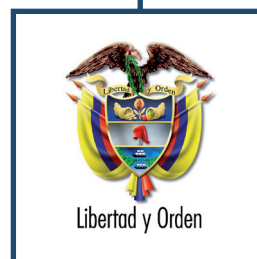


Transitional Justice in Colombia  
The Justice and Peace Law:  
**An experience in truth, justice  
and reparation**



Republic of Colombia

## Introduction

The transitional justice process in Colombia, developed by means of the Justice and Peace Law, is an unprecedented process. Its purpose is: i) to achieve demobilization, disarmament and reintegration of illegal armed groups, ii) to recognize and enforce the rights of the victims to the truth, justice and reparation and iii) to conduct criminal proceedings against the leaders of these groups that are responsible for the commission of atrocious crimes.

This ambitious objective, which requires an enormous effort to reconcile the apparently contradictory values of justice and peace, has been made possible by a complex process of institutional participation in which the different parties have contributed with their own experiences and perspectives to the achievement of a delicate balance between the desire for reconciliation of millions of Colombians and the requirements of local and international law.

These characteristics, added to the fact that the transitional process is carried out within a condition of violence in which some armed groups (guerrillas) have yet to make the decision to take part in a peace process, and in which those that did participate (self-defense groups) had not been defeated militarily, make this a unique and original process, the perfection of which is accomplished, at times, through trial and error. In addition, broad participation by the international community has allowed the incorporation of a number of expert recommendations to adjust the process to the expectations of contemporary law and to the mistakenly called "international standards"<sup>1</sup>.

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<sup>1</sup> The conformation of international standards calls for the existence of a consistent international practice and an "opinio juris" on the part of those involved; this means that such experiences have become mandatory, a condition that may not yet apply regarding the current context of transitional justice.

Past peace processes with armed groups in Colombia (until 2002), never took into account the rights of the victims nor elements of justice. The peace agreements of the 80s and 90s with groups such as the M-19, the Quintín Lame and the Popular Liberation Army, were based on the granting of amnesty and pardon to all their members.

Approximately five years after its implementation, the Justice and Peace Law has shown its benefits and has the support of a great majority of the Colombian people and a large part of foreign experts. The application of the law has required learning along the way, building from the ground up without prior models, with difficulties and ups and downs, where mistakes are common and corrective actions must be appropriate and swift, but which has undoubtedly achieved significant results. Initial skepticism has gradually evolved into a sentiment of trust and the national experience has acquired a degree of inertia that cannot be reversed.

**The Justice and Peace law, has led to the individual or collective demobilization of almost 50,000 individuals; the surrender of over 18,000 weapons; the main leaders of the self-defense groups and their accomplices are behind bars awaiting trial; more than 280,000 people have been recognized as victims and the truth on more than 36,000 criminal actions has started to emerge.**

## Origins

The process toward the creation of the legal framework of the transitional justice process in Colombia was a long one and met with numerous obstacles. It originated during the 2002 peace negotiations with the self-defense forces that had shown their willingness to disarm and reintegrate into civil society. However, the question remained on what to do with those individuals responsible for the perpetration of serious crimes.

The international and local context had undergone a radical transformation in the sense of no longer allowing the most serious crimes to go unpunished. The creation of the International Criminal Court and the growing exposure and recognition of the victims required the creation of new mechanisms where peace would be subject to the discovery of the truth, responsibility for heinous crimes was recognized and the victims were repaired.

This context led to the Government's initiative to present the Justice and Peace Law Bill, which was debated in the Colombian Congress for almost two years. Substantial modifications were made to the original project, taking into account the points of view of academics and experts, political parties and movements, non-governmental organizations and Colombian and international agencies and institutions. It was a widely participative process, in which the most diverse groups had the opportunity to express their opinions.

After the approval of Law 975 in July of 2005, the Constitutional Court carried out a revision (Ruling C-370/06) and found that the Law was in keeping with the

Constitution, while at the same time adding substantial modifications that made it, not only stricter regarding criminal responsibility for the perpetration of serious crimes, but also more generous in the recognition of the victims' rights to the truth, justice and reparation.

It was a transparent process, which included the participation of all branches of the Government and the control entities of the State, with strict adherence to the Constitution and the Law. The international community provided assistance and supervision throughout the entire process.

## Characteristics of the **Justice and Peace Law**

The law is essentially made up of two parts. The first one refers to the criminal procedures for the investigation and trial of serious crimes and the requirements to be eligible for the benefit of an alternative penalty. The second refers to the means by which the victims can exercise their rights to the truth, justice and reparation.

The law sets forth an alternative penalty of 5 to 8 years of prison for those individuals who decide to participate in the demobilization process and fulfill the requirements of complete confession of their crimes and integral reparation to the victims. Non-fulfillment of these requirements results in the removal of the individual from the list of candidates under this law and the transfer of their proceeding to the ordinary criminal law system.

