

THE MULTIPLE FRAMES OF GENDER-BASED VIOLENCE (GBV) IN THE COLOMBIAN JUSTICE AND PEACE JUDICIAL SYSTEM

By

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Author's Declaration

I, the undersigned Monica Alejandra Acosta Alvarado hereby declare that I am the sole author of this thesis. To the best of my knowledge this thesis contains no material previously published by any other person except where due acknowledgement has been made. This thesis contains no material which has been accepted as part of the requirements of any other academic degree or non-degree program, in English or in any other language.

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ABSTRACT

The Justice and Peace law of Colombia established the legal framework for the disarmament demobilization and reintegration (DDR) of ex-paramilitary members of the United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia), and the transitional justice criminal system to investigate, prosecute and judge AUC ex-combatants for the crimes committed during conflict, including crimes related to GBV. The law has been widely criticized by Colombian feminist organizations for its lack of action in investigating, prosecuting and punishing GBV. However, an aspect that had not been analyzed is the inconsistencies in the conceptualization and framing of GBV in conflict. This thesis aimed to understand how GBV was framed in the Justice and Peace law, and how that framing led to confusing judicial precedents. Using a critical frame analysis, the thesis explores the Justice and Peace law, the judicial rulings of “Salvatore Mancuso”, “Edison Giraldo Panigua” and “Vencedores del Arauca”, and the documents elaborated by the Attorney General’s Office of Colombia (AGO) to investigate and prosecute crimes related to GBV. From the existing literature three frames of GBV were identified in the law: the *individual-rights frame*, the *women-centered frame* and the *structural inequality frame*. The findings of the analysis show that these multiple frames were used indistinctly by the judges in the three judicial rulings studied here generating distorted and contradictory approaches to GBV in conflict. These cases illustrate how a poorly formulated Justice and Peace law, with a weak conceptualization of GBV, generates a judicial vacuum that translated into confusing judicial rulings.

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LIST OF ABBREVIATIONS

GBV: Gender-based violence

VAW: Violence against women

CRSV: Conflict-related sexual violence

AUC: United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia)

FARC: Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)

LTTE: Liberation Tigers of Tamil Eelam

WPR: Women's Peaceful Road (La Ruta Pacífica de las Mujeres)

CWIP: Colombian Women Initiative for Peace (Iniciativa de Mujeres Colombianas por la Paz)

MNI: Table of National Committees (Mesa Nacional de Incidencia)

AGO: Attorney General's Office of Colombia

CNMH: National Center for Historical Memory (Centro Nacional de Memoria Historica)

ICTR: International Criminal Tribunal for Rwanda

ICTY: International Criminal Tribunal for the Former Yugoslavia

INTRODUCTION

Crimes against humanity have been committed by all the actors who have participated in the Colombian conflict. The left-wing guerrillas, the right-wing paramilitaries, the State forces, drug lords, and private actors have been responsible for committing crimes such as forced displacement, massacres, enforced disappearances, targeted homicides, and GBV. Among all parts involved, the right-wing paramilitaries were perhaps one of the most murderous actors. Based on the reports elaborated by the CNMH, the paramilitaries, organized under the name United Self-Defense Forces of Colombia (AUC), implemented extremely violent strategies attacking civilians in the name of their war against the guerrillas (CNMH 2014). The AUC were not the only ones responsible for implementing strategies to defeat and intimidate non-combatants, however, their tactics were the most extreme and violent including the use of sexual violence targeting women and children on the territories they once controlled.

In 2003, the former president of Colombia Alvaro Uribe Velez, as an attempt to minimize the critical level of violence in the country, decided to start a negotiation process with the AUC. To consolidate the agreement reached by the government and this criminal organization, in 2005 the *Justice and Peace Law* (Law 975/05) was enacted. The act provided the regulatory framework to implement transitional justice mechanisms aimed to guarantee *justice, truth* and *reparation* for the victims. It also provided benefits to demobilized paramilitaries that fulfilled the requirements established in it. Under the law, the ex-combatants will continue holding responsibility for the crimes committed, but the sentencing periods were drastically reduced with maximum periods of incarceration of eight years. The act also instructed the special tribunals and the Attorney General's Office (AGO) on the procedures required to guaranteeing its implementation, defining the Justice and Peace judicial system.

Given the importance of this judicial system, scholars delved into the analysis of different aspects of the Justice and Peace Act including the debates prior its enactment, its measures and the judgments product of it. For instance, Arvelo (2007) explored the process that preceded its implementation. He identified the different frameworks that were contested in the multiple bills including the “peace-forgiveness” frame, the “strict justice” frame, and the “peace-justice balancing” frame. Laplante and Tidon (2006) explored how this law was created in a context where the conflict was not reaching an end, so its measures of transitional justice were not a response to the aftermaths of a conflict, but an attempt to contribute to the finishing point of it.

Other scholars analyzed the impact of the judgments and its relationship with gender. In particular, Restrepo (2007) studied how this law and the so-called *Justice and Peace judgments* had led to the invisibilization of women survivors of GBV. She argued that the limited participation of women’s organizations in the defining process of the Justice and Peace Law led to the disempowering of women in the judgments. According to her findings, the framing of the investigation procedure revolved around the prosecuted testimony, silencing women victim’s voices. However, little analysis of the impact of this law on the framing of GBV in the context of transitional justice in Colombia has been made. The studies mentioned above do not question how sexual violence, rather than an extraordinary phenomenon only present during war times, is part of the structural violence that disproportionately affects women lives. Moreover, they ignore how the distorted frames led to confusing judicial precedents. Therefore, this thesis will offer a different understanding to the analysis of GBV framing in the judicial process that are part of this transitional justice system.

More precisely this thesis will explore how GBV was framed in the Justice and Peace law and in the judicial decisions taken under this legal framework in Colombia. In order to understand

this phenomenon, it will be necessary to analyze how the distorted framings of GBV in those judgments led to the establishment of confusing judicial precedents that perpetuated gender notions about women roles in conflict and in peace times. To answer the research question, I decided to use an in-depth qualitative research on several documents of the Justice and Peace legal system. Using the qualitative methodology proposed by Bacchi's in *Analyzing Policy: What's the problem represented to be?* I will analyze the different ways in which gender-based violence was framed in the judicial decisions and how it affected the outcomes of each decision. The initial task of this methodological approach is to analyze policies, in this particular case the Justice and Peace law, the judicial ruling of the Court and the judicial procedures of the AGO, to critically discern how the 'problem' is represented and to assess the different representations (Bacchi 2012, 22). The WPR approach will allow me to question what the assumptions of the Court were in framing sexual violence. Therefore, understanding how sexual violence was problematized in this judicial decision is a critical step in answering the research question proposed here. I argue that a poorly formulated law causes flaws in its implementation process. In this particular case, the poor conceptualization of GBV in the Justice and Peace law led to confusing judicial rulings that contradict each other in their understanding of GBV in the context of Colombia. Moreover, I argue that this translates into inconsistent judicial precedents generating a confusing legal framework for the investigation of these crimes

Considering the dimension of the Justice and Peace system, as a special jurisdiction for the crimes committed by the AUC, it was necessary to carried out an initial research. Among the 43 judicial decisions that currently exists under the Justice and Peace system, only three judicial rulings on GBV were identified. A very low figure considering that the CNMH in its report *Basta ya!* with information provided by the Women's Peaceful Road (La Ruta Pacífica de las Mujeres -

WPA), documented around 376 cases related with GBV that were allegedly committed by the AUC. Since the focus of this thesis is the understanding of the framing of GBV, I will only analyze the three decisions identified, the Justice and Peace Law, and the documents provided by the AGO related to the investigation of GBV in conflict.

