

Between Reconciliation and Justice:
The Struggles for Justice and Reconciliation in Colombia

by

Gabriel Gomez Sanchez

A Dissertation Presented in Partial Fulfillment
of the Requirements for the Degree
Doctor of Philosophy

Approved April 2011 by the
Graduate Supervisory Committee:

Pat Lauderdale, Chair
LaDawn Haglund
Jeffrey Juris
Vanna Gonzales

ARIZONA STATE UNIVERSITY

May 2011

ABSTRACT

Over the past decades, Colombian society has endured the impact of a longstanding political conflict among different actors and outrageous expressions of violence, especially among left wing guerrillas, right wing paramilitary groups and the state government. Drawing on socio-legal studies in transitional justice and human rights, this research attempts to analyze the recent experience of transitional justice in Colombia. The main purpose of this research is to understand how political, institutional and social actors, especially the government, the courts, the human rights and transitional justice NGOs, and victims associations, frame the mechanisms of transitional justice and use legal instruments to transform the conflict and reach what they consider "justice." It also attempts to understand the relations between politics and law in the context of a hegemonic discourse of security and give account of the expressions of resistance of human rights networks. In doing so, this research advances theory on literature about law and society and transitional justice by means of applying and expanding the theoretical framework of socio-legal research via the process of transitional justice in Colombia. The dissertation presents information gathered in the field in Colombia between July 2009 and July 2010 through a qualitative research design based on document analysis and in-depth interviews with members of different international and domestic human rights organizations, victims' organizations and national institutions. The research explains how these organizations combined political and legal actions in order to contest a project of security, and more specifically a project of impunity that came from negotiations

with the paramilitary groups. The research also explains how the human rights networks not only mobilized internationally to gain political support from the international community, but also how these organizations contributed to transform the political debate about victims' rights. The research also explains how the human rights organizations and victims' groups articulated the global discourse on human rights and the local and domestic meanings constructed by the emerging movements of victims. Finally, the research analyses the relevance of legal practices consisting on strategic use of law in order to protect the victims of human rights violations.

DEDICATION

To all the human rights activists that work in Colombia, who courageously risk and sacrifice their lives struggling for a more just society.

ACKNOWLEDGMENTS

While conducting this research in Colombia I thought many times that social science research is, to great extent, the result of a collective effort in which the researcher contingently ends up being the collector of the reflections, ideas and voices of the people we came across during this journey. Of course I am not forgetting the intellectual and personal effort of the researcher who, finally, is the one who leads the endeavor of carrying out a research project. What I want to express is the acknowledgment to those persons and institutions without which this research would have not been possible.

First, I would have not been able to follow the doctoral program without the support of institutions that provided the necessary funding to follow the program and the dissertation research. The Fulbright-Colciencias-DNP program and LASPAU allowed me to come to Arizona State University to carry out my doctoral program. The University of Antioquia in Colombia also cosponsored my studies from 2005 and 2011. Finally, the Graduate College of the Arizona State University granted me the Graduate College Dissertation Fellowship, which made it possible to focus on the final process of writing the dissertation in fall 2010 and spring 2011.

In the process of getting adapted to Arizona and creating a new life in Tempe, I had the chance to be part of different networks that have become part of my academic and activist life. International fellow students gathered in the Fulbright Student Association provided me support when I was a brand new student in ASU. The Fulbright ASU student association, led by Marco Cabrera,

Tamara Fuster and Omar Galicia, became not only my first group of friends, but also a very enriching network of bright graduate students from all over the world that have widened and enriched my worldviews. Later on, I also became part of the Local to Global Justice, a small network of progressive scholars and activists led by Elizabeth Swadener that tried to bring together grassroots organizations, scholars, and artists to share their knowledge, raise awareness about situations of injustice and promote social change. Despite the expressions of intolerance, racism and institutional violence that have emerged in Arizona, the Local to Global Justice Teach in, as well as the program of Justice Studies, became a refreshing oasis of hope and action in the Arizona State University community. As part of these networks I could acknowledge much better the relevance of solidarity and networks in the pursuit of justice.

I was fortunate to find the guidance and support of a team of scholars who generously shared with me their wisdom, academic knowledge and life experience. The dialogue with professors LaDawn Haglund, Vanna Gonzalez and Jeffrey Juris provided me the opportunity to share with them their expertise and bring together their knowledge in political economy, political science and cultural anthropology to explore interdisciplinary approaches to the relations between state and society. Pat Lauderdale, my adviser, provided me the space in his courses of “Political Trials and Indigenous Justice” and “Law and Social Sciences” to follow up the peace process with the paramilitary groups in Colombia and elaborate the first reflections on the dissertation project. Later on he encouraged me to focus on my interest on transitional justice and sociolegal

studies. I am indebted with all of them for their generous advice and challenging comments in the process of writing the dissertation. I am also indebted with the members of my writing group Tim Rowlands, Sheruni Ratnabalasuriar and Denisse Roca for their support while writing my dissertation. In the process of writing the dissertation I also was fortunate to find the insightful comments of Shelley Erickson, who patiently helped me, not only to edit the final versions of the dissertation and better express my ideas in English, but also to improve the quality of the dissertation.

While doing the field research, the support of the human rights activists in Colombia was critical to carry out this research. I am especially grateful to friends and activists at the Colombian Commission of Jurists (CCJ), the Center for Grassroots Education and Research (CINEP), Corporación Nuevo Arco Iris, Dejusticia, the Women's Initiative for Peace (IMP), the Lawyers Collective Jose Alvear (CAJAR), the International Centre for Transitional Justice (ICTJ), Fundación Social, Viva la Ciudadanía, the Movement for Victims of State Crimes (MOVICE) and Corporación Jurídica Libertad. All of them deserve all my gratitude and my expression of solidarity.

Finally, during all this process my family has provided the support and affection that is necessary to persist. I am especially indebted with Denisse for her love and enormous support. She is the partner with whom I share, among many other things, the same endeavor of struggling for a more just society.

TABLE OF CONTENTS

	Page
LIST OF TABLES.....	x
ABBREVIATIONS.....	xi
CHAPTER 1: INTRODUCTION.....	1
Background.....	6
Transitional Justice from the Perspective of the Social Fields.....	11
Research Questions and Methods.....	35
Overview of the Chapters.....	47
CHAPTER 2: THE TURN TO THE DISCOURSE OF SECURITY.....	50
The Disenchantment about the Peace Negotiations with the Guerrilla Groups.....	52
The Expansion of the Paramilitary Groups.....	60
The Democratic Security.....	69
The Peace Process with the Paramilitary Groups.....	78
Conclusions.....	85
CHAPTER 3: THE ROLE OF HUMAN RIGHTS ORGANIZATIONS AND NETWORKS.....	88
The Formation and Transformation of Human Rights Organizations.....	90
The Institutionalization of Human Rights.....	102
The Human Rights Networks.....	114
Political and Legal Mobilization on Human Rights.....	120

	Page
Conclusions.....	129
 CHAPTER 4: THE FRAMING OF THE “JUSTICE AND PEACE”	
LAW.....	132
Transnational Actors and New Forms of Political Leverage	135
Human Rights Networks and the Vernacularization of the Discourse of Transitional Justice.....	140
The Alternative Punishment Draft and the Introduction of the Language of Truth, Justice and Reparation.....	148
The Struggles to introduce the discourse of Truth, Justice and Reparation in Congress.....	155
Strategic Litigations and Resistance through Law.....	164
Conclusions.....	170
 CHAPTER 5: HOPE AND FRUSTRATION: CONTEMPORARY VICTIMS’ DISCOURSES AND STRUGGLES FOR REPARATIONS	
Vulnerability and Marginality of the Victims.....	174
The Visibility and Social Mobilization of the Victims Groups.....	180
The Discursive Formation of the Victims’ Networks.....	187
Initiatives on Reparation from Below.....	198
Strategic Litigation.....	204
Conflicting Perspectives.....	206
Conclusions.....	212

	Page
CHAPTER 6: RESISTING THE POLITICAL CONSTRUCTION OF	
IMPUNITY.....	217
The Battlefield of the Justice and Peace Proceedings	
to Protect Victims’ Rights.....	219
Resistance to Impunity.....	233
The Justice and Peace Judicial Space.....	246
The Institutional Resistance of the Supreme Court.....	255
Conclusions.....	260
CHAPTER 7: FINAL CONCLUSIONS.....	263
Contesting Discourses: Between Reconciliation and Justice.....	265
The Framing of Mechanisms of Transitional Justice.....	268
Carrying out the Justice and Peace Law.....	277
Relations between Politics and Law.....	281
Significance of the Research.....	289
Recommendations for Future Research.....	292
REFERENCES.....	295

LIST OF TABLES

Table	Page
1. Government’s bill and reaction of the human rights organizations.....	150
2. Comparison of the three main bills discussed in Congress.....	161
3. Transformation of the Governments’ initiative.....	168
4. The “Victims’ Law” bill and the Government’s policies.....	207
5. Crimes Confessed vs. Documented Cases.....	229
6. Distribution of Public Defenders.....	231
7. The “Justice and Peace Law” and the “Victims’ Law” bill.....	270

ABREVIATIONS

ASFADDES	Asociación de Familiares de Detenidos y Desaparecidos (Association of Relatives of the Detained and Disappeared)
AUC	Autodefensas Unidas de Colombia (United Self Defense Groups of Colombia)
CAJAR	Colectivo de Abogados Jose Alvear Restrepo (Lawyers Collective Jose Alvear Restrepo)
CCEEUS	Coordinación Colombia-Europa-Estados Unidos (Coordination Colombia-Europe-United Status)
CCJ	Comisión Colombiana de Juristas (Colombian Commission of Jurists)
CEJIL	Centro por la Justicia y el Derecho Internacional (Center for Justice and international Law)
CINEP	Centro de Investigación y Educiación Popular (Center for Grassroots Education and Research)
CPDH	Comité Permanente para la Defensa de los Derechos Humanos (Permanent Comité for the Defense of Human Rights)
CSPP	Comité de Solidaridad con los Presos Políticos (Comité in Solidarity with Political Prisoners)
ELN	Ejército de Liberación Nacional (Nacional Liberation Army)
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
FEDEFAM	Federación Latinoamericana de Familiares de Familiares de Desaparecidos (LatinAmerican Federation of Disappeared Family Members)
G-24	Grupo 24 (Group 24) The donnor countries that make part of the London-Cartagena-Bogota Process.
GVSO	Mesa de Víctimas de Organizaciones Sociales (Group of Victims from Social Organizations)

HRW	Human Rights Watch
IAHRC	Inter American Human Rights Commission
M-19	Movimiento 19 de Abril (April 19 Movement-Left wing guerrilla group)
MOVICE	Movimiento de Víctimas de Crímenes de Estado (Movement of State Crimes' Victims)
NCA	Nacional Constituent Assembly
OIDHACO	Oficina Internacional de Derechos Humanos Acción Colombia (Internacional Office of Human Rights Action on Colombia)
UNDP	United Nations Development Program
UNHCHR	United Nations High Commissioner for Human Rights
UP	Unión Patriótica (Patriotic Union-Left wing democratic party)
WGVL	Grupo de Trabajo sobre la ley de Víctimas (Working Group on Victims' Law)
WOLA	Washington Office on Latin America

CHAPTER 1

INTRODUCTION

In July 24 2004, three commanders of the right-wing paramilitary forces, invited by two Congress members, attended the House of Representatives in Bogotá, Colombia in order to advocate for a loose legal framework that elicited the demobilization of those groups. The paramilitary commanders, who were concentrated on the negotiation camp in Santafé de Ralito, northwestern Colombia, had been authorised to go to the Colombian Congress. Evidently, it was not an ordinary day in the Colombian Congress. The auditorium was crowded and most of the Congress members were eager to listen to the paramilitary leaders. For hours, they waited until the commanders arrived from the airport to the Congress building. Wearing formal suits, they entered to the auditorium and were received as if they were contemporary heroes. Many of the Congress members approached the guest speakers to greet them and shake their hands. Two of the paramilitary commanders read their own speeches, while the other one, maybe because of his illiteracy, made another person read it for him. They told their own story; they portrayed themselves as the victims of the state's absence and the need to take up arms in order to defend the state, their families and properties. But they did not say a word about the suffering they caused. They did not acknowledge their participation on massive crimes against humanity, such as the elimination of thousands of militants of a left wing party, or gross violations of human rights, such as the elimination of community leaders, trade union

representatives, indigenous and afro-descendant community members. They did not explain either why they promoted the forced displacement of thousands of peasants, afro-colombian communities and indigenous people. They did not show the minimum expression of remorse or a willingness to repair the harm done. Rather they insisted in their counter insurgent narrative stressing their “heroic” efforts and the fact they were not criminals. They went to Congress to demand the Colombian Congress and the entire Colombian society back up a legal framework that fit their interests. For them, as well as for many Congress members, the price of peace was forgetfulness and forgiveness.

Meanwhile, in the balconies of the House of Representatives two victims’ survivors and human rights activists that managed to enter into the auditorium stood up silently and showed the pictures of their murdered relatives. The media broadcast the powerful symbolic image of the activists raising the pictures of the victims while Salvatore Mancuso, one of the commanders, delivered his speech. For years, the human rights activists and survivors had been denouncing the existence of human rights violations in the country, as well as the linkages between state agents, politicians and the paramilitary groups. For years, the human rights activists had also denounced the linkages between economic groups, such as livestock raisers, banana growers, or mining corporations with the paramilitary forces. However, the response to these denunciations was silence, denial and impunity. That scene of the Colombian Congress seemed to encapsulate the contradictions of the Colombian society. Only the symbolic power of the memory and the images of the victims disturbed the complicit

relations between the politicians and the paramilitary groups. Despite the fact human rights activists were taken out of the building after demanding justice, this image has remained in the memory of the human rights activists ever since. The paramilitary commanders went out the room even before the last speech was read. They did not care to listen to anybody; they only went there to make their demands.

One year later the Colombian Congress approved a legal framework that gave generous incentives for the demobilization of the paramilitary members. Two years later the Constitutional Court struck down some of the core provisions of that legal framework restricting the incentives for the paramilitary members and widening the scope of victims' rights. Four years later the paramilitary commanders were extradited to the United States. Five years later more than one hundred politicians were indicted by their linkages with the paramilitary groups. And six years later, Ivan Cepeda, one of the human rights activists that stood up in Congress that day, was elected to be part of the House of Representatives. Despite the fact that impunity still prevails in Colombia, this brief story suggests that the recent experience of transitional justice in Colombia is also a story of contention and resistance.

One goal of this dissertation is to contribute to the research literature on transitional justice and human rights by means of a case study that examines the political and legal contentions in the framing and carrying out of the mechanisms of transitional justice in Colombia. I rely upon relevant theoretical perspectives that allow me to analyse three main overlapping aspects: first, the contested

process of framing and carrying out the mechanisms of transitional justice, second, the role of non state actors in introducing the language of international human rights law and constructing new meanings of victims' rights, and third, the relations between law and politics, especially regarding the way human rights networks used political and legal actions to resist government's policies on security, forgiveness and forgetfulness. Regarding the first theoretical question, the process of framing transitional justice mechanisms, I draw on Pierre Bourdieu's (1992) concept of social fields to argue that transitional justice is a contested space in which different actors with diverse views, interests, and resources struggle to defend their particular approach to solving the political conflict in Colombia and deal with claims for justice. Rather than a contention between globalized perspectives on human rights and local practices, I highlight the contradiction between a discourse on security and a discourse on human rights in the recent Colombian experience, which has led to proposals for very different mechanisms for mediating the transition. In this regard I also draw on political and legal anthropology to explore how the construction of the discourse of victims' rights not only implied the introduction of the globalized language of international human rights law, but also how multiple meanings of human rights were negotiated within the national political and legal space by different organizations and actors (Alvarez, Dagnino & Escobar, 1998; Goodale & Merry, 2007; Speed, 2008, Tate, 2007).

A second aspect of the research is related to the question about how non state actors and the courts frame and use legal mechanisms to protect victims'

rights. Drawing on transnational advocacy networks (Keck & Sikkink, 1998), as well as on literature on human rights and transitional justice from below (McEvoy, 2008; Rajagopal, 2003; Santos and Rodriguez, 2005), I suggest that non state actors, such as human rights and victims' organizations and networks, struggled, not only to gain leverage with the international community (Keck & Sikkink, 1998), or vernacularize the globalized discourse of victims' rights in the national sphere (Merry & Levit, 2006), but also to give content to the meaning of truth, justice and reparations based on the needs and the voice of disenfranchised groups. Finally, regarding the relations between politics and law, I maintain that networks of human rights NGOs, victims' organizations and social movements articulated collective efforts and deployed political and legal mobilization to contest the prevailing policies on security, forgetfulness and forgiveness promoted by the Colombian government. While the government promoted the legalization of politics, this is the use of legal forms to normalize existent relations of power, human rights networks and the courts led a process of resistance by means of politicization of human rights and judicialization of politics. In this research I argue that human rights networks relied on political and legal actions to bring the discourse of human rights in the transnational and domestic political arena. Human rights organizations and the courts also brought the political conflict to the legal sphere, specifically the judicial forums, in order to higher the standards of protection of victims' rights and make accountable the perpetrators of gross human rights violations. My research here is based on document analysis and in

depth interviews with human rights activists in Colombia that were conducted between July 2009 and July 2010.

Background

The recent peace process between the Colombian state government and the paramilitary groups caught the attention of activists and scholars of different disciplines interested in human rights, transitional justice and conflict resolution, mainly because of the complexity of the political history of the conflict and the social consequences of the process. Over the past decades, Colombian society has endured the impact of a longstanding political conflict among different actors and outrageous expressions of violence, especially among left wing guerrillas, right wing paramilitary groups and the state government. From the perspective of transitional justice and human rights, this process represents different challenges. On the one hand, there is the hope of breaking the cycles of violent conflict in Colombia through the demobilization and disarmament of almost 35.000 paramilitary members (Comision Colombiana de Juristas CCJ, 2008), and on the other hand, the possibility of retributive or restorative justice for the families of more than 100,000 murdered people who were killed in selective murders and massacres, as well as for more than four million people displaced from their lands during the past two decades.

The experiences of what has been called transitional justice in different countries, have in common the existence of a political flux, and the tension between the search for peace, and the pursuit of some level of accountability,

especially through mechanisms of retributive justice. This is not a dichotomist division, but rather a wide spectrum that gives possibilities for diverse expressions and mechanisms of conflict transformation. Comparative studies on transitional justice show that it is very difficult to generalize and set forth a unique model on transitional justice (Laplante & Theidon, 2006; McAdams, 1997; McEvoy & McGregor, 2008; Roht-Arriaza & Mariezcurrena, 2006; United Nations, 2004). Depending on the political and social context, every society designs different mechanisms and strategies to transform violent political conflicts and deal with the feelings of vengeance and forgiveness (Minow, 1998). In some cases, when there is a relative consensus about the need for retribution and conditions of political stability, the political elites stress mechanisms of retributive justice. That was the case of the Nuremberg and Tokyo trials.

More recent manifestations of the creation of trials in the international arena are the special courts for former Yugoslavia, Rwanda, and the International Criminal Court (ICC). There have been also cases in which the society is highly divided because of internal political conflicts and the contradiction between the pursuit of peaceful coexistence and retributive justice intensifies. For instance, during the 80s and the 90s former dictators in Latin America tried to avoid mechanisms of accountability. In countries such as Argentina, Chile and Uruguay, during the first years of the political transition the political elites came up with mechanisms that maximized the pursuit of forgiveness and forgetfulness, such as blanket amnesties and pardons. In those cases, it seemed that impunity was a predicament to reach peaceful coexistence. Finally, there have been also

intermediate mechanisms that try to balance the pursuit of reconciliation and punishment, such as the Truth and Reconciliation Commissions (TRC). The most renowned experience is the CTR in South Africa, especially because it attempted to carry out principles of restorative justice rather than retributive justice (Roht-Arriaza & Mariezcurrena, 2006).

In the case of Colombia, the transitional justice process is complex and highly contested. There is no consensus among the government, the courts, the human rights NGOs and the victims about the mechanisms to transform the political conflict and protect the rights of the victims. The government and the demobilized paramilitary groups leaned to a project of reconciliation, forgiveness and forgetfulness through a legal frame that gave softer punishment to the perpetrators who confessed their crimes. Conversely, domestic and transnational human rights NGOs, such as the Colombian Commission of Jurists, the Colectivo Jose Alvear, Human Rights Watch and Amnesty International, among others, as well as some victims associations, such as the Movement of Victims of State Crimes –MOVICE-, manifested their concern about impunity and claimed for retributive justice. In addition to the resistance of the human rights and victims' organizations, the higher courts have contributed to constrain the policies that maximized generous incentives for the demobilized paramilitary members, forgetfulness and forgiveness.

Five years after the demobilization of the paramilitary members, the political conflict has transformed and it seems it is far from being over. After the negotiations with the paramilitary groups the continuing conflict between leftwing

guerrilla groups, especially the FARC (Colombian Revolutionary Armed Forces) and the state government fueled a strong political division between “friends” and “enemies.” Up to August 2010, when Alvaro Uribe finished his second presidential term, the government controlled the majority of Congress members, received the support of the mainstream media and the economic groups, and had 70% of public opinion support. Between 2002 and 2010, the government and the majority of Congress members were reluctant to promote mechanisms of truth, justice and reparation for the victims of violations of human rights perpetrated by the paramilitary groups and state agents. Since the beginning of Uribe’s presidential term, the government was more concerned about the political goal of defeating the FARC, pursuing security and encouraging foreign investment in the country.

The design of mechanisms of transitional justice, have become a battlefield among a variegated set of actors. In a context of political polarization, transnational and domestic human rights NGOs as well as the higher courts played an important role of resistance against the attempt to impose a project of transitional justice based on forgetfulness and forgiveness. These expressions of resistance are based primarily on political and social activism, and strategic use of law. Social and political activism implies the creation of transnational and national networks, social mobilization and visibility of the victims as a movement.

Among the variegated range of experiences of transitional justice, the case of Colombia provides new elements that might enrich comparative analysis on

law and society, human rights, and transitional justice. First, there is not a transition from war to peace, but a process in which the political conflict continues. Second, conversely to other cases in Latin America, the institutional role of the courts represents a case of institutional resistance that constrains the sphere of maneuvering by the state government. Third, the practices of transnational and domestic human rights networks and their alliance with victims associations makes it necessary to think seriously about the practice of transitional justice. From this perspective, it is not enough to address the process of transitional justice based on elite's decisions and institutional frameworks. Finally, due to the fact that this is a recent process, it is necessary to critically examine the transitional justice experience in Colombia and how political, social and institutional actors frame and use transitional justice mechanisms.

Taking into account these elements of context, the main purpose of this research is to understand how political, institutional and social actors, especially the government, the courts, the human rights and transitional justice NGOs, and victims associations, frame the mechanisms of transitional justice and use legal instruments to transform the conflict and reach what they consider "justice." I also want to bridge the more abstract level of social structural constraints and institutional arrangements with the more concrete level of practices of human rights protection, in order to make visible the narratives and subjectivities of those actors who were marginalized from the peace process with paramilitary groups (Goodale & Merry, 2007; Lauderdale et al., 1990). In doing so, I want to advance theory on literature about law and society and transitional justice by means of

applying and expanding the theoretical framework of sociolegal research via the process of transitional justice in Colombia.

Transitional Justice from the Perspective of the Social Fields

Drawing on Pierre Bourdieu's concept of the social field (1992), I understand transitional justice as a space of contention in which different social actors struggle among each other in order to protect their interests, life styles and values. It is a contention between scholars about the conceptualization of transitional justice as an academic field (Bell, 2009). But transitional justice is also a disputed space among politicians, armed groups, human rights NGOs, among others, in order to design and apply the mechanisms to solve political conflicts, and deal with the claims of accountability for the perpetration of gross violation of human rights (Hagan & Levi, 2005; McAdams, 1997; McEvoy, 2008; Mendez, 1996; Roht-Arriaza & Marriazcurrena, 2006; Teitel, 2000). The idea of transitional justice or justice in times of political transition implies the intensification of the relations between politics and law. It also implies the rupture between a previous political order and an emergent idea of a foundational moment that is the basis to build up the new institutional frame. The intersection zone between the rules of politics and law intensifies to the extent social and legal actors struggle to define the best forms to solve the political conflict, the features of the new foundational moment and the basis of the institutional mechanisms of the new order. However, the social implications of the process of political transition go beyond the institutional design of mechanisms of transitional justice,

because social tensions keep on emerging in both institutional and non-institutional spaces. In this regard, the importance of a critical approach to transitional justice is not the interest on institutional design, but rather the complexity of the relations among different social actors and the way they transform the emerging conflicts.

The boundaries between politics and law are blurry and dynamic. For Bourdieu, the legal field has a relative autonomy and structuring rules according to which the legal decisions and practices cannot be explained solely by the logic of power relations or economic structural constraints. Nor are the legal decisions the result of a total and autonomous field based on the neutrality and rationality of legal actors. From the internal perspective of lawyers, the social life is ordered and understood by legal rules and the abstract concepts of the legal discourse. From the external perspective of social sciences, such as sociology or anthropology, law is a discursive construction that creates social life. For Bourdieu (1987), the legal field is not the simple instrument of domination and economic constraints, as the Marxists understand, and neither is it the autonomous field that the legal positivists attempt to describe. Law and politics are two fields with different logics and rules and where the social actors might deploy different forms of resources and power. However, these two fields are in constant interpenetration and mutual influence, especially in times of political conflict. Despite the fact that Bourdieu's perspective on law focused mainly on the social foundation of legal field and the force of law, my interest is not to stress the internal logic of the legal field. Rather, I explore the relations between politics

and law in the context of a turbulent political scenario and legal pluralism (Santos, 1995) in which the sovereignty of the state government is contested by other political actors. In this regard, I attempt to analyse how different social actors move in the political and legal, and how they struggle to frame and carry out mechanisms of transitional justice. The theoretical perspective of social fields as an overarching approach to the analysis of transitional justice in Colombia suggests the relevance of an expanded theoretical framework. I employ this framework to provide an account of the process of institutionalization of transitional justice and to analyze current perspectives on and experiences of transitional justice and human rights. Drawing on a broader concept of transitional justice from below I highlight the relevance of non state actors, especially the relations among human rights organizations in the process of creating new practices and meanings of victims' rights and their resistance against the governments' attempts to promote a policy of forgetfulness and forgiveness.

Emergence, transformation and institutionalization of transitional justice

Some decades ago, but especially since the 90s, the topic of transitional justice caught the attention of scholars from different fields. The concept of transitional justice or justice in times of political transition is defined as the set of institutional or non-institutional mechanisms that emerge in times of political flux in order to set forth the basis of a new political order, and in the meantime, to deal with the claims of justice because of the perpetration of gross violations of human rights during the former regime (Elster, 2004; Minow, 1998). But despite the fact

transitional justice is a rather new concept, the political and social problems it attempted to address were not a novelty (Elster, 2004). One of the iconic images of transitional justice and human rights in the twentieth century is the Nuremberg trials, created after World War II by the Allies in order to judge the Nazi leaders who perpetrated gross violations of human rights. Despite the criticism that they expressed victors' justice and forgot their own crimes, the Nuremberg and Tokyo trials constituted a new paradigm for both human rights and transitional justice discourses (Teitel, 2000).

In that moment, the political leaders who promoted the trials had to face difficult challenges: How to deal with the claims of accountability for those who were responsible of so much suffering for humanity? Should they be objects of vengeance or should there be an institutional constraint for vengeance, such as the establishment of a legal forum? In case of a tribunal, would it be possible to judge all the perpetrators of human rights violations? What would be the legal framework for those trials? The constitution of the Nuremberg trials as a new paradigm implied the idea of limits to politics. Instead of promoting practices of vengeance by means of a ritual of victors' justice, the design of a tribunal followed the forms and principles of western law: it was considered the triumph of law over politics and rationality over vengeance (Minow, 1998). However, the development of the trials showed that the relations between politics and law are much more intricate and diffused than the legal experts are willing to accept. In any case, the image of the Holocaust and the emergence of a social awareness about human suffering brought about significant changes in the legal discourse.

First, it led to a rupture with the prevailing positivistic perspectives according to which the tensions between legality and justice were to be solved in favour of legality. There was a re-emergence of more sophisticated iusnaturalist conceptions of law based on the idea of the superiority of rational principles over legal forms. Actually, the enactment of the Universal Declaration of Human Rights and the following declarations and treaties on human rights drew on Lockean and Kantian perspectives, according to which human rights were pre-existent to the state's legal system and inherent to human nature. However, in order to avoid risks of witnessing new forms of state repression and massive violation of human rights, the international community and the human rights organizations promoted the enactment of different international instruments that have institutionalized the discourse of human rights (Bell, 2009, McEvoy, 2008; Teitel, 2000).

Transitional justice gained special attention during the 80s and the 90s. During this period, different countries in South America (i.e. Argentina, Chile, Brazil, Uruguay and Paraguay) experienced moments of transition from dictatorship to liberal democracies. Years later, some Central American countries, such as El Salvador and Guatemala, experienced civil wars and peace processes between the different parties at stake. In addition to these cases, after the collapse of the Soviet Union and the fall of the Berlin Wall, different countries in Eastern Europe faced a transition from the socialist system to economic capitalism and liberal democracy. In Africa and Asia, different countries have also faced moments of political transition and the need to deal with gross violations of

human rights. Based on these experiences, scholars have attempted to do comparative research in order to identify common elements and learn from each experience. At the beginning, the research on transitional justice, dominated by studies on democracy and human rights, highlighted three characteristics. First, scholars observed the existence of a political transition characterized by the rupture between the past regime and a new order. Second, there was the purpose to found a new institutional order inspired by concepts such as liberal democracy and Rule of Law. Third, these studies also stressed the creation of trials as the main institutional mechanism to respond to the claims of justice and deal with mass crimes committed by the ancient regimes (Hagan & Levi, 2005; McAdams, 1997; McEvoy, 2008; Mendez, 1996; Roht-Arraza & Marriazcurrrena, 2006; Teitel, 2000).

Despite the observation of some common elements in different (western) countries, comparative studies on transitional justice have also recognized the diversity and complexity of the different experiences. Currently, it is well accepted that there is not a unique or “off the shelf” formula to get through a process of transitional justice (McEvoy & McGregor, 2008; United Nations, 2004). The experience of the Truth and Reconciliation Commission (TRC) in South Africa, guided by the principles of restorative justice instead of the prevailing image of retribution and trials, caught the attention of scholars and the international community during the nineties. Ever since, different experiences have drawn on Truth and Reconciliation Commissions and local practices as well, such as the Gacaca practices in Rwanda (Waldorf, 2010). It is possible to observe,

on the one hand, a growing institutionalization of transitional justice based on the discourse of international human rights law and international criminal law. Some illustrative examples of this expansion is the systematization of the international principles against impunity (Joinet, 1997), the creation of different special tribunals to deal with the violation of human rights in the former Yugoslavia, Rwanda, and Sierra Leone, and the creation of the new International Criminal Court. On the other hand, there is a growing interest to observe the interaction between the institutional mechanisms and their impact on society and how the communities experience the post conflict (McEvoy & McGregor, 2008; Waldorf, 2010). The documentation of these experiences shows manifold tensions and complexities that cannot be addressed by the guiding principles of the Nuremberg trials or the assumption that all transitions come from the abolition of a dictatorship or a repressive state.

I want to highlight especially two main contradictions that take place in the processes of transitional justice and that deserve more attention. The first aspect relates to the conflict between perceived political needs in a given context and normative values of justice. There are cases in which the political conditions and the normative claims move in the same direction such as it happened, to some extent, after World War II. Different experiences in Latin America, Eastern Europe, Africa and Asia, show that the definition of political transition depends on political bargains that imply solving the political conflict and responding to the claims for accountability. The second aspect relates to the contradiction between the powerful interest groups and the disenfranchised groups. What does occur

when the elites who take part in peace negotiations choose to grant amnesties to the perpetrators of mass crimes and do not take into account the claims and the voices of the victims? Unfortunately, this question is not fully addressed by those who focus mainly on institutional design and elite decisions. In any case, I do not attempt to portray these tensions as dichotomies, but rather as a continuum, that gives room for manifold intermediate expressions. Contemporary literature on transitional justice and human rights acknowledges these contradictions through the distinction between “transitional justice from above” and “transitional justice from below.” However, in order to be consistent with the theoretical framework I follow, I draw on Marc Goodale and Sally Merry’s idea of in betweenness (2007). They claim that it is necessary to overcome binaries, such as global/local, or from above/from below and explore the wide range of practices in between (Goodale & Merry, 2007).

Transitional justice from above

The “from above” perspective addresses the relations between politics and law from an institutional view, which focuses on the design of public policies, legal frameworks, the role of political elites and the production of forms of knowledge, such as the discourses of law and public policies. This perspective gives an account of the emergence and transformation of the discourse of transitional justice throughout the past decades. It is a perspective that acknowledges the existence of gross violations of human rights and the enormous suffering of humanity, suggests institutionalized responses in the national and

international arena in order to constraint to the state power and tries the perpetrators of mass crimes against humanity. Martha Minow (2002) eloquently describes this institutional response when she affirms that the twentieth century brought the most brutal forms of mass extermination, but also brought the possibility to respond institutionally to these crimes. For Minow, accepting the fact that the logic of law cannot respond to the logic of war, it would be worse to do nothing. Actually, the comparative studies on transitional justice give account of a variegated set of institutional mechanisms that attempt to deal with the political need to cease violence and reach accountability, such as amnesties, international tribunals, domestic tribunals, luring, National Truth and Reconciliation Commissions (TRC), among many others (Minow, 1998; Osiel, 2005; Teitel, 2000)

Given the fact that it is a moment of political transition, that is to say, a rupture with the former regime and the foundation of a new order, it is well accepted that it is an exceptional moment that breaks up the normal relations between law and politics. Literature on constitutional law and transitional justice suggests that the relations between law and politics intensify to the extent that the new political conditions entail the transformation and reform of the constitutional and legal frames. Nevertheless, the tensions between the political needs and the principles of justice are solved in different ways. According to Ruti Teitel (2000), it emerges as a contradiction between those who consider that the process of transitional justice should be tailored to the normative patterns of law, such as the human rights advocates (idealists), and those who think that the political

conditions define the scope of institutional changes (realists). The idealists insist on constraining politics by means of the legal discourse and some of them attempt to defend a universal and normative project of transitional justice and Rule of Law. As a consequence, what is conceived as a set of universal principles and values in human rights and justice, must guide the decision making process in the political sphere during periods of political transition. For instance, from the perspective of human rights and constitutional law, the new reforms should respect a set of minimum standards on human rights and mechanisms of accountability (McAdams, 1997; Mendez, 1997; Roht-Arriaza & Marriazcurrrena, 2006). Among those standards, the international discourse on human rights highlight four main state obligations with the correlative human rights for the victims: 1) the obligation to do justice; 2) the obligation to allow the victims to know the truth; 3) the obligation to repair the victims; and 4) the obligation to guarantee that those crimes will not happen again in the future (Joinet, 1997; Mendez, 1997).

For Teitel, the realists consider that the law is an outcome of politics and the design of transitional justice mechanisms depend mainly on the existing political and economic conditions. In contrast, human rights advocates base their aspirations on good will, but they fail to observe the social and political context. For the realists, the human rights advocates are not capable of offering feasible solutions to the political conflicts (Teitel, 2000). Some examples of how the logic of politics prevailed over the logic of values of justice are the cases of Argentina and Chile. In Argentina, the military members and the Menem's government

promoted a blanket amnesty to avoid any possible prosecution. In Chile, Augusto Pinochet and the army promoted a self amnesty and designed a new constitution, according to which the former dictator would hold a life tenure seat in the Senate. Another example about the weight of political interests and views is the peace process in El Salvador. In this case, the members of the Peace Commission, led by Belisario Betancur (former Colombian president 1982-1986), emphasized the possibility of a peace accord by granting amnesties to the members of the armed forces and the front Farabundo Marti for National Liberation FMLN, rather than pushing for mechanisms of prosecution.

However, Ruti Teitel attempts to go beyond the dichotomy between the idealists and the realists. She considers that both perspectives have shortcomings. On the one hand, the idealist approach of human rights advocates are based on normative theories that do not take into account the importance of describing and analyzing the political contexts. On the other hand, the realist perspectives neglect to acknowledge the relevance of normative frames in the political arena and its constitutive role in the construction of society. Teitel (2000) suggests drawing on a constructionist perspective because it is necessary to observe the role of law in times of political change. For Teitel, law in times of political transition is both constituted by the political context, and an instrument able to produce political change. Moreover, she sustains that in times of institutional normality and times of political transition, the courts perform a transformative role. This transformative role of the courts takes place when they define the illegitimacy or

illegality of other public branches' decisions, such as Congressional laws or executive decisions, or when the courts protect victims' rights (Teitel, 2000).

But this contention between principles of justice and political needs is not restricted to the political and legal battles in the national institutions; it also takes place in the design and functioning of the international tribunals. For instance, John Hagan and Ron Levi (2005) illustrate this contradiction in the context of the International Court for the former Yugoslavia (ICTY). They analyze the creation and development of the ICTY and provide an analysis of the political conditions that led to the emergence of the tribunal. The authors show how the creation of the ICTY, especially from 1994 to 1996, was characterized by the contradiction between the political needs of the international relations and the moral and legal imperatives of criminal law and human rights. In sum, the constructionist perspective attempts to come up with an intermediate point between the normative discourse of human rights and the descriptive discourse of the realists on law and social sciences showing how the normative discourse can also impact the institutional sphere and create new political realities. However, the constructionist approach still focuses on the institutional approach and fails to give account of the discourses and practices of non state actors. In this regard I argue that the possibilities of the legal discourse and practices to construct new social reality deserve deeper sociological and anthropological explanations.

Transitional justice from below

The “from below” perspective focuses on the participation of non state actors in the political design and carrying out of the mechanisms of transitional justice, and on non formal practices of conflict resolution in local spaces. This approach provides additional theoretical elements for understanding the social embeddedness of transitional justice mechanisms and other perspectives on conflict solving in times of political transition (Lundy & McGovern, 2008; McEvoy, 2008). Despite the fact that the literature on transitional justice from below is rather exploratory, the advocates of this perspective converge on two main points. First, they criticize the restrictive and one-dimensional way the “from above” approach understands concepts, such as justice, democracy and the rule of law. According to those who advocate the “from below” perspective, the institutional view on transitional justice and human rights reproduce a western and liberal conception of democracy, human rights and law. This approach also maximises the centrality of state law, state led initiatives or state-like institutions (McEvoy, 2008; Rajagopal, 2003). For McEvoy, the growth of the academic field of transitional justice has coincided with the colonization of the legal discourse on the topic of transitional justice, especially under the influence of legal experts on international human rights law and international criminal law. In addition to this fact, there was a process of normalization of what was considered an exceptional mechanism. The emergence of the discourse of transitional justice was thought of as the exception, not as the rule. However, during the past years the discourse of transitional justice has normalized. This effect has reduced the possibility of

taking into account other epistemological perspectives according to which trials and punishment are not the more just forms of solving conflicts and reaching justice.

Second, the “from below” perspective attempts to analyse the role of the non state actors, such as the social movements, or subaltern subjects, whose experiences are made invisible by discourses and institutional practices (Rajagopal, 2003; Santos & Rodriguez, 2005). In this regard, McEvoy and McGregor (2008) attempt to promote a dialogue among different local experiences, paying special attention to grassroots organizations and communities. McEvoy (2008) also attempts to question that lack of substantial meanings promoted by the legal discourse. In so doing, he makes the distinction between “thin” and “thick” conceptions of transitional justice. According to McEvoy, the “thin versions” on transitional justice are related to formal expressions characterized by the lack of social embeddedness. Conversely, the “thicker” versions of transitional justice are characterized by a more substantial content that come from social and participatory processes from below (McEvoy, 2008). McEvoy also suggests that the “from below” perspective comes from the experience of grassroots organizations, regardless of the relations with institutional spheres. This is a conception of transitional justice that is mainly participatory, non-formal and non bureaucratic. A similar view is supported by Patricia Lundy and Marc McGovern (2008), who draw on the experience of social movements on non-western societies and alternative scholars to argue the

importance of participatory processes within the communities to create their own projects of collective memory.

However, other authors also show that the “from below” perspective might be more flexible and should not be restricted to grassroots organizations and informal knowledge. For authors like Lorna McGregor (2008), Peter Houtzager (2005) and Balakrishnan Rajagopal (2005), among others, some institutional actors, such as the courts, can use the legal discourse of international law, human rights and constitutional law to empower disenfranchised groups. In this regard, McGregor makes an interesting argument about the emancipatory role of international law. McGregor acknowledges that the institutions and the discourse of international human rights law has served in the past to reproduce inequalities, colonial and ethnocentric practices. Nevertheless, for her, the discourse, mechanisms and institutions of international law have the capacity to empower disenfranchised groups and resist oppressive practices. In fact disenfranchised groups and social movements have incorporated the language of rights and the categories of international human rights law in order to frame their struggles for justice, as it is the case of the Landless movement in Brazil (Houtzager, 2005). Also the social movements have contributed to change the legal discourse and incorporate new concepts and meanings (Rajagopal, 2003; 2005).

For this research, I draw on a wider conception of the “from below” perspective. According to this perspective, I do not restrict the possibility of building up expressions of human rights and transitional justice from below as the

only participation of grassroots organizations. I acknowledge the relevance of taking into account the participation of grassroots organizations in local spaces. However, given the circumstances of political context in turbulent conflicts, the possibility of mobilization for grassroots organizations and communities might be seriously affected, especially when the political conflicts are not over. The from below perspective I assume for this research implies the participation of different actors such as domestic, transnational human rights NGOs, victims' organizations and state courts. These actors not only draw on tactics of political mobilization but also in actions of legal mobilization. In this perspective, the legal discourses ends up to be an element for empowerment of disenfranchise groups, resistance and construction of alternatives. In order to analyse these processes of resistance promoted by the human rights NGOs and the courts, it is also important to clarify other two theoretical aspects: the human rights networks and resistance.

Non state actors and human rights networks

Literature on human rights has shed light on the social relevance of activism, social movements, networks and connections among human rights organizations and movements (Alvarez, Dagnino & Escobar, 1998; Goodale & Merry, 2007; Jelin, 1994; 1998; Keck and Sikkink, 1998; Merry, 2006; Speed, 2007; 2009). Human rights NGOs and social movements have taken part in the formation of networks that helped transform public policies on human rights. For example, the classic work of Margaret Keck and Kathryn Sikkink has shown how national and transnational NGOs created networks that raised awareness about

violation of human rights in Latin America, by means of tactics of “information politics.” The human rights NGOs designed symbolic tools consisting of chants and labels that allowed the international and national communities to learn from those mobilization campaigns. They also mobilized in the transnational arena to create alliances with transnational NGOs and reach political leverage in the international community. According to Keck and Sikkink, the political leverage and the pressure of the international community over the national government were the final steps of what they called a “Boomerang pattern.” This means that if the national governments did not pay attention to the domestic NGOs’ claims for improving the human rights situation, the human rights networks would get political leverage and support from international and transnational communities. Finally, the international pressure on the national governments might elicit transformations of the public policies and significant changes of the human right situation. More recent work have insisted on this argument, stressed the role of the transnational advocacy networks on shaping world politics (Khagram, Riker & Sikkink, 2002).

However, the literature on transnational advocacy networks has some limitations. First, literature on transnational advocacy networks emerged in the field of International Relations. This literature emphasizes the role of non state actors on the transformation of international policies and the effect on national governments. Nevertheless, it does not address the dynamics and tensions in the domestic sphere (Goodale & Merry, 2007; Rajagopal, 2003; Tate, 2007). Second, the reception of this literature on some law and society approaches, especially on

the governance approach on law and society, assumes that the role of the different stakeholders is similar. Following Santos and Rodríguez' (2005) argument, it is not fair to compare the privileged situation of the bureaucrat that works in a transnational or international agency in Washington, New York or Brussels, and the work of domestic activists who risk their lives every day in the rural areas of Colombia.

I do not conceive of the transnational sphere as a space located “out there.” Drawing on Tsing (2005) and Tate (2007), a proper transnational space does not exist, but rather relations that take place in manifold spaces. The transnational human rights networks move in different forums and spaces, but especially they exert a relevant influence in the domestic arena. I also attempt to give account on how the human rights networks, led by domestic NGOs, deploy different types of political and legal tactics, in order to transform the institutional and social practices on human rights. The human rights networks do not restrict themselves to mobilizing internationally to gain political leverage and bring about political pressure on national governments. The human rights NGOs also have created forms of transnational solidarity in order to support some human rights programs economically and technically and bring attention to victims. They also have introduced new discourses, such as the discourse of international human rights or the concepts of “truth, justice and reparation”. Drawing on Sally Merry's (2006) concept of vernacularization, the NGOs and activists on human rights are translators that incorporate the discourse of human rights in the local and national sphere. But they are more than simple translators. As activists, they engage in

social and legal practices of defence of human rights, they articulate with social movements and take part in the construction of local and domestic discourse of human rights (Goodale & Merry, 2007). In doing so, they assign meanings for their rights and they take part in the formation of their own political identity as victims of human rights violations or human rights activists (Alvarez, Dagnino & Escobar; 1998; Tate, 2007). Drawing on Shanon Speed's argument on revolutionary rights, the discursive formation of victims' rights is also a dialogical relation, that is to say a contested process characterized by the contradiction between an authoritarian project supported by the discourse of "security and war on terror", and the discourse of human rights based on the principles of justice.

In this regard, the process of framing the mechanisms of transitional justice is not the outcome of a consensus among social actors such as the NGOs, the social movements, the government and the politicians in congress. Drawing on Bourdieu's perspective on the legal and the political field, the framing of these mechanisms is a contested process among manifold actors who advocate for different goals and interests. It is the battle for the appropriation of what justice and peace mean. In this regard, Lorna McGregor (2008) makes an interesting reflection when describing the role of the human rights discourse in violent contexts. McGregor acknowledges that the discourse of human rights has served to normalize relations of colonization and diminish cultural differences. However, she suggests, it is necessary to overcome the contradiction between cultural relativism and the western universalism. For McGregor, the human rights NGOs accomplish a role of introducing and incorporating international human rights

elements that might empower disenfranchised groups and encourage them to keep on resisting and building up new alternatives. In this perspective, the international law is not only the expression of colonial impositions or the attempt to universalize the western experience. It might be also a tool for empowerment and transgression of oppressive orders. In the same token, the local actors are not simply passive actors that translate and spread the discourse of the western transnational human rights NGOs. The transnational and domestic organizations as well as the social movements challenge oppressive expressions of state control and nourish the human rights discourse based on their own practices and experiences (Goodale, 2007; Speed, 2009; Tate, 2007). Bearing in mind the possible contribution of these actors, I am interested precisely in the linkages and connections among different transnational, domestic and local actors that create new spaces for the production of meanings and practices of human rights.

Law, social change and resistance

A second relevant aspect that the “from below” perspective I draw on for this research is related to the possibilities and limits of legality to entice social change. What type of oppressions and resistance are we talking about when we think about law as resistance? Who are the subjects who promote that resistance? What can they do when using the legal instruments to promote social change? Literature on law and society about resistance show that it is difficult to find an answer in abstract and general terms because there is always an underlying assumption about the resistance against a political, economic or cultural form of

oppression. The linkages between politics and law are intricate and ambivalent. Different research on law and society show the diverse range of conceptions about resistance. For instance, Joel Handler (1992) advocates for an idea of material resistance in which the social movements during the sixties and seventies used legal instruments to reach long-term transformations in society.

During the 90s, legal consciousness and narrative studies stressed the cultural dimension of resistance (Merry, 1995; Sibley & Ewick, 1995). These authors focused on the narratives of marginal subjects to decentre the concept of law and shed light on two forms of resistance. First, they showed how the marginal subjects resisted the state law in everyday life, and second, they gave account of how legal instruments might be used to promote resistance against patriarchal, racist or ethnocentric cultural patterns and help struggle for political, ethnical or gender identity (Merry, 1995; Sibley & Ewick, 1995). During the past decade, comparative studies on law and society have stressed the interest on resistance from wider perspectives. These approaches highlight the role of social movements, (Rajagopal, 2003), subaltern subjects (Santos & Rodriguez, 2005) and grassroots organizations (McEvoy, 2008) creating alternatives to what they consider as oppressive and unjust. Second, these subjects contested global discourses that universalize western values and principles, such as individual property, individual autonomy, capitalist economy, development, liberal democracy or rule of law. For instance, Rajagopal, focuses on how the social movements in the so-called third world have contested the ideology of development and challenged the universal conceptions of human rights and

development. Drawing on post structural and colonial studies, Rajagopal gives an account of how the social movements in India have resisted the violence of the discourse on development and have used legal instruments to resist development projects.

