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# Overcoming Heteronormativity in Transitional Justice

A Queer Perspective on the Colombian Truth Commission

Author: Gerard Paituví Sánchez  
Supervisor: Lorena Sosa

## ABSTRACT

The main focus of this thesis is the capacity of truth commissions to respond to LGBTI victims' experiences and claims. These appear to be underrepresented in truth commissions, and consequently, in transitional justice. This thesis analyses the Colombian truth commission, which emerged from the Peace Agreement signed in 2016, and which is the first in history to mention LGBTI people in its mandate. Drawing from previous truth commissions which included at some level LGBTI victims, the thesis wonders how a queer perspective could benefit the Colombian truth commission to give a better representation and inclusion for LGBTI victims. In order to do so, it analyses the legal and social perception toward LGBTI people in Colombia to understand the prejudices that motivate this violence. It details briefly the types of violence directed against LGBTI people and how intersectionality helps us understand it better. The thesis concludes by detailing how the Colombian truth commission could implement a queer perspective and how this would impact LGBTI victims of the armed conflict.

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## 1. INTRODUCTION

Victims of an armed conflict or previous wrongdoings by a government have the right to be recognized and to have full access to justice. This is the starting point of transitional justice. Truth commissions are one of the transitional justice mechanisms and the cornerstone when it comes to a victim-centred approach. There have been more than 40 truth commissions since transitional justice was born as a process of judicial redress to acknowledge previous human rights abuses and prevent future ones. Yet, most truth commissions have overlooked and hidden some victims from the public eye, such as women and lesbian, gay, bisexual, trans and intersex (LGBTI) people.

The 1990s were the starting point in which truth commissions started considering women as specific and differentiated victims in an armed conflict and applied a gender perspective analysis in their reports. Since then, it became generalized to apply a gender perspective in the mandate of truth commissions, as it was undoubtedly acknowledged that conflict affected women differently and that they were victims of specific types of violence, especially sexual violence. However, sexual and gender diverse people have not been granted this degree of inclusiveness yet. Although some progress has been made in recent decades and a few truth commissions have included LGBTI victims of violence in their reports, there is still much to be done to achieve full representation for these victims.

The Colombian truth commission might be the first one to make a proper representation for LGBTI victims of the internal armed conflict. It is the first truth commission in history to include sexual and gender minorities in its mandate and the hopes for the LGBTI community in the country are high. After all, even though Colombia presents itself as a socially conservative country, with prejudices against LGBTI people attached in the mindsets of many people, it has a progressive legal framework regarding sexual orientation and gender identity, thanks in most part to the Constitutional Court.

This thesis aims to answer the following question:

*To what extent could the adoption of a queer perspective by the Colombian Truth and Reconciliation Commission contribute to a better representation and inclusion for LGBTI victims of the armed conflict?*

## 1.1. Structure

To respond to the above-mentioned research question, the thesis has the following structure:

Chapter 1 aims at introducing the thesis. It presents a brief introduction to the topic, the research question, the structure and the terminology and acronyms used.

Chapter 2 provides the theoretical framework for this work. It defines transitional justice, truth commissions and queer theory, and it finally contextualizes queer theory within transitional justice.

Chapter 3 aims to answer the question of how different previous truth commissions have addressed LGBTI violence. In order to do so, the truth commissions that will be analyzed are from: South Africa, Perú, Paraguay, Ecuador and Brazil. This chapter synthesizes the progress made over the years in the field of truth commission regarding LGBTI victims, which led to the current moment, with the Colombian truth commission claiming to be the first one ever to include an LGBTI perspective in their mandate.

Chapter 4 consists of the first part of the case study on Colombia's truth commission. It wishes to answer the questions of what the legal protection for LGBTI people in the country is and how this minority was included in the Peace Agreement. To answer these two questions, the chapter starts with a historical analysis of the legal situation of LGBTI people from a national perspective, exploring the historical legal advancements made in terms of sexual orientation and gender identity, making an emphasis on the judgments made by the Constitutional Court, which have been progressive in these issues. It could be argued that this caselaw could help to push the truth commission out of the binary standards transitional justice seems to still be attached, such as those of man/woman, male/female, and perpetrator/victim. The fourth chapter then moves to an analysis of the transitional justice system in Colombia in which the truth commission is enclosed and its relation to LGBTI representation, commenting on the Peace Agreement signed in 2016 and the mandate of the truth commission.

Chapter 5 represents the second part of the Colombian case study. This chapter wishes to address the question of what it is known about violence against LGBTI during the armed conflict and especially what the commission knows. To answer this, it starts with defining violence by prejudice and its link with gender violence, followed by a historical and social analysis of Colombian society's prejudices on sexual orientation and gender identity and

how these create and justify the violence suffered by LGBTI people. The next section describes this violence during the armed conflict and its reasons, mentioning three different actors: the FARC-EP, the paramilitary (and neo-paramilitary) groups and the National Police. Finally, the last section of this chapter mentions the inputs and different sources of information that are currently available on this topic for the Commission.

Chapter 6 takes all the analysis made throughout the thesis and answers the main research question of this thesis. It considers how the Colombian truth commission could incorporate a queer perspective into its final report and how this would impact LGBTI victims of the armed conflict.<sup>1</sup>

## 1.2. Terminology

AUC. Autodefensas Unidas de Colombia (United Self-Defense Forces of Colombia), a paramilitary group

ELN. Ejército de Liberación Nacional (National Liberation Army), a guerrilla group

FARC-EP. Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People’s Army), a guerrilla group

IACHR. Inter-American Commission on Human Rights

IACtHR. Inter-American Court of Human Rights

LGBTI. Lesbian, gay, bisexual, trans and intersex. The author decided to stick with this acronym to give cohesion to the paper, while acknowledging that the language used to talk about LGBTI people is constantly evolving and that different acronyms can be used over time without denying the whole existence of sexual and gender diverse people. The terms ‘sexual and gender minorities’, ‘sexual and gender individuals/people’, and ‘queer individuals/people’ were used interchangeably referring to LGBTI people.

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<sup>1</sup> The Colombian truth commission published its final report on June 28, 2022. The analysis made in the thesis was done previous to this date. The purpose of this thesis, therefore, is not to analyze the final report, but instead to consider the effect a queer perspective can have on the commission’s work.

SIVJRNR. Sistema Integral de Verdad, Justicia, Reparación y No Repetición. (Integral System of Truth, Justice, Reparation and Non-Repetition). Transitional justice system being applied in Colombia.

UN. United Nations

## 2. THEORETICAL FRAMEWORK

This chapter examines transitional justice, queer theory, and the relation between them. In order to do so, it is divided into three main sections. The first one briefly contextualizes transitional justice, defining it, and explaining the origins and history this relatively new field has had over the past decades. Once this brief overview of the field is done, the text moves on to the specifics of truth commissions, one of the main mechanisms of transitional justice and the one of concern for this thesis. Therefore, a definition of truth commissions is given, and it shortly contextualizes the link it has with restorative justice. After that, as it did for transitional justice, the origins and history of truth commissions are explained, as its history is not completely linear with transitional justice. Truth commissions appeared much later and became consolidated only a few decades ago. The characteristics, purposes and objectives of these commissions are detailed in the following subsections, to better understand the work of these commissions and understand the context in which they happen.

The second main section tries to explain and define queer theory for the reader, a complex task as it will be seen. This academic field has remained a tough one to decipher and understand because it breaks with the fundamentally human idea of labelling and putting in small boxes everything in our world. Even science and religion, as much different as they appear to be, have in common this urge of creating categories for everything. That is probably why queer theory is critical to these disciplines.

The third and last section brings together the content of the two previous sections and dives into the main topic that this thesis will develop: the interaction between truth commissions and queer theory and how this could benefit the field of transitional justice and their analyses on the human rights abuses experienced by some marginalized groups.

### **2.1. Transitional justice**

Transitional justice is a relatively recent field, but it has amounted to an abundant number of bibliographies, and different authors and institutions provide different definitions for the term. The Security Council of the United Nations defines this new approach to justice as:

“[Transitional justice] covers the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past conflict, repression, violations, and abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof” (United Nations Security Council, 2004, p. 4)

A goal that is vital for transitional justice is to equilibrate the contradictory demands of peace and justice through the whole process of transitioning from a given social and political order to a new liberal democratic regime (Uprimny & Saffon, 2005, p. 2).

The main innovation of transitional justice is that it puts the victims of human rights abuses at the center of the whole process of transition that the country is living. The goal is to find redress for the harms suffered by the victims and acknowledge them (International Center for Transitional Justice (ICTJ), n.d.). This victim-centered approach makes it easier for society to move on from the past, as the victims know they have been heard and the pain they have been suffering is acknowledged as an attempt to lift it. This meant a change from the traditional criminal prosecution approaches, which were primarily focused on condemning the perpetrators and punishing them, without paying much attention to the victims, their suffering, their needs, and their opinion.

The creation of a specific field named transitional justice came from the claims for justice and the concerns on how to address and acknowledge the past abuses the people suffered, while at the same time maintaining a political and social change towards democracy and peace, and most importantly, non-repetition (United Nations, 2008, p. 1). To achieve these purposes, transitional justice has a wide variety of mechanisms and policies: implementing military, police, judicial and/or other reforms; holding trials; creating truth commissions or commissions of inquiry; purging perpetrators from public or security posts; providing reparations to victims; providing individualized access to security files; or building memorials (Hayner, 2010, p. 8).

### 2.1.1. Origins and evolution of transitional justice

This approach to regime changes or post-conflict societies was born in the late 1980s in Latin America and Eastern Europe, when these societies moved from dictatorial or communist regimes with severe human rights abuses and start transitioning into democracies (United Nations, 2008, p. 1). Despite this fact, there is some debate on the real birth of transitional justice, and some scholars consider the 1980s as the second phase of transitional justice, and not its birth. These refer to the Nuremberg Trials after the Second World War as the moment when transitional justice was established (Teitel, 2003, p. 70). These trials were the first international attempt of creating a judicial system to seek accountability for gross human rights abuses, in this case, committed by the Nazi regime, directed at individuals and not only at States.

For Teitel, the second phase that started in the 1980s was characterized by the expansion of the notion of justice and rule of law, moving on from retributive justice as it was previously understood to a more restorative justice approach, considering the issues of peace and reconciliation as an important part of the transitional justice process (Teitel, 2003, p. 72-90). She argues that the third and last phase is the proper establishment of transitional justice, shifting from being perceived as an approach only present in extraordinary conditions of armed conflict or dictatorships to becoming a normal concept in international law. This argument comes reinforced by the creation of the International Criminal Court as a permanent international tribunal that deals with issues traditionally associated with transitional justice (Teitel, 2003, p. 90).

### 2.1.2. Truth commissions and restorative justice

The incorporation of restorative justice into transitional justice meant that the field shifted towards a goal of achieving peace with non-judicial mechanisms. This was the birth of truth and reconciliation commissions, which became a prominent aspect of the whole transitional justice approach as an “alternative measure to deal with past abuses by creating the spaces where the victims were able to dialogue with its perpetrators, achieve social reconciliation, acknowledge the broader truth about the conflict among others” (Torrado Rojas, 2018, p. 33).

Truth commissions can be defined as:

“Official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. These bodies take a victim-centred approach and conclude their work with a final report of findings of fact and recommendations” (United Nations Security Council, 2004, p. 17)

These abuses can have been committed by repressive regimes using the military or other government forces and/or by non-state armed groups in periods of internal unrest, civil war, or dictatorship (Wiebelhaus-Brahm, 2018, p. 601).

Truth commissions are the pinnacle of the victim-centered approach most transitional justice processes defend and promote. As it was mentioned above, a victim-centered approach focuses on the victims and their suffering and needs, rather than on simply prosecuting the perpetrators (International Center for Transitional Justice (ICTJ), n.d.). This innovative approach, combined with restorative justice, forces the perpetrator(s) to face the victims and make them recognize the pain that the victims suffered and apologize for it.

This whole process in which the victims receive the truth has the potential to “alleviate the suffering of the surviving victims, vindicate the memory or status of the direct victim of the violation, increase the surviving victims’ depth of understanding into the circumstances and causes that led to the atrocity, and encourage society to confront its dark past and through it to seek reform.” (Aldana, 2006, p. 109). Moreover, truth commissions also stand out as the main mechanism transitional justice can offer when it comes to restorative justice, which has an almost inseparable link with a victim-centered approach.

Restorative justice can be defined as an alternative model for facing crime, based on the reconciliation between the victim and the perpetrator. The restorative justice approach shifts away the focus of the crime. Typically, standard criminal law has put the attention to the criminal act and the perpetrator’s punishment. Restorative justice argues that the attention should be put on reparation, recognizing the harm and suffering of the victims, and trying to satisfy their needs (Uprimny & Saffon, 2005, p. 4).

### 2.1.3. Origins and history of truth commissions

There is also some debate on the emergence of truth commissions. Two possibilities appear to be the solution to this problem, whether it was in Uganda in the early 1970s or in Bolivia and Argentina in the early 1980s (Wiebelhaus-Brahm, 2018, p. 599). Despite their origins, truth commissions became popular in Latin America in the 1980s and 1990s, when many countries decided to establish their own commissions to navigate through the process to become democracies.

However, there is one truth commission that popularized and made known to the public what truth commissions were. The South African Truth and Reconciliation Commission, after the apartheid regime, established the model to follow for future truth commissions and became the first one to apply a restorative justice approach (Parmentier, 2001, p. 401).

Truth commissions are seen nowadays as almost an obligatory mechanism to have in any transitional justice process and the United Nations fully supports their integration in any peace process (Wiebelhaus-Brahm, 2018, pp. 599-600). To this date, more than forty truth commissions have been established around the world, although some of them did not complete their task of submitting a final report (Hayner, 2010, p. xi).

### 2.1.4. Characteristics of truth commissions

All truth commissions share four main characteristics that identify them as truth commissions and not as other types of investigative bodies.

