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Bringing Justice to War: Literature Review for a Comparative Study of Transitional Justice

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With the relevant participation of the international community, in 2016, the Colombian Government achieved a Peace Agreement to end more than fifty years of war with the Revolutionary Armed Forces of Colombia. This is the first peace negotiation in the world developed entirely under the continued preliminary examination of the International Criminal Court. The laying down of weapons by the oldest active guerrilla in the world demanded establishing an Integral System of Truth, Justice, Reparation, and Guarantees of non-Repetition, that should satisfy both internal tensions and an unprecedented International Legal Order. As the Colombian case outlines tensions between national peace, global justice, and human rights, it has been a focus of political, legal, and academic debate. This literature review presents the main discussions around Colombian Transitional Justice: The compatibility of the Final Agreement with the International Commitments in terms of Human Rights and Individual Criminal Responsibility; the role of the international community in the peace process; and evaluations of the reached implementation. This text affirms that there is a promising gap in terms of comparative studies and enunciates a comparison that would give lights on the way transitional justice has evolved since it emerged as a concept and it became a global manner of understanding transitions to democracy.

Keywords: Transitional Justice, International Legal Order, Colombian Final Agreement of Peace, Democratic Transitions.

Introduction

During the late 1980s and early 1990s, the notion of transitional justice emerged as a 'conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes' (Teitel 2003, 70). Before this period, 'the dominant approach in transitional contexts was that of forgiving and forgetting; its instruments par excellence were general and unconditional amnesty laws' (Uprimny, Sánchez and Sánchez 2014, 63).

From the 1980s onwards, the approach of blanked amnesties —where Law worked 'at the service' of what was politically agreed— started to be contested by the need to guarantee some minimum standards of justice as a condition to build a society respectful of human rights. It was argued that:

> Wherever the criminal justice response was politically unwise or simply impractical, other ways should be considered to respond to the predecessor regime's wrongdoing and repressive rule, and, moreover, that such alternatives could advance the rule of Law (Teitel 2014, xii).

With time, the unfolding of international criminal Law and the establishment of the International Criminal Court (ICC) strengthened the commitments of States in terms of individual criminal responsibility[1]. This turn of events transformed the dynamics of negotiating peace. 'With the creation of the ICC, subsequent peace processes were affected, positively, by the need to include standards from international human rights and the international criminal law' (Currea-Lugo 2021, 106).

Moreover, independently from the Rome Statute, States have a general duty to investigate, prosecute and punish, which limits the possibility of offering general amnesties as an incentive to armed groups to abandon weapons and play under the rules of democracy. Under new circumstances, 'the question for the ICC Prosecutor, but, most importantly, for a State Party to the Rome Statute, is how to achieve the requirements of justice under the Statute while securing lasting peace' (Stewart 2018, 2).

According to Teitel, the first notion of transitional justice expanded[2], and the world witnessed an 'increasing detachment of transitional justice

[1] Unlike its predecessors, the ICC emerged from the consensus of the international community on the creation of an international, independent, and permanent body for the eventual prosecution of those responsible for serious international crimes (Mora, Santiago and Betancourt 2019, 106).

[2] Nowadays, it is possible to talk about Transitional Justice also in situations of ongoing conflicts. Its principles can be claimed and implemented even in contexts where 'the transitional process cannot produce a radical transformation of the social and political

from local politics and its corresponding transformation into a form of global law and politics' (2014, 3). Therefore, 'the challenge in this context is to incentivize demobilization while fulfilling the accountability standards of criminal law' (Sánchez 2016, 172).

Crossed by these queries, in 2016, the Colombian Government achieved a Peace Agreement to end more than five decades of war[3] with the Revolutionary Armed Forces of Colombia (FARC-EP). This peace process 'has been the first developed entirely under the continued scrutiny of the International Criminal Court' (Arevalo and Höker 2018, 54). The Final Agreement had the support of the Office of the Prosecutor (OTP 2016) because it excluded amnesties for crimes recognized by the Rome Statute.

According to Sánchez (2016), the Colombian way stands that the State's duty to punish is not absolute and, during times of political transitions, its fulfilment can interfere with other duties and values (equally essential) such as peace, truth, and victim's rights. 'Thus, the Colombian Constitution upholds the idea that the duty to investigate must be weighed against other specific duties and is dependent on the specific context' (Sánchez 2016, 174).

