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TWAIL Review

06

Issue 6 / 2025



# THIRD WORLD APPROACHES to INTERNATIONAL LAW *Review*

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(2025) 6 *TWAIL Review* 51–80

## Beyond the Performance of Restorative Justice: The Role of Local Practices in Colombia's Transitional Justice

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### Abstract

*The Colombian peace agreement with the FARC follows a novel approach to Transitional Justice, prioritizing victims and restoring damages from the conflict. This system integrates judicial and non-judicial justice, truth, and reparation mechanisms. Rooted in theories from the Global North, these approaches are sometimes applied without considering local contexts, leading to interpretations of transitional justice as a form of colonization. The Colombian model challenges this by incorporating local cultural and traditional practices within its restorative framework. This raises a question: do these practices represent transformative change, or are they cosmetic responses? Interviews with judicial officials, victims, and representatives of civil and non-governmental organizations highlight the significance of integrating conscious responses to affected communities. This emphasizes local practices as meaningful for victims rather than performative gestures. Ultimately, I argue that the purpose of the current transitional justice system should acknowledge the rights, humanity, and agency of human and non-human elements beyond performative acts.*

### Key words

Transitional justice, cultural practices, restorative justice, decolonization.

## 1 Introduction

In the middle of the central square of the municipality of San Onofre, Sucre, stood a ceiba tree. Its location was not a coincidence but rather the most visible manifestation of the local community's involvement in developing a process of healing after the horrors of war. The history of this small village on Colombia's Atlantic coast is far

from tranquil. Instead, it is remembered as the headquarters of one of the most violent organizations in the armed struggle.<sup>1</sup>

The 'Héroes de los Montes de María' Bloc of the United Self-Defense Forces of Colombia (AUC for its acronym in Spanish)<sup>2</sup> picked San Onofre and its neighboring rural districts as the setting for its criminal endeavors.<sup>3</sup> San Onofre is six kilometers away from the El Palmar property. In this 2,500-hectare area, one rubber tree stands out as the location where the organization commander committed the most heinous crimes against those who were thought to be guerilla members, thieves, homosexuals, or unfaithful women.<sup>4</sup> At that time, the illegal group took advantage of the aerial roots of the tree to hang, murder, and bury the victims. This tree is still remembered as a scene of terror.

Introducing a new set of Transitional Justice (TJ hereinafter) mechanisms in Colombia in 2016 enabled San Onofre to reclaim a piece of its past. The memory of a ceiba tree was given a meaning of reconciliation in 2019. Together with victim advocacy groups and the San Onofre community, the Special Jurisdiction for Peace planned and executed a restorative act honoring the memory of those who had been forcefully disappeared.<sup>5</sup> In contrast to previous practices, the community's needs drove this gathering; the day started with a walk from the El Palmar property, passing through the region's main cemetery and ending at the main square where a new ceiba tree was planted while pipe music was played in memory of the disappeared.<sup>6</sup>

But, in what ways does planting a tree serve as an example of restoring the damage incurred? Are the conventional assertions regarding trials, convictions, and incarceration eclipsed by the shadow of this tree? These questions might be addressed by the introduction of a new set of TJ mechanisms in Colombia in 2016, as the country

<sup>1</sup> Between 1997 and 2005, Rodrigo Mercado Pelufo (Cadena) and Marco Tulio Pérez Guzmán (El Oso) dominated San Onofre, enforcing behavioral norms and discriminatory practices. Cadena controlled transit and racial and ethnic hierarchies and targeted women and the LGTBI+ community. Their violent regime included extermination, torture, sexual violence, and forced disappearances. The Truth Commission documented at least 223 cases, though locals claim over 500 deaths in El Palmar alone CNMH, "Paramilitarismo, Balance de La Contribución Del CNMH Al Esclarecimiento Histórico," 2018.

<sup>2</sup> AUC stands for United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia, in Spanish).

<sup>3</sup> Its strategic waterfront location made it a key hub for drug distribution and weapon loading. However, control over daily life shaped the population's history Comisión de la Verdad CEV, "¿A Dónde van Los Desaparecidos?," 2020.

<sup>4</sup> CNMH, *Mujeres y Guerra. Víctimas y Resistentes En El Caribe Colombiano*, Taurus Pensamiento (Centro Nacional de Memoria Histórica, 2011).

<sup>5</sup> MOVICE and CSPP, 'Exhumando Verdad y Justicia. Informe Sobre La Desaparición Forzada En Sucre Entre 1988 y 2008' (Bogotá, 2019). <https://es.scribd.com/document/436076496/Exhumando-Justicia-y-Verdad-Resumen-Ejecutivo>

<sup>6</sup> MOVICE, 'La JEP Tomó Las Primeras Decisiones Sobre Solicitud de Medidas Cautelares En San Onofre (Sucre)', Movimiento Nacional de Víctimas de Crímenes de Estado (2019) <https://movimientodevictimas.org/la-jep-toma-las-primeras-decisiones-sobre-solicitud-de-medidas-cautelares-en-san-onofre-sucre/> (accessed 24 May 2025).

witnessed a watershed moment in its peacebuilding history, as the FARC<sup>7</sup> agreed to end its military campaign, ushering in a new TJ system.<sup>8</sup> Although no formula is set in stone for Colombia to reckon with the aftermath of a violent past, the current TJ model is a promising approach. The emphasis on victims at the center of the model's design distinguishes it from earlier attempts at TJ in this country. By emphasizing victim centrality,<sup>9</sup> the model recognizes and protects victims' rights to engage actively and meaningfully in all stages of the transition process. This characteristic conveys a fresh viewpoint and can transform justice dynamics in Colombia.

Nonetheless, this new conception of justice is still grounded in the intellectual and structural advancements constructed in the Global North. The core of TJ's literature is still engrained in Neil Kritz's coining of the term and Ruti Teitel's<sup>10</sup> three-fold genealogy of phases, to name a few. Whether TJ is best understood as a field,<sup>11</sup> a discourse,<sup>12</sup> an idea,<sup>13</sup> or even as a cloak that unifies several components,<sup>14</sup> much of this theorizing still occurs primarily far from where TJ is actually practiced.<sup>15</sup> From applying courts and truth and reconciliation commissions to providing direct reparations to victims, the international community has consistently upheld retributive justice, reflecting its enduring punitive stance.<sup>16</sup> TJ models are frequently formulated within the context of the Global North. These understandings are commonly applied to situations in the Southern region without considering the specific settings or the diverse ways in which individuals may cope with mass atrocities. As a result, they have

<sup>7</sup> FARC stands for Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia in Spanish).

<sup>8</sup> The Colombian government's peace agreement with the FARC established a Comprehensive System of Justice, Truth, Reparation, and Non-repetition, including the Special Jurisdiction for Peace, to prosecute and judge armed conflict crimes.

<sup>9</sup> See Law Act No.1957/2019, Article 13; decision TP-SA-SENIT 1 of 2019, 3 April 2019, and Constitutional Court Judgment C-080 of 2018.

<sup>10</sup> While Ruti Teitel, a key architect of the TJ theory, was born in Argentina and her experience growing up under a military junta informed her interest in TJ, her scholarly work has been critiqued for being detached from on-the-ground post-conflict contexts and often rooted in Western perspectives.

<sup>11</sup> Paige Arthur, 'How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice,' (2009)31:2 *Human Rights Quarterly*, at 321–67, <https://doi.org/10.1353/hrq.0.0069>.

<sup>12</sup> Marcos Zunino, *Justice Framed: A Genealogy of Transitional Justice* (Cambridge University Press, 2019), <https://doi.org/10.1017/9781108693127>.

<sup>13</sup> Jamie Rowen, *Searching for Truth in the Transitional Justice Movement* (Cambridge, NY: Cambridge University Press, 2017), <https://doi.org/10.1017/9781316258279>.

<sup>14</sup> Christine Bell, "Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field,'" (2008) 3!: *The International Journal of Transitional Justice*, at 5–27, <https://doi.org/10.1093/ijtj/ijn044>.

<sup>15</sup> Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections,' (2008) 29:2 *Third World Quarterly*, at 275–89, <https://doi.org/10.1080/01436590701806848>.

<sup>16</sup> Roman David and Susanne Y.P. Choi, 'Getting Even or Getting Equal? Retributive Desires and Transitional Justice,' (2009) 30:2 *Political Psychology*, at 161–92, <https://doi.org/10.1111/j.1467-9221.2008.00687.x>.

not effectively facilitated peace and healing for those most in need of it. Critics argue that transitional justice, when imposed as a one-size-fits-all model, can leave victims feeling sidelined rather than empowered.<sup>17</sup>

Challenging what has been developed in the past, modes of Restorative Justice (RJ hereinafter) such as planting trees to honor the missing, listening to tales expressed via millennium songs, remembering those who have passed on, and sewing a victim's story into textiles illustrate new approaches to overcoming grief.<sup>18</sup> Moving away from previous top-down approaches to the integration of RJ into the judicial process,<sup>19</sup> the goal is to empower victims, perpetrators, and communities to shape the repair mechanisms actively.<sup>20</sup> While the scope is not new to international policy frameworks, integrating local cultural practices fundamental to Colombian heritage and traditions has emerged as a distinctive aspect of the restorative approach.<sup>21</sup> Rather than reflecting a single national identity, these practices often stem from culturally distinct backgrounds. The multiplicity of minority traditions integrated in the process challenges the idea of a unified cultural mainstream, highlighting the richness of Colombia's diverse ethnic and community-based expressions. For example, some ceremonies are indigenous (e.g., Arhuaco or Nasa rituals), others Afro-Colombian (e.g., drumming, oral histories), and others stem from rural mestizo traditions (like llanero music). Its institutionalization situates Colombia within a global trend that seeks to offer an alternative to the traditional retributive justice outcomes. In doing so, the country enters a larger conversation that acknowledges how RJ has been adapted in previous transitions, including Canada, New Zealand, Latin America, Rwanda, and South Africa.<sup>22</sup>

Nonetheless, the construction of an international restorative justice mainstream, as reflected in instruments such as the United Nations Basic Principles

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<sup>17</sup> Nagy (2008).

