

# Colombia's Government and Necropolitics as State's Policy

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## Abstract

The constitutional State is based on rules that set limits on the use of force to achieve its essential objective, peace. In 2016, Colombia signed a peace agreement, which was granted constitutional status by the Constitutional Court. However, Colombia's first post-agreement government has been unable to reverse the country's endemic violence and has failed in its duty to protect the right to life of its citizens. This government, which fails to understand its responsibilities, has created a relationship with necropolitics, selectively allowing its population to die by using war, the enemy, and terror as justification for this exception.

**Keywords:** constitution; peace; violence; death.

## 1. Introduction

The law is the ideal means to achieve peace, understanding the latter as the state in which the collective refrains from using violence by order of law, which applies to all persons equally. Within this framework, the Constitution emerges as the archetype on which this entire normative system is based. According to Ferreyra, the main conflict the law must correct through the peaceful settlement of disputes is to avoid harm between individuals in a society, caused by either the violation of individual rights or the abuse of power by the State. Its purpose, then, is not to obtain justice or much less generate well-being—these goals only apply after achieving a state of relative peace: its purpose is to establish itself as a sine qua non for legal pacifism, which is nothing more than peace constructed as the lowest common denominator of overall order and where force is not used without regulation: “law, then, is a proxy of relative peace in a community” [1]. The Constitution is presented as the instrument with the highest degree of evolution within the order established by the law, responsible for the supreme goal of promoting peace within a particular system. It has the first and primary task of establishing guiding principles for the totality of a State and, in addition, takes on the procedural role of creating the bond that lessens tensions between the governed and the governing [1].

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### ***1.1. Legal pacifism***

Every constitutional State has two natural elements, territory and population, and two non-natural elements, power and Constitution, the latter being understood as essential for creating a lasting state order. In this way, the Constitution falls under the fourth element of the State and is developed in two ways: internally, when it is analyzed in the context of itself, and externally, when it is analyzed in terms of how it relates to other state elements. This constitutional basis of the State is realized through four principles, despite being principles of a progressive realization, and therefore unfinished, nature: subordination, variation, distinction, and action. The first refers to the subjection relationship that citizens and public servants have to the Constitution, in the sense that they must adhere to its law because it is the legal order on which the State is based. The second refers to the fact that the Constitution can only be changed through its own process. The distinction principle concerns the establishment of a division of power and a hierarchy that allows some to organize and give orders under the subjection of the Constitution and others to obey. This is essentially the experience of democracy. Finally, action refers to the Constitution's recognition of fundamental rights, which are the foundation of societal coexistence but are, at the same time, subjective rights and objective laws, which makes them courses of action to limit the use of force [2].

The above allows for constitutional rules to serve as the main driving force for peace, since tensions that may arise between the governed, be they citizens or public servants, are dissolved in favor of all processes that subordinate State action to the law of the Constitution. This means that the objective of the constitutional State is peace and that the constitutional instrument must comply with the maximum objective of the law, which is to promote peace. The regulation of the use of force within the state framework is subject to a legal order led by the Constitution, which is the manifestation of the sovereign will of the people and which validates all subordinate norms within a legal system. In this regard, this order is applied to the entire State and is what endows it with its own power [2].

In the case of Colombia, neo-constitutionalism was influenced by the international constitutional movement that gave a predominant place to peace. Therefore peace, after having been widely discussed in the Constituent Assembly, was included in the final text of the Political Constitution of Colombia of 1991, in its preamble and Articles 22, 67, and 95, marking a milestone between the "before" and "after," since there was no similar precedent in the Constitution of 1886. The Colombian Constitution contains a number of inalienable rights recognized for the entire population and for the State in particular, which includes the obligation to respect, guarantee, and protect peace. Because the idea of peace is part of its preamble, the text must be interpreted in a teleological manner, positioning it as a reference for all state institutions, actions, and purposes. The Constitution of 1991 has to be analyzed in a progressive manner as a course for society so that the whole State apparatus can use it as a reference, especially the judicial branch [3].

