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A CONTEXT VISION

The insufficiency of transitional justice for the peace building

La insuficiencia de la justicia transicional para la construcción de la paz

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ABSTRACT

Taking into account that the transitional justice arose under the same foundations of retribution and utilitarianism of ordinary justice and that the principles of truth, justice, reparation and non-repetition were implemented in the two transitional models based on denunciation, surrender and submission for some of the actors of the armed conflict who demobilized individually and collectively, based on a theoretical and case study, it was established that the Transitional Justice is insufficient for the construction of peace, since criminal law is not the way to achieve peaceful coexistence. We found that the main causes of this insufficiency are related to the conditional submission, the distortion of the truth, the lack of some actors in the conflict, the absence of a large part of the victims and the indifference to State crimes, among others; Because of that, we conclude that it is necessary to redirect Transitional Justice towards humanitarianism and recognition of the other, based on the principles of tolerance, unity in diversity, prospective justice, ideological pluralism, pro-victim and pro-homine, in a structural way; in order to overcome violence and move *seriously* towards peaceful coexistence, as a founding value proclaimed by the Colombian people in the preamble of the political charter.

RESUMEN

Teniendo en cuenta que la Justicia Transicional surgió bajo los mismos fundamentos del retribucionismo y utilitarismo de la justicia ordinaria y que los principios de verdad, justicia, reparación y no repetición, se implementaron en los dos modelos transicionales a partir de la delación, la rendición y el sometimiento para algunos de los actores del conflicto armado que se desmovilizaron de manera individual y colectiva, a partir de un estudio teórico y de casos, se logró establecer que la Jtr resulta insuficiente para la construcción de la paz, ya que el derecho penal, no es el camino para lograr la convivencia pacífica. Encontramos que las principales causas de esta insuficiencia están relacionadas con el sometimiento condicionado, la distorsión de la verdad, la falta de algunos actores del conflicto, la ausencia de gran parte de las víctimas y la indiferencia frente a los crímenes de Estado, entre otras; por ello, concluimos, que es necesario redireccionar la Jtr hacia el humanitarismo y el reconocimiento del otro, a partir de los principios de tolerancia, unidad en la diversidad, justicia prospectiva, pluralismo ideológico, pro víctima y pro homine, de manera estructural; con el fin de superar las violencias y transitar en serio, hacia la convivencia pacífica, como valor fundante proclamado por el pueblo colombiano en el preámbulo de la carta política.

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1. Introduction

This paper is intended to reflect on the insufficiency of Transitional Justice for the achievement of Peaceful Coexistence and is the product of research developed in the Comprehensive Justice Seedbed in which we propose that the new models of Transitional Justice implemented in Colombia, as a consequence of the internal armed conflict for more than fifty years, are insufficient for the achievement of stable and lasting peace, first, because it maintains the epistemological foundations of retribution and utilitarianism, and second, because it incorporates structural flaws related to the policy of conditioned submission, the distortion of truth, the absence of some participants of the conflict, the absence of most of the victims and the indifference towards State crimes.

This is seen both in the Justice and Peace Law and in the Special Jurisdiction for Peace (JEP). The first suspends the ordinary sentence and replaces it with an alternative that ranges between five and eight years of effective imprisonment (Law 975, 2005)[2], "for the contribution of the beneficiary to the achievement of national peace, collaboration with justice, reparation to the victims and their adequate resocialization" and the latter, where the ordinary and alternative sentences that were created as a consequence of the Agreement, and that "have the essential purpose of satisfying the rights of the victims and consolidating peace"[3], "shall have the greatest restorative and reparative function of the damage caused, always in relation to the highest degree of recognition of truth and responsibility that is made before the justice component of the SIVJRNR through individual and collective statements" (Final Agreement, 2016, No 60).

The latter model was enshrined in the Political Constitution (Legislative Act 01, 2017) and in the laws regulating the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (SIVJRNR for its acronym in Spanish) (Law 1820, 2016), (Law 1922, 2018), (Law 1957, 2019), in which the principles that were to govern the "ending the conflict and the construction of a stable and lasting peace" were constitutionally and legally enshrined, without this being possible, due to the way in which they were developed.

It enshrines the founding principles of the Integral System of Truth, Justice, Reparation and Non-Repetition and those that had already been studied in the context of the Justice and Peace Law. However, as demonstrated in this paper, not only some of them have not been epistemologically developed, but also those that had already been referred to in the scope of this law, have not been fully implemented, which makes it difficult to fulfill the purpose of building a stable and lasting peace; additionally, because its scope of application is very restricted and restrictive and therefore insufficient.

In order to develop this particular topic, we pose two questions: Why are the models of Transitional Justice implemented in the Justice and Peace Law and the Integral System of Truth, Justice, Reparation and Non-Repetition -SIVJRNR- insufficient for the achievement of peace in Colombia? And What is the model of justice that could come closer to the construction of a stable and lasting peace for peaceful coexistence? and What is the model of justice that could approximate the construction of a stable and lasting peace for peaceful coexistence?

Our main goal is to demonstrate that Transitional Justice implemented in two different models, with different actors, different purposes, but based on the same criminal policy of demobilization, subjugation, denunciation and surrender, is insufficient to achieve peace in Colombia. Therefore, we conceive a notion of Transitional Justice based on humanitarianism and recognition.

Based on the rational deductive method and the empirical analysis of case studies at the jurisprudential level, we were able to determine that the inadequacy and inadequate application of the two transitional models implemented in Colombia are far from building a stable and lasting peace; rather, they prevent it from being achieved. 1) The concept of justice built on retributionism and utilitarianism. 2) The insufficiency of Transitional Justice for the construction of a stable and lasting peace. 3) The commitment to a *notion of humanitarian Transitional Justice and recognition,* as a way of approaching peaceful coexistence.

2 [1] **Art. 29 Alternative penalty**. In the event that the convicted person has complied with the conditions set forth in this law, the Chamber shall impose an alternative penalty consisting of deprivation of liberty for a minimum period of five (5) years and no more than eight (8) years, assessed in accordance with the seriousness of the crimes and his effective collaboration in the clarification of the same.

3 Ibid., Art. 3. Alternatives. Alternativity is a benefit consisting of suspending the execution of the sentence determined in the respective sentence, replacing it with an alternative sentence that is granted for the contribution of the beneficiary to the achievement of national peace, collaboration with justice, reparation to the victims and their adequate re-socialization. The concession of the benefit is granted according to the conditions established in the present law.

2. The concept of Transitional Justice built on retributionism and utilitarianism.

On this subject, we will make a brief description of some of the most important notions of justice from retributionism and utilitarianism, which allow us to affirm that Transitional Justice based on these criteria are not suitable to achieve peaceful coexistence.

