

# The Impact of Human Rights Mobilization on Colombia's Justice and Peace Law

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## The Impact of Human Rights Mobilization on Colombia's Justice and Peace Law

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VERONIKA HOELKER, MAR 7 2016

### Contesting Transitional Justice in Transnational Times:

#### The Impact of Human Rights Mobilization on Colombia's Justice and Peace Law

##### Introduction

In 2003, the Colombian government led at the time by President Álvaro Uribe Vélez began what would become a highly contested and controversial process by formally engaging in 'peace' negotiations with one of the primary actors involved in the western hemisphere's longest internal armed conflict – the paramilitary apparatus. These negotiations came after failed attempts of the previous government to reach a peace deal with the country's oldest and largest left-wing rebel group, the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC). Uribe's policies entailed, amongst other things, a willingness on the part of the government to engage in negotiations with those irregular armed groups that agreed to a unilateral ceasefire as a precondition for entering peace talks (García-Godos, 2013), and built on previous legislation aimed at the termination of the armed conflict (García-Godos & Lid, 2010). After entering preliminary talks with Colombia's largest paramilitary group, the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*, AUC) formally signed a framework under which they agreed to demobilize by the end of 2005 (Díaz, 2009). This agreement, also known as the Santa Fé de Ralito Accord marked the beginning of a process that would eventually unleash waves of fierce criticism from domestic and international actors alike. Aside from questioning the degree to which the demobilization process was in fact a genuine one, critical observers also tapped into the discussion of how to deal with those paramilitary commanders that had committed grave crimes and who could not – as stipulated under the relevant legislative framework – be beneficiaries of pardons or amnesties (Guembe & Olea, 2006).

The Uribe administration's response to this question came in the form of a draft law proposed to Congress in August 2003, known as Draft Law 85 or Alternative Sanctions Law. As the latter title already suggests, this framework laid out the conditions for the suspension of prison times and envisaged a set of alternative penalties for individuals guilty of heinous crimes. Although not entirely absent from the proposition, the issue of victims and their rights was barely elaborated (Díaz, 2009). While in retrospect this seemed to blatantly fly in the face of international standards, it must be noted that politically speaking, this apparently highly permissive proposal was – or could have been – perfectly viable at the time (Carrillo, 2009). As a matter of fact, it was in line with previous attempts to end the armed conflict and was justified on well-established premises that would, as it was commonly believed, serve the purpose of reconciliation and peace. Nevertheless, the proposed draft law sparked a controversy that would stretch over a period of more than two years during which members of the international community, civil society, and various political and judicial actors intervened to contest and amend the design of a law that would later be known as Law 975, or Justice and Peace Law (Díaz, 2009). Eventually, key concessions were made on behalf of victims' rights, strengthening the key transitional justice notions of truth, justice and reparations.

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As such, the Colombian transitional justice experience may be said to exhibit characteristics that are indicative of a number of global trends that have considerably influenced the relatively young concept that transitional justice is. Recent changes related to the resurgence of international criminal law and the concomitant "internationalization" of transitional justice, for example, are increasingly trumping impunity for serious crimes (Engstrom, 2013) and thus affecting the course of actions that may be taken in transitional justice processes. Moreover, transitional justice today differs markedly from the experiences of countries such as Argentina or Chile, where the initiation of transitional justice processes came in the aftermath of regime change and not as a mechanism to negotiate the end of an internal armed conflict (García-Godos & Lid, 2010). In this respect, Teitel (2014: 14) observes that:

justice is being reconceptualized through a global politics of accountability, often in the context of weak rather than strong states, and beyond the primary focus on abuses of state power with evident implications for the transformative challenge. Accountability for past wrongs is being demanded in situations where there is no clear or consolidated political transition.

Regardless of whether or not the transitional justice project was successful in Colombia, it constitutes a pertinent case for analyzing changes and new dynamics inherent to contemporary transitional justice experiences. Transitional justice as conducted in Colombia evidences an evolution of the concept whereby it is indeed becoming a viable mechanism for the resolution of ongoing conflict – that is a form of 'negotiated transitional justice' – which enmeshes accountability measures and victims' rights (García-Godos, 2013; García-Godos & Lid, 2010).

In addition, within what Teitel (2014: 4-5) perceives as the "global phase" of transitional justice, there has been an increased involvement of transnational nongovernmental organizations and global civil society that has generated "a shift from a focus on state-centric obligations to a focus upon the far broader array of interests in non-state actors associated with globalization." Indeed, the work of NGOs and global civil society more broadly has frequently been credited with putting victims' and human rights on the agenda and catalyzing many of the changes made to the Justice and Peace law (Díaz, 2009). Hence, this paper seeks to analyze the law's evolution by drawing on theories of transnational human rights mobilization, transitional justice as experienced from 'below' and notions related to the contemporary consolidation of international standards and the ways in which they are cemented in local human rights discourse. How – as others have asked before (Carrillo, 2009) – can the inclusion of key transitional justice mechanisms in the law be explained when the political climate in which the first proposal was made suggested that there could have been a viable path to peace without said mechanisms? To what effect was the outcome really the result of a well consolidated and *unified* human rights and victim's movement considering that it operated in a relatively unfavorable environment and faced fierce opposition and hostilities (Uprimny & Saffon, 2008)?

In addressing these questions, this study sheds light not only on the ways in which transitional justice may be contested from an array of non-state actors but also on the conflictive dynamics within these human rights advocates. It will be shown that international standards that have consolidated in recent years have led to a rapprochement on key issues among these actors, but they have simultaneously also created new tensions within them. It is precisely such tensions that make transitional justice an arena for dispute among a multiplicity of actors and which, upon closer examination, is mirrored in how the Justice and Peace Law was conceived. At the same time, efforts from 'below' were crucial in pushing for the incorporation of a transitional justice discourse in Colombia, which eventually found its way into many provisions of the Justice and Peace Law.

As such, this paper fits into the relatively sparse literature on the role of civil society actors within transitional justice processes (Backer, 2003). Such actors and their study are extremely important in contexts of negotiated transitional justice where the inclusion of a human and victims' rights dimension is becoming increasingly important (Bell & Keenan, 2004). Moreover, while much ink has of course been spilled since the passing of this law in 2005, its ten year anniversary at the time of writing also means that there has been ample evaluation of the law's aftermath for transitional justice efforts in the country. This allows for some tentative insights not only into this particular transitional justice effort but also into some of the dilemmas and implications for the current peace process in Colombia.

Following a brief outline of the methodology used for this research, key arguments in transitional justice scholarship that are pertinent to the Colombian experience will be discussed in conjuncture with the growing literature on

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transnational human rights mobilization and the role of non-state actors as human rights advocates. The paper will then provide an overview of the Justice and Peace Law's 'normative evolution.' Finally, the last two chapters will give an answer to the research questions mainly by using data obtained through interviews carried out in Bogotá.

## **Methodology**

Seeing as there is a wide array of secondary literature on transitional justice more generally as well as specifically on the case of Colombia, this paper draws significantly on this material while also complementing it with a set of primary sources such as original law texts, NGO reports, Intergovernmental Organization reports and information obtained through semi-structured interviews carried out in Bogotá in June 2015.

Since this study examines the dynamics of human rights mobilization from 'below' in negotiated forms of transitional justice processes, the persons interviewed include mostly directors and members of human rights NGOs, peace and/or victims' rights organizations. The organizations were chosen based on their extensive experience in lobbying for victims' rights on a national and transnational level and in particular for their direct involvement in the debate surrounding the Justice and Peace Law. Questions were designed so as to gain an understanding of the organization's involvement in the 'Justice and Peace' debate in Colombia as well as their advocacy methods employed to effectively intervene in it. Most interviewees agreed to have material directly attributed to them, which was not surprising given the nature of their lobby work that frequently involves public manifestation of their concerns and suggestions. Although organizational limitations complicated arranging interviews with a wide spectrum of organizations and stakeholders, a degree of variety was sought within the interviewees and the organizations they represent. For example, while they all draw on the discourse of peace, human rights and victims' rights, they do so to varying degrees. Their scope and mandate also differs with some organizations focusing more on humanitarian work and others on the legal representation of victims.

It must be borne in mind that the organizations interviewed can of course not do justice to such broad categories as 'non-state actors' or 'civil society organizations.' While useful as terms to theorize notions related to the various actors involved in conflict resolution, it must be recognized that they are of course far from homogenous. Rather, the organizations interviewed can be considered to be among the most professionalized non-state stakeholders in human rights and transitional justice policy in Colombia and thus constitute fruitful points of departure for understanding the dynamics of contesting such policy from 'below.' All interviews were carried out in Spanish and Spanish material used in this paper was translated by the author.

Finally, this study does not aim at quantifying the effectiveness of the organizations' work per se. As many scholars have noted, little is in fact known about the impact of human rights pressure, as it is quite difficult to measure (Sikkink, 1996: 161). While studies that have attempted such a quantification do exist (Hafner-Burton, 2008), an emulation of such methods would have been beyond the scope of this paper. Nevertheless, the interviews conducted offer valuable insights into the dynamics at play within key NGOs involved in one specific debate, especially when considering that lobby or advocacy as understood here is not restricted to quantifiable efforts such as the number of protests or urgent action campaigns undertaken. Rather, mobilization and with it the possible proliferation of human rights discourse that might lead to policy change can also be found in less obvious local and/or transnational advocacy as this paper shall illustrate.