<sup>18</sup> Jurisdicción Especial para la Paz JEP, 'Manual de Justicia Transicional Restaurativa,' 2024.

<sup>19</sup> Catalina Diaz, 'Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia,' in Kieran McEvoy & Lorna McGregor (eds.), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Bloomsbury Publishing Plc., 2008), at 1–23.

<sup>20</sup> Ibid, 16.

<sup>21</sup> Local cultural practices refer to rituals, symbols, and traditions rooted in the social and historical fabric of Colombia's diverse communities. These include activities such as community-led ceremonies, the planting of commemorative trees, the performance of traditional music or storytelling during hearings, and other customs derived from Indigenous, Afro-Colombian, and regional heritages. Often originating in historically marginalized communities, these practices are increasingly being incorporated into formal transitional justice proceedings as a means of recognizing and legitimizing alternative epistemologies and experiences of justice.

<sup>22</sup> Nicola Palmer, *Courts in Conflict: Interpreting the Layers of Justice in Post-Genocide Rwanda* (Oxford University Press, 2015); Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda* (Cambridge University Press, 2010); Priscilla B. Hayner, *Unspeakable Truths Transitional Justice and the Challenge of Truth Commissions, Unspeakable Truths*, (Routledge, 2002).

on the Use of Restorative Justice Programmes in Criminal Matters<sup>23</sup> prompts essential questions about whether this global diffusion represents the spread of an effective practice or a form of neocolonial appropriation.<sup>24</sup> Consequently, the integration of RJ practices raises critical concerns about the extent to which such practices genuinely challenge entrenched power structures or address historical harms. Drawing from Tauri's critique<sup>25</sup> of the integration of indigenous practices in RJ responses, the globalization of restorative practices can trigger forms of neo-colonization, as dominant visions of restoration<sup>26</sup> often reflect the commodified interpretations developed within Western liberal democracies. This tension becomes salient in contexts where RJ is presented as a neutral, apolitical tool for healing, despite being deeply embedded in political and ideological frameworks, often shaped by Global North agendas. This issue is even more problematic when restorative approaches lean on the financial support from foreign donors who may expect specific, performative applications of the RJ model that align with externally defined standards and outcomes.<sup>27</sup>

Implementing RJ or TJ frameworks raises critical concerns regarding whether their neo-colonizing essence emerges from their origins (Global North or South) or how they are adapted locally. In this article, neocolonial logics of transitional justice refer to the ways in which TJ mechanisms, though framed as universal, often embed assumptions and power relations reminiscent of colonial structures. As Nesiah<sup>28</sup> argues, this occurs when Western or Northern institutions export their models of justice to post-conflict societies in the Global South, thereby perpetuating forms of epistemic or structural dominance. A neocolonial approach to TJ, therefore, subordinates local worldviews, practices, and priorities to externally imposed

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<sup>23</sup> UN, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (2002).

<sup>24</sup> Pioneers such as Howard Zehr developed the concept of restorative justice (RJ), drawing on Mennonite Christian principles and Indigenous peace-making practices. As a result, even what is termed 'local restorative practices' in Colombia intersects with these frameworks, which have Western or external roots. See Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, 3rd ed. (Scottdale, Pa: Herald Press, 2005), and Howard Zehr and Ali Gohar, *The Little Book of Restorative Justice*, (GoodBooks, 2003).

<sup>25</sup> Juan Marcellus Tauri, 'Restorative Justice as a Colonial Project in the Disempowerment of Indigenous Peoples,' in Theo Gavrielides (ed.), *Routledge International Handbook of Restorative Justice*, (2018), at 342–58.

<sup>26</sup> Within this context, the term 'restoration' denotes the act of repairing harm and restoring relationships or dignity to victims, going beyond material restitution.

<sup>27</sup> Paul Gready and Simon Robinsy, 'From Transitional to Transformative Justice: A New Agenda for Practice,' (2014) 8:3 *International Journal of Transitional Justice*, at 339–61. Madlingozi, 'On Transitional Justice Entrepreneurs and the Production of Victims.' (2010) 2:2 *Journal of Human Rights Practice*, at 208–228.

<sup>28</sup> Vasuki Nesiah, 'Theories of Transitional Justice: Cashing in the Blue Chips,' in Anne Orford, Florian Hoffman and Martin Clark (eds.), *The Oxford Handbook of the Theory of International Law*, (Oxford University Press, 2016), at 779–96.

templates, which may appear inclusive yet fail to genuinely reflect the lived realities or justice needs of affected communities.<sup>29</sup>

This study intends to investigate the impact of local expressions, such as community-led ceremonies, symbolic acts or the use of traditional art and music, on the concept of TJ and its underlying normative framework, critically examining how these adaptations influence its post-colonial nature. Setting aside the debate over geographic origins, the aim is to clarify how the imposition of any framework (transitional or restorative) in a top-down manner could potentially disregard local agency and context.

This essay has two sections that study the decolonizing potential of cultural-embedded practices in TJ. The first section analyzes whether TJ has been considered a form of colonization in the modern era. It assesses the effects of adopting international law as the foundation for this strategy, aimed at standardizing global legal systems in armed conflicts. The evaluation addresses challenges related to power dynamics and TJ processes as extraction mechanisms. It also scrutinizes the transitional model as a fixed and transplanted formula. Lastly, the evaluation extends to issues surrounding uncovering previous colonialism, shedding light on problematic aspects, such as the selective examination and redress of specific human rights abuses. In contrast, others are disregarded or consigned to history.

In its second section, this paper examines how cultural, ancestral, and traditional practices can serve as a decolonizing response to the transitional process in Colombia, revealing their transformative potential. In particular, this section will show how these locally rooted practices, drawn from Indigenous, Afro-Colombian, and rural traditions—have begun to reflect what victims expect from justice and how they envision justice outcomes on their own terms. Additionally, this section adopts a critical lens: for such practices to be genuinely decolonial, they must move beyond symbolic inclusion and engage directly with the historical conditions of exclusion and marginalization that victims have endured.<sup>30</sup> Their decolonizing power does not lie in the mere presence of songs, art, or crafts—elements now common across transitional justice arenas. Instead, it lies in their capacity to confront entrenched injustices and challenge colonial power dynamics in knowledge and practice. In this sense, a decolonizing transitional justice mechanism is not simply one that incorporates cultural expressions, but one designed by and for local communities, grounded in their epistemologies and worldviews. The heart of its decolonizing character rests in how it

<sup>29</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*. (Cambridge University Press, 2005).

<sup>30</sup> Yolanda Sierra León, 'Reparación Simbólica, Litigio Estético y Litigio Artístico: Reflexiones En Torno Al Arte, La Cultura y La Justicia Restaurativa En Colombia,' in Yolanda Sierra León (ed.), *Reparación Simbólica: Jurisprudencia, Cantos y Tejidos*, (Bogotá: Universidad Externado, 2018).

disrupts the authority of dominant Western legal paradigms and opens space for alternative visions of justice that have often been left unaddressed.

The study integrates perspectives from interviews with legal experts, survivors, and representatives of non-governmental organizations and civil society engaged in restorative initiatives during the current transitional period. This research investigates diverse local and cultural traditions witnessed during hearings and procedures carried out by the TJ system, aiming to scrutinize the distinction between restorative practices and those infused with a cultural component. While the former merits acknowledgment for its prevalence and redress capabilities, the latter prompts considerations regarding the performative aspects of incorporating these cultural elements.

## 2 Methods

This article's findings draw on semi-structured interviews conducted in 2023 and 2024. In total, 18 participants were interviewed, including six judicial officers, six survivors, three former FARC members and three Human Rights advocates or representatives of civil society organizations. Interviews averaged approximately 1.5 hours and were conducted both in-person and online depending on participants' availability and geographic location.<sup>31</sup>

The interviewees explored key questions such as *how the incorporation of cultural practices has impacted participants' sense of justice and healing; how restorative approaches are constructed within the current TJ system, and whether these practices are viewed as meaningful or merely symbolic*. All participants were asked to reflect on the effectiveness of restorative practices in their understanding of peace and justice.

Interview protocols were tailored slightly depending on the participant group. Judicial officers were queried about the construction of these practices and the extent to which they respond to local needs versus externally imposed understandings of 'cultural relevance'. Survivors and civil representatives were asked whether these practices contribute to their healing processes and if grassroots approaches to justice are genuinely embedded within institutional mechanisms. Lastly, former FARC members were asked about their participation in restorative initiatives and their perspectives on the effectiveness of these practices in facilitating engagement with survivors and contributing to their reintegration.

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<sup>31</sup> Participants were selected through purposive and snowball sampling based on their involvement in or knowledge of restorative practices within Colombia's transitional justice system. Interviews were conducted in Spanish and translated into English when necessary. Data were analyzed using thematic analysis (Braun & Clarke, 2006) to identify patterns across participant narratives, and all transcripts were coded using NVivo software to support systematic and transparent analysis. For security reasons, all information was encrypted and securely stored. All names and identifying information have been anonymized to protect participants' confidentiality.

### 3      Transitional Justice as a neo-colonizing mechanism

#### 3.1      Navigating Neo-colonial challenges in TJ legal framework

Planting a tree as a means of reparation for violated rights may stray from what TJ aims to achieve. Teitel's<sup>32</sup> genealogical approach to TJ saw its stabilization and international recognition, transitioning from an exceptional occurrence to a normative standard and setting it as an element of the rule of law paradigm.<sup>33</sup> Since then, the model has been seen as a set of mechanisms ingrained within the international rule of law. However, criticisms of TJ highlight its foundation on the values, strategies, and interests of the Global North.<sup>34</sup>

The notion of TJ as a colonizing process arises partly from its reliance on a legal framework that is inextricably linked to a conceptual and discursive neo-colonial model.<sup>35</sup> Such an understanding of the rule of law is moulded by the languages and practices, legal systems, and the principles underpinning it.<sup>36</sup> Nonetheless, these elements represent the transplantation of legal standards—such as individual criminal responsibility, procedural due process norms, singular narrative truth-telling models, and individualized monetary reparations<sup>37</sup>—that have emerged and evolved in non-conflict environments with a prevailing Western hegemonic perspective.<sup>38</sup> The fundamental nature of this legal culture results in the imposition and conspicuous tacit implementation of legal standards and institutions that do not align with the non-Western—transitioning—frameworks.<sup>39</sup> As such, the mechanisms designed to address the consequences of war or repression may not operate as a neutral and helpful force.

