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Colombia's relentless pursuit of justice: Wartime abuses, dynamics of violence, and justice outcomes

Bård Drange

University of Oslo

Faculty of Social Sciences

Department of Political Science

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To the people of Mesetas,

and all who strive

for a more peaceful Colombia

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Abstract

In this dissertation, I explore the origins and outcomes of Colombia's approach to addressing wartime abuses in the 2016 Final Peace Agreement. This peace agreement contains a justice policy on wartime abuses that is comprehensive, innovative, and arguably the most victim-centered framework globally, making it a policy that is likely to inspire and impact how wartime abuses are addressed elsewhere and in the future. Hence, unpacking the origins and outcomes of Colombia's 2016 justice institutions can offer new theoretical and policy-relevant insights into state responses to wartime abuses globally. I approach this topic from a foundation of conflict research concerned with links between dynamics of violence and justice institutions, and transitional justice scholars' interest in explaining justice outcomes. Hence, I ask the following main research question: How do dynamics of violence shape justice outcomes on an institutional and individual level? To guide my research, I develop the threat-opportunity framework centered on national-level actors and war-affected individuals' perceptions and actions vis-à-vis justice institutions. This actor-centric framework draws on theorizations of justice institutions as inherently political and contested and assumes that justice institutions can represent a threat for some people but an opportunity for others. Perceptions of threat or opportunity correspond with subsequent actions, including resistance/avoidance or support/engagement vis-à-vis justice institutions. The institutions of interest in this dissertation are trials (including tribunals), truth commissions, reparations, and amnesties.

I argue that key actors' perceptions of specific dynamics of violence lead to actions that shape justice outcomes. Hence, my key theoretical contribution is to demonstrate how perceptions and behavior vis-à-vis justice institutions can be explained in the context of specific dynamics of violence, for example violence committed by paramilitaries, conflict severity, renewed violence after a peace agreement, and large-scale and wide-ranging abuses. This research forms part of a growing interest in wartime legacies for post-conflict outcomes. For conflict research on justice institutions in particular, I theorize how dynamics of violence shape justice institutions, which scholars have examined less intensely than the reversed relationship, and I expand the analysis to the perceptions and actions of war-affected individuals. The dissertation also contributes to the transitional justice literature by exploring how accountability and victims' rights are pursued amid war, and how wartime legacies shape post-conflict justice outcomes, both in terms of justice institutions themselves and their contributions to war-affected individuals.

The dissertation is composed of four papers centered on Colombia, though paper 2 also includes a global analysis. The papers combine quantitative and qualitative methods, including in-depth fieldwork in one conflict-affected community, and provide different inroads to the overarching research question. In paper 1, I argue that national-level actors perceived paramilitary violence differently, leading to a tug of war dynamic between human rights proponents working to expose abuses and the government attempting to conceal abuses. In paper 2 (written with co-authors), we argue that justice institutions adopted during conflict help predict which institutions are established post-conflict, and we use the case of Colombia to elucidate mechanisms for explaining this relationship. In paper 3, I argue that renewed violence after 2016 led individuals to adopt risk-reducing behavior by showing restraint in providing testimonies. Finally, in paper 4, I argue that large-scale and wide-ranging abuses hamper the contributions of Colombia's reparation programs targeting individuals and communities.

Findings from this dissertation have research and policy implications. First, I theorize contestations about justice institutions during and after armed conflict, suggesting dynamics of violence play an important role in influencing whether key actors perceive justice institutions as a threat or an opportunity. I then argue that these perceptions lead to actions of resistance

and avoidance or support and engagement with justice institutions, thereby influencing justice policies, institutional repertoires, and benefits for war-affected individuals. Part of this contribution is that unravelling the legacy of institutions adopted during conflict and the dynamics of violence in the post-conflict period can help explain under what conditions justice outcomes are reached. Second, I present an analytical framework that can be used in researching and assessing the construction and implementation of justice institutions. A strength of this threat-opportunity framework is that it enables researchers and policymakers to simultaneously consider the interests of national-level actors and war-affected individuals. Third, my dissertation advances our understanding of how and with what results justice institutions are contested in Colombia, including the role renewed violence and wide-ranging and large-scale abuse play in limiting implementation. This research has relevance for conflict researchers interested in conflict dynamics and their repercussions, and for scholars on transitional justice interested in factors that shape justice outcomes.

Part 1: Introduction

Colombia's relentless pursuit of justice: Wartime abuses, dynamics of violence, and justice outcomes

Long renowned (and infamous) for pervasive violence, drug trafficking, and guerrilla groups, Colombia is becoming a front-runner for justice. In addressing the plight of the families of more than 500,000 dead and eight million displaced persons from more than five decades of armed conflict, the country has constructed a set of institutions and policies that lack neither comprehensiveness nor ambition. From trials, truth-seeking missions and reparation programs established at the height of war in the 2000s, Colombia has mended and developed its policies and institutional repertoires over time. These efforts culminated in the 2016 Final Peace Agreement between the Colombian state and the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC), the historically largest rebel group in the country. The agreement is arguably the most victim-centered peace agreement in the world and has been praised for several innovative features and for combining several justice institutions to achieve victims' rights (J. M. Quinn and Joshi 2019, 208; Sandoval, Martínez-Carrillo, and Cruz-Rodríguez 2022).

In this dissertation, I explore the origins and outcomes of Colombia's comprehensive approach to wartime abuses. With the 2016 Final Peace Agreement and the 2011 Victims and Land Restitution Law in mind, I suggest Colombia has become a front-runner for justice as its justice policies – and the institutional repertoires constructed to implement them – will inspire and impact the way wartime abuses are addressed elsewhere. Hence, unpacking the origins, contributions, and limitations of justice institutions in Colombia can offer new theoretical perspectives and analytical approaches for scholars and practitioner alike in analyzing state responses to wartime abuses globally. Unpacking the Colombian case is also important to inform future policies in Colombia as violence persists and the pursuit of justice continues today.

This dissertation stemmed from an interest in exploring how wartime abuses are addressed *during* armed conflict. Whereas scholars on transitional justice focus on institutions deployed to address wartime abuses after conflict, conflict researchers have examined trials, truth commissions, reparations and amnesties adopted during armed conflict and their implications (Loyle and Binningsbø 2018). Preliminary research along this line of inquiry has showed that adopting these institutions can shape conflict dynamics, including violence levels, as well as conflict termination and the sustainability of peace (Loyle and Binningsbø 2018; Dancy and Wiebelhaus-Brahm 2018; Daniels 2020). How conflict dynamics shape justice institutions, however, has received less attention within this line of research (though see Lake 2017; Loyle 2020). Moreover, this strand of research has been primarily concerned with the role of governments and wartime elites, but with less attention to civil society actors and the role of and contributions to war-affected individuals. A focus on the during-conflict period has also meant limited efforts to examine and theorize the establishment and implementation of justice institutions across the during to post-conflict period.

In this dissertation, therefore, I examine justice institutions across the during to post-conflict period and focus on how dynamics of violence – a facet of conflict dynamics – shape justice outcomes. Dynamics of violence refers to patterns of violence, including variations in violence levels, who is targeted, when and by whom, whereas justice outcomes are the impact of efforts to pursue justice for wartime abuses, which in this dissertation include the justice institutions that are established and how these institutions contribute to war-affected individuals. The focus on justice outcomes is motivated by the literature on transitional justice, where a key concern is providing evidence-based assessments of the impact of justice institutions (Merwe, Baxter,

and Chapman 2009; Thoms, Ron, and Paris 2010; P. Gready and Robins 2020). Transitional justice is the key literature that examines institutional responses to wartime abuses, but primarily investigates justice institutions established in the post-conflict period and focuses on post-conflict factors to explain such justice outcomes. Hence, exploring wartime legacies, including dynamics of violence and justice institutions adopted during conflict, can help explain justice outcomes in the during and post-conflict period.

Research questions

The **main research question (RQ)** for this dissertation is**:**

How do dynamics of violence shape justice outcomes on an individual and institutional level?

To answer this question, I build on the answers to four sub-questions, each of which delves into different aspects of how dynamics of violence shape justice outcomes. Each sub-question is addressed in a separate paper. The first two papers focus on institutional-level justice outcomes, while the last two focus on individual-level justice outcomes. All papers focus on the case of Colombia (though paper 2 also includes a global analysis of justice institutions adopted during and after conflict).

The sub-research questions are as follow:

Sub-RQ 1: *How did the government and human rights proponents perceive and shape the establishment of accountability institutions for paramilitaries in Colombia in the 2000s?*

This question helps answer the main RQ by examining different national-level actors' perceptions of violence committed by one set of armed actors, namely paramilitaries. The aim is to examine how the government and human rights proponents shaped the establishment of justice institutions as well as the reconfiguration of justice policies and the institutional repertoires during conflict.

Sub-RQ 2: *How, if at all, can during-conflict justice policies explain which justice institutions are established after war?*

This question examines links between justice institutions adopted during conflict and the institutions established afterwards. The first aim is to conduct a statistical analysis of whether wartime policies can explain post-conflict institutions. The second aim, by drawing on a study of Colombia, is to elucidate the mechanisms at work to explain how justice institutions shape policies adopted afterwards. This mixed-methods approach facilitates cross-case examination of justice institutions, including the role of conflict severity for explaining post-conflict outcomes, and in-depth discussions of how the Colombia case can deepen our understanding of links between the during and post-conflict period.

Sub-RQ 3: *How does renewed violence shape individuals' perceptions and engagement with institutions seeking truth and accountability?*

This question focuses on how renewed violence after war shape individuals' perceptions and actions vis-à-vis truth and accountability institutions established in the 2016 Final Peace Agreement in Colombia. Specifically, the question is concerned with how renewed violence shapes individuals' perceptions of and engagement with these institutions.

Sub-RQ 4: *How does a legacy of wide-ranging and large-scale abuse shape the contributions of individual and community reparations to people's perception of recognition and benefit?*

This question helps answer the main RQ by examining how pervasive war, which includes large-scale and wide-ranging abuses, shapes individuals' perception of recognition for wartime

abuses and their engagement with reparation programs. In this way, it examines another way in which dynamics of violence shape justice outcomes on the individual level. For this discussion, the focus is on reparation programs established in the 2011 Victims and Land Restitution Law and the 2016 Final Peace Agreement in Colombia.

Research strategy and analytical approach

To examine how dynamics of violence shape justice outcomes, I take an actor-centric approach which reflects current theorizations of justice institutions as inherently political and contested. Indeed, conflict research on justice institutions and the literature on transitional justice emphasize that different actors push justice policies in certain directions and also seek to influence the implementation of justice institutions (for example Vinjamuri and Snyder 2015; Arnould 2016; Lake 2017). The two types of actors I examine reflect the types of justice outcomes I investigate. First, I examine i*nstitutional-level justice outcomes*, which I define as the justice institutions that are established and the features of justice policies such as which perpetrators are tried in tribunals and who is included in the scope of reparation programs. Institutional-level outcomes include the institutional repertoire, which refers to the institutionalization of a justice policy that can subsequently be implemented. To examine institutional-level outcomes, I focus on national-level actors' perceptions of dynamics of violence, and how this subsequently leads to certain actions towards justice institutions. Second, I examine i*ndividual-level justice outcomes*, which I define as how justice institutions contribute to individuals affected by war and operationalize as individuals' own view of how justice institutions benefit them. For these outcomes, I examine war-affected individuals' perceptions and actions vis-à-vis justice institutions.

I adopt an analytical framework that assumes justice institutions can represent a threat for some people but an opportunity for others (the threat-opportunity framework). Hence, some actors pursue the benefits that justice institutions may provide, whereas others may resist them. The threat-opportunity framework categorizes key actors' perceptions of justice institutions as either a threat or an opportunity – a decision that has subsequent implications for their behavior. Perceiving justice institutions as a threat will lead to resistance or avoidance, whereas perceiving them as an opportunity will lead to support for or engagement with them. Then I argue that specific dynamics of violence help explain when certain justice policies or institutions are perceived as threats and when they are perceived as opportunities. This framework is inspired by Lake (2017) and Sriram (2013) who examine wartime elites and spoilers' perceptions and actions. I refine and adapt theorizations by Lake and Sriram to the context of justice institutions established during conflict and expand it to include individuals affected by war. Hence, the framework facilitates an analysis of how dynamics of violence shape both institutional and individual-level justice outcomes.

I use this framework to conduct a case study on Colombia, following in the footsteps of many scholars who have conducted extensive and valuable research at the intersection between conflict and justice. On conflict, scholars have for example examined wartime social order, re-mobilization of armed groups, civilian targeting, and civilian agency amid war (Arjona 2016; Daly 2017; Kaplan 2017; Steele 2017), and on justice, scholars have among other topics interrogated victims' agency, preferences, gender dynamics, and state responses (Krystalli 2019; Zulver 2022; García-Godos and Lid 2010; Uprimny et al. 2006; Nussio, Rettberg, and Ugarriza 2015; Prieto 2012). However, the case of Colombia is important to revisit and well-suited to answer the main research question for two reasons. First, is the high number of justice institutions adopted amid war,[1] which makes Colombia a fruitful case in which to explore the

[1] Colombia has recorded the sixth-highest instances (197) of 'during-conflict justice' in data collected by Loyle and Binningsbø (2018), ranked behind Israel, Myanmar, India, Somalia, and the Philippines.

emergence of justice institutions amid war as well as links between during and post-conflict institutions. Secondly, Colombia is a pertinent case for its innovative transitional justice efforts adopted in 2016 as part of the Final Peace Agreement with the FARC. The agreement is "almost certainly the most victim-centered comprehensive peace agreement ever negotiated" (J. M. Quinn and Joshi 2019, 208), and, according to Sandoval et al., the "most ambitious TJ [transitional justice] system ever created" which they in part attribute to "its holistic approach bringing to life various TJ mechanisms to fulfil victims' rights" (Sandoval, Martínez-Carrillo, and Cruz-Rodríguez 2022, 17; see also Herbolzheimer 2016; Bakiner 2019).

Hence, despite much research on conflict and justice in Colombia, the 2016 justice policies provide further opportunities to theorize Colombia's establishment of justice institutions during conflict and what influence the during-conflict institutions have had on the development of the justice policies and institutional repertoires established in 2016. While scholars have examined the 2016 justice framework in light of the 2005 Justice and Peace Law and 2011 Victims and Land Restitution Law (Bakiner 2019; Ruiz 2018; Nauenberg Dunkell 2021), those studies feature less of a focus on mechanisms, that is, how wartime policies shape post-conflict institutions. The 2016 Final Peace Agreement also motivates a look at prospects of implementing innovative justice policies by means of an institutional repertoire developed over decades. For example, the refinement of this repertoire over time motivates an examination of how, in the context of pervasive war and post-conflict violence, the institutional repertoire addresses both victim-survivors and other war-affected individuals in those peripheral territories most affected by armed conflict. Finally, viewing the establishment of institutions in conjunction with their contributions to war-affected individuals can further inform how Colombia's justice policies and institutional repertoires benefit those most affected by war.

Within the universe of armed conflicts, Colombia stands out for the number of justice institutions adopted during conflict and the comprehensiveness of its 2016 justice policies. Hence, I consider Colombia an extreme case, that is, a case that "lies far away from the mean of a given distribution" (Gerring 2006, 101–2). Extreme cases contain important insights into the conditions that facilitate such extraordinary outcomes. As calls for justice and the adoption of measures to address wartime abuses haven grown, findings from Colombia are relevant for a growing number of cases. Though extreme cases are less generalizable, the insights they hold can also provide insights into cases along the regression line as well as cases placed at the other extreme where abuses are not addressed. Another facet of the Colombia case is the distinction between the during and post-conflict period. For this dissertation, the post-conflict label on Colombia after 2016 refers to the FARC insurgency. However, this focus does not suggest that I ignore the violence that persists in Colombia, including the continued activities of the National Liberation Army (*Ejército de Liberación Nacional*, ELN) rebel group, continuing FARC dissidents, and the intermixed issue of continued criminal violence.[2]

The relationship between papers

These four papers offer different inroads to the key relationship under study, namely how dynamics of violence shape justice outcomes. The papers complement each other by examining different dynamics of violence and justice outcomes on various levels of analysis (institutional vs individual), including the period under study: While the first paper is situated in the during-conflict period, the others focus on the transition from conflict to post-conflict (paper 2) or the post-conflict period itself (papers 3-4). This range provides a more comprehensive

[2] While I use the post-conflict label on Colombia in terms of the FARC insurgency, it could also be argued that 2016 represents a larger turning point. As Gutierrez-Sanin suggests, large-scale insurgency in Colombia ended with the 2016 Final Peace Agreement, and while violence remains political, violence today has more local than national characteristics (see Gutierrez-Sanin 2020, 14, 188–90).

understanding of the core relationship under study. Whereas all papers center on the case of Colombia, my co-authors and I for paper 2 also conduct a global analysis which facilitates some contextualization of Colombia's case among armed conflicts globally. The combination of different levels of analysis and period under study also means that the papers shed light on different aspects of the origins and outcomes of the 2016 Final Peace Agreement. Whereas paper 1 examines the establishment of the Justice and Peace Law, paper 2 examines links between this law and the 2016 Final Peace Agreement and proposes mechanisms to explain these links, before papers 3 and 4 study the implementation of different justice institutions from the 2016 Final Peace Agreement.

In total, the four papers combine qualitative and quantitative methods to shed light on different aspects of the overarching research question (see Table 1). Hence, they also explore different dynamics of violence as well as different justice outcomes. Furthermore, they are based on different data sources. While paper 2 draws in part on a statistical analysis of two global data sets on justice institutions during and after conflict, papers 1, 3 and 4 utilize personal interviews conducted by the author in Spanish in Colombia. Paper 1 builds on interviews and conversations conducted in the capital Bogotá with analysts, practitioners, and international observers. Papers 3 and 4, however, are based on interviews with a wide range of local inhabitants in Mesetas, a conflict-affected community in central Colombia, and practitioners and experts in the regional capital Villavicencio.

Table 1: *Overview of papers*

Paper title	**Methodological approach**	**Data source**	**Publication status**
1: A tug of war: Pursuing justice amidst armed conflict	Qualitative; dynamics	**Expert interviews** in Bogotá	Published in the *Nordic Journal of Human Rights*
2: Justice now or later? How measures taken to address wrongdoings during armed conflict affect post-conflict justice	Cross-national statistical analysis; elucidating causal mechanisms	**Global data sets** on during and post-conflict justice; documents and scholarship on Colombia	R&R in the *International Journal of Transitional Justice*
3: Fear and risk-reducing behaviour: How renewed violence shapes the pursuit of truth and accountability	Mechanism-focused analysis based on qualitative interviews	**In-depth fieldwork** in Mesetas and Villavicencio	Under review in *Conflict, Security and Development*
4: Reparations after pervasive war: The contributions of individual and community reparations in Colombia	Mechanism-focused analysis based on qualitative interviews	**In-depth fieldwork** in Mesetas and Villavicencio	Submitted to *Journal of Peacebuilding & Development*

Contributions of the dissertation

My primary theoretical contribution is to demonstrate how perceptions and behavior vis-à-vis justice institutions can be explained in the context of specific dynamics of violence. Specifically, the dynamics of violence I examine include violence committed by paramilitaries, conflict severity, renewed violence after a peace agreement, and large-scale and wide-ranging abuses. In four different papers, I show how these dynamics shape actors' perceptions of justice institutions as a threat or an opportunity which correspond with behaviors of resistance, avoidance, support, or engagement. These actions subsequently influence justice policies, institutional repertoires, and finally benefits for war-affected individuals. By theorizing contestation across the during to post-conflict period, I also contribute to growing cross-

fertilization across conflict research on justice institutions and transitional justice. For example, I contribute to unravel the legacy of institutions adopted during conflict and the dynamics of violence in the post-conflict period to help explain under what conditions justice outcomes are reached.

A second theoretical and conceptual contribution is to refine and present an analytical framework that can help us analyze actors' perceptions and actions vis-à-vis justice institutions amid or after armed conflict. The threat-opportunity framework provides an actor-centric approach to justice institutions which can help scholars – as well as practitioners – analyze contestation about justice institutions. I expand theorization by Lake (2017) and Sriram (2013), who focus on national-level actors, to create a more integrated framework that also includes war-affected individuals. Hence, framework is ambitiously seeking to account for both national-level actors and war-affected individuals and is meant to provide insights into contestation both during and after armed conflicts.

Empirically, my dissertation advances our understanding of how and with what results justice institutions are contested in Colombia, a key case to understand how wartime abuses are addressed and a potential source of inspiration for other countries embarking on such endeavors. The analysis provides insights into the origins of its acclaimed 2016 justice policy, but also examines some of the obstacles faced in the implementation phase. The research conducted in Mesetas provides insights on the contributions of justice institutions in this particular community – which holds empirical value in and of itself – but may also travel to other conflict-affected areas of Colombia and globally. In conjunction, this dissertation provides insights into justice policy reconfigurations, the construction of institutional repertoires, and subsequently points to the limits of such ambitious and comprehensive policies and repertoires for actual implementation and contributions to war-affected individuals.

Structure of the introduction

In the remainder of this introduction to my dissertation, I first situate the four papers in conflict research on justice institutions and the literature on transitional justice. Then I present the analytical framework I construct to reflect on the combined contributions of the four papers. Afterwards, I provide some background on Colombia and Mesetas before I discuss the research design, including data sources, analytical process, and fieldwork in Mesetas. Next, I discuss ethical issues before I touch on philosophy of science. Finally, I discuss the main findings and future avenues of research.

Contested justice institutions: A literature review

In this chapter, I review the literature that informs this dissertation and on which I have built the analytical framework I present in the next chapter. I first define the scholarly works that motivate this study, namely conflict research on justice institutions and transitional justice literature, and research on the case of Colombia in particular. Second, I review literature concerned with institutional-level and then individual-level justice outcomes.

Conflict research, transitional justice, and justice outcomes

The most relevant literature to examine contestation about justice institutions during and after war originates either within conflict research on justice institutions or transitional justice (including post-conflict justice), or somewhere in-between. Conflict research has in the last decade become increasingly concerned with the role justice institutions play during conflict. In this line of inquiry, researchers have shown that justice institutions commonly studied in the post-conflict period – notably trials, truth commissions, amnesty and reparations – are also adopted during conflict (Loyle and Binningsbø 2018). Loyle and Binningsbø (2018) identify more than 2,205 'during-conflict justice' processes implemented amid conflict, with at least one process in over 60 percent of armed conflicts since World War II. The primary focus of conflict research on justice institutions is to examine links between justice institutions, on the one hand, and conflict dynamics and conflict termination, on the other (Dancy 2018; Dancy and Wiebelhaus-Brahm 2018; Daniels 2020; Loyle and Binningsbø 2018; Kersten 2016). Less attention has been paid to examining how conflict dynamics shape justice institutions, inquiring the role of civil society (though see Stokke and Wiebelhaus-Brahm 2022), and further unpacking conflict dynamics and justice institutions in both the during and post-conflict period.

Transitional justice, the key literature concerned with justice institutions in the aftermath of war, emerged with a legal focus on transitions from authoritarian to democratic regimes in the 1990s (Kritz 1995). Since then, it has expanded to also address justice in post-conflict contexts. Contributions to this literature come from multiple disciplines, including anthropology, sociology and political science, and encompass various approaches, including global data sets, survey methods, ethnography, and interview-based methods (Olsen, Payne, and Reiter 2010; Adhikari, Hansen, and Powers 2012; Theidon 2012; Blomqvist, Olivius, and Hedström 2021). This theme of research also contains sub-fields concerned with particular transitional justice instruments such as reparations (for example de Greiff 2006).

I view conflict research on justice institutions and transitional justice literature as distinct, yet increasingly overlapping with further potential for cross-fertilization. While conflict research on the topic is recent, it provides important perspectives and insights into the establishment of justice institutions amid war as well as links with conflict dynamics and wartime legacies. Though there is considerable transitional justice research on alternative motives (for example Subotić 2009; Loyle and Davenport 2016), conflict research has further grounded contestation in war-waging and other conflict-related goals (Lake 2017; Loken, Lake, and Cronin-Furman 2018; Loyle 2020). Part of the reason is that transitional justice scholars primarily focus on the post-conflict context and engage less with conflict dynamics to explain outcomes. To study justice institutions in Colombia, which emerged amid war and are implemented amid violence, I draw on and speak to these overlapping research agenda.

This dissertation's focus on justice outcomes is motivated by a concern within the transitional justice literature of providing evidence-based assessments of the impact of justice institutions (Merwe, Baxter, and Chapman 2009; Thoms, Ron, and Paris 2010; P. Gready and Robins 2020). This concern rose in part from a criticism of transitional justice institutions that the justification for their existence is normative and based on assumptions that 'good' institutions produce

'good' outcomes (Loyle and Davenport 2016, 128; see also P. Gready and Robins 2020). In the 2000s, several scholars argued that advocates for justice claimed more impact than evidence suggested (Mendeloff 2004; Thoms, Ron, and Paris 2010; Snyder and Vinjamuri 2004). Explaining the impact, effects, or outcomes has, therefore, become a key concern within the transitional justice literature in the recent decade. While this dissertation focuses on contestation among key actors in the context of addressing wartime abuses, this is not meant to underplay disagreement among scholars about impact, outcomes, and 'success' (see for example Ainley, Friedman, and Mahony 2015 on evaluating transitional justice in Sierra Leone). Disagreement among scholars concerns among others what the goals of transitional justice should be, for example what harms transitional justice should address and which mechanisms one ought to study (Friedman 2017, 8; Merwe, Baxter, and Chapman 2009, 4).

For this dissertation, I chose to focus on institutional and individual-level outcomes. The former are concerned with which types of institutions are established and their characteristics, and have been examined through global data sets such as Olsen et al. (2010) or more qualitative approaches (Kochanski 2021). For example, Skaar, García-Godos, and Collins (2015) examine transitional justice institutions over time through thick descriptions of nine cases from Latin America, including the changing characteristics of the many different forms that domestic trials and tribunals have taken in the region. The individual level has also gained considerable attention, where predominantly transitional justice research focuses on how justice institutions serve victims of conflict-related abuse. Though several scholars challenge aspects of the victim-perpetrator dichotomy that permeate transitional justice (for example Moffett 2016; Krystalli 2021; Millar 2012), the literature maintains a focus on victims or victim-survivors. Victims-survivors are supposed to benefit directly through truth-telling and participation in trial procedures and reparation efforts (Mendeloff 2004, 358; de Greiff 2006; de Waardt and Weber 2019). Subsequent outcomes include healing and reconciliation, recognition and improved livelihoods (Millar 2010; Brounéus 2010; de Greiff 2006).

The countries that conflict researchers and transitional justice scholars have examined are varied, but apart from key cases like South Africa, Uganda, Sierra Leone and Peru, Colombia has also gained considerable attention from both Colombian and international scholars. Among important scholarship on the establishment of justice institutions includes analyses of the 2005 Justice and Peace Law, examined both from a legal and human rights perspective, and with a focus on demobilization processes (for example Uprimny et al. 2006; Laplante and Theidon 2006; Restrepo and Bagley 2011). Another strain features the implementation of justice institutions, including perspectives of victims and other war-affected individuals, which has been examined using surveys focused on attitudes (Nussio, Rettberg, and Ugarriza 2015; Rettberg and Ugarriza 2016) and interview-based studies with ex-combatants, victims and other war-affected individuals (Prieto 2012). Furthermore, scholars have contributed empirical work about reparations in the context of conflict-affected communities (Firchow 2017) and more conceptual debates about the intended target groups and objectives of reparation programs (Uprimny 2009). Most recently, the justice framework in 2016 Final Peace Agreement has attracted several contributions that discuss this topic in light of the 2005 Justice and Peace Law and 2011 Victims and Land Restitution Law (Ruiz 2018; Nauenberg Dunkell 2021; Bakiner 2019). While these scholars examine the 2016 Final Peace Agreement in comparison to previous justice policies, there is a lesser focus on mechanisms – specifically how the during and post-conflict policies and institutions are related. Moreover, the signing of the 2016 Final Peace Agreement motivates research that examines previous policies in light of this 2016 policy and the institutional repertoires constructed to implement it.

Institutional-level justice outcomes

I now turn to literature concerned with which institutions are established and their institutional repertoire. Scholarship on justice institutions typically focuses on state actors, notably governments, and portrays justice institutions as inherently contested and as fundamentally political (Vinjamuri and Snyder 2015, 305; see also Leebaw 2008; 2008). Some scholars consider justice institutions as heavily influenced by post-conflict (or post-transition) power balances, where the extent of accountability through criminal prosecution is shaped by the power of the judiciary, elites or the state overall to establish and hold prosecutions versus the power of those potential defendants (Snyder and Vinjamuri 2004). Hence, potential defendants, including the former government, are expected to compel the post-conflict government not to pursue accountability policies that target them (Sriram 2013, 251; Huntington 1991).

