



Victims of Language: Language as a Pre-condition of Transitional Justice in Colombia's Peace Agreement

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INTRODUCTION

“Victims” were addressed as one of the six themes that the negotiators of Colombia’s Government and the Colombian Revolutionary Armed Forces (FARC) included in the *General Agreement to End the Conflict and Build a Stable and Lasting Peace (General Agreement)*, which was signed in Havana on 26 August 2012, after several months of negotiations between the parties.¹ This agreement established a framework and an agenda that would guide the negotiations of peace to end over fifty years of internal

¹The other themes of the negotiations were: Integral Rural Development; Political Participation; End of the Conflict; Illicit Drugs; and Implementation, Verification and Ratification. See Negotiation Table, *Acuerdo General para la terminación del conflicto y la construcción de una paz estable y duradera [General Agreement to End the Conflict and Build a Stable and Lasting Peace]* Havana, 2012, <https://bit.ly/2RrhIwj>.

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armed conflict. The very short *General Agreement*, which resulted from secret “exploratory conversations,” did not explicitly mention the term “transitional justice,” although its stated goal, “to compensate the victims [was] at the center of the agreement.”² It also listed two subthemes that organised this part of the ensuing negotiations: victims’ human rights and truth.³

In the *Final Agreement* signed in 2016, “victims” are included in section five. This section creates a very innovative and comprehensive System of Truth, Justice, Reparation and Non-Repetition, in what can be described as a true attempt to delineate the mechanisms that would make the sections of the agreement that deal with “transitional justice” a cornerstone of a successful peace process. Thus, the *Final Agreement* aims at establishing the ameliorating conditions that would guarantee a “stable and long-lasting peace” beyond the military end of the conflict by combining two formal transitional justice processes: judicial mechanisms to oversee great violations of human rights and international humanitarian law, and extra-judicial mechanisms to shed light on “what happened,” to search for the disappeared and to compensate the victims.

This chapter will not delve into these processes, but focuses instead on the specific language used to talk about victims during the peace negotiations in Havana, and in the *Final Agreement*. The objective is to determine whether the goals established in the *General Agreement* of 2012 around the victims of the conflict are reflected during the conversations and clearly included in the final peace agreement. The present research is part of a broader project of Peace Innovation developed at Cultureplex Lab that looks into how artificial intelligence, statistical computing and digital methods in general can support and assist transitional justice and peace-building processes. Taking the case study of Colombia, this project responds to the challenge of building a stable and long-lasting culture of peace in the country—an intention clearly expressed throughout the negotiations period and in the *Final Agreement*—by analysing, in this particular research, the role of language in peace processes.

²Although there is a policy consensus “that victims should be included in transitional justice processes” the broadness of definitions and the lack of precision in the used language leaves a wide space for political interpretations about what this inclusion means and how it will be interpreted. See Astrid Jamar, *Victims Inclusion and Transitional Justice: Attending to the Exclusivity of Inclusion Politics: PA-X Report: Transitional Justice Series* (Edinburgh: The University of Edinburgh, 2018), 2.

³Negotiation Table, *General Agreement*, 3.

We argue that language itself—the very tool that makes the peace conversations possible—is a key improving factor in any peace process. The effectiveness and quality of the peace achieved depends to a large extent on the accuracy of the language used in both negotiating and ultimately formulating the agreements. The reason is not only that language is the foundation that makes the conversations possible and substantiates the future resolution of conflicts by political means, but that the life of the agreement after its ratification will entirely depend on the ability of the language used to continue to be relevant, accurate and clear about the type of peace the parties have agreed to support. In Colombia, this desire is reflected in the very title of the *General Agreement* and the *Final Agreements*; they state that to be true and effective, peace needs to be “stable and long-lasting.” Victims are supposed to be at the centre of this goal.

Accurate language in peace agreements is an ameliorating factor that can support many of the pre-conditions of transitional justice processes described in the introduction of this volume. We consider it is a transversal component that, if used properly, can legally set the grounds to foster pre-conditions of transitional justice needed to achieve the desired state of peace. In the specific case of the inclusion of victims, that has been framed as a global transitional justice priority to further legitimise institutional efforts, language should describe what is being promoted at a high policy level, what is provided for in peace processes and how both policy provisions and peace agreement commitments get translated into practice for the benefit of the victims and the overall peace.

Accurate language in peace documents is an ameliorating factor that directly affects the stability of peace in the post-agreement period. The Arabs and the Israelis, for example, have a different understanding of the famous UN resolution 242, approved by the Security Council after the Six Day War in 1967. The provision of the resolution expresses the:

establishment of just and lasting peace in the Middle East should include the application of both the following principles:

- withdrawal of Israeli armed forces from territories occupied in recent conflict;
- termination of all claims or states of belligerency and respect for ... territorial integrity ... of every State in the area and their right to live in peace within secure and recognized boundaries.⁴

⁴UNSecurityCouncil, *UNResolution 242*, (1967). [https://undocs.org/S/RES/242\(1967\)](https://undocs.org/S/RES/242(1967)).

The Israelis claimed that they should not withdraw from all the territories that they occupied as the English version talked about “territories occupied,” while the Arabs claimed that this is not true as the preamble and the French translation, which together with the English version is an official UN version of the document, talks about “Retrait de forces armées israéliennes des territoires” (with emphasis on “the,” which was not present in the English version). That is why it was possible to raise the question as to whether Israel was actually asked to withdraw from all the territories occupied in the recent conflict, or to withdraw from some, but not all, territories. Finally Israel did not withdraw its pre-Six Day War borders and Arab countries still argue about the issue.

This example shows how a prior agreement about the meaning and interpretation of the language used in transitional justice processes is a key for a successful and effective implementation of its contents. This is even more important today, a moment in which digital tools and data technologies are being used globally to disrupt the trust in language and truth as pre-conditions of any conflict resolution, regardless of the scale of the conflict and the political regime in which the conflict erupts. In societies such as Colombia’s embarked in a process of transitional justice, an agreement about what language will be used and how it will be used will prove key to achieve the long-lasting peace the parties aspired to when starting the negotiations.

DATA AND METHODOLOGY

The Negotiation Table in Havana created a website to publish the documents issued by the delegations, inform the public about the progress being made during the negotiations, publicise the drafts of the provisional agreements and collect the proposals to be included in the conversations submitted by the public. After the end of the negotiations, the Office of the High Commissioner for Peace of the Colombian Government published a website to host all the documents that had made up the original website of the Negotiation Table.⁵

The language and documents analysed for this article were recovered from the documentation published on the original website of the Negotiation Table. These 137 documents, published between 2012 and

⁵The documents can be found at <https://goo.gl/Ji9y4s>. The original website was removed from www.mesadeconversaciones.com.co, which is currently offline.

Table 5.1 Number of documents published during the negotiations

<i>Category</i>	<i>Sub-category</i>	<i>Number of documents</i>
Final agreement	Final agreement	1
Historical Commission of the Conflict and its Victims	Relatorías	2
	Reports	10
General documents	Reports	4
	Draft of joint agreements	13
	Joint media releases	107
Total		137

2016, are organised in three categories (Table 5.1): first, General Documents that include the drafts of joint agreements, reports and the media releases of the Negotiation Table; second, Historical Commission of the Conflict and Its Victims, that includes reports and *relatorías* (curated summaries of the reports) written by academics to explain the causes of the armed conflict; and third, the Final Agreement. The year that ended the conflict, 2016, was the most prolific in terms of the volume of publications.⁶

The Negotiation Table published fifty-five documents in 2016, thirty in 2015, twenty in 2014, twenty-five in 2013 and just seven from September to December 2012 (Fig. 5.1). The date that the parties announced the protocols for a definite ceasefire and laying down arms, 5 August 2016, was the day with the most number of publications.

