration programs

¹⁷⁹ Inter-Agency Working Group on DDR, ‘The Integrated DDR Standards’, Concepts, Policy and Strategy of the IDDRS ‘*The UN Approach to DDR*’, Module.2.10 (2019) 5–6 <<https://www.unddr.org/wp-content/uploads/2021/02/IDDRS-2.10-The-UN-Approach-To-DDR.pdf>> (accessed 14 June 2021).

¹⁸⁰ S.J. Grilc, p. 113.

supported by the United Nations are time-bound by nature ... the reintegration of ex-combatants and associated groups is a long-term process that takes place at the individual, community, national and regional levels, and is dependent upon wider recovery and development'.¹⁸¹

When analysing the rights approach to DDR published by the UN, it is evident that it was still 'guided by several policies and agendas that frame the UN's work on peace, security and development'¹⁸² rather than adopting a human rights lens. Moreover, these soft law norms¹⁸³ and most studies have established the link between DDR and human rights from the victims' rights and justice vs. peace perspective, which has already been analysed in depth. However, the IDDRS, when determining the link between DDR and TJ mechanisms, incorporates the following principles, which are relevant for former combatants and victims' rights:

'Do no harm: A first step in creating a constructive relationship between DDR and TJ is to understand how TJ and DDR can interact in ways that, at a minimum, do not obstruct their respective objectives of accountability and reconciliation and maintenance of peace and security'.¹⁸⁴

'Balanced approaches: While the imperative to maintain peace and security often demands a specific focus on ex-combatants in the short term, long-term strategies should aim to provide reintegration opportunities to all war-affected populations, including victims'.¹⁸⁵

'Respect for international human rights law: DDR programmes shall respect and promote international human rights law. This includes supporting ways of

¹⁸¹ Inter-Agency Working Group on DDR, 'The Integrated DDR Standards', Concepts, Policy and Strategy of the IDDRS *'The UN Approach to DDR'*, Module.2.10 (2019) 6 <<https://www.unddr.org/wp-content/uploads/2021/02/IDDRS-2.10-The-UN-Approach-To-DDR.pdf>> (accessed 14 June 2021).

¹⁸² Ibid, p. 7.

¹⁸³ Inter-Agency Working Group on DDR, 'The Integrated DDR Standards', Linkages, *'DDR and Transitional Justice'*, Module.6.20, (2019) 5 <<https://www.unddr.org/wp-content/uploads/2021/02/IDDRS-6.20-DDR-and-Transitional-Justice.pdf>> (accessed 14 June 2021).

¹⁸⁴ Inter-Agency Working Group on DDR, 'The Integrated DDR Standards', Linkages, *'DDR and Transitional Justice'*, Module.6.20 (2019) p. 7 <<https://www.unddr.org/wp-content/uploads/2021/02/IDDRS-6.20-DDR-and-Transitional-Justice.pdf>> accessed 14 June 2021.

¹⁸⁵ Ibid, p.7.

preventing reprisals or discrimination against or stigmatisation of those who participate in DDR programmes as well as protecting the rights of the communities that are asked to receive ex-combatants and members of the society at large. DDR processes shall provide for a commitment to gender-, age- and disability-specific principles and comply with principles of non-discrimination’.

¹⁸⁶

‘Respect for international humanitarian law: DDR programmes shall respect and promote international humanitarian law, including the humane treatment of persons no longer actively engaged in combat. United Nations peacekeeping forces, including military members involved in administrative DDR programmes, are also subject to the fundamental principles and rules of international humanitarian law, and in cases of violation, they are subject to prosecution in their national courts’.¹⁸⁷

Likewise, according to the UN approach human rights are relevant standards for DDR participants when developing a DDR process. Nevertheless, ‘the following rights ‘are particularly relevant, as they often arise within the DDR context, especially with regard to the treatment of persons located in DDR facilities (including but not limited to encampments)’.¹⁸⁸

- ‘Right to life (Article 3 of UDHR; Article 6 of ICCPR; Article 6 of CRC; Article 10 of CRPD);
- ‘Right to freedom from torture or other cruel, inhuman or degrading treatment or punishment (Article 5 of UDHR; Article 7 of ICCPR; Article 2 of CAT; Article 37(a) of CRC; Article 15 of CRPD)’;

¹⁸⁶ Ibid, p.7.

¹⁸⁷ Ibid, p.7.

¹⁸⁸ Inter-Agency Working Group on DDR, ‘The Integrated DDR Standards’, Concepts, Policy and Strategy of the IDDRS, ‘*The Legal Framework for UN DDR*’, Module.2.11 (2019) 9 <<https://www.unddr.org/wp-content/uploads/2021/02/IDDRS-2.11-The-Legal-Framework-For-UNDDR.pdf>> (accessed 14 June 2021).

- ‘Right to liberty and security of person, which includes the prohibition of arbitrary arrest or detention (Article 9 of UDHR; Article 9(1) of ICCPR; Article 37 of CRC)’;
- ‘Right to a fair trial (article 10 of UDHR; article 9 of ICCPR; article 40(2)(iii) of CRC)’;
- ‘Right to be free from discrimination (Article 2 of UDHR; Articles 2 and 24 of ICCPR; Article 2 of CRC; Article 2 of CEDAW; Article 5 of CRPD)’; and
- ‘Rights of the child, including considering the best interests of the child (Article 3 of CRC; Article 7(2) of CRPD) and protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (Article 19 of CRC)’.

The IDDRS further recognises that special protections apply to vulnerable groups, women, children and persons with disabilities.¹⁸⁹

Another group of rights that is entirely related to the reintegration component is the ESCR. Although the IDDRS deals with reintegration as a process to support conflict prevention and prevent re-recruitment, it also realises the importance of fulfilling DDR participants’ ESCR in post-conflict contexts.¹⁹⁰

In the following chapters, the national TJ and DDR mechanisms currently operating in Colombia will be analysed, with the objective of determining whether victims’ and ex-combatants’ rights are being violated and if the state is fulfilling its international obligations. This analysis will be done in two different stages: first by questioning if the design of the mechanisms itself endangers the scope of the rights that were just determined, and second, by evaluating the implementation and the impact the mechanisms with respect to victims and ex-combatants.

5. Peace Agreement and Victims Public Policy

¹⁸⁹Ibid, p.9.

¹⁹⁰Ibid, p.9.

As explained above, the PA is not Colombia's first TJ experience. However, it is the first peace deal with the former FARC guerrillas, who were reluctant to participate previously and abruptly ended the peace negotiations in 2002. Nonetheless, prior to the PA law 1448 of 2011 established an administrative reparation route for victims and land restitution for the armed conflict. Currently the PA and the norms that develop it and law 1448 are complementary. The PA never aimed to replace 1448 but rather to integrate it into the PA TJ strategy.

5.1 Law on Victims Reparation and Land Restitution

Before the signing of the PA, the Colombian Congress published law 1448 of 2011,¹⁹¹ an ambitious law that dictates the measures of attention, assistance and comprehensive reparation to victims of internal armed conflict¹⁹². To achieve these objectives, the law created the Unit for the Comprehensive Attention and Reparation of Victims (UARIV), which is the national entity charged with executing victims public policy¹⁹³.

Law 1448 also created, the Single Registry of Victims (RUV), an essential tool of the Colombian state to individualise each victim with their corresponding victimising facts¹⁹⁴. Each victim in the RUV has the right to all the measures of the law; however, in Article 28, the law highlights victims' rights, although it does not provide an exhaustive list. These include the following:

- '1. Right to truth, justice and reparation.'
- '2. The right to take part in institutional and community dialogue.'
- '3. The right to benefit from affirmative actions taken by the state to protect and guarantee the right to life in conditions of dignity.'
- '4. The right to seek and receive humanitarian attention.'

¹⁹¹ Congress of Colombia. Law 1448 of 2011.

¹⁹² 'Balance ley 1448 del 2011' [online video] <<https://www.youtube.com/watch?v=PKnrzzhvsII>> (accessed 25 June 2021).

¹⁹³ Congress of Colombia, Law 1448 of 2011, art 153.

¹⁹⁴ Congress of Colombia, Law 1448 of 2011, art 154.

- ‘5. The right to participate in the formulation, implementation and monitoring of public policy on prevention, care and integral reparation.’
- ‘6. The right to a differential approach to the public policy dealt with in this law.
- ‘7. The right to family reunification when the family nucleus has been divided because of the type of victimisation.’
- ‘8. The right to return to one’s place of origin or to relocate under conditions of voluntariness, security and dignity, within the framework of the national security policy.’
- ‘9. The right to restitution of land if it has been dispossessed, following the terms established in this law.’
- ‘10. The right to information regarding the routes and means of access to the measures provided for in this Act.’
- ‘11. The right to know the status of judicial and administrative proceedings in progress, in which they have an interest as a party or interveners.’
- ‘12. Women’s right to live free from violence’¹⁹⁵.

As denoted earlier, the law incorporates measures of ‘attention which refers to the provision of information, guidance and legal and psychosocial support to the victim, with a view to facilitating access to and qualifying the exercise of the rights to truth, justice and reparation’.¹⁹⁶

The law defines ‘assistance measures as programs and resources of a political, economic, social, and fiscal nature, among others. Under the State’s responsibility, aimed at re-establishing the effective exercise of victims’ rights, providing them with the conditions to live a dignified life, and ensuring their integration into social, economic and political life’¹⁹⁷. Moreover, the law contains specific measures, such as humanitarian aid, funeral assistance, education, health measures and emergency health care. Furthermore, the law includes special measures for victims of forced displacement:

¹⁹⁵ Congress of Colombia, Law 1448 of 2011, art 28.

¹⁹⁶ Congress of Colombia, Law 1448 of 2011, art 49.

¹⁹⁷ Congress of Colombia, Law 1448 of 2011, art 49.

1. *Immediate attention*, meaning aid delivered to people who claim to be displaced and who are in a situation of heightened vulnerability and require temporary shelter and food assistance¹⁹⁸;
2. *Emergency Humanitarian Care* is the humanitarian assistance to which displaced persons or households are entitled once the administrative act has been issued in the RUV, and it will be delivered following the degree of need and urgency concerning their minimum subsistence¹⁹⁹; and
3. *Transitional Humanitarian Care* is given to people in a situation of displacement included in the RUV who do not yet have the necessary elements for their minimum subsistence but whose situation, in light of the assessment made by the UARIV, does not present the characteristics of seriousness and urgency that would make them recipients of Emergency Humanitarian Attention.²⁰⁰ However, the most important measure contained in the law regarding victims that have been forcibly displaced is the return and relocation policy, which aims to guarantee comprehensive care for victims of forced displacement who voluntarily decide to return or relocate under favourable security conditions. Such people will try to remain in the place they have chosen so that the state can guarantee the effective enjoyment of their rights through the design of special accompaniment schemes.²⁰¹

With regards to victims' reparation, the law establishes several measures, starting with an administrative indemnity of a maximum of 40 monthly minimum wages. Moreover, the law includes the creation of a Program of Psychosocial Care and Comprehensive Health to Victims (PAPSIVI)²⁰² as well as the National Centre for Historic Memory, which is responsible for reporting on the events of the armed conflict.²⁰³ Another important measure that the law includes, taking into account the Colombian context, is collective

¹⁹⁸ Congress of Colombia, Law 1448 of 2011, art 63.

¹⁹⁹ Congress of Colombia, Law 1448 of 2011, art 64.

²⁰⁰ Congress of Colombia, Law 1448 of 2011, art 65.

²⁰¹ Congress of Colombia, Law 1448 of 2011, art 66.

²⁰² Congress of Colombia, Law 1448 of 2011, art 137.

²⁰³ Congress of Colombia, Law 1448 of 2011, art 148.

reparation, which is fundamental for indigenous peoples and afro-Colombian communities.²⁰⁴ The law also prioritises victims' access to housing subsidies as a form of reparation.

Finally, one of the most important reparation measures that the law includes is land restitution. The land restitution process included in the law consists of two stages: an administrative and a judicial one. The administrative stage is done by the Land Restitution Unit, which will, if applicable, include the premise in the Register of Land Forcibly Abandoned and Deprived. Afterward, the victim, which the Unit can legally represent, has to present the case before a civil court, which will decide after a judicial process if the property should be restituted, monetarily compensated if the victim cannot return or if a similar property should be allocated to them.²⁰⁵

5.2 The Final Peace Agreement

The PA is made up of six points that aim to overcome the generalised violence in Colombia: 1) comprehensive rural reform; 2) political participation; 3) definitive ceasefire and cessation of hostilities and laying down of arms; 4) a solution to the problem of illicit drugs; and 5) agreement on the victims of the conflict and 6) implementation and verification mechanisms. For reasons of space and relation to the research question, this thesis will focus mainly on point 5, which creates the System of Truth, Justice, Reparation and Non-Repetition (SIVJNR), and point 3, which refers to DDR and the rights to which it is related.

5.2.1. Victims in the Agreement

Point 5 of the PA focuses on Colombian conflict victims up to 2016. In order to comply with the international obligations and standards that were explained in Chapter 4, the negotiating teams considered a series of principles with the understanding that victims are at the centre of the PA: '1) recognition of the victims; 2) acknowledgement of responsibility; 3) the realisation of victims' rights; 4) victim participation; 5) clarification

²⁰⁴ Congress of Colombia, Law 1448 of 2011, art 151 and 152.

²⁰⁵ Congress of Colombia, Law 1448 of 2011, art 69–114.

of the truth; 6) reparation for the victims; 7) guarantees of protection and security; 8) guarantees of non-repetition; 9) principle of reconciliation; and 10) a rights-based approach'.²⁰⁶

The agreement had to resolve the tension between justice and peace raised in the 4 regarding victims' rights standards. For this reason, the PA included a series of JT mechanisms that would allow peace to be achieved without granting amnesty that would result in impunity. This mechanism is the SIVJRN, which is composed of three institutions: the Commission on Truth, Coexistence and Non-repetition (CEV); the Special Unit for the Search for Persons deemed as Missing in the context of and due to the conflict (UBPD); and the Special Jurisdiction for Peace (SJP).

- Commission on Truth, Coexistence and Non-repetition

The PA conceived the CEV as follows:

A temporary, extrajudicial body seeking to uncover the truth about what happened and contribute to the elucidation of violations and infringements, and to offer a broad explanation to society as a whole, about the complexity of the conflict; to promote the recognition of the victims and of the responsibilities of those who directly and indirectly took part in the armed conflict; and to promote peaceful coexistence across the country's territories in order to guarantee non-repetition.²⁰⁷

The PA also establishes that, throughout its work, the Commission must take a perspective that demonstrates how the conflict impacted

‘women, children, adolescents, young people and the elderly as well as people with disabilities, indigenous peoples, rural communities, people who espouse particular religions, opinions, or beliefs, Afro-Colombian, black, Palenquero, Raizal and Roma communities, LGBTI persons, displaced and exiled persons,

²⁰⁶ Colombia's Government and FARC-EP, *Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*, Bogotá, 24, November 2016, p.107–8.

