

Transitional justice in Colombia
competing discourses in a peace agreement context

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List of Acronyms

ACORE	Asociación Colombiana de Oficiales Retirados de las Fuerzas Militares [Association of Retired Officials]
AUC	Autodefensas Unidas de Colombia [United Colombian Self-Defense]
CONPA	Consejo Nacional de Paz Afrocolombiano [Afro-Colombian Peace National Council]
CONPI	Coordinación Nacional de Pueblos Indígenas de Colombia [National Coordination of Indigenous Peoples of Colombia]
DA	Discourse Analysis
DDR	Disarmament, Demobilisation and Reintegration
ELN	Ejército de Liberación Nacional [National Liberation Army]
EPL	Ejército Popular de Liberación [Popular Liberation Army]
FARC	Fuerzas Armadas Revolucionarias de Colombia [Revolutionary Armed Forces of Colombia]
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo [Revolutionary Armed Forces of Colombia – Peoples’ Army]
FEDEGAN	Federación Colombiana de Ganaderos [National Federation of Cattlemen]
FIP	Fundación Ideas para la Paz [Ideas for Peace Foundation]
IACHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
IHL	International humanitarian law
JEI	Jurisdicción Especial Indígena (JEI)
LGTBI	Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersexed
JEP	Jurisdicción Especial de Paz [Special Jurisdiction of Peace]
NGO	Non-governmental organization
OACP	Oficina del Alto Comisionado para la Paz [High Commissioner for Peace Office]
ONIC	Organización Nacional Indígena de Colombia [National Indigenous Organization of Colombia]
PRT	Partido Revolucionario de los Trabajadores [Revolutionary Workers Party]
TJ	Transitional justice
TRC	South African Truth and Reconciliation Commission
UARIV	Unidad para la Atención y Reparación Integral a Víctimas [Unit for Attention and Integral Reparation for Victims]
UN	United Nations
WPR	What’s the Problem Represented to be

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Abstract

This research paper analysed the transitional justice discourses of the government, its political opposition, the FARC, and the civil society participants in the peace negotiation, and its particular understandings of peace and conflict in the context of the peace negotiation with FARC. Based on the study of the competing discourses and how are they reflected in the mechanism to admin transitional justice - Special Jurisdiction of Peace -, I argue that the mechanism definition has been part of a bargain between elites looking for the status quo preservation. Thus, the Special Jurisdiction of Peace privileges the governments' discourses, especially of the government in power, while excluding some of the demands from civil society representatives and FARC.

Relevance to Development Studies

This research paper contributes to a critical analysis of the transitional justice discourses, and the peace and conflict understandings that rely on a neoliberal conceptualisation of development in Colombia. Moreover, it present other less visible counter-discourses that have contested the traditional discourse from pluralistic views of development in the peace process debate.

Keywords

Transitional justice, Colombian peace agreement, Special Jurisdiction of Peace, discourse análisis.

Chapter 1 | Introduction

1.1 Statement of the research problem

The concept of transitional justice was introduced in Colombia almost 15 years ago as part of the peace-building framework. Since then, diverse understandings, representations, and discourses of transitional justice have informed the decisions to deal with violent past and present of the country, especially in the academic and governing spheres, and more recently by civil society organizations.

War and peace are not only a matter of arms but also about words. The discursive arena on war and peace can successfully justify the mobilization of fighters or the international support for a certain war, and in the same sense, peace discourses are often heavily contested (Frerks, 2013: 19).

Transitional justice alternatives, as mechanisms to transit from a conflict to a post-conflict scenario, are also part of similar discursive constructions and contestations. Although the concept of transitional justice has been often portrayed as technical, neutral or apolitical, it is not. If, following Foucault, we understand discourse as a social practice, conceptualizations and definitions of reality are part of socio-historically and politically embedded constructions even when they are represented as objective and politically neutral (Frerks and Klem, 2005: 3).

In that sense, applying the discursive approach to peace and conflict researches allows us to explain how certain perceptions of reality shape discourses, but also how the discourses construct and deconstruct reality. Behind any transitional justice program, there are assumptions and presumptions that have a direct effect in post-conflict strategies (Bacchi, 2009: xiv) because they inform strategies, policies and practices of justice.

This research thus starts from the assumption that discourses have material effects, and subsequently that discourses on justice shape justice strategies and institutions. As justice is understood as one of the key elements of peace in Colombia, then discourses on justice are also relevant for building post-conflict, peaceful society Transitional justice mechanisms – such as Special Jurisdiction on Peace - are created in order to prosecute war crimes and human rights violations, and are agreed as part of the peace negotiation process between the Colombian government and the FARC guerrilla. Thus, who will be prosecuted and how, what is seen as crime worth prosecution, who is seen as perpetrator and who as victim are all crucial questions, not just discursively but in a daily lives of Colombians who have lived through war, fought in it, supported it, benefited from it or suffered because of it.

Equally important question is who are the actors who have the power to answer those questions, what ideas shape their answers, and how their answers will shape the future of Colombia. While this last question is beyond the scope of this research, **the question of the key actors and key concepts about justice are the focus of this research.** Following the peace process negotiations between 2012 and 2016, I define the **key actors** as the government and its political opposition, the FARC, and the civil society. The **key concepts** embedded in the peace process that are shaping the main ideas about transitional justice are:

justice, peace and conflict. This research will examine how each of the actors understands and relates to these concepts, keeping in mind that post-conflict, peacebuilding strategies, mechanisms and institutions are currently shaped by them.

The debate about peace and justice that started at the negotiating table with the FARC and government as the leading actors, and some participants from the civil society, offered the first ideas and created the first version of a transitional justice mechanisms. However, the discussion has continued after the peace agreement was signed in 2016 and, in the last two years, numerous shifts have introduced new conceptualizations of justice and new transitional justice system. Political leaders of the peace process opposition have been the most open proponents of these new ideas about justice and peace. Those shifts indicate a specific understanding about the violent conflict in Colombia and its victims, as well as about how the transition from conflict to peace should happen. Their ideas – and the institutions and mechanisms that would be built upon them - are seen by some observers and actors as a threat to the peace-building strategies that could jeopardize the achievements of the peace process (Uprimny, 2018).

Discourse analysis approach enables me to study the understandings behind the competitive discourses on transitional justice in the post-peace agreement context in Colombia, and to examine to what extent are these discourses part of the Special Jurisdiction on Peace mechanism. Thus, rather than examining the legal provisions contained in the transitional justice section on the peace agreement, this research focuses on the meanings of basic concept that the key actors related to transitional justice - i.e. justice, peace, and conflict.

1.2 Research Questions

Main Research Question

Which understandings of transitional justice are offered by the key actors of 2016 peace agreement in Colombia, and how are they reflected in the Special Jurisdiction of Peace mechanism?

Sub-questions

- How the key actors define justice?
- What ideas about conflict and peace inform these definitions of justice?
- What are the similarities and differences in the key actors' approaches to justice?
- How are competing discourses on transitional justice reflected in the Special Jurisdiction of Peace?

1.3 Context

In Colombia, since 1980 successive governments have negotiated the disarmament of rebel groups, but it was not until the beginning of the XXI century when transitional justice (TJ) appeared as a concept in the judicial and political arena. Nowadays it has become a reference when it comes to debating the end of the oldest conflicts in Latin America. In general terms, it could be said that TJ experiences in Colombia have focused more on the judiciary framework to prosecute an ex-combatants, than on essential social justice claims (Sánchez, 2017: 13).

Colombia has a long history of peace negotiation with numerous and diverse armed groups. From 1989 to 1991, Colombian government signed peace agreements with four guerrilla groups: the urban group called M-19, the Popular Liberation Army (EPL), the indigenous guerrilla group known as Quintín Lame and the Revolutionary Workers Party (PRT). In 1994 the same happened with the Socialist Renewal Current, an ELN dissidence group.

The accords were based on incentives for the massive disarmament, demobilisation and reintegration for guerrilla members. The legal framework offered amnesty for the criminal procedures and pardons for the insurgency, and for some of its leaders the possibility of participating in the national constitutional assembly of 1991 that redrafted a new constitution (Velásquez, 2018: 53).

Transitional justice as a concept was introduced in 2003, when then-president Álvaro Uribe Vélez formalised a negotiation the content of which was secret, with the United Colombian Self-Defense (AUC), the largest paramilitary federation in the country. They demobilised in stages, starting in 2003 and finished in 2006 with 37 AUC groups disarmed. Uribe's government proposed an alternative sentences law that offered amnesties for all demobilised armed actors, including the paramilitary commanders that were responsible for human rights violations (Laplante and Theidon, 2006: 77).

This proposal was strongly criticised by International and domestic advocates who demanded judicial accountability and respect for the victims' rights (Rowen 2017: 630). Thus, the government was forced to change the justice framework to prosecute paramilitary crimes with the advise of the International Center for Transitional Justice (ICTJ) (Rowen 2017: 630). What resulted was a paradoxical shift in which the government and the paramilitaries leaders went from rejecting any option save for an amnesty to supporting the so-called Justice and Peace Law, arguing a necessity to find a balance between peace and justice and a need recognise victims' rights to truth, justice and reparation (Uprimny and Saffon 2008: 174).

In 2006 the Constitutional Court, that included the obligation for ex-combatants to repair the victims and to tell the truth, approved the creation of an entirely new penal process to prosecute ex-combatants (Rowen 2017: 630). In exchange for providing voluntary confessions of their crimes, disclosure of all their goods to repair the victims and a promise to not return to illegality, the alternative judicial process gave paramilitary and guerrilla sentences of five to eight years. Furthermore, the ex-combatants that were not accused of crimes against humanity or war crimes, could obtain amnesty if they went through a Disarmament, Demobilisation and Reintegration (DDR) program (Rúa, 2015: 82).

An academic and political sector strongly criticised the elaboration, implementation and development of the Justice and Peace Law. Uribe's government was accused of instrumentalised transitional justice discourse according to their own interests, creating a law that used the rhetoric of the truth, justice and reparation to promote impunity (Uprimny and Saffon 2008: 177), and that was extremely beneficial to the perpetrators and not to the victims (Rúa, 2015: 82).

Eight years after the law was approved just 14 sentences had been passed, and in that sense, the Law did not fulfil its formal aspirations of reparation (Velásquez, 2018: 58). Other critics pointed out that TJ was a foreign idea brought to Colombia by transnational advocates supported by the government, regardless of the particular political context. That idea was better suited for academics than for the ones who have worked in the field (Rowen 2017: 633).

It was also a starting point to talk about transitional justice and to use the categories and logic of justice to analyse the situation in Colombia (Uprimny and Saffon 2008: 171). It showed the necessity to re-think strategies for investigating all actors involved in all the human rights violations in a 50-years armed conflict without overburdening the judicial system (Sánchez et al., 2016: 258).

Furthermore, the confessions during Justice and Peace Law processes exposed links between the paramilitary expansion, massive land grabbing and forced displacement that some academics and civil society organisations had been reporting (Abdala and Zarama, 2012). It gave a glimpse of the complex relationship between the paramilitary and some economic elites who benefited from the armed conflict. A review of academic literature showed that in the 35 sentences passed until 2015 by this jurisdiction, 349 cases of corporate complicity with land-grabbing and paramilitaries had been mentioned (Marín and Bernal, 2018: 47).

Victims and Land Restitution Law

In 2011, the government of President Juan Manuel Santos enacted the Victims Reparation and Land Restitution Law (popularly referred to as Victims' Law) as part of the transitional justice framework in Colombia. The new legislation provided financial reparation to the victims and the restitution of the dispossessed land. Before this point, the victims' reparation had been conceived from a judicial responsibility, and not from a holistic approach that took into account international standards (Rúa, 2015: 88). The Victims' Law indicated a break from Uribe's government in the sense that it acknowledged the existence of an internal armed conflict in Colombia, in which some state agents have violated human rights as well (Rúa, 2015: 87).

Some critics have said that the challenge to ensure justice for more than 8 million people is more complicated than this Victims' Law recognises. According to Jamie Rebecca Rowen (2017: 642), the notion of 'transitional' in this bill suggest that the compensation would be finite and its perception of justice is short-sighted. Rowen argues that the idea of transitional justice continues circulating in Colombia "because the government has been able to craft an understanding of transitional justice that fits its needs. Rather than signalling radical political change, the idea of transitional justice has helped the government to provide a temporary solution for Colombia's ongoing conflict" (Rowen 2017: 642).

Peace process with FARC

On 18 October 2012, in a public event in Oslo, the Colombian Government and the Revolutionary Armed Forces of Colombia (FARC) set at the negotiation table that officially opened a peace process that took place in La Havana, Cuba, for almost four years (FIP, 2016a). Since the beginning of the conversation, President Santos made clear that the government would not negotiate the economic, political and social system of the country, but rather the end of the conflict and the establishment of a lasting peace (Jaramillo, 2013: 3).

The parties agreed to divide the conversation into cycles that gave the structure to the six chapters of the final agreement, in that order: Agrarian development, political participation, ceasefire and FARC's reintegration process, solution to the illegal drugs problem, victims' rights, and implementation (Gobierno de Colombia and FARC-EP, 2016a: 7–9). The fifth point also known as the 'victims' rights agreement' was based on a human rights perspective and recognised that the armed conflict in Colombia was caused by different responsible actors not just the FARC and the state (Pabon and De Gamboa, 2018: 68). Within this section, the "Comprehensive System for Truth, Justice, Reparations and Non-Recurrence" combines judicial and extra-judicial mechanisms to prosecute severe violations of human rights and infringements of the international humanitarian law, to clarify the truth of what happened during the conflict, repair the victims, and search for the disappeared. The Comprehensive System is composed of: The Truth, Coexistence and Non-Recurrence Commission, The Special Unit for the Search for Persons Deemed as Missing in the Context of and due to the Armed Conflict, and the Special Jurisdiction for Peace (Gobierno de Colombia and FARC-EP, 2016a: 9).

The Special Jurisdiction of Peace (JEP in Spanish), which is the focus of this research, is the component of justice in the comprehensive system. JEP purpose is to admin transitional justice to the gravest and representatives' crimes that happened in the context of the conflict before 1st December 2016 (Jurisdicción Especial para la Paz, n.d.).