This thesis will be divided into three chapters that explore the framing of GBV in Colombia. The first chapter is an extended literature review on gender and transitional justice as a broader concept, considering the relationship of gender, law and justice. An additional analysis of the work done in Colombia in relation to gender and transitional justice, specifically focus on GBV in conflict will be present here as well. The second chapter will describe the historical background of the peace process with the AUC in order to understand the context in which the Justice and Peace was enacted. This chapter will also discuss the role of women and women's organizations during the negotiation process of the law, and in the judicial processes. The aim of this chapter is to understand the relationship between the *Justice and Peace law* and gender. The third chapter will analyze the different frames of GBV in the three decisions of the High Court of Justice and Peace: the judgment of Salvatore Mancuso, the judgment "Bloque Vencedores de Arauca" and the judgment of Edison Giraldo Panigua. The final part of this thesis will be the conclusions that summarize the findings of the analysis.

METHODOLOGY

Given that the focus of this research is to understand and assess the framing of sexual violence in the Justice and Peace judgments of Colombia, I will use a critical frame analysis that requires an in-depth qualitative research on several documents of the Justice and Peace legal system. This research will require the analysis of the 975/2005 Justice and Peace Law, the judicial decisions on GBV took under that legal frame, and the documents elaborated by the AGO defining the investigation procedures related to these decisions. The frame analysis will allow me to understand the variation on the frames of GBV in the documents mentioned before. Critical frame analysis is built upon theoretical notions from social movement theory, policy theory, and gender theory (Verloo 2005, 34). Using the methodology proposed by Carol Bacchi in her book *Analyzing Policy: What's the problem represented to be?* (WPR), I will analyze the different ways in which GBV was framed in the judicial decisions and how it led to confusing judicial precedents.

The WPR approach is based on a post-structuralism mode of analysis (Bletsas 2012, 32). This approach challenges the idea of the existence of objects as fixed, in particular, the idea of frames and problems as fixed realities (Bacchi 2012, 21). As described by Verloo (2005), a frame could be understood as an interpretation scheme that structures the meanings of reality and transforms fragmentary information into a structured “problem”. Thus, frames are not the description of a reality but a specific construction that provides meanings to any given reality and shape the understanding of it (Bletsas 2012, 34). Therefore, using the WPR approach will allow me to question what the assumptions were in the framing GBV in the Justice and Peace judicial system.

The research strategy of this thesis has two phases. The preliminary phase was the identification of the judgments under the Justice and Peace judicial system related to GBV. Currently, there are 43 judicial decisions against ex-paramilitaries members under this legal framework. Most of the judicial decisions of the High Court established criminal responsibility for crimes such as targeted homicides, massacres, extortion, forced displacement, enforced disappearances, and a few of them on GBV. Among the existing judgments, only three contain decision against this phenomenon: the judgment of Salvatore Mancuso, the judgment “Bloque Vencedores de Arauca” and the judgment of Edison Giraldo Panigua.

The second phase of the research is the analysis of the Justice and Peace law, the judicial rulings mentioned above, and the AGO documents, to identify and critically assess the different frames of GBV used in them. To do the analysis it is necessary to understand the frames that conceptualize GBV in relation to gender equality in literature. Three frames will be use for the analysis: the *structural gender equality frame*, the *women-centered frame*, and the *individual-rights frame*. The *structural gender equality frame*, understand GBV as a form of gender-based discrimination, rooted in gender inequality (Krizsan et. al 2014, 762). In line whit this idea, Cockburn (2012) argue that GBV is not a phenomenon which occurs in isolation, but is perpetuated by the gender power dynamics of a given society. The *women-centered frame* focuses on the idea that women are particularly more affected by any type of GBV in comparison to men, however, it does not connect this element with the structural social factors that create inequality among genders (Krizsan et. al 2014, 762). Finally, the *individual rights frame* that is centered on the individuals and focus on the symptoms of the issue rather than it structural causes (763). In this frame, the circumstances of the individuals are the reasons behind their victimization and not the power gender dynamic that perpetuate violent manifestations such as sexual violence, domestic

violence, among others. The assessing of this framings will be done using the methodology proposed by Bacchi in her WPR approach (Bacchi 2012, 23)¹. The aim of this phase is to critically discern how the ‘problem’ is represented in each framing and to assess its different implications (23) in the judicial system. By looking at the discrepancies in the framing of GBV in the law, judicial decisions and AGO documents, I would be able to see what the impact of them was in the establishment of judicial precedents. This is a critical aspect in the Colombian jurisprudence nowadays considering the number of victims of GBV that are still waiting for justice.

¹ Bacchi proposed in her WPR approach several critical questions to understand and analyze the framing of any given problem. The six questions will be used in this thesis in order to identified the critical key elements of how sexual violence was framed in this particular judicial system and what were the implications of the different framings. The question proposed by Bacchi are: What’s the “problem” represented to be in a specific policy? what presuppositions or assumptions underlie this representation of the “problem”?, how has this representation of the ‘problem’ come about?, what is left unproblematic in this problem representation? where are the silences? can the ‘problem’ be thought about differently? what effects are produced by this representation of the “problem”?, how/where has this representation of the ‘problem’ been produced, disseminated and defended? How could it be questioned, disrupted and replaced?

CHAPTER 1: LITERATURE REVIEW GENDER AND TRANSITIONAL JUSTICE.

The purpose of this chapter is to explore the theoretical debate regarding gender and transitional justice. The ideas discussed and analyzed here will be useful to provide a conceptual framework to understand the intrinsic connection between gender and justice in the context of post-conflict countries from a broader perspective, to later on focus on the Colombian case. The first section will discuss the different approaches used by multiple authors in the analysis of GBV in war and in peacetime, the aim here is to understand what the material implications of these crimes are for the survivor lives. The second part will explore the relationship between gender, law and transitional justice to analyze what the responses have been from the international community to these atrocities. The final part of this chapter will explore the work done in Colombia regarding GBV and transitional justice, which will provide a framework of the existing literature that explored the relationship between gender and the Justice and Peace law. This description and analysis of the existing literature will be the departure point for the critical frame analysis implemented in the third chapter.