Whereas power balance arguments remain important, other scholars argue that international actors have also grown increasingly interested in accountability and victims' rights. Within this line of inquiry, domestic justice institutions are considered important in order for justice to be anchored domestically (Jensen, Lagoutte, and Lorion 2019). This preference follows the complementarity principle of the International Criminal Court, where it only intervenes if domestic courts are unable or unwilling. Some researchers point to international norms of accountability and victims' rights as an important influence in recent decades (Sikkink 2011). This includes the role of domestic human rights actors, who Kim (2012) finds to be critical in enhancing the likelihood of criminal prosecutions in transitions to democracy. Such human rights actors may speak on behalf of, or even represent, victims and victim-survivors in a struggle for truth, justice and reparations. A prominent example are the Madres de la Plaza de Mayo (Mothers of the Plaza de Mayo) who demanded the whereabouts of their missing children during Argentina's dictatorship (Humphrey and Valverde 2008, 85). In the context of peace agreements, Bell and Kitagawa (2022) find that civil society organizations play a role in shaping justice policies within peace agreements in the direction of criminal accountability. However, civil society actors or public opinion, more broadly, have also been found to resist or go against the establishment of justice institutions, as for example in Sierra Leone and Mozambique (Shaw 2007; Igreja and Skaar 2013).

When faced with international and/or domestic demands for prosecution, the responses by governments are oftentimes considered and justified in the context of the peace vs justice debate. This debate is typically framed as a dilemma between the priorities of peace and justice, where too 'much' justice (understood as accountability and punishment of perpetrators) may deter rebel groups from laying down arms and potentially derail peace processes (Snyder and Vinjamuri 2004; Leebaw 2008). Some governments have put forth this argument to justify why amnesty should be adopted rather than criminal proceedings. Indeed, amnesty has by some scholars been argued to be a "necessary tool" to allow for "politically expedient bargains" that can help ensure that rule of law is upheld in post-conflict societies (Snyder and Vinjamuri 2004, 6). Even trial processes with reduced prison sentences could hamper demobilizations and peace processes (Dancy and Wiebelhaus-Brahm 2018, 48). Proponents of establishing justice institutions, however, suggest prosecuting human rights offenders can deter future violence (Bassiouni 1997, 18). Relatedly, criminal prosecution has been argued to strengthen the rule of law in post-conflict societies (Nettelfield 2012).

In the face of international demands for adherence to accountability norms, states have been shown to construct half-hearted justice institutions that seem to pursue accountability but are accompanied by weak institutions that do not threaten larger examinations of state abuses (Cronin-Furman 2020; see also Lyons and Reed Hurtado 2010). For example, governments have devised justice policies that only target violations committed by rebel groups, as in the

case of Uganda. Some scholars argue that governments utilize the legitimacy of transitional justice institutions to pursue political interests or, according to Simangan in the cases of Kosovo, Cambodia and Timor-Leste, "for the sake of short-term stability" (Simangan 2017, 306; see also Kochanski 2018). This finding follows similar conclusions by Loyle and Davenport in Rwanda, where they argue that the state pursued a policy of transitional injustice in which it promoted denial, perpetuated violence and legitimized authoritarianism (Loyle and Davenport 2016). Hence, alternative motives may shed light on the lack of prosecution, truth-telling, and reparations, but also the establishment of justice institutions to pursue other goals than accountability and victims' rights. Conflict researchers on justice institutions have further examined alternative motives and the reasons for which certain justice institutions are adopted amid war. Many conflict researchers theorize justice institutions as nonviolent tools to pursue political or military objectives (see Loken, Lake, and Cronin-Furman 2018; Dancy 2018; Daniels 2020; Loyle 2020). This research implies that justice institutions are imperfect vehicles to pursue justice, but rather means of waging war or securing personal or intergroup short-term gains.

The recent research interest in 'during-conflict justice' indicates the theoretical and empirical importance of untangling what it means to pursue justice during conflict and also whether motivations, objectives, and impacts are different after conflict. Moreover, justice efforts in Colombia before 2016 points to the importance of such theoretical efforts to analyze empirical outcomes (such as Uprimny et al. 2006; Lyons and Reed Hurtado 2010; Laplante and Theidon 2006). Whereas transitional justice institutions are meant to address justice after political transitions, which are often more clear-cut than war endings, armed conflicts typically have more contested endings. This is for example the case in Colombia, where some areas were more affected by armed conflict than others, and where violence did not end with the 2016 agreement (Gutierrez-Sanin 2020). In other words, though conflict research focuses on the during-conflict period (defined by, *inter alia*, battle deaths), wartime logics may also hold in post-conflict settings. Lake, for example, examines wartime elites' perceptions and actions vis-à-vis post-conflict rule-of-law institutions in the Democratic Republic of Congo (DRC). She shows that trial proceedings became an arena for wartime elites to continue to pursue economic, military, and political objectives. Hence, conflict research can provide important perspectives and explanations for institutional-level justice outcomes both during and after conflict.

Individual-level justice outcomes

Turning now to literature focused on the contributions of justice institutions to war-affected individuals, I discuss two prominent themes that are relevant for this dissertation, namely (1) mismatches between how justice policies are implemented and individuals' perceptions of these policies; and (2) divisions and tensions that justice institutions may create or intensify.

The first theme – mismatches – concerns cultural appropriateness and relevance and the disjuncture between the supply and demand for justice institutions. One mismatch, which Eastmond and Mannergren Selimovic point to, is that truth-telling and pursuing accountability is not the most culturally appropriate way to deal with wartime abuses in all contexts (Eastmond and Mannergren Selimovic 2012, 503). Rather, these may reflect western practices. For example, a focus on regret in Cambodia and acceptance of culpability in East Timor do not require truth-telling practices that tribunals and truth commissions usually call for (Eastmond and Mannergren Selimovic 2012, 205). In Sierra Leone, Shaw argues the truth-telling practice of its Truth and Reconciliation Commission did not correspond with local practices of forgetting (Shaw 2007, 206; see also Ainley, Friedman, and Mahony 2015). While hybrid or 'special courts' have been designed to produce more national ownership and reflect local priorities, these have nonetheless been criticized. Kastner argues that combining international

and domestic efforts, including Western and traditional practices can also have negative implications for resilience and may sow division within society (Kastner 2020). Hence, institutions can fail to produce desired justice outcomes when the means of pursuing justice do not fit cultural practices.

Even with national and local support, justice institutions – for example trials in cities far removed from conflict-affected communities – can be perceived as having little relevance to daily life (Weinstein and Stover 2008). Rettberg and Ugarriza find that "[p]eople appear to care more about their wellbeing and their relations with others in their immediate context than for abstract processes of rebuilding historical memory at a central level" (Rettberg and Ugarriza 2016, 531). Prieto (2012) finds that people in urban neighborhoods in Colombia, including ex-combatants and victims, tend to think about accountability and truth-seeking as macro-level concerns with limited relevance for everyday life. While trial proceedings typically take place in bigger cities or abroad, reparations can help remedy this distance (especially for people in remote areas) through concrete contributions, like monetary compensation, that prevent other justice institutions from "fading into irrelevance" (de Greiff 2006, 461). However, reparations after peace agreements are typically implemented very slowly or not all, which can frustrate individuals' expectations about reparations (J. M. Quinn and Joshi 2019, 225; Weber 2020).

A second important theme in the literature on contributions of justice institutions to war-affected individuals concerns tension and division. While justice institutions are posed as vehicles for healing and reconciliation, they have also been shown to create division and lead to tension about which victims are worthy of reparations and recognition (Mendeloff 2004, 374; Macdonald 2013; Moffett 2016). This dichotomy between recipients of reparations and non-recipients has been known to cause tension within communities and societies, leading to anger and threats of violence (Macdonald 2013, 102). This tension can be aggravated by the type of perpetrator or the assumed political allegiances of victims of certain groups, as these considerations may have implications for who feels safe or able to demand reparations (Franko and Goyes 2023; Adhikari and Hansen 2022).

Scholars have also identified tension in war-affected individuals' perceptions about the need to expose abuses and seek truth about wartime abuses. For example, silence and concealment can sometimes be favored by war-affected individuals as these positions can represent a means through which to facilitate coexistence and dampen risks of renewed violence and division (Eastmond and Mannergren Selimovic 2012; Willems 2022; Blomqvist, Olivius, and Hedström 2021). Also, in the presence of ex-combatants in one's community, civilians seem to prefer restorative approaches to justice rather than retributive ones which could obstruct coexistence (Hall et al. 2018; Tellez 2019). Hence, war-affected individuals who live side-by-side with ex-combatants may have a stronger preference for activities concerned with co-existence rather than trials and truth-seeking. Nonetheless, there are further needs to unpack implications of violence for individuals' engagement with justice institutions.

Questions about who should receive reparations concern the role and type of reparations. Only addressing victims with reparations corresponds with corrective justice focused on the abuses themselves, while addressing larger groups of war-affected individuals speaks to distributive justice (S. Gready 2022). Who reparations should target relates closely to debates about reparations versus development. Some scholars argue reparations ought to address socio-economic issues at root of war, whereas others emphasize that development is already an obligation and that combining reparations and development may dilute recognition of specific wartime abuses (Uprimny 2009; de Greiff 2006; S. Gready 2022). Whereas some examine multiple reparation programs implemented in same area – including studies in Colombia (Weber 2020; Firchow 2017), these examinations are less concerned with how patterns of

violence shape respective contributions of reparation types targeting individuals vs larger populations. For example, in long-lasting conflicts like Colombia, pervasive war can blur attitudes of victims and other war-affected individuals towards justice institutions (Nussio, Rettberg, and Ugarriza 2015). This finding motivates a need to better understand the role of conflict exposure for war-affected individuals' reception of reparation programs.

Summary

This literature review shows that the establishment and implementation of justice institutions is contested both among national-level actors and war-affected individuals. Whereas the role of conflict dynamics, broadly speaking, has received more attention – in part due to more research on justice institutions during conflict – there remains potential to theorize how conflict dynamics shape justice outcomes across the during and post-conflict periods. This discussion forms the backdrop for the analytical framework I construct in the next chapter.

Analytical framework

In this chapter, I present the threat-opportunity framework which guides the analysis of the main research question. This framework helps understand how dynamics of violence shape justice outcomes by focusing on key actors' perceptions of and actions vis-à-vis justice institutions (Table 2). These actors are (1) national-level actors involved in the establishment of justice institutions; and (2) war-affected individuals who are key receivers and agents in the implementation of justice institutions. This focus on national-level actors follows research reviewed in the preceding chapter and its emphasis on contestation, where the political nature of these institutions and alternative or conflict-related goals can shape justice policies (for example Vinjamuri and Snyder 2015; Loyle and Binningsbø 2018; Saffon and Uprimny 2010). Research I reviewed also indicates the importance of war-affected individuals' agency to explain individual-level outcomes, including how past and present violence shape perceptions and actions (Blomqvist, Olivius, and Hedström 2021; Zulver 2022; Millar 2010).

In the framework, I focus on the outer bounds of perceptions, namely, how actors perceive these institutions as a threat or an opportunity. These perceptions speak to what actions these actors are likely to take. For national-level actors, perceiving justice institutions or certain repertoires as a threat makes them take actions to resist whole institutions, or, at least, facets of these institutions, and may, for example, seek to modify threatening aspects. If, on the other hand, national-level actors perceive justice institutions as an opportunity to advance certain interests, they are expected to support the establishment of justice institutions.

For war-affected individuals, perceiving justice institutions as a threat causes them to avoid these institutions and/or refrain from pursuing benefits they could provide. If justice institutions are perceived as an opportunity, however, they are expected to engage these institutions, contributing to their work and benefiting from their results.

Table 2: Analytical Framework: Perceptions and actions vis-à-vis justice institutions.

	Threat	**Opportunity**
National-level actors	Resist	Support
War-affected individuals	Avoid	Engage

This framework views justice institutions as inherently contested institutions, where dynamics of violence are mobilized to explain when justice institutions are perceived as threats or opportunities for national-level actors and war-affected individuals. For example, the government may view the prosecution of rebels as a threat to peace processes because uncovering rebel atrocities and conducting prosecutions – even with reduced prison sentences – could cause rebels to break off negotiations. For a government, scrutinizing state abuses or extricating networks of collusion with pro-government militias could implicate prominent politicians and thus also represent a serious threat to a government's legitimacy or politicians themselves or their supporters. However, if trials only target rebels or low-ranking state agents, this justice institutions can rather be viewed as an opportunity to remove adversaries without constituting a considerable threat to high-ranking state agents. Similarly, a government may refrain from awarding reparations to victims of state abuse because it could suggest a recognition of state responsibility, whereas only awarding reparations to victims of rebels would not pose a threat. Hence, specific aspects of justice policies, like who trials target and who reparation programs target, can be important for actors' perceptions of justice institutions.

As the institutions I examine are state-led, the government is the key national-level actor in this perspective. However, other actors' perceptions and actions also matter. Rebel groups are expected to resist criminal trials by stalling peace processes, as justice institutions could "deprive ex-combatants of their liberty" (Sriram and Herman 2009, 464). Civil society actors, human rights advocates or victims' organizations may view providing amnesty for large-scale atrocities as a threat to victims' demands for truth-telling and reparations. Governments, on the other hand, particularly when state abuses are widespread, may view truth-recovery as a challenge to the narrative they wish to promulgate. Conflicts with considerable state abuses may also be viewed as opportunities for the international community, including human rights advocates, to push state policies in the direction of accountability and truth-seeking (Root 2009).

For war-affected individuals, justice institutions can create considerable dilemmas and pose uncomfortable questions. But, justice institutions can also address some of the most pressing needs and questions that war-affected individuals have when recovering from war. Hence, if established and implemented, justice institutions can have major repercussions or benefits for the affected. For example, trials and truth-seeking missions may represent an opportunity to discover what happened to family members, and to see those responsible held to account. However, in case of retaliatory attacks against those who speak up about wartime abuses, the same institutions may represent a threat and lead individuals to avoid rather engage these institutions for fear of reprisal.

In many cases of wartime abuse, reparations can provide opportunities to recognize the suffering caused by war and provide means for improving livelihoods through monetary compensation. However, reparations can also represent a threat, as those who claim reparations for abuses may upend an uneasy co-existence after war with the ex-combatants who were (in)directly responsible for the abuse in question. Furthermore, trials and truth commissions could clash with priorities or preferences for forgetting. This disjuncture between desired and actual result could result from a logic of cultural inappropriateness (Shaw 2007), but also stem from a fear of ex-combatants (Hall et al. 2018) or of revealing one's political affiliation with a former regime (see Adhikari, Hansen, and Powers 2012).

In developing the threat-opportunity framework, I draw primarily on Lake's (2017) theoretical propositions about how post-conflict rule-of-law institutions are captured by wartime elites. However, I adapt this framework to a different setting, namely key actors' perceptions and actions vis-à-vis extraordinary justice institutions adopted to address wartime abuses. Moreover, I broaden it by also applying it to war-affected individuals. In her article, Lake argues that in the Democratic Republic of Congo (DRC), wartime elites used the DRC's military courts to advance conflict-related agendas, including removing challengers or adversaries and protecting loyalties (Lake 2017, 297). She argues that, for wartime elites, the military courts represented a threat (against wartime elites or collaborators) or an opportunity (to remove adversaries, deflect attention or broker deals). Hence, the conceptualization of threat and opportunity are borrowed from her work (but also from Sriram (2013) who discusses spoilers using similar terms).

This framework is also inspired by a distinct framework ('expose-conceal') I construct in paper 1 to theorize the contestation about how state-led justice institutions are established amid war. In brief, the expose-conceal framework emphasizes diverging goals of domestic actors, pitting various human rights and civil society actors (seeking to expose abuses) against the state (seeking to conceal them) in a tug of war. The expose-conceal framework is similar to the threat-opportunity framework, as both emphasize resistance and support for certain justice institutions, depending on whether aspects or the whole of an institution's repertoire represents

a threat. However, expose-conceal does not satisfactorily distinguish perceptions and actions vis-à-vis justice institutions, and, moreover, it is less useful when analyzing reparation programs because these programs are more forward-looking. Hence, I saw the need to construct a different, but related, framework for my whole dissertation.

In this dissertation, I use the threat-opportunity framework to study the case of Colombia and how domestic actors shape the establishment and implementation of justice institutions. As Arnould (2016) suggests, scholarship has traditionally had a split view wherein international actors promote justice while domestic actors resist. The framework I use is pertinent to shed light on such promotion and resistance, where part of it is to examine the role of national-level actors, which is also the focus of Lake (2017) and Sriram's (2013) work. However, I also expand this theorization of contestation as driven by fear and opportunity to the level of individuals and suggest a focus on threat and opportunity can also be useful in analyzing war-affected individuals' perceptions.

In sum, my analytical framework proposes how justice institutions are perceived and engaged with depends on specific dynamics of violence. For national-level actors, risks include facing truth-seeking processes into abuses and subsequent punishment, and delegitimization by having their collaboration with armed groups exposed. Risks can also be personal in that taking part in truth-telling can bring retaliation by perpetrators. For others, justice institutions may constitute considerable or life-changing opportunities by putting a lid on past crimes and enabling some to avoid prosecution, or, on the contrary, to hold perpetrators accountable. Opportunities include discovering the truth about family members, receiving compensation, or merely having one's story told and heard in a formal arena.

Key concepts

Key concepts to define for this framework are wartime abuses, dynamics of violence, justice outcomes as well as national-level actors and war-affected individuals.

In this dissertation, I define **wartime abuses** as violent acts perpetrated against individuals or civilian infrastructure in the context of armed conflict. Included in this definition are the legal concepts of war crimes and conflict-related human rights abuses. Whereas papers 1-3 define wartime abuse in terms of direct acts of violence, in paper 4 I expand this definition to consider the longer-term neglect certain communities may have endured because of armed conflict. This expansion allows for the recognition of other repercussions of war that may impact individuals' lives and be deemed important for compensation.

Dynamics of violence refers to variations in patterns of conflict-related violence. This definition builds on the conceptualization by Gutiérrez-Sanín and Wood (2017), who argue that patterns of violence should include the repertoire, targeting, frequency and technique of the violence committed. In this way, they push for scholarly efforts to be more precise about the type of violence one investigates. This approach can provide a more nuanced understanding of how specific variations in violence can shape outcomes (in my case justice outcomes). In my papers, I examine the dynamics of violence in reference to violence committed by paramilitaries (paper 1), conflict severity and armed conflict itself (paper 2), renewed violence after a peace agreement (paper 3), and large-scale and wide-ranging abuses (paper 4).

I define **justice outcomes** as the impact of efforts to pursue justice for wartime abuses. In this dissertation, I examine institutional and individual-level justice outcomes.[3] **Institutional-level justice outcomes** refer to which justice institutions are established (trials, truth commissions,

[3] Other justice outcomes outside the scope of this dissertation includes the number or quality of court proceedings and the number of reparation payments provided.

amnesty, or reparations), including more specific features of justice policies, such as which victims are included in reparation programs, if only leaders are prosecuted, and what punishment they receive. I also consider the *institutional repertoire* a justice outcome: While a policy may be adopted, it must be set in motion (or institutionalized) before implementation can begin, and, therefore, constitutes a step forward from policy decisions. The institutional repertoire is, therefore, the result of policy (a political decision) that is subsequently institutionalized (by the pertinent bureaucracy) and becomes part of the country's institutional 'toolbox'. An institutional repertoire can be a war tribunal with lawyers and staff able to prosecute perpetrators, or a reparation program with rules and bureaucrats to provide reparations to victims. My use of institutional repertoire in this 'Introduction' is an elaboration on the term my co-authors and I use in paper 2, where we primarily use it as a mechanism to explain that certain institutional arrangements from the during-conflict period are drawn upon when policymakers adopt justice policies after conflict. In this Introduction, I also use institutional repertoire as a justice outcome.

Looking at key actors, I refer to **national-level actors** as those groups or organizations with strong interests in adopting (or not) justice institutions, including interests to shape specific policies. For my analysis, these actors includes the government, (other) armed actors, and various civil society actors. Civil society actors include human rights advocates, victims' organizations, and other actors with stakes and power to influence justice institutions.[4] Second, I refer to **war-affected individuals** as those individuals directly affected through acts of violence or indirectly by living in areas that experience confrontations or acts related to war. I use war-affected individuals rather than victims (or victim-survivors) because it better facilitates the study of the contributions of justice institutions in areas heavily affected by war, where distinctions between victims and non-victims may at times be elusive (Nussio, Rettberg, and Ugarriza 2015, 352–53). This definition is not meant to downplay the suffering of victims who endure direct violence (per the legal definition) but to recognize that suffering can go beyond this.

Limitations of this framework

This framework recognizes the often-polarized perceptions that actors have of justice institutions by highlighting the outer bounds of threat and opportunity, and shedding new light on the contestations that permeate justice institutions. However, the framework lacks ability to capture middle grounds. Though this is not the objective of the framework, an awareness of a middle ground could provide insights into when justice institutions can be perceived as 'tolerable' (Sriram 2013, 253). For example, a state can support trials against state agents if only targeting lower-rank individuals, and thus avoid damaging its perceived legitimacy (see for example Cronin-Furman 2020; Loken, Lake, and Cronin-Furman 2018). Also, although reparations may be viewed as favorable, a state with limited resources may condone establishing institutions but not fully support its implementation. Future studies could consider whether including a middle ground would be of value, and how this could be operationalized.

Another limitation is that the framework does not consider the role war-affected individuals can play in establishing justice institutions. Some war-affected individuals can, through their role as policy makers, rebel commanders or members of human rights groups, influence policy. Moreover, war-affected individuals can also become key domestic actors that shape the justice institutions themselves, as can be seen with victims organizations in Colombia (Rettberg 2015;

[4] Using Gready and Robins' (2017) terminology, this refers primarily to the 'traditional civil society'.

see also Zulver 2022). These are important exceptions, but do not fit within the scope of this dissertation.[5]

Summary

In this chapter, I have presented the analytical framework employed to study how dynamics of violence shape justice outcomes. The framework focuses on the perceptions and actions of national-level actors and war-affected individuals vis-à-vis justice institutions. This analytical approach demands data that shed light on national-level actors and individuals' perceptions and actions as concerns justice institutions. I now turn to the case of Colombia after which I discuss the research design.

[5] Another limitation is the exclusion of 'street-level bureaucrats' such as judges, lawyers, truth commission staff and bureaucrats in reparation programs. This exclusion follows my focus on the establishment of justice institutions and contributions to individuals rather than specific court cases or truth dialogues.

Colombia and Mesetas: Background

In this section, I first provide a brief background to the case of Colombia before I discuss case selection and its suitability for answering the overarching research question. I then turn to the case of Mesetas – the fieldwork site for papers 3 and 4 – for a discussion of history and the type of insights it may provide.

Brief history of Colombia

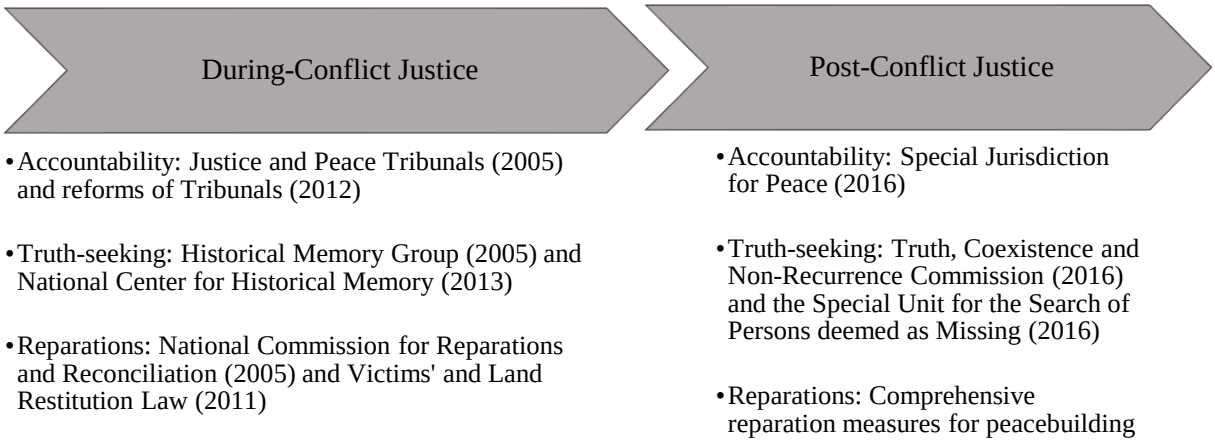
Since independence in 1821, Colombia has continuously been affected by civil war, demobilization processes, and the re-eruption of armed conflict. The latest armed conflict, dominated by the FARC insurgency, began in 1964 with the creation of the FARC and the ELN, a smaller leftist and liberal guerrilla group.[6] The FARC's insurgency was motivated by the plight of poor peasants and political exclusion, and met with state efforts to quell it, but also by growing self-defense forces protecting large landowners, and large paramilitary armies which, at times, collaborated extensively with official state forces (Gutierrez-Sanin 2019). The conflict broiled at low intensity in the 1960s and 1970s before escalating in the 1980s, to a large extent driven by increased access to drug money, and culminated in the most violent years between the mid-1990s and mid-2000s (Truth Commission 2022).

Despite the demobilization of several smaller guerrilla groups in the early 1990s, violence and abuses increased (Guáqueta 2007). After many failed attempts, the government initiated peace dialogues with the FARC from 1999 to 2002 in a demilitarized zone comprising five municipalities along the Eastern Mountain Range of Colombia.[7] The dialogues eventually failed and led to the election of President Álvaro Uribe Velez in 2002 on a wave of anti-FARC sentiment. Uribe quickly agreed with paramilitary groups to their demobilization in 2003. Both actors foresaw a superficial treatment of paramilitary abuses, in part because amnesty for wartime abuses had been the norm during previous demobilizations (see Carranza-Franco 2019). However, domestic and international actors pushed for accountability and exposing abuses, which helped establish the Justice and Peace Law in 2005. The law established special tribunals awarding prison sentences, a truth-seeking mission, and a reparations and reconciliation commission. The Justice and Peace Law was viewed as controversial by broad sectors of Colombian and international society, both for its dubious contributions to justice and because it was not able to prevent the remobilization of many paramilitary groups (Saffon and Uprimny 2010; Daly 2017). Nonetheless, it also contributed to important advancements for victims' rights (see for example García-Godos and Lid 2010).

In the 2010s, sustained pressure to address wartime abuses and ensure victims' rights resulted in two major policy achievements. First was the 2011 Victims and Land Restitution Law, promising extensive individual and collective reparations for Colombia's millions of victims as well as the restitution of stolen lands. Second was the 2016 Final Peace Agreement, a landmark accomplishment that established multiple institutions that put victims at the center. These institutions include the Truth Commission, the Special Jurisdiction for Peace, and the Unit for the Search of Persons Deemed as Missing. These institutions are considered innovative for their victim-centered focus as a key attribute (Sandoval, Martínez-Carrillo, and Cruz-Rodríguez 2022; J. M. Quinn and Joshi 2019, 208). Figure 1 below summarizes key justice institutions divided into the during-conflict period until 2016 and the post-conflict period afterwards.

[6] For different perspectives on the armed conflict, including root causes and when it started, see for example the Historical Commission on Conflict and its Victims (Comisión Histórica del Conflicto y sus Víctimas 2015).
[7] Among these five municipalities are Mesetas, the key field site for this dissertation.

Figure 1: Institutions and programs on accountability, truth, and reparations in Colombia during armed conflict and after the 2016 Peace Agreement with the FARC. Adapted from paper 2.



The Truth Commission established in 2016 provided an updated analysis and numbers on wartime abuses in Colombia. Its final report showed that rebel groups, paramilitaries, and the state had been responsible for 450,000 killings, the forced disappearance of 121,000 people, 50,000 kidnappings, and eight million victims of forced displacement (Truth Commission 2022, 206). However, the violence is not finished as the large-scale FARC insurgency has been replaced by a more fragmented landscape of mostly criminal groups and remnant groups of FARC dissidents along with the smaller rebel group ELN. Since 2016, violence have affected several parts of the country (Gómez Triana and Ríos 2022) and resulted in the killings of hundreds of social leaders and FARC ex-combatants in demobilization processes. Gutierrez-Sanin suggests large-scale insurgency has ended, but that violence in Colombia since 2016 can rather be considered a new though related 'cycle of violence' (Gutierrez-Sanin 2020).