Before starting to negotiate the victims' rights point, on June 2016, the government and FARC released a public statement arguing that the centre of the agreement was the compensation of the victims, and announced three participation mechanisms. Firstly, the creation of the Historical Commission of the Conflict and its Victims, a diverse group of experts -chosen by both sides of the table - who presented a document that argued what were the causes of and reasons for the continuation of the conflict, and its effects on Colombia, according to various researcher perspectives. Secondly, four regional discussion forums in Villavicencio, Barrancabermeja, Barranquilla, and Cali were established to reflect on the fifth point of the negotiation agenda. Thirdly, an invitation to a victims' delegation was issued to participate at the negotiation table in Havana (Brett, 2017: 89). The 60 people delegation - divided into groups of 12 - that visited the negotiation team in different moments was a composed based on selection criteria of gender, the kind of crime against them and who was the perpetrator group (guerrilla, paramilitaries or the State) (2017: 27).

Achieving active inclusion of other civil society in the negotiation process - apart from victims - was not easy and required the pressure from social movements. That was the case of the women's organisations, and indigenous and Afro-Colombian communities. When the peace talks started in 2012, women were not part of either of the two negotiation teams, reinforcing the belief that war, as well as its ending, were men's issues (Céspedes-Báez and

Ruiz, 2018, p. 93). Forty women's organizations joined forces and created the coalition called *Mujeres por la Paz* (Women for peace) to spread one message: "peace without women does not go". *Mujeres por la Paz* led numerous forums across the country and a public demonstration of 8000 women in November 2013 towards the presidential palace (Céspedes-Báez and Ruiz, 2018, p. 96). The sub-commission was advised by 18 gender/feminist experts who flew to Havana to reformulate the agreement.

Although indigenous and Afro-Colombian communities had demanded participation in Havana to present their perspective for more than three years, they were called to participate only the day before of the final agreement was announced. In the end, Afros and indigenous leaders get the so-called 'ethnic chapter' that included some of their claims (Verdad Abierta, 2016) .

The Final Agreement reached on 24 September 2016 but it was rejected by the majority of the Colombians in the plebiscite of October 2. That led to a renegotiation process of most of the chapters in the agreement and the introduction of other modifications during the endorsement process. The Special Jurisdiction of Peace faced several changes at it would be explained in chapter 5.

1.4 Methodological considerations

To conduct the research, I applied Discourse Analysis (DA) methodology because I believe in the DA potential to unpack statements that appear obvious, inevitable or natural, and to explore the process of construction of meanings of 'truth' (Goodwin, 2013: 170).

There is a variety of approaches to DA, according to different schools of social science and policy field areas. This research reflects from a post-structural approach that defines discourse "as an ensemble of ideas, concepts, and categories through which meaning is given to phenomena" (Gasper and Apthorpe, 1996: 2). The analysis of Special Jurisdiction of Peace as a public policy is informed as well by post-structuralist and social-constructionist theories that understand policies as discourses. Under this conceptualisation, the ways policies frame certain social problems and construct concepts, categories and subject positions, shape the world in which these policies are implemented (Goodwin, 2013: 170). I also find functional the understanding of discourse as a conversation, debate and exchange, analysis of which takes into account different points of view in the debate and rely on intellectual exchange in policy-making (1996: 4). Thus, this research integrates contributions from different approaches, and it is not a ready-made formula based on invariable assumptions, which is considered by some authors a constant danger in DA research (1996: 2).

According to Teun A. van Dijk discourse can be analysed as structure and as process (Dijk, 1997b), as well as social interaction (Dijk, 1997). Discourses have three main dimensions: the use of language, communications of beliefs, and interaction in social situations. The challenge of discourse analysis is to formulate theories of the relationship between language users, beliefs and interactions (Dijk, 1997b: 2).

However, it is not enough to explain discourse through its internal structure and its process; discourse must be studied as a practical, social and cultural phenomenon (Dijk, 1997a: 20). Reading discourses as a social interaction means that they are part of broader sociocultural structures and processes; this means that language users are not only speakers

but members of social categories of gender, class, ethnicity, age, and others, that play a fundamental role in the act of writing or speaking (Dijk, 1997a: 21). In that way, discourse does not occur in a vacuum and does not possess a 'meaning' by itself, but is produced within a specific context (Phillips and Hardy, 2002: 4).

This research is focused on the study of **discourses as social interactions**; thus, the context is guided by the local and global characteristics of the social functioning of the texts, rather than by a context of the verbal structures (Dijk, 1997a: 14). That requires researcher to take a broader perspective and show the social, political or cultural functions of discourse within certain institutions, groups, society and culture at large (Dijk, 1997b: 5). Contrary to a 'given' or 'static' social context that language users and their discourses 'obey' passively, according to their groups, society or culture, discourses as social interaction, and their users contribute to construction and challenge the social contexts (1997b: 20). Therefore, this research understands discourses as a social practice that is shaped by social situations, structures, institutions, and power relations, but also as a mechanism to produce, reproduce or dispute that context (Fairclough and Wodak, 1997: 258 in Wodak and Meyer, 2009, p. 5–6).

Power/Knowledge in Discourse

Based on Michel Foucault theory, power is intrinsically connected with the production of truth and knowledge. The 'Truth' about everyday reality is a construction that is kept in place through a wide range of strategies to privilege and normalise specific views and exclude others (Mills, 2003b: 76).

Power work through knowledge and is not possesses but exercised. Power/knowledge regimes produce knowledge by institutionalised practices (of exclusion, representation, naming, defining) and everyday practices (Mills, 2003b: 69). Thus, there is no absolute truth. In Stuart Hall's words, there are not fixing meanings. Instead, meaning is constructed through language based on context, practices and interactions; through systems of representations (Hall, 1997: 25). Powerful institutions produce discourses of what is normal and what is true, which are accepted by the majority of the people through their daily practices through the process of normalization without the need for brute force. Those discourses, practices and values can also be read as shared 'cultural codes' to understand the world under the same conceptual maps (Hall, 1997: 22).

Therefore, discourses are not merely a translation of reality into language, but "a system which structures the way that we perceive reality" (Mills, 2003a: 55). Rather than denying the existence of material reality, Foucault's theory suggests that we can only think about, experience and comprehend material reality based on the discourses that we know and the structures that these discourses impose on our thinking (2003a: 56). In other words, material reality and discourses are mutually constitutive. There are, however, competing and conflicting discourses – linked to competing and conflicting social structures, institutions and struggles. Thus, there are ways to resist and transform the dominant institutional discourses. "Discourse is both the means of oppressing and the means of resistance" (2003a: 55).

Relying on such approach to discourse, truth, power and knowledge, this research use discourse analysis as a methodology to understand how discourses on transitional justice have naturalised certain practices and values, and how they are contested through counter-discourses.

1.4.1 DA Methods

The first step to examine the competing discourses about transitional justice was to select three categories of analysis: peace, conflict and justice. Based on a detailed reading of the Special Jurisdiction of Peace chapter in the Peace Agreement, it was possible to identify the centrality of those concepts in the definition of the new transitional justice mechanism.

As an analytical tool, categorisation is understood as a representation strategy that organises everyday knowledge by classifying actors, objects and ideas into specific groups with a purpose that the categorisation itself (Sacks, 1992 in Leudar et al., 2004: 244). That purpose is in justifying past and future actions. Thus, classification has a direct impact on any transitional justice mechanism – as their (past and future) action is in dispensing justice. For instance, the conceptualisation of conflict in the law defines or redefines who would be prosecuted and who not. Similarly, beyond law and legal/jurisprudence issues, justice as a concept determines who has the power to guarantee a fair judicial process or to change the provisions of justice. Same happens with the conceptualisation of peace and victimhood: what is peace and what actions would bring it; who is victims and what actions produce victimhood.

The tool was used to analyse the TJ mechanisms and the competing discourses that inform them. Because, in this particular case, the Special Jurisdiction of Peace as a public policy was not only the result of a government decision but the result of a debate arena between a diversity of actors that participate in its elaboration and execution at different levels.

Therefore, the following step in my methodology was the definition of four principal actors in peace negotiations: the government, its political opposition, the FARC, and the civil society participants in the peace negotiation (i.e. victims, women and the Indigenous' and Afro-Colombian' leaders). These four actors were selected based on their influence in the process on making Special Jurisdiction of Peace.

An actor-orientation and constructivist approach start from the recognition that realities are socially shaped and interpreted by different social positions, perspectives and interests that vary within individuals and groups (Frerks and Klem, 2005: 2). Rather than determining the accuracy (i.e. the 'truthfulness') of the discourses, the purpose is to examine how and why social actors arrive at their multiple and diverse understandings, interpretations and representations – i.e. discourses - about reality (Frerks and Klem, 2005: 3). That does not mean that this research ignores the heterogeneous nature of the selected actors and the possibility of the co-existence of more than one discourse within the given actor.

In addition to categorisation, the selected texts were analysed through the 'What's the Problem Represented to be?' (WPR) method. This is a framework developed by Carol Bacchi is build based on four academic traditions: social construction theory, post-structuralism, feminist body theory and governmentality studies (Bacchi, 2009: xv). WPR consists of six interrelated questions that help the researchers to unravel "problem representations" in policies and the assumptions, presumptions and silences that lie behind those policies (Bacchi, 2009: xv)¹.

¹ The six guiding questions are summarised in the chart on Appendix 1.

WPR method fit harmoniously with the post-structuralist assumptions that inform this research. Hence policies are analysed as cultural products that give shape to 'problems' based on deep-seated cultural assumptions (Bacchi, 2009: x). Problems, in this sense, are not understood as troubling conditions, but as “the kind of change implied in a particular policy proposal” (Bacchi, 2009: xi). In this particular research, WPR allows me to centre the attention on how certain representations of justice, peace and conflict play a central role in the transitional justice proposal made by the different actors. Furthermore, I ask how those representations of transitional justice are included or excluded in the problematization of “proper” justice to transit from conflict to peace contained in the Special Jurisdiction of Peace.

Summarising, I consider that the combination of WPR and categorisation provide a critical analysis to the Special Jurisdiction of Peace mechanism, and to the understandings of transitional justice offered by the principal actors of the 2016 peace agreement in Colombia.

1.4.2 Text selection

I started by reading all the public statements of the government, the FARC and civil society representatives regarding transitional justice contained in the *Library of the Peace Process with the FARC-EP* (OACP, 2018), an eleven volumes compilation of the most relevant public statements of the various actors that was edited and published by the High Commission for Peace Office in Colombia (OACP). That publication does not contain public statements delivered by the political opposition to the peace agreement, though.

To select documents for analysis I followed Foucault suggestion to focus attention on 'prescriptive texts', which expose rules, opinions and advice of how problems should be addressed (Foucault, 1986 in Bacchi, 2009: 34). Thus, I prioritised speeches where the actors not only refer to transitional justice in general, but also include their views on how 'TJ' should look like in a post-agreement scenario. I used others selection criteria such as the time period, including speeches delivered from the beginning the negotiation process on November 2012 until the endorsement of JEP in November 2017. I also prioritized statements that expose actors' understanding of the key categories analysed: justice, peace and conflict.

To study FARC discourse on transitional justice, this research focused on the analysis of the three official statements released by the guerrilla peace delegation in Havana during the negotiation process with the government.² Unlike FARC, the government had a more diverse group of official spokespersons from the government peace delegation, and for this research I decided to select only Juan Manuel Santos statements.

The discourses against the peace process, and more specifically against the Special Jurisdiction of Peace, are produced by a variety of actors, such as: the Conservative Party, some evangelical churches, the Colombian Association of Retired Military Officials, (Acore), and some economic groups like the National Federation of Cattlemen (Fedegan) (Gómez, 2017: 242). However, I decided to focus on the statements released by the former President Álvaro Uribe and his Democratic Centre party, since August 2018 in power, based on their influential role in the renegotiation and modification of the Peace Agreements.

² All analysed documents are listed in Appendix 2

For the civil society organizations and individuals, I selected official statements they brought to the negotiation table and some documents that compile their propositions regarding TJ.

1.4.3 Scope and limitations

This research is based on secondary data and the analysis is limited to the trials component - only one of the components of the transitional justice system of the peace agreement - and a reduced number of categories and actors. I am aware that empirical research with different actors that participated in the elaboration of the Special Jurisdiction of Peace would have brought a more extensive spectrum of analysis. Furthermore, a possibility to study more categories and more actors' discourses would enhance the complexity of the research.

Regarding my positionality in this research, my previous work as a journalist covering armed conflict in Colombia, and especially my experience reporting on Justice and Peace Law trials, made me more aware of the social power relation behind the TJ discourses and its materials effects on the most vulnerable population's lives. As a Colombian citizen, I supported the necessity of peace conversations with FARC. However, I do not think that this is an impediment to do a critical analysis of the peace agreement and the competing discourses on TJ.

Chapter 2 | Theoretical Framework

2.1 The State of the Relevant Academic Fields

According to the Secretary-General office of the United Nations (UN), to promote reconciliation and lasting, consolidated peace, it is necessary to have effective governing and justice systems that respect human rights and the rule of law (UN, 2010: 3). In that sense, to the UN-approach, transitional justice is crucial for the establishment or re-establishment of the institutionality, and has been defined as:

“the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof” (United Nations, 2004: 4)

The UN refers to mechanisms such as truth commissions, trials, amnesties, reparation programs, memorials, venting and lustration procedures, among others, implemented by societies during transition and transformation processes (Mihir, 2017: 1). Whatever combination of mechanisms and procedures chosen by the government or the civil society might be, it must conform to the international norms (UN, 2010: 3).

Although policymakers, donors and international cooperation in TJ field have widely accepted that definition, there is not a fixed meaning of the concept. On an academic level a debate about the nature and boundaries of TJ persists, as well as the discussion about social relation of power involved in the construction of the mainstream understanding of transitional justice. In general, among scholars, TJ is read as the measures implemented under international law to address massive serious crimes (P de de Greiff, 2010: 2). Ruti Teitel, one of the most influential scholars on the field, has defined TJ as “the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes” (Teitel, 2014a: 49). According to Teitel (2014a: 52), the evolution of transitional justice could be divided into three phases. The first one, named ‘the post-war phase’, started when the II World War ended in 1945. The Nuremberg Trials, considered the symbol of this phase, took two precedents set by the post-World War I: the predominance of international law over the national law, and the adverse effects of the severe collective sanctions to Germany that led to a liberal focus on individual judgments. This first phase of transitional justice occurred in unique conditions that allow interstate cooperation, war crime trials, and sanctions.