²⁰⁷ Colombia's Government and FARC-EP, *Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*, Bogotá, 24, November 2016, p.112.

human rights defenders, trade unionists, journalists, farmers, ranchers, traders and businessmen and women, among others.²⁰⁸ This can also assist in creating awareness in society about the specific ways in which the conflict perpetuated historical prejudices and gender stereotypes'.²⁰⁹

The CEV was incorporated into the Constitution by Legislative Acts 01 and 02 of 2017, conceiving it as an autonomous entity at the national level with a legal personality and administrative, budgetary and technical autonomy, subject to its own legal regime.²¹⁰ The CEV, due to its temporary nature, was called upon to function for three years plus an initial preparation period of six months from the election of the commissioners.²¹¹ Hence, the CEV is due to conclude its mandate in November 2021.

The CEV was regulated by the Law Decree 588 of 2017.²¹² In this decree, a mandate is given for the elaboration of the final report, which should include, among other things:

- The practices and facts that constitute serious human rights violations and grave breaches of IHL, particularly those that reflect patterns or have a massive character, took place on the occasion of the conflict and the complexity of the contexts and territorial dynamics in which these happened.
- The collective responsibilities of the state, including the government and other public authorities, the FARC-EP, paramilitaries and any other group, organisation or institution, national or international, which has had some involvement in the conflict.
- How the conflict impacted the exercise of politics and the functioning of democracy as a whole, including the impact on political and social parties and movements, particularly opposition parties and movements.

²⁰⁸ Colombia's Government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24, November 2016, p.114.

²⁰⁹ Colombia's Government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24, November 2016, p.114.

²¹⁰ Congress of Colombia, Legislative Act 01 de 2017, art. 2.

²¹¹ Presidency of Colombia, Law Decree 588 of 2017, art. 1.

²¹² Presidency of Colombia, Law Decree 588 of 2017.

- How the conflict impacted those who participated directly in the conflict as combatants and their families and environments.
- The development of the conflict, particularly the actions of the state, guerrillas, paramilitary groups and the involvement of different sectors of society.²¹³

One essential advantage of the CEV relates to access to information. Article 15 of the decree establishes that all state entities must provide the information requested by the CEV²¹⁴. Furthermore, Article 16 allows the CEV to access classified information and requires access to information regarding human rights violations and breaches of IHL.²¹⁵ In this regard, the Constitutional Court added that the CEV must not only have access to information related to the issues in question but also, based on the right to truth and the nature of its mandate, it must have access to all information of a public nature without the government being able to object its confidentiality.²¹⁶

- Special Unit for the Search for Persons Deemed as Missing in the Context of and due to the Conflict

The UBPD was created with:

The aim of determining the fate of people deemed to be missing as a result of actions of State agents, members of FARC-EP or any other organization involved in the conflict, and thus contributing to realising the victims' rights to truth and reparation'²¹⁷

Similar to the CEV, the UBPD was introduced into the Constitution by Legislative Act 01 of 2017, which established that the Unit is a national body with legal status and administrative, budgetary and technical autonomy. It also has a

²¹³ Presidency of Colombia, Law Decree 588 of 2017, art 11.

²¹⁴ Presidency of Colombia, Law Decree 588 of 2017, art 15.

²¹⁵ Presidency of Colombia, Law Decree 588 of 2017, art 16.

²¹⁶ Constitutional Court of the Republic of Colombia (21 March 2018) Sentencia C-017-2018 para. 236.1

²¹⁷ Colombia's government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*' Bogotá, 24 November 2016, p. 120.

humanitarian and extrajudicial character. It directs, coordinates and contributes to the implementation of humanitarian actions aimed at searching for and locating persons reported missing in the context of and as a result of the armed conflict who are found alive, and in cases of death, when possible, the identification and dignified delivery of their remains.²¹⁸

Moreover, the Law Decree set a series of objectives that the UBPD must accomplish, among which the following stand out:

- To establish the universe of persons reported missing due to the armed conflict (before 1 December 2016).²¹⁹
- Strengthen and expedite the processes for identifying remains in coordination with the institute of forensic medicine.²²⁰
- Coordinate and advance processes for the search, location and dignified handover of remains.²²¹
- Promote inter-institutional coordination for the psychosocial care of relatives.²²²
- Guarantee the participation of relatives.²²³
- Provide detailed information reports to relatives on the fate of persons reported missing.²²⁴
- Establish a National Register of graves, illegal cemeteries and gravesites.²²⁵

The UBPD represents a fundamental part of the SIVJNR because its functions derive from the state's obligation to alleviate the suffering of the families of victims of disappearance, and it must be understood within the framework of the right to humanitarian assistance, which the Constitutional Court has defined as the set of activities of the state aimed at providing relief to persons unprotected by the armed conflict.²²⁶

²¹⁸ Congress of Colombia, Legislative Act 01 of 2017, art 3.

²¹⁹ Presidency of Colombia, Law Decree 589 of 2017, art 5.1.

²²⁰ Presidency of Colombia, Law Decree 589 of 2017, art 5.1(d).

²²¹ Presidency of Colombia, Law Decree 589 of 2017, art 5.1(f).

²²² Presidency of Colombia, Law Decree 589 of 2017, art 5.5.

²²³ Presidency of Colombia, Law Decree 589 of 2017, art 5.4.

²²⁴ Presidency of Colombia, Law Decree 589 of 2017, art 5.6.

²²⁵ Presidency of Colombia, Law Decree 589 of 2017, art 5.10.

²²⁶ Constitutional Court of the Republic of Colombia, (10 July 2018) Sentencia C-067-2018 para 7.5.3.

- Special Jurisdiction for Peace

The SJP is the judicial component of the SIVJRNR, which means that it is the court in charge of satisfying victims' right to justice and truth and providing a trial following due process for those under investigation. Accordingly, the SJP has the competence to investigate, judge and eventually impose a sanction for 'conducts committed prior to 1 December 2016, on account of the armed conflict, by those who participated in it, especially about crimes considered serious violations of IHL or severe violations of Human Rights'.²²⁷

The SJP, similarly to the extrajudicial SIVJRNR components, was incorporated into the Constitution through Legislative Act 01 of 2017, on this occasion through Article 5. In addition, the SJP is regulated through a Statutory Law. In the Colombian legal system, such laws:

Constitute a type of law of unique hierarchy, whose essential purpose is to safeguard the entity of the matters it regulates, which are: fundamental rights and duties, as well as the procedures and resources for their protection; the administration of justice and other fundamental matters.²²⁸

This law reforms the justice sector to introduce the new jurisdiction, regulates and structures the SJP and focuses on the principles and bases of the procedure described in the AP. However, this is not the only law that regulates the peace tribunal; two ordinary laws are also fundamental to the nature and functioning of the SJP. First, Law 1820 of 2016 establishes how amnesties and pardons are regulated for most FARC members not responsible for war crimes or crimes against humanity but rather political crimes. Meanwhile, Law 1922 of 2018 regulates the process within the SJP in more detail, explaining each of the procedural stages.

²²⁷ Congress of Colombia, Law 1957 of 2019, art 8.

²²⁸ Constitutional Court of the Republic of Colombia (6 October 2006) Sentencia C-748-2011.

Before giving a brief explanation of the structure and procedure of the SJP, it is worth mentioning that since the PA, the following has been stated:

One of the paradigms guiding the judicial component of the comprehensive system for truth, justice, reparation and non-repetition will be the application of restorative justice, the primary goal of which is to repair the harm done and make reparation to the victims of the conflict, especially in order to put an end to the social exclusion triggered by their victimization. Restorative justice addresses, first and foremost, the needs and dignity of the victims and it comes with a comprehensive approach guaranteeing justice, truth, and a commitment to ensuring that what happened will never be repeated.²²⁹

Therefore, it can be said that ‘the comprehensive system places special emphasis on restorative and reparative measures, and seeks to achieve justice not only through retributive sanctions’.²³⁰ The restorative justice principle caused political polarisation in Colombia, which will be analysed in later chapters. However, without it, the agreement might not have been achieved.

First, the SJP has jurisdiction to judge former FARC combatants and members of the security forces. In addition, the SJP can try agents of the state who are not members of the security forces and civilian third parties who voluntarily submit to the peace tribunal.²³¹

As a previous stage to the individual trials, the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct (JPAR), a body within the SJP, receives reports:

²²⁹ Colombia’s government and FARC-EP, ‘*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*’, Bogotá, 24 November 2016, p.124.

²³⁰ Colombia’s government and FARC-EP, ‘*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*’, Bogotá, 24 November 2016, p.111.

²³¹ Congress of Colombia, Law 1922 of 2018, art 11 para 1.

submitted to it by the State Prosecutor General's Office, the relevant bodies of the military criminal justice system, the Indictment Commission of the House of Representatives or anybody replacing it, the Office of the Attorney-General, the Office of the Comptroller General of the Republic or any other jurisdiction operating in Colombia concerning all investigations underway about conducts committed during or because of the armed conflict, including any which may have already been brought to trial or concluded by the Office of the Attorney General or Comptroller General or by any other jurisdiction, As well as receiving reports from Colombian victims' and human rights organisations with regard to acts committed during the armed conflict.²³²

If the person appearing testifies and reveals the whole truth and acknowledges responsibility, he or she will be subject to the **proper sanctions** of the SJP, which were conceived under the concept of restorative justice. The penalties are restrictive of liberty outside a penitentiary establishment but limited to a maximum size equivalent to that of Local Transitory Normalisation zones (ZVTN). The proper sanctions will have a duration of between five and eight years.²³³

Apart from mobility limitations, proper sanctions also include an additional restorative component, based on the understanding that the sanction is not only retributive. The restorative actions of sanctions vary depending on whether they are carried out in a rural or urban area but could consist of the following:

The participation in infrastructure reconstruction works in the territories most affected by the conflict; participation in programmes to clear and decontaminate territories of anti-personnel mines; improvised explosive devices and unexploded ordnance or explosive remnants of war, participation in illicit crop substitution programmes, contribution to the search for, location, identification and recovery

²³² Colombia's government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24 November 2016, p.133.

²³³ Congress of Colombia, Law 1957 of 2019, art 127.

of remains of persons killed or reported missing in the context of and in connection with the conflict, and participation in damage or environmental reparation programmes, such as reforestation.²³⁴

If the person who testifies before the JPAR does not contribute the truth or acknowledge responsibility, an adversarial trial will be initiated. The person testifying will be investigated by the Investigation and Indictment Unit, which acts as the Prosecutor's Office. Finally, the case will be decided by the Prosecuting Chamber.

If the person before the Prosecuting Chamber acknowledges truth and responsibility in a comprehensive and detailed manner before sentence is passed, an **alternative sanction** shall be imposed, consisting of five to eight years' imprisonment.²³⁵ As can be seen, the applicability of restorative justice comes with the condition of acknowledgement of the truth.

Finally, if the person does not acknowledge truth and responsibility before the Prosecuting Chamber and is found guilty of serious human rights violations, **ordinary Sanctions** corresponding to prison sentences between 15 and 20 years will be imposed.²³⁶

²³⁴ Colombia's government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24 November 2016, p. 149–50.

²³⁵ Congress of Colombia, Law 1957 of 2019, art 128.

²³⁶ Congress of Colombia Ley 1957 of 2019, art 128.

Figure. 1

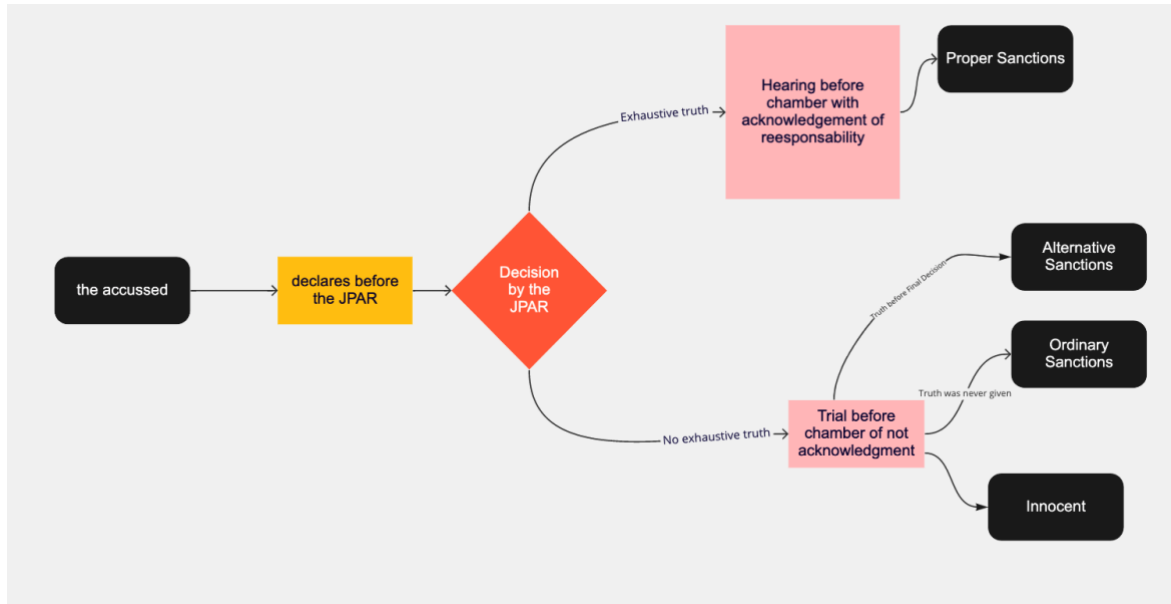


Figure.1 SJP sanctions procedure, made by Juan Sebastián Córdoba

Furthermore, one of the innovations of reparation is that its existence does not proceed only due to the imposition of sanctions by the jurisdiction; several reparation mechanisms were established. Therefore, the agreement establishes the commitment to structure various processes to improve the conditions of victims in the country.²³⁷ Some ‘non-sanction related’ reparation mechanisms include the following:

Early acts of recognition of collective responsibility: These are formal, public and official acts carried out at both the national and regional levels. These acts imply that the actors in the conflict recognise their responsibility and ask for forgiveness for the damage caused in the context of the conflict, committing themselves to concrete actions of integral reparation, coexistence, non-repetition and constructive acts of peace in general.²³⁸

Collective reparation: ‘In the context of the conflict, the government and FARC-EP have agreed that the government will strengthen collective reparation processes and

²³⁷ F Barbosa, *¿Justicia transicional o impunidad? La encrucijada de la paz en Colombia* (Bogotá, Ediciones B, 2017).

²³⁸ Colombia’s government and FARC-EP, ‘*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*’, Bogotá, 24 November 2016

ensure that comprehensive rural reform plans and programmes will be reparation based where applicable²³⁹.

The fifth PA point includes other forms of reparation as well, such as land restitution, psychological rehabilitation and the return of victims of forced displacement, which were provided under Law 1448 of 2011.

5.2.2. Ex-Combatants in the Agreement

The third point of the PA contemplates the different DDR mechanisms and protocols for ending the violence between the Colombian state and the FARC guerrillas. However, similarly to the international DDR framework, the mechanisms were drafted based on security and peacebuilding principles rather than on a human rights discourse.

As a first step, the agreement outlines a timeline for the implementation of the DDR mechanisms, which begins with the demobilisation of the FARC ex-combatants, followed by the laying down of arms and finally reintegration. This chapter will briefly explain the laying down of arms, as it fulfils the function of guaranteeing non-repetition for the victims. However, the research will focus on elements related to demobilisation and reincorporation, as they are closely related to the rights of DDR participants.

The core elements of this sub-chapter are as follows: 1) political participation rights agreed in the PA; 2) the security of ex-combatants; and 3) economic and social reintegration.

