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Artículos de investigación

Transitional Justice before and after Transition: Colombia in Comparative Perspective

Justicia transicionat antes y después de la transición: Colombia en perspectiva comparada

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Resumen: La experiencia colombiana con la justicia transicional (TJ) es anterior al reciente acuerdo de paz entre el gobierno de Colombia y las FARC. Colombia representa un caso único de esfuerzos significativos hacia TJ antes de que se lograra un fin negociado del conflicto armado. Las leyes, instituciones y programas que implementaron estos mecanismos anteriores de TJ sentaron las bases para un entorno posterior al conflicto, a pesar de que su implementación tuvo lugar en medio de un conflicto en curso. Cada administración ha podido identificar áreas de mejora para los mecanismos que ya existen y los ha fortalecido mediante cambios en la estructura normativa o mediante la creación de nuevas instituciones. Después de un breve resumen de la evolución del concepto de los mecanismos de TJ y TJ, el documento proporciona una breve descripción de los casos comparativos de TJ en América Central. Luego se considera el caso colombiano, examinando primero las iniciativas de TJ anteriores al acuerdo de paz, antes de centrarse en los mecanismos de TJ negociados entre el gobierno colombiano y las FARC. Analizar el caso colombiano en una perspectiva tanto histórica como comparativa puede ayudar a arrojar luz sobre algunos de los desafíos clave que se avecinan para la responsabilidad de TJ en Colombia.

Palabras clave: Justicia transicional, proceso de paz, derechos humanos.

Abstract: Colombian experience with transitional justice (TJ) significantly precedes the recent peace agreement between the Colombian government and the FARC. Colombia presents a unique case of significant efforts towards TJ before a negotiated end of the armed conflict was achieved. As such, each prior experience with TJ informed posterior efforts. After a brief summary of the evolution of the concept of TJ and TJ mechanisms, the paper provides a brief overview of comparative cases of TJ in Central America. Then, the Colombian case is considered, first examining TJ initiatives that preceded the peace agreement, before focusing on TJ mechanisms negotiated between the Colombian government and FARC. Analyzing the Colombian case in both historical and comparative perspective can help to shed light on some of the key challenges that lay ahead for TJ accountability in Colombia.

KEeywords: Transitional justice, peace process, human rights.

INTRODUCTION

Colombian experience with transitional justice (TJ) significantly precedes the recent peace agreement between the Colombian government and the FARC. Colombia presents a unique case of significant efforts towards TJ before a negotiated end of the armed

conflict was achieved. As such, each prior experience with TJ informed posterior efforts. After a brief summary of the evolution of the concept of TJ and TJ mechanisms, the paper provides a brief overview of comparative cases of TJ in Central America. Then, the Colombian case is considered, first examining TJ initiatives that preceded the peace agreement, before focusing on TJ mechanisms negotiated between the Colombian government and FARC. Analyzing the Colombian case in both historical and comparative perspective can help to shed light on some of the key challenges that lay ahead for TJ accountability in Colombia.

1. EVOLUTION OF THE CONCEPT OF TRANSITIONAL JUSTICE

The evolution of the concept and scope of TJ was closely linked to the paradigm of democratic transitions - transitions from authoritarianism to democracy (initially the Southern Cone cases, and later of Central and Eastern Europe). The field of TJ generally ignored cases where human rights abuses took place in a context where the norms of liberal democracy were formally in place (for example, Colombia). The normative agenda related with studies of democratic transitions very much influenced the field of TJ. Priority was given to facilitating transitions and protecting newly democratic governments from authoritarian reversals. The primary objective of TJ was reconciliation (making concessions to facilitate negotiated solutions). Not surprisingly, early on the emphasis was on truth commissions and amnesties instead of judicial processes. This focus also recognized the limits on judicial systems to process massive numbers of cases of human rights abuses (Arthur 2019).

During a second period (second half of the 1990s) in the evolution of TJ there was a change towards greater emphasis on judicial processes and reparations for victims. In addition, the focus on democratic transitions opened up to include transitions from armed conflict to post-conflict. Scholars focused on how TJ mechanisms could contribute to establish and consolidate peace. Instead of presenting truth commissions and criminal tribunals as antagonistic, scholars came to view them as complementary. Reconciliation was no longer seen as a political concession but rather a mechanism to create community and political consensus.

1.1 Mechanisms of Transitional Justice

Most scholars of Transitional Justice (Olsen, Payne, Reiter 2010) focus on four or five categories of TJ: 1) judicial processes/trials, 2) truth commissions, 3) amnesties, 4) reparations, and sometimes 5) lustration policies (purging of human rights abusers from public function). Other TJ mechanisms include institutional reforms and memory projects.

