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The Shortcomings of Corporate Accountability in Post-Conflict Colombia: Land, Rivers and Animals

By: Isabella Ariza Buitrago¹ and Luisa Gómez Betancur²

Abstract

Harms resulting from a fifty-year-old conflict in Colombia were out of all proportion. Clashes between organized armed groups, such as army troops, guerillas, and paramilitary groups resulted in countless violations of human rights and international humanitarian law. However, the emergence, degradation, effects and continuation of the conflict have shown that, beyond a clash of armed groups, the war has been underpinned by a “logic of dispossession, exploitation, and domination.” This logic used plundering devices over many territories and bodies. In the shadows of the strife, non-armed actors, such as business people, corporations, and politicians, were also responsible for and benefited from the war. Economic actors participated in land grabbing, forced displacement and the fraudulent and illegal possession of the land that historically belonged to Indigenous People, *campesino* and afro-communities. This same logic showed that, along with human bodies “as the first territory targeted for dispossession,” lands, animals, rivers, and whole ecosystems were severely impacted. Despite this recurring logic and its devices, the transitional justice architecture is ill-equipped to deal with past and present dispossession, exploitation, and domination. This Article explains transitional justice’s stringent limitations for delivering justice and remedy for victims of corporate abuse, such as a weakening anthropocentric and corporate-centric approach that does not properly address harms against territories, rivers, animals, or ecosystems. However, this piece also reflects on the endeavors that both the transitional justice institutions themselves and civil society at the domestic and international levels have made to

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effectively respond to the systems of dispossession of the Colombian conflict and, most importantly, to their victims.

Keywords:

Transitional Justice, Animal Law, Corporate Accountability, Rights of Nature.

“The project before us is not an extensionist one (expanding the definition of the human to allow a few racialized groups or preferred ape species in) but rather a reconstructive one (reimagining humans, animals, and nature outside of systems of domination).”
Claire Jean Kim

Introduction

The headline of a Colombian newspaper article reads: “A biologist goes bird-watching with the men who kidnapped him.”³ The article tells the story of a man that feels hope for the future of the country and fraternity with former FARC-EP combatants. The article also mentions that Colombia is the most biodiverse country in the world per square kilometer, reports that fourteen new species of animals have been discovered in the Amazon region, and suggests that ecotourism has plenty of potential for enhancing the economy.⁴ This idyllic view of a post-conflict Colombia contrasts with the fact that the country continues to have one of the world’s most unfair land tenure structures, which has led many landless *campesinos* to colonize environmentally protected areas.⁵ It is also at odds with the fact that deforestation increased by 44% in 2016, the year the Peace Agreement between the Colombian government and FARC-EP was signed.⁶

Many challenges regarding the implementation of the Peace Agreement between the Colombian government and former guerrilla --now political party-- FARC-EP remain. Although a paradigm shift in environmental matters is essential for permanent and sustainable peace, and

³ All translations are ours. Pardo Ibarra, Tatiana. “El biólogo que observa aves con los hombres que lo secuestraron.” *El Tiempo*. June 1st, 2019. Available at: <https://www.eltiempo.com/vida/medio-ambiente/el-biologo-que-observa-aves-con-los-hombres-que-lo-secuestraron-369514>

⁴ *Id.*

⁵ Note that the opposite phenomenon is also common: local governments have declared as “protected forests” lands that campesino settlers have inhabited for years. See Ángel, G., Posada, V., Olaya, C., González, L., Sánchez, S., Jerez, C., Melo, L. 2019. Lineamientos para la política pública participativa. Parques con Campesinos. Carta Acuerdo FAO-ANZORC. Bogotá.

⁶ Further, “Landowners who try to return to their abandoned plots are facing an unexpected problem. Jungles that were once cleared for farmland grew back during FARC-EP occupation; the government has claimed much of this land as a natural resource that cannot be used for farming or timber. This has left hundreds of thousands of people with no source of income if they choose to move back to their land, especially because most of them do not have papers to prove ownership.” Reardon, Sara. “FARC-EP and the forest: Peace is destroying Colombia’s jungle — and opening it to science.” *Nature*. 12 June 2018. Available at: [nature.com/articles/d41586-018-05397-2](https://www.nature.com/articles/d41586-018-05397-2)

although victims are well aware of the harm and damage that animals suffered during the war,⁷ transitional justice mechanisms do not focus on environmental justice, and animals are mentioned only once in the Agreement—to make sure that families have animals in their land—.⁸ Polluted land and rivers, and harmed and killed animals are almost completely absent in post-conflict conversations. Similarly, victims of corporate abuse are not properly represented in the transitional justice process because its tribunal, the Special Jurisdiction for Peace (“SJP”) does not have mandatory jurisdiction over corporations that participated either directly or indirectly in the conflict.

A transitional approach to justice after the conflict should recognize that along with armed groups, non-armed actors, including business people, corporations, and politicians, have also been responsible for and benefited from the war. By ignoring the role that non-armed actors played during the armed conflict in Colombia, one might be at risk of simplifying the scope of the harm or the motivations and vehicles that contributed to the outbreak or continuation of violence. As the identity of economic actors and their powerful networks are identified in the complex puzzle of the armed conflict, it becomes clearer that the Colombian conflict can be understood and accounted for through a logic of “dispossession”⁹, “exploitation”, and domination”¹⁰ over bodies and territories.

1. Devices of Dispossession, Exploitation, and Domination

The armed conflict attempted to conquer and wound not only human bodies but also nature and territories. This logic is well-framed by a group of rural women that were victims of gross human rights violations and participated in storytelling processes with the Colombian Truth Commission: “The [material] dispossession was accompanied by forces that have intimidated

⁷ Centro Nacional de Memoria Histórica. *Mujeres, coca y guerra en el Bajo Putumayo*. Bogotá: Publicaciones Semana 2012, p. 276. Available at: <http://centrodememorialhistorica.gov.co/wp-content/uploads/2020/01/El-Placer-mujeres-coca-y-guerra-en-el-Bajo-Putumayo.pdf>

⁸ Final Agreement for a Stable and Durable Peace, 2016. “Article 4.1.3.6. a) For the family nuclei of the cultivators linked to the crops of illicit use: Establishment of home gardens and delivery of minor species with their due technical support, provision of supplies and food for the animals, according to the preference of each family nucleus.” (“Artículo 4.1.3.6. a) Para los núcleos familiares de los cultivadoras y cultivadores vinculados a los cultivos de uso ilícito: Establecimiento de huertas caseras y entrega de especies menores con su debido acompañamiento técnico, provisión de insumos y alimento para los animales, de acuerdo con la preferencia de cada núcleo familiar.”)

⁹ As conceptualized by Nichols, Robert. “Theft Is Property! The Recursive Logic of Dispossession,” *Political Theory* 2018, Vol. 46(1) 3–28, available at: https://criticaltheory.northwestern.edu/mellon-project/critical-theory-in-the-global-south/sub_projects/theft-is-property,-nichols.pdf

¹⁰ As conceptualized by Ko, Aph and Syl Ko. *Aphro-ism: Essays on Pop Culture, Feminism, and Black Veganism from Two Sisters*. Lantern Publishing & Media, 2017.

campesinas. In addition to the territory, our bodies have also been subject to dispossession and have been used as weapons of war through sexual violence and other types of violence that left deep traces in our daily lives. Many women have gone through this situation of feeling that neither their body nor their land are worth anything”.¹¹ They also refer to forced recruitment of their children: “When legal and illegal armed actors take away from us our children, this is dispossession.”¹²

Plundering and domination devices were used over many territories. Along with human bodies “as the first territory targeted for dispossession,”¹³ land, animals, rivers, and whole ecosystems enlarged the list. All of them were severely impacted by war and, as a result of over five decades of war, ecosystems and wildlife in Colombia experienced significant environmental pressures and damage. Remote zones where armed groups settled overlap with the most biodiversity-rich areas in the country and the world.¹⁴ Some investigative reports indicate that in 2013 40 percent of the presence of illegal groups was recorded in National Natural Parks, areas designated for conservation purposes.¹⁵ Camp settlement and the development of illegal activities in these areas involve the usage and processing of resources, which under conflict conditions could not be deemed sustainable.¹⁶ According to official statistics, 58 percent of deforestation between 1990 and 2013 took place in war zones.¹⁷ Among the main identified causes of deforestation are illegal mining, crops used for illicit purposes, illegal logging, forest fires, and extensive cattle ranching.¹⁸ In the mid-2010s, 56 percent of deforested areas were transformed into grass cover for livestock activities.¹⁹ Land grabbing and the development of extractive projects and agribusiness

¹¹ “Nuestros cuerpos, además del territorio, también han sido objeto de despojo”. December 17, 2020. *Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*. Available at: <https://comisiondelaverdad.co/actualidad/noticias/nuestros-cuerpos-ademas-del-territorio-tambien-han-sido-objeto-de-despojo>

¹² *Id.*

¹³ Sánchez, M. (2021). Cartografías del despojo: saqueo, explotación y guerra contra los cuerpos afro-campesinos en los Montes de María (Colombia). *Palobra*, 21(1), 5-23.