More recently, Boaventura de Sousa Santos and Cesar Rodriguez (2005) attempt to give an account of the role of law in the process of counter hegemonic globalization, that is to say, the way resistance against corporate globalization might build up alternative visions and promote a cosmopolitan view of law and society. The cosmopolitan view of resistance suggested by authors such as Rajagopal, and Santos and Rodriguez, takes into account new elements. First, the process of resistance targets global projects that universalize western views on development, rule of law, and corporate capitalism. These projects normalize practices of social exclusion, creating social and cultural hierarchies, marginalize other worldviews, and normalize the state of exception to protect those worldviews (Agamben, 2005). Second, the law has an oppressive dimension to the extent that might be instrumental for the projects of development and economic globalization. The local resistance led by NGOs and social movements are, to some extent, resistance against law, which implies the promotion of social movements, legal or illegal collective actions, oriented to defend alternative practices and contest those political projects which are considered unjust and oppressive. Third, the legal discourse might play an emancipating role to the extent it incorporates meanings and discourses that emerge from the grassroots organizations and the social movements. In this regard, it is also possible to do

resistance through law, such as the case of the Landless Movement in Brazil (Houtzager, 2005), the indigenous groups in Colombia (Rodríguez & Arenas, 2005) or the environmentalist movements in India (Rajagopal, 2005). Finally, these authors draw on a variety of local cases of resistance in order to learn from the different social movements and the emergence of transnational activists to create what they call a cosmopolitan conception of legality based on the emergence of subaltern subjects.

The goals of the research

Based on the overall theoretical perspectives explained above, I attempt to give accounts of the complexity of the recent experience of transitional justice in Colombia. As I noted in the beginning of the introduction, attempt to address three main overlapping arguments. First, I am interested in explicating how the framing of the mechanisms of transitional justice is a contested process that involves different actors and discourses (Alvarez, Dagnino & Escobar, 1998; Bourdieu & Wacquant, 1992; Goodale & Merry, 2007). I maintain that during the first decade of the century in Colombia the framing of mechanisms of transitional justice were conditioned by the contradiction between a hegemonic discourse of security that attempted to grant generous incentives for the demobilization of the paramilitary groups, and a discourse of human rights that attempted to highlight the existence of legal and ethical constraints for political negotiations and the moral and legal imperative to protect victims' rights.

A second point I make is related to the role of non state actors in the framing and carrying out mechanisms of transitional justice. Considering the fact that in Colombia the violence promoted by armed guerrillas and the paramilitary groups has undermined the capacity of mobilization of grassroots organizations, especially in local contexts, the research attempts to give account of how the human rights networks resisted the project of impunity promoted by the government and have attempted to create new alternatives for the protection of victims' rights. It has been resistance to a political regime that emerged in the first decade of this century, which under the guise of the war on terror and the pursuit of security, combines the protection of corporate capitalism, the military power of state government, the retrenchment of the welfare state and the dismantling of the basic individual and political freedoms that were taken for granted in the liberal state (Agamben, 2005). This regime represented also the consolidation of a hegemonic discourse of security supported by different sectors of the Colombian society. Bearing in mind this political context, I want to give accounts of how transnational and domestic human rights organizations, emerging domestic social movements, victims organizations, and the higher courts, converged into a discourse and practices of human rights and transitional justice from below.

Finally I am interested in exploring the relations between law and politics in the context of the recent experience of transitional justice in Colombia. I suggest that the government drew on a form of relations between law and politics that implied the legalization of politics. In this regard the government attempted to normalize existing power relations and practices of social control and cover them

with the veil of legality (Laplante & Theidon, 2007). Conversely to the government's use of law, human rights and victims' networks combined political and legal actions in order to contest a project of security and war on terror, and more specifically a project of impunity that came from negotiations with the paramilitary groups. The resistance implied two forms of relations between law and politics: first politicization of human rights, and second, judicialization of politics. The politicization of human rights was related to human rights and victims' networks attempt to bring to the political arena the ethical and legal discourse on human rights. In this regard, human rights activists stressed the existence of legal and ethical constraints on political negotiations and the international support of victims' rights. The judicialization of politics was the attempt of human rights organizations and the higher courts to transform the political conflicts and convert them into legal conflicts. In doing so human rights activists and the courts brought those conflicts to the judicial forums in order to protect victims' rights and make accountable the perpetrators of political actors who were involved in gross violations of human rights.

Research Questions and Methods

Based on the goals and the theoretical framework, I will address the following questions:

1. How do actors such as the Government, Courts, transitional justice NGOs, human rights NGOs, and victims, struggle and negotiate the framing of mechanisms of "reconciliation" and "justice"?

2. How do the judiciary, the NGOs and the victims frame and use the legal instruments to protect rights of truth and reparation?
3. To what extent do social practices of human rights and transitional justice NGOs and victims associations promote expressions alternative forms of transitional justice?
4. What is the Colombian case's contribution to comparative research on transitional justice regarding how to solve past conflicts?
5. What are the characteristics of the legal field in context of the transitional justice process?
6. What are the characteristics of institutional and social resistance to the model of forgiveness and forgetfulness in the case of Colombia?

In order to answer the research questions, I collected and analyzed the following information: 1) documents (mainstream and alternative newspapers, official documents, human rights reports) about the main facts related to the peace process between the government and paramilitary groups and the public debates about the mechanisms of transitional justice, 2) documents (mainstream and alternative newspapers, legal documents, human rights reports) about the enactment and use of legal mechanisms of transitional justice; 3) in depth interviews with the heads and staff members of the Commission of Reconciliation, transnational and domestic human rights and transitional justice NGOs; 4) in depth interviews with leaders and members of victims' associations.

I conducted a case study of the recent transitional justice process in Colombia between August 2009 and July 2010 based on document analysis and

in-depth interviews. This case study attempted to carry out three main goals: first, to give account of an historical phenomenon consisting in the struggles to frame and use mechanisms of transitional justice in the context of the peace process between the Colombian government and the paramilitary groups (George & Bennet, 2005; Ragin, 1994), second, to give voice to some of the actors that were marginalized from the institutional design of transitional justice mechanisms (Ragin, 1994), and third, to advance theory expanding the analysis of legal field on experiences of transitional justice (Ragin, 1994). Regarding the first goal, the case study provides accounts of the political and legal battles between 2003 and 2006 that framed the legal mechanisms for the demobilization of the paramilitary groups and the protection of victims' rights. It also gives accounts of the political and legal mobilization of the human rights and victims' organizations in order to enact a more comprehensive legal framework for the protection of victims' rights between 2007 and 2009. Regarding the second goal, the research gave voice to the human rights activists and some victims' organizations leaders. In the process of doing the research, I realized there was very little information about the history and the struggles of the human rights organizations in Colombia. Conversely, there are numerous reports that provide information about the situation of human rights. Yet , with the exception of the work of Winifred Tate (2007), Robin Kirk (2003), and Flor Alba Romero (2001), there is little systematic information about the historical processes of human rights organizations in Colombia. Having that in mind, giving voice to the human right activists has made it possible to grasp, at least, part of the recent political and legal struggles of the human rights activists

in the country. I wish I could have given voice for more groups of victims, however, during the research I realized there was a large number of victims' groups and giving voice to them was beyond the capacity of this research. Finally, the research provides important research for comparative analysis, especially regarding the role of the human rights and victims' networks in the domestic sphere, as well as the critical role of the courts in the context of a transitional justice process.

I went back to Colombia on June 2009 and I focused on collecting documentation about the peace process with the paramilitary groups and the legal framework enacted in the context of that negotiation. This information was mainly what Prior (2003) names documents as evidence, this is, information from the newspapers about the peace process with the paramilitary groups and the debates on transitional justice mechanisms. I obtained documentation based on mainstream (right wing newspapers *el Tiempo* and *el Colombiano*) and alternative media websites (center left media *El Espectador*, *Semana* and *verdadabierta.com*) about the peace process between paramilitary groups and the national government, the situation of human rights, and relations among the government and human rights NGOs. In doing so, I covered the period between 2002 up to the present. Documentation from newspaper websites were particularly useful in providing information about the different moments of the transitional justice process, the actor's perspectives, the public discussions about the legal frame, and the perceived outcomes of the transitional process. I collected this documentation from specialized websites. Reports from governmental institutions and human

rights NGOs, such as the Colombian Commission of Jurists (CCJ), the Lawyers Collective Jose Alvear Restrepo (CAJAR), and the Research Centre for Popular Education (CINEP) were helpful to obtain deeper information about the perspective, interests of these specific actors and their own assessment of the transitional justice process. I retrieved this information from their websites, and the documentation the human rights organizations turned in to me when I visited them to do the interviews.

I also collected legal documents about the legal frame of transitional justice process in Colombia. This information implied getting the different drafts discussed in the National Congress about the “Justice and Peace Law” and the “Victim’s Law.” I also included Constitutional Court decisions that have impacted that legal frame and Supreme Court decisions that have influenced the application of those mechanisms. This type of information required special attention, not only because what it says, but also what it does. Following Austin (1962), Bourdieu (1987) and Prior (2003), legal language, rituals and forms are particularly relevant to the extent they create meanings and transform social practices. This information was relevant to trace different initiatives on transitional justice and understand the way political interests penetrate the legal sphere.

In August 2009 I settled in Bogotá in order to get access to the main human rights NGOs, intergovernmental organizations and state institutions involved in the process of transitional justice in Colombia. Colombia, as do many other Latin American countries, maintains the remnants of a centralized state

structure, which means that the main political debates, meetings and discussions take place in the capital. As a consequence, Bogotá turns out to be a space of connections among international communities, transnational actors, the main human rights organizations and networks, and the state government. Bearing this fact in mind, if I wanted to search for information about how institutions, NGOs and victims' associations, struggle for framing and carrying out mechanisms of transitional justice, I needed to move to the capital and contact the main human rights organizations. The selection of the organizations I had to contact was based on purposeful sampling and snowballing sampling (Maxwell, 2005; Patton, 2002). Based on pre-dissertation research and document information I identified the main human rights organizations that took part in the political debate on transitional justice in Colombia. The members of these organizations were the ones who had experienced the political battles in the political process of framing the mechanisms of transitional justice. In order to gain access to those organizations I contacted them by mail and by phone introducing myself and explaining the purpose of the research. I also gained access to the interviewees by means of contacting former colleagues who work in human rights NGOs, such as CINEP and the Colombian Commission of Jurists.

I interviewed the members of human rights NGOs and victims' associations that have taken part in public debates about transitional justice or whose work with victim's organizations is considered relevant. The persons I interviewed belonged to the following organizations: the Colombian Commission of Jurists (CCJ), Colectivo de Abogados Jaime Alvear Restrepo, the International

Center for Transitional Justice (ICTJ), the Center for Popular Education (CINEP), the Centre for Law, Justice and Society Studies (DeJusticia), the Corporación Arco Iris, the Women's Initiative for Peace (IMP), Viva la Ciudadanía, the Social Foundation and Corporación Jurídica Libertad (CPL). Regarding the variegated groups of victims of violence perpetrated by paramilitary groups over the past two decades, it was very difficult even to categorize them in advance. I tried to get access to different victims' associations taking into account their diversity, level of organization and participation in public debates. As a consequence, I contacted representatives of the Movement for Victims of State Crimes (MOVICE) and the Organizing Committee for Victims' Meeting.

During this process, I realized that in addition to the human rights NGOs it was also important to interview members of the international community and intergovernmental organizations. I contacted the United Nations Human Rights Office in Colombia (UNHCHR), the United Nations Development Program (UNDP), and some embassies who were involved in international cooperation programs, such as the embassies of Sweden, Canada and the European Commission. Given the characteristics of the polarized context that prevailed in Colombia, it was important to examine some of the political debates. I tried to give account of different perspectives at stake. Regarding the government's perspective I drew on official documents and media coverage. However, considering the fact that one of the aims of the research is to give voice to marginalized actors whose perspectives are hidden by the mainstream media, I paid more attention to contacting human rights and victims' organizations.

Based on my prior experience doing sociolegal research in Colombia, I am convinced that the more worthy information emerges when there are ties of confidence between the interviewer and the interviewee, this is, informal conversations in which we minimize hierarchical differences. Actually, the fact that I am professor of a public university in my home country allowed me, to some extent, to open the doors, to different human rights organizations. But in general terms, getting access to the human rights organizations or activists was rather difficult. Given the characteristics of the research topic and the difficult circumstances of the political context, in some cases it took me months to get access to human rights organizations and schedule appointments with their members. By the time I made the interviews the human rights organizations were suffering a notorious harassment from state security agencies or were target of death threats. Despite the fact that I spent seven months in Bogota, I only started feeling that my research was moving along by the end of my stay in the capital of Colombia. In fact, when I moved back to Medellín I had to go back to Bogotá to conduct interviews with prominent activists whose schedules were extremely busy. Medellín, which is the capital of the province of Antioquia, is also the region that has been most impacted by the actions of paramilitary groups. In Medellín I searched for information from the human rights NGOs and institutions that work in the region. While being there I conducted interviews with members of different NGOs and victims organizations. I also attended different victims' meetings and activities organized by the human rights networks in the region.

Considering the characteristics of the topic, I preferred to create and maintain confidence and trust with the interviewees who might be intimidated with structured interviews, formal hierarchical forms of communication, or the language used to frame the research questions (Maxwell, 2005). Regarding the diverse experience of the interviewees, I wanted them to tell their stories. The content of the interviews differed, depending on the organization and the type of information the person had. Considering that the purpose of the interview is to gain as much information about interviewees' knowledge and experience, I designed the interviews based on open ended questions (Maxwell, 2005). I tailored the interview guides to each interviewee, depending on his or her experience and expertise. I started asking about their experience and perspective on the demobilization of the paramilitary groups and their approach to the debate on transitional justice. I realized that I needed to be careful with the language I was using. There were terms that might be considered suspicious for the human rights activists, such as "transitional justice," or "reconciliation." Therefore, I tried to avoid using terms that might be considered offensive.

Because of the amount of information the interviews entailed, I needed to schedule new appointments to continue the conversations. Initially, the interviews were rather descriptive and general. I wanted them to tell me as much information as possible about their organizations, their perspective on the legal frames that came after the demobilization of paramilitary groups, the debates on that topic and the actions they have been involved to protect the victims' rights. As I became familiar with the information and the recent history of the political

process in Colombia, I started organizing the puzzle and the interviews became more specific and specialized. Because of the long conversations with the human rights activists, I not only ended up strengthening the bonds with old friends, but also increased the ties of solidarity with the human rights organizations. I was invited to participate in forums of public debate, seminars, breakfasts, summits and different forms of public discussions that allowed me go through a snowball effect. I also attended victims' summits in which the transitional justice experience was assessed. Slowly I realized I had been doing more observation that I had initially thought.

The interviews were recorded only with authorization from the interviewees and their identities were secured for ethical and security reasons (Maxwell, 2005). I kept a record of the codes of the different interviews. I omitted or changed the name of interviewees when quoting some of the interviews. I only put their real names in the cases in which the interviewees are publicly recognized by their work and whose interviews makes possible to identify them, such as the case of prominent human rights defenders who runs the larger and more visible NGOs. I got the interviews transcribed, with the exception of the interviews with victims or those interviews whose content required more discretion. In these cases, I took notes or transcribed the interviews myself. Once I got the transcripts of the interviews done, I started coding. The transcriptions were coded based on open coding method (Emerson et al. 1995). Codification of the interviews and observations combined deductive and inductive codes. Some deductive categories are based on the theoretical framework, such as justice, reparations, human rights

NGOs, human rights networks, political mobilization or strategic litigation. The inductive codes emerged from the words and expressions of the interviewees, such as the case of the *G-24*, the *MOVICE*, the *Meeting of Victims from Social Organizations*, or forms of actions the organizations carried out, such as *emblematic cases* (Emerson et al. 1995). The coding attempted to give account of the actors, their main discourses, and the actions they carried out. For both cases, deductive and inductive coding, it was very important to listen to the voice of social actors and understand the social production of meanings.

Once the texts and interviews were coded, I organized and classified the codes and related them to broader categories. The initial categories I used are suggested in the interviews (subjects, perspectives on reconciliation and justice, the role of the institutions and organizations, transitional justice practices, and practices of resistance). Based on coded and categorized information, I wrote analytical memos about the main substantial and theoretical categories (Maxwell, 2005) of analysis in order to put together the data, theoretical reflections and possible answers for the research questions. Between August 2009 and July 2010, I started sending these memos to my dissertation chair as monthly reports. In these analytical memos, I connected the data with the research questions and the theoretical framework. For instance, how did the government attempt to frame the mechanisms of “reconciliation” and “justice”? Or, how did the NGOs and the victims frame and use the legal instruments to protect rights of truth and reparation? For the analysis I drew on the theoretical framework explained above, which includes Pierre Bourdieu’s perspective on the legal field, literature on

transnational advocacy networks (Keck & Sikkink, 1998), transitional justice and human rights from below (Goodale & Merry, 2007; McEvoy & McGregor, 2008; Rajagopal, 2003; Santos & Rodriguez, 2005). In the process of doing the analysis, it was very helpful to write a paper for the Law & Society and the Latin American Studies Association LASA meetings that took place on 2010. Based on the comments and feedback I received from the committee members for that paper, I prepared the first four chapters of the dissertation.

The credibility of information was assessed based on different qualitative data analysis , such as, quality of information, the credibility of the researcher and the value of qualitative research (Patton, 2002). I was able to conduct more than forty six in depth interviews and take part in numerous events related to the discussion and assessment of the mechanisms of transitional justice in Colombia. Having interviewed activists from at least ten different human rights NGOs, and members of the victims' organizations, I tried to both, highlight the main points of agreement and give account of the diversity of perspectives. In doing so, I interviewed at least two or three staff members from each organization in order to compare their own perspectives. Following Ragin (1994), I tried to do interviews until I reached the saturation point, this is, the moment in which the interviewees started repeating the critical contents to answer the research questions (Ragin, 1994). To assess the quality and credibility of this information triangulation of methods was used to compare the information from different interviewees and among the interviewees and documents (Patton, 2002). This research provided in

depth information about the political and legal processes of framing mechanisms of transitional justice during the first decade of the century in Colombia.

Overview of the Chapters

The following chapters attempt to give account of the findings and the analysis of this research. In Chapter 2 I explain the different conditions that lead to the emergence of a hegemonic discourse of security and the meaning of negotiations between the government and the paramilitary groups. Here, I suggest that different conditions, such as the exhaustion of the peace negotiations with the guerrilla groups, especially the FARC and the ELN, the collective feeling of distrust and rage against those guerrillas, the expansion and transformation of the paramilitary as political actors, and the election of Alvaro Uribe as President in 2002, contributed to the emergence of a prevailing discourse on war on terror and security. This context explains the favorable perception of a peace negotiation with the paramilitary groups. Under these circumstances, the design of a legal frame seemed to be an attempt to legalize politics. This is a legal frame that fit the aims of both the paramilitary groups and the Colombian Government.

In Chapter 3, I affirm that despite the fact that the advocates of a legal framework were favorable to the paramilitaries and seemed to prevail in the national political arena, there was a strong resistance from the human rights networks and the courts. To support this argument I examine the emergence of human rights networks in Colombia and their alliances with transnational NGOs

and international organizations. I also give accounts of the process of institutionalization of the Human Rights discourse and the role of the Constitutional Court. Then, I explain how the human rights NGOs developed different strategies during the 1990s, such as political mobilization and strategic litigation in order to struggle against impunity.

In Chapter 4, I expand on the political and legal debates between 2004 and 2006 on the “Justice and Peace Law.” I make the argument that the human rights networks resisted the hegemonic discourse of security by means of introducing the language of international human rights law, and the international standards on victims’ rights. I provide empirical information about the process of framing the legal framework that ruled the demobilization of the paramilitary groups. While the paramilitary groups and the government maximized the pursuit of peaceful coexistence, the human rights NGOs mobilized to demand accountability, truth and reparation. I explain how the NGOs used political mobilization and strategic litigation to defy the government bill. In this chapter, I argue that the human rights NGOs achieved moving the debate from the political arena to the legal field and activated the Constitutional Jurisdiction to change the terms of the debate. In doing so, the human rights organizations transformed the political scene and reached to empower the victims’ organizations.

In Chapter 5, I show the transformation of the political debate and the emergence of the victims’ organizations as a new political actor between 2005 and 2007. I also show how during 2007 and 2009 the human rights networks and the victims’ organizations articulated to mobilize and promote a new legal

framework to protect the victims' rights. In this chapter, I argue that the human rights and victims' networks brought together elements of the global discourse of international human rights law and the local demands of grassroots organizations to construct a from below initiatives on reparation. Finally, in Chapter 6, I focus on the implementation of the legal framework, especially regarding the application of victims' rights. I explicate the possibilities and the limits of the legal mechanisms to protect victims' rights and the perspective of victims' organizations and the human rights NGOs about those mechanisms. First, I analyze the structure and processes of the Peace and Justice Trials, and second, I analyze the role of the Supreme Court, the higher court in Criminal Law, which took the lead to prosecute the politicians linked with paramilitary groups and made very important decisions protecting victims' rights.

CHAPTER 2

THE TURN TO THE DISCOURSE OF SECURITY

“The essential task of a theory of the state of exception is not simply to clarify whether it has a juridical nature or not, but to define the meaning, place, and modes of its relation to the law”

Giorgio Agamben (2005)

In order to understand the relations between politics and law in the context of the negotiations with the right wing paramilitary groups in Colombia, in this chapter I want to account for the main characteristics of the social and political field in the past decades in Colombia. I argue that during the first decade of this century, different conditions made possible the emergence and consolidation of a hegemonic project based on the virtual consensus that security was the most urgent political need in Colombia. This emerging and generalized view about the political situation in the country strengthened, on the one hand, the idea of a common enemy it was imperative to defeat by any possible means, and on the other hand, the social acceptance of paramilitary groups as a “necessary evil” with whom to bargain, despite holding them accountable for gross violations of human rights. In a context characterized by the political fragmentation and the contradictions between the state legal discourse and social practices, the emergence of a new political discourse brought together different political actors into a project that maximized the goals of political order and security. I want to highlight three main conditions that made possible the emergence of this

hegemonic view on security. First, after the failed peace negotiations between the Colombian government and the FARC in 2002, a collective feeling of frustration emerged in Colombian society as well as the perception that the peace negotiations with the guerrilla groups were exhausted. Second, during the second half of the 90s, the paramilitary groups expanded their military presence within the national territory and strove to change their political self-representation. The political strategy of the paramilitary groups was not restricted to the military expansion and the cooptation of state local and national institutions, but also strove to portray themselves as legitimate political actors that deserved amnesties and legal incentives for demobilization. Finally, the election of Alvaro Uribe in 2002 implied that the support of a political platform of “democratic security” was a turning point in the political negotiations with the armed groups.

The collective political representation of the FARC as a common enemy, and the relative social acceptance of political negotiations with the paramilitary groups, entailed the search for exceptional legal mechanisms to meet perceived political needs (Agamben, 2005). On the one hand, a strong discourse emerged that intended to redefine the armed conflict in Colombia and degrade the FARC to the category of “terrorist”, closing the path for any possible political negotiation (Parker & Lauderdale, 2010). Based on this view, the government attempted to introduce new institutional arrangements and legal reforms that were instrumental to the war on terror. On the other hand, the political discourse also made it possible to introduce new representations about the paramilitary groups as political actors with whom it was necessary to have political negotiations in order

to deactivate the armed conflict. Consequently, introducing a new legal framework provided incentives for the demobilization of the paramilitary groups and implied the legalization of the prevalent political needs for security. The prevailing political perceptions entailed a two-fold form of legalization of politics (Laplante & Theidon, 2007): first, the law as an instrument of war against the “terrorists” (Oliverio, 1998), and second, the law as an instrument of negotiation with the paramilitaries as new allies. Drawing on the Italian philosopher Giorgio Agamben (2005), these forms of legalization of politics represent contemporary manifestations of the normalization of the state of exception; this is the extraordinary power of the state based off the idea of the attempt to overcome allegedly exceptional circumstances by reducing the possibility of legal constraints. While the government used political and legal discourse to defeat the left wing guerrilla groups, such as the FARC, it also attempted to design a legal framework that intended to give incentives for the demobilization of the paramilitary members, legalizing their properties and allowing them to take part in politics.

The Disenchantment about the Peace Negotiations with the Guerrilla Groups

How do we explain the fact that for more than twenty years the leftwing guerrillas had been considered a political enemy entitled to amnesties and political pardons, but during the past decade, they were considered terrorists? One of the dramatic features of the political situation in Colombia rests on the fact that during this long term conflict, the actors and manifestations of violence have not

experienced a radical turning point; that is to say, a general transition from war to peaceful coexistence. The armed groups and the relations among them constantly vary, but violent actions continue as part of the practice to solve political and social disputes. This dynamic of transformation seems to be an oscillatory movement between the search of peace accords and periods of intensification of war. For instance, the partisan violence between the conservative and liberal party, which prevailed during the mid-century, transformed into an insurgent and counter insurgent violence during the sixties and seventies. The emergence of subversive groups from different political affiliations, such as the FARC (agrarian background), the ELN (Guevara's influence), and the EPL (a Maoist perspective), accounts for both the internal social conflicts in Colombian society and the influence of the cold war in the country.

While the subversive groups, following the perspective of a revolutionary utopia, took up arms in order to change the economic and social structures of society, the Colombian government and the army along with the United States, considered the guerrilla groups a revolutionary threat that needed to be repressed. During the sixties and the seventies, the governments denied any possibility of starting peace negotiations with the leftwing guerrillas and chose to confront the guerrillas by normalizing the use of the state of siege (Gallón, 1979; Garcia Villegas, 2001). The implementation of the state of siege under the prevailing view of the "National Security" doctrine, the incorporation of counter insurgent tactics and the struggle against the "internal enemy", led to the escalation of repression against political opposition, social movements and left wing parties.

During this time in Colombia, as well as in the rest of Latin America, the impact of the Cold War and the attempt to protect the capitalist system in the hemisphere brought about the increase of power of the state security agencies and the spread of human rights violations. In this context, as I will show in detail in the following chapter, the discourse of human rights emerged in the national arena in order to contest the institutionalized repression and persecution against political opponents and social leaders.

The attempts to negotiate with the guerrillas only started in the beginning of the 80s, when President Belisario Betancur (1982-1986) enacted an amnesty law and promoted peace talks with the guerrilla groups. In spite of the military's opposition, the government attempted to initiate peace negotiations with different groups, such as the FARC, the M-19, and the EPL. Betancur's government introduced to the official discourse, the claims of some different democratic and social sectors, such as trade unions, left wing parties, and peasant movements, which insisted in the structural causes of political violence. From this perspective, the government justified the effort to establish the peace talks in order to address "the objective causes of violence" (Laplante & Theidon, 2007). During this decade, the social movements, such as the peasants, the indigenous groups and trade unions, and political opponents were interested in the peace talks and a non-military way out of the political conflict in the country. For these democratic movements, the idea of a political negotiation was justified based on the acknowledgement that the guerrilla groups were motivated to create a more just and democratic society. From this perspective, they also acknowledged that the

guerrilla groups used violence in a context in which the institutional frame did not allow for the possibility of substantial political and social transformations (Tate, 2007).

Unfortunately, the government's attempts at peace negotiations did not lead to peace accords and the political outcomes showed that the peace process was more complex than the government had thought. First, the contradictions among different state agencies became evident. While the national government advocated for peace negotiations and a peaceful solution to the political conflict, different officials and members of the military forces were opposed to the peace negotiations with their main enemies. For a long time the military officials considered the peace negotiations as an attempt to give up on the counterinsurgent war and give away the country to the guerrillas (Bedoya, 2010). Second, different economic groups and local elites strongly opposed the peace negotiations because they considered them an act of surrender to the communist groups. It is illustrative that the resistance against the peace negotiations came from the livestock owners in the province of Cordoba, a region whose main economic resource rests on landownership and livestock raising. For them, the peace negotiations with the guerrillas represented a risk of falling into a communist threat (Romero, 2003). Third, the growth of the paramilitary groups, funded by drug traffickers, land owners and supported by some military members, resulted in a "dirty war" against left wing militants that demobilized and took part of the emergent left wing party, the Patriotic Union (UP). The security forces and paramilitary groups killed more than two thousand members of the Patriotic

Union after the foundation of this party in 1985 (Romero, 2003). The violent resistance by the military forces, the land owners, the livestock raisers, and drug traffickers to the peace negotiations gave birth to new reactions that intensified the political conflict and distrust about the possibility of new negotiations with the government.

Despite the difficulties in reaching a peace process, the subsequent government of Virgilio Barco (1986-1990) pursued promoting a peace process with the guerrilla groups. Even considering the peace policies were more restrictive and the government emphasised the aspect of disarmament and demobilization, during this period it was possible to reach peace accords with some guerrilla groups, such as the M-19, the Quintin Lame, The EPL, the ADO, the PRT and a dissident group of the ELN. The peace policies attempted to overcome the idea of the “National Security” doctrine, according to which it was necessary to defeat the enemy, that is to say, the guerrilla groups. It also acknowledged the political status of the guerrilla members as political enemies, this is, enemies who were motivated by altruistic goals of creating a more just society. This perspective was supported by the liberal legal tradition in criminal law, according to which the ethical enemy and the ordinary criminal must have a differentiated treatment (Orozco, 1992; 2005). This differentiation, internationally acknowledged, had a practical consequence, the fact that the political enemy might be granted amnesties and pardons in order to support peace agreements. By the end of the 80s and the beginning of the 90s, there was a contradictory and dramatic situation in Colombia. The efforts to reach peaceful coexistence led to

the disarmament, demobilization and reincorporation of different insurgent groups. The peace agreements also brought about a process of democratic openness and political transformation. In fact, the participation and leadership of the demobilized guerrilla group M-19 in the National Constituent Assembly in 1991 contributed to the introduction of democratic ideas in the new political architecture and basic legal framework of Colombian society. It was also a time in which political violence greatly increased, mainly because of the drug cartels and paramilitary groups.

It was clear that the political representation about the left wing guerrilla groups was related to a revolutionary project and, in the meantime, this fact led to a differentiated legal treatment. It was also apparent that the peace processes and the political negotiations might bring about processes of political transition and democratic transformations in the country. But unlike the political representations of the guerrilla groups, the paramilitary groups and the drug traffickers were portrayed as narco-terrorists and the main responsible actors of the ongoing political violence. In the legal field (Bourdieu, 1987), while the guerrilla groups were entitled to amnesties and pardons, the paramilitary groups were denied any political altruistic motivation and legal incentives for demobilization. Despite the legal treatment for the guerrillas, the government used state of siege and created special jurisdictions allegedly to prosecute the armed groups linked to drug trafficking. However, in practice, the state of siege was used to repress every type of enemy, including the guerrillas, depending on the circumstances (García Villegas, 1993).

How to explain then, the shift in the political representations of the left wing guerrillas, who moved from being considered political enemies to being thought of as terrorists groups? Likewise, how to explain the paramilitary groups, who were portrayed as terrorists groups during the eighties and the beginning of the 90s by the state government? In a few years, Colombian society endured a transformation in the political discourse and the collective representations of the political conflict, the political actors and the mechanisms to transform political violence in the country. During the 90s, new circumstances in the national and transnational political arena led to the transformation of the political conflict as well as the representations about the different armed actors. In the national arena, the political conflict between the existing guerrilla groups -FARC and ELN- and the government intensified and deteriorated.

The FARC, especially during the second half of the 90s, moved to what the French sociologist Daniel Pecaute (2008) defines as an offensive stage. This group focused on a military strategy based on expanding their fronts and increasing the number of combatants. From having 8,200 militants during 1990, they reached 16,492 members in 2000, that is to say that in one decade they doubled the number of combatants (Ministry of Defense, cited by Pecaute, 2008). The FARC also intensified the military offensive, consisting of attacks against state military bases, small towns and road checkpoints. They used, among other non-conventional weapons, gas pipes filled with explosives that carried a terrible destructive power that affected the civil population. However, to fund the offensive stage, the FARC increasingly got involved in the economy of drug

trafficking. They also intensified random kidnappings against the civilian population in order to fund a war in which, they considered, everybody was involved. Emphasizing a military strategy exposed a lack of interest for relationships with civil society and the observation of the International Humanitarian Law, that is to say the international principles and rules that protect civilian population during war. The civilian population had to endure the cruel effects of political violence in their everyday lives, including the destruction of their towns, the possibility of random kidnappings and displacement from their lands (Pecaut, 2008). By the end of the 90s, a high level of political violence and the negative impact of an economic recession affected the country (Pecaut, 2006; 2008).

These circumstances resulted in the public's claim for a political negotiation with the FARC as a way to solve the political and economic crises. In 1998, Andrés Pastrana was elected under the promise of a political negotiation with the FARC. While the peace talks created great expectations, they also faced manifold difficulties. First, the government agreed to demilitarize four municipalities to establish a safe zone to start the negotiations and guarantee security for the FARC. The FARC took over the control of the zone and used it as headquarters for their military actions. Second, the parties agreed to adopt a model of peace talks in the midst of the ongoing conflict. The hostilities, attacks and kidnappings intensified to show strength and negotiation power. Third, the parties suspended the peace talks for different reasons, which delayed the timing of the negotiation agenda and the extension of the safe zone. Finally, after three

years of difficult negotiations between the government and the FARC, the process was broken in 2002, due to the accumulative effects of persistent violent actions. The rupture of the peace negotiations left a collective feeling of social frustration and exhausted the model of negotiations with the guerrilla groups. Given the circumstances, the social organizations, the democratic sectors and the international community that had advocated for the peace process seemed to be powerless and without a clear agenda for the future.

The Expansion of the Paramilitary Groups

In addition to the shift in the political perceptions about the peace negotiations with the guerrilla groups, an ongoing dramatic transformation in Colombian society occurred, affecting the power relations in local spaces and the social perception about the paramilitary groups. The paramilitary groups and their relations with state authorities was not a novelty in Colombian history. Since the mid 60s, when the Colombian government became one of the forefront spaces for the National Security doctrine promoted by the United States, the government had enacted the state of siege decree 3398 of 1965, which later became the law 48 of 1968. By means of this legal framework, the Colombian armed forces were allowed to hand over guns to groups of civilians, usually peasants, in order to set forth self defence groups and deploy counter insurgent actions in the rural areas. Having been promoted since the 60s, these groups achieved major visibility during the eighties, when different drug traffickers decided to create and fund paramilitary groups, such as the Death to Kidnappers –Muerte a Secuestradores-,

as a response against the threats and kidnappings of the guerrilla groups. The formation of these groups led by landowners, drug traffickers and supported by armed forces members, was not restricted to self defence. The paramilitary groups moved quickly, deploying offensive tactics against civilian populations and resisting the process of democratization that was taking place in the country. These processes included the peace process with the guerrilla groups in the eighties, the local elections and the influence of the Patriotic Union, a new left wing political party that came from the peace accords with the FARC in 1985 (Romero, 2003). During the 80s, the paramilitary groups grew exponentially in zones with big landownership, such as the mid Magdalena region, the province of Cordoba and the region of Uraba. These were mainly devoted to growing banana plantations and raising livestock. From a structuralist perspective, the emergence and growth of the paramilitary groups in the country was definitely associated to the feudal modes of production in Colombian society and the more conservative sectors in the country. That fact had made them the target of the guerrilla groups, and also was the condition that made possible the emergence of a furious counter insurgent offensive.

However, the paramilitary groups did not restrict themselves to self defense actions, they also deployed offensive tactics that mainly targeted civil society groups in order to control territories, expand their properties and businesses (Verdad Abierta, 2010). They were trained by international mercenaries and supported by the armed forces, especially in the region of mid Magdalena (Semana No, 362. 1989). By the mid eighties, drug traffickers and

paramilitary groups were, according to the official discourse, the main public enemies. By this time, some Congress members denounced the existence of more than 140 paramilitary groups in the country (Barco, 1990). These groups deployed a dirty war against left wing activists, trade union leaders, human rights defenders, journalists, judges and every person who dared to challenge their actions and interests. In 1989, the national government, pressed by public opinion and human rights activists, enacted a new decree suspending the effects of the law 48 of 1968 and criminalizing the membership of and participation in armed groups. In this next section, I explain how paramilitary groups, which were considered terrorists groups by that time, were considered new political actors by the beginning of the century.

By the mid 90s the paramilitary groups, which had functioned as a set of dispersed local groups, started a process of political transformation led by the brothers Vicente and Carlos Castaño and Ivan Roberto Duque, who was known as Commander Ernesto Baez, the founder of a right wing party named Movement for National Renovation (MORENA) in the mid Magdalena during the eighties. The dispersion of these groups, the violence they exerted and the methods they used helped them to establish a system of social control based on fear and terror. The practices of violence perpetrated by the paramilitary groups had the virtual effect of making the people feel that the paramilitary groups were everywhere, even if they were not very visible. The massacres of community members, the selective murders of social leaders, and the displacement of the civilian population had, among others, the effect of creating a feeling of terror that disciplined society and

gave the message that the paramilitary groups were the real power organization in their regions. In everyday life, especially in zones influenced by these groups, the people might know the paramilitary members, but the people were afraid of speaking out. The effect on the population was evident and crushing. Through the naturalization of fear and violence, the collective fear became a part of everyday life in the zones influenced by the paramilitary groups (Kirk, 2003; Tate, 2007).

However, by the end of the 90s, after years of clandestine operations, the paramilitary commander Carlos Castaño decided to come out to the public space. He showed up in broadcast shows and started portraying a more political profile. Based on the interviews the paramilitary commanders gave to the media and the result of criminal investigations, it has been possible to understand the logics and actions of these groups. The visibility of the paramilitary groups was part of a political strategy that experienced different stages. First, after they controlled the regions of Cordoba and Uraba, the paramilitary groups attempted to expand their influence through territorial expansion and lead a process of military unification. Second, they targeted civil society allegedly with the idea of affecting the social basis of the guerrilla groups. Third, they obtained economic resources from different venues, such as taking over the lands of the peasants, getting involved in drug trafficking activities and appropriation of state resources. Finally, they attempted to gain political visibility by means of a counter insurgent narrative that portrays them as political actors with a similar ethical status as that of the guerrilla groups (Romero, 2003; Valencia, 2007; Verdad Abierta, 2010).

Between 1994 and 1997, different paramilitary groups led by the Castaño brothers started a process of military and political unification. In the beginning, the unification included the groups of the regions of Cordoba and Uraba and adopted the name of United Self Defence Groups of Cordoba and Uraba –ACCU. Several years later, under the leadership of the ACCU, they created a higher confederation named United Self Defence Groups of Colombia –AUC- (Pecaut, 2008; Romero, 2003; Valencia, 2007). By 1999, the AUC was an irregular army with an impressive military power and the capacity to control different territories in northern Colombia, the mid-Magdalena, the Cauca Valley, and some regions of the flat lands in eastern Colombia. The paramilitary groups carried out a process of expansion by means of the intensification of bloody and unspeakable practices that had developed throughout more than one decade, such as massacres, selective murders to social leaders, disappearance of political opponents and massive displacement of communities, indigenous groups and the afro-descendant population. In contrast to what they attempted to portray as a counter insurgent war, they targeted mainly civilian populations, especially social leaders, activists and communities that contested their interests and actions. Those groups relied on the support and tolerance of Colombian military forces, who sought the paramilitary groups as a natural ally, to the extent that they could carry out the dirty work the military forces were not expected to do (Romero, 2003; Tate, 2007; Valencia, 2007).

The paramilitary groups began the process of expansion in the region of Uraba by the mid 90s. Uraba, a banana plantation zone located in the Caribbean

coast and close to the border to Panama, was a disputed territory with different armed groups, mainly with the FARC. It was also a region in which the Patriotic Union had won the election in different municipalities and in which the banana workers were part of a trade union influenced by the leftwing guerrillas. The offensive stage led by Carlos Castaño, targeted the Patriotic Union activists and representatives, as well as social leaders, trade union leaders, and made the FARC leave the zone (Romero, 2003; Valencia, 2007). According to the criminal investigations and paramilitary confessions, the state armed forces facilitated the penetration and domain of the paramilitary groups. For instance, in the case of Uraba, the commander of the 17th brigade, Rito Alejo del Rio, was instrumental in the tactics and goals of the paramilitary groups. By 1997 and 1998, Uraba was portrayed by the army as a model of pacification for the country. However, behind that model of pacification was the expansion of the paramilitary groups, which had taken over the control of the region with the support of the army and the economic sectors of the region. According to Valencia, the process that started in Uraba was replicated in different regions, such as eastern flat lands, (Llanos Orientales), the Cauca Valley (Valle del Cauca), the pacific coast, the Catatumbo region, and the northern Caribbean coast, among many others. One of the leaders of the AUC described this process highlighting the alliances between the paramilitary groups and the local elites:

“We received a bunch of people from all over the country asking us to bring the self defence groups. This caused a wave that

led to an enormous quantity of actions without any control all over the country. All the people started founding groups...” (Semana No. 1205, 2005).

In addition to the military expansion, the paramilitary groups penetrated the political organizations and the local institutions. In doing so, the paramilitary leaders created alliances with political elites. By the end of the 90s, the paramilitary leaders started having meetings with local leaders, drug traffickers, business people and members of the army to ask for contribution for their cause (Valencia, 2007). The paramilitary leaders were afraid of a peace agreement between Pastrana’s government and the FARC. The paramilitary project was thought to resist the peace negotiations with the guerrillas. It also implied a process of cooptation of the local and regional institutions in order to protect their interests and the status quo, that is to say, private property on big landownership and economic interests in the regions controlled by the paramilitary groups. However, the influence of the paramilitary groups expanded to small towns, intermediate cities and the marginalized neighbourhoods of the cities. According to Leon Valencia, by 2002, the year of the, 230 municipalities in 12 provinces changed their political landscape. The traditional parties, the liberal and the conservative parties, used to prevail in the local elections. Now, under the influence of the paramilitary groups, local interest groups controlled by paramilitary groups won the local elections. Regarding the national elections, they elected 26 senators and several representatives. They also strongly supported the

candidacy of Alvaro Uribe who finally won the presidential elections with an extraordinary support of the voters (Valencia, 2007). Several years later, the paramilitary commanders acknowledged that 35 % of the Congress members were their allies. Vicente Castaño, one of the paramilitary leaders affirmed:

“There is a bond of friendship with the politicians in the zones where we operate. There is direct communication between the commanders and the politicians and they form alliances that are undeniable. The self defence groups give advice to many of them and there are commanders who have friends that are candidates to the public corporations and the municipalities” (Semana No 1205, 2005)

The paramilitary groups complemented their strategy of military expansion and cooptation of state institutions by shifting their political representation. They elaborated on a counter insurgent narrative in which they portrayed themselves as politically driven actors. These narratives attempted to build up the political identity of an actor whose main purpose was to defend the state and their safety against the threats of the guerrilla groups. According to this narrative, they emphasized their condition as former victims of the guerrilla groups, who were compelled to organize themselves and accomplish the task that the state did not fulfil. According to the commanders of these groups, the process of paramilitary unification was a reaction against the FARC’s violence that came

during the mid 90s. According to Valencia, the commander Ernesto Baez influenced Carlos Castaño to change his rhetoric. Castaño, whose father had been kidnapped and murdered by the FARC, still used a narrative based on vengeance and personal feelings. Baez convinced him to develop a more general narrative, not based on vengeance, but in the guise of a political project (Valencia, 2007). When the face of Carlos Castaño came out to the public sphere in 2000, he showed the force of his political narrative, arguing that the paramilitary groups were motivated by a counter insurgent project. This narrative also implied the construction of an enemy. In this case, the enemy did not restrict itself to the guerrillas, that is to say, the FARC or the ELN. The symbolic construction of the enemy extended to the communities where the guerrilla groups exerted influence: the social organizations, the trade unions, the leftwing parties, and the human rights activists. According to this narrative of war, anyone who was not with them was against them. For the paramilitary commanders, all these social organizations were “guerrilla’s useful idiots” or “disguised guerrilla members.” Based on this construction about the other, the paramilitary organizations denied the otherness, the richness of their identity and their human condition to justify the elimination of their opponents. They did not acknowledge the disappearance of people, massacres and selective murders. Rather, they denied these actions or portrayed them as “actions of war” or “enemies killed in action,” even if the victims were civilians. The force of this narrative also penetrated everyday life in Colombian society and influenced the public consciousness about political and social violence. For the past two decades the banality of violence and the

dehumanization of the victims seemed to be the social practices of adaptation to a brutal expression of social control (Kirk, 2003; Tate, 2007).

The Democratic Security

By 2002, Colombian society faced different circumstances. First, the public was frustrated by the outcomes of the peace negotiations with the FARC and the continuity of political violence, especially the actions committed by the FARC and the ELN. By the end of the 90s the economic groups, the mainstream media and the public opinion had supported the peace negotiations in order to cease violence and bring about economic growth in the midst of a strong economic recession (Pecaut, 2008). By the beginning of the past decade, those same social sectors also supported the rupture of negotiations and the ending of the demobilization zone. It seemed there was not any hope for the peace processes with the guerrilla groups in the short run. On the contrary, there was a prevailing collective negative representation about the FARC and the ELN. Second, Colombian society, especially in rural zones and marginalized sectors of the urban areas, experienced the expansion of a parallel system of social control led by the paramilitary groups. The paramilitary groups also penetrated the state institutions and reached to constrain the voters' decisions on the elections of 2002. Finally, Alvaro Uribe, a controversial and charismatic politician who had been governor of the province of Antioquia, launched his candidacy for the presidency under the platform of "democratic security." During his campaign, Uribe was the candidate who mostly opposed to the extension of the "demobilization zone" and the peace

negotiation with the FARC. He elaborated rhetoric and a set of patriotic symbols that would increase the feeling of collective patriotism during his term. Uribe's image grew significantly in the political polls and won the elections with a great deal of support from the Colombian voters. The support of public opinion and the voters for Uribe represented also the support for his project of "democratic security" and the reaction against the FARC (Medellín, 2010).

The language of "democratic security"

Uribe's government coined a new language that shifted terms and assigned new meanings to define the political situation. It also characterized the different actors involved in the conflict and addressed the possible mechanisms to solve the political situation. In contrast to the tradition of the democratic sectors in the country, which defined the political situation as a "political conflict", the government insisted that there was no political conflict in Colombia. For Uribe, the Colombian case was a case of "terrorist's threats and terrorists attacks" (Uribe, 2002). For those who argued that there was a political conflict in Colombia, including the peace and human rights organizations as well as the international community, there was the underlying idea that sooner or later, the parties involved would face a political negotiation. For the government, denying the existence of a political conflict and sustaining cases of "terrorist's attacks" implied a shift in the political and legal treatment to the guerrilla (and paramilitary) groups. Regarding the leftwing guerrillas, these groups were no longer considered to be motivated by a revolutionary project and, as a

consequence, no longer legitimate actors taking part in a peace negotiation. For the government and the majority of public opinion, there was no interest to insist on political negotiation with the FARC. Even the peace NGOs and the international community that had advocated for the peace talks, acknowledged that the political environment was not favourable for a political negotiation. The FARC were responsible, in large part, for the social distrust and the negative representation held by public opinion. However, according to the new language coined by Uribe and his advisers, the FARC were no longer simply a group of criminals, as he used to refer to them when he was Governor of the Province of Antioquia. Now, Uribe adopted the discourse on terrorism promoted by the Bush administration after September 11 and degraded the FARC to the status of “terrorist group.” However, the category of “terrorists” would be problematic for the government while starting the peace process with the paramilitary groups. The category of “terrorists”, which was also used for the paramilitary groups, was opposed to the category of a “political enemy” and the possibility to go through a peace process with these groups (Oliverio, 1978).

The new government constructed a narrative and promoted a set of practices based on the pursuit of “security” and “war on terror.” Based in this new state of exception, the government attempted to frame a new language (Agamben, 2005). According to the initial statements of Uribe’s campaigns and the official documents that designed the “democratic security policies,” the discourse was formulated in vague terms and the wide scope seemed to include manifold values and perspectives. The government focused on security and

recovered the monopoly of force by the state on the national territory. However, it also included the rhetoric of respect for democracy, respect for the opposition and dissent, and the rule of law. It is possible to observe this language in the presidential campaign. In his “Democratic Manifesto”, there were 100 points that showed the priorities of his campaign. One of the chapters of the manifesto, focused on “Democratic Security,” expressed the perspective on this topic. “Conversely to the time I was student, today the political violence and terrorism are the same. Any act of violence exerted because of political motivation is terrorism. It is also terrorism the violent defence of the state” (Uribe, 2002).

