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Attempts in Strengthening Indigenous Justice Systems in Colombia Through Transitional Justice

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Abstract

This study examines the extent to which transitional justice in Colombia has strengthened Indigenous justice systems. Indigenous peoples in Colombia have suffered the worst violations of human rights due to the armed conflict (1958–2016). Thus, the State has failed to uphold their rights to truth, reparation, justice, and nonrecurrence. The task of the Special Jurisdiction for Peace, the justice component of the transitional justice system, is to prevent cycles of impunity endured by Indigenous communities. It endeavors to address epistemic violence rooted in international and national laws that incorporate intercultural approaches within their regulations and proceedings. However, tensions have emerged due to the challenges that pose the effective understanding of the Indigenous ontologies of damage, justice, and reconciliation in Colombia. The study's findings demonstrate that strengthening Indigenous justice is dependent on the understanding of its ontology and the capacity of transitional justice to develop legal frameworks based on Indigenous law.

Keywords: Transitional justice; Indigenous justice; Indigenous ontologies; interculturality.

Introduction

Indigenous peoples in Colombia have suffered disproportionate and differentiated impacts due to the armed conflict (1958–2016). According to the Colombian Truth Commission´s final report (Comisión de la Verdad en Colombia, 2022), examining historical violence is necessary due to colonial heritage, which explains the structural racism perpetuated in political, educational, legal, and economic institutions. Through politics of exclusion and violence, these institutions have legitimized acculturation policies, land dispossession, territorial occupation, natural resource exploitation, war economies, and discrimination. These violations have denied the humanity of ethnic population Comisión de la Verdad en Colombia, 2022.

The Special Jurisdiction for Peace (JEP) is a product of a peace agreement signed in 2016 between the Colombian government and the largest guerrilla organization—FARC. The JEP is the justice component of the transitional justice system that investigates, clarifies, and sanctions severe human rights violations and grave breaches of international humanitarian law committed during the armed conflict. Based on a restorative justice framework, the JEP mandated the prevention of the impunity endured by Indigenous communities by satisfying their rights to truth, justice, reparation, and guarantees of non-repetition. In this sense, a need emerges to decolonize transitional justice by incorporating Indigenous epistemologies that acknowledge Indigenous ontologies. In this manner, the real extent of the damage is understood; hence, the sanctions and reparations imposed will be consistent with the needs of the justice claim of Indigenous peoples. Consequently, it is expected that the JEP will contribute to the strengthening of Indigenous justice systems by tackling epistemic violence rooted in national and international laws and generating new intercultural epistemologies in transitional justice.

Within this context, this study examines the extent to which transitional justice strengthens Indigenous justice systems in Colombia. The subsequent text provides the theoretical framework on which analysis is based, followed by brief context on the impacts of the armed conflict on Indigenous people in Colombia. Intercultural epistemologies within the normative framework of the JEP are then identified. Afterward, the study examines the most relevant orders within macro-case 05 (Territorial Case of Northern Cauca and Southern Valle del Cauca) and analyzes the consideration of these epistemologies in legal orders and tensions that have emerged. Based on an interpretive paradigm, this study invites a critical analysis of the regulation and jurisprudence of the JEP by investigating conceptual and theoretical debates about epistemic violence and interculturality in transitional justice in Colombia.

This document does not pretend to represent the voice of Indigenous peoples or the institution of the JEP. Instead, it is an academic and reflective exercise on a process in which multiple interactions have occurred between Indigenous people and the transitional justice system in Colombia. Therefore, learnings and tensions that defy the epistemologies of transitional justice were identified and analyzed to be considered in other macro-cases or in similar transitional processes.

Theoretical Framework

The discussion in this article falls under the theory of epistemic violence. This pertains to a colonial process in which the production of knowledge is appropriated and dominated by a knowledge system that underlies power relationships and reproduces discourse in which other forms of knowledge are denied or oppressed (De Sousa Santos, 2010; Spivak, 2003). *Other* knowledge is "a whole set of knowledge that have been disqualified as inadequate to their task or insufficiently elaborated: naive knowledge, located low down on the hierarchy, beneath the required level of cognition or scientificity" (Foucault, 1980 as cited in Spivak, 1988, p. 25). De Sousa Santos (2020, p. 1) claims that the law has reproduced oppressive structures as a form of epistemic violence by concealing political and cultural privileges. As a cognitive structure, law is a universal norm that emanates from the State within abyssal thinking. Within this framework of thinking, legality is determined according to official or international law. Therefore, any kind of reality that does not fit within this classification is eliminated or considered non-existent (De Sousa Santos, 2010, p. 29). Hence, law and knowledge are built on dichotomies (e.g., legal and illegal, culture and nature, and science and beliefs), which are typic of the positivism that characterizes Eurocentric monocultures (De Sousa Santos, 2007). Consequently, De Sousa Santos (2010) proposes an ecology of knowledges that recognizes the diversity of epistemologies and the multiplicity of knowledge.

Escobar and Frye (2020a) stated that "multiple knowledges, or epistemes, refer to multiple worlds or ontologies" (p. 68). From this perspective, ontology is the comprehension of multiple realities or worlds, rather than multiple perspectives of a reality (Blaser 2014, p. 52).

As such, a need emerges for an intercultural process with political consequences that compel translations in which the other knowledge is given meaning and is understood. Thus, the Colombian transitional justice system represents an opportunity to overlook epistemic violence and build a new epistemology of justice, a new knowledge based on other ontologies that recognizes the historical and cultural grievances suffered by ethnic populations in Colombia (De Sousa Santos, 2020).