1.2 The Irreconcilable Objectives of Transitional Justice

It is important to note the contradictions that arise in the application of TJ mechanisms. For example, short term concessions associated with achieving stability (eg amnesties) often conflict with long term aspirations associated with the concept of reconciliation to build consensus and community. Moreover, TJ mechanisms often attempt to respond to local practices considered as legitimate while at the same time trying to transform the foundation of political legitimacy, rejecting practices and traditions implicated in the systematic political violence of the past (Leebaw, 2008). It is important to recognize these tensions in the objectives of TJ.

Finally, the importance of national and local context cannot be ignored. Each case is different and the mechanisms of TJ must respond to the particularities of each case (no one size fits all). The historical development, duration of the conflict, character of human rights violations, the conditions of the process of transition, the strength of political and judicial institutions, and the institutional and fiscal capacity for reparations, all must be taken into account.

2. CENTRAL AMERICAN CASES - EL SALVADOR AND GUATEMALA

The Salvador and Guatemala political/historical context during the 1930s-70s was dominated by military authoritarianism characterized by the brutal repression of democratic opposition. As the opportunities for peaceful political opposition were closed off, during the 1960s and 70s there was a process of radicalization of some opposition groups, including taking up arms. In both countries, although there were different armed revolutionary groups they succeeded in uniting under a single political-military organization (FMLN in El Salvador and URNG in Guatemala). During the 1980s the armed conflicts intensified in each country, especially in the case of El Salvador. The government of El Salvador and the armed forces came to the realization that they were not going to be able to defeat the FMLN militarily. There was also significant internal and external pressure in support of a negotiated solution to the armed conflict (Williams and Ruhl, 2013).

In El Salvador, the UN played a key role in mediating the peace negotiations that led to the signing of the peace agreement in January 1992. The UN also served as the guarantor during the implementation phase of the peace agreements. Some of the most notable provisions of the peace agreements related to TJ included:

1. Truth Commission - the establishment of a truth commission with the authority to investigate and determine responsibility for the most serious human rights violations committed during the conflict; however, there was no provision to prosecute those found responsible.

2. Lustration policy - the creation of an Ad Hoc commission to investigate the human rights records of members of the armed forces and recommend the worst offenders for removal from active duty.
3. Institutional reforms - there were several provisions related to the mission and structure of the armed forces and police. The constitutional role of the armed forces was limited and new provisions for civilian oversight introduced. Several combat battalions were dismantled, the public security (police) forces were demobilized and a new civil police force established no longer under the armed forces. In addition, the size of the armed forces was substantially reduced.
4. Disarmament, demobilization and reinsertion of the FMLN guerrillas.

Although an amnesty was never negotiated, shortly after the peace agreementss were signed, the Salvadoran government approved an amnesty for members of the armed forces and police, covering both criminal and civil responsibility. In the Guatemala case, the government and the URNG agreed to an amnesty, with the exception for those responsible for genocide/crimes against humanity (Williams and Ruhl).

In the Guatemalan case, the peace agreements were not as strong in the area of TJ accountability: while they included provisions for a truth commission (Comisión para el Esclarecimiento Histórico - CEH), it was not to assign responsibility to any individual for human rights violations (García-Godos and Salvadó, 2016). The agreements provided for the restructuring and reduction of the armed forces and police (including reducing the defense budget), but did not include any provisions to purge the armed forces and police of those responsible for human rights violations. Moreover, the constitutional reforms were never approved in a popular referendum (in El Salvador, the reforms were passed during two legislative sessions). Unlike the peace agreements in El Salvador, the Guatemalan accords did include provisions to establish a reparations program.

The most important achievements in terms of TJ accountability were the investigation and clarification of the worst human rights abuses, the removal from active duty of some of the worst offenders (in the Salvadoran case), and the processes of demilitarization initiated by the two peace agreements. The limitations had to do with the fact that in neither case did the truth commissions have authority to recommend trials for human rights violations, and the amnesties were too broad and, in the Salvadoran case, not even a product of the negotiations. In addition, the Salvadoran agreements did not include any provisions for reparations to the victims. Not until the first FMLN government after the peace agreements (President Mauricio Funes - 200914) did the government authorize a reparations program, which began under President Salvador Sánchez Céren (2014-) with an initiative to create a registry of victims (Martínez Barahona and Gutiérrez Salazar, 2016). In the Guatemalan case, although a reparations program was provided for

by the peace agreements, the program took several years to be established and, as of 2014, the National Reparations Program (PNR) still did not have a registry of victims (García-Godos and Salvadó, 2016). Finally, the provisions of both peace agreements related to restitution and resolution of land conflicts for the victims were very weak (one of the principal causes of the armed conflict in both countries).