To conciliate these tensions, the Agreement designed an Integral System for Truth, Justice, Reparation, and Guarantees of Non-Repetition (from now on: *The Integral System*) constituted of three institutions: A Truth Commission, a Missing Persons Search Unit, and a Special Jurisdiction for Peace (JEP, Spanish Acronym).

Although it is clear that 'Transitional Justice is always contextual, even if it is based on universal values' (Uprimny, Sánchez and Sánchez 2014, 25) it is also true that 'every peace process learns from developments elsewhere, [and] innovates to adjust to challenges present in the local context. Theses [Colombian] innovations can in turn become a reference for international peacebuilding processes' (Herbolzheimer 2016, 3)

Therefore, not without detractors and challenges, currently, 'the peace talks between the Colombian government and the FARC-EP have become a global reference for negotiated solutions to armed conflicts' (Nylander, Sandberg and Tvedt 2018, 8).

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order', leading to processes of transitional justice without transition (Uprimny, et al 2006, 13-14).

[3] There is no consensus on the date of starting of Colombian armed conflict, but it was considered the longest running-conflict of America and the third oldest active war in the world (Jiménez and González 2012, 10)

For these reasons the Colombian Peace Process has been at the centre of the academic, judicial and political debate. This text will show the main topics of discussion subject to analysis.

Ahead of this impressive attention, 'comparative studies contrasting the implementation of the peace agreement with the FARC-EP and other cases worldwide are one of the least explored aspects of the Colombian armed conflict' (Fernández-Osorio 2019, 104). This gap in comparative studies goes beyond the analysis of the implementation.

Although two texts comparing the peace talks between Turkey and the Kurdistan Workers' Party (PKK) with Colombian negotiations (Özkan 2018; Dilek and Baysal, 2021), there are not many works thinking the Colombian Peace Process in comparison with other transitions that took place before the signing of the Rome Statute or without ratifying it.

Therefore, this Ph.D. research aims to compare Nepal, the Balkans and Colombia, to see how the unfolding of international commitments in terms of international criminal responsibility has impacted the ways of negotiating peace?

The Balkan transition is proposed because it took place at the beginning of the emergence of transitional justice as a concept; its unfolding was crucial for determining the extension of the notion. The Nepal transition is chosen because it took place recently —after the establishment of the ICC but without ratifying the Rome Statute— and it is a peace process with a relatively low interest in the academic community that opens a potential window to develop unexplored analysis.

A triangulation of the cases would contribute to the debates that arise in situations of politically negotiated transitions as there is a 'relatively widespread consensus that a legitimate transition from war to peace must be based on an appropriate balance between achieving peace and the ethical and legal imperatives of fulfilling victims' rights' (Uprimny, Sánchez and Sánchez 2014, 15).

With this in mind, this text is divided into five parts. The first one shows the literature about the compatibility of the Colombian Agreement with international obligations in terms of criminal responsibility; the second exposes the analysis regarding the role of the international community in the peace conversations and its subsequent implementation; the third presents the texts that have evaluated the implementation of the Final Peace Agreement; the fourth goes further in key concepts that will orient the comparison; and the last one exposes some conclusions.

1. The compatibility of the Colombian Agreement with International Standards.

The question that guides the works quoted in this part of the literature review does not apply only to the Colombian transition: 'How should the legitimate interest in punishing perpetrators be balanced against the desire for national reconciliation in a society recently torn by conflict?' (Méndez 2001, 25). In this matter, the primary definition of Transitional Justice is quite enlightening. According to the former Deputy Prosecutor of the ICC:

The concept of 'transitional justice' embraces a full range of processes that societies employ to deal with the legacy of past human rights abuses and to achieve accountability, justice, and reconciliation. To fulfil these aims, transitional justice systems commonly include four measures: criminal justice, mechanisms for the establishment of the truth, reparations programs, and guarantees of non-recurrence (Stewart 2018, 4).

The Colombian Agreement established all these measures through *the Integral System*. However, there were doubts regarding the criminal justice issue. The matter was of particular importance as Colombia ratified the Rome Statute in 2002[4] and in 2004 the ICC opened a preliminary examination based on the alleged commission of crimes against humanity and war crimes, in the framework of the armed conflict, whose perpetrators are among government forces, paramilitary, and rebel armed groups (OTP, 2012).