5.2.3. Political participation rights agreed in the PA

One of the most well-known segments of the AP is the one that grants political participation rights to former FARC members. In this sense, the agreement authorised former combatants to create a new political party, called *Comunes*, that would have a

²³⁹ Colombia's government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24 November 2016

guaranteed presence for two constitutional periods in Congress, composed of the Senate and the House of Representatives.²⁴⁰

5.2.4. Security of ex-combatants

Concerning the security of ex-combatants, the PA included two mechanisms: 1) a National Political Covenant and 2) National Commission on Security Guarantees. These instruments include ex-combatants as a population under their protection but are not limited to them, and they also include social leaders, human rights activists and social or political organisations.²⁴¹

Regarding, the National Political Covenant, both the national government and the FARC-EP committed themselves to promote a national political pact in the regions so that weapons would never again be used in politics, nor would violent organisations such as paramilitarism promoted. In addition, the government undertook the necessary legislative changes to prohibit the promotion, organisation, financing and use of paramilitary structures or practices.²⁴²

Finally, the PA included the National Commission on Security Guarantees, which aim to ‘plan and monitor public and criminal policies on the dismantling of any organisation or conduct covered by the agreement that threaten the implementation of the accords and peacebuilding. The Commission will also harmonise those policies in order to ensure their implementation. The performance of the comprehensive system for protection will be monitored and evaluated by the high-level unit’.²⁴³

5.2.5. Economic and social reintegration

²⁴⁰ Colombia’s government and FARC-EP, ‘*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*’, Bogotá, 24 November 2016, p.61.

²⁴¹ Colombia’s government and FARC-EP, ‘*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*’, Bogotá, 24 November 2016, p.68–9.

²⁴² PGN, Segundo Informe al Congreso sobre el estado de implementación del Acuerdo Final (2020), p.224.

²⁴³ Colombia’s government and FARC-EP, ‘*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*’, Bogotá, 24 November 2016, p.69.

Reintegration into civilian life is a comprehensive, long-term process that considers the interests of the FARC-EP members and their families in the reintegration process to strengthen the social fabric across the country and foster coexistence and reconciliation among its inhabitants²⁴⁴. It also aims to promote and implement productive activities as well as local democracy. FARC reintegration is predicated on acknowledging individual liberties and the free exercise of rights by all former FARC members.²⁴⁵

It is worth mentioning that in Colombia, in addition to the DDR process established in the PA, there is another similar process that is still active under Law 975 of 2005, or the Justice and Peace Law, which, as already mentioned, applied to paramilitary groups.²⁴⁶

As stated above, the PA established a calendar from the cease fire to reintegration into civilian life for FARC members. In this regard, the agreement established 23 ZVTN,²⁴⁷ where the laying down of arms and demobilisation occurred. Within 60 days of the establishment of the ZVTN, 'a socioeconomic census will be conducted to provide the information needed to facilitate the comprehensive reintegration of FARC-EP into civilian life, both as a community and as individuals'.²⁴⁸

According to the AP, once the former FARC members demobilised, they would have the right to a one-time, 8 million pesos economic support payment to start a productive project. In addition, the PA also considered creating a social and solidarity economy organisation (ECOMÚN), set up by the FARC-EP to promote a collective process of economic reincorporation.²⁴⁹

²⁴⁴ Ibid.p.58.

²⁴⁵ Ibid.p.59.

²⁴⁶ Congress of Colombia Law 975 of 2005.

²⁴⁷ Indepaz, 'Estas son las 23 Zonas Veredales Transitorias de Normalización (ZVTN)' <<http://www.indepaz.org.co/estas-son-las-23-zonas-veredales-transitorias-de-normalizacion-zvtn/>>

²⁴⁸ Colombia's government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24 November 2016, p.64.

²⁴⁹ Ibid. p.64.

The ZVTN ended on 15 August 2017 as demobilisation zones and became 24 Territorial Training and Reincorporation Areas (ETCR), where every member received a basic monthly income equivalent to 90 per cent of the current legal minimum monthly wage for 24 months, in addition to a one-time normalisation allowance of 2 million pesos.²⁵⁰ Reintegration of FARC members also included social security enrolment, allowing them to receive health and pension payments for 24 months, which could be extended to 36 months in the case of serious illness or rehabilitation due to conflict-related injuries.²⁵¹

Finally, the PA established plans and programmes necessary to protect the essential rights of ex-combatants, such as formal education (primary, secondary, technical and technology and university) and education for employment and human development, as well as validating and standardising knowledge and know-how; housing; culture, entertainment and sports; environmental protection and restoration psychosocial support; and the reunification of family and extended family units and the elderly, including measures to protect and care for the children of reintegrated FARC-EP members.²⁵²

5.3 Victims' and Ex-Combatants' Rights Regarding the Peace Agreement Design

As will be studied in depth in the following chapters, the official discourse of the government and its political party and the mass media appears to be based on the rhetoric of human rights and democratic principles due to the conditions in which the SIVJRN was designed, particularly the SJP sanctions. The argument that has been established is that the TJ model adopted by the PA establishes a system that promotes impunity for the most serious crimes, given that 'those responsible for these atrocious acts would not necessarily be deprived of their liberty; they could (...) avoid serving even a single day in prison'.²⁵³ Indeed, this quote was mentioned in 2016 by José Miguel Vivanco, the Human Rights watch Director for the Americas.

²⁵⁰ Ibid. pp.64–5.

²⁵¹ Ibid.p.65.

²⁵² Ibid.p.65.

²⁵³ JM Vivanco, 'La promesa del acuerdo de paz en Colombia y sus graves defectos', *Human Rights Watch, Human Watch* (30 September 2016) <<https://www.hrw.org/es/news/2016/09/30/la-promesa-del-acuerdo-de-paz-en-colombia-y-sus-graves-defectos>> accessed 7 April 2021.

This argument would seem entirely reasonable based on the understanding that there is no proportionality between the atrocious crimes committed during the conflict and the punishment imposed by the SJP. In the same vein, the SJP's proper sanctions specifically imply a violation of the obligation to investigate, judge and, above all, punish those responsible for serious crimes during the conflict, which would result in veiled amnesty and impunity. In the words of the former defence minister of the Duque government, Holmes Trujillo, 'compliance with the obligations mentioned above implies that the processes that are carried out are authentic, the penalties are real, effective and proportional to the seriousness of the crime and the level of responsibility of the perpetrator'.²⁵⁴

Notwithstanding the above, we must remember that this type of sanction occurs in a transitional and not in an ordinary context. The particular context of transition would thus force us to rethink the purpose of punishment since, in a context of normality, the primary purpose of punishment is retribution and punishment. On the contrary, in transitional scenarios, the purpose of punishment takes on a different character, namely restoration and victims' rights.²⁵⁵

Following this order of ideas, it could be concluded that the Colombian TJ model is not only a court that grants permissive sanctions for severe crimes but also a holistic system that considers victims to be at its centre. On the one hand, it does this by demanding maximum compliance with the right to truth through conditionality within the SJP process and establishing extrajudicial mechanisms, such as the CEV and the UBPD. On the other hand, regarding comprehensive reparation for victims, the Colombian model includes a robust administrative reparation mechanism that seeks to compensate victims of ESCR to overcome their state of vulnerability. Finally, the SJP is a judicial mechanism that prosecutes individuals in a serious, diligent and independent process based on a

²⁵⁴C. Holmes, 'La CPI habla de nuevo' (2017) *Portafolio* 7 <<https://www.portafolio.co/opinion/carlos-holmes-trujillo-garcia/carlos-holmes-trujillo-la-cpi-habla-de-nuevo-510936>> (accessed 9 May 2021).

²⁵⁵ D Blanco, 'Proporcionalidad y Sanciones Transicionales Análisis Del Modelo de Castigo de La Jurisdicción Especial Para La Paz (JEP)', *Revista de Derecho*, 2019, Vol. 52, p. 168.

restorative rather than a punishing logic. Nevertheless, even the proper sanctions imply a restriction of movement and participation in reparatory activities.²⁵⁶

Regarding, ex-combatants' rights in the agreement's design, it is worth mentioning that the third point of the agreement was negotiated at the end of the peace talks. This fact is relevant because the DDR was left to be developed by subsequent regulations.²⁵⁷ The plan was made only for a two-year period, which expired in 2019. On another note, similar to the IDDR, human rights language is primarily absent from the PA's design. In the following chapter, this thesis will analyse the implementation of these policies and how ex-combatants' rights are being affected.

As with any judicial process, the SJP process must adhere to due process. As has already been analysed in other sections of this thesis, the SJP represents an independent, partial and competent judicial tribunal to judge the serious crimes committed during the conflict. However, concerning the presumption of innocence, as mentioned by Judge Patricia Linares, it is relativised according to the procedural design.²⁵⁸

The presumption of innocence is one of the general principles of the right to a fair trial, established in article 14(2) of the ICCPR and 8(2) of the ACHR. In this sense, the same argument that modulates the victims' right to justice must be used. Therefore, this particular context of transition demands new forms of justice. The SJP model is based on incentives for acknowledging responsibilities; therefore, it is expected that those appearing will accept their participation in the crimes. These acknowledgements bring national reconciliation closer so that relativising this right would not end up being a violation of it. Finally, if the accused does not accept their guilt, a trial will be held, from which they may be innocent if their participation in the crimes cannot be proven, which gives full guarantees to the accused.

²⁵⁶ Colombia's government and FARC-EP, '*Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace*', Bogotá, 24 November 2016, pp.149–50.

²⁵⁷ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

²⁵⁸ Interview with Patricia Linares, Bogota-Viena, 19 July 2021.

6. Current scenario of the implementation of the peace agreement and law 1448

As outlined in the previous chapter, the PA's design itself is the source of most of the criticisms coming from the political sector currently in government. However, four years after signing the agreement, one would expect its implementation to have produced results in satisfying the rights of victims and ex-combatants. However, as the current government was elected embracing a narrative against the PA, it is crucial to analyse the progress of its implementation.

6.1 Victims' Rights in the Implementation

In order to determine whether the victims' rights international standards in TJ contexts have been taken into account in the PA implementation, the study will focus on the satisfaction of the rights to justice, truth and reparation. As stated above, these are interrelated rights, and thus some components of the implementation can address elements of more than one right.

- **Right to Justice**

As analysed in previous chapters, victims' right to access justice is related in an unusual way to the obligation to investigate, prosecute and punish in transition and armed conflict contexts. Accordingly, the advance in the SJP implementation will be evaluated considering the scope of this obligation.

First, it is important to point out that the simple fact that those most responsible for the serious crimes that occurred during Colombia's long conflict are being brought to justice is an advance that could not have been achieved without this PA. The FARC fought the state and its institutions for more than 50 years and has now decided to submit to justice, and therefore this represents a significant step forward in fulfilling the right to justice²⁵⁹. Second, the progress of the SJP since the judges took office in 2018²⁶⁰ will be briefly but rigorously described. Finally, bearing in mind that the obligation under study is one of

²⁵⁹ Interview with Patricia Linares, Bogota-Viena, 19 July 2021

²⁶⁰ Presidency of Colombia, '*Presidente Santos posesionó a magistrados de la JEP*' 15 January 2018. <<http://es.presidencia.gov.co/noticia/180115-Presidente-Santos-posesiono-a-magistrados-de-la-JEP>> accessed 25 June 2021.

means and not of results,²⁶¹ the progress on different issues related to victims' justice will be examined.

In the beginning, the SJP had to become operative without approval of the necessary regulations, a situation that generated some debate²⁶². However, as mentioned in the previous chapter, on 18 July 2018, the procedural law was approved by Congress, and it was not until 6 June 2019 the statutory law was approved. In other words, the SJP only had a complete legal framework two years after its creation²⁶³.

To date, the SJP has opened seven macro-cases, four of which are thematic while three are regional. 'A macro-case is a method of judicial investigation that establishes patterns, practices or policies implemented by an organisation',²⁶⁴ which in this particular context are the FARC, the state and some civilian third parties, resulting in cases with numerous victims and perpetrators in a determined period of time.²⁶⁵

The seven macro-cases are as follows: 1) hostage-taking and other severe deprivations of liberty committed by the FARC EP,²⁶⁶ with 2,456 accredited victims,²⁶⁷ 2) the territorial situation of Ricaurte, Tumaco and Barbacoas (Nariño),²⁶⁸ with 84,599 accredited victims,²⁶⁹ 3) deaths unlawfully presented as combat casualties by agents of the state,²⁷⁰ with 6,402 cases and 388 indicted public forces personnel;²⁷¹ 4) the territorial situation of

²⁶¹ F. Sersale 126 and I/A Court H.R., Case of the 19 Merchants v. Colombia. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para 184.

²⁶² PGN, Segundo Informe al Congreso sobre el estado de implementación del Acuerdo Final (2020), p. 385.

²⁶³ Ibid, p.386.

²⁶⁴ ¿De qué se trata el caso 01 de la JEP? Al Tablero con la JEP' (2020) <https://www.youtube.com/watch?v=jwI_zA9D2og&feature=emb_logo> (accessed 25 June 2021).

²⁶⁵ ¿De qué se trata el caso 01 de la JEP? Al Tablero con la JEP' (2020) <https://www.youtube.com/watch?v=jwI_zA9D2og&feature=emb_logo> accessed 25 June 2021.

²⁶⁶ SJP, Jurisdicción Especial Para la Paz, Auto 002 de 2018.

²⁶⁷ SJP, *Macro-caso 01*, [Official website], 2021, <<https://www.jep.gov.co/especiales1/macrocasos/01.html>>, (Accessed 25 June 2021)

²⁶⁸ SJP, Jurisdicción Especial Para la Paz, Auto 004 de 2018.

²⁶⁹ SJP, *Macro-caso 02* (2021) <<https://www.jep.gov.co/especiales1/macrocasos/02.html>> accessed 25 June 2021.

²⁷⁰ SJP, Jurisdicción Especial Para la Paz, Auto 005 de 2018.

²⁷¹ SJP, *Macro-caso 03* (2021) <<https://www.jep.gov.co/especiales1/macrocasos/03.html>> accessed 25 June 2021.

the Urabá region,²⁷² with 35,174 accredited victims;²⁷³ 5) the territorial situation in northern Cauca and southern Valle del Cauca,²⁷⁴ with 180,000 accredited victims²⁷⁵; 6) victimisation of the *Unión Patriótica* members,²⁷⁶ with six reports received;²⁷⁷ and 7) recruitment and use of children in armed conflict,²⁷⁸ with 8,000 facts under investigation.²⁷⁹

Although all the cases brought before the SJP are still at an early stage,²⁸⁰ two have made more progress than the rest, cases 1 and 3.²⁸¹ Regarding case 1, it was the first time the conditionality principle was used,²⁸² resulting in high-ranking FARC members losing the benefit of the PA. The application of conditionality demonstrates the seriousness of the process since, at first, the FARC did not fully understand what it was facing once it had laid down its arms. However, with these types of decisions, the participants realise that submitting themselves to a judicial body requires them to comply with what was agreed in the AP.²⁸³

Furthermore, regarding macro-case 1, the JPAR issued Judicial Order 19 of 2021²⁸⁴, in which the eight highest-ranking FARC members were charged with crimes against humanity, deprivation of liberty and the war crime of hostage-taking²⁸⁵. In addition, they were charged with other crimes, including torture, forced disappearance and homicide²⁸⁶. The FARC secretariat sent a document to the SJP in which it accepted these accusations. Now the JPAR must set a hearing focused on the recognition of truth and responsibility

²⁷² SJP, Jurisdicción Especial Para la Paz, Auto 040 de 2018.

