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Transitional justice doused in restorative promises: new horizons or old quicksand?

Justicia transicional impregnada de promesas restaurativas: ¿nuevos horizontes o paraje fangoso ya conocido?

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**Transitional justice doused in restorative promises:
new horizons or old quicksand?**
**A critique of the restorative justice hype promoted by Colombia's
Special Jurisdiction for Peace**

ARTICLE IN PRESS

Justicia transicional impregnada de promesas restaurativas:
¿nuevos horizontes o paraje fangoso ya conocido?
Una crítica a la exaltación de la justicia restaurativa promovida por la
Jurisdicción Especial para la Paz en Colombia

ARTÍCULO EN PRENSA

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Summary: Introduction. 1. Restorative Justice: a practice that needs to be grounded and that demands humility. 2. Projecting demanding voices. 3. Power dynamics and who benefits from restorative approach in the JEP. 4. Governmentality through moralization. 5. Restorative justice clashes with legal culture and forms of law. 6. Restorative measures should relate to the damage caused and be an expression of concrete recognition; in the JEP, they are not! 7. Personal life: beyond the role as a victim in a legal hearing. A word in conclusion: much-a-do about restoration, what about justice? Bibliography.

Abstract: The promise of restorative justice (RJ) in Colombia's transitional justice (TJ) mechanisms is often framed as a novel paradigm producing

remarkable results. Yet, a significant gap exists between rhetoric and practice. Persons seeking justice for gross violations express concern that RJ primarily benefits perpetrators rather than victims. This paper contrasts the promises promoted by Colombia's Special Jurisdiction for Peace (JEP) with scholarly RJ literature and the experiences of victims' families. It critiques the JEP's use of RJ, emphasizing that restorative approaches are neither new to TJ nor intended to be celebrated uncritically. Experts stress humility and restraint in RJ practice, while the JEP actively promotes its model as a global legacy. Drawing on the voices of Colombians whose relatives were executed by the Colombian Army, this paper highlights how RJ practices shape the experiences of those persons seeking justice and underscores the risks of misusing restorative paradigms in pursuing TJ.

Keywords: restorative justice, transitional justice, Colombia, victims, critical studies.

Resumen: El uso de la justicia restaurativa (JR) en los mecanismos de justicia transicional en Colombia suele presentarse como un paradigma innovador con resultados notables. Sin embargo, persiste una brecha entre la retórica institucional y la práctica. Quienes reclaman justicia ante la Jurisdicción Especial para la Paz (JEP) señalan que la JR parece beneficiar más a los perpetradores que a las víctimas. Este artículo contrasta los discursos de la JEP con la literatura académica sobre JR y con las experiencias de familiares de víctimas. Se plantea una crítica al uso de la JR por la JEP, subrayando que este enfoque no es tan novedoso en contextos transicionales ni deben celebrarse de manera acrítica. A partir de los testimonios de familiares de personas ejecutadas extrajudicialmente por el Ejército, se analiza cómo el uso la apelación a las prácticas restaurativas inciden en sus percepciones de justicia y se advierten algunos riesgos inherentes a la instrumentalización de la JR.

Palabras clave: justicia restaurativa, justicia transicional, Colombia, víctimas, estudios críticos.

Introduction

The promise of restorative justice (RJ) in the implementation of transitional justice (TJ) mechanisms in Colombia appears to be spreading rapidly. RJ is being floated around in the Colombian TJ field as a new paradigm of justice that serves to reinvigorate the lofty goals of the Special Jurisdiction for Peace (known as the JEP, the Spanish acronym for the *Jurisdicción Especial para la Paz*). The JEP encompasses a complex set of judicial chambers in charge of the criminal accountability leg of the transitional justice scheme derived from the 2016 peace deal with one of the guerrilla groups in Colombia.

Given its complexity and novelty within the TJ field, the JEP has generated a substantial body of academic commentary. Much of the early literature focused on normative aspirations and institutional design, either because the JEP was still on paper, only beginning its operations, or because authors deliberately prioritized conceptual frameworks over practice. From the outset, the JEP has attracted considerable praise—some warranted, some overstated. Its ambitious mandate and the technical and discursive capacity of Colombian lawyers and professionals, amongst other factors, produce undeniable global interest. Much of the existing scholarship has not interrogated concrete results, nor sufficiently scrutinized the adequacy of the mechanism to deliver on its wide-ranging claims. More recent research, including work engaging with victims' perspectives, suggests that partial outcomes remain tenuous and difficult to assess (Figari and Vargas 2024; Mayans *et al.* 2023; García Espinosa 2023). Nearly a decade after the 2016 Peace Agreement, the JEP has not yet issued its first criminal judgment. The special court, its judges, and academic commentators have highlighted important achievements; some recent publications present both positive and critical perspectives (JEP 2025; Michalowski 2024; Sarkin and Pereira 2023; Valencia and Molano 2023; Ambos and Peters 2022). This article does not attempt to evaluate this broader literature or adjudicate the overall success of the JEP. Instead, it narrows the focus to a single dimension: the restorative claims advanced by the JEP and how they are experienced by a particular group of persons who are claiming justice. This contribution is not intended to produce generalizable results, nor to dismiss the potential of restorative practices, but rather to critically illuminate aspects of the restorative rhetoric that remain far less convincing when viewed from the perspective of those directly affected.

The RJ drive at the JEP could remain a provincial stream added to the medley of partial justice-seeking attempts in the war-torn country.¹ However, the JEP's restorative approach to justice is being packaged as a legacy and advertised in global accountability circles as a model to deliver justice in future transitional settings (JEP 2024c; Interview with Vidal 2025). For this reason, alone, other voices —other than that of the promoters of the supposedly unique paradigm— should enter the debate. I attempt to contribute to that purpose by reflecting critically on this experience in Colombia, and by gathering and organizing the testimonies of a group of people who, against all odds, power dynamics and the passage of time, are still demanding justice for heinous crimes committed against their family members by the Colombia military 15 or 20 years ago. They are now the subjects of the restorative tactics that are presented as novel. Their voices and experiences motivate and structure this critique.