The Peace Conversations with FARC-EP had severe implications in the unfolding of the ICC's examination. Its former Deputy Prosecutor expressly noted that 'how a peace agreement affects national proceedings will have an impact on the Office's assessment of the admissibility before the ICC of cases arising out of the situation in Colombia' (Stewart 2015, 8).

Although there were open expressions of support, there were also concerns about tensions with the international standards, particularly regarding how to unfold the JEP in the national jurisdiction.

In their *Amicus Curiae*, both the former ICC Prosecutor Fatou Bensouda (2017), Human Rights Watch (2018), and the European Centre for Constitutional and Human Rights (ECCHR 2017) expressed their concerns because the Colombian Law created legal space for senior commanders to avoid criminal responsibility. Specifically, the legal principle defined at

[4] Colombia was in the radar of the ICC from 1998, when former president Andrés Pastrana signed the Rome Statute. 'Pastrana, who had initiated other peace talks with members of the FARC, believed that the ratification of the Statute could act as deterrent for guerrillas and promote a commitment to the peace process' (Aksenova 2018, 259-260).

the national level for *command responsibility* did not meet the international criteria because it is too restricted: On the one hand, it totally avoids the standards of *should have known* and, on the other, it adds a condition of *effective control* to determine if high officials are held to be responsible.

Because of these disagreements, the possibility of the ICC moving forward to a formal investigation was place of academic disclosure (Sánchez 2016; Urueña 2017; Torres, Ardila, and Suarez 2019).

Moreover, as Colombia is also part of the Inter-American System for the protection of Human Rights[5], there were concerns about the Agreement's compatibility with the Inter-American Convention on Human Rights (Acosta-López 2016). On this matter, there was a direct precedent when the Inter-American Court expressed the need to find a balance between justice and peace that did not lead to impunity in a previous transition to disarm paramilitary groups in Colombia (Uprimny and Saffon 2008, 182).

In that opportunity the system designed alternative penalties from five to eight years of imprisonment under the Justice and Peace Law of 2005. The issue of proportionality also enters into consideration as 'the Inter-American Court of Human Rights have provided guidelines for States to ensure that punishment is proportional to crimes and that lenient sentencing does not transform into a manner of impunity' (Seils 2015, 3). However, 'International practice is not especially relevant for this case. For Colombia the most important indication comes from the OTP and its apparent acceptance of the eight-year threshold' (Seils 2015, 15) established by the above-mentioned Law of Justice and Peace to disarm the paramilitary.

To deal with the component of justice the *Integral System* lies on the JEP. The Special Tribunal has a hybrid regime of sanctions that combines retributive and restorative measures. To move between both approaches, the JEP (2020) has the competence to establish three types of sanctions:

a) *Ordinary sanctions*, ranging from 15 to 20 years in prison, which will be imposed on those who were admitted under the competence of the JEP, but do not provide truth or acknowledge responsibility for the crimes for which they are being tried.

b) *Alternative sanctions*, from 5 to 8 years, which contemplate the deprivation of liberty of those who acknowledge truth and responsibility.

c) *Proper sanctions*, which will also have a duration of 5 to 8 years but do not include deprivation of liberty. In turn, they contemplate a restriction of liberty. This type of sanctions will be imposed on those who acknowledge

[5] On this matter, the Inter-American Commission on Human Rights (2021) published a compendium with the standards in terms of justice, truth, reparation and guarantees of no repetition.

truth, responsibility and perform Works, Labours, and Actions with Restorative-Reparative content (TOAR, Spanish Acronym).

By being at the heart of the sanctions, the TOAR are an essential issue in achieving the goals of the JEP. According to the guidelines published (JEP, 2020), they must have five elements:

- Effective participation of victims.
- Addressing the damages caused.
- Not harming the rights of victims.
- Contribution to the reconstruction of social ties or to a transformation of society that allows overcoming the conflict.
- Suitability to achieve the reintegration of the perpetrator into society.

The sanctions are thought for the maximum responsible of massive human rights violations. This prioritization is accepted under the terms of the ICC (Stewart, 2018) and seems to fulfil the regional standards as 'this system of selection would be found to be in compliance with the American Convention on Human Rights under the conventionality control test as practiced by the Inter-American Court' (Acosta-López 2016, 178). Moreover, 'prosecuting everyone involved in the conflict is estimated to require 114 years. The only feasible solution is therefore prioritization of cases and choosing the most representative or "symbolic cases"' (Aksenova 2018, 276).

