

Persistent Violences and Transitional Justice: From Security to “Provention” as a Guarantor of No Repetition

Jenny Pearce & Juan David Velasco

Abstract

Colombia is the tenth country in the world in terms of its number of peace negotiations according to the Uppsala University Data Base. Each negotiation has had varied outcomes, some resulting in significant demobilisations, but none have ended the collective use of violence by non-state armed actors nor selective violence by some state actors. Each one has also been followed by what appears to be an ‘historic pattern’ of assassination of former combatants. Another pattern during and after armed conflicts, has been the systematic assassination of social activists, often accused of supporting an insurgency, or who have been organized to achieve certain reforms, from access to land, to defending indigenous rights and human rights in general. Following the Peace Accord with the FARC-EP in November 2016, these patterns do not appear to have changed. However, one thing is new, the opportunity for a new institutional framework able to confront these ongoing violences which are an obstacle to rights to truth, justice, reparation, and no repetition. This chapter explores how the JEP is contributing to a shift in the focus of the State from one of security as a function of militarisation and punitive populism to one of “*provention*”. This neologism created by the Investigation and Prosecution Unit of the JEP, conveys the importance of integrating protection and prevention as part of a comprehensive security system for people that participate in the transitional justice. The chapter discusses the violences that are threatening the lives and livelihoods of the population groups that the JEP is mostly concerned with (victims, the former combatants, and human rights organisations). It shows why “*provention*” can pave the way for a new approach to justice in Colombia, one which embraces restorative justice, contributes to guarantees of non-repetition and promotes the principles of the centrality of victims and their effective participation. In turn, this generates new sensibilities amongst citizens about the significance of transitional justice to sustainable peace.

Introduction¹

Colombia is the tenth country in the world in terms of its number of peace negotiations according to the Uppsala University Data Base². Despite these efforts, no government has achieved a definitive end to the internal armed conflict. Although the abandonment of weapons by the longest lasting insurgency in western history -the FARC-, was an important step towards a stable peace, it was not enough. Criminal organizations and insurgent groups continue to generate chronic violence and insecurity in different regions of the country³.

This chapter reflects on the way these persistent violences continue to overshadow the development of the transitional justice model that was created by the Final Peace Agreement signed between the national government and the FARC in November 2016. The chapter analyses how the Special Jurisdiction for Peace (hereinafter JEP) has adapted itself to high-risk environments and how it is contributing to building the pathway from transitional justice to sustainable peace.

The chapter will focus on studying the responses that this judicial body has created to mitigate the risks of the occurrence of human rights violations against the groups and territories of importance to transitional justice. It proposes the neologism of “provention”⁴ in order to build a philosophy that departs from the conventional wisdom that associates security with militarism and “punitive populism” (Wood, 2014). “Provention” prioritizes the following goals: the development and embrace of restorative

-
- 1 This chapter aims to explain the proposal of Provention Strategies in the Transitional Justice System. It does not include a study or an evaluation of the implementation process.
 - 2 Only surpassing Colombia in the number of peace negotiation initiated with one or several rebel forces or paramilitary groups are the following countries: Chad, Sudan, Liberia, Uganda, Ivory Coast, Burundi, Liberia, Congo, and Mozambique.
 - 3 The National Liberation Army (ELN) continues the armed struggle after six decades of revolutionary life, which makes it the oldest guerrilla insurgency in the western hemisphere today, replacing the historical record claimed by the FARC.
 - 4 Provention is the combination of an early warning system with the immediate adoption of protective measures to avoid the risks’s materialization to the life, liberty, security and physical integrity of individual and organizations participating in the JEP. In this sense, an analyst’s team assesses the probability of serious human rights and International Humanitarian Law violations in certain geographical areas of Colombia and issues an alert for the chief prosecutor of the JEP and the judges to take different risk control decisions.
 - 5 “Punitive populism” refers to the idea that public support for more severe criminal justice policies (specifically incarceration) has become a primary driver of policy

justice as a way to guarantee non-repetition and promote the participation of victims and social organizations from the grass roots upwards. In other words, it protects citizens in order to prevent more violence.

1. Persistent violence and their negative impacts on the development of transitional justice in Colombia

One of the distinctive features of the JEP is that it has sought to acknowledge victims who have community ties or collective identity. For this reason, the judges allowed more than 268 groups, such as indigenous organizations and reservations, community councils, unions, and political movements, to participate until December 2021 as civil parties in the proceedings.

However, from the opening of the JEP doors to the public in March 2018, gross human rights violations have taken place against the very organizations that have been acknowledged as victims by the JEP. This figure is particularly high for the cases of indigenous and Afro Colombian communities located in the Pacific Nariño, northern Cauca as well as in the Urabá Antioqueño and Chocoano.

making, as well as of political election cycles, with the result of increasingly harsh punishments regardless of their ability to reduce crime.