First, truth commissions focus on the past and they do not have the competence to investigate violations being committed at the same time as the commission is undergoing (Wiebelhaus-Brahm, 2018, pp. 601-602). Transitional justice focuses on accountability and justice for past abuses, and therefore, their attention is always on the past. Also, it constitutes an extraordinary justice mechanism dedicated to specific (and past) human rights violations, while current human rights violations must be dealt with using the conventional justice system of the country, or international mechanisms.

Second, truth commissions are set up to investigate a pattern of abuses over a predetermined and fixed period of time, rather than a specific event. The mandate of the commission defines the limits of its investigation, specifying the period of time and the

types of abuses investigated (Wiebelhaus-Brahm, 2018, pp. 601-602). This specific time limit can be both an advantage and a disadvantage because it allows the Commission to investigate deeply into the period of time it covers, but it leaves many violations committed during other periods of time out of the Commission's reach.

The third characteristic is that truth commissions are temporary bodies, with the intention to conclude with a public report. The time span of a commission varies from a few months to a few years, after which they submit a report detailing all their findings and making recommendations to the state to redress the past abuses and prevent them from happening again. These recommendations can be proposals for institutional, legislative, and judicial reforms; reforms to the security forces; and compensations to the victims, among others (Wiebelhaus-Brahm, 2018, pp. 601-602). Moreover, the final report becomes the official history of the events that happened in the past, making these events known to the population.

Fourth and last, truth commissions are officially authorized or empowered by the state. This allows the commissions to have a high level of legitimacy to confront some sectors of society that can be reluctant to expose the past (Wiebelhaus-Brahm, 2018, pp. 601-602). Moreover, it shows that the state is willing to acknowledge the previous wrongdoings and move on to a more peaceful future.

#### 2.1.5. Purpose and objectives of truth commissions

Truth commissions are a part of the integral transitional justice mechanism each country decided to apply. These truth-seeking entities can serve the purpose of complementing traditional tribunals, especially in cases where courts and trials are not the most reliable and fair source of justice, with corruption and perpetrators exercising their power even after the transition (Wiebelhaus-Brahm, 2018, pp. 602-603). Moreover, truth commissions in many cases are the main government initiative to face past human rights abuses and their final reports and recommendations can act as a starting point from which other measures may be developed concerning accountability, reparations, and reforms (Hayner, 2010, p. 20).

The main objective of these commissions is to tell the history of past abuses and clarify uncertain events, in order to generate official acknowledgement for the wrongdoings and give the victims an identity and a voice. In order to achieve this, the second main objective

of a truth commission is to respond to the needs of the victims and survivors, giving their attention to them (Hayner, 2010, p. 22). After all, it is the official body within transitional justice devoted to and for victims, rather than investigating the abuses only from the perspective of perpetrators, as some other judicial mechanisms do. The most prominent example of this were the public hearings during the South African truth commission, in which victims told their truth, which gave them political power and citizenship (Fullard & Rousseau, 2009, p. 1), as they, traditionally marginalized people, were put in the center.

The third objective of a truth commission is to also provide help to the other transitional justice mechanisms, and its recommendations can help counter impunity and prosecute more effectively perpetrators, contributing to the general accountability for the past crimes (Hayner, 2010, pp. 22-23). After all, a truth commission is not an institution standing alone, but rather one piece within a whole set of mechanisms that conform to the transitional process in a country. In the case of Colombia, for example, the Truth Commission is part of an integral system of justice and reparation for the victims and interacts with the other two mechanisms that were established, as it is explained in more detail in the fourth chapter of this thesis.

Fourth, the final recommendations given by truth commissions can result in institutional reforms, which the commission can determine to be crucial to prevent further abuses. These reforms generally focus on the police, military, and judicial system. However, the successful implementation of these reforms remains to be weak (Hayner, 2010, p. 23). Some commissions in the world submitted high-quality final reports with detailed recommendations to the state to address some issues. However, in countries like Guatemala, Perú or South Africa these reforms and recommendations have not been fully done or even the final reports were received with small political support (Millán Hernández, 2015).

The fifth and last objective for truth commissions is promoting reconciliation, in order to avoid for the past to generate future violence. They do so by addressing the conflicts and explaining the reasons and history behind them. Despite this fact, as Hayner states, truth-telling can also increase tensions in some cases, where the transition is not happening smoothly and without resentment, and violence is on the verge of relapsing or has not stopped at all (Hayner, 2010, p. 23). Therefore, it has to be handled with care.

As Wiebelhaus argues, truth commissions occur more frequently when the balance of powers is relatively even, and perpetrators do not exercise absolute control over the state

(Wiebelhaus-Brahm, 2018, p. 603). In these democratic transitions, truth commissions act as a balance between the demands of some powerful perpetrators for amnesty and forgetting the past, and the demands of the local and international community to expose the truth and deal with past crimes (Hayner, 2010, p. 7). Moreover, in a society where the past was characterized by excessive corruption and violence in the judiciary branch, the capacity to have a fair trial or lack of it can generate mistrust in the population and reluctance to report past crimes. Also, the courts perhaps are not sufficiently efficient and can be overwhelmed by the huge amount of denunciations received, thus not being able to reach resolutions in a reasonable time (Wiebelhaus-Brahm, 2018, p. 603).

The mandates of truth commissions, broader than other transitional justice mechanisms, allow them to go further than trials do in their investigations because they put the focus on the patterns, causes, and consequences of political violence. Hayner argues that the breadth and flexibility that truth commissions possess are the main strength of these mechanisms. This allows them “to outline the full responsibility of the state and its various institutions that carried out or condoned repressive policies” (Hayner, 2010, p. 13).

## **2.2. Queer theory**

Queer theory presents itself as a challenge when one tries to define it. If one researches about it, one finds a lot of disseminated information but a lack of a standard definition upon which the authors agree on. Most of the authors that theorize about queer theory actually refuse to define it, arguing that the theory resists being defined and captured. As Halperin states, “the more it verges on becoming a normative academic discipline, the less queer ‘queer theory’ can plausibly claim to be” (Halperin, 1995, p. 113). Despite all this, the definition of queer theory that this thesis embraces is the “postmodern view on identities that contests the stability of identity categories such as sex, gender and sexuality” (Gonzalez-Salzberg & Perisanidi, 2021, p. 3).

Moreover, there is not one single ‘queer theory’; there are multiple ‘queer theories’, and some of them sometimes contradict each other. Also, the word ‘queer’ has multiple meanings. It started being famous as a pejorative word for pointing out what was ‘strange’ or ‘different’, but now it has been acquired as a positive word used for LGBTI people to identify themselves (Barker & Scheele, 2016, p. 10).

However, queer theory itself fights the concept of identity politics, and therefore it challenges any type of fixed identity, such as gay or lesbian or asexual. Queer theory argues that these identities can make it harder for people to change themselves and makes it easier for other people to just perceive other individuals as one identity and not as the whole person they are, with different categories and identities. It argues that all identities are “performatively constructed through the reiteration of acts, opposing the idea of the existence of an internal essence of the body” (Gonzalez-Salzberg & Perisanidi, 2021, p. 4).

It also fights against a binary system that simplifies the world excessively, labelling things as either ‘this’ or ‘that’ (Barker & Scheele, 2016, p. 13). Queer theory believes that binaries are the basis of social hierarchies and that eventually, these hierarchies are the source of repression and inequalities.

#### 2.2.1. Cisheteropatriarchal norms

The current cis-hetero patriarchal society is supported by different social norms or assumptions that define it and put limits on what is considered ‘normal’ for sexualities, gender, and sexual relations. The first assumption that society makes is that identities are fixed and essential. Therefore, sexual identity is an aspect of who we are, it is fixed since we are born and lasts all our life (Barker & Scheele, 2016, p. 27). The second assumption stipulates that sexuality is binary (heterosexual/homosexual) and it is based on the attraction to binary genders (men/women) (Barker & Scheele, 2016, p. 27). The third and last assumption is that we can divide people into normal and abnormal based on what they like to do sexually and with whom. Sexual practices out of the conventional such as BDSM, or a woman leading sexually over a man is considered abnormal and out of the norm (Barker & Scheele, 2016, p. 27).

#### 2.2.2. Principles and common characteristics of queer theory

Queer theory, as it has been mentioned already, does not have a standard definition, and different authors use it with different meanings. This lack of a single queer theory and the existence of different queer theories is a defining characteristic of this approach, which does not believe in simplistic explanations or universal truths.

Despite this fact, some common characteristics can be extracted from the different queer theories initiated during the 1990s to try to understand better what ‘queer theory’ is. All of them oppose the categorization of people and defy the idea of essential identities. Moreover, they question binarisms, like homosexual/heterosexual or masculine/feminine. They stipulate that things depend on the context, geography, culture, etc. Finally, these queer theories examine the power relations underlying certain interpretations, categories, identities, etc. (Barker & Scheele, 2016, p. 31).

A common feature of these queer theories is that they all come from poststructuralists theories that examine power relations related to sex, sexuality, and gender by destabilizing the dominant interpretation accepted by default that assumes that heterosexuality is the ‘normal’ or ‘natural’ standard in sexuality and categorizes people according to this (Gonzalez-Salzberg, 2019, p. 99). This examination and critique are done in two ways. First, unmasking how sexual and gender identities are a construct created with the ways of thinking and being available at different moments and places. Second, stating that these sexual and gender identities are performative, i.e., something individuals do instead of something they are (Barker & Scheele, 2016, p. 62). All in all, these characteristics fight the three main cis-hetero patriarchal assumptions that have already been mentioned in the previous subsection.

### 2.2.3. Precedents and history of queer theory

Queer theory comes preceded by different theoretical social approaches, as well as different activist movements. Some of the ideas queer theory promotes were already alive within these precursors.

Existentialists like De Beauvoir or Camus already questioned the idea of a fixed identity and essence and denied biological and social essentialisms. They state that human beings are in a continuous process of self-creation. Moreover, authors like De Beauvoir analyze how our social factors like our race, gender, culture, or class, impact our liberty to choose some aspects of our life, like the liberty to be homosexual; and how society puts pressure on individuals based on their gender (Barker & Scheele, 2016, pp. 33-36).

Another precursor of queer theory is the biologist Alfred Kinsey, who focused his research on sex-positive behavior and created a scale with a whole spectrum between heterosexuality and homosexuality, instead of a binary conception (Sullivan, 2003, p. 17).

Sexologists, like John Gagnon and William Simon, suggested that the social world we live in produces sexuality. Other psychologists also made their contributions to the notions of gender and sexuality (Barker & Scheele, 2016, pp. 37-41).

Contributions like the ones made by the black feminism movement were key to including intersectionality in the analysis of oppression. This philosophy noticed how women are all different and that being a woman is not necessarily their only defining feature, because they can suffer as well other types of oppression for their race or social class. Instead of focusing on identity politics, they made political and economic analyses of the dominant structures in society. Queer theory also takes from this movement the notion of “normal” and “other”, which black feminists apply to white women (“normal”) and black women (“other”) (Barker & Scheele, 2016, pp. 42-43). Kimberlé Crenshaw also based her ideas on black feminism to argue that any type of oppression can be observed separated from the rest and established that intersectionality was key to understanding how oppression affects distinctively each individual (Sullivan, 2003, p. 72).

A prominent idea from queer theory is that there is not a universal and absolute truth. In the 1970s and 1980s, poststructuralist academics were already promulgating this idea. When it comes to individuals, poststructuralists state that there is not a single truth about who each person is and that people do not have a fixed and stable identity, but that each person occupies their identities based on their relationships with the world and culture they are surrounded with (Sullivan, 2003, pp. 39-45).

Officially, queer theory was born in 1990 and in the beginning, it was really centered around sexualities and identity politics, but also took into consideration how power operates in relation to sexuality (Barker & Scheele, 2016, p. 59). This focus on sexuality was the legacy of Michael Foucault, who conceived sexuality as a social construct (Gonzalez-Salzburg, 2019, p. 100) to regulate identities and create power relations. Despite this, as it has been mentioned already, queer theory is not a singular concept and lacks a fixed identity itself. This plurality makes it difficult to establish a clear origin for the theories and their evolution.

Queer theory, and Butler especially, criticizes homosexual activism versus queer activism. Homosexual activism relied on assimilation policies to gain rights as a minority. The problem with these identity politics is that rights based on an identity often end up benefiting only the most privileged people inside this group, in this case, white middle-class gay and lesbian people, and excluding the others. Moreover, gaining rights based

on a fixed and essentialist identity comes with the risk of staying within the binary norm (heterosexual/homosexual) with the power relations this carries (Barker & Scheele, 2016, p. 76).

#### 2.2.4. Closing remarks on queer theory

All in all, queer theory states that sexuality and gender are socially constructed within power relations. They are both perceived by society as a fixed and essential part of someone's identity; they are connected, as someone's sexuality comes defined by that person's gender and the gender of the people they are attracted to. All this leads to the feeling that gender and sexuality are something stable based on the discourses available.

Queer theory tries to fight these constructs by recognizing that gender and sexuality are multiple and fluid and denying these issues as a basis for defining a person because this would make us fall into normative structures. This leads irreversibly to questioning the existing binarisms, such as man/woman or heterosexual/homosexual.

### **2.3. The intersection between transitional justice and queer theory: queering the normal and normalizing the queer**

The field of transitional justice has traditionally shown a lack of attention to sexual and gender minorities in recognizing their vulnerability to insecurity and violence because of their sexual orientation and gender identity. Some authors state that not only transitional justice pays no attention to the LGBTI population, but in general global politics do not either (Schulz, 2020, pp. 9-10). This lack of attention happens even though violence against sexual and gender minorities has been documented in different contexts. This lack of consideration for violence against sexual and gender minorities may come from a binary understanding of violence, which constructs gender-based violence as something occurring within the male-female binary, and from an assumption of heterosexuality as the norm (Bueno-Hansen, 2018, p. 2).

