WHAT WILL WE FIND WHEN WE TURN THE PAGE? THEORIZING A MORE EXPANSIVE NOTION OF TRANSITIONAL JUSTICE

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Abstract:
In its search to promote accountability and remedy large-scale, systematic human rights violations, the field of transitional justice has largely overlooked violations of economic, social, and cultural (ESC) rights. However, these violations are at the heart of many conflicts and addressing them is critical to one of transitional justice's aims: non-repetition. This article asks why transitional justice theory has largely focused on civil and political rights and argues theory should be informed by praxis, which as cases like Colombia show, is progressively integrating ESC rights and transitional justice in measures like comprehensive reparations and rural reforms. Transitional justice is a living concept, and as such, where relevant it should be cognizant of all violations perpetrated to better turn the page on conflict.

Keywords: Transitional justice; economic, social, and cultural rights; Colombia; peace agreement; non-repetition

Resumen:
En su búsqueda de la rendición de cuentas y reparación de violaciones sistemáticas y amplias de los derechos humanos, el campo de la justicia transicional (JT) ha pasado por alto a las violaciones de los derechos económicos, sociales y culturales (DESC). Sin embargo, muchos conflictos se caracterizan por estas violaciones y es crítico abordarlas para lograr la no repetición, uno de los objetivos de la JT. Este artículo pregunta por qué la teoría se ha centrado en los derechos civiles y políticos y argumenta que esta debe informarse por la práctica, que en casos como Colombia, está integrando progresivamente los DESC y la JT en medidas como reparaciones integrales y reformas rurales. La JT es un concepto vivo y cuando sea pertinente, debe contemplar todas las violaciones perpetradas para pasar la página al conflicto.

Palabras clave: Justicia transicional; derechos económicos, sociales y culturales; Colombia; acuerdo de paz; no repetición

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I. INTRODUCTION

"Transitional justice must have the ambition to assist the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to - but also beyond - the crimes and abuses committed during the conflict that led to the transition, and it must address the human rights violations that predated the conflict and caused or contributed to it."

- Louise Arbour, UN Office of the High Commissioner for Human Rights (2007, p. 3)

During the negotiations that led to the 2016 Peace Accord between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), national and international actors began to reassess their strategic priorities with an eye on the horizon. Development and humanitarian agencies that for decades had been implementing a wide array of programs, from rural economic development to aid for internally displaced persons, began to posit how to best incorporate the core elements of the peace accord into their portfolios. Given Colombia's extensive history of ongoing peacebuilding during decades of armed conflict (Rettberg, 2013a), it was no surprise that they would seek to bolster their support for transitional justice.

In post-conflict scenarios around the world, transitional justice and socioeconomic development often take place under similar circumstances of instability, poverty, corruption, limited trust in institutions, and government deficits, in countries with legacies of armed conflict and human rights violations (De Greiff, 2009). Following conflict and atrocities, countries often face the dire need for transitional justice, as well as social, economic, and cultural wrongs. However, does the definition of the former contemplate the latter? Examples like Guatemala and Bosnia and Herzegovina demonstrate that a "missed opportunity to support transitional justice is a missed opportunity for the goals of development" (Sancho, 2014, p. 2). The interplay between definitions of transitional justice and socioeconomic rights is evident in numerous countries where deep-seated inequality is at the heart of conflict.[1] For these countries to move toward a more peaceful future,

[1] Extensive literature explores inequality and conflict. While Collier (2000, p. 1) writes that inequality has "little systematic effect on risk" of conflict, Gurr (1985) notes frustration at the root of inequality can foment violence. Under a perspective of relative discrepancy, perceived differences in expectations and capacities can cause frustration that amplifies animosity. Over time, increasing inequality and ongoing violence could contribute to the continuation of conflict. As Collier (2000, p. 6) says: "history matter[s]." For discussions of the interplay between

reconcile citizens, and achieve greater social cohesion, it is critical to address the entire spectrum of rights violated – including economic, social, and cultural (ESC) rights that may have directly contributed to violence. However, with the exception of some critical theory, most literature separates transitional justice from ESC rights.

To analyze the complex relationship between these issues, this article asks: *Has transitional justice scholarship and theory engaged with or dismissed ESC rights? To what degree are these rights incorporated in contemporary transitional justice mechanisms?* To answer these questions, it looks at why in discussions of how to remedy situations of massive and systematic violations of human rights, much of the literature on transitional justice seems to have prioritized mechanisms addressing violations of civil and political rights (most commonly through trials, reparations, and truth commissions, and guarantees of non-repetition), arguably over social, cultural, and economic ones – even in cases where ESC violations are present. However, as an evolving concept defined by its practical experiences, transitional justice as a field of practice should be prepared to address all relevant rights in each individual context. This, I argue, is fundamental for transitional justice to redress violations, uphold justice, and avoid repetition.

Setting the stage to address these questions, Section II reviews the contemporary definitions of transitional justice and describes how the concept developed and evolved over time. While society's efforts to address violations in the wake of conflict are "as old as conflict itself" (Transitional Justice in Historical Perspective, n.d., par. 2) and seminal language on transitional justice dates back to processes like Nuremburg in 1945 (Teitel, 2003), most academic literature emerged and expanded in the 1990s. This section also describes how ESC rights came to be enshrined in international law, including sources of law on transitional justice and conflict. Finally, this section describes a nascent body of literature on the intersection between transitional justice, ESC rights, and socioeconomic development.

socioeconomic rights and transitional justice, see: Bergsmo, Rodriguez-Garavito, Kalmanovitz, & Saffon Eds. (2010) on Eastern Europe, Nepal, Guatemala, and Colombia, Laplante (2008) on Guatemala and Peru, Mamdani (2000) on South Africa, and Sharp (2014b) on Chad, Ghana, Sierra Leone, Libera, and Kenya.

Section III then turns its attention to the questions at hand, arguing that while contemporary scholarship and theory on transitional justice have generally overlooked ESC rights, the lack of a strict code defining the concept means that it can be interpreted more broadly. Semantically, politically, or legally, there is no reason for which transitional justice cannot be expanded without altering its purpose. By creating a space for expansion, transitional justice could focus more on "process-based change to bring about deeper cultural and structural changes in post-conflict societies" (Fletcher & Weinstein, 2015, p. 17), which may ultimately be critical to turn the page on conflict and promote stable, lasting peace.

Moreover, a broader understanding of transitional justice sensitive to ESC rights may more fully respond to specific violations occurring in many conflicts; thus, an expanded understanding could be better equipped to ensure one of transitional justice's objectives: non-repetition.[2] Furthermore, this section notes that transitional justice should be defined by the practical cases in which it is applied, rather than prescribed upon these cases. In countries where ESC violations are at the heart of armed conflict and repression, protecting these rights is critical to remedying atrocities. Based on the causes and characteristics of the armed conflict, Colombia exemplifies such a context. Through transitional justice mechanisms implemented for years amid ongoing conflict, Colombia demonstrates: 1) The importance of considering a broader notion of transitional justice sensitive to economic violations and inequality, including to advance the preventative guarantees of non-repetition, and 2) The practical expansion of transitional justice mechanisms to engage with civil, political and ESC rights. The latter is evidenced by the Development Plans with a Regional Focus (PDET), established under the 2016 peace agreement's section on comprehensive rural reform, and other elements of the agreement.

[2] Roht-Arriaza (2016) notes that before the term was incorporated into human rights documents and jurisprudence, guarantees of non-repetition were included as a form of remedy in the law of State responsibility (8). Discussing the history of these guarantees, she notes they serve an "explicitly preventative purpose" and in the law of state responsibility, serve to address the causes of the initial violation (9). A body of soft law on non-repetition was created through UN principles and guidelines in the late 1990s and early 2000s, including the inclusion of "prevention" in the chapeau on non-repetition in the UN's Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims in 2005.

Finally, in Section IV, I present conclusions from the discussion and note challenges that may arise in the application of broader conceptions of transitional justice. The fact that we *can* expand the conception – and that it is already being done in practice –does not mean that the implementation of measures will be simple. However, in specific cases marked by widespread ESC violations, it could make the difference for non-repetition.

II. LITERATURE REVIEW

A. Defining transitional justice

Literature on what today is referred to as transitional justice emerged and quickly burgeoned over the past thirty years. The 20th Century "witnessed the commission of terrible atrocities" (Teitel, 2006, p. 1615) the world over, including in Turkey, Bangladesh, Cambodia, Iraq, Rwanda, Yugoslavia, and numerous countries in Latin America. While for most of history, the world's record has been of impunity and persecution, notable cases of early transitional justice with long-term precedent-setting implications – like the Nuremberg trials in the aftermath of World War II – set the stage for future processes. Teitel (2003) notes three distinct periods in the evolution of transitional justice: the first beginning in 1945, the second in the final quarter of the 20th Century, and the third around the turn of the 21st Century, when transitional justice shifted from the exception to the norm (p. 71).

Nearly fifty years after Nuremberg, as the 20th Century wound down, domestic and international efforts to confront numerous cases of political repression, genocide, and human rights violations gained prominence. Massive human rights violations in Eastern Europe, Africa, and Latin America were met with calls to hold individuals responsible accountable, respond to victims' needs, and set in motion a

range of new legal instruments.[3] Accountability for violations and post-conflict scenarios also received attention in international humanitarian law (Bell, 2009, p. 8).[4]

Scholars like Teitel (2000) and Kritz (1995) began to introduce the term transitional justice in the academic lexicon, with the former writing that the concept referred to "periods of political change, characterized by legal responses to confront the wrong-doings of repressive predecessor regimes" (Teitel, 2003, p. 69). The concept quickly rose to prominence to describe efforts to turn the page on repression, address the wrongs of the past, rebuild the social fabric and promote healing in fractured societies (Olsen, Payne, & Reiter, 2010a, p. 10). As Bell (2009, p. 7) notes, other fields of study took many decades to get to the point transitional justice reached in just two. In addition to describing past and ongoing episodes of violence, armed conflict, and repression, theory stressed the practical importance of transitional justice and the need to employ and expand transitional measures.

The concept's increased recognition in theory and praxis was followed by the creation of think tanks, institutions, academic programs, policies, and strategies dedicated to analyzing and supporting transitions like those in the former Yugoslavia, Rwanda,[5] Peru, South Africa, and El Salvador. Founded in 2001, the International Center for Transitional Justice (ICTJ) notes that when facing regime changes and human rights violations in Eastern Europe and Latin America, transitional justice processes aimed to recognize victims and "promote possibilities for peace, reconciliation, and democracy" (2008, p. 1). Recognizing an increased global focus on transitional justice, the UN Security Council (2004) defined it as:

> "...the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may

[3] For example, including the International Criminal Tribunal for the former Yugoslavia in 1999, the International Criminal Tribunal for Rwanda in 1994, and the South African Truth and Reconciliation Commission in 1995.
[4] For example, Article VI of the 1995 Agreement on Refugees and Displaced Persons annexed to the Dayton Agreement in Bosnia and Herzegovina reinterprets Article 6(5) of the Protocol II to the Geneva Conventions, conditioning amnesties to IDPs and refugees to those who did not participate in serious violations of IHL.
[5] There is some debate on the nature of the mechanisms in Yugoslavia and Rwanda. Albeit in accordance with the fact that these mechanisms were spaces to resolve past human rights violations, some consider them more closely related to international criminal law than transitional justice.

include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and **individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals,** or a combination thereof." (p. 4)

Early in its conceptual development, scholars largely used the term to refer to transitions from repressive, authoritarian regimes to potentially more just and democratic ones (Lenzen, 2009, p. 81). Transitional measures responded, "when a government that… engaged in gross violations of human rights is succeeded by a regime more inclined to respect those rights" (Teitel, 2003, p. 79). The concept expanded to include political violence, state repression, armed conflict, mass atrocities, and human rights violations that were not necessarily accompanied by authoritarianism or regime change, but also internal armed conflicts and general political turmoil.[6] This included cases like Colombia, where transitional justice measures have been implemented in the midst of ongoing conflict with multiple armed actors (Uprimny, Saffon, Botero & Restrepo, Eds., 2006). Rather than a transitional in regimes, Colombia's transition aims to move from conflict to peace. Globally, transitional justice has been "increasingly articulated as one of the measures to help build peace," (Lenzen, 2009, p. 81) in scenarios of social strife, institutional breakdown, violence, poverty, corruption, and armed conflict.

