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Integral Rural Reform and Democratic Opening for Peace Building: Transitional Justice in Colombia

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Abstract- This article deals with the transitional process in development in the neighboring country after the end of a conflict that lasted for more than fifty years involving guerrilla movements, paramilitary groups and public forces in Colombia. Its goal is to analyze two of the most peculiar aspects of the agreement between the protagonists of the confrontations: integral rural reform and democratic opening for the peace building. Firstly, the peculiar dynamics that involve law and politics in times of transition are highlighted, and then the peace process itself. Then, it moves on to the two points mentioned in the agreement, discussing how the obligations assumed by Colombian society with regard to expanding access to land and conducting political reform are in line with the idea of non-repetition that should guide transitional process. It is discussed how the agrarian question, related to the origin and performance of the FARC-EP guerrilla movement, could not be absent from the context of the agreement signed, while at the same time reflecting on the need to change the electoral system as an imperative for the expansion of competition in electoral disputes, which would convince those historically marginalized movements to surrender their arms and believe in the coming to power by the vote.

Keywords: *transitional justice; land reform; political reform; colombia.*

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Integral Rural Reform and Democratic Opening for Peace Building: Transitional Justice in Colombia

Reforma Rural Integral e Abertura Democrática Para Construção da Paz:Justiça Transicional na Colômbia

Bruno Galindo [α] & Brivaldo Pereira Dos Santos Jr.[σ]

Resumo- O presente artigo versa sobre o processo transicional em desenvolvimento no país vizinho após o fim de um conflito que perdurou por mais de cinquenta anos envolvendo movimentos guerrilheiros, grupos paramilitares e as Forças Públicas na Colômbia. Tem por objetivo analisar dois dos pontos mais peculiares do acordo celebrado entre os protagonistas dos confrontos: reforma rural integral e abertura democrática para a construção da paz. Primeiro, salienta-se a peculiar dinâmica que envolve o direito e a política em momentos de transição para em seguida se debruçar sobre o processo de paz em si. Avança-se então sobre os dois pontos do acordo indicados, discutindo como as obrigações assumidas pela sociedade colombiana no que diz respeito à ampliação do acesso à terra e à realização de uma reforma política coadunam-se com a ideia da não-repetição que deve orientar todo processo transicional. Discute-se como a questão agrária, relacionada com a origem e a atuação do movimento guerrilheiro FARC-EP, não poderia estar ausente do contexto do acordo firmado, ao mesmo tempo em que se reflete sobre a necessidade de mudança do sistema eleitoral como um imperativo para a ampliação da competividade nas disputas eleitorais, o que convenceria aqueles movimentos historicamente marginalizados a entregar as armas e acreditar na chegada ao poder pelo voto.Conclui-se ao final que a Colômbia pode se beneficiar de experiências transicionais vivenciadas por outros países que emergem de conflitos de natureza semelhante, mas que alguns dos aspectos peculiares da história de décadas de confronto impôs a inserção de condições diferenciadas nas negociações que conduziram à renúncia ao conflito. Outra conclusão a que se chega, tomando por base os momentos iniciais da implementação do acordo de paz, é que num ambiente democrático em que não apenas a Presidência da República atua em nome do Estado colombiano, os protagonistas do conflito precisam se acostumar com a ideia de que os outros poderes constitucionais atuam na conformação do processo transicional, seja na construção do arcabouço normativo pelo parlamento, seja na interpretação do acordo e das normas a ele subjacentes dada pela Corte Constitucional.

Palavras-chave: justiça de transição; reforma agrária; reforma política; colômbia.

Abstract- This article deals with the transitional process in development in the neighboring country after the end of a conflict that lasted for more than fifty years involving guerrilla movements, paramilitary groups and public forces in Colombia. Its goal is to analyze two of the most peculiar aspects of the agreement between the protagonists of the confrontations: integral rural reform and democratic opening for the peace building. Firstly, the peculiar dynamics that involve law and politics in times of transition are highlighted, and then the peace process itself. Then, it moves on to the two points mentioned in the agreement, discussing how the obligations assumed by Colombian society with regard to expanding access to land and conducting political reform are in line with the idea of non-repetition that should guide transitional process. It is discussed how the agrarian question, related to the origin and performance of the FARC-EP guerrilla movement, could not be absent from the context of the agreement signed, while at the same time reflecting on the need to change the electoral system as an imperative for the expansion of competition in electoral disputes, which would convince those historically marginalized movements to surrender their arms and believe in the coming to power by the vote. It is concluded at the end that Colombia can learn from transitional experiences of other countries emerging from conflicts of a similar nature, but that some of the peculiarities of the decades of history of the confrontation led to the insertion of different conditions in the negotiations, resulting in the renunciation of the conflict. Another conclusion, based on the initial moments of the implementation of the peace agreement, is that in a democratic environment in which not only the Presidency of the Republic acts in the name of the Colombian State, the protagonists of the conflict need to get used to the idea that the other constitutional powers act according to the transitional process, whether in the construction of the normative framework by the parliament or in the interpretation of the agreement and the underlying norms given by the Constitutional Court.