<sup>32</sup> Ruti G. Teitel, *Transitional Justice*, Oxford University Press (Oxford, 2000).

<sup>33</sup> Ruti G Teitel, 'Transitional Justice Genealogy,' (2003) 16 *Harvard Human Rights Journal*, at 69–94.

<sup>34</sup> Rebekka Friedman, Nelson C. Sanchez, and Eric Wiebelhaus-Braham, 'Securing the Peace and Promoting Human Rights in Post-Accord Colombia The Role of Restorative, Reparative, and Transformative Justice Dimensions,' in James Meernik, Jacqueline H R Demeritt, and Mauricio Uribe-Lopez (eds.), *As War Ends: What Colombia Can Tell Us about the Sustainability of Peace and Transitional Justice*, (Cambridge University Press, 2016), at 305–24.

<sup>35</sup> Mohamed Sesay, 'Promotion of the Rule of Law: Reinforcing Domination through the Internationalisation of Legal Norms,' (2005) 42:5 *Third World Quarterly*, at 956–75, <https://doi.org/10.1080/01436597.2020.1831379>.

<sup>36</sup> Anghie (2005); Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights,' (2001) 42:1 *Harvard International Law Journal*, at 201–45; Rodrigo Uprimny and Maria Paula Saffon, 'Transitional Justice, Restorative Justice and Reconciliation,' (2005) 2 *Dejusticia*, at 1–24, <https://bit.ly/3kaVrkm.>; Pablo De Greiff, *The Handbook of Reparations*, 1st ed. (Oxford University Press, 2006).

<sup>37</sup> Mutua (2001).

<sup>38</sup> Nagy (2008).

<sup>39</sup> Ahan Mohit Gadkari, 'Peacebuilding as a New Form of Colonialism: A Case Study of Liberia and Sierra Leone,' (2022) 9:2 *Lentera Hukum*, at 333.

They exhibit tendencies that perpetuate the enduring effects of colonialism rather than working as a neutral and practical entity.<sup>40</sup>

Within the dispute about who develops and implements the regulatory framework, TJ finds itself between a sword and a wall to establish to whom it belongs. The international rule of law has been conceived to be a structural, neutral, and universal part of the transitional model, as it would allow a standard application of the same criteria across different settings that might adopt it.<sup>41</sup> The evolution and consolidation of international law was even something Teitel celebrated and framed as one of the triumphs of the transitional evolution.<sup>42</sup> However, the prominence of international law over local frameworks has been perceived as another example of neo-colonialism. The strong linkage between TJ and International Law (IL) has delineated one of the most significant limitations. Lu and Moyo—both critical theorists engaging with postcolonial perspectives on global justice—recall that TJ is embedded in IL norms and structures, which integrate intrinsic imperialism and colonization practices.<sup>43</sup> With a primordial scope of what justice and accountability account for, Western countries have established what other ‘users’ of the framework should pursue to hold perpetrators accountable or administrate justice.<sup>44</sup>

For Sesay, whose work focuses on post-conflict reconstruction and legal pluralism in Africa, the normative foundation and promotion of a Western-oriented rule of law, particularly in legal reconstruction after the war, sustain the underlying settler-colonial roots of political violence, leading to a fragile framework for constructing a post-colonial and post-conflict nation-state.<sup>45</sup> In the same light, Antony Anghie has profusely stressed the clash between European and non-European worlds when creating a myth out of the colonial foundation of international law. Through Anghie’s lens, international law acts as an affirming mechanism of structural issues rooted in colonialist practices, such as cultural inequity and the subordination to alien understandings of human rights.<sup>46</sup>

<sup>40</sup> Claire Wright, Bill Rolston, and Fionnuala Ní Aoláin, 'Navigating Colonial Debris: Structural Challenges for Colombia's Peace Accord,' (2023) 11:1 *Peacebuilding*, at 62–77. <https://doi.org/10.1080/21647259.2022.2027153>.

<sup>41</sup> Barbara Oomen, 'Donor-Driven Justice and Its Discontents: The Case of Rwanda,' (2003) 36:5 *Development and Change*, at 887–910. Ingrid Samset, 'Towards Decolonial Justice' (2020) 14:3 *International Journal of Transitional Justice*, at 596–607.

<sup>42</sup> Teitel (2003).

<sup>43</sup> Khanyisela Moyo, *Postcolonial Transitional Justice: Zimbabwe and Beyond*, (Routledge, 2019), 244; Catherine Lu, *Justice and Reconciliation in World Politics*, (Cambridge University Press, 2018), 309.

<sup>44</sup> Laurel E. Fletcher and Harvey M. Weinstein, 'How Power Dynamics Influence the 'North-South' Gap in Transitional Justice,' (2018) *Berkeley J. Int'l L* 190.

<sup>45</sup> Sesay (2005).

<sup>46</sup> Anghie (2005).

### 3.2 *Challenges of Power and Extraction in TJ*

In addition to being seen as a model of justice whose institutions, methods, and statutes were developed following foreign law, TJ is also seen as a source of extraction from the North to the South in its colonizing connotation. Okafor highlights how implementing an International Human Rights Fact-Finding approach has perpetuated a simplistic division between good and evil, depicting Western efforts to uncover Human Rights violations as reliable and exemplary while portraying contributions from the Third World as merely the backdrop where violence intended for comprehension unfolds.<sup>47</sup> Hence, instances of war, impunity, oppression, and systematic human rights violations are categorized within a racialized hierarchy.<sup>48</sup> Within this structure, the South is positioned at the base, serving as a subject of investigation and exploration while being barred from occupying higher echelons where decision-making and research occur.

Fletcher and Weinstein further emphasized the TJ model's colonizing connotation in their analysis of the embedded power dynamics.<sup>49</sup> An insightful debate unfolded regarding the role of researchers from the North and their engagement with regions in the South where TJ processes are commonly developed. According to the authors, scholars from the Global North are perceived as factories of the transitional model and are often seen as field experts. Conversely, researchers from the South are recognized as apprentices who navigate raw materials and grasp ways to utilize their available resources. The argument revolves around the South being positioned as a source of research material for the North, perpetuating a colonial dynamic. This raises ethical questions, especially since the data came from people who had firsthand experience with extreme violence as offenders, victims, or witnesses. Drawing from the North-South analysis presented in Fletcher and Weinstein's essay, academics from the North need access to the pain of 'the others,' which local organizations and agencies in the South seek to preserve. The involvement of the researchers raises issues not just because the researchers intrude into the traumatic experiences of individuals affected by the conflict but also because their presence is frequently viewed as temporary, perhaps leading to unmet expectations or extra injury.<sup>50</sup>

Within the realm of knowledge production and dissemination, the colonial aspect of the model significantly impacts the dynamics that shape the role of Global

<sup>47</sup> Obiora C. Okafor, 'International Human Rights & Fact-Finding,' in Philip Alston and Sarah Knuckey (eds.), *The Transformation of Human Rights Fact-Finding*, (Oxford University Press, 2016).

<sup>48</sup> Mutua (2001).

<sup>49</sup> Fletcher and Weinstein (2018).

<sup>50</sup> Fletcher and Weinstein (2018).

South regions. As Jones<sup>51</sup> recalls, internationally credited individuals are privileged in determining the research agenda and policies that impact TJ initiatives, regardless of their foreignness in implementing the process. It is not rare that scholars and practitioners from origins and backgrounds are privileged over epistemic expertise, frequently skewing the understanding of what and how the transition should be understood. As Carter and López<sup>52</sup> argue, this reflects a form of epistemic violence, whereby the lived experience of marginalized communities is systematically excluded from the construction of legal knowledge and theory. Rather than being recognized as legitimate epistemological contributions, these experiences are often reduced to anecdotal input or secondary data. This dynamic reinforces the dominance of externally produced models and obscures locally grounded perspectives that could meaningfully reshape transitional justice. The preference for what is done and conceptualized “outside” sets an unequal tendency to marginalize local partners and limit their contributions to the field.<sup>53</sup>

The power dynamics embedded in TJ processes, especially those in the Global South, are further underscored by the agendas held by donors and international organizations.<sup>54</sup> These organizations employ their resources to present transitional processes in the context of developmental initiatives. Nevertheless, economic intervention, often deemed crucial for the functionality and character of the transition, presents political hazards. The circumstances preceding the transition are pivotal in donors' investment decisions. Contexts with a high political risk during the transition are perceived as more precarious investments, dissuading participation from certain investors. Conversely, scenarios with lower volatility receive more substantial support. As Nagy<sup>55</sup> highlighted, this example demonstrates how the Global North influences TJ's applicability.

The underlying motivation for providing development assistance to transitional states, particularly those in fragile transitions, manifests in several problematic outcomes. These include undermining local ownership and participation in the TJ process, promoting unrealistic expectations among people regarding the pace

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<sup>51</sup> Briony Jones, 'The Performance and Persistence of Transitional Justice and Its Ways of Knowing Atrocity,' (2021) 56:2 *Cooperation and Conflict*, at 163–80.

<sup>52</sup> Terrell Carter and Rachel López, 'If Lived Experience Could Speak: A Method for Repairing Epistemic Violence in Law and the Legal Academy,' (2024) 109:1, atn1–73.

<sup>53</sup> Fletcher and Weinstein (2018).

<sup>54</sup> Nagy (2008).