Though RJ is being presented as a fresh ingredient in Colombia's TJ practice, the convergence of the two fields is not new (Ward and Langlands 2008 or Woolford 2009, 72-74). It seems that the current hype is riding the wave of a lot of forgetting about past warnings and unfulfilled promises. Scholars and proponents have underscored the shared values and practices by both banners, in the quest to achieve (some sort of) accountability and to make a community whole again (or at least functional), after experiencing troubles, harms or violations.² As an empirical field, RJ practices can inform the way responses to malfeasance and community conflicts are addressed in

¹ Colombia has promoted several official truth-seeking mechanisms since the 1960s; it has also frequently used amnesties and incentive-driven criminal justice schemes to promote demobilizations and collaboration with judicial authorities. Furthermore, it has been toying with TJ-language and put in motion TJ mechanisms since the early 2000s, with the demobilization of some paramilitary groups. Colombia's record in seeking justice is marked by fragmentation and partiality; the current efforts in relation to the FARC (*Fuerzas Armadas Revolucionarias de Colombia*) are not any different. The country's history reveals a pattern of bits-and-pieces of peace deals and justice efforts; all significant and important, but partial.

² Consider, for example, the 2012 volume of the International Criminal Law Review that contains the papers shared in a 2011 international conference on the interplay between both fields of practice (Doak and O'Mahony, eds. 2012) or warnings issued by Ward and Langlands (2008) in their text on convergences and divergences of RJ and human rights offending. More recently, Aertsen and Pali (2017) gathered a series of authors to work at the intersections of RJ and critical social theory; notably, Lode Walgrave (Aertsen and Pali, eds 2017: 95-110) succinctly underscored the flaws with the misuse of RJ and, given the absence of evidence to support promises of positive results, calls to "dim the expectations."

specific communities. It has also been suggested that RJ practices can act as a catalyst in transitional settings through the creation of new community bonds or strengthening existing ones. These practices may also be used to reinforce the participatory potential of TJ mechanisms by including actors who have traditionally felt alienated from established legal processes and institutions. Both findings are nuanced and, when grounded, should be explored. But this cautious approach is far from the ambitious claims made by various JEP spokespersons that present the restorative paradigm as the new successful formula to addressing heinous crimes.

For example, Roberto Vidal, the Chief Justice of the JEP, expressed in May 2024, during an International Conference on “Restorative Transitional Justice: Healing, Transformation and Peacebuilding,” that the magistrates of that court system are demonstrating “immense creativity,” and “are building very contemporary technologies of social intervention” that seek to make a transition towards peace and consolidate democracy through restorative justice (JEP 2024 c). He declared that the JEP is moving forward like no other mechanism, based on a trial-and-error system. Though, he recognizes that this approach poses a huge risk, he declares to be hopeful and promotes the legacy of this effort, though results are far from materializing.

The JEP is nowhere near the end of its mandate; in fact, though it is over six years into its jurisdictional role it has not reached a single conviction or sentence. And, yet the restorative approach is already being presented as its legacy. The complexity of the quest and the obstacles that the JEP has faced in achieving any sense of justice would advise the use of less pomp in public circles. However, far from the needed caution and humility, the JEP purports to be taking giant leaps, achieving grandiloquent goals and professing restorative justice within the framework of its labyrinthine formal and judicial structure, which only gets more tortuous with the passage of time. The pathway from promise to realization is long, windy and thorny; and good intentions are not enough to move rhetoric into practice.

Legal discourses and JEP decisions are adorned with the RJ rhetoric (JEP 2024a, 36-46): everything sounds pristine, harmonious and restorative! But language is elusive, and justice is not experienced through promises and exaltations. Justice must be experienced. There are important voices, precisely those of people who have suffered violence, persons who the JEP supposedly places at the center of their action, who do not share the restorative aspiration.

Colombia toyed unsuccessfully with restorative notions in the context of the demobilization of paramilitary groups, in the early 2000s

(Saffon and Uprimny 2006; Lyons and Reed 2010; and Firchow 2017). On the global scale, international scholarship heeded heavy warnings about the misuse of conventional RJ to address trauma and suffering resulting from mass atrocities (Doak and O'Mahony, 2012: 305-311). In addition to underscoring the haziness, ambiguities and obfuscation of RJ (including its theory, practice and rhetoric), Clamp and Doak (2012, 346) alerted that "(t)he portability of concepts developed in the context of 'ordinary' criminology' and criminal law generally to human rights violations and other serious acts committed in the course of civil conflict is questionable". Moreover, they cautioned that "restorative justice has also become a victim of its own success, in that the concept has come to be co-opted and construed in so many different ways so as to become virtually meaningless" (Clamp and Doak 2012, 359). As is evident from these observations, the admonitions about the slippery nature of restorative promises in addressing atrocity crimes have been aired loud and clear for over a couple of decades.

Warnings should not be equated with defeatism or to the notion of "nothing works". The pursuit of justice is inherently complex and requires a reflexive approach. Identifying risks and articulating criticisms serve several purposes, including: ensure that we do no harm, prevent repetition of past mistakes, and ensure continual reflection and adjustment to serve the interests of those who seek justice. Such cautions also function as a safeguard against collective amnesia, which often proves more consequential than remembrance. Past warnings or criticism should prevent us from re-launching well-meaning-but-ill-equipped mechanisms or recycling fads that sound good but eventually fail in practice.