Alternatively, by ensuring truth, justice, and reparation, transitional justice could materialize legal pluralism and interculturality and, thus, the recognition of other systems of justice from a decolonial view (De Sousa Santos, 2020). Walsh (2010) defined interculturality as a political, ethical, and epistemic practice. As an "epistemic turn", the path to decolonization involves the following points of departure: (a) knowledge has value, color, and gender and is situated; (b) it is relevant to the revitalization and enhancement of ancestral knowledge and recognizes the context in which it interacts and its temporality; and (c) it is a part of a process of production of knowledge and systems of thinking (Walsh, 2004). Indeed, the epistemic turn refers to the value of Indigenous cosmologies regarding their territories and the multiple relationships that coexist therein as an "attempt to fully acknowledge indigenous people's ontological self-determination" and the recognition of "Indigenous Law as law" (Bacca Benavides, 2019, p. 145-146).

Nonetheless, interculturality in the transitional justice system raises tensions that De Sousa Santos (2020) describes as follows. The first pertains to the recognition of ethnic justice and the western tradition of hegemonic justice, upon which ordinary justice has been built. This tradition led to the lack of recognition of Indigenous justice systems as valid. The second tension is between liberal multiculturalism, whereby other cultures are recognized while conforming to the dominant culture, and interculturality, in which diversity is celebrated and enriched by other cultures. The third tension is the interaction between ordinary justice and Indigenous justice, which has been expressed through denial, coexistence through distance, reconciliation, and conviviality (De Sousa Santos, 2020, p. 6). With these clarifications, the next section aims to examine the epistemic transformation in transitional

justice by analyzing representative decisions in macro-case 05 and identifying the tensions that have emerged from the intercultural process led by Indigenous peoples and the JEP.

Impacts of Armed Conflict on Indigenous People in Colombia

Armed conflict has led to the physical and cultural extermination of Indigenous peoples. Indeed, the Constitutional Court of Colombia has recognized that approximately 71 out of 115 Indigenous peoples[1] are at risk of extermination. The underlying reasons are (a) confrontations between armed groups in Indigenous territories, (b) conflict dynamics that actively involve Indigenous peoples, and (c) socioeconomic and territorial processes due to armed conflict (Corte Constitucional Colombiana, 2009).

Installing military bases in Indigenous territories without consultation and using anti-personnel mines are examples of how Indigenous communities were instrumentalized. Furthermore, the selective homicide of traditional authorities and prominent leaders, confinement, stigmatization, sexual violence, forced recruitment, mobility control, and the imposition of behavioral and cultural codes demonstrate the direct targeting of Indigenous peoples by armed groups (Comisión de la Verdad en Colombia, 2022). Additionally, territories and communities endured the socioeconomic impacts of practices such as land dispossession, illegal economy, and natural resource exploitation by armed groups in territorial control. These actions result in impoverishment, food insecurity, famine, disease, forced displacement, and ethnic weakening (Comisión de la Verdad en Colombia, 2022).

In this context, violence produces individual and collective transformations that serve as evidence of the differential vulnerabilities of Indigenous peoples and their territories, which threaten their preservation. For instance, armed conflict infringed on their cultural integrity by attacking their systems of beliefs, which limited the practices of rituals and ceremonies and led to the loss of their language. In addition, armed conflict weakened Indigenous autonomy by placing political and governance structures at risk. This affected decision-taking mechanisms, threatened leaders and traditional authorities, impacted the mechanisms for community protection and territorial control, destroyed nature, desecrated territories and sacred places, and displaced spirits and ancestral guides (Comisión de la Verdad en Colombia, 2022, p. 278). In other words, the collective and organizational processes of Indigenous peoples are at risk, which threatens their survival.

Nonetheless, the State has overlooked these violations and the impacts on Indigenous rights. In this sense, opportunities for reparation have emerged because of the long history of struggles, led by Indigenous organizations, to resist dominant institutional violence. Moreover, the multiple dimensions of harms suffered by ethnic groups were ignored, so advocacy for the recognition of their rights and defense of territories has strengthened. After a process of consultation, Indigenous peoples succeeded in influencing Decree 4633/2011 in 2011, which ruled on the attention, assistance, reparation, and restitution for Indigenous peoples as victims. For instance, different conceptions of harm were recognized. The Decree encompassed individual and collective harm; individual harm with a collective impact; and harm to cultural integrity, territory, autonomy, and organizational integrity (Art. 5–7).

One of the most notable advances of the Decree was the recognition of the territory as a victim of armed conflict. It was recognized as an alive being that supports harmony and balance across Indigenous communities (Art. 3). This broad notion of territory exceeded the traditional concept of territory as an object with geographical limits. The Decree recognized territory as a being in which material and unmaterial, and human and nonhuman relationships interact. This notion implies that humans are only one part of the unity. Thus, understanding territory via Indigenous ontologies means comprehending that violence against territory denotes the interruption of life and the possibility of the circulation of the Vital Web (Red Vital)[2] that interacts within it. For instance, deforestation, river contamination, and landscape modification diminished the capacity to communicate with spiritual guides and interrupted the life plans of Indigenous communities[3] (Centro Nacional de Memoria Histórica [CNMH] and Organización Nacional Indigena de Colombia [ONIC] 2019). This aspect demonstrates that armed conflict "not only affected humans but also nonhuman entities that inhabit in the territory and goes beyond damage against the property or environmental issues" (author's translation; Ruiz-Serna, 2017, p. 89).