According to this view, the armed actors, such as the guerrillas and the paramilitary groups were considered terrorists, and the state was portrayed as the victim of the armed actors. The state security forces were not considered agents of violence or a party involved in the political conflict. The new institutional rhetoric also strengthened the patriotic component, the vindication of the image of the state armed forces and the growth of the military capacity of the state. For instance, the “Democratic Manifesto” envisioned a country “without paramilitary and guerrilla groups,” and affirmed that the democratic security project should protect every person. It also praised the role of the security forces. “With more police officers and soldiers our public forces will suffer less defeats and will be more respected and the people will live more peacefully” (Uribe, 2002). However, the project of security went beyond shifting public representations of the security forces and the growth of the repressive side of the state. For the new discourse, security was responsible for the entire population and every person was part of the

war. From this perspective, the meaning of citizenship also shifted to the idea of the citizen soldier. The government attempted to intensify the relations of collaboration between the civil society and the armed forces. According to the campaign manifesto: “All of us will support the armed forces, basically giving information. We will start with more than a million citizens. Without paramilitary groups. Creating local security fronts in all neighbourhoods and commerce places...” (Uribe, 2002).

These comments were reiterated a year later when the government officially wrote the public policy on Defence and Democratic Security. This document identified the main goals of the “Democratic Security” policies, the threats and strategies to follow. It is worth mentioning that according to the government, pursuing the monopoly of force and security in the national territory implied a restriction of freedoms and constitutional rights. In fact, the Constitution was considered as an obstacle to that objective. According to the document “During the past decade, the Constitution of 1991 reached to deepen and expand the scope of democracy, however the authority of institutions was eroded by the impact of illegal armed organizations” (Ministerio de Defensa, 2003). The new government narrative started offering a new approach to the Colombian political situation, a reinterpretation of the recent history, the way to define the allies and name the enemies.

Institutional practices of democratic security and human rights violations

The very same day Alvaro Uribe took office, the FARC launched rockets against the government palace. In response to the attacks, the government declared the state of siege by means of the governmental decree 1837 of 2002. Based on the state of siege the government adopted some measures, such as the creation of a special tax for security (Decree 1838 of 2002) and the establishment of rehabilitation zones in the places most affected by the fighting (Decree 2002 of 2002). This decree gave authority to the armed forces to assume judicial functions. Based on these measures, the security forces could detain people and conduct home raids without judicial authorization. Likewise, the security forces were allowed to wiretap communications with almost no restriction. These measures allowed the armed forces to increase their functions and weakened the institutional control over their actions. The government also created a network of informants and designed a program of peasant soldiers. It increased the budget on security expenses and requested positive outcomes in the counter insurgent struggle (Medellín, 2010; Rojas y Meltzer, 2005;). The Uribe administration also created a program to secure the main routes of the country. This program consisted of militarizing the routes and schedule caravans of cars that were escorted by the army in order to avoid checkpoints and random kidnappings. It started in the province of Cesar, but later on, it replicated the government policies in the rest of the country (Medellín, 2010). Some of the measures adopted by Uribe's government increased the military capacity of the state by means of recruiting citizens to be part of the army or the law enforcement. Likewise, the

government started a program of informants and rewards to incentivize the people to give information about the guerrilla groups. The content of these programs made apparent that that the “war” was not a conflict between the state government and the armed groups, but a conflict between society as a whole and the “terrorists.”

A few days after Uribe took office, the government started showing the results of his policies. According to Pedro Medellín (2002), the astonishing growth of volunteers in the informant networks in the northern coast could only be explained by the existence of an already existing organized power. For Medellín, the paramilitary organizations, which already controlled part of the region, made part of the informants’ network. The increase on the military capacity focused on creating mobile brigades and training the civilian population that became part of the peasant soldiers (Medellín, 2002). Based on the state of siege decrees, the armed forces carried out massive captures. President Uribe himself promoted these massive detentions. In the inaugural session of a meeting with entrepreneurs, the President made the following suggestion to the armed forces.

“The past week I told General Castro in that zone we could not keep doing detentions of 40 or 50 people every Sunday, but rather 200 to speed up the incarceration of terrorists and hit these organizations. These detentions have been massive, but not

arbitrary detentions. The detentions obey the legal order. A careful scrutiny about the evidence has been made.” (Uribe, 2002).

The President explained that the legal order was respected but we cannot forget that legal order was based on state of siege and the measures provided the army with outstanding power to detain people. Despite the enormous support of the public opinion and the decrease of some expressions of violence in the national territory, the government policies crossed the line in which the governmental actions became a threat against the population. The massive detentions expanded and the persecution and demonization of human rights activists increased. In many cases, the people who were detained had to be released because there was no evidence to support any linkages with the guerrilla groups. On the contrary, as the human rights reports stated, the massive detentions led to labelling people as “terrorists” and abusing the communities. In one case, a blind 59-year-old person was detained accused of being the chief explosive manager of the guerrilla (Semana, 2002).

The practices of war intensified and the gap between those who supported the government and the critics turned to be even more polarized. Different international organizations and human rights NGOs highly criticized the creation of the rehabilitation zones and the government measures. The United Nations Human Rights Office representative also expressed discontent with the measures (Medellin, 2010). According to the UNHRO representative, these measures did not meet the international principles on state of siege. Likewise, the human rights

NGOs denounced the abuses perpetrated by the armed forces, such as the case of massive detentions. The Constitutional Court struck down some of the measures such as the possibility to carry out and make home raids without judicial authorization. However, the government insisted on the use of the state of siege and extended the term of the rehabilitation zones for different terms.¹ The Constitutional Court finally struck down the extension of the rehabilitation zones (Medellín, 2002). After the first year of Uribe's government, different NGOs released their reports about the situation in Colombia. First, the National Report on Human Development highlighted the relevance of taking into account a perspective on human development, instead of focusing exclusively on the military view. Second, the Colombia Platform on Human Rights, Development and Democracy, released a critical report about the situation of human rights in the country. The report titled "The Authoritarian Enchantment" gave an account of the dark side of a government that, according to the mass media and the public opinion, had reached impressive outcomes in the recovery of security. According to the report, the massive detentions, the tortures and forced disappearances increased (Plataforma Colombiana de Derechos Humanos, Desarrollo y Democracia, 2003). The national government strongly reacted against the Human Rights NGOs the very same day the report was released. President Uribe, in a speech in one of the army bases, stated:

¹ According to the Colombian Constitution the state of siege is restricted for a term of 90 days.

“There are some critics we respect but we disagree with their theses about weakness.... There are serious human rights organizations that we respect and embrace. We will have with them a permanent dialogue to improve what it is necessary to improve...” and “...there are human rights traffickers on human rights that should take off their mask, show up their political ideas and abandon that cowardice to hide their political beliefs behind the human rights” (Uribe, 2003).

By the beginning of the Alvaro Uribe’s first term, the evident support of the economic sectors, the mainstream media and the majority of the public opinion turned out to create a generalized consensus on the rejection against the guerrilla groups and the need to strengthen the military capacities of the state government by means of exceptional measures. The human rights organizations and the left wing party were the only actors that dared to raise their voice to denounce the existing violations of human rights and the repressive contents of Uribe’s policies.

The Peace Process with the Paramilitary Groups: Political Needs and the Manipulation of the Legal Discourse

Alvaro Uribe’s government initiated the peace process with the paramilitary groups in a context characterized by a hegemonic discourse of security and strong political polarization. From the beginning of his government,

Uribe's administration initiated informal approaches with the commanders of the paramilitary groups in order to explore the possibility of a peace process. The peace commissioner, Luis Carlos Restrepo and an Exploratory Commission were in charge of exploring this possibility. By February of 2003, the AUC commanders subscribed to a "commitment" according to which they were willing to initiate a negotiation process and reincorporate into civil society. In March, the paramilitary commanders, the Peace Commissioner and the Exploratory Commission scheduled different meetings to set forth the basis of the negotiation between the government and the AUC (Henao, 2009). By June 23, the Exploratory Commission delivered the recommendations to the government. These recommendations made special emphasis on the peace negotiations and the perspective of Disarmament, Demobilization and Reincorporation (DDR), but they did not mention anything about the situation of the victims or make any recommendation about the aspect of accountability (Henao, 2009). Later on, on July 15 of 2003, the parties signed the "San José de Ralito Agreement" which indicated the exploratory stage was over and the stage of negotiations begun. According to this agreement, the main purpose of the negotiations was to demobilize the paramilitary groups, reincorporate them to civil society, cease hostilities and avoid being engaged in drug trafficking (Henao, 2009). In addition to the San José De Ralito, the government also signed agreements with other paramilitary groups, such as the Bolivar Central Block and the Arauca Winners in November of 2003, and the agreement with the Self Defence groups of Casanare, in January of 2004 (Henao, 2009). The peace talks were restricted to the

paramilitary commanders and the government, in particular the Peace Commissioner Luis Carlos Restrepo.

The peace process with the paramilitary groups was not conceived as a comprehensive peace process that involved all parties of the conflict as had happened in El Salvador or Nicaragua. Neither was it thought of as a process of “transitional justice” that aimed at responding to the claims of “truth, justice and reparation” made by the victims of the armed conflict. The contents of the “commitments” between the government and the paramilitary groups showed that the main objective of the negotiations was to reach peaceful coexistence by means of demobilization, cessation of hostilities and reintegration. The legal incentives for demobilization, such as “alternative punishment,” were instrumental for those goals. The weight of the past peace negotiations with the guerrilla groups during the 80s and the 90s, also explained the fact that the victims were not taken into account as a critical element of the peace process. The peace negotiations with the guerrilla groups during the 80s and 90s took for granted that the guerrilla groups represented the voice of the people of the marginalized communities in which they had influence. By that time, the discourse of human rights did not claim any accountability for the actions perpetrated by the guerrilla groups. In addition to these circumstances, the discourse of security promoted by the government led to a polarized relationship between the government and the human rights NGOs. For those who were familiar with the discourse of human rights, the concepts of victims’ rights were not a novelty. Having that in mind, it was evident the

government and the paramilitary groups were not interested in introducing the topic of victims' rights.

Regarding the goals of the negotiation, for the national government the peace process was the possibility to demobilize a powerfully armed group, deescalate the expressions of political violence and focus on Uribe's security policies against the FARC. In so doing, the country would be able to incentivize foreign investment and promote economic growth. That idea was repeatedly stated by Alvaro Uribe during his two governmental terms. For the paramilitary groups, their interest in the peace process and their demobilization was not very clear. Carlos Castaño, one of the AUC commanders, had stated in 2000 that eventually it would be necessary to get through a political negotiation. However, it is important to take into account that the paramilitary groups were not militarily defeated. They entered in the peace negotiations in the moment of major military expansion and political influence. What did they seek with the peace negotiations? As time has gone by it is apparent that the peace negotiations had different meanings. First, the expectation about being granted an amnesty meant not only avoiding criminal prosecution, but also avoiding possible extradition to the United States to face charges for drug trafficking. Second, the possibility of reincorporation to civil society also implied the legalization of their assets and participation in politics. They were not warriors, they were mainly landowners and drug traffickers who wanted to enjoy their riches and allow them to enter in the legal political game. The peace process and the legal frame that came out of the negotiations were basically a top down initiative that did not intend to give

space for substantive participation of social organizations, communities or the victims affected by those groups.

Expectations about the negotiations differed between the two parties. For the government, it was necessary to break with the tradition of previous peace processes with guerrilla groups, who were considered “political criminals.” However, it seemed that inside the government there was not a unified criterion about that issue. For the Peace Commissioner, the category of the “political criminal” ought to be considered based on an objective dimension regardless of the political motivation. That means the peace commissioner advocated for a wider concept of the political criminal, consisting of being part of an armed group. That view disregarded the traditional legal approach that considered that the political criminal should be motivated by the altruist goal of founding a more just society. For the Peace Commissioner the political criminal should lose the privilege of being granted amnesties or pardons. President Uribe advocated for the use of different categories from the concept of the “political criminal” as I have shown. The government also considered that the experience of a peace negotiation in the midst of the ongoing conflict, as the previous experience with the FARC, was a terrible mistake. Uribe’s government requested a unilateral cease-fire and commitment for demobilization of the armed groups. Finally, the government accepted that the peace negotiations were not “political negotiations” but rather negotiations to access politics. That meant that the political agenda was not intended to produce significant transformations in the economic, social and political system, but rather to guarantee security and order (Restrepo, 2005). In

contrast to the government's perspective, the paramilitary groups attempted to be recognized as "political criminals" and being granted legal incentives, such as amnesties and pardons.

According to their counter insurgent narrative, the paramilitary groups claimed a legal frame that fit two main goals. First, bearing in mind that they portrayed themselves as heroes that saved the country from the threat of the guerrillas, they were no "ordinary criminals" and did not deserve to receive any punishment. On the contrary, their heroic efforts deserved recognition. Second, they did not accept extradition to the United States. The paramilitary commanders knew that under international law, and according to the current extradition treaty between Colombia and the United States, extradition does not proceed in cases of political criminals. However, in spite of what they said, the life conditions imposed by the armed conflict were unsustainable. According to some analysts, there was also a war fatigue. The paramilitary commanders were not professional warriors but landowners who wanted to enjoy their life. In addition to this fact, the government policies on security made those groups lose legitimacy (Laplante & Theidon, 2007).

Despite the differences between the parties' perspectives and expectations, it was clear that the political agenda was not a major issue in the negotiations. As the negotiations moved on, the political agenda vanished and the discussions mainly focused on the process of demobilization and the legal incentives for the disarmament and the demobilization. By the end of 2002, Uribe's government suggested extending the existing legal frame that was used for prior negotiations

with the guerrilla groups. The government promoted the enactment of the law 782/2002 in order to extend the legal frame created by the law 418/1997. According to this legal framework, the paramilitary members who were not indicted, prosecuted or sentenced at that time for the commission of crimes against humanity would not be prosecuted for any other crime committed as consequence of their membership to the paramilitary groups. This legal framework would benefit more that 19,000 intermediate and low-grade paramilitary members. However, for the negotiators, the major legal problem was the legal situation of the paramilitary leaders. From the perspective of the negotiators, it was necessary to come up with a more specific legal framework that addressed the situation of those who were responsible of crimes against humanity.

In 2003, the President himself suggested exploring the possibility of a different concept, restorative justice, based on the experiences of Northern Ireland (Diaz, 2008). The government wrote a draft named the “Alternative Punishment Penal Draft”, which aimed at granting generous incentives for the demobilized paramilitaries who were prosecuted for crimes against humanity. The government and the political elites in the National Congress drew on the rhetoric of the exceptional circumstances the country was facing and the concept of “restorative justice” to design mechanisms of forgiveness and forgetfulness, instead of mechanisms of accountability and truth.

Given the outstanding political capital of the government and the paramilitary groups, which consisted of the public’s support of the President,

the governmental control on the majority of congress members and the linkages of some congress members with the paramilitary groups, it seemed that a very favourable legal framework would be enacted by the congress without major difficulties. Yet, the political and institutional resistance exerted by the human rights networks and the courts made the political debates move to a different direction.

Conclusions

The recent experience of transitional justice in Colombia cannot be explained under the metaphor of the transition from a dictatorship to a liberal democracy or from war to peace. The public debates on the mechanisms of transitional justice took place in a political context characterized by the emergence of a hegemonic discourse on war on terror and security. In this chapter, I argued that the emergence of the discourse of security was possible because of different conditions, such as the exhaustion of the peace process with the guerrilla groups and the reaction of different social sectors against those groups. Additional conditions played a part, such as the military expansion of the paramilitary groups during the 90s and the beginning of the 2000s and their effort to portray themselves as politically motivated actors in order to have a political negotiation with the government, along with the strong support of the policies on “democratic security” promoted by the government of Alvaro Uribe between 2002 and 2010. In the middle of a turning point of the long standing political conflict in Colombia, the Uribe administration took advantage of these existing

conditions and managed to put together the following elements. First, the strong discontent of most of the social sectors in Colombia against the FARC, second, the possibility of creating a new form of state government based on security apparatus in order to defeat the guerrilla groups, third, legalizing the existing rightwing paramilitary organizations, and finally, promoting a process of economic growth based on more favourable conditions for foreign investment. Uribe managed to gain the support of the urban economic elites, the rural feudal class, and the urban middle class, under the promise of security. The lower class was mainly neutralized through assistencial public policies.

This chapter has emphasized especially the emergence of the hegemonic discourse on security. Drawing on Agamben's (2005) idea of the state of exception, I sustain that Uribe's government also created a new discourse able to reframe the political situation. The new narrative of the government constructed the idea of the FARC as the common enemy that must be defeated by any military means and exceptional measures. That endeavour, implied to transform the public perceptions about the political conflict and introduced exceptional measures to confront the terrorist groups. The penetration of the discourse and the practices on security also created a collective feeling of support of the government and the acceptance of the violence perpetrated by the paramilitary groups as a necessary evil to defeat the FARC. By the time of the negotiations between the government and the paramilitary groups, these forces were not conceived as perpetrators of horrendous human rights, but rather as those actors that were forced to mobilize against the threats of the guerrilla groups to defend their properties.

Regarding the relations between politics and law, both the adoption of exceptional measures to confront the FARC and the exceptional measures that led to the negotiation with the paramilitary groups implied a process of *legalization politics* (Laplante & Theidon, 2007). This means that the legal instruments were instrumentalized to fit the main political goals: to confront the enemy and to make possible negotiations with the new allied. The government had reached an impressive amount of political capital (Bourdieu & Wacquant, 1992). It had the support of the economic groups, more than 70% of the public opinion support during the two presidential terms, and also controlled the majority of the Congress. In addition to that, collective expressions in everyday life seemed to show an almost unanimous support of the government policies. Given the existence of this hegemonic discourse, the initiative of the Alvaro Uribe's government to enact a legal framework in the context of the negotiations with the paramilitary groups was a from above project of reconciliation. Despite the fact there was not strong political opposition in the domestic political arena, it did not take into account the participation of disenfranchised groups, such as the victims of the paramilitary groups, the communities, or the human rights organizations (McEvoy, 2008).

CHAPTER 3

THE ROLE OF HUMAN RIGHTS ORGANIZATIONS AND NETWORKS

“Hadn’t been for the human rights networks, all of us would be dead”

Human rights lawyer

By the time Alvaro Uribe took office in August 2002 and started carrying out the policies on “Democratic Security”, there was already a very active human rights network in Colombia. The human rights organizations started raising awareness about the possible consequences these policies might entail in the future. It is worth mentioning that the relations between the state government and the human rights NGOs had been conflicted for a long time. However, the human rights activists were especially concerned about Alvaro Uribe’s policies (Plataforma de Derechos Humanos, Democracia y Desarrollo, 2003). In the mid 90s, when he was governor of the province of Antioquia, Alvaro Uribe became one of the most conspicuous supporters of the security cooperatives, known as “convivir” (lit., coexist). These security cooperatives, which had been created by Erensto Samper’s government in 1996, were expected to play a critical role in the counter insurgent policies against the guerrillas, allowing civilian people to provide information for the state security forces. However, the paramilitary groups used the “convivir” to expand their actions under the protection of that legal frame, especially in regions such as Uraba and Cordoba (Valencia, 2007).

Uribe also had supported the army against the denunciations raised by the human rights NGOs and the social organizations that advocated political negotiations with the guerrilla groups. Finally, different incidents showed the human rights activists that Uribe was crossing the thin line of legality when he supported some army members who had been denounced by the human rights NGOs for human rights violations and linkages with paramilitary groups. One of the most visible cases was his support to General Rito Alejo del Rio. This General, known as “the pacifier of Uraba”, was removed from the army by the President Andres Pastrana (1998-2002) because of his linkages with paramilitary groups in the region of Urabá. A few years later the judicial investigations and the demobilized paramilitaries confirmed the human rights accusations (Semana, Mayo 15 2007). These circumstances, among others, caused the human rights activists to feel distrustful and highly concerned about Uribe’s government.

The human rights networks were not a novelty in Colombia. The human rights organizations, which emerged in the 70s, have increased and expanded over the past decades. During the 90s, these organizations also intensified their networks with international NGOs, international organizations, universities, and some institutional actors, such as the courts. Based mainly on in depth interviews with human rights activists and human rights reports, this chapter focuses in the process of formation and transformation of human rights organizations and the construction of a discourse of human rights to contest the state arbitrariness. The chapter also gives accounts of the process of institutionalization of the discourse of human rights and its incidence in the transformation of the relations between

the human rights organizations and the state, as well as the transformation of the state itself. Bearing in mind the political transformation and the process of institutionalization of the discourse of human rights, the human rights networks incorporated different tactics oriented to enhance international pressure on the Colombian government to change its policies (Keck & Sikkink, 1998; Khagram, Riker & Sikkink, 2002). I argue that these networks also deployed actions in the domestic arena in order to elicit political changes and mobilize grassroots human rights and victims organizations based on the discourse of victims' rights (Alvarez, Dagnino & Escobar, 1998; Tate, 2007; Speed, 2009). They also deployed actions of legal mobilization in order to transform the legal framework and reach accountability to the state government and state agents. I argue that the construction of a discourse on human rights and the use of political and legal mobilization actions during the past decades constituted an expression of human rights and transitional justice from below that made resisting the project of impunity promoted by the government and the paramilitary groups possible (McEvoy, 2008; McGregor, 2008; Rajagopal, 2003).

The Formation and Transformation of Human Rights Organizations

Similar to other Latin American countries, the human rights organizations in Colombia emerged during the 70s and the 80s, specifically in the context of cold war tensions and as a reaction against the National Security policies carried out by the dictatorships against political opponents (Keck & Sikkink, 1998; Orozco, 2005). The experience of different countries in Latin America, such as

Argentina, Chile, Brazil, Uruguay, Peru, Nicaragua, Guatemala and El Salvador, among others, led the social organizations to take action against the abuses of the military regimes and mobilize to overthrow the dictatorships. These organizations got support from international NGOs, cooperation agencies and international organizations, which also contributed to the sustainability of the emerging organizations in the domestic arena². In some cases, the human rights organizations were supported by the Catholic Church and cooperation agencies linked to the Catholic Church, such as Paz Christi and Diakonia. Most of these agencies came from Europe, and some of them were influenced by liberation theology thinkers, such as the Peruvian Gustavo Gutierrez, the Brazilian, Lonardo Boff and the Colombian, Camilo Torres. The experiences of the Vicaría de Derechos Humanos in Chile, after the coup d'Etat in 1973, and the work of some religious communities such as the Jesuits or the Mary Noll nuns in El Salvador during the 70s and 80s, were illustrative examples of the influence of the church in the defence of human rights (Orozco, 2005).

In other cases, the resources came from secular organizations, from either Europe or the United States. Some examples of the main organizations are NOVIB, OXFAM and the Ford Foundation. In fact, the Ford Foundation became one of the more influential and committed cooperation agencies in the field of human rights in Latin America (Keck & Sikkink, 1998). Nevertheless, many of the emerging human rights organizations were related to left wing political parties, trade unions and social movements (Tate, 2007). In this perspective, Ivan

² Interview with Antonio Madariaga, Director of Viva la Ciudadanía, Bogotá, February 8, 2010.

Orozco (2005) highlights the unavoidable political dimension of human rights activism during the seventies and eighties in Latin America. In addition to different influences and forms of organizations, the growth of human rights mobilization and organization was also related to the increasing practices of human rights violations, such as arbitrary detentions, torture and disappearances. The survivors and family members formed new organizations and mobilized to claim for the liberation of their family members and the accountability of the state government. One of the most salient mobilizations in Latin America was the Mothers of Plaza de Mayo (Madres de la Plaza de Mayo) in Argentina. This experience became a model for victims' organizations in the continent and the Mothers of Plaza de Mayo were invited to other countries to share their experience around different all over Latin America. All these forms of networks contributed to create bonds of solidarity and spaces of political leverage and defence of human rights (Khagram, Riker & Sikkink, 2002; Keck & Sikkink, 1998, Orozco, 2005).

Colombia is not an exception to the experience of human rights organizations in Latin America. Despite the fact that Colombia was not formally a dictatorship, intellectuals and critics considered the political system a restricted democracy with lack of citizen participation and social inclusion (Comité Permanente de Derechos Humanos, 2004; Pecaut, 2006). During the second half of the twentieth century, specifically during the National Front period, the different governments deployed a counter insurgent policy against the leftwing guerrillas and denied the possibility of a political negotiation with those groups.

During that time, the army also gained more political power. The counter insurgent struggle became an obsession for the military members influenced by the National Security Doctrine. According to this discourse, which emerged in France and was promoted by the U.S. in Latin America, the enemy was not only an external enemy but also an “internal enemy.” That enemy was comprised by either the guerrilla groups’ members, social movements’ leaders, left wing parties’ militants, and any activist or intellectuals that advocated for social justice ideas (Comité Permanente de Derechos Humanos, 2004). Under the extraordinary powers given by state of siege and a constitutional frame that lacked mechanisms for human rights protection, the state government increased the repression against civilian population. During this period, the government enacted decrees that allowed the army to assume judicial functions such as prosecuting and judging the civilian population in military tribunals. The government also widened the scope of action of the army, criminalized social protest and increased the punishment for those prosecuted in military tribunals. Meanwhile, the legal frame reduced the basic freedoms and reduced the scope of mechanisms of human rights protections, such as the habeas corpus (Gallón, 1979; García-Villegas, 2001; Iturralde, 2010; Uprimny, 2001). Having that in mind, the state of exception, is not a recent practice in Latin America, and in Colombia. It was a useful instrument of political and social control that served to repress the social movements and left wing organizations. The particular characteristic of the Colombian case was the fact that the state of exception was masked by the forms of liberal democracy (Agamben, 2005).

In response to the state's arbitrariness, during the 70s political leaders, militants of leftwing organizations, grassroots activists and progressive lawyers started founding a first generation of human rights organizations. Initially they adopted the form of committees, that is to say, relatively informal associations based on voluntary work. The committees attempted to denounce and make visible the cases of arbitrary detention, torture and political persecution against political opponents (Tate, 2007). These organizations represented a wide range of left wing approaches, but shared the common values and goals struggling against state repression, democratic restriction and the violation of human rights³. For instance, in 1973, the Solidarity Committee for Political Prisoners –CSPP- was founded, among others, by prestigious intellectuals, such as the writer Gabriel García Marquez and the journalist Enrique Santos Calderon. The CSPP was also comprised of militant leftwing organizations and family members of those who were detained (Romero, 2001; Tate, 2007). The CSPP aimed at providing political solidarity, emotional support and legal advice to those who were prosecuted for being part of revolutionary groups or members of leftwing parties. In the polarized and agitated political environment of the 70s in Colombia, many social activists saw no alternative for social change other than taking up arms and “ir al monte” (lit., go to the mountains). The revolutionary utopia was also defended by the argument of peoples' rights to take up arms (Tate, 2007).

From this perspective, the CSPP provided solidarity to the political prisoners, not to deny they were leftwing militants, but to defend the right to do it

³ Interviews with members of CAJAR, CCJ and CINEP, Bogotá, October 2009-February 2010.

(Tate, 2007). By that time, a group of Jesuits influenced by the Liberation Theology ideas and committed to do grassroots work founded the Centre for Research and Grassroots Education (CINEP). The CINEP attempted to promote social justice by doing grassroots education activities. In doing so, some priests, such as Javier Giraldo, committed themselves to the defence of community members and the denunciation of human rights violations. The CINEP and Javier Giraldo worked with church base members integrating the Intercongregational Commission of Justice and Peace. The church had access to what was happening in the slums and rural areas so they began registering the cases of violations of human rights and building up the first experiences of databases on human rights. In this regard, documentation, informed denunciation and the construction of databases became the main tools of the human rights organizations in order to show the systematic forms of human rights violations and the participation of state agents in those actions (Tate, 2007).

By the mid seventies social mobilization and protest increased, as well as institutional violence by means of state of siege and military repression. The topic of human rights violations caught the attention of different political sectors regardless of their ideological approach. In 1979, as a consequence of an assault in which the guerrilla group M-19 stole armament from an army warehouse, the military commanders and President Turbay agreed to adopt harsher measures consisting, for instance, of the restriction of the habeas corpus, the possibility to try civilians before military courts and the criminalization of actions associated with social protest. The government enacted the legislative decree 1923/79,

known as the Security Statute. The application of these measures led to the increase of human rights violations. Within a few weeks the security forces, especially the army, detained and tortured thousands of people in Bogotá. As a reaction against the deterioration of human rights situation by the end of the 70s and the beginning of the 80s, new human rights organizations emerged in the political scene. For instance, in 1979 different intellectuals, political and social activists, under the leadership of the prestigious former diplomat Alfredo Vásquez Carrizosa, founded the Permanent Committee for Human Rights (CPDH). The CPDH was a coalition of organizations and social leaders that embraced people from different ideological perspectives including the traditional liberal and conservative party, and the communist party as well. The CPDH members also came from a variegated set of disciplines and activities that included lawyers, trade union leaders, artists and politicians. The foundation of the CPDH showed that there was an increasing concern among the democratic sectors of society about the increasing violations of human rights in the country. This concern is evident in the call for the first National Forum on Human Rights in 1979:

“These serious concerns lead us to call for a democratic forum in which the citizens from all the political sides be represented, especially the experts, the associations’ representatives and bar associations, law schools, entrepreneurs and the National Trade Union Council, in order to draw conclusions about the general problem of

the situation of human rights in Colombia” (Comité Permanente de Derechos Humanos, 2003, p. 42).

A few months later, in 1980, a group of critical lawyers founded the Lawyers Collective Jose Alvear Restrepo –CAJAR-. The CAJAR, from a critical approach to the political system, focused on using the scarce legal actions that the political regime and legal frame allowed, such as habeas corpus. Some of those mechanisms were based on legal representation of people detained because of political motivation and public actions before the Supreme Court and the State Council. However, the main goal of the CAJAR has been to struggle against impunity and search for accountability of human rights perpetrators.⁴ During the 80s, despite the growing denunciations made by the human rights existing organizations, the manifestations of political violence increased and deteriorated. It was not just the case of practices of arbitrary detentions and torture. The country was witnessing other forms of human rights violations that was thought to be exclusive from the military dictatorships in the southern cone in South America, such as the forced disappearance. By the beginning of the 80s, 14 students from the national university were disappeared by security forces. In 1982, the relatives of those students, jointly with father Javier Giraldo founded the Association of Detained and Disappeared Family Members –ASFADDES. The members of ASFADDES collected information and discovered all the cases of disappearance that followed similar patterns. They denounced the disappearances

⁴ Interview with a member of CAJAR, Bogotá, February 15 2010.

and mobilized to catch the attention of public opinion and claim a response by the state. However, the official response moved between the denial of the facts and the evasion of accountability, and the intimidation and threats against the family members (ASFADDES, 2003). Not only were the disappeared's family members forced to undergo the state's denial but also the silence and negligence of the mainstream mass media (ASFADDES, 2003). The foundation of ASFADDES made evident the condition of vulnerability and isolation solitude of human rights victims. It was also possible to observe the emergence of organizing processes of victims and the growing linkages with human rights organizations. As some activists have affirmed, every time there was a violation of human rights, the survivors became human rights activists. In the case of ASFADDES, many of the family members were not previously involved in political activism, however, after the disappearance of their parents, siblings, daughters or sons, they learned to mobilize and become more politically active (ASFADDES, 2003).

By the end of the 80s, the situation of human rights in the country had worsened. Despite the fact that the Betancur's government (1982-1986) attempted to promote peace talks with the guerrilla groups, the eruption of paramilitary groups and the brutal offensive against the left wing militants led to the systematic elimination of the Patriotic Union members. The paramilitary groups supported or tolerated by the army and state security forces, deployed practices of disappearance, massacres, selective murder and forced displacement. Nonetheless, the denunciation, social mobilization, and claims before the state government, seemed to vanish in the air. By that time, the official discourse

emphasized the argument that the drug traffickers and the paramilitary groups were responsible of the increasing political violence, but denied any linkage between the army and those groups. By 1988, a group of lawyers with expertise in international human rights law founded the Colombian branch of the Andean Commission of Jurists. It was later known as the Colombian Commission of Jurists (CCJ). According to the CCJ founders, the aim of this NGO was to contribute to the improvement of the situation of human rights in Colombia. It was not enough to do legal representation in favour of political opponents, or to do grassroots education in order to reach social justice. It was necessary to enhance the general improvement of the situation of human rights in the country by means of incorporating international mechanisms of protection of human rights. According to Gustavo Gallón, one of the CCJ founders, by that time very few people in the country knew about international human rights law. Regarding the context of the CCJ foundation, Gallón affirms:

By 1980 there were 100 people murdered because of socio political motivations in Colombia... In 1985 there were more than 1000 people killed each year because of political reasons. And in 1988 there were 4,200; that is to say, an unbelievable growth, 42 times the number of killings. This fact brought about a huge impact and showed the powerlessness and the need to reach new forms of protection. And we

created the Colombian Commission, because we had contacts with the Andean Commission...⁵.

During the 70s and the 80s there was a growing organization focused on denouncing human rights violations, claiming state accountability and seeking international solidarity. There was a wide range of points of views, experiences and ideological approaches to human rights. For some activists, the discourse on human rights was, and still is, mainly a left-wing political discourse that provided the possibility to enhance social mobilization against the repressive state. In this regard, the forms of organization and action were conceived as a political and social mobilization. Early on, the work on human rights was a voluntary work characterized by the political commitment and the grassroots activities with communities, such as education and promotion of human rights as political consciousness. The dedication, political commitment and sacrifice of the activists compensated for the lack of resources and the precarious funding (Tate, 2007).

However, the human rights organizations faced a process of transformation. On the one hand, the legal dimension of the human rights discourse represented the possibility to contest legal and institutional arbitrariness in the legal field. For the human rights lawyers, it was important to emphasize the relevance of the international human rights law and the connections with international organizations. The legal language

⁵ Interview with Gustavo Gallón, Director of the Colombian Commission of Jurists CCJ, Bogotá, April 6 and 21 2010.

demanded more professional skills to register and support the information, as well as a different language to address the denunciations and claims (Tate, 2007). On the other hand, the transit from non-formal organizations under the forms of committees, characterized by the commitment and voluntary work, to a more professional and paid job under the form of Non Governmental Organizations (NGOs), implied different changes. The level of organization allowed the activists to get access to funding from cooperation agencies and a growing formalization of human rights work. It does not mean that the discourse of human rights lost its political dimension, but rather that the introduction of legal language and the formalization of the organization implied the incorporation of other dimensions and repertoires of action (Houtzager, 2005).

This process and the relative formality of the NGOs was not exempt from internal disputes and manifold debates and contradictions. For instance, there were regional differences, especially among those that were based in Bogotá, the capital of the country, and those located in other cities and small towns. While the NGOs that were located in Bogotá had more access to the central institutions, embassies and cooperation agencies, the local NGOs did not have the same level of resources. There were also political differences. For the more radical approaches, which were closer to the leftwing groups, the genuine human right activist ought to be a committed militant. For them, being a human rights activist was a vocation instead of a job. Besides, social change and social justice would not be

reached by means of the initiative of the state government or by means of legal institutions (Tate, 2007). Nevertheless, there were other organizations and activists, which were also very critical of the state government, but attempted to promote political reforms and institutional transformations. Despite the diversity of the human rights organizations, there were common goals, shared values and solidarity bonds that brought them together. It seems then that the construction of the human rights organizations, rather than being a process of massive social mobilization and a social movement as it is argued by Romero (2001), was a process of networks among organizations that started with informal committees and associations, but shifted, at least in the case of the larger organizations, to a more formal form of organization as NGOs.

Institutionalization of Human Rights

As it was explained in the theoretical framework, the discourse of human rights went through a process of institutionalization after World War II by means of the creation of the United Nations Organizations and the adoption of international declarations and treaties on human rights (Keck & Sikkink, 1998; McEvoy, 2008; Minow, 1998). In Colombia, the process of institutionalization of the human rights discourse is a recent experience that started taking place during the eighties as a response to the denunciations of human rights violations by the domestic human rights activists, the pressure of the international organization, and the constitutionalization of the human rights discourse in the domestic legal

system (Goodale & Merry 2007; Houtzager, 2005; Keck & Sikkink, 1998; Tate, 2007). I single out, at least three different moments: 1) the response to the international and domestic social pressure during the 80s, 2) the incorporation of human rights institutions in the new Constitution 1991, and 3) the consolidation of a legal culture of human rights in the Constitutional Court. It has been a process of transformation of the relations between the human rights organizations and the state and international institutions.

First, by the mid 80s, the initial signals of the penetration of the human rights discourse on state institutions appeared. By that time the Attorney General Carlos Jimenez Gómez, initiated official investigations on human rights violations and denounced the linkages between paramilitary groups and the army (Comité Permanente de Derechos Humanos, 2003). The Attorney General Office continued to play a critical role struggling against human rights violations. In 1987, the Attorney General Carlos Mauro Hoyos created the Human Rights Commission of the Attorney General Office. The main human rights NGOs were invited to be part of this new institutional space. After the murder of Hoyos in January 1988, the following Attorneys General, not only continued leading the Human Rights Commission, but also widened the human rights NGOs participation and promoted the creation of regional commissions (Romero, 2001). By the end of 1987, the situation of violence in Colombia seemed to be even worse and the political pressure against the government grew even more.

President Virgilio Barco (1986-1990) decided to create the Human Rights Governmental Office, which is a governmental office focused on designing

public policies on human rights. However, the discourse of human rights, which had been the domain of the NGOs promoting a critical and confrontational narrative, began to be used by the state government itself. The fact that the government started using the language of human rights created an ambivalent situation. On the one hand, it seemed it was an important achievement for the human rights activists to the extent the government acknowledged the relevance of the human rights situation. On the other hand, for the NGOs, the institutional narrative on human rights might be used for the political purpose of the state government. One illustrative example of this tension is the statement about human rights as everybody's responsibility. The Human Rights Governmental Office – HRGO- adopted the report of a Commission of the Research on Violence. According to this report, the current situation of violence in Colombia was characterized by expressions of diffuse social violence (instead of political violence). Alvaro Tirado, the head of the HRGO, drawing on that report, claimed that human rights were the responsibility of every person. This approach, based on a sociological view, was at odds with the International Human Rights legal approach, according to which the legal responsibility for human rights violations rests only on the state. The human rights NGOs did not agree with that statement and understood it was a way to evade the state's responsibility on human rights violations (Romero, 2001).

The relations among social organizations and the state institutions would become even more complex during a second moment of institutionalization characterized by the call for a National Constituent Assembly (NCA) and the

enactment of the new Constitution of 1991. The constituent process and the aspiration of creating a more democratic institutional framework affected the relations between state and non state actors. During the 80s the social organizations, left wing political movements and parties and human rights organizations claimed democratic reforms, political openness and a radical constitutional reform (Comité Permanente de Derechos Humanos, 2004). Some examples of this pursuit of political change were the projects of constitutional reform introduced in the 6th Forum organized by the Permanent Committee for Human Rights in July 1989. The Committee advocated for a constitutional reform by means of a participatory National Constituent Assembly that guaranteed social participation and substantial democratic reforms (Comité Permanente de Derechos Humanos, 2003). However, the idea gained political force a month later when Luis Carlos Galán, member of the Committee and presidential candidate, was murdered in August 1989. The university students mobilized and created the 7th ballot movement calling for a National Constituent Assembly following the elections. The movement gained outstanding support from social organizations and even the political parties accepted the idea of reforming the political constitution. The new constituent process became a moment of enormous symbolic force for different social organizations, left wing democratic parties and new generations of people who had grown up in the midst of a turbulent political conflict. For many social leaders and democratic sectors, the constituent process represented the rupture with a violent past, the lack of democracy and

confessional values. It represented also the hope for inclusive democracy, respect for human rights and the construction of democratic institutions.

A variety of events made institutionalizing the human rights discourse and the search for a more democratic political system possible. First, the social mobilization that started with the students and spread through other social movements and organizations crystallized the struggles for democracy that had been under way for years. Second, the Democratic Alliance M-19, the new political movement that emerged after the demobilization of the M-19 in 1989, gained the majority of the votes and reached 19 seats in the NCA. Regarding the fact that none of the parties got an absolute majority to impose their rules, the major political forces, the M-19, the Liberal and the Conservative parties, decided to adopt a consensus based model. As a consequence, the NCA was viewed as a political pact that included for the first time disenfranchised groups, indigenous people, afrodescendant population and left wing parties. Third, one of the major political and social concerns among social activists was the situation of impunity and the violations of human rights in the country. This concern was evident during the debates and bills of reforms introduced in the NCA in 1991. These bills included ideas such as the enshrinement of a generous bill of rights, the creation of constitutional actions and writs to protect human rights, the restriction of the state of siege, the incorporation of international treaties in the national law, and the creation of new institutions focused on protection of human rights. Finally, the human rights organizations, as well as intellectuals and progressive human

rights law schools placed an enormous influence on the content of the bills approved by the NCA.

In the process of institutionalization of the human rights discourse, it is particularly interesting to observe the participation of different NGOs in the creation of the new institutional frame. It was the outcome of a long-term political struggle. An example of such participation was the election of Alfredo Vásquez Carrisoza, president of the Permanent Committee for Human Rights, as member of the NCA. Another example is the participation of a coalition of NGOs, known as Viva la Ciudadanía, which sought to transform the political culture and enhance social participation. According to Antonio Madariaga, director of Viva la Ciudadanía, it was a bid for citizenship in a country in which the average person understood citizenship as having an identification number. For Madariaga, Viva la Ciudadanía, started organizing bottom up workshops before the NCA to collect ideas that would feed the debates at the NCA. The main purpose of the different organizations that participated in the workshops was to promote democratic institutions, respect of human rights, participatory democracy and political pluralism. For Madariaga it was like the entrance to political modernity in the country. However, this bid implied a transform the confrontational vision that had prevailed in some social organizations.

The adoption of a new Constitutional frame in Colombia made evident the contradictions among different social organizations and NGOs. On the one hand, some NGOs still were sceptical about the possibilities of a significant social change by means of institutional venues. On the other hand, there were some

organizations that were considered social democrats or reformists, which were more optimistic about the possibility to create democratic institutions. For Madariaga:

“...We went beyond the concept of human rights and put together some things that still nowadays characterize Viva la Ciudadanía... We decided: we have to insist on the idea of constructing citizenship. From this point, on the one hand, there was a strong debate with some sectors from the NGO movement and the human rights movement that advocated for community work and the strengthening of grassroots organizations. They came from a long tradition of despising (traditional) politics and especially legal politics... We saw the opportunity to insist on the construction of citizenship and bridge the social organizations views with politics...

For those organizations that made part of Viva la Ciudadanía, the participation in the NCA was the chance to build up a new institutional project based on democratic institutionalism. Other human rights NGOs, such as the Colombia Commission of Jurists –CCJ-, also took part on the constituent process in order to gain political leverage and influence the NCA members on topics such as the bill of human rights, human rights mechanisms of protection, the limits of state of siege and the incorporation of international human rights standards. According to Gustavo Gallón, different political parties in the NCA invited the CCJ to give

advice on the debates about human rights topics. In addition to this advice, the CCJ also published a book in order to gain more influence on the NCA. For Gallón, the participation of the CCJ contributed to enrich the debates that led to the enactment of some constitutional provisions on the incorporation of international treaties on human rights.

“Of course, new sectors, or progressive actors, or whatever you want to name it, invited us, as well as the conservative party and the liberal party. They asked for our advice, our expertise, precisely, regarding international human rights law. That fact, as well as the action of other people, had effect on different aspects of the constitution. That is, the bill of rights enshrined in the constitution and the mechanisms of protection of human rights; the provision about the supremacy of international human rights law; the creation of the Constitutional Court and the limitation of the state of siege”⁶

A new, and third moment in the process of institutionalization is related to the consolidation of the discourse of human rights in the institutional sphere, especially the leading role of the courts. It is a process of constitutionalization of the human rights that has taken place in Latin America during the 90s (Houtzager, 2005). The Ombudsman and, especially, the Constitutional Court have carried out an outstanding role. The Ombudsman carried out a significant pedagogic role

⁶ Interview with Gustavo Gallón, Director of the Colombian Commission of Jurists CCJ, Bogotá, April 6 2010.

during the 90s consisting of programs of education and information about the fundamental rights and the different mechanisms of human rights protection. The Constitutional Court in its turn as the head of the constitutional jurisdiction, played a leading role promoting a new perspective on constitutional law and human rights. Some Justices, such as Ciro Angarita, Carlos Gaviria and Eduardo Cifuentes, as well as the clerks that worked with them influenced the Court to introduce progressive decisions that broke with traditional legal formalism that had prevailed in the Colombian legal culture. The Constitutional Court decisions, mainly those that decided the Tutela writs, and also the decisions about constitutional actions against Congressional laws, represented the introduction of neo constitutional debates in the Colombian legal field. Drawing on contemporary comparative jurisprudence and constitutional law, the Justices and clerks introduced the neo constitutional approach to subvert the legal formalism and maximize the protection of human rights. These Justices and clerks were subjects that promoted a rupture with the formalist mentality and the pursuit of justice. Some of them had attended graduate programs in Europe or the United States and were professors at prestigious law schools in the country. Some of them had also worked in human rights NGOs and had even taken part in the social mobilizations that led to the National Constituent Assembly. Moreover, most of them belonged to a generation that had suffered the impact of state arbitrariness and conceived the law as a means for reaching social change.⁷

⁷ Interview with Rodrigo Uprimny, former Justice of the Constitutional Court, Bogotá, April 20, 2010.

According to the neo constitutional perspective they introduced, law is not restricted to the legal rules written by the legislative branch. Drawing on constructivist legal scholars, such as Ronald Dworkin (USA), Robert Alexy (Germany), Zagrebelski (Italy), the neo constitutional approach law was also integrated by principles and values. In addition to these views on constitutional law, the Justices also introduced contemporary debates on multiculturalism and cosmopolitanism to protect cultural rights and community values of indigenous people and afro-descendant groups. Drawing on Bourdieu's (1997) perspective on the social fields, these new subjects incorporated the contemporary debates on jurisprudence and constitutional law into the domestic legal field, to promote progressive decisions related to different human rights conflicts in Colombia. It is what Sally Merry (2007) describes as a process of vernacularization of human rights. This process of constitutionalization of human rights, supported by globalized discourses on comparative law and international human rights law has contributed to contest political forces from within the legal field. In recent Colombian history, the Constitutional Court has led a process of legal cosmopolitanism that has elicited the reaction of conservative political groups consisting in attempts of judicial reforms and the accusation of politicization of justice.

How to explain then, that the executive branch and the legislative power did not manage to undermine the independence of the Constitutional Court? The answer to this question lies in different aspects. First, in Colombia there has been a tradition of judicial independence since the mid 20th century, which is an

exceptional case in Latin America. Drawing on Rodrigo Uprimny (2001), this judicial independence is, to some extent, the by-product of a non democratic experience. Up to 1957, the Justices of the Supreme Court were appointed by the executive power. However, when the dictatorship that ruled between 1953 through 1957 ended, the political parties and the military junta agreed to call for a plebiscite. One of the questions of the plebiscite, suggested by the junta, implied that the fellow justices would appoint the new Supreme Court Justices. The military junta made sure that in the future the Supreme Court Justices would be sympathisers of the junta. This fact led to the institutional tradition according to which the judiciary appoints their members. This tradition was preserved in the new Constitution of 1991. Despite the fact that the appointment of the Constitutional Court requires the participation of the legislative branch, in the beginning, the Congress appointed the Justices based on their academic merits. The politicians did not envision that the Constitutional Court would represent a threat to their interests.

Finally, in addition to the argument of judicial independence, there is another argument based on the legitimacy and the social embeddedness of the Constitutional jurisdiction, that is to say, the Constitutional Court and all the judges when they decide the *Tutela writ* to protect fundamental rights. Before the Constitution of 1991, the citizens did not have any feeling of appropriation for legal institutions and they did not know the constitution. A different thing emerged during the constitution of 1991. One of the most significant aspects of the collective feeling of the acceptance of the constitution was the practice of the

Tutela writ. Any person was entitled to ask for the protection of any judge when a fundamental right was in risk. The judge had to make a decision in the brief term of ten days. Any person could get access to justice to defend fundamental rights, such as due process, cultural identity, petition rights, freedom of thought, freedom of speech, or health. The level of social acceptance of the Constitutional Court and the *Tutela writ* has made it even more difficult for the conservative political sectors to reform the judiciary. Going back to the question of maintaining independence, the tradition of judicial independence and the legitimacy of the judicial branch have supported the survival of the Constitutional Court, even when its decisions have strongly opposed the rule of the majority and the will of the executive branch.

In sum, the institutionalization of the discourse of human rights has been a part of a long process of transforming the relations between the state government and society in Colombia. During the seventies and eighties, the relations between the social organizations, human rights organizations and the state government were highly confrontational. The process of enactment of the new Constitution in 1991 and the process of constitutionalization of the discourse of human rights entailed a process of transformation for human rights organizations and for some state institutions as well. Despite the fact that the practices of political violence worsened during the 80s and 90s, there was also a growing incorporation of the discourse and practices of human rights led, not only by the human rights activists and NGOs, but also by the Constitutional Court.