<sup>55</sup> Nagy (2018).

and scope of TJ efforts, and reinforcing power imbalances by supporting particular groups over others.<sup>56</sup>

### 3.3 TJ as a Fixed and Transplanted Model

As Rowen<sup>57</sup> notes, some attempts in the Southern Cone to deal with transitions from authoritarian to democratic regimes were not recognized as forms of TJ and were only labelled as such because of the framing imposed by North American and European models. Vielle<sup>58</sup> has echoed this critique by referring to TJ as a ‘one-size-fits-all’ neoliberal approach. By its blind focus on the individual, as a pillar of the liberal state, this justice system has been labelled by the author as an “IKEA-type” of justice that has been mistakenly transferred across settings without contemplating the contextual circumstances of each case. As noted by Gomez<sup>59</sup> in her analysis of the dazzling effect created by the model, there is a hegemonic dominance of the discourse regarding appropriate and inappropriate actions in transitional situations made possible by the ‘context-blindness’ of this approach. The consequences extend beyond the inadequate implementation of a model that serves as a patchwork of disjointed regulations instead of facilitating harmony. This misalignment in implementation, as stated by Jamar,<sup>60</sup> perpetuates an environment of epistemic violence, hindering crucial and politically sensitive discussions required to address the enduring legacies of mass violence. This dynamic reproduces hierarchies of knowledge that privilege dominant frameworks while discrediting or neutralizing local forms of expression and understanding. In Spivak’s<sup>61</sup> perspective, the problem is that voices from below are unheard and must first be translated into the terms set by external systems to be legible. This critique is echoed by Fricker,<sup>62</sup> who underscores how, within TJ frameworks, victims’ accounts are undervalued due to a lack of interpretative resources that could make sense of their experiences within dominant legal frameworks. With this, epistemic violence (and injustice) emerges as the marginalization of ancestral, oral, or performative ways of

<sup>56</sup> Elena A Baylis, 'Transitional Justice and Development Aid to Fragile and Conflict-Affected States: Risks and Reforms,' in Roger Duthie and Paul Seils (eds.), *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, (2017).

<sup>57</sup> Jamie Rowen, 'We Don't Believe in Transitional Justice?' Peace and the Politics of Legal Ideas in Colombia,' (2017) 42:3 *Law and Social Inquiry*, at 622–47.

<sup>58</sup> Stephanie Vielle, 'Transitional Justice: A Colonizing Field?', (2012) 4:3 *Amsterdam Law Forum*, at 58–68.

<sup>59</sup> Diana Gómez-Correal, 'El Encantamiento de La Justicia Transicional En La Actual Coyuntura Colombiana: Entre Disputas Ontológicas En Curso,' (2016) 6 *Victimas, Memoria y Justicia: Aproximaciones Latinoamericanas Al Caso Colombiano*, at 125–66.

<sup>60</sup> Astrid Jamar, 'The Crusade of Transitional Justice Tracing the Journeys of Hegemonic Claims in Violence and Democracy,' (2019) *The British Academy*, at 53–59.

<sup>61</sup> Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?', (2003) 14:27 *Die Philosophin*, at 42–58.

<sup>62</sup> Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford, UK: Oxford University Press, 2009).

knowing in favor of technocratic or legalistic mechanisms, perpetuating a knowledge hierarchy.

The attempt to classify the TJ model into a predetermined category has led to the standardization of mechanisms and practices, frequently without thoroughly evaluating their relevance and suitability for a particular context. Nesiah<sup>63</sup> noted that ingrained conceptions of expertise, professionalism, and appropriateness within institutions and legal frameworks have gained precedence over scrutinizing and adapting the model for each unique transition. As a result, a standardized array of transitional mechanisms, such as truth commissions, accusations, reparation strategies, and tribunals, has been unquestionably embraced. Likewise, transitional settings have witnessed the implementation of an international law framework, even when such approaches might not be the most effective or appropriate. This unreflective acceptance not only risks neglecting the complexities and nuances of specific circumstances, potentially compromising the desired goals of TJ efforts, but also fosters the implementation of Western understandings of how transitions should unfold.<sup>64</sup>

### 3.4 Previous colonialism

The colonial, selective, and narrowed vision of the TJ model deployed in the Global South has also overlooked issues of early colonialism that are still the base for further limitations.<sup>65</sup> This problem dates to the colonial era when the state's institutional foundations were built on the settler apparatus. The political and ethnic identities the colonists encountered during that time did not align with the state structure they wanted to establish. The demand for a 'more civilized' rule of law resulted in the removal of indigenous representations, which threatened the colonial paradigm, from the legal system.<sup>66</sup> Even when normative systems have been transformed to meet the need to include the traditional essence of the system, the truth is that in cases such as Rwanda, Nigeria,<sup>67</sup> or Sierra Leone,<sup>68</sup> the system has validated and sponsored the continuation of colonial abuses.

<sup>63</sup> Nesiah (2016).

<sup>64</sup> Jamar (2019).

<sup>65</sup> Bill Rolston and Fionnuala Ni Aolain, 'Colonialism, Redress and Transitional Justice: Ireland and Beyond,' (2018) 7:2 *State Crime Journal*, at 329–48.

<sup>66</sup> Augustine S.J. Park, 'Settler Colonialism, Decolonization and Radicalizing Transitional Justice,' (2020) 14:2 *International Journal of Transitional Justice*, at 260–79.

<sup>67</sup> Hakeem O Yusuf, 'Colonialism and the Dilemmas of Transitional Justice in Nigeria,' (2018) 12 *International Journal of Transitional Justice*, at 257–76.

<sup>68</sup> Richard Chelin and Hugo van der Merwe, 'Policy Brief: Transitional Justice and Colonialism,' 2018, at 10.

The problematic relationship between TJ and settlers in post-colonial times continues to raise questions about the overlooked redress for victims of colonial crimes. As far as these victims are not integrated into the restorative approach of TJ, what is known to be a 'historical memory' or a 'social memory' would still fall short.<sup>69</sup> Rolston and Aolain pose an insightful query regarding the TJ as a colonization exercise; by referring to the model as a transition from a 'from' to a 'to', the authors inquire about what should be understood as the starting point.<sup>70</sup> The answer to this question determines how colonizing influences impact the justice model. The close connection between TJ and its deep-rooted colonial origins is evident in the selective focus processes, which disregard significant moments of violence and human rights abuses. Such an oversight demonstrates the silence maintained by the model regarding the early stages of colonization. As Wright et al. suggest, based on their analysis of the Colombian experience with Truth Commissions and their approach to colonial legacies, this omission becomes evident in contexts where such commissions are tasked with constructing narratives of past violence. Their work highlights how institutions often operate within epistemological limits that obscure the colonial legacies embedded in state formation and justice mechanisms.

The focus on recent atrocities reflects on earlier forms of colonization. The authors discuss how transitional processes in East Timor, South Africa, and Rwanda have overlooked key periods of colonial rule and genocidal acts. For example, the Portuguese and then the Indonesian occupation in East Timor, the British and Dutch occupations preceding the National Party in South Africa, and the Belgian colonial genocidal acts before the 1994 genocide in Rwanda were all largely ignored by TJ initiatives.<sup>71</sup>

Although transitions may signify the establishment of democracy after an authoritarian regime or the onset of peace following an armed conflict, such as the impact of colonization, TJ must prioritize serving the victims of colonization.<sup>72</sup> This perspective might face criticism for the challenge of determining guilt or responsibility for events that occurred centuries ago. While financial restitution and public apologies have been suggested as forms of reparation, considering the complex effects of colonization within TJ allows for exploring alternatives beyond legal condemnation or monetary compensation. This approach redirects focus to historical and cultural processes erased by colonizers, such as restoring ancestral lands or offering symbolic

<sup>69</sup> Fletcher and Weinstein (2018).

<sup>70</sup> Rolston and Ni Aolain (2018).

<sup>71</sup> Ibid.

<sup>72</sup> Park (2020).

restitution based on traditional practices. By embracing these broader forms of redress, TJ can address colonization's multidimensional and intergenerational impacts, fostering genuine healing and reconciliation beyond legal or economic measures.<sup>73</sup>

The colonial mindset deeply ingrained in TJ principles leads to the perception of the model as a policy designed for 'others' to manage their circumstances while avoiding the examination of colonial practices by Western nations. This selective engagement has been criticized as a form of imperialism in a new guise, hindering meaningful involvement from former colonizers in formerly colonized territories.<sup>74</sup>

A decolonial approach to transitional justice requires moving beyond a one-size-fits-all template toward a process that is contextually crafted and grounded in the knowledge systems, priorities, and worldviews of the communities it serves. It means centring affected communities not as recipients of justice, but as active architects of the process—designing, shaping, and leading its form and content. Such an approach must also integrate Indigenous, Afro-Colombian, and Criollo legal and cultural frameworks as foundational sources of normative authority, rather than treating them as symbolic additions or optional supplements. A truly decolonial approach demands an inverted epistemological orientation: theory must emerge from the specific contexts in which TJ is implemented, not the reverse. It also requires recognizing a plurality of truths and justice narratives—oral histories, spiritual worldviews, communal memory—as legitimate forms of knowledge in the construction of justice. Beyond recognition, it must address the material legacies of colonialism through redistributive and collective reparations, especially regarding land and territorial rights. Above all, decolonizing TJ means rejecting the automatic transfer of models conceived in the Global North, and instead listening carefully to the needs, urgencies, and lived realities of communities across the Global South, so that justice responses arise organically from within, rooted in their own temporalities, epistemologies, and struggles.

## 4 Decolonizing Through Cultural Integration in Transitional Justice

### 4.1 Unveiling the Restorative Connotation

Colombia has endured the longest armed conflict in the Western Hemisphere,<sup>75</sup> resulting in widespread human rights abuses and international crimes. Despite several peace efforts, the conflict is still ongoing.<sup>76</sup> In 2016, the country witnessed a watershed

<sup>73</sup> Rolston and Ni Aolain (2018).

<sup>74</sup> Fletcher and Weinstein (2018).

<sup>75</sup> Comisión de la Verdad CEV, 'No Matarás. Relato Histórico Del Conflicto Armado Interno En Colombia,' in *Hay Futuro Si Hay Verdad*, 2022.