Phase II took place in the post- Cold War time. The decline of the Soviet Union and the end of the United States - Soviet bipolarity impacted the Southern Cone of South America, Eastern Europe and Central America. During this phase, the question of national law vs international law was raised again, and the answer was nation-state trials based on international jurisprudence to legitimise the new regimes and advance nation-building, modernisation and the rule of law (2014a: 54). The values of the rule of law were not based only on retribute justice anymore; peace and reconciliation started to be considered as part of more complex and diverse political conditions of the transition. In this phase, the TJ aim was to unveil an alternative truth to past violations, and this led to the rise of the justice vs truth

debate and the appearance of Truth Commissions in different parts of the world (Teitel, 2014a: 55).

The third “steady-state” phase, started by the end of the 20th century and continues until today. It is associated with the expansion and normalisation of transitional justice; what it used to be the exception is now the norm. The principal symbol of this stage is the International Criminal Court (ICC) created in 1998 to prosecute war crimes, genocide and crimes against humanity under international law, ratified by 123 countries that are parties to the Rome Statute (ICC, n.d.). According to Teitel (2014a: 65), there are many dilemmas by the expansion of the law of war, such as the establishment of a humanitarian law that serves the broader purpose of regulating the conduct in war, for instance, contributing to the foundations of an emerging law of terrorism.

Transitional justice as globalized agenda

The globalisation of TJ brought a new scenario where the dichotomy between peace and justice were dismissed by the international organizations under the consensus that a lasting peace is not possible without addressing grievances (Kent, 2017: 204). In the 2004 UN Secretary-General report, Kofi Annan pointed out that “Justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another” (United Nations, 2004: 8). Thus, blank amnesties or 'forgive and forget' policies, as there were in the post-Cold War phase, are no longer suitable for the new accountability standards (Agata Fijalkowski, 2017: 116), and cannot be applied in the countries that are members of the Rome Statute. In Rosemary Nagy words, this is a 'global project' in which “the question today is not whether something should be done after atrocity but how it should be done”(Nagy, 2008).

A predominant view of this approach understands transitional justice associated with a specific set of mechanisms, closer to the UN definition. For instance, according to Pablo de Greiff³, despite the disagreements about the boundaries of the concept and the implementation, there is a consensus about the minimal core elements that transitional policies must have: “prosecutions, truth-telling measures, reparations for victims, and some initiatives tending towards institutional reform, particularly the vetting of security sector personnel. Other elements frequently said to be parts of transitional justice include memorialization efforts as well as local justice initiatives” (Greiff, 2010: 2). But this approach has been criticised for its “top-down” application and its “one-size-fits-all” model (Sharp, 2014: 9).

The International Center for Transitional Justice (ICTJ), an NGO that is advising transitional justice initiatives in more than 20 countries, describes four main strategies to deal with massive violations: prosecution, truth-seeking, reparations, and institutional reform (ICTJ, 2011b). This approach was inspired by the holistic model, proposed by Alex Boraine, co-founder of the ICTJ, that distinguishes five essential pillars of the transitional justice. 1) a retributive approach to sanction the responsibility for human rights violations, 2) truth recuperation, 3) reconciliation, that includes the reintegration of the ex-combatants, 4) non-repetition guarantees and 5) reparations (Boraine, 2006). This is a model that has been predominant among policy-makers, scholars and TJ practitioners in Colombia (Sánchez, 2017: 29).

³ United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and former Director of Research at the ICTJ.

The problem, according to Dustin Sharp (2014: 3) is that in the last 30 years 'transition' is still assumed as the transition to a Western-style liberal market democracy. Although today the TJ field is increasingly interdisciplinary, most of the debates are still narrow and thin encrusted on human rights, legalisms and political sciences domains that do not problematise the idea of the liberal peace (Sharp, 2014: 7). Similarly, Zinaida Miller (2008: 272) refers to the close relationship between policymakers and scholars as a 'snowball effect' that does not do a critical examination of the international actors and the social relation of power involved in the understanding of TJ.

Critical perspective: assumptions and silences of TJ

During the last years, critique of conceptualization of TJ has increased as a sign of the age and maturity of the field. Scholars and practitioners are calling for broad agendas and reframing of the concept (Bell, 2008: 13). The expansion has been reflected on a more inclusive and complex approaches that have brought new scopes, methodologies and actors. For instance, recent work in the field is demanding a more participatory approach and less top-down interventions (Lundy and McGovern, 2008); more reflections on what transition means and how to understanding it within violent democratic societies (Ni Aolain and Campbell, 2005); questioning the capacity of the traditional TJ mechanisms to contribute to and/or obstruct accountability for human rights violations (Skaar et al., 2016); including more critical analysis of gendered justice gaps (Björkdahl and Mannergren Selimovic, 2017), and studying the inclusion of local justice practices as a respond to transitional justice aims (Clark, 2007).

I focus on some scholars who are critically examining the understanding of transitional justice as a discourse and practice, exploring the assumptions, silences and social relation of power involved in the construction of the concept.

Nagy (2008: 277–278), for instance, insists that the focus on the set of mechanisms in the predominant approaches of TJ has a narrow understanding of violence and its transitional response. She claims that trials and truth commissions structure conceptions of violence and justice based on the assumption that focuses on legal processes as a better solution to deal with social harm, privileging liberal democratic ideals. According to Nagy (2008: 287), transitional justice is a discourse and a practice embedded in power, and so is its definition of who is accountable for what, where and when. It is one-size-fits-all discourse focused on massive violations of human rights that tends to ignore structural violence, gender inequality and foreign involvement in its understanding of violence.

Likewise, Miller (2008: 266) argues that the transitional justice project narrations on peace and conflict may perpetuate silences and invisibilities in which physical atrocities are intolerable but structural violence is accepted. According to Miller, TJ actors and practitioners hardly ever mention social exclusion, economic rights, redistribution and development, and when those aspects are mentioned they tend to remain as a part of a contextual background. More specifically, the TJ literature fails to explore the economic causes and consequences of conflict, or the liberal economic ideas that inform transition based on liberal peace assumptions, or the government development plans that accompany the transition process (Miller, 2008: 267).

In that sense, Miller (2008: 267) disputes the idea of false neutrality and non-political of the legal mechanism of transitional justice. The mainstream TJ concept already has a political

position regarding inequity, redistribution and development. The problem is that seen through this lens, the narrative of conflicts becomes political and unidimensional. Two examples: after the South African Truth and Reconciliation Commission (TRC), the story of apartheid is focused on racism and individual violations and not on the story of an economic-colonial project that created a system of abuses; Rwanda genocide become an 'ethnic hatred' story rather than a consequence of colonial constructions of unequal distribution of resources (2008: 281).

Sharp (2014: 9) argues that TJ narratives are grounded neutral, technical and apolitical language proper to the human rights discourses that veil the political assumptions and purposes of the TJ project (Sharp, 2014: 9). He also agrees that the TJ consensus to 'do something' is focused on large-scale human rights atrocities and physical violence while ignoring economic rights (2014: 2), partly as a consequence of the early construction of the field that conceived transition as a transition to democracy and the rule of law under a western liberal market approach.

TJ discourse and practice have material effects. Coming back to the TRC, Sharp explain that the Commission limited the category of victim to the individuals who suffered violations of human rights, while the victims and beneficiaries of the apartheid system itself remained in the background. As a result, “two decades since the end of white rule in South Africa, apartheid has ended, but the de facto economic and social status quo has not changed to the degree many would have hoped” (Sharp, 2014: 11). Based on that, the author proposes that the notion of transition in TJ should be reconceptualised and reoriented from a transition to democracy to a 'positive peace' approach that addresses structural violence (2014: 23).

The inclusion of social-economic issues as part of the TJ conceptualisation has been received with scepticism by some scholars. Lars Waldorf (2012: 179) does not deny the importance of recognising social-economic inequalities to prevent future conflict but insists on the short-term, legal and corrective nature of transitional justice and the danger of creating unrealizable expectations of something that could be done through democratic policies. De Greiff (2010: 40–41) considers that adding economic crimes to the tasks of trials and the truth commissions could overburden the transitional justice process and rise a broader opposition of the economic elites.

Rather than refuting, UN attempted to incorporate some of these issues in its TJ understanding. In 2006 UN Louise Arbour, United Nations High Commissioner for Human Rights, said that:

“Transitional justice must have the ambition of assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to, but also beyond the crises and abuses committed during the conflict which led to the transition, into the human rights violations that pre-existed the conflict and caused, or contributed to it. When making that search, it is likely that one would expose a great number of violations of economic, social and cultural (ESC) rights and discriminatory practices” (Arbour, 2006: 3–4).

However, as Lekha Sriram argue, as long as transitional processes are embedded in the peacebuilding framework that promotes free markets and democracy it is unlikely that socioeconomic issues would be taken into account (Sriram, 2014: 28). The evident danger for

Sriram “is that promoting marketisation without dealing with past grievances over inequitable resource distribution may lead to the revival of old grievances or create new ones” (2014: 24)

2.2 Theoretical perspectives of this research

In this research, I focus on the critical theoretical perspectives on transitional justice mentioned above. First, I start with the conception of TJ as discourse and as a practice that has material effects on the society. As Nagy (2008: 291) argues, “the institutions of transitional justice are, at base, definitional. They serve not only to delineate past and future but also to define violation and crime, victims and perpetrators, injustice and morality. They demarcate the boundaries of acceptable demands by a citizenry newly awarded its rights and narrate themselves as instruments of justice, political will, stability and peace”.

Second, starting from my hypothesis that the foundations of the Colombian peace process with FARC (2012-2016) are based on the mainstream understanding of transitional justice as part of the liberal peacebuilding agenda, this critical perspective allows me to unpack the assumptions and silences behind the Special Jurisdiction on Peace.

Third, I take in the emphasis on the social relation of power involved in the definition of a TJ process. In 1986, Guillermo O'Donnell and Samuel Huntington -quoted by some of the critical perspective scholars - emphasized that TJ is the result of a series of bargains between elite groups based on their interest, where the level of justice will depend on which elite perpetrator groups dictate the terms of the transition (O'Donnell and Schmitter, 1986 in Paige, 2009: 346).

Chapter 3 | What Justice means?

3.1 Special Jurisdiction of Peace's debate

For the first time in the history of Colombia, the design of the transitional justice mechanisms was part of the peace process agenda. In 2012, the Government created what was called the Legal Framework for Peace, an attempt to translate the international standards on transitional justice into the Colombian Constitution, but the proposition was rejected by FARC in the negotiating table (Semana, 2013). Also, at the time it was explained in the context, some civil society representatives participated in the discussion of the TJ model.

The most charged discussion was the definition of the judiciary mechanism to investigate, prosecute and sanction crimes against humanity and other violations to the international humanitarian law (IHL) (Gómez, 2017: 240). Unlike previous peace processes, as Rome Statute member and as a country under preliminary examination by the ICC, total amnesties were not an option for Colombia (Uprimny et al., 2014: 13).

Peace negotiations with FARC were framed under the globalisation stage of TJ, or phase III (Teitel, 2014b). Thus, the TJ debate had at least four particular characteristics: the debate of justice vs peace was overcome; there was more monitoring by the international courts as the CCI and the Inter-American Court of Human Rights (IACHR); there were stronger demands of no-impunity in terms of truth, justice and reparation by different actors; and political dissensions were 'translated' into judiciary disputes (Uprimny et al., 2014: 15).

The controversy focused on the questions of what may be sanctioned, who may be prosecuted, and how. Despite the use of legal and apparently neutral vocabulary, the debate became mostly political: "The meaning of transitional justice continues to evolve in Colombia. While an analysis of the Justice and Peace Law reveals how different actors first instrumentalised transitional justice, the peace process with FARC highlights how politicised the idea has become" (Rowen J.R., 2017: 641).

In September 2015, FARC and government announced an agreement on the creation of a Special Jurisdiction for Peace (JEP) that will be in charge of taking "decisions that offer full legal certainty to those who participated directly or indirectly in the internal armed conflict with regard to acts committed in the context of and during said conflict and which represent serious breaches of international humanitarian law and serious violations of human rights" (Gobierno de Colombia and FARC-EP, 2016a).

3.2 FARC's understanding of justice

An overview of all the discourse of FARC related to transitional justice during the negotiation process reveals changes in the conceptualization of justice within the transition context. For instance, at the beginning of the peace talks, based on its political nature, FARC claimed amnesties and transitional justice based on a truth commission. But at the end of the negotiations they started to accept the necessity of a judicial process. Even further, in the

third document analysed here FARC adopted some of the government's arguments and strategies, such as highlight the benefits of a peace based on truth, justice, reparation and no repetition, and the redistributive justice as the best solution possible (FARC-EP, 2018c: 523).

However, in general terms, there is no significant shift in the conceptualisation of the categories. The essence of the FARC demands has been upheld through their Conferences and the previous peace processes. FARC has always argued that a disarmament agreement is not a peace agreement if there is no change in the structural causes of the violence, such as the inequality in land distribution or the lack of guarantees to its participation in politics, and more recently, the need to find a solution to the paramilitary and the drug trafficking economies (Medina, 2009: 202).

According to FARC, justice system is partly responsible for reproduction of violence because it is founded on a 'criminal law of the enemy' that has obscured the state's responsibility for the conflict, while imprisoning innocent people or political opponents. Thus, in a transitional scenario, the new TJ mechanisms to judge FARC cannot be part of the justice branch that has been politized (FARC-EP, 2018a: 230). This justice system, according to FARC, must be centred on the truth. The truth is the most important mechanism to repair victims: "Without truth reconciliation is not possible. The Truth must mark the only way to rebuild Colombian society after years of confrontation (...)"(2018a, p. 226) [Translation by TN]⁴. It could be said that FARC emphasised less on the judiciary process, and put more effort into truth initiatives.

But a question remains: what kind of truth? FARC answer is: the truth about the structural causes that have caused and perpetuated the conflict in Colombia since the 1930s. They are looking indeed for the 'real truth' about the roots of the conflict to undermine the 'false' conflict narrative spread by the government. It is a conceptualisation of truth more characteristic of Phase II of TJ, after the end of the dictatorships on the southern cone of America, when transitional justice processes focused on the construction of an alternative history of past abuses (Teitel, 2014b: 55). Victims, defined as political agents leading mobilization processes, must participate in the transitional justice process, and in the construction of truth. Thus, their reports need to be heard. Furthermore, it could be said that FARC's discourses are more focused on a historical side of 'the truth', rather than on immediate concerns such as the locations of the burials of the dead and information about the disappeared - a truth that victims' organisations are asking for.

