TRANSITIONAL JUSTICE IN THE ONGOING ARMED CONFLICT IN COLOMBIA

by

ADRIANA RINCON VILLEGAS

(Under the Direction of AMY J.ROSS)

ABSTRACT

Transitional justice is built on the assumption that all societies with a legacy of human rights abuses should implement a special set of mechanisms to address a violent past. In certain cases, the law defines the scope of the transitional process and, occasionally, even the scope of what is considered as "violence". The objective of this research is to understand how transitional justice is conceived and articulated in the ongoing Colombian armed conflict. To serve this purpose, I ask three research questions. First, when and how does the Colombian government engaged with "transitional justice" in its legal system? Second, how is "transitional justice" defined in the laws?; and third, who are "victims" and "perpetrators" represented within the Colombian "transitional justice" framework? To address these questions, I analyzed two separate sets of transitional justice legal documents.

INDEX WORDS: internal armed conflict, transitional justice, post-conflict, law, Colombia

TRANSITIONAL JUSTICE IN THE ONGOING ARMED CONFLICT IN COLOMBIA

by

ADRIANA RINCON VILLEGAS

B.Law., Universidad Jorge Tadeo Lozano, Colombia, 2009

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial Fulfillment of the Requirements for the Degree

MASTER OF ARTS

ATHENS, GEORGIA

2015

TRANSITIONAL JUSTICE IN THE ONGOING ARMED CONFLICT IN COLOMBIA

by

ADRIANA RINCON VILLEGAS

Major Professor:	Amy Ross
Committee:	Joshua Barkan
	Fausto Sarmiento

Electronic Version Approved:

Julie Coffield
Interim Dean of the Graduate School
The University of Georgia
May 2015

DEDICATION

A mi hermana, Ángela María, por quien cada una de estos días de aprendizaje ha sido posible. A su paciencia, su amor, su generosidad cotidiana, y su coraje inmenso… a todo lo que mi hermana mayor representa en mi vida.

A mi mamá, cuyo amor y apoyo incondicional me acompañan por este camino lleno de retos y de alegrías. Gracias por enseñarme el valor de la lucha incansable. A mi papá, a quien extraño cada minuto de mi existencia y de quien heredé gran parte de lo que soy. A mi cuñado Iván, mis tíos Pedro, Ángela, Carmen y Elia, quienes me dieron la oportunidad de iniciar este camino, y quienes hacen que cada día esté lleno de compañía y felicidad. A Daniela, mi adoración. Finalmente, a mi amado Víctor, mi compañero de vida, quien generosamente comparte cada segundo de su existencia para enriquecer la mía.

A ustedes, mis grandes amores, a Dios y a mi país, Colombia, pertenece cada palabra de este escrito y cada minuto de este destino.

ACKNOWLEDGEMENTS

Esta tesis es el resumen del inconmensurable esfuerzo de todas las personas que han aportado a este sueño. Quiero agradecer especialmente a Amy Ross, quien con confianza, paciencia y convicción ha dirigido este trabajo. Gracias por enseñarme a creer en mí. Gracias por su fuerza, su generosidad y su pasión infinita por enseñar.

A Fausto Sarmiento, por acompañarme desde el inicio de este reto con su invaluable ayuda, su ejemplo y su consejo. ¡Qué orgullo ser su estudiante! ¡Qué orgullo compartir la misma identidad latinoamericana!

A Joshua Barkan, por su constante motivación y guía en cada paso de este proceso. Mi gratitud y mi más profunda admiración.

A mis profesores, en especial Hilda Kurtz, Steve Holloway, Jenn Rice, Nik Heynen y Jerry Shannon, así como a todos mis compañeros y amigos del Departamento de Geografía que me han acompañado a través esta nueva vida llena de retos cotidianos. Thank you folks for being part of this dream that today comes true!

A Amy, David, Laura, Karen, Angela María, Victor, Paty y al equipo del Writing Center de la Universidad, por su inmensa colaboración en el proceso de escritura de este documento.

Finalmente, al Departamento de Geografía de la Universidad de Georgia, que me otorga la oportunidad de culminar este proceso y de seguir adelante con este sueño académico que hoy continúa.

TABLE OF CONTENTS

Page

ACKNOWLEDGEMENTS v

LIST OF TABLES vii

CHAPTER

1 INTRODUCTION 1

2 CONCEPTUAL FRAMEWORK 7

3 CASE STUDY: VIOLENCE IN COLOMBIA 17

4 METHODOLOGY 30

5 CRITICAL LEGAL ANALYSIS 44

6 CONCLUSIONS 53

REFERENCES 57

APPENDICES

A List of Legal Documents Cited 69

LIST OF TABLES

Page

Table 1: Colombian Transitional Justice Legal Documents 30

Table 2: Number of Colombian Transitional Justice Legal Documents Analyzed 32

Table 3: Two sets of the Colombian Transitional Justice Legal Documents Analyzed 37

CHAPTER 1

INTRODUCTION

"En Colombia, en cambio, estamos intentando desarrollar una compleja modalidad de justicia transicional en un país en el cual persiste el conflicto interno. Es decir, estamos intentando reparar el bote en altamar, con fuertes vientos y furiosas olas."

[In Colombia, however, we are trying to develop a complex version of transitional justice in a country in which the internal armed conflict persists. That is to say, we are trying to repair the boat at high seas, with high winds and furious waves.]

Eduardo Pizarro (2009)[1]

Colombia is one of the oldest ongoing conflicts in the world. For more than 50 years large populations have suffered massacres, kidnappings and the crime of forced displacement[2] (Grupo de Memoria Histórica 2013, p.33). From 2005 to 2015 the two administrations in charge—Presidents Uribe and Santos—created Disarmament, Demobilization and Reintegration (DDR) mechanisms through laws and regulations, in order to achieve a ceasefire with specific actors of the conflict. In 2005 President Uribe set up a plan of negotiations with one of the actors of the conflict: right-wing paramilitary groups. Those negotiations concluded in demobilization through Law 975/05. From 2010, President Santos issued a set of laws with transitional justice mechanisms such as assistance and reparation measures (Law 1448/11 and *Acto*

[1] Member of the Board of Directors of the Trust Fund for Victims, International Criminal Court. Current Ambassador of Colombia to the Netherlands and Rapporteur of the *Comision Histórica del Conflicto y sus Víctimas,*
[2] In 2004, the Constitutional Court of Colombia (*Corte Constitucional)* declared a humanitarian emergency for the 4 million internally displaced people in the country (*Sentencia T-025/04)*.

Legislativo#1/12) and demobilization measures (Law 1424/10 and Law 1592/12). In 2012, President Santos set up negotiations with the *Fuerzas Armadas Revolucionarias de Colombia* (The Revolutionary Armed Forces of Colombia), FARC. By April 2015 he was exploring the possibility of negotiations with the *Ejército de Liberación Nacional* (The National Liberation Army), ELN. All of those laws and regulations set out the parameters for the transitional justice measures adopted in Colombia.

Transitional justice constitutes a set of standard mechanisms promoted by international organizations of human rights. More than a set of discretionary mechanisms for helping societies to overcome a violent past, transitional justice has become a global industry to promote the values of liberal democracy (Theidon 2009; Nagy 2008; Frankzi and Olarte 2014). Transitional justice is assumed as inherently positive and mandatory. The main assumption of those who recommend transitional justice is that, regardless of the particular context of the war, a society who has to overcome a history of egregious human rights abuses should engage in transitional justice mechanisms. "Transitional justice, as both a phenomenon and a conceptual tool, is regarded as inevitable and commonplace for anyone wishing to address the issue of past human rights violations . . . Thus, within normative narratives of transitional justice, the concept of transition is regarded as inherently positive and as requiring no further elucidation, just mere inhabiting and embracing" (Ignatius 2011, p.177 and p.184).

From the point of view of critical human rights[3], transitional justice processes are not inherently positive, are not homogeneous and should not be mandatory. Understanding transitional justice mechanisms as neutral can make invisible its contradictions and the social

[3] See for example, Ross, A. and Sriram, C., 2013. "Critical Approaches to Human Rights," Social Science Research Council. In: http://www.ssrc.org/fellowships/subcompetitions/dpdf-fellowship/7A830765-EF37-E211-8EAC-001CC477EC84/FC8B1C1A-F137-E211-8EAC-001CC477EC84/

injustice embedded in the political economy that supports them (Franzki and Olarte 2014). They may incorporate elements of amnesty, and from a critical standpoint, amnesty may contribute to impunity. In that sense, it is necessary to regularly evaluate transitional justice mechanisms (Ross 2010a, 7).

As a political project, transitional justice processes have several interests in contention, some of them incompatible, and in that sense it is not a homogeneous process (Theidon and Betancourt 2006; Leebaw 2008). Critics have argued that transitional justice mechanisms often deliberatively ignore aspects of the war, such as structural violence and its socioeconomic factors. For scholars such as Miller (2008), this silencing may contribute to the continuation of conflict.

Laws and regulations often have the power of defining the actors, the scope and the timeline of the transitional justice process. The role of "the legal" in transitional justice has a profound impact on its expansion and popularity. The idea of law in Western legal systems is built on assuming a division between law and society, as if the law had a higher rationality that works in a different direction from societies' everyday life. This perspective of the law as a field that is "autonomous, self-sufficient, rational, correct and disconnected from everyday life" (Blomley 1994; Gordon 1984) implies two assumptions: that the law is detached from the historical and political circumstances in which it was created; and that the law does not need to be critically evaluated. Critical legal studies challenges these ideas by proposing an understanding of the law as an "open" system, created as a historical and political artifact that is necessarily implicated in the political negotiations of values between power agents. Those power agents usually belong to the space of sovereign power that is exerted within the borders of the nation-state. However, "Though at times, the space of law corresponds with state territoriality, it

can also take other spatial forms" (Barkan 2013, p.88). According to Barkan (2013), "Sovereignty defines territory and binds it to a system of law. In doing so, sovereign power produces both an inside and an outside to the constituted order. However, what is outside of the law still bares a relation to sovereign power." (p.89). In this case, international human rights institutions and procedures constitute important agents that have the power to define the actors, the scope and the timeline of the transitional justice process.

In this thesis I wanted to answer the following research questions: First, **when and how does the Colombian government engage with "transitional justice" in its legal system?** Second, **how is transitional justice defined in the laws**? And third, **how are social actors identified and represented within the Colombian transitional justice framework?**

To answer those questions, this thesis has six chapters. In chapter 2, I describe my conceptual framework, particularly based on critical human rights and critical legal geography literatures. In chapter 3, I provide a description of violence in Colombia in order to situate my critique in this specific context. In chapter 4, I explain my data collection and data analysis methods. Chapter 5 contains the analysis of my findings in the context of my conceptual framework and my case study. In chapter 6, I state my findings and questions for further research.

I conduct an analysis based on two lists of questions, which I called "critical sub questions". Throughout my analysis I identified Law 975/05 as the first transitional justice important law. I also identified that the President Uribe and President Santos administrations have created transitional justice laws in Colombia, but these laws were created under opposed discourses related to violence, and under different sets of political goals.

The Uribe administration (2002-2010) proposed the Democratic Security Policy (PSD) as a strategy to combat armed groups. That strategy included a military offensive against armed groups, especially against guerrilla groups, and implied that the government would not negotiate with them. The bill of Law 975/05, issued during the Uribe administration, does not use the expressions "transitional justice" and "internal armed conflict". However, the Constitutional Court evaluated Law 975/05 and gave that law the status of a "transitional justice" law. The Santos administration (2010-2018) explained the violence within the discourse of human rights and international humanitarian law as an *internal armed conflict*. This decision allowed the state to negotiate with guerrillas and to apply the international humanitarian law, which is the body of laws that regulates armed conflicts. The Santos administration inserted the concept of transitional justice in the Colombian Constitution, which includes the possibility of suspended sentences and alternative punishments for ex-combatants. The International Criminal Court (ICC) approves the peace process with the FARC guerrilla, but insists that prosecution processes for war criminals must include prison sentences. These views on violence suggest tensions within the transitional justice project. To understand that contention, I divided the laws into two sets and analyze them separately. For my analysis I created two sets of specific questions that I called "Critical Sub-questions". These questions helped me to identify how the laws define transitional justice, which of them make reference to violence as an "internal armed conflict" and how the laws represent the different actors of the transitional justice process.

I identified that transitional justice in Colombia applies to specific people, in a specific timeline, under specific conditions. While these laws create categories of inclusion, they simultaneously exclude several people harmed by the war or by the violence associated with it. Finally, I identified that laws are essential in the Colombian transitional justice project, which I

define as a set of mechanisms created from 2005 to 2014 to address human rights abuses committed by specific armed groups (mostly paramilitary and guerrilla groups) from January 1, 1985 until the present, as well as to demobilize those armed groups. Those laws associated with transitional justice produce specific subjectivities of who is considered –and who is not considered—as victim and as perpetrator. The analysis also raised several questions for further analysis that I will state in the last chapter of this thesis.

CHAPTER 2

CONCEPTUAL FRAMEWORK

In 2004, the United Nations defined transitional justice 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, p.8).

Transitional justice is built on the assumption that all societies with a legacy of human rights abuses should implement a special set of mechanisms to prosecute perpetrators, compensate victims, and make an institutional reform to address the past. Transitional justice as neutral, homogeneous, and inherently positive mechanisms have been increasingly promoted by their advocates, particularly institutions such as the International Center for Transitional Justice (ICTJ) and the United Nations (UN).

In the present chapter I will start by first describing the previously mentioned assumptions. Second, I will discuss two of the most important critiques made by human rights scholars: transitional justice as a global industry that promotes liberalization and transitional justice as a field of contention. Third, I will explain the role of the law in transitional justice.

Transitional justice: normative approach

The concept of transitional justice was originally developed within the context of transitions from dictatorships to liberal democratic regimes in the 1980s and 1990s in Latin

America, and later on, was replicated in certain African conflicts. Currently, it is commonly used for designating the attempts to address legacies of human rights abuses. Transitional justice has become a dominant form in human rights literature, at the point of being considered by the international community as the only correct approach for addressing egregious crimes. The United Nations emphasizes a unified concept of transitional justice, as well as a set of standards and guiding principles for a common understanding of this ideal. "Concepts such as 'justice', 'the rule of law' and 'transitional justice' are essential to understanding the international community's efforts to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict. They serve both to define our goals and to determine our methods . . . To work together effectively in this field, a common understanding of key concepts is essential" (United Nations 2004, p.5). The International Center for Transitional Justice (ICTJ), an organization that advises countries on addressing legacies of human rights abuses, echoes these claims. According to the ICTJ (2009), the common core elements of transitional justice include flexible prosecution processes, comprehensive reparation programs, creation of Truth Commissions, and institutional reform processes.

Subotic (2012) states that transitional justice advocacy has changed significantly within the past two decades. "While it used to be aimed primarily at discretionary mechanisms for societies to deal with past violence, it is now increasingly legalized and directed at broader issues, such as postconflict peace accords, and even longer-term goals, such as instituting democracy, rule of law and a culture of human rights."(Subotic 2012, p.115) She defines transitional justice advocacy as "an active network of institutions and individuals who advocate for and help design TJ institutions around the world" (p.107), and studies international transitional justice advocates

such as Human Rights Watch (International Justice Program), Amnesty International (Campaign for International Justice), the International Center for Transitional Justice (ICTJ), the Center for Justice and Accountability (CJA), the Open Society Justice Initiative Institute and the Coalition for the International Criminal Court.

