**Lawyers in a time of Peace? Human rights lawyers and the implementation of the Peace Accords in Colombia**

Introduction

On the 24th August 2016 in Havana, the Colombian government and the representatives of FARC-EP (the largest of the armed guerrilla groups operating in the country) concluded the final sections of the negotiations, that had formally begun in 2012.[[1]](#footnote-1) This ended the fifty-year long internal armed conflict during which there has been an unprecedented toll on Colombian society with up to 220,000 people killed and many millions internally displaced.[[2]](#footnote-2) The deal struck between FARC-EP[[3]](#footnote-3) and the Colombian government was essentially about transforming an armed guerrilla group into a legitimate political movement with representation within the institutions of the Colombian State. To accomplish this, however, the agreement and the negotiations sought a much broader agenda which recognised the need for fundamental structural reform to the Colombian State (most importantly the rural economy) as well as establishing a mechanism for addressing the actions committed on both sides during the armed conflict.

Integral to the final Peace Accords are the institutions tasked with clarifying the truth of events during the conflict and contributing to the non-repetition of crimes against victims. A Truth Commission, as part of the non-judicial means of establishing the truth of events that took place in the armed conflict, and a Special Jurisdiction for Peace (JEP) which would investigate and prosecute crimes including war crimes. Under the terms of the accords the Truth Commission and the JEP are to operate independently to encourage those participating to fully disclose their own involvements in the events pursued by the Commission. Additionally, JEP would operate a system of benefits of lessor sentences for those willing to cooperate and be fully candid with investigators.

Underlying the effectiveness of institutional configuration as well the commitment to victims’ rights will be the wider engagement of both civil society but also legal actors including human rights lawyers engaged with the representation of victims of the armed conflict. This article examines the role and attitudes of human rights lawyers during the initial period when the Peace Accords were being implemented and the institutional framework set up and decided upon. The critical phase of the implementation period took place during 2016-2018 when the administration of President Santos, who negotiated the agreement, was in Office and was seeking to establish the working framework of the Accords before the 2018 Presidential elections. The aim of this article is to establish an understanding both of the strategies of human rights lawyers when engaging with a key moment of the beginning of transitional justice practices and how human rights lawyers may influence or shape emerging institutions and wider meanings of transitional justice. To explore these matters the article adopts the idea of *mentalité* as a conceptual framework to bring together both the idea of the social capital of cause lawyering with a legal cultures approach to argue that human rights lawyers can bring about transformative or symbolic social or political change.

1. Chronology, institutions and activism from the ground-up

The purpose of this section is to provide a wider context for the examination of the role and attitude of human rights lawyers and additionally it is anticipated that this section will provide useful background to those unfamiliar with the transitional justice situation in Colombia. The section is formed of two parts: the first outlines the central chronology of events leading up to the signing of the final Peace Accords (hereinafter ‘the Accords’) and then subsequent efforts towards setting up the institutions designed to implement the terms of the Accords. The second part considers the term human rights lawyer and provides some justification for the specific focus in this article on human rights lawyers in Colombia.

1. A brief chronology of events

During the years of peace talks held in Havana, the negotiators for both sides focused on six core areas: agricultural or rural reforms; political participation; end of the conflict and disarmament; solutions to the problems of the illicit drug trade; victims and transitional justice and implementation or verification. These different goals for the negotiations were pursued in the context of a commitment to thematic values which underpin the entire structure of transitional justice sought by both parties, namely; truth, justice, reparations and non-repetition. Rural and agricultural reform, which was agreed in the early rounds of negotiations, has always been a central and original aspect of the conflict with the deep inequalities of rural Colombia and the enormous displacement from land and territories suffered by many during the duration of the armed conflict. The Accords commit the Colombian State to programme of rural development intended to improve infrastructure and services as well as providing support for small farmers and communities. In addition, the terms of the Accords on rural reforms attempt to provide a solution to the access and use of land which encompasses a means of restitution for the loss of land illegally during the armed conflict. Securing meaningful political participation was always a critical goal for the FARC-EP negotiations as it fundamentally rests on the ability to transform into a legitimate political movement and the Accords ensure that there are guarantees for political representation[[4]](#footnote-4) by FARC-EP in the initial years after implementation. It is also the case that wider commitments to ensure that participation and political protest is made easier in Colombia by securing a more plural and representative political system. For the negotiators a key challenge was to agree the basis for the institutions of transitional justice to ensure justice for the victims of the armed conflict and the terms of surrender to end the conflict. The difficulties around this part of the Accords may not be entirely surprising given that there is always a significant tension between securing political participation for FARC-EP and accountability for past crimes committed. For the purposes of this article the focus will be on victims and the mechanisms designed to achieve justice and truth given the closeness of these issues to the work of the human rights lawyers.

The negotiations that took place around the issue of victims’ rights and the mechanisms of achieving transitional justice involved the participation of thousands of individual victims and up to 60 groups and organisations.[[5]](#footnote-5) The resulting agreement reflected a commitment to the protection and guarantee of the rights of victims of the conflict and sought to ensure that the institutions established under the accords would pursue the need to clarify the truth of events during the conflict and contribute to the non-repetition of crimes against victims. Following the established practice in post-conflict societies Colombia adopted a Truth Commission as part of the non-judicial means of establishing the truth of events that took place in the armed conflict and a Special Jurisdiction for Peace (JEP) which would investigate and prosecute crimes including war crimes. Under the terms of the accords the Truth Commission and the JEP are to operate independently to encourage those participating in the Truth Commission to fully disclose their own involvements in the events pursued by the Commission. Additionally, JEP would operate a system of benefits of lessor sentences for those willing to participate and to be fully candid with investigators.

Seeking to establish a Truth Commission alongside a judicial tribunal for the prosecution of crimes in Colombia reflects a ‘playbook’ in the advocacy of international standards of the rule of law and governance.[[6]](#footnote-6) In recent times, however, these standard models have been met with critical opposition both for the normative assumptions underlying them and the mixed practical successes they have accomplished.[[7]](#footnote-7) It has been claimed that transitional justice practices have been developed within a hegemonic discourse which privileges certain normative commitments surrounding the rule of law and the liberal democratic state leading to a set of assumptions which it is argued tend to focus on top-down legal processes alongside liberal economic reforms.[[8]](#footnote-8) For example, whilst truth commissions remain one of the most common transitional justice mechanisms[[9]](#footnote-9) to uncover the past and narratives which might otherwise have been silenced there is also developing criticisms that such commissions risk further polarisations and lead to compromises between truth and justice which can undermine the efficacy of the commissions for victims.[[10]](#footnote-10) The risk is that transitional justice mechanisms can become a uniform and procedural process which fails to address the particular context of each conflict and undermines local efforts, as Lundy and McGovern observe in the context of their study of communities in Northern Ireland the dominant orthodoxy within transitional justice led to questions about the issue of agency as ‘who engenders and controls change within the post-conflict agenda’.[[11]](#footnote-11)

Responding to these kinds of critical assessments about orthodox approaches to transitional justice, and acknowledging the critical ambiguity surrounding the Colombian State’s role in the conflict, this section of the Accords was negotiated with the active participation of victims and groups. It was hoped that such involvement would reflect a different normative approach based on the actuality of experience of the violence, exclusion of oppression and the needs of victims. This effort at ‘ground up’ construction of the priorities and values of transitional justice was important in a conflict which has been fuelled by complex socio-economic conditions, marginalization and discrimination against social groups – élite driven exclusion. Rethinking the importance of context and local engagement with transitional justice has developed as a critical theme within the international community as a response to the ‘one-size fits all’ criticism that has been levelled against the unilateral approaches of the international legal order when it comes to post-conflict rebuilding.[[12]](#footnote-12) Colombia’s efforts towards crafting transitional justice institutions which reflect ownership and participation by the communities and individuals that suffered most during the armed conflict reflects this shift towards building a post-conflict rule of law which is informed by the context and particular circumstances of Colombian society and could be seen as more durable as a consequence.

