Transitional Justice in Colombia: Legal Guarantees and Protection of the Human Rights of Victims

Melisa José Caro Benítez[1], Fernando Luna-Salas[2], Astrid Daniela Vidal-Lasso[3]

[1]Universidad de Cartagena, Colombia, mcarob1@unicartagena.edu.co, https://orcid.org/0000-0003-3892-9395
[2]Universidad de Cartagena, Colombia Profesor de la Maestría en Derecho Procesal del Politécnico Gran Colombiano., flunas@unicartagena.edu.co https://orcid.org/0000-0003- 4574-6335
[3]Universidad de la Amazonia, Colombia, a.vidal@udla.edu.co https://orcid.org/0000-0002-9257-2190

Abstract
This article analyzes the suitability and scope of transitional justice in Colombia as an essential legal mechanism for protecting the human rights of victims of the armed conflict. Using a qualitative, analytical-descriptive methodology supported by documentary and case-law review, the study evaluates the effective enjoyment of the rights to truth, justice, comprehensive reparation, and guarantees of non-repetition. The findings show that, in response to the complexities of the national sociopolitical context, transitional justice has generated profound constitutional debates and transformations. It is concluded that this institutional framework goes beyond a merely punitive approach and has become a mechanism that, despite its continuing challenges, promotes reconciliation and is fundamental to progress toward sustainable human development and stable and lasting peace.

Keywords: Effective enjoyment of rights; Human development; Victims; Peace; Transitional justice.

1. INTRODUCTION

Peace constitutes one of the essential conditions for the effective realization of human rights and the consolidation of the social and democratic rule of law. In this context, its recognition as both a constitutional right and duty is especially relevant because of the prolonged armed conflict in Colombia and the profound effects that conflict has produced on human dignity and on the rights of victims.

In this setting, transitional justice as a means of peacebuilding cannot be limited solely to the cessation of hostile activities by groups operating outside the law. It also requires the adoption of efficient and effective legal, political, and institutional measures that fully guarantee victims access to and effective enjoyment of their rights. This article is framed within an analytical-descriptive legal investigation and seeks to answer the following research question: Does the implementation of transitional justice in Colombia constitute a full legal guarantee for victims?

Transitional justice therefore acquires particular importance as a mechanism designed to respond to serious human rights violations. This perspective also entails articulating transitional justice mechanisms with the context of conflict and with the consolidation of a condition of peace.

The study is aimed at identifying the guarantees that protect the right to peace in Colombia and the conditions required to achieve its effective stability.

METHODOLOGY

The research follows a qualitative approach from an analytical-descriptive perspective. It is analytical because the discipline under examination is a human science and is open to the falsificationist method associated with the philosopher of science Karl Popper. This approach emphasizes that scientific conclusions must remain open to criticism by other participants in the scholarly community. Legal science, in particular, is constantly subject to analysis by jurists because it is a human science developed through dialectical reasoning and because it evolves alongside society and political processes. Accordingly, it is important to analyze enacted legal rules and their degree of validity in the empirical sphere, including through critical examination of the way in which they are applied.

The descriptive component is appropriate for identifying the issues developed throughout the study and explaining them in a manner that allows the analysis to remain both deductive and logically structured.

The study uses both primary and secondary sources of information. Primary sources include legislation and case law used as the basis of the legal analysis, as well as satisfaction surveys concerning the application of these rules in the social environment. Secondary sources include legal scholarship addressing the same subject matter.

1. Conceptual Approach to the Legal Framework for Peace in Colombia

International law contains basic premises to which citizens must adhere in order to give effect to the right and duty of peace, which in Colombian domestic law is a constitutional requirement.

According to the Seminar on Education for Peace-APDH (2000), peace is understood as a process of realizing justice at different levels of human relationships. It is a dynamic concept that requires conflicts to be brought to the surface, confronted, and resolved through nonviolent means, with the ultimate purpose of achieving harmony within the individual, with nature, and with other people.