Key fieldwork site: Mesetas

I conducted interviews in the capital Bogotá to examine institutional-level justice outcomes and examined individual-level outcomes in Mesetas, one of many Colombian municipalities affected by armed conflict. Mesetas has a population count of 11,287 (Instituto Geográfico Agustín Codazzi 2022), half of whom live in the village center and the other half dispersed in rural areas, and is located along the Eastern Mountain Range in the department (region) called Meta. The municipality, particularly its mountainous Northern, Western, and Southern parts, was a FARC stronghold for decades as Mesetas, and the nearby Uribe municipality, provided a strategic corridor between the Eastern Plains and Bogotá, through which FARC planned to take Bogotá. Mesetas also experienced significant confrontations between the FARC, paramilitaries and state forces. Violence levels in Mesetas during the armed conflict were significant, resulting in thousands of victims, mostly forced displacement, but also homicides and forced disappearances (see also Appendix I in paper 3, page 125). The most violent period was between 1998 and 2008 (see Figure 2 below).

I chose Mesetas for this study for two reasons. First, Mesetas is among those municipalities most affected by armed conflict in Colombia. The second is that Mesetas has become prioritized within the peace process in several ways, including as one of the 170 municipalities that the government in 2017 defined as most affected war, poverty, institutional weakness, and illicit economies. Mesetas is also one of 24 municipalities that host reintegration camps for FARC ex-combatants (and the only one to host two such camps). As a result, Mesetas has been given considerable attention and resources in comparison with many other municipalities, and

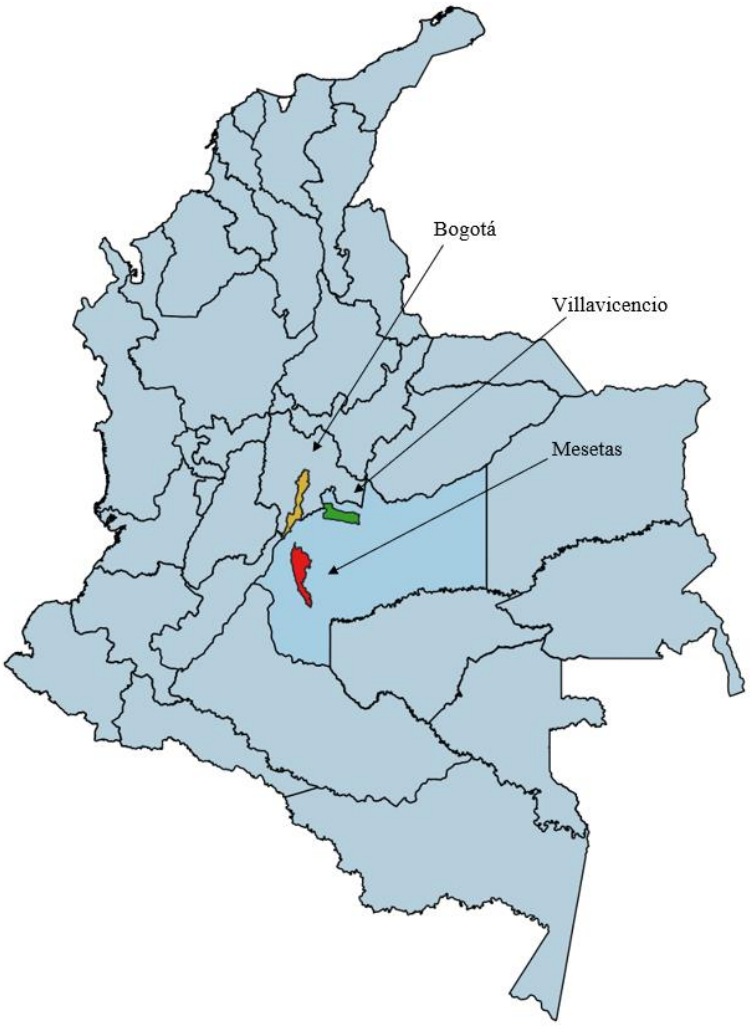
enjoys comparatively more interventions from the community-development and reparatory efforts called Development Projects with Territorial Focus, implemented in Colombia's historically marginalized, poor, and conflict-affected areas.[8]

Figure 2: Number of displaced persons from Mesetas per year. The box covers the three years Mesetas was demilitarized due to peace dialogues. The vertical line marks the signing of the 2016 Final Peace Agreement.

While Mesetas is the central location for this research, I also conducted interviews in Villavicencio, which is the capital of the region of Mesetas and home to most regional agencies and institutions.

[8] The Agency for Territorial Renewal's (2023) interactive map shows that Mesetas is among those 10 municipalities with the higher numbers of finished projects and total investments through the PDETs. Considering Mesetas' low population count compared with the other 10 municipalities, Mesetas is perhaps the municipality with most investments.

Figure 3: Map of Colombia and the three data collection sites.



Research design, data, and methods

In this chapter, I discuss how I apply my analytical framework, including the data sources used and the analytical processes behind each paper. As fieldwork for the Mesetas case study constitutes the largest empirical undertaking conducted for this dissertation, I provide further information about this fieldwork and empirical data.

Data sources and analytical process

The threat-opportunity framework requires data gathering (and analysis) to focus on national-level actors and war-affected individuals' perceptions and actions vis-à-vis justice institutions. I collected this data to shed light on the role of dynamics of violence in shaping justice outcomes. The dissertation builds on three sources: (1) Bogotá-based interviews, (2) two global data sets, and (3) in-depth fieldwork in Mesetas. The papers and corresponding data sources represent different methodological approaches. These data sources are selected because they are considered best suited to answer the respective research questions posed in the papers.

Paper 1

For paper 1, I draw on existing and new data sources. Existing data sources include reports and academic and analytical efforts by Colombian and international scholars, while new data sources include five formal interviews and two dozen informal conversations. Most interviews were conducted on-site in Bogotá in November 2019, and a few digitally in February 2021. These interviews were conducted with Colombian and international analysts, practitioners, and human rights advocates.

I began the analytical process by reviewing global and Colombia-specific literature on motives and drivers of justice institutions. I then travelled to Bogotá and engaged in conversations and interviews with Colombia practitioners and analysts as well as international observers, where I explored contestation about the 2005 Justice and Peace Law. The cleavage seemed to exist between the state, on the one hand, and a varied group of actors, on the other, that had widely different perceptions about how paramilitary violence ought to be addressed. I then proceeded to understand more fully the potential motives held by these actors by investigating their public statements and analyzing their actions. To help navigate a web of actors, events, motives, and actions, I reviewed relevant literature and interviewed experts, observers, and policymakers. Interviews also provided further depth to or counterweights for official statements. For example, while practitioners I interviewed were more likely to emphasize the justice framework for paramilitaries as an appropriate compromise, members of civil society stressed the drawbacks and misuse of justice institutions. From these observations, I developed the expose-conceal framework which I applied to study the trajectory of proposals, justice institutions, and revisions of justice institutions in Colombia during the 2000s.

Paper 2

In paper 2, co-authors Helga M. Binningsbø, Cyanne Loyle and I utilize the during-conflict justice (DCJ) and post-conflict justice (PCJ) data sets. The first set includes 2,205 individual events (i.e., institutions), and the latter includes 236 post-conflict periods when at least one institution was created. To facilitate an analysis across the during to post-conflict period, the during-conflict justice data was aggregated to 'periods'.

The paper was motivated by findings in paper 1 about links between justice institutions established during and after war. We evaluated our general and four sub-hypotheses using a cross-national statistical analysis, drawing on these DCJ and PCJ datasets. These data sources are uniquely positioned to examine links between the during and post-conflict period, as they represent the most comprehensive data on during-conflict justice and the most comprehensive

datasets on post-conflict justice as well. We also use a case study of Colombia to illustrate mechanisms linking justice institutions established during and after conflict. In the analytical process, we drew on findings from paper 1 about the links between the Justice and Peace Law in 2005 and the reconfigurations of justice institutions into the 2010s, and elaborated three mechanisms that could explain this relationship.

Papers 3-4

For papers 3 and 4, I draw on in-depth fieldwork in Mesetas and interviews conducted in Villavicencio. The empirical data were collected in four rounds between 2020 and 2022. Three rounds were onsite: February 2020, September-November 2021, and April-May 2022. One round (January-February 2021) took place digitally due to the Covid-19 pandemic. Most interviews were conducted in Mesetas, where I sought to account for a diversity of perspectives along the following categories: civilians from the villager center and rural areas; FARC ex-combatants in and outside the reintegration camps; individuals with varying conflict exposure, including victims-survivors; leaders and other community members; individuals working with peace implementation and others; different age groups; and different genders. This variation among interviewees was meant to help account for prominent perceptions and actions within the community. I also conducted interviews in Villavicencio, primarily with practitioners, analysts, and academics working on peace implementation and who had some or extensive knowledge about Mesetas.

The empirical material consists of semi-structured interviews with 67 individuals or small groups of two or three individuals, most of which were conducted in Mesetas (48) and the rest in Villavicencio (19). I interviewed about a third of these (sets of) interviewees two, three or four times. Most interviews lasted 45-60 minutes, but some were shorter (down to 15 minutes) and longer (up to 2.5 hours). I also engaged in many informal conversations with other local inhabitants. Moreover, I attended several meetings, project termination presentations, and a local government session to familiarize myself with the context and meet potential interviewees. My approach to fieldwork in Mesetas was informed by the emphasis in transitional justice literature to ground assessments of justice institutions in the "everyday life of those who should be most affected by it" and therefore recognize that people's perceptions are shaped by community characteristics and dynamics (Weinstein and Stover 2008, 5; see also Eastmond and Mannergren Selimovic 2012; Blomqvist, Olivius, and Hedström 2021). Therefore, during the first two rounds, interviews concerned contextual aspects like community history, wartime abuses, the implementation of the 2016 Final Peace Agreement, and renewed violence in the area. In the last two rounds, there was a clearer focus on interviewees' perceptions of and experiences with the justice institutions established in 2016 and individual reparations through the 2011 Victims and Land Restitution Law.

I used iterative processes for analyzing the data collected for papers 3 and 4, which meant going back and forth between data and theory (see for example Timmermans and Tavory 2022; and Bennett and Checkel 2015, 18). In the last two fieldwork rounds, my growing familiarity with the fieldwork site and relevant questions helped me narrow down the scope of the literature informing my research, and, in the process, refined my research questions and hypotheses. For example, my fieldwork diary provided the focus for paper 3, as I during round three of fieldwork identified a trend of fear among my interviewees. Thereafter, I paid more attention to fear, which was a theme not heavily covered in the literature I had read to that point. During round four, I gained more confidence in my findings as new interviewees (unprompted) cited fear as causing restraint from engaging with justice institutions. I further triangulated and deepened my understanding of fear through interviews with Villavicencio-based practitioners with insights on the topic.

During the last round of fieldwork, I inquired about people's perceptions of reparations as the focus for paper 4. After fieldwork, I reflected on the pervasive war in Mesetas, where different reparation programs seemed to address, comprehensively, both personal abuses as well as the larger impact of decades of war and violence on the whole municipality. While people seemed to perceive of reparation programs as opportunities for recognition of having suffered and a means to improve livelihoods, many of my interviewees experienced delayed or rejected reparations. These experiences seemed tied to the wide-ranging and large-scale abuses in Mesetas, which I conceptualized as pervasive war. Subsequently, I discussed pervasive war in relation to people's perceptions and actions vis-à-vis individual and community reparations.

Methodological considerations about fieldwork and empirical material

Three main challenges impacted my fieldwork and empirical material, including efforts to access a diverse sample of interviewees and build trust. The first challenge was a **volatile context**, as FARC dissident groups were present in the area and a couple of social leaders as well as ex-combatants had been killed in recent years. Following advice from contacts in Villavicencio, I made sure I had contacts before arriving in the village area of Mesetas and had contact with FARC ex-combatants before travelling onwards to their reintegration camps in rural areas of the municipality. This first fieldwork round, in February 2020, was meant as a pilot trip to prepare for a longer stay in April that year.

The second challenge was the **COVID-19 pandemic**, which derailed my planned April visit. During the 18 months that the pandemic prevented me from travelling to Colombia, I first chose to interview Colombian diaspora in my hometown Oslo, but, unable to connect this work with the broader dissertation, I opted for online interviews in January and February 2021. These interviews elicited some motivating, if superficial, exchanges with inhabitants in Mesetas as well as more in-depth interviews with practitioners in Villavicencio. I believe that the digital interactions, without face-to-face interaction, made it difficult to broach sensitive topics (Mwambari, Purdeková, and Bisoka 2021). Interviews with practitioners in Villavicencio were more fruitful, probably because these interviewees were more familiar with digital interviews, had better internet connections, and spoke primarily about their work. I returned to Mesetas in September 2021 for round three, only some months after the killings of all four members of a land restitution mission (Ardila 2021). To reach more remote populations beyond the village in this volatile context, I drew on the contacts I had established during previous rounds and travelled with a local moto-taxi driver. Overall, round three was the longest one and provided the most empirical material.

A third challenge was the **sensitivity of the research topic**. Investigating questions related to conflict, truth and justice requires speaking with people who have experienced trauma during the war, or currently at-risk individuals such as ex-combatants and social leaders. Going into most interviews, I was not aware if or what abuses the interviewee had experienced, nor anything about the alleged perpetrators nor the interviewees' comfort with the topic (see for example Howe 2022, 369). Hence, it was important to take measures to avoid re-traumatization and leaving people with a feeling of extraction or over-sharing (Villamil 2021; Fuji 2017).

I took various measures to engage at-risk individuals on sensitive topics in a volatile context. One measures was to interview people multiple times as a means to build trust and rapport and to facilitate in-depth exchanges. To build trust, I also carefully informed people about my presence in Mesetas and my research plans, including my plans to make additional visits. I wrote letters to my participants about the purpose of my research, informing them of what I planned to do with the information gathered, and to discuss what I can and cannot do for my interlocutors. As explaining protocols orally before interviews may not fully facilitate a mutual understanding of the interaction (Parkinson 2021, 6), this letter provided another means of

being transparent, mending potential misunderstandings about what benefits the research project brings (and what it does not), and sharing information about my research. For the last round of fieldwork, I sent an updated letter before arranging meetings. During interviews, I was also careful not to pepper interviewees with questions and requests for information, but rather to show patience and be conscious of people's comfort and body language. I used pauses and silence to provide the participant time to raise potentially more difficult viewpoints or experience – or to change the topic of conversation. Furthermore, I wanted to signal that I was not only interested in the information they provided but also to attempt to understand better the struggles they face and share their company. Some people were open to meeting me the first time I approached them and spoke willingly early on, while others seemed more willing to meet after I shared these letters, and seemed more willing to speak when I met them a second time. Yet others remained reluctant after the measures I took by expressing vague statements or taking conversational detours.

To ensure a diverse sample, I selected interviewees from a wide range of categories, including ex-combatants, victims, leaders, and other community members, and with respect to gender and age. Rather than asking if people knew ex-combatants or victims, I asked to speak with people in specific areas of the municipality, either in rural areas or in the village center. I also wanted to avoid having too many respondents that represented Mesetas' educated elite (Millar 2010, 478). In reintegration camps, I spoke primarily with ex-combatants and with civilians living nearby. Apart from members of victim organizations, many other interviewees talked about having been directly affected by the war. I was also careful not to rely on only a few people for contacts as various biases may arise from this, for example only targeting NGOs that speak on behalf of others (Obradovic-Wochnik 2020).

The final sample is diverse in important ways, though with three overrepresentations to note. The sample is geographically diverse: roughly half (26) are from the village and the remainder (22) from rural areas. For age, approximately half were above 40 years old and thus had experienced the most intense part of war as an adult, whereas those under 40 (from 25-40) belonged to the generation who experienced the conflict as young people. Only a few respondents were younger than 25. These numbers may present an overrepresentation of elder viewpoints, but as this group is most likely to be affected by the war, I consider this overrepresentation appropriate for this research.

The list of respondents is also skewed toward those persons in leadership roles (slightly more than half of total respondents). Nonetheless, I have defined leadership roles quite broadly, which means that leaders include persons with leading positions in civil society organizations, government offices and communal action boards (of which there are 66 in Mesetas). Hence, those people I consider leaders also varied significantly in knowledge about the peace process and whether this role was renumerated.

There is also an overrepresentation of men among my interviewees (46 men and 21 women). This can be partly explained by the fact that men are also overrepresented in leadership positions, and could be related to my positionality as male. However, when looking at people with whom I had multiple interviews, the numbers are more even (10 women vs 14 men). Indeed, most of those I interviewed several times were leaders, which could speak to leaders (regardless of gender) being more comfortable or eager to speak even on sensitive issues. In paper 3, I use this bias to strengthen my argument, which speaks to the need to carefully consider empirical material in the context of the research question posed.

Research ethics

In conducting fieldwork for this dissertation, I have complied with guidelines and considerations made by the Norwegian National Committee for Research Ethics in the Social Science and the Humanities and have been granted approval to collect personal data by the Norwegian Centre for Research Data (NSD).[9] I also benefitted from numerous conversations, workshops and interactions on ethics, fieldwork, and methodology. These meetings have taken place with fellow scholars and practitioners in Norway, Colombia and at international conferences.

In this chapter, I reflect on ethical considerations of particular importance when conducting fieldwork in a volatile context with potentially vulnerable and at-risk-individuals and on sensitive topics. In the following, I touch on consent, re-traumatization, data protection and dilemmas of data transparency, and values in research and positionality. Though focused on fieldwork from Mesetas, I also touch on issues related to interviews in Villavicencio (and to a smaller extent Bogotá).

Consent

In most cases, I arranged meetings through the messaging service WhatsApp, which provided interviewees with a chance to decline interactions up-front. If the person was willing to sit for an interview, I began by elaborating about consent, my research interests, and the value of speaking with this person in particular – given they have time and willingness to do so. As we interacted in their native language, I was conscious of the participants' understanding of what our interaction entailed, including consent, lack of material rewards for participating (see more below), and that they should speak up if they needed to take a break or had other issues to attend to. Before starting the interviews, I secured verbal consent for the interview, recording the interview and taking notes. Verbal consent was preferred as written consent could become a risk to participants (see also Wood 2006).

I considered it important to be transparent about my plans and research in Mesetas, but it was also a security measure as transparency helped minimize potential false rumors and distinguish me from NGO workers, such as the United Nations personnel stationed in Mesetas. I also believe transparency helped build trust between me and the respondents: I returned when I said I would return and that fostered a predictability between us.

Re-traumatization

Researching justice for wartime abuse in a small and heavily affected community which still experiences intermittent violent episodes poses several issues. A key issue is the risk of causing people's trauma to re-surface without being in a place to assist or support them appropriately. Given my research interest, I focused on respondents' experiences and perceptions of measures to address wartime abuses, rather than the abuse itself. However, some people shared aspects of their own or their family's experiences with wartime abuse anyway, which among others suggests that their perceptions of justice institutions are interlinked with their own experiences with wartime abuse. In this way, only the people who felt comfortable shared some aspects of these most intimate experiences. Having discussed potential negative repercussions of this fieldwork, discussions about sensitive topics need not be harmful if conducted in environments of respect and care, and could constitute important scholarly work with policy implications (for example Skjelsbæk 2018).

[9] Case number 771946.

Data protection and transparency

Especially in a community where many people know each other and are aware of my interactions, data protection and transparency have several dimensions. To ensure data protection, I was careful to protect information that people provided. Following ethical guidelines, I kept interview data and personal keys separately and anonymized interview data upon notetaking.

Transparency is important for enabling readers to consider the empirical material for my arguments but can be problematic as very little contextual information is provided because people in small communities may identify each other. Therefore, I take great care to provide as much information as possible without risking the identities of the people I interviewed.

Positionality and values

I have tried to provide unbiased accounts of key actors' perceptions and actions vis-à-vis justice institutions. However, on controversial topics like wartime abuses and justice, it is, arguably, impossible not to let one's values or perspectives emerge in one way or another. My research agenda and research questions are likely colored by international normative preferences for, for example, accountability and the broad international support for the 2016 Final Peace Agreement. However, rather than engaging in debates about the best approach to address wartime abuses, I have tried to focus on key actors and their perceptions and actions.

My positionality has also shaped the interviews I have conducted. As a foreigner, I may have given me easier access to certain interviewees (perhaps particularly practitioners, analysts, and policymakers), though it may also have created a distance between me and interviewees who have experienced wartime abuse and live in a conflict-affected community. However, familiarity with Colombia and interacting in Spanish language likely reduced this distance sufficiently to allow for meaningful interactions. I also framed my presence in Mesetas as an attempt to learn more about life in their community, which was likely facilitated by my status as a young, foreign researcher with limited local knowledge. As for potential biases in people's answers, I believe this did not work systematically in a particular direction as questions were not about their opinions of international actors (including Norwegian ones in particular). Also trust-building measures (discussed in the previous chapter) likely addressed parts of this issue.

Relationship to Philosophy of science

In this chapter, I briefly lay out my philosophical stance and discuss its implications for my research to shed light on the assumptions that inform my research questions and data interpretation.

Ontologically speaking, I am convinced that there exists a reality 'out there' about which we can gather knowledge. Hence, I believe I adhere to the scientific realist tradition in ontological terms, which states that there is a mind-independent world, but that the investigation of it is "in some sense dependent on the ideas one brings to scientific investigation" (Chakravartty 2017)**.** Indeed, I do not find the 'view from nowhere' (see Nagel in Reiss and Sprenger 2020) convincing, feasible, nor desirable within the social sciences, particularly for social phenomena such as war and peace and the multifaceted phenomenon of justice. Rather, I ascribe to the importance of a plurality of epistemological approaches, as I believe that only through a combination of approaches based in different traditions can help provide sufficient criticisms and angles to fully understand a phenomenon.

In this dissertation, I conduct research within a scientific realist tradition, where the different approaches I take are methodologically – and not epistemologically – diverse. In the dissertation, I conduct both in-depth and qualitative interviews about people's perceptions of justice institutions, and I take part in a quantitative analysis that provides strict definitions of what during-conflict and post-conflict means and reduce complex institutions into their presence or absence. Such a categorical approach (war or peace, presence or absence) to what is inherently more complicated, is a compromise one needs to take when comparing armed conflict globally. In this way, the papers are epistemologically coherent, though adapting different methodological approaches for each one.

Overall, I suggest that approaching the topic of inquiry – pursuing justice for wartime abuses through state-led institutions – is best achieved from different perspectives. Indeed, different perspectives on the same topic can facilitate a more comprehensive understanding of the phenomenon at hand.

Summaries of papers

Paper 1: **A Tug of War: Pursuing Justice amidst Armed Conflict** (published in the *Nordic Journal of Human Rights)*

In Paper 1, I ask how state-led justice institutions that address wartime abuses emerge amid war and analyze the contestation of these institutions through a framework focused on the actions of key national-level actors. I develop and employ the expose–conceal framework which emphasizes competing opinions about which institutions to establish, including specific policies on who should be held accountable, what punishment they receive, and how trials should proceed. I suggest that states are expected to try to conceal abuses, an important reason why state-led justice institutions are often considered flawed or exploited politically. There are, on the other hand, various justice advocates who work to expose abuses and hold perpetrators accountable. In developing this framework, I partly build on research within conflict studies that focus on the state and its pursuit of political and conflict-related goals, and transitional justice research that focuses on civil society actors mobilizing for accountability and victims' rights.

I apply the expose-conceal framework to the case of Colombia in the 2000s, when the Government of Colombia agreed with paramilitary groups, responsible for large-scale wartime abuses, to demobilize. In this case study, I identify a dynamic interaction between the government and various justice advocates that resembles a tug of war logic, where gains for one side are perceived as losses for the other. Whereas the state favored more lenient justice terms to facilitate demobilizations, justice advocates sought stronger accountability and focus on victims' rights to tackle impunity.

The paper demonstrates how paramilitary violence was perceived differently by the state than by human rights proponents. For the government, as well as paramilitaries, accountability was perceived as a threat, in part as an obstacle to a smooth peace process, but also as a threat to expose collusion between politicians and paramilitaries, which could threaten politicians closely connected with the government. Civil society saw the lack of accountability, including truth-seeking and reparations, as threats to victims' rights, and mobilized massively to counter what they viewed as a recipe for impunity. After the adoption of the 2005 Justice and Peace Law, civil society actors also saw opportunities to further build on the Law's recognition but insufficient fulfilment of victims' rights.

The paper offers a conflict studies perspective on establishing state-led justice institutions amid war. The findings reveal that both the government's political and conflict-related goals as well as civil society actors' human rights demands influence which justice institutions are established and what features they will have. Hence, I suggest the justice institutions that emerged in 2005 can be considered a combination of a nonviolent tool to wage war and institutions designed and equipped to deliver on promises of accountability and victims' rights. Persistent efforts by various human rights proponents kept pressure on politicians and the government to reconfigure justice institutions to be more aligned with victims' rights. For example, consider the 2011 Victims and Land Restitution Law, which expanded rights to reparations and land restitution to include victims of the state, and the 2012 reforms to the Justice and Peace Tribunals that ensured greater contextual analysis of wartime abuses and a focus on 16 macro-cases of violence rather than thousands of individual perpetrators. These examples of reconfigured institutional repertoires are viewed by victims and human rights proponents as justice policies increasingly in line with goals of accountability and victims' rights.

Paper 2: **Justice now or justice later? How measures taken to address wrongdoings during armed conflict affect post-conflict justice** (R&R in the *International Journal of Transitional Justice)*

In paper 2, Helga M. Binningsbø, Cyanne E. Loyle, and I explore the legacy of justice institutions adopted during conflict for post-conflict outcomes. The paper has two sections: one focused on the general relationship and the second on causal mechanisms. The first section examines justice institutions adopted during conflict as an explanation for justice institutions adopted after conflict. We test our general hypothesis for all four justice institutions combined (trials, truth commissions, reparations, and amnesty) and test a sub-hypotheses on a unique combination of the during-conflict justice (DCJ) and post-conflict justice (PCJ) data sets.

Results from the quantitative analysis show important links between the two periods, namely that institutions established during conflict are an important determinant of measures established after conflict. Our findings are positive and significant for the overall combination of justice institutions, and also positive for the specific institutions, though only significant for trials, amnesties, and reparations. Overall, our findings support previous arguments about power balance, in that harsher justice policies like trials are less common after armed actors negotiate an end to conflict. In other words, armed actors seem to view criminal prosecution as a threat and prefer amnesty provisions to protect their futures. We also found that a stronger civil society makes post-conflict truth commissions, reparations and, to some extent, amnesties more likely, but not trials. Hence, civil society actors may perceive opportunities to push for truth-seeking and reparations to ensure victims' rights, but do not have enough influence to demand that armed actors face trials for their crimes.

In the second section, we explore causal mechanisms to understand how institutions adopted during conflict may explain post-conflict institutions. We use the case of Colombia to show how these three mechanisms work. We define Colombia as post-conflict in regard to the armed conflict with the FARC, and therefore consider the 2005 Justice and Peace Law and the 2011 Victims' Law as instances of during-conflict justice and categorize the 2016 Final Peace Agreement as post-conflict justice. The first mechanism says that justice institutions established during conflict create a policy precedent for addressing violations in a particular way also after conflict. The second mechanism says that institutions adopted during conflict constitute an institutional repertoire of justice options that are drawn upon in the post-conflict period. The third is that prior experiences with justice processes stoke public expectations for accountability which continue into the post-conflict period.

The quantitative and case study findings speak to each other in interesting ways. For example, in the case of Colombia, we find that civil society actors and public expectations also contributed to post-conflict trials. Quantitative findings, however, suggest a stronger civil society only makes post-conflict truth commissions, reparations, and amnesties more likely, but not trials. Hence, it may be that characteristics of Colombia make it stand apart. Another quantitative finding concerns how variations in conflict severity (measured as battle deaths) impacted post-conflict justice outcomes. Conflicts reaching 1,000 annual battle deaths in any one year were less likely to establish post-conflict trials and more likely to establish truth commissions. Colombia, surpassing 1,000 annual battle deaths in the late 1990s and early 2000s, is (again) a counterweight to this overall trend.

Paper 3: **Fear and Risk-Reducing Behaviour: How renewed violence shapes the pursuit of truth and accountability** (under review in *Conflict, Security and Development)*

In paper 3, I ask how renewed violence shapes individuals' perceptions and actions vis-à-vis justice institutions concerned with truth and accountability. This question is becoming

increasingly relevant in research on implementation of transitional justice with the importance of victim-survivors' stories and renewed focus on participation in transitional justice institutions, and as armed conflicts relapse or are replaced by post-conflict violence. In this paper, I study how war-affected individuals perceive and engage with institutions dedicated to pursuing truth and accountability in the context of the 2016 Final Peace Agreement in Colombia, including the Special Jurisdiction for Peace, the Truth Commission, and the Search Unit for missing persons. I collect data from Mesetas, one of many conflict-affected communities in Colombia that has experienced episodes of violence before and after 2016. I conducted semi-structured interviews with a wide range of residents in Mesetas and with practitioners in the nearby city of Villavicencio.