The first book of the bible (Genesis, 1990) which means "origin" or "beginning" relates the origin of sin and suffering, or what in criminal law has been called crime and punishment. In verse two, God gave this command to man in the Garden of Eden: "You may eat of the fruit of every tree in the garden except the tree of good and evil. Do not eat of the fruit of that tree, for if you eat of it you will surely die," clearly describing the penal type describing the forbidden conduct and the punishment for noncompliance. In the third verse Adam and Eve disobey God. The serpent tells the woman that it is not true that they will die if they eat of the fruit of the tree "So she cut off one of the fruits and ate it. Then she gave it to her husband and he also ate it", configuring a conduct contrary to the norm; an unlawful act.

God called the man and asked him. "Have you eaten the fruit of the tree of which I told you not to eat? The man answered, "The woman whom you gave me as my companion gave me the fruit, and I ate it. He also asked the woman, who answered, "The serpent deceived me and so I ate of the fruit", giving them the possibility of explaining the reasons why they had eaten the forbidden fruit, which did not satisfy him and he says to Adam: "...now the earth will be under a curse because of you" and condemned them to die, just as he had warned. The reason for the punishment itself was not for eating the fruit of the forbidden tree, but for not having obeyed.

The penalty is the result of deservedness for disobedience. Throughout history, man has maintained a system of justice of deserved punishment when he does not obey the law, whatever it may be, because it goes against the power that imposed it, and this same deserved punishment is reflected in the modern State and in the transitional models, because what is sought is punishment for disobedience, as reflected for example with the ex-combatants of the FARC because with their submission, confession, forgiveness and repentance, they recognize their disobedience.

On the basis of the social pact, Beccaria (2015, pp. 14,15) argued that divine justice and natural justice are by their essence immutable and constant, but "human or political justice", being a relationship between action and change in society, can vary, depending on whether it is necessary or useful to the same society; clarifying that the fact of proposing the concept of "human or political justice" is not incompatible with the immutability of divine justice and natural justice, he stated that justice is "only the necessary link to hold together particular interests, without which they would be reduced to the ancient state of unsociability" (p. 20) and consequently, the penalty of punishment is not incompatible with the immutability of divine justice and natural justice. 20) and consequently, the punishment must be proportional to the crime because he considers that "the true measure of crimes is the damage done to the nation, and for this reason those who believed that the intention of the one who commits them was mistaken" (p. 27). As can be seen, the penalty is determined by the damage caused to the person in power; it does not protect either society or the victim. This proportionality is reflected in the two transitional models both quantitatively and qualitatively, since it not only imposes custodial sentences and restricts other rights, but also requires submission, confession, repentance and acknowledgment of the commission of serious crimes against humanity.

Carrara (1988) for his part affirmed that "the natural law would have been impotent to maintain the order of the moral world, because it is weaker than the eternal law that regulates the physical world. This is always obedience; the former is very often violated and despised" (p. 14) and considered that "the prohibition and retribution of good and evil, which remain in the hand of God, have in justice their only foundation and their only measure" and in this sense, justice submits man and God does not punish him to defend man, but because "justice orders that whoever does an evil should suffer another evil" (pgs. 16,17); that is to say, it continues with the conception of retribution of punishment in favor of the one who holds power. As the author points out, justice subjects man; it does not matter whether it is done in an ordinary process or in Transitional Justice.

Likewise, within the theories of retribution, as Mir Puig points out, "the conviction that evil must not go unpunished and that the guilty party must find in it what he deserves" (2004, p. 87) is deeply rooted. The basis of this conviction is given by religious, ethical and legal reasons. The religious ones establish a relationship between divine justice and the function of punishment; the ethical ones propose, with Kant, absolute retribution

insofar as man is an "end in himself" and therefore punishment cannot be based on reasons of social utility; and the legal reasons proposed by Hegel, consider that the retributive character of punishment is justified to the extent that the general will or legal order, which has been denied by the special will or the offender, is reestablished. These theories have as a function the realization of justice and unlike the punishment that God imposed on Adam and Eve, liberal political philosophy, since Beccaria, has set as a limit the proportion of the punishment to the gravity of the crime committed.

Kantian retributionism in Transitional Justice is evident; because regardless of the amount of punishment, the punishment is also represented in the permanent public scorn and seeks, finally, as Hegel points out, the reestablishment of the legal order with the policy of subjugation.

Furthermore, Mir Puig (2004, p. 91) refers that the theories of prevention give punishment a utilitarian function based on the fact that "punishment is necessary for the maintenance of certain social goods", as an "instrument aimed at preventing future crimes"; on the one hand, as a form of psychological coercion or threat so that citizens do not commit crimes, from Feuerbach's perspective; and on the other hand, to prevent those who have already committed a crime from doing so again, as proposed by correctionalism in Spain, the Italian positive school and the "modern direction" of von Liszt in Germany, who stated that "The correct punishment, that is, the just punishment, is the necessary punishment" (MIR PUIG, p. 94).

The author notes that the combination of these theories gave way to the eclectic direction initiated by Merkel, which incorporates retribution and general and special prevention, insofar as it assigns to criminal law the function of protecting society; however, there are those who consider that retributionism of a "conservative" nature should prevail, fulfilling a function of social protection and realization of justice; while the "progressive" sector considers that the basis of punishment is the defense of society based on the protection of legal assets, where retribution represents the maximum limit of the requirements of prevention, preventing the imposition of a penalty greater than that deserved for the act committed; in other words, criminal law is only responsible for a protective function. On the other hand, Mir Puig, considers that Roxin's unitary construction focuses i) *on the legal obligation or legislative moment of protection of legal property,* which can only be achieved through general prevention, since it is prior to the crime; ii) in the judicial application that refers to the imposition of the penalty but without exceeding the culpability of the perpetrator, affirming in this only sense its retributive nature; and iii) *the judicial determination of the penalty,* where it must be reconciled from the "game space theory" (Criminal Law. General Part, p. 101), justice, general prevention and special prevention, which defines the *punitive quantum,* between the minimum and the maximum indicated in the criminal type. At the same time, he proposes one of the theories of criminal law that is the most protective, based on the model of the Social and Democratic State of Law. He considers that it is not a question of the function of punishment in the abstract, but the function it fulfills in the particular model of each State, so that its function depends on the tasks of each State. Thus, a theocratic conception obeys the demand for justice based on divine punishment; in the conception of the absolute State, punishment is an end in itself; in the liberal State, based on abstract and ideal principles such as the demand for justice on the basis of retribution, strictly speaking; the social State, starting with interventionism, focused on special prevention which clashed with the principle of equality, since it implied special treatment for perpetrators of the same crime, which led to authoritarian political systems.