1.1 GBV in war and in peace time

Sexual violence continues to be one of the multiple atrocities that occur during war. Particularly women and children suffer the impact of these criminal acts that are the product of critical conditions that exacerbate gender and power dynamics in conflict environments. As define by Wood (2009) sexual violence is a broader category that includes rape, sexual slavery, sexual torture, enforced prostitution, sexual organ mutilation, forced pregnancy and enforced sterilization. These horrific manifestations of violence have always been part of the war dynamics, however,

just until relatively recent years has the public debate over sexual violence in conflict started to gain significant attention.

Scholars have discussed several aspects of these types of crimes, including the motivations and reasons for the use of sexual violence in conflict, how it has been framed by international organizations and the academia, and what the impact is on survivor lives. Ward and Marsh (2006) studied the multiple motivations of rape and other forms of sexual violence in war, finding that this type of violence could be the product of three different elements: the collapse of social norms that accompanies war; it could also be part of a systematic strategy carried out by one or multiple actors involved in conflict for the purpose of destabilizing populations, destroying bonds in communities and families; or with the special purpose of threatening and frightening civilians. Other scholars, such as Wood (2009) had delved into understand why some groups do not engage in sexual violence, in order to provide an opposite approach to the general idea that sexual violence is unavoidable in conflict. By analyzing the LTTE, a secessionist group in Sri Lanka, she provided an explanation of the top-down implication, arguing that the level of control over the troops, in which cadre were punished for sexual relations, effectively enforced its decision to prohibit sexual violence against civilians. Therefore, the top-down approach could be one of the multiple reasons why some groups do not commit these types of crimes during the conflict.

As any other social phenomenon, GBV have been framed under different categories. Crawford (2013) explored the different approaches in which GBV has been framed by the international community. Even though this type of violence has been part of all wars, the international community began to recognize it and condemn it after the horrific genocides in the former Yugoslavia and Rwanda. Since then, sexual violence has been defined as a war crime, as a crime against humanity, an act of genocide and more recently as a security issue (Crawford 2013, 506).

Crawford (509) argue that narrowing sexual violence, in particular, rape, as a security issue creates a situation in which a significant amount of work and resources are invested to just one of the crimes from the spectrum of GBV and inequality. Therefore, by overlooking this broader spectrum, issues like domestic violence, lack of political and economic rights for women, inequality in education, sexual violence in peacetime, and other manifestations of GBV do not receive the resources needed (509).

Another analysis on GBV in wartime and in peacetime is focused on the impact that it has on survivor lives. Two main positions can be identified within this discussion. On the one hand, GBV could be understood as a continuum of violence that exacerbates during wartime. On the other hand, GBV could be understood as a separate phenomenon with unique dynamics that could be differentiated in war and in peacetime (Merry 2009, 157). Merry (2009) noted this two positions by analyzing the relationship of gender and war through the understanding of the role that militarization has in gender dynamics. One position argues that the process of militarization has its own implications, therefore, the gender dynamics of this particular context differs from the ones in the non-militarized environments. A military culture has its own set of norms and values focused on ideas of masculinity, sexuality, violence, and women (160). This cultural understanding of a particular form of masculinity during war is also seen as a way of acting out, or performing, in which physical violence against women is celebrated (161). In this particular context, masculinity is developed through militarization that sees violence as heroic and essential to support the fight (162).

The other position argues that, far from being a particular phenomenon that stands by its own, sexual violence is not the result of a “performing” of masculinity in the specific dynamics of war, but it is part of the widespread sexualized patterns of dominance (Cockburn 2012). Authors such

as Cynthia Cockburn (2012) defined this as a continuum leading from militarism, through militarization, followed by episodes of ‘hot’ war and unsteady peace with sustained military investment, during which women continue to be affected by the same structural violence with slightly different levels of intensity. This continuum of war and violence is also argued by Jefferson (2014), based on her findings she argues that women experience coercion by men in similar forms in war and so-called peace. Men who were accustomed to have control over women’s bodies in peace times continued to do so with brutality during war.

In accordance with these ideas, it is possible to argue that the material implications of these horrific acts are constant for women whether in peace and in wartime. Therefore, to understand how GBV is framed by different scholars, international institutions and governments, it is necessary to analyze the different dimensions and characteristics that are attributed to this phenomenon.

1.2 Gender and transitional justice

Transitional justice is commonly described as a package of measures such as prosecutions, truth commissions, reparations, legal reforms, reconciliation activities (Bell et. al 2007), and other forms of acts that could help to consolidate a more peaceful and stable environment after a conflict ends. Considering the dynamics of war, and the different implications it has in women and men lives, gender has become a crucial aspect in the debates of transitional justice. Since the 1990’s, GBV in particular, has been the major issues discussed in transitional justice. Feminist scholars have discussed several points regarding the relationship of this two concepts, including the advances made in the recognition of women experience of GBV in conflict, and the legal accomplishments to tackle these atrocities.

Advances in the recognition of women's roles and women's experiences of GBV were made in these debates thanks to the efforts of feminist movements. Bell and O'Rourke (2007) identified three primary practical advances: the recognition of women's experience of GBV as one of the most serious crimes of war; the identification of the gap between legal standards and the prosecutions for these crimes; and the implementation of reforms in courtroom procedures to ensure that survivors do not face re-victimization in an adversarial legal process.

Besides these practical advances, Crawford (2007) also recognizes the legal advances in the process of framing GBV. The first frame, identified in the Fourth Geneva Convention of 1949, focused in the need to protect women's "honor", particularly against rape, enforced prostitution, or other forms of assaults (Crawford 2007, 512). After the atrocities in former Yugoslavia and Rwanda, in 1995 at the Conference on Women in Beijing, the United Nations (UN) framed sexual violence as a violation of women's human rights and physical security (511). This shift in the framing GBV, changed the way in which the international community addressed the issue by creating new mechanisms to punish and avoid those atrocities.

International tribunals also played a major role in the process of framing GBV in legal terms. The International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) prosecuted rape as a war crime, a crime against humanity, and an act of genocide, setting completely new precedents (Crawford 2007, 506). After these changes in the understanding of GBV, the UN through the Security Council Resolution 1820 included the use of sexual violence as a weapon of war. This new understanding made international institutions such as the UN Secretary-General define responsibilities to monitor the occurrence of sexual violence in conflicts, setting it as a priority of the Security Council's agenda (Crawford 507).

However, despite these major advances in the recognition of women experience of GBV in conflict, two main aspect continued to be questioned by feminist scholars. First, the broader relationship between gender and transitional justice that goes beyond sexual violence and second, the effectiveness of the legal framework created to address this issue. Campbell (2007) argue that all social constructions, including practices, laws and norms are not gender-neutral, therefore, they have implications on the gender dynamics of any society. For her, the existing mechanism of transitional justice reiterate hierarchical models of gender (Campbell 2007, 15) by portraying women as helpless victims without any agency. She suggested that it is necessary to develop an understanding of GBV as “a continuum of acts that constitute gender norms through force” (22). Moreover, Hamber (2007) argue that transitional justice as conceived today fails to recognize the levels of power within society and the continuities between past and present. Therefore, it is essential to consider GBV before, during and after conflict.