Despite engagement by critical theorists and increasingly complex contexts,[7] the central tenets of transitional justice posited by early theorists remain largely the same today. Comparing over 1,100 transitional justice mechanisms in 161 countries from 1970 to 2010, Olsen, Payne, and Reiter (2010a) demonstrate that transitional justice is more common than we often think, noting "most of the theoretical literature focuses on trials, truth commissions, amnesties, reparations, and lustration policies, with a limited number also referring to institutional reforms and memory building" (p.

[6] Olsen, Payne, and Reiter (2010, p. 10) discuss ideas like "coming to terms with the past" and "dealing with the past," in the face of debates regarding the helpfulness, accuracy, and clarity of the term transitional justice.
[7] Sharp (2012, p 791) notes, "As the Cold War recedes in time, conflicts across the globe are increasingly interstate in nature, less fueled by a grand global ideological battle than by local struggles for resources and control of government."

31). Despite slight variations, with some authors stressing certain components over others and discussing how to most effectively ensure victims' rights and avoid impunity, theory continues to define transitional justice by its four main mechanisms Addison (2009) and Sancho (2014). The Office of the United Nations High Commissioner for Human Rights (OHCHR, 2014, p. 5) defines the four central tenets as: 1) criminal prosecutions of perpetrators of violations of human rights and international humanitarian law, 2) truth-telling, 3) reparation to victims of violations of human rights and international humanitarian law, and 4) the State's obligation to assure non-repetition.

These tenets combine retributive and restorative measures to help societies move on from conflict and strife where human rights violations are "so numerous and so serious that the normal justice system will not be able to provide an adequate response," (ICTJ, 2020, par. 1) to address impunity while giving societies and victims tools to heal. According to Olsen, Payne, and Reiter (2010a), while some argue that combining retributive and restorative measures "dilutes the notion of justice," (p. 12) and increases the chance that perpetrators will not be held accountable, the opposite actually is often true: retributive measures that lack tools to foster reconciliation and healing risk leaving the social fabric tattered and victims' affectations unaddressed.

Debates on transitional justice as a global project moved past discussions of democracy versus justice, peace versus justice, and truth versus justice, reaching a consensus that in the wake of atrocities something must be done (Nagy, 2008, p. 276). Over the past thirty years, what Sikkink (2011) describes as a "justice cascade" overturned trends of impunity, characterized by high profile trials and prosecutions demanding accountability for human rights violations. Debates now focus on *how* to ensure all applicable elements are addressed in a transition, the nature of mechanisms to respond to civil and political rights (for example, procedures followed by truth commissions, alternatives for institutional reform, and preventing impunity in criminal prosecutions), and how to ensure local ownership and agency.

B. Economic, social, and cultural rights in international law

Before analyzing the relationship between transitional justice and ESC rights – what a deeper integration of the two would mean – this section briefly describes ESC rights' protection under international law. Adopted by the United Nations General Assembly in 1966, the International Covenant on Economic, Social and Cultural Rights (hereafter, "ESC Covenant") states these rights "derive from the inherent dignity of the human person" and the basic minimum conditions for this dignity to be possible; for human beings to "[enjoy] freedom from fear and want," economic, social, cultural civil, and political rights are necessary (UN General Assembly, 1966, Preamble). ESC rights include the right to work (including just and favorable working conditions), the right to form and join trade unions, the protection of family, maternity, and childhood, the right to social security, the right to adequate standards of living (including food, clothing, and housing), the right to health and education, the right to take part in cultural life, the right to benefit from scientific progress, and the protection of moral and material interest of authors of scientific, artistic or literary works (UN General Assembly, 1966).[8]

The normative framework for ESC rights emerged in an ideological context defined by the Cold War (Roth, 2004, 64). Following World War II, the 1945 San Francisco Convention, which led to the founding of the UN, proposed a Declaration on the Essential Rights of Man. Following debates on the inclusion of negative and positive rights, two international covenants were created, one on civil and political rights and another on economic, social, and cultural rights. Together with the Universal Declaration of Human Rights, they make up the International Bill of Human Rights (OHCHR, 1996).

The Committee on Economic, Social, and Cultural Rights monitors State parties' compliance with obligations under the Covenant. Over time, the Committee developed conceptual tools clarifying these rights and States' positive and negative

[8] Notably, while the Universal Declaration on Human Rights states that everyone has the right to own property, the Covenant does not refer to the right to property. Roht-Arriaza (2014, 112) writes this was due to its "Cold War provenance." For its part, the American Convention on Human Rights also states the right to private property "as meets the essential needs of decent living" in its Article XXIII.

obligations, namely to respect and refrain from interfering with them, protect and prevent third parties from interfering, and fulfil them by adopting appropriate measures. The respect of ESC rights is of immediate effect, the protection from interference by third parties is generally of immediate effect, and the fulfilment has some immediate duties like compliance with minimum obligations, while enjoyment as such is subject to progressive realization (OHCHR, 2014, pp. 10-12).

Colombia ratified the ESC Covenant in 1969 (OHCHR, 2020), in a moment when the domestic context was characterized by increasing confrontations, social mobilizations, and the proliferation of new guerrilla groups following the transformation of community self-defense groups (Centro Nacional de Memoria Historica [CNMH], 2013, pp. 119-129). The government's priority became stopping these groups, postponing social and economic reform, the restructuring of land ownership, and agricultural modernization (CNMH, 2013, p. 126). Emblematic confrontations like Marquetalia in 1964 and counteroffensives in Cauca and Caquetá around the same time further hardened early guerrillas' position. For its part, the State adopted legislation authorizing the creation of the self-defense groups, a precursor to the paramilitary groups that would play a central role in over four decades of complex, multi-actor violence and broad human rights violations (Legislative Decree 3398, as cited in Ituango Massacres v. Colombia, par. 125.1).

While the ESC Covenant and the 1948 Universal Declaration of Human Rights[9] are often pointed to as the principle instruments protecting ESC rights, other international, regional, and national human rights and humanitarian law instruments – including broader mechanisms not necessarily labelled as ESC instruments – are also important (OHCHR, 2014, p. 9). Regional treaties in Europe, Africa, and Latin America, have been fundamental for protecting ESC rights.[10] The interpretation of treaties by international bodies like the Inter-American Court of Human Rights

[9] ESC Rights are referenced in Articles 22 to 27 of the Universal Declaration on Human Rights.
[10] For example, the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. Also, the 1961 European Social Charter, the 1981 African Charter on Human and Peoples' Rights, the 1990 African Charter on the Rights and Welfare of the Child, and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

(IACHR) and its Commission and domestic judicial systems has also been critical to understanding the relationship between ESC rights and transitional justice. International treaties directly and indirectly incorporate State obligations to ESC rights,[11] in some cases linking them to transitional justice.[12] ESC rights have been widely recognized and incorporated into domestic legal frameworks, albeit "not to the same extent as civil and political rights" (OHCHR, 2014, p. 3). In constitutions,[13] through domestic statutes and national and local laws and by ratifying international treaties, States also recognized ESC rights directly. Over time, Chinkin (2009, pp. 18-19) notes that soft law has also been developed on economic and social rights, including UN General Assembly declarations, guidelines on ESC violations, basic principles on remedies and reparations for victims atrocities, Millennium Development Goals, and International Labor Organization declarations.

However, in the decades when the covenants were negotiated and subsequent academic debates, some theorists denied even "the very legitimacy of ESC issues as rights," (Roth, 2004, p. 64) and in the early 2000s, human rights organizations were urged to pay more attention. ESC rights are important in a broader rights framework, in which all human rights are "universal, indivisible and interdependent and interrelated" (World Conference on Human Rights, 1993, Point 5). ESC rights apply equally and without discrimination to all people, and moreover, they are justiciable, create State obligations, and can be claimed (OHCHR, 2014, p.

[11] Key international texts that explicitly refer to ESC include: UN Charter, Article 1(3), 55, and 56; the Declaration on Social Progress and Development (1969); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Declaration on the Right to Development (1986); the Convention on the Rights of the Child (1989); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). See Chinkin 2009 for the treaties that create ESC obligations.

[12] For example, Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide states that, when "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group," genocide includes acts "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." OHCHR (2014, 9) argues that this can refer to situations in which an actor deliberately deprives a group of minimum standards needed to live, for example through forced starvation. OHCHR also cites indirect considerations in the 1949 Geneva Conventions and the 1907 Hague regulations regarding the right to health of the wounded and the sick, and the 1977 Additional Protocols I and II, which "forbid the starvation of civilians as a method of warfare, as well as attacks on objects indispensable to the survival of the civilian population."

[13] For example, South Africa, Finland, and Portugal are among dozens of countries whose constitutions recognize ESC rights as fully justifiable. Other countries, like India, the Netherlands, and Mexico, include the protection and promotion of ESC rights as general duty of the State. Cited in OHCHR 2014, 3.

4). The OHCHR (2014) notes that while historically there was “skepticism” (p. 14) about justiciability, in recent decades regional and domestic courts and quasi-judicial mechanisms have increasingly addressed and decided on violations and remedies.

According to Roth (2004, pp. 64-66), an important practical debate lies in *how* these rights should be protected, particularly in poverty and instability where positive litigation could face resource shortages. Identifying the actors directly responsible for ESC violations can also be challenging, and Roth (2004) argues that remedies “flow much less directly from the mere documentation of an ESC violation than they do in the civil and political rights realm” (p. 66). In general, litigation on ESC rights is more straightforward when violations result from “arbitrary or discriminatory governmental conduct,” rather than general scarcity (Roth, 2004, p. 69).

Despite challenges, in cases defined by socioeconomic violence and ESC violations, transitional justice – as “...the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (UN Secretary General, 2010, p. 2.) – should consider ESC rights. Ensuring an approach that responds to the particularities of each context is important to protect victims’ rights and dignity, ensure accountability, serve justice, achieve reconciliation, and ultimately, contribute to non-repetition. However, they left unattended to, even in cases where ESC violations are roots of the conflict or were directly and broadly violated in the conflict.

C. Transformational transitional justice

Over the past decade, a nascent body of literature emerged on the interaction between transitional justice and socioeconomic issues. In 2008, the International Journal of Transitional Justice published an issue on the “nettlesome nexus” (Mani, 2008, p. 254) between the concepts, discussing the economic costs of transitional justice measures and the degree to which transitional justice should be concerned with inequality, discrimination, and marginalization, and social justice. In 2014, the ICTJ and the Swedish Development Agency published a report advocating to

strengthen the connections and coordination between transitional justice and development, noting complex ongoing transitions in Colombia, Iraq, Tunisia, Myanmar, the Democratic Republic of the Congo, Uganda, Pero, Kosovo, Afghanistan, and Cambodia and the possible role transitional justice can have in socioeconomic growth (Sancho, 2014). In 2012, the ICTJ and the Brookings-LSE Project on Internal Displacement wrote, “transitional justice measures can be used to address the…injustices associated with displacement” (p. 1). For its part, the UN has also progressively expanded its frameworks, connecting transitional justice mechanisms with remedying violations of ESC rights. In 2009, the UN reviewed its framework for durable solutions for IDPs to include transitional justice measures (Sandvik & Lemaitre, 2015, p. 254).

Authors like Sharp (2014a) note that economic violence, including corruption, economic crimes, and stealing natural resources, long “sat at the periphery” (p. 290) of transitional justice. According to Miller (2008), economic issues have been intentionally invisible in the field. However, economic violence plays a central role in many conflicts, particularly in contexts of inequality. Roht-Arriaza (2014, p. 110) notes that ESC violations can prevent victims from accessing vital medical services, education, food, water, and livelihoods. Those whose land or property are stolen can be pushed into vulnerability and poverty.