Besides, FARC argues that all the actors must be part of the transitional system in a future tribunal, and contributors of the Truth Commission. A transitional justice system should reach and prosecute even-handedly civilians involved in the conflict, and not only combatants (FARC-EP, 2018b). Especially, the civil heads of the state, the corporations, and landowners who financed armed groups. All those actors must engage with the victims' reparation process according to the type of victimisation they caused. However, as the head of the dominant and exploitative regime, the state must take on the primary responsibility in a judiciary process and should be the one in charge of the financial reparation of the victims.

That leads also to a broader notion of who is the victim. If more actors recognise their responsibility, more victims can be included. For instance, victims of the economic system,

⁴ Quotes translated by the author from Spanish to English.

victims due to the foreign interference, victims of extrajudicial executions, and political prisoners are, according to FARC, all victims of the conflict.

FARC firmly demands amnesty for political crimes – i.e. crimes related to their political activity that cannot lead to a custodial sanction in any case. Also, because they recognise themselves as a political organisation that fought collectively, they must not be tried as individuals.

Finally, because injustice is only one of the causes of systemic violence, a new transitional justice system is not going to work if the other structural causes of violence - such as unequal land distribution, or lack of guarantees to participate in politics - do not change. So, while legal aspects of justice are important for FARC, they are not enough to achieve social justice and reconciliation.

3.3 Government's competing understandings of justice

During the plebiscite campaign in 2016 and after the rejection of the peace agreement in the plebiscite, the Special Jurisdiction of Peace debate has been framed as part of a political polarisation fight between two spectrums that used to be allies: the then president Santos' administration and the Democratic Centre Party of the then former president Uribe (FIP, 2016b). This is a narrow conceptualization that has prioritised the powerful actors and ignored a range of other competing actors and discourses.

Indeed, those governmental discourses have commonalities. Both start from a mainstream liberal conceptualisation of peace as a mean of promotion of democracy and free markets that focused on massive human rights violations and excluded economic violence (Sharp, 2014: 28). Therefore, neither discourses problematized neoliberal economic practices and development plans as roots of the conflict and as possible causes of new violence (Miller, 2008: 267). Both approaches ignored structural violence, gender inequality and foreign involvement (Nagy, 2008: 287).

Santos administration's discourse

Based on the analysis, it could be said that Santos administration's discourse on transitional justice is a translation of the so-called JT 'global project' (Nagy, 2008: 276), with ICTJ's advice "at the heart of the peace negotiations" (ICTJ, 2011a), supported by the international law standards and drafted in a technical and apolitical vocabulary, the government suggested a "holistic", "victim-oriented" TJ process that enhances prosecution, truth-seeking, reparations, and some institutional reforms.

The then president Juan Manuel Santos argued that transitional justice requires employment of the necessary mechanisms to achieve justice in times of transition from armed conflict to peace (Santos, 2018c). Therefore, transitional justice is the cornerstone of the process because it is called to lead to the end of the conflict with the satisfaction of victims' rights in a transition scenario in which the victims would not be afraid to speak up and the victimisers would have incentives to accept their crimes. Rather than a 'justice or peace' dichotomy, Santos insisted that the agreement attempts to achieve peace with the highest standards of justice (Santos, 2018b: 467). Thus, justice must enforce national and international regulations,

(i.e. the Constitution, the Rome Statute and the ICC norms) to prosecute war crimes, human rights violations and international humanitarian law violations:

“The guerrilla told us: “We would be the only guerrilla that put aside its weapons to go to prison and we will not accept that”. We responded: “We understand that position, but you have committed crimes, some crimes that are listed in national and international jurisprudence, and the country simply cannot, as it was done in the past, offer a blank amnesty”. Here we do not forget everything that happened, because where are the rights of the victims, the rights to the truth, the rights to reparation, the rights to justice?” (Santos, 2018b: 467) [Translation by TN].

There is an emphasis on the international community as a witness of the process: “Colombian peace is also the peace of the continent and, therefore, the whole world has its eyes on us. What we will or will not do resonates far beyond our borders” (Santos, 2018a: 137).

Furthermore, similar to FARC, the government believes that the Special Jurisdiction of Peace must not be designed only for former guerrilla members, but its argumentation is very different. Since the beginning of the peace process, Santos promised to military members and other prosecuted state agents that they will have the same judiciary benefits as FARC: “There will be no special treatment of justice for the FARC if there is not - at the same time - a differentiated treatment, but simultaneous, equitable and symmetrical, for our military and police” (Santos, 2018a: 524) [Translation by TN]. That does not mean that they were considered as equals in the eyes of the government. Same logic applies to the civilians that actively participated in the conflict. Although, the president has always made clear that civilians who participated in the conflict as a result of coercion are innocents, and peace will not be a 'witch-hunt' of companies.

According to the government, only if Colombia satisfy victims' rights it would move forward as a society. Therefore victims' rights have been in the centre of a number of public policies led by Santos' administration (Santos, 2018c), such as the promotion of Victims' Law in 2011. The 'victim-centred' or the 'victim-oriented' perspective claim for restaurative justice and victims' rights to truth, an approach increasingly taken in the recent TJ literature, is criticized by some scholars for its lack of reflection upon what victims' rights actually mean (Sriram and García-Godos, 2013: 5).

Supported by international law standards, the government defined which victims' rights need to be satisfied: truth, justice, reparation and non-repetition. In the same normative discourse, a victim is a person or a collective that suffered damages as a consequence of human rights or IHL violations in the context of the conflict (UARIV, n.d.). Santos portrays victims as benevolent human beings looking for a specific kind of truth; a homogeneous group that have in common their suffering, who are supporting the peace agreement to avoid future victimisation:

“If you ask the victims what their main demand is, it is not the money, it is not the land, much less the revenge (...) For the most part, victims want, in the first place, to be recognized. They want to know what happened to them and find out what happened to their loved ones” (Santos, 2018b, p. 114) [Translation by TN].

This homogeneous conceptualisation of victims, leaves out the victims' organisations with specific claims, such as those demanding imprisonment of their aggressors; or more complex readings such as that victims can be perpetrators. Although victims' rights are

named as the centre of the peace process, victims are not seen as proactive political actors with specific perspectives on the transitional justice agreements.

Finally, the government portrays itself as the expert in the field who has lessons learned from previous transitional justice experiences in Colombia, such as the Victims' Law and the Peace and Justice Law. The official discourse uses a technical language, rather than a political one to justify political decisions that have material effects. For instance, based on some of the principles of the JT as global project, Santos claims that to investigate all the crimes that occurred during the conflict is impossible and ineffective; therefore, the most significant crimes and the higher ranks commanders should be prioritised. He argues that is not possible and efficient that the same institution is in charge of prosecuting crimes and seeking the truth, and that trials and Truth Commission must be two separate and independent mechanisms. He insists that the Commission must find "useful" truth rather than structural causes of conflict (Santos, 2018c: 116).

Peace process opposition discourse

Among the political opposition to the peace process with FARC, discourse of justice competing with the government's is best represented by the Democratic Centre Party. The public debate among scholars, politicians and analysts has been centred on the rhetorical strategies of the so-called 'No' campaigning in the 2016 plebiscite: the lies, distortions and the fear mongering contributed to the success of the 'No'paign and defeat of the peace accord plebiscite (Basset, 2018: 243). This research is focused on how this particular opposition discourse problematized justice in transition and what are assumptions that informed it.

In general, it could be said that is a nationalistic discourse focus on the past, more specifically, on what they consider the achievements of the Álvaro Uribe Vélez administration and its 'democratic security' policy. Its definition of justice in times of transition has three main characteristics: prioritisation of the 'rule of law' and the constitutional order, strong defence to the 'honorability' of the military members, and a focus on retributive justice. Despite a political perspective of this discourse, the critiques and their propositions are embedded in the judiciary and technical debates that are difficult to follow for those who are not familiar with the law or political science field (Uprimny et al., 2014: 13). First, the idea that justice must be always framed into the 'rule of law' and the institutionality and, even in times of transition, means only the State can prosecute and administrate justice (Duque, 2017). Thus, justice is not relative, and the Special Jurisdiction of Peace (JEP) is consequently not lawful:

“with this agreement, justice has been relativised, based on the ideology of the perpetrators. Is there a difference in the Colombian law between a homicide perpetrated by the paramilitaries or committed by the FARC? Is there, in the Colombian law, any differentiation of a kidnapping committed by the FARC or by a paramilitary group? No, it does not exist, because in the rule of law enshrined in the Constitution there is no differentiation” (Duque, 2017) [Translation by TN].

According to this view, a new TJ system thus must be part of the judiciary branch, and that means that its sentences would be under the vigilance of the Supreme Court. The applicable law must be the Colombian constitution supported by the international law, and all the judges must be Colombians (Centro Democrático, 2016). According to Uribe only Attorney General can investigate and prosecute, so civil society and victims' organisations should not

send reports to JEP, as some of them are biased against military members and that can put in danger the institutionality (Uribe, 2016).

This view relies on the assumption that the 'rule of law' and the state institutionality works correctly, but especially that the structure of the state has not been involved in causing or reproducing violence. Uribe compared Colombia with other Latin American countries to remark that there have not been long dictatorships: "Our democracy has been in permanent improving without having to give in to terrorism" (Uribe, 2016). Moreover, this view comes from a mainstream conceptualization of TJ as a transition to democracy or the implementation of the 'rule of law' (Sharp, 2014: 35).

Second, the focus of the peace process is reduced to FARC demobilisation, thus TJ must be designed only to prosecute guerrilla members. There is a legal institutionality to pursue civilians and state agents, and a President is not allowed to agree on a new judicial system to link them to criminal groups (Uribe, 2016). Civilians and state agents could be part of a transitional justice process only if they accept it voluntarily. Military members that decide to be part of the TJ mechanisms would receive all the legal benefits, but they deserve a differential judicial treatment; any attempt to treat them as equal to FARC members would be an insult to their honour. Therefore, justice must not apply the same chain of command for Armed Forces and FARC (Centro Democrático, 2016). This discourse is also a battlefield for the truth. According to Uribe, if FARC conditioned the justice system, they can impose a discourse in which the guerrilla is seen as a political actor in a social struggle, while the state is portrayed as the perpetrator (Uribe, 2016).

Third, a prison or a restriction of liberty to high guerrilla commandants is necessary to the 'rule of state' equilibrium, an exemplary way to repair the victims (Duque, 2017). No imprisonment, no extradition for FARC but political participation (guaranteed by the Peace Accords) is a bad example for the rest of Colombians:

"This disguised amnesty is also granted without forgiveness, without repentance, without handing over the money of the third richest terrorist group in the world to repair the victims. The criminals admit the suffering caused and justify it" (Uribe, 2016) [Translation by TN].

The proponents of this view usually refer to some of the more condemn crimes among Colombians such as the rape of minors, forced abortions and kidnapping and killings of the members of the state military.

The Democratic Centre Party, as well as the government, refers to the importance of international law, but as a counter-argument. According to Uribe, the Rome Statute allows for sentence reductions but to some extent demands retributive justice (Uribe, 2016). Thus, a peace agreement is a violation to the international law standards⁵. This anti-impunity approach that has been promoted by legal scholars and activists around the world justifies trials under a narrow assumption that legal processes are the best way to solve individual and social

⁵ Article 77 of the Rome Statute states that imprisonment is necessarily part of the punishment the International Criminal Court may impose on a convicted person. This may be for a specified time or a life imprisonment. In addition, the Court might also order fines and forfeitures, but imprisonment being the primary punishment (ICC, 2002: 54).

harm (Fletcher and Weinstein, 2002: 584), and focuses on individual accountability that ignores systemic responsibilities (Miller, 2008: 275).

3.4 Civil society discourses

To study some of the civil society discourses that participated in TJ debate during the peace negotiation process, I divided the analysis into victims, women's organisations and the ethnic communities' representatives. This decision is based on how they were included in the peace negotiations, with full understanding that the mode of inclusion itself can be debated.

Unlike the government's discourses there is no technical or neutral language in civil society's discourses, and peace is conceptualized as a positive peace (Galtung, 1969) that includes social justice propositions to tackle the structural violence. That is why, although most of the victims were invited to present the victims' rights perspectives, their demands include issues on lands, education and political participation, among others.

Victims

60 individuals, representing victims, divided into five groups of 12 people were invited to Havana. As it was explained earlier, the diverse groups were composed by external actors, and the conversations with the government and FARC were secret. At the end of each meeting, the group of victims released a concise statement in which there were no fully developed ideas on justice, peace and conflict. However, it could still be seen that their conceptualization of justice goes further than a retribution, when they claim for justice "not as revenge, but as a right and a commitment to peace" (Segunda delegación víctimas, 2018) and give more importance to truth, recognition of responsibilities, restitution of rights and the guarantees of non-repetition. Victims demanded a truth about what happened, but also a truth about the causes and the responsibilities in the war (Quinta delegación víctimas, 2018).

They portray themselves as heterogeneous groups that do not pretend to represent the total universe of victims in Colombia (Primera delegación víctimas, 2018). That heterogeneity reflects on some of their specific demands. For instance, the only delegation that included a victim of anti-personnel mines called for humanitarian demining (Cuarta delegación víctimas, 2018). Furthermore, the statement that includes a more profound conceptualization of structural violence was part of the fifth delegation in which there was a significant number of politicians, black activists and victims of the state violence (Quinta delegación víctimas, 2018).

Thus, victims' claims during the peace process were more related to their positionality and their social struggles than to the condition of victimhood. Indeed, a study that analyzed the data from the Justice and Peace Survey concluded that there are small differences between the victims and non-victims on how they feel toward some aspects of transitional justice, such as the punishment, truth-seeking, historical memory and reparations. Instead, differences depend more on other factors, for instance, on religion (Nussio et al., 2015: 19).

Women

Women and feminists included in the Havana negotiations had clear message: Women have to be part of the peace agreement because their rights cannot be agreed without them, and this inclusion should not be restricted to the victims' component of the peace negotiations,

but to the whole Accord. Women's rights organisations participants defined themselves as the plural voice of a variety of woman: indigenous, peasants, feminists, LGBTI members, victims and ex-combatants, among others (Casa de la Mujer et al., 2014).