Understanding the impacts and harms experienced by Indigenous peoples in armed conflict contexts plays a pivotal role in transitional justice, as it allows for a deeper insight into the historical, structural, and intergenerational causes rooted in colonial power. These causes are reflected in institutional practices of discrimination against Indigenous peoples (González, 2021). For instance, in Latin America, Guatemala is one of the countries that established transitional justice mechanisms following the signing of peace accords between the State's army and guerrilla forces in 1996. The armed conflict in Guatemala resulted in over 200,000 people being killed or disappeared, with 83% of the victims belonging to Mayan Indigenous communities. The Historical Clarification Commission (CEH) determined that the military strategy was disproportionate, violating cultural values

and collective cohesion in Mayan communities—actions that constituted acts of genocide (Inter-American Commission on Human Rights, 2015). Beyond the CEH, a National Reparation Program was created in 2003 to redress violations against victims of the armed conflict through economic compensation. However, this program failed to provide effective individual and collective reparations for Indigenous peoples due to bureaucratic delays and the elimination of compensations for specific violations. These included massacres, sexual violence, and crimes against humanity—crimes for which Mayan communities were disproportionately victimized (Inter-American Commission on Human Rights, 2015).

Regarding justice, no special tribunal was established for the investigation, prosecution, and punishment of the perpetrators of war crimes and crimes against humanity. On the contrary, "the application of amnesty laws has obstructed the clarification of the facts and the prosecution and punishment of the persons responsible for serious human rights violations, leaving them in impunity" (Inter-American Commission on Human Rights 2015, para. 433). Additionally, although former dictator Efraín Ríos Montt was convicted of genocide, the Constitutional Court later overturned the decision. In terms of justice, it is important to note that for some Mayan communities retributive justice is not about courts. Their normative system seeks to restore social harmony, with sanctions varying according to the nature of transgressions at the personal, family, and community levels (Viaene, 2011). Within Mayan justice, when someone commits a transgression and does not acknowledge it, they will suffer *q'oq'*, meaning that "sacred value will be resolved by spiritual interventions that transcend human capacity" (Viaene 2011, p. 198). In this sense, individuals who participated in or collaborated with the army and caused harm to Mayan community members are considered victims of *q'oq'*. Thus, they face both retributive and restorative sanctions, which also have social and communal effects (Viaene, 2011). This brief example notes the difficulties of Mayan communities enduring a transitional justice system rooted in colonial and patterns of discrimination. In this case, according to international law, there is a clear manifestation of impunity. However, this contrasts with the Mayan perception of retributive justice, in which *q'oq'* serves as a form of moral and spiritual punishment (Viaene, 2011).

Therefore, violations and harms experienced by ethnic communities cannot be generalized, nor can reparations be universalized, under the dominant paradigms of justice. This issue is intrinsically related to the capacity to access justice by considering collective, spiritual, cultural, and territorial approaches and traditional knowledge and practices (Comisión de la Verdad en Colombia, 2022, p. 131). By including intercultural dialogue and knowledge exchange among Indigenous victims, judges, and judicial operators, access to justice without impunity can be ensured (Izquierdo, 2019). In this regard, impunity is not the absence of punishment. It is a manifestation of epistemic violence anchored in the justice system in which abuse of power is displayed in different dimensions. Three mechanisms of abuse of power are identified as (a) through legal regulations and institutions, in which the State monopolizes the production, interpretation, and application of laws in detriment of Indigenous rights and cosmologies; (b) through stigmatizing, racist, and discriminatory discourses, which have worsened the human rights situation and increased the criminalization of Indigenous communities; and (c) the abusive use of physical force on people and over territories (Indigenous Peoples Rights International, 2021, p. 25).

Intercultural Epistemologies of Transitional Justice in Colombia

Transitional justice in Colombia requires "going beyond a state-centric view of transitional justice; going beyond an individualistic form of analysis; going beyond recent violations; and going beyond archival and written sources" (International Center for Transitional Justice 2012, p. 3). Izquierdo and Viaene (2018) proposed that decolonizing social and legal knowledge, which informs the field of transitional justice, is necessary. Essentially, the JEP was created as per the mandate of the peace agreement, which ensures the rights of victims through the investigation, prosecution, and punishment of persons responsible for human rights violations committed during armed conflict. A remarkable aspect is that Indigenous organizations have consulted the JEP since its constitution, because their rights and interests could be affected. However, this issue was far from being a peaceful one. During the negotiations of the peace agreement, between the government and FARC, Indigenous voices were excluded. The subsequent mobilization of Indigenous organizations demanding the recognition of their contribution to building peace resulted in an ethnic chapter being included in the peace agreement (Braconnier, 2020).

The ethnic chapter considered prior consultation and participation as guarantees and safeguards of the peace agreement's implementation. It led that the JEP ensured the participation of Indigenous peoples and the centrality of victims, incorporated a restorative approach, demanded respect for Indigenous jurisdiction[4], and ensured mechanisms of coordination between Indigenous jurisdiction and transitional jurisdiction. All these principles were agreed in the Protocol 001/2019, which was adopted by the Special Jurisdiction for Peace and Special Indigenous Jurisdiction to coordinate interjurisdictional and intercultural dialogues[5]. To guarantee the principles mentioned above, the JEP created an ethnic commission in which eight out of 11 judges are Indigenous and Afro-Colombian people. They are responsible for the incorporation of the ethnic approach in the legal proceedings and jurisdictional coordination with Indigenous peoples and organizations (*Protocol 001/2019*). As Justice Cantillo stated, "this Commission is the guardian of legal pluralism" (Cantillo 2022a, p. 97). For instance, the

commission has contributed concepts and recommendations to opened macro-cases and raised institutional awareness about the importance of understanding the principles of self-determination, autonomy, self-governance, and Indigenous law.

