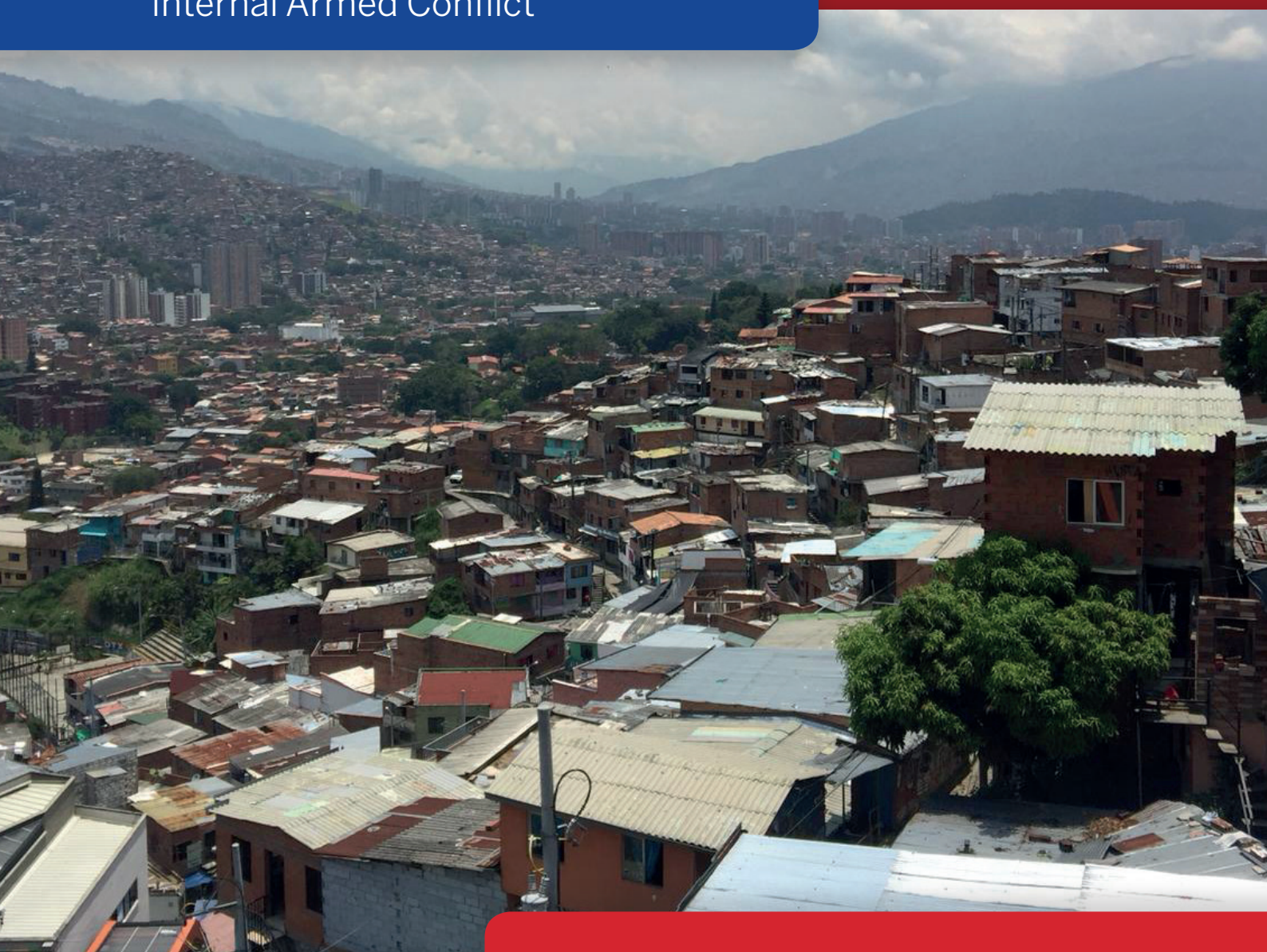


REPARATIONS IN COLOMBIA: WHERE TO?

Mapping the Colombian Landscape
of Reparations for Victims of the
Internal Armed Conflict



POLICY PAPER

February 2019

Reparations, Responsibility

Victimhood in Transitional Societies

The Reparations, Responsibility and Victimhood in Transitional Societies project was launched in October 2017 as an independent research project funded by the UK Arts and Humanities Research Council (AHRC – AH/P006965/1). The core team of the project is composed of Dr Luke Moffett (Queen's University Belfast), Professor Kieran McEvoy (Queen's University Belfast), Professor Clara Sandoval (University of Essex), Dr Cheryl Lawther (Queen's University Belfast), Dr James Gallen (Dublin City University), Dr Peter Dixon (George Mason University), and Dr Adriana Rudling (Queen's University Belfast), in partnership with REDRESS, the International Organisation for Migration (IOM) and the International Center for Transitional Justice (ICTJ). This project examines a range of issues relevant to reparations in six jurisdictions, namely Colombia, Guatemala, Nepal, Northern Ireland, Peru and Uganda. Its main themes are eligibility and complex victimhood, acknowledgement and truth recovery, victim participation and ownership, responsibility, accountability and the state/non-state axis, and finance, feasibility and development.

There are three types of policy outputs to this project. First, we aim to produce guidelines on the implementation of reparations. Second, we will deliver two handbooks on how donors and non-state armed groups can engage with reparations. Third, we will author a series of reports that disseminate our findings from each of the six jurisdictions under examination. The present policy paper is one of these reports.

It contains an analysis of the state of reparations before the 2016 Final Peace Agreement between the Colombian government and the FARC.

Acknowledgements

The research team would like to express their deepest appreciation to all of those individuals and organisations who made this report possible. By sharing your time, experiences, and research with us, you have provided us with invaluable insights that have greatly contributed to a better understanding of the future of reparations in Colombia. We want to extend a special thank you to Daniel Marín López, Campaña Colombiana Contra Minas, Enilda Jiménez Piñeda, Silvia Quintero Cano, and the Colegio Mayor de Nuestra Señora del Rosario for their support during our fieldwork. We would also like to thank Colin Slack for the creativity and attention to detail that has gone into the design of this report.

Authors

This policy paper was authored by Nelson Camilo Sanchez (University of Virginia) and Adriana Rudling (Queen's University Belfast). Edited by Luke Moffett (Queen's University Belfast) and Peter Dixon (George Mason University).

For further information

Website: <https://reparations.qub.ac.uk/>

Twitter: @TJreparations

E-mail: Dr Luke Moffett, Project Principal Investigator - l.moffett@qub.ac.uk

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Executive Summary

The Colombian Armed Conflict and Its Victims

Since the early 1960s, guerrillas, paramilitaries, drug cartels, and state forces have been involved in a contest for the control of territory, with serious consequences for the civilian population. Violence increased steadily between 1982 and 1995, experiencing a dramatic escalation between 1996 and 2002. There remains a lack of social and political consensus about the causes and the starting point of the Colombian armed conflict. The transitional justice process began in 2005 in the midst of an active conflict. The universe of victims eligible for reparations has been constantly expanding as a result of the ongoing violence. Characterisations of the conflict have varied between civil war, struggle against terrorism, war against drugs, dirty war, socio-political violence, and non-international armed conflict. A simpler definition refers to multi-actor violence, with anti-systemic overtones.

Although it may be difficult to distinguish between common crime and conflict-related crime in practice, the fact that the reparations regime introduced by Law 1448/2011 covers nearly 20% of the population shows the impact of the conflict to have been extensive. This piece of legislation introduced an important shift with regard to the transitional justice framework, as it acknowledged both the existence of the internal armed conflict and widened the scope of reparations to cover victims of state agents. Almost 7.5 million of the approximately 8.8 million victims registered by the Single Registry for Victims are internally displaced people. Threats, homicide, forced disappearance, and loss of property also stand out as victimising acts due to the high numbers of registrations.