It adopts then, the formula of the Social and Democratic State of Law that assumes correlative functions in each category, incorporating the principle of the maximum possible utility and that of the minimum necessary suffering, in such a way that the protection of society is less burdensome. Thus, the principle of legality submits the punitive power of law; the social necessity of criminal intervention, the fragmentary and subsidiary nature of criminal law and the exclusive protection of legal assets, determines the limits of the Social State; and the principles of human dignity, equality, proportionality, culpability and citizen participation, result in placing criminal law at the service of the citizen.

FERRAJOLI (1997, p. 331 ff), argues that the traditional theories of criminal law are based on a half-hearted utilitarianism, since it refers only to the maximum utility of the majority; therefore, he considers that within the parameters of utilitarianism, the aims of criminal law, in addition to seeking the maximum possible welfare of the non-deviant, must also seek the minimum necessary discomfort of the deviant. He considers that the prevention of crimes and arbitrary punishments legitimizes the "political

necessity" of criminal law as a normative instrument for the protection of fundamental rights and, therefore, this legitimacy "is not "democratic", in the sense that it does not come from the consent of the majority"; on the contrary, the guarantee "means precisely the protection of those values or fundamental rights, whose satisfaction, even against the interests of the majority, is the justifying purpose of criminal law: the immunity of citizens against the arbitrariness of prohibitions and punishments, the defense of the weak through rules of the game equal for all, the dignity of the person of the accused and therefore the guarantee of his freedom through the respect also of his truth. It is precisely the guarantee of these fundamental rights that makes criminal law and the majority principle itself acceptable to all, including the minority of the accused and the accused" (p. 335 and 336).

The utilitarian currents of criminal law, in the sense that punishment serves some purpose according to the different theories, do not rule out, none of them, its retributive nature to a greater or lesser extent. All of them accept deprivation of liberty as a form of criminal sanction, regardless of the justification they give it. Utilitarian theories shine in Transitional Justice. The penalties and alternative sentences of the two transitional processes are used to subdue the postulants and appearing parties; to make them accept the truth demanded by the State and be proclaimers of their own guilt; and especially, to legitimize the State crimes committed during the war in Colombia. Thus, truth and justice are what power says they are.

3. The insufficiency of Transitional Justice for the construction of stable and lasting peace

Transitional Justice was conceived in Colombia as a mechanism to reconcile the armed conflict that the country has been experiencing for more than five decades. Initially with the demobilization of the self-defense groups that was implemented with the Justice and Peace Law (2005) and later with the signing of the Final Peace Agreement (2016, No. 60).

While the Justice and Peace Law was designed so that the organized illegal armed groups would contribute to the achievement of national peace through the collective demobilization of the United Self-Defense Forces of Colombia (AUC) collectively and of the members of the groups that took up arms individually, for the purposes of truth, justice, reparation and non-repetition, in exchange for a reduction in the quantum of punishment ranging from five to eight years of effective deprivation of liberty; The SIVJRNR was implemented through the JEP to obtain the highest degree of recognition of responsibility through individual and collective declarations.

The principles were accepted in the Agreement under the assumptions of submission, collaboration, betrayal and surrender with the objective of "achieving a stable and lasting peace", which is far from being so, since truth became confession, justice continues to be retributive in quantitative and qualitative terms, reparation and non-repetition represented by forgiveness and repentance, since these principles thus conceived, with the intention of putting the "other" in a state of indignity, what it does is to generate more resentment and new forms of violence.

In consequence, the problems that we have been able to demonstrate and that impede the implementation of peace in Colombia through Transitional Justice as it is formulated are multiple: 1) its origin founded on the friend-enemy relationship; 2) fear as a control mechanism; 3) the fallacy of Transitional Justice as a reduction of penalties; 4) truth as a conditioned confession and not as a principle; 5) the mandatory acceptance of truth as the official narrative of truth; 6) the construction of contexts under the standard of criminal investigation and not of historical memory; 7) legal insecurity and non-compliance by the State; 8) conditioned submission; 9) the selfhood of officials; 10) the absence of all actors in the conflict: division in justice and peace and in the JEP; 11) prevalence of the SIVJRNR over the other points the Agreement; 12) the exclusion of a large part of the victims; and 13) the legitimization of State crimes.

3.1. The origin based on the friend-enemy relationship

This problem arose with the issuance of Law 975 of 2005 as a consequence of the collective demobilization of the self-defense groups and the individual demobilization of the members of subversive groups who decided to collaborate and inform on the other members of the group in order to obtain the "benefit" of the alternative punishment. On the one hand, the relationship between the members of each group is maintained in isolation, considering the other as their enemy; on the other hand, the relationship of enemies is maintained with the

groups that are still taking up arms, and from these, a new relationship of enemy arises with those who have demobilized individually and are "collaborating" with peace; and finally, the victims and society in general, also continue to consider the applicants to this law as their enemies, regardless of whether they are members of the self-defense groups or of the guerrillas.

Eleven years after the enactment of this law, on October 4th, 2016, this policy of division between friend-enemy was further strengthened, with the results obtained in the plebiscite that called the Colombian people and that according to data from the National Registry of Civil Status, to the question that was asked, about whether do you support the final agreement for the termination of the conflict and the construction of a stable and lasting peace? 50.21% represented in 6,431,376 votes, answered NO; compared to 49.78% represented in 6,431,376 votes, answered YES. (Plebiscite, 2016); Agreement that was finally signed without the approval of the people on November 24th 2016.

In item 5 of the Agreement, the principles already implemented in the law of justice and peace, which already had the experience of the impossibility of even approaching peace, were again taken up; however, in the justice component, the JEP was created, which has also maintained the division of the appearing parties into demobilized FARC members, State agents, third parties who collaborated and financed the conflict and those who participated in the social protest. In this sense then, the processes that are carried out in the JEP are of an isolated nature, as is the truth component.

According to information from the Special Jurisdiction for Peace (2021), although they have a registry of 13,311 persons subject to this jurisdiction, of which 9,819 correspond to the FARC-EP, 3,329 to the public force, 151 to agents of the State other than the public force and 12 persons in social protest; it also indicates that the appearing parties who are actually bound by order, are in the order of 1,080, distributed as follows:

Table 1. Source of information obtained from (JEP, 2021).

