Transitional Justice and Victims’ Rights before the End of a Conflict: The Unusual Case of Colombia*

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Abstract. In a context of continuing armed conflict, a comprehensive scheme of transitional justice has been developed in Colombia since 2005 through the Law of Justice and Peace, with the aim of achieving peace with one of the armed actors in the conflict, the paramilitary groups. The clear link between the demobilisation of illegal armed groups and the rights of the victims is the main feature of the Colombian process. This article provides a systematic review of the implementation of the law, focusing on the institutions, mechanisms and procedures put in place to fulfil its goals. Emphasis is given to the legal category of ‘victim’, victims’ rights and victim reparation measures. By exploring how the scheme works in principle and in practice, we are able to assess the prospects for victims’ rights in Colombia today.

Keywords: transitional justice, Colombia, victims’ rights, victim reparations

Introduction

As part of the process of transition to democracy across Latin America in the 1980s, several countries introduced what is now known as transitional justice (TJ) – that is, institutional initiatives for dealing with past atrocities in societies emerging from authoritarian regimes or armed conflict. Truth commissions, criminal prosecutions, reparations programmes, purges and institutional reform featured among the various mechanisms applied by Latin American governments to deal with the past and usher in a new era of national reconciliation and peace. In the case of Argentina and Chile the transitions were political, and soon after the return to democracy TJ mechanisms were developed to address violations committed during the

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authoritarian regimes. In Peru and Guatemala the transitions were not only political but also signalled a shift from armed conflict to peace. In all these cases, TJ processes were initiated after the transition had taken place.¹ In Colombia, however, in a state of continuing armed conflict and with no obvious political transition, a comprehensive scheme of TJ mechanisms was put in place with the aim of achieving a partial peace by focusing primarily on one of the armed actors in the conflict: the paramilitary groups. In this case, TJ processes are clearly linked to demobilisation processes. Indeed, the link between the demobilisation of illegal armed groups and the rights of the victims is the main feature of the Colombian process. Accountability measures were explicitly included in the negotiations with the paramilitaries and were followed by the subsequent institutionalisation, through legal codification and specific policy implementation, of TJ mechanisms. In the Colombian scheme, sanctioned by the Law of Justice and Peace (Law 975),² the destinies of the demobilised victimisers and the victims are intertwined in complex ways.

As might be expected, the Colombian process has created a great deal of public and academic debate. A central question has been why Law 975 deals with both the demobilisation of illegal armed groups and victims’ rights at the same time and through the same legal instrument.³ The seeming paradox of a peace process involving originally pro-establishment forces (the paramilitaries) and the application of TJ mechanisms when no obvious transition has occurred has been intensively debated.⁴ Questions have also been raised about the consequences of setting up reparation procedures that might jeopardise the victims,⁵ and about the aspiration of reaching peace with all ‘organised armed groups at the margins of the law’ under one single legal framework. Critics of the process have argued that the law is motivated more by potential political gain, a desire to allow the perpetrators to escape with

¹ A comparative analysis of victim reparations programmes in Latin America is beyond the scope of this article, but references will be made to the ongoing Peruvian and Guatemalan experiences to highlight specific issues.

² Congress of the Republic of Colombia (CRC), Law 975, Por la cual se dictan disposiciones para la reincorporación de miembros de grupos armados organizados al margen de la ley, que contribuyan de manera efectiva a la consecución de la paz nacional y se dictan otras disposiciones para acuerdos humanitarios, 25 July 2005. For an unofficial English translation, see www.mediosparalapaz.org/downloads/Law_975_HRW_and_AI.rtf.

³ Rodrigo Uprimny and María Paula Saffon, Desplazamiento forzado y justicia transicional en Colombia: estudio sectorial (Bogotá, 2007); María Paula Saffon and Rodrigo Uprimny, ‘Uses and Abuses of Transitional Justice in Colombia’, in Morten Bergsmo and Pablo Kalmanovitz (eds.), Law in Peace Negotiations (Oslo, 2009), pp. 217–43; Gustavo Gallón, Michael Reed and Catalina Lleras (eds.) Anotaciones sobre la ley de justicia y paz; una mirada desde los derechos de las víctimas (Bogotá, 2007).

⁴ Rafael Pardo, Fin del paramilitarismo: ¿Es posible su desmonte? (Bogotá, 2007).

⁵ More than 20 victims have been killed in the process of claiming their rights. A victim protection programme was established in September 2007.
impunity, the protection of economic interests and the like.\textsuperscript{6} Supporters of the process, on the other hand, have declared that the process is in full compliance with international human rights standards.\textsuperscript{7}

As the debate has gone on, the Colombian government has moved ahead to implement a complex scheme of measures that encompass retributive justice, truth seeking and victim reparations. The TJ process involves numerous actors, specialised public agencies, a polarised civil society and a heterogeneous universe of victims. All these groups are immersed in a comprehensive network of procedures and regulations. The various parts of the process have developed at different paces.

A serious assessment of the Colombian process needs to start with an examination of the legal and institutional-bureaucratic structures developed for its implementation. In this article we contribute to the debate on the Colombian TJ process by focusing on the institutions, mechanisms and procedures put in place to fulfil its goals.\textsuperscript{8} Our concern is with how the

\textsuperscript{6} In the media and in their own institutional documents, victims’ organisations and entities representing victims have from the outset criticised the law as intended to offer impunity to victimisers and consolidate power relations developed over the last few decades. See, among others, the Act of Constitution of the \textit{Movimiento Nacional de Víctimas de Crímenes de Estado} (National Movement of Victims of State Crimes, MOVICE), 25 June 2005, stating opposition to Law 975, at www.movimentodevictimas.org/index.php?option=com_content&task=view&id=14&Itemid=61. The Colombian Commission of Jurists does not see the process as contributing to the solution of the conflict, nor providing for victims’ right to truth, justice and reparation. See Ana María Díaz and Carlos Alberto Marín (eds.), \textit{Colombia: el espejismo de la justicia y la paz – balance sobre la aplicación de la ley 975 de 2005} (Bogota, 2008).


\textsuperscript{8} This article is based on a review of legislation and administrative documents gathered during two fieldwork periods in Bogotá in November/December 2007 and Bogotá and Córdoba in October/November 2008. This was contrasted with information obtained through interviews with: public officials from the Justice and Peace institutions; representatives from victims’ organisations in MOVICE, \textit{Corporación Reiniciar} and the
process is designed to function, and how it has been implemented so far. By exploring how the scheme is intended to work on paper and how it actually works in practice, we make clearer the implications for the victims of the Colombian armed conflict, who are meant to be the primary beneficiaries of the TJ process. We focus on the legal category of ‘victim’, victims’ rights and victim reparation measures not just because there is a real and legitimate need for reparatory measures among large victim populations in Colombia today, but also because we want to reflect on the effects (positive and/or negative) of legal categories such as ‘victim’ on people whose rights have previously been violated and ignored. The article starts with a brief introduction to the Colombian armed conflict, followed by two core sections providing a detailed account of the legal and institutional structures as well as the various mechanisms under implementation in the TJ process. We conclude by reflecting on the prospects for victims’ rights in Colombia in light of the current process.

*Paramilitaries and Victims in the Colombian Armed Conflict*

Colombia has been ravaged by internal armed conflicts since independence, but war has been neither continuous nor uniform; the intensity, locations and actors have changed over time. Before and during the nationwide civil war known as *La Violencia* (1948–57), the antagonists were the two economic, social and political elites organised under the Liberal and Conservative parties. In 1957 they reached a peace agreement whereby power was to be shared equally among the two for 16 years. The political regime thus changed from a two-party system to a bipartisan (consociational) regime called the National Front. The inter-elite war was soon replaced, however, by an anti-regime insurgency waged by various guerrilla groups; the war re-ignited and continues to this day. The human cost of this conflict has been considerable. From 1964 to 2007, of an estimated total of 674,000 homicides, 94,000 were

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Organización Nacional de Indígenas de Colombia (National Indigenous Organisation of Colombia, ONIC); the Consultoría para los Derechos Humanos y el Desplazamiento (Centre for Human Rights and the Displaced, CODHES); the Comisión Colombiana de Juristas (Colombian Commission of Jurists, CCJ); and several academic institutions. Interviews with individual victims were also carried out in Córdoba.