<sup>76</sup> Rodrigo Uprimny et al., '¿Justicia Transicional Sin Transición? Verdad, Justicia y Reparación Para Colombia,' (2006) *Centro de Estudios de Derecho, Justicia y Sociedad*, 11–16.

moment in its peacebuilding history. The FARC agreed to end its military campaign, ushering in a new TJ system.<sup>77</sup> One of the most remarkable aspects of the new judicial system is its substantial restorative component.<sup>78</sup> Through this lens, the latest TJ model aims to approach justice while focusing on repairing harm and reconciling parties, rather than adopting a punitive approach.<sup>79</sup> It is hoped that the restoration of the victims will go beyond just being monetary or legally mandated and instead expand to include different dynamics that will enable their full participation in the TJ process and, as a result, the comprehensive repair of the harm.<sup>80</sup> Since its introduction in Colombia following the peace agreement, the TJ has seen several restorative examples in which the victims have played a significant role.<sup>81</sup> Due to the victims' and communities' active participation, components with roots in ancestry, native culture, and tradition are now the focus of restoration.<sup>82</sup> This prompts the question of whether these culturally grounded practices within restoration foster a decolonizing effect on the TJ system.

The story of decades of violence is being told today by those who were actively engaged in it, as well as those who endured its consequences directly or indirectly. Within the process, the principle of centrality positions the victims at the heart of the entire process. Unlike in earlier attempts to guarantee justice, when victims were essentially bystanders in judicial processes or had limited participation through the submission of evidence or claims through one of the parties, the current transitional dynamics have reshaped the landscape.<sup>83</sup> Today, victims have a voice and are actively heard throughout the process. This break from earlier practices represents a substantial shift in pursuing justice towards a more victim-centered approach.<sup>84</sup>

Beyond participating in theoretical discussions that aim to clarify the significance of TJ and its restorative component, it is crucial to comprehend how people translate these elements, frequently alien to their realities, into concrete forms

<sup>77</sup> Gobierno Colombiano and FARC, 'Acuerdo Final Para La Terminación Del Conflict y La Construcción de Una Paz Estable y Duradera [Final Agreement for the End of the Conflict and Construction of a Stable and Lasting Peace],' 2016, 124–192.

<sup>78</sup> The restorative paradigm is embedded in Article 1, Section 4 of Legislative Act No. 1/2017 and developed in Statutory Law 1957/2019, establishing court rules and procedures.

<sup>79</sup> As Zehr thoroughly explains, restorative justice is broadly defined as a process whereby all stakeholders affected by an injustice have an opportunity to discuss its effects and decide on reparations. See, Zehr, *The Little Book of Restorative Justice* (2002).

<sup>80</sup> Congreso de Colombia, Law 1957/2019' (2019).

<sup>81</sup> MOVICE and CSPP (2019).

<sup>82</sup> JEP (2024).

<sup>83</sup> See Art 137 Colombia's Code of Criminal Procedure.

<sup>84</sup> Interview with Judge No. 1, member of the Special Jurisdiction for Peace's Section of Absence of Acknowledgment of Truth and Responsibility. Name omitted for security reasons.

of rights restoration. As such, de Gamboa et al.<sup>85</sup> agree that restoring victims entails acknowledging their morality and individuality. Recognizing this moral agency leads to identifying several methods for restoring their rights and acknowledging that each restorative process could differ. Understanding the duty to repair harm, preserve memory, or uphold the victim's position says nothing about how it can be fulfilled.<sup>86</sup> In the Colombian case, incorporating a restorative approach has opened a window to integrating culturally rooted, ancestral, and traditional practices. This has raised a question as to whether this restorative approach can be seen as a decolonizing mechanism of the TJ framework adopted by the country's judicial system. By foregrounding indigenous and local practices, Colombia's approach attempts to acknowledge the need for integrating non-Western forms of justice as valid measures to address the 'epistemic injustices' embedded in TJ. Victims' approach to justice and their needs are subjective, influenced by their upbringing, relationship with armed conflict actors, experienced victimization, and identity within a community. This resonates with Izquierdo and Viaene's<sup>87</sup> argument for the recognition of epistemic pluralism in contexts. As Judge No. 2 recalled,

There is not a single standardized model of victim care, and precisely in this lies the benefit that the Jurisdiction is seeking, with approaches that are much more appropriate to the circumstances of each case and each individual.<sup>88</sup>

Acknowledging the multiplicity of worldviews on justice is essential not only for cultural legitimacy but also for challenging the dominance of Eurocentric legal logics in post-conflict settings.<sup>89</sup>

In the Colombian case, incorporating a restorative approach and assessing these needs has opened a window to integrating more than judicial engagements. These settings go beyond legal representation, the right to participation, or the acknowledgment of survivors' rights. They have transcended into a sphere where survivors articulate their hopes for justice, freely and meaningfully share their stories, and approach justice in a more relatable manner. This approach facilitates efficient repair of the harm inflicted and allows an engagement in restorative and transformative

<sup>85</sup> Camila de Gamboa Tapias and Bert van Roermund, *Just Memories. Remembrance and Restoration in the Aftermath of Political Violence* (Intersentia, 2020).

<sup>86</sup> Pablo De Greiff, 'La Obligación Moral de Recordar,' in *Política, Cultura y Perdón*, 2007, <https://editorial.urosario.edu.co/pageflip/acceso-abierto/cultura-politica-y-perdon.pdf#page=175> (accessed 24 May 2025).

<sup>87</sup> Belkis Izquierdo and Lieselotte Viaene, 'Descolonizar La Justicia Transicional Desde Los Territorios Indígenas,' (2018) 34 *Afrontar El Pasado, Construir Juntos El Futuro*.

<sup>88</sup> Interview with Judge No. 2, member of the Special Jurisdiction for Peace's Section of Absence of Acknowledgment of Truth and Responsibility. Name omitted for security reasons.

<sup>89</sup> Mutua (2001).

approaches to constructing memory and justice.<sup>90</sup> These emerging initiatives illustrate the concept of 'beyond reform,' as described by Lykes and Murphy. Decolonization is achieved by integrating alternative approaches that better meet the needs of marginalized communities, empowering them to actively influence their ideas of justice. Only through this approach can substantial changes be consciously made to the deeply rooted problems of the standardized reform that TJ entails. This perspective resonates with the authors' concept of being, knowing and doing by integrating changes that honour the diverse worldviews inherent in the aspirations of justice of all communities.<sup>91</sup>

In and out of the judicial setting, exchanging dialogue among victims, perpetrators, and the justice system constitutes a performative act. This ritualistic aspect of seeking repair and strategically repositioning voices and perspectives is aimed at meeting the expectations of justice.<sup>92</sup> However, within this dynamic, a delicate balance is struck between the symbolic power of a truth well-articulated and the potential theatricality of a forced atmosphere. To date, the court's website and its YouTube channel are filled with videos that depict the integration of different practices in which survivors bring pictures of their missing,<sup>93</sup> hand out crafts or visual representations of their needs to the judges,<sup>94</sup> or engage in multi-modal dynamics enriched with art, music, crafts, and visuals.

Restorative approaches have emerged as disruptive forces to traditional conceptions of justice, providing survivors, perpetrators, and the local community the chance to participate in dialogue and share their personal stories. The Colombian context exemplifies the potential for reconciling the inherent conflict between RJ and TJ.<sup>95</sup> Within this complicated interaction, novel techniques are utilized to negotiate the intricacies and harmonies between these justice models, ultimately promoting a more comprehensive and transformative justice system.

<sup>90</sup> JEP (2024).

<sup>91</sup> M Brinton Lykes and Colleen Murphy, 'Decolonizing Transitional Justice: Soft, Radical or Beyond Reform,' (2023) 17:3 *International Journal of Transitional Justice*, at 361–69.

<sup>92</sup> Luis Carlos Sotelo Castro, 'Listening Performances as Transformative Mechanisms in the Context of Restorative Transitional Justice Scenarios,' (2023) 2011 *Listening, Community Engagement, and Peacebuilding*, at 175–99.

<sup>93</sup> See, for example, JEP Colombia, 'Audiencia de Reconocimiento de Verdad | Caso 03 | Subcaso Casanare | 20230920', <https://www.youtube.com/watch?v=cSKgOHGflQw&t=9353s> (accessed 24 May 2025).

<sup>94</sup> See, for example, JEP Colombia, 'Audiencia de Reconocimiento de Verdad | Caso 03 | Subcaso Casanare | 20230918', <https://www.youtube.com/watch?v=efeJV8Q4CwE&t=3695s> (accessed 24 May 2025) and JEP Colombia, 'Audiencia de Reconocimiento de Verdad | Caso 03 | Subcaso Casanare | 20230918', <https://www.youtube.com/watch?v=efeJV8Q4CwE&t=115s> (accessed 24 May 2025).

<sup>95</sup> Rodrigo Uprimny and María Paula Saffon, 'Justicia Transicional y Justicia Restaurativa: Tensiones y Complementariedades,' in Angélica Rettberg (ed.) *Entre El Perdón y El Paredón: Preguntas y Dilemas de La Justicia Transicional*, (International Development Research Centre, 2005), at 211–32.

Restoration has manifested itself in various powerful forms within the TJ framework. Active participation during hearings involving face-to-face encounters between perpetrators and survivors has facilitated meaningful dialogue, forgiveness requests, and the recounting of untold stories. Ceremonies held after the recovery of missing people's remains have marked a transformative shift, challenging the traditional outcomes of justice.<sup>96</sup> In this evolved justice paradigm, participants in the TJ model seek more than just a decision; they push the system to address and alleviate their pain in ways beyond traditional punishment.<sup>97</sup>

#### 4.2 *Performing Cultural Significance in Restorative Approaches*

The Ceiba tree mentioned earlier is not the only effort to include healing measures in the TJ process. Nor is it the only example of integrating cultural aspects to convey a more relatable system and starring participation. This parallel approach unfolded later in Cartagena, Bolívar, where a study on preventative measures<sup>98</sup> was conducted, primarily addressing the forced disappearances and other acts of violence that occurred in the Canal del Dique area.<sup>99</sup> Through a song written by those who had firsthand contact with the violence in the area, the locals told the tale of the missing in a moving exhibition. This musical expression, accompanied by regionally specific Caribbean instruments, served as a potent means of communicating their experiences.<sup>100</sup> Later in Villavicencio, Meta, and in preparation for engaging with the emerging TJ system during a hearing of observations,<sup>101</sup> Mrs. Delia Perez and Mrs. Lilia Alagona built a to-scale harp. During the crafting process, Mrs. Alagona stressed that this harp is characterized by vibrant colors that are reminiscent of the llano—the vast plains region of eastern Colombia—and symbolizes its diverse landscape,

<sup>96</sup> Centro Internacional para la Justicia Transicional ICTJ, 'Transformación de Las Relaciones Sociales. Respuestas Restaurativas Ante Violaciones Masivas de Los Derechos Humanos,' 2024.