MACROCASES		Number of appearing parties admitted by competence
01	Hostage-taking and other serious deprivations of liberty committed by the FARC-EP (Renamed with Ruling SRVR 019 of 2021) Opening: Ruling SRVR 002 of 4th Jul 2018	66
02	Situation in the municipalities of Ricaurte, Tumaco and Barbacoas in the department of Nariño Opening: Ruling SRVR 004 of July 10th, 2018	69
03	Deaths illegitimately presented as combat casualties by agents of the State Opening: Ruling SRVR 005 of July 17th, 2018.	495
04	Territorial situation in the region of Urabá Opening: Ruling SRVR 040 of September 11th, 2018.	270
05	Territorial situation Northern Cauca and southern Valle del Cauca Opening: Ruling SRVR 078 of November 8th 2018	106
06	Victimisation of members of the Patriotic Union (UP) Opening: Ruling SRVR 027 February 26th 2019	16
07	7 recruitment of children in armed conflict Opening: SRVR 029 of March 1st 2019	63
	TOTAL	1085[4]

Source: own.

4 In the information provided by the SJP, it is indicated in the totals of the number of appearing parties in the proceedings that "N.A." "4 Given that there may be persons and versions made jointly between macro-cases, it is not possible to total them to avoid duplication of information". https://www.jep.gov.co/jepcifras/JEP%20en%20cifras%20-%20diciembre%2017%20de%202021.pdf

It can be seen not only that the division between the different appearing parties, but also that five years after the signing of the Agreement, the number of those formally linked to it is very low. Likewise, the internal division of the jurisdiction by groups is maintained, even within the same macro-cases, which means that the same friend-enemy criterion continues to be maintained even within the same jurisdiction among the appearing parties, but also with respect to the interests of each group of victims, depending on the type of participant, that is, within the same jurisdiction, the appearing parties and victims are divided by groups, maintaining the friend-enemy division.

3.2. Fear as a mechanism of control.

Fears were realized with the signing of the Agreement. As a consequence of a pacification process, an armistice, a ceasefire, a laying down of arms, a surrender, or whatever you want to call it, less of an Agreement, but rather a unilateral and conditional surrender, many former FARC combatants and social leaders of various communities were killed, as was to be expected. The State has maintained a policy of non-implementation of peace, including the very form of prosecution.

If the law of justice and peace (2005), demanded to grant the alternative punishment the submission to access the punitive reduction that in many cases did not reach the threshold of the principles and the fact of not accepting the institutional truth, generated the fear of their exclusion (Law 975)[5]; in The justice component of the Integral System has also been implementing an increasingly rigid regime of conditionalities that has been excluding many appearing parties.[6]

This has generated, on the one hand, fear for one's own life as a former FARC combatant; because the policy of extermination of the enemy has continued; and on the other hand, the procedural fear of being excluded from the system; which would result in exclusion from the jurisdiction and the imposition of the highest penalties in the ordinary justice system, or in the best case scenario, the maximum penalty of 20 years in the JEP system if the truth is not accepted as it is said it should be accepted (Law 1957),[7]

3.3. The fallacy of Transitional Justice as a reduction of sentences.

In this matter we have argued that the reduction of sentences in Transitional Justice by an alternative sentence or even a sentence of its own, although they reduce the time of deprivation of liberty in the amount of punishment, the marked increase in punishment from the qualitative point of view, far exceeds the quantitative reduction, the quantitative reduction because this qualitative penalty (Law 1957[8]) is represented in the acceptance of the truth that the State determines with respect to the acceptance of all the causes of the war, violence, drug trafficking and corruption, in the heads of those who are the postulants and appearing parties in Transitional Justice on behalf of the State itself; To this end, postulants and appearing parties in Transitional Justice are required to ask for forgiveness, to repent, to compensate, to guarantee that what happened will not be repeated, even if they cannot do so; in short, to accept all the conditions imposed by the State, so that each applicant or participant, with his confession and repentance, exonerates the State of any type of responsibility and of the crimes committed throughout the armed conflict. Retributive justice remains intact, it is only transformed.

3.4. Truth as a conditioned confession and not as a principle.

One thing is the narrative that the postulants give of the facts in the Justice and Peace Law, which are part of the truth component, and another thing is the legal qualification of the facts. In many cases the facts do not make up the legal qualification made of them; however, the acceptance of the facts, but not of the legal qualification, has meant in Justice and Peace the non-acceptance of the charges. In this case, the paragraph

5 Art. 19 Acceptance of Charges. PARAGRAPH 1. If in this hearing the accused does not accept the charges, or retracts those admitted in the free version, the National Prosecution Unit for Justice and Peace shall forward the proceedings to the competent official in accordance with the law in force at the time of the commission of the conduct under investigation. Art. 20. Breach of the procedural unity: If the accused or accused partially accepts the charges, the procedural unity shall be broken with respect to those not admitted. In this case, the investigation and trial of the charges not accepted shall be processed by the competent authorities and the procedural laws in force at the time of their commission. With respect to the accepted charges, the benefits provided for in this law shall be granted.

6 appearing parties bound by ruling

7 Article 125 states that the sanctions seek to satisfy the rights of the victims and consolidate peace.

The sanctions to be imposed by the Peace Tribunal of the PJP will be restorative and reparative of the damage caused, always in relation to the degree of recognition of truth and responsibility made before the Jurisdiction, through individual or collective declarations.

8 Article 125 states that the sanctions seek to satisfy the rights of the victims and consolidate peace.

The sanctions to be imposed by the Tribunal for Peace of the PJP will be restorative and reparative of the damage caused, always in relation to the degree of recognition of truth and responsibility made before the Jurisdiction, through individual or collective declarations.

of Article 19 of Law 975 is applicable, which establishes that if in the indictment hearing the defendant "does not accept the charges, or retracts those admitted in the voluntary confession, the Prosecutor's Office "will send the case to the competent official in accordance with the law in force at the time of the commission of the conduct under investigation"; in other words, the case is sent to the ordinary justice system.

In these cases, the applicants are obliged to accept crimes that often do not correspond to the legal qualification in order not to be excluded from Justice and Peace and not to be sent to the ordinary justice system, because even if they had confessed to many crimes, by sending just one of them to the ordinary justice system, the reduction of the alternative sentence was practically lost.

In the Special Jurisdiction for Peace, this was evidenced in Indictment No. 19 of January 26th 2021 in which the Chamber for the Determination of Facts and Conduct charged the former combatants of the FARC Secretariat with the crime against humanity of serious deprivation of liberty and the war crime of hostage-taking within the macro-case 01 "Hostage-taking and other serious deprivations of liberty". (Ruling 19, 2021)

In a response dated April 30th 2021 (Macrocase, 2018), the FARC appearing parties acknowledged their responsibility for the facts and the Chamber's legal qualification of them; however, it reformulated the legal qualification by determining "... that the imposition of forced labour by the victims during captivity constituted the crime against humanity of slavery". (Ruling 244, 2021)

The Chamber denied the request of the **former combatants** to overturn this accusation, which was set forth in the sixth paragraph of Ruling 19 of 2021, which states that "the FARC-EP committed other crimes against humanity concurrently with the serious deprivations of liberty" and that "By naming these facts, and giving an account of their gravity and their criminal nature for violating the universal rules of war, the **Chamber** fulfills its constitutional and statutory function of facilitating society, and appearing parties to understand the gravity of the facts and conduct of the past. These names make it possible to understand that some means that may have seemed justified in the midst of the war, must today, in light of the Final Peace Agreement, be understood in a different way, as the victims suffered, and not as the perpetrators conceived them"; However, this is a way of decontextualising the truth of the conflict and reducing it to criminal acts, ignoring the true historical meaning of the armed conflict.

