

Article

La Havana-Bogota Peace Agreement and the Transitional Justice in Colombia¹

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Abstract. In this article armed conflict in Colombia and the post-agreement period, which is still very recent, are evaluated. The armed conflict between the armed forces of the State and the FARC-EP has terminated in Colombia by making The La Havana-Bogota Peace Agreement. By the virtue of this agreement, the post-agreement period in Colombia is started. With this agreement, some other various steps have been taken to increase the political participation of the Colombian people and the democratization in Colombia. The Integrated System, containing the Commission for the Clarification of Truth, Coexistence and Non-Repetition, the Unit for the Search of Missing People Due to and in the Context of the Armed Conflict and the Special Jurisdiction for Peace, was established. Colombia is a current issue for international community in the context of transitional justice period.

Keywords: peace agreement, post-agreement period, Colombia, transitional justice, human rights violations.

Resumen. En este artículo se evalúan el conflicto armado en Colombia, y el período posterior al Acuerdo de Paz, todavía muy reciente. El conflicto armado entre las Fuerzas Armadas del Estado y las FARC-EP terminó en Colombia con la firma del Acuerdo de Paz La Habana-Bogotá. A raíz de esto, se inicia el periodo Post-Acuerdo en Colombia. Con este convenio, se han dado otros pasos para incrementar la participación política del pueblo colombiano y la democratización en Colombia. Se estableció el Sistema Integrado, que establece la creación de una Comisión de Esclarecimiento de la Verdad, de la Convivencia y No Repetición, la Unidad de Búsqueda de Personas dadas por Desaparecidas en el Contexto y en razón del Conflicto Armado, y la Jurisdicción Especial para la Paz. Colombia es un tema de actualidad para la comunidad internacional en el contexto del período de justicia transicional.

Palabras clave: acuerdo de paz, período post-acuerdo, Colombia, justicia transicional, violación de derechos humanos.

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1. Introduction

In Colombia, even though there is a post-agreement period, whether the State could achieve to terminate the conflict by an endless peace or not, is still a big question. As a current problem for the international community and for the Colombian people, there are many points to discuss on Colombia and its post-agreement period. It is seen that there are some ongoing acts of violence in Colombia, even though a peace agreement is made. The ongoing interconnection among the actors such as the Colombian official mechanisms, companies, drug trackers, paramilitaries and other illegal actors causes human rights violations and insecurity. Also, conflicts between Colombian official forces and some other organized armed groups continue. For this reason, in this article, the term post-agreement is used instead of post-conflict². The Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (La Havana-Bogota Peace Agreement) and transitional justice system will be evaluated in this article, in order to understand the post-agreement period in Colombia.

2. Post-Agreement Transition Process in Colombia

In the Colombia, in the beginning of 21st century, the Colombian government has transformed the security forces into a more robust state and this made it difficult for the armed groups to struggle conflict with official forces. During the armed conflict, in some parts of the country, especially an important armed group, the Revolutionary Armed Forces of Colombia—People's Army (FARC-EP), acted as *de facto* authority. They provided some of the public services. In 2002, the State expanded its official forces all over Colombia and carried out military operations and ensured its full and effective control in these regions³. The official armed forces killed three very important leaders of the FARC-EP, and this decreased its effectiveness⁴. After these, the negotiations between the government and FARC-EP representatives began to yield results⁵. Following the four-year negotiations, on the 24th November 2016, La Havana-Bogota Peace Agreement was signed between representatives of the Colombian government and FARC-EP in Havana, Cuba⁶.

Especially the domestic press of the country expressed the acts of violence as domestic tensions, terrorist attacks or fight against drug traffickers until 2010; although these groups had acquired a certain organized structure during the non international armed conflict within the borders of Colombia. In 2010, when the President *Santos* accepted that the situation in the country was a non international armed conflict. Then, the above mentioned

² Guillermo Kreiman and Juan Masullo, *Who Shot the Bullets? Exposure to Violence and Attitudes Toward Peace: Evidence from the 2016 Colombian Referendum* «Latin American Politics and Society», vol. LXII, n. 4, 2020, p. 24-26.

³ Milton Mejia, *Armed Conflict and Human Rights in Colombia* «The Ecumenical Review» vol. LXIII, n. 1, 2011, pp. 63.

⁴ Pedro Valenzuela, *The End of the Armed Conflict in Colombia: A Multiple Causal Factor Explanation* «Journal of Peace and Change» vol. XLIII, n. 2, 2018, p. 209.

⁵ Ibid.

⁶ Luisa Vierucci, *The Colombian Peace Agreement of 24 November 2016 and International Law: Some Preliminary Remarks* «Symposium on the Colombian Peace Talks and International Law», 2017 https://www.peaceprocesses.it/images/pdf/luisa_vierucci_-_agreement_colombiafarc.pdf (Date Accessed 22 January 2019), p. 1.

negotiations began between Colombian government and the FARC-EP in order to end the armed conflict between them⁷. It became undisputable that the Colombian armed forces, the FARC-EP and other armed groups were bound by international humanitarian law.

A legal code was adopted in 2011 in Colombia to eliminate grievances caused by violence acts and to give illegally seized lands back to their legal landlords. For people, who were living in the rural areas of Colombia, agricultural lands have big importance, because they could not use their lands for farming, due to the illegal seizures during the armed conflict. So, these people lost their only way of earning their lives and they had no choice but to leave their places of residence⁸. It was not so easy to implement this code due to the continuing acts of violence. Some people demanded their illegally seized lands by using their right derived from the legal code, but 71 of them were killed and 500 of them were threatened with death⁹.

One of the most important steps taken in the conflict resolution period is the Victims' Code. The Victims' Code was signed by the President of Colombia on the 10th June 2011 and entered into force in January 2012. With this code, it was aimed to eliminate the grievances of people, who have suffered from the non international armed conflict in Colombia and whose grievances had not been remedied until the entry into force of this code. It was aimed to provide individual or collective judicial, administrative, social or economic measures for these individuals¹⁰.

According to the Victims' Code, the victim could be a person who has been harmed since 1985 by being a victim of a violation of human rights or international humanitarian law rules and by being relatives of such victims. According to this code, victims of human rights violations or enforced displacement committed before 1985 can only obtain moral or symbolic reparations. For people whose human rights have been violated between 1985 and 1991, no return of land is provided. But they can be entitled to compensation. Human rights victims, whose land was seized or occupied otherwise from 1991 until the end of the implementation of the code in 2021, may be subject to return or reinstatement of land. Under the aforementioned law, if someone was not a child soldier or has not been harmed by any conflict-related crime, this person could not be considered as a victim¹¹.

There were many violations of human rights that injured many Civilian Colombians, including victims of enforced disappearance, torture or other inhumane treatment, sexual violence, enforced displacement and some other acts of violence. Many of these victims or sometimes the family members of the victims lodged applications for reparation based on the Victims' Code. For this application, victims are required to present some documents such as identification and statements of witnesses. Then, the Colombian State sends administrative notice via mail within 120 days. These victims receive a personalized note from the government expressing its willingness for the reparation. But, sadly, many vic-

⁷ Luis-Miguel Gutierrez Ramirez, *Yarım Asırlık Silahlı Çatışmanın Ardından Barışı Yaratmak Kolombiya'da Geçiş Adalet Tartışmaları Üzerine İnceleme «Anayasa Hukuku»* Serkan Köybaşı (translated), vol. IV, n. 8, 2015, p. 92.

⁸ María del Pilar López-Urbe and Fabio Sanchez Torres, *On the Agrarian Origins of Civil Conflict in Colombia*, Latin America and Caribbean Centre, May 2014, p. 13.

⁹ Ramirez, p. 100.

¹⁰ Francesca Capone, From the Justice and Peace Law to the Revised Peace Agreement Between the Colombian Government and the FARC: Will Victims' Rights Be Satisfied at Last? «Zeitschrift für ausländisches öffentliches Recht und Völkerrecht» n. 77, p. 142.

¹¹ Ibid., p. 142-143.

tims took this response and received nothing else from the Colombian State. It is known that only about 11% of victims had been paid as of 2019¹².

Various factors played a role in the start of the new negotiations in 2012. The first reason is that the FARC-EP, one of the two most important parties of the conflict, was gradually losing its power. Military reforms in Colombia and military successes against armed groups have depleted the FARC-EP. Therefore, it can be said that the military success of Colombian armed forces against the leftist armed groups was the main reason for the end of the Colombian non international armed conflict. Many FARC-EP fighters, secretaries, leaders and members of this group's key decision-making systems were killed during this period. In this case, there was a motivation to end conflict and achieve peace¹³.

Another factor is the pressure of some other States on the Colombian government and FARC-EP executives to negotiate for building peace, such as Venezuela, Norway, Spain and the United Kingdom. In fact, negotiation for peace with The National Liberation Army (ELN) was also discussed, but it is thought that the rivalry and ideological differences between the ELN and the FARC-EP could had affected peace negotiations with this latter negatively¹⁴.

On the 27th August 2012, the president of Colombia announced that peace talks with the FARC-EP would begin. Negotiations with the FARC-EP included the ending of the armed conflict, the political participation of the groups, the development of agriculture in the country, the prevention of drug trade, and the reparation of the victims' losses. When the talks started to yield positive results, the FARC-EP announced that it would stop the kidnapping and free forcibly detained 20 police officers¹⁵.

The negotiations with the FARC-EP in 2012 were held first in Cuba, then in Norway and then again in Cuba. Interviews were conducted in secret, for one and a half years to hinder any manipulations. As the negotiations proceeded, the public was informed of the situation¹⁶. Peace talks were attended by 10 people representing each party and five of these 10 people were fully authorized to conduct the negotiations. 20 assistants of these groups of 10 were also present during the negotiations. It was observed that all 10 representatives of the FARC-EP were selected among the fighters and it was also observed that the participants changed with the rotation system in order to inform other FARC-EP members about the progress of the negotiations¹⁷. In addition to the negotiations, five separate forums were organized namely 'rural issues,' 'political participation,' 'drugs,' 'victims' and 'implementation.' The participation of the Colombian people in these forums was urged. In 2014, 60 victims selected by the United Nations (UN) as its representatives were sent in groups of 12 to the delegation in Havana¹⁸.

¹² Elsa Voytas and Benjamin Crisman, *State Violence and Participation in Transitional Justice: Evidence from Colombia* «Static1», 22 December 2020) https://static1.squarespace.com/static/5f3ab0f93a505e0aed7cef51/t/5fe-24f91a775596e135cefd8/1608667029189/draft_1222.pdf (Date Accessed: 20 January 2021), p. 10.

¹³ Pat Peterson, *Conflict Resolution in Colombia*, Perry Center Occasional Paper, June 2013, p. 13.

¹⁴ Yusuf Çınar and Yasin Avcı, *Kolombiya Sorunu: Taraflar, Sebepler, Çözüm Süreci ve Öneriler* «Küresel Riskler ve Bölgesel Krizler» ed. Atilla Sandıklı and Elnur İsmail, Bilgesam Publishing, 2007, p. 238.

¹⁵ Ibid.

¹⁶ Ibid., p. 239-240.

¹⁷ Güneş Daşlı, Nisan Alıcı and Julia Poch Figueras, *Barış ve Toplumsal Cinsiyet: Kolombiya Barış Süreci, Demokrasi, Barış ve Alternatif Politikalar Araştırma Merkezi*, July 2018, p. 20.

¹⁸ Ibid.

Negotiations between the Colombian government and the FARC-EP continued until 2013. As a result of the negotiations, the parties reconciled their opinions and decided to distribute 800,000 hectares of land to farmers, who were having economic difficulties. Drug trafficking, reform of the justice system and the problems of victims affected by the conflict were also discussed. In this context, Regional Strategic Projects and lastly Magdalena Medio Peace and Development Project have been put into effect by the Colombian government and projects have been carried out to ensure economic justice. By these projects, it was aimed to raise awareness and sensitivity of the people of the country on human rights and to increase political participation. In 2015, the Historical Commission on Conflicts and Victims, including six people selected by the FARC-EP and six people selected by the Colombian government, produced a comprehensive report. The Commission's report served as a guideline for the progress of peace process. It was announced by the president of Colombia that the peace agreement was signed in 2016 and that the FARC-EP would lay down its arms within 60 days¹⁹.

In Colombia, apart from the La Havana-Bogota Peace Agreement, there is another agreement which was made between the Colombian government and the FARC-EP. This second agreement is the 'Agreement between the Government and FARC-EP on the Bilateral and Definitive Ceasefire and Cessation of Hostilities and the Laying down of Arms' which consists of seven chapters and 25 appendices. The aim of this agreement was to end the conflict between the Colombian government's security forces and FARC-EP members. According to the provisions of this agreement, it was aimed to prepare the institutional framework envisaged by the agreement and to integrate members of the FARC-EP to civilian life. This agreement is a text that seeks to protect the rights of all Colombians, with provisions that put victims at the center, while trying to eliminate the effects of the conflict and to build peace²⁰.

With the La Havana-Bogota Peace Agreement, a system called the Commission for the Follow-up, Promotion and Verification of Implementation of the Final Agreement was established. This mechanism consists of three representatives from the Colombian Government and three representatives from the FARC-EP or its transformed political party. This establishment basically observes the parties' compliance with the final agreement and resolves disputes regarding the implementation of this agreement. The Commission acts within the principles of impartiality, transparency, trust and it is seen as a guarantee system for the entire Colombian people²¹.

The possibility of peace building in Colombia has also been related to the mines. In Colombia, many people lost their lives because of the mines during the conflict. It is estimated that from 1990 to 2013, 10,000 people have died because of mines. It is stated that 40% people who died due to mines were civilians and 60% were soldiers. Deaths caused by mines reached a peak in 2006. In 2012, when the negotiations started, it was observed that there was a decrease of almost half of the number of deaths that were experienced in 2006. According to the government, 100,000 mines were cleared from 2012 to 2013, but

¹⁹ Çınar and Avcı, p. 242-244.

²⁰ Presidencia de al República and Todos por un Nuevo Pais, *Summary of Colombia's Agreement to End Conflict and Build Peace*, 2016, p. 14.

²¹ *Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace (La Havana-Bogota Peace Agreement)*, UN Security Council, 21 April 2017, S/2017/272, https://unmc.unmissions.org/sites/default/files/s-2017-272_e.pdf (Accessed Date: 21 January 2019).

the clearance of the rest will continue for 10 years²².

It should be noted that, in Colombia, peace negotiations with another major armed group, ELN, have been ongoing since February 2017. But it is seen that these peace negotiations have been suspended several times. It should be accepted that reconciliation with the ELN is also important for achieving peace²³.

The transition to at least the post-agreement period does not mean that violations of human rights and threats on them are certainly over in Colombia. Paramilitary groups continued their hostile actions in this period and organized attacks in various regions. Especially attacks on human rights defenders continued²⁴. In addition, 87 human rights defenders were killed by paramilitary groups during the negotiations in order to put an end to the negotiations. It is also noted that just before the start of the peace talks, 180 people, formerly FARC-EP guerrillas, were killed by paramilitary groups²⁵.

When the content of the La Havana-Bogota Peace Agreement is evaluated, it is seen that the agreement consists of six chapters and annexes, and that it is a very long and detailed agreement. After the parties signed the agreement, its text was presented to UN Secretary General *António Guterres* by the UN Permanent Representative to Colombia *Maria Emma Mejia Vélez*, with a letter from Colombian President *Santos*. This agreement has five chapters, namely, "Comprehensive Rural Reform", "Political Participation: A Democratic Opportunity for Peacebuilding", "End of Conflicts", "Solution to the Problem of Illicit Drugs", "Agreement on the Victims of the Conflict" and "Implementation, Verification and Public Endorsement". La Havana-Bogota Peace was approved by the Colombian Parliament, and it entered into force on the 1st December 2016, as the longest agreement text putting an end to a non international armed conflict²⁶.

La Havana-Bogota Peace Agreement states that peace is the basic right of all citizens and the precondition of practicing all other rights. It is seen that this provision of this peace agreement was written in a harmony with the Colombian Constitution, by taking some articles of the constitution as an example. Article 22 of the Constitution of Colombia regulates that, peace is an obligation and a right, so everyone is obliged to comply with. According to the Article 95, paragraph 6 of the constitution, there is an obligation for the individuals and citizens to make effort to reach peace and maintain it²⁷. Also according to the Agreement, an amnesty will be applied in accordance with the international standards²⁸ and this was seen as the step to ensure peace and reconciliation after the conflict ends. As it is well-known, in international law, it is essential not to apply amnesty on international crimes. Accordingly, La Havana-Bogota Peace Agreement acknowledged

²² Peterson, p. 19-20.

²³ Daşlı, Alici and Figueras, p. 44.

²⁴ UN General Assembly, *Visit to Colombia, Report of the Special Rapporteur on the situation of human rights defenders*, A/HCR/43/51/Add.1, 26 December 2019, para. 13.

²⁵ Daşlı, Alici and Figueras, p. 44.

²⁶ Christine Bell, *Lex Pacificatoria Colombiana: Colombia's Peace Accord in Comparative Perspective* «Symposium on the Colombian Peace Talks and International Law», 2017, <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/lex-pacificatoria-colombiana-colombias-peace-accord-in-comparative-perspective/14D6D1986F104F243B1FFFE1AE92A5CA> (Date Accessed 20 January 2019), p. 166.

²⁷ *La Havana-Bogota Peace Agreement*, art. 5.1.2. For the Colombian Constitution in English, see: *Colombia's Constitution of 1991 with Amendments through 2005*, https://www.constituteproject.org/constitution/Colombia_2005.pdf (Date Accessed 9 September 2018).

²⁸ *La Havana-Bogota Peace Agreement*, art. 5.1.2.

that violations of international humanitarian rules that had been processed systematically or as part of a plan or policy could not be a matter of amnesty²⁹.

In addition to criminals who committed international crimes, other criminals who have committed some serious crimes such as hostage taking, severely deprivation of liberty, torture, enforced displacement, enforced disappearance, extrajudicial killings could not benefit from amnesty. Furthermore, it was not possible for people, who engaged in sexual violence or engaged in incidents such as the use of children in conflicts, to benefit from amnesty. People who were FARC-EP members and people who were judged for political crimes had the opportunity to benefit from amnesty³⁰.

The La Havana-Bogota Peace Agreement has established the legal framework of the Special Jurisdiction for Peace and it stated that international humanitarian law, international human rights law and the Colombian Criminal Code should be implemented during the trials. It also emphasized that all of these rules must be applied in harmony³¹. Vierucci accepts the view that the reference to international law would require compliance with rules of international criminal law³². These regulations of the La Havana-Bogota Peace Agreement are good examples of referencing to both national law and international law during the trials in post-agreement periods.

The La Havana-Bogota Peace Agreement included articles on the prevention of illegal herb and drug production, thereby facilitating the prevention of organized crime. It also includes regulations on social diversity, problems about women rights and sexual orientation and includes long provisions for coping with the past³³. Before the peace agreement and during the peace negotiations, women participation was being promoted over time to prove international community that the peace negotiations included women³⁴.

The parties of the agreement asked the UN to help them in ending hostilities and oversee the implementation of the agreement during the ceasefire period. According to the agreement, following the completion of this period, the UN would set up a peace-keeping mission that will monitor the integration of FARC-EP members into civil life and ensure the safety of Colombian people³⁵.

Colombia feels itself limited with the requirements of international law in ensuring justice. By the Agreement, the Colombian government is under the obligation to comply with the international law rules on human rights, to effectively implement the treaties on such rules, to respect and guarantee human rights³⁶. Until the end of the 2020, about 8.9 million victims were registered in Colombia. During the fifty years of violence, Colombia had experienced one of the world's highest number of conflict related victims. As a result of this, the transitional justice activities gained importance for the social reconciliation³⁷.

²⁹ Ibid.

³⁰ Capone, p. 149-150.

³¹ *La Havana-Bogota Peace Agreement*, art. 5.1.2.

³² Vierucci, p. 7.

³³ Bell, p. 168.

³⁴ Josephine Lasota, *Transitional Justice in Colombia-Insight from Postcolonial Feminist Theory* «TLI Think! Paper King's College London Research Paper Series» n. 13, 2020, p. 9.

³⁵ Vierucci, p. 5.

³⁶ *La Havana-Bogota Peace Agreement*, art. 5.1.2.

³⁷ Voytas and Crisman, p. 4.

3. The Integrated System Established for Transitional Justice in Colombia

For a community which experienced mass atrocities and dramatic human rights violations, it is not easy to reach a longlasting peace, even though the armed conflict has finished. It is important to listen those victims who were injured, to elicit admissions from violators, to investigate crimes and to rebuild the trust among the members of the community. These can be achieved by establishment of a good system for transitional justice period. Accordingly, the La Havana-Bogota Peace Agreement has established a system for transitional justice³⁸.

The full name of the system that is foreseen for Colombia, which is also known shortly as the Integrated System, is the Integrated System of Truth, Justice, Reparation and Non-Repetition. This Integrated System has contained three mechanisms: the Commission for the Clarification of Truth, Coexistence and Non-Repetition, the Unit for the Search of Missing People Due to and in the Context of the Armed Conflict and the Special Jurisdiction for Peace³⁹.

The Article 5.1.2 of the La Havana-Bogota Peace Agreement regulated that States have an obligation to reveal the violated rights of victims and prevent future violations⁴⁰. One of the most important tools in the Integrated System, that Colombia has established to fulfill this obligation, is the Special Jurisdiction for Peace, as it is the judicial dimension of the system⁴¹.

As the Special Jurisdiction for Peace is a different and special judgement unit of the national and usual judicial system, it is a point that can be criticized like other special judiciary units established in post-agreement periods in the world⁴². According to the peace agreement, the trial of the people committed conflict related crimes will be heard in the Special Jurisdiction for Peace. People in this category are punished in the way that restrict their freedom effectively and range from five to eight years imprisonment⁴³.

If any court established in Colombia judged people who were under the Special Jurisdiction for Peace's jurisdiction, the decision of this court had to pend until the Special Jurisdiction for Peace reviewed the first court's judgement⁴⁴. The Special Jurisdiction for Peace must be independent, objective and impartial. It should also conduct its proceedings in accordance with the legal procedure and provide necessary support to victims. The Special Jurisdiction for Peace is obliged to prevent the emergence of new victimisations and it must fulfill its duties in accordance with international standards⁴⁵.

The Special Jurisdiction for Peace consists of 38 judges, an investigation department,

³⁸ Cynthia Cohen, *Reimagining Transitional Justice* «International Journal of Transitional Justice», vol. XIV, n. 1, 2020, p. 1.

³⁹ Reneta Segura and Sabrina Stein, *The Colombian Peace Process with the FARC: A Mapping of Vulnerabilities*, Conflict Prevention and Peace Forum, July 2018, p. 11.

⁴⁰ *La Havana-Bogota Peace Agreement*, art. 5.1.2.

⁴¹ *The Special Jurisdiction for Peace in Colombia: Recommendations for the Selection of Judges of the Chambers and Divisions of the Tribunal for Peace* http://www.dplf.org/sites/default/files/the_special_jurisdiction_peace_colombia_web_06_03_2016_0.pdf (Date Accessed 18 January 2020).

⁴² Nelson CS Leon, *Could the Colombian Peace Accord Trigger an ICC Investigation on Colombia?* «AJIL Unbound», n. 110, 2016, p. 172-176.

⁴³ Segura and Stein, p. 11.

⁴⁴ *La Havana-Bogota Peace Agreement*, art. 3.2.

⁴⁵ *La Havana-Bogota Peace Agreement*, art. 5.1.2.

a court department and three subdepartments. The judges were selected by a committee, which had five members and which was envisaged to be established in the Peace Agreement. In the selection of the judges, gender balance was mentioned, attention was paid to the representation of different ethnic groups. The judges are selected from different ideological views and fields of study, and they have previously carried out studies on military criminal law or human rights law⁴⁶. For ensuring the impartiality of the selected judges, lawyers who have provided legal advice in any situation related to conflicts in Colombia or have filed a lawsuit against the state of Colombia before any international court or organization, have not been selected as judges for trials⁴⁷.

According to the La Havana-Bogota Peace Agreement Article 5.1.2., the Colombian government should apply amnesty as wide as possible to end hostilities and create a reconciliation in Colombia. This amnesty can be applied to people, who were members of rebel groups in the past, and to people accused of or convicted of political and related crimes⁴⁸.

The Colombian constitution also allows for amnesty to political and related crimes. However, it is forbidden to include the crimes against humanity or other crimes regulated in the Statute of International Criminal Court within the scope of amnesty. In addition to these crimes, for some other crimes such as taking hostages, restricting liberties of others, torture, extrajudicial executions, enforced disappearance of people, rape and other forms of sexual violence, kidnapping, enforced displacement, and recruitment of children also lead to violations of international humanitarian law, amnesty will not be applied⁴⁹. But it is necessary to mention that the post-agreement transitional justice activities in Colombia are criticized by saying that the transitional justice activities fail to take into account the sexual violence and related crimes that were committed against women. There are many cases waiting for the prosecution or judgement relating these issues⁵⁰.

The Special Jurisdiction for Peace also has the function of supporting victims. Because of this last function of the Special Jurisdiction for Peace, it must spend vast majority of its budget. Non-governmental organizations, such as the International Center for Transitional Justice, *Dejusticia* and Human Rights Watch, criticize the Special Jurisdiction for Peace for both its complexity and the cost of its supporting victim function. They argue that, these blocked the other units of Special Jurisdiction for Peace. Also, according to their criticisms, “punishments that effectively restrict freedom” are not sufficiently proportional to the crimes committed⁵¹.

According to the Colombian transitional justice system, military superiors can only be prosecuted for crimes committed by their subordinates under such circumstances: First of all, the superior may be held responsible for the crimes committed by the subordinates under her/his command and if these crimes were committed in the area where the superior was legally appointed. Secondly, if the superior has the capacity to give orders legally

⁴⁶ Segura and Stein, p. 14.

⁴⁷ Ibid.

⁴⁸ *La Havana-Bogota Peace Agreement*, art. 5.1.2.

⁴⁹ *La Havana-Bogota Peace Agreement*, art. 5.1.2.

⁵⁰ Lasota, p. 6.

⁵¹ <https://www.hrw.org/news/2017/10/09/colombia-fix-flaws-transitional-justice-law> (Date Accessed 24 November 2018).

and physically and to check orders, then the superior's criminal responsibility could be engaged. As a third condition, the superior should have the capacity to carry out operations in the region where the crime was committed. Fourth and final condition for the superior's responsibility could be summarized as "knowledge of the crime." The superior must know the fact that the crime was going to be committed and must have the physical capacity to prevent it is necessary. These conditions are criticized by the Colombian lawmakers and non-governmental organizations because of the fact that they are restricting the military superior's responsibility⁵².

It is expected that the Commission for the Clarification of Truth, Coexistence and Non-Repetition will play the role of revealing what happened during the armed conflict period and guaranteeing the right to the truth of the Colombian people. By this, it will be possible to understand the causes of the conflict and to remember the history. This situation not only serves to guarantee the right to the truth, but also ensures coexistence, accountability, reconciliation and non-repetition. As it can be seen obviously, this commission is an important part of the integrated system. It is also an important tool for building peace, respecting victims' rights and eliminating grievances⁵³.

It is planned that the Commission for the Clarification of Truth, Coexistence and Non-Repetition consists of 11 independent and impartial commissioners representing all segments and groups of the society. One of these 11 commissioners is the head of the commission. The commission is established for a three-year period. The commission will publish a final report containing its work, before its mission will end. A separate committee will be established to monitor the implementation of the recommendations contained in the final report of the commission⁵⁴.

The Commission for the Clarification of Truth, Coexistence and Non-Repetition has three main objectives. The first of these is to understand the causes of the conflict and to establish a common understanding in the society on this. The second is to create a 'recognition' situation in the Colombian society. By "recognition" the social awareness of victims as citizens, whose rights have been violated, and of political actors, like the foundation stones for the transition period and for the new order, is meant. It is also aimed to engage the individual or collective responsibility of those people who were responsible for violations of human rights. As a result, it is desired that the events caused by the conflict should be recognized by the society and thus not repeated. The third aim is to create a culture of respect and tolerance necessary for democracy in the Colombian society. By this, the dialogue environment will be improved in the society, the grievances will be eliminated and the responsibilities will be detected⁵⁵.

The Commission is expected to continue its work in a victim-oriented, independent and impartial manner⁵⁶. It should be suitable for participation and pluralism. In relation to other mechanisms working for peace building, it must maintain its sensitivity to dif-

⁵² Segura and Stein, p. 13-14.

⁵³ Cohen, p. 3.

⁵⁴ *La Havana-Bogota Peace Agreement*, art. 5.1.1.1.5, 5.1.1.1.6, 5.1.1.1.7. and 5.1.1.1.10.

⁵⁵ *La Havana-Bogota Peace Agreement*, art. 5.1.1.1.

⁵⁶ Comision de la Verdad, *Comprehensive System of Truth Justice Reparation and Non-Repetition (SIVJRN) Special Jurisdiction for Peace and Unidad de Búsqueda de Personas Dadas Por Desaparecidas*, 2019, https://www.jep.gov.co/Infografas/SIVJRN_EN.pdf (Date Accessed 28 January 2020), p. 2.

ferences and gender⁵⁷. The commission's duties are to reveal violations of human rights law and international humanitarian law, to ensure that the State, FARC-EP, paramilitary groups and all other groups are accepted as responsible for these violations and to demonstrate the impact of armed conflict on society, democracy, political movements and combatants. It is also among the responsibilities of the commission to investigate the historical scope, origin and causes of the conflict⁵⁸.

The Unit for the Search of Missing People Due to and in the Context of the Armed Conflict will deal with the people, who are missing and there is no information about them. This unit also has to identify those who have died, to deliver their remains to their families and to report the results of the fate of these people. Regarding the functions of this third unit, firstly, it has to collect information about all people, who are disappeared during the non international armed conflict period in Colombia, because of the conflict. It also has the task of working with the national forensic medicine agency to identify the remains of those, who were disappeared but turned out to be dead, and to return their remains to their relatives. While doing these, it has to work in coordination with all institutions of the State and human rights organizations and it can use the State's official databases to access the information it needs. This unit has all the power and authority to perform its duty⁵⁹.

The Unit for the Search of Missing People Due to and in the Context of the Armed Conflict should take all the necessary steps to guide the relatives of the missing people and provide psychological support and should engage with all national or international institutions related to their duties. While the remains of the disappeared people will be handed over to their relatives, the ethnic and cultural traditions of those concerned should be respected. Remains of people who can not be identified or whose relatives can not be found should be preserved professionally⁶⁰. Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia stated that if the Integrated System of Truth, Justice, Reparation and Non-Repitition works properly, it will an effective mechanism in accordance with international standards⁶¹.

A final evaluation on the current situation in Colombia should be done. As a necessity derived from the La Havana-Bogota Peace Agreement, many of the demobilized ex-combatants were putted into reintegration camps. It was aimed to help these people to be reintegrated into civilian life. But, the camps and people in these camps couldn't be protected. More than 200 former ex-combatants were killed. The current status of these camps is unclear and they are away from being safety places for ex-combatants. Because of some threats and attacks to the ex-combatants, many of them left these places. As UN considers the reintegration of ex-combatants an important point for reaching to

⁵⁷ Lasota, p. 8.

⁵⁸ Francisco de Roux, *21 Key Points to Learn About the Truth Commission, Commission for the Clarification of Truth, Coexistence, and Non-Repitition*, Comision Verdad, October 2018, https://www.jep.gov.co/Infografias/SIVJRNR_EN.pdf (Date Accessed 28 January 2021), p. 8-9. Also see: *La Havana-Bogota Peace Agreement*, art. 5.1.1.1.2.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ UN General Assembly, *Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia*, 4 February 2019, A/HRC/40/3/Add.3, p. 13, para 86.

peace, this situation in Colombia can be accepted as an important obstacle for reaching a longlasting peace⁶².

Since 7th August 2018, the present president is *Ivan Duque Marquez*. His party, which is the Democratic Center Party, is considered as a conservative and rightish party⁶³. He is criticized with not giving enough importance to the post-agreement and reconstruction activities regulated by the Peace Agreement⁶⁴. If government and relevant UN missions continue not to implement the Peace Agreement, the situation in Colombia will continue to be accepted as a situation of indefinite war⁶⁵.

4. Conclusion

In Colombia, various legislations have been adopted and commissions have been established in order to eliminate damages caused by violations of human rights law or violations of international humanitarian law. In this dialogue and peace preparations environment, the La Havana-Bogota Peace Agreement was made, the Integrated System and the Special Jurisdiction for Peace were established. UN High Commissioner for Human Rights supported these mechanisms about their work.

The Peace Agreement established a system to ensure transitional justice and address human rights violations in Colombia. For all Colombian people and also for regional and international security, it is expected from the Colombian State to ensure the implementation of the articles of this agreement. It is necessary for the parties of the acts of violence in Colombia to watch the provisions of the Peace Agreement to have a peaceful State and not to violate rights of individuals.

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⁶² Alicia Florez and Laura Calderon, Why Former FARC Fighters are Abandoning Colombia's Reintegration Camps «InsightCrime», 16 November 2020, <https://insightcrime.org/news/analysis/farc-fighters-colombia-reintegration-camps/> (Accessed Date: 24 June 2021).

⁶³ <https://www.npr.org/2018/06/18/620888643/colombia-elects-right-wing-populist-ivan-duque-as-president> (Accessed Date: 14 June 2021).

⁶⁴ Jaime Bonet-Moron et. al., *Regional Economic Impact of Covid-19 in Colombia: An Input-Output Approach* «Regional Science&Practice», vol. XII, n. 6, 2020, p. 1123-1124.

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