# Invisible transitional justice : a comparative case in the Catatumbo and Montes de Maria regions (Colombia)

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I was admitted as a research student at the University of St Andrews in August 2015.

I received funding from Colciencias and have acknowledged the funder in the full text of my thesis.

I, Diana Florez-Munoz, received assistance in the writing of this thesis in respect of grammar, which was provided by Sandra Piai.

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# Abstract

This thesis, which is grounded in ethnography and participatory action research methodologies, takes as its starting point the contention that war victims tend to prioritize truth and justice to overcome the legacies of gross human rights violations. Focusing in two war-affected regions in the 50-year-long civil war in Colombia (Catatumbo and Montes de Maria), the question that it seeks to answer is whether the particular survivors' demands fit within the agenda of transitional justice (TJ) at both the international and national level. This question has explored three dimensions. Firstly, this study identifies the main elements of the global agenda of TJ, evidencing that despite the profound changes in its traditional settings, the field remains petrified in its initial assumptions and institutions. Second, to determine the constituent elements of the TJ system in Colombia, this thesis looks beyond the legal dimension of TJ to delve into the politics of the transitions of these processes. Finally, the greatest emphasis is placed on the identification of the expectations of 130 victims to leave a troublesome past behind, considering exclusively their own understandings and realities. The notion of the everyday is used here as it captures those elements that condition their demands, seeing them as no longer restricted to their victimization but related to their immediate requirements and choices to address different types of violence.

A stark discrepancy between the macro TJ priorities and the preferences of those who are the alleged main beneficiaries of these policies has been found. While the former are based on a limited concept of justice that seeks to resolve the visible marks of violence, the latter seek to transform those structures that gave rise to, and continue to, perpetuate violence. Therefore, despite the fact that at international and national levels, there have been great debates and disputes about justice and truth as the adequate response towards closure of a painful and divisive past, in the contexts studied and in the testimonies of the victims, TJ has remained, at best, invisible.

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# List of Acronyms

| | | |
|---|---|---|
| **APL** | | The Alternative Penalties Law |
| **AUC** | *Autodefensas Unidas de Colombia* | United Self-Defence Groups of Colombia |
| **AUCP** | | AUC post-demobilization groups |
| **CSTJR** | | Comprehensive System for Truth, Justice, Reparations and Non-Recurrence |
| **DT** | | Diocese of Tibú |
| **EPCV** | | Effective Participation Councils of Victims |
| **ELN** | *Ejército de Liberación Nacional* | National Liberation army |
| **EPL** | *Ejército Popular de Liberación* | Popular Liberation Army |
| **FARC** | *Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* | Revolutionary Armed Forces of Colombia — People's Army |
| **FPA** | | Final Peace Agreement with the FARC |
| **GOC** | | Colombian Government |
| **ICC** | | International Criminal Court |
| **IDP** | | Internal Displaced People |
| **JPL** | | Justice and Peace Law |
| **LRU** | | Land Restitution Unit |
| **MBSC** | | Mampujan, Las Brisas and San Cayetano |
| **MMa** | | Montes de Maria |
| **NRV** | | National Registry of Victims |
| **PAR** | | Participatory Action Research |
| **SP** | *Sembrando Paz* | |
| **SJP** | | Special Jurisdiction for Peace |
| **SPT** | | Social Pastoral of Tibu |
| **STPD** | | Special Temporary Peace Districts |
| **TJ** | | Transitional Justice |
| **TCC** | | The Truth, Coexistence and Non-Recurrence Commission |
| **UBN** | | Unsatisfied basic needs |
| **UNDP** | | United Nations Development Programme |
| **VRL** | | Victims and Land Restitution Law |

## *Chapter Introduction*

*Through our peaceful march "we remind the country that we were peasants ... that had the right to live, work and stay on our land, and that as citizens we had other rights that the State [now] should guarantee: comprehensive reparation and socioeconomic rights" Peaceful Movement of the Alta Montana, Montes de Maria*

*(CNMH, 2017b, p. 165).*

In April 2013, more than 1,000 peasants, victims of the war,[1] from the Alta Montana of the Montes de Maria (MMa) region (Colombia) participated in a peaceful march for two days to demand from the government: the implementation of integral reparation programs for war-affected communities and the guarantee of the socio-economic rights that these populations have historically been denied (Figure 1). A year later, in a very different area located on the border with Venezuela, the inhabitants of a village called Pacelli in the Catatumbo region (also largely affected by the war) presented in an official ceremony a series of proposals to the national government (Figure 2). For more than two years (2012-2014), the Pacelli people had been working on the crafting of a plan to build a better common future. I was fortunate to witness both events as I was working with United Nations Development Programme (UNDP) field offices (2011-2015). In addition to my amazement at the promoters' ability to carry out these peaceful bottom-up actions using almost exclusively their own resources, I was surprised that neither in Alta Montana nor in Pacelli, the rights to justice and truth were part of their agenda.

In my years of experience working in these Colombian marginalized areas, the prevailing practices and discourses of TJ seemed to have little resonance in communities victimized by war, at best. These reflections became more intense during the peace negotiations with the Revolutionary Armed Forces of Colombia — People's Army (*Fuerzas Armadas Revolucionarias de Colombia*- FARC) (2012-2016) when statements by the warring factions, experts, national NGOs and opponents of the peace process filled the discussions with what war-affected populations supposedly demanded: "without truth there is no justice"; "reparation is the most important demand"; "victims want the truth more than to see their perpetrators

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[1] To the extent that, during the fieldwork, the participants did not make significant distinctions between the concepts "victims" and "survivors", these words are used interchangeably.

behind bars"; "...beyond reparation, [the victims] want to know the whole truth" and "the truth is one of the most urgent victims' claims" (El Espectador, 2015; Hochschild, 2014; La W, 2016; Santos, 2018a). In addition to the questionable validity of such statements in a context of more than seven million victims and where most of them do not participate in political debates (over 90%) (Rettberg, 2015, p. 4), these assumptions in the mundane spaces of war victims, in their day-to-day lives appeared to have no relevance.

Consequently, the dissonance found between the discourses and policies about victims' priorities and the disorderly realities of post-conflict settings led me to reflect on the need to test, through a rigorous and systematic study, many of the established paradigms of transitional justice (TJ), particularly on the importance for survivors of justice and truth. This thesis intends then to determine the extent to which the TJ agenda at the international and national levels are aligned with the preferences of the survivors living in two Colombian war-impacted regions: Catatumbo and MMa. The importance and originality of this study are that while it privileges the experiences of the war-survivors to understand their claims, the project goes beyond the predetermined policy prescriptions of TJ. In other words, this project does not assume that victims demand the truth or that they prefer the search for justice or reparation. Instead, this study has asked 130 war survivors how they wanted to confront the legacy of human rights violations.

## *Research Questions*

By privileging the voices of those "who were harmed the most and are *de facto* on the margins" of the TJ field (Rooney & Aoláin, 2018, p. 8), this study seeks to contrast their expectations with the objectives of contemporary TJ processes. This is a very controversial issue in the Colombian context, since it is assumed that there is a significant level of congruence, at least on paper, between the macro and micro agenda of TJ. On the one hand, as the domestic legal system has appropriated the international standards of victims' rights, the presumption is that the extant TJ institutions respond to the survivors' expectations (Barbosa, 2017; Carrillo-Ballesteros, 2015; CCJ & GIZ, 2018). On the other hand, to the extent that this country has implemented an exceptional and progressive infrastructure for victims' participation, it has been assumed that the conflict-affected yearnings have been reflected in the TJ national agenda (Acevedo, 2016; Brett, 2017; Rettberg, 2015; Ucrós M, 2016).

However, the official adoption of the global accountability standards and sophisticated and innovative models of victims' participation do not necessarily mean that the survivors' preferences to address the past[2] have been automatically considered in the TJ domestic repertoire. Nor does it mean that international frameworks reflect the demands of all those who have suffered the most in the conflict. Thus, moving away from these well-established assumptions, this project aims to answer the following question:

> "*To what extent do the particular demands of survivors (in two war-affected regions) in Colombia fit within the agenda of TJ at the international and national level?*

To answer the main inquiry of this thesis, three fundamental questions need to be addressed. The first relates to the components of the mainstreaming of TJ*: i) What are the main elements of the global agenda of TJ?* An international TJ agenda is understood as those normative, political and institutional elements where there is a certain level of consensus among the global network of professionals, policymakers and academics. The second key question is about the internal dynamics of TJ in Colombia*: ii) What are the key components of the domestic post-conflict justice framework?* This country has widely embraced the use of TJ discourses and practices in the last fifteen years, becoming a world-class example (Sikkink, Marchesi, Dixon, & D'Alessandra, 2014; Weber, 2018, pp. 88–89). Accordingly, the global normative framework of the victims' rights have been incorporated into the domestic legal system, limiting the available political options in peace-making practices (Abuchaibe, 2017; Lyons, 2010). However, this question goes beyond determining the TJ legal structure, to focus on its political dimension.

The third key question, and the one to which this study has paid the most attention is related to: iii) *How do the victims want to overcome the legacies of gross human rights violations?* This is a difficult question to answer, not only because of the immense number of victims and the diversity of the damage they have suffered in the Colombian context, but also because of their cultural disparities and the identities that converge on them. Considering these limitations and seeking to have a variety of local perceptions of how to deal with a violent past, this

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[2] Although the term "dealing with the past" and "addressing past violence" is frequently used in this thesis, it is understood that "the past" also refers to the political and criminal violence continuum environment that characterizes the regions studied.

research aimed to capture the voices of war-victims in two conflict-ridden regions with marked differences.

Anticipating the results of the study, when comparing the victims' claims with the international and national TJ agenda, a great abyss was found. This led to an additional key question: *iv) How is this disconnection possible when the field of TJ has declared itself to be established to respond to the victims' demands?* This question is fundamental for offering alternative causal explanations for such disconnection in the Colombian case, which go beyond blaming the liberal roots of the field and the exclusion of the war-affected population in the decision-making processes of the TJ.



*Figure 1 Peaceful march organized by the Alta Montaña Photograph courtesy of Sembrando Paz (SP)*



*Figure 2 Presentation of Pacelli plan 2014 Photograph courtesy of Social Pastoral of Tibu (SPT)*

## *The available literature at the international level*

In the last fifteen years, a consensus has emerged about the need to inquire into the demands as perceived by those who have fallen victim to serious violations (Fajardo & Farasat, 2008; Millar, 2011; Robins, 2009, p. 321; Shaw & Waldorf, 2010, pp. 4, 7; Vinck, Pham, Baldo, & Shigekane, 2008). Therefore, research has been conducted in different countries, finding a wide variety of demands, ranging from alternative local practices (Aroussi, 2018; L. Kent, 2018; Nee & Uvin, 2010; Robins, 2011b; Shaw, 2007; Theidon, 2010) to socio-economic rights and security (AIHCR, 2004; Clark, 2009b; Millar, 2011; Pham, Vinck, WIerda, Stover, & Adrian, 2005; Robins, 2011b; Vinck et al., 2008). Despite their different outcomes, what has been common in these studies has been the great distance found between the core paradigms of the field and the yearnings of war victims. While these studies have meant a major step in questioning the foundations of the field, important elements that significantly influence the national and survivors' agenda of TJ have been overestimated.

### *The everyday neglect of the post-conflict*

Most of the aforementioned studies treat post-war spaces as merely second-order issues, rarely related to the survivors' expectations. Particularly in those studies using surveys, the respondents' contexts are ignored or simply included as little more than useful information (AIHCR, 2004; Fajardo & Farasat, 2008; Kiza, Rathgeber, & Rohne, 2006; Vinck & Pham, 2008; Vinck et al., 2008). The second weakness of most of this literature is that while victims, and thus their needs, are defined primarily by their experience of victimization, their current realities are generally overlooked (AIHCR, 2004; Kiza et al., 2006; Robins & Wilson, 2015; Vinck & Pham, 2008). Consequently, several of these works, and this is the third weakness, tend to limit their scope and the victims' choices to the institutional framework of TJ: prosecutions, truth-seeking and reparations.

Reading some of the mentioned studies, one has the strong feeling that the lives of those who have suffered most from war can be divided into two dimensions. The first is the result of their victimization and the other related to their realities. It seems that these studies pretend (as I did initially in my own project) that participants have to separate themselves from their realities to define their priorities as victims. However, as several people mentioned during my field work,

the status of being a victim and being poor/marginalized go hand in hand in war-torn societies. The concept of the everyday, as will be seen later, contributes precisely to being a meeting point between what survivors suffer and confront as a result of war and what they face as a consequence of structural violence

## *The liberal Western domination*

Liberal peace has been understood as the hegemonic model of Western peacebuilding interventions, in which democratization, civil and political rights and market liberalization are its core values (Mac Ginty, 2010, p. 393; Sharp, 2015, p. 151). According to its critics, top-down and one-size-fits-all interventions, disregard for local practices, root-causes of conflict and the population's urgent needs have characterized unsustainable peacebuilding interventions in recent decades (Duffield, 2007; Sriram, 2007, 2009, 2014; Visoka & Richmond, 2017). It is within this framework, that TJ has been increasingly associated in the last decade. The connection was first recognized in the UN seminal report in 2004, in which TJ was mentioned as one of the main strategies for peacebuilding operations (UNSC, 2004). Since then, it has become something of a commonplace amongst scholars to see TJ as an integral part of the hegemonic liberal state-building apparatus and, therefore, of its main critiques (Gready & Robins, 2014; Robins, 2015; Rubli, 2012; Sharp, 2012; Sriram, 2009a, 2014). Thus, to the extent that post-conflict justice goals do not resonate with survivors' demands, critics attribute much of the blame to the global liberal paradigms.

When explaining why TJ practices have not responded to the needs of the people they claim to serve, Gready and Robins point to the liberal legalist as the main culprit (2014, pp. 341–343). Being embedded in globalized liberalism, they argued, justice in transitions has revolved more around physical harm and a language of rights than the local concerns of those most affected by war *(idem)*. Also, from a theoretical stance, Sharp explains how TJ has become a "routine part of the post-conflict checklist" (2012, p. 781), leaving key demands of war-affected people in the peripheries of its practices (2013). At the level of empirical studies, the prevailing liberal approach is often mentioned as the reason for the chasm between the narrow TJ agendas and survivors' preferences. Robins, for example, who conducted several studies in post-conflict contexts, attaches much of the responsibility of such disparity to the dominant liberal principles in the TJ practices (2011b, 2015, 2017). On his part, to explain why the goals of TJ have not

resonated with the local demands of Sierra Leone's victims, Millar blames not only the global discourses but also the Western epistemic community, usually disconnected from the realities of post-conflict contexts (2011, pp. 529–531).

Many of the deficits of the above literature derive mainly from their neglect of the internal contexts, particularly the state-level peace processes in which TJ institutions are generally negotiated (Macdonald, 2019, p. 237; McAuliffe, 2017b, Chapters 3–4; Selby, 2013). Therefore, as the TJ projects are seen as external processes imposed by a powerful international community, these scholars blame external ideologies and standardized formulas for the dissonance between what the victims expect (which revolve mainly around peace positive) and what TJ promises to offer. (McAuliffe, 2017b, Chapter 3). Nevertheless, and as will be shown in the case of Colombia (Chapter 3), the internal political dynamics of making peace have had a great influence on the definition of a limited TJ agenda and, consequently, in its distance from the preferences of those most affected by the war.

## *The available literature at the national level*

### *The dominant approaches*

In Colombia there has been a growing academic productivity of TJ, driven by international and national scholars and practitioners (Acosta et al., 2018; Bergsmo, 2009; Bergsmo, Rodriguez, Kalmanovitz, & Saffon, 2010; Botero Marino & Restrepo, 2006; Brett, 2018; Butti & Leyh, 2019; Dixon, 2016; Firchow, 2017; Hayner, 2018; Lyons & Reed, 2010; McGill, 2017; Sikkink et al., 2014; Uprimny, 2009). However, despite this astounding growth in writing, the literature has been comparatively poor in inquiring about the priorities of the supposed beneficiaries of TJ, let alone in determining whether these demands intersect with those elements established in global and national frameworks. Overall, these discussions have revolved around two main perspectives.

Firstly, writings in the field have been dominated by legalistic and top-down approaches which, while offering important conceptual elements (García Arboleda, 2013, pp. 1–5), have been disconnected from those who have endured hardships during the war (Prieto, 2012, p. 533). From a theoretical perspective, these works have contrasted whether the TJ global standards

have been reflected in the post-conflict institutions (Abuchaibe, 2017; Barbosa, 2017; Rincón, 2010; Uprimny & Saffon, 2006; Uprimny, Saffon Sanín, Botero Marino, & Restrepo, 2006). The second strand, the multidisciplinary studies, have sought to highlight the role of non-state actors and judicial institutions in the configuration of TJ processes (Arias, 2010; Diaz, 2008; Gómez Sánchez, 2014; Kalmanovitz, 2010; Lecombe, 2010; Lyons, 2010; Urueña, 2017). Therefore, these analyses have paid special attention to the political debates that arise between different narratives about the TJ scope and content (Diaz, 2008; Gómez Sánchez, 2014, 2017).

Despite being diverse in approach and perspective, both clusters of literature present similar shortcomings. Firstly, as most of these works provide little evidence of victims' attitudes, they have been based on the normative assumptions and commonplace beliefs of the field: victims demand justice, victims prefer the truth and so on. Unsurprisingly, scholars have assumed that victims' rights and their traditional institutions are the suitable responses to confront past injustices (Botero & Restrepo, 2006; de Greiff, 2010; Díaz Pabón, 2018; García Arboleda, 2013, pp. 1–4; Giraldo R, 2016b; Lyons & Reed, 2010; Uprimny & Saffon, 2006; Uprimny et al., 2006). This does not mean that these and other studies have not been strong critics of the domestic justice and truth institutions. In fact, the opposite is true. However, instead of questioning their pertinence to meet the conflict-affected people's priorities, most of these academics have placed blame on the poor implementation and/or manipulation of such measures (Cepeda, 2010; Saffon & Uprimny, 2007).

A second related gap within this literature has been the absence of the war-victimized persons' views. As most academics have focused on the macro-level of TJ, their sources of information have been legal documents, belligerent parties, experts and international and regional bodies (Gómez Sánchez, 2014; Rincón, 2010; Urueña, 2017). Consequently, while there is extensive knowledge about these actors' agendas, there remains a dearth of research about how local subjects perceive their needs (Rettberg, 2008b, p. 20). Similarly, since the narrow lens of the TJ literature and policies have normally fixated on the victimization experience, they have failed to consider the continuing experiences of violence that converge in the victims' everyday lives (Acosta et al., 2018, p. 115; Butti & Leyh, 2019, pp. 774–778; Rettberg, 2008b, p. 103; Robins & Wilson, 2015, p. 223; Weber, 2018, p. 101). The latter, the contexts in which victims live and, here, the third limitation, is largely bypassed within most of this scholarship. Even when mentioned, war survivors' realities are merely descriptive, and no relationships are established with their demands.

## *The alternatives*

To respond to some of the aforementioned deficiencies, limited empirical research work has been carried out in recent years. There have been two main approaches: "within" and "beyond" TJ. Among the former is the pioneering work of Angelika Rettberg who, through surveys in different cities, sought to identify the victims' top expectations in terms of reparation (2008b). Although the report found certain levels of correlation between place of origin and gender and the reparation measures chosen, in general the majority prioritized basic needs and the search for truth. A second study carried out in 2009 aimed to compare the survivors' perceptions in different war-affected regions (Fundación Social, 2009). Combining surveys with qualitative techniques, the projects found that in most contexts, including MMa, the most common desire was to uncover the truth, followed by retributive justice and reparation. Also using mixed methods, a third research project aimed at identifying the victims' expectations nationwide and in three regions, found interesting results (García Arboleda, 2013). Unlike the previous studies, this work reduced the level of generalization among victims, establishing two categories: victimized ways of life (peasants, ethnicity, social movements and urban life); and among those people who had accepted the loss (of material goods, of a relative) or continued denying it. Although these factors affected to some extent their preferences,[3] most research subjects prioritized reparation.

These mixed and interesting results from previous studies offer valuable and pioneer baseline data about the victims' preferences. However, these works frame survivors' demands within the TJ boundaries. Thus, as the normative assumptions of the field have been taken as their point of reference, the participants' responses have evidently been coloured by these same premises: more truth, better reparation programmes and less impunity. The question that remains to be answered is if these studies had moved away from the global TJ postulates, would the outcomes have varied. The results in this thesis in MMa, in which truth and justice fell outside the participants' top priorities, have confirmed this hypothesis

The second group of empirical studies are the "beyond TJ". Using ethnographic methods, three studies have found that the expectations of different victims' groups have not resonated in the

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[3] For example, while the indigenous and Afro population and those belonging to social movements placed a high value on the right to the truth, the right to justice was prioritized only by the latter's group.

normative frameworks of rights that TJ usually seeks to use. These works have paid special attention to the survivors' everyday lives to understand how these factors shaped their preferences. In one of these investigations conducted with young victims in a Colombian post-conflict area (Butti & Leyh, 2019), researchers revealed a major gulf between the reparation programs and the victims' demands. Beyond the poor implementation of such programmes, it was found that such a gap was rather a consequence of the survivors' disinterest in the extant legal formula (*ibid*, pg.70). Considering their experiences of victimization worsened by daily stigmatization and their engagement in violence, the TJ measures offered little to respond to young people's realities (*ibid*, pg.74).

The other study within this second cluster was carried out in periphery neighbourhoods in capital cities where victims and former combatants lived together (Prieto, 2012). Although this study focused more on capturing the factors that facilitated their coexistence, it provided key elements on the understanding of TJ and its impact on daily life. When asked about the truth, justice and reparations, although participants considered them important, they saw these rights as abstract concepts that belonged at a macro level (*ibid*, p. 544). From a feminist perspective, a third study carried out with women on Colombia's Caribbean coast found that beyond humanitarian aid and economic reparations, the women demanded enhancement of "their autonomy and agency through support in terms of education, organizational skills and livelihood projects" (Weber, 2018, p. 105).

Although the previous studies provide a crucial background to broaden the understanding of victims' wants, they have also two major gaps. On the one hand, these studies rarely attempt to consider how domestic political dynamics have affected the configuration of the TJ agenda, implicitly assuming that the latter is a set of legal norms based, more or less, on global standards. Thus, the second limitation is that most of these studies blame the gap between the TJ frameworks and the victims' preferences on a conceptual gap in the regulatory framework (Butti & Leyh, 2019; Weber, 2018), the non-participation of a group of victims (Acosta et al., 2018) and/ or ignorance of officials about their responsibilities (Weber, 2018).

## *Filling the Gaps*

As has been explored, similar research questions proposed here have been addressed by the reviewed literature. These studies have undoubtedly been valuable in providing key conceptual and practical elements: the heterogenous picture of victims' priorities; the tensions between the latter and the externalized blueprints of TJ; and the need to include comprehensive measures to address mass violence. Most of this scholarship, however, has failed to consider decisive factors to comprehend the war-survivors' preferences and their lack of harmony with TJ frameworks, which require deeper exploration and which this research aims at solving. Firstly, the political dynamics of post-conflict ecologies have normally been neglected. Thus, the national TJ infrastructure has normally understood as a strand of global liberal standards. Secondly, while survivors' perspectives have been progressively influencing the literature, their demands continue to be understood predominantly from a normative position. Thus, everyday realities of survivors, in which different layers of violence converge, are usually overlooked in the literature, giving other factors (victimization, exposure to TJ) an almost exclusive role in explaining their preferences. Thirdly, to the extent that the justice-truth and reparations triad is considered the adequate response to the victims' demands (particularly in the Colombian context), few studies question the correspondence of the former with the latter.

Therefore, this research is expected to contribute to filling these gaps by addressing the mentioned research questions. In relation to the *(i) question* -the international TJ agenda, this study identifies its traditional components: an understanding of justice limited to individualized violent incidents, the traditional TJ institutions and the victims' rights (Arbour, 2007; Gready, 2005; Mani, 2008; McGill, 2017; Rooney & Aoláin, 2018); and those developments that have led it to be not only the pre-eminent response to histories of violations, but one of the main tools to peacebuilding (Hazan, 2007; UNSC, 2004). This analysis shows that, although the field has rapidly expanded to a variety of settings and become an almost mandatory element of discussion in peacemaking efforts (Bell, 2009, p. 120; Williams, Dicker, & Paterson, 2018), there have been no significant shifts in its essential characteristics (Fletcher & Weinstein, 2015, p. 192; Robins & Wilson, 2015, p. 220).

The *(ii) question* related to the national TJ agenda has usually been addressed from a legalistic stand almost entirely separate from politics (Abuchaibe, 2017; Barbosa, 2017; Rincón, 2010). Looking beyond this traditional approach, this thesis is drawing on the notion of *the politics of transitions,* which conceive TJ as the result of political negotiations that while seeking to legitimize strategic commitments also aims to respond to the pragmatic goal of concluding a

period of conflict (Huntington, 1991; McAuliffe, 2017b, 2017a; O'Donnell & Schmitter, 1986; Reed, 2010; Rubli, 2013; Trevino-rangel, 2012). Accordingly, following this line of reasoning, the politics of transitions does not assume the TJ agenda in a given context is the result of a liberal peacebuilding model irrespective of the particularity of war-endings and domestic politics. This thesis suggests, and particularly in the Colombian context, that although the post-conflict accountability agenda is composed of global standards on the rights of victims, it is also made up of those elements that were excluded (structural reforms) or water down (justice) so as not to jeopardize the transitions. The politics of transitions also contributes to answering the *(iv) question* that seeks to understand why macro and micro agenda are so different, presenting complementary explanations to comprehend such remoteness.

With respect to the *(iii) question*: the victims' expectations of leaving a troublesome past behind, this thesis has been informed by the survivors' own cognition. This study provides an important opportunity to advance the comprehension of survivors' wants by considering two elements. Firstly, a focus on the survivors' *everyday lives* has been adopted in this research, considering not only the conventional factors proposed by the literature (victimization, stage of the war, language of rights) but also what plays out in the course of their ordinary lives in the extreme post-war contexts. In this reading, the one-dimensional understanding of victims' preferences expands to engage with the direct violence that still characterizes post-conflict environments and the structural face of violence that have enabled abuses in the first place. Secondly, this work also generates fresh insights by challenging the robustness of assumptions of the dealing-with-the-past processes that promote universal knowledge of victims' claims.

Consequently, by identifying the TJ agenda at all three levels, this study compares the congruence between those priorities prescribed and defined internationally and nationally with those articulated by a group of victims. The importance and originality of this work are various. Firstly, this research compares, for the first time, the victims' expectations in two regions of Colombia in different stages of the war, seeking to identify what factors have affected their choices.[4] Secondly, this is the first study to contrast macro and micro priorities to deal with the uncomfortable legacies of the past in Colombia. While some studies have sought to gauge victims' perspectives (CNMH, 2012a; Fundación Social, 2009; García Arboleda, 2013;

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[4] As will be shown later, although other studies in Colombia have made similar efforts, or they have focused on a single region (McGill, 2018), and/or have used the normative frameworks of TJ to collect and analyse the expectations of the victims (García Arboleda, 2013; Rettberg, 2008b).

Rettberg, 2008b) or to define the national TJ infrastructure (Abuchaibe, 2017; Kalmanovitz, 2010; Rincón, 2010), comparisons among these levels have been virtually absent. Third, a different notion of TJ has been proposed, understanding it as the result of political disputes to respond mainly to the ultimate goal of ending violence. Finally, this study provides new insights into the use of methodologies that, as explained in the next section, shift the locus of the research from "the comfortable distance of non-war, non-repression and often from the vantage point of the global North" (Rooney & Aoláin, 2018, p. 2) to where the war-violence has occurred.

## *Methodological approach*

> "*Writing is important for cross-cultural understanding and to academic careers, but researchers must also seriously consider committing to practices that transcend writing and academia and make useful contributions to the local community*" (Alcalde, 2007, p. 152)

While there has been a growing interest in literature to give a voice to war victims in recent years, the latter continue to be seen more as a means to the investigator's objectives/career and very rarely benefit from the research (Kaye & Harris, 2018, p. 62; Palmer & et al., 2013, p. 35). During my fieldwork (and as other investigators have found elsewhere (Cronin-Furman & Lake, 2018, p. 609; Henry, Higate, & Sanghera, 2009, p. 474)), I repeatedly heard such complaints as: "you come here [researchers], take information from us and everything remains the same"(interview 30, woman). I fully understood these claims. In my work experience with victimized communities (2011-2015), the number of times that researchers generously received contributions from the survivors and then vanished was frustrating. Therefore, a methodology was sought that, while committing to hearing the voices of victims, could make practical contributions to participants and/or their communities (beyond the cliché that hearing their stories is in itself a benefit).

The methodological path proposed by Robins in his study in victims' needs in Nepal and Timor-Leste was seen as a novel approach to respond to these aims. The Participatory Ethnography methodology, which combines ethnographic methods with Participatory Action Research (PAR), aims to allow the researcher to engage with the victims' realities, while seeking to

"leave something behind" that could be useful for the respondents (Robins, 2011b, pp. 133–153). As fieldwork developed, several modifications to this methodology had to be introduced as explained below.

## *Participatory ethnography methodology*

To answer the main research inquiry, particularly the victims' preferences *(question (iii)),* field-based research was conducted for almost a year (Sept 2016- July 2017) in two Colombian conflict-affected regions: Catatumbo (eight months) and MMa (three months). In addition to being aware of the complexities of conducting research in volatile war-affected regions (Wood, 2006), working with victims of unspeakable crimes required the adoption of sensitive and context-appropriate methodologies (Lawther, Killean, & Dempster, 2019). Thus, in order to understand daily life from the perspective of those who live it and to place "the subaltern voices of those who survived widespread structural and systemic violence" at the centre of this study, an ethnographic methodology was necessary (Rooney & Aoláin, 2018, p. 5).

Contrary to a limited understanding of ethnography in which it is assimilated into qualitative methods (Ingold, 2010), a deeper understanding of ethnographic methodology was used in this research, which included three key elements. The first was long-term fieldwork, which meant staying in the communities long enough to understand, albeit in a limited way, the contexts and challenges that characterized the lives of people in these complex areas (Millar, 2018b). Second, this approach required me to put people and communities' priorities before my academic goals. In this way, it was possible to see what the main understandings and concepts that dominated the agendas of the studied regions were, even if this ended up moving away from my own research interests. Finally, a self-reflection process is crucial for an ethnographic approach. This implied being willing to change or modify my initial assumptions and let the knowledge be built within and between the participants and communities with whom I worked.

Thus, this approach allowed me to change the focus from an external and global agenda (rights of victims and TJ institutions), to the daily struggles that victims face in complex settings and interconnect them with their main demands (Robins, 2011b, p. 134). Particularly in those contexts governed by mistrust towards external agents (Catatumbo being the main example), without the immersion that an ethnographic study implies, it would have been very challenging

not only to collect information from a varied array of actors but also to understand why the main elements of TJ remained invisible in the day-to-day life of war-affected communities (Millar, 2018a). Accordingly, long-term fieldwork was planned and implemented, using qualitative methods involving interviews, active/passive observations and informal discussions (see below).

Initially, I had planned to spend six months in each region to combine my fieldwork with a volunteer position at two grassroots organizations. However, since it was very difficult to conduct interviews initially due to the insecurity of some parts of Catatumbo, I had to extend my work for two more months and reduce my stay by the same proportion in MMa. Therefore, while in the former I worked with a local partner, the Social Pastoral of Tibu (SPT)[5] and at the same time carried out the research,[6] in the latter I had to conduct the investigation independently. Fortunately, field access in MMa was facilitated by the favourable security conditions and the already existing relationships with the locals. In Catatumbo, having a well-recognized local partner was essential, not only to facilitate access to different respondents, but to mitigate harm to communities and risks in a conflict zone and it enabled me to gain access to a large number of activities usually not available to outsiders (Cronin-Furman & Lake, 2018, p. 610; Lawther et al., 2019, pp. 390–391).

The other methodology used was an adaptation of the PAR, which implies the combination of research and actions with the aim of contributing to generating change. Thus, this approach offered a number of attractive features to this research. First, this methodology differs from passive observation in that the researcher takes a more dynamic role for the benefit of the respondents (Harrison & Callan, 2013, p. 1). Thus, the research becomes a process of knowledge exchange between the researcher and the researched (Gillis & Jackson, 2002; Robins & Wilson, 2015, pp. 226–227). Secondly, as the participants are strongly involved in the design and development of the project, the PAR ensures that their preferences drive the research (Greenwood, Whyte, & Harkavy, 1993; Robins, 2011b, p. 135). Thirdly, the given

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[5] The Pastoral Social of Tibu is an organization linked to the Catholic church that works to increase the advocacy capacities of community organizations and promotes the peasant economy. As it has been in the region for more than five decades (the Diocese of Tibu), being with the communities even in the most violent times of the war (1998-2005), this organization has great legitimacy and respect in the region, including from illegal actors. More information http://diocesisdetibu.com/pastoral-social/

[6] A written volunteer agreement was established with the SPT, in which mutual collaboration was established. Although specific functions were defined, in the end I ended up assuming different roles in planning, monitoring projects, advocacy, organizing activities, representing the organization, etc.

methodology is flexible and dynamic, allowing modifications depending on the participants' needs and highly unstable research contexts (Robins & Wilson, 2015, p. 229).

However, some challenges associated with PAR arose during my field experience. First, although this approach expects participants to define the research problem, this can be a very problematic task to implement, as universities expect PhD students to define the purpose of their research beforehand. Second, as the PAR assumes that there is a common interest to address a particular issue between the researcher and the researchees, it does not consider the possibility that the research topic may be irrelevant to the latter. This was the case in my own project, where TJ seemed invisible in the selected contexts. Finally, to the extent that this methodology generally works best with a specific group of people with similar goals and/or identities, it is possible to carry out a joint process of updating the research process (Robins & Wilson, 2015, p. 230). However, although in principle this was the intention, in Catatumbo, the level of dispersion of victims and their few organizations, as well as the context of violence, made it very difficult to find such a group. Furthermore, to the extent that a broad view of the preferences of survivors from these regions was sought, different locations were included for the interviews within these areas.

Consequently, the PAR has been recontextualized. Although some may argue that the *raison d'être* of this methodology has been distorted, the approach used here still shares with the latter several of its essential elements: a strong interaction between the researcher and participants (and their communities) and the implementation of actions in favour of the latter (Robin, 1991; Stringer, 1996, p. 11). Therefore, and in consultation with my supervisor, it was decided to implement actions on a macro level (with organizations) that sought to indirectly/directly impact the participants.

Hence, in Catatumbo, upon agreement with the SPT and in consideration of my skills, it was defined that I would support the writing and submission of grant proposals based on the victims' demands. Then, with the SPT team support, a broad participatory process was carried out with different communities. Due to the conditions of this region (Chapter 4), the victims' priorities revolved around road improvement, coca crop substitution, productive projects and the strengthening of their communal organizations. Along with the submission of the grants to different donors, a lobby strategy was developed. The majority of the projects have obtained

direct resources worth $ US 300K and indirect resources worth $US 14M with international organizations, namely the EU, FOS, Adveniat and Howard Buffett Foundation. [7]

In MMa, due to time constraints, I intermittently supported various victims' organizations in activities they prioritized: training in the FARC Final Peace Agreement (FPA) components, preparation and review of legal documents and financing of their activities (lunch and transportation). Although it is difficult to determine the impact of these initiatives, I attempted to reciprocate, albeit in a very limited way, the generosity of those who supported my research. Furthermore, I have committed to returning to this region (once I complete my PhD) to work with two organizations (Tejedoras de Mampujan and ASOCHENGUE) in structuring bankable projects.

## *Case selection*

The decision to compare a small number of cases was made considering the need to make a careful analysis of the victims' preferences living in specific regions, instead of having a national vision (Collier, 1993, p. 105). From this perspective, the case selection process was strongly influenced by two types of criteria: practicability and relevance. Regarding the former, to the extent that the research questions arose when working in these contexts, Catatumbo and MMa were selected to test the initial hypothesis. Secondly, as other studies have shown, having previous work experience in the investigated contexts not only facilitates the process of gathering information but also allows researchers to have a better rapport with the participants (ICTJ & Fundación Social, 2006; Robins, 2011b). In the case of Catatumbo, due to the prevalence of an environment of mistrust and violence, without having previous arrangements with local actors, it would have been very complex not only to have access to a significant number of participants but also to be able to stay for a long period in the region as a researcher.

However, the accessibility factor, although it is particularly important in complex (post-)war contexts, is not sufficient to justify the choice of cases (Walford, 2001, pp. 162–163). It is necessary to explain why these cases (and not others) have been relevant to the aims of the research study *(ibid*, p.156). Thus, the second criterion to select these regions was their

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[7] See Appendix II for the complete list of projects.

particular significance within the internal armed conflict and the TJ frameworks. As will be explained later, Catatumbo and MMa are emblematic cases of the war, insofar as they have been the scene of disputes between a large number of armed actors and as a consequence, the majority of their population has been affected by violence. It is not surprising then that the FPA has given priority to these regions for the implementation of rural programmes and for establishing Special Temporary Peace Districts (STPD) (Figure 3) [8] These regions are also part of the so-called peripheral areas of Colombia, that is, those that have been precariously articulated with the central level and where their inhabitants have historically been excluded and socioeconomic benefits (CNMH, 2017a, p. 44).
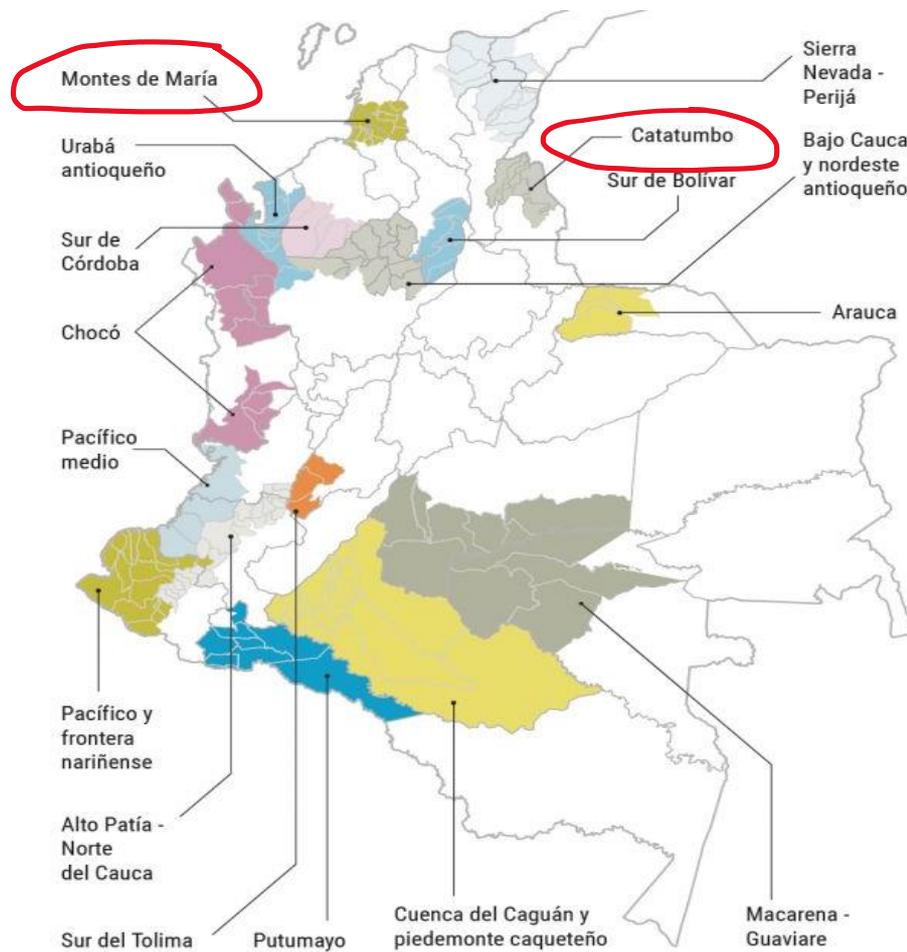


*Figure 3 Regions most affected by the War prioritized in the FPA*

*(Agencia De Renovacion Del Territorio, 2020)*

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[8] To ensure better integration of the most conflict-affected regions and as a special reparation measure, the FPA established the creation of 16 Special Transitory Peace Electoral Districts (GOC & FARC-EP, 2016, sec. 2.3.6.)

Despite these similarities, the regions were rather selected due to their significant differences which, according to other comparative studies, have affected the way in which victims define their priorities to redress the legacy of the violations: stage of the war, perceptions of the main armed actors and the level of appropriation of a rights discourse (related to the victims' exposure to TJ). Accordingly, while Catatumbo is a context of an ongoing war with little exposure to the instruments of TJ, and also with a historical presence of the guerrilla, MMa reflects an opposing scenario. The latter has been considered a model for peacebuilding since 2010 and has been an emblematic case for the implementation of truth and justice institutions. Likewise, while the guerrillas had little acceptance in this territory, the paramilitaries managed to penetrate into the social and institutional structures of the region. It was intended then to test the impact of these factors in the participants' responses in the selected contexts (Section 8.1).

Before proceeding further, a caveat is in order. As the areas studied were deliberately chosen by the researcher (considering the aforementioned criteria), the selection bias of the cases poses a great challenge for the validity of the thesis results (Collier & Mahoney, 1996; Geddes, 1990). Although this study is not, in fact, intended to generalize its outcomes across a large set of cases, but to test a hypothesis that emerged specifically in these contexts, these explanations do not in themselves resolve bias concerns. Could the interviewees' preferences be closer to the TJ agenda if the violence had not affected the majority of the population? Could the participants' responses have been different if the socioeconomic conditions of their contexts had been better? Unfortunately, beyond being transparent about mentioning how the cases were selected and recognizing the risk of bias in this process (Leuffen, 2007), this project does not provide a clear route to solve the problem. However, as explained later (Concluding Chapter), the given regions present similar characteristics with others also affected by the war: low socioeconomic levels, marginalized regions and a predominance of illegal economies (CNMH, 2013, 2017a; Prieto, 2012). What can be said is the selected cases reflect to a certain extent the realities of other areas affected by the war in Colombia.

## *Research methods*

Different methods resonated with the project' aims. While empirical analysis of official domestic documents, UN and other international/national organizations' reports and mass media database was used to answer *questions (i), (ii) and (iv),* semi-structured interviews and

participant observation were implemented to address the *(iii) question*. Although focus groups were initially planned, the SPT suggested not to do so due to the political sensitivity of the issue.

My main research method was in-depth *semi-structured interview*s of first generation victims, that is, those that have been directly affected by the conflict (Brewer et al., 2018b, p. 2). Seventy interviews were conducted in Catatumbo and 60 from MMa (Figures 4 and 5). In the former location, the interview sites were selected using the criteria of accessibility (due to security concerns). To this extent, interviews were conducted mainly in those municipalities in which the SPT had a presence (with the exception of Ocaña). In order to guarantee a wide variety of interviewees and encounter alternative narratives from those provided from the SPT's records, I used two other channels to contact participants: through the ombudsman municipal and liaison offices of victims and the Effective Participation Councils of Victims (EPCV).[9] In the former, several of the municipal officials brought me into contact with victims (having obtained their prior agreement) to whom they provided advice. In the latter, in addition to interviewing some of the members of the EPCV, I was also introduced to other victims who were either part of their organizations or who they knew.

Using the same methodological approaches as those developed for Catatumbo (although acculturated to local differences), I conducted 60 semi-structured interviews in MMa.[10] Interviewees were approached mainly through personal contacts, the EPCVs, the snowball technique and the ombudsman municipal and liaison offices of victims. In both regions, efforts were made to ensure a diversity of interviewees and, therefore, to be able to test for distinctions between particular socio-demographic features, types of crimes, and perpetrators and levels of state support. Moreover, in both territories, the sample also incorporated public officials, who were war survivors and responsible for the assistance of victims.

Having different channels to select the participants allowed me, on the one hand, to include a cross-section of victims in the sample, taking into account factors such as gender, age, occupation and membership of a victim/social organization. Through this variety of survivors'

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[9] The Victims and Land Restitution Law (Victims Law) contains provisions that seek to guarantee victims` participation thought the establishment of roundtables for participation in each of Colombia's 1,122 municipalities and 32 provinces

[10] The interviews were also conducted in Sincelejo (Sucre capital), which although it is not geographically part of the Montes de Maria, it is where a large part of the victim population of the region is located. According to official information, out of its 279,031 inhabitants, 57% corresponds to victims (Alcaldia de Sincelejo, 2016, p. 38).

voices, a reasonable range of opinions and experiences was gathered, providing a general picture of the agenda of those who suffered the most during the war in both regions. On the other hand, the different sources for selecting participants contributed to tackling hierarchical differences and gender imbalances that generally prevail within organizations and communities. To the extent that the victims I interviewed through the municipal offices were those who did not belong to any organization or did not actively participate in public activities, I was able to capture the opinions and perceptions of those who generally remain invisible in communities. Regarding the gender balance, I was able not only to have an equal number of men and women but also to interview women who fulfilled different roles in their communities: social leaders, housewives, public employees, peasants.

It is important to clarify that although indigenous populations inhabit both regions, participants from these groups were not specifically targeted.[11] Without ignoring their importance and the substantial impact of the war on them, the indigenous groups represent only two percent of the population in both regions (Colombia Responde, 2015; Ministerio de Cultura, 2015). Furthermore, to the extent that I had no experience working with these populations, and an ethnic approach was not included, no emphasis was placed on this population at the information-gathering stage.

In all cases the victims were contacted personally in advance, to ensure that their participation was voluntary and did not pose any risk for them. All the interviews were conducted by the researcher and normally took place in the priest's main residence,[12] in a municipal office (in a private space provided) or in the interviewees' houses.

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[11] In Montes de Maria, three people who stated that they belonged to indigenous victims' organizations were interviewed.
[12] As I was working with the SPT (a Catholic organization) and some participants were contacted through it, the priests of different towns offered me their facilities to carry out the interviews. Likewise, and for security reasons, these sites were relatively safe spaces and were preferred by some interviewees.
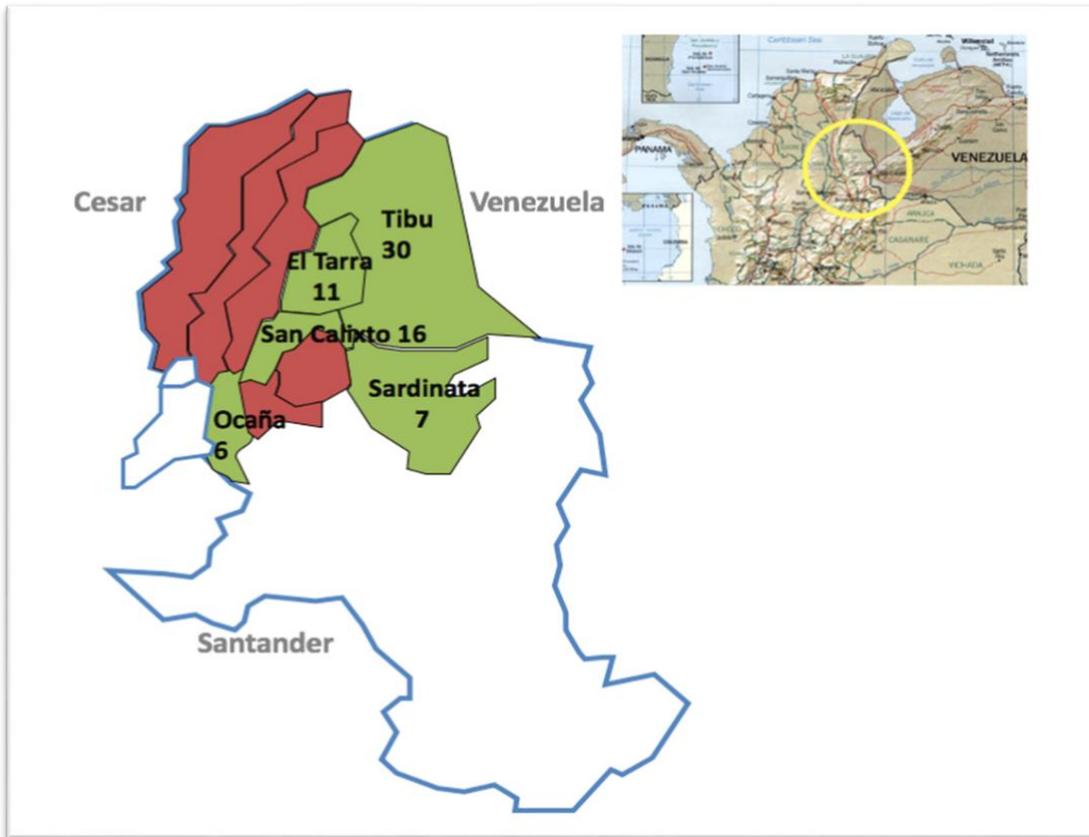
*Figure 4 Interviews' locations and number of interviews by city Catatumbo*



*Figure 5 Interview locations and number of interviews by city Montes de Maria*

The *participant observation* method was used during my time in Catatumbo and MMa. I was able to attend numerous community and institutional meetings as well as day-to-day social activities. I was invited to participate in the meetings of victims' organizations, in peace initiatives, in addition to being able to share with various communities with which I had worked in the past (2011-2015). These multiple sites, in addition to allowing me to interact with war-survivors and other key actors (politicians, FARC members, religious leaders) in their natural environments, were an important source of data on the everyday lived experience of the victims' encounters (or the absence of them) with the TJ institutions.

## *Ethical aspects and challenges*

Ethical approval for this study was granted by the Ethics Committee of the School of International Relations, University of St Andrews. For reasons of safety and/or at participants' request, oral (recorded) informed consent was obtained from virtually all of them.[13] Similarly, although the interview questionnaires excluded potentially traumatizing issues, a distress protocol was established, which included the support of a psychologist when necessary. Although, particularly in MMa, the participants talked openly about their experience of victimization (without being asked), I did not perceive significant retraumatization as a result of the interviews. In addition, the information from the interviews and field notes was stored anonymously and under data protection protocols.

The safety of the interviewees and the researcher was a priority. Despite the context of war in Catatumbo, my fieldwork occurred during a period of an apparent calm between the signing of the FPA with the FARC (2016) and the latter's demobilization. Likewise, most of the trips were made with the SPT.[14] The most important challenge was related to the threats received by two social leaders I worked closely with (and who were interviewed) allegedly by FARC members due to their decision to create an independent organization. Contrary to some arguments to do otherwise (Adetoun, 2005), it was extremely difficult to remain rigidly within my researcher's role. Thus, together with Monsignor Sanchez, Director of the SPT, a strategy of advocacy was implemented before the responsible authorities (Diócesis de Tibú, 2017; La

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[13] There were three people in San Calixto (one of the most complex municipalities in Catatumbo) who preferred that their interviews not be recorded, as well as not signing the consent forms.
[14] However, to avoid confusion of the participants, when conducting interviews, I emphasized my role as a researcher. Of course, I could not assure that I was completely successful.

Silla Vacía, 2017a). Despite the efforts made, the leaders and their families were displaced (for the third or fourth time). On the contrary, in MMa, I had adequate access by public transport, and I was usually accompanied by a resident of the area. Fortunately, no security incident was reported.

As for my positionality in these complex contexts, I constantly moved between the fluid constructions of "insider" and "outsider" status.[15] Firstly, because of having worked with an international organization (UNDP) in these territories (2011-2015) and because of being a PhD researcher in disadvantaged areas, I faced similar ethical challenges to those other researchers have found in other conflict settings (Alcalde, 2007; Clark, 2012; Henry et al., 2009). Despite strongly emphasizing that I had no link to the government or international agencies, some participants assumed otherwise, and presented their complaints or requests. Likewise, some respondents with very precarious conditions identified me as someone economically privileged and with the possibility to help them in some way (which I tried to do to insofar as I was able). However, such interactions were more the exception.

In both territories, a sense of trust and collaboration usually emerged with fieldwork participants. Having common attributes and features with the participants,[16] knowledge of the political dynamics and good prior relationships with different actors helped me enormously to be perceived as some kind of insider. In addition, in Catatumbo, immersing myself in the flow and rhythm of a grassroots organization and in community activities, contributed significantly to building a rapport with some of the fieldwork actors (Chereni, 2014, p. 16). In MMa, having worked in the region in the past, its friendly culture and also the victims' familiarity with researchers helped me mitigate the power asymmetries. Nevertheless, as Alcade affirms, being aware of the great social and economic disparities between the researcher and the participants (added to the differentiated impact of the war) prevents the idealization of such a relationship as "a space of equality where historical inequalities could somehow be momentarily erased" (2007, p. 148). However, instead of trying to ignore my privileged position and deny the inherent power disparities between researchers and informants, I used my available resources

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[15] The insider researcher is understood here as a one who shares cultural, language, attitudes and physical characteristics with the participants (Ganga & Scott, 2008; Merriam et al., 2001). Conversely, an outsider shares few or no characteristics with research subjects (Chereni, 2014).

[16] In addition to being Colombian, having the same language, I shared similar beliefs in terms of religious practices with my participants (Catholic).

(my skills, my contacts, my limited financial resources) to support the victims and their communities.

A second important aspect of my positionality was how to ensure fair representation of the voices of the victims. Could I speak legitimately on their behalf? As has been widely recognized in the literature, power imbalances in how the researcher represents (or misrepresents) the words and emotions of the "other" can only be mitigated to a certain extent (Clark, 2012, p. 836; Lee-Treweek & Linkogle, 2000, p. 199). Accordingly, there has been much discussion about the negative consequences of the practices of privileged people (e.g., researchers) speaking on behalf of less privileged people, as the former may end up interpreting the latters' demands from their perspectives (Alcoff, 1991, p. 7). To overcome these challenges, I did not assume what the victims' preferences were. I asked them. I faithfully reflected, or at least I hope I did, the participants' desires to recover from mass abuses, without setting normative limits in their responses.