According to Ruti Teitel (2003), transitional justice "moves from the exception to the norm to become a paradigm of rule of law. In this contemporary phase, transitional jurisprudence normalizes an expanded discourse of humanitarian justice constructing a body of law associated with pervasive conflict, which contributes to laying the foundation for the emerging law of terrorism" (pp.71-72). Transitional justice has expanded to offer assistance, peacekeeping and peacebuilding measures. As a result, it requires a large and expensive bureaucracy.

Critical views on transitional justice

Transitional justice advocates usually present it as a set of value-free, neutral mechanisms. This understanding has become preponderant in human rights literature, "achieving the status of common sense" as Theidon (2009) states. For critical scholars, assuming transitional justice as neutral (non-political) ignores its own conceptual limits, political consequences and, most importantly, its contradictions. Franzki and Olarte state that transitional justice mechanisms are not neutral. For them, the intended transition to peace is bonded to the political and socioeconomic projects that promote liberalization. "The ideas and norms that form the basis of transitional justice mechanisms and which are elaborated and justified in transitional justice research are conceptually reflective of the 'demo-liberal' context in which the field emerged in the 1990s" (Franzki and Olarte 2014, p.202). In this sense, transitional justice originally emerged to promote a specific global order, which means that it is not an unbiased set of mechanisms for achieving inclusive lasting peace and reconciliation. Hence, the goals of that global order

exclude other possibilities for seeking accountability. As Miller (2008) states, "transitional justice as both literature and practice offers more than just a set of neutral instruments for the achievement of the goals of justice, truth and reconciliation. It also serves to narrate conflict and peace, voice and silence, tolerable structural violence and intolerable physical atrocity" (p.267).

Critical human rights approaches also challenge the premise that transitional justice models are inherently positive. As Kimberly Theidon (2009) states, "there is a teleological aspect to the concept of transition: 'before' was worse, and 'after' will lead to something better" (p.295). In that sense, " . . . within normative narratives of transitional justice, the concept of transition is regarded as inherently positive and as requiring no further elucidation, just mere inhabiting and embracing" (Ignatius 2011, p.184). Also, Carothers (2002, p.8) pointed out that the definition of transition—what he calls *paradigmatic transition*—rests on core assumptions such as the idea that any country moving away from dictatorial rule or from egregious human rights abuses can be considered as a country in transition towards democracy. Democratization, and consequently transition, is assumed as occurring over coherent and sequential stages until reaching a final and sustainable consolidation. As a consequence, transitional justice is imagined as a set of lineal processes that usually culminate in reconciliation. "Even though transition is supposed to signify merely change, which can be either positive or negative, theorists within the normative discourse of transitional justice have tended to zealously overemphasize the positive value of the concept" (Ignatius 2011, p.182).

Transitional justice as homogeneous is also problematized in the literature. Bell (2009) argues that "in periods of radical change different political goals can be incompatible" (p.125), so the decision to create a transitional justice process must address the possibility that transitional justice goals could not be reached continuously, effectively, and simultaneously. Theidon and

Betancourt (2006) state that in a transitional process there are multiple transitions that are usually opposed and contested. Lyons (2010) describes transitional justice as a "field of contention" (p.25). These transitions produce different "transitional subjects", such as combatants, who leave their guns, as well as governments who look for ending the violence and communities who receive ex combatants. (Theidon and Betancourt, 2006). Additionally, Leebaw states that the goals of transitional justice and national reconciliation may be opposed. "The promotion of transitional justice to support national reconciliation is puzzling given that transitional justice institutions were historically seen as a threat to national reconciliation. Because truth commissions and criminal tribunals investigate extremely divisive and violent histories, they have often been viewed as obstacles to reconciliation and charged with 'opening old wounds,' generating political instability and interfering with forward-looking political change**"** (Leebaw 2008, pp.96-97).

Transitional justice assumes ideal subjects whose goals and expectations are homogeneous and that are able and willing to ask for forgiveness and to forgive. As Brudholm argues, "much talking and thinking about postconflict justice and reconciliation has focused on a model of an idealized actor who demonstrates a readiness to forgive and reconcile and a capacity to let go the past in order to move forward. This construction alienates those who do not adopt the reconciliation model, undermining the very intent of such projects" (2008, p.6, as cited in Ignatius 2011, p.186). Linked with the argument above, the idea that people are always involved and benefited from participating in transitional justice mechanisms is also widely assumed. This creates a disconection between the theoretical legal project of justice and everyday life. "Typical transitional justice approaches thereby run the risk of creating widespread and ultimately unmet expectations of justice without delivering real, present-day peace for citizens. This undermines

the transition itself" (Chang and Segura 2012, p.176). The emphasis in transitional prosecutions is usually on high-ranking criminals, but other sources of violence, and most importantly, their impact in people's everyday life is usually ignored. "A focus on the 'big' questions of transitional justice also obscures the links between crimes committed during the war and the high crime rate in the present" (Chang and Segura 2012,p.175). For Chang and Segura (2012) "This mismatch between analytical models and people's lived experiences of violence has important consequences and creates something of a false dichotomy between security and justice. Inevitably, when forced to choose between the two, many people will choose security because it offers benefits that are perceived as more tangible and immediate than those of justice" (p.177). According to Nagy (2008), "transitional justice may be alien and distant to those who actually have to live together after atrocity" (p.275). In this sense, critical approaches also show the need of see the complexity in processes of transition, particularly, "how transitional justice concepts and mechanisms may be simultaneously enabling and constraining; they may facilitate social and political mobilization against oppressive forces, or may be used to legitimize or normalize unequal structures of power and authority" (Theidon 2009, p.297).

Critics argue that transitional justice has become a "global industry" (Theidon 2009, p.296) or a "global enterprise" (Miller 2008, p.268). As Theidon (2009) states: "There is a global transitional justice industry, composed of teams of expert consultants, standardized software packages for data management, and a set of assumptions regarding how to 'do memory' and why memory matters" (p.296). For Franzki and Olarte (2014), transitional justice has become a brand that identifies a standard procedure for addressing human rights abuses. "It could be argued that within 20 years, the notion of transitional justice has accomplished what most advertising specialists can only dream of, namely, that most people identify a specific brand with an entire

product group" (Franzki and Olarte 2014, p.201). One big deficiency of transitional justice is its neglect of the economic factors of violence. Focusing on one specific kind of violence (armed conflict or dictatorship), it ignores other forms of violence, including inequality and structural violence. It also excludes the possibility of socioeconomic redistribution of resources. Transitional justice treats "inequality or structural violence as contextual background rather than central issues in transition" (Miller 2008, p.266).

For Miller (2008) this economic invisibility has three costs: a) an incomplete understanding of the origins of the conflict; b) an inability to imagine structural change due to a focus on reparations, and c) the possibility of renewed violence due to a failure to address the role of inequality in conflict. In this sense, critical approaches insist on the need of constant evaluation of transitional justice and in the expansion of its mechanisms to the socioeconomic causes of violence (Ross 2010a, p.7). For Jones, Bernath and Rubli (2013), this approach "does not assume that it is necessary a rejection of transitional justice as such, but rather that it may, if taken seriously, tell us something about the presence of divergent approaches to peace and justice within a given society". (p.6).

The "legal" in transitional justice:

The idea of law in Western legal systems is built on assuming a division between law and society, as if the law had a higher rationality that works in a different direction from societies' everyday life. Scholars in that legal dominant tradition "divide the world into two spheres, one social and one legal. 'Society' is the primary realm of social experience. It is 'real life'. 'Law' or 'the legal system', on the other hand, is a distinctly secondary body of phenomena. It is a specialized realm of state and professional activity that is called into being by the primary social world in order to serve that world's needs" (Gordon 1984, p.60). This conception creates a

disconnect between everyday lives and the rationality of legal knowledge. As Gordon (1988, p.16) states, "Legal discourses are saturated with categories and images that for the most part rationalize and justify in myriad subtle ways the existing social order as natural, necessary, and just." If, as Hutchinson & Monahan (1984) said, law is "simply politics dressed in a different garb" (p.206), legal analysis must become a way to uncover the hidden meanings, rules and structures of power hidden in the law.

The rise of international institutions that promote transitional justice has had a definite impact on the adoptions of legal international mechanisms as the standard response to heinous crimes. According to Subotic, "solving problems through an institutional or a legal setting is becoming an increasingly internationally accepted practice even for issues that previously were not considered to be in the legal purview, such as legacies of past violence" (Subotic 2012, p.109). The creation of institutions such as the *ad hoc* tribunals for Yugoslavia (ICTY) in 1993, Rwanda (ICTR) in 1994 and later the International Criminal Court (ICC) in 2002 institutionalized international legal responses to human rights abuses.

The scope of transitional justice continues expanding. According to Subotic, "the new approach recast TJ from a moral or legal duty to one that is instrumental, that can be used as a political tool of peacebuilding. This recasting is important because it provides justification for increasing judicial intervention in ongoing conflicts, such as the ICC's indictments related to the ongoing conflicts in Libya, Sudan, Uganda, Ivory Coast and the Democratic Republic of the Congo" (2012, p.116). Through its process of institutionalization and "lawyerization" (as Subotic [2012, p.109] names it), transitional justice works as a "definitional project explaining who has been silenced by delineating who may now speak, describing past violence by deciding what and who will be punished and radically differentiating a new regime in relation to what actions were

taken by its predecessor" (Miller 2008, p.267). This definitional project raises a question about the goals of transitional justice mechanisms: It is *justice* the real concern of transitional justice processes?

As Theidon (2009, p.298) states, "engaging with transitional justice mechanisms may be a way to gain admission into prestigious international organizations or to 'clean up' a recent past: justice may be a minor or non-existent concern" (Theidon 2009, p.298). Post-conflict is usually preceded by an explicit conclusion of violence: a ceasefire or a peace agreement is the typical expression of the end of a war. However, as Ross (2010a) points out, establishing a transitional scenario as "post-conflict" is problematic and has serious implications. "The power to determine when a intervention is 'post' (or following) a particular conflict reveals significant aspects of the power-relations associated with, and created through, the conflict. Moreover, the power to determine that a particular policy is an element of 'reconstruction' carries further significance" (p.1). Ross asks, "What counts as 'post'? Who has the power to determine that a conflict has entered a 'post-conflict period? How does this determination affect the material interests of the population impacted by the conflict and its associated violence? How does the ability to determine the 'post' influence future power-relations? How is the post-conflict phase (possibly) detrimental to peace and human security—and why?" (Ross 2010a, p.1)

For Ross, the 'post' in 'post-conflict' has agency. It is "far from static, fixed, or an already determined self-evident fact. Rather, the 'post' is an influential feature in the dynamics of power, violence, conflict, and conflict resolution" (Ross 2010a, p.3). As Ross (2010a) states, "in the event that violence and social suffering continue in the 'post-conflict' period, and despite reconstruction efforts, we can become perhaps even more cynical and suggest that contemporary patterns, projects and policies of 'post-conflict reconstruction' might actually contribute to the

conflict's continuation rather than resolution" (p.2). In his analysis about corporate power, Barkan (2013) asks how the global order of corporate capitalism "created and repeatedly justified for its abilities to 'improve life, to prolong its duration, to improve its chances, to avoid accidents, and to compensate for failings' [citing Foucault 1975-1976, p.264], results in a system that routinely denies housing, clothes, food, work, and essential medicines; that exposes populations to unsafe living conditions and environmental hazards; and that constantly attempts to push workers into depoliticized forms of bare life" (p.161). This analysis is useful to describe the aforementioned critiques on transitional justice. Critics ask how the global industry of transitional justice created and justified for protecting humans from violence and guaranteeing their rights, results in a system that exclude those who have suffered for decades the socioeconomic impact of war and of structural violence. In Chapter 3 I will explore the Colombian war, its implications, irreconcilable goals and contentions in political agendas around transitional justice in Colombia.

CHAPTER 3

CASE STUDY: VIOLENCE IN COLOMBIA

Colombia's war is one of the oldest in the world. According to the United Nations, Colombia's war has produced the second greatest number of internally displaced people (United Nations High Refugees Commission, 2013), with more than 6 million people displaced. In April of 2015, the Colombian *Unidad para la Atención y Reparación de Víctimas* (The Unit for Attention and Reparation of Victims) reported a total of 7,337,667 victims of what the current Colombian government calls the "internal armed conflict"[4]. However, that number is based on people affected by specific forms of violence–"heinous crimes"— that occurred from 1985 until the present and which were also registered in the state victims' program. In consequence, it is difficult to determine how many people have been affected by violence throughout centuries of brutal conflict.

Particularly, there is a lot of controversy among scholars and politicians about the origins, circumstances and consequences of the current violence. Coming from academics, politicians, armed groups, victims associations, ex-presidents and many others, multiple narratives in a strongly polarized country try to make sense of decades of incessant violence. In the last 10 years, the government has designated 3 national commissions to investigate and make reports about the war. From 2005 to 2015 the National Reparation and Reconciliation Commission, (CNRR), and the National Center for Historical Memory (CNMH) wrote around 30 reports to recount regional and national heinous crimes. In 2014, in regard to the peace talks with the FARC guerrilla group, delegates designated a commission of scholars in order to clarify the key

[4] In http://www.unidadvictimas.gov.co/index.php/en/ , last accessed: April 26, 2015.

historical aspects of the violence in Colombia. This commission is called *Comisión Histórica del Conflicto y sus Víctimas* (Historical Commission for the Conflict and its Victims[5]). Scholars Eduardo Pizarro, Víctor Moncayo, Sergio de Zubiría, Gustavo Duncan, Jairo Estrada, Darío Fajardo, Javier Giraldo SJ, Jorge Giraldo, Francisco Gutiérrez, Alfredo Molano, Daniel Pécaut, Vicente Torrijos, Renán Vega and María E.Wills were chosen by the peace negotiators to write their own versions (12 essays, 2 reports in total) of the history of violence in Colombia. These essays were released in February 2015. In contrast with those narratives, Colombian transitional justice laws, issued between 2005 and 2014, are focused on specific crimes in specific times, and its transitional mechanisms do not address the socioeconomic factors of the war. The economic component of the war in Colombia appears in the laws only as secondary information for framing the actual problem.

This chapter is an attempt to narrate key points of the history of violence in Colombia, and how it is –and remains today—historically related with socioeconomic factors that promote it and keep the country far from peace. In the following paragraphs I will describe historical episodes of violence in Colombia, using certain key points (and also possible contradictions), of narratives offered by the Historical Commission (2015), as well as some references to other scholars. I will present the main points of some narratives, leaving an in-depth analysis of those narratives for further research. I will conclude the chapter by describing the specific understanding of the conflict by the two governments responsible for issuing transitional justice laws over the last 10 years in Colombia.

Narratives of Violence in Colombia

During the so-called "Encounter" in the 15th century, colonizers enslaved entire indigenous populations in the Americas and exterminated most of them, bringing almost three

[5] In this text I will refer to this commission as the Historical Commission.

centuries of brutal colonialism in the entire North, Central and South American territories. It includes the territory of what was named by Spain "*El Nuevo Reino de Granada*" and is currently called "*República de Colombia*". After independence in 1810, Colombia faced more than 8 national and 14 regional civil wars (Pizarro 2015, p.9; Wills 2015, p.5). Amongst others, the "*Guerra de los Mil Días*" (The War of a Thousand Days, between 1899 and 1902) triggered a strong polarization between the *Liberal* and *Conservador* political parties. As a result, Colombia began the 20th century at war, and in 1903 Panama partitioned from Colombia.