## **Literature Review**

### *Transitional Justice*

As is well known, the field and practice of transitional justice dates back to the 1980s and was essentially informed by efforts to address past atrocities in the aftermath of democratic transitions in Latin America and Eastern Europe

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(Engstrom, 2013). Early scholarly debates on the subject frequently revolved around the question of whether to pursue comprehensive punitive measures for perpetrators or give precedence to amnesties. This debate essentially rested on what has been perceived by many as an inherently conflictive relationship between efforts of judicial accountability and the desire to secure peace and reconciliation in a post-conflict society. Pursuing justice, it was often asserted, would amount to excessive reliving of past crimes and thereby exacerbate an already fragile system of nascent democratic institutions.[1] The prevalent use of truth commissions as a means of redress exemplifies this priority given to peace and reconciliation as these bodies were not typically vested with comprehensive judicial powers. Instead, they principally focused on disclosing past atrocities in an attempt to guarantee their non-repetition and thereby avoid the seemingly destabilizing effects of prosecutions (Roht-Arriaza & Mariezcurrena, 2006).

The field of transitional justice has since evolved considerably, most clearly evidenced by the fact that its practice "has dramatically expanded in scope and ambition" (Engstrom, 2013: 41). As already mentioned in the introduction, this has gone hand in hand with a number of developments related to the internationalization of transitional justice, which is borne out by an increased international demand for (individual) accountability and must be seen against the backdrop of a newly consolidated system of international criminal law that saw the creation of UN-spearheaded *ad hoc* tribunals for war crimes in Rwanda and the Former Yugoslavia and culminated in the 1998 creation of the International Criminal Court (ICC) (Engstrom, 2013). These trends are instructive of the ways in which previous acceptance of amnesties and pardons for offenders of human rights were gradually replaced by an understanding "that peace without reckoning with the past was merely an interlude between conflicts" (Roht-Arriaza & Mariezcurrena, 2006: 10). As a consequence, literature on transitional justice by the end of the 20<sup>th</sup> century began to be more concerned with issues surrounding universal jurisdiction and concomitant questions of the desirability of international and individual accountability of perpetrators and the conditions under which criminal proceedings could be successful (e.g. Sikkink & Walling, 2007; Lutz & Reiger, 2009; Sikkink, 2011; Lessa et al., 2014).

However, the overwhelming attention given to these topics is by no means an indicator of an across-the-board consensus concerning the effectiveness and/or desirability of international justice. There is, after all, still a lack of empirical evidence on the questions of whether judicial intervention is favorable for long-lasting peace (Engstrom, 2013). For example, if one considers deterrence to be a central objective of punishing perpetrators, the question remains whether trials actually serve that purpose and are able to boost the solidification of democracy (Snyder & Vinjamuri, 2003/4). Against the backdrop of conceiving local and civil society actors as core components of transitional justice experiences, there is also ample reason to question the involvement of external actors in accountability proceedings seeing as they may in fact have detrimental effects on "local ownership" of justice (Engstrom, 2013). It must also be noted that there is a discrepancy between the normative aspirations for accountability and the actual on-the-ground design of transitional justice mechanisms, in particular on the part of civil society actors, who may advocate for practices that are sometimes at odds with international standards (Boesenecker & Vinjamuri, 2011), an issue that will be of particular relevance to this paper.

As concerns scholarship on civil society and their role within institutionalized transitional justice processes, there appears to be a gap evidenced by the fact that "[m]ost empirical research in this context is devoted to the steps taken by national governments, the United Nations (UN) and other international and regional authorities" (Backer, 2003: 297). This gap has partly been filled by comprehensive works such as the volume edited by McEvoy and McGregor (2008) in which various thematic and regional studies explore notions of activism "from below" in transitional justice processes. McGregor (2008: 52) highlights that "actors other than states increasingly have a catalytic effect in demanding and shaping the evolution of international law to ensure the rights and protection of traditionally marginalized groups". Similarly, human rights NGOs may take on roles of what Merry (2006: 40) has called "knowledge brokers" or "translators" of international legal standards and human rights institutions. By acting at the intersection of the global and the local, these NGOs fulfill a function of "vernacularizing" human rights discourse at home (Merry, 2006: 40), making them a crucial component for negotiated models of transitional justice that seek the inclusion of victims and civil society.

While grassroots projects that constitute peacebuilding efforts on the ground have of course been studied (McDonald, 1997), there is an important difference between embedding these efforts in the field of peace construction or conflict resolution as opposed to understanding them as part of a transitional justice process. This is

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in part because the fields of peacemaking and transitional justice have not necessarily been studied in conjunction. Rather, there exists a tension between the two, which may be a remnant of earlier 'peace versus justice' debates whereby one element necessarily precluded the pursuit of the other – a perception that runs counter to the fact that, when implemented on the ground, transitional justice and peacebuilding are rarely separate (García-Godos & Sriram, 2013). This is related to the fact that the changing dynamics of warfare since the end of the Cold War have seen an upsurge of internal conflict and, with it, the concept of negotiated agreements (Bell & Keenan, 2004). Paired with the previously mentioned international trends, this has yielded a new paradigm of 'negotiated transitional justice' – as demonstrated by the Colombian experience – where accountability measures, victims' and human rights, the disarmament, demobilization and reintegration (DDR) of ex-combatants and peacebuilding come to be understood as inherently linked and thus conceivable under the umbrella of one single legal framework (García-Godos, 2013; Sriram & Herman, 2009).

## *Transnational Human Rights Mobilization*

The issues revolving around local ownership of transitional justice and the seemingly growing role of civil society within transitioning contexts is part of a more general global trend whereby institutions of global governance increasingly interact with "global civil society," a complex network of movements, groups and individuals who "negotiate and renegotiate social contracts or political bargains at a global level" (Kaldor, 2003: 78). While this trend is also documented in the works on 'new' social movements and protest related to both political and social issues (e.g. Tarrow, 2005; Tarrow & Della Porta, 2005; Silva, 2013), within the context of human rights specifically, there has been a proliferation of theories concerning the role of non-state actors as catalysts of human rights discourse in domestic politics or as instigators of actual policy change (e.g. Keck & Sikkink, 1998; Cardenas, 2011; Meernik, 2012). In *Activists Beyond Borders: Advocacy Networks in International Politics* (1998), Margaret Keck and Kathryn Sikkink document the ways in which civil society mobilizes transnationally to draw attention to abuses in their countries. With the increased professionalization of movements and organizations and the modernization communication technology, local actors now often find themselves operating as part of a Transnational Advocacy Network (TAN) by reaching out to other international actors who share the same values and a common discourse on a given issue (Keck & Sikkink, 1998). The rationale behind this *modus operandi* rests on the idea that human rights advocates can enhance their leverage by operating within a TAN, particularly in contexts where their voices are otherwise marginal and their governments unsusceptible to their demands and denunciations. Through extensive international exposure of violations and the concomitant public 'shaming' of target governments, chances of altering state behavior may be significantly higher. The strategy whereby "domestic NGOs bypass their state and directly search out international allies to try to bring pressure on their states from outside has been referred to as "boomerang effect" or "boomerang pattern" (Keck & Sikkink, 1998: 12). Keck and Sikkink (1998: 16) identify a number of key tactics that are at the heart of such human rights activism, such as boosting the transnational information flow about human rights abuses ("information politics"), holding states to account by reminding them of their international duties ("accountability politics") and using strong symbolic incidents or figures ("symbolic politics") to draw attention to an alarming situation.

As regards this and related phenomena within Latin America, much of the literature has focused on countries such as Chile (Ropp & Sikkink, 1999) or Argentina (Brysk, 1994) or on broad overviews of the trend in the region (Cardenas, 2011), whereas Colombia in particular has been widely ignored. At first glance this seems ironic given Colombia's abysmal human rights record (Kirk, 2009). Scholars have attributed this to the fact that transnational human rights activism has in fact played a marginal role in Colombia for a number of reasons: the 'normalization' of the lengthy and complex conflict; Colombia's imperviousness to pressure for regime change; and the involvement of non-state armed actors in the conflict that are less vulnerable targets of human rights shaming campaigns (Sikkink, 2009; Brysk, 2009). The omission is distressing because when bearing in mind some of the trends outlined in the previous section, it seems that the newly emerging notion of negotiated transitional justice is necessarily intertwined with an increased involvement of non-state human rights advocates as clearly evidenced by the Colombian case.

Naturally, there is much to be said about the actual effectiveness of TANs, and even strong proponents of the theory have put forth that these networks may not be successful seeing as their work is highly contingent on a number of factors, such as for example the vulnerability of the target or the density of the network (Keck & Sikkink, 1998). Many

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have thus highlighted that, at least in terms of achieving accountability of perpetrators, a confluence of various factors – of which international pressure is only one – plays an important role. Such factors include the absence of strong veto players and domestic judicial leadership, reminding us that the individual domestic context remains crucial when it comes to assessing the permeability of demands for compliance (Lessa et al., 2014). These findings notwithstanding, there is still a point to be made about the importance of transnational advocacy work. Studies that question the effectiveness of TANs often focus on the ambitious objective of judicial accountability which is arguably an extremely high standard against which to measure TAN success. In that respect, it is important to bear in mind the intermediate accomplishments of TANs such as simply putting issues on an agenda and catalyzing important human rights debates. This observation is particularly pertinent for the discussion of this paper because when studying the work of civil society or TANs in the specific context of negotiated transitional justice processes, it becomes evident that their demands may be highly diffuse and too complex to neatly fit into what appears to be a “global consensus” for demanding “international accountability” (Boesenecker & Vinjamuri, 2011: 346).