The importance of the *nomen iuris* of the facts serves to indicate that the appearing parties committed cruel and inhuman crimes that transcended the armed conflict and seeks to show that illegal detentions are not enough to make the accusations, but that it is necessary to incorporate slavery in the way it has been structured in the Rome Statute, to further demonstrate the "cruelty" that these appearing parties are obliged to accept; otherwise, they would not be able to access their own and/or alternative sentences. Let us remember that the acceptance of these facts, in the form in which they are qualified by the state through the SJP, represents the "truth". A conditional truth. A forced confession.

What we intend to illustrate in this topic is that the truth, as it is developed in transitional scenarios, is insufficient to achieve peace, is insufficient to achieve the construction of peace because it is also subject to a regime of conditions that prevent the development of a true Transitional Justice as an axiological principle that allows to know what happened in the framework of the armed conflict as a true and truthful narrative of the facts that made Colombia maintain a war for more than five decades and not as isolated facts such as the creation of macro-cases, giving priority to attribute criminal responsibility rather than the construction of truth. The truth subjected to political interests by showing that the State is the great victim of the war, is the true essence of this component of truth. In the Justice and Peace Law, it was concluded that the "only ones responsible" for the grave violations of human rights were the postulates of the self-defense groups and the guerrillas, and in the SIVJRNR, those "most responsible" for the grave violations of human rights are the appearing parties, exempting the State from responsibility.

3.5. The obligatory acceptance of truth as the official narrative of truth.

The truth constructed in this way signifies the legitimacy of the official narrative of truth; that is to say, the historical memory of the armed conflict in Colombia is being written, not only on the basis of the subjected truth, but its narrative is defined by the procedural truth of an ordinary justice system that has considered the members of the insurgent groups as "terrorists", attributing criminal responsibility to them in that condition.

These criminal proceedings built on the denial of the armed conflict made the procedural truth the basis for the construction of the truth in the transitional processes. Thus, in justice and peace processes, convictions or trials in the ordinary justice system were the basis for the construction of truth, with the modality of expanding on the facts in the free versions given by the accused.

In the JEP, although the reports presented by social and victims' organizations have been taken into account, the greatest source of truth has been obtained from the reports presented by the Prosecutor General's Office. The material truth is affected by a procedural construction for the purpose of conviction which prevents its holistic construction, not only because the narrative changes according to the ends, but also because it is biased, as it does not allow for the integral participation of all the actors in the conflict in their participation in a comprehensive manner.

The truth of Transitional Justice is in line with Nietzsche's theory of the will to power (2020[9]), who considered that truth is that which the will to power imposes, because "there are no facts but interpretations"; and it is the interpretation of the facts that configures the truth of the one who has the will to power. Thus, it has been constructed in Transitional Justice and coincides with the approach of Foucault (1989, p. 34) when he refers to the *power-knowledge-knowledge-power* relationship that constructs truth; it is the truth of the will to power "in short, it is not the activity of the subject of knowledge, which would produce knowledge, useful or averse to power, but the power-knowledge, the processes and struggles that traverse it and that constitute it, are what determine the forms, as well as the possible domains of knowledge".

Foucault builds on Nietzsche's thesis that "there are no facts but interpretations" to affirm that power creates *truth*, so that, faced with a fact, each individual creates his or her own interpretation of it, that is, *his or her own truth*. It is power that has the means to impose its interpretation on others, as is the case in current Transitional Justice processes, which seek the truth interpreted by those who hold it: the state. Gradoli (2013) also considers that there is no absolute truth and that there are multiple interpretations of the facts.

3.6. The construction of contexts under the standard of criminal investigation and not of historical memory;

We continue with the analysis of the different ways in which the truth is distorted in Transitional Justice, also when it is obtained through confessions and constructed from the criminal investigation, insofar as it analyses the facts and the reality of the war on the basis of crimes, and from there it starts from a fallacy that leaves out of the truth the causes that originated and still maintain the war in Colombia, reducing them to crimes committed by those who submitted themselves to this justice system.

The emphasis of these transitional processes, based on the construction of "patterns of macro-criminality"[10] (Decree 3011) in the Justice and Peace Law and of "macro-cases" in the SIVJRNR, is aimed at seeking the responsibility of those "most responsible for crimes"[11] (Ruling 244, p. 31), in order to reveal the context of the economic, social and political factors that led to the prolongation of the war for so many decades as part of the economy and state policy, but for the purposes of prosecution. 31), in order to reveal the context of the economic, social and political factors that led to the prolongation of the war for so many decades as part of the economy and state policy, but with the aim of prosecution[12] (Decree 3011), as established in the Justice

9 [1] 115 The interpretative character of every event. The event itself does not exist. What happens is a group of phenomena selected and summed up by a being who interprets. 7[60] Against positivism, which stops at phenomena: "there are only facts" - I would say: no, there are precisely no facts, but only interpretations. We cannot ascertain any fact "in itself"; perhaps it is absurd to want something of the sort. "Everything is subjective" you say; but this is already an interpretation, the "subject" is nothing given, it is only something added by the imagination, something added afterwards. Is it still necessary to put the interpreter behind the interpretation? This is already an invention, a hypothesis

10 Article 16. Definition of macro criminality pattern. It is the set of criminal activities, practices and modes of criminal action that are developed repeatedly in a determined territory and during a determined period of time, from which the essential elements of the policies and plans implemented by the organized illegal armed group responsible for them can be deduced. The identification of the pattern of macro criminality makes it possible to concentrate investigative efforts on those most responsible for the development or implementation of a criminal plan and contributes to revealing the structure and modus operandi of the organized illegal armed group, as well as the relationships that made its operation possible.