Keywords: transitional justice; land reform; political reform; colombia.

I. Introduction

This essay proposes to draw a picture of two very characteristic elements of the Transitional Justice process that unfolds in the neighboring country,

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taking into account the content of the Final Agreement passed by the Congress of the Republic of Colombia in 2016.

The study of these specific points - Integral Rural Reform and Democratic Opening for Peace Building - highlights how transitional processes implemented in countries of the same subcontinent differ, exposing the importance of the local context for its configuration.

Before discussing these points that are part of the agreement, it is necessary to know about the context of Colombian transitional justice, focusing on the existence of a multiplicity of actors involved in its construction, based on what has been settled in the understandings celebrated in Havana.

To avoid misunderstanding, it should be clarified that when the authors refer to the well-known guerrilla movement that took part in the Peace Agreement, the Revolutionary Armed Forces of Colombia, the FARC-EP acronym will be used, thus including the expression *Ejército del Pueblo* added by the organization itself in 1982.

On the other hand, when the reference targets the political party that succeeded it, the Alternative Revolutionary Force of the Common, will be adopted the acronym FARC.

Another interesting issue of the Colombian Transitional Justice is the way in which it is possible to see the dynamics that develops in such processes: an alternation between the approval of legal rules and the performance of political-institutional movements as propellers of the transition aiming at the end of the civil war.

Taking this nuance of Transitional Justice into account is one of the starting points of its study, once its comparison with ordinary justice, that in force in times of peace, is always tempting.

This type of understanding may lead to a trap pointed out by Ruti Teitel at the beginning of his Transitional Justice theory, citing the competition between those who believe that the law and the ideal of justice that accompanies it are the natural precursors of political change (she calls them idealists) and those who argue that the transition is driven by institutions and their balance of power (they would be the realists), and law is only a reflection of political change[1].

The side that each one takes in this debate is usually tainted by its academic-disciplinary bias or the generalization of a particular national experience[2].

Thus, lawyers tend to position law as the starting point of the transitional process, while political scientists assert that political-institutional circumstances are the main aspect of transition, and law is merely a reflection of it.

Teitel teaches that neither of the two views, which also reflect the dichotomy between liberal and critical theorists of the relationship between law and politics, are able to explain the role of law in periods of radical political transformation.

This is clear from reading the following passage:

> Again, neither liberal nor critical theorizing about the nature and role of law in ordinary times accounts well for law's role in periods of political change, missing the particular significance of justice claims in periods of radical political change and failing to explain the relation between normative responses to past injustice and to state prospects for liberal transformation[3].

In this way, it is very important that anyone who proposes to study transitional justice should be aware of this feature and keep in mind this very peculiar dynamic that develops, always differently, between law, justice and politics in moments of transition.

II. Transitional Justice in Colombia: Contextualizing its Steps

Before analyzing the mentioned two points of the Agreement, it is necessary to study the path carried out by Colombian society and institutions aiming the end of a conflict that had been dragging on for five decades.

Due to the temporal magnitude of the conflict, it is natural that there should be alternation between moments of advance and retreat in the peace process, but it is possible to address that the promulgation of the 1991 Constitution was a relevant landmark.

This is related to the idea that the mentioned Constitution's inserted in a context of transformations carried out within Latin American constitutional law from the 1980s, as Professor Rodrigo Uprimny emphasizes:

> Since the mid-1980s, and especially since the 1990s, Latin America has experienced a period of considerable constitutional changes, since almost all countries adopted new Constitutions (as in the cases of Brazil in 1988, Colombia in 1991, Paraguay in 1992, Ecuador in 1998 and 2008, Peru in 1993, Venezuela in 1999 and Bolivia in 2009, among others) or introduced very important reforms to their existing Constitutions (as in the case of Argentina in 1994, Mexico in 1992 or Costa Rica in 1989)[4].

[1] TEITEL, Ruti G. Transitional Justice. Oxford: Oxford University Press, 2000.

[2] TEITEL, Ruti G. Transitional Justice. Oxford: Oxford University Press, 2000.

[3] TEITEL, Ruti G. Transitional Justice. Oxford: Oxford University Press, 2000.

[4] UPRIMNY, Rodrigo. Las transformaciones constitucionales recientes en América Latina: tendencias y desafíos. In: GUARAVITO. César Rodríguez (Coord.) El derecho en América Latina: un mapa para el pensamiento jurídico del siglo XXI. 1. ed. Buenos Aires: Siglo Veintiuno Editores, 2011, p. 109-137.

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However, it is relevant to perceive that the changes in each country contain important differences, either by the origin and nature of the process or by its intensity or even by its orientation[5].

In the case of Colombia, Uprimny points to the movement for the promulgation of a new constitution as an attempt to reinforce a regime that, although democratic, contained problems of legitimacy[6], which certainly has a close relationship with the relay of political elites led by conservative and liberal parties during the 19th and 20th centuries[7].