## The “Justice and Peace” Law

### *Background and Precursors*

Previous efforts in Colombia to seek a negotiated solution to the armed conflict were undertaken by the governments of Belisario Betancur (1982-86), Virgilio Barco (1986-90)/César Gaviria (1990-94) and Andrés Pastrana, and involved peace dialogues with left-wing rebel groups. Notable legal frameworks used during the Pastrana administration included Law 418 of 1997 (later extended by Law 548 of 1999), which aimed at facilitating the dialogue between the State and armed groups ‘at the margin of the law.’ The law essentially “opened the possibility that the government could bestow *carácter político* (political status) on guerrilla groups and popular militias, thus making negotiations possible” (Laplante & Theidon, 2006-2007: 61). Moreover, it rested on the granting of amnesties and economic benefits to those members of illegal armed groups that agreed to demobilize. Although some criminal proceedings were undertaken in the negotiations of the 1990s, the approach taken followed the notion of “forgive and forget” (Jaramillo et al., 2009: 26). Victims’ needs were not specifically considered, nor was their active participation in the negotiations; reparative measures were lacking and no efforts were made to construct integral accounts of the truth to create a historical memory (Jaramillo et al., 2009). In part, this is also a result of the fact that, as political delinquents, guerrilla combatants and their crimes were conceptualized in a manner that made granting amnesties tenable. However, crucial developments related to the rejection of amnesty policies and the concomitant expansion of robust international jurisdiction mechanisms have also affected the environment in which peace negotiations are undertaken in Colombia. As the negotiations with the paramilitaries were unfolding, former High Commissioner for Peace Daniel García-Peña (2005: 66) noted:

[...] the national and international context is different than it was ten years ago, when Colombia held talks with the M-19 and other guerrilla groups. Today there is an International Criminal Court and international jurisdiction for crimes against humanity. Today, Colombian laws have limited the possibilities, for example, of extending amnesty in cases of kidnapping. It was possible to grant amnesty for kidnapping in the early 1990’s, but today it is against Colombian law.

These observations help to explain in part why the infamous Alternative Sanctions Law presented to Congress in 2003 was scrutinized and rejected the way it was by a number of actors who, as the following section will show, drew significantly on international legal tools and allies to bolster their demand for change.

While Pastrana’s failed talks with the FARC shattered hopes for achieving peace, they also politically paved the way for a much different approach to dealing with the left-wing insurgents, embodied by Pastrana’s successor, Uribe. Elected president in 2002, a time of US-led anti-terrorist discourse, Uribe’s Democratic Security Policy sought to “recover territorial control of Colombia [...], ensure its security” and “strengthen the military forces,” in an attempt to defeat terrorist groups (Díaz, 2009: 475). By building on some of the aforementioned legislation (i.e. Law 418 and Law 548), the Uribe administration explored the possibility of engaging in negotiations with the paramilitaries. This

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constituted an important shift in the “analytical frame” of approaching endeavors to end the armed conflict, seeing as it was always thought that the paramilitary demobilization would be the result of peace with the insurgency – either simultaneously or subsequently – because the paramilitaries themselves claim to be a consequence of the guerrilla (García-Peña quoted in Laplante & Theidon, 2006-2007: 63).

At the same time, this meant that the Uribe administration had to find a way to circumvent those constraints that forestalled negotiations with actors that lacked a political agenda, of which the paramilitaries were considered one (Guembe & Olea, 2006: 124). As a consequence, Law 782 was enacted in December 2002, which laid the groundwork for peace talks with the paramilitaries, as it removed the requirement of political status for the illegal groups to enter negotiations (Bueno & Rozas, 2013).

As part of the precondition for obtaining amnesties and economic benefits, the AUC announced a unilateral ceasefire before formally engaging in negotiations with the government that eventually led to the Ralito Accord in July 2003. In it, the AUC announced its demobilization by the end of 2005 (Laplante & Theidon, 2006-2007), a process that would be divided into three stages. The initial step consisted of paramilitary leaders providing the High Commissioner of Peace with a list of combatants that would demobilize. The respective combatants were then relocated into a concentration zone (*zona de ubicación*) until the government had verified their identities and determined the nature of the crime they committed. During this phase, a ceremonial handover of weapons was also carried out. In a last phase, those combatants who were not wanted for violations of human rights were permitted to return to their homes and became eligible to register in a DDR program and subsequently receive the corresponding benefits. In cases where combatants had been accused of grave breaches that would forfeit their eligibility for such benefits, the individuals had to remain in the concentration zone (Human Rights Watch, 2005). Overall, this process resulted in the demobilization of 31,687 members of armed groups between 2003 and 2006 (Jaramillo et al., 2009: 13).

This procedure and some of its shortcomings did not go unnoticed by the human rights community. Many critics were skeptical of its genuineness, as there was reason to believe that the handing over of weapons was in fact a smokescreen for paramilitary commanders who did not actually intend to cease their activities. Some worried that they would simply be “recycled” into the system (Amnesty International, 2005: 23), making the procedure effectively tantamount to “transforming the illegal into the legal” (Díaz, 2009: 481). In a 2005 report published by Amnesty International, these concerns were backed by the results of in-depth fieldwork carried out in Medellín that sought to monitor and evaluate the local demobilization process. The report concludes that

“[t]he paramilitary demobilization in Medellín and elsewhere has lacked transparency and effective oversight, especially on issues of verification and the application of international norms on truth, justice and reparation. [...] More than 2,300 killings and ‘disappearances’ across the country have been attributed to the paramilitaries since they declared a ceasefire in December 2002” (Amnesty International, 2005: 11).

In that same report, Amnesty International also reminds the Colombian government that any meaningful demobilization process must be accompanied by respect for international norms regarding victims’ rights to truth, justice and reparation as well as effective mechanisms for the prevention of impunity (Amnesty International, 2005). These and related demands were also central to the debate surrounding the Justice and Peace Law, and perhaps even more so, its various precursors, as the following section will demonstrate.

## *The Road to “Justice and Peace:” From Draft Law 85 to Law 975*

Because the established legislative framework in Colombia could only provide amnesties and benefits to those combatants guilty of political crimes such as, for example, rebellion or sedition, combatants guilty of more serious violations were unable to take advantage of it (Díaz, 2009). In order to address precisely those individuals, the Uribe administration proposed Draft Law 85 in August 2003. Also known as Alternative Sanctions Law (*Ley de Alternatividad Penal*), this proposal became the subject of fierce criticism from both local and international actors. Given the context in which it was designed and the provisions it included, the negative reactions to it were perhaps hardly surprising.

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For one thing, the drafting of this law was not subject to public debate and instead the result of private negotiations between government officials and lawyers (Carrillo, 2009). In addition, it was seen by many as promoting impunity and not paying enough attention to the rights of victims, which meant that critique from human rights advocates was often “framed in terms of the rights to truth, justice and reparation” (Díaz, 2009). While the law did address the rights of victims and reparations in Articles 1 and 6, formulations were vague and lacked measures that would effectively guarantee access to these rights (Carrillo, 2009). A list of reparative acts under Article 6, for example, came without an explicit delineation of how such reparations could be made on the ground and whether or not the granting of benefits was conditional upon an active contribution to such reparations (Congreso de Colombia, 2003). Victims' rights were further obfuscated by the fact that Article 1 included a provision whereby reparations to “society in general” would suffice in cases where a direct compensation to the victim was not possible (Congreso de Colombia 2003; Díaz, 2009). Therefore, reparative measure listed in Article 6 were in fact “not cumulative, but alternative” (Díaz, 2009: 487). Aside from lacking measures that would strip an individual of benefits in case of noncompliance, the sanctions in and of themselves were considered by many as too permissive. They included, for example, restrictions related to the “beneficiary’s eligibility to participate in politics, hold public offices, [...] bear arms,” as well as their choice of residence and their physical proximity to the victims (Carrillo, 2009: 136). They were also required to cease further commission of crimes and seek judicial authorization prior to leaving the country. Acceptance of such sanctions or conditions was essentially the only prerequisite for a combatant to be granted a full pardon, and upon this acceptance the president of the Republic would request a suspension of any prison sentences (Carrillo, 2009).

In the annexed “Exposition of Motives,” Minister of the Interior, Fernando Londoño Hoyos justified the proposed bill on grounds that resonated clearly with notions of restorative justice. He bolstered his argument by emphasizing that amnesties have had a “very long tradition” in history (Congreso de Colombia, 2003) and, as such, serve the purpose of surpassing conflictive situations during which ordinary measures will necessarily have to be suspended for a temporary period of time in order to advance other, more important causes, such as peace and the “reconstruction of democracy” (Congreso de Colombia, 2003). Second, he drew significantly on the antecedent experience of Northern Ireland, where the 1998 Good Friday Agreement implemented measures to regulate the early release of prisoners. Londoño noted that these releases, having been contingent on the prisoners' compliance with certain parameters, were not objected to by international human rights bodies, precisely because prison sentences had, after all, been served and the benefits granted ultimately contributed to peace (Congreso de Colombia, 2003). He concluded his statement by unambiguously favoring a forward-looking approach to justice that unlike contrary measures would not focus on ‘vengeance,’ i.e. the rigorous application of proportional prison sentences.