According to Galtung (2003), the right to peace has two recognized dimensions: negative peace and positive peace. In the prologue to Peace by Peaceful Means: Peace and Conflict, Development and Civilization, Juan Gutiérrez explains that Galtung calls positive peace the unfolding of life and negative peace the overcoming of direct, structural, and cultural violence. Positive peace emphasizes justice and development and the satisfaction of needs for security, well-being, freedom, and identity; peace therefore ceases to mean only the absence of war and becomes a process involving multiple theoretical and methodological perspectives.

Because peace is both a right and a duty, responsibility for its protection falls on state entities and private individuals alike, regardless of the role each person performs in society. For this reason, in Judgment C-370 of 2006 the Constitutional Court balanced peace, justice, and victims rights and explained that peace is a purpose of international law, a fundamental aim of the State, a third-generation human right, and an inherent right of every human being. The Court also emphasized its protection as a legal duty of citizens, who must seek its attainment and preservation, making peace both an objective and subjective right of major importance to humanity.

Regarding the importance of this right, Ramírez (2010) argues that new wars have led to awareness of what may be considered the first right of peoples: the right to peace, both internal and external, as a right of peoples in aggressor States and of peoples subjected to aggression. Together with the corresponding prohibition of war, it represents a fundamental norm of contemporary international law.

The foregoing invites reflection on the fact that the value of the right to peace is often recognized only when a State is experiencing conflict, rather than through a permanent commitment to peaceful coexistence. Ramírez (2010) also notes that recognition of the right to live follows logically from the idea of peace and that peace is a value, a principle, and an essential right deeply rooted in human nature and shared by humanity as a whole.

Peace is therefore an important social reality from both an objective and a subjective perspective within interaction among members of society. It is objective because citizens have an obligation to protect this right, and subjective because it is fundamental to every human being and its realization contributes to a full life.

With respect to the need to protect this right, there is no international body of rules that comprehensively regulates acts constituting peace, but there are international rules governing violations of the right to peace. Protection is therefore often constructed through the prohibition of negative situations, based on the understanding that peace is the opposite of war. In this regard, the Colombian Constitutional Court stated in Judgment C-328 of 2000 that Article 22 of the Constitution establishes peace as a right and a mandatory duty and that, in its simplest conception, peace means the absence of war. The protection of peace consequently includes a right to prevent war through nonviolent means, while the Colombian State bears the fundamental duty to organize and channel those efforts as the legitimate representative of the interests and rights of the population.

Consequently, the various concepts aimed at protecting rights derived from human dignity, whether through individuals or state institutions, contribute to the realization of the right to peace. This makes it necessary to foster the consolidation of a peaceful society even where a formal stage of war has not occurred.

2. Transitional Justice as a Mechanism for the Realization of Rights

In response to the imperative of protecting human rights and fundamental rights violated during the armed conflict, Colombia developed a set of procedures different from those used by ordinary justice. These procedures operate during conflict or post-conflict periods and, as Judgment C-579 of 2013 indicates, seek through reconciliation, recognition of victims rights, and strengthening of the social rule of law to satisfy the rights of victims and bring hostilities to an end, thereby contributing to the creation of a peaceful society.

Transitional justice uses different judicial and extrajudicial procedures to guarantee the rights to truth, justice, comprehensive reparation, and non-repetition of acts of barbarity and conflict. It is implemented through measures such as criminal proceedings against those bearing the greatest responsibility, reparation for harm suffered, reform and creation of public institutions, truth commissions, and other forms of investigation and analysis of human rights abuses.

For Teitel (2023), transitional justice is characteristic of periods of political change in which a society must confront crimes committed by a previous repressive regime. Her principal view is that transitional justice is neither static nor universal; rather, it

depends on the political and historical conditions of each transition and therefore on the historical and political context of each country.

In her genealogy, Teitel identifies three phases. The first is associated with the postwar period and the Nuremberg trials and focuses on punishment and criminal responsibility. The second corresponds to the post-Cold War period, in which truth, reconciliation, reparation, and peace gain greater relevance. The third is characterized by the normalization of transitional justice as part of the rule of law.

Accordingly, and following Teitel, transitional justice must be reformulated in light of the political and social conditions of each country so that society can confront the past, recognize victims, reconstruct the rule of law, and strengthen peace.