In the paper, I demonstrate that renewed violence following the 2016 Final Peace Agreement influenced victim-survivors to perceive justice institutions as a threat, and subsequently led to risk-reducing behavior. This argument is based on findings from Mesetas where, after some calm years following the 2016 peace agreement, renewed violence, and the re-appearance of armed groups from 2019 onwards made many interviewees reluctant to contribute testimony. Despite a stated desire to do so, many individuals responded to this renewed violence with lower engagement or non-engagement with justice institutions. Though induced by renewed violence, I suggest these behaviors form part of wartime legacies of having lived in rebel-controlled or disputed areas for years and decades.

The findings suggest that many war-affected individuals perceive justice institutions as a threat in the context of post-conflict violence, and that they adapt their actions accordingly. This finding contributes to research on violence and transitional justice by showing how the former not only impacts preferences and attitudes, but also shapes victims' engagement with justice institutions. The analysis also emphasizes how dynamics of violence can impact justice outcomes in post-conflict contexts. Rather than directly engaging with justice institutions, wartime legacies of avoidance behaviors are re-ignited following armed conflict. The findings also reveal that despite Colombia's sophisticated institutional repertoire, characterized by victim participation, local outreach and shifting to virtual interviews to facilitate interviews with at-risk individuals may not be enough to fully avoid the consequences of post-conflict violence. Finally, the paper sheds light on why some individuals chose to remain silent in the face of post-conflict violence in Colombia, which includes the killings of hundreds of social leaders and FARC ex-combatants since 2016. Notwithstanding the importance of understanding why and with what results individuals mobilize for peace and justice, understanding when they do not provide a more nuanced picture of how post-conflict violence shapes the pursuit of justice.

Paper 4: **Reparations after pervasive war: The contributions of individual and community reparations in Colombia** (submitted to *Journal of Peacebuilding & Development)*

This paper explores the contributions of reparation programs to individuals affected by war, focused on the expanding institutional repertoire of Colombia's reparation efforts. In particular, the paper focuses on individual reparations to specific individuals as well as community reparations that target a particular area affected by war where all inhabitants are meant to benefit. I conduct this study in a community affected by pervasive war – subject to wide-ranging and large-scale abuses – and which demands reparations that target both victim-survivors and other war-affected individuals.

The paper examines the following research question: How does a legacy of wide-ranging and widespread abuse shape the contributions of individual and community reparations to people's perceptions of recognition and benefit? In response, I examine three claims: First, that

individual reparations are the best-suited means for recognizing an individual instance of abuse and providing benefits to compensate for that abuse; second, that community reparations address the effects of pervasive war by providing benefits – and recognition – to the wider population of war-affected individuals; and third, that individual and community reparations, in combination, can complement each other and address the drawbacks of each type of reparations.

In the context of wide-ranging and large-scale abuses, I find that many individuals perceive individual and community reparations as opportunities to seek recognition as well as improved livelihoods. However, while individuals attach great importance to individual reparations, questions about who is compensated, delays resulting from the large-scale abuses that reparation programs aim to address, and rejections in cases where the abuse does not fit definitions of conflict-related victimization, hamper recognition of the abuses they suffered and their perceptions of improved livelihood. Due to wide-ranging and large-scale abuse, many residents emphasize the importance of reparations for the community overall, but I find that high expectations and slow implementation often deter recognition. In comparison, I find that while slow implementation of community reparations may create frustration among some people, denial of individual reparations seems to trigger a starker and more personal sense of rejection.

Based on these findings, I argue that Colombia's sophisticated institutional repertoire falls short of providing war-affected individuals, in the context of pervasive war, with a sense of recognition. The institutional repertoire used in Colombia *is* sensitive to the extent that individuals in communities like Mesetas have suffered both large-scale and wide-ranging abuses, but implementation and contribution to individuals is limited by pervasive war. The institutional repertoire ensures a sensitive approach to different groups, which follows development and peacebuilding scripts. However, tailoring reparations for all categories of people is tedious and perhaps not conducive to impact. Such an institutional complexity arises from attempts to address the full range of abuses but can also lead to inefficient implementation of reparations. Thus, reparation programs offer opportunities for recognition, but also carry the threat of rejected victimhood and compensation.

Main findings

In this section, I share the key findings from my examination of this research question: How do dynamics of violence shape justice outcomes on an individual and institutional level? I will first discuss findings on the institutional levels, then discuss the individual level and review overall findings before I suggest possible policy implications.

Findings on the institutional level

In my analysis of institutional-level justice outcomes, I focus on national-level actors, such as the state, armed groups, and human rights proponents, and discuss their perceptions and actions vis-à-vis justice institutions in the light of the dynamics of violence. I find that national-level actors differ in their perceptions of the dynamics of violence and subsequently in their actions toward justice institutions. In paper 1, where I discuss the Justice and Peace Law adopted to demobilize paramilitaries, I show that human rights advocates worked to expose abuses, whereas the Uribe Government took actions that seemed intended to conceal these abuses. The Uribe Administration seemed to perceive justice institutions as a threat to the demobilization process and to legitimacy and potential accountability facing paramilitary groups and their supporters (which included about one-third of Colombian Congressmen). Human rights advocates, on the other hand, seemed to view justice policies and the growing institutional repertoire as an opportunity to advance criminal accountability and victims' rights over time.

The justice institutions devised in the 2005 Justice and Peace Law were established by a government that sought minimal scrutiny into paramilitary abuses and collusion. However, human rights proponents acted to ensure a stricter judicial framework for paramilitaries than the government wanted, including demanding closer scrutiny of abuses and collusion. Hence, the Justice and Peace Law was not only a strategically deployed tool meant to ensure demobilization without accountability and conceal abuses, but also represented a justice policy with some capacity for prosecutions, for providing reparations, and for contributing to truth-telling. Whereas conflict scholarship on justice institutions typically portrays justice institutions (notably trials) adopting during conflict as nonviolent tools to pursue conflict-related goals (Loyle and Binningsbø 2018; Loken, Lake, and Cronin-Furman 2018), my findings also show that actors working to expose abuses and pursue accountability and victims' rights can influence outcomes.

Findings from papers 1 and 2 provide different insights into the establishment and continuation of justice institutions from the during to post-conflict context. Together, the papers suggest that justice policies are more likely to be established during conflict and sustained into the post-conflict period with a combination of pressure from (inter)national civil society organizations (as shown in paper 1) and in situations with sufficient public expectations that sustain this pressure (paper 2). In Colombia, the backlash against the 2003 Government-proposed Alternative Penalties Law led to persistent demands for accountability and victims' rights. In paper 2, we argue this proposed law, which recommended criminal trials, constituted a policy precedent that made a return to broad-based amnesty no longer possible. We propose that a growing institutional repertoire and large public demand for the goals of accountability and victims' rights helped ensure that Colombia's policy of trials, truth-seeking, and reparations were extended over time and into the post-conflict context of the FARC insurgency. Hence, our findings deepen our understanding of the legacy of pursuing justice during conflict: We certainly do not ignore that such institutions are often used as nonviolent tools, but we also suggest these institutions represent a policy precedent and opportunities for further institutional development.

Findings on the individual level

In examining how dynamics of violence shape justice outcomes on an individual level, I focused on the contributions of trials, truth commissions and reparation programs to individuals. My findings on the individual level correlate with other scholars' findings in important ways, including themes identified in the literature review. These correlations include a perception that justice institutions are oftentimes 'distanced' (i.e., with little practical relevance for daily life) and difficult to implement in a community where many ex-combatants are in reintegration processes. In Mesetas, individuals I interviewed were hesitant and moderated when expressing themselves and often referred to recent episodes of violence, the presence of ex-combatants, and a fear of a return of war. As other research suggests, in the face of violence or when living alongside ex-combatants, many people hold back and prefer restorative justice rather than retributive forms, and emphasize co-existence over confrontation about past events (Tellez 2019; Hall et al. 2018; Rettberg and Ugarriza 2016). My findings contribute to this line by showing how specific dynamics of violence shape people's perceptions and actions vis-à-vis justice institutions. Based on research conducted in Mesetas, I find that this plays out differently for questions about truth and accountability than for reparations.

For truth and accountability, I find that renewed violence after conflict re-ignited wartime behaviors and made truth and accountability institutions seem threatening, leading some to avoid them. Through what I label risk-reducing behavior, many victim-survivors refrain from engaging with these institutions and decline to contribute testimony despite an interest in finding the truth about what happened to family members. For reparations, the institutional repertoire used in Colombia *is* sensitive to the variety of abuses individuals in communities like Mesetas have suffered. As such, reparation programs provide opportunities both to victim-survivors and other war-affected individuals to have their suffering recognized and claim concrete reparatory benefits. However, I find that the large-scale and wide-ranging nature of abuse hampers contributions to individuals: Varying patterns of violence make some people ineligible for compensation, and large-scale abuses cause delays in implementation which lead to feelings of rejection and frustration. Whereas community reparations target all inhabitants, slow implementation and subsequently frustration and disillusionment also impeded these contributions.

Thus, I find that particular dynamics of violence limit or impede the desired outcomes Colombia's justice institutions can produce. This happens despite increasingly sophisticated institutional repertoires that have been developed and reconfigured from the during to post-conflict context. However, while emphasizing limitations, my findings also show that many residents desire what justice institutions are meant to provide, such as the truth about what happened to family members, accountability for abuses, and reparations. The finding that there is a preference for prosecutions, truth-telling, and reparations corresponds with other findings from Colombia and Mesetas (for example Nussio, Rettberg, and Ugarriza 2015; Helga Malmin Binningsbø et al. 2018). What I emphasize is that in the face of violence or when living alongside ex-combatants, many people hold back on their demands for prosecution and truth-telling for fear of retaliation or in desire to avoid potential disruptions to a fragile situation. This reluctance can also be the situation for many who prefer retributive justice institutions but perceive such a scenario as highly unlikely. These examples underline that war-affected individuals' perceptions of justice institutions are shaped by contextual factors in which they prefer coexistence or avoiding justice institutions due to fear of retaliation.

Overall findings

The main finding is that specific dynamics of violence as part of wartime legacies of armed conflict shape when justice institutions are perceived as a threat or an opportunity. In this way,

my dissertation contributes a different lens for understanding contestation over justice in contexts of war, and how specific dynamics of violence shape perceptions and behaviors that influence justice outcomes. I find that analyzing dynamics of violence can help explain justice outcomes in particular situations, pointing to the need to account for wartime legacies when analyzing the construction and implementation of justice institutions.

Taken together, my papers show that different dynamics of violence may lead to similar perceptions of threat or opportunity among national-level actors and war-affected individuals. For example, national-level actors and war-affected individuals may take actions that limit justice outcomes (in this case justice policies) or act in ways that serve to conceal rather than expose abuses. In paper 1, I argue that paramilitary violence, through politicians' widespread collusion with these groups, made the government resist accountability measures and take actions to conceal abuses. For war-affected individuals, I find that concealment occurred through avoidance behavior due to fear retaliation. In both cases, digging into the past can be problematic for politicians colluding with militia groups and affected individuals seeking the truth about what happened to family members. For individuals, episodes of violence seem to have functioned as warnings of potential retaliation and, as a result, triggered wartime behavior of avoiding certain topics. As one resident, quoted in paper 3 (see page 121), considered the dilemma of whether to pursue the truth about his family members, he reasoned, 'Why look for trouble?' This person cited the lack of confessions by the FARC in transitional justice institutions as a reason for his low expectations. Hence, pursuing elusive goals of truth and accountability may not be worth the risk one faces.

On the other hand, national-level actors and war-affected individuals also perceive justice institutions as opportunities for future benefits. For human rights proponents, initial justice policies targeting paramilitary violence became building blocks for future action with the goal of enhanced accountability and victims' rights. For war-affected persons, justice institutions were opportunities insofar as reparations and other benefits were concerned. Beyond pursuing individual reparations for their suffering, community leaders, in particular, viewed reparation efforts as potential means of recognition for people's suffering in Mesetas and for improving livelihoods. Indeed, many continue to demand and engage with justice institutions concerned with truth, justice, and reparations despite the risks individuals face when pursuing truth and justice, and the frustration they encounter when reparations are denied or rejected.

For this dissertation, the combination of an in-depth study with a global statistical analysis facilitate a discussion on how 'typical' Colombia may be, and whether findings from Colombia may have relevance also in other contexts. Global findings cited in paper 2 suggest that a stronger civil society enhances likelihood of establishing truth commissions and reparation programs. In Colombia, I found that civil society actors played a significant role in pushing for victims' rights and also the establishment of trials in 2005 and 2016. Furthermore, findings from paper 2 suggest that trials are not common after peace agreements nor after more severe conflicts. The fact that Colombia did establish trials after a peace agreement and for a conflict with several battle deaths indicates a need for caution when generalizing Colombia to other cases, but also to consider what makes Colombia stand apart from other countries.

Some reasons Colombia stands apart can be gained from considering the case of Uganda and what Quinn (2021) calls a 'false start'. Quinn argues that establishing justice institutions amid war can be detrimental, as states use them to "camouflage […] repression and violence that is often still taking place and sometimes even legitimizes it" (J. R. Quinn 2021, 38). Though the Justice and Peace Law in Colombia was far from exemplary, it was not captured by wartime elites to the extent that elites did in the DRC (Lake 2017), in part due to Colombia's stronger institutions and the influence human rights actors, including politicians in Congress. Thus, it

seems not to be the high number of during-conflict justice institutions itself that enabled Colombia's much-praised 2016 framework, but the combination of adopting such institutions in a context with stronger and more democratic institutions. While the central Colombian government was heavily challenged, particularly in the late 1990s, it could not be described as "slowly decaying" like Uganda (J. R. Quinn 2021, 39).[10]

Policy implications

For policymakers addressing wartime abuses, the case of Colombia – notably with the 2016 Final Peace Agreement – holds important lessons. Colombia's advanced justice policies and refined institutional repertoires may eventually play a role similar to the justice policies in South Africa in the 1990s in becoming an example of how to navigate the challenge of pursuing justice. Despite innovative, victim-centered, and comprehensive approaches, Colombia's 2016 justice policies have been contested by significant sectors of the public, and key politicians like Álvaro Uribe and Iván Duque. Hence, policymakers in other countries would be wise to recognize the inherently contested nature of efforts to address wartime abuses. Within this line of thinking, my findings speak partly to considerations in establishing and implementing justice institutions – particularly during conflict.

My findings suggest that under certain conditions, establishing justice institutions during conflict can contribute to enhanced justice policies and institutional repertoires after conflict. However, achieving these results may depend on the type of violence addressed, state collusion with groups responsible for abuses, and the institutional strength and the extent to which democratic processes allow civil society actors to influence policy making. Hence, there is a need for greater attention to strengthening the rule of law during war and accounting for the legacy of justice institutions in the design of institutions post-conflict (see also policy brief by Helga M. Binningsbø, Loyle, and Drange forthcoming). In supporting the establishment or implementation of justice institutions, it may be pertinent to account for political willingness, including potential intentions to comply with norms but create justice policies and institutional repertoires that are not effective in implementing them. For this kind of analysis, the threat-opportunity framework used in this dissertation can become a tool for practitioners assessing the construction of justice institutions. The threat-opportunity framework facilitates an analysis for considering the interests of national-level actors (including international actors where pertinent) for establishing justice institutions and the interests of individuals in implementing them. While scholars and practitioners are already well-aware of the need to ground justice institutions in the interests of war-affected individuals, accounting for the role of the dynamics of violence may heighten chances that implementation of justice institutions make actual contributions to war-affected individuals.

Despite the comprehensive and sophisticated institutional repertoire developed in the 2011 Victims and Land Restitution Law and 2016 Final Peace Agreement, implementation of these policies still lags for many reasons related to the dynamics of violence. For example, a growing institutional repertoire of reparation programs – and therefore also further opportunities for recognition and benefits – does not automatically yield better results because the suffering and impact of war is so large-scale and wide-ranging. Hence, implementing reparation policies requires a carefully attuned approach to balance the scale and range of abuses with the ability to implement reparation programs in a timely manner. For institutions requiring victim participation, such as trials and truth commissions, renewed violence in the post-conflict context can make individuals perceive them as threatening. As a result, an option for

[10] There are other explanations which could be considered, including power balance, the differences in leadership between ex-presidents Álvaro Uribe and Juan Manuel Santos, as well as the influence of the Rome Statutes of the International Criminal Court coupled with jurists' role during the Havana peace negotiations.

policymakers is to adopt less ambitious victim-participation methodologies due to risks of post-conflict violence. Another option is to provide more tailored means of participation that take violence levels in different regions of the country into account, including greater trust-building efforts to prepare individuals to provide testimonies.

All told, my findings about the relationship between trials, truth commissions and reparation programs with the contextual factors of wartime legacies of violence and renewed violence after war underlines the need for holistic thinking. As Meernik et al. (2019, 405) emphasize, the Colombia case emphasizes the importance of not thinking in silos but to consider relationships between various facets of peace processes. Moreover, policymakers and scholars will be challenged to consider how preferences, perceptions, and behavior in terms of peace and justice develop with changes to the nature of political violence, dynamics of violence, and social, political, and economic conditions in Colombia.

Concluding remarks

This dissertation has presented a study of how dynamics of violence shape the establishment and implementation of institutions addressing wartime abuse during and after conflict. To this end, I adopted an analytical framework fit to examine the influence of dynamics of violence and which combines perceptions and actions of national-level actors and war-affected individuals. This approach facilitated viewing policies, institutional repertoires, and implementation in conjunction, which put the 2016 Final Peace Agreement in Colombia in a broader context. Following from this exploration of justice institutions at the intersection between the during and post-conflict period, I believe there are opportunities to further extricate how a conflict context vs post-conflict context shapes the pursuit of justice, broadly speaking, and specifically actors' perceptions of threat and opportunity. Apart from studying post-conflict contexts, examinations of the efforts to address wartime abuses in cases of ongoing armed conflicts, such as Ukraine, Mali, or the Central African Republic, could further our insights about the relationships between conflict dynamics and justice outcomes. Such studies could also assess and refine the utility of the threat-opportunity framework presented in this dissertation. Moreover, future studies could examine interactions between dynamics of violence, or conflict dynamics broadly speaking, and justice outcomes by examining how poor justice outcomes can again feed back into the conflict itself. This could for example be to study how poor experiences with justice institutions may be linked with remobilization – both of ex-combatants and civilians.

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Part 2: The Papers

Paper 1: A tug of war: Pursuing justice amid armed conflict

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Bård Drange

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A Tug of War: Pursuing Justice Amid Armed Conflict

Bård Drange

Peace Research Institute Oslo (PRIO) and University of Oslo (UiO), Oslo, Norway

ABSTRACT

Despite its prevalence in armed conflicts globally, the pursuit of justice and human rights during armed conflict has received relatively little attention compared with efforts taken post-conflict. In this article, I discuss the trajectory of state-led measures to tackle human rights abuses while violence is ongoing, with a focus on the interplay between actors seeking to expose and those seeking to conceal human rights abuses. This expose–conceal framework is used to study the search for justice for abuses committed by paramilitary groups in Colombia in the 2000s. I argue that various domestic and international human rights advocates and civil society organisations clashed with the Colombian Government over questions of accountability. Persistent efforts to expose or conceal abuses produced a tug-of-war dynamic, where the two sides pulled the political debate and judicial frameworks in their preferred direction. This article contributes a conflict studies perspective on the establishment of national-level institutions to advance human rights in a context of high impunity and amid armed conflict. Going forward, I argue that more attention to the during-conflict period can enhance our understanding of how the pursuit of justice plays out after conflict.

KEYWORDS

Justice; armed conflict; human rights; Colombia; victims' rights; AUC; FARC

1. Introduction

Killings of civilians, forced disappearances, displacements, and other human rights abuses are part and parcel of armed conflicts today. To pursue justice for these abuses, victims – along with domestic and international human rights advocates – demand truth, justice, and reparations. A nascent literature has recently recognised the extent to which measures to pursue truth, hold perpetrators accountable, and provide reparations to victims are taken amid armed conflict. While this has provided more knowledge about the impact of judicial and non-judicial measures on conflict intensity and termination types,[1] we know less about how the pursuit of justice unfolds during armed conflict. In this article, I discuss the trajectory of state-led measures to tackle human rights abuses while violence is ongoing, with a focus on the interplay between actors seeking to expose and those seeking to conceal human rights abuses. The expose–conceal framework is

CONTACT Bård Drange bardra@prio.org

[1]See for example Cyanne E Loyle and Helga Malmin Binningsbø, 'Justice during Armed Conflict: A New Dataset on Government and Rebel Strategies' (2018) 62 Journal of Conflict Resolution 442.

developed from a conflict studies perspective through attention to conflict actors' motives and actions as well as the context of ongoing armed conflict. This study thus contributes a conflict studies perspective on the establishment of national-level institutions to advance human rights in a context of high impunity and amid armed conflict.

In this article, I examine accountability measures taken towards paramilitary groups in the armed conflict in Colombia in the 2000s. Colombia is a pertinent case due to the prominence of questions of justice in the context of peace and demobilisation processes as well as the praise the recent peace agreement with the rebel group Fuerzas Armadas Revolucionarias de Colombia (FARC) received for its approach to transitional justice and victims' rights. While amnesties and pardons had historically been the norm in Colombia, the end of the 1990s saw increasingly strong calls for justice. In the 2000s, widespread public debate and controversy over questions of amnesty and accountability surrounded the demobilisation process of paramilitary groups.[2] In this process, later dubbed the Justice and Peace process, general amnesty was scrapped in favour of accountability measures.

Two sides emerged in the Justice and Peace process. Human rights advocates, civil society and victim organisations, some prominent politicians, and international actors sought to expose human rights abuses and strengthen accountability. The government, however, took actions that seem to have served to conceal human rights abuses and limit judicial scrutiny. On the spectrum from stricter to more lenient accountability, each side persistently pulled judicial and non-judicial measures in their preferred direction throughout the 2000s, like a tug of war. This dynamic shaped the pursuit of justice and helps explain key developments in Colombia, including aspects of the 2016 peace agreement with the FARC. It specifically sheds light on the development of the discourse on victims' rights, which has come to dominate questions of human rights abuses in Colombia.

Scholars have examined how transitional justice has been disputed and contested in various regions of the world.[3] There have also been important efforts to examine the drivers of post-conflict and transitional justice, making a comprehensive overview of local, national, and international actors involved in such processes.[4] The expose–conceal framework developed here focuses on a type of contestation that I argue is particularly prominent during conflict. The framework integrates insights from studies of human rights and transitional justice on the one hand and conflict processes on the other. Through attention to conflict actors' motives and the context of ongoing armed conflict, the conflict studies perspective sheds new light on the 'domestic institutionalization' of human rights, which focuses on building and supporting national-level institutions to promote human rights.[5] In particular, this study contributes to our

[2]For example Jemima García-Godos and Knut Andreas O Lid, 'Transitional Justice and Victims' Rights before the End of a Conflict: The Unusual Case of Colombia' (2010) 42 Journal of Latin American Studies 487; Elvira María Restrepo and Bruce Michael Bagley (eds), *La desmovilización de los paramilitares en Colombia: entre el escepticismo y la esperanza* (Ediciones Uniandes 2011).

[3]For example Elin Skaar, Jemima García-Godos and Cath Collins, *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability* (Routledge 2015); Valerie Arnould, 'Transitional Justice in Peacebuilding: Dynamics of Contestation in the DRC' (2016) 10 Journal of Intervention and Statebuilding 321.

[4]Elin Skaar and Eric Wiebelhaus-Brahm, 'The Drivers of Transitional Justice: An Analytical Framework for Assessing the Role of Actors' (2013) 31 Nordic Journal of Human Rights 127.

[5]Steven LB Jensen, Stéphanie Lagoutte and Sébastien Lorion, 'The Domestic Institutionalisation of Human Rights: An Introduction' (2019) 37 Nordic Journal of Human Rights 165.

understanding of how state-led measures can be taken despite high impunity and amid the challenge of ongoing armed conflict.

In the following, I will point to three developments in the literature before presenting the expose–conceal framework. A discussion of methodology will then precede an exploration of motives and actions to expose and conceal in the context of the Justice and Peace process with the paramilitaries in the 2000s. In the discussion section, I will briefly consider developments in Colombia in the 2010s and point to differences in pursuing justice at the height of military confrontations and pursuing it closer to the end of armed conflict. Last, I will conclude and consider implications beyond Colombia.

2. Accountability Amid War

This article speaks to three issues and developments in the scholarship on human rights and justice in the context of armed conflict. The first is the focus on building state-led and national-level institutions, which point to the role of domestic institutions in pursuing human rights globally.[6] This drive for domestic efforts has been prominent for several decades, and the fact that states are considered the key justice provider aligns both with the complementarity principle of the International Criminal Court as well as with more general calls in peacebuilding for national and local ownership.[7]

A second issue, which is given more attention, is actors' motives. Rather than taking motivations for granted, scholars have further examined the basis for why states in particular adopt measures to pursue justice. For example, based on a study of Rwanda, Loyle and Davenport suggest that the post-genocide state pursued a policy of transitional injustice[8] – promoting denial, perpetuating violence, and legitimising authoritarianism. Subotić coins 'hijacked justice' to describe the use of transitional justice for domestic political gains in the Balkans,[9] while Loken, Lake, and Cronin-Furman show how the government of Sri Lanka used accountability measures during war to gain political legitimacy rather than combating impunity.[10] States are the focal point of such studies, but other domestic as well as international actors and their motives and actions are also given attention, including non-governmental organisations,[11] external states and international organisations,[12] and rebel groups.[13]

A third and related development is a recognition that judicial and non-judicial measures are also taken during war. Loyle and Binningsbø label these measures 'during-conflict justice' and define them as a '… judicial or quasi-judicial process initiated during an armed conflict that attempts to address wrongdoings that have taken or are taking place as part of that conflict'.[14] To date, scholars have primarily

[6]Ibid.
[7]Dustin N Sharp, 'Addressing Dilemmas of the Global and the Local in Transitional Justice' (2014) 29 Emory Int'l L. Rev. 71.
[8]Cyanne E Loyle and Christian Davenport, 'Transitional Injustice: Subverting Justice in Transition and Postconflict Societies' (2016) 15 Journal of Human Rights 126.
[9]Jelena Subotić, *Hijacked Justice: Dealing with the Past in the Balkans* (Cornell University Press 2009).
[10]Meredith Loken, Mili Lake and Kate Cronin-Furman, 'Deploying Justice: Strategic Accountability for Wartime Sexual Violence' (2018) 62 International Studies Quarterly 14.
[11]For example Jack Snyder and Leslie Vinjamuri, 'Trials and Errors: Principle and Pragmatism in Strategies of International Justice' (2004) 28 International Security 5.
[12]For example Arnould (n 3).
[13]For example Cyanne E Loyle, 'Rebel Justice during Armed Conflict' (2020) 65 Journal of Conflict Resolution 108.
[14]Loyle and Binningsbø (n 1) 443.

used statistical approaches to shed light on the broad trends and potential usages and impact of such measures.[15] Some explore the usage of such measures depending on regime type and balance of power, and their impact on conflict intensity and termination.[16] Dancy and Wiebelhaus-Brahm investigate domestic trials and find that trials against rebels are associated with higher likelihood of conflict termination, while trials against state agents may be linked with prolonged conflict.[17] Further, Dancy,[18] and Daniels,[19] explore the effects of the use of amnesty during war.

3. Analytical Framework: Expose and Conceal

To date, scholars focused on the use of judicial and non-judicial measures during war have put a strong emphasis on the strategic and pragmatic use of such measures for military or political gains.[20] Yet domestic and international human rights activists also push for accountability.[21] Thus two relatively clear sides form. On the one side are those advocates of justice, accountability, and international human rights who take actions to put pressure on states to address human rights abuses, even against state agents. They include domestic and international human rights advocates, along with other actors such as politicians or victim and other civil society organisations. On the other side are actors who may seek to limit criminal prosecution and truth-seeking measures, sometimes arguing about the needs of peace over justice. Actors seeking to limit criminal prosecutions may also spoil and seek to wreck such processes.[22] States oftentimes play key roles, as they may hijack,[23] avoid,[24] or subvert[25] judicial processes meant to address human rights abuses.

Although a multitude of actors and interests exist, I argue that two such sides are likely to emerge amid armed conflict, where one side works to expose and the other to conceal human rights abuses. I conceive of this tug of war as a longer struggle that takes place in both the design and implementation phases of judicial measures, therefore shaping the trajectory of justice over years and sometimes decades.