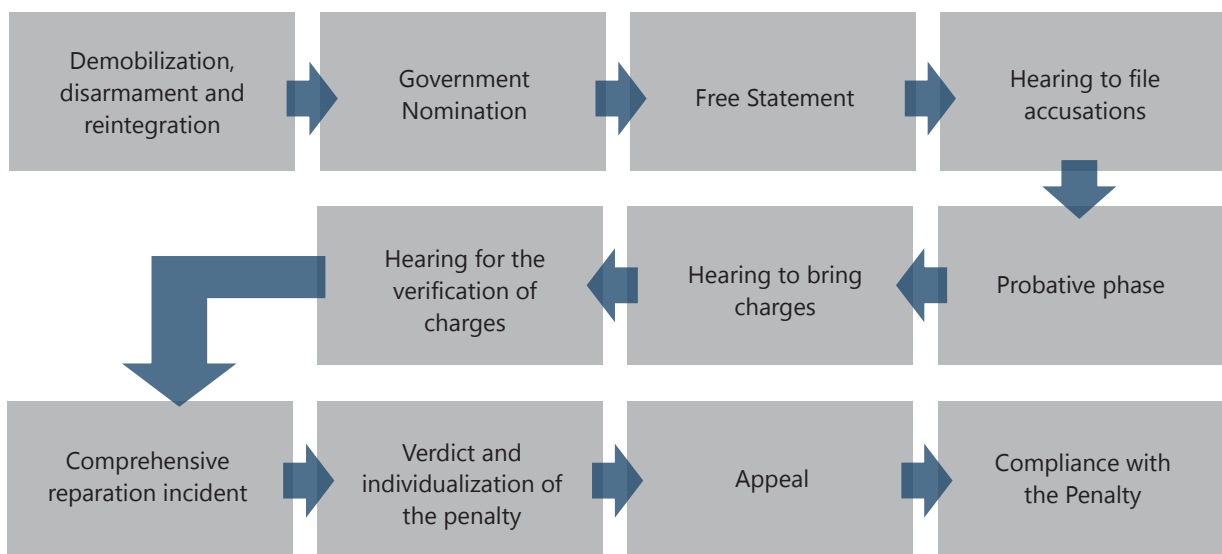
The Judicial Branch is responsible for carrying out the proceedings: The Office of the General Prosecutor, through its Justice and Peace Unit, is responsible for the investigation stage, while the Justice and Peace Chamber of the judiciary is in charge of the trial stage. The Supreme Court of Justice is competent to preside over and resolve any appeals. Furthermore, the law provides for participation by the Office of the Inspector General of the Nation and the Office of the Ombudsman.

In comparison with those cases in which the transitional justice processes are entrusted to international courts (tribunals for Yugoslavia or Rwanda) or special courts (Sierra Leone or Cambodia), the fact that the Judicial Branch itself carries out the proceedings, carries the great advantage that it enables the strengthening of local institutional capabilities while, at the same time, bringing justice closer to the communities affected by the crimes.

**With regard to the victims, the Law recognizes their right to attend all stages of the criminal proceeding, making them true participants thereof. They have the right to directly question the accused (nominated) individuals about the perpetration of crimes against their families and to demand reparation. Said reparations include different modes, such as restitution, compensation, rehabilitation and measures for the assurance of non-repetition.**

In addition, the perpetrators are jointly and severally responsible for their crimes; that is, they must answer, not only for the crimes they committed directly, but also for those committed by other members of the illegal group to which they belonged. But, even in those cases where the perpetrator cannot be identified, the State is under the subsidiary obligation to repair. No budgetary limitations exist for the legal reparation of the victims.

### THE JUSTICE AND PEACE LAW PROCEDURE



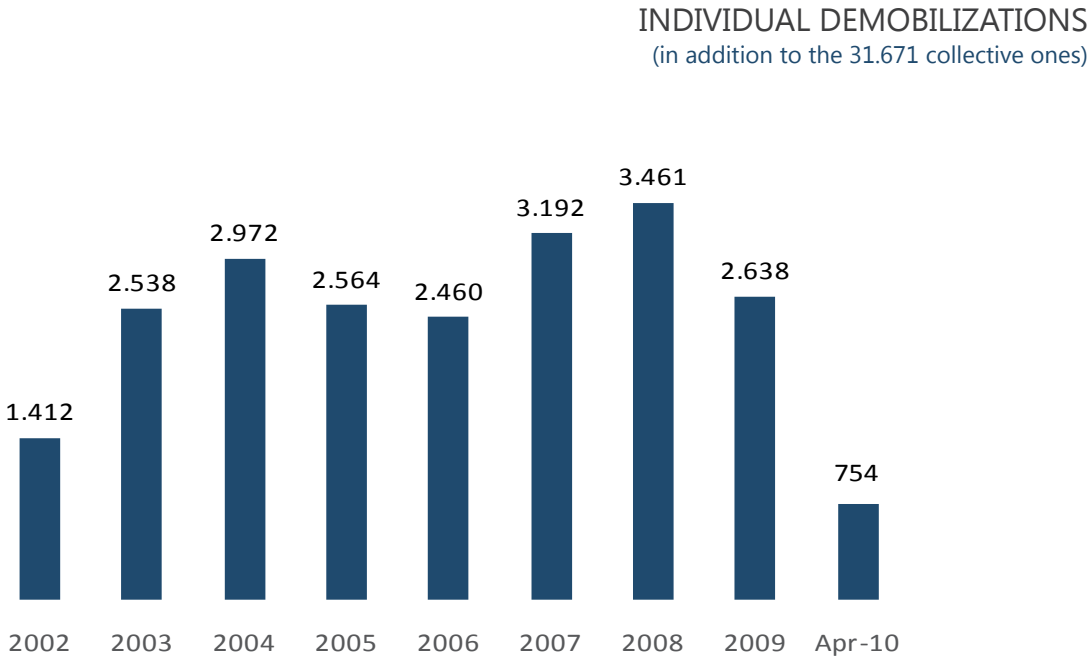
"The Justice and Peace Law has been the subject of different opinions and criticisms regarding its effectiveness and applicability. In this regard, the Mission takes into account the importance of observing the results in all dimensions, stressing that the achievements of the Law have been significant for thousands of people who had been subjected to paramilitary violence."