The data was processed with Python,⁷ a generic and modern computing language, widely used for text analytics. Python is enriched with computing libraries like Scikit Learn⁸ for machine learning applications and

⁶In February 2015, the ten reports and two *relatorías* of the Historical Commission of the Conflict and its Victims were published together as a book. See Comisión Histórica del Conflicto y sus Víctimas, *Contribución al entendimiento del conflicto armado en Colombia [Contribution to the understanding of the armed conflict in Colombia]* (Bogotá: Ediciones Desde Abajo, 2016).

⁷Python Software Foundation, *Python*. Accessed December 26, 2017. <https://www.python.org/>.

⁸Fabian Pedregosa et al., “Scikit-Learn: Machine Learning in Python,” *Journal of Machine Learning Research* 12 (2011): 2825–2830, <http://www.jmlr.org/papers/v12/pedregosa11a.html>.

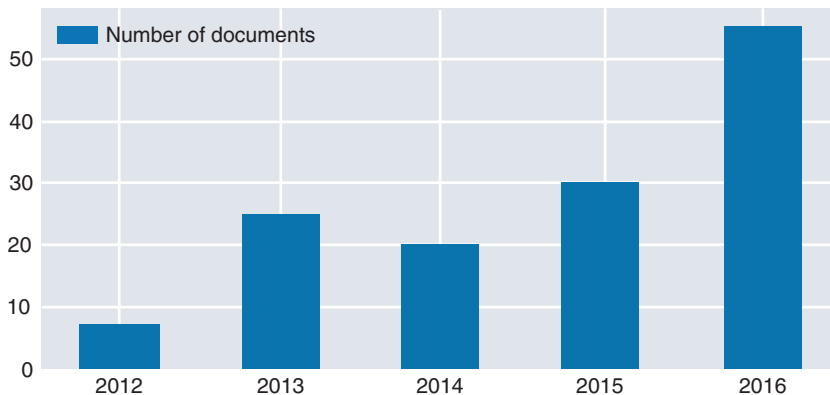


Fig. 5.1 Number of publications per year

SciPy⁹ for mathematical analysis. Both were used in this study. We filtered out from the total corpus, common Spanish words like prepositions, articles, demonstrative pronouns, among others; repeated headings and footers were also removed. By doing this, we eliminated the so-called stop-words and just used for the analysis the most relevant categories of words from a semantic point view. Using natural language processing techniques and Python libraries, specifically NLTK,¹⁰ we analysed the text of the documents classified in Table 5.1, searching for keywords that help us to describe the discourse of peace and paying special attention to the term “victim(s).”

In addition, we performed a close reading of all the relevant documents released by the Negotiation Table including the *Final Agreement*, and press conferences reports released on important dates during the period. The result is a combination of methods of language and discourse analysis that seeks to determine what the language of the Final Agreement between the Colombian government and the FARC really says about the victims of the conflict, including positive outcomes and certain shortfalls.

⁹Eric Jones et al., *SciPy: Open Source Scientific Tools for Python*. Accessed December 26, 2017. <https://www.scipy.org>.

¹⁰Steven Bird, Ewan Klein and Edward Loper, *Natural Language Processing with Python* (California: O’Reilly Media, 2009), <http://www.nltk.org/book/>.

THE MENTIONS OF VICTIMS DURING THE NEGOTIATIONS

The public phase of the dialogue between the Government of Colombia and the FARC took place in Havana from 4 September 2012 to 24 August 2016. The victory of the “No” side in the plebiscite, held on 2 October 2016 to approve the peace agreement, forced the negotiating parties to return to Havana and correct the original agreement. The Final Agreement was signed on 24 November 2016 and ratified by the House of Representatives and the Senate on 30 November 2016, officially ending the negotiations process.

Although the conversations were secret, and the minutes of the negotiations have not been made public, both parties were prudent in what they chose to publish and when they chose to do so. They were forthcoming with the public about where the dialogue stood at several junctures in the process. The number of joint media releases issued throughout the more than four years of negotiations and the immediate publication about the agenda after the preliminary joint agreements were made is the best evidence of the parties’ will to keep the public informed.

Three factors contributed to the healthy balance between transparency and privacy that made the process ironclad. First, the agenda for the negotiations had been clearly delineated in the *General Agreement*,¹¹ signed in 26 August 2012 in Havana by Sergio Jaramillo and Frank Pearl, as representatives of the government and Mauricio Jaramillo, Ricardo Téllez, and Andrés París as representatives of the FARC.¹² Second, the procedure mandated that there would be no movement on other issues until the previous issues on the list had been agreed upon. And third, the government put in place a safety mechanism based on the principle that “nothing is agreed upon until everything has been agreed upon.”¹³ This also brought a very slow pace to the public phase of the negotiations in Havana.

Both parties stated, during the negotiations and in the *Final Agreement*, that “redress for victims is at the core of the agreement between the

¹¹ Negotiation Table, *General Agreement*, 1.

¹² Also, Marco León Calarcá, Hermes Aguilar and Sandra Ramírez signed on behalf of the FARC. As witnesses, Carlos Fernández de Cossío and Abel García signed from Cuba; Dag Halvor Nylander and Vegar. S. Brynildsen from Norway; and Enrique Santos C., Álvaro Alejandro Eder, Jaime F. Avendaño, Lucía Jaramillo Ayerbe and Elena Ambrosi from Colombia.

¹³ This is the principle ten of the “Working Rules of the Negotiation Table” included in the *General Agreement*.

National Government and the FARC-EP.”¹⁴ The *Declaration of Principles*,¹⁵ that precedes the description of the mechanisms that make up the *Joint Agreement on Victims*,¹⁶ also reflects “this commitment to the victims” that had been “the canvass of these conversations to make sure that the integral satisfaction of their rights to the truth, justice, reparations and non-repetition” was the cornerstone of the *Final Agreement*.¹⁷ Since the transitional justice approach foregrounds the significance of victim-centred processes,¹⁸ it is legitimate to investigate the agreement and question whether the language on victims contained in the documents of the negotiations held in Havana and in the *Final Agreement* account for this focus on the victims. Since there are some critiques of transitional justice that argue that “victims are (to varying degrees) instrumentalized in the pursuit of larger political and social goals,”¹⁹ and in politics there used to be a gap between rhetoric and reality²⁰ that has also been identified in the experiences of victims of transitional justice,²¹ it is important to understand to what extent the language of peace negotiation and the resulting agreement in Colombia reflect what the parties claim it to say.

In quantitative terms, the term “victims,” and its semantic network of concepts, makes up a very small portion of the language used in Havana. It only became preeminent at very specific moments during the negotiations. The rest of the time victims are absent. The most frequent words used in all the official documents published by the Negotiation Table refer to general issues such as “agreement” (2234 times), “national” (2214),

¹⁴Negotiation Table, *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace*, trans. British Council in Colombia (Bogota: Office of the High Peace Commissioner, 2016), 132, <https://goo.gl/RDsEPe>.

¹⁵Negotiation Table, *Comunicado Conjunto June 7, 2014 [Media Release]*, Havana. <https://goo.gl/jFcc3o>.

¹⁶Negotiation Table, *Borrador Conjunto Acuerdo sobre las Víctimas del Conflicto [Joint Agreement on Victims of the Conflict]*, Havana, 2015. <https://goo.gl/KCrpP6>.

¹⁷The Media Release of 7 June 2014 exactly repeats: “redress for victims is at the core of the agreement.” See Negotiation Table, *Comunicado Conjunto June 7, 2014*, 1.

¹⁸Vasuki Nesiah, *Transitional Justice Practice: Looking Back, Moving Forward*, (Amsterdam: Impunity Watch, 2016), 24.

¹⁹Kieran McEvoy and Kirsten McConnachie, “Victimology in transitional justice: Victimhood, innocence and hierarchy,” *European Journal of Criminology* 9, no. 5 (2012): 527–538.