RJ practices should have a role in most societies to address some injustices and wrongdoings; but their use needs to be localized and rooted in community approaches. That RJ has worked in addressing an outburst of school violence in a particular northeastern community of Canada does not mean that RJ will work in addressing executions committed systematically by the Colombian Army throughout the country. The nature of the offending, context, dynamics and structures, amongst other factors, matter in claiming, doing and experiencing justice. Furthermore, that RJ language is imported into a formal judicial structure does not wondrously alter the nature or the logic of a jurisdictional initiative structured by criminal law. RJ practices can likely benefit some judicial procedures; but RJ approaches are not always appropriate, and they do not substitute the administration of justice by the state.

Given that the use of RJ by the JEP is the subject of this critique, it is necessary to establish a basic frame of reference for what is meant by restorative justice. Thus, in the first section, a cursory review of what is RJ, according to its proponents, is offered. Based on this review, as will be highlighted, the problem is not so much with the RJ paradigm itself, but rather with the way the JEP is misusing RJ.³ In the second section, the voices of a small group of persons claiming justice in the JEP are introduced. My elaboration of this critique was motivated by interviews that I conducted with a group of persons who are seeking justice for violations attributed to the Colombian military.⁴ Their experiences and opinions —partial and biased as they may be— guide my reflections. Subjectivity matters, particularly under the guise of restorative approaches. Following, in sections three through seven, five thematic blocks are used to summarily illustrate the misuse of RJ by the JEP, including the use of RJ to moralize or control the demands of the persons claiming justice, its transplantation to formal judicial proceedings, and disregard for the great asymmetries of power amongst the participants in the proceedings. Each thematic block is developed in snippet form, to generate reflection of the many ways the restorative promise is being misused or abused. Finally, I offer a word in conclusion, emphasizing the importance of leaving all rhetoric aside and exploring viable routes that will satisfy a meaningful sense of justice to be experienced by the persons who have been harmed and are demanding justice.

³ The critical approach adopted in these reflections is not aimed at criticizing RJ and its use in community settings; if pressed on the matter, I would likely support localized RJ responses to many problems and conflicts that are regularly criminalized. Throughout my work, I have noted the negative effects in Latin American contexts of overcriminalization of wrongdoing, the selectivity of criminal law, and the damage caused by prisons. I take any alternative to the application of criminal law seriously.

The critical approach reflected in this article concentrates on the (mis)use of the restorative paradigm to respond to abominable offenses, by a judicial body, in a context in which power and violent dynamics continue to unduly weigh on the people claiming justice.

⁴ My research employed a qualitative design, focusing on intersubjective accounts of how the JEP's restorative promises are experienced by persons who are claiming justice for their family member who was executed. The sample was purposive but functioned as a convenience sample, facilitated through lawyers representing victims before the JEP who suggested potential participants. From these contacts, I conducted twelve semi-structured interviews, intentionally seeking representation from different regions of Colombia. The aim is not to generalize but to document subjective perspectives, experiences, and motivations of individuals formally recognized as "victims" within the JEP process. All interviews were recorded to ensure accuracy and to capture the depth of participants' narratives.

1. **Restorative Justice: a practice that needs to be grounded and that demands humility**

Talk of restorative justice often eludes definitions. The notion appeals to intuitive understandings, often invoking moral and religious (personal) preferences. Since it appeals to instinct, common sense and predispositions, people talk freely and pursue goals they believe to be “restorative.” The notion can be accommodated to serve as a qualifier, a verb or a noun (restorative, restore and restoration, correspondingly) and, thus, its use expands. Language is sloppily used: restoration is equated with restitution, atonement, healing, reparation or reconciliation.

The word ‘restore’ is full ambivalence; it can mean the action or effect of returning to a previous situation—a sense according to which “restoring the damage”, which is often said, is confusing and probably wrong. Restore can also mean fixing a damaged thing, giving it a new appearance—which may make more sense, but is still problematic. If you think about it, the popular phrase “restoring the damage” continues to be an elusive catchphrase. In relation to extreme damage or harm, it is probably void of meaning. All the persons with whom I spoke insisted that the harms caused were incommensurable and that these could not be undone or fixed. Their assertions and feelings should not be ignored; for example, a mother of one of the executed youths stated: “Nothing you do can bring my son back to life.” Another said: “There is nothing in this world that can restore the damage they committed. There is not; really, there isn’t.” This feeling was unanimously expressed by all persons interviewed.

Howard Zehr (2023), one of the promoters of RJ, says that ambiguity is one of the most powerful qualities of ‘restorative justice’. He says that it activates people’s common sense and makes it easier for everyone (without being specialists) to get involved in the debate. However, he warns that this quality also represents a risk factor, as it allows personal and subjective notions to be incorporated and impose solutions that are far from fair.

Zehr and other RJ practitioners insist, again and again, that ‘restorative justice’ is not a special form of justice, but is the term used to describe practices that can be incorporated in different ways and forms to address the harms generated by different conflicts and social transgressions, favoring dialogue as a means of resolution (Zehr and Toews, eds. 2004).

Proponents insist that RJ is a practice that must be rooted in communities—it should not be conceived as an external or formal

process. The practice of RJ should emerge from below, from the community level, to address the harms experienced by individuals and communities, and to mend the relationships between people and the trust amongst community members. The process should lead to a shared understanding of the damage and its scope. The process should explore the obligations of those persons who harmed and put in motion mechanisms that allow the community's balance to be restored, as the harms are progressively repaired or mitigated by those who have harmed. Proponents stress the importance of engaging the obligation and responsibility of those who have harmed (Zehr 2023).

In the process, different mechanisms are used that favor dialogue and promote the participation and commitment of all those affected and involved in the matter. Zehr (2023) and others (Aerssen and Pali 2017) emphasize that restorative justice practices are wide-ranging—they include community circles, mediations between offended and offenders, and conferences between families and specific communities (such as educational communities or neighborhoods). The repertoire of practices is ample, and approaches are changing. The tool kit approach is not recommended; practitioners insist that attention should be placed on the embeddedness (social roots) of the tools in particular communities and their adequacy and effectiveness in resolving conflicts, re-establishing social relations and addressing damages.