The Guatemalan and Salvadoran experiences with TJ provide two important lessons for the Colombian case. First, successfully negotiated peace agreements can bring an end to armed conflict but not eliminate violence, particularly if they do not respond to the principal roots of the conflict. After the peace agreements in both countries there has been a significant increase in criminal violence. In El Salvador the failure of the government to train and deploy the new civilian police in a timely fashion allowed criminal gangs to fill the vacuum. Today, El Salvador and Guatemala suffer from some of the highest homicide rates in the world. Secondly, the demands for justice do not disappear once the truth commissions have completed their work. On the contrary, in both cases there has been much pressure and efforts to bring to justice the intellectual authors of the most serious human rights violations. In the case of Guatemala, ex-president Gen. Rios Montt was judged and found guilty of genocide perpetrated during the armed conflict; although his sentence was annulled by the constitutional court (García-Godos and Salvadó, 2016). In El Salvador, there have been efforts to apply international human rights law, using judicial processes in Spain and the United States, including the deportations of ex-officials for their participation in human rights violations. The Salvadoran Supreme Constitutional Court is considering a lawsuit that argues that the 1992 amnesty law violated the government's obligations to comply with international human rights treaties. Previously, the Inter-American Human Rights Court ordered the government to judge those responsible for the El Mozote massacre (where the armed forces killed 900 civilians, including women and children) and to pay reparations to the families of the victims (similarly arguing that the amnesty law did not apply to crimes against humanity) (Martínez Barahona and Gutiérrez Salazar, 2016).

3. THE COLOMBIAN CASE

There are some obvious contrasts between the Colombian and Central American cases. Since 1958, Colombia has enjoyed civilian democratically elected governments, however, with some significant qualifications. While not authoritarian in the classical sense, the institutions of liberal democracy have functioned within a context of massive human rights violations. As such, the Colombian case is not a typical case of democratic transition, although the peace agreement could open up a process of democratic deepening. The armed conflict in Colombia was one of the oldest in the world. The guerrilla armies, including the FARC, were significantly weakened in the last ten to fifteen years of the conflict, including a significant reduction in the territories

under their effective control. Their negotiating position was much weaker than the FMLN in El Salvador, more similar to that of the URNG in Guatemala. Also, in the Colombian case, the armed revolutionary groups never united under a single political-military organization to give them more leverage. Consequently, the government has to negotiate individually with each guerrilla group. Moreover, the paramilitary organizations are quite unique in the Colombian case. Although in both Guatemala and El Salvador, paramilitary death squads operated alongside the armed forces and police, they never grew to become small armies that controlled territory as in the Colombian case. And finally, the land issue is much more complicated in the Colombian case given the duration of the conflict and additionally, the problem of illicit drugs is very unique to Colombia.

4. TRANSITIONAL JUSTICE IN COLOMBIA

4.1 Betancur Government

In comparison with the Central American cases, Colombia's experience with TJ significantly precedes the recent peace agreement with the FARC. By tracing the history of TJ in Colombia one can see how earlier efforts influenced the shape of TJ mechanisms implemented under the Uribe and Santos administrations. The foundations for Colombia's engagement with TJ have roots in Belisario Betancur's administration (1982-86). Betancur began his term after a campaign in which he advocated for a negotiated end to the armed conflict. Within the first year of the Betancur's presidency a Peace Commission (Decree No. 2711, 1982) was created to negotiate with guerrilla groups, an amnesty Law (Ley 35 de 1982) was passed, and by 1984 a bilateral cease fire agreed upon. However, just as the Bentancur administration served as a foundation for the TJ mechanisms implemented by the Uribe and Santos administrations, it also set a precedent for some of the latter's shortcomings as well.

The creation of the Peace Commission allowed for government representatives to begin talks with guerrilla groups, including the FARC and M-19. Law 35 was passed in December 1982. This law granted blanket amnesty to all political crimes committed before it was enacted (Article 1), and authorized the government to organize and implement programs for the rehabilitation and reincorporation of those under amnesty as well as those subjected to armed encounters (Article 8). Hence the creation of the Plan Nacional de Rehabilitación, a program meant to increase the presence of the state in the regions most affected by the conflict. This law did not differentiate the actions of those who participated in the conflict from those who were subjected to its violence. Rather, the benefits of the law were meant to address the needs of both.