²⁷³ SJP, *Macro-caso 04* (2021) <<https://www.jep.gov.co/especiales1/macrocasos/04.html>>

²⁷⁴ SJP, Jurisdicción Especial Para la Paz, Auto 078 de 2018.

²⁷⁵ SJP, *Macro-caso 05* (2021) <<https://www.jep.gov.co/especiales1/macrocasos/05.html>>

²⁷⁶ SJP, Jurisdicción Especial Para la Paz, Auto 27 de 2019.

²⁷⁷ SJP, *Macro-caso 06* (2021) <<https://www.jep.gov.co/especiales1/macrocasos/06.html>>

²⁷⁸ SJP, Jurisdicción Especial Para la Paz, Auto 29 de 2019.

²⁷⁹ SJP, *Macro-caso 07* (2021) <<https://www.jep.gov.co/especiales1/macrocasos/07.html>>

²⁸⁰ Interview with Patricia Linares, Bogota-Viena, 19 July 2021.

²⁸¹ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

²⁸² PGN, Segundo Informe al Congreso sobre el estado de implementación del Acuerdo Final (2020).

²⁸³ Interview with Patricia Linares, Bogota-Viena, 19 July 2021.

²⁸⁴ SJP, Jurisdicción Especial Para la Paz, Auto 19 de 2021.

²⁸⁵ CINEP, 'Noveno informe de verificación de la implementación del Acuerdo Final de Paz en Colombia' (2021) 219.

²⁸⁶ SJP, Jurisdicción Especial Para la Paz, Auto 19 de (2021), p.273, 274.

where the FARC members face their victims. However, due to the COVID-19 pandemic and the current protests taking place all over the country, the date for the hearing has not been set.²⁸⁷

Meanwhile, in macro-case 3,²⁸⁸ the JPAR issued Judicial Order 033 of 2021. The SJP decided to prioritise the '*false positives*' pattern perpetrated by army members, whereby 6,402 civilians were extrajudicially executed and presented as guerrilla combat casualties between 2002 and 2008.²⁸⁹ In July 2021, the SJP issued two important judicial orders,²⁹⁰ in which 25 national army officials were charged with war crimes.²⁹¹

Furthermore, official statistics from the SJP as of 9 July 2021 indicated that 12,993 persons had been subjected to the judicial mechanism of the SIVJRNR. Of these, 75.5% are FARC members, 23.3% are members of the security forces, 1.1% are state agents and 0.1% are related to acts of social protest²⁹².

The last component of the right to justice to be analysed is the effective participation of victims. Within the SJP process, there are two ways for victims to participate: the first is to submit reports to the JPAR, and the second is to be accredited as a victim in one of the macro-cases.²⁹³ The reports can be delivered by any victims' organisation, victims' group or NGO.²⁹⁴ Accredited victims have the status of special interveners,²⁹⁵ which entitles them to present appeals and judicial requirements and testify in the procedural stages

²⁸⁷ 'Caso 01 ¿Qué sigue tras la imputación de cargos? la magistrada Julieta Lemaitre nos explica' (2021) <<https://www.youtube.com/watch?v=SsqUsT4vDEU>> accessed 25 June 2021.

²⁸⁸ SJP, Jurisdicción Especial Para la Paz, Auto 033 de 2021.

²⁸⁹ SJP, Jurisdicción Especial Para la Paz, Auto 033 de 2021 para 14.

²⁹⁰ SJP, Jurisdicción Especial Para la Paz, Auto 125 de 2021 and SJP, Jurisdicción Especial Para la Paz, Auto 128 de 2021.

²⁹¹ SJP, Jurisdicción Especial Para la Paz, Auto 125 de 2021 and SJP, Jurisdicción Especial Para la Paz, Auto 128 de 2021.

²⁹² SJP, '*Principales Estadísticas*' [Official statistics], (2021) <<https://www.jep.gov.co/jepcifras/JEP%20en%20cifras%20-%20julio%2016%20de%202021.pdf>> accessed 22 July 2021.

²⁹³ SJP '*Manual de participación de víctimas*' (2021) <<https://www.jep.gov.co/Infografas/participacion/manualparticipacion.pdf>>

²⁹⁴ Congress of Colombia, Law 1957 of 2019, art 79(c).

²⁹⁵ Congress of Colombia, Law 1957 of 2019 art 14xf.

indicated for that purpose.²⁹⁶ Regarding this point, Patricia Linares mentioned that the SJP was done with and for the victims. However, this does not mean that they act as judges or can impose sanctions on the perpetrators. They can manifest their opinions at any procedural stage, but the responsibility of the SJP is dispensing justice by determining the truth and individualising the perpetrators while taking into account the right to a fair trial.²⁹⁷

- Right to Truth

Considering the interaction between the rights under study, this section will assess the progress of the two extra-judicial components of the SIVJNR. The judicial truth implementation is subsumed within the right to justice section.

Special Unit for the Search for Persons Deemed as Missing in the Context of and due to the Conflict

As mentioned in Chapter 3, the right to truth was initially conceived as the right of relatives of victims of enforced disappearance to know the whereabouts of their loved ones. For this reason, UBPD's work is crucial for the fulfilment of the right to truth, which also represents a form of reparation.

All the consulted reports highlight the establishment of the national search plan for disappeared persons. However, they also mention the creation of regional search plans, although they differ in their figures: the June 2021 report of the UN Verification Mission in Colombia reports eight regional search plans,²⁹⁸ the report presented by the OAS in

²⁹⁶ 'A talk with the SJP/ Get to know the Special Jurisdiction for Peace' (2021) <<https://www.youtube.com/watch?v=5frVWYLQLW4>>

²⁹⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14 and OAS, *American Convention on Human Rights*, 'Pact of San Jose', *Costa Rica*, 22 November 1969, art 8 and Colombian Political Constitution 1991, art 29.

²⁹⁸ UNSC, United Nations Verification Mission in Colombia Report of the Secretary-General, Report S/2021/603.

December 2020 reports 12 regional plans;²⁹⁹ and the Kroc Institute in September 2020 reported 14 plans.³⁰⁰

However, despite these advances in plan design, the UBPD has shown very few results. It would be expected that, four years after the signing of the PA, the results would be different.³⁰¹

Commission on Truth, Coexistence and Non-repetition

As mentioned in the previous chapter, the mandate of the CEV ends on 28 November 2021,³⁰² when the final report will be published.³⁰³ Thus, the Commission is already processing the information. In fact, at the end of 2020, the table of contents of the report was approved.³⁰⁴

The CEV has made a substantial effort to move and organise memory and truth events in remote territories³⁰⁵. For example, in 2020, four truth encounters were held, where armed actors acknowledged their responsibility to victims for the conflict³⁰⁶, and 5,839 interviews and 105 social dialogues were held in the last six months of 2020 alone³⁰⁷. Further, former president Juan Manuel Santos spoke voluntarily before the CEV to

²⁹⁹ MAPP/OAS. Twenty-Ninth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States. OEA/Ser. G CP/Doc.5668/20.

³⁰⁰ Paz Iniciativa Barómetro, Matriz de Acuerdos de, and Instituto Kroc de Estudios Internacionales, 'El Acuerdo Final de Colombia en tiempos del COVID-19: Apropiación institucional y ciudadana como clave de la implementación', 21 May 2021.

³⁰¹ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

³⁰² Paz Iniciativa Barómetro, Matriz de Acuerdos de, and Instituto Kroc de Estudios Internacionales, 'El Acuerdo Final de Colombia en tiempos del COVID-19: Apropiación institucional y ciudadana como clave de la implementación', 21 May 2021.

³⁰³ MAPP/OAS. Twenty-Ninth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States. OEA/Ser. G CP/Doc.5668/20.

³⁰⁴ CINEP, 'Noveno informe de verificación de la implementación del Acuerdo Final de Paz en Colombia' 2021.

³⁰⁵ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021

³⁰⁶ Paz Iniciativa Barómetro, Matriz de Acuerdos de, and Instituto Kroc de Estudios Internacionales, 'El Acuerdo Final de Colombia en tiempos del COVID-19: Apropiación institucional y ciudadana como clave de la implementación', 21 May 2021.p.135.

³⁰⁷ MAPP/OAS. Twenty-Ninth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States. OEA/Ser. G CP/Doc.5668/20.p.37.

address the extrajudicial killings committed by the public force, called *false positives*, when he was the Minister of Defence.³⁰⁸

Notwithstanding the above, due to the COVID-19 pandemic the CEV had to extend the deadline for submitting interviews and receipt of cases.³⁰⁹ For this reason, several NGOs filed a lawsuit before the Constitutional Court to extend the CEV's working timeframe, given the limitations of the sanitary emergency.³¹⁰

However, the most critical situation that the CEV has faced is a lack of access to classified information from the defence ministry, the National Army and the public force in general, especially considering that the Constitutional Court in ruling C-017-2018³¹¹ granted the CEV access to such information. Consequently, in December 2020 the CEV had a thematic hearing before the IACHR, where the CEV commissioners denounced the lack of will on the part of the national government to share classified information regarding human rights violations during the armed conflict.³¹²

Despite this refusal, the Colombian state and military forces have not publicly recognised their collective responsibility for serious crimes.³¹³ The willingness of the FARC to share information has not been high either, but it has taken significant actions toward the victims³¹⁴. This lack of collaboration with the CEV is due to the group logic in the Army, where it is understood that accepting war crimes collectively would harm the institution.

³⁰⁸ UNSC, United Nations Verification Mission in Colombia Report of the Secretary-General, Report S/2021/603.

³⁰⁹ MAPP/OAS. Twenty-Ninth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States. OEA/Ser. G CP/Doc.5668/20, p.38.

³¹⁰ Dejusticia, '*Presentamos una demanda para ampliar el periodo de la CEV*' <<https://www.dejusticia.org/presentamos-una-demanda-para-ampliar-el-periodo-de-la-comision-de-la-verdad/>> accessed 21 July 2021.

³¹¹ Constitutional Court of the Republic of Colombia (21 Marzo 2018) C-017-2018 para. 236.1

³¹² 'PS178_11) Comisió de la Verdad, la Convivencia y la No Repetición de Colombia' [Online video] 2020, <https://www.youtube.com/watch?v=jq9pl7PFdAA&t=1724s>. (Accessed 25 may 2021)

³¹³ CINEP, 'Noveno informe de verificación de la implementación del Acuerdo Final de Paz en Colombia' 2021, p. 204.

³¹⁴ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

However, on the contrary, in a JT context this type of action would give legitimacy to the public force by making reparations to victims.³¹⁵

6.1.3 Victims and Land Restitution Law

According to the UARIV national statistics, there are currently 9,146,456³¹⁶ victims in the RUV, which represents a significant challenge in policy implementation. The law initially had a duration of ten years; however, the Colombian congress prolonged it for another ten years until 2031.³¹⁷

The following is an evaluation of the current implementation of the law, using statistics provided by the government and the UARIV but mainly the latest report issued by the Follow-up and Monitoring Commission of the Victims' Law (CSMLV), which consists of the Attorney General's Office, the Comptroller General's Office and the Ombudsman's Office.

- Attention Measures

As mentioned in the previous chapter, the measures of satisfaction contained in the law established that 'victims of the armed conflict have the right to have clear and timely information on the access routes and the state of progress of the measures of comprehensive reparation, which may be applicable in each particular case'.³¹⁸ In order to fulfil this obligation, the Colombian State issued Decree 1084 of 2015 to create regional centres for victim assistance.³¹⁹ In 2018 the government intended to implement 34

³¹⁵ CINEP, 'Noveno informe de verificación de la implementación del Acuerdo Final de Paz en Colombia' 2021, p. 204.

³¹⁶ UARIV, 'Victimization Statistics' (2021) <<https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394>> accessed 8 July 2021.

³¹⁷ CNMH, 'Gobierno Duque proroga la Ley de Víctimas y Restitución de Tierras' (2021) <<https://centrodememoriahistorica.gov.co/gobierno-duque-proroga-la-ley-de-victimas-y-restitucion-de-tierras/#:~:text=9%20enero%202021-Gobierno%20Duque%20proroga%20la%20Ley%20de%20V%C3%ADctimas%20y%20Restituci%C3%B3n%20de,Tierras%20hasta%20el%20a%C3%B1o%202031>> accessed 8 July 2021.

³¹⁸ CSMLV, *Séptimo Informe de Seguimiento al Congreso de la República 2019 – 2020* (Bogotá, 2020) p.103.

³¹⁹ Administrative Department of Social Prosperity of Colombia, Decree 1084 of 2015

regional care centres, and 33 were in operation by March 2020. However, it is important to mention that during 2020 all centres remained closed due to the COVID-19 emergency.³²⁰

- Assistance Measures

With regard to assistance measures, the evaluation of their implementation will focus on humanitarian aid and resettlement and relocation of victims of forced displacement, as was done in the last report published by the CSMLV.

Humanitarian assistance aims to mitigate or make up for the needs related to the right to minimum subsistence for victims of force displacement. In addition, in the case of other victimising events, it seeks to address the vulnerability accentuated by the event³²¹. In the report, the CSMLV demonstrated progress in the delivery of different types of humanitarian aid, such as a reduction in delivery times for emergency humanitarian aid, which improved from 77 days in 2018 to 42 days in 2019. In addition, concerning the delivery of immediate humanitarian aid, the UARIV reported 93% compliance with delivering aid to victims not yet included in the RUV.³²²

Even so, one of the situations that most concerns the CSMLV is the lack of consistency in the information reported by the UARIV. The UARIV sent two different responses to the entities that make up the commission. The first reported 395,731 displaced households with minimum subsistence needs, of which 350,651 obtained humanitarian aid. In the second response, 342,455 households were entitled to humanitarian aid, and 340,723 were effectively assisted.³²³ This situation is extremely concerning since the official data provided by the UARIV are not reliable, which results in poor implementation of the reparation policy.

³²⁰ CSMLV, *Séptimo Informe de Seguimiento al Congreso de la República 2019 – 2020* (Bogotá, 2020) p.104.

³²¹ Administrative Department of Social Prosperity of Colombia. Decree 1084 of 2015.

³²² CSMLV, *Séptimo Informe de Seguimiento al Congreso de la República 2019 – 2020* (Bogotá, 2020), p.142.

³²³ Ibid, p.124.

The return and relocation processes are complex and do not end with the mere transfer of the household to a place. Durable solutions are implemented, aimed at the restoration of rights, socio-economic stabilisation and reparation, in order to overcome the effects generated by the victimising event.³²⁴ Therefore, despite the fact that the indicator contained in the National Development Plan ('victims returned, relocated or locally integrated') reflects accumulated progress of 106% toward the programmed target, this in itself does not account for progress in the fulfilment of the objective of the public policy, as it is measured based on a single programme and does not comprehensively demonstrate the state's offer to guarantee the socio-economic stabilisation of the victims.³²⁵

Finally, it is noteworthy that in 2019, concerning the indicator of returns, relocations and local integration, less than 1% (17,386 victims) of the total population (1,813,644) overcame the situation of vulnerability. Hence, overcoming vulnerability does not necessarily occur as the result of durable solutions such as return, relocation and local integration.³²⁶

- Reparation Measures

In order to analyse the government's compliance with the reparation measures for victims of the conflict, the CSMLV established four implementation indicators: (i) compensation, (ii) rehabilitation, (iii) restitution and (iv) satisfaction.