¹⁴ Departamento Nacional de Planeación, Bases del Plan Nacional de Desarrollo 2014–2018 50 (2015).

¹⁵ Los parques: de las balas a la paz, *Semana*. Sept. 21, 2013. Available at: <https://www.semana.com/nacion/articulo/los-parques-de-las-balas-la-paz/358371-3> [<https://perma.cc/YS3S-NYWF>].

¹⁶ César Rodríguez Garavito et al., *La Paz Ambiental: Retos y Propuestas para el Posacuerdo*, Dejusticia 19–20 (Jan. 2017).

¹⁷ Departamento Nacional de Planeación, *Conpes 3850: Fondo Colombia en Paz* 15 (2015); Departamento Nacional de Planeación, *Dividendos Ambientales de la Paz* 5 (2016)

¹⁸ Environmental Investigation Agency, *Condenando el Bosque: Ilegalidad y falta de gobernanza en la Amazonía Colombiana* 6, 16 (2019).

¹⁹ See Rodríguez Garavito et al., *supra* note 16, at 29.

have also accelerated deforestation and degradation of forests.²⁰ Mercury dumping, as a consequence of illegal gold mining, has polluted water, soil, and air.²¹ In 2011, Colombia had the world's highest per capita mercury pollution.²² According to the UN Environment Programme in 2018, Colombia is one of the highest emitters of the toxic chemical, after Indonesia and Perú.²³ There is also severe environmental degradation due to attacks on oil pipelines by rebel groups, particularly the National Liberation Army (ELN). Since the 1980s, it is estimated that more than four million oil barrels have spilled over land and water basins, reaching almost 800 rivers and streams between 2009 and 2015.²⁴ As a strategy of the fight against drugs, herbicides --composed of glyphosate-- were heavily sprayed by air over illicit crops: about two million hectares have been sprayed since the mid-1990s.²⁵ Because aerial spraying of this chemical is difficult to perform in a controlled manner, wildlife and farming activities suffer destruction too. The Constitutional Court in Colombia has already discussed the negative impacts of these herbicides for human rights.²⁶

Up until 2014, about 50 percent of towns in the country were impacted by illegal mining, and extractive activities took place in 28 percent of natural protected sanctuaries.²⁷ Violence in the most biologically diverse sites in Colombia --such as the Amazon and the biogeographical Chocó and Catatumbo²⁸-- made conservation activities virtually impossible.²⁹ Armed actors used strategies such as the placement of landmines,³⁰ killings, and threats against rangers in natural

²⁰ Environmental Investigation Agency, *supra* note 18.

²¹ Lorenzo Morales, *Peace and Environmental Protection in Colombia: Proposals for Sustainable Rural Development*, Inter-Am. Dialogue 10–11 (2017), Available at: http://www.thedia-logue.org/wp-content/uploads/2017/01/Colombia-report-Eng_Web-Res_Final-for-web.pdf [<https://perma.cc/DA38-6FU3>].

²² Paul Cordy et al., *Mercury Contamination From Artisanal Gold Mining in Antioquia, Colombia: The World's Highest Per Capita Mercury Pollution*, 410–11 *Sci. Total Env't* 154, 155 (2011).

²³ UNEP & AMAP, *Technical background report to the global mercury assessment 2018* 3–34 (Oct. 2, 2019).

²⁴ Departamento Nacional de Planeación, *supra* note 17, at 12–13.

²⁵ Ministerio de Justicia y ODC, *Reporte de drogas de Colombia* 75–79 (2015).

²⁶ See Corte Constitucional [C.C.] [Constitutional Court], mayo 13, 2003, Sentencia SU-383/03; Corte Constitucional [C.C.] [Constitutional Court], febrero 7, 2017, Sentencia T-080/17; Corte Constitucional [C.C.] [Constitutional Court], abril 21, 2017, Sentencia T-236/17; Corte Constitucional [C.C.] [Constitutional Court], mayo 8, 2017, Sentencia T-300/17 (documenting many harms and human rights violations resulting from the aerial application of herbicides whose active component is glyphosate).

²⁷ Departamento Nacional de Planeación, *supra* note 17, at 19.

²⁸ See Rodríguez Garavito et al., *supra* note 16, at 12–13.

²⁹ María D. Álvarez, *Forests in the Time of Violence: Conservation Implications of the Colombian War*, 16 *J. Sustainable Forestry* 47, 63 (2003).

³⁰ Jorge Eduardo Espinosa, *Adiós a las Minas en Colombia*, *N.Y. Times* (Dec. 20, 2018), <https://www.nytimes.com/es/2018/12/20/espanol/opinion/opinion-desminado-colombia.html> [<https://perma.cc/4ZFW-AY6C>].

sanctuaries³¹ to discourage institutional presence.³² Additionally, the government's interests are focused on ending armed struggle, so the military budget is often prioritized above conservation efforts.³³ In 2019, military expenditure was more than 14 times the budget for environmental protection in Colombia.³⁴ In 2020, it increased to almost 17 times.³⁵ This is a brief account on how non-humans bodies have also been subjected to plundering devices and how every territory provides a testimony of the “logic of dispossession, exploitation, and domination” that has characterized the war in Colombia and behind which corporate abuse has been present.

Jungles, rivers and animals should be protected, not based on a fear of human extinction or by taking a simple conservationist approach, but rather because they form part of a wide and complex ecosystem, which affected communities are also a part of. While trying to find ways to end a fifty-year-old conflict, the Colombian government was able to imagine ways in which former combatants could be welcomed to mainstream society. But, at the same time, it kept relying on the same judicial mechanisms that perpetuate corporate impunity. This paper explores some ways to achieve redress, even when the law seems to be tailored to fit companies' economic interests and to leave out restoration for victims of corporate abuse, rivers, animals and land. In the following pages, we will explore how conflict has benefited extractive economic actors, how post-conflict appears to continue to do so, and how civil society has organized to find accountability beyond the official transitional justice mechanisms.

2. Conflict and Extractivism: Rivers, Animals and Corporate Impunity

Like other wars and conflicts, the history of Colombian conflict can be read as an effort to dominate what is considered wild. Left-wing guerillas and the jungles they inhabited for decades

³¹ InfoAmazonía, Guardaparques de la Amazonia Salen de áreas Protegidas por Amenazas, El Espectador (Feb. 24, 2020), <https://www.elespectador.com/noticias/me-dio-ambiente/guardaparques-de-la-amazonia-salen-de-areas-protegidas-por-amenazas-ar-titulo-906118> [<https://perma.cc/87DR-MDYH>].

³² This phenomenon is identified in Jeffrey A. McNeely, Conserving Forest Biodiversity in Times of Violent Conflict, 37 *Oryx* 142, 148 (2003).

³³ This phenomenon is identified in Thor Hanson et al., Warfare in Biodiversity Hotspots, 23 *Conservation Biology* 578 (2009).

³⁴ According to the budget classification showing types of activities or services in which national funds will be allocated (“Clasificación Funcional”), in 2019, COP 11,620 thousands of millions (mm) was expended in the defense sector while COP 788 mm was expended in environmental protection services. Ministerio de Hacienda y Crédito Público, Presupuesto Ciudadano 2019 24 (2018), <http://www.pte.gov.co/WebsitePTE/Documentos/PresupuestoGeneralNacion2019.pdf> [<https://perma.cc/4R37-762H>].