Human Rights Networks

The relations among domestic, transnational NGOs and international organizations started in the beginning of the 80s. The networks and alliances among these organizations emerged as a step-by-step process. A diverse, complex and slow process, this took years to consolidate. It is not a space characterized by unanimity or consensus. The emergence of alliances among diverse groups of human rights organizations are necessarily characterized by their different experiences and political approaches. A first type of network is based on the initiative of the cooperation agencies. In this case, some cooperation agencies attempted to bring together the NGOs they were funding in order to exchange information about their experiences. In this regard, different alliances emerged among some organizations that received funding from European cooperation agencies related to the church or those interested with the promotion of human rights. These networks attempted to create a space for assessment, shared experiences and stressed solidarity bonds.⁸ A second form of network formation was an attempt to join efforts among organizations and activists that shared common experiences, values and goals. As time went by, the collective actions of these organizations led them to coordinate their efforts to reach common goals. For instance, the Solidarity Committee for Political Prisoners, Permanent Committee for Human Rights and ASFADDES, formed branches in different regions and localities (ASFADDES, 2003; Tate, 2007). ASFADDES also was invited to participate in international forums to talk about the Colombian case and

⁸ Interview with Antonio Madariaga, Director of Viva la Ciudadanía, Bogotá, February 8 2010.

take part of international networks such as the Latin American Federation of Disappeared Family Members –FEDEFAM-. The relations with FEDEFAM members allowed the Colombian delegations to learn from the experience of Mothers of Plaza de Mayo in Argentine and create closer bonds of solidarity with organizations from all over Latin America (ASFADDES, 2003).

The coordination of networks has been a slow and time-consuming process that has demanded the collective effort of different organizations. The emergence of the transnational networks regarding the Colombian case began in the 80s when Amnesty International and the Inter American Human Rights Commission visited Colombia to assess the situation of human rights. These organizations wrote reports expressing their concern because of the serious violations of human rights in Colombia. According to Flor Alba Romero (2001), anthropologist and activist in human rights, the reports brought about a feeling of hope about the possibility to bring the cases of human rights violations to the Inter American Human Rights System. For Romero, the international pressure prompted a shift in the government's position, especially during Belisario Betancur's (1982-1986) administration (Romero, 2001). However, Gustavo Gallón, director of the Colombian Commission of Jurists CCJ provides a different interpretation of the reports.

For Gallón the IAHR Commission was not as straightforward as the one written by Amnesty International. Besides, Turbay's (1978-1982) government tried to manipulate the report saying it was not a negative report against Colombia. The human rights organizations also expected a harsher, more

straightforward report from the IAHR Commission. This event created a feeling of distrust and scepticism among some human rights organizations about the possibility to bring cases before the IAHR system⁹. In any case, it is clear that there was an incipient relation among international organizations, transnational NGOs and domestic human rights organizations. It took more than five years for the Colombian human rights organizations to bring a case before the IAHR Commission. The first case was brought by the Permanent Committee of Human Rights of Antioquia in 1987. It was the case of the disappearance of Luis Fernando Lalinde, a student of anthropology of the University of Antioquia, militant member of the communist party and a person committed to social justice, who was disappeared in 1982 while he was taking part in a communist youth camp. The very same year, Hector Abad Gomez, the director of the Human Rights Committee that brought the case to the Inter American Commission, was killed by paramilitary groups¹⁰.

The worsening human rights situation in Colombia also caught the attention of international human rights NGOs, such as Human Rights Watch, WOLA and CEJIL, as well as the International Organizations, such as the IAHR Commission. Domestic human rights NGOs such as the CCJ, CAJAR and CINEP intensified their linkages with those organizations, providing information and helping them to contact other domestic organizations for their reports.¹¹ However, one of the elements that have strengthened the human rights bonds among these

⁹ Interview with Gustavo Gallón, Director of the Colombian Commission of Jurists (CCJ), April 6 and 21, 2010.

¹⁰ Ibid.

¹¹ Interview with a CCJ lawyer, Bogotá, October 16 2009.

organizations is the pursuit of security and survival. According to some human rights activists, the logic behind the human rights network strategy rests on the need to protect each other against the death threats and the risks they are facing. Obviously, there has been a feeling of solidarity as well as a set of common values and goals, as they realized they could not do their job and survive if they worked in isolation. “Hadn’t been for the human rights networks, all of us would be dead” said a human rights lawyer¹². Flor Alba Romero (2001) insists on this aspect saying that the transformation of the human rights movement, to some extent, is due to the fact that the human rights activists moved from thinking about protecting other people, to thinking about protecting themselves.

It was in the mid 90s when the human rights organizations started articulating their efforts in order to gain political leverage in the international arena (Keck & Sikkink, 1998). According to different activists, the first attempt to coordinate international relations was through the International Work Group. This group gathered about 15 human rights organizations in order to coordinate the work they were carrying out in the international arena. According to Gustavo Gallón, by then, there was more room to manoeuvre and to define their actions. Currently, he suggests, the international treaties regulate the international affairs. According to Gallón, this group did not last long due to internal disputes. Despite the fact that the human rights NGOs were increasingly intensifying their ties and contacts with some international forums, it seemed that it was discontinuous and not sufficiently coordinated. For instance, the Colombian NGOs used to go before

¹² Interview with lawyers of the CAJAR, Bogotá, October 15 2009.

the United Nations Human Rights Commission a few days before the sessions started. Sometimes they did not previously agree on what they were to ask before the HR Commission and ended up asking for different measures.¹³ For Gallón, one of the main goals of the CCJ is to gain political leverage before the UNHR Commission by means of a more systematic and consistent lobby. It was also important to get a better level of coordination among the different Colombian human rights NGOs and coordinate the main priorities on what they wanted to ask to the UNHR Commission. Regarding this fact, Gallon affirms:

“We also decided to lobby before the United Nations Human Rights Commission, where years before different Colombian organizations and trade unions went to do lobby in an intermittent way. Some organizations attended one year, some other organizations attended the meetings the following year, to request actions on Colombia –a special rapporteur for Colombia-, but there was no systematic work”

14

By 1995, different human rights organizations focused on Colombia and organized a conference in Brussels in order to entice a debate about the human rights situation in the country. For the human rights NGOs and activists, one of the main problems was that the Colombian government had portrayed the Colombian situation as the case of a state that was victim of drug trafficking

¹³ Interview with Gustavo Gallón, head of the Colombian Commission of Jurists, April, 6 2010.

¹⁴ Interview with Gustavo Gallón, Director of the CCJ, Bogotá, April 6 and 21 2010.

violence. It was also necessary to unify the voice of the human rights organizations and agree to what they were to request of the UNHRC. Bearing those circumstances in mind, the human rights organizations organized the Brussels conference in order to provide a space for public debate prior to the regular UNHR Commission sessions. The conference attempted to influence the Commission members to make decisions on Colombia. Different human rights organizations took part in the conference, as well as the Colombian government. The human rights NGOs that organized the conference became a coalition known as ODHACO, which has been an important human rights network in Europe. Later on, during the sessions of the UNHR Commission in Geneva, the NGOs also lobbied before the Commission insisting on taking action about the Colombian case. The Colombian government, willing to avoid a stronger decision about the Colombian state, requested a special report from the president of the Commission. As a by-product of this request, the Commission included the Colombian case in the Commission's agenda of 1996.¹⁵ By 1996, the UNHR Commission addressed in depth the Colombian case. During those sessions, the human rights NGOs also tried to coordinate their actions and agree on their request. They were debating whether to request a special rapporteur or a delegation of the United Nations High Commissioner for Human Rights' Office. Finally, they agreed on requesting the UNHCHR Office and the HR Commission took a decision in the same direction (Tate, 2007).¹⁶

¹⁵ Ibid.

¹⁶ Ibid.

The political mobilization abroad was also connected with political and legal mobilization in Colombia. After the creation of ODHACO, a group of NGOs in Colombia founded the Coordination Colombia Europe United States – CCEEUS-. The purpose of the CCEEUS was to coordinate the NGOs position before the international community, especially before the United Nations HR Commission. Later on, the network added the component of the United States. While the alliance with ODHACO attempted to influence the UNHR Commission, the US Office of the CCEEUS attempted to lobby before different state agencies concerned with human rights, such as the State Department and the US Congress. Regarding the perspective on human rights, the CCEEUS has focused on denouncing the situation of human rights in Colombia, mainly on civil and political rights. This network reached out to put the Colombian case on the international agenda, gaining international visibility and opening the path to introduce mechanisms of monitoring the human rights situation in the country. In fact, in 1997, the UNHCHR Office representative started in Colombia.¹⁷

Political and Legal Mobilization on Human Rights

Over the past decades the human rights organizations and networks in Colombia have deployed and refined different mechanisms of political and legal mobilization in order to struggle against impunity and protect human rights. These actions were not restricted to enhance a boomerang pattern consisting in gaining international political leverage and having the international community pressure

¹⁷ Ibid.

the Colombian state to change its policies (Keck & Sikkink, 1998). That is part of the landscape, but it is not the whole story. The human rights networks also have deployed political actions to promote direct institutional and social transformations in the domestic and local arena (Goodale & Merry, 2007; Merry, 2006; Orozco, 2005; Speed, 2007; 2009; Tate, 2007). Even more, these networks have refined a legal toolkit based on strategic litigation in order to contest state power, demand state accountability and attempt to protect human rights victims' such as truth, justice and reparation.

Political mobilization on Human Rights

As detailed in this chapter, the construction of human rights networks, as well as the actions of social and political mobilization is the outcome of years of work, resistance and efforts of survival. Drawing on Keck and Sikkink (1998), the human rights organizations deployed tactics of information politics, political leverage and accountability politics. However, the domestic and local experiences make evident that those tactics go beyond the scope of international relations. First, regarding actions of *information politics* the meaning and scope of information transcend the idea of providing information to the international community. On the one hand, there is a set of practices consisting of providing information about human rights violations, documenting the cases, supporting the information with evidence, sending out urgent actions, building up databases, and publishing reports. This information was intended to circulate in both the domestic and the international arena. These practices have been refined in the

past decades. These information politic tactics allowed the human rights groups to make visible the existence of human rights violations, to name those violations, to denounce the agents and actors accountable for those violations and understand the patterns of the systematic practices of violence. To some extent, this information circulates from the local and domestic sphere to the global sphere by means of urgent actions, periodical reports, international conferences, press releases and internet WebPages (Goodale & Merry, 2007; Keck & Sikkink, 1998; Khagram, Riker & Sikkink, 2002; Tate, 2007). Drawing on Santos (1995), the experiences and information about the human rights situation might be part of a “globalized localism” according to which, the Colombian reality is no longer a domestic domain, but also part of the political agenda of different transnational NGOs and international organisms.

On the other hand, there is another type of information consisting of introducing theoretical tools on human rights and comparative experiences on human rights campaigns. This type of information and knowledge, promoted by international and domestic human rights NGOs and activists, empowers domestic organizations to raise awareness about human rights (McGregor, 2008). Likewise the NGOs, but also the law schools and cooperation agencies, have intensified the publications about human rights and reports on human rights situations. The law schools have incorporated human rights contents in the legal education. The NGOs for long time have also carried out workshops and trainings on human rights actions and concepts (Goodal & Merry, 2007; Tate, 2007). There has been a growing professional knowledge, especially within the legal field about

constitutional law, international human rights law, humanitarian law and fundamental rights (Houtzager, 2005). In fact, the legal discourse on human rights is also a discourse of power that develops a technical language and professional practices that are the exclusive domain of the experts on the subject (Bourdieu, 1997). This legal approach has the progressive potential to contest the other discourses and practices, such as state arbitrariness, but also creates hierarchies to the extent excludes those who do not have the symbolic and cultural capital on human rights (Goodale & Merry, 2007; McGregor, 2008). The incorporation and construction of technical language on human rights by subjects such as legal experts on human rights, scholars and justices of the courts constitute an exercise of incorporation of a global discourse that has been used to contest expressions of arbitrariness in Colombia (Goodale & Merry, 2007; Jelin 1998).

Second, the processes of political leverage vary according to the settings and spaces. In the domestic space, the human rights organizations have not had the same level of political support by the state Congress and the political parties, or even the public opinion. For long time the mainstream media did not pay attention to the denunciations made by the human rights organizations and, sometimes, portrayed the human rights activists as groups linked with leftwing guerrillas. In a political context in which the mainstream media has been complicit or benevolent with the state power, the human rights organizations and the victims were marginalized. Yet, the social organizations and human rights NGOs learned to use alternative mechanisms of information and alternative mechanisms of action before the political spaces such as the state congress and

the government.¹⁸ In this regard, different activists affirm that lobbying has been one of their tactics to gain influence in the law making process.¹⁹ An illustrative example of this practice was the public debate that the Permanent Committee for Human Rights (PCHR) carried out by the end of the 90s; the social mobilization about the idea of constructing democratic institutions promoted by Viva la Ciudadanía, the actions of lobbying before the National Constituent Assembly (NCA) carried out by Viva la Ciudadanía, the CCJ and the PCHR.

The human rights NGOs also have relied on lobbying to promote specific regulations such as the criminalization of forced disappearance (ASFADDES, 2003). However, the actions to gain political support in the domestic arena, conversely to the experience before the United Nations, has been rather dispersed and disarticulated to the extent it depends on the initiative of each NGO and its own linkages with political parties in Congress. In the international arena, the experience of the human rights networks during the 90s seemed to be more articulated. The joint effort of ODHACO and the CCEEUS before the UN Human Rights Commission brought about significant measures of monitoring and assessment of the Colombian human rights situation. The lobby before the U.S. government and Congress also has brought about pressure on the Colombian government to the extent there has been periodic assessments made by the U.S. government about the human rights situation in Colombia.²⁰

¹⁸ Interview with a lawyer of the CAJAR, Bogotá, October 2009.

¹⁹ Interviews with human rights activists, Bogotá, October 2009-February 2010.

²⁰ Ibid.

Finally, the actions of information politics and political leverage in both the domestic and international sphere, have made possible the creation of political spaces that demand accountability. The very fact that the international community is aware about the situation of human rights and adopts international mechanisms of monitoring and assessment has created an important impact on domestic public policies. The United Nations High Commissioner for Human Rights Office representative in Colombia has performed a significant role monitoring the state government policies on human rights and writing reports about human rights progress. However the processes of accountability are not restricted to responding to the international community by means of monitoring and assessment. Human rights organizations have also used domestic and international legal mechanisms of strategic litigation in the pursuit of reaching accountability of the state government.²¹

Strategic litigation

Among the human rights NGOs that exist in Colombia, just a very few of them focus on human rights legal actions, such as the Lawyers Collective Jose Alvear Restrepo (CAJAR), the Colombian Commission of Jurists (CCJ), the Women's Initiative for Peace (IMP), or the Corporación Jurídica Libertad (CLJ). However, the largest and more experienced organizations are the CAJAR and the CCJ. For most of these organizations *strategic litigation* is the outcome of years of experience on legal activity. According to some activists, strategic litigation is

²¹ Ibid.

a form of legal mobilization that relies on different legal mechanisms, either national or international, that might provide the best possible legal and political outcomes for the cause of human rights protection.²² These outcomes aim at meeting the following goals: 1) to bring about changes in the domestic legal framework by means of incorporating international standards on human rights protection, 2) to contribute to the efficacy of those mechanisms, 3) to struggle against impunity promoting the disclosure of truth about human rights violations (this goal implies the acceptance of state accountability for human rights violations and the introduction of mechanisms to avoid the repetition of those facts), and 4) to promote the use of reparation mechanisms for the victims of human rights violations. In addition to these goals, the legal activists highlight two main characteristics of this form of litigation: *adaptability* and *selectivity*.

Regarding *adaptability*, the human rights lawyers affirm that there is no unique specific path to follow because each case entails a different strategy. According to a prominent human rights lawyer and member of the CAJAR, it is also an activity in constant transformation due to the permanent legal and judicial reforms, so the lawyers need to be ready to adapt to the new circumstances and insist on the pursuit of human rights protection. Regarding the second characteristic of *selectivity*, the very concept of strategic litigation implies a restriction to the extent that it is impossible to represent all cases. The human rights lawyers that use strategic litigation acknowledge that it is very difficult to represent all the victims that request their services. For those lawyers, it is more

²² Interview with a Lawyer of CAJAR, Bogotá, October, 2009.

important to represent fewer people and get higher social and political impact, instead of representing many people as a routine regardless the political and social impact. In this regard, it is important to assess in advance, what would be the best possible legal contribution for each case to the general situation of human rights protections. Bearing that in mind it is possible to make the case become a precedent for future cases.²³

I will highlight three main forms of strategic litigation used by the human rights NGOs in Colombia. The first form is the use of public actions, especially constitutional actions against Congress, laws before the Constitutional Court, and administrative actions against government decrees before the State Council. This form of litigation aims at contesting the laws and decrees when their content violates the constitution or the international human rights law. Regarding the fact that the Constitutional Court and the State Council are the courts that decide these cases, it is worth mentioning that in the Colombian legal practice the difference between the two courts are well known. The Constitutional Court has led a progressive view on law, drawing on neo constitutional perspective and maximising the protection of fundamental rights. The State Council, with the exception of some sections, still maintains the legal tradition inherited from the French administrative law culture. This distinction is relevant to the extent that the lawyers know a case before the State Council not only takes longer but also its decision would not protect constitutional principles but legal rules. In practice,

²³ Interviews with members of the CAJAR and the CCJ, Bogotá, October 2009-February 2010.

their decisions end up being instrumental for the government's goals, even if the government decrees contradict the constitution.²⁴

A second form of strategic litigation is based on emblematic cases of human rights violations. In this type of litigation, the human rights lawyers represent victims of criminal cases before ordinary jurisdiction and cases of state torts before the administrative jurisdiction. Due to the characteristics of the victims and the social impact of the conflict, the goal is not restricted to representing the individual case, but rather to make the case become a legal and social precedent for future cases. A third form of strategic litigation consists of selecting a relevant case to present to the Inter American System of Human Rights. According to the norms of the IAHR system, when the domestic legal mechanisms are not effective to protect human rights, it is possible to go before the IAHR Commission in Washington. Once the Commission has assessed the case, which might take three years, the decision is made whether to present the case to the IAHR Court in San Jose de Costa Rica. In fact, some NGOs such as the CCJ and the CAJAR, have played a critical role in bringing relevant cases to the IAHR system. Based on this form of strategic litigation, the Court has found the Colombian State accountable of human rights violations in different opportunities, such as the support of paramilitary groups, and lack of diligence protecting the civil population from the action of those groups. These decisions are particularly relevant because both the legal and political meaning. They have a legal impact to the extent the IAHR Court decisions are binding for the Colombian state. They also have a political

²⁴ Interviews with human rights activists, Bogotá, October 2009-February 2010.

meaning to the extent those decisions become an expression of public shaming before the international community because of the failure to protect their citizens.

Conclusion

Over the past the past two decades, the human rights discourse has changed. Different actors, such as human rights organizations and networks, have incorporated new elements, meanings and practices (Goodale & Merry, 2007; Speed, 2009). In the beginning, there was the prevailing domain of a political dimension according to which the activists and committees considered themselves militants and subjects committed to social justice projects. The committees and NGOs emphasized the *political dimension* of the human rights discourse based on political contestation against the state government arbitrariness. Either drawing on leftwing critical approaches or centre left reformist views, the organizations and activists deployed actions consisting of public denunciation, grassroots education, social mobilization and political leverage to pressure the state government and empower the communities. However, during the 90s, the political dimension moved from a left wing critical approach to a center left constructivist view. This transformation was associated with the process of professionalization and institutionalization of the human rights discourse as well as the formation of human rights networks. Nowadays, the human rights discourse has incorporated different approaches, such as legal and moral philosophical approaches (Goodale & Merry, 2007; Speed, 2009). The human rights lawyers introduced a legal and moral dimension consisting of using legal instruments to represent the political

leaders who were prosecuted by the state, and also to introduce the language of International Human Rights Law. These activists from different political perspectives and backgrounds also claimed for the moral virtue of human rights principles, such as principles of human dignity, regardless of the actor who perpetrated the violent actions against civil populations.

This process of historical and social construction of the discourse and practices of human rights allows me to suggest the following conclusions. First, in Colombia, the construction of the discourse of human rights is mainly the outcome of a long process of transformation of the activists' organizations. In contrast to other Latin American countries, such as Argentina, in which the human rights discourse was appropriated by social movements (Alvarez, Dagnino & Escobar, 1998; Jelin, 1994; 1998; Orozco, 2005), in Colombia it is a process led by human rights NGOs. But the experience of the Colombian human rights networks also has some peculiarities. In contrast to the Peruvian case, in which the Coordinadora de Derechos Humanos gathered all the human rights organizations (Root, 2009), in Colombia the experience of the human rights networks is characterized by the internal political contradictions among the NGOs and activists. Second, the human rights networks do not restrict themselves to international relations in order to get the international community to pressure the Colombian government as it has been suggested by Margaret Keck and Kathryn Sikkink (1998).

The human rights networks in Colombia also have played a significant role in the domestic sphere as the work of different scholars in legal anthropology

have suggested (Goodale & Merry, 2007; Tate, 2007; Speed, 2009). They have created domestic alliances and deployed political tactics in the domestic arena, such as social mobilization and lobbying before the National Congress to have influence on public policies and the law making process. Third, in addition to these political mechanisms, the human rights organizations, especially the human rights legal organizations, have used strategic litigation actions to contest legal frames, introduce the language of human rights law, and protect human rights. These NGOs, which have worked with grassroots organizations for years, have rested on the international human rights law to empower the disenfranchised groups, claim for justice and challenged the practices of impunity. Drawing on Lorna McGregor (2008), it is a practice of human rights from below. Finally, despite the fact the human rights organizations and networks do not have political support from the mainstream mass media and the public opinion, they have accumulated important political and legal capitals that have been useful to contest state power and the political decisions based on the rule of majorities (Bourdieu, 1987).

CHAPTER 4

THE FRAMING OF THE “JUSTICE AND PEACE” LAW

In the previous chapters, I have tried to put together different pieces of the political and legal puzzle in Colombia in order to understand the relations between politics and law in the context of the peace process with the paramilitary groups. On the one hand, during the first decade of the century there was an emerging hegemonic discourse on security. This discourse was characterized by the social reaction against the FARC, the expansion of paramilitary groups, and the support of the main interest groups, the mainstream media and the public opinion to the policies on security proposed by Alvaro Uribe's government. According to this discourse, security and war on terror became the main priority for the government and the majority of the voters, even if that goal entailed the restrictions and even the violations of human rights. The government coined a language that constructed the “terrorists” as the new enemy. However, the category of the “terrorist” was flexible enough to stretch out and label, not only the armed groups, but also the political opponents under the stigma of being terrorist collaborators; this occurred with the human rights organizations and members of the leftwing party. The practices of security intensified military actions and involved the civilian population in the pursuit of security and war against the FARC. Some visible outcomes of those policies, such as the reduction of some expressions of violence reinforced the public opinion support of Uribe's administration. Meanwhile, the new government initiated a peace process with the

right wing paramilitary groups, virtually without major political opposition. Both parties attempted to carry out a demobilization process and incorporate the paramilitary members to civil society. As it was explained in Chapter 2, it was a project that implied the legalization of politics (Laplante & Theidon, 2007).

On the other hand, there were also voices of distrust and discontent among the human rights and victims' organizations that contested the hegemonic discourse on security. Despite the fact that the human rights discourse and the human rights organizations were not supported by the economic groups, the main stream media and the majority of the public opinion, the strength of the human rights networks rested on the support of the international community, the transnational human rights organizations as well as on the process of institutionalization of the human rights discourse led by the Constitutional Court. Over the past decades, the human rights networks had accumulated a political capital of transnational allegiances, as well as a legal and moral capital based on the knowledge of human rights law and the support of victims' rights (Bourdieu & Wacquant, 1992). This strength has allowed the human rights and victims' organizations to resist what they called a project of impunity.

In this chapter, based mainly on in-depth interviews with human rights activists and human rights reports, I give account of the contentious process of framing the "Justice and Peace" law between 2003 and 2006. This process provided the legal framework for the demobilization of the paramilitary commanders. I do not restrict the framing of the legal mechanisms to the law making process that takes place in Congress. Drawing on Pierre Bourdieu's

(1987; 1992) concept of the legal field, I understand the framing process as a contentions political process that takes place among different political and legal actors that strive to defend their interests and discourses about the political situation and the demands of justice. The main argument of this chapter is that given the political hegemonic discourse of security, the government and the majority coalition in Congress, could not impose the legal framework based on generous incentives for demobilization. The human rights networks resisted that project, drawing on the different meanings and mechanisms that the discourse of human rights provides (Goodale & Merry, 2007; Rajagopal, 2003; Speed, 2009). In doing so, the human rights networks, led by domestic NGOs, drew on mechanisms of transnational political leverage, information politics, lobbying before the National Congress and carried out mechanisms of strategic litigation (Goodale & Merry, 2007; Khagram, Riker & Sikkink, 2002; Keck & Sikkink, 1998). By using all these mechanisms, the human rights organizations managed to introduce the language of “transitional justice” in the political arena to show that the political negotiations had legal and moral constraints. They also struggled to give content to the meaning to the victims’ rights of truth, justice and reparation and resist the manipulative use of the language of transitional justice (Uprimny & Saffon, 2007).

In order to explain this argument I will address five parts. In the first part of the chapter, I will explain the relevance of transnational and international actors, such as transnational NGOs, intergovernmental organizations and the international community in the political arena in Colombia. The relevance of this

part rests on the role these actors played in the framing of different legal mechanisms related to victims' rights. In the second part, I spell out the emergence of new human rights NGOs and the role of the human rights networks in the vernacularization of the discourse of transitional justice. In the third part, I address the debates that emerged in the political arena when the government introduced the "Alternative Punishment Draft", that is to say, the first draft of the legal framework for the demobilization. In the fourth part, I explain different political actions that the human rights organizations made to struggle for more substantial conceptions of victims' rights. Finally, I give account of the strategic litigation mechanism that the human rights NGOs used to contest the legal framework the Colombian Congress approved in 2005.

Transnational Actors and New Forms of Political Leverage

During the past decades, human rights NGOs have adopted a strategy of political mobilization to build political leverage in the transnational and international arena (Keck & Sikkink, 1998). As I explained in the previous chapter, over the past decades the human rights organizations created alliances with transnational human rights NGOs, such as Amnesty International Human Rights Watch, CEJIL and WOLA, among others. They organized networks, such as ODHACO and the CCEEUS to lobby before human rights International Organizations, such as the Human Rights Commission at the United Nations in Geneva (Tate, 2007). Based on these actions, the Human Rights Commission agreed to the Colombian State to open representative office in Colombia of

United Nations High Commissioner Office for Human Rights. Since 1997, the UNHCOHR has monitored the government's public policies on human rights, written different reports to the Human Rights Council and made recommendations to improve the human rights situation in the country (CCEEUS, 2006). In addition to these actions of monitoring, assessment and advice, there are other UN delegations in Colombia that attempt to contribute solving the situation of human rights, such as ACNUR, UNDP and UNIFEM. In this perspective, the human rights organizations not only strengthened bonds of solidarity with international NGOs, but also created strong relations with intergovernmental organizations. As Gustavo Gallón affirms, they also caught the attention of these actors and influenced them to put the Colombian situation on their agenda.²⁵ In addition to these efforts, during the first decade of the century, the international human rights networks explored another channel of international pressure that gained special relevance: the international cooperation programs.

By the beginning of Uribe's administration, the human rights NGOs were highly concerned about the human rights situation and the possibility that the international cooperation programs would support the Democratic Security policies. As a part of the dialogue with the European countries, the government and the international community settled on a summit in London in 2003. The London Summit in 2003 involving Alvaro Uribe's government was a turning point in relations between Colombian civil society and the international

²⁵ Interview with Gustavo Gallón, director of the Colombian Commission of Jurists, Bogotá, April 6, 2010.

community²⁶. In the beginning, participants at the London Summit attempted to address general aspects of cooperation programs in Colombia. The Summit was supposed to gather state delegations rather than civil organizations. However, the human rights NGOs in Colombia were concerned how international funding might be used in relation to the peace talks under way back home with the paramilitary groups. Under the initiative of the United Nations, organizations from civil society were invited to participate in the Summit and two representatives of the NGOs were allowed to speak before the international community.²⁷ The London Summit did not result in an agreement on international cooperation for Colombia. However, Summit members drafted a declaration, also known as the London Declaration, which proved influential. The international community acknowledged and supported the participation of civilian organizations in the process of defining international cooperation programs. In the beginning, NGO members expected a stronger statement against the Uribe government and his policies on security, especially considering there were demonstrations in different European cities against Uribe's policies. However, the declaration recommending the government improve the human rights situation and acknowledging the political conflict and humanitarian crisis was written in a very diplomatic tone. Not until later did human rights activists begin to see what a political achievement this declaration was, as it opened space for civil society

²⁶ Interview with Antonio Madariaga, director of 'Viva la Ciudadanía,' Bogotá, February 8 2010.

²⁷ Interviews with members of different human rights NGOs and International Embassies, Bogotá, October 2009-February 2010.

participation and showed the international concern for the political situation of the country.²⁸

After the London Summit, the NGOs decided to organize themselves to follow up with the London Declaration recommendations. In doing so, they set forth a new platform called “the Social Organizations Alliance.” The “Alliance,” as they usually call it, which gathers more than 150 NGOs from all over the country, became the main representative of the social organizations before the international community to discuss international cooperation programs.²⁹ In itself, this platform made it possible to achieve coherence and improve the level of communication with the international community. It also allowed the NGOs to gain political leverage and influence the content of cooperation programs, especially those relating to human rights. According to Gustavo Gallón:

“...And ever since the Alliance still goes on, their members get together every week and has reached to develop, to transform the nature of relationships between non governmental organizations and the international community that exists in Colombia. If we used to see the state government representatives from time to time, once per year, or twice... now we see each other every week. From that point, it was developed... an agenda of permanent discussion about cooperation in Colombia. This agenda focuses on two main aspects: cooperation as

²⁸ Ibid.

²⁹ Ibid.

such, regarding projects and policies, and the accomplishment on human rights recommendations.³⁰

The 24 countries that took part on the summit also created an informal organization, known as the “Group of the 24” or “G-24.” Despite the fact that this is an international relations space dominated by diplomatic language and states interests, over the past years the international community through the G-24 has played different roles. First, it represents a significant part of the international community, that is to say fifteen countries from the European Union and other countries around the world. This group has increasingly committed to human rights situations and victims’ rights in Colombia. Second, it became the mediator between the civil society organizations and the national government in the midst of a very polarized political confrontation. Finally, the international community played a significant role regarding the framing of the legal instruments for the demobilization of the paramilitary groups. In sum, the international NGOs, the international intergovernmental organizations and the international community have played a significant role during the framing process of mechanisms to protect victims’ rights. In the case of the international community, this aspect was evident in the summit of Cartagena in 2005. By the end of 2004, the Social Organizations Alliance and the Group of the 24 (G-24), promoted a new meeting in order to assess the accomplishments of the London Declaration. The new summit took place in Cartagena in February 2005. One of the purposes of the

³⁰ Interview with Gustavo Gallon, Director of the CCJ, Bogotá, April 6 and 21 2010. .

meeting was to discuss the response of the Colombian government to the representative of the United Nations High Commissioner Office for Human Rights (UNHCHR).³¹ It was clear the international community was concerned about the legal framework the government was supporting and the lack of inclusion of human rights standards. The international community assumed the topic of truth, justice and reparation should be one of the main components for international cooperation programs.

Human Rights Networks and the Vernacularization of the Discourse of Transitional Justice

By the beginning of the first decade of the century, the connections among the international community, the transnational and domestic human rights organizations, become more dense and active. If the relations with national and transnational actors, such as the transnational human rights NGOs, the intergovernmental organizations and the international community, intensified during the first decade of the century, a similar process occurred within the domestic organizations. Throughout this period, some existing organizations and new actors emerged in the scene. First, in addition to the existing human rights NGOs, new organizations emerged, introducing new elements on the discourse of human rights. Some existing organizations, such as the Social Foundation, and new organizations, such as Dejusticia and a branch of the International Center for Transitional Justice ICTJ, drew on international human rights law, comparative

³¹ Ibid.

law and constitutional law to shed light on the political debate and provide elements to design public policies on “justice, truth and reparation.” Second, grassroots organizations of human rights and victims also gained visibility claiming for the protection of victims’ rights. Some existing victims’ organizations such as ASFADDES, Reiniciar, the foundation Manuel Cepeda Vargas, and the emerging Movement of State Crimes Victims MOVICE raised awareness about the situation of the victims and gained a visibility that is more political. Third, former peace NGOs shifted their attention on the peace process with the FARC to the peace negotiations with the paramilitary groups and the debates on victims’ rights. For instance, some NGOs, such as Indepaz, Nuevo Arco Iris and the Women’s Initiative for Peace, also focused on the peace negotiation with the paramilitary groups and the victims’ claims for justice. Finally, different scholars and universities also promoted public debate about transitional justice and contributed to make more visible the voices of the victims and the situation of human rights in the country.

These forums made it possible to put together the transitional justice experiences from other countries, the experts on international human rights law and the victims’ organizations in Colombia (De Gamboa, 2006; Hoyos, 2007; Rettberg, 2005). All these organizations and spaces of public debate played an important role in the configuration of the legal frame emerging after the peace process with the paramilitary groups.³² They led a process of vernacularization of

³² Interviews with different human rights activists, Bogotá, October 2009-February 2010.

the language of transitional justice, in which they emphasized the components of international human rights standards (Merry, 2006).

The transnational and domestic human rights NGOs deployed different actions of information politics (Keck & Sikkink, 1998). They not only provided information to the international NGOs and intergovernmental organizations consisting on human rights reports, urgent actions as they usually did (Tate, 2007). In this perspective, the International Relations perspective suggested by Keck and Sikkink does not explain the impact on the domestic sphere. In fact, the human rights organizations, scholars and activists also introduced information about international human rights law and international standards on victims' rights of truth, justice and reparation. The domestic human rights NGOs and universities organized academic conferences and meetings promoting public debate about the topics of transitional justice and human rights standards. They brought international experts and activists from other countries to share the experiences of Argentina, Chile, El Salvador, South Africa, and Northern Ireland, among others (De Gamboa, 2006; Hoyos, 2007; Rettberg, 2005). The language of transitional justice, international human rights law and truth, justice and reparation seemed to penetrate the political and social sphere. This was also a period of significant political debates, even within the human rights NGOs and victims' organizations. However, this process of vernacularization (Merry, 2006) of "transitional justice" and victims' rights did not imply a consensus about the content or meaning of that language (Goodale & Merry, 2007; Speed, 2009).

Some human rights activists and victims' organizations were very critical about the peace negotiations with the paramilitary groups and embraced maximalist views on retributive justice. Drawing on Ruti Teitel's (2000) conceptual work, there is a group of human rights organizations and activists that are closer to what Teitel defines as an idealist perspective on human rights. It is a normative perspective according which the political relations ought to submit to the international human rights law principles. According to this approach, these human rights organizations rejected any possible political negotiation with the paramilitary groups and claimed for high retribution for all the paramilitary members. For instance, regarding the peace negotiations, some prominent activists, such as the Jesuit priest Javier Giraldo said that it was not a real political negotiation to the extent there was not conflicting interests and views between the parties involved. For Father Giraldo, both the paramilitary groups and the state government shared the same goals and interests (Giraldo, 2003).

Other activists insisted that the paramilitary members were not political deviants. According to this approach, the very idea of a political negotiation with the paramilitary groups was unacceptable. These groups were the perpetrators of crimes against humanity, such as the genocide of the Patriotic Union members, the disappearance and murder of thousands of political and social activists and the ones who generated the massive displacement of more than three million people. As such, a legal framework ought to emphasize the claims of justice and victims' rights. In this regard, the more critical human rights NGOs considered it was necessary to introduce legal mechanisms imposing measures of accountability

that guaranteed a proportional punishment with the harm the paramilitary had caused. These NGOs also demanded full disclosure of truth in order to know about the whereabouts of the disappeared people, why did they disappear and kill people, and who were the persons who ordered those crimes. They also demanded creating mechanisms of integral reparation and measures to avoid repetition of violence in the future.

For most of the human rights activists “transitional justice” was a new concept but at the same time a very suspicious term. For them, the term “transitional justice” was part of the official rhetoric that attempted to create the idea that there was a “political transition” and that the Colombian society was facing a situation of “post-conflict.” From the beginning of the debates about transitional justice, the more critical human rights organizations contested the idea of naming political transition the peace process with the paramilitary groups.³³ For most of the human rights activists, a transition would imply at least three elements: first, the inclusion of all the armed groups in the peace process, that is to say the FARC and the ELN, second, a thorough demobilization and cease fire, and third, a substantive political transformation. Most of the human rights and NGOs agreed that the Colombian case was not an experience of political transition. However, part the content of the transitional justice discourse, such as the concepts of victims’ rights has been very well received and appropriated. Actually, for the human rights and victims’ organizations, the claims for justice, truth and reparation has become an important incentive for their social

³³ Interviews with different human rights activists, Bogotá, October 2009-February 2010.

mobilization.³⁴ The divergence about the language illustrates how the political and legal actors struggle also to narrow down or widen the meanings of terms, such as human rights, justice, reconciliation or transitional justice (Bourdieu, 1997; Goodale & Merry, 2007; Tate, 2007; Speed, 2009).

Other human rights and peace NGOs adopted an intermediate perspective between higher retribution and accountability, and forgetfulness and forgiveness. For some of the activists that came from peace NGOs, it was not possible to carry out fully the claims of retributive justice for more than 35,000 paramilitary members and impose a harsher punishment on them. Given the political circumstances, it was necessary to negotiate with the paramilitary groups and balance the incentives for demobilization and the claims of justice as well. For some peace activists that were demobilized, such as members of former guerrilla groups, they could not reject the political negotiations because they came from peace negotiations as well. For instance, a member of a peace NGO that was founded after the demobilization of a dissident branch of the National Liberation Army (ELN) sustained *that* “we could not oppose to the peace negotiations with the paramilitary groups because we also come from a peace negotiation with the government”.³⁵ Regardless, they claimed that any negotiation at any price was not acceptable. For them there ought to be some level of retribution, and higher levels of truth and reparation.³⁶

³⁴ Ibid.

³⁵ Interview with a member of Corporación Nuevo Arco Iris, Bogotá, September 30 2009. .

³⁶ Ibid

In addition to the political arguments, some human rights NGOs, such as Fundación Social and Dejusticia, drew on international comparative experiences to make the argument that any political negotiation ought to respect the international treaties on human rights law and humanitarian law. These organizations were critical in the role of introducing the concepts of international standards on human rights, such as the international declaration against impunity (Botero, 2004; Botero and Restrepo 2005; Joinet 1997). They also argued that it was necessary to draw an intermediate way out to solve the contradiction between the political needs of peaceful coexistence and the social demands for justice. In this perspective, it was a moral imperative to respect the hard core of moral principles and the international human rights standards on victims' rights, but at the same time, it was also socially relevant to solve the political conflict. For instance, Rodrigo Uprimny, a former Justice of the Constitutional Court and director of Dejusticia, made a comparative study on different experiences on transitional justice. Based on these experiences he suggested exploring mechanisms of "compensatory forgiveness" and "accountable forgiveness", that is to say intermediate mechanisms that would facilitate demobilization and, at the same time, meet international standards on truth, justice and reparation (Uprimny, 2006).

In any case, both the maximalist and the moderate approach on human rights and transitional justice shared the common view of pursuing and protecting victims' rights and were at odds with the "Alternative Punishment Draft" bill proposed by the government. If the maximalist view on justice rejected any

political negotiation and claimed the highest standards on victims' rights, the government's bill seemed to be the expression of a maximalist view on the opposite side. For the paramilitary commanders and the government, the bill attempted to emphasize the pursuit of peaceful coexistence and the incentives for demobilization, such as the guarantee of no extradition, no prison, and voluntary based disclosure of truth and reparation. For the paramilitary commanders, they were also victims who had suffered violence perpetrated by the guerrilla groups. They argued that they were political actors and deserved to be granted the same legal treatment that the leftwing guerrilla groups received in the past. They also insisted they should not be treated as criminal or terrorist but as the heroes that had saved the country from the guerrilla threats (International Crisis Group, 2004). The government in its turn, affirmed that it was necessary to look forward and think about the possibility of deactivating violence. In sum, there were at stake different political discourses that entailed different political goals and interests, as well as contesting meanings on terms such as justice, reconciliation, human rights and transitional justice (Bourdieu, 1997, Goodale & Merry, 2007). In the following parts of the chapter, I will give account of how the human rights networks tried to influence the law making process and introduce the language of victims' rights in the legal framework of the paramilitary demobilization.

The Alternative Punishment Draft and the Introduction of the Language of Truth, Justice and Reparation

Between 2004 and 2005, contesting what they called a project of impunity and legalization of paramilitary groups, different transnational and domestic NGOs took advantage of the debates in Congress about the bills introduced by the government. At the beginning of Uribe's administration, the government and the National Congress promoted the enactment of the law 782 of 2002 in order to extend an existing legal framework used during previous peace processes. This legal framework would be favorable to the roughly 20,000 paramilitary members as long as they were not indicted or convicted for gross human rights violations. The problem the government and paramilitary commanders faced during the peace negotiations, however, was that this legal framework did not address gross violations of human rights (Fundación Social, 2006). In August 2003, the national government, through the Minister of Internal Affairs, Fernando Londoño Hoyos, introduced a new bill to the Congress called Alternative Punishment Draft. It was contradictory that a government, which advocated for security and tough policies on "terrorism" introduced a bill whose motivations emphasized the political need for amnesty and reconciliation. In doing so, the government drew on historical and international experiences of political negotiations and amnesties as successful experiences of peaceful coexistence, such as the Good Friday Agreement in 1998 between Great Britain and Northern Ireland. In addition to this argument, the government also co-opted critical perspectives in criminology such as abolitionism and restorative justice to favor the new allies. For the government,

“The bill addresses a restorative justice conception that overcomes the identification of punishment with vengeance that characterizes a discourse in which the main goal is to react against the deviant causing a similar pain he has inflicted on the victim, and only as a secondary goal, to search for non repetition (prevention) and reparation for victims. It is important to take into account that by doing justice the Law aims at reparation instead of vengeance. Given the evidence that prison, as the only response to crime, has failed in many cases to commit the goal of resocialization of criminals, the contemporary criminal law has moved forward in the topic of alternative punishment” (Congreso de la Republica, 2003. Own translation).

The content of the bill focused especially on the incentives for demobilization, such as the proceedings, the conditions for granting the incentives, and the alternative punishment (Congreso de la Republica, 2003). It also vaguely mentioned victims’ rights but those rights were void of any content. It was evident this was not the main purpose of the bill. According to the Alternative Punishment Draft, the paramilitary commanders who were sentenced for committing gross violations of human rights might be granted an alternative punishment. This alternative punishment consisted of different restrictions, barring such individuals from bearing arms or running for public office.

Importantly, it did not impose any prison sentence or create any obligation to confess their actions. The following chart summarizes the main content of the bill.

Chart No. 1: Governments’ bill and reaction of the human rights networks

	Justice	Truth	Reparation	Institutions
Regulation	<p>Alternative Punishment consisting: conditioned freedom</p> <p>Restrictions -To be public functionary -To run for office -To have and carry guns -To live in specific places -To approach and communicate with the victims -Geographic restriction of freedom</p> <p>The Punishment can be suspended and submitted to probation from 1 to 5 years.</p>	<p>Collaboration to clarify the facts related to the conflict</p> <p>Information that contribute to the deactivation of armed groups.</p>	<p>Reparation of victims according to existing laws.</p> <p>Social work to recovery of the victims</p> <p>Active collaboration with institutions focused on social work and the recovery of the victims.</p> <p>To give away assets to the state to victims’ reparation.</p> <p>Collaboration</p>	<p>There is a special Unit of the Attorney General Office that carry out the criminal investigation</p> <p>The President decides who deserves to be granted the incentives</p>
Observations from human	Manipulation of restorative justice	Very low standards on truth	Very low Standards on reparation	Discretionary power of the President to

rights organizations	No accountability Impunity	disclosure		define who deserves to be granted the incentives
-----------------------------	-------------------------------	------------	--	--

From the outset, the political debates reflected a growing political polarization about the Alternative Punishment Draft within and outside the National Congress. Initially, the debates within the National Congress focused on the convenience of the demobilization, disarmament and reintegration process; however, some Congress members introduced concerns about ethical and international human rights standards (Fundación Social, 2006). Likewise, different social organizations raised their voices against the bill. NGOs such as the International Crisis Group, ASFADDES, the Colombian Commission of Jurists, and the Manuel Cepeda Vargas Foundation, manifested their discontent with the bill arguing that it was a project did not take victims' rights seriously and it was rather a project of impunity (Botero, 2004; Gallón, 2004; Fundación Social, 2006). One of the reactions that captured the attention of public opinion was a statement by the representative of the United Nations High Commissioner Office for Human Rights (UNHCOHR) that the bill did not guarantee the victims' rights of truth, justice and reparation. According to the UNHCOHR representative,

“The Office highlights that every initiative on this topic must put together the pursuit of national reconciliation with the committed respect for the victims of human rights and humanitarian law violations.

“There is no compatibility between the above mentioned rules and principles and those provisions that attempt to promote impunity. That is the case of legalizing the situation in which the perpetrators of international crimes, such as war crimes and crimes against humanity are not properly punished in proportion to the seriousness of the facts. It is also the case in which these perpetrators are granted with pardons regardless the efficacy of victims’ rights” (UNHCOHR, 2003 Own translation).

Two different political perspectives reflected the level of political polarization. On one hand, the government and paramilitary groups advocated a legal frame that maximized the pursuit of peaceful coexistence and reconciliation. This perspective did not demand accountability for gross violations of human rights. On the other hand, the human rights NGOs demanded a legal frame that included a higher level of retribution for all the perpetrators of human rights violations. An example that illustrates the level of polarization and tensions between the political needs and the legal and ethical values was the government’s reaction to the UNHCOHR representative’s statement. According to the Minister of Internal Affairs, Fernando Londoño, the statement was a manifestation of an orthodoxy that restricted the possibilities of reaching peace in Colombia. The

paramilitary commanders also wrote a press release saying they were not opposed to the rights of truth, justice and reparation, but that those rights also ought to be respected for those who were taking part in the peace process (Fundación Social, 2006).

The peace process with the paramilitary groups slowly moved from the negotiation table to the National Congress. In doing so, it shifted from the closed space of political negotiation between the government and the paramilitary commanders, to a public forum that made it possible, to some extent, to include other voices and perspectives. The new scenario, however, was not highly promising in terms of the quality or the transparency of the debate for a number of reasons. First, the majority of Congress members were also part of the government coalition. Second, it is now becoming evident that some Congress members not only sympathized with the paramilitary groups' rhetoric, but they were also linked to those organizations. Actually, some paramilitary cadres met with Congress members to discuss the content of the legal framework.³⁷ Nevertheless, the National Congress was, to some extent, a space for public debate about the peace process and the need to protect victims' rights. By the beginning of 2004, the Congressional Peace Committee set forth a cycle of hearings in order to discuss the phenomenon of paramilitary groups in Colombia. By April 2004, the Peace Committee had scheduled hearings to listen to the opinions and perspectives of international experts on human rights. Representatives from different NGOs and international organizations, such as the

³⁷ By the end of 2008, 59 congress members and more than 300 functionaries in the country were indicted because of their alliances with paramilitary groups. See www.verdadabierta.com.

UNHCOHR representative, Michael Fruhling, and the director of Americas Division of Human Rights Watch, Jose Manuel Vivanco, took part in the hearings. Both of these experts insisted on taking the rights of truth, justice and reparation seriously. Vivanco also maintained that, according to the human rights law, a peace agreement that does not consider the victims' rights is inadmissible. He also brought up decisions taken by the Inter American Human Rights (IAHR) Court in which amnesties were deemed inadmissible in cases of gross violations of human rights. For Vivanco,

“The serious thing, in my opinion, is that under the subterfuge of Alternative Punishment the government, in August of the past year, intended to hide its attempt to guarantee impunity on war crimes and crimes against humanity, among other serious crimes. The majority of paramilitary commanders and leaders who are seeking for negotiations with the current government are the ones who are responsible for those crimes” (Vivanco, 2004 Own translation).