The adoption of Law 35 facilitated the possibility of demobilization. After a year of dialogue, the government and the FARC signed the first of the Pactos de La Uribe in the department of Meta. This agreement

set forth a negotiated bilateral cease fire, reincorporation in the form of "political, economic, and social participation" for FARC members, and the benefits of Law 35. In turn, the Peace Commission agreed to promote political reform and to implement a rural reform to improve the living conditions and educational levels of the rural population. The peace talks were later opened up to other guerrilla groups, however, the National Peace and Verification Commission lacked the necessary mechanisms to guarantee the rights of those demobilized. Ultimately, the peace agreement did not represent a national consensus, as most political parties, economic elites, and the military opposed Betancur's peace initiatives. Moreover, the FARC's entry into electoral politics with the formation of the Unión Patriótica (UP) was met with brutal repression from paramilitary groups and security forces.

4.2 Uribe Government

While subsequent administrations made failed attempts to negotiate an end the armed conflict, the use of TJ mechanisms received renewed interest during the Alvaro Uribe government. As with negotiations during the Betancur administration, dialogues between government representatives and a particular armed group occurred first and later opened up to other interested armed actors. In contrast to previous administrations, Uribe turned his attention to paramilitary organizations. Negotiations between an Exploratory Peace Commission and the Autodefensas Unidas de Colombia (AUC) began in 2003 with the Acuerdo de Santa Fe de Ralito. Unlike during the Betancur government, a ceasefire in 2002 preceded the negotiations, which allowed for the demobilization process to begin shortly after the agreements were signed. The Cacique Nutibara Bloc was the first to demobilize in 2003, but the process itself lasted until 2006.

The demobilization of the AUC was possible due to Law 782 of 2002 and aided by the Programa para la Reincorporación a la Vida Civil de las Personas y Grupos Alzados en Armas created by Decree 200 of 2003. Law 782 served as a foundation for the subsequent 2005 Law of Justice and Peace (Law 975). Law 975 was implemented in the midst of the demobilization of the AUC. The focus of the law was to facilitate the peace process as well as the reincorporation of those who demobilized into civilian life, while guaranteeing victim's rights to truth, justice and reparations (Article 1). In order to achieve this objective, an institutional framework for criminal prosecution was established through Law 975. This is the first example in which judicial processes for addressing human rights violations were incorporated alongside demobilization and measures for victim reparation (Cuervo, Bechera and Hinestroza, 2007: 17).

Those paramilitaries who agreed to demobilize and receive the benefits of the law were to be judged in Justice and Peace courtrooms after a voluntary deposition, indictment, reparations hearing, and sentencing. The alternative sentencing offered by Law 975 relied on retributive justice

by establishing sanctions of restricted liberty of a minimum of five years and a maximum of eight years (Article 29). The restriction of liberty began in the "zonas de concentración" (Article 31) and ended after the completion of a "período de prueba" for reintegration after the sanction was completed. Jemima García-Godos and Knut Andreas O. Lid (2010: 506) refer to the voluntary deposition and collaboration with the courts as the judicial path to truth. However, the biggest shortcoming of the process was that it relied on ex-combatants' cooperation given that the state had almost no information on their crimes. Victims' organizations criticized the judicial processes as a "sort of hidden amnesty for those combatants who did not confess their crimes" since the state had hardly any information on the crimes that took place during the conflict (Sánchez León, García-Godos and Vallejo, 2016: 256).

The AUC only demobilized partially; approximately 32,000 paramilitaries demobilized and 18,051 weapons were turned in (CNMH 2015). Only 20,000 out of the 32,000 who demobilized reported to the Programa para la Reincorporación (CNMH 2015: 77). The number of offenses brought forth to the Justice and Peace courts overwhelmed the Colombian judicial system. The first of these sentences were not issued until 2009. As of December 26, 2016, 7,531 applicants (for lighter penalties in exchange for full confessions in the Justice and Peace system) had given confessions, but only 49 sentences had been issued (Proyecto Antonio Nariño, 2017).

To receive alternative sentencing and the benefits of the law, demobilized individuals were to participate in victims reparations (Article 3), which included turning in assets obtained illegally (Article 11.5). The Comisión Nacional de Reparación y Reconciliación, Fondo para la Reparación de Victimas and the Comisiones Regionales para la Restitución de Bienes were created, through Articles 50, 54 and 52, to fulfill the requirements to guarantee the victims' rights to truth and reparations. Forms of reparation outlined in Article 8 included both symbolic and material reparations at individual and collective levels, amongst which are: monetary compensations (Article 45), restitution (Article 46), physical and psychological rehabilitation (Article 47), guarantees of non-repetition and disseminating the truth (Article 48).