Table 1. *Level of human rights violations against indigenous, afro and peasant groups that were acknowledged as victims by the JEP, 2018–2021*⁶

| Judicial case opened by the JEP judges | Number of social groups acknowledged as victims | Number of social groups acknowledged as victims that have registered gross human rights violations | Percentage of gross human rights violations |
|--|---|--|---|
| Territorial situation of Ricaurte, Tuma-co and Barbacoas in Nariño (case No. 02) | 94 | 26 | 28% |
| Territorial situation of the Urabá region (case No. 04) | 80 | 16 | 16% |
| Territorial situation in the northern region of Cauca and southern Valle del Cauca (case No. 05) | 82 | 27 | 33% |

Source: Investigation and Prosecution Unit (The Prosecutor of the JEP)

During 2020, every six days a social activist and member of an organization that has submitted reports to the JEP, was killed⁷. The year 2020 is considered a turning point in the history of the conflict in Colombia, since repertoires of violence that were believed to be overcome – such as massacres – returned in alarming numbers. In the words of the Chief Prosecutor, Giovanni Álvarez:

“There is a warning sign with the occurrence of massacres in the last nine months. We are approaching the threshold of the year 1998 when the most cruel and degraded stage in the history of the armed conflict in Colombia began. At that time (1998 – 2002) there was an average of one massacre every two days. In 2020, we are approaching this reprehensible statistic. The evidence shows us that after exceeding this threshold of deaths, the chances of returning to a humanitarian crisis are high” (Giovanni Álvarez, statement 063, September 2020)⁸

6 Data were checked last on 31st December 2021.

7 One of the existing mechanisms for social organizations to contribute to the clarification of the truth in the JEP is through the preparation and submission of reports containing context data of victims by region and period, and attributions of alleged responsibility in the commission of crimes.

8 Authors' own translation.

This trend has gotten worse to the point that 2021 had the highest levels of organized violence since the signing of the Final Peace Agreement⁹. Thus, it became the year with the highest number of massacres (93), mass forced displacements (146), clashes between the security forces and illegal armed groups (228), and harassment against the security forces (134). There has also been an increase in cases of forced recruitment of children (89).

Another repertoire of violence that was believed to be overcome and that returned with great force during 2020 and 2021, was the generalized threats to the civilian population through graffiti painted on the walls and the circulation of pamphlets. Thus, in 20% of Colombian municipalities, propaganda messages from an illegal armed organization have been observed in public places, and the dissemination of lists of people and social organizations that are declared to be "military targets" by criminal organizations, have also been verified in parks, commercial establishments and WhatsApp message chains¹⁰.

The frequent murder of social activists and the significant increase in massacres of civilians has generated new dynamics of terror in the population. These are connected to efforts by armed groups to control territories and trafficking corridors. The literature refers to efforts by non-state armed actors to control territories as "rebel governance" or "criminal governance" (Mampilly, 2011; Kasfir, 2015; Arjona, 2016; Arias 2017; Lessing, 2020). While this captures the depth and extent of efforts to ensure that territories serve the interests of these actors and not of the State, the authors prefer to characterize these processes as the construction of "violent social orders" which, in turn, "order violences". This distinguishes them from understandings of "governance" as non-coerced consent which can be objectively measured as such. The construction of these orders certainly includes aspects which are associated with "governing". Examples are the

9 JEP (2022). COMUNICADO 013: En 2021 el conflicto armado se reactivó en 12 zonas del país: UIA. Available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/En-2021-el-conflicto-armado-se-reactiv%C3%B3-en-12-zonas-del-pa%C3%ADs,-dio-a-conocer-la-UIA-de-la-JEP.aspx>

10 In the pamphlets issued by the illegal armed groups during 2020, it has been detected that 15% of the social organizations that have submitted reports to the JEP have been declared as "military targets." The Gulf Clan and the FARC dissidents are mainly responsible for the authorship of the pamphlets and threatening graffiti. This information can be seen at the Risk Monitoring System of the Investigation and Prosecution Unit. Available at: https://www.jep.gov.co/uia/Paginas/mecanismo_monitoreo/index.aspx

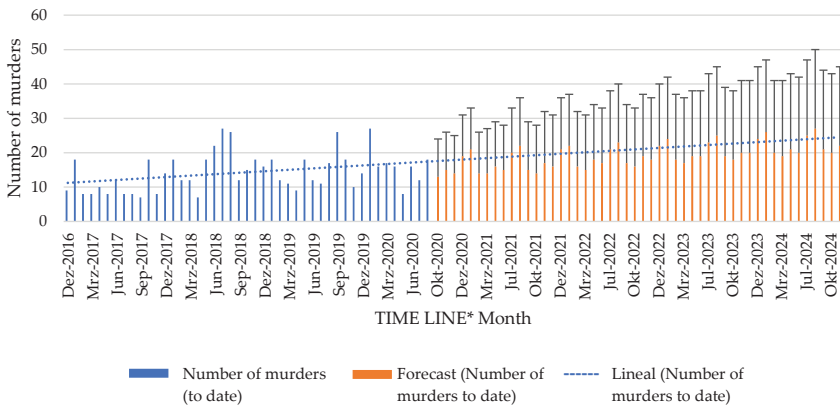
norms of behavior that the dissidents of the FARC¹¹, the Gulf Clan¹² (*Clan del Golfo*) and the National Liberation Army (ELN) have illegally imposed during the health emergency caused by the coronavirus in ten departments of Colombia¹³. However, while they may be underpinned by the de facto rules imposed by armed groups, they are not underpinned by the rule of law, independently administered by legitimately authorized authorities.