Building on general calls for a broader approach to transitional justice, some authors (Schmid & Nolan, 2014, Mamdani, 2000, and Mani, 2002) call for deeper analyses of the intersections between socioeconomic development and transitional justice, including the potential benefits of intentionally deepening ties (De Greiff & Duthie 2009). Others (Mani, 2002, Laplante, 2008, Miller 2008, and Pasipanodya, 2008) discuss the need to expand understandings of transitional justice to include structural violence, poverty, and inequality. According to Mani (2008), if transitional justice does not do so, it could “lose credibility in the predominantly impoverished and devastated societies where it operates” (p. 253). Narrow conceptions could risk advancing a vision of transitional justice that is incapable of explicitly addressing the roots of individual conflicts (Sriram, 2014), particularly inequality and discrimination.

Miller (2013) notes that scholarship in the early 2000s addressed efforts to "*bring politics back in* to transition and transitional justice," (p. 372) proposing adding "more rights" or "more development" to address the "radical implication that the field as a whole systematically neglects inequality or nonphysical violence" (p. 371).

However, despite some critical literature questioning *whether* and *how* conceptions of transitional justice were sensitive to ESC rights and development, Urueña and Prada-Uribe (2018) note the initial thickening was followed by a return to "more cautious and limited proposals of integration" (p. 407). Initial engagement was followed by hesitation, characterized by scholarship's continued focus on certain elements of transitional justice over others and general oversight of ESC rights outside of critical theory. Sharp (2019) notes that critical theory exploring the field's traditional limitations has not yet "cohered into a distinguishable 'school'" (p. 570). While critical theory on other issues, like local ownership, have had some traction in broader debates, discussions of ESC rights continue to be undercurrent. These debates remained on the sidelines of scholarship's principal engagement with the classic tenets and civil and political rights. Scholarship defining transitional justice as a field of practice continued to include some concepts and overlook others, even normatively suggesting which should or should not be included. The field continued to demonstrate that Miller (2013) has called "technocratic legalism [which] masks the politics inherent in distributing resources and power" (p. 372).

There are several possible explanations for this. On one hand, proponents faced questions of whether more holistic approaches were practically workable, including given budgeting and sequencing challenges (Urueña & Prada-Uribe, 2018). Regarding Colombia's and Peru's transformational reparations programs,[14] Sikkink, Pham, Johnson, Dixon, and Marchesi (2014) write that "as admirable as these may be in principle, in practice they may introduce uncertainty and the possibility of constant task-expansion into an already massive reparations

[14] Transformational reparations programs are those that do not simply aim to bring victims to their *status quo* state before the conflict. Considering that many victims lived in contexts of inequality and poverty prior to conflict, transformational reparations aim for the progressive improvement of victims' lives, in the case of Colombia, for example, moving them beyond any pre-conflict state of vulnerability.

challenge" (p. 4). Moreover, according to De Greiff (2009), while there are inherent connections between development and transitional justice – like the mutually reinforcing nature of distributive and corrective justice – there could be risks to forgetting that transitional justice is principally concerned with the latter. However, what precisely is there to say that it *is* principally concerned one or the other? While answering the question of *whether* transitional justice mechanisms should respond to questions of economic violence "opens a veritable Pandora's box of thorny moral, legal, and policy issues," (Sharp 2014a, p. 292), sources of international law on transitional justice state that it should include *the full range* of measures to turn the page post-conflict. In conflicts characterized by widescale ESC violations, non-repetition could depend upon recognizing and addressing these crimes.

However, as Urueña and Prada-Uribe (2018) also note, practical challenges are not the only reasoning behind limited engagement between transitional justice theory and socioeconomic issues. Through its relatively short but very animated history, transitional justice has focused on certain rights. According to Miller (2013) the field is biased towards civil and political rights, narrow interventions, and reparations as the means to solve all economic questions. These points will be discussed in detail in Section III. Despite conceptual and practical challenges, the question remains: without a deeper engagement with economic, social, and cultural rights, can transitional justice truly attain its objective of "repairing the social contract" (Tolbert, 2014, p. 1), particularly in cases of inequality and poverty where ESC violations were widespread during conflict?

In the midst of discussions on *whether* transitional justice should or should not include certain types of violence, actors, and mechanisms, armed conflicts continue to rage on around the world. Countries with active conflicts struggle to transition to lasting peace and remedy victims. In Colombia, as peace implementation lags,[15] violence and conflicts continue with other armed groups,

[15] The Kroc Institute's (2020) most recent report on peace implementation shows important gaps, including a gap between the implementation of stipulations related to ethnic and gender approaches and the agreement in general. Many of these stipulations focus on medium and long-term commitments, including structural reforms.

often in territory left behind by the FARC over illicit economies and the ability to plunder resources, displacing and forcibly confining thousands of people.[16]

Given these discussions on the relationship between ESC rights and transitional justice, the following section theorizes what Lenzen (2009) refers to as the "missing link" (p. 84) between efforts to restore justice and peacebuilding. As a living concept with no single code or definition, there is no barrier preventing transitional justice theory from more fully incorporating responses to ESC rights and violence. According to Arthur (2009, p. 359), "there is no single theory of transitional justice and the term does not have a fixed meaning," but rather, is a "belief-based system of thought" (Fletcher & Weinstein, 2015, p. 2). Thus, as a concept defined by its practical interventions, we should be receptive of case-by-case applications of transitional justice, which are ultimately what define *what* the concept truly is. In this sense, policy and praxis have arguably already operationalized a broader definition of transitional justice than scholarship. Colombia, I argue, exemplifies a practical case of transitional justice that more expansively incorporates economic, social, and cultural "symptoms and causes" (Lenzen, 2009, p. 84) of conflict. While implementing expanded conceptions certainly poses its own challenges, the recognition and codification of all rights in transitional justice processes could be an important first step for non-repetition.

III. TOWARDS AN EXPANSIVE CONCEPTION OF TRANSITIONAL JUSTICE

A. General arguments

An important starting point to discuss why transitional justice can include a greater focus on ESC rights is to understand why it has not. A series of possible reasons and arguments emerge. One overarching argument has to do with the impacts of human rights discourse on the development of transitional justice.

[16] The United Nations Office for the Coordination of Humanitarian Affairs (2020) notes that 35,300 people were affected by mass displacement in 2019, 76 percent on the Pacific coast. 40,000 people were forcibly confined, up compared to all years since 2017. Selective killings of social leaders continue at an alarming rate.

According to Miller (2013), transitional justice has been heavily impacted by human rights, a legalistic field biased towards civil and political rights, which often focuses on individual over collective perceptions. Sharp (2012) notes that despite the legal indivisibility of all human rights (including civil, political, economic, social, and cultural rights) noted in UN declarations, social and economic rights' very place in international law has been questioned. Roth (2004) notes this may be because it is often easier to identify the violations and violators of civil and political rights; however, Sharp (2012, p. 797) notes that organizations like Amnesty International and Human Rights Watch were "reluctant" to document violations of ESC rights during much of the 1990s and expressed skepticism whether they were truly rights at all. Speaking to the human rights field's perceived bias, Waldorf (2012) suggests that a focus on civil and political rights is a reflection of the fact that "transitional justice is inherently short-term, legalistic and corrective" (p. 179) and ESC rights entail larger, long term interventions to address structural issues.

Critical theory questions paying more attention to some rights than others. Nagy (2008) notes the need to critically reflect on how transitional justice's narrow focus on civil and political rights ignores how "structural violence and gender inequality inform subjective experiences," (p. 287) and could create risks for the goal of non-repetition. Certainly, civil and political rights are central to transitional justice, however, one set of rights need not exclude another – particularly when both are protected under binding international law. Determinations should not assume that one must select one or the other, but rather tailor mechanisms per each transition and the relevant international and domestic legal instruments. No code dictates what transitional justice does or does not include. It is a fluid concept without a single definition. To say that transitional justice is explicitly one thing and not another could ignore practical experiences on the ground. Moreover, international and domestic jurisprudence, quasi-legal mechanisms, and soft law that has recognized violations of civil, political, and economic, social and cultural rights in armed conflict, in some cases creating positive obligations for States. Case studies like Colombia

demonstrate that transitional justice includes a broad range of mechanisms and respond to all relevant rights violations, including ESC rights.

To unpack the field's perceived emphasis on civil and political rights, others point to the fact that its theoretical development took place in the midst of transitions from authoritarianism to democracy in the late 20th Century. At this moment, scholarship focused on the need to transition to democracy, positing that other issues like socioeconomic inequality would be addressed after creating democratic institutions and guaranteeing rule of law. However, sequential arguments could ignore the inherent role that ESC violations played in a given conflict or human rights violation, even as a contributing factor to civil and political violations.

Other arguments suggest that transitional justice theory has not engaged with ESC rights because of the strong influence by criminal justice (specifically international criminal law, which focuses on individual rather than structural causes) (Arbour, 2007), or because of neoliberal biases that favor elites (Miller, 2013, p. 377), a focus on rule of law and electoral democracy (Waldorf, 2012, p. 173), and the priorities of liberal peacebuilding (Paris, 2004), which is often at the forefront of reconstruction efforts post-conflict. The collapse of communism led actors away from visions that might suggest large-scale structural reforms (Waldorf, 2012, pp. 173-174) and towards an emphasis on reparations as the solution to all economic issues (Miller, 2013). Thus, the development of transitional justice scholarship may have been "bound by its context of emergence [and the] presumed 'liberal consensus'" (Franzki & Olarte, 2014, p. 202). I now discuss each of these points.

Regarding the influence of criminal justice, Arbour (2007) argues transitional justice as we know it today is "anchored" (p. 2) in the Nuremberg Trials and individual responsibility for international crimes, based on the law of war and international human rights law. The influence of international criminal law could also explain transitional justice's emphasis on civil and political rights, accountability, due process (Waldorf, 2012, p. 173), and subsequent "[s]ilence" on structural violence and inequality" (Miller, 2008, p. 273). During its early development, transitional justice was modeled on criminal justice systems (Arbour, 2007), and quickly developed an

emphasis on accountability (McEvoy, 2007). Moreover, parallel developments in human rights law and international criminal law impacted the development of transitional justice, "undermin[ing] the validity of amnesties" (Laplante, 2009, p. 918) and increased the use of tribunals for criminal prosecutions.

At the end of Cold War, jurisprudence from international and domestic tribunals propagated principles of individual criminal liability for human rights violations (Laplante, 2009). Individuals, not only States, could be responsible for these crimes. Over the following decades, a series of highly publicized human rights trials fostered greater criminal accountability, demonstrating a shift in the legitimacy of impunity (Sikkink, 2011). Trials are instrumental in transitions to do away with norms of violations and create "a new legal order" (Teitel, 1997, p. 30, cited in Laplante, 2009). To this point, it is important to note the argument that civil and political rights are more imputable, and as such, transitional justice focuses on individual criminal responsibility for accountability.

According to Fletcher and Weinstein (2015), in 486 transitional justice papers published between 2003 and 2008, certain topics prevailed in the period when these mechanisms passed from the exception to the norm. Nearly all of the studied papers focused on national responses, theories on transitional justice, truth-seeking, and international criminal justice (p. 8). Just two articles (those by Laplante, 2008 and Miller, 2008) "explicitly incorporated the dismantling of structural inequalities as part of the transitional justice paradigm" (Fletcher & Weinstein, 2015, p. 12). The authors note that all of the articles studied focused on "transitional justice as a menu of interventions to promote justice, political stability, and human rights," paying little attention to how "structural drivers of conflict may undermine the pragmatic transitional justice interventions" (p. 17).

A separate line of arguments notes the development of transitional justice theory coincided with a specific historical moment characterized by a push for democratization and trends of liberal peacebuilding. Theory engaged with transitions in Latin America and Eastern Europe in the 1980s and 1990s, which in many cases entailed moving from authoritarianism to democracy. These transitions frequently

took place “in conjunction with a project of economic and/or political liberalization,” (Miller, 2008, p. 270) which arguably influenced what transitional justice mechanisms were formed and the shape they took. Arthur (2009, p. 359, cited in Sharp, 2012, p. 801) asks how the “toolbox” created for transitional justice might be different if the transitions that occurred in the 1990s took place in a context of transition towards socialism, rather than Western democracy.

