

Victims and reparation: The Colombian experience

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Introduction

Law 975/2005, also known as the “Justice and Peace Law” set the basis for transitional justice process in Colombia. In addition, it created for the first time, *inter alia*, a legal framework to recognize and enforce the rights of the victims to the truth, justice and reparation.

In a large majority of peace processes in Colombia and the world during the late 20th century, the main incentive for conflict resolution and the development of transitional strategies were amnesties for the leaders of armed groups, responsible in many cases of serious human rights violations. None of these processes recognized victims’ rights and neither provided any mechanism for reparations.

With the adoption of the Justice and Peace Law in Colombia, this situation changed in two ways. On the one hand, by recognizing victim’s right to participate in all stages of the criminal proceedings against members of illegal groups responsible for serious crimes, it made effective the victims’ rights to truth, justice and reparation. On the other hand, by creating a National Commission for Reparation and Reconciliation (CNRR) responsible for ensuring victims’ rights were effectively guaranteed. Moreover, the Law conditions the benefits for perpetrators to fulfilling all requisites to access the justice and peace process, including full confession of the truth on their criminal conducts, returning all property and assets obtained while participating in the illegal armed group for the reparation of the victims, and providing other forms of reparation for the victims.

This paper aims at explaining the implementation of the Justice and Peace Law in relation to victims. It intends to contribute to the debate within the framework of the stocktaking exercise during the Review Conference in Kampala, and specifically in the panel on the impact of the ICC on victims and affected communities.

The Colombian model in relation to victims, although far from perfect, can well serve as a useful experience to share with other States and the international community. We hope that in so doing we can contribute to a better understanding of victims of serious crimes and consequently to promote better mechanisms for ensuring their rights to truth, justice and reparation.

The CNRR and reparations

The National Commission for Reparation and Reconciliation - CNRR, by its initials in Spanish, was created by article 50 of the Justice and Peace Law for a period of eight years. The CNRR is composed of 13 commissioners, comprised of:

- One delegate of the Vice President of the Republic (President of the CNRR)
- Five commissioners in representation of civil society
- Two commissioners in representation of victims' organizations
- Five commissioners in representation of different State organs (Prosecutor General's office, Ministry of Interior and Justice, Ministry of Finance and Public Credit, People's Ombudsman, Presidential Agency for Social Action and International Cooperation)

Article 51 of the Justice and Peace Law establishes the CNRR's functions, as follows:

“... ensure victims' participation in processes of judicial truth and the fulfillment of their rights; present a public report on the reasons for the creation and evolution of illegal armed groups; follow-up and verification of disarmament, demobilization and reintegration processes; follow-up and periodic evaluation of the reparation process, and providing recommendations for its adequate implementation; present to the National Government a report on the victims' reparation process; recommend criteria for reparations; coordinate the activities of the Regional Commissions for Property Restitution, and; undertake national reconciliation activities to avoid the reappearance of new *violences*”.

Thus the CNRR's mission is to ensure the victims' access, without any distinction, to truth, justice, integral reparation and guarantees of non repetition, and through its incidence in public policies, to promote pacific coexistence and reconciliation within a transitional justice context. This mission will include a differential approach on gender, age and ethnicity.

In this sense, the CNRR has developed relevant definitions, principles and criteria for its actions towards victims' reparations. Two key points stand out: a definition of victims, of integral reparation, and the establishment of principles and criteria for reparations in the Colombian case.

Integral reparation: Reparation dignifies the victims through measures to alleviate their suffering, compensate their social, moral and material losses, and restitute their citizen rights. Consequently, the concept of integral reparation refers to the need of understanding reparations as part of the transitional justice process, which not only includes judicial truth but the reconstruction of the historical memory, the application of justice and the institutional reforms needed for this purpose, under the concept of external integrality.

Furthermore, there should be a balance between material and symbolic reparations, individual and collective reparations, under the concept of internal integrality. This means that reparation cannot and should not be understood as isolated from the remaining components of transitional justice, or as something that can be exchanged with justice or truth.

Principles for reparation: Principles for reparation include: 1. consultation with the beneficiaries for the definition of reparation measures, in particular for collective and symbolic reparations; 2) coherence and complementarity with the remaining components of transitional justice, 3) balance between internal integrality. Inclusion of measures of restitution,

compensation, rehabilitation, satisfaction and guarantees of non repetition; 4) coherence between the type of damage and the type of reparation measures; 5) effectiveness; 6) promptness; 7) proportionality; 8) gender and equity perspective for reparations; 9) reparations that consider age differences and social conditions among the beneficiaries.