²⁰Mark Thompson, *Enough Said: What’s Gone Wrong with the Language of Politics?* (New York: St. Martin’s Press, 2016), 92.

²¹Kieran McEvoy and Kirsten McConnachie, “Victimology in transitional justice,” 528.

“conflict” (1619), “government” (1586), “FARC-EP” (1374), “politics” (1365), “Colombia” (1337) or “peace” (1317). “Victim(s)” appears only sixteenth most frequently (833) and it makes for 0.14 percent of the total words used in the published documents. This percentage rises to 0.61 percent when the context is only the preliminary agreement on victims on the negotiation agenda. In fact, the semantic role of the victims in the documents of the negotiations is very limited.

The moments at which “victims” become semantically relevant are few, but very significant, namely, in the text of the *Joint Agreement on Victims* and in the *Final Agreement*. However, this apparent significance is diminished when the language on victims is scrutinised within the context of the preliminary *Joint Agreement*. Then, the term moves to the background and gives way to legal and political agreements that it was hoped would make both the culprits and the truth emerge. In fact, despite the strong philosophical and doctrinal intent on the part of the signatories to “do” justice for victims, the victims are directly made present only in the margins of that provisional agreement (in the sections on truth and reparations), indirectly in the main section of the *Joint Agreement on Victims* (in the section on justice) and almost absent in the section on non-repetition.²² In addition, the analysis of the language of this part of the agreement shows that for the victims to exist, both as mentioned entities and subjects of civic rights, it was previously necessary to explicitly redefine the “conflict” as an “armed conflict.” This redefinition lasted only for a short period. It was used by the government before the negotiations started, by some of the historians writing for the Historical Commission, and a few times in the *Joint Agreement on Victims*. Most of the time, the documents from the Negotiation Table referred to the situation simply as “the conflict,” without qualifiers. The linguistic and civic existence of victims also required establishing a system of justice that acknowledges the criminals as morally equal to their victims.

THE VICTIMS’ MOMENT

The agreement about the victims was the fifth theme to be dealt with by the parties in Havana. The rest of the negotiations were devoted to the logistical and military aspects of demobilising the FARC combatants and

²²Truth, Reparations and Non-Repetition use 10,595 words in total whereas the Justice section uses 45 percent of the *Joint Agreement on Victims of the Conflict*.

handing over the weapons. During the period of negotiations, the conversations around victims marked a turning point in the rejection of the agreement by part of the public opinion and the opposition against President Juan Manuel Santos in Colombia. The reason was that it included the component of transitional justice, something that many Colombians do not believe in, given the multitude of divergent meanings that the concept adopts in practice and the variety of political actors who appropriate the idea for different purposes.²³ In chronological terms, it also took up a considerable amount of time to get an agreement around the victims. The previous theme in the agenda (illicit drugs) had been finalised and published on 16 May 2014. The participation of the Historical Commission—whose report was not published until February 2015, nine months after the conversations around the end of the conflict (third theme) had ended—the presence of several groups of victims in Havana and the delicate theme of justice created a considerable delay so that the Joint Agreement on Victims was made public on 15 December 2015.²⁴ In total, eighteen months had passed since the FARC and the government had concluded the previous theme.

The term “victim” barely appeared in the first three preliminary agreements about rural reform, illicit drugs and political participation signed by the Colombian government and the FARC prior to starting the discussion about victims. In spite of claims about the centrality of victims in the peace process, the language of the first 22 months of negotiation did not pay attention to the victims.²⁵ The same pattern occurred in the joint press releases issued by the Negotiation Table in 2012 and 2013. In those, the word “victim(s)” does not emerge in the list of the 20-most used words. This changed in the Joint Media Releases of 2014 and 2015, in which “victim(s)” along with “conflict” become the two most used terms by the parties. In 2016, the last year of negotiations, the language of peace reverted and “victims” disappeared from the list of most used words in the documents prepared for the media.

²³ Jamie Rebecca Rowen, “‘We Don’t Believe in Transitional Justice’: Peace and the Politics of Legal Ideas in Colombia,” *Law & Social Inquiry* 42, no. 3 (2017): 622–647.

²⁴ The Joint Agreement of the Bilateral and Definitive Ceasefire and Cessation of Hostilities and the Laying down of Arms was released in 23 June 2016.

²⁵ The word “victim(s)” appears 360 times in all documents published before the date of publication of the Joint Agreement on Victims of the Conflict in 15 December 2015.



Fig. 5.2 Number of occurrences of “victim(s)” in documents over the years

Table 5.2 Documents with the most occurrences of “victim(s)”

<i>Date</i>	<i>Title</i>	<i>Frequency</i>
24 November 2016	Final agreement	230
15 December 2015	Joint agreement on victims	172
15 December 2015	Joint media release	34
7 June 2014	Joint media release	32
5 August 2014	Joint media release	23
17 October 2015	Joint media release	16
24 August 2016	Joint media release	10
17 July 2014	Joint media release	10
17 August 2014	Joint media release	6

When all the documents published by the Negotiation Table are considered, victims emerge clearly in two distinct moments of the negotiations: on and around 15 December 2015, when the *Joint Draft about the Victims of the Conflict* and the accompanying media release (number 64) were issued; and on 24 November 2016, when the second version of the Final Agreement was published (Fig. 5.2). Even so, “victim(s)” make up just a 3.3 percent of the language around peace published in Havana.²⁶

A detailed analysis (Table 5.2) reveals that, beyond the above-mentioned texts, the documents containing the most references to the victims of the Colombian conflict are joint media releases published during the negotiation

²⁶We don’t consider stop-words in this counting.

of the point on victims during 2014 and 2015, plus ten occurrences in the joint media releases announcing the end of the negotiations in August 2016.

The *Joint Agreement on the Victims* is entitled “Comprehensive System of Truth, Justice, Reparations and Non-Repetition,” and beyond the inverted commas, adds the following text: “including the Special Jurisdiction for Peace; and Commitment on Human Rights.” The huge linguistic, political, and legal challenge of this part of the agreement is clear as soon as the reader gets to the first paragraph and finds a complex text in which the authors express the desire to make the victims the centre of the solution and compensate them for their suffering. This was stated by the High Commissioner for Peace Sergio Jaramillo in his address to the Senate titled “El tiempo de las Víctimas.”²⁷ In this text, the Commissioner outlined the philosophical principles that became part of the agreement about the victims and that had been agreed upon by the parties in the Joint Media Release of 7 June 2014. For instance, the statement: “Redress for victims is at the core of the agreement between the National Government and the FARC-EP” stated in the declaration to the Senate is exactly the first sentence of the *Joint Agreement on the Victims*. Also, Sergio Jaramillo included other principles such as: “the recognition of the victims; the acknowledgment of responsibility; the satisfaction of the rights of the victims; the participation of the victims; the clarification of the truth; the reparation of the victims; the protection and security guarantees; the guarantees of non-repetition; the principle of reconciliation; rights approach.”

The complexity of the declaration reflects the political undercurrents that were already present during the discussions around the first Colombian Law of Justice and Peace, Law 975, in 2005, and still resonated throughout the negotiation between the government and the FARC. For Rowen, the presence of the components of truth, justice and reparations is proof of the malleability of the idea and, although in theory carries a holistic conception of justice, in practice it meant a rejection of transitional justice as it only served as a slogan that, under transitional justice, would undermine the victims’ rights.²⁸ This contradiction was also evident in 2016 and 2017 as the political consequences for the country of the comprehensive system accorded in Havana was evident along the turbulent road for

²⁷ Sergio Jaramillo, *El tiempo de las víctimas [The moment of victims]*, (Bogotá: Oficina del Alto Comisionado para la Paz, 2014), http://www.altocomisionadopalapaz.gov.co/Prensa/Discursos/Documents/el_tiempo_de_las_victimas.pdf.