According to them, the peace process - and the TJ system by extension - must acknowledge women's and LGBTI people's differential experiences of discrimination, exclusion, racism and homophobia during the conflict, based on structural violence and historical practices of patriarchy and militarism (Cumbre Mujeres y Paz, 2016), based on a system that reproduces an unequal distribution of resources based on gender, including the property of land (Casa de la Mujer et al., 2014). These demands have been largely ignored by the mainstream understanding of TJ, and only in the last years have been included in some programs. According to Nagy, when the disproportional impact of structural violence on women is ignored, women tend to appear as indirect or secondary victims of deceased family members (Nagy, 2008: 285).

Consequently, women's organisations proposed a TJ mechanism that, in addition to the criminal justice component, assures women's and LGBTI people's experiences would be addressed under a differential approach. Moreover, they demanded the recognition of responsibilities by all actors involved in gender-based violence (Cumbre Mujeres y Paz, 2013: 63). Additionally, Women's advocates demanded a balanced composition of men and women in the negotiation table, in the Special Jurisdiction of Peace and on all the institutions created in a post-agreement scenario. The main argument was that the presence of women reduce the possibility that the TJ mechanism and the peacebuilding design reproduce male subjectivity and interests, a claim developed by feminists scholars (Ní Aoláin and Turner, 2007 in Céspedes-Báez and Ruiz, 2018: 104)

One of the coalitions of women's rights NGOs pushed for a prohibition of amnesty for sexual violence against women (2018: 100). Some scholars and activists have pointed out the narrow understanding of women in conflict that came out as a result of these interventions:

“women's NGOs, movements, and advocates succeeded in including their voices in these points, but they ended up reinforcing an idea of women tied to victimhood and of sexual violence as the paradigmatic crime against women” (Céspedes-Báez and Ruiz, 2018: 101).

Indigenous and afrocolombian communities

Afro-Colombian and indigenous communities decided to join forces to demand the inclusion of the ethnic perspective in the peace agreement to acknowledge the self-determination of these communities, and the special rights granted by the Constitution. Primarily, they claimed a prior consultation with the ethnic communities to approve and implement the deal in their territories (Arias and Moreno, 2018). In the end, government and FARC also included them in the same category to create the so-called ethnic chapter in the final agreement.

However, it is a diverse group not only because of the evident differentiated experiences of conflict between afro-Colombians and indigenous people but also within the communities. For instance, the representation of the indigenous people in Habana was the National Indigenous Organization of Colombia (ONIC), an association that includes 47 regional indigenous organisations from 28 different departments with diverse experiences of the conflict and different understandings of peace and justice. An interesting example is the indigenous peoples of Cauca in the southwestern region of the country that has had rejected the

presence of FARC guerrilla in their territory since the 1980's. In addition to constant demands against the human rights violations by the Armed Forces, they have had claimed that FARC' leadership has a systematic militarise strategy to affect the indigenous people in Cauca, its culture and territories (Aguilera, 2014: 312–316).

Nonetheless, there is a common agenda that afro and indigenous brought to the negotiation table. In general, it can be said that propose an agreement - and TJ mechanisms - that acknowledge the violence structures of colonisation, discrimination, exclusion and racism that have had a disproportionated impact the ethnic communities (CONPA, 2018: 477). Instead of an individualistic approach, afro and indigenous leaders ask for the recognition of collective and environmental victimizations (ONIC, 2016: 498). Therefore, the reparation must be seen in terms of social, economic and cultural rights (CONPI et al., 2016: 12) . Moreover, there must be concertation about the DDR programs for indigenous and afro guerrilla members.

The TJ mechanisms as well have to consider the practices and customs of the ethnic groups, attending their plural processes, languages and traditional ways of transmission, and any JEP decision must consider the principles of unity, territory, autonomy and culture. Moreover, the mechanisms themselves have to include members of the indigenous and afro communities, and these communities' reports have to be considered in the trials (CONPI et al., 2016: 9).

Specifically, indigenous representatives demanded the recognition of the supremacy in their territories of Special Indigenous Justice (JEI), a system “developed autonomously by the government of each indigenous community and is ancestral, for life and harmony with Mother Earth” and entrenched in the Constitution (ONIC, 2016: 499). The main concern is that the imposition of a new legal system could undermine JEI's credibility.

Chapter 4 | Understanding Peace and Conflict

The above discussed discourses on transitional justice relied on specific understandings of both the conflict and the peace. These understandings are tied to the social locations as well as specific interests of the actors, and are indicative of the differences in future strategies for post-conflict reconstruction of the country.

4.1 FARC discourse

The FARC recognises the existence of the conflict (or the war) and its narrative is strongly connected to the history of the last century in Colombia (Medina, 2009). In that sense, in their speeches, there are reiterative references to 'La Violencia' - the confrontation of the Colombian Conservative Party and the Liberal Party in the 1940s and 1950s - and to the anti-insurgency policies driven by the government as part of a Cold War strategies. Based on the analysis of the speeches, I argue that FARC's understanding of conflict relies on three propositions that are the backbone of their conceptualisations of peace and justice.

First, FARC argues that the origin of violence and its reproduction is structural, embedded in the political, economic, social and cultural structural conditions of domination, exploitation and inequality that still exists in Colombia (FARC-EP, 2018b: 243). The state, as the head of the dominant and exploitative regime, carries the main responsibility for the violence in Colombia. According to FARC the capitalistic economic system is one of the structural causes of the conflict (Aguilera, 2014: 190). However, at the government requirement, the change of the socio-economic system was always off the table, and that is why it is not present in FARC's proposal for future transformation of the society.

Those dominant power and social inequality structures were the reasons why FARC decided to exercise the right of rebellion (FARC-EP, 2018a: 244). Thus, the conflict did not start when the guerrilla group was created. Consequently, FARC understands peace as a positive peace (Galtung, 1969) in the sense that it is not limited to the end of the armed fighting but to the end of the structural violence. That means that changing the structural causes of the conflict is a condition to achieving peace:

“In the current political scenarios, all sides talk about “transition” and the kind of justice that we need to achieve it. But, moving up from current condition to another implies necessarily to implement structural changes in the institutional framework that allow reconciliation based on social justice. So, then, it would be inconsistent to pretend that all the components of the distrusted institutions remain intact”(FARC-EP, 2018a: 224) [Translation by TN].

The State is the first one called to reformulate itself towards the purpose of peace. FARC considers that the state and its institutions have designed and implemented terrorist policies that led to a false narrative of the conflict in which FARC is portrayed as the only victimizer to hide state's responsibilities in the conflict.

Second, according to FARC, the Colombian conflict has had multiple actors and they are just one among them. In that way, the guerrilla does not limit its notion of conflict to the

combatants in the battlefield but instead includes other actors such as political parties, corporate leaders and companies in various economic sectors, landowners, transnational corporations, media outlets, the church, and foreign powers, especially the United States. Therefore, to achieve peace all the actors need to tell the truth, and the foreign powers have to cease any form of interventionism, advice or foreign military intervention (FARC-EP, 2018b: 161). The guerrilla considers that media and government have manipulated forgiveness discourse to reduce FARC to a machine of victimization (FARC-EP, 2018d: 161).

Third, FARC defined itself as a political actor, implying that the political right to rebellion against the dominant power framed their actions during the conflict. The rebel group added that they were never defeated, thus Colombian conflict has no victors and losers. Hence, peace is constantly defined as a political solution that requires, particularly, political and social forgiveness to enable reconciliation. A peace scenario cannot be reproduced along the 'winners and losers' logic, and that is why FARC is willing to work with other actor involved in the conflict to satisfy the rights of victims and affected communities in general (FARC-EP, 2018a: 229).

4.2 Government discourses

Santos administration's discourse

According to the government, Colombia needs peace to fulfil victims' rights as broadly as possible because peace is the supreme good of every society, and is also a constitutional duty of the state. The government is looking for a liberal peace that does not compromise the neoliberal development model of the country, nor the democratic institutional model, and does not represents a risk to the region (Doyle, 2005: 463). Furthermore, is not a negative peace (Galtung, 1969) because it is not only about the "the silence of weapons" (El Tiempo, 2016). But it is neither a positive peace as it is not looking to change the structural violence. Rather, the government understands the issues included in the agenda (i.e. agrarian development, political participation, narcotrafic) as reforms necessary to avoid the prolongation of the conflict, but not as the elements of the root causes of it.

The peace process is presented as a result of the government's plan that has meticulously followed, step by step, three chronologically phases: the previous work that made possible an agreement, the agreement, and the transition. The argumentative structure of government's discourses oversimplifies, or does not problematize the voices, facts and counter-arguments that have played a key role in the peace process debates in Colombia⁶.

Unlike FARC, Government discourse appeals to the progress and future and not to the past.

"A Colombia in peace will shine like a star on the international scene; a Colombia in peace will allow us to move forward faster towards equity; a Colombia in peace will facilitate us to become the most educated nation in Latin America; a Colombia in peace will be safer because the public force dedicated to war will focus on improving the security of citizens, of Colombians; a Colombia in peace will attract more investments that will create more and better jobs; a Colombia in peace will turn us into a tourist power; a Colombia in peace will

⁶ Paraphrased from the non-published work. Navarrete, T (2018). 'What transition means? An argumentative and metaphorical analysis of the Colombian government discourse in the FARC peace agreement context'.

take better care of the environment, of that wonderful biodiversity that we must preserve” (Santos, 2018a: 515) [Translation by TN].

Government peace conceptualisation does not problematize to what extent the economic system, the development model and the institutional structures have caused or exacerbated the conflict. The conflict is portrayed as an obstacle that needs to be torn down because it has slowed the economic progress in Colombia, and this is the reason why the state has not been able to fully guarantee rights to their citizens, especially in the most remote regions of the country. In this spirit, recognition of conflict was a practical decision to move forward. What kind of conflict the government speaks about: a 50 years conflict that has left thousands of victims. This implies - without saying it directly - that the conflict started with the establishment of FARC guerrilla. Furthermore, the government recognize as FARC and ELN (National Liberation Army) guerrillas, some civilians and demobilized paramilitary groups as main actors of conflict. The state - mostly referred as some state agents - has been seen as participating both by action and by omission. Other illegal armed groups that appeared after the paramilitary demobilisation and have been called as Bacrim (criminal bands) by the government have been categorized as part of the organised crime and not as actors in the conflict.

Peace process opposition discourse

The Democratic Centre Party representatives have openly denied the existence of an internal conflict in Colombia. President of the Senate, Ernesto Macías said in his speech at Iván Duque's presidential inaugural on the 7th August 2018: “In Colombia, there has not been a civil war or an armed conflict, but a terrorist threat against the State” (El Heraldo, 2018). Therefore, they do not recognise FARC as a political actor and, instead, portrayed them as terrorists (El Heraldo, 2018) a cocaine cartel (Duque, 2017) and the principal criminals of Colombian history (Uribe, 2016). On the other hand, the Armed Forces are described as protecting the sovereignty and providing security under the rule of law. Civilians are represented as victims (Duque, 2017).

It is a simplistic conceptualisation of the conflict in which the state is considered a victim, many actors are ignored, there are no considerations for historical context and structural violence, while the focus is on FARC crimes. According to Sharp (2014: 12), “when conflicts are viewed through a one-dimensional lens, prevention of human rights abuses becomes a simplistic function of punishment and impunity”.

With that in mind, peace is conceptualised as a right in the Constitution that cannot be framed outside its legal boundaries. There will not be peace with impunity, which means, there will not be peace without punishment (Duque, 2017). Based on their proposals, a peace agreement is limited to the achievement of a negative peace, to allow demobilisation and reintegration of the guerrilla members to the democracy. But there cannot be agreements on land distributions or political participation (Centro Democrático, 2016). This is also a liberal peace: “The only thing that guarantees a lasting peace is a respected and stable democracy, with great strength in private initiative and social policies” (Duque, 2017).

Victims have rights to truth, justice and reparation. As part of the reparation, they propose a ‘winners and losers’ scenario in which FARC must be prosecuted, must reparate the victims and ask for pardon, and must repent for their acts (Centro Democrático, 2016). However,

there is no demand for an equal kind of reparation to the victims of the state, and Uribe's administration did not demand victims' rights under the same conditions in the past, when the TJ mechanism to prosecute paramilitary members was created.

4.3 Civil society discourses

Victims

According to the victims group's public statements, truth is the basis for peace; a truth that can be constructed by listening to victims' experiences (Segunda delegación víctimas, 2018). During the peace negotiation, victims wanted to be viewed as agents and not be recognized only by their suffering. One of them said: "We do not accept being the emotional touch in a negotiation" (Caracol Radio, 2014). Thus, as a group, victims demanded other actors not to instrumentalise their experiences (Segunda delegación víctimas, 2018)

Victims demand a positive peace with specific social justice demands to address structural violence, such as access to education, health, essential sanitation services (Tercera delegación víctimas, 2018), and political inclusion (Quinta delegación víctimas, 2018). Regarding conflict, victims list the state, FARC, and other armed groups (ELN, EPL and paramilitaries) as perpetrators.

Women

Truth, justice, reparation and no repetition guarantees are necessary conditions to end the conflict (Casa de la Mujer et al., 2014), but achieving peace implies a transformation of the structural causes that originated the conflict and the recognition of the historical women role in peacebuilding (Cumbre Mujeres y Paz, 2016). That is why Women' organizations asked to the negotiation table that considers their propositions in all chapters of the agreements and not only in the victims' rights section.

Unlike FARC, the definition of structural causes has a gender perspective. As Mujeres por la Paz concluded in their National Meeting of Women for Peace, "from the women's perspective, peacebuilding means a new way of doing politics, which implies decentralising power, eradicating historical, patriarchal and militaristic practices" (Cumbre Mujeres y Paz, 2016: 2). Moreover, "Peace is the reflection of a fair, free, plural and egalitarian world" (Casa de la Mujer et al., 2014) [Translation by TN].

Regarding conflict, there is not an extend conceptualisation in the public statements, but they remarked that violence and militarization that has had a disproportionate impact on the Women and LGBTI people's live, and the importance of recognize the variety of actors that have participated in the conflict causing pain, marginalization and exclusion.

Indigenous and afrocolombian communities

According to the statements released by the Afro-Colombian and indigenous representation in Havana, the ethnicity and race discrimination has been one of the roots in the social and armed conflict. The ethnic groups- as they identify themselves- are victims of the racist and discriminatory practices of the state to deny them the fundamental rights guaranteed by the

Constitution. Consequently, indigenous and Afro has been particularly affected by the conflict (CONPA, 2018: 478).