There is not an agreement about the origins of the Colombian conflict. Scholars locate the origins of the conflict in different moments in the 20th century. Vega (2015) situates it in a process of permanent subordination between Colombia and the United States, which began in the 1800s, continued in the 1900s, and has lasted until the present. Moncayo (2015) presents certain examples of subordination to North American contra-insurgency policy: the creation of the Organization of American States, the signing of the *Pacto de Asistencia Militar* of 1952, the organization of the *Batallón Colombia* (Colombia Troop) for participation of Colombia in the Korean War, the establishment of the special CIA secret team of October 1959, the creation of the Administrative Department of Security in Colombia under the model of the FBI and the launching of napalm bombs with US assessment and the organization of paramilitary groups in 1955. (p.28; also see Vega 2015, pp.13-15). Vega (2015) adds the war on drugs and the *Plan Colombia* as expressions on Colombia's subordination to the US (pp.37-52).

Fajardo (2015), Molano (2015), de Zubiría (2015) and Giraldo SJ (2015) identify the origins of the conflict in the land struggles of 1920s. In the 1920s and 1930s the economic growth due to the increase of coffee production triggered migration of *campesinos* (peasants) to the cities and an increased interest in land by entrepreneurs. "Stagnating or declining incomes

related to the world depression and to heightening population pressure on the land were elements of the Colombian brew in the 1930s. By the end of the coffee era (1880-1930) during which that product became Colombia's dominant export, land had become increasingly valuable and the conditions for a crisis of conflict around it had been met. The profitability of coffee exports was the basic ingredient" (Berry 2002, p.5). It also triggered new processes of *de facto* colonization of land in rural areas. Landowners and entrepreneurs found in these migrations an opportunity for land encroachment, and those processes happened with complete absence of state (legal or military) punishment and control. "The rapid expansion of the transportation network and the growing demand for coffee led to an appreciation in rural land values and brought large entrepreneurs onto the prowl for land, leading to a great increase in the number of encroachments on squatter-occupied land between 1918 and 1931" (Berry 202, p.5). As a consequence, as Fajardo (2015, p.8) states, three main factors were causes of tension in the 1930s: an excessive concentration of rural property, the uncertainty about methods of appropriation of badlands, and the weak legitimacy of property titles. Measures such as the acknowledgement of union and women's rights triggered peasant awareness of their right to land and during those years they began to gather in order to invade and protect lands from which they had been dispossessed. It also triggered discontent to large landowners and entrepreneurs, who soon gathered and withdrew their support from the *Liberal* party (Pizarro 2015, p.12). According to Pizarro (2011) and Behar (1985), it triggered the emergence of numerous peasant agrarian movements—*Ligas y Sindicatos*—that were organized around the struggle for land reform. It intensified due to a weak state, one unable to control its own territory, where the massive displacement of peasants sharpened land concentration and triggered poverty and misery (Pizarro 2015, pp.13-14).

A partisan struggle triggered a bloody period in Colombian history called "La Violencia", in which the two traditional parties (*Liberal* and *Conservador*) fought for national and regional power. This period of time (1948-1956), triggered by the killing of the presidential candidate Jorge E. Gaitán on April 1948, brought devastation to cities and intensified in rural areas, where it combined with the above mentioned problems on land tenure.

According to Pécaut, in Colombia in the 1930s the traditional bi-partisan system and the struggle that caused "La Violencia" were essential to violence and exclusion. Unlike other countries of the region, authority in Colombia has mostly been based on civil, not military, power. During the 1930s and 1940s the differences between the parties became stronger. As Pécaut (2015) says, the two traditional parties formed opposing political cultures. The *Conservadores* claimed their proximity to the Catholic Church and defended conservative values. The *Liberales* could not come to an agreement and divide into groups, some of which claimed to defend peasant and laborers rights. However, in their foundations both rested on networks manipulated by local leaders (pp.8-9; also see Wills 2015, pp.4-7)

Gutiérrez (2015), Giraldo (2015) and Torrijos (2015) state that the origins of the current Colombian conflict are located in the *Frente Nacional* (National Front) period, in the 1960s, when the FARC and ELN guerrilla groups made the final decision of defying the state's authority (Torrijos 2015, pp.1-2; also see Gutiérrez 2015, pp.10-12; and Giraldo 2015, pp.3-10). Although these scholars acknowledge the existence of violence in the 1920s and 1930s, they believe that the two periods of violence (before and after the *Frente Nacional*) have different circumstances, actors and motivations. "La Violencia" was resolved in a power-sharing pact between *Liberal* and *Conservador* parties called the *Frente Nacional*. This pact, however, excluded other political organizations, such as peasant movements and the Communist Party. On

the contrary, those movements and political organizations were strongly proscribed. As Vega (2015) points out, the *Frente Nacional* establishes a bipartisan exclusionary order that, to silence popular discomfort, resorts to repression, the emergency state, and counter-insurgency (p.22). Although the *Frente Nacional* succeeded in solving the bipartisan war, one of its main failures according to Pizarro (2015, p.35) was that it was not able to articulate a comprehensive agrarian reform. According to Molano (2015, p.46), the absence of agrarian reform triggered a new wave of migration in the countryside in the 1970s, and that process happened in parallel to the rise of the cocaine business. For that reason, as Molano (2015) states, the countryside suffered the worst consequences of multiple kinds of violence in the struggle for controlling the resources derived from coca leaf cropping and processing, and cocaine commercialization.

Another important episode was the creation of diverse guerrilla groups in the 1960s and the subsequent emergence of drug trafficking in the 1970s. During "La Violencia" groups of peasants settled especially in Tolima, Huila and Cundinamarca as self-defense groups. Their leaders –among others, Pedro Marín, alias "*tirofijo*", who later on would cofound and lead the FARC guerrilla group—gradually adopted the ideological flags of communism. In the late 1950s, the Colombian military attacked those rural settlements in governmental attempts to recover control of the territory those groups claimed to be under their control. After successfully responding to the attacks, the settlements established themselves as guerrilla groups in 1964, under the name of *Fuerzas Armadas Revolucionarias de Colombia,* FARC (Pizarro 2011). Several guerrilla groups, such as the *Ejército de Liberación Nacional,* ELN (1962); the *Ejército de Liberación Popular,* EPL (1967); and *Movimiento 19 de Abril,* M-19 (1974) also arose in the 1960s and the 1970s, while the state fought them with the support of the United States and its doctrine against communism. As Pizarro (2015) points out, except for the FARC guerrilla

group, whose origins are in the self-defense groups and the Colombian communist guerrillas of the 1950s, all guerrilla groups arose as urban organizations and were led by students and professionals (p.23). In the 1980's the Colombian President Belisario Betancur (1982-1986) decided to create a peace strategy that included amnesties for guerrilla members, and about 373 ex-combatants were awarded these amnesties (Ramírez & Restrepo 1991)[6]. These agreements finally failed and military activity of guerrilla groups intensified (Grupo de Memoria Histórica 2013, p.173).

In the 1970s, the business of cocaine production and distribution complicated the existing violence in Colombia. Drug trafficking arose in the1960s and 1970s, when practices of smuggling increased due to a crisis in the economy, particularly in the production of coffee and cotton. As the prosecution of smuggling groups in the 1970s became stronger, groups in the Urabá and Guajira regions of northern Colombia began trafficking marijuana. Drug dealers such as Pablo Escobar and Carlos Ledher began producing and distributing cocaine. The Medellín cartel undertook a series of attacks against state officials in the 1980s that produced thousands of killings, threats and kidnappings. "Plata o plomo" ("accept the money or face the bullets") became a Medellín cartel's colloquial slogan to threaten people and persuade them to receive bribes, or otherwise be killed.

The violence from drug cartels became acute at the end of the 1980s, when the attacks became more massive and included bombing malls, airplanes and entire neighborhoods, along with the selected killing of politicians, judges and journalists. Although the rise of drug trafficking and guerrilla groups were independent processes, drug dealers found important support from guerrilla and paramilitary groups, who found in drug trafficking a way of financing

[6] Three agreements were signed: one was signed with FARC in La Uribe, Meta (Acuerdos de La Uribe) in March 1984, other with EPL in El Hobo, Huila (Acuerdos del Hobo) in August 1984 and other with the M-19 (Acuerdos de Corinto) in August 1984.

their activities (Molano 2015, p.47). It also involved political parties, whose members began financing their campaigns with money derived from drug trafficking (see Duncan 2015, p.1; Gutiérrez 2015, pp.15-18).

The rise of right-wing paramilitary groups–commonly called *Autodefensas Unidas de Colombia*, AUC—greatly complicated the armed conflict, which, from being a conflict between insurgency and contra-insurgency, became a conflict between multiple actors and multiple contested interests. Paramilitary groups (AUC) arose in the 1980s as another violent agent whose purpose was to fight the guerrillas' criminal activities against large landowners in the areas of Córdoba and Antioquia (two of the most important banana, coffee and cocaine producers [Gutiérrez 2006]). Soon, these paramilitary leaders forged alliances with the Medellín and Cali drug cartels and state officials, in order to protect land and corridors that were used to produce and distribute cocaine. These new alliances triggered a more aggressive guerrilla offensive. However, in the 1990's, financial support was also extended to the guerrilla's drug trafficking activities, and this support generated contention among all illegal forces, as well as between them and state military forces. For Pécaut (2015), among those multiple interests are also included those of what he calls "opportunistic third parties", political leaders that wove alliances with paramilitary groups to obtain their political support, or to accumulate displaced people's land and goods. Also, possibly included in this category are national and multinational companies allied with paramilitary fronts in order to generate massive displacement of people, illegally occupy their lands or buy their lands below their commercial value (p.11, as cited in Pizarro 2015, p.49. Also see Fajardo 2015, p.44).

Additionally, in the late 1990's the FARC guerrilla intensified its criminal activity. After the last attempt of negotiation in San Vicente del Caguán, the FARC became stronger and

initiated a systematic plan of attacks against civilians, including kidnappings, disappearances, massacres, bomb attacks, and massive forced displacement. In summary, according to Gutiérrez (2015), four main factors have contributed to the continuation of war: a) insubordination of rural legal elites due to state absence in most of rural territory; b) leadership of illegal elites, specially illegal drugs mafias; c) participation of political parties in the conflict; and d. participation of members of state security agencies in the conflict. (pp.16-35, as cited in Pizarro 2015, p.65).

Finally, agreement amongst scholars about what is the most accurate term for calling the violence in Colombia has not been reached. The members of the Historical Commission use different options, as Pizarro (2015, pp.43-48) explains. De Zubiría, Fajardo, Molano, Giraldo SJ, Vega and Estrada refer to the "social armed conflict" in order to show the link between political violence and social issues. Giraldo and Wills use the term "war", to differentiate it from generalized criminality. Gutiérrez uses "civil war" as well as "contra-insurgency war". Torrijos refers to "irregular conflict" to explain that it is not a struggle for power between states, but between a state and certain armed groups. Pizarro (2015) argue that "internal armed conflict" is the most precise way to call the war, as it helps to describe it as a "prolonged", "complex", "discontinuous", "regionally disparate", "heinous" and "political" conflict (pp.45-48).

Violence in Colombia: Legal Interpretation in President Uribe's and President Santos' Administrations

In 2002, the right-oriented politician Álvaro Uribe was elected as President of Colombia (2002-2010) and established a strategy to deal with violence. The Democratic Security Policy (PSD) was a strategy that included a military offensive against armed groups, especially against politically left-oriented armed groups. This policy was mainly based on the American doctrine of "war on terror." In consequence, no negotiation occurred with the leftist organization. However,

the government had to face a serious humanitarian crisis declared in 2004 for massive forced displacement throughout the country[7], and, importantly, the eventual jurisdiction of the International Criminal Court for war crimes committed in 2009. As a result, although they did not negotiate with guerrilla groups, they initiated negotiations with paramilitary groups. In 2010, Juan M. Santos, who had served as Minister of National Defense in the President Uribe administration was elected as President of Colombia. However, he proposed a new strategy for addressing violence in the country. He adopted the discourse of human rights and international humanitarian law, naming violence as an *internal armed conflict*. This decision allowed the state to settle a peace negotiation with guerrilla groups and to apply the international humanitarian law (the body of laws that regulates armed conflicts). In August 2012, peace negotiations with FARC began and are currently continuing (April 2015) to take place. The peace negotiators agreed on discussing six points (Mesa de Conversaciones, 2012) as follows:

1. Comprehensive agricultural development policy
2. Political participation
3. End of conflict
4. Solving the problem of illicit drugs
5. Victims
6. Implementation, verification, and countersignature

Although the peace talks were originally confidential, on September 24, 2014, partial agreements on points 1, 2 and 4 of the agenda were released and are currently publicly

[7] In 2004, the Constitutional Court *(Corte Constitucional*) established that the internal displacement in Colombia was not just an isolated phenomenon or an individual crime, but a general situation of human rights violations. The Court called it an Unconstitutional State of Affairs, *Estado de Cosas Inconstitucional*, and ordered an immediate action from the State (Sentencia T-025/04).

available[8]. Related to the agricultural development policy (point 1), three main points were agreed upon: First, the government will constitute a Land Fund whose beneficiaries will be landless farmers and the most affected people from war, such as female farmers and forcibly displaced people. Second, the government will institute a census in order for landowners to pay more accurate taxes over property. Third, the government will create mechanisms in order to protect reserve zones such as wetlands, forest reserves and fragile ecosystems. With regards to political participation, they agreed on reforming the current electoral system for allowing small political parties to be elected. Also, they agreed on a set of mechanisms for giving guarantees to all political parties to participate in politics. They named these mechanisms *Sistema Integral de Seguridad para el Ejercicio de la Política* (Comprehensive Security System for the exercise of Politics). Concerning illicit drugs, the negotiation team agreed on creating a program for regulating crop replacement. The program will be called *Programa Nacional Integral de Sustitución de Cultivos de Uso Ilícito* (National Comprehensive Program for the Substitution of Illicit Crops). Finally, with regards to point 5, on March 7, 2015, the parties agreed on working together to remove landmines from rural areas of the country (Mesa de Conversaciones, 2015).

Violence in Numbers

The transitional justice legal plan in Colombia focuses on crimes described in the Rome Statute that are committed by specific illegal armed groups from 1985 until the present. According to the *Unidad para la Atención y Reparación de Víctimas* (The Unit for Attention and Reparation of Victims), the *Grupo de Memoria Histórica* (Historical Memory Group), and the Historical Commission, most of the denunciations come from the following crimes: forced internal displacement, land dispossession, kidnappings, extortion, child recruitment, torture, homicide, massacres, threats, sexual violence, forced disappearances, anti-personnel landmines,

[8] See https://www.mesadeconversaciones.com.co/

and attacks against property (Pizarro, 2015, pp.73-74). For all the members of the commission, there are factors that strongly contribute to the continuation of war. According to the *Grupo de Memoria Histórica* (2013, p.32), between 1958 and 2012 the war resulted in 218,094 deaths, 40,787 of whom were combatants and 177,307 of whom were civilians. From 1985 to March 2013, the *Unidad para la Atención y Reparación de Víctimas* (2013) reported 25,007 disappearances, 1,754 victims of sexual violence, and 6,421 recruited child soldiers (as cited in *Grupo de Memoria Histórica* 2013, p.33). According to the *Grupo de Memoria Histórica* (2013) between 1970 and 2010 there were 27,023 kidnappings associated with the internal armed conflict, and between 1982 and 2012, there were 10,189 victims of anti-personnel landmines (p.33).