14th Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 28, 2010.

The transitional justice process in Colombia called for the creation of a new institutional framework with instances that did not exist before, as well as the corresponding allocation of budgetary, physical and human resources. Obviously, this process did not materialize overnight and required adjustments along the way to respond to a challenge the magnitude of which could not have been predicted from the outset.

### The High Presidential Counselor for Reintegration

As a result of the negotiation process with the self-defense groups, 37 collective demobilization processes were carried out between 2003 and 2006, during which 31,671 members of these groups demobilized, including their main leaders, who surrendered their weapons and to justice. In addition, 21,991 members of other armed groups, mainly FARC and ELN, have demobilized at the individual level between 2002 and April of 2010.



Source: Ministry of Defense



With the aim of creating the conditions for ending the violence in Colombia, the Government has created a long-term strategy to enable the successful reintegration of demobilized members of illegal armed groups, which currently is estimated at over 50,000.

The High Presidential Counselor for Reintegration was established in 2006 and is the entity responsible for designing, implementing and evaluating state policy directed to the Social and Economic Reintegration of Persons that demobilize voluntarily. This task is developed in coordination with the Ministry of National Defense, the Ministry of Interior and Justice and the Office of the High Peace Commissioner.

This policy includes not only promoting the reintegration process but providing integral support so that their incorporation into communities is successful and sustainable.

### **The National Commission for Reparation and Reconciliation (CNRR)**

To enforce the rights of victims, the Justice and Peace Law established the National Commission for Reparation and Reconciliation (CNRR). It is a separate and independent entity made up of representatives of government, enforcement agencies, civil society and victims.

The CNRR has four strategic objectives:

1. To include the rights of victims in the public agenda at a regional, national and international level;
2. To advocate for the success of transitional justice, including truth, justice, reparation, reconciliation and guarantees of non-repetition.

3. To recommend public policies and institutional reforms aimed at guaranteeing the rights of victims, the non-recurrence of violence and the successful reintegration of former combatants into civilian life and;

4. To design a proposal for social and political education that contributes to the cultural transformation of Colombian society in favor of peace and reconciliation.

The Commission's responsibilities cover 5 aspects: i) reparation support to victims, ii) reconciliation, iii) demobilization, disarmament and reintegration, iv) historical memory and v) specific populations and gender.

Regarding historical memory, the Commission's objective is to obtain an integrating memory from all sources, in which the participation of the victims is paramount. As a result of the investigative task carried out in recent years, documents relating to representative cases involving the massacres of Trujillo and El Salado have been published. Other case studies are under the corresponding investigation task and their publication is expected shortly. In addition, 12 regional commissions for asset restitution were created with the purpose of facilitating the procedures for the restitution of assets and property to the victims.

“... it may be concluded that the existence of the Peace and Justice Law proves that the Government of Colombia is conducting actions to fight the crimes perpetrated by the Illegal Organized Armed Groups. Furthermore, this law is framed within a set of norms and mechanisms conducive to avoiding impunity”.

**Ambos Kai et al. Procedure of the Justice and Peace Law (Law 975/2005) and International Criminal Law. Study of the complementary intervention power of the ICC regarding the so-called “justice and peace” process in Colombia. GTZ. Embassy of the Federal Republic of Germany in Bogotá. Georg-August-Universität**

# The Justice and Peace Unit of the Prosecutor General's Office

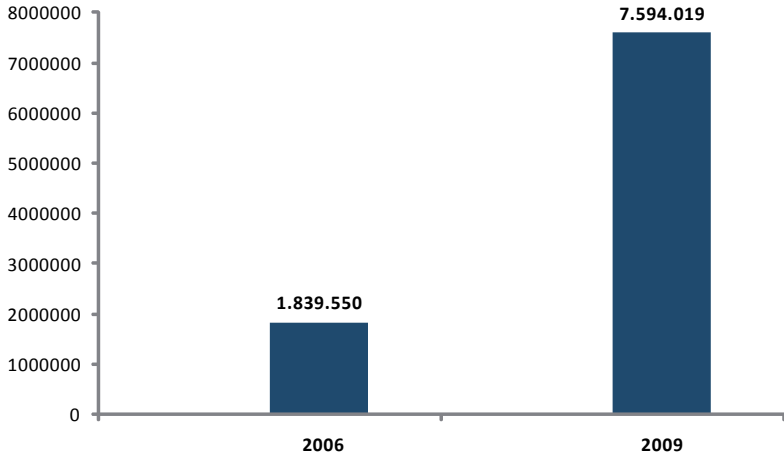
The Justice and Peace Unit is the division of the Prosecutor General's Office responsible for advancing the criminal action (investigation and prosecution) of all the criminal acts of those nominated to the Justice and Peace Law.