Like the victims and the social organizations that participate in the JEP, the former combatants of the FARC also live a worrying security situation. According to calculations by the Investigation and Prosecution Unit, since the signing of the Final Peace Agreement until October 20, 2020, every five days a demobilized person was a victim of homicide¹⁴. If this "historic pattern" remains¹⁵, it is predicted that by the end of 2024, 1,600 murders

-
- 11 The FARC dissidents can be classified into three groups: the "early deserters" such as alias Gentil Duarte and alias Iván Mordisco, who, before the signing of the Peace Agreement, withdrew from the process and publicly reiterated their rebellion against the Colombian State. A second group are the "late deserters" such as alias Iván Márquez, alias Jesús Santrich, alias Romaña and alias el Paisa, who, after having led and signed the Peace Agreement, claimed betrayal and returned to armed struggle. This group called itself "the second Marquetalia." And a third group are the "lumpenized independents", who have contacts with the previous groups, but maintain autonomy to manage the drug trafficking business and illegal mining, since their motivations are exclusively economic. On a characterization of the FARC dissidents: Aguilera (2020) and Fundación Ideas para la Paz (2018).
 - 12 Also known as *Autodefensas Gaitanistas de Colombia* (AGC). They are successor groups to paramilitarism, which have a hybrid command structure (hierarchies with network and outsourcing delegations), imitate the methods of violence of the old AUC (massacres, murder of left-wing social and political leaders) and the guerrillas (armed strikes), and are financed mainly from drug trafficking, illegal mining and smuggling of goods.
 - 13 During the Covid 19 pandemic in Colombia, evidence has emerged that shows how illegal armed groups and organized crime networks have controlled rural populations and urban peripheries in Nariño, Cauca, Vichada, Antioquia, Córdoba, Bolívar, Norte de Santander and Arauca, imposing curfews, establishing opening and closing hours for commercial establishments, punishing people who do not wear masks and murdering people who violate the rules of social distancing. See: Investigation and Prosecution Unit (2020), Defensoría del Pueblo (2020) and Human Rights Watch (2020).
 - 14 In total, there were 220 cases of homicides of former FARC combatants during the period of the signing of the Peace Agreement until October 20, 2020.
 - 15 Historically, after the signing of peace accords in Colombia, demobilized former combatants have faced dangerous situations. For example, out of a total of 2.200 former EPL guerrilla combatants who surrendered arms, 321 were killed (14.6%). Similarly, out of 280 demobilised from the PRT guerrilla, 40 were killed (14.3%).

of former combatants would have occurred¹⁶ (see graph 1). These human losses not only erode the trust of the demobilized in the Colombian State, but also symbolize the silencing of the truth, because with each violent death a valuable opportunity to clarify the crimes committed in times of war is lost.

Graph 1. Forecast of violent deaths of former FARC combatants (2021–2024)



Source: Investigation and Prosecution Unit. (2020). *Silenciando la verdad: Un diagnóstico de violencia letal que afectan a los excombatientes de las FARC-EP en Colombia (2017–2020)*.

^{*}Note: This forecast does not represent a probabilistic estimate. It is a forecast based on the analysis of a time series of homicides of former FARC-EP combatants through the “exponential smoothing method¹⁷”, which is why it is specified that its results are projections that depend on the invariance of the environment (everything stays the same)

On the other hand, of 37.761 former members of the paramilitary groups (AUC) who demobilised, 3.589 were killed (11.33%).

- 16 This means that in seven years after the signing of the peace agreement, 12% of the total demobilized population of the former guerrilla FARC could have lost their lives violently.
- 17 It is a method that allows to estimate the number of possible cases in the future, based on the analysis of short time series where recent results are given a greater weight over past results. This method allows to identify trends in the behavior of a variable as long as the factors remain the same. (Hyndman, Koehler, Keith, & Ralph, 2008, p. 4–5).

This ongoing violence in territories where the JEP has prioritized its investigations for international crimes committed prior to December 1st, 2016, raises several challenges concerning the possibility of full compliance with the Constitution and the law¹⁸. A first challenge is the deterioration of the guarantees for the participation of victims.

On the one hand, the social and territorial control exercised by criminal structures in various regions of the country, keeps communities from being involved in the transitional justice process. There are known cases where social activists have expressed fear of presenting reports, accrediting themselves as victims and/or participating in judicial hearings, due to the risks to their lives¹⁹.

On the other hand, the persistent dynamics of the armed conflict mean that the victims who have been acknowledged, stop going to the hearings of the Tribunal. This is because they have been forcibly displaced many times or are living in environments with high restrictions on physical mobility due to the “de facto confinement” imposed on communities inhabiting areas of influence of criminal structures.

In these events, contact with the JEP is difficult and even impossible, since people in a situation of forced displacement must ensure their material subsistence and therefore have no choice but to renounce their intention to access their rights to truth, justice and reparation. And, failing that, people in “de facto confinement” cannot communicate with the outside world, given the death threats or the risks involved in movement, due to devices and explosive remnants (antipersonnel mines) that have been installed in the perimeters of their homes.

Where all these conditions of insecurity and vulnerability prevail, JEP officials must anticipate the risks potential witnesses face and plan their judicial mission and support activities accordingly. This is important since the JEP's operating model is not centralized²⁰. Many of the JEP's plans consist precisely in bringing transitional justice closer to the peripheral communities that have been seriously affected by the armed conflict. Likewise, many of the judicial activities demand permanent contact with the victims who reside in these remote, dispersed, and disconnected places from the country's capitals.

18 For example, Legislative Act 01 of 2017, Law 1957 of 2019, Law 1922 of 2018 and Law 1820 of 2016.

19 cf *El Espectador* (July 4, 2020).

20 The majority of victims of the armed conflict live outside the capital Bogotá. Hence, judicial action in the territories is necessary to satisfy rights to justice, truth, and reparation.

In summary, the deterioration of security conditions in Colombia in recent years has created obstacles for victims and human rights organizations to effectively participate in the JEP. The homicides of social activists, massacres, threats to entire communities, and the return of violent social orders in general, has made the administration of transitional justice difficult in the territory. There is a high geographical correspondence between the sites where the JEP develops its macro cases²¹ and the sites of intensification of violent conflicts.