Also, according to Human Rights Watch and the *Instituto de Estudios sobre Conflictos y Acción Humanitaria* (Institute of Studies on Conflicts and Humanitarian Action, IECAH), violence derived from the war is still happening. Human Rights Watch (2013, p. 27) establishes that from 2008 to 2013, 510 land restitution leaders were threatened, 94 of whom became victims of forced displacement. Also, the Colombian *Defensoría del Pueblo* (Ombudsman's Office) states that between 2006 and 2011, 71 land restitution leaders were killed (as cited in Semana magazine, 2012). Finally, a group of 23 families (89 people) of peasants in Guapi (Cauca), and Riosucio (Chocó) were displaced by illegal armed groups in January 2014, and 598 people from Alto Baudó (Chocó) were displaced in June 2014 (El Tiempo, 2014).

A major agent of violence arose after demobilization of paramilitary groups in 2005. New armed groups of rearmed ex-combatants called *Bandas Criminales Emergentes* (BACRIM) are mostly comprised of demobilized combatants that returned to illegal activities, or by combatants who never demobilized (CNRR 2007). Recently, IECAH made a report that reveals that between

November 2012 and September 2014, around 347,286 people were displaced in Colombia. For IECAH (2015), it means that even though there are negotiations with FARC in La Habana, Cuba, every month around 15,100 people are forced to leave their home as a consequence of violence and conflict. Forty-eight percent of the forced displacements were caused by FARC and ELN criminal actions, while BACRIM generated one of each of the five displacements (p. 9). Also, according to IECAH (2015), between November 2012 and September 2014, there were 644 victims of anti-personnel landmines, 37% of whom were children (p.10). These numbers, however, do not account for other sources of violence that are intimately linked to the prolongation of war in Colombia. According to Pizarro (2015, p.51), the 12 essays of the Historical Commission coincide in that inequality, unequal distribution of land, high levels of rural unemployment, lack of job opportunities for young people, persecution for union leaders and criminalization of peasants that cultivate coca leaf are decisive factors which lengthen the war. According to Summers (2012, p.223), "Colombia now has the most unequal land tenure system in Latin America, with 1.15% of landowners owning 52.2% of all cultivable land." That issue becomes more serious due to the weak system of legal protection of rural land. As Pécaut (2015) states, 47% of lands lack legitimate property titles. Land registries do not exist in all departments and in many places they are not reliable (pp.4-5). All the above information suggests that the war in Colombia is strongly linked with socioeconomic factors such as inequality, unequal distribution of land, and poverty. The transitional justice laws created by the two last administrations in Colombia intending to deal with the war focus on certain kinds of harm but ignore all other sources of violence, especially those sources of violence that caused the war in the first place. I argue that a more comprehensive understanding of violence and its scenarios, causes, and protagonists is required for achieving lasting peace.

CHAPTER 4

METHODOLOGY

This chapter describes data collection and data analysis methods. In this project, I use document and discourse analysis of legal texts, taking into account the complex historical and social circumstances of war in Colombia described in Chapter 3.

The sources of data are primarily Colombian legal documents in Spanish. Through previous experience working for the Colombian *Unidad para la Atención y Reparación de Víctimas* in the Spring of 2013, I identified legal documents that constitute the Colombian transitional justice legal framework. These documents include one constitutional reform, six laws, eleven court decisions[9] and one decree[10]. I also analyzed seven selected legal documents, literally motive exhibitions (called *Exposiciones de Motivos),* which are preambles and justifications for proponents of each bill to be put into consideration of the Colombian Congress. I analyzed twenty-six legal documents, as shown in Table 1:

Table 1. Colombian Transitional Justice Legal Documents

Law	*Exposición de Motivos*	Court decision (*Sentencia de Constitucionalidad*)
Acto Legislativo #1/2012	✓	Sentencia C-579/13

[9] In Spanish "*Sentencias*" or "*Sentencias de Constitucionalidad*". These are decisions made by the Corte Constitucional in order to evaluate if a law or decree –in part or whole—is aligned with the national Constitution.

[10] There are two main global systems of law: civil law (or Continental European law), and common law (applied, amongst others, in the US and the UK). The Colombian legal system is based on the civil law, and for this reason depends upon statutes and written laws; those statutes, according to scholars such as Hans Kelsen (1982 [1960], 2nd edition) are organized hierarchically, as in a pyramid. The Constitution is located in the top, being the most important law, the Kelsenian *Grundnorm*, the Basic Norm from which all of the others derive their validity. In Colombia, the hierarchies are, from the most important, as follows: the national Constitution, Laws, Decrees, and Regulations.

Law 1719/14	✓	-
Law 1592/12	✓	-
Law 1448/11	✓	Sentencia C-052 /12 Sentencia C-250/12 Sentencia C-253 A/12 Sentencia C-715/12 Sentencia C- 781/12 Sentencia C-280/13
Law 1424/10	✓	Sentencia C-771/11
Law 1312/09	✓	Sentencia C-936/10
Law 975/05	✓	Sentencia C-370/06
Decreto 1290 2008	NA	Sentencia SU-254/13

I proceeded to collect these. I downloaded them from the International Center for Transitional Justice (ICTJ)[11], the Colombian Congress[12] and the National Printing of Colombia's[13] websites. For conducting my analysis, first I read and translated the legal documents from Spanish.

I designed two checklists that will be referred to as Critical Sub-questions, which I used to identify specific answers that helped in answering each of the research questions.

Critical Sub-questions Set No.1:

What are the reasons contained in each documents for creating the law?

How do the laws define *transitional justice* (in case it is defined)?

Do the laws acknowledge themselves as transitional justice laws?

Is the internal armed conflict" linked to the use of "transitional justice" in the legal texts?

[11] Access: https://www.ictj.org/colombia-timeline/index_eng.html
[12] Access: http://www.secretariasenado.gov.co
[13] Access: http://www.imprenta.gov.co/portal/page/portal/inicio

Critical Sub-question Set No.2:

Who is acknowledged as a victim by the legal system? Since when?

Is there any differentiation amongst victims depending upon who the perpetrators are? Are any victims excluded from the transitional justice benefits?

How are perpetrators defined? Are any perpetrators excluded from transitional justice benefits?

In the next paragraphs, I describe the structure of each of the documents. I identified five groups of transitional justice legal documents in Colombia: constitutional reforms, laws, Constitutional Court's decisions (*sentencias)*, decrees and *Exposiciones de Motivos,* as shown in Table No. 2:

Table 2. Number of Colombian Transitional Justice Legal documents Analyzed

	Constitutional reforms	Laws	Judicial decisions, *Corte*	*Exposiciones de Motivos*	Decrees	Total
Uribe	0	2	1	2	1	6
Santos	1	4	10	5	0	20
Total	1	6	11	7	1	26

I found a meaningful difference between the number of documents from Uribe's administration (6) and Santos' administration (20). As explained in chapter 3, the political agenda of each administration explains this difference. The Uribe administration focused on demobilization, while the Santos administration created a legal framework that supports the end of the "internal armed conflict" and the so-called "post-conflict". Also, I found contestations between the Uribe administration and the Constitutional Court, especially in the interpretation of violence as an internal armed conflict adopted by the Court. I found contestations between the

Santos administration and the International Criminal Court in regards to how to prosecute perpetrators. Finally, I found a coincidence between the uses of the terms "internal armed conflict" and "transitional justice" in the texts.

The following are documents issued in Uribe's administration. Law 975/05 is a disarmament and demobilization law created to prosecute and reincorporate ex-combatants demobilized by July 25, 2005 who have committed egregious crimes. The bill was presented on February 2005 and passed on July 2005. It had twelve chapters and seventy-one articles, which were later reduced to sixty-nine. Law 975/05 was created for demobilization of the paramilitary groups and guerrilla members (only individuals). This law creates a more flexible prosecution procedure, which concludes in a judicial decision with two sentences: a principal (conventional sentence) and an alternative sentence with five to eight years in prison (art. 29). According to the original text, the perpetrator loses these benefits if he/she commits the same crime again. The law also provides a definition of victim and defines rights to truth, justice and reparations for victims of the armed groups, although it does not provide specific mechanisms for guaranteeing those rights. The *Exposición de motivos* of this law explains that it was issued in response to the need to prosecute war criminals while respecting victims' rights. *Sentencia C-370/06* gives victims concrete tools to access their rights. These tools include: (a) expanding the scope of material goods for reparations; (b) clarifying the requirements for keeping the benefits to demobilized ex-combatants; and (c) prohibiting paramilitary groups from being declared as political criminals. This court decision does explicitly define violence as an armed conflict and the process of demobilization as a transitional justice process.

Decree 1290/08 establishes the amount of monetary compensation for individual reparations. President Uribe issued the decree on April 2008. It has five chapters and thirty-seven articles.

Article 2 establishes the scope of the individual reparations' program, which excludes crimes against property and patrimony, as well as reparations derived from crimes committed by state officials. Law 1312/09 was created to modify certain articles from the Colombian criminal code, particularly the opportunity principle of criminal law[14]. This law had six articles and established that low-ranking demobilized ex-combatants could be prosecuted through the opportunity principle. This law was in effect from July 9, 2009 to November 23, 2010, when the *Corte Constitucional* declared it unconstitutional in *sentencia* C-936/10. This *sentencia* established that the prosecution path established in Law 1312/09 promoted impunity. Consequently, this law is not currently in effect.

The following are documents issued in Santos's administration. Law 1424/10 is a law for prosecuting ex-combatants that do not commit egregious crimes. The Santos administration presented the bill in November 2010 and it passed on December 29, 2010. The law has eleven articles and is the first transitional justice law issued in Santos' administration. It created two transitional justice instruments for demobilization: the contribution to historical truth and reparation's agreement[15] (art.2); and the non-judicial mechanism for contribution to historical truth and reparation[16] (art. 4). The goal of those instruments is to receive a complete and truthful version from the ex-combatants in order to guarantee the right to truth for victims, as well as to preserve historical memory. *Sentencia C-771/11* explains how the Law 1424/10 fits with the national Constitution and defines the idea of transitional justice already explicit in that law.

[14] Professor Nelu Popa defines the Opportunity principle as the legal situation when "the prosecutor is permitted to refuse the exercise of criminal prosecution if in relation to specific elements of the case there is no public interest in achieving its object. This waiver may materialize only after the initiation of criminal action, where important clues about the author's guilt and the existence of the crime already exist, the situations being somewhat incompatible". Access: Popa, Nelu Dorinel, The Opportunity Principle in the Criminal Proceedings and the Penal Action (2012). Available at SSRN: http://ssrn.com/abstract=2196779

[15] In Spanish, "Acuerdo de contribución a la verdad histórica y la reparación"

[16] In Spanish, "Mecanismo no judicial de contribución a la verdad y la memoria histórica"

Law 1448/11, or "Victims' Law" is a law that creates measures for assistance and comprehensive reparations for victims of the armed conflict. It also defines who has the status of victim and what kind of things he/she can access due to their condition of vulnerability. The Santos administration presented the bill on September 27, 2010 and it passed on June 10, 2011. It has nine titles, five chapters and 208 articles. According to its *Exposición de motivos,* this law aims to create a state policy on assistance, attention and reparations for victims of armed groups. It creates humanitarian aid (arts 47-48), attention (arts.60-65), assistance (arts. 49-54), and integral reparation (art. 69-118) measures. This law explains in detail who is considered a victim. This law delimits the definition of a victim to those that suffered damage[17] between January 1,1985 as well as land dispossession from January 1, 1991. The Corte has proffered several judicial decisions to explain the scope of Law 1448/11. *Sentencia* C-250/12 (9.1 and 9.2) and *Sentencia* C-052/12 describe historical facts about the concept of a victim, and declare as "constitutional" the timeframe to acquire the condition of victim. *Sentencia* C-253A/12 (6.1.1) and reiterates that those victims not covered by the legal definition do not loose the status of victims, although they cannot access the benefits of this law; also, it establishes the status of victim to child soldiers if demobilized under the age of 18 (6.2). *Sentencia* C-715/12 declares that if people use extra judicial resources to get access to their land, they will not loose their condition as victims (8.7). *Sentencia* C- 781/12 shows how the Constitutional Court defines "internal armed conflict"(5). Lastly, *Sentencia* C-280/13 states that the legal definition of a victim of forced displacement from Law 1448/11 can be extended to armed groups other than guerrilla and paramilitary groups (4.3, *Cuarto cargo*).

Law 1592/12 is a law created to modify certain aspects of Law 975/05. It has thirty-two articles and it establishes a new criminal investigation strategy for prosecuting demobilized ex-

[17] "Infractions to International Humanitarian laws or to international regulations on human rights"

combatants. This strategy is based on prioritization and selection criteria for perpetrators, and focuses on seeking macro-criminality patterns rather than case-by-case investigations.

Acto Legislativo #1/12[18] or "Legal Framework for Peace" is a constitutional reform that inserts the concept of transitional justice in the Colombian Constitution. It has four articles, and the main goal of the constitutional reform is to articulate the existent legislation related to the armed conflict. It also allows for suspended sentences and alternative punishments in order to facilitate and expedite the prosecution process, which will be based on macro-criminality rather than individual prosecutions. *Sentencia C-579/13* evaluates if the transitional justice plan established in the *Acto* is aligned with the international obligations of the State related to human rights. According to the *Corte*, the suspended sentences should not be allowed for war criminal leaders, who should be prosecuted and sentenced.

Law 1719/14 is a law designed to guarantee justice for victims of sexual violence related to the armed conflict. This law adds explicit reference to the "internal armed conflict" to the Colombian Criminal code. *Sentencia SU-254/13* establishes that comprehensive reparations should not only constitute monetary compensation, but other components that have to be also effectively guaranteed. Also, the *sentencia* reiterates the prohibition of considering the amounts of humanitarian aid or attention measures as reparations[19].

Data analysis: Critical Sub-questions Set No.1

For the purposes of this analysis, I divided the documents into two sets: one for legal documents created between 2005 and 2009 (under President Uribe's administration) and the other one between 2010 and 2014 (under President Santos' administration), as follows:

[18] This thesis will refer the legislative act as the "*Acto"* or the "*Acto legislativo*" throughout the text.
[19] The Corte called that prohibition the "differentiation principle", and has explained it in this *sentencia*, as well as in C-280/13 and C-1199/08.

Table 3. Two Sets of Colombian Transitional Justice Legal Documents Analyzed

Laws under the Uribe administration	Laws under the Santos administration
Law 975/05 *Exposición de motivos*, Law 975/05 Law 1312/09 *Exposición de motivos*, Law 1312/09 Decree 1290/09 *Sentencia* C-370/06	*Acto Legislativo* No.1/12 and *Exposición de motivos* Law 1719/14 and *Exposición de motivos* Law 1592/12 and *Exposición de motivos* Law 1448/11 and *Exposición de motivos* Law 1424/10 and *Exposición de motivos* *Sentencia* SU-254/13 *Sentencia* C-579/13 *Sentencia* C-280/13 *Sentencia* C-781/12 *Sentencia* C-715/12 *Sentencia* C-253A/12 *Sentencia* C-250/12 *Sentencia* C-052/12 *Sentencia* C-771/11 *Sentencia* C-936/10

I looked for explicit mention of "transitional justice" and "internal armed conflict" within the laws. Expressions identified were: "*justicia transicional*", "*proceso transicional*", "*proceso de transición"*, "*ley transicional*", "*conflicto armado*" and "*conflicto armado interno*".