Both parties agreed that the method for the approval of the accords was by popular plebiscite to be held in October 2016 – only a few weeks after the official signing. The result was a narrow[[13]](#footnote-13) rejection of the accords, with a low turnout of just 37.4%. Responding to this the Colombian government and FARC-EP swiftly agreed[[14]](#footnote-14) specific alterations to the accords that took into consideration the criticisms that had been levelled against it by the opposition party, led by the former President, Álvaro Uribe. In respect of the provisions about transitional justice the main impact of the revisions was to affect the scope of the JEP jurisdiction: under the revisions JEP’s remit would last for ten years with the possibility of extension; there would now be no foreign magistrates but up to 10 experts could be appointed as observers and the rulings of the JEP tribunal could now be appealed to the Constitutional Court.[[15]](#footnote-15) Additionally, the revised accords made changes to the definition of command responsibility and also specified more clearly the conditions and penalties for those found guilty of war crimes.

Having achieved the agreement of the FARC-EP leadership for these revisions it was decided that the method of implementation would be through the Colombian Congress rather than seeking a further referendum. Using a fast track procedure to accelerate the legislative process the Colombian government sought to ensure that much of the Accords legislation could be passed through Congress without significant revision or delay by the opposition parties. The legality of the fast track procedure was considered in May 2017 when the Colombian Constitutional Court ruled that the fast track procedure would be limited and would end in November 2017.[[16]](#footnote-16) This led to slow down in the implementation of the Accords prior to the Presidential elections in the summer of 2018 – the political polarisation of Colombia was also underscored by the promises of the Presidential candidate from the Alvaro Uribe[[17]](#footnote-17) party - Iván Duque – during the election campaign to change key planks of the Accords, including the operation of the JEP jurisdiction.

1. Studying activism from the ground up

The key actors which are the focus of this research are human rights lawyers; this requires some initial justification regarding the importance of their role and ability to determine or shape the success of transitional justice in Colombia. An initial question is one of definition for this study: what exactly constitutes a ‘human rights lawyer’ in Colombia? Lawyers in Colombia tend to describe themselves as ‘human rights lawyers’ based largely on who they represent; how they organise and describe themselves and to an extent their political/social capital. Colombia’s human rights lawyers tend to work from offices – known as *colectivos* de abogados – in the major cities of the regions and in the capital Bogotá. These groups can be relatively small – one or two lawyers working in the regions or the *colectivos* can be larger and have a national reach in terms of their work. Critical to the definition of human rights lawyers is who they represent – this influences the sort of work that they conduct but it also has a significant impact on their own security. The bulk of their work involves representation and advocacy for the individual and collective victims of serious human rights abuses in Colombia. These abuses have been at the hands of state entities or paramilitary and other armed groups. Human rights *colectivos* also work with highly marginalised communities and groups in Colombia ensuring that they receive legal advice and representation. Part of this work will entail travelling to remote areas of the country to visit groups or individuals who have been most impacted by violence and armed conflict. This has led to human rights lawyers becoming themselves the target of both state and non-state violence. Paramilitary far-right groups have been responsible for threats and assassinations of lawyers and human rights activists in Colombia, a trend which unfortunately shows no sign of abating despite the Peace Accords. State based actors were also responsible for a climate of threat and intimidation against human rights lawyers in Colombia in the 2000s a campaign of surveillance against human rights workers was uncovered in DAS and the former President Alvaro Uribe contributed to the false linking of those investigating human rights abuses committed by the state with terrorism. Lawyers engaged in human rights work tend also to be politically active; this can be observed in two main ways. The first is that the nature of their work requires lawyers to be actively engaged with a broad range of organisations campaigning and organising on behalf of different marginalised groups and individuals – in other words participation in the active promotion of particular *causes*. These range from land restitution campaigns; groups representing prisoners; environmental organisations; centres advancing indigenous rights issues and others – these constitute the grass-roots politics experienced in rural and urban Colombia which human rights lawyers are connected. The second sense that human rights lawyers are political is pursued in more detail as part of this article and that is that the cause of human rights requires political advocacy. This can take several forms but the most usual involves engaging in local, national and international debates to highlight the importance to Colombia’s constitutional future and the threats facing proper respect for human rights.

Why focus on human rights lawyers as significant actors in this study? The first response to this can be framed as part of a wider methodological shift in the study of transitional justice in which to fully explore the factors which might enable a society to break or emerge from a continuum of violence requires an ‘agency or actor’ oriented perspective. This will involve appreciating that developing practices of human rights and peace are rooted in everyday interactions and contexts.[[18]](#footnote-18) The emphasis on the importance of understanding embedded practices of transitional justice in part stems from reaction to the uniform international standards of the rule of law and governance[[19]](#footnote-19) and hegemonic discourse leading to a set of assumptions which it is argued tend to focus on institutional legal processes alongside liberal economic reforms.[[20]](#footnote-20)

Underpinning the alternative ‘contextual’ approach is that institutional mechanisms and top-down initiatives cannot always sustain societal commitments to lasting peace and attention must be paid to both to unofficial local initiatives and the agents or actors involved in community and grass roots measures at peace building. An approach which examines the attitude of actors shaping and using the transitional justice mechanisms and institutions at the ground level focuses on the way complexity is built up in the specific context and culture of the circumstances facing transitional justice in any particular instance. Emphasis on cultural attitudes and context to enrich an understanding of transitional justice practices necessitates going beyond a generic or broad-brush account and to drill down to the actors, individuals or communities that can create transformative change in a society after conflict.

Another reason to focus on human rights lawyers in pursuit of the context of transitional justice lies in the specificities of the way that the Colombian conflict has unfolded, and the institutional position occupied by human rights lawyers between the different levels of actors and justice institutions of the state. Acting as the link between victims’ groups, organisations and communities on the one side and the state institutions that have been set up to administer justice and truth on the other lawyers emerge as a distinct kind of intermediary participant in shaping the practice and the meaning of transitional justice. Engaging with human rights lawyers will become a critical part of ensuring that these institutions receive ‘buy in’ from the individuals and communities that have been most affected by the years of conflict and would therefore be central to the continuing legitimacy and credibility of the application process. As well as the relationship between individuals and the institutions the human rights lawyers bring with them expertise about the challenges associated with investigating state crimes in Colombia and the so-called ‘shadow state’; the complex nexus that has existed between various state agencies and paramilitary groups.[[21]](#footnote-21) In turn this has led to human rights lawyers operating both within the domestic legal order but also where necessary litigating at the Inter-American Court of Human Rights and effectively using international human rights norms to hold the state accountable by assessing national level measures against international standards.[[22]](#footnote-22) Finally, human rights lawyers can facilitate the flow of information and the kind of documentary evidence that reaches the institutions set up under the Peace Accords – and as a result can highlight how the practices of these institutions may fall short of what is necessary for the range of clients that they represent. Hence, there is certainly a potential for human rights lawyers to actively shape the way that the new institutions will handle cases and therefore the symbolic meaning of transitional justice in Colombia.

1. The ‘Accords’ and implementation from the Lawyer’s perspective

To structure the later theoretical contributions of this article it is necessary to examine the concrete concerns and aspirations of human rights lawyers in Colombia as the Accords were being implemented and developed into a legal and institutional structure during 2016-2017.[[23]](#footnote-23) Part of the interest is how the human rights lawyers express themselves and the presuppositions they demonstrate about their role in this process; and in so doing establish that there is a shared or common attitude amongst human rights lawyers about the implementation of the Accords.