Beyond the 'symbolic cases', the Tribunal established criteria (JEP 2018) to create macro-cases that show patterns of macro criminality and representativity of the general dynamics that were present during the whole armed conflict.

In addition to these technical matters, there were also two key measures taken to safeguard the legality of the Agreement on the international level (Rojas, 2018): The first one was declaring it a Special Agreement under the terms of common Article 3 of the Geneva Conventions of 1949; the second was the formal presentation of the Final Agreement to the UN Security Council.

So far, the forms of facing the component of criminal justice designed by the Agreement and the developments of the JEP have been understood by the ICC as huge efforts to investigate and prosecute Rome Statute crimes at the national level. Based on the idea of positive complementarity, a Cooperation Agreement (the first of its kind) was signed between the Colombian Government and the ICC in October 2021.

The Cooperation Agreement agreed to close the preliminary investigation that the Tribunal had to examine the Colombian situation from 2004

on the condition that Colombia preserves the legal institutions that were created to guarantee the transition to peace by means that ensure justice. Nevertheless, if the OTP considers that these institutions are not respected, there are chances of reopening the examination and advancing to the formal investigation.

The legal innovations of the Colombian Transition are giving significant contributions to the criminal justice criteria as 'the compatibility of the restorative sentences with international standards has never been examined in the past' (Levy, 2021). Up to date, they seem to be fulfilling the international principles of criminal responsibility. The former Deputy Prosecutor of the ICC expressed that, beyond the tensions mentioned, 'the approach Colombia has taken to ensure accountability is innovative, complex and ambitious, and it must be sustained' (Stewart 2018, 21). For such reasons, the JEP 'is on its way to fulfilling its enormous responsibility, not only of contributing to Colombia's transition to peace, but also of setting a historical precedent of institutionalized restorative justice to face the legacy of war' (Levy, 2021).

2. Role of the International Community in the Peace Conversations and its Subsequent Implementation

The role of the international community is a whole topic of reflection because it played a fundamental role in the unfolding of the peace conversations even before they officially started, during the preliminary confidential talks between the parties during 2011-2012. Although national ownership was a vital component of the negotiations:

> The support and interaction of the international community, and in particular from the countries in the region, was important throughout the whole process. The designation of special envoys, such as from the U.S. and EU, also indicated a strong international commitment to the process (Nylander, Sandberg, and Tvedt 2018, 8).

According to Herbolzheimer (2016), the peace conversations had external support but were driven directly by the parties; Four countries were asked to participate formally in the peace talks: Cuba and Norway as *guarantor countries*, and Venezuela and Chile *accompanying countries*. Among other things, the guarantor countries contributed to build trust, offered logistics, and helped to solve problems in moments of crisis. Moreover, the involvement of international actors included the participation of observers, such as the Organization of American States (OAS) and special envoys

from the EU, the UN, and experts from many regions that contributed with their knowledge of previous experiences.

As mentioned before, being part of the Rome Statute played an important role in unfolding the commitments regarding the justice component. Following the text of Brubaker that aimed to determine the involvement of the UN Security Council in the process, 'the ICC "was always at the background" during the talks' (Brubaker 2020, 56).

Also, the delegations maintained constant communication with the ICC. This is why the work of Aksenova that analyses the involvement of the ICC in Colombia affirms that 'the interaction between the ICC and Colombian domestic actors can thus be described as a "dialogical model"' (Aksenova 2018, 261) with an active engagement from both sides to construct common means[6].

The 'breathing on the neck' of the ICC contributed significantly to remove the possibility of absolute amnesties from the negotiation table. However, their involvement went beyond the negotiations and was present in the implementation phase.

In 2018, when the Agreement implementation was in its initial steps, Iván Duque won the presidential election. He came from a political sector that was in open opposition to the Peace Agreement and affirmed that it would suffer changes during his term (Ustyanowski, 2018). Those modifications were mainly directed to the JEP. By vetoing some articles of the Law that created the Tribunal, he delayed the establishment of the JEP for two years and jeopardized its implementation.