When it comes to the effectiveness of transitional justice mechanisms, scholars have analyzed the impact that the ICTR and the ICTY judicial decisions has on survivor lives. Both tribunals have recognized sexual violence and GBV as one of the most serious offenses against humanity (Franke 2006, 45), contributing to groundbreaking international jurisprudence (Jefferson 2014). However, these tribunals have been criticized by scholars such as Hamber (2006) because of the weak investigations and the lack of effective long-term prosecution strategies. This has caused disappointment among women’s rights activists and survivors of sexual violence (Jefferson 2014), especially because these decisions have left out of the discussion, social dynamics that are part of the dynamics of violence. Ní Aoláin (2009) state that it is not possible to evaluate the credibility and value of accountability mechanisms in transition periods without paying attention to the broader dynamic of the society in question.

In order to address the issues of GBV and VAW in conflict, it is necessary to understand the practical and legal implications that the different framings of sexual violence have had so far. As described in this section, the different frames of GBV used by the international community led to the implementation of different interventions that had an impact on survivors. Therefore, analyzing the different implications of any given frame is an essential step of any policy design.

1.3 Gender, Law, and transitional Justice in Colombia

An interesting case for the analysis of the relationship between gender and transitional justice is the Justice and Peace Law in Colombia. Measures of transitional justice have been implemented in Colombia since 2005 when the government negotiated a ceasefire with the paramilitary group AUC. As part of the transition process, the Peace and Justice law was enacted in 2005. It established the legal framework to investigate and judicialize ex-combatants that were responsible for crimes against humanity such as massacres, forced displacement, homicides, force recruitment, GBV, among other types of crimes. Given the importance of this law, scholars such as Guzman (2011), Restrepo (2007) and Salcedo (2013) have analyzed its effectiveness to see if it has guaranteed justice, truth, and reparation for the victims and survivors. They agree in the lack of effectiveness of this law, in particular two aspects have been explored with more detail: the relationship of GBV with conflict, and the lack of a gender perspective in the existing measures that have caused the silencing of women.

One of the most relevant aspect analyzed by scholars is the relationship of gender dynamics in the Colombian context, the conflict, and the interventions from the government to address this issue. For instance, in her work with women's organizations around the world, Cockburn (2012) recognize the role that Colombian organizations such as the Women's Peaceful Road (WPR) have had in the understanding of GBV in conflict and in peacetimes. She found that women survivors

and women's organizations see the gender power relations within the Colombian context as constant during peacetime and wartimes (Cockburn 2012). Women close to conflict environments suffer from similar expressions of violence in both periods. Rape and domestic violence are seen to be a constant in the everyday lives of Colombian women.

The lack of effectiveness of the Justice and Peace act addressing GBV, is one of the critical aspects that has been studied by Colombian scholars. Guzman (2011) focus her analysis in the measures of this law and how they have not guarantee access to justice for the survivors of GBV. She argues that this particular law lacked a gender perspective, creating an inefficient judicial system because it ignores the reality that Colombian women face, in particular survivors of GBV, when they approach judicial authorities. For instance, survivors always face discrimination from society and authorities, but this aspect has never been addressed by the government in any of the policies implemented. She suggests that empowering women during the judicial processes by listening to their perspective and needs should be a priority for the government (Guzman 2011, 39). Scholars such as Salcedo (2013) and Restrepo (2007) focus their investigations on the understanding of the role of women in this judicial system and how the lack of a gender perspective made it inefficient. Salcedo (2013), argue that the limited women participation in the negotiation process with the AUC translated into weak measures that ignore and silence women in the judicial measures. Restrepo () with similar conclusions argues that the fact that the investigation procedure focused on the prosecuted confessions, it disempowered for women as it ignores their realities.

As showed here limited research of the relationship between gender and the Justice and Peace Law has been made so far, for instance, none research has been made on the impact that the framing of sexual violence has in the judicial process and investigations. So far, no study has analyzed how sexual violence was framed in the Justice and Peace judgments in Colombia. Considering that each

of the existing judgments have a different approach when it comes to the understating of GBV, this thesis will explore the impact of the distorted framings in the establishment of judicial precedents.

CHAPTER 2: HISTORICAL BACKGROUND THE PEACE PROCESS WITH THE AUC AND THE ROLE OF WOMEN'S ORGANIZATIONS

This chapter will provide a historical background of the peace negotiation process with the Self-Defence Forces of Colombian (AUC), and the Colombian government in order to provide a contextual base for the frame analysis carried out in the next chapter. The first part will briefly describe the role that the AUC had in the Colombian conflict, and it will also provide a description of the negotiation. The aim here is to contextualize this peace process within the Colombian recent history. The second section will have a brief description of the law and its conceptualization of GBV in order to understand what the approach to justice was in the final version. The final part will present a description of the role played by Colombian Women's organizations in the formulation of the law. It will explain the interventions made by them before and after the law's enactment in their struggle to guarantee the rights of the victims of GBV.

2.1 Negotiation process with the AUC

The Colombian conflict is characterized by its complexity because of the multiple actors involved and their multiple interests. One of the most violent non-state armed actors were the AUC which formally demobilized in 2006 (Arvelo 2006, 402). The paramilitary established a contra-insurgency strategy against the guerrillas from the mid-1980's to the beginning of the 2000's, which included massive attacks against the population that lived in the areas controlled by the guerrillas. According to the investigation carried out by the CNMH, between 1982 and 2002, the paramilitaries were responsible for 1.166 massacres, around 58,2% from a total of 1.982 acts documented (CNMH 2014). They were responsible for acts of torture against civilians, the CNMH

documented that the AUC committed 371 acts of torture, around 63% from a total of 588 acts document (CNMH 2014). They also committed crimes such as forced displacement, forces disappearances, and GBV.

Considering the multiple actors involved in the conflict, calculating the number of cases of forced displacement, force disappearance and GBV attributable to the AUC is a very complex task. The CNMH and CODHES, a well-known human rights NGO in Colombia, calculated that the number is around 6 million Internally Displaced Persons (IDP) (CNMH 2014), however, the figure could be bigger considering the difficulties that the victims of these crimes face when accessing the authorities. Additionally, discerning which actor was responsible for the act is very difficult because guerrillas and paramilitaries operated in the same areas in close periods of time.

Nevertheless, the most difficult task is calculating the exact number of victims of GBV. Due to the stigmatization and social discrimination, victims of GBV usually do not complaint with authorities. An under-registration of these violent acts seems to be the rule. As described by Kimberly Theidon (2006) women have little reason to tell a stigmatizing and shameful experience, especially when the possibility of finding justice is so distant. In the case of Colombia, the rate of prosecution and judgments of these types of crimes is very low. According to the figures provided by the AGO, only 5% of the complaints of GBV end up in a judicial punishment (AGO 2016). The CNMH with data recollected from the AGO, the Constitutional Court, victims' testimonies and perpetrators confessions calculated around 317 cases of GBV in conflict, a figure that includes crimes such as rape, sexual slavery, forced abortion and forced sterilization. The AUC were responsible for 304 of these acts, around 95% from the total.