9 This is an ongoing process, and empirical assessments are just being published. See Díaz and Marín, *Colombia: el espejismo*; Catalina Díaz, Nelson C. Sánchez and Rodrigo Uprimny (eds.), *Reparar en Colombia: los dilemas en contexto de conflicto, pobreza y exclusión* (Bogotá, 2009).

attributed directly to the internal conflict. Of those, 51,500 were civilians. Close to 6,000 were forcibly disappeared, 51,500 were kidnapped and at least 11,000 were tortured. About 4,500 massacres were carried out, and between 2.5 and 4.3 million people were forcibly displaced.

Whether the current conflict is simply the continuation of the bipartisan violence or whether it is governed by different dynamics is debated among Colombian scholars. The Comisión Nacional de Reparación y Reconciliación (National Commission for Reparations and Reconciliation, CNRR) defines the start of the current conflict as 1964, when the first of the communist guerrilla groups, the Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People’s Army, FARC-EP), Ejército de Liberación Nacional (Army of National Liberation, ELN) and Ejército Popular de Liberación (Popular Liberation Army, EPL), were established. In the 1970s these groups were joined by a ‘second wave’ of guerrillas, most of which demobilised by 1989–90. The establishment of paramilitary groups coincided with the formation of the first communist guerrillas.

Paramilitary groups have been one of the most violent actors in the conflict, and are considered the primary force responsible for displacement in Colombia. When peace was being negotiated in 2002 it was to these groups that the government turned. Dating the formation of paramilitary groups is difficult, but given that they originally were pro-establishment forces, it is reasonable to link their creation to the laws enabling and/or encouraging their existence. The monopoly over the legitimate use of violence enjoyed by the official armed forces, a condition cemented in the peace agreement between the Liberal and Conservative elites, was short-lived. By 1965 the government had enabled the creation of new irregular forces through Decree 3398, which aimed to ‘organise the national defence’ of citizens against

11 All figures are from Diego Otero, Experiencias de investigación: las cifras del conflicto colombiano (Bogotá, 2008), at www.indepaz.org.co/attachments/191_cifras per cent201964 per cent20-2007.pdf.
12 Ibid.
15 Yamile Salinas, Darío Gonzáles and Eliza González, Tierra, oro y conflictos (Bogotá, 2008).
In practice, this meant legalising the formation of private self-defence or paramilitary groups. The decree was later adopted by Congress in 1968.

As part of the peace negotiations with the ‘second wave’ of guerrillas, the legal foundation for the existence of paramilitary groups was revoked in 1989. After a short period of relative calm, however, the ‘historical guerrillas’, the FARC and ELN, rapidly regained ground and violence increased. Consequently, in 1994 paramilitary structures were again allowed to exist within a new legal framework. Decree 356 of 1994 opened the way for the creation of self-defence groups called Convivir, but the differences between these and traditional paramilitaries were more a matter of definition than practice. Even so, the Convivir groups were considered legal and the paramilitaries were deemed illegal. It is these modern paramilitaries, organised under the banner Autodefensas Unidas de Colombia (United Self-Defence Forces of Colombia, AUC), that were demobilised under the TJ process of Law 975.

The AUC evolved from the regionally based Autodefensas Campesinas de Córdoba y Urabá (Peasant Self-Defence Forces of Córdoba and Urabá, ACCU), founded by the Castaño brothers in 1986 with only 93 soldiers. By 1997 the group had grown to between 4,000 and 5,000 combatants, and by 2005 the number had soared to some 30,000. Originally located in only certain municipalities, these paramilitaries consolidated control and started to engage and displace the guerrillas. The numerous local and regional self-defence groups enjoyed great support from the national army and their founders in local government, as well as from the rural and drug elites. In the 1990s the balance of power within these fragmented groups shifted from the original leadership asserted by rural elites to military commanders. The paramilitaries came to effectively control a large percentage of the drugs trade.

16 Presidency of the Republic of Colombia (PRC), Decree 3398 of 1965, Por el cual se organiza la defensa nacional.
17 CRC, Law 48 of 1968, Por la cual se adoptan como legislación permanente algunos decretos.
18 PRC, Decree 1194 of 1989, Por el cual se adiciona el decreto legislativo 0180 de 1988, para sancionar nuevas modalidades delictivas, por requerirlo el restablecimiento del orden público.
19 PRC, Decree 356 of 1994, Por el cual se expide el estatuto de vigilancia y seguridad privada.
20 In his biography, former paramilitary leader Carlos Castaño considered the decree to have favoured self-defence groups closely aligned to the drugs trade. Current president Alvaro Uribe used this decree actively while holding the position of governor in the state of Antioquia. See Mauricio Aranguren, Mi confesión (Bogotá, 2001).
by taking over areas controlled by drug lords and guerrillas, and co-opting and expelling cartels and rural power holders.23

The military expansion of the paramilitary forces ran parallel with their incursion into politics. The areas under their control became strictly regulated, and the official decentralisation process of the 1990s had the unintended effect of tightening their grip on local and regional political institutions. By controlling local constituencies, the paramilitaries were also given access to national politics. In 2002 they claimed to control 35 per cent of the Colombian national Congress, and one-third of Colombia’s municipalities.24 This was subsequently substantiated by Colombian researchers and became known as the parapolítica scandal.25 The rank and file of the paramilitaries is quite diverse. Historically, members of the irregular armies had to be approved by the local patron before the military commander would include them as members of the local self-defence group. Paramilitary combatants are former military officers, former guerrillas, common criminals and former police, but also include ‘professional’ contract killers as well as young, poor and unemployed men.26

In December 2002 the AUC declared a unilateral ceasefire, a government pre-condition for talks with any of the armed groups. Negotiations were formalised on 15 July 2003 with the Pact of Santa Fé de Ralito, whereby AUC leaders agreed to demobilise fully by the end of 2005.27 Being an umbrella organisation, the AUC did not demobilise collectively, but rather in stages. The first group to demobilise was the Bloque Cacique Nutibara of Medellín, in 2003, even before the negotiations had come to an end. By 2006 some 37 AUC groups had demobilised.28

Violence was significantly reduced due to two factors: the peace agreement with the paramilitaries, and the considerable military effort to force the guerrillas into a defensive position.29 According to official government figures for the period 2002–7, kidnappings for ransom fell by 87 per cent, assassinations by 45.2 per cent and terrorist attacks by illegal armed groups by 76.5 per cent.30 In addition, the FARC-EP guerrilla group, which in 2002

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23 Gustavo Duncan, Los señores de la guerra: de paramilitares, mafiosos y autodefensas en Colombia (Bogotá, 2006).
27 Acuerdo de Santa Fé de Ralito para contribuir a la paz en Colombia (2003).
28 Alto Comisionado para la Paz (ACP), Proceso de paz con las autodefensas: informe ejecutivo (Bogotá, 2006).
had operated in 71 fronts, had only 10 regularly operating fronts in 2005.\textsuperscript{31}
A related explanation for the success of the military campaign against the guerrillas can be found in the process with the AUC, as it also allowed for individual demobilisation of members from the subversive armed groups. According to official figures, close to 18,000 dissident guerrilla members had demobilised under the same legal framework by late 2008.\textsuperscript{32}

In the context of the TJ process, the ‘victims of the Colombian armed conflict’ are often referred to in generic terms, as a single group. However, the universe of victims in Colombia encompasses a large and extremely heterogeneous group in terms of composition, background, organisation, outlook and interest. Common to all victims is that they have experienced at least one form of human rights violation, yet their backgrounds and way of dealing with their victimisation may be completely different. For instance, not all victims join or are organised in specific groups or associations, although a large number of victims’ organisations exist in Colombia today, at the national, regional and local levels. They are usually based in geographical jurisdictions or on specific characteristics of the victim group, often related to one particular type of violation, but some are more encompassing and have a broader base in terms of composition and the ways in which violations can be addressed. For example, the \textit{Asociación Caminos de Esperanza de las Madres de la Candelaria} (Association of Mothers of the Candelaria – Paths of Hope) and \textit{La Ruta Pacífica de las Mujeres} (The Peaceful Path of Women) are geographically based inter-regional groups addressing the needs of women victims of the armed conflict.\textsuperscript{33} Similarly, the \textit{Organización Nacional de Indígenas de Colombia} (National Indigenous Organisation of Colombia, ONIC) and the \textit{Unidad Indígena del Pueblo Awa} (Indigenous Union of the Awa People) represent indigenous groups, at the national and local levels respectively.\textsuperscript{34} Others, such as the \textit{Asociación de Familiares de Detenidos Desaparecidos} (Association of Families of the Disappeared, ASFADDES), work for the rights of the disappeared, regardless of the ethnicity or sex of the individual. Groups such as \textit{País Libre} (Free Country) work with victims of kidnapping.\textsuperscript{35} At the national level, the \textit{Movimiento Nacional de Víctimas de Crímenes de Estado} (National Movement of Victims of State Crimes, MOVICE), an umbrella