The right to truth implies truthful knowledge of what occurred for the relatives of direct victims and also seeks to protect historical and collective memory so that such events are not repeated. Joinet (1997) maintained that every people has an inalienable right to know the truth about past events and the circumstances and reasons that led to massive and systematic human rights violations and atrocious crimes. The right to justice, in turn, concerns clarification of the facts surrounding human rights violations and identification and punishment of those responsible.

The right to comprehensive reparation is an international, integral, and complex right whose purpose is to restore dignity and ensure the effective enjoyment of fundamental rights. Guarantees of non-repetition refer to the use of the measures necessary to prevent situations of conflict from recurring.

In Acevedo Jaramillo et al. v. Peru, the Inter-American Court of Human Rights explained that reparations are measures aimed at eliminating the effects of violations and that their nature and amount depend on both material and non-material damage. Along the same lines, in Judgment C-715 of 2012 the Constitutional Court clarified that comprehensive reparation includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition, as recognized in international law and regulated in Colombia by Law 1448 of 2011.

It may be argued that the State seeks to achieve negative peace. If the concepts of negative and positive peace are compared with the premise that Colombia has not historically enjoyed periods of absolute peace and that its sociocultural development has been marked by violence, the conclusion would be that the State seeks peace through mechanisms aimed at overcoming situations of conflict. This, however, raises the question of whether such mechanisms are suitable for achieving peace.

This leads to the question of whether transitional justice is suitable as the mechanism responsible for restoring the human right to peace. Moreno and Benavides (2011) warn that transitional justice mechanisms are not intended merely to entice actors to a negotiating table and should not be mistaken for a promise of impunity designed to persuade combatants to lay down their arms. Demands for justice, truth, and reparation do not disappear in the face of peace. Peace is one value to be balanced, but so too is the States duty to investigate those responsible for serious human rights violations and serious breaches of international humanitarian law, particularly those bearing the greatest responsibility and those responsible for the most serious crimes, and to ensure compliance with judicial decisions.

The situation described by these authors is relative because, although transitional justice in Colombia does not seek absolute peace as its immediate purpose but rather the dignification of victims, the means used include reconciliation and strengthening of the social rule of law through public policies governing truth, justice,

comprehensive reparation, and non-repetition. The latter, if effectively achieved, would optimize realization of the human right to peace.

Based on the legal and argumentative development of the principles of transitional justice, its purposes can be summarized in three objectives:

PRIMARY - Recognition: to grant political recognition to victims so that they may participate politically in the State and become integrated into society, as well as civil recognition that guarantees their status as rights-bearing citizens (Taylor, 1992; Habermas, 1998).

INTERMEDIATE - Legitimization: to strengthen legal rules in order to prevent disregard for human rights.

ULTIMATE - Effectiveness: to generate civic trust through restoration of order and security and through consolidation of a rights-guaranteeing State in which people not only have access to rights but are also able to enjoy them effectively.

3. Jurisprudential Background

With respect to protection of the human right to peace during and after transitional processes, the Constitutional Court has developed relevant case law. Some of the principal decisions are discussed below.

In Judgment C-370 of 2006, the Constitutional Court held that the right to justice complements the right to peace because realization of justice, including resolution of conflicts, helps guarantee peaceful coexistence. In States undergoing democratic transition or emerging from conflict, however, tensions may arise between these rights. To end conflict, criminal benefits are sometimes granted to persons responsible for serious human rights violations, breaches of humanitarian law, and violations of fundamental rights. Political agreements of reconciliation therefore require a certain degree of flexibility in the application of principles, and amnesties, pardons, sentence reductions, or alternative mechanisms of justice may be acceptable when they facilitate the abandonment of arms and restoration of social harmony, provided that transitional processes do not diminish obligations to protect human rights and stabilize a peaceful society.

In Judgment C-579 of 2013, the Court stated that peaceful coexistence is a basic purpose of the State and held that the pursuit of peace, as both a constitutional right and duty, justifies the use of transitional justice mechanisms to overcome situations of internal armed conflict. It further held that protection of the right to peace entails not only prevention of war but also mitigation of its effects. Peace is therefore the ultimate purpose of the forces of the constitutional order, a prerequisite for a free and open democratic process, and a necessary condition for effective enjoyment of fundamental rights. Peace processes and the reinsertion and reincorporation of guerrilla groups into civilian life are consequently priority objectives of state administration and involve all branches and organs of public power.