Reparations Schemes

Under Colombian law, victims have access to reparations through a mix of judicial and transitional justice measures. The ordinary reparations scheme covers criminal procedure, civil procedure and the administrative responsibility of the state when a person has suffered harm. It also includes reparations that may be ordered by international bodies, such as those in the Inter-American Human Rights System. The transitional justice mechanisms put in place since 2005 specifically cover the right to reparation for victims of the armed conflict, continually deepening the offer and widening the scope of the measures. Although the exact contents and the relationship of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition arising from the 2016 Final Peace Agreement with the FARC with existing mechanisms are yet to be defined, the Colombian reparations programme is one of the most complex and thoroughgoing ones so far.

The first transitional justice instrument, Law 975/2005, was conceived as a strictly judicial mechanism. It offered victims reparations primarily from the assets seized or surrendered by demobilising ex-combatants who entered the process of alternative sentencing. After hearing the victims, a specialised judge assessed their damages and decided on the reparations due. One of the positive aspects of reparations was that they went beyond compensation for harm. Due to the slow pace of these proceedings, Decree 1290/2008 introduced a reform that allowed victims registered in legal proceedings to claim compensation for homicide, enforced disappearance, kidnapping, torture, sexual violence and forced recruitment, and have this sum deducted from the total awarded at the end of the trial.

Law 1448/2011 broadened the scope of the reparations offered, the category of beneficiaries, and created new institutions that would provide care and assistance to victims as well accompany and advise them on accessing reparations through the appropriate (state) agencies. The acknowledgement of Law 1448/2011 of the internal armed conflict and victims of state agents represented an important advancement in relation to previous legislation that had seen the state as being engaged in a struggle against terrorist groups. Based on a series of pre-determined categories of crimes, Law 1448/2011 offers victims restitution, rehabilitation, satisfaction, guarantees of non-repetition and compensation, in line with international law. It considers an administrative and legal pathway for both individual and collective reparations. Victims who were dispossessed of their lands after 1 January 1991 can regain these with the help of the Land Unit and specialised restitution judges. The cut-off date of 1 January 1985 introduced an important distinction insofar as those who suffered violations prior to it can only access symbolic reparations and guarantees of non-repetition.

The Performance of Reparations

The Colombian reparations programme is one of the most ambitious in the world, both in terms of the measures it offers and the number of victims it aims to cover. The use of transformative language by Law 1448/2011 raised victims' expectations, but effective implementation has presented many challenges. Difficulties in coordination between (government) agencies and institutions, limited state capacity, bureaucratic problems, all common problems of executing public policy in Colombia, have frustrated victims' aspirations. Thus, seven years after the approval of Law 1448/2011 and three years before it is scheduled to end, only about 7% of victims of the Single Registry for Victims have been compensated. Compensations reached 2.7% of the registered victims of forced displacement, 33% of forced disappearances, and 30.5% of homicides. Most received their compensations as a result of the application of Decree 1290/2008 that regulated the administrative programme of Law 975/2005. With only 25 enforced sentences resulting from Law 975/2005, only 13 compensations ordered have been paid out. As of January 2019, little over 43% of requests made before the Land Unit have been processed, counting both non-registered requests and cases resolved through judicial rulings. The Comprehensive System for Truth, Justice, Reparations and Non-Recurrence of the Final Peace Agreement further develops reparations by tying them to the construction of peace and highlighting the importance of victim participation, rehabilitation, collective reparations and acts of collective acknowledgement of responsibility.

Debates surrounding Reparations

Since the transitional justice framework was put in place, three issues have dominated the debates, namely the criteria of eligibility, the responsibility for compensation and the relationship between assistance, reparations and development. The Constitutional Court has intervened in each of these debates, defining itself as an important transitional justice actor, in light of repeated challenges by victims and human rights organisations. Eligibility dealt primarily with the cut-off dates introduced by Law 1448/2011, the issue of whether or not ex-combatants could be considered victims for the purposes of reparations and included in the Single Registry for Victims and how reparations should be paid out to internally displaced persons. Constitutional Court Ruling C-250/2012 accepted the cut-off dates arguing that they did not exhibit an absolute arbitrariness as they covered a large part of the victims and the Legislative had to consider principles of fiscal responsibility. The same ruling found that the exclusion of ex-combatants from the administrative programme was not unconstitutional as these preserved their right to access to the ordinary judicial route, should they consider themselves to have suffered unlawful harm. The payment of compensations to internally displaced persons is related to various interventions by the Constitutional Court since 2004. Building on Law 387/1997 that made provisions for the assistance and relief to internally displaced

persons, Ruling T-025/2004 offered these victims special protected status. Their inclusion in Law 1448/2011 as subjects of reparations, and therein compensations, seemed like a natural progression considering the continued interest of the Court in monitoring the situation of these victims. Given the high numbers of internally displaced persons registered as victims and the risk of overburdening the state with the fiscal responsibility for their reparations, Ruling C-462/2013 found compensation at the household to be constitutional.

Responsibility for reparations was defined in Constitutional Court Ruling C-370/2006 to lie primarily with the victimiser, where the state should act in a subsidiary manner, providing reparations where victimisers are unable or unwilling, so as to avoid introducing unnecessary discrimination between victims. Constitutional Court Ruling C-1199/2008 determined that, while there is a clear relationship between assistance, reparations, and development, a policy where one included the other could not exist as each of these schemes referred to different types of actions and individuals or communities. Thus, the Colombian state was directed to continue its assistance policy for those requiring immediate support due to disasters and its social policies to guarantee minimum satisfaction of economic, social and cultural rights, as well as add a specific policy on victims' reparation. The minimum standard for reparations was considered the recognition of victims as victims.

Findings and Conclusions

Since the 2016 Final Peace Agreement between the Colombian government and the FARC is poised to deepen the reparations available to victims, integrating them with truth and justice measures, this is a timely report on the state and reach of reparations in the country. Our initial desktop research and fieldwork carried out in 2018 show that there remains a large implementation gap between what has been delivered on the ground, what victims expect, and what they are entitled to in terms of reparations. Although legally sophisticated and comprehensive, the administrative reparation programmes emerging from Law 975/2005 and Law 1448/2011 have met with a number of difficulties in the course of implementation. The gap between the reality of reparations on-the-ground and the letter of the law can be understood in three ways. First, reparations have been delayed. Second, they have arrived to a select few. Third, they have not always responded to the victims' needs. Vulnerable groups and individuals have been particularly hit by the deficient implementation, as prioritisation mechanisms that aimed to facilitate their access have only begun being deployed in the last three years. These gaps must be addressed if the promise of victims' rights being central in measures dealing with the past made by President Santos and the FARC is to be taken seriously.

Recommendations

This report finishes by outlining some recommendations in moving forward with reparations. These are directed towards the different actors engaged in formulating and implementing reparations in Colombia. Their aim is to ensure that reparations are meaningful for their beneficiaries. Victims should have timely access to appropriate reparations regardless of the conflict-related harms they suffered. Coordination and better integration between the different mechanisms and agencies involved in delivering reparations is a must. Victims' voices should be heard, they should be informed of the decisions that concern them, given the means to easily navigate the systems of reparations available, and allowed to determine the degree to which they want to participate. Reparations should remain modest and maintain their specificity by comparison to measures like assistance, development and peacebuilding. Furthermore, reparations should be sustainable in terms of both human and institutional resources so that they may have a lasting positive effect in the everyday lives of victims.



Introduction

The Colombian armed conflict has left sizable number of victims, which the Single Registry for Victims amounts to 19% of the population on 1 January 2019.¹ Under a transitional justice framework, a series of measures were established to guarantee the rights of victims to truth, justice, reparations and guarantees of non-repetition. Operating within a large-scale demobilisation process that started with Law 975/2005, reparations were understood as a complement the ordinary judicial mechanisms that victims could turn to and were still primarily legal in nature. Decree 1290/2008 sought to address some of the shortcomings of its implementation by introducing maximum amounts and standardising reparations procedures for selected violations that occurred throughout the conflict. Although Law 1592/2012 introduced a substantial reform, Law 975/2005 had serious design limitations. It only recognised the victims of illegal armed groups and essentially tied reparations to the assignment of responsibility of the demobilising perpetrators by a specialised judge.