\textsuperscript{31} Colombian Ministry of Defence (CMD), \textit{Política de consolidación de seguridad democrática} (Bogotá, 2007). These numbers should be read with caution.
\textsuperscript{33} www.madresdelacandelaria.org; www.rutapacifica.org.co.
\textsuperscript{34} www.onic.org.co.
\textsuperscript{35} www.asfaddes.org; www.paislibre.org.
organisation consisting of 200 victims’ associations and groups, plays an active role in the national debate concerning the Colombian TJ process.36

Victims’ organisations are supplemented by organisations that work with or on behalf of victims without necessarily being composed of victims themselves. This includes human rights organisations, academic institutions and a diversity of non-governmental organisations. As with victims’ organisations, these are very diverse in terms of mission, strategy, operations and ideological position. Some provide specific services, such as legal or mental health counselling. Human rights organisations such as the Comisión Colombiana de Juristas (Colombian Commission of Jurists, CCJ) play a pivotal role in legally addressing the plight of the victims, and have brought several cases to the highest national and international courts.37 In the current process the CCJ has chosen a representative sample of the victims to whom it provides legal support. Academic research centres also play an important role: the Consultoría para los Derechos Humanos y el Desplazamiento (Centre for Human Rights and the Displaced, CODHES) conducts relevant research on internal displacement, and functions both as an advocacy and consultative body for national and international institutions.38 Other research centres such as the Jesuit-founded Centro de Investigación y Educación Popular (Centre for Research and Popular Education, CINEP) focus on the dynamics and consequences of the armed conflict, support local projects for peace and collect data on human rights abuses.39

Impressive as the wealth of organisations may seem, victims’ organisations face many challenges, one being their dependency upon other organisations for all kinds of resources, particularly funding. Their leaders are often under threat by the illegal armed groups still operating, and several have been killed.40 These organisations have largely been excluded from the official TJ processes and have tense relations with government institutions. CNRR officials often refer to victims’ organisations as being ‘too extreme’ and having ‘no desire for reconciliation’.41 This sentiment is mutual, however, as representatives of the victims’ organisations have expressed mistrust for the

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36 www.movimientodevictimas.org. See also note 6.
37 www.coljuristas.org.
38 www.codhes.org.
39 www.cinep.org.co.
41 According to CNRR president Eduardo Pizarro, the position held by many victims’ organisations is motivated by political opposition to the current government (interview, 4 Dec. 2007, Bogotá).
TJ process and have opted out of taking part in the institutional framework established to oversee it.\textsuperscript{42}

**Transitional Justice in Colombia**

*The legal framework*

The clear link between the demobilisation of illegal armed groups and the rights of the victims is the main feature of the Colombian process and is expressed in the main legal instrument regulating it, the 2005 Law of Justice and Peace (Law 975). Its origins lie in previous legislative attempts to end the armed conflict. Law 418 (1997) gave the government legal instruments ‘to seek a peaceful coexistence’ with the guerrillas,\textsuperscript{43} and was made temporary and effective for a period of two years (Article 131). In 1999, Law 548 prolonged the validity of Law 418, making some amendments.\textsuperscript{44} This was replaced in 2002 by Law 782, which ensured the continuation of the previous two instruments while giving the government the legal mandate to initiate a process of negotiation with ‘armed groups at the margins of the law’ (Article 3a 782/02) – in effect, the paramilitary AUC.\textsuperscript{45} This law established the legal framework not only to enable peace negotiations (Articles 2–4) but also to initiate the codification of victims’ rights (Articles 5–18), as well as the framework for the regulation of demobilisation and reinsertion of former combatants into society (Articles 19–25).\textsuperscript{46} Decree 128 (2003) regulated the three preceding laws, enabling the government to effectively initiate the process of demobilisation of the paramilitary forces. The six chapters of this presidential decree define the actors and stages involved, the process of demobilisation, the benefits for demobilised combatants, how the process of reinsertion is to be implemented, the issue of minors, and some final considerations regarding funding and time frames.\textsuperscript{47}

\textsuperscript{42} This was confirmed during our interviews with representatives from MOVICE, Corporación Reiniciar, ONIC and CCJ in Bogotá in Nov 2007. Mistrust intensified after the first consultative meeting between the victims and government agencies in Sincelejo on 27 October 2006. Victims’ organisations were sceptical about the process from the beginning, and this scepticism developed into a more general opposition. MOVICE, the largest, most vocal and most encompassing organisation, did not participate in the process. Victims’ organisations were originally represented at the CNRR by ONIC and País Libre.

\textsuperscript{43} CRC, Law 418 of 1997, *Por lo cual se consagran unos instrumentos para la búsqueda de la convivencia.*

\textsuperscript{44} CRC, Law 548 of 1999, *Por medio de la cual se prorroga la vigencia de la ley 418 del 26 de Diciembre 1997.*

\textsuperscript{45} CRC, Law 782 of 2002, *Por medio de la cual se prorroga la vigencia de la ley 418 del 26 de Diciembre 1997, prorrogada y modificada por la ley 548 de 1999, y se modifican algunas de sus disposiciones.*

\textsuperscript{46} Other issues regulated by Law 782 include witness protection and the surrender of military equipment and material goods possessed by illegal armed groups (Articles 50–82).

\textsuperscript{47} PRC, Decree 128 of 2003, *Por el cual se reglamenta la Ley 418 de 1997, prorrogada y modificada por la Ley 548 de 1999 y la Ley 782 de 2002 en materia de reincorporación a la sociedad civil.*
Law 782 and its regulatory Decree 128 encountered strong resistance from national and international human rights organisations, including Amnesty International and the Inter-American Human Rights Commission. The combination of ordinary laws and regulatory decrees was seen by many as a collection of legal tools guaranteeing impunity instead of punishment for AUC members, while granting them a series of benefits that neither the victims nor Colombian society at large enjoyed.

Although Decree 128 provided the government with a legal instrument to initiate the process, its fulfilment required the Congress to pass a law. The first bill presented by the government was known as the Alternative Penalties Law, and was based on a restorative idea implying that criminal punishment would not contribute to reconciliation. The bill therefore proposed a guarantee of amnesty for all demobilised armed actors. Instead of punitive measures, it included time-limited restrictions in the areas of political participation, place of residence, permission to carry weapons and so forth. The bill was heavily criticised by national and international human rights organisations, victims’ organisations and some political groups, and was rejected by the Colombian Congress.

In the aftermath of this failed legislative initiative, a new bill was drafted by the allies of the executive in Congress, getting congressional approval on 25 July 2005 to be passed as Law 975, the Law of Justice and Peace. This law adheres to a discourse of transitional justice, introducing the requirement of retributive justice in terms of imprisonment and recognising the role of the victims and their rights in the peace process. According to some observers, Law 975 was codified in order to enable the government to advance with peace negotiations with the paramilitaries after its initial proposal had collapsed. By that time the AUC had already begun to demobilise in great numbers, and it continued to do so even after the underlying premises set for the demobilisation had changed.

Legislative problems did not end with the passage of Law 975. Victims’ organisations, headed by Gustavo Gallón Giraldo from the CCJ, filed a case at the Colombian Constitutional Court (CC) questioning the constitutionality of the law. After extensive deliberations, the CC announced its Ruling C-370 in 2006, finding the overall law to be constitutional, although particular aspects of it were considered unconstitutional and thus needed to be interpreted and implemented differently. The legal content of the law is thus

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49 Legislative Bill 85, 2003, Ley de alternatividad penal.
51 Ibid., pp. 223–4.
significantly different from that to which the paramilitary leaders agreed when they began dismantling their organisations in 2003,\textsuperscript{53} and as a consequence, some paramilitaries have withdrawn from the process.\textsuperscript{54} To amend the changes introduced in the CC ruling, the government issued Decrees 3391 and 4436 (2006) so as to continue the TJ process within the original framework agreed upon by the parties to the negotiations.\textsuperscript{55} Hence, amid protests from paramilitaries, victims and human rights organisations, the process of demobilisation continued and by 2007 the president proclaimed that in Colombia the paramilitaries no longer existed.\textsuperscript{56} Unfortunately, there is evidence of the creation of new paramilitary groups, the re-organisation of old paramilitary structures and continued activity among paramilitary dissidents who did not demobilise.\textsuperscript{57}

The institutional structure of Justice and Peace

Law 975 is a comprehensive piece of legislation, not only in terms of its scope and the measures it regulates, but also in terms of the complex institutional structure it creates to fulfil its mandate. This structure includes both new and existing public institutions, each one with specific functions and roles to play in the process. For the sake of clarity, a brief presentation of these institutional actors and their respective roles is provided here.\textsuperscript{58}

The CNRR derives directly from Law 975 (Art 50), where its composition, functions and tenure are defined. It is made up of six representatives from government agencies (these include the CNRR’s president and its technical secretary), five representatives from civil society appointed by the President of the Republic, and two representatives from victims’ organisations. The functions of the CNRR are manifold and include overseeing the judicial part of the TJ process, guaranteeing the victims’ right to participate in the process, recommending a scheme on victim reparations, evaluating the process and providing suggestions for further action, and conducting public acts of national reconciliation. It should be emphasised that the CNRR’s

\textsuperscript{53} An annotated law text including the CC’s decisions and specific considerations can be found at www.fiscalia.gov.co/justiciapaz/Documentos/LEY_975_concordada.pdf.