### ***1.2. Necropolitical explorations***

This article explores Colombian politics from the perspective of a constitutionalism focused on peace. To do so, necropolitics is used as a theoretical framework to explore whether the particularities of local governance align

with the peace agreement's principles after it was signed.

Among the most radical processes of the 21st century is the way people's lives have been directly defined by the economic and political decisions of those in power. Wars and major humanitarian crises have ostensibly worsened people's lives, leaving them exposed to the dynamics of death management. Achille Mbembe is the first to radicalize the proposals of Foucault's biopolitics which, referring to Nazi totalitarianism, discussed the extermination of the population in the name of the survival of a nation or a particular group [4]; he also examined racism as a political tool of biological division and the exclusion and death of those considered inferior. Later, Giorgio Agamben, basing himself on these ideas, wrote *Homo Sacer* regarding the right to kill with impunity and the justification of death [5]. Mbembe managed to link biopolitics and decolonialism more deeply by presenting necropolitics as the space where subjectivities are politically linked in the realm of life and death [6].

Necropolitics implies the subjection of life to power over death; in this way, the contemporary world has created mechanisms that have become weapons used to cause as many deaths as possible and thus create the “worlds of death,”<sup>a</sup> which are nothing more than spaces that bring together those condemned to accept living as the living dead [7]. These worlds of death are supported by three conditions: the economy, the confinement of groups of people, and the ability to produce large-scale death. The first can be understood as the economic system that exposes people who experience some form of exploitation to risks, such as climate change. As for the second characteristic, confinement refers to areas where concentrations of particular social and economic conditions are found, such as slums, communes, or prisons, allowing certain population groups to remain confined and controlled outside the rest of society. Regarding the capacity to produce death, Mbembe explores some additional categories that illustrate these worlds of death.

- State terror, as the first category, describes how the State persecutes, imprisons, and eliminates selected population groups in such a way as to silence or at least neutralize them. It should be noted that both authoritarian governments and contemporary liberal democracies operate within this logic.
- The second category is the use of violence shared between the State and actors from the private sector, such as paramilitary forces. This guarantees the free movement of weapons in society while allowing the implementation of a sub-regime constituting an armed versus an unprotected population. As a consequence of this uncontrolled access to weapons, which is given value because of said capacity, social ties crumble, allowing power to be achieved and exercised according to the price of others' lives.
- The third is war as a mode of production such that it commodifies itself, creating the permanent need for new war markets as a path to wealth.
- The fourth is natural resource depletion, which has allowed the same people to deplete resources with the complicity of the States and large international corporations.
- Fifth, the various mechanisms for killing, widely ranging from aberrant practices such as torture to the use of state-of-the-art technology like remote control drones, become typical instruments of necropolitics.

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<sup>a</sup> places where people are so marginalized that they live like the living dead, indicating they coexist with a politics of death.

- Last is the ability to morally justify atrocities from the use of force [6].

Necropolitics involves the coordination of the political, the economic, and the military to disappear and eliminate certain sectors of the population. However, necropolitics also refers to the surveillance of individuals from a purely utilitarian perspective, as in, for example, the acceptance of certain manifestations of structural violence from the State, unregulated by public policies, that allow small doses of death to be delivered, gradually putting human dignity at risk. This is how the abuse of power, the use of force, and the non-guarantee of basic rights undervalues those suffering them, which in turn contributes to the creation of a morality that allows the acceptance of the idea that there are people whose existence is focused solely on day-to-day survival, trivializing the concept of human dignity [6]. Mbembe refers to these new concepts of morality that, in the words of Hanna Arendt (1951) [8], make society superfluous.