The most successful practices have taken place in specific communities (at the micro level), and in societies that are much less violent and conflictive than Colombia's, such as Canadian and New Zealander communities (Woolford 2009). Where evaluated, restorative justice outcomes are inconclusive (Pavlich 2005). The best practices are recorded in small-scale programs, in which the involvement of an affected community is guaranteed, there is closeness in the exchange between the offended and the offenders, and very concrete and grounded goals are established (such as that the people affected by the harm have a framework that allows them to understand what happened) (Aertsens and Pali 2017).

Andrew Woolford (2009, 76-82) reviewed qualitative and quantitative evaluations of experiences with restorative justice and noted that the appraisals made by offenders are more positive than those made by people who have been harmed. His review also highlights that these practices do not take place as a substitute for formal punitive justice, but as a complement. That is, restorative practices complement and help give a robust sense of justice in cases where criminal sanctions are in place.

In relation to the proclaimed benefits to communities, the results are simply not clear. In contexts of massive human rights violations in which the RJ paradigm has been used to address harm and suffering, several scholars warn that beyond a small circle of people who engage in the specific events and rituals, communities that do not “take” the bait of “quasi-religious philosophy” end up dissatisfied; and that “compulsory compassion” does not yield restoration or any sort of justice (Wilson 2001; Acorn 2004; Mamdani 2000).

In his lectures, Zehr (2019) is particularly careful to claim successes and warns that the practice of RJ raises more questions and doubts than answers. As others, he underscores that ‘restorative’ justice is not opposed to ‘retributive’ justice but complements it. When pressed about the need for criminal punishment, he states that he cannot seriously envision, in the societies in which we live, a world without prisons to resolve cases that cannot be addressed by restorative practices—although, consistently and coherently, emphasizes the need to rationalize the use of prisons (Zehr 2019). The complementarity of the different values goes hand in hand with the multidimensional nature of justice. In other words, justice is a concept composed of various values, including retributive, distributive, restorative, corrective, and compensatory, amongst others. There is no fixed formula and the balance is mobile: for example, the demand for justice can be (more or less) retributive or corrective, depending on changing circumstances. Each of the values adds something, but no value encapsulates all that is just.

Finally, Zehr (2019) makes a fundamental warning: “You can follow the principles (of restorative justice) and still do some terrible things” if certain values are not respected, including respect, responsibility, and relationships (the re-establishment of a balanced relational framework). If only his humility had some echo in those who present the ‘restorative’ paradigm as a magic potion to do justice in Colombia. Now, I turn the persons who stimulated these reflections.

2. Projecting demanding voices

Between April and May 2024, I conducted a series of interviews with a dozen persons who are demanding justice for the murders of their relatives committed by members of the Colombian Army.⁵ All the

⁵ The JEP estimates that the Colombian Army committed over 6,000 of these executions and presented them as Kills-In-Action (KIAs) to increase their effectiveness statistics. These sham-KIAs engage the responsibility of civilian and military commanders

persons interviewed⁶ participate in the JEP in different ways, after having sought justice for these crimes for years in the ordinary justice system.

I reproduce their voices, giving them different names for protection, to make known their experiences in relation to the promises of RJ. As underscored in the introduction, I am working with a purposive and convenience sample that is deeply particular. Any type of generalization appears contrary to the very nature of RJ methods. I have used only excerpts of extensive interviews that I conducted. I leave out vivid and intimate details of their lives, to avoid identification. Their experiences are privileged and should matter; they forever changed my perceptions.

All the persons I interviewed, want to act in a dignified way. After years of experiencing grievances, injustice and denials about what happened, they continue to seek official acknowledgement of wrongdoing and want their loved ones to be remembered, to matter. To varying degrees and in various ways, they all deal with trauma, frustration and feelings of rage. They all have very robust ideas and experiences of what is just and unjust.

The interviews reveal them as complex human beings —like all of us. Violent events and multifarious harms have tainted their lives; however, in the present, marked by the passage of time since the original victimization, they strongly express that they are much more than victims and that their lives are not contained by that role that society and state institutions, such as the JEP, assign to them. They all have a sense of the past, a present and a future that is not limited to being victims of something or someone. For example, Doris, an urban woman about 60-years-old, with a warrior spirit and a critical read of many social problems, who seeks justice for the disappearance and murder of her son by the military, told me: “I am outraged by the word victim, because it is as if they were saying to you: ‘Oh, you poor thing, you lost your son’. So, they want you to be quiet, ‘You have to do what we are going to teach you’.”

Her words illustrate one of the less visible problems of the supposed virtue of classifying persons as victims: when people who have been victimized are labeled as victims that role becomes totalizing —annulling other dimensions of their lives— and regulating what is

and the organizational responsibility of the Colombian Army (Reed 2016). Denial continues to weigh heavily over this pattern of violence.

⁶ See note 4 *supra*, providing a brief description of purposive and convenience sampling, and methods used.

expected of them. The victim-notion is projected as an ideal-type that tames and governs the behavior of a very diverse group of people and assigns them a homogeneous role (Mutua 2001, 203-204). There is nothing wrong with acknowledging that a person has been a victim of a crime or a violation; the problems arise out of the labeling and totalizing process that drains other identities from the personal experience and imposes an expected social role. The social and institutional projections tied to the victim-label are weighty, for example: "victims" are expected to be fragile, sad and passive; they are assumed to need saving; and "good" victims are willing to forgive.

Some of the persons I spoke to insisted that, although there is a lot of talk about "the participation of victims," those instances of participation do not respond to their needs or interests. For example, Antonio, a thirty-something-year-old peasant who has been looking for 20 years to find out why the Colombian Army killed his father, said, in a calm and melodic voice: "perhaps my voice is not heard because I am a simple peasant. They concentrate on what they think is supportive (...) but, sometimes, their action is unfocused. They should really consult more with victims. They decide what we need and don't really ask what we want or need. They should listen more...". Of all the people I spoke to, Antonio is the person who places the most hope in restorative promises, but even so, he expressed that his opinions were not properly considered.