Regarding mechanisms of coordination, Protocol 001/2019 was issued after a prior consultation with Indigenous organizations in which they easily agreed that the JEP would respect their justice systems and jurisdiction. This process was fluid, because it was a product of the trust generated by commissioners in which Indigenous representatives felt that they were speaking the same language (Cantillo, 2022b). This is in contrast to what has occurred in the ordinary justice system, where formality, legality, and verticality have dismissed Indigenous demands of justice (Olarte, 2020). Therefore, the guarantees in Protocol 001/2019, which was based on legal pluralism, established that the JEP would consider the *Law of Origin* (*Ley de Origen*) and *Natural Law* (*Ley Natural*) along with other proceedings from the opening of macro-cases in the definition of special sanctions (Art. 1). Additionally, Protocol 001/2019 guarantees the participation of traditional, spiritual, and political authorities in procedural stages. It also guarantees the prevalence of the Indigenous language and orality; translations of JEP decisions; and the presence of interpreters in scenarios in which Indigenous victims, Indigenous perpetrators, and traditional authorities intervene (Art. 3). This process encompasses horizontal dialogues between JEP justices and Indigenous authorities (Art. 41).

Within this framework, the Law of Origin denotes a common understanding of the 115 Indigenous peoples in Colombia about justice. It is the mandate of nature that organizes life and brings harmony and balance to the relationships among humans, nature, and the universe (Novoa and Mestre, 2021). Ley de Origen is represented by oral traditions that have been transmitted through collective and ancestral knowledge in which forms of being and life, and community principles are understood. Thus, Indigenous justice systems are not written in a code; they are systems, because they refer to a communitarian and organized structure governed by by this law, which is related to the *Buen Vivir (* Good Living) as an ethic of balance and complementarity that ensures the survival of Indigenous peoples not as individuals but as a unity with nature (Zaffaroni 2011, p. 106). According to Escobar and Frye (2020a), "echoing indigenous ontologies, Buen Vivir, implies a different philosophy of life that enables the subordination of economic objectives to the criteria of ecology, human dignity and social justice" (p. 79).

In this context, justice for some of the Indigenous peoples in Colombia implies the understanding of multiple interactions between the territory and the universe in which different beings coexist with their own language and forms of communication in daily life. A very common observation is that the word "justice" does not appear in some Indigenous lexis in Colombia. When conflict exists within the community, damage is healed through the word, advice, and reflexive accompaniment of families, traditional and spiritual authorities, and traditional healers (Olarte, 2021).

From this viewpoint, normative and procedural developments with an ethnic approach comprise the attempts of transitional justice to exceed state-centric views. This disrupts the rhetorical and monolingual discourses of legal pluralism and the universality of human rights that prevailed in ordinary justice in Colombia (Bacca Benavides, 2008). Through its normativity, the JEP is shedding light on sources of knowledge concealed in the epistemologies of justice, in which Colombian Indigenous justice systems have been subordinated. Thus, they have been compelled to adjust their languages, beliefs, and motivations to the dominant language of justice to the point of absorbing otherness (Bacca Benavides, 2008). These legal practices have led to the institutionalization and codification of the Indigenous justice system in a process of transformation, adaptation, and imposition (Sánchez, 2001). By conducting cultural reappropriation and translating Indigenous justice into a comprehensive language of justice, ordinary justice has not only denied the historical traditions and cosmologies of the communities but also prevented the strengthening of their justice systems (Bacca Benavides, 2008).

Macro-Case 05: The Territorial Case of Northern Cauca and Southern Valle del Cauca

This case was opened in November 2018 and prioritized human rights violations and severe violations of international humanitarian law in the region of Northern Cauca and Southern Valle del Cauca. This region encompasses 17 municipalities, namely, Santander de Quilichao, Suárez, Buenos Aires, Morales, Caloto, Corinto, Toribío, Caldono, Jambaló, Miranda, Padilla y Puerto Tejada en el Cauca, y Palmira, Pradera, Florida, Candelaria y Jamundí, and el Sur del Valle del Cauca (Auto Sala de Reconocimiento de Verdad de Responsabilidad y de Determinación de Hechos y Conductas -SRVR 078 2018).

This macro-case is one of the three cases that feature a territorial approach. It was opened by the JEP because this region is historically vulnerable and is one of the most affected by armed conflict. It also counted the largest number of victims with more than 200,000 people and 138 organizations in which Indigenous peoples, Afro-Colombian people, and Campesinos (peasants)[6] have suffered the most disproportionate impacts.[7] Lastly, more than 12 violations against international humanitarian law were identified in more than 15 reports submitted to the JEP by Indigenous and Afro-Colombian organizations, the National Centre of Historical Memory, and the Prosecutor (Jurisdicción Especial para la Paz, 2018). One of the principles of the JEP is the centrality of the victims, which is intrinsically related to the right to participate. This right enables the recognition of victims

as subjects of rights and the possibility to restore and transform social relationships through the JEP, and perpetrators. The materialization of participation begins with reports of narratives and perspectives about armed conflict, which are submitted by victims to the JEP (2020a). This process enables justices to understand harm and victimization from the viewpoint of victims.