For them, land appropriation is central to understand the conflict. Afro communities argue that after the expedition of the Law 70/1993, that conceded collective land titling to ancestral Afrocolombian communities, the war increased in their territories through an extractivist economic model causing severe damages to the environment (Cortes-Ruiz, 2016: 13). Similarly, indigenous consider that the war has been functional to an energy-mining colonization model into the ethnic communities and peasants' territories. A war in which FARC guerrilla has prioritised a militarism strategy rather than a political agenda (ONIC, 2014: 118).

For that reasons, most of the claims of these communities were not focus on the victims' rights section and the Special Jurisdiction of Peace, but in other aspects of the peace agreement more related with the particular condition of their communities, such as self-determination over their land, the expansion of coca crops in their territories and illegal recruitment of the youngest members of the communities.

In that way, social justice peace must be territorial, biodiverse and ethnic. Thus, it is a positive peace called to solve the roots of the conflict (CONPI et al., 2016: 13) and to return them the possibility to decided about the development model for their territories (CONPA, 2018: 479).

For the indigenous representatives in Havana “peace means living in harmony with Mother Earth and its elements, including community life. It is the respect to our traditional and spiritual authorities, to the sacred sites, to the rivers and mountains, to the seas and oceans, to the forests and jungles, animals and people” (ONIC, 2016: 501) [Translation by TN]. It is a concept of peace that it is not achieved only through a peace agreement (ONIC, 2014: 113).

Chapter 5 | Discursive reflections on the Special Jurisdiction of Peace

5.1 Transitional justice debate in the post-Peace Agreement context

After Colombians rejected the agreement in the plebiscite of October 2016, FARC and Santos' government decided to re-negotiate the peace agreement with some of the political and religious leaders of the peace process opposition, headed by the Democratic Centre Party, whose propositions mostly focused in the reformulation of the victims' rights point (FIP, 2016b). Although they did not reach a final arrangement, in November 2016 FARC and government announced a new peace agreement that included some of the propositions of the 'No' campaign. After that, the guerrilla started their transition from a guerrilla to a political party (Casey, 2016).

While Santos was still in power, some sections of this new agreement - including the JEP creation- were endorsed with significant changes by the Congress and ratified by the Constitutional Court. In the post-agreement time, more political voices of the opposition - and some from Santos' administration that joined them⁷ - were involved in the definition of what kind of justice must be implemented in Colombia after FARC demobilisation. It could be said that at this point the TJ deliberation and the final decisions about the mechanisms were concentrated among a centralised political elite. In O'Donnell and Schmitter words, it was a bargain between elites to determine the terms of the transition according to their interests (O'Donnell and Schmitter, 1986 in Paige, 2009: 346).

In January 2018, the Special Jurisdiction of Peace was inaugurated with the modifications included (Semana, 2018), but the debate about what its mission is still ongoing and the power relation changed in the government changed. On 17th of July 2018, Iván Duque, the candidate of the Democratic Centre that promised more modifications to JEP, was elected as president (Casey and Abad, 2018).

Thus, to analyse how the competing discourses are reflected in the Special Jurisdiction of Peace, this research is focused on four milestones that defined what the Jurisdiction is today. 1) the first peace agreement of August 2016 (Gobierno de Colombia and FARC-EP, 2016a) 2) the second peace agreement of November 2016 reached after the plebiscite (Gobierno de Colombia and FARC-EP, 2016b) 3) the Special Jurisdiction Peace Law Endorsed by the government on April 2017 (Congreso de Colombia, 2017) and ratified by the Constitutional Court on November 2017 (Corte Constitucional, 2017) 4) and the later regulation to JEP on July 2018 (Congreso de Colombia, 2018).

⁷ After the plebiscite, some parties from the Santos' administration coalition, such as Cambio Radical, did not support the JEP and led the initiatives to re-formulate it.

5.2 Transition to what and justice for whom

During these four moments, there were a variety of TJ aspects in dispute, but I focus the analysis on the following questions: transition to what end? TJ to whom and how? And Justice by whom and for whom?

Transition to what end?

The aim of the *first Peace agreement* is the end of the conflict and the construction of lasting peace (Gobierno de Colombia and FARC-EP, 2016a: 1). However, the government and the FARC made clear that they have different expectations of what must be the final goal of the agreement, expectations that are informed by their conceptualisation of conflict and peace. Thus, according to the government, the aim is to reverse the effects of conflict and change the conditions that have facilitated violence. For FARC, the purpose is to contribute to solving the structural causes of conflict, such as the lack of access to land (2016a: 1). But a few pages later, the document of the agreement indicates that the end of the conflict means to start a transition that:

"contributes to a greater integration of our territories, a higher social inclusion - especially of those who have lived on the margins of development and have suffered the conflict - and to strengthen our democracy to expanded it in all the national territory ensuring the discussion of social conflicts through institutional channels, with full guarantees for those who participate in politics" (2016: 4) [Translation by TN].

Thus, the terms of the transition are familiar to the governments' discourses on transitional justice and peace. It is a liberal peace perspective to promote democracy, or the expansion of the rule of law in the territory, and its inclusion on the neoliberal economic model of Colombia. The terms of the transition were not the centre of the discussion because those they did not represent a threat to the interests of the armies, business and political elites. According to O'Donnell and Schmitter (1986 in Paige, 2009: 346), the main focus of elites bargaining on TJ is the legal-institutional reform, rather than socioeconomic transformations. Therefore, the bargain in Colombia has drawn towards the trials and the definition of who are the perpetrators and how must be punished, and the outcome is a Special Jurisdiction of Peace that does not hazard the status quo of the elite, based on the logic of "settling a past account, without upsetting a present transition" (2009: 347)

TJ to whom and how?

The *first Peace Accord* determined that JEP would investigate and prosecute to all actors (i.e. ex-combatants, military members, civilians, state agents), who had direct or indirect participation in the conflict. including the civilians who sponsored - no through coercion and threats - paramilitary groups (Gobierno de Colombia and FARC-EP, 2016a: 134). The document excluded from this procedure to the president and former presidents and paramilitary members that already went through the Peace and Justice Law trials.

Following the Rome Statute, the international humanitarian law and the international human rights law, the agreement forbids amnesties to crimes against humanity, genocide, and war crimes, including sexual violence, focusing on the most significant crimes and the higher ranks commanders (2016: 136). FARC ex-combatants that accept their responsibility, tell the truth and repair the victims through social service work, receive liberty-restricted sanctions - not imprisonment- from five to eight years, without losing their political rights (2016: 297). In this scenario, military commanders must respond for the crimes committed

by its subalterns, even if they did not take an active role in the actions, but throughout negligence (Pabon and De Gamboa, 2018: 79).

The *second agreement* extended the sanctions benefits to the state agents and civilians but made clear that telling the truth does not mean to accept any responsibility (Equipo Negociador del Gobierno, 2018: 257). It also limited the liberty-restriction sanction to FARC members to specific locations and urged for FARC economic reparation to victims as requisite (OACP, 2018: 240). That condition does not apply to other actors. As Miller explained (2008: 284), the focus on reparation in TJ mainstream approach contributes to the definition of who is guilty and who is the victim. When reparation is thought as compensation and not as a redistribution of wealth, the debates are narrowed to who 'owes' whom and how.

The *Special Jurisdiction of Peace's Law* issued by the Congress went further and determined that the participation of civilians - the so-called third-parties in the conflict - and civil servants in the Special Jurisdiction of Peace would be only voluntary (Congreso de Colombia, 2017: 14). The decision was confirmed by the Constitutional Court under the argument that JEP is a mechanism to end the conflict and reincorporate FARC members to the civilian life, thus force non-combatants to join the new jurisdiction is unconstitutional (Corte Constitucional, 2017: 20–21). It is an interpretation that relies on a simplified assumption of conflict as a confrontation between combatants on the battlefield. Furthermore, Congress excluded from JEP scope the funders of illegal armed groups and limited it to the so-called physical crimes included in the Rome Statute (Congreso de Colombia, 2017: 17). The Congress also narrowed the understanding of the command chain responsibility; military commanders – but not civilians – must be investigated only in cases where they had explicit and effective knowledge about the crimes (2017: 28)⁸.

Lastly, during the Law regulation, among other modifications, the Congress called on to a special procedure and chamber in JEP to prosecute only militaries. Until it is done, they are not obligated to be part of JEP (Congreso de Colombia, 2018: 34).

To summarize, after the modifications, JEP prosecutions are only mandatory to FARC combatants and military members, but not under the same conditions, meaning that there not be an equal access to justice to all victims. Therefore, it could be said that the limitations to the scope of the Special Jurisdiction of Peace ended up narrowing the transition discourse into a demobilisation process and framing the discussion in a one-dimensional understanding of conflict of Colombia as a fight between combatants.

Justice by whom and for whom?

The discussion of who is prosecuting was connected with the purposes of diminished the scope of the Special Jurisdiction of Peace, while the debate about victims' rights has had been

⁸ Pursuing article 28 of the ICC's statute, commanders and other superiors (non-military) may be deemed to be responsible for the crimes committed by subordinates under her effective authority and control when she failed to control them and to take all the necessary measures to prevent the commission of the crime. The treatment of the military commanders' and civilian superiors' responsibility differs slightly. Both are responsible if they know, or should have known about their subordinates' acts, and if they did not take preventive measures to avoid the crime and punish the subordinates. However, in the case of civilian superiors, they end up being responsible when 'The crimes concerned activities that were within the effective responsibility and control of the superior' (ICC, 2002: 19)

peripheric. However, the outcome of the TJ bargain ended up at the expenses of the civil society demands.

The *first peace agreement* established a JEP consisting in national and foreign judges with independence from the judicial branch and full authority to investigate and prosecute any human right violation related to the conflict (Gobierno de Colombia and FARC-EP, 2016a: 130). As the government advised and according to TJ traditional set of mechanisms, it created a Truth Commission in charge of clarifying violence patterns, context and regional dynamics in which the Human Rights violations occurred. However, the information consigned by the Commission cannot be part of the judicial process of the Special Jurisdiction of Peace.

As it has been defined in past TJ legal frameworks in Colombia, the international law standards determine the who is a victim and who is not, as well as the definition victims' rights in terms of truth, justice, reparation and non-repetition. But, following the suggestions of the civil society groups in Havana, there is a differential approach recognition of the disproportionated impact of the conflict in women lives, LGBT community, indigenous people and Afro-Colombians. The agreement also ratified that any JEP decision concerning the Special Indigenous Jurisdiction needs to be previously consulted with them. Moreover, the reports presented by civil society and victims' organisations to the JEP had the same importance as the authorities reports (2016a: 149–151).

After the plebiscite, the second agreement established a 15-years temporal limit to JEP, eliminated the direct presence of foreign judges and created an appeal procedure and determined that its sentences would be under the vigilance of the Supreme Court (Equipo Negociador del Gobierno, 2018: 240–253), in accordance with to the claim of the Democratic Centre Party.

Despite what civil society representation in Havana demanded, the role of victims changed under this new agreement and their representation focused more on their suffering instead to their political agency. The civil society and victims' organisations' reports presented to JEP lost the power to start an investigation to serve as a context, and their presence is required only in 'contradictory trials' (Equipo Negociador del Gobierno, 2018: 252).

Furthermore, following the suggestions of the evangelical churches and the Conservative Party (FIP, 2016b), the gender approach in the agreement was modified under the argument that the so-called 'gender ideology' was a threat to the traditional family values (Chaparro and Martínez, 2017: 12). Thus, in the second agreement signed by the government and the FARC, any mention to the gender equity was changed to "equity between men and women" (Equipo Negociador del Gobierno, 2018: 274); eliminating all the allusions to the LGBTI population. It is an evidence that the gender-role transgressed perspectives are still perceived as a hazard to the status quo (Chaparro and Martínez, 2017: 13).

Chapter 6 | Conclusions

The key actors selected to this research paper have different definitions and expectations of justice in transition that are tied to their social locations as well as their specific interests. On the one hand, FARC's understands justice as social justice that requires, among other measures, a truth-unveiling process for all actors involved in the conflict. On the other hand, for the civil society representatives in Havana, any attempt of justice needs to start with the recognition of the unequal, racist, and discriminatory structures that have had a disproportionate impact on some civil society sectors based on class, race, gender, and location. While, governments' competing discourses differs from a set of mechanisms driven by the international law standards to end the conflict, to a more retributive justice approach represented in a 'winners and losers' trials scenario.

Those discourses on transitional justice relied on specific understandings of both the conflict and the peace. On one side of the range, FARC read peace in a positive way as social justice, thus to achieved is necessary to end structural conditions of inequality and domination that caused violence; in other positive sense, for civil society representatives peace means to tackle social inequality and the inclusion of plural discourses. On the other side of the range, governments' competing discourses coincide on a liberal conceptualisation that focuses on crimes against humanity, rather than structural violence, while the conflict is considered an obstacle by the former administration, and a terrorist threat by the government in power.

After the peace accord was signed by the parties and rejected in the plebiscite, the definition of Special Jurisdiction of Peace and the terms of the transition has been part of a bargain between elites looking for the status quo preservation. The outcome so far privileges the governments' discourses, especially of the government in power, while excluding some of the demands from civil society representatives and FARC. Thus, the terms of the transition are still driven by a liberal peace project; justice is reduced as a 'winners and losers' scenario with trials to prosecute combatants, with more benefits to the Armed Forces; Peace conceptualisation is narrowed to a more negative sense that prioritises the demobilisation and prosecution of FARC and some military members; and the understanding of conflict is simplified to a unidimensional perspective of a battlefield in which the state forces faced an insurgency group.

In a broader sense, the post-structural discourse analysis of this research and the critical theoretical perspectives on TJ, contribute to unpack the assumption of TJ as a set of neutral or pragmatic mechanisms to deal with a violent past. It allows a broader understanding of TJ as a particular 'solution' to deal with a particular representation of the problem. The analysis also indicates that the discourses of justice in transition are embedded on particular understandings of peace and conflict informed by assumptions, presumptions, as well as the social location of the actors and their specific interests.

Finally, this research contributes to a broader analysis of TJ discussions in Colombia, out of the box of the legal boundaries, that is key to further examinations on how the peace and conflict discourses embedded in the TJ mechanisms are shaping strategies for post-conflict reconstruction, and to some extent defining the future of the country.