<sup>97</sup> Alejandro Gómez Velásquez and Julián Correa Saavedra, '¿Sobredimensión de La Tensión Entre Justicia y Paz? Reflexiones Sobre Justicia Transicional, Justicia Penal y Justicia Restaurativa En Colombia,' (2015) 13:26 *International Law: Revista Colombiana De Derecho Internacional*, at 192–248.

<sup>98</sup> The imposition of precautionary measures aims to adopt protection strategies when there is a potential or real danger to victims' rights. The urgency leads to actions for guardianship and alleviation of any possible harm.

<sup>99</sup> The Canal del Dique engineering project aims to construct an artificial arm to control the Magdalena River's flow and water sediments across 115 km of Colombia's Caribbean region. This massive construction site has also become a tragic dumping ground for paramilitary groups. The precautionary measure protects the water tributary and adjacent territories, continuing the search for missing persons.

<sup>100</sup> Jurisdicción Especial para la Paz JEP, 'Audencia Pública Canal Del Dique', 2022.

<sup>101</sup> This hearing is a procedural phase where victims can express their opinions on what the offenders said during the prior testimony phase. See: Laura Acosta-Zárate and Fabián Martínez-Guerrero, 'Constructing Restorative Dialogue as an Alternative to Traditional Punishment in Transitional Justice Models,' (2022) Universidad Externado de Colombia in *Cátedra UNESCO Derechos Humanos y Violencia: Gobierno y Gobernanza Experiencias de Diálogos Restaurativos En El Contexto Transicional Colombiano*, at 13–35.

mirroring the rich tapestry of Llanera music.<sup>102</sup> The harp maintained a consistent presence throughout the hearing, strategically and meaningfully positioned next to the podium where judges, institutions, alleged perpetrators, and victims actively participated. To wrap up the session, in keeping with the Llanera music theme established by the harp, a musical ensemble<sup>103</sup> performed several songs that recounted the experiences of mothers who lost their children in the war and other survivors of the most heinous atrocities.<sup>104</sup> Using music and art in justice is not unprecedented; in this case, the particular llanero harp music and the women's songs carry a regional identity that challenges the formal tone of legal proceedings, inserting a local narrative into the record. As Muñoz López recounts, music has contributed to earlier efforts to confront the legacies of mass violence. In El Salado, for example, musical expression played a central role in grassroots initiatives of symbolic reparation and collective healing, illustrating how culturally rooted practices have long been part of Colombia's repertoire of restorative responses.<sup>105</sup>

Building upon the initial focus on incorporating cultural and local aspects of identity, later sessions also examined the traditional cosmology of indigenous cultures. This played a significant role during the observation hearing conducted in Valledupar, Cesar as part of the investigation into the responsibility of state agents in crimes, including extrajudicial executions.<sup>106</sup> The engaged involvement of members of the Indigenous communities characterized the entire session. The event began with a ceremonial act of harmonization, guided by a *matrona* (a respected elder woman known for preserving community traditions), a *carricero* (or traditional reed artisan), and members of the Kankuamo and Wuiwa peoples. Community members performed the ceremony to cleanse the room and obtain consent from the spiritual protectors of the region in preparation for discussion.<sup>107</sup> Members of the Indigenous group led a closing

<sup>102</sup> Silvia Rueda and Angela Giraldo, *The Harp of Restoration* (Unpublished raw footage, 2023).

<sup>103</sup> During the hearing, the group was introduced as "La hija de la Llanura." Their performance can be observed in: JEP Colombia, 'Audiencia de observaciones a versiones de militares en el Caso 03 ('falsos positivos'), Subcaso Meta', <https://www.youtube.com/watch?v=hsqJH4jRmWc> (accessed 24 May 2025).

<sup>104</sup> This cultural representation was held on February 23<sup>rd</sup> and 24<sup>th</sup>, 2023. See, JEP Colombia 'Día 2 | Audiencia: Observaciones a versiones de militares en el Caso 03, Subcaso Meta', <https://www.youtube.com/watch?v=GX98qLX-hOE> (accessed 24 May 2025).

<sup>105</sup> Carlos Andrés Muñoz López, "La Música Como Elemento de Reparación Integral En El Postconflicto Armado, Caso El Salado, Colombia," (2021) 23:2 *Revista Estudios Socio-Jurídicos*, at 61–99, <https://doi.org/10.12804/revistas.urosario.edu.co/sociojuridicos/a.9515>.

<sup>106</sup> Jurisdicción Especial para la Paz JEP, 'Auto No. 005 de 2018. "Por Medio Del Cual Se Avoca Conocimiento Del Caso No. 003, Denominado 'Muertes Illegitimamente Presentadas Como Bajas En Combate Por Agentes Del Estado" (2018).

<sup>107</sup> This cultural representation was held on August 31<sup>st</sup>, 2023. See: JEP Colombia, 'Audiencia de observaciones | Resolución de Conclusiones exintegrantes fuerza pública Caso 03', <https://www.youtube.com/watch?v=wKdrTpcBTXg&t=1784s> (accessed 24 May 2025).

ritual. This time, infused with a more Christian influence, survivors from the region presented an offering of prayer, poems, and songs, a glimpse of the restorative component.<sup>108</sup>

Incorporating cultural and traditional elements can help achieve justice, recognize identities, and provide the transitional process with essential elements for full reparation. Judge No. 1 emphasized that cultural and symbolic expressions are crucial for addressing victims' claims, making them feel heard and recognized as members of their social, ethnic, and community groups. Justice systems must understand that responding to these claims requires more than investigation, judgment, and punishment; it also entails offering accounts of truth that acknowledge victims' identities and their cultural, territorial, and community significance. Therefore, justice systems should adopt this cultural and symbolic language to communicate effectively with victims and fulfill their rights.<sup>109</sup>

Placing the cultural, traditional, and historical essence at the forefront of the judicial process entails addressing a different approach to TJ's colonizing perspective. Beyond what has historically been considered in this sense, colonization processes also involve institutional and intellectual colonialism. Attempts to adopt a justice model that is already tied to international economic, political, or structural considerations often lead to expectations about the outcomes the system should produce.<sup>110</sup> A punishment agenda, decision-making protocols, and procedural stages become tied to a colonizing mindset settled by those who believe they have developed a formula that only needs to be applied to a case study.<sup>111</sup> Challenging Western impositions, justice is brought to local areas, enabling victims to shape the restoration of their rights. This approach frees the system from external restrictions, prioritizing victims' agency and perspectives. Contesting prevailing narratives, it fosters a more inclusive, decolonized justice that centers on victims' voices, cultural values, and a sense of transformation.<sup>112</sup>

This approach contests the notion of a top-down justice model, instead advocating for a dynamic driven by community and tradition, impacting the activities of judicial operators and the norm itself. While the legal framework created for the TJ system in Colombia may have included a restorative component, the interactions between judicial operators and victims influence the creation and application of

<sup>108</sup> This cultural representation was held on August 31<sup>st</sup>, 2023. Also see: JEP Colombia, 'Audencia de observaciones | Resolución de Conclusiones exintegrantes fuerza pública Caso 03', <https://www.youtube.com/watch?v=ne8eA7EmzTo> (accessed 24 May 2025).

<sup>109</sup> JEP (2024).

<sup>110</sup> Nesiah (2016).

<sup>111</sup> Vielle (2012).

<sup>112</sup> Interview with Legal Officer No. 4. Name omitted for security reasons.

relevant rules. As such, it is possible to have a more complex and situation-specific understanding of justice thanks to this dynamic, fueled by cooperation between operators and victims. It acknowledges that meaningful restoration incorporates the cultural, emotional, and social components and legal and financial considerations. Through this transforming process, the TJ system takes on new forms and changes, reflecting the needs, values, and aspirations of the community it serves.<sup>113</sup>

This paradigm shift has made it possible for victims to see themselves as essential contributors to the formulation and organization of the objective of justice.

They understand who we are, our origins, and our needs. That's justice. Different from the one that comes from above, which is always the same. Justice is who we are, as demonstrated by our actions during the hearings.<sup>114</sup>

This viewpoint guarantees that the processes are founded on the community's understanding of justice and recognizes the critical necessity of victim participation.<sup>115</sup> By doing this, the scope of discovering the truth and making up for victim wrongs is broadened beyond the bounds of courtroom proceedings and the results of a sentence. It includes local scenarios and practices historically and customarily used to treat and heal the harm done. Most significantly, this active and inclusive involvement develops a sense of reparation. Survivors have shared how such a process has assisted them in escaping emptiness and grief and fostering connections with others.

Through these practices, victims experience joy and a revitalized feeling of community.<sup>116</sup> For instance, two survivors noted that this sentiment was not universal beyond the culturally rooted nature of the practice. However, a thematic convergence emerged among the remaining survivors, who expressed that although they appreciated participating in the restorative activities and incorporating their interpretations of traditions and grassroots practices, they did not perceive them as truly contributing to their healing processes. For these participants, such approaches, often infused with music, dance, customs and symbolic elements of their communities and territories, do not meaningfully address the deeper issues left unresolved by the conflict. As such, the sense of emptiness left by the justice process remained, resurfacing once the restorative practice concluded.

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<sup>113</sup> Interview with judge No. 1.

<sup>114</sup> Interview with Survivor No. 2, currently involved in the restorative procedures. Name omitted for security reasons.

<sup>115</sup> Interview with Survivor No. 3, currently involved in the restorative procedures. Name omitted for security reasons.

<sup>116</sup> Interview with former FARC member No. 2, currently involved in the restorative procedures. Name omitted for security reasons.

#### 4.3 *Skepticism and Challenges around the Incorporation of Cultural Practices*

The integration of local and cultural practices in the TJ model has been considered with skepticism by some of the individuals who have taken part in the process and by some of the participants. While the adoption of these practices has brought about innovation and had an impact, there are worries that cultural representations, such as artistic, folkloric, ancestral, or traditional samples, are now being incorporated into the process not to genuinely claim ownership, highlight local identity, and achieving adequate reparation, but rather to satisfy a new criterion added to the model.