In the following sections, I weave the testimonies of these persons claiming justice in Colombia. Their voices ground my critique and provide a specific perspective of the experience of "victims" subjected to the restorative practices of the JEP.

3. Power dynamics and who benefits from restorative approach in the JEP

RJ was conceived, in part, as a means to respond to the unfairness of the criminal justice system. In its origins, RJ is a practice that seeks to respond to the damage generated by offending conduct whilst seeking to avoid criminal treatment, since criminal justice has proven to be inadequate at addressing harms and has deepened discrimination and further damaged some sectors of the population, for example, poor young persons who are part of discriminated groups. RJ is intended to aid offenders (who are themselves socially vulnerable and regularly criminalized) recognize wrongdoing, assume responsibility and prevent future malfeasance.

In the context of the JEP and, particularly, in the case of commanders who benefited from the executions systematically

committed by members of the Colombian Army, neither social vulnerability nor the disproportionate application of criminal law against them characterize their social or power standing in society. On the contrary, they are protected by power and shielded *de jure* and *de facto* by various forms of impunity.

The use of restorative rhetoric and practice that the JEP is applying to these powerful offenders is inappropriate. A framework of action that was developed in contexts of combating poverty, reducing social vulnerabilities, community promotion initiatives, and strengthening informal justice tools is being transferred without much reflection to a formal scenario that is judicial, that must apply criminal law, and that must judge powerful people (high-ranking officers of the Colombian Army), who continue to be protected by political and military elites and even by the military organization (Reed 2024).

Both Woolford (2009) and Pavlich (2005) have alerted us to some of the risks involved in this type of transplantation, full of imitation of language and forms, but lacking social meaning or community roots. They highlight that if power dynamics are not addressed and processes of discrimination and subordination are not neutralized, restorative practices (such as dialogue circles, mediated exchanges between offenders and offended, or conferences with all stakeholders) do not have the desired effects and can, in fact, reinforce unjust relationships.

Moreover, the imbalances of power observed 'within' the group of offenders subjected to the JEP are extraordinary and are also contrary to a basic premise of RJ: working outside of power relations and subordination. For those not familiar with martial culture, consider the following illustrations: a colonel, no matter how retired he might be, is a superior to any soldier (or captain or major, for that matter); the rank and class differences between officers and non-commissioned officers delineate indissoluble barriers; a soldier is always considered an "order-follower;" and the *esprit de corps* of the military organization reaches beyond active duty. All these factors, and others of the military total institution, determine the behavior of those military men who appear or are called to depose before the JEP (*comparecientes*). These dynamics, internal to the offender groupings, necessarily corrupt any restorative intent the JEP might have. There may be extraordinary cases of humanity in any one group, but they are exceptions, not the norm.

Lastly and most significantly, the disparity of power between the officers responsible for the executions and the people demanding justice for the murders of their relatives was extreme at the time of the events and continues to be so. Nothing has changed! What is worse: many of these people feel that the restorative cloak that the JEP has

put on justice is not for them, but rather for the perpetrators. They feel the JEP is placing the interests of the officers above theirs.

Matilde, a 40-year-old woman from the oriental plains of Colombia, after narrating in full detail all the steps she took over a decade to find out what happened to two of her relatives who were executed by the Army, exposes the imbalance of power with the military officers and the unfairness of the JEP. She expressed: "All this is to manipulate us, to use us. They use us for the benefit of the perpetrators. We are the ones who have to be there (at the JEP) and suffer, so that the perpetrators can get away with it. We, the victims, have not felt any benefit towards us; all benefits have been for them." In a latter part of the interview, she situated herself in the shoes of the perpetrators and clinched: "It can't be that I confess to being a murderer, that I killed some persons and that's it," her voice was silenced by anger and sadness. Her feeling that the killers and the Army are getting away murder without activating consequential forms of accountability was shared by everyone I interviewed.

4. Governmentality through moralization

As Zehr (2019) and other scholars (Pavlich 2005; Walgrave 2017) warn, restorative justice practices have the potential to undermine the persons who have been harmed. One of the risks, particularly documented by Pavlich, is that the RJ framework can be used to "govern" how people should behave, especially those with less power (2005, 43-64). As the aspiration is to change the way people regularly behave in the face of harm, practices can be used to control human behavior, favoring certain attitudes and discouraging others. The RJ framework lends itself to order claimants' behaviors. Gina, a woman from Boyacá who has been pursuing justice for her husband's execution for almost two decades, illustrates this manifestation: "They (the JEP) want us to walk where they want us to walk." Contrary to the predicated "centrality of the victims," the JEP pretends to control the way persons who have been victimized should behave and govern how they tackle conflicts and harms.

Some of the persons who have participated in the restorative practices that the JEP implements, such as private conferences with confessed perpetrators, say that they are directed to talk only about the positive aspects of the process and that if they do not behave as instructed, the JEP excludes or marginalizes them. Luciana, a young woman from the Atlantic Coast, tells me that every time she is going

to say something, there is always a comment like “oh, and now what else does this *girl* want?” Luciana is an avid college student; she grew up not knowing what had happened to her father, who was executed by soldiers and presented as a death-in-combat by the Colombian Army. Luciana wants to “be aware” of what happened and demands justice for her father’s murder. She sounds like a lawyer, though she is not studying law. With a jovial voice and speaking swiftly, she sentenced: “Dissenting voices are silenced. For example, they will tell me: ‘what you are saying is okay, but let’s listen to someone else,’ and they will turn to someone who will speak about forgiveness.” Her reproof of how strong voices are stifled and how certain expressions are favored over others shows how restorative forms are used to condition and govern what people demanding justice can say.