Operating under these principles, the CNRR's five areas of work contribute to the development of reparation programs and policies, through a coordinated work approach with government institutions responsible for implementing the Justice and Peace Law. It also provides recommendations to implement public policies on reparation for the benefit of Colombian victims.

The CNRR is coordinating its work with other Justice and Peace institutions in the country, through its national and regional offices to improve victims' access to the judicial proceedings, to develop the administrative reparations program, to enhance outreach to victims and institutions, and to effectively accompany victims during the different phases of the process, *inter alia*.

MECHANISMS FOR REPARATION

Judicial Reparation process

Reparation through the judicial process was established by Law 975/2005. Victims are entitled to participate at all stages of the proceedings, not only by attending the public hearings but also by asking the accused about the crimes committed against their relatives. They are also entitled to be represented by a public defender.

There is a specific stage during the process called the reparation incident, which is the key opportunity for victims to make claims for reparation. During the incident perpetrators are allowed to present their proposal for reparation in order to conciliate. If it is not possible, the judge will make a decision based on the evidence presented. The decision is included in the final sentence against the accused.

Responsibility for reparation falls in first place on the perpetrators. If their assets are not enough to repair the victims, the group or faction of the group to which the perpetrators belonged is subsequently responsible. If this is not enough, the State has a subsidiary obligation to repair the victims. It is worth recalling that perpetrators must repair victims with both their illegally and legally obtained assets.

Reparation not only includes monetary compensation but also restitution, rehabilitation, satisfaction and guarantees of non repetition. It also consists of symbolic and collective reparations. Reparation also may incorporate: verification of the facts, disclosure of judicial truth, search for missing persons, location of mass graves and identification of human remains, public apologies, commemorations and homage, restoration of dignity and reputation, recognition of victims, prevention of human rights violations, among others.

Figures of the Interinstitutional Justice and Peace Committee indicate that, to March 2010, 2.108 free-statement hearings had taken place, 1.240 had finished and 868 were ongoing. Among these, 18.149 criminal actions were confessed involving 21.333 victims. 195 Justice and Peace nominees

were at the stage of presenting accusations, while 82 were at the formulation and acceptance of charges stage¹.

On April 2010, the first reparation incident took place against two former paramilitary commanders, accused of the displacement of 663 people in the village of Mampujan, 450 robberies, the massacre of 11 people in the villages of Mampujan and San Cayetano (2000) and the kidnapping of 7 people in Isla Mucura (2003). 1.406 victims were registered in this incident. Demands were presented by the victims and their representatives for collective and individual reparations. Since an agreement was not reached, the Justice and Peace magistrate will make a decision on June, 2010. The CNRR and other government institutions working in the Justice and Peace process provided preparation, support and accompaniment to the victims in the case. Other cases are expected to follow in 2010.

Administrative reparations process

On April 22nd 2008, the Colombian government issued Decree 1290/2008 which establishes and regulates the individual Administrative Reparations Program. The Program's object is to provide individual reparations to those who, previous to the date of publication of the decree, suffered violations of their fundamental rights due to the action of illegal armed groups². The administrative reparation operates without prejudice of the judicial reparation.

The Program covered victims of the following crimes: homicide; forced disappearance; kidnapping; personal and psychological injury, with and without permanent disability; torture; violations of sexual liberty and integrity; recruitment of minors, and; forced displacement. Beneficiaries were those persons who suffered direct damage, due to the activities of illegal armed groups, at any date before April 22nd, 2008. In the event that the direct victims were missing, the condition of victim will pass to the spouse, permanent companion or family in first degree of relation, or those who were economically dependent of the direct victim.

The decree establishes that the State, in accordance with its subsidiary obligation to repair and without excusing the perpetrators of their obligations, should have an administrative procedure to repair the victims. In addition, the administrative procedure sought to cover those victims who were not yet part of the judicial process or that, being a part of it, did not yet benefit from a judicial order for reparation. Finally, the Program also supplemented reparations when the perpetrators' resources were insufficient.

Administrative reparations are complementary to any reparations ordered through the judicial process. Administrative procedures for reparation comprise not only monetary compensation but also restitution, rehabilitation, satisfaction and guarantees of non repetition, which can be implemented through the existing offer of State programs. Victims can present their reparation claims free of charge and without intermediaries. The State, through the Presidential Agency for Social Action and International Cooperation, decides on the request in a maximum period of 18 months

During its first year of operation (2009), the Program had a budget of approximately 100 million US dollars; around 11.000 applicant families received monetary compensation. This is equivalent

¹ Figures: Interinstitutional Justice and Peace Commission. March 2010. Internal working document.