A final issue about positionality was challenging the dominant understanding of researcher-researchee relationships (Schulz, 2020). Although the opposite could be thought due to the focus of this thesis on the vulnerabilities and needs of the victims, in general, the participants did not assume a passive role, nor did I adopt a role of superiority and control over the informants. Re-conceptualizing the fluid research relationships, the participants and the communities with which I worked greatly influenced the research process. In these complex post-conflict areas, the informants exercised "multiple positionalities that went beyond the stereotypical representation of the vulnerable respondent in need of external protection." (*ibid,* p. 4). These positionalities included everything from offering me protection (particularly in Catatumbo), to allowing me to participate as a passive and active observer (according to their agendas) in their internal natural spaces or in interaction with institutions and other actors.

Finally, an important related challenge to the previous point that I faced in writing this thesis (and that I could not satisfactorily address) was not being able to do justice to the extraordinary life stories of the victims in these contexts. As this work aims to identify the survivors' highest priorities (linked to the challenges they face every day), their experiences of resilience, courage and the important roles they have played in their communities, regions and in the country have become obscured this project. Despite the fact that their past and present represented a tale of struggle for survival, in their narratives most of the participants not only expected a much better

future but also described how they were working with their communities and with their organizations to challenge the structures of violence.

## *Structure*

Besides the present introduction and the concluding section, this thesis has eight chapters. Considering several of the identified gaps, Chapter 1 proposes two analytical concepts: "everyday life" and "the politics of transitions" that contribute to explaining the research questions. Chapter 2 presents the main elements of the international TJ agenda, including those that, since its origin, have remained in the field as its main developments in the new century. Chapter 3 presents the Colombian context to explain why TJ has been implemented in this country despite not having undergone a transition. The bulk of this chapter, through the phases of the peace processes with the paramilitaries and the FARC, identifies the main components of the TJ infrastructure at the domestic level. The following four chapters (4-7) constitute the set of cases, in which the preferences of the victims in the two Colombian regions chosen for this study are identified: Catatumbo and MMa. Each case is covered in two chapters: one provides an analysis of the contexts, including the everyday lives of war victims and the experience of TJ, and the other analyses and presents the results of the ethnographic work. Finally, Chapter 8 presents the outcomes of the comparative study: between the two regions studied, and between the these and the national and international TJ agenda. In addition, an alternative justification is proposed to explain why there is an enormous distance between the macro and micro levels.

# *Chapter 1: Do the post-conflict ecologies and domestic actors matter in the agenda of transitional justice?*

## *Introduction*

> *"The fact remains that if your stomach is empty, if you do not have shelter or access to medical care when needed, the right to truth and accountability, among other civil and political rights, may seem a luxury"* *(Saeed, 2016, p. 172).*

The central inquiries of this thesis are concerned with what victims' demands are in the so-called post-conflict periods and to what extent these priorities are reflected in the national and international agenda of TJ. Over the past decade or so, political scientists have engaged with related concerns, paying special attention to the TJ's global mainstream (Aroussi, 2018; Millar, 2011; Robins, 2011b, 2012, Shaw, 2005, 2007; Vinck & Pham, 2008; Vinck et al., 2008; Weinstein, Fletcher, Vinck, & Pham, 2010). From different disciplines, these studies have found a critical disjuncture between TJ ideas and praxis and the primary interests of its subjects living in places like Colombia, Nepal, East Timor, Sierra Leone, DRC and Afghanistan (Butti & Leyh, 2019; Millar, 2011; Pham et al., 2005; Prieto, 2012; Robins, 2011b; Vinck et al., 2008; Weinstein et al., 2010). This sense of "disconnect" has been attributed primarily to the exclusion of victims' voices and to the liberal bias of the TJ field (Gready, 2005; Mani, 2008; Millar, 2011; Robins, 2009, 2011b; Shaw, 2007).

Despite the proliferation and key findings of the above and other critical TJ literature, a major limitation has been identified. As most studies have placed great emphasis on the experience of victimization and on the predominance of liberal peace to explain victims' needs and the configuration of TJ agenda, respectively, the complexities of post-conflict ecologies have been overlooked. From this perspective, there are two major gaps in this literature which require elaboration and that this project aims at solving. To start with, when analysing survivors' wants, studies have tended to separate them from their realities of the post-conflict spaces. Thus, the hardships of survivors' everyday lives are excluded in these analyses or, when mentioned, are merely an informative characteristic rather than determining factors in their demands (AIHCR, 2004; Backer, 2010; Fajardo & Farasat, 2008; Fundación Social, 2009;

Kiza, Rathgeber, & Rohne, 2006; Pham et al., 2005; Rettberg, 2008; Weinstein et al., 2010). The second problem is that most of this literature while focusing on the international and legal dimensions of TJ turns a blind eye to the internal political dynamics in which the terms of past responsibility are negotiated and agreed (Kochanski, 2018, p. 2; McAuliffe, 2017b, Chapter 3).

Bearing these limitations in mind, this research brings novel theoretical benchmarks to better understand the perspectives of those attempting to recover from war and their dissonance with the practices of delivering justice after conflict. Consequently, instead of focusing exclusively on external elements, this thesis emphasizes those endogenous factors that guide victims' priorities and the TJ agenda at the national level. Firstly, to widen the scope of what has been encompassed in survivors' claims, the notion of *the everyday* from critical scholarship on peacebuilding and TJ is invoked to answer the *(iii) question.* This concept is used here to refer to and illustrate that the conflict-affected desires are strongly related, not only to their victimization experience and their knowledge of rights but to what they face in the day-to day in usually extreme post-war contexts (Butti & Leyh, 2019, pp. 774–775; Roberts, 2011c, p. 412). These arguments are aligned with the classical concepts of direct and structural violence and positive and negative peace proposed by Galtung (1969, 1990).

Secondly, to identify the main elements of the TJ agenda at the national level, this thesis goes beyond its legal and formal dimensions (Chapter 3). From this perspective, this thesis conceives TJ processes as inherently political, paying special attention to the influence of the politics of transitions on how countries craft their own paths forward following violence. This argument is substantiated by bringing back transitology approaches and using recent critical studies of peacebuilding and TJ (Bell, 2017; Macdonald, 2019; McAuliffe, 2015, 2017a; Mohamedou & Sisk, 2013; O'Donnell & Schmitter, 1986; Przeworski, 1986). This political understanding of the field also provides alternative explanations to the disjunctions between the conflict-affected' standpoints and post-conflict justice projects

This chapter unfolds as follows. Considering the stated gaps in the domestic and international literature (Introduction Chapter), Sections I and II present the notions of everyday life and the politics of transitions as the theoretical framework of this thesis in order to gain a better insight into what victims seek in transitions *(question (iii))*; the configuration process and the components that integrate the TJ scheme at the domestic level *(question (ii));* and complementary arguments to explain the alleged distance between the micro and macro TJ

agenda The concluding part presents how these theoretical approaches contribute to answering the research questions.

## *1.1. The everyday of post-conflict spaces*

This section seeks to bring the concept of the everyday from the peacebuilding literature to understand how victims' preferences during transitions are substantially influenced by their current contexts. This notion is relevant here as it captures those elements that may condition survivors' demands, seeing them as no longer restricted to their victimization but related to their immediate requirements and choices to address different types of violence (Eastmond, 2010; Stefansson, 2010, p. 88; Vinck & Pham, 2008). This is not to say that TJ principles are meaningless to the conflict-affected, far from it. As several studies have shown (including this study), the wants and attitudes of survivors are dynamic and contingent on many factors (religion, the nature of harm, culture or ethnicity) (AIHCR, 2004; Backer, 2010; Rettberg, 2008b; Robins, 2011b; Saeed, 2016; Samii, 2013; Shaw, 2007; Vinck & Pham, 2008; Weinstein et al., 2010). However, the critical literature on the everyday contributes to understanding why structural conditions of war survivors (low-income states characterized by historic levels of inequality and violence) seem to carry greater weight in defining their expectations than global standards such as truth or justice.

The conception of the everyday has long been explored in critical post-liberal peace theories as a site of resistance to global liberal interventions (Mac Ginty, 2014; Mitchell, 2011; Richmond, 2011; Richmond & Mitchell, 2012) and it has recently been proposed with a similar meaning within the TJ literature (Riaño Alcalá & Baines, 2012).[17] In the former scholarship, the everyday in war-torn societies is generally understood as the site where contingencies experienced by people as a result of different types of violence emerge and coalesce (Millar, 2010, p. 529; Robins, 2013, pp. 48–49) and/or the skills and resources that people have at their disposal to cope with and adjust to these challenges and rebuild ordinary life in the best possible way (Bleiker, 2012; Kent, 2018; Mitchell, 2011; Roberts, 2011a). This research is mostly inspired by the former approach, as it aims to analyse what most influences survivors' expectations, rather than the strategies they use to minimize conflict. Therefore, the notion of

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[17] While the everyday has become an emerging concept among TJ scholars, it is still a poorly developed research topic.

the everyday refers to victims' experience on the ground, not only as a result of the wounds of conflict but also a combination of everyday violence (or the threat of it) (Gready, Boesten, Crawford, & Wilding, 2010, p. 2) and "the war-aggravated poverty that strips clothing from people's backs destroys their shelter and excludes from their lives basic nutrition, jobs and access to clean toilets" (Roberts, 2011c, p. 412).

To unravel these different types of violence that have characterized everyday lives in post-conflict settings and also the broad expectations of war-victims, Galtung's classical works in violence and peace are used as analytical frameworks (Galtung, 1969, 1990; Galtung & Fischer, 2013). In addition to physical and visible violence (direct violence), there is another type of harm that has seriously affected populations living in these complex contexts: structural violence. As will be seen later (Chapters 4 and 7), the effects of both types of harm that generally converge in the daily lives of war survivors had a great influence on how the research participants defined their priorities. Along the same lines, the concepts of negative and positive peace help in understanding why, in highly unequal and divided societies, the demands of the victims, while embracing the end of physical violence, go far beyond this limited concept of negative peace.

In essence, what is proposed here is the need for a richer and more comprehensive conception of victims' expectations that pays more attention to the ordinary and the quotidian of communities where not only the legacies of violence, but ongoing violence, poverty and inequality are anchored in the structures of society. Such an idea of understanding survivors' demands is different from what dominates the current mainstream of TJ that focuses on the victimization experiences. Thus, when viewed through the lenses of the everyday, what actually plays out on the ground in post-conflict scenarios becomes visible: lives that remain "marked as much by continuity as change, particularly when it comes to questions of structural violence....[ and], economic opportunities ..." (Kent, 2018, p. 159). Hence, the image is never unique. The everyday in these convulsed settings is not only related to the visible scars of war but to its social and psychological dimensions. Consequently, this section revisits the classical concepts of violence and peace to understand how these notions materialize in the everyday lives of victims in post-war settings and in their demands to confront their past, respectively.

A note about the understanding of TJ is in order before proceeding. As will be explained later (Section 1.2.), this thesis is situated within a political and narrow understanding of TJ (Gomez

Isa, 2010; McAuliffe, 2017b; Reed, 2010) rather than within a transformative conceptualization, i.e. TJ as a potential vehicle to social and economic transformation (Evans, 2016; Gready & Robins, 2014; Magill & O'Connell, 2016; McGill, 2018; Robins, 2011b; Sharp, 2013). The approach taken here, however, does not imply denying the need to address the sources of social grievances to build sustainable peace and prevent the reignition of war. The argument presented below is that the TJ measures agreed upon in the peace processes have necessarily served the political needs of ending the war, which necessarily implies affecting the interests of those actors that supported (and support) violence as little as possible (Bell, 2017; Reed, 2017). Thus, expecting elite bargaining processes, such as TJ, to address historical socioeconomic inequalities "underestimate[s] the political element of contextual constraints and consequent limitations of responding to massive violations" (Duthie, 2017b, p. 28).

### 1.1.1. *Violence and Peace: a broad understanding*

**Direct and Structural Violence**

Violence in post conflict periods has been conventionally associated by the great majority of scholarly works within peace and conflict research with "the use or credible threat to make use of physical force to damage others or their belongings" (Nilsson & González Marín, 2019, p. 4; see also Roberts, 2008, pg. 2). However, for a growing body of writers, Johan Galtung being its main and earliest precursor, violence in such settings goes beyond its visible manifestations (1969, 1990). Thus, in post-conflict settings, even when overt forms of coercion cease, other types of harm remain anchored in social structures, preventing a large majority of the population from meeting their basic needs (McGill, 2017, p. 81). Galtung has clearly identified such distinctions among violence, allowing us to elucidate its disparate but interdependent nature in societies where peace is considered to prevail (1969, 1990). Therefore, the purpose of using this author's typology of violence as an analytical framework is to broaden our understanding of the grim realities that characterize post-conflict environments as well as the impact of these complexities upon the survivors' top priorities to recover from mass abuses.

Galtung's classical classification of violence relates to the subject and the visibility of the effects of violence: direct/personal and indirect/structural. The former is generally visible, tangible and usually reflected in official records. This violence has an identifiable victim and

perpetrator and its main aim is to reduce human beings' somatic capacity (Galtung, 1969, p. 171). Structural violence, on the other hand, refers to the existence of a discriminatory or unequal structure "that perpetuates constraints in agency and unequal opportunities to receive an education, have access to medical care and justice and to secure a stable job" (Ho, 2007, p. 4). Therefore, the structures of power, rather than a specific actor or group, are those that maintain particular conditions that inhibit general human capabilities (Farmer, 2004).[18] Likewise, unlike direct violence that is normally expressed in physical damage, the impacts of social injustice, as it is also called, "are more observable at the societal level, as systematic shortfall in the quality of life of certain groups of people " (Kent, 2011, p. 135). The dimensions of violence are clear to this peasant leader in Catatumbo:

> "bullets are not the only thing that kill people, but the ones that make the most noise. People die here every day because they can't get them out to the hospital…children get sick and some die because the water they drink is rotten. But that is not seen in the press and the government does not want to talk about it" (interview 8, man)

Indeed, structural violence has been "usually normalized and accepted as a part of the 'status quo'" (Anglin, 1998, p. 145) and is not usually part of the war and post-war statistics (Roberts, 2006, p. 252). As its impacts are quieter (although not necessarily less deadly), as this leader affirms, and generally affect people who were already marginalized before the war, this harm has become part of "business as usual" in these convoluted settings. Thus, for example, in post-war scenarios, premature or preventable deaths or water deprivation are seen more as isolated and ordinary cases than as forms of structural violence resulting from "systematic exclusion of certain groups from the services and opportunities provided to others" (McGill, 2018, p. 26). In contrast, overt violence generally refers to the direct effects of war (personal injury, death, sexual violence) as well as that which persists in the present in post-war societies, whether as war-related harm (for example, attacks by dissident groups) and/or everyday violence as explained below (subsection 1.1.4).

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[18] Nevertheless, this argument does not mean the role of human agency in creating and sustaining such structures is denied (Prontzos, 2004, p. 300). The perpetuation of inequality and poverty in certain sectors of society and parts of the world are the result of policy choices and human decisions and not of a random distribution of power and resources (Farmer, 2003, p. 7; UNDP, 2005, p. 52)

Despite the differences between the dimensions of violence, it is important to recognize the blurred nature of their boundaries in war and post-conflict settings (Christie, Tint, Wagner, & Winter, 2008). In these environments, indirect and direct violence are closely intertwined and mutually reinforcing. Direct violence is usually sustained and fuelled by deep and historic expressions of inequality, racism and other elements of structural violence (Anglin, 1998). Also, inequitable structures are maintained and reinforced by means of overt violence (Galtung, 1969, p. 184). Thus, the notion of everyday life is useful for linking together the different faces of violence (and also the responses) that generally appear under different analytical and policy lenses. Thus, when seen through the everyday lens, the victims' realities become multidimensional, and "the everyday injustices rooted in historical inequalities" become "as important, if not more important, for many survivors than the extraordinary injustices of gross human rights abuses" (Waldorf, 2012, p. 175).

Therefore, conceptualizing violence in a broad way is a useful way of understanding the divergences between what the prevailing TJ paradigms seek to address and what happens in the course of the ordinary day-to-day of millions of victims. While the former has traditionally been concerned with addressing egregious acts of past physical violence (Gready & Robins, 2014, p. 342), the latter embraces, but is broader than, the marks of war, including deep-seated structural violence (Hecht & Michalowski, 2012, p. 5; Sharp, 2018, p. 21). As will be seen later, (Chapters 2 and 3), despite the fact that there has been a growing strand in academic and policy writing calling to expand the TJ purview to distributive justice, the international agenda of TJ and national elites continue to ignore the different everyday forms of oppression and violence that usually remain in societies perceived as at peace (McAuliffe, 2017b; Miller, 2008, p. 237; Nagy, 2013, p. 53; Sharp, 2012, p. 782).

A broad understanding of violence is crucial then to understand the interrelationships between the different types of harm that converge on the everyday lives of those who have suffered the worst of modern warfare. This broad interpretation of violence also contributes to challenging the one-dimensional conception of peace as the absence of war. Thus, in the Galtungian sense "[a]n extended concept of violence leads to an extended concept of peace" (1969, p. 183). A related expansion occurs with the expectations of victims: if different types of violence converge in their contexts, their demands will also expand to address not only the wounds of war but also the continued transgression of their fundamental rights. Consequently, the classic distinction between positive and negative peace contributes to pushing the debates about the

victims' claims outside their traditional purview of truth and justice and towards their present needs.

## *Positive and negative peace*

In the same way as the interpretation of violence, a limited notion of peace has prevailed among scholarship, policy and practice (Diehl, 2016; Martin, 2005; Roberts, 2006, 2008). Under such understanding, it can be said that "the world is more peaceful largely because of declining violent behaviour—often measured in terms of battle deaths" (Diehl, 2016, p. 3). Prominent databases on peace and conflict have drawn their findings mainly from negative peace indicators: battle-related deaths, terrorism deaths and incidents of conflict (Global Peace Index, Uppsala Conflict Data Program, War and Peace Database). However, on the one hand, if other indirect impacts of war were included, such as "the number of civilians from war's apprentices famine, hunger and disease or suffering from being uprooted and then marginalized in terms of their longer-term security, then a greater number would be recorded" (Roberts, 2006, p. 252). On the other hand, the cessation of armed hostilities in post-war societies, although a major accomplishment, cannot be automatically equated with the achievement of peace, at least in a broad sense.

Alternative thinking on peace has helped refocus this concept from the needs of peacemaking at the state-level to the concerns of people's daily lives. Attention has been turned from a narrow and short-term approach focused on the absence of direct violence - known as negative peace, towards a comprehensive approach that seeks not only the silence of weapons but which also addresses those issues that hinder people's chances for survival - positive peace (Anglin, 1998, p. 145; Galtung, 1969; Galtung & Fischer, 2013, pp. 173–178; Roberts, 2006). From this perspective, a richer classification of the dimensions of peace provides a useful analytical tool for understanding the multidimensionality of victims' expectations to deal with the legacies of the past.

The current focus of academic and policy writing on TJ fails to capture the complex realities of victims. Interestingly, as recent works in various settings have found (including this study), there is a closeness between a wide interpretation of peace and the claims of victims in war and post-conflict situations (Clark, 2009a; Gready & Robins, 2014; Millar, 2010; Robins, 2009;

Vinck & Pham, 2008). As such, the narrow conceptualization of peace as the mere absence of overt violence falls short of the needs and expectations of those who have suffered most.

The label of negative and positive to the word peace, explains Galtung, is because, while the former does not lead to a "positively defined condition", the latter, on the contrary, does: equitable distribution of power and resources. Other differences between these categories of peace can be summarized as follows: while negative peace is short term, pessimistic, curative, it can be achieved by non-peaceful means, and is primarily aimed at reducing direct violence. Positive peace, on the other hand, is optimistic, preventive; it implies the use of peaceful means to achieve it and long-term interventions. Its main objective is to address social inequality and structural violence as well as its effects on people's daily lives (Galtung, 1969; Nagy, 2013). Despite these enormous differences, the concept of positive peace does not, and could not, exclude the attainment of negative peace. If the violence that destroys infrastructure, kills civilians and displaces people, does not stop or at least decrease, any attempt to address the grosser aspects of social exclusion will be unrealistic at best.

From this point of view, when reading the victims' demands in the mentioned empirical studies (and the present study), one cannot help but recall the notion of positive and negative peace proposed by Galtung (1969, pp. 183–186). This includes, on the one hand, demands related to "freedom from want in terms of economic security and freedom to live in dignity in terms of good governance, democratisation and protection of human rights" (Lambourne, 2009, p. 36). On the other hand, victims' claims also cover a limited concept of peace: the end of the war (Pham et al., 2005; Vinck & Pham, 2008). Or in those contexts that fail to exceed the threshold to be labelled again as war, the non-repetition of the experience of victimization and the non-resumption of war are also part of the victims' agenda.

Therefore, a broad interpretation of the notions of violence and peace in post-conflict societies is key, as it allows us to capture the multidimensionality, heterogeneity and complexity of the realities of war victims and, therefore, of their expectations. How do the different dimensions of violence translate into the lives of war victims? The rest of this section tries to solve this question, presenting the three main ways in which structural and direct violence are manifested in post-conflict contexts based both on the narratives of the research participants and on the findings from other studies.

### *1.1.2. The everyday precariousness*

What is life usually like in so-called post-war scenarios? Although this question depends on the contexts' particularities, one of the common traits of these environments identified by a large number of studies has been the depiction of a constant "battle with precariousness" (Jansen, 2015, p. 183), in which victims are forced to navigate their day-to-day lives (Aroussi, 2018; Arriaza & Roht-Arriaza, 2010, p. 206; Brewer et al., 2018a, pp. 104–149; Nee & Uvin, 2010, pp. 172–173; Pham et al., 2005, pp. 15–16; Prieto, 2012, p. 536; Robins, 2011b, pp. 105, 119). It is no coincidence that those societies emerging from conflict are also the poorest (Forman, 2002, p. 125). Therefore, measures to alleviate economic difficulties and material inequality reflect what post-conflict justice means from those attempting to recover from conflict (Aroussi, 2018, p. 286; Millar, 2010, p. 526; Rettberg, 2008b, p. 69). In this regard, Robins' understanding of what everyday life means in post-war settings is useful here.

Robins defines the everyday life in post-war settings as a sphere of the ordinary in which deficits arise on a day-to-day basis as a result of the confluence of the consequences of the war abuses and the structural violence that pre-existed the conflict and was usually exacerbated by it (2017, p. 53). This conception is based on a needs-based approach rather than on the rights discourse that generally drives responses to the legacies of war (Robins, 2013, p. 46). The former, in contrast to the rights framework, allows victims to articulate their priorities in line with their particular circumstances rather than on an external list prescribed by international standards (Robins, 2011b, p. 50). It is not surprising then, that in these highly unequal contexts, "[t]he primary concern of the survivor will be to rebuild his/her life and, having [his/her] physical needs addressed" (Cullinan, 2001, p. 64), other matters, such as the search for justice or the truth, may later become their priorities.

From this perspective, the hierarchical model of human needs, proposed by Maslow, is relevant to understand why among the endless number of victims' concerns, some acquire a greater weight. While this theory does not refer to the unique challenges of war, a high relationship between this model and the priorities of the conflict-affected has been found (Mallinder, 2008, pp. 360–362; Robins, 2011b, pp. 60–62; Vinck & Pham, 2008, p. 404; Wemmers & de Brouwer, 2011, p. 288). This theory can be summarized as follows: five interdependent levels of human needs are proposed (Figure 6), in which physiological needs become the main

motivation of humans above anything else. Thus, as long as these needs are unsatisfied, other needs will be "become simply non-existent or be pushed into the background" (*ibid*, p.374). Once basic rudimentary needs have been met, other higher-level needs will arise with a more collective or social dimension (security, love/belonging).
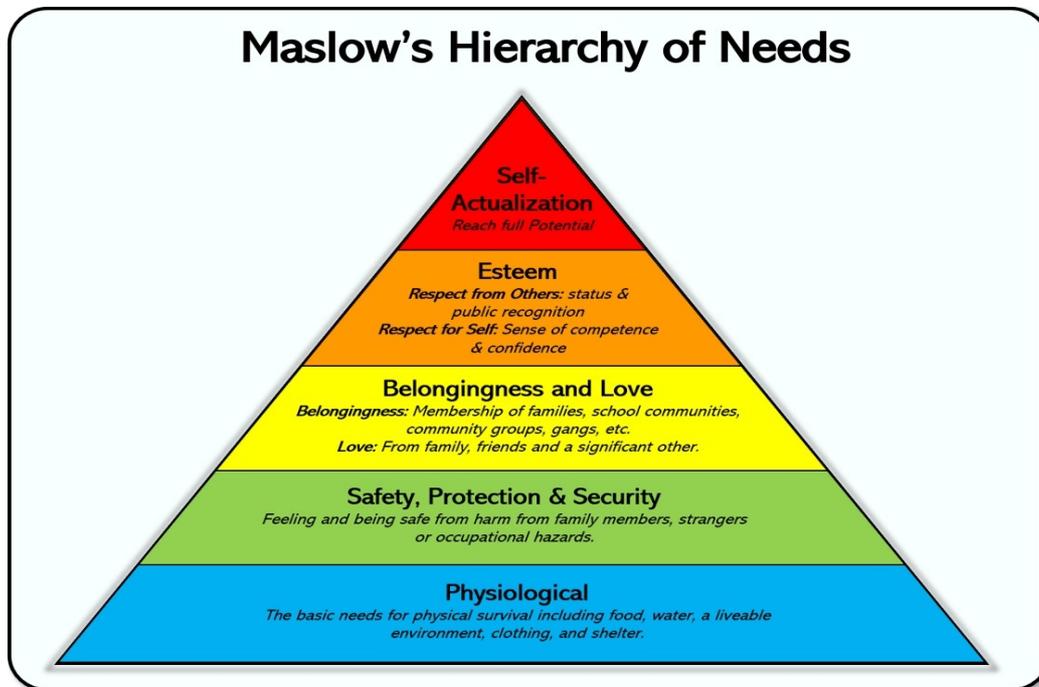


Figure 6 Maslow´s Hierarchy of Needs

Despite the different shortcomings of this theory in the case of war victims,[19] Maslow's model contributes to illustrating why key issues such as justice and truth tend to be ignored by survivors when more pressing needs have not been resolved (Wemmers & de Brouwer, 2011, p. 288). Thus, "[a]s long as basic survival needs are not met, and safety is not guaranteed, transitional justice mechanisms, will not be perceived as a priority and will lack the level of support needed for their success" (Vinck & Pham, 2008, p. 404).

Thus, as several ethnographic accounts have shown, one of the main differences between the TJ projects and its local subjects is in what each considers most appropriate to address the past. While the former seek to establish institutions with a strong approach focused on the past and on the visible face of violence, the latter are more concerned about the need to restore some

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[19] Maslow's work presents several limitations: i) In war, affected populations generally experience different deprivations at the same time (poverty and insecurity), and they will not necessarily seek their satisfaction in a linear way; ii) Maslow's model fails to account for cultural influence in prioritizing particular human needs. As some scholars have argued, although the needs identified by Maslow are universal, the order and hierarchy proposed are not (Tay & Diener, 2011).

kind of ordinary life, address the impacts of structural and direct violence and look to the future (Aroussi, 2018; Eastmond, 2010; Millar, 2010, p. 524; Pham et al., 2005, p. 36; Robins, 2012, opp. 93–94). Consequently, in a typical post-conflict context, the very nature of daily deprivation is what dominates the victims' agenda, regardless of whether their current needs are a direct consequence of the war or otherwise (Millar, 2010, p. 529; Rettberg, 2008b, pp. 69–76; Robins, 2012, p. 97; Vinck & Pham, 2008, pp. 403–404).

### 1.1.3. *The everyday emotional distress*

Armed conflicts destroy infrastructures, retard economic growth and kill countless numbers of people. However, one of their most significant impacts, which normally remains invisible, is the dramatic effects they have on people's minds (Bello, 2015; Robins, 2011b, p. 250). The experience of terror and impotence during war causes sadness, fear, loneliness and uncertainty among people who overnight see their life projects destroyed. Thus, traumatic memories remain a significant burden for a large part of those who have suffered most from collective violence, having a negative effect on their daily lives, even several decades after the end of the conflict (Brewer et al., 2018b, pp. 144–145). As many studies have shown, a strong association between the exposure to war and high levels of emotional distress has been found among populations living in war-torn areas (de Jong, Komproe, & Van Ommeren, 2003; Hewitt Ramírez et al., 2016; Kiza et al., 2006, p. 87; Pena, Espindola, Cardoso, & Gonzalez, 2007).

The aforementioned is aggravated by the state's low capacity to meet the psychological needs of victims, forcing them to go about their day-to-day existence with the harsh emotional consequences of violence (MSF, 2013, p. 3). However, it is important to highlight that mental suffering among the victim population has not only been the result of traumatic events during war but also to continuous stress related to structural and other non-war related harm (domestic violence, child abuse) (Bell, Méndez, Martínez, Palma, & Bosch, 2012, pp. 6–7; de Jong et al., 2003, p. 2129).

While there is much debate over what should be the appropriate treatment for the psychological scars of war survivors (Zraly & Nyirazinyoye, 2010, p. 1657), there is a greater consensus not

only at the academic level but among the victims themselves[20] about the urgent need to address these harms in post-conflict contexts (Nagy, 2015, p. 529). However, an important question that remains is whether the everyday emotional distress impacts victims' demands. Although there is a dearth of efforts in the TJ literature, recent empirical studies in different war-stricken settings have observed a relationship between both factors.

When asked about their main concerns, the families of the disappeared in Nepal and Timor Leste named, as expected, the urgency of knowing their loved ones' fate (Robins, 2011b, Chapters 6–7). However, although this demand has traditionally been associated with the right to the truth, this study highlighted how knowing about their family members was also related to their emotional healing (*ibid*, sec 9.2). Another study on different types of victims in Colombia suggested a strong relation between the stage of the grieving process survivors were in (acceptance or denial) and the definition of their priorities (García Arboleda, 2013, pp. 47–67). Therefore, while for victims of peasant origin, denial and impotence before their perpetrators meant they did not want to return to their lands and demand justice, for those who had coped more easily with trauma and belonged to social organizations, their demands revolved around justice and truth *(idem)*.

## 1.1.4. *Everyday violence and the fear of it*

"Reaching a peace deal is not the same as reaching peace" (Mac Ginty, Muldoon, & Ferguson, 2012, p. 1). Conflicts and peace studies have increasingly recognized that a peace agreement does not imply that the machinery of violence will disappear, or even weaken substantially in the short and medium term (Nilsson & González Marín, 2019; Steenkamp, 2011). Particularly in contexts in which violence "serves a multiplicity of social, economic, and political function[s]" (Suhrke, 2012, p. 3), old and new forms of violence are more the norm than the exception (Arriaza & Roht-Arriaza, 2010, p. 209; Nilsson & González Marín, 2019, p. 1). Thus, the grey zone "no war, no peace", which implies the persistence of violence and a general public disenchantment with the war-peace transition, becomes the common scenario in many societies attempting to emerge from protracted war (Mac Ginty, 2006).

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[20] Several empirical studies on victims expectations towards TJ mechanisms have found the need for psychological support one of the main demands of survivors (García Arboleda, 2013; ICTJ & Fundación Social, 2006; Pham et al., 2007; Robins, 2011b)

Accordingly, on the one hand, studies have shown that one of the worst consequences of war, and one that is particularly embedded in violent post-accord societies, is the brutalization of everyday life. The latter refers to the violence that permeated daily practices during the armed conflict and that continues to determine people's daily lives after a peace accord has been signed (Brewer et al., 2018b, pp. 18–19). Thus, although in places like Sri Lanka, South Africa and Guatemala the war officially ended more than a decade ago, the enduring brutalization of everyday life continues to be reflected in the persistence of crimes of ethnic hatred, attacks on human rights defenders and lynchings (Brewer et al., 2018b, pp. 19–24; Godoy, 2002). This is also what Bourgois has defined as "everyday violence": "[d]aily practices and expressions of violence on a micro interactional level: interpersonal, domestic and delinquent" (2016, p. 8). This type of violence is normally a consequence of the structural inequalities and the legacies of hatred and resentment that, although peace has been won, remain almost intact (*ibid*, p. 29). However, systematic and overt violence, produced by peace spoilers and/or by new armed actors, also remains the reality of many so-called post-conflict contexts (Nilsson & González Marín, 2019; Vinck & Pham, 2008).

Nevertheless, the physical expression of violence is only one of the manifestations of everyday violence in societies recovering from war. In these contexts, perceptions of threats, which include fear that war will erupt again and fear of daily life situations, become the reality of many victims (Prieto, 2012, p. 536; Vinck & Pham, 2008, p. 404; Wemmers & de Brouwer, 2011, p. 288). Following Nilsson and Gonzalez Marin's discussions on insecurity in post-accord environments, this study defines these types of threats such as those "posed by other forms of violence that impact people's everyday security, and those posed to a person's ontological security" (2019, p. 6).

Considering the above, it therefore comes as no surprise that different empirical studies have found security and the shadow of renewed violence as influencing factors in how survivors define their demands (Mallinder, 2008, p. 372). Important studies in Afghanistan, Uganda and Democratic Republic of Congo (DRC) found that a large majority of research participants prioritized the need to improve security and prevent recurrence of violence (AIHCR, 2004, p. 18; Pham et al., 2005, pp. 22–25; Vinck et al., 2008, pp. 402–404). The prevalence of security, according to some of these studies, was closely associated with the high level of fear expressed by the participants in the face of ordinary activities.

It is important to bear in mind that, on the one hand, the factors proposed here are inevitably provisional. As research experiences have evidenced, those factors that influence victims' wants are subject to the passage of time and changing contexts (Cullinan, 2001, pp. 45–46; Nee & Uvin, 2010, p. 158; Weinstein et al., 2010, p. 46). The diversity of victims makes it almost impossible to reach a definitive conclusion about the factors that define their expectations. What may be crucial for one victim may be irrelevant to another, even among those who have similar war experiences or demographic characteristics. Nevertheless, and as evidenced above and according to the data of this thesis, in those settings in which the pressing needs remain unsatisfied and the risks of repetition of violent events persist, these are likely to remain the victims' preferred demands (Cullinan, 2001, pp. 64–65; Eastmond, 2010, p. 12; Fletcher & Weinstein, 2002, p. 625; Saeed, 2016, p. 172).

## 1.2. *The politics of transitions*

As mentioned, one of the most common explanations for the growing disconnection between the often-enumerated goals of TJ and the needs of those whom its state-centric institutions claim to serve has been the major weight of the liberal blueprints in TJ projects, external actors and the exclusion of victims (De Waardt & Weber, 2019, p. 211; Magill & O'Connell, 2016, pp. 7–8; Robins, 2011b, p. 96). What most of these TJ scholars do not reflect on, are the most central questions of power: who has not prioritized the victims' expectations? Why (and by whom) have survivors been excluded from these processes? If processes of dealing with the past have generally not met the war-victims' claims, whose interests are being fostered?

This section will try to answer some of these queries from a different angle: the complex transitional politics where accountability projects are usually negotiated (Bell, 2017; Duthie, 2017; McAuliffe, 2015, 2017a; Rubli, 2013). Based on the classical framework of transitology and critical literature on peacemaking and TJ, the political contexts in which post-conflict justice policies are crafted are taken as a point of reference. Therefore, in contrast to comparative studies that understand the TJ agenda as exclusively creatures of the dominant liberal-legalist paradigm (Lundy & Mcgovern, 2008; Robins, 2011b; Sharp, 2018), this thesis suggests that pragmatic domestic and political considerations are those that significantly determine and inform, as ever, the processes of containing the past (Bell, 2017; Higley &

Burton, 1989; Lessa, 2011; McAuliffe, 2015, 2017b; Mohamedou & Sisk, 2013; O'Donnell & Schmitter, 1986; Przeworski, 1986; Rustow, 1970)

In so doing, this thesis has drawn on the notion of *the politics of transitions*; that is the endogenous dimension of the configuration of the TJ agenda during the war termination processes, where political stability ends up prevailing over other goals such as social justice and the strict meaning of justice (Huntington, 1991; Huyse, 1995; O'Donnell & Schmitter, 1986; Saffon & Uprimny, 2007; Spitz & Chaskalson, 2000). Other factors that condition, although in a more limited way, the prospects for any preferred TJ outcome at the domestic level are also considered in this section: the international infrastructure of justice[21] and civil society actors' endeavours (Bell, 2017, pp. 95–101; McAuliffe, 2017b, Chapters 3–4). Before moving on to the main arguments, those contexts under which the peace (and justice) has to be brokered are explored.

## 1.2.2. *Peace settlements: a conservative peace*

There is a broad assumption in peacebuilding discourses that peace processes and their successful resolution are founding moments to transform historical patterns of violence (Aroussi & Vandeginste, 2013, p. 198; Chinkin, 2003; McAuliffe, 2017b, p. 105; Panjor & Heemmina, 2018). Equally, it is assumed that in those who in the past supported and benefited from different forms of violence, now believe in the value of protecting the human rights of the same people they have abused for decades (Hansen & Sriram, 2015, p. 409). What these approaches have in common is that they give these transitional tools a fairly ambitious value, seeing them as phenomena with high potential to transform unjust arrangements on which war-afflicted societies have been based (Bell & O'Rourke, 2007, pp. 295–296; Bergsmo, Rodríguez-Garavito, Kalmanovitz, & Saffon, 2010, p. 2)

Nevertheless, tendencies observed in practices at the end of wars have evidenced that, instead of being vehicles for justice and the welfare of the masses (Jacobsen, Young, & Osman, 2008, p. 323), peace accords mainly represent the preferences of those powerful enough to allow the transitions (Arnson & Azpuru, 2003, p. 284; Darby & Ginty, 2008, pp. 6–7; Selby, 2013, p.

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[21] The elements of the international agenda of TJ will be addressed in Chapter 2. What is intended here is to show how the global components of TJ interact in the configurations of TJ frameworks at the national level.

76). The political and complex nature of peace processes and negotiated settlements "means that they are often the result of political trade-offs over power rather than deliberated in the interest of, or with the input of, the public" (Easterday, 2014, p. 387).

Put briefly, peace processes are better understood as "inter-elite political accommodations whose aim is often not so much "peace" as the reconfiguration of domestic hegemony and/or international legitimacy" (Selby, 2008, p. 13). This conservative approach is best illustrated by Liberia, Sierra Leone, Guatemala and El Salvador, where, although a negotiated solution contributed to decreasing the war-related harm, peace endeavours focused more on power distribution than in bringing about real change at a grassroots level (Arnson & Azpuru, 2003, p. 276; Denney & Domingo, 2017, p. 213; Hayner, 2008, pp. 331–333; Sajjad, 2016, p. 35). Therefore, those who generally control these processes (of peace, of post-conflict justice) should not necessarily be seen as "catalysts" of transformation, but rather as "status quo-keepers" (Jackson & Albrecht, 2018, p. 48).

Therefore, if it is recognized that peace negotiations and agreements are intrinsically political, the policies of TJ created as a result have to be considered part of these politics insofar as they seek to affect/protect the interests of political actors. Although TJ scholars have increasingly highlighted the heavyweight of global human rights standards and the well-being of victims in decisions about how to deal with the past (García-Godos, 2016; Méndez, 2016; Ucrós M, 2016), what these studies generally do not explain is "why the societal actors that supported physical violence to secure economic interests would now subscribe to a societal consensus that puts their profits in danger" (Franzki & Olarte, 2013, p. 211). Thus, while the struggles for power and to retain economic and political gains continue to greatly determine the way forward in how the past is addressed, the TJ choice will necessarily be one that does not touch upon (or affects as little as possible) the fundamental interests of powerful domestic actors.

### 1.2.3. *The politics of transitions in the negotiations of justice*

It has become progressively common that past-focused institutions, instead of being agreed on transitions from authoritarianism, are decided on peace negotiations (Budak, 2015). In contemporary war-to-peace transitions, where none of the factions have been defeated militarily and thus retain much or part of their power, the options are reduced as neither party

can impose its understanding of justice (Sieff & Vinjamuri, 1999, p. 760). Therefore, the bargaining over justice issues during peacemaking processes continue to be a very politically-sensitive matter because, in addition to involving possible prosecutions, it also implies the admission of what the war parties have done and thus, their loss of legitimacy (if any).

The question of the role of politics in the process of "coming to terms with the past" is, however, an old one, having its origins in the transitology literature.[22] Although, indeed, on the one hand, current transitions are very distant from those emerging in Eastern Europe and in Latin America (de Greiff, 2012; Robins, 2015, paras. 16–18), on the other hand, the dilemmas facing governments today are not whether "there will be some kind of transitional justice, but what the timing, modalities, and sequencing might be" (Sharp, 2012, p. 781); these changes do not mean that some of the elements of early transitions do not continue to prevail in contemporary war-ending processes, particularly the strong influence of politics. Thus, the contribution of this area of study to analyse the current agenda of TJ refers to its understanding of TJ (as part of the democratization process) as an elite-dominated process resulting from a series of bargaining arrangements in order to allow the transition (Franzki & Olarte, 2013, p. 213; Mohamedou & Sisk, 2013, p. 27; Schmitter, 2018, pp. 36–37).

Bringing studies on political regime transformation back to the analysis of TJ shows that the marginalization of certain dimensions of justice (e.g. socioeconomic versus civil and political rights) from war termination processes has not been only the product of an external liberal agenda, but also a conscious and convenient decision of the parties negotiating the transition (McAuliffe, 2017a, Chapter 3; Mohamedou & Sisk, 2013, p. 31; Segura & Mechoulan, 2017). In this sense, the democratization literature is useful to this thesis (and particularly to answer the *questions (ii) and (iv))* as its proponents do not assume the democratization processes, including the configuration of TJ, to be a different activity from politics (de Greiff, 2012; Méndez, 1997b; UN Security Council, 2011; UNSC, 2004), but one that is intrinsically related to them . Accordingly, in embracing this approach, TJ endeavours cannot be seen as a neutral and depoliticized project that arises from international imposition, but "the result of

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[22] The transitology refers to "a body of literature that has comparatively, and through case-study analysis, examined common patterns, sequences, crises and outcomes of transitional periods" (Mohamedou & Sisk, 2013, p.11). This area of studies that arose from the analysis of the process of democratizations since the 1970s to the post-Cold War period, has strongly influenced the beginning of the TJ field (Arthur, 2009; Huntington, 1991; O'Donnell & Schmitter, 1986)

negotiations and political deliberations in which multiple actors intervene" (Trevino-Rangel, 2012, p. 100).

Apart from evidencing the political nature of TJ, the study of political regime transformations can shed light on contemporary cases of post-conflict justice efforts in two main ways. First, this literature elucidates one of the main determinants of the TJ agenda: the role of the elites (Arthur, 2009, pp. 346–347; Huntington, 1991; Huyse, 1995). Drawing on a wide range of transitional contexts, transitology scholars emphasized the strong (and almost unique) role of powerful actors in defining the terms of democratic transitions, including the rules of the game for dealing with legacies of abuse (Higley & Burton, 1989; O'Donnell & Schmitter, 1986).

Second, earlier studies of regime-type transition are particularly useful to the current studies of TJ as "their descriptions … help to clarify the political contexts out of which transitional justice claims emerged" (Arthur, 2009, p. 343). In current TJ scholarship, while scholars usually overstate the influence of international interventions and norms, they fail to capture the centrality of national contexts (and political elites) in shaping institutions specifically to deal with the past (Arbour, 2007; Gready, 2005; Miller, 2013; Robins, 2013; Sharp, 2015). Thus, while recognizing the enormous differences between traditional transitions (authoritarianism to democracy) and war-ending processes, the lens of transitology allows attention to be drawn back to domestic contexts, political elites, and, not least, peace negotiations and agreements (or elite pacts).

Although each transition is unique and different internal and external variables affect the way countries decide to deal with the legacy of violations (Bell, 2017), the aforementioned elements (politics, power of balance among elites and particularities of national contexts) have played a fundamental role in those contexts where transitions that have been the product of peace negotiations. The Accra Comprehensive Peace Agreement signed in 2003 ended the 14-year civil war in Liberia. Despite a broad civil society involvement, the elite bargaining gave priority to those who held the dominant positions on the battlefield (Steinberg, 2010, p. 137). Consequently, the way in which justice was negotiated reflected the prevalence of elite pacts, on the one hand, thwarting the establishment of a criminal tribunal and on the other, assuming a *de facto* amnesty to those responsible of human rights violations (Hayner, 2007, pp. 15–17). Another example of the predominance of factions' political and economic assets over other noble goals has surely been nowhere more real than in the Central African Republic (CAR).

The 2019 peace agreement focused on guaranteeing combatants' inclusion in a key governments' slots. Although amnesties were excluded in the agreement (due to international opposition), for several of its signatories, prosecutions were taken off the table (Labuda, 2019; Mudge, 2019). The justice component was addressed with shallow commitments, which while internationally welcomed, actually mean that powerful actors are highly unlikely to be "held accountable any time soon for crimes they may have perpetrated" (ICG, 2019, p. 8). The cases of Indonesia (2005) and recent negotiations in Syria would seem also to be cases-in-point (Suh, 2015; Williams et al., 2018).

These cases illustrate that justice arrangements within these peace processes have not been the result of liberal peace interventions (even if international actors mediated these processes) but rather a tactical accommodation of some TJ institutions to the interests of elite constituencies. Thus, post-atrocity justice institutions have been infused with, and structured by, the trade-offs of those controlling the war-ending processes (Bell, 2017, p. 96; Brown, 2012; Macdonald, 2019). Consequently, as demonstrated, TJ decisions are "typically linked in a complex set of trade-offs, which together reflect the balance of power and in which transitional justice can lose out to other imperatives" (Bell, 2017, p. 96). Justice in transitions then, cannot be only explicable in terms of liberalisation or compliance with international standards but considerably structured within the realm of politics (Brown, 2012).

The prevailing power constellations during the transitions, privileged by transitological approaches, cannot explain by themselves why a certain accountability path has been preferred (Sieff & Vinjamuri, 1999, p. 760). Thus, the excessive focus on elite negotiations and the neglect of the role of the international norms/actors and other non-elite local players in these studies limits the analysis of components of the TJ agenda (Grosescu, 2015, pp. 107–109; Jordan, 2004, p. 323). Here, the literature on peacemaking and TJ contribute to filling these gaps, providing a broader understanding of these factors as determinants of projects to address the legacy of a repressive past.

## 1.2.4. *International norms and actors*

Exogenous actors and their liberal agendas also have influenced the states' choices in addressing a repressive past. However, as McAuliffe has argued while the power of ideologies

and international actors has been overstated, the passivity/resistance assigned local actors has been neglected in the TJ literature (2017b, Chapters 3–4). Accordingly, it has become commonplace among the scholarship to describe the adoption/ imposition of external models of TJ in a given context as a process where universal and liberal pretensions infuse the conflict protagonists' actions (Sajjad, 2016, p. 41), leaving aside considerations of local politics. In the view of these and other critics, international actors and institutions are portrayed as the main decision-makers in top-down TJ processes (Rubli, 2012, p. 7; Sriram, 2009, p. 116). However, in practice, this is hardly the case. The liberal agenda, including the protection of victims' rights, have ended up being shaped and warped "by the specificities of war-ending processes and the strategies and power dynamics that accompany them" (Selby, 2013, p. 78).

Suh defines TJ as preventive policies to the extent that global norms are normally adopted by political elites to "block unwanted international pressure to address human rights abuses" (Suh, 2015, p. 97). Indeed, in this current context of human rights internationalization, where the question is increasingly "how much accountability can be achieved when" (Bell, 2009, p. 124), external pressure on states to take synchronized choices with justice standards plays a very important role in the TJ national agenda. Against this background, and particularly for those countries/factions that are seeking external legitimacy or depend significantly on international aid, the "human rights talk" would end up being included in the formal agreements (Fletcher, Weinstein, & Rowen, 2009, pp. 198–201). However, it would be naive to believe that the decisions on past-focused policies would be taken in isolation or to the detriment of the warring parties' main interests (Macdonald, 2019, p. 237; Reed, 2017). Accordingly, while some international TJ prescriptions would be selectively incorporated, the factions will seek to "keep intact the internal balance of power" (Subotić, 2013, p. 136).

The above is not to neglect the heavy weight of the international standards on human rights and liberal practices in post-conflict justice practices. It is indisputable that these processes are becoming less local (Selby, 2013, pp. 72–73). While the roles and level of intervention vary, it is recognized that international interveners and norms have contributed significantly to shaping negotiated settlements and past-focused institutions around the world (Jansen, 2015). Particularly after 2002, the shadow of the ICC has pushed recalcitrant warring factions to accept a dose of justice (Bell, 2017, p. 97). The TJ toolkit has been transferred from one location to another (Cavallaro & Albuja, 2008). Indeed, the exclusion of amnesties in the Liberia and Libya peace accords was mainly due to strong international opposition. However,

the contention here is that TJ discourses overstate the authority of external actors and global blueprints in contemporary post-conflict justice and underestimate the power of domestic factors to craft these processes (McAuliffe, 2015; Subotić, 2013, p. 137).

## 1.2.5. *The leverage of local actors*

This section explores the capacity of local actors (NGOs, victims' organizations and survivors) to affect TJ elite-level post-conflict settlements. To begin with, participatory approaches in TJ programming have increasingly become a recurring claim among academic and policy writing (García-Godos, 2016; Lundy & Mcgovern, 2008; Méndez, 2016; UNSC, 2004; Vinck & Pham, 2008). In response to these calls and added to victims' growing public presence in political scenarios, the inclusion of victims in the TJ planning has begun to be required by international sponsors and strategically adopted by conflict protagonists (Rettberg, 2015; Shaw & Waldorf, 2010, p. 4) However, while scholars and international actors continue to praise the positive effects of such involvement (legitimacy, ownership, empowerment and peace sustainability) (Brett, 2017; European Parliament, 2016, p. 2; Rettberg, 2015, p. 35; Ucrós M, 2016, pp. 8–10), critical assessments of the impact of these efforts are lacking (De Waardt & Weber, 2019, pp. 212–213). In developing such arguments, TJ scholars, in addition to implicitly assuming that warring factions are willing to put aside their own interests, tend to isolate these participation exercises from the political dynamics in which they take place.

Civil society actors generally, and especially in unstable contexts, lack leverage or resources to influence the elite drivers of TJ projects (J. Darby & Ginty, 2008, p. 5; McAuliffe, 2017b, p. 121). Thus, while war survivors' inclusion in addressing the past projects is recognized as a "well-established norm" (Méndez, 2016, p. 2), these processes can do little to alter the armed antagonists' key expectations at the negotiating table: "[v]ictims are at best consultees and witnesses, not decision-makers, and therefore their ownership over these processes remains limited" (De Waardt & Weber, 2019, p. 212). In the same vein, Wilson argues that strategies for contending with the past are one of the elements in which,

> "civil groups are usually least effective in shaping the course of the talks and where the
> two main protagonists in the conflict act most expediently to protect their interests. It
> is one of the most elitist questions of all issues in transitional negotiations, and the one

in which leaders are most likely to reach a deal over the heads of ordinary people" (Wilson, 2001, p. 198).

In claiming that national TJ agendas are highly conditioned by internal factors, two related arguments are presented. The first argument is that TJ processes are driven by political considerations, particularly by the interests of those negotiating the transition. This is not to deny the impact of key international legal developments and the struggles of victims' constituencies in the make-up of TJ projects, but to insist that it should not "be forgotten that [post-conflict justice] is [predominantly] the result of a political negotiation between two opponents with particular interests, which include their desire to evade or mitigate responsibilities and reduce the implications of their past acts" (Reed, 2017).[23] The second argument is that the prevailing understanding of TJ processes from liberal or normative lenses is problematic, since these approaches underestimate the relationship between the political war-ending process and the definition of strategies to confront the past.

## *Concluding remarks*

What do war-victims want? Do TJ national and international agendas reflect their main concerns? This study attempts to address these questions, taking as a reference two Colombian regions severely affected by war. This chapter has attempted to offer alternative theoretical approaches, while trying to overcome some of the weaknesses in exiting studies. The main limitation identified in the TJ scholarship is their neglect of post-conflict ecologies at different levels. At the micro level, to the extent that survivors' needs, and demands are generally understood only as those that have a relationship with their victimhood, a large part of these studies neglect the harsh conditions that generally characterize war-affected environments. At the macro level, the contexts where TJ projects are negotiated and decided are mentioned at best as little more than useful information.

Considering the necessity of analysing key dimensions of post-war spaces to answer the research questions in a more compressive way, alternative theoretical approaches have been proposed. Nevertheless, the notions of the everyday and the broad understandings of violence

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[23] Translated by the author.

and peace are useful here for three main reasons. First, these concepts imply a deeper look at the different dimension of violence that characterized the lives of the victims. This involves going beyond the direct effects of the war (without ignoring them), to include the daily contingencies and challenges that habitually define post-war scenarios (everyday violence, everyday precariousness and everyday trauma). As Robins rightly affirms, the status of victim and the experience that derives from it is "only one element of the everyday lives of those impacted by conflict, alongside highly contingent social, economic and cultural understandings" (2012, p. 97). Therefore, everyday life becomes an integrating and wider space to see victims in a more comprehensive way: as people affected by war, but also as those whose human rights have historically been absent. Second, and perhaps the main contribution of the everyday notion is that it represents an opportunity to get involved and connect with the daily life of those who are supposedly the central beneficiaries of TJ (Chapters 4 - 7). Third, the concepts of positive and negative peace contribute to challenging the provisions that have been proposed to deal with the past, paving the way for war survivors to identify and discern what is the most beneficial way to redress what has been destroyed by war.