From the six laws chosen from Uribe's administration (2005-2010), only one (the *sentencia*) mentions and develops the concept of transitional justice. *Sentencia* C-370/06 (4.2.2, 240) explains the concept and characterizes Law 975/05 as a transitional justice law. For defining transitional justice, it quotes the definition from the *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (UN Resolution S/2004/616, 8)[20]. That *sentencia* also quotes several treaties, conventions and international

[20] The Report defines transitional justice in the following terms: "The notion of 'transitional justice' discussed in the present report comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international

documents that contain the obligations related to human rights the Colombian government must respect in a process of transitional justice[21].

Santos' documents also define transitional justice. Law 1448/11 (art. 8) reiterates that Colombian transitional justice creates judicial and extrajudicial mechanisms for guaranteeing rights to truth, justice and reparations to victims (that fulfill certain requirements). This definition is also explained in *sentencia* C-052/12 (3.1), C-250/12 (6); *sentencia* C-253A/12 (p52); *sentencia* C-579/13, (6.1.2), *sentencia* C-771/11 (4), and *Acto Legislativo* #1/12 (*Exposición de motivos*, p.2).

Most of Uribe's documents describing violence use the following nomenclature: *Violencia* (preamble, decree 1290); *Acciones que hayan transgredido la legislación penal* (preamble, Decree 1290 and art. 5, Law 975/05*); delitos cometidos por miembros de gaoml* (preamble, Decree 1290); *conductas violatorias de los derechos fundamentales* (art 2, Decree 1290); *hechos delictivos cometidos durante y con ocasión a la pertenencia de estos grupos* (Law 975/05 art. 1), *hechos de violencia sistemática*, (Law 975/05, art. 6); *situación de orden público que vive el país* (art. 59, Law 975/05); *ofensas graves a la nación* (Exposición de motivos Law 975/05, p.3). The expression *Terrorismo* is only used once in the *Exposición de motivos* of Law 1312/09, p.4. In Santos' legal documents, all of the laws, *sentencias* and most of the

involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof", available in: http://www.un.org/en/ruleoflaw/ , last accessed: February 17, 2015

[21] Among others, *Pacto Internacional de Derechos Civiles y Políticos (4.3.2); Convención Americana de Derechos Humanos (4.3.3); Convención para la prevención y la sanción del delito de genocidio (4.3.7); Estatuto de la Corte Penal Internacional (4.3.8); "Convención Interamericana para prevenir y sancionar la tortura; ."Convención Interamericana sobre desaparición forzada de personas"; Convención para la prevención y la sanción del delito de genocidio; El Estatuto de la Corte Penal Internacional (4.3.); Sentencias: Caso Godínez Cruz vs. Honduras (Sentencia de la Corte Interamericana de Derechos Humanos del 20 de enero de 1989, deberes de investigación y juszgamiento); Caso Barrios Altos vs. Perú (Sentencia de la Corte Interamericana de Derechos Humanos del 14 de marzo de 2001, incompatibilidad de leyes de amnistia).*

Exposiciones de motivos explicitly refer to transitional justice. The following legal documents include transitional justice:

- *Acto legislativo#1/12:* preamble, art. 1, *Exposición de motivos* (whole document, 36 pages) and *Sentencia* C-579/13 (6.1.2)
- Law 1424/10: preamble, art. 1, art. 9.
- Law 1448/11: arts. 1, 8 and 9. *Exposición de motivos*, pp. 1-3, 5, 6, 10, 16-19, 29-31. *Sentencia* C-052/12 (3.1), *Sentencia* C-250/12 (6), *Sentencia* C-253a/12 (VI and 2), *Sentencia* C-715/12 (5.2.1), *Sentencia* C-781/12 (5).
- Law 1592/12: *Exposición de motivos,* pp10, 11, 12, 13 and 14.
- Law 1719/14: art. 33.
- *Sentencia* C-936/10 (25).
- *Sentencia* SU-254/13 (4.1).

The following legal documents include "internal armed conflict":

- *Acto* legislativo*#1/12:* art. 1, *Exposición de motivos* (whole document, 36 pages) and *Sentencia* 579/13, (6.4.2)
- Law 1448/11: preamble, art. 3, art. 144, 145, 149, 181, 197; *Exposición de motivos*, pp 4, 5, 6, 8, 11, 24, 25, *Sentencia* C-052/12 (3.1), *Sentencia* C-250/12 (6), *Sentencia* C-253a/12 (4), *Sentencia* C-715/12 (6.2), *Sentencia* C-781/12 (4)
- Law 1719/14: preamble, arts 1-10, 14, 22, 24-28, 32 and 33 and *Exposición de motivos*.
- *Sentencia* C-936/10 (31 and viii)
- *Sentencia* SU-254/13 (5.3. and 6.6)
- Law 1592/12 does not make explicit allusion to the armed conflict. However, it uses the terms "*graves violaciones a los derechos humanos e infracciones graves al derecho*

internacional humanitario" (*Exposición de motivos*, p10) that show the interpretation of the violence in Colombia as an internal armed conflict.

- Law 1424/10 does not name the armed conflict (described as *conductas/hechos/ delitos de los demovilizados cometidos durante y con ocasión de su pertenencia al gaoml*, arts 1, 3, 5, 6). However, *Sentencia* C-771/11 does refer to an internal armed conflict (6.3.2).

It is evident that all the documents analyzed from the Santos administration are acknowledged as part of the transitional justice plan. Additionally, most of the documents (15/18) name the violence as an "internal armed conflict".

Data analysis: Critical Sub-questions Set No.2

In the following paragraphs I will answer my second set of critical sub questions. The original text of Law 975/05 defines a victim as "a person that (individually or collectively) has suffered harm such as injuries that cause physical, psychologial or sensory disabilities, emotional suffering, financial loss or human rights violations. Harm must be derived from crimes committed by organized illegal armed groups (*gaoml*). Partners, parents and progeny are also considered victims when the case deals with killing or forced dissapearance. The status of victim can be acquired regardless of whether the perpetrator is identified, put in jail or judged, and regardless of whether victims and perpetrators are relatives. Members of the military who have suffered harm by armed groups can be considered victims as well as their parents and progeny[22] (art. 5). *Sentencia* C-370/06 declared the exclusion of other family members that also could have

[22] This definition is similar to the one on the UN Resolution A/RES/60/147: "victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization". In: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement , last accessed: February 11th, 2015.

been affected by armed groups' crimes as inconstitutional (6.2.4.2.2- 6.2.4.2.16). The *Corte* establishes that all family members that have suffered a "real, concrete and specific harm" can be considered as victims and have rights to truth, justice and reparations (6.2.4.2.16).

Decree 1290/08 created a program for reparations that included certain crimes and was focused only on individual reparations. The decree explicitly excluded crimes against property and crimes committed by state agents (art. 2). This decree was only applicable to crimes committed before April 22, 2008.

Law 1448/11 from the Santos administration was issued to establish victims' rights. Art. 3 of this law defines victim as those people who individually or collectively have suffered harm for crimes occurred since January 1, 1985 as well as partners and progeny of victims of killings or dissapearences. The law defines the crimes as violations to human rights and international humanitarian law committed during the "internal armed conflict". Additionally, the law considers as victims those who have suffered damage when assisting a victim or preventing the intended harm. As mentioned previously, *sentencia* C-280/13 states that the legal definition of a victim of forced displacement is not limited to those crimes committed by guerrilla or paramilitary groups, but can be extended to other groups such as BACRIM[23] (4.3, *Cuarto cargo*). The *Unidad para la Atención y Reparación de Víctimas* also began including reparations for a group of victims of the Medellín Cartel (victims of a mid-air bomb explosion in an *Avianca* flight in 1989[24]), although other drug trafficking victims are not yet covered by those benefits.

Sentencia C-370/06 and Law 1592/12 added changes to Uribe's laws with regard to reparations. Law 975/05 had established that the only material goods for reparation purposes

[23] *Bandas criminals emergentes,* groups of recidivist demobilized ex combatants.
[24] See ELTIEMPO 2014, "Víctimas del narcotráfico piden ser reconocidas" In: http://www.eltiempo.com/politica/justicia/vctimas-del-narcotrfico-piden-ser-reconocidas/14898349 , November 27th and ELTIEMPO 2013, "No todas las víctimas de Escobar son objeto de reparación: Gobierno", In: http://www.eltiempo.com/archivo/documento/CMS-13126939 , October 16th.

were those goods illegally obtained. *Sentencia C-370/06* stated that goods for reparation included both legal and illicit goods owned by the ex-combatants. Law 1529/12 (arts. 11.5, 13.4, art. 18, art. 37; art. 44, art. 44.1, art. 46, art. 54) added that the demobilized ex-combatants must also to give information about goods they know belongs to the organization.

All of Uribe's laws classify perpetrators as organized illegal armed groups (in Spanish, *grupos armados organizados al margen de la ley, gaoml*). Law 975/05 (art. 1) defines *gaoml* as "guerrilla or paramilitary groups [as whole or part]". Expressions such as perpetrators or victimizers (*perpetradores* or *victimarios*) appear as synonyms in Decree 1290/08 (art. 2), as well as criminal organizations (*organizaciones criminales*) in Law 975/05's *Exposición de motivos* (p.2). Guerrilla groups that demobilized collectively, as well as drug lords, politicians and entrepreneurs who financially supported armed groups are excluded from the benefits and continue being prosecuted by ordinary justice. The law also excluded ex combatants from BACRIM (recidivist ex-combatants, in Spanish *Bandas Criminales Emergentes)*. The criminal strategy for prosecuting perpetrators in the Uribe administration was focused on a case-by-case basis.

As described earlier, the Santos administration issued a reform to Law 975/05 and changed the criminal strategy for prosecuting perpetrators. Moving away from a case-by-case basis, the new administration proposed a strategy focused on looking for macro-criminality patterns and prosecuting certain people based on selection and prioritization criteria. The constitutional reform contains this new prosecution strategy as well. Furthermore, Law 1719/14 created more specific sentences for sexual violence committed as part of the armed conflict. Drug traffickers, members of BACRIM, and individuals and organizations that have sponsored armed groups are explicitly excluded from the benefits of the transitional justice plan.

Additionally, the *Exposición de Motivos* of Law 975/05 as well as *sentencia* C-370/06 (4.3) emphasize their agreement with international standards of human rights. As indicated in the previous chapter, it is important to note that the Rome Statute was adopted in Colombia through Law 742/02. With regard to war crimes, the International Criminal Court has jurisdiction in Colombia for crimes against humanity committed from 2002 and war crimes committed from November 2009.

All documents analyzed from the Santos' administration are recognized as directly based on international human rights standards. *Sentencia C-370/06* lists all international human rights obligations that the Colombian government has committed to[25]. According to these laws, they do not oppose the international obligations the government has subscribed to with regard to guaranteeing human rights, provided that egregious crimes will always be prosecuted.

The following chapter will analyze the differences, contentions and exclusions between the two sets of legal documents. It also will examine the role of law production in the transitional justice program in Colombia.

[25] See footnote No.24, p. 53.

CHAPTER 5

CRITICAL LEGAL ANALYSIS

Chapter 4 summarized the structure, goals, and characteristics of each of the transitional justice legal documents I analyzed in this research. In this chapter I explain three main arguments resulting from my analysis. First, I aim to demonstrate that transitional justice in Colombia is an exclusionary project. Second, I will propose that transitional justice in Colombia is a contested project. Third, I will show the links between transitional justice and laws.

Transitional justice as an exclusionary project:

I argue that transitional justice in Colombia is an exclusionary project that applies to specific people (named as victims or perpetrators of the "internal armed conflict"), within a specific timeline (January, 1985 until June 2021), under specific requirements. According to Miller (2008), "ultimately, transitional justice is a definitional project, explaining who has been silenced by delineating who may now speak, describing past violence by deciding what and who will be punished and radically differentiating a new regime in relation to what actions were taken by its predecessor" (p.267). Declaring violence as an "internal armed conflict" gives relevance to only one specific source of violence, limiting the number of people acknowledged as victims. Thus, this limitation ignores the socioeconomic factors that originally caused the conflict in Colombia and that contribute to its persistence, such as unequal distribution of land, capitalism, inequality, drug trafficking and subordination to foreign powers.

Transitional justice as an exclusionary project is directly linked to the notion of internal armed conflict. It artificially divides the violence into two kinds: violence related and violence

unrelated to the internal armed conflict. Transitional justice aims to deal exclusively with violence linked with the internal armed conflict. It focuses on victims of specific crimes occurring from January 1, 1985. This dualism creates a narrative of war that obscures other sources of violence that determine the continuation of war. It also obscures the institutional and historical responsibility of the Colombian state in the conflict, specifically its lack of presence in certain rural areas, its unwillingness of conducting an integral agrarian reform and the active participation of certain members of the military in criminal activities of paramilitary groups. More importantly, it creates the false impression that violence in Colombia will find its end when peace agreements with guerrilla groups are signed. The situation is similar with the definition of violence as a "terrorist threat" from President Uribe administration. It does not acknowledge the socioeconomic causes of the war. Additionally, it neglects the preponderant role of the populations affected by the war and focuses on how to defeat the armed groups. "Colombian transitional justice" has evolved since its inception in 2005. The original objective of Colombian transitional justice, the demobilization of paramilitary groups, has been changed through the *sentencias* of the Constitutional Court, the change in administration and the negotiations with the FARC guerrilla. Currently, it includes new categories of perpetrators and a legal procedure for each, as well as a particular conception of victim and her/his specific rights, which are only guaranteed to those who fit that conception.

Thus, the definition of victim in transitional justice is exclusionary. Law 1448/11 defines a victim as a person who: a) Individually or collectively has suffered a real, concrete and specific harm as a consequence of a violation to international humanitarian laws or international human rights laws; or b) is a family member in cases of killing or disappearances, and has been affected

by the internal armed conflict[26]; or c) has suffered harm when assisting a direct victim or when preventing or attempting to prevent the intended harm. The law applies to crimes committed from January 1, 1985, and in the case of land dispossession from January 1, 1991. The law is in force until June 10, 2021. Additionally, certain victims of other armed groups have been included in the benefits of Law 1448/11. *Sentencia* C-230/13 included victims of forced displacement committed by BACRIM. The *Unidad para la Atención y Reparación de Víctimas* included a group of victims of the Medellín cartel[27].

The definition of victim in these laws excludes all crimes that are outside the international humanitarian law. It implies that other sources of victimization that do not directly relate to the "internal armed conflict" are outside the scope of transitional justice. Benefits from transitional justice are limited to reparations and do not create mechanisms for addressing poverty or inequality. As Ross (2010a, p.8) states, "Reconciliation without redistribution is more likely to engender conflict rather than resolve such situations". The definition of victim excludes those who have been harmed before 1985. According to the *Grupo de Memoria Histórica* (2013, p.32), the definition of victim excludes around 11,238 people who were victims of those crimes from 1958 to 1984. Additionally, as the *Instituto de Estudios sobre Conflicto y Acción Humanitaria* (IECAH) states, the definition also excludes several people who have been harmed but have not denounced the abuses. According to the IECAH (2015), Law 1448/11 establishes an assistance model "on demand" that requires from victims the presentation of their denunciation. The possibility of denounce is greatly complex in zones under the control of armed actors.