2. *“Provention” as an integrated system to mitigate risk and guarantee the principles of the centrality of victims and their effective participation*

The previous diagnosis is alarming due to the threats and vulnerabilities that severely limit the participation (as *comparacientes* or those who appear in person) of victims, former combatants and social organizations, in the processes which the JEP has set in motion. For this reason, the Investigation and Prosecution Unit of the JEP created a “protection system for rightsholders and guarantors” which is divided into two components: i) the programme of *protection* for victims, witnesses, and other participants; ii) the programme of risk *prevention*. The integration of these two components is what the Investigation and Prosecution Unit calls: “Provention”.

The protection programme was created under Article 87(b) of Law 1957 of 2019²². This component is responsible for receiving and processing applications of risk assessment for accredited victims, witnesses, and judicial representatives of victims and appellants. In the event that the level of risk is assessed as extraordinary or extreme²³, and that there is a causal link

21 The concept of “macro case” refers to the fact that the JEP investigates a large volume of crimes and the perpetrators responsible in the same judicial file. Till now, the JEP has opened seven “macro cases”: Three of them prioritize territorial situations of gross human rights violations and war crimes (Urabá, pacific Nariño, and north of Cauca and south of Cauca Valley); three other cases prioritize types of large-scale crimes (kidnappings committed by the FARC, extrajudicial executions committed by state agents; and forced recruitment of children); and another one prioritizes the genocide of a political party.

22 Article 87 of Law 1957 of 2019: “*Functions of the Investigation and Accusation Unit. To decide, ex officio or at the request of the Chambers or Sections of the JEP, the protection measures applicable to victims, witnesses and other participants*”.

23 As a legal rule, the level of risk must be classified as ordinary, extraordinary or extreme. This evaluation follows technical criteria that guarantees the process will be impartial and transparent.

between the threat and the participation of the person or the population group in the JEP, two types of protection measures can be taken: a) *strong*, characterized by the provision of security schemes such as armored cars and escorts; b) *soft*, characterized by the emergency relocation of the person²⁴, the delivery of bulletproof vests, cell phones, panic buttons, police visits to where the programme beneficiary resides, among others.

The number of applicants and beneficiaries of the programme have been increasing proportionally to advances in the macro-cases of the JEP. For example, in 2019, the program received one application every two weeks, while in 2020 the programme received 15 applications per week. Similarly, the number of people who received protection measures, increased exponentially compared to 2019 (see Table 2). In summary, up to 31 December 2021 the Investigation and Prosecution Unit of the JEP had processed 1,424 applications for protection submitted by victims, witnesses, judicial representatives of victims and appellants.

Table 2. *Number of protection measures assigned by the Investigation and Prosecution Unit of the JEP, 2019–2021*

| NUMBER OF PROTECTION MEASURES ASSIGNED | |
|--|-----|
| 2019 | 36 |
| 2020 | 173 |
| 2021 | 443 |

Source: Investigation and Prosecution Unit (Prosecutor of the JEP)

The protection programme has been one of the most significant policies that the JEP has taken to safeguard individuals or social organizations who contribute to uncovering truth from being subjected to reprisals and homicides. However, measures such as providing armored cars and escorts are not always appropriate, due to the fact that these measures are the most expensive and are not financially sustainable in the medium and long term²⁵. In fact, these measure in remote areas increase the level of exposure of members of social organizations to armed groups.

-
- 24 That is, the immediate change of the person's place of residence to avoid being killed.
- 25 Protection Programme expenditures increase over time, since the security schemes assigned to the beneficiaries are cumulative. The risk level for a social leader who is a victim or who represents the interests of a community participating in the JEP does not tend to improve over time.

Furthermore, when the risk is collective and affects entire communities, strong protection measures end up being useless because it is impossible to provide security schemes to each member of an indigenous reservation, community council, political party, etc. In addition, experience shows that in some cases assigning armored vehicles and escorts to certain leaders within an organization causes rivalry or makes other members jealous²⁶. On many occasions, social organizations use nonviolent discourses and reject the use of arms, and therefore refuse protection measures based solely on bodyguards and the militarization of territory.

Due to these problems, the Investigation and Prosecution Unit created the risk prevention programme to complement protection measures²⁷. The programme aims to issue early warnings when victims—those who appear in the JEP as well as social organizations that contribute to truth—are at risk of suffering human rights violations. Therefore, this programme is based on the following principles:

- I. Prevention of human rights violations is a legal obligation of the State, which especially applies to agencies that manage transitional justice
- II. Prevention is an essential component for the guarantees of non-repetition
- III. Prevention is an indispensable requirement to apply restorative justice as a guiding paradigm of the JEP
- IV. Prevention is a guiding criterion for planning the JEP's activities in rural and urban areas, using the principles of "do no harm", precaution, and due diligence
- V. Prevention strategies are directed against violences and militarized responses to violence. They transfer, build, and strengthen the capacities of social organizations participating in the JEP and their mechanisms of care, self-protection and timely communication when threats occur.

Thus, prevention is not conceived as an act of good will by public officials from the transitional justice system, but rather as a legal obligation of the Colombian state that emanates from two sources of law. Firstly, international human rights treaties that have been signed and ratified, such as the International Covenant on Civil and Political Rights and the

26 Based on an interview with a leader who belongs to a platform of organizations of women victims of sexual violence and human rights defenders done on October 29, 2020 in Bogotá.

27 This program was created in March 2020 through an administrative resolution signed by the Chief Prosecutor of the JEP, Giovanni Álvarez Santoyo.

American Convention on Human Rights. Secondly, the jurisprudence of the Colombian Constitutional Court.