The Comisión Nacional de Reparación y Reconciliación (CNRR) was created to guarantee victim participation, present public reports about the birth and evolution of illegal armed groups, and follow up on reincorporation and reparation processes, amongst others. In order to implement the right to truth, the CNRR formed the Grupo de Memoria Histórica (GMH). This group was used to compile a more holistic history of the armed conflict. This approach to the truth component is what Garcia-Godos and Lid (2010: 507) refer to as the historical path. The GMH focused on academic reports, however, multiple multimedia productions were also made available to the public.

The CNRR also coordinated the Comisiones Regionales para la Restitución de Bienes, responsible for procedures related to claims about property and land ownership. It aided the CNRR in designing

and implementing the Programa de Restitución de Bienes. A Victim's Reparation Fund was established, composed of the assets illegally obtained by demobilized paramilitaries before joining the process, funds from the national budget, and donations. As of 2016, only 6.4% of payments made to victims were covered with funds obtained from convicted persons (Pearson, 2017: 296). Many victims did not come forth through the processes created by Law 975, some due to logistical barriers or because they failed to fulfill requirements, while others feared retaliation (García-Godos and Lid, 2010: 509-10). By 2008 only 235,000 victims had come forth to claim reparations, and only 24 of them had received reparations (Summers, 2012: 224).

4.3 Santos Government

During Juan Manuel Santos administration, the Colombian Congress approved the Victims' and Land Restitution Law (Law 1448) in 2011, which is considered an important breakthrough for the recognition of the victims of the armed conflict. In contrast to the Justice and Peace Law, Law 1448 shifts the responsibility of proving victimhood onto the state (Article 5), and recognizes as victims, not only those harmed by illegal armed groups but also those victimized by the police and armed forces (Sánchez León, García-Godos and Vallejo, 2016). Another difference from the previous law is that the state is required to promote and implement the participation of victims in the peace process: judicial, truth, and reparations processes.

Law 1448, aimed to provide both, material and symbolic reparations to the victims' of the armed conflict while fulfilling their rights to justice, reparations and truth. The restitution component is one of the main features of the law. Article 71 defines restitution as measures that re-establish conditions prior to the violation of rights. In order to do so, the state is required to compensate victims of displacement or dispossession with the juridical and material restitution of their lands. Only the violation of rights that took place after 1991 are eligible for restitution; those occurring from 1985-91 can only be compensated financially.

Reparations in form of restitution also include the process of return or relocation (Article 70) as well as housing (Article 123). Matters of restitution are to be handled through the Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas, created for a period of ten years, under the Department of Agriculture and Rural Development (Article 103). This entity is responsible for designing, implementing and preserving the Registro de Tierras Presuntamente Despojadas y Abandonadas Forzosamente (Article 76), which includes information about the land to be restituted, as well as the victims and the process of restitution. The financial instrument, the Fondo de la Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas (Article 111), depends on the national budget, donations, as well as the assets obtained illegally by demobilized actors, amongst others (Article 113). Women heads of household are to be given prioritization in the

process of restitution (Article 115). Law 1448 also addresses matters of housing restitution, however, instead of creating new entities for the matter it resorts to those already in place: Subsidio Familiar de Vivienda, the Ministerio de Ambiente, Vivienda y Desarrollo Territorial and the Ministerio de Agricultura y Desarrollo Rural (Articles 123-7).

In terms of symbolic reparations, the Law establishes April 9th as a national day for solidarity and memory (Article 142), commits to create an archival program of Human Rights and Historical Memory (Article 144) and the Centro Nacional de Memoria Histórica (CNMH - Article 146). The CNMH replaced the CNRR and was charged with creating a museum of memory, of managing the archive for historical memory and the Program for Human Rights and Historical Memory, as well as putting together exhibits and disseminating information, amongst others. Amongst the most important publications of the CNMH is the 2013 report titled ¡Basta Ya! Colombia: Memorias de guerra y dignidad, the closest example of a truth commission in the Colombian case up to this point.

The Victims' and Restitution Law also created the Unidad Administrativa Especial de Atención y Reparación Integral a las Víctimas (UARIV, Article 166) to administer the reparation program for victims. Among the entities under the UARIV are the Fondo para la Reparación de Víctimas, the Registro Único de Víctimas, and the Red Nacional de Información para la Atención y Reparación a las Víctimas.