The unit operates on a decentralized basis with headquarters in Bogota and offices in Barranquilla and Medellin. It also has 50 satellite research groups in 42 capitals of departments and municipalities across the country. In addition, there is a sub-unit of exhumation, which operates in four regions, each with a prosecutor.

At the beginning a total of 295 people were responsible for the duties of Justice and Peace. Currently there is a team of 1,060 servers in the Unit.

In 2006, the budget allocated to the unit was USD\$ 1,8 which increased in 2009 to USD \$ 7,6. Between 2006 and 2009 a total of USD \$ 22,4 has been dedicated to its strengthening.

JUSTICE AND PEACE UNIT BUDGET



Source: Prosecutor General's Office

## **The Mission to Support the Peace Process of the Organization of American States (MAPP/OEA)**

On January 23, 2004, the Government of Colombia and Secretary General of the OAS, signed an agreement to establish an OAS mission (MAPP / OEA) to back the peace process, which included the verification and monitoring of the agreements and the accompanying to communities victims of violence. Under this framework, the MAPP/OEA has supported the peace process with the AUC, with the observance of the principles of sovereignty and independence of the Colombian State.

The Mission MAPP/OEA has cooperated in the verification of the demobilization, disarmament and reintegration – DDR - process. The MAPP/OEA is also currently working on verification tasks and is cooperating with State entities to strengthen reintegration programs for combatants and the prevention of recruitment.

Through its 5 regional offices in Bogotá, Barranquilla, Bucaramanga, Cali and Medellín, this Mission has been performing an important role with the objective to ensure the sustainability of the demobilization process.

“The demobilization of illegal self-defense groups is the first time –not only in the history of Colombia but in world history as well – that an armed group that has not been defeated in combat surrenders its weapons without the incentive of an amnesty”.

**Considerations of the Government of Colombia regarding the statement issued by the Representative of the Office of the UN High Commissioner for Human Rights on Law 975/2005 (Justice and Peace Law)**

**Bogotá, February 2010**

## **Participation and acknowledgement of the victims**

The most important achievement of the implementation of the Justice and Peace Law is, without a doubt, the fact that the victims are recognized and exposed. In a short period, thousands of Colombians went from anonymity to become the true protagonists of the transitional justice process. Over 280.000 people have been registered as victims. Of this amount, over 46.000 have participated in the free statement hearings.

At the beginning of the process, the victims were reluctant and fearful of approaching the authorities to report the crimes or to enquire after their loved ones. This entailed great effort on the part of the Office of the General Prosecutor to overcome this obstacle. Indeed, approximately 380 informative and victim support sessions were held, in which more than 86.000 victims were personally and directly assisted. Likewise, a website on the matter and a nationwide toll-free number were created to provide care and information to those needing it.

On the other hand, the work of the National Commission for Reparation and Reconciliation has been pivotal to the public information and victim awareness strategy. To this purpose, the entity has prepared a series of documents setting principles, criteria and lines of action guiding the reparation process. The entity has nationwide presence through its 12 regional offices and almost 150 officers, which has allowed the victims to become familiar with their rights and to participate in the mechanisms provided by the Law.

The Commission has also set up a series of radio and television programs with the cooperation of a few television channels and radio stations to disseminate the testimonies of the victims. Over 15 documentaries have been broadcasted on television and several radio shows are broadcasted regularly in regional radio stations. Most of them may be accessed through the Commission's website [www.cnrr.org.co](http://www.cnrr.org.co), which also includes detailed information on each one of their areas of work.

“The participation of the victims in the procedural framework of the Justice and Peace Law has a determinant purpose regarding the exertion of the right to truth, justice and reparation”.

**Ambos Kai et al. Procedure of the Justice and Peace Law (Law 975/2005) and International Criminal Law. GTZ. Embassy of the Federal Republic of Germany in Bogotá. Georg-August-Universität**

“The wholesome care provided to the victims by the State is particularly targeted at psycho-social care; legal advice for their participation in the Justice and Peace processes if they so desire it; guidance concerning administrative reparation programs and collective reparation and the protection to guarantee their life and personal integrity”

**Considerations of the Government of Colombia regarding the statement issued by the Representative of the Office of the UN High Commissioner for Human Rights on Law 975/2005 (Justice and Peace Law) Bogotá, February 2010**

## **Administrative Reparation**

During the implementation process of the Justice and Peace Law, the need to expedite the issue of progress regarding reparation was observed. The magnitude of the confessions (Salvatore Mancuso alone - the leader of the autodefensas - has confessed to more than 500 criminal actions) made it clear that the criminal processes would take more time than was expected, but that this was not a reason to delay the right of the victims to reparation.

This is why the Administrative Reparation Program was created by the Government in addition to the judicial reparation, with the purpose of granting a series of individual material reparation to any person whose fundamental rights had been infringed by the illegal armed groups. The procedure to obtain reparation is very simple, as it does not require hiring a lawyer, just filling out a form that must be rapidly processed. The Reparation Committee must decide on a reparation petition before 18 months. The non-issuance of a decision is understood as an acceptance of the petition.

**During its first year of operation (2009) approximately 11.000 families received reparation, including 70 women victims of sexual violence, 550 minors who had been forcefully recruited and 1.300 victims of anti-personnel mines. The**

**budget invested was US \$100.000.000. The budget for 2010 is US \$150.000.000, which is expected will help take care of approximately 13.000 families.**

To place into context the magnitude of this effort, it must be taken into account that the ICC’s Victims Trust Fund had a budget of approximately US \$6.000.000 to November 2009 for all its programs.