The transitions in the 1990s also occurred amid what Paris (2004) describes as liberal internationalism, a push for peacebuilding combined with market democracy. Liberal peacebuilding in the post-Cold War era prioritized political and economic liberalization that may have overlooked ESC rights and general inequality. Largely pre-prescribed measures for peacebuilding did not engage deeply with local populations to understand why conflict and repression occurred (and thus, why it may repeat itself). These measures, when tied to an overall development agenda, would be likely to support or encourage the development of certain transitional justice measures linked to accountability and rule of law; they were capable overlooking other measures, for example redistributive land reform and collective reparations programs.

Development actors frequently support liberal peacebuilding projects stressing rule of law, democracy, security, and justice sector reform in transitions. Questions of economic and social violations are seen as a separate issue. However, while States have permanent obligations to protect ESC rights, they are also responsible for addressing specific violations of these rights that take place in conflict. Moreover, addressing links between economic violence and inequalities and the persistence of conflict may be particularly critical to non-repetition. According to Gready (2010, p. 214) mechanisms that theories deem central to or separate from transitional justice reflect specific interests, the kind of transformation sought, and ultimately – the behavior sanctioned.

Perhaps, as Bell (2009, pp. 13 and 19) notes, limitations to transitional justice’s conceptual expansion are also related to the fact that the term has become overly legalistic, which according to McEvoy (2008) “impedes both scholarship and

praxis" (p. 16). Specific academic debates given center stage over time could have created a "scholarly inertia in which…it may become difficult to raise questions outside the accepted discourse" (Miller, 2008, p. 275).

However, McEvoy (2008) also notes that thicker understandings involving non-traditional actors could be "better equipped to actually deliver to those who have been most affected by conflict" (p. 45). Expanding the concept could mean going beyond simply linking two independent fields, one of practice and another of inquiry, and fully bridging "practice and interdisciplinary legal analysis" (Bell, 2009, p. 6) into one coherent field. Practice should directly inform analysis; cases of transitional justice on the ground must inform inquiry, and thus, our definitions of the field.

While the arguments mentioned above refer to what Lenzen (2009) calls the "missing link" (p. 84) between contemporary definitions of transitional justice and ESC rights, in practice, through progressive jurisprudence, soft law, and policymaking, the concepts *are* being bridged. In its guidance note "Approach to Transitional Justice," the UN Secretary General (2010) reiterated that while transitional justice processes include truth, reparations, institutional reforms, and prosecutions, the combination of measures chosen must be "in conformity with international legal standards and obligations" (p. 2), and "seek to take account of the root causes of conflicts and the related violations of all rights, including civil, political, economic, social, and cultural rights" (p. 3). The UN Secretary General goes on to say that "successful strategic approaches to transitional justice" (p. 7) will consider violations of ESC rights, including loss or deprivation of property rights. It connects transitional justice's ability to achieve lasting peace to addressing "systematic discrimination, unequal distribution of wealth and social services, and endemic corruption…" (p. 7) through comprehensive solutions.[17]

[17] As examples of comprehensive, integrated solutions, the UN (2010, p. 10) notes countries could mandate truth commissions to examine ESC violations, investigate and prosecute under national and/or international law crimes involving ESC violations, redressing victims' rights to health, housing, education, and economic viability through reparations, guaranteeing non-discrimination in access to services, adapting key legislation to recognize and protect ESC rights, and enshrining protections for ESC rights in peace agreements and constitutions. This article's case study on Colombia will show how the country has advanced in multiple of these recommendations.

While normative arguments for expanding the concept of transitional justice can be controversial, Miller (2013, p. 377) notes three reasons one might consider incorporating ESC rights more fully. The first is pragmatic: considering inequality and economic and social issues is fundamental to understand and address the underlying causes of conflict and addressing these causes is important for non-repetition. The second is philosophical: transitional justice should consider the justness of resource distribution and transformational measures post-conflict. The third is sociological: transitional justice mechanisms should be expanded to include ESC measures when conflict victims prioritize these measures. Surveys of victims in Nepal (Robins, 2012) and the Democratic Republic of the Congo (Vinck & Pham, 2008) show that immediately after conflict, victims are often interested in social and economic justice, and rank compensation, education, housing, and clothing as their most pressing needs.

To discuss the evolution of transitional justice and the possibility of expanding it further, it is helpful to understand it as a community of practice and a living conceptual field that continues to develop. According to Arthur (2009) is "an international web of individuals and institutions, whose internal coherence is held together by common concepts, practical aims, and distinctive claims for legitimacy" (p. 324). As a community of practice, transitional justice is made up of groups of people, including judges, practitioners, policymakers, and scholars, who "learn how to do it better as they interact regularly" (Wenger, 2009, p. 1). The concept is not static but dynamically evolves to accomplish its purpose. It is process-oriented and "concerned with change toward improving human lives and societies" (Lenzen, 2009, p. 77), through a combination of different measures.

No single code limits must be addressed in the aftermath of conflict and atrocities. Transitional justice mechanisms are tailored to each experience of conflict and each country's context and legal frameworks, rather than one-size-fits-all formulas. According to the ICTJ (2008), transitional justice is "justice adapted to societies transforming themselves" (par. 1), which as Tolbert (2014) writes "help[s] repair the social contract between the state and its citizens after it has failed to

protect, or actively violated, those rights" (p. 1). To advance non-repetition, the distinct causes of the conflict must be considered, including socioeconomic violence and ESC violations, lest important stones be left unturned.

The following section uses the Colombian case to demonstrate a practical example of a more expansive notion of transitional justice. When Sharp (2014a) noted that perhaps economic violence was moving to the forefront of transitional justice, he asked "where does policy go from here?" (p. 292). Practical examples at the international level, the regional level, and domestically in Colombia demonstrate that ESC rights have gained momentum in jurisprudence, policy, and praxis, if not in scholarship and theory.[18]

B. Colombia's inclusion of economic, social, and cultural rights in transitional justice mechanisms

The treaties mentioned above in the background provide for economic, social, and cultural rights and corresponding State obligations. However, understanding their content and interpreting their applicability has fallen into the hands of international and domestic judicial and quasi-judicial bodies (OHCHR, 2014, p. 10). This section will analyze this process, specifically the integration of international law into the Colombian domestic legal system and the development of relevant jurisprudence, legislation, and transitional justice mechanisms.

For decades, Colombia has implemented transitional justice mechanisms amid ongoing conflict. These include disarmament, demobilization and reintegration processes in the early 2000s, a comprehensive victims reparation program beginning in 2011, and most recently, the negotiations and 2016 Peace Accord signed between the government and the FARC (all while conflict continues with other armed groups). The creation and implementation of legislation and policy

[18] This article focuses on Colombia, but comparative and small-N studies would be useful to understand the growing tide of ESC rights in transitional justice measures and processes around the world.

mechanisms has been impacted by emblematic decisions and judgements at the international, regional, and domestic levels.

Transitional justice mechanisms in Colombia respond to what the CNMH (2013) calls a prolonged and degraded war. The ongoing conflict is characterized by massive human rights violations affecting over nine million conflict victims (20 percent of the population, many of multiple violations and on repeated occasions). The majority of Colombia's conflict victims are from the poorest and most vulnerable regions and sectors of society. Eighty percent of victims were forcibly displaced, leading to further socioeconomic vulnerability and inadequate standards of living.

According to Uprimny and Saffon (2007b, p. 167), the armed conflict is complex not only because of the characteristics of the conflict itself, but also because of the context in which it occurred. It is rooted in deep-seated inequality and unfair distribution of land and resources, has taken place over many decades and between multiple actors (multiple guerilla groups, State participation, paramilitary and neo-paramilitary groups, and criminal groups), and continues to be fueled by the presence of numerous illegal economies. Moreover, the conflict has taken place amid significant societal polarization, political ambiguity, and the involvement of outside actors (Uprimny & Saffon, 2007b, p. 167). Inequality increased during the conflict. The country's Gini coefficient of land rose from 0.84 in 1990 to 0.86 in 2000 and 0.88 in 2009 (Ibánez & Muñoz, 2010, p. 291 & 298.). It is estimated that 0.4 percent of the population owns 62 percent of the country's best land (USAID, 2017). The historic issue of unequal access to land and decades of deliberate and persistent forced displacement by armed actors to seize land will be discussed at the end of this section.[19] But first, this section will discuss relevant developments in international and regional legal frameworks, including treaties, jurisprudence, and soft law, and their integration into Colombia's domestic legal system and transitional justice measures.

[19] Knut (2010, p. 179) cites a saying, "it is not the civil war that causes displacement; rather the civil war is being fought to produce displacement."

1. Domestic integration of international law on ESC rights and human rights

A number of relevant international treaties to which Colombia is a member address ESC rights, human rights more broadly, and international humanitarian law in the context of armed conflict. The interpretation of these treaties by domestic courts, particularly the Constitutional Court, is significant to understand present-day inclusion of ESC rights in transitional justice mechanisms. As noted above, Colombia ratified the Covenant on Economic, Social, and Cultural Rights in 1969. The State is obligated to respect, protect from third party violation, and fulfill ESC rights. These obligations are not limited to the armed conflict or victims of human rights violations, however, when these rights *are* explicitly and directly violated in conflict, what mechanisms should address them?[20] The following pages address this question.

Under Colombia's 1991 Constitution, international human rights treaties and agreements ratified by Congress have primacy in domestic law and cannot be restricted in states of exception (Constitución Política de Colombia, 1991, Article 93). Furthermore, Article 94 states that the explicit mentioning of rights does not, therefore, negate other rights that are not expressly mentioned. In this way, the Constitution facilitates the integration of human rights treaties into the domestic legal order. Since its early days, Colombia's Constitutional Court has "granted special attention to international human rights norms" (Gongora-Mera, 2011, p. 101) through interpretations cognizant of the text's original intent. In its interpretation of Article 93, the Constitutional Court applied international norms domestically and found the prevalence of international treaties in those cases when they are constitutional and have entered into the domestic legal system through ratification (Olaya, 2005). [21] Through the progressive development of the "Block of Constitutionality" doctrine, a series of decisions permit the internal application of international human rights law.

Two cases must be met for supranational norms to be integrated into the Block of Constitutionality. First, the recognition of a human right, and second, that

[20] The UN Committee on Economic, Social, and Cultural Rights (1990, par. 12) states that State parties' have a duty to protect vulnerable members of their society "even in times of severe resource constraints."
[21] For its interpretation of Article 93, see, illustratively, Constitutional Court rulings T-409 of 1992 (MPs Alejandro Martínez Caballero and Fabio Morón Diaz) and C-574-92 (MP Ciro Angarita Barón).

the right in question cannot be limited during a state of exception.[22] The Constitutional Court's interpretation in Decision C-578 in 1995 establishes the binding force of international humanitarian law treaties in domestic law,[23] noting the principles of International Humanitarian Law in the Geneva Conventions and its two Additional Protocols constitute a "minimum ethical catalogue applied to national or international conflicts, broadly accepted by the international community," (Constitutional Court [CC], Decision C-578-95, point III.3.2) and can be considered *ius cogens* customary law by all countries. Human rights treaties are *ius cogens* norms that seek, above all, to protect human dignity and comprise the international regime to protect the rights of the human being (CC, Decision C-225-95).

In 1999, agreements or treaties that are *purely* economic in nature were excluded from the Block of Constitutionality, as no constitutional disposition expressly included them or gave them supremacy (Olaya, 2005, p. 90). However, in Decision T-512 of 2003, the Constitutional Court recognized that all fundamental rights in the Constitution must be interpreted based on international human rights treaties; economic treaties were included as a parameter for interpreting human rights. Thus, it echoed United Nations' soft law declarations that human rights treaties must be approached in a comprehensive manner, regardless of the different types of rights therein contained, recognizing human rights as a single body of law (Olaya, 2005, p. 90). On this point, OHCHR (2005) writes, "Civil and political and economic, social, and cultural rights are not fundamentally different from one another, either in law or in practice. All rights are indivisible and interdependent" (p.

[22] Illustratively, see Constitutional Court ruling C-295-93 (MP Carlos Gaviria Díaz). Olaya 2005, Footnote 5, notes that, per Sentencia C-225-95 MP: Alejandro Martínez Caballero, Article 93 must be interpreted based on Article 214-2, which prohibits the suspension of human rights and fundamental liberties in states of exception.