The United Nations General Assembly has considered “prevention” to be a specific component for guaranteeing non-repetition (Van Boven, 1993). Its relevance lies in the fact that it is not possible to fully compensate a victim of serious human rights violations. Rather, measures should be taken to prevent such violations in the first place (De Greiff, 2015).

The Inter-American human rights system²⁸ has also defined “prevention” as a core element to guarantee non-repetition, which in turn is part of the right to full reparation according to Article 63 of the American Convention (Rojas, 2009; Engstrom, 2019). For this reason, in 63% of the cases where a conviction was made, the InterAmerican Court ordered states to create new norms, mechanisms, or policies for the prevention of human rights violations (Londoño & Hurtado, 2017).

Regarding the Colombian Constitutional Court, its jurisprudence has established that:

"While in some cases the right to non-repetition has been associated with the right to reparation, it deserves special mention in transitional justice contexts. The guarantee of non-repetition is composed of all actions aimed to prevent the re-occurrence of conduct that affected the rights of the victims, which must be appropriate to the nature and magnitude of the offence. The guarantee of non-repetition is directly related to the State's obligation to prevent serious human rights violations, which includes the adoption of legal, political, administrative, and cultural measures that promote the safeguarding of rights²⁹" (emphasis added)³⁰

This interpretation is important for three reasons: first, because it no longer considers the guarantees of non-repetition to be subsumed within the right to comprehensive reparation³¹; second, because it explicitly defines the guarantees of non-repetition as a "legal obligation of the Colombian State"; and third, because it makes a causal link between the right to non-repetition and the adoption of measures to prevent gross and massive human rights violations.

28 The American Convention on Human Rights was approved by the Colombian State in Law 16 of 1972 and ratified on July 31, 1973. As an international human rights treaty, it was incorporated into the domestic constitutional order in Article 93 of the Political Charter of 1991.

29 Constitutional Court, Ruling C-839 of 2013, numeral 3.5.2.4.

30 Author's own translation

31 Which implies they have a sort of "legal life of their own".

On this last point, the Constitutional Court of Colombia stated unambiguously that there are seven types of prevention mechanisms that form part of the State's obligations to safeguard human rights and guarantee non-repetition:

"(i) In particular, the following contents of this obligation have been identified: Recognize rights internally and offer guarantees of equality; (ii) design and implement comprehensive prevention strategies and policies; (iii) implement education and outreach programs aimed at eliminating patterns of violence and rights violations, and to provide information on rights, their protection mechanisms, and the consequences of their violation; (iv) introduce programmes and promote practices that allow for an effective response to reports of human rights violations, as well as to strengthen the institutions whose functions correspond to protecting human rights (v) allocate sufficient resources to support prevention efforts; (vi) adopt measures to eradicate risk factors, including the design and implementation of instruments to facilitate the identification and notification of such risk factors and violations; (vii) To take specific prevention measures in cases where a group of persons is found to be at risk of having their rights violated"³² (emphasis added)³³

This position, according to which the guarantees of non-repetition are an autonomous right that is interconnected with the right to reparation, was ruled constitutional by the Court in its review of Act 01 of 2017³⁴. What is more, the high court went further in a subsequent decision on the statutory law of the JEP. The judges considered that prevention—understood as an obstacle to the emergence of new violence—could be analyzed as a necessary means for the development of restorative justice³⁵:

"Restorative justice can be an appropriate complement in transitional situations, both to the design of transitional justice mechanisms as well as for the implementation of transitional justice. In order to achieve objectives of peace

32 Constitutional Court, Ruling C-839 of 2013, numeral 3.5.2.4

33 Author's own translation

34 Constitutional Court, Sentence C-674 of 2017, Judge: Luis Guillermo Guerrero Pérez.

35 The third paragraph of transitory article 1 of Legislative Act 01 of 2017 establishes: *"The Comprehensive System will achieve justice by placing special emphasis on restorative and reparative measures and not merely retributive sanctions. One of the guiding paradigms of the JEP will be the application of restorative justice that preferably seeks restitution for harm caused and for the reparation of the victims of the conflict, especially to end the situation of social exclusion that has caused their victimization" (emphasis added).*

*and reconciliation proposed in transitional justice, it has become evident that it is necessary to reconstruct social fabric and find new types of punishment from those used in ordinary justice... The above, oriented to prevent the emergence of new violence that could endanger the transition process. Restorative justice and transitional justice also complement each other in their understanding of reparations to victims. In the framework of restorative justice, reparation is a central element according to which the aim is to restore the victims' agency as a rightsholder, while at the same time allowing for the rehabilitation of the perpetrator, in such a way as to guarantee the non-repetition of human rights violations and the reconstruction of the social fabric of the community*³⁶" (emphasis added)³⁷

In summary, prevention is a legal obligation of the Colombian State that applies especially to institutions that administer transitional justice, since (i) it is a fundamental element for constitutional right, such as guaranteeing non-repetition, also (ii) it is necessary for achieving restorative justice. But in addition to such legal grounds, the JEP's prevention program seeks to incorporate the principle of "Do No Harm" which complies with the jurisprudence of the Appeals Section of the Special Peace Tribunal:

"The administration of justice must be oriented towards do no harm. This means, at least in part, that the substantial and procedural configuration of the Jurisdiction must serve to prevent even a hint of re-victimisation. Thus, the JEP must do more than abstain, which it can achieve with policies of caution and respect. It must also act by designing and executing judicial mechanisms to protect and guarantee the rights of the victims. During their time at the JEP, these people are at risk of further abuse... So that the Jurisdiction cannot limit itself to being the vehicle for the future dignification of victims under an assumption that this could be frustrated by exogenous factors... Do no harm demands that the Jurisdiction consider the impact its rulings will have. This can be multidimensional. It encompasses the geographical location of the victims and perpetrators, the place where the acts subject to the proceedings were perpetrated, and the place where the judicial proceedings—including reparations—will take place. From a reading of this context, the organs of the JEP will be able to anticipate the impact of their decisions and adapt them so that they are relevant and reasonable

36 Constitutional Court, Sentence C-080 of 2018, Point 4.1.9, Substantive judge: Antonio José Lizarazo Ocampo.

37 Authors' own translation.

for the particular group to which they are addressed". (Appeals Section, TP-SA-SENIT 1 of 2019, April 3, 2019, Paragraphs 72 and 73)³⁸.