<b>ADMINISTRATIVE REPARATION</b> (In addition to judicial reparation)	
<b>2009</b>	
Budget	100.000.000 Dollars
Beneficiaries	11.000 families
Women victims of sexual abuse	70
Children forcefully recruited	550
Victims of anti-personnel mines:	1.300

Source: National Commission for Reparation and Reconciliation CNRR

“Between February and May 2008, 4.083 victims throughout the nation were consulted about their opinions and impressions on wholesome reparation on the occasion of the preparation of Decree 1290/2008. Counseling and legal advice has been provided to 12.343 victims in order to fill out the registry form of events attributable to illegal armed groups, as to become accredited by the National Unit for Justice and Peace and to 17.131 victims in order for them to fill out and send the administrative reparation form in accordance with Decree 1290/2008.

Moreover, 788 victims have been provided with legal advice through the legal office on criminal actions; support to 9.982 victims during free statements has been provided; 274 victim petitions requesting protection measures were received and forwarded; documents addressed to the different entities with justice and peace competencies in order to fully comply with their tasks were prepared and 2.768 officers were trained in the Justice and Peace Law and the rights of the victims”

**Ambos Kai et al. Procedure of the Justice and Peace Law (Law 975/2005) and International Criminal Law. GTZ. Embassy of the Federal Republic of Germany in Bogotá. Georg-August-Universitat**

## **Criminal responsibility and confession of crimes**

One of the most important features of the transitional justice process in Colombia is the existence of criminal investigations and proceedings conducted independently by the Judicial Branch against former members of illegal groups.

This proceeding begins with the so-called free-statement hearings. The purpose of this stage is the full confession of all crimes by the former members of illegal armed groups nominated by the Government (currently 4,112). A prosecutor of the Justice and Peace Unit, with the participation of the Office of the Inspector General of the Nation, is in charge of carrying out this task. It also provides for the participation of the victims in the hearings by means of a system that ensures protection of their identity through the use of separate rooms or voice distortion. The hearings are public and fully compliant with procedural guarantees.

In practice, these free-statement hearings go beyond their purely criminal scope, since they include a confrontation between victims and victimizers and, for the same reason, they become the first step toward forgiveness and reconciliation. In several cases, participation by the victims in the hearings ends with the admission of guilt by the perpetrators and, in that sense, it constitutes one of the first means of reparation for the victims.

More than 36,000 criminal actions have been reported during these hearings, each of which may include several crimes. This is particularly significant considering that a substantial number of these crimes were previously unknown to the authorities. The existence of more than 52,400 victims has been reported in these hearings.

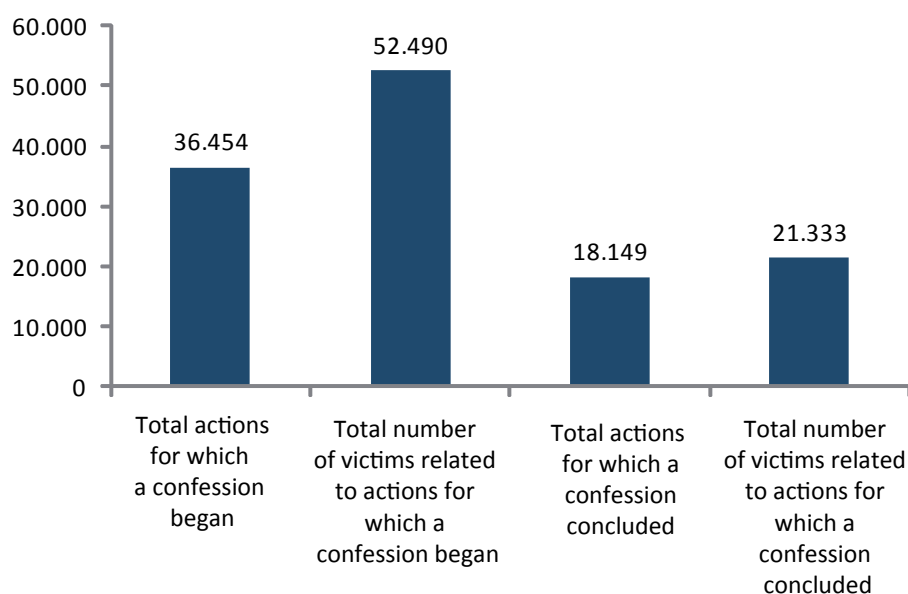
*“The Government of Colombia is willing to conduct an investigation and the trial of those responsible for international crimes. First of all, the purpose is not to clear the members of the Illegal Armed Groups of their criminal responsibility. The Justice and Peace Law grants neither amnesty nor pardon, but provides an*



alternative penalty which significantly reduces the penalty, that is, it is in-between and cannot be considered a full exemption ... Secondly, there has not been an unjustified delay in criminal proceedings. Considering an absolute approach and a relative approach, the complexity of the cases under investigation must be taken into account, along with the investigative advances and the requirements set forth by the Constitutional Court and the Supreme Court of Justice ... third, the design of the Justice and Peace Law allows for independent, impartial procedures”.