This frame of political asphyxiation did not permit the emergence of peaceful popular movements - as exemplified by the case of the Patriotic Union, which was discussed later, and was responsible for a constant sequence of episodes of violence that would explain, at least partially, the dissemination and longevity of guerrilla movements on Colombian territory.

It is not by chance that the new Constitution incorporates in its text legal democratic instruments such as plebiscite, referendum, popular referendum, revocation of mandate and the *cabildo abierto* (public meeting convened by a certain number of voters in which the head of the executive - local or regional - must participate).

Another signal of recognition of this lack of legitimacy in the regime is found in Point 2 of the Peace Agreement, entitled "Political participation: democratic opening to build peace", where it is clear that a democratic expansion is necessary with the emergence of new political trends in the country.

Nevertheless, the constitutional change, despite its importance, is not sufficient to carry out an effective transition, which is also coherent with the lesson of Ruti Teitel on the impossibility of determining a single element propellant of a transitional process.

Pedro Brandão, in a work directed by the first author of these lines, already warned that the new forms of representation foreseen in the Charter of 1991 were not effective and, citing Carlos Gaviria Diaz, stated:

> It should be noted, however, that these forms of popular and democratic representation are paralyzed, practically reducing to the vote. The country is moving, in the political sphere, to deepen the traditional status quo and all its injustices and inequalities, failing to achieve these constitutional goals[8].

At this point, the role of the Colombian Constitutional Court, whose work in transforming character deserves to be emphasized, has already played a part in the constitutional history of Colombia, since it has played a crucial role in the realization of fundamental rights, especially by establishing an intercultural logic in the protection of these rights[9].

But the Constitutional Court has also played an important role in the transitional process, since it has been called on several occasions to express its views on legal initiatives aimed at achieving peace, understandably elevated to the status of fundamental right by Article 22 of the Constitution.

An example of this occurred in the judgment of the constitutionality of Legislative Act n. 1/2012, which included a transitional article to the Colombian Constitution:

> Transitional Article 66. The instruments of transitional justice will be exceptional and will have as their prevailing purpose to facilitate the end of the internal armed conflict and the achievement of stable and lasting peace, with guarantees of non-repetition and security for all Colombians; and will ensure, at the highest possible level, the victims' rights to truth, justice and reparation. A statutory law may authorize a different treatment under the terms of a peace agreement for the different armed groups outside the law that have been parties to the internal armed conflict and also for State agents in relation to with their participation in it[10].

In fact, when it is called upon to express its view on a still embryonic transitional process, the Colombian Court, while recognizing the role of the Transitional Justice as a constitutionally adequate mechanism for peace building, tries to set limits on the negotiation to be carried out in Havana:

> Transitional justice seeks to resolve the strong tensions between justice and peace, between legal imperatives for the satisfaction of victims' rights and the need to achieve a cessation of hostilities. This requires a delicate balance between putting an end to hostilities and preventing the return to violence (negative peace) and consolidating peace through inclusive structural and political reforms (positive peace).
>
> [...]

[5] UPRIMNY, Rodrigo. Las transformaciones constitucionales recientes en América Latina: tendencias y desafíos. In: GUARAVITO. César Rodríguez (Coord.) El derecho en América Latina: un mapa para el pensamiento jurídico del siglo XXI. 1. ed. Buenos Aires: Siglo Veintiuno Editores, 2011, p. 109-137.

[6] UPRIMNY, Rodrigo. Las transformaciones constitucionales recientes en América Latina: tendencias y desafíos. In: GUARAVITO. César Rodríguez (Coord.) El derecho en América Latina: un mapa para el pensamiento jurídico del siglo XXI. 1. ed. Buenos Aires: SigloVeintiuno Editores, 2011, p. 109-137.

[7] PÉCAUT, Daniel. As FARC: uma guerrilha sem fins? São Paulo: Paz e Terra, 2010.

[8] BRANDÃO, Pedro. O novo constitucionalismo pluralista latino-americano. Rio de Janeiro: Lumen Juris, 2015.

[9] BRANDÃO, Pedro. O novo constitucionalismo pluralista latino-americano. Rio de Janeiro: Lumen Juris, 2015.

[10] COLÔMBIA. Congreso de la República de Colombia. Acto Legislativo n. 01/2012. Avaliable in: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=48679>. Accessedin 13 February 2018.

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> Although a correct reading of the Legislative Act allows conclude that it does not replace the Constitution, this Corporation considers it necessary to set a series of parameters in its interpretation to avoid that it can become an instrument for impunity and for the lack of knowledge of the rights of victims. 1. Termination of the armed conflict with respect to the demobilized group in the case of collective demobilization and the delivery of arms and non-commission of new crimes in individual demobilization as a requirement for the implementation of the Legal Framework for Peace. Should be required the termination of the armed conflict about the demobilized group in case of collective demobilization and the delivery of arms and non-commission of new offenses in individual demobilization as a condition for the implementation of the Legal Framework for Peace 2. Safeguarding rights of the victims. Under the recognized fundamental pillar, at least the following guarantees must be granted to all victims: (i) transparency in the selection and prioritization process, (ii) a serious, impartial, effective investigation, within a reasonable time and whit your participation, (iii) the existence of an appeal to challenge the decision on the selection and prioritization of your case, (iv) specialized counseling, (v) your right to the truth, which, in the event of your case has not been prioritized must be guaranteed through non-criminal judicial mechanisms and extrajudicial mechanisms, (vi) their right to reparation, (vii) their right to know where the remains of their relatives are located. 3. Investigation and prosecution of all serious violations of Human Rights, International Humanitarian Law and the Rome Statute, which constitute crimes against humanity, genocide, or war crimes committed, and impute them to their maximum responsible[11].