It is also necessary to regress a few years to describe the context in which the concept of necropolitics arose. After the 1990s, during which a defined role associated with the neoliberal ideas of welfare and freedom was seemingly established for the State, the 9/11 attacks gave rise to the West-East discourse that began to gradually legitimize states of emergency in modern political logic. In this manner, the theory of necropolitics emerged as a critique of the prevailing model of exception to show the ways in which government/State regimes administered death. In this new contemporary philosophy, the relationship between violence and law, the State and exception, was established. At this point, three key elements can be identified: the naturalization or normalization of exception as a political strategy; the utilitarian ways of conceiving the body and human life through hierarchies of inferiority; and, finally, permanent defense from the figure of the enemy, created directly by all the mechanisms of power to justify and maintain such states of emergency and exception. Within this line of thought, population control is exercised within a philosophy of war that ranks people according to their usefulness and allows territories to be defined according to which is more important, as these relate to this new meaning of life. Mbembe uses the idea of the colony to demonstrate its validity in such a way that the colony is where disposable and superfluous life is located, sovereignty is a power outside the law, and peace is perpetual war.

*"In the same context, colonies are similar to the frontiers. They are inhabited by 'savages.' The colonies are not organized in a state form and have not created a human world. Their armies do not form a distinct entity, and their wars are not wars between regular armies. They do not imply the mobilization of sovereign subjects (citizens) who respect each other as enemies. They do not establish a distinction between combatants and noncombatants, or again between an 'enemy' and a 'criminal.' It is thus impossible to conclude peace with them. In sum, colonies are zones in which war and disorder, internal and external figures of the political, stand side by side or alternate with each other."* [6] (p. 24)

Within this context, the State retains its traditional image but allows new parallel powers to emerge that operate as devices of war by transferring the monopoly of violence to other actors.

*"War machines are made up of segments of armed men that split up or merge with one another depending on the tasks to be carried out and the circumstances. Polymorphous and diffuse organizations, war machines are*

*characterized by their capacity for metamorphosis. Their relation to space is mobile. Sometimes, they enjoy complex links with state forms (from autonomy to incorporation). The state may, of its own doing, transform itself into a war machine. It may moreover appropriate to itself an existing war machine or help to create one. War machines function by borrowing from regular armies while incorporating new elements well adapted to the principle of segmentation and deterritorialization. Regular armies, in turn, may readily appropriate some of the characteristics of war machines.* [6] (p. 58)

Thus, places like refugee camps, anti-terrorism and anti-migration legislation, prisons, and spaces in a territory without a State presence have been legalized and normalized, and the right to kill and the imposed valuation of certain lives as less important and disposable have been established as a form of policy in contemporary regimes.

### **1.3. Necropolitics in colombia?**

In November 2016, the Colombian State and the Revolutionary Armed Forces of Colombia signed the “Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace,”<sup>b</sup> a milestone that marked the beginning of a new era for the country; however, the advancement represented by the signing of the agreement is just another step, and not a definitive one, to achieve the desire to live without war. Peace is a right and obligation under Article 22 of the 1991 Constitution,<sup>c</sup> which, considering the principle of subordination, obliges the State and its members to consolidate peace and a peaceful coexistence beyond the peace agreement. The Constitutional Court in its C-630/17 decision<sup>d</sup> recognized the peace agreement as legally binding for the entire State, and this constitutional protection implies the design and implementation of consonant public policies; this constitutional backing directs the three governments after 2017 to connect constitutional principles with political implementation.

Despite the clarity of constitutional obligations, the elitist and violent tradition of power in Colombia has meant that it continues expressing hate aimed at making the other, constructed as an enemy, invisible, which undoubtedly puts the reconciliation process at serious risk. Once the weapons were handed over, polarized Colombia has continued in the fight to defeat and annihilate the one considered an adversary. The attitude of the current government, which is the first charge with carrying out the agreement, is worrying because of its permanent attack of the peace process, contributing to new cycles of violence, exacerbated by their connection with past wounds. This government-adopted negative peace<sup>e</sup> strategy focuses on eliminating all vestiges of war; however, this perspective excludes the process of social, economic, and civil construction that society requires to eliminate the Colombian conflict’s structural causes. The systematic abandonment of several regions of the country and exclusion of those most affected by the war is a constant feature that feeds its perpetuity by including new actors and dynamics.