These reforms were understood as attacks, and it was a topic of academic discussion if it was time for the ICC to act (Ambos and Aboueldahab, 2019). On that matter, the Cooperation Agreement between the OTP and the Government of Colombia, mentioned in the previous section of this text, appeared as a way to commit the president to respect the agreements in general and the JEP in particular. It also reinforced the Tribunal:

> If, during the strict monitoring that the JEP will carry out of the commitments signed between the Colombian State and the Office of the Prosecutor of the International Criminal Court, it observes the disregard of any of them, it will immediately make use of a direct and effective channel of communication created by the said Agreement, in order to alert the Prosecutor to these serious facts and request, if necessary, the expeditious exercise of its full powers of international criminal prosecution. (JEP, 2021)

[6] As her work shows, one of the most significant proves of these relations of mutual communication were the letters sent directly to the Constitutional Court of Colombia. To see more on this it is possible to see Uprimny (2013).

Beyond the ICC, the text of Piccone analyses the tensions between international organizations and the attempts of President Duque to harm the Peace Process in a '"death by a thousand cuts" tactic' (Piccone 2019, 22). His work shows the calls from the UN Secretary-General António Guterres on the Government to give the JEP guarantees to full functioning with independence and autonomy. Also, he mentioned the interventions of the head of the UN High Commissioner for Human Rights mission in Colombia, reminding him of the historical responsibilities of Duque to fully implement the accord.

It is worth noting that international participation was agreed in La Habana by consensus. Regarding the implementation and verification, it was agreed a Mission of Verification of the UN Security Council[7]. On this matter, the analysis of Brubaker concludes that:

> This case helps demonstrate the role the Security Council can play as a 'protector of existing peace agreements', especially when political turnover puts an existing accord under threat. In this case the Council had to strike a delicate balance between protecting an agreement and respecting Colombia's sovereignty (2020, 53)

In the same direction, the Inter-American Commission on Human Rights 'calls on the State to step up its efforts to implement this Agreement, in order to ensure compliance with it and to continue to promote the consolidation of peace in Colombia' (IACHR 2020).

From the other side of the Atlantic Ocean, 'currently, the EU supports the implementation of the peace accord in the framework of the European Trust Fund for Peace' (Amaya-Panche 2021, 5). According to Ioannides:

> Since the signature of the Colombian peace agreement, the EU has redoubled its support for the implementation of the stipulations in the peace deal, by setting up the EU Trust Fund for peace in Colombia and appointing a special envoy to give visibility to and monitor the peacebuilding process (2019, 53).

The challenges for the implementation and the consequences of the identified lack of political will to fully implement the Peace Agreement will be explored in more detail in the next section. Still, an interesting conclusion to this point is that 'the trend in the implementation process would

[7] The Mission in Colombia was established on 25 January of 2016, with the specific goal of 'verifying the laying down of arms and, as port of the tripartite mechanism, a definitive bilateral ceasefire and cessation of hostilities following the signing of the peace accord' (Brubaker 2020, 57). However, its mandate was extended. As it was though to be a brief mission, the parties requested a special condition of not naming it with an acronym, something usual for longstanding missions.

be more precarious without the support [and pressure] of the international community' (Estrada 2021, 300).

3. The Implementation of the Agreement

Signing the Final Agreement closed one of the stages. Afterwards came the more significant challenge of implementing the commitments in what was initially called the post-conflict scenario. However, as previous experiences suggest that armed conflicts do not necessarily finish after the signing of agreements, even during the phase of conversation, 'these discussions have led some people to suggest the use of the term "post-agreement" instead' (Herbolzheimer 2016, 6).

The Colombian armed conflict is one of the oldest and most complex in the world. As the FARC-EP was the guerrilla with the most significant presence in the territory, their laying down of weapons represented a huge milestone in terms of peacebuilding. Nonetheless, it did not mean an effective transition to a peaceful order. Among the most relevant armed actors are still paramilitary groups, FARC dissidents (who did not avail themselves of the Agreement), and the National Liberation Army guerrilla.

The transformation of the armed conflict is a direct consequence of the 'lack of readiness on the part of State agencies to fill the security vacuum as FARC units demobilized in 2017' (Piccone 2019, 7). Other armed groups started new violent processes to win or consolidate control over the left territories.