³⁵ In 2020, the above trend remains. Only COP 750 mm is invested in conservation efforts while COP 12,349 mm is devoted to defense purposes. Ministerio de Hacienda y Crédito Público, Presupuesto Ciudadano 2020 22 (2019), <http://www.pte.gov.co/WebsitePTE/Documentos/PresupuestoGeneralNacion2020.pdf> [<https://perma.cc/FV69-QEMH>].

were imagined by mainstream society as just that: wild. Through violent strategies that sometimes benefited corporate interests, *campesinos* were dispossessed from their land in rural areas of the country, making Colombia the country with the highest number of internally displaced people.³⁶ Rivers were consistently and systematically polluted, their water streams were dominated by the horror of violence and used as avenues to dump bodies and disappear people. All armed actors of the conflict harmed or used animals in violent ways. This section takes a brief look at those domination dynamics and shows the ways in which, even after the official end of the conflict, many of those dynamics persist.

2.1. Extractivism and Land Grabbing

During the pandemic year³⁷, Colombia's Institute of Hydrology, Meteorology and Environmental Studies reported that 171,685 hectares of forest, mostly in the Amazon region, had been destroyed, an increase of over 8 percent compared to 2019.³⁸ Through land grabbing, economic actors often set up "valuable agricultural operations" such as "cattle rearing and African palm oil cultivation."³⁹ This is a decades old phenomenon: before the signature of the Peace Agreement extractive projects "benefited from the dynamics of dispossession and the rural development model," while the government approved the dispossession by "providing a 'lifeline' to the corporations that have grabbed state-owned lands (*baldíos*) illegally."⁴⁰ During the peak of

³⁶ Colombia has the highest number of internally displaced people (IDPs), according to the United Nations. See <https://www.unhcr.org/colombia.html>. In its annual report, the UNHCR, the agency in charge of monitoring forced displacement, said Colombia had 7.7 million IDPs.

³⁷ After a harsh pandemic year, more than 43% of Colombians are living in poverty. Earlier this year, protesters took to the streets demanding changes to tax and labor reforms that would further impoverish the middle and lower classes. Women, young people, Indigenous communities, Afro-Colombian people, and union leaders demanded Iván Duque's government to step up the implementation of the Peace Agreement and guarantee their right to protest. Indigenous and Afro-Colombian communities fighting against corporations like Cerrejón demanded an end to continuous harassment and death threats. During the protests, riot police inflicted grave injuries on hundreds of people "under the pretext of restoring order." Independent journalists suffered attacks, social justice lawyers were threatened, and union leaders had to flee the country after receiving death threats. In this context, environmental defenders fighting corporate abuse, like Jani Silva --who has received several death threats--, are asking for protection. For more detail, see *Informe Final De La Misión De Observación Internacional Por Las Garantías De La Protesta Social y Contra La Impunidad En Colombia*, published in October, 2021, available at: <https://ddhhcolombia.org.co/2021/10/07/informe-final-de-la-mision-sos-colombia/>

³⁸ Instituto de Hidrología, Meteorología y Estudios Ambientales (Ideam). "Boletín de Detección Temprana de Deforestación (DT-D)". Subdirección de Ecosistemas e Información Ambiental. Sistema de Monitoreo de Bosques y Carbono (SMBYC). Available at: <http://documentacion.ideam.gov.co/openbiblio/bvirtual/023891/22BOLETIN.pdf>

³⁹ Insight Crime. "Land Grabbing: Tracing and Targeting the 'Invisible' Threat Destroying Colombia's Forests." March 25, 2021. <https://insightcrime.org/news/land-grabbing-tracing-targeting-invisible-threat-destroying-colombia-forests/>

⁴⁰ "Dispossession and Displacement: Strategies for Orinoquia's Development." Available at: <https://humanidadvigente.net/wp-content/uploads/2017/12/DESPOJAR-Y-DESPLAZAR-RESUMEN-INGLES-2.pdf>

paramilitary violence (1996-2006) more than 3,100 people were killed and 55,000 *campesinos* were forcibly displaced. Displacements meant that valuable land became cheap: a paramilitary combatant declared in a Justice and Peace court that “Everything was done because of the land, which is rich in coal. This generates a lot of money, that's why all this displacement happened. A land in conflict is worth nothing: where there are dead and displaced people, one could buy the hectare for 150 thousand colombian pesos.”⁴¹ As a result of the forced and massive displacement, together with the fraudulent purchase and sale of property, mining companies acquired a significant part of the land stripped from displaced *campesino* communities.⁴²

The most explicit symptom of the coincidence between land grabs and the mining boom in *Magdalena Grande*⁴³, a region rich in coal, is that a significant part of exploitation licenses granted to large coal companies currently overlaps with lands claimed by victims of land dispossession and forced displacement. Drummond, for example, has an exploitation license that includes 57 properties in Chiriguaná, Cesar. The same US company is also authorized to exploit an area covering 81 farms known as Mechoacán, Casacará, and El Platanal in Codazzi, Cesar. Over these lands, victims have filed dispossession complaints. Prodeco, a company that represents Glencore’s operations in Colombia, owns an exploitation license that covers eight lands with restitution claims by *campesinas* and *campesinos* in El Prado, Los Manguitos, San Rafael, and Plan Bonito (Cesar). Likewise, Carbones Serranía is a company that was authorized to exploit coal in an area that includes 25 properties in La Jagua, Cesar, that were allegedly illegally appropriated.⁴⁴

Despite the formal demobilization of the United Self-Defense Forces of Colombia paramilitaries in 2006, the victims of human rights violations, community leaders, and union activists continue to be threatened, intimidated, and attacked. Neo-paramilitary groups continue to

⁴¹ VerdadAbierta.com, 2010, diciembre 13, “La versión de Samario sobre la Drummond y los paras.”

⁴² “El desplazamiento forzado no solo fue utilizado como estrategia de guerra, sino que también coincidió con los intereses económicos tanto de los paramilitares como de las élites económicas locales y las empresas que estuvieron directamente involucradas en los desplazamientos o se beneficiaron de los bajos precios de la tierra y la garantía de permanencia en ella” (Centro Nacional de Memoria Histórica 2013, 71; Juzgado Adjunto al Juzgado Quinto Penal del Circuito Especializado de Medellín 2013 cit. in Sánchez, Nelson Camilo et al. *Cuentas claras: El papel de la Comisión de la Verdad en la develación de la responsabilidad de empresas en el conflicto armado colombiano*, Dejusticia: Bogotá, Feb. 2018). Available at: <https://www.dejusticia.org/publication/cuentas-claras-empresas/>

⁴³ “El Magdalena Grande” is how the region of the Colombian Caribbean coast is known, which runs from the Magdalena River to the Guajira peninsula and which until the 1960s comprised the current departments of Magdalena, Cesar, and La Guajira..

⁴⁴ “La maldita tierra: Guerrilla, paramilitares, mineras y conflicto armado en el departamento del Cesar”. CNMH, Agosto de 2016. Available at: <https://www.centrodememoriahistorica.gov.co/descargas/informes2016/maldita-tierra/la-maldita-tierra.pdf>

operate in Cesar after the Ley de Víctimas y Restitución de Tierras was enacted in 2011, threatening and intimidating “post”-conflict land restitution claimants.

These overlapping patterns repeat in zones currently dominated by extensive cattle ranching and agribusinesses but that historically belonged to *campesino* and afro-communities. This is the case of the Curvaradó and Jiguamiandó afro-communities in the municipality of El Carmen del Darién that were massively displaced at the hands of a criminal plan hatched by paramilitary groups, the Colombian National Army, and economic actors. Under counter-terrorist slogans, military and paramilitary forces broke into their territories and, in joint operations, widely known as “Cacarica and Genesis Operations,” spread terror and forcefully displaced more than 3,500 people⁴⁵ in just three days.⁴⁶ After some years, when many of these afro-communities attempted to return to their homes, they found cattle ranchers, African palm oil cultivation owners, and logging businesses taking possessions of the lands through fraudulent and illegal means.

Although Chapter I of the Peace Agreement⁴⁷ contains a “Comprehensive Rural Reform,” that intends to alleviate the effects of the conflict and to change the conditions that enabled persistent violence in Colombia, such as the issue of land access and use, the unfair concentration of land with agricultural potential, and the exclusion of the rural population from land ownership, the transitional justice framework that subsequently developed the Peace Agreement fails to tackle the logic of domination described in this Section. In substance, the law continues to benefit corporate abuse and law enforcement is weak when it comes to protecting *campesinos* and their territories. The absence of transitional mechanisms for corporate accountability and a persistent corporate-centric approach hinders comprehensive reparation. Colombia’s transitional justice design left corporations out. As we will explain, some gaps in the law let corporations impune for profiting, benefiting from, or directly financing the conflict.