3.1. Expose

Various actors may seek to expose the truth about human rights abuses and hold perpetrators accountable. Advocates for justice may be victims and victim organisations, civil

[15]Though see Loken, Lake and Cronin-Furman (n 10); and Milli Lake, 'Organizing Hypocrisy: Providing Legal Accountability for Human Rights Violations in Areas of Limited Statehood' (2014) 58 International Studies Quarterly 515.
[16]Loyle and Binningsbø (n 1).
[17]Geoff Dancy and Eric Wiebelhaus-Brahm, 'The Impact of Criminal Prosecutions during Intrastate Conflict' (2018) 55 Journal of Peace Research 47.
[18]Geoff Dancy, 'Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace' (2018) 72 International Organization 387.
[19]Lesley-Ann Daniels, 'How and When Amnesty during Conflict Affects Conflict Termination' (2020) 64 Journal of Conflict Resolution 1612.
[20]Loken, Lake and Cronin-Furman (n 10); Loyle and Binningsbø (n 1).
[21]Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (1st edn, WW Norton & Company 2011); Hun Joon Kim, 'Structural Determinants of Human Rights Prosecutions after Democratic Transition' (2012) 49 Journal of Peace Research 305.
[22]Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge University Press 2004) 99.
[23]Subotić (n 9).
[24]Kate Cronin-Furman, 'Human Rights Half Measures: Avoiding Accountability in Postwar Sri Lanka' (2020) 72 World Politics 121.
[25]Loyle and Davenport (n 8).

society organisations, judges, politicians, or international human rights actors. While it is diverse in many ways, I argue that using this broad category of justice advocates helps recognise the various actors that together may seek to uncover abuses and advocate for accountability. Importantly, this definition crosses the distinction between international and domestic actors. As a diverse group of actors, justice advocates do not necessarily make a collective and concerted effort together. However, some actors, for example international and domestic human rights proponents, do often collaborate.[26]

In recent decades, accountability norms have gained traction among numerous global and local actors, and a multitude of actors are promoting the pursuit of accountability and justice for human rights abuses. Ever since the tribunals established in Greece in the 1970s and Argentina in the 1980s, the role of justice advocates has been central.[27] Even in democratic states with functioning and independent judicial systems, addressing human rights abuses – especially when the state is involved – usually requires justice advocates to push for it.[28]

What unites justice advocates is the shared goal of exposing human rights abuses and achieving accountability for such crimes committed in the context of armed conflict. While not necessarily working in a coordinated manner, an important aspect of their work is establishing accountability measures for past abuses or contesting current ones. While justice advocates may not have much leverage individually, together they may impact state policies or call for external actors to engage. Their various actions include calling out armed actors for human rights abuses, resisting what they view as improper judicial frameworks, and seeking to construct judicial and political frameworks that recognise the importance of truth-seeking and accountability to a greater degree.

3.2. Conceal

While some seek to expose human rights abuses, others are inclined to conceal such abuses. These actors have typically committed human rights abuses during war,[29] and will seek to prevent truth-telling and subsequently curtail prosecutions.[30] Rebels, paramilitary groups, and states, along with collaborators and funders or war, thus tend to prefer lenient accountability measures and amnesty or pardons for their own human rights abuses. Perpetrators may also fear revenge from collaborators whom they might implicate by telling the truth. Pursuing accountability and exposing abuses is therefore an uphill battle, particularly in the context of ongoing armed conflict.

Among armed groups committing abuses, states play a special role because they can act as both '[p]rincipal violator and essential protector' of human rights.[31] This speaks to states' various functions and incentives, and it underlines the importance of recognising that different state institutions – judicial institutions or sections of an elected body, for example – may sometimes pull in different directions. However, it also reflects the fact that the state is often an important or the most important perpetrator of violence and

[26]Kim (n 21).
[27]Sikkink (n 21).
[28]Joanna R Quinn, 'Whither the "Transition" of Transitional Justice?' (2014) 8 Interdisciplinary Journal of Human Rights Law 63.
[29]Chandra Lekha Sriram, 'Spoilers of Justice' (2013) 31 Nordic Journal of Human Rights 248, 251.
[30]Sikkink (n 21) 259.
[31]Jack Donnelly, *Universal Human Rights in Theory and Practice* (3rd edn, Cornell University Press 2013) 35.

wants to secure its legitimacy and power; states seek to control the narrative of culpability for violence and human rights abuses to secure what they view as (post-conflict) stability. Furthermore, when facing strong and persistent armed groups, states may scrap accountability and truth-seeking in favour of amnesty or pardons to incentivise them to lay down arms.[32]

It can be argued that the use of amnesty and minimal scrutiny of past abuses is essential for peace and reconciliation,[33] but such arguments may be particularly compelling for a state if this also conceals the state's own abuses. States may seek to avoid accountability measures by creating weak institutions that keep abuses covered.[34] Loyle and Davenport suggest judicial measures can be used to ' … promote denial and forgetting, to perpetuate violence and armed conflict, and to legitimize authoritarianism while increasing state repression'.[35] It is noteworthy that states have been shown to take measures to avoid accountability long before any calls are made for justice, for example by substituting extrajudicial killings with forced disappearances, which are more difficult to trace back to a government.[36] Some scholars suggest that states have used militias to help conceal abuses and avoid accountability by creating 'plausible deniability'.[37]

If pressured to pursue accountability, states may seek to re-shape, reconfigure, or obstruct such measures to avoid investigations into their responsibility for or complicity in human rights abuses. When a state limits the scope of justice processes, for example limiting prosecutions to certain types of crimes or specific time periods, this could indicate that it is concealing or denying abuses.[38] Furthermore, a state can regulate participation in these processes.[39] A state can also enact judicial measures to create smoke and mirrors, for example by actively prosecuting some instances of particularly grave sexual violence.[40]

3.3. Tug of war

In the context of armed conflict, actors may use words and actions to expose or conceal human rights abuses. When working to expose or conceal abuses, gains made by one side are perceived as losses for the other. This repeated and persistent dynamic constitutes a tug of war, in which actors seek to pull frameworks or political debates in their preferred direction.

The tug-of-war analogy emphasises domestic tension about the legacy of human rights abuses. While not rejecting or downplaying nuances in actors' motives and actions, I suggest the clash between efforts to expose and conceal abuses comes to dominate, as

[32]Daniels (n 19).
[33]Bernhard Weimer and Natália Bueno, 'Paz e Reconciliação Em Moçambique. Conjunturas Críticas e Dependência Da Trajectória', *Desafios para Moçambique 2020* (IESE 2020).
[34]Cronin-Furman (n 24).
[35]Loyle and Davenport (n 8) 131.
[36]Caroline L Payne and M Rodwan Abouharb, 'The International Covenant on Civil and Political Rights and the Strategic Shift to Forced Disappearance' (2016) 15 Journal of Human Rights 163; see also Joseph M Cox, 'Keeping out of Harm's Way? Constitutional Due Process and State Repression' (2020) 19 Journal of Human Rights 307.
[37]Sabine C Carey, Michael P Colaresi and Neil J Mitchell, 'Governments, Informal Links to Militias, and Accountability' (2015) 59 Journal of Conflict Resolution 850, 869.
[38]Loyle and Davenport (n 8) 131.
[39]Ibid. 131–32.
[40]Loken, Lake and Cronin-Furman (n 10).

states seek to avoid too much scrutiny of human rights abuses, retain legitimacy, and control the narrative. Actors seeking to expose versus conceal abuses may vary over time and depend on those actors' involvement in the conflict. The relative strength of actors at each end of the rope may vary; despite the agency of civilians and human rights advocates, their ability to influence state policy amid armed conflict is often minimal.

Efforts to expose human rights abuses may raise awareness of such issues and help establish accountability institutions or judicial frameworks, but gains for justice advocates can dwindle as the movement loses steam or as states limit activists' manoeuvring space. In a context of ongoing war, efforts to hold perpetrators responsible may be particularly challenging as states have incentives to both grant amnesty to rebels and to limit investigations into human rights abuses committed by its own forces or by forces it supports. Apart from their impact on the trajectory of justice, changes to an accountability regime amid war can also threaten the predictability for armed groups considering or undergoing demobilisations, making the state seem untrustworthy or unpredictable.

In summary, if questions about justice reach public debate, they are likely to lead to contestation over the best approach to justice and be characterised by discourses and actions that serve to expose or conceal human rights abuses. In other frameworks, contestation has been used to describe the efforts of various actors in transitional justice.[41] The framework used here stresses a binary debate and approach to questions of justice, which I suggest is particularly strong in the context of ongoing armed conflict. Discourses and actions resemble a zero-sum game, where judicial frameworks and political debates are pulled by actors from opposing sides, resulting in an erratic trajectory for justice.

4. Studying Justice During Armed Conflict

During armed conflict, limited and unreliable information, continued victimisation, and ongoing confrontations may create an unpredictable and chaotic environment in which to pursue justice. Studying such attempts requires attentiveness to conflict actors and their interests and motives as well as to debates in and decisions by political and judicial bodies. Rather than focusing on specific measures or events, I explore motives and actions over time. This suggests that a measure is not necessarily an endpoint, but may lead to further mobilisation in favour or against.[42] The purpose is to identify which actors were most important in pushing to expose or conceal human rights abuses. This approach facilitates an analysis over time, as new knowledge or evidence about abuses, new political leadership or changing conflict dynamics may impact the pursuit of justice.

Caution is advised in studies of motives commonly viewed as unfavourable, for example concealing human rights abuses to avoid accountability. As Dancy and Wiebelhaus-Brahm write:[43] 'Even when presented with a near-complete record of events, it is difficult to determine which purpose motivates actors who initiate judicial proceedings.'

[41]For example Skaar and Wiebelhaus-Brahm (n 4); Arnould (n 3).
[42]For example Bronwyn Anne Leebaw, 'The Irreconcilable Goals of Transitional Justice' (2008) 30 Human Rights Quarterly 95, 118.
[43]Dancy and Wiebelhaus-Brahm (n 17) 49.

Rather than comprehensively identifying all motives (if that is even possible), the purpose is to observe systematic actions that help indicate motives. Analysing actions may be particularly fruitful when stated objectives diverge from or obscure real motives. Remaining cautious is key because finding a 'smoking gun' pointing to efforts to conceal is unlikely.

In this article, I draw on reports, the work of Colombian and international scholars, and interviews with Colombian and international analysts, practitioners, and human rights advocates. Five formal interviews and two dozen informal conversations were conducted in Bogotá and digitally in the period between November 2019 to February 2021.[44]

5. Background: Justice and Peace in Colombia

The armed conflict in Colombia has been ongoing since the largest rebel group, FARC, was established in 1964. In 2016 the Colombian Government signed a peace agreement with the FARC, but a smaller rebel group, the Ejército de Liberación Nacional (ELN), remains active. The armed conflict has caused at least 220,000 deaths, the majority of them civilians, and more than 7 million victims of other acts, primarily forced displacement, but also kidnappings, torture, and sexual violence. Paramilitary groups arose in the 1980s and grew to comprise a myriad of fragmented armed groups fighting an anti-guerrilla and anti-communism campaign by the early 2000s. From 1997 to 2006, most of these groups were united under the umbrella of the Autodefensas Unidas de Colombia (AUC). Paramilitary groups have displaced millions of Colombians, killed and forcibly disappeared hundreds of thousands, and committed an estimated 1400 massacres.[45]

For most of its history, Colombia's approach to peace processes and demobilisations was to combine amnesties with reintegration benefits for ex-combatants of armed groups. Over the last two decades, however, it has developed an ever-expanding patchwork of measures to address human rights abuses that go beyond amnesty for all. This started as automatic amnesties were replaced by accountability mechanisms in the early 2000s.

The Justice and Peace process refers to the AUC demobilisation process, which started with rapprochements between the AUC and the administration of President Álvaro Uribe Vélez (2002–2010) in 2002 and led to the passing of the Justice and Peace Law in Congress in 2005. The law established the Justice and Peace Tribunals, demanding that leaders and mid-level commanders be held accountable by serving a 5–8-year prison sentences in exchange for truth-telling, providing reparations to victims, and committing to non-repetition.[46] The backdrop for this process was Uribe's combined strategy of all-out war on the FARC, which, after a failed peace process under the previous president, corresponded with many Colombians' frustrations and anti-FARC sentiments. With the paramilitaries, however, he quickly initiated negotiations after the AUC declared a unilateral ceasefire in late 2002, a requirement for negotiations. His Peace Commissioner signed a two-page agreement with the AUC in July 2003.

[44]Data collection for this study was approved by the Norwegian Centre for Research Data, case number 771946.
[45]Francisco Gutierrez-Sanin, *Clientelistic Warfare: Paramilitaries and the State in Colombia* (Peter Lang 2019) 13.
[46]Ley 975 de 2005 por la cual se dictan disposiciones para la reincorporación de miembros de grupos armados organizados al margen de la ley, que contribuyan de manera efectiva a la consecución de la paz nacional y se dictan otras disposiciones para acuerdos humanitarios (Ley de Justicia y Paz 2005) (Colombia); see also García-Godos and Lid (n 2) 498ff.

Between November 2003 and April 2006, official documents report a total of 30,944 persons demobilised from 37 blocks of the AUC.[47] Parallel to these demobilisations, Colombia's Congress negotiated the legal framework that would guide the process.

6. Analysis: Exposing and Concealing Human Rights Abuses in Colombia

During the Justice and Peace process in Colombia in the 2000s, two sides formed around the question of punishment for paramilitary human rights abuses. According to the empirical material drawn upon in this article, the sides were characterised as in favour of or against stricter justice measures for paramilitaries. In this section, I first analyse actions taken by proponents of stricter justice measures who sought to expose human rights abuses. Second, I analyse actions taken by proponents of more lenient justice measures, who I will argue were partly motivated by a desire to conceal human rights abuses. Third, I illustrate how this tug of war played out in Colombia.

6.1. Exposing abuses and pursuing accountability

Unlike Colombia's many peace processes in the 1980s and 1990s, the demobilisations of the AUC were characterised by debates about accountability from the very beginning. Debates were kickstarted in 2003 with the Alternative Penalties Law proposed by the Uribe Administrations, in which judges could revoke prison sentences, disallow defendants to take on public functions, be political candidates, or carry arms, and other such restrictions.[48] This proposed law was met by an uproar from a diverse set of actors calling for stricter punishments for human rights abuses and stronger compliance with international standards. For example, executive director of Human Rights Watch' Americas Division José Miguel Vivanco said it would mean impunity due to the '… derisory and disproportionate punishments for the magnitude of the crimes against humanity'.[49] In 2004, several members of congress presented their own proposed laws, which went further than the Alternative Penalties Law in abiding to international standards of accountability and victims' rights, but they were ultimately defeated by the government's revised version, the Justice and Peace Law, approved by Congress in 2005. International human rights organisations, the United Nations High Commissioner for Human Rights, and the European Union pushed for greater efforts to tackle accountability. The United States supported the establishment and implementation of accountability measures yet was adamant about allowing for the extradition of drug traffickers, which advocates viewed as an obstacle for accountability and exposing abuses.[50]

Throughout the 2000s, various civil society organisations, congress members, international actors, and others continuously contested what they viewed as inadequate

[47]Office of the High Commissioner for Peace, 'Proceso de Paz Con Las Autodefensas: Informe Ejecutivo' (2006) 92 <https://reliefweb.int/sites/reliefweb.int/files/resources/9DEF64898DC8E5DEC1257195003707C0-govt-col-19jun.pdf> accessed 13 November 2020. However, some caution is advised with this number; also collaborators, drug traffickers, and persons with no relations to the AUC reportedly demobilised. Hence, the actual number of fighters is probably lower.
[48]Legislative Bill 85, Ley de alternatividad penal (2003).
[49]Nicolás Palau Van Hissenhoven, 'Trámite de La Ley de Justicia y Paz: Elementos Para El Control Ciudadano al Ejercicio Del Poder Político' (Fundación Social 2006) 46–47 <www.programassocialesdirectos.org/phocadownload/publicaciones/tramite_ley_justicia_paz.pdf> accessed 29 August 2019. This and other translations from Spanish to English by author.
[50]Annie R Bird, *US Foreign Policy on Transitional Justice* (Oxford University Press 2015) 123–42.

measures to hold perpetrators accountable, ensure victims' rights, and deconstruct the financial and political power networks behind paramilitary crimes. These actors pulled the government-proposed Alternative Penalties Law from 2003 towards more accountability and victims' rights. Its revised form, the Justice and Peace Law, thus adopts international human rights discourse and terminology and is considerably more ambitious and outspoken on victims' rights.

Nonetheless, many parties have argued that the Justice and Peace Law was not designed to ensure that these aspirations were actually fulfilled. Among these were participants in a civil society initiative headed by lawyer Gustavo Gallón Giraldo from the Colombian Commission of Jurists, who claimed that reduced sentences were not accompanied by guarantees of actual truth-telling and reparations, and so the Justice and Peace Law constituted a 'veiled pardon'.[51] The initiative also questioned the law's constitutionality.[52] Ruling on this lawsuit in 2006, the Colombian Constitutional Court considered parts of the law unconstitutional, and demanded the loss of reduced sentences if defendants did not tell the full truth and the inclusion of ex-combatants' legal assets, not just their illegal ones, to provide reparations to victims.[53] The National Movement of Victims of State Crimes, an umbrella organisation of hundreds of victims' organisations, also criticised the law. They pointed to collusion and the lack of recognition of state crimes as preventing real justice gains.[54] Lawyers and scholars likewise contested the law; Uprimny and Saffon,[55] for example, argued that the government abused and manipulated transitional justice in its own favour.

Many assessments of the Justice and Peace process point to its shortcomings, suggesting it has brought '… neither peace nor justice'.[56] That was the case for most informants for this article, who emphasised victims' lack of recognition and impunity for many paramilitaries. Indeed, for many informants and Colombians in general, the Justice and Peace Tribunals became perpetrator-focused spectacles, sometimes through televising AUC leaders' 'Free accounts', and where victims were only given access to proceedings through video streaming in nearby rooms.[57] Despite the shortcomings, many informants simultaneously expressed a 'glass half-full' perception of elements of progress. This sentiment was more common among observers and experts than human rights advocates. They emphasised that the Justice and Peace Tribunals helped expose numerous crimes, uncover mass graves, gain information about paramilitary violence, operations and functioning, and illustrate considerable collusion between state actors and paramilitaries. The judicial proceedings have identified the remains of 4300 forcibly disappeared persons and a total of 11,000 victims have received reparations, although this is a small component of the larger numbers of estimated victims of disappearances and of

[51]Lisa J Laplante and Kimberly Theidon, 'Transitional Justice in Times of Conflict: Colombia's Ley de Justicia y Paz' (2006) 28 Michigan Journal of International Law 49, 84.
[52]García-Godos and Lid (n 2) 497.
[53]Laplante and Theidon (n 51) 104–105.
[54]Catalina Diaz, 'Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia' in Kieran McEvoy and Lorna McGregor (eds), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Hart Publishing 2008) 197.
[55]Maria Paula Saffon and Rodrigo Uprimny, 'Uses and Abuses of Transitional Justice in Colombia' in Morten Bergsmo and Pablo Kalmanovitz (eds), *Law in Peace Negotiations* (2nd edn, Torkel Opsahl Academic EPublisher 2010).
[56]León Valencia, 'Ni justicia ni paz' in Eduardo Pizarro Leongómez and León Valencia (eds), *Ley de justicia y paz* (Grupo Editorial Norma 2009).
[57]Juan José Lozano and Hollman Morris, *Impunity* (Nour Films and Autlook Filmsales 2010).

victims in general.[58] Significantly, the Justice and Peace process has contributed to uncovering the penetration of the AUC into the Colombian state through requiring paramilitaries to confess crimes.[59] Concurrently and with growing persistence, the Colombian Supreme Court has furthered this work through its 'Parapolitica' investigations.[60]

In sum, throughout the 2000s, various civil society organisations, congress members, and others continuously contested what they viewed as inadequate measures to hold perpetrators accountable, ensure victims' rights, and deconstruct the financial and political power networks behind paramilitary crimes. One observer suggests that civil society has always demanded peace and worked 'tirelessly and endlessly' to that end, but that the debates around justice in the context of the demobilisation '… catalyzed many organizations that were already there by opening structured debates about victims' rights'.[61] The efforts to expose human rights abuses were grounded in the need for recognition and satisfaction of victims' rights, which was to permeate efforts to expose human rights abuses and hold perpetrators accountable.

6.2. Concealing collusion

In the late 1990s and early 2000s, the collusion of politicians with the paramilitaries and in massacres committed by paramilitary groups was becoming well known. In 2001, the United States put the AUC on its terrorist list and gradually put more pressure on Colombia to comply with human rights standards.[62] With the AUC becoming a political liability, the Uribe Administration's response was a quick demobilisation. Peace Commissioner Restrepo argued this visible demobilisation was necessary to get at least some support for the process, and that such support would have been unlikely in the case of lengthy discussions.[63] Restrepo also argued the Alternative Penalties Law, proposed by the Uribe government in 2003, was a necessary incentive for AUC demobilisation.[64] President Uribe said he understood

> … the concern raised by offering alternative sentences for grave crimes … But in a context of 30,000 terrorists, it must be understood that a definitive peace is the best justice for a nation in which several generations have never lived a single day without the occurrence of a terrorist act.[65]

The government's focus, both in words and actions, seems to have been the demobilisation of the AUC, backed by arguments about the necessity of lenient treatment to compel paramilitaries to demobilise and showing results quickly to get popular support.

[58]Gwen Burnyeat and others, 'Justice after War: Innovations and Challenges of Colombia's Special Jurisdiction for Peace' (*LSE Latin America and Caribbean blog*, 2020) <https://blogs.lse.ac.uk/latamcaribbean/2020/04/03/justice-after-war-innovations-and-challenges-of-colombias-special-jurisdiction-for-peace/> accessed 24 May 2020.
[59]Douglas Porch and María José Rasmussen, 'Demobilization of Paramilitaries in Colombia: Transformation or Transition?' (2008) 31 Studies in Conflict & Terrorism 520, 532–33.
[60]Mauricio Romero and León Valencia (eds), *Parapolitica: La Ruta De La Expansion Paramilitar Y Los Acuerdos Politicos* (Intermedio Editores 2007).
[61]Interview, respondent 1, International observer (New York/Online, January 2020).
[62]Porch and Rasmussen (n 59) 526.
[63]León Valencia, 'León Valencia, Corporación Nuevo Arco Iris' in Cynthia J Arnson and others (eds), *Colombia's Peace Processes: Multiple Negotiations, Multiple Actors* (The Woodrow Wilson International Center for Scholars 2006) 14.
[64]Van Hissenhoven (n 49) 27.
[65]See Laplante and Theidon (n 51) 77.

In this context, the government had no clear plan or strategy for pursuing justice; the process was incremental and decisions taken on a step-by-step basis.[66] As Lyons suggests, the Uribe Administration's justifications implied a trade-off between peace and justice, suggesting that a pursuit of justice would impede peace and reconciliation.[67] The government's disinterest in accountability and justice is also indicated by the lack of effort to look into potential atrocities committed by rank-and-file paramilitaries during the demobilisations,[68] or verify whether leaders benefiting from reduced sentences had truly demobilised.[69] Acemoglu, Robinson, and Santos shed light on the particular role of congress members' collusion with paramilitary groups in the voting on the Justice and Peace Law.[70] They show evidence for Colombian senators voting in line with paramilitary interests, favouring lenient punishment and avoiding extradition. Informal ties and clientelist relationships between paramilitary groups and regional and national politicians and security apparatus have been well established in research.[71] This includes ties in Congress; in the early 2000s, paramilitary leaders themselves boasted of controlling more than 30% of congress members.[72]

Paramilitary leaders seem to have been motivated to take part in demobilisation to avoid extradition and prison sentences and to keep both illegally and legally gained assets after demobilising.[73] Rangel suggests that paramilitaries became increasingly aware that demands for truth, justice, and reparations had grown substantially, thus recognising that they had little hope of demobilising in exchange for amnesty.[74] Notwithstanding prison sentences, the Justice and Peace Law did not include extradition or the requisition of legally gained assets, leaving paramilitary leaders favourable towards it. The Constitutional Court's ruling of 2006 filled many loopholes, however, leaving paramilitary leaders dissatisfied; a few abandoned the demobilisation process.[75]

From 2006, the Uribe Administration's reluctance to further scrutinise paramilitary crimes became more obstructive. This coincided with the Parapolitica scandal gaining traction, revealing new insights into various regional and national politicians' collusion with paramilitary leaders. According to Human Rights Watch,[76] the Uribe administration sought to obstruct the investigations by delegitimising the Supreme Court, pushing against congressional reforms to sanction or remove paramilitary influence in

[66]Interview, respondent 2, Colombian practitioner (Bogotá, November 2019).
[67]Amanda Lyons, 'Introduction: For a Just Transition in Colombia' in Amanda Lyons and Michael Reed Hurtado (eds), *Contested Transitions: Dilemmas of Transitional Justice in Colombia and Comparative Experience* (International Center for Transitional Justice [ICTJ] 2010) 24.
[68]Rodrigo Uprimny, 'Las leyes de Justicia y Paz' in Elvira María Restrepo and Bruce Michael Bagley (eds), *La desmovilización de los paramilitares en Colombia: entre el escepticismo y la esperanza* (Ediciones Uniandes 2011) 110.
[69]Human Rights Watch, '¿Rompiendo El Control? Obstáculos a La Justicia En Las Investigaciones de La Mafia Paramilitar En Colombia' (Human Rights Watch 2008) 77 <www.hrw.org/legacy/spanish/reports/2008/colombia1008/> accessed 15 September 2020.
[70]Daron Acemoglu, James A Robinson and Rafael J Santos, 'The Monopoly of Violence: Evidence from Colombia' (2013) 11 Journal of the European Economic Association 5, 36.
[71]For example Restrepo and Bagley (n 2); Gutierrez-Sanin (n 45).
[72]Human Rights Watch (n 69) 96.
[73]María Teresa Ronderos, *Guerras Recicladas: Una Historia Periodistica Del Paramilitarismo En Colombia* (Penguin Random House Grupo Editorial 2014) 353.
[74]Alfredo Rangel, *El Poder Paramilitar* (Fundación Seguridad & Democracia 2005) 17.
[75]Pablo Kalmanovitz, 'Introduction: Law and Politics in the Colombian Negotiations with Paramilitary Groups' in Bergsmo and Kalmanovitz, *Law in Peace Negotiations* (n 55) 7–8.
[76]Human Rights Watch (n 69) 5.

Congress, and suggesting reforms to remove the Parapolitica investigations from the Supreme Court.

The most controversial example of the Uribe Administration's actions to obstruct the Justice and Peace Tribunals was the extradition of 14 top AUC commanders to the United States to stand trial on drug-trafficking charges in 2008. The administration claimed that this was because commanders had not fully confessed their crimes and provided reparations to victims, hence breaking with the demobilisation agreement, and because they had continued to conduct crimes from prison.[77] Human Rights Watch,[78] and others,[79] however, suggest that the extraditions came as paramilitary commanders had started revealing information in recent months and were prepared to reveal more.[80] For many, the extradition incident illustrates Uribe's efforts to prevent uncomfortable truths about collusion reaching the public,[81] and has substantially influenced the search for truth, justice, and reparations.[82] An alternative interpretation, offered by an analyst and practitioner involved in these processes, is that Uribe extradited the paramilitary leaders in order to cut ties between them and mid-level commanders, and hence prevent further collaboration.[83]

Finding a definitive indicator of the Uribe Administration's concrete strategy of concealing human rights abuses is unlikely, but abovementioned evidence points in this direction. An international observer suggests that while Uribe was a '… powerful president and dominated Congress, he had a weak side: he was aware that allies in Congress would have serious judicial problems with Parapolitica', and so many of his actions in the context of the Justice and Peace process seem to have been damage control: 'Uribe never liked the outcome, [but] did whatever needed to avoid collateral damage.'[84]

To summarise, overwhelming evidence points to collusion, strong incentives to conceal human rights abuses, and relatively systematic actions to limit and obstruct investigations.