The second approach proposed in this chapter is the analysis of the contexts which justice and truth measures are usually defined. This necessarily implies understanding, on the one hand, that peace processes, rather than windows of opportunity that favour the majority, are opportunities to end or reduce direct violence and secure the interests of those powerful enough to obstruct the transition. On the other hand, TJ processes and agreements cannot be understood in isolation from domestic politics, the elite incentives and the maximum interest of peace processes: ending the war. On this basis, this approach contributes to answering the research questions, particularly in the definition of the TJ agenda in Colombia (Chapter 3) and in providing alternative explanations to understand why the latter have been at odds with the claims of the war victims in this study (Section 8.3). Thus, and in contrast to how the Colombian experience of post-conflict justice has usually been analysed by scholars and practitioners, particular attention will be given to the political context in which truth and justice provisions have been agreed upon.

Again, the above does not suggest that international elements do not play a relevant role in the configuration of TJ's infrastructure. As will be expanded in the next chapter, there is a growing consensus around a global responsibility agenda that significantly affects the way states face their own past evils. However, what is questioned in this chapter is that TJ is generally

portrayed as a liberal project driven by external agents, regardless of the particularities of peace negotiations and the key role of domestic actors.

# *Chapter 2 The international agenda of Transitional Justice*

*"The aims of transitional justice will vary depending on the context, but these features are constant: the recognition of the dignity of individuals, the redress and acknowledgment of violations; and the aim to prevent them happening again"*

(ICTJ, n.d.)

## *Introduction*

The origins of TJ can be traced to the early 1980s among societies that sought to satisfy the demands of justice amidst the challenges bound up in political transitions in the Southern Cone of Latin America. This was the beginning of a thorny path which expanded to the region and to former Soviet Union regimes. Yet, this is not how the story ends. Since the 1990s, and with greater strength in the new century, the growth and positioning of TJ as a worldwide practice and discourse has been irrefutable (de Greiff, 2011, p. 31). From being an exceptional and provisional practice highly shaped by local politics in post-authoritarian contexts (Huntington, 1991; Malamud-Goti, 1989), the field has been institutionalized at the global level and has become nearly a normalized and inescapable task in the wake of human rights violations (Rubli, 2012). Thus, coupled with key progress in international law and policy in human rights, the truth and justice mechanisms have come to be regarded not only as the pre-eminent response to redress the wrongs of the past, but as one of the main political tools of the international post-conflict peacebuilding efforts (Sharp, 2015, p. 154; UN General Assembly and UN Security Council, 2000; UN Security Council, 2011; UNSC, 2004).

Have these developments on several fronts (contexts, nature and scope of the abuses, types of victims) marked far-reaching changes in the content of the global TJ agenda? There is not a simple answer to this question. On the one hand, although increasingly critical voices have called for expanding the boundaries of TJ to the current complexities (Arbour, 2007; Thomas O Hansen, 2011; Sharp, 2015), its main foundational paradigms remain deeply embedded in state practices: a narrow understanding of justice and set of rights and state-centric institutions. That the instruments created for the early cases of TJ continue to be considered as legitimate, even though the current practical dilemmas of societies in transition have varied considerably (Arthur, 2009, p. 354,) is just one illustrative example thereof. That is not to say that a world-

wide one-size-fits-all formula has been implemented in societies affected by significant violence (Nagy, 2008, p. 121; Sriram, 2009, p. 121), let alone that TJ praxis has remained stagnant over recent decades. Although the field has "become ossified" in many of its basic postulations (Robins, 2015, p. 182), developments in the field have been remarkable, particularly in the consolidation of an anti-impunity global framework and the institutionalization of victims' rights.

This chapter is directly engaged with such continuities and changes, upon which the TJ contemporary discourse rests. The aim is to identify the TJ international agenda in the twenty-first century, highlighting those components that have traditionally been at the centre of the mainstream of TJ concerns (Section I) and their most influential developments in recent decades (Section II). Continuing with the changes in the field, the last section places special emphasis on the so-called victims-turn (García-Godos, 2016), with a view to providing a response to whether this trend has translated into transformation on the global mainstream of TJ. Consequently, given this thesis seeks to understand to what extent the needs articulated by war victims in this study coincide with the main elements of the global contemporary processes of TJ, this chapter contributes particularly to the definition of the latter *(question (i)).*

## *2.1.   What has remained?*

The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition (UN Rapporteur) identifies two main differences between those contexts in which TJ arose (post-authoritarian) and the current ones into which the field has been transferred (war, post-conflict and non-transitory environments): institutional capacity and scope and dimensions of violence (de Greiff, 2012, paras. 15–18). While in the former settings a relatively advanced institutional system prevailed with the economic capacity to respond to the challenges of transitions, in the current TJ environments the opposite seems to be the rule (*ibid*, para 16). Similarly, while the prevalent crimes of authoritarian regimes were political and carried out by the state, and directed against particular individuals, in the new contexts "the violations often come about as a result of generalized social conflict in which, among other factors, there is a plethora of violent agents" (*idem).*

Despite the expansion of the field and the numerous calls to address its emerging challenges, responses (including those of the UN Rapporteur) continue to be mainly based on some of TJ's early assumptions and institutions (Nagy, 2008, p. 288). This section provides an overview of the prevailing scripts underpinning TJ practice at the global level and describes some of the disadvantages of their permanence in deliberations on justice in transitions.

## 2.1.1. A narrow understanding of justice

What kind of justice is prioritized in the wake of widespread human rights violations? Decades of practice of TJ have barely changed the answer to this question: a restricted justice that prioritizes violations of bodily integrity at the expense of long-term patterns of structural harm present in wartime and peacetime (Arbour, 2007, p. 5). Several arguments have been raised to explain the neglect of socioeconomic wrongs,[24] one of the most accepted, being the influence of Western liberal democratic modes of thought that emerged in the so-called 'third wave' transitions (Arthur, 2009, p. 341; Nagy, 2008, p. 284; Sharp, 2015, p. 152; Waldorf, 2012, p. 173). Accordingly, democracy had been conceived within a restricted and moderated realm of politics and legal institutions, leaving behind "the incorporation of social and economic *desiderata* into the definition of democracy" that prevailed in the 1960s/1970s (Diamond, 1997, p. 6). This resulted in a fairly limited version of justice, in which the physical violence that characterized authoritarian regimes, took precedence (McAuliffe, 2015, p. 93). [25] This approach has predominated since then, although victims' demands, and structural features of today's TJ scenarios are far removed from those in which the field emerged.

In the last 15 years or so, calls for a "multi-faceted dimension of justice in low-income, war-torn societies" (Lundy & Mcgovern, 2008, p. 274) have resonated among academic circles and to some extent, in key multilateral organizations (Arbour, 2007; Gready, 2005; Mani, 2008; Miller, 2008; Nagy, 2008; Sharp, 2013; UN Security Council, 2011). The UN Rapporteur recognizes the growing interaction between economic opportunities' demands and the

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[24] The traditional focus of TJ on international criminal law (Arbour, 2007, p. 2); the strong influence of the human rights framework and a liberal peace agenda (Waldorf, 2012, p. 173); the assumption that the causes of conflicts are political rather than the result of socioeconomic factors (Miller, 2008, p. 268); and to ensure the maintenance of the status quo (Mani, 2002, p. 151).

[25] Although theorists at that time exceptionally discussed the inclusion of a socioeconomic dimension of justice in the process towards democracy (Asmal, 1992, pp. 495–496; McSherry, 1992, p. 487), they were ignored by the TJ mainstream.

traditional victims' rights in recent transitions, proposing collaborative (but still distinct) work along with security and development projects (de Greiff, 2012, p. 63).

Despite the growing consensus for a broad understanding of justice, these claims have been poorly translated into reality (García-Godos, 2013, p. 242; UNHCHR, 2014, p. 1). Neither the impact of structural violence nor everyday victims' concerns are part of the current international TJ agenda (Millar, 2011, p. 529). Beyond the fact that some truth commissions have acknowledged the root causes of violence and have provided broad recommendations (with little or no implementation), the justice dimension continues to be confined to its initial assumptions (Nagy, 2008, p. 285; Waldorf, 2012, pp. 176–177). Even more importantly, although an increasing number of field-based studies (including this research) in war-torn societies have found that survivors' greatest demands revolve around basic needs rather than the abstract concerns of TJ, the field has seemed to turn a deaf ear to those calls (Millar, 2011; Pham et al., 2005; Robins, 2011b; Vinck et al., 2008).

## 2.1.2. Victims' rights

The understanding of victims' rights as "a set of norms that determine the treatment and entitlements that victims of human rights violations have with regard to remedies and reparations" (García-Godos, 2013, p. 244), did not acquire an international regulatory nature until the late twenty century. Accordingly, in the absence of a clear international framework, the characteristics of victims, the nature of the repression[26] and the demands of survivors of authoritarian regimes influenced the definition of particular rights in the TJ early experiences (Mandani, 2000, p. 59). Although there were large disagreements among academics and policy-makers about "the content" and "justiciability" of state obligations to respond to large-scale victimisation by previous regimes (Méndez, 1997a, p. 7), there was a general recognition of the core rights of this emerging field: justice, truth and reparation (Kritz, 1995; Méndez, 1997a, pp. 7–8).

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[26] Most of the literature reviewed from the first two decades of TJ refers to those crimes that affect life, liberty and physical integrity, such as extrajudicial execution, torture, disappearances, and arbitrary arrests (Malamud-Goti, 1990; Méndez, 1997a; Orentlicher, 1991; Zalaquett, 1992). These offences were characteristic of dictatorial regimes of the Southern Cone.

The literature and policy documents surveyed during the early days of TJ did not reflect other victims' claims such as those related to social or economic needs. The virtual absence of empirical studies based on the survivors' voices (Sieff, 1999, p. 817) and the assumptions by the emerging TJ community based on those affected by state repression contributed to the establishment of a victim's prototype: political dissidents who came from urban middle-class families and were mainly affected by forced disappearance and/or torture (Kovras, 2017, p. 67; Mandani, 2000, p. 59). From this type of victim (students, scholars, trade unionists and religious leaders), instead of "the marginalized people they sought to help", the rights of the victims began to be narrowly defined (Rajca, 2018, p. 39). The victims' socioeconomic circumstances or their membership of communities subjected to ancestral discrimination was hardly included in academic research, let alone policy documents (Popkin et al., 1995).

Subsequent contrasting developments contributed to consolidating victims' rights at the international level. On the one hand, the establishment of international courts coupled with the rapid development of international guidelines on the state's duty to punish serious crimes positioned at the global level, the right to justice and a prosecutorial model based on individual responsibility (Joyner, 1998; Méndez, 1997a; Morris, 1996; Rana, 2012; Roht-Arriaza, 1996), and, on the other hand, the South African decision to opt for forgiveness and truth raised several questions about the appropriateness of prosecutions in unstable contexts (Llewellyn & Howse, 1999). Therefore, the right to the truth and its most representative institution, truth commissions, began to be defined less as the second best solution but as a synonym for the reduction of justice to be accepted as the first choice in the international arena (Llewellyn & Howse, 1999; Parlevliet, 1998; Siegel, 1998).

As a consequence of these developments, two opposite legal narratives and practices of justice emerged in the TJ field. The retributive justice, based on the criminal law principles, claimed that as abuses committed in the past constituted generally international crimes, states were under an international obligation to prosecute and punish their culprits (Aukerman, 2002; Orentlicher, 1991). In this sense, this approach, per se, did not seek peace, but the pursuit of justice (Williams & Duque, 2019, pp. 430–431). Thus, as retributive justice focused on the perpetrator and the punishment for his actions, trials, whether through international, hybrid or national courts, were seen as the appropriate instruments. On the contrary, restorative justice claimed to prioritize the reparation of the damage caused to the victim and to rebuild the relationships destroyed by the war. Accordingly, justice was "not based on punishment

inflicted but the extent to which harms [had] been repaired and future harms prevented"
(Gilbert & Settles, 2007, p. 7). Thus, in the complex contexts of political transitions, it was
argued, this dimension of justice was the most appropriate, since, while not endangering
transitions, it focused on victim reparation and rehabilitation of perpetrators (Trevino-rangel,
2012, pp. 85–86). The right to truth as well as the implementation of truth-telling strategies
thus became the greatest exponents of restorative justice.

However, the dilemmas between these two dimensions of justice, between the search for justice
in its strict sense and the right of truth, would be resolved in the new century by consolidating
a holistic approach of TJ

## *2.1.3. State-centric institutions*

In his definition of TJ in 2004, the UN Secretary General listed, although not exhaustively, the
non-judicial and judicial tools of this field: "individual prosecutions, reparations, truth-seeking,
institutional reform, vetting and dismissals, or a combination thereof" (UNSC, 2004, para. 8).
The TJ instruments did not represent an innovation, as the report claimed, but a best practice
toolbox that different societies in transition had been using to deal with the legacies of human
rights abuses. Indeed, in the early period of TJ, these instruments had been envisaged mainly
in post-authoritarian regimes to respond not only to the victims' demands for justice and certain
types of crimes, but also to consolidate emerging democracies (Arthur, 2009, p. 355; Barria &
Roper, 2010, p. 3; de Greiff, 2012, para. 15).

Several decades have passed since then and, although on the one hand, the environments of TJ
have extended to contexts that have not necessarily advanced to well-functioning democracies
or that have even experienced no change at all (Carothers, 2002, p. 9), on the other hand, the
nature and the scale of violence and survivors' claims have varied significantly (Millar, 2011;
Robins, 2011b). Yet the field has not moved its traditional responses from their dominant
positions. On the contrary, since the late 1990s the conventional TJ instruments have
mushroomed around the world (Olsen, Payne, & Reiter, 2010a), as it was assumed that their
implementation would "lead to the transformation of the institutions, the consolidation of
national unity and the establishment of a 'true democracy'" (Trevino-Rangel, 2012, p. 102). In
particular, it has been claimed that the most prominent TJ tools - prosecutions and truth

commissions - have contributed to breaking the cycles of violence, deterring future human rights violations and advancing the strengthening of democracy (Kim & Sikkink, 2010; Méndez, 1997b; Olsen et al., 2010a) and peace (Mendeloff, 2004, pp. 354–355).

Notwithstanding their growing popularity, the TJ traditional tools have been subject to increasing controversy. To start with, the evidence of the positive effects of these instruments on diffuse objectives such as reconciliation and democratization has been inconclusive at best and detrimental at worst (Oskar, Roland, & James, 2008). A second criticism of TJ institutions has been their disconnection from the realities of those who have to live in extreme conditions after war. In these settings, the pre-determined TJ responses have been seen by violence-affected communities as remote and distant from their concerns and realities (Roberts, 2011c, p. 411; Robins, 2011b).

Thus, TJ processes have not been the result of a deep process of reflection on the needs of those most affected by repression and structural violence, but of the application of a "mechanistic, 'ticking box' approach" (Andrieu, 2019). A caveat is again in order here. That TJ tools have been based on international standards and templates should not obscure the fact that they continue to be strongly shaped by the political bargaining processes at the national level (Section 1.2). Accordingly, the content and scope of truth and justice institutions in peace negotiations/accords, although being increasingly influenced by global developments on human rights, remain determined by a constellation of different actors, many of whom have been part of the abuses and have historically benefited from marginalization and violence (Cohen, 1995b; McAuliffe, 2017b).

The initial structure of the field of TJ was defined through the limited lens of the transitions of authoritarian regimes to liberal democracies in the 1980s and early 1990s: serious (but not massive) violations of human rights at the hands of the state against political activists, mainly acts of physical violence and domestic institutions with relative capabilities to respond to the challenges of transitions. While these societies privileged certain rights that should be protected and the remedies (mainly legal-institutional tools) that would respond to these claims, the emerging democratic governments sought to avoid the process for contending with the past becoming an obstacle for the transition process. Several decades have passed since then, and although the dilemmas of TJ in the current environments have changed and are complex, the same interpretation of justice and the set of rights and measures which emerged from "the

regional diagnoses of Latin American observers" (Arthur, 2009, p. 360) still shape the TJ endeavours around the world.

## *2.2.   What has changed?*

In the absence of a clear international conceptual and regulatory framework of TJ, the emerging democratic governments in the 1980s had to respond to the "justice vs democracy" dilemmas by creating their own policies from scratch (Arthur, 2009, p. 330; Neier, 1990, p. XXX). This scenario is different today. More than three decades, not only of experience, but also of regulatory progress at the international level, have meant that the societies involved in these projects have not only many more lessons to take advantage of, but that they are more limited in what can or cannot be negotiated in terms of justice. This section seeks to present these developments in the global agenda of post-conflict justice.

### *2.2.1. The institutionalization of victims' rights*

If, in the early 1990s, Carlos Menem, Patrico Alwayn, and the Mothers of the Plaza de Mayo movement had been asked how to respond to victims of legacies of abuses, their answers would have been varied, considering their different stances on the 'justice versus democracy' debates. While each president had referred to reparation and truth respectively, the Argentine organization would have chosen justice and truth. Almost three decades later, this scenario has varied considerably. Although sharp differences persist as to how and when victims' rights should be guaranteed, it is indisputable that there is a widespread consensus on its main components in the policy and academic arenas: the right to justice, the right to truth and the right to reparation. The emergence and consolidation of an international framework for victims' rights has been the result of a strong and global affirmation in international norms and standards (García-Godos, 2013, p. 244), the most important being the following:[27]

- The report Set Principles (1997) commissioned by the UN to combat impunity and its updated version (2005) known as the 'Joinet Principles' describe the

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[27] For a complete analysis of the inclusion of victims' rights in different international and regional instruments see International Federation of Human Rights, (2007, Chapter I).

duties of states against human rights violations, bringing together in a single instrument "the well-known trilogy of core rights and remedies…"(Haldemann & Unger, 2018, p. 10).

- The Basic Principles on the Right to Remedy and Reparation (2005) (The Reparation Principles), seek to "rationalize through a coherent approach the means and methods by which victims' rights can be addressed" (Bassiouni, 2006, p. 251).

- The Convention for the Protection of all Persons from Enforced Disappearance (2006) has codified the right to the truth, recognizing the right of persons with a legitimate interest to know the fate of victims of this crime and receive reparation.

It is important to highlight two coinciding points in the design processes of the Joinet and Reparation principles that may explain the focus of these instruments on civil and political rights. Firstly, local politics and the demands of civil society and experts from the third wave of transitions, particularly from Latin American countries, significantly influenced the design process of these international guidelines (Haldemann & Unger, 2018, p. 19; Van Boven, 2009, pp. 29–30). Thus, as mentioned earlier, both the victims' experiences of victimization as well as the contextual factors of post-authoritarian democracies shaped the state responses introduced by the principles. Secondly, and more importantly, although at this stage initial attempts were made to expand the scope of the principles to include all human rights violations (including socioeconomic harm and historical wrongdoing), there was no support or interest from state delegations to follow this path (Haldemann & Unger, 2018, pp. 8–9; Van Boven, 2009, p. 30).

Without pretending to be exhaustive, the victims' rights are presented below, combining state practices and the mentioned normative elements. The right to justice is defined as the access to an effective judicial remedy, which encompasses, prosecutions and punishment for those responsible for international crimes. Although from a maximalist approach, all international crimes should be investigated in transitional contexts, "exemplary prosecutions", extra-judicial mechanisms and alternative sanctions have become widely accepted in state practices and international court proceedings (Bell, 2009; ICC-OP, 2015; Méndez, 1997a; Orentlicher, 1991, 2007). In simple words, in terms of justice, although TJ processes are increasingly bound to

international law, governments have the leeway to prosecute certain perpetrators, certain crimes and define the terms of sanctions.[28] Trials still remain the main instrument for delivering justice. While temporary international tribunals have lost relevance in the last decades, the ICC establishment in 1998 and its ratification by more than 120 countries has " raised the profile of international justice efforts" (Roht-Arriaza, 2006, p. 7). The ICC's complementary approach to national efforts[29] has also contributed to a growing interest in peace negotiations to establish (or promise to do so) domestic prosecutions or other accountability mechanisms (truth commissions) to avoid the ICC jurisdiction (Bell, 2009, p. 117, 2017, p. 97).

The right to the truth implies that individuals are entitled to access objective and relevant information related to the crimes they or their relatives were subjected to. Several soft law instruments and regional judicial bodies have recognized a collective dimension as it is assumed that "it is a political right that applies not only to victims and those with an interest in the information but also politicians, NGOs and others seeking information of a public matter…" (Klinkner & Davis, 2019, p. 23). Accordingly, the social interpretation of the right to the truth has acquired a special character, becoming "a necessary, if not vital, component of the peacebuilding process, as important as demobilization, disarmament or the holding of post-war elections" (Mendeloff, 2004, pp. 355–366). Truth commissions, allegedly the most appropriate institution for this task, have, thus, become one of the most popular mechanisms of TJ (Roht-Arriaza, 2006, p. 4).

The right to reparation means that any victim of international crimes is entitled to reparation that is effective and proportional to the gravity of the wrong inflicted. In its classical conception, reparation implies that all efforts must be made to erase the effects of the heinous crimes and return the victims to the situation they were in before they were affected by violence (Uprimny, 2009, p. 629). The obligation to repair, strictly speaking, does not take into account the current conditions of victims but the damage caused (*ibid*. p. 639). Restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition are the components of this duty. The last element seeks to ensure that states take all the necessary measures to

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[28] The discretion of the states in choosing the type and duration of the sanctions was ratified by the ICC Prosecutor (ICC-OP, 2015, p. 10)

[29] The principle of complementarity implies that the international tribunal can only exercise its jurisdiction over international crimes when national systems cannot or do not genuinely want to do so (Rome Statute Article 17)

prevent these crimes being committed in the future. Institutional reforms and the repeal of laws contrary to human rights are some of the measures enshrined to guarantee this right.

### 2.2.2. A holistic agenda: retributive and restorative justice

One of the most common quandaries in the early days of TJ concerned the tensions between the binaries of reconciliation versus justice and retributive and restorative justice (Sikkink & Walling, 2007, p. 429). This old-school debate seems to have been settled in the new century by embracing a 'package approach' (Subotić, 2012, p. 120) that accommodates these conflicting aspirations within the field and promotes institutions of multiple accountability (Carrillo, 2009; Friedman & Jillions, 2015; Roht-Arriaza, 2006, p. 9). In practice, the comprehensive agenda of TJ has involved designing and implementing, preferably in parallel, instruments of retributive and restorative justice.

However, the acceptance of the combination of restorative and retributive justice instruments has not meant, at least at the normative level, that the former can replace the latter. Over the past two decades, and particularly with the establishment of the ICC, there has emerged a global recognition of states' obligation to investigate and punish international crimes (Orentlicher, 2007, p. 18). Thus "the existence of a truth commission, or even administrative sanctions, has not been found to modify the state's obligations to investigate, and if warranted, criminally prosecute" (Bell, 2009, p. 113). Thus, despite the expansion of how societies address an atrocity ridden past, a retributive approach to justice continues to prevail at the international level, where the search for justice in a strict sense (again, at least in theory) prevails over the search for a quick peace.

### 2.2.3. Amnesties and their limitations

Amnesties have been a long-standing practice used to bring an end to armed conflict (TJI, 2013, p. 25). However, the last twenty years have seen key changes in their boundaries. Contrary to the past in which states had ample room for manoeuvre to refrain from pursuing justice in return for political gains, since the mid-1990s the growing force of international developments against impunity "have abridged the scope of state sovereignty and made it impossible to see the amnesty issue in purely political terms" (Freeman, 2009, p. 1). Reflecting

this trend, several instruments of international law (Subsection 2.2.1) and a series of decisions by regional human rights bodies, have contributed to the prevailing affirmation of a global principle in support of prosecutions for international crimes and therefore to the prohibition of amnesties thereof.

Nevertheless, the fact that in recent years there has been a growing consensus in favour of the international paradigm described above does not mean that practice has followed the same direction (Mallinder, 2018). What is certain is that their use continues to be overwhelming, whether in encouraging parties to sit at the table or to wind down a period of mass abuses (Jeffery, 2018; Olsen, Payne, & Reiter, 2010b, pp. 39–41; Slye, 2002). In terms of effective compliance, the scenario is especially bleak. Even in cases where the belligerent parties have remained silent or have even ruled out such amnesties, sophisticated strategies have been followed to circumvent such prohibitions (Vandeginste, 2011). However, it is undeniable that the question on how to confront legacies of mass abuse cannot be driven, at least openly, by the need to achieve peace at the cost of human rights (Bell, 2009, p. 120).

The last two decades have witnessed important developments for the TJ field of ideas and praxis. The consolidation of victims' rights in international instruments, the proliferation of a holistic post-conflict approach and a greater consensus on the obligation of states to prosecute international crimes are some of the most significant changes. These elements and those presented above (Section 2.1) are part of what could be called a global TJ agenda. The internationalization of post-conflict justice has also provided an opportunity for the views of its alleged beneficiaries to be included in the configuration of truth and justice institutions. This development is explored in the next section

## 2.3. The Victims-turn in transitional justice

"*In a peace process ... it is impossible to talk about non-repetition if you do not have those affected involved because the one[s] who are talking [at the negotiating table] are the ones who have been carrying guns... The vision of those who have had to endure the greatest damage, in addition to [giving] legitimacy, marks the way forward in a [peace] process*"

(Brett, 2017, p. 18).[30] The words of Jineth Bedoya, a recognized Colombian war survivor and the model of victims' participation during the FARC peace negotiations (2012-2016) (in which she became involved) echo a global trend of TJ: the victims-turn. Jineth's declaration also convincingly highlights three frequent rationalities for war survivors' involvement: relevance, legitimacy and empowerment (Andrieu, Aloui, Ferchichi, Hamza, & Robins, 2015, p. 10; de Greiff, 2012, para. 54; Jamar, 2018, p. 41; Lundy & McGovern, 2008; Triponel & Pearson, 2010, p. 131).

Thus, the involvement of victims during TJ endeavours "has become a well-established norm, perhaps not as a *sine qua non* obligation on the part of states that embark on TJ exercises, but certainly as a measuring stick for their effectiveness and as predictors of their chances of success" (Méndez, 2016, p. 2). How did this transformation occur? Have these changes had any impact on the ground? Are victims' demands represented (if possible, to speak of a homogeneous group) on the TJ international agenda? This section attempts to answer some of these questions, noting that most of the literature and policy documents about the merits of a victim-centred approach have been widely normative and seldom grounded in empirical analysis (Andrieu et al., 2015, p. 10; McAuliffe, 2017b, p. 31).

## 2.3.1. What does the victims-turn mean ?

The victims-turn, as García-Godos calls the positioning of those whose lives have been most directly affected by violence at the centre of TJ processes (2016), has involved, at least in theory, three main changes. First, the post-conflict agenda has allocated a privileged place to victims' rights, even supposedly above the political interests of the parties to the conflict (Ucrós M, 2016). Second, the field has allegedly stretched its borders to include the voices of war-affected populations, throughout the process of planning and implementing responses to correct past serious wrongdoings (Triponel & Pearson, 2010, p. 107). Thus, the active engagement of victims is considered a key principle for the sustainability and success of TJ institutions and lasting peace (de Greiff, 2012, para. 54; Lundy & Mcgovern, 2008; Méndez, 2016, p. 2). Finally, a 'victim-centred' approach has also involved "unprecedented attention" in the field towards local processes that aim to meet the needs for accountability and healing of war-

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[30] Translated by the author.

affected communities (Shaw & Waldorf, 2010, p. 4). This thesis is more interested in the first two understandings of the concept of the victims' turn.

While in these times it would seem counterintuitive to think about TJ without including victims as protagonists, this has not always been the case. In the early state practices of TJ, victims' voices were generally perceived as "a complication, and embarrassment, a political inconvenience and a marginal phenomenon" (Van Boven, Flinterman, Grunfeld, & Westendorp, 1992). The main focus of this emerging field revolved around how states and society as a whole could move from a violent past to a new democratic and sustainable scenario, "not on the (interest and priorities of) individual victim or groups of individuals whose rights had been violated" (García-Godos, 2016, p. 351). Against this background, victims were perceived as a homogenous and passive group in which the state's obligation to address serious human rights violations rested. Therefore, the public participation of victims in TJ systems and claims in favour of their participation were practically absent within this flourishing field of practice (Triponel & Pearson, 2010, pp. 116–120).

As the field advanced into different contexts and demonstrated its inability to respond to the disparate local realities of victims, TJ interventions began to be called into question by their alleged beneficiaries (Shaw & Waldorf, 2010, p. 4). Similarly, academics began to question the near absence of victims' voices in a field (McEvoy & McGregor, 2008). This trend has also been significantly driven by international regulatory changes. Parallel with the consolidation of victims' rights, key international policies made explicit for the first time the need to embrace victims' perceptions in the practice of justice (de Greiff, 2012, pp. 54–57; EU, 2015, p. 8; ICTJ, 2019; Jamar, 2018, p. 9). Rejecting "pre-packed solutions", in 2004 the UN Secretary General conditioned the success of TJ on victims' involvement and called for contextual awareness in the implementation of accountability measures in transitional countries (2004, paras. 16–17).

The victims-turn, the local-turn, or the bottom up approach have "permeated all approaches to transitional justice" (Robins, 2017, p. 43). However, while the alleged benefits that are said to result from victim involvement have been widely accepted by communities of scholars and practitioners, there has been an insignificant empirical record offering support to these arguments (Taylor, 2014, p. 4).

## 2.3.2. Myths of the victims-turn

Unlike other issues in the field that have generated endless discussions, victim-centeredness has achieved a global consensus among academics and policy makers. However, the most obvious questions to ask is: What has been the impact of this global trend in TJ practice? And even more importantly, what has this supposed change meant for victims? Much of the pro-victim-centred discourse, although aware of "the need for critical perspectives on the innovations produced by this turn" (García-Godos, 2016, p. 358), remains highly enthusiastic about the benefits for victims at the individual level (healing and trust), for TJ institutions (sustainability and legitimacy) and in general for the attainment of peace and national reconciliation (Brett, 2017, 2018; Méndez, 2016, p. 1; Roht-Arriaza, 2006, pp. 11–12; Sperfeldt, 2012; Triponel & Pearson, 2010).

However, these arguments have not been supported by systematic evidence, but are based more on "unverifiable notions that agree with common sense" or on attributes that are beyond what even TJ instruments and peacebuilding programmes are intended to achieve (McAuliffe, 2015, p. 249). Likewise, case studies of TJ practices with a high participatory level have been carried out on a small scale and have not yielded conclusive results on their impact on national TJ agendas, much less on the international one (Arriaza & Roht-Arriaza, 2008; Diaz, 2008; García-godos, 2013; Lundy & McGovern, 2008).

The few empirical studies that have addressed the impact of the inclusion of victims in TJ initiatives are sceptical about the alleged benefits proposed in the TJ literature. For example, in Burundi, while efforts to expand the participation of Hutu victim groups previously marginalized in the official TJ process were fruitful, they ended up reinforcing ethnic divisions among victims' organizations (Jamar, 2018, p. 41). The widely recognized public consultation (including victims' organizations) at the outset of the TJ process in Tunisia has led to a series of unintended consequences, not necessarily related to greater empowerment of survivors and recovery of the their trust in institutions: "[t]he greatest impression victims have gained from the transitional justice process to date is that it lacks impact and results; some have become cynical and believe it will always be subservient to political interests" (Andrieu et al., 2015, p. 5).

To measure the impact of this alleged 'transfer of power' to victims, a study in 2016 analysed "the global trends in relation to victims' inclusion in peace processes" between 1960 and 2016 (Jamar, 2018, p. 9). Of the total peace processes analysed (1518), approximately half included TJ measures, in which only 195 provisions were intended for victims (*ibid*, p.9). The findings showed even bleaker results regarding the alleged victims' turn: no significant and continuous increase of measures in favour of victims was found among the peace accords from the turn of the century until 2015 (*ibid,* p.13); victims' participation was poorly addressed in the agreements (only nine provisions in this regard) and most of the provisions continued to describe victims as defenceless subjects (*ibid,* p. 18).

However, these calls for prudence are the exception. As with other normative claims underpinning the field, much discourse in favour of a victims' turn "lay[s] in the realm of what we as scholars or practitioners can control - the rights that should be propagated, the bottom-up approaches we can catalyse, the reforms of the mechanism we support" (McAuliffe, 2017b, p. xi), but rarely in the political power struggles that underpin accountability endeavours and in the rigidity of international standards. On the one hand, the alleged victim-centred agenda gives the false illusion of a symmetrical relationship between victims and powerful elites, assuming that the latter have given priority to the demands of the former. A very difficult picture to believe. As explored before, TJ processes are primarily the result of political negotiations in which private interests, whether to "evade or mitigate responsibilities and reduce the implications of their past acts" (Reed, 2017),[31] "maximize their economic gains" (McAuliffe, 2015, p. 99) or to "preserve the status quo" prevail at the expense of the legitimate interests of those who suffered most from violence.

On the other hand, even if in an ideal scenario there was a homogeneous list of victims' preferences in responding to histories of violations, which were given priority over the political arrangements of the warring factions, could victims' local demands affect the international TJ agenda? It would be very unlikely, particularly if victims' claims contradicted norms of international law (Shaw & Waldorf, 2010, p. 4). The UN Secretary General is very clear when he states that while the "domestic legal traditions and national aspirations" should guide the ways in which a country decides to face its past, these traditions and aspirations must be "in accordance with international standards" (UNSC, 2004, p. 17). Diane Orenchentlier, a highly

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[31] Translated by the author.

regarded human rights scholar, answers this question in a similar vein, reaffirming the supremacy of international standards, due to the universal legitimacy gained over a long period and the invaluable benefits for various cultures in their fight against impunity (2018, p. 2).

This section has attempted to address the question to what extent the international TJ agenda has been affected by the so-called victims' turn. Although it has not been possible to give a definitive answer, taking into account precisely the lack of studies on these issues, what can be said is that many of the (mostly positive) claims are based more on assumptions than what logic or the evidence dictates. At the international level, the scenario is very contradictory. As Shaw and Waldorf argue, despite the fact that the voices of victims are being heard more in the configuration of TJ processes (although with questionable methods), it would be very difficult for war victims to "get what they ask for if it contradicts international legal norms" (Shaw & Waldorf, 2010, p. 4). Therefore, in the TJ global discourse, although there is a greater recognition of the need to include those affected in the processes to overcome the past, the scope of such participation in practice will necessarily be determined by international legal norms and the fundamental principles of the field, not to mention by the power configurations in war-ending processes.

## *Concluding remarks*

The field, which began as domestic processes of accountability amidst political transitions from authoritarian regimes, has expanded as an international justice project and as a peace-building tool in a wide range of non-transitioning, conflict and post-conflict contexts. These issues (accountability and peace/reconciliation) are generally accepted today in much of the academic and activist literature as the main objectives of this global practice (Fletcher, 2015, p. 193; UNSC, 2004; Vieille, 2012, p. 58). Could it be argued that there is also a broad consensus on its core elements? Certainly not. State practices, the conceptions and aspirations of scholars, policy-makers and especially victims as well as the international norms seem to privilege different components. Nevertheless, this chapter has explored seven traditional and novel elements that, despite some being widely contested, can be proposed as the basis of TJ's ideas and practice today: i) a restricted interpretation of justice that focuses on the visible side of violence; ii) the demands of victims shaped and restricted to a civil-political rights-based framework; iii) the traditional toolbox of TJ institutions; iv) the consolidation of the pillars of

TJ (justice, truth and reparation; v) an accountability dimension that meets international standards (e.g. no amnesties for international crimes); vi) a holistic approach and vii) the involvement of the TJ intended beneficiaries.

Although, as explained above, many of these elements continue to be challenged by academics and practitioners, TJ continues to exist in a global regulatory framework. At different levels, the TJ global discourse and norms have permeated states' practices when defining post-conflict justice measures. Those peace processes in which the demands of justice were sacrificed in the name of peace and reconciliation are now part of the past (Bell, 2009, p. 120). Having said that, however, it does not mean that the political need of putting an end to violence nor that the main concerns of war principles have been subordinated to international legal standards or to the interest of the vast majority of people who suffered from conflict. As explained before, the recent cases of peace negotiations evidenced how the agreements on post-conflict justice have been significantly structured by domestic politics (Section 1.2)

Nowhere is the above scenario truer than with respect to the configuration of the TJ projects in Colombia in the new century. Seeking to define the national TJ agenda in this country, the next chapter seeks to present the local dynamics that took place in the trajectory of post-conflict justice processes in the peace negotiations with the paramilitaries and the FARC. While characterized by wide acceptance of normative changes at the international level, the belligerent parties sought to adapt them to their own interests. War-victims, who have been very active throughout these processes and who have contributed precisely to challenge the impunity attempts, have been transferred from the centre of the discussions to the periphery of the political agenda.

# *Chapter 3: The triumph of Justice over Politics?*

*"It must be understood that a definitive peace is the best justice for a nation in which several generations have never lived a single day without the occurrence of a terrorist act"*

*Alvaro Uribe Velez (2003)[32]*

*"The peace of Colombia is the greatest tribute we can pay to the millions of victims left by this absurd war. And it is the guarantee that there will be no more victims"*

*Juan Manuel Santos* (2015)[33]

## *Introduction*

The reservation on the ICC jurisdiction on war crimes until 2009 was a strategy of the Colombian government (GOC) to prevent the tribunal from becoming an obstacle to peace in the following years (de la Calle, 2019, pp. 100–101; Pizarro, 2017, p. 334; Schneider & Taborda Ocampo, 2011). In effect, the Uribe administration began negotiations with the United Self-Defence Groups of Colombia (*Autodefensas Unidas de Colombia* -AUC) within a few months of coming to power in 2002. Given the president's great popularity and the paramilitary alliances with key institutions, the conflicting parties expected a smooth demobilization that would declare the end of paramilitarism "without having to address structural issues linked to the phenomenon" (Reed, 2010, p. 91). However, little did the factions expect that a more favourable environment for accountability would contest their attempts to control the past (Rincón, 2010). Similarly, they did not foresee that their efforts to circumvent their responsibility would end up galvanizing numerous and robust victims' organizations (Arias, 2010; Carrillo, 2009; Laplante & Theidon, 2006).

As of this moment, both the state's international obligations on victims' rights and war survivors would inevitably be the "necessary travel companions" to the discussions about how to put an end to the war (Gomez Isa, 2010, p. 155). This statement was proved true in 2012

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[32] Translated by the author.
[33] Translated by the author .

when, for the first time in national peace efforts, a specific point on "Victims" was included in the negotiation agenda with the FARC and years later the traditional TJ toolbox was established in the FPA (2016).

Despite the great differences that characterized these peace negotiations, the resulting TJ frameworks have been seen as the consolidation of a trend towards accountability (Botero, 2003; Botero Marino & Restrepo, 2006; Pizarro, 2017; Ucrós M, 2016; Urueña, 2017; van Nievelt, 2016). However, the triumph of justice over politics is only a part of the story. Looking at the different stages of the AUC and FARC peace processes can help understand how TJ institutions continue to be the result of political compromises between social and political forces on acceptable ways of dealing with the legacies of human rights violations (Gómez Sánchez, 2014, p. 26; Kalmanovitz, 2010, p. 8; Rubli, 2013, p. 4). Acceptable, in the sense of not putting the Colombia's fragmentary transition, first and foremost, at risk, and responding, at least notionally, to the country's international obligations.

In view of the above, this chapter attempts to define the TJ agenda at the national level in the 21st century, highlighting the political process that gave rise to the accountability frameworks that made the recent peace negotiations possible. The explanatory framework of the chapter is divided into the peace process phases given that post-conflict justice institutions are dynamic and unpredictable practices negotiated at different times (Bell, 2017, p. 87). The key roles of the victims' constituency and international actors/norms are succinctly considered to evidence that, although they significantly affected the TJ pathways, the conflicting parties also learned how to use them to their advantage. It is necessary to begin, however, with a brief history of the Colombian war and peace attempts as a background to the TJ processes that are explained in later sections.

A comment on the approach taken here is due. Considering the theoretical approach (Section 1.2), this Chapter attempts to go beyond legal approaches. Therefore, the emphasis here is on the political dimension of TJ: the role of the parties negotiating the conflict and the particularities of the bargaining processes. It is important to understand that, although the rights of victims and the mechanisms of truth and justice are today the undeniable elements of the Colombian infrastructure to face the past, the interests of the powerful forces and the objective

of ending the conflict are those that have defined their scope. Nevertheless, the general legal traits of the main truth and justice mechanisms are sketched here. [34]

## 3.1. Colombia: a prolonged and multipolar war (1964-to present date)

Colombia has been a country with profound paradoxes. For more than 50 years, while the country has been able to modernize and develop a stable economy, it has been the scene of a cruel war with devastating humanitarian and social consequences. The prolonged civil war has not implied, however, the "centralization of brutal and authoritarian power", but a set of regional struggles, in which the powerful local actors and the national elites have interacted and mutually benefited from violence (Guitiérrez Sanín, 2015a, p. 33). A variety of armed actors has also characterized the armed conflict, which without exception has waged a war against society (Pécaut, 2001, 2015). This country has also been defined not only for having one of the longest armed conflicts in the Western Hemisphere, but also for its extensive experience in the pursuit of peace through political negotiations (Lopez, 2016, p. 22). Thus, Colombian history has been marked by the simultaneity of permanent war and permanent negotiations (Sanchez, 2007, p. 63), in which a variety of TJ mechanisms (although only recently under such titles) have been implemented.

This section then presents a chronological account of the Colombian history of war and peace, highlighting how until the beginning of the century the exigencies of politics played a key and overt role in the country's attempts to come to terms with its own past atrocities. The final part of this section sketches the infamous inventory of atrocities committed during the war to understand why the country has been a suitable stage for the TJ infrastructure despite not having experienced a deep political transition.

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[34] With regard to the legal dimension of the TJ instruments in Colombia see (Barbosa, 2017; Botero Marino & Restrepo, 2006; De Gamboa Tapias, 2010; Rincón, 2010). Likewise, the main TJ instruments have been examined by the Constitutional Court, providing an in-depth and legal analysis thereof.

### 3.1.1. _A multicausal war_

Within the framework of the FARC peace negotiations a commission of experts was established in 2015 to understand the complexity of the armed conflict in Colombia (GOC & FARC, 2014, p. 2). As anticipated, the individual final reports proved the challenges of establishing a single narrative of the war. However, what most experts agreed on was the existence of "structural and historical failures" as the causes of the emergence and persistence of armed violence: the political violence over power; extreme levels of inequality and poverty, high concentration and dispossession of land and state weakness (Pizarro L, 2015, pp. 5–6).

The use of political violence has been decisive in shaping institutions and accessing power in the last two centuries in Colombia (CNMH, 2016, p. 112). However, it would be the armed repression and political exclusion of peasant and social movements from a bipartisan political agreement in 1958, which provided Marxist-inspired guerrillas with the groundwork for their emergence in the 1960s (CNMH, 2013, p. 49; Duncan, 2015, p. 1; Gonzalez, 2004, p. 12). From then until now, disturbing alliances between politicians, state agencies and illegal armed players have become a common practice in politics, in which thousands of political opponents have been killed, disappeared and displaced (Pizarro L, 2015, p. 66; Romero Ospina, 2012).

Historic high levels of poverty and inequality as causes of the Colombian war have been widely challenged, as it has been argued that countries with worse indices in the regional context did not end in violence (Duncan, 2015; Gaitán Daza, 2001; McDougall, 2009, p. 327). However, and in line with a multicausal approach, although these factors alone could not have led to political violence, it was precisely their convergence with other variables (Latin America's revolutions, the state terrorism) that gave way to the contemporary war (Pizarro L, 2015, p. 54). A greater consensus has emerged on unresolved agrarian issues as one of the main triggers of the war (CNMH, 2013a; Fajardo, 2015; Guitiérrez Sanín, 2015a; Molano, 2015; Pécaut, 2015; Pizarro L, 2015; UNDP, 2011). For decades, struggles over access to land and the appropriation of large swathes of land by powerful elites and armed actors have coexisted in the background of social and political tensions (Fajardo, 2015, pp. 5–6).

Last but not least, the historical inability of the state to have a presence throughout its territory and to have a monopoly on violence, as well as to satisfy the basic needs of its population, has not only been at the roots of the war, but has contributed to its persistence by more than five

decades (Giraldo M, 2015, pp. 6–7; Giraldo R, 2015, pp. 12–13; Pécaut, 2015, p. 10). This does not mean that the state has not been strengthened in recent decades. On the contrary, the problem is that it has done so unevenly. Accordingly, although Colombia has a "state and government at a national level much stronger than thirty years ago ... the huge regional gaps in institutional capacity and quality of life have not only not been closed, but in some cases have deepened" (Lopez, 2016, p. 25). [35] As will be discussed later, the regions analysed in this thesis are part of this last group (Chapters 4 and 5).

### 3.1.2. *Making peace while waging the war (1964-2016)*

The emergence of the FARC in 1964 has been regarded as the starting point of the Colombian contemporary war. From its beginnings until its demobilization, the FARC's political agenda revolved around agrarian issues (FARC-EP, 1982, 2012; Velez, 2001) A diverse number of insurgent groups, based on similar demands, emerged in the next two decades, the most important being the National Liberation Army (Ejercito de Liberación Nacional ELN) and the M-19. Since the late 1970s, when drug trafficking became the main driver of the war, guerrilla groups began to strengthen militarily and economically, expanding to a large number of regions. As the armed forces lacked the resources to respond to the military positioning of the guerrillas, a convergence between drug traffickers, elites and the military emerged, leading to an all-out-war against the rebel groups and their alleged support base (Giraldo R, 2015, pp. 13–15; Melo, 2018, p. 246). This murky alliance prompted the appearance and strengthening of right-wing paramilitaries from the mid-1980s.

As the war intensified, all governments without exception until 2002 opened spaces for peace negotiations with rebel groups. In these processes, national reconciliation and peace prevailed, leaving aside measures to establish responsibilities for past abuses (Hayner, 2018, p. 105; Rettberg, 2015, p. 5). Consequently, the peace accords reached with several guerrilla groups in the early 1990s followed a very similar approach: guerrilla' political participation , amnesties, demobilization programmes and low-impact social projects for conflict-affected areas (Chernick, 2015; Garciá Durán, 1992). Thus, beyond acknowledging the consequences of the war on certain regions, "accountability was simply not a factor" in the early negotiations

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[35] Translated by the author

(Carrillo, 2009, p. 140).[36] This was ratified many years later by a former guerrilla commander participating in the M-19 negotiations: "the issues that are dealt with now, related to victims and the right to the truth, are something that was never under discussion in peace processes in Colombia before…" (Florez, 2016).[37] At that time, he adds, the crimes "were conceived of as something that had happened in the conflict and that should be left behind" (*idem*).

The next two decades were regrettable for the country (1990-2008). From being a battle between combatants, it went to being one where "the unarmed population became progressively involved in armed projects not by consent or social adhesion, but by coercion and victimization" (Sanchez, 2015, p. 9). On the one hand, the strengthening of the paramilitarism contributed to this tragedy. In 1997, hundreds of old and new paramilitary groups united under the name of the AUC "seeking to translate its military power and economic might into political capital" (Laplante & Theidon, 2006, p. 56). Yet, as they expanded, the AUC evolved from counter-insurgency to establishing a heterogeneous and dispersed criminal structure (Duncan, 2015, p. 30; Guitiérrez Sanín & Barón, 2006, p. 2). Despite the AUC's involvement in massive and serious violations against civilians, these groups acquired strong social support due to society's weariness with guerrilla crimes. (Gonzalez, 2004, p. 13; Guitiérrez Sanín & Barón, 2006, p. 22; Saffon & Uprimny, 2007, p. 8). On the other hand, while the insurgents continued to expand and strengthen due to their participation in the drug market, their attacks against civilians generated a wave of national rejection (CCJ, 2004, p. 18).

Alvaro Uribe's coming to power in the 2000s began a new stage of the Colombian conflict (2002-2010). During this period, while a major military offensive against insurgent groups began, a different stance was taken with the paramilitaries. Peace talks with the latter began in 2003, ending three years later with the demobilization of more than its 30,000 members. For their part, the guerrilla groups, particularly the FARC, by 2010, had been seriously weakened due to the military-paramilitary offensive. Meanwhile, as the security forces managed to regain control of some key areas, their participation in serious violations increased significantly (Villarraga Sarmiento, 2015, pp. 187–188).

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[36] Translated by the author
[37] Translated by the author

In 2010 the former Defence Minister of Uribe's government, Juan Manuel Santos, was elected president with the promise of continuing a hard-line stance against insurgent groups. Against the odds, the incoming administration set up channels for dialogue with the FARC, ending in the signing of a peace agreement six years later (2016). As the FARC redeployed from its historic areas, other new and traditional armed groups (including post-demobilization paramilitary groups) have taken over their criminal activity and territory, generating serious humanitarian consequences (Escobedo, Ramírez, Lovera, & Patiño, 2016; Prem, Rivera, Romero, & Vargas, 2018). Therefore, although most of the traditional illegal actors in the war have demobilized and today, at least officially, a post-conflict period has begun, the dynamics in the "other Colombia" show another reality (Catatumbo is an illustrative example). The dominance of illegal armed groups, as well as the prevalence and deepening of structural violence, make many of the victims of the regions most affected by the conflict ask themselves the question: *what peace*?

### *3.1.4. A war against (rural) society*

In a series of essays in the 1990s, Daniel Pecaut concluded that the violence in Colombia could be described as "war against society" (2001). Drawing upon this concept, this subsection explains why this war representation has taken on more meaning in the last two decades. As its name suggests, the war against society has implied that the impacts of the violence have been borne disproportionately by civilians (CNMH, 2013; Giraldo M, 2015; Pizarro L, 2015, p. 71). As has largely been evidenced in the Colombian war "the violence used against civilians, rather than being a simple collateral damage, has been deliberately employed by the armed agents" (CNMH, 2013, p. 44). The scandalous figure of 380 civilians killed by each combatant between the mid-1990s and 2008 reflects this systematic practice (Giraldo R, 2015, p. 30).

A second aspect of the "war against society" is that its consequences have been borne particularly by certain segments of the population and regions. Although political violence has had a national impact, population groups have not been affected homogeneously, not all regions have been impacted with the same intensity. Firstly, the burden of violence has fallen disproportionally on peasants, indigenous and Afro-descendant populations, who have registered the greatest number of victims (UNDP, 2003, 2011). Second, violence against the most vulnerable has been a distinctive aspect of the war. Unlike the victims of the Southern

Cone dictatorships who were stripped of their civil and political rights, the victims in Colombia "have never had access to full and total citizenship ... they have become accustomed for a long time to live under the sign of violence" (Pécaut, 2001, p. 262).[38] In terms of regional impact, of the 1,122 municipalities, conflict-related violence was concentrated in 16% of these between 2002 and 2013, most of them located in poor rural areas (DNP, 2015). Catatumbo and Montes de Maria are part of this group.

In addition to the brutality of the crimes, the numbers have reached scandalous levels. According to the National Registry of Victims (NRV), a total of 7,358,248 people have been victims of forced displacement (15% of the total population). [39] The NRV also reports a total of 267,297 persons direct victims of homicide, 47,052 direct victims of forced disappearance, 32,537 victims of kidnapping, 24,786 cases of sexual violence, 11,382 victims of antipersonnel mines and 7,431 illegally recruited minors, among other facts.[40] The number of hectares usurped or abandoned due to force has also been shocking: more than 8.3 million hectares according to official records (CNMH, 2013, p. 81).

The above description shows why the vicious cycle of violence in Colombia can be defined as a "war against society", or to be more precise, against a part of society: those who have already experienced the denial of their rights even before the commission of atrocities. This bleak scenario fraught with violations of human rights also partly explains why, despite the fact that Colombia is still far from being a post-conflict scenario, it has embarked on the implementation of TJ measures. The TJ experiences of the new century have demonstrated that, although largely transformed by a series of international and national events/actors, they have followed the traditional path implemented in the past (elite-level political negotiations, unconditional amnesties and a security approach). The configuration of such institutions within the negotiation processes in the 21st century will be addressed in detail in the following sections.

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[38] Translated by the author
[39] Official information consulted on March 5, 2018. Available at: www.https://rni.unidadvictimas.gov.co/RUV.
[40] *Idem*

## 3.2. Phase I: The exploratory stage

The preliminary stages of the peace negotiations evidence what priorities guided the TJ path in the new century. Despite the enormous differences between the AUC and FARC peace negotiations, the warring factions sought to protect their interest and the processes of partial transitions. However, unlike the previous period (1982-2002), the international environment and domestic developments limited to some extent the manoeuvring power of those negotiating peace. Consequently, from the genesis of both peace processes, it was clear that the parties had to find common ground to meet international standards and safeguard their interests.

### 3.2.1. Paramilitaries (November 2002- July 2003)

The US extradition request of the main AUC chiefs[41] and the possibility of exchanging these requests for their demobilization precipitated their decision to begin peace talks in 2002 (Pizarro L, 2004, p. 82; Ronderos, 2014, p. 353). Thus, the paramilitaries' overriding interests during the negotiations were hardly a surprise. As can be seen in the limited official documents of the transactional process, while demobilisation, reincorporation and reconciliation were constantly reiterated as the main aims of the peace efforts, addressing war-related crimes and structural violence were not on the agenda (Kalmanovitz, 2010, p. 2).