**Ambos Kai et al. Procedure of the Justice and Peace Law (Law 975/2005) and International Criminal Law. GTZ. Embassy of the Federal Republic of Germany in Bogotá. Georg-August-Universität**

### VICTIMS AND CONFESSIONS



Source: Prosecutor General’s Office

### Justice and Peace Jurisprudence

One of the greatest dilemmas of the country regarding the implementation process of the Law was how to settle the contradiction that organizing swift trials and investigating the entirety of the crimes perpetrated by former members of illegal groups at the same time presented.

This debate was extensive and participative. Sectors from civil society, academicians and different political sectors took a part in it. Finally, the Supreme

Court of Justice authorized partial indictments in Judgment 32575 issued December 14, 2009. This implies that the Office of the General Prosecutor must continue to investigate all crimes committed by the nominees of the Justice and Peace Law, but shall also be able to issue indictments for the other crimes as long as there is enough evidence to support them. This pivotal decision allowed increasing the number of indictments and charges.

“This ruling (CSJ S 32575/200) highlights that partial indictments are the only way in which to make progress in the Justice and Peace process and the enormous amount of work carried out by the national authorities will surely lead to judicial convictions”.

**Considerations of the Government of Colombia regarding the statement issued by the Representative of the Office of the UN High Commissioner for Human Rights on Law 975/2005 (Justice and Peace Law)  
Bogotá, February 2010**

Another main jurisprudence is related to the obligation of the accused to confess not only the time, mode and place in which the individual crimes they perpetrated took place, but also, in order to be granted the benefits of the Law, the confession must include information on the structure and operation of the criminal organization they belonged to (Ruling 31150 issued May 12, 2009). This decision of the Supreme Court of Justice has allowed reconstructing the truth on the criminal organizations as a whole, their operation and their structure.

In Ruling 31582 issued May 22, 2009, the Supreme Court of Justice referred to the pretense of a few members of the autodefensas whereby they claimed to be the “ideologists” of their organizations and therefore refrained from reporting the criminal activities in which they were involved. In light of this situation, the Supreme Court of Justice indicated that “ideologists” had to be aware of the multiple criminal actions perpetrated to achieve the ends of the organization and that therefore they were co-responsible for those actions. This prevented many former members of the autodefensas from evading justice.

These decisions have consolidated the framework of the Justice and Peace framework and are essential to guide the actions of the authorities responsible for applying the Law.

"It is undeniable that this is an ambitious process considering the amount of events and victims involved. In this context, the role of the judiciary is pivotal. We must highlight that the Justice and Peace Unit of the Office of the General Prosecutor is accountable for the enormous task of investigating multiple events that have smeared with violence the history of the country and had never been confronted. Thanks to the undeterred commitment of this Unit and to the support of the National Government, to December 2009, 1.968 free statements had been made, 1.231 of which had been completed; in addition, the confession of 35.664 events were initiated and 17.262 had been completed. Likewise, 34.445 victims participated in the free statements".

**Considerations of the Government of Colombia regarding the statement issued by the Representative of the Office of the UN High Commissioner for Human Rights on Law 975/2005 (Justice and Peace Law)  
Bogotá, February 2010**

### **Loss of benefits and extradition**

"The nomination to the benefits of justice and peace by the Government, originates in a voluntary act by the demobilized. This is part of the nature of the Law and does not imply that the State will give up its faculty to prosecute. Those who don't surrender the law will be subject to investigation and trial via the ordinary justice system"

**Considerations of the Government of Colombia regarding the statement issued by the Representative of the Office of the UN High Commissioner for Human Rights on Law 975/2005 (Justice and Peace Law)  
Bogotá, February 2010**

During the initial phase of criminal proceedings, a few leaders of the self-defense groups (15) displayed their unwillingness to comply with the obligations acquired by virtue of the Justice and Peace Law and attempted to continue their criminal activities from prison. As a result, in March 2008 they were extradited to the United States and may lose the potential benefits to which they were entitled as nominees in the framework of the Law.

This decision proved that there would be no concessions to those who were unwilling to comply with the provisions of the law. Furthermore, it enabled the middle command levels of the self-defense groups who remained within the framework of the Law to speak up without fear of retaliation on the part of their former chiefs.

A few sectors have mistakenly claimed that the extradition had been granted in order to silence these former leaders. However, reality has proven the opposite, as some of the most shocking confessions of their crimes took place after their extradition.

Since then, 33 public hearings have taken place via videoconference in 13 proceedings, within the framework of the Justice and Peace jurisdiction. Likewise, 37 public hearings as a part of 21 processes have taken place within the framework of the ordinary criminal jurisdiction.

There is an ongoing joint effort between the two countries to improve the judicial cooperation mechanisms in order to ensure the participation of those who have been extradited in the investigations taking place in Colombia.

Finally, several judicial decisions<sup>2</sup> have confirmed that the extradition of persons does not hinder the continuation of the investigations and trials in the framework of the Justice and Peace Law. Moreover, the victims have not been subject to irreparable damage as their rights have been guaranteed by the Law and its regulatory decrees.

“Extraditions have not led to the total (global) deactivation of the Justice and Peace Law process development or of the current justice and peace institutional process”.