6.3. Tug of war

Various justice advocates worked to expose human rights abuses in Colombia in the 2000s. They criticised what they viewed as inadequate legal frameworks, suggested revised frameworks, and called out the government for obstructing the implementation of these measures. On the other hand, the government seemed primarily concerned with addressing the risks associated with its connections with the AUC and with collusion between politicians at all levels, without exposing human rights abuses or collusion. It therefore acted to demobilise the AUC, and in doing so sought to limit the reach of

[77]Adriaan Alsema, 'Massive Extradition of Paramilitary Bosses' *Colombia Reports* (13 May 2008) <https://colombiareports.com/massive-extradition-of-paramilitary-bosses/> accessed 9 February 2021.
[78]Human Rights Watch (n 69).
[79]For example Lozano and Morris (n 57).
[80]See also Bird (n 50) 138.
[81]Arturo J Carrillo, 'Truth, Justice and Reparations in Colombia: The Path to Peace and Reconciliation' in Virginia M Bouvier (ed), *Colombia: Building Peace in a Time of War* (United States Institute of Peace 2009); Valencia, 'Ni justicia ni paz' (n 55).
[82]International Human Rights Law Clinic, 'Truth behind Bars: Colombian Paramilitary Leaders in US Custody' (Berkeley: University of California 2010) <https://repositories.lib.utexas.edu/bitstream/handle/2152/7467/Truthbehindbars-Berkeley.pdf?sequence=2&isAllowed=y> accessed 17 February 2021.
[83]Interview, respondent 3, Colombian expert and practitioner (Bogotá, November 2019).
[84]Interview, respondent 4, International observer (New York/Online, November 2019).

legal frameworks; it also took other actions to limit investigations and thus conceal indications of collusion and human rights abuses.

Beyond the repeated contestation described in previous sections, the tug-of-war dynamic is illustrated by the array of proposed and signed laws, Constitutional Court revisions, and presidential decrees. One example is the 2006 Constitutional Court revisions, which were contested by various presidential decrees, one of which identified ambiguity about whether the Court's revisions would work retroactively. The decree suggested it did not, which essentially meant that the stronger guarantees that the Constitutional Court pushed through would not count for the overwhelming majority of ex-combatants, as they had demobilised between 2003 and April 2006.[85] Victims, human rights organisations, and others mobilised and forced the government to modify this aspect.

Another source of great contestation throughout the demobilisations process was whether paramilitaries should be classified as having conducted 'political crimes', and hence benefit from sentence reductions. While their crimes were categorised as political in 2002, the debate was reignited in 2007 when the Supreme Court of Justice suggested that paramilitaries' rank-and-file could not get amnesty because belonging to the AUC was not a political crime. This meant that around 26,000 rank-and-file paramilitaries were left in a 'judicial limbo', causing significant uncertainty; this was revolved judicially in 2010 with the passing of Law 1424.[86]

These examples further exemplify the contestation between the Uribe Administration and various victims and human rights organisations in the aftermath of the 2005 Justice and Peace Law. Some describe the Justice and Peace Law as a reasonable, or politically viable, compromise between the interests of peace and the interests of justice.[87] Uprimny and Saffon suggest that, on a spectrum ranging from 'forgive and forget' to a 'full application of victims' rights', both sides moved from their respective positions onto a middle ground.[88] However, this is also a ground that neither party is satisfied with, particularly justice advocates, and both sides continuously seek to pull it in their preferred direction. Rather than an endpoint, the congressional debates over the creation of the Justice and Peace Law have continued in the implementation phase in the latter half of the 2000s and beyond. While advocates would argue that the quests for justice and quests for peace can be complementary, the desire of the Uribe Administration to limit judicial scrutiny has made any advancements toward justice a potential risk for political allies. Increasing justice for paramilitary crimes seems to have potentially negative repercussions for the government, turning the process into something resembling a zero-sum game.

7. Discussion

The Justice and Peace process in Colombia is a controversial yet, by some standards, extraordinary effort to pursue justice amid armed conflict. Despite being renowned for

[85]Uprimny (n 68) 106.

[86]'24.643 ex paramilitares rasos se presentaron para resolver situación jurídica' *Semana* (Bogotá, 28 December 2011) <www.semana.com/24643-ex-paramilitares-rasos-presentaron-para-resolver-situacion-juridica/251383-3/> accessed 12 July 2021.

[87]For example Eduardo Pizarro Leongómez, 'Reparar el Bote en Alta Mar' in Pizarro Leongómez and Valencia, *Ley de justicia y paz* (n 56); Restrepo and Bagley (n 2).

[88]Saffon and Uprimny (n 55) 390–94.

offering impunity for human rights abuses, Colombia went further than many countries in creating a state-led, national-level tribunal holding pro-government militias accountable while fighting was ongoing. Overall, a key outcome of the process was the demobilisation of more than 30,000 AUC ex-combatants from 2003 to 2006 and significant advancements in security, at least for some types of crimes, in the following years.[89] Yet the process ultimately left human rights advocates disappointed. Some suggest the process has legitimised the paramilitary groups' operations,[90] without engaging with the deeper political, military, and economic structures of paramilitary crimes and collusions.[91] This, Lyons suggests, '… defies the widely known and documented reality of a history of State and elite complicity and active engagement with paramilitarism in the country'.[92] While the AUC as an umbrella organisation with a larger national political project no longer exists, many of its political and economic structures persist. In this section, I briefly bring the discussion of justice and accountability in the 2000s to the 2010s, and, based on this, suggest differences between pursuing justice at the height of military confrontations and pursuing it closer to the end of armed conflict.

In this article I argue that a tug of war played out over whether to expose (with relatively stricter justice measures) or conceal (with more lenient ones) human rights abuses by paramilitaries in the 2000s. Various victims and human rights activists were thus pitted against the Uribe Administration and political allies. However, after 2010, when Juan Manuel Santos succeeded Uribe, the dynamic was in some respects reconfigured. The Santos Administration inched closer to those seeking to expose abuses and satisfying victims' rights. Even though Santos was Uribe's former defence minister and destined successor, he approached human rights abuses differently. As well as the Victims and Land Restitution Law approved in 2011, Santos backed reforms of the Justice and Peace Tribunals, equipping them to further unravel criminal structures behind paramilitary crimes.[93] Despite not fully satisfying victims' demands, Santos has also been more forthcoming than Uribe about extrajudicial killings by state forces between 2002 and 2008.[94] The victim-centred approach has been cemented in institutions stemming from the 2016 peace agreement. This includes the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz) putting victims centre-stage and focusing on macro-criminality and facilitating structures, the Truth Commission's victim-focused events and workshops, and the Unit for the Search of Disappeared Persons' quest to bring closure to victims' families. While the laws and institutions established during both Santos and Uribe's Administrations were forms of political compromise, their respective laws and institutions reflect two quite different approaches.

The case of Santos and Uribe also illustrates how actors and individuals may switch standpoints depending on the perpetrator of crimes.[95] Uribe criticised the transitional

[89]Francisco Gutiérrez Sanín and Andrea Gonzales Peña, 'Colombia's Paramilitary DDR and Its Limits' in Antonio Giustozzi (ed), *Post-conflict Disarmament, Demobilization and Reintegration: Bringing State-building Back In* (Routledge 2012).
[90]Diaz (n 54) 214.
[91]Lyons (n 67) 19.
[92]Ibid.
[93]Saskia Nauenberg Dunkell, 'From Global Norms to National Politics: Decoupling Transitional Justice in Colombia' (2021) 9 Peacebuilding 190, 199.
[94]Andrés Bermúdez Liévano, 'Colombia: The Day When President Santos Asked for Forgiveness' (*JusticeInfo.net*, 24 June 2021) <www.justiceinfo.net/en/79049-colombia-day-president-santos-asked-forgiveness.html> accessed 24 February 2022.
[95]I am grateful to reviewer 2 for emphasising this point.

justice framework of the 2016 peace agreement for being a '… framework for impunity'.[96] This accusation may seem paradoxical given that it was Uribe's Administration that proposed the Alternative Penalties Law without prison sentences for paramilitaries, but it underlines the contested notion of what is meant by 'justice advocate' at different points in time. It also indicates a multiplicity of visions of justice. Uribe and his supporters have suggested that rebel groups, which they label terrorist groups, may not be treated the same way as the AUC, which they suggest engaged in counterterrorist and self-defence activities. This may help explain why the Uribe Administration initially proposed a highly lenient framework for punishing paramilitaries, while Uribe condemned a similar approach taken by the Santos Administration towards the FARC.

Contestation over the peace process and justice questions culminated in a 2 October 2016 plebiscite: the 'No' campaign narrowly defeated a first version of the agreement, which was then slightly revised. This and subsequent disputes over justice and accountability indicate that lingering feelings of injustice will continue to characterise Colombia's relentless pursuit of justice. Controversy around the nature of the FARC – political or criminal – and appropriate punishment along with questions of state responsibility will remain contentious for a long time. A key point of contention today is the type of restricted liberty that FARC rebels will be subject to: rather than prison sentences, they will likely be confined in rural areas, something which is hard to swallow for those who see prison as the only appropriate punishment.[97] In many ways, different stances on human rights abuses form part of the high degree of polarisation and societal tension in Colombia, which fundamentally touches on questions regarding who are most responsible for the conflict in the first place, and if rebel or paramilitary groups may be justified in their use of violence.

The case of Colombia offers at least four insights into differences between pursuing justice at the height of military confrontations and pursuing it closer to the end. One practical but significant insight is that, given the fog of war, judicial institutions created amid armed conflict may face greater challenges in estimating the number of abuses and defendants, and thus in making realistic plans. An example from the Justice and Peace Tribunals was the rapid escalation in the volume of defendants.[98] From an allegedly two-digit number at the onset, the number of defendants rose to nearly 3000 within few years,[99] and overwhelmed the system. The abovementioned reforms facilitated a more contextual approach and a focus on macro-cases, which shortened the list of defendants considerably. This disappointed victims who wanted to confront their perpetrators,[100] but significantly sped up progress; only a handful of sentences were passed prior to 2013, but around 50 sentences and convictions of close to 470 paramilitaries have been handed out since.[101] By the time the Special Jurisdiction for Peace

[96]Jamie Rebecca Rowen, *Searching for Truth in the Transitional Justice Movement* (Cambridge University Press 2017) 90.
[97]Interview, respondent 5, Colombian practitioner (Bogotá/Online, February 2021).
[98]Dunkell claims the government grossly underestimated the number of defendants: see Saskia Nauenberg Dunkell, 'The Politics of Transitional Justice: Seeking to End More than 50 Years of War in Colombia' (PhD thesis, UCLA 2018) 143 <https://escholarship.org/uc/item/45m2z4m3> accessed 7 May 2019.
[99]García-Godos and Lid (n 2) 504.
[100]Craig K Lang, 'The Impact of Transitional Justice on Colombia's Rule of Law' (2019) 3 Middle Atlantic Review of Latin American Studies 15.
[101]Burnyeat and others (n 57); see also Rama judicial, Republica de Colombia, 'Salas de Justicia y Paz' (2021) <www.ramajudicial.gov.co/web/salas-de-justicia-y-paz;jsessionid=12889EBB9EABEE60D87CC9036459B57C.worker2> accessed 14 January 2021.

was established in 2016, however, magistrates had a wealth of information, greater oversight, and benefitted from Colombia's experiences with the Justice and Peace Tribunals.

Another insight is that wartime collaboration between states and pro-government militias makes a state reluctant to dig into human rights abuses and uncover structures involving the state itself or political elites. In Colombia, paramilitaries influenced the terms of their own demobilisation through supportive congress members.[102] Historical collusion with paramilitaries significantly limited the Uribe Administration's interest in pursuing accountability and exposing human rights abuses. This speaks to Donnelly's point that a state, and in this case wartime leaders, may simultaneously be a violator and a protector of human rights,[103] underlining that states and other actors may primarily protect human rights when others are responsible.[104] It also corresponds with findings from Sri Lanka, where accountability processes targeting state forces were restricted to some individuals and used towards military ends.[105]

A third insight relates to how, despite the Uribe Administration's reluctance, Colombia established national-level tribunals holding paramilitary leaders accountable during war. In this, Colombia stands apart from many other cases. Contrary to the situation described by Lake in the Democratic Republic of Congo,[106] the institutions built in Colombia were not captured by wartime elites, but functioned to a large extent independently, uncovering uncomfortable information about elite politicians' collusion with paramilitaries. Nonetheless, the Justice and Peace process was controversial, and has been described as a legitimisation process.[107] This speaks to one potential risk of pursuing justice amid war. During war, actors that are most opposed to accountability measures may also have more power, whether political, military, or economic, to shape the conditions of justice. One contextual factor in Colombia that is not common in all countries experiencing war is the considerable influence of civil society and the political opposition. In terms of timing,[108] despite rampant general impunity, Colombia already had a somewhat strong and independent judiciary before establishing the tribunals in 2005. This helps explain why, despite dealing with groups with which politicians colluded and with which the state security apparatus collaborated, Colombia established national-level institutions to expose abuses and hold paramilitaries accountable.

A fourth and final insight is that changing normative tensions and political realities may shape the pursuit of justice. In both 2003 and 2016, Human Rights Watch expressed dissatisfaction with accountability measures for paramilitaries and the FARC respectively. Although it fought alongside key domestic and international human rights organisations in the 2000s, as shown in this article, Human Rights Watch was criticised for helping derail the peace process in 2016.[109] As part of normative and political tensions,

[102]Acemoglu, Robinson and Santos (n 69).
[103]Donnelly (n 31) 35.
[104]Sriram (n 29).
[105]Loken, Lake and Cronin-Furman (n 10).
[106]Milli Lake, 'Building the Rule of War: Postconflict Institutions and the Micro-Dynamics of Conflict in Eastern DR Congo' (2017) 71 International Organization 281.
[107]Diaz (n 54) 214.
[108]Laurel E Fletcher, Harvey M Weinstein and Jamie Rowen, 'Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective' (2009) 31 Human Rights Quarterly 163, 218.
[109]Greg Grandin, 'Did Human Rights Watch Sabotage Colombia's Peace Agreement?' (3 October 2016) *The Nation* <www.thenation.com/article/archive/did-human-rights-watch-sabotage-colombias-peace-agreement/> accessed 12 February 2021.

this underlines the challenges in adapting international norms of human rights into domestic contexts.[110] Further, it concerns differences between armed groups, the gravity of abuses, the political context, and opinions about appropriate punishment, all of which can change as armed conflicts subside and wind down.

8. Conclusion

In this article, I have discussed the trajectory of state-led measures to tackle human rights abuses while violence is ongoing, focusing on the interplay between actors seeking to expose and those seeking to conceal human rights abuses. I used this expose–conceal framework to study the quest for justice for human rights abuses committed by paramilitary groups in Colombia in the 2000s. The persistent efforts to either expose or conceal abuses produced a tug-of-war dynamic, as the two sides pulled the political debate and judicial frameworks in their preferred direction. Although many actors and individuals cannot easily be seen as being on either end of the rope, the tug-of-war analogy holds insights into the messy trajectories of justice such pulling contests may lead to. Such a trajectory often leaves justice advocates disappointed and disillusioned, and it can also cause unpredictability for groups considering or undergoing demobilisation processes. Substantially, the expose–conceal framework also points to how a state taking on a dual responsibility to fight insurgents and provide justice can face the paradoxical task of prosecuting its own human rights abuses or collusion with pro-government militias.

Though most justice advocates see a glass half empty, the efforts to expose abuses in Colombia have been considerable. Through democratic and judicial channels, justice advocates put the government in a squeeze between compromising with domestic and international actors and managing allegations and risks of exposure of dubious links, and the potential sanctions that could follow, all while attempting to defeat or demobilise armed groups. Despite controversies, the national-level institutions established in the 2000s provided a first experience of accountability in demobilisation processes in Colombia. This subsequently shaped the pursuit of justice in the 2016 peace agreement, where the approach to transitional justice and victims' rights has been praised as ambitious and sophisticated.

Colombia's experience can provide insights into potential dynamics for accountability norms and justice advocates in ongoing armed conflicts, especially as such norms and advocates may grow in strength. During conflict, ongoing victimisation and limited information may complicate judicial progress and wartime leaders may have interests in concealing abuses, especially any involving themselves or collaborators. As wartime leaders typically have stronger economic, political, and military power during armed conflict, establishing judicial measures at this time can generate considerable risks. However, with a somewhat independent judiciary from the outset, Colombia shows that domestic institutions can be built, even during war, to expose abuses and hold perpetrators accountable. Indeed, efforts to build institutions and awareness along with persistent efforts to expose abuses and unravel crimes, collusion, and perpetrators,

[110]Nauenberg Dunkell, 'From Global Norms to National Politics' (n 93); Annika Björkdahl and Louise Warvsten, 'Friction in Transitional Justice Processes: The Colombian Judicial System and the ICC' (2021) 15 International Journal of Transitional Justice 636.

may help tackle the legacy of human rights abuses over time. Pressure, institutions, and recognition of victims' rights may be critical bulwarks in the face of societal tension over state responsibility, collusion, and appropriate punishment.

Research on state-led measures amid conflict may be of great relevance in conflicts as varied as Syria, Myanmar, and Mali, as practitioners and advocates are quick to point to the need for justice and nationally anchored institutions. To advance our understanding of how abuses can be addressed amid violence and by a state engaged in the fighting itself, it is fruitful to combine insights from literature on human rights and transitional justice with literature on conflict processes. Together, they can provide insights into legal and political issues, both of which are central to understanding the search for justice during conflict. Engaging with the motives and actions of actors involved in the pursuit of justice can help us recognise and understand the trajectories and derailments of justice processes over time.

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ORCID

Bård Drange http://orcid.org/0000-0002-0635-2205

Paper 2: Justice now and later: How measures taken to address wrongdoings during armed conflict affect post-conflict justice[1]

R&R in *International Journal of Transitional Justice* (with Helga M. Binningsbø and Cyanne Loyle)

[1] This paper adopts footnotes and US spelling as per the journal's standards.

Justice now and later: How measures taken to address wrongdoings during armed conflict affect post-conflict justice

Abstract: Transitional justice has become a default response when rebuilding post-conflict societies. Indeed, to reconcile and move forward, it is argued that societies need to confront the violence of the past. But what factors influence when and how past violence will be addressed? We argue that judicial and quasi-judicial processes initiated while armed conflict is ongoing have substantial impact on the judicial policies pursued once conflict has ended. Through an analysis of during and post-conflict justice in Colombia since 2000, we demonstrate that a history of addressing human rights violations makes it more likely that transitional justice will be adopted given three mechanisms: policy precedent, institutional repertories, and public expectations. We analyze this relationship through global patterns of during- and post-conflict justice since 1946. Our findings confirm the expectation that justice polices pursued (or not pursued) during conflict are a strong factor in understanding how the past will be addressed post-conflict.

Keywords: During-conflict justice, civil war, peace agreement, Colombia

Introduction

The transitional justice (TJ) framework in the 2016 Peace Agreement between the Colombian government and the FARC rebel group is considered one of the most comprehensive and ambitious justice policies adopted to date. Highly innovative in its nature, the TJ framework is perhaps the most victim-centered framework globally, gives similar treatment to both state and non-state agents, and prescribes alternative forms of punishment ('special sanctions') which also function as a form of reparations to victims.[2] Following from the Agreement, the Colombian government has implemented a criminal tribunal, a truth commission, and a unit for the search of missing persons, all to address wrongdoings from the five decades long conflict. While pioneering in many respects, these transitional justice institutions were neither proposed nor created in a political vacuum, but should rather be considered as the culmination of a patchwork of accountability and reconciliation laws and institutions in Colombia dating back at least two decades. Beginning in the early 2000s, the Colombian government, with pressure from domestic and international actors, began to gradually build up a justice regime intended to acknowledge and remedy the violence of the ongoing conflict. It is these early frameworks of accountability and reconciliation which served as the precedent and repertoire for future breakthroughs in transitional justice.

While transitional justice is often studied independent of the dynamics of the preceding conflict,[3] the trajectory in Colombia calls us to question the impact that judicial and quasi-judicial processes adopted while armed conflict is ongoing have on post-conflict institutional outcomes.[4] Post-conflict or transitional justice refers to the processes put in place to wrestle with the abuses

[2] Kristian Herbolzheimer, 'Innovations in the Colombian Peace Process,' Noref: Norwegian Peacebuilding Resource Center (2016); Clara Sandoval, Hobeth Martínez-Carrillo and Michael Cruz-Rodríguez, 'The Challenges of Implementing Special Sanctions (Sanciones Propias) in Colombia and Providing Retribution, Reparation, Participation and Reincorporation,' *Journal of Human Rights Practice* 14(2) (2022): 478–501.

[3] See discussion in Cyanne E. Loyle and Helga Malmin Binningsbø, 'Justice during Armed Conflict: A New Dataset on Government and Rebel Strategies,' *Journal of Conflict Resolution* 62(2) (2018): 442–466.

[4] Quasi-judicial refers to those policies or institutions which function in similar ways to the judiciary (e.g., court system), but are distinct from the formal judiciary.

of past periods of violence. These processes include human rights trials, truth commissions, reparations programs, amnesty agreements, and purging or lustration processes. While these institutions are primarily studied in the post-conflict period, similar processes and policies are often put in place before a conflict has ended, a phenomenon referred to as during-conflict justice.[5]

The Colombia case offers insights into the ways in which violence addressed during armed conflict often directly impacts accountability decisions made once conflict has ended.[6] We argue that the relationship between during and post-conflict justice is a product of three mechanisms: policy precedent, institutional repertoire, and public expectations. To test this argument, we combine two unique data sources on during and post-conflict judicial processes to examine the relationship between these two temporal periods of judicial reckoning. Furthermore, we conduct an in-depth analysis of the relationship between during- and post-conflict justice in Colombia to illustrate how the three mechanisms work in practice. We argue that under certain conditions the use of judicial processes during conflict makes post-conflict justice more likely and that past experiences with a particular type of justice policy leads to a policy continuity in the post-conflict period. The use of judicial processes during conflict creates a policy precedent for addressing violations in a particular way as well as an institutional repertoire of justice options that are drawn upon in the post-conflict period. Furthermore, prior experiences with justice processes stoke public expectations for accountability which continue into the post-conflict period. In identifying and accounting for the mechanisms which make transitional justice more likely, our work adds to our understanding of transitional justice adoption and provides policy implications for those interested in advancing the cause of post-conflict justice.

Our paper offers three important contributions to the literature on post-conflict reconstruction and rule-of-law. First, to the best of our knowledge, this is the first systematic analysis of the relationship between during and post-conflict justice processes. Bringing a mixed methods approach to this study we are able to generate and test new theory on this relationship. Second, we identify three mechanisms that may explain the correlation between the during and post-conflict periods which have implications for post-conflict institutions beyond the current field of inquiry. In other words, we have no reason to believe that our findings on the impact of policies during and post-conflict apply solely to the field of transitional justice. Third, our findings highlight the importance of accounting for past judicial behavior in our attempts to strengthen accountability following armed conflict and offer policy implications for those interested in strengthening rule-of-law in the post-conflict period.

The Determinants of Post-Conflict Justice

The literature on the determinants of transitional justice has primarily focused on factors related directly to the post-conflict period or political transition. Balance of power arguments, for example, have highlighted the centrality of post-conflict elites and their residual power for

[5] Loyle and Binningsbø, supra n 2.

[6] In this article, we refer to Colombia as post-conflict in regard to the termination of the armed conflict with the FARC and recognize that this classification has not meant a cessation of violence throughout the country (see for example Francisco Gutierrez-Sanin, *¿Un nuevo ciclo de la guerra en Colombia?* DEBATE, 2020).

determining the likelihood that past violators will be held to account.[7] The greater the relative (political) strength of the old government compared to the new or incoming government, the less likely that the new government will pursue "harsh" forms of justice.[8] In this conception, old elites (including members of the military, security forces, or judiciary) block implementation of post-conflict justice processes by threatening political resistance, violence, or taking back power if accountability measures are pursued. Nalepa finds that variation in the "skeletons in the closet" of current elites influences the political bargains around accountability which are struck post-transition.[9]

Additional explanations for the use of post-conflict justice focus on the role of civil society to push for or resist the implementation of justice processes. These explanations stress that governments in a newly transitioned or post-conflict country are unlikely to pursue policies which could likely lead to civil unrest or upset the status quo.[10] Skaar and Wiebelhaus-Brahm suggest that civil society and victims' organizations often play an important role in pushing for transitional justice.[11] International advocacy networks can further strengthen domestic claims. Kim finds strong evidence for the role of transnational advocacy networks as well as policy diffusion over time and space.[12] Specifically, he suggests that national and international advocacy for accountability is key to guaranteeing "persistent and frequent human rights prosecutions."[13] External incentives also condition this calculus, such as potential membership in the European Union or growing international norms of accountability.[14] Sikkink, who conducts a global analysis of human rights trials from 1980 through 2005, argues that the presence of these trials has grown in large part due to international pressures and a normative shift towards prosecutions for violators of human rights.[15]

This work focuses on factors driving transitional justice decisions in the post-conflict period. A nascent literature has examined judicial and quasi-judicial measures applied during war with a focus on the impact of types of conflict termination.[16] These studies, however, are global in

[7] Helga Welsh, 'Dealing with the Communist Past: Central and East European Experiences after 1990,' *Europe-Asia Studies* 48(3) (1996): 413–428.
[8] Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991).
[9] Monika Nalepa, *Skeletons in the Closet: Transitional Justice in Post-Communist Europe* (New York, NY: Cambridge University Press, 2010).
[10] Jose Zalaquett, 'Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints' in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, ed. Neil Kritz (Washington, DC: United States Institute of Peace, 1995).
[11] Elin Skaar and Eric Wiebelhaus-Brahm, 'The Drivers of Transitional Justice: An Analytical Framework for Assessing the Role of Actors,' *Nordic Journal of Human Rights* 31(2) (2013): 127–148.
[12] Hun Joon Kim, 'Structural Determinants of Human Rights Prosecutions after Democratic Transition,' *Journal of Peace Research* 49(2) (2012): 305–320.
[13] Ibid., 306.
[14] Jelena Subotić, *Hijacking Justice: Dealing with the Past in the Balkans* (Ithaca, NY: Cornell University Press, 2009); Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America,' *Chicago Journal of International Law* 2(1) (2001): 1–33; Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W. W. Norton & Company, 2011).
[15] Sikkink, supra n 13.
[16] Geoff Dancy, 'Deals with the Devil? Conflict Amnesties, Civil War, and Sustainable Peace,' *International Organization* 72(2) (2018): 387–421; Geoff Dancy and Eric Wiebelhaus-Brahm, 'The Impact of Criminal

scope and have not addressed the potential direct connection between during and post-conflict transitional justice.

Case-specific work has engaged directly with the interaction between prior attempts at justice and post-conflict accountability. In a study on Mozambique, Weimer and Bueno suggest the continued use of amnesty laws to provide national reconciliation was based on a path dependent logic from a historical reliance on impunity.[17] Looking at the case of Colombia, Dunkell[18] and Ruiz[19] identify continuity from the 2005 accountability measures towards paramilitaries to those measures taken in the 2016 Peace Agreement. Furthermore, Drange suggests domestic and international advocates for accountability and victims' rights have gradually enabled more ambitious and victims-centered approaches in Colombia.[20] These cases suggest clear links between accountability pursued while conflict is ongoing and later post-conflict attempts which have not been fully theorized in the transitional justice literature.

Connecting justice during and after conflict

While research has focused on the post-conflict determinants of transitional justice, the path of justice in the Colombia conflict against the FARC illustrates the ways in which judicial behavior during armed conflict impacts the post-conflict period. Building from the Colombia case, we argue that the use of justice processes during armed conflict can make post-conflict justice more likely because behavior during conflict creates a policy precedent for certain behavior, offers an institutional repertoire from which to draw, and creates public demand for certain interventions. These factors create the conditions under which policy choices are replicated and built upon across time. This does not mean that identical institutions are always reintroduced once a conflict has ended; previous iterations can be built on, learned from, and/or innovated in favor of an improved institution in the post-conflict period. Furthermore, it is possible that certain factors influence this relationship such as how the conflict terminated and who holds power following the violence. Nevertheless, the judicial and quasi-judicial approaches taken while a conflict is ongoing should lend insight into a government's post-conflict judicial behavior.

To begin with, the adoption of judicial institutions creates a policy precedent, offering prior policy guidance on how to proceed in certain situations. Policy precedent refers to the way in which a prior policy or action functions as an example or guide in how to handle similar circumstances later. Particularly when dealing with atrocities following war, how governments have chosen to address wrongdoings in the past can offer guidance for how to proceed in the future. Bueno traces the policy sequencing in Mozambique between an impunity-serving truth

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Prosecutions during Intrastate Conflict,' *Journal of Peace Research* 55(1) (2018): 47–61; Loyle and Binningsbø, supra n 2; Lesley-Ann Daniels, 'How and When Amnesty during Conflict Affects Conflict Termination,' *Journal of Conflict Resolution* 64(9) (2020): 1612–1637.

[17] Bernhard Weimer and Natália Bueno, 'Paz e Reconciliação Em Moçambique. Conjunturas Críticas e Dependência Da Trajectória,' in *Desafios Para Moçambique* (2020).

[18] Saskia Nauenberg Dunkell, 'From Global Norms to National Politics: Decoupling Transitional Justice in Colombia,' *Peacebuilding* 9(2) (2021): 190–205.