²⁸ Rowen, “‘We Don’t Believe in Transitional Justice’,” 624.

approval in the National Congress.²⁹ As Sergio Jaramillo, then the High Commissioner for Peace of the Colombian government, said at the end of his Senate address of 9 June 2014, “this is the moment of the victims, this is the moment of peace.”³⁰ This is also clearly stated in the preamble of this part of the agreement. It included, according to the initial paragraph, two main issues: human rights of the victims and truth—although “truth” is followed by a very complex definition that states the following:³¹

with the aim of drafting a content that will satisfy the claims of those who have been affected by the long conflict. Now, in the pursuit of a political solution, through these new accords and important de-escalation measures and agreements, we have taken a major step forward towards building a stable and lasting peace and bringing an end to a war that has torn the country apart for more than half a century.

The sentence is complex because it includes indirectly a definition of victim that puts it in relation to the conflict. In this, the parties follow the definition contained in Article 3 of Law 1448 (2011)³² that states that victims are:³³

those persons that, individually or collectively had suffered a damage by events taking place from 1 January 1985 onwards, as a consequence of infractions against International Humanitarian Law or grave and manifest violations of international norms of Human Rights, occurred on the occasion of the internal armed conflict.

Victims, here, are “those who have been affected by the long conflict” and have entitlement to claims or actually express those claims, since the compensation starts an administrative process that may legally be initiated only

²⁹The problems experienced in November and December 2017 to pass the law that would enact the part of the agreement that gives the victims of the conflict the right to have 16 seats in the Congress of the Republic (See Tribunal Administrativo de Cundinamarca, No. 250002341000201701993-00, 2017, <https://goo.gl/94LHHq>) are the proof of the gap between the intentions expressed in these types of agreements and the landing in national legislation. The failure to enact clauses of the agreement such as this would confirm the idea that victims of armed conflicts feel in many cases exploited by transitional justice mechanisms that may end up scarifying victims’ priorities. See Vasuki Nesiiah, *Transitional Justice Practice*, 25.

³⁰Sergio Jaramillo, *El tiempo de las víctimas*, 5.

³¹Negotiation Table, *Borrador Conjunto Víctimas*, 1.

³²Published in *the Diario Oficial 48096* in 10 June 2011.

³³The text in italics as it appears in the text of the Law indicates that that section has been declared “executable” by the Constitutional Court (Ruling C-280, 2013).

by someone with such a claim. This is the basis for the victims' reparations section of the agreement. The references to their human rights and to the truth make up the dimensions of non-repetition and truth, respectively. That is, the initial definition of what constitutes a victim that opens the *Joint Agreement on Victims* refers to three of the four components of that agreement—truth, reparations and non-repetition—and leaves untouched the crucial and longer section of it: justice. The definition of victim in Law 1448 (2011) also establishes in its fifth paragraph that this definition may never be interpreted as an acknowledgement of the political character of the terrorist or illegal groups that caused the damage. The language used around victims or the lack of it limits the access of victims to justice.

The term “conflict” is also explicitly defined for the first time throughout the negotiations and it is described as a long confrontation, which might have an opportunity for a political solution through these agreements. Thus, this convoluted first paragraph contains the three dimensions of the conflict that the government and the FARC were trying to end. The political side of the solution here refers to the themes of discussion in the Agenda (integral rural development; political participation; the end of the conflict; illicit drugs; victims; implementation, verification and endorsement). The confrontation addresses the violent dimension of the conflict that will be finished through the mechanisms described as they relate to the end of the conflict, and to the agreement's implementation, verification and endorsement contained in the *Final Agreement* and could only hope to be sustained if the political side is implemented and integrated into the new social, economic and political structure of Colombia. The repetition of the formula about the building of a stable and lasting peace serves as a colophon that tightly closes the linguistic and political loop started by the negotiations.³⁴

The connection between the conflict and the victims was clearly established in the mandate that the negotiating parties had given the Historical Commission: to find out “what happened throughout the conflict, including the multiple causes, origins and effects thereof, is fundamental to the realization of the rights of victims.”³⁵ If the Commission focused more on the causes of the conflict than on the victims, in the *Joint Agreement on the Victims* this link between the conflict and its victims gets stronger, thanks to the clarification around the meanings of both “conflict” and “victims.”

³⁴The problem is that the language used to express it does not coincide with the chronological and political order of the negotiations and this contributes to the confusion about the peace process.

³⁵ Comisión Histórica del Conflicto y sus Víctimas, 2.

In the *Joint Agreement on Victims*, “conflict” (178 times) and “victims” (168) are the two unigrams most used throughout the document. These are closely followed by “rights” (162), “peace” (134) and “justice” (120),³⁶ in a clear indication of the semantic context in which these terms are placed, especially when compared to the limited role they play in the rest of documents issued by the Negotiation Table. Here the conflict is not an isolated and empty term repeated many times in several moments, but a key concept that appears 32 times, specifically as “armed conflict.” The context is established by the most frequent words found in sentences in which “conflict” appears, such as “victims” (60), “reparation” (42), “rights” (40), “repetition” (32) and “persons” (31). It is also evident in the top two bigrams in those sentences: “national government” (18) and “human rights” (18). Looking around the sentences containing “victims,” the most used terms are “conflict” (60), “rights” (58), “reparation” (50), “repetition” (33), “justice” (30) and “recognition” (27); while the most frequent bigrams are, again, “human rights” (23) and “national government” (18), followed by “comprehensive system” (12) and “integral reparation” (10).

THE LANGUAGE OF THE COMPREHENSIVE SYSTEM OF TRANSITIONAL JUSTICE

In the section of the Colombian peace process that deals with victims, the language describing victims and their projection into the future results in a complex system that embraces the idea of “comprehensiveness” to cover all those aspects. “Comprehensiveness” here refers to the whole point on victims and its application to the level of satisfaction of the victims’ rights (“integral satisfaction”)³⁷ and to the level of reparation of the victims (“integral reparation”).³⁸ This system contains four elements that are also described as rights of the victims: truth, justice, reparation and non-repetition. It emerges from the application of a set of ten principles, ethical, philosophical, operational and legal, expressed in the *Declaration of Principles* of 7 June 2014 and repeated in the *Comprehensive System of Truth, Justice, Reparations and Non-Repetition*.³⁹

³⁶ Following these, we found: “commission” (108), “reparation” (106) and “acknowledgement” (100).

³⁷ Negotiation Table, *Borrador Conjunto Víctimas*, 3.

³⁸ *Ibid.*, 50.

³⁹ *Ibid.*, 1.

The holistic approach⁴⁰ contained in the *Comprehensive System* precludes any formal hierarchy that would bind its four rights and pillars in a specific set of dependencies. Rather, they are complementary. Some of them are judicial in nature, like the *Special Justice for Peace* (JEP),⁴¹ whereas others are extrajudicial (Truth), the mechanism to implement reparations is administrative and the right to non-repetition implies the ongoing action of the state and the changing of the socioeconomic conditions that gave rise to the conflict in the first place. However, the text is clear that they are interconnected through the conditions and incentives to access any special justice treatment, as these are dependent on the victims having access to the truth and on the culprits acknowledging their responsibilities. To emphasise this point, the text explicitly states that “the fulfilling of these conditions will be verified by the Special Jurisdiction for Peace.” In the end, justice is the cornerstone of the agreement⁴² and it is in the justice component where victims are less present, opening up the possibility that this “perpetrator-oriented”⁴³ element of the agreement would result in a revictimisation of the victims if there is a lack of coordination and/or resources to fully and simultaneously deploy the other three mechanisms.