Whilst clearly in line with previous attempts at negotiating an end to the conflict by favoring peacebuilding over accountability, this restorative justice approach is not without problems: The restorative justice language used in the Exposition of Motives came “without clear understanding among officials of the meaning, requirements and applicability of that framework, particularly in a context within which massive human rights violations had been committed” (Díaz, 2009: 485). While restorative justice has indeed been associated with the idea of ‘looking forward’ rather than focusing on the perpetrator and the crimes committed, the paradigm by implication also emphasizes the harms suffered by victims, turning its attention to their needs (Uprimny & Saffon, 2006). A further core component of restorative justice is the direct contact between victim and perpetrator for the purpose of tending precisely to those needs and, in the process, catalyzing meaningful reconciliation (Cohen, 2001). Given the design of Draft Law 85, it is, however, difficult to imagine how it would have contributed to an effective realization of such objectives.

These and related observations were also at the heart of the harsh criticism the Alternative Sanctions Law faced, which eventually forced the government to move the debate to Congress, where hearings were held over the course of almost two years from September 2003 to August 2005 (Hissenhoven, 2006). These and other public hearings gave various actors the opportunity to either defend the project proposed by the government or voice their concerns and propose alternatives. Following this series of debates, the Uribe administration proposed a modified version of the law in April 2004, which rested significantly on recommendations made in previous hearings by Michael Frühling, director of the United Nations High Commissioner for Human Rights office in Colombia (HCHR-Colombia) (Hissenhoven, 2006). The modifications included the establishment of a Special Court and a new unit in the Attorney General's office charged with guaranteeing access to truth, justice and reparations. Additionally, new prerequisites



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were introduced for paramilitary commanders wishing to subject themselves to the judicial framework, making benefits more contingent on their contributions to reparations and peace. Most crucially though, alternative sanctions now consisted of reduced prison sentences of five to ten years (Gómez-Sánchez, 2014: 105). Not surprisingly of course, the last adjustment in particular came much to the dismay of paramilitary commanders who had initially entered negotiations on the premise that they would not serve any prison time.

With regards to the legislation being discussed in Congress, it became more and more evident that by the end of 2004 there was a "new level of urgency regarding victims' rights" (Gómez-Sánchez, 2014: 110). Consequently, while the modified proposal did address some of the shortcomings of the Alternative Sanctions Law, criticism did not cease. Some still worried that the prison time envisaged by the law was too lenient and disproportional for the crimes in question (Vivanco, 2005) and emphasized that the law still failed to guarantee full disclosure of the truth because benefits were not contingent on a complete confession. Another concern revolved around the cursory checks of the criminal background of the individual wishing to demobilize. Furthermore, there were no mechanisms in place that would ensure the disclosure of more in-depth information about the armed group's structure and the identity of its members (Vivanco, 2005: 77). In the end, a slightly modified version of the government's April draft was challenged by various counterproposals in Congress. Among those, the so-called "senate proposal" drafted by senators Rafael Pardo and Gina Parody stood out as "a highly effective tool for dismantling the underlying structures of illegal armed groups," and incorporating important international legal standards related to victims' rights in particular (Human Rights Watch, 2005). Most importantly, it focused on revoking benefits for omitting crimes and not complying with the conditions outlined. It is thus not surprising that it was backed by a host of human rights NGOs (Kline, 2009). Table 1 (found in Kline, 2009: 55-56) illustrates some of the discrepancies between the "Pardo-Parody" proposal and the government's proposal.

The support the Pardo-Parody proposal received notwithstanding, it was eventually the government's proposal that was approved by a majority coalition in Congress in July 2005 (Díaz, 2009: 488). This final version of the law, commonly referred to as the Justice and Peace Law, included some major changes to the original proposal made in August 2003. While not exhaustive, the following list provides an overview of some of the most significant changes:

- Benefits were now explicitly conditional on the suspension of criminal activities and full demobilization. Therefore, to be eligible for alternative sanctions, the combatants must have met the requirements prior to receiving benefits. In addition, compliance with these requirements would be verified by a judicial procedure (Carrillo, 2009: 145; Congreso de Colombia, 2005: Article 10).
- The right to truth was strengthened to the extent that demobilized combatants were required to give account of their involvement in the armed groups before a prosecutor. These confessions, or free versions (*versiones libres*), would serve the purpose of revealing specific details about the combatants and the crimes they committed, and thereby contributed to a more integral disclosure of the truth (Congreso de Colombia, 2005: Articles 15, 17).
- It implemented mechanisms for victims to access reparations during the investigative period. To that end, the law also established the National Commission on Reparations and Reconciliation (CNRR) as a monitoring body for the reparations process (Carrillo, 2009: 145; Congreso de Colombia, 2005: Articles 42, 8).

While for some this law constituted an acceptable compromise between reconciliation and the pursuit of justice (Hissenhoven, 2006: 94), the domestic and international criticism prevailed. Opposition to the law by local human rights advocates was particularly strong, especially among the newly created National Movement of Victims of State Crime (*Movimiento Nacional de Víctimas de Crímenes de Estado*, MOVICE) that consisted of over 200 organizations which dismissed the Justice and Peace Law as "a law of impunity" (Díaz, 2009; Martínez). Many still felt that the free versions constituted an unsatisfactory mechanism to ensure the right to truth because the law continued to lack effective ramifications that would make combatants ineligible for benefits if their confessions could be proven to be incomplete or false. On the contrary, a delayed disclosure of crimes after the pronouncement of a sentence would simply open a new judicial process under the umbrella of the same law instead of stripping the perpetrator from any benefits. Sentence reductions were also not strictly conditional on the effective contribution to reparations. Finally, whilst charged with the mandate to produce a report of the causes and emergence of illegal

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armed groups in Colombia, the CNRR could not be considered a full-fledged truth-telling body capable of disclosing a holistic truth about the conflict and the crimes committed and thereby contribute to the creation of a historical memory (Comisión Colombiana de Juristas, 2005a). As concerns justice, the law continued to be criticized not only for the significant reduction of prison sentences (they were now down to between five and eight years) but also for retaining the possibility of reducing those already low sentences even further, for example by construing time an ex-combatant spent in a concentration zone as "time served" (Comisión Colombiana de Juristas, 2005b).

This discontent culminated in several unconstitutionality complaints filed to the Constitutional Court of Colombia (hereinafter CC) by a number of activists, lawyers and human rights NGOs.[2] In May 2006, the Court presented its verdict, upholding the overall constitutionality of the law, but striking down some of its provisions and reinterpreting others so as to strengthen victims' rights to truth, justice and reparation (Díaz, 2009). Following these considerations, the Court made important adjustments to the law:

- It emphasized that confessions must be truthful and complete. Moreover, it should be clear that cases where unconfessed crimes were later discovered should lead to the annulment of benefits and a subjection of the perpetrator to ordinary criminal law (CC, 2006: paragraph 6.2.2.1.7.5.).
- The right to reparations was enhanced by striking down a provision whereby illegally attained assets by paramilitaries would not have to be used to repair a victim if the return was not actually feasible (CC, 2006: paragraph 6.2.4.1.2.).
- Finally, the Court's approach to justice resulted in two key decisions that related to the perpetrators' punishment. To this end, the Court struck down the provision that could have reduced the prison sentences of five to eight years even further (CC, 2006: paragraph 6.2.3.3.4.). The Court did, however, uphold the notion of alternative or reduced prison sentences by arguing that in balancing such rights as truth and justice against the right to peace in situations of ongoing conflict, there was a leeway that permits the granting of amnesties, pardons or alternative sentences. Furthermore, mitigation could be considered appropriate as long as it was tied to strict conditions, as it did not automatically rescind the coming into effect of ordinary criminal justice (CC, 2006: paragraphs 6.2.1.6.8., 6.2.1.4.9.).

The Court's reasoning behind the ruling is emblematic of the new tendencies in international law regarding the need to uphold accountability measures. At the same time, it presents an effort to balance such measures against the obligation to ensure peace and victims' rights to truth and reparation, all of which ought not to foreclose one another. As such, the Court's verdict was based extensively on international jurisprudence and international soft law with relevance to the resolution of conflicts where concurrent interests must be balanced against each other [3] (Burbridge, 2008). While this effort of balancing was still considered unsatisfactory by some human rights advocates, particularly because low prison sentences were after all retained, it resulted in a reinforcement of victims' rights to truth, justice and reparations as petitioned in the unconstitutionality complaint. The complaint in itself, put forth by the Colombian Commission of Jurists (*Comisión Colombiana de Juristas*) and having been backed by numerous other NGOs and civil society organizations constitutes an example of judicial intervention 'from below.' Thus, as mentioned earlier, it is evident that advocacy work on the part of non-state actors came in various forms with NGOs exhausting both political and judicial pathways to catalyze important changes to the Justice and Peace Law. In what follows, such interventions will be discussed in more detail.

## TANs as a Catalyst for Change?

### *The Professionalization of Human Rights in Colombia*

As Carrillo (2009: 148) notes, the normative evolution that occurred after the original Draft Law 85 was proposed coincided with the "rise of a 'professionalized' human rights NGO sector in Colombia, and its close articulation with domestic and, especially, international counterparts." Indeed, a look at the trajectory of human rights movements in Colombia and Latin America more generally reveals that human rights activism throughout the 60s and 70s differed markedly from today. While, as Sikkink (1996) asserts, no significant NGO sector specialized on human rights

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existed in Latin America prior to 1973, the subsequent decades saw an ample consolidation of NGO networks, with organizations disseminating information about violations, denouncing governments and increasingly working in tandem with international funding agencies and other organizations to enhance their potential for 'leverage' (Sikkink, 1996: 156).