In addition, Luciana draws attention to how moralism is used as a disciplinary framework. She says that the persons who participate in the public sessions are instructed to show a positive and nuanced version of what takes place in the private exchanges with the perpetrators. She is not convinced by the emphasis on the positive-side-of-things and affirms: “we must talk about what’s not pretty. That, too, must be discussed; it must be shown. (Our expressions) can’t be limited the beautiful and the restorative. Why don’t we show the cruelty of the testimonies? No, we must show the pretty side of things so that the perpetrators are encouraged to talk. That can’t be! The armed conflict was not a pretty thing.”

There are some people who have broken with the JEP, precisely because they feel they are being controlled by the JEP. One woman with who I spoke manifested: “I feel a lot of pain and a lot of sadness for the people who are being used for these cases (in the JEP). Personally, I don’t lend myself to anyone manipulating the way I think.”

All the people interviewed stated that they feel the weight on them to fulfill the restorative aspirations that the JEP teaches them. This transfer of responsibility may be causing greater damage and, undoubtedly, reproduces social relations marked by power and evidences a moralizing control of how people who have been victimized should behave.

5. Restorative justice clashes with legal culture and forms of law

The practice of restorative justice is not intended for formal judicial settings. RJ is, precisely, an alternative or a complementary response to formal justice. Moreover, the fact that RJ is integrated into the JEP’s

practice can conflict with its other functions, as it restorative goals generate tensions and self-interest in the cases that should be resolved through the application of criminal law. The realization of criminal justice clashes with restorative purposes. "Restoration and justice are in themselves both virtuous ends, but the reality of many cases is that they cannot be pursued together. Only in aspirational language do restoration and justice exist without getting in each other's way" (Pemberton and Aarten 2017, 323).

As the JEP assumes multiple roles, including investigator and judge of egregious behavior, mediator or facilitator in restorative practices, and "defender of victims" but promoter of perpetrator confessions, tensions and conflicts become apparent. As the JEP becomes a party in the dynamic, it acts to defend its interests but is also in charge of regulating behavior of others and resolving cases.

Evaluations of RJ programs in other parts of the world where authorities have been more involved highlight an unintended effect: the interests of officials and official entities enter the restorative resolution equation (Pavlich 2005, 16-17 and Woolford 2009, 76-82). This interest may entail a distortion to the extent that the official entity seeks to demonstrate the efficiency of its action, leaving aside the attainment of restorative effects or achieving criminal convictions in cases of complex offending. Official involvement can also favor the adoption of management indicators that demonstrate success in procedures, or count the number of people served, over indicators of social impact.

Moreover, the practice of RJ requires flexibility and informality, but the administration of justice is formal and governed by rigid procedural frameworks. That mix leads to contradictions between the informality of out-of-court sessions where things are said and happen without consequences, and hearings that are governed by law and require lawyers.

Additionally, the habits of officers of the court (clerks and judges, trained lawyers) are not aligned with restorative practices. The testimony offered by Matilde, a forty-something-year-old woman from eastern Colombia, illustrates this point: "Some people in the JEP understand the pain that we are experiencing and respond appropriately to the situations that arise. But there are others who are driven by the coldness of getting on with business, applying the law, using that inhumane veil. For example, there's a lawyer in the JEP who says, 'Why are you crying? Just let things go. The important thing here is that they (the perpetrators) speak up'."

Similarly, Gina, who's specific case was not prioritized by the JEP to follow the confessional track is trying to get answers from magistrates

in charge of addressing the residual caseload, which is immense. As she seeks clarification of her case, left unresolved by the soldiers' confessions, she finds that the legal pathways are inflexible, and the JEP's need to resolve the legal situation of perpetrators is at odds with her interests. She recalls a magistrate telling her that: "the laws and rules had been established (...) so there was nothing that could be done (to address her questions)." The judge, then, recommended that "it was better for her to let go of the baggage (apparently alluding to her trauma and her interest in finding the truth), so that she could walk calmly, lightly, because it was likely that the soldier who had murdered her family member would no longer remember the incident."

These narrated experiences illustrate the difficulties in materializing the restorative purposes through legal proceedings; additionally, they show how far from restorative aspirations, legal practice can, in fact, be an additional source of victimization.

6. **Restorative measures should relate to the damage caused and be an expression of concrete recognition; in the JEP, they are not!**

The JEP launched in early 2024 something it calls the "Restorative System." It is described as "an effort that, based on Restorative Justice, will ensure the implementation of projects that incorporate works, creations and activities with restorative and reparative content that must be carried out by the *comparecientes* (the persons who appear before the JEP) who have provided truth and who have acknowledged responsibility for the serious crimes committed during the armed conflict" (JEP 2023b).

According to statements by the JEP's Chief Justice Vidal and public communications by the JEP about these "restorative projects," all offenders will converge, without distinction and with no specific relation to the damages or the confessed criminal conduct. "Both members of the security forces and members of the former FARC-EP guerrillas will be working (on these projects)" (JEP 2024c). So, the criteria that have been deemed essential for restorative initiatives to work—including, ensuring differentiation based on type and extent of damages and a direct link between measures adopted and the transgression dynamics, or linking restorative actions with specific communities and people who were harmed—are openly being abandoned by the JEP.

According to this logic, and with respect to restorative measures envisaged in the case concerning extrajudicial executions committed by the Colombian Army (known as Case 003 in the JEP), the projects will involve dozens of soldiers and non-commissioned officers who have plead guilty, along with a small number of officers who have acknowledged responsibility in various regional contexts. The group selected to stand in as “the most responsible” culprits remains very limited compared to the broader universe of individuals implicated in the offending pattern. The fate of the hundreds (if not thousands) who exit the justice scheme via the back door provided by the exceptional chamber tasked with “resolving legal situations” (*Sala de definición de situaciones jurídicas*) of those deemed to not be most responsible for the heinous killings remains uncertain (Colombia, *Ley estatutaria de la JEP, Ley no. 1957 de 2019*, art. 84). What is clear is that these individuals benefit from the system: at the very least, those previously convicted of murder by ordinary courts were set free after serving only five years in prison.