To do this I decided to conduct a series of interviews with human rights lawyers working in Colombia over the course of the summer 2017 – with the expectation that this would capture initial concerns or expectations surrounding the Accords and how they might be implemented alongside early strategies for how lawyers might expect to work with the new institutions to administer transitional justice. Overall 15 interviews were conducted for this study with lawyers – the majority (8) featured senior human rights lawyers working or based in Bogotá; a smaller number (3) were with junior lawyers who had started working in the last 5 to 10 years and the remainder were with officials from the *Comisión Colombiana de Juristas* and the UN agency with responsibility for monitoring the protection provided to human rights defenders, including lawyers. The interviews were arranged and selected in advance through contacts and organisations in the UK who had worked with Colombian human rights.[[24]](#footnote-24) The interviews themselves were semi-structured in character and focused primarily on the Accords and the implementation. Following the terms of the ethical approval of this study the names of the interviewees are anonymised. In addition, I have supplemented my own interviews with public information provided by human rights lawyers often in the form of news or public interviews – where this is the case, I have used their names.

The principal lens for human rights lawyers when assessing the Accords was the impact any such developments in transitional justice might have on the people that they have spent their whole careers representing, the victims of Colombia’s long years of violence. There has been a focus upon honouring the commitment to non-repetition as part of the settlement for victims to ensure that the accords mark an end to the continuum of violence in Colombian society. It was understood that this was a complex and multifaceted task requiring a recognition that that the sources of violence would embrace question outside the armed conflict between the FARC-EP and the state.

“We believe we have a mission to contribute to historical clarification – a position we have been developing and we hope this can be translated into the work of the entire system which involves differentiating between incidents relating to the armed conflict and actions that come from wider political violence. The accords mean ending the armed conflict, but we have to think about the violations of the last fifty years and not all can be explained in the context of the armed conflict”.[[25]](#footnote-25)

Not only does this mean an acknowledgement of the socio-economic inequalities and environmental or rural injustices fuelling conflict but equally the human rights lawyers saw that the focus on victim rights must be able to clarify the complexity of being termed a ‘victim’ or ‘victimhood’ within the violence experienced.

“Unless the system of transitional justice can identify, name and explain how [human rights violations] happened then it has reduced facility for us. What were the practices; funding schemes; doctrines that led to violations of human rights? Who are the victims? To understand what happened in Colombia we also need to understand that there are individual and collective victims and we are interested to understand what the impacts for society have been”.[[26]](#footnote-26)

A difficulty for the human rights lawyers representing victims of the conflict involves achieving a balance between a transitional justice system which encourages the honest participation of those responsible for crimes with in a system of amnesties or reductions in sentences but does so engaging with victims as well a failure to do could undermine trust and impact on perceived access to justice. Some lawyers were already indicating that they have concerns about the way this was being handled; decisions which were already being taken by the Secretariat to the Peace Jurisdiction prior to the appointment of the magistrates and finalising the legislation upon which JEP would operate.

“I think the Peace Jurisdiction began poorly…what happens to the cases in which benefits for participants have already been; where full disclosure has not taken place and without the participation of the victims.”[[27]](#footnote-27)

Criticisms of the office of the Secretariat were not, however, shared with all the participants to the study. Some human rights lawyers felt that the office of the Secretariat was a necessary stepping point to gaining momentum behind the creation and work of the JEP; a point which for many reflected a concern that due to the implementation of the accords through congress vital progress towards setting up the institutions of transitional justice and examining the first cases would be heavily delayed. A wider variance of view between the lawyers interviewed on this matter was the extent to which the Secretariat and then the JEP should consider cases which were not strictly part of the armed conflict, but which are bound up with the continuation and legacy of political violence in the Country. Some human rights lawyers consider that this should be a wide approach using the transitional justice process to address longstanding and contextual factors behind violence whilst others advocate a narrow scope worried that victim participation could be compromised if undeserving cases are accorded benefits for conducts which were clearly outside the scope of the armed conflict.[[28]](#footnote-28)

Human Rights lawyers were also worried, as the Accords began to be implemented, that there would be lack of ‘joined up’ up coordination between the institutions. This would impact on their ability to effectively pursue the claims of victims across the range of institutions that would be relevant for dealing with claims. A focus was that evidence gained through the Truth Commission might be used in the JEP to establish context to uncover the type of acts or behaviours which might otherwise be viewed as isolated events of the armed conflict. In this way the concern of the lawyers was not that the Truth Commission should transfer specific incriminating evidence against individuals to the judicial authorities, but that information can be provided which enables the JEP to explain the type of conduct that was pursued under the armed conflict.

“The Truth Commission is a non-judicial body, which is correct given that its task is not to establish criminal liability but the manner that it has been established means that the information that it gets will not be transferred to the judicial authorities. This is important because the Truth Commission can produce very valid information which can be extremely useful for the judicial authorities. For example, we are looking at context and we are interested in the difference between the armed conflict and other violations of human rights. It is difficult to talk about incidents in an isolated manner, such as the assassination of Manuel Vargas[[29]](#footnote-29) without appreciating that this was not an isolated targeted homicide but occurred within the context of the genocide against the Patriotic Union[[30]](#footnote-30).”[[31]](#footnote-31)

Another lawyer was more specific about the risks of critical information not being shared: “there will be a lot of truth that is lost along the way and the only beneficiary will be the perpetrator”.[[32]](#footnote-32) What the human rights lawyers are advocating are bridges, points of exchange, between institutions which enable critical information to be transferred and personnel to be able to understand the significance of valuable information sharing even if this information cannot be used as evidence in judicial proceedings.

Human Rights lawyers were not only concerned about the dynamics of the new institutional relationships which would emerge as the Accords are implemented but also how the existing branches of the state would assist or limit the possibilities for transitional justice in Colombia. The method chosen to implement the revised accords, after the plebiscite, gave prominence to two significant institutional actors; Congress and the Constitutional Court of Colombia (CCC). Human rights lawyers understood that engagement with these institutions would form a critical part of their own strategic involvement in the political process around the implementation of the accords. A familiar narrative of the constitutional history of Colombia after the adoption of the 1991 Constitution has been the activism of the CCC.[[33]](#footnote-33) Due to a range of factors including the specific character of the judges appointed and the weak legislature the CCC provided the normative scaffolding for the Constitution particularly in its commitments to socio-economic rights.[[34]](#footnote-34) It was stressed by the lawyers that the CCC is different from the post-1991 court and will do things its own way, but there was also considerable uncertainty about what the approach of the Court might be:

“It is hard to know how the Court might act. On the one hand we can see positive actions such as the call for public hearings so that victims and citizens in general can express their opinions about some of legislation being passed by Congress…it looks like it is a Court that wants to defend the Constitution and constitutional principles, but it is maybe not being sufficiently flexible regarding the unique issues presented by the Peace Accords and the use of the Fast-Track.”[[35]](#footnote-35)

In the Fast-Track decision in May of 2017 the CCC imposed time-limits on the ability of Congress to pass Peace Accord measures through the Fast-Track process; this may have implications on the ability of Congress to get all the measures associated with the accords through in a reasonable time-frame but on the other hand the lawyers were also sanguine about the need for accords legislation to receive proper public scrutiny: “at a certain level this is a consequence of the plebiscite which sees the need for a higher standard to approve these regulations”.[[36]](#footnote-36) In other words, the measures brought forward under the accords lack a direct democratic legitimacy following the referendum and this will affect the way that the CCC interprets such measures.