O'Rourke warns that there is a marginalization of queer experiences from the United Nations Security Council's Women, Peace, and Security Agenda (O'Rourke, 2016, p. 34) (Paige, 2018). This entity is indeed responsible for setting the normative policy framework for gendered issues in transitional justice. This same author argues that this

marginalization is due to the heteronormative assumptions and cis privileges that frame global politics (O'Rourke, 2016, p. 32). On this account, this thesis argues that implementing queer theory into transitional justice is vital to fight this endemic marginalization and ending the binary perspective on gender being applied, and the normativity of heterosexuality, creating a sense of 'otherness' to non-heteronormative sexualities and non-binary genders.

Transitional justice can be a powerful tool for change, and at the same time, it can reinforce the structural marginalization of different groups of people if they appear underrepresented (Rooney & Ní Aoláin, 2018, p. 1). This field, the same as many others in global politics, uses binaries between victims and perpetrators (Feierstein, 2013). The same happens when transitional justice applies gender approaches, falling in the binary men/women to explain violence, and applying it narrowly, limiting it to women as victims and men as perpetrators (Stoltz, 2020, p. 131). This reinforces the power relations that the cis-hetero patriarchal society imposes and proves that binaries exist as a tool to maintain this repression and control from the predominant group over different minorities.

Queer theory also breaks with the binary perspective of war/peace and the assumption that moving from one of these states to the other is a linear transition (Buckley-Zistel et al., 2014) (Simić, 2020). Many armed conflicts in the world have relentlessly proved this point, like in Colombia, where the Peace Agreement signed in 2016 has not brought peace to the country and violence is still very present. Different minorities, like LGBTI people, may experience the same amount of violence in post-conflict situations as during the conflict period (Serrano-Amaya, 2017, p. 190).

Despite all this, some progress has been made and transitional justice is opening its viewpoint to include LGBTI issues and rights. This progress is being implemented slowly and, in most cases, it has proved to be still based on binarism, especially when it comes to gender.

### 2.3.1. Queer theory in truth commissions

Truth commissions are increasingly becoming an obligatory mechanism in transitional justice, and they could incorporate queer theory into their approaches to narrating history. After all, one of the main goals of a truth commission is to tell the narrative of those most

affected by violence, and this includes groups that have been historically marginalized by the state (Fobear, 2014, p. 53). Therefore, if truth commissions do not pay enough attention to the political violence directed toward sexual and gender minorities, their task of retelling the abuses committed would be incomplete. This could even cause LGBTI groups to be more marginalized and receive more violence during the post-conflict setting, as perpetrators could perceive that there is general impunity when homophobic, transphobic, and anti-queer violence happens.

If truth commissions decide to acknowledge these past abuses committed toward queer population, it would allow them to understand and address this violence in order to prevent it from happening in the present and fight inequality (Garnets et al., 1990, p. 370). Moreover, investigating violence against LGBTI people can show patterns of directed violence specifically directed at this social group and would prove it as not random and individual violence, but as a collective and organized violence with a purpose. This is necessary to make reparations for addressing these wrongs. Also, recognizing that this violence has a political component and motivation attached to it will force transitional justice processes to analyze it and redress it (Fobear, 2014, p. 54).

This inclusiveness of violence directed at LGBTI people is vital to fight the heteronormativity present in any patriarchal society and give access to justice to people who traditionally have been left out of it, expanding the notion of truth and justice to those who fall out of the norm. Moreover, all victims of violations under human rights law and international humanitarian law, as well as society in general, have a right to truth, as the Inter-American Commission on Human Rights has stated. This right is both an individual and a collective right (González-Salzberg, 2008, p. 438).

Violence directed at queer people has a clear agenda of social domination and usually is linked to a social cleansing exercised by some military or non-state armed groups, to gain control over a territory. Sexual and gender minorities are perceived as threats to security and stability because there is a stereotype of them being sexual predators, pederasts, or carriers of diseases (Fobear, 2014, p. 54). As Fobear argues, most times gender and reproductive violence comes in hand with this violence against sexual and gender minorities. Therefore, the link between them is undeniable and they both need to be addressed (Fobear, 2014, p. 54). A queer analysis of them would put the focus on the social and political ideologies that create these types of violence.

Applying queer theory to the mandate and approach of a truth commission would not only benefit sexual and gender minorities, but it would also impact any other marginalized or oppressed group, no matter if their oppression is based on their race, social and economic class, or any other characteristic. Queer theory is intersectional and makes a broad analysis of the world and the societal norms present. For queer theorists, identities, like sexuality, gender, race, or class, are fluid and dynamic. These are “inevitably intertwined with, even sometimes constitutive of, power relations” (Gamson & Moon, 2004, p. 51). Queer theory confronts the aspects of society that marginalizes people, instead of just focusing on the violence they receive. Moreover, this intersectionality would prove useful to avoid making the mistake of labelling people into one category and assuming that everyone within it experienced the same type of discrimination. For example, a white urban middle-class woman has most likely not suffered the same amount of violence and repression as a rural indigenous woman. Categorizing these two persons just considering the common category of women and putting them at the same level is a mistake, and that is exactly what queer theory tries to avoid.

Truth commissions achieve to create, with its final report, an official version of the truth, giving the sense that anything not mentioned in it has not happened, further silencing individuals that step outside of the binary vision of victim/perpetrator, minority/majority or oppressed/privileged that truth commissions apply (Fobear, 2014, p. 59). However, queer theory denies the existence of a universal and unique truth, as it has been mentioned previously. Therefore, queer theory can help truth commissions to explain history better, allowing for the existence of multiple versions of the truth and recognizing that identities are fluid and not fixed.

Truth commissions are supported by the state and they can serve the purpose of perpetuating a specific nationalist political ideology that could marginalize even more some groups if they go against the interests of these elites (Ní Aoláin, 2006, p. 840). Feminists have already argued that patriarchy is used to build the idea of male supremacy, and how gender violence in periods of conflict has been seen as unimportant and underrepresented (Ní Aoláin, 2006, p. 840). The same could be applied to sexual and gender minorities, which in this case have been held inferior by the cis-hetero normative society and have been nearly invisible in truth commissions so far.

### 2.3.2. Conclusions

As long as transitional justice and truth commissions base their truth on patriarchal notions, any person that falls out from the gender binary or is perceived as not heterosexual, or not 'normal' will be left out. Failing to satisfy the right to truth to every victim and society is a grave deficit by any state that is willing to move on from a violent and turbulent past.

Queer theory challenges the very idea of normal and “focuses on how heteronormativity structures social and political realities” (Fobear, 2014, p. 61). Therefore, truth commissions could benefit entirely from queer theory and improve their analyses of the abuses suffered by the population, and their reasons, motives and consequences. Unless all the victims of past abuses are recognized, impunity will still happen, and social peace and justice will be difficult to achieve. Therefore, applying a queer perspective to deepen and expand the right to truth can benefit society in its journey towards peace and democracy.

### 3. PREVIOUS TRUTH COMMISSIONS

The present chapter details the previous truth commissions which mentioned to some extent violence against LGBTI people. The inclusion of these victims into the final reports of truth commissions has been increasing over time and it is obvious that each truth commission learned something from the previous ones, both their mistakes and wise decisions. Therefore, all the commissions analyzed in this chapter have set the precedent for the current Colombian Commission for the Clarification of Truth, Coexistence and Non-repetition, which is analyzed deeply in the following chapters.

The commissions analyzed in this chapter are the South African Truth and Reconciliation Commission; the Peruvian Truth and Reconciliation Commission; the Paraguayan Truth and Justice Commission; the Ecuadorian Truth Commission; and the Brazilian Truth Commission, in chronological order. This analysis showcases how the consideration and inclusion of LGBTI victims of violence have been increasing over time, although none of these commissions present the level of commitment to sexual and gender diverse victims that the Colombian one theoretically will have, according to its mandate.

#### 3.1. South Africa

The South African Truth and Reconciliation Commission (TRC) was established after the end of the apartheid regime and the armed resistance by the African National Congress (ANC) with the mission of uncovering the human rights abuses committed during this period (Hayner, 2010, p. 27). This was the first TRC that published a report, in 1998, making any mention at all of the experiences of sexual diverse individuals.

Although it was never thought of as a specific topic or section for the report, the Commission heard the voices of some LGBTI victims who experienced repression and discrimination because of their sexual orientation or perceived sexual orientation in the South African Defence Force during apartheid (Mbwana, 2020, p. 9). Some victims also explained how they were forced to undergo ‘aversion therapies’ by doctors to try to correct their homosexuality and impose on them heterosexuality without their consent (Fobear, 2014, p. 56). These therapies included practices that are considered torture, like electric shock treatment or castration. Furthermore, there were some reported cases of gender reassignment surgeries against the will of the person (Kaplan, 2001, pp. 216-217).

These gender reassignment surgeries prove how the apartheid regime perceived homosexuality. If a gay man, after receiving corrective torture, did not show any heterosexual behavior, the solution was to force him to be a woman. By doing so, this individual would be heterosexual in the eyes of the state and would be considered a normal person in the cis-hetero patriarchal society.

The National Coalition for Gay and Lesbian Equality (NCGLE), a South African NGO, presented a case to the Commission about four men that were abducted by security personnel and tortured. Finally, one of them was murdered. The abductors justified these actions on homophobic and racist arguments, and the NCGLE used that to draw attention to the case and denounce the situation. In the document that the NCGLE submitted to the TRC, they stated the reasons for not pushing the TRC into making violence against LGBTI people a separate topic for the Commission (Serrano-Amaya, 2018, pp. 123-124). The organization decided to use the opportunity that the Truth and Reconciliation Commission represented to obtain legal reforms in the post-apartheid country, prioritizing the advancement of rights for the LGBTI community, rather than giving voice and recognition to all the victims of the apartheid (Verhelst López, 2018, p. 19).

Moreover, for some people, the TRC had to be focused more on race rather than gender and sexuality, as this was the main victimization factor that occurred during the apartheid. Therefore, LGBTI victims were generally not given the chance to appear in front of the Commission to tell their story and the participation was limited to gay and lesbian activists and their organizations (Serrano-Amaya, 2018, p. 122).

All in all, the South African Commission produced a final report with few mentions of violence perceived by LGBTI individuals and only made superficial allusions to the human rights abuses that happened on the ‘aversion therapies’ (Verhelst López, 2018, p. 19). This gives the impression to the reader that the violence that occurred during the ‘aversion therapies’ was nothing more than a homophobic response by some doctors and an isolated fact. There is no mention of the social prejudice and structural homophobia that were present in apartheid South Africa (and also in the post-apartheid country) (Colombia Diversa (Organization), 2020, p. 38).

The lack of a specific hearing on human rights violations committed against sexual and gender minorities was a conscious choice of the LGBTI activists that interacted with the Commission. As it has been mentioned above, they decided to fight for a legal change in the future South Africa, rather than fully acknowledging the pain and abuse suffered by

the victims during the apartheid regime for being LGBTI individuals (Serrano-Amaya, 2018, pp. 123-124).

### 3.2. Perú

The Peruvian Truth and Reconciliation Commission (TRC) was established between 2001 and 2003 to uncover the human rights abuses committed during the internal armed conflict that lasted the previous two decades. It was the first Truth Commission to incorporate a gender perspective in the mandate and it produced a specific chapter on sexual violence (Verhelst López, 2018, p. 20). However, the notion of gender applied by the Commission was strictly binary and focused only on women.

During the armed conflict, both the official armed forces and the subversive groups applied social extermination of gay and trans people in the Peruvian Amazon. The rebel groups apparently exercised territorial control by wiping out people that they labeled as ‘anti-socials’, which included sexual and gender minorities. The persecution and killing of these people were a common mechanism to gain social legitimacy among the citizens (Muddell, 2007).

Apparently, the Commission was completely aware of this issue and was widely discussed within it. However, the final report of the Commission only made mention of this as a small side note that was included as an afterthought (Muddell, 2007). A member of the Commission found by chance a memorial to the LGBTI victims that died during the conflict and that was the tipping point that forced the Commission to include, at some level, some recognition to those victims (Nesiah, 2006, p. 47).

«The final Peruvian report listed an incident where the rebel group MRTA detained and assassinated eight transvestites on charges of vandalism and collaborating with the armed forces and police» (Fobear, 2014, p. 57). The armed group stated that homosexuality was corrupting the youth and that they had the moral obligation of protecting the children by eliminating all sexual and gender diverse individuals (Verhelst López, 2018, p. 20). Moreover, the report mentioned a case of a gay man that was killed by the MRTA and stated that more similar cases might have occurred during the period (Verhelst López, 2018, p. 21). The Commission did not try to deepen this investigation, for all it is known.

All in all, the Peruvian Commission mentioned a few specific cases of violence against the LGBTI community but did not try to deepen in this topic or make a proper analysis of the reasons that generated this violence. Instead, this lack of uncovering the reasons and future consequences shows how the Commission was still very much attached to the cis-hetero normativity. This conclusion comes reinforced when it is proven that the Commission felt forced to include some type of mention of violence against LGBTI people after finding the memorial that the civilian population did.

### **3.3. Paraguay**

The Paraguayan Truth and Justice Commission (TJC) was established in 2004 with the task of investigating the human rights violations that occurred during the dictatorship of Alfredo Stroessner (1954-1989) by state agents. Even though homosexuality was not illegal anymore during the period of the dictatorship, there was a systematic social repression by the police forces towards LGBTI people, involving arbitrary detentions, raids, and torture, especially of trans women (Bueno-Hansen, 2018, p. 4). Moreover, homosexuality was considered a criterion for being labelled as a person “potentially dangerous for national security” (Comisión de Verdad y Justicia de Paraguay, 2008, p. 174)

The final report explained two cases of violence against sexual and gender minorities. One was the case of a man who was burned to death in his apartment. He was a famous radio broadcaster and the police suspected he was gay. Therefore, they started raiding meeting places for LGBTI people because they considered that the murderer had to be another gay man. Many people were arrested the following days, but the press did not mention this (Comisión de Verdad y Justicia de Paraguay, 2008, pp. 175-180).