In Judgment C-577 of 2014, when addressing political participation by persons who had belonged to groups operating outside the law, the Court indicated that participation is an element of the transitional process in which reconciliation is one of the most important objectives. Comparing Transitional Article 67 of the Constitution with the principle of political participation, the Court concluded that its application in a transitional justice context is consistent with the objective of achieving stable and lasting peace.

Law 975 of 2005 is an instrument aimed at achieving reconciliation and facilitating

peace processes for the individual or collective reincorporation into civilian life of members of illegal armed groups. In that sense, the law develops the constitutional right of all Colombians to peace. To make that right effective, the legislature may establish criminal-law benefits provided that victims rights are not left unprotected and the Constitution is not violated. Law 975 is an ordinary statute regulating criminal procedure and is not equivalent to an amnesty or pardon law, because it neither prevents continuation of criminal proceedings already initiated nor eliminates penalties. It grants a criminal-law benefit in pursuit of peace. That benefit, known as alternative sentencing, suspends execution of the ordinary sentence fixed in the conviction and replaces it with an alternative sentence of five to eight years imprisonment, provided the statutory requirements are met. Judgment C-370 of 2006 held that this mechanism is constitutional because it does not disproportionately affect victims rights to truth, justice, reparation, and non-repetition.

The debate therefore asked whether the transitional justice elements introduced by the Legal Framework for Peace were incompatible with the essential constitutional pillar requiring respect for, protection of, and guarantees for the rights of society and victims, including fulfillment of the obligations to investigate, prosecute, and where appropriate punish serious violations of human rights and international humanitarian law, and whether the reform amounted to a substitution of the Constitution or of any of its fundamental pillars.

At the international level, political reconciliation agreements involving broad social groups have been accepted as instruments for achieving peace. Such agreements form part of the processes implemented through transitional justice, which seeks to make the right to peace effective in societies affected by conflict.

Peaceful coexistence is a basic purpose of the State and must be the ultimate objective of the forces of the constitutional order. Constitutional case law has therefore recognized that peace is also a prerequisite for a free and open democratic process and a necessary condition for the effective enjoyment of fundamental rights, which gives it a central place in the constitutional order.

The Court has also recognized the commitment of States to respect and promote human rights as a guarantee of peace, including protection of dignity and human rights even during war, the consolidation of international humanitarian law, universal acceptance of individual criminal responsibility for serious human rights violations, and the obligation to punish such conduct.

The principle of human dignity and the right to peace not only impose a duty to prevent war but also require the State, when conflict cannot be avoided, to mitigate its effects. In relation to armed conflicts, the first duty of the State is to prevent their occurrence by establishing mechanisms that allow social conflicts to be resolved peacefully within social and institutional spaces. Peaceful coexistence is therefore a basic purpose of the State, a prerequisite for democratic life, and a condition for effective enjoyment of fundamental rights. Peace processes and the reinsertion and reincorporation of guerrilla groups into civilian life are priority objectives of public administration and engage the responsibility of all branches and organs of public power, as stated in Judgment C-579 of 2013.

The Court has likewise stated that political participation, as a foundational and cross-cutting principle of the Colombian constitutional system, is essential to the formation, exercise, and control of power in a democratic State established under the 1991 Constitution.

Transitional Article 67 of the Constitution establishes, among other rules, that in order to facilitate the end of the internal armed conflict and achieve stable and lasting peace, a statutory law shall determine which offenses may be considered connected to political offenses for the specific purpose of allowing political participation by persons who took part in the conflict. Crimes against humanity and genocide committed systematically may not be treated as connected political offenses, and persons selected and convicted for such crimes under transitional justice mechanisms may not participate in politics.

When comparing Transitional Article 67 with the principle of political participation, the Court found that the reform did not eliminate the defining constitutional element previously in force. On the contrary, it represented an application of that principle in a transitional justice setting aimed at achieving stable and lasting peace. The Court emphasized that political participation is one of the essential elements of transitional processes in which reconciliation becomes a particularly important objective for the political community.