The Peace Agreement created a complex transitional justice system which includes the Special Jurisdiction for Peace (SJP) as its justice component. “One innovative characteristic of the SJP is that its competence is not limited to state actors and members of armed groups, but also

⁴⁵ Caso De Las Comunidades Afrodescendientes Desplazadas De La Cuenca Del Río Cacarica (Operación Génesis) Vs. Colombia. Judgement, Noviembre 20, 2013, at 46. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_270_esp.pdf

⁴⁶ Cacarica: 23 años construyendo paz. Marzo 13, 2020. *Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*. Available at: <https://comisiondelaverdad.co/actualidad/noticias/cacarica-23-anos-construyendo-paz>

⁴⁷ Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, Colom.-FARC-EP-EP, Nov. 24, 2016, <http://especiales.presidencia.gov.co/Documents/20170620-dejacion-armas/acuerdos/acuerdo-final-ingles.pdf> [<https://perma.cc/LF8X-ZR8N>] [hereinafter Final Agreement]

includes [civilians] or third party actors.”⁴⁸ As it was crafted in the Peace Agreement, the SJP had the ability to summon civilians, that included politicians and economic actors, such as cattle ranchers, businessmen, or farmers that although did not form part of the armed forces did profit, benefit from, or directly financed it. However, in a 2017 decision, the Colombian Constitutional Court ruled that the mandatory submission of economic actors to the SJP was unconstitutional on the grounds that it violated their rights to a fair and impartial trial, in particular the principle of the natural judge.⁴⁹ Consequently, the court’s solution to this issue was to deprive the SJP of its ability to summon these actors.⁵⁰ In a nutshell, the SJP maintains jurisdiction over economic actors only if they voluntarily present themselves before the system, otherwise they will continue under jurisdiction of the ordinary criminal justice system. The problem with this outcome is that the ordinary justice system has historically guaranteed impunity for economic actors, then, the latter have no incentives to appear before the SJP. “Considering the difficulties and poor results that have characterized the investigations of the ordinary prosecutors thus far, it seems that few businessmen will have sufficient incentives to present themselves before the [SJP] and that its contribution to clarify their role in [violations of human rights or humanitarian law] and hold them accountable will be rather limited.”⁵¹

This outcome set up a discouraging scenario for victims of corporate abuse. Their hope was rooted in the SJP’s innovative powers to summon economic actors, and, based on the dynamic of the transitional justice system, to compel them to contribute to justice, truth, reparations, and non-repetition in exchange for legal benefits. The jurisdiction of the SJP over third party actors, as originally crafted, offered a genuine ability to combat *de facto* impunity.

Ultimately, the Court's decision privileged the *status quo* of impunity that has characterized economic actors' investigations in the ordinary criminal justice system. To be clear about the dimension of the impunity in Colombia, according to the 2020 Report on Preliminary Examination Activities,⁵² the Colombian General Attorney informed the Office of the Prosecutor at the International Criminal Court (ICC) that out of 2.683 cases related to third party actors, only there

⁴⁸ “Transitional Justice in Colombia”. *Essex Law Research Blog*. February 8, 2019. Available at: <https://essexlawresearch.blog/2019/02/08/transitional-justice-in-colombia/>

⁴⁹ On the Court’s reasoning in this context, *see*, Corte Constitucional, Sentencia C-674 de 2017, Bogotá D.C., catorce de noviembre de dos mil diecisiete, para. 5.5.2.6.

⁵⁰ *Ib.*, para. 5.5.2.11; Corte Constitucional, Sentencia C-080/18, Bogotá D.C., 15 de agosto de dos mil dieciocho, para. 4.1.6.3; art. 11(1), Law 1922/2018. *See also*, Jurisdicción Especial Para La Paz, Tribunal Para La Paz, Sección de Apelación, David Char Navas, Auto TP-SA 19 de 2018; Bogotá D.C., 21 de Agosto de 2018.

⁵¹ Philipp Wesche, Business Actors, Paramilitaries and Transitional Criminal Justice in Colombia, *International Journal of Transitional Justice*, 2019, 13, 478–503.

⁵² Available at: <https://www.icc-cpi.int/Pages/item.aspx?name=2020-otp-rep-PE-COL>.

were 15 judgments, out of which 10 were convictions.⁵³ Simply put, the corporate impunity related to the conflict in Colombia overcomes 99.81%.

2.2. Rivers: Pollution and their Moral Contamination

“The war in Colombia has trampled the rivers to their full extent, as often happens on battlefields”.⁵⁴ As land, Colombian rivers and water streams have also been subjected to systems of domination. They have been systematically polluted, but also morally or symbolically contaminated. *The World’s Water*, a website dedicated to providing information to protect and preserve fresh water, has tracked and categorized events related to water and conflict since the late 1980s.⁵⁵ Between 1990 and 2019, 48 events took place in Latin America and the Caribbean, out of which 20 occurred in Colombia and were associated with the armed conflict. An important part of these events relate to dynamiting oil pipelines causing serious streams and rivers contamination, as well as bombing water supplies, aqueducts, and treatment plants mostly by guerillas. Only in 2015, the oil spills into rivers put at risk the food and economic security of approximately 84,000 farmers, indigenous people, and fishermen who depend on these ecosystems; left 160,000 inhabitants without water, and caused irreparable damage to fauna and flora, threatening 30 species of fish and 25 of mammals, some of them at risk of extinction, such as the tapir, the armadillo, the leopard, the manatee, the ñeque and the white-tailed deer.⁵⁶

Rivers have also been continuously poisoned with heavy metals as a consequence of legal and illegal mining. Economic actors have pursued the extraction of Colombian gold. With a violent and illegal initial extraction, companies then export it very easily outside of the country.⁵⁷ The Quito River, which twenty years ago was at the heart of one of the most biodiverse regions in the world, is now the cause of death of children that result from intoxication with mercury-polluted

⁵³ Despite these alarming numbers of impunity, the ICC Prosecutor, Mr Karim A. A. Khan QC, on October 28, 2021, concluded the preliminary examination of the Situation in Colombia with a Cooperation Agreement with the Government charting the next stage in support of domestic efforts to advance transitional justice. Available at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1623>

⁵⁴ Ignacio Piedrahita, “La verdad sobre los ríos”. Publicaciones Semana S. A. January 2020. Available at: https://comisiondelaverdad.co/images/Libro_La_verdad_de_los_rios_31012020v.pdf

⁵⁵ Available at: <https://www.worldwater.org/water-conflict/>

⁵⁶ Tatiana Pardo, “Los ríos que las FARC-EP pintaron de negro”, *El Espectador*. June 27, 2015. Available at: <https://www.elespectador.com/ambiente/los-rios-que-las-FARC-EP-pintaron-de-negro-article-568911/>

⁵⁷ “Una mafia devastó la selva en Chocó,” August 24th, 2021. *La liga contra el silencio*. “Las empresas luego lo exportan, de manera informal casi siempre, a Estados Unidos, Suiza y Canadá, según un informe publicado en febrero de 2021.” Available at: <https://ligacontraelsilencio.com/2021/08/24/una-mafia-devasto-la-selva-en-choco/>

water.⁵⁸ Gold mining powered by mercury turns rivers into inhospitable places for fish, produces an “irreversible damage” to the environment, and generates the “massive displacement of fauna.”⁵⁹ Currently, it is estimated that due to mining processes, more than 80 rivers in Colombia are polluted with mercury.⁶⁰ For centuries, rivers in Colombia have been a route and refuge for countless communities who have found in them sacred places, food, company, transportation, and homes. Quite simply, rivers have been places where life flourishes. However, due to devices of domination, “rivers have also been and are witnesses of the worst massacres in the history of the armed conflict. Thousands of dead have rested in their waters and for years hundreds of communities have mourned them.”⁶¹ Water streams have been stained by the forced disappearance, a crime with staggering numbers in the country.⁶² Dumping persons and bodies into rivers to disappear them was carried out by all actors of the conflict, but paramilitary groups used this disappearing practice the most.