In December 2015, the Colombian National Institute of Legal Medicine and Forensic Sciences recorded the

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<sup>b</sup> Available at: [https://www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11\\_1.2016nuevoacuerdofinal.pdf](https://www.cancilleria.gov.co/sites/default/files/Fotos2016/12.11_1.2016nuevoacuerdofinal.pdf)

<sup>c</sup> Available at: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=4125>

<sup>d</sup> Available at: <https://www.corteconstitucional.gov.co/relatoria/2017/C-630-17.htm>

<sup>e</sup> Understood as the simple absence of war and direct violence.

following data: 10,305 violent deaths from homicides; 117 deaths at the hands of groups operating outside the law; 68 deaths from organized crime; and 6,244 violent deaths from unknown perpetrators. Similarly, municipal-level deaths in that year were as follows: Cali 1,356; Bogotá 1,353; Medellín 464; and Barranquilla 424 [9]. Comparing the years after the signing of the agreement, that is, 2017, 2018, and 2019, we find that up to November 2019, the same organization's report reveals that the number of homicides went from 10,868 cases in 2017 to 10,229 in 2018 and 10,468 in 2019. If the data are analyzed by number of cases, the results are different: at the municipal level, the three cities with the highest rate of homicidal violence in 2019 were Cali with 964 cases, Bogotá with 935, Medellín with 546, and Barranquilla with 286 [10]. This new post-conflict war is a recycling of the violence against civil society, and the main victims are social leaders, reformed terrorists, and land claimants.

Between November 24, 2016, and July 20, 2019, figures show that 627 social leaders and human rights defenders have been killed: 21 in 2016, 208 in 2017, 282 in 2018, and 116 in 2019 [11].

As of August 2019, the Unified Victims' Registry (UVR) identified 8,356,734 people as victims of the armed conflict, of which 7,404,616 were displaced and 25,704 were victims of crimes against sexual freedom and sexual integrity. The abduction of 36,677 people, the murder of 998,315, and the enforced disappearance of 170,160 were also recorded [12].

The problem is exacerbated by the death of social leaders and demobilized guerrillas in the post-agreement period, during which there has been evidence of a deliberate breach of constitutional duty by the State. To illustrate this, this article analyzes the latest report of the Office of the United Nations High Commissioner for Human Rights in Colombia from February 26, 2020, and discusses the most relevant findings.

One of the main observations is the persistence of violence against defenders of human rights and indigenous people, emphasizing that guarantees of their rights in rural areas is key for overcoming violence. The homicide rate in 2019 was 25/100 inhabitants, which indicates the country is experiencing endemic violence. This organization recorded 36 massacres and 133 resulting homicides, identifying areas including Antioquia, Cauca, and Norte de Santander where disputes over control of trafficking related to the illicit economy is evident. Similarly, the OHCHR recorded 108 murders, of which 75% occurred in rural areas and 86% in towns or cities where the multidimensional poverty index is higher than the national average; 91% of the events occurred in municipalities with endemic violence, and 98% occurred in places that suffer from the presence of the illicit economy, as well as that of the National Liberation Army (ELN in Spanish) and other actors at the margins of the law. What is noteworthy about these figures is that 65% of all homicides were of those who defend the rights of communities and ethnic groups, which is a trend that has dragged on since 2016, making it so that defending human rights in Colombia is considered a high-risk activity. The current government has supported this human rights activism, but the report shows that in judicial processes involving State and military officials and social leaders, the latter continue to be victims of harassment. Likewise, it can be concluded that the attacks against social leaders are also aimed at the representatives of Community Action Groups (JAC in Spanish), which form the basis of local-level political participation and community development. An aggravating circumstance mentioned by the report is that to protect defenders of human rights, the National Commission of Security

Guarantees<sup>f</sup> was created; this commission has never been convened but is obligatory under the peace agreement [13].