In Colombia specifically, early precursors of professionalized human rights activism mainly consisted of a form of "political struggle" which manifested itself in community organizing and was frequently "defined in the terms of the Colombian left" (Tate, 2007: 75-76). The changing international context influenced the local human rights landscape significantly. Attention towards the situation in Colombia among international nongovernmental organizations (INGOs) particularly from the 80s onwards<sup>[4]</sup> has come with an increased degree of transnational activity within human rights groups, with INGOs frequently working in tandem with their local counterparts as they rely on a constant flow of information exchange with them (Aranguren, 2009: 79). Moreover, the 1990s in Colombia, exhibited a "transformation of solidarity organizations linked to social movements into professionalized NGOs" (Tate, 2007: 106). This climate was further boosted by the changes brought about by the new 1991 Constitution. Since its crafting had considerably been influenced by human rights activists and their lobby work, "a new optimism about engaging with the state on issues of human rights and effecting social change 'from within'" (Chambers, 2013: 129).

Indeed, aside from some of the country's older human rights and peace NGOs that emerged in the late 70s, it was in the 1990s that many of today's organizations were founded and began to professionalize<sup>[5]</sup>. At the same time, the mainstreaming of human rights discourse that began to permeate Colombian movements and the concomitant international funding that came with it also led to increased tensions within some organizations: a professionalization of their work necessarily conflicted with their strong affiliation to left-wing social struggles. As Chambers (2013: 123) notes:

A particularly important debate centered on the issue of documenting and categorizing guerrilla violence. For the newly professionalized organizations, guerrilla violence had to be categorized either as human rights abuses or as violations of international humanitarian law. In contrast, for those whose understanding of human rights was formed in the course of engagement with radical politics, criticizing the guerrillas and documenting their violence was unthinkable.

Remnants of such differences between some organizations can still be observed today. While the wide variety and the degree of complexity of today's NGOs certainly defy easy categorization, some have contended that there are in fact two currents of activism with moderate "NGOs committed to peace and a negotiated solution to the conflict" on one side, and "human rights NGOs that have adopted a radical, confrontational discourse of denunciation [...] of the state" on the other (Pizarro Leongómez, 2003). Others have made distinctions that resonate with notions of forward versus backwards-looking approaches to conflict resolution:

While [human rights NGOs] cling to a legal and moral "dogma" which, according to them, has already been established in the past, [peace NGOs], on the other hand, conceive their work, at least in part, by means of marches and according to the given circumstances, thereby following a more teleological approach that focuses on the future (Orozco Abad, 2005: 239).

Such types of categorization strongly cemented themselves during the Uribe presidency in particular, which became known for an extremely divisive and hostile rhetoric towards certain human rights NGOs (Semana, 2004a). Paradoxically, while some have asserted that peace negotiations may in fact result in an amplified room for human rights and peace NGOs or activists to intervene (Reis, 2006), "[t]he very existence of a peace process may also [...] increase the threat to human rights defenders" (Bell & Keenan, 2004: 339). This is especially true of the debate around the Justice and Peace Law. The threats and risks human rights defenders were exposed to during that time has been widely documented and criticized by INGOs monitoring the situation in Colombia (e.g. Human Rights Watch, 2008). As a matter of fact, transnational advocacy played a crucial role for Colombian human rights NGOs not just in terms of demanding changes to the legislation proposed by the government but, first and foremost, it served as a means for their own protection. A method frequently used to achieve the so-called "boomerang effect" discussed earlier were urgent action and 'shaming' campaigns promulgated by some of the more well-known

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international human rights NGOs. As many interviewees stated, this help was crucial in securing protection for human rights defenders who had been targeted for criticizing the government's policies. Faced with death threats, many NGOs relied heavily on transnational dissemination of information on their situation as well as on the protective accompaniment of organizations such as Peace Brigades International (Anonymous 1; Martínez; Pérez).

## *The Intervention from "Below"*

From the moment Draft Law 85 entered the debate, it began to be perceived by many as a guarantor for impunity, and NGOs dedicated to the rights of victims immediately felt alarmed to take action (Anonymous 1). The following section outlines how NGOs engaged in advocacy campaigns on both national and transnational levels to propel important changes. It will be shown that such campaigns ranged from social protest, political and judicial intervention to more low-key education 'campaigns' on issues of human rights and transitional justice, all of which significantly drew on international standards of victims' rights. This discourse was particularly strengthened by the presence and support of international non-governmental and intergovernmental actors and bodies, mirroring the degree of scrutiny the domestic debate in Colombia was subjected to.

As already mentioned, upon being introduced in Congress, the Alternative Sanctions Law sparked a strong backlash from national and international critics. It was also from this moment onwards that the demands on the part of human rights and victims' organizations gradually began to incorporate notions of transitional justice, which, as will be outlined later, was by no means free of controversy (Uprimny & Saffon, 2008). The discontent manifested itself during a series of congressional debates and public hearings following the dismissal of Draft Law 85. Several rounds of debates were held in Congress from September 2003 during which government representatives, senators, members of the judiciary and representatives of NGOs and victims' organizations were given the opportunity to debate the subject of victims' rights and the paramilitary demobilization process (Hissenhoven, 2006). Key representatives of well-known Colombian NGOs that intervened in the debates included the director of the Colombian Commission of Jurists, Gustavo Gallón, as well as the president of the Association of Relatives of the Detained-Disappeared (*Asociación de Familiares de Desaparecidos y Detenidos*, ASFADDES), the director of International Crisis Group (ICG). Michael Frühling from the office of the HCHR-Colombia, who was backed in his assertions by the other NGO representatives present, criticized what he considered some of the biggest pitfalls of the proposed bill by explicitly referring to the impermissibility of amnesties for grave crimes within international law:

Regulations that promote impunity by allowing for situations where perpetrators of international crimes [...] are not sanctioned appropriately and proportionally, or where such perpetrators are granted pardons that are not accompanied by a guarantee of effective victims' rights, are incompatible with international norms and standards (Frühling, 2003).

By frequently basing their demands on international human rights and international humanitarian law, Frühling and other members of the human rights community actively engaged in efforts of "accountability politics," arguing that the Colombian state would fail to comply with many international standards, should it pass Law 85 (Hissenhoven, 2006). It is interesting to note here that the Minister of the Interior, Londoño, responded to this type of criticism by suggesting that the ambitious pursuit of accountability inherent to international law significantly impeded negotiated efforts to end the armed conflict in Colombia. In his opinion, full adherence to these standards would amount to a complete stalemate in such a way that, ultimately, "nothing can be done" to resolve Colombia's conflict (Hissenhoven, 2006: 30).

During a round of public hearings throughout the months of January and April in 2004 (of which several were 'regional' hearings held in a number of municipalities across the country), a total of 82 individuals were given the opportunity to take part in the discussion which gave non-state actors in particular a chance to weigh in on the debate. Speakers during these hearings included members of political parties, academics, NGO representatives, victims groups' representatives, international experts as well as ordinary citizens. These hearings opened up the debate for essentially two opposing camps regarding the legitimacy and emergence of paramilitary groups in Colombia. Whilst one side defended the armed groups for having acted out of necessity to defend their rights against guerrilla insurgents, others, such as for example a representative from ASFADDES, conceived the paramilitaries as

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having been a product from within the state, thus criticizing their participation as a negotiating party to the peace process (Hissenhoven, 2006: 36). At the same time, this side of the debate agreed that upon undertaking any sort of peace negotiation, fundamental victims' rights to truth, justice and reparation ought to be guaranteed by engaging in genuine efforts to restore the victims' dignity and promote a 'never forget' policy regarding the crimes committed (Hissenhoven, 2006: 40).

These notions resurfaced continuously throughout the debate, evidencing yet again the ways in which notions of victims' rights had permeated the domestic discussion, which gained additional importance through the intervention of international actors. In another speech to Congress in April 2004, for example, Michael Frühling again underlined the importance of international standards in the peace process which was reiterated by the director of the Americas Division of Human Rights Watch, Jose Manuel Vivanco (Hissenhoven, 2006: 45). Both contended that while they supported a peace process with the paramilitaries in Colombia, no such process could be completed without the simultaneous implementation of victims' rights in accord with the relevant international norms. Vivanco also refuted the government's argument that Draft Law 85 could derive any sort of legitimacy from the experiences of Northern Ireland or South Africa, holding that prison sentences were reduced rather than suspended in the first case and amnesties were strictly conditional in the latter. There was a consensus within the human rights community that no parallels could be drawn between these regulations and the ones proposed in the Draft Bill (Hissenhoven, 2006: 47). As a matter of fact, Vivanco warned that the alternative sanctions envisaged by Draft Law 85 could be seen a mere "subterfuge" for guaranteeing impunity (quoted in Gómez-Sánchez, 2014: 104).