As of January 2017, the Registro Único de Víctimas (RUV) had registered 8,250,270 victims of the armed conflict.[1] The databases through the Registro Nacional de Información (RNI) contain detailed information about various reparation and rehabilitation programs.[2] According to the Registro de Tierras Despojadas y Abandonadas Forzosamente (RTDAF) as of June 2017 the number of inscriptions under review surpassed 41,000. The number of requests per year for restitution, on the other hand, grew from 7,209 in 2011 to 28,227 in 2013, and has decreased since to 5,651.

The strength of these preceding TJ mechanisms is precisely that they made transitional justice a part of the Colombian constitution and vocabulary. These laws, institutions and programs set the foundation for a post-conflict environment even though their implementation has taken place in the midst of an ongoing conflict. Each administration has been able to identify areas of improvement for the mechanisms already in place, and have strengthened them through either changes to the normative structure or by creating new institutions. Therefore, through the Victim's Law, the Santos administration addressed those marginalized by the Justice and Peace Law and set the foundation for the points negotiated by his administration and the FARC-EP.

4.4 Transitional Justice and the Final Peace Agreements

As the peace talks between Santos government and the FARC advanced from 2012 to 2016, previous experiences with transitional justice

served as examples for a negotiated end to the conflict. The Bentancur administration attempted full amnesty but was unable to guarantee the rights of either victims or demobilized ex-combatants. This first experience culminated in the massacre of members of the Union Patriótica political party, which was created by those who participated in the demobilization process that began in the 1980's. Through the Justice and Peace Law, the Uribe administration avoided granting full amnesty through reduced sentences but failed to guarantee victims' rights to truth, justice and reparation. The approach taken through the Final Agreement is one of conditional amnesty, which sets out not only to implement retributive justice but also restorative justice.

The role of international mediation in the peace negotiations was different from that of El Salvador and Guatemala, where the UN served as an official mediator. In the Colombian case, a group of countries (Cuba, Chile, Norway, and Venezuela) supported the peace talks. The UN's role was limited to verifying the process of disarmament and demobilization of the FARC, not the implementation of the agreements as in El Salvador and Guatemala.

The initial peace agreement signed by the two sides in August 2016 was not approved in the referendum held on October 2, 2016. Opponents of the agreement contended that "the justice components of the peace agreement, which centered on truth, reconciliation and reintegration, rather than solely on trials, were tantamount to allowing rebels to get away with murder" (Rei-ter, 2016). After a month of re-negotiation taking into account many of the opposition's objections to the agreement, the Colombian government and FARC reached a new final agreement to end the longstanding conflict. The revised agreement - signed on November 24, 2016 - contained improved mechanisms for transitional justice, particularly outlining and defining what types of crimes would be judged by the special tribunals, and providing more specifics about the FARC's transformation into a political party (Peace Government Team Colombia 2016).

The final agreement covered six points: 1) rural integral development, 2) political participation, 3) the problem of illicit drugs, 4) ceasefire and disarmament, 5) victims, and 6) implementation, verification, and referendum. Point 5 of the agreement is most directly related to transitional justice and provides for the creation of the Sistema Integral de Verdad, Justicia, Reparación y No Repetición (SIVJRNR). The SIVJRNR is composed by the Jurisdicción Especial para la Paz (JEP), the Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición (CEV), and the Unidad de Búsqueda de Personas dadas por Desaparecidas en el contexto y en razón del conflicto armado (UBPD); thus combining judicial and extrajudicial TJ mechanisms.

Law 1820, 2016, regulates the implementation of the justice component of the SIVJRNR, the JEP. According to Article 7 of this law, amnesty is a mechanism applied to members of the FARC as well as to those accused of being so, after they agree to abide by the Final Peace Agreement. Therefore, amnesty is limited to those who

committed minor crimes and conditioned on the individual's compliance with the SIVJRNR and does not exempt them from the responsibility to contribute with truth and reparations; failure to do so results in the removal of any special sentences. Following international law, those responsible for human rights violations, crimes against humanity, and genocide are ineligible for amnesty.

The peace agreements provide for three categories of sanctions depending on the degree of acceptance of responsibility in the commission of human rights violations.

> 1) For full and prompt confession to the "worst and representative crimes" committed during the armed conflict, alternative sentences of "effective restriction of liberty"[3] ranging from 5 to 8 years in non-prison conditions are to be imposed; and 2 to 5 years for those who did not have a "decisive participation" in the violations.
>
> 2) For those who come forward after the initial period is over to recognize their responsibility for human rights violations, an "ordinary" sentence ranging from 5 to 8 years in prison will be applied.
>
> 3) For those unwilling to recognize their responsibility for human rights violations, a prison sentence of 15 to 20 years will be applied.