**Ambos Kai et al. Procedure of the Justice and Peace Law (Law 975/2005) and International Criminal Law. GTZ. Embassy of the Federal Republic of Germany in Bogotá. Georg-August-Universität**

“The extradition of former members of the demobilized autodefensas does not mean that the State has given up its punitive faculties regarding serious violations against Human Rights, which is why the processes against them are ongoing<sup>3</sup>”.

**Considerations of the Government of Colombia regarding the statement issued by the Representative of the Office of the UN High Commissioner for Human Rights on Law 975/2005 (Justice and Peace Law) Bogotá, February 2010**

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2. Judgment of the Superior Judicature Council, Jurisdictional Disciplinary Chamber, reg. under number 10011102000200801403 01 dated May 6, 2008; Judgment of the Administrative Court of Antioquia, Second Chamber, reg. under number 05001-23-31-000-200800688-00 dated June 5, 2008.

3 “Extradition and the Justice and Peace Law are not exclusive among each other, as the former prevents the exertion of rights provided in Article 4°, Law 975/2005, (truth, justice and reparation), and to the contrary, may become an important tool for accomplishment thereof at a certain point.” Superior Judicature Council, Jurisdictional Disciplinary Chamber, May 06, 2008, reg. under number 110011102000200801403 01,

## **Search for Missing Persons**

One of the most terrible crimes committed against thousands of Colombians is that of forced disappearance. This crime represents the violation of many fundamental rights, such as the right to life, to liberty and personal safety, human treatment and the recognition of legal rights.

Once the Constitutional Court revised the Justice and Peace Law, it ordered that those who had been accused had the specific obligation to confess the forced disappearances and to contribute to shed light on the facts. Thanks to these confessions, 2.579 graves have been exhumed, in which over 3.131 bodies have been found. Of this amount, 807 have been fully identified and delivered to their families.

These numbers are especially significant, considering that unlike other countries, in Colombia there is usually one person per grave. This entails a greater logistical, technical and security-related effort. In former Yugoslavia, for instance, 1.600 people were found in a single grave.

In 2008, the Prosecutor of the International Criminal Court, Luis Moreno Ocampo and Judge Baltazar Garzón were invited by the General Prosecutor to visit Colombia in order to participate in an exhumation task and observe the professionalism of the technical team of the Technical Investigation Corps of the Office of the General Prosecutor.

**A significant part of this effort has been the work of the Missing Persons Search Committee, the members of which include Government representatives, the Office of the General Prosecutor, the Inspector General's Office and civil society. Likewise, an Urgent Search Mechanism for Missing Persons has been created to help find a missing person by way of the immediate adoption on the part of the judicial authorities of all procedures conducive to finding the person presumed to be missing.**

Moreover, the existence of a National Registry of Missing Persons facilitates the work of the authorities regarding the clarification of this crime and finding the victims.

### **Demobilization, Recidivism and Criminal Bands.**

The High Presidential Counselor for Reintegration, the National Commission for Reparation and Reconciliation and the OAS Mission MAPP/OEA, have played a pivotal role in the identification of potential problems such as rearmament of former combatants, possible tensions between demobilized individuals and the communities that take them in, and the existence of vulnerable groups of demobilized persons (children, women, disabled persons) who require special humanitarian assistance.

As in other DDR processes implemented throughout the world, in Colombia a certain percentage of the illegal armed groups decided to continue pursuing criminal activities. It is estimated that approximately 7% to 10% of the former members of these groups have returned to the perpetration of crimes by way of drug trafficking or related activities.

After the definitive dismantling of the illegal self defense structures, Colombia has experienced the phenomenon of emerging criminal bands ("BACRIM" for its acronym in Spanish): Criminal enterprises that have formed to go after the illegal businesses once controlled by the illegal self defense groups.

At times, the activities of these bands have been mistakenly interpreted as equivalent to the self-defense group phenomenon, but it is clear that their character is not one of counterinsurgency, and that their aim is not to replace the authority of the State. Their behavior is purely criminal and mainly linked to the drug trafficking business.

The State is not oblivious to the threat posed by these criminal bands and has vigorously responded to this phenomenon by imposing the law throughout the nation. As a consequence, to March 2010, 7.884 members of these bands had been apprehended and 1.080 killed in combat. The individuals that have been captured include criminals such as alias Don Diego (one of the FBI's 5 most wanted fugitives), alias Don Mario and Los Mellizos ("the Twins").

<b>OPERATIONAL AGAINST EMERGING CRIMINAL BANDS                      ("BACRIM")</b> (as of november 17, 2009)		
Total BACRIM members captured	7190	100%
Demobilized BACRIM members captured	1075	15%
Total BACRIM members killed during clashes with the	1192	100%
Demobilized BACRIM members killed during clashes with the military	71	6%

Source: Office of the Director of Criminal Investigation - National Police.  
 Communication No. 1609 - GRESO-ARIDA -38,10. November 18, 2009.

"The Mission notes that the United Self-Defense Forces of Colombia (AUC) have disappeared as a political reality, which is undoubtedly of significant importance to the country and represents a great step within the peace process that began in 2004. But, as we have been stating since the Sixth Quarterly Report, some of them have reappeared, not as paramilitaries, but as criminal bands, explicitly connected with drug trafficking and other illegal activities."