The presence of international actors in the debate not only manifested itself in direct and individual interventions in congressional debates and public hearings. International NGOs dedicated a great deal of work to publishing a series of reports, evaluating and denouncing the deficiencies of the ongoing developments in the legislative procedure[6]. Moreover, the role of the Organization of American States (OAS) within Colombia's 'Justice and Peace' experience became pivotal through the creation of a special body in January 2004, the Mission to Support the Peace Process (*Misión de Apoyo al Proceso de Paz*, MAPP-OEA). As stipulated in its official mandate, its primary function is to support the peace process and monitor the demobilization process of illegal armed groups (OAS, 2004). Through the publication of quarterly reports the Mission extensively documented its work and cooperation with local non-state actors, the progress made in the peace process and the challenges the demobilization continued to face.

Although it would be an overstatement to say that members of civil society alone were able to shape the debate (Hissenhoven, 2006), there is no denying that scrutiny of the government's intentions in dealing with the paramilitaries rose considerably, not least because local actors and NGOs were able to count on the reiteration of their demands by strong voices of INGOs and the support of a permanent mission that would monitor the demobilization. Aside from their congressional interventions, victims and their advocates were also able to achieve a new level of "visibilization," (Bayona; Madariaga; Martínez) at the time, which peaked in the formation of strong victims movements such as MOVICE. Their high degree of visibility became most evident when in 2004, a number of victims mobilized to actively protest the speeches of paramilitary leaders Ernesto Báez and Salvatore Mancuso in Congress. In what presents an example of "symbolic politics," victims and their next-of-kin gathered in Bogotá's Plaza de Bolívar holding photographs of their killed relatives while others, such as the one of the movement's figure heads senator Iván Cepeda, silently protested the commanders' speeches from the press gallery inside Congress (Semana, 2004b). The protest became a strong statement against legitimizing the participation of paramilitaries in congressional debates while denying victims a stronger platform (Gómez-Sánchez, 2014: 107) and for many, it constituted an important wake-up call that drew attention to victims and their demands (Madariaga).

Although anything but homogenous in scope and mandate, many human rights groups found themselves operating in an international human rights regime that saw "a positive evolution of international law" (Carrillo, 2009: 150) in which blanket amnesties for grave violations were no longer tolerable. Gallón explained that the period of the Justice and Peace Law correlated with a culmination of international standards, especially those regarding victims' rights: Not only did the influence of the Rome Statute hover over the debates in Colombia, but the year 2005 in particular saw important instances of solidification of victims' rights with legal experts revising and presenting updates of the Joint and van Boven Principles before the UN Commission on Human Rights[7]. Against the background of such trends, many organizations commented that while there may be significant differences among certain peace and human

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rights NGOs, they had managed to find a consensus on one specific matter: Amnesties for grave violations of human rights are inadmissible and should only be granted to individuals responsible for political crimes (Martínez; Anonymous 2; Pérez). As a consequence, their lobby and advocacy work during the 'Justice and Peace' debate converged significantly, making various actors of victims and human rights organization what has been referred to as "knowledge brokers" or "vernacularizers" of human rights and, in this particular case, transitional justice discourse (Merry, 2006; Gómez-Sánchez, 2014).

This is evidenced not only in the advocacy work undertaken by NGOs since the Alternative Sanction Law was proposed but also by earlier efforts that sought to mainstream the notion of an integral approach transitional justice. It was in 1996, for example, that the NGO *Viva La Ciudadanía* organized a seminar in conjunction with the Colombian Commission of Jurists that centered on transitional justice, which at the time was still an "extremely novel idea, one that was sparsely recognized by the local human rights movement" (Madariaga). According to the director of *Viva La Ciudadanía*, the objective of the seminar was to generate awareness of the notion of transitional justice, not merely through protest, but rather by developing ideas and educating society about issues surrounding transitional justice. This first project was later followed by a more comprehensive and semi-clandestine[8] series of seminars (*Verdad, Justicia y Reparación* – Truth, Justice and Reparation) on transitional justice in April of 2004 which saw the participation of a number of international experts in the field[9]. The purpose of these seminars was to craft and discuss alternatives to the government-led demobilization processes taking place with the paramilitaries at the time.

Additionally, about one year before this seminar was held, a number of NGOs (of which *Viva La Ciudadanía* was one) began to mobilize transnationally to raise awareness of the situation in Colombia, particularly by doing considerable lobby work in Europe. As a matter of fact, various NGOs were able to tap into cooperative talks between the Colombian government and member countries of the G-24. Following a summit held in London in July 2003, they adopted the London Declaration, laying out a framework of recommendations for the improvement of citizen security and respect for human rights in Colombia. Many NGO workers highlighted the fact that their participation in this dialogue and the support they garnered from the international community further opened the debate of Colombia's situation to civil society members (Madariaga). Furthermore, as concerns the demobilization process of the paramilitaries, the follow-up Cartagena Summit held in February 2005 presented yet another opportunity for the international community and Colombian activists to increase their leverage and seriously question the government's new version of the law. The 2005 Cartagena Declaration reflected some of these concerns by calling on the Colombian government to complement the proposed legal framework for a negotiated peace with appropriate measures concerning truth, justice and reparations and reiterated similar recommendations made by the United Nations High Commissioner for Human Rights regarding the demobilization process (HCHR-Colombia, 2005).

The extensive and lengthy debate that the Alternative Sanctions Law generated underpins the fact that transitional justice does not operate in a vacuum. After all, civil society actors were able to contest the government-led proposals and the paramilitaries' demands even after they too had adopted a supposed language of transitional justice (Díaz, 2009). As many interviewees emphasized, this presented a real problem, because "transitional justice 'speak' can mean all or nothing" (Martínez). This is further complicated by the fact that different actors may bestow different meanings upon key aspects of transitional justice (Pérez; Madariaga). Uprimny & Saffon (2008: 175-176) observe that transitional justice discourse can entail either "manipulative" or "democratic" purposes:

[The manipulative use] of transitional justice discourse consists of the use of human rights and victims' rights discourse but with the primary purpose of concealing impunity. [It] adopts the language of transitional justice as a rhetorical means only, through which no meaningful reforms can be achieved. [...] The democratic use of transitional justice discourse demands the effective application of [its] mechanisms. As such, the democratic use of transitional justice aims at transcending the rhetorical value of transitional justice in order to make it instrumentally and not just symbolically effective.

Bearing in mind the significant changes that were incorporated into the final version of the Justice and Peace Law, particularly after the Constitutional Courts' rulings, a movement towards a more "democratic" use of transitional justice was instigated by civil society and human rights advocates. This was only possible, however, because local

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NGOs could rely on their dense transnational networks and a vast experience of contesting impunity that was informed by the increased robustness of international standards (Gómez-Sánchez, 2014). As mentioned earlier, there would have been a politically viable path for the government to put forth their original version of the Alternative Sanctions Law, but resistance from human rights advocates was too strong to permit it.

This, of course, does not mean that non-state actors and human rights activists or their respective organizations for that matter are altogether trumping state-led politics. On the contrary, it is still very much the case that NGOs are "marginal voices" (Anonymous 1; Reis, 2006) that often find themselves struggling against other conflicting discourses promulgated not only by a majority of the political elite, but also by the economic sector, the media and public opinion in general (Gómez-Sánchez, 2014: 89). Much in line with the Keck and Sikkink's TAN theory, their strength was after all contingent on the support of international mechanisms and partners and the concomitant scrutiny that Colombia's human rights policy was simultaneously subjected to. Nevertheless, it is undeniable that their strategies consisted of more than just 'taking to the streets.' "Symbolic politics" were crucially accompanied by catalyzing a transitional justice dialogue through seminars and publications, and advocating for change through political and judicial intervention as evidenced by the participation of civil society actors in congressional hearings and the multitude of petitions filed by such actors to the Constitutional Court.

## *Consensus Lost, Consensus Found?*

While the international climate informs the ways in which non-state actors were able to mobilize transnationally and seek a consensus to build a coalition strong enough that would permit a solidification of victims' rights in line with international law, one must also be cautious not to overstate their alleged unison. As mentioned before, categories such as 'civil society actors' or the 'human rights community' may be useful in demarcating them from state agents or actors from 'above.' But oversimplification of such categories obscures the debates and differences that persisted within these groups despite or, perhaps, because of the layer added by a growing acceptance of international norms.

Such differences became apparent from the early stages of the debate sparked by the proposal of the Alternative Sanctions Law. Many NGO members, for example, affirmed that there was no consensus on whether or not intervention in the legislative debate should even be undertaken, because that would have amounted to "legitimizing the government's proposal" (Mejía). Many justified this position by arguing that the dialogue between the government and the paramilitaries was inherently flawed, because "peace negotiations are made between enemies, not friends" (Mejía). The debate remained tense on a number of issues with the introduction of the government's final version of Law 975. As one interviewee fittingly put it: "There were essentially three opinions regarding the law: It's a good law. It's a good law if some changes are made. It could be a good law if major changes were made" (Anonymous 2). It is notable that while some organizations were unwavering in their opposition to the law, others – while sharing some concerns with its fiercest critics – were eager to "seize it as a window of opportunity to construct peace in Colombia" (Sanabria). Some also distanced themselves from taking a too critical stance by holding that their mission was to "work with what the government gave them" if it meant that there could at least be a minimum degree of respect for victims' rights (Cerón). This attitude was fueled by hopes that despite the limitations that the new legislative framework might bear, it could be a starting point for constructing peace in Colombia. Indeed, upon reflecting on the long-term impacts of the law in retrospect, many interviewees were affirmative that it was at least a partial success in terms of victims' rights. They credit it for having set important standards for negotiated solutions to peace in Colombia, and, concomitantly, for introducing the language of transitional justice in the country (Anonymous 1; Sanabria). Thus, while they certainly acknowledge some of the law's pitfalls, they also feel that it inevitably brought the discussion a step closer to further legislation, most importantly to the 2011 Victims and Land Restitution law (Cerón; Sanabria).