\textsuperscript{54} Among others, Vicente Castaño Gil, one of the three AUC founders, withdrew from the process in 2006.

\textsuperscript{55} PRC, Decree 3391 of 2006, \textit{Por el cual se reglamenta parcialmente la ley 975 de 2005}; PRC, Decree 4436 of 2006, \textit{Por el cual se reglamenta parcialmente la ley 782 de 1997}.


\textsuperscript{57} CNRR, \textit{Disidentes, rearmados y emergentes: bandas criminales o tercera generación paramilitar?}, Informe no. 1 (Bogotá, 2007).

\textsuperscript{58} A detailed description of the specific role of public institutions in the Justice and Peace process can be found in \textit{Papel de las instituciones en la Ley de Justicia y Paz}, available at www.cnrr.org.co/new/interior Otros/papel Instituciones.pdf.
mandate is limited to developing and recommending specific measures and programmes (including pilot projects). The proper implementation of such recommendations or proposals is to be carried out by other public institutions after their formal approval. The CNRR is centrally based, but has regional offices across the country. Through its work the CNRR helps victims directly (for example, assisting in the identification and registration of victims’ legal status) and indirectly (providing logistical, financial and moral support to other victims’ organisations).

Article 33 of Law 975 prescribes the establishment of the Unidad Nacional de la Fiscalía para la Justicia y la Paz (National Unit for Justice and Peace, UNFJP), a specialised agency of the Fiscalía General de la Nación (Prosecutor General’s Office of Colombia). Its mandate is to ensure that the demobilised paramilitaries fulfil their obligations with regard to confessions, and to carry out criminal investigations, in addition to having the main responsibility for collecting and systematising reports of abuses. These reports are based on victim registrations/denunciations and form the base for a national registry of ‘acts allegedly committed by organised groups at the margins of the law’ administered by the UNFJP. Since 2006 the UNFJP has operated as a decentralised agency with headquarters in Bogotá, two major offices in Barranquilla and Medellín, and 20 local offices (grupos satélites) across the country, totalling 52 judicial offices (despachos judiciales).

According to Article 32 of Law 975, the Tribunales Superiores de Distrito Judicial (High Courts of Judicial Districts) serve several functions, such as monitoring the judicial process, ensuring that the rights of the victims are respected and securing public access to the case registry, which they are responsible for systematising and preserving. These courts are also mandated to decide on jail sentences for paramilitary leaders, and to assist in the process of settling reparation claims.

Acción Social, the Presidential Agency for Social Action and International Cooperation, functions as the CNRR’s technical secretariat and is mandated to administer the Victims Reparations Fund. The fund consists mainly of illegally obtained resources surrendered by the demobilised combatants as well as public funding. CC Ruling C-370 allows also the inclusion of funds

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59 According to Resolution 3048 (2006), the UNFJP has 15 prosecutors and 150 investigators to carry out its duties, in addition to 45 judicial assistants, 15 secretaries and 60 drivers and security staff (Prosecutor General’s Office of Colombia, Resolution 2426 (2006), Por la cual se modifican los artículos 2° y 3° de la Resolución 0-2426 de agosto 3 de 2006). In August 2008, however, the government announced an increase in the number of appointed prosecutors, of which 59 would be lead prosecutors and 125 assistant prosecutors. See www.vicepresidencia.gov.co/Es/Prensa/Noticias/2008/Paginas/080826a.aspx.

60 According to Article 54 of Law 975, this was the task of the Red de Solidaridad Social, replaced by Acción Social in 2005.
that were legally obtained by the paramilitaries if necessary to provide remedy to the victims. International donor contributions are also envisaged.

The Defensoría Pública (Public Defence Office) and Defensoría del Pueblo (Ombudsman’s Office) play similar roles but are divergent in relation to whom they are meant to assist or protect; their mandate is outlined in Article 34 of Law 975. While the Public Defence Office ensures the rights of the victimisers during the legal process, the Ombudsman’s Office assists the victims in exercising their rights to reparations. The Procuraduría General de la Nación (Attorney General’s Office) is an institution that enjoys administrative autonomy in order to guarantee the rights of all citizens. Its role in this context is to ensure the legality or constitutionality of the process at hand. To fulfil this role, a specialised unit with nationwide jurisdiction, the Procuraduría Judicial para la Justicia y Paz (Judicial Attorney for Justice and Peace), was created in accordance with Article 35.

Due to the complexity of the institutional structure, the CNRR has made great efforts to provide information about the process. Extensive advice days (jornadas de atención a víctimas) are organised by CNRR field staff in local communities across the country to disseminate information, assist with registration and provide guidance on individual cases. Printed and electronic information and radio and TV broadcasts are also available, although the amount of information they provide can be overwhelming.

Defining the victim

The most basic definition of any programme addressing the needs of victims is that of the ‘victim’ itself and the identification of the basis for victimhood. Article 5 of Law 975 defines the category of ‘victim’ as:

anyone who individually or collectively has suffered direct harm such as temporary or permanent injuries that cause certain forms of physical, psychological and/or sensory handicap (sight and/or hearing), emotional suffering, financial loss or disrespect for their fundamental rights. These harms must have resulted from acts of transgression of criminal legislation, carried out by organised armed groups at the margins of law.\(^6\)

This broad definition of ‘victim’ includes both individuals and communities; it addresses physical and psychological injuries, economic loss, and various violations of fundamental human rights. It encompasses crimes punishable under the Colombian penal code as well as those covered by international humanitarian law.\(^7\) Thus the CNRR identifies the following as the most

\(^6\) CRC, Law 975 of 2005, Article 5, ‘Definition of victim’ (our translation).

\(^7\) Attorney General’s Office, Conceptos básicos acerca de la Ley 975 de 2005 (Justicia y Paz) y de los derechos de las víctimas (Bogotá, 2007), pp. 17–18.
common violations of human rights in the Colombian armed conflict: forceful disappearances, kidnapping, murder, genocide, forced displacement, arbitrary detention and violation of due process, forced recruitment, torture, sexual and reproductive violence, inhuman and degrading treatment, terrorist acts, barbarism, destruction of cultural assets and sites, and use of anti-personnel mines. A final element established by the CNRR is the time frame: violations suffered since 1964 onwards can provide a basis for inclusion in the Justice and Peace framework.

A restriction observed in this broad definition concerns the origin of victimisation: violations must have been committed by members of ‘armed groups at the margins of the law’. While this includes people victimised by illegal armed groups in Colombia, paramilitary and guerrillas alike, those victimised by official state agents (military and police forces) are excluded from the category of victims in the framework of Law 975. At the same time, the definition of ‘victim’ was expanded following CC Ruling C-370 to include close members of the victim’s family who are economically dependent on the victim. According to this extended definition, not only will the parents or children of an individual killed by illegal armed groups be considered victims, but also all family members who were affected and can document victimisation will become eligible for reparation.

To take part in the Justice and Peace process – with regard to the right both to justice and reparation – victims are required to establish their legal status as such by formally registering the violations they have suffered. This is done by filling in a form developed by the UNFJP called ‘Register of Acts Attributable to Organised Armed Actors at the Margin of the Law’ (‘Registro de hechos atribuibles a grupos organizados al margen de la ley’). This can be collected from and dropped off at any of the Prosecutor General’s Offices across the country, as well as in all offices of the judicial police, the national registrar, and regional CNRR and Acción Social offices. The form needs to be accompanied by ‘proof of the harm suffered’, which may consist of a document certifying the existence of a formal complaint (denuncia) filed by the victim. In other words, in order to take part in the Justice and Peace process, victims must register a formal complaint with the appropriate judicial, administrative or police authorities. A copy of the complaint, a judicial order to follow up, a certificate that the victim actually lived/was present at the time of the events, and/or a certificate of kinship

64 In comparison, the definition of ‘victim’ in the Peruvian reparations legislation includes those victimised by the Peruvian armed and police forces, but excludes former members of subversive groups (Supreme Decree 015-2006-JUS, Reglamento de la Ley No 2892, Ley que crea el Plan Integral de Reparaciones, Article 52).
with the victim can then be used as proof of the harm suffered. There are no restrictions as to the date of the formal complaint; complaints can be filed for events that happened many years ago. This process of ‘accreditation as victims’ has to be done in person, and can only be completed once the necessary documents are delivered.