In the first component—Truth⁴⁴—the term “victim(s)” appears 33 times (Fig. 5.3) and it is the third most used word after “commission” (89) and “conflict” (53) and before “persons” (28). In this section of the agreement, “victims” is often surrounded in the same sentences by unigrams like “commission” (14), “conflict” (13), “rights” (11) and “organisations” (11) and bigrams like “human rights” (5), “disappeared persons” (4) and “national government” (3).

In the Truth section, the negotiators adopted two approaches that contributed to the fluidity of the concept of victim: territoriality and gender.⁴⁵ For the first, the text states in its guiding criteria for the two mechanisms

⁴⁰ Vasuki Nesiah, *Transitional Justice Practice*, 27.

⁴¹ In Spanish, *Justicia Especial para la Paz*.

⁴² Justice contains 12,799 words, Truth 5674, Reparations 3855 and Non-Repetition 1066.

⁴³ Luc Huyse, “Victims,” in *Reconciliation After Violent Conflict. A Handbook*, ed. David Bloomfield, Teresa Barnes and Luc Huyse (Stockholm: International Institute for Democracy and Electoral Assistance, 2003), 61.

⁴⁴ This includes the Commission of Truth and the Search Unit of Missing People.

⁴⁵ This seems to respond to a long-standing problem for women in Colombia’s rural history, who traditionally have had very limited agency and citizenship. See Donny Meertens and Margarita Zambrano, “Citizenship Deferred: The Politics of Victimhood, Land Restitution and Gender Justice in the Colombian (Post?) Conflict,” *International Journal of Transitional Justice* 4, no. 2 (2010): 6–200.

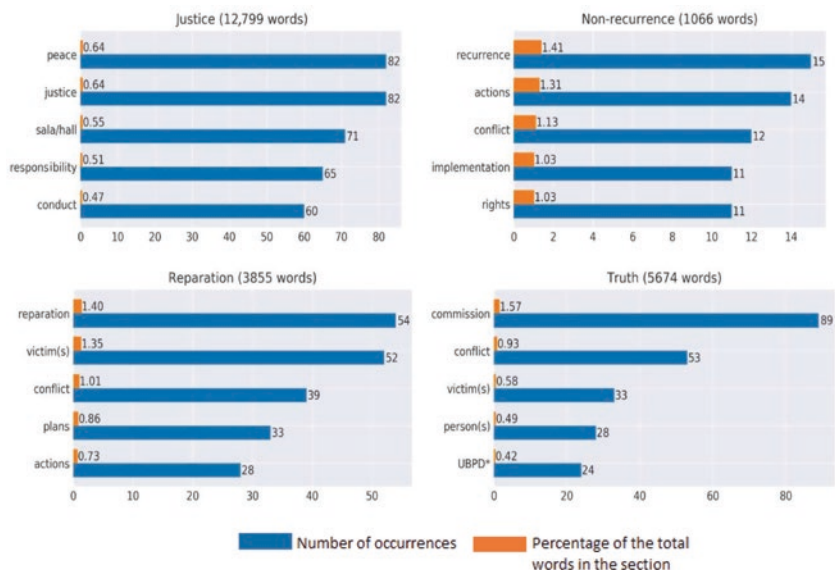


Fig. 5.3 Most frequent words per section in the *Comprehensive System of Truth, Justice, Reparations and Non-repetition*

of the component of truth that, although the truth commission would be a national entity, it was required to take a territorial-based approach in order to achieve a better understanding of the regional dynamics of the conflict and the diversity and particularities of the territories affected, aimed at promoting the truth-building process and contributing to the guarantees of non-repetition in the various territories. The territorial-based approach also takes consideration the people and populations that were forcefully displaced from their territories.⁴⁶

For the second approach, the truth commission was to adopt a methodology that would integrate differential and gender approaches in each step of its work.⁴⁷ The list of all possible affected people resulting from the implementation of these approaches expands, even more, the previous level of detail of the concept of victim. This is not only because of the

⁴⁶Negotiation Table, *Borrador Conjunto Víctimas*, 10.

⁴⁷This perspective was integrated in Law 1448. See Sanne Weber: “From Victims to Mothers to Citizens: Gender-Just Transformative Reparations and the Need for Public and Private Transitions,” *International Journal of Transitional Justice* 0 (2017): 2.

multifaceted dimensions of the differentiation and gender, but because the drive towards inclusivity is resolved again by means of a long list that included⁴⁸ women, boys and girls, teenagers, youth, old adults, persons with disabilities, indigenous peoples, communities of peasants, Afro-Colombian, black, palenque and raizals populations, the LGBTI population, exiled and displaced populations, defenders of human rights, unionists, journalists, farmers, cattle farmers, merchants and entrepreneurs. The list ends with “among others.”⁴⁹ As Astrid Jamar has pointed out: “Efforts to include victims are often based on ‘status equality’ identifiers such as gender, age, ethnicity or membership of another group. However, in practice these identities overlap and connect with political positions, and providing for group inclusion without awareness of the political complexity of allegiance and alliances can crystallize or reinforce existing power imbalances that inclusion efforts seek to address.”⁵⁰

In the section on Justice, “victims” do not make the list of the twenty most frequently used words, although the word itself occurs 31 times, but in a large text of 12,799 words. Quantity is important because referring to something or someone without naming them is very difficult in linguistic terms and requires a mastery of language that is more prone to appear in literary texts than in legal ones. Unless a special and refined linguistic style has been coined from the beginning of the documentation, the most likely outcome is that when something is not mentioned it is the case that it is not being talked about. Here, the victims appear as part of the goals of the *Special Jurisdiction for Peace*, which include the goal of satisfying the victims’ rights to justice and the enacting of their rights as the central axis of the Comprehensive System, the consideration of the seriousness of the damages caused by the transgressions of International Humanitarian Law and the violations of human rights occurred during the conflict. From that point, the *Special Jurisdiction for Peace* deals mainly with organisational and procedural matters for the functioning of the tribunals. Although the prosecution is meant to give justice to victims, victims are left in the background and language is taken over by the culprits, their crimes and their

⁴⁸With masculine and feminine forms for all words that accept those gendered forms in Spanish.

⁴⁹On page 10, when explaining the guiding criteria and after clarifying the territorial criterion, the list of people included in the differential and gender approach is condensed into the following categories: sex orientation, gender, age, ethnic group, disability and vulnerable populations, with a special attention to women.

⁵⁰See Astrid Jamar, *Victims Inclusion and Transitional Justice*, 1.

possible punishments in this part of the transitional justice system, maybe due to the passive role played by victims at this stage of the legal proceedings.⁵¹ Only in number 52, on the Peace Court, is there a clarification that concerns the victims and makes them active in the legal proceedings. This section states that in the case of a sentence that goes against the fundamental rights of a victim “with direct and legitimate interest,”⁵² the victim will be able to seek court protection by appealing the decision to the Appeals Section of the court. This is the only section in which victims are considered able to make legal arguments or to directly participate in the process.⁵³ It seems that, at this point, the justice component of this comprehensive system enacts the mirror principle by which the “victims’ needs were increasingly framed as being capable of being met only in inverse proportion to the extent to which offenders’ needs were recognized,”⁵⁴ something that does not happen in the truth component of the system, which is precisely organised around the victims’ needs to know. Only in the case of the Colombian system of transitional justice, the mirror returns an empty image of the victims due to the imprecision to define them, who, in relation to the perpetrators, are only found in the section concerning truth, and in relation to the state in the reparations and non-repetition components.

In the reparations component, the victims go back to centre stage and the document is organised around a types of acts that are meant to contribute in diverse forms to reconciliation through reparation.⁵⁵ They range from early acts of recognition of collective responsibility, with important religious and symbolic components, to concrete actions contributing to

⁵¹The section on the “List of Sanctions” includes two elements that revolve directly around the victims’ rights. First, a statement saying that the list has been created taking into account the commitments about reparations of the victims and guarantees of non-repetition. And second, in cases of participation (already carried out) in the removal of unexploded mines and explosives, these activities will be considered as part of the sanction if the activity has repaired the victims or has had a repairing impact. Negotiation Table, *Borrador Conjunto Víctimas*, 45.