Accordingly, the Court held that the provision did not disregard any right of conflict victims because, first, the regulation would not grant amnesties or pardons or prohibit extradition but would instead establish rules for political participation; and second, such participation would be possible only after clarification of the truth had begun and contributions had been made to reparation for victims. In the context of transitional justice, where exceptional measures are justified by the search for peace, political participation by former conflict actors in the post-conflict period may serve as a useful tool for consolidating democracy and the constitutional regime established in 1991.

From these judgments it may be inferred that, in order to protect and guarantee the purposes of the social and democratic rule of law, the Government implements transitional mechanisms through laws and public policies oriented toward reconciliation as a means of eliminating conflict and achieving a peaceful society.

4. Peacebuilding

The reconciliation process and guarantees of non-repetition are fundamental pillars for the configuration of genuine negative peace in Colombia. Through appropriate public policies designed to reduce unnecessary conflicts, encourage reconciliation between victims and perpetrators, promote dialogue concerning the need to overcome conflict, and secure respect for rights derived from human dignity among the Government and groups operating outside the law, a condition of peace may be achieved.

Reconciliation, in addition to being a morally and individually desirable objective, is an important condition for supporting political and economic processes aimed at providing security, economic growth, and political and social stability in post-conflict societies.

Political reconciliation agreements require flexibility in the application of principles. Amnesties, pardons, sentence reductions, or judicial mechanisms that encourage abandonment of arms or violent conduct may be acceptable insofar as they facilitate recovery of social harmony, provided that transitional processes do not reduce obligations to protect human rights or undermine stabilization of a peaceful society.

Peacebuilding consists of actions aimed at supporting, strengthening, and consolidating peace so that conflict does not recur. Peacebuilding therefore has both

preventive and remedial dimensions, regardless of the temporal stage of the conflict. Transitional justice ultimately seeks to dignify victims. The means used to achieve this purpose include reconciliation and strengthening of the social rule of law through public policies concerning truth, justice, comprehensive reparation, and guarantees of non-repetition. Effective realization of non-repetition would, in turn, strengthen the human right to peace.

This analysis may also be linked to the Human Rights-Based Approach, which offers a new perspective on the needs of citizens, families, social organizations, and the State as a duty-bearer. The approach seeks to connect rights with obligations through the allocation of roles to the international community, the State, civil society, and the private sector so that claims of rights can be fulfilled. Victims of the Colombian armed conflict are citizens with multiple needs but also with capacities that, from a human rights-based perspective, should be considered in strengthening human capabilities and in implementing mechanisms for sustainable human development.

The process of reconciliation and guarantees of non-repetition are likewise fundamental pillars for the configuration of genuine positive peace in Colombia. Appropriate public policies that reduce unnecessary conflicts, promote reconciliation between victims and perpetrators, encourage dialogue concerning the need to overcome conflict, and secure respect for rights derived from human dignity among the Government and groups operating outside the law can support progress toward a condition of peace.

5. Conclusions

Peace as an organizing axis and superior mandate: In the Colombian context, peace goes beyond the negative conception of the absence of war and becomes a third-generation human right and a mandatory constitutional duty. Pacification of society is the axis around which protection of other fundamental guarantees revolves; without peace, it is not possible to ensure a dignified life and sustainable human development in material terms.

The teleological nature of transitional justice: This exceptional institutional framework is confirmed as a suitable and constitutionally legitimate mechanism for restoring order and protecting victims. Its value does not lie exclusively in its punitive capacity in response to serious human rights violations, but also in its reconciliatory purpose and its commitment to truth, justice, comprehensive reparation, and guarantees of non-repetition.

Articulation between public policy and human rights: Achieving a genuine transition to the post-conflict stage requires peace agreements to be implemented through a Human Rights-Based Approach. This obliges the State to address structural violence through effective public policies that rebuild the social fabric, restore civic trust, and enable political and civic participation by all actors involved.

Overcoming utopia through institutions: Although consolidating peace in a nation historically fractured by conflict represents a major challenge, reconstruction of the social rule of law through transitional legal frameworks lays the indispensable foundations for eradicating violence and definitively restoring the dignity of victims.

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