Appendices

Appendix 1. WPR question guiding

1	What's the problem represented to be?
2	What presuppositions or assumptions underlie this representation of the problem?
3	How has this representation of the problem come about?
4	What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be thought about differently?
5	What effects are produced by this representation of the problem?
6	How/where is this representation of the problem produced, disseminated and defend-ed? How could it be questioned, disputed and disrupted?

Appendix 2. Documents for analysis

FARC

- 05-08-2013 Statement of the FARC-EP Peace Delegation. The historical responsibility of violence: implications of recognition of State as part of the conflict, the right to peace and importance of historical memory P. 160 – 161 (Volume III)
- 03-09-2014 Statement of the FARC-EP Peace Delegation. Comprehensive rights of victims for peace and national reconciliation: ten elementary proposals. *Library of the Peace Process with the FARC-EP*. P. 224-226, 229 – 231, 234 – 236, 290 – 292 (Volume V Part I)
- 15-12-2015 Statement of the FARC-EP Peace Delegation. Message to the Colombian people about the final closure of the Special Jurisdiction for Peace and the Partial Agreement about Victims. The benefits of the Special Jurisdiction for Peace and its implications regarding impunity and justice. *Library of the Peace Process with the FARC-EP*. P. 522 – 527 (Volume V Part II)

Governments

Santos' administration

- 25-07-2013 Declaration of Juan Manuel Santos. Public Hearing Intervention of the Legal Framework for Peace. Foundations and details of the Legal Framework for Peace: no impunity, comprehensiveness and conditionality, among other aspects. *Library of the Peace Process with the FARC-EP*. P. 137 – 145. (Volume III)

- 23-07-2014 Declaration of Juan Manuel Santos. Intervention in the 'Culture of Peace and transitional justice ' Forum. Considerations on victims, justice and truth commissions, and their importance in the Peace Process scenario *Library of the Peace Process with the FARC-EP*. P. 112 – 117 (Volume V Part I)
- 23-09-2015 Declaration of Juan Manuel Santos. Agreement and justice issues in the Peace Process with the FARC-EP. The definition of date to sign the Final Agreement, the Agreement on the bases of a justice system and the importance to think of a Colombia without conflict. *Library of the Peace Process with the FARC-EP*. P. 514 – 519 (Volume V Part II)

Democratic Centre Party

- 26-09-2016 Manuscript of Álvaro Uribe regarding the peace Agreement published by newspaper El Colombiano the day that the First peace agreement was signed. <http://www.elcolombiano.com/colombia/acuerdos-de-gobierno-y-farc/acuerdo-de-paz-manuscrito-de-alvaro-uribe-DF5052072>
- 2016 Bases of a national peace agreement. Democratic Centre Party proposals to renegotiate the agreement after the plebiscite. <http://static.iris.net.co/semana/upload/documents/bases-de-un-acuerdo-nacional-de-paz.pdf>
- 06-04-2017 Senator Iván Duque's intervention in the public hearing regarding the lawsuit for the Legislative Act for Peace in the Constitutional Court <http://www.alvarouribevelez.com.co/es/content/intervencion-del-senador-ivan-duque-en-la-audiencia-publica-en-la-corte-constitucional-en-el>

Civil Society

Victims

- 16.08.2014 First delegation of Victims. Release. Words of thanks to the Bureau and ratification of the commitment of the victims to build peace. P. 92 -93 (Volume V Part I).
- 10.09.2014. Second delegation of victims. Release. Gratitude of victims for peace efforts and the invitation to meet with the Mesa, and demand that the parties guarantee their rights. *Library of the Peace Process with the FARC-EP*. P. 126 (Volume V Part I).
- 02.10.2014 Third Delegation of Victims. Release. Recount of the symbolic act offered, expressions of support for the Process and rejection of the threats and stigmatization of those that have been the object of the victims who have met with the Mesa. *Library of the Peace Process with the FARC-EP*, P. 151 -152 (Volume V Part I).
- 02.11.2014 Fourth Delegation of Victims. Release. Recount of the eight considerations expressed by the victims, regarding the Peace Process. *Library of the Peace Process with the FARC-EP*. P. 182 -183 (Volume V Part I).
- 16.12.2014 Fifth Delegation of Victims. Release. Count of the calls to advance in the Process, to listen to the communities most affected by the conflict and to promote the necessary mechanisms to build peace. *Library of the Peace Process with the FARC-EP*. P. 217 (Volume V Part I).

Women's rights organisations

- 25-10-2013 First National summit women and peace: proposals systematization. Organizations: Casa de la Mujer, Ruta Pacífica de las Mujeres, Red Nacional de Mujeres, Mujeres por la paz, Colectivo de Pensamiento y Acción Mujeres, Paz y Seguridad, Grupo de Seguimiento de la Resolución 1325, Conferencia Nacional de Organizaciones Afrocolombianas – CNOA –, Iniciativa de Mujeres Colombianas por la Paz – IMP – y la Asociación Nacional de Mujeres Campesinas, Negras e Indígenas de Colombia – ANMUCIC –. <http://cumbrenacionaldemujeresypaz.com/sistematizacion/>
- 15-12-2014 Statement: Women's organizations to be part of the peace agreement and not pact their rights without them. Organizations: The House of Women, Women for Peace, with its delegate ASODEMUC; Mujeres Arte y Parte en la Paz of Colombia, with its delegate the Colombian Theater Corporation, and the Women for Peace Summit, with its delegates Peaceful Route for Women, National Network of Women and Alliance Initiatives of Colombian Women for Peace -IMP. <https://www.humanas.org.co/archivos/63a.pdf>
- 21-09-2016 Second National summit women and peace: Political manifesto. Organizations: Casa de la Mujer, Ruta Pacífica de las Mujeres, Red Nacional de Mujeres, Mujeres por la paz, Colectivo de Pensamiento y Acción Mujeres, Paz y Seguridad, Grupo de Seguimiento de la Resolución 1325, Conferencia Nacional de Organizaciones Afrocolombianas – CNOA –, Iniciativa de Mujeres Colombianas por la Paz – IMP – y la Asociación Nacional de Mujeres Campesinas, Negras e Indígenas de Colombia – ANMUCIC –. <http://cumbrenacionaldemujeresypaz.com/encuentros-nacionales/2da-cumbre-2016/>

Afro-Colombians and Indigenous people

- 28-06-2016 Statement of the National Indigenous Organization of Colombia (ONIC). Meeting with the negotiation teams in Havana and the representatives of indigenous peoples, their idea of peace and the requirement to be present in the Final Agreement. *Library of the Peace Process with the FARC-EP*. P. 498 – 501 (Volume VII)
- 8-01-2016 Statement of the Afro-Colombian Peace National Council (CONPA). Facing the advances in the Negotiations between the Government and the FARC-EP, we are still waiting for an answer. Claim by the Afro-Colombian community to the negotiation table demanding participation in the Peace Negotiations. *Library of the Peace Process with the FARC-EP*. P. 476- 479 (Volume VII)
- 2016 Joint proposal of six indigenous and afro organizations: CONAFRO, CONPI, MASEAQCH, FEDEMICHOCÓ PODER CIUDADANO, CONPAZ. Proposals for Inter-ethnic Peace dialogues. Analysis and Territorial Ethnic Approach of the Peace conversation in Havana Cuba. <http://jafethpaz.com/propuesta-interetnica-de-dialogos-de-paz/>

**Library of the Peace Process with the FARC-EP* <http://www.altocomisionadoparalapaz.gov.co/Prensa/Paginas/2018/Biblioteca-del-Proceso-de-Paz-con-las-Farc-EP.aspx>

References

- Abdala YS and Zarama JM (2012) *Justicia y paz: tierras y territorios en las versiones de los paramilitares*. Centro Nacional de Memoria Histórica.
- Agata Fijalkowski (2017) Amnesty. In: Simić O (ed.) *An introduction to transitional justice*. Abingdon, Oxon; Routledge, pp. 113–136.
- Aguilera M (2014) *Guerrilla y población civil: trayectoria de las FARC, 1949-2013*. 3a. ed. Bogotá: Centro Nacional de Memoria Histórica.
- Arbour L (2006) Economic and Social Justice for Societies in Transition. In: *Second Annual Transitional Justice Lecture Center for Human Rights and Global Justice and the International Center for Transitional Justice*.
- Arias LF and Moreno R (2018) Comunicado: Comisión Étnica para la Paz y la Defensa de los Derechos Territoriales. In: Oficina del Alto Comisionado para la Paz (ed.) *Los Mecanismos e Instancias de Participación de La Mesa de Conversaciones y La Construcción de Paz Desde Los Territorios*. Biblioteca de la Paz con las FARC-EP VII. Bogotá, pp. 480–482.
- Bacchi CL (2009) *Analysing policy: what's the problem represented to be?* Frenchs Forest, N.S.W.: Pearson.
- Basset Y (2018) Claves del rechazo del plebiscito para la paz en Colombia. *Estudios Políticos* 0(52): 241–265.
- Bell C (2008) Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’. *International Journal of Transitional Justice* 3(1): 5–27.
- Björkdahl A and Mannergren Selimovic J (2017) Gender and transitional justice. In: Simić O (ed.). Abingdon, Oxon; Routledge. Available at: <http://lup.lub.lu.se/record/692777c3-1947-4461-acd3-e50617852af2> (accessed 2 November 2018).
- Boraine AL (2006) Transitional Justice: A holistic interpretation. *Journal of International Affairs* 60(1): 17–27.
- Brett R (2017) *La voz de las víctimas en la negociación: sistematización de una experiencia*. Programa de las Naciones Unidas para el Desarrollo - PNUD.
- Caracol Radio (2014) De la Calle pide a Farc mayor compromiso con víctimas y sin reticencias. *Caracol Radio*, 3 October. Available at: http://caracol.com.co/radio/2014/10/03/nacional/1412330460_445167.html (accessed 8 November 2018).
- Casa de la Mujer, Mujeres por la Paz, Mujeres Arte y Parte en la Paz de Colombia, et al. (2014) Comunicado: Organizaciones de mujeres exigen ante la Mesa de Diálogo ser pactantes

y no pactadas en el Proceso de Paz en Colombia. Available at: <https://www.humanas.org.co/archivos/63a.pdf>.

Casey N (2016) El gobierno de Colombia y las Farc firman un nuevo acuerdo que no será sometido a votación. *The New York Times*, 24 November. Available at: <https://www.nytimes.com/es/2016/11/24/el-gobierno-de-colombia-y-las-farc-firman-un-nuevo-acuerdo-que-no-sera-sometido-a-votacion/> (accessed 11 November 2018).

Casey N and Abad S (2018) Colombia Elects Iván Duque, a Young Populist, as President. *The New York Times*, 19 June. Available at: <https://www.nytimes.com/2018/06/17/world/americas/colombia-election-ivan-duque.html> (accessed 11 November 2018).

Centro Democrático (2016) *Bases de un acuerdo nacional de paz*. Partido Centro Democrático.

Céspedes-Báez LM and Ruiz F (2018) Peace without women does not go! Women's struggle for inclusion in Colombia's peace process with the FARC. In: Pabon FA (ed.) *Truth, Justice and Reconciliation in Colombia: Transitioning from Violence*. 1 edition. New York: Routledge, pp. 50–65.

Chaparro N and Martínez M (2017) *Negociando desde los márgenes: La participación política de las mujeres en los procesos de paz de Colombia (1982-2016)*. Bogotá: Dejusticia. Available at: <https://www.dejusticia.org/publication/negociando-desde-los-margenes-la-participacion-politica-de-las-mujeres-en-los-procesos-de-paz-de-colombia-1982-2016/> (accessed 12 November 2018).

Clark P (2007) Hybridity, Holism, and 'Traditional' Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda. *The George Washington International Law Review; Washington* 39(4): 765–837.

Congreso de Colombia (2017) Acto legislativo No. 1.

Congreso de Colombia (2018) Ley 1922.

CONPA (2018) Comunicado: Frente a los avances en las Negociaciones entre el Gobierno y las FARC-EP, nosotros seguimos esperando una respuesta. In: Oficina del Alto Comisionado para la Paz (ed.) *Los Mecanismos e Instancias de Participación de La Mesa de Conversaciones y La Construcción de Paz Desde Los Territorios*. Biblioteca de la Paz con las FARC-EP VII. Bogotá, pp. 476–479.

CONPI, CONPAZ, CONAFRO, et al. (2016) *Propuesta Interétnica de Diálogos de Paz*.

Corte Constitucional (2017) Comunicado No. 55.

Cortes-Ruiz P (2016) *Afrocolombianos, Afrocolombianas y Post-Acuerdo. Análisis de condiciones para la adopción de un enfoque diferencial étnico afrocolombiano*. International Institute on Race, Equality and Human Rights.

Cuarta delegación víctimas (2018) Recuento de las ocho consideraciones manifestadas por las víctimas a propósito del Proceso de Paz. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP, pp. 182–183.

Cumbre Mujeres y Paz (2013) *Sistematización*. Bogotá: Mujeres por la Paz. Available at: <http://cumbrenacionaldemujeresypaz.com/sistematizacion/>.

Cumbre Mujeres y Paz (2016) *Las mujeres vamos por la paz*. Mujeres por la Paz. Available at: <http://cumbrenacionaldemujeresypaz.com/encuentros-nacionales/2da-cumbre-2016/>.

de Greiff P de (2010) *Transitional justice, security, and development security and justice thematic paper*. 62061, 29 October. The World Bank. Available at: <http://documents.worldbank.org/curated/en/937211468151160151/Transitional-justice-security-and-development-security-and-justice-thematic-paper> (accessed 2 November 2018).

de Greiff P (2010) Articulating the Links Between Transitional Justice and Development: Justice and Social Integration. In: de Greiff P and Duthie R (eds) *Transitional justice and development: making connections*. New York: Social Science Research Council ;, pp. 28–75.

Dijk TA van (1997a) *Discourse as Interaction in Society*. Dijk TA van (ed.). London: Sage.

Dijk TA van (1997b) *The Study of Discourse*. Dijk TA van (ed.). London : Sage,.

Doyle MW (2005) Three Pillars of the Liberal Peace. *The American Political Science Review* 99(3): 463–466.

Duque I (2017) Intervención del Senador Iván Duque en la audiencia pública en la Corte Constitucional en el proceso de demanda del Acto Legislativo para la Paz | Álvaro Uribe Vélez. Available at: <http://www.alvarouribevelez.com.co/es/content/intervencion-del-senador-ivan-duque-en-la-audiencia-publica-en-la-corte-constitucional-en-el> (accessed 31 October 2018).