Another serious situation is the lack of access to justice. Colombia's Office of the Attorney General has a presence in half of Colombia's municipalities, making access difficult for people living in rural areas and in areas where homicides and violence are palpable. This restricts equal access to justice for the entire Colombian population. These institutional constraints have been attributed to budgetary reasons and the lack of protection that can be offered to public servants. It has been shown that, in cases of allegedly arbitrary deprivation of liberty, the processing of such cases was done by the military criminal justice system and not by the ordinary courts; further, in Antioquia, Arauca, Guaviare, and Nariño, the district attorney's office did not apply the protocol to activate the emergency search mechanism in alleged cases of enforced disappearance. Regarding the people's economic and social rights, it was determined that the number of inhabitants facing multidimensional poverty is three times higher in rural areas than in cities. The rate of households that do not have access to drinking water in the countryside is 16 times higher than those in the city, and the illiteracy rate in the countryside is four times higher. This obviously prejudices indigenous peoples and afro-communities, who are mainly based in rural areas [13].

The Colombian government's response to the report is worrying. It not only denied the findings but even called for the international organization to leave the country,<sup>g</sup> arguing that the increase in violence is largely due to the protection the Venezuelan government offers to illegal groups. This is how the government used its well-known strategy of creating new truths and disguised its lack of commitment to its responsibilities in the face of a very serious situation that threatens the very human rights it should guarantee to its people [14].

In Colombia, the discourse of power has guided the construction of official truths through mechanisms such as curtailment of debate to influence people's opinions, building truths aimed at hiding the facts, and protecting power and thus maintaining the social status quo. The report presented here is no exception. Colombia continues to maintain a policy that segregates and demonizes the sectors of the population that have been historically marginalized; to that extent, the transition toward reconciliation is utopian because the expectation of accountability is for members of the FARC, not for the State or its military forces. Therefore, the use of State power that seeks to praise institutional work while ignoring the denigrating exclusions and violence that it has generated appropriates the entire narrative and excludes any that attempts to reveal other realities, even more so when these attempts are also punished, silenced, and killed. With this dynamic, the State is excluded from public scrutiny and assumes the role of the victim, as it is exempt from responsibility; this is visible in the referral of cases to military justice, which prevents the exercise of the natural controls of the constitutional State.

Thus, the greatest obstacle to the implementation of the peace agreement is the lack of political will on the part of the government, which has generated two clear consequences to date: first, the state and its structure have not been able to reverse the violence that continues to affect the country, and second, the state has failed in its duty to protect the agreement and Colombians' right to life. This means that society does not perceive security as its

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<sup>f</sup> The entity in charge of dismantling the criminal groups that have succeeded the FARC.

<sup>g</sup> See: <https://elpais.com/america/internacional/2020-03-02/el-uribismo-pide-expulsar-a-la-oficina-de-derechos-humanos-de-la-onu-de-colombia.html>

right but as a State concession that simultaneously justifies the abuse of force, repression, and the disappearance of dissent.

Just as relations are built in Colombia, power has established cultural, political, religious, ideological, and even educational patterns that ignore "otherness," which legitimize war and justify its continued presence, bestowing on it a kind of charm when satisfied by the disappearance of that other, either physically or symbolically. Similarly, this logic justifies the denial of post-agreement conflict and violence by omitting its effects and denying victims their status as subjects of law. These factors operate as a parallel story of impunity, establishing a systematic ignorance of the truth in the collective consciousness, that is, the construction of an ideology that manipulates social issues, causing the agreement and its implementation to be discredited, and, in turn, contributing to the violence that the country faces today.