The process of victim accreditation serves at least three purposes: to give the victims the right to participate in the judicial process; to provide the prosecutor general with sufficient information to prosecute the demobilised victimisers; and to give victims the right to access full reparation (reparación integral) from their victimisers.

The challenges posed to the process of victim accreditation are many. The broad definition of victims and in particular the introduction of 1964 as the starting point of ‘reparable’ victimisation imply the inclusion of vast numbers of people whose plight was thought long forgotten. Notably, the victim category includes also those affected by forced displacement – internally displaced people, or IDPs – estimated at between 2.6 and 4.3 million. The effective dissemination of information and the registration process are also challenging. As mentioned earlier, the CNRR has organised vast public information campaigns to inform victims about their rights; other public institutions have taken similar initiatives. However, the need to file a formal complaint to validate registration may be a deterrent for many victims, who often find people related to the victimisers or their group in the key administrative and judicial bodies receiving and handling the complaints at the local level. As we will see later, this requirement is based on the individual responsibility of the victimiser to provide victim reparation. The Colombian modus operandi is in this sense very different from other reparation programmes. In Peru and Guatemala, for example, registration in the national victims’ registries and subsequent accreditation as victim are completely independent from any judicial process, and participation in the reparations programme does not exclude the possibility of filing a criminal or civil suit.

According to the UNFJP, 105,331 forms had been registered by 18 January 2008. Preliminary numbers from the national registry distinguished between nine categories of victims according to membership and occupation: indigenous people, politicians, members of the security forces, civil servants, union members and leaders, journalists, IDPs, members of the paramilitaries, and ‘others’, which is by far the largest group among all registered victims.


66 Interview with CNRR coordinator Eduardo Porras, Sucre’s Regional Office (Montería, Nov. 2008).

67 UNFJP, Oficio 002056 A (Bogotá, 3 March 2008).
Indeed, while 2,000 of the victims each fit in one of the identified categories, the remaining 103,000 are identified as ‘others’. With regards to the crimes committed, the numbers are more scattered; the main categories are homicide (74,151), forced displacement (14,521), forced disappearances (10,126), personal injury (1,243) and theft (2,937). At first sight these numbers may seem impressive given the relatively short time the process had been in effect, but they must be compared to the estimated number of victims that fall under the definition of Law 975 and the interpretation put forward by the CNRR. Statistics do differ; in addition to the estimated four million people displaced from their land since 1985, there are all the political victims, a category that includes leaders and members of political parties, community organisations, labour unions, journalists and teachers. The total number of victims since 1964 most likely exceeds four million. According to UNFJP figures, by June 2009, 219,818 people had registered as victims, which is still far from the estimated total number. That notwithstanding, this is the first time in Colombian history that a victims’ registry has been implemented; as the process continues, many more victims may register seeking justice and reparation.

*Mechanisms of Transitional Justice in Colombia*

Law 975 explicitly states that the national reconciliation process is to be achieved by promoting victims’ rights to truth, justice and reparation (Article 4). Such rights can be interpreted and implemented in various ways, and this often involves contestation between different interpretations and modes of implementation. In what follows, we discuss the official interpretation of victims’ rights as envisaged in Law 975. The complexity of the Colombian process is partly due to the overlap and dynamics between various elements and stages involved in the implementation of the right to truth, justice and reparation. Although these three elements (justice, truth, reparation) are intimately connected, we discuss them separately for the sake of clarity.

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68 One may wonder how ‘internally displaced’ can be considered a category for membership or occupation first, and then how to explain the apparent mismatch between that number and the figure given for ‘forcefully displaced’ as a category of crime.

69 CODHES, 2007 *Año de los Derechos de las Personas Desplazadas* (Bogotá, 2006).


71 The process of victim registration faces many challenges also in other parts of the world. In Peru, for example, the Reparations Council encountered a number of administrative, financial and logistical problems in setting up the Registro Unico de Víctimas (Unified Victims Registry). Individual victim registration started in September 2007. By October 2009, the number of victims registered was 61,000; the total expected number of victims is 280,000. See www.ruv.gob.pe/Boletin/Boletin8/not1/not1.htm.
Implementing the right to justice

The process of demobilisation of paramilitary forces was initiated in 2003 and was officially completed in 2006. The demobilisation and TJ processes are interdependent, as once demobilisation had taken place the Law of Justice and Peace would facilitate a national peace process by reintegrating demobilised paramilitaries and ensuring the right to justice by holding them accountable for their crimes. However, Law 975 is not restricted to any single armed actor; it dictates that all illegal armed groups, both paramilitaries and guerrillas, are eligible for the codified benefits. In other words, groups that did not take part in the negotiations with the government can also demobilise under Law 975.

It is important to know how the demobilisation process has been implemented in order to understand how ideologically different organisations can be treated equally by the same law. The AUC consisted of a great number of largely independent paramilitary groups that united under this banner, thereby enabling these different organisations to negotiate collectively. Almost all organisations party to the AUC did agree to demobilise, yet they did so independently and at different times. The first demobilisation took place on 25 November 2003 in a ceremony in Medellín in which 868 paramilitary fighters from the Bloque Cacique Nutibara participated. On 16 August 2006, 743 members of the Frente Norte Medio Salagui laid down their weapons and became the last paramilitary faction of the AUC to demobilise. Consequently, the process was not a one-off event but one that lasted for three years before 37 paramilitary bloques or frentes, with a total number of 31,671 combatants, had been demobilised. Of these, 2,716 combatants are subject to the process of Law 975, including individuals who had criminal proceedings opened against them or admitted involvement in crimes once demobilised; these are known as postulados. During demobilisation the combatants registered their names, their level of involvement in the organisation and whether they had violated human rights or humanitarian law. If they did not admit to any crimes and had no pending cases against them in the judicial system, these combatants were given immunity in line with Decree 128 of 2003, and could take part in the social programmes designed to reincorporate them into civilian life. For all postulados, the first step is participation in compulsory confessions known as ‘free accounts’ (versiones libres). In regular criminal prosecutions the aforementioned crimes are punishable with sentences of between 20 and 60 years in prison. Under the framework of Law 975 these sentences can be reduced to prison terms of between five and eight years depending on the severity of the crime and

72 ACP, Proceso de paz con las Autodefensas: informe ejecutivo (Bogotá, 2006).
whether the postulados meet the conditions established by law by telling the whole truth about their crimes, abstaining from further criminal activity and personally providing reparation to their victims.

The ‘free accounts’ stage is followed by an investigative process wherein the accused is confronted with claims by the prosecutor about imputed criminal acts in a series of hearings (audencias). Victims have the right to follow the proceedings directly, ask questions through their legal representatives, provide information to advance the process and assist in identifying related events or the whereabouts of hidden assets, mass graves and so forth. At the end of these proceedings the accused/victimiser has two choices: either to accept responsibility for the atrocities with which he is charged and convicted under Law 975, or to deny responsibility for certain atrocities while recognising others. At this stage, victims or their representatives can request a special hearing to deal with victim reparations (audiencia de incidente de reparación integral), to which we will return later. Denial of involvement and/or failure to meet the conditions established by Law 975 will lead to the transfer of a particular case to regular legal proceedings following ordinary criminal law, if sufficient evidence to carry out legal proceedings is gathered.

It is at this stage that reparations claims presented by the victims can be dealt with. After serving the jail term, a period of probation ensues with a time frame defined as half of the original sentence. During probation the demobilised individual must register periodically, not commit new crimes, and inform authorities of their whereabouts. Failure to respect these conditions will render the alternative sentencing invalid.

Implementing the right to truth

In interviews with representatives from several victims’ organisations, the right to truth was stressed as the most important form of reparation that could be afforded to victims. For them, truth means not only clarifying what happened or where their loved ones are buried, but also why and in cooperation with whom these atrocities were carried out. The CNRR acknowledges the right to truth as indispensable for obtaining justice, reconciliation and reparation, and sees clear linkages between two strategies to reveal two types of truth in the Colombian process; one based on judicial

73 This shift to an ordinary criminal process can involve extradition for postulados who have extradition requests from other countries.