Although cultural, ancestral, and traditional practices can potentially disrupt the transplanted mold of TJ, some contend that their incorporation fails to address genuine needs for redress and restoration adequately.<sup>117</sup> While these practices may symbolize cultural identity, there is a concern that they may ultimately become mere performances rather than genuine efforts to tackle the significant harm endured. For some, such practices resemble pantomimes and performances based on Western conceptions of how non-Western understandings should be portrayed.<sup>118</sup> The worry persists that incorporating such elements could risk becoming superficial gestures that do not deeply resonate with the real challenges faced by victims and their communities. This skepticism emphasizes the significance of thoroughly evaluating cultural traditions' influence and genuineness within the TJ framework.

Often, artistic samples are included in various proceedings, sometimes in the context of harmonization, which often incorporates cultural themes. Nonetheless, this inclusion occasionally comes off as just aesthetic rather than meaningful. It might produce a fleeting show where victims exhibit cultural expressions, creating a pleasant and memorable ambiance. However, these situations' real meaning and intent are not necessarily focused on repair. Disapproval has surrounded the reduction of the 'ethnic' to merely folklore or creative productions for amusement, while genuine ethnic representation needs to address the severe problem further.<sup>119</sup>

The restorative component has shifted into a mere formality—a checkbox ticked off without genuinely addressing the victim's need for reparation. For instance, scholars such as Velásquez-Ruiz and Olarte-Bácares<sup>120</sup> highlight the laudable contribution of corporations that provide financial and logistical support to

<sup>117</sup> Interview with Survivor No. 1, currently involved in the restorative procedures. Name omitted for security reasons.

<sup>118</sup> Interview with Legal Officer No. 2. Name omitted for security reasons.

<sup>119</sup> Interview with HHRR advocate No. 1, a specialist in processes involving indigenous communities. Name omitted for security reasons.

<sup>120</sup> Marco Alberto Velásquez-Ruiz and Carolina Olarte-Bácares, 'Access to Remedy and the Construction of Collective Memory: New Perspectives in the Realm of the Colombian Transitional Justice Project,' (2022) 7:3 *Business and Human Rights Journal*, at 468–74.

extrajudicial settings. The notion that minimal involvement in extrajudicial scenarios suffices as reparation reflects a superficial understanding of restorative measures and a misconception of these settings as a performance of those responsible. In this instance, it's the corporations implicated by the transitional process.

Such minimal involvement is compounded by doubts surrounding the victim's participation in the elaboration and design of these practices, raising questions regarding their authenticity. Western cultural hegemony has resulted in certain depictions being recognized as definitive cultural representations. There is a romanticized sense of what ancestral and traditional expressions should convey.<sup>121</sup> This occasionally leads to recommendations for practices from judicial staff, support groups, or victim organizations more aligned with what is generally considered typical for each region.<sup>122</sup> The portrayal of identity then risks becoming a cliché of how victims should dress, what music should be played, or which regional aspects should be displayed to refer to the cultural component inside what is promoted as restorative.<sup>123</sup> Overutilizing these traditional displays undermines the transformative potential, and the proper restoration sought through their adoption. This concern aligns with broader critiques of how 'tradition' can be reified or strategically deployed in postcolonial contexts. As Hobsbawm and Ranger<sup>124</sup> argued, many traditions presented as ancient or authentic are often recent constructions, invented to serve political or institutional purposes. In transitional justice settings, these traditions can become symbolic currency—tools to convey national healing or cultural depth—without engaging with the lived experiences or internal complexities of the communities involved.<sup>125</sup> In the Colombian case, as Gómez Correal<sup>126</sup> has shown, the folklorization of violence and memory can obscure structural inequalities while projecting a curated image of 'local culture.' Even well-intentioned efforts to include ancestral or community practices risk essentializing identity if they assume these traditions speak for a unified or timeless Colombian essence. As such, cultural forms are always mediated through power and representation, and their deployment in TJ must avoid turning local communities into

<sup>121</sup> Interview with HHRR advocate No. 1.

<sup>122</sup> Interview with Survivor No. 4, currently involved in the restorative procedures. Name omitted for security reasons.

<sup>123</sup> Interview with Legal Officer No. 2. Name omitted for security reasons.

<sup>124</sup> Eric J. Hobsbawm and T. O. Ranger, *The Invention of Tradition* (Cambridge, NY: Cambridge University Press, 2012).

<sup>125</sup> Benedict R. O'G Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, UK: Verso, 1991); Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton, N.J: Princeton University Press, 1993).

<sup>126</sup> Gómez-Correal, 'El Encantamiento de La Justicia Transicional En La Actual Coyuntura Colombiana: Entre Disputas Ontológicas En Curso,'(2016) *Víctimas, memoria y justicia: aproximaciones latinoamericanas al caso colombiano*, at 125-166.

performers of an externally defined script. Rather than treating culture as a stable repository of meaning, transitional justice must engage with it as dynamic, contested, and historically situated. As Judge No. 2 highlights,

What victims truly appreciate is the opportunity to be heard on their terms, which is the most valuable aspect, regardless of how cultural practices are presented in the hearings.<sup>127</sup>

The disruptive capacity of incorporating these elements into the judicial equation has yet to reach its fundamental aim. The breaking point for making RJ a powerful force against the colonial spirit of TJ extends far beyond the mere integration of cultural demonstrations during judicial procedures. Its actual capacity to emerge as a mechanism capable of challenging the imposition of international norms, establishing a framework that considers the local backdrop in which it operates, and standing out through local studies and analyses, rather than being a source of intellectual and pragmatic extraction, is hindered by the performative participation of local communities and the cosmetic inclusion of ethnic, traditional, or cultural practices. As Sierra Leon<sup>128</sup> argues, what is often dismissed as symbolic can in fact constitute a form of litigio estético—*aesthetic litigation*—where long-standing cultural practices serve as tools for memory, truth-telling, and justice-making among historically marginalized communities. Recognizing these practices as epistemic and political forms of resistance reveals the deeper potential of restorative justice. Conversely, the disruptive capacity of cultural-restorative practices lies in recognizing more fundamental aspects of the debt justice owes to the local essence.

Decolonization achieves its revolutionary goal when justice and its normative framework acknowledge that criminality extends beyond internationally specified offences.<sup>129</sup> For instance, when armed groups trespass on lands that have significance for the victims, like rivers or areas that are protected by Indigenous communities, or when bodies are dumped in water sources, the normative understanding needs to be challenged.

Timidly, the justice apparatus in Colombia has started to explore paths of recognition of diverse identities and redress beyond the performance of cultural components. The Constitutional Court,<sup>130</sup> in its decision T-622/16 and the Supreme

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<sup>127</sup> Interview Judge No. 2.

<sup>128</sup> Sierra León (2018).

<sup>129</sup> Eve Yang and Tuck K. Wayne, 'Decolonization Is Not a Metaphor,' (2012) 1:1 *Decolonization: Indigeneity, Education and Society*, at 1–40.

<sup>130</sup> Likewise, in decisions C-595/2010 and T-080/2015, the court acknowledged that 'Nature is not only considered as the environment and surroundings of human beings but also as an entity with its entitlements that must be protected and ensured.'

Court of Justice, STC4360/18, have respectively recognized the Atrato River and the Amazon as entities possessing legal rights.<sup>131</sup> This recognition serves the purpose of correcting environmental harm and protecting the natural environment.

These decisions also have significance for the concept of personhood. This perspective is examined in Ariza-Buitrago and Gomez-Betancur's analysis of the invisibility of non-human elements in Colombia's TJ process, which questions whether rivers, ecosystems, or animals can be compensated and rehabilitated for the endured harm.<sup>132</sup> Both courts carefully consider the impacts of unlawful mining and natural resource exploitation on water supplies, air quality, and deforestation. They also address the infringement upon the rights of non-human beings, which goes beyond environmental protection, emphasizing the importance of rivers, mountains, and territories to Indigenous, ancestral, and Afro-Colombian people for their beliefs, cultural practices, and sustenance, legally acknowledging these natural elements as entities.<sup>133</sup>

Evoking these first approaches, the Special Jurisdiction for Peace set aside the analysis linked solely to environmental impact and the necessary protection of territories and natural resources due to their direct connection to the fundamental right to life.<sup>134</sup>

In this context, territory is often seen primarily as a means of governing private property or as a focus for constitutional and jurisprudential protection, highlighting environmental rights. However, it also shifts towards a communal orientation, becoming a fundamental aspect encompassing existence's material and metaphysical elements.<sup>135</sup> Considering the inherent connection between Indigenous communities

<sup>131</sup> The ordinary justice has also recognized the Magdalena River (Decision 2019-00066-00, October 24<sup>th</sup>, 2019), the Pisba Páramo (Decision within the cause 2018 00016 01, August 9, 2018), the La Plata River (Decision within the cause 2019-00114-00, March 19<sup>th</sup>, 2019), the Coello, Combeima, and Cocora Rivers (Decision within the cause 2011 00611, September 14<sup>th</sup>, 2020), the Otún River (Decision within the cause 201900057, September 11<sup>th</sup>, 2019), the Pance River (Decision within the cause 2019-00043, July 12<sup>th</sup>, 2019) and the Cauca River (Decision within the cause 2019-00071, June 17<sup>th</sup>, 2019) as rights-bearing entities.

<sup>132</sup> Isabella Ariza-Buitrago and Luisa Gómez-Betancur, 'Nature in Focus: The Invisibility and Re-Emergence of Rivers, Land and Animals in Colombia's Transitional Justice System,' (2023) 17:1 *International Journal of Transitional Justice*, at 71–88, <https://doi.org/10.1093/ijtj/ijad001>.

<sup>133</sup> Henry Torres Vásquez, 'Conflictos Armados y Terrorismo En Colombia. El Terrorismo de Las Farc-EP de Acuerdo Con La Jurisprudencia de La Corte Constitucional Colombiana,' (2016) 13 *Institia*, at 11–34; Corte Suprema de Justicia, MP. Luis Armando Tolosa Villabona, "STC 4360/2018," 2018; Belkis Izquierdo and Lieselotte Viaene, 'Decolonizing Transitional Justice from Indigenous Territories,' (2018) 34 *Peace in Progress*, at 1–9, <https://www.icip.cat/perlapau/en/article/decolonizing-transitional-justice-from-indigenous-territories/>.