Another form of participation in the transitional process is the accreditation of individual or collective victims of armed conflict. This entitles victims to participate in the proceedings as interveners, provide evidence, request precautionary measures, and participate as in judicial proceedings or audiences (Jurisdicción Especial para la Paz, 2020b). Moreover, extrajudicial scenarios are anticipated to build constructive dialogues with the JEP. For instance, the process of informing, discussing, consulting, and coordinating is an example of extraprocedural practices in which ethnic communities have participated, ensuring the implementation of legal pluralism and an ethnic approach (Jurisdicción Especial para la Paz, 2020b). Indeed, in this macro-case, a dialogue table was formed with the judicial representatives of the victims. This table coordinated notifications with ethnic relevance and communicated jurisdictional decisions to the victims (Rodríguez Peña et al., 2024).

Accreditation of Traditional Authorities as Victims of Armed Conflict

To date, 45 Indigenous peoples, 67 community councils, and eight organizations have been accredited as victims of the conflict by the JEP. As collective subjects, more than 30 Cabildos and Resguardos from the Nasa and Misak peoples, the regional Indigenous organization Consejo Regional Indígena del Cauca (CRIC), and the Asociación de Cabildos Indígenas del Norte del Cauca ACIN CXHAB WALA KIWE were accredited.[8] Cabildos and Resguardos are fundamental to the political organization of Indigenous peoples in Colombia and have defended their territories against institutional and structural violence. Based on the political constitution, they were recognized as part of the administrative branch of the State and granted jurisdictional authority within their territories. During the armed conflict, the traditional authorities (i.e., Cabildos and Resguardos) directly conducted negotiations with the commanders of armed groups to prevent attacks on their communities (Centro Nacional de Memoria Histórica [CNMH] and Organización Nacional Indigena de Colombia [ONIC], 2019). Moreover, in urban areas, they have safeguarded lives and been responsible for the strengthening of cultural identity and the transmission of knowledge. In general, more than mediators between state bureaucracy and their communities, they have been interlocutors within the multiple worlds that inhabit their territories.

However, the violence perpetrated by armed groups in their territories has transformed Indigenous authorities (e.g., political, administrative, spiritual leaders, and ancestral healers) into victims of political violence and other systemic violations. These have included massacres, murders, enforced disappearance, forced displacement, and disruption of organizational and political processes (Comisión de la Verdad en Colombia, 2022). The Inter-American Court of Human Rights examined this situation and declared precautionary measures for members of the fourth Nasa Resguardos who underwent stigmatization and threats against life and personal integrity (Inter-American Commission on Human Rights, 2011). Selective killings have disempowered Indigenous communities, depoliticized their fights, and stripped their knowledge. Moreover, traditional authorities have suffered stigmatization from armed groups and the State, which have denied their justice systems and capacity to dispense justice communities (Centro Nacional de Memoria Histórica [CNMH] and Organización Nacional Indigena de Colombia [ONIC] 2019, 512). Montero de la Rosa (2024) explained how Nasa authorities were stigmatized as "guerilla allies" when they controlled their territory and exercised justice by expelling the armed forces from a sacred place.

In this sense, understanding the damage to traditional authorities requires not only the identification of individual harm but also the understanding of harm due to the interruption of the Red Vital (Vital Web), which has led to what Indigenous people call "bad death". Thus, the knowledge of Indigenous authorities is necessary for intervening and mediating between life and death (Centro Nacional de Memoria Histórica [CNMH] and Organización Nacional Indigena de Colombia [ONIC], 2019). Moreover, this recognition of Indigenous authorities as victims of armed conflict has additional consequences, according to Centro Nacional de Memoria Histórica and the Organización Nacional Indigena de Colombia (2019), it is the first step in addressing impunity for this type of violence.

- It acknowledges the violence inflicted by the State on traditional authorities as part of a broad strategy of land grabbing and natural resource exploitation.
- It highlights the important roles played by spiritual, cultural, political, and territorial guides in strengthening Indigenous justice, harmonizing the imbalance produced by the armed conflict, and safeguarding the Vital Web.
- Instead of being passive voices, traditional authorities become active agents in the transitional justice process.

Initially, the accreditation decision through the Auto SRVR 02 del 17 de enero de 2020 by the JEP entails the recognition of Indigenous peoples' autonomy and self-determination; hence, the possibility of strengthening their justice systems is recognized

by the Colombian Constitution. This is evident in the legal framework of the JEP, ensuring respect for Law of Origin, understanding of Indigenous justice systems, and the importance of preserving the knowledge that allows life and good death. This recognition is an "epistemic turn" since it reflects a political practice in response to hegemonic legal knowledge. Some legal proceedings from JEP evidence how the ancestral knowledge of traditional authorities and Law of Origin were legitimized and revitalized through transitional justice in Colombia.

Among the most representative of these proceedings have been legal notifications with ethnic and natural relevance, in which justices have approached Indigenous territories and communities to explain jurisdictional orders. For Indigenous authorities, the rituals and ceremonies conducted during ethnic notifications are manifestations of harmony and healing, which enable them to overlook tension and encourage collaboration (Universidad Santo Tomás Tunja, 2022). Rather than cultural performances, ethnic notifications have become part of the due process in Indigenous justice systems and have constituted the other "languages" incorporated by the JEP in valuing Indigenous participation.

For instance, when Cauca River was accredited as a victim of conflict, this decision was notified to the communities by restorative proceedings that were agreed between communitarian councils and Indigenous communities. This proceeding, which the JEP terms a "notification with natural relevance", targeted the reconciliation between the river and the communities and were accompanied by traditional ceremonies and rituals from the communities that were notified. In addition, the first accusation within the macro-case was notified with ethnic relevance to more than 316 Indigenous authorities and Afro-Colombian leaders (Jurisdicción Especial para la Paz, 2024). This decision was preceded by intercultural encounters in which patterns of mass criminality were identified based on victims' testimonies (Jurisdicción Especial para la Paz, 2023a).