The second case relates to a 14-year-old boy who was abducted from school and killed (Verhelst López, 2018, p. 22). The police quickly started doing raids for more than a month, in which they arrested many gay men, only on the suspicion that the murderer was a gay man. These arrests were not done legally and the persons under arrest did not know the reason why they were being arrested. These people were not interrogated about the case, they were asked to give the names of more gay men who were still not arrested. More than a hundred people were arbitrarily detained for weeks with no legal motive, which made them lose their jobs. Many of them were forced sexually by police agents

and received torture, and inhumane and degrading treatment during this time. Before their release, a “list of homosexuals” was made public, and the victims faced discrimination and marginalization when they got out of jail (Comisión de Verdad y Justicia de Paraguay, 2008, pp. 181-189).

The Commission used these two emblematic cases to extract some general conclusions. It affirmed that during the dictatorship, even though homosexuality was not a criminal act, the police systematically persecuted and abused LGBTI people and the justice system condoned these acts (Comisión de Verdad y Justicia de Paraguay, 2008, p. 190), implementing a “de facto criminalization of conducts” (Verhelst López, 2018, p. 22).

Finally, on the recommendations of the final report, the TJC established that they did not have enough reliable statistical information on the repression against LGBTI individuals, but that the two cases that the Commission investigated were proof of how the dictatorship did not respect sexual and gender diverse people (Comisión de Verdad y Justicia de Paraguay, 2008a, p. 52).

This commission shows an advance after the two previous commissions already mentioned. It is the first one that includes the violence against LGBTI people in its conclusions and tries to generate some recommendations for it, even though it failed on doing so. Perhaps the Commission decided not to prioritize the violence suffered by sexual and gender minorities due to a lack of time, or economic and human resources. All in all, it gives the feeling that the Commission only touched the tip of the iceberg and finally decided not to dig deep into this topic, only addressing it briefly with the two examples mentioned.

### **3.4. Ecuador**

The Ecuadorian Truth Commission (TC), which operated between 2008 and 2009, had the mandate of investigating the human rights violations that occurred between 1984 and 2008 by state agents, which resulted in impunity. There was special attention to the presidency of León Febres Cordero (1984-1988) (Bueno-Hansen, 2018, pp. 22-23).

The investigation contemplated from the beginning the inclusion of LGBTI victims in the report, and even though the Commission did not investigate individual cases related to violence against LGBTI people, it “conducted focus groups as well as in-depth interviews

with activist leaders” (Comisión de la Verdad de Ecuador, 2010, p. 292). Therefore, the final report included a whole chapter on sexual violence and gender, and within this chapter, there was a section specifically dedicated to violence against the LGBTI community between 1990 and 2000.

The Commission labelled the violence suffered by sexual and gender diverse people as gender violence. It stated that this is based on structurally asymmetric power relations and that for the dominant power, LGBTI people are considered a threat to social order. As they step out of the heterosexual and patriarchal norms of society, they break gender roles and society marginalizes them for this (Comisión de la Verdad de Ecuador, 2010, p. 293).

Homosexuality was illegal until 1997 by Article 516 of the Penal Code with 4 to 8 years in prison. This allowed the police to brutally repress gay men, arbitrarily arresting and torturing many people. Only homosexuality between gay men was illegal at the time, and lesbian women faced less discrimination and repression for their sexuality (Comisión de la Verdad de Ecuador, 2010, p. 293), as women being romantically involved with other women was an invisible part of society, and therefore police did not consider it an issue that needed to be addressed. This does not mean that lesbian women did not suffer other types of discrimination and repression, because their gender condition also made them a target for discrimination and violence.

However, the Commission found out that even after the depenalization of homosexuality, the police continued targeting LGBTI people arbitrarily, justifying it in the protection of public morality. This proves the homophobic prejudice still present in many countries nowadays, and as the Commission states, the violence exerted by the police is only another layer of the daily violence suffered in many contexts by LGBTI people (Comisión de la Verdad de Ecuador, 2010, pp. 293-294).

Furthermore, the Commission put light on the local security policy of the municipality of Guayaquil, which targeted LGBTI people, especially transgender women who were sex workers. The Commission called for better mechanisms to investigate these types of violations, to avoid impunity (Comisión de la Verdad de Ecuador, 2010, pp. 297-299). In its final report, it recommended creating public policy to avoid discrimination based on sexual orientation and/or gender identity. It is important to highlight that this recommendation considered that civil society organizations had to be allowed to help formulate these policies (Comisión de la Verdad de Ecuador, 2010, pp. 457). Moreover,

as a legal reform, the TC recommended creating laws to protect non-discrimination against LGBTI people and their full participation in Equity Councils (Consejos de Igualdad) (Comisión de la Verdad de Ecuador, 2010, p. 461).

This Commission, after the three previous experiences, moved forward and showed a level of inclusion never seen before. Its report recognizes the heteronormativity and power relations that rule Ecuadorian society and exposes them as the main reason for this violence to occur. It is also important to highlight how this Commission goes a step further and mentions how violence against LGBTI people is a present issue, proving the continuum of violence.

### **3.5. Brazil**

The Brazilian Truth Commission (TC) was established between 2012 and 2014 to investigate the human rights violations committed by state agents between 1946 and 1988, with a special focus on the violence and repression during the Brazilian dictatorship (1964-1985) (Bueno-Hansen, 2018, p. 5).

When it comes to LGBTI representation, it was far more inclusive than the previous Commissions. The TC held a public hearing specifically on homosexuality and dictatorship, which provided context for the repression suffered by LGBTI people during the years of the non-democratic regime (Bueno-Hansen, 2018, p. 5). Furthermore, the final report had an entire chapter under the same topic, called “Ditadura e homossexualidades” (Comissão Nacional da Verdade, 2014).

This chapter showed that the dictatorial regime applied repression against LGBTI people in different forms: using an official homophobic discourse, stating that sexual diversity was part of a communist mindset; violating the right to work of some people based on their sexual orientation; applying a generalized censorship of any published content that could be considered homosexual or linked to non-heteronormative ideas; and with the use of violence by the police, which raided LGBTI meeting places, targeting especially trans women (Comissão Nacional da Verdade, 2014) (Verhelst López, 2018, p. 24). The Brazilian report on LGBTI violence is also innovative as it links deeply the psychological and economic impacts that LGBTI people suffered because of this systematic discrimination and persecution (Colombia Diversa, 2020, p. 39).

The final report also offered recommendations on changing legislation and making institutional reforms to avoid repetition, as well as proposing advances on gender identity and recommending a series of reparation measures for the victims.

It is important to highlight that while the National Truth Commission was ongoing, the Sao Paulo State Assembly decided to create its own regional Truth Commission, called Rubens Paiva State Truth Commission. This Commission, even though not really well-known, presented an innovative inclusion of LGBTI people and pushed forward the investigation and inclusion of violence against sexual and gender diverse people in the country while the National Truth Commission was doing its own work (Comissão da Verdade do Estado de São Paulo “Rubens Paiva,” 2015).

### **3.6. Comprehensive analysis**

Some main points can be drawn after the analysis of these five truth commissions, which considered LGBTI victims at different levels but did not include a queer perspective per se. First, the most important issue to highlight is that none of these commissions included an LGBTI perspective in the mandate. Some of them, especially the first three, only mentioned superficially a few cases of violence against the LGBTI community. There was a lack of a continued implementation of an LGBTI perspective for the whole report. Most of these commissions did incorporate a gender perspective in their mandate and through their analyses, and there is a need to repeat this inclusion now for LGBTI people.

Moreover, mentioning only a few cases as examples of violence against sexual and gender diverse people only reinforces the invisibility that the LGBTI community suffers and makes it impossible to address in-depth the whole context of homophobic and transphobic violence suffered during the period investigated. Only two of the five commissions analyzed in this chapter made final recommendations (Ecuador and Brazil) addressing this issue and proposing institutional, legislative, and legal changes to prevent further violence. The importance of delivering recommendations to change the nature of this violence is vital. Otherwise, the mention of a few cases only remains anecdotal and does not produce any change in society. Therefore, it only proves to be useless.

Furthermore, even though these two last commissions showed extraordinary progress considering the examples they had from previous experiences, they analyzed LGBTI violence as a distinctive category, which it is, but did not go further in considering how

people who identify themselves as LGBTI also could have perceived more violence based on their race or class. This lack of an intersectional and queer analysis is something to consider for future truth experiences, considering how race and social class play an important role in LGBTI people being victimized (Comisión Interamericana de Derechos Humanos (CIDH), 2015). Also, transitional justice, and in this case, truth commissions, need to move on from the gender and sex binarism of man/woman and male/female and start considering the whole spectrum of sex and gender diversity to truly embrace queer theory as a valid approach to violence in periods of conflict and social unrest.

This ignorance of the violence suffered in the past also allows for further violence to be committed in the post-conflict setting, because the lack of representation in the truth commission's report is perceived as impunity, or even acceptance for this type of violence to occur. On top of this, explaining the past is difficult if there is no account of the facts. The non-existence of LGBTI organizations during the time of conflict and violence shows how the abuses committed can go by without any memory or recollection of them happening. NGOs are much needed to keep track of this, and documenting the abuses committed is vital to shedding light on this issue, especially when the state does not have official information on LGBTI violence.

All of this shows how societies are still homophobic and heteronormative and are ignorant of the demands by the LGBTI community to acknowledge their suffering. After all, truth commissions are funded by the government and there is a political agenda behind them. The Commission's report is the final and official truth of what happened, so there is power in deciding what is told and what is not. The telling and re-telling of the past shape the future of society and its tolerance toward diversity.

On a final optimistic note, this analysis also showcases the progress made by truth commissions over the years. We started with the South African commission, only mentioning briefly the violence suffered, and from that, we reached the Brazilian Commission, with a whole section devoted only to this issue and with a regional truth commission also making an in-depth analysis of the violence suffered by LGBTI people.

## 4. CASE STUDY ON COLOMBIA'S TRUTH COMMISSION I: LGBTI RIGHTS, PEACE, AND TRANSITIONAL JUSTICE

The present chapter deepens on the legal developments regarding LGBTI rights in Colombia. First, it explores the evolution of the rights of sexual and gender minorities in the country. This is necessary to understand that the inclusion of LGBTI people in the Peace Agreement is not accidental, but instead is another step on a continued progress of LGBTI rights in the country.

After this section, it focuses on the Peace Agreement signed in 2016 between the Colombian government and the extinct FARC-EP guerrilla, highlighting how this document tackled LGBTI victims. In a final part, it also briefly explains the transitional justice system developed after this agreement and, specifically, how the truth commission in the country is tasked with dealing with LGBTI victims in its mandate.

### **4.1. Analysis of the legal situation of LGBTI rights in the country**

Homosexuality was decriminalized in Colombia in 1980, by the effect of an executive order. After this moment, homosexuality was no longer considered a crime, even though it would still be considered a psychiatric disease for a few more years (Cotrina Gulfo, 2018, p. 153). The case of trans people is different. Officially, trans people were never criminalized for the fact of being trans. However, society has always discriminated against them and set them aside in the marginalized areas of cities (Cotrina Gulfo, 2018) (Bustamante Tejada, 2008, p. 135), as they defy the natural order of gender in a heterosexual society (Butler, 2011). Even though prostitution is legal in the country and cross-dressing became legal with the above-mentioned executive order from 1980, trans people, especially those who practice sex work, are still persecuted and discriminated against by the police (Verástegui-Mejía & Céspedes, 2021, pp. 51–52).

Between 1980 and 1991, thanks to academia and social activism, the country experienced the emergence and the establishment of a small, marginalized and sometimes hidden, LGBTI movement (Cotrina Gulfo, 2018, p. 156). After this brief period, the new Constitution of 1991 represented a turning point for the LGBTI movement in Colombia, as it meant the creation of the Constitutional Court. The Constitution itself did not make any explicit mention of sexual orientation or gender identity as protected categories in

article 13, which codes discrimination and equality (*Constitución Política de La República de Colombia*, 1991). Despite this fact, the Constitutional Court has emerged as an institution that has pushed the rights and protection of LGBTI people forward, recognizing the equality of LGBTI people and their right not to be discriminated against based on their sexual orientation and gender identity or expression (Comisión Interamericana de Derechos Humanos (CIDH), 2018, para. 89). The existence of appeal mechanisms like the action of ‘tutela’ or the protection of fundamental rights that the Constitution granted have helped LGBTI activists to gain rights using the judicial system (Colombia Diversa, 2020, p. 124). This ‘tutela’ mechanism allowed citizens the possibility of submitting a case against the state for the violation or not fulfilment of their fundamental rights.

#### 4.1.1. Sexual orientation

Only three years after the creation of the Constitutional Court, this institution started adopting a view favoring the advancement of LGBTI rights. During the 1990s, the Court ruled in favor of eliminating the censoring of the appearance of LGBTI people in the media (*Sentencia No. T-539/94*, 1994). It also eliminated homosexuality as causal for being fired as a teacher (*Sentencia No. C-481/98*, 1998), and as causal for receiving a military honor offence (*Sentencia No. C-507/99*, 1999). As Lemaitre states, these decisions made by the Court “gave a new frame of meaning to sexual orientation, so this has moved from a culture and lifestyle issue to being a problem of rights.”<sup>2</sup> (Lemaitre Ripoll, 2009, p. 81)

All in all, during the 1990s the Constitutional Court showed an approach committed to the advancement of LGBTI rights, based on equality and non-discrimination on one side, and the right to the free development of personality on the other. Furthermore, the Court established that sexual orientation was a distinctive criterion and that any norm or law which mentioned it should be evaluated to determine if it was discriminatory or not (Lemaitre Ripoll, 2009, p. 83).

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<sup>2</sup> Translation made by the author of the present thesis.