⁵²*Ibid.*, 36.

⁵³A principle of active participation that is considered key to really implement the alleged role of the victims as protagonists in transitional justice, as opposed to the simplest role of being the centre of the peace agreement between the government and the guerrillas.

⁵⁴Kieran McEvoy and Kirsten McConnachie, “Victimology in Transitional Justice,” 530–532.

⁵⁵Pamina Firchow, “Do Reparations Repair Relationships? Setting the Stage for Reconciliation in Colombia,” *International Journal of Transitional Justice* 11, no. 2 (2017): 316.

reparation and to the collective reparation in the end of the conflict, which include specific government plans for development in the territories. It is difficult to ascertain whether this language will help solve what Firchow has called the “nomothetic approach to reparations in Colombia, which requires that each problem be attended to by a different law.”⁵⁶ To this level, the question is whether the semantics around the integral quality of the system about victims contain the germs for the development of on-the-ground mechanisms that will combat the nomothetic approach and the open-ended definition of victims contained in the agreement.

Finally, the language of reparations focuses on psychosocial rehabilitation, including for victims of sexual violence, the return of displaced and exiled persons, and the restitution of lands. The language of reparations in the agreement seems to take into account the approach:

suggesting that transformative reparations should also encourage women’s active participation, both throughout the reparation process (internal representations) and in society (external representation), through enhancing equity and promoting women’s access to economic resources.⁵⁷

However, the lack of details in this section of the agreement makes it difficult to predict that its implementation would avoid the obstacles encountered in the ground by similar principles of the Victims Law.⁵⁸ Likewise, the paucity of details obscures the understanding of how the agreement would activate the necessary mechanisms to measure peace at the local level⁵⁹ and across all the dimensions of victimhood contained in it.

The last section deals with the creation of institutional mechanisms to guarantee the participation of the victims and their organisations in the implementation of the policy of attention and reparations to victims going forward.⁶⁰ In total, the term “victims” appears 54 times in this rather short part of the document.

⁵⁶ *Ibid.*, 333.

⁵⁷ Sanne Weber, “From victims and mothers to citizens: Gender-just transformative reparations and the need for public and private transitions,” 90.

⁵⁸ *Ibid.*, 91.

⁵⁹ Pamina Firchow, “Do Reparations Repair Relationships?” 318.

⁶⁰ Referring to interviews conducted in 2010, Rowen states that the “idea of recognition reflects beliefs about what transition in Colombia would entail: not only would the state recognize the existence of an armed conflict, but also victims would have a national platform to voice their experience and, ideally, to participate in policy decisions that affect them. The (Truth) Commission would not contribute to a transition, but would be a product of it. This

The component on Guarantees of Non-Repetition distils a philosophical tone that summarises the ideas and principles that structure the rest of the document. It does not include explicit actions or plans but delves into the reasons behind the design of the Comprehensive System for victims. It also collects some of the desires that should inform the political action of the government in the future and sought to characterise the new political climate of coexistence in the country once the conflict has ended. This includes the protection of the human rights of the populations and groups most affected by the conflict, the obligation of the government to guarantee the protection of individuals and political parties, and prevent events like the massacres suffered by members of the Unión Patriótica,⁶¹ the fight against impunity and the elimination of criminal organisations. “Victims” almost disappear to a total of three occurrences.

EXPANDING THE DESCRIPTION OF “VICTIMS”

All the most used terms in the Joint Agreement on Victims are conceptual pillars of the Comprehensive System designed by the parties, of which transitional justice or JEP makes up the core. This connection among the conflict, the victims and the justice component of the agreement is made evident in one of the most important paragraphs of this document as it details the concept of victim advanced in the first paragraph of the preamble:

The armed conflict, that has multiple causes, has caused the people unparalleled suffering and harm in our history. There are millions of Colombians (colombianos and colombianas) who are victims of forced displacement, there are some hundred thousand deaths, scores of thousands of disappeared people of all types and a wide array of collective groups and populations affected across the territory, including communities of peasants, indigenous, Afro-Colombian, black, palenques, raizals and rom, political parties, social movements and unions, guilds, among others. Not to mention other less visible but not less painful forms of victimization, such as sexual violence, psychological consequences, or the simple coexistence with fear.⁶²

ideal of a Truth Commission, in turn, affects their understanding of transitional justice in Colombia. A real transition would be a society in which victims have a public platform, such as a Truth Commission, to voice their suffering.” See Rowen, 637.

⁶¹ The Patriotic Union is a left-wing Colombian political party founded in 1985 as part of a legal political proposal of several guerrilla groups, including the Movement for Self-Defense of Workers and two demobilised fronts, Simón Bolívar and Antonio Nariño, of the FARC.

⁶² Negotiation Table, *Borrador Conjunto Víctimas*, 3.

The paragraph expands the official definitions of victim⁶³ that, based on the notion of “personhood,” are included in international legal documents. It integrates elements for an extended definition of victims of armed conflicts at the end of the second decade of the twenty-first century in legal, political, cultural, military and humanitarian terms, stating that “no victim is only a victim, but also an actor with many identities, roles and resources.”⁶⁴ This type of definition includes the gender lenses: both men and women. It also covers both individuals and collectives that are clearly self-identified as such in either cultural or legal terms: communities of peasants, indigenous, Afro-Colombian, black, palenques,⁶⁵ raizals⁶⁶ and rom,⁶⁷ political parties, social movements and unions, guilds. It comprises a typology of damages suffered by the victims—forced displacement, killings, disappearances—and it also contains other types of violence and its consequences as recognised by the International Criminal Court,⁶⁸ including sexual violence, psychological damages and fear. This expanded description seems like an attempt to surpass the limitations of Law 1448 (2011) and integrate the complex reality of victimhood in Colombia,⁶⁹ preparing the ground for a more attuned set of mechanisms that would

⁶³ Luc Huyse, “Victims,” 57.

⁶⁴ *Ibid.*, 56.

⁶⁵ The palenquera community is made up of the descendants of the enslaved who, through acts of resistance and freedom, took refuge in the territories of the North Coast of Colombia since the fifteenth century called palenques. There are four recognised palenques: San Basilio de Palenque (Mahates—Bolívar), San José de Uré (Córdoba), Jacobo Pérez Escobar (Magdalena) and La Libertad (Sucre).

⁶⁶ It refers to the native population of the Islands of San Andres, Providencia and Santa Catalina descendants of the union between Europeans (mainly English, Spanish and Dutch) and African slaves. They are distinguished by their culture, language (Creole), religious beliefs and historical past similar to the Antillean peoples such as Jamaica and Haiti. Given its cultural specificity it has been the subject of policies, airplanes and socio-cultural programmes differentiated from other black communities of the Colombian continent.

⁶⁷ Rom is an ethnic group in Colombia mainly located in the departments of Atlántico, Bolívar, Norte de Santander, Santander, Valle del Cauca, Nariño and Bogota.

⁶⁸ The Elements of Crimes are reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B. The Elements of Crimes adopted at the 2010 Review Conference are replicated from the Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, from 31 May to 11 June 2010 (International Criminal Court publication, RC/11).