It is also apparent that human rights lawyers are also hopeful about the possible role that the CCC can play in the implementation of the accords. This in part stems from the past progressive jurisprudence of the Court in relation to rights (including those of historically marginalised communities in Colombia) and socio-economic issues. A general position encountered in the interviews can be summed up in the following quote:

“Hopefully, the Court can balance necessary constitutional guarantees when implementing the Peace Accords with the very real advances in the rights of victims promised by the Accords”.[[37]](#footnote-37)

Dealing with Congress offers quite different prospects; the frank view expressed by human rights lawyers in conversation was that the situation was “horrible”; a significant part of the problems in Congress is that entrenched political positions regarding the accords have led to a slow-down in the implementation of the legislation. This is matter which has become more pronounced in the aftermath of elections in 2018. The confrontational political atmosphere has resulted in some human rights lawyers deciding to become elected to Congress with the result that there are allies there for the views expressed by human rights lawyers about the accords and transitional justice, but inevitably these are at present a minority in the current composition of Congress.

Finally, the Accords were founded upon a respect for international law which prohibited certain conduct as war crimes, significant breaches of international human rights law, and requires the state to act. Colombia is a signatory of the International Criminal Court and the international delegation which helped to mediate the agreement between FARC-EP and the Colombian government ensured that the transitional justice arrangements would respect international human rights norms.[[38]](#footnote-38) For the human rights lawyers this was viewed as a highly significant commitment; not least because under President Alvaro Uribe their work had been publicly denigrated and they themselves had become targeted by the state security services. Equally, human rights lawyers facing these internal difficulties domestically had looked to the international community for assistance and support, including fellow human rights lawyers.[[39]](#footnote-39)

As the Peace Accords move through the implementation phase through Congress there was renewed concern that the safeguards of international human rights law and practice could be weakened in the face of political compromise. One example of this proved to be a significant point of debate in the interviews; in the wake of the failure to gain popular support in the plebiscite the representatives of FARC-EP and the Colombian government agreed to make some changes to the original accord. One change was that the JEP would no longer have judges drawn from the international community; instead there would be a number appointed as international advisors/observers. The lawyers were explicit about their disappointment with this change indicating that it the presence of foreign judges would have provided “greater strength and stability” to JEP and that “what you see is an attempt to reduce to the minimum international observation”.

Is there something like a *shared* perspective which emerges amongst human rights lawyers as the implementation of the Accords takes place? It is probable that human rights lawyers, in common with other peace activists in Colombia, display something of a conflicted or contradictory perspective when it comes to the Accords and the implementation of them. It is a mixture of deep scepticism but equally accompanied by sentiments of optimism. In part the scepticism and optimism are expressed in a temporal sense; the lawyers when speaking about the prospects of working in the future within the institutions of transitional justice suggest that this may a moment of opportunity – of change. The following is a quote from a senior lawyer in one Bogotá’s most well-known human rights *colectivos:*

“So first to think about what our role would be in this system of comprehensive truth, justice and repetition. We have a goal of focusing on the structural guarantees of non-repetition. This is essential to the work we have been carrying out for the last four decades. We have represented victims trying to look for justice in very specific cases, the main goal; our institutional mission is that there are no more crimes in Colombia the kind of grave human rights violations that we have had to respond to over the last four decades.”[[40]](#footnote-40)

However, scepticism finds its place in the recollections about a past of violence and the instances of previous stalled attempts to find peace settlements or lasting solutions to problems faced by Colombian society.[[41]](#footnote-41)

It is important not to underestimate that for all the difficulties and ongoing concerns about implementation the institutions being set up as part of the accords; the moment itself represents a significant event which holds out the possibility for best chance at an open and transparent investigation of the truth behind some of the most violent episodes of Colombian history and a measure of legal accountability for serious human rights violations. At the time that I conducted these interviews one of the principal issues on the horizon would be who would be appointed to the critical positions as justices of the JEP. It is noteworthy that this matter came up amongst the lawyers and indicates the kind of cautious optimism that the creation of these new institutions would make to Colombian society. The significant hope was that the new justices appointed would acknowledge and command the confidence of groups which have suffered most by the armed conflict and which continue to face being marginalised or disadvantaged in Colombian society.

“We hope that there is a judge from the indigenous communities. We hope that gender is respected – women who have a track record in dealing with the specifics of violations against women.”[[42]](#footnote-42)

Optimism is tempered by scepticism which is often rooted in the historical realities of the previous efforts to build peace in Colombia. Most, if not all of the lawyers involved in human rights work have at some point been subject to threats, harassment and actual intimidation by both state and paramilitary forces.[[43]](#footnote-43) Unfortunately, human rights and community activists face mounting threats on the ground in Colombia, particularly in rural areas vacated by the FARC-EP and where the illicit economies of narcotics or extractive mining remain active. One UN official, interviewed for this study, as part of understanding the wider context of human rights work in Colombia, indicated that 2017 had seen a marked deterioration of the security situation particularly in Cauca; Antioquia and Valle de Cauca.[[44]](#footnote-44) Violence appears to be targeted and focuses on Community leaders, union officials and human rights workers or activists and suggests the continued resilience and strength of paramilitaries in impacted areas of the country.

Resolving the scale and extent of the violence that has occurred during the armed conflict is a daunting task but perhaps a residual sense of scepticism centred on disappointment about previous peace efforts or initiatives. The lawyers interviewed cited the failure of 2005 legislation[[45]](#footnote-45) aimed at dismantling the paramilitary groups that had flourished in Colombia throughout the 1990s and early 2000s not only did the legislation fail to provide a mechanism for sufficient victim involvement[[46]](#footnote-46) but many lawyers point to the resurgence of paramilitary crimes in the years since the disbanding of these groups.[[47]](#footnote-47) The presence of paramilitary violence and the ongoing killings of activists and community leaders represent one of the most significant threats to the success of maintaining the peace and attaining a functioning process of transitional justice. The sheer scale of the difficulties when it comes to the restitution efforts becomes particularly apparent when looking at land claims. Colombia has a high number of internally displaced people[[48]](#footnote-48) who will be looking to the implementation of the Peace Accords to see whether there is some prospect of regaining land which has been lost to armed conflict, illegal extractive industry or paramilitary activity. The ‘Victims’ Law’, Law 1448, implemented in 2012, has been criticised by observers for its slow, inefficient response to claims and its failure to really grapple the exploitative use of land and natural resources by powerful economic elites, including multi-national companies.[[49]](#footnote-49)

The mixture of scepticism and optimism as a shared perspective on the implementation of the Accords may not be in itself entirely surprising but it does provide an important basis for a more detailed theoretical study regarding the implications of a common attitude amongst human rights lawyers and what this can mean for the pursuit (and success) of transitional justice in Colombia. A critical matter will be how to understand the relationship between a common attitude and the strategic choices made by lawyers to advance the interests and rights of their clients and how in the long run this holds structural advantages for Colombia in cementing the institutions and practices of the Accords.

1. *Mentalité* as a framework of analysis.

In this section the article elaborates on how a shared or common attitude might assist an understanding about the complex role that can be played by human rights lawyers to affect political or social change impacting both on the possible meanings of transitional justice and the way that the institutions set up under the Accords might work. To elaborate on the possible theoretical and analytical dimensions that this could take the article advances the concept of *mentalité* which has its origins in the cultural turn within comparative law but which is applied to a different context here.