Many of the persons seeking justice for the death of their loved ones have complained that this group of persons was released without contributing to the reconstruction of events or the criminal dynamic. Gina, for example, stated: “I’m outraged that the JEP has several chambers, but they don’t compile and share the information. (...) The chamber that defines the legal situation of the soldiers (*la Sala de definición de situaciones jurídicas*) is a black hole. I’ve been begging for a long time for them to inform me what the man (that executed my husband) has told them, what he has contributed. (...) In fact, they have not confirmed whether he is under the jurisdiction of that chamber. No one says anything; no one confirms whether he is under their domain. Neither yeah nor nay. Nothing.” The contribution of these former soldiers in the restorative dynamic is uncertain. Significantly, this group is the most numerous: as mentioned before, the size is in the hundreds and even thousands of persons who are being “processed” in this “black hole,” as Gina describes it. The persons demanding justice do not have effective recourses in this Chamber of the JEP.

Let us return to the few visible perpetrators that are making their way through the more open confessionally-driven cases (handled by a lower chamber and a higher chamber for cases of acknowledgement of truth and responsibility). These individuals are supposed to actively participate in the restorative projects.

The national launch of the JEP’s Restorative System, “We must sow the future together,” was held on April 2, 2024, in the Usme locality

(to the south of Bogotá) was televised (JEP 2024 b). In addition to authorities, including the mayor of Bogotá and the JEP's Chief Justice, it featured three Army officers, two of them responsible for a litany of atrocities committed in Casanare. Absent, however, were the persons who were harmed and victimized by these military men in Casanare.⁷ The event took place in the site of one of the restorative projects that the JEP calls "Sowing Life" (*Siembras de vida*). It is a tree-planting initiative with ecological content, which according to the official account, provides "a fertile ground in which actions sprout that contribute to restore and heal the damage caused to the victims of the armed conflict, the communities, the territory and society as a whole" (JEP 2024b). Rhetorical artifices aside, the project is disconnected from the offending pattern and the aggrieved communities; it jumbles up perpetrators of all types.

During the event, Henry William Torres Escalante, a colonel (at the time of the crimes) who has been declared responsible for dozens of aggravated homicides in Casanare, spoke on behalf of all those who will work on the project planting trees. He is referred to and speaks as if he continued to hold his official rank (retiring as a general). Reiterating restorative mantras, he thanked and congratulated everyone, and recognized the courage of the 48 soldiers who will work on this project as a second chance, "sowing hope so that the tragedy of war will not be repeated" (JEP 2024b). The applause of the audience followed—again, an audience that excluded the family members of those executed by his military unit. The language of the confessed perpetrators continued to reflect denial of the heinous acts. Another retired colonel responsible for executions in northeastern Colombia referred to the executed persons as "those people who died in those combats" (JEP 2024 b). His statement reiterates the denial that is at the core of the criminal practice committed under the color of law by the Colombian Army: the production of sham kills-in-action by executing persons, simulating combats and using them for the body count.

Doris, the mother of a young man assassinated in the northeastern region of Colombia, was, also, not invited to the ceremony. In relation to this project, she manifested: "The methods that the JEP is using for restoration are shameful. They order the soldiers who murdered my son to plant flowers, to water them and that is supposed to be restoration! It can't be."

⁷ I confirmed through a direct interview (on August 2024) that they were not invited, though they are organized in an association that is in constant contact with the JEP.

Luciana, now a university student, remembers her father and states that she can contemplate the possibility of some projects serving as a type of sanction, but that they would have to be linked to the recognition of what happened and respond to special conditions. Reflecting on the announcement made by the JEP that development projects were going to be used to restore persons who had been victimized, she stated: "The idea that we are all the same and that the construction of a road serves us all" is far from the recognition we are demanding. She considers that the forestry project goes against their dignity as family members; she explains: "It can't be that they're going to plant trees all over Colombia and put a plaque on them that says the name of the victim, and that's it. So: the tree has (my dad's) name on it and that's it. I've been restored! No, that is not the way it works!"

A group of people demanding justice for the crimes committed in Casanare, strengthened by their collective action, wrote a remarkable letter to the Chief Justice of the JEP, in which they express their openness to participate in projects that contribute to the recognition and understanding of the violations and harms they have experienced. However, claiming their dignity, they raise their voice —*alzan su voz desde la dignidad*— to reject the Usme event, which featured the officers most responsible for the atrocities in Casanare "planting trees in a region so different and distant from (theirs)". This public show, coupled with the growing frustration due to the lack of progress in the JEP case on the executions in Casanare, lead them to write: "after so much effort we are left empty-handed, full of questions and with the pain of reopened wounds from expecting what did not take place: we did not get any of the (promised) truth" (Casa-paz 2024).

Their demanding voices are clear. The JEP is celebrating its 'Restorative System', while the people affected by the violence—the victims, who are supposedly the core of the JEP—are openly expressing their rejection to its practices. The official rhetoric is far from restorative and appears to be camouflaging injustice.

7. Personal life: Beyond the role as a victim in a legal hearing

The final thematic exploration regarding the expansive use of restorative rhetoric by the JEP is related to the instrumental use of the persons who have been harmed in the legal proceedings and the manifest disregard for their needs when they are not satisfying the ideal legal role of the victim. Instead of embracing the complexity of

the persons claiming justice, the JEP's practices often reproduce the traditional and reductionist role of the ideal victim, as a figure who is powerless, innocent and passive that requires saving by a protector. Furthermore, instead of delving into the complexity of the human being, the JEP promotes a totalizing and one-dimensional image of the person: the victim. The JEP appears to ignore that many of the persons who act as victims in their legal hearings have complex lives outside the courtrooms, with needs and demands consonant with their social dynamics.