The decade that gave the start to the 21<sup>st</sup> century gave many more small victories to the LGBTI rights movement, such as the sentence which ruled that schoolbooks could not limit sexual orientation because sexuality was an essential element of humanity (*Sentencia No. T-435/02*, 2002). This is just one example of many rulings which condemned discrimination in the work environment or prison; or ensured the protection of the right to the freedom of assembly, among others (Lemaitre Ripoll, 2009, p. 83).

During the same decade, the LGBTI movement started being recognized as an organized movement and even was given some space to participate in the peace process. The project “Planeta Paz” (Peace Planet) promoted the participation of civil society organizations in the peace dialogues in Caguán (Colombia Diversa, 2020, p. 125). Thanks to this, some organizations that advocated for the advancement of LGBTI rights emerged, especially for those affected by the armed conflict. This gave visibility to LGBTI individuals as subjects of law who deserved the same degree of protection as other movements or minorities who suffered violence.

Despite this, the Court was still reticent on recognizing patrimonial rights to LGBTI partners and families and ruled against different actions of “tutela” presented on this issue (*Sentencia No. C-507/99*, 1999) (*Sentencia No. T-1426/00*, 2000). The Court gave the competence to decide on these sensitive issues to the executive and legislative powers, i.e., the Congress (Colombia Diversa, 2020, p. 125). There, activists promoted relentlessly a law to establish effective equality between homosexual and heterosexual couples. They were naming this law as the gay marriage law. Some progressive congressmen and congresswomen attempted to pass this law in the Congress (Lemaitre Ripoll, 2009, p. 84). However, the Catholic church and the conservative wing always responded with fierce opposition and the different attempts never materialized into law.

After the last attempt of passing a law in the Congress, which resulted in a negative once again, a group of LGBTI organizations like Colombia Diversa decided to move the fight back to the Constitutional Court in 2006, which showed a change of view compared to previous years. It stated that the exclusion of homosexuals from the institution of marriage was a violation of their fundamental rights and ruled unconstitutional the decision because it imposed heterosexuality in order to have access to the benefits that marriage has (*Sentencia No. C-075/07*, 2007) (Lemaitre Ripoll, 2009, pp. 84–85). This made legal the civil unions of same-sex couples, providing some of the rights, but not all, entitled to marriage.

In the following years, the Court ruled on some issues that improved the equality of homosexual couples and the rights that this bring, like access to a survivor's pension for a homosexual partner (*Sentencia No. C-336/08*, 2008), or the affiliation to social security for a homosexual partner (*Sentencia No. C-811/07*, 2007). In 2011, the government passed Law 1482 modifying the penal code and adding sexual orientation as a ground for considering discrimination against someone (*Ley 1482. Por Medio de La Cual Se Modifica El Código Penal y Se Establecen Otras Disposiciones*, 2011). This law expanded the degree of protection afforded to LGBTI people. In spite of this, this advance came short, as it did not include gender identity and expression on it.

Finally, in 2016, the Constitutional Court ruled in favor of legalizing same-sex marriage, stating that banning it was unconstitutional. They based their decision on the principles of equality and non-discrimination, present in the Constitution (*Sentencia No. SU214/16*, 2016). Moreover, in 2018, the Santos government issued Decree 762, ordering the Interior Ministry to add a chapter on public policy especially devoted to sexual and gender diverse people, in order to guarantee the full achievement of their rights (*Decreto 762. Por El Cual Se Adiciona Un Capítulo al Título 4 a La Parte 4, Del Libro 2, Del Decreto 1066 de 2015, Único Reglamentario Del Sector Interior, Para Adoptar La Política Pública Para La Garantía Del Ejercicio Efectivo de Los Derechos de Las Personas Que Hacen Parte de Los Sectores Sociales LGBTI y de Personas Con Orientaciones Sexuales e Identidades de Género Diversas*, 2018, p. 762). This represented a major step forward in the protection of LGBTI people and their normalization in society, as citizens of full legal rights.

#### 4.1.2. Gender identity and gender expression

The Constitutional Court has not remained silent on trans rights either. Different individuals or organizations have presented actions of “tutela” to the Court arguing that their rights were violated. The Court has ruled on questions regarding access to healthcare in different cases (*Sentencia No. T-771/13*, 2013) (*Sentencia No. T-552/13*, 2013). Ruling on this access to healthcare is vital for trans people, as they can see denied gender reassignment surgeries or other treatments necessary to reach their perceived gender. It has also ruled favorably on questions related to education (*Sentencia No. T-141/15*, 2015), the army (*Sentencia No. C-356/19*, 2019) (*Sentencia No. C-584/15*, 2015) (*Sentencia No.*

*T-476/14*, 2014), or the workplace (*Sentencia No. T-143/18*, 2018); settings where trans people have traditionally been discriminated, originating further exclusion from society.

It is of paramount importance to highlight case *T-063/15*, which was an action of “tutela” that a trans woman submitted after a notary denied her the right to change the sex that appears on her birth certificate. In this, the Court stated that there is a right of each person to define by themselves their own sexual and gender identity and that the civil registry should reflect how a person perceives their own sex and gender. It also stated that this right should be implemented through an easy notarial procedure (*Sentencia No. T-063/15*, 2015). Therefore, the Court recognized that sex is an aspect of individual identity, and each person can determine it freely. This decision changed the previous procedure, in which trans people needed to appear in front of a judge, who was the ultimate person to decide if a trans person could or could not change their legal sex in the registry (Osella & Rubio-Marin, 2021, p. 656).

In 2015, the government passed a presidential decree implementing this decision (*Decreto 1227. Por El Cual Se Adiciona Una Sección al Decreto 1069 de 2015, Único Reglamentario Del Sector Justicia y Del Derecho, Relacionada Con El Trámite Para Corregir El Componente Sexo En El Registro Del Estado Civil*, 2015). This decree “establishes that gender recognition can be achieved through a notarial procedure” (Osella & Rubio-Marin, 2021, p. 656) without the need to undertake a psychiatric or physical evaluation. However, it establishes a limit to gender recognition and only recognizes the male/female binary.

This same decree “refers to ‘sex’ as a social construct” (Osella & Rubio-Marin, 2021, p. 656). The importance of this from a queer perspective is undeniable. It proves that not only the Constitutional Court is applying the principles of queer theory to its reasoning, but that the government itself is eager to also consider queer theory, and its vision of sex, in its legislation. This is aligned with the vision of the Inter-American Commission on Human Rights, which has also considered ‘sex’ a social construction, stepping out of the traditional binary of sex restricted to male and female, and embracing diversity, in the interest of including intersex individuals (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 16).

Some authors argue that the Court’s decision has an open reading to gender recognition and diversity. The Court does not define the beneficiaries of the right, making it inclusive and perhaps recognizing the different experiences of gender that exist. These same

authors state that the Court “refers to gender identities in the plural” (Osella & Rubio-Marin, 2021, p. 657), recognizing that trans identities are plural and not shaped by the same model.

Finally, in 2022, the Constitutional Court ruled on an action of “tutela” presented by a citizen from Medellín. This individual was denied the option to have another gender outside the male/female binary in their registry. The Court found a violation of the applicant’s rights to equality, human dignity, legal personality, and free development of personality, and ordered the recognition of a third option as ‘non-binary’ (*Sentencia No. T-033/22*, 2022). The Court added that the discordance of sex in the registry to the one the person self-identifies as can cause further discrimination and exclusion from society. This institution acknowledged the existence of identities outside the traditional sex binary and argued that these identities must be protected from discrimination (González Cabrera, 2022). With this ground-breaking resolution, the Court advanced on recognizing the existence and protection of sexes and genders outside binarism.

#### 4.1.3. LGBTI victims of the armed conflict

The rights of LGBTI victims of the armed conflict also started being recognized. In 2003, the Constitutional Court stated that a differential approach needed to be implemented regarding victims of forced displacement, considering their ‘sexual option’ among others (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 1015). In 2009, after Colombia Diversa submitted a case, the Court established that the terms ‘family’ or ‘permanent partner’ included homosexual couples (Lemaitre Ripoll, 2009, p. 85). This is especially important because, after this moment, LGBTI couples have legal access to the right of family reunification in the armed conflict. Furthermore, in 2011, the government issued Law 1448, also known as Victims Law, which recognized LGBTI people as victims of the conflict and has a differentiated approach for sexual and gender diverse people (Comisión Interamericana de Derechos Humanos (CIDH), 2018, para. 91), especially on regards to the right to individual and collective reparations. Moreover, LGBTI people started being counted as a specific group in statistics on the violence related to the armed conflict (Colombia Diversa, 2020, p. 126). These advancements gave better visibility to LGBTI victims of the conflict, which undoubtedly led to the mention and incorporation of these victims into the Peace Agreement in 2016 and the mandate of the truth commission. Therefore, representation for LGBTI victims of the conflict has

been increasing over the previous years and it is expected to reach new highs after the publication of the commission's final report.

#### 4.1.4. Conclusions

Colombia has been a historically conservative country, ruled by right-wing political parties who have not been precisely predisposed to guarantee the fundamental rights of LGBTI people. In contrast to this, the Constitutional Court appears to be an exceptionally progressive institution, as most of the rights that LGBTI people conquered in the country have been achieved through this institution. The Court has in general made an inclusive reading of the Constitution, expanding progressively its meaning and the application it has on LGBTI people.

Queer theory has undoubtedly made its way into the Constitutional Court and this institution is little by little embracing it and applying it to the cases concerning sexuality and gender. Back in 1999, the Court was already relying on sociological theories to argue that sexuality is variable and fluid and not a fixed identity of an individual (*Sentencia No. SU-337/99*, 1999, para. 29). Over the years, the Court has rejected the dominant discourse that establishes binaries as the natural order. It has rejected this naturalness and has questioned on multiple occasions the binary constructions surrounding gender and sex, stating that the binary system is a cultural construction. The influence that queer theory has had over the Constitutional Court is undeniable.

The Constitutional Court also is influenced by the Inter-American Court of Human Rights (IACtHR). Queer theory is also influencing the IACtHR in its ruling on issues concerning sexual orientation and gender identity (*Azul Rojas Marín vs. Perú*, 2020), and consequently, it is influencing the Colombian Constitutional Court, as the latter relied on IACtHR decisions' in some of its rulings concerning sexual orientation and gender identity (*Sentencia No. T-476/14*, 2014) (*Sentencia No. T-033/22*, 2022). It is important to highlight how the Constitutional Court relied on the IACtHR on issues that break with the gender binary, such as in the case T-033/22, which was already mentioned earlier.

## **4.2. LGBTI inclusion on the post-conflict developments**

Since the signing of the 2016 Peace Agreement, Colombia is immersed in a post-conflict setting. That document was praised internationally as an example of inclusion and diversity. It took into consideration how different minority groups were affected by the conflict, like women, LGBTI people, indigenous communities, or afro descendants. This Peace Agreement was the starting point for a whole transitional justice system that is taking place right now in the country, with different mechanisms, which also incorporated LGBTI victims into their work, as it will be further analyzed.

### 4.2.1. The 2016 Peace Agreement

In 2016 the Colombian government and the FARC-EP guerrilla signed the Peace Agreement that would start the whole transitional justice process that the country is currently living through. But even before the signing of the Agreement happened, there were intense years of negotiations. Different LGBTI leaders and organizations participated in the Havana peace negotiations and forced the inclusion of LGBTI people as victims of the conflict in the final document of the Peace Agreement (Colombia Diversa, 2020, p. 126). This represented a shifting point, as the negotiating parties recognized the historical violence suffered by LGBTI people and actively wanted to remedy it (Bouvier, 2016, p. 22).

The ‘no’ in the referendum held nationally over the acceptance of the Peace Agreement was attributed to the inclusion of a gender and LGBTI approach in it, as some sectors of society considered that the Agreement was trying to force a ‘gender ideology agenda’ on Colombian society. The advancement for women and LGBTI victims the Agreement tried to make backfired and was used by the opposition. According to the UN High Commissioner for Human Rights, this “had a chilling impact on previous gains related to those rights” (United Nations General Assembly, 2018, para. 5).

The agreement emphasizes how it pays special attention to the fundamental rights of different marginalized groups, like the LGBTI population (Comisión Interamericana de Derechos Humanos (CIDH), 2018, para. 91) (United Nations General Assembly, 2017, para. 11). To achieve this, it considers the creation of a body named “National Council for the Reconciliation and Coexistence” (Consejo Nacional para la Reconciliación y la Convivencia) (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia

- Ejército del Pueblo, 2016, p. 46), which is tasked with promoting the no stigmatization of vulnerable groups, including LGBTI people, among others (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 47). It also stipulates the right of every citizen to have access to an effective and independent judiciary system, which have to be able to guarantee justice to cases of gender violence and without stereotypes to LGBTI people (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 79).

Moreover, chapter 5 of the Peace Agreement, which is entirely dedicated to victims, establishes the transitional justice system that is currently being implemented. This chapter recognizes the amount of suffering and damage experienced by different groups, including the LGBTI population (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 126). This same chapter establishes that the Truth Commission must apply a differentiated perspective for the LGBTI population, due to the distinctive characteristics of the violence suffered by sexual and gender diverse people during the conflict (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 131), in order to establish how their economic, social, cultural and environmental rights were violated (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 134).

The Agreement also considers how the Truth Commission has to incorporate and implement a gender approach throughout the whole process, and for this, it contemplates the creation of a gender working group, which will be the body within the Commission responsible for interacting with LGBTI organizations to establish collaborating agreements (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 136). Finally, the Agreement states that equality and non-discrimination are a fundamental pillar for the implementation of it, and that no part of the Agreement has to be interpreted to deny rights to any social minority (Comisión Interamericana de Derechos Humanos (CIDH), 2018, para. 91) (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 192).