Since the very early stage of the negotiations, the AUC commanders conditioned their demobilisation on non-extradition, non-restitution of their assets and amnesties (Ronderos, 2014, p. 360; Vidal, 2013). The Uribe administration was responsive to these requirements, as reiterated by its Interior Minister: "[t]he government is willing to turn the page on the past. There are some legal limitations that will be studied and that we will have to overcome with a lot of imagination "(El Tiempo, 2003).[42] The various impunity strategies employed in the following years by the then administration would show what the senior official was referring to. Through the enactment of Law 782 of 2002, non-political groups, such as the AUC, were able to participate in peace talks and be beneficiaries of amnesties (CCJ, 2008, p. 109). Despite the fact that this law did not extend to the most serious abuses, the high levels of impunity

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[41] The significant involvement of the paramilitaries in drug trafficking and its impact on the United States at the end of the 20th century led this country to request the extradition of several paramilitary leaders in 2002 and for the AUC to be included in the list of terrorist organizations (Grajales, 2011, p. 165).
[42] Translated by the author

ensured that even recognized paramilitary chiefs with no pending investigations, received legal benefits (*ibid*, p. 45-48). Moreover, under the GOC interpretation, the law beneficiaries (about 90% of the AUC) did not have to hand over their assets for reparation, nor contribute to the truth (CCJ, 2008, p. 190; HRW, 2008, p. 32).

Nevertheless, despite the rapid growth of voices of rejection of the impunity attempts of the GOC (Amnesty International, 2003, p. 75; CCJ, 2003, pp. 12–13; CINEP, 2002, p. 5; UNHCHR, 2003, p. 168), president Uribe and the AUC expected that the "forgive and forget" policies would not generate major debates in political scenarios considering their popularity and close alliances with Congress. The opposite was about to happen: the human rights community and key international actors would manage to wrestle against the official plans to exclusively control the past.

### *3.2.2. The FARC (September 2010-August 2012)*

Shortly after President Santos took office, confidential talks began with the FARC. After more than fifty years of a bloody war, the president had understood that the war had reached a point of mutually hurting stalemate (de Boer, Garzón-Vergara, & Bosetti, 2017, p. 8; Santos, 2018c, p. 30). For its part, the significant decrease in its military capacity had led the FARC to negotiate (de la Calle, 2019, pp. 48–49; Herbolzheimer, 2016, p. 2). Likewise, the approval of the Victims and Land Restitution Law in 2011 (VRL) was a clear signal for the insurgent group of a change in the government's peace agenda. The VRL approval meant a profound change in the previous government's discourse regarding the recognition of the war as well as the right to comprehensive reparation for all victims of the armed conflict (Figure 7).

In an environment of scepticism and hope, the parties defined a common agenda in 2012, which tried to reconcile the FARC's historical demands for structural reforms with a more reductionist vision of the GOC focused on the end of the conflict (Segura & Mechoulan, 2017, pp. 12–13). The agreed roadmap, which was closer to the latter, included five points*: Rural Development, Political Participation, the End of the Conflict, Illicit Drugs and Victims. The last point was one of the most controversial issues during the early negotiations (Bermúdez Liévano, 2017, p. 36). While the FARC` demanded oblivion policies for its crimes (FARC-EP, 2012, p. 4), the government emphasized the international prohibition of these instruments

(OACP, 2018b, pp. 213–219). Therefore, unlike other agenda items, the content of the Victims point was written vaguely, leaving aside key issues such as justice and socioeconomic issues. This wording somehow traced what would be the emphasis on the accountability policies agreed years later: a good dose of truth in exchange for less justice (Garay Salamanca & Vargas Valencia, 2016; Leon, 2015).

**The Victims and Restitution Law (VRL)** corresponds to the most ambitious legislative commitment to date in the field of TJ, not only at the national but international level (Rúa Delgado, 2015, p. 92). Firstly, in addition to the magnitude of the potential beneficiaries of the law (more than seven million), the VRL establishes a comprehensive reparation program never before carried out around the world (Sikkink et al., 2014). Secondly, the given law guarantees international and regional normative standards regarding the protection of victims' rights to reparation *(ibid, p.7)*. Thus, it is contemplated that reparation should go beyond its economic dimension, to also guarantee restitution, rehabilitation, satisfaction and guarantees of non-repetition. Thirdly, unlike its predecessor (JPL), the VRL expands the concept of victim, on the one hand to include all those affected by the war, regardless of the perpetrator, and on the other, the reparation is not subject to a judicial process, nor a conviction of those responsible.

While the law was not the result of a peace negotiation, but rather a joint process of pressure from human rights and victims' organizations and the Constitutional Court (Summers, 2012, pp. 224–225), it contributes significantly to defining the domestic TJ agenda in four many ways. Firstly, it establishes the victims' rights as the most appropriate response for people affected by war-related crimes. Second, a transformative approach has been adopted to implement reparation programs. Since the vast majority of victims were poor and marginalized before being affected by the war, this model proposes that reparation should not return victims to their pre-war state, but "transform the circumstances in which they lived and that could have been one of the roots of the conflict." (Uprimny, 2009, p. 638). Third, the VRL prioritizes the right to restitution, by establishing a procedure to reverse the phenomenon of land dispossession and abandonment. Finally, the law includes assistance measures aimed at the victim attaining a basic level of subsistence before receiving reparations. Unlike reparation programs that focus on victims' harm, these assistance measures aim to meet their needs (Dixon, 2016, p. 95).

*Figure 7 Victims And Land Restitution Law*

Issues related to addressing the past were crucial in the AUC and FARC pre-negotiations. Although in the latter, there was greater awareness of the international obligations, both governments knew that incentives needed to be offered to keep the warring factions at the negotiation table (Bell, 2017, p. 89). For their part, the paramilitary and the guerrilla groups, without having been defeated, demanded a forgetting approach. However, the global context and pressure from human rights organizations led the parties of the conflict to reorient their plans if they expected their agreements to be defendable in the long run.

## 3.3.  Phase II: Formal peace talks

The expansion of TJ as a field of knowledge and practice since the turn of the 21st century (Chapter 2) significantly impacted the peace processes in Colombia. At the domestic level, the entry into force of the Rome Statute in 2002, the rapid growth of victims' movements and the progressive jurisprudence in favour of victims' rights increasingly restricted the bargaining power that governments had in the past. This did not mean, however, that the parties had put their political interests aside. Thus, during the AUC negotiations, the Uribe administration sought to grant generous legal benefits to the pro-systemic paramilitaries, and it was close to attaining them, had it not been for the great opposition of the human rights community. Regarding the FARC peace process, although the guerrilla group demanded the application of broad penal benefits, it realized that to shield itself from accountability was legally and politically unsustainable. In the end, in both processes, the antagonists of the conflict focused on building an agreement that, while withstanding international and national scrutiny, ensured a set of concessions necessary to end the conflict.

### 3.3.1. Paramilitaries (Jun 2003- July 2005)

**A limited agenda**

The AUC formal negotiations began in July 2003. Although this accord encompassed an agenda limited to demobilization, the factions' aims went further (García-Peña, 2005, p. 67). Based on previous peace accords, the self-defence groups expected to obtain similar concessions: no prison, no extradition, legalize their assets and political participation (Gómez Sánchez, 2014; Rangel, 2005; Semana, 2004). On the government side, its main concern was

to strike a rapid deal to take thousands of armed men out of the conflict and elude any discussion on state criminality (Kalmanovitz, 2010, p. 3; Lyons, 2010; Reed, 2010). Although most of the demobilized troops benefited from Law 782, the GOC still had to find a legal path for those responsible for the gravest crimes. Thus, from this moment, the parties focused on the design of a legal transition framework, leaving aside other urgent reforms to effectively dismantle paramilitarism, repair victims' losses and address structural problems (Lyons, 2010, p. 19).

***The Alternative Penalties Law***

In light of severe criticisms of the parties' aspiration to close off the discussion about the past, high-level officials crafted a convenient model of restorative justice, which placed high emphasis on reconciliation and peace to justify non-custodial sentences for individuals guilty of heinous crimes (Carrillo, 2009, p. 137). Thus, the so-called Alternative Penalties Law (APL) was in line with the paramilitary agenda (Mancuso, 2004; Ronderos, 2014, p. 362). Likewise, without jeopardizing the interests of the conflicting parties, the bill mentioned the rights of victims in a vague manner. The attainment of peace became then the main premise for transitional measures. However, as the APL sparked significant opposition from diverse social actors and international organizations human rights organizations (Arias, 2010), it was finally withdrawn (Fundación Social, 2006, pp. 48–49).

In the face of huge opposition, the GOC was forced to rethink its accountability strategy if it was going to seek political and financial support for its peace agenda (Saffon & Uprimny, 2007, p. 224; Semana, 2005). Hence, the peace process "moved away from an emphasis on peace and very little accountability to incorporate larger requirements of truth, justice and reparations (at least *de jure*…)" (Kalmanovitz, 2010, p. 4). Therefore, by mid-2005 the pro-Uribe coalition in Congress, which, it was proved later, represented the paramilitaries' interests, approved the Justice and Peace Law (JPL) (Lopez, Avila, & Corporación Nuevo Arcoiris, 2010; Reed, 2010, pp. 94–95).

## *3.3.2. FARC (October 2012- August 2016)*

*The negotiation agenda*

Despite the termination of the conflict being set as the highest goal of the peace talks, while the FARC prioritized structural reforms, the GOC put emphasis on disarmament and political guarantees (OACP, 2018c, pp. 72–73). Notwithstanding these enormous disparities, partial agreements were reached on rural development, illicit drugs and political participation. However, discussions on how to face the past turned out to be the most complex (Herbolzheimer, 2016, p. 3). The guerrilla, on the one hand, denied its responsibility and referred to TJ as domination mechanisms (FARC-EP, 2013, 2014a). On the other hand, although the GOC publicly raised the need to fulfil its international obligations (OACP, 2018a, pp. 113, 190, 266), it also knew that, "it was necessary to find a way out of the criminal favourability that allowed the FARC to take the final step in decent conditions" (de la Calle, 2019, p. 109). [43]

Facing great public opposition to granting legal concessions to the FARC, the parties established a series of pre-agreements: broad victims' participation mechanisms (See below) and the Declaration of Principles. Although the principles were mainly based on victims' rights and, according to the parties, on the survivors´ expectations (OACP, 2018a, p. 92), they also responded to the factions' interests. The exclusion of justice from the principles would not be fortuitous and, instead, elusive terms such as 'acknowledgement of responsibility' were enunciated, although justice issues were, according to some polls, key demands of victims and the general population (CNMH, 2012a, p. 52). Nor would it be accidental that socio-economic rights were addressed vaguely within the principles. These approaches would predominate in the Victims´ Agreement as explained below.

*The key debates in the Victims` Agreement*

Whether addressing socio-economic rights should be incorporated in reparation programmes was discussed during negotiations. While the FARC insisted that violations of these rights had to be included (FARC-EP, 2014b), the GOC claimed, based, on the conservative approach of TJ, that only conflict-related crimes could be addressed within this legal framework (Bermúdez Liévano, 2017, pp. 256–258). In the end, the latter position, which emphasized civil and

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[43] Translated by the author

political rights, prevailed in the Victims' Agreement. To the extent that the balance of forces was in favour of the state, the insurgent group did not have the political and military leverage to put pressure on major transformations in the FPA.

However, the crucial discussion within the point of "Victims" focused on criminal responsibility (Hayner, 2018, p. 205). Given the FARC highly hierarchical structure, the GOC knew that keeping low-level combatants committed to the demobilizations if their leaders were in jail was a high risk for the process (Bermúdez Liévano, 2017, p. 236). For the FARC, an agreement that included a single day in jail was unacceptable (FARC-EP, 2015). To overcome this deadlock, with the advice of TJ experts, a restorative justice scheme was agreed that while attending to the state's obligations, also responded to the supreme aim of peace and the parties' key interests (de la Calle, 2019, p. 118; El Tiempo, 2015) (Subsection 3.4.2).

The activation of the ICC for the exclusion of prison sentences from the justice agreement, one of the government's main concerns, had also been resolved for now. In May 2015, the ICC had asserted that states had wide discretion to define the scope of the penalties (Urueña, 2017). The other two sensitive issues, the FARC political participation and non-extradition were resolved in favour of the guerrilla as the confessed perpetrators were allowed to run for political office and the possibility of extradition for the FARC was closed for crimes committed before the agreement (de la Calle, 2019, pp. 133–137; GOC & FARC-EP, 2016, p. 160). Consequently, and once the main debates were overcome, the Victims' Agreement was concluded in December 2015.

### *Participation of Victims*

As Gómez Isa would rightly state in 2010, the growth and empowerment of victims' organizations during the AUC negotiations would turn their participation into a *sine qua non* condition of future peace processes (2010, p. 155). Accordingly, several participations mechanisms were implemented during the FARC negotiations: regional forums to collect proposals from victims and direct involvement of survivors in the peace talks. Scholars, practitioners and the same peace accord have highlighted how the agreed TJ final framework was shaped by the victims' inputs (Arias Ortiz, 2018; Brett, 2018; GOC & FARC-EP, 2016, p. 135; OACP, 2016; Ucrós M, 2016). However, comprehensive analyses of the more than 27 thousand submissions by victims and the political climate of the participation process are still

needed.

The topics guiding the discussions in the victims' regional forums reflected how the factions sought to obtain greater political and moral weight for their agenda. According to the forums´ methodology, thematic roundtables were organized based on the Declaration of Principles. As none of these principles contained a commitment to justice, in a strict sense, and socioeconomic rights were loosely addressed, the parties possibly sought to prevent these issues from being raised by participants. In effect, there was a near-absence of proposals for punitive punishments and FARC political restrictions (UN & Universidad Nacional de Colombia, 2014c, 2014b), despite that at that time these issues generated intense national debates (de la Calle, 2019, pp. 98, 137). On the contrary, given the precarious conditions in which most of the victims lived, socioeconomic rights became one of the most recurrent proposals among participants (UN & Universidad Nacional de Colombia, 2014b, 2014a, 2014c). Nevertheless, and although several victims in the Havana delegations also made similar requests (Acevedo, 2016), the expansion of TJ into the realm of socioeconomic rights was excluded in the Victims´ Agreement.

Therefore, this thesis suggests that survivors´ participation in the TJ design process had mainly a legitimizing character of the transitional compromises. As Brett argues, given that victims have suffered first-hand the ravages of war, their demands are based on "a narrative conferred with profound legitimacy" (2018, p. 287). Therefore, as the survivors' demands and the war factions coincide, on the one hand, it would be morally reprehensible to oppose them and, on the other, it would diminish, in principle, the chances of highly controversial commitments being challenged (e.g. no prison sentences) (Leebaw, 2008, p. 113). Conveniently, both parties constructed a narrative in which certain rights (particularly truth) acts of acknowledge and ending the conflict were survivors' priorities, even over other demands such as justice, reparation and socioeconomic rights. Hence, the factions chose which of the victims´ expectations set forth in the participation mechanisms were in line with their interests and turned them into mantras in national and international settings, (El Espectador, 2016b; OACP, 2018a, pp. 96–97, 2018b, p. 118). In the words of President Santos,

> *"If one asks victims what their main demand is... it is not about money, land, much less about taking revenge... What the majority want, in the first place, is to be recognized;*

*they want to establish the facts of what happened to them and find out what happened to their loved ones" (OACP, 2018a, p. 114).*[44]

The formal negotiation stage evidenced large differences on how the past was going to be addressed. While during the AUC bargaining, the TJ process was "unilaterally directed from the highest positions of the executive branch, without any transparency and without the participation of the victims of violence" (Gómez Isa, 2010, p. 149), in that of the FARC, the victims' involvement, for different reasons, became an imperative for the parties to this negotiation. However, in both processes the parties sought to find politically and legally acceptable solutions that did not jeopardize the delicate transitions. In the end, in both processes, centralized and traditional TJ institutions were established to comply with the international standards of victims' rights, but without renouncing the main goals of the parties.

## *3.4. Phase III: Peace accord and post-accord*

From a legal point of view, the TJ instruments agreed in order to facilitate the transition of the AUC and the FARC comply in general terms with global and regional standards of human rights and constitute international examples of the few efforts to achieve a peaceful solution while seeking to establish past responsibilities (Barbosa, 2017; Uribe B, 2009, pp. 220–221). Thus, the rights to truth, justice and reparation, as well as the traditional tools of TJ, are today undisputed elements of the post-conflict accountability agenda. However, the conflict-driven and political nature of the peace negotiations mean that the aim of ending the war has prevailed and determined the terms of the agreements, particularly those related to dealing with past violations.

### *3.4.1. Paramilitaries (July 2005- December 2017)*[45]

It was only from the issuance of the JPL, that Colombia included the concept of TJ as a mechanism to facilitate the transition and respond to the imperative of justice in its regulations and discourses (Abuchaibe, 2010, pp. 303–304). The given law was based on a restorative

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[44] Translated by the author.
[45] Rather than a peace agreement signed between the parties, the AUC bargaining process resulted in the approval of the JPL (Kalmanovitz, 2010, p. 6)

model of justice, where it was sought, at least in theory, that the offender would assumed responsibility of his actions and repaired the victims (Jerez, 2018, p. 146). The JPL aimed "to facilitate the processes of peace and individual or collective reincorporation into civilian life of the members of illegal armed groups, guaranteeing the victims' rights" (art 1). Not only the logical order of sentences in its objective demonstrated the priorities of the law. The remaining articles also reaffirmed that despite "the government´s investment in the 'grammar' of transitional justice" (Lecombe, 2010, p. 165), the agreed framework was mainly a means to ensure the transition and the factions´ interests: state impunity, generous reductions of penalties, the AUC's swift reintegration and reduction of direct violence (Gómez Sánchez, 2014, p. 59).

The given law created a special legal procedure that provided individual prosecution of those responsible for international crimes, who by fulfilling minimal and symbolic duties could receive generous alternative penalties (between five and eight years in prison) (Uprimny & Saffon, 2006). Although the law included the rights of justice, truth and reparation in the TJ agenda, no legal effective mechanisms were established to guarantee them (De Gamboa Tapias, 2010, pp. 69–70). The JPL also guaranteed the non-extradition of paramilitaries and their possibility of participating in politics. But perhaps one of the most prominent illustrations of the use of the JPL to protect the government's interests was its exclusion of state officials and other powerful actors from its scope (Diaz, 2008, p. 206).

Thus, the JPL became a strategic instrument to protect the warring factions' interests. From rejecting any accountability measure initially, the warring factions ended up praising the JPL as "the most ambitious transitional justice law in the world" (Lecombe, 2010, p. 175. See also Ex-comandantes AUC, 2009; Kalmanovitz, 2010, p. 10). Saffon and Uprimny have suggested that this radical change of position was a way of seeking legitimacy of "partial processes of impunity" using broadly the categories of reconciliation, forgiveness and the same victims´ rights (2007, pp. 16–17). However, the government's efforts to homogenize the TJ discussions, produced the opposite effect. The growth of the global accountability regime and the widespread sense of frustration of many survivors caused a great mobilization of victims against the official impunity attempts never before seen in the country (Gómez Sánchez, 2014, pp. 128–130).

*The legal battlefield Vs the political realm*

Given that the political alternatives for now had been exhausted, human rights organizations challenged the JPL constitutionality. Based extensively on international jurisprudence, the Constitutional Court declared that while the achievement of peace justified substantial penalty reductions to those responsible for heinous crimes, these concessions should be balanced with victims' rights.[46] Therefore, the Court demanded that in order to obtain lenient penalties, the demobilized had to completely confess their crimes and hand over all their assets for reparations. Likewise, the ruling opened the door to extradition.

To keep the AUC process going, the government tried to circumvent the constitutional ruling through subsequent decrees (De Gamboa Tapias, 2010, pp. 66–68; Ronderos, 2014, pp. 372–374; Semana, 2007). However, when a large part of the paramilitary troops, at least officially, had demobilized by 2006, the popular re-elected government surprisingly extradited to the US a dozen paramilitary commanders. Although the GOC claimed that the AUC had continued to run their drug business, other sources, including those extradited, argued that its main motivation was the paramilitary leaders' announcement to reveal their closer allies, involving the president himself (Kerr, 2017; Ronderos, 2014, p. 374; Sontag, 2016). Thus, the clarification and justice for thousands of abuses were left in limbo (Urueña, 2017, p. 115). The executive confirmed once more the pre-eminence of its interests, regardless of whether these were to the detriment of victims and even now of its former allies.

## 3.4.2. FARC-EP (August- 2016- March 2018)

*The Final Peace Agreement*

The Victims Agreement marked a point of no return for the peace process, since it meant that for the government an ingredient of justice had been satisfied and that for the guerrilla group its political interests had been upheld (Giraldo R, 2016a, p. 6). Indeed, the FPA was signed and submitted to endorsement through a plebiscite on October 2, 2016. The accord failed to be accepted by a narrow margin of 0.4%, the generous legal concessions to the FARC being one

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[46] Constitutional Court, ruling C-370 of 2006, No. D-6032, May 18, 2006

of the alleged reasons that contributed to this defeat (Capone, 2017, p. 128; Matanock & García-Sánchez, 2017; Segura & Mechoulan, 2017). Against the odds, new negotiations began among the parties and six weeks later a new agreement was signed including, according to the GOC, most of the proposals raised by the No-vote campaign (Hayner, 2018, p. 212).

However, the two main objections of the opposition (lenient penalties and the guerrilla' participation in politics) were spurned by the warring parties. As the Colombian High Commissioner for Peace stated, "trying to impose these conditions would have made it impossible to reach a new peace agreement" (Jaramillo, 2018b, p. 56). The government delegate was right. Although the insurgents yielded on some complex points during the second discussions (providing their assets for reparation, reducing their funding as a political party), none of these issues threatened their key core demands (Jaramillo, 2018a). Likewise, for the Santos administration, the new modifications in addition to further protecting the interests of the powerful actors also gave the state more control over the FPA implementation (Gómez, 2017; Guitiérrez Sanín, 2018, p. 100).

### *The Comprehensive System of Truth, Justice, Reparations and of Non-recurrence*

With a sophisticated legal language based on victims' rights and commitments to international standards, the parties delineated in detail the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence (CSTJR). From a legal approach, the CSTJR has been set up to fulfil the victims' rights in a holistic way through a complex set of central institutions and provisions. The text of the agreement recognizes in several parts that the dominant paradigm of justice in CSTJR should be in its restorative dimension, which "seeks the restoration of the damage caused and reparations for the victims affected by the conflict, particularly to end the situation of social exclusion generated by their victimization " (GOC & FARC-EP, 2016, p. 154). Likewise, it establishes that the sanctions to those responsible for serious violations should "place[s] special emphasis on restorative and reparative measures, and … [to] achieve justice not only through retributive sanctions" (*ibid,* p. 136).

Accordingly, based on the concept of restorative justice, the CSTJR creates a set of central institutions and judicial and extrajudicial measures of several layers:

i) The Truth, Coexistence and Non-Recurrence Commission (TCC) that seeks to "uncover and learn the truth about what happened during the conflict" (GOC & FARC-EP, 2016, p. 139). Following the traditional approach of truth commissions, the TCC will not establish individual responsibilities or clarify crimes on a case-by-case basis, but rather a shared and historical understanding of war (*ibid,* p.140).

ii) The Unit for the Search of Persons declared as Disappeared

iii) The judicial component in the CSTJR is the Special Jurisdiction for Peace (SJP). Based on individual prosecutions, the SJP investigates and punishes war-related crimes, in particular the most serious. The agreement establishes effective restrictions on liberty (non-imprisonment) between five and eight years for those that provide "the full truth, reparations for the victims and guarantees of non-recurrence" (i*bid* p. 155). The sanctions in this case will have a restorative and reparative effect and entail carrying out projects to assist survivors of conflict (*ibid*, p 182-184).

iv) Amnesties for political and related crimes, excluding the most heinous crimes.

v) Regarding reparation, the VRL remains as the main instrument, although the agreement establishes the need to strengthen the existing schemes. The novelties here are the inclusion of restorative actions by the SJP beneficiaries and the contribution of the FARC assets to implement reparation measures.

vi) Guarantees of non-repetition: The FPA establishes that the main aim of the CSTJR is "to contribute to the prevention and guarantee of non-recurrence of the violations and of the conflict itself" (*ibid*, pag.197). These measures would be materialized mainly through the measures to end the conflict (e.g. ceasefire), demobilization and re-incorporation and the FAP implementation.

From a political bargaining perspective, the agreed post-conflict justice infrastructure responds mainly to the broad objective of allowing Colombia's fragmentary transition, which necessarily implies addressing the warring factions' expectations. On the one hand, drawing on the restorative dimension of justice, the new TJ infrastructure allows for reduced and non-prison sanctions for members of the FARC responsible for international crimes in exchange for their commitment to contribute to truth and reparation. The benefits also involve the participation in politics of the main guerrilla commanders, without being affected by the criminal investigations. On the other hand, for the Establishment, the agreed TJ system implies ensuring

an element of punitive justice (more symbolic than real), the exclusion of structural reforms and differential and equitable treatment with respect to the criminal benefits for the military. (Garay, 2016; Giraldo R, 2016a, p. 6; Verdad Abierta, 2017b). Accordingly, the post-conflict justice system, while broadly adopting the main postulates of the international TJ agenda (therefore appeasing international actors such as the ICC), has managed to maintain the "balance of power, which leaned (undoubtedly) in favour of the government, without overriding the FARC interests" (Reed, 2017).[47]

Regarding socioeconomic rights, on the one hand, while the Victims' Agreement contains some provisions, it does not establish mechanisms for their guarantee (GOC & FARC-EP, 2016, p. 154). On the other hand, in the Rural Development section of the FAP, more concrete measures have been included to improve, to a certain extent, the precarious conditions of a large number of victims living in rural areas: the establishment of a Land Fund to provide small plots to the poor and victims of violence; programmes for improving road infrastructure, health, education and housing and the legalization of property titles.

### *The national TJ in the post-accord period*

The discussions of the elites that have dominated the FARC post-accord illustrate how the party's key goals and other powerful actors continue to prevail on the TJ agenda. Thus, new debates no longer at the negotiating table but in other spheres (e.g. Congress and courts) have aimed to either protect the parties' concessions or challenge those issues that might threaten the interests of other influential actors (Guitiérrez Sanín, 2015b, 2018). Thus, discussions over a preferential judicial treatment for the military and the exclusion of third parties in the conflict (businessmen, politicians, ranchers) in the TJ system have predominated in political and judicial scenarios. Meanwhile millions of victims, who were allegedly protagonists of the peace accord, have been moved to the periphery of Colombian attention.

To further probe the plausibility of the above argument, two examples are given. Firstly, one of the points of the FPA that generated more expectations among victims' organizations was the recognition that the reparation program had to be reformed in terms of budget and validity of the law (GOC & FARC-EP, 2016; La Silla Vacía, 2017b). Although a comprehensive

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[47] Translated by the author.

consultation process with victims was carried out in 2017, the reforms have not been prioritized by the government (Romero Silva & Vargas Valencia, 2017). Secondly, regarding those measures included in the FPA to improve the conditions of rural areas, progress has been minimal in the analysed period of implementation.[48] The national agenda has revolved around protecting the parties' priorities and to some extent other powerful actors (Guitiérrez Sanín, 2018; Verdad Abierta, 2017a).

Meanwhile, despite the precarious socioeconomic and security conditions in which a large part of victims live, these issues remain outside the main national discussions. While the unprecedented reparation programme (under the VRL) has meant significant progress in establishing socio-economic measures and land restitution schemes, most of its programmes continue underfunded and have had a marginal impact on the survivors' living conditions (CSML, 2016b; Guitiérrez Sanín, 2013; Instituto Kroc, 2018, p. 221). Egregious figures reflect this reality: only 2% of the total displaced population have managed to overcome vulnerability, 97.6% of victims do not have a stable source of income and only 7% of them have been compensated (CSML, 2016a).

The post-agreement period (which still continues) has shown that the TJ systems have contributed to achieve concrete gains for the negotiating parties. In the AUC process, state responsibility discussions were postponed and the structures that facilitated the paramilitary expansion have been left almost untouched. Regarding the FARC process, time will tell whether the TJ discourse was only a means to protect the parties' interests or whether the accountability instruments were actually designed to guarantee victims' rights and (less likely) to improve the survivors' life conditions. However, the first year of the FPA implementation may throw some light on these questions. The new TJ system has allowed the insurgents to remain free during the judicial process and participate in politics. The government, meanwhile, has been able to get an important actor (or part of it) out of war without having to make structural reforms and has achieved a differentiated indulgent justice process for state agents. Therefore, despite the profound differences between both processes, the established TJ

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[48] According to the implementation report made by the Kroc Institute for May 2018, the progress in rural development has been marginal (2018, pp. 24–60). As for the reparation measures contemplated in the Victims point, the picture is also bleak. In 88% of provisions, progress has been minimal or has not even begun (*ibid*, p. 209-222)

formulas have allowed the parties to prevent international and national restrictions endangering the transitions.

## *Concluding remarks*

The definition of the components of the TJ agenda in the Colombian context in this chapter implies going beyond its legalistic dimension (without ignoring it), to focus on the politics behind the production of truth and justice institutions. Contrary to common assumptions in contemporary TJ literature, the conservative peace processes in which past measures are usually negotiated have not responded to everyone's interests, but primarily to those who have the power to prevent the transition. The validity of this argument has become clear when analysing the different stages of the AUC and FARC peace processes.

On balance, while the dominant global discourses on accountability have heavily influenced the Colombian TJ formula, the political needs of peace are what have ended up defining its fine print. On the one hand, based mainly on the restorative dimension of justice, the current TJ framework includes a series of state-centric provisions to promote accountability for international crimes (allowing prioritization of cases, lenient and restorative sanctions), to clarify the truth (judicial and historical approach) and to provide transformative reparations for victims and guarantees of non-recurrence. On the other hand, the TJ agenda is also made up of the interests of the parties negotiating the conflict, which despite their enormous differences can be summarized as: the end of armed confrontation, political participation, the long-term maintenance of the *status quo* and the denial and/or mitigation of responsibilities for their past actions.

The two dimensions, the legal and normative that conform to international standards and the political, which reflect the expectations of powerful actors, come together to define the TJ domestic agenda. However, as dealing-with-the past processes are linked and embedded in the broader political process of ending the war, their elements remain, as in the past, determined by considerations of power.

Is the national TJ agenda consistent with what those who have experienced violations seek? As this thesis privileges the alleged beneficiaries of the accountability institutions, the question

will be addressed considering their perspectives in the so-called transition periods in two regions with long stories of inequality and poverty but at different stages of the peace-war vicious circle, to define their priorities (Chapter 6 and 7). However, as shown further on, the victims' priorities are highly contingent upon the complexities of their everyday lives. Therefore, the contexts of Catatumbo and MMa are analysed deeply in the next two chapters.

## *Chapter 4 Catatumbo: the lost land of transitional justice*

## *Introduction*

In 2016, after the release of a journalist kidnapped by the guerrilla in Catatumbo, President Santos referred to this region as "a kind of nationwide Bronx"[49]. An unfortunate comparison, not only because it reinforced the stigmatization towards this region, but because it ignored the structural causes of the war, the value and potentialities of Catatumberos. This perspective, however, has not been the exception. In the rest of the country, its population has been historically stigmatized. Certainly, it cannot be denied that the region has experienced extremely high levels of violence and remains one of the most complex areas in the country after the FARC demobilization (HRW, 2019). However, Catatumbo is also a territory where thousands of rural dwellers have learnt to survive and resist in a context in which the state has been traditionally absent and where all the armed groups have waged an all-out-war against them. A social leader reflects thus on this region:

> "*this violence is not ours…. the government allowed it when it left us alone, then the guerrillas took advantage of our desperation and arrived, and then the paramilitaries [along] with the army swept the region with everything in it. But here we are… resisting" (interview 3, male)*

Indeed, this was the scenario I found during my fieldwork in Catatumbo. On the one hand, people who, despite poverty and violence, continued to find ways of surviving and securing a better future for their families; on the other hand, a national government trying to regain the local inhabitants' trust; different non-state armed groups generating terror; and the FARC in the process of demobilization and still facing the challenge of integrating into the very region that still bore the scars of its crimes. What I did not find in this context were the debates (relevant at the national level) on the dilemmas between peace and justice or discussions over the traditional mechanisms to remember the past. In everyday life, Catatumberos were concerned about improving their quality of life. Although the war still marked their daily life,

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[49] The Bronx, a neighbourhood in the centre of Bogotá, which was until 2016 the main drug distribution and drug consumption centre, as well as a place where hundreds of drug addicts and criminal gangs lived.

there were other less visible impacts of violence that people dealt with in the best possible way with the limited resources they had.

This chapter aims to reflect the aforementioned scenario to understand how a context in which a transition is increasingly distant has heavily shaped the victims' priorities. In terms of structure, Section I consists of a brief characterization of the structural conditions of Catatumbo. Predominantly, through the lens of local insights, Section II attempts to capture the challenges that marked the victims' everyday lives. The final section discusses the low impact of TJ on the region and some reflections regarding the truth and justice infrastructure under the FPA. Therefore, both this and the next chapter (Chapter 5: Montes de María) contribute to answer *question (iii)* , insofar as they provide the elements to understand why the participants prioritized those measures that could have a direct impact on the improvement of their everyday lives.

## *4.1. Background*

Located in the department of Norte de Santander, in north-eastern Colombia, on the border with Venezuela, Catatumbo is a region of approximately 10,000 km2 that includes ten municipalities: Tibú, El Tarra, Sardinata, El Carmen, Convención, Teorama, San Calixto, Hacarí, La Playa and Ocaña. According to the official projections of 2011, the region has a population of 282,000 inhabitants, the majority of whom live in rural areas (DNP, 2013). Catatumbo is a mountainous area with vast biological diversity, considerable natural resources and a variety of climates that facilitates agricultural activities. However, the great wealth of the region contrasts significantly with its low levels of economic, political and social development (Salinas, 2015, pp. 7–8).

*Figure 8 Region of Catatumbo*

*(CNMH, 2015, p. 37)*

As stated by a local official, "think of a whatever problem. Well the Catatumbo has it". Unfortunately, he was not exaggerating. For more than four decades the region has been the axis around diverse but intertwined political, armed and economic conflicts, and, in humanitarian terms, one of the most challenging points of the border areas in Colombia. Four areas of great concern have loomed large in this region: i) disputes among armed actors; ii) historical conditions of poverty and marginality; iii) coca crops; and iv) the persistence of violence. These interrelated problems are briefly analysed below to reflect not only the complex situation of the region, but also to understand why these dimensions have ended up determining the victims' expectations in this region (Chapter 6). The last part provides an overview of the convoluted so-called post-accord scenario in the region.

## 4.1.1. The armed actors

The economic, social and political marginalization of the region as well as the substantial revenue generated from the oil industry and illicit economies have favoured the arrival of, and disputes between, different armed actors. Historically, guerrilla groups had had a presence in

the region and their coexistence had been peaceful, dividing resources from legal and illegal trade (Avila, 2019). During their first few years, insurgent organizations enjoyed a certain degree of legitimacy amongst populations, as the former demanded better distribution of the region´s wealth (Aguilera Peña, 2014, p. 24; CNMH, 2018c, pp. 220–236). However, since the 1990s the guerrilla groups have prioritized their military and economic aims, imposing their rules and displacing or assassinating those who oppose them (CNMH, 2018a, pp. 29–41).

In this complex context, the line between ideological affinity and coercion of non-state armed groups has become very thin. As a victim of forced displacement points out: "if you have a weapon, will I say no? We have to obey" (interview 37, female). Thus, as insurgent organizations increased their sources of financing, particularly through drug trafficking, they no longer had to depend on their acceptance by the populace to survive (Pécaut, 2008, pp. 103–104). Consequently, the non-state armed groups have set aside their political agenda, losing their legitimacy with the majority of the Catatumbo inhabitants (CNMH, 2018c). Nevertheless, speaking out about the abuses committed by the insurgency still remains a taboo in the region:

> "*At this moment there is no organization here that dares to speak about the damage that the guerrillas have caused, let alone their victims. Silence has been the norm. Peasants are not convinced that the FARC surrendered all their arms, nor yet do they have the capacity to feel safe with the state*" (interview 67, male).

It is worth noting that the communities' perceptions of the insurgent groups vary, depending on each context and the type of control that the latter have established with the former. Nevertheless, communities' shared attitudes are born out of a generalized exhaustion towards violence from wherever it comes. Interviews also revealed that the horror experienced during the paramilitary period seemed to have obscured the guerrilla abuses during the war. Most of the research participants identified the AUC's arrival in the late 1990s as the starting point of the war, despite the fact the guerrillas were there before. A municipal ombudsman explains this prevalent understanding of the war:

> "*Let's say that there has been a coexistence with the guerrillas. They act very differently in comparison with the paramilitaries. When the paracos arrived ... they killed and massacred peasants. But what most hurt the people – and that is why they*

*remember it more – is that they came with the military ... they helped them [AUC] get here in the first place" (interview 63, male).\*

In effect, in 1999 a few months after the AUC leader publicly announced the military takeover of Catatumbo (CNMH, 2015, p. 63), hundreds of paramilitaries committed one of the worst massacres in Colombian history in La Gabarra (Tibú). With the complicity of the military, large landowners and public officials (CNMH, 2015, pp. 63–68), more than 40 peasants were killed, 112 people disappeared and hundreds of families were displaced (Molano, 2012). From this point onwards, a wave of violence and terror was unleashed on civilians across the region until 2006. Although the AUC expansion in Catatumbo has been presented as a counterinsurgency operation, the control of the coca economy and the expropriation of land to favour agro-industrial companies revealed their true interests (CNMH, 2018c, ll. 314–318; Molano, 2012).

Although the AUC Catatumbo Block officially demobilized in 2004, many holdouts within the paramilitary structures did not demobilize and have continued to commit crimes linked to the drug business in urban areas (MAPP-OEA, 2006, pp. 6–11). The state, for its part, is perceived, on the one hand, as an absent actor, that has not restored the monopoly of force, but nor has it regulated the natural wealth of the territory; and on the other, it is perceived as an actor that only appears to protect external economic agents and to persecute the "coca-leaf peasants" (CNMH, 2015, p. 19). Although a hard-line military approach has been privileged by the GOC, the results in terms of security continue to be discouraging (Cinep/PPP, 2018, p. 46) - for example, the homicide rate in the region is three times higher than in the rest of the country (Semana, 2019).
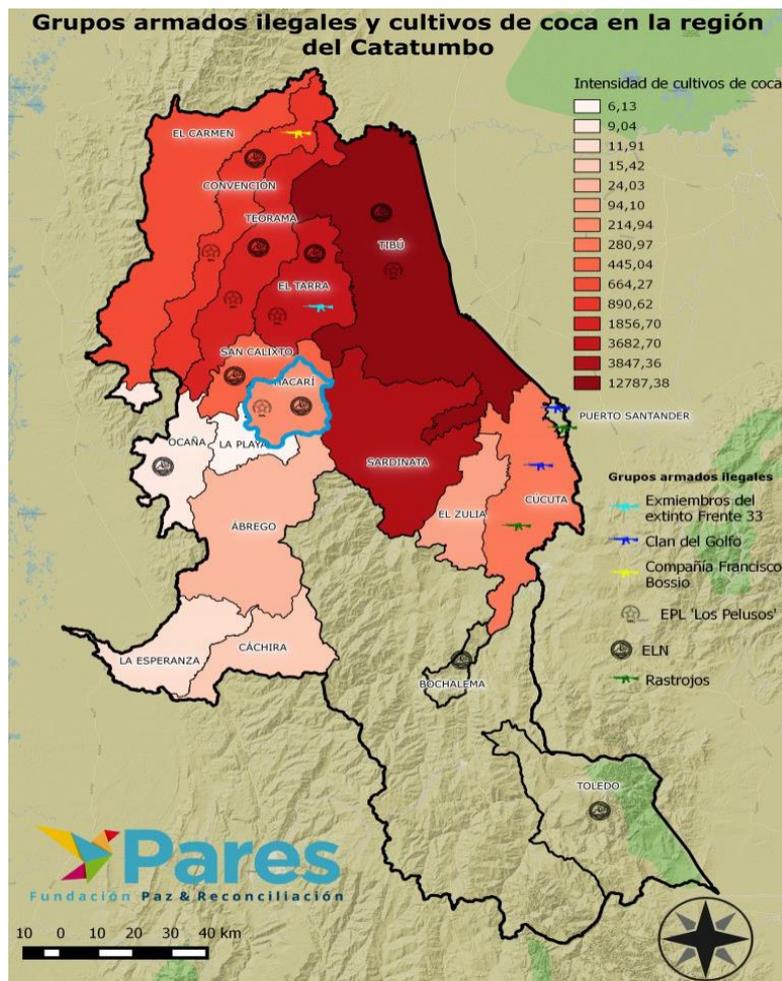
*Figure 9 Illegal armed groups and coca crops in the region*

*(Pares, 2019)*

In 2018, it was estimated that in the Catatumbo region there were approximately 13,000 members of the security forces, 2,500 guerrilla members and an unknown but growing number of dissidents of the FARC and paramilitary groups (Avila, 2019; Semana, 2019) (Figure 9). As stated by a social leader, "the FARC that regulated the illegal world have left their areas, leaving behind a complete mess with armed groups seeking to control these lucrative businesses" (interview 36, male). Indeed, the rupture of political and military agreements caused by the FARC demobilization has brought with it the rearrangement of other groups and the destabilization of control over both illegal economies and the population.

## 4.1.2. Between poverty and marginality

The conditions of poverty and the marginalization of Catatumbo have been historically alarming. With the exception of Ocaña, for most of its inhabitants, the lack of basic services

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and provision of quality health and education services have been the norm (CNMH, 2018a, p. 27). The levels of poverty in most municipalities exceed 70% (Cinep/PPP, 2018, p. 47). Although the region has shown slight signs of improvement in terms of basic services (DNP, 2013), the majority of the rural population face an appalling everyday reality: lack of electricity, drinking water and basic sanitation (Table 1).

| Municipality | Households without sewage pipes | Households without running water | Illiteracy |
| --- | --- | --- | --- |
| El Tarra | 92.6% | 100% | 33.3% |
| Teorama | 85.2% | 96.7% | 34.1% |
| Sardinata | 74.8% | 97.3% | 30.5% |
| El Carmen | 74.1% | 99.5% | 43.8% |
| Hacarí | 70.6% | 99.4% | 38.5% |
| La playa | 59.4% | 68.4% | 47.2% |
| Ocaña | 62.8% | 91.2% | 42% |
| San Calixto | NI | NI | 75% |
| Tibú | 61.9% | 91.4% | 30.4% |
| Abrego | 66.8% | 75.6% | 46.6% |
| Convención | 52.6% | 89.4% | 36.5% |

*Table 1 Human development indicators*

*Source: Censo Nacional Agropecuario 2017*

In terms of unsatisfied basic needs (UBN), for example, the figures are scandalous. While the last national average is 27.78%, in one of the most important municipalities of Catatumbo, El Tarra, 73.11% of the inhabitants have UBN (rural and urban areas). Figures are also disquieting in the rest of the nine municipalities, with a greater impact in rural areas (Figure 10).
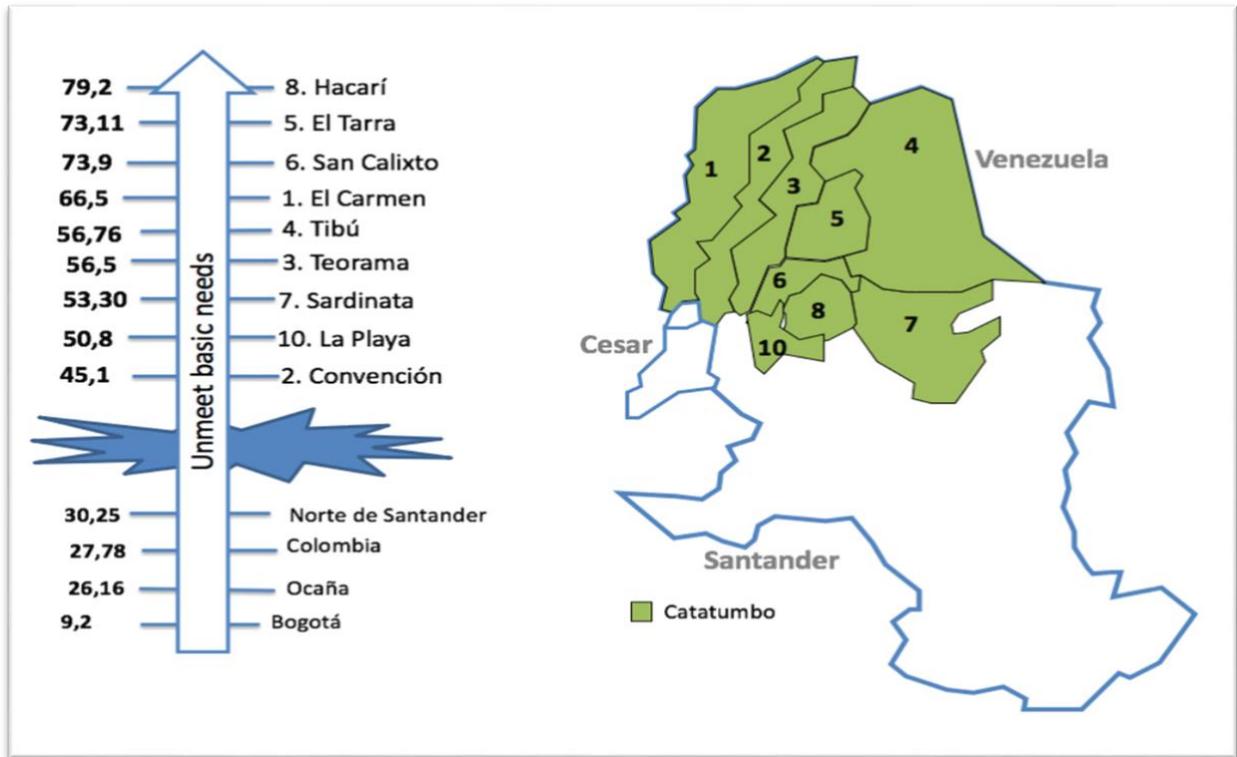
*Figure 10 Unsatisfied basic needs indicators Catatumbo*

*(SALINAS, 2015, p. 6) Designed by Victor Gutierrez*



*Figure 11 A house abandoned*

*as a consequence of war, Pacelli. Photograph courtesy of SPT*

In terms of access to and quality of education, the reality is also dreadful (Cinep/PPP, 2018, p. 85). Classrooms usually do not have doors or windows, desks, and much less access to potable

water. The effects of the armed conflict are also devastating. Warring factions have often used schools as a refuge or a place of combat (El Espectador, 2016a). Accordingly, it is common to find bullet holes in schools and graffiti of the armed groups on its walls. In 2018, more than 45,000 students were unable to attend their classes as a result of disputes between the ELN and the EPL (NRC, 2018).



*Figure 12 A school in the rural area of San Calixto*

*with graffiti from a guerrilla group operating in the Pacelli area. Photograph courtesy of SPT*

Regarding access to health, the situation is equally dramatic (Cinep/PPP, 2018, p. 86). Most municipalities have a small health centre with one or two doctors and without basic supplies. In rural areas, there is no medical care. In this context, unsurprisingly, job opportunities are scarce. Therefore, the progressive departure of private companies, the lack of support for agricultural activities and the presence of illegal armed actors have led to coca cultivation and other related activities becoming one of the main methods of survival of the region.

*Figure 13 Vehicular bridge El Tarra*

*Photograph courtesy of SPT*

## 4.1.3. The coca economy

Catatumbo's importance for armed actors is mainly derived from its strategic position for the production and commercialization of coca leaf and coca paste. In addition to sharing an extensive lawless border with Venezuela, the geography of the region has favoured the massive cultivation of coca leaves (FIP, 2015). In 2017 the illicit coca-plant production escalated to 28,0000 hectares, representing 20% of the country's total production (SIMCI, 2017). Although this exponential increase has been attributed to the restrictions on aerial fumigation and pressure from armed actors, the lack of guarantees and sustainable resources for peasants moving out of the coca trade continue to be the main reason.

*Figure 14 Coca crops*

*. Photograph taken by the author*

Although coca crops are one of the greatest threats to the implementation of the FPA, this activity also remains the only source of income generation for thousands of families. The deficiency in decent roads or infrastructure makes the transportation costs of other agricultural products significantly high. Precisely the opposite occurs with coca crops. A kilo of coca base can be carried in a rucksack and the market is usually assured. Nevertheless, the profits of coca crops, contrary to popular belief, are minimal for the *campesinos* and scarcely enough to cover some basic needs. Needless to say, the farmers are exposed to constant risks: fumigations, arbitrary detentions, disputes between armed actors, among others.

## 4.1.4. The spiral of violence

Living in Catatumbo is like being in another Colombia. Scenes like schools with white flags or crosses, traces of bullets in houses and public offices, houses destroyed by bombs, police hidden in barricades and military tanks at the entrance of various municipalities are part of everyday life. All armed agents have used attacks against civilians as part of their war tactics, following the patterns of violence of other regions (CNMH, 2013, p. 41). The AUC implemented a repertoire of violence based mainly on the application of a scorched earth strategy (CNMH, 2015, pp. 93–94). It is not a coincidence therefore that 59.5% of the total of forced displacements in the region (166,295) between 1987 and 2017, occurred during the AUC period (CNMH, 2018c, p. 321). Likewise, during this period a wide spectrum of violent

acts occurred: 60 massacres, 11,200 selective killings, 988 forced disappeared and thousands of hectares of land stripped (CNMH, 2018c, p. 373; Colectivo de Abogados Luis Carlos Pérez, 2012).

For their part, the guerrillas have used kidnapping, extortion, selective assassinations, attacks on civilian goods, forced recruitment and land dispossession (FIP, 2015, p. 15). However, the scope of the crimes perpetrated by these groups is still unknown, as the insurgent groups continue to dominate the region. Finally, in addition to its proven alliance with the paramilitaries, the armed forces have been mainly responsible for enforced disappearances, disproportionate use of force against civilians and arbitrary arrests (CNMH, 2015, pp. 74–79). It is not surprising, then, that according to official records approximately 40% of the population has been affected by the war (Cinep/PPP, 2018, p. 52). However, this figure may be much higher if one considers that, as was corroborated in the interviews and other reports, a large number of people affected by the conflict have not been registered in official records (CNMH, 2015, p. 219; Fundación Social, 2009, p. 111).

The aforementioned scenario is not part of Catatumbo's past. Unlike in some areas where the FARC demobilization has brought a certain stability to local communities, in the region the opposite has been the true. When the UN peace mission and state institutions began to arrive and the powerful FARC Front 33 handed over their weapons (or part of them) at the end of 2016, the region was experiencing a kind of tense calm. Its inhabitants, although they had somehow hope, knew that the context could worsen. They were right. By 2018, the war between the remaining insurgent groups for the FARC's most lucrative rackets had caused serious humanitarian consequences for the region. According to the official records of 2018, with more than 24,000 displaced persons and 1055 people threatened, there had been a 302% increase in victimization levels with respect to 2017 (Avila, 2019). Murders had more than doubled from 112 in 2015 to 231 in 2018 (HRW, 2019).

However, and as several organizations have reiterated, the current situation of Catatumbo should not be understood only as the result of "indiscriminate political and social violence, but as a systematic action of violations of the human rights of its inhabitants" (Cinep/PPP, 2018, p. 45).[50] As this section has tried to show, the violence that this region goes far beyond the

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[50] Translated by the author.

FARC demobilization and current armed confrontation. Although the present-day escalation of violence in the region is scandalous, the precarious living conditions of thousands of families are even more so. The following section seeks to reflect the daily life of people in Catatumbo. Although it cannot be argued that this is representative of the entire region, it is a bitter indicator of the reality of its inhabitants.

## 4.2. The everyday in Catatumbo

Based on empirical evidence, not only through one-to-one in-depth interviews, but from my own experience in the Catatumbo for almost two years,[51] this section seeks to capture the ordinary life of war-victims in one of the most troubled regions of the country. Consequently, considering the notion of the everyday and the different dimensions of violence that it encompasses (Section 1.1), this section seeks to demonstrate that, along with the effects of direct violence, people in their everyday lives struggle to overcome the impact of structural violence that sometimes seem to be even more urgent than the constant noise of war. Indeed, although the state has paid attention to the region when a public figure has been kidnapped or Venezuela has violated the international border, there are many silent deaths that do not appear in official records, but have been caused by the historical abandonment of the state (critical road conditions, lack of medical care and malnutrition).

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[51] I have worked twice in the Catatumbo region. During 2014-2015, I worked as Technical Assistant of the UNDP regional office. Then I did my fieldwork for this thesis from September 2016 to April 2017.

*Figure 15 Villagers in La Gabarra (Tibu)*

*still enjoy sitting outside their houses despite violence. Photograph taken by the author*

This section therefore focuses on the three main aspects that the participants repeatedly mentioned in the interviews about their daily lives and that were also evident during my fieldwork in various communities: fear, insecurity and a lifetime of deprivation. This portrait allows us to understand why TJ mechanisms are not seen by the victims as legitimate and relevant in their ordinary lives (Chapter 6).