Based on these circumstances, the International Committee of the Red Cross (2022) identified six internal armed conflicts, including confrontations between the State and guerrillas, the State and paramilitary forces, paramilitaries and guerrillas, and guerrillas and guerrillas. The control of drug trafficking corridors is one of their significant engines. Despite the complexities, it is argued that:

The current situation is not comparable to that of the FARC-EP before the peace process; today they are three independent groups that have been dismantled - like splinters of a large trunk - and so far, do not represent an insurgent project, nor a scenario of war as before the peace agreement. What is happening today are less intense, focused conflicts, with recurrent actions in 14 departments and 74 municipalities; before the peace agreement, in 2011 the Ombudsman's Office reported a sustained presence in 31 departments and 249 municipalities (Indepaz 2021, 37)

Linked with the second section of this text, it is interesting to acknowledge the official establishment of the Barometer Initiative of the KROC Institute for International Peace Studies of the University of Notre Damme to formally monitor and verify the implementation of the Peace Agreement[8] through the Peace Accord Matrix (PAM) Program[9]. They also participated in the conversation process and their annual reports are of enormous relevance. Their fifth report remarks that five years after the signing of the Final Agreement, it is possible to discern three patterns.

First, the commitments that were urgent to consolidate the end of the conflict with FARC-EP —which means the abandonment of weapons and the displacement of former combatants from their zones of domain— 'were completed rapidly, without prejudice to some issues regarding security guarantees that are still pending' (KROC 2021, 8).

Second, it is possible to see that commitments that aimed to tackle the problem of illicit drugs and the *Integral System* that was designed to attend the victims' rights [10] are 'advancing and, if they continue at the same pace, should be completed on schedule' (KROC 2021, 8). However, there are difficulties with the rhythm of the Comprehensive National Programme for the Substitution of Illicitly Crops that existed before the Agreement but is linked with these goals.

Third, commitments in terms of the Integral Rural Reform[11] 'reported minimal progress at the current stage of implementation' (KROC 2021, 8). The same situation applies for the State pledges to guarantee an opening of the political participation.

From a general frame, an evaluation of the implementation shows that 'levels of violence in Colombia have decreased since the peace agreement was signed. However, violence against social leaders and demobilized ex-combatants and communities has increased significantly' (Amaya-Panche 2021, 1).

The security of the former guerrilleros is a matter of enormous gravity. According to the United Nations Verification Mission in Colombia, updated to March 28th of 2022, 'since the signing of the Final Agreement, a total of 315 former combatants (10 women) have been killed. In addition, 89 former combatants (6 women) have been victims of attempted homicide, while 27 are deemed as missing' (2022, 9). Moreover, there have been

[8] Section 6.3.2. of the Final Agreement.
[9] This Matrix was used for the work of Fernández-Osorio (2019), mentioned above.
[10] Points 4 and 5 of the Final Agreement.
[11] That was designed to face one of the main causes of the armed conflicts: the concentration of land and the inequality of the countryside

serious threats to the productive initiatives of the signers of peace, that are increasing the difficulties for their process of reintegration into society.

The systematic murdering of ex-guerrilleros in process of reintegration and their security threats were recognized by the Constitutional Court of Colombia in January of 2022[12], when it declared the State of Unconstitutional Things and ordered the State to increase the low level of implementation seen in the components of the Final Agreement related to guarantee the security of the signers of peace, their families and those who are members of the new political party created by former FARC-EP.

According to Currea-Lugo, 'the central problem of implementation is that its outcome depends, for many reasons, on touching part of the power structure and transform Colombian political and institutional culture' (2021, 115). Moreover, the difficulties to fulfil the commitments are also linked with financial challenges. The work of Rodríguez and Martínez, argues that 'the fiscal structure of the Colombian State was not adapted to the needs arising from the Final Peace Agreement' (2022, 13).

Also, there are serious challenges that must be clarified in terms of the justice component, particularly to clarify the victims' participation in the definition of the restorative sanctions that the JEP must establish. So far, the guidelines of the Tribunal do not explain in detail the link between the restorative initiatives, the damaged caused and the victims that are consulted in the process of determining the sanctions. Because of these ambiguities 'it may be the case that *respondents*[13] carry out reparation activities in places where their victims do not reside, or in regions where they have not committed any acts of victimisation' (Sandoval et al 2021, 24).

In addition to these queries, the work of Vargas and others (2021) shows claims from victims that have participated in the formulation of the JEP's sanctions. As many of them are still in conditions of economic vulnerability[14], the issue of reparations to solve their material situation appears as a need of victims that might not be met; because the Tribunal prioritizises collective reparations over individual.