Finally, it should be noted that the prevention program prioritizes strategies that are diametrically opposed to the militarization of territory and "punitive populism" (Wood, 2014). In fact, for the Investigation and Prosecution Unit it is important to strengthen the capacities of the organizations that participate in the JEP, through support for human rights observers³⁹, improvement of internal communications in rural communities⁴⁰, and the promotion of self-protection mechanisms such as *guardia indígena*⁴¹ and the *guardia cimarrona*⁴². Consequently, this integrated scheme inspired the invention of the neologism "provention"⁴³ with the purpose of pointing out the importance of generating security conditions from within civil society and from diverse territories, avoiding solving problems through state repression (see table 3).

38 Authors' own translation.

39 The Investigation and Accusation Unit is part of the Network of Human Rights Observers of Colombia. It supports the process of information management and technical documentation of human rights violations of civil society observers in the territory.

40 By supporting ethnic and racial communities to have means of communication such as radios, booster antennae, internet connection, etc.

41 The Indigenous Guard is an ancestral, autonomous organization that seeks to defend the territory through a system of surveillance and internal communication that rejects the use of firearms.

42 The Cimarrona Guard is a community self-protection initiative that seeks to protect the territory autonomously from threats posed by external interests.

43 "Provention", as previously discussed, is a way of integrating protection and prevention a part of a comprehensive security system for victims and social organizations that participate in the JEP.

Table 3. Integrated scheme of prevention and protection (named “provention” by the Investigation and Prosecution Unit)

| PREVENTION | PROTECTION |
|---|---|
| International Human Rights Law <ul style="list-style-type: none">• International Covenant on Civil and Political Rights adopted by the United Nations General Assembly• American Convention on Human Rights (Art. 63). | <ul style="list-style-type: none">• Article 87 of Law 1957 of 2019 |
| Jurisprudence of the Constitutional Court <ul style="list-style-type: none">• Sentence C-839/2013• Sentence C-674/2017• Sentence C-080/2018 | |
| <ul style="list-style-type: none">• Early Warning System in the Transitional Justice• Designs mechanisms to eradicate risk factors (prevention as guarantees of non-repetition) | <ul style="list-style-type: none">• Remedy a situation of imminent risk• Acts when a risk arises as a result of participation in the JEP |
| <ul style="list-style-type: none">• Design and implementation of monitoring systems that allow quantitative and qualitative risk assessments (longitudinal survey)• Emission of warning signals about the probable emergences of risk scenarios• Design and implement “risk baselines” to monitor situations that may affect the participation of rightsholders in the JEP.• Precautionary measures to safeguard the lives and integrity of appellants and social leaders (e.g., improving internal communications, strengthening organizational capacities, supporting collective self-protection mechanisms, etc). | Strong measures <ul style="list-style-type: none">• Armored Cars• Bodyguards |
| | Soft measures <ul style="list-style-type: none">• Training in human rights and self-protection, first aid courses, delivery of panic buttons• Arrangement of Police visits• Bulletproof vests• Emergency relocation |

3. The Risk Monitoring System of the Investigation and Prosecution Unit⁴⁴

In compliance with international standards for the protection of human rights and taking into account the aforementioned case law, the Investigation and Prosecution Unit developed a Monitoring System to identify, in a timely manner, risk factors in regions⁴⁵ as well as for populations of interest to the JEP⁴⁶, and thus forewarn of situations that may hinder participation and appearance in the processes that the Jurisdiction carries out.

This methodological tool establishes a conceptual approach⁴⁷ that allows the systematization of large volumes of information⁴⁸, in order for an early detection of threats and vulnerabilities that have the potential to affect the fundamental rights of those who testify and other stakeholders of the JEP, and hence affect the normal advancement of judicial processes as well as the activities that support the entity's mission. In that sense, this instrument is essential for supporting all sorts of processes of the entity's mission, such as administrative actions, judicial investigations, and actions

44 Available at: https://www.jep.gov.co/uia/Paginas/mecanismo_monitoreo/index.aspx

45 The system for monitoring risk can be analyzed at two levels: the national level, where 100% of Colombian municipalities are covered; and the local level, in which an analysis of context is carried out in the 111 municipalities where the JEP has prioritized its macro-cases and has adopted precautionary measures. Some of these measures include protecting cemeteries where there are signs that the bodies of victims of extrajudicial executions are being concealed.

46 The population groups of interest to the JEP are: 1. the individual and collective victims (307,783 persons who were seriously affected by the armed conflict, and more than 268 ethnic groups, racial groups, peasant groups, unions, and political parties); 2. civil society organizations and State institutions that have submitted reports to the JEP (545); 3. Those who are obligated to participate (3,367 former members of the Armed Forces and 9,757 ex-combatants of the FARC) 4. Judicial representatives of victims and appellants.