The inclusion of state agents and civilians as beneficiaries of transitional justice is one of the many differences between the peace agreements with the AUC and FARC-EP. Whereas previous peace agreements excluded any form of recognition of transgressions on behalf of the state, the Final Peace Agreement is framed through this recognition and goes as far as to regulate the judicial process for state agents. As of November 2017, 3,491 ex-guerrillas and 1.714 current and former military and security personnel had signaled their intention to be tried under the new system (Isacson, 2017).

The transitional justice system established under the JEP has been criticized on a number of scores. Opponents of the peace agreement argue that the alternative sentencing is too lenient on FARC leaders and ex-combatants. Others criticize the vague language in the agreement and implementing legislation that fails to detail the conditions of confinement. Despite these criticisms, the peace negotiators looked for creative solutions that allowed the government to comply with international human rights treaties and at the same time convince the FARC to lay down its arms without the guarantees of a general amnesty. There was already some precedent with alternative sentences under Uribe's Law of Justice and Peace. As was pointed out, the previous law only applied to the paramilitaries and did not insist on accountability for state agents responsible for human rights violations.

Additional concerns had to do with the definition of "command responsibility" for military commanders. In November 2017, the Constitutional Court upheld the legislature's definition of command responsibility that departs from international norms. Instead of using the standard of "should have known" about crimes committed by their subordinates, military commanders can avoid accountability by claiming

to not have known of their subordinates' illegal actions (Isacson, 2017). And finally, the law implementing the JEP removed language form the agreement that would have compelled civilian third parties (landowners, narcotraffickers, local officials, etc.) to appear and confess before the JEP. Now, civilian non-combatants will only appear before the JEP "voluntarily."

The peace agreement also provides for the establishment of a truth commission (La Comision para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición - CEV) that builds on earlier efforts described above during the Uribe and Santos administration and aims to play a fundamental role in peace-building efforts. The CEV is a temporary "organ" of extra-judicial nature that seeks to learn the truth of what took place during the armed conflict; to contribute to the clarification of the abuses committed; to offer an explanation of the complexity of the conflict to society; to promote recognition of victims, and the voluntary recognition of individual and collective responsibilities of those who participated in the armed conflict; and to promote peaceful coexistence in territories affected by the armed conflict to guarantee non-repetition. The eleven members of CEV will be chosen by a selection committee whose members will be designated by the United Nations, the European Court of Human Rights, the state University system of Colombia, the Sala Penal of the Colombian Supreme Court of Justice, and the International Center for Transitional Justice (ICTJ). The commission was formally installed in May 2018.[4]

And finally, the peace agreement provides for a program for integral reparations, building on earlier reparations efforts (and far more comprehensive than in the Central American cases. The reparation provisions cover material, psychological, and physical reparations, both individual and collective reparations, land restitution, collective return, and public acts of acknowledgement of collective responsibility. Reparations program will use existing institutions established as a result of the Victims' and Land Restitution Law (Law 1448). The challenge here is the magnitude of victims' claims and the inability of the Colombian government to make significant progress meeting the goals set out in Law 1448. There are also widespread doubts as to the government's ability to fully fund the reparations program. On the other hand, significant progress has been made on the part of the FARC participating in public acts of acknowledging its collective responsibility for violations committed during the conflict; however, there has been greater reticence on the part of the Colombian government to recognize its own responsibility (CLACSO 2017).

4.5 Violence after Demobilization

Similar to the Central American cases, we have seen an increase in violence after the demobilization of ex-combatants. This was the case after the paramilitary demobilization with the transformation of many paramilitary groups into criminal organizations (bandas criminales -

BA-CRIM). Similarly, with the FARC's demobilization and giving up territories it previously occupied, new armed groups have moved in to fill the vacuum as the Colombia state has been slow to develop a strong institutional presence in these areas. In addition to criminal violence, we have also seen political violence directed against human rights and community activists. Since the agreements were signed in November 2016 through April 2018, almost 300 community organizers and activists have been murdered and hundreds more have received death threats (Diaz and Jimenez, 2018).