El Heraldo (2018) Discurso completo de Ernesto Macias durante la posesión presidencial. 7 August. Available at: <https://www.elheraldo.co/politica/lea-aqui-el-discurso-completo-de-ernesto-macias-durante-la-posesion-presidencial-528161> (accessed 7 November 2018).

El Tiempo (2016) ‘¿Es la hora de dejar atrás las divisiones!': Santos. *El Tiempo*, 12 November. Available at: <https://www.eltiempo.com/politica/proceso-de-paz/santos-habla-sobre-nuevo-acuerdo-de-paz-57816> (accessed 5 November 2018).

Equipo Negociador del Gobierno (2018) Documento de Trabajo. In: Oficina del Alto Comisionado para la Paz (ed.) *De La Referendación Al Acuerdo Del Colón*. Biblioteca del proceso de paz con las FARC-EP. Bogotá.

FARC-EP D de P (2018a) Derechos integrales de las víctimas para la paz y la reconciliación nacional: diez propuestas mínimas. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP. Bogotá, pp. 224–226.

FARC-EP D de P (2018b) La responsabilidad histórica de la violencia. In: Oficina del Alto Comisionado para la Paz (ed.) *La Discusión Del Punto 2. Participación Política: Apertura Democrática Para Construir Paz*. Biblioteca del proceso de paz con las FARC-EP. Bogotá, pp. 160–161.

FARC-EP D de P (2018c) Mensaje al pueblo colombiano sobre el cierre definitivo de la Jurisdicción Especial para la Paz y el Acuerdo Parcial sobre Víctimas. In: Oficina del Alto Comisionado para la Paz (ed.) *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP. Bogotá, pp. 522–527.

FARC-EP D de P (2018d) Nuestro compromiso con las víctimas del conflicto y sus derechos. In: Oficina del Alto Comisionado para la Paz (ed.) *La Discusión Del Punto 2. Participación Política: Apertura Democrática Para Construir Paz*. Biblioteca del proceso de paz con las FARC-EP. Bogotá.

FIP (2016a) La Habana, paso a paso. Available at: <http://www.ideaspaz.org/especiales/dialogos-habana/#> (accessed 29 June 2018).

FIP (2016b) Radiografía del plebiscito y el Posplebiscito. Available at: <http://www.ideaspaz.org/especiales/posplebiscito/> (accessed 8 November 2018).

Fletcher L and Weinstein H (2002) Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation. *Human Rights Quarterly*: 573.

Frerks G (2013) Discourses of war, peace and peacebuilding in Sri Lanka. In: Hilhorst D (ed.) *Disaster, Conflict and Society in Crisis*. Routledge, pp. 19–37.

Frerks G and Klem B (2005) Sri Lankan Discourses on Peace and Conflict. In: Frerks G and Klem B (eds) *Dealing with Diversity: Sri Lankan Discourses on Peace and Conflict*. The Hague: Netherlands Institute of International Relations., pp. 1–46.

Galtung J (1969) Violence, Peace, and Peace Research. *Journal of Peace Research* 6(3): 167–191.

Gasper D and Apthorpe R (1996) Introduction: Discourse Analysis and Policy Discourse. In: Gasper D and Apthorpe R (eds) *Arguing Development Policy - Frames And Discourses*. London: Frank Cass, pp. 1–10.

Gobierno de Colombia and FARC-EP (2016a) Acuerdo Final. Available at: <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf>.

Gobierno de Colombia and FARC-EP (2016b) Segundo Acuerdo Final.

Gómez GI (2017) Entre el castigo y la reconciliación. Análisis sociojurídico del proceso de paz y la negociación del Acuerdo sobre las Víctimas del Conflicto. *Estudios Políticos* 0(50): 236–256.

Goodwin S (2013) Analysing Policy as Discourse: Methodological Advances in Policy Analysis. In: *Methodological Choice and Design: Scholarship, Policy and Practice in Social and Educational Research*. Sydney: Springer, pp. 167–180.

Hall S (ed.) (1997) *Representation: Cultural Representations and Signifying Practices*. SAGE Publications.

ICC (2002) Rome Statute.

ICC (n.d.) The States Parties to the Rome Statute. Available at: https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx (accessed 2 November 2018).

ICTJ (2011a) About the International Center for Transitional Justice. Available at: <https://www.ictj.org/about> (accessed 4 November 2018).

ICTJ (2011b) What is Transitional Justice? Available at: <https://www.ictj.org/about/transitional-justice> (accessed 2 November 2018).

Jaramillo S (2013) La transición en Colombia [The transition in Colombia]. In: *Dilemas jurídicos del proceso de paz [Judiciary dilemmas of the peace process]*, Bogotá, 2013.

Jurisdicción Especial para la Paz (n.d.). Available at: <https://www.jep.gov.co/Paginas/JEP/Jurisdiccion-Especial-para-la-Paz.aspx> (accessed 14 November 2018).

Kent L (2017) Transitional justice and peace-building. In: Simić O (ed.) *An introduction to transitional justice*. Abingdon, Oxon ; Routledge, pp. 201–222.

Laplante L and Theidon K (2006) Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz. *Michigan Journal of International Law* 28(1). Available at: <https://repository.law.umich.edu/mjil/vol28/iss1/2>.

Leudar I, Marsland V and Nekvapil J (2004) On membership categorization: 'Us', 'them' and 'doing violence' in political discourse. *Discourse and Society* 15(2–3): 243–266. DOI: 10.1177/0957926504041019.

Lundy P and McGovern M (2008) Whose Justice? Rethinking Transitional Justice from the Bottom Up. *Journal of Law and Society* 35(2): 265–292.

Marín D and Bernal L (2018) Los empresarios en la guerra: elementos de la verdad judicial sobre la complicidad empresarial en Colombia. In: *Cuentas Claras. El papel de la Comisión de la Verdad en la develación de la responsabilidad de empresas en el conflicto armado*. Dejusticia, pp. 39–68. Available at: <https://www.dejusticia.org/publication/cuentas-claras-empresas/> (accessed 19 May 2018).

Medina C (2009) *FARC-EP: Notas Para Una Historia Política, 1958-2008*. Bogotá: Universidad Nacional de Colombia, Facultad de Derecho, Ciencias Políticas y Sociales.

Mihr A (2017) An introduction to transitional justice. In: Simić O (ed.) *An introduction to transitional justice*. Abingdon, Oxon ; Routledge, pp. 1–27.

Miller Z (2008) Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice. *International Journal of Transitional Justice* 2(3): 266–291.

Mills S (2003a) Discourse. In: *Michel Foucault*. London ; New York: Routledge, pp. 53–66. Available at: <https://trove.nla.gov.au/version/20149427> (accessed 19 October 2018).

Mills S (2003b) Power/Knowledge. In: *Michel Foucault*. London ; New York: Routledge, pp. 67–69. Available at: <https://trove.nla.gov.au/version/20149427> (accessed 19 October 2018).

Nagy R (2008) Transitional Justice as Global Project: critical reflections. *Third World Quarterly* 29(2): 275–289.

Ni Aolain F and Campbell C (2005) The Paradox of Transition in Conflicted Democracies. *Human Rights Quarterly* 27(1): 172–213.

Nussio E, Rettberg A and Ugarriza JE (2015) Victims, Nonvictims and Their Opinions on Transitional Justice: Findings from the Colombian Case. *International Journal of Transitional Justice* 9(2): 336–354. DOI: 10.1093/ijtj/ijv006.

OACP (ed.) (2018) *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca de la Paz con las FARC-EP. Bogotá.

ONIC (2014) *Agenda Nacional de Paz de los Pueblos Indígenas de Colombia*. ONIC.

ONIC (2016) Comunicado: Reunión con la Mesa en La Habana de representantes de los pueblos indígenas, su idea de la paz y la exigencia de estar presentes en el Acuerdo Final.

Pabon FA and De Gamboa C (2018) The Transitional Justice Framework agreed between the Colombian Government and the FARC-EP. In: Pabon FA (ed.) *Truth, Justice and Reconciliation in Colombia: Transitioning from Violence*. 1 edition. New York: Routledge, pp. 50–65.

Paige A (2009) How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly* 31(2): 321–367.

Phillips N and Hardy C (2002) What Is Discourse Analysis? In: *Discourse Analysis: Investigating Processes of Social Construction*. Qualitative research methods v. 50. Thousand Oaks, CA: Sage Publications.

Primera delegación víctimas (2018) Palabras de agradecimiento con la Mesa y ratificación del compromiso de las víctimas de construir la paz. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP. Bogotá, pp. 92–93.

Quinta delegación víctimas (2018) Recuento de los llamados a avanzar en el Proceso, a escuchar a las comunidades más afectadas por el conflicto y a promover los mecanismos necesarios para construir la paz. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP, p. 217.

Rowen J.R. (2017) “We Don’t Believe in Transitional Justice:” Peace and the Politics of Legal Ideas in Colombia. *Law and Social Inquiry* 42(3): 622–647.

Rúa C (2015) Los momentos de la justicia transicional en Colombia. *Revista de Derecho* 0(43): 71–109.

Sánchez C (2017) *Tierra en transición: justicia transicional, restitución de tierras y política agraria en Colombia*. Colección Dejusticia.

Sánchez C, García-Godos J and Vallejo C (2016) Colombia: transitional justice before transition. In: Skaar E, García-Godos J, and Collins C (eds) *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability*. London and New York: Routledge.

Santos JM (2018a) Alocución sobre el acuerdo en materia de víctimas con las FARC-EP. In: Oficina del Alto Comisionado para la Paz (ed.) *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP. Bogotá, pp. 514–519.

Santos JM (2018b) Intervención en el Consejo Regional de Ministros. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP. Bogotá.

Santos JM (2018c) Reflexiones sobre las víctimas del conflicto, la justicia y las comisiones de la verdad, y su importancia en el marco del Proceso de Paz. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP. Bogotá, pp. 112–117.

Segunda delegación víctimas (2018) Agradecimiento de las víctimas por los esfuerzos de paz y la invitación a reunirse con la Mesa, y exigencia a las partes de garantizar sus derechos. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP. Bogotá, p. 126.

Semana (2013) Las FARC rechazan el Marco Jurídico para la Paz. *Las FARC rechazan el Marco Jurídico para la Paz*, 8 June. Available at: <https://www.semana.com/nacion/articulo/las-farc-rechazan-marco-juridico-para-paz/353307-3> (accessed 13 November 2018).

Semana (2018) Llegó la JEP: desde el lunes funcionará el tribunal de paz. *Llegó la JEP*, 13 January. Available at: <https://www.semana.com/nacion/articulo/llego-la-jep/553569> (accessed 11 November 2018).

Sharp DN (2014) Introduction: Addressing Economic Violence in Times of Transition. In: *Justice and Economic Violence in Transition*. Springer Series in Transitional Justice. New York: Springer-Verlag, pp. 1–26.

Skaar E, García-Godos J and Collins C (eds) (2016) *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability*. London and New York: Routledge.

Sriram CL (2014) Liberal Peacebuilding and Transitional Justice: What Place for Socioeconomic Concerns? In: Sharp DN (ed.) *Justice and Economic Violence in Transition*. Springer Series in Transitional Justice. New York: Springer-Verlag, pp. 27–49.

Sriram CL and García-Godos Jemina (2013) Introduction. In: Sriram CL, García-Godos Jemima., Herman J, et al. (eds) *Transitional justice and peacebuilding on the ground: victims and ex-combatants*. Law, conflict and international relations. London [etc.]: Routledge, pp. 1–19.

Teitel RG (2014a) *Globalizing Transitional Justice: Contemporary Essays*. Oxford University Press.

Teitel RG (2014b) *Human Rights in Transition: Transitional Justice Genealogy*. Oxford University Press. Available at: <http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780195394948.001.0001/acprof-9780195394948-chapter-4> (accessed 1 November 2018).

Tercera delegación víctimas (2018) Recuento del acto simbólico ofrecido, expresiones de respaldo al Proceso y rechazo a las amenazas y a la estigmatización de las que han sido objeto las víctimas que se han reunido con la Mesa. In: *Discusión Del Punto 5: Acuerdo Sobre Las Víctimas Del Conflicto*. Biblioteca del proceso de paz con las FARC-EP, pp. 151–152.

UARIV (n.d.) Frequent Questions. Available at: <https://www.unidadvictimas.gov.co/en/frequent-questions/42621> (accessed 21 October 2018).

UN (2010) *Guidance Note of the Secretary General. United Nations Approach to Transitional Justice*. Available at: https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf (accessed 19 May 2018).

United Nations (2004) *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*. Available at: <https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/> (accessed 19 May 2018).

Uprimny R (2018) JEP, Un paso adelante... dos atrás. In: *Dejusticia*. Available at: <https://www.dejusticia.org/column/un-paso-adelante-dos-atras/> (accessed 13 November 2018).

Uprimny R and Saffon MP (2008) Usos y abusos de la justicia transicional en Colombia. *Anuario de derechos humanos* (4).

Uprimny R, Duque LMS and León NCS (2014) *Justicia Para La Paz: Crímenes Atroces, Derecho a La Justicia y Paz Negociada*. Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia.

Uribe Á (2016) Manuscrito de Uribe frente al Acuerdo que se firma hoy. *El Colombiano*, 26 September. Available at: <http://www.elcolombiano.com/colombia/acuerdos-de-gobierno-y-farc/acuerdo-de-paz-manuscrito-de-alvaro-uribe-DF5052072> (accessed 31 October 2018).

Velásquez MA (2018) The emergence and consolidation of transitional justice within the realm of Colombian peacebuilding. In: Pabon FA (ed.) *Truth, Justice and Reconciliation in Colombia: Transitioning from Violence*. 1 edition. New York: Routledge, pp. 50–65.

Verdad Abierta (2016) Acuerdo con las Farc tiene capítulo étnico. In: *Verdad Abierta*. Available at: <https://verdadabierta.com/indigenas-y-afros-a-la-expectativa/> (accessed 14 November 2018).

Waldorf L (2012) Anticipating the Past: Transitional Justice and Socio-economic Wrongs. *Social & Legal Studies* 21(2): 171–186.

Wodak R and Meyer M (eds) (2009) *Methods for Critical Discourse Analysis (2nd Ed)*. London: SAGE Publications.