This situation was corrected with Law 1448/2011 that covers all victims of the conflict, regardless of their victimiser. It, nevertheless, introduces important cut-off dates for the type of reparations that victims can access. Functioning with a transformative logic that goes beyond compensation, this law seeks to combat poverty and marginalisation by generating a virtuous interaction between reparation and social policies. The transitional justice regime of reparations is complex as it combines judicial and administrative mechanisms, overlapping material and symbolic elements in individual and collective dimensions. Yet, after more than a decade of operation, doubts remain about whether or not it is capable to deliver on its promise to victims. The implementation of reparations has privileged compensation and few victims have actually received awards after undergoing lengthy registration and legal processes. This is particularly important considering the renovation of the framework proposed by the 2016 Final Peace Agreement with the FARC. The reach of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition remains to be defined at present as vital elements of the Agreement are yet to be implemented. While we saw the creation of truth and justice mechanisms dealing with conflict-related crimes, a series of acts of collective acknowledgement of responsibility as well as material contributions by the FARC to reparations, the 2018 change in government will likely have an effect on the way reparations are being carried out.

1 Established by Law 1448/2011, which will be discussed in greater detail below, the Single Registry for Victims is run by the Unit for the Attention and Reparation of Victims also known as the Victims' Unit. The numbers of registered victims presented throughout the report in tables and text are extracted from this database using 1 January 2019 as a reference point. For the latest numbers, see: <https://cifras.unidadvictimas.gov.co/>

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Given this historic moment, the purpose of this policy paper is to map out the current reparation regime available to victims of the internal armed conflict, focusing on its achievements and challenges. It presents the initial findings of the Reparations, Responsibility and Victimhood project based on secondary sources, like academic publications, civil society reports and government evaluations, and fieldwork carried out in 2018. While the 34 interviewees were not selected following a representative sampling procedure, the 25 semi-structured interviews carried out in Colombia in September 2018 and the United Kingdom in April 2018 provided us with a wide range of views on the on-the-ground implementation of reparations in the country. The interviews lasted between 30 minutes and two hours. Key participants, like representatives of donors and civil society organisations, particularly victims, government officials, and (ex-) combatants, were invited to contribute their perspectives. The fieldwork in Colombia focused on four sites, namely Calí, Medellín, Algeciras, and Bogotá, which were selected due to their different experiences of the armed conflict and current state of reparations.

This paper is divided in four main sections. The first section introduces the Colombian armed conflict, focusing on its milestones, victims and typology of harms. The second section describes the reparations landscape, including its ordinary judicial pathways and the complementary transitional justice mechanisms in operation since 2005. The third section consists of an evaluation of the progress made so far in terms of implementation of Law 975/2005 and Law 1448/2011. The fourth section deals with some of the key debates that the system of reparations has faced, emphasising issues of responsibility, eligibility, and the relationship between assistance, development and reparations. The fifth section summarises its main points and adds a brief discussion of what is to be expected from the implementation of the Final Peace Agreement in terms of reparations. Finally, the report concludes with seven recommendations. Textboxes and quotes are used throughout the text to reflect on the state of reparations from the perspective of our interviewees.





The Colombian Armed Conflict and its Victims

The transitional justice project that Colombia embarked on in 2005 distinguished the country from its peers. On the one hand, Colombia aimed to deliver redress in the midst of an ongoing conflict. On the other hand, unlike its Latin American counterparts where reparative policies came after truth commissions, Colombia aimed to deliver redress alongside a truth and justice process. The fact that transitional justice did not come at the end of the conflict, but was intended to bring about the end of politically motivated violence has had serious practical and policy implications. A truth commission, like the one that began operating in 2018,² would have produced a state-sanctioned narrative of the conflict that could have become the basis of a social consensus on the past and eligibility criteria for reparations. The persistence of the conflict despite repeated attempts at demobilisation adds new victims daily. Thus, not only did the redress process begin without a shared understanding of the nature of victimisation, the causes of the violence, and basic eligibility criteria for redress, but also the number of potential beneficiaries changed throughout the process as attacks from violent actors did not abate.

The starting point of the conflict continues to be a matter of debate amongst three groups of scholars. One group refers to the state of permanent conflict that Colombia has found itself in since independence from Spain.³ A second group ties the current conflict to the ten-year long civil war known as *La Violencia* (the Violence) that claimed the lives of nearly a quarter of a million people between 1948 and 1958.⁴ A third group considers the origin of the conflict to lie in the political exclusion generated by the consociational regime that ended *La Violencia* by alternating political power between Liberal and Conservative parties.⁵ These divisions are reflected in the work of the *Comisión Histórica del Conflicto y sus Víctimas* (The Historic Commission on the Conflict and its Victims), the only official body that has taken up the task of characterising the armed conflict in partial fulfilment of the 2012 framework agreement between the

2 Known as the Commission for the Clarification of Truth, Coexistence, and Non-repetition (*La Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*), this commission was created through Decree 588/2017. The result of the 2016 Final Agreement with the FARC, it formally opened on 28 November 2018.

3 Mario Aguilera Peña, *Actores Armados y Población Civil. Las FARC: la guerrilla campesina, 1949-2010. ¿Ideas circulares en un mundo cambiante?* (Corporación Nuevo Arco Iris 2010).

4 Centro de Memoria Histórica, *¡Basta ya! Colombia: Memorias de guerra y dignidad. Informe general grupo de memoria histórica* (Imprenta Nacional 2013).

5 Javier Giraldo, 'Política y guerra sin compasión', In *Comisión Histórica del Conflicto y sus Víctimas* (CHCV) (ed), *Contribución al entendimiento del conflicto armado en Colombia* (Ediciones Desde Abajo 2015).

Colombian government and the FARC. The twelve essays included in the publication present a great disparity with regard to the understanding of the origins and nature of the conflict, as well as its main actors and the victims to be considered.⁶

The delivery of measures of redress have been impacted by this lack of consensus as well as different legal and political characterisations of the conflict as a civil war, struggle against terrorism, war against drugs, 'dirty war,' socio-political violence, and non-international armed conflict throughout its course.⁷ Thus, victims have been covered by a tapestry of legislation that has offered them ever-changing and piecemeal measures that include humanitarian assistance, development, and redress and reparations. When asked about the reference dates established by the first wide-ranging administrative reparations programme in Law 1448/2011, the Constitutional Court found that in such a long conflict any start date could be considered arbitrary. It explained that, in the absence of an agreement on the milestones of the conflict, Congress could use its freedom to legislate in interest of fiscal responsibility and include such cut-off dates as long as it avoided absolute arbitrariness.⁸

1. Historical Context of the Colombian Conflict

The assassination of Liberal presidential candidate Jorge Eliecer Gaitán on 9 April 1948 initiated the period known as *La Violencia*, an armed confrontation between the Liberal Party and the Conservative Party that spilled into the countryside. This period was interrupted between 1953 and 1957 by the military dictatorship of General Rojas Pinilla, who was overthrown and eventually replaced by the *Frente Nacional* (National Front). Foregrounding a national reconciliation process, this 16 year period meant the alternation in power between the two parties that had taken up arms and the exclusion of alternative political sectors, notably the political Left.⁹ Most armed resistance groups active during *La Violencia*, especially those affiliated to the Liberal Party, disarmed and reintegrated into civilian life. Those that remained either became criminal gangs controlled by the state or evolved into a new type of armed group that would become the foundation for the guerrilla groups.¹⁰

6 Comisión Histórica del Conflicto y sus Víctimas (CHCV) (ed), *Contribución al entendimiento del conflicto armado en Colombia* (Ediciones Desde Abajo 2015).

7 Instituto de Estudios Políticos y Relaciones Internacionales (IEPRI), *Nuestra Guerra sin nombre. Transformaciones del Conflicto en Colombia* (Grupo Editorial Norma 2006).

8 Ruling CC-250/2012.

9 Julie Mazzei, *Death Squads or Self-Defense Forces? How Paramilitary Groups Emerge and Challenge Democracy in Latin America*. (The University of North Carolina Press 2009) 80.

10 Gonzalo Sánchez and Peter Bakewell. 'La Violencia in Colombia: New Research, New Questions'. *Hispanic American Historical Review*, 1985, 65(4), 789.