This Peace Agreement is inclusive and progressive when it comes to social minorities. The Peace Agreement also includes an intersectional approach (United Nations General Assembly, 2017, para. 11), but this has to be materialized by the different institutions emerging from the transitional justice system. After all, Colombia is a widely diverse

country, with multiple social groups that intersect between them. However, even though the document promises to be intersectional, its mention of LGBTI people seems to be only present as another category for discrimination. The Peace Agreement commits the same mistake as international law, universalizing the LGBTI experience and thinking of this social group as a single unit, in which all the victims have to fit.

#### 4.2.2. The Integral System of Truth, Justice, Reparation and Non-Repetition (SIVJRNR)

As it was mentioned before, chapter 5 of the Peace Agreement is entirely dedicated to the victims of the armed conflict. An essential part of this chapter is the creation of the Integral System of Truth, Justice, Reparation and Non-Repetition. This acts as the transitional justice system, composed of different judicial and extra-judicial mechanisms, with the objective of guaranteeing the rights of victims to truth, justice, reparation and non-repetition. This system has to lead the country in the transition from the armed conflict to a peace setting (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición de Colombia, n.d.). Legislative Act 01 of 2017 incorporated the SIVJRNR into the Constitution of Colombia (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición de Colombia et al., n.d.).

The SIVJRNR is composed of three main bodies: the Special Jurisdiction for Peace (JEP); the Truth, Coexistence and Non-Repetition Commission (CEV); and the Unit for the Search for Persons Presumed Disappeared in the context and by reason of the armed conflict (UBPD). Also, the SIVJRNR establishes the «comprehensive reparation measures for peacebuilding and guarantees of non-repetition» (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición de Colombia et al., n.d.), which will be achieved with the joint work of these three mechanisms and the results they will provide. Furthermore, the system will be founded on the application of restorative justice and will achieve justice with different systems, and not only with retributive penalties (Gobierno de Colombia & Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo, 2016, p. 128).

Even though these mechanisms are autonomous and function on their own, they all interact with each other and have some shared work. They are working together for two purposes: “strengthen the participation of victims and the territorial and extraterritorial

presence of the SIVJNR” and “strengthen legitimacy and citizen trust” (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición de Colombia et al., n.d.). To achieve these two purposes, they are working on creating relations with different organizations of the civil society and national entities, and to guarantee the protection, security, and rights of the victims. The three mechanisms exchange information and must work in a coordinated and articulated way as part of the system to ensure the full satisfaction of the rights of the victims, which can only be accomplished with the combination of judicial and extrajudicial processes.

#### 4.2.3. Mandate of the Truth Commission

The Truth Commission’s legal regime is established by Decree 588 of 2017, which in Article 1 establishes the Commission as an autonomous and independent body from the national order and within the Constitutional range (*Decreto 588. Por El Cual Se Organiza La Comisión Para El Esclarecimiento de La Verdad, La Convivencia y La No Repetición*, 2017). Article 4 of the same Decree constitutes the Commission as an extrajudicial body, meaning that its activity will not have judicial character and it will not apply as a criminal charge in any authority (*Ibid*, p. 6). Article 8 states that the Commission will have a differential and gender approach across all its work, taking into consideration the different experiences and particular conditions of discriminated and vulnerable groups, which were especially affected by the conflict and received a differential impact (*Ibid*, p. 7). Article 11 delimits the work of the Commission by establishing its mandate. The third paragraph stipulates that the Commission must recognize the human and social impact of the conflict, including the impact on the economic, social, cultural, and environmental rights in society, and how different vulnerable groups were affected differentially by the conflict, including LGBTI people (*Ibid*, p. 8).

Considering all this, Colombia’s Truth and Reconciliation Commission is expected to be different from the previous commissions analyzed already in the third chapter. This difference is essentially in the integration of the differential approach across all the Commission’s work. This implies that even though the final report may produce a specific chapter on violence directed at LGBTI people during the conflict, the experiences of sexual and gender diverse people must be considered and captured all over the report. This would impact on a better representation of this violence and in a more coherent and cohesive final report. If the Commission decides to create specific chapters on gender,

race, LGBTI, or peasants, and does not make any intersection between them, it would have failed on representing the real diversity and intersectionality present in Colombian society.

Furthermore, there is a lack of definition for what constitutes the object of analysis for the Commission in terms of LGBTI people. The mandate only mentions the acronym LGBTI and does not make any explicit or differential mention of minoritized groups like trans or intersex people. This creates the risk of the Commission focusing mainly on the already visible and mostly accepted groups within the complex and extensive LGBTI acronym; those being mostly white gay men and women from the middle and upper classes living in urban areas. Considering the nature of the Colombian conflict, which mainly took place in rural areas, with more racial diversity and poorer populations, the analysis made by the Commission needs to be intersectional to fully understand the reasons and consequences of the violence suffered by LGBTI people.

## 5. CASE STUDY ON COLOMBIA'S TRUTH COMMISSION II: PREJUDICE, CONFLICT AND TRUTH

LGBTI people in Colombia have historically been a target of violence, even before the armed conflict started (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 1027). Despite this fact, it is undeniable that the armed conflict has had an impact on the LGBTI community and the levels and types of violence they perceived (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 123). This chapter defines violence by prejudice and how it is linked with gender violence. Also, it details the factors that allowed for this violence to happen in the first place and how the conflict reproduced and magnified what was already happening. The armed groups only took preexistent social problems for their own benefit, one of these being the discrimination based on sexual orientation and/or gender identity (Centro Nacional de Memoria Histórica, 2015, p. 66). Therefore, a brief mention of the different victimizations applied by three different actors is also necessary. Later on, there is a mention of the inputs the Commission has available related to these types of victimization as a closing part of the chapter.

### 5.1. Violence by prejudice and gender violence

Violence by prejudice can be defined as the type of violence that is committed on bodies for being what they are or for what they are perceived to be (Gómez, 2008). Prejudice is an open concept which includes any type of discrimination present in a particular social, political, economic, and cultural context. Therefore, violence by prejudice can be based on sexual orientation, gender identity, race, class, political ideology, etc. (Colombia Diversa, 2020, p. 25). There is a correlation between violence by prejudice and stereotypes. The latter constitutes a preexistence vision over a social group and the characteristics its individuals have (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 41). Therefore, individuals cease to be seen as independent entities with distinctive characteristics and are seen as part of this social group, which defines the stereotypical characteristics of its members. The perpetrator of violence by prejudice perceives the victims based on these stereotypes.

This violence can be either discriminatory or hierarchal. Discriminatory violence by prejudice perceives the victim as part of 'the other', incompatible with the dominant

social group and the perpetrator aims to exclude the victim. This is the case of violence which attempts to force out the LGBTI individual or ‘correct’ them. Hierarchal violence by prejudice perceives the victim as inferior within the social order, and the perpetrator aims to reinforce this inferiority and maintain the hierarchy. This is the case of attacks which attempt to strengthen discrimination with subordination and humiliation (Gómez, 2008). These two types of violence are instrumental in the way that they put the perpetrator in a superiority over the victim and they generate a difference between the victim and the perpetrator based on their sexual orientation and/or gender identity; the perpetrator’s being considered the normative one in that specific context and the victim’s being the non-normative.

Moreover, violence by prejudice is not only directed at the individual who receives it, instead, it works as an example to other LGBTI people, creating fear in them and perpetuating a social message of rejection (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 3). It also reinforces the stereotypes and stigma already existing over a particular group (Corporación Caribe Afirmativo, 2019, p. 54). In other words, this violence is normalizing, in the way it aims at imposing a single role model when it comes to sexual orientation and gender identity (Bielsa, 1986) based on the binary and heteronormative system, in which sexual and gender diverse individuals are not tolerated. Finally, this violence has a high level of social and judicial impunity because it occurs in places where the community and the authorities condone it and even encourage it (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 44). This leads to a lack of investigation in these cases or to insufficient and unsatisfactory investigations.

Colombia Diversa refers to violence by prejudice as a type of gender violence. They define gender violence as “the types of violence that respond to unequal power relations derived from the sex-gender-desire system” (Colombia Diversa, 2020, p. 26), a concept created by Butler, in which binary sex-gender roles and heterosexuality become the norm, and there is oppression on women (Butler, 1990). If a person does not fit within this system, violence against them is considered legitimate in order to maintain the perpetuation of the system (Colombia Diversa, 2020, p. 27). Therefore, there is an unbreakable relation between gender violence and violence by prejudice, as the latter happens because sexual and gender diverse individuals step out from this sex-gender-desire system. This has also been stated by the UN High Commissioner for Human Rights and the Special Rapporteur on Torture, who mentioned how LGBTI people are often

subjected to sexual violence and torture to punish and dehumanize them for breaking the gender norms (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 27). Moreover, gender violence is not only violence of men against women, but instead is a violence of heterosexual masculinity against anything that can represent non-heterosexual masculine femininity or feminine masculinity. That is why the victims of violence by prejudice tend to be LGBTI people who clearly defy these traditional sexual and gender roles in an attempt of subordinating or eliminating them from the social order (Colombia Diversa, 2020, p. 28).

## **5.2. Prejudice: historical and social analysis**

Latin American societies have been characterized by systemic discrimination based on different factors such as race, gender, sexuality and most importantly, poverty and economic power, which have classified people between first-class and second-class citizens (Comisión Económica para América Latina (CEPAL), 2010, p. 13). Discrimination and inequality are multicausal, and even though discrimination suffered by LGBTI people can be analyzed only by taking into consideration sexuality and gender, a broader analysis will show how sexual orientation and gender identity in some cases are only one form of discrimination that may intersect with others like race.

Since colonization, Colombian society has been based on the Judeo-Christian tradition, which established fixed identities for men and women and imposed heteronormative sexuality and binary gender roles (Lugones, 2012). Moreover, colonization imposed a series of power relations based on race, class, gender, and sexuality, in which the white rich heterosexual men are the dominant social group over the rest. These ideas paved the way for discrimination against sexual and gender diverse individuals because people who are perceived to have a sexual orientation or a gender identity out of the norm are considered threats to the system (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 28). This mindset led to the creation of stereotypes, stigmas, and prejudices, which justified and perpetuated the oppression against a social group (Corporación Caribe Afirmativo, 2019, p. 49). This oppression is materialized as structural violence, and during the armed conflict different conditions allowed for this violence to persist and even achieve higher quotas. These factors, as we will see, are interlinked, and are reinforced between them.

The first factor is the legal status of homosexuality, which only became decriminalized in Colombia in 1980. Therefore, attacks by the police on LGBTI people were legal before then, as the mere existence of homosexuals was a ground reason for this violence (Centro Nacional de Memoria Histórica, 2015, p. 72). There was an intention to ‘punish’ LGBTI people by the police, which were acting according to the legal order of the time (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 25). Obviously, this illegality of LGBTI people forced a specific mindset on people, which started perceiving sexual and gender diversity as something wrong. The final responsibility for creating this pejorative image of homosexuality falls on the State, which was highly influenced by the religious morality dominant at the time.

The second factor are the structural conditions of exclusion and marginality lived by LGBTI people in their everyday lives (Centro Nacional de Memoria Histórica, 2015, p. 80). Colombian society is still highly heteronormative and therefore, violence against LGBTI people happens ordinarily, which normalizes them for both the victim and the perpetrator. There is social complicity and justification toward the perpetrator, which has a symbolic effect on the victim and the entire LGBTI community, who receives a message of threat and terror (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 44).

As soon as a kid starts showing signs of not complying with the ‘natural’ role it has in a cis-hetero normative society, i.e., showing signs of homosexuality or taking gender roles traditionally perceived as not part of their gender, they are rejected and start receiving violence. The family is one of the main perpetrators of violence against LGBTI people, usually with the intention of ‘correcting’ the sexual orientation or gender identity of the individual (Comisión Interamericana de Derechos Humanos (CIDH), 2020, para. 172) (Centro Nacional de Memoria Histórica, 2015, p. 82). This violence and discrimination rapidly extend to other settings like schools, churches, and the community. This comes in the form of insults, physical violence, and threats (Colombia Diversa, 2020, p. 40) (Centro Nacional de Memoria Histórica, 2015, p. 86) (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 103). The same community and the way they reproduce the violence against LGBTI people play an important role in why armed groups attack LGBTI people, as a way of getting the favor of the community.

The third factor is the continuum and circularity of violence. The different settings previously mentioned in which violence occurs are not isolated but make a chain of

violence that continues in time and creates a continuum and a circularity of violence (Centro Nacional de Memoria Histórica, 2015, p. 94) (Colombia Diversa, 2020, p. 40). For example, a boy that starts showing gender expressions which are typically associated with girls may get bullied at school and receive physical violence. This could lead to him abandoning school. If later on, this boy self-identifies as a trans girl, she may start receiving abuse from her family, in the form of sexual, physical or psychological violence. The abandonment of the family and the need to have money to survive probably force this girl to prostitute herself, with the amount of violence and abuse this means for a transgender woman (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 372) (Comisión Interamericana de Derechos Humanos (CIDH), 2020, pp. 78–87). This example shows us how violence based on sexual orientation or gender identity leads to discrimination, inequality and ultimately, revictimization. Social and economic conditions make it virtually impossible to escape this circularity and continuum of violence. The violence suffered creates the conditions for receiving more violence in a chain. Another example of this circularity of violence is forced displacement, where the victims feel forced to migrate because of the violence perceived in their territory, even though sometimes the cycle of violence starts again at their destination by other armed groups or the police (Comisión Interamericana de Derechos Humanos (CIDH), 2013, paras. 1011–1013).

The fourth factor contributing to violence by prejudice during the armed conflict are the spaces that these people live in and their role in them. LGBTI people have been forced historically to create their own safe spaces, like bars or meeting places, where they can socialize, organize, and live, especially in cities. However, these places are often monopolized by gay men, and to a lesser extent, lesbian women. Transgender people are normally banned from these places, and they are forced to isolate themselves in marginalized areas, where they work (Centro Nacional de Memoria Histórica, 2015, p. 103). These marginalized areas are also drug trafficking places and the armed groups that control those territories exercise violence over the bodies of transgender women, as well as the police during raid operations (Grattan, 2018, p. 9).