<sup>134</sup> Jurisdicción Especial para la Paz JEP, 'Auto No. SRVBIT 079/2019. Acreditar Como Víctimas En Calidad de Sujetos Colectivos de Derechos Al 'Katsa Su', Gran Territorio Awá, y a Los Treinta y Dos (32) Cabildos Indígenas Awá, Asociados y Representados En La Unidad Indígena Del Pueblo Awá – Asociación De Autoridades Tradicionales Indígenas Awá – UNIPA en el marco del Caso 02,'(2019).

<sup>135</sup> Amaya Álvarez-Marín et al., 'Legal Personhood of Latin American Rivers: Time to Shift Constitutional Paradigms?,' (2021) 12:2 *Journal of Human Rights and the Environment*, at 147–176, <https://doi.org/10.4337/jhre.2021.02.01>.

and their land, the court has acknowledged the imperative of surpassing anthropocentric perspectives that regard the land, nature, rivers, and seas as means for human exploitation. Instead, it promotes a comprehensive viewpoint based on relational ontologies. From this perspective, the court has recognized the Katsa Su, which encompasses the extensive land of the Awá Indigenous community, along with 32 Indigenous councils.<sup>136</sup> Additionally, the court has acknowledged the Eperara Euja world-territory of the Eperara Siapidaara people<sup>137</sup> and the titled and ancestral collective territory of the Afro-Colombian people of Tumaco and Barbacoas<sup>138</sup> as entities that have suffered harm. These judgments aim to build a comprehensive vision encompassing the entire geographical area, considering many aspects such as nature,<sup>139</sup> human beings, spiritual entities, and their intricate interconnections.

While representing a jurisprudential advancement and recognizing aspects of personhood and rights, these decisions primarily prioritize ecosystem protection and the prevention of environmental harm. This approach, however, overlooks the importance of incorporating Indigenous, Afro-Colombian, and peasant worldviews into redress mechanisms. According to these perspectives, rivers, mountains, jungles, water, and life are not merely components of biodiversity; they require protection for reasons beyond their environmental impacts. Achieving this goal requires adopting decolonization approaches to legal and social knowledge.<sup>140</sup>

Decolonization of the system is rather seen in consideration of the need to learn the truth about what happened with these territories and elements of nature when developing its special sanctions,<sup>141</sup> as well as to ensure that those who caused the harm are held accountable and make amends. Redress ideas must go beyond Western

<sup>136</sup> JEP, 'Auto No. SRVBIT 079/2019. Acreditar Como Víctimas En Calidad de Sujetos Colectivos de Derechos Al 'Katsa Su', Gran Territorio Awá, y a Los Treinta y Dos (32) Cabildos Indígenas Awá, Asociados y Representados En La Unidad Indígena Del Pueblo Awá – Asociación De Autoridades Tradicionales Indígenas Awá – UNIPA en el marco del Caso 02.'(2019).

<sup>137</sup> Jurisdicción Especial para la Paz JEP, 'Auto No. SRVR-094/2020. Acreditar Como Víctimas En Su Calidad de Sujeto Colectivo de Derechos Al EPERARA EUJA Territorio-Mundo Del Pueblo Eperara Siapidaara y a Los Resguardos Representados Por La Organización 7, En El Marco Del Caso 02,' 2020.

<sup>138</sup> Jurisdicción Especial para la Paz JEP, 'Auto No. SRVBIT 018/2020. Acreditar Como Víctimas En Calidad de Sujetos Colectivos de Derechos Al Pueblo Afrocolombiano de Los 17 Consejos Comunitarios y Su Territorio Colectivo Titulado y Ancestral' (2020).

<sup>139</sup> The Special Jurisdiction for Peace has also acknowledged the Cauca River in Decision 226, 11 July 2023.

<sup>140</sup> Izquierdo and Viaene (2018).

<sup>141</sup> Beatriz E Mayans-Hermida, Barbora Holá, and Catrien Bijleveld, 'Between Impunity and Justice? Exploring Stakeholders' Perceptions of Colombia's Special Sanctions (Sanciones Propias) for International Crimes,' (2023) 17:2 *International Journal of Transitional Justice*, at 192–211, <https://doi.org/10.1093/ijtj/ijad009> (accessed 24 May 2025); "Special sanctions" (sanciones propias in Spanish) are the restorative and reparative outcomes the Special Jurisdiction for Peace will issue. These are aimed at individuals who acknowledge responsibility and contribute to the detailed construction of the truth for serious human rights violations. See: Acosta-Zárate and Martínez-Guerrero (2022).

conceptions of restitution and dig into the core damage caused to local communities.<sup>142</sup> As the interviewed HHRR advocate advises, it is considerably more critical to listen to the mamos (Indigenous spiritual and political authorities from the Sierra Nevada region) and incorporate their views on what constitutes justice as part of the final decision. Recognizing ancestral and spiritual components by the legal system should be more than a symbolic gesture of victimhood. Instead, RJ should aim to address reparative needs that go beyond what is understood in the West, and the accepted model, its processes, and its results should reflect this objective to decolonize the transitional model effectively.<sup>143</sup>

*Conclusions: Decolonizing potential or performances of justice?*

Planting a tree in San Onofre's center square was not a whimsical or misguided response to the TJ process. Neither was the creation of spaces where local communities could recount their stories through songs, poems, and crafts. The new RJ component has expanded the scope of law and justice to include perspectives beyond Western understandings. While planting trees as memorials is not exclusive to Colombia – even European communities have long planted trees to commemorate events – the significance here lies in the local ownership and symbolism of the ceiba in this community. The Colombian case signifies a notable shift towards a justice system that prioritizes the community and emphasizes restoration. This pivot places greater importance on addressing victims' needs and enhancing societal bonds rather than solely focusing on traditional justice outcomes. The active involvement of victims, highlighting moral agency and individuality, raises questions about whether this approach truly serves as a decolonizing mechanism within the TJ framework.

Colombia is cautiously incorporating local elements into its transitional and restorative processes, beginning to explore a decolonial approach to the still predominantly Westernized TJ model. The prevalence of Western values and perspectives in shaping justice mechanisms and the standardization of practices raises concerns about the system's colonial origins. Prioritizing international law over local systems further exacerbates power imbalances and undermines local autonomy, hindering authentic participatory justice in the Global South.

Attempts to challenge the normative framework and the mechanisms inherent in the TJ model have kept power dynamics intact. TJ, often seen as a form of extraction from the Global North to the Global South, perpetuates a racialized hierarchy. Power

<sup>142</sup> Consider the traditional San Lorenzo rite, which cleansed participants before the hearing and honoured wartime disappearances. See: JEP Colombia, 'Audencia de seguimiento medidas cautelares Territorio Ancestral Indígena de San Lorenzo | 20231204', <https://www.youtube.com/watch?v=sK0AS4zqUU> (accessed 24 May 2025).

<sup>143</sup> Interview with HHRR advocate No. 1.

dynamics within these processes, along with international agendas and economic interventions, highlight the need to address imbalances that compromise the authenticity and effectiveness of TJ efforts. Furthermore, criticism of the system arises from excluding earlier colonial processes. TJ fails to address historical colonization and its ongoing effects embedded within institutions and systems by primarily focusing on post-conflict or post-oppression periods.

Efforts to create an innovative system that serves as a model for other processes to learn from primarily revolve around enhancing the restorative aspect. A significant achievement is the active engagement provided to survivors, whose perspectives serve as the critical element and constitute the fundamental structure of every proceeding.

Contrary to replication, the Colombian system has uniquely infused the restorative component with traditional elements. Symbolic and customary acts, accompanied by cultural expressions, illustrate the influence of the Global South on TJ. However, doubts persist about integrating cultural practices into the framework, highlighting the complex relationship between authenticity, representation, and innovation. While incorporating community-based practices, such as Indigenous rituals, Afro-Colombian commemorative acts, oral traditions, or symbolic acts of healing, has introduced meaningful innovations to the TJ process, concerns remain about their intent, efficacy, and decolonizing capacity. Including artistic, folkloric, ancestral, and traditional elements prompts questions about how these manifestations assert ownership, emphasize local identity, and contribute to successful reparation or if they merely serve as additional criteria to the existing model. Critics argue that while these traditions may symbolize cultural identity, they risk becoming performative rather than genuine efforts to address victims' suffering. Concerns also exist that cultural aspects may lead to superficial demonstrations that fail to connect deeply with victims' difficulties. Questions about the sincerity of victims' participation in developing these methods underscore worries about imposing Western cultural viewpoints. Additionally, there's a risk of reducing ethnic representation to stereotypes, where victims must conform to predetermined notions of cultural identity, thus undermining the transformative potential of these practices.

Cultural aspects in TJ have a profound impact beyond symbolism. When addressing redress, achieving authentic decolonization requires considering indigenous, Afro-Colombian, and peasant worldviews. The Colombian courts' recognition of legal rights for rivers, territories, and other non-human entities represents a significant advancement, acknowledging their personhood in the judicial system for environmental preservation and broader legal recognition. The legal system should move beyond symbolism and integrate communities' perspectives to address

reparative needs beyond Western concepts. The success of RJ in challenging the colonial nature of TJ hinges on acknowledging and respecting local cultures, moving beyond superficial inclusions, and embracing a holistic vision that considers the intricate connections between nature, humans, spiritual entities, and justice. Decolonization requires legal changes and a profound shift in understanding and addressing the core harm inflicted on local communities, recognizing diverse worldviews, and adopting a more inclusive and culturally sensitive approach to reparations.

~



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## FRONT COVER IMAGE

*'There was an academic friend here — where are you?'*

by Samir Harb (Instagram: Samir\_harbsss)

*In memory of Dr Wiesam Essa (1975—2024)  
and all the scholars who have been tragically killed in Gaza  
by the Israeli war machine.*

## TWAIL Review Issue 6

Published September 2025

Windsor, Canada ~ Bogotá, Colombia

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