In July 15, 2003, the Colombian ex-President Alvaro Uribe Velez through its interlocutor, the Peace Commissioner Luis Carlos Restrepo, started a peace negotiation with AUC representatives

in Santa Fe de Ralito, Cordoba (Arevalo 2006, 430). The “Ralito Accord” as it was called, define the terms for the peace negotiations with the AUC. This process yielded a formal AUC ceasefire and an agreement to give up their arms (430). After a year of close negotiation, the government of Uribe presented to the congress the first draft of what will be known as the Justice and Peace Law.

2.2 The Justice and Peace Law: multiple framings of justice

The Justice and Peace Law is perhaps one of the most criticized laws in Colombian recent history. The first draft of the law presented by Uribe’s government aimed to enticing paramilitaries to deliver their weapons permanently in exchange for penal benefits (Arevalo 2006, 460), without addressing with enough details the process of reparation for the victims of the atrocities committed by the AUC. A variety of legislative proposals were presented and debated in the Congress after this initial draft. The debates were focused on finding a balance between punishment and reparation. After one year of intense deliberation the Justice and Peace Law was enacted by the Congress on June 22, 2005.

The Justice and Peace law established the first transitional justice measures in Colombia. The final version of the Act contains the requirements for the demobilizing combatants, the instructions for the prosecution and punishment of crimes, and the measures for victims’ reparations. Additionally, it defined that the prosecutions will be based on the prosecuted confessions. The AGO using the information provided by the ex-paramilitaries will have to start an investigation of the acts confessed, corroborating the information with the possible victims, and witnesses (Justice and Peace Law 2005).

In its considerations, it also provided a general understanding of the humanitarian crimes committed by the AUC in order to guide the judges and prosecutions in the application of the law. All crimes, including massacre, targeted killing, extortion, homicide, forced displacement, forced

disappearances in conflict have definitions in the law by making explicit references to the Colombian Penal Code (Law 599 2002). However, the law does not provide an explicit definition of GBV. The only instruction that its given is in the articles 13 and 15, where the law mentions the international regulations and conventions that could be used by the prosecutors and judges to understand GBV in conflict; the 1993 UN General Assembly Declaration on the Elimination of Violence Against Women, the 1995 United Nations Conference on Women in Beijing, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Inter-American Convention on The Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem Do Para".

2.3 Women's organizations participation

The process of peace negotiation with the AUC had little participation of victims' and women's organizations. During the first year of the peace process, the negotiations were closed, only government and AUC representatives discussed the details of the "Ralito Accord". Women's organizations such as the WPR and the CWIP actively criticized the government for not allowing other crucial actors to participate in the negotiations. When the first draft of the Justice and Peace law was presented in the Congress, legal considerations were established to incorporate the participation of victims, international organizations, human rights NGO's and Women's organizations.

The participation of the Women's organizations could be divided before and after the enactment of the law. Before the law, both the WPR and the CWIP engaged in public manifestations against Uribe's government decision to have a close negation with the AUC. Marches and protest throughout the country were organized by these two groups who considered that the process was illegal and unconstitutional. After a year of struggle, the

Table of National Committees (MNC acronym in Spanish)² was established to guarantee the participation of the multiple actors that were left out in the initial phase, including the CWIP (Ibarra 2011, 252). After working intensively for seven months, the MNC asked the government to: a) accept the recommendations of the special rapporteurs on GBV; b) fulfill the commitments made when ratifying international conventions on the fight against GBV; c) investigate crimes against women committed by the AUC; d) ensure women victims of GBV safety; and e) create a truth commission (244). The final text of the law included their proposals in the articles: 39. Protection of victims and witnesses; 40. Exception to publicity at trial; 42. Attention to special needs of victims; 51. National Commission for Reparation and Reconciliation, and 59. Measures to facilitate access to the archives of the Justice and Peace Law.

After the enactment of the law, these organizations have been more focused on guaranteeing the victims access to justice. Their collective actions are aimed to complain with the authorities about the impediments for women to participate in the reparations hearings, and the lack of action from the authorities to investigate the cases related to GBV (Ibarra 2011, 254). Nowadays, The Women's Peace Route and the Colombian Women Initiative for Peace continue working on this issues, helping women around the country to fight for their rights providing physiological and legal support.

² Author's translation from Spanish. Mesa Nacional de Incidencia

CHAPTER 3: FRAME ANALYSIS

THE MULTIPLE FRAMINGS OF GBV

This chapter presents the results of the critical frame analysis carried out to understand how GBV was framed in the Justice and Peace Law of Colombia, the judicial decisions took by the Court under this legal framework, and the documents that describe the procedures and guidelines for the prosecution of GBV by the AGO. The aim of it is to assess the multiple frames used in these documents, and analyze how these distorted frames led to the establishment of confusing judicial precedents. The first part will focus on the Justice and Peace law, describing how GBV is defined, which international regulations were used to conceptualize GBV in the text, and what the underpinnings and assumptions were in this contextualization. The second section will explore the contesting frames of sexual violence in the “Salvatore Mancuso”, “Bloque Vencedores de Arauca” and “Edison Giraldo Panigua” judicial rulings. The aim here is to contrast the three different framings to assess what the evolution of the understanding of GBV has been in transitional justice in Colombian. The final part is the conclusion of the frame analysis, it will present how the multiple frames are distorted and create confusing judicial precedents. This will be done by contrasting the frames of GBV in the legal framework defined in the law, with the judicial rulings and the documents elaborated by the AGO.

3.1 The various framings of GBV in the Justice and Peace law

The Justice and Peace Law, defines the judicial system that implements transitional justice measures established in the peace process with the AUC. It also defines a broad framework for the investigation, prosecution and judicialization of the multiple crimes committed by the paramilitaries. Within this framework, the law does not have an explicit definition of GBV.

However, in its articles 13, 15, 38 and 58, it defines what the understanding of it should be, and what measures should be implemented to guarantee *truth, justice* and *reparation* for the victims. This section of the chapter presents the results of the frame analysis carried out to analyze the law, in particular three elements of it were studied, the framing of GBV in the general considerations, the measures to guarantee the rights of the GBV victims, and the final aim of the law.

Due to the absence of an explicit definition of GBV in the general considerations of the law, judges and prosecutors may have to many possibilities for the interpretation of this phenomenon. The only instruction that its given on this interpretation, as described in the previous chapter, is that judges and prosecutors can turn to the articles 13 and 15, where the law mentions the international regulations and conventions that could be used to understand GBV.

The three frames of GBV that this law refers to in the general considerations, can be translated into incoherent understandings of the same phenomenon. As described in the methodology section and in the literature review of this thesis, all of these regulations and conventions have different frames for conceptualizing GBV. The “Belem Do Para” Convention, and the Conference on Women in Beijing used a *women-centered frame* of GBV. This frame focuses on the idea that women are particularly more affected by any type of GBV in comparison to men, however, it does not connect this issue with the structural social factors that create inequality among genders (Krizsan et. al 2014, 762). The UN Declaration on the Elimination of Violence against Women and the CEDAW uses a *structural gender-inequality frame* (762). In this case, GBV is understood as a form of gender-based discrimination, rooted in gender inequality (763).