11 "The concept [of the most responsible] presupposes the identification of individual acts that illustrate the macro-criminal structure and of a total act, which describes the context of that structure that made the commission of the international crimes possible. For this reason, in his opinion, there could be a sort of double indictment: an individual indictment for the specific acts and a collective indictment for the pattern. On this understanding, "the person most responsible is the person who plays an essential role in the criminal organisation for the commission of each crime, that is, the person who has: directed, controlled or financed the commission of the crimes against humanity, genocide and war crimes committed systematically". Ruling 244/21

12 Article 15. ***Definition of context***. For the purposes of the application of the special justice and peace criminal procedure, ***the context is the frame of reference for the investigation and prosecution of crimes perpetrated in the context of the internal armed conflict***, in which geographical, political, economic, historical, social and cultural aspects must be taken into account. As part of the context, the criminal apparatus linked to the organized illegal armed group and its support and financing networks will be identified.

and Peace Law and as set out in Transitory Article 7 of the Constitution, which states that the SRVR will carry out its work "in accordance with prioritisation criteria based on the seriousness and representativeness of the crimes and the degree of responsibility for them" (Legislative Act 01, 2017); without its objective being the solution of the structural problems of citizens in each part of the territory and that from there, the construction of historical memory and its non-repetition can be achieved.

As long as Transitional Justice continues to consider the Colombian armed conflict as crimes committed by the appearing parties to be tried as the ultimate criminals, the causes of the armed conflict, such as social and economic inequality, the lack of opportunities, the increase in poverty, the systematic violation of human rights, cannot be understood, let alone mechanisms of non-repetition established. Therefore, with the two prevailing models of Transitional Justice, it is not possible to build a memory with a view to unveiling the causes of the war, the real perpetrators, the consequences that the war has had on the population for several generations, and much less, to make a diagnosis that seeks non-repetition.

The transitional processes based on the construction of the truth from the criminal investigation of crimes defined at the national and international level, with the aim of charging the "those most responsible" with criminal responsibility as the main criminals of the internal conflict in the way it is being done, especially in the JEP, is nothing other than the continuation of justice based on vengeance and hatred, This is the continuation of justice based on revenge and hatred, which is increasingly encouraged by the meaning it represents for society, by the fact that the state is finally putting the "top criminals of the war in Colombia and the perpetrators of all the atrocities committed in recent decades in the public pillory, endorsed and accepted by the postulants and appearing parties.

3.7. Legal uncertainty and non-compliance by the state.

This began with the Justice and Peace Law when the members of the self-defence groups demobilised collectively and the guerrillas of the different armed groups demobilised individually. Once demobilised, the AUC commanders were extradited to the United States (2008)[13] where most of them, having served their sentences, have returned to the country asking to be accepted as appearing parties in the JEP, which has been denied.

From a legal point of view, non-compliance and insecurity arise from the very issuance of the Justice and Peace Law, which established that the alternative sentence would range between five and eight years as a maximum of effective deprivation of liberty; However, what it did not establish was when it would start to be counted and it proceeded to reform it seven years later (Law 1592, 2012) and (Decree 3011, 2013), when many of the applicants were about to complete eight years of deprivation of liberty since their demobilisation, modifying the law so that it would start from the date of application, which was ratified by jurisprudence, that is, the term for the substitution of the security measure was counted eight years after the application and not from the date of demobilisation.

In the justice component of the SIVJRNR, it was established from the very signing of the Agreement that the submission of the appearing parties to the JEP was subject to a regime of conditionalities, but as the processes have advanced, more and more conditions have been incorporated that are very difficult to comply with because the purpose of "satisfying" the rights of the victims is increasingly difficult; But not because of the victims themselves, but because each time, new requirements and demands arise that close the possibility of accessing the sentences in this transitional model.

The legal uncertainty of the procedural law (Law 1922), for example, in which it was established that the Chamber for the Definition of Legal Situations assumes knowledge but not jurisdiction over the cases, means that a prior process of confession and development of the reparation plan is carried out by the appearing parties , tending to comply with the clear, concrete and programmed commitment -CCCP- before the Jurisdiction, even though the jurisdiction has not yet assumed jurisdiction.

13 Mass extradition of paramilitary leaders In a surprise move, this morning the government lifted the extradition moratorium on the extradition of the top demobilised paramilitary leaders and immediately ordered their transfer to the US... In total, fourteen of them were handed over to the US government. (...) They are the top leaders of the United Self-Defence Forces of Colombia (AUC) who negotiated a peace treaty with the government of Álvaro Uribe, under the commitment not to commit any more crimes and to demobilise their troops. El Espectador May 12th, 2008

From two scenarios, both political and legal, new obstacles are being placed; Thus, after 5 years of signing the agreement, the JEP only has 1,085 appearing parties linked by ruling, there are already very few people who would be missing to enter; what glimpses that finally, those sheltered by this Jurisdiction are very few.

3.8. The selfhood of civil cervants.

A large part of the judicial officials of the JEP have been officials of the judicial branch, in view of which we consider that the same idea of ordinary justice continues to be maintained, without there being evidence of a change of mentality in the whole system that would really allow progress to be made towards a true justice of peace; because the procedures are becoming increasingly lengthy and also the procedural impediments to access to this jurisdiction and to the proper and alternative sentences. This can easily be seen with the issuance of the procedural law 1922 of 2018, proposed by the same judicial officials of the Jurisdiction and which is nothing more than a mixture of the inquisitorial criminal procedure codes of law 600 of 2000 and the accusatory of law 906 of 2004, proper of the ordinary justice system.

3.9. The absence of all the actors in the conflict

Gaius Julius Caesar is credited with the famous phrase Divide et impera. Thus began Transitional Justice with the Justice and Peace Law "for the reincorporation of members of armed groups organised outside the law, who contribute effectively to the achievement of national peace" (Law 975, 2005), because it only allowed the collective demobilisation of the self-defence groups and the individual demobilisation of members of the insurgent groups, so that they would provide information and collaborate effectively in the dismantling of the group to which they belonged, The same happened with the Agreement; from the outset, it excluded self-defence groups that participated in the armed conflict, armed groups other than the FARC, and those members of their own ranks that were not included in the lists.

Thus, for example, the Appeals Section of the Peace Tribunal of the SJP emphasised that it does not have jurisdiction over paramilitaries for the following reasons: 1) paramilitaries are excluded from the Final Agreement by the signatory parties; 2) there is no express rule empowering the SJP to receive them; 3) the SJP applies to rebel structures and paramilitaries are not; 4) there was no final peace agreement with the paramilitaries (Ralito was a prior and partial demobilisation arrangement); 5) there has been no such agreement after November 24th 2016; 6) the paramilitaries cannot present themselves as civilian third parties because these roles are exclusive; 7) neither can they invoke the principle of favorability because they are not dealing with the same factual assumptions or bodies of law, which is why they receive different legal treatment; 8) Law 975 of 2005 constitutes special legislation for the prosecution of paramilitaries (Ruling , 2019).[14]

The continuation of a fragmented Transitional Justice, which has not only maintained an internal division between the members of each party, but in this scenario it is impossible to construct the truth of what happened, to know who is really responsible for the humanitarian crisis generated by the war in Colombia: but the most important thing to highlight is that, in neither model, has the state assumed its historical responsibility. For the Colombian state, "the others, all of them" were the ones who committed the grave human rights violations generated by the armed conflict.