Due to the pressure of human rights networks (Khagram, Riker & Sikkink, 2002; Keck & Sikkink, 1998), some Congress members introduced modifications to the original draft such as provisions that included victims' rights. Once the sessions formally started in April 2004, Congress accumulated all the bills related to the topic of the peace process, yet, in practical terms, the discussion focused primarily on the Alternative Punishment Draft. The amendments also included the

creation of a special court and a specific unit in the office of attorney general tasked with working toward truth, justice and reparation (Fundación Social, 2006). The Congress also introduced more requirements to grant incentives for demobilization and established an alternative punishment, a prison sentence from 5 to 10 years. The introduction of these changes provoked a negative reaction among the paramilitary commanders who insisted they did not deserve any accountability or prison punishment. By June 2004, the government and its Congress allies decided to withdraw the bill and put off the discussion of the legal framework until the following term.

The Struggles to Introduce the Discourse of Truth, Justice and Reparation in Congress

By the second half of 2004, the National Congress had not formally debated any of the bills related to the peace process or victims' rights. During this time, the tensions among different actors intensified in the political arena. The human rights organizations continued to show their discontent with the Alternative Punishment Draft and raised awareness about the ethical and legal constraints on the peace negotiations. Different NGOs and scholars contributed, not only to introduce the language of truth, justice and reparation, but also to enhance a public debate on the ongoing process with the paramilitary groups (Goodale & Merry, 2007). These activists and scholars promoted public discussions, organized academic conferences and started publishing books about

international experiences of transitional justice and international human rights law standards.³⁸

The NGOs did not have a coordinated and planned strategy to overcome the hegemonic support within the National Congress for the Alternative Punishment Draft. Instead, the NGOs deployed a varied set of autonomous and dispersed actions of political mobilization such as lobbying and information politics. Some NGOs, such as the CAJAR and the recently-created Victims Movement of Victims' Crimes –Movimiento de Víctimas de Crímenes de Estado, MOVICE-, built coalitions with some Congress members, particularly Piedad Cordoba, to introduce a progressive bill of truth, justice and reparation (Fundación Social, 2006). Other NGOs, such as the Social Foundation, preferred to exert influence on Congress members by means of organizing academic forums with international and national experts about these topics. For the Social Foundation, it was critical to invite key Congress members to these academic meetings so that they would take informed decisions.³⁹ Other NGOs, such as the Women's Initiative for Peace –Iniciativa de Mujeres por la Paz IMP-, tried to influence some members of the majority coalition in order to, at least, ensure minimum protections for women victims' rights.⁴⁰ Finally, the CCJ and the Social Foundation followed up all the sessions and Congress debates to keep the human

³⁸ Interview with Antonio Madariaga, head of Viva la Ciudadanía, Bogotá, February 8 2010.

³⁹ Interview with Paula Gaviria, director of the Human Rights Program at the Social Foundation, Bogotá, February 5 2010.

⁴⁰ Interview with a former member of Iniciativa de Mujeres por la Paz, Bogotá, February 4 2010.

rights networks informed about the evolution of the debates and keep records that would support any constitutional action against the Congressional law.⁴¹

During this period, certain events exacerbated the tensions between the parties and intensified their polarization. One of the events that sparked political debate was the invitation of some paramilitary commanders to speak before the House of Representatives on July 2004 (Semana No1161, 2004). Two representatives, both conspicuous supporters of the paramilitary groups, invited the paramilitary commanders to voice their concerns about the legal framework. On July 24, three paramilitary commanders addressed the Congress insisting on the counter insurgent rhetoric and portraying the paramilitary groups as the response to the inefficacy of the state. They also highlighted their “heroic” effort to save the country and advocated for a legal framework that led to reconciliation and forgiveness. Once they gave their speeches, they went out of the room without the intention to listen the Congress members (Semana 1161, 2004). This visit sparked much controversy and human rights activists, the international community, the victims’ organizations and some Congress members –the minority- manifested their strong discontent. At the same time the paramilitary commanders were giving their speech before the House of Representatives, only two victims’ family members could enter the Congress building and showed up in the balconies. While one of the commanders started his speech, Iván Cepeda - director of the Manuel Cepeda Foundation- and Lilia Solano –director of the Justicia y Vida foundation - showed the pictures of those relatives who had been

⁴¹ Interviews with different human rights NGOs members, October 2009-February 2010.

murdered by the paramilitaries (Semana 1161, 2004). Other victims' relatives demonstrated in front of the Congress building claiming for justice and enduring the insults of paramilitary supporters.⁴² Some Congress members who had been part of the government's coalition, such as Rafael Pardo and Gina Parody, as well as some Congress members from the leftwing party, expressed their discontent with the invitation of paramilitary commanders to the National Congress (Semana 1161, 2004).

In addition to these reactions, a group of Democrat Senators from the United States sent a letter to President Uribe. In it, they expressed concerns about the Colombian government's reluctance to follow the recommendations made by the UNHCOHR representative. They were also worried about the weakness the government was showing in the peace negotiation with the paramilitary groups. President Uribe answered the letter, insisting on the advantages of the peace process and the exceptional characteristics of the links between paramilitary groups and armed forces members (Fundación Social, 2006). Over the following months, other responses to the peace process with the paramilitary groups emerged. Human rights NGOs documented various cases of murders and violations of the cease-fire agreement. Some grassroots organizations, NGOs and the UNHCOHR representative demanded the end of violence against the indigenous population (Fundación Social, 2006). In addition, Senator Gustavo Petro, a member of the left-wing party Polo Democrático Alternativo, led a debate

⁴² Interview with members of MOVICE, Bogotá, February 17 2010. .

in Congress to denounce the linkages between the state security forces and the paramilitary groups.

By the end of 2004, numerous international and domestic actors had demanded the enactment of a legal framework to facilitate the process of demobilization. For instance, the OAS, the Inter American Human Rights (IAHR) Commission, and different European governments considered it critical to enact a new legal framework as long as it was respectful of victims' rights (Fundación Social, 2006). It became evident that a legal framework was required to transform the political conflict; however, the content should not be restricted to the pursuit of peaceful coexistence but also provide a response to the social and ethical demands of justice. Within Congress, a group of members led by Uribe's former allies Rafael Pardo and Gina Parody and a group of Congress members that made part of the opposition party started drafting a new bill. Initially they attempted to agree with the government about the content of the draft. However, while this group attempted to introduce higher standards on victim's rights, the government insisted on lowering the standards (Semana No. 1188, 2005).

Meanwhile, pressure from the human rights networks and the international community became more explicit within the space of the Cartagena Summit in February 2005. By that time, relations between the government and the NGOs were deteriorating and had become distant.⁴³ Responding to this situation, the Alliance of Organizations and the G-24 promoted a meeting to advance the commitments of the London Declaration. For the Alliance of Organizations, one

⁴³ Interview with Antonio Madariaga, Viva la Ciudadania, Bogotá, February 8, 2010.

of the main concerns was the current situation of human rights in the country. The international community was also concerned about the government's response to the UN recommendations regarding the Alternative Punishment Draft. For the Cartagena Summit, the government announced it would show the international community a new bill that guaranteed the respect of international standards of victims' rights. In reality, according to the human rights activists, the new version adopted the same structure and the main ideas of the Pardo-Parody Bill (Semana 1188,2005). This shift was generally well received by the international community and the human rights networks.⁴⁴ It seemed that the government was moving forward to recognize victims' rights.

However, the government's shift toward the inclusion of a more substantial of victims' rights did not last long. It was useful enough to get the support from the G-24, but a few days later the government was involved in an internal debate. It became evident there was a divide within the government that also affected communication with the National Congress. On one hand, Sabas Pretelt, the Minister of Internal Affairs, whose team had worked jointly with Pardo and Parody by the end of 2004, supported a bill that was closer to the Pardo-Parody bill. This bill kept the incentives for demobilization (Fundación Social, 2006). On the other hand, Senator Armando Benedetti, a member of the government coalition, drafted a bill that included the provisions suggested by the High Commissioner of Peace, Luis Carlos Restrepo. This bill included even more generous provisions and expanded the condition of the political criminal for those

⁴⁴ Interviews with members of the CCJ and Fundación Social, Bogotá, October 2009-February 2010.

who were part of a paramilitary group. The purpose of this bill was to provide amnesties and pardons to demobilized paramilitary members (Fundación Social, 2006). The following chart depicts some of the main contents of the bills.

Chart No. 2: Comparison of the three main bills discussed in Congress

	Pardo-Parody Bill *	Ministry of Internal Affairs Bill **	Peace Commissioner – Benedetti Bill ***
Incentives	-Reduced punishment -Just for collective demobilization.	-Reduced punishment -Just for collective and individual demobilization -The defendant does not lose the incentives in case of omission or false declarations.	- Paramilitary members are considered political criminals. This fact implies: -No extradition -Amnesty -No restriction for public service
Truth	-Full Confession -In case of omission or falseness the defendant loses the incentives.	-Full Confession is not required. -In case of omission or falseness the defendant loses the incentives.	-Free version -No obligation to confess -Collaboration in criminal investigation about the facts he/she was involved.
Justice	-5 to 10 years of prison	5 to 10 years of prison	5 to 10 years of prison
Reparation	-The National Committee for Reparation sets forth a plan for integral reparation of the victims. Reparation Fund comprised by demobilized paramilitaries' assets	-The National Council for Reparation design policies on reparation. -Reparation Fund comprised by demobilized paramilitaries' assets	-Reparation Fund comprised by demobilized paramilitaries' assets that come from illegal activities.
Institutions	-Special Unit of the	-Special Unit of the	-The president is

	Attorney General Office -Tribunal for Truth, Justice and Reparation -National Committee for Reparations	Attorney General Office -Tribunal for Truth, Justice and Reparation -National Council for Reparations	the one who decides to grant incentives.
--	---	---	--

* Gaceta del Congreso No 27 2005

** Gaceta del Congreso No 43 2005

***Gaceta del Congreso No 50 2005

By the beginning of 2005, nine bills reflected the different perspectives of the political spectrum. Out of those nine bills, Congress only concentrated on the three bills described in the chart. However, in Congress, the chief bill speaker Senator Mario Uribe integrated the two bills supported by the Ministry of Internal Affairs and the High Commissioner of Peace.⁴⁵ The new version kept the incentives for demobilization. Regarding the disclosure of truth, it did not require full confession but rather allowed for a voluntary declaration. Regarding accountability, the bill set forth an alternative punishment of between 5 and 8 years imprisonment, including the time they spent in the negotiation camp. Finally, the bill attempted to create a reparation fund to be made up of demobilized properties. The bill restricted reparation, making it a responsibility of the demobilized paramilitary members (Fundación Social, 2006). Unlike the new bill, supported by the government, the Pardo-Parody Bill was the outcome of a coalition between different political sectors, such as the liberal party, former members of the government coalition and members of the leftwing party. In

⁴⁵ Mario Uribe, cousin of Alvaro Uribe was sentenced in February 2011 by the Supreme Court because of his linkages with paramilitary groups.

general terms, it attempted to create stronger mechanisms of accountability and recognition for victims' rights. First, it required full confession for the demobilized paramilitaries and imposed sanctions against those who totally or partially omitted information in the confession of their crimes. Regarding retribution, the Congress members who led the bill lowered the standards and established an alternative punishment of prison between 5 and 8 years. Finally, regarding reparation, the bill created a reparation fund that would pool not only the properties of the demobilized paramilitaries but also those of the government (Fundación Social, 2006:141).

New social reactions emerged. Paramilitary commanders manifested their disappointment with the government initiative and asked the government and the senators to withdraw it. According to the paramilitary commanders, the bill failed to meet their requests such as the stipulation that no extraditions and no prosecution in international trials would be pursued. Ernesto Baez, one of the commanders, wrote a press release saying the AUC was willing to promote a referendum in case their requests were not included in the new legal framework (Fundación Social, 2006). At the same time, the international community also manifested its discontent with the government's bill. For instance, the UNHCOHR representative highlighted that the bill the government introduced to the National Congress was different from the one presented to the international community at the Cartagena Summit. In addition to these reactions, the International Criminal Court Prosecutor also raised his concerns about the investigations of members of armed groups in Colombia (Fundación Social,

2006). Despite the expressions of discontent from the international community and human rights organizations, the majority of Congress members supported the government's bill and revived the status of political criminals for the paramilitary members. The bill passed without major resistance in June 2005. Once this Peace and Justice Law was passed, different reactions emerged in the political arena. Diverse transnational and domestic human rights organizations, such as Human Rights Watch, Amnesty International, the United Nations, the Colombian Commission of Jurists, the National Movement of State Crimes (MOVICE), and Viva la Ciudadania, among others, raised their voices in discontent. Meanwhile, the government started a national and international campaign to explain the advantages of the peace process and the legal framework recently enacted (Fundación Social, 2006).

Strategic Litigations and Resistance through Law

Some of the actions of political mobilization, such as establishing transnational advocacy networks, doing information politics and attempting to get political influence over the National Congress, allowed human rights NGOs and victims' organizations to gain political leverage (Keck & Sikkink, 1998). As they gained support from the international community, they were also able to introduce ideas about victims' rights into the political arena (Goodale & Merry, 2007; Tate, 2007). These organizations understood the actions of political mobilization had limitations and that the National Congress was not the most promising venue to promote a progressive perspective of victims' rights protection. The legal field in

Colombia, is not a space of homogeneity and consensus, especially considering a context of political polarization (Bourdieu, 1997). Instead, to some extent, the legal field reproduced the political tensions between the perceived political needs of peaceful coexistence and the ethical and legal imperatives of justice. The legal field has been a space in which the human rights networks could deploy different strategies to challenge the force of political actors and the project of impunity. Given the circumstances, it seemed the Courts offered the possibilities to challenge the constitutionality of the Justice and Peace Law and struggle to introduce what Kieran McEvoy describes as thicker conceptions of human rights standards (McEvoy, 2008). In this case, the more substantial conception of victims' rights rests on the incorporation of international human rights law standards (McGregor, 2008).

Once the Peace and Justice Law was enacted, human rights NGOs, such as the CAJAR, the MOVICE, and the CCJ, filed actions before the Constitutional Court. The Constitutional Court accumulated the files and selected the one presented by the CCJ as the leading file. The CCJ lawyers had taken longer to carefully elaborate the arguments and face the challenges that entailed this action. For the CCJ lawyers that wrote the constitutional action, the goal was to strike down the regulation or, at least, to get the Court to limit the privileges and incentives of the demobilized paramilitaries and widen the scope of victims' rights. Doing so meant responding to different challenges. First, the constitutional action was especially challenging because the constitutional flaws of the law were not explicit or obvious. Some of the contents of the "Justice and Peace Law," such

as the incentive for the demobilized paramilitaries and the brief terms for the judicial proceedings, might be considered a manifestation of the ordinary exercise of the regulatory competence of the Congress. The unconstitutionality of the law rested on its contradiction of constitutional principles. This fact demanded a careful process of argumentation and required lawyers to take on a pedagogic role in order to illustrate how the application of the law might affect victims' rights. Second, in order to protect victims' rights of truth, justice and reparation, the lawyers thought they should not restrict the debate to the contradiction between constitutional norms and the Justice and Peace Law. They had to show that according to the constitution it was necessary to include the international human rights law standards. From this perspective, the lawyers supported their arguments by drawing on different sources of international human rights law, such as international treaties approved and signed by the Colombian state, Inter American Human Rights Court decisions, and comparative law. Finally, the lawyers took advantage of the documentation generated as that the CCJ had followed the debates and proceedings that led to the enactment of the Justice and Peace Law. This rigorous documentation made it possible to introduce clear evidence about the irregular revival of the provisions that recognized the category of political criminals to the paramilitary groups.⁴⁶

In addition to the arguments provided by the lawyers who filed the constitutional action against the Justice and Peace Law, different transnational human rights NGOs presented amicus curie briefs. Some NGOs, such as the

⁴⁶ Interview with a former lawyer of the CCJ, Bogotá, September 2009.

International Center for Transitional Justice (ICTJ), the International Commission of Jurists, the Human Rights Committee, and the International Confederations of Free Trade Unions (CIOSL), provided solid arguments based on international law and comparative experiences of transitional justice (Constitutional Court C-370 2006).

After several months of speculation and debate, the Constitutional Court upheld the Justice and Peace Law. The decision rested on the Court's determination that the law represented an intermediate path in a context of political polarization (Laplante & Theidon, 2007). The Constitutional Court did not accept the argument that the alternative punishment was a masked amnesty and that the whole regulation was a system of impunity. However, the Court did strike down some of the core provisions of the law. The Court drew on the claimant's arguments that international human rights treaties, decisions, and standards concerning victims' rights were binding for the Colombian state. For the Court, the constitutional problem was a tension between two values protected by the constitution: on the one hand, the pursuit of peaceful coexistence and, on the other hand, the rights of truth, justice and reparation. For the Court, none of these values were absolute and exclusive. In order to guarantee the coexistence of both the pursuit of peace and the protection of victims' rights, it was necessary to balance them. The Court accepted that it was legitimate and constitutional to introduce measures reducing punishment in order to facilitate the demobilization of paramilitary forces. However, there was no reason to neglect the recognition and protection of victims' rights. The Court struck down the provision that

expanded the category of political criminals to paramilitary groups and restricted some incentives granted to the demobilized paramilitary members. The Court also widened the victims' rights and requested full confession of paramilitary crimes (Constitutional Court C-370 2006). The following chart shows how the legal framework changed from the first bill the government drafted in 2003 and the Constitutional Courts decision in 2006.

Chart No 3: Transformation of the Government's initiative

	Alternative Punishment Draft (2003-2004)	Peace and Justice Law (Before Constitutional Court Decision 2005)	Justice and Peace Law (After Constitutional Court Decision 2006)
Incentives	-Generous Incentives -Probation- Alternative Punishment	-Generous incentives -Reduced punishment -Paramilitary actions are considered political crimes, such as sedition. -Entitled to be granted amnesties and pardons.	-Reduced incentives -The Court struck down the provision that allowed the paramilitary members to be granted amnesties and pardons for committing sedition.
Truth	-Voluntary Based Collaboration	-Free version -Non mandatory Confession -Victims' rights to take part in the process are reduced	-Mandatory Confession -Victims have the right to participate in the judicial process.
Justice	-Probation	-5 to 8 years of	-5 to 8years of

		prison Including the time of the peace negotiation at Santa Fe de Ralito	prison It does not include the time of peace negotiation at Santa Fe de Ralito
Reparation	-Reparation Fund comprised by demobilized paramilitaries' assets	-Reparation Fund comprised by demobilized paramilitaries' assets	-Reparation Fund comprised by demobilized paramilitaries' assets

The Court's decision brought about an immediate social and political impact. As soon as the decision was publicly known, a new crisis emerged between the demobilized paramilitaries and the government. For the paramilitary commanders, it was the end of the peace process. The government and the demobilized commanders met with legal advisers in order to analyze and then come up with a way to resolve the situation. Statements were also issued blaming the Constitutional Court and human rights NGOs for the failure of the peace process and portraying them as enemies of the pursuit of peace. In order to protect the Constitutional Court from the political reaction, the human rights networks also took part in the debate providing support to the Constitutional Court.⁴⁷ Here, they emphasized how the decision was not a political conflict between the government and the Court but rather a legal conflict between a Congressional law and the Constitution. For human rights NGOs and the international community, it was a promising decision. Although some NGOs expected a more progressive decision in favor of victims' rights, there was a level of relief and satisfaction.⁴⁸

The decision represented a radical shift of the legal frame. The Constitutional

⁴⁷ Interview with a former lawyer of the CCJ, Bogotá, September 2, 2009.

⁴⁸ Interview with different human rights activists, Bogotá, September 2009-February 2010.

Court's decision provided new legal tools for victims' rights and it translated the social demand of justice into a language of rights.

Conclusions

This chapter attempted to give account of the contested process of shaping the legal framework that came during the demobilization process of the paramilitary forces in Colombia and led to the enactment of the "Justice and Peace Law." In the midst of a political context characterized by the hegemonic discourse of security and a high level of public support for the Alvaro Uribe administration, the human rights networks managed to resist the government's attempt to set forth a legal framework based on alternative punishment that maximized the pursuit of forgiveness and forgetfulness. The chapter also gave accounts of different struggles and actions that have impacted both the macro-level of the political debates and the institutional design. On one hand, the human rights networks deployed tactics of political mobilization, intensifying the alliances with transnational NGOs and the international community in order to gain political leverage in the international arena. Here, the aim was to produce a "boomerang pattern", to get the international community to exert pressure on the Colombian government to introduce international human rights law standards on victims' rights (Keck & Sikkink, 1998). However this pressure was not restricted to the international relations and the international forums. It took place in spaces of new forums of international cooperation programs and the direct dialogue with the international community and the intergovernmental organizations in

Colombia. This was especially visible in the context of the London-Cartagena Process. In this regard the human rights networks also played an important role in the domestic political arena, specifically by doing information politics, introducing the language of international human rights law and lobbying before the National Congress accept constraints on political negotiations (Goodale & Merry, 2007; Tate, 2007)

Human rights advocates became the actors who incorporated the language of victims' rights, assigned new meanings to victims' rights and struggled against the manipulative use of transitional justice (Goodale & Merry, 2007; Speed, 2009; Uprimny & Saffon, 2007). The new discourse of victims' rights also helped make victims visible as new political and social subjects. By means of practices of informative and symbolic politics, the networks introduced and positioned the language of truth, justice and reparation, and generally, victims' rights, in the political arena. Moreover, there was a moment in which the dialogue with the international community and the domestic political debates intertwined. The international community and domestic NGOs influenced the National Congress to accept, at least formally, the language of truth, justice and reparation.

The tension between the political needs of reconciliation and the moral and legal principles of justice was resolved, though the logic used to do so differed between the political and legal fields. In the political field, the elites who advocated for the pursuit of reconciliation and forgiveness had higher political capital and relied on majority rule (Bourdieu, 1997). However, the hegemony of the discourse of security in the national arena did not prevent domestic human

rights NGOs from gaining important political leverage in the transnational field by means of the human rights networks and the support of the international community (Keck & Sikkink, 1998; Khagram, Riker & Sikkink, 2002).

The human rights networks efforts did not restrict the language of transitional justice and victims' rights. Instead, the human rights organizations advocated for a thicker version of victims' rights and opposed thin conceptions promoted by the government coalition (McEvoy, 2008). These struggles were fought in part in the political arena of the National Congress but mainly in the legal space of the Courts. Strategic litigation against the Justice and Peace Law and the Constitutional Court decisions brought about a turning point, emphasizing the tension between those who advocated for the political needs of reconciliation and forgiveness and those who claimed higher standards on accountability. The Constitutional Court transformed the terms of the debate and moved it from the zero sum logic that prevailed in the political arena to the legal constructivist view according which there was a tension between principles (Teitel, 2009). But this Court mediation also created a political and social impact. On one hand, it transformed the content of the legal framework and defended a thick version of victims' rights and, on the other hand, it empowered victims by means of transforming their claims by giving them the status of constitutionally protected rights (McGovern, 2008).

CHAPTER 5

HOPE AND FRUSTRATION: CONTEMPORARY VICTIMS'

DISCOURSES OF RESISTANCE AND STRUGGLES FOR REPARATION

Over the past decade the human rights networks, comprised of international and domestic human rights NGOs, grassroots and victims' organizations, articulated their actions to claim justice for the victims of human rights violations. These networks encouraged social and political mobilization to express solidarity with the people who survived the heinous violations of human rights perpetrated by the armed groups, such as the leftwing guerrilla groups or the rightwing paramilitary forces. New victims' organizations, motivated by the spreading discourse of victims' rights, emerged and integrated with the existing human rights networks. A variety of victims' groups gained a social visibility they had never had before in recent Colombian history and attempted to consolidate themselves as new social actors capable of having influence in the public sphere.

In this chapter, I argue that during the second half of the past decade, human rights NGOs and the victims' organizations and movements played a critical role in the public debate on the legal frame for victims' reparations. The human rights and victims' organizations and movements not only raised awareness about the situation of the victims, but also constructed a discourse of victims' rights that provided more substantial versions of reparations (McEvoy, 2008). I sustain that this discursive construction draws on different influences and practices, on the one hand, the influence of transnational discourse of human

rights (McGregor, 2008), and on the other hand, the participation of the victims' groups movements (McEvoy, 2008; McGovern, 2008). Drawing on a rights based discourse, the human rights and victims groups attempted to overcome their situation of vulnerability, construct their own political identity and contest the state's restricted perspective on human rights (Alvarez, Dagnino & Escobar, 1998; Goodale & Merry, 2007). In order to explain this argument I will divide the chapters in the following parts: first, I will show how the victims of political violence have undergone a situation of marginality and vulnerability, second, I will give account of recent visibility and mobilization of the victims groups; third, I will address the formation of the three main victims' networks and their perspectives on victims' rights, fourth, I will explain how the victims' networks engaged in a from below initiative on reparations. In the fifth part, I will explain how strategic litigation practices contributed to the construction of more substantial views on reparation and finally, I will give account of the conflicting perspectives on reparation between the human rights and victims' networks and the state government.

Vulnerability and Marginality of the Victims

One of the contributions of literature of legal anthropology and sociolegal studies on human rights is the attempt to make visible the existing conditions of oppression and violence. During the past decades, literature on new social movements tried to give account of the rights based struggles and social mobilizations in Latin America and their attempt to overcome the negative

consequences of structural adjustment policies and neoliberal policies (Alvarez, Dagnino & Escobar, 1998; Alvarez & Escobar, 1992). More recent work on legal anthropology attempts to give account of the practices of human rights and the existing conditions of vulnerability (Goodale, 2007). Contemporary literature on law and social sciences also show how disenfranchised groups attempt to overcome the situation of vulnerability by means of social or legal mobilization (Houtzager, 2005; Rajagopal, 2005; Santos & Rodríguez, 2005;). In this part I attempt to show how the articulation between a global discourse on victims' rights and the social mobilization of human rights organizations and victims groups have provided the victims groups with tools to resist the situation of vulnerability and struggle for their rights.

The historical conditions of oppression in Colombia has brought about the vulnerability of a variety of subjects, such as indigenous people, afrocolombian population, peasants, and low income people, among others, who never have been included in the economic and political metaphor of the social contract (Escobar & Alvarez, 1992; Santos & Garcia, 2001). In addition to the historical, social and economic exclusion that has characterized Colombian society, it is a fact that a great number of victims of political violence belong to social movements and leftwing organizations that have struggled for social justice (MOVICE, 2008). Most of the people who have suffered the cruelty of violence come from socially marginalized groups, such as indigenous groups, afro-descendant communities and peasants groups. According to the Verification Commission on Displacement, more than 90 % of the displaced people are under

the poverty line (Uprimny, 2009; Comisión de Verificación sobre Desplazamiento, 2008).

This situation of political and social exclusion is also reproduced in the everyday life of Colombian society, in which the practices of exclusion, oppression and human rights violations are denied, normalized and trivialized by the mass media, the political mainstream and most privileged social sectors. It just takes a while to wander around the main cities in Colombia, such as Bogotá, Medellín, Cali or Cartagena, to observe, not only the striking social differences, but also the disturbing images of displaced people from the countryside settling in squatter settlements in the periphery of the cities. They struggle for their survival in a society that has adapted to see those images as part of the normal urban landscape. For a long time, the social and institutional responses to human rights violations in the country have moved from denial to normalization. For a long time different state institutions and privileged social sectors denied the existence of practices of forced disappearances, torture or the linkages between the paramilitary groups and state agents (ASFADDES, 2003). During the 80s and 90s, it was common to listen to expressions that justified or passively accepted the practices of elimination and human rights violations: “Algo habrá hecho” (He/she must have done something wrong). In many cases the victims’ survivors had to remain in silence as a response to the “blame the victims” mentality that emerged in Colombia. According to this mentality the victims of political violence have been labelled as the relatives of “left wing militants” or “displaced people”. According to different human rights activists and lawyers, the newspapers did not

give account of the denunciations of human rights violations or mobilizations for justice (ASFADDES, 2003).

Up to the mid-nineties the mass media were suspicious about the human rights reports because they were conceived as politically biased and committed to a leftwing agenda. For Gustavo Gallón, the support of international and inter-governmental human rights organizations was critical to make the media pay more attention on the human rights reports.⁴⁹ Despite the efforts of the human rights organizations to denounce the violations of human rights, the response of some state government officials still astonishes, as they seem more focused on showing to the international community that the situation is not that bad as the human rights organizations portray. One of the more recent and eloquent examples of denial came from Jose Obdulio Gaviria, counsellor of Alvaro Uribe, who affirmed that in Colombia there were no forced displaced people, but migrants that freely decided to move from the countryside to the cities (Cambio.com, 2008).

The recent visibility and capacity of mobilization of the victims of political violence in Colombia is the outcome of a longstanding process of struggle of human rights and grassroots organizations. But the process of their identity construction, their political and social capital and their organizing capacity seem to bring about asymmetrical relations even among the disenfranchised groups (Alvarez, Dagnino & Escobar, 1998; Bourdieu & Wacquant, 1992). In the case of the victims with prior participation in left wing

⁴⁹ Interview with Gustavo Gallón, director of the Colombian Commission of Jurists (CCJ).

parties, trade unions or social organizations, they had already the experience, the skills, the training and the political consciousness to mobilize for social justice⁵⁰. They were already part of social movements and organizations that have contributed to construct political identities based on their aspirations and struggles for justice and social rights during the 80s and 90s (Alvarez, Dagnino & Escobar, 1998; Escobar & Alvarez, 1992). That was precisely the case of NGOs such as Reiniciar, a human rights NGO founded by the survivors of the Patriotic Union in order to struggle for the memory of more than two thousand militants who were murdered during the 80s and 90s or disappeared during the eighties and nineties (Reiniciar, 2010).

However, in the case of other groups of victims, they did not initially possess the social (social connections) or cultural (information and education) capital to promote organizing processes (Bourdieu & Wacquant, 1992). That was the case of the relatives of the disappeared, who were not engaged in political mobilization, as well as those who lived in regions with lesser levels of organization. They did not identify or portrayed themselves as “militants.” Many of them were mothers, wives or daughters of left-wing militants. Regarding this situation of vulnerability, many of the victims found the social and legal support in the human rights organizations to learn about their rights and start taking part of collective processes to claim for justice.⁵¹ The discourse and practices of human rights provided the victims the tools to empower themselves and transform

⁵⁰ Interview with Julia, CINEP, October 28 2009; Clara, CCJ, November 6 2009, and Cristina, CCJ, September 17 2009. The names have been changed

⁵¹ Ibid.

their frustration, pain and asymmetrical power relations, in the endeavour to make claims for accountability and truth. In fact, different victims' organizations became grassroots human rights NGOs, such as it happened with the Relatives' Association of Detained and Disappeared –ASFADDES-, or Reiniciar. These human rights organizations also started working with victims, providing legal advice, psycho-social counselling and supporting their organizing processes⁵². In the context of the 80s and the 90s, when the violations of human rights skyrocketed, the victims' organizations portrayed themselves as human rights organizations, deploying different campaigns to struggle against impunity and preserving the memory of the victims (ASFADDES, 2003).

In addition to the situation of marginalization and invisibility, the victims were also fragmented among a set of different groups. For instance, for years the human rights and victims organizations used to portray themselves using labels such as “the disappeared”, “the UP members”, “the displaced population”, and “the victims of the human rights violation”, among others. The construction of their identity as victims depended on the type of violent actions they had suffered and the perpetrators who victimized them. Sometimes, these fragmented identities brought about conflicts among these groups preventing them from working together and reaching common goals. For instance, during the eighties there were discussions between the relatives of the disappeared people and the relatives of those who had been murdered about which family had suffered more (ASSFADDES, 2003). In addition to these circumstances, their narratives and

⁵² Ibid.

struggles seemed to permeate only those sectors that were more conscious about the human rights situation in the country. In spite of these obstacles, the human rights organizations and victims' survivors have persevered in their actions claiming for justice and struggling against impunity.

The Visibility and Social Mobilization of the Victims' Groups

By 2005 the victims of political violence in Colombia gained political and social visibility they had never had before. The media and the scholars started shifting their interests. For long time the media and the social scientists had focused on the causes of war, and the history, characteristics and practices of the armed groups. The deterioration of the internal conflict, the demobilization of the paramilitary groups and the influence of the global discourse on human rights, made it possible to pay more attention to the consequences of war and the people who suffered the violence of the armed actors, including the state government. There was a growing interest in knowing the faces, listening to the voices of the survivors and understanding the history of those who were killed, disappeared and humiliated under the label of being "guerrilleros" or the necessary victims of every war. How can we explain the visibility of the victims and the shift in the ways violence and political conflict were framed in Colombia? On the one hand, the situation of the hostages of kidnapping perpetrated by the guerrilla groups, mainly the FARC and the ELN, moved the solidarity of most of the public opinion. This feeling of solidarity, highly supported by the mainstream media, seemed to touch social sectors that had been distant from the suffering of those

who endured the hardship of the Colombian conflict. On the other hand, the peace negotiations with the paramilitary groups turn out to be a Pandora's Box that unleashed forces not envisioned by the government nor the paramilitary commanders. Three conditions contributed to the visibility of the victims.

First, the process of globalization of the discourses of human rights and transitional justice has had an important impact in Colombia. In this perspective the different human rights networks comprised of different actors, who play the role of moral entrepreneurs (Jelin 1998; Keck & Sikkink, 1998) have contributed to incorporate and introduce the concepts of "truth, justice and reparation" in the public arena also introduced the idea of the existence of legal and ethical constraints to the political negotiations (McGregor, 2008; Minow, 1998; Teitel, 2000). This discourse provided the possibility to create new identities to the extent they realized they were entitled to claim for justice (See Chapter 4) (Alvarez, Dagnino and Escobar, 1998). For long time they had claimed to know the truth about the perpetrators of the crimes, their motivations and the whereabouts of their relatives. The victims also had claimed for justice before the state institutions. This process of learning the language of rights and victims' organization is described by a human rights activist in the following terms:

“ ... In many cases it has allowed the people to lose fear to talk about the topic, to denounce it, to talk to other people about it...In other cases, they have denounced the facts they did not dare

to denounce. In some cases, it has empowered the victims, let's say, to organize themselves..."⁵³

But in this dialogic relationship between the human rights organizations and the victims, the victims were not the only actors that underwent transformations (Speed, 2009). For the human rights activists, their interactions with the victims also provided an opportunity to become familiar with them, to get to know their relatives and their communities. For instance, the human rights organizations, following both, the need of the victims and the suggestions of the international human rights courts, have attempted to incorporate psychologists or social workers because they learned there were emotional or social problems that needed to be addressed. Even in the case of some professional NGOs that mainly focus on legal work, they acknowledge their own transformation.⁵⁴

However, during more than twenty years of human rights actions and campaigns, the struggles for justice and against impunity moved from fragmented actions among different victims' sectors, to a more collective action supported by human rights networks.⁵⁵ The process of constitutionalization of the human rights discourse and the progressive role of the courts and the introduction of a discourse of "justices, truth and reparation" has given the human rights organizations and the victims' groups the possibility to incorporate legal actions in their repertoires (Houtzager, 2005). There is no sharp division between political and legal tactics; rather there is a more comprehensive struggle that includes political and legal

⁵³ Interview with a lawyer of the Colombian Comisión of Jurists, October 2009.

⁵⁴ Ibid.

⁵⁵ Interviews with some members of human rights NGOs, October and November 2009.

actions. The visibility of the victims as subjects entitled with rights has not been the desired outcome of the discourse on security promoted by the government. Nor was a desired outcome the recognition of the harm caused by the paramilitary groups or the product of the legal framework envisioned by Congress' version of the "Justice and Peace" law.⁵⁶ In fact, this process of visibility emerged in the context of a dialogic process and a public debate on the legal framework of the demobilization of the paramilitary groups (Speed, 2009). It has been, to some extent, the consequence of the expansion, incorporation and adaptation of the discourse of "truth, justice and reparation" in the public sphere and the rise of what Iván Orozco (2005) has named the "humanitarian consciousness."

Second, in the context of a peace process with an armed group that deployed dynamics of mass violence and collective feelings of terror in the name of a counter insurgent war, some victims felt they needed to raise their voices, tell their stories and claim to know what happened, and why. From the collective feelings of fear and intimidation, some groups were moved by the imperative need to tell what they had experienced and claimed to know regarding the whereabouts of their relatives, who ordered the crimes and why they killed them and destroyed their communities. New narratives emerged and contested the ones framed by the paramilitary groups and spread by the mainstream media. It is important to remember that by the end of the 90s and the beginning of the 2000s the paramilitary groups had stressed the narratives of the counter insurgent war

⁵⁶ Ibid.

saying they were forced to take up arms to defend their life and properties against the FARC (See Chapter 2). According to them, they only targeted guerrilla members. They also coined a military language full of euphemisms to depict their actions and dehumanize the other. For them, they did not murder civilians, including women and children, or commit mass crimes against defenceless population: they killed their enemies in combat. However, the incorporation of a global discourse on victims' rights and the pressure of the international community and the human rights organizations made it possible to tell alternative narratives and show the perspective of those who did not have the power to raise their voice and explain their suffering. These contesting narratives made evident the different emotions and feelings associated with their political affiliations of each party.

While some sectors of the population, such as the middle and upper classes expressed their solidarity with the hostages of kidnapping and their hatred toward the guerrilla groups, the human rights organizations, social and victims' organizations tried to raise awareness and expressed their solidarity also with the victims of mass crimes against humanity perpetrated by paramilitary groups. After more than two decades of violent practices consisting of massacres, forced disappearances, murders and massive displacement, it was humiliating for the victims that the perpetrators of such heinous crimes could be granted generous incentives for demobilization. In this regard, the peace process with the paramilitary groups and the debates on the legal framework for the demobilization turned out to unleash a reaction of the victims of paramilitary groups. One of the

most symbolic moments that made the victims more visible in the public sphere was the one I depicted in the introduction of the dissertation, the attendance of three paramilitary commanders to the House of Representatives in July 2004. That day, while the commanders delivered their speech advocating for generous incentives for demobilization, the TV cameras captured the images of two victims' organizations leaders who stood up in the balconies showing the pictures of their murdered relatives. Meanwhile, two different demonstrations took place before the National Capitol. One group was comprised of the victims' relatives who raised their voices against the Governments' bill and against impunity. The other group supported the paramilitary commanders showing their sympathy to them and intimidating the victims⁵⁷. In this context of polarization, different victims' groups decided to get together and raise their voices against what they considered were new offences against the victims. This feeling grew during the following years when the paramilitary commanders started delivering their versions in the "Justice and Peace" trials in which they attempted to reaffirm their epic narratives, denying that they killed innocent people and re-victimizing the victims' relatives⁵⁸.

Third, once the demobilized paramilitary members started confessing their crimes in the judicial forums, the human rights organizations, as well as the alternative media, played a significant role in the visibility of victims by giving account of violations of human rights and releasing the contents of the paramilitary confessions at the "Justice and Peace" proceedings. The newspapers

⁵⁷ Interview with a member of the Movement of State Crimes' Victims, February 17 2010.

⁵⁸ Ibid.

also released special reports on the history of the paramilitary groups and their actions. These reports gave account of brutal practices, such as throwing away the victims' bodies to the river basins, dismembering the bodies to bury them faster, and destroying the victims' remains by using their own crematoriums. For instance, the newspaper El Tiempo published one of the more shocking reports in May 24 2007. This report gave account of the training process to get rid of the people murdered by the paramilitary groups. One of the demobilized paramilitary members depicts how they were trained: *"...they were elder people who were brought in trucks. Their hands were tied. The order was to take their arms off as well as the heads, to dismember them alive"* (El Tiempo, May 24 2007). The human rights organizations and the newspapers also started giving account about the history of the communities that endured the harshness of paramilitary violence. That was the case of the people of several small towns: Trujillo, in the province of Valle; El Salado, in the region of Montes de María; Soledad, in the province of Atlantico; Mapiripan, in the province of Meta; and Pueblo Bello, in the Province of Antiquia, among many others. Some alternative media spaces such as Verdad Abierta, followed up the progress of the "Justice and Peace" trials and judicial investigations (verdadabierta.com). The criminal investigations and the media reports confirmed what the human rights organizations had denounced for years. However, the human rights reports fell short considering the outrageous reality. For the human rights activists, the release of all this information seemed to be just the tip of an iceberg that would take a longer time to discover.

The Discursive Formation of the Victims' Networks

Between 2005 and 2007, new victims' networks emerged in a context of profound political polarization. Specifically, they emerged in the midst of the public debates of the legal frame for the demobilization of the paramilitary groups and the claims for justice and protection of victims' rights. It is possible to single out two antagonistic perspectives in the political arena. On the one hand, there was a hegemonic discourse that, not only advocates for the process of neoliberal reforms, retrenchment of the welfare state and good environment for business, but also promoted a political project based on security and order. The government and the majority coalition, which represented the interests of rural land owners, big corporations, urban upper and middle class population, had promoted a constitutional amendment allowing the President to run for re-election, deployed a violent language against the left-wing party and those social actors who criticized the government's policies on security. According to this language, those who did not agree with the "democratic security" policies were considered useful idiots of the FARC and the terrorists. In this perspective the discourse of security and war on terror seemed to create a stark division between the enemies and the allies (Agamben, 1998; Oliverio, 1998). There was no possibility of intermediate perspectives. Bearing in mind that situation, the human rights and victims organizations were portrayed as an extension of the "enemies."

On the other hand, the human rights NGOs, the social and the victims' organizations, attempted to promote a social and political project that stressed the respect of the constitutional order, the protection of human rights, the

humanitarian exchange of hostages of the FARC, and more commitment with the victims of human rights violations. The human rights organizations and networks were the forefront of the position against the core policies of the government. According to the founder of a new victims' organization, *"it seemed that the human rights networks became the main political opposition party."*⁵⁹ For instance, these networks had deployed different tactics of information politics and lobby before the U.S. Democratic Party to block the signature of the free trade agreement between Colombia and the United States. They also had challenged the constitutional amendment that allowed the President to run for re-election. Regarding the demobilization of the paramilitary forces and the mechanisms of transitional justice, the more critical organizations considered that the "Justice and Peace Law" was an instrument of impunity that attempted to legalize the paramilitary groups. Likewise, many of the human rights and victims' organizations members I interviewed disagreed with the National Commission for Reintegration and Reparation –CNRR-. For them, that institution lacked legitimacy to the extent it had been created by the "Justice and Peace Law" and the government had integrated it without consulting the victims' groups.⁶⁰ While the majority of social and human rights organizations called for an open and participatory dialogue that would lead to framing public policies on victims' rights, the government did not see it as a political priority. Despite the fact that some international and intergovernmental organizations provided advice on

⁵⁹ Interview with one of the founders of "Hijos e Hijas por la memoria y contra la impunidad," February 23 2010.

⁶⁰ Interview with members of human rights NGOs, October and November 2009.

reparation to the government, Uribe's administration addressed the issue of reparations based on a restrictive conception. The national government preferred to use top down mechanisms enacting a legal framework on administrative reparation by means of government decrees. It did not consider the participation of victims' organizations or drafting a bill to start a public debate in the national Congress.⁶¹

It is in this context that new organizations and networks emerged between 2005 and 2007 in the domestic and national level, such as the State Crimes Victims' Movement (MOVICE), the National Meeting of Social Organizations' Victims and, later on, the Working Group on Victims' Law. These networks constituted collective spaces in order to discuss the situation of victims, to follow up the legal actions against the legal framework, to design political actions of social mobilization and suggest the contents of public policies on victims' rights. The international community also has played an important role in the integration of these networks to the extent some cooperation agencies shifted the priority of their programs on peace negotiations to support the work with victims.⁶² However, these networks and organizations are far from representing a unified perspective about victims in the country. They are rather spaces of diversity that show the different visions about their own political identity and their views on the actions they want to carry out. In the following part, I will explain three main spaces of organization and networks that have advocated the protection of

⁶¹ Interview with a staff member of the UNHCHR, November 19 2009.

⁶² Interview with staff members of the embassies of Sweden, Canada and members of the UNDP, September and November 2009.

victims' rights during the past years: the Movement of State Crimes' Victims (MOVICE), the Group of Victims from Social Organizations (GVOS), and the Working Group on the Victims' Law Bill.

The Movement of State Crimes' Victims (MOVICE)

The MOVICE was initially founded in 2005 as a network that integrated almost 250 organizations that gathered in the "II National Meeting of Victims of Crimes against Humanity". The MOVICE members agreed that their main goals consisted of the struggle against impunity and the protection of victims' rights. In doing so, they attempted to promote the consolidation of a social movement. These goals were ratified in the third MOVICE's National Meeting in July 2006. Ever since, the MOVICE members have deployed actions of social mobilization, political leverage and legal mobilization in order to strengthen the social movement, defend their rights and promote social change. Regarding the actions of social and political mobilization, the MOVICE has spread its influence all over the country creating a network that gathers different groups of victims.

Currently, the MOVICE is comprised of more than 1,400 grassroots human rights organizations and victims' organizations distributed in nine national chapters and international chapters integrated by exiled victims' survivors. The MOVICE attempts to do grassroots work with victims and build up alternative policies of "truth, justice and reparation" from below. From that perspective their view on political influence on Congress or legal actions, are important tools but they are not the core of the MOVICE' actions. According to one their founders, "

...the legal actions are important, but not the main part of the struggle. This is neither a short term struggle, it is important to have in mind that the main goal is the political and social transformation in the long run.”⁶³ The victims of state crimes have portrayed themselves as a social movement comprised of state crimes’ victims and grassroots human rights organizations that support these groups of victims. As some members of the MOVICE sustained, “we work with the bases.”⁶⁴ Their political identity also rests on the confrontational relationship with the state government and the struggle for retributive and distributive justice and the protection of human rights (Alvarez, Dagnino & Escobar, 1998). In this regard, they also attempt to go beyond the legal dimension of human rights and create from below initiatives and practices based on the experience and needs of grassroots organizations (McEvoy, 2008; McGovern, 2008).

The Group of Victims from Social Organizations (GVSO)

Another network that attempted to advocate for victims’ rights is the Group of Social Organizations’ Victims (GVSO). This network, not only includes grassroots organizations, such as the MOVICE, the CINEP, or AVRE, but also more formal and human right NGOs that work with victims, such as the Colombian Commission of Jurists CCJ, and Viva la Ciudadanía, among others. After the enactment of the “Justice and Peace Law” and the Constitutional Court decision about that legal framework, these organizations decided to promote a

⁶³ Presentation of one member of the MOVICE in the Meeting against Forced Disappearance, University of Antioquia, Medellín, July 2009.

⁶⁴ Interview with Sara, member of the MOVICE, Bogotá, November 2009. The name was changed.

space for deliberation from the perspective of the victims. However, they did not restrict to the victims of the state crimes, but also to other groups of victims. They attempted, on the one hand, to know the real situation of the victims, and on the other hand, to promote public policies on the protection of victims' rights. In order to carry out those goals, and after having intense internal discussions, these organizations decided to call for a National Meeting of Social Organizations' victims in 2007.⁶⁵ In doing so, they created an organizing committee integrated by different human rights and social organizations. The meeting had different goals: first, to gather victims from different regions of the country and allow them create bonds of solidarity and overcome fragmentation and isolation, second, to gather firsthand information about their situation, and third, to ensure their voices and claims were listened to by the state institutions⁶⁶. According to some human rights activists who took part in the organizing committee, the human rights organizations made an enormous effort to plan and call victims from all over the country. They formed a network of domestic and local organizations as well as international cooperation agencies to support the organization of the event.⁶⁷

The meeting, which gathered more than two thousand people from different regions of the country, addressed the interests of different groups of victims, such as the situation of trade union leaders, indigenous groups, afro-descendant communities, women, kidnapped people, disappeared and the LGBTQ community. The meeting also allowed some victims to raise their voices and

⁶⁵ Interview with members of human rights NGOs that make part of the Group of Victims from Social Organizations –MVSQ, November 2009.

⁶⁶ *Ibíd.*

⁶⁷ Interviews with members of different human rights NGOs, October and November 2009.

share their suffering and experiences. By the end of the event, the final declaration that summarized the conclusion of the meeting was submitted to different representatives of the state institutions, such as the Attorney General Office, the Public Ministry and the Ombudsman Office. This declaration also became a symbol of identification for the victims that took part in the event⁶⁸. After the meeting, the members of the organizing committee decided to keep on working and found the Group of Victims from Social Organization (GVSO). The GVSO members, who also make up part of existing human rights networks, have a very critical perspective on the “Justice and Peace Law” and the “democratic security” policies. Similar to the MOVICE, the GVSO attempts to create participatory mechanisms to construct initiatives from below on reparations and protection of victims’ rights (McEvoy, 2008; McGovern, 2008). They have advocated for the inclusion of a conception of reparations based on both, the international standards on victims’ rights, and the needs of the victims’ groups. This means that the reparation should not be restricted to economic individual compensation, but rather integrate other components, such as psychological reparation, symbolic reparation, collective reparation and differential approach as well. The GVSO has also promoted different actions of social mobilization in order to make visible the victims as a collective actor and raise awareness about their claims for justice. It also has elaborated work papers suggesting the design of public policies for the protection of victims’ rights. Actually, during 2007 and

⁶⁸ Interview with members of human rights NGOs that make part of the Group of Victims from Social Organizations –GVSO, October and November 2010.