In rural areas, LGBTI people are forced to hide their identity and they do not have the possibility of living their sexuality or gender identity more publicly. When someone is recognized as non-heteronormative, the whole community and environment of this person are made aware of that (Comisión Interamericana de Derechos Humanos (CIDH), 2015,

para. 103), which makes it easier to identify the targets for armed groups. However, in a smaller community, the dynamics between people are more cohesive and it can help to create protective environments for LGBTI people if the community accepts them (Centro Nacional de Memoria Histórica, 2015, pp. 107–108). In these cases, even if the community does not truly accept the sexual orientation or gender identity of the individual, they do not condone any violence against them.

The fifth reason are the discourses that have supported this heteronormative violence, based on the stereotypes and stigma over LGBTI people (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 213), who are seen as sinners, carriers of HIV, pedophiles, and disturbers of the social morality. The armed groups gather all these stereotypes that the community believes in and justify the violence against LGBTI people in order to ‘clean’ the community of the perceived social deviants. Therefore, committing this violence has a strategic purpose for the armed group. This gives legitimacy and acceptance to the armed group by the community, who generally condone this violence. This apathy of the community is the sixth and final reason that allows for this violence to persist during an armed conflict and to be even worse. Social complicity allows to reproduce the oppression of people who do not follow the normative social roles (Corporación Caribe Afirmativo, 2019, p. 49). Sometimes even members of the community are the perpetrators of violence because they have the endorsement of the armed group that controls the territory. Therefore, violence against LGBTI people comes with a high level of impunity. There have even been cases in which the community have requested the armed groups to commit violent actions against LGBTI people living in the community (Centro Nacional de Memoria Histórica, 2015, p. 123).

All in all, Colombian society is still based on cis-hetero normative principles, which reinforce a sexual hierarchy, the sex and gender binaries and misogyny (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 48). This creates a society where violence against sexual and gender diverse people is justified and necessary. This violence has sometimes been defined as a ‘social cleansing’. The IACHR started mentioning this ‘social cleansing’ occurring in the Colombian armed conflict in 1993 (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 29). There is not even a need to be actually part of the LGBTI community to become a victim of violence, just being perceived as one is reason enough to suffer it (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 30). The dominant social stereotypes present

where this violence is committed, in which communities are even perpetrators of violence based on their prejudices allows for a high level of impunity, as these cases are not properly investigated (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 43). This gives legitimacy to the perpetrator and can even make the victim normalize this violence as part of being an LGBTI individual.

### **5.3. Victimizations by different actors**

During the Colombian armed conflict, different types of violence directed at LGBTI people occurred. The goal of this thesis is not to enumerate every known individual case, but rather to mention briefly the most common types of violence committed by different actors and analyze how intersectionality helps understand better some types of victimization that took place. Even though the Colombian armed conflict has a huge number of actors, the present thesis will only mention three of them: FARC-EP, paramilitary groups (mainly under the name ‘AUC’) and the National Police. These were not the only actors in the conflict who committed violence against LGBTI people, all of them did, but there is not enough data on this issue for other actors such as the ELN or the military forces.

#### **5.3.1. FARC-EP**

Even though this guerrilla group was a single actor with a vertical organization and tight discipline, it had a presence over the whole country with different blocks and fronts. This complex military structure allowed for minor variations between the different blocks and fronts. Therefore, even though the types of violence that the group applied to LGBTI people were different in each territory, some common notions can be extracted.

The principal types of victimization conducted by members of FARC-EP were threats and forced displacement, torture, kidnapping, sexual violence, slavery (labor or sexual), forced recruitment and homicides committed because of the sexual orientation or gender identity of a person (Corporación Caribe Afirmativo, 2019, p. 72). This violence was not only directed at civilians, LGBTI people within the guerrilla group also suffered victimization. If high-rank officers discovered any type of homosexual behavior in soldiers, they were forced to hide their identity because there was an explicit prohibition

of homosexuality within the guerrilla group (Corporación Caribe Afirmativo, 2019, pp. 72, 75) (Colombia Diversa, 2020, p. 63). The FARC-EP also used strategically homosexual and transgender people for intelligence labors, as they considered that LGBTI people were more invisible and less suspicious than others, based on their stereotypes (Corporación Caribe Afirmativo, 2019, p. 74).

Threats to LGBTI people in the region usually came in the form of pamphlets with the names of actual or perceived LGBTI people (Corporación Caribe Afirmativo, 2019, p. 76) (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 296). Direct threats to an individual were also common, especially to the ones that were more visible defying the sex-gender-desire system. These threats showed the prejudice in the way pejorative words regarding the individual's sexual orientation or gender identity were used (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 993). These threats led many victims to be forcibly displaced, breaking their social and familial bonds (Corporación Caribe Afirmativo, 2019, p. 78). Some of the victims who stood up to these threats and decided to stay in their territory were murdered, or suffered more violence until they were forced to leave (Corporación Caribe Afirmativo, 2019, p. 86).

Sexual violence was normally used as a way to intimidate and punish gay or bisexual men and trans women, especially those individuals who showed feminine behavior, and as part of their social cleansing campaign, forcing the victims to displace to other regions of the country (United Nations General Assembly, 2015, para. 20). In the case of trans men and lesbian or bisexual women, the goal of sexual violence was to correct their sexual orientation or gender identity and show them that women belonged sexually with men based on their way of thinking. Almost always, sexual violence and rape were conducted by a group of people who humiliated the victim with insults, pejorative attitudes, and cruelty, leaving the victim even more defenseless and vulnerable (Corporación Caribe Afirmativo, 2019, pp. 81–82). Therefore, the bodies and sexual integrity of LGBTI people became a political and military objective during the armed conflict to establish power relations and dominance over a vulnerable group.

These different types of violence normally were not an isolated fact but were part of a group of victimizations suffered by the same person. For example, LGBTI people were kidnapped, raped, and forced to work. Once they were released, they received threats until they were forced to displace to another territory. Moreover, this violence was more present if the victim apart from being an LGBTI person was part of another vulnerable

group, such as afro-descendant, peasant, indigenous, poor, minor, etc. (Corporación Caribe Afirmativo, 2019, p. 75).

### 5.3.2. AUC/Paramilitary and neo-paramilitary groups

AUC was the main paramilitary group active during the armed conflict in Colombia until its demobilization in 2006. After this moment, different smaller paramilitary groups appeared and were categorized as neo-paramilitary groups, criminal gangs or organized armed groups. These paramilitary groups used violence against LGBTI people as a political and military opportunity to gain social recognition in the territories, as an answer to the prejudices of the community, which condoned and applauded this violence and repression (Corporación Caribe Afirmativo, 2019, p. 96). They committed this violence with a clear purpose of doing a ‘social cleansing’ and ruling over the social and moral order present (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 993) (United Nations General Assembly, 2015, para. 20).

The types of victimization committed by the AUC are not much different from the ones committed by the FARC-EP. They included threats and forced displacement (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 296), especially linked to the distribution of pamphlets where LGBTI are referred to as ‘military objectives’ and are threatened to leave the territory (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 993). Moreover, they also committed sexual violence that usually implied kidnapping, homicides to eliminate diversity, and slavery or forced labor (Corporación Caribe Afirmativo, 2019, p. 97).

Paramilitaries, however, committed more homicides than other groups (Colombia Diversa, 2020, p. 103), as their ultimate purpose was the total elimination of sexual and gender diverse people in the territories under their control. This is the most prominent example of discriminatory violence, in which the goal is to exclude the victim even if it means killing them, rather than hierarchal violence. Of course, the predominant social morality made it easier for these groups to commit these homicides without any backlash, as the community saw these deaths as less painful or even necessary.

### 5.3.3. National Police

The National Police, especially in small rural towns, committed violence against LGBTI people with complete impunity (Comisión Interamericana de Derechos Humanos (CIDH), 2013, paras. 998–1000). This armed group operated in different ways from the other illegal armed groups. The rural areas in Colombia experienced the worst of the armed conflict and the fight between legal and illegal armed groups to gain and maintain control over the territory was never-ending (Corporación Caribe Afirmativo, 2019, pp. 118–119). Even though the police did not need to commit violence against LGBTI people to gain social recognition, as they were already the legal armed group, attacking LGBTI people was a strategy to weaken the perception that the community had of the illegal armed group, proving that the police was also capable of maintaining the social order established in a cis-hetero normative society.

The main types of violence that police officers conducted were arbitrary detention, collective rape with coercion, forced nudity, torture and injuries (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 990). These crimes were committed following a pattern and were not isolated facts. There are cases where the chief of police was aware of the situation and made nothing to stop it (Corporación Caribe Afirmativo, 2019, p. 117). The police repeatedly carried them out, generally with total impunity. Normally, if they arbitrarily detained someone, they did it using a car without license plates, without following the official protocol and with no record of the detentions (Corporación Caribe Afirmativo, 2019, p. 121).

Even though in some cases the police used threats to force the victims in order to abuse them, in some cases there was no need for threats; after all, the police itself as an institution represents power and authority. They benefit from social control and represent the state's authority in the territory. Because of this, the police officers used the bodies of the victims as they pleased and when they pleased, reaffirming their superiority over them and their power relation, which came reinforced with the use of pejorative insults during the abuses, to reproduce the prejudice (Corporación Caribe Afirmativo, 2019, pp. 125–126).

The victims were defenseless against this type of violence because they had no option to report it or denounce it to the authorities. The very same people in charge of protecting them from violence were the ones committing the violence. This led to the high level of impunity that the police had over the years. Moreover, the police made use of state

buildings to commit these abuses, which led to a higher continuum of violence than the illegal armed groups, which had not a permanent presence in a territory.

#### 5.3.4. Summary of victimizations

All in all, these different actors committed similar types of abuse to LGBTI people. The most typical victimizations were torture, sexual violence, threats using pamphlets, forced displacement, and homicides (Comisión Interamericana de Derechos Humanos (CIDH), 2015, paras. 296, 345). Other victimizations that were less common include kidnapping, sexual and work slavery, and arbitrary detentions (Corporación Caribe Afirmativo, 2019, p. 96).

The majority of these abuses were committed by illegal armed groups (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 993), especially paramilitary groups, who amount to almost 50% of the known cases (Colombia Diversa, 2020, pp. 100–104). However, these cases are considered only a small part of the real amount of abuses, because many LGBTI people do not report it for fear of becoming an even more public figure, which could result in more violence. It is also believed that abuses concerning police officers have a higher degree of impunity as the victims do not trust reporting it, which they would have to do at a police station to other police officers. This creates a high level of impunity among the police force. However, the illegal armed groups also benefit from this impunity and under-reporting of cases (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 997).

The majority of victims appear to be gay men or trans women (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 279), mostly because these two groups are more visible in society and it is more difficult for them to ‘hide’ their identity. Trans women are typically victims of forced displacement after receiving sexual violence and threats in their original communities. This forces them to move to other safer spaces, typically cities, where they are usually forced to work as prostitutes for economic reasons (Comisión Interamericana de Derechos Humanos (CIDH), 2020, paras. 115–117).

#### 5.4. Intersectionality of violence

An analysis of the violence committed against LGBTI people during the armed conflict in Colombia would be incomplete if it does not consider intersectionality with other identities. Individuals have multiple identities that intersect between them and they can be categorized into different groups upon which there are stereotypes, and therefore, this intersection can magnify the prejudice (Corporación Caribe Afirmativo, 2019, p. 51). These may include age, race, class, or stereotypes like HIV. LGBTI people start receiving violence when they are kids for their sexual orientation or gender identity, even when they are not even aware of their own condition (Colombia Diversa, 2020, p. 90). Adults notice how some kids do not follow the sex-gender-desire stereotypes that are present in society and start victimizing them in an attempt to ‘correct’ this and make them comply with the social standards. This violence is even higher if the kid is part of an indigenous, afro-descendant, peasant, or poor community (Corporación Caribe Afirmativo, 2020, p. 116). The family is typically the first environment where these sexual and gender diverse kids are violated, but it is soon followed by the school, the community, and the armed groups, generating this continuum of violence, aggravating the vulnerability they suffer (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 301).

Race can also be analyzed jointly with sexual orientation and gender orientation. Afro-descendants that identify themselves as part of the LGBTI community perceived high levels of violence (Comisión Interamericana de Derechos Humanos (CIDH), 2020, para. 112). This violence was directed especially at gay men and trans women who self-identified as afro descendants, or who lived in areas typically associated with a poor afro-descendant population (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 360). Since colonization, there have been some stereotypes of race, sexuality and gender based on the binary conceptions present in Judeo-Christian heterosexual societies. These stereotypes were used and exacerbated during the armed conflict to justify the violence committed to afro LGBTI people, as a way to reinforce this racial dominance. There is a stigma on black men to be hypermasculine as a trait of heterosexuality (Corporación Caribe Afirmativo et al., 2021, p. 66) (Colombia Diversa, 2020, p. 95). Therefore, when a black man breaks with this hypermasculinity, the armed group perceive that he is a threat to both his race and his sexuality, losing his essential defining characteristic. In the case of black women, the stereotype paints them as hypersexual women and links femininity as inferior to masculinity (Corporación Caribe Afirmativo et

al., 2021, p. 66). Sexual violence and rape committed against them are then justified in general in order to satisfy the stereotypical submission that black women have to their sexuality. In the case of lesbian black women, sexual violence plays a corrective role on the victim as well as an erotic role on the perpetrator, based on the mentioned stereotype (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 172). Armed groups perceive these racialized bodies as part of the promiscuous stereotype associated with black people, which allows them to use them as they wish.