[26] In Spanish, *con ocasión y en desarrollo de un conflicto armado*.
[27] See ELTIEMPO 2014, "Víctimas del narcotráfico piden ser reconocidas" In: http://www.eltiempo.com/politica/justicia/vctimas-del-narcotrfico-piden-ser-reconocidas/14898349 , November 27th and ELTIEMPO 2013, "No todas las víctimas de Escobar son objeto de reparación: Gobierno", In: http://www.eltiempo.com/archivo/documento/CMS-13126939 , October 16th.

The definition of victim in the legal texts is contradictory. The notion of victim has been expanded in order to fulfill the international obligations regarding human rights. However, it still depends on arbitrary factors. The laws explicitly state that a person may acquire the status of victim regardless of whom the perpetrators are (arts. 3, 60 and 74 of Law 1448/11; art. 5 of Law 975/05). However, the status of victim in Colombia ultimately depends on the identity of the perpetrators. Designating an individual as a victim depends on the individual decision of the state official who receive the denunciation. The state official has to make sure that the crimes were committed "within the context of the internal armed conflict", that is, by one of the "illegal organized armed groups" (*gaoml).* The laws make clear that those who were not victims of crimes committed by *gaoml,* are not able to benefit from reparations because the violence they suffered is not directly linked with the "internal armed conflict" (art. 3, num. 3 Law 1448/11). Thus, a crime only can be classified as "within the internal armed conflict" based on the identity of the perpetrator.

The inclusion of certain victims of the Medellín cartel in the benefits from Law 1448/11[28] raises questions about the crimes drug traffickers committed: if certain victims of drug trafficking activities can benefit from Law 1448/11, does this open the possibility of defining drug traffickers as "illegal organized armed groups" and allowing their prosecution under transitional justice laws, with all benefits implied?

Finally, the laws also explicitly determine when the condition of victim ceases. Law 1448/11 (art. 67) states that the condition of vulnerability for victims will cease once their rights are recovered. The government is in charge of deciding the criteria by which a person is no longer considered to be vulnerable (art. 67 parr 1). According to that law, the condition of vulnerability

[28] According to the *Unidad para la Atención y Reparación de Víctimas* (2015), only those who were victims of crimes perpetrated by drug trafficking organization motivated by "political rationales" are considered "victims of the internal armed conflict" and benefit from Law 1448/11.

for victims is assessed every two years through the "Assistance and Integral Reparation Route" process (*Unidad para la Atención y Reparación de Víctimas,* 2012*).* This assessment process, however, brings into question how the assessment criteria are determined, especially in a context of high levels of poverty and inequality that contribute to the continuation of violence.

Transitional justice as a contested project

Colombian transitional justice is not homogeneous. In Colombia, several political agendas are in contention. The analysis I made of the laws and the legislative procedure reveals the contention among several political agendas. The laws show oppositions between administrations and their interpretations of violence. They also show oppositions among the Colombian authorities and the international community, particularly the International Criminal Court, related to how to prosecute war criminals.

During the time frame of my analysis (2005-2014), transitional justice had different interpretations. The term *transitional justice* is explicitly mentioned in all the documents of the Santos set, and it is defined in several of them[29]. The Colombian definition paraphrases the definition provided by the United Nations. Conversely, there is no explicit mention of transitional justice in any bills passed during Uribe's presidency, neither in Law 975/05 nor in Decree 1290/08. However, the Constitutional Court's *sentencia C-370/06* includes Law 975/05 as a transitional justice law. I argue that this contradiction reveals contestations between the executive branch (President Uribe) and the judicial branch (Constitutional Court) about how to interpret violence. From 2005 to the present, the Constitutional Court has modified transitional justice laws in order to accommodate them to the International Criminal Court requirements. Certain bills, such as Law 1312/09 and Law 975/05, passed without the minimum conditions to

[29] Law 1448/11 (art. 8), *Sentencia* C-052/12 (3.1), C-250/12 (6); *Sentencia* C-253A/12 (p52); *Sentencia* C-579/13, (6.1.2) and *Sentencia* C-771/11 (4), and *Acto Legislativo* (*Exposición de motivos*, p2).

guarantee rights for victims, whereupon the Court intervened by modifying or excluding those laws. The original definition of *victim* from Law 975/05 excluded victims of state officials, as well as those harmed by other illegal armed groups such as BACRIM and drug traffickers. The Court included specific mechanisms in the law for guaranteeing the rights to truth, justice and reparations for victims. President Santos also adopted the notion of "internal armed conflict" and set up negotiations for a peace agreement with the FARC guerrilla, which is opposed by ex-President Uribe, who considers this project to be a pathway for impunity. The International Criminal Court strongly opposes suspended sentences for war criminals. However, the Santos administration continues to negotiate demobilization with FARC while still being unclear about its position related to suspended sentences and alternative punishments.

President Uribe and President Santos respond to different –and contested—political agendas. I argue that this process reveals a permanent contradiction between the Congress, the President, the Constitutional Court and the International Criminal Court, as well as between political parties and political leaders, and it also fosters an environment of legal instability for perpetrators, victims and Colombians in general. Throughout the documents I analyzed, I found mainly two opposing prosecution strategies: one applied from 2005 to 2012, and other from 2012 to the present. The former prosecution strategy was structured on a case-by-case basis, which ex-combatants that committed mass atrocities received a sentence of 5-8 years in prison (Law 975/05). That strategy was extended to low-ranking ex-combatants (non-war criminals) through Law 1424/10. In July 2010 only one ex-combatant had been sentenced[30] from the 4,346

[30] *Sentencia* available in: http://www.fiscalia.gov.co/jyp/wp-content/uploads/2012/10/Sentencia-Edwar-Cobos-Téllez-y-Uber-Enrique-Banquéz-Mart%C3%ADnez-2010.pdf , last accessed: February 2nd 2015)

postulated ex-combatants[31]. In 2012, Santos issued Law 1592/12 in order to create a criminal strategy more focused on seeking macro-criminal patterns. This new criminal strategy was inserted in the national Constitution through the *Acto legislativo #1/12,* and this insertion allowed suspended sentences and alternative punishments for war criminals who confessed and who surrendered any goods acquired, either legally or illicitly.

In 2014 the International Criminal Court, ICC prosecutor, Fatou Bensouda, expressed her strong disagreement to suspended sentences[32]. She emphasized that if Colombia does not fulfill ICC standards of justice, which include prison sentences for war criminals, the court will initiate prosecutions in Colombia. Currently, Colombia is on "preliminary examination" status from June 2004 until present[33]. It means that, before intervention, the Office of the Prosecutor analyzes the situation and collects information. On December 2, 2014 the Prosecution Office of the ICC released their annual Report on Preliminary Examination Activities (ICC-OTP, 2014). The report emphasized the incompatibility between suspended sentences for war criminals and the obligations derived from the Rome Statute. It also warned the Colombian government about the possibility for the intervention of that court, if the Colombian state would not prosecute war criminals in accordance with ICC regulations.

Conversely, the negotiations with FARC have taken place under the possibility of alternative punishments. The leader of the negotiation team, Humberto De la Calle, requested the

---

[31] High Commissioner for Peace of Colombia 2010, quoted in: Valencia, German and Mejia, Carlos, "Ley de Justicia y Paz, un balance de su primer lustro", Perfil de Coyuntura Económica No. 15, agosto 2010, Universidad de Antioquia, p 67, http://www.scielo.org.co/pdf/pece/n15/n15a3.pdf , last accessed: February 2nd 2015.

[32] *Suspended sentences* are the exemptions of war criminals for imprisonment if they participate in the peace agreements and fulfill certain conditions.

[33] Fatou Bensouda visited the School of Law at University of Georgia as the keynote in the conference "Children & International Criminal Justice" on October 28, 2014. There, I had the opportunity to inquire about her position on the current transitional justice process in Colombia. Bensouda emphasized in her disagreement with the possibility the *Acto Legislativo#.1/12* opened for suspended sentences. She stated that she personally talked with President Santos in 2014 and made clear that the ICC does not accept suspended sentences for war criminals, as it would violate obligations derived from the Rome Statute.

ICC to be flexible with the Colombian process[34]. Also, the Colombian prosecutor Eduardo Montealegre advocates for suspended sentences and alternative punishments if FARC signs a peace agreement[35]. In the same fashion, in February 2015 President Santos expressed the possibility of amnesties to "more than 13.000" civilians involved in supporting armed groups, if they contribute to national reconciliation[36]. All the process described above suggests contentions among state officials, as well as between them and international authorities.

Law instead of justice? The illusion of post-conflict in Colombia

The term "post-conflict" is also mentioned throughout the legal texts of the Santos administration, although they do not offer a specific definition. *Exposición de motivos* of Law 1448/11 (num. III) states that demobilization is one of many indicators of post-conflict. However, those indicators are never explicitly listed or defined in the laws. I argue that it raises the question about whether the laws are, and will be, indicators of post-conflict in Colombia.

After analyzing the documents within the context of the narrative of the war in Colombia (chapter 3) and the theoretical framework of critical human rights and critical legal studies (chapter 2), it is important to note the relevance of laws and regulations in the Colombian transitional justice project. Throughout the documents I observed debates between the Executive branch, the Congress and the Constitutional Court, as well as with the International Criminal Court. These debates triggered a process of analysis and revision of laws, and subsequently a process of massive legal production. It reveals the preponderance that the Colombian state –and the international community—gives to laws and regulations as powerful problem solving

[34] See, http://www.lafm.com.co/noticias/humberto-de-la-calle-pide-la-c-171969 , November 14th, 2014. Last accessed, February 20th, 2015.
[35]See, http://www.eltiempo.com/politica/proceso-de-paz/proceso-de-paz-fiscal-propone-penas-alternativas/14630278 , October 2nd, 2014. Last accessed, February 20th, 2015.
[36] Public declaration, February 18, 2015; see http://www.elespectador.com/noticias/politica/mas-de-13-mil-procesos-contra-no-combatientes-articulo-544976 , last accessed: February 19th, 2015.

indicators. Bensouda points this out when she states the following: "My belief in the power of the law to serve as a potent tool to stop and prevent violence and to pacify communities gripped by conflict remains unshaken. Strengthening our investigative and prosecutorial activities and capabilities, as well as our cooperation networks and devising meticulous and transparent strategic plans and policies are crucial to these efforts." (Bensouda, 2015[37])

I argue that transitional justice laws in Colombia are means to create the impression that the state is capable and willing to fulfill international obligations on human rights. The humanitarian crisis declared in 2004 in Colombia due to the millions of forced displaced people prompted the need for action. Thus, the government focused on creating a legal framework of what is called "transitional justice" in order to contain the crisis. The international community – particularly the United Nations[38], the International Criminal Court[39] and the World Bank[40]—sees transitional justice laws in Colombia as effective state actions to deal with violence in the country. Laws help to create the impression of passing from a "conflict" to a "post-conflict" stage. The rule of law has the power to determine when the conflict comes to an end, who is considered as a victim and a perpetrator and who will benefit from transitional justice. It is important to ask for further analysis if the idea of post-conflict is obscuring the persistence of the conditions that caused the armed conflict in the first place in Colombia. As Ross (2010a, 7) states, "transitional justice mechanisms need to be interrogated on a regular basis, especially when they replace rather than accompany other neo-conflict reconstruction projects"

---

[37] Bensouda, Fatou 2015. Is the International Community Abandoning the Fight Against Impunity?, In: ICTJ, https://www.ictj.org/debate/article/our-resolve-create-more-just-world-must-remain-firm#.VP7_bR2N2jM.twitter

[38] See for example, http://www.semana.com/nacion/articulo/el-aplauso-al-proceso-de-paz-de-naciones-unidas/416234-3 , January 26th, 2015. Last accessed, February 20th, 2015.

[39] See the ICC interim report of 2014, http://www.icc-cpi.int/NR/rdonlyres/3D3055BD-16E2-4C83-BA85-35BCFD2A7922/285202/OTP2012035032COLResumenEjecutivodelReporteIntermed.PDF , points 204-207. Last accessed, February 20th, 2015.

[40] See for example, http://www.elespectador.com/noticias/nacional/banco-mundial-establecio-fondo-multidonante-el-posconfl-articulo-544600, February 17th, 2015. Last accessed, February 20th, 2015.

CHAPTER 6

CONCLUSIONS

In this thesis I aimed to understand when and why the Colombian government engaged with "transitional justice" in its legal system, what "transitional justice" means in the laws, and finally what social actors were represented in the laws. This thesis examines transitional justice legal documents in Colombia created from 2005 to 2014. I used qualitative analysis to read and interpret twenty-six legal documents.

Three main arguments resulted from this analysis. First, transitional justice in Colombia is an exclusionary project. Second, transitional justice in Colombia is a contested project. And third, transitional justice in Colombia is based on massive laws production, perhaps instead of other mechanisms that could address the violence. This analysis has been informed by critical human rights literature, critical legal studies literature and literatures on the Colombian armed conflict.

I propose that transitional justice is an exclusionary project, as it uses categories such as "internal armed conflict", "terrorism", "victim" and "perpetrator" that only applies to a limited amount of people, under specific conditions, at specific times. Violence represented in the transitional justice project only include the category of "heinous crimes" under the terms of the Rome Statute, but ignore other sources of violence, including the violence derived from socioeconomic factors such as unequal distribution of land, capitalism, poverty or inequality. Additionally, it focuses on reparations, and excludes all other socioeconomic measures for achieving social justice. This particular narrative has specific consequences: it obscures the state

responsibility in violence and, most importantly, it creates the impression that the Colombian government is able and willing to fulfill its international responsibility to address human rights. The current definition of victim (Law 1448/11) is an example of this limited subjectivity created by the law. The definition establishes specific conditions for receiving transitional justice benefits and excludes persons harmed who do not fulfill those requirements.

I argue that transitional justice in Colombia is a contested project. In practice, it differs from the homogeneous ideal the United Nations prescribed. Several agendas (the President, the Constitutional Court, the International Criminal Court, guerrilla groups, paramilitary groups, political parties and victims) are in contention, which make the process volatile, uncertain and dependent upon changes that every administration, the Congress and the Constitutional Court decides to make. The notion, implications, and consequences of transitional justice from 2005 were not the same as in 2014 and are prone to be modified after signing the peace agreement with FARC.

Finally, I argue that transitional justice in Colombia mostly emphasizes law production. Through the documents analyzed, I observed continuous tension between the President, the Congress and the Constitutional Court that triggered changes in existing laws or the creation of new laws. As stated in Chapter 4, the International Criminal Court Prosecutor reiterated her strong belief in "the power of the rule of law to serve as potent tool to stop and prevent violence and to pacify communities gripped by conflict" (Bensouda 2015). This reveals the lead role of laws and regulations as relevant "problem solver" indicators in transitional justice contexts.

This research contributes to critical human rights and critical legal geography literature concerning violence, power and social justice. It analyzes how a standardized set of mechanisms to address a legacy of human rights abuses, deliberately acknowledge certain sources of violence

and exclude others. Particularly, how those mechanisms exclude those sources of violence that caused the violence in the first place in Colombia. This research raises several questions for further analysis, especially in the context of an eventual signing of a peace agreement in the near future between the FARC and the State. First, the idea of post-conflict is mentioned throughout President Santos legal texts, but it has become specifically relevant in the media as the peace talks with FARC advance. Applying Ross' (2010a, p.1) analysis about the 'post' in 'post-conflict' to the Colombian case, one could ask: What will count as "post-conflict" in Colombia? How does the ability to determine the 'post' will influence future power-relations within the country? Most importantly, how does this determination affect the material interests of the population impacted by the conflict and its associated violence? Will Colombians incur higher or lower levels of inequality with regard to wealth and land distribution once they enter into the "post-conflict" stage?