Furthermore, as a territorial case in which the majority of the victims are ethnic groups, proceedings have been held using intercultural approaches. For instance, the exhumations of victims, were conducted in coordination with Indigenous traditional authorities who sought not only to identify and recover the bodies, but also, sought to heal the territory from bad death. In addition, the hearings of voluntary versions with Indigenous ex-combatants have ensured that they can speak in their language and be defended and judged by their justice systems. Moreover, the first inter-justice hearing was held with Tribunal de Ética y Justicia Ancestral Afrodescendiente del Cauca in which Afro-Colombian authorities demanded the truth about violations by the perpetrators (Jurisdicción Especial para la Paz, 2022). Nonetheless, horizontality, trust, and the JEP's proximity to authorities have characterized these encounters, which were founded on respect for Indigenous justice systems (Olarte 2022), intercultural proceedings have not been exempted from tensions between JEP and Indigenous Peoples. On one hand, certain disagreements have stemmed from the ways in which interculturality has been integrated into the proceedings. On the other hand, tension has emerged when the possibility of achieving justice, truth, reparation, and reconciliation has been questioned.

Regarding the former, a few criticisms have been related to the language used by the JEP in the decisions, which continues to be technical and formal. Moreover, the use of terms in these decisions does not necessarily correspond to what the authorities have expressed in terms of the Indigenous cosmovision (Braconnier et al., 2023). For instance, legal accusations in regard to crimes of war and crimes against humanity do not correspond with the demands of justice claimed by Indigenous and Afro-Colombian victims. This issue will be examined in the next section. Other tensions have been related to the possibility of achieving justice and truth while Indigenous authorities and perpetrators are under constant risk from the worsening security conditions in territories. For instance, some of the perpetrators and Indigenous authorities that participated in the JEP were killed by criminal organizations that assumed the control of the territory after the demobilization of the guerrilla following to the signing of the peace agreement. Indeed, the delay in the implementation of the peace agreement in Indigenous territories have resulted in a security breach into the territory (Consejo Mayor de Gobierno de la Organización Nacional Indígena de Colombia [ONIC] 2023). Additionally, there has been little correspondence with other extrajudicial institutions in the system regarding truth, justice, reparation, and guarantees of non-repetition, such as the Search Unit for Disappeared People or the Truth Commission, which ended its mandate in 2022 (Braconnier et al., 2023). Moreover, victims involved in the macro-case have expressed uncertainty about the influence of their participation if perpetrators do not recognize and fully acknowledge their responsibility and do not contribute to truth. Requiring perpetrators to remain in a restorative and dialogic process, in which measures of reparation and restoration are determined, could result in impunity (Vargas et al., 2021).

Recognition of Ancestral and Collective Territory

The recognition of the *Çxhab Wala Kiwe* (Nasa Territory) as a victim of conflict was a result of a request made by the CRIC and was founded on unity between the territory and the people that inhabit it. For the Nasa people, territory "is an alive being, that feels, it needs care and to be feed" (Jurisdicción Especial para la Paz, 2020a). It is a "vital space that ensures their survival as a people, as a culture living together in harmony with nature and the spirits" (CRIC quoted in Escobar & Frye 2020b, 58). The harms suffered by ancestral and sacred territories negatively transformed the bonds of Indigenous communities with

territory, which violated the harmony, balance, and autonomy of the Nasa people at Northern Cauca (Jurisdicción Especial para la Paz, 2020a).

Consequently, this recognition as a victim of conflict appealed both to the cosmovision of Indigenous peoples and their right to self-determination and to the national and international frameworks for the rights of Indigenous people and their relationship with the territory. For instance, the Indigenous and Tribal Peoples Convention (1989) entitled Indigenous territories to:

(a) Prevent displacement from their land (Art. 5)
(b) Respect the spiritual values related to their relationship with territories (Art. 13)
(c) Safeguard the right to possess, develop, and control lands where they have traditionally based their subsistence (Art. 14)
(d) Require prior consultation if the territory will be affected
(e) Ensure the conservation and protection of the environment and its capacity to produce
(f) Avoid military intervention, except for public interest or when freely agreed through prior request to Indigenous authorities. (Jurisdicción Especial para la Paz, 2020a)

In the same macro-case, Cauca River was recognized as a silent victim of armed conflict. The community councils of the Cuenca del Río Cauca, Micro Cuenca de los Ríos Teta and Mazamorrero, and Cuenca Río Timba–Marilópez made this claim. They also explained how paramilitaries and military forces used the river as a mass grave through systematic behaviors, such as torture, murder, illegal mining, and illicit crops, which destroyed the communities' relationship with the river. The community councils described how violence disrupted the social cohesion and cultural identity of the communities with the river (Jurisdicción Especial para la Paz, 2023a). This decision was based on the international legal framework that protects the environment, the recognition of territory as a subject of rights, the jurisprudence, the observations of the Customary International Humanitarian Law of the International Committee of the Red Cross, the Consultive Opinion of the Interamerican Court of Human Rights, the Colombian legal framework Decree 4633/2011, and the jurisprudence of the Constitutional Court.[9]