In just five rivers of the country (Magdalena, Cauca, Putumayo, Atrato, Sinú, and San Jorge) 5.907 victims of forced disappearance have been confirmed.⁶³ Finding them has been almost an impossible task: 1,080 bodies have been recovered.⁶⁴ Also, in the Chocó Region (Buenaventura), communities have identified “clandestine mass graves” into the water, in estuaries and mangroves – “acuafosas.” This type of violence has caused a moral or symbolic poisoning of rivers. They were no longer a place where life flourished, but rather, a vehicle of death. “Acuafosas” and “blood” rivers have caused fear, terror, and a wound in the relationship that afro-communities had with their territories. Estuaries were the livelihoods for communities; they

⁵⁸ “Una mafia devastó la selva en Chocó,” August 24th, 2021. *La liga contra el silencio*. “Según informes de la Defensoría del Pueblo, retomados por la Corte Constitucional, en las comunidades indígenas de Quipará (pueblo Wounan) y Juinduur (pueblo Emberá), que habitan en el bajo Atrato, tres menores de edad murieron y otros 64 se intoxicaron por ingerir agua contaminada en 2013 (...) En 2016 el Ministerio de Salud, el Instituto Nacional de Salud (INS) y la Universidad de Córdoba (UC) desarrollaron un estudio con 1.096 personas de 11 municipios en Chocó. El 47,3 % (519) estaban intoxicadas con mercurio, según los parámetros establecidos por el INS. Este químico también afecta a los peces.” Available at: <https://ligacontraelsilencio.com/2021/08/24/una-mafia-devasto-la-selva-en-choco/>

⁵⁹ “Una mafia devastó la selva en Chocó,” August 24th, 2021. *La liga contra el silencio*. “Las empresas luego lo exportan, de manera informal casi siempre, a Estados Unidos, Suiza y Canadá, según un informe publicado en febrero de 2021.” Available at: <https://ligacontraelsilencio.com/2021/08/24/una-mafia-devasto-la-selva-en-choco/>

⁶⁰ Alberto Mejía, En busca de la descontaminación de los ríos afectados por mercurio. March 3, 2020. Available at: <https://www.iagua.es/blogs/alberto-mejia-arango/busca-descontaminacion-rios-afectados-mercurio-2>

⁶¹ Comisión de la Verdad, “Los ríos también tienen una verdad que contar”. January 31 de 2020. Available at: <https://comisiondelaverdad.co/actualidad/noticias/los-rios-tambien-tienen-una-verdad-que-contar>

⁶² According to official records, between 1958 and 2017, there were more than 83.400 forced disappearing victims.

⁶³ Laura Cerón y Lorena Luengas. “Ríos colombianos: vertientes de vida y muerte”, November 30, 2019. Available at: <https://todoesciencia.minciencias.gov.co/opinion/rios-colombianos-vertientes-de-vida-y-muerte>

⁶⁴ Rutas del Conflicto. Proyecto Ríos de Vida y Muerte. “Más de mil cuerpos recuperados en 190 ríos”. Available at: <https://rutasdelconflicto.com/rios-vida-muerte/especial/mil-cuerpos.html>

generated economic and food sustainability, and a space where families could spend weekends and where young went swimming. But this changed: “One of my sons has problems going to sea because when he goes fishing, he would see black bags spouting blood.”⁶⁵ “The river has been contaminated morally. How do you clean a river from its history? How do you take away from the river the moral contamination it has carried?”⁶⁶

2.3. (Ab)use of Animals in War⁶⁷

Past and present exploitation of nature is the cause of human and non-human animal displacement and harm. One could imagine that animals thrived in the jungle during the conflict—in the space where law could not reach, and corporate extractivism was impossible—. However, this depiction is highly utopic: in the nearly fifty years of internal conflict, FARC-EP was a severe human presence in the jungle, and animals were displaced, battled, often eaten, feared, and sometimes used as weapons for the war.

The war in Colombia took the lives of many human and non-human bodies. FARC-EP killed animals to eat them and used them as weapons to attack their enemies. Becoming experts in eating jungle animals meant making sure they could survive and be in a position of advantage compared to other humans, who had no such training. But their relation to animals was originally mediated by political views. In their initial political enterprise, before their project got deeply entangled with the economy of drug trafficking, FARC-EP viewed animals as a way to assure subsistence and independence for rural families.⁶⁸ As Crespo analyzes, many questions remain unanswered: “How many animals and whole species have been displaced from their territories? What are the numbers of animals killed in bombardments or mines? How many animals have been used as shooting practice, to desensitize the actors in the conflict to death and torture?”⁶⁹ It was a known practice for FARC-EP to use animals as bombs: “Animals, bicycles and corpses served as

⁶⁵ Carolina Ávila Cortés y Valentina Parada Lugo. “Los mapas de la desaparición forzada en Buenaventura.” *El Espectador*. April 30, 2021. Available at: <https://www.elespectador.com/reportajes/los-mapas-de-la-desaparicion-forzada-en-buenaventura/>

⁶⁶ Laura Cerón y Lorena Luengas. “Ríos colombianos: vertientes de vida y muerte”, November 30, 2019. Available at: <https://todoesciencia.minciencias.gov.co/opinion/rios-colombianos-vertientes-de-vida-y-muerte>

⁶⁷ This subsection is based on Ariza, Isabella, “Transition in Colombia: An Opportunity to Repair Animals in Cities and Animals in War,” recipient of the Harvard Law School 2020 Animal Law and Policy Writing Prize, unpublished.

⁶⁸ This conception of land ownership and animals rearises in the Peace Agreement of 2016: the only direct allusion to animals in the Agreement is in regard to them being provided to families that used to cultivate illegal crops. Animals as victims of war are left out of the Agreement. As property, FARC-EP demanded their more equal distribution between owners and the *campesinos* who worked the land.

⁶⁹ Crespo, Carlos A. “Territorios de paz para los animales y el ambiente”. *El Turbión*. 2 de junio de 2016. Available at: <https://elturbion.com/13421>

explosives. Horses, donkeys, ambulances, balls and even the bodies of children ended up being turned into bombs.”⁷⁰

In territories where paramilitarism ruled, the setting is no longer the jungle. It is still rural and far from the cities —far enough so that the absence of the state did not impact mainstream society—, but semi-industrialized and quite populated (by persons that, in exorbitant amounts, would become displaced). The actors are also different: paramilitarism arose as a phenomenon that responded to the guerrilla’s force with harsh, private, illegal armies. In settlements that paramilitary groups invaded, they brutally killed dogs that were spotted in the street after curfew, and forced women to kill their animals and cook for them.

All armed actors of the Colombian conflict made slavery uses of the women’s bodies: they used them to carry out chores and domestic tasks. In the case of paramilitary groups, “they stole their animals and then forced them to cook them, they recruited them in situations of domestic and sexual slavery.”⁷¹ Paramilitarism has a strong attachment to cattle raising,⁷² and the inhabitants of Rincón del Mar (in the Atlantic Coast of Colombia) said that in the public meetings that paramilitary leaders held to communicate their coercive rules and regulations, they referred to them as ‘pigs’, ‘cattle’, ‘animals’. Additionally, paramilitaries had a number of reasons to kill dogs: first, they wanted to eradicate the non-compliance of the curfew. Second, animals littered. The kind of society that paramilitaries wanted to impose resembled a military dictatorship: “This was much more related to the type of town, the social order desired by the paramilitaries (...) They killed the dogs that were on the beach, so we had to tie them up.”⁷³ Third, whenever paramilitaries started a confrontation, dogs barked, alerting the presence of strangers. As soon as they barked, paramilitaries shot them.

If FARC-EP used animals as weapons, paramilitaries used them as allied perpetrators. All over the country, paramilitary leaders were trained to kill peasants using serpents, tigers,

⁷⁰ Guerrillas exploded corpses, houses, animals, and cars to attack and contain their enemy, the national army. Centro Nacional de Memoria Histórica. “Capítulo IV: Los impactos y los daños causados por el conflicto armado en Colombia” in *Informe General*. Bogotá: 2014. Available at: centrodehistoriahistorica.gov.co/descargas/informes2013/bastaYa/capitulos/basta-ya-cap4_258-327.pdf

⁷¹ Centro Nacional de Memoria Histórica. *Mujeres y guerra: Víctimas y resistentes en el Caribe colombiano*. Bogotá: Editora Aguilar, Altea, Taurus, Alfaguara, S. A, 2011. p. 132. Available at: http://www.centrodehistoriahistorica.gov.co/descargas/informes2011/Informe_mujeresyguerra.pdf

⁷² “For paramilitaries the appropriation of displaced territories is part of the objectives of military security and the creation of sanctuaries for the business of drugs, and in some cases for the development of agricultural plantations of long term or extensive cattle raising.” (Duica et al., 75)