[19] Marco Alberto Velásquez Ruiz, 'The Emergence and Consolidation of Transitional Justice within the Realm of Colombian Peacebuilding,' in *Truth, Justice and Reconciliation in Colombia: Transitioning from Violence, Europa Perspectives in Transitional Justice*, ed. Fabio Andrés Díaz Pabon (New York: Routledge, 2018).

[20] Bård Drange, 'A Tug of War: Pursuing Justice Amid Armed Conflict,' *Nordic Journal of Human Rights* 40(2) (2022): 346–364.

commission adopted in the early 1980s by Mozambique's first president, Samora Machel, and the subsequent Frelimo government approved amnesty following the 1992 General Peace Agreement.[21] In Colombia, we see consecutive governments relying on a precedent of impunity for wrongdoing until pressure from domestic and international actors around the demobilization of paramilitary groups in 2003 offers a shock to this policy, pushing for greater accountability. Once a policy shift has taken place, accountability precedents and a focus on victims' rights continues through the signing of the 2016 Peace Agreement.

Similar, but conceptually distinct from the impact of policy precedent is the influence of institutional repertoires. An institutional repertoire is the menu of institutional options which can be mobilized in a particular circumstance. When choosing between mechanisms of accountability, for example, policy makers are likely to draw from a repertoire of institutional arrangements which have been used in the past. While precedent refers to previous policy choices, e.g., to hold violators accountable for past actions or to favor impunity, the institutional repertoire mechanism refers specifically to the adoptions of similar institutions to those previously employed. As Skaar and Wiebelhaus-Brahm write of human rights trials, "When there are functioning courts and trained lawyers and judges, the chances of fair trials increase."[22] In other words, when human rights trials have been used in the past, the cost of creating new institutions is reduced, making it likely that the use of certain institutional forms will continue. In the period from 2005 till today, Colombia established and refined the tools it needed to pursue a strategy of trials with truth-seeking measures and reparations. Instead of continuously building new accountability institutions from scratch, consecutive governments drew on similar tools as had been used in the past and took actions to refine or reconfigure these institutions along the way.[23] Drawing from a historical repertoire of institutions allows governments to not reinvent the institutional wheel. Even while conflict termination and regime transitions offer an opportunity for institutional innovation, governments often fall back on prior institutional repertoires when deciding how to deal with the past.

In addition to policy precedent and institutional repertoires, past policies are also likely to establish public expectations for certain institutional responses, thereby increasing the likelihood of public pressure for specific judicial outcomes. For example, if reparations for certain harms were given during the conflict there may be an expectation of financial compensation for harms in the post-conflict period. These expectations of specific responses likely condition public demand and put increasing pressure on the post-conflict government to respond to past abuses in a particular way. In Colombia, reactions among key human rights activists towards the 2005 Justice and Peace Law, was to strive to improve on and reconfigure it to ensure greater victims' rights.[24]

[21] Natália Bueno, 'Different mechanisms, same result: Remembering the liberation war in Mozambique,' *Memory Studies* 14(5) (2021): 1018–1034.
[22] Skaar and Wiebelhaus-Brahm, supra n 10, 136.
[23] Juan Carlos, Arboleda-Ariza, Isabel Piper-Shafir and Gabriel Prosser Bravo, 'Reparation policies in Colombia: Memory as a Repertoire,' *Memory Studies*, 0(0) (2020).
[24] Rodrigo Uprimny and Maria Paula Saffon, 'La ley de "justicia y paz": ¿una garantía de justicia y paz y de no repetición de las atrocidades?' in *¿Justicia transicional sin transición?* ed. Rodrigo Uprimny, María Paula Saffon Sanín, Catalina Botero Marino, and Esteban Restrepo Saldarriaga (Bogotá: DeJuSticia, 2006).

The impact of policy precedent, institutional repertoire, and public expectations should all work together to suggest that the implementation of justice processes during armed conflict increases the likelihood of adopting post-conflict justice once a conflict has ended. We therefore expect that:

H1: The use of justice processes during armed conflict makes post-conflict justice more likely.

While our three mechanisms suggest that addressing wrongdoings while an armed conflict is ongoing will make post-conflict justice more likely, these same drivers also make certain institutional forms more likely. Given the institutional repertoire and public expectations arguments, past experience with trials, for example, should make it more likely for a government to use trials following armed conflict. We would expect this same relationship for other justice policies such as reparations programs, truth commissions, and amnesties. We therefore expect that experience with a specific type of justice process during conflict will make that same type of process more likely once the conflict has ended. For this reason, we hypothesize that:

H2a: The use of trials during conflict makes post-conflict trials more likely.

H2b: The use of reparations during conflict makes post-conflict reparations more likely.

H2c: The use of truth commissions during conflict makes post-conflict truth commissions more likely.

H2d: The use of amnesties during conflict makes post-conflict amnesties more likely.

Research Design

To test our hypotheses about the relationship between justice processes initiated during armed conflict and the processes initiated once conflict has ended, we combine data from the During-Conflict Justice (DCJ)[25] and the Post-Conflict Justice (PCJ)[26] datasets.[27] Both of these datasets collect information on the judicial and quasi-judicial policies adopted by actors to address the violence of armed conflicts. The DCJ dataset includes information on judicial processes adopted while conflict is ongoing, while the PCJ dataset collects information on judicial processes once conflict has ended. Both datasets collect information on the use of trials or criminal tribunals, truth commissions or commission of inquiry, reparations programs, amnesty offers, lustration or purging processes, and exiles adopted specifically in regard to wrongdoings which took place during a particular armed conflict. The two datasets are matched based on the unique conflict identifiers in the UCDP/PRIO Armed Conflict Dataset,[28] leaving us with a dataset of 388

[25] Loyle and Binningsbø, supra n 2.
[26] Helga Malmin Binningsbø, Cyanne E Loyle, Scott Gates and Jon Elster, 'Armed conflict and post-conflict justice, 1946–2006: A dataset,' *Journal of Peace Research* 49(5) (2012): 731–740.
[27] Available for download at http://justice-data.com/.
[28] Nils Petter Gleditsch, Peter Wallensteen, Michael Eriksson, Margareta Sollenberg and Håvard Strand, 'Armed Conflict 1946–2001: A New Dataset,' *Journal of Peace Research* 39(5) (2002): 615–637.

observations of post-conflict periods[29] following all extra-systemic, internal, and internationalized internal armed conflicts occurring between 1946 and 2011.[30]

The DCJ dataset's unit of analysis is individual during-conflict justice events – 2205 in total, whereas the PCJ dataset's unit of analysis is post-conflict peace periods – of which 236 have at least one post-conflict justice process. Due to the difference in unit of analysis, we use the cross-sectional PCJ dataset as our basis and aggregate individual DCJ events to conflict episodes corresponding with the post-conflict peace periods. The unit of analysis in this paper is thus individual observations of post-conflict peace periods defined as at least one year of armed conflict inactivity (less than 25 battle-related deaths). We do not observe the post-conflict periods after the first five-year duration.

To capture the use of justice processes in the post-conflict period (dependent variable), we rely on several variables from the PCJ dataset. These variables measure whether a certain justice process was implemented within the post-conflict peace period. The variables are dichotomous, recording the presence or absence of post-conflict justice processes. In this paper we look at four conflict-related justice processes: trials, truth commissions, reparation programs, and amnesties. We include post-conflict justice processes that were initiated by the government (Side A), by the rebel group(s) (Side B), or by the government and rebels together. We exclude processes initiated by international actors.[31] We use both a general dependent variable – *post-conflict justice* – that has the value 1 if at least one of these processes were present in the post-conflict period and 0 if not, and four specific dependent variables, one for each of the justice processes. For example, our post-conflict trial variable has a value of 1 if there is at least one trial in the post-conflict period and 0 if not.

The independent variables in our analysis are mirrors of the dependent variables but measure the presence or absence of these conflict-related justice processes during conflict. The variables are aggregated based on information in the DCJ dataset. Given that there can be multiple justice events (of the same or different type) within one year, we aggregated information about multiple justice events throughout a conflict episode into five dichotomous independent variables, one general – *during-conflict justice variable* – with the value 1 if at least one of the four justice processes (trial, truth commission, reparation, and amnesty) were present at least once in the conflict episode and 0 if not, and four specific independent variables, one for each justice process.[32] For example, our during-conflict truth commission variable has a value of 1 if there is at least 1 truth commission during the conflict and 0 if not.

[29] Information about the post-conflict period, in particular justice processes, covers the years 1946 to 2016, ensuring a full post-five-year period after the conflict episodes ended.

[30] Since the UCDP/PRIO ACD is revised and updated annually, and the PCJ and DCJ datasets are based on different versions (the PCJ dataset is based on UCDP/PRIO ACD version 17-2 and the DCJ dataset is based on UCDP/PRIO ACD version 4-2012) five observations in DCJ did not have corresponding observations in PCJ and 75 observations in PCJ did not have corresponding observations in DCJ – primarily due to the difference in the time covered.

[31] Note that 'government' and 'rebel' relates to Side A and Side B in the UCDP/PRIO Armed Conflict Dataset such that post-conflict justice processes initiated by a rebel group (Side B) which ousted the government (Side A) is included as a Side B sender of post-conflict processes.

[32] We only include DCJ initiated by governments (Side A) as we do not expect the same mechanisms are at play when rebel groups initiate (quasi-) DCJ.

We also include six control variables that we expect may influence the use of post-conflict justice processes, reflecting mechanisms emphasized by previous research as discussed above. To capture the post-conflict power relations between the warring parties, we include a dummy variable for whether the conflict ended with a *peace agreement* or not, taken from the UCDP conflict termination dataset version 3-2021.[33] Given growing international attention and pressure for post-conflict accountability processes, we include a dummy variable reporting whether the conflict ended after the ICC was ratified in 2002 or not (*post-ICC*). To capture national pressure for accountability and victims' rights, we include a *civil society* variable from the V-Dem dataset.[34] The Core Civil Society Index measures the robustness of civil society on a range from 0 to 1), using the average score for the last conflict year and first peace year.[35] To capture the legacy of conflict, we include controls for the type of conflict, whether the rebels fought to get control over a specific territory or over the government (*territorial conflict*), and the severity of conflict, whether the conflict reached a cumulative number of battle deaths larger than 1000 (*civil war*). Both these variables are from the UCDP/PRIO Armed Conflict Dataset.[36] Finally, we control for the *region* in which the conflict took place, separating between Europe (the reference category), Middle East, Asia, Africa, and Americas.

To test our hypotheses about the effect of during-conflict justice on post-conflict justice processes, we run logistic regressions using Stata 15 with post-conflict peace periods as the unit of analysis. We cluster the observations on country to account for non-independence, assuming that justice processes in a particular post-conflict period are non-independent from justice processes in a different post-conflict period within the same country, but independent across different countries.

Empirical Analysis

In this paper we argue that the use of judicial and quasi-judicial processes during armed conflict impacts the institutional decisions which are made once a conflict has ended. In Table 1 below we present the statistical analyses of these relationships. Table 1 shows the basic relation between justice during and justice after conflict, both bivariately (model 1) and with control variables (model 2). Both models confirm the expectation in hypothesis 1, that the presence of at least one justice process during conflict increases the likelihood that there is at least one justice process after the conflict has terminated. Replacing the dependent and independent variables

[33] Joakim Kreutz, 'How and When Armed Conflicts End: Introducing the UCDP Conflict Termination Dataset,' *Journal of Peace Research* 47(2) (2010): 243–250.

[34] Michael Coppedge, Michael, John Gerring, Carl Henrik Knutsen, Staffan I. Lindberg, Jan Teorell, David Altman, Michael Bernhard, M. Steven Fish, Adam Glynn, Allen Hicken, Anna Lührmann, Kyle L. Marquardt, Kelly McMann, Pamela Paxton, Daniel Pemstein, Brigitte Seim, Rachel Sigman, Svend-Erik Skaaning, Jeffrey Staton, Steven Wilson, Agnes Cornell, Lisa Gastaldi, Haakon Gjerløw, Nina Ilchenko, Joshua Krusell, Laura Maxwell, Valeriya Mechkova, Juraj Medzihorsky, Josefine Pernes, Johannes von Römer, Natalia Stepanova, Aksel Sundström, Eitan Tzelgov, Yi-ting Wang, Tore Wig and Daniel Ziblatt, 'V-Dem [Country-Year/Country-Date] Dataset v12', Varieties of Democracy (V-Dem) Project (2022), https://doi.org/10.23696/vdemds22.

[35] In a robustness check we replace civil society strength with a *political regime* variable (polity2) from the PolityV dataset, ranging from -10 (fully autocratic) to 10 (fully democratic). Like the civil society variable, we use the average score for the last conflict year and first peace year. Monty G. Marshall, Monty G. and Keith Jaggers, 'Polity IV Project: Political Regime Characteristics and Transitions, 1800–2002. Dataset Users' Manual' (Center for International Development and Conflict Management, University of Maryland, 2002).

[36] Gleditsch et al., supra n 27.

with two count variables of the different types of justice processes present, i.e., zero to four processes, yields similar results (see Appendix 1): the more different types of justice processes adopted during conflict, the more types of post-conflict justice processes.

Regarding control variables, conflicts that ended with peace agreements are more likely to be followed by justice processes, while territorial conflicts are less likely to have them. There are no differences in the overall likelihood of post-conflict justice processes depending on the strength of civil society, whether the conflict ended before or after the ICC was established, or the severity of conflict. Post-conflict societies in Asia are significantly less likely to initiate justice processes in the aftermath of conflict compared to countries in Europe, while the Middle East, Africa, and the Americas do not differ.

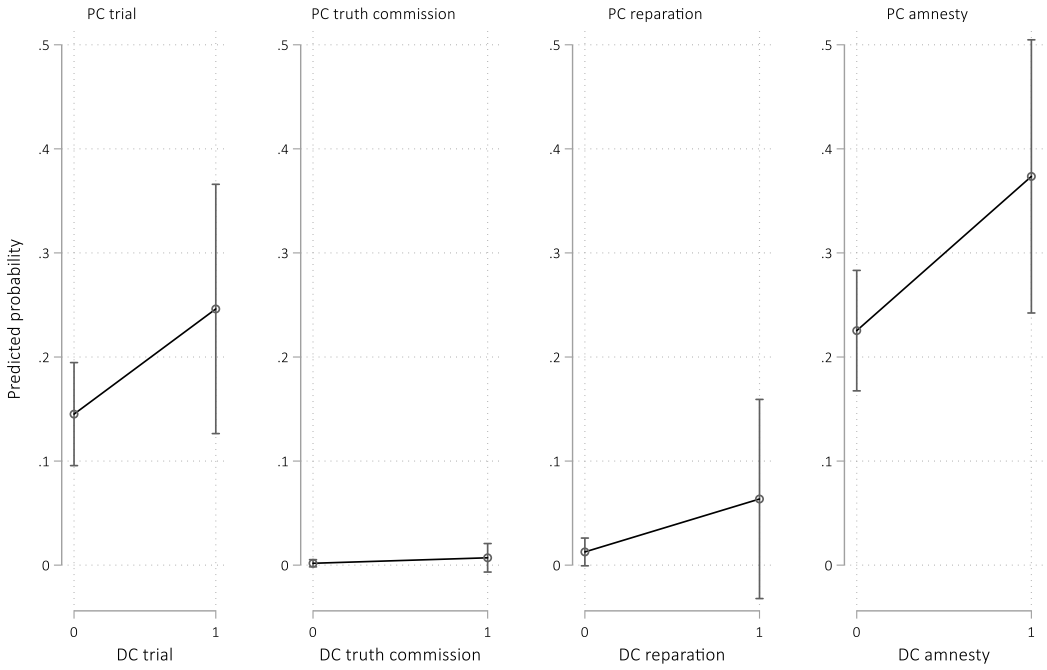
Table 1: During- and post-conflict justice, 1946–2016.

VARIABLES	(1) Post-conflict justice	(2) Post-conflict justice
During-conflict justice	1.147***	1.037***
	(0.278)	(0.315)
Peace agreement		1.574***
		(0.330)
Post-ICC (2002)		-0.0229
		(0.315)
Civil society		0.498
		(0.518)
Territorial		-1.053***
		(0.263)
Civil war		-0.163
		(0.245)
Region (Ref: Europe)		
Middle East		-0.738
		(0.513)
Asia		-0.812*
		(0.433)
Africa		-0.244
		(0.402)
Americas		0.409
		(0.562)
Constant	-0.679***	-0.0940
	(0.226)	(0.506)
Observations	362	354

Note: Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1.

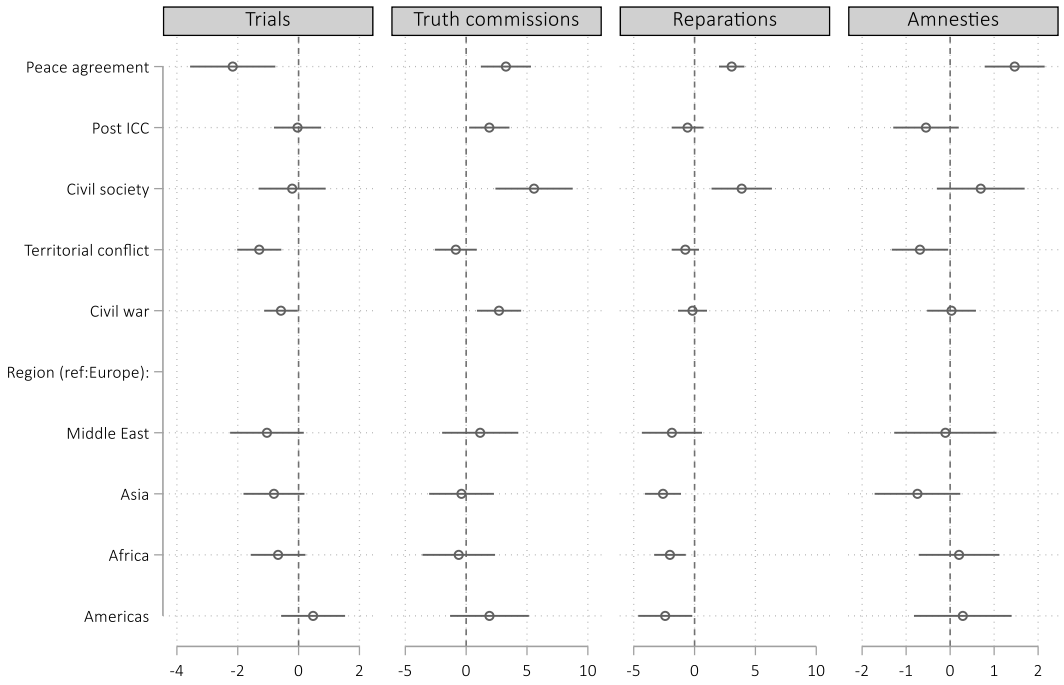
Next, we investigate the types of justice processes separately to assess the credibility of the four sub-hypotheses, H2a–2d. Figure 1 shows the predicted probabilities of each of the four post-conflict justice processes given the absence or presence of the same type of justice process during conflict (with all other variables at their means). All four process types show positive relationships between the use of judicial or quasi-judicial processes during and after conflict. For both trials and amnesties, the probability of them occurring post-conflict almost doubles if they were also used during conflict. The chance of a post-conflict trial increases from 14.5 to 24.6 percent if there was at least one trial process during conflict. For amnesties, the likelihood increases from 22.5 percent without to 37.4 percent with during-conflict amnesties. Truth commissions and reparations are less common processes both during and after conflict. The likelihood of truth commissions post-conflict is not significantly affected by their use during conflict, but the probability of reparations post-conflict raises substantially when there were reparations also during conflict, from 1.3 to 6.4 percent. These findings suggest a strong relationship between the institutional repertoires during and after conflict.

Figure 1: Predicted probabilities of post-conflict justice processes by absence (0) or presence (1) of during-conflict justice processes, 1946–2016.



Note: N = 354. The full statistical models, including control variables, are shown in Appendix 2.

Figure 2: Coefficient plots for control variables and four post-conflict justice processes, 1946–2016.



Note: N = 354. The full statistical models, including during-conflict justice processes, are shown in Appendix 2.

Figure 2 shows coefficient plots for the effect of the control variables on post-conflict justice processes for the same models as in Figure 1.[37] The control variables fare a bit differently in the models with disaggregated justice processes compared to the aggregated results presented in Table 1. Governments, for example, are less likely to use post-conflict trials after peace agreements, but more likely to initiate truth commissions, reparations, and amnesties. The predicted probability of a post-conflict trial is only 3.1 percent when conflicts end with peace agreements compared to 21.8 percent without peace agreements. The probability of truth commissions is 3.1 percent (compared to 0.1 percent without), whereas the probability of reparations is 16.9 percent and the probability of amnesty is 55.4 percent in the same context. This coincides with previous research that suggests the power balance post-conflict (or post-transition) influences policy decisions. Parties to peace agreements are likely to demand compromises that protect their future, shying away from accountability processes and requiring amnesties. Reparations constitute less of a threat for combatants and are thus easier to agree on. Increasing international pressure for post-conflict justice has a positive effect on truth seeking, with the predicted probability of a post-conflict truth commission increases from 0.2 percent prior to the ratification of the Rome Statute in 2002 to 0.9 percent in the years thereafter. The effect is opposite for amnesties, where the probability decreases from 27.7 percent before 2002

[37] Predicted probabilities calculated with the other variables in the models at mean values.

to 18.2 percent after. Although international pressure may have been successful in making impunity for wrongdoings less acceptable, this pressure may have to target post-conflict societies more directly to have an effect on the likelihood of trials, as Sikkink argues.[38]

Further, stronger civil societies are positively and significantly related to truth commissions and reparations. Going from the fifth percentile to the 95th (from value 0.04 to 0.90 on the 0–1 civil society variable) increases the predicted probability of truth commissions from negligible to 3.4 percent. The same change in civil society strength increases the probability of reparations from 0.3 to 8.2 percent. The civil society variable has no significant effect on post-conflict trials or amnesties.[39]

Regarding legacies of conflict, it is less likely to see post-conflict trials and amnesties after territorial conflicts (predicted probability of 9.7 percent for trials and 20 percent for amnesties, compared to 28 and 33 percent, respectively, for governmental conflicts), but the type of conflict incompatibility does not affect the likelihood of truth commissions or reparations. Conflict severity, measured as a conflict reaching the level of a full-scale war, has a significant negative effect on post-conflict trials (13.4 percent predicted probability compared to 21.6 percent for low-intensity conflicts), and a significant positive effect on post-conflict truth commissions (1.1 percent compared to negligible). Finally, region has a negative effect on post-conflict reparations, but no effect on trials, truth commissions or amnesties.[40] Asian, African, and American governments are less likely to grant reparations, with predicted probabilities of 0.8, 1.4, and 0.97 percent, respectively, compared to European governments with a predicted probability of 9.9 percent for post-conflict reparations.

In sum, four of the five hypotheses regarding the relationship between during- and post-conflict justice are supported with our empirical analyses: the ways in which violence is addressed during armed conflict shapes justice decisions once that conflict has ended. Below we turn to the case of Colombia to further draw out the causal mechanisms driving our findings.

Justice Now and Later in Colombia

The case of Colombia offers a rich example through which to further explore the relationship between during and post-conflict judicial policies. Though Colombia has suffered extensive violence for the last two centuries, our focus is on the armed conflict with the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*, FARC), established in 1964, and their quest to unseat the national government. The intensity of this conflict increased in the 1980s as the FARC strengthened militarily. Violence against civilians increased further with the growing size of paramilitary armies. The FARC insurgency is rooted in a complex history, transpired with extensive state collusion with paramilitaries, and with large-scale abuses of civilians by all key armed actors – the FARC, the paramilitaries, and the

[38] Sikkink, supra n 13.

[39] In a robustness check, we replace civil society strength with political regime (Appendix 3). The two are highly correlated (Pearson's r = 0.77) and display similar effects on likelihood of post-conflict justice. Democratic regimes are more likely to initiate truth commissions and less likely to grant amnesties after conflict compared to more autocratic regimes, but regime type does not affect governments use of trials or reparations.

[40] Post-conflict trials are significantly less likely in the Middle East compared to Europe (control region), but the other regions do not differ (Appendix 2, Model 1).

state.[41] In total, the violence led to more than 450,000 killings, the forced disappearance of 121,000 people, 50,000 kidnappings, and 8 million victims of forced displacement.[42] Nine out of ten deaths were civilians.[43] Paramilitaries committed most homicides and forced disappearances, while the FARC was responsible for the spate of kidnappings.

During the conflict, numerous rebel and paramilitary groups were established and later demobilized. First, 5,000 combatants from five small rebel groups demobilized from 1989 to 1994.[44] Next, several paramilitary groups demobilized in 2003-2006, totaling 30,944 individuals.[45] This second wave of demobilization was the largest demobilization process to date. Despite the subsequent remobilization of some paramilitary groups, these demobilizations mark an important milestone and contributed to considerable advancements in peace and security for the country.[46] Another milestone for terminating violence in Colombia was the 2016 peace agreement with the FARC and subsequent demobilization of 13,000 combatants. Among demobilized FARC-fighters, fewer than 5% have returned to violence.[47] Hence, armed conflict with the FARC rebel group has ended. Violence, however, has not ceased. A smaller rebel group, National Liberation Army (*Ejército de Liberación Nacional*, ELN) still operates, along with a fragmented picture of criminal groups and FARC dissidents.[48]

The 2016 Peace Agreement is among the most victim-centered peace agreement globally and includes a comprehensive transitional justice framework based on principles of restorative justice.[49] Though pathbreaking in many respects, this framework can be understood within a broader historical context regarding impunity and accountability for conflict-related wrongdoing in Colombia. As Ruiz argues "the transitional justice frameworks … [2005 Justice and Peace Law and 2011 Victims' Law] are the direct precursors of the current Colombian peacebuilding initiative [i.e., 2012-2016 Havana negotiations], which incorporates a vital transitional justice

[41] E.g., Truth Commission, *Hay Futuro Si Hay Verdad: Informe Final* (Bogotá: Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, 2022); Francisco Gutierrez-Sanin, *Clientelistic Warfare: Paramilitaries and the State in Colombia* (Oxford; New York: Peter Lang, 2019).
[42] Truth Commission, supra n 40.
[43] Truth Commission, supra n 40.
[44] Alexandra Guáqueta, 'The Way Back in: Reintegrating Illegal Armed Groups in Colombia Then and Now: Analysis,' *Conflict, Security & Development* 7 (3) (2007): 417–456.
[45]Note this number is likely inflated, as some of the demobilized were drug traffickers and petty criminals (Office of the High Commissioner for Peace, 'Proceso de Paz Con Las Autodefensas: Informe Ejecutivo,' (Bogota, 2006), https://reliefweb.int/sites/reliefweb.int/files/resources/9DEF64898DC8E5DEC1257195003707C0-govt-col-19jun.pdf (accessed 17 April 2023).
[46] Francisco Gutiérrez Sanín and Andrea Gonzales Peña, 'Colombia's Paramilitary DDR and Its Limits,' in *Post-Conflict Disarmament, Demobilization and Reintegration: Bringing State-Building Back In*, ed. Antonio Giustozzi (Burlington, VT: Routledge, 2012).
[47] According to Chief of the UN Verification Mission in Colombia, Ruiz Massieu (CNN Español, 'Más del 95% de exguerrilleros de las FARC que se desmovilizaron continúan acogidos a los acuerdos de paz, dice la ONU,' CNN, 13 January 2022, https://cnnespanol.cnn.com/2022/01/12/exguerrilleros-desmovilizaron-continuan-acogidos-al-acuerdo-paz-colombia-onu-orix/ (accessed 17 April 2023).
[48] International Crisis Group, *A Fight by Other Means: Keeping the Peace with Colombia's FARC, Latin America Report N°92* (2021).
[49] Jason Michael Quinn and Madhav Joshi, 'Transitional Justice in the Colombian Final Accord: Text, Context, and Implementation,' in *As War Ends: What Colombia Can Tell Us About the Sustainability of Peace and Transitional Justice*, ed. Jacqueline H. R. DeMeritt, James Meernik and Mauricio Uribe-López (Cambridge: Cambridge University Press, 2019); Sandoval, Martínez-Carrillo and Cruz-Rodríguez, supra n 1.

component. Thus, the current agreements are a new stage of the peace infrastructure that has been under construction in Colombia since the 1980s."[50] In the 20th century, Colombia's approach to abuses was characterized by a policy of impunity. In the early 2000s, however, there was a shift to a greater and outspoken demand for accountability policies. This resulted in accountability institutions adopted in 2005, which despite flaws and controversies, would shape Colombia's approach to abuses also in the 2016 Final Peace Agreement. To better understand how we arrived at the 2016 Final Peace Agreement, we chart the evolution of Colombia's accountability policy over the last decades.