² Source: Presidential Agency for Social Action and International Cooperation.

to approximately 23.000 victims³. The majority of beneficiaries were women (87%). In contrast, the majority of direct victims were men (approximately 92%).⁴

The majority of crimes denounced by the victims corresponded to: homicide (7.887 cases), forced disappearance (1.561 cases), child recruitment (403 cases), kidnapping (375 cases) and violations against sexual liberty and integrity (15 cases).⁵

In 2010, with a budget of approximately 150 million US dollars, it is expected that approximately 18.000 victims will receive monetary compensation from this program.

CNRR's AREAS OF WORK

Attention to victims and reparation

This area is responsible for the monitoring and evaluation, of victims' participation in three processes:

- 1) Psychosocial recovery and attention to special needs;
- 2) The judicial process and the search for truth, prosecution of perpetrators and reparations incident; and,
- 3) The collective administrative reparations process, addressed to communities or groups affected by systematic violence.

Three aspects stand out:

Contribution to the preparation of a public policy document on reparation (CONPES)

Decree 1290/2008 establishes the need to develop a public policy document (CONPES document) to define the measures of restitution, rehabilitation, satisfaction and guarantees of non repetition; ensure their establishment, execution and follow-up, as well as determine the institutions responsible for the implementation of each of these measures.

The aim of the Decree and the public policy document is to make reparations a State policy, complementary to the judicial process. In this sense, the document will give sustainability to the reparation mechanisms to guarantee the victims' rights to integral reparation.

Several State institutions have contributed to the preparation of this document through an interinstitutional roundtable, led by the Ministry of Interior and Justice, the CNRR, the Office of the Ombudsman and the National Planning Department. The document is a joint construction,

³ Inspector General's Office. Informe de Seguimiento al Programa de Reparación Individual por Vía Administrativa. Bogotá. Mayo de 2010. Página 12.

⁴ Idem.

⁵ Op Cit.

which is still in process. It is expected that, during the month of July 2010, the document will be presented to the Presidency for approval. The signature of this vital public policy document will ensure the institutional arrangements and the necessary resources to achieve the comprehensively the objective reparation.

Institutional Collective Reparations Program - PIRC

Article 49 of the Justice and Peace Law establishes that the Colombian Government, following recommendations by the CNRR, shall implement an institutional collective reparations program. This program must include actions addressed to the recovery of the institutionality and the rule of law in the areas most affected by violence, as well as promoting the rights of those most affected by violence, and dignifying the victims of violence. The Program aims at recognizing the impact that the systematic and/or general violence had on the violation of individual and/or collective rights, and repairing the collective life project of communities, groups, towns and/or organizations.

The draft of the document, prepared by the CNRR's Attention and Reparation Area, is currently under study by the CNRR's commissioners. This document contains criteria and guidelines for the set-up and development of the program. The guidelines include the identification of the groups entitled to collective reparations, the organizational structure, and the identification and categorization of reparation measures.

The collective reparations program will not replace individual reparation nor prevent individual victims to request reparations through judicial proceedings or the Administrative Reparations Program.

Interinstitutional Victims' Attention Model – MIAV

The Interinstitutional Victims' Attention Model – MIAV is a strategy for inter agency coordination that seeks to build common mechanisms for attention, orientation, follow-up and accompaniment for the victims. The Justice and Peace Law created several coordination spaces to articulate the different government institutions participating in the process. The MIAV defines common interdisciplinary interventions and routes to guarantee the victims' access to their rights.

The CNRR's role within the model is the supervision and follow-up to the pilot projects for the implementation of the MIAV (four cities in the country), and to act as liaison to the national coordinating committee.

The model operates under two priority lines:

1. Direct attention to victims: orientation; advice to victims on their rights; accompaniment in each of the steps of the Justice and Peace process; psychological and legal interventions to efficiently assist the victims to exercise their needs during the process.
2. Referral to complementary processes: actions to facilitate the effective referral of the victims to other institutions and processes which also contribute to the restitution of their rights, for example, health, education, etc.. Follow-up on the interinstitutional articulation, the effectiveness of the referral and attention of the victims' needs.

During the first quarter of 2010, 6.856 victims had access to the model in three cities: Medellín, Pasto and Valledupar.

Property Restitution

Thousands of Colombian victims, including numerous communities, have been expelled of their land and properties throughout the years.

Article 46 of the Justice and Peace Law states that “restitution implies returning the victims to their situation prior to the violation of their rights”. This includes, among others, the return to his/her place of residence and the consequent return of his/her property.