[23] Ruling C-578 of 1995, MP Eduardo Cifuentes Muñoz cites Law 137 of 1994, which establishes intangible rights as the right to life and personal integrity, the right to not be submitted to forced disappearance, torture, or cruel, in human or degrading treatments or punishments, the right to the recognition of the legal person, the prohibition of slavery, servitude, and trafficking, the prohibition of punishments of exile, life in prison, and confiscation, the right to consciousness, freedom of religion, the principal of legality, favorability and the non-retroactive nature of criminal law, the right to elect and be elected, the right to marriage and protection of the family, the rights of the child, the right not to be condemned to prison for civil debts, the right to habeas corpus and the right of Colombians by birth to not be extradited (later amended) and the indispensable judicial guarantees for rights' protection. The decision also notes that International Humanitarian Law has absolute and universal validity and does not depend on its positive inclusion, per Constitutional Court Sentence C-574-92, MP Ciro Angarita Barón.

3). As part of an integral body of human rights, ESC rights cannot be limited during a state of exception; Colombia's obligation to respect, protect from third parties, and progressively fulfill ESC rights continue during armed conflict.

Decisions by the Constitutional Court have also explicitly referred to social rights, including by integrating sources of international law on social rights into the Block of Constitutionality (Olaya, 2005, p. 91). Decision T-426 of 1992, for example, recognizes the right to a minimum standard of living needed to survive, derived from the rights to life, health, work, and social security and citing Article 25 of the Universal Declaration of Human Rights.[24] Moreover, the Constitutional Court has found that social rights are fundamental rights when "their non-recognition potentially jeopardizes fundamental principles and rights" (Gongora-Mera, 2011, p. 102).[25] The Constitutional Court has also catalogued social rights as human rights (Decision T-568-99) and indicated that the international treaties ratified by Colombia, including ILO agreements, the ESC Covenant, and the Organization of American States Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador"), are part of the Block of Constitutionality (Decision C-551-03).[26]

The inclusion of international and regional human rights treaties into the Block of Constitutionality is an important starting point to respect, protect, fulfil and incorporate ESC rights into legal frameworks on the impacts of the armed conflict and measures like reparations. While the State's duty to respect, protect, and fulfil ESC rights is not only linked to a transitional justice framework, but broader circumstances, prominent decisions discussed below connect elements of the conflict (including IDPs' rights) to ESC rights.

[24] Article 25 of the Universal Declaration of Human Rights states, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."
[25] Fundamental rights include human dignity, life, moral and physical integrity, or the free development one's nature; where the infringement of social rights jeopardizes these rights, they can be of immediate application.
[26] Additionally, CC T-642-04, T-666-04, T-697-04, and T-827-04 (MP Rodrigo Uprimny Yepes).

2. Adjudicating ESC rights in conflict: examples from the Inter-American system

Regional courts have also played an important role in interpreting and adjudicating violations of ESC rights, with direct implications for Colombia. In the Western Hemisphere, the Inter-American Court of Human Rights (IACHR) has issued a number of rulings on ESC violations in internal armed conflicts. Multiple cases have ordered reparations to remedy victims of ESC violations.[27] Landmark adjudications by the IACHR demonstrate the connection between ESC rights, large-scale abuses, and transitional justice mechanisms, indicating how economic violence, the creation of paramilitary groups, and land seizures aggravate conflict.[28]

Three cases are particularly relevant for the present discussion. The first – Mapiripán Massacre v. Colombia (2005), hereafter "Mapiripán" – regards the massacre of at least 49 people in Meta department in 1997. The IACHR ruled the Colombian military was directly complicit and know about the impending attack, even facilitating the arrival of the *Autodefensas Unidas de Colombia* (AUC) paramilitary group, but did nothing (Mapiripán, 2005, pars. 96.31-32). After the massacre, people were forcibly displaced, and among other violations, the IACHR found the State violated victims' Freedom of Movement and Residence under Article 2.2 of the Organization of American States' 1969 American Convention on Human Rights (Mapiripán, 2005, pars. 165). Displacement also resulted in victims facing "grave conditions of poverty and lack of access to many basic services" (Mapiripán, 2005, par. 175), and loss of land and houses, marginalization, loss of the household, unemployment, deteriorated living conditions, greater illness and higher mortality, loss of access to common property, food insecurity, social disintegration, impoverishment, and deterioration of living conditions (pars. 180 & 96.59).

The IACHR linked the massacre to the subsequent displacement

[27] For example, Plan de Sanchez v. Guatemala (2004), whereby the IACHR called for the State to implement health, education, and infrastructure measures as reparations for victims.

[28] Chapter III of the American Convention on Human Rights is on Economic, Social, and Cultural Rights. It includes one article, Article 26: Progressive Development. This Article indirectly refers to the right to an adequate standard of living, stating that States must take measures to guarantee "…the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter…" noting that these are achieved progressively. However, while achieved progressively, Article 26 creates the obligation that States, to the degree possible per their level of development, continuously improve conditions.

"originat[ing] in the lack of protection" (Mapiripán, 2005, pars. 143, 144, 146 & 186). The Court connected direct civil and political violations, namely homicide, and subsequent economic and social violations, namely displacement and the abovementioned losses, establishing the relevancy of both. However, while this decision takes an important step in identifying the vulnerable conditions of displacement victims, it "did not detail the positive obligations deriving from the right to life of relevance to economic, social, and cultural rights," (OHCHR, 2014, p. 26) beyond noting the State failed to provide the necessary conditions for victims to live in dignity.

The second case – Ituango Massacres v. Colombia (2006), hereafter "Ituango" – went a step further in the adjudication of ESC rights. In June 1996, a paramilitary group belonging to the AUC traveled to Ituango, Antioquia, freely passing police forces along the way (Ituango, 2006, par. 125.33). Upon their arrival and in the months that followed, paramilitaries tortured and murdered people in the district La Granja, and in October 1997, they arrived in the district El Aro, tortured and killed townspeople, and stole their livestock (pars. 125.35-63). They burned houses and threatened to kill residents if they did not herd stolen livestock to another municipality; nineteen residents were forced to herd livestock for seventeen days (pars. 125.82-85). Along the way, members of the Army imposed curfews so other towns would not see what was happening and some received stolen livestock. Entire communities were displaced for fear the group would return (par. 125.85 & 125.110).

The IACHR ruled the State was complicit in the violation Article 21 of the Inter-American Convention, Right to Property (Ituango, 2006, pars. 176-177). It noted that for those who lost livestock, the damage was "especially severe" as it was their "main source of income and food" (par. 178). The IACHR cited the Constitutional Court[29] in noting that "property shall be considered a fundamental right, provided it is so closely related to the maintenance of basic living conditions, that its violation affects the right to equality and a decent life" (CC, Decision T-506-92). Moreover, it ruled

[29] In both *Mapiripán* and *Ituango*, the IACHR used the Constitutional Court's interpretations of standards regarding the rights of victims of displacement, particularly the noted Unconstitutional State of Affairs in T-025.

the acts violated Article 6.2 of the Inter-American Convention, which prohibits forced or compulsory labor. State actors knew people were being forced to herd stolen cattle and at times "directly participated and collaborated" (Ituango, 2006, par. 150). The IACHR also found violations of the prohibition of arbitrary interference with private life, family, home, correspondence, violations of the freedom of movement and residence of victims who were forcibly displaced, and unlawful attacks on honor and dignity of victims who lost their homes (pars. 7-8). The Court referred to Additional Protocol II to the Geneva Conventions, regarding prohibitions to attacking, removing and destroying items that are indispensable for survival (par. 180).

Under national and international law, the State is required to prevent crimes, investigate them and punish the responsible, protect the displaced from re-victimization, provide nutrition, housing, healthcare, education, and clothing, and ensure safe return or relocation. However, in the Ituango judgement, experts noted that in the aftermath of the victimization, the State's response was limited, and measures to return IDPs were carried out before minimum security conditions were guaranteed, creating risks of re-victimization (Ituango, 2006, p. 32-33). The IACHR called for reparations responding to the ESC violations, including a housing program (par. 407). This decision showed that adjudication is possible on ESC rights, expanding jurisprudence for their protection, and demonstrated that displacement is, in and of itself, a violation of economic and social rights.

While the IACHR has stopped short of establishing precedent on ESC violations as the direct root of conflict, its decisions have taken steps to demonstrate the relationship between the two. The Rochela Massacre v. Colombia[30] case joins other decisions on patterns of violence and economic issues, including Las Dos Erres Massacre v. Guatemala (2009), La Cantuta v. Peru (2006), and Almonacid-Arellano et al. v. Chile (2006). These decisions that demonstrate how "clarifying the factors that fuel conflict or repression – such as the creation of paramilitary groups

[30] Rochela Massacre v. Colombia, Judgement of 11 May 2007, Series C, No. 163. The case refers to cooperation between State agents in a paramilitary group's killing of 15 judicial officials investigating human rights violations. The IACHR found that the State violated the American Convention on Human Rights for the loss of life and failing to adequately investigate and prosecute responsible actors.

or land disputes – could help adjudication" (OHCHR, 2014, p. 25).

A final important reflection on the aforementioned cases: while there is sometimes a misconception that civil and political rights violations are discrete and ESC rights violations are massive, widescale, and always structural, this is not the case (Schmid & Nolan, 2014, p. 372). Examples like Ituango and Mapiripán show discrete ESC violations and State obligations. ESC violations in armed conflict can be adjudicated upon, and reparations are often used to remedy these wrongs.

3. Domestic steps to respect, protect, and fulfil ESC rights through transitional justice

Colombia has a long history of developing and implementing transitional justice measures amid ongoing conflict, and to a large degree, these measures have been acutely aware of and sensitive to ESC rights. As the following pages note, this includes investigating ESC violations and inequality as a contextual factor in the outbreak of conflict and its prolongation, as well as looking at how actors in the conflict directly violated ESC rights. Consequently, the country's transitional justice processes include explicit measures to remedy ESC violations.

A transformative approach to transitional justice is exemplified by Colombia's comprehensive reparations program for over nine million registered conflict victims. The legal framework and reparations program for conflict victims developed progressively over approximately twenty years, aided by prolific decisions by the Constitutional Court and significant national and international advocacy by civil society groups. In the early 1990s, civil society "called for government recognition of displacement as a human rights problem," (Sandvik & Lemaitre, 2015, p. 255) and Colombia took steps to follow international normative developments to provide greater protections to victims. The CNMH (2015) notes that for decades, victims faced tensions "between invisibility and recognition, both in normative and legal scenarios" (p. 23) and "ignominious hierarchies" (p. 14) ranked some crimes (like crimes against humanity) above others (like displacement). Rettberg (2013b, p. 2) notes how for years the number of victims increased exponentially, but victims remained invisible, including in political debates.

After decades of displacement,[31] in 1995 the government adopted a national policy for IDPs and created the National Program for Comprehensive Attention to Displaced Populations. However, the program was limited and only extended IDPs benefits allotted to victims of natural disasters. The explicit relationship between displacement and conflict, and furthermore, the use of displacement and land seizures tools by armed actors with economic aims, was overlooked. In 1997, Colombia adopted Law 387, which defines forced displacement and establishing measures for "the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of IDPs" (Ley 387 de 1997, Article 3).

However, while the law was more progressive on paper and included measures called for the next year in the 1998 UN Guiding Principles on Internal Displacement (Weiss Fagen, Fernandez, Stepputat, & Vidal, 2006, p. 84), in the years that followed, implementation fell behind (Deng, 2000). In Decision SU-1150 of 2000,[32] the Constitutional Court unified precedent to declare that IDPs had a human right to humanitarian aid, making these claims immediately enforceable through *tutela* direct petitions (Sandvik & Lemaitre, 2015, pp. 257-258). For IDPs, this was pivotal to address the immediate consequences of ESC violations. Furthermore, in Decision T-327 of 2001, the Constitutional Court stated that the UN's Guiding Principles expand on existing international human rights, international humanitarian law, and refugee law, and are part of the supranational normative body of law and the Block of Constitutionality (Sandvik & Lemaitre, 2015, p. 258).