74 The Constitutional Court decided that combatants should be sentenced according to ordinary criminal law, with sentences ranging from 20 to 60 years, and that sentencing defined by Law 975 would be seen as an alternative sentencing (Ruling C-370 of 2006).

75 See note 7.
mechanisms – the judicial truth – and the other based on a reconstruction of the historical record – the historical truth.

The judicial path

The judicial path to truth is based on the legal proceedings established by Law 975. In this sense, truth refers to information accessed through legal proceedings. As discussed in the previous section, postulados are to provide full confessions of all criminal acts committed during their time as active combatants. The date and topic of the ‘free accounts’ are announced and take place in one of three main UNFJP offices. Victims are given only partial access to the proceedings, which are organised on the basis of what is likely to be confessed and the registration of the individual or group of victims. For instance, if an entire community is affected, the court will allow only the community’s legal representatives to be present on its behalf. The confessions are preceded by a summary provided by the paramilitary member on trial outlining the crimes to be confessed. As the number of crimes committed is invariably very high, the confessions are not one-off events, and access to specific sessions depends on what is likely to be confessed. The complete content of the confessions is not made public due to concerns regarding the following investigative stage, and several restrictions have been introduced to make sure that the information is not recorded. Journalists have partial access to the proceedings, so the general public is given a limited amount of information as to what is being confessed in the ‘free accounts’.

Confessions are followed by a trial in which the special prosecutor explores the circumstances in which the crime(s) took place and confronts the defendant with cases not confessed but attributed to him by the investigative authorities. Criminal acts not included in the ‘free accounts’ will be dealt with by regular courts unless the information omitted was simply forgotten and not deliberately omitted; the latter case opens the door for further confessions or the possibility of admitting responsibility for additional criminal acts once confronted with evidence. If such post-hoc admission occurs, the individual can still be eligible for benefits under Law 975. This flexible approach to the condition of revealing the complete truth is justified due to the intensity and nature of the conflict: whereas the victims will vividly remember the loss of their loved ones, the paramilitaries engaged in numerous criminal acts involving hundreds or thousands of people over a

76 CC Ruling C-170 imposed more stringent conditions on the paramilitaries in order to respect the right to truth and deny them the option of forgetting. If the paramilitaries are found to be responsible for crimes that they have not confessed, the conditions are considered broken and the victimiser will not enjoy the benefits laid out in Law 975. It is unclear how this will be applied by individual magistrates, however.
ten-year period may not recall all acts committed. According to this line of argument, ex-combatants should not be punished for forgetting specific crimes if they are, to the best of their ability, rendering complete versions of the truth.\(^{77}\) A significant amount of information has been obtained through the ‘free accounts’ regarding the location of mass graves; by September 2009, 2,109 graves had been located, containing the remains of 2,570 people.\(^{78}\)

The historical path

One of the mandates of the CNRR is to determine the historical truth of the internal armed conflict. Law 975 establishes that academic investigations are to determine the reasons for the establishment and evolution of the illegal armed groups present in Colombia. To this end the CNRR formed a working group, the Grupo de Memoria Histórica (Historical Memory Group, GMH) with the objective of constructing an ‘integrated history’ (memoria integradora) of the Colombian armed conflict that acknowledges different narratives.\(^{79}\) This approach to truth is considered by the CNRR to be both a pedagogical and a political tool key to the creation of an environment favourable for political negotiations and reconciliation. The GMH has put forward a comprehensive approach to understanding the conflict, including its nature and evolution, the economic interests present, the different forms of resistance used and the socio-economic consequences. The period under investigation runs from the creation of the first illegal armed group in 1964 to the present, but also considers the years before 1964. The GMH’s mission is primarily to be fulfilled through academic research on emblematic cases; the first study, of the Trujillo massacres in the period 1988–94, was completed in September 2008.\(^{80}\)

Although both the CNRR and the GMH directly address the implementation of the right to truth, they do not define themselves as a ‘truth commission’. Such an institutional mechanism is envisaged by the CNRR for a later stage, once Colombia enters a post-conflict context, and it is expected to draw on the findings, conclusions and recommendations made by both the judicial and the historical paths to truth.\(^{81}\) However, the GMH mandate

\(^{77}\) Interview with Eduardo Pizarro, Nov. 2007.
\(^{79}\) CNRR, Plan Area de Memoria Histórica (Bogotá, 2007), p. 1.
\(^{80}\) The report, entitled Trujillo: una tragedia que no cesa, along with a documentary film and other related materials, can be downloaded from the CNRR website at www.cnrr.org.co.
to reconstruct an integrated history of the conflict shows great similarities with the mandates of truth commissions in the region. Indeed, the need for historical clarification was explicitly stated in the mandates of the Peruvian truth commission and the *Recuperación de la Memoria Histórica* (Recovery of Historical Memory) project in Guatemala.82

**Implementing the right to reparation**

Reparations, as envisioned by the CNRR, consist of ‘dignifying the victims through measures that alleviate suffering, compensate social, moral and material loss, and restore their rights as citizens’.83 This is referred to as ‘full reparation’ (*reparación integral*). This comprehensive and broad understanding of victim reparations is consistent with contemporary standards in international law, as expressed in the United Nations Basic Principles.84

The CNRR strategy establishes that victim reparations will be guided by principles of sufficiency, effectiveness, timeliness and differential treatment.85 Accordingly, reparations need to be *sufficient* for the victims to enhance their livelihoods; *effective* so that the majority of the victims are covered; *timely* so that victims receive reparation within a reasonable time frame; *favourable* to those groups of victims that are especially vulnerable; and *differentiated* so as to meet the needs of the different groups of victims affected by the violence. Although the ambitions of the Colombian government and the CNRR are considerable, both the mechanisms and the institutions established to implement the reparations scheme have been widely criticised by almost all victims’ and human rights organisations.86

Full reparations encompass multiple and specific forms of reparation that are complementary, yet distinct: restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition.87 Law 975 establishes the definitions of these various forms of reparation.88 *Restitution* is defined as a return to pre-existing conditions, including a return to liberty, the right to return to one’s place of residence and the return of lost property, if possible. *Compensation* (*indemnización*) seeks to compensate by economic means for the physical, material and moral harm suffered by the victim, and also for ‘lost opportunities’ with regard to education, work and social mobility.

82 In both countries, victim reparations programmes followed recommendations made by the truth commissions. In Colombia, reparations are developed prior to the work of a truth commission.  
85 CNRR, *Definiciones estratégicas*, p. 4.  
86 See note 7.  
87 CNRR, *Definiciones estratégicas*, pp. 5–6.  
88 CRC, Law 975 of 2005, Articles 8, 46, 47 and 48.
Rehabilitation addresses medical and psychological treatment of victims or close family members affected by violence as well as legal counselling. Satisfaction measures are non-monetary, aiming to re-establish the dignity of victims. Such measures include the public acknowledgement of violations committed, the restoration of the victim’s good name and reputation, the return of the remains of the disappeared and access to information regarding what happened to the victims. Finally, non-repetition refers to general institutional measures to prevent violations from happening again.

The law establishes that there are three main forms of reparations: individual, collective and symbolic. Individual reparations are those that have received most attention both from the CNRR and the public. In the Colombian TJ scheme, individual victims receive direct reparations from their victimisers through a judicial process. If the individual victimiser cannot provide satisfactory reparation, responsibility is passed to his military unit.

Individuals eligible under Law 975 enter the legal process once demobilisation is completed, and their victims can seek reparations from particular victimisers through legal advisors. While victims can present their reparation claims against a victimiser at any stage of the judicial process, these will not be dealt with until the investigation phase of the process is in its final stages. At this time the respective Court of Justice and Peace at the High Court of the Judicial District will initiate a specific proceeding known as a ‘hearing on a full reparation claim’ (audiencia de incidente de reparación integral), in which reparation claims are presented, considered by the court and forwarded to the victimiser. A conciliation process is envisaged to reach a negotiated solution, but the victim is not obliged to negotiate.

In this hearing, victims and victimiser meet in front of an assigned judge to come to an understanding on the mode and scope of reparations. Following this path, it is expected that victimisers recognise victims as such, and that victims are able to confront the victimisers personally and to some extent reconcile with them by agreeing to the content of reparations. Highlighted in this process is the direct link between the victims and the victimiser. The former combatant will provide reparation to the victims directly with the illegally obtained funds he has surrendered to the state and, if the amount surrendered does not cover the agreed compensation, the victimiser is obliged to provide reparation with legally obtained funds.