Administrative compensation is a component of the comprehensive reparation, whose objective is material compensation for damages caused by breaches of IHL or serious human rights violations in the framework of the internal armed conflict and constitutes a series of measures that are mainly economic in nature³²⁷.

³²⁴ Ibid, p.146.

³²⁵ Ibid, p.162.

³²⁶ Ibid. p.152.

³²⁷ Ibid. p.259.

To calculate the effectiveness of the implementation of individual administrative compensation, two aspects must be taken into account. The first is the goal set by the government to compensate 127,574 victims per year. In 2019, a total of 79,668 victims were compensated, which corresponds to a 62.4% compliance rate. Meanwhile, in 2020 only 15,459 victims were compensated, equivalent to 12.1% of the target³²⁸.

Second, the total number of victims registered in the RUV is 8,989,570 (March 2020), of which 7,261,998 already meet the requirements for accessing administrative compensation. Based on the above, it can be deduced that if 879,821 people have been compensated from 2011 to 2020, the actual progress of the measure has only been 12.12%. Currently, the number of victims registered in the RUV is 9,146,456, and 7,351,894 have completed the established route and are entitled to reparation. According to the CSMLV, it is likely that the percentage of compliance will be even lower in the future since the number of people entitled to reparation is increasing faster than compensation payments.³²⁹

Regarding the implementation of the PAPSIVI, as part of the victims' public policy it is essential because

Psychosocial care is understood as the set of articulated service processes that aim to favour the recovery or mitigation of psychosocial damage and emotional suffering generated to victims, their families and communities, as a consequence of serious Human Rights violations and breaches of International Humanitarian Law.³³⁰

At first glance, it would seem that PAPSIVI's implementation goals are being met positively since the target for 2019 was to attend 100,000 victims, and 145,139 were attended effectively.³³¹ However, the reality is not encouraging considering that from

³²⁸ Ibid. pp.259–60.

³²⁹ Ibid. p.260.

³³⁰ Ibid. p.172.

³³¹ Ibid. p.173.

2011 to March 2020, the UARIV and the Health Ministry attended 838,138 victims, which is only 28% of the initial goal set by the law of attending to 3,000,000 victims by 2021. According to the CSMLV, it would take 24 years to attend to 72% of the victim population.³³²

As already mentioned, as part of comprehensive reparation, it was foreseen that victims would have prioritised access to housing subsidy programmes established by the government. However, this legal provision has not been translated into reality since the proportion of the victim population with access to urban housing subsidies compared to non-victim households is low. However, the most serious issue is that the percentage of victims with allocated subsidies has decreased in recent years, from 18.1% in 2018 to 16.4% in 2019 and 16.1% in 2020³³³.

With regard to Collective Reparation, its implementation has not gone any better. There are 755 collective reparation subjects enrolled in the programme, 63% of which are ethnically differentiated communities. As of March 2020, only 16 (2.12%) subjects of collective reparation had completed the Comprehensive Collective Reparation Plan, with none belonging to Indigenous, Afro-Colombian, Raizal, Palenquera or Roma communities. Of the total number of collective reparation subjects, 77.22% are in the programme's initial phases, and 20.66% are already implementing their collective reparation projects.³³⁴

6.1.4 Victims' Rights Implementation Overview

Finally, there has also been minimal progress in the implementation of the law concerning land restitution. As of 20 April 2020, the URT had received 125,474 restitution claims, of which 81,778 received a decision on the merits. Ten years after the law was issued, the fact that the URT has only processed 65% of the requests is considered insufficient according to a CDMLV report.³³⁵ Worse, of the total number of requests only 20,790

³³² Ibid. p.174.

³³³ Ibid. pp. 212–213.

³³⁴ Ibid, p.305.

³³⁵ Ibid, p.194.

passed from the administrative stage to the judicial stage, representing a 17% effectiveness rate.³³⁶

On the negative side, the UBPD has produced minimal results despite working for four years. Furthermore, the most critical programme is the reparation policy. Due to the delays in all components of the programme, reparation has been inaccessible for many victims, as they are obliged to face bureaucratic barriers that may take years to overcome.³³⁷

6.2 Ex-Combatants' Rights Implementation

Regarding ex-combatants' rights, the analysis will focus on three specific issues: a) socio-economic reintegration, b) the security of ex-combatants, which are related to ESCR and c) the rights to life and personal integrity, accordingly. These rights are relevant for DDR participants, as noted in Chapter 4 of this thesis.

6.2.1 Socio-Economic Reintegration

As mentioned in Chapter 5.2.2 the reintegration component of the PA was one of the last components to be agreed upon in Havana, Cuba. This highlights the importance of analysing the current situation of ex-combatants' rights regarding their economic reintegration, which initially was not planned beyond the two years of implementation³³⁸. However, it is worth noting that the government planned beyond this period, and today the measures are still being implemented, several of the ETCRs have been maintained and some are being added to the land-use plans of nearby municipalities³³⁹.

In the same vein, it is essential to mention that the government acquired 1,060 hectares for ex-combatants, regularised 19 former ETCR to make them permanent settlements and began the construction of rural housing projects. As of April 2021, 2,626 former combatants and their families were living in the former ETCRs, meaning that 70% of

³³⁶ Ibid, p.205.

³³⁷ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

³³⁸ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

³³⁹ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

DDR participants were residing outside of these zones.³⁴⁰ While this land programme was not foreseen in the PA, the government started obtaining land in good faith to support reincorporation.³⁴¹

Among the measures being implemented are both individual and collective productive projects. The Agency for Reintegration has approved 2,709 individual projects benefitting 3,273 people and 90 collective projects benefitting 3,414 ex-combatants. Thus, half of the DDR participants are already registered for a productive project. Furthermore, 60% of the projects are already functioning.³⁴²

Finally, it is important to recognise that the reincorporation process is a long one. The government of Colombia has made significant efforts to implement it, even beyond what was agreed in Havana.³⁴³ However, a more ambitious strategy should have been devised for the FARC's mid-level commanders, given that they have spent their whole lives in the war and are accustomed to having social, military and economic power and now have to be reincorporated with less than a minimum salary.³⁴⁴

6.2.2 Security for Ex-Combatants

The violence in several of the territories formerly controlled by the FARC has turned them into zones of dispute for armed groups vying for economic and social control. These regions have suffered historical state neglect, leading to violence, poverty and the establishment of illegal economies, such as drug trafficking and mining.³⁴⁵ This situation

³⁴⁰ MAPP/OAS. Twenty-Ninth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia of the Organization of American States. OEA/Ser. G, CP/Doc.5668/20, 19.

³⁴¹ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

³⁴² UNSC, United Nations Verification Mission in Colombia Report of the Secretary General, Report S/2021/603, 19.

³⁴³ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

³⁴⁴ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

³⁴⁵ UNSC, United Nations Verification Mission in Colombia Report of the Secretary-General, Report S/2021/603.

led to the killing of 421 human rights defenders by December 2020³⁴⁶ and the forced displacement of more than 7,400 people by June 2021.³⁴⁷

Against this violent backdrop, 28 former FARC members have been killed in 2021³⁴⁸ and 278 since the PA was signed.³⁴⁹ This is a significant number, and it could affect the progress of socio-economic implementation.³⁵⁰ Indeed, the SJP issued several precautionary protection measures for former FARC combatants due to the large number of threats and murders committed.³⁵¹ On 21 July 2021, a hearing was held to follow up on the precautionary measures; however, due to time constraints, the conclusions of that hearing will not be analysed here.³⁵²

The security of ex-combatants is a significant problem in the current reincorporation process and does not depend on individual protection programmes as some FARC members already have. On the contrary, the violence in former FARC territories and the lack of planning by both the Duque and Santos governments in terms of territorial control have led to the growth of new armed groups.³⁵³

7. Official Political Narrative Towards the Peace Agreement

Up to this point, the relevant human rights of both victims and ex-combatants have been analysed in relation to the PA and its implementation from a human rights and legal approach. Now, a political and discursive analysis regarding the PA will be carried out. First, by analysing the government, its party and of course, its highest representative,

³⁴⁶ Human Rights Watch, *Left Undefended-Killings of Rights Defenders in Colombia's Remote Communities* (Washington, USA, No. ISBN: 978-1-62313-890-5, 2021).

³⁴⁷ UNSC, United Nations Verification Mission in Colombia Report of the Secretary-General, Report S/2021/603, p.3.

³⁴⁸ Indepaz, Líderes Sociales, Defensores de DD.HH y Firmantes de Acuerdo Asesinados en (2021) <<http://www.indepaz.org.co/lideres-sociales-y-defensores-de-derechos-humanos-asesinados-en-2021/>> accessed 17 July 2021.

³⁴⁹ UNSC, United Nations Verification Mission in Colombia Report of the Secretary-General, Report S/2021/603, p. 4.

³⁵⁰ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

³⁵¹ CINEP, 'Noveno informe de verificación de la implementación del Acuerdo Final de Paz en Colombia' (2021), p.118.

³⁵² Audiencia de seguimiento a las medidas de protección a firmantes del Acuerdo de Paz (Meta) (2021) <<https://www.youtube.com/watch?v=IllaFWqjdM>> accessed 21 July 2021.

³⁵³ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

former president Álvaro Uribe Velez, narrative towards the PA, in order to determine how much, it has impacted in the focus groups rights.

7.1 The Colombian Political Regime

Colombian democracy is unique in the region. On the one hand, it has solid democratic institutions, independent powers and a strong legal tradition. On the other hand, it has been facing armed conflict for the past 50 years.³⁵⁴ According to the V-Dem Institute, Colombia is an electorate democracy, which means that there are 'multiparty, free and fair elections, however, the rule of law or liberal principles are not satisfied'.³⁵⁵

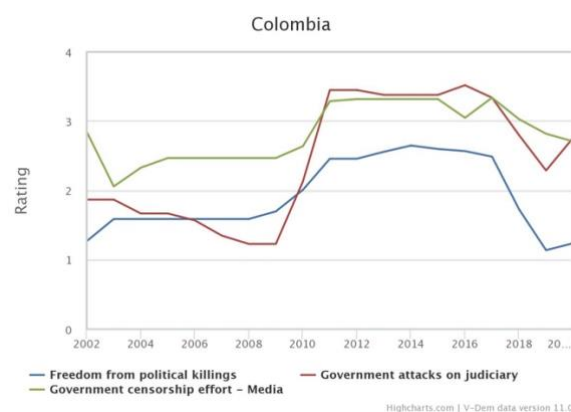
This research will now analyse different indicators and components in the V-Dem country graph tool to quantify the level of democratisation in Colombia in greater depth. The following graph will compare:

- (1) Attacks on the judiciary by the government, where the values range from '0. Attacks were carried out on a daily or weekly basis' to '4. There were no attacks on the judiciary's integrity';
- (2) direct or indirect attempts by the government to censor print or broadcast media, with values ranging from '0. Attempts to censor are direct and routine' to '4. The government rarely attempts to censor major media in any way, and when such exceptional attempts are discovered, the responsible officials are usually punished'; and
- (3) freedom from political killings, with values ranging from '0. Not respected by public authorities. Political killings are practiced systematically and they are typically incited and approved by top leaders of government' to '4. Fully respected by public authorities. Political killings are non-existent'³⁵⁶.

³⁵⁴ B. S. Santos, *'Democracia y transformación social'* Bogotá, Siglo del Hombre Editores, 2017.

³⁵⁵ A. Lührmann, 'Regimes of the World (RoW): Opening New Avenues for the Comparative Study of Political Regimes' (2018) 6 V-Dem Institute, Department of Political Science <<https://www.v-dem.net/files/5/Regimes%20of%20the%20World%20-%20Final.pdf>> ,2018, Vol 6(accessed 12 June 2021).

³⁵⁶ V-Dem Institute, 'Country Graph' <<https://www.v-dem.net/en/analysis/CountryGraph/>> (accessed 21 June 2021).



Graph 1. Attacks on judiciary, political killings and censorship since 2002³⁵⁷

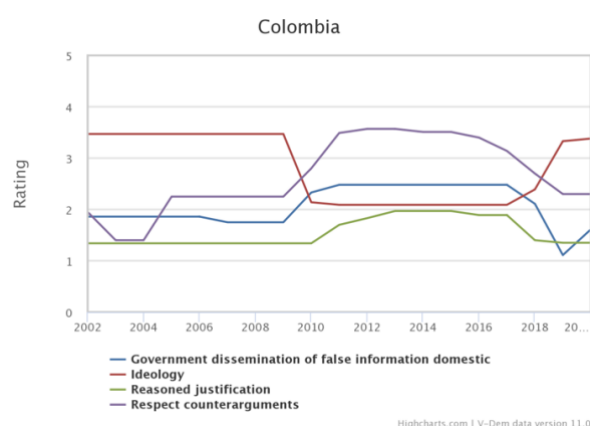
In the previous chart, all the variables show the same trend, despite starting in 2002 with very different values. During Uribe's government there were high levels of political killings, censorship of the media and attacks on the judiciary. These dramatically improved from one year to another when president Santos got into office and finally started to decrease when current president Iván Duque won the election. The direct attacks on the SJP, CEV and Constitutional Court are common, as was explained. This affects the legitimacy of the judicial system and in the end the efficacy the PA in Colombia, which directly impacts victims' rights to justice, truth and reparations.

The next graph will show the change in the other four variables related to discourse and its content. The first variable is

- (1) Government dissemination of false information, where the values are from '0. Extremely Often' to '4. Never or almost never';
- (2) the extent to which the government promotes a specific ideology or societal model, with values ranging from '0. Not at all' to '4. Almost exclusively';
- (3) 'when important policy changes are being considered, before a decision has been made, to what extent do political elites give public and reasoned justifications for their positions?' The values are '0. No justification' to '3. Sophisticated justification'.

³⁵⁷ V-Dem Institute, 'Country Graph' <<https://www.v-dem.net/en/analysis/CountryGraph/>> (accessed 21 June 2021).

The final variable is (4) ‘to what extent do political elites acknowledge and respect counter arguments?’ For this variable, 0 means that counterarguments are prohibited or punished and 5 means that political elites almost always acknowledge, value and accept counterarguments³⁵⁸.



Graph 2. Discursive elements since 2002³⁵⁹

In this second graph it is evident that the trend repeats; during Uribe's and Duque's governments the level of autocratisation was higher. It is important to remark that from 2019 to 2020, the dissemination of false information improved. However, the most recent events in Colombia related to the national strike might change this improvement.

On 28 April 2021, protests all around the country started due to a tax reform proposition that the government was forced to withdraw. The violent response to the protests generated alarm all around the world. Human Rights Watch reported several killings of protestors by the police force, use of firearms by national security forces against protestors and shootings by civilians against indigenous protestors in Cali.³⁶⁰ In this context the IACHR completed a visit to the country in order to verify the human rights

³⁵⁸ V-Dem Institute, 'Country Graph' <<https://www.v-dem.net/en/analysis/CountryGraph/>> (accessed 21 June 2021).

³⁵⁹ V-Dem Institute, 'Country Graph' <<https://www.v-dem.net/en/analysis/CountryGraph/>> (accessed 21 June 2021).