Second, the peace talks negotiators have reiterated the need of establish a Truth Commission after signing a peace agreement. Will the future Truth Commission's narrative include multiple representations of violence, including those that link current violence with historical socioeconomic causes and consequences? How will future narratives of the Truth Commission be acknowledged and represented in the laws?

Another question for further analysis relates to how Colombian transitional justice impacts the Latin American region. The notion of "internal armed conflict" automatically binds state action to the territorial limits of the country, and ignore the implications that war in Colombia have in other countries. As Ross and Sriram (2012) state, "the transitional justice mechanisms that respond to past atrocities have generally been undertaken in national or international institutions and focus primarily on offenses within a single state and primarily by

national actors of that state. Despite the proliferation of transitional justice mechanisms, they have generally not been designed or utilized to address transboundary or regionalized abuses. The result has been significant inconsistencies in practice, with some crimes addressed and others ignored, creating zones of impunity" (p.3). Thus, further analysis is required to understand the impact of the conflict in the region.

This thesis has demonstrated that Colombian transitional justice is exclusionary and it is linked to a deliberate limited narrative of laws related to violence in Colombia. How will a limited understanding of violence affect people? Will the "post-conflict" project in Colombia prevent the possibilities of renewed violence?

As the Colombian *Grupo de Memoria Histórica* (2013) states, "Colombia is just starting to clarify the dimensions of its own tragedy". In that regard, it is important to ask for further analysis as to what kind of justice can be achieved through transitional justice; who are the beneficiaries of transitional justice and who becomes ignored and excluded.

REFERENCES

- Academic Sources

Atienza, M. (1997). *Contribución a una teoría de la legislación*. Madrid, España: Civitas.

Baracaldo, D. (2015). ¿Cuáles son las zonas 'rojas' por violencia en Colombia? Retrieved from: KIENYKE 2015, http://www.kienyke.com/politica/las-zonas-de-mas-violencia-en-colombia/

Barkan, J. (2013). *Corporate Sovereignty: law and government under capitalism*. Minneapolis, MN: University of Minnesota Press.

Behar, O. (1985). *Las guerras de la paz*. Bogotá, Colombia: Planeta.

Bell, C. (2009), The 'New Law' of Transitional justice, In Ambos, K., Large, J., & Wiarda, M., (Eds.), *Building a future on Peace and Justice: Studies on Transitional Justice, Peace and Development* (pp.105-126), Berlin, Germany: Springer-Verlag.

Bell, C.,& O'Rourke, C., (2007). Does Feminism Need a Theory of Transitional Justice? An Introductory Essay. *The International Journal of Transitional Justice*, 1 (1): 23-44. doi: 10.1093/ijtj/ijm002

Bensouda, F., (2015, February 9). Is the International Community Abandoning the Fight Against Impunity?, Retrieved from: https://www.ictj.org/debate/article/our-resolve-create-more-just-world-must-remain-firm#.VP7_bR2N2jM.twitter

Berry, A., (2002, April 22). Has Colombia finally found an agrarian reform that works? Prepared for the conference: Equalitarian Development in the Era of Globalization, University of Massachusetts, Amherst, April 22-24. Retrieved from: http://www.peri.umass.edu/fileadmin/assets/pdfs/Berry-AGREF_1_.10.pdf

Bickford, L., (2004). Transitional Justice. In Shelton D., (Ed.), *Encyclopedia of Genocide and Crimes Against Humanity* Vol 3, (p1045).

Blomley, N., (1994). *Law, Space and the Geographies of Power*, New York City, NY: The Guilford Press.

Brudholm, T. (2008). Resentment's Virtue: Jean Amery and the Refusal to Forgive. Philadelphia, PA: Temple University Press.

Carothers, T., (2002). The End of the Transition Paradigm. *Journal of Democracy* 13:1 (pp.5-21). Retrieved from: http://www.journalofdemocracy.org/articles-files/gratis/Carothers-13-1.pdf

Chang, H., & Segura, M., (2012). Editorial Note: When transitional justice is not enough. *The International Journal of Transitional Justice*, 6 (2): 175-181. doi: 10.1093/ijtj/ijs015

Comisión Nacional de Reparación y Reconciliación (2007). Disidentes, rearmados y emergentes: ¿bandas criminales o tercera generación paramilitar? Retrieved from: http://www.cnrr.org.co/

Das, V., Kleiman, A., Lock, M., Ramphele, M., & Reybolds, P., (Eds.).(2001). *Remaking a World: Violence, Social Suffering, and Recovery*, Berkeley CA: University of California Press.

De Greiff, P., & Duthie, R., (Eds.).(2009) Transitional Justice and Development: Making Connections, New York City, NY: Social Science Research Council.

Dávila, A. (1999), *Las violencias, inclusión reciente*, Bogotá, Colombia: Universidad Nacional de Colombia.

De Zubiría, S. (2015), Dimensiones políticas y culturales en el conflicto colombiano. In Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Delaney, D. (2010), *The Spatial, the Legal and the Pragmatics of World-Making. Nomospheric Investigations*, New York City, NY: Routledge.

Díaz, C. (2008). Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia, In: McEvoy, K & McGregor (eds.). *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*. Portland, OR: Hart Publishing.

Duncan, G. (2015), Exclusión, insurrección y crimen. In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Duthie, R., (Ed.). (2012). *Transitional Justice and Displacement.* New York City, NY: Social Science Research Council.

Douzinas, C., (2000). *The end of human rights: critical legal thought at the turn of the century.* Portland, OR: Hart Publishing.

Duggan, C., (2010), Editorial note. *The International Journal of Transitional Justice*, 4 (3): 315-328. doi: 10.1093/ijtj/ijq023

El Espectador Newspaper (2015, February 18). Más de 13 mil procesos contra 'no combatientes'. Redaccion Politica. http://www.elespectador.com/noticias/politica/mas-de-13-mil-procesos-contra-no-combatientes-articulo-544976

--- (2015, February 17th). Banco Mundial estableció fondo multidonante para el posconflicto en Colombia. Redaccion Nacional. http://www.elespectador.com/noticias/nacional/banco-mundial-establecio-fondo-multidonante-el-posconfl-articulo-544600

El Tiempo Newspaper (2013, n.d.). Los años más violentos en Colombia. In: Multimedia/Cifras de Violencia. http://www.eltiempo.com/Multimedia/infografia/cifrasdeviolencia/

--- (2013, October 16). No todas las victimas de Escobar son objeto de reparacion. Redaccion Judicial. http://www.eltiempo.com/archivo/documento/CMS-13126939

--- (2014, June 24). Defensoría advierte sobre 513 nuevos desplazados en Alto Baudó, Chocó. Redacción Justicia. http://www.eltiempo.com/politica/justicia/defensoria-advierte-sobre-513-nuevos-desplazados-en-alto-baudo-choco/14163320

--- (2014, November 27). Víctimas del narcotráfico piden ser reconocidas. Redaccion Eltiempo. http://www.eltiempo.com/politica/justicia/vctimas-del-narcotrfico-piden-ser-reconocidas/14898349

--- (2014, October 2), Fiscal propone penas alternativas. Redaccion Politica. http://www.eltiempo.com/politica/proceso-de-paz/proceso-de-paz-fiscal-propone-penas-alternativas/14630278

Engstrom, P. (2011). Transitional Justice and Ongoing Conflict. Social Sciences Research Network. Retrieved from: http://ssrn.com/abstract=2004313

Estrada, J. (2015) Acumulación capitalista, dominación de clase y subversión. Elementos para una interpretación histórica del conflicto social y armado. In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

European Comission (2008). *DG MARKT Guide to Evaluating Legislation*. Brussels, Directorate-General for Internal Market and Services, Unit B2: Impact Assessment, Evaluation and Economic Analysis. Retrieved from: http://ec.europa.eu/dgs/internal_market/docs/evaluation/evaluation_guide.pdf

Fairclough, N. (1989). *Language and Power*. London, UK: Longman.

Fajardo, D. (2015) ""Estudio sobre los orígenes del conflicto social armado, razones de su persistencia y sus efectos más profundos en la sociedad colombiana", In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Fiscalia General de la Nacion (2010). Sentencias ley de Justicia y Paz. Retrieved from: http://www.fiscalia.gov.co/jyp/direccion-de-fiscalia-nacional-especializada-de-justicia-transicional/ley_justicia_y_paz/

Fisk, C., & Gordon, R., (2011), Foreword: 'Law As…': Theory and method in Legal History", UCI Law Review, Vol. 1, No. 3, 2011; UC Irvine School of Law Research Paper No. 2012-51. Retrieved from: http://ssrn.com/abstract=2066039 or http://dx.doi.org/10.2139/ssrn.2066039

Figari, R. (2010), *The Role of Transitional Justice in the Midst of Ongoing Armed Conflicts: the case of Colombia*. Postdam, Germany: Universitätsverlag Potsdam.

Frankzi, H., and Olarte, M.(2014) Understanding the Political Economy of Transitional Justice: A Critical Theory Perspective, In: Buckley-Zistel, S., (Ed.), *Transitional Justice Theories* (pp.201-221). New York City, NY: Routledge.

Fuentes, E., Suárez, B., & Rincón, A., (2013). Facticidad y Constitución: la doctrina del Estado de Cosas Inconstitucional en América Latina. *Athenas, Revista de Direito, Política e Filosofia,* Faculdade de Direito de Conselheiro Lafaiete, Ano I Volume 2, pp. 49-75, Conselheiro Lafaiete MG, Brazil.

Gamboa, C. (Ed.).(2006), *Justicia Transicional: teoría y praxis*. Bogotá, Colombia: Universidad del Rosario,

Gee, J.P. (2011). *An Introduction to Discourse Analysis: Theory and Method,* (3rd ed.), New York City, NY: Routledge.

Giraldo SJ, J. (2015). Aportes sobre el origen del conflicto armado en Colombia, su persistencia y sus impactos, In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Giraldo, J. (2015). Política y guerra sin compasión. In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Gómez, J., Herrera, J. & Pinilla, N. (2010), *Informe Final: Comisión de la Verdad sobre los hechos del Palacio de Justicia*, Bogotá, Colombia: Universidad del Rosario.

Gómez, S. (2012). *El Desplazamiento Forzado en Colombia: Cinturones de miseria, hábitat, calidad de vida, Despojo de tierras y eficacia de las ayudas*. Madrid, España: Editorial Académica Española.

Gordon, R. (1984), Critical Legal Histories. Faculty Scholarship Series. Paper 1368. Retrieved from: http://digitalcommons.law.yale.edu/fss_papers/1368

---(1988), "Law and Ideology" Tikkun 14, Vol.3, No.1. Online Version: http://www.kathrynpieplow.pwrfaculty.org/wp-content/uploads/2011/01/Gordon-Crits.pdf

Greer, E. (1982). Antonio Gramsci and 'Legal Hegemony'. In Kairys D. (Ed.) *The Politics of Law: a progressive critique* 304. New York NY: Basic Books.

Grupo de Memoria Histórica (2013). Informe Basta Ya, Bogotá, Colombia: Centro Nacional de Memoria Histórica.

Gutiérrez, F. (2006). *Nuestra guerra sin nombre: transformaciones del conflicto en Colombia*. Bogotá, Colombia: IEPRI-Norma.

---(2015). ¿Una historia simple? In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Human Rights Watch (2013) *The risk of returning home*. Human Rights Watch, United States of America.

Hutchinson, A. & Monahan, P. J. (1984), Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Though. In *Stanford Law Review*, Vol. 36, No. 1/2, Critical Legal Studies Symposium, (pp. 199-245). http://www.jstor.org.proxy-remote.galib.uga.edu/stable/1228683?seq=1#page_scan_tab_contents

ICC-OTP (2014), *Report on Preliminary Examination Activities*. Retrieved from: http://www.icc-cpi.int/iccdocs/otp/OTP-Pre-Exam-2014.pdf.

Ignatius, S. (2011), "Transitional Justice beyond the normative: Towards a Literary Theory of Political Transitions", The International Journal of Transitional Justice, Vol. 5, pp.177–197

Instituto de Estudios sobre Conflictos y Accion humanitaria (2015), *La dimensión humanitaria tras los acuerdos de paz: propuestas para la comunidad internacional en Colombia*. Retrieved from: http://www.iecah.org/web/images/stories/publicaciones/informes/Informe_Final_IECAH.pdf

Internal Displacing Monitoring Center (2010), *Un nuevo impulso a la devolución de tierras: hacia la restitución de la propiedad de la población desplazada en Colombia*, Ginebra, Suiza: Consejo Noruego para los Refugiados.

International Center for Transitional Justice (2009), "Qué es la Justicia Transicional?". Retrieved from: http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-Spanish.pdf

International Journal for Transitional Justice (2013), Editorial Note, *The International Journal of Transitional Justice*, 7 (1): 1-7. doi: 10.1093/ijtj/ijs039

Jones, B., Bernath, J., and Rubli, S. (2013). Reflections on a Research Agenda for Exploring Resistance to Transitional Justice. Swiss Peace Foundation, Swisspeace Publications. Retrieved from: http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/WP_3_2013.pdf

Kelman, M., (1984). Trashing, *Stanford Law Review* Vol. 36.

Kelsen, H., (1982 [1960]) *Teoría pura del derecho: introducción a la ciencia del derecho*, Spanish translation: Roberto Vernengo. Segunda edición, México D.F, Mexico: UMAN.

Kennedy, D., (1979), The structure of Blackstone's commentaries, *Buffalo Law Review*, Vol 28. Retrieved from: http://duncankennedy.net/documents/Photo%20articles/The%20Structure%20of%20Blackstones%20Commentaries.pdf

Kritz, N., (Ed.).(1995), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vol. II: Country Studies. Washington D.C., United States Institute of Peace Press.

LaFM News (2014, November 14). Humberto De la Calle pide a la CPI flexibilidad en los diálogos de La Habana. Retrieved from: , http://www.lafm.com.co/noticias/humberto-de-la-calle-pide-la-c-171969

Leal, F. (2006). La política de seguridad democrática: 2002-2005. In *Revista Análisis Político*, Bogotá, Colombia: IEPRI.

Leebaw, B.A. (2008). The Irreconcilable Goals of Transitional Justice. In *Human Rights Quarterly*, 30 (1), 95-118. 10.1353/hrq.2008.0014

Leiva, L. (1999) *Fundamentos de técnica legislativa*. Bs.,As., Argentina: La Ley.

Lyons, A. (2010), For a Just Transition in Colombia, In: Lyons, Amanda and Reed, Michael (Eds.). (2010). *Contested transitions: dilemmas of transitional justice in Colombia and comparative experience*. Bogotá, Colombia: International Center for Transitional Justice.

Martino, A. (2001), *Manual de Técnica Legislativa-Proyecto Digesto Jurídico Argentino*, Bs. As., Argentina: Colegio Público de Abogados de la Capital Federal.

Matsuda, M. (1987), Looking to the Bottom: Critical Legal Studies and Reparations. In *22 Harvard Civil Rights-Civil Liberties Law Review* 323-399 Retrieved from: http://heinonline.org/HOL/LandingPage?handle=hein.journals/hcrcl22&div=&id=329&page

Maxwell, J. (2012). *Qualitative Research Design: An Interactive Approach*. London, England: SAGE.