In addition, article 21 of Decree 4760/2005 assigns responsibilities to the CNRR to design a Property Restitution Program, with the support of the Regional Commissions for Property Restitution. The CNRR is currently designing the program with the advice of a Specialized Technical Committee.

In addition to the Property Restitution Program, article 52 of the Law creates Regional Commissions for Property Restitution. These Commissions deal with the proceedings and claims over property and land ownership, through orientation, support and accompaniment to victims in their claims. The Regional Commissions for Property Restitution also provide advice to the CNRR on the design of the Property Restitution Program.

There are currently 13 Regional Commissions operating throughout the country. In addition, three pilot projects in victimized communities are in place: Mampujan, Chengue and Turbo.

Gender and Specific Populations

Differential approach is a cross-cutting issue to CNRR’s activities. The Gender and Specific Populations Area seeks to prioritize attention to the most vulnerable victims, strengthening the differential approach among the public policies of integral reparation. This means including the visions that specific populations have on their own reparation. Through the promotion of dialogue between State institutions, NGOs and victims’ organizations, the area contributes to the goal of effective reparation. It has 4 work lines:

- Ethnicity: indigenous and afro-Colombian communities
- Gender
- Age: children and teenagers
- Disability

The Gender and Specific Populations Area develops consultative processes to identify their expectations on reparation, and determine the best way to achieve appropriate reparation to each particular group. Since violence generates different impacts in the different population groups, the inclusion of a differential approach on reparation is essential to satisfy their specific demands.

Currently, the area is focusing on identifying visions to create specific reparation policies for indigenous and afro-Colombian populations, through consultative workshops. In addition, the area is working on the identification of alternatives for collective reparation for women victims of sexual violence, and demobilized children. The area also provides support to public policy design, to the Property Restitution Program, and to the Institutional Collective Reparations Program.

Disarmament, Demobilization and Reintegration

The Disarmament, Demobilization and Reintegration – DDR area monitors and evaluates the demobilization process of illegal armed groups, through interagency coordination, field work, and content generation. The DDR area also analyzes regional political dynamics, regional and national public policies, civil society perceptions on the process.

To date, the area has produced one DDR report. The second report will be published soon. Investigation and compilation will begin for the production of a third report. The area is currently providing guidance to the CNRR's regional offices, offering training and advice and producing internal guidelines and standards. In addition, the area monitors cases where victims need protection, in a joint effort with the Ministry of Interior and Justice. In 2010, the area will additionally start producing regional analyses on the DDR process in Colombia.

Historical memory

Part of the CNRR's mandate is to build a narrative of violence through a public report on the origins and evolution of illegal armed groups. The historical memory area seeks to accomplish such mandate, identifying the different “memories of violence” and giving a voice to the victims and other actors who had no voice during the conflict.

The construction of historical memory requires thus to study the different explanations of conflict with regard to its causes, interactions and consequences. The construction of an organized narrative of the conflict must take into account the memories of different actors, with the aim of building an inclusive story. The recognition of these diverse realities, imaginaries and interpretations contributes to the consolidation of democracy, as memory becomes a resource for the recognition of the past, the re-significance of the conflict and the prevention of future violence.

In this sense, memory constitutes a central step for the transition from violence to post-conflict.

The historical memory area has opted to carefully select emblematic cases for analysis, which illustrate processes and trends of the conflict in Colombia. The analysis of the cases seeks to produce a historical memory anchored in concrete events or situations where multiple dynamics converge including judiciary and historical processes.

So far, the historical memory area has made public the following reports:

- Trujillo: A tragedy that does not cease, 2008.
Publication. Proposal for public policies. Documentary and exposition.
- El Salado: That war was not ours, 2009

Publication. Proposal for public policies. Documentary

- Memories in times of war. Repertoire of initiatives, 2009
Documentary, data base and multimedia production
- Remembering and narrating the conflict. Toolkit for re-building historical memory, 2009
- Conceptual approach to land dispossession 2009

In 2010, the historical memory area is working on the following cases, among others:

- Justice as a victim of armed actors: La Rochela massacre
- Violence against ethnic minorities: Bojayá massacre
- Violence against political parties: Segovia
- War, memories and gender in the Caribbean Coast
- Free-statement hearings from the socio-judicial and anthropological perspective
- Civil society resistance to armed conflict: Cases of La India, San Carlos and indigenous communities in the Cauca department
- Land, memory and conflict, phase 1: Cordoba and Sucre departments
- Memories of the internationalization of conflict
- Narratives and practices of memory
- Visual narratives of conflict
- Political economy of conflict

Reconciliation

Reconciliation is a key element of the transitional justice process. The CNRR understands that reconciliation must be a process built jointly with the victims, former combatants, public institutions, civil society, churches, universities, businessmen, in sum, citizens. For this purpose, the CNRR developed four strategic lines of action to approach the topic of reconciliation in a creative, participative perspective:

- Strategic alliances for reconciliation
- Social pedagogy of reconciliation
- Systematization and visibilization of reconciliation experiences
- Strategies to position the topic of reconciliation in the public agenda.