When it comes to the definition of the measures that should be implemented to guarantee *truth, justice* and *reparation*, the law is gender neutral and uses an *individual-rights frame approach*. In its articles 38 and 58, the law uses the category “victims of GBV” that includes: women, children,

elderly people and disable persons, who are considered subjects of special protection because of their vulnerable conditions (Justice and Peace Law 2005). These vulnerable conditions, however, are not related to structural social and gender dynamics, but to their lack of agency to protect their own lives. This interpretation of women in the same category as children and disabled persons have been widely criticized by the Women's Pacific Route and the Colombian Women Initiative for Peace. They considered that this notion of women as helpless victims left them without any agency during judicial procedures. Therefore, women are portrayed as mere victims without a voice. According to the law, they have to be individually repair, however, this individual approach for reparation did not question the Colombian gender dynamics that perpetuated violent manifestations over women bodies before, during and after conflict.

Another aspect assessed during the frame analysis of this law was how the final goal of the measures established to guarantee GBV victim rights was framed. Overall, the investigation and clarification of the truth are the main priorities of the law. The rights of *reparation* for the victims are framed within *the individual rights approach*. Reparation refers to the victims' rights to have a normal live after the conflict, nevertheless, it also refers to the reintegration of ex-paramilitary members into society in the understanding of repairing the society as a whole. Thus, for the law this reparation is only possible when the perpetrators are prosecuted and condemned, when the truth is clarified, and when the ex- combatants rejoin society and live in peace with the victims.

It is possible to identify three different frames of GBV within the same law in the three sections analyzed here, the *women-centered frame*, the *structural gender inequality frame* and the *individual rights frame*. This broad understanding of GBV translate into confusing judicial interpretations of the same phenomenon. As described by Bacchi (2012) the way a problem is framed represents a particular shape of a social phenomenon and also reflects the way in which

the problem should be address within this understanding. In this case, the way GBV is framed in the law is confusing because three different options are proposed, and each of them conceptualize GBV in completely different ways. The next section of the chapter will show how GBV was framed in three judicial decisions, in order to explain how distorted these interpretations are. It will also show chronologically the evolution of the framing of GBV, as it will help to show how despite the advances, the last interpretations of this phenomenon made by the court are a setback in the understanding of GBV.

3.2 Contesting frames of GBV in judicial rulings

The Justice and Peace judicial system has been widely criticized by Colombian feminist organizations for its lack of action in investigating, prosecuting and judicializing GBV. During the first six years of its implementation, the Court took around 15 decisions, sentencing ex-paramilitary fighters for the crimes committed against civilians, including massacre, homicide, force displacement and extortion. Even though the CNMH documented the use of GBV against women and children by the AUC, no judicial ruling established their responsibility for these crimes. It was not until 2010, when the prosecutors submitted the case of “Vencedores de Arauca”, that the Court took decision for the first time over three cases of sexual slavery. Afterwards, in 2014, the court took decision in the case of “Salvatore Mancuso” and, in 2015 the most recent one, the case of “Edison Giraldo Panigua”. Overall, only three judicial decisions on cases of GBV has been made under the Justice and Peace legal framework since its enactment, a figure that by itself is alarming as it shows the lack of attention that the government and the Colombian authorities have put to these atrocities.

Moreover, within the only three judicial decisions that the Court has taken, the conceptualizations and framings of GBV used are different, varying from the *structural gender*

equality frame to the individual rights frame. As it will be show in this section, these multiple frames have cause confusing interpretations of GBV by the judges over the years. Thus, there is not a clear evolution on the understanding of this phenomenon. On the contrary, advances followed by setbacks seem to be the rule.

3.2.1 Judicial Ruling: 2011, “*Bloque Vencedores de Arauca*” and the individual rights approach

In 2011, the Justice and Peace Court took one of the most awaited judicial decisions in Colombia. After years of requesting the authorities to judicialize the acts of sexual violence committed by the AUC, the first judicial ruling on GBV was enacted by the Court. It defined the judgement of José Rubén Peña Tobón, Wilmer Morelo Castro, y José Manuel Hernández, three ex-members of the AUC Unit named “Vencedores de Arauca”. This decision established criminal responsibility for the crimes committed by these ex-paramilitaries against six women. The specific crime attributed to the perpetrators was sexual slavery committed in the regions they once controlled. The six women were forced to provide “sexual services” to the members of the unit, in exchange for the protection of their lives.

For this particular case, the Court used the *individual-rights frame* to conceptualize GBV and to define the criminal responsibility of these individuals. The judicial ruling is gender neutral as it uses the category of “victims of GBV” to refer to the women survivors. It only made references to the gender of the victims explicitly when describing the facts, while in the rest of the considerations the judges used the genderless “victims” category. In the understanding of the Court, as it is explicitly defined “anyone could be victim of sexual violence in the context of conflict. It is a matter of circumstances and not conditions such as gender, poverty, and ethnicity” (Judicial ruling

“Vencedores de Arauca” 2011)³. For the court, anyone that was living under the control of the AUC was at a higher risk of becoming a victim of GBV, and other types of violent manifestations. In spite of the general approach that the Court uses to frame GBV, in another section of the general considerations, the judges also defined sexual violence as a crime against humanity. However, no further considerations on that note are made in the whole text. In the final considerations for the case, the court reaffirms that the clarification of the context in which the crimes were committed is a priority to understand the dynamics of the conflict, and to guarantee the victims right to truth. It also ratifies the importance of prosecuting the higher leaders of the AUC for the crimes committed by them and their units, and it also orders the AGO to consolidate and define new procedures for the investigation and prosecution of GBV.

The individual-*rights approach* used in this first judicial ruling to frame GBV ignores significant aspects of this issue. First, in the whole text there is no mention of the structural violence that affect women disproportionately. Second, it ignores the cultural factors that creates inequality among genders making women more vulnerable to these violent acts. Finally, it ignores the possibility of women as possible perpetrators of these atrocities.

3.2.2 Judicial Ruling: 2014, “*Salvatore Mancuso*” and the structural gender inequality approach

The most applauded judicial decision on GBV was the judicial ruling of Salvatore Mancuso. In this particular case, the court focused on the context in which the crimes were committed defining criminal responsibility to Salvatore Mancuso, leader of the “Bloque Norte” Unit of AUC, for 175 cases of GBV that included: rape, sexual slavery, sexual organ mutilation,

³ Authors translation from Spanish

forced sterilization and forced abortion. Women's organizations around the country applauded the court decision because of the broader understanding of GBV, and because it was the first time that the court established that sexual violence was used by the AUC as a tool to generate terror among the population.