The conceptual term *mentalité* comes from comparative legal studies and legal anthropology which examines the importance of cultural context as to how a legal system is underpinned by a distinct mode of thinking.[[50]](#footnote-50) Pierre Legrand has written that *mentalité* considers how a community ‘thinks about the law and why it thinks about the law in the way that it does’.[[51]](#footnote-51) What becomes important is to investigate the framing perception about how a community comes to use the laws and legal system; this also includes symbolic commitments which define how this community understands itself and its past in relation to the legal system.[[52]](#footnote-52) In this way studying and comparing legal orders can only become meaningful if a move is made away from a paradigm in which the primary points of comparison are legal rules or sources towards the underlying attitudes and culture which provide an interpretive symbolic meaning to the legal order.

Retaining the sense that *mentalité* conveys the deeper shared attitudes that can forge new symbolic understandings of social (legal) practices, the article adapts this to the community of Colombian human rights lawyers by focusing on three features: firstly, human rights lawyers as a distinct culture of ‘legality’ in Colombia; secondly, that human rights lawyers advance their shared attitude as *cause-lawyers* and finally that human rights lawyers become *puente(s)* (bridge(s))between different institutional and interested parties. *Mentalité* is intended to bring each of these potentially separate points of inquiry together in order to provide an approach to understanding the social and political impact of human rights lawyers on the implementation of transitional justice in Colombia. At its root *mentalité* provides a conceptual framework, grounded in what lawyers themselves say about their role, to explore how the practice and implementation of transitional justice can give rise to new symbolic meanings about politics, society and the economy.

Turning to the first aspect of *mentalité*; human rights lawyers share something more than having a similar perspective on the problems or opportunities presented by the Accords – they have a *shared legal culture*. Writing about how legal education has transformed constitutional discourse in Latin America, Javier Couso argues that legal culture expresses the relationship between law and the legal system with politics and how this experienced by different actors involved (judges, lawyers or jurists).[[53]](#footnote-53) Borrowing from Couso’s definition it can be proposed that legal culture articulates a common representation of the complex relationship between the legal process and politics which can impact on the *particular* experiences of a *particular* set oflegal actors.

The interviews with human rights lawyers reveal that because of the kind of work that they undertake and the threats to their own safety there emerges a strong and resilient culture of personal motivation for the people and communities that they represent. However, such a commitment is not viewed entirely as providing legal representation alone but in addition political advocacy: it is in other words difficult to envisage representing the people that they do without taking a political stance in relation to the past violence or the future of a possible peace. Since, lawyers understand the deeper and structural political, economic and social factors that lead to people requiring recourse to legal representation. For example, a response from one of the younger generation of lawyers interviewed demonstrated this understanding that they are joining the work of a community with a shared culture and politics for which they are motivated to advance:

“I have been working in litigation and administrative process – working with victims of state crimes, torture, unjust detentions. About a year ago I have been working with territorial restitution, indigenous communities – I have become interested in joining the assembly to have a new generation of members of congress. I believe I should have this commitment with our society”.[[54]](#footnote-54)

In so far as legal culture can be seen as a way of expressing, often in personal terms, the interface between the involvement with law and the expectation of transformative political change for those who have been historically marginalised in Colombia we can understand that lawyers also draw on what they see as the values or culture of the people that they work with as an aspect of a shared outlook for the future of Colombia in conditions of peace. In an interview to Peace Brigades International a long-standing human rights lawyer and ex-President of the CCAJAR lawyer’s *colectivo*, Luis Guillermo Perez notes how threatened communities in Colombia demonstrate great dignity and strength of solidarity to confront the abuses they have suffered.[[55]](#footnote-55) A similar sentiment about how the essential work of the human rights lawyer must be politically transformative for the values of communities is illustrated by this quote from Judith Maldonado, director of the Luis Carlos Perez Lawyers *colectivo*: ‘we seek to bring the rule of law to the communities…so that it can be tool for the transformation of their communal, social, political and cultural realities.’[[56]](#footnote-56) The legal culture of legality can therefore be understood as a deep embeddedness not only in the shared realities of the people and communities lawyer’s represented but also their wider sense of political values for which lawyers bring law and legal process as a possibility of (mutual) transformation and new symbolic meanings for wider society in Colombia.

Discussion about the distinct legal culture of human rights lawyers’ dovetails with the second element of *mentalité* that of being a *cause lawyer*. Latin American lawyers tend to be members of a privileged elite, social entrepreneurs, nation builders and key power brokers. Colombia is no exception to this general trend but there is also a resilient tradition of cause lawyering emerging to advocate for democracy and human rights. Cause lawyering is described by Sarat and Scheingold as a commitment to an ideological or social cause or relying on litigation as a form of moral activism.[[57]](#footnote-57) Being a cause lawyer is defined by what sort of causes or issues draws a person into human rights work in the first instance and the background that they come from enabling them to do this work.

In Colombia many of the older generation of human rights lawyers emphasise that they came to the profession without any family ties to the law – often from the countryside or rural areas and studied to become a professional lawyer in one of the non-traditional law schools. Interest often emerged from involvement in the trade union movement and early campaigns associated with the rights of political prisoners held in Colombian jails. Senior human rights lawyer Reinaldo Villalba recalls his interest in joining CCAJAR in these terms:

“My journey as a human rights defender began as a trade unionist; I am an educator. While practising teaching, I became a lawyer and was invited to work in criminal defence; a few months later CCAJAR asked me to be a part of its team. The truth is I had admired CCAJAR’s work since being a student in the National University of Colombia, so I didn’t think twice about joining.”[[58]](#footnote-58)

Similarly, the human rights lawyers, and member of Congress and the time of the interview, Alirio Uribe, recalls the significance of his own background as framing the causes of defending rights in Colombia:

“In my life, I grew up in a poor family, in a poor village in Colombia, so I saw all of the injustice related to that from a very early age. At university I was a student leader and I worked with trade unions. When I became a lawyer, I represented social causes.”[[59]](#footnote-59)

The younger group of human rights lawyers that I interviewed as part of this study in some sense had similar backgrounds to the older lawyers – they did not come from legal families with ties to the legal profession and often grew up in rural areas of Colombia. However, it was noticeable that they often addressed different causes as part of their motivations for becoming human rights lawyers citing issues such as environmental degradation; the damaging impact of multi-national co-operations engaged in extractive mining practices and the challenges facing minority/marginalised groups and communities in Colombia such as women, child-soldiers; Afro-Colombians and Indigenous peoples. For example, the comments by a young human rights lawyer exemplifying this articulation of a new generation of causes for human rights lawyers:

“I joined CCAJAR five years ago. I was looking for a space where I could work on human rights issues – within the logic of responding to a world of conflict. There is a serious need to work with the people that need most in this country. I was fortunate to find this place in CCAJAR....which makes me feel I am working in place that is decent, that I am working for justice, I think one of my characteristics is my commitment to the victims – our country. I come from a region that is far away from Bogotá. I recognise the benefits of being from a rural area, this becomes my concern – the defence of our territories.”[[60]](#footnote-60)

Cause lawyering is not fixed and may shift in emphasis – what remains consistent is that cause lawyering carries with it a strong sense of personal identification for the lawyer and equally is re-enforced by a narrative back-story about the way that the lawyer came to their training and to the work of defending human rights. Cause lawyering as part of *mentalité* assists our appreciation of the depth of the culture of legality exhibited by human rights lawyers in Colombia by creating a common or shared sense of purpose about their societal role and obligation to others. This assists human rights lawyers to remain resilient in the face of the threats and dangers that they face performing their work. Equally important is that cause-lawyering contributes to a *mentalité* whereby a longer view or ‘through-time’ perspective about the attainment of incremental successes is adopted – because they can appreciate that their causes are shared across generations and are understood as a sense of solidarity by the community of human rights lawyers. The articulation of shared causes not only serves to unite lawyers with those that they represent but can also serve to provide a concrete and measurable quality to what symbolic change in Colombia should resemble. By advocating causes and their own personal narratives in bringing about transformative change human rights lawyers can point to the actuality of what this can be – what it can look like for Colombia. A visualisation of new symbolic meanings holds without wider benefits for Colombian society who may struggle to really understand what change might look like even though the causes that human rights lawyers’ campaign for are widely accepted.