These four cross-cutting lines of action have become operational through the following activities:

- a) Consultative processes with victims: It aims to assess the different visions and perceptions that victims have on reconciliation, the conditions they define for the process and the actions that they believe must be undertaken.

Consultative workshops have taken place in different regions and have become spaces to socialize the role of reconciliation. Additionally consultative workshops have taken place with indigenous and afro-Colombian communities. The results of this process can be found in the document “Guidelines for the collection of reconciliation imaginaries with specific populations”.

- b) Territorial dialogues on reconciliation: These are spaces to position the concept of reconciliation among the local public. As a result of these dialogues, local actors are engaging in the construction of Regional Reconciliation Committees within the Justice and Peace framework.
- c) Sensitization on victims' rights with former combatants currently in prison: the CNRR has begun a sensitization process with former combatants in La Picota prison (Bogotá), in partnership with the OAS, and the National Penitentiary Institute.

This sensitization includes topics such as: peace process, integral reparation for victims, DDR, gender-based violence and violence towards specific populations, citizenship, non-violence and “unlearning” the war, reconciliation and peace-building. This sensibilization process wants to provide elements for the construction of the reparation proposals that former combatants have to present during the integral reparation incidents, where victims and/or their families participate.

- d) Processes with communities of victims: The CNRR provides accompaniment to communities that, in the midst of the conflict, have developed initiatives for peaceful conflict resolution, and have become successful stories of peaceful resistance against war and towards reconciliation.

CHALLENGES AND CONCLUSIONS

As mentioned in the introduction of this paper, the victims' reparation process in Colombia still has many challenges to overcome in the path to achieve integral reparation. The dimensions of the process, the thousands of victims and hundreds of accused perpetrators are a proof of the difficulty of the task.

One of the greater limitations in the process is the persistence of violence. In this scenario, guaranteeing the non repetition of the violent acts becomes increasingly complicated. Persistence of guerrilla groups and criminal bands also implies a permanent growth of the universe of victims. For this reason, achieving peace with these armed actors is an essential requirement for the success of the justice and peace, and reparations policies.

On the other hand, fiscal limitations cannot be ignored. Undertaking a reparations policy is not possible in a short period of time, due to budget implications. A principle of gradualism needs to be applied. This, in turn, is not easy as the vast majority of the victims experience high levels of vulnerability. Additional fiscal efforts are thus required. The limited number of properties and assets handed to the Victims' Reparation Fund by the perpetrators further complicates the task, as it is this fund who administers reparations. The need for a law on land ownership is also evident. Rapid and efficient norms are required for the restitution of properties to those victims who were evicted and dispossessed of their land.

Nonetheless, despite of the multiple challenges and obstacles, the process of victims' reparation in Colombia has shown important positive results in favor of those who have suffered the most from the violence. The legal framework created by the Justice and Peace Law, its subsequent decrees as well as the Constitutional Court's sentences on the matter, have allowed empowering victims as leaders of the process. They are now not only “recipients” of benefits but active participants, entitled to rights to truth, justice and reparation. In addition, Colombian institutions

and civil society have begun to recognize the victims as such, thus becoming visible in the country's complex political and social scene.

The final aim of the victims' reparation process in the country is to strengthen democracy and democratic ways. It is possible to affirm that to date, the most vulnerable and affected in the conflict have acquired a voice and demand the respect and satisfaction of their rights.

A society that respects and restitutes the rights of the most vulnerable is a democratic, inclusive society. Colombia has still a long way to end up the reparation of the thousands of victims that the violence has produced, but the aim of full respect and restitution of rights will lead the country's vision and actions for the years to come.

Victims' reparation in Colombia is a joint and continuous effort between institutions and persons without precedent in the world. The Justice and Peace Law has developed an extensive legal framework for achieving the reintegration of illegal groups into society and, at the same time, achieving real reparation for victims in an efficient and adequate manner. The process is a permanent collective construction that articulates national and international efforts. It is open to inputs, critiques and to the voices of different national and international institutions, associations, organizations and/or actors committed to victim's reparation.

Nonetheless, it is possible to affirm that with the commitment of State institutions, actors and, of course, the victims, the country will continue working towards overcoming the problems derived from a conflictive past towards a better future.