The change of direction of the Executive Branch after the election of former President Juan Manoel Santos, although supported by Álvaro Uribe, is, in fact, an example of the oscillation that characterized the treatment given to the subject by Colombia, well described by Victor Manuel Moncayo:

> That is why the political regime now returns to oscillate between those two positions, which have alternated or coexisted in the face of the Colombian conflict. On the one hand, the elimination, that is to say, extermination, which implies expanding and deepening the so-called legitimate exercise of force, a process in which can the State walk in ways that go beyond the limits imposed by the legal order or of appeal to parastatal modalities of repression; or, on the other hand, the integration or cooptation so that the resistances accept both the institutional ways of handling and treating the conflict, and contents compatible with the good development of the order of domination, without altering or compromising it.
>
> The Colombian State has always moved between these two positions and, for this reason, during these long decades many processes of dialogue and peace have been tried, but without abandoning the military logic. More recently, the option has been just the conflict, with the aim of defeating violent resistance, to achieve the imposition of "normality" by force[12].

The modification of the government's position on the issue of guerrillas, added the announcement in August 2016 of the celebration of the first version of the Agreement between the Colombian Government and the FARC-EP, after four years of negotiation in Havana, introduced an effervescent political debate in the country.

Thus, the dispute becomes even more fierce between those who defended the approval of the Agreement and those who proposed its rejection with the prediction of its submission to a popular plebiscite.

In favour of the Agreement are not only the left-wing parties of the political spectrum but also those of center-right as the Party of La U, led by the then President Juan Manuel Santos. Its rejection is led by Álvaro Uribe, leader of the Democratic Center Party that, when presiding the country, adopted the policy of democratic security, which inspired militarist and far-right sectors for whom victory would depend on a final military solution, with the extermination of the terrorist enemy.[13]

Although its effectiveness has been recognized in the fight against violence and in the resumption of several territories previously under guerrilla control, the democratic security policy, coordinated curiously by former Uribe's Defense Minister, former President Santos, was severely criticized for its disrespect for international law.

Episodes such as the invasion of Ecuadorian territory to assassinate members of the FARC-EP summit[14] and the use of symbols of international aid agencies on rescue missions, including the rescue of

[11] COLÔMBIA. Corte Constitucional. *Sentencia* n. C-579/13. Bogotá, 28 ago. 2013. Avaliable in: <http://www.corteconstitucional.gov.co/relatoria/2013/C-579-13.htm>. Accessedin 13 February 2018.

[12] MONCAYO, Víctor Manuel. Las conversaciones de La Habana: una compleja oportunidad para la paz en Colombia. In: ESTRADA, Jairo (Coord.) Solución política y proceso de paz en Colombia. 1. ed. Querétaro: Ocean Sur, 2013.

[13] ESTRADA, Jairo. Presentación. In: ESTRADA, Jairo (Coord.) Solución política y proceso de paz en Colombia. 1. ed. Querétaro: OceanSur, 2013.

[14] AÇÃO contra FARC abre crise entre Colômbia e Equador. *O Globo*, Rio de Janeiro, 2 fev. 2012. Avaliable in: <https://oglobo.globo.com/mundo/acao-contra-farc-abre-crise-entre-colombia-equador-venezuela-3847030>. Accessedin 14 February 2018.

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former Senator Ingrid Betancourt, let know the exact notion of unrestrained determination to combat guerrillas.

At the end of a heated debate, the Agreement was rejected by the people in a plebiscite whose participation was not mandatory, for reasons that can only be speculated but which are probably linked to the risk of impunity:

> [...] It is speculated that the reasons why the Colombian people did not accept the terms set forth for the agreement would be related mainly to the uncertainty of the realization of justice in relation to the perpetrated violations during the period[15].

This led to the resumption of negotiations in Havana in an attempt to reconcile opposite political sides with the diffused message from the ballot box.

The absence of a clear justification for rejecting the first version of the Agreement ended up granting a wide margin of freedom to the negotiators, which meant that the second version was not so different from the first.

Among some important changes, it may be emphasized that the new agreement would no longer integrate the Colombian Constitution in its entirety, but only human rights and international humanitarian law, which is in line with the idea of a block of constitutionality provided for Article 93 of the Constitution:

> Article 93. International treaties and conventions ratified by Congress, which recognize human rights and prohibit their limitation in states of emergency, prevail in the internal order. The rights and duties fixed in this Constitution shall be interpreted in accordance with the international treaties on human rights ratified by Colombia.