Turning to the final element of the understanding of *mentalité* adopted here; human rights lawyers as a *puente* (bridge) for transitional justice. The term itself is a modification of the term used by Garth and Dezalay to describe the role of lawyers in the Global South as social ‘brokers’; where this comes to mean the way ‘social, political and economic resources [are converted] into legal process and vice versa’.[[61]](#footnote-61) This entails lawyers negotiating between different interests – political, economic or social – and in turn converting this negotiated ‘broker’ role into a mix of legal and social capital (family name and friendships cultivated in the legal profession). There is an emphasis in Garth and Dezalay’s work on the unique position enjoyed by lawyers to take advantage of the social and capital embeddedness of the law to mediate between different groups, interests but equally the changing understandings of the role of power, regulation and governance. In the context of the ‘Global South’[[62]](#footnote-62) Garth and Dezalay note how lawyers in these countries tend to serve as ‘double brokers’ – that is lawyers that act as points or intermediaries ‘importing’ legal innovations (mainly from the US) into the local legal contexts.[[63]](#footnote-63) Initially, it might seem that the idea of lawyers as ‘double brokers’ would be to bring specific expertise or knowledge from one jurisdiction to alter or change local practice of their home jurisdictions. In addition, however, this kind of double-broker role can be about more significant and deeper cultural transformations – for example Javier Couso argues how legal education and training of Latin American lawyers in American Law Schools has led to a very different kind of interpretive approach being adopted by the courts in respect of how they apply constitutional norms.[[64]](#footnote-64)

The *puente* term adopted here also sees human rights lawyers act as intermediaries and in so doing can bolster their social or political capital. However, instead of ‘brokering’ or ‘contracting’ between interests I understand the role of human rights lawyers to be bridging the political and legal world with the vastly different and often marginalised communities that they represent. There are at least three ways to understand how human rights lawyers in Colombia can be viewed as adopting a *mentalité* of the *puente*: the first, is that human rights lawyers recognise the responsibility for bringing law and legal processes to the communities that they represent. By attempting to protect and uphold the priority of victim’s rights within the new constellation of transitional justice institutions human rights lawyers are part of the link between these institutions and communities that have been affected during the armed conflict. The second sense of *puente* can be seen in the efforts to build alliances outside Colombia amongst the wider international human rights community; this can be seen within the existing and well-established links to the Inter-American Court and the Inter-American Commission on Human Rights (ICHR). Additionally, critical international alliances come from engaging with NGOs by raising awareness of events or cases that are being pursued by the human rights lawyers or indeed highlighting the severe threats suffered by human rights lawyers as they go about their work. Prizes and nominations help to underline the important contribution of human rights work in Colombia with the hope of fostering diplomatic pressure to ensure continued state assistance and protection for lawyers. High level recognition builds supportive networks and provides expertise but equally establishes social and political capital within Colombia. The third sense of *puente* corresponds more clearly to the idea of the ‘double broker’ in which human rights lawyers become a way of importing international legal standard or norms to domestic legal system. An example of this concerns the efforts by human rights lawyers to ensure that the definition of ‘command responsibility’ adopted by the Accords adheres to international standards, under the Statute of Rome. The concern expressed by the lawyers was that unless the international definition was adopted it would be difficult to ensure proper accountability of senior military figures who may have planned and organised an operation.[[65]](#footnote-65)

*Mentalité,* defined here is in this three-point sense, can usefully provide some framework to understand how the work and role of human rights lawyers is pivotal at the outset of Colombia’s efforts at transitional justice and building peace. Just as the institutions under the Accords are set up and begin to work attention is drawn to the core issues at stake and which animate to work of human rights lawyers, namely how can this be a moment which does bring about new symbolic meaning for Colombia. For this study the words of the human rights lawyers themselves have indicated a shared perspective of optimism and scepticism surrounding the beginnings of transitional justice in Colombia but this can be extended to think about what they share that runs deeper: it includes a legal culture; causes which extend across generations of lawyers and the ability to act as the bridge between those they represent and the legal or state structures at national and international levels.

Many of the features of *mentalité* outlined in this paper do hold advantages or benefits for the lawyers in the way that they are able to practice their work and how they relate to the individuals or communities that they represent. Even so, it would be an error to view *mentalité* as a strategic practice adopted to help them work in a challenging and threatening environment – to do so would truncate the definition of *mentalité* and leave out its cultural dimensions which can be understood as being of benefit to Colombia more widely. Given the past violence in Colombia it is possible to become overtly cynical or pessimistic about institutional or legal efforts towards building peace or transitional justice. Whilst such attitudes are understandable in themselves when applied widely, they can result in more pervasive sense that law and legal process inherently lacks or fails a test of legitimacy. Over the last decades transitional justice has been approached through a lens which sees the state determine and limit the reach of transitional justice principally to evade scrutiny of the state actions during the armed conflict. As Rowen suggests in her analysis of attitudes towards transitional justice an institutionally shaped meaning can lead to general apathy about the utility of the concept and its role in framing debates about the future of Colombia.[[66]](#footnote-66) *Mentalité* can provide an antidote to this way of thinking, not necessarily by being optimistic about transitional justice but by understanding that the work of human rights lawyers (and others) can bring about new symbolic meanings for Colombia and that this can be evidenced in the relationships and practices already undertaken by lawyers with each other and in diverse communities throughout Colombia.

Conclusion

This article has proposed a conceptual framework to help understand how critical human rights lawyers are to the early stages of transitional justice. *Mentalité* is based around a cultural understanding about how new symbolic meanings can be created from the practices and work of human rights lawyers with individual and community victims of Colombia’s internal conflict. If Colombia is to build upon the legacy of the Accords and construct a different future then the foundations of this will be laid by the many lawyers, community leaders and civil society activists.

To this extent the period of time after the interviews for this article took place has thrown up considerable challenges; principally the marked decline in the security situation across rural parts of Colombia. The demobilisation of FARC-EP has created a vacuum in rural areas which has often been filled by other violent actors, including para-militaries whose goals lie in destabilising the implementation of the Accords. The impact of this has been seen in the number of killings of community leaders, activists and others[[67]](#footnote-67) – people with whom human rights lawyers work on a frequent basis. Additionally, by the end of 2018 the political situation in Colombia shifted; in June 2018 Iván Duque won the Presidential elections, Duque comes from a party led by ex-President Uribe who has been a consistent and vocal critic of the agreement with FARC-EP and campaigned against the PA during the referendum of 2016. During the Presidential campaign of 2018 Duque made it a point of future policy that he would seek to change parts of the PA – particularly those parts of the JEP which have been claimed to provide impunity for FARC-EP. The Constitution of Colombia does protect key aspects of the Accord and this will prevent Duque from wholesale abandonment but nevertheless, it is possible for Duque to place practical impediments and obstacles in the way of its implementation.

In the long-run it is anticipated that the research developed here can be used to assess how durable and useful the concept of *mentalité* is to human rights lawyers as they actively work within the institutional system created by the Accords. Given the rapidly declining security situation in 2018-2019 for those working with rural community leader in the field of human rights it will be important to understand how this has impacted on the ability of human rights lawyers to work with victims of the armed conflict and the wider implications for the future of the Accords.