Furtheremore, although many victims value their participation in the public audiences of the JEP, there are concerns about the methodology used to develop the versions that perpetrators offer: Some victims con-

[12] Sentence SU020-22

[13] Translation of the Spanish word 'comparecientes', a soft way found to name the perpetrators.

[14] Which in many cases was an structural factor to suffer the victimizing event.

sider that court representatives have limited possibilities to deeply investigate matters that are interesting for them and their communities, and above all 'they observe that *respondents* do not contribute sufficiently to the truth in these spaces' (Vargas et al 2021, 5).

Even if the Colombian Agreement was globally applauded by innovations related to the incorporation of a gender focus, 'achievements in terms of gender continue to be marginal in respect to the peace objectives and the enactment of victims' rights' (Gómez and Montealegre 2021, 457). This is a situation shared with the ethnic approach.

4. Key Concepts to Guide the Comparison

According to Matanock and García-Sánchez (2017), even if it has particularities, the Colombian conflict belong to the most common type of civil war: An asymmetric conflict; for them its unfolding reflects a common pattern of current wars in terms of the different levels of confrontation seen. 'While a complex and important case in its own right, Colombia is also very similar to other civil conflicts, despite having one of the longest-running insurgencies in the world' (Matanock and García-Sánchez 2017, 153).

For such circumstances the Colombian peace process with FARC-EP can be object of comparative analysis. This section offers categories from the Peace and Conflict Studies pointed out by Jarstad (2008). Her analysis affirms that every transition from war to democracy must deal with at least four dilemmas: Horizontal, vertical, systemic, and temporal.

The *Horizontal dilemma* refers to the tension that appear by opening the democratic space to armed groups that are negotiating peace and leaving weapons under the condition of being able to participate in the Government. Opening the democratic space to parties that used violence as a way of doing politics 'may have negative effects on democratization. Such inclusion can be seen as a reward for violence and thereby contradict the democratic principle of non-violence' (Jarstad 2008, 22).

The *Vertical dilemma* 'entails the difficult choice between efficacy and legitimacy. It pertains the relation between elite and mass politics' (Jarstad 2008, 23). This dilemma focuses on the mechanisms of communication concerning representatives of the parties in the negotiation table and the queries and perceptions of persons in the grassroots.

The *Temporal dilemma* 'regards trade-offs concerning short-term versus long-term effects on democratization and peacebuilding' (Jarstad 2008, 25), it addresses the measures that should be taken to guarantee a lasting

peace and the tensions that appear with decisions needed in the present to agreed ceasefires or actually be able to negotiate.

Finally, the *Systemic dilemma* considers the issue of ownership and deals with the tensions that might arise between local engagement and international control of participation in the peacebuilding process.

Each dilemma serves as a variable of analysis to that could guide the proposed comparison. The dilemmas offer a framework to study how the separate cases dealt with each specific part of the transition and get to conclusions by analysing their differences and similarities.

Conclusions

The Colombian peace process with FARC-EP and the transitional justice established to guarantee the transition of the former guerrilla to play under the rules of democracy, was an object of study for many analysts. Due to all its complexities and innovations, Christine Bell affirmed that independently of its implementation 'reaching a final accord as Colombia did, whatever happened thereafter, remains a significant achievement' (Bell 2016, 166).

There is a vast bibliography that goes from policy briefs and human rights reports to academic analysis. The Colombian transition was centre of legal, political and scholar debates that paid attention to three main topics: The compatibility of the Final Agreement with the established standards in terms of individual criminal responsibility; the role of the international community in the peace process —during the phase of negotiations and afterwards in the post-agreement stage—, and the evaluation and monitoring of the implementation of the commitments achieved.

Despite the difficulties to put into practice what was agreed in La Habana, by the way found to tackle the challenges regarding the component of criminal justice, 'Colombia has broken the false dichotomy between peace and justice. There is no peace without human rights and there are no human rights without peace' (Herbolzheimer 2016, 5).

Nevertheless, the field of comparative studies is full of potentialities and unexplored paths. Compare the Colombian transition with the ones of Nepal and the Balkans would give lights on the way transitional justice has evolved from its emergence as a concept, to a global manner of understanding transitions in a way that satisfy the international obligations of States in terms of truth, justice, reparation and guarantees of no repetition.

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