HIV has been traditionally linked to LGBTI people, who have the stigma of being carriers of HIV. This creates a bigger degree of marginalization and makes sexual and gender diverse people a target for violence, especially the violence carried out by armed groups, who seek to do a 'social cleansing' in the territories under their control and use HIV as a reason to attack LGBTI people, despite the fact if their diagnostic is real or perceived. Even when this diagnosis is real, armed groups forcibly revealed to the population who was a carrier of HIV and even denied these people access to healthcare (Corporación Caribe Afrimativo et al., 2021, p. 76). Moreover, the dynamics of the armed conflict translate into the collapse of different institutions, including health centers, leaving the population more exposed to contracting infectious diseases and not receiving the proper treatment (Corporación Caribe Afrimativo et al., 2021, p. 26) (Elbe, 2002). These abuses committed against HIV-positive people are intersectional with violence against LGBTI people, they are not isolated. Also, they respond to particular purposes of the conflict and its armed groups, mainly the social control and the perpetuation of power over the population and the contested territory.

Finally, economic and social class is also a factor that intersects with LGBTI people and increases their exposure to violence. People who live in poverty or do not have enough economic resources are especially vulnerable to becoming victims of violence, sexual or economic exploitation, torture and police persecution, and LGBTI people have higher rates of poverty, lack of housing and food insecurity (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 369). This higher degree of poverty usually is linked with the discrimination LGBTI people face because of society's prejudices, and poverty itself becomes another factor for discrimination. In a conflict context, LGBTI people were a target by armed groups, who used lower-class people to work for them, while abusing them.

All in all, being an LGBTI person during the conflict meant to be violated. The cis-hetero normativity that ruled in society was the ultimate reason for attacking people who represented a threat to this social model. Moreover, LGBTI individuals were not only attacked because of their sexual orientation or gender identity. These were intersected with prejudices based on race or HIV, among others. This led to armed groups attacking kids because of their perceived non-normative behavior, attacking LGBTI black people because of the racial stereotypes that define black men as hypermasculine and black women as hypersexual with men.

### **5.5. Current inputs made available to the Colombian truth commission**

The truth commission in Colombia is not starting the task of documenting all this violence against LGBTI people during the conflict from scratch. Even before the signing of the Peace Agreement in 2016, different organizations have been doing that work and documenting cases. The two major LGBTI NGOs in the country, Colombia Diversa and Caribe Afirmativo, have published numerous reports on the situation of LGBTI people in the context of the armed conflict over the years.

These two organizations established collaboration agreements with the Truth Commission in order to help in recognizing the LGBTI victims of the conflict (Colombia Diversa, n.d.). Some of their reports were forwarded to the Commission and represent its main source of information for the final report. Colombia Diversa submitted a report called “Who is going to count us?” (Quién nos va a contar?) (Colombia Diversa, 2020) in which different smaller LGBTI NGOs from Colombia collaborated, usually local rural organizations.

Caribe Afirmativo also submitted different reports to the Commission, some of them focused on the intersection between sexual orientation and gender identity with race (Corporación Caribe Afirmativo et al., 2021), age (Corporación Caribe Afirmativo, 2020), or HIV (Corporación Caribe Afrimativo et al., 2021), in which also different smaller LGBTI organizations collaborated. It is important to highlight how Caribe Afirmativo pays more attention to intersectionality when analyzing violence committed against LGBTI people during the conflict. This organization is based in the Caribbean region of the country and has a more racially diverse staff, while Colombia Diversa is

located in Bogotá and most of its staff are white middle-class people. This could be the reason why the latter does not typically base its analysis on intersectionality and instead makes a broader analysis, giving a reductionist analysis sometimes. Despite this fact, the quality, importance, and relevance of its reports are undeniable.

Moreover, the truth commission has a precedent of truth-telling within the state's institutions. The Victims Law of 2011 (*Ley 1448. Por La Cual Se Dictan Medidas de Atención, Asistencia y Reparación Integral a Las Víctimas Del Conflicto Armado Interno y Se Dictan Otras Disposiciones*, 2011) created the National Center for Historical Memory (Centro Nacional de Memoria Histórica), which is tasked with preserving the memory of the armed conflict. This institution produced three excellent reports on the violence suffered by LGBTI people during the conflict: "Being a faggot in the middle of the armed conflict" (*Ser marica en medio del conflicto armado*) (Centro Nacional de Memoria Histórica, 2019), "A carnival of resistance: memories of the trans reign of the Tuluní river" (*Un carnaval de Resistencia: memorias del reinado trans del río Tuluní*) (Centro Nacional de Memoria Histórica, 2018), and "Wiping out the difference" (*Aniquilar la diferencia*) (Centro Nacional de Memoria Histórica, 2015). Even though these were not produced explicitly for the Commission, it would be making a big mistake if it did not take them into consideration, considering they make an in-depth analysis of this issue.

Finally, the Commission is developing its own investigation of the violence perpetrated against LGBTI people during the conflict. The Commission's staff has organized different public spaces in which the above-mentioned organizations, as well as different victims, participated explaining their experiences and giving their testimonies (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición de Colombia, 2020), even exiled LGBTI people (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la no Repetición de Colombia, 2021) and LGBTI victims of sexual violence (United Nations General Assembly, 2020, para. 37). The Commission has also reiterated its commitment to acknowledging the LGBTI population and giving them the voice and visibility they deserve and the need to stop the impunity that this violence has enjoyed the last decades.

## 6. FINAL CONCLUSIONS: INCORPORATION OF A QUEER PERSPECTIVE IN THE COLOMBIAN TRUTH COMMISSION'S FINAL REPORT

The Colombian truth commission is publishing its final report soon<sup>3</sup> and expectations from the LGBTI community are high, as this is the first truth commission ever that explicitly recognizes in its mandate that violence against the LGBTI community needs to be addressed and acknowledged. Considering the different sources of information available, there is no doubt that the Commission is going to be able to produce a detailed analysis of these types of victimization. The question remains on whether this analysis would take the principles of queer theory or not.

Both the Peace Agreement and the mandate of the truth commission are quite progressive for LGBTI people if we compare them to the previous commissions that were analyzed in the third chapter. This progression by itself is already an achievement because LGBTI people have historically been underrepresented in transitional justice. It is clear that Colombia is trying to redress this marginalization, and in doing so recognizes LGBTI victims of the armed conflict. However, from a queer perspective, the Peace Agreement may come short, as there is only a mention of the mantra that ‘the conflict impacted on LGBTI people’ that gets repeated on multiple occasions. It could be said that they mention LGBTI people as part of an ‘otherness’, not fully trying to break the sex-gender-desire system or the binaries in society that perpetuate this oppression. There is a need for the truth commission, and all transitional justice mechanisms, to truly acknowledge a differentiated approach. If institutions keep using the terms ‘gender approach’ or ‘differentiated approach’ without really recognizing the structural deficiencies that the system has regarding minorities, this marginalization is not being tackled and there is no progress.

The different reports that Colombia Diversa, Caribe Afrimativo and the National Center for Historical Memory have on LGBTI violence do indeed conclude that the cis-hetero

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<sup>3</sup> The Colombian truth commission published its final report on June 28, 2022. The analysis made in the thesis was done previous to this date. The purpose of this thesis, therefore, is not to analyze the final report, but instead to consider the effect a queer perspective can have on the commission's work.

normative society built on binaries represents the major reason and justification of violence against LGBTI people and its perpetuation. Therefore, it is undeniable how society needs to address this system and change it to avoid further violence in the future. Even though the Commission may not address the current normative structure in society to explain past violence during the conflict, it must try to do it in its recommendations for institutional change, exposing the system that generated this violence and trying to address it.

These same reports also state how the post-conflict setting can be even more violent and generate more discrimination against social minorities than the conflict itself (Colombia Diversa, 2020, p. 77). After the entry into force of the Peace Agreement, the number of LGBTI defenders killed has not stopped (United Nations General Assembly, 2019, para. 24) and trans women are still being disproportionately affected by violence (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 992). This proves that even if Colombia's legislation is progressive on LGBTI rights, Colombian society is still not as progressive and prejudices are still deeply rooted, which is being translated into current violence (Grattan, 2018, p. 22).

The Peace Agreement might have helped the country progress towards peace as FARC-EP is no longer an active guerrilla group, but other groups are still active, and therefore total peace has not been achieved. Moreover, the disarmament of FARC-EP has left a power vacuum and now different groups, like paramilitaries or ELN, are fighting to gain control over the territories that belonged to the extinct guerrilla (Grattan, 2018, p. 29). The Commission has the obligation of dealing with human rights abuses committed before the Peace Agreement entered into force and it cannot address this issue. This brings to light how transitional justice is based on a binary system of war/peace, in which chaos and violence are portrayed as something from the past, while the present is represented as peaceful (Serrano-Amaya, 2017, p. 190). Even though breaking this binary is not the mission of the Colombian truth commission, it surely is something that transitional justice needs to consider in order to continue being a relevant field for conflict and post-conflict societies.

It is also expected from the final report to have a chapter devoted to violence against LGBTI people. Considering the NGOs' reports, especially the reports made by Caribe Afirmativo on different specific types of intersectionality within the LGBTI community, the Commission will most likely include an intersectional analysis of race, gender, social

class, etc., within the chapter devoted to LGBTI people. Moreover, other chapters on gender, race or rurality are expected to exist in the final report, and it would be convenient to relate each individual chapter to the violence committed against LGBTI people, in order to reach a more global (and queer) perspective and analyze how this intersectionality can act as aggravation for the violence. Otherwise, the dynamics of the Colombian armed conflict, which has proven to be extremely complex, are not going to be well represented and acknowledged in the final report.

Queer theory has also made its way into other Colombian institutions that can represent an example for the truth commission. The recent advancement made by the Constitutional Court, detailed in the fourth chapter, shows how this institution is increasingly embracing queer theory to rule on LGBTI issues, questioning the binary system and recognizing it as a source of oppression for sexual and gender diverse people. It would be wise for the commission to abide by the Court's rulings and apply also queer theory in their analysis of gender and sexuality, considering also how the commission is under constitutional order. Making an analysis which remains within the limits of the binary and sex-gender-desire system would not benefit the LGBTI community, as much violence they perceived would not appear in the final report and their whole truth would still remain unheard.

This could be understood as a sign of oppression for the members of the LGBTI community who are on the farthest side of the cis-hetero normativity. Making a single collective history of LGBTI people in the conflict could label them as a fixed identity, benefiting only the most privileged people inside this group. While some members of the LGBTI community are starting to be embraced by the system, such as 'masculine' middle-class urban gay men, many others are being left behind, reinforcing the discrimination they suffer. Therefore, the final report of the truth commission should break with the notion of LGBTI as a single analysis unit, because it could actually be harmful to sexual and gender diverse individuals to be analyzed as a single unit. It has already been stated that the violence directed against LGBTI people varies in each case (Giraldo Aguirre, 2018, p. 121). The types of victimization for a gay man are different from those for a trans man, as well as the types of victimization based on sexual orientation and gender identity are also different. Taking this into account, different analyses need to be made, trying as much as possible to deepen into the different and diverse realities that LGBTI people experienced throughout the armed conflict. This

would defy the notion of fixed and essentialist identities and indirectly would defy the binary norm of heterosexual/homosexual and the power relations this binary carries.

All of this would allow the commission to create a new narrative for LGBTI people in the country. The Colombian conflict has played a substantial role in defining and categorizing LGBTI individuals, shaping the subjectivities and reinforcing the differences against this community. This has labeled and stereotyped LGBTI people as prostitutes, informants, victims, perpetrators, and a long list of categories (Colombia Diversa, 2020, p. 83). This shows how war, gender and sexuality are intertwined, as war can push the negative perception of LGBTI people even further.

The commission must also recognize that the conflict is not the only thing that generated violence against LGBTI people. We know that the conflict has affected especially the life of LGBTI people living in peripheric areas, where armed violence coexists with different domination systems, like structural racism, poverty, patriarchy, and compulsory heterosexuality. If the commission applies a queer analysis on the violence directed against LGBTI individuals, it would put the focus on the social and political ideologies that create these types of violence. This would help them formulate better recommendations to force the state to implement legal protections for LGBTI people (Maier, 2020, p. 8). The commission can act as a powerful tool to shed light on this issue and be a force for change to achieve actual peace and change in the country.

Colombia right now presents different problems regarding LGBTI violence. The first one is the high level of impunity and the lack of effective investigations of this type of violence. Even when investigations start, they tend to stop at the early stages of the investigation, contributing to this high level of impunity (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 1002). Civil society organizations report that authorities investigate violence against LGBTI individuals as crimes of passion and that the officials tasked with the investigation reproduce the prejudices society has toward sexual and gender diverse individuals (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 1008). These prejudices persist in the judiciary branch, and judges reproduce them, ruling on these cases as crimes of passion (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 988). Moreover, most LGBTI people do not report being victims of violence for fear of being outed, or because they are afraid of retaliation, or even because they do not trust the police and judicial system (Comisión Interamericana de Derechos Humanos (CIDH), 2015, para. 97). Even when victims report

it, there is no official differentiated information and tracking on violence directed against LGBTI people, so it is exceptionally difficult to examine the situation of LGBTI people (Comisión Interamericana de Derechos Humanos (CIDH), 2013, para. 1017).

Therefore, the recommendations made by the commission in its final report must consider all of this and force the state to create training programs for the police and judges to avoid discrimination against LGBTI people in their access to justice. Also, the commission must recommend the state to start collecting official information on violence and to create an effective national public policy on the discrimination LGBTI people face. Intersectionality has to be a central aspect of these recommendations and has to force the state on collecting disaggregated information in which the different sexual and gender options appear to intersect with other factors like race, social class, age, location, etc. This would be the only way to have a complete vision of the violence against LGBTI people, its reasons, motives, and consequences.

All in all, the implementation of a queer perspective by the Colombian truth commission would definitely impact on a better representation and inclusion for LGBTI victims of the armed conflict. It would also benefit any other marginalized or oppressed group, no matter if their oppression is based on their race, social and economic class, or any other characteristic minority, through its intersectional analysis. Even more, it would force the commission and society to confront the cis-hetero normativity that still creates and perpetuates power relations and violence, and prevents us from achieving actual equality and stable peace.

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