CONCLUSION

Unlike the Central American cases, we saw how the recent peace agreements in Colombia built upon earlier experiences with transitional justice beginning with the Betancur administration. Each new peace agreement and law that incorporated TJ mechanisms attempted to improve on previous efforts but their success was limited within the context of an ongoing armed conflict. The recent peace agreements that brought an end to the armed conflict with the FARC represent a major advancement in the pursuit of transitional justice accountability. While significantly more comprehensive than the TJ mechanisms implemented in the Central American cases, the Colombian peace agreements fall short in the area of institutional reform related to the military and security forces. Whereas in the Central American cases (especially in El Salvador) the military and police underwent significant restructuring and reform, the FARC was never in a position to extract such concessions during the negotiations.

Similar to the Central American cases, the peace agreements in Colombia reflect the sometimes irreconcilable contradictions of TJ. On the one hand, the agreements contained incentives for the FARC and members of the military and security forces who had committed human rights abuses that violate the social expectations for truth and justice on the part of victims (González Chavarría, 2010). These incentives/concessions were considered necessary to bring an end to the armed conflict and to create stability in the short term. On the other hand, TJ has as a long term aspiration the integral reparation of victims that requires mechanisms such as truth commissions so that the victims can learn the truth about past abuses; programs of reparation to address the material, physical, and psychological damage resulting from these abuses; and institutional changes that guarantee the rule of law and no repetition of past abuses. These TJ mechanisms require resources and institutional capacity that are often lacking. Lastly, the way in which political leaders negotiate these tensions and contradictions related to TJ in the short term will shape the prospects for establishing a lasting peace in the long term.

TABLE 1
VICTIMS OF THE COLOMBIAN ARMED CONFLICT
PER INDIVIDUAL AND ACT OF VICTIMIZATION

VIGENCIA	PERSONAS		VIGENCIA	EVENTOS
Antes de 1985	231.452		Antes de 1985	237.761
1985	24.663		1985	27.394
1986	27.625		1986	30.714
1987	34.233		1987	38.049
1988	54.272		1988	59.173
1989	52.604		1989	57.645
1990	64.249		1990	70.322
1991	64.941		1991	71.661
1992	77.292		1992	84.838
1993	82.872		1993	90.352
1994	86.305		1994	93.122
1995	140.619		1995	150.726
1996	180.821		1996	194.134
1997	298.756		1997	321.693
1998	289.098		1998	309.88
1999	330.879		1999	354.117
2000	677.729		2000	734.546
2001	742.736		2001	793.491
2002	857.446		2002	917.544
2003	534.439		2003	575.068
2004	478.624		2004	512.278
2005	526.749		2005	555.342
2006	499.559		2006	522.571
2007	516.365		2007	540.745
2008	457.074		2008	473.974
2009	274.006		2009	286.259
2010	216.457		2010	229.273
2011	257.25		2011	278.993
2012	260.133		2012	320.752
2013	273.203		2013	325.202
2014	256.739		2014	305.963
2015	188.214		2015	224.662
2016	94.246		2016	116.717
2017	49.699		2017	62.843
Sin información	27.054		Sin información	27.098
Total	**9230.403**		**Total**	**9.994.902**

*Personas: Victima identificada de manera única ya sea por su número de identificación, por su nombre completo o por una combinación de ellos.
*Eventos: Ocurrencia de un hecho victimizante a una persona, en un lugar (municipio) y en una fecha determinada.

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Notas

1 By examining the RUV according to the years in which the person's rights were violated one may notice that the number of people being victimized increases from 24,663 in 1985 and peaks at 857,446 in 2002. The years with the highest number of violations being 2000-2008. Through this particular filter of the RUV it is also possible to notice a dramatic decrease in victimizing events from 2002-2003 when the paramilitaries began to demobilize, as well as from 2015-2017 as the FARC-EP entered in negotiations with the state (see Table 1).

2 An example is the Housing program. As of April 2016, the housing program had benefitted 86,258 homes or 290,503 individuals on a national level. The RNI reports that within more than half of these homes, 57,997, reside persons victimized by the armed conflict. The departments with the largest concentrations of homes from the housing program, according to the data available, are: Antioquia, Atlántico, Córdoba, Magdalena, and Valle del Cauca, as well as Cundinamarca and Bogota D.C.

3 The conditions of confinement are to be determined by the tribunal judge.

4 The CEV is headed by Jesuit priest Francisco de Roux; other members include journalist and historian Alfredo Molano Bravo, other human rights experts like Lucía González Duque, Martha Cecilia Ruiz and Saúl Alonso Franco, retired army major Carlos Guillermo Ospina, Alejandra Miller Restrepo, María Ángela Salazar, María Patricia Tobón, Alejandro Valencia Villa, and Spanish national Carlos Martín Beristain.