⁶⁹ This is the term used by Rowen to criticise the language and content of Law 1448, 2011 in relation to the victims. See Rowen, “‘We Don’t Believe in Transitional Justice’,” 642.

achieve justice for all types of victims of the Colombian conflict. At the same time, it also clearly reflects the difficulties expressed by several scholars to provide a satisfactory definition and a comprehensive categorisation of victims in processes of transitional justice.⁷⁰

These ambitious goals are the result of victims' participation in the negotiations in Havana, one of the outstanding elements of Colombia's peace process and the resulting system of transitional justice. And it might be the diversity of the voices listened to by the government and the FARC during the negotiations that led to the adoption of a definition that left some aspects open. These include the number of victims, estimated to be in the millions, although the Single Registry of Victims offers very specific numbers based on administrative requirements.⁷¹ It also includes the great variety of groups and affected populations, whose list ends with the expression "among others," and the use of instances of other forms of violence, as in, "such as, such as" instead of a rigorous set of criteria or a closed list when referring to other forms of victimisation. It is not a closed or strict definition, but an adaptable and adjustable statement that tries to step around the classification of victims in categories.⁷²

The description of victims agreed upon in Havana also tries to reflect as much as possible the multiple dimensions and gravity of the suffering of victims in the Colombian armed conflict. As a result, the open-ended description of victims falls into the instability or liquidity between the semantically limited language of peace in the Havana conversations and the complex reality this language tries to capture. The more the language of the agreement attempted to touch upon the issues that limit the victims to space, time and diversity,⁷³ the more difficult the effort became. It is as though the victims, the human beings, as well as the words that define them, became fluid in the whirl of unstable elements of the list. The reader is left to imagine the rest, both the unspeakable dimensions of victimhood,

⁷⁰ Mijke de Waardt, "Naming the Victims: The Semantics of Victimhood," *International Journal of Transitional Justice*, 10 (2016): 432–433.

⁷¹ There are 8,250,270 victims of the armed conflict registered according to the Unique Victims Registry. Accessed 6 December, 2018. <https://rni.unidadvictimas.gov.co/RUV>.

⁷² Huyse classifies victims along three "broad distinctions": individual-collective, direct-indirect and first-second generation victims whereas Nesiiah highlights the complexities surrounding the establishment of formulas for victim-centred processes of transitional justice. See Luc Huyse, "Victims," 54; Vasuki Nesiiah, *Transitional Justice Practice*, 26.

⁷³ The Comprehensive System explicitly declares that has "an equity-based and gender-based approach." Negotiation Table, *Borrador Conjunto Víctimas*, 5.

and all other possible types of victims not contained in this list.⁷⁴ The writers of the agreement on victims struggled on the one hand to avoid the exclusion and the discouragement of collective action that de Waardt has identified for the case of Peru as side effects of “external semantic victim categorization.”⁷⁵ On the other hand, the same difficulties appeared when the drafters attempted to capture the plurality attached to the diversity of violence suffered by human beings in the long Colombian conflict. By doing that, they drove the language of peace and victimhood off the cliff of the unlimited. The list, according to Umberto Eco, becomes a tool to stir the world, to put into practice Thesaurus’ invitation to accumulate properties so that new relations among things that are normally far away from each other emerge, or, in any case, to put into question those that are accepted by common sense.⁷⁶

The distance between the sought-after effects of this type of list, which is an invitation to explore plurality and reorganise relations, and the semantic consequences it actually produces is made clear in Foucault’s assertion that those lists create certain monstrosities by reducing to nothing the space for common encounters.⁷⁷ Victims are closer, but they cannot coexist in the same space.

The second feature of the description of victims in the peace negotiations in Colombia is its reliance on a victims’ identity perspective. This approach is the result of the deployment of the principle of diversity⁷⁸ assumed at a conceptual level by the negotiating teams and channelled through the participation of groups of victims in several audiences throughout the negotiations.⁷⁹ Beyond the dilution of diversity into the unlimited elements of the list, the notion of victim sought after by both

⁷⁴ Umberto Eco has explored the unspeakable character of certain lists that play with that rhetorical topos. See Umberto Eco, *The Infinity of Lists* (London: MacLehose, 2012), 49.

⁷⁵ Mike de Waardt, “Naming the Victims,” 444.

⁷⁶ Eco, *The Infinity of Lists*, 327.

⁷⁷ Eco, *The Infinity of Lists*, 395.

⁷⁸ That is, through the gender politics described by Catherine O’Rourke in terms of “state liability for private harms,” “the militarization of everyday life,” “acute public regulation of women’s private reproductive lives” and the “public political manipulation of women’s organizing.” See Catherine O’Rourke, “Feminist scholarship in transitional justice: a de-politicising impulse?” *Women’s Studies International Forum* 51 (2015): 122.

⁷⁹ Patricia Lundy and Mark Govern, “Whose Justice? Rethinking Transitional Justice from the Bottom Up,” *Journal of Law and Society* 35, no. 2 (2008): 279–283.

negotiators and victims falls short of its goal because of the use of what Brubaker and Cooper have called “the prevailing constructivist stance of identity—the attempt to ‘soften’ the term, to acquit it of the charge of ‘essentialism’ by stipulating that identities are constructed, fluid and multiple.”⁸⁰ Indeed, it is this constructivist approach to identity⁸¹ that ends up filling up and almost taking over the description of victim. The result is a proliferation of multiplicities that preclude the political potential⁸² in Colombia’s social, cultural, and ethnic diversity and fail to take shape in the terms of description of the justice component of the *Final Agreement*.⁸³ As Angel-Botero has explained for the case of peasants when considered as a group category, transitional justice reiterates the differences previously created by the implementation of notions of multiculturalism in this sphere, which resulted in rendering the peasant unreadable by state-sponsored programmes and policies.⁸⁴

⁸⁰ Rogers Brubaker and Fredrick Cooper, “Beyond ‘identity,’” *Theory and Society* 29, no. 1 (2000): 1–47.

⁸¹ Rarna Kapur denounced that as well intentioned as it was, the attempt to integrate cultural diversity into a gender analysis resulted in more “cultural essentialism and the construction of other as backward and uncivilized,” especially when approach through the lenses of violence, which is the perspective taken in transitional justice mechanisms. See Rarna Kapur, “The Tragedy of Victimization Rhetoric: Resurrecting the ‘Native’ Subject in International/Post-Colonial Feminist Legal Politics,” *Harvard Human Rights Journal* 15, no. 1 (2002): 18.

⁸² It is not clear how the action path argued for by Paul Gready and Simon Robins in order to widen and deepen the “conceptualization of the role that civil society plays in transitional justice processes” by advancing the concept and role of a new civil society in transitional justice and replacing the latter with the concept of “justice in transition” would be more effective in a country whose state struggles to effectively reach large parts of the territory and to provide some of the basic public services characteristic of socio-liberal states. The manipulation of the debate around the “gender ideology” allegedly hidden in the agreement and the negative result in the plebiscite are proof of both the political manipulation of the notion of victims and the practical difficulties to articulate principles of diversity that are socially acceptable and legally useful in a post-conflict Colombia. See Paul Gready and Simon Robins, “Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and ‘New’ Civil Society,” *The International Journal of Human Rights* 21 (2017): 956.

⁸³ It is important to acknowledge that the selection process of the members of the multiple organisms of the transitional justice system has been guided by principles of equity, diversity and inclusion.

⁸⁴ Carolina Angel-Botero, “Reproduciendo diferencia: la negociación de identidades ciudadanas en el marco de la justicia transicional,” *Revista de Estudios Sociales* 59 (2017): 46.