2009, the GSOV played a very significant role in the discussion and organization of the public hearings of the Victims' Law bill.

The Working Group on the Victims' Law

A third relevant network on the struggles for victims' rights is the Working Group on the "Victims' Law" Bill. This is rather a group of legal experts on human rights law and public policies that attempted to exert influence on the congress. By the end of 2007, when the Congress started discussing the "Victims' Law" bill, different human rights NGOs led by the Social Foundation formed a space of discussion in order to give advice to the Congress members who led the initiative. This group also gathered human rights NGOs such as the Colombian Commission of Jurists CCJ, the Center for Studies on Law, Justice and Society – Dejusticia-, and Nuevo Arco Iris. Most of these organizations had in common a special interest on legal work on human rights. In addition to this characteristic, these NGOs had supported a moderate perspective on the discussion on the "Justice and Peace Law". Despite the fact that they were very critical of the government's policies, they considered it was important to come up with alternative solutions and suggest institutional mechanisms to protect victims' rights. That is why these organizations strongly promoted the introduction of the international standards on victims' rights (Jelin, 1998; McGregor, Tate, 2007; Merry, 2006). For these organizations, the main contribution they could make was

to enhance informed discussions on the topics, especially regarding the lack of public debates on topics such as reparations.⁶⁹

These groups of experts have functioned as translators that introduce and adapt the information and concepts that provide content to the discourse of “victims’ rights” (McGregor, 2008; Merry, 2006; Tate, 2007). In doing so they organized public forums inviting international experts, promoted research, and published books in order to spread information and improve the public debate. These actions of information politics (Keck & Sikkink, 1998) adaptation (McGregor, 2008; Merry, 2006;) and alternative constructions (Speed, 2009; Tate, 2007) were critical in influencing the content of the “Victims’ Law” Bill. These NGOs also carried out actions of strategic litigation consisting on constitutional actions related to reparation. Finally, they played a significant role in the design of the congressional hearings that facilitated the communication between the victims from different and some of the congress members. By using this mechanism, the human rights networks attempted, on the one hand, to discuss the content of the “Victims Law bill”, and on the other hand, to allow the congress speakers to listen to the voices of the victims.

Articulation of human rights networks in the struggle for victims’ rights

The conformation of these three spaces that gathered human rights, social and victims organizations allow me to highlight the following three characteristics of the human rights networks during this period. First, there was a diversity of

⁶⁹ Interview with Rodrigo Uprimny, director of Dejusticia, April 20 2010.

views and experiences among these organizations and movements. Inside these networks and spaces of debates, the emerging movement of state crimes victims, the MVSO members and the experts groups, struggled among each other to define who represents the victims, what strategies and tactics to follow and what contents to include in their initiatives. These sort of internal conflicts have emerged, not only in the social movement but also, in the human rights networks at large, as it has been illustrated in the case of the feminists groups in Latin America (Alvarez, 1998) or the landless social movement (Houtzager, 2005). However, despite the internal disputes and contradictions, the human rights and victims organizations managed to overcome the possibility of fragmentation. The networks were not that cohesive as other networks in Latin America, such as the case of the “coordinadora de derechos humanos,” in Peru (Root, 2009), but they achieved to work together and reach some level of coordination among them. In this regard, the human rights and victims’ organizations, not only achieved the support of the international community, but also appropriated the discourse of victims’ rights to mobilize and gain social visibility. These spaces have articulated the existing human rights networks, such as the alliance of social organizations, the G-24 and the Coordination Colombia-Europe-United States with the victims’ organizations. These spaces, such as MOVICE, the GVSO and the Working Group of the Victims’ Law bill, despite their different perspectives and political views, managed to coordinate their actions of social, political and legal mobilization much better, to the extent they gained more political capital and influence on the political domestic sphere.

Second, the national meetings of victims' organizations have allowed the different victims' groups to share their experience, create bonds of solidarity and build up a process of collective political identity (Alvarez, Dagnino & Escobar, 1998). The case of the victims of state crimes is particularly salient to the extent they attempt to create a social movement whose identity rests on the pursuit of justice and the struggle against impunity (MOVICE, 2010). The MOVICE meetings, as well as the GVSO meetings, have contributed to raise awareness within the victims groups about who they are, what they seek and the rights they struggle for. In this perspective, the drafting of foundational declarations and papers in which they draw their common values and goals also have contributed to reinforce their political identity and define a minimum consensus on the contents of their struggles. Finally, different from the public debates on the "Justice and Peace Law" between 2004 and 2005, in which the human rights networks based mainly on the incorporation of international human rights law, and international standards on victims' rights, in the public debates on reparations there was an effort to put together both, the participation of the victims' groups and the incorporation of the international standards on human rights. This shift represented a dialogical process in the discursive construction that attempted to introduce more substantial and participatory versions of victims' rights (Speed, 2009)

Initiatives on Reparation from Below

The victims' organizations, and those organizations that worked with victims, promoted actions of political and legal mobilization in order to take part in the framing and design of public policies and legal frameworks that addressed the protection of victims' rights. Some networks, such as the Movement of State Crimes Victims (MOVICE), as well as the Group of Victims from Social Organizations GVSO, were engaged with other human rights networks, such as the Coordination Colombia-Europe-United States CCEEUS, and the Alliance of Social Organizations that emerged in the context of the process London-Cartagena-Bogotá.⁷⁰ In the context of this process, the human rights NGOs and the victims' organizations have taken part on the drafting of work papers to discuss initiatives of public policies on victims' rights (MOVICE, MVOS). The human rights and victims networks have introduced these initiatives in different forums and meetings, especially under the support of the international community. For instance, the initiatives were introduced on the Bogotá Meeting of 2007, as part of the London-Cartagena-Bogotá process. The MOVICE had been working on new initiatives and work papers trying to promote the participation and listen to the voices of grassroots victims' organizations.

During the second half of the decade, the victims' organizations promoted mechanisms and procedures to enhance democratic participation in the elaboration of these initiatives. This fact has, on the one hand, consulted the content of the public policies with the victims' groups, and on the other hand,

⁷⁰ See chapter three.

introduced international standards on victims' rights. In this regard, since 2007 the different human rights and victims' networks have promoted discussion on the following topics: 1) the acknowledgement that the historical process of victimization in Colombia is related to structural conditions of exclusion that reproduce the situation of vulnerability and marginalization of different social groups, 2) the acknowledgement that the State has taken part in a process of systematic elimination of social groups because of their political affiliations, 3) the inclusion of different groups of victims, without discriminating against state crimes' victims, and 4) the need to design programs of land restitution and integral reparation for the victims (MOVICE, MVOS).

By the end of 2007, new circumstances made the victims' organizations consider the possibility of engaging in actions of political mobilization before the National Congress, such as lobbying and debating public policies on victims' rights, especially regarding reparation programs. Actually, the Congress initially addressed the topic on reparation in response to the request of "Visible Victims", a victims' organization of guerrillas' violence. Up to that moment, the Congress only had focused on the "Justice and Peace Law" but it had not properly addressed the topic of victims. Juan Fernando Cristo, a Congress member of one of the opposition parties, took the lead on the discussion about drafting a legal framework about victims' rights. Once the Colombian Commission of Jurists (CCJ) and the Social Foundation, two human rights NGOs that followed up the debates in Congress, noticed the existence of a "Victims' Law" bill, they informed the human rights and victims organizations about the situation. The CCJ

informed the other GSOV organization members about the bill. In response, the GVSQ got interested about the bill and explored the possibility to take part on the debates⁷¹. The Social Foundation contacted other legal human rights NGOs, such as the CCJ, the International Center for Transitional Justice ICTJ and Dejusticia, in order to discuss and exert some influence on that legal framework from a more technical perspective. According to Paula Gaviria, coordinator of the Human Rights program at the Social Foundation, explains:

“We contacted the senator and started: ok, where do you want to go with this? And a process of discussion started. We focused on it. We put all our effort to study the topic and started sharing it with other people. The first moment was a breakfast meeting at the Social Foundation with the senator Cristo and the members of the first committee of the senate. The excuse was to show them the findings of a research on the region of Nariño. But the real goal was to discuss the scope of the bill, ever since the relationship with the senator increased.”

These complementary spaces of discussion about the bill highly influenced the “Victims’ Law” bill in Congress. The Group of Victims from Social Organizations (GVSQ) was more interested in listening to the voices of the victims, enhancing social mobilization and taking part on a participatory process

⁷¹ Interview with members of the CCJ, October and November 2009.

of discussions about the bill. The Working Group of legal experts was more interested in providing legal arguments drawing on international human rights and comparative law. The organizations of the GVSO agreed on the idea to start a participatory and public discussion about the bill. For them, the victims' organizations ought to be the key actors of that discussion. The Working Group also advocated for a participatory process. Once they contacted Senator Cristo, they promoted a process of discussion and improvement of the bill's content. The debates in the Senate that took place in 2007-2008, moved forward without major opposition from the majority coalition. There were different reasons that facilitated the progress of the bill (Sánchez, 2009). First, the prevailing idea among the human rights networks and the international community was that the congress had worked in favor of the perpetrators instead of taking seriously the victims' rights. Before the international community and the democratic sectors, the Congress was discredited. This perception worsened when the media and some government opponents revealed the linkages between paramilitary groups and Congress members. Second, those Congress members who were interested in protecting victims' rights faced less opposition from the majority coalition. In fact, some members of the majority coalition initially supported the bill. Third, the first version of the "Victims' Law" Bill was very general and did not represent any risk for the government. Senator Cristo, the speaker of the bill, acknowledged the bill was very general and it was necessary to discuss it with

experts from the NGOs, the international community and the victims' organizations⁷².

By 2008, the human rights and victims' organizations networks progressively took the lead on the debate about the "Victims' Law" bill. Both the experts group and the GVSO convinced the Senator to plan a series of Congressional hearings in order to listen to the opinion of the victims and discuss with them the content of the bill. The Congressional hearings were socially and politically relevant for different reasons: first, for the GVSO organizations these hearings represented the possibility to follow up the process they had started in 2007 with the National Meeting of Victims from Social Organizations. Second, these hearings also represented the possibility to build a bottom up legal framework that responded to the voices and the needs of the victims. Third, they made strengthening the organizational capacity of the victims, especially in the regions, possible. In order to get support for the regional hearings the Senator and the Social Foundation contacted the representatives of United Nations Development Program (UNDP). This agency had already contributed to the previous meeting of victims' organizations. In order to solve some funding and logistic difficulties, the UNDP also contacted other agencies of the UN system as well as some cooperation programs. Finally, these collective efforts among some Congress members, the human rights and victims organizations and the international community made it possible to organize nine regional Congressional

⁷² Interviews with members of the Social Foundation and the CCJ, October and November 2009.

hearings in the country that took place by mid 2008.⁷³ Paula Gaviria, from the Social Foundation, explains how they organized the hearings in the following terms:

“ this is one thing we have to carry out. A working group on the topic emerged and we said: Ok. Who join us? Then we’ve got the Foundation, and also Viva la Ciudadanía got deeply engaged as the technical secretariat of the GVSO. Then a coordinating space emerged in the UNDP and we participated in it. The UNDP invited all the United Nations system, so that ACNUR, UNIFEM and other joined us...also the CCJ attended the space. We suggested, ok, let us do the hearings but let us do it well by means of workshops to prepare the hearings. Let us set forth regional organizing committees that already existed with the GVSO process. The UNDP also have programs in the regions... since many organizations took part of that process we said: let’s do a preparatory workshop with the people in order to make the hearings much more effective, and the people go with more information to the hearings.”

The design and development of the hearings was the outcome of a collective effort of the Congress members from the opposition parties, the UNDP and the human rights and victims’ organizations. Each of the hearings was planned as a two-day activity. During the first day there was a workshop

⁷³ Interview with Natalia Paredes, CINEP, October 28 2009; Ana María Rodríguez, CCJ, November 6 2009, and Fátima Esparza, CCJ, September 17 2009.

explaining to the victims the main contents of the “Victims’ Law” bill, including advantages and disadvantages. The workshop attempted to promote a participatory discussion in order to debate the content of the bill and provide feedback to the Congress members. During the second day, the hearing was open to the public. For two months, more than three thousand victims attended the nine workshops and hearings. These hearings made it possible for victims to congregate in order to listen to their opinions about the Congress’s bill. For those who attended the hearings it was a democratic process that strengthened the solidarity bonds among social and victims’ organizations. It also allowed Congress members to get closer to the reality of the victims in Colombia. However, as long as the bill was gaining more public attention and legitimacy among the social organizations and the victims, the bill also generated distrust among the majority coalition in Congress and the government.

Strategic Litigation

In addition to the actions of social and political mobilization, the human rights organizations also initiated a set of legal actions that enriched the public debate on reparation. By 2007 and 2008, the Constitutional Court came to decisions regarding constitutional actions filed by different NGOs about the rights of displaced people. These decisions contributed to the clarification of concepts that were conflated by the government, and protected the rights of a group of victims: the displaced people. Following the Court’s opinion, different human rights NGOs, such as Dejusticia, filed another constitutional action against the

provisions of the “Justice and Peace Law” that ruled about the mechanism of reparation. According to Rodrigo Uprimny, director of Dejusticia:

“We paid more attention to the topic on reparation, and land issues, displacement, and we started working with the “Follow up commission on displacement”, and also gender topics... And we combined a more scholar reflection with some legal actions that are basically constitutional actions. Then we introduced a constitutional action in order to clarify the time frame of that law and... clarifying the distinction among social policies, and reparation. It was a long text and we worked on it jointly with other organizations. Fortunately the action was successful.⁷⁴

This constitutional action attempted to challenge the government’s restrictive conception about reparation. For instance, according to the “Justice and Peace” Law’s provision, “the social services provided by the government to the victims...make part of the reparation and rehabilitation programs” (Justice and Peace Law). For the human rights NGOs, the government and the Congress mixed concepts such as public policies, humanitarian aid and reparation. From the human rights perspective, the international human rights law made a clear distinction between those concepts. The claimants wanted the Court to clarify the concept of reparation and adopt the international standards according to which

⁷⁴ Interview with Rodrigo Uprimny, April 20 2010.

there is a distinction among three main concepts: public policies, humanitarian aid, and reparations. For the human rights NGOs, the provision of the “Justice and Peace” Law was a manifestation of the government’s restrictive perspective on reparation. According to this view, humanitarian programs might be considered part of the reparation programs for the victims. The Constitutional Court struck down this provision in 2009, when the Congress had already blocked the bill (C-1199, 2009). The Court’s decision was very relevant to the extent it made clear that, according to the international standards on human rights, public policies, humanitarian aid programs, and reparation programs are different concepts. For the Court, the confusion among these concepts had a negative effect on victims.

Conflicting Perspectives

The debates about the “Victims’ Law” bill and the topic of reparation were the opportunity to consolidate the spaces of social, political mobilization of victims and think seriously about the contents of the victims’ right to reparation. In this regard, two different perspectives were at stake during this process. On the one hand, the human rights and victims’ networks promoted a wider and more substantial conception of reparation based on the international standards on human rights law and also drew on the claims of victims’ organizations. On the other hand, the government, with the support of the National Commission on Reintegration and Reparation (CNRR), advocated a more restrictive conception of reparation. The government, which for a long time did not take any action regarding victims’ rights, drafted governmental decree 1290, on administrative

reparations in 2008, while the opposition parties were leading the debate on “Victims’ Law” bill in Congress (Henao, 2009). According to Evelio Henao, a former legal advisor of the Ministry of Internal Affairs, “this is the only form of reparations we can afford.” He was referring to the administrative reparations decree, suggesting the costs that the initiative of the victims’ organizations entailed. By the second half of 2008, the conservative party introduced a different bill, based on the government’s decree. The differences between these conflictive perspectives on reparation are depicted in the following chart.

Chart No. 4: Comparison between the Victims’ Law bill and the Government policies

	Victims’ Law bill (*) Supported by human rights and victims’ networks and opposition parties	Government’s decree and conservative party’s bill (**)
Political Conception	-For the human rights networks the government is more concerned about the perpetrators. -For the human rights networks and social	- For the government the Human right networks and victims organizations are instrument of guerrilla groups. -For the government there is

	organizations Colombia faces an armed conflict.	no armed conflict but terrorist threats.
Conceptual basis of Reparation	-It is based on the concept of state accountability. The state is accountable no matter who is the perpetrator of the crime.	-Principle of solidarity. The government says the main responsible is the armed actor. The state help in the cases the criminal's assets are not enough to repair the victims.
Concept of Victim	-It draws on international standards on human rights -It includes victims from all armed actors, even the victims of state agents. -It also includes future victims	-Restrictive concept of victim -It does not include victims of state crimes -It does not include future victims
Concept of Reparation	-It draws on international standards on human rights. - It is based on a concept of integral reparation. It is not restricted to individual economic compensation but	- It does not follow the international standards on human rights - It is based on a restrictive concept of reparation that

	<p>also includes psychological support, collective reparation and differential approach.</p> <p>-There is a distinction among humanitarian aid, social policies, and reparation.</p>	<p>narrow it down to individual compensation</p> <p>- It conflates humanitarian aid, public policies and reparation</p>
<p>Legal Mechanisms</p>	<p>-Administrative reparation for all groups of victims</p>	<p>- Administrative mechanisms for victims with the exception of state agents' victims</p>
<p>Institutions</p>	<p>-It seeks for independent institutions</p> <p>- The Human Rights and victims networks distrust of the government and the CNRR.</p>	<p>- The main institutions in charge are the governmental program of <i>Acción Social</i> and the CNRR.</p>

* Gaceta 634 de 2007

** Decreto 1290 2008

As it is depicted in the chart, the human rights and victims networks, as well as the liberal party, progressively promoted a public debate about the legal framework characterized by five main aspects. First, they drew on international

human rights law and decisions of the Inter American Human Rights Court, and principles of comparative law. The bill was based on a concept of integral reparation that implied psycho-social support and symbolic reparation. For the victims, part of the reparation implied the disclosure of truth and accountability of the perpetrators of the mass crimes. Second, regarding the target population, the human rights and victims' organizations wanted the state to recognize all groups of victims regardless of the group that perpetrated the crime. From this perspective, these networks advocated the inclusion of state crimes' victims as part of the target population. For the human rights organizations, the acknowledgment of the state's accountability did not affect the due process of the state agents. According to human rights standards, accountability for the sake of reparation and criminal responsibility are very different. Third, regarding the legal mechanisms the victims can use to protect their rights, there is a common agreement that the judicial procedure is fuzzy, slow and expensive for the victims. That is why both the human rights networks and the government relied on an administrative mechanism in order to expedite the process of reparation. Fourth, regarding the meaning of reparation, the human rights NGOs insisted the government conflated very different concepts: *humanitarian aid* is used to provide support to the victims of natural disasters or massive catastrophes that require urgent action, *public policies* are a broader concept associated to carry out social rights as a permanent obligation of the state, and *reparation* is the obligation to fix the harm caused by unlawful actions or human rights violations (Uprimny & Saffon, 2009). Finally, regarding the institutions in charge of

channelling reparation, the human rights and victims' networks highly distrusted the current governmental institutions and the CNRR for their lack of commitment to the victims.

The government promoted a minimalist perspective on reparation that ended up being supported by the CNRR when the government started drafting governmental decree 1290 on administrative reparation (Henao, 2009). Later on, the majority coalition in Congress attempted to neutralize the "Victims' Law" bill by introducing a new bill that drew on the government's decree. This new bill included the following five main components. First, the government assumed a restrictive concept on reparation that narrowed it down to individual economic compensation. Second, the target population of this legal framework was also restricted to the victims of armed groups. For the government and the majority coalition in Congress, the state crimes' victims ought to be excluded from this program, as well as same sex partners and future victims. Third, regarding the mechanisms of reparation, the CNRR and the government considered that the administrative mechanism was faster. However, according to the government, the victims of state agents should claim their rights before the judicial system if they wanted to be repaired. Fourth, the government and the majority coalition in Congress had approved a provision in the "Justice and Peace Law" saying that the humanitarian aid and public policies programs received by the victims would be considered as reparation. Finally, for the government, the governmental program of "Accion Social" and the CNRR should be the institutions in charge of the reparation programs.

Then, during the beginning of 2009, the majority coalition in Congress disregarded the democratic process the human rights and victims networks carried out during 2007 and 2008. The government and the conservative coalition attempted to impose their bill. The government started showing its main priorities and concerns. First, for the government the “Victims’ Law” bill should not undermine and offend the patriotic integrity of the army. Allowing the victims to receive administrative reparations for the crimes perpetrated by state agents would mean acknowledging guilt and violate the due process of thousands of soldiers and law enforcement agents. Second, for the government, the topic was politicized by the human rights NGOs and the left-wing parties. From the “technical” perspective the government supported, it was necessary to consider the cost of the reparations. The cost of reparation was extremely high and the state government could not afford to pay that amount of money. As a consequence and considering the government disagreed with the current negotiations in Congress, the government ordered to withdraw the bill in June 2009 (Sanchez, 2009). Despite the government virtually won the political battle in the short run by blocking the “Victims’ Law” bill, the human rights and victims networks considered they had gained political and moral force to pursuit in their long term struggles.

Conclusions

This chapter has explained how during the second half of the past decade, different conditions, such as the demobilization of the paramilitary groups, the

reaction to the “Justice and Peace Law”, the influence of the global discourse on human rights and the existing campaigns that struggled against impunity, made possible the visibility and mobilization of victims, as well as their integration to the human rights networks. In a context of intense political confrontation, the demobilization process of the paramilitary groups and the incorporation of the discourse of “truth, justice and reparation” in the political arena made it possible to pay more attention to the tragic situation of the victims of human rights violations as well as their conditions of vulnerability and marginalization (Goodale & Merry, 2007). Between 2004 and 2007, victims groups and existing human rights organizations articulated their efforts giving birth to new forms of networks and social movements. These networks and movements formed a kaleidoscopic set of different political views, ethnic, racial and regional backgrounds and gender differences. As a consequence it is difficult to understand the victims as a homogenous and consolidated social actor. Nevertheless, despite this diversity, during the past few years the victims groups and the human rights organizations have tried to overcome their fragmentation and marginalization to construct common spaces of deliberation and dialogue among them (Goodale & Merry, 2007; Speed, 2009). For instance, the victims of state crimes, drawing on a rights based discourse, have constructed their political identity working with grassroots organizations, stressing the accountability of the state government and claiming, not only for retributive justice, but also for distributive justice (Alvarez, Dagnino & Escobar, 1998).

A similar process of a collective construction of a discourse of victims' rights took place in the formation of the Group of Victims of Social Organizations (GVSO). A different case is the working group on the "Victims' Law" bill that gathered the main legal human rights NGOs of the country. These organizations, drawing on their connections with transnational human rights NGOs, intergovernmental organizations and Congress members (social capital), as well as their legal expertise (cultural capital), they played the role of translators and mediators in the incorporation of international human rights law (Bourdieu, 1987; Jelin, 1998; Speed, 2009). Despite the political and disciplinary differences within these groups and among them, these networks managed, not only to coordinate their actions of political and legal mobilization, but also construct a dialogical process that brought together, elements of globalized perspective on human rights law, and the experiences and perspectives of grassroots victims groups (Speed, 2009).

This chapter also explains the conflicting frames on victims' rights, specifically regarding reparations. The human rights and victims' networks relied on mechanisms of political and legal mobilization in order to promote a "from below" public policies and legal framework on reparation (McEvoy, 2008; Rajagopal, 2003). During 2007 and 2009, they promoted a participatory process with victims' groups from all over the country, enhanced a public debate on the topic of reparations, and came up with initiatives of public policies on reparations that included aspects, such as reparations for the victims of the state crimes, collective rights and land restitution of the indigenous peoples and afro-decedent

communities, reparation for victims of gender violence as well as psycho social assistance for the victims (McEvoy, 2008; Rajagopal, 2003, 2005). In contrast to Alvaro Uribe's government and the majority of Congress members aimed at framing a "from above" policies according to which the goals of the "moral of the troops" and "fiscal discipline" prevailed over human rights. Within the National Congress, the majority coalition remained silent about the "Victims' Law" bill. Only when the human rights and victims' networks, jointly with the opposition parties, moved forward on the discussion of the bill, the majority opposed by introducing an alternative conservative bill that reproduced the governments' decree on reparations. Finally, taking advantage of their political capital, the majority coalition and the government imposed their perspectives on security and fiscal discipline disregarding the participatory process and the needs of thousands of victims of the armed conflict.

Conversely to the "Justice and Peace Law" framing process, in which the social and political mobilization actions were dispersed and fragmented, the human rights and victims' networks reached a higher level of coordination in the framing of the "Victims' law" bill. This level of coordination facilitated a channelling of the initiatives of the victims' organizations into the law making process. From this perspective, the human rights and victims' networks not only were translators between the transnational discourse on human rights and the domestic sphere, but also between the non formal space of grassroots and victims groups and the institutional sphere of the National Congress (Goodale & Merry; Jelin 1998). In this contested and dialogic process, the human rights and victims

networks achieved to introduce contents of social justice and distributive justice in the debate of reparations. They reached to stress the political dimension of the human rights to the extent they challenged the very conception of the neoliberal state (Speed, 2009). Despite the political capital of the government and the majority coalition imposing their view, the human rights and victims' networks strengthened their ties and bonds of solidarity. Before the eyes of the international community and the democratic sectors in society, the short run political triumph of Alvaro Uribe's government in Congress, was also a great moral and legal defeat in the long run.

CHAPTER 6

RESISTING THE POLITICAL CONSTRUCTION OF IMPUNITY

In the past chapters, I have examined the contentious process of framing the main mechanisms of truth, justice and reparations in Colombia during the first decade of the century. More precisely I have spelled out the political and legal battles between different political actors in the framing of the “Justice and Peace Law” and the “Victims’ Law” bill. Over the past decade, the domestic and international human rights NGOs have resisted the hegemonic discourse of security promoted by Alvaro Uribe’s government and contested the attempt to introduce a from above project of “reconciliation” that turned out to be a form of legalization of politics (Laplante & Theidon, 2007). During this period, the human rights organizations intensified their networks, refined the content of the human rights discourse and increased their actions of political and legal mobilization. As part of this process, new victims’ organizations and networks also have emerged as political actors trying to promote bottom up initiatives and public policies on victims’ rights. As I have explained in the previous chapters, the human rights and victims’ networks contested the process of legalization of politics by means of the politicization of human rights. The human rights and victims networks not only introduced and adapted the discourse of victims’ rights to the domestic political arena (Goodale & Merry, 2007; Tate, 2007), but also enhanced a dialogical process and a construction of a discourse of victims’ rights that rests in both, the influence of the globalized discourse of human rights law (McGregor, 2008;

Speed, 2009) and the construction of participatory processes with grassroots victims organizations (McEvoy, 2008; McGovern, 2008; Speed, 2009).

But the struggles to claim for justice are not restricted to the framing of the legal mechanisms in the political arena of the National Congress. These struggles have also taken place in the application of transitional justice mechanisms, that is to say, the way the different actors in contention strive to define the meanings and the practices of the victims' rights. In this chapter I will focus on the application of the "Justice and Peace Law" as a battlefield among different social and legal actors. I argue, drawing in Pierre Bourdieu's perspective on the legal field (1987), that this contention implies the penetration of political forces into the legal field and the resistance of human rights networks by stressing the legal and moral dimension of human rights. In this contention, the human rights networks, comprised of intergovernmental organizations, members of the international community, human rights NGOs, victims' organizations and the higher courts, attempt to resist what Winifred Tate (2007) has named "the political construction of impunity" (p. 215). In doing so, the human rights organizations have deployed different sets of political and legal actions, such as gaining political leverage in the international community, providing technical assistance for institutional strengthening and bringing cases before the courts. In order to explain this argument, I will focus on four aspects. First, I will explain how the "Justice and Peace" procedures have become a battlefield in which different political and legal actors struggle to impose their perspectives on justice and truth. Second, I will spell out the main actions taken by the human rights organizations to resist

impunity and protect the victims' rights in the judicial forum. Third, I will focus on the judicial space and the "Justice and Peace" proceedings as a space of contention, and finally I will explain the role of the Supreme Court.

The Battlefield of the Justice and Peace Proceedings to Protect Victims' Rights

For years, human rights and victims' organizations denounced the violations of human rights, the linkages between state security forces and paramilitary groups and claimed for the accountability of the perpetrators of human rights violations. Since the 80s, the prevailing situation of impunity became one of the most persistent denunciations of the human rights NGOs and intergovernmental organizations. In response to the denunciations about impunity, institutional judicial reforms became the main priority, not only within the domestic political arena, but also as a concern of the international community. For instance, in 1991 the National Constituent Assembly introduced a substantial reform to the judicial system, such as the creation of the Attorney General Office, to face the problem of impunity. But in the meantime, Colombia became one of the main recipients of international aid in Latin America during the 90s to carry out Rule of Law programs (Arenas & Gómez 2001; Rodriguez-Garavito, 2001; Santos, 2001). Despite the institutional efforts to create a powerful Attorney General Office and strengthen its institutional, administrative and economic capacity, the astonishing power and resources of the armed groups, such as drug traffickers and the paramilitary groups have made very difficult to overcome the

situation of impunity. This lack of social and institutional response to the commission of crimes, especially regarding violation of human rights, is not restricted to institutional factors in Colombia, but also to political aspects. For the anthropologist Winifred Tate (2007), there is a political construction of impunity, which consists of the formal response to the demands of retributive justice, without serious attempt to overcome the problem .

During the past years, the efforts of the human rights organizations have struggled to make sure that the “Justice and Peace” proceedings do not end up being another chapter of the political construction of impunity. They have raised awareness about victims’ rights and elicited a public debate on the legal framework that take those rights seriously, and in addition, have also served to denounce the asymmetrical situation between the perpetrators of crimes against humanity and the victims of those crimes in Colombia. The human rights and victims’ organizations have struggled to transform the power relations that existed before the peace accords with the Colombian government and balance the equation by introducing a language that stresses the legal and ethical principles of justice (Minow, 1998; Teitel, 2000). In this regard, the Constitutional Court’s decision striking down some of the “Justice and Peace Law” provisions, balanced the situation in favor of the victims’ rights. Yet, it was not enough to reach a legal framework that enshrined, to some extent, the victims’ rights while the political context still was favorable for the paramilitary groups (and those social sectors that supported them) and hostile against the victims of gross human rights violations. In this part, I will examine the political, legal, and institutional

constraints the human rights networks have faced in order to reach some level of victims' rights protection.

Political constraints

Among the human rights activists and critical analysts in Colombia there is a relative consensus about the fact that the recent Colombian experience is not the story of a transition from conflict to post conflict, or from war to peace (Uprimny & Saffon, 2005, Valencia, 2010).⁷⁵ It is rather the case of a partial transition in which the forms and some mechanisms of transitional justice have been used to face the demobilization of one armed group. However, the political conflict between the Colombian government and the left wing guerrilla groups persisted and intensified to the extent that the language and the discourse of security did not allow for the possibility of any political negotiation. The hegemonic discourse of security and war on terrorism, not only served to reinforce the social rejection against the FARC, but also created a hostile environment for those who dare to disagree with the government, including the human rights NGOs and the victims of the paramilitary groups. For Uribe's administration, the claims of victims' rights made by the human rights NGOs were part of a political opposition against the government and instrumental for the "terrorist groups." From this perspective the social, human rights NGOs and the victims' organizations were portrayed as enemies (see Chapter 5). The political conflict, far from being over, persisted in the political language and the emerging

⁷⁵ Presentation of Michael Reed, Director of the International Centre for Transitional Justice ICTJ, at the Victims Meeting in Medellín, November 2010.

representations of the “friends” and the “enemies.” The political conflict was not only present in the macro level of the political arena; it was also present in the micro politics of the judicial proceedings in Colombia.

The rhetoric of transitional justice was not precisely a descriptive language that gave account of a political transition from war to peace, but rather it was part of the semantic political battle. For example, the government and the National Commission of Reintegration and Reparation (CNRR) have insisted that Colombia is an example of successful transitional justice in which more than 30,000 combatants have been demobilized (Pizarro, 2010). According to this view, the paramilitary groups disappeared after the demobilization process ended in 2006. For Uribe’s administration, the emerging armed groups that attempted to take over control on the territories left by the demobilized paramilitaries were not a new generation of paramilitary groups, but rather “criminal gangs.” The government also insisted before the international community over and over to change the language referring to the political situation and acknowledging the progress on the human rights situation and security.⁷⁶ In opposition to that perspective, the human rights organizations became the main opponents of Alvaro Uribe’s government. These organizations, as well as the opposition political parties, continued denouncing the abuses caused by the “Democratic Security” policies, and they strongly opposed the constitutional amendment that allowed Alvaro Uribe to run for reelection for the 2006-2010 term. The human rights organizations continued documenting human rights violations in the zones

⁷⁶ Interview with Maria Paulina García y Annika Karlsson, staff members of the UNDP, February 2 2010.

controlled by the former paramilitary groups and denounced the emergence of new forms of paramilitary groups (CAJAR,CSPP& MOVICE, 2009; CCJ, 2007). They also denounced the abuse of the language of transitional justice when referring to the Colombian situation (CAJAR,CSPP& MOVICE, 2009; CCJ, 2007; Uprimny and Saffon, 2007).

But this was not a simple contention between political representations. Behind the government's view on maximizing the pursuit of reconciliation and providing generous incentives for demobilization, there were also powerful groups who strongly opposed any claim of accountability by the paramilitary members and disclosing the truth about the mass crimes they committed. When the "Justice and Peace" judicial proceedings started taking place by the end of 2006, the country was facing a very polarized political environment that caused a negative impact on both the institutional arrangements and the proper function of the judicial system. The government mainly stressed the pursuit of security, war against the FARC and "from above" policies of "reconciliation" with the paramilitary groups. The government focused on the reintegration program for the demobilized paramilitary members but paid very little attention to the strengthening of the institutional capacity of the judicial system and the legal representation of the victims. For the human rights organizations, the government and the majority coalition in Congress were protecting the perpetrators of crimes against humanity and were not committed with the pursuit of truth, justice and reparation. In addition to these facts, the human rights NGOs also denounced the

fact that the paramilitary groups did not fully demobilize their military and economic structures.

As the human rights reports documented, the demobilized paramilitary groups have continued exerting social control and political violence in some regions of the country (CAJAR, CSPP & MOVICE, 2009, CCJ, 2007, 2010). In some regions, such as Urabá and Cordoba, the paramilitary groups have threatened the victims' organizations leaders that advocate for their rights and the recovery of their lands. Up to the present, more than fifty victims' leaders have been murdered by paramilitary forces (Verdad Abierta, 2010). The paramilitary organizations did not demobilize their economic and political structures and they were not interested in losing their properties and privileges. This reality turned out to be an enormous obstacle to carry out the victims' rights to know the truth about the violence they suffered, go back to their lands, recover their properties and obtain reparation (CAJAR, CSPP & MOVICE, 2009; CCJ, 2010).

Legal constraints

Another element in the political construction of impunity is related to the design of the legal framework for the demobilization of the paramilitary forces. For the human rights activist, the proceedings for the trials would have turned out to be a quasi-administrative and very brief procedure designed to adjudicate soft punishment to the perpetrators of gross violations of human rights in Colombia. The legal framework was initially designed to carry out a fast track procedure for the demobilized paramilitary members that were involved in crimes against

humanity (see Chapter 3). It would have taken approximately six months for a paramilitary member to get through this procedure. Then, they could have legalized their properties and engaged in politics as they had already planned.⁷⁷ Yet, the Constitutional Court decision in 2006 changed the plans for the paramilitary members and the political elites that dominated the government and the Congress. As a prominent human rights lawyer said, “*the Constitutional Court ruined the party for the government and the paramilitary groups.*”⁷⁸ The Constitutional Court changed the content of the “Justice and Peace Law” and introduced significant modifications to the Justice and Peace Proceedings reducing the incentives for the paramilitary members and widening the scope of the victims’ rights (see Chapter 4).

According to the “Justice and Peace Law” the proceedings have two main stages: an administrative stage and a judicial stage. The *administrative stage* consists of the elaboration of a roster of the paramilitary members, mainly the commanders and middle rank members who were involved in the commission of gross violations of human rights. The list of defendants (*postulados*) is elaborated on by the Peace Commissioner, the Ministries of Internal Affairs and Defense. Once the government approves the list, it sends it to the Attorney General’s Office. Once the Attorney General’s Office receives the list with the defendants that want to be part of the “Justice and Peace” proceeding, the *judicial stage* starts. The *judicial phase* starts with the confession of the crimes committed by

⁷⁷ Interview with members of the Colombian Commission of Jurists and the CAJAR, Bogotá, September 2009-February 2010.

⁷⁸ Interview with a member of the CAJAR, Bogotá, November 2009.

the paramilitary member. The Constitutional Court requested the paramilitary members to fully confess their crimes; otherwise, they will lose the incentives of alternative punishment. Initially, according to the “Justice and Peace Law” as it was enacted by the Congress, the terms of the proceedings were restricted and did not allow the Attorney General’s office to collect the evidence to confront the version of the candidates. Furthermore, the proceedings did not allow the victims to participate. The Constitutional Court’s decision also struck down the brief terms in order to follow the proceedings established for the regular criminal proceedings and allowed the victims to take part in every moment of the proceeding. In spite of the significant changes introduced by the Constitutional Court, the victims had to face many other obstacles to protect their rights. Despite the Constitutional Court’s decision in 2006 protecting the victims’ rights, the government came up with the strategy of neutralizing the Constitutional Court by means of governmental decrees (CCJ, 2010; Uprimny, 2010).

Actually, the legal frame was designed to facilitate the demobilization of the paramilitary members but not to reach accountability for commission of gross violations of human rights. Out of the 33,000 demobilized paramilitary members, almost 29,000 were not initially submitted to any criminal investigation. They were covered by the incentives provided by the Law 782 of 1992 and the governmental decree 128 of 2002. Based on this legal framework the state declined to prosecute those paramilitary members that were not indicted or convicted for crimes against humanity (MOVICE, CSPP & CAJAR, 2009). According to the human rights organizations, the extension of these incentives to

the paramilitary groups was a *de facto* amnesty that guarantees the impunity for those paramilitary members. Only 10% of the demobilized paramilitary members, that is to say, a bit more than 3,000 paramilitary members, initially decided to submit to the “Justice and Peace” legal framework. These proceedings implied that the Attorney General Office must have the capacity to receive the confession of each one of those candidates. Regarding the victims, up to the beginning of 2010, 278,334 victims had registered in the information system of the Attorney General Office (Fiscalía General, 2010). These victims have expected to be part in the proceedings, learn the whereabouts of their family members, the reasons why they were killed and disappeared, and who ordered the murder.

Institutional constraints

A third aspect in the political construction of impunity is related to the institutional arrangements that came after the demobilization of the paramilitary groups. In the midst of this political conflict between those who advocate for the pursuit of top down reconciliation, forgetfulness and forgiveness, and those who claim for truth, justice and reparation, the institutional arrangements were critical for the achievement of any of those goals. For Uribe’s government it was not a priority to design institutional mechanisms and strengthen the capacities to carry out the rights of truth or justice. The design for the “Justice and Peace” institutional arrangements has not provided the institutional and technical capacity to face the challenge of carrying out the criminal investigation of mass crimes perpetrated by the paramilitary groups in Colombia during the past three decades.

The government created the administrative structure to increase the staff members of the Attorney General's Office. However, that structure, consisting of three "Justice and Peace" main units and eleven satellite units, turns out to be insufficient to face the criminal investigations. The main "Justice and Peace" Attorney General Units are located in three of the largest cities of the country: Bogotá, Medellín and Barranquilla. From the perspective of access to justice for the victims, this design suggests the existence of economic and geographical barriers that prevents the victims, mostly peasants and marginalized communities, to travel from remote villages in the country to attend hearings in those cities (Cappelletti & Garth, 1977).

The Attorney General Office Units are comprised of 28 prosecutors, who are in charge of receiving the confessions of more than 3,000 paramilitary members that decided to take part in the "Justice and Peace" proceedings. Each one of those confessions takes place in hearings that demand sometimes several months. In addition to the amount of cases, the prosecutors appointed for the "Justice and Peace" Units did not have major experience on transitional justice. As a former member of the Attorney General Office said, "They did not have a clue of transitional justice; the prosecutors came from doing criminal investigations in other Units, such as, corruption or other topics".⁷⁹ Actually, as different human rights lawyers and members of intergovernmental organizations acknowledge, the topic was new for everyone.⁸⁰

⁷⁹ Interview with a former member of the Attorney General Office, Bogotá, September 2009.

⁸⁰ Interviews with different human rights NGOs members, Bogota, September 2009-February 2010.

According to the Attorney General Office, up to December 2010 more than 4,000 defendants that took part in the “Justice and Peace ” proceedings had confessed to 1, 597 massacres, 45, 499 murders, 4, 312 cases of forced disappearance, and 9,538 cases of forced displacement. However, the cases are much more than what the defendants have confessed. The Attorney General Office has documented 173,000 murders, 34, 467 forced disappearances, and 74, 990 cases of forced displacement (Fiscalía, 2010). Based on these confessions the Attorney General’s Office has discovered more than 1,200 mass graves. The Attorney General’s Office has identified more than 500 bodies of disappeared people (Semana.com, Feb 15, 2010). In the following chart, it is possible to contrast the gap between the amount of crimes confessed by the defendants and the amount of crimes documented by the Attorney General’s Office.

Chart No. 5: Crimes Confessed vs. Documented Cases December 2010

Type of Crime	Confessed	Documented
Massacres	1.597	1.597
Murders	45.499	173.183
Forced Recruitment	2.144	3.557
Forced Disappearance	4.312	34.467
Forced Displacement	9.538	74.990

Extortion	1.777	3.532
Kidnapping	1.866	3.527
Sexual Violence	42	677
Drug Trafficking	68	68

Attorney General Office, 2010

These figures, which have been portrayed by the government and the Attorney General’s Office as the demonstration of the achievements of the “Justice and Peace Law”, have also been contested by the human rights organizations. Despite the shocking figures of the documented cases, the outcomes seem to be minimal when they are compared with the amount of crimes documented by the human rights organizations during more than two decades of horror. According to the report made by the MOVICE, the CSPP, and the CAJAR, the databases of the human rights organizations show that the crimes committed by the paramilitary groups are far beyond the figures of the Attorney General’s Office. For these organizations: “Actually between 1982-2009 5 million people have been displaced; between 1982-2007; the estimated amount of tortured people is 15,000; between 1965-2007 the detained-disappeared people is up to 50,000; and from 1977-2007 more than 80,000 extrajudicial murders” (Movice, CSPP, CAJAR, 2009 Own translation).

Regarding the legal assistance and representation for the victims, the government did not support a comprehensive program to represent the interests of

the victims in the trials. Despite the fact that the Ombudsman has tried to show their efforts in responding to the demands of the victims, the capacity of the Ombudsman Office cannot respond properly to those demands. The Ombudsman Office, which is in charge of providing legal representation for the defendants in the regular criminal trials, did not have the capacity to provide additional representation for the victims in the “Justice and Peace” proceedings. By 2008, 91% of the registered victims did not have any legal assistance assigned by the Ombudsman Office (Defensoría del Pueblo, April 2008). By that time there were only 68 public defenders assigned to represent the victims. This suggests that each public defender was assigned more than 800 victims (Defensoría del Pueblo, April, 2008). Out of those 68 public defenders, 35 worked in Bogotá, 19 in Barranquilla and 14 in Medellín. The following chart compares the distribution of cases per public defenders in the three cities in which the main Attorney General Units are located.

Chart No. 6: Distribution of Public Defenders

Region	No of Public Defenders	No of Cases	No of cases per Public Defenders
Bogotá	35	1,426	40
Barranquilla	19	5,420	285
Medellín	14	2,465	176

Defensoría del Pueblo, 2008

The political contention over the two different approaches about how to deal with the political conflict and the claims of justice also permeated the institutional arrangements and the possibility of responding to the claims of the human rights and victims organizations. In the context of a hegemonic discourse and practices of security and war against terrorism, the lack of political commitment of the government to carry out the victims' rights and the weak institutional capacity of the Attorney General's Office and the Ombudsman Office, it was difficult for them to carry out the rights of truth, justice and reparation. However, the human rights networks have tried to resist both, the hegemonic discourse of security and the political interests on impunity by deploying different political and legal actions. The "Justice and Peace" legal proceedings have become the scenario for the main battlefield among those political sectors who want to maximize the pursuit of demobilization and peaceful coexistence, and those who attempt to reach some level of justice and truth (Bourdieu, 1987). But bearing in mind the political context I described, this contention takes place in different scenarios, such as the framing of the legal rules that set forth the legal proceedings, the design of the institutional arrangements, the assigning of resources, the action of the state agents, and the application of judicial decisions. The "Justice and Peace" judicial proceedings have become the scenario that crystallized different tensions among the political and legal actors.

Resistance to Impunity

In order to resist the political construction of impunity (Tate, 2007) and the process of legalization of politics (Laplante & Theidon, 2007), the human rights networks, not only have attempted to influence the legal framework, but they also have tried to contribute to the public debate about institutional arrangements and the conditions in which victims' rights are put into practice. The different actors that take part in the human rights networks, such as the international community, the intergovernmental organizations, the transnational NGOs and the domestic NGOs, have created spaces to address the human rights situation in Colombia. In these spaces, they explore different forms of action in order to influence public policies, strengthen the institutions and mechanisms of protections of human rights and empower the victims' domestic human rights and victims organizations. Here, I highlight three main forms of action that different human rights organizations have deployed in order to protect the victims' rights: 1) international political leverage and influence on public policies, 2) transnational and domestic human rights NGOs as translators, and 3) strategic litigation.

International political leverage and influence on public policies

As I explained in Chapter 3, the human rights organizations have relied on the international community in order to attain political leverage and force the international community to exert pressure on the Colombian government to introduce public policies on human rights (Keck & Sikkink, 1998). These actions

might produce two important effects: first, to bring about public shaming in the international arena, and second, to convince the international community to avoid supporting cooperation programs on security and, instead, support programs on human rights. Actually, during the past decade, the international community played a significant role within the space of the London-Cartagena-Bogotá process. This has been a space of dialogue and negotiation among members of the international community, organizations of civil society and the Colombian government (see Chapter 3). Within this space, different members of the international community, such as the United Nations, the European Commission and specific countries, have manifested their concern about the conflict and the human rights situation in Colombia. In the Cartagena Summit in February 2005, the members of the G-24 got more involved in the public debate about the “Alternative Punishment Draft” (see Chapter 4). Ever since, the international community started paying more attention to the victims’ rights. The following summit, which took place in Bogotá in November of 2007, was also a moment of political contention between the state government and the human rights NGOs. According to some members of the United Nations Development Program (UNDP), the summit was also a space for political negotiation about the need to take the victims’ rights on the institutional sphere seriously.⁸¹ While the government demanded the international community acknowledge the improvement on security and the situation on human rights, the civil society organizations have contested the achievements of the Colombian government and

⁸¹ Interview with Maria Paulina García and Annika Karlsson, staff members of UNDP Colombia, Bogotá, February 2 2010.

claimed protection of victims' rights. The human rights organizations also denounced the asymmetrical situation of the victims compared with the privileges the government granted to the demobilized paramilitary members.

In the midst of this political context, the members of the G-24 played the role of active mediator between the two sectors, trying to concede some of the government's goals and, at the same time, trying to create more institutional commitment about the protection of victims' rights.⁸² An illustrative example of the political negotiation is the contrasting content of the statements elaborated, on the one hand by the international community and the government, and on the other hand, by the transnational human rights NGOs. The final declaration of the 3rd Summit, which took place in Bogotá, manifests in a very diplomatic tone the interests of the Colombian government to acknowledge its efforts to carry out the "Justice and Peace Law".

"[They] highlighted the efforts and achievements of the state to carry out justice and unveil the truth in the context of the Justice and Peace Law and acknowledge the contribution of the Attorney General's Office and the Supreme Court in the struggle against impunity and the pursuit of truth. In this regard, [They] praised the processes that have allowed the victims to claim for their rights and the response that the state institutions and the civil society organizations have begun to articulate. [They] pointed out that the victims must have a

⁸² Ibid.

fundamental role in the process of truth, justice and reparation, as a condition to reach lasting peace.” (Final Statement, 2007)

However, the final declaration of the civil society groups, that is to say, the transnational human rights NGOs that took part in the summit, is very telling about the perspective of transnational human rights NGOs on the foreign and Colombian government agreement. The NGOs were very straightforward pointing out the asymmetry between the demobilized paramilitary members and the victims, and the persistence of human rights violations in the country.