In the early 2000s forced displacement increased dramatically, and over 770,000 people were displaced in 2002 alone (Victims Unit, 2020). In 2004, the Constitutional Court issued a landmark ruling for IDPs, Decision T-025.[33] T-025 brings together 108 *tutela* dossiers from 1,150 families and summarizes the entirety

[31] From 1989 to 1996, estimates of displacement range from 392,891 (Victims Unit, Victims Registry) to 773,510 (CODHES), as cited in CNMH, 2018, p. 91.
[32] In the 2000, Colombia's new penal code typified displacement as a crime, but the CNMH notes (2018, p. 92), this had little effect given ongoing violence and impunity.
[33] The CNMH (2018, p. 94) notes that in this decision, the Court offered a "new thesis" beyond its traditional function of declaring legislative acts, laws, or Executive decrees constitutional or unconstitutional, extending its review to social situations or, "states of things."

of constitutional jurisprudence on the rights of victims of forced displacement. The Court declared that millions of IDPs' living conditions and the State's omission in protecting their rights and assisting them represented a structural "Unconstitutional State of Affairs." Victims' minimum core rights (including to education, dignity, work, safe return, health, and non-discrimination) were not met. The Court called for steps to be taken to follow-up and remedy the situation. T-025 is "one of the most important examples of a structural remedy for widespread violations of socioeconomic rights in the world" (Landau, 2016, par. 1). The Court's decision refers back to the UN's Guiding Principles on Internal Forced Displacement as "pertinent for the interpretation" (Decision T-025-04, 2.1.3) of IDPs' constitutional rights.

In follow-up decisions to T-025 in subsequent years, the Constitutional Court continued to develop jurisprudence for the protection of IDPs' rights, including ESC rights. In 2003, the Constitutional Court issued Decision T-602, which defines the IDPs' resettlement considering factors like poverty and vulnerability and states that resettlement must be done in "conditions that contribute to improving the quality of life of the displaced population" (par. 6). Moreover, it prohibits regression in the satisfaction of IDPs' ESC rights (CNMH, 2015, p. 97). In 2010, the Court issued Decision T-045, finding that the State was obligated to protect the constitutional right to health for four victims of massacres and forced displacement. The Court identified positive State obligations, including providing specialized medical attention, procedures, and treatment and designing mental health programs that respond to collective damages caused by the conflict and cultural and historic contexts.

Another critical moment in the introduction of transitional justice language in the domestic system amid ongoing conflict is Law 975 of 2005, the Justice and Peace Law. The result of initial attempts to procure amnesty for the AUC, the law focused on alternative sentences for demobilizing paramilitary combatants (Evans, 2012, p. 212) and included what Sandvik and Lemaitre (2015) call "limited" (p. 252) elements for truth, reconciliation, and reparations, based on "the restoration of the status quo ante" (Lid, 2010, p. 193). The Justice and Peace Law created a framework, in addition to ordinary jurisdiction, for international crimes to be tried in

Colombia – although actual results in terms of prosecutions were limited (Sandvik & Lemaitre, 2015, p. 259). The law also created the National Commission for Reparations and Reconciliation, which called for clearer responsibilities, earmarks for victims, and a non-judicial reparations program. In 2008, an administrative reparation program was born under Decree 1290. However, it continued to exclude victims of the State and focused on humanitarian aid. Reviewing this decree, the Constitutional Court referred to Decision T-025 and found that administrative measures did not sufficiently advance IDPs' rights (CC, Auto 008-09).

In this context, advocates for victims' rights called for expansive legislation recognizing State responsibility. However, according to Evans (2012, p. 229) the government at the time preferred referring to 'solidarity,' a term more related to social programs or humanitarianism than transitional justice. To the contrary, victims' socioeconomic needs directly pursuant to violations in the conflict are not a result of welfarism. The CNMH (2015) notes armed actors were drawn to distinct characteristics that made rural areas best suited to their objectives and illicit economies; they displaced populations and stole their land with particular financial and economic motives. Through extensive investigations, the CNMH found that displacement had "clear economic income purposes" (2015, p. 98). Displacement was not a side effect of violence, but a purposeful act.

As debates on broader victims' legislation continued, rumors spread that a comprehensive reparations law would spell the end to social programs for impoverished Colombians (Cristo, 2012, p. 82). These rumors politicized reparation policies, because as Sandvik and Lemaitre (2015) note, "when transitional justice regimes co-exist alongside other protection regimes designed for the same individuals…[beneficiaries may end up]…competing for resources and international attention" (p. 254).[34]

[34] Rettberg (2013b) discusses this issue, noting that tensions could form between non-victimized poor communities and communities with victims and demobilized ex-combatants benefitting from additional programs, writing "policymakers have been pressed hard to explain the peacebuilding components of projects such as building roads, bridges, and housing for victimized communities…" (pp. 34-35). In contexts of widespread inequality, it is fundamental to coordinate remedies for discrete violations and broader collective remedies for largescale economic violence.

In 2011, Colombia passed Law 1448 – the Victims Law – which establishes individual and collective victims' right to comprehensive reparation through judicial, administrative, economic, and social measures (art. 1). The Victims Law sets forth measures like financial compensation, land restitution, physical and psychosocial rehabilitation, truth and memory, satisfaction measures, and guarantees of non-repetition, and it creates an institutional system to carry out these measures (Ley 1448, 2011, art. 69). It establishes victims' right to return and relocation, differential approaches that protect the rights of groups disproportionately affected by conflict (including women, children, and ethnic groups) and other transitional measures, while also ensuring that victims receive humanitarian aid until minimum conditions are reached. The law also expands the definition of victims; the definition under the Victims Law is no longer connected to perpetrators' responsibility, but to violations of human rights and international humanitarian law and a good faith declaration (Ley 1448, 2011, art. 3). The law notes fifteen types of violations – *hechos victimizantes*, including forced displacement, kidnapping, torture, sexual violence, homicide, as well as economic acts like dispossession of land and property. It also establishes a comprehensive collective reparation program for communities and groups, which addresses damages to community property, the social fabric, and institutions.[35] Summers (2012) notes the simplified process to declare as a victim facilitated the "major increase in the number of victims who have a right to damages and other forms of reparations" (p. 227).

Comparing 45 reparation policies in 31 countries, Sikkink et al. (2015) find that in complexity of reparation measures, the Victims Law is the most ambitious reparations policy in history. It is transformational, that is, rather than aiming to redress victims' direct affectations but leave them in their pre-conflict *status quo* state of vulnerability, it seeks to progressively improve and transform existing social and economic conditions. It reflects the argument that reparations should not seek to restore situations that are "unjust and discriminatory" (Saffon & Uprimny, 2010, p.

[35] Reparation measures requested under community collective reparation plans could include construction of schools, clinics, bridges, refurbishment of damaged livelihoods.

407), but rather advance towards equality. It echoes Kalmanovitz's (2010, p. 72) point that why should we seek to return to the *status quo ante bellum* when this situation contributed to the conflict itself? Instead, we should look forward and build sustainable and inclusive conditions for lasting peace. Priority should instead be given to social over corrective justice post-conflict, particularly in cases where wars are drawn out, widespread and cause extensive damage (Kalmanovitz, 2010, p. 85).

Sikkink et al. (2015) also show that victims in Colombia consider the main impact of the conflict to be psychological/mental or emotional, followed by material or economic. The Victims Law responds to these impacts by establishing the right to emergency aid for food, basic goods, shelter and housing subsidies, tax relief, financial education, medical care, and primary and secondary education. According to Roht-Arriaza (2014, p. 116), the program goes beyond early programs that focused on administrative and lump-sum payments, principally to survivors of homicide or disappearance. It seeks to overcome the "subordination and social exclusion" (Uprimny & Saffon, 2007a, p. 35) that characterized victims' life pre-victimization, as part of broader support for their dignity and to prevent repetition.

The Victims Law addresses ESC violations through administrative programs, but also by calling for measures to ensure satisfaction and guarantees of non-repetition. While OHCHR (2014) notes that reparations for largescale ESC violations have been "the exception" (p. 38), they are a vehicle capable of addressing both structural and discrete ESC violations. However, in practice, achieving the goals of ambitious reparations programs is daunting. If the Colombian government continues at its current rate, it will take ninety years for all victims to receive reparations (Nieto, 2020). In general, countries undergoing transitional justice and implementing reparations are "poor, with many competing challenges and few resources" (Roht-Arriaza, 2014, p. 110). Tasking reparations programs alone with too much, including addressing structural inequalities, may risk not fulfilling victims' expectations. This issue – the potential for collective solutions – is discussed in greater detail below.

4. 2016 Peace Accord: a robust approach to ESC rights

After four years of negotiations, a polarized referendum that voted down the first version of the peace agreement, and the eventual approval of a revised agreement by Congress, in November 2016, the "Final Accord to End the Conflict and Build a Stable and Lasting Peace" was signed by the Colombian government and the FARC. The agreement establishes the broadest set of transitional justice mechanisms in the country's history. At its core, the peace agreement recognizes the root economic and social causes of the armed conflict, the acceptance of a broad human rights framework (including ESC rights [Acuerdo Final, 2016, p. 2]), and establishes specific steps to incorporate ESC rights into transitional justice measures. In its six overarching sections (integral rural reform, political participation, end of the conflict, illegal drugs, victims, and implementation and verification), the agreement is notably robust and complete. It considers diverse experiences from around the world and international standards for transitional justice and directly incorporates victims' demands. It addresses the diverse facets and effects of the conflict and establishes a series of obligations the State must fulfill (including creating comprehensive programs for land and agricultural policy and a comprehensive system for truth, justice, reparations and non-repetition) and responsibilities for the reincorporating FARC. The agreement is deeply cognizant of the role of economic and social violations, structural inequalities, and socioeconomic violence as a cause for the conflict's outbreak and prolongation.

In the following paragraphs, I will discuss several components that exemplify a broader approach. While the entire agreement demonstrates a robust inclusion and recognition of a full human rights spectrum, I highlight these examples because they reflect two different approaches to ESC rights in peace agreements and transitional justice. First, the creation of a truth commission with a broad mandate to investigate the root causes of the conflict. Over the course of history, this has been a more common approach connecting ESC rights and transitional justice. The second are broad measures for comprehensive rural reform, and namely, the Development Programs with a Regional Focus (PDET). Rural reform measures aim

for structural transformation of the countryside to reduce historic inequalities between urban areas and rural ones affected by conflict. Finally, I note the ethnic chapter to the peace agreement, which responds to violence's disproportionate impact on ethnic communities' ESC rights, including cultural rights.

Because of their focus on uncovering the truth about past events and understanding contextual factors' impact on violence, truth commissions are one of the most straightforward ways to incorporate ESC rights in transitional justice (OHCHR, 2014, p. 17). Truth commissions can provide a holistic account of the root causes of conflict and violations of different rights. While most truth commissions' mandates have focused on civil and political rights, others have covered ESC rights explicitly in their investigations and recommendations. In this way, truth commissions respond to the pragmatic argument (Miller, 2013) for expanding conceptions of transitional justice: to be able to address the roots of conflict, we must know what they are and why they were present. Table 1 shows several examples of the differing degrees to which truth commissions have incorporated ESC issues.

Table 1: ESC Rights and Truth Commissions (by author, sources cited below)

Country	Report	Summary
Guatemala	1999	The commission went beyond its mandate and dedicated a full chapter to the root causes of conflict. It focused on civil and political violations but noted that acts of genocide against indigenous communities violated their cultural rights and deprived them of their traditional economic activities, forcing them into extreme poverty (Guatemala: Memoria del Silencio, 1999). However, Laplante (2008, p. 335) notes that the commission did not frame its recommendations in terms of the violations it discovered.
South Africa	2002	Discussions on economic violence were limited to one day of hearings on the role of business (Miller, 2008, p. 283). Economic and social abuses were looked at in the framework of civil and political abuses, relegating them as contextual factors (Schmid & Nolan, 2014, p. 376). However, in its recommendations, the commission mentioned land and fiscal reform, placing a greater emphasis than past commissions on economic development and distributive justice (Roht-Arriaza, 2016, p. 28).
Peru	2003	The commission looked at economic and social issues as background factors but did not look at ESC violations as part of past abuses (Schmid & Nolan, 2014, p. 376). In its recommendations it emphasized collective reparations in conflict-affected areas, however Laplante (2008, p. 335) notes recommendations did not fully consider the ESC violations uncovered.