The 1960s saw the emergence of three of the most important guerrillas, each with their distinct ideology and audience. *Ejército de Liberación Nacional* (The National Liberation Army, ELN), inspired by the Cuban Revolution and following Guevarist lines, *Fuerzas Armadas Revolucionarias de Colombia* (The Revolutionary Armed Forces of Colombia, FARC), founded on the basis of a Communist agrarian conception, and *Ejército Popular de Liberación* (The People's Liberation Army, EPL), with a Maoist orientation, proved to be some of the most resilient movements of this time. They were joined, amongst others, by the urban guerrilla *Movimiento 19 de Abril* (19 April Movement, M-19) and the indigenous guerrilla *Movimiento Armado Quintín Lame* (Quintín Lame Armed Movement), both of which demobilised following amnesties in the early 1990s.¹¹ While these mainly rural guerrillas remained weak throughout the 1970s, they grew and consolidated their power in the 1980s in sparsely populated regions, taking advantage of significant economic resources from the cultivation of coca, illegal mining and oil extraction.¹²

The response of the Colombian state to the burgeoning guerrillas was mixed. Acting within the Constitution, it applied a series of states of exception and emergency, restricting liberties in order to facilitate the intervention of its security forces. Moreover, through Decree 3398/1965, later modified by Law 48/1968, it authorised the creation of so-called self-defence groups that could count on the sponsorship of the police force for the provision of arms.¹³ Initially composed of lawful sectors, primarily livestock farmers or local politicians, whose purpose was to reject the guerrillas' extortion campaigns, these self-defence paramilitary groups joined forces with unlawful sectors, especially narco-traffickers, to benefit from state support.¹⁴ The growth of paramilitarism was related to the resistance of sectors within the armed forces, drug trafficking groups, and traditional elites to the peace efforts of the Betancur administration (1982-1986) and Barco administrations (1986-1990). The introduction of the concept internal enemy into counter-insurgency strategy as a response to the guerrillas carrying out normal political activities alongside their illegal armed struggle led to a shift from self-defence to search-and-destroy.¹⁵ The murder of thousands of members of the *Unión Patriótica* (Patriotic Union, UP), the party established by the FARC in 1985, is a prime example of the perverse results of this doctrine supported by Decree 1923/1978 or the *Estatuto de Seguridad* (Security Statute).¹⁶ During this 'dirty war,' the alliance of paramilitary groups,

11 Daniel Pécaut, *Violencia política en Colombia*. (Hombre Nuevo Editores 2003) 46.

12 Ángel Rangel, *Colombia: guerra en el fin del siglo*. (Tercer Mundo 1998) 63.

13 Inter-American Court of Human Rights, *Case of the 19 Merchants v. Colombia*. Judgment on Merits, Reparations and Costs 5 July 2004. Series C No. 109, para. 84(a).

14 Francisco Gutiérrez Sanín, *Estado, control territorial paramilitar y orden político en Colombia*. In Instituto de Estudios Políticos y Relaciones Internacionales (IEPRI). *Nuestra Guerra sin nombre. Transformaciones del Conflicto en Colombia*. (Grupo Editorial Norma 2006).

15 Inter-American Court of Human Rights, 'Second report on the situation of human rights in Colombia', 1993. Chapter II.D Available at: <<http://www.cidh.org/countryrep/Colombia93eng/toc.htm>> Accessed: 7 November 2018.

16 Steven Dudley, *Walking Ghosts: Murder and Guerrilla Politics in Colombia*, (Routledge 2004).

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regional elites, narco-traffickers and security forces promoted the extermination of all political opposition and sought to eliminate support for the Left by 'cleansing' the civilian population.¹⁷

The near continuous peace talks throughout the 1980s led to the demobilisation of a few thousand guerrillas from the M-19, the EPL, and Quintín Lame.¹⁸ These groups became central to the democratisation process culminating in the adoption of the 1991 Constitution. Due to the extreme nature of their violence and increasing pressure from the international community, the Barco administration outlawed paramilitary groups with Decree 1194/1989.¹⁹ Provided they could restructure as self-defence groups, paramilitaries made a quick comeback with Decree 356/1994.²⁰ The legal framework notwithstanding, the violence from both paramilitaries and guerrilla groups intensified throughout the 1990s as both groups modernised and set up functional armies.²¹ The FARC, for example, achieved important military victories after raising recruitment levels and upgrading their weapons.²² Paramilitary groups increased their armed actions and unified their command structure, eventually establishing the *Autodefensas Unidas de Colombia* (United Self-Defence Forces of Colombia, AUC). At the turn of the century, paramilitary groups had about 10,000 combatants divided into ten blocs, while the guerrillas had 21,000 guerrilla fighters distributed among over 100 fronts.²³

2. The Victims of the Colombian Armed Conflict

The absence of a state-sanctioned wide-ranging truth mechanism coupled with the fact that the conflict is ongoing means that the universe of victims is a great unknown of the conflict and constantly expanding. Furthermore, as gross human rights violations tend to occur in a context of intense 'ordinary' violence, it is often difficult to characterise the victimisation by pointing to a clear link with the conflict. Where data has been collected, methodological differences about how to best estimate the numbers of violations render

17 Marc Chernik, 'The Paramilitarization of the War in Colombia', *NACLA Report on the Americas*, 1998, 31(5), 29.

18 These agreements had similar features. The groups were granted access to DDR measures, the possibility of political participation as well as broad amnesties, which excluded 'atrocious crimes.'

19 Winifred Tate. *Counting the Dead. The Culture and Politics of Human Rights Activism in Colombia*. (University of California Press 2007) 51.

20 Jemima García-Godós and Knut Andreas O. Lid. 'Transitional Justice and Victims' Rights before the End of a Conflict: the Unusual Case of Colombia'. *Journal of Latin American Studies*. 2010, 42(3), 492.

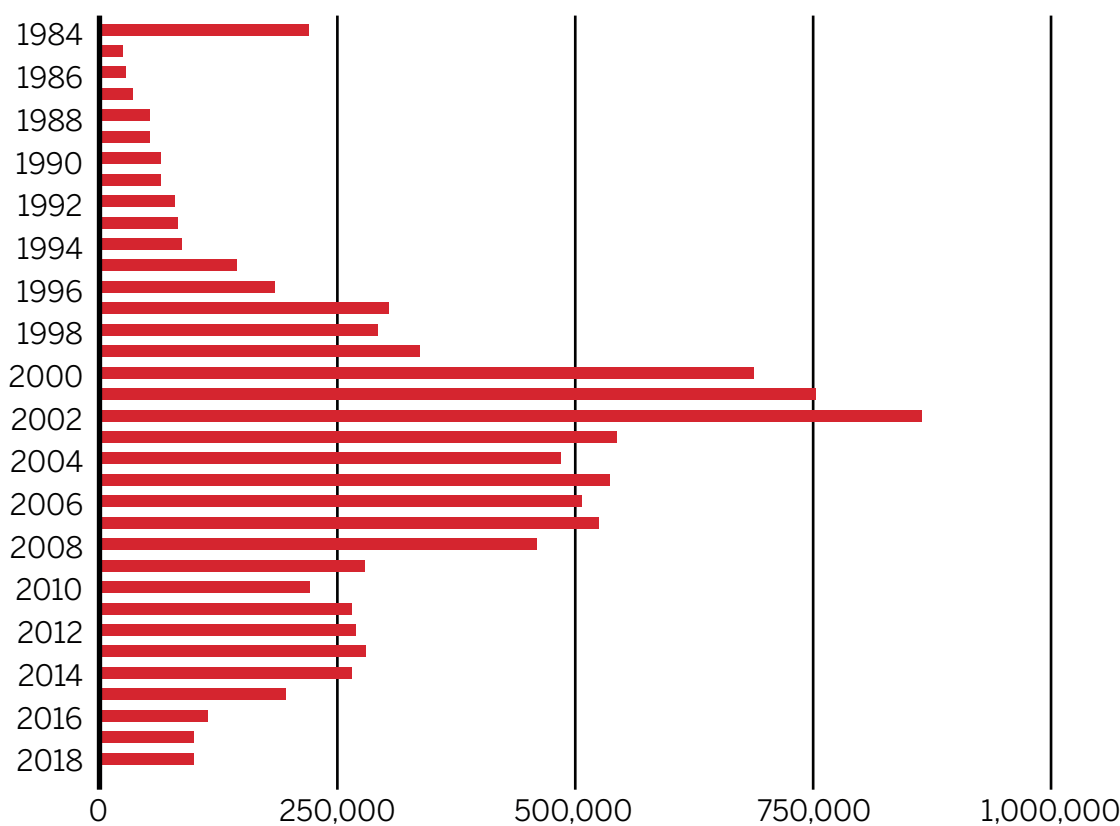
21 Francisco Gutiérrez Sanín. *El orangután con sacoleva. Cien años de democracia y represión en Colombia (1910-2010)*. (Editorial Debate 2014).