1. Negotiations began in 2012 but had started in secret following the election of Manuel Santos in 2010. For a detailed report on the choices regarding the format of the talks in Havana see the work of NOREF (Norwegian Centre for Conflict Resolution) at <https://noref.no/Publications/Regions/Colombia/Designing-peace-the-Colombian-peace-process> (accessed 06/08/2018). [↑](#footnote-ref-1)
2. For a comprehensive account of the background to the conflict and the impact of the many decades of violence, see the report of the Centro Nacional de Memoria Histórica, *Basta Ya: Colombia Memorias de Guerra y Dignidad* <http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/descargas.html> [↑](#footnote-ref-2)
3. The armed revolutionary force known as FARC-EP conducted the largest and most well-organised armed insurgency groups against the Colombian State. FACR-EP existed a broadly Marxist revolutionary armed political movement intent upon changing the rural economic life of Colombia. It began as a rural movement in response to the experiences of *campesino* farmers. The other major *guerrilla* groups in Colombia, ELN and EPL remain active despite recent efforts at negotiated settlements. [↑](#footnote-ref-3)
4. This is guaranteed in terms of a minimum number of seats in congress for the 2018 election cycle. [↑](#footnote-ref-4)
5. For a detailed report on the choices regarding the format of the talks in Havana see the work of NOREF (Norwegian Centre for Conflict Resolution) at <https://noref.no/Publications/Regions/Colombia/Designing-peace-the-Colombian-peace-process> (accessed 06/08/2018). [↑](#footnote-ref-5)
6. See for examples Paris *At War’s End: Building Peace After Civil Conflict,* Cambridge: Cambridge University Press, 2004; Teitel, *Transitional Justice*, Oxford: Oxford University Press, 2000; Turner, ‘Delivering Lasting Peace, Democracy and Human Rights in Transition: The Role of International Law’ *International Journal of Transitional Justice* (2008) 2; 126-151; Teitel, *Globalizing transitional justice. Contemporary Essays*; Oxford: Oxford University Press, 2014. [↑](#footnote-ref-6)
7. For a critical account of the way transitional justice assumptions fail to examine the success of impact of the measures adopted see Chandra Lekha Sriram, ‘Beyond Transitional Justice: Peace Governance, and Rule of Law’ *International Studies Review* (2017) 19, 53-69 for criticism of the underlying normative premise underlying liberal peacebuilding see Kieran McEvoy, ‘Beyond Legalism: Towards a thicker understanding of Transitional Justice’ *Journal of Law and Society* (2007) 34; 411-440 [↑](#footnote-ref-7)
8. Robins and Gready, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ *The International Journal of Transitional Justice* (2014) 8; 339-361. [↑](#footnote-ref-8)
9. Since the 1970s there have been truth commissions established in Uganda, Argentina, Guatemala, South Africa, Ghana, East Timor and Morocco. [↑](#footnote-ref-9)
10. R.Mani, *Beyond Retribution: Seeking Justice in the Shadow of War,* Oxford: Wiley Publishing, 2002. [↑](#footnote-ref-10)
11. Lundy and McGovern, ‘Whose Justice? Rethinking Transitional Justice from the Bottom Up’ *Journal of Law and Society* (2008) 35; 265-292. [↑](#footnote-ref-11)
12. For a selection of the research which emphasises the importance of a contextual approach to transitional justice see: Baxter, Chapman and van der Merwe, ‘Assessing the Impact of Transitional Justice: Challenges for Empirical Research, Washington DC, US Institute of Peace Process; Shaw, Waldorf and Hazan, *Localizing Transitional Justice: Interventions and Priorities After Mass Violence;* Bell and Campbell ‘Transitional Justice: (Re)Conceptualising the Field’ *International Journal of Law in Context* (2007) 3; 81-88. [↑](#footnote-ref-12)
13. The result of the referendum was: 49% Yes; 50% No. [↑](#footnote-ref-13)
14. The signing of the revised PA took place on 14th November 2016. [↑](#footnote-ref-14)
15. For an account of the principal alterations to the PA see the report compiled by the Washington Office on Latin America (WOLA) - <http://colombiapeace.org/2016/11/15/key-changes-to-the-new-peace-accord/> (accessed 06/08/2018). [↑](#footnote-ref-15)
16. For initial comment on the decision and its impact see; <https://www.insightcrime.org/news/analysis/colombia-court-ruling-spells-trouble-farc-peace-process/> (accessed 07/08/2018). [↑](#footnote-ref-16)
17. The ex-President of Colombia, Alvaro Uribe, stood on a platform of rejecting the Accords and campaigned for a no vote. He is also seen as a divisive political figure who has often spoken publicly against human rights lawyers and defenders. [↑](#footnote-ref-17)
18. For a general account see Robins and Gready, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ *The International Journal of Transitional Justice* (2014) 8; 339-361. For some specific studies of context: Dancy and Michel, ‘Human Rights Enforcement from Below: Private Actors and Prosecutorial Momentum in Latin America and Europe’ *International Studies Quarterly* (2016) 60; 173-188; McEvoy and McGregor *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* Oxford: Hart Publishing, 2008; [↑](#footnote-ref-18)
19. See for examples Paris *At War’s End: Building Peace After Civil Conflict,* Cambridge: Cambridge University Press, 2004; Teitel, *Transitional Justice*, Oxford: Oxford University Press, 2000; Turner, ‘Delivering Lasting Peace, Democracy and Human Rights in Transition: The Role of International Law’ *International Journal of Transitional Justice* (2008) 2; 126-151; Teitel, *Globalizing transitional justice. Contemporary Essays*; Oxford: Oxford University Press, 2014. [↑](#footnote-ref-19)
20. Robins and Gready, ‘From Transitional to Transformative Justice: A New Agenda for Practice’ *The International Journal of Transitional Justice* (2014) 8; 339-361. [↑](#footnote-ref-20)
21. Termed para-politics this remains one of the most serious long-term challenges for Colombia and has mired past politicians, including the ex-President Uribe, within the allegations of collusion with paramilitary interests see Claudia López Hernández, *Y refundaron la Patria: De cómo mafiosos y politicos reconfiguraron el Estado colombiano* Barcelona: Random House Mondadori, 2010. [↑](#footnote-ref-21)
22. Importance of international standards and monitoring as part of transitional justice: see <https://www.berghof-foundation.org/fileadmin/redaktion/Publications/Handbook/Articles/fischer_tj_and_rec_handbook.pdf> [↑](#footnote-ref-22)
23. Ethics Approval for the interviews was given by University of Southampton: ERGO ID 28173. Interviews were conducted in Spanish; the translated English version which appears in this article was done by a professional translator and then transcribed. In total there were 15 specific participants in the study. Further conversations with human rights lawyers were undertaken before and after this study and formed part of the background context to understand human rights legal work in Colombia. [↑](#footnote-ref-23)
24. I was greatly assisted by representatives from Colombia Caravana of International Lawyers and Peace Brigades International, Colombia. [↑](#footnote-ref-24)
25. Interview with senior Human Rights Lawyer in Bogotá [↑](#footnote-ref-25)
26. *Ibid*. [↑](#footnote-ref-26)
27. Interview with Human Rights Lawyer in Bogotá [↑](#footnote-ref-27)