From impunity towards accountability in Colombia

In the early history of the conflict, ex-combatants in Colombia were given during-conflict amnesties in exchange for demobilization and rarely faced criminal prosecution for past crimes. This approach was used to incentivize demobilizations in an attempt to facilitate the end of war. Amnesty and pardons of prison sentences were given throughout the 20th century, from the Thousand Days' War in 1902 to the brutal 'La Violencia' conflict in the 1950s.[51] Amnesty was also widely used during the armed conflict with the FARC. In 1982, for example, President Belisario Betancur offered a broad amnesty to enhance trust between the government and rebel groups.[52] This policy of impunity took place in a context of limited international or domestic mobilization towards accountability for conflict-related wrongdoing.[53] Despite growing domestic mobilization also in the 1990s,[54] amnesty was used strategically with little regard for victim's rights.

In the early 2000s, however, public attention about wartime abuses grew and demands coalesced behind calls for accountability. Central to this growing attention to accountability was a degradation into further violence in the late 1990s. The period between 1995 and 2004 would go on to become the most violent years of the conflict, resulting in 45% of all victimization events. Between 2000 and 2002, more than five hundred thousand people were displaced annually.[55] This period also included an uptick in massacres perpetrated both by the FARC and paramilitaries.[56] Given the sheer scope of violence, newly elected President Uribe faced mounting international and domestic pressure to address these egregious wrongdoings. Domestically, a demand for prosecutions accompanied a public discourse characterized by a perception of "armed groups as criminals as opposed to 'political others'."[57] Internationally, the increased legal focus on human rights in Colombia kept pace with a global turn towards

[50] Ruiz 2018, supra n 18, 50. See also Gwen Burnyeat, Par Engström, Andrei Gomez-Suares, and Jenny Pearce. 'Justice after War: Innovations and Challenges of Colombia's Special Jurisdiction for Peace'. LSE Latin America and Caribbean Blog (blog) (2020), https://blogs.lse.ac.uk/latamcaribbean/2020/04/03/justice-after-war-innovations-and-challenges-of-colombias-special-jurisdiction-for-peace/ (accessed 17 April 2023).
[51] Francy Carranza-Franco, *Demobilisation and Reintegration in Colombia: Building State and Citizenship* (Routledge, 2019).
[52] Eduardo Pizarro Leongómez, *Cambiar El Futuro: Historia de Los Procesos de Paz En Colombia (1981-2016)* (Penguin Random House, 2017).
[53] Guáqueta, supra n 43.
[54] Winifred Tate, *Counting the Dead: The Culture and Politics of Human Rights Activism in Colombia* (Berkeley: University of California Press, 2007).
[55] Truth Commission, supra n 40.
[56] Truth Commission, supra n 40; Guáqueta, supra n 43.
[57] Guáqueta, supra n 43, 438.

individual accountability with the creation of the International Criminal Court. Demands by the United States and the European Union to ensure greater human rights compliance contributed to calls for accountability for paramilitary crimes.[58]

The shift towards addressing abuses (rather than ignoring them) and holding perpetrators accountable (rather than providing amnesty) arose as a response to the Alternative Penalties Law proposed in 2003. In 2002 an umbrella organization of paramilitaries, the United Self-Defense Forces of Colombia (*Autodefensas Unidas de Colombia*, AUC) signaled their readiness to demobilize. To facilitate demobilizations, Minister of the Interior and Justice, Fernando Londoño Hoyos, proposed a judicial framework which recommended criminal trials to facilitate individual accountability for past crimes. Londoño suggested this approach would enable truth-telling for victims by way of establishing the time, mode, and place of victimization events, as well as reparations through defendants performing acts such as monetary compensation, social work, and public apologies. Instead of prison sentences, the Law proposed alternative punishments restricting rights to hold public office, run for popular elections, carry arms, or live outside a particular geographical area for a duration of 10 years.[59]

The Alternative Penalties Law was met with swift backlash from domestic and international human rights advocates, civil society organizations, and politicians who viewed the proposal as being a "disproportionate punishments for the magnitude of the crimes against humanity" and insufficient to address victims' rights.[60] This backlash against impunity marked a new phase for human rights in Colombia and signaled a turn towards accountability as well as greater attention towards the rights of victims.

An Institutional Framework of Accountability and Victims' Rights in Colombia

Between 2003 and 2006, several proposals were put forward to address abuses by paramilitary forces. The proposed Alternative Penalties Law, described above, offered alternative punishments without prison terms. A counterproposal came from Congress members Gina Parody and Rafael Pardo who were among those most vocal on the issue. Parody and Pardo called for harsher punishments and the convening of an independent special tribunal and proposed that those found guilty of crimes should use their private assets to compensate victims. Furthermore, the state should assist if funds were lacking or if individual perpetrators were unable to be identified.[61] This proposal demanded greater accountability and attention to victims' needs than the Alternative Penalties Law and motivated extensive Congressional debate until the Justice and Peace Law was approved July 2005.

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[58] Hyeran Jo, Beth A Simmons and Mitchell Radtke, "Conflict Actors and the International Criminal Court in Colombia,' *Journal of International Criminal Justice* 19 (4) (2020): 959–977; Sikkink, supra n 13.
[59] Congress of the Republic of Colombia, *Legislative Bill 85*, *Ley de Alternatividad Penal* (2003).
[60] Nicolás Palau Van Hissenhoven, 'Trámite de La Ley de Justicia y Paz: Elementos Para El Control Ciudadano al Ejercicio Del Poder Político,' (Bogotá: Fundación Social, 2006), 46f.
[61]Human Rights Watch, 'Colombia: Librando a Los Paramilitares de Sus Responsabilidades' (2005), https://www.hrw.org/legacy/backgrounder/americas/colombia0105-sp/3.htm#_ftn28 (accessed 17 April 2023); Maria Paula Saffon and Rodrigo Uprimny, 'Uses and Abuses of Transitional Justice in Colombia,' in *Law in Peace Negotiations*, ed. Morten Bergsmo and Pablo Kalmanovitz, FICHL Publication Series 5. (Oslo: Torkel Opsahl Academic EPublisher, 2010).

The Justice and Peace Law established three institutions to address paramilitary crimes. First was the Justice and Peace Tribunals which were tasked with prosecuting leaders and mid-level commanders. The Tribunals, in Bogotá, Barranquilla, and Medellin, were established within the judicial system and were focused on individual criminal responsibility. The Tribunals were given the power to award prison sentences of between five to eight years conditional on defendants telling the truth, ceasing criminal activity, and contributing reparations to victims.[62] The second institution was the National Commission for Reparation and Reconciliation which was responsible for ensuring victims' rights, such as monitoring and coordinating victim reparations, ensuring victims' rights to judicial truths, and monitoring the disarmament, demobilization, and reintegration process. The third institution was the Historical Memory Group, a component of the National Commission for Reparation and Reconciliation. This was tasked "to present a public report on the reasons for the appearance and evolution of illegal armed groups".[63] Through these three institutions, the Justice and Peace Law pursued accountability, truth-seeking, and reparations.

In sum, the Justice and Peace Law is predicated on the idea that addressing conflict-related abuses requires judicial proceedings to hold perpetrators accountable for their actions, but also to facilitate truth-telling and reparations to victims. The turn in the direction of accountability marked a shift away from the historical precedent of impunity for crimes committed during armed conflict. This shift emerged from strengthened mobilization against the 2003 Alternative Penalties Law. While the Uribe Administration worked to limit accountability, the response against the proposed law paved the way for debates not on whether to hold trials and contribute to truth-telling and reparations, but rather how to do so. While the need for accountability was established, how to implement this policy – what punishment, for whom, and what level of victim involvement – continued to be hotly debated. In this debate, Drange suggests two sides emerged; one comprising various human rights proponents seeking to expose abuses and a government making efforts to conceal them.[64]

Despite the Uribe Government's resistance, these debates lead to policy evolutions which further strengthened the focus on victim's rights. In the Justice and Peace Tribunals, for example, only victims whose perpetrator was on trial were eligible for reparations. Hence, in a 2007 report to Congress, the National Commission for Reparations and Reconciliation (CNRR) asked the state to provide reparations to victims through the state budget irrespective of judicial proceedings.[65] Responding to pressure from the CNRR and the Inter-American Court on Human Rights, the government established an individual reparation program in 2008.[66] While a step forward, the

[62] Jemima García-Godos and Andreas Lid, 'Transitional Justice and Victims' Rights before the End of a Conflict: The Unusual Case of Colombia,' *Journal of Latin American Studies* 42(3) (2010): 487–516; Congress of the Republic of Colombia, *Law 975. Por La Cual Se Dictan Disposiciones Para La Reincorporación de Miembros de Grupos Armados Organizados al Margen de La Ley, Que Contribuyan de Manera Efectiva a La Consecución de La Paz Nacional y Se Dictan Otras Disposiciones Para Acuerdos Humanitarios* (2005).
[63] Pilar Riaño Alcalá and María Victoria Uribe, 'Constructing Memory amidst War: The Historical Memory Group of Colombia'. *International Journal of Transitional Justice* 10 (1) (2016): 6–24, 8.
[64] Drange, supra n 19.
[65] Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge UK: Cambridge University Press, (2012). See also Comisión Nacional de Reparación y Reconciliación, Proceso de reparación a las víctimas: balance actual y perspectivas futuras. Report to Congress, Bogotá (2007).
[66] Ibid.

government did not recognize state responsibility which effectively meant victims of state crimes were excluded from reparations. Furthermore, the issue of land restitution was also not addressed.[67]

These limitations lead to a new policy evolution with the passing of the Victims and Land Restitution Law in 2011. This law revised the reparations program to include both victims of state agents and address the issue of land restitution. The Victims and Land Restitution Law, described as ground-breaking and ambitious, was tasked with providing reparations to victims of conflict-related wrongdoing and land restitution for those who were dispossessed and displaced in the context of the armed conflict.[68] The Victims' and Land Restitution Law would go on to be fundamental for supporting the Havana peace negotiations.[69] Furthermore, the Law advanced the work of the Tribunals and continued and strengthened the work of the Historical Memory group through the creation of the National Center for Historical Memory.[70]

As the above analysis shows, Colombia developed a patchwork of institutions dedicated to the pursuit of accountability, truth, and reparations for victims – all amid armed conflict. It was these institutions which provided the policy precedent, institutional repertoire, and public expectations which would influence the adoption of post-conflict justice policies following the 2016 Peace Agreement.

Building on the Past for Justice in the Future

The 2016 Peace Agreement and its praised, yet controversial, post-conflict justice framework was not developed in a vacuum. Rather, it advanced and innovated on the established precedent of holding perpetrators of wartime abuses to account. Through this framework, trials were established to advance accountability while maintaining a focus on truth-telling and reparations – expanding the work of the Justice and Peace Law (2005) and Victims and Land Restitution Law (2011).

The 2016 Peace Agreement established three institutions closely related to measures adopted while the conflict was ongoing: the Special Jurisdiction for Peace (JEP), the Truth, Coexistence and Non-Recurrence Commission, and the Special Unit for the Search for Persons Deemed as Missing. The Special Jurisdiction is a tribunal tasked with holding accountable those most responsible for violence during the conflict. If defendants disclose information about their crimes and recognize responsibility for their actions, the Special Jurisdiction has the option to offer reduced sentences of five to eight years, mirroring the sentences of the prior Justice and Peace Tribunals. However, the JEP can also impose 'special sanctions' (*sanciones propias*), which are non-custodial sanctions where defendants engage in restorative activities in line with victims' priorities, such as infrastructure projects and building health centers.[71]

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[67] Ibid.
[68] Lina M Céspedes-Báez, 'Colombia's Victims Law and the Liability of Corporations for Human Rights Violations,' *Revista Estudios Socio-Jurídicos* 14(1) (2012): 177–213.
[69] Herbolzheimer, supra n 1.
[70] Andrés Bermúdez Liévano, 'Political Tussle over Truth and Memory in Colombia,' JusticeInfo.Net (blog), 19 March 2020, https://www.justiceinfo.net/en/44027-political-tussle-over-truth-and-memory-in-colombia.html (accessed 17 April 2023).
[71] Sandoval, Martínez-Carrillo and Cruz-Rodríguez, supra n 48.

Second, the peace agreement created a Truth, Coexistence and Non-Recurrence Commission responsible for uncovering the truth about the conflict and wartime abuses, and promoting recognition of victims, further advancing earlier truth-seeking efforts. As part of its work, the Commission gathered 14,000 testimonies for a final report published in 2022 and held public events, for example at 'houses of truth' dispersed throughout the country. Third, the peace agreement established the Special Unit for the Search for Persons Deemed as Missing in the context of and due to the conflict. Beyond these institutions, the peace agreement pursues "comprehensive reparation measures for peacebuilding",[72] in that it presents new measures and strengthens existing reparation efforts – predominantly the Victims and Land Restitution Law from 2011. In sum, the 2016 justice framework follows a policy of accountability focused on trials enhanced with truth-telling and reparations and takes lessons from and builds on the country's previous experience with during-conflict justice.

Debates surrounding the 2016 Peace Agreement showcase the degree to which the policy precedent for accountability has become entrenched in Colombian politics. In the referendum on 2 October 2016, a narrow majority of Colombians rejected the Peace Agreement on grounds that included the question of accountability for the FARC.[73] Those campaigning for 'No' in the plebiscite, led by ex-President Álvaro Uribe, claimed, among other things, that the peace agreement gave the FARC amnesty. Though the 'special sanctions' are an alternative to imprisonment, they can also be viewed as an "effective restriction of liberties".[74] Proponents of the 'special sanctions' as a restorative approach, emphasized the need for recognizing responsibility for past harms, offering redress for victims, and contributing to truth and non-repetition. While divergent in their approach, both sides of the debate placed a strong emphasis on the need for accountability for past wrongdoings. The importance of accountability in the referendum, therefore, suggests the policy precedent and public expectations for accountability had grown strong.

The reliance on institutional repertoires for accountability is evidenced in the ways in which the justice framework from the peace agreement reflects similar policies proposed in 2003 and put in place in 2005. The Special Jurisdiction for Peace, though unique in several ways, also resembles the Justice and Peace Tribunals of 2005 in certain respects. The Truth Commission and Unit for the Search for Missing Persons advanced the truth-seeking work of the Historical Memory Group and National Center for Historical Memory, though also developing new methodologies for truth recovery and victim participation. Rather than seeking out new institutional forms, the Peace Agreement built on existing institutional repertoires adopted during the conflict to advance the policy precedent of accountability, truth-telling, and reparations in the post-conflict period.

Furthermore, public expectations played an important part in ensuring that during-conflict institutions were improved over time. The restorative approach of the 2016 Peace Agreement is rooted in demands made by domestic and international victims and civil society organizations in the context of the Justice and Peace Law. Since the 2000s, civil society organizations, politicians,

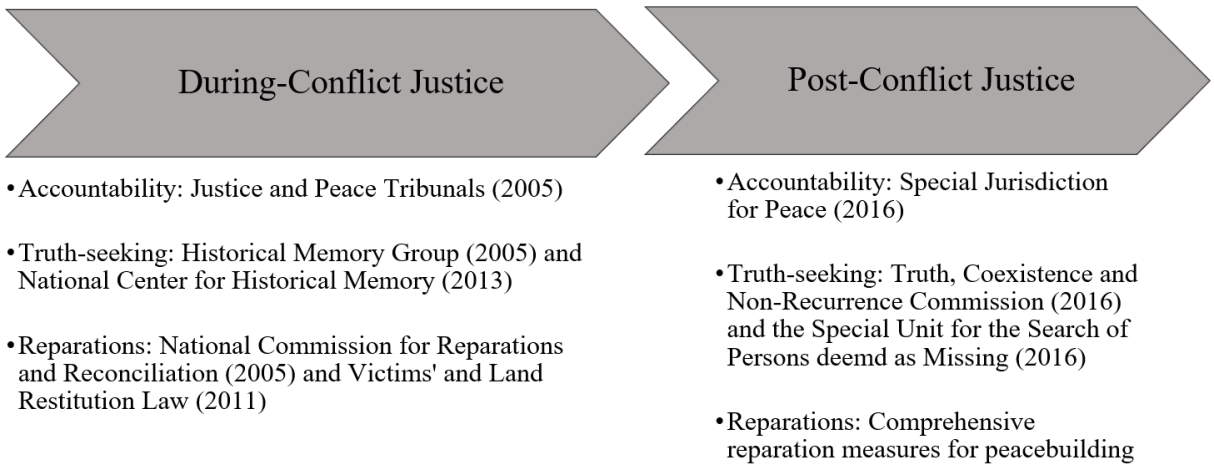
[72] The Colombian Government and the FARC, *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace* (2016), section 5.1b.
[73] Greg Grandin, 'Did Human Rights Watch Sabotage Colombia's Peace Agreement?' The Nation, 3 October 2016, https://www.thenation.com/article/archive/did-human-rights-watch-sabotage-colombias-peace-agreement/ (accessed 17 April 2023).
[74] Sandoval, Martínez-Carrillo and Cruz-Rodríguez 2022, supra n 1, 1.

lawyers, and international actors have kept pressure on the Colombian government to not just conduct criminal trials, but to ensure accountability and victims' rights through truth-telling and reparations. Contrary to the perpetrator-focused proceedings of the Justice and Peace Tribunals, there has been a gradual but strong emphasis on victims, their rights, and the fulfillment of these rights. The Justice and Peace Law explicitly laid out victims' rights, which has in itself become "an empowering tool for victim organizations and their allies".[75] Given this public pressure, the justice framework in the 2016 Peace Agreement is centered even more aggressively on a restorative approach to justice, where contributions to truth and reparations are favored over punitive measures such as prison sentences.

While there has been much continuity between contemporary justice measures and the approaches of the past, it is important to acknowledge the ways in which the peace process in Colombia also represents a substantial leap forward from past policies. For example, the 2016 framework is focused on victims' voices and victims' rights, considers both abuses by rebels and state agents as well as the role of third-party actors, and puts greater attention to gender equality and women's participation in peacebuilding.[76] Furthermore, new work by Ariza-Buitrago and Gómez-Betancur discusses the ways in which transitional justice in Colombia is equipped to respond to concerns about corporate complicity in past violence and the perpetration of environmental harms.[77]

Figure 3 lays out the continuity between those approaches to accountability, truth-seeking, and reparation taken at the height of armed conflict in Colombia and similar measures adopted within the post-conflict justice framework in the 2016 Peace Agreement.

Figure 3: Institutions and programs on accountability, truth, and reparations in Colombia during and after the armed conflict with the FARC.



[75] Jemima García-Godos, 'Victims' Rights and Distributive Justice: In Search of Actors,' *Human Rights Review* 14 (3) (2013): 241–255, 248.
[76] Herbolzheimer, supra n 1.
[77] Isabella Ariza-Buitrago and Luisa Gómez-Betancur, 'Nature in Focus: The Invisibility and Re-Emergence of Rivers, Land and Animals in Colombia's Transitional Justice System,' *International Journal of Transitional Justice* (2023). See also Laura Ordóñez-Vargas, L. C Peralta Gonzalez, Enrique Prieto-Rios, 'An Econcentric Turn in the Transitional Restorative Justice Process in Colombia,' *International Journal of Transitional Justice* (2023).

Conclusion

Both our quantitative analyses and the case study on Colombia provide support for current theories about determinants of post-conflict and transitional justice. We find that harsher forms of justice like trials are less common in post-conflict periods following peace agreements. The more equal power balance associated with negotiated settlements favors alternative justice processes when addressing past wrongdoings. The 'special sanctions' in Colombia illustrate this well. Even though the 'special sanctions' remain controversial, the relative strength of the FARC during negotiations called for weaker sanctions than long-term prison sentences. Similarly, the truth-seeking institutions and reparation measures in the Colombian peace agreement echo the quantitative findings that such institutions are more likely after peace agreements.

We also find strong support for the role of civil society in pushing for post-conflict justice. Quantitatively, the stronger the civil society in post-conflict settings, the more likely are truth commissions, reparations, and, to a lesser extent, amnesties. In the Colombia study we show how a plethora of civil society actors advocated for the need for ensuring victims' rights through truth-seeking and reparations. Further, claims about the 'justice cascade', with growing international norms favoring accountability and opposing impunity for conflict-related wrongdoings, find support in Colombia's Special Jurisdiction for Peace as well as somewhat weaker support in the effects of the post-ICC variable on truth commissions (positive) and amnesty (negative, but insignificant).

Nonetheless, even if our analyses support current theories about determinants of post-conflict behavior, we find that post-conflict institutions are also a direct byproduct of the processes adopted while conflict is ongoing. In the case of judicial or quasi-judicial processes used during armed conflict, these processes provide a policy precedent and institutional repertoire from which to draw on once the conflict has ended. Furthermore, prior use of judicial mechanisms to reckon with conflict-related abuses creates a public expectation for justice which follows into the post-conflict period.

Analyzing a global sample of conflict-related justice processes during and after internal armed conflicts between 1946 and 2016 support these relationships. Post-conflict justice is more likely when similar processes were also initiated in the midst of conflict. While this effect is strongest for reparations, it is positive for all four types of justice processes studied and significant for three (trials, reparations, and amnesties). Victim-centered processes may be especially responsive to public demands as they create expectations that conflict-related wrongdoings will be investigated and revealed, and lead to compensation for the individuals who suffered. Truth commissions are still rare, and while their presence post-conflict correlates with their presence during conflict, their instigation depends more on pressure from civil society and compromises reached in peace agreements. Trials and amnesties, directed at the violators themselves, may have a different reasoning both during and after conflict. A history of refraining from prosecution during conflict may create a policy precedent for continuing with amnesties post-conflict, even if public expectations call for accountability.

The global patterns are reflected in Colombia too. Justice processes addressing wrongdoings, primarily trials, truth-telling, and reparations, came at the height of armed conflict in the early 2000s. From this point onwards, trials have become an essential element for dealing with wrongdoings. The innovative 2016 post-conflict justice institutions were not born in a vacuum, as the first accountability tribunals in Colombia to address conflict-related wrongdoings were

created by the 2005 Justice and Peace Law. While controversial and limited, the policy of accountability established in the demobilization of the paramilitaries in the 2000s became the new 'normal' in Colombia. This first substantial experience with during-conflict justice would serve as a policy precedent for addressing future demobilizations and serve to build an ever-growing institutional repertoire and public demand for more and better tailored ways to address wrongdoings committed in the context of armed conflict.

Conflict-related justice processes are primarily seen as means to advance accountability and justice for wrongdoings; however, recent work has argued that judicial processes during conflict are often put in place for reasons not directly related to accountability.[78] While there are elements of victor's justice and other strategic motivations in the post-conflict period,[79] these alternative aims likely play a greater role during conflict.[80] The relatively weak effect of during-conflict trials on post-conflict trials may support the claim that political motivations during conflict dilute the effects on post-conflict justice. If a government used prosecutions during conflict not only to ensure accountability for wrongdoings, but also to weaken opposition and strengthening its own position vis-à-vis the rebels, this may provide less of a policy precedent and institutional repertoire for the post-conflict transitional period. Within this context, people's experiences may be less with justice than with misuse of the judiciary, creating skepticism rather than public expectations for government use of prosecutions post-conflict.

Our findings suggest that accountability following armed conflict is linked, in part, to behaviors of governments while armed conflict is ongoing and likely to other developments around the globe. As Herbolzheimer has reflected: "Every peace process learns from developments elsewhere, but also innovates to adjust to challenges present in the local context. These innovations can in turn become a reference for international peacebuilding processes."[81] Moving forward, greater attention should be placed on judicial precedent, institutional repertoires, and public demand in engaging how best to address the legacies of conflict through transitional justice.

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[78] Loyle, Cyanne E. Loyle, 'Justice During Armed Conflict: Addressing Grievance or Projecting State Strength' (unpublish manuscript).
[79] Cyanne E. Loyle, 'Transitional Justice and Political Order in Rwanda,' *Ethnic and Racial Studies* 41(4) (2018): 663–680; Cyanne E. Loyle and Christian Davenport, 'Transitional InJustice: Subverting Justice in Transition and Post-Conflict Societies,' *Journal of Human Rights* 15(1) (2016): 126–149.
[80] Loyle, Cyanne E. Loyle, Helga Malmin Binningsbø and Scott Gates, 'Amnesty as a Weapon of War: Government strength and justice processes during armed conflict,' (Baltimore, MD: Annual Convention of the International Studies Association, 2017).
[81] Herbolzheimer, supra n 1, 3.

Appendix 1

Continuous independent and dependent variables (Replicating Table 1 (Model 1) in the paper).

	(1) Post-conflict justice
During-conflict justice	0.195***
	(0.0654)
Constant	0.486***
	(0.0715)
Observations	362
R-squared	0.063

Note: Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1.

Appendix 2: Specific justice processes during and after conflict, 1946–2016.

	(1) PCJ trial	(2) PCJ truth commission	(3) PCJ reparation	(4) PCJ amnesty
DCJ trial	0.654*			
	(0.388)			
DCJ truth commission		0.867		
		(0.707)		
DCJ reparation			1.663**	
			(0.734)	
DCJ amnesty				0.718**
				(0.342)
Peace agreement	-2.165***	3.269***	3.053***	1.467***
	(0.715)	(1.051)	(0.533)	(0.348)
Post-ICC (2002)	-0.0340	1.907**	-0.572	-0.548
	(0.395)	(0.843)	(0.667)	(0.380)
Civil Society	-0.211	5.581***	3.875***	0.696
	(0.562)	(1.621)	(1.266)	(0.509)
Territorial	-1.292***	-0.848	-0.759	-0.685**
	(0.370)	(0.880)	(0.572)	(0.327)
War	-0.579**	2.704***	-0.167	0.0318
	(0.282)	(0.926)	(0.607)	(0.283)
Region (Ref: Europe)				
Middle East	-1.040*	1.156	-1.860	-0.108
	(0.618)	(1.596)	(1.260)	(0.593)
Asia	-0.810	-0.383	-2.591***	-0.742
	(0.511)	(1.358)	(0.755)	(0.497)
Africa	-0.674	-0.608	-2.020***	0.204
	(0.459)	(1.523)	(0.663)	(0.468)
Americas	0.477	1.917	-2.412**	0.289
	(0.536)	(1.652)	(1.131)	(0.566)
Constant	0.128	-10.47***	-3.914***	-1.199**
	(0.530)	(2.768)	(1.120)	(0.505)
Observations	354	354	354	354

Note: Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1.

Appendix 3: Specific justice processes during and after conflict, 1946–2016. Replacing civil society index with political regime

	(1) PCJ trial	(2) PCJ truth commission	(3) PCJ reparation	(4) PCJ amnesty
DCJ trial	0.844**			
	(0.415)			
DCJ truth commission		1.312*		
		(0.719)		
DCJ reparation			2.285***	
			(0.820)	
DCJ amnesty				0.872**
				(0.360)
Peace agreement	-1.892***	2.347***	3.019***	1.525***
	(0.721)	(0.887)	(0.608)	(0.342)
Post-ICC (2002)	0.0914	1.501*	-0.433	-0.319
	(0.391)	(0.894)	(0.840)	(0.370)
Political regime	-0.0495	0.204***	0.0515	-0.0403*
	(0.0335)	(0.0712)	(0.0522)	(0.0237)
Territorial	-1.373***	-1.345	-0.618	-0.528
	(0.394)	(0.975)	(0.519)	(0.329)
War	-0.842***	2.117**	-0.575	-0.0744
	(0.291)	(1.047)	(0.652)	(0.302)
Region (Ref: Europe)				
Middle East	-1.838***		-2.165**	-0.959
	(0.650)		(1.090)	(0.729)
Asia	-1.337***		-2.160***	-1.281**
	(0.478)		(0.620)	(0.639)
Africa	-1.432***		-1.644***	-0.385
	(0.504)		(0.622)	(0.642)
Americas	-0.0112		-2.223	-0.0436
	(0.578)		(1.387)	(0.695)
Constant	0.592	-6.195***	-1.905***	-0.475
	(0.479)	(1.238)	(0.649)	(0.629)
Observations	325	325	325	325

Note: Region omitted from Model 2 as there are no truth commissions in Europe in the sample when controlling for political regime. Robust standard errors in parentheses. *** p<0.01, ** p<0.05, * p<0.1.

Paper 3: Fear and risk-reducing behaviour: How renewed violence shapes the pursuit of truth and accountability[1]

Under review in *Conflict, Security and Development*

[1] This paper adopts endnotes and British spelling as per the journal's standards.

Paper 4: Reparations after pervasive war: The contributions of individual and community reparations in Colombia[1]

Submitted to *Journal of Peacebuilding & Development*

[1] This paper adopts in-text citations and British spelling as per the journal's standards.