Although seemingly straightforward, this road to reparation presupposes a series of conditions. Firstly, victims must be able to identify the perpetrator (or at least his or her bloque), which is not always devoid of problems due to the chaos created by the illegal armed actors, particularly in cases of massive displacement. The context of continued conflict also inhibits the victims due to fear of reprisals. Secondly, victims have to be present during the court hearing, which takes place in one of three locations: Barranquilla, Bogotá or...
Medellín. This implies great cost in terms of resources and time for victims and their families, who may not necessarily live in those cities. Thirdly, victims should be able to prove their claims in the form of either witnesses or written records in order to seek reparation. This is complementary to the documents presented at the stage of victim accreditation. The crimes in question must be included in the proceedings forwarded by the prosecutor if not voluntarily admitted by the defendant during the ‘free accounts’. Fourthly, and equally important for reparations, victimisers must have the financial resources to provide reparation to their victims. If no agreement is reached, the court will take the final decision according to the nature and consequences of the crime(s) committed. Victims have the right to appeal against these decisions. In any case, reparations will not be carried out prior to a conviction or sentencing. The Reparations Fund has the mandate to implement decisions concerning monetary compensation.

Victims unable to identify individual victimisers but who know which bloque the victimiser belonged to can file a request for a case hearing without having to go through the entire process. As established in Article 45, paragraph 2 of Law 975, these victims can request the High Court of the Judicial District to call a case hearing regarding a particular group. For this request to proceed, several conditions apply: (1) the group/bloque must be identified, (2) a causal relation must be established between the group and the damage done, (3) the groups must have been demobilised and their members must be undergoing the judicial process, and (4) the Prosecutor General’s Office must have exhausted all possible ways to identify the individual perpetrator or be able to state that this was not possible. All four conditions must be met for the High Court to approve a call for a reparation hearing. As of December 2008, 463 such requests had been registered by the High Court, although no information is available concerning the outcome of these requests.

The fact that reparation claims cannot be processed before the judicial process is complete is a major criticism of the Colombian TJ scheme. With judicial processes still ongoing and only one court decision reached so far, the

89 A list entitled Estadística de incidentes de reparación can be found at the UNFJP website at www.fiscalia.gov.co/justiciapaz/Documents/incidentes.pdf. The list is constantly updated. When accessed on 28 January 2009, the list was 31 pages long and all entries were numbered, from 1 to 463. The same list accessed on 2 April 2009 was 32 pages long but no longer enumerated.

90 This refers to the process against Wilson Salazar Carrascal, alias ‘El Loro’, completed in March 2009 but later overturned by the Supreme Court. For a discussion of the outcome of this process concerning victim reparations, see Catalina Díaz Gómez and Camilo Ernesto Bernal Sarmiento, ‘El diseño institucional de reparaciones en la Ley de Justicia y Paz: una evaluación preliminar’, in Díaz, Sánchez and Uprimny (eds.), Reparar en Colombia, pp. 581–621.
the reparation hearings remain an aspiration. In May 2008, the Colombian Supreme Court of Justice expressed concern about the limited progress made at the ‘free accounts’ stage, with not a single sentence reached. The Supreme Court urged the Prosecutor General’s Office to speed up judicial proceedings, while at the same time reaffirming the need to have convictions and sentencing prior to an effective consideration of reparation claims. \(^91\) In other words, all steps of the process still have to be followed.

To remedy some of the problems inherent in this scheme, the CNRR recognised the need to develop an alternative path to individual reparation. An Individual Administrative Reparations Programme (Programa de reparación individual por vía administrativa) was established in April 2008. \(^92\) Whereas the judicial path demands a high level of evidence of victimisation, the administrative road has a lower threshold even though Decree 1290 explicitly sets up requirements for the victims to fulfil when applying for reparations. The administrative path is favourable for those who cannot identify or are afraid to confront their victimisers, those who do not have the financial resources to bring their claim before the special courts, and those who were victims of organisations other than the paramilitaries. With administrative reparations, the state assumes the task of compensating the victims. This brings the Colombian case closer to the Peruvian and Guatemalan programmes, where reparation benefits are covered by the state and are not expected to be provided by the victimiser. In Colombia, however, this is done out of a principle of solidarity with the victims and not because the state assumes responsibility for the crimes committed. The name of this form of compensation expresses this clearly: it is known as ‘solidarity compensation’ (compensación o indemnización solidaria). \(^93\)

Administrative reparations encompass only monetary compensation for crimes committed against individuals. Damage to property and violations committed by state agents do not apply. Compensation amounts vary depending on the nature of victimisation, ranging from 27 to 40 minimal monthly salaries, presumably to be paid as a lump sum. Acción Social, in charge of the Reparations Fund, is mandated to establish and implement the administrative reparations programme. A simple format was developed, and

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\(^91\) Ficha de relatoría no. 6, sentencia del 23 de Mayo de 2008, Sala de Casación Penal, Corte Suprema de Justicia, Radicación 29642, in Prosecutor General’s Office, Tercera entrega de extractos de providencias bajo el marco de la Ley 975 de 2005 (Bogotá, Jan.–July 2008).

\(^92\) Colombian Ministry of Interior and Justice, Decree 1290 of 2008, Por el cual se crea el programa de reparación individual por vía administrativa para las víctimas de los grupos armados organizados al margen de la ley.

\(^93\) A discussion on the difference between solidarity and responsibility as the basis for victim reparations can be found in Nelson Camilo Sánchez, ‘¿Perder es ganar un poco?: avances y frustraciones de la discusión del Estatuto de Víctimas en Colombia’, in Díaz, Sánchez and Uprimny (eds.), Reparar en Colombia, pp. 623–718.
by the end of January 2009 approximately 180,000 application forms had been received by Acción Social, 60,000 of which had been formally registered.\footnote{Reparaciones por vía administrativa se agilizarán este año’, \textit{CNRR Noticias}, 26 Jan. 2009, available at www.cnrr.org.co/contenido/09e/spip.php?article48.} By October 23 the same year the number of forms received had risen to 266,672, generating monetary compensation to 1,549 victims.\footnote{See http://reparaciones.ictjcolombia.org/edicion3/reportaje_central.html.} The duration of the programme in terms of registration is two years, while payments to victims are expected to take place over a ten-year period.

Collective reparation is a complex category encompassing symbolic and material reparations with the aim of ‘rebuilding the social fabric and inserting state institutions into the communities affected by systematic violence’.\footnote{CNRR, \textit{Informe al Congreso: proceso de reparación a las víctimas – balance actual y perspectivas futuras} (Bogotá, 2007).} The areas most affected by the armed conflict in Colombia are predominantly rural, often devoid of state presence of any kind. People in these areas are poor and have historically relied on illegal armed groups for protection. As the balance of power between the different illegal groups has shifted, these communities have come into the crossfire. The CNRR is responsible for recommending different ways in which communities affected by the violence are to receive reparation. To date, the issue of collective reparations is still on the drawing board. Some general proposals have been publicised with regard to how the process is expected to evolve, the acts of reparation to be implemented and the social groups most likely to benefit from collective reparations. In order to develop a strategy that can be implemented across the country, the CNRR initiated a Pilot Plan for Collective Reparations.\footnote{Five pilot projects were initiated in 2008 (interview with Eduardo Pizarro, Nov. 2008). In June 2009, a CNRR official informed us that the projects were still in a preparatory stage.} This pilot focuses on a limited number of communities or social groups specifically selected to represent the cultural, ethnic, geographic and socio-economic diversity of the groups most affected.