This makes it possible to affirm that the Colombian State selectively leaves its population to die. This, from a necropolitical perspective, is the administration of death. In countries such as Colombia, violence, war between illegal actors, and the occupation of territories by non-state actors threaten human dignity, over which the universality of human rights is proclaimed. In Achille Mbembe's view, the contemporary world suffers from the evil of inequality, militarization, and the resurgence of all those totalitarian forces that exclude and kill. In this regard, contemporary democracy has embraced these tendencies that coincide with the motivations that accompanied colonialism at the time. This undoubtedly affects the very essence of democracy, and war ends up not only becoming natural but also operating as an attribute of sovereignty, which allows it to annihilate all enemies of the State [6]. As was previously mentioned, Colombian politics have created enemies throughout its history, which affirms this idea. All non-state actors who tacitly proclaim their right to use violence and kill to a State that, from its inaction, simply observes this, are recipients of a positive silence in favor of death. The justification offered by the State for the murders of demobilized people and social leaders is a way of linking the victims with illegal activities, supporting the imaginary idea that if they were killed, they must have done something to deserve it.

#### **1.4. Conclusions**

For Mbembe, neoliberalism has commodified the human being. In this case, social, demobilized, afro, and indigenous leaders in Colombia inhabit the "worlds of death," which makes them susceptible to being discarded and to underestimating their moral character because they, as modes of production, are perfectly replaceable using this logic [7]. It is concerning how the Colombian State makes political use of the death of people exercising sovereign power, not only in the kingdom of the living but also in that of the dead: national policy continually reaffirms its ability to differentiate among which deaths must be regretted and which can be accepted. These worlds of death in Colombia can be inserted into the categories described by Mbembe and explained as follows:

1. Colombia is a liberal democracy that has incorporated the discourse of terror into its governance. Power has intentionally generated emotions that, in the collective, lead to the perpetuation of differences and social conflict, the construction of hatred, and the naturalization of violence against the other "enemy" that



threatens the collective. This has become evident during the post-agreement period in the polarizing strategies that, from different sectors of power, have manifested themselves against alternative political positions to neutralize them, forcing the people to continue to remain in extreme positions.

2. The political structure of the state is one of the most important limitations to this study because its own violent nature, as described, denies dissent and controls information because death is a central activity of value creation.
3. With regard to the use of shared violence, Colombia maintains a permanent state of war in which it is not possible to differentiate between the armed forces and transnational crime groups, like drug traffickers, paramilitary forces, and dissidents, which increases the need to legitimize the state of emergency, leaving the most vulnerable—the unarmed and those who have taken on the mission of fighting for peace, as is the case with social leaders—completely unprotected. The devalorization of certain groups impacts the valuation of their contributions creating a space for certain deaths as a generalized commodity.
4. Colombia is the country in Latin American that allocates the most economic resources to military spending, accounting for 3.1% of its GDP according to the Stockholm International Peace Research Institute.

*"From 1964 to 2016, the government spent the incredible sum of 112,909.8 million in current dollars, equivalent to 142,492.76 million constant dollars in 2014, on war, under the alternative of considering a surplus over 1.5% of GDP as an expense to address the internal conflict. Under the second alternative, that is, that war spending constitutes anything over 1.0% of GDP, the situation is more critical. Indeed, expenses in current dollars amount to 139,144.91 million, and in 2014 dollars, to 179,274.53 million."* [11]

5. The Colombian case shows that, despite having strong constitutionalism, political action exceeds the natural capacity for control, implying the subjection of the constitutional goal of peace and the objective of law to the will of a necropolitical State. Mbembe states that totalitarianism can be renewed and manifest itself in new categories, such as the contemporary idea of managing death, which is precisely what is happening in Colombia. Necropolitics allows us to critique the model of exception in constitutional democratic frameworks because it instrumentalizes human existence and excludes certain social groups, using the figures of exception and enemy. In this way, Colombia connects war, the enemy, and terror as justification for the exception to its duty to carry out the constitutional mandate of peace.

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