⁷³ Centro Nacional de Memoria Histórica. *Mujeres y guerra: Víctimas y resistentes en el Caribe colombiano*. Bogotá: Editora Aguilar, Altea, Taurus, Alfaguara, S. A, 2011. p. 128.

crocodiles, lions, snakes, caimans, vultures.⁷⁴ This was a method meant to disappear the corpses of their victims. A woman of Puerto Asís, in the Amazon of Colombia, remembered that in nearby lakes “[Paramilitaries] had alligators. They said that they would feed us to those animals.”⁷⁵ A victim interprets this perverse practice as “a manifestation of not wanting to bury, but to disappear,”⁷⁶ but a paramilitary combatant confessed that they used rattlesnakes, one of the most poisonous in the world, to murder peasants, because “as International Humanitarian Law says that after three deaths there is a massacre, our purpose was not to be blamed for so many massacres. We used snakes because these deaths were counted as accidents of nature.”⁷⁷

The Declaration of the Women's Movement Against War in Putumayo stated: “The Colombian Government must ensure and guarantee the right to human, animal and plant life!”⁷⁸ This declaration proposes that human and non-human animals being part of a whole is essential, not accessory, to peacemaking in Colombia. Animal cruelty, in war and outside of it, continues to be battled through a punitive response. This is true both in Colombia and in the United States.⁷⁹ In a transitional justice regime, moving away from strictly anthropocentric and corporate-centric solutions could bring reconciliation that transcends the criminal/innocent, city/jungle, and human/nature dichotomies. By blurring these lines and through an adaptive ethics of mutual avowal⁸⁰, both FARC-EP ex-combatants and persons that incur in animal abuse could be reinserted from the margins.

3. Accountability Beyond Transitional Justice

So far, this paper explored both the logic of domination and extractivism that characterized the conflict and that subsists in the Colombian context. After mapping the lack of mechanisms for corporate accountability and acknowledging the variety of harms infringed on bodies and non-human territories, we will explore what tools are under construction to address this impunity crisis. This section examines the strategies that civil society and public interest lawyers have developed

⁷⁴ *Id.*, p. 135.

⁷⁵ *Id.*, p. 276.

⁷⁶ *Id.*, p. 48.

⁷⁷ Guillén, Gonzalo. “Paras alimentan fieras con los restos de sus víctimas”. *El Nuevo Herald*. 23 August 2009. Available at: <https://www.elnuevoherald.com/noticias/mundo/america-latina/colombia-es/article1998424.html>

⁷⁸ Movimiento de mujeres contra la guerra “Campaña por la desmilitarización y recuperación de la vida civil” Comunicado de prensa No. 14. Declaración del movimiento de mujeres contra la guerra en su movilización al Putumayo.

⁷⁹ See Marceau, Justin. *Beyond Cages*. Cambridge: Cambridge University Press, 2019.

⁸⁰ An ethics of mutual avowal “takes seriously the imperative of challenging domination’s multiple dimensions.” Kim, Claire Jean. *Dangerous Crossings*. Cambridge: Cambridge University Press, 2015.

to advance accountability whether within the transitional justice institutions or beyond them. First, it describes the efforts to hold corporations accountable in a post-conflict setting. This includes strategies within transitional justice, such as relying on the Colombian Truth Commission, and outside of it, such as activating civil law mechanisms to find redress for victims of corporate abuse. Second, it examines innovations in the legal field such as the rights of nature and its consequences for territories, rivers, and animals as victims of the armed conflict.

3.1. Seeking Corporate Accountability for Economic Actors

As described, the SJP does not have mandatory jurisdiction over economic actors, but retains voluntary jurisdiction. Other transitional justice institutions such as the Colombian Truth Commission could reveal the role of companies in the conflict.⁸¹ Because its mandate entails that “in its process of clarifying, the Commission also studies the effects of the armed conflict on nature and will seek to identify common patterns and their consequences,” it is expected that the final report will include an analysis of the role that corporations played in the conflict.⁸² Transnational companies enjoy the rights granted to them by legal regimes, but few of the responsibilities they would have to assume if they were natural persons.⁸³ Although at least nineteen truth commissions have addressed corporate responsibility in their reports, and some have explicitly named economic actors involved in the conflict, economic actors along supply chains often claim that *others*, not them, are responsible for human rights violations.⁸⁴ This is the case with energy companies that, for example, after purchasing coal from multinational companies operating in Colombia, argued

⁸¹ Article 13 of Decree 588 of 2017 provides that the Truth Commission must prepare a final report that “contains the conclusions and recommendations of its work, including guarantees of non-repetition.” We understand that the Truth Commission does not have “the double mission of reconstructing the truth and doing justice” but rather that of investigating “what happened”, “why”, “how” and --just as important-- the “where next?” (Bermúdez Liévano, Andrés (Ed. and coord.) Havana debates: an Inside Look. Barcelona: Human Capital Fund for the Colombian Transition, Institute for Integral Transitions (IFIT), p. 253, emphasis added. <https://ifit-transitions.org/wp-content/uploads/2021/03/Los-debates-de-La-Habana-Una-mirada-desde-adentro.pdf>)

⁸² “En su proceso de esclareciendo la Comisión también estudia las afectaciones del conflicto armado a la naturaleza y buscará identificar los patrones comunes y sus consecuencias.” Available at: <https://comisiondelaverdad.co/actualidad/noticias/los-rios-tambien-tienen-una-verdad-que-contar>

⁸³ Byrnes, Christopher, Elizabeth Deligio, Brother Anthony Kote-Witah, and Charity Ryerson, ‘We All Stand Before History’: Corporate Impunity as a Colonial Legacy—The Case of the Niger Delta 9 de abril de 2019, *HHRJ*. Disponible en: <https://harvardhrj.com/2019/04/we-all-stand-before-history/>)

⁸⁴ “A commission should also consider recommending non-judicial sanctions against those named, such as banning them from public positions of authority or from posts in the security or intelligence service, prohibiting them from working in a private security firm, and taking away their right to bear arms. While such recommendations could not be implemented by the commission itself, they could guide lawmakers toward establishing a strategy for accountability and reducing the threat of further abuses by these individuals in the future, outside of the limited possibilities of successfully prosecuting them in court” (p. 144). Hayner, Priscilla B. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. New York & London: Routledge, 13 de septiembre de 2010.

that the “complexity of the coal market” and the “fundamentals of competition law” meant that coal could not “be traced back to the beginning of the mining operations or mining company/origin, as this isn’t known at the time of purchase.”⁸⁵ For years, the government promoted, rather than regulated, extractive activities. As the size of companies or their production units decreased, their influence in the management of the sector decreased as well. Hence, while large-scale industry has a high amount of power and influence over all strategic decision-making processes, small and medium-sized miners, informal miners, and ancestral and artisanal miners have little to no relation to these niches and, consequently, obtain little benefit from public policy.⁸⁶ These are the sorts of findings that the Colombian Truth Commission should integrate and address to imagine adequate guarantees of non-repetition.

Beyond transitional justice, in Colombia as in other parts of the world, civil society has had an increasing interest in pursuing civil claims for human rights violations.⁸⁷ Despite there being a clear nexus between corporate behavior and damages, the law of many countries as well as international law is ill fit to serve the interests of communities. Because of strict proof standards, a narrow understanding of causation, and restricted notions of standing, proving the elements of torts—or its equivalent in other jurisdictions—, which is hard enough during times of peace, turns into an impossible task. If forcibly displaced, many communities focus on preserving their lives and don’t have the time, the opportunity, or the tools, to gather evidence before they leave their territory. If harassed or killed, community leaders and their families have trouble attributing the conduct to companies because threats and bullets often come from hired assassins.⁸⁸ And, if negatively impacted by environmental harm, communities struggle with proving causation, while companies hide behind formally valid environmental licenses and permits.

⁸⁵ Diálogo Holandés del Carbón. Informe Final (julio de 2013). pp. 8–9. Disponible en: www.paxvoorrede.nl/media/files/dutch-coal-dialogue-final-rapport-2013.pdf.

⁸⁶ Although this paper did not emphasize the structural problems of mining in Colombia, see in this regard Velásquez, Fabio E. "La participación ciudadana en el sector extractivo en Colombia," Bogotá: Editorial Dejusticia, 2021, available at: <https://www.dejusticia.org/wp-content/uploads/2021/05/La-participacion-ciudadana-en-el-sector-extractivo-en-Colombia.pdf> (pp. 23, 29).