The use of transitional justice language among NGOs, however, was highly contentious. As Uprimny and Saffon (2008: 171) note, "while at the beginning of the discussion none of the involved actors used transitional justice language, for various reasons, every single one of them ended up using it". This was by no means self-evident for many actors, especially those that defended the view that negotiations with the paramilitaries were not genuine and the ceasefire they propagated a sham. Talking about a transition in a context where no clear transition from war to peace was taking place, particularly because not all warring factions were involved in the negotiations, was

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problematic for many (Sanabria; Anonymous 2; Pérez). Nonetheless, as outlined in the previous chapters, transitional justice standards became an important tool with which to hold the government accountable and pressure it to adopt a law that would be in conformity with these standards. It is therefore not surprising that in their lobby and litigation work, some organizations refrained from drawing on the transitional justice mechanisms of Law 975 and rather favored the use of international norms such as those outlined in the Joinet Principles of 1997 (Martínez).

Hence, the mere use of the language as well as its incorporation into the final version of the law was by no means a guarantor for its effective implementation. As a matter of fact, one might say that this obfuscated the law's weaknesses to a degree that made it difficult even for the Constitutional Court to overhaul them: "It was beguiling; like a shiny new car with pristine bodywork but a faulty engine" (Gallón). This may also explain why opinions regarding the success or partial success of the law diverge greatly among victims and human rights organizations: while some worked with what might be called a "manipulative" or rather "symbolic" character of the law in order to achieve significant adjustments and bestow a more "democratic" meaning on it, others refused to bargain altogether. Cerón, for example, underlines that owing to the Justice and Peace Law, she and other members of her NGO *Iniciativa de Mujeres Colombianas por la Paz* (Colombian Women's Initiative for Peace, IMP) were able to participate in hearings as victims' representatives, which would likely not have been possible within an ordinary justice system. Through their participation and lobby work, important adjustments were made to the practice of hearings, such as, for example, being granted private and more discrete free versions in cases dealing with sexual violence.

As a consequence, assessments of the law's outcomes vary considerably among those interviewed. Whilst the disclosure of paramilitary structures and the crimes committed is perceived by some as an advancement in terms of truth, others highlight the fact that there can be no truth when considering the unresolved cases of the tens of thousands of disappeared (Martínez). Many NGO workers felt that any chances of unveiling an integral truth were jeopardized when paramilitary commanders participating in the free versions became subject to extradition requests from the United States. Many NGO members highlighted that following extradition, access to the truth became much more difficult. For most human rights advocates, this was particularly worrying because the drug trafficking charges for which paramilitaries were being extradited pale next to the atrocities that were being investigated within the Justice and Peace procedures. Extraditions were thus considered an unjustified obstruction of an important truth-telling process under way in Colombia that had the potential of unveiling grave human rights violations (Pérez). This view, however, received little endorsement from other groups that set aside legal considerations and pragmatically reflected on how this actually enhanced parts of their work, especially in cases of sexual violence. Prior to the extradition, as Cerón explains, it was very difficult to motivate victims to attend the free versions as they feared physical proximity to the perpetrator. In many cases, she states, the hearings continued through video transmissions, making victims less reluctant to attend.

Unison among national and international actors was also anything but a given at the time. While some organizations reiterated the importance of the MAPP-OEA support (Cerón), others went as far as saying that the mission was in fact "their biggest opponent" (Madariaga). This can be attributed to the fact that some perceived the cooperation between the OAS and the Colombian government as a political move, a "promotional strategy" (Laplante & Theidon, 2006-2007: 73) used to "throw a lifebelt" at Uribe following the strong resistance the Alternative Sanctions Law was met with (Madariaga). A big point of contention between some NGOs and the OAS Mission was the latter's treatment of the demobilization process as a genuine and effective one. Thus, cooperation between the Mission and civil society groups was in fact sluggish, especially in the initial stages of their involvement:

In an initial meeting with Sergio Caramagna, the head of the OAS mission, one of the first things he said was that he feels alone, that no one wants to talk to him, that no one wants to engage in the process. This has to do with how groups in civil society view the possibilities of the negotiation process with the paramilitaries (García-Peña, 2005: 65).

Efforts to convince then High Commissioner for Peace, Luis Carlos Restrepo, and the director of the Mission, Sergio Caramagna, of the shortcomings of the demobilization process came in the form of NGOs presenting reports and findings, essentially arguing that ceasefires by the paramilitaries were not being abided by as promulgated by the



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authorities. It was also then that Restrepo allegedly admitted that the ceasefire had been “a metaphor, not a reality”[10]. For organizations critical of the ceasefire, thus, the MAPP-OEA did not represent an important ally, at least not until their sixth (García-Peña, 2005) report was published, in which – for the first time – they acknowledged the “regrouping of demobilized combatants into criminal gangs” as well as the “emergence of new armed players” in certain regions of the country (OAS, 2006: 9; Madariaga).

These observations are a clear indicator for the contemporary approximation of peacebuilding and transitional justice in which peace and justice are not necessarily considered mutually exclusive (Engstrom, 2013). In contexts where significant trade-offs in terms of truth, justice, reparations and peace are no longer tenable, civil society organizations traditionally inclined towards one ‘end’ of the spectrum – justice or peace – may certainly have moved towards a more moderate middle, but this reconciliation also brings with it new points of contention. This pattern is clearly underscored by how different organizations prioritize their goals and by the ways in which they perceive those of other human rights or victims’ rights advocates. There has, for example, been a tendency to regard strong advocates of international norms as “staunch defenders” or “purists” when it comes to international norm compliance (Bayona). On a related note, others refer to them as unwavering advocates of punitive justice who cling to a long outdated belief that long prison sentences can solve things (Villamil; Anonymous 1). Peace NGOs such as Redepaz for example consider transitional justice mechanisms primarily to be tools for the construction of peace and not for punishments (Sanabria). The proliferation of international norms, according to such views, has led to a “dogmatic allegiance” to the guidelines of the International Criminal Court and international justice more generally (Sanabria).

Naturally, in today’s context this does not amount to a total opposition to such standards; rather it has led many to the conclusion that what Colombia needs is a novel approach to transitional justice, possibly one that has not previously been considered elsewhere (Sanabria; Villamil).

## Towards a “Variable Geometry” of Transitional Justice?

The analysis of human rights advocacy on the ground in Colombia clearly reinforces the idea of transitional justice as a space for dispute among an array of actors (Gómez Sánchez, 2014). Examining non-state human rights advocates as instigators of a discourse that reflects the contemporary resurgence of international legal standards in the realm of human rights sheds light on possible new pathways of transitional justice and the tensions that persist within those: Interestingly, groups and organizations that have historically advocated for an inclusion of all actors in a negotiated solution to the conflict, have criticized other NGOs for flip-flopping on the issue of penalties depending on the armed group in question: Some of those who tirelessly demanded longer prison sentences for members of the AUC are now reluctant to apply the same standards just as vigorously to members of the FARC (Madariaga). This flip-flopping accusation is a two-way street however with human rights NGOs pointing to the alleged hypocrisy of other NGOs and government officials that have, since the initiation of peace talks with the FARC, backpedaled on their earlier pro-amnesty positions with the AUC (Madariaga).

This is emblematic of the fact that international normativity can only permeate the contentious politics of negotiations to a certain degree, or as it were, create tensions that affect the conception of negotiated settlements in contexts like Colombia. According to some NGO workers, for example, the rigid application of prison sentences for grave crimes within the Justice and Peace Law framework is in fact impeding the current peace talks in Cuba, especially as victims – who are incredulous as to the political origin of their perpetrator – demand that the same parameters be applied to FARC commanders (Sanabria; Cerón). While this may make sense from a victims’ point of view, unfortunately it flies in the face of the politics inherent to negotiating peace with the various actors involved in the Colombian armed conflict. This is so because “[t]he problem is that the political-military strength of each of these groups – and therefore their willingness to avail themselves of those measures – varies considerably” (Jaramillo et al., 2009: 7). This has been reiterated by actors such as the FARC themselves who have repeatedly questioned the applicability of previous legal frameworks such as the Justice and Peace Law or the more recent Legal Framework for Peace (*Marco Jurídico para la Paz*) (Bayona; Semana, 2015). The proliferation of international norms and the concomitant appropriation of many human rights and victims’ rights organizations is further put into perspective by an

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ongoing polarization regarding the various armed actors in Colombia. As Uprimny and Saffon (2008) note, for a sustainable and legitimate peace to take hold, there must be a unanimous dismissal of grave violations committed by all sides of the warring factions, which is far from being the case within Colombian society.

Nevertheless, seen against the backdrop of the negotiations with the paramilitaries throughout Uribe's presidency, it has become clear that an important precedent has been set. To put it into an interviewee's words, the Justice and Peace Law's weaknesses notwithstanding, it inaugurated "the first chapter of contemporary transitional justice in Colombia" (Madariaga). Indeed, it has put into perspective earlier approaches to peace such as experienced under the Pastrana administration where amnesties and perpetrator-centered approaches prevailed. Therefore, despite the distinctive character of the armed groups, the solidification and growing support of international standards and the rights to truth, justice and reparation have meant that "with regard to serious violations or infractions of human rights, international humanitarian law, and international criminal law, the same criteria will have to apply [to all groups]" (Frühling, 2005: 71).