3.10. The prevalence of the justice component of the SIVJRNRN over the other points of the Agreement.

Transitional Justice was reduced to the justice component of point 5 of the Agreement (Final Agreement, 2016, No 60); fundamentally, to the judicialisation of the armed conflict, through some of the participants: FARC ex-combatants to submit and answer for all crimes committed during the armed conflict; State agents members of the security forces, who in isolation and behind the back of the State, carried out extrajudicial executions; state agents who are not members of the security forces, principally those who participated in parapolitics and who are represented by those who have trials pending in the ordinary justice system or who have already been convicted; third parties who voluntarily wish to accede to the law, but for whom the time limit for doing so has expired; and some who have been prosecuted for social protest.

The Comprehensive Rural Reform, the democratic opening to build peace, the end of the conflict with

14 See also: Ruling TP-SA 057/18, interested party Hurtado, para. 47; Ruling TP-SA 063/18, interested party Narváez, para. 23). This argument has been reiterated in those cases in which the SA has ruled that the requirement of personal jurisdiction is not met because they are former combatants of paramilitary groups and not civilian third parties who promoted, financed, sponsored or collaborated with paramilitary groups; see as examples Ruling TP-SA 101/19, interested party Pilonieta, para. 28; RulingTP-SA 207/19, interested party Rincón, para. 27; Ruling TP-SA 207/19, interested party Hurtado, para. 28.

the reincorporation of the FARC into civilian life, the solution to the drug problem, have yet to be developed. Transitional Justice, instead of being integral, inclusive and inseparable from all the points of the peace agreement, where citizen participation is allowed as a whole, has been limited to two more criminal justice processes, in which the applicants to the Justice and Peace Law and appearing parties before the JEP are subjected to seek a reduced sentence.

3.11. The absence of a large number of victims.

For a person to be recognised as a victim, they must be accepted in one of the two criminal models of Transitional Justice; however, as we have already mentioned, not all the actors in the conflict are in one or the other; these victims are practically excluded.

Among them are, for example, the victims of the other insurgent groups that are or were protagonists in the internal armed conflict; the victims of third parties who collaborated with, financed and supported the self-defence groups, but who did not voluntarily submit to the SJP; and, in particular, the victims of state crimes throughout the conflict who are not part of either of the two transitional models.

3.12. The exclusion of state crimes.

In both models of Transitional Justice, the Colombian state is largely absent. The grave violations of human rights throughout the armed conflict that Colombia is still experiencing, through crimes against humanity and war crimes committed by the state in a generalised and systematic manner, will go down in history without any semblance of truth or justice.

The grave violations of human rights by the state are configured by its tolerance, acquiescence, negligence or omission in the commission of crimes perpetrated by its agents, as the Inter-American Court of Human Rights has pointed out:

> "... the State crime is configured as a serious violation of peremptory international law (jus cogens). The State crime becomes even more evident to the extent that it establishes the intention (fault or guilt), or tolerance, acquiescence, negligence, or omission, on the part of the State in relation to serious violations of human rights and International Humanitarian Law perpetrated by its agents, including in the name of a State policy" (Judgment, 2000 para. 35).

One of the many crimes is the case of 19 comerciantes vs Colombia in which the State was condemned and in which the IACHR Court stated that

> "g) the Colombian State is generally responsible for the existence and strengthening of the "paramilitary" groups.
>
> j) according to the Third Report of the Commission on the Situation of Human Rights in Colombia, the State has played an important role in the development of the so-called "paramilitary" groups, "which it allowed to operate with legal protection and legitimacy in the sixties, seventies and eighties";
>
> k) the State acknowledged before the Commission that the relationship of cooperation between the "paramilitary" group operating in the area at the time of the events and its own agents had a basis in law. Precisely this was the basis for exonerating the members of the Army involved in the execution of the alleged victims from responsibility" (Judgment, 2004 para. 84e).

The Inter-American court of Human Rights also declared that the Colombian State violated the norms contained in the American Convention on Human Rights and international norms such as International Humanitarian Law, in the following cases: **Caballero Delgado and Santana v. Colombia** (Judgment, 1995), **Case of Las Palmeras v. Colombia** (Judgment, 2000), **Case of the Nineteen (19) Merchants v. Colombia** (Judgment, 2002), **Case of Gutiérrez Soler v. Colombia** (Judgment, 2005), **Case of the Mapuche Massacre v. Colombia** (Judgment, 2005),**Case of the Mapiripán Massacre v. Colombia** (Judgment, 2005), **Case of the Pueblo Bello Massacre v. Colombia** (Judgment, 2006),**Case of the Ituango Massacre v. Colombia** (Judgment, 2006), **Case of the Rochela Massacre v. Colombia** (Judgment, 2007), **Case of Escué Zapata v. Colombia** (Judgment, 2007),**Case of Valle Jaramillo et al. v. Colombia** (Judgment, 2008),**Case of Manuel José Cepeda Vargas v. Colombia** (Judgment, 2010), **Case of the Santo Domingo Massacre v. Colombia** (Judgment, 2012), **Case of Rodríguez Vera et al. (disappeared persons from the Palace of Justice) v. Colombia,** (Judgment, 2014), **Case of the Afro-descendant communities** (Judgment, 2013), **Case Yarce et al. v Colombia** (Judgement, 2016),

Vereda la Esperanza v Colombia (Judgement, 2018), **Case Isaza Uribe v Colombia** (Judgement, 2018),**Case Omeara Carrascal et al. v Colombia** (Judgement, 2018), **Case Bedoya Lima v Colombia** (Judgement, 2021).

The Colombian state not only participated through fault or negligence, but also through malice. Its actions were not only due to tolerance, acquiescence, negligence or omission, but also direct participation through its agents in collusion with the self-defence groups. In the Justice and Peace process, it was considered that those most responsible for the self-defence groups were the top commanders, but this is not the case. In most of these cases, those most responsible have not even been identified, and those who have been identified have not yet appeared before the Transitional Justice.

Although it is true that third parties who financed, supported and collaborated with the self-defence groups can enter the JEP, this entry is voluntary (2019 art 63). Those most responsible have not yet been prosecuted and have not yet appeared in either of the two Transitional Justice processes.