³⁶⁰ Human Rights Watch, 'Colombia: Egregious Police Abuses Against Protesters' (2021) <<https://www.hrw.org/news/2021/06/09/colombia-egregious-police-abuses-against-protesters>> (accessed 25 July 2021).

situation. Their report's conclusions raised several human rights issues that occurred during the protests such as 'disproportionate use of force; gender-based violence in the context of protest; ethno-racial violence in the context of protest; violence against journalists and against medical missions; irregularities in protection transfers; and reports of disappearances; as well as the use of military assistance, disciplinary powers and military criminal jurisdiction'.³⁶¹ In the recommendations of both Human Rights Watch and the IACHR report, police reform was suggested; due to the armed conflict, the Colombian police belongs to the Ministry of Defence, resulting in a militaristic approach.

The reactions of the government to the IACHR's report were of complete disregard. When President Duque was asked about it, he answered, 'No one can recommend that a State tolerate criminality'.³⁶² Furthermore, Duque started to refer to protestors as criminals and CD members of Congress used the term 'terrorist', which has a deep meaning in the Colombian context.³⁶³

Finally, it is not easy to categorise the Colombian political regime. On the one hand, it is not fully democratic, as evidenced by armed conflict, high levels of violence, police brutality and diffusion of false information by the government in addition to economic inequalities. On the other hand, free, fair and regular elections take place, despite some clientelism and corruption on the local level. The organisation Freedom House classifies Colombia as a partly free state. A political concept that partially describes Colombia's context is that of new despotism as described by John Kane, in which governments mobilise support for their through the use of patronage, economic growth, weak judiciary systems and selective violence.³⁶⁴ This can perfectly explain the success of *Uribismo* and its discourse. However, armed conflict and violence are still widespread within the

³⁶¹ IACHR, 'Observaciones y recomendaciones de la visita de trabajo de la CIDH a Colombia realizada del 8 al 10 de junio de 2021' https://www.oas.org/es/cidh/informes/pdfs/ObservacionesVisita_CIDH_Colombia_SPA.pdf (accessed 25 July 2021).

³⁶² 'Declaración del presidente Iván Duque frente al informe de la CIDH' (7 July 2021) <<https://www.youtube.com/watch?v=Px1IBDufUvQ>> (accessed 25 July 2021).

³⁶³ 'La primera línea es el nombre de una banda terrorista: Margarita Restrepo Vicky en Semana' <<https://www.youtube.com/watch?v=zFevCGCEQuA>> (accessed 25 July 2021)

³⁶⁴ J. Kane, *The New Despotism* Cambridge, Harvard University Press, 2020, p, 223.

country, as are active paramilitary groups. These do not belong to new despotism as Kane describes it.³⁶⁵

7.2 *El Uribismo*: A Narrative with Great Consequences

Origins and Foundations

Uribismo is the political movement created around former president Álvaro Uribe Vélez. However,³⁶⁶ to analyse how the discourse he represents has impacted the rights of the populations under study in this thesis, it is first necessary to understand *Uribismo* from its contextual and political dimensions. In order to do so, the thesis will apply analyses of *Uribismo*'s rhetoric to the purpose of the research, as well as tweets and YouTube videos that were collected to complement its arguments.

Álvaro Uribe was elected president of Colombia in 2002³⁶⁷ after a failed peace process attempt with the FARC.³⁶⁸ The aftermath left the guerrillas in control of massive territories, especially in the southwest region, and troops all around the country confronting the National Army and Paramilitary groups.³⁶⁹ Moreover, Uribe's election came a year after the attack on the United States on 11 September 2001 and the beginning of the war on terror, a situation that allowed him to classify the FARC guerrillas as terrorists.³⁷⁰

As a result of this new approach to the conflict, military actions increased by 200% in just one year.³⁷¹ His national policy was named 'Democratic Security' and primarily involved the war against the communist guerrillas. This represented a strong discursive narrative that praises authority and the established order.³⁷² This strategy, accompanied by forceful

³⁶⁵ Ibid, p.17.

³⁶⁶ V. Morales, 'El uribismo y la forma de hacer política en Colombia: Discursos e imagen política' Cuaderno del Centro de Estudios en Diseño y Comunicación, 2021, Vol. 112, p.258.

³⁶⁷ B. Kajsui, p.219.

³⁶⁸ D. Muñoz, 'Racionalidades de gobierno en medio y a través de la guerra reciente en Colombia' Universitas Humanistica, 2018. Vol.85, p. 37.

³⁶⁹ A. Ávila, '*Detrás de la guerra en Colombia*', Bogotá, Editorial Planeta Colombiana, 2019, p.274.

³⁷⁰ D. Muñoz, p. 37.

³⁷¹ A. Ávila, p. 246.

³⁷² B. Kajsui, p. 44.

military actions against the guerrillas,³⁷³ managed to identify a clear internal enemy that was isolated socially and politically to establish its ruthless and perverse character in the collective imagery.³⁷⁴ However, the war on terror narrative only considered violence in one direction, from the terrorists against democracy and the rule of law.³⁷⁵ Hidden was the fact that the paramilitary expansion was consolidated in several regions with the aid of the public forces,³⁷⁶ as has been proven by the IACtHR rulings.

Additionally, President Uribe's narrative was based on the exaltation and praise of the army and the public forces.³⁷⁷ An example is the 2006 National Army publicity campaign called 'Heroes in Colombia do exist!' in which soldiers expressed, 'Although I do not know you, I am willing to give my life for you'.³⁷⁸ This publicity campaign aired on national television for ten years and was intended to glorify the army and divide the country between 'good' and 'bad' and 'us' and 'them',³⁷⁹ thereby creating admiration and respect for the army and aversion to the guerrillas. The exaltation of the public forces led to a growth of the army. By 2011, one year after Uribe left office, 'the military personnel represented 1% of the country's population',³⁸⁰ and Colombia's military expenditure was the six percent of the gross national product.³⁸¹

Additionally, the effectiveness of the military actions was measured in casualties. This led to *false positives*, extrajudicial executions in which the army abducted innocent civilians, dressed them as guerrilla fighters and presented them as having died in combat.

³⁷³ A. Ávila, p.244.

³⁷⁴ D. Muñoz, p.37.

³⁷⁵ D. Vélez, 'Análisis sobre el discurso mediático-político en torno al enemigo terrorista en la política de defensa y seguridad Democrática y sus antecedentes' (BA thesis, Universidad del Cauca 2019).

³⁷⁶ I/A Court H.R., Case of the Rochela Massacre v. Colombia. Interpretation of the Judgment on Merits, Reparations and Costs. Judgment of January 28, 2008. Series C No 175.

³⁷⁷ D. Vélez, 'Análisis sobre el discurso mediático-político en torno al enemigo terrorista en la política de defensa y seguridad Democrática y sus antecedentes' (BA thesis, Universidad del Cauca 2019).

³⁷⁸ Ejército Nacional de Colombia, 'Todos los videos LOS HEROES EN COLOMBIA SI EXISTEN' <<https://www.youtube.com/watch?v=8tXoFZtEb9s&t=84s>> (accessed 21 July 2021).

³⁷⁹ D. Murcia, 'Los héroes en Colombia sí existen: Medios de comunicación, teoría del conflicto e imaginarios sociales en la sociedad colombiana' (BA thesis, Pontificia Universidad Javeriana 2012).

³⁸⁰ N. Richani. Systems of Violence, Second Edition: The Political Economy of War and Peace in Colombia. *SUNY Series in Global Politics*. Albany: SUNY Press, Vol. 2, 2013. (Accessed 1 April 2021)

³⁸¹ N. Richani. Systems of Violence, Second Edition: The Political Economy of War and Peace in Colombia. *SUNY Series in Global Politics*. Albany: SUNY Press, Vol. 2, 2013. (Accessed 1 April 2021)

Many of the victims were persons with mental disabilities.³⁸² As mentioned in the previous chapter, the SPJ proved that there were 6,402 cases of false positives between 2002 and 2008.³⁸³

Another key element to understanding *Uribismo* is its support from the dominant classes. Sankey describes Uribe's rise to power, stating that it:

Was the product of decades of formation of a multi-class coalition led by conservative politicians, landlords, cattle ranchers, regional elites, urban businesspeople and religious leaders, but which also counted with a support base amongst rural middle farmers and urban middle and working classes, particularly precarious and unorganised workers inhabiting the poorest neighbourhoods around provincial towns.³⁸⁴

This idea is supported as well by Kajsiu as he compared the Medellin votes in the 2018 presidential election. Medellin has been a stronghold for *Uribismo*, and the results of his study concluded that President Duque had 'greater electoral support amongst the higher as opposed to the lower social classes. By contrast, his political opponent, Gustavo Petro, enjoyed less support amongst the higher strata compared to the lower and middle ones'.³⁸⁵

The Uribe government had great approval from the upper political and economic classes. However, the *parapolitica* phenomenon represented the alliance between paramilitary groups and politicians; 35% of the congresspersons elected between 2002 and 2006 were supported or financed by the AUC. All of those senators and representatives belonged to the government coalition.³⁸⁶

³⁸² 'Qué son los "falsos Positivos" y quiénes sus responsables, José Miguel Vivanco de Human Rights Watch' <https://www.youtube.com/watch?v=MaNf_Phi4qs> (accessed 27 May 2021).

³⁸³ SJP, *Macro-caso 03* (2021) <<https://www.jep.gov.co/especiales1/macrocasos/03.html>> (accessed 25 June 2021).

³⁸⁴ K. Sankey, 'From Cold War Origins to The Neoliberal Order: Formation, Trajectory and Social Base of Colombia's Far-Right' (International Institute of Social Studies, 2018), the Hague, 17-18 March 2018.

³⁸⁵ B. Kajsiu, 'The Colombian Right: The Political Ideology and Mobilisation of Uribismo' (2019) 44 *Canadian Journal of Latin American and Caribbean Studies*.

³⁸⁶ '¿Quiénes son los congresistas condenados por paramilitarismo? | Hagamos Memoria | El Espectador' <https://www.youtube.com/watch?v=hj0yKRnq_zc&t=34s> accessed 27 May 2021.

When Uribe's government ended in 2010, his defence minister, Juan Manuel Santos, won the elections using the continuity of Uribe's government as a discursive element. The campaign appealed to the fear of the return of terrorism.³⁸⁷ The conflict was still active in a state that Ariel Ávila calls a 'negative tie', in which it was impossible for the FARC to win the war, but neither could it be defeated.³⁸⁸ However, the security policy changed dramatically during the Santos government.

Peace Agreement and Plebiscite

In March 2012, President Santos announced that exploratory meetings for a possible PA were starting. This announcement produced an objection from Uribe.³⁸⁹ In April 2012, Uribe started using the social network Twitter to distance himself from the government he helped to elect. As an example, one of his tweets expressed '#Terrorismcontinues and today murderers and kidnappers were legitimised before the world by the appeasement of the Santos government'.³⁹⁰ One year later, former president Uribe decided to start his own political party, *Centro Democrático* (CD), which became the opposition party during the Santos government.

After four years of negotiation, on 24 August 2016, the Colombian government and the FARC guerrillas announced a historic agreement that 10 years earlier would have been unthinkable. President Santos was not obliged to call a plebiscite, but he did so to gain legitimacy for the PA.³⁹¹

From that date until 2 October 2016, an intense political campaign was held. As explained in previous chapters, the PA is very complex. Consequently, explaining it to the general

³⁸⁷ V. Morales, 'El uribismo y la forma de hacer política en Colombia: Discursos e imagen política' (2021) 112 Cuaderno del Centro de Estudios en Diseño y Comunicación 266.

³⁸⁸ A. Ávila, p. 472.

³⁸⁹ V. Morales, p. 267.

³⁹⁰ Á. Uribe, (*Twitter*, 5 September 2012)

<<https://twitter.com/AlvaroUribeVel/status/243112523866451968>> (accessed 22 June 2021).

³⁹¹ J. M. Santos, '*La Batalla por la Paz*' Bogotá, Editorial Planeta Colombiana, 2019, p. 529.

public during a political campaign was very complicated.³⁹² Patricia Linares mentioned that the confidentiality of the initial phase of the peace talks, although understandable, made the PA less comprehensible for the public³⁹³ and promoted disinformation.³⁹⁴

The NO campaign, headed by Uribe, employed the terrorist and enemy discourse regularly, implying that the PA meant total impunity for gross human rights violations and war crimes, which, as was explored previously, is not a simple discussion. The NO campaign targeted the Colombian people's emotions by saying that the PA was handing the country over to FARC, implying that the rule of law had surrendered to terrorism. This narrative is seen in the tweets collected for this research. For example, in one of them, Uribe wrote, 'Let us avoid handing the country over to the FARC', accompanied by an image that says, 'What do Santos and the FARC want with the plebiscite? To approve everything Santos has granted to the FARC narco-terrorist group regardless of the destruction of our homeland'.³⁹⁵

Figure.2



Figure2. Álvaro Uribe. Tweet 9 September 2016³⁹⁶

³⁹² D. Dajer 62.

³⁹³ Interview with Patricia Linares, Bogota-Vienna, 19 July 2021.

³⁹⁴ D. Dajer 62.

³⁹⁵ Á. Uribe, (Twitter, 9 September 2016)

<<https://twitter.com/AlvaroUribeVel/status/774020553854160897>> (accessed 22 June 2021).

³⁹⁶ Á. Uribe, (Twitter, 9 September 2016)

<<https://twitter.com/AlvaroUribeVel/status/774020553854160897>> (accessed 22 June 2021).

Similarly, a billboard was placed in Santa Marta, which read, 'Do you want to see Timochenko as president? Vote yes to the plebiscite', implying that if the PA were to be approved, FARC leader Rodrigo Londoño a.k.a.'Timochenko' would become president of Colombia. The placement of the billboard had a relevant media follow-up (Figure 3),³⁹⁷ and therefore its message amplified. Another narrative that proved successful during the campaign compared Colombia to neighbouring Venezuela, which has an autocratic political system. The NO campaign stated explicitly that if the PA were approved, Colombia would face the same fate.³⁹⁸

Figure. 3



Figure 3. Billboard in Santa Marta. Timochenko President³⁹⁹

Moreover, the NO campaign used the gender approach included in the PA and communicated the idea that the PA was written under the 'gender ideology', which would impose an LGBTI agenda and attack the values of the traditional Colombian family. Alejandro Ordóñez, the Attorney General at the time and current ambassador to the OAS, was the person who most promoted this narrative,⁴⁰⁰ targeting the religious beliefs of Colombian citizens.⁴⁰¹

On 2 October 2016, the NO option won the plebiscite by a minimal margin of 0.43%.⁴⁰² As explained in Chapter 2, the PA had to undergo some changes and was finally endorsed

³⁹⁷ El Tiempo, 'Desmontan polémica valla con imagen de Timochenko en Santa Marta,' <<https://www.eltiempo.com/archivo/documento/CMS-16700003>> (accessed 21 June 2021).

³⁹⁸ V. Morales, p. 268.

³⁹⁹ El Tiempo, 'Desmontan polémica valla con imagen de Timochenko en Santa Marta,' <<https://www.eltiempo.com/archivo/documento/CMS-16700003>> (accessed 21 June 2021).

⁴⁰⁰ "'Acuerdo Santos/Timochenko es una imposición de la ideología de género": Alejandro Ordóñez' (24 September 2016) < <https://www.youtube.com/watch?v=gh3Gd4gv0mM>> (accessed 12 May 2021).