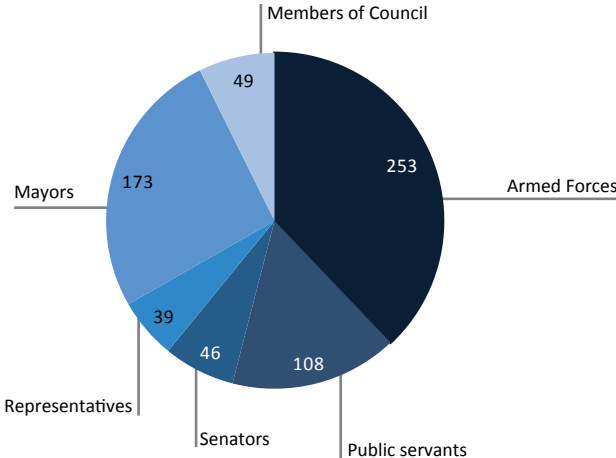
**14th Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 28, 2010.**

### Impact of the Justice and Peace Law in the ordinary jurisdiction

The Justice and Peace Law has had significant effects that transcend beyond the development of cases involving what the media has referred to as “parapolítica” (para-politics), has involved the Office of the General Prosecutor and the Supreme Court of Justice. There are currently 46 senators, 39 members of the House of Representatives, 19 Governors and 173 Mayors under investigation.

On the other hand, over 250 members of the Armed Forces, including high-ranking officers, are also under investigation for their possible links to these groups. We must remember, however, that the persons investigated in these cases are not entitled to the benefits of the Justice and Peace Law.

INVESTIGATIONS TRANSFERRED TO ORDINARY JURISDICTION  
(Without reduced sentence nor benefits)



Source: Prosecutor General's Office

“A complex peace process is not devoid of errors; in spite of this, it has been an invaluable process, as it has generated opportunities for Colombia in terms of the recovery of territory for State institutions and has exposed the victims, generating conditions for them to gain access to truth, justice and reparation”.

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## **Participation of the international community**

The international community has played a more active part in the application of the Justice and Peace Law. As previously indicated, the Organization of American States through the Mission to Support the Peace Process carries out verification and accompaniment tasks to the process.

Likewise, countries such as Germany, Canada, Spain, the United States, Japan, the Netherlands, Sweden and Switzerland, participate in many of the working areas of the National Commission for Reparation and Reconciliation. Organizations such as the IOM, the Open Society Institute, Friederich Ebert Stiftung, OCHA, UNDP and AVINA have also supported the Commission.

The Office of the General Prosecutor has also received support from the European Union, the Government of the Netherlands and the United States.

Multiple NGOs have also been present, mainly by supporting the victims in their legitimate claims and by monitoring compliance with the provisions of the Law.

This accompaniment has served to add transparency and legitimacy to the process and to reinforce the institutional capabilities of the State to impart justice. It is different when an international court tries the crimes, as this does not generate an impact on the reinforcement of domestic justice systems. In this context, the experience of the International Court in the former Yugoslavia is a good example, as they encountered serious difficulties upon transferring the cases to the countries as a part of the closing strategy.

The role of international justice is essential in our world nowadays, but we must not forget that it is the States who are responsible for investigating and trying

serious crimes. In this sense, constructive approximations such as the “positive complementarity”<sup>4</sup> of the ICC are embraced, as they highlight the reinforcement of national justice systems.

The Government respectfully extends an invitation to the international community, academics and civil society to give the Justice and Peace Law the chance to fulfill its purpose and to the prevalence of the harmonious cooperation between State powers so the rights of the victims and national reconciliation take precedence over any other motivation and encourages the analysis referring to the implementation of the Law not to ignore elements such as those provided herein.

**Considerations of the Government of Colombia regarding the statement issued by the Representative of the Office of the UN High Commissioner for Human Rights on Law 975/2005 (Justice and Peace Law)  
Bogotá, February 2010**

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4. International Criminal Court, Office of the Prosecutor, Prosecutorial Strategy 2009-2010. The Hague, February 1, 2010. “The positive approach to complementarity means that the Office will encourage genuine national proceedings where possible, including in situation countries, relying on its various networks of cooperation, but without involving the Office directly in capacity building or financial or technical assistance”.

## Final Considerations

The application of the transitional justice process in Colombia has ambitious objectives and covers a broad array of actions in the areas of reintegration, justice and rights of the victims. All State organs participate in the execution of these actions independently and within the scope of their competencies pursuant to the law.

The investigations conducted by the judicial entities have exposed thousands of crimes and led to a new way to conduct the proceedings, not only shedding light on individual crimes, but also on the structure and actions of illegal armed groups.

The victims have become the main actors of this process and have started to observe the acknowledgement of their rights to truth, justice and reparation.

The nation's conscience is fighting the use of violence as a genuine resource for political action. This has undoubtedly brought about the reinforcement of democratic means. The results of the experience of transitional justice are creating the perfect environment to end the violent cycle in Colombia. This is in consonance with the ultimate purpose of Transitional Justice, which is the construction of a reconciled society.

The efforts of the State and the people of Colombia are unprecedented in the world. It is probably the most complete and demanding legal framework to achieve the reincorporation of illegal armed groups by way of reconciliation schemes without sacrificing the requirements of justice related to the commission of serious crimes.

The Colombian model will not only lead to significant repercussions in the future when negotiation processes with other irregular armed groups will take place, but it should also become a reference point to similar efforts made in other regions of the world.



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