## 4.2.1. *A climate of fear and insecurity*

*"*It's been 103 days since we have not heard a bomb or gunshots. We know it's a treacherous calm because it will not last... as I say, we're not enjoying" [52] This was the description of a secondary teacher when asked what life was like in San Calixto. A small and remote municipality of nine thousand inhabitants, this municipality has been for decades the emblematic zone of the dissident group of the EPL.[53] The bullet holes in the walls of houses and municipal offices and a police station covered with barricades in the main park also

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[52] Interview 48, male.
[53] The EPL was an insurgent group that emerged in the 1960s and demobilized in the early 1990s. However, a dissident group has since continued to operate in Catatumbo.

evidenced the distrust expressed by this young teacher (Figure 16). Similar stories were told by other people who had been directly affected by the constant attacks of armed actors:

> *"Look, I've been a victim several times. The most serious was an attack in XXXX when the guerrilla fired a bomb and fell on the door of my house. Thank God when the bomb exploded my daughter was in the back room. So, the whole impact fell on me. Since then I cannot sleep at night even though we no longer live in that house"* (interview 54, female).



*Figure 16 A barricaded Police Station in San Calixto (2017)*

*Photograph courtesy of SPT (2017)*

The victims interviewed in San Calixto, without exception, kept track of the days that there had not been a guerrilla attack. They did not trust the dead calm experienced in their municipality. An official from the mayor's office, whose two brothers were murdered, explained:

> *"Since November [2016], San Calixto has been relatively calm, but still it is worrisome because here the actors outside the law have many interests: the territory, the coca. The FARC left but other armed actors remain… Unfortunately, our people will be the ones who will have to bury their dead "* (interview 48, male).

Ten months after the interviews the residents' fears were confirmed. The quiet atmosphere had only been the prelude to a war to the death between the remaining guerrilla groups, which

resulted in thousands of displaced persons, forced confinement of civilians and the death of dozens of peasants (El Espectador, 2018). One of the saddest cases occurred in April 2018 when a humble dwelling was almost destroyed in the crossfire between these guerrillas and two of the family members were killed (La Opinión, 2018a). Around 50 farmers had to escort the ambulance to get the dead and a woman and a baby who had miraculously survived (El Espectador, 2018) (Figure 17).
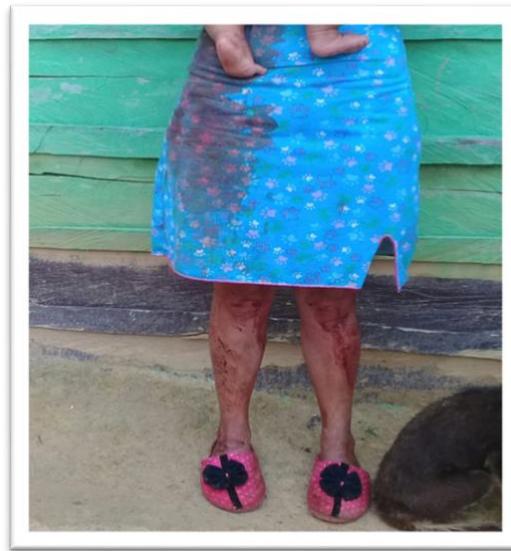


*Figure 17 Survivors of the guerrilla confrontation.*

*Photograph Courtesy of Ascamcat*

Although San Calixto has been one of the most conflictive and abandoned areas of Catatumbo, I found a an atmosphere of fear and insecurity throughout the majority of the region (CNMH, 2015, 2018c). Threats either by guerrilla or alleged paramilitary groups circulate continuously, either to impose an armed strike *(paro armado)*[54] or to threaten certain sectors of the populations (e.g. Venezuelan and LGTBI). During my fieldwork, the guerrillas ordered several armed strikes, forcing the inhabitants to remain confined, sometimes for entire weeks. Despite the government's calls to ignore the norms of the non-state armed groups, the population did not take any risks and closed their businesses, did not go out, etc. While the population's compliance with irregular group rules has been one of their major strategies to survive, this is

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[54] This is a term generally used by illegal armed groups where the population of a town or region is ordered to completely cease its commercial, religious, social, and political activities. People are often threatened, being warned to stay in their homes or to face the consequences (murder, business closure, detention).

also the greatest proof of the inability of the state to fulfil its social function in Catatumbo (Duncan, 2006, p. 140).



*Figure 18 Announcement by the EPL*

*Declaring the armed strike in Catatumbo (2017). Photograph Courtesy of SPT.*

Fear was one of the most repeated feelings expressed by participants in this region. On the one hand, it was a fear that resulted from the victims' traumatic experiences of the war and which they were afraid to repeat. This fear, in addition to being described in most of the interviews, was particularly reflected in an episode that occurred in early 2017 when the FARC began its demobilization process. After a regional peasant organization warned of the arrival of the paramilitaries in La Gabarra (El Espectador, 2017), several of its inhabitants (whom I later interviewed) went on their own to find these people and expel them from the region. Although the AUC re-emergence was unlikely to happen at this particular time considering the strong militarization of the area and the presence of other guerrilla groups, the fear of the inhabitants was evident everywhere. For the people I spoke to, just thinking that they could suffer paramilitary violence again, prevented them from sleeping.

As explained before (Subsection 1.1.3), post-conflict environments (if Catatumbo could be called such) are generally characterized by high levels of insecurity, as a result of the ruptures in dominant political and economic arrangements among illegal actors and disputes that emerge to control territories and populations. This is certainly the case in Catatumbo, where thousands of people have remained trapped in the midst of crossfire. While the period immediately after

the signing of the FARC peace agreement gave the impression that the situation would improve, the current scenario shows that, as many people told me, the armed actors were strengthening to wage a far worse war.

### 4.2.2. *"There is an atmosphere of poverty everywhere"*[55]

A second aspect of daily life referred to the poor living conditions in which most Catatumberos have lived. Poverty has been evidenced by the contaminated water that children drink, the preventable diseases that kill rural inhabitants, the wooden houses improvised in high-risk areas, the few opportunities for employment and education for the young, and limited access to primary health care, among other deprivations:

> *"You are not asking me this, but now at home I have two little children who have not eaten anything all day. I come here to the City Hall to see if they give something to make a sugarcane-water." (interview 18, female).*

> *"I live in the greatest misery. I live on the charity. Thanking the good people in Catatumbo, the kind people, the humble, as they give me a little charity. This is the reality that one lives." (interview 2, male).*



*Figure 19 Water that children drink in a rural public school (Tibu) 2016*

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[55] Interview 2, male

In urban areas, although the displaced population had greater access to basic services (still precarious), in terms of decent housing and employment opportunities, the situation was particularly worrying, as the following participant reported:

*"I live in a straw ranch that we bought with a lot of effort after the paramilitaries took everything from us. But I have not been able to repair it. It has no floors, no bathroom. Thank God we have where to live but we live like animals" (interview 9, female)*

A woman who survived the AUC massacre of Gabarra is 40 years old, although she looks a lot older. Her skin is wrinkled and blotchy, her hands were sore, worn and part of her hair is grey. She recounts how she has not been able to recover after being displaced:

*"Well remembering, when we were displaced, they took away the five cows that we had. I had three small children and a sick one. We arrived at Tibú and we had to eat from the rubbish. It's something you do not want to remember. My God, today I work here in this pig farm but there are days that we continue to endure hunger (interview 27, female).*



*Figure 20 Traditional cook (Las Mercedes) 2017*

*Photograph taken by the author*

## 4.3. *Transitional Justice in Catatumbo*

In the complex and changing context described above, TJ measures have been implemented. Not surprisingly, the results in both cases have been detrimental to victims and, at best, invisible. The first part of this section briefly summarizes the victims' experience in the implementation of the JPL and the VRL in this region. However, it must be clarified that rather than making an in-depth evaluation of TJ, this section seeks to present the local perceptions of its supposed beneficiaries. This analysis provides important insights to understand why victims did not see TJ tools and their taken-for-granted aims as relevant and legitimate.

### *4.2.3. Justice*

More than ten years after the JPL was enacted, a large number of structural and operational failures in its implementation have not allowed victims to obtain justice, particularly in areas where the armed conflict persists, such as Catatumbo. First, the given law has been characterized by the slow pace of proceedings. After a decade, of the 96 paramilitaries investigated, only eight judgements against the main commanders of the AUC Catatumbo Block have been handed down (CNMH, 2018c, p. 83; Verdad Abierta, 2014a). Another key problem of the JPL, as mentioned before (Subsection 3.4.1), has been its restricted scope that, as such, excludes state members and private actors. Therefore, despite the fact that these actors' responsibility for the paramilitarism expansion in Catatumbo has been proved in the JPL trials (Sala de Justicia y Paz, 2014b, 2014a), only few have resulted in a condemnatory verdict under ordinary justice (CNMH, 2015, p. 234). In other cases, criminal proceedings have not even been opened. A notorious example in this region summarizes this problem. A former mayor of Catatumbo, who accompanied a group of victims to a JPL hearing, explains it in this way:

> "*A very well-known lady named XXX who had a restaurant was killed by the paramilitaries. When her family asked the paramilitary during the [JPL] hearings, he said: we killed XXX because Mrs. YYY, who also had another restaurant, paid us to kill her. Can you imagine that information? This information came to the municipality .... And look now, Mrs. YYY lives in the municipality and no legal process has been opened. When these things happen, the victims lose that sense of asking for truth and justice*" (interview 47, male)

Likewise, victims face several obstacles in participating in the JPL processes. As the judicial hearings have been held in the main cities, it has been very hard for victims to attend them given the high transport costs. Thus, although 63% of the interviewees were paramilitaries´ victims, the majority have not participated in these processes (90%). For those victims who did participate in the hearings, their experience was rather dramatic. Participants recounted how they were exposed to their perpetrators without any prior or subsequent psychological support. In addition, some felt that they were re-victimized since the former paramilitaries' responses were evasive or ended up justifying their crimes. This view was echoed by the former mayor mentioned above :

> "*we made all the logistical and economic efforts to bring 82 victims to two public hearings in Ocaña. That was a "circus". The victims who came to hear the truth received no response or were blamed. The few who heard it, nothing happened... The victims were more wounded by the state; they hate the victims' policies more. Humble people left the hearings with a deeper pain and the state never showed up since. In the end, I left the hearings because I was ashamed to be the representative of the state in that farce" (interview 47, male)*

In summary, for the informants in this study, the faith in justice remains low. The ordinary judiciary has even worse results. Of the more than 770 cases of murders reported since 2017, only in less than 10% has there been a conviction. Crimes such as recruitment, forced disappearances or forced displacement show no progress and no one has been convicted (HRW, 2019). Thereby, as will be seen in Chapter 6, the "human justice", as it is called, is viewed with suspicion by survivors, who did not expect that in this life, but rather in the afterlife their perpetrators will pay for their crimes.

## *4.3.1. Truth*

The other inherent objective of the JPL has been the search for the truth. The hearings have contributed to reveal important information that would have been very difficult to obtain by other means. The AUC confessions, on the one hand, have confirmed the complicity between the paramilitaries and the armed forces, politicians and public officials (Sala de Justicia y Paz,

2014b, 2014a). On the other hand, the former paramilitary commanders recognized a large number of crimes in this region, of which there was little information. However, there are three serious problems with the JPL implementation. Given that the confessions of the paramilitaries in most cases have not been accompanied by other measures (reparation and psychological support) and the violations have continued, being committed even by members of the same groups, it is likely that the truths that did come to light have not redressed the harm caused.

Moreover, even though a significant number of crimes have been solved through the JPL proceedings, the question is, what is the proportion of crimes that are not known and therefore have not been recognized by the state (López Caballero, 2012, p. 32). The high number of victims interviewed who never reported their cases to the JPL system is an indicator of the long way ahead. A third problem has been that even though victims had participated in the JPL processes, a sense of discontent regarding the truth was prevalent among interviewees:

> *"My sister and I went to a hearing and the one that killed my brother asked for forgiveness, and he said why he had done it, but his version was different from ours. But how could we contradict him?" (interview 21, female).*

In the framework of the JPL and the VRL or through private initiatives, historical memory exercises have been promoted. These have allowed communities to develop a collective truth that reflects the horror they have experienced mainly during the paramilitary incursions (Asociación Minga & Fundación Progresar, 2009; CNMH, 2015, 2018c, 2018a). These excellent works have been well received by communities and have given contextual elements for judicial processes. However, these are little known by the general population in Catatumbo. Long reports, added to the low levels of literacy in the region, make it very complex that these tools could be useful for victims.

### 4.2.4. *Reparations*

In terms of economic reparation, the transition mechanisms have had a series of setbacks to guarantee this right in a timely and effective manner. To claim compensation, victims have two options: through a judicial (JPL) or administrative procedure (VRL). In the former, those victims in the Catatumbo who have been recognized for compensation through a JPL sentence

have been a minority (according to the interviews). In this sense, the lucky ones faced a long and arduous path for nearly a decade to be finally repaired by amounts much smaller than those that were ordered by the courts (Verdad Abierta, 2014b).

The situation is not better in terms of reparation through the administrative procedure. Recognizing that compensating more than seven million victims implies an immense effort in budgeting for the state, it is also true that this component has not been prioritized by the government. No information was found on the number of victims repaired in Catatumbo. However, an official from a municipal ombudsman's office gives an idea of the regional scenario,

> *"Compensation is the slowest at the moment. Last year, as far as I am concerned, there was not a single person in this town who was compensated. There are people who have already died waiting for more than ten years to be repaired. What the state has done is re-victimize the victims"* (interview 52, male)

In addition, of the 70 victims interviewed, only 8% had received compensation. It should be noted that most of them have not had their expectations met. To the extent that money was paid many years later, compensations have lost their ability to redress, prolonging the difficult situation in which most of survivors and their families live (García Arboleda, 2013). As for the other components of the reparation, such as medical and psychological rehabilitation within the framework of the VRL, the advances are even more precarious. During my fieldwork, I had no knowledge of any state programme responsible for psychological counselling of victims in the region.

## *Concluding remarks*

Analysing the regional contexts, the victims' everyday lives and their experiences during the implementation of the truth and justice tools in the region, this chapter contributes to understand why the war survivors have prioritized those measures that could have an impact in their everyday above the traditional elements of TJ (Chapter 6). To do so, this chapter has presented the difficult conditions of the inhabitants of Catatumbo. In addition to the burden of their violent and tragic past, Catatumberos continue to face a war over their territory. This

chapter has also demonstrated how the continuation of war, fear, the lack of dignified conditions, the stigmatization and the abandonment of a social state have been part of the daily life of Catatumberos. It is a very complex reality for a population that resists accepting this way of life for their children. However, while the armed actors are losing more and more political space, it is also increasingly evident that "whoever dominates the territory with weapons continues to determine who goes out, who enters, who works, who lives or who dies" (interview 59, male).

In this scenario, TJ measures have been poorly implemented, generating adverse effects on victims in some cases. The needs and rights claimed by victims, such as reparation and psychological assistance, continue to be left out at the forefront of the state's priorities. The new CSTJR has been designed to follow the same approach. It will concentrate on judging those responsible for the violations and seeking a truth (although necessary), leaving aside the main needs of those who have suffered the worst consequences of war. Although it is unknown now how this system will operate in Catatumbo, the challenges that must be met to achieve its objectives are not minimal.

# Chapter 5: Montes de Maria: Winning the peace, losing the land[56]

*"Quien siembra la tierra, siembra la paz" (Perez, 2010)*

## Introduction

If in the 1990 MMa was one of the main theatres of operation in the Colombian war, since 2008 it has begun to be recognized not only as the first post-conflict scenario but also as a successful one (ILSA, 2012, p. 6). Under the Uribe administration (2002-2010) and the military support of the paramilitarism, the state regained control in a significant part of the territory, considerably reducing direct violence. Although fears persist about the return of violence, the re-emergence of a variety of social practices in the last decade demonstrates the key changes experienced by its population: "today, I can sit in front of my house at night, attend meetings of my organization, talk to people from other towns…." (interview 101, male) (Figure 21). The security improvements have set the stage for the progressive restoration of the social fabric, the implementation of several TJ initiatives and slow economic recovery of the region. However, as a peasant leader rightly argues "while it is true that the armed ones left, peace has only come for some" (interview 84, male).

Indeed, the greater slice of the "peace cake" has gone mainly to large economic conglomerates and traditional elites at the expense of those who bore the brunt of hostilities (Aguilera Diaz, 2013; Daniels, 2011; Daniels & Maza, 2017; Leon, 2009). Thus, the continuities of the past in the post-conflict era contrast with the discourse of transformation and renewal which governments have strongly relied on. Dynamics such as high levels of land concentration and poverty, inequality, corruption and the presence of AUC post-demobilization groups (AUCP) remain present in the daily life of the inhabitants of this region.

This chapter seeks then to explore some of these challenges that victims face in their everyday lives. The purpose here is to provide a background to understand why these realities seemed to

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[56] This title is taken from an article of the portal web *Verdad Abierta* about the situation in MMa (Verdad Abierta, 2012)

have more clout in the participants' priorities to face their past than the international and national discourses of the rights of the victims that have prevailed in the region for more than a decade (Chapter 7). To do so, the chapter is divided into three parts. Section I describes the evolution of the dynamics of violence in MMa (1980-2017), as a context to the voices of the victims that will be analysed in following sections. As one of the main characteristics of this research is to analyse the daily lives of the victims from their own perspectives, Section II identifies three dynamics in which the impacts of direct and structural violence were conflated. The final section explores the TJ experience in the region, taking into account the voices of its purported beneficiaries.



*Figure 21 People usually sit in front of their houses*

*to share time with their neighbours. Photograph courtesy of SP*

## 5.1. *General context*

Montes de María is a sub-region of small hills in the Colombian Caribbean of 6466 km2 close to important centres of economic power (Figure 22). The region comprises 15 municipalities made up of the departments of Sucre and Bolivar: Córdoba, El Carmen de Bolívar, El Guamo, María La Baja, San Jacinto, San Juan Nepomuceno, Zambrano, Ovejas, Chalan, Colosó, Morroa, Toluviejo, Los Palmitos, San Onofre and Palmito. MMa has 345,018 inhabitants, with

a predominantly urban population (59,3%) compared to the decrease in the rural population (Daniels & Maza, 2017, p. 15). Its population is a mixture of *mestizos*, Afro-Colombian and indigenous peoples, reflecting a diversity in their traditions and cultural expressions.
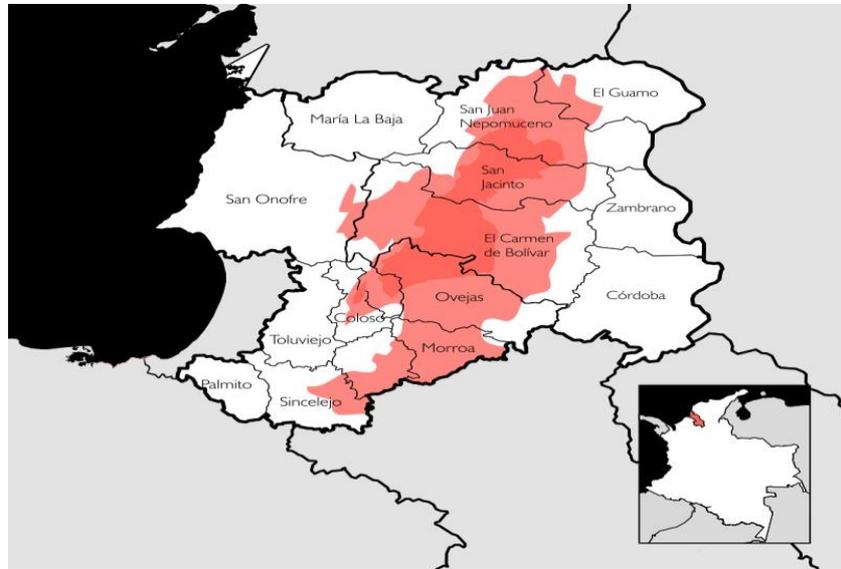


*Figure 22 Region of Montes De Maria*
*WIKI-COMMONS 2018*

Its favourable topography, its strategic position and the richness of its soils have made the region one of the largest food suppliers in the Caribbean (Daniels, 2016, p. 55). However, contrary to what should be a blessing, it has made MMa an area fought over by different actors (CNMH, 2012b, pp. 364–365). Their unbridled greed for land and for the control of strategic areas has led to massive levels of human rights violations, outrageous land concentration rates and major setbacks in socioeconomic rights. Meanwhile, rural communities and civil society, despite having been the most affected, have challenged a culture of violence and continued to engage in political actions in the face of structural violence.

*Figure 23 Region of Montes De Maria*

*Photograph courtesy of SP*

This section then seeks to present, through three periods, the different dynamics that have characterized the region since the arrival of the guerrillas in 1980 to the so-called post-conflict period. Thus, in addition to understanding the research participants' background, this section allows us to understand why MMa has become one of the main TJ experimental laboratories.

### 5.1.1. Armed conflict (1980-2002)

The conflicts over the land and the control of the territory have been the transverse axe of the armed violence in MMa (Porras, 2014). Thus, different guerrilla groups arrived in 1980 attracted by the economic and political advantages of the region (GMH, 2009, p. 80). As the MMa had been the scene of historical land struggles, the insurgent groups envisaged a favourable political environment (Fals Borda, 2002; GMH, 2009; UNDP, 2010). Nevertheless, their success in building a peasant political base was very limited (Porch, 2012, p. 268; UNDP, 2010, p. 15),

*"The FARC were initially welcomed… they had an attractive ideology for many people, but that changed. They began to kill and kidnap in the name of peasants ... people stopped supporting them because we do not support arms, but political actions "* (interview 80, male).

For their part, the *campesino* movements rejected the guerrilla groups' attempts to subordinate them to their logic of war (UNDP, 2010, p. 10; Verdad Abierta, 2010b). However, for the regional elites affected by these land redistribution processes, and their private paramilitary groups, both the guerrilla and the peasant struggles were conveniently the same. Ironically, for the insurgent groups, the peasant movement also constituted a threat to their expansion (Verdad Abierta, 2010b, 2014c). As a result, a low intensity dirty war began against the *campesino* movement causing the murder and displacement of most of its members (Escobar, 2013; Perez, 2010; Verdad Abierta, 2010a).

The guerrilla rapidly spread throughout the region, unleashing a wave of kidnappings and extortions upon large landowners. Meanwhile, the paramilitaries that had arrived since the 1980s continued to operate as fragmented armies in the service of large landowners and drug traffickers (ILSA, 2012, p. 13). Thus, the situation had become complex and volatile but worse was to come. From the mid-1990s to the mid-2000s, this region became the scene of some of the most macabre episodes in the recent history of the war, as a result of two interrelated factors. One was the FARC military consolidation and the escalation of horrendous crimes against civilians (CNMH, 2012b, pp. 355–356; Verdad Abierta, 2010a). The other was that the regional elites had organized and financed a unified paramilitary structure in the region since 1997, which would later join the AUC (Escobar, 2013, p. 129). Meanwhile, the security forces, which had unsuccessfully tried to defeat the guerrillas, welcomed and supported the paramilitary consolidation (Verdad Abierta, 2010a).

Thus, between 1995 and 2005, the paramilitaries, using the most aberrant devices and technologies of pain, committed 49 massacres with 332 people murdered and displaced almost a third of the population (ILSA, 2012, p. 6). Although the AUC framed their actions as a counter-insurgency strategy, this was subsidiary to the preservation of the political *status quo,* the capture of public revenues, drug trafficking and land dispossession (Escobar, 2013, p. 126; ILSA, 2012, p. 18). Thus, while the region became one of the main centres of the expulsion of displaced populations and ghost towns, the AUC and their allies, managed to reverse the rather

limited land redistribution process carried out since the 1970s (Mercado Vega, 2017, pp. 212–214).

That the deaths of civilians associated with armed conflict was four times greater than those of the combatants between 1997 and 2002 (Figure 24) is evidence that the war was not aimed primarily at armed actors but civilians. 80% of civilian murders were perpetrated by the AUC (CERAC, 2009).
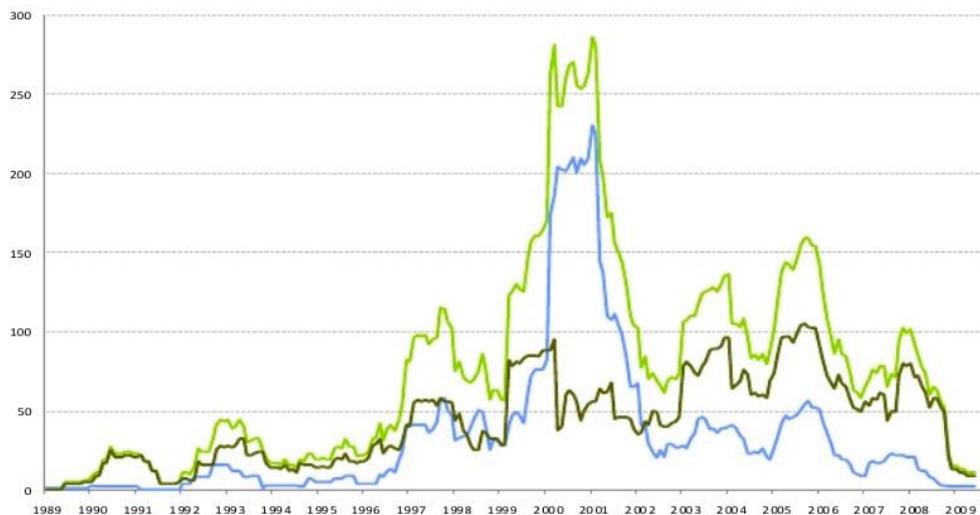


*Figure 24 Homicide statistics in Montes de Maria 1989-2009*
*Source CERAC 2009*

Total

Civilians

Combatants
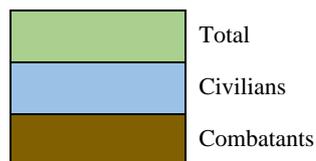
By 2002, Montes de María was a "no man's land", where a tacit agreement to share the territory between the illegal armed groups emerged (Porch, 2012, p. 253). Thus, while the AUC controlled the main drugs corridor and most of the urban centres, the insurgents were settled in the mountains (*idem*). The coming to power of president Alvaro Uribe in 2002 would alter these dynamics. While for some of the interviewees, mainly those in municipal centres, the consolidation of MMa began, for the rest another war started, this time at the hands of the state and large companies.

## 5.1.2. Territorial pacification and consolidation (2002-2010)

The pacification of MMa led by the Uribe administration began in 2002 with the significant military increase as well as the granting of broad judicial powers to the armed forces (UNDP, 2010, pp. 11–12). The military intervention and the support of the AUC yielded strong and rapid results, which led to the defeat of the guerrilla in 2010 and the reduction of direct violence (Porch, 2012, pp. 253–254). Nevertheless, the pacification cost was very high for the rural populations, as they ended up being disproportionately affected by large-scale raids and mass arrests (Fundación Social, 2009, p. 62). A second component of the strategy to regain state power was the AUC peace process which included the ceasefire in 2002 and the demobilization of more than 500 men from the MMa AUC unit in 2005. Thus, a significant decline began in massive violations of human rights (Figures 25 and 26). However, as is presented below, the paramilitary economic, political and criminal structures would continue in the region.
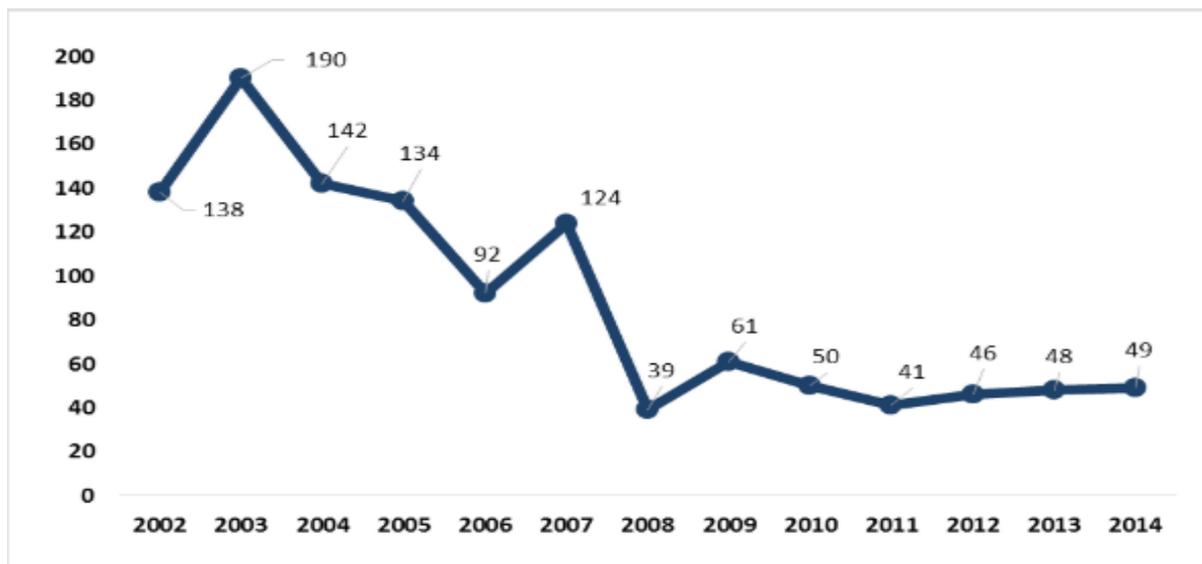


*Figure 25 Homicides in Montes de Maria 2002-2015*
*(Daniels & Maza, 2017, p. 17)*

138
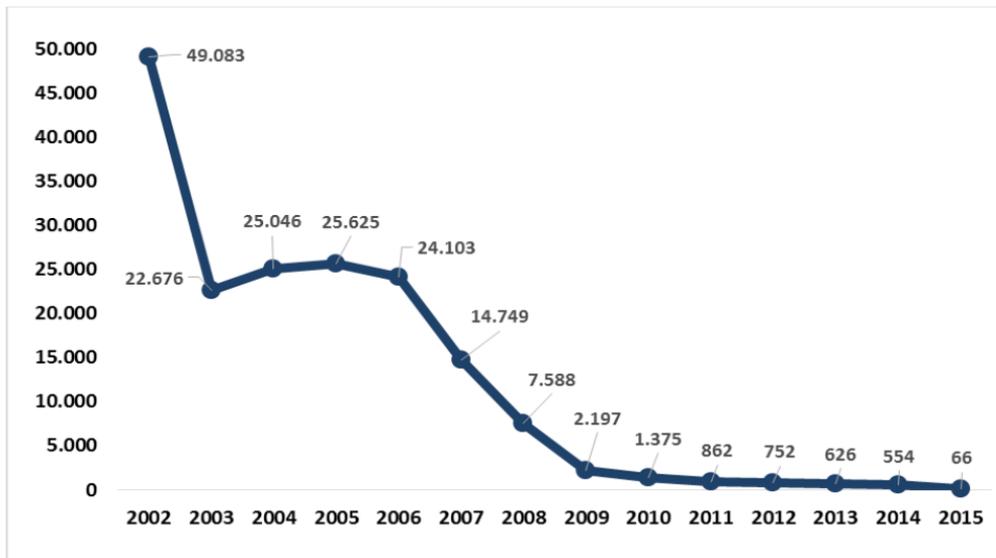
*Figure 26 Displacements in Montes De Maria*
*according to people expelled 2002-2015 (ibid, p.18)*

With the demobilization of the AUC and the FARC eviction, what the government called the consolidation of the territory began. While this strategy included the continued presence of the military forces, it also extended to a social and economic component (Wola, 2012). Certainly, improved security conditions increased economic prospects, but mainly for wealthy investors, who were attracted by the low cost of land and the vulnerability of small landowners (Fundación Social, 2009, pp. 64–65). Accordingly, the MMa stabilization was not intended to improve the living conditions of the population, but to allow a second counter-agrarian-reform (ILSA, 2012, p. 26; Leon, 2009; Mercado Vega, 2017, pp. 222–229).

By 2010 there was very little of the warlike confrontation in the region. However, as one victims' leader said, "other unresolved and new conflicts had just begun". The AUC demobilization, as its former main leader confirmed, "did not mean the end of paramilitarism" (Porras, 2014, p. 371). Indeed, the new, armed structures continued to be involved, although on a smaller scale, in drug trafficking and protection of lands (*idem*). Likewise, new and unsettled tensions and conflicts over land arose (Fundación Social, 2009, pp. 64–65). As displaced people began to claim their rights from large companies and landowners, they became the target of threats, new displacements and murders (Daniels & Maza, 2017, pp. 20–21). Paradoxically, the high levels of violence experienced in the last three decades and the lack of functioning state structures were the catalyst for important peace initiatives and the (re)emergence of social movements which had been fractured during war (CINEP/PPP, 2018; Fundación Semana, 2015).

## 5.1.3. The so-called post conflict (2010-2017)

If in the previous decades, war and consolidation were the most common words to describe MMa since the 2010 post-conflict, victims' reparation and peacebuilding seem to have been the most appropriated. Thus, the region has become a post-war laboratory and the centre of a large number of actions related to the restoration of victims' rights (Section 5.3). Likewise, the presence of the armed forces, among other factors, has managed to prevent the establishment of other illegal armed actors. Although the latter persist mainly in corridors for drug-trafficking, it is not a widespread phenomenon. The state continues to control the region, as stated by a local municipal ombudsman:

> *"The security levels in Montes de María are stable…there are no reports of any armed group linked to the war. The state has recovered the territory: we have not had any kidnapping in many years, the homicides are very low and in some cases zero and the displaced people come from other regions" (interview 91, male).*

Social organizations and communities have also played an important role in preventing the recurrence of war, reinforcing the perspective of peaceful coexistence and assuming the non-use of violence as their main principle (CINEP/PPP, 2018, p. 221; Semana, 2016). The bottom-up-based practices of conflict transformation have repaired to a great extent the social ruptures between and within communities caused by the narratives of armed actors.

Regarding the improvement of conditions in the region, slow progress has been made in road infrastructure and coverage of public services (mainly in urban areas) (Semana, 2016). However, more than a decade after the end of the war and despite significant economic investments, there has been very little progress in improving the impact of structural violence: all municipalities have poverty levels above 80% (Fundación Semana, 2015, pp. 8–9); there is a 64% housing deficit and only 12.8% of the population has permanent access to public services (UNDP, 2010, p. 39). The social and economic well-being of displaced populations is particularly worrying: 70% are below the poverty line and the chances that they alone can change this situation are almost non-existent (Daniels & Maza, 2017, p. 35).

In conclusion, this section has explained that, despite the process of pacification of MMa outsiders, investors and the regional elites are the ones that have gained the most advantage (Escobar, 2013, pp. 130–132). Meanwhile, those on whom the war has impacted the most, have been unable to recover their life projects and the possibilities to do so remain, at the best, uncertain.

## 5.2.  The everyday in Montes de Maria: a post-war society?

MMa could be seen as a model to follow, but also as a warning sign of what awaits many territories where a post-conflict period has started after the signing of the FPA. On the one hand, the region has become a leading example of reconciliation. On the other hand, it is also a clear testimony that the ending of overt violence has not translated, even after more than a decade, into the reduction of the vulnerabilities of the population, nor into the improvement of institutional deficiencies (Fundación Semana, 2015, pp. 12–13). The following quote by a social leader illustrates the point:

> "*The situation has changed now; I travel all over Montes de María and I can assure you that there are no groups like the FARC or the ELN. What you can find everywhere in Montes is extreme poverty, uncertainty about the future and lands with cows and teak…*" (interview 82, male)

Indeed, these three interrelated issues (poverty, uncertainty and conflicts over land), as shown in this section, featured strongly in the interviews to describe their everyday realities. Thus, by allowing individuals who survived atrocities to voice the challenges that dominate the so-called post-conflict scenario, this section will contribute to understanding why the main responses of TJ are increasingly seen to be curiously at odds with the victims' main concerns.

### 5.2.1. A constant struggle with scarcity

Stories of frustration and hopelessness were constantly repeated by the participants. In the urban centres where a large part of the displaced people have settled, the victims mentioned the vicissitudes they continued to endure after more than two decades:

*"For us it is difficult to get a job in Ovejas because there are none. We went from being peasants to being the poorest of the poorest. Now we have neither the crops nor the money to buy food. Instead of improving, every day we get poorer"* (interview 87, female).

*"I need government support… I have two children; I live in a rented mud house with the grass roof... in dire conditions. I depend on what a neighbour gives me, or my father-in-law, or if I am lucky, I get a job for a day (interview 97, female).*

It is a "life of daily *rebusque*", as a Montemariano said, "any opportunity, if it is legal, must be taken". The '*rebusque* life' was ever present among the most impoverished victims, who described how they earn their living working as moto-taxi drivers, street vendors and doing errands. Other interviewees stated how, besides the devastating effects of the war, other complications have deepened their already precarious situation (diseases, natural disasters and new types of violence). In interviews with rural victims, feelings of precariousness and abandonment by the state were particularly pronounced. The combination of the absence of effective policies to protect them, the loss of assets caused by the war and the massive purchase of lands have led to the impoverishment of the peasants (Daniels, 2016, p. 56). Thus, their precarious individual status added to the poor state of basic development services such as education and health make it almost impossible for these people to structurally improve their current living situations.

*Figure 27 "Rebusque life"*
*Street vendors, odd jobs. Maria la Baja. Photograph courtesy of Gabriel Pulido*



*Figure 28 School in the Guamanga village,*
*El Carmen de Viboral. (CNMH, 2017, p. 251)*

Therefore, it is not a surprise that, when the interviewees were asked about the recognition of the region as a post-conflict scenario, many of them have a clear answer: what post conflict? Their understanding of peace goes far beyond the silence of weapons. The following victim's narrative reflects the contrasts between their understating of peace and their realities:

*" If you go to Chenge today, what you find is a desolate village, only some families have returned, but there are no houses, no basic services or roads, we do not have how to cultivate our lands. Peace means good roads, food crops, peasants who return to their lands in decent conditions, job opportunities ... "(interview 89, male) (Figure 29)*

A life of precariousness is not, however, the rule in this region. The gradual recovery of the territory has also meant significant economic progress for only very few, Thus, while for the traditional families, that hold the political and economic power, and for the new land owners the last fifteen years have allowed them to strengthen and increase their assets, for the majority the opposite is true.



*Figure 29 Chengue (Ovejas)*

*Its population was displaced in 2001, after 27 peasants were killed. Despite being a case prioritized by the state for reparation, poverty and abandonment characterize this village. Photograph courtesy of Jairo Barreto*

### 5.2.2. Memories of violence

Most of the most relevant security indicators in Montes de María have shown significant improvements since 2010, as mentioned before. Likewise, despite its coastal areas remaining a focus for coca trafficking, the region is not currently an area disputed by armed actors, not even where armed violence is concentrated (Indepaz, 2018). According to several studies, violence in the FARC post-agreement has occurred and will continue in those territories offering generous illegal rents and military advantages (border and mountainous areas) (FIP,

2014; Salas-Salazar, 2016). Thus, from the outside, the probabilities that the region could experience the horrors of those particularly dark times seems very low. However, for a large number of the participants, feelings of anxiety and uncertainty about a relapse into violence were particularly strong. Moreover, many victims considered that although the current environment is relatively calm, those structural elements that in the past contributed to the emergence of armed violence, continue to be prevalent and in some cases have worsened.

On the other hand, during the interviews, it soon became apparent that the memories of the violence also played a relevant role in the participants' concerns about the resumption of violence. As studies have shown, in the wake of pervasive human rights abuses, war-related memories are embedded in individuals and communities, increasing their fears of further historical abuses (Ardanaz, Corbacho, & Ruiz-Vega, 2014; Kevers, Rober, Derluyn, & De Haene, 2016). This comes across very clearly in the following interviews:

> *"The police say nothing is happening here… the same happened in 2000… we told the police: 'the paracos are arriving...we have seen them. They [police] said: ' it is a lie' … and then our families were killed, our comrades … we are afraid, but we still have to keep going" (interview 92, female).*

> *"Here there is at this moment an apparent calm, but here peace as such does not exist and many things are going to happen again, God forbid but as in the past, after the demobilization of the guerrillas, the paracos and the FARC swept away our communities " (interview 126, male).*

*Figure 30 A tapestry elaborated by women victims from Mampuján*

*Photograph courtesy of Juana Ruiz*

Continuities with the past and present hardships seemed particularly to sharpen old memories, either when victims experienced the same precarious socioeconomic conditions as they had in the past or when new types of violence emerged such as in the case of social leaders and communities located in drug-trafficking areas:

> "*There are several leaders who have been threatened because of land issues. I have been victimized again. Only a month ago my name was included as a military target in a new list ... We know that violence can come back at any time…*" *(interview 132, male).*

> "*Here people go to bed early and do not go out at night, we fear that the bloody scenarios of the past that still traumatize us will return to San Onofre*" *(interview 128, female)*

Indeed, a year later after these interviews, in June 2018, the National Ombudsman's Office warned about an increase in the risks for social leaders and civilians due to land conflicts and control of the strategic corridors for drug-trafficking (Defensoria del Pueblo, 2018a, 2018b). But beyond the existence or not of the conditions that allow a relapse into war in MMa the

memories of violence and personal security concerns were present in inhabitants' daily lives. During my fieldwork, not a day went by without people mentioning their uncertainty about the sustainability of peace in the region. At first, and particularly after arriving from Catatumbo, these fears seemed disproportionate. However, listening to stories of displacements, massacres and torture, I understood that the horror was so great and the tolerance and indifference of the authorities and society so blatant, that the victims had every reason to fear that violence could rear its head again.

## 5.2.3. The struggle to recover or keep lands in the post-war period.

As long as the main livelihood of thousands of peasant families continues to be threatened, land conflicts will continue to be one of the main problems of this region (Daniels, 2011; Daniels & Maza, 2017; Mercado Vega, 2017; UNDP, 2011). However, while in the so-called post-war period, the actors on one side of these conflicts have mutated or formed alliances (paramilitaries, politicians, large landowners and investors); on the other hand, the most affected have remained the same: the small rural owners. Thus, from armed groups that deprived entire communities of their lands through violence, a new modality of dispossession has been adopted:

> "They no longer need to kill or displace us. Now, either they buy the lands of the neighbours to corner us or send lawyers with money in hand to convince us to sell ... it is another type of dispossession, and it is worse because it is disguised as legal " (interview 133, male).

In fact, many of the peasants interviewed, who are now over 60 years old and who faced all the cataclysms of war, said that what they are experiencing today resembles the land struggles of the 1970s, "*the alleged owners of the land know how to use their power and their weapons to protect their interests*" (interview 84, male). While initially four land claimants were killed in the early 2010s in MMa and several leaders have been threatened since, the expected high levels of violence have not yet arisen. However, for several of the interviewees, this scenario might change, as a peasant leader stated:

*"So far, we have seen that the restitution policy has focused on easy restitutions: giving clear title to landholdings and other processes against the same peasants… but the big landowners of Montes de Maria and the powerful businessmen have not been touched (interview 95, male).*

This section has shown through the victims' accounts, what are the main dynamics that prevail in their daily life after the war has stopped in MMa: a life of socio-economic deprivation dominated by the uncertainty about the relapse of violence and problems of access and enjoyment of land. The notions of everyday life and the different facets of violence are of the utmost importance here, because they move the survivors' priorities beyond the theoretical dichotomies to understand that victimization is only one aspect of their lives. Although none of these harsh realities are hidden, and a large number of academic and official reports have given account of these dynamics, they still do not seem to be part of the main discourse that informs victims' policy. Although it would not be realistic to think that these profound problems should have been solved by this time, what might be expected is that at least these complexities had not deepened and, on the contrary, showed signs of improvement.

## 5.3.  Transitional justice in Montes de Maria

MMa has been the scene of horrendous crimes that left more than 370,000 displaced, included more than 50 massacres, hundreds of kidnappings, more than 80,000 hectares abandoned or stripped and still an uncertain number of other crimes (CNMH, 2012b, p. 368; Garcia Reyes, Ochoa, Pardo, & Zableh, 2015, p. 23; Reyes, 2009). Thus, this panorama coupled with the end of the war and the growing emergence of social and victims' organizations has led to the application of a large number of institutional measures aiming to deal with this legacy of abuses since the end of the first decade of 2000. In this process, and with the support of international and national organizations as well as with the opening of the first institutions of TJ in the country, a large number of victim organizations of various kinds have emerged and been consolidated in the last decade (Brett & Florez, 2016; Fundación Social, 2009). The political and legal training of these organizations, added to the historical existence of peasant movements in the region, has led to a great majority of victims having appropriated a language of rights.

This section therefore seeks to present the experience of the main TJ institutions on the ground, mainly based on the victims' testimonies. The aim of this section is not to carry out a general evaluation of the post-conflict justice infrastructure, but to explore how its main assumptions continue to be poorly pursued according to the victims' perceptions.

Before proceeding further, a caveat is in order. Among the 60 research participants, eight were recognized as victims in the first JPL ruling in 2010: the case of Mampujan, Las Brisas and San Cayetano (MBSC).[57] This distinction is important because being the first and a historic ruling within the JPL, the victims from MBSC were singled out as a priority by the judicial authorities, the state and international cooperation. This phenomenon, added to the organizational strengthening of these communities, led to a greater degree of victims' participation and compliance (although still very limited) of the judicial orders and a different model of compensation (Lefkaditis & Ordonez, 2014). Therefore, within this section, this distinction will be made when relevant.

## 5.3.1. Justice

Regarding the satisfaction of the right to justice, the study identified three groups of victims in MMa who had different levels of access thereof. First, those who had no access to the TJ main tools, mainly as a result of the reduced scope of the JPL (Fundación Social, 2009, pp. 106–107). Thus, those affected by the state and the AUC post-demobilisation groups' offences, as argued by a member of an association of victims of state crime, *"lack a different road map to justice beyond the inefficient ordinary criminal justice"* (interview 128, male). Regarding the insurgent groups' victims (35%), in no case, according to the interviewees, have the perpetrators been brought to justice. According to some participants, despite having filed the respective criminal complaints years later before ordinary courts, no progress has been made.

A second group of victims is those who have been registered under the JPL, but their cases have not been processed, in some cases even after more than a decade. [58] For instance, of the

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[57]On March 10, 2000, more than 60 paramilitaries gathered the population in the central square of the Mampujan village. After warning them that if they did not leave, they would be killed, the whole village (300 people) fled to María La Baja. Later, the paramilitaries went to Las Brisas in search of an alleged guerrilla camp, and when they found nothing, they proceeded to torture and kill 11 peasants, leading to the displacement of hundreds of families from this zone.

[58] In order for a victim to be recognized within the JPL process, the crime committed against her must have been recognized by the former paramilitary in his voluntary declaration.

35 interviewed who gave their statements in the JPL processes, only in 10 cases have victims been recognized as such (22%). The last group consists of those survivors who have been covered by a JPL verdict.[59]. The interviewees, as well as several reports, showed the obstacles that they had faced in obtaining justice: the lack of financial resources to participate in the hearings, the derisory eight-year prison terms for the paramilitaries (according to some participants) and the lack of investigations into the state agents who participated in the violations (Lefkaditis & Ordonez, 2014, p. 99).

## 5.3.2. Truth

As the regional director of the Colombian Truth Commission in MMa, Eduardo Porras, affirms *"the truth is like a puzzle. Each party involved has a piece, the paramilitaries, the guerrilla, the state and, most importantly, the victims. That we put all together does not necessarily mean that we will find an absolute truth but at least one truth that includes all"*.[60] This definition is particularly relevant in the JPL processes, where the versions of a part of those involved in the war (the AUC) and their victims have tried to reconstruct the events that surrounded the tragedy in MMa. Both versions of the story in many cases have coincided, but also in many others they have entered into dispute:

> "*In the hearing of the paramilitary Cara Cortada, I asked him about my brother, he said that he did not know him and then said that the guerrilla killed him. I was very upset because he knew my brother and also because there was no guerrilla here. I got really upset ...I never participated [in the hearings] again*" (interview 124, female).

Thus, the knowledge of the truth has been a very controversial right for communities. In the MLB judicial process, as survivors had a greater level of participation and of access to evidence compared to other cases, one might think that they would have a different approach. However, for most of them, only a small part of the truth, and the part they already knew, came to light. Along the same line, the victims who participated in the JPL hearings declared that in addition to giving special priority to the perpetrators' statements in establishing the truth, the latter

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[59] This group of victims included those recognized in the MBSC ruling and those recognized in 2014 in the first macro sentence in which 12 AUC chiefs were condemned and 9500 victims were recognized. It is unknown how many victims are from MMa (FGN, 2014).
[60] Personal Interview

justified their atrocities, describing them as political actions and as the results of anti-subversive actions.

Thus, in general terms, a feeling of dissatisfaction with the process of truth recovery was prevalent among the interviewees. For those who participated in the JPL processes, the AUC testimonies were full of gaps and ambiguities, as the latter ended up showing themselves as victims, hiding their accomplices and denying their direct participation in the cruel crimes. For those who have not had access to the JPL hearings, after so many years, several considered that the truth will never be known and that the main responsible actors, such as politicians and military, the main responsible actors, still control the region.

There is a case, however, in which the truth has been totally absent for 16 years: The Guaimaros massacre. Despite being the third massacre with the highest number of deaths in the region (15), it is shocking that today the progress regarding justice and truth is almost non-existent (Gutierrez, Jimenes, & Junieles Acosta, 2018, pp. 93–99). Family members of the victims only know that their loved ones were tortured and then murdered. The perpetrators, the circumstances and the motivations are still unknown. One of the victims who lost his father and brother in the massacre recounts,

> "…there have been thousands of versions, that my brother had his head cut off, that the other one also had their fingers cut off … but we do not know what happened to them… we still have a lump in our throat because we do not know who to forgive. We would like to forgive and know what happened… (interview 119, male).

### 5.3.3. Reparation

**Restitution of land**

As thousands of families from MMa were forced to flee their lands, and having improved security conditions, the region became the ideal scenario for the restitution programme established by the VLR (Guitiérrez Sanín, 2013, p. 13). Progress has been made in its implementation, albeit at a slow pace. While by 2018, 11,827 restitution claims had been filed, only 501 received a ruling for restitution, in which 581 peasants have benefited (Pacifista,

2018). Thus, if one compares the pace of these processes (only 4,2% of the claims filled have been resolved) against the large amount of abandoned or stripped land (approximately 80 thousand hectares) and potential claimants (around 99 thousand), the future does not look bright (Guitiérrez Sanín, 2013, p. 14; Pacifista, 2018). According to a hypothetical exercise, the law would take 93 years to attend to the 3500 restitution claims received up until 2013. As the author of this report states, not only is it very difficult to comply with the restitution in MMa, it seems impossible (Guitiérrez Sanín, 2013, p. 6)

In spite of this panorama, for a significant number of the interviewees the restitution constitutes one of the best tools to assist victims to come to terms with a violent past (Subsection 7.2.3.). The importance of this policy is also evident in that of the 14 participants who lost their land (either by abandonment, dispossession or by irregular transactions), seven filed their cases with the Land Restitution Unit (LRU). Of these, in two cases, which were part of the MBSC ruling, their land titles were formalized in 2012. In two other cases, the dispossessed land was recovered, positively impacting the beneficiaries:

> *"With the restitution judgement, I got back my land, and also they gave me a project and a house. One sees that thanks to some institutions we can trust again, although there is a lot to do… electricity, roads, but we have returned to the land that was what we asked for "(interview 100, male)*

In the same way, a study on the perceptions of a large number of restitution beneficiaries (205) yielded very similar results (Garcia R & Pardo, 2016). As this study evidenced, although limitations regarding access to basic service and road infrastructure still exist, in most cases the restitution process has had a positive impact on the respondents. The families have been able to return to their lands and have received support to resume their agricultural activities.

***Return of victims***

"Montes de Maria is full of emblematic cases of return… but how many promises have been fulfilled? And how many people live as before? I think not many. " (interview 79, female). Thus, a victim of Las Palmas described the process of return that began in 2014, and that although it was announced with great fanfare, its inhabitants still did not have the minimum

conditions to remain in this village (Bermúdez Liévano, 2015). Another representative case has been the return of Chengue, in which, as one of its leaders affirms,

> *"The response of the state has been putting a band-aid on the problem, but there has not been a collective return, where peasants can have guaranteed the recovery and sustainability of their livelihoods. The village has not changed much since the day after the massacre, only on paper ..." (interview 89, male)*

The return of Mampujan, one of the most important cases and where progress is evident, has also faced significant challenges. Although several of its inhabitants recognize important institutional efforts (improvement of roads, construction of houses and land titling), most people still remain in Rosas de Mampujan today (where they arrived after the displacement in 2000) and some travel to their plots every day. Paradoxically, the new place offers them better living conditions.

The returns not accompanied by the state, however, are those that predominate in this region (Fundación Semana, 2015, pp. 14–15; Fundación Social, 2009, p. 64). According to several interviewees, when security improved, they decided to return to their lands without any support. Those who were fortunate and did not find new occupants, found weeds, their houses destroyed and few neighbours to work with. Even so, several stayed and today they continue fighting to re-establish what they lost during the war.

*Figure 31 A peasant who returned to his lands*

*without the support of the state in Capaca. Photograph taken by the author*

Many of the above discussions illustrate the main obstacles to the implementation of the main TJ tools in the region. What emerges from the data is that the results have been few despite the great promises. In terms of justice, there is a general disappointment, mainly because the majority have not been able to see this right guaranteed. Participants felt that the truth found so far has been a "half-truth" that it has only shown one side of the war. Regarding the right of reparation, this was where the highest degree of dissatisfaction was found. However, it is also where the participants have higher expectations, as they believe that the restitution of land and the restoration of their dignity can contribute to the transformations that the territory requires.