22 Ariel Fernando Ávila Martínez, 'FARC: Dinámica reciente de la guerra. En qué está la guerra'. *Revista Arcano*. 2008, 14, 4-24. Available at: <https://issuu.com/arcoiris.com.co/docs/revista_arcanos_14> Accessed: 7 November 2018.

23 Departamento de Planeación Nacional. 2002. 'Plan Nacional de Desarrollo 2002-2006. Hacia un Estado Comunitario'. Available at: <<https://colaboracion.dnp.gov.co/cdt/pnd/pnd.pdf>> Accessed: 23 January 2019.

civil society and government authorities incapable of finding an agreement regarding the magnitude of harms. For instance, numbers reported by CODHES, the largest civil society organisation working on forced displacement, nearly double those registered by the government. Not only does the database of the government agency monitoring forced displacement start in 1995, but numbers are incomplete and underestimated until 2000.²⁴ The fact that indicators generated by different government agencies are not centralised and their emphases differ further complicates mapping the effects of the violence. The *Observatorio de Memoria y Conflicto* (The Conflict and Memory Observatory, OMC), affiliated to the *Centro Nacional de Memoria Histórica* (National Centre of Historical Memory, CNMH), is the first official information system that emerged in 2018 to respond to this predicament and consolidate both government and civil society sources on the conflict.²⁵

Figure 1. Victims included in the Single Registry for Victims based on the year of the victimising event.



²⁴ Diego Otero. 'Experiencias de investigación: las cifras del conflicto colombiano'. 2008, 10 Available at: <<http://www.indepaz.org.co/wp-content/uploads/2009/07/Cifras-1964-2007.pdf>> Accessed: 7 November 2018

²⁵ For more information, see: <http://centrodememoriahistorica.gov.co/observatorio/nosotros/>

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The repertoire of intimidation mechanisms and violence has been extensive and systematic, being directed primarily against the civilian population. According to a report by the National Centre of Historical Memory, the conflict had caused the death of approximately 220,000 people between 1958 and 2012, more than 85% of whom were civilians.²⁶ Based on a data-set that runs between 1966 and 2007, Otero estimates that, of a total of 662,310 homicides, between 7.4% and 7.8% can be considered politically motivated killings, the remainder being a product of common crime. More than half of these victims were civilians.²⁷ The confession of demobilised paramilitaries collected within the framework of Law 975/2005, discussed further below, paints a picture where homicides and enforced disappearance top the list of crimes with more than 25,000 homicides, 1,046 massacres, and 3,551 enforced disappearances.²⁸ The lethal effects of the violence increased steadily between 1982 and 1995, soaring between 1996 and 2002 as paramilitaries and guerrillas expanded their actions.²⁹ By 1 January 2019, there were 218,881 direct victims of homicide and 37,654 direct victims of enforced disappearance in the Single Registry for Victims since 1985. The Conflict and Memory Observatory reports 262,197 dead, 46,813 of whom were combatants, and 80,514 forcefully disappeared, of whom 70,587 remain disappeared, between 1958 and 2018.³⁰

Victimising Act	Direct Victims
Forced Abandonment or Illegal Appropriation of Land	8,909
Terrorist Acts/ Attacks/ Combat/ Harassment	95,708
Threats	400,350
Unlawful detention	19,636
Crimes against Sexual Integrity and Freedom	27,251
Forced Disappearance	47,469
Displacement	7,476,056

26 Centro de Memoria Histórica, supra n 4, at 33.

27 Otero, supra n 24, at 14.

28 Unidad Nacional de Fiscalías para la Justicia y Paz quoted by Indepaz. 'Ley 975 de 2005: Ocho años después, ni justicia ni paz'. 2014, 4, Available at: <<http://www.indepaz.org.co/wp-content/uploads/2014/02/LEY-975veredicto.pdf>> Accessed: 7 November 2018.

29 Centro de Memoria Histórica, supra n 4, at 33.

30 This database seeks to unify different existing registers and databases on the impacts of the internal armed conflict. It triangulates data from 592 sources and 10,236 databases and documents from civil society organisations and state institutions, including legal records. For more information on the sources, see <http://centrodememoriahistorica.gov.co/observatorio/metodologia/fuentes/> The database is available at: <<http://centrodememoriahistorica.gov.co/observatorio/bases-de-datos/>> Accessed: 27 November 2018.

Victimising Act	Direct Victims
Homicide	267,412
Physical Injury	7,627
Psychological Injury	462
Anti-Personal Mines/ Unexploded Ordnance/ Explosive Devices	11,470
Loss of Personal and Real Property	114,312
Kidnapping	32,837
No data	1,180
Torture	10,669
Forced Recruitment of Minors	7,593

Table 1. Direct victims included in the Single Registry for Victims.³¹

Data compiled by Gaviria shows that at the end of the 1980s, the homicide rate in Colombia was triple that of the US and 50 times higher than any European country.³² The question about what can be considered conflict-related violence and what is common or organised crime is still open. Even the most pessimistic estimations do not go over attributing more than a quarter of the violent deaths to the conflict.³³ The Colombian armed conflict is not a 'simple' case of one group fighting another, or taking military action against the state, being more easily understood as a number of interconnected conflicts that continue today. Unlike El Salvador or Guatemala, the high levels of violence Colombians experienced throughout the 1980s were the result of actions taken by multiple actors, some of which cannot be said to have political goals, during a functional democracy.³⁴ Medellín is one of the urban centres that has suffered the worst consequences of the involvement of drug cartels in the conflict. In the 1980s the boundaries between political and criminal violence became increasingly porous in the city. The Medellín Cartel shifted its attention to Leftist groups in the latter part

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- 31 These figures refer to victims registered by 1 January 2019 regardless when the victimising act occurred, that is they include victims before the 1 January 1985. In the case of homicide, forced disappearance and kidnapping, these numbers refer exclusively to direct victims.
- 32 Alejandro Gaviria. 'Increasing Returns and the Evolution of Violent Crime: the Case of Colombia'. *Journal of Development Economics*, 2000, 61, 2.
- 33 Peter Waldmann. *Guerra civil, terrorismo y anomia social. El caso colombiano en un contexto globalizado*. (Grupo Editorial Norma 2007) 233.
- 34 Frances Thomson, 'The Agrarian Question and Violence in Colombia: Conflict and Development', *Journal of Agrarian Change*, 2011, 11(3), 325.

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of the 1980s, having supported a number of paramilitary groups in the beginning of that decade, going as far as founding their own organisation to fight against kidnapping and extortion.³⁵ The Cartel then engaged in a terror campaign against the state in its fight against extradition, placing dozens of bombs around the country and murdering politicians and public figures.³⁶ Although legislation like Law 104/1993 and Decree 444/1993 that provided relief and assistance for victims of terrorist and cartel attacks laid the groundwork for the current reparations programme, these victims are now all but forgotten as attention. Depending on the interest of each specific government and successful peace negotiations, attention has shifted to other types of victims.³⁷



San Antonio Park Medellín: Botero's Pájaros de Paz

Photo credit: Luke Moffett

“the problem is that the Victims’ Law does not take the victims of narco-trafficking into account at all. It never thought about victims that belonged to other groups that are not insurgent groups or armed groups, as such, with a political agenda.”³⁸

The difficulty to demarcate conflict-related violence from common crime notwithstanding, over the past 60 years of conflict there has been considerable suffering registered in Colombia. The *Dirección para la Acción Integral contra Minas Antipersonal – Descontamina Colombia* (The Directorate for Integral Attention Against Anti-personnel Mines – Descontamina Colombia) reports 11,629 victims of anti-personnel mines since 1985, 2,286 of whom were deadly.³⁹

35 Francisco Gutiérrez Sanín and Ana María Jaramillo. 'Crime, (Counter-)insurgency and the Privatization of Security – The Case of Medellín, Colombia'. *Environment & Urbanization*, 2004, 16(2), 22.