The association of citizens claiming justice for the crimes committed in Casanare complained to the JEP regarding this treatment. They position their claims to justice based on their citizenship—not victimhood (Casa-paz 2024). This group of citizens acknowledges their initial distrust of the JEP and explains that they overcame that position and decided to participate because of the assurances they received that the process would be meaningful for them. They highlight their participation in hearings and workshops in El Yopal (the capital of Casanare) and remind the JEP of everything they did to fulfill their commitment: to participate actively in the proceedings. Following, they describe a part of life that is usually not talked about in the JEP: everything that goes on outside the JEP, everything that can be described as mundane.

Recalling a public hearing held on September 2023 in El Yopal (JEP 2023a), the association describes how their members returned home: "At the end of a hearing that was full of pain, drama, tears, lies, elaborate speeches and arrogance, we were left empty-handed. And we were left alone, suffering from physical and mental illnesses (...), because of the emotional effort required during the hearing and the poor or almost non-existent results of that hearing and the private encounter with the perpetrators" (Casa-paz 2024). The lack of psychological and social support between hearings that this group highlights demonstrates the emphasis placed on public moments of theatricalization and ritualization at the JEP, but omission in the care provided in their day-to-day existence, as if pain was constrained to the judicial spectacle.

Genoveva, a peasant woman in her forties who seeks justice for her brother's execution, shares the anguish caused by the JEP's restorative rituals when she is home. "They conduct workshops for us, they put us up in hotels, they give us good food, they talk to us nicely (...), everything is rosy there; but they forget where we have been, the path that we have taken. It's hard. I want to persevere, because I want justice; I want to know how those who did this to my brother have

lived. But I don't know how much longer I'll have to wait." She expresses that all these experiences are very foreign to her; she experiences them as artificial, removed from reality. After the hearings and workshops, she is left alone and does not find meaning in anything: "It's totally frustrating. After I arrive home, life turns awful: I regret all the days I wasted over there (at the JEP)."

Those unable to attend the hearings also express distress. Antonio, a community leader from the Atlantic Coast, the most hopeful and positive person I interviewed, expressed that he could not be in many hearings because he had to work and that not participating afflicted him. "I would like to be at all those hearings and events," he stated, "but I can't, because I must think about my family, and I can't expose myself (reflecting on his security). I have a family, and I must honor my obligations." Antonio feels guilty when he misses hearings at the JEP; however, he must tend to the various dimensions of his life.

All these expressions reveal tensions that are not sufficiently considered. JEP officials might be dedicated full-time to a *bona fide* effort to do achieve justice in some cases—it is their job, after all! However, persons claiming justice were thrust unwilling into this situation, experiencing extreme trauma and need, often being exposed to great risk, and having many other roles to fulfil, beyond being "victims" in the special criminal proceedings. The multiple layers of their lives weigh heavily on them and a proper restorative initiative should consider their humanity in more complex and ambiguous ways, adapting to specific needs. The people who are supposed to be at the vortex of the JEP are shedding light on needs and pressures that derive from the role that they are expected to play as ideal victims. The restorative framework that the JEP proclaims should provide satisfactory responses to these tensions.

A word in conclusion: much-a-do about restoration, what about justice?

Put simply, but profoundly, Genoveva says in a sad voice and slow cadence: "I will be honest: I don't see justice anywhere in the JEP." Her brother's execution has been included in one of the subregional cases that are getting special attention in the confessional track of the JEP, which should advance quicker through the legal maze of the special courts. In short: she is one of the lucky ones; her specific case is getting special treatment. Unlike Genoveva, most persons claiming justice for the executions of loved ones by the Colombian Army are experiencing

a darker side of the JEP. Thousands of cases that were not prioritized or selected will be disposed with little truth or justice attached. If Genoveva's experience engenders frustration, the persons getting the residual treatment, like Gina, bear an ostracizing experience.

Antonio, the dreamer who has an inexorable positive outlook on life, advances that he wants to believe in the promises made by the JEP, but warns that "we need a more humane, more real justice; not one made of paper." He recognizes that he has been privileged in his dealings with the JEP, because he has been selected to participate in public and private events to bear witness and present his claim to justice for his father's death, but he expresses concern for all those who have been left out, which —I insist— are the majority of persons seeking justice.

Beyond frustration, others are beginning to express rejection. For example, Doris, says: "I feel a lot of pain; it's as if they're making fun of me. After all the effort of pursuing and achieving a bit of justice in the ordinary jurisdiction" —the material killers of her son were convicted— the only thing that JEP has done is annul what had been achieved. "So much effort to be left empty-handed," she concludes.

Satisfying the needs and claims of an extremely large population that has been victimized is no easy feat. Achieving justice in situations of mass and systematic offending is always a difficult task. Furthermore, though a negotiated settlement was reached with the FARC and Colombia's peace is celebrated, the situation on the ground is quite complex: armed conflict persists, and many other sources of violence generate daily threats. Extreme insecurity and socioeconomic needs qualify the lives of the majority of those claiming justice in Colombia. These conditions imply that greater prudence and tact should be followed when promising restoration or justice, or restorative justice, to victimized communities and persons.

Consonant with its restorative creed, the JEP must provide satisfactory and concrete responses to the demands and needs of people who have experienced harm and are demanding justice —or so the theory goes. In practice, some of these persons are manifesting that benefits awarded to confessed perpetrators are not producing the results that were promised, and they feel their pain is being instrumentalized. Recovering a meaningful sense of justice for those who have been harmed should be a guiding principle of the RJ approach the JEP is purportedly adopting in Colombia. For now, restoration appears flighty and enigmatic, and justice seems stuck in quicksand.

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