## *Concluding remarks*

For more than two decades, MMa was the scene of crimes against humanity and infractions of IHL, the seriousness of which exceeded the thresholds of violence known in Colombian history until that moment. The civilians, mostly from the rural population, suffered grave consequences, not only losing their lives but also abandoning their lands and life projects. Today, after the departure of the main non-state groups, a peasant leader affirms *"the Montemarianos wake up with the sound of bagpipes and drum and not to the one of the rifles"*

*(interview, 117, male)*. Indeed, crimes such as kidnappings, attacks against civilians and displacements have significantly decreased. However, while the war that caused so much damage is no longer being waged, its underlying drivers still endure –lack of service delivery, conflicts over land and corruption. Hence, even though the region seems to be going in a different direction from that of armed violence, the persistence of structural violence could be a trigger for setbacks in terms of security and development in the region.

Moreover, although communities in MMa have found extraordinary ways to move forward, setting positive examples in terms of reconciliation and conflict transformation, the impact of their past victimizations was still fresh for a surprisingly large percentage of participants and the uncertainty as to whether these violations can be repeated is one of their main concerns. This sense of fear is accompanied by high levels of inequality and poverty, serving as a reminder that the problematic conditions of most of the population of the past continue to be relevant in the post-conflict period.

However, these daily concerns of those trying to recover from the conflict have been absent in the main mechanisms of TJ. This is not surprising, given that the hegemonic approach to addressing the legacies of violence has focused on the rights of justice and truth, and to a lesser extent on reparation (Chapter 2). However, this has not meant, as this chapter has shown, that the traditional TJ institutions in MMa have fulfilled their objectives. Delays in justice, truth and reparations are comparable to the dimensions of the damage caused by the war. But, is the absence of a complete truth (if it can be said that there is one) and of justice one of the concerns of the victims of this region? What are the concerns of the victims of this region? These are the questions that the next two chapters will try to answer in the context of Catatumbo and MMa.

# *Chapter 6 Catatumbo*

## *Introduction*

This research has sought to answer one main question: To what extent are the international and national agenda in confronting the violations committed during the war congruent with the demands of those directly affected by it? This chapter focuses on the third component of this question in the Catatumbo region: the priorities of those who are the notional target of the TJ discourse *(question (iii))*. To do so, this research challenges the top-down approaches to TJ, which privilege the voices of practitioners and experts and take for granted the universal paradigms of the field (Robins, 2011b, pp. 22–23). Accordingly, it seeks to give voice to survivors in debates about the past and the future, regardless of whether their claims are framed as victims' rights, needs, or as a little of each one. Although sharp distinctions can be established in theory between these notions (Uprimny, 2009, pp. 635–636), these differences are less clear when confronted by the realities of fieldwork (Dixon, 2016). As one peasant explained when asked to mention his priorities from his perspective as a victim:

> *"I cannot respond to you as either a victim or as a poor person… one cannot be separated from the other ... I am a victim and a poor person" (interview 2, male).*

Consequently, in order to capture the victims' perspectives, it was necessary to undertake ethnographic research in two war-affected areas, one of these being the Catatumbo region. Accordingly, 70 one-to-one in-depth interviews were conducted, which not only allowed the participants to define the most appropriate ways to overcome their victimization but also to bring out many of the interrelated complexities that affect their lives. The interview findings were complemented through participant observation, through which I gathered disparate accounts of victims and their communities and was able to understand better particular practices and processes in their daily lives.. Bringing together these strands of the analysis

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[61] Interview 3, male

shows that in a context of ongoing conflict and structural violence, the very local demands of victims revolve around a mixture of the notions of positive and negative peace.

In terms of structure, the chapter contains four sections. While Section I describes the main features of the participants, the bulk of Section II introduces the empirical findings derived from the views of conflict-affected individuals on how to address a violent past. The discussion is organized according to the interviewees' preferences, identifying relevant correlations with the features described in the previous section. Section III outlines the prevalent victims' attitudes towards the universalizing concepts of truth and justice. To conclude, the last section presents some comments, concerning the relationship between the everyday lives of victims in Catatumbo and their main demands.

## *6.1. Who are the victims in Catatumbo?*

As this research aimed to understand the victims' main priorities in confronting their past in Catatumbo, three aspects were key regarding the features of the participants. First, the study included only first-generation victims, that is, those who had been directly affected by the war (Turkovi, 2002, pp. 206–212). A second factor was to include participants from urban and rural areas, in order to reflect the regional geographic distribution where the population of the latter predominates. Finally, in order to include the perspectives of the survivors in Catatumbo, the interviewees were mainly from this region or had lived there for many years.

The particular characteristics of the victims interviewed are presented in this section, including their main demographic characteristics and those elements set forth in the national normative framework. These elements provide information on the participants' socioeconomic characteristics and experiences of victimization, in order to reduce the risks of oversimplifying their expectations in the following section.

### 6.1.1. Socio- demographic characteristics of the participants

I conducted 70 in-depth interviews, in which 52% of interviewees were female and 48% male. The participants were within the age range between 23 and 77 years. The mean and median ages were 43 and 40 respectively. Regarding the levels of education, while 18% had never

received any, the remaining had had access to formal education, although it had not always been completed. The majority had studied up to elementary school (42%); followed by secondary school with 22% and a university degree or a technical programme with 12%. Moreover, seeking to reflect the proportion of people located in rural and urban areas in Catatumbo, 63% of the participants were from the former. With respect to the participants' occupation, farmers represented the highest proportion (27%), although a greater number of victims reported having been dependent on farming before being affected by the war.

| ACTIVITY | NUMBER | PERCENTAGE |
|---|---|---|
| Peasant | 19 | 27% |
| Unemployed | 12 | 17% |
| Informal Job | 10 | 14% |
| Formal job (teacher, secretary, civil servant) | 10 | 14% |
| Civil servant (victim-related) | 7 | 10% |
| Housewife | 6 | 9% |
| Other | 6 | 9% |

*Table 2 Main activities of the victims*

The precarious employment situation of most participants was one of the indicators of the particularly difficult material conditions they faced.[62] More than half of the participants had a limited degree of satisfaction of basic needs, of which more than a third lived in an extreme situation (Table 3). In addition, as in other civil wars, the effect on women was greater in comparison with men (Nikolic-Ristanovic, 2003). In most cases of female interviewees, in addition to pre-existing and continued male-dominated violence, following the killing or disappearance of the breadwinner of the family, they became heads of households while

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[62] To determine the socioeconomic level of the interviewees, a simple and modified version of the methodology for measuring Unmet Basic Needs was used. To the extent that applying this complete instrument was complex and would require a long time, the dimensions used by the Colombian government in its latest population censuses were generally considered. (Fresneda, 2007, p. 21). The interviewees were asked: Which of the following needs do you think have not been met: i) adequate housing; ii) access to basic services; ii) employment; iii) adequate education of the victims or their dependents? According to the number of unmet needs, four categories were proposed: normal, moderate, serious and extreme.

continuing with the task of raising their children. Only 16% of the participants, mainly men and those who worked with local governments, said they had a normal economic status.

| CATEGORY | MALE | FEMALE | TOTAL | PERCENTAGE |
|---|---|---|---|---|
| Normal- all basic needs met | 7 | 4 | 11 | 16% |
| Moderate - unable to afford one basic need | 12 | 9 | 21 | 30% |
| Serious - unable to afford two basic needs | 8 | 13 | 21 | 30% |
| Extreme – unable to afford more than three basic needs | 4 | 11 | 15 | 21% |
| Not mentioned | 2 | | 2 | 3% |

*Table 3 Economic security status*

Before presenting the data on the participants' membership of social organizations, two caveats are in order. The first is the prevalence in Catatumbo of historical forms of association and of peasant and indigenous organizations that emerged during the AUC period (Salinas, 2015, pp. 22–23). Although most of their members, if not all, were war victims, their agendas focused on the demands for dignified living conditions and security and alternatives to coca crops (CNMH, 2015, pp. 212–215). The second key issue is that, unlike other regions, in which important victim organizations have positioned their agendas regionally and nationally and have incorporated a legal and sophisticated discourse in the last decade (Gómez Sánchez, 2014, pp. 61–89), in Catatumbo, the opposite is true. The few existing local victims' organizations, as described by a municipal ombudsman:

> *"still do not have enough political strength or a high level of training in rights ... although they are in some way recognized here in XXXXX, when the national government comes, they are not invited to these discussions" (interview 63, male).*

Bearing this in mind, half of the interviewees stated that they belonged to community-based organizations. Another large number, especially urban dwellers, were not associated with and did not participate in cross-community networks. Involvement in victims' organizations was very limited. To the extent that the guerrillas still exercise armed control in the region, not surprisingly, no organizations of victims of guerrilla groups were found.

| MEMBERSHIP ORGANIZATIONS* | NUMBER | PERCENTAGE |
|---|---|---|
| Community-based organization | 35 | 50% |
| None | 30 | 43% |
| Peasant or farmer association | 14 | 20% |
| Victims' organization | 13 | 19% |
| Political Party | 5 | 7% |
| Others | 3 | 4% |

*Table 4 Membership organizations*

*One person can belong to one or more organizations

## 6.1.2. Normative features of the participants

As mentioned, Article 3 of the VRL provides a broad definition of victims (Figure 7). This concept includes victims of both state and non-state armed groups who have suffered one or more forms of victimization as a direct consequence of the war[63]. Consequently, the research participants could be characterized as victims considering the VRL definition and, as such, eligible for the integral reparation stipulated therein.

Firstly, regarding their own experience as victims, most participants (65) answered bluntly with a "yes" or "of course" when asked if they recognized themselves as victims. Although there has been a great academic debate about the negative connotations of this label (for example,

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[63] According to the VRL, the forms of victimization are: abandonment and land dispossession, terrorist attacks, threats, crimes against sexual integrity and freedom, enforced disappearance, personal injury, loss of property or goods, torture, kidnapping.

its association with passivity, helplessness, vindictiveness) (Dijk, 2009; Meredith, 2009), most of the interviewees did not have reservations about perceiving themselves as victims. A large proportion of the participants (72%) have been registered in the National Victim Registry (NVR).[64]

Secondly, as has occurred at national level, forced displacement has been the most common form of victimization among the participants, with an overall representation of 70%.[65] In four out of five displacements, another type of victimization was experienced, in which land dispossession and homicide predominated. The victims' accounts showed the harshness of the war in two senses. Firstly, there were eight participants who had suffered more than three different war victimizations, among them a very young woman who, in addition to losing her father and brother at the hands of the guerrillas, had been a victim of torture and sexual violence by the AUC. Secondly, it was possible to determine that some crimes, mainly displacement, had occurred on several occasions and were committed by different armed actors.

Most of the reported crimes occurred between 1998 and 2004 (78%), coinciding with the paramilitary period. Approximately 22% of the violations took place in the last 5 years, the most recent being in 2017 when the fieldwork was conducted. Thus, while it could be said that there has been a decrease in direct harm, other types of violence still persist or have worsened: poverty, restriction on fundamental freedoms and marginalization.

| FORM OF VICTIMIZACION | NUMBER | PERCENTAGE |
|---|---|---|
| Forced displacement and misappropriation or abandonment of land | 17 | 24% |
| Forced displacement and homicide | 9 | 13% |
| Forced displacement | 9 | 13% |
| More than three different forms of victimization | 8 | 12% |
| Forced displacement and other crimes | 8 | 11% |
| Homicide | 4 | 6% |

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[64] To access the legal benefits and the different mechanisms of protection of rights, the victim must register and be accepted in the National Registry of Victims.

[65] According to the National Registry of Victims' database, as of February 1, 2019, there have been 10,322,073 victimizing incidents, of which 72% correspond to enforced displacement. (See http://cifras.unidadvictimas.gov.co/Home/General Accessed March 10, 2019)

| FORM OF VICTIMIZACION | NUMBER | PERCENTAGE |
|---|---|---|
| Terrorist attacks | 4 | 6% |
| Enforced disappearances | 4 | 6% |
| Not mentioned | 4 | 6% |
| Sexual violence | 2 | 3% |

*Table 5 Forms of victimization*

Thirdly, when asked which parties were responsible for their victimization, a majority indicated the paramilitaries (71%), followed by the insurgent groups (37%). As has been stated previously, the number of victims of the latter may be greater. The responsibility was assigned to the state armed forces to a lesser degree, despite their having been repeatedly mentioned as accomplices of the paramilitaries.

Fourthly, with respect to the institutional assistance provided under the VRL, 64% registered in the NVR have accessed at least one measure. However, the data provided evidence that victims' policies have had a more assistance-related focus[66] than a transformative one (Table 6). Regarding compensation, of the 34 victims who requested it, only five have obtained it despite, in most cases, the crimes having occurred more than ten years ago. In terms of land restitution, in only in one of 17 reported cases of dispossession or abandonment, did the victim resort to the process enshrined in the VRL. None of the displaced persons interviewed has benefited from a return program. The few who have returned have done so without institutional support. Psychological support from the state was virtually absent, being provided mainly by the Catholic Church.. Regarding the measures aimed at satisfying the socioeconomic rights enshrined in the VRL, only one victim reported receiving a housing subsidy.

| TYPE OF MEASURE* | NUMBER | PERCENTAGE** |
|---|---|---|
| Humanitarian Assistance | 28 | 54% |
| None | 21 | 41% |

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[66] Even with regard to humanitarian assistance, the majority of officials interviewed complained that, despite being one of the measures that victims claim the most, their delivery has not been timely, nor does it respond to the humanitarian needs of victims

| TYPE OF MEASURE* | NUMBER | PERCENTAGE** |
|---|---|---|
| Humanitarian assistance and compensation | 5 | 10% |
| Physiological support | 2 | 4% |
| Satisfaction measures | 3 | 6% |
| Housing subsidy | 1 | 2% |

*Table 6 Government Support*

*A victim could have received more than one measure

**Total number of victims registered in the NRV: 51

The aforementioned data do not reflect the stories of hope, courage and struggle told by each of the interviewees. Nor do these descriptions reflect that despite what they have had to go through, war survivors were looking for ways to rebuild their lives on their own, not so much for their own sake as for the generations to come. But what the features of the victims reveal are that the war in Colombia has been waged against society (Pécaut, 2001). To address these situations, the standard global framework of TJ has been accepted as the main and adequate response (Millar, 2011, pp. 529–530). However, in a context in which the war violence has been layered upon decades of socioeconomic injustices, do these assumptions meet the expectations of those who have been directly affected by different types of violence? The next section seeks to answer this question.

## 6.2.  Main priorities of the victims

After presenting a complete and complex description of the participants that reflects not only their main features, but also the impact of direct and structural violence in their realities, this section addresses one of the main issues of this research, namely how the victims in Catatumbo want to confront their past. The study left open the possibility of responses from participants to avoid leading questions and to establish a rapport. Thus, participants were asked an open question: *If you could prioritize three aspects to overcome or cope better with what happened during the conflict, what would they be?* This enabled the interviewees to define in their own terms, their main claims and to receive a broader spectrum of their preferences.

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Therefore, in a quantitative and qualitative manner, the results of the interviews are presented according to those three main aspects mentioned by the participants, looking at key interrelations that may have influenced their perceptions. Although participants' responses varied, in most cases, while their perceptions arose from what could address the effects of structural and overt violence, truth and justice played a very marginal role.

## *6.2.1. Social and Economic Rights*

As other studies have evidenced, the expectations of war survivors' are significantly contingent upon the socioeconomic context and the particular circumstances they encounter on a day-to-day basis (Aroussi, 2018; Millar, 2011; Robins, 2011b). A municipal liaison official for victims, who assisted between 50 and 80 victims daily, explained this evident relationship:

> *"Housing, education and income generation are what victims most ask for. Why? Because that is what they have lacked for many years. If a victim has his job and a safe place to live, these will guarantee him a minimum subsistence and they will be able to carry on with their life" (interview 42, Female)*

It is therefore not a surprise that the responses of the majority of the participants focused on the deficits that arise in their daily lives as a result of the direct effects of war and decades of historical marginalization (Roberts, 2011c, p. 412). As other studies have shown, in "well-disorganized societies", to take up Uprinmy's expression, in which there were serious violations of human rights and where unequal access to resources have been the norm (2009, p. 630), everyday life needs become the most critical concern for victims (Millar, 2011; Pham et al., 2005; Robins, 2011b; Uprimny, 2009). Accordingly, four out of five of the interviewees raised one or more aspects related to socioeconomic rights as their priorities. Decent housing, accessible and quality education and the right to work were the three main demands among participants (Table 7).

Being able to see the hardships of the daily life of most Catatumberos for almost twenty months makes these demands completely understandable. With few exceptions, the living conditions of rural people were deplorable. Displaced families living in urban centres are usually located at roadsides or high-risk areas, which prevents them from having access to any public service

or subsidies (Figure 32). Similarly, the majority of the municipalities only offer young people a very dangerous and saturated job market: coca collectors (*raspachines*) or soldiers for illegal groups (La Opinión, 2018b). The dysfunctional education and health system is the result of a mixture of the historical marginalization of the region and the direct effects of the war (El Espectador, 2016a).



*Figure 32 House of a displaced family located in rural Tibu.*
*Photograph taken by the author*

For the above reasons, a large number of participants centred their responses on the equal access to resources for rebuilding their lives. For their part, the social/peasant leaders articulated their demands through a broader social vision, focusing on the reconstruction of local infrastructure (roads, aqueducts, health posts, schools). Nevertheless, in both cases, their responses reflected a present- and future-oriented approach, in which the aim was the recovery of the means of livelihood:

> *"The most important rights for me are that my children do not have to endure hunger, that they have a place to study, that one can have a small salary and provide for the family" (interview 28, female).*

"*Well I would not ask for anything for me. I would ask for an impact project, infrastructure, roads on behalf of my brother for the community. A project that would encourage the development of my community and that we could say this was built in his name*" (interview 19, male).

In general, the available data did not allow the identification of influential factors to determine the responses of those who did not (14) prioritize socioeconomic rights. In this group, there were participants with normal, severe or extreme economic conditions, different degrees of education and levels of access to reparation measures. However, and as expected, those in a more precarious situation prioritized mainly basic needs over other rights. The same cannot be said of those who have a normal standard of living (11), as most mentioned the provision of social services as their main demands (9). At first glance this finding would not make sense. Nevertheless, when brought into the Catatumbo context, it becomes clearer that the serious regional economic and social restrictions also affect the participants with better economic conditions.

Empirical studies have shown that to the extent that war survivors have low levels of education and less access to information about human rights, they will focus their demands on their immediate needs (Robins, 2011b, p. 47). The data of this research confirmed this finding. However, in the opposite case, the results also remained very similar. The demands of those with a discourse of rights and a greater knowledge of the TJ framework in relation to the average population (social leaders) also defined their priorities as needs and, to a lesser extent, as victims' rights.

| MAIN PRIORITIES | NUMBER | PERCENTAGE |
|---|---|---|
| Decent housing | 22 | 31% |
| Education | 19 | 27% |
| Right to work | 15 | 21% |
| Economic assistance | 8 | 11% |
| Health | 8 | 11% |

| MAIN PRIORITIES | NUMBER | PERCENTAGE |
|---|---|---|
| Social Investments to improve the quality of life (water, electricity, road infrastructure) | 7 | 10% |
| Access to land | 5 | 7% |
| Food security | 3 | 4% |

*Table 7 Socioeconomic rights prioritized by participants*



*Figure 33 Catatumbo roads*
*being repaired by the communities. Photograph taken by the author*

## 6.2.2. Peace, security and guarantees of non-repetition:

It is worth bearing in mind that when the fieldwork was carried out, there was an uncommon atmosphere of calm in the region. However, this environment did not mean that the population was not afraid or anxious, or least of all that the war was over. On the contrary, Catatumberos expressed constant feelings of concern about what could happen in the spaces left by the FARC. Thus, and unsurprisingly, half of the victims (51%) considered improvement in security and

non-repetition to be one of the most important responses to past violence. Although the notion of guarantees of non-repetition was rarely used by the participants, they referred to what this right means in their own words:

> *"…[T}he most important thing of all for the victims and especially for us living in San Calixto is tranquillity. I want to live without thinking everyday: when they are going to kill me? When are they going to throw a bomb?" (interview 54, female).*

> *"If at least they [armed actors] stop killing us and let us return peacefully to the regions where we left, we would be at peace. Being able to speak, to walk without the fear that the state and its paramilitary structures are going to attack us again" (interview 65, male).*

No matter who was the aggressor or the type of victimization, among the participants there was a great demand that what had happened to their families and their communities not be repeated. Consistent with other studies (AIHCR, 2004; Pham et al., 2005) and relevant for the present study, was that some participants were willing to sacrifice other rights such as justice for the higher goals of peace and security. As explained by two civil servants in San Calixto:

> *"The first and most important right: non-repetition… that we do not have to experience what we live everyday... Other municipalities complained because a lot of victims' projects came to San Calixto. I told them in Ocaña: I prefer to have their tranquillity and not that bunch of projects. If we asked victims here what they would choose: projects or tranquillity, people would prefer tranquillity" (interview 48, male)*

> *"I have a friend named XXX, in 2011 the FARC threw some cylinders at the police station and one of them fell into his sister's house, killing her, her husband and a three-year-old baby ... he was the only one that survived ... he was a five-year-old boy, his sister was like his mother, I asked him what do you think about the FARC not going to jail?, and he said: if they do not throw a cylinder again, for me they can walk down the*

*street, receive money, as long as they do not repeat the same thing they did to my sister''*
*(interview 52, male).* [67]

In contrast to the measures proposed by TJ and the peacebuilding programs to guarantee non-repetition (greater military presence and institutional reforms), the victims had a different approach. On the one hand, in a context in which almost total breakdown of trust public institutions prevails, only one participant suggested an increase of military presence. The arrival of more soldiers was regarded with fear and for many participants seen as a signal of the paramilitary return. On the other hand, the victims affirmed that the most effective approach to guarantee non-repetition was to address the structural causes of the armed conflict. This is in line with the views of a mid-ranking FARC commander, who when asked if with their demobilization peace would finally come to Catatumbo, he stated: "*what fuels the war is not our presence... It is hunger and neglect. Thus, while poverty, state abandonment and inequality persist, even if all the guerrilla groups demobilize, the violence will not stop*".[68] The current context of Catatumbo seems to prove him right.

### *6.2.3. Psychological support*

The psychological impact of war and the high probability of victims' developing clinical psychological illnesses have been well documented (Kiza et al., 2006, p. 87; De Jong et al., 2001) (Subsection 1.1.3). This is even more complex when violations of the past continue to occur in the present, as in the case of Catatumbo. However, despite this bleak scenario, there were few organizations in the region that promoted the psychological recovery of the Catatumbo people. Public institutions did not offer this service,[69] which became a task carried out by the same communities or grassroots organizations or by the village priests.

Psychological assistance was prioritized by 15 participants (21%). It was found that those who belong to a social organization were more likely to believe in the need to include this assistance as one of the most important measures in overcoming past experiences of violence.

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[67]The murder of this family was a tragic event that was remembered by almost all the interviewees in San Calixto. Since the victims were a well-known family in the town, the actions of the FARC caused anger and commotion among the villagers. Also, information was found in the national press (El Tiempo, 2011).

[68] Meeting with the FARC commander Reinel Paez held on November 3, 2016 in the village San Isidro.

[69] This was confirmed by the majority of local public officials, who complained about the lack of these programmes in their municipalities.

Surprisingly, although none of these victims had received state psychological support, their stories conveyed how the people in their communities, in the church and in their organizations helped them deal with what they went through.

Public officials also highlighted psychological support. For them, although it is something that victims do not usually demand because of lack of knowledge, or shame, listening to so many of them has led them to conclude that it is necessary to "heal their souls". In addition to the positive impact at the personal level, as stated by a municipal ombudsman, this support could contribute to social reconstruction:

> *"Psychological support is one of the things victims need most. The state has not understood the need to repair victims psychologically to end the conflict. If a military man comes to Catatumbo, people do not want him, even if he is the best military man in the world… Victims do not want him because the resentment they have inside is greater and will not disappear alone" (interview 63, male)*

### *6.2.4. Compensation and return and restitution of land*

According to participants, economic reparation, and return and restitution of land are the fourth and fifth most important measures, at 20% and 7%, respectively. Regarding compensation, its prioritization is understandable considering the acute deprivations in which the victims live and the impact on families of losing their main economic provider. While for some victims the economic reparation was an acknowledgment of what they had lost, for others it was a way to cover their current needs, to buy the house they lost or to guarantee the education of their children. An overwhelming majority of these respondents emphasized that the money received would never be enough to repair the damage caused.

According to public officials, compensation is one of the measures most demanded by victims. This is a daily occurrence. Therefore, the incidence of a low number of participants who mentioned reparation (15) may be because victims did not want to be seen as exchanging their loved ones for a sum of money In fact, several participants affirmed that the idea of accepting money showed contempt for the life of their relatives or, as one political leader said, it is like *"putting a price on the dead person." (interview 61, male)*.

Contrary to some findings of previous victim-based studies that indicate a significant value for symbolic and immaterial measures of reparation (Kiza et al., 2006; Robins, 2011b), in Catatumbo these mechanisms were absent in the main participants' demands. Moreover, when mentioned, participants expressed apathy towards these measures. As stated by a social leader in reference to a marble monument remembering the massacre of La Gabarra (Figure 34):

> *"Maybe for some victims, it is very good to hang their names on the walls or as here, put a plaque remembering what happened in La Gabarra, but those are things that we would no longer like to remember. Whoever wants to see a book of memories should be able to do so. But first, help us to stop being poor... give us a future, a hope, an opportunity to start again" (interview, 26, female)*



*Figure 34 A monument located in La Gabarra*
*to conmemorate the ten years of massacre in 2009. Photograph taken by the author.*

The low level of victims' demands for the return and restitution of land was somewhat surprising, considering that a quarter of the interviewees were victims of land dispossession. Nevertheless, these findings coincide with the results of several studies in Colombia, where, faced with an uncertain and insecure environment in the site of origin, victims did not want to return to their lands (García Arboleda, 2013, pp. 60–61; Ibanez & Querubin, 2004). Moreover,

as traumatic events are associated with their places of origin, people were less willing to return (Arias, Ibáñez, & Querubin, 2014, p. 231):

> *"they say that they are going to return the lands to me, but I do not want to go there where there was so much pain, to remember again. There I saw how they killed my husband with a chainsaw" (interview 26, female).*

Regarding the land restitution, as mentioned above, of the 17 victims that may be entitled to reclaim their lands, only one has initiated the process under the VRL. In the remaining cases, several victims stated that they did not know the procedure or did not intend to have their land returned to them because of fear. Indeed, in Catatumbo the process of land restitution is little known and, due to security conditions, the LRU, in charge of restitution processes, has only been able to access limited areas of the region.

## *6.2.5. Truth and justice*

Given the above complex environment, we now turn to the question of to what extent are the global paradigms of TJ, truth and justice, the chosen responses of the victimized to address wartime violations. According to the interviews, the participants' expectations diverge significantly from these idealized goals. Understandably, the victims in Catatumbo necessarily prioritize responses to overcome what have an impact on their everyday lives: poverty, exclusion, insecurity and fear. Thus, in terms of truth and justice only 12% and 8% of the victims, respectively, mentioned them as one of their main preferences. Of the nine participants who prioritized the former, six demanded a historical account of the armed conflict as being necessary to face their past, while the other three asked to know the fate of their missing relatives. The victims who gave priority to justice, did so from a retributive approach.

Accordingly, in a region where people "often live at the margin of subsistence" (Randall & Theobald, 1985, p. 52) and fear of the resumption of war, victims claimed those rights that would generate a direct transformation in their imminent needs, instead of those that have an abstract content in the short term, such as truth or justice. Moreover, Catatumberos have learned to live without the latter as these have rarely been part of their lives. Although the same could be said about socioeconomic rights and security, the main difference is that these aspects refer to their survival. Thus, providing a way to overcome the war-aggravated poverty and

insecurity is seen by the victims as the best way to face their past and current suffering. Therefore, from the standpoint of those who struggle to rebuild their lives, it makes more sense to give greater value to their basic needs and security than the main objectives of TJ (Maslow, 1943). As a peasant jokingly stated: "*I can go to sleep without knowing the truth, but not without eating*" *(interview 3, male).*

## 6.3.  Perception about transitional justice foundations

One of the most striking (but also expected) preliminary findings of the above section is that in a context in which people face deep socio-economic inequalities and a high degree of insecurity, the rights of justice and truth did not play a role in their main demands. Although it was precisely their complex situations that justified the absence of these rights in the victims' responses, this research sought to gauge the participants' receptivity to the TJ core rights. In order to do so, for those victims who did not mention justice or truth or both within their initial responses, a question was included about their perceptions towards the usefulness of justice and truth in dealing with a violent past. The range of attitudes encountered are therefore detailed in this section.

To set the stage for a discussion of these issues, the participants were first asked about their understandings of justice and truth. In short, beliefs surrounding justice focused on two elements. Firstly, respondents most frequently linked this notion with disbelief and frustration: "justice does not exist" "how can we ask for justice if there has never been any?" As explained above, these attitudes seemed to derive from a lack of exposure to the national judiciary, but also to the weakness of the judiciary. Secondly, overall, this notion was identified as giving each one his due. Likewise, a small percentage associated this concept with what constitutes a just society (13%).

With respect to what truth means, those canvassed in this study mainly associated it with an individual dimension, that is, in knowing the particular circumstances in which the crime was committed. In addition to describing this right as a responsibility of the state and the perpetrators, the participants also associated it with feelings of relief from emotional pain, distress and sorrow. Regarding the right to truth-seeking mechanisms, virtually none of the participants linked this right with the work of truth commissions. Nevertheless, this lack of

knowledge is understandable given that the Colombian Truth Commission had not been implemented at the time the investigation was carried out.

## *6.3.1. Justice*

In a context like Catatumbo, where the state has been incapable of administering justice and where there is little knowledge about rights, it should not be surprising that demands for justice remained absent within the survivors' priorities. It may be that if victims believed in the justice system and the possibility of obtaining justice, their claims would have varied (Aroussi, 2018; Nee & Uvin, 2010). The Bishop of Tibu, put this issue even more bluntly:

> *"Catatumberos have the following perspective on justice: there are those who continue to be victimizers, applying justice in a more or less effective way, if one can say so, at one end, and at the other end a state that has not guaranteed their right to justice. So, within this scenario, do you think that people are going to demand justice?"*[70]

Nevertheless, in general the respondents (64) stated that justice was necessary to redress the legacies of violations. However, there were different views, which can be broadly split into three clusters. Firstly, most of the participants were in favour of holding perpetrators accountable, mainly in the form of imprisonment and meaningful punishments. Overall this attitude accounted for 42% of all answers. While some participants felt that the crimes have been so extreme that they must be effectively prosecuted, others stated the need to set an example to future generations, prevent new cycles of violence or simply affirmed that it was a state's obligation to those most impacted by the war,

> *"Of course, who does not want justice? Who does not want them to pay for what they did? It was an injustice because my father was a peasant and he did nothing…. Of course, they should be thrown in jail because after so much damage they cannot be rewarded "(interview 25, female).*

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[70] Personal interview

*"Well, I do believe that all those people should pay for all that evil they have done, the military, the paramilitaries and the guerrilla. The pain that they caused us has no name. They should be put in jail"* (interview 54, female).

For a second group of participants, religion emerged as an important factor in their perceptions towards justice. For two out of five people interviewed, 'God's justice' was the only one that existed. For them, it is a justice that "never fails," that "they have seen with their own eyes" and that is "above the fake justice of men". This resonates with the large number of mainly Catholic people living in Catatumbo (CNMH, 2018c, p. 124). However, the understanding of divine justice was usually associated with retribution and not with a religious-redemptive narrative.

A third cluster of interviewees (one fifth) believed that transitional processes should be founded upon the restorative dimension of justice. Most of them belonged to social or political groups, revealing that they were more open (as some of them put it) to reconciliation and to sacrifice justice to achieve peace. In general terms, participants refer to restorative justice as a model in which the perpetrator redresses the harm caused by addressing the victims' needs. Accordingly, the aim of this type of justice is that *"this scenario of violence is not repeated, and that those who caused so much harm, repent and reintegrate into society"* (interview 62, male).

Finally, 10% of the participants stated that justice was not a priority. These victims claimed the need to first guarantee socioeconomic rights before establishing judicial instruments. A leader of a women's organization explained:

*"We are not going to ask for justice. We do not have a grudge against them, we do not understand why they did that, but we do not expect them to tell us. What we need to see is some productive projects... we want to give our children a future, a university, a roof. The government should start talking about truth and justice when victims have a job, income, land... (interview 26, female).*

Deducing from these results (Table 8), it can be said that war victims showed support for some form of justice (78%) at the same time as they prioritised those measures that would address their direct and immediate needs. Although there were different understandings of the paths to reach it, a retributive approach prevailed, possibly due to their desire to see punishment not

only for their former victimizers, but also for those who currently generate violence. However, it should be borne in mind that justice was not included as a priority by most of participants in the first instance. Although 78% asked for one of the forms of justice described, the victims only referred to this notion when specific questions were included in the interview. A municipal liaison of victims gave me her interpretation:

*"if you ask me if I want justice, I cannot say no because that is the discourse that the law brings. But if you ask me my priorities as victim, justice is not in the first places"* *(interview 42, female).*

| APPROACH TO JUSTICE * | NUMBER ** | PERCENTAGE |
|---|---|---|
| Retributive | 27 | 42% |
| Divine Justice | 28 | 40% |
| Restorative Justice | 14 | 22% |
| Not a priority | 9 | 14% |
| Social justice | 4 | 6% |
| No opinion | 5 | 8% |

*Table 8 Approaches to justice*

\* The total number of victims was 64.

\*\* Given that the aggregated numbers of the total responses were 87, it is obvious that many participants opted for a combination of two approaches of justice

## 6.3.2. Truth

According to the data collected regarding the need to clarify the past, there was no agreement among the interviewees on the topic. Thus, participants' opinions fell into three categories. A first group (45%) indicated the need for truth-telling. Three-quarters of interviewees within this category gave an individual (*who killed my father*? *Where are the remains of my brother*?) rather than a collective dimension to this notion. The main motivation of the participants for

finding the truth was their desire to be able to regain their peace of mind and to clear the good name of their relatives or of themselves:

"*We would like to know why my brother was killed … where he is buried. Thus, one does not remain with an anxiety of not knowing and thinking that he may be alive. It's something that does not give you peace of mind. Truth is something that seals a past, a suffering. My mom still has hope that he will come back alive*" (interview 21, female).

Only a minority of the participants within this group (mainly members of social and political movements) argued that in order to have an unbiased account of the wrongs committed during the war, the truth must have a collective and historical dimension and one that allows the recognition of individual responsibilities:

"*Society needs to know why the war began and continues until today. What the Colombian people expect is to know who benefited [from it] …The businessmen? the military? Otherwise violence will continue as is happening now….*" (interview 61, male).

A second group of participants (28%) expressed feelings of fear and rejection against the exposure of the past. For some, activating memories of violence through verbal recollection of the events was seen as a very painful process, so they preferred to forget. As those experiences caused a great emotional and psychological impact on their lives, these victims have decided to leave behind those episodes as a way to cope with their loss:

"*One would not want to remember those things again because we have already overcome that time, so I do not want to remember or know anything about that again* (interview 11, female).

Other participants expressed their concern about the possible consequences of discovering the truth, mainly due to the reprisals of their perpetrators, who in some cases continue to control the region:

*"it is better not to unearth the horrors of the past. If what has happened is discovered, the group that killed my father and brothers will come to take revenge on my children, so it is better not to know" (interview 38, female).*

This voluntary forgetting of the past did not mean, however, a process of "personal amnesia which prevents the individual from recalling disturbing incidents or feelings" (Cohen, 1995b, p. 13). On the contrary, for the participants within this group, as was evident in the interviews, the conscious restraint of these traumatic events and the lack of interest in digging up the past was "a form that would enable them to recover their lives" (Shaw, 2007, p. 195) and to protect themselves and their families in an environment where violence still prevails.

For a final group of participants, the truth about past instances of violations was not considered a priority (21%). Some of them stated that in a context of poverty, while the truth would not have a significant impact on the recovery of their lives, the fulfilment of other rights would do so. Other participants stated that most victims knew the circumstances of what had happened and therefore, this right was not a priority. Thus, in general the data indicated that at the time of the study, the percentage of victims who were in favour of processes of truth-seeking (45%), was proportional to those who were not (49%) (Table 9). This again reinforces one of the central ideas of this thesis: to recognize the unfeasibility of making general statements about the victims' demands.

| APPROACH TO THE TRUTH * | NUMBER | PERCENTAGE |
|---|---|---|
| Individual truth | 21 | 34% |
| Collective truth | 7 | 11% |
| Forgetting | 14 | 23% |
| Not a priority | 5 | 8% |
| Victims know the truth | 6 | 10% |
| No opinion | 4 | 6% |
| Does not believe in truth | 2 | 3% |
| Does not want to know the truth | 3 | 5% |

*Table 9 Approaches to truth*

* The total number of victims was 62.

There were two counterintuitive characteristics in the data regarding the right to the truth. First, the victims who participated in the JPL hearings, all associated finding the truth with suffering and stress. Some argued that as perpetrators presented a convenient version of the facts, they had not been able to find peace since that moment. Other interviewees expressed their great disappointment with these truth mechanisms, since after testifying many years ago in the JPL processes, their lives continue to be the same or worse. A former official who accompanied several victims in the JPL hearings summarized the reasons behind these perceptions:

> *"It is extremely disappointing when one saw that victims went through a very painful moment and told their horrific experiences during the [JPL] hearings and nothing happened…. Then, the victims lose the sense of asking for truth, justice and reparations because although the truth was published, the perpetrators and the people who paid them, continue to live without remorse" (interview 49, male).*

Second, a rather unexpected low level of support for the right of truth was recorded among civil servants who assisted victims. Almost all of them expressed some scepticism towards the alleged benefits of this right for victims as well as in their own individual cases. Considering that these officials showed a greater knowledge of the TJ frameworks (as was evident during the interviews), it was expected that they would give a prioritizing role to the right to truth as one of the main demands of victims

## *Concluding remarks*

This chapter has presented the results of a qualitative study at a particular point in time concerning the priorities identified by research subjects regarding how to deal with the legacy of the past (and the violence of the present) in the Catatumbo region. The data showed that while the victims have suffered the horrors of war for years, they have also suffered another violence that is less visible in the official records: structural harm. In the face of addressing the tragedies of the war, the interviewees' expectations reflected Maslow's hierarchy of needs, which includes being able to access the resources to have a decent life and guarantee the physical security of their families and communities. However, although these demands could

be interpreted as individual to satisfy specific needs, what victims hoped was that the structures that had maintained and perpetrated the war would be transformed. That their children could access higher education means that the current weak educational system in the region improves substantially and receives the same resources as Bogotá's public schools. That families have their food guaranteed means that the State makes large investments in infrastructure and implements long-term projects with peasants.

Therefore, the expectations of the survivors end up becoming very close to what is known as positive peace. However, it is also clear to them that if the armed violence does not stop, it will be very difficult for their lives to be transformed. For this reason, security, non-repetition of the facts and stopping the war became another of their main demands. Thus, as the different faces of violence mix in their day-to-day life, it is obvious that the different dimensions of peace have also converged in the way they want to confront their past and their present.

As this research demonstrates, in the daily lives of citizens affected by armed conflicts and particularly in contexts of ongoing warfare, demands for justice and truth were seldom mentioned as other urgent needs prevailed. Could it be affirmed then, that these rights were not relevant for the victims? Certainly not. As evidenced when participants were asked, there was a general demand for justice and truth. The problem is that as long as the most basic needs are not being met, it will be difficult for them to demand the guarantee of those rights that they perceive as distant and abstract.

Finally, an episode I witnessed during my fieldwork helped me to reaffirm my initial assumptions but also to question them: the prevalence of socioeconomic rights over truth and justice among the Catatumbo victims. A month after the negative result of the referendum vote on the peace agreement, the FARC organized several peace vigils throughout the country (October 31 2016). The objective was to send a message to society that both the guerrilla group and the inhabitants of war-affected areas supported the process. In Catatumbo, the vigil involved approximately 1,000 peasants, FARC members, leftist organizations and members of the Catholic Church. Among the speeches presented by social and political leaders, in addition to ratifying their support to the peace agreement, several referred to the most urgent demands of the region: social justice, reconciliation, freedom, peace and the right of the communities to live in decent conditions. The rights of justice and truth were not mentioned by any of the speakers. Nevertheless, one of the tensest moments occurred at the end of the day, when Elibeth

Murcia, wife of Henry de Perez, a leader of La Gabarra who was disappeared 9 months before, took the microphone and with a choked voice, told the FARC: [71]

> *"I came today with two objectives. First, to congratulate the FARC for the step they have taken. I am one of its victims myself. My brother was murdered on November 4, 2000 in San Martín, by Comandante Flaminio. I would like to have him here today and give him a big hug, because my God put in my heart the capacity to forgive him. I also came to ask Commander Reinnel and to commit him before God and before all this audience to help me find Henry ... to help me know what happened to him. I do not care which person wanted to hurt him, I want to have peace and tranquillity in my heart. From the moment Henry disappeared, there is no peace in my life. I want to give him a burial as he deserves."*

From that moment I understood the futility not only of making generalizations about the demands of the victims but also about what they do not want. In the case of Elibeth, a great woman with whom I had the opportunity to speak that day when we returned to Tibu, her demands were focused on finding her husband, alive or dead, and for the crime to be recognized. She wanted to know the truth. She put her life in danger (as some people told me later) by asking the FARC, who were still armed, to reveal the truth about the disappearance of Henry. During that conversation, she did not mention her socioeconomic needs, nor the security of the region, as most of the victims in the interviews had.

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[71] The names of the victims are mentioned, since the speech of Elibeth was reproduced by a local newspaper, and Henry was a recognized leader of the region (La Opinión, 2016)

# *Chapter 7 Montes de Maria*

*♪♫Dime la verdá, solo la verdá, no hay reparación ni justicia si no es con verdá♫♪*[72]

## *Introduction*

"All the leaders with whom we speak today understand the importance of the truth. They say that beyond reparation, they want to know the whole truth "(La W, 2016). Thus, the Colombian government's top peace negotiator, Humberto de la Calle, described the scenario he found during the symbolic act of handing over the FARC FPA to several social leaders of MMa on September 25, 2016. Newspaper headlines ratified later the preferences of the region's victims' (quoting the national official rather than the victims): 'Montes de María ask for the truth and the end of the stigmatization' (El Espectador, 2016b); 'Montes de María demand the truth' (El Heraldo, 2016). But to what extent has the satisfaction of this right been a general claim of local people? Although it is very likely that local participants in that event expressed a strong desire to discover the truth, either through the emotional momentum of the moment (a day before the FPA official signing) or simply because, in effect, the fulfilment of this right was one of their foremost aspirations, relatively little is known about the preferences of the rest of the victim population in MMa.

In fact, in Colombia the studies that have attempted to find war victims' preferences have been scarce, and among them the majority have used the fundamental assumptions of TJ as a conceptual framework (Fundación Social, 2009; García Arboleda, 2013; Rettberg, 2008b). Nevertheless, and despite the lack of conclusive and solid evidence, scholars, politicians and the same conflicting parties continue to claim that victims have a strong preference for official accountability either through truth telling processes or prosecutions. In contrast to this approach, this thesis places special emphasis on the contexts in which victims usually live, as well as privileging their own conceptions to address the past, even if this implies departing from what TJ defenders often expect.

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[72] Excerpt of the song: Solo la Verdá, written by Adrian Villamizar, a victim of the Colombian war.

Therefore, this chapter presents the findings from ethnographic research carried out in a representative case of a post-war society with historic structural inequalities: MMa. This part of the investigation mirrored the exercise conducted in Catatumbo, which included a combination of 60 semi-structured interviews and participatory visual observation methods. The one-to-one in-depth interviews allowed those most affected by war to articulate their priorities to respond to histories of violations. In the same way, the existing relationships of trust and friendship with several people,[73] gave me the opportunity to participate in meetings and events, as well as to share time with many of the participants and others key actors outside the format of an interview. These varied sources of information, both interviews and observations, allowed me to have a rich level of detail and also a broader view of the day-to-day struggles that victims faced in a transitional context.

In terms of structure, the chapter begins by describing who the victims of MMa are. Section II presents in order of importance those demands that the interviewees considered key to overcoming the scars of their tragic past. The relevant interrelations between the main participants' demands and their characteristics are also analysed. To the extent that TJ's basic assumptions were almost absent from the victims' responses, Section III of this chapter explores participants' attitudes to the main notions of TJ and about whether, according to the participants, justice and truth should be part of the roadmap for their recovery.

## 7.1.  Who are the victims in Montes de Maria?

There are two related characteristics of the victim population of MMa. First, given that the region's historical conflicts have revolved around land issues, the most affected have naturally been the rural populations and their organizations. A second characteristic has been the victims' appropriation of a language of rights, as a result, on the one hand, of the knowledge and political maturity acquired by the peasant movements and transferred to the new generations (Sanchez G, 2010). On the other hand, as TJ tools have been applied in a very broad way for more than a decade, Montemarianos have also been exposed to a discourse on victims' rights (Section 5.3). Several international and national actors have supported the formation of victim

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[73], I worked as a legal officer in the UNDP Regional Office of MMa between 2011 and 2013.

organizations and processes of political and legal training for their members (Paladini, Rosende, Chaves, & Turriago, 2009, pp. 345–346).

Taking into account the above, the rest of the section describes the particular features of the research participants concerning their sociodemographic characteristics and the normative features established in Colombian national law. Before proceeding further, and as a reminder to readers, the population of interest for this study was people personally affected by the conflict who came from the selected regions or who have lived there for many years. Likewise, in order to reflect the distribution of the population at the regional level in MMa, a higher percentage of victims from urban settings was included in the sample (60%).

## 7.1.1. Sociodemographic characteristics of the participants

The total sample size of the study was 60 war survivors, of which 55% were male. Interviewees fell into the age range of 26 -72 years old. However, as the aim was to interview people who had suffered as a result of the armed conflict (which officially ended more than a decade ago), mainly older people were included in the sample. Thus, the mean age of participants was 47 years and the median was 48 years. Regarding the ethnic groups interviewed, three were indigenous people and the other 15 identified as Afro-Colombians.

While almost half of the participants had completed little or no formal education, 13% and 10% had a technical or professional career, respectively. Nonetheless, the low levels of formal education of most participants are not directly related to the extraordinary knowledge that Montemarianos have acquired over the decades. When I worked in this region, I was always amazed by the political and legal knowledge of local co-workers (peasants, victims, afro-populations). These qualities were again confirmed during the interviews.

| ACTIVITY | NUMBER | PERCENTAGE |
|----------|--------|------------|
| Peasant | 19 | 32% |
| Informal job | 11 | 18% |
| Unemployed | 10 | 17% |
| Formal job | 7 | 12% |

| ACTIVITY | NUMBER | PERCENTAGE |
|---|---|---|
| Civil servant victim-related | 7 | 12% |
| Housewife | 3 | 5% |

*Table 10 Main activities of the victims*

A third of the interviewees worked in agriculture, followed by 18% who worked in temporary jobs such as moto-taxi drivers or street vendors (Table 10). In addition, a significant number of urban participants declared that they came from rural peasant environments, but as a consequence of the war they had to abandon their lands. 17% of the participants (all located in the municipal centres) described themselves as unemployed, while only 12% reported having a stable job, either with the municipal mayor's offices or public schools. A particular aspect of this region was that 40% of participants affirmed that they worked as social or victim leaders. However, although this is one of the most valuable, exhausting and risky jobs, it is usually unpaid.

| CATEGORY | MALE | FEMALE | TOTAL | PERCENTAGE |
|---|---|---|---|---|
| Normal- all basic needs met | 5 | 2 | 7 | 12% |
| Moderate - unable to meet one basic need | 8 | 7 | 15 | 25% |
| Serious - unable to meet two basic needs | 15 | 13 | 28 | 47% |
| Extreme – unable to meet more than three basic needs | 4 | 4 | 8 | 13% |

*Table 11 Economic Security Status*

In terms of the economic conditions reported by the interviewees, the largest group of people was classified in an extreme or serious situation (60%), followed by 25% with a moderate status. Not surprisingly in post-conflict settings, the ills of poverty and marginalization are particularly acute for people living in rural settings. Indeed, in several of the villages I visited, it seemed as if the war had just happened.[74] Many houses were still in ruins and abandoned,

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[74] Chengue, Chinulito, Macajan

the streets totally destroyed, and the residual water coming out everywhere. This was characterized as living "between the ghosts of the past and the anguish of the present" (Fundación Semana, 2015, p. 15).[75] No differences were found between men and women in terms of their socioeconomic status (Table 11). However, regional studies have shown not only a disproportionate impact on women during the war, but also the deepening of their pre-existing discrimination and economic marginalization in the aftermath of direct violence (CNMH, 2014).

As has been laid out, one of the great strengths of the region has been its organizational capacity, which translates into the existence of a large number of organizations working on a variety of topics. This is also reflected in the diversity of victim organizations that are grouped by the type of victimization, their ethnic origin or by a sector of the population (Figure 35).

| MEMBERSHIP OF ORGANIZATIONS* | NUMBER |
|---|---|
| Victims | 31 |
| Peasant or agriculture | 16 |
| Political party | 2 |
| None | 19 |
| Other | 4 |
| No applicable (civil servants) | 7 |

*Table 12 Membership organization*

*One person can belong to one or more organizations
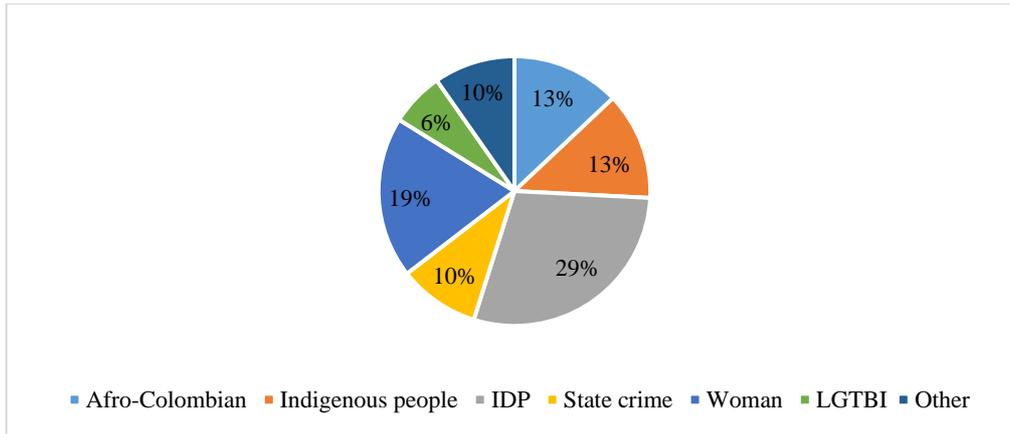
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[75] Translated by the author

*Figure 35 Types of victims´ organizations*

## 7.1.2. Normative features of the participants

All the interviewees identified themselves as direct or indirect victims of the war. Although the majority did not oppose the term victim, two participants said that they would prefer in the future to be recognized with an empowering term, such as a survivor or resilient.

The data on the forms of victimization indicate that one of the main strategies of the armed actors and regional elites in MMa, was to empty the territory in order to either seize these lands, repopulate them with their supporters, or to control strategic areas for drug-trafficking. It is therefore not surprising that 95% of the interviewees had been displaced at least once and that in 30% of these cases their lands had been abandoned or they had been dispossessed (19). Four out of five participants reported multiple victimization experiences, demonstrating again the significant amount of violence that victims had to endure. As displacement was the major component of the armed conflict in this region, these events were typically accompanied by death threats (28%), homicides (21%) and sexual violence (8%).

Most human rights violations of the sample group were committed by non-state armed groups (95%), with paramilitary groups predominating (73%). The insurgents' groups were responsible for 41% of the victimizations, for which 88% of the participants identified the FARC as being responsible. The high involvement of the guerrilla groups in the human rights abuses, was an unexpected result, considering that before the FARC peace process, the violence perpetrated by the guerrillas was hardly discussed in the region. State security forces were only identified as responsible by 10% of the interviewees. However, it was generally perceived that

the state and the regional elites were behind the crimes. Armed structures that emerged after the AUC demobilization represented a small proportion among the perpetrators (7%).