Another modified point was the express possibility of reviewing the decisions of the Special Jurisdiction for Peace by the Constitutional Court, although there are severe restrictions to the appeals that seek this objective.

And it was further specified that the FARC-EP should declare during the abandonment of arms its assets for the purpose of reparation of the victims.

After the changes, although the natural way was the submission of the renewed Agreement to a new plebiscite, it was decided to vote in the Congress of the Republic, where it was approved under strong protests from the opposition.

However, this did not mean that the implementation of the transition was free of changes, and it should be mentioned, for example, that various legislative instruments adopted in the wake of the Agreement were and are being submitted to the Constitutional Court for scrutiny.

One of the situations occurred when the Constitutional Court understood unconstitutional two paragraphs (denominated *literales* in Colombia) of Legislative Act n. 1/2016, which imposed severe restrictions on legislative activity in the examination of draft legislation aimed at implementing the Agreement[16].

In view of the above considerations, it is clear that political and legal elements are interconnected and alternated during a transition process, especially in a complex scenario such as Colombia, characterized by a multiplicity of actors involved in the conflict and institutions responsible for the Implementation of the Peace Agreement.

With all this in mind, it is already possible to analyze the agreement itself, initially through an overview of its content, and then focus on the two points most related to this work.

III. An Overview of the Peace Agreement

Examining the new Peace Agreement between the Colombian Government and the FARC-EP is not a simple task, since it is a 310-page document whose complexity is to be understood as the main milestone in the struggle to end a conflict that has lasted for more than five decades.

In addition, it should be stressed that the Agreement is not a mere contract in which rights and duties are established. It proposes to go further, combining the establishment of mutual obligations with explanations on the causes of the conflict and serve as guidance on the interpretation of what was agreed upon.

Initially, the Peace Agreement is divided into five different points, which contain one or more agreements, all resulting from negotiations held at different times during the period of debates held in Havana between 2012 and 2016.

They are:

Point 1 - Integral Rural Reform agreement;
Point 2 - Political Participation: Democratic Opening to Build Peace agreement;
Point 3 - three different agreements: a) Cease Fire and Definitive Cease of Bilateral Hostilities and Arms Delivery; b) Reintroduction of the FARC-EP to Civil Life - in the Economic, Social and Political Spheres - according to their Interests and c) Security Guarantees and Fight against Criminal Organizations

[15] RIBAS, Ana Carolina; CARVALHO, Ana Paula Luciani de; RAMINA, Larissa. Processo de Paz na Colômbia: uma análise à luz do Direito Internacional Humanitário. Curitiba. vol. 62, n. 1, p. 273-298, jan./abr. 2017. Revista da Faculdade de Direito da UFPR. http://dx.doi.org/10.5380/rfdufpr.v62i1.50863

[16] COLÔMBIA. Corte Constitucional. *Sentencia* n. C-332/17. Bogotá, 17 mai. 2017. Avaliable in: <http://www.corteconstitucional.gov.co/relatoria/2017/C-332-17.htm>. Accessed in 16 February 2018.

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Responsible for Homicide and Massacres or against Human Rights Defenders, Social Movements or Political Movements, including those Criminal Organizations that have been Named as Successors of Paramilitarism and its Support Networks, and the Combat of Criminal Conduct Threatening the Implementation of Agreements and the Construction of Peace;
Point 4– Solution to the Problem of Illicit Drugs agreement;
Point 5 – Victims agreement.

A careless reading could lead to a questioning about the inclusion of Points 1 to 4 as worthy of the attention of scholars of the Transitional Justice, since they would be far from those traditional elements that integrate its concept.

In fact, many authors point out the ideas of memory, truth, reparation, punishment and institutional reforms as the main lines of the implementation of transitional justice, as some transcribed examples indicate:

> Transitional justice can be defined as the effort to build sustainable peace after a period of conflict, mass violence or systematic violation of human rights.
>
> The goal of transitional justice involves prosecuting perpetrators, revealing the truth about past crimes, providing reparations to victims, reforming institutions that had perpetrated abuses, and promoting reconciliation[17].
>
> In order to establish the starting points of the conceptions defended in this essay, I use the concept of Louis Bickford which gives a very broad definition of what transitional justice is before the variety of experiences discussed here. According to the author, transitional justice consists of a set of measures considered necessary to overcome periods of serious human rights violations during armed conflicts (e.g. civil wars) and/or authoritarian regimes (dictatorships), with the adoption of measures with the following objectives:
>
> – Clarification of the historical and judicial truth, among other things, with the opening of the state archives of the period of exception;
> – Establishment of memory places (e.g., the Holocaust memorial in Germany), so that present and future generations can know and understand the gravity of what occurred in the authoritarian period;
> – Institutional reforms in relation to security services, adapting them to the axiological agenda of the democratic regime and rule of law, as well as establishing a democratic and humanistic culture in public institutions;
> – Reparation of damages to victims (indemnities, rehabilitations, etc.);
> – Promoting material justice, with the accountability in varying degrees of those who committed serious crimes against human rights(BICKFORD, 2004, p. 1046-1047, GREIFF, 2007, p. 26)[18][19].