From the perspective of interculturality, the declaration of territory and nature as a victim of armed conflict defies the anthropocentric view of transitional justice[10]. For the first time, a transitional panel adopted a decision that "gives agency to ancestral territory so rights to truth, justice and reparation can be guarantee [*sic*]" (Jurisdiccion Especial para la Paz, 2023a). Indeed, the decision questions the ontology of separation, which states the dualism of human–nonhuman, mind–body, life–death, and living–nonliving, which prevails in the modern time (Escobar & Frye, 2020b, 56).Specifically based on this ontology, culture and nature are separated; the latter is conceived as an exploitable and attainable object, which provides the subject (human) with an exclusive right to knowledge (Estermann, 2022). Conversely, the ontological turn adopted by the JEP questioned the existence of a unique universe; instead, it proposed a pluriverse as a linkage among different worlds that interact with one another in diverse forms (Blaser, 2014, De la Cadena, 2015 quoted in Ruiz-Serna 2017, 89). Furthermore, this understanding supposes a differentiation between harms to and of the territory that implies thinking with the territory, rather than thinking over the territory (Ruiz-Serna, 2022):

> The former 'refers to the violations of individual and collective rights over the territories that have been recognized to indigenous people. Instead, the latter recognizes the territory as a life being, in which animals, spirits, mountains, rivers have agency, will and personality'. (p. 97)

Understanding harms to nature requires comprehension of the ontological turn. Under environmental justice theory, environmental harms are framed within the field of human rights. The environment is protected only to the extent that affects human beings, and an anthropocentric understanding that objectivizes nature is maintained. Thus, it is considered a means instead of an end, and violations are expressed as material damage requiring repair. In biocentric theories, nature is a living being with immaterial dimensions (Cruz, 2017) and ontological specificities (Lyons, 2022). Specifically, Lyons (2022) refers:

> to the diverse realities that make up the everyday practices, spiritual understandings, and socio-ecological dynamics that compose life in a given place. The concept of territory does not refer to the same reality for each of these organizations, and this necessarily obliges the JEP to navigate conflicts between human victims that may emerge due to territorial disputes. (para. 5)

In turn, this view, which aims to reinterpret knowledge and justice, features multiple political, epistemological, and ontological dimensions. According to Ruiz-Serna (2022):

> it is political, because an issue that was in the private arena for Indigenous people became public and a common issue/ It is epistemological, because it reconsiders the process in which knowledge about harms is built. Lastly, it is ontological, because recognizing other forms of expressing harm transform and create other realities and worlds. (p. 98)

However, despite the efforts of Indigenous people to explain the harms and damage that occurred during the armed conflict, this acknowledgment was not presented as evidence in the preceding decisions.

The Chamber for the Acknowledgment of Truth and Responsibility determined the facts and conduct of macro-case 05 and accused 10 ex-FARC members of crimes against humanity and war crimes. The Chamber determined that the war crimes committed included attacks against the civilian population and the destruction of the environment to gain and maintain territorial and social control. Specifically, damages against nature and territory were classified as crimes of destruction of the environment under Article 8(2)(b)(iv) of the Rome Statute (which applies to international armed conflicts):

> Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated. (Rome Statute of the International Criminal Court, 1998)

In addition, the order argues under Article 8(2)(e)(xii): "destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict" (Rome Statute of the International Criminal Court, 1998). Nevertheless, this decision was the first of its kind among territorial cases and was the subject of both dissenting and concurring opinions from JEP justices. Rather than discussing the legal classification of war crimes that are not typified in the Rome Statute, the current analysis focuses on the controversy about nature and territory as property. Justices argue that considering environment and territory as property is a regression to colonial views, which dismiss the recognition of territory and environment as a subject of rights and as intrinsically related to Indigenous peoples (Jurisdicción Especial para la Paz, 2023b).

For Justice Izquierdo from the JEP, the most suitable accusation would be the war crime of destruction of cultural property or places of worship. Article 8(e)(iv) describes this as "intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives". This crime is related to the Additional Protocol to the Geneva Conventions (Article 16), which protects cultural objects and places of worship that constitute the cultural or spiritual heritage of peoples. In this sense, comprehension of the environment should be based on the ontologies of Indigenous people in which territory encompasses multiple beings (e.g., human, nonhuman, and spiritual) and relationships. This is necessary for understanding the legal rights violated and the degrees of damage that threaten the survival of Indigenous peoples (Jurisdicción Especial para la Paz, 2023b). Justice Parra from the JEP added that considering the crime of destruction of the environment as non-amnestiable can not only impact Indigenous people's collective rights to autonomy and self-determination but also affect the rights of nature as a victim of conflict (Jurisdicción Especial para la Paz, 2023b).

Based on these examples, providing evidence on three points is possible. First, the unique effort exerted by a transitional tribunal reducing epistemological and theoretical breaches in addressing crimes and violations under victim´s comprehensions of damage in the context of armed conflict. In so doing, the JEP recognized ley de Origen and Indigenous justice systems by firstly opening territorial macro-cases. As Lyons (2023) stated, "territorial macro-cases demonstrate the pressing need to prioritize the particularities of Indigenous peoples' territorial relations and ancestral origins while also acknowledging the complex temporalities of dispossession and variations of justice existing in a given place" (p. 70). The second pertains to the incorporation of the ethnic approach within its legal framework and proceedings, like Protocol 01. While the third relates to intercultural dialogues with Indigenous jurisdiction as evidenced in the notification with "natural relevance" concerning Cauca River. Thus, the legal pluralism founded in the Colombian Constitution evolved from a rhetorical discourse into the concrete realization of a right within the transitional justice.