Mesa de Conversaciones (2012), Acuerdo General para la terminacion del conflicto y la construccion de una paz estable y duradera. Retrieved from: https://www.mesadeconversaciones.com.co/sites/default/files/AcuerdoGeneralTerminacionConflicto.pdf

--- (2015), "Comunicado conjunto #52", La Habana, Cuba, March 7th. Retrieved from: https://www.mesadeconversaciones.com.co/comunicados/comunicado-conjunto-52-la-habana-7-de-marzo-de-2015

Miller, Z. (2008), Effects of Invisibility: In Search of the 'Economic' in Transitional Justice. In: *The International Journal of Transitional Justice*, 2 (3): 266-291. doi: 10.1093/ijtj/ijn022

Molano, A. (2015). Fragmentos de la historia del conflicto armado (1920-2010). In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Moncayo, V. (2015). Hacia la verdad del conflicto: insurgencia guerrillera y orden social vigente. In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Nagy, R. (2008). Transitional Justice as Global Project: critical reflections. In: Third World Quaterly, Vol 29, No.2, pp 275-289. doi: 10.1080/01436590701806848

Nino, C., (1989). *Consideraciones sobre la dogmática jurídica*. México D.F, Mexico: UNAM.

Obel, T., (2011). Transitional Justice: Toward a differentiated theory. Oregon Review of International Law, Vol 13,1: 1-45. Retrieved from: http://conflict.uoregon.edu/org/oril/docs/13-1/Hansen.pdf

OECD (1997). Checklist on Law Drafting and Regulatory Management in Central and Eastern Europe", SIGMA Papers, No. 15, OECD Publishing. Retrieved from: http://dx.doi.org/10.1787/5kml6g2zl0bw-en

--- (2012), Evaluating Laws and Regulations: The Case of the Chilean Chamber of Deputies, OECD Publishing. Retrieved from: http://dx.doi.org/10.1787/9789264176263-en

Ojara, P (2012). Deconstruction and Demonization: The Role of Language in Transitional Justice, In: Okello, M.C., Dolan C., Whande, U., Mncwabe, N., Onegi, L, and S.Oola (eds.). *Where the Law Meets Reality: Forging African Transitional Justice*. Cape Town, Dakar, Nairobi and Oxford: Pambazuka Press.

Orjuela, A., & Lozano, C., (2012). La indeterminación del campo de la justicia transicional en Colombia. In *Revista Estudios Socio-Jurídicos*, 2012, 14, (1),pp. 255-281.

Orozco, I., (2002). La posguerra colombiana: divagaciones sobre la venganza, la justicia y la reconciliación. In *Análisis Político* No.46, mayo-agosto.

Padskocimaite, K.,& Ausra R. (2012). *The Right Toolkit: Applying Research Methods in the Service of Human Rights*. University of California: Human Rights Center, Berkeley School of Law.

Palacio, M. (1995). *Entre la legitimidad y la violencia: Colombia 1875-1994*, Bogotá, Norma.

Patel, A., De Greiff, P. & Waldorf, L (Eds.). (2010) *Disarming the Past: Transitional Justice and Ex-Combatants*, New York, NY: Social Science Research Council.

Pécaut, D. (2015). Una conflicto armado al servicio del statu quo social y político. In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Pizarro, E., (1991), Los orígenes del movimiento armado comunista en Colombia. En: *Revista Análisis Político* No. 07, Bogotá, Colombia: IEPRI.

--- (2009), Reparando el bote en altamar. En: Pizarro, E., & Valencia, L., (2009) *Ley de Justicia y Paz*. Bogotá, Colombia: Colección Cara y Sello, Norma.

--- (2011), *Las Farc (1949-2011): De guerrilla campesina a máquina de guerra*. Bogotá, Colombia: Norma.

--- (2015), Una lectura múltiple y pluralista de la historia. In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Politica de Defensa y Seguridad Democratica (2003), Retrieved from: http://www.oas.org/csh/spanish/documentos/Colombia.pdf

Popa, N. (2012), The Opportunity Principle in the Criminal Proceedings and the Penal Action. In *Social Sciences Research Network*. Retrieved from: http://ssrn.com/abstract=2196779

Programa de las Naciones Unidas para el Desarrollo (2003), Conflicto, callejón con salida. *Informe Nacional de Desarrollo Humano Colombia*, Bogotá, Colombia: PNUD

--- (2011), Desplazamiento forzado, tierras y territorios: Agendas pendientes: la estabilización socioeconómica y la reparación. Bogotá, Colombia: PNUD.

Ramírez S. & Restrepo, Luis A. (1991), *Actores en conflicto por la paz*. Bogotá, Colombia: Siglo XXI editores.

Richmond, O. (2011), *A Post-Liberal Peace*. New York, NY: Routledge.

Rincón, A., & Freire-Kane, A. (2012), Lost in transition: the legal pathway for demobilization in Colombia. In *Revista Análisis Internacional* No.5, Facultad de Ciencias Sociales, Universidad Jorge Tadeo Lozano, pp. 177-195. Bogota, Colombia: Universidad Jorge Tadeo Lozano.

Rincón, A. (2011) Teoría de la paz democrática: entre la Paz perpetua y el Fundamentalismo liberal. In *Serie de Documentos para la Paz, Observatorio de Construcción de Paz*, pp. 55-74, Bogota, Colombia: Universidad Jorge Tadeo Lozano.

--- (2011) Del cese al fuego a la paz sostenible: desafíos contemporáneos de la Justicia Transicional, In Revista Análisis Internacional, Facultad de Ciencias Sociales, Universidad Jorge Tadeo Lozano, pp. 129-146. Bogota, Colombia: Universidad Jorge Tadeo Lozano.

--- (2009a) Creating reconciliation scenarios: challenges to the Law of Justice and Peace, In *Magazine Defense and Security Studies, Center of Strategic Studies on National Security and Defense, CEESEDEN*. Eighth Edition 4(2), pp. 25-28. Bogota, Colombia: War School.

--- (2009b), Posibilidades de reconciliación nacional a través de la Ley de Justicia y Paz (Possibilities of Reconciliation Derived From the Justice and Peace Law), B.Laws Thesis, under the direction of Dr. Danny Marrero and Mr. Carlos Gómez. Bogota, Colombia: Universidad Jorge Tadeo Lozano.

Rodríguez, C. (2009). *Más allá del desplazamiento: políticas, derechos y superación del desplazamiento forzado en Colombia*, Bogotá, Colombia: CIJUS Universidad de los Andes.

Ross, A., and Sriram, C. (2013). Critical Approaches to Human Rights, In: *Social Science Research Council*.
http://www.ssrc.org/fellowships/subcompetitions/dpdf-fellowship/7A830765-EF37-E211-8EAC-001CC477EC84/FC8B1C1A-F137-E211-8EAC-001CC477EC84/

Ross, A., and Sriram, C.L. (2013). Closing Impunity Gaps: Regional transitional justice processes?. In *Transitional Justice Review*: Vol. 1: Iss. 1, Article 8. doi: http://dx.doi.org/10.5206/tjr.2012.1.1.2

Ross, A. (2011). Transnational Geographies and Human Rights. In Panelli, R., Del Casino, V., Cloke, P., and Thomas, M. (Eds.), *A Companion to Human Geography*. pp 490-507. Malden, MA: Wiley-Blackwell.

--- (2010a), Problematizing the 'post' in post-conflict reconstruction. Paper presented at the Association of American Geographers annual meeting, April 2010, Washington DC. Panel: New Frontiers of Post-Conflict Reconstruction.

--- (2010b) A Social Geography of Human Rights. In *The SAGE Handbook of Social Geographies*. Smith, S., Pain, R., Marston, S., & Jones, JP III (pp.488-504). London, UK: SAGE.

Sánchez, G. (1985). *Ensayos de historia social y política del siglo XX*. Bogotá, Colombia: El Áncora.

Sandoval, C. (2011) Transitional Justice: Key Concepts, Processes and Challenges. In Institute for Democracy & Conflict Resolution, (IDCR-BP-07/11), University of Essex, Colchester, UK. Retrieved from: http://www.idcr.org.uk/wp-content/uploads/2010/09/07_11.pdf

Semana magazine (2012, April 9). Reina impunidad en asesinatos de líderes de tierras. Nacion. Retrieved from: http://www.semana.com/nacion/articulo/reina-impunidad-asesinatos-lideres-tierras/256131-3

--- (2015, January 26), El aplauso al proceso de paz de Naciones Unidas. Nacion. Retrieved from: http://www.semana.com/nacion/articulo/el-aplauso-al-proceso-de-paz-de-naciones-unidas/416234-3

Springer, N. (2005), *Desactivar la guerra. Alternativas audaces para consolidar la paz.* Bogotá, Colombia: Aguilar.

Sriram, C.& Ross, A. (2007), Geographies of crime and justice: Contemporary Transitional Justice and the creation of 'Zones of Impunity'. *The International Journal of Transitional Justice*, 1 (1): 45-65. doi: 10.1093/ijtj/ijm001

Stan, L. and Nedelsky, N. (Eds.).(2013), *Encyclopedia of transitional justice*, Cambridge, UK and New York, NY: Cambridge University University Press.

Subotić, J. (2012), The Transformation of International Transitional Justice Advocacy. In *The International Journal of Transitional Justice*, 6 (1): 106-125. doi: 10.1093/ijtj/ijr036.

Summers, N. (2012) Colombia's Victim's Law: Transitional Justice in a Time of Violent Conflict? In *Harvard Human Rights Journal* (25). Retrieved from: http://harvardhrj.com/wp-content/uploads/2009/09/Summers.pdf

Teitel, R. (2000), *Transitional Justice*, New York, NY: Oxford University Press.

Theidon, K. (2009), Editorial note. The International Journal of Transitional Justice, 3 (3): 295-300. doi: 10.1093/ijtj/ijp022.

Theidon, K. & Betancourt, P. (2006) Transiciones conflictivas: combatientes desmovilizados en Colombia. In *Análisis Político* No. 58, septiembre-diciembre, pp 92-111.

Torrijos, V. (2015) Cartografía del conflicto: pautas interpretativas sobre la evolución del conflicto irregular colombiano, In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Tribunal Superior de Distrito Judicial de Bogota (2010), Process No. 110016000253200680077 against the prosecuted Edwar Cobos Téllez (alias "Diego Vecino") and Uber Enrique Banquéz Martínez (alias "Juancho dique"). Bogota, Colombia. Retrieved from: http://www.fiscalia.gov.co/jyp/wp-content/uploads/2012/10/Sentencia-Edwar-Cobos-Téllez-y-Uber-Enrique-Banquéz-Mart%C3%ADnez-2010.pdf

Unger, R. (1996). *What should legal analysis become?* London, UK: Verso.

Unidad de Victimas, (2012) Ruta de Asistencia y Reparacion Integral, Bogota, Colombia. Retrieved from: http://www.unidadvictimas.gov.co/index.php/en/conozca-sus-derechos/ruta-atencion ,

--- (2015), Red Nacional de Informacion. Colombia. Retrieved from: http://www.unidadvictimas.gov.co/index.php/en/

United Nations (2005) Resolution A/RES/60/147. Retrieved from: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement

United Nations Secretary-General (2004), *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. Doc. S/2004/616. Retrieved from: http://www.unrol.org/files/2004%20report.pdf

--- (2010), *United Nations Approach to Transitional Justice*. Guidance Note. Retrieved from: http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf

United Nations High Commissioner for Refugees, (2013). *Displacement, the New 21st Century Challenge*, UNHRC Global Trends 2012. Geneva, Switzerland: UNHCR. Retrieved from: http://www.unhcr.org/51bacb0f9.html

Unger, T., & Wierda, M. (2009), Pursuing Justice in Ongoing Conflict: A Discussion of Current Practice. In: Ambos, K., Large, J., & Wierda, M. (Eds.). *Building a Future on Peace and Justice: Studies on Transitional Justice*. Berlin, Germany: Springer-Verlag Berlin Heidelberg.

Uprimny, R., Saffon, M., Botero, C., & Restrepo, E. (2006), ¿Justicia transicional sin transición? Verdad, justicia y reparación para Colombia, Bogotá, Colombia: Dejusticia. Retrieved from: http://www.dejusticia.org/files/r2_actividades_recursos/fi_name_recurso.201.pdf

Valencia, G., & Mejia, C. (2010). Ley de Justicia y Paz, un balance de su primer lustro. In *Perfil de Coyuntura Económica* No. 15, pp. 59-77. Medellin, Colombia: Universidad de Antioquia, p 67, http://www.scielo.org.co/pdf/pece/n15/n15a3.pdf

Vega, Renán (2015). Injerencia de los Estados Unidos, contrainsurgencia y terrorismo de Estado. In: Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Vinjamuri, Leslie (2010), "Deterrence, Democracy, and the Pursuit of International Justice", In: *Ethics and International Affairs*, 24 (2) (pp.191-211). doi: 10.1111/j.1747-7093.2010.00256

Wills, Maria E. (2015). Los tres nudos de la guerra colombiana. In Comisión de Historia del Conflicto y sus Víctimas, *Contribucion al entendimiento del Conflicto Armado.* Retrieved from: http://www.indepaz.org.co/wp-content/uploads/2015/02/Version-final-informes-CHCV.pdf

Winter, Stephen (2013). "Towards a Unified Theory of Transitional Justice", In: The International Journal of Transitional Justice, Vol. 7, 224–244. doi: 10.1093/ijtj/ijt004

APPENDIX A: List of Legal Documents Cited

Republic of Colombia, Constitutional Court (2004). *Sentencia* T-025, Bogotá.

Republic of Colombia, Constitutional Court (2010). *Sentencia* C-936, Bogotá.

Republic of Colombia, Constitutional Court (2006). *Sentencia* C-370, Bogotá.

Republic of Colombia, Constitutional Court (2011). *Sentencia* C-771, Bogotá.

Republic of Colombia, Constitutional Court (2012). *Sentencia* C-253A, Bogotá.

Republic of Colombia, Constitutional Court (2012). *Sentencia* C-250, Bogotá.

Republic of Colombia, Constitutional Court (2012). *Sentencia* C-781, Bogotá.

Republic of Colombia, Constitutional Court (2012). *Sentencia* C-052, Bogotá.

Republic of Colombia, Constitutional Court (2012). *Sentencia* C-715, Bogotá.

Republic of Colombia, Constitutional Court (2012). *Sentencia* C-781, Bogotá.

Republic of Colombia, Constitutional Court (2013). *Sentencia* C-532, Bogotá.

Republic of Colombia, Constitutional Court (2013). *Sentencia* C-280, Bogotá.

Republic of Colombia, Constitutional Court (2013). *Sentencia* SU-254, Bogotá.

Republic of Colombia, Constitutional Court (2013). *Sentencia* C-579, Bogotá.

Republic of Colombia, Decree 1290/11.

Republic of Colombia, Exposición de motivos, Law 975/05

Republic of Colombia, Exposición de motivos, Law 1312/09

Republic of Colombia, Exposición de motivos, Law 1424/2010

Republic of Colombia, Exposición de motivos, Law 1448/2011

Republic of Colombia, Exposición de motivos, Law 1592/2012

Republic of Colombia, Exposición de motivos, Law 1719/2014

Republic of Colombia, Exposición de motivos, *Acto Legislativo*# 1/12

Republic of Colombia, *Acto Legislativo* # 1/12

Republic of Colombia, Law 975/05

Republic of Colombia, Law 1312/09

Republic of Colombia, Law 1424/2010

Republic of Colombia, Law 1448/2011

Republic of Colombia, Law 1592/2012

Republic of Colombia, Law 1719/2014