⁸⁷ See the Bonavero Institute’s research project, "Civil liability for human rights violations," description available at: <https://www.law.ox.ac.uk/content/civil-liability-gross-human-rights-abuses>

⁸⁸ According to Javier Giraldo S.J, the acts of these perpetrators can be attributed to paramilitary groups that have changed the way they operate. Whereas in the past they used to be formally organized, illegal groups that functioned as parallel but state-approved armies, they now often don’t take responsibility for their actions and hide under the facade of “regular” crime. See Peña, Pompilio. “Javier Giraldo: La matanza de desmovilizados es una tradición,” September 28, 2019, available at: <https://hacemosmemoria.org/2019/09/28/javier-giraldo-la-matanza-de-desmovilizados-es-una-tradicion/>

For these and other reasons, corporate harm during conflict often goes unredressed. But two years ago, the Colombian Supreme Court of Justice decided the Machuca case, an exception to this rule and the only one of its kind in recent legal history in Colombia. The Court ordered that an oil company had to pay economic and moral damages to the Machuca community, which was affected by an oil spill that was the result of a bombing conducted by the National Liberation Army, a guerrilla force. Considering the country's conflict and the security measures that the company did take, this case could have failed. The parties heavily discussed whether the armed group's conduct should exonerate the company from liability. Traditionally, in civil law jurisdictions like Colombia, if an independent third party harms another person and there is no vicarious liability, the defendant is usually off the hook. Here, the debate was more nuanced. Both the circuit court and the Supreme Court focused on the fact that the company *created* the risk. Although the company could have traced the pipeline elsewhere, it chose to trace it near the community, and with this it created a risk that ended up materialized. Having created an unnecessary risk, the company was responsible for the Machuca community's damages. Despite the causality chain being relatively long, the Court found the company liable. Other cases may fit the pattern that the Machuca case followed. In cases in which companies deviate rivers, and this deviation results in damages to communities, causation may be even easier to prove.

Civil law attorneys are continuously imagining ways to use civil litigation against companies for their involvement in environmental and human rights violations during conflict. Corporate Accountability Lab, a Chicago-based nonprofit, created a social lab precisely to share experiences from Africa and Latin America in battles against companies for their behavior during conflict. This social lab is a "cross-jurisdictional, cultural, and linguistic collaboration to protect people and the planet from corporate abuse during conflict" and convenes "a diverse international group of lawyers and community advocates working towards justice for victims."⁸⁹ Corporate Accountability Lab also designed a civil litigation skill share exercise where Colombian attorneys meet with Global North attorneys and discuss ways to use civil litigation to remedy harms tied to corporate abuse during the conflict. According to their analysis, statute of limitations, the difficulty of proving causation and finding impartial experts within the reach of the communities played an important role in preventing the civil route from being the most common one for impacted

⁸⁹ Kelly, Avery. "Why We Created a Social Lab on Corporate Accountability In Transitional Justice," March 26, 2021. Available at: <https://corpaccountabilitylab.org/calblog/2021/3/26/why-we-created-a-social-lab-on-corporate-accountability-in-transitional-justice>

communities. They are, however, exploring ways in which these obstacles can be surpassed in order to use the ordinary law --and not transitional justice-- in favor of the communities.

3.2. The Rights of Nature: an Approach to Addressing the Harms to Territories, Rivers, and Animals as Victims of Conflict

Despite the limitations of the transitional justice mechanisms, characterized by a persistent anthropocentric approach that has hindered victimhood and comprehensive reparation for non-humans' bodies and territories, some developments by the SJP have intended to fill this gap.

Currently, Colombian judges have recognized as “subjects of law” more than nine rivers,⁹⁰ two national parks,⁹¹ and other ecosystems such as high-altitude wetlands (*páramos*)⁹² and the Colombian Amazon rainforest.⁹³ This ripple effect started in 2016, when a river —the first non-human body, was recognized as a “subject of rights.” Through Judgment T-622 of 2016, the Constitutional Court of Colombia declared the Atrato River had “rights that imply its protection, conservation, maintenance and ... restoration.”⁹⁴ A *tutela* lawsuit,⁹⁵ filed by ethnic communities of the Atrato River, showed evidence that government entities had violated their fundamental rights to their territory and culture. According to the plaintiffs, the lack of institutional control over illegal

⁹⁰ Tribunal Administrativo [T. Admtivos.] [Quindío State Superior Tribunal], Sala Cuarta de Decisión Quindío marzo 15, 2019, N. 2019-00024, Tribunal Administrativo del Quindío [T.A.Q.] (Colom.). (Quindío River case); 3rd Juzgado de Ejecución de Penas y Medidas de Seguridad [Juzg. Circ.] [Third Tribunal of Execution for Penalties and Security], Cali, Valle del Cauca julio 22, 2019-00043 (Colom.) (Pance River case); Sala Cuarta Civil Medellín [T. Superiores] [Medellin State Superior Tribunal], Civil Court No. Four June 17, 2019, N. 2019-076 (Colom.) (Cauca River case); Personeria Municipal de Ibagué Ministerio de Medio Ambiente y otros, Tribunal Administrativo de Tolima [T. Admtivos], Administrative Tribunal of Tolima 2019 (Colom.) (Tolima Rivers case); Luz Marina Diaz y otros v. Empresa de Servicios Públicos del Municipio de La Plata–Huila, Corte Constitucional [C.C.] [Constitutional Court], No. 2019-114 (Colom.) (La Plata Huila River case); 4th Juzgado de Ejecución de Penas y Medidas de Seguridad [Juzg. Circ.] [Fourth Tribunal of Execution for Penalties and Security], Pereira, Risaralda Tutela 2019, 036-2019 (Colom.) (Otún River case); Andres Felipe Rojas Rodriguez y Daniel Leandro Sanz Perdomo v. Ministerio de Ambiente y De-sarrollo Sostenible y otros, Juzgado Primero Penal del Circuito de Neiva Huila [Juzg. Circ.] [First Criminal Tribunal of the Circuit of Neiva Huila] 2019, 41001-3109-001-2019-00066-00 (Colomb.) (Magdalena River case).

⁹¹ Juan Felipe Rodriguez Vargas v. Presidencia de la República y otros, Tribunal Superior [T. Sup.][Ibagué State Superior Tribunal], Sala Quinta Laboral Ibagué 2020, N. 2020-000091 (Colomb.) (Los Nevados National Natural Park case); Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala de Casación Civil 2020, STC3872-2020 (Colomb.) (Isla Salamanca National Natural Park case).

⁹² Corte Constitucional [C.C.] [Constitutional Court], Tribunal Administrativo de Boyacá Augusto 9, 2018, 15238-3333-002-2018-00016-01 (Colom.) (Páramo de Pisba case).

⁹³ Corte Suprema de Justicia [C.S.J.] [Supreme Court], Sala. Civil abril 5, 2018, M.P: Luis Armando Tolosa Villabona, STC4360-2018, Expediente 11001-22-03-000-2018-00319-01 [hereinafter Decision STC4360-2018].

⁹⁴ Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16, translated in The Judgement for River Atrato (Colombia) Is Now in English!, GARN (July 2, 2019), <https://delawarelaw.widener.edu/files/resources/riveratratodecisionenglishdrpdellaw.pdf> [<https://perma.cc/AN2K-9KCX>] [hereinafter Sentencia T-622/16].

⁹⁵ According to “Constitución Política de Colombia” [C.P.] art. 86, a *Tutela* is a legal mechanism in Colombia to protect fundamental rights.

mining activities in the river that overlapped with their ancestral territories was threatening their traditional ways of life. In the judgment, the Court highlighted the overlapping between illegal mining in the Atrato River Basin and armed conflict: “the rise of illegal mining of gold and other precious metals [in the Basin of the Atrato River and its tributaries] has opened up alarmingly—as a financier of the armed conflict—which is generating worrying socio-environmental conflicts that materialize in an indiscriminate struggle for the control of territories and natural resources.”⁹⁶ As a result, the region and its communities endured forced displacement, the degradation of ecosystems, the reduction of forests, extinction of endemic species and pollution of rivers, among other factors that place the natural and cultural heritage of the country at high risk.⁹⁷ Along with these harms caused by illegal phenomena, the high court pointed out that “policies and legislation have emphasized access for economic use and exploitation to the detriment of the protection of the rights of the environment and of the communities.”⁹⁸

“The Court recognized that the government failed to recognize the river as not only an ecosystem but also as the territory that enabled communities to develop their cultural rights. Accordingly, it failed to understand that there was a “biocultural” relationship between the river and local communities worthy of constitutional protection. The legal solution was to recognize the river as a subject of rights and to declare that it will be represented by a “Guardians’ Council”, composed of one member of the plaintiff communities and one delegate of the Colombian State. The Guardians’ Council represents and protects the river in all scenarios. This ruling is a creative solution to socio-environmental problems. For years, the government had neglected the Atrato River’s territories and marginalized its neighboring communities. Thus, through the creation of the Guardians’ Council with decision making power, a novel forum that ordinary law does not envision, community participation was strengthened, and an innovative form of environmental governance was set up. Interestingly, this governance is in charge of the local population, whose on-the-ground experiences and knowledge could provide valuable perspectives about more appropriate and sustainable interactions with the Atrato River ecosystem”⁹⁹:

Recognizing nature as a subject of law engenders making a claim for the dissolution of the dualism between society and nature, a demand to implement alternatives to the fatigued

⁹⁶ Corte Constitucional, supra note 90, at 9.35.