Sierra Leone	2004	The commission's mandate included looking into the causes, nature, and extent of the violations and the context in which they occurred (Witness to Truth, 2004). The Commission looked specifically at the role of mineral resources in exacerbating the conflict and included economic violations (Witness to Truth, 2004). However, it did not use concepts like "minimum core obligations" to strengthen its findings (OHCHR, 2014, p. 21).
Timor Leste	2005	The commission looked into root causes of the conflict, including the contexts that led to the violations (Chega! 2005). ESC rights violations were significant, and a majority of the deaths reported resulted from hunger and illness (Chega! 2005). It found that crimes violated the right to an adequate standard of living, and the rights to health and education, providing recommendations on economic and social rights. However, when it came time to define "victim," the definition was limited to civil and political violations (Sharp, 2012, p. 795).
Liberia	2010	The commission looked at economic crimes without referencing the human rights framework in determining responsibility for economic crimes like the exploitation of resources to "perpetuate armed conflicts" (OHCHR, 2014, p. 22). According to OHCHR (2014), the commission did not account for State responsibility under human rights law, despite the fact that some of the economic crimes defined also constituted human rights violations.
Kenya	2013	The commission's report discusses economic and social rights, noting a particular importance for women. However, Schmid and Nolan (2014) argue that it demonstrated a "problematic use of rights language [with] little specific legal analysis of ES violations" (p. 370), equating economic and social violations to collective economic marginalization.

By expanding mandates, incorporating concepts like core minimum obligations, and reference obligations under international treaties, it is possible for truth commissions (one of the classic tenets in transitional justice theory) to engage with ESC rights more purposefully. Truth commissions can call for States to comply with their obligations and make precise recommendations to address ESC violations and ratify relevant international treaties. Moreover, they can create a forum for victims' voices to be heard and grievances and priorities to be voiced, reflecting Miller's (2013) sociological argument for expanding transitional justice. Furthermore, by investigating and raising the visibility of ESC violations as potential root causes of armed conflict and human rights violations, truth commissions increase our understanding of these rights as relevant in transitional justice discussions and even highlight causal links. Truth commissions can also recommend that States ratify treaties to increase the protection of ESC rights and prevent future recurrence.

Colombia's Truth Commission is an autonomous legal entity that is part of the Peace Accord's Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (Acuerdo Final, 2016, Point 5.1.1.1.). With a three-year mandate, the Truth Commission will investigate and clarify what happened in the armed conflict, including practices and acts that constitute gross violations of human rights and serious infractions of International humanitarian law, and the contexts and dynamics in which they took place. It is tasked with investigating the collective responsibilities of state and non-state actors and the human and social impact of the conflict on society, including on ESC and environmental rights, and the historical context, origins, and multiple causes of the conflict. Among the acts it will specifically investigate are forced displacement and land grabbing (Decreto 588, 2017, III).

The Commission is currently investigating and gathering testimonies, including from victims' organizations, and will then draft its report, develop a strategy to communicate its findings with the public, and inform the Special Jurisdiction for Peace about the participation of individuals in its jurisdiction. Ultimately, it will be important to see how the Truth Commission analyzes and makes recommendations pursuant to ESC rights. According to Sharp (2012), for truth commissions to have a broader impact, it is important they use "a human rights paradigm" (p. 795) that recognizes the binding nature of ESC rights, lest later development programs to combat inequality "become mere charity…rather than responses to concrete violations of international human rights law to which individuals are entitled" (p. 796).

Turning our attention to the second component of the agreement discussed here, comprehensive rural reform is a direct manifestation of measures to correct historic inequalities and broad economic violations in the conflict. Land has been a tenuous issue throughout Colombian history, including in the early days of the conflict. Land ownership in Colombia is very unequal; in 2009, 81 percent of land was owned by 13 percent of landowners (CNMH, 2016, p. 271). Only 0.4 percent of the population owns 62 percent of the country's best arable land (USAID, 2017). The agreement notes that "the unresolved issue of land ownership and, in particular, the concentration thereof, the exclusion of the rural population and the

underdevelopment of rural communities" is one of the original causes of the conflict and fueled it for decades (Acuerdo Final, 2016, preamble, par. 19).

As the conflict swept across the country, millions of rural families were stripped of land by armed actors or forced to abandon it.[36] Estimates of how much land was seized or abandoned differ notably depending the source and the years covered; according to Land Restitution Unit, approximately 5.5 million hectares were abandoned or seized, an area nearly then size of Croatia and 10.8 percent of all land apt for agriculture (Garay and Barberi, 2010, p. 261). Moreover, according to the Inspector General's Office, seventy nine percent of IDPs report leaving behind a land title, leaving them in a greater state of vulnerability (Urueña, 2016, p. 200).

Forced displacement and land seizure are central issues when considering the scope of transitional justice: should mechanisms seek to remedy discrete violations against direct victims of specific ESC violations (as in Ituango v. Colombia and Mapiripán v. Colombia), or should they also take into account widespread inequalities that caused and/or fueled conflict? Moreover, what is to be done about IDPs forced into conditions of marginalization, who were displaced from land they may or may not have had a formal title for, and which was subsequently stolen? If 79 percent of IDPs left behind some kind of land title, over seven million people were left without land and livelihood. These questions are not easy to answer, particularly through a lens of implementation, but in a case like Colombia's, remedying all economic wrongs linked to the conflict may be vital to prevent future violence.[37]

According to the CNMH (2015), displacement has been a "structural element characterized transversally throughout Colombian history" (p. 23) and is rooted in patterns of inequality and "exodus and land grabbing that began in the era of colonization and independence" (p. 35). Displacement nearly always results in a loss of property, land, and provokes marginalization of living conditions and

[36] The CNMH (2016, p. 326) cites the National Commission of Reparation and Reconciliation's definition land stripping intentionally stealing, expropriating, privatizing, or alienating someone from a good or right (moveable or immovable property, social and community spaces, habitats, culture, politics, economic, and nature).
[37] The connections between economic conditions and vulnerability to violence is an expansive topic, yet it is worth noting that in conflict-affected areas, people with limited or no economic opportunities, including many IDPs, are targets for illegal armed groups' forced recruitment.

socioeconomic opportunities. While 51 percent of Colombian IDPs lived in poverty pre-displacement, 98 percent lived in poverty post displacement (Garay & Barberi, 2010, p. 277). Transitional justice in Colombia has been cognizant of the need to respond to unequal access to land, land seizures and abandonment, and forced displacement (as well as poverty generated or worsened by displacement); land restitution efforts under the Victims Law were continued and expanded upon under the peace agreement's sections on comprehensive rural reform. By including land restitution in domestic legislation and the peace agreement, Colombia has recognized its centrality to successfully transitioning to peace. Domestic legislation has arguably gone further than international law on restitution; while international bodies affirm the right to restitution, the principle is only found in soft law and human rights conventions do not give full guarantees of property (Lid, 2010, pp. 182-183).[38]

To address historically unequal access and use of land, the peace agreement creates a land fund, mass titling processes for small and medium properties, mechanisms for resolving land disputes, a general cadastral system, and rural reserve zones. It also establishes plans should be created to develop and provide infrastructure such as roads, irrigation, electricity, internet, social development (health and education), housing, and access to water, and protect the right to food and promote labor formalization in areas affected by the conflict, prioritizing 170 rural municipalities under PDET.

PDETs and their operationalization through Action Plans for Regional Transformation are the practical instruments by which comprehensive rural reform is sought. They pursue the structural transformation of the countryside, improving wellbeing and quality of life in rural areas, rural development based on cooperative and collectively organized systems, and the development of regions neglected by the armed conflict (Acuerdo Final, 2016, point 1.2.1). They are tailored to sixteen subregions and ensure progressive public investment to structurally change areas

[38] Lid (2010) notes that references to restitution in UN principles and guidelines are also multifaceted; restitution has traditionally referred to property but Article 19 of the UN Basic principles also expands the concept to include restoration of liberty, employment, identity, and the enjoyment of rights.

affected by conflict, poverty, and limited State presence (Acuerdo Final, 2016, point 1.2.2). PDET pillars include social regulation of rural property and land use, infrastructure and land projects, health, rural education and early childhood, rural housing, potable water and basic rural sanitation, economic reactivation and agricultural production, system to progressively guarantee the right to food, and reconciliation, coexistence and peacebuilding (Agency for Territorial Renovation, n.d.). By achieving structurally transforming conflict-affected areas, the PDET would create the conditions for reintegration, reconciliation, and advance comprehensive reparations, including by creating conditions for minimum standards of living and infrastructure vitally needed to connect rural areas to markets and provide livelihood opportunities.[39] They would create a foundation for peace and non-repetition.

As a final caveat, the Peace Accord also takes steps to address a frequently overlooked part of ESC: cultural rights. Many discussions of ESC rights and transitional justice (including this one), focus almost entirely on economic and social rights. In addition to referencing ethnic and cultural diversity throughout the text, Colombia's peace agreement includes a specific chapter on the rights of ethnic groups, which was included because of the direct participation and advocacy by ethnic civil society groups in the peace negotiations.[40]

The ethnic chapter recognizes the disproportionate impact of the conflict on ethnic groups' collective territories and way of life. It considers the principle of non-regression recognized in the ESC Covenant and states that the interpretation and implementation of the peace agreement must take into account self-determination, social, economic, and cultural identity and integrity, rights over land, territories, and resources, recognition of ancestral traditional practices, the right to restitution, non-discrimination, and self-governance mechanisms (Acuerdo Final, 2016, point 6.2.2). Peace implementation, per the Ethnic Chapter, must also consider the right to free

[39] While the current government has shown limited will to implement parts of the agreement, PDETs have bridged one administration to the next. They are the current tool (albeit with funding challenges) for implementing different parts of the agreement, including comprehensive rural reform. However, to maintain the focus on structural transformation, it is vital that communities can engage in PDET development, monitoring, and implementation.
[40] Rettberg (2013b, p. 5) notes that civil society actors' perspectives and priorities were not considered during the peace processes during the 1980s and 1990s.

and informed consultation and the right to cultural objection. The ethnic chapter recognizes that the armed conflict affected Afro-Colombian, Indigenous, and Rom communities' right to take part in cultural life. It establishes specific measures to remedy violations, including resettlement, return, and restoration of the collective territories of Indigenous Peoples and Afro-Colombian community councils, and priority humanitarian demining (Acuerdo Final, 2016, point 6.2.3.d).

Through the three aforementioned components, the peace agreement recognizes transitional justice as a process of structural transformation addressing violations committed in the armed conflict. Non-repetition is a principle throughout the agreement, including in its Comprehensive System for Transitional Justice, which establishes the Special Jurisdiction for Peace, the Truth Commission, the Unit to Search for Disappeared Persons, and reiterates reparation measures.

Non-repetition is one of the ultimate goals to ensure peace is sustainable and lasting. However, internationally and in Colombia, "[i]n both theory and in practice, it is also the least developed goal" of transitional justice" (Piccone, 2019, p. 19). Guarantees of non-repetition, which are also included in the Victims Law, are often intangible. What specifically can and must be done to ensure that someone is not revictimized and in general, that armed conflict does not break out again? In many regions in Colombia, nearly four years after the peace agreement was signed, communities continue to face violence at the hands of multiple armed groups, including displacement, selective killings and threats, sexual violence, and forced confinement. In this context, what can be done to promote non-repetition?

On one hand, non-repetition has been linked to justice and conflict prevention (Piccone, 2019). According to a 2018 study by the UN Special Rapporteur on Transitional Justice and the Special Adviser to the Secretary General on the Prevention of Genocide, "criminal justice, through the assertion of accountability… generates a deterrent effect; signaling that no one is above the law, which is important for social integration" (UN General Assembly, 2018, p. 4). Criminal justice, preventing impunity, and punishing those responsible are certainly vital for non-repetition, however, given the particularities of each conflict, other elements should

also be considered. In Colombia, structural reforms are part of a broader transition to positive peace and a future free of violations (Piccone, 2019).

IV. CONCLUSIONS

Measures to respond to and remedy massive atrocities and violations of human rights, achieve justice for victims, and turn the page on repression and conflict have been implemented to different degrees for many years. The contemporary era has been defined by transitional justice measures becoming the norm, rather than the exception. Yet amid the expansion of transitional justice, theory and scholarship have focused on remedying some forms of violence and violations more than others.