47 A mathematical equation can measure this: Risk equals the sum of hazard and vulnerability factors, over institutional capacities. There are 46 variables of analysis that allow for an analysis of the temporal and geographical evolution of the armed conflict, organized crime, social conflicts and the response of the State.

48 The monitoring system captures real-time information from 197 media outlets and 637 Twitter and Facebook accounts of social organizations, state entities and multilateral agencies working on the implementation of the Peace Agreement, which participate in the JEP and which follow the human rights situation in Colombia. It also incorporates 230 Early Alerts of the Ombudsman's Office and the early warnings issued by social organizations on Twitter.

with a procedural character which the Jurisdiction controls. It follows, therefore, that the Risk Monitoring System contributes to:

- The development of the Index of Risks and Affections (ICAR) that classifies the level of danger in the Colombian municipalities⁴⁹. Through statistical analysis of factors of organized violence, insecurity and the evolution of the Covid 19 pandemic, a scale of 0 – 100 is generated where it would warn of a high or extraordinary risk at a certain threshold⁵⁰, a rethinking of JEP actions in a territory is necessary. In this way, ICAR became a guiding criterion and a planning tool to support administrative, logistical, and judicial activities in the territories under the principle of "do no harm" that has been registered in the jurisprudence of the Appeal Section.
- The development of restorative justice by issuing early warnings that indicate the geographical points where security risks for ex combatants are concentrated. In other words, the aim is to prevent injuries and physical threats to demobilized ex-combatants who appear before the JEP during the implementation of the "proper sanctions" and the "*Works and activities with restoration-reparations content (TOAR, for its initials in Spanish*⁵¹)". For example, two main risk patterns of victimization for ex combatants were identified in the report "*Silenciando la Verdad*" by the Investigation and Prosecution Unit (Investigation and Prosecution Unit, 2020). First, there is a higher risk for these ex-combatants who assume leadership roles in cooperatives, productive projects, governmental institutions or occupy a regional position in the *Los Comunes* Party, formed by the former FARC. Second, there is another pattern of risk for the ex-combatants who are between 18 and 32 years old and keep strong roots in the territories that were part of the historical rearguard of the FARC-EP guerrilla during the war. Specifically, in areas like Los Llanos del Yarí and El Caguán, La Macarena, El Duda y El Guayabero, there are high risk of assassination and threats against demobilized combatants, and/or pressures to take up arms again and join the guerrilla dissidents.

49 The ICAR methodology is developed at the document "Diagnosis of connectivity, safety and public health conditions (COVID-19) Territorial Cases 02, 04 and 05" done by the Executive Secretariat of the JEP in August 2020.

50 The high risk threshold is from 22–24,05 and the extraordinary risk is from 24,05–100.

51 The TOAR can be understood as an early reparation plan that seeks to the reconstruction of the social fabric of the community.

- Perception analyses—through longitudinal surveys—on the security and risk conditions applied to victims, affected communities, and other groups of interest to the JEP. This offers an input on which to base the possible adoption of precautionary measures according to the level of severity and urgency resulting from such analyses⁵².
- The submission of reports about patterns of current human rights violations of acknowledged victims and former combatants, in order to support the possible adoption of protective measures under Articles 22 and 23 of Law 1922 of 2018, and Article 17 of Law 1957 of 2019⁵³. This information is also essential in the analysis of guarantees of non-repetition.
- The design and implementation of "risk baselines" to analyze the evolution of security situations in the territories prioritized by the Chamber for the Recognition of Truth and Responsibility⁵⁴ and other jurisdictional instances of the JEP.
- The establishment of a permanent linkage with victims' organizations at all procedural stages in the JEP. A pilot plan was implemented within the framework of case 07 on forced recruitment of children. A base line of risk was established in this case and before the start of the stage of "voluntary testimony" by top FARC leaders who were called to account to the JEP. From that moment on, and until the case is resolved (by issuing convictions or acquittal), a "preventive accompaniment" is carried out to warn of different risk situations that could affect the participation of the victims and their legal representatives.

52 For example, the Section on the Absence of Recognition of Truth and Responsibility of the Special Peace Tribunal ordered the Investigation and Prosecution Unit, through SAR AT-0148–2020, to analyse the situation affecting all human rights organisations acting before the JEP, and based on that information, to proceed with the processing of precautionary measures for collective protection.

53 On several occasions, the magistracy has ordered the Investigation and Prosecution Unit to prepare and deliver reports identifying possible patterns in the threats to rightsholders and guarantees in the JEP. See: Order SRVBIT-137 of 14 August 2020; Order SRVNH-04–00–126/20 of 16 September 2020; Order SAR AT-0148–2020 of 21 September 2020; Order SRVAOA-020 of 28 September 2020.

54 On different occasions, the rapporteurs' offices of the macro-cases have ordered the Investigation and Prosecution Unit to establish "risk and security baselines" in the prioritized municipalities. See: Case Order No. 002 of March 26, 2019; Order SRVAOA-008 of June 25, 2020.

Conclusion

Over four years since the Peace Accord was signed, Colombia remains in 2022 a country facing multiple expressions of violence. Within this context, the JEP has used its mandate to find ways to defend the rights and lives of those victims which it was set up to enable to provide testimony to its Investigation and Prosecution Unit. ‘*Provention*’ is now a comprehensive mechanism aimed at both protecting victims and social organizations who participate in the JEP, but also to prevent them experiencing further victimization. This, it is argued, is a duty of the State, not a choice. The national and international legal justifications have been set out in this chapter.