This decision is groundbreaking because of its interpretation and understanding GBV in the Colombian conflict. For this ruling, the Court used the *structural gender equality frame* of GBV. It explicitly refers to women victims of sexual violence as the most proportionally affected group, but it also refers to other victims such as children, men and members of the LGBTI community. The judges also mention the multiple factors that intersect with gender, such as ethnicity and poverty, which as a whole, made certain individuals more vulnerable to these types of violent manifestations. The judicial ruling makes explicit reference to the gender power relationships that cases inequality among the Colombian society, making women more vulnerable to these atrocities. Consequently, it makes reference to the culture of "machismo" and how women bodies are used by men in conflict, but also before and after. Moreover, for the first time in the Colombian legal framework, the judges established an innovative conceptualization of GBV as a war tool in the conflict making explicit references to the decisions took by the ICTY, in the understanding of rape as a war tool in the former Yugoslavia.

When it comes to the establishment of the measures to be implemented, the court defined similar actions as in the previous judicial ruling. The main goal must be the clarification of the truth for the victims and their families, and the prosecution of those who led the units that committed the crimes. Nevertheless, this ruling changed the way in which GBV is understood in the Colombian legal framework and it set an important legal precedent.

3.2.3 Judicial Ruling: 2015, “Edison Giraldo Panigua” and the women-centered approach

The most recent decision of the Justice and Peace court is perhaps the most controversial, as it is considered by multiple women’s and victims’ organizations a setback from the advances made in the Salvatore Mancuso case. This judicial ruling defined responsibility for the crimes committed by the unit “Bloque Heroes de Granada” of the AUC, led by Edison Giraldo Panigua. Among other crimes, it refers to 12 cases in which members of this unit raped several women and children in the regions they once controlled. In this decision, the Court used a *women centered-frame*, arguing that women are the most affected compared to men, showing figures from the AGO that illustrate women being 75% of the victims of sexual violence in conflict.

One particular aspect of this ruling is the use of the category “women victims” exclusively when it comes to crimes related to sexual violence. The judicial ruling also establishes the criminal responsibility of Edison Giraldo Panigua for other crimes committed by his unit, such as homicide and enforced disappearances. In the general considerations made by the court for those criminal acts, the category of “victims” is framed as any individual that was affected by the violent actions committed by the AUC. However, at the same time, it framed “women victims” category by explicitly referring to women as “incapable to defend themselves from this criminal act, because they are subject of special protection” (Edison Giraldo Panigua Judicial Ruling 2015) ⁴. In its final considerations, the court defines similar measures to the previous rulings. The prosecution of the perpetrators has to be the main goal of the judicial system, with the clarification of the truth. According to the judges’ considerations these two elements are the only way to guarantee the right of reparation to the victims.

⁴ Authors translation from Spanish

The *women-centered approach* used in this judicial ruling to frame GBV, is a setback in the understanding of this issue. Even though, a significant advance in the framing of GBV was made in the “Salvatore Mancuso” ruling, this decision used a frame that ignores the structural violence that affect women disproportionately, as it also ignores the cultural factors that creates inequality among genders making women more vulnerable to these violent acts.

3.3 Distorted frames and confusing judicial precedents of GBV

Defining a broad legal framework for the understanding of GBV do not translate necessarily to incoherent or distorted judicial rulings. Leaving the judges with the possibility of interpreting the norm in order to provide a better understanding of a criminal phenomenon is essential for any legal system. The evolution on the interpretation of a legal phenomenon could be seemed as an advance in the establishment of groundbreaking judicial precedents. However, sometimes this broad framework could lead to confusing interpretations of the same legal phenomenon. The case of the Colombian Justice and Peace judicial system is an example of how a wide range of possibilities for interpreting GBV led to confusing judicial rulings with multiple frames for the same phenomenon, and with measures that not necessarily translate into victims’ rights reparation.

The multiple frames used to define GBV in the Justice and Peace Act are reflected in the three judicial rulings analyzed here. The genderless *individual right approach* is the prevailing frame in the law and in the “Vencedores de Arauca” judicial ruling. The *structural inequality frame*, that is used in the CEDAW and in the UN Declaration on the Elimination of Violence Against Women is used again in the “Salvatore Mancuso” decision, and the *women-centered frame* used in the “Belem Do Para” convention is also used in the “Edison Giraldo Panigua” judgement.

However, instead of defining a progressive judicial interpretation of GBV, as it was thought with the “Salvatore Mancuso” ruling, these judicial rulings show a recoil in the definition and

conceptualization of this phenomenon. The first judgment of “Vencedores del Arauca” was limited in the understanding of GBV by only focusing in the particular circumstances of each individual victim, without questioning the structural violence that could be seen before, during and after the conflict. As a genderless document, women are only mention in the description of the facts, in the rest of the text the “victims of GBV” category is used in order to define the considerations and measures to be implement by the court and other authorities. These measures included the definition of new procedure for the attention of GBV.

The first setback in the framing of GBV could be identified in the definition of the measures established by the court. Few months after the ruling was enacted, in 2012, the AGO came out with the Guidelines for prosecuting sexual violence within the Jurisprudential framework of the Justice and Peace law⁵. This document uses a *women-centered frame*, explicitly referring to women and their special needs. Here women are portrayed as “special subjects that require different attention because of their feminine conditions that make them incapable of protect themselves”⁶. Organizations such as Sisma Mujer and the National Women Network criticized this posture of the AGO and the court, by arguing that women need to be more actively involved in the judicial processes, and by portraying them as mere victims their agency is being taken away.

An advance in the framing was made with the “Salvatore Mancuso” ruling, and its progressive interpretation of GBV as rooted in the Colombian gender dynamics. This new approach changed the way in which feminine and masculine identities were defined in the Colombian jurisprudence. Feminine identities here were not defined as weaker in comparison to masculine identities, but as oppressed by a culture of “machismo” that historically and structurally uses women bodies to

⁵ Authors translation from Spanish. Guía para la investigación penal de los delitos relacionados con violencia sexual en el marco de la Ley de Justicia y Paz.

⁶ Authors translation from Spanish.

empower, disempower, and intimidate (Guzman 2011, 45). Six months after the enactment of this ruling, the AGO came out with the Procedure for differential and specialized attention of women victims of sexual violence in conflict⁷. Even though the name of the document explicitly refers to women, it is possible to identify that the document uses an *individual-rights frame*. It uses the category of “victims of GBV” in which women, children, elderly people and disable people belong.

Women here are not treated as an actor with an important voice, but as subjects that passively need to be provided with services such as physiological attention and legal support. Even though these measures are needed by the victims, by themselves they are not enough to guarantee a comprehensive reparation. As many women’s organizations have declared, women need to be empower in the judicial procedures participating as proactive actors. By framing the role of women as helpless victims in the narratives of GBV, there is no possibility for them to have an active role in the investigation, prosecution and judicialization. Overall, this procedure could be seen as a setback in the understanding of GBV, as it goes back to an *individual right approach* ignoring the structural factors that affect women disproportionately, and by perpetrating the notions and ideas of women as passive actors without any agency.