Developed in the aftermath to World War II, the international body of human rights law gives equal footing all human rights, including civil and political rights, as well as ESC ones. Over time, international legal obligations to respect, protect, and fulfil ESC rights have been developed through diverse treaties and soft law. Robust sources of international law have also developed on transitional justice and State obligations to remedy and respond to violations of human rights and international humanitarian law. So too have points of interaction developed between ESC rights and transitional justice.

However, while some voices in praxis and scholarship have called for deeper exploration of the connections between transitional justice and ESC rights, most theory has focused on a traditional approach, whereby transitional justice addresses civil and political rights through trials, reparations, and truth commissions, and non-repetition. In the face of conflicts defined by deep-seated inequalities and aggravated by socioeconomic violence and violations of ESC rights, there is no semantic, political, or legal reason why countries cannot employ a more expansive view of transitional justice. Practical experiences like Colombia demonstrate that some are already taking this approach.

Implemented as stated in the peace agreement, the mechanisms for comprehensive rural reform would help Colombia overcome a legacy of pervasive

inequality, promote equal access to land, and help IDPs overcome conditions of vulnerability caused by violence in the conflict. The comprehensive elements of the peace agreement demonstrate a complete, well-informed, and robust approach to transitional justice that is uniquely tailored to the multiple, complex causes and characteristics of the Colombian internal armed conflict.

Colombia is a case in point that non-repetition could be the "missing link" that Roht-Arriaza (2016) mentions could unite transitional justice and ESC rights. Guarantees of non-repetition, both in the international law of state responsibility and in international human rights law, are preventative in nature; they are forward looking and "about changing the status quo, not returning to it" (Roht-Arriaza, 2016, p. 14). Non-repetition measures are inherently diverse and tailored to specific cases of transitional justice.[41] However, what links them, Roht-Arriaza argues, is "the idea that forward-looking changes need to be part of the mix of post-violation reconstruction" (2016, p. 31). Nothing conceptually prevents non-repetition measures from going beyond those noted in scholarship on countries like Chile, El Salvador and Guatemala, namely vetting, justice and security sector reform, and limited institutional reforms. Preventative non-repetition measures should address the specificities of each conflict, including patterns and structures that contribute to violence and violations. While past examples may provide lessons learned for similar cases, dissimilar cases must look to their own history, citizens, and local context to define what measures really can guarantee non-recurrence. In many cases, this means analyzing "patterns of exclusion, marginalization, discrimination, impunity and…development patterns that exacerbate these" (Roht-Arriaza, 2016, p. 33).

A more expansive conception of transitional justice will not come without challenges. At a practical level, adding 'more justice' to already short, complex, and often underfunded processes increases the potential for processes to come up short

[41] While traditionally referring to institutional reforms, vetting, and security and justice sector reform, as Special Rapporteur Pablo de Greiff has noted the category does not necessarily designate any one specific measure, but rather can be achieved through a variety of initiatives. Guarantees of non-repetition can go beyond the traditional institutional reform, security and justice sector reform, and vetting to broader concepts of civil society, legal empowerment, and cultural changes. See: UN Doc. A/68/345 and UN Doc. A/HRC/30/42.

and victims' expectations to not be met.[42] In these final pages, I will discuss some of these issues, noting though that given the increasingly complex nature of armed conflicts and persistent ESC violations, these challenges would perhaps best be seen as a call to action.

First, by expanding conceptions of transitional justice, do we risk overloading the concept, thus diluting its efficacy (De Greiff, 2009, pp. 40-41) or making it "so broad as to become meaningless" (Roht-Arriaza, 2006, p. 2)? Some note that even with its currently narrow scope, transitional justice measures "don't necessarily work well or lead to demonstrated positive results," (Roht-Arriaza, 2016, p. 3) or at least, we have not determined a surefire and objective way to measure results. Tracing the results of an expansive transitional justice process to the mechanism itself, rather than broader development factors, would likely be challenging. To this point, while logistical concerns are valid, it is also important to note that broader conceptions are not necessarily 'tacking on' additional rights; the framework and language on transitional justice already contemplates ESC rights as part of the complete body of human rights; rather, a broader conception means recognizing the presence of ESC violations as a direct consequence of armed conflict (even when widespread) and addressing them as part of a more complete, comprehensive transition.

Second, many countries with conflict are low income and have limited capacity and resources to spend on transitional justice mechanisms, which can be very expensive (Olsen, Payne, & Reiter, 2010b). Adding additional components to already underfunded processes risks creating expectations that will not be met. Post-conflict countries with limited budgets often find that they need to prioritize which mechanisms to fund. Faced with vast security sector reform and demobilization, disarmament and reintegration of ex-combatants (understandably deemed urgent to end conflict), may be hesitant to dedicate resources to larger, structural issues. Even

[42] On Colombia, Lid (2010, p. 214) notes that the issue is not "whether enough justice and sufficient measures of reparation are being included in the process; but rather that a failure of the process will result in no justice and no reparation." Questions also arise regarding political will: the longer measures are expected to last, the more like new administrations will arrive and change the scope or abandon them. Victims, already skeptical of institutions that did not respond to them during decades of violence, may be let down again.

Colombia, a middle-income country, has limited resources to comply with pre-peace agreement mechanisms like the Victims Law. Since 2011, reparation has moved slowly, partially due to the need to set up a new institutional framework, but also given budgetary caps that limit the number of reparation payments that can be made. During the past nine years, the government has spent over 1.7 billion dollars in administrative payments to just over one million victims (Semana, 2020). Given the pace of reparations, many victims may never see the measures they are entitled. Land restitution advances have also been slow: over 125,000 requests have been made, of which roughly 82,000 have been finalized administratively and 11,000 have a legal order restituting land (Land Restitution Unit, 2020). In a recent report on Colombia, the UN notes that while structural rural reforms would lead to better enjoyment of the right to an adequate standard of living and contribute to resolving structural causes of violence, in 2020, "the budget was reduced for all institutions responsible for implementing the Comprehensive Rural Reform" (UN General Assembly, 2020, p. 12). Zuluaga (2019) writes that Colombia's 2018 to 2022 national budget underfunds peace implementation by 40 percent.

Faced with these challenges, some ask if funding issues could be addressed by a closer relationship between international development and transitional justice. The links between transitional justice and international development is an extensive topic, but in cases like Colombia, development actors set aside significant resources to support transitional justice processes like demobilization, disarmament, and reintegration, reparations, historical memory, truth commissions, and trials and special jurisdictions. Capitalizing on these resources may alleviate funding issues, particularly in the case of ESC measures, which align even more closely with some development actors' traditional objectives.

However, a closer relationship between development aid and transitional justice presents challenges.[43] Deeper involvement by international actors could lead

[43] Urueña and Prada-Uribe (2018, p. 406) note possible limitations international investment protection could place on a closer relationship between socioeconomic issues and transitional justice, for example, in areas where land redistribution and resettlement, including of ethnic groups, overlaps with foreign investments.

to politicization of transitional justice.[44] Development actors have political agendas reflected by which transitional justice measures they are willing to support and which they are not.[45] International donors may also be more willing to support rule of law, democratization, and economic liberalization than redistributive processes. Theorizing a closer relationship between international actors and host governments also begs the question, are there things that the State *should or must* carry out and finance itself to comply with its obligations to citizens? For example, regarding paying for reparations through development aid, Roht-Arriaza argues that this "conflates two separate obligations of government: to make reparations for wrongs it committed and to provide essential services to the population" (2004, p. 188). For example, development aid is more tooled towards setting up, training, and strengthening the institutions needed for reparation than paying for the actual reparations themselves, which can be the costliest part of all.

These concerns lead to a larger question, which Urueña and Prada-Uribe (2018) deem the main concern when analyzing the relationship between socioeconomic issues and transitional justice: "Where does transitional justice end and social justice and development begin?" (p. 405). The answer we provide depends both on *what* we think transitional justice is meant to achieve (namely, whether it is intended to achieve "political change" or something broader [Franzki & Olarte, 2013, p. 204, cited in Urueña & Prada-Uribe, 2018, p. 406]) as well as *how* we think it should achieve it.

Here it is important to ask, when the root causes of armed conflict and mass atrocities are deeply economic and social, and/or, when the violations and violence carried out are deeply economic or social, is the change really exclusively political? Or in cases like Colombia's, are economic and social questions critical pieces of the puzzle that if left out could result in an incomplete transitional justice process incapable of achieving non-repetition? Ultimately then we must also ask: should

[44] Duffield (2014, p. 236) refers to the 'liberal peace complex' understanding themselves as impartial experts performing 'neutral, apolitical, and purely technical' work, yet their work always comes with priorities and biases.
[45] For example, some are less willing to support collectively demobilized FARC ex-combatants or the Special Jurisdiction for Peace. Support for illegal drug substitution also reflects specific international political priorities.

conceptions of transitional justice be focused on looking backward to deal with the wrongs of the past, or should they also look forward, towards the social and structural change needed to avoid further conflict?

In practice, as this article has aimed to show, countries like Colombia are already taking steps to design more expansive transitional justice mechanisms that are aware of and responsive to ESC rights that have been violated. Colombia's transitional justice framework recognizes socioeconomic inequalities and ESC violations as a necessary element for understanding why the conflict started, how it continued for over five decades, and how it can be prevented in the future. The arguments here are not to say that all of Colombia's general socioeconomic development issues can or should be addressed by transitional justice. Outside the context of armed conflict, the State has obligations under international and domestic law to respect, protect, and fulfill ESC rights. However, for those ESC violations that *are* intertwined with the armed conflict, so too, I argue, should be the response. In this sense, a more expansive conception of transitional justice does not suggest altering its aims or objectives, but rather working within existing legal frameworks to address large-scale violations of rights more comprehensively.

For the abovementioned challenges, countries that do decide to include ESC rights in transitional justice must walk a fine line to determine where conflict-specific and general socioeconomic issues begin and end. Sharp (2012, p. 802) refers to "thick" and "thin" approaches to economic violations in transitional justice. The latter look at discrete instances of economic violence that took place as a direct result of the conflict, like stealing land or food or forcing people to herd stolen cattle. The former also consider structural issues like income inequality and land reforms. This delicate balance recognizes that the more expansive the conception, the greater the risk that elites may be unwilling to level the playing field and resist structural changes – perhaps even violently (Sharp, 2012, p. 802). How then can a society ensure ESC measures are both thick enough to address inequalities fueling conflict while also ensuring widescale buy-in, including by those who for decades have benefitted from inequality? One route forward would combine elements of "thin" and "thick"

approaches under a paradigm of “justice for positive peace” (Sharp, 2012, p. 811), whereby praxis and rights, as a “terrain for ideological and political struggle” (Sharp, 2020, p. 266) guide the way.

Without a doubt, the concept of transitional justice has evolved over the past several decades. Colombia may not have even entered under earlier definitions, as the conflict is ongoing and there was no specific political transition, for example from authoritarianism to democracy. The changes witnessed this century demonstrate that transitional justice is a living concept. These debates are all the more reason for scholarship and theory to engage in critical discussions more deeply. By engaging in complex discussions, we can address what Miller (2008) describes as the “constructed invisibility” (p. 266) of economic questions and violence in transitional justice literature. In the end, it is important to remember that how we define concepts has reverberating impacts beyond the concept itself; in the case of transitional justice, our definition may even impact “what was and will be viewed in society as a crime and a moral outrage” (Miller, 2008, p. 266) – as well as what will not be.

Many of the articles on more expansive conceptions of transitional justice were written around a decade ago, when the International Journal of Transitional Justice (2008) published its edition on socioeconomic issues and transitional justice. These took an important step in establishing bridges between transitional justice and ESC rights. However, renewed engagement is vital to find solutions to challenges like sequencing, financing, ensuring communities have a voice, adjudicating on ESC violations, designing collective measures that promote reconciliation while considering individual affectations, and objectively measuring results. Given the complexity of recent conflicts, many of which are characterized by massive numbers of refugees and IDPs, illicit economies, inequality, and complex socioeconomic questions, it is time to pick up the debate.

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