28. A particularly sensitive example would be the so called *falsos positivos* scandal in which the Colombian Army killed unarmed civilians in order to bolster the number of active kills recorded against *guerrillas:* see the report from the *Guardian Newspaper* on 24th June 2015 on the scandal: <https://www.theguardian.com/world/2015/jun/24/colombian-army-killed-thousands-civilians-human-rights-watch> [↑](#footnote-ref-28)
29. Manuel Vargas was a Colombian MP who was assassinated in Bogotá in 1994. [↑](#footnote-ref-29)
30. The Patriotic Union was a leftist political party formed in 1985 which suffered a serious of targeted assassination of its leadership during the 1980s and 1990s which led to its decline. [↑](#footnote-ref-30)
31. Interview with Senior Human Rights Lawyer, Bogotá. [↑](#footnote-ref-31)
32. Interview with Human Rights Lawyer, Bogotá. [↑](#footnote-ref-32)
33. For further literature on the important role that the CCC has played in the constitutional development of Colombia since the new constitutional settlement in 1991. For an historical overview see; For an historical overview see, David Landau, *Beyond Judicial Independence: The Construction of Judicial power in Colombia,* PhD, Harvard University, 2014: accessible at <http://nrs.harvard.edu/urn-3:HUL.InstRepos:14226088> (accessed 3rd February 2018). *.* For wider comment on the rights introduced by the 1991 Constitution see, Juan Pérez ‘Colombia’s 1991 Constitution: A Rights Revolution’ in *New Constitutionalism in Latin America: Promises and Practices* Farnham: Ashgate, 2012 [↑](#footnote-ref-33)
34. Rodrigo Uprimny Yepes, “The Enforcement of Social Rights by the Colombian Constitutional Court” in R. Gargarella, P. Domingo and T. Roux (editors) *Courts and Social Transformation in New Democracies: An institutional Voice for the poor?* Farnham: Ashgate, 2006. [↑](#footnote-ref-34)
35. Interview with Human Rights Lawyer, Bogotá. [↑](#footnote-ref-35)
36. Interview with legal researchers/coordinators at the *Comisión Colombiana de Juristas*, Bogotá. [↑](#footnote-ref-36)
37. Interview with Human Rights Lawyer, Bogotá. [↑](#footnote-ref-37)
38. Colombia acceded to the Rome Statute on 5 August 2002 together with a declaration pursuant to article 124 excluding war crimes from the jurisdiction of the ICC for a seven-year period. Since 1 November 2009 the ICC can initiate investigations of War Crimes over Colombian territory and nationals and over other crimes listed in the Rome Statute committed since 1 November 2002. [↑](#footnote-ref-38)
39. For example, the work undertaken with Colombian Human Rights Lawyers by the UK group of Lawyers Colombian Caravana. [↑](#footnote-ref-39)
40. Interview with Senior Human Rights Lawyer, Bogotá. [↑](#footnote-ref-40)
41. Although it is likely that other human rights activists in Colombia are also likely to display a similarly contradictory stance in relation to the Peace Accords this was necessarily beyond the scope of the current research enquiry. [↑](#footnote-ref-41)
42. *Ibid*. [↑](#footnote-ref-42)
43. For first-hand accounts about this period see the documentary film made about the situation human rights lawyers during the 2000s: *Gotas Que Agrietan La Roca* (Droplets that Wear Away the Rock), 2014. [↑](#footnote-ref-43)
44. Since the beginning of 2017 80 people have been assassinated in total 29 community leaders 20 cases involving members of community groups. Interview with the chief officer of the *Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos,* 24th July 2017, Bogotá. The latest reports for 2018-2019 demonstrate a continued and worrying rise in the level of violence directed at community leaders and human rights defenders. A summary of the latest developments can be accessed from Washington Office for Latin America, WOLA: <https://www.wola.org/2019/06/peace-implementation-needed-address-colombias-security-crisis/>. [↑](#footnote-ref-44)
45. Law 975 – known as ‘Justice and Peace Law’. [↑](#footnote-ref-45)
46. Parts of the Law 975 were in fact held to be initially unconstitutional by Colombian Constitutional Court because they violated victims’ rights; see more generally for a critical account of the way that early efforts at Transitional Justice privileged a certain ‘viewpoint’ regarding its meaning: Jamie Rebecca Rowen, ‘We Don’t Believe in Transitional Justice: Peace and the Politics of Legal Ideas in Colombia’ *Law and Social Inquiry* 42(3) 622-647. [↑](#footnote-ref-46)
47. See the evidence gathered in the latest 2016 report of the Colombia Caravana: see <http://www.colombiancaravana.org.uk/our-work-2/reports/> (accessed 03/08/2018) [↑](#footnote-ref-47)
48. http://www.coha.org/colombias-invisible-crisis-internally-displaced-persons/ [↑](#footnote-ref-48)
49. <https://www.amnesty.org/en/latest/news/2014/11/colombia-s-land-restitution-process-failing-those-forced-their-land/> and the following useful study <https://www.tni.org/files/download/martinez-victims-law-web.pdf> [↑](#footnote-ref-49)
50. The principal forms this has taken within the comparative law literature has been: legal knowledge (Annalise Riles); collective memory (Niklas Luhmann); law in the minds (William Ewald); legal culture (Clifford Geertz) [↑](#footnote-ref-50)
51. Pierre Legrand, ‘European Systems Are Not Converging’ *International and Comparative Law Quarterly,* 45 (1996) 52-81, p.60 [↑](#footnote-ref-51)
52. *Ibid.* p.61 [↑](#footnote-ref-52)
53. Javier Couso, ‘The Transformation of Constitutional Discourse and the Judicialization of Politics in Latin America’ in *Cultures of Legality* (Couso, Huneeus and Sieder eds. Cambridge: Cambridge University Press, 2010) at 143 [↑](#footnote-ref-53)
54. Interview with a Junior Human Rights Lawyer, Bogotá. [↑](#footnote-ref-54)
55. For the full interview see: <https://peacebrigades.org.uk/news/2015-11-29/conversation-colombian-human-rights-lawyer-luis-guillermo-p%C3%A9rez> [↑](#footnote-ref-55)
56. For the full interview see: <https://peacebrigades.org.uk/country-groups/pbi-uk/where-we-work/colombia/luis-carlos-perez-lawyers-collective> [↑](#footnote-ref-56)
57. Gomez, ‘Political Activism and the Practice of Law in Venezuela’; Stephen Meili, ‘Latin American Cause-Lawyering Networks’ in *Cause Lawyering and the State in the Global Era,* Sarat and Scheingold eds. (Oxford: Oxford University Press, 2001) [↑](#footnote-ref-57)
58. Reinaldo Villalba in conversation during the Colombia Caravana delegation to Colombia in 2014. [↑](#footnote-ref-58)
59. Alirio Uribe in conversation with Colombia Caravana, 2014. [↑](#footnote-ref-59)
60. Interview with Junior Lawyer at CCAJAR, Bogotá, 2017. [↑](#footnote-ref-60)
61. Garth and Dezalay (eds), *Lawyers in an Era of Globalization* (London: Routledge, 2011)*,* p.33 [↑](#footnote-ref-61)
62. The focus in the edited collection *Lawyers in an Era of Globalization* focuses on experiences of lawyers in Latin America and Asia [↑](#footnote-ref-62)
63. Ibid. p.5 [↑](#footnote-ref-63)
64. Javier Couso, ‘The Transformation of Constitutional Discourse and the Judicialization of Politics in Latin America’ in *Cultures of Legality* (Couso, Huneeus and Sieder eds. Cambridge: Cambridge University Press, 2010) [↑](#footnote-ref-64)
65. Interview with Senior Lawyer at CCAJAR, Bogotá, July 2017. [↑](#footnote-ref-65)
66. Rowen, ‘We Don’t Believe in Transitional Justice’. [↑](#footnote-ref-66)
67. By the end of 2018 the total number of recorded assassinations in Colombia was 120, the full report and details of the assassinations can be found WOLA website: <https://www.wola.org/2018/12/december-update-least-120-activists-killed-colombia-far-year/>. [↑](#footnote-ref-67)