Perhaps the biggest setback can be seen in the framing of GBV in the “Edison Giraldo Panigua” case that moves backwards from the *gender inequality structural frame* to the *women-centered frame*. This last decision understands GBV as a problem that affect women disproportionately, but at the same time, it limits their role as passive actors on the conflict. It explicitly established that “women in their feminine condition require special protection from the authorities”⁸, this especial

⁷ Authors translation from Spanish. Procedimiento para la atención diferenciada y especializada de las mujeres víctimas de los delitos relacionados con violencia sexual en el marco del conflicto armado

⁸ Authors translation from Spanish.

protection implies that they cannot participate in the judicial process in the same conditions as the prosecuted (“Robinson Giraldo Panigua” Judicial ruling 2015).

Despite the advances and setbacks identified in the multiple frames of GBV, it is possible to recognize two weaknesses that prevail in all the approaches and conceptualizations of the court. The first one, in neither of the frames of GBV the court questioned how the whole procedure is based on the prosecuted standpoint. In this judicial system, the prosecuted confessions are conceived as the sources of truth, and their voices are never contested with the voices of the victims. This could be explained by the fact that in all the judicial decisions analyzed here, women are portrayed as helpless and voiceless victims, and not as individuals that have a meaningful and significant voice that it is needed to be heard in order to reach the so-called truth. Second, in none of the framings of GBV women are considered possible perpetrators. In the frames used in the law and in the multiple decisions, women are not portrayed as capable of committing the same types of crimes. Even though, the CNMH has shown that AUC women leaders committed crimes such as sexual sterilization, sexual slavery and forced abortions, no judicial ruling has taken decisions over these facts.

Moreover, thanks to the frame analysis carried out it is possible to identify two elements that have led to confusing judicial precedents. First, a law that uses three different frames of GBV at the same time creates a confusing legal framework for the judges and prosecutors. They can use these multiple frames to prosecute and condemn the same phenomenon and sometimes the decisions taken by them could be contradictory with each other. That is the case of the three judicial rulings analyzed here, that showed how GBV was framed in three different ways, even though each of the framings ignores several aspects of this phenomenon. Second, the three judicial rulings show an inconsistent evolution in the framing of GBV. The decisions started with an *individual rights*

frame, to them moving on to the more progressive *structural inequality frame*, to finally take a step back to the *women-centered frame*. These inconsistencies show how minimal has been the evolution of the framing of GBV in the Colombian legal framework. Based on these aspects, it is possible to recognize that Colombia has confusing judicial precedents of GBV in conflict.

CONCLUSIONS

The right-wing paramilitaries were perhaps one of the most brutal actors in the Colombian conflict. The United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia - AUC) in their violent campaign against the left-wing guerrillas, implemented military strategies that brutally affected civilians all around the country. The AUC were responsible for committing crimes such as massacres, homicides, forced displacements, forced disappearances, targeted killings, and gender-based violence (GBV). In 2003, the former president of Colombia Alvaro Uribe Velez decided to start a peace negotiation with the AUC. The process known as the “Ralito Accord” established the general guidelines for the demobilization and reintegration of ex-paramilitaries. Two years after the negotiations started, in 2005, the Justice and Peace law was enacted. The law regulates the transitional justice measures for the reintegration of ex-combatants, and the special judicial system for the investigation, prosecution and judgment of the crimes committed by these violent actors.

The Justice and Peace judicial system has been widely criticized by Colombian feminist organizations for its lack of action in investigating, prosecuting and punishing GBV crimes. By 2017, only three judicial rulings punishing ex-combatants for committing crimes related to GBV has been taken. However, an aspect that had not been analyzed yet was the inconsistencies in the understanding and framing of GBV in conflict. This thesis explored how GBV was framed in the Justice and Peace law and in the judicial decisions taken under this legal framework in Colombia. It also explored how the distorted framings of GBV in these judgments led to the establishment of confusing judicial precedents. Using a critical frame analysis, the Justice and Peace law, the judicial rulings of “Vencedores de Arauca”, “Salvatore Mancuso” and “Edison Giraldo Panigua”, were analyzed in order to answer the previously mentioned questions.

To answer the first research question on how GBV was framed it was necessary to analyze the Justice and Peace law, and then analyze the judicial rulings enacted under this legal framework. In the first analysis, three elements of the Justice and Peace law were studied: the framing of GBV in the general considerations, the measures to guarantee the rights of the GBV victims, and the final aim of the law. In the general considerations, the law does not provide an explicit definition of GBV, in its articles 13 and 15 it refers to the international regulations and conventions that could be used to understand GBV in this context. However, the international regulations and conventions that the law refers to have different approaches to the same phenomenon. On the one hand, the “Belem Do Para” Convention, and the Conference on Women in Beijing uses a *women-centered frame* of GBV (Krizsan et. al 2014, 762). On the other hand, the UN Declaration on the Elimination of Violence Against Women and the CEDAW uses a *structural gender-inequality frame* (763). Moreover, in its measures to guarantee the rights of the GBV victims, and in its final aims the law uses an *individual-rights frame approach*. In its articles 38 and 58, the law uses the genderless category “victims of GBV” that includes: women, children, elderly people and disable persons (Justice and Peace Law 2005). All of these actors are considered subjects of special protection because of their vulnerable conditions. However, in the understanding of the law, it is their particular individual situation that makes them more vulnerable to the violent atrocities of conflict, as opposed to gender dynamics of the Colombian society.

The second analysis was carried out using the judicial decisions taken under this legal framework. Three different frames of GBV were identified here. The genderless *individual right approach* is used in the “Vencedores de Arauca” judicial ruling. The *structural inequality frame* is used in the “Salvatore Mancuso” decision, and the *women-centered frame* that is used in “Edison

Giraldo Panigua” judgement. These multiple frames used by the judges in the judicial rulings reflects the vagueness in which the GBV was defined in the law.

Based on the findings of the analysis it was also possible to answer the second research question on how the distorted frames of GBV led to confusing judicial rulings. I identified two main element that has caused this confusion. The first one is that by using three different frames for the understanding of the same phenomenon, the law established an incoherent legal framework for prosecutors and judges. This is reflected in the three judicial rulings studied here that use multiple approaches for similar cases perpetrated by the same illegal actor, the AUC. The second aspect identified, is the inconsistent evolution of the framing of GBV. The decisions started with an *individual rights frame*, to then moving on to the more progressive *structural inequality frame*, to finally take a step back to the *women-centered frame*. The case of the Justice and Peace law illustrates how a poorly formulated law creates flaws in its enforcement. A weak conceptualization of GBV in the law creates a judicial vacuum in the understanding of this phenomenon that later on translates into confusing judicial rulings.

Finally, it is important to highlight that these aspects need to be addressed by the Colombian government and legislators in the upcoming peace process with the FARC. Crimes related to GBV continues to be one of the most common atrocities that affect women all around the country. Defining a consistent law that explicitly conceptualized GBV is needed for the functioning of the transitional justice criminal system. This future law will need to reflect the advances made in the understanding of GBV and its relationship with gender equality. Therefore, I proposed that the future law uses that *structural inequality approach* as a way to frame GBV in conflict and in peace. This will allow prosecutors and judges to question the power relations and

the gender dynamics of the country when making decisions in the investigation, prosecution and punishment of GBV.

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