⁴⁰¹ D. Dajer 62.

⁴⁰² S. Botero, p.373.

by Congress and the Constitutional Court. However, the Colombian NGO Ideas for Peace Foundation conducted some very interesting research regarding the regional vote during the plebiscite, in which one of the main conclusions is that in most territories where the conflict was more intense, the option supporting the PA obtained more votes.⁴⁰³ A representative example of these territories showing greater support is the community of Bojayá, which after suffering great violence from FARC during the conflict showed great interest in the PA; for them, it represented new opportunities.⁴⁰⁴

In the aftermath of the plebiscite, Juan Carlos Vélez, manager of the NO campaign, expressed that they intended to enrage voters.⁴⁰⁵ This success of this constructed narrative in the plebiscite was evident and shaped Colombia's political landscape until today. The repercussions of the plebiscite are fundamental to explaining the triumph of President Duque in 2018 and understanding the current state of implementation of the PA.

Duque's Election and Government

When the Santos government ended in 2018, the PA's implementation was in its initial phases, making it the main topic during the presidential election. The winner of that election was the CD candidate and current president Iván Duque Márquez, who did not have much political experience just having been a senator for the CD between 2014 and 2017.⁴⁰⁶

The strategy used during this campaign was the same as the one used for the plebiscite, just with a few variations regarding the fact that the PA was already in motion.⁴⁰⁷ As an example, in a television interview Duque said and then tweeted that:

⁴⁰³ E. Álvarez, J. C. Garzón and J. L. Bernal, 'Voting for peace: Understanding the Victory of "no"', Fundación Ideas para la Paz, 2016.
<https://www.wilsoncenter.org/sites/default/files/media/documents/article/voting_for_peace_wwc-fip_final_english.pdf> , pp.2–5.

⁴⁰⁴ Ibid, p.21

⁴⁰⁵ La República, 'Estábamos buscando que la gente saliera a votar verraca Juan C. Vélez', El Colombiano, 2016, <<https://www.elcolombiano.com/colombia/acuerdos-de-gobierno-y-farc/entrevista-a-juan-carlos-velez-sobre-la-estrategia-de-la-campana-del-no-en-el-plebiscito-CE5116400>> (accessed 25 May 2021)

³⁹ V. Morales.

⁴⁰⁷ B. Kajsu, p.215.

Allowing perpetrators of crimes against humanity to reach elected public positions without having told the whole truth, without having made reparations to the victims and without having served their sentences is an offence to the country and a monument to impunity.⁴⁰⁸

In addition to the discussion on why the SIVJNR does not imply impunity, it is important to mention that the ordinary justice system in Colombia reports massive delays, and 74% of the criminal complaints are closed, i.e., they remain unpunished or merely never proceed to trial. Of the remainder, convictions are handed down in only 2% of cases.⁴⁰⁹ As was already addressed, in only three years the SJP has obtained important results in matters of the truth; one can say that it has achieved more results than ordinary criminal courts have in 50 years.

Furthermore, the political alternative to Duque was Gustavo Petro, a former member of the M-19 guerrilla organisation, which demobilised in 1990.⁴¹⁰ This was an element that the CD campaign used to sell the idea that he represented '*Castro-Chavism*', a term used to associate him the Cuban and Venezuelan regimes.⁴¹¹

During Duque's government, the discourse towards the PA has not changed. In 2019, after lengthy debates in Congress and the Constitutional Court, the SJP statutory law was approved. However, President Duque objected to six principal articles of the law, arguing convenience reasons.⁴¹² In this context, Álvaro Uribe expressed to the media that 'We must bear in mind that the FARC imposed the SJP and that there are very serious

⁴⁰⁸ I. Dúque (29 December 2017)

<<https://twitter.com/IvanDuque/status/946525475794571267>>. (accessed 6 July 2021)

⁴⁰⁹ Corporación Excelencia en la Justicia, '*Manual azul de la justicia*', vol.10, 2020, <<https://cej.org.co/wp-content/uploads/2020/11/MANUAL-AZUL-DE-LA-JUSTICIA-DE-LA-CEJ.pdf>> (accessed 12 July 2021).

⁴¹⁰ El Espectador, '¿Para qué sirvió la paz con la guerrilla del M-19? - Hagamos Memoria- El Espectador' <<https://www.youtube.com/watch?v=c6v1y1CvKx0>> (accessed 2 April 2021).

⁴¹¹ B. Kajsu, p.216.

⁴¹² 'Colombia: Presidente Duque objeta ley esencial para la continuidad del proceso de paz en el país' <<https://www.youtube.com/watch?v=vdIWH8e3sl4>> (accessed 2 April 2021).

allegations that, not content with having set the mechanism, it has been demanded that the judges must be linked to the FARC'.⁴¹³

Nevertheless, the Constitutional Court did not allow the objections and the government had to approve the law.⁴¹⁴ Consequently, members of the CD party reacted and attacked the SJP and the Constitutional Court after the decision. For example, in one of her tweets, Congresswoman Paloma Valencia said, 'Today, every one of the high courts has done a great service to criminality and have failed the institutions that have fought so hard against drug trafficking'.⁴¹⁵

During 2020 and 2021, the discourse regarding the PA agreement was maintained. The government and its political party have continued to deny the very existence of the armed conflict, and continue the narrative that in Colombia there is a narco-terrorist organisation called FARC confronting a fully democratic political regime,⁴¹⁶ which can in some way be legitimising the lack of security ex-combatants face.

Regarding the SJP macro-case 03, Álvaro Uribe contended that there was no systematicity in the *false positives*, and the numbers are not real. He considered these to be isolated acts committed by a few soldiers, rotten apples within the army⁴¹⁷, and reiterated that the SJP is a biased court that is openly against the Armed Forces. He also criticises the very fact that the SJP judges the military, as it is not acceptable to equate the public forces with a group of terrorists and drug traffickers.⁴¹⁸ For these reasons, Uribe has repeatedly stated his intention to end the SJP.⁴¹⁹

⁴¹³ Á. Uribe, (Twitter, 14 March 2019)

<<https://twitter.com/AlvaroUribeVel/status/1106052067746086912>> (accessed 26 June 2021).

⁴¹⁴ Constitutional Court of the Republic of Colombia, (29 May 2019), Auto 282.

⁴¹⁵ P. Valencia, (Twitter, 30 May 2019)

<<https://twitter.com/PalomaValenciaL/status/1133877926888443904>> (accessed 26 June 2021).

⁴¹⁶ 'Álvaro Uribe: Santos engañó al mundo respecto a las FARC'

<<https://www.youtube.com/watch?v=D5EubIYoVqw>> (accessed 21 June 2021).

⁴¹⁷ JO. Melo, 'Colombia: las razones de la guerra', Bogotá, Editorial Planeta Colombiana, 2021, p.256.

⁴¹⁸ 'Álvaro Uribe Vélez responde al informe de la JEP sobre falsos positivos | Semana Noticias' (20 February 2021)

<<https://www.youtube.com/watch?v=B4hi2RRvTIM&t=382s>> (accessed 21 June 2021).

⁴¹⁹ 'Álvaro Uribe le apunta a derogar la JEP | Semana Noticias' (12 October 2020)

<<https://www.youtube.com/watch?v=8SsvL57v9Y8>> (accessed 21 June 2021).

President Duque has been more moderate than the party leader.⁴²⁰ However, the essence of the discourse is the same and an example of this is his speech on 9 April 2021, the Armed Conflict Victim's Day, when he repeatedly insisted that there should be proportionality in the sanctions against the FARC members.⁴²¹ Once again, going back to the impunity discourse, which by this point in time when the SPJ is already producing some results just disturb the legitimacy of the system which ends up affecting the realisation of victims' rights within the SIVJRNR framework.⁴²²

In the same sense, Alejandro Valencia Villa expressed his opinion during the hearing held by the CEV at the IACHR on 8 December 2020. During the hearing, he denounced that the CEV had received discrediting claims that put the team and the victims at risk, as well as the attempts at legal reforms to hinder the functioning of the CEV. In 2018, a draft legislative act was presented that sought to limit access to information from the CEV and the other entities that made up the SIVJRNR and prohibit access to confidential information; nevertheless, Congress withdrew the draft law. However, attempts at reform continued. Regardless, there is a refusal by the state to contribute information towards the exercise of the CEV's mandate,⁴²³ which ends up affecting the victims' rights to truth taking into account that without relevant information the CEV's final report will not fulfil the scope of this right.

In general, it can be said that the discourse used by the CD and the current government is based on the negation of the conflict, the FARC as an internal enemy that can be only defeated by military means and the exaltation of the public force. However, after revising the context, it can be stated that this discourse has had substantial political success as shown in the 2016 plebiscite and the 2018 elections. Moreover, if the conflict is analysed objectively, the public force was another war actor along with the paramilitaries and the

⁴²⁰Presidente Duque, único disidente en apoyo ala JEP, en encuentro de justicias transicioinales,(1 November 2020) <<https://www.youtube.com/watch?v=PnTc7nvgGSI>>.

⁴²¹ Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.

⁴²² Interview with Patricia Linares, Bogota-Vienna, 19 July 2021.

⁴²³ 'PS178_11) Comisió de la Verdad, la Convivencia y la No Repetición de Colombia' (2020) <<https://www.youtube.com/watch?v=jq9pl7PFdAA&t=1724s>> (accessed 25 May 2021).

guerrillas. The army was legitimised by the rule of law and the constitution, which gave them a different status. However, the army caused thousands of victims in *false positives* and collaboration with paramilitaries on some occasions.

These narrative patterns used by the government and its party show the intention to hinder the functioning of the SIVJRRNR bodies. In this sense, for Judge Linares, this smear and disinformation campaign has negatively affected the implementation and legitimacy of the SJP, which would no longer exist if it were not for the support of the international community. In the same vein, Elena Ambrosi mentions that both the SJP and the CEV have had to work in a very adverse political environment and that despite this lack of cooperation, as analysed in the previous chapter, these bodies have produced significant results. However, for Elena Ambrosi, one of the most serious points is the lack of communication between the government and the SIVJRRNR, which in the future could have severe repercussions on the victims' right to reparation—bearing in mind that the reparation component of the SJP proper sanctions requires coordination with state public policies programmes to impact the reparation of victims by the perpetrators. On the other hand, the government's invisibilisation of the victims of the state, in this narrative logic that understands only one actor in the conflict as violent, generates a lack of recognition and, to some extent, the stigmatisation of these victims' organisations.

Finally, concerning ex-combatants, it can be said that the narrative employed over the last 20 years by the Uribismo, which dehumanises and antagonises the enemy, has severe repercussions on the process of national reconciliation. The process of reincorporation into civilian life must be successful for former FARC members to see their rights respected and guaranteed. However, if they find themselves in a system that does not accept them but rather discriminates against them, their access to economic alternatives to war disappears.

8. Conclusion

The signing of the historic agreement between the Colombian state and the FARC-EP reassured the population and gave the international community hope for the reconciliation

of Colombians. It marked the beginning of a path toward achieving a stable and lasting peace, especially in the territories where the war was most cruel. Therefore, the PA could be considered the most important event in Colombia since the promulgation of the 1991 Constitution.

Due to its characteristics and components, the PA helped to guarantee the rights to truth, justice, reparation and non-repetition for thousands of victims of the armed conflict in light of the crimes perpetrated by the FARC guerrillas and members of the military forces. It also aided in the successful reintegration of ex-combatants into civilian life through the fulfilment of rights.

The agreement is undoubtedly complex, and its implementation is not easy because it involves various components, such as the political participation of ex-combatants, the end of the conflict itself, illicit drugs, victims, rural reform and transitional justice. However, the agreement also contains the keys and tools necessary to advance the consolidation of democracy in Colombia and to overcome a conflict that has had severe consequences for the human rights of a large sector of the population and the country's economic development. A visible and verified achievement was the demobilisation and disarmament of the largest and most powerful guerrilla group in Colombia in more than fifty years and its transformation into a political party. In addition, the simultaneous hard work of the SJP and the CEV has already yielded significant results.

The confidential nature of the negotiations between the state and the FARC in Havana, which took more than four years, did not allow the majority of the Colombian population to realise the advantages and nature of the historic agreement correctly⁴²⁴, particularly the political participation of ex-combatants and the reparative and restorative approach of sanctions against ex-combatants who accept responsibility for and provide truth about their participation in non-amnestiable crimes. These circumstances also limited the progress of the government of President Juan Manuel Santos in implementing the PA and

⁴²⁴ Interview with Patricia Linares, Bogota-Viena, 19 July 2021

the public's understanding of the factual content of the agreement during his term in office.

The CD party exploited the difficulties described above. In opposition to the government, the CD designed and implemented an effective strategy of disinformation, disorientation and outright rejection of the PA. As a result, the plebiscite called by the president on 2 October 2016 to legitimise the agreement and honour the commitment made with the FARC to submit the agreement for widespread endorsement lost by 52,000 votes out of a total of 13,000,000.

Based on an analysis of the discourse, reflected in the communiqués, tweets, WhatsApp chains and other messaging of the CD, former President Uribe and President Duque, it is clear that a political strategy was adopted in opposition of the peace agreement and its implementation, with the following characteristics and components:

- a) With substantial support from some media outlets, it was reported that the agreement implied handing the country over to the FARC, which would take control of the land and use its immense wealth to win the 2018 presidential elections. The process in neighbouring Venezuela would be replicated in Colombia, and the so-called 21st-century socialism model would be adopted, with severe consequences for the population.
- b) The idea was conveyed that the agreement would grant total impunity for ex-combatants, claiming that the sanctions, because they did not involve effective prison sentences, were equivalent to forgetting and pardoning the serious crimes committed by the FARC while ignoring the rights of the victims.
- c) False ideas were circulated with unusual effectiveness, such as (i) pensioners' allowances would be reduced to finance the guerrillas' reincorporation into civilian life; (ii) the military forces would be reduced as much as possible; (iii) private property would be abolished; and (iv) millions of hectares of land would be handed over to the FARC and expropriated from the current owners.

d) One of the false news stories that did the most damage to the plebiscite was that the agreement established 'gender ideology', supported by the Attorney General at the time, an ally of the Democratic Centre, which upset broad conservative sectors close to the Catholic Church and other religious denominations.

e) It generated indignation among the population rather than discussing the content of the agreement fairly and honestly.

f) There was a persistent disqualification of the judges of the SJP, who were described as activists of the international left with ideological interests, not affiliated with the military forces, who did not guarantee any impartiality whatsoever.

g) The objections presented by the president, some of them endorsed by the General Prosecutor at the time, against the Statutory Law of the SJP, the basic norm for its functioning, led to a public belief that the agreement and the law contained severe aspects with unpredictable consequences. The president's discourse reiterated the disinformation strategy, which the Constitutional Court ultimately rejected.

h) President Duque's government provided no frank and clear support or collaboration with the SJP, which caused difficulties for its operation and affected the timely recognition and guarantee of victims' rights.

i) The government opposed the approval of seats for victims' representatives in the congressional process. However, the Constitutional Court would later recognise the legitimacy and necessity of their representation under the terms of the peace accords.

j) There were systematic and strong attacks on political participation, especially on the presence of FARC commanders in the Congress of the Republic, conveying the false idea that they would first have to serve prison sentences and make reparations to the victims before they could occupy such seats.