“...Lasting peace should be built on the pillars of justice, peace and reparation. The way the demobilization process with the paramilitaries is evolving, it will be difficult to guarantee lasting peace, given the paramilitaries’ contempt for the rights of the victims and the perpetuation of their armed structures. We have observed that the demobilized are categorized as victims and we are concerned about the fact that funds earmarked to victims are disproportionate to those allocated to the demobilized...

... Human rights defenders and organizations have worked for years so that the victims have access to their rights. What is worrying is that they have to work in an environment of pressures and accusations that are produced by a number of actors, including political circles within

the Colombian government. The high levels of impunity are alarming. The authorities in charge of pursuing these crimes are not showing the will required to ensure justice.” (International Civil Society Declaration, 3rd International Conference on Colombia, 2007).

According to the members of the United Nations Development Program UNDP, the NGOs and the international embassies I interviewed, the members of the international community do not disregard the critical situation of human rights. It seems to be a contradiction between two different forms of addressing the political tension. While the members of the international community attempt to address the contradictions by maximizing the diplomatic channels and negotiating even the words and the terms for describing the political situation in the country with the government, the human rights organizations maximize the pursuit of justice values. These organizations are not willing to negotiate the language or deny what they consider it is a worrisome humanitarian situation. These organizations also make claims for institutional change and more political commitment regarding the protection of victims’ rights.

However, the international community has created spaces in which the political concerns are less ambivalent and express more commitment with the victims’ rights. One example of these forms of action takes place in the “Seminars for Public Policies.” In addition to the international summits, the parties of the London-Cartagena-Bogotá Process, that is to say, the members of the civil society (the Alliance of Social Organizations), the international community (the G-24)

and the government, have also scheduled a set of annual seminars in order to promote public debate on victims' rights. For instance, in 2008, the London-Cartagena-Process organized a seminar named "Integral Attention to Victims" and in 2009, they organized a new seminar named "Public Policies on Access to Justice for Victims".⁸³ According to the UNDP members, these seminars attempt to bring together members of social organizations and victims from the regions, state functionaries and members of the international community. The seminars also attempt to create a space of discussion based on the presentation of international experts on the topics of victims' rights, and listening to the voice of the victims. Finally, the seminars promote the discussion about possible elements to design public policies on the protection of victims' rights. It is an outstanding effort considering the level of political polarization in the country. However, the seminars are not necessarily a space of consensus and agreement. In December of 2009 when I attended the seminar on "Public Policies on Access to Justice for Victims," the political contradiction between the government functionaries and the victims' organizations was evident. The government sent low rank functionaries to attend the seminar. Most of them were very emphatic on the idea that the purpose of the seminar was listening to ideas that might be useful for public policies design, but not to commit to a particular action. For their part, the victims were very disappointed with the government functionaries and expressed their discontent because they expected proper responses for their needs, such as

⁸³ Interview with Maria Paulina García and Annika Karlsson, Op. Cit.

reparations, access to justice and conditions of security for the leaders of victims' organizations.

Transnational and domestic human rights NGOs as translators

In addition to the spaces of public debate on victims' rights, the international community and the human rights NGOs have contributed to increase the institutional capacity of the state agencies that are in charge of carrying out the rights of justice, truth and reparation. In this perspective, some members of the international community decided to coordinate efforts to strengthen the institutional and economic capacity of some critical programs on the protection of victims' rights. This instrument would allow the country donors, this is countries that provide international aid to Colombia, to allocate resources based on more comprehensive information and avoid reproducing the efforts made by other agencies. By 2005 and 2006, different cooperation agencies decided to support state policies related to transitional justice. The Spanish International Cooperation Agency (AECI) suggested creating a coordinated space for cooperation.⁸⁴ In 2006, the members of the G-24 requested the UNDP to design a strategy of cooperation. During those two years, the members of the G-24 discussed the strategy and then started negotiating that strategy with the government.⁸⁵

A group of countries, such as Sweden, Spain, the Netherlands and Canada, were more interested in supporting programs related to the protection of victims'

⁸⁴ Interview with Gabriela Vásquez, member of UNDP, Bogotá, February 10 2010.

⁸⁵ Ibid.

rights. These countries advocated for two different programs: the first group of programs aim at strengthening the capacity of institutions that worked with victims, such as the Attorney General Office, the Ombudsman Office and the Supreme Court, among others, and to empower victims' organizations as well. A second group of countries, such as Germany through the German cooperation agency GTZ, advocated for the support programs of reintegration.⁸⁶ The negotiation among the different countries led to the idea of including the two components of the program. According to Vásquez, the overall goal of the program consists on empowering the victims' organizations to make claims for their rights and improving the institutional capacity of the state agencies that are in charge of the protection of victims' rights. The multi-donor program is managed by the UNDP and receives funds from countries such as Spain, Belgium, Canada, the Netherlands, Sweden, Switzerland, Norway, and Great Britain, among others.⁸⁷ These funds have been allocated, for instance, to strengthen the program of public representation of victims at the Ombudsman Office, and strengthen programs of psycho-social assistance to the victims at the Attorney General Office.

In addition to the role of the international community and the efforts of international cooperation agencies, the transnational NGOs have also participated in the discussion of institutional design. The NGOs that have the expertise and experience on the topic play the role of mediators that brings comparative

⁸⁶ Ibid.

⁸⁷ Ibid.

knowledge and transmits that experience to domestic institutions and staff members (Goodale & Merry, 2007; Jelin 1998). One of the most illustrative examples of this form of action is the role of the International Center for Transitional Justice (ICTJ). Since the moment the ICTJ opened the Colombian branch, this international NGO started giving advice to the Attorney General's Office. For years, the Attorney General's Office had received international cooperation and technical support from different cooperation agencies, such as the USAID (Arenas & Gómez, 2001; Santos, 2001) and the Netherlands. The Netherlands had mainly supported the Human Rights Unit under the program against impunity. However, the ICTJ did not attempt to replicate what these cooperation agencies were doing, but to focus on the technical assistance to the Unit of Justice and Peace. For the staff members of the Unit, the topic of transitional justice was a brand new topic and they were not trained to carry out that type of criminal investigation. The role of the ICTJ was to bring international experts to train the Attorneys General and staff members of the unit. One of the main challenges was to transform the logic of the criminal investigation as it was usually carried out. According to the tradition in criminal law, the criminal investigation was conducted under the assumption of individual responsibility. The evidence and the construction of judicial truth attempted to shed light on the particular case of investigation. However, for transitional justice cases, in which the perpetrators have committed thousands of murders, it is impossible to tackle the challenge of knowing the truth and prosecute more than 4,000 defendants as individual cases.

Following the experience of international tribunals, the ICTJ and other human rights NGOs provided training in criminal investigation of systematic crimes. In this perspective, the attempt is to understand and investigate the crimes as part of a systematic plan, instead of investigating case by case.⁸⁸ The ICTJ has provided more than technical cooperation to the Unit of Justice and Peace of the Attorney General Office. This NGO also started providing support to different governmental agencies and judicial institutions, such as the National Commission of Reintegration and Reparation (CNRR), and the Supreme Court. The ICTJ provided advice for the CNRR in order to design a public policy on mechanisms of administrative reparation. This NGO also promoted international conferences to exchange experiences among the members of Supreme Courts in Latin America.⁸⁹

Strategic litigation

A third form of action is carried out by some of the more relevant human rights law organizations, such as the Lawyers Collective Jose Alvear (CAJAR), the Colombian Commission of Jurists (CCJ), the Women's Initiative for Peace (IMP), and the Corporación Jurídica Libertad (CJL), among others. Once the "Justice and Peace Law" was enacted, the human rights NGOs faced a serious debate about whether to represent the victims before the Justice and Peace Courts. More critical human rights NGOs considered what representing victims before the

⁸⁸ Interview with Camilo Bernal, Coordinator of the Justice Area at the International Center for Transitional Justice in Colombia (ICTJ), Bogotá, February 23 2010.

⁸⁹ Ibid.

Justice and Peace Courts would mean in terms of playing the game of impunity.⁹⁰ For them, it was necessary to bring the paramilitary members to the ordinary criminal justice in order to have them held accountable for the crimes they committed to the full extent of Colombian criminal law. However, considering the new criminal law framework that alternative was not feasible. The human rights organizations with more experience in legal action, such as the Colombian Commission of Jurists (CCJ) and the Lawyers Collective Jose Alvear CAJAR, which had struggled to defend human rights for more than two decades, were more practical in their approach. In the case of the CCJ, their members acknowledged there was an intense internal debate whether to represent victims before the Justice and Peace trials. The CCJ decided to take part in the trials under different arguments. First, regardless of the opinion about the legal framework created by the “Justice and Peace Law,” the Justice and Peace trials represented a space in which the demobilized paramilitaries were expected to confess the crimes committed during the past twenty years. Second, only by gaining access to legal processes and the Justice and Peace trials was it possible to know the truth and extend legal mechanisms to protect victims’ rights. Finally, in case those mechanisms did not work, it would be much better to have criticized the process from the inside by getting firsthand information, than doing so from the outside without serious knowledge of the situation. The CAJAR adopted a similar perspective.⁹¹

⁹⁰ Interview with human rights activists, September 2009-February 2010.

⁹¹ Interview with different members of the CCJ, September 2009-February 2010.

One prominent CAJAR member explained that his organization had undergone all the state of siege legislation that was enacted during the 80s and the 90s. They also had to litigate before the military tribunals. This was just another chapter in the history of exceptional regulations and impunity in Colombia. For them, they did not have to make any decisions, all the cases and crimes they had struggled for were to be tried in that jurisdiction. As a consequence they decided to represent victims before the Justice and Peace courts⁹². In addition to these organizations, some NGOs, such as the Women's Initiative for Peace and the Corporación Jurídica Libertad CJL, which had been working previously with groups of victims, followed the will of the victims' groups. For the victims it was very important to interrogate the paramilitary commanders about the whereabouts of their family members and know the reasons of their actions.⁹³

The human rights litigants acknowledge the NGOs do not have the capacity to represent all the victims. For instance, the Colombian Commission of Jurists CCJ represents approximately 600 hundred victims and the Women's Initiative for Peace represents 500 women. The CAJAR and the Corporación Jurídica Libertad CJL represent also a small group, especially considering that there are more than 280,000 victims registered before the Attorney General's Office. However, for the human rights litigants the main goals are to transform the judicial process, know the truth and reach some level of accountability. For instance, the CCJ designed a representation program based on identifying ten emblematic cases. The selection considered different criteria such as racial, ethnic

⁹² Interview with a lawyer of CAJAR, February 15 2010.

⁹³ Interview with a former member of IMP, Bogotá, February 4 2010.

and gender diversity, regional basis, and political affiliation to include different groups that have been victimized. To carry out the program, the CCJ hired a group of litigants with extensive experience with human rights work. Other NGOs, such as the CAJAR and the CJL were engaged in representation of victims of human rights violations before the ordinary criminal justice system. The IMP has focused on representing groups of women they had been working with.⁹⁴ According to one litigant, by representing just one person in a case, it has been possible to get to know the formation of the paramilitary groups in the region of Uraba, the structure of the paramilitary groups, the linkages between the army and the banana growers with the paramilitary groups, their strategy to deprive communities, such as afro Colombian communities, indigenous groups and peasants, from their lands and to eliminate the main Trade Union organization of the region.⁹⁵ The litigants have also struggled to transform the asymmetrical relations within the judicial process by means of playing an active role in the hearings, requesting the collection of evidence, posing questions to the paramilitary members and appealing the Attorney General's Office decision when the victims' rights are denied. In doing so, they also have incorporated the international human rights law arguments in order to influence the decisions of the Attorney General's Office. Mainly international cooperation programs run by the European Commission and certain foreign embassies (Canada, Switzerland and Spain, among others) fund these actions of legal representation. Such

⁹⁴ Interviews with members of different human rights NGOs, Bogotá, September 2009-February 2010.

⁹⁵ Interview with a human rights litigant, September 2010.

transnational support funds NGOs, such as the CCJ and the CAJAR, to carry out strategic litigation of emblematic cases.

The Justice and Peace Judicial Space

Now I will show how the political contention penetrates the legal field, and, more specifically, the judicial space of the “Justice and Law” proceedings. The contention in the legal field is transformed to the extent that the discourse of human rights constitutes in itself a cultural capital that resists the attempt to impose the political needs of reconciliation, forgetfulness and forgiveness. From the perspective of the social fields, Pierre Bourdieu (1987) pointed out that the legal field transforms the social conflicts in legal conflicts by means of a set of rituals, symbols and a language that names the subjects and the conflict. But conversely to the relative autonomy of the legal field that Bourdieu describes, in the middle of a political conflict, such as in the case of Colombia, the relations of the political and the legal fields are much more interpenetrated. The actors that prevail in the political arena attempt to penetrate the legal sphere, re-defining the legal rules and principles according with their interests, and the human rights litigants and activists, try to transform the political sphere by means of the language of rights and obedience to legal and ethical principles.

In the case of the “Justice and Peace” legal proceedings, it is possible to observe a contention among different actors with different amounts of political and legal capitals. The demobilized paramilitary commanders tried to impose their narratives of war and impose their views justifying their actions; the human

rights litigants resisted the political stands of the defendants by drawing on the human rights discourse. In this contention, the human rights litigants have reached, to some extent, to transform the power relations inside the courtrooms degrading the demobilized paramilitary members to the status of perpetrators of crimes against humanity (Parker & Lauderdale, 2010). The litigants also have attempted to transform the passive role of the Attorney General's Office members by introducing the discourse of international human rights law. In order to give account of this political and legal contention I will highlight the following characteristics: 1) The asymmetry of power relations within the judicial sphere. 2) the resistance and the transformative role of the human rights litigants, and 3) the political decision to extradite 14 paramilitary commanders to the U.S.

The asymmetry of power relations inside the “Justice and Peace” hearings

It has been more than four years since the hearings for confessions started and they still are going on. These confessions are the base of the criminal investigations and the “Justice and Peace” trials as well. The judicial forum has become a battlefield between two asymmetrical parties. The demobilized paramilitary members, legally represented by very well paid lawyers, portrayed their symbolic image of military commanders and their capacity of intimidation. In deep contrast to the deployment of symbolic power associated with the former paramilitary commanders, the victims, mostly peasants and members of marginalized communities, could not even access the courtroom and request information about their family members. Their conditions of marginalization and

vulnerability end up to be reproduced by the judicial system (Goodale & Merry, 2007). Some of the victims are represented by the Ombudsman Office Lawyers, and a very few are represented by the human rights litigants.

In the beginning, the paramilitary commanders themselves attempted to reproduce in the courtroom the logic of war they had imposed for years in the territories they controlled. The demobilized paramilitaries tried to defend themselves by introducing their “heroic” narratives within the judicial forum. Adopting aggressive stances, it seemed some former paramilitary commanders were taking control of the hearings by taking advantage of their intimidating presence. For instance, Olga, one of the litigants of the Colombian Commission of Jurists CCJ, recalls the first hearing with Salvatore Mancuso, one of the more conspicuous commanders of the paramilitary groups. Olga remembers Salvatore Mancuso’s image as being, very well dressed and accompanied by his lawyers’ team. He did not seem to be a defendant, but still behaved as a commander in chief that liked to take control of every situation. His body language, his speech, the way he looked at the other people seemed to create fear in those around him. In contrast, the Attorney General portrayed a quite different image, the image of a shy and powerless functionary dominated by awkward behavior. Olga also recalls that Mancuso, before starting his confession (or giving his speech), decided to show a video. The video, made by the paramilitary group, showed how a guerrilla group took over a small town by defeating the local police force. Then, the paramilitary groups showed up, fighting and defeating that guerrilla group. The video presented by Mancuso, portrayed itself a narrative of war that penetrated

the legal forum. It was a narrative according to which they were peaceful landowners who were forced to take up arms to defend themselves from the threats, extortions and kidnappings of the guerrilla groups. According to this narrative, because of the absence of the state protection, former victims of the guerrilla groups decided to organize and defend themselves.

Actually, that is what the paramilitary commanders started doing during the hearings. They insisted on the virtue of their cause and the merits of their fight as well as the heroic battles against the guerrilla groups. For them, most of the people they killed, disappeared or displaced belonged to the guerrilla groups. They were reluctant to acknowledge there were victims and did not show any remorse for their actions. As a result, the space of the hearings was a space of re-victimization for the victims. The family members of many victims who had been disappeared or murdered had to endure the violence of a narrative that labeled them as “guerrilla’s informants” or “collaborators” all over again.

According to the human rights litigants, the rhetoric of violence and justification of war was not contested by the Attorney General’s Office members, who played a very passive role and did not prevent the defendants from changing their terms and avoid reproducing the language of violence. While the Constitutional Court had protected the victims’ rights to participate in the whole judicial process, the Attorney General did not allow the victims to ask questions in the hearings. The accounts of horrendous crimes during the hearings, the detailed and cold blooded depiction of horror, such as training camps for dismembering bodies, or the accounts of committing massacres against civilian

population, produced a traumatic effect on the victims' families. For the human rights organizations, the Attorney General's Office was not prepared to provide adequate assistance.⁹⁶ There were not adequate accommodations or facilities for the victims. Sometimes, the victims did not have psycho-social assistance or restrooms available for them. In addition to that situation, the hearings were closed to the public and the victims were allocated in different rooms in which the hearing was broadcast by video. The victims' relatives did not have the chance to directly request information about their family members or contest the narratives of war constructed by the defendants.⁹⁷

Resistance and the transformative role of the human rights litigants

The actions of the litigants have slowly contributed to transform the power relations from within the courtrooms as well as the mentality of the Attorney General's Office functionaries. For instance, the human rights litigants, struggling to overcome these manifestations of institutional and symbolic violence, requested the Attorney General's Office to take over the hearings and reverse, to some extent, the hierarchical inertia that enabled the paramilitary commanders to control the hearings. They insisted the prosecutors of the Attorney General Office ought to show higher status and authority than the former paramilitary commanders. Over and over again, litigants struggled for the respect of the courtroom and the victims asking the prosecutors to take over control on the

⁹⁶ Interviews with members of different human rights NGOs, Bogotá, September 2009-February 2010.

⁹⁷ Ibid.

hearings and avoid the reproduction of violent language. The human rights litigants also have claimed the victims' rights to participate in the hearings by writing down questions that were to be read by the Attorney General.⁹⁸

According to some of the litigants, the members of the Attorney General's Office, who were in charge of conducting the hearings, saw the human rights litigants as an obstacle for the proceeding. The litigants appealed their decisions claiming for the victims' rights. As time has gone by, the prosecutors gained respect for the role of the litigants and, some of them, have adopted the discourse of victims' rights. For the litigants, it is the outcome of a pedagogic role of the litigants and the human rights organizations explaining the international standards on victims' rights.⁹⁹ According to these litigants, the victims' legal assistance has been a process of education, transformation, and sometimes frustration. For them, the "Justice and Peace" proceedings represent unique challenges and difficulties. The human rights NGOs realized it was necessary to promote actions of legal education not only for the victims but also for the functionaries. For victims, legal education was aimed at helping them understand their rights and empowering them to use the existing legal tools in order to transform their situation. Regarding the functionaries, as one of the NGO lawyers would tell me, everyone, even the lawyers themselves, was a newcomer to the topics of transitional justice and international standards on victims' rights.

By 2007 and 2008, the relations between the Colombian government and the demobilized paramilitary groups deteriorated. The paramilitary commanders

⁹⁸ Ibid.

⁹⁹ Ibid.

felt betrayed by the Colombian government because it did not fulfill what they considered an agreement. In the political and legal context, the circumstances had changed. The penetration of the discourse of international standards on human rights and the international and national pressure on the government and the mobilization of the victims claiming of justice, truth and reparation made things quite different for the paramilitary commanders and the rest of the demobilized paramilitary members. The Attorney General's Office also started introducing changes in the hearings, led by the influence of the Supreme Court. By 2007 and 2008 some paramilitary commanders, such as Salvatore Mancuso and Ever Velosa, shifted their perspective on the hearings and started providing more information in their confessions. It seemed that the arrogance some of them showed during the first two years of hearings shifted to a more humble standpoint. For Olga, in the case of Velosa was a deep feeling of remorse. It seemed that the truth telling was a relief and a form of reparation for the relatives of the victims he murdered.¹⁰⁰ However it was not the case of all the demobilized paramilitaries. That is why his confession turned out to be very relevant.

The information was immensurable and it was necessary to schedule a great deal more hearings to finish the confessions. In their confessions, they explained the history of the paramilitary groups, their role in the organization, and the different actions they ordered. Not only did they give accounts of their actions, they also gave account of the support of the army to carry out their actions. They also explained how different politicians, current Congress members

¹⁰⁰ Ibid.

and members of the state government had been sympathizers or supporters of their actions. For instance, Velosa confessed to how the members of the 17th brigade of the army in Uraba were the ones who recommended that they bury the bodies on mass graves. Leaving the bodies on the roads might create some problems for the army. Another example is Mancuso's statement about the linkages between the state agents and the paramilitary groups. Asked by the human rights litigants about the state accountability on the creation of the paramilitary groups, he answered that he himself was the product of the state initiative.¹⁰¹ For the human rights NGOs, the confessions of the paramilitary commanders have provided a great deal of information that has confirmed what the human rights NGOs had denounced for many years. The difference here is that there is an institutionalized process before the state criminal justice system. These confessions also have contributed to disclosing the linkages between the paramilitary groups, the army, state security agencies, politicians and some economic groups, such as land owners, banana growers, livestock raisers and some transnational corporations. However, for the human rights NGOS, this is only the tip of the iceberg.

The extradition of the paramilitary commanders

In June 2008, the government made a decision that substantially changed the outcome of the "Justice and Peace" proceedings. When some of the paramilitary commanders were providing more information and giving account of

¹⁰¹ Ibid.

the relations between the paramilitary groups and politicians, Uribe's government decided to extradite 14 paramilitary commanders to the U.S. According to the government, the paramilitary commanders had continued committing crimes from the sites where they were imprisoned. The government's sudden decision took the victims, the Attorney General's Office and the human rights activists by surprise. For them, the extradition negatively affected the pursuit of the criminal investigations and, especially, the possibility of disclosing the truth of a great deal of crimes committed by the paramilitary groups. The international human rights organizations, intergovernmental agencies and the domestic NGOs vehemently opposed the government's decision. From the perspective of international human rights law, it was unthinkable that the Colombian government would extradite the perpetrators of crimes against humanity, thus making a decision that was against the human rights international law. First, if the paramilitary commanders had not fulfilled their commitment of stopping their illegal actions while they were in prison, the legal framework had established they would lose their incentives and be prosecuted, convicted and sentenced according to the ordinary criminal law. Second, it was suspicious that the government adopted that decision precisely when some of the paramilitary commanders were providing more information about the linkages between the paramilitary groups and the politicians and state government. Finally, it was unethical and against the of the international human rights principles to give more relevance to crimes of drug trafficking than crimes against humanity.¹⁰²

¹⁰² Interviews with members of different human rights NGOs, Bogotá, September 2009-February

Institutional Resistance of the Supreme Court

Based on the legal actions used by the victims' lawyers, the Supreme Court has adopted a number of decisions that have changed the direction of the "Justice and Peace" trials. One of the Supreme Court's functions, among other tasks, is to work as the court of appeals on the "Justice and Peace" cases. It also takes part on the extradition proceedings and finally, it is the institution in charge of leading the criminal investigations against the higher functionaries of the state. During the past three years, the criminal law section of the Supreme Court has become the most prominent institution in the resistance to the project of impunity and has led the main investigations against government and Congress members who were involved with paramilitary actions. In this part, I will highlight three roles the Supreme Court takes in protecting victims' rights and facing the penetration of paramilitary and drug trafficking actors on the state apparatus. The first space of resistance is related to the introduction of international standards on human rights protecting the victims' rights within the "Justice and Peace" trials. The second space relates to vetoing further extraditions to the U.S. in order to guarantee the protection of victims' rights and third, leading the criminal investigations against politicians involved with the paramilitary groups.

Protection of victims' rights in the "Justice and Peace" proceedings

Throughout the past three years the criminal law branch of the Supreme Court has transformed not only their prior opinions, but also has led a process of transformation of the criminal investigations and the protection of victims' rights. Regarding the "Justice and Peace Law," the Supreme Court, making decisions about the appeals of the Justice and Peace Courts has introduced guidance for future decisions.¹⁰³ For the Court, the exceptional nature of the transitional justice mechanisms of the "Justice and Peace" trials makes it necessary to introduce new international standards of protection of human rights. According to these standards, the core of judicial proceedings is not the defendant, as it happens in the western liberal conception of criminal law, but the protection of the victims' rights. From the western liberal legal tradition, the ordinary criminal procedure attempts to guarantee the defendants' rights, such as due process, presumption of innocence, and individual freedom. In this perspective, the victims' rights were not protected. The state prosecutors represented the interest of the society as a whole. However, for the discourse of human rights law, and in the case of transitional justice, the victims deserve more protection because of their vulnerability vis a vis the commission of gross violations of human rights.

In Colombia, the Supreme Court, as well as the human rights organizations, has struggled to introduce the international standards on human rights. According to the Supreme Court decisions, the paramilitary groups are criminal organizations, and as such, their crimes need to be considered as

¹⁰³ Ibid.

systematic crimes, not as a set of individual crimes. For the Court, the logic of the traditional criminal investigation is insufficient to handle the challenges presented by the paramilitary organizations.¹⁰⁴ The Court also argued that the Attorney General's Office should not be restricted to a passive role in the reception of the paramilitary members' declarations but instead should perform a more active role. The Court has maintained that victims are entitled to take part in the whole judicial process, including the paramilitary members' versions. The Court asked the Attorney General's Office functionaries to remain skeptical about the defendants' versions of events and take into account the victims' versions (Corte Suprema de Justicia, 2009).

Response to the extradition of the paramilitary commanders

Colombia and the United States signed an Extradition Treaty in 1979 as part of the war on drugs strategy led by the United States. Ever since, Colombia has sent to the U.S. thousands of Colombians convicted of drug trafficking activities. Since the beginning of the peace process with the paramilitary groups, the U.S. government also requested the extradition of some of the paramilitary commanders because they were involved on the production of cocaine. The Colombian government conditioned the extradition of the paramilitary commanders to the fact they submitted to the legal framework and stop their illegal activities. As it was explained above, in June 2008, Alvaro Uribe's government suddenly decided to extradite the main paramilitary commanders to

¹⁰⁴ Presentation of a Supreme Court clerk at the Victims Summit, Medellín, November 2010.

the U.S. who were requested by different U.S. courts. According to the legal procedure, once the request is made by the U.S. government, the Colombian government through the ministry of External Relations sends the request to the Supreme Court. If the Court approves the legality of the request, the government has the discretionary power to extradite the requested person to the U.S. Regarding the case of the paramilitary commanders, the Supreme Court approved the request of extradition but recommended the government not extradite the paramilitary commanders until they had fulfilled all their obligations related to the transitional justice procedures in Colombia (CCJ, 2010). Specifically, they were to disclose the truth about what they knew about the crimes committed by the paramilitary groups, and repair the victims with their own assets.

However, the government, on different occasions disregarded the concept of the Supreme Court. The most notorious of these, was the extradition of 14 paramilitary commanders on June 2008. For the Court, the human rights organizations and the international community, that extradition represented the lost possibility to reach truth about the whereabouts of the disappeared family members and the truth about the linkages between the paramilitary groups. Yet another consequence of the government's decision was the fact that the Supreme Court changed their own precedent denying the authorization for extradition when the requested person was involved in the Justice and Peace jurisdiction.

Linkages between the paramilitary groups and politicians

During the negotiations between the paramilitary groups and the government, Salvatore Mancuso, one of the more prominent commanders of the paramilitary groups acknowledged that they had the support of 35 % of the Congress members. By 2005, Gustavo Petro, senator and leader of the Polo Democrático Alternativo, one of the main parties in opposition, promoted a hearing in Congress to denounce the linkages between the paramilitary groups and politicians and government functionaries. Simultaneously, different reports of human rights NGOs also started denouncing the expansion of the paramilitary groups during the 90s and the beginning of the 2000s (Valencia, 2007). According to this research, the paramilitary groups deployed military actions against civil population in order to expand their control. They also penetrated the local and national institutions. Despite this information being initially rejected by the government, the confessions of the demobilized paramilitary members and the criminal investigations demonstrated that the bonds between the United Self Defense Groups of Colombia (AUC) and the local elites and government functionaries were stronger than the public opinion had thought. The confessions of some commanders, such as Salvatore Mancuso and Ever Velosa have demonstrated the participation of the army during the expansion of the paramilitary groups in the country. But they also have disclosed the agreements between local politicians and the paramilitary groups. These agreements pursued to found a new political project in Colombia (Verdad Abierta, 2010).

The Supreme Court has led the criminal investigations against the Congress members and other high-level state functionaries who were involved in those agreements or promoted the actions of the paramilitary groups in their regions. In doing so, the Supreme Court has restricted the traditional privileges the Congress members had, such as immunity. When the Supreme Court started the investigations against the Congress members, many of them resigned their seats in Congress in order to avoid the criminal investigation of the Supreme Court and have the lower courts carry out the criminal investigations. However, the Court changed the traditional precedent and decided to preserve the legal competence to investigate the crimes committed by the Congress members, even if they resigned. So far, the reports of human rights organizations, the confessions of the paramilitary commanders and the criminal investigations of the Supreme Court have disclosed that there were more than 14 local agreements between paramilitary groups and local politicians. More than one hundred Congress members are under the investigation of the Supreme Court, as well as different high level state functionaries.

Conclusions

In this chapter, I have argued that the struggles for justice are not restricted to the framing of legal mechanisms of transitional justice. The application of mechanisms of transitional justice and protection of human rights, not only depend on what the law says, but specially on what the state and non state actors do. This is, it is highly dependent on the practices and the actions of political and

legal actors (Bourdieu, 1987; Goodale & Merry, 2007). In this chapter I especially focused on relations between politics and law regarding the “Justice and Peace” proceedings. Drawing on Bourdieu, I analyzed how political actors with enormous political and economic capital, such as the demobilized paramilitary members, politicians and Uribe’s government, attempted to create political conditions of impunity. I also drew on Winifred Tate (2007) to sustain that the political construction of impunity made the human rights networks face political, legal and institutional constraints. Currently, it has become apparent that for Alvaro Uribe’s government disclosing the accountability and truth for gross violations of human rights perpetrated by the paramilitary groups during the past decades, was an obstacle.

In order to resist, at least, some aspects of the political construction of impunity, the human rights networks deployed different mechanisms of political and legal mobilization. First, the international community played the role of active mediation between the government and the human rights organizations. In doing so, the international community and the transnational advocacy networks pressured the government and introduce policies on protection of victims’ rights (Jelin, 1998; Khagram, Riker & Sikkink, 2002; Keck & Sikkink, 1998). Second, the human rights networks also played the role of translating the discourse of victims’ rights and international human rights law as part of education programs for the judiciary in order to increase the technical and administrative capacities of judicial institutions (Goodale & Merry, 2007). Finally, within the judicial proceedings, the human rights litigants, by doing strategic litigation, have

contested the asymmetrical relations of power that the paramilitary members attempted to reproduce within the judicial forum. It is a process of *judicialization of politics* in which the litigants have relied in the cultural and symbolic capital of the legal discourse, in this case, the human rights discourse (Bourdieu, 1987). In so doing they introduced the language of international standards on victims' rights to empower the victims and claim for their rights within the legal proceedings. Despite some institutional resistance in the Attorney General's Office they have reached to degrade the paramilitary members to the status of perpetrators of human rights violations and upgrade the victims as subjects entitled with rights (Parker & Lauderdale, 2003). In this process of judicialization of politics and legal resistance to impunity, the Supreme Court has provided the more powerful symbolic support to that resistance to the extent it is the higher authorized state institution to define what the criminal law institutions mean. In this case it has worked to defend the rights of the victims.

CHAPTER 7

FINAL CONCLUSIONS

During the first decade of the century, Colombian society experienced a puzzling political transformation that entailed the shift of the armed conflict and the use of mechanisms of transitional justice. Based on my research I have argued that these political shifts took place in the context of an emerging hegemonic discourse on security and war on terror. This hegemonic discourse implied not only an spontaneous consensus on the market economy and the transformation of the welfare state, but also the strong support of security policies and exceptional mechanisms to guarantee the security of citizens, but especially, to enhance a good environment for business and promote foreign investment. It implied the use of what Giorgio Agamben (1998) has described as the state of exception; this is the normalization of extraordinary measures in the name of security. A variety of conditions made possible the emergence of this discourse on security. In chapter 2 I highlighted three main aspects that contributed to construct the discourse on security and war on terror: first, the collective reaction against the guerrilla groups and the shift on the political representations of the paramilitary forces, second, the expansion of the paramilitary forces as a parallel state that imposed a system of social control based on fear and violence, and third, the massive support the government of Alvaro Uribe, who was elected in 2002 under the platform of the war against the guerrilla groups. This transformation brought at the same time the intensification of the war against the guerrilla

groups, and the incorporation of mechanisms of transitional justice to elicit the demobilization of the paramilitary forces.

I have sustained that the recent experience in Colombia was not the story of a sharp transition from war to peace, or from a dictatorship to a liberal democracy. In contrast to other cases in Latin America that took place during the 80s and the 90s, in which different countries went through a political transition to liberal democracy (McAdams, 1997; Mendez, 1996; Roht-Arriaza & Marescurrena, 2006), the experience of Colombia is rather the case of the use of transitional justice mechanisms in the middle of complex political conflicts. Through the Colombian case, I give an account of the contentious process of framing and carrying out the mechanisms of transitional justice in a context of post-cold war and post-9/11 world order. In order to analyze the contribution of this research and respond the main research questions, I will break up the conclusion in five parts. First, I will summarize the contesting discourses promoted by the government and the paramilitary groups and the human rights networks. Second, I will address the framing of the mechanisms of transitional justice. Third, I will analyze the application of the “Justice and Peace” Law. Then I will summarize the main contributions of this research, and finally I will address the relations between politics and law.

Contesting Discourses: Between Reconciliation and Justice

I have sustained that the definition of the policies and mechanisms of transitional justice ought not be reduced to the analysis of legal institutions and take for granted the consensus on those institutional and legal forms. Instead, I have argued that transitional justice can be better understood through the lenses of a conflict base theory that give accounts of the relations between politics and law. Drawing on Pierre Bourdieu's (1987) perspective on the social field, I analyse the framing the mechanisms of transitional justice as a social field in which a variety of actors struggle to defend their discursive constructions on justice and peace. During the first decade of the century, there was an intense political and legal contention between two projects related to dealing with the political armed conflict and the way to deal with the violations of human rights. On the one hand, the government and the political elites promoted a from above project of reconciliation, forgetfulness and forgiveness. This political project was instrumental for a larger project that attempted to reach the monopoly of force by the state government, and guarantee security and good environment for business. On the other hand, the human rights networks contested both the projects of security and the pursuit of forgetfulness and forgiveness, and instead made claims for accountability and protection of victims' rights.

However, these contested discourses took place in a specific political and social context. By the beginning of the first decade of the century, what I call a hegemonic discourse on security and war on terror implied the convergence of international and domestic transformations. In the domestic political sphere in

Colombia, as explained before, it was a collective consensus about the political perceptions and acceptance of public policies on war on terror, and at the same time the social indifference with the violation of human rights perpetrated by the rightwing paramilitary groups. According to this discourse, the perceived political need to defeat the guerrilla groups became the main priority for the government and the majority of the voters, even if that goal entailed the restrictions and even the violations of human rights. Regarding the international context, the government borrowed the 9/11 war on terror rhetoric coined by Bush administration and adapted it to fight the FARC to get support in the international arena. However, in the international arena the strategy of Uribe's government was not as successful as it was in the domestic sphere.

In the domestic arena, the government ruled under a new state of exception (Agamben, 1998). It was not only the hegemony of corporate capitalism and the neoliberal policies but also the overwhelming support of the dismantling of the basic liberal freedoms. Even the defense of basic freedoms that had been taken for granted in the liberal state mentality of human rights were considered subversive. Basic liberal rights, such as due process, were undermined in the name of security. Alvaro Uribe coined a language that shifted the representations of the political conflict and the way to name the actors involved in that conflict. The government not only symbolically degraded the guerrilla groups to the status of "terrorists," but also attempted to upgrade the paramilitary groups to the status of political enemies in order to explore the possibility of an amnesty (Parker & Lauderdale, 2010). The government relied on the state of siege to adopt

harsher measures of social control, restricting basic freedoms in zones of conflict and involving the civilian population in the political conflict. The rapid outcomes on security, and the support of the media contributed to maintaining the public perception of the government achievements.

In the meantime, without major opposition, the new government also initiated a peace process with the right wing paramilitary forces, a group that years before had been conceived as the perpetrator of the most outrageous human rights violations in the country. With an outstanding support of the public opinion and controlling the majority of the congress members, the government promoted a “from above” (McEvoy, 2008) policy on reconciliation by means of introducing to the Congress a bill known as the “Alternative Punishment Draft bill.”

Given the domestic political consensus on the security policies led by the Uribe administration and characterized by the support of the economic groups, the cooptation of the mainstream media, and the control over the majority coalition in Congress, it seemed that the legal framework would be approved without any social and political resistance. The human rights organizations did not have great political capital in the domestic political arena, even less considering the public’s support on the war against the FARC. Actually, the government deployed a violent language against the human rights organizations and those who dare to criticize their government policies on security. Despite the fact that the human rights discourse and the human rights organizations were not supported by the public opinion in the domestic arena, the strength of the human rights networks rested on the transnational political leverage (Keck & Sikkink, 1998) as well as on

different mechanisms of adaptation, appropriation and resignification of the human rights discourse (Goodale & Merry, 2007; Speed, 2009; Tate, 2007). Over the past two decades, the human rights networks accumulated political capital of transnational allegiances, as well as a legal and moral capital based on the knowledge of human rights law and the support of victims' rights (Bourdieu & Wacquant, 1992). This strength has allowed the human rights and victims' organizations to raise awareness about the situations of human rights in the country and more specifically, to resist what they called a project of impunity.

The formation of human rights networks as well as the process of institutionalization of human rights during the 90s and 2000s, provided the human rights organizations the possibility to deploy different mechanisms of political and legal action to resist what they considered it was a project of impunity (Jelin, 1998; Keck & Sikkink, 1998). Led by domestic human rights NGOs and later on by victims' organizations, the human rights networks proposed "from below" conceptions of transitional justice by incorporating the international standards on truth, justice and reconciliation and encouraged the victims' organizations raise their own voice (McEvoy, 2008; McGregor, 2008).

The Framing of Mechanisms of Transitional Justice

The framing of mechanisms of transitional justice in Colombia is not explained as the outcome of a consensus among the different political parties and armed actors that decided to enter in a transition from war to peace. Neither is it reduced to an institutional process in which the political elites defined the

institutional arrangements of the proper mechanisms to solve the political conflict and deal with the claims of accountability. I do not restrict the framing of the legal mechanisms to the law making process that takes place in Congress. Behind the scenes of the decision makers in the government and the Congress, there has been an intense political battle among a variegated set of transnational, domestic and local actors to protect their views on peaceful coexistence and justice. Following Pierre Bourdieu and Loic Wacquant's (1992) perspective on the social fields, I understand the framing of the mechanisms of transitional justice as a contentious political process that takes place among different social actors that strive to defend their interests and discourses about the political situation and the demands of justice. This contention is not restricted to what these actors say, but also in their practices, this is, what they do (Bourdieu et al., 1992; Goodale & Merry, 2007). It is also a process that implies the construction of discourses, meanings according to which they not only understand the political relations but also construct their own political identity (Alvarez, Dagnino & Escobar, 1998). In this research I gave account the framing process of two mechanisms that produced major political debate: the "Justice and Peace Law" and the "Victims Law bill". The following chart provides a comparative analysis of the framing process of those mechanisms based on the following topics: 1) the political context, 2) initiative of the bill, 3) interests at stake, 4) political and social mobilization, 5) legal mobilization, and, 6) role of the courts.

Chart No. 7: Comparison between the framing of the “Justice and Peace Law” and the framing of the “Victims’ Law” Bill

Topic	Justice and Peace Law	Victims’ Law Bill
<p>Political Context:</p> <p>-What are the characteristics of the political context that surrounded the framing of the transitional mechanisms of transitional justice?</p>	<ul style="list-style-type: none"> - First presidential term of Alvaro Uribe (2002-2006) -Hegemonic discourse on security and war against the FARC - Political negotiation with the paramilitary groups (2002-2006) -Public debates on the legal framework that granted incentives for the demobilization of the paramilitary members (2004-2005) -Reaction of transnational and domestic human rights organizations 	<ul style="list-style-type: none"> -Second presidential term of Alvaro Uribe (2006-2010) -Discontent of the human rights and victims organizations because of the “Justice and Peace Law” -Reaction against the silence of the government and congress on victims’ rights -Emergence of victims’ organizations. -Initiatives and debates on the “Victims Law bill” (2007-2009)
<p>Initiative of the project</p>	<ul style="list-style-type: none"> - Government and leaders 	<ul style="list-style-type: none"> -Human Rights, victims

<p>-Who introduced the bill and took the lead on the discussion?</p>	<p>of the majority coalition in Congress</p>	<p>organizations, and opposition parties</p>
<p>Interests at stake</p> <p>-What are the interests and perspectives of the different actors?</p>	<p>-The government attempt to deactivate the armed conflict and demobilize the paramilitary forces.</p> <p>-The paramilitary groups attempt to demobilize under the condition of no extradition to the U.S., forgiveness, and the possibility to take part in politics.</p> <p>-The more critical human rights organizations claim for a maximalist approach on retributive justice and truth.</p> <p>-More moderate NGOs accept lower standards on retribution as long as</p>	<p>-The human rights and the new victims' organizations attempt to promote a legal framework on reparation based on participatory process with the victims.</p> <p>-The human rights organizations and the international community decided to support the victims' organizations.</p> <p>-The government and the majority coalition in Congress blocked the bill in 2009 because it affected the moral of the</p>

	there is truth and reparation.	troops and it was too costly for the state government.
<p>Political mobilization</p> <p>-What type of actions did these human rights networks and victims' networks carry out to promote the protection of victims' rights?</p>	<p>- Human rights organizations coordinated actions before the international community. E.g. Information politics and lobby</p> <p>- They carried out dispersed actions of promoting public debate and lobby before congress in the domestic sphere.</p>	<p>-Human rights and victims' networks coordinated actions before the international community. E.g. Information politics and lobby.</p> <p>-Coordinated actions within the domestic sphere. E.g. Promoted the "Victims' Law bill"</p>
<p>Legal mobilization</p> <p>What are the legal actions that the human rights and victims' organizations carried out to protect victims' rights?</p>	<p>- Human rights and victims' organizations challenged the Justice and Peace Law before the Constitutional Court</p>	<p>- Since the bill was blocked before it was passed in Congress, it was not possible to go before the Constitutional Court.</p>

		- However, other decisions of the Court provided useful opinions supporting the substantial conception on reparation.
Role of the Courts What is the role of the Courts in the framing process of the mechanisms of transitional justice”	-The Constitutional Court changed the legal framework in favor of victims’ rights.	- The opinions of the Constitutional Court provided legal instruments to defend more substantial contents on reparation.

The comparative chart allows us to understand the contested process of the framing of each mechanism and observe the transformation that took place between the beginning of the public debates about the “Justice and Peace Law” in 2004 and the public debates of the “Victims’ Law bill” in 2009. Regarding the “Justice and Peace Law,” the initial purpose of the government was to elicit the demobilization of the paramilitary forces by means of generous incentives. The legal framework proposed by the government maximized the pursuit of demobilization and peaceful coexistence by means of mechanisms that led to forgiveness and forgetfulness. However, despite the support of the economic groups, the mainstream media and the enormous political capital of the Alvaro Uribe administration, the government and the majority coalition in Congress

could not impose the “Alternative Punishment Draft Bill.” The human rights organizations and the Constitutional Court managed to resist the government’s bill. The human rights networks deployed tactics of political mobilization, intensifying alliances with transnational NGOs and the international community in order to gain political leverage in the international arena. As I explained in Chapter 4, the human rights organizations achieved the international community exert pressure on the Colombian government to introduce international human rights law standards on victims’ rights (Jelin, 1998; Keck & Sikkink, 1998). However, the networks also played an important role in the domestic political arena, specifically by doing information politics and lobbying before the National Congress. During 2004 and 2005, they played an outstanding role introducing the language of victims’ rights and struggling against the manipulative use of transitional justice (McGregor, 2008; Merry, 2006; Tate, 2007; Uprimny & Saffon, 2007). By means of practices of incorporation of the discourse of victims’ rights, the human rights networks introduced and positioned the language of truth, justice and reparation, and generally, victims’ rights, in the political arena (Goodale & Merry, Tate, 2007). Moreover, there was a moment in which the dialogue with the international community and the domestic political debates intertwined. The international community and domestic NGOs influenced the National Congress to accept, at least formally, the language of truth, justice and reparation.

However, the human rights networks efforts were not restricted to introducing the language of transitional justice and victims’ rights in the domestic

sphere. Bearing in mind the manipulative use of that language by the government and its lack of commitment to protect those rights, the human rights organizations also advocated for a more substantial version of victims' rights. This conception opposed the formal or abusive conceptions promoted by the government coalition (McEvoy, 2008; Uprimny & Saffon, 2007). These struggles were fought in part in the political arena of the National Congress, but mainly in the legal space of the Courts. Strategic litigation against the "Justice and Peace Law" and the Constitutional Court decisions brought about a turning point, emphasizing the tension between those who advocated for the political needs of reconciliation and forgiveness and those who claimed higher standards on accountability. The Constitutional Court shifted the logic of the debate and transformed it into a conflict of constitutional principles (Bourdieu, 1987; Teitel, 2000). For the human rights and victims organizations, the support of the Court and the constitutional protection of the language of rights provided elements for mobilization and empowerment (McGregor, 2008).

By the time the political and legal debates on the "Victims' Law" bill started, the political context has changed. By 2006 and 2007, the government still enjoyed a high political support, but the human rights and victims' networks had already gained important political support. In fact, the networks moved from being led by human rights NGOs to a network that increasingly included grassroots organizations and social movements. The victims' and grassroots organizations attempted to overcome their situation of vulnerability by means of the mobilization and construction of a political identity based on victims' rights

and their claims of justice (Alvarez, Dagnino & Escobar, 1998). The victims' organizations, motivated by the demobilization of the paramilitary groups, the discourse on victims' rights, and their discontent on the "Justice and Peace Law," created different spaces of congregation and debate. These organizations and movements took the lead in the public debate on the "Victims' Law Bill" during 2007 and 2009. Different human rights and victims' networks managed to coordinate more their actions of political and legal mobilization.

All these networks, despite their differences, converged on the goal of constructing a democratic and participatory process to frame the "Victims' Law" bill and define a core content of that legal framework. For the human rights and victims' networks, it was important, not only to draw on international standards on human rights but also to mobilize and listen to the voices of the victims to design public policies on truth, justice and reparation. It seemed the human rights and victims networks were moving from a broader conception of transitional justice from below based on the emancipatory role of international law, to a more specific concept of transitional justice from below based on participation of grassroots organizations and disenfranchised groups (McEvoy, 2008; McGovern, 2008; McGregor, 2008). Regarding the topic of reparations, the human rights and victims' networks insisted on an integral conception of reparation that included a perspective of cultural differences and distributive justice.

Conversely to the "Justice and Peace Law" process, in which the social and political mobilization actions were dispersed and fragmented, the human rights and victims' networks reached a higher level of coordination in the framing

of the “Victims’ Law” bill. This level of coordination facilitated channelling the initiatives of the victims’ organizations and translated them into the institutional language of the law making process. From this perspective, the human rights and victims’ networks not only were translators that introduced and adapted the discourse of human rights in the domestic sphere (Goodale & Merry, 2007; Jelin, 1998; Merry, 2006), but also enhanced a dialogical process between diverse meanings of human rights, such as the discourse of the international human rights law and the collective construction of grassroots and victims’ movements (Alvarez, Dagnino & Escobar; 1998; McGovern, 2008; Speed, 2009). The construction of a discourse based on victims’ rights, the formation of identity politics as victims of human rights violations in a moment of high support of the international community for human rights, allowed the human rights and victims’ networks to strengthen their political and social capital (Alvarez, Dagnino & Escobar, 1998; Bourdieu & Wacquant, 1992). The participation of victims groups in the framing of the “Victims’ Law” bill also allowed them to introduce a more substantial conception on reparation that was more inclusive and responsive to the needs of the different victims groups (McEvoy, 2008; McGovern, 2008).