In point 5 are the issues that are most relevant to transitional justice, given the centrality the victim must have in order for transitional justice objectives to be achieved.

However, it must be recognized that points 1 and 2 are related to the idea of non-repetition – probably the most important goal of transitional justice -, which is why they cannot be ignored by those who wish to understand the Colombian framework.

IV. Integral Rural Reform

Born in the peasant struggle, the FARC-EP always showed in its ideology the need for a revision of the Colombian rural reality, and an agreement with them necessarily would have to deal with this issue.

This connection between the origin of the guerrilla and the struggle for land is explored in the work of Daniel Pécaut. According to this scholar, the formation of the FARC-EP is only intelligible in the light of two previous data. On the one hand, since 1920 intense agrarian conflicts are common in various regions of Colombia. Founded in 1930, the Communist Party played a considerable role in those conflicts and thus obtained durable support in a part of the peasantry. The new organization, therefore, already had old support. On the other hand, the most important thing is that Colombia left the episode of *La Violencia* - civil war that devastated the country from 1946 -, causing 200 thousand deaths. During those years, armed groups of variable orientations emerged, some more politicized than others. Among them, there were communist groups that were described as "*autodefensas*" or "*guerrillas*", who, while fighting against the regime, often pursued the struggle for land. The problem of guerrilla warfare is therefore in a very different context from that of other Latin American countries[20].

[17] VAN ZYL, Paul. Promovendo a justiça transicional em sociedades pós-conflito. In: REATÉGUI, Félix (Org.) Justiça de transição: manual para a América Latina. Brasília: Comissão de Anistia, Ministério da Justiça, 2011, p. 47-71.

[18] GALINDO, Bruno. Justiça de Transição na América do Sul: Possíveis lições da Argentina e do Chile ao processo constitucional de transição no Brasil. In: FEITOSA, Enoque (Org.) O judiciário e o discurso dos direitos humanos. Recife: Editora Universitária da UFPE, 2012, p. 197-240.

[19] GALINDO, Bruno & CASTRO, Juliana Passos de. The rights to memory and truth in the Inter-American paradigms of transitional justice: the cases of Brazil and Chile. In: Revista de Direito Internacional (BrazilianJournalofInternational Law), vol. 15, nº 2. Brasília: UniCeub, pp. 307-323, 2018.

[20] PÉCAUT, Daniel. As FARC: uma guerrilha sem fins? São Paulo: Paz e Terra, 2010.

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This relationship between the panorama of rural reality in Colombia and the armed struggle is throughout the Agreement, and it is constantly emphasized in its text that among its objectives is to solve the historical causes of the conflict: the question of land ownership and its concentration, the social exclusion of peasants and the backwardness of rural communities.

The integral rural reform, theme of Point 1 of the Agreement, brings a wide series of measures of responsibility of the Colombian State, the majority directed to the development of the peasant, family and community economy, with the purpose of creating a well-being situation for population and reduction of extreme poverty.

The creation of a fund for the distribution of land to those who do not have them, with prioritization of the female head of the family, as well as the provision of credit for the economic development of the rural regions, are among the planned initiatives.

There will also be development programs focusing on the territories most affected by the conflict and the creation of an agrarian jurisdiction to resolve disputes over land tenure quickly.

The restitution of land to the displaced who fled the violence is also part of this effort to transform the countryside, adding to the well-known Victims and Restitution of Land Act (1448/2011), whose effectiveness was conditioned to the pacification of the area that the property is pleaded, as explained by Gualano and Marinoni:

> It is accepted that the demands for restitution have generated difficulties. In regulating 1448 /2011 Act (4829/2011 and 599/2012 Decrees), the National Government has established as a requirement for restitution the property in an area that has been "macrofocalized" and "microfocalized" by the Ministry of Defense as a region where there are minimum conditions of security for the return of the victims. These security conditions are seen primarily as a guarantee that the restitution of land will not put the victims in a position susceptible to further violence[21].

However, it is important to say that even with the conclusion of the Agreement and the effective abandonment of arms by the FARC-EP, already certified by the United Nations Mission[22], the pacification of the old conflict zones, as has even alerted the Colombian press, despite possible attempts by the Government to cover up the absence of occupation by the state of the vacuum left by the guerrillas:

> During the last months the cases of displacement, assassinations and threats to social and peasant leaders have been reactivated. The community maintains that it is not "líos de faldas", but armed actors who dispute the control of drug trafficking in the absence of the state in the territory.
>
> While the Minister of Defense, Luis Carlos Villegas, affirms that the murders of social leaders take place "in their immense majority as a result of a boundary issue", the inhabitants of Putumayo have been denouncing the presence of armed actors and dissidence of the Farc who are threatening and murdering their leaders for the control of drug trafficking in the area. They are not the only ones. Yesterday, the Office in Colombia of the United Nations High Commissioner for Human Rights expressed its bewilderment at the disqualification of Minister Villegas and asserted that, according to their work in the field, up to yesterday they have registered 105 homicides of human rights defenders: 73 murders against leaders, 18 murders of members of social and political movements and 14 victims during social mobilizations[23].