An overview of the victims' views of those considered responsible is reflected in figure 36:
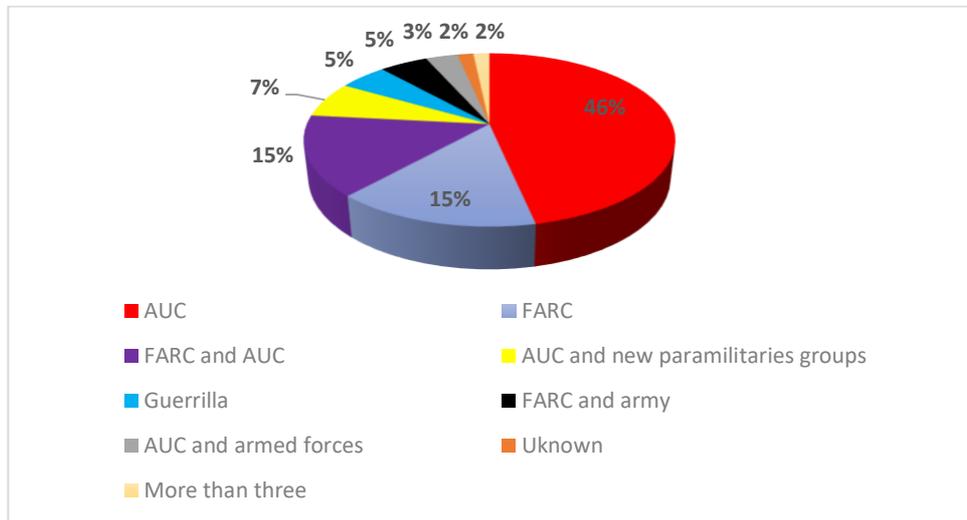


*Figure 36 Perpetrator responsible for the human rights violation*

Most participants (88%) are included in the NVR. When asked to indicate the measures received by victims, most of the participants clearly demonstrated a great knowledge about the different measures to which they were entitled. Possibly as a result, 98% received at least one of the measures enshrined in the VRL and previous related legislation (Figure 37). The majority had access to humanitarian aid (76%), and half of them received an additional measure, such as compensation (23%), productive projects (18%) or house subsidies (9%).
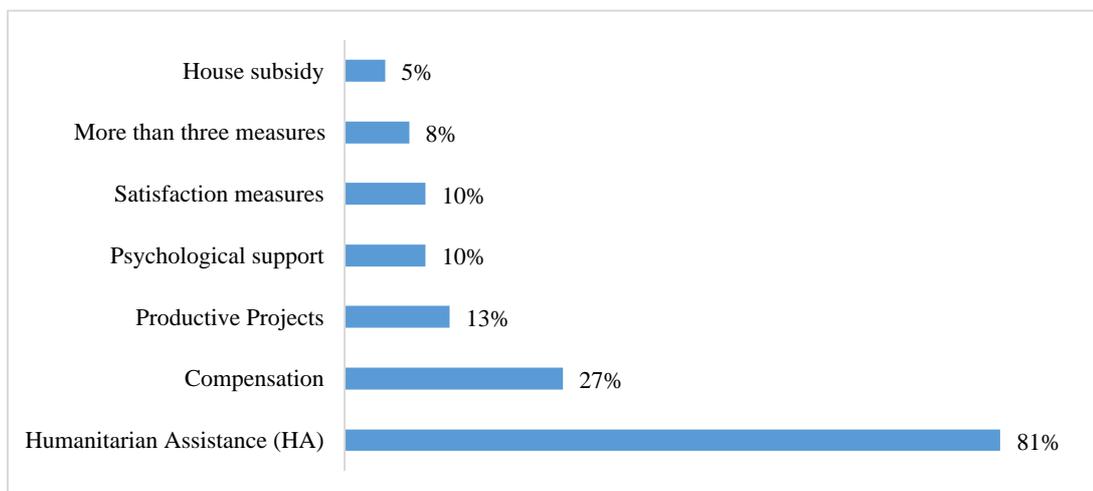


*Figure 37 Government support*

*A victim could have accepted more than one measure

**Total number of victims registered in the NRV: 58

In terms of compensation, this was received by 38% of the 42 victims who claimed to have requested it. Among these are six victims included in the MBSC ruling, and they were compensated taking into account the material and immaterial damages suffered (Corte Suprema de Justicia, 2011). In other words, these victims received a much larger amount of money than is normally received through administrative means. Therefore, these participants declared that the economic reparation had meant a turning point in their lives since they could (re)build their houses or invest the money in small businesses. In the remaining cases (administrative reparation), most victims complained about the minimal effect that compensation had had on their living conditions.

The psychological support has been given mainly by grassroots organizations. The few state programmes, according to several victims, have been decontextualized and based on national models, as a victim of Mampujan explained:

> *"We have our own ways to heal ourselves and the government knows it ... But what did they do? They hired an expert yoga agency at the national level. And they brought the yoga experts here and they thought everyone was going to register, but only a small group joined, without any impact... yoga is great, but not here in the Caribbean region"* (interview 108, Female)

In terms of return and restitution, the percentage of participants who have accessed these rights was very low compared to the dimension of the problem. In the former, although five victims claimed to be part of processes of return accompanied by the state, they affirm that the support had been more on paper. However, most of the displaced persons who returned did so without any form of accompaniment by the state. In terms of restitution under the VRL, among those who were dispossessed or who abandoned their lands (14), seven initiated the restitution process, of which, in four cases, the rulings favoured the dispossessed land-owners.

As explained in this section, the population in MMa was exposed to high levels of violence. Although this research seeks to reduce the degree of abstraction of the victim population and

their demands, the typical interviewee in MMa can be described as having four general characteristics: i) peasant population or with a rural origin; ii) exposure to extremely high levels of violence; iii) strong human rights language and iv) limited socioeconomic conditions.

## 7.2. Main priorities of the victims

When the participants were asked to mention their priorities, many asked themselves where they should begin. In MMa although direct violence had declined to unimaginable levels ten years ago, the opposite happened with economic and social needs for the majority of its inhabitants, particularly for those who had suffered the inclemency of the war (Daniels & Maza, 2017, p. 35). In this way, the everyday hardships that people continue to endure (Section 5.2) mainly guided participants' responses regarding how they wanted to address the past crimes.

The particularity of the MMa research, as mentioned above, is that, in general terms, those who participated in this study had a clear understanding of the distinction between their rights as victims and as citizens and the key legal frameworks regarding their entitlements. Nevertheless, when asked about their main priorities in dealing with their past, the rights of victims, with the exception of reparation, virtually vanished from their responses. This evidences that when the most basic rights are compromised, other rights and demands take a back seat (Maslow, 1943) Using representative narratives, the following section presents, in order of importance, the preferences of the participants to overcome the violence of the past and also to face many of the challenges in the so-called post-conflict. In addition to knowing their entitlements better than many of us who call ourselves experts, the victims are the ones who know which are the most appropriate responses to which the state and society should pay more attention.

The following graph reflects in general terms what the main priorities of the victims were:
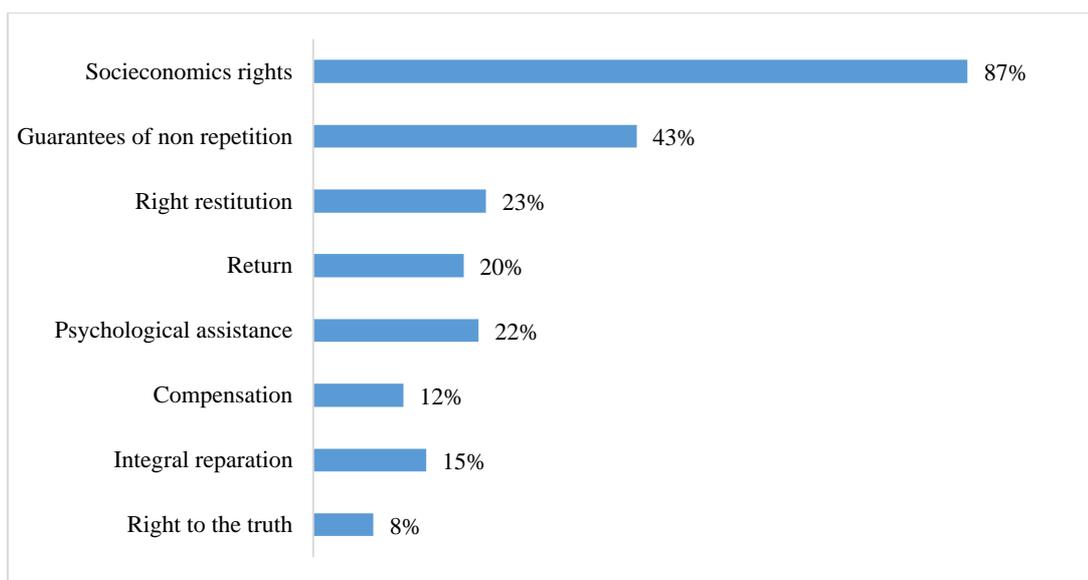
*Figure 38 Priorities of the participants*

*A victim usually had more than one priority.

### 7.2.1. Socioeconomic rights

Against a backdrop in which 60% of the participants reported having a low quality of life, one would intuitively expect that the most important demands to address the damage suffered during war were related to those aspects that would alleviate their everyday difficulties. However, even those who reported having a normal socioeconomic status, also listed among their demands the improvement of the living conditions. Thus, an overwhelming majority of participants (87%) indicated at least one of the socioeconomic rights within their main priorities. Neither gender, ethnicity (in the case of indigenous peoples and Afro-Colombians),[76] nor the type of victimization marked differences between those who prioritized socioeconomic rights and those who did not.

Among participants' preferences, those components related to access to a decent home (basic services, adequate materials) and having a stable form of subsistence (jobs, land, productive projects) were the most important:

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[76] However, to the extent that this research did not adopt an ethnic approach, it would be hasty to affirm that the preferences of the Afro, indigenous and other population were the same.

*"Employment is one of our main demands because I have always said that if a person is given a job, he does not continue to beg or pay attention to humanitarian aid"* (interview 81, male).

*"First, education for the young victims, but since we are all victims, then education for all of us; secondly, support through productive projects for the peasant so that he can start again and third, good roads to take those crops out to the cities. " (interview 95, male).*

Thus, the main demands of the participants were the provision of resources to tackle the present violations, which in most cases were a mixture of structural inequities and the delayed impacts of war. One of these resources was land. It must not be forgotten that the land in the region is not only important for its productive value, but also because it is "a historic demand and the basis of a cultural system on which the memory of work, suffering and resistance rests" (Fundación Semana, 2015, p. 28),

Although in the best way, war survivors have learned to "endure the pain", as they said, their situation was usually one of near-constant struggle for their survival and that of their families. As the displaced population generally fled to places where conditions were already precarious for most of the inhabitants, being able to restart their lives in an unfamiliar and adverse environment has proven extremely difficult (HRW, 2005, pp. 19–22). Despite having been displaced more than 15 years ago and having settled in cities since then, most of the victims interviewed had not yet been able to stabilize economically.

Consequently, the state interventions that have improved the living conditions of the population were those that the participants remember most. This was reported by a participant:

*"What has changed the lives of the victims in the Montes de María? Not that the paramilitaries went to prison. What has changed the lives of the victims here is the Montes de Maria transverse that has benefited the poorest ... Peasants can finally commercialize their products"" (interview 80, male)*

*Figure 39 Montes De Maria Transverse*
*Photograph taken by the author*

Indeed, a 43-kilometer-long road that connects the municipalities of El Carmen de Bolívar and Chinulito, which was begun in 2010, has transformed the lives of the inhabitants of this region. When I worked in this area, the road to the villages in the Alta Montana area was of a bad quality as people had to negotiate between cliffs and potholes. Now, as I could verify, the route was paved and widely used by locals (Figure 39). But the improvement of the roads is only one of the collective demands of the interviewees. Furthermore, to the extent that the violations of human rights in MMa affected entire communities (Montoya, 2015, p. 46), a significant number of participants within this group (42%) raised their priorities collectively: the construction of a school or a health centre, a housing programme, the installation of electric power for an entire town.

## *7.2.2. Guarantees of non-repetition*

"The region in question continues to be at peace". This is how the Minister of Defence in July 2019 responded to the population's concerns about the reappearance of the paramilitary structures in MMa (El Espectador, 2019). Although these complaints arose due to specific events (distribution of threatening pamphlets and alleged combat in the mountainous areas), during my fieldwork I also found an overall feeling of distress among the population due to the increasing risk of the resumption of violent societal conflict. Although the levels of violence of the 1990s and the 2000s seems to have gone away, remnants of the legacy of atrocities are

everywhere: trees and houses where victims were tortured, lakes and rivers that were used to get rid of bodies, churches and health centres in ruins, as well as burned out houses (Figure 40).



*Figure 40 Mampujan health centre abandoned since displacement in 2001*
*Photograph courtesy of Gabriel Pulido*

Possibly a combination of the memories of the violence and the outbreaks of renewed violence led to a large number of different sorts of victims (43%) placing great importance on demanding that the tragic events they had experienced would not be repeated:

> *"What I and the women of my organization demand is that the state guarantees that the crimes will not be repeated. Sometimes one feels healed but remembers what happened and cries. So, I would just ask for guarantees of non-repetition... especially for our children... I do not want them to experience that" (interview 127, female).*

A common viewpoint among the respondents who gave priority to guarantees of non-repetition was that for them their safety was an obligation of the military forces and therefore, the only ones called to provide security to their communities. Although it is true that the population still

demanded recognition of the responsibility of the military in the AUC tragedies, it was possible to observe that the levels of trust between society and the armed forces had improved.

## 7.2.3. Return and restitution of land

Among those participants who prioritized the right of return of their lands (20%), two major groups can be discerned. The first group included those who were willing to return to their territories, although more than 15 years had passed since they were displaced. The impediment to do so, however, was not necessarily that their land was in the hands of a third party. As several interviewees said, the problem was that their plots were full of weeds and there was absolutely no infrastructure. In these conditions and without state support, the return became a utopia:[77]

> *"if the government tells us today that they are going to clean the land and give us productive projects, we would leave everything and return to our land immediately. But they tell you to come back to what? to more poverty?" (interview 89, female).*

The second group that included the right to return within their main preferences did so from a collective perspective (3). In other words, for them the best way to face the past was for their communities to be able to return to their territories and recover, to some extent, not only their material possessions, but also the unity of their communities.

In terms of restitution, almost a quarter of the respondents mentioned this right as one of the priorities (23%). Some of these participants had initiated legal restitution proceedings and were waiting for their cases to be resolved. For others, particularly former peasant leaders,

> *"the restitution of lands to the true landowners, the peasants, is the only way that the conflicts in Montes de Maria will be solved, but not only to give them back the land, it must be accompanied by an integral program" (interview 117, male).*

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[77] Despite the precarious conditions of many villages that were abandoned during the conflict, many communities have returned with their own means (or with a little help from the state). Returnees continue to fight not to flee again, not from the armed groups but from poverty (Fundación Semana, 2015, pp. 49–51).

## 7.2.4. Psychosocial assistance

The brutalization of everyday life during the war in MMa was widely elucidated by the participants of this study. They showed how, even though this visible violence had already left, the memories of terror and barbarism in the midst of helplessness continued to impact their lives. Thus, although most of the crimes reported by the participants were committed in the period 1997-2005 (97%), the feelings of pain, helplessness and guilt were in many cases a daily torture. Recounting the horrors, an interviewee said:

> "*Sometimes I start to cry at night. And I say, my God, what do I have? and I squeeze my head and I see all my dead. I see the cousin who was beheaded and then cut into pieces. I cry and then I dream when the marine infantry was firing, and the bullets went over my head and then I see when my daughter was raped by the guerrilla and I say: God, that should not have happened to her*" (interview 92, female).

However, the greatest psychological harm experienced by victims does not only stem from their experience of victimization, but also from the severity of structural violence that translates into limited access to food, health care, decent work and an adequate home (Kostelny & Ondoro, 2016; Wessells & Kostelny, 2012). Consequently, participants that prioritized emotional needs emphasised that psychological programs should go in hand-in- hand with the improvement of the victims' living conditions. Otherwise, any efforts towards emotional recovery were going to be insufficient, as stated by a civil servant:

> "*Psychosocial care must be accompanied by income generation and measures aimed at improving the quality of life because I cannot talk about happiness if I do not have a roof to live under*" (interview 114, female).

Psychological studies in MMa revealed the major dimension of emotional harm. One study found that of the 208 victims from different municipalities, 90% and 80% had symptoms of depression and anxiety, respectively. Other research based on two war-affected communities found that out of 129 victims, almost 25% had emotional disorders (Ramírez, Hernandez, Romero, & Porras, 2017, p. 7). Therefore, it is not surprising that one in five participants in my own study included psychological assistance as one of their demands. Furthermore, this figure

could be considered low if one takes into account the high level of exposure to psychological trauma reported by the two studies mentioned. However, in contexts of serious economic inequalities and poverty, the satisfaction of basic needs become a priority over emotional healing (Maslow, 1943). As a well-known professor in the region, José Francisco Restrepo, told me, "when the stomach is empty, head problems are put on the second level".

## 7.2.5. Comprehensive reparation and compensation:

The last common responses that the participants deemed important to overcome their experience of victimization were comprehensive reparation (15%) and compensation (12%). Regarding the former, the victims had a clear understanding of what this right meant. The following extract illustrates this:

> *"Comprehensive reparation means restoring what we have lost, what we suffered... although all that suffering is irreparable, comprehensive reparation recognizes that the damage was both to your soul and your material possessions" (interview 84, male).*

Immaterial forms of reparation, such as memorials, commemorative events, apologies or the acknowledgment of the victimization were not mentioned within the victims' priorities. However, in their accounts several of the respondents were insistent on the need for the state to recognize their role in violating human rights or stressed the importance of this having been done:

> *"We have demanded it many times… it is a thing that does not cost a peso: that the state publicly acknowledges that we were not guerrillas but working peasants. That would allow us to stop being stigmatized as guerrillas" (interview 89, male).*

## 7.2.6. The right to truth and justice

The almost complete absence of the right to justice and truth in the participants priorities (8% and 0%, respectively) was an intriguing finding.[78] While it was predictable that in a region

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[78] Of the five participants who demanded truth, four had no information on the whereabouts of their loved ones, or the perpetrators and motivation of the crimes remained unknown. Thus, the seeking of the truth for these participants consisted of finding out the facts of their specific case, rather than establishing a collective and historic understanding of the past.

where living conditions were precarious, measures aimed at solving the daily life problems would prevail among the participants' responses, my initial assumptions were that the TJ pillars might play a relevant role in MMa. Considering survivors' high levels of exposure to victim rights discourses in the past decade,[79] I expected that the right to justice and truth were going to be mentioned by victims' and social leaders.

A straightforward reason cannot be given to understand why these rights were not originally considered by the participants. Nevertheless, it could be argued that the socioeconomic conditions of the region and the security uncertainty played an important role in the interviewees' demands. The following extended quote from a leader supported this argument, adding that the temporary nature of victims' preferences also needs to be taken into consideration:

> *"At times we have said it ... we prefer the truth. I also have said it, but everything happens in stages. There is a stage where you feel so hurt and hopeless that you say even if I don't receive a peso[80] what I prefer to know the truth, what happened with my husband? what happened with my son? But when you see that your children cannot go to study, that you do not have water, that you do not have a decent place to live, the priorities change. I was also one of the first to say, first the truth but things change according to the time and according to the circumstances " (interview 108, female).*

Indeed, as the circumstances of war survivors change over time, their demands will seek to respond to their current deprivations and needs, whether they are related to abuses in wartime or are the result of structural violence or both (Millar, 2011, p. 529; Robins, 2011b, p. 120). However, the victims' preferences, in the MMa context, also included measures to confront what had happened in the past (e.g. psychological support) and expectations of the future (e.g. land issues and education for children). Thus, the reconstruction of social and economic life summarizes in a few words the main interviewees' demands to overcome the legacies of violations. The participants did not put any emphasis on justice. Similarly, the need to know the truth was not mentioned by the participants. Does the above mean that these rights had no

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[79] As explained above, as Montes de Maria has been the laboratory of different initiatives of TJ and peacebuilding, its inhabitants have been exposed for a long time to discourses of truth, justice and reparation, as well as to the TJ institutions (Brett & Florez, 2016).
[80] Colombian currency

relevance in restoring the lives of the victims? Or that the participants felt that justice and truth had been satisfied to some extent, so they preferred to focus on other rights? It is to these sorts of issues the next section now turns.

## 7.3. *Truth and justice perceptions*

Reflecting the hierarchy of needs proposed by Maslow (1943), empirical studies in northern Uganda and DRC found that when basic needs and security had not been met, TJ traditional responses (mainly prosecutions and truth seeking mechanisms) were relatively remote priorities for war survivors (Millar, 2011; Pham et al., 2005; Vinck & Pham, 2008; Vinck et al., 2008, pp. 22–23). Consistent with these studies, in MMa not only in the data gathered from the interviews, but also from the meetings of victims' organizations in which I was able to participate, the demands of justice and truth were not among the highest priorities. Therefore, it is worth exploring what these rights meant to participants in a post-conflict context and understanding whether these rights, in accordance with their opinions, were decisive in rebuilding their lives.

### 7.3.1. Justice

The participants' views regarding the importance of the right to justice in the process of facing their past varied widely. The participants of this study took different positions, which will be illustrated below with examples (Figure 41).
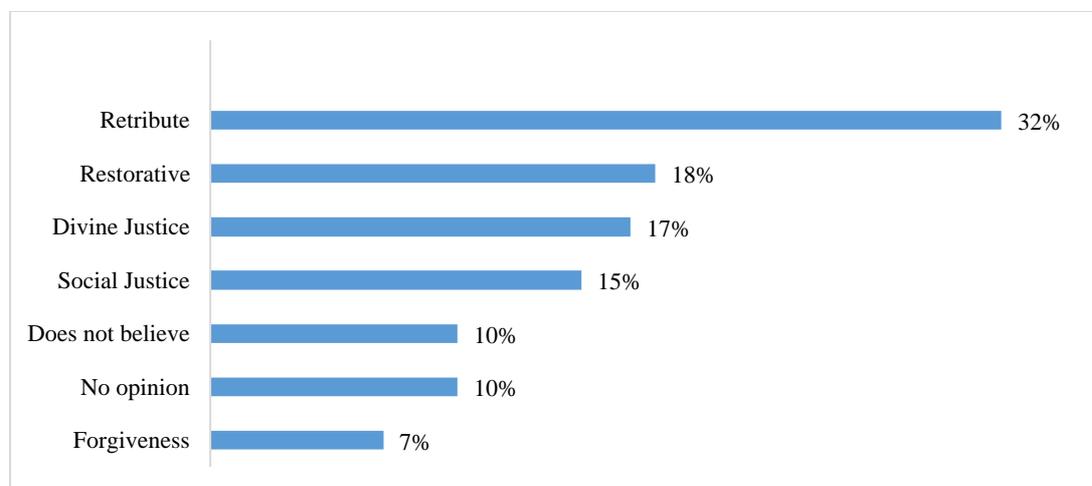


*Figure 41 Approaches to justice.*

* The total number of victims was 60.

** Many participants opted for a combination of two approaches of justice.

A third of those interviewed expressed their support with the most common notion of dealing with violators of human rights: retributive justice (19). The majority mentioned the need for those responsible for crimes during the war to be punished with prison sentences corresponding to the seriousness of their offenses. Different factors may explain this high demand for this type of justice in MMa the extreme levels of violence against civilians and widespread feeling of impunity regarding ordinary and TJ. Consequently, it was understandable that national TJ systems were seen with scepticism by these victims:

> *"I don't think it's fair that after so much damage that the AUC did and now, they are free without paying everything they did... It hurts us that the FARC does not go to jail because many of the victims are still suffering from their crimes"* (interview 87, female).

When the responses of those who prioritized retributive justice were examined, there was a significant correlation with gender, as 16 of the 19 participants of this group were women. Likewise, in general terms of the total number of women who took part in the study (27), 60% deemed it important to hold accountable those who committed human rights violations. Although studies have not presented conclusive results in respect to the impact of gender on attitudes towards offenders, in general "it was often suggested that women were less punitive" (Kiza et al., 2006, p. 144). The data gathered in this study revealed a different pattern. Several official reports and academic papers have convincingly demonstrated that in MMa, particularly during the strategy of conquest and government of the AUC, women were particularly affected by the war (CNMH, 2014; Pardo Garcia, 2018). Although it is not possible to establish that the intensity of the victimization experience was the reason behind the female participants' preferences for retributive justice, it is plausible to assume that it is one of the factors that influenced their attitudes.

Providing some kind of restorative post-war justice was mentioned by 11 participants (18%), in which the majority (6) belonged to victims' organizations:

*"Justice must be oriented to repair the damage caused to the victims. What is the goal of putting them 40 years in jail? Will something change for us? If these people really regret it, they can come here and help build a road"* (interview 137, female).

To a lesser extent, but still important nonetheless, 15% and 17% of the participants referred to God's justice and social justice. In the case of the former, and contrary to findings in other studies in transitional contexts (Brewer et al., 2018b; Kiza et al., 2006), for the majority of the victims who claimed 'to leave everything in God's hands', their feelings were associated more with retribution than forgiveness. Social justice was closely linked to the concept of positive peace, where the participants referred to changing those structures that have generated violence (e.g. redistribution of land). Finally, a very small group of victims spoke about the need to forgive the perpetrators and forget about the desires for justice (4).

The different cohorts of participants' attitudes towards justice presented several similarities. First, both those who were part of the JPL processes, and those who did not participate in them, felt that justice had not been done. However, although rage and betrayal were often expressed against their perpetrators and the state during the interviews, in the end the majority of the victims were willing to facilitate reconciliation. Secondly, the victims made no distinctions regarding the perpetrator in their demands for justice. Thus, the imposition of imprisonment was demanded for all those who had committed human rights violations. Finally, in general, the participants stated that justice was an important right that should be guaranteed, either through prosecutions, spaces of reconciliation, truth-seeking or through divine providence. However, that the victims only referred to this right when they were questioned about it, creates doubts about whether justice was really one of their priorities.

## *7.3.2. Truth*

It is widely accepted by policymakers, scholars and human rights defenders that truth-telling processes have a wide variety of merits, ranging from the individual (overcoming traumas, healing the soul, weakening the desire for revenge) to the collective level (reconciliation, democratization, prevention of the repetition of past crimes) (Cohen, 1995a, pp. 18–20; Hayner, 2000). On the other hand, although to a lesser extent, critical approaches have questioned the purported positive effects of truth-seeking processes, arguing that they may be harmful to both the individual (revictimization) and long-term peace (Backer, 2010; Shaw,

2007). The data from MMa on perceptions regarding the right to the truth reflect both competing assumptions of truth-finding measures (Figure 42).
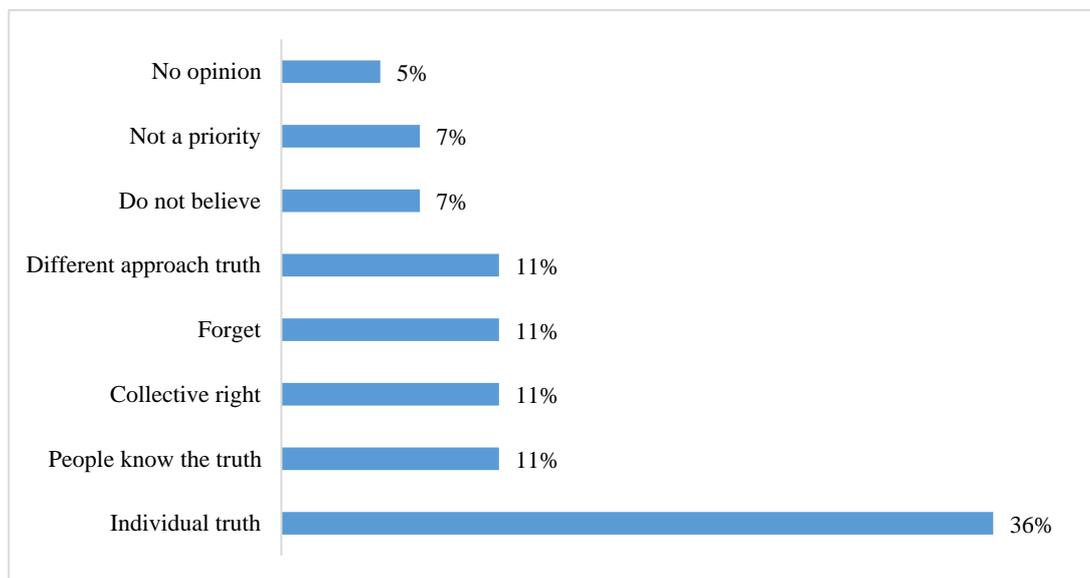


*Figure 42 Approaches to truth*

     * The total number of victims was 55

The 'pro-truth-finding' interviewees considered that the satisfaction of this right was a critical component whether for the personal recovery or for the reconstruction of post-conflict societies (47%). However, most participants gave an individual meaning to this right, paying much attention to knowing the particular circumstances of their cases rather than a shared and collective understanding of the past. It is important to note that as virtually all the victims claimed to know the actual perpetrator (armed group), there was a particular interest among participants in determining who the intellectual authors of their crimes were.

In line with the understanding of the truth of truth commissions (historical account of the truth), the six remaining participants in this first group stressed the importance of establishing the structural causes as well as the historical and political responsibilities of the war to achieve larger societal peace. Not unexpectedly, as a Colombian version of the truth commissions had not come into effect by the date of the fieldwork, few victims mentioned it as the ideal instrument to find the truth.

A second approach to the truth referred to those participants who preferred to leave old graves unopened and considered it more important to keep moving forward (36%). The motivations

of the victims within this group varied significantly. Some declared that since they knew what had happened, no more truth was needed. For others, the truth was not a priority:

> "People here in Pichilin do not ask for the truth, people wonder why the government has not brought the promised economic benefits: "We already know that the police and infantry supported the paracos…" (interview 101, male).

Other participants expressed their desire to forget because knowing the truth involved substantial emotional pain. In a statement worth quoting at length, a participant recounted his negative experience in a truth-seeking exercise organized by an UN agency:

> "Even those women who were the strongest in XXX, that day they collapsed while retelling their stories. They [UN members] put them in public to tell their truth. I told the organizers that the women didn't want to remember because they really did not want to tell the truth. They (UN) did not understand that there are victims who do not want to recognize that their relatives were part of the conflict… I know that some victims had a link with the perpetrators either because they did it on purpose or because they were forced to do so… so victims do not want to tell the truth and prefer to move on" (interview 93, male)

Regarding the victims who have participated in judicial and extra-judicial truth-seeking mechanisms, they reported a great deal of ambivalence. For these participants, particularly those from Mampujan and Las Brisas, although they showed great disappointment with the known truth, most of them stated that, this has not prevented them from continuing with their lives.

While the nature of the victimization experience (only in the case of disappearance) had an impact on the understanding of the truth (to learn about the fate of loved ones), other participants' characteristics such as gender, ethnicity, type of perpetrator, membership of an organization, or participation in TJ mechanisms did not have a substantial effect on the perception of the victims towards the right to the truth.

The results presented in this section contradict several of the basic assumptions of TJ. Firstly, despite the fact that the victims expressed high levels of dissatisfaction with the rights of truth

and justice, this did not mean that they expressed a desire for revenge. Openness to reconciliation was not only expressed repeatedly during the interviews, but it was also a characteristic that I found in the daily lives of the Montemarianos. Second, although several victims supported the truth-finding procedures, the findings of this study did not support the assumption that the right to the truth was essential or a general request of the war-affected population. Third, a retributive understanding of justice was not necessarily incompatible with forgiveness or reconciliation. Nor can it be assumed, as many studies have claimed, that those who did not forgive their perpetrators were "consumed by anger and unable to move forward" (Brewer et al., 2018b, pp. 81–82). Despite the fact that it is widely accepted that the victim who demands justice in retributive terms has not yet been able to heal or has not forgiven, one victim explained the difference between these processes:

> "*one thing is the search of an effective justice that we deserve and a very different one is the internal personal process of forgiveness and healing that we have been working on for many years*" (interview 133, female).

## *Concluding remarks*

The main aim of this chapter was to inquire into the victims' perceptions in MMa mainly regarding two aspects: priorities to confront their past and insights towards justice and truth. To this end, the first part presented the participants' main characteristics, in which two in particular stood out that also characterize the general population of this region: their robust and historical organizational capacity and the appropriation of a language of rights. Did these features influence, victims' responses to how to deal with mass and collective violence? In most cases, not really. Listening to the victims articulate their demands, it was clear that preferences hinged around structural violence and security problems regardless of whether they were related to war, the result of the state historical abandonment or both. Such emphasis on these issues cannot be separated from the realities of precariousness, sense of insecurity, land concerns and emotional trauma in which victims live every day.

The key question for the general argument is why in MMa, where most participants were fully aware of their rights as citizens and as victims, they ended up prioritizing those aspects that had an impact on transforming the structures of poverty and inequality above the paradigmatic

victims' rights. The first obvious answer is that, as prior comparable research has shown, in contexts of structural violence, inequality and (perception of) insecurity, victims' priorities have revolved around what can have a direct impact on the quality of their lives (Aroussi, 2018; Millar, 2011; Robins, 2011b). Another reason explaining the absence of justice and truth in the participants' responses could be related to the lack of meaning of the legitimacy inherent for victims in these rights. To the extent that the TJ measures created high expectations in the region, but with few exceptions these have been poorly fulfilled to date, demands for the satisfaction of these rights has become a great disappointment for many victims. Finally, the answer may be as simple as victims did not mention these rights precisely because they were not part of their priorities.

Victims' attitudes toward justice focused on the main traditional approaches (retributive and restorative). However, other broader conceptions of justice were also mentioned. For example, several victims prioritized the demands of social justice over retribution or truth. A few other participants expressed their desire not to demand justice in exchange for knowing the truth or being compensated. Thus, in general the participants expressed their desire that some kind of justice be satisfied. Regarding the right to the truth, although half consider it a right that must be guaranteed, a similar proportion of respondents also considered it otherwise.

Is it victims who have guided the agendas of TJ? Or on the contrary, are "[v]ictims… consequently integrated into TJ-instruments according to the latter's agenda, instead of according to their needs or the rights supposedly attributed to them?" (Ottendörfer, 2019, p. 659). The next chapter will seek to address this question precisely, comparing first, the findings from MMa and Catatumbo and then with the international and national agendas of TJ.

# Chapter 8: Comparative chapter

## Introduction

This chapter sets out to answer the main question of this thesis: To what extent are the priorities of the victims reflected in the national and international agenda of post-conflict accountability? To answer this question, it has been necessary to follow three basic steps: First, Chapter 2 has proposed a series of elements that encompass the contemporary global TJ theory and praxis. Then, from a mainly political dimension, Chapter 3 has attempted to define the main components of the Colombian TJ framework. Finally, Chapters 6 and 7 have identified the preferences of a group of victims towards the problem of dealing with the past in two different war-torn Colombian regions. To this end, while the voices of war survivors have been brought to the fore, the normative and factual presuppositions of TJ have in principle been set aside. Consequently, the appropriate means of redress articulated by those who have survived systematic and structural violence have been analysed in the light of the specific post-war contexts in which they live (Chapter 4 and 5).

To provide some foreshowing of the findings, it could be argued that: firstly, the preferences and experiences of the victims did not coincide with most of the elements that underpin mainstream TJ projects at the global level. Secondly, a similar disconnect has been found between the main elements of the political agenda of TJ at the national level and the preferences articulated by those allegedly affected by the truth and justice measures. Thirdly, a consensus has been found at all three levels regarding both the right to reparation (some elements) and the objective of ending the war/guarantees of non-repetition.

The chapter is divided in three main sections. Using data from the Catatumbo and MMa regions, Section I seeks to compare the demands articulated by the participants in both regions, to determine whether a common TJ agenda can be established at the local level or, on the contrary, the considerable differences between them, require a differentiated treatment. Based on these findings, Section II compares the main components of the global and domestic TJ frameworks with the evidence collected in these territories. Considering the substantial differences found between the macro and micro TJ agendas, Section III while presenting the

long-standing arguments that have explained such gaps, provides a complementary account for the case of Colombia.

## 8.1. *The Transitional Justice agenda of the victims*

Catatumbo and MMa are peripheral regions of Colombia that have been seriously affected by the war. However, they were rather selected for their significant differences in three dimensions: evolution of the war, perceptions of the main armed combatants and the level of appropriation of a discourse of rights. To the extent that these elements, according to several studies, had been decisive in the way the conflict-affected defined their preferences to redress the legacy of violations, it was intended to demonstrate the validity of such claims in the selected contexts. In a nutshell, the data revealed little variance in the way the participants defined their priorities in each region. While the last two factors did not shape their views, the first was influential to some extent. However, a fourth factor, which emerged during the fieldwork, had a greater weight in the preferences of the participants: their everyday lives. This space has been marked by a continuous and visible circle of violence that moves between direct physical harm and chronic structural violence, historically embedded in the structures of societies. But instead of revealing contrasts between regions, the notion of the everyday has ended up bringing them closer.

The everyday in-conflict and post-conflict settings can be seen as a site that is shaped by the more silent but overwhelming (structural) violence, the direct impacts (particularly in the case of Catatumbo) and the severe and long-term consequences of war. Given that in both case studies, these different types of violence and the impact and scars of war converge on the day-to-day life of the victims, the everyday in the end was a critical determinant in their perceptions. The victims' main concerns focused mainly on present and future-oriented measures, seeking to address the multiple layers of violence that have manifested themselves in terms of overt violence and historical economic and social inequalities,

While Chapters 6 and 7 have identified the preferences to address the past in each region, this section sets out to compare them and define their common and distinctive elements. It begins with an analysis of the three mentioned differential elements and then suggests a fourth factor (the everyday) that explains why seemingly different contexts contained such similarities in how the victims want to redress the war legacies. Then, the participants' main expectations are

recapitulated, showing slight variation between regions. Finally, some explanations are suggested to understand why the basic principles of TJ did not play a relevant role in the survivors' preferences in both settings.

## 8.1.1. Differentiating factors

Catatumbo and MMa regions have three stark differences (Table 13). Given that these elements have been identified as critical in the configuration of victims' perceptions, it was thought that clear divergences would be revealed in preferences between the two contexts studied. Firstly, the state of the conflict.[81] Catatumbo has been considered a war zone for more than three decades. Despite the demobilization of the main illegal armed groups, violence continues to be the order of the day (HRW, 2019). Conversely, MMa has been described as a post-conflict region for more than ten years and is oft-cited in official accounts and media as a model for peacebuilding and reconciliation. The fact that among the 226 murders committed against social leaders at the national level in 2018, none occurred in MMa while 18 took place in Catatumbo (El Tiempo, 2018), demonstrates their huge contrast.

The second trait is related to how victims of past atrocities perceive the main armed actors.[82] While the guerrilla' groups in Catatumbo have had a historical presence, in MMa their presence was temporary and found little acceptance with the population. In the case of the AUC while in both areas its rejection was high, in the latter, there was "a great deal of social acceptance *vis-à-vis* paramilitarism" in certain sectors of society (Escobar, 2013, p. 129). Regarding the armed forces, in Catatumbo the relationship with the population has been characterized by distrust and fear, while in Montes de María it has been significantly strengthened. The third factor allegedly affecting victims' perceptions is their appropriation of a language of rights and

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[81] The relationship between the state of violence and victims' preferences was found in a study in the Democratic Republic of Congo, in which an ongoing conflict region was compared with another where war-violence had ceased (Vinck et al., 2008). It was found that while in the former, one of the top preferences was for security, in the latter it did not play a significant role (2008, p. 55). The report explains that "[t]he different priorities result from the fact that there is continuing open armed conflict in eastern DRC while the violence and fear wrought by the absence of security is not felt in Kinshasa and Kisangani" (*ibid* 56).

[82] In a comparative study in five war-torn countries, an important relationship was found between the identity group and the attitudes of the participants towards any form of TJ (Weinstein et al., 2010, pp. 39–44). For example, in Rwanda, while the Tutsis strongly supported punishing the perpetrators, Hutus did not show the same desire. Similar results were found in Burundi (Nee & Uvin, 2010). By assimilating these variables to the Colombian case (although ethnicity has not played an important role in the war), what can be intuited is that greater acceptance (or coexistence) or rejection of a community in relation to a particular armed group would influence their demands, particularly in relation to justice.

their level of exposure to TJ mechanisms.[83] As MMa has been the laboratory of a large number of past accountability measures for more than a decade, an important number of victims have become more knowledgeable regarding their rights. In contrast, Catatumbo has not yet been prioritized for TJ measures. While victims' organizations are few and have low technical and advocacy capabilities, war survivors have little knowledge of their rights.

| REGION | EVOLUTION OF THE ARMED CONFLICT | PERCEPTION OF ILLEGAL ARMED ACTORS | EXPOSURE TO TJ MEASURES AND LANGUAGE OF RIGHTS |
|---|---|---|---|
| Catatumbo | War zone<br><br>Presence of illegal armed actors (mainly guerrilla and dissident groups)<br><br>Heavily militarized | **Guerrilla**<br>Historical presence<br>Insurgents are seen as a part of the landscape<br>Certain level of coexistence<br>**AUC**<br>Extreme level of rejection<br>External agents<br><br>**Armed Forces**<br>Tense relationship<br>Fear and mistrust | Low level of victims' access to TJ measures<br><br>Low number of victim organizations and little understanding of victims' rights<br><br>Low level of victim participation in institutional spaces. |
| **Montes de Maria** | Post-conflict region since 2010<br><br>Illegal armed groups have demobilized or defeated | **Guerrilla**<br><br>High levels of rejection<br>Temporary presence<br><br>**AUC**<br>Greater level of acceptance in society | Prioritized zone for implementation of TJ measures<br><br>High number of victim organizations and great knowledge of language |

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[83] A study of forced disappearance in Nepal and Timor-Leste found that most participants articulated their demands in terms of needs rather than rights (Robins, 2011b). Arguably, one of the reasons for this finding was that there was a lack of understanding of the rights that TJ upholds due to the low educational level and the precarious economic situation of most victims.

| | | Armed forces | of rights |
|---|---|---|---|
| | | Average levels of trust and respect | |
| | | | High level of participation of victims in institutional spaces |

*Table 13 Main differentiating factor in Catatumbo and Montes De Maria*

Notwithstanding the marked differences between regions, it was striking to find that the victims in both contexts showed similar preferences in how to overcome their violent past. The participants' everyday lives and the similarities of the regions in terms of their historical neglect by the state and their low levels of development emerged as a fourth factor to explain these outcomes. The notion of the everyday refers to ordinary life in war-affected contexts set against a background of structural and overt violence and (perceptions of) insecurity. In these convoluted environments, people's everyday lives were not defined exclusively by the past but also by a combination of policy choices, historical state abandonment and unequal distribution of economic and political resources (Farmer, 2004; Roberts, 2008; UNDP, 2005).

Thus, acknowledging the specificities of both contexts, strong similarities were found in the way victims experience precariousness, insecurity and emotional distress (Sections 4.2 and 5.2). These realities, which were mixed together in the everyday lives of post conflict settings, ended up having a high impact on how the participants defined their preferences to face the past.

## 8.1.2. Catatumbo vs Montes de María

This sub-section seeks to present a comparative analysis of the participants' priorities in Catatumbo and MMa highlighting the role (or irrelevance) of the mentioned factors as well as significant victims' characteristics in shaping the participants' views. Before presenting the results, the key respondents' features in each region are briefly described. It should be noted that both groups had important similarities regarding their socioeconomic conditions, their rural origin and the repertoires of violence, demonstrating that "Although the violence has

affected society as a whole, it was most merciless towards those who are excluded and vulnerable" (CNMH, 2016, p. 31). The differences of both groups are also highlighted.

The majority of research participants had little or no formal education. Their socioeconomic situation was self-reported as precarious in most cases. Forced displacement accounted for the bulk of acts of victimization. The paramilitaries bore the greatest responsibility for the crimes, followed by the insurgent groups in both regions. The direct participation of security forces in the crimes was relatively low. Consequently, in both regions the majority of crimes occurred during the paramilitary period (1997-2005). Not unexpectedly, in Catatumbo, in 22% of the cases compared to MMa (3%), victimization has occurred in the last five years.

The main differences between the two groups were found in relation to two elements. First, the participants' affiliation to organizations. While in Catatumbo, the vast majority were part of the community action councils or did not belong to any organization in Montes de María, victims and peasants' organizations had the highest participation. The second differentiating characteristic, as mentioned, was their exposure to TJ measures. While in the latter case the majority had been engaged with the TJ infrastructure in some way or another, in the former the accessibility has been extremely precarious. These two related characteristics have generated, among other consequences, a greater appropriation of a language of rights in MMa.

### *"We have the right to live in dignity"[84]*

On average, a large number of those met in Catatumbo and Montes de María prioritized measures aimed at addressing the impact of violence in its broadest sense. These findings, as mentioned, must be assessed against a context of deep and large-scale socioeconomic deficits that have been transmitted across generations. Therefore, and reflecting Galtung's notion of structural violence, these outcomes clearly confirm that the impact of this type of harm can be much greater (albeit less visible for outsiders) than the effects of direct violence (Section 1.1). Furthermore, also the order of priorities of the victims, where the most rudimentary needs occupied an important place, reflect the applicability of the theoretical proposition of the hierarchy of needs (Maslow, 1943). These outcomes are consistent with prior comparable

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[84] Interview 96, female

research (Aroussi, 2018; Millar, 2010; Pham et al., 2005; Robins, 2011b; Vinck & Pham, 2008; Vinck et al., 2008). However, they also challenge some of the findings of these studies.

Firstly, the assumption that victims are usually unaware about a language of rights and, therefore articulate their demands as needs (Millar, 2011; Robins, 2011b, 2011a, 2017), has not been conclusive in this study. Despite the participants exhibiting a keen understanding of the TJ frameworks, particularly in MMa, when they stated their preferences, the focus was on the chaos that different forms of violence created in their daily lives. The most revealing case referred to the local officials in both territories. Although many of them were fully cognizant of the victims' rights, when asked about the most appropriate measures for the war-affected, they focused on socioeconomic, psychological and non-repetition measures. A local ombudsman explained,

> *"Of course, when you ask me the victims' priorities, truth, justice and reparation come to my mind. But that is what the law and the government rhetoric says. But here it is very different, under what circumstances was the victims' law [VRL] created? For a city? For contexts like Catatumbo? I don't think so" (interview 63, male).*

Thus, more than the lack of a language of rights as an explanation for the exclusion of rights within victims' preferences (Robins, 2011b), this may be the result of the conviction that these normative frameworks "will do [or have done] little to actually alleviate the harm done or prevent it from recurring it" (Okello, 2010, p. 281). Secondly, unlike other studies (Robins, 2011b, 2011a; Vinck & Pham, 2008), an inverse relation between high economic capacity and education levels of victims and socioeconomic demands was not conclusive. While, not surprisingly, those with low economic conditions prioritized measures to improve their living standards, the same was true for those financially secure with higher levels of education. Likewise, among the minority that did not prioritize socio-economic issues, participants with very precarious conditions were also found. These results, which coincide with others found in another study in Colombia, indicate the need to be cautious about the generalizations that the socioeconomic status necessarily predisposes the nature of survivors' demands (Rettberg, 2008a).

Finally, the available data did not allow me to identify why a small number of participants in both regions did not prioritize socioeconomic needs. To the extent that participants with

different socioeconomic conditions (including those with a good standard) and demographic characteristics and victimization events were found within this group, it was not possible to establish differential factors to explain why their responses were different from most of the participants.

*"The most important thing is to stop the war and not repeat it"* [85]

The fieldwork of this study was carried out at a particular conjuncture: the signing of the FPA and the first year of its implementation. Thus, the data clearly reflected strong feelings and perceptions associated with this time in history. In Catatumbo, an atmosphere of "tense calm" prevailed. While more than 700 FARC men had begun their demobilisation process in the region, the population did not trust the whole process. Although they felt a sense of hope, they knew that the situation could get worse. In MMa expectations were higher. They had been in a so-called post-conflict period for more than ten years. However, uncertainty about the renewal of intense violence was evident during the fieldwork.

In both regions, the victims expressed their anxiety. In Catatumbo, one of the predominant concerns on their minds was related to the emerging disputes over illegal economies and the militarization of the region. In MMa, perceptions of insecurity were more related to the memories of war and the possibility that violence would be unleashed again. Against this background, an important number of the victims considered security and/or non-repetition as the main responses to past violence. The results in Catatumbo were expected and consistent with other studies in ongoing conflicts (Pham et al., 2005; Vinck et al., 2008). In MMa the findings were less clear. To the extent that this region had substantially improved in terms of security, it seemed counterintuitive to encounter these perceptions. However, this fear, understandable in and of itself, also has a solid logical basis: the memories of the brutality of the war, the emergence of new violence and the persistence of the causes of conflict contributed to people fearing that violence could return.

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[85] Interview 39, male

*" We have not had a day to heal our souls"* [86]

> *"The war has collapsed the victims' projects, dreams, beliefs and condemned them to loneliness, silence, uprooting. War has taken away the possibility of doing what they know and living as they want, plunging them into dependence, frustration and shame"* (Bello, 2015).[87]

The above description of the emotional impact of the war properly captures some of the feelings expressed by a large part of the interviewees. In both regions, those measures to mitigate the emotional effects of war were a priority for one out of five victims in both regions. The traumas of the violence of the past and of the present were living memories in the everyday lives of the participants. This figure may seem low given the enormous psychological damage caused to war-affected populations (Subsection 1.2.3). However, if one considers that access to psychological support has been precarious, the victims were not expected to demand it (Vinck et al., 2008, p. 55). Similarly, and again applying Maslow's theory of needs, when the primary needs of victims, such as food, health, and safety, have not been met, psychological healing is no longer urgent. Nevertheless, after hearing the traumas of the survivors on a daily basis, several public officials have concluded that "emotional support is one of the things that victims need most" (interview 63, male).

*"When one is in his land, the soul rests"*[88]

The state of the conflict significantly affects the victims' responses in both regions regarding their expectations of returning (and beginning restitution proceedings) to their lands. Although displacement and land dispossession were the most common victimizing event in the sample, 23% of the victims in MMa mentioned their willingness to return and regain possession of their lands as key measures to redress past harm, while in Catatumbo, only 7% did so.

What explains these results? The persistence of violence and the precarious economic conditions in the places of origin have been associated with the decision of the displaced not to return. A study in Colombia found that only 11% of displaced persons wanted to return due

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[86] Interview 6, female.
[87] Translated by the author
[88] Interview 113, male

to the fear of being victimized again and to the poor conditions in their places of origin (Arias et al., 2014).[89]Although this did not mean that displaced people had better conditions in the current places, they preferred to "postpone the return until peaceful conditions [were] restored" (Fagen, 2011, p. 10). Indeed, and as evidenced in Catatumbo, the victims had chosen to face the severity of life in urban areas, rather than return to the countryside where their lives were constantly at stake. In MMa, although a significant number of respondents remained in the place of reception, an equal number have returned with state support or on their own. For the latter, the improvement of security was one of the main reasons to do so.

Where are the victims' rights in this account of the survivors' priorities? While participants effectively mentioned non-repetition and the right to reparation (some components), the rights to truth and justice represented only a small proportion in the preferences of the victims in both regions. However, instead of assuming that war-affected people were not interested or rejected these rights, this investigation inquired about the participants' perceptions in order to understand whether this was the case or whether there were additional explanations. Similar results were found in Catatumbo y MMa.

## 8.1.3. What about truth and justice?

The question of truth and justice must be understood in a context in which these rights have been historically denied, not only within the recent TJ frameworks, but also in the Colombian traditional justice system (CNMH, 2018a, Chapter 3; CSML, 2016a). It was not a coincidence then that when the participants in both regions were asked about the suitability of justice and truth to address the violence of the past, the vast majority expressed their disbelief.

Drawing closely on the data from survivors in both regions, the following conclusions are proposed. Overall, the participants in Catatumbo and MMa had similar perceptions about what justice and truth meant. Regarding the former, the data indicated great support for retributive justice, while much less for a restorative approach in both territories. Concerning the right to the truth, the respondents in Catatumbo and MMa were roughly evenly divided between those

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[89] In Afghanistan, Iraq and Kenya, similar results were found (Fagen, 2011; Robins, 2011a).

who believed that the truth was a necessary right for their recovery and those who expressed disbelief, fear, apathy and a desire to forget and move on.

Thus, despite the different ways Catatumbo and MMa have experienced the war/peace and TJ mechanisms, perceptions of truth and justice differed little across regions. Two exceptions, however, need to be highlighted. Possibly showing greater distrust in justice institutions, in the former a greater number of participants favoured divine justice compared to the latter. In MMa, there was also a lesser desire to forget compared to Catatumbo. Different reasons can explain this variation: security improvements and greater influence of TJ discourses.

An important question that emerges is: Why have the basic principles of TJ been excluded in the preferences of victims in both territories, despite the differences between them? An important issue that, as already mentioned, was repeatedly raised by the participants was the historic dysfunctionality of the justice system in Catatumbo and MMa. Thus, it could be argued, that the victims "really would desire the full transitional justice menu if they believed they had a fair shot of actually getting it…" (Nee & Uvin, 2010, p. 166). Another factor that explains the absence of justice within the priorities of the victims is related to the primacy of primary needs over other demands (Maslow's hierarchy of needs) (Subsection 1.1.2). Thus, it seems that more than a lack of interest or reluctance to pursue justice or an unfamiliarity with a language of rights (Aroussi, 2018; Millar, 2010; Robins, 2011b), the problem lay in the non-satisfaction of the most imminent wants of war-survivors in both regions.

On average, for the research participants, justice and, to a lesser extent, truth were seen as important rights for their recovery. The point is that, while victims continue to suffer from the pervasive threats of indirect and direct violence, other rights will necessarily fade into the background. It may be that this order of importance will change after the everyday challenges of post-conflict settings have finally been addressed.

Does the above mean then that truth and justice are also victims' priorities? There can be no assurance that this is the case. That the participants in both territories only referred to these rights when specifically questioned about them creates doubts about whether they are important as a way to redress the past. What can be said is that the vast majority of the survivors gave priority to those measures that could address the impacts of different forms of harm: socioeconomic, psychological and human security. In the case of MMa, the return and land

restitution were also part of the victims' TJ agenda. The questions remaining now are to what extent the national and international agendas of TJ are congruent with the perceptions of those they should benefit? These questions are addressed in the next section.

## 8.2. Comparison between the post-conflict justice agendas

The methodology used in this thesis has brought to the fore the voices of those who have remained marginalized (although the field claims otherwise) in the TJ top down processes, providing alternative understandings of their expectations. Although victims encompass multiple intersectional identities, the mainstream of TJ has assumed that their demands can be solved within a single dimension (victims' rights) (Butti & Leyh, 2019). However, in the everyday life of so-called post-conflict environments, the different forms of violence continuously experience by survivors generally fall outside the limits of their status as "victims of war" (Dixon, 2016, p. 88). This disconnection has been reflected in this project, in which most of the participants have chosen transformative solutions, instead of the normative responses of truth and justice, to redress the harm done to them.