4. The commitment to humanitarian Transitional Justice.

In order to answer our second question, what is the model of justice that could come closer to the construction of a stable and lasting peace for peaceful coexistence? the theoretical proposal we put forward is that the aims of punishment in Transitional Justice models should transcend society as a whole, replacing the retributive nature of punishment (quantitative and qualitative), and instead seek the truth and the non-repetition of punishable conduct, in a scenario in which society, all the actors in the armed conflict and all the victims of war are included.

In addition to resolving the shortcomings mentioned above, it is necessary to unify a single model of Transitional Justice that is coherent and on equal terms for all, that truly includes those most responsible for the war, so that a historical narrative of what happened can be constructed, not for the purposes of judgement or condemnation, but of Non-Repetition, based on principles that 'advocate the recognition of the other and humanitarianism understood as Bloch refers, "is the effect of knowing oneself to be united towards the same objective, of knowing that all that one has of value and all that one recognises of value in others comes from the common objective" [...]. in its mediate or significant sense, it always presupposes the influence of the community and also of the axiological background from which it comes and on which it is based" (1980, p. 171). (1980, p. 171)

Let us remember that with the implementation of the Justice and Peace Law, the principles of truth, justice, reparation and non-repetition were born for the first time in Colombia, as a new jurisdictional model, which are taken as the basis of the SIVJRN, but which, although they form part of point 5 of the Agreement, do not sufficiently develop all the other points.

The principles that are part of the Agreement, but which can transcend the whole of society and the structural changes it needs to live in peace, cannot be implemented without changes in the economic structure; and one of them is the Comprehensive Rural Reform embodied in the Agreement. Some of the principles to be implemented and others to be redefined cannot be developed without economic liberation, as Bloch points out when he states that "neither human dignity is possible without economic liberation, nor economic liberation [...] without the great question of human rights" (1980, p. xi); that is, for the author, there is no real establishment of rights without putting an end to exploitation and there is no real end to exploitation without the establishment of rights. Therefore, we consider that the principles embodied in the transitional models, some of them still without an epistemological content and others, which must be re-signified, must radiate throughout society.

Tolerance, understood as harmony in difference; unity in diversity, in the recognition of diversity; *harmony in the difference in respecting and recognizing the other,* despite their differences; *the dialogical principle* in the sense that the antagonistic are also complementary insofar as it unites two principles or ideas that are mutually exclusive, but that are inseparable within the same reality or phenomenon; *prospective justice*, insofar as it recognizes the fundamental rights for future generations; *ideological and political pluralism* based on diversity and the recognition of individual and collective rights; *individual freedom*, understood as a manifestation without direct constraint or prohibition of the will and the possibility of freely expressing thought, dissidence or nonconformity without sanctions or reproaches that disturb free thought, but as Bloch

refers (1980, p. 160) on the basis of "ethical freedom, as long as it is really free, is part of freedom of action..." and free from corruption.

These principles are developed on the basis of *human dignity*, understood as the pro-homine principle, the right of every human being to be respected and valued as an individual and social being, with their particular characteristics and conditions, for the mere fact of being a person; *human rights*, understood as the rights that all people have by the mere fact of existing, that is, inherent to all human beings, without any distinction whatsoever; *free thought*, as the possibility of directing one's intellectual, academic, philosophical and political education without limits or conditions; *equality*, as an indispensable basis for democratic participation, without distinction of any kind; and fraternity, understood by the author as "the affection of knowing oneself to be united towards the same objective, of knowing that all that one has of value and all that one recognises of value in others is for the common good", [...] "which always presupposes the influence of the common good". which always presupposes the influence of the community and also of the axiological background from which it is derived and on which it is founded".

It is on these foundations that we believe that Humanitarian Transitional Justice should be consolidated: not only to seek a change from a stage of war to a stage of peace through truth, justice, reparation and non-repetition, which has been insufficient, but also to be incorporated into the entire penal system and transcend the very structure of the state and society, based on this categorisation of values and principles, all of which are aimed at achieving peace and coexistence.

5. Conclusions

The two models of Transitional Justice implemented with the Justice and Peace Law and the Special Jurisdiction for Peace with different actors and different purposes, are built on the same epistemological foundation of retributionist and utilitarian criminal law based on the premise of evil for evil; This prevents Transitional Justice from seriously developing the principles of truth, justice, reparation and non-repetition, as it is based on retributionism from a quantitative and qualitative point of view, but also on utilitarianism based on a policy of denunciation, surrender and subjugation of postulants and witnesses who accept the institutional truth and thus legitimise the state crimes committed during the armed conflict.

The insufficiency of Transitional Justice for the construction of a stable and lasting peace is also reflected in multiple causes such as the permanent distinction between friend and foe; Fear as a form of social control that prevents the truth of what happened from coming closer and that is disguised in a conditioned confession and a truth of obligatory acceptance, based on the construction of a criminalised reality and reduced to patterns of macro-criminality and macro-cases, which prevent a clear, comprehensive and holistic narrative of what happened in Colombia during the war and which incorporates all actors in a single truth process to seek non-repetition and a prospective model of justice, without war and more equitable, for future generations.

As long as the Colombian state does not assume the historical debt it owes to the people in every corner of Colombia and recognises the truth of what happened, it will be very difficult to propose measures for non-repetition and peace-building. We have been able to verify, without any speculation, from the condemnatory sentences of the Inter-American Court of Human Rights against the Colombian state, the serious violations of human rights and crimes against International Humanitarian Law throughout the armed conflict, without these facts being part of the Transitional Justice processes.

The construction of peace in our country and the achievement of peaceful coexistence are possible to the extent that Transitional Justice goes beyond the sphere of criminal law; irradiates civil society in the implementation of the principles of tolerance, unity in diversity, harmony in difference, the dialogic principle and gives new meaning to human dignity, the pro homine principle, freedom in all its manifestations, but especially ethical freedom, free from corruption; and develop the component of a rural reform contained in the Agreement; but also of a structural reform that develops the principle of equality in the development of greater social equity.

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[42] Judgment, Case of Rodriguez Vera and Others (Disappeared from the Palace of [2] Justice) v. Colombia (I/A Court H.R., November 14th 2014).

[43] Judgment, Case of Yarse et al. v. Colombia (IACHR Court November 22nd 2016).

[44] Judgment, Case of Vereda La Esperanza v Colombia (I/A Court H.R., November 21st 2018).

[45] Judgment, Case of Omeara Carrascal et al v. Colombia (Inter-American Court of Human Rights November 21st 2018).

[46] Judgment, Case of Isaza Uribe et al v. Colombia (I/A Court H.R., November 20th 2018).

[47] Judgment, Case of Bedoya Lima v. Colombia (I/A Court H.R. Aug. 26th 2021).