In fact, the Colombian agrarian question is something that imposes a set of challenges that denote a huge effort, both in the historical and legal spheres:

> Considering the magnitude of the process of expropriation and forced abandonment of land, the amount of material and immaterial damages of the massive victimization before the loss of assets, the destruction of life projects and the dismantling of fabrics and social communities, besides the survival of various forms of violence in large territories - consistent with the fact that more than 30% of the households surveyed in the Third Verification Survey (2010) claim to have no knowledge of what is currently happening with their abandoned land or dispossessed in their place of origin - some key challenges[24].

V. Political Participation: Democratic Opening to Build the Peace and Reincorporation of the FARC-EP to Civil Life

There is no doubt that Point 2 contains some of the most controversial measures among those

[21] GODOY, Miguel Gualano de; MARINONI, Luiz Guilherme. A justiça transicional colombiana e as medidas de garantia para a reparação das vítimas. In: Revista de Processo Comparado, vol. 4, p. 229-251, jul./dez. 2016.

[22] FARC concluem entrega de armas na Colômbia, diz Nações Unidas. *Folha de São Paulo*, São Paulo, 26 jun. 2017. Avaliable in: <http://www1.folha.uol.com.br/mundo/2017/06/1896320-farc-concluem-entrega-de-armas-na-colombia-diz-nacoes-unidas.shtml>. Accessedin: 14 February 2018.

[23] PUTUMAYO, a merced de una nueva ola de violencia. *El Espectador,* Bogotá, 21 dez. 2017. Avaliable in: <https://colombia2020.elespectador.com/territorio/putumayo-merced-de-una-nueva-ola-de-violencia>. Accessedin: 13 February 2018.

[24] GARAY SALAMANCA, Luis Jorge; VARGAS VALENCIA, Fernando. *Memoria y reparación*: elementos para una justicia transicional pro víctima. 1. ed. Bogotá: Universidad Externado de Colombia, 2012.

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envisaged in the approved document and has aroused very strong criticism from opponents of the Agreement.

Criticism of this part of the agreement comes mainly from those who disregard the historical difficulties that organizations and social movements have encountered throughout Colombian history in order to gain access to an effective participation space in the dispute, which directly impacts the degree of effectiveness of the experienced democracy.

At the same time, the historical exclusion of the participation of some actors in the national decision-making process leads them to see in military force a way of compensating their lukewarmness in the political field, which is a complicating factor in moments of transition, delivery of arms and reintegration. In addition, it is a process with a huge escalation of violence, coming in part from those who were not included in the transitional pact and as they are politically weak, show their strength from the militarist side, which makes the process more complex. A political transition under these conditions hinders the proper correlation of forces to a democratic process of inclusion. The forces of opposition to the regime end up being heterogeneous and not necessarily agglutinated around the military force. This will only become clear when these forces transit the democratic world[25].

An emblematic case illustrates the extent of the problem and serves as a point of reflection for those who are considering what has been agreed in this part of the Agreement.

The Patriotic Union was a party created as a political branch of the FARC-EP in the 80's of last century because of advances in negotiations on a peace agreement still under the government of former President Belisario Betancurt.

The members of the Patriotic Union were subjected to violent persecution - some even call it genocide - that significantly damaged their electoral performance and led the party to the annulment of its legal personality by the National Electoral Council:

> Since the Patriotic Union (UP) was born as a legal option for ex-combatants who had taken up arms against the State, they seldom had the opportunity to see the political victory in a democracy scenario. His presidential candidate, Jaime Pardo Leal, was assassinated in October 1987, and virtually the entire country knew that sooner or later that would happen.
>
> As time went by, the violent wave against that party was raging. Little by little they were killing their militants, to the point that, between 1985 and 1988, there were 573 deaths among the members of the so-called political arm of today's unarmed FARC guerrilla. More than 20 years later, in September 2016, President Juan Manuel Santos ended up asking for forgiveness, on behalf of the Colombian State, for the genocide committed against that community[26].

It is not by chance that many see with concern the violence of which has been victim the new party that happened to the FARC, which has launched candidates to the parliamentary elections of March of 2018:

> With this background, and in the face of the systematic violence that has been recorded since the Peace Agreement of the Colón Theater was agreed upon, the likelihood of the repetition of that scenario is not at all distant. The members of the nascent Revolutionary Alternative Force (FARC) political party have been crying out to the government to provide security guarantees in this jump to legal life, without weapons and, so far, the murders, threats and harassment seem keep being bread of every day. (EL ESPECTATOR, 2018).
>
> The FARC party announced on Friday the suspension of its electoral campaign after protests against its candidate for president, Rodrigo Londoño, Timochenko, in different regions of Colombia. The former guerrilla leader received insults in the department of Quindío, in the center of the country, in Cali and in the city of Yumbo, in the southwest, where he was thrown stones and eggs. According to the Revolutionary Alternative Force of the Common, "the successive attacks" reflect "the existence of a coordinated plan, aimed at preventing the political participation of a legally constituted party." After signing a peace agreement with the government of Juan Manuel Santos, the FARC became a political party last September that will have guaranteed representation in Congress from March and will attend presidential elections in May[27].