According to Law 975, Article 8, symbolic reparations encompass all sorts of measures directed towards victims’ groups or the general public seeking to preserve collective memory, strengthen the guarantee of non-repetition, provide public acknowledgement that violations took place, serve as a public act of forgiveness, and help to re-establish the victim’s dignity. Several measures such as the construction of sites of memory, formal apologies and conducting acts of remembrance to honour victims or promote ‘reconciliation’ are envisaged. Media campaigns involving public education about the plight of the victims have been developed, creating a space for victims’ rights in the public media.\footnote{Examples of media outreach are the radio programmes \textit{La hora de las víctimas} (Victims’ Hour) and \textit{Las víctimas cuentan} (The Victims Tell Us), and the television documentary series \textit{Nunca más}}
Prospects for Victims’ Rights in Colombia

Our review of the implementation of the Law of Justice and Peace indicates that there has been a great deal of progress with regard to the establishment of mechanisms and procedures. Public institutions mandated to implement the various aspects of the law have been created and are operating. This, by itself, is no small achievement. In the particular case of Colombia, where the state and its institutions have had relatively little presence in vast areas of the national territory, and where there is a deeply rooted mistrust of the state in general, the implementation of a legal instrument such as the Law of Justice and Peace is a challenging task. Yet regulations have been formulated, approved and implemented, forms have been designed, registration is taking place, and information mechanisms explaining the process are being developed. At the time of its approval, many observers considered Law 975 a legal manoeuvre to secure impunity for victimisers. Similarly, many considered it absurd to talk about transitional justice in Colombia because of the absence of a clearly defined conflict/post-conflict period of transition. The Colombian case shows, however, that reparations to victims need not wait until all armed groups have demobilised, and in this respect the Colombian process is unprecedented.

Law and the discourse of rights constitute today a central part of the myth of the state as guarantor of rights. In a country such as Colombia, this myth also exists in spite of the constant mistrust of state institutions. While it is possible to approach law as a form of ‘social control and of enforcing power relations’, there is also empirical evidence that social actors can appropriate the concept of law, making it ‘a space of resistance to the hegemony of nation-state law at the same time as it reinforces the centrality of law as a mode of protest’. Law can be both a means of social control and a guarantor of rights, making it a ‘site of engagement’ for social actors with different visions of the state and political projects.


99 See note 6.
100 Rodrigo Uprimny (ed.), ¿Justicia transicional sin transición?: reflexiones sobre verdad, justicia y reparación en Colombia (Bogotá, 2005); Pardo, Fin del paramilitarismo.
104 Rachel Sieder, ‘Rethinking Citizenship: Reforming the Law in Postwar Guatemala’, in Hansen and Stepputat, States of Imagination, p. 204.
The power of law relies as much on its enforcement as it does on the ideals it represents and the discourse it uses. Such ideals and discourse are often captured and internalised by subaltern groups in their struggle for voice and representation in the public sphere. The interaction between social actors and normative law in the public sphere can produce unforeseen consequences quite different from the original intention behind the legislation. Here lies what Margaret Somers calls ‘the empowering potential of normative law and the legal system’.  

In this article we have seen that the application of Law 975 reaches far beyond the administrative and judicial boundaries of public sector bureaucracies. The complex institutional structures established by Law 975 have a target audience well beyond the organised sectors of civil society, reaching into isolated hamlets and individual families across the country. ‘Legality is the ultimate basis for legitimacy’, and by having the power to legalise social practices (to recognise what is accepted and unacceptable, legal and illegal), the state reproduces its authority in society. At the same time, social actors may adopt and reinterpret notions that are legally recognised due to their strong normative stand; these notions may become effective vehicles for claim making and participation. In our view, the ‘victim’ category and the related issue of victims’ rights have assumed that role in Colombia today.

Recalling the broad definition of ‘victim’ introduced by Law 975 and applied by the CNRR and the UNFJP, it is possible to argue that once introduced into the Colombian public sphere, the codification of this legal category and its related rights has opened up a space for the formulation of claims that today have gained widespread legitimacy, both morally and legally. These claims are not necessarily much different in content than before 2005, but their moral and legal argument has changed. For example, the fight against impunity or to find out who killed one’s husband or son is no longer framed by civil society organisations (solely perhaps) as a quest for the due punishment of perpetrators, but as a victim’s right to justice. Similarly, the quest for a proper solution to the IDP situation is now being framed in terms of victims’ rights to restitution, also within the framework of Law 975. The case for the unconstitutionality of Law 975 presented before...
the Constitutional Court was also argued on the basis of victims’ rights. Recalling the diversity of victims and victims’ organisations, there are many groups and individual victims who, for the first time and on the basis of their victimhood, have found a legal and legitimate avenue to raise claims with the state. The introduction of the legal category of ‘victim’, accompanied by a set of rights and benefits, has direct impact and potential for victims themselves and for Colombian society at large. Full of normative strength and legitimacy, the language of victims’ rights has made a successful incursion into institutional life among state and non-state actors alike. While the Colombian armed conflict has always produced victims, the upsurge of victims’ organisations is a recent phenomenon, directly linked to the Justice and Peace process. The CNRR itself has a strong normative base when arguing for resources with respect to other public agencies, while non-governmental organisations and victims’ organisations can base their legal arguments and social claims on the imperative of protecting victims’ rights. These aspects must not be underestimated.

Final Remarks

In this article we aimed to provide a systematic review of the Justice and Peace process in Colombia by examining the legal and institutional-bureaucratic structures developed for its implementation. We wanted to understand how Justice and Peace measures function and how they relate to each other. In our view, the thread that connects all parts of this system is its focus on victims and victims’ rights. Our review shows that the current implementation of Law 975 has managed to keep this focus. Some very understood as the return to one’s place of residence and devolution of property stolen. For a critical review of the relationship between forced displacement and the TJ process in Colombia, see Uprimny and Saffon, Desplazamiento forzado.

110 This may not always be the case; the victim category can also have limiting effects. ‘Victim’ is often associated with being a passive object of violent acts, a view that ignores the actor’s agency in the specific situation or in a larger historical context. For an example of limiting effects, see Jemima García-Godos, ‘Victim Reparations in the Peruvian Truth Commission and the Challenge of Historical Interpretation’, International Journal of Transitional Justice, vol. 2, no. 1 (2008), pp. 63–82.
111 MOVICE itself was founded by 800 delegates from different victims’ organisations in June 2005 in response to Law 975. See MAPP-OEA, ‘Decimo tercer informe trimestral (Bogotá, 2009); Saffon and Uprimny, ‘Uses and Abuses’; and Díaz, Sánchez and Uprimny (eds.), Reparar en Colombia.
112 The latest development in this regard is the bill known as the Estatuto de Víctimas, presented to the Senate in 2008 and dismissed by Congress months later. The proposal could have strengthened and protected victims’ rights, and was supported by public institutions and civil society organisations alike. For a discussion of the legislative process, see Sánchez, ¿Perder es ganar un poco?’. 
important issues are still pending, however, such as the restitution of land and property and the formulation and implementation of specific reparations programmes.

The strength and potential of victims’ rights lie in their capacity to convey legitimate claims on a solid normative base; this is an opportunity that victims, victims’ organisations and civil society at large are increasingly taking advantage of in the Colombian process. This opportunity must not blind us, however, to the need to address what Law 975 aims for – namely, peace. As victim and victimiser are two sides of the same coin, without the effective demobilisation and reintegration of illegal armed actors, the goals of justice and reparation for the victims of the Colombian armed conflict are unlikely to be achieved.

**Spanish and Portuguese abstracts**

**Spanish abstract.** En medio de un contexto de conflicto armado, un complejo esquema de justicia transicional ha sido desarrollado en Colombia desde 2005 a través de la Ley de Justicia y Paz con el fin de alcanzar la paz con uno de los actores armados en el conflicto: los grupos paramilitares. El claro vínculo entre la desmovilización de grupos armados ilegales y los derechos de las víctimas es la principal característica del proceso colombiano. Este artículo provee una revisión sistemática de la implementación de la ley, centrándose en las instituciones, mecanismos y procesos articulados para alcanzar tales metas. Se dá énfasis a la categoría legal de ‘victima’, los derechos de las víctimas y medidas de reparación. Al explorar cómo funciona el esquema en principios y en práctica, seremos capaces de evaluar las perspectivas de los derechos de las víctimas en Colombia hoy.

**Spanish keywords:** justicia transicional, Colombia, derechos de las víctimas, reparaciones a las víctimas

**Portuguese abstract.** No contexto de conflito armado contínuo na Colômbia, um programa compreensivo de justiça transitória foi desenvolvido a partir de 2005. A Lei de Justiça e Paz teve como objetivo alcançar a paz com uma das partes armadas no conflito, os grupos paramilitares. A ligação explícita entre a desmobilização de grupos armados ilegais e os direitos das vítimas representa o principal aspecto do processo colombiano. Este artigo oferece uma revisão sistemática da implantação da lei, concentrando-se nas instituições, mecanismos e procedimentos instalados para que as metas fossem atingidas. As categorias legais de ‘vítima’, direitos das vítimas e medidas reparatórias recebem ênfase. Ao explorar o funcionamento do programa em tese e na prática, podemos avaliar as prospectivas das vítimas obterem seus direitos na Colômbia atual.

**Portuguese keywords:** justiça transitória, Colômbia, direitos das vítimas, reparações às vítimas