However, the contribution of the JEP goes even further than this. The pattern of the many previous peace negotiations in Colombia has included the assassination of many former combatants as well as social activists. In the first place, the JEP represents an opportunity for a new institutional framework able to confront this history of violence associated with efforts to make and build peace in Colombia. In the second place, the JEP has begun to show that “*Provention*” has a potential beyond the immediate and urgent need to protect the population groups with whom it directly interacts. It is demonstrating that a form of justice which reduces violence and builds peace in a country that has experienced so many variations of insurgent, state and criminal violences, must begin to explore restorative approaches to justice. These must also enable the participation of victims. This generates new sensibilities amongst citizens about the significance of transitional justice to sustainable peace. This approach to justice underpins, the authors argue, the aim of interrupting the intergenerational cycles of violence in Colombia and de-sanctions violence as a tool for dealing with conflicts, injustices and/or for the purposes of accumulation of economic, social and/or political power.

Literature

- Arias, E. D. (2017). *Criminal Enterprises and Governance in Latin America and the Caribbean*. George Mason University, Virginia: Cambridge University Press.
- Arjona, A., Kasfir, N., & Mampilly, Z. (2015). *Rebel Governance in Civil War*. Cambridge University Press.
- Alvarez, E., Cajio, A., & Pardo, D. (2018, 04 10). “Las disidencias de las FARC: un problema en auge”, Fundación Ideas para la Paz: <http://www.ideaspaz.org/publications/posts/1662>

- De Greiff, P. (2015). Informe del Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición, A/HRC/30/42, Consejo de Derechos Humanos de las Naciones Unidas, 30º periodo de sesiones, Nueva York, 2015, párr. 15 Disponible en: <https://undocs.org/pdf/symbol-es/A/HRC/30/42>
- Engstrom, P. (2019), "Introduction: Rethinking the Impact of the Inter-American Human Rights System", in book, "The Inter-American Human Rights System. Impact Beyond Compliance", UK: Palgrave Macmillan
- Hyndman, R., Koehler, A., Keith, O., & Ralph, S. (2008). *Forecasting with Exponential Smoothing*. Berlin, Germany: Springer
- Lessing, B. (2020). *Conceptualizing Criminal Governance*. Cambridge University Press.
- Londoño, M. & Hurtado, M. (2017). Las garantías de no repetición en la práctica judicial interamericana y su potencial impacto en la creación del derecho nacional. *Boletín Mexicano de Derecho Comparado*. núm. 149, enero-abril de 2017, pp. 725–775.
- Mampilly, Z. C. (2015). *Rebel Rulers: Insurgent Governance and Civilian Life during War*. Cornell University Press.
- Peña, M. A. (2020). Disidencias: ¿rebeldes obstinados, exguerrilleros narcotraficantes o guerrillas ambiguas? In: M. Aguilera Peña, V. Barrera, M. Parada Hernandez, F. Gutierrez Sanin, C. Marea Restrepo, & R. Vargas M., *Violencias que persisten* (págs. 225–322). Bogotá DC: National University of Colombia – IEPRI.
- Rojas, P. (2009). *Reparations before the Inter-American Court of Human Rights (1988 – 2007)*. University of Chile.
- Van Boven, Theo (1993). Study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr. Theo van Boven, Special Rapporteur, E/CN.4/Sub.2/1993/8, United Nations Commission on Human Rights, 45th session, p. 64. Available at: <https://www.corteidh.or.cr/tablas/10101.pdf>
- Wood, W. (2014) Punitive Populism: An Entry to the Encyclopedia of Theoretical Criminology. Mitchell Miller, J. *The Encyclopedia of Theoretical Criminology*. Oxford: Blackwell Publishing.

Other Sources

- Defensoría del Pueblo (2020): Alerta Temprana No 018–2020
- El Espectador. (4 de 07 de 2020). El Espectador. Obtenido de In Chocó, social leaders fear participating in JEP processes for their safety: <https://www.elespectador.com/colombia2020/justicia/jep/en-choco-los-lideres-sociales-temen-participar-de-procesos-de-la-jep-por-su-seguridad/>

- Human Rights Watch. (2020, 05 15). Colombia: Armed Groups' Brutal Covid-19 Measures. Retrieved from Human Rights Watch: <https://www.hrw.org/news/2020/07/15/colombia-armed-groups-brutal-covid-19-measures>
- Investigation and Prosecution Unit. (2020). Dinámicas de violencia, afectación a civiles y control social durante la cuarentena en Colombia: Un análisis de los factores de riesgo en los territorios y las poblaciones de interés para la Jurisdicción Especial para la Paz. Retrieved from Special Jurisdiction for Peace: <https://www.jep.gov.co/JEP/SiteAssets/Paginas/uia/Sala-de-prensa/Un%20análisis%20de%20los%20factores%20de%20riesgo%20en%20los%20territorios%20y%20las%20poblaciones%20de%20interés%20para%20la%20UIA-JEP.pdf>
- Investigation and Prosecution Unit. (2020). Silenciando la verdad: Un diagnóstico de la violencia letal que afectan a los excombatientes de las FARC-EP en Colombia. Retrieved from Special Jurisdiction for Peace: <https://www.jep.gov.co/JEP/documentos1/Comunicado%20UIA%20No.%20079%20-%20Cada%20vez%20que%20muere%20un%20ex%20combatiente%20se%20silencia%20la%20verdad%20para%20un%20grupo%20de%20v%C3%ADctimas,%20dijo%20el%20Director%20de%20la%20Unidad%20durante%20la%20presentaci%C3%B3n%20del%20informe%20%E2%80%9CSilenciando%20la%20verdad%E2%80%9D.pdf#search=silenciando%20la%20verdad>