The intersectional approach underlies the macro-case through the recognition of the disproportionate and differentiated damage suffered by the region, territory, and ethnic population. The accreditation of Resguardos, Cabildos, Indigenous organizations, the Nasa Territory, and Cauca River as victims of armed conflict demonstrates the manner in which law can hold dialogues beyond individuals. It also illustrates how the law can attend to the multiplicity of relationships between communities and territories and the pluriverse within it. These examples are evidence of how the JEP incorporated other languages of justice, in which nature, territory, autonomy, sovereignty, ancestrality, and spirituality coexist, within their legal practices. Additionally, the tension that underlies the interculturality of transitional justice as a non-linear process, full of setbacks, is recognized (De Sousa Santos, 2020). This tension is related to the maintenance of the structural conditions that led to the armed conflict. Under these conditions, the victimization of Indigenous and Afro-Colombian populations, including homicides, massacres, forced recruitment of children, and the use of anti-personnel mines, continues to occur. Another tension is related to the influence of

intercultural dialogues in the decisions of the tribunal. The majority believe this macro-case captured the claims of justice by Indigenous communities. However, some decisions, such as the determination of facts and conducts, dismissed Indigenous ontologies not only about the territory but also the ontological notion of Indigeneity. For instance, a challenge remains in understanding the collective damage of sexual crimes committed against Indigenous women. Thus, Indigenous ontologies pertain to the understanding of the exercise of Indigenous jurisdiction as a practical knowledge contained in their life plans (*plan de vida*), the paths of the territory, the sounds of nature, the songs of the spirits, and the interactions among multiple beings (Bacca & Delgado, 2023). Conversely, another tension implies the risk that the rights of truth and justice would not be fulfilled under the epistemes of Indigenous justice. For Bacca Benavides (2008):

> dialogue is insufficient when institutions are enclosed in their language and their logic, so they decide about issues that entail different thinking. As a consequence, walls are built, if from the politics of the sameness the openness toward difference is vindicated. (204; author's translation)

Conclusions

Law is a language that creates and transforms realities. Transitional justice in Colombia has created new dialogues based on other epistemologies and transformed realities by recognizing ontologies that were not previously recognized or even been visible. Indigenous communities have created a common ground with the JEP in which trust, proximity, and horizontality have enabled them to talk the same language in challenging the dominant paradigm of law. This language has permeated the decisions founded in Indigenous ontologies. However, it is important to understand that the strengthening of Indigenous justice through transitional justice will depend not only on formal proceedings. It will also rely on communities being heard and effectively participating in each stage of the process, and the JEP considering Indigenous knowledge in their decisions. This aspect is relevant because other macro-cases with different approaches remain open, in which Indigenous people have been accredited as victims. In other words, Indigenous law must be considered as such in different macro-cases. In this way, Indigenous law will hold the same value as international law. Hence, criminal charges and sanctions would be truly harmonizing if interculturality played a fundamental role in revitalizing the Indigenous self, not only by recognizing Indigenous justice but also by understanding community, territory, nature, and justice as a whole.

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[1] The 115 Indigenous peoples in Colombia are represented by 1,900,000 inhabitants in Colombia, according to the Colombian National Bureau of Statistics (DANE).

[2] According to the National Center of Historical Memory and the Indigenous National Organization, the Vital Web (*Red Vital*) is understood as a unity in which human, natural, and spiritual beings weave a net through which they intersect and build special ecosystems for life. Balance in the Vital Web is given if harmony exists between natural and spiritual forces; thus, attacks against the Vital Web are an attack on life (CNMH and ONIC, 2020).

[3] "The Plan is a narrative of life and survival, it is constructing a road to facilitate the passage through life, and not merely constructing a methodological planning scheme" (Escobar, 2020, p. 58).

[4] Indigenous jurisdiction refers to the right given by the Colombian Constitution to Indigenous peoples to administer justice within their territories (Constitución Política, 1991, art. 246)

[5] It is important to note that the JEP and Afro-Colombian people, during prior consultation with these communities, agreed Protocol 001/2021, which established mechanisms of recognition and communication between communities during judicial proceedings in transitional justice. This explains why, in territorial macro-cases, justices carried out judicial proceedings according to the diversity of the Afro-Colombian people.

[6] Peasants or *Campesinos* "refers to an historical and intercultural subject with memories, knowledge and practices that constitute forms of cultures. Established on family and neighbourhood life to produce food, common goods, and raw materials, with a multi-active community life linked to the land and integrated with nature and the territory. Peasant is a subject located in rural areas and municipal centres associated with them, with various forms of land tenure and organization, producing for self-consumption and surplus production, with which they participate in the local, regional, and national market" (ICANH 2017, 24).

[7] The population of the Northern Region of Cauca is composed of 48% Afro-Colombians, grouped into 39 communitarian councils; 30% Indigenous people, grouped into 24 Resguardos; and 22% Campesinos (Londoño 2023; https://www.youtube.com/watch?v=wpZX-9-5Ghk).

[8] Law 1448/2011 (Law for Victims of Armed Conflict) and Decree 4633/2011 established individual and collective damages and described the collective subjects and stages for reparation. According to the Truth Commission, the number of collective subjects was 755, out of which only 47% had been in a prior identification phase (Colombian Truth Commission, 2022).

[9] There have been a number of decisions in which the High Courts in Colombia have recognized nature as a subject of rights:
Corte Constitucional, Sentencia T-622 de 10 de noviembre de 2016, M. P. Jorge Iván Palacio Palacio.
Corte Suprema de Justicia, Sala de Casación Civil, Sentencia STC-4360-2018 de 5 de abril de 2018, M. P. Luis Armando Tolosa Villabona.
Tribunal Administrativo del Quindío, Sentencia de primera instancia de 5 de diciembre de 2019, M. P. Rigoberto Reyes Gómez.
[10] Another territorial case that recognized nature as a victim of armed conflict was macro-case 002. In this macro-case, the Katsa su-grand territory of the Awá People was accredited as a victim (Auto SRVR No. 79 2019).

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