⁹⁷ *Id.*

⁹⁸ *Id.* at 9.31.

⁹⁹ Luisa Gómez-Betancur, (2020). The Rights of Nature in the Colombian Amazon: Examining Challenges and Opportunities in a Transitional Justice Setting. *UCLA Journal of International Law and Foreign Affairs*, 25(1). Available at: <https://escholarship.org/uc/item/5bk379rd>

discourse of development, and a vindication for regenerative systems instead of the dominant growth economic model. Undoubtedly, the rights of nature expose the anthropocentric perspectives of the environmental law and emphasize the need to imagine and create [...] strategies that advocate for the indivisible and interrelated links between people and nature.¹⁰⁰

Given the recognition of “the rights of nature” for rivers and other non-human entities, one may ask whether there is any possibility for ecosystems that endured negative impacts of war, to be acknowledged as victims of the armed conflict. If so, could rivers, ecosystems or animals be redressed and restored as a consequence of the harm suffered?

These questions and reflections seem to have resonated with the transitional justice architecture. In recent years, the Investigation and Prosecution Unit of the Special Jurisdiction for Peace declared the environment as “a silent victim of the armed conflict” in the framework of an investigation carried out in the south of the country (Nariño Department). The Unit asserted “to be seeking [environmental] reparation mechanisms and guarantees of non-repetition.”¹⁰¹

The rights of nature have already been mentioned in other Units of the SJP.¹⁰² But, remarkably, transitional judges have recognized the malfunction of antagonism or dualism between society and nature and have instead promoted a more intertwined conversation between these worlds. They have emphasized the notion of territory as a victim.¹⁰³ Territory refers to “a living whole and sustenance of identity and harmony.” In accordance with indigenous ontologies, “territory” denotes no separation between the material, the cultural, and the spiritual spheres, and human and nonhuman are interrelated and interdependent.¹⁰⁴ Based on this, the SJP, one of the

¹⁰⁰ *Id.*

¹⁰¹ See Press Release, JEP, Unidad de Investigación y Acusación de la JEP, “recon-oce como víctima silenciosa el medio ambiente,” Comunicado 009 (June 5, 2019), <https://www.jep.gov.co/SiteAssets/Paginas/UIA/sala-de-prensa/Comunicado%20UIA%20-%20009.pdf> [<https://perma.cc/9RCF-AH35>].

¹⁰² JEP et al., Diversidad étnica y cultural, pluralismo jurídico y consulta pre-via: instrumentos de coordinación y articulación entre los pueblos indígenas y el sistema integral de verdad, justicia, reparación y no repetición (SIVJRNR) 11(2019), <https://www.jep.gov.co/DocumentosJEPWP/protocolo.pdf> [<https://perma.cc/5E8L-246W>].

¹⁰³ The idea of nature as a victim was referenced by Decree-Law 4633 of 2011, known as the Law of Victims for Indigenous Communities. This legislation, a political victory for the indigenous peoples’ organizations, establishes that indigenous peoples have “special and collective ties” with “Mother Earth” (Article 3) and have the right to “harmonious coexistence in the territories” (Article 29). In addition, it recognizes that the territory is “a living whole and sustenance of identity and harmony” and that it “suffers damage when it is violated or desecrated by the internal armed conflict” (Article 45). “Spiritual healing” is part of the integral reparation of the territory (Article 8). Belkis Izquierdo & Lieselotte Viaene, Decolonizing Transitional Justice From Indigenous Territories, ICIP(2018), http://www.icip-perlapau.cat/numero34/articles_centrales/article_central_2 [<https://perma.cc/VX78-KC9R>].

¹⁰⁴ Izquierdo & Viaene, supra note 103.

most diverse tribunals in the world regarding gender and ethnicity,¹⁰⁵ has issued several decisions recognizing territories as victims of the armed conflict. According to recent decisions, the Katsa Su and the Cxhab Wala Kile territories of the indigenous Awá and Nasa peoples, respectively,¹⁰⁶ as well as territories of the afro-colombian communities from Tumaco, Ricaurte and Barbacoas¹⁰⁷ municipalities are subjects of rights. These decisions have been accompanied by other recent ones in the cases of Eperara Euja territory of Eperara Siapidaara people and other nine indigenous people and communities.¹⁰⁸

Although a close examination of the case law in Colombia shows that there is no unique, standardized, or uniform content of the “rights of nature,” and several challenges remains in its implementation, this approach might be a promising path to fill the gaps of transitional justice mechanisms and guarantee justice, truth, reparations, and non-recurrence, also, for territories, rivers, and animals.

Conclusion

This Article examined the effects that corporate abuse in post-conflict Colombia had and continues to have over land, rivers and animals. The devices of dispossession, exploitation, and domination were not eliminated after the signature of the Peace Agreement, and anthropocentric and corporate-centric logics continue to dominate. Land grabbing, abuse of animals, material pollution and moral or symbolic contamination of rivers were some of the mechanisms that reigned during the war, many of which have not been eliminated. The very different types of personhood that corporations and non-human bodies and territories enjoy have very real consequences: the lack of incentives for economic actors to join the transitional justice regime is causing an impunity

¹⁰⁵ See Santiago Pardo Rodríguez, A Second Chance on Earth: Understanding the Selection Process of the Judges of the Colombian Special Jurisdiction for Peace, 10 *Notre Dame J. Int'l & Compar. L.* 209, 261–62 (2020).

¹⁰⁶ Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] noviembre 12, 2019, Auto SRVBIT 079; Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] diciembre 3, 2019, M.P: B. F. Izquierdo Torres, Auto SRVBIT 099; Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] enero 17, 2020, M.P: R. Sánchez, Auto SRVBIT 002.

¹⁰⁷ See Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] enero 24, 2020, M.P: B. F. Izquierdo Torres, Auto SRVBIT 018; see also Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] octubre 21, 2019, M.P: B. F. Izquierdo Torres, Auto SRVBIT 067.

¹⁰⁸ See Jurisdicción Especial para la Paz [JEP] [Special Jurisdiction for Peace], Sala de Reconocimientos de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas [SRVR] junio 10, 2020, M.P: B.F. Izquierdo Torres, Auto SRVBIT 094.

crisis, in which animals, rivers, and land remain unredressed. While corporate actors enjoy many rights of legal personhood and few of the responsibilities they would have to face were they natural persons, non-human bodies and territories face an ongoing battle to achieve protection through *some* kind of personhood. Hence, this Article also explored the accountability efforts beyond and within transitional justice mechanisms. Both national and international activists and attorneys have been seeking corporate accountability for economic actors, and local law has made huge advances in enhancing the rights of nature to addressing harms to territories, rivers, and animals as victims of conflict. While human and non-human victims keep pointing at extractivism as one of the main causes and effects of the war, legal and illegal corporate power continues to disguise these effects through speeches of economic and human development. But the idyllic view of a post-conflict Colombia, strongly in doubt after the wave of protests in the country,¹⁰⁹ is increasingly raising novel legal battles demanding protection and reparations. A post-conflict society must find a space for those who it considers “wild”, and being worthy of state protection should be extended to the life of every animal, to the life of every human, and to the lives that rivers have shared, enhanced, and buried.

¹⁰⁹ For more detail, see *Informe Final De La Misión De Observación Internacional Por Las Garantías De La Protesta Social y Contra La Impunidad En Colombia*, published in October, 2021, available at: <https://ddhcolombia.org.co/2021/10/07/informe-final-de-la-mision-sos-colombia/>