When seen against the discrepancies among the fiercest human rights and victims' rights advocates, however, this rigorous and strictly congruent application will likely face challenges. This becomes clear upon examining the contentious attitudes towards punishment for serious human rights violations in Colombia: While most actors have come to understand the inadmissibility of amnesties for grave violations, there is still a high degree of disagreement when it comes to the exact type of punishment that perpetrators ought to face. This is not least so because of a (deliberate) ambiguity in this respect inherent in international law (Stahn, 2005) and the challenges that arise from conceiving transitional justice as a negotiated solution to an ongoing conflict[11]. At the same time, the leeway created by this lack of clarity as concerns explicit guidelines for punishment is precisely what makes human rights advocates from 'below' important interpreters of the legal framework, opening up the kind of dispute that could be witnessed during the negotiations with the paramilitaries: a strong opposition to seemingly disproportional prison sentences for serious human rights violations may very well have originated from a strong and universal anti-impunity consensus – yet at the same time it was also international standards that the Constitutional Court was able to rest on when defending admissibility of reduced sentences (Seils, 2015). Consequently, upon having reached a consensus that impunity must be eviscerated, many human rights NGOs still continue to dispute the notion of sanctions and the degree of variability that lies within the panoply of prison sentences on one end and unconditional amnesties or pardons on the other. In this regard, Jaramillo observes that:

The question, then, is whether it is possible to carry out a transition with a 'variable geometry' in which transitional measures vary from group to group, even when they are guilty of the same type of violations – war crimes, crimes against humanity – and should therefore be covered by the same measures (Jaramillo et al., 2009: 7).

The dynamics of this variable geometry and the controversy attached to it are clearly visible within the discrepancies among various human rights NGOs during the negotiations with the paramilitaries, where unwavering demands for strong punitive measures on one hand were confronted with a willingness for compromise regarding reduced sentences on the other (Martínez; Madariaga; Villamil).

## Conclusion

Since its inception, the Justice and Peace Law has undergone some changes[12] but continues to be a controversial framework, one that in retrospect is often assessed as having failed, especially in questions of justice and reparations[13]. Perhaps this is illustrative of the fact that, in the end, the law fell short of constructing a holistic framework for transitional justice that simply could not live up to society's needs and expectations (Villamil).

Despite these observations, the dispute that accompanied the law's creation is instructive for understanding the dynamics at work during contemporary, negotiated transitions. The increased presence and relevance of non-state actors in such processes is clearly evidenced by the Colombian experience with victims' and human rights NGOs occupying an important role as "knowledge brokers" of international standards, which eventually led to the inclusion

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of fundamental victims' rights to truth, justice and reparation in the final version of the law. In addition, the opposition to the government's Alternative Sanctions Law and subsequent proposals was nurtured by the concomitant rise of universal anti-impunity standards and contributed to a rapprochement among local NGOs on the subject, making their demands for a "democratic use" of transitional justice much stronger. This was further enhanced by the fact that the debate was subjected to ample scrutiny on the part of INGOs and intergovernmental organizations whose interventions helped increase leverage of local groups, most evidently illustrated by their lobby and transnational advocacy work during the London and Cartagena Summit and during many congressional debates and hearings.

However, their efforts also go much farther than that, with NGOs working with international think tanks and experts as 'educators' of issues such as transitional justice, even well before the concept had gained prominence in Colombia. In addition, judicial intervention was crucial for amending the law as evidenced by the numerous petitions filed to the Constitutional Court. In the end, the adoption of measures protecting key victims' rights to truth, justice and reparation came as an effort from 'below' to bestow upon the law a "democratic" set of transitional justice mechanisms (Uprimny & Saffon, 2008), especially considering that the initial proposal from the government fell entirely short of them. Taken together, the work of human rights advocates on the ground during the 'Justice and Peace' debate illustrates the usage of key tactics among organizations acting in a transnational environment: symbolic, accountability, information and leverage politics backed by important international support were crucial in boosting claims of an otherwise marginal group of actors, especially given that political and social circumstances in Colombia were not at all unfavorable for the kind of policies put forth in the Alternative Sanctions Law.

At the same time, the "maturation of international law" (Gallón) that roughly coincided with the Justice and Peace debate in Colombia and concomitant anti-amnesty sentiments have not neatly translated into an obliteration of differences and challenges amongst non-state actors in Colombia. This becomes clear when considering the various approaches taken by NGOs to contesting the Justice and Peace Law, as they still exhibit a great degree of diversion. On the one hand, this is because any 'judicialization' of transitional justice is bound to conflict with local practices and perceptions regardless of universal acceptance of certain standards. As a matter of fact, it is precisely this 'judicialization' that has created new questions and challenges, because, the robustness of international standards notwithstanding, there simply are no one-size-fits-all approaches to transitional justice processes. Paradoxically then, the Colombian experience illustrates that international standards have had the effect of unifying human rights advocates on anti-amnesty attitudes while at the same time contributing to new disputes regarding the implementation of accountability measures, for example. For professionalized human rights victims' NGOs in particular this debate has translated into amplified room to contest transitional justice from 'below' and may indeed explain the widely-held view among them that new – or perhaps 'variable geometry'-models – of transitional justice will be necessary to end the armed conflict.

## Appendix

**Name**                      **Role/Organization**   **Date interviewed**   Anonymous 1   NGO worker   17-06-2015   Anonymous 2   NGO worker   18-06-2015   Bayona, José Joaquín   Director of the Politics and Conflict Resolution Program at Universidad del Valle   13-06-2015   Cerón, Angela   Director,

Iniciativa de Mujeres Colombianas por la Paz (IMP)   18-06-2015   Gallón, Gustavo   Director,

Comisión Colombiana de Juristas (CCJ)   01-07-2015   Madariaga, Antonio   Director,

Viva la Ciudadanía   24-06-2015   Martínez, Diego   Executive Secretary,

Comité Permanente por la Defensa de Derechos Humanos (CPDH)   19-06-2015   Mejía, Claudia   Director,

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Sisma Mujer 19-06-2015 Pérez, Luis Guillermo Lawyer,

Colectivo de Abogados Alvéar Restrepo (CAJAR) 22-06-2015 Sanabria, Luis Emil Co-Director,  
Red Nacional de Iniciativas Ciudadanas por la Paz (REDEPAZ) 18-06-2015 Villamil, Carlos Fidel  
Director of Transitional Justice,

Office of the Attorney General 22-06-2015

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## Endnotes

[1] For arguments on this debate, see for example Zalaquett (1990); Orentlicher (1991)

[2] The most prominent complaint came from the Colombian Commission of Jurists which was backed and signed by a number of Colombian human rights NGOs (Comisión Colombiana de Juristas, 2005c)

[3] For example, the Court drew significantly on the notion of the right to peace as outlined in the UN Charter, the Universal Declaration of Human Rights and the Charter of the Organization of American States before proceeding to weighing it up against justice and the right to truth. (CC, 2006: paragraph 4.1.1) In outlining the concomitant obligation of states to pursue justice, the Court relied significantly on the jurisprudence of the Inter-American Court of Human Rights. (CC, 2006: paragraphs 4.4.2, 4.4.3)

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[4] International attention towards Colombia increased after a number of INGOs started reporting on Colombia which culminated in the first analysis of the country's situation at the United Nations Commission on Human Rights (Aranguren, 2009)

[5] Among those interviewed, for example, the Permanent Committee for the Defense of Human Rights (*Comité Permanente por la Defensa de los Derechos Humanos*) and the José Alvear Restrepo Lawyer's Collective (*Colectivo de Abogados José Alvear Restrepo*) were founded in 1979 and 1980, respectively, making them two of the oldest human rights NGOs in the country.

[6] See for example Human Rights Watch, 2003; International Crisis Group, 2004; Human Rights Watch, 2005; Amnesty International, 2005

[7] The 1997 Joinet Principles that enshrine key victims' rights of truth, justice and reparations were updated in 2005 by Diane Orentlicher; The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (or van Boven Principles) were also revised in 2005. (Gallón)

[8] The meetings kept a low profile to protect participants from threats and hostilities. (Madariaga)

[9] These included, for example, the judge Richard Lyster, who served as commissioner for South Africa's Truth and Reconciliation Commission from 1996-1999; Kieran McEvoy, professor of law and transitional justice; members of the International Center for Transitional Justice; a commissioner of Peru's truth commission; and José Manuel Vivanco, executive director of the Americas Division at Human Rights Watch.

[10] The Colombian Commission of Jurists subsequently published a critical report on the Justice and Peace process, entitled *La metáfora del desmantelamiento de grupos paramilitares* (2010), referencing Restrepo's statement

[11] For example, in an annexed opinion to the *The Massacres of El Mozote and Nearby Places V. El Salvador* case (2012), Judge Diego Garcia-Sayán indicates that the IACtHR had in fact not previously dealt with situations involving the negotiated end of a non-international armed conflict. Among the new challenges such situations create he points to the problematic weighing of justice and peace and related questions of the permissibility of alternative or reduced sentences (Seils, 2015)

[12] Law 1592 of 2012 reformed the Justice and Peace Law, changing the investigative focus and how reparations are made in order to increase efficiency of the processes (International Center for Transitional Justice, 2015)

[13] There had only been 32 sentences by June 2015 (El Tiempo, 2015)

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