Carrying Out the Justice and Peace Law

However, transitional justice as a battlefield does not end in the political and legal process of framing the mechanisms to protect rights of truth, justice and reparations. The application of those rights represents in itself a space of resistance of the human rights and victims’ networks to a project of impunity.

Drawing on Winifred Tate's idea of the political construction of impunity, I analyzed in Chapter 6, how the existence of political, institutional and legal constraints might be part of the political construction of impunity in the carrying out of the transitional justice mechanisms in Colombia. The possibility of carrying out the victims' rights depends on the political conditions, such as the (lack of) monopoly of force of the state government, the institutional capacity of the state agencies, the existing legal framework and the action of the human rights and victims' organizations. In the midst of a polarized political context in which the economic and political structures that supported the paramilitary groups persist, the possibilities of reaching adequate institutional arrangements and social conditions for the protection of victims' rights are reduced. The government mostly focused on the process of demobilization and the programs of reintegration of the paramilitary members. However, the process of truth telling or the accountability of the perpetrators of horrendous human rights violations did not seem to be a priority the government. In order to contest what they considered was another chapter of the history of impunity in Colombia, the human rights networks also deployed similar mechanisms of political and legal actions that they used for the framing of the transitional justice mechanisms.

The human rights networks have attempted to influence the design of institutional arrangements and struggle from within the judicial forums to contest the dominant perspectives on forgiveness and forgetfulness. In this contention, the human rights networks have relied in different political and legal actions, such as gaining political leverage in the international community in order to pressure the

government and transform the public policies on victims' rights (Jelin, 1998; Keck & Sikkink, 1998). They also have introduced a more technical language and transformed the institutional capacities of some state agencies by means of international cooperation programs and programs of training. In this perspective, both the cooperation agencies and some transnational and domestic NGOs incorporated the language of transitional justice in the political, institutional and legal sphere in Colombia (Goodale & Merry, 2007; McGregor, 2008; Tate, 2007). The human rights NGOs also have played a significant role carrying out actions of strategic litigation. In doing so, the human rights litigants have tried to transform the asymmetrical relations inside the courtrooms and prompt the Supreme Court to make critical decisions on the protection of victims' rights. The human rights litigants as well as the victims, have struggled within the Justice and Peace proceedings to contest the political narratives of the paramilitary members and introduce alternative narratives that show the faces and the voices of the victims. Slowly, the litigants have reached, to some extent, to degrade the representation of the paramilitary commanders as "heroic warriors" to the category of perpetrators of human rights violations (Parker & Lauderdale, 2010).

However, the possibility of legal actions as a mechanism of transformation depends also on the leadership of the Constitutional Court and the Supreme Court. The Constitutional Court has made important decisions regarding constitutional actions, such as those that challenged the legal framework set forth by the "Justice and Peace Law." In its turn, as I spelled out in Chapter 6, the Supreme Court has adopted decisions relevant in processes of Justice and Peace proceedings,

extradition of paramilitary members to the U.S. and the prosecution of higher state functionaries. In both cases, the Constitutional and the Supreme Courts have led a process of protecting the victims' rights by means of incorporating international standards on human rights. The legitimacy of the courts and the support of the international community represent a manifestation of resistance of legal and democratic values over the discourse of war on terror and security.

However, the efforts of the human rights networks and the courts for protecting the victims' rights do not necessarily imply that the political and economic conditions of marginalization and vulnerability change (Goodale & Merry, 2007). The recent victims' summits and the human rights reports do not portray enthusiastic outcomes of the Justice and Peace legal framework. So far, only one final decision sentencing two demobilized paramilitaries has been made in the Justice and Peace proceedings. Most of the cases are still under way. The victims' groups remain in a condition of vulnerability. Different victims' organizations leaders face death threats and more than 50 leaders who attempted to recover their lands have been killed. For the victims' organizations, the "Justice and Peace Law" failed to disclose truth, guarantee retributive justice and provide reparation for the victims. However, acknowledging this dark scenario, the attempt to use legal mechanisms to resist impunity have contributed to transform the political context. Currently the Supreme Court has convicted more than one hundred of politicians linked with paramilitary groups (Verdad abierta, 2010).

Relations between Politics and Law

Politics and law are deeply intertwined, especially during the moments of political transition. During the periods of political flux and transitions, societies face the need to discuss the basis of the political foundation and the design a new institutional and legal architecture (Minow, 1998; Teitel, 2000). The experience of Colombia is not an exception to this intertwined relationship. Regardless, the Colombian experience on transitional justice did not lead to enactment of a new constitutional architecture and the foundation of the main institutional bases as it happened in the eastern European countries or some Latin American countries during the 80s and the 90s. The case of Colombia shows that in a context of persistent conflict, the discourse and the mechanisms of transitional justice might become part of the conflict. In order to analyze the relations between politics and law in the recent experience of using mechanisms of transitional justice I take into account the contradictions between the main discourses at stake, and secondly, how the legal forms are used by different actors. Bearing in mind those elements, I single out three main forms of relations between politics and law: 1) legalization of politics, 2) politicization of human rights, and 3) judicialization of politics. While the legalization of politics represents a from above project of reconciliation, forgiveness and forgetfulness, the other two forms represent resistance against that project.

Legalization of Politics

I understand legalization of politics as the attempt to use the legal forms to normalize power relations in a given context. Following Bourdieu's (1987) perspective on the social fields, the logic and interests of the political field penetrates the legal field and use legal symbols and practices. From the point of view of legal perspectives on transitional justice, the use of the legal instruments to normalize the status quo and power relations are close to what Ruti Teitel (2000) understands as a realist perspective in which the political constraints define the content of law. In the midst of a context in which the discourse of war on terror and security prevailed, the government and the Congress promoted two forms of legalization of politics that were instrumental in carrying out the perceived political needs of confrontation and political stabilization. First, according to the emerging discourse of security, the FARC became the main public enemy. Perceived as a group of terrorists, the possibilities of political negotiations were closed and their confrontation and elimination became the main priority for the government. In order to confront the "terrorists," the government relied on the state of siege to produce extraordinary measures, such as increasing the financial capacity and functions of the army and security forces. It also restricted some individual rights and promoted the participation of civilian population in the conflict by means of mechanisms such as the peasant soldiers and informants networks. The political needs of war against the FARC defined the design of exceptional legal mechanisms (Agamben, 1998; Oliverio, 1998).

Second, the government explored the possibility of a political negotiation with the rightwing paramilitary groups. These groups, which had portrayed themselves as political enemies motivated by a counter insurgent ideology, had reached enormous power in the regions of influence and a high level of penetration in the local and national state agencies. For the peace commissioner Luis Carlos Restrepo, (2005) the negotiation with these forces was not a political negotiation but rather a negotiation to access politics. In order to facilitate the demobilization of these groups, the new government also promoted a legal framework that facilitated the demobilization and legalization of the paramilitary groups by means of introducing from above mechanisms of reconciliation and forgiveness. Following Laplante and Theidon (2007), it was a project that attempted legalizing politics, which means to make legal the existing power relations in which the paramilitary members would be granted generous incentives, protect their properties and have the possibility of taking part in the political game in the future. Both confronting the enemy and demobilizing new political allies implied framing and deploying legal mechanisms that normalized and institutionalized the existing political needs.

Politicization of Human Rights

The hegemonic discourse on security in the domestic arena did not prevent domestic human rights NGOs from contesting and resisting the project of from above forgetfulness and forgiveness. In Chapter 3, I gave account of the emergence of human rights organizations and networks. For more than thirty

years, the human rights organizations had raised their voice to denounce the violations of human rights and claimed retributive justice to make the perpetrators of those crimes accountable. Having emerged in a context of cold war and state repression, the human rights organizations deployed actions of information politics and political leverage (Keck & Sikkink, 1998). Despite the process of institutionalization of the discourse of human rights that took place during the 90s, the political dimension of the discourse of human rights not only persists, but has gained new force and inspired new forms of collective action (Alvarez, Dagnino & Escobar, 1998; Jelin, 1998). The globalization of a human rights discourse supported by the international law, despite the ambivalent meanings, provides elements to contest expression of oppression in the domestic and the international sphere (Goodale & Merry, 2007; Speed, 2009). It also provides the disenfranchised groups instruments for mobilization (Houtzager, 2005; McGregor, 2008; Rajagopal, 2005). In this perspective, the human rights networks, responding to the attempt of legalizing politics, achieved to introduce the human rights discourse in the political arena. In doing so, the human rights organizations achieved politicizing the topic by introducing legal and moral dimensions that were considered relevant in the global discourse of human rights and relevant for the international community.

As a consequence, the human rights networks highlighted the following contents developed in international human rights law: 1) political negotiations ought to have moral and legal limitations, 2) amnesties, political pardons or any other mechanism leading to impunity are unacceptable for the international

human rights law, and 3) the victims are entitled to claim their rights and demand the state fulfill its obligation to disclose the truth, prosecute and sanction the perpetrators of gross violations of human rights, repair the harm done and guarantee that those crimes will not happen again. Despite the fact that the human rights organizations and the courts have developed some of these principles in the past, the political conditions did not make it possible to introduce that discourse successfully in the political arena during the 80s and the 90s. It is precisely in the context of the demobilization of the paramilitary groups and the disclosure of the crimes perpetrated by those groups in which the discourse of human rights gained more political relevance.

Over the past six years, the discourse of victims' rights was not only a discourse of resistance to the project of legalization of politics. The human rights and victims' organizations and movements attempted to move from resistance to the construction of alternatives. The discourse of victims' rights provided elements for the construction of new political identities of the victims' groups and movements (Alvarez, Dagnino & Escobar, 1998). Based on a political identity of subjects entitled with rights, the victims' organizations and movements felt encouraged to participate in public debates and seek political and legal changes (Lundy & McGovern, 2008). In addition to the emergence of the new victims' organizations, the human rights and victims' networks were able to coordinate their actions and enhance a dialogic process of construction of a democratic conception on reparations (Speed, 2009). Despite the diversity and internal contradictions among human rights and victims' organizations, they brought

together elements of the international discourse on human rights, and also the grassroots based discourse on victims' needs. This experience is an example of what Kieran McEvoy and Lorna McGregor define as transitional justice from below. This participatory process allowed them to introduce a more substantial conception of reparation that attempted to be more inclusive and responsive to the needs of the different victims' groups.

Judicialization of Politics

The process of judicialization of politics implies bringing the political conflict to the logic of the legal field and convert it in a legal and judicial conflict (Bourdieu, 1987; Houtzager, 2005). Once the conflict enters in the legal field, the power relations of the actors also might change. In the case of Colombia, the tradition of autonomy of the judicial branch and the process of constitutionalization of the discourse of human rights has made possible, not only to carry out a system of check and balances, but also to bring to the criminal justice system former politicians who were linked to the paramilitary groups. In this regard, the courts have defied the principle of majority that prevails in the political field and imposed principles of justice and protection of victims' rights. It is what Ruti Teitel (2000) describes as the constructionist power of law. In the recent experience of the use of transitional justice mechanisms in Colombia, the process of transforming the political conflicts into legal conflicts depends on the actions of two main legal practices: strategic litigation exerted by human rights litigants and the response of the higher courts. As explained in Chapter 3,

strategic litigation is the outcome of years of experience on legal activity. It is a form of legal mobilization that relies on different legal mechanisms, either national or international, that might provide the best possible legal and political outcomes for the cause of human rights protection. These outcomes aim at meeting the following goals: 1) to bring about changes in the domestic legal framework by means of incorporating international standards on human rights protection, 2) to contribute to the efficacy of those mechanisms, 3) to struggle against impunity promoting the disclosure of truth about human rights violations, and 4) to promote the use of reparation mechanisms for the victims of human rights violations.

In order to respond to the attempts of legalizing politics, the human rights NGOs in Colombia have relied mainly in two forms of strategic litigation. The first form is the use of public actions, especially constitutional actions against Congress, laws before the Constitutional Court, and administrative actions against government decrees before the State Council. This form of litigation has been very useful to contest the legal framework designed by the “Justice and Peace Law.” In this case, the Constitutional Court transforms the conflict between two maximalist perspectives. On the one hand, the government’s attempt to maximize the pursuit of peaceful coexistence, and on the other hand, the human rights organizations to maximize the pursuit of accountability. The Constitutional Court transformed the political contradictions in a conflict of constitutional values and pointed out that the pursuit of peace should not lead to undermining the international standards on victims’ rights (Chapter 4). A second form of strategic

litigation is based on emblematic cases of human rights violations. The human rights NGOs have relied in this form of litigation to protect the rights of justice, truth and reparation of the victims of gross violations of human rights. In doing so the human rights litigants have attempted to transform the asymmetric power relations inside the courtrooms and promote a process of transformation on the mentality of the courts.

As I explained in Chapter 6, the Supreme Court has adopted a number of decisions that have changed the direction of the “Justice and Peace” proceedings. Following Bourdieu’s terms, the Supreme Court is the authorized actor of the legal field that stabilizes and defines the meanings of victims’ rights. In this case, the Court as defended has protected the victims’ rights by means of the symbolic capital of the legal discourse (Bourdieu, 1987). During the past three years, the criminal law section of the Supreme Court has become the most prominent institution in the resistance to the project of impunity and has led the main investigations against government and Congress members who were involved with paramilitary actions. The Court has introduced the international standards on human rights protecting the victims’ rights within the Justice and Peace trials. The Supreme Court also decided to veto further extraditions to the U.S. in order to guarantee the protection of victims’ rights. However, the most prominent decisions of the Court consist of initiating criminal investigations to high state functionaries, such as Congress members and former directors of the intelligence governmental office, for their participation and linkages with the paramilitary groups.

Significance of the Research

The significance of this research rests on its contribution to advance theory on interdisciplinary studies on transitional justice and human rights, and give the possibility to listen the voices of the human rights activists about their experience or resisting impunity during the past decade in Colombia. This research advance theory on transitional justice and human rights to the extent it provides elements of interdisciplinary dialogue. This dialogue brings together different fields and approaches on transitional justice and human rights, such as, social theory (Bourdieu, 1987; Bourdieu & Wacquant, 1992), political science (Keck & Sikkink, 1998), legal perspectives on transitional justice (McAdams, 1997; Minow, 1998; 2002; Teitel, 2000), criminology (McEvoy, 2008; Parker & Lauderdale, 2010), legal anthropology (Goodale & Merry; 2007; Speed, 2009; Tate, 2007), sociology of law and society (Rajagopal, 2003;2005; Santos & Garavito, 2005), and social movements theory (Alvarez & Escobar, 1992; Alvarez, Dagnino & Escobar, 1998), among others. This research went beyond traditional the legal research on transitional justice and human rights that usually focuses on institutional mechanisms and legal regulations which neglect to give account of the social and political processes that rests behind those institutional expressions. It also extends some prior research that has applied similar theoretical frameworks to explain the globalization of law in Latin America (Dezalay and Garth, 2002) and the contradiction between political needs and normative values (Hagan and Levi, 2005). This research is not focused on

political and legal elites or legal institutions but rather gives accounts of the contested process of framing and application of those mechanisms.

This approach provided accounts of a more complex situation to the extent it gave account of the conflicts, struggles and interactions among different actors and the way they imposed or negotiated the framing of legal mechanisms. As part of a contested process, I have suggested that transitional justice experiences are a space of battle in which different actors, with different amount of power and resources, constructed discourses, assigned meanings and carried out practices to defend their interests and perspectives. The research highlights the relevance of non state actors, such as intergovernmental organizations, international and domestic human rights NGOs, and victims' organizations and social movements. The analysis on the their connections through the formation of networks to contest, resist and propose alternatives for the protection of human rights allowed me to advance theory on human rights networks. In this perspective, the network analysis does not restraint to the scope of international relationships, as suggested by Keck and Sikkink (1998). Human rights and victims' networks are relevant, not only to elicit international pressure on national governments, but also to incorporate discourses of human rights and carry out actions of political and legal mobilization in the domestic arena. In this sense, the research dialogue with recent research on legal anthropology on the contradictions between global and local practices on human rights (Goodale & Merry, 2007; Tate, 2007; Speed, 2009). In doing so the research provides elements to explain the leadership of domestic human rights NGOs in the resistance against the hegemonic security policies and

the incorporation of the discourse on victims' rights. However, this is not a static perspective. The research also makes a contribution to understand the dynamic process of discursive formation of victims' rights.

This research also made possible to listen the voices of different actors who belong to non state organizations, such as intergovernmental organizations, human rights NGOs and some grassroots organizations. The research achieved to give account of the perspective of a minority of groups that resisted the policies on security promoted by the government and advocated for the rights of disenfranchised groups. By listening to the voice of different human rights activists it was possible to understand also the richness of the history of the human rights organizations in Colombia, the plurality of political views, their relations with the state government, their role in constructing democratic institutions, their attempts to get together and coordinate their actions. But listening their voices also helped me to understand how the activists have constructed strong bonds of solidarity with international organizations and grass roots organizations for years to resist, not only the violence against disenfranchised groups, but also the violence against them. However, this story is yet to be told in Colombia. Despite of the effort of the human rights activists to resist oppression, the history of the struggles for the defense of human rights, construct democracy and contest impunity remain, in most cases, hidden in their own memory, sometimes because of fear, sometimes because of internal political contradictions, and sometimes, because they are so busy that they cannot afford to take a while to write about themselves.

Recommendations for Future Research

This research attempted to understand the contested process of framing the mechanisms of transitional justice in Colombia, the contested process of carrying out the mechanisms of protection of victims' rights and the relations between politics and law in the context of the recent transitional justice experience in the country. As long as I moved forward in the research, I realized there were critical aspects that need to be addressed and were beyond the goal of the present research. A first aspect that constitutes a problem for future research is related to the relations between the economic structures, the transformation of the state government in Colombia and the increase of human rights violations. During the past years, the linkages among entrepreneurs, politicians and paramilitary forces have become apparent. In this research, I tried to give account of those relations as part of the political context that helped explain, to some extent, the emergence of a hegemonic discourse on security. By stressing the resistance of the human rights organizations, I did not suggest that the force of law or the discourse of human rights can overcome the existing structural constraints that have made of possible for powerful landowners, entrepreneurs and drug traffickers to deprive the peasants, indigenous groups or afro descendant people from their lands. Perhaps the discourse of human rights and the courts cannot face the wide-spread networks of drug traffickers and overcome their powerful intimidation and brutality and their capacity to co-opt the state agencies.

What this research shows is that some social actors, such as the human rights organizations, victims' groups and the higher courts, draw on the discourse

on human rights to resist those forms of oppression and promote a different project of society. For future research, it will be necessary to address how specific modes of production, such as those based on big landownership, drug trafficking and some transnational corporations have fueled forms of repression and organization of paramilitary groups to deprive afrocolombian communities, indigenous population and peasants from their lands and protect their corporatist interests.

A second aspect for future research is related to the voice of the victims, grassroots organizations and the communities. This research attempted to give account, to some extent, of the voices and perspectives of human rights activists, especially those who belong to human rights organizations and networks that work for the victims' rights. Because it took longer to gain access to the organizations and the activists, I could not have as much interaction with victims' groups and communities. This research has allowed me to get in contact with existing human rights and victims' networks and organizations. In this regard, future research will address deeper perspectives and narratives of victims' groups and the communities that have suffered the impact of political violence. In this perspective it will be necessary to get deeper understanding, by means of other research methods such as ethnography and participatory observation, of the social mobilization of the victims and grassroots human rights organizations, their collective actions, practices and their struggles to defend their rights.

A third aspect for future research is related to the carrying out of the mechanisms of transitional justice. Up to the end of 2010, there was only one final

decision in the “Justice and Peace” proceedings and only two former paramilitary sentenced. Despite the amount of procedural decisions of the “Justice and Peace” Courts and the Supreme Court, the proceedings still go on and will take longer to have final conclusions. So far, the collective perspective of the victims’ organizations is that the “Justice and Peace” law is a failure. In any case, it is important to take into account that the time of legal realm is different of the time of the social movements. For future research, it will be necessary to address different questions that are not yet solved in this research. To what extent the do the legal proceedings achieved to protect the victims’ rights, in terms of justice, truth and reparations? To what extent does the judicial system offer a space of transformation of the political asymmetries and power relations between the former paramilitary members and the victims? What is the experience of the victims in the legal forums?

And last but not least, I cannot forget the impressive work of the higher Courts, especially the Supreme Court in the role of leading a process of institutional resistance and judicialization of politics (Lauderdale, 1988; Santos, 2001). In this perspective, future research will have to address the Colombian experience of judicialization of politics and go in depth in the contradiction between the judicial branch and the executive and the legislative branch in a context of cooptation and penetration of paramilitary forces into the state government.

REFERENCES

- Agamben, Giorgio. 2005. *State of Exception*. University of Chicago Press.
- Alvarez, Dagnino and Escobar. 1998. *Culture of Politics/Politics of Culture: Re-visioning Latin American Social Movements*. Westview Press.
- Arenas, Luis Carlos and Gabriel Gomez. 2001. "Searching for Justice in the Era of Rule of Law Programs: Case Studies of Colombia, Peru and Venezuela". *Beyond Law*. Vol. 7. No. 23. ILSA.
- Acción Social. 2007. Final Statement.
<http://www.accionsocial.gov.co/contenido/contenido.aspx?conID=2172&catID=127>
- ASFADDES. 2003. *Veinte años de historia y lucha*. ASFADDES, Bogota.
- Barahona De Brito, Alexandra, Gonzalez Enriquez, Carmen and Aguilar, Paloma. (2001). *The Politics of memory*. Oxford: Oxford University Press.
- Bell, Christine. 2009. "Transitional Justice Interdisciplinarity and the State of the "Field" or "Non-Field."." *The International Journal of Transitional Justice*, Vol. 3, 2009, 5-27.
- Botero, Catalina. 2004. *Documento de recomendaciones sobre el proyecto de ley estatutaria No. 85 de 2003-Senado, denominado "de alternatividad penal"*. Fundación Social. Asesoría en Derechos Humanos.
http://www.indepaz.org.co/attachments/151_Articulo%20alternatividad%20UV.doc
- Botero, Catalina and Esteban Restrepo. 2005. "Estándares internacionales y procesos de transición en Colombia." In, Rettberg, Angelika (Ed). 2005. *Entre el perdón y el paredón. Preguntas y dilemas de la justicia transicional*. IDRC, Ediciones Uniandes, CESO. Bogotá.
- Bourdieu, Pierre. 1987. "The force of Law: Toward a sociology of the juridical field. *Hastings Law Journal*." *The Hastings Law Journal*, 38: 805-853.
- Bourdieu, Pierre and Loic Wacquant. 1992. *An Invitation to Reflexive Sociology*. Chicago: University of Chicago Press.

- Bourdieu, Pierre and Loic J. D. Wacquant, Samar Farage. 1994. "Rethinking the State: Genesis and Structure of the Bureaucratic Field." *Sociological Theory*, Vol. 12, No. 1, pp. 1-18.
- Booth, James. 2001. "Memories of Justice." *The American Political Science Review*, Vol. 95, No. 4, pp. 777-791.
- Codhes. 2008. *Tapando el sol con las manos. Informe sobre desplazamiento forzado, conflicto armado y derechos humanos, enero-junio de 2008*. Boletín informativo, No. 74, Bogota. www.codhes.org.
- Comision Colombiana de Juristas (CCJ) 2007. *Colombia: El espejismo de la justicia y la paz. Balance sobre la aplicación de la ley 975 de 2005*. Bogota, Comision Colombiana de Juristas. 238 pp.
- Comision Colombiana de Juristas (CCJ) 2007. *Colombia 2002-2006: Situación de derechos humanos y derecho humanitario*. Bogota. Comision Colombiana de Juristas. www.coljuristas.org.
- Comisión Colombiana de Juristas (CCJ) 2010. Colombia: La metáfora del desmantelamiento de los grupos paramilitares. Segundo informe de balance sobre la aplicación de la ley 975 de 2005. CCJ, Bogotá.
- Comisión de Seguimiento a la Política Publica sobre el Desplazamiento Forzado (Csppdf). 2009. *Proceso nacional de verificación de los derechos de la población desplazada. Primer informe a la Corte Constitucional*. Bogotá, enero 31 de 2008. Bogotá.
http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52
- Comité Permanente por la Defensa de los Derecho Humanos. 2004. *Derechos Humanos en Colombia. Veinticinco años. Itinerario de una historia*. CPDDH. Bogotá.
- Congreso de la República. 2003. *Proyecto de ley estatutaria No 85 de 2003*. Senado. Gaceta del Congreso 436. 27 08 2003.
http://servoaspr.imprenta.gov.co:7778/gacetap/gaceta.nivel_3
- Congreso de la República. 2004. Pliego de modificaciones al proyecto de alternatividad penal. Gaceta del Congreso 158, 2003
- Coordinación Colombia Europa Estados Unidos CCEEUS. 2006. *Oficina en Colombia de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos*. 62° periodo de sesiones de la Comisión de Derechos Humanos de las Naciones Unidas. Ginebra.

http://www.ddhhcolombia.org.co/files/Sobre_el_mandato_de_OACNUDH_marzo06_62_periodo.pdf

- Corte Suprema de Justicia, Sala de Casación Penal. 2009.
- De Gamboa, Camila (Ed). 2006. *Justicia Transicional: Teoría y Praxis*. Editorial Universidad del Rosario. Bogotá.
- De Gamboa, Camila. 2007. Justicia transicional: la transición fallida. En, Hoyos, Guillermo (Ed). 2007. *Las víctimas frente a la búsqueda de la verdad y la reparación en Colombia*. Pontificia Universidad Javeriana, Instituto Goethe, Pensar. Bogotá.
- Diaz, Catalina. 2007. *Colombia's Bid for Justice and Peace*. Internacional Center for Transnacional Justice. Draft Version.
- Diaz, Catalina. 2008. "Challenging Impunity from Below: The Contexted Ownership of Transitional Justice in Colombia." In, McEvoy, Kieran and Lorna McGregor. 2008. *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*. Hart Publishing. Oxford and Portland.
- Douzinas, Costas. 2000. *The End of Human Rights*. Oxford. Hart Publishing.
- El Espectador. Feb 20, 2008. *Una histórica marcha contra el secuestro*. <http://www.elespectador.com/noticias/paz/articulo-una-historica-marcha-contra-el-secuestro>
- Elster, John. 2004. *Closing the Books. Transitional Justice in Historical Perspective*. Cambridge: Cambridge University Press.
- Escobar, Arturo and Sonia Escobar. (2002). *The Making of Social Movements in Latin America: Identity, Stratey and Democracy*. Westview Press.
- Ewick, Patricia and Susan Silbey. 1995. "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative." *Law & Society Review*, Vol. 29, No. 2, pp. 197-226.
- Ewick, Patricia and Susan Silbey. 1998. *The Common Place of Law. Stories from Every Day Life*. Chicago. University of Chicago Press.
- Ewick, Patricia and Susan Silbey. 2003. "Narrating Social Structure: Stories of Resistance to Legal Authority." *American Journal of Sociology*. Vol. 108, No. 6, pp. 1328-1372.

- FIDH and OMCT.2007. *Colombia Las Tinieblas de la Impunidad: Muerte y persecución a los defensores de derechos humanos*. Federación Internacional de Derechos Humanos y Organización Mundial Contra la Tortura.
- Fisher, William. 1997. "Doing Good? The Politics and Antipolitics of NGO Practices." In *Annual Review of Anthropology*, Vol. 26, pp. 439-464.
- Forero, Edgar. 2003. *El Desplazamiento Interno Forzado en Colombia*. Washington, D.C. Kellogg Institute, Woodrow Wilson International Center for Scholars, Ideas para la Paz.
- Fruhling, Michael. 2003. High Commissioner for Human Rights Office in Colombia. 2004. *Intervención del señor Michael Fruhling, Director de la Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, ante la Comisión primera del Honorable Senado de la República. Observaciones sobre el Proyecto de Ley "por la cual se dictan disposiciones en procura de la reincorporación de miembros de grupos armados que contribuyan de manera efectiva a la paz nacional*. <http://www.hchr.org.co/publico/pronunciamientos/ponencias/ponencias.p3?cod=29&cat=24>
- Fruhling, Michael. High Commissioner for Human Rights Office in Colombia. 2004. *Reflexiones sobre la necesidad de aplicar los derechos a la verdad, a la justicia y a la reparación para poder superar el conflicto armado interno en Colombia y lograr una paz duradera y sostenible*. Seminario Internacional "Experiencias de alternatividad penal en procesos de paz" Barcelona. <http://www.hchr.org.co/publico/pronunciamientos/ponencias/po0436.pdf>
- Fruhling, Michael. High Commissioner for Human Rights Office in Colombia. 2004. *Sobre la implementación de las recomendaciones del Alto Comisionado de las Naciones Unidas para los Derechos Humanos a Colombia, y la situación de los derechos humanos y del derecho internacional humanitario*. Cartagena. <http://www.hchr.org.co/publico/pronunciamientos/ponencias/po0454.pdf>
- Fruhling, Michael. 2004. High Commissioner for Human Rights Office in Colombia. *Alternatividad Penal, Justicia y Reparación. Intervención en la Universidad Externado de Colombia* <http://www.hchr.org.co/publico/pronunciamientos/ponencias/po0437.pdf>

- Fundacion Social (FS). 2006. *Tramite de la ley de Justicia y Paz*. Fundación Social.
- Gallón, Gustavo. 1979. *Quince años de estado de sitio en Colombia: 1958-1978*. Bogotá Editorial América Latina.
- Gallón, Gustavo and Catalina Diaz. 2004. *Ni Verdad, ni Reparacion, ni Paz: Negociaciones para la Impunidad de los paramilitares en Colombia*. Comisión Colombiana de Juristas.
http://www.coljuristas.org/documentos/documentos_pag/barcelona.pdf
- García Villegas, Mauricio. 2001. "Constitutionalismo perverso. Normalidad y anormalidad constitucional en Colombia: 1957-1997". In, Santos, Boaventura and Mauricio García. 2001. *El caleidoscopio de las justicias en Colombia*. Bogota: Colciencias.
- García Villegas, Mauricio. 2008. *Jueces sin Estado. La justicia colombiana en zonas de conflicto armado*. Siglo del Hombre, DeJusticia y Honrad Adenauer Stiftung.
- García Villegas, Mauricio y Cesar Rodríguez Garavito. (Eds.) 2003. *Derecho y Sociedad en America Latina. Un debate sobre los estudios juridicos criticos*. ILSA-Universidad Nacional de Colombia.
- George, Alexander and Andrew Bennett. 2005. *Case studies and Theory Development in the Social Sciences*. MIT Press. Cambridge.
- Giraldo, Javier. 2005. *Cinco falacias en el proceso con los paramilitares en Colombia*. <http://www.javiergiraldo.org/spip.php?article114>
- Goffman, Erving. 2001. "On Fieldwork." In, Emerson, Robert. (Ed). 2001. *Contemporary Field Research: Perspectives and Formulations*. Waveland Press. Long Grove, Illinois.
- Gomez Isa, Felipe. 2008. *Paramilitary Demobilization in Colombia: Between Peace and Justice*. Fride. Universidad de Deusto.
- Goodale, Mark and Sally Engle Merry. (Eds) 2007. *The Practice of Human Rights. Tracking Law Between the Global and the Local*. Cambridge. Cambridge University Press.
- Guembe, Maria Jose and Helena Olea. 2006. "No justice, no peace: Discussion of a legal framework regarding the demobilization of non-state armed groups

- in Colombia.” In Roht-Arriaza and Javier Marezcurrena. (Eds). 2006. *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice*. Cambridge. Cambridge University Press.
- Gutierrez, Francisco. 2004. “Criminal Rebels? A Discussion of Civil War and Criminality from the Colombian Experience”. *Politics & Society*, 32 (2) 257-285.
- Hagan, John and Ron Levi. 2005. “Crimes of War and the Force of Law.” *Social Forces*, Vol. 83, No. 4, pp. 1499-1534.
- Handler, Joel. 1992. “Presidential Address 1992, Postmodernism, Protest and the New Social Movements.” *Law and Society Review*, Vol 26, Number 4.
- Henao, Evelio. 2009. *El fin de las AUC. Verdad o ficcion?* Bogota. Intermedio editores.
- Houtzager, Peter. 2005. “The Movement of the Landless (MST), juridical field, and the legal change in Brazil.” In, Santos Boaventura and César Rodríguez-Garavito (eds.) 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge . Cambridge University Press.
- Holstein, James and Jaber Gubrium. 2002. Active Interviewing. In Winberg, Darin (Eds). *Qualitative Research Methods*. Malden, MA. Blackwell Publishers.
- Hoyos, Guillermo. (Ed). 2007. *Las Víctimas en Colombia. Frente a la búsqueda de la verdad y la reparación*. Bogota, Pontificia Universidad Javeriana, Goethe-Institut, Pensar.
- Hughes, Everett. “The Place of Field Work in Social Science.” In, Weinberg, Darin. 2002. *Qualitative Research Methods*. Blackwell Publishers.
- Human Rights Watch. 2005. *Colombia: Displaced and Discarded. The Plight of Internally Displaced Persons in Bogota and Cartagena*. Human Rights Watch.
- International Crisis Group. 2004. *Demobilising the Paramilitaries in Colombia: An Achievable Goal? Latin American Report No. 8*. Brussels.
- <http://www.crisisgroup.org/en/regions/latin-america-caribbean/andes/colombia/008-demobilising-the-paramilitaries-in->

International Civil Society Declaration, 3rd International Conference on Colombia, 2007.

Inverarity, James, Pat Lauderdale and Barry Feld. 1983. *Law and Society. Sociological Perspectives on Criminal Law*. Boston-Toronto. Little, Brown and Company.

Iturralde, Manuel. *Castigo, liberalismo autoritario y justicia penal de excepción*. Siglo del Hombre Editores Universidad de los Andes, Pontificia Universidad Javeriana-Instituto Pensar. Bogotá.

Jelin, Elizabeth. 1994. "The Politics of Memory: The Human Rights Movements and the Construction of Democracy in Argentina." *Latin American Perspectives*, Vol. 21, No. 2, Social Movements and Political Change in Latin America: 1, pp. 38-58.

Jelin, Elizabeth. 1998. "Toward a Culture of Participation and Citizenship: Challenges for a More Equitable World." In, Alvarez, Dagnino and Escobar. (Eds.) 1998. *Culture of Politics/Politics of Culture: Re-visioning Latin American Social Movements*. Westview Press.

Johnstone, Gerry (Ed.) 2003. *A Restorative Justice Reader*. Portland: Willan Publishing.

Joinet, Louis. 1997. La Administración de la Justicia y los Derechos Humanos de los Detenidos. Informe presentado a Naciones Unidas.
<http://www.derechos.org/nizkor/doc/joinete.html>

Kairys, David (Ed.) 1998. *The politics of Law: A progressive Critique*. New York: The Perseus Books Group.

Keck, Margaret and Kathryn Sikkink. 1998. *Activists Beyond Borders: Transnational Advocacy Networks in International Politics*. Cornell University Press.

Kirk, Robin. 2003. *More Terrible than Death. Violence, Drugs, and America's War in Colombia*. Public Affairs. New York.

- Khagram, Sanjeev, James V. Riker and Kathryn Sikkink (Eds.) 2002. *Restructuring World Politics. Transnational Social Movements, Networks and Norms*. University of Minnesota Press.
- Laplante, Lisa and Kimberly Theidon. 2006. "Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz." *Michigan Journal of International Law*. Vol. 28:49.
- Lauderdale, Pat. 1988. "Racionalización del Derecho en Costa Rica." *Revista Judicial*. Costa Rica No 44.
- Lauderdale, Pat. 1998 Justice and Equity: A Critical Perspective. In *Searching for Equity: Conceptions of Justice and Equity in Peasant Irrigation (Buscando la equidad: Concepciones sobre justicia y equidad en el riego campesino)*, edited by Rutgerd Boelens and Gloria Davila. Assen, The Netherlands: Van Gorcum.
- Lauderdale, Pat and Michael Cruit. 1993. *The struggle for Control. A Study of Law, Disputes, and Deviance*. New York. State of New York University Press.
- Lundy, Patricia and Kirsten McGovern. 2008. "The Role of Community in Participatory Transitional Justice." In, McEvoy, Kieran and Lorna McGregor. 2008. *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*. Hart Publishing. Oxford and Portland.
- Maxwell, Joseph A. 2005. *Qualitative Research Design. An Interactive Approach*. Thousand Oaks. Sage Publications.
- McAdams, James (Ed). 1997. *Transitional Justice and the Rule of Law in New Democracies*. Notre Dame: University of Notre Dame Press.
- McEvoy, Kieran. 2008. "Letting Go of Legalism: Developing a 'Thicker' Version of Transitional Justice." In, McEvoy, Kieran and Lorna McGregor. 2008. *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*. Hart Publishing. Oxford and Portland.
- McEvoy, Kieran and Lorna McGregor. 2008. *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*. Hart Publishing. Oxford and Portland.
- McGregor, Lorna. "International Law as a 'Tiered Process': Transitional Justice at the Local, National and International Level." In, McEvoy, Kieran and

- Lorna McGregor. 2008. *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*. Hart Publishing. Oxford and Portland.
- Meltzer, Judy. 2004. *Transitional Justice and Reconciliation in Post-Conflict Colombia: Some Considerations for Future Canadian Engagement*. FOCAL. Policy Paper. www.focal.ca
- Medellín, Pedro. 2010. ““No todo vale en la guerra”. Una evaluación de ocho años de seguridad democrática.” In, Rangel, Alfredo and Pedro Medellín. 2010. *Política de Seguridad Democrática*. Bogotá. Editorial Norma.
- Mendez, Juan. 1996. “In Defense of Transitional Justice.” In, James McAdams (Ed). *Transitional Justice and Rule of Law in New Democracies*. Notre Dame: University of Notre Dame Press.
- Merry, Sally Engel. 1995. “Resistance and the Cultural Power of Law” *Law & Society Review*, Vol. 29, No. 1, pp. 11-26.
- Merry, Sally Engel. 1998. “Legal Pluralism” *Law and Society Review*, Vol. 22 No. 4.
- Merry, Sally Engel. 2006. “Transnacional Human Rights and Local Activism: Mapping the Middle.” *American Anthropologist*, Vol. 108 Issue 1, pp. 38-51.
- Merry, Sally Engel and Peggy Levitt. 2008. *Law, Human Rights and Social Movements: Exploring the Justice Scaffold*. New York University and Wellesley College. Working Paper. 43 pp.
- Minow, Martha. 1998. *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*. Boston. Beacon Press.
- Minow, Martha. 2002. *Breaking the Cycles of Hatred. Memory, Law and Repair*. Princeton and Oxford. Princeton University Press.
- Molano, Alfredo. 1994. *Trochas y Fusiles*. Bogotá: El Ancora Editores.
- Nader, Laura and HF Todd. 1978. *Disputing Process-Law in Ten Societies*. New York. Columbia University Press.

- Oliverio, Annamarie. 1998. *The State of Terror*. State University of New York Press.
- Oliverio, Annamarie and Pat Lauderdale. 2005. No Hay Rosas Sin Espinas: Statecraft in Costa Rica. In *When States Kill: Latin America, the U.S. and Technologies of Terror*, edited by Cecilia Menjivar and Nestor Rodriguez. Austin, TX: University of Texas Press. Pages 198-226
- Orozco-Abad, Ivan. 1992. *Combatientes, Rebeldes y Terroristas: Guerra y Derecho en Colombia*. Bogota. Temis.
- Orozco-Abad, Ivan. 2005. *Sobre los limites de la conciencia humanitaria. Dilemas de la paz y la justicia en America Latina*. Bogota. Temis-Universidad de Los Andes.
- Orozco-Abad, Ivan. 2009. *Justicia Transicional en tiempos del deber de memoria*. Bogota. Temis-Universidad de Los Andes.
- Osiel, Mark. 2005. "Respuestas Estatales a las Atrocidades Masivas." In Rettberg, Angélica (Ed) 2005. *Entre el perdón y el paredón. Preguntas y delamas de la Justicia Transicional*. Bogotá. Universidad de Los Andes.
- Oxhorn, Philip. 2001. "From Human Rights to Citizenship Rights? Recent Trends in the Study of Latin American Social Movements." *Latin American Research Review*, Vol. 36, No. 3, pp. 163-182.
- Patton, Michael Quinn. 2002. *Qualitative Research & Evaluation Methods*. Sage Publications. Thousand Oaks, London, New Delhi.
- Parker, Jerry and Pat Lauderdale. 2011. "Political Deviance in Courtroom Settings." Pages 47-71 in *A Political Analysis of Deviance: New Edition*, Pat Lauderdale, ed. Toronto, Canada: de Sitter Publications.
- Pecaut, Daniel. 2006. *Cronicas de cuatro decadas de politica colombiana*. Bogota. Editorial Norma.
- Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo PCDHDD. 2005. *Mas alla del embrujo. Tercer ano de gobierno de Alvaro Uribe Velez*. Bogota. PCDHDD.

- Rajagopal, Balakrishnan. 2003. *Internacional Law from Below: Development, Social Movements, and Third World Resistance*. Cambridge. Cambridge University Press.
- Rajagopal, Balakrishnan. 2005. "Limits of law in counter-hegemonic globalization: the Indian Supreme Court and the Narmada Valley Struggle." In, Santos Boaventura and César Rodríguez-Garavito (eds.) 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge . Cambridge University Press.
- Ragin, Charles. 1994. *Constructing Social Research*. Pine Forge Press.
- Rangel, Alfredo (Ed). 2005. *El Poder Paramilitar*. Bogota, Planeta.
- Reiniciar, 2010. "El genocidio contra la Unión Patriótica." <http://reiniciar.org/node/79>
- Restrepo, Luis Carlos. 2004. "La politica de Seguridad Democratica". In, *Conflicto y Paz en Colombia: Consecuencias y perspectivas para el futuro*. Libros de Cambio, 2004. p. xviii.
- Restrepo, Luis Carlos. 2005. *Justicia y Paz. De la negociación a la gracia*. Medellín. ITM.
- Rettberg, Angelika (Ed). 2005. *Entre el perdón y el paredón. Preguntas y dilemas de la justicia transicional*. IDRC, Ediciones Uniandes, CESO. Bogotá.
- Rodríguez-Garavito, Cesar and Luis Carlos Arenas.2005. "Indigenous rights, transnational activism, and legal mobilizations: the struggle of the U'wa people in Colombia." In, Santos Boaventura and César Rodríguez-Garavito (eds.) 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge . Cambridge University Press.
- Rodríguez, Cesar. Marzo 1 2008. "La derecha y la marcha". En, Semana. http://dejusticia.org/interna.php?id_tipo_publicacion=1&id_publicacion=294
- Rojas, Cristina and Judy Meltzer. 2005. *Elusive Peace: international, National and Local Dimensions of Conflict in Colombia*. Polgrave Macmillan.

- Roht-Arriaza and Javier Marezcurrena. (Eds). 2006. *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice*. Cambridge. Cambridge University Press.
- Romero, Flor Alba. 2001. "El movimiento de derechos humanos en Colombia". In Archila, Mauricio and Mauricio Pardo. *Movimientos sociales, Estado y democracia en Colombia*. CES, Bogotá. Universidad Nacional, ICAHN.
- Romero, Mauricio. 2003. *Paramilitares y autodefensas. 1982-2003*. Bogota. IEPRI.
- Root, Rebecca. 2009. "Through the Window of Opportunity: The Transitional Justice Network in Peru." *Human Rights Quarterly*. No 31, 452-473. Johns Hopkins University Press.
- Sánchez, Camilo. 2009. ¿Perder es ganar un poco? Avances y frustraciones de la discusión del Estatuto de Víctimas en Colombia. In In, Díaz, Catalina, Nelson Camilo Sánchez and Rodrigo Uprimny (Eds). *Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión*. Centro Internacional para la Justicia Transicional ICTJ and Centro de Estudios de Derecho, Justicia y Sociedad Dejusticia. Bogotá.
- Sanchez, Gonzalo. 2008. "Tiempos de memoria, tiempos de victimas." *Analisis Politico*. Bogota, IEPRI. Universidad Nacional de Colombia.
- Santos, Boaventura de Sousa. 1995. *Toward a New Common Sense: Law, Science and Politics in the Paradigmatic Transition*. New York: Routledge.
- Santos, Boaventura de Sousa. 2006. "The Heterogeneous State and Legal Pluralism in Mozambique." *Law & Society Review*, Vol. 40, No. 1, pp. 40-76.
- Santos, Boaventura de Sousa and Mauricio Garcia. 2001. *El caleidoscopio de las justicias en Colombia*. Bogota: Colciencias, Universidad de Los Andes, Universidad Nacional.
- Santos Boaventura and César Rodríguez-Garavito (eds.) 2005. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge . Cambridge University Press.
- Sarat, Austin. 1990. " "...The Law is all over": Power, Resistance and the Legal Consciousness of the Welfare Poor." *Yale Journal of Law & the Humanities*, 2: 343.

Sarat, Austin and Thomas Kearns (Eds). 2000. *Law in the Domains of Culture*. Ann Arbor. The University of Michigan Press.

Semana 1161. 2004. *Vinieron, hablaron y se fueron*. Agosto 1 2004. Bogotá.
http://www.semana.com/wf_InfoArticulo.aspx?IdArt=80657

Semana 1188. 2005. *La hora de la verdad*. Febrero 6 2005. Bogotá.
<http://www.semana.com/noticias-nacion/hora-verdad/84646.aspx>

Semana. Marzo 6, 2008. “Colombia cansada de violencia.”
http://www.semana.com/wf_InfoArticulo.aspx?IdArt=109991

Semana, Marzo 7, 2008. Iván Cepeda: Queremos que se le rinda un justo homenaje a las víctimas del paramilitarismo.
http://www.semana.com/wf_InfoArticulo.aspx?idArt=109263

Speed, Shannon. 2007. “Excercising Rights and Reconfiguring Resistance in the Zapatista Juntas de Buen Gobierno.” In, Goodale, Mark and Sally Engle Merry. (Eds) 2007. *The Practice of Human Rights. Tracking Law Between the Global and the Local*. Cambridge. Cambridge University Press.

Speed, Shannon. 2009. *Rights in Rebellion. Indigenous Struggle and Human Rights in Chiapas*. Stanford University Press. Stanford California.

Stanley, Elizabeth. “Evaluating the Truth and Reconciliation Commission.” *The Journal of Modern African Studies*, Vol. 39, No. 3, pp. 525-546.

Stryker, Robin. 1996. “Beyond History Versus Theory: Strategic Narrative and Sociological Explanation.” *Sociological Methods Research*; 24, Pp. 304-351.

Tate, Winifred. 2007. *Counting the Dead. The Culture and Politics of Human Rights Activism in Colombia*. Berkeley-Los Angeles-London. University of California Press.

Teitel, Ruti. 2000. *Transnational Justice*. Oxford University Press.

Trubek, David and John Esser. 1989. “ ‘Critical Empirism’ in American Legal

Studies: Paradox, Program, or Pandora's Box?" *Law and Social Inquiry*, Vol 14, No. 1 pp. 3-52.

Tsing, Anna. 2005. *Friction. An Ethnography of Global Connection*. Princeton University Press. Princeton and Oxford.

United Nations (2004). *The rule of law and transitional justice in conflict and post-conflict societies*. <http://www.unrol.org/files/2004%20report.pdf>

Uprimny, Rodrigo. 2001. "Las transformaciones de la administración de justicia en Colombia". In, Santos, Boaventura and Mauricio García. *El Caleidoscopio de las Justicias en Colombia*. Conciencias, ICANH, Universidad de Coimbra CES, Universidad de los Andes, Universidad Nacional de Colombia, Siglo del Hombre Editores. Bogotá.

Uprimny, Rodrigo. 2006. *¿Justicia Transicional sin Transición?* Bogota: Dejusticia.

Uprimny, Rodrigo and Maria Paula Saffon. 2009. 'Usos y abusos de la justicia transicional.' In, Rangel, Alfredo (Ed). *Justicia y Paz. Cual es el precio que debemos pagar?* Bogota. Intermedio editores. English version. 'Uses and Abuses of Transitional Justice.' http://dejusticia.org/interna.php?id_tipo_publicacion=2&id_publicacion=352

Weinberg, Darin. 2002. *Qualitative Research Methods*. Blackwell Publishers.

Valencia, Leon. 2007. "Los Caminos de la Alianza entre los paramilitares y los partidos politicos." En. *Parapolitica. La ruta de la expansion paramilitar y los acuerdos politicos*. Bogota. Intermedio editores y Corporación Nuevo Arco Iris.

Vivanco, Jose Manuel. 2004. *Intervención ante la Comisión Primera del Senado de la República de Colombia*. Bogotá. http://www.hrw.org/spanish/docs/2004/04/02/colomb8404_txt.htm