As can be seen, there were reasons for requiring the agreement that Colombia should assume responsibility for ensuring the secure exercise of political participation by those who renounced armed struggle and opted for peaceful opposition to the government, making it a democratic alternative of power.

Democratic strengthening is an indispensable condition for non-repetition of the conflict, and it has been a strong argument for the abandonment of weapons and violence as methods of political action.

Among the concrete measures aimed at expanding the locus of democratic discussion and political reintegration of FARC members, one of the most important is the adoption of the Statute of

[25] TORRES ÁVILA, Jheison. El constitucionalismo, transición política y justicia transicional. *Análisis Político,* Bogotá, n. 88, p. 126-147, set-dez. 2016. https://doi.org/10.15446/anpol.v29n88.63882

[26] FARC, en alerta por atendados. *El Espectador,* Bogotá, 23 jan. 2018. Avaliable in: <https://colombia2020.elespectador.com/politica/farc-en-alerta-por-atentados>. Accessed in: 13 February 2018.

[27] EL PARTIDO de las FARC suspende su campaña por las protestas contra Timochenko. *El País*, Bogotá, 9 February 2018. Avaliable in: <https://elpais.com/internacional/2018/02/09/colombia/1518186629_908819.html>. Accessed in: 13 February 2018.

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Opposition, as provided for in the text of the 1991 Constitution, and a more equitable distribution of resources between political parties.

In addition, it is envisaged that sixteen special transitional peace zones will be created, which will elect sixteen representatives to the House of Representatives.

For those seats, which will be temporary and will only last for two legislative periods (of four years each), political parties that are represented at the congress or those with legal personality, including the party that succeeded the FARC-EP, will not be able to launch candidates.

Another point discussed during the plebiscite (maintained in the new agreement) was the guarantee of five seats for representatives of the FARC in the House of Representatives and five in the Senate of the Republic during two legislative periods starting in 2018.

This point is justified both by the recognition of the difficulties imposed on the parties and social movements in the arena of Colombian democracy, whose most symbolic case is that of the Patriotic Union, as well as the need for political insertion of the members of the FARC-EP, guaranteeing them an effective space for presentation of their ideology and real chances of becoming a political alternative.

It should be noted that the establishment of transitional seats for ex-combatants is not an innovation of the Colombian transitional process, since similar measures have been adopted, for example, in the Philippines and the Democratic Republic of the Congo:

> In peace processes such as that in the Philippines or in the Democratic Republic of the Congo, the participation of members of ex-combatants' political parties was allowed on a transitional basis, i.e. while other political decisions were taken. Most of these transitions were created to facilitate the creation of a National Constituent Assembly, however, after the transition, these parties had to contend politically with other parties[28].

Finally, the Agreement provides that obtaining and retaining the legal personality of political parties shall be no longer for electoral performance, but for membership, which will prevent the indiscriminate proliferation of political parties.

Taking into account what has been exposed in this item, the reinsertion measures adopted in this Point are essential for effective integration of FARC members into the political arena, with the permanent abandonment of arms, which will contribute for non-repetition of the conflict.

[28] SUAREZ, Beatriz; RUEDA, Bibiana. Lecciones aprendidas para Colombia desde las experiencias internacionales: In HENRIQUES, Miguel Barreto (Editor Académico) Experiencias internacionales de paz: lecciones aprendidas para Colombia.1. ed. Bogotá: Universidad de Bogotá Jorge Tadeo Lozano, 2015, p. 349-370.

VI. Conclusion

After all the above, it should be seen that the Colombian transitional justice has some advantage over other experiences, since, as it is a more recent process, it can learn the lessons of other international and foreign examples, taking advantage of the successes and failures of others countries.

On the other hand, a challenge that requires considerable caution is related to the complexity that accompanies a particularly long conflict, where there is a multiplicity of actors involved in serious human rights violations.

Another warning to be aware of is the fact that the Colombian transition occurs in a democratic environment, although it is fraught with imperfections as pointed out above, which prevents a single institution, the Presidency of the Republic, from being responsible for shaping the transitional process.

This means that the FARC must be prepared for changes imposed by other institutions such as the Congress of the Republic and the Constitutional Court, whose role cannot be removed without violating the Constitution in its most fundamental axes: the rule of law and separation of powers.

Anyway, the inclusion of unusual elements in the Peace Agreement, such as the obligation to implement reforms in the rural sphere and in the representative system, is an important point for serious confrontation with the causes of the conflict and seems to show that the Agreement has the potential to be managed to lead effective changes in the structure of Colombian society, without which it will be difficult to guarantee the objective of non-repetition.

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