As extensively elucidated through this thesis, the local understandings have not conformed to widely recognized normative claims about how victims want to leave a troublesome past behind. This section seeks, therefore, to sketch out these lacunae as well as some of the similarities between these levels. Before proceeding further, two caveats are in order. First, this section does not intend to engage in universalist versus cultural relativism, as it is recognized that local actors do not function entirely outside the national and international influence of discourses and praxis of TJ (Dunn, 2017, p. 75). On the contrary, as evidenced particularly in MMa, war victims have appropriated a discourse of rights. Secondly, to the extent that the participants' main priorities in both territories were very similar, regional differentiation among them will only be made when relevant.

### 8.2.1 The past vs the present and the future

A back-forward looking dimension, focused on the more perceptible legacies of violence and technocratic approaches, has prevailed in the international discourses and praxis of TJ. Accordingly, a comprehensive approach has been positioned in the TJ global framework as the

most appropriate treatment to impunity and deep national divisions. Despite increasing urgings to consider other victims' social identities (economic marginalization, age, discrimination) in the TJ purview (Aroussi, 2018; de Greiff, 2012; Rooney & Aoláin, 2018; Weinstein et al., 2010), its current international practice continues to oversimplify these complex intersections under the victim category (Butti & Leyh, 2019). In this line, contemporary internationalized TJ continues to focus on a set of central and legal institutions (Macdonald, 2019; McEvoy, 2007; Robins, 2011b, p. 23). Truth and justice institutions, and to a lesser extent reparation programmes, remain the dominant mechanisms of TJ (de Greiff, 2014; Olsen et al., 2010a; Sikkink & Walling, 2007), regardless of whether they are what local populations demand and their impact continues to be, at best, non-conclusive (Macdonald, 2013; Mendeloff, 2009; Thoms, Ron, & Paris, 2010).

In contrast to the narrow and primarily prosecutorial approach to justice, a forward-looking and broad dimension stood out in most of the participating victims' preferences (Chapter 6 and 7). This did not mean that the survivors decided to forgive and forget (although some said they had done so) or that backward-looking measures did not play a role. In fact, reparative measures such as emotional healing and return/restitution of lands were also highlighted by the participants. However, most of those met in this study based their desires on a broad conception of justice very close to what is understood positive peace (Galtung, 1969; Galtung & Fischer, 2013). The greatest disconnect was found among the conventional assumptions of truth and justice as the preferred responses of victims and what they considered meaningful to deal with and recover from mass abuse: to improve their everyday lives.

As explained above, the everyday lives of war victims in these complex environments were highly conditioned by shared situations of the long-term effects of victimization experiences, socio-economic marginalization and the impact and remnants of the armed conflict (Gready & Robins, 2017, p. 957). While at the conceptual level, the state's obligations and responses to each of these dimensions can be discerned (development policies; reparation programmes) (de Greiff, 2014, paras. 60–61; Uprimny, 2009), this division can be extremely difficult in the rough terrain of post-conflict societies (Dixon, 2016; Laplante, 2007).

The foregoing does not necessarily imply that there is no relationship between the TJ global principles and the expectations of its supposed beneficiaries. When respondents expressed their views on the role that the pillars of TJ could have in their recovery from mass abuse, a

significant number of them ended up coinciding with several of the postulates of the international accountability agenda. Firstly, obtaining justice was seen by most of those met as a necessary response to relieve the pain they had suffered. While, high levels of support were found for retributive justice to prevent the repetition of violence, others said that a restorative approach to justice could help to promote peace. A second similarity found between the global and victims' agendas regarded the subject of truth. Almost half of the participants stated that in order to forgive and move forward it was necessary to know the circumstances of the crimes. A final similarity with the central paradigms of the field, already mentioned, referred to certain reparation measures and guarantees of non-repetition as key responses to advance the question of the past.

However, the above data cannot be conclusive regarding a high degree of coincidence between international approaches to post-conflict accountability and local demands. Firstly, as mentioned above, the fact that victims' rights only arose when participants were specifically asked about them, casts doubt on whether these were really considered priorities. Secondly, there were also large gaps between micro narratives around justice and truth and those established in the TJ global agenda. For instance, a religious and social meaning was also given to justice. Likewise, almost half of the participants from both regions expressed their disbelief, fear and apathy towards truth-seeking measures. One out of every three participants emphasized an individual truth related to the circumstances of the crimes, rather than the macro truth generally prioritized by TJ global praxis (Chapman & Ball, 2008). Third, although most victims demanded prosecution, a small group said they were willing to compromise criminal justice for the sake of peace. An unthinkable approach, at least theoretically, under the current climate of international accountability (Orentlicher, 2007).

Finally, although the right to reparation was a point of agreement between the victims and the global agenda, a closer examination also reveals their distance. On the one hand, although the right to reparation should cover human rights violations, in the limited number of international and national experiences, it remained constrained to "a few civil and political rights, those most closely related to basic freedoms and physical integrity, leaving the violations of other rights largely unrepaired"(de Greiff, 2014, para. 26). For the participants, the right to redress had a broader meaning, which included not only what was destroyed by war but also fulfilling the state' historical debt. In other words, a broad understanding of peace. On the other hand, the

data challenge another global assumption: symbolic reparation measures were virtually ignored by participants.

## 8.2.2. *Negative vs Positive peace*

This section compares and contrasts the current TJ agenda in Colombia with insights drawn from ethnographic research in two war-affected areas. By engaging with people's everyday lives in alleged transitions and taking distance from the axiomatic TJ assumptions, the results of this projects may seem outrageous to TJ advocates. However, the victims' expectations have arisen from the innumerable violations experienced at different times and dimensions, which have been merged and intensified in their daily lives. Thus, the survivors' demands have necessarily coincided with an understanding of peace, where not only visible violence ceases but the social structures that have perpetuated it are transformed. On the basis of the victims' top priorities, it can be argued that the dominant discourse and praxis of TJ at the domestic level have very little relevance, at best, in four main ways.

Firstly, the TJ domestic infrastructure has been overdominated by a restorative and, to a lesser extent, retributive understanding of justice, giving significant priority to centric judicial and extrajudicial mechanisms. From this point of view, the current post-conflict justice systems (JPL and CSTJR) have focused on past-conflict-related harms, limiting their scope almost exclusively to the overt dimension of violence and civil and political human rights violations. From the other end, war victims' expectations were based on a broader approach to justice: social justice/positive peace. But more than a preference of socioeconomic over political and civil rights, or of positive peace over negative peace, for the majority, the dimensions were closely related. Likewise, these demands, beyond the satisfaction of material needs, had a sociopolitical content. The interviewees saw their claims as tools to address structural violence.

From the above scenario, the second difference between the TJ domestic agenda and the victims' desires emerge. While the former seeks to preserve a conservative approach of TJ, in which the economic and social structures are maintained to avoid unleashing the elites' opposition, the latter aim precisely to progressively challenge the economic and political order that allowed and continues to allow the violations in the first place. Particularly in the case of the FARC peace process, even though this guerrilla group, as well as the victims involved in

the channels of participation during the peace process, demanded an expansion of the scope of the post-conflict accountability measures to include the social and economic harms of the war, the government ended up imposing the orthodox understanding of TJ .

A third significant difference between micro and macro agendas of TJ refers to the right to the truth. Accordingly, while the need to clarify the truth has been represented by official discourses as "one of the greatest wishes of Colombian society and of the victims" (GOC & FARC-EP, 2016, sec. 5.1.1.1 See also El Espectador, 2016b; OACP, 2018a, 2018b; Santos, 2018b), for the victims met in this study, it did not constitute a top priority. "[The victims] don't talk much about economic reparations, not even about justice. What they longed for was the truth… The truth of what happened in the war " (El Periodico, 2019).[90] Former President Santos' statement has not only become a taken-for-granted assumption in the internal context, but reflects the approach taken in the new infrastructure of TJ: " a lot of truth … and little justice" (Leon, 2015). Moreover, mirroring a global trend (and also for reasons of convenience at the local level) (Millar, 2011, pp. 520–521), the official discourses have increasingly focused on the need to have a shared vision of past events (collective memory) and less frequently on the need to clarify the facts of human rights violations (Acevedo, 2016; Gomez Isa, 2013). The establishment of the TCC (under the FPA) and its focus on a historical truth have been part of this narrative.

As mentioned, the right to the truth did not resonate among most of the participants. In Catatumbo, these right and truth-seeking measures were rarely mentioned because, as the Bishop of Tibu, affirmed, "*unfortunately, the truth in Catatumbo does not satisfy hunger. It does not help victims to get out of the precariousness in which they have been left by the war. People who lost everything ... will prioritize what helps them regain control of their liv*es."[91] In MMa, despite the fact that several judicial and extrajudicial processes aimed at clarifying the truth have been conducted, the truth was not raised by the respondents. When several of these participants were asked if their omission was due to the satisfaction of this right, the majority responded negatively. The following testimony reflects to some extent what many people stated,

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[90] Translated by the author
[91] Personal Interview

*"Here you live day to day. So, that truth that the paramilitaries didn't tell me, I'm learning to live without it, and it doesn't hurt anymore. But what hurts me is when children come to play and see that court [pointing an area full of mud]; when it rains, and the sewer does not work. That is a tangible reality…. It doesn't hurt my son so much not to know the truth. It helps me more that my son can come to play in a decent place"* (interview 113, male).

The fourth difference between the participants' understandings and the TJ national agenda was found in the scope of justice and truth (when the victims where specifically asked about these rights). Unlike the emphasis given to restorative justice and alternative penalties in the domestic infrastructure, most victims demanded effective and proportional punishments for those responsible for the violations. Many participants strongly criticized the lenient sentences established for the AUC and the FARC members. Even for those few who objected to prison terms for those who demobilized, exemplary sanctions continued to be essential for peace and non-repetition (e.g. non-participation in politics, no economic benefits). In relation to the truth, while only half considered that this right was important, the majority of this group gave it an individual dimension instead of a collective one. Pulling together these findings and comparing them with the TJ discourses and practices in Colombia, it is clear that the restorative approach and the historical dimension of the truth preached by the TJ were poorly reflected in most of the participants' opinions.

Where this study found a higher level of correspondence between the participants' preferences and the national post-conflict accountability framework was in those elements that have a greater lag in practice: reparation and guarantees of non-repetition (CSML, 2019; Dajer, 2018; de Greiff, 2005, 2014, 2015; Segovia, 2006). Firstly, the innovative adoption of a transformative approach in the reparation programs established by the VRL brought the participants' expectations and the TJ agenda a little closer. As this approach seeks to change the conditions of poverty and the discrimination that most victims suffered before being victimized and aggravated by war, it matches with what a large number of the respondents called "to have a decent life". The victims' expectations and the components of the public reparation policy also coincided in the psychological care. Likewise, another component of reparation in which the participants of MMa showed their preference was in terms of return and land restitution processes, coinciding with the policies established in the VRL.

Secondly, the guarantees of non-repetition, although usually under other headings, were the second most named priority in Catatumbo and MMa, concurring not only with those provided in the TJ legal frameworks but with the conflicting parties' goals. On the one hand, although the scope of this right in Colombian legislation has been wide and diffuse, the participants focused especially on what Diane Dajer called the "hard core of non-repetition": the armed groups' demobilization and the end of the armed conflict (2018, p. 84). On the other hand, as explained extensively (Chapter 3), accountability mechanisms have been inextricably linked and integrated with the broader goal of enabling the fragmented transitions. Therefore, although the motivation of armed antagonists and victims to pursue the end of the conflict are certainly very different, in the end their goal is the same: to stop the war.

In summary, the international norms and the warring factions' interests have been decisive in the domestic TJ infrastructure. While certain understanding of justice (restorative), certain discourses (e.g. victims want the truth above anything else), certain rights (civil and political) and certain mechanisms (courts, truth commission) have been prioritized, others have fallen out of the public agenda (e.g. a broad conception of justice, redistribution of land, effective and proportional sanctions). Thus, the mainstream of TJ continues to assume that war survivors' needs can be satisfied with traditional and centric TJ institutions and legal reforms (Dunn, 2017, p. 73; Robins, 2011b, p. 227).

Here is a schematic summary of the comparison between the three levels.

| LEVEL | INTERNATIONAL AGENDA | NATIONAL AGENDA | VICTIMS' TOP PRIORITIES |
|---|---|---|---|
| **Main priority of TJ** | Accountability | Allowing the fragmented transitions (negative peace) | Positive and negative peace |
| **Main rights** | CPR* | CPR* | ESR** |
| **Truth** | Individual /Collective | Collective | Individual (not a top priority) |
| **Justice** | Retributive – Restorative | Restorative-retributive | Social Justice Retributive Justice (not a top priority) |
| Compensation | X | X | X |

| Reparation | Symbolic | X | X | |
| --- | --- | --- | --- | --- |
| | Restitution of land /return | X | X | X |
| | Psychological | X | X | X |
| | Transformative approach (ESR) | | X | X |
| **Guarantees of non-repetition** | | Institutional reforms | Implementation of the CSTJR and the FPA End the war | End the war |
| **Measures** | | TJ traditional institutions | TJ traditional institutions | Reparation, security measures and development programmes |

*Table 14 International and national TJ agenda versus the victim' main demands*

\*CPR: Civil and political rights

\*\*ESCR: Economic and Social rights

A look at this comparison can give a glimpse of important levels of coincidence, for example, regarding reparation, non-repetition and social and economic rights. However, the reality on the ground has proven to be more complex. On the one hand, the transformative approach to reparation has vanished in practice. Transforming the conditions of approximately seven million victims would necessarily imply structural reforms that go beyond dispersed and under-funded social programs (CSML, 2019). On the other hand, the post-agreement phase has shown that those measures established to impact the most war-affected regions established in the FPA have left out of the government's major priorities (Guitiérrez Sanín, 2018; Restrepo, 2019). Regarding non-repetition, although the AUC and FARC demobilization has been fulfilled in general terms, violence in the areas left by them has increased significantly and new outbreaks of violence have reappeared in so-called pacified areas

## 8.3. *Who to blame?*

Previously, a range of discrepancies between the TJ realm, both nationally and internationally, and the desires of war-affected populations were presented. These differences can be summarized in that, while a limited understanding of justice linked to the acts of violence that

preceded the transitions and a negative conception of peace have dominated the global and domestic post-conflict justice agendas, the participants of this research have focused on a broader approach to peace. As mentioned, recent comparative empirical studies have also noted these major discords in a variety of settings. In contexts such as Uganda, Sierra Leone, Nepal, East Timor and Northern Ireland, accountability projects "appeared if anything even more than distant, something rooted firmly in the formal mechanisms and institutions of international criminal justice rather than in the communities more affected by conflict" (McEvoy, 2007, p. 414).

Most of these studies, if not all, have blamed the prevalence of liberal postulates in the field and/or the historical marginalization of victims' voices in the configuration of TJ for the inflexibility of past-accountability models to address the wide range of victims' demands (Millar, 2010; Pasipanodya, 2008, pp. 389–390; Robins, 2009; Robins & Wilson, 2015; Vinck & Pham, 2008; Weinstein et al., 2010). However, these explanations, while important, only reflect part of the story. The politics of transitions of war-ending processes in the Colombian context offers a fresh insight to the oft-cited arguments to explain such gaps. A summary of these latter factors is presented first and then a complementary explanation to these assumptions is proposed.

### 8.3.1. *The liberalism of Transitional Justice*

A strong criticism has developed over the last fifteen years, challenging the main TJ assumptions for their lack of correspondence with the main expectations of those most affected by the violence of the past. That critique has mainly blamed the top-down liberal peace frameworks for such disconnection, to which TJ strategies are allegedly now closely linked (Gready, 2005; Robins, 2015, 2017, Sharp, 2012, 2018; Sriram, 2007). Thus, as the post-conflict justice mechanisms are based on the core values of the liberal paradigm (democratization, the rule of law and free markets), discussions about socioeconomic issues and deep transformations have been precluded.

Without making distinctions between the contexts, this literature has argued that these regimes choose (by persuasion or coercion) from a plethora of international models to address the past (Cavallaro & Albuja, 2008; Rubli, 2012). As these prototypes have usually been designed and

funded by external interveners, the TJ mechanisms mainly reflect Western values and institutions: prioritization of legal accountability and public acknowledgement, individual responses and a narrow understanding of justice (Sriram, 2007, pp. 588–591). As a consequence, these institutionalized interventions have been, according to these scholars, alien and distant to the vast majority of people who have suffered during and after the conflict (Robins, 2011b, 2015).

Two questionable assumptions arise from this critical scholarship. On the one hand, these and other studies often speak of TJ as an international intervention, in which external actors exercise great power to define and deploy standardized models of institutions based on a global (Western) consensus of justice (Gready & Robins, 2014, p. 342; Miller, 2008; Rubli, 2012, pp. 6–7). Underlying this assumption is the belief that the principles of liberal peacebuilding are imposed without any or little discussion with internal actors, including those negotiating the transition. A second presumption, usually implied, is that there is an alignment of the interests of the states with the international TJ frameworks. That is, in this literature, with some exceptions, the international and national arenas are taken as one. In this sense, both the particularities of the contexts and the nature of the transition have almost been completely ignored, as have the domestic elite actors who finally give way or block attempts at justice (McAuliffe, 2017b; Selby, 2013).

Consequently, an analysis based solely on the domination of liberalism, while explaining to some extent why certain discourses and institutions of post-conflict justice continue to prevail, evades the key question of the role of local dynamics and pragmatic political commitments in adopting and adapting a certain TJ model. This is where the analysis of the politics of transitions contributes to understanding the TJ configuration within the broader political contexts of peace negotiations. But first, the other long-held assumption to explain such disconnection is presented.

### 8.3.2. *The exclusion of victims from TJ process*

For decades, while survivors were portrayed as passive and homogeneous actors in peacemaking processes, their demands were relegated to the urgency of ending the conflict (Sanchez, 2015, p. 8). The last two decades have witnessed important normative developments,

which coupled with the growing visibility of victims' movements, have opened opportunities for survivors to complement/challenge official efforts to reckon with the past (Arias, 2010; Gready & Robins, 2017). Therefore, the need to promote survivors' participation in the configuration of TJ as a successful route to legitimacy and ownership has generated a broad consensus among the global network of scholars and practitioners (Andrieu et al., 2015, p. 10; García-Godos, 2016; Méndez, 2016; Triponel & Pearson, 2010, p. 131). Underpinning this participative reading is the argument that if victim participation expands, the hegemonic and institutional approaches of the TJs will be challenged, responding more appropriately to the highly contextualized demands of survivors.

However, to the extent that the victims' participation has been the exception and that its few experiences have had a marginal impact at best on the TJ practices at national and international level (Andrieu et al., 2015; Gready & Robins, 2017, p. 968; Jamar, 2018; McAuliffe, 2017b, p. 120), it cannot be assumed that higher participation levels would lead to better and more appropriate responses to the conflict-affected victims' needs. Nevertheless, the Colombian experience has become a beacon of optimism in the face of that uncertain scenario.

As explained earlier, the civil society has played a key role in the design-processes of TJ in Colombia (Chapter 3). That TJ today is part of the political and legal scenario, is largely attributable to the work that the national victims' movements along with other key actors have carried out in the last fifteen years (Arias, 2010). Firstly, during the AUC peace process, different organizations challenged the GOC impunity attempts, altering to some extent the official agenda of little justice, no truth and no reparation (Diaz, 2008; Saffon & Uprimny, 2007). Subsequently, and in a more constructive environment, the victims participated in the justice debates during the peace process with the FARC, and arguably, their proposals were the basis of the final agreement (GOC & FARC-EP, 2016, sec. 5.1; Ucrós M, 2016). Therefore, the participation of (some) victims and their organizations has meant better alignment of their main demands, based on the victims' rights, and the national and international core elements of TJ (Gómez Sánchez, 2014; Lecombe, 2010).

However, this world-renowned experience (De Waardt & Weber, 2019, p. 210) also makes an appeal to caution: victims' participation needs to be understood as part of a broader process aimed to end the conflict. Thus, the fact that the victims' voices were heard during the FARC negotiations, did not mean that their expectations took priority over the principal conflict

interests. As McAuliffe argues, although the factions may allow victims to participate "given their lack of coercive tools like arms, blockages or control of funds", the latter still have little influence on the former, let alone being able to convince them to make greater commitments (2017b, p. 121). The exclusion of socioeconomic responses within the FARC Victims Agreement despite being a repeated requirement in the participation processes, is an illustrative example. Consequently, the justice component in the FPA reflected those victims' priorities that were in line with the factions' interests and to some extent with international standards. The adoption of the JPL, with a high spectrum of impunity, also reflected the prevalence of the needs of the powerful.

Thus, despite the fact that the participation of victims and their impact on the configuration and positioning of the TJ in Colombia is today indisputable, this has not necessarily implied better and more appropriate responses to the survivors' urgent needs. Not to mention that in a context like Colombia's, where there are more than seven million victims, talking about a unique victim agenda may be too ambitious. In the same way, to the extent that the scripts and the dominant and predetermined structures of TJ continue to be the benchmark of the processes of institutional participation, it may be the case that "the subaltern largely remains unable to speak (or be heard) within TJ institutions or discourses"(Grewal, 2019, p. 618).

### 8.3.3. *The politics of transitions*

The international frameworks for victims' rights and the standards of accountability have become an essential part of the Colombian legal system (Rincón, 2010). Since the beginning of the peace process with the paramilitaries, and with greater legal and political strength in the FARC peace process, the human rights standards became a minimum nucleus of justice for the parties in the negotiations. However, and as explained earlier, the trajectory of the different stages of both peace processes (AUC and FARC) have reflected that although the international regulations operated as "virtuous restrictions" (Saffon & Uprimny, 2007), the content and the scope of the main TJ mechanisms were adjusted to the disputants' expectations (Chapter 3). Accordingly, the shape of accountability projects will have "is not decided in the abstract, but rather it is a contextual decision, influenced by what is perceived to be the key objectives and what realistically can be achieved with the resources the decision makers are willing or able to employ" (Magill & O'Connell, 2016, pp. 14–15). The "key objectives" will necessarily be

related to the final aim of peace processes: the achievement of a negative peace (Bell, 2017; Reed, 2017).

Despite the wide differences in both Colombian peace processes (AUC and FARC), since the beginning of the negotiations, the demands of the conflict elites became the parameters that determined the discussions and later on, the terms of the agreed accountability frameworks. The formulas used by the Uribe administration to achieve peace evidently showed that its main interest was to strike a rapid deal to take thousands of armed men out of the conflict and elude any discussion on state criminality (Kalmanovitz, 2010, p. 3; Lyons, 2010; Reed, 2010). Thus, the JPL, prior to the constitutional ruling, reaffirmed that, despite being "replete with rousing rhetoric about the rights to truth, justice, and reparation" (Reed, 2010, p. 108), the legal transitional framework was mainly a means to ensure the factions' interests: state impunity, maintaining the *status quo*, generous reductions of penalties, the AUC's swift reintegration and reduction of direct violence (Gómez Sánchez, 2014, p. 59; Reed, 2010).

The story of the Victims' Agreement during the FARC negotiations has often been portrayed as an innovative and successful balance between justice and peace (Ucrós M, 2016; P. Williams et al., 2018, pp. 448–453). As the agreement is full of provisions that emphasize the victims' centrality, the guarantee of their rights and commitments to reject impunity (GOC & FARC-EP, 2016), it is more complex to obtain a glimpse of its political dimension and the predominance of certain interests to ensure the transition. However, from a political negotiation perspective, the CSTJR should be understood as the result of a set of political trade-offs between "two losers"[92] who primarily sought to protect their main demands (Reed, 2017). On the guerrilla side, these were: "not a single day in jail," political participation, amnesties and no extradition. On the government side, its main concern was to ensure the fragmented transition, but also to guarantee criminal benefits for state agents, a minimum of justice for the guerrillas and exclude provisions which could affect the powerful actors' interest (Garay, 2016; Giraldo R, 2016a; Guitiérrez Sanín, 2018; Segura & Mechoulan, 2017, p. 9).

Consequently, that the TJ infrastructure at the domestic level has ended up leaving aside the multidimensionality of the human rights violations cannot be attributed exclusively to a global

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[92] This was the term used by García Peña, former high peace commissioner of Colombia, to refer to the fact that despite the Colombian government having had a great military advantage against the guerrillas in 2010, the latter had not been defeated and were still a key warring faction.

standardized international liberal project, nor the exclusion of the victims during these processes. Structural and direct violence will remain in the so-called post-conflict era because, on the one hand, far from being profound periods of transformation, these transitions are periods of rearrangement of the existing powers rather than of radical changes; and on the other, because precisely those negotiating the transitions, are those that will be affected if structural changes are implemented. A question asked by Franzki and Olarte and rarely answered by TJ scholars is: "why the societal actors that supported physical violence to secure economic interests would now subscribe to a societal consensus that puts their profits in danger [?]" (2013, p. 211).

Scholars and practitioners have increasingly begun to question the relationship between the proposed objectives of TJ and those defined by its supposed beneficiaries. Steering away from the narrowness of the field assumptions, these critical studies have found great dissonances between the standard global frameworks of TJ and the priorities of its intended recipients (Aroussi, 2018; Gready & Robins, 2014; Robins, 2017). This project has coincided with the main results of these studies. However, unlike most of these analyses, which focused largely on liberal postulates as being mainly responsible for such disconnection, this thesis has proposed a complementary factor that led TJ to being a distant and abstract response, at best, for victims in post-conflict settings: the domestic politics of transitions.

Therefore, in the Colombian context, the fact that the TJ infrastructure has not responded to the broad socioeconomic demands of the victims, nor to the promotion of transformative responses, has not only been the consequence of the external liberal paradigms of the field. Such disconnection has mainly been the result of the prevalence of the political interests of the elites during the transition processes, which have hindered the profound transformations to the existing political and economic orders.

## *Concluding remarks*

This chapter has tried to survey whether the TJ principles and practices, at the international and national level, accorded with what victims wanted in two regions severely affected by similar types of violence, but at different stages of the war. Several interesting outcomes that challenge the core paradigms and normative assumptions of the field have been found. Despite the great

differences between the Catatumbo and MMa regions, the challenges faced by victims in their everyday lives have brought them significantly closer. In both contexts, the participants' demands have revolved around the resolution of the daily contingencies, some of them with roots that date back to their historical marginalization and others as a result of the new challenges brought by the post-conflict era. These demands have been mainly related in both settings to what Comaroff and Comaroff call "the minima of a 'dignified' existence: clean water, housing, sanitation, medical care, basic income" (2012, p. 121) along with the need to feel safe and leave behind the memories of a violent past. In none of these contexts, have the standard TJ discourses and interventions had resonance among the participants.

Overall, what this study has found is that the mainstream of TJ did not echo the priorities of the research participants. It is not surprising then, that the victims were extremely disappointed with the TJ infrastructure (even if not necessarily mentioned under this name) as it failed to capture their everyday realities and the different faces of violence. Three overall differences among these levels have been highlighted. Firstly, victimhood has become the main identity on which the official TJ agenda has focused its attention, unifying under this condition the various contingencies experienced by victims in post-conflict settings. Although in the case of Colombian legislation, other vulnerabilities of survivors have been recognized, these provisions are more isolated measures than part of a comprehensive plan to transform victims' complex realities. On the contrary, the participants, without denying their status as victims, have integrated other identities and conditions that have equal or greater weight in their daily lives (direct and structural violence). Therefore, their priorities have been aimed at impacting their different needs and rights as a whole.

Secondly, instead of completely rejecting the primacy of civil and political rights and the same TJ, the participants' call has been to put at least at the same level a broader understanding of justice. Although there has been a greater openness to recognize the need to link the TJ realm with the fields of development and security, the main responses to war victims, at the national and global level, continue to be on the violence of the past rather than on its continuation in different dimensions. Finally, one of the main disconnections found in this study was the marked distinctions made by the global and national TJ agenda between victims/citizens, reparation/social policy and their lack of practicality in the realities of the participants. In the everyday lives of most of the victims and where the human rights have been historically absent, survivors:

*"do not care if assistance is called "reparation", "development", "assistance" or "social assistance", their priority is to see children fed and educated and they understand that the state can do this as rectification for both the impact of the conflict and a history of exclusion…" (Robins, 2011b, p. 236).*

Important coincidences, on the other hand, were also found between the preferences of the victims met in this study and the global and domestic agenda of TJ. Non-recurrence and the right to reparation resonated significantly among the former. However, to the extent that these are the ones with the greatest delays, both nationally and globally, it is debatable whether these are part of the TJ national and international top priorities.

A final point has been discussed in this chapter to explain the great dissonance found between the global and domestic level and the participants' expectations. At the heart of this discussion has been the role given to the local politics where TJ institutions has been negotiated. On balance, while the dominant global discourses and practices of accountability have heavily influenced the Colombian formula, the political needs of peace are what have ended up defining its fine print. Thus, that the accountability agenda of the past has been based on a narrow focus on justice cannot be attributed exclusively to a global hegemonic liberal agenda, but to the political interests of powerful actors.

A question necessarily emerged from this chapter: could it thus be concluded that TJ is not necessary, and that efforts and resources should be focused on development and security programmes? This does not seem to be the approach adopted by most of the participants in this thesis. That the majority of those met in this study did not include the pillars of the TJ in their priorities does not mean that they were not relevant responses for those interviewed. The invisibility of TJ seems to be more related to the precarious socioeconomic and security realities of the victims. So as long as these are not resolved effectively, it will be complex for war-survivors to prioritize abstract rights that do not seem to have an impact on their daily lives. Moreover, if a group of participants, no matter how small, have endured unspeakable crimes, and knowing the truth and obtaining justice have been prioritized as appropriate measures to address the past and the present, then these rights must remain a priority in public agendas.

# *Conclusions*

## *An overview of the main original contributions*

Despite the great boom in TJ literature in the last decade, and particularly in the Colombian experience in recent years, the academic debate is still insufficient in four related ways. Firstly, the victims' voices have remained absent from academic writing. However, as Brewer *et al*., assert, it has been an "absent-presence", meaning that although victims are constantly mentioned by scholars and practitioners, they are rarely heard directly (2018b, pp. 1–2). The second gap in the literature is the narrow framework in which the victims' demands are understood. Therefore, although there are some studies that have been based on the war survivors' perspectives, they have been driven by preconceived categories of their rights (justice, truth and reparation) and the violations they have experienced (violations to civil and political rights). Thirdly, to the extent that it is assumed that the survivors' preferences coincide with the victims' rights, the relevance of the latter in the eyes of the former have rarely been questioned. Finally, even when studies have recognized a discrepancy between the macro agenda of TJ and its alleged beneficiaries' perspectives, the political processes in which truth and justice institutions have been negotiated have been overlooked.

Considering these limitations in the literature, I have posited the main research question, which along with conducting ethnographic and participatory research in two conflict-affected regions, has contributed to expanding the understanding of the victims' preferences and their dissimilarities with the international and national agendas of TJ. The main question that has guided this research has been: *To what extent do the TJ agenda at the local level (referring to a group of victims) coincide with those established at the domestic and global levels?* Three questions arising from the main research inquiry have been addressed first.

Regarding *question (i)*, *the content of the international agenda of TJ*, this thesis has presented its key elements in Chapter 2, which although still hotly disputed, even the most sceptical of these practices have recognized them as part of the accountability global framework: i) an understanding of justice restricted to civil and political rights; ii) the rights of victims as the main response to confront the past; iii) the TJ tool-kit implemented in a holistic manner; iv) emphasis on retributive justice and acceptance of restorative mechanisms; and v) the

participation of victims in TJ processes. The main argument here is that even if the contexts where TJ is now applied have substantially changed, the main tenets of TJ remain in place. This is nowhere more true than in the current TJ infrastructure in Colombia.

The *(ii) question - the main elements of the post-conflict justice infrastructure*, has been addressed paying special attention to its political dimension (Chapter 3). The representation of TJ given by the top peace negotiator during the FARC peace process summarizes the approach taken in this thesis. Referring to the TJ debates that emerged during the peace talks, the official compared them with the "short blanket syndrome:[93] "[i]n transitional justice, the same thing happens: a formula that responds to guerrilla interests can leave the army out. And if you benefit the latter, human rights NGOs will protest. If you touch the paramilitaries' political friends, the right-wing parties react. And if you affect the structures close to the guerrillas, it is the left-wing that growls" (de la Calle, 2019, p. 97).[94] This account clearly reflects the process of shaping TJ projects: a political struggle driven primarily by strategic considerations of power and political expediency (Bell, 2017). As evidenced before, the Colombian TJ structure has not been solely the outcome of an international imposition, but the result of highly divisive political disputes and domestic elite political manoeuvres, in which the interests of the most powerful have been privileged (Diaz, 2008; Garcia V, 2014; Gomez Isa, 2010; Gómez Sánchez, 2014; Reed, 2017).

Thus, integrating studies from transitology and critical studies of TJ and peacemaking literature, this study has exposed the politics of transition in the post-conflict justice processes in Colombia in the last two decades. This analysis allows us to go beyond the traditional TJ literature that generally overlooks the prominence of domestic end-of-war dynamics, where the terms of TJ measures are negotiated. The recognition that TJ processes are the result of political disputes and that the balance of power, as Michael Reed claims, does not make them good or bad (2017), but it allows us to understand that, despite the fact there is a broad discourse on the centrality of victims in the post-conflict justice practices, what has ended up prevailing on the Colombian scene has been the political interests of a few.

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[93] The short blanket syndrome refers to the comparison made by a football technical director in the 1960s: "Football is a short blanket. If you cover your head, you uncover your feet; and if you cover your feet, you uncover your head." (Lucht, 2014)

[94] Translated by the author

I addressed a third question: *What are the appropriate means to confront the past according to those who have experienced violations in two Colombian war-affected regions?* (Chapters 5 and 7). The ethnographic methodology has attempted to capture the preferences of 130 victims as an alternative to the isolation and exclusion that they tend to face in conflict and post-conflict settings. Despite the fact that the Catatumbo and MMa regions have common elements (severely affected by the armed conflict and the historical abandonment of the state), they have differences in three aspects considered influential in the victims' preferences: the stage of the war, exposure to the TJ institutions and the type of interaction with armed groups (Chapters 4 and 6).

The data suggest that, on the one hand, the progressive improvement of security in MMa (in contrast to the reality of war in Catatumbo) affected the participants' responses as they expressed a greater desire to return to their land and/or to initiate restitution processes. On the other hand, the other two differential factors between these regions (relations with the war factions and their exposure to TJ institutions) were causally irrelevant in the victims' responses. Thus, despite the different ways Catatumbo and MMa have experienced war/peace, the participants' main concerns differed little across regions: having a decent life, a safe environment in which people could die of old age, and a present in which fears of being victimized again have dissipated. What explains the similarity between the participants' preferences from two regions with marked differences? The concept of the everyday and the different types of violence that this concept integrates have been proposed here as the answer to this question.

In this thesis, the efficacy of the notion of the everyday life and the different forms of harm it encompasses has been in its ability to render visible the multidimensionality of the victimhood and the survivors' needs. (Section 1.1). In particular, measures to counteract the impact of the structural violence prevailed in the victims' top priorities. Therefore, the everyday becomes a space where the effects of war (land abandonment, psychological trauma, physical disabilities) are mixed and aggravated by structural violence that is perpetuated, in post-conflict scenarios. (Robins 2011, p. 412).

The hierarchy of needs has also provided an alternative framework to understand why the underlying TJ assumptions were generally absent in the preferences of the participants. Therefore, instead of concluding that justice and truth were irrelevant to the victims, this theory

offers an alternative explanation. As, in general terms for the research participants, justice and truth were seen as important rights for their recovery (when specifically asked about them), the absence of these rights in their top priorities seemed to be due more to the non-satisfaction of their most imminent needs. Thus, as victims continue to face widespread threats of indirect and direct violence, other rights will necessarily fade into the background (Vinck & Pham, 2008, p. 404).

What the participants shared in this research should not only be seen as demands aimed at solving their personal situation. What the victims have expressed is the need to alter those structures, or what has been understood as a positive peace. Consequently, the results of this study have revealed that when the main beneficiaries of truth and justice policies were allowed to articulate their demands, the agenda that emerged was qualitatively different from that established at the international and national level. The data suggest that widely accepted assumptions about victims' priorities, based on the victims' rights, generally have little empirical basis. Participants generally did not share the axiomatic TJ assumptions that justice and truth were the primary and unique response to overcome a violent past.

However, there were two points of coincidence between the micro and macro levels: guarantees of non-repetition and reparation. With regard to the former, victims warring factions, as well as international standards, agree that the best way to ensure that violence does not recur is to stop the fighting. Does this mean that the victims were willing to sacrifice their rights to justice and truth in order for the war to stop? [95] I cannot answer this question. However, in a context like Catatumbo, victims would probably agree to at least postpone the search for these rights in order to achieve a negative peace. Regarding reparation particularly in its component of rehabilitation (psychological care) and restitution (return and restitution of land) another point of agreement was found between the three levels.

I addressed a fourth question: *Why do such gaps prevail in the field?* Most scholars have identified the liberal foundations of the field and the exclusion of the main beneficiaries in the TJ configuration process as the main culprits. Without disregarding the impact of these factors on such gaps, this thesis has focused its attention on the domestic processes where the terms of

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[95] This question was only included in some interviews. Therefore, an overview of the victims' perspectives in this regard cannot be provided.

the post-conflict accountability institutions are usually defined: the peace processes. The argument here is that the failure of TJ frameworks to address the main victims' demands lies primarily in the powerful domestic actors negotiating the transition. The analysis of the politics of transitions in the Colombian context (Chapter 3) has made clear that the TJ agreements, although increasingly altered by international standards, continue to respond to the needs to a negative peace. This means protecting the main interests of warring factions (political participation, distribution of power, lenient sanctions, preservation of the *status quo*) and minimizing the risks of spoilers jeopardizing the transition.

Consequently, the results of this study make five main contributions to the theory and practice of TJ and also to the broader field of peacebuilding. Firstly, based on their own understandings and experiences, this project has broadened the comprehension and relationship between the realities and the demands of victims living in so-called post-conflict settings. Thus, considering not only their experience of victimhood, but also the complex interplay between direct and structural violence, between the past and the present, that converge in their everyday lives, the findings of this work provide an alternative conceptual framework (the everyday and its dimensions of violence) to the usual studies.

Second, being the first study in Colombia to compare the expectations of victims (from a broad perspective) in two different war-affected regions with the macro priorities of truth and justice institutions, this thesis has confirmed the absence of the fundamental principles of TJ on the agendas of those living with the legacies of mass violence. It was revealing that most victims did not see, in a strict sense, the TJ core paradigms as the best way to confront the inheritance of human rights violation. Thus, while TJ was invisible in most of the participants' narratives, structural violence and the threat of direct violence were the main drivers in defining their demands.

The third contribution of this study has been its broad understanding of TJ. In this thesis, and particularly in the Colombian context, TJ has been conceived as the result of political commitments to allow the fragmented transitions. In this sense, this thesis has opened the door to investigate post-conflict justice projects as processes that, far from being exclusively the response to international standards and the demands of victims, have been instrumental to the main objective of ending the war. Thus, the fact that the domestic TJ agenda in Colombia has had a limited impact on the victims' expectations does not mean it can be solely understood by

the liberal hegemony of the field or their exclusion from these processes (in Colombia this is a highly debatable issue). As this thesis has explored, the politics of transitions (that is the domestic politics of peace processes) has contributed significantly to determining both the elements that are included and those that are excluded in the institutions to face the past.

The fourth main contribution to the TJ and peacebuilding fields is the use of a mixture of ethnographic and PAR methodologies. Going beyond traditional qualitative methods, I attempted not to just assume the role of a researcher who observed and took notes. Spending a relatively long period in each region and adapting my work to the agendas and priorities of the territory, allowed me to have a more realistic vision of the regions' realities. It was especially useful, to dialogue with, as well as observe, the communities in their everyday lives in an honest and transparent way. My relationship with them was not based solely on my academic interests, but on seeking ways (albeit in a very limited way) to contribute to their strategies of transforming their realities. This approach gave a special ethical value to my fieldwork. It was not a one-way relationship in which I benefited from the participants' knowledge. On the contrary, it was a scenario in which the researcher and the researchees interacted in an attempt to solve their daily problems and dilemmas, in which the researcher joined as a volunteer, as an advisor, as another worker to serve the communities.[96]

Finally, how could this study contribute to understanding the needs and demands of war survivors? To answer this question, the Colombian context must be considered. The armed conflict in Colombia has spanned at least 60 years of its history; it has had multiple armed actors and it has directly affected almost 20 percent of its population, especially those already facing deep inequalities and widespread poverty. These characteristics cannot be ignored when it comes to understanding the victims' preferences. For them (at least for those who participated in this study), solving their past is not only based on punishing a member of an illegal group or finding the truth but also addressing the different impacts that the past and war continue to have on their daily lives. In other words, bringing the impact of the past into "present value." Consequently, if I had to leave a single message of this thesis to academics and practitioners, it would be this: try to understand and seek ways to address the victims' expectations, it is necessary not only to look at their past but also at their present.

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[96] While the results and impact of the actions taken in the concerned contexts were modest compared to the needs and demands of the victims, it is expected that they would show the potential of taking such an approach.

Generally speaking, this study has confirmed my main initial assumptions: a stark discrepancy between the macro TJ agenda at the international and national levels and the preferences of those who are the alleged main beneficiaries of these policies. However, my conclusions are only related to a particular point in time, to the victims who participated in this project and, to a certain extent, to the region where they live. These and other limitations are addressed in the next session.

## *Limitations of this study*

The study has found some important limitations. Firstly, considering that the project has focused on two regions and on a small sample size of victims, it cannot be stated that the study is a national representative sample of the target population. Since the intention was to conduct one-to-one in-depth interviews and capture the victims' perspectives beyond the assumptions of TJ regulations, large samples and quantitative methods were considered inadequate. However, although generalization is not possible, this study can serve as a basis for other researchers, who, taking into account the particularities of the contexts studied here, "can make informed decisions about the applicability of the findings to their own or other situations" (Walford, 2001, pp. 154–15). Despite this limitation, the given regions, Catatumbo and MMa exhibit many characteristics similar to other contexts affected by war, including the prevalence of direct violence, high levels of poverty, unsatisfied basic needs and land concentration (CNMH, 2017a). Therefore, these characteristics make it likely that in other post-conflict scenarios, similar findings will be found with respect to the preferences of the victims, which makes the outcomes of this investigation relevant to other transitional scenarios.

The second limitation refers to the over/under-representation in the sample of certain groups, human rights violations, socioeconomic conditions and type of offenders. Although it was sought to include participants with different characteristics, due to the regions' characteristics and the very reality of the effects of the war, this was not always achieved. Firstly, in relation to socioeconomic conditions, most of the participants were in a precarious situation. However, this largely reflects the reality of victims in Colombia. Without ignoring that there are war-victims who are economically stable, most of those affected in Colombia are characterized as poor (Prieto, 2012, p. 536; Rettberg, 2008b, p. 13). Second, the experience of victimization

was forced displacement, and the perpetrators that prevailed among the participants were the AUC's victims. These proportions also reflect the national patterns of the armed conflict..

A third limitation of this study is that its conclusions are temporary insofar as they represent a specific moment in the lives of the victims (Macdonald, 2013, p. 60). Therefore, this project, unlike longitudinal studies, fails to capture how survivors' attitudes can change over time in response to different political and economic developments (Backer, 2010). However, one of the few longitudinal studies conducted in Uganda in 2005 and 2007 to identify victim' preferences found that demands related to basic needs and livelihoods had not changed despite key changes in the political environment (signing of the peace agreement) (Pham et al., 2005, 2007). This shows that, to the extent that socioeconomic rights are not guaranteed, it is highly likely that they will continue to be the victims' priorities.

Finally, I consider that, although not necessarily a limitation, this study lacks concrete proposals to address the great distance found between the victims' claims and the TJ frameworks. Other studies have posited a victim-centred approach (Robins, 2011b, Chapter 10, 2011a; Vinck & Pham, 2008), or have proposed to extend the already saturated mandate of TJ to economic justice (Arbour, 2007; Gready, 2005; Miller, 2013; Robins, 2009; Sharp, 2013). However, this thesis does not choose these popular paths, as they tend to ignore the vagaries of post-conflict scenarios. On the one hand, even if a progressive system for victims' participation in justice-seeking measures were to be established, a greater degree of involvement of victims could not guarantee the transformation of the root causes of violence given vested interests of powerful actors and the large scale of inequality in countries emerging from conflict (Colombia is an illustrative example). On the other hand, most of the literature overlooks the fact that, even if the normative limits of TJ were expanded, the local forces that have benefited from inequality and violence and are in charge of negotiating the terms of transitions would not jeopardize their interests for the benefit of the majority (the Colombian TJ path also illustrates this case clearly).

Does the above mean that the continuation of the precarious conditions of millions of victims must be accepted? Or that according to the results of this and other studies, truth and justice initiatives should be postponed until the economic and physical security of war-survivors is guaranteed? These concerns are addressed in the next section.

## *Recommendations*

After presenting the details of this research, it is important to now ask the question, as several research participants asked me at the time: What are the results of this research for? Of course, all research efforts have an academic impact: the production of knowledge. But beyond this abstract impact, I would like to make some broad recommendations.

Firstly, the three axes of TJ are crucial (and mandatory) to confront decades of violence. There should be no doubt about this. The fact that several of the participants, even if few in number, considered it a priority to know where missing husbands were, to know why brothers and fathers were murdered, and to obtain justice for destroying a lifetime of work, is sufficient reason to continue pursuing these goals. However, although the victims' rights are essential, they are not sufficient to address the innumerable contingencies and structural problems that characterize the lives of victims. It is not possible to continue responding to those living with the legacies of mass violence with the establishment of a court (which few victims will have access to), a truth commission (whose report few will read) and with isolated measures of reparation (which solve the victims' needs only temporarily).

However, the proposal to expand the limits of TJ to encompass socioeconomic damages and structural violence seems unlikely in the Colombian scenario. On the one hand, the establishment of a complex legal and extrajudicial system of TJ in the FPA, preserving the most conservative elements of this field, demonstrates that this initiative has few possibilities. On the other hand, that most victims remain in poverty today demonstrates that the transformative approach to reparation has only had a modest impact in practice, at best. In that context, the recommendation is to expand the range of responses to victims (through development and security programmes) to include measures that combat exclusion, poverty and different types of violence. [97] Coordinated implementation between TJ measures and development programs could be an alternative to achieve the improvement of the victims' living conditions, although being aware of the great limitations that traditional truth and justice institutions have (Duthie, 2008, p. 299; Waldorf, 2012, p. 180)

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[97] Although this was the approach in the FARC peace agreement through the rural development and substitution programmes for coca crops, the problem has been that these components present the greatest delays in the implementation period (El Espectador, 2020; Instituto Kroc, 2018). Discussions about victims have focused on the establishment of remote and extensive TJ institutions

Secondly, it is necessary to recognize the political nature of TJ and the purposes it seeks. If it is understood that the TJ infrastructure has been designed primarily to allow the transition, it will be possible to understand why its institutions are insufficient to satisfy the demands of the victims. This does not mean affirming that the TJ institutions do not benefit the victims. Land restitution, for example, is a clear example of the positive impact of these projects. As found in this thesis, this measure was recognized by victims as one that could generate tangible transformations in their realities. With regard to the third recommendation, it is necessary to privilege measures that can affect the lives of victims, such as land restitution, productive projects, access to housing subsidies and the expansion of health and education coverage.

However, this work has had a more descriptive and analytical approach. As mentioned, this thesis does not propose a new theory or regulatory changes to address the preferences of war survivors to deal with and recover from mass abuse. However, I consider that exposing and questioning for the first time in Colombian literature, the appropriateness of the rights of victims to respond to the demands of war-survivors is in itself a very valuable exercise.

## *Future research agenda*

This research has sought to contribute to a more context-specific analysis of the victims' demands, their realities, and their level of consistency with the macro-agenda of TJ. Based on the results and limitations found, five lines of research are proposed. Firstly, studies are required that combine qualitative and quantitative methods that examine what the victims' demands are in macro or national contexts. However, unlike studies that have been carried out (Fundación Social, 2009; García Arboleda, 2013; Rettberg, 2008b), it should not limit victims' responses to regulatory frameworks, but rather allow participants' demands to be articulated on their own terms.

Secondly, an analysis of the preferences of victims with stable or high economic conditions is required. Typically, related studies both in Colombia and internationally (including this study) have focused on victims that characterize post-conflict settings (with high levels of poverty and affected by exclusion). However, and recognizing the difficulties of interviewing these

types of victims,[98] it would be a valuable exercise to test the relationship between the highest socioeconomic level and the demands for justice and truth.

Thirdly, to the extent that extending the mandate of TJ to social justice is more an aspiration than a reality (McAuliffe, 2017), it is suggested that connections between TJ initiatives and development and security programmes should be sought. Although great advances have been made at the theoretical level (de Greiff & Duthie, 2009; Díaz, Sánchez, & Uprimny, 2009), there are still important gaps regarding empirical studies that allow us to identify how truth, justice and reparation initiatives have been complemented by, and have contributed to, the improvement of the living conditions of the victims (Macdonald, 2013, p. 361). A fourth proposed line of research is to address the particular needs of women victims. Although according to what was found in this research, in general terms no profound differences were found between them and men in terms of their main priorities, national studies have shown the particular and serious effects that women suffered during the war (Ávila & Paes-Machado, 2019; CNMH, 2011, 2018b). Therefore, researchers are invited to identify their particular demands from a gender perspective.

Finally, it suggests the urgency of a methodological shift away from the same ontological assumptions, directly involved with those who suffered the consequences of the war, to contextualized research that pays full attention to the heterogeneity and messiness of post-conflict contexts. Calling for a more interventionist approach, Phillip Darby argues that scholars and researchers: "need to go out into the world and to connect with the everyday" (2009, p. 700). Connecting with the everyday, however, means not only observing and being passive witnesses of what happens in the contexts under investigation, but "committing to practices that transcend writing and academia and make useful contributions to the local community" (Alcalde, 2007, p. 152). As privileged people who have received an education well above the standard level, we can put our knowledge and capabilities at the service of those who have generously decided to participate in our research

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[98] In my own experience, when in MMa I managed to contact several victims belonging to the upper economic classes. Most of them were reluctant to participate in an interview.

# *Appendices*

## *Appendix I Interview Scripts*

**Catatumbo and Montes de Maria Semi-structured research instrument**

### 1. *General characteristics of the interviewee's*

Place of origin, length of residence, occupation, age, organization membership.

### 2. *Socioeconomic status*

Which of the following needs do you think have not been met?

 i)  Adequate housing; ii) access to basic services; ii) employment; iii) adequate education of the victims or their dependents

### 3. *General perception of the country and the region and changes in the past 10 years*

- Why do you think the war started and when?
- Do you think that the situation of the region has changed in the last 10 years?
- What have been the major impacts of the peace process with the paramilitaries and the FARC?
- Do you feel safer now living in this region? Why?

### 4. *Victimization*

- Have you or someone in your family has been affected by war ?
- Do you consider yourself (a) as a victim of armed conflict or serious violations of human rights?
- Have you received any support from the government? What kind of support?

### 3. Priorities

- Do you know your rights as a victim?

- If you could prioritize three aspects to overcome or cope better with what happened during the conflict, which ones would they be?
- *(If the participant does not mention justice and truth):* You did not mention justice and/or truth, what do you think about those rights? Why you did not mention them? (when the participant did not mention justice and truth)
- How do you define the right to justice?
- How do you define the right to the truth?

### 5. *Participation in TJ mechanisms*

- Did you participate in the Justice and Peace processes?
- What do you think of this process?

### 6. *Peace process with the FARC*

- What do you think of the peace process and agreement with the FARC?
- Five points were included in the peace agreement: rural development, political participation, the substitution of illicit crops, disarmament and demobilization, and victims? Which do you think is most important? Which of these points is being talked about the most in the region?
- The parties to the conflict, the FARC and the government, have repeated that in the peace process and the respective agreement, that the victims have been at the centre. Do you think that the victims have been at the centre?
- Do you think that the victims participated in the peace process with the FARC?
- Have you heard of transitional justice? What is for you?

## Appendix II. Social Pastoral of Tibu projects approved in Catatumbo

| Approved Project | Main aim | Agency or Institution | Approved funding (approx.) |
|---|---|---|---|
| **Renovar Haciendo (2016-2017)** | Provide technical and social support to farmers included in substitution of coca crops programmes | Episcopal Action Adveniat (Germany) | US 50,000 |
| **Renovar Haciendo II (2018-2019)[99]** | Establish a Social Initiative Fund support to finance projects of grassroots organizations | The Swedish-Norwegian Fund for Support to the Colombian Civil Society (FOS) | US 250,000 |
| **Corredor Gran Alianza (2017-2022)[100]** | Establish local alliances for the improvement of the Gran Alianza Roadway corridor (113 Km) | UNDP | US 15,000 |
| | Improvement of the Gran Alianza Road | Howard Buffett Foundation/ Colombian National government | US 14 M |

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[99] More information https://foscol.org/2018/08/fos-visito-la-diocesis-de-tibu-renovar-haciendo/
[100] More information https://caritascolombiana.org/la-gran-alianza-incidencia-de-las-comunidades-que-se-convierte-en-un-corredor-vial/FPA http://www.portalparalapaz.gov.co/publicaciones/1283/fundacion-howard--g-buffett-aporta-mas-de-46-millones-de-dolares-para-vias-en-el-catatumbo/

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