The discourse of disinformation and disorientation about the peace accords and the functioning of the SJP was intensified in the midst of political polarisation. It was also used as an electoral strategy to ensure the victory of the CD in the presidential elections of 2018, which led to the CD's candidate, Iván Duque Márquez, winning the presidency. This electoral success explains the president's link to this narrative and many of his actions or omissions concerning the implementation of the PA.

A common thread of the strategy has been to delegitimise the peace process as much as possible, first, by generating serious doubts among the public about its content and the serious dangers in its implementation, and second, due to the lack of a basis for legitimacy after the plebiscite's defeat that sought its widespread endorsement. President Santos would later recognise that it was a mistake to call the plebiscite and to have trusted that the CD's strategy would not be effective due to the possibility of ending the armed conflict of more than 50 years.⁴²⁵ The strategic nature of the opposition of the CD and specifically of former President Uribe to the Peace Accords is even more evident because, after the triumph of the NO vote in the plebiscite, the Santos government and the FARC accepted (not without difficulty) the introduction of 97% of the modifications to the Havana agreement proposed by spokespersons of that party. Despite this, the CD rejected the modified agreement of the Teatro Colón and persisted in its opposition.⁴²⁶

Even so, the process is continuing. It has strengths and dynamics, and it is desirable and necessary to implement it to the maximum extent possible. Nevertheless, it has encountered internal complexities, the rupture of the FARC dissidents led by some of its principal negotiators, Iván Márquez, and Jesús Santrich.

⁴²⁵ J. M. Santos, p. 529

⁴²⁶ N. Cosoy, '¿En qué se diferencia el nuevo acuerdo de paz entre el gobierno de Colombia y las FARC del que fue rechazado en el plebiscito?', BBC-News, 13 November 2016

The proper implementation of the PA is essential for deepening the Colombian democracy, reconciliation, the effectiveness of human rights (particularly those of victims and ex-combatants) and ensuring peace with justice and social equity.

As the government's chief negotiator in the PA, Humberto de la Calle argued that it was 'the best possible agreement'. If it is appropriately developed, with the political will and commitment of all sectors of society, the government and state institutions and the international community, it will serve not only to develop democracy but also to stimulate other peace processes, especially with the ELN.

For now, some elements indicate that the PA's implementation will follow an effective, albeit challenging and complex course. Among others, the following factors are highlighted:

- a) The support of the international community, the proactive attitude of social organisations in Colombia and the critical awareness of a significant sector of citizens, especially young people, who demand a country at peace and with protected rights, in addition to the effective participation of academics and intellectuals of diverse orientations, who see the peace process and its implementation as an opportunity to follow the democratic path.
- b) The committed work of the SJP and the Truth Commission. On the one hand, the transitional justice system is expected to conclude the cases — macro-cases — and issue sentences of criminal responsibility and applicable sanctions. On the other hand, the CEV will deliver its final report.
- c) The decisions made by Congress when issuing the norms that develop the agreements, especially those related to the functioning of the SJP, have been positive for the process and its implementation. In addition, and quite significantly, the decisions of the Constitutional Court have given the peace agreement a solid legal basis and an indisputable legitimacy.

d) The progress toward implementation has been announced in the reports of the UN verification mission, the OAS mission, the IACHR, the Attorney General's Office, the CINEP and the Kroc Institute. These data reveal that there is a favourable dynamic for continuing with the implementation.

e) The greater understanding of the former FARC commanders, who are now militants of the political party '*Comunes*', of their historical responsibility for the process and the victims. They have adopted a more transparent attitude in their appearance before the SJP and remained loyal to the limits established in the PA, despite the criminality of the murders and threats that continue to be perpetuated against their members. Regarding this point, the role of the ordinary justice system, especially the General Prosecutor, is essential in terms of investigating, prosecuting and punishing those responsible.

f) To a lesser extent, the discourse — described and analysed in Chapter 7 — of the CD and the government shows not only their disagreement with the peace process but also their use of a strictly political strategy. Essentially, they have resorted to disorientation and disinformation to strengthen their ideological platform, keep their followers loyal to their ranks, strengthen their electoral banners and ensure their continuity in power, as they already know that such tactics were effective in winning the plebiscite against the peace accords (2016), the 2018 presidential elections and significant representation in Congress (39 seats). Of course, it is likely that the intensity of the strategy will change for the 2022 elections, as new aspects of confrontation emerge in the country's political scene. However, it is an issue that will necessarily be part of their electoral campaign, as in some ways it has and will continue to define their political identity.

Furthermore, it is clear that the CD and the government, when attacking the PA, aim to jeopardise the SIVJRNR, impacting victims' and ex-combatants' rights. If it is successful in its aim to end the SJP, the CD would affect the victims' rights to access justice, truth and a judicial remedy and reparation, which should never be restricted. The argument that the SJP sanctions imply impunity is not absolute, and it seems from the discourse analysis that the CD expects severe retributive justice for former FARC members but not for

public force members. Furthermore, the lack of political will to correct the mistakes regarding the administrative reparation policy have rendered it almost non-existent.

It is clear then that the implementation of the PA has a deep meaning regarding the process of democratisation and respect for human rights in the country, not only the point 3 and 5 of the agreement but the rural reform intend to transform the reality of the territories most affected by the internal armed conflict where the absence of the State is the rule. Furthermore, the PA establishes a way of dealing with disputes in a non-violent manner, which can lead to a future agreement with the ELN guerrilla and other armed organisations that currently are disputing former FARC territories. In 2022 there will be new congressional and presidential elections, where the implementation of the PA will undoubtedly be one of the central issues during the campaigns in a very polarized country.

To conclude this research, it is pertinent to refer to the voice of the victims, in this case, that of Ingrid Betancourt, who was kidnapped for seven years by the FARC. In her statement to the CEV made on 24 June 2021 she said, 'This Peace Agreement, certainly imperfect, gave us what is now the only instrument we have to get out of the Barbarity of war'⁴²⁷.

⁴²⁷Palabras de Ingrid Betancourt en el Encuentro por la Verdad (24 June 2021)
<<https://www.youtube.com/watch?v=1220aHSzfUo>> (accessed 28 July 2021)

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Interviews

- Interview with Elena Ambrosi Turbay, Bogota-Vienna, 17 July 2021.
- Interview with Patricia Linares, Bogota-Vienna, 19 July 2021.

Figures and Graphs

- **Figure.1** SJP sanctions procedure, made by Juan Sebastián Córdoba
- **Figure2.** Álvaro Uribe. Tweet 9 September 2016
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- **Figure 3.** Billboard in Santa Marta. Timochenko President
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- **Graph 1** Attacks on judiciary, political killings and censorship since 2002
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- **Graph 2** Discursive elements since 2002
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Annex 1.

INTERVIEW WITH JUDGE PATRICIA LINARES (19 JULY 2021)

Professional profile of the interviewee: Lawyer specialising in human rights and international humanitarian law, expert in transitional justice. Former General Attorneys Delegate for Human Rights. Former President and current Judge of the Special Tribunal for Peace in Colombia.

Balance of the agreement

With regard to the balance of the peace agreement five years later, P.L. maintains that it has been a difficult road, as it was processed under the confidentiality that was indispensable, but that this prevented the people from taking exact ownership of its content. Also, because an important sector of the country did not seek reconciliation and peace, but rather the unconditional subjugation of the FARC. He recalled that each point of the agreement had been subjected to a rigorous process, but highlighted the fact that the guerrillas had accepted negotiations with a state that they had ignored and fought against for more than half a century, and that these negotiations had been carried out within the framework and under the rules of the Constitution.

Legal implementation of the agreement

It is also very important that all points of the agreement were verified and endorsed by the bodies that had the competence to verify its conformity with the constitution. Congress issued the norms for the development of the agreement, including the statutory law of the SJP, and the constitutional court considered that it was within the limits of the constitution.

But these circumstances explain why people did not know the process in all its details and exact dimensions. People's expectations were diffuse, because there was little information, especially about the nature of the sanctions applicable to ex-combatants and the atmosphere of political confrontation that had prevailed since then. This was compounded by the fact that the plebiscite was lost and people did not understand what really happened. It was therefore necessary to seek constitutional solutions that were ratified by the Court.

For those who wanted peace, the expectation was the implementation of the agreement, but not everyone understood it that way, and over time the justice component of the agreement has been better understood, especially the need to allow the JEP to act so that it can fulfil its tasks. But it is possible that when the SJP decides that the FARC leadership is entitled to benefits and its own sanctions (not prison), it will be very complex and it will be necessary to promote political agreements with the ex-combatants.

Own sanctions and restorative approach

Regarding the reparatory nature of the sanctions themselves, P.L. indicates that intense work is being done on the issue, despite the political polarisation, and that there is a constructive dialogue with the Presidential Advisory Office for Stabilisation and the United Nations. However, it is necessary to build and design, with the participation of the victims, a correct application of the principle of proportionality that responds more to criteria of gradualness of the sanction according to the command exercised or the degree

of participation in non-amnestible crimes. He recalls that the discourse of the government and the C.D. party points more towards proportionality according to the seriousness of the crime and with reference to the common penalties foreseen in the penal code.

In any case, the role assigned to the UN Verification Mission will be very important in this respect.

Disinformation strategy

The systematic smear and disinformation campaign led by former President Alvaro Uribe and his political party to weaken the SJP has created multiple problems in the implementation process. Despite this, the support of the international community for the process is important, as without it, it is likely that the SJP and other basic components of the agreement would not exist.

The road has therefore been more difficult, but the social organisations that were also the architects of the agreement, the international community and the young people who demand peace as a right, have made it possible to move forward, despite the obstacles created by the CD and the government, which have been echoed in the media.

This has delayed the implementation of the agreement, the participation of victims and the realisation of their rights.

With regard to the SJP, he notes that there has been no clear, concrete and unequivocal orientation on the part of the current government to support its management. This attitude contrasts with the support of the previous government. As a result, it has been difficult to achieve a greater degree of compliance with the jurisdiction's orders to the military forces.

Conditionality Regime

Regarding the P.L. conditionality regime, he notes that this has been a learning process. In principle, FARC members were not clear about what this was all about. They have had to internalise and take ownership of what the conditionality regime and its benefits are and what it means. But everything has been regularised through jurisprudence and thanks to this the ex-combatants have been accepting the regime.

As the work of the SJP progresses, ex-combatants have realised that if they do not contribute effectively to the truth, the SJP has legal tools to impose custodial sanctions. An example of this has been the evolution of the acceptance of responsibility for kidnapping.

Victims' Participation

On the participation of victims in the proceedings before the SJP and their right of access to justice, P.L. points out that the procedural and statutory rules could be improved, but in the system created it is clear that it is not the victims who determine who is or is not responsible, nor do they impose sanctions or determine reparation. That is the role of judges subject to due process. What victims have the right to do is to participate in or oppose their own type of sanction in specific cases.

INTERVIEW WITH ELENA AMBROSI

(July 16, 2021)

Professional profile of the interviewee: Lawyer specialising in human rights and international humanitarian law, expert on victims of the armed conflict in Colombia, she participated in the negotiating table between the Government and the FARC. She was Delegate Attorney for the Follow-up of the Peace Agreement.

The first topic discussed in the interview was the balance, five years after the signing of the peace agreement, on the process of reincorporation and demobilisation of FARC ex-combatants.

E.A. maintains that on these two points, in contrast to others in the Final Agreement, progress has been made, although there are currently major challenges. He recognises that although the current government was not initially in favour of the peace process, important commitments have been fulfilled. This issue has structural difficulties, because it was a point that was not dealt with in detail in the Agreement and was left to be developed in the future through a Reincorporation Council. On the positive side, a CONPES (document of the National Council for Economic and Social Policy) with a gender focus was approved. He stressed that in the beginning there were many difficulties for productive projects, some of which still exist today and which can be explained as a structural problem of the agreement itself and not necessarily the government's responsibility. He recalls that the government itself decided to give legal stability to the ETCRS (previously known as the Veredal Zones for the laying down of arms), and this represents a positive aspect of the process.

He highlights the effort that has been made to buy land for ex-combatants, as there is a plan for the normalisation of land, despite the fact that this was not contemplated in the Accords. He recognises that this is a long, complex and difficult process, as many legal requirements must be met.

The second theme of the interview is related to the most visible problems of the process.

E.A. points to two major flaws:

a) the previous government should have designed and implemented a more ambitious and concrete policy for the reincorporation of the FARC's mid-level commanders. These are men trained for war, with the capacity to command their troops, with weapons and resources, and their transition to civilian life is extremely difficult. This is a key point as they are the ones who motivate ex-combatants not to return to arms. He argues that an institutional reincorporation should have been designed, i.e. linking them to the tasks of the state itself. It should not be forgotten that the FARC, due to its own history and characteristics, has great differences with the Paramilitaries. The FARC are more inclined towards collective rather than individual reincorporation and have a greater sense of belonging to their organisation. The government had no experience in this field and this has made the process very difficult.

b) The major problem that remains is the security of ex-combatants. At least 200 fatalities have been recorded so far. This is the "Achilles' heel" of the process. Although some ex-combatants have security schemes offered by the state, the problem is that the general security conditions in the regions have deteriorated more and more. The government did not design a territorial control strategy to guarantee security in these territories after the disarmament or withdrawal of the FARC. Such a strategy does not exist. Groups of ex-combatants have been forced to move to other regions because of individual and collective threats. In these regions there is a high level of fragmentation of criminal organisations, including FARC dissidents and the ELN, among others, with a presence in the departments of Nariño, Putumayo, Caqueta and in the areas of Catatumbo, Bajo Cauca and the Pacific.

On this point, it is worth noting that greater coordination with regional authorities is required to support reincorporation. The last point addressed is the analysis of the change of government and its impact on the process, especially on the Integral System of Truth, Justice, Reparation and Non-Repetition.

In general terms, there has been progress in reintegration, but serious difficulties in reparations, and the big issue is security. In relation to the government's attitude or disposition towards the justice components, the following stand out:

The Unit for the Search for Disappeared Persons (UBPD) has problems as it has not produced concrete results four years later. And this is not necessarily a problem attributable to the government.

The Truth Commission, which concludes its work at the end of this year, has done intense and difficult work, but its task is not yet very visible to the community. In part he explains this because neither the government nor the FARC has made a show of acknowledging the truth. He believes that intensive social dialogue will be required. He points out that there is no relationship between the government and the commission. The government could have made an acknowledgement of responsibility for past events, but did not do so. This makes it difficult to close the cycle of war and its effects.

For its part, the SJP has excelled with indictments in cases 001 and 003. And this despite the government's twenty attempts to introduce modifications to the SJP. It is notorious that on the issue of the sanctions to be applied by the SJP there is no collaboration or willingness on the part of the government.

The change of government has led to a discourse that delegitimises the institutions that make up the justice component of the peace agreement, a discourse that is mainly promoted by the governing party and is damaging to the process. These institutions have had to work in a very adverse environment.

The issue of reparation for victims is a bleak one. Compensation is proposed over very long periods of time, with targets that are almost impossible to meet. Structural solutions must be considered. It is preferable to try to concretely improve the living conditions of the victims, the vast majority of whom belong to a poor population. The victims must be

guaranteed a secure future with rights. In the rural reform proposed in the peace agreement, there are tools that should be used to transform the lives of the victims, who should also be supported with a process of collective psycho-social rehabilitation, which is very necessary to confront the collective trauma of the ravages of war.