36 Semana. 'Cronología de la guerra'. 1990. Published: 29 October <<https://www.semana.com/especiales/articulo/cronologia-de-la-guerra/14051-3>> Accessed: 27 November 2018

37 Interview with research team COL07, Medellín, Colombia, 5 September 2018.

38 Idem.

39 This database is being continuously updated and can be found at: <<http://www.accioncontraminas.gov.co/estadisticas/Paginas/victimas-minas-antipersonal.aspx>> Accessed: 22 November 2018.

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The victims of landmines we interviewed explain that the accident has consequences beyond the physical injury, with family life being affected, leading in some cases to separations and isolation. Recovery is difficult, especially if victims live in rural areas, where the majority of the work is physical in nature. The prosthetic limbs offered by the state programs are not always fit for purpose and they wear out easily, but when 'you talk to the doctors they will say that for the type of work you do, you would need this kind of prosthetic, but that money would help 50 different people.'⁴⁰ The lack of support has left many victims thinking that "the government will not let [them] die insofar as they give [them] medical care, but they don't give [them] medical care so that [they] can rehabilitate"⁴¹ and "become fully re-integrated into their social life."⁴²



The crops of a landmine victim in Algeciras, Neiva

Photo credit: Luke Moffett

"when mines are placed, non-state armed groups say you can't take that path because it is mined but those paths sometimes lead to schools, watering holes, places that they would need to use in order to survive everyday and farm. These are fundamental access points need to use or else their educational life suffers and there are economic consequences when they can no longer use the lands."⁴³

40 Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018.

41 Idem.

42 Interview with research team COL04, Bogota, Colombia, 4 September 2018.

43 Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018.

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After Syria, Colombia was the second country in the world in terms of absolute numbers of displacement at the end of 2015.⁴⁴ There are currently 7,418,168 victims of forced displacement since 1985 registered with the Victims' Unit.⁴⁵ As this is a demand-driven instrument that requires further validation of the claims by the state agency, it underestimates the true magnitude of displacement by about 30%.⁴⁶ While the category of internally displaced person is a relatively new legal construct, the violence and intimidations that Colombians have experienced since at least the period of *La Violencia* have continuously brought people to urban centres. Moreover, a large group of people have been displaced from the countryside due to development-related land-grabs that were concealed by and, to an important extent, fuelled the conflict.⁴⁷ The so-called 'third phase of agrarian reform,' which began in the middle of the 1990s, led to a concentration of land appropriated from smallholdings or collective indigenous and Afro-Colombian territories.⁴⁸ As rural residents were further impoverished as a result, they joined the ranks of the internally displaced as economic migrants. Law 387/1997, known locally as the Law of the Displaced because it established a number of measures for the care, protection, and socioeconomic stabilisation of this population, was the first time that this type of victimisation was taken note of in the country.⁴⁹ The landmark Ruling T-025/2004 by the Constitutional Court used the legal concept of unconstitutional state of affairs to offer special protected status to internally displaced persons. Arising from a *tutela* action, this judgement profiled the Constitutional Court as an important transitional justice actor as it reserved the right to monitor state treatment of internally displaced persons. This monitoring process is carried out through a special chamber within the Court and will continue until such time as the Court finds that the state is no longer in violation of its constitutional duties towards internally displaced persons. It was through this judgement of the Constitutional Court that internally displaced persons were put on the map of transitional justice as a group with special vulnerable status.⁵⁰

44 The Internal Displacement Monitoring Centre, 'Global Report on Internal Displacement', 2016, 27, Available at: <<http://www.internal-displacement.org/globalreport2016>> Accessed 22 November 2018.

45 For latest numbers, see: <https://cifras.unidadvictimas.gov.co/Home/Victimizaciones>.

46 Ibáñez, Ana Maria and Andrea Velásquez. "El Proceso de Identificación de Víctimas de los Conflictos Civiles: Una Evaluación para la Población Desplazada en Colombia." Documento Cede 36, 2006, Available at: <<https://core.ac.uk/download/pdf/6617775.pdf>> Accessed 22 November 2018.

47 Nazih Richani. *Systems of Violence: The Political Economy of War and Peace in Colombia*. (State University of New York 2013).

48 Frances Thomson. 'Why We Need the Concept of Land-grab-induced Displacement.' *Journal of Internal Displacement*, 2014, 4(2), 46.

49 Roosbelinda Cárdenas, "'Thanks to My Forced Displacement": Blackness and the Politics of Colombia's War Victims', *Latin American and Caribbean Ethnic Studies*, 2018, 13(1), 76.

50 Manuel José Cepeda-Espinosa. 'How Far May Colombia's Constitutional Court Go to Protect IDP Rights? *Forced Migration Review*. Special Issue. Putting IDPs on the Map: Achievements and Challenges. 2006, 21-23 Available at: <<https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/full.pdf>> Accessed: 23 November 2018.

A survey of the prevalence of sexual violence in the context of the armed conflict estimated that 18.36% of women in the 142 municipalities with a presence of armed actors had suffered sexual violence.⁵¹ Gender aside, the Single Registry for Victims refers to 26,527 victims since 1985.⁵² Building on T-025/2004, the Constitutional Court stated that sexual violence was 'a habitual, extensive, systematic and invisible practice'⁵³ used across the board by all actors of the armed conflict, including the security forces. It considered that sexual violence was 'not the product of a casual and isolated disorder by low level combatants within the armed organisations; but ... the product of deliberate incentives and sanctions from the organisations' senior leadership or echelons, directed at all of their combatants.'⁵⁴ Of the cases where the group membership of the author is known, 49.5% belonged to the guerrilla, 46% to paramilitary groups, and 1.1% to the security forces.⁵⁵ Women were attacked either because of who they were themselves or who their relations were. Sexual violence against women was committed by paramilitary groups as a means of controlling women who exhibited a level of social and political leadership in their communities, transgressed traditional gender roles or due to their (presumed) support of guerrilla groups.⁵⁶ While the mechanisms arising from the implementation of the Final Peace Agreement are likely to shed more light on the uses of sexual violence by the guerrilla, such practices are known to have been deployed in a more targeted and individual fashion in the territories under their control.⁵⁷ For instance, although it should be noted that the Single Registry for Victims only covers combatants who left the illegal armed group as minors, the FARC are widely known to have controlled the sexuality of the women amongst its ranks through forced contraception or the assignment of a partner.⁵⁸

The National Centre of Historical Memory found that the effects of the armed conflict were more severe amongst those who have been traditionally marginalised, like historically impoverished populations, Afro-Colombian and indigenous groups,

51 Campaña violaciones y otras violencias: Saquen mi cuerpo de la guerra. 'Encuesta de prevalencia de violencia sexual en contra de las mujeres en el contexto del conflicto armado colombiano (2010-2015)'. 2017, 5. Available at: <<https://www.rutapacifica.org.co/images/libros/Encuesta%20prevalencia%20violencia%20sexual%20Colombia.pdf>> Accessed: 23 November 2018. For an executive summary in English, see: https://www.oxfamamerica.org/static/media/files/COLOMBIA_SURVEY_SEXUAL_VIOLENCE_EXEC_SUM.pdf

52 For latest numbers, see: <https://cifras.unidadvictimas.gov.co/Home/Victimizaciones>.

53 Constitutional Court Writ 092/2008.

54 Constitutional Court Writ 009/2015.

55 Centro de Memoria Histórica, supra n 4, at 80.

56 Corporación Sisma Mujer. 'Mujeres en Conflicto: Violencia Sexual y Paramilitarismo' 2009, 44-62, Available at: <<http://www.sismamujer.org/new/wp-content/uploads/2017/12/2009-Mujeres-en-Conflicto-Violencia-Sexual-y-Paramilitarismo.pdf>> Accessed: 23 November 2018.

57 Centro de Memoria Histórica, supra n 4, at 83.

58 ABC COLOMBIA. 'Colombia: Women, Conflict Related Sexual Violence and the Peace Process'. 2013, 10ff, Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/ABColombia_Conflict_related_sexual_violence_report.pdf> Accessed: 23 November 2018.

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and women.⁵⁹ The Single Registry for Victims shows that around 9% of the victims are Afro-Colombians and 2% – indigenous.⁶⁰ Due to the connection that indigenous groups have with their ancestral lands, displacement has an added moral, spiritual and collective impact. One interviewee told us that “what was really harmed was that equilibrium between the individual and the territory, that suffered a rupture. It is not just about money, or building schools, or new roads, or bridges. It is about that harmony between the person and the territory, that is what was affected in the conflict.”⁶¹ The loss of land, cattle and access to sacred places like cemeteries produces a moral harm that goes beyond the loss of livelihood for these groups.⁶² The armed conflict also had consequences for the transmission of culture in these groups as “those who were disappeared from the communities were usually the intellectuals, the people who were the local government, the leaders of the groups, the caciques. So, we lost the knowledge of our language, knowledge of our healing practices and suffered in organisational aspects.”⁶³ The geography of the conflict shows an important overlap between the territories traditionally inhabited by indigenous and Afro-Colombian communities and sites of intense violence, like Cauca, Bojayá, Medio Atrato, in the department of Chocó, and Guaviare.⁶⁴ An index of territorial vulnerability that combines variables that capture socio-economic development, access to justice, fiscal capacity, security and humanitarian assistance, shows areas like Arauca, Vichada, Meta, Guaviare and Nariño to have high and persistent levels of vulnerability between 2008 and 2012.⁶⁵ This means that, as the conflict began to decrease in intensity after 2005, the ethnic minorities who traditionally inhabit these departments faced both a higher risk of harm when compared to people living elsewhere as well as more obstacles to recover due to their marginal status and the socio-economic exclusion.

59 Centro de Memoria Histórica, *supra* n 4, at 25. For reports on the situation of women in conflict, see, amongst others, *La masacre de Bahía Portete: Mujeres wauu en la mira*, *Mujeres y Guerra*. 2010. *Victimas y resistentes del Caribe colombiano*. 2011, and *El Placer. Mujeres, guerra y coca en el Bajo Putumayo*. 2012, all available at: <http://www.centrodememoriahistorica.gov.co/informes/publicaciones-por-ano>.

60 The National Administrative Department of Statistics 2005 census shows that 10% is Afro-Colombian and little over 3% indigenous. Available at: <https://censo2018.dane.gov.co/index.php/#antesydespues_container>. Accessed: 28 November 2018.

61 Interview with research team COL09, Medellín, Colombia, 5 September 2018.

62 Centro de Memoria Histórica, *La masacre de Bahía Portete: Mujeres wauu en la mira* (Taurus 2010), 207

63 Interview with research team COL09, Medellín, Colombia, 5 September 2018.

64 Centro de Memoria Histórica, *supra* n 4, at 53 and 63.

65 Departamento de Planeación Nacional. ‘Índice de Vulnerabilidad Territorial: Resultados 2008-2012’ 2015, 7 Available at: < <https://colaboracion.dnp.gov.co/CDT/Prensa/Publicaciones/03%20%C3%8Dndice%20de%20Vulnerabilidad%20final.pdf>> Accessed: 27 November 2018.

Ethnic Group	Men	Women	LGBTI	N/A
Indigenous	109,060	104,114	43	1,693
None	3,653,668	3,694,583	2,010	55,232
Rom	15,343	14,174		125
Raizal from the Archipelago of San Andres and Providencia	4,776	5,021	2	127
Black/ Afro-Colombian	402,666	362,236	215	5,234
Palenquero	1,038	971	2	15

Table 2. Victims in the Single Registry for Victims based on the differential approach.⁶⁶

The Colombian legal system considers certain groups vulnerable. This justifies the introduction of both the differential and gender approach to reparations in Law 1448/2011, which is explained in greater detail below. While there is no unified definition of vulnerability, article 13 of the Constitution ties vulnerability to the notion of equality. In a bid to avoid discrimination and marginalisation and ensure citizens' real and effective enjoyment of their rights, this article makes it incumbent upon the state to 'promote the conditions to protect those individuals who on account of their economic, physical and mental condition are in obviously vulnerable circumstances.' Thus, for instance, women,⁶⁷ disabled people,⁶⁸ senior citizens,⁶⁹ minors, ethnic minorities,⁷⁰ LGBTQ+⁷¹ groups are covered by the Constitution. As explained above, the Constitutional Court added internally displaced persons to the group of protected persons with Ruling T-025/2004. This judgement also ordered the state to apply a differential approach to the delivery of assistance measures for internally displaced persons, taking into account the inherent vulnerability that comes with gender, age, ethnic origin, and disability. This initiative captures the extreme vulnerability of those who are both internally displaced *and* belong to a class protected by the Constitution and places a higher burden of responsibility on the state for their welfare.⁷²

66 This table includes both direct and indirect victims. Extract from the Single Registry for Victims on 1 January 2019.

67 See, amongst others, Law 1257/2008, Law 1719/2014, and Law 1751/2015.

68 Law 1618/2013.

69 Law 1251/2008.

70 Amongst others, Decree 1953/2014, Decree 2719/2014, Law 70/1993.

71 See article 43-47 of the Constitution for all the groups.

72 See Writ 004/2009 and Writ 382/2010 order special measures for the protection of indigenous people, Writ 092/2008, Writ 098/2013, Writ 009/2015 – for women, Writ 006/2009 for disabled people, and Writ 005/2009 – Afro-Colombians.

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Pastoral Afrocolombiana, Cali Archdiocese

Photo credit: Luke Moffett

“we know as the current society the distinction even though racism is still there, the distinction is based on the economic opportunities that one has. I think it should be more reparation among the poor because it's really pathetic being Black in a discriminating society and being poor at the same time [as you are] Black. So the weight is heavier in this sense. Some are saying it should be collective at the same time and specific depending on the living conditions of the people.”⁷³

73 Interview with research team COL17, Cali, Colombia, 7 September 2018.

Reparations Schemes

Colombia's reparative framework is made up of two separate systems. First, there is the ordinary reparations scheme that refers to standards for legal proceeding, civil norms, civil procedure and the administrative responsibility of the state when a person has suffered harm. Second, there are the transitional justice mechanisms put in place since 2005 to cover the right to reparation of the victims of the armed conflict. This section gives a general description of the ordinary system, followed by a presentation of the judicial and administrative routes implemented specifically for the benefit of victims of the conflict. As the implementation of the reparative mechanisms set out in the Final Peace Agreement is ongoing, this section does not cover the Comprehensive System of Truth, Justice, Reparation and Non-Repetition and its interaction with the existing measures.

1. Reparations through the ordinary judicial system

Colombian criminal law gives victims of a crime the right to comprehensive reparation of the damages suffered. Following conviction, the criminal accusatory proceeding establishes a stage known as comprehensive reparation incident where the victim must prove the damages suffered to be granted full or partial reparation through conciliation or a judge's decision. The author of the crimes or the third party responsible then becomes liable for comprehensive reparation.⁷⁴ The jurisprudence of the Constitutional Court demonstrates a broad interpretation of victims' rights that goes beyond economic reparation to include the right to be treated with dignity, to participate in the decisions that affect them, and to obtain effective judicial protection of the real enjoyment of their rights.⁷⁵ The minimum standard for the comprehensive reestablishment of victims' rights is the guarantee of their rights to truth, justice and compensation for damages suffered.⁷⁶

Article 90 of the Colombian Constitution establishes administrative liability when damage is caused by a government entity to a person who is not obligated to bear it under the law. Actionable grounds are fault in rendering a public service,⁷⁷ liability for hazardous activities and liability for causing damage through the violation of the

74 According to article 106 of Law 906/2004, victims of criminal offences taking place after 1 January 2005 have 30 days to file a reparations' request after a sentence is issued against the defendant.

75 Ruling C-228/2002 states that access to justice 'can entail various judicial remedies...to obtain the truth about what happened, the punishment of those responsible, and the material reparation for the incurred damages.'

76 See Constitutional Court Rulings C-580/2002, C-228/2002 and C-250/2011.

77 According to State Council Ruling in Case 14880/ 30 November 2006, *falla del servicio* arises due to lateness, irregularity, inefficiency, omission, or the absence of the service to be delivered.

right to equal protection.⁷⁸ The State Council has been consolidating jurisprudence on reparation for gross human rights violations committed by state agents or third parties with their acquiescence, notably incorporating reparation criteria established by the Inter-American Court of Human Rights starting 2002. Thus, it has added reparation measures such as satisfaction measures, rehabilitation, and guarantees of non-repetition to its traditional package of compensation. Furthermore, it presumes moral harm suffered by direct and indirect victims of a violation.⁷⁹

The Colombian Civil Code provides for both direct and indirect, or vicarious, extra-contractual civil liability actions. The person who commits an illicit act through negligence, wilful misconduct, or fraud and causes any bodily, moral, or material damage is obligated to indemnify the victim(s) under article 2341. Article 2347 explains that principals are liable for reparations when the injury is caused by their employees' performance of their duties. Given the principle that damages awarded must be comprehensive and cover the entirety of the harm caused, they are usually the same in all gross violations, regardless of the type of liability.

International bodies, like the United Nations Human Rights Committee⁸⁰ and the International Labour Organisation's Committee on Freedom of Association,⁸¹ are another avenue for reparations. The Constitutional Court has established that decisions on individual cases by human rights protection bodies are binding on the Executive branch as well as all government entities and authorities, including judicial bodies. To facilitate the receipt of these awards, Law 288/1996 creates an expedited mechanism to promptly deliver compensation without any additional legal procedures. This has benefitted the petitioners that have come before the Inter-American System in particular as the Inter-American Court of Human Rights has undertaken to discuss and evaluate the Colombian domestic reparations regimes in a number of recent judgements. This Court first referred to the administrative reparations programme in the *Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, where it found such a programme may 'constitute one of the legitimate ways of satisfying the right to reparation ... in conjunction with other

78 According to the third section of the State Council Ruling Case 7136/ 29 April 2004, *responsabilidad por daño especial and responsabilidad por riesgo creado* arise when administrative entities, acting legitimately, produce a damage that exceeds the normal burden citizens should be expected to carry. The right to compensation is based on article 13 of the Constitution, referring to the right to equality, and article 95.9 of the Constitution, which states that all individuals must contribute the state finances under equal and just conditions.

79 See State Council Ruling Case 29273/ 19 October 2007: third section; State Council Ruling Case 16996/ 20 February 2008: third section; State Council Ruling Case 19031 and Case 38222/ 14 September 2011: third section; State Council Ruling Case 29764/ 21 November 2013: third section; State Council Ruling Case 32988/ 28 August 2014: third section.

80 See *Bautista de Arellana v. Colombia*, Communication No. 563/1993, U.N. Doc. CCPR/C/55/D/563/1993(1995).

81 See, amongst others, Case No. 3092/ 5 June 2014. Definitive Report No. 381/ March 2017, Case No. 3034/ 2 May 2013. Definitive Report No. 374/ March 2015; Case No. 2935/ 31 March 2012. Definitive Report No. 370.

measures of truth and justice'⁸² where the scale of the violations committed overwhelms the capacity of domestic courts.⁸³ In the *Case of Vereda La Esperanza v Colombia*, it 'recognised and valued the efforts developed by the state in terms of reparation for armed conflict victims, through the mechanisms in the Victims' Law,'⁸⁴ but argued that 'it is necessary that the state specifies if the use of such reparation mechanism has been effectively used by victims, and in addition, if the use of this route necessarily implies renouncing other means of redress, such as judicial proceedings (nationally or subsidiarily at the international level).'⁸⁵ This judgement sees the Court trying to strike a balance between the choice of governments to implement large-scale administrative reparation programmes and the interests of the individual petitioners that come before it.

2. Reparations within the Transitional Justice Framework

The transitional justice mechanisms that operate in Colombia function in a context where both domestic and international law bodies have been engaged in developing instruments for the reparation of conflict-related harms, as we saw above. Recognising that the ordinary legal avenues had limited success in tackling the victimisation phenomenon arising from the armed conflict, the Colombian state began implementing a wide range of measures nearly three decades ago to help these victims access basic services. These measures, initially dubbed humanitarian aid, included monetary compensation for victims of the drug cartels throughout the 1980s and 1990s.⁸⁶ When they later expanded to cover other categories of victims of the armed conflict, like internally displaced persons,⁸⁷ the foundation for what would become the current administrative reparation programmes was laid. Reparations were first tied to a demobilisation process in 2005, although, as explained above, a number of guerrillas had previously undergone such reintegration processes prior to this date. Despite the fact that the amnesties granted these groups excluded a range of crimes committed outside of combat, such as atrocities, kidnapping, and extortion, they were part of a pact of institutionalised oblivion.⁸⁸ The state directed the concrete victims of these violations to forget and those who fell outside of the scope

82 Judgment on Preliminary Objection, Merits, Reparations and Costs 20 November 2013, Series C No. 270, para. 470.

83 It later developed this analysis in *Case of Yarce et al. v Colombia* Judgement on Preliminary Objection, Merits, Reparations and Costs 21 November 2016, Series C No. 325.

84 Judgment on Preliminary Objection, Merits, Reparations and Costs 31 August 2017, Series C No. 341, para. 265.

85 Ibid., para. 264.

86 Decree 444/1993.

87 Law 387/1997.

88 Ana María Gutiérrez Urresty. 'Las amnistías e indultos, un hábito social en Colombia'. In: Camila de Gamboa Tapias (ed.) *Justicia transicional: teoría y praxis*. (Universidad del Rosario 2006), 388-408.

of these amnesties towards the ordinary system of justice. There were, consequently, no wide-ranging state-sanctioned truth or reparations processes before 2005. Pressure from the international community, local civil society, and various interventions by the Constitutional Court and international experts, particularly the International Centre for Transitional Justice, eventually led to the adoption of Law 1448/2011 that broadens the scope and coverage of reparations available through the transitional justice framework.⁸⁹

2.1. The Special Legal Process of Law 975/2005

The announcement of a unilateral ceasefire and the intention demobilise by the leaders of the unified command of the paramilitaries, the *Autodefensas Unidas de Colombia*, on 1 December 2002 was followed by nearly three years of intense negotiations. Law 975/2005, known as *Ley de Justicia y Paz*, the Justice and Peace Law, regulated their demobilisation under a *sui generis* model, referred to as the Justice and Peace model, which balanced the interests of peace with the rights of victims to justice, truth, and reparations. As a transitional justice mechanism, criminal trials could only be used to punish the worst crimes, leaving the possibility of amnesties or pardons open for other crimes committed in the context of the armed conflict. It also introduced a procedure for prioritisation and management of cases under the control of the Executive branch. This body could initiate the process of demobilisation by presenting lists of demobilising individuals to a specially created branch of the Office of the Prosecutor General, the *Unidad Nacional de la Fiscalía para la Justicia y la Paz* (National Unit of the Prosecutor for Justice and Peace) that would then take statements on serious crimes from these individuals.⁹⁰ Instead of a model of blanket amnesty, the Justice and Peace approach attributed responsibility in the judgment and incentivised perpetrators to contribute to truth and reparations in exchange for reduced sentences.

“I grew up with his daughter and his son, we were a really close family [with the neighbour across from us] and he was the person helping the paramilitaries kill my father, he betrayed my father. Knowing the truth, in a certain level, helps you but also can harm you because realising the people you think are part of your life, our friends, our neighbours betray you and kill your father, that was really hard.”⁹¹

89 Jamie Rowen. 2017. *Searching for Truth in the Transitional Justice Movement*, Cambridge: Cambridge University Press.

90 Article 33 of Law 975/2005.

91 Interview with research team COL02, Belfast, U.K., 11 April 2018.

The pathway for victims to obtain reparations remained judicial in this special legal process, largely mimicking that set out in normal criminal proceedings. Once the criminal responsibility of the demobilising individual was established, victims' reparation requests were heard in a special stage called *incidente de reparación* (reparation incident). The Justice and Peace Court would listen to the victim and assess damages in order to decide on the reparation measures due.⁹² As this was effectively a demobilisation, disarmament and reintegration project geared primarily towards disbanding the paramilitary