The list of victims contained in this description comprises who the victims are, but also who will be considered victims in the future, in the case that some of the open clauses of the text become active at some point.⁸⁵ The gravity and moral weight of the atrocities described in this fluid definition are resisted by the liquidity of the words needed to capture them.⁸⁶

Victims are considered fluid in two respects, what results in an ambiguous language that makes it difficult to effectively implement the system. First, their number and composition are open and can be extended if the conditions for their belonging change. That is, the concept of victim in the Colombian agreement assumes that the condition it represents is not necessarily binary and, therefore, it cannot be captured as a set of positive or negative components. Victimhood fails to be defined when the definition is based on dialectical antagonisms⁸⁷ that condemn victims to stay forever in an emotional and social state of victimhood. The signals of victimisation occupy a wide and somehow continuing spectrum, and these need to be expressed through a more nuanced and complex language. Second, those signs undergo a process that connects them with time at an essential level and makes it necessary to protect their condition in the future. The difficult relationship between victims, time, and language has been recognised at the level of the individuals' self-perception⁸⁸—as “the term victim defines them in terms of their past.”⁸⁹ But what about their condition of victims in the future, once the ideal state of a “stable and long-lasting peace” has been achieved. Are victims considered ex-victims once transitional justice has been served? Should transitional justice conceptually consider several steps to facilitate the transition of victims to a new condition as ex-victims similar to the condition performed by ex-combatants?⁹⁰ If deployed efficiently, that is, if the peace

⁸⁵ Daniel Ruiz Serna has argued that the Law of Victims (Law 1448, 2011) could be interpreted as acknowledging the territory itself as a victim of the conflict and therefore making it a subject of rights. This would align the concept of territory better with indigenous ontologies via the extension of the traditional notion of victimhood. See Daniel Ruiz Serna, “El territorio como víctima. Ontología política y leyes de víctimas para comunidades indígenas y negras en Colombia,” *Revista Colombiana de Antropología* 53, no. 2 (2017): 88.

⁸⁶ Zygmunt Bauman, *Liquid Modernity* (Cambridge: Polity Press, 2003), 18.

⁸⁷ Mike de Waardt, “Naming the Victims,” 446.

⁸⁸ Luc Huyse, “Victims,” 60.

⁸⁹ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, (Cambridge: Polity Press, 2002).

⁹⁰ “That is, it is a passage of sorts between two states of affairs that seek to address past abuses while preparing for a future of peace, stability, and the rule of law shaped by human

agreement is successfully implemented, would this transition end up with the restoration of the victims' dignity and their own estimation as integrated citizens⁹¹ and full members of their communities? Only, then victims will become past-victims⁹² and peace might become a reality, individually and collectively.⁹³

CONCLUSIONS

Analysing the language on victims in Colombia's peace agreement is key to understanding whether the numerous statements of the negotiating parties about the centrality of the victims in the agreement were actually reflected in the intricacies of such complex political and legal document. At stake is whether language can become an ameliorating factor that would buttress the TJ process and promote permanent peace.

rights. Thus, any gains made through processes of transitional justice should not end with such processes, but should be used as a base by the transitional governments upon which to build, reinforce, and grow, in order to ultimately reach the desired model of society and governance." Samar El-Masri, Tammy Lambert & Joanna Quinn, "Changing the context: can conditions be created that are more conducive to transitional justice success?" in this volume.

⁹¹The testimony collected by Mike de Waardt from some Peru's victims reinforces the duality between victimhood and citizenship that characterises the practical measures of that country's transitional justice system. See Mike de Waardt, "Naming the Victims," 433. In the complex problem of making the victims the protagonists in transitional justice, Juan E. Méndez has argued the importance of a human rights perspective in demanding "affirmative measures to ensure that victims, survivors and their families would now be recognized as first-class citizens with specific rights and entitlements." See Juan E. Méndez, "Victims as Protagonists in Transitional Justice," *International Journal of Transitional Justice* 10, no. 1 (2016): 1–5.

⁹²It is the triple dimension of the mechanism of recognition/acknowledgement—of the victims as such—the voluntary recognition of responsibilities by those who participated in the conflict and of the society as a whole of this legacy of violations and infractions that substantiates the definition of victim here. Specifically, the first dimension of recognition talks of "victims as citizens (ciudadanos y ciudadanas) whose rights were infringed and as political subjects who are vital for the transformation of the country." Negotiation Table, *Borrador Conjunto Victims*, 8.

⁹³Although the language in the peace agreement gets closer to articulate this transition, the well noted fact that only a minority of victims get the benefits of transitional justice due to lack of resources will likely preclude a satisfactory implementation of those principles. Loyo Cabezudo has made an overall positive evaluation of the Comprehensive System of Transitional Justice included in the Final Agreement, although this author has also pointed out what she considers loopholes in the articulation of the relations between the Justice and Truth components. See Loyo Cabezudo, "La justicia transicional en Colombia: ¿Un instrumento para erradicar la impunidad?," *Anuario Iberoamericano de Derecho Internacional Penal*, 5 (2017): 38–39.

The analysis of the documents published by the Negotiation Table shows that the victims play a salient linguistic role only in very specific moments of the negotiations and are, at least linguistically, mostly absent when the parties talk about issues other than the item on victims. Even on the question of victims, the results are mixed. On the one hand, the victims emerge into the language only when the word “conflict” is used to describe the situation in Colombia over the last fifty years. In the case of the Historical Commission, the analysis of the causes of the conflict assumed the ideological or disciplinary lenses of the authors, leaving aside, for the most part, the study of the victims. On the other hand, the conflict and the victims are inextricably linked because a third element, the culprits, need both of those elements to enter the solution of the problem through the *Special Jurisdiction for Peace*. In this respect, one wonders if the victims are just an excuse needed to salvage other parts of the agreements, in particular, the requirements of special justice systems that are typical of transitional justice. The necessity of creating systems of transitional justice that compensate the victims and allow for the reintegration of perpetrators into society and that return both victims and victimisers to the condition of citizens is generally agreed to be worthwhile. However, if the goals and promises inserted in the Comprehensive System designed in Colombia are not fulfilled during its implementation, then the revictimisation of the victims would only serve to legitimate an agreement that some scholars have described as a pact between elites.⁹⁴ Therefore, the victims would not reap any of the benefits that should flow to the components of truth, reparations, non-repetition and political participation. Such perversion of the transitional justice system’s integrity and of the Final Agreement’s goals would result in a new violation of the victims’ rights, in this case by the state, as one of the results of the accord is the elimination of the FARC as a political actor outside the boundaries of the state.⁹⁵ The victims would not be able to make the transition into citizenship.

In the “Comprehensive System of Truth, Justice, Reparations and Non-Repetition,” the parties struggle to propose a stable definition of victim and language serves as the malleable conduit for a very fluid concept of victim that integrates many of the ideas coined by postcolonial and

⁹⁴ León, Juanita, “‘Los acuerdos de La Habana básicamente son un acuerdo de élites’: Luis Jorge Garay,” *La Silla Vacía*, 14 April 2016, <https://lasillavacia.com/historia/los-acuerdos-de-la-habana-b-sicamente-son-un-acuerdo-de-lites-luis-jorge-garay-55462>.

⁹⁵ The preeminence of the national government—and the role as principal actor among the institutions of the state—as the main political actor after the conflict is made evident by its position as the most used term throughout all the documents and the Final Agreement.

feminist cultural theories. The more fluid the concept, the better the chances of adopting a description that serves the goal of recognising diversity in the forms of citizenship. This seems to have been the decision of the parties after listening to the victims. It is in this section of the documents that the victims play a key role in pushing the boundaries of the concept of citizen and become the main subject to test if all branches of the Colombian state would have the willingness and ability to deliver on the plans and mechanisms that make concrete the victims' recovery of their rights.

Finally, we recommend that in future negotiations, the parties test the content of the documents they publish to make sure that their public declarations and the principles that inspire the negotiations are really reflected in the language choices they make. Given the complexity and duration of the negotiations and the length and number of the documents, natural language processing and artificial intelligence techniques would offer a cheap and efficient manner to automatically read the documents and test the linguistic assumptions of the negotiators. By doing this, the parties will make sure that the assumed pre-conditions they have established to guarantee the success of the proposed transitional justice system will, in effect, be directly derived from the language they use. At the end of the day, the language of the agreement is the only thing left after the conflict ends and peace becomes the natural way of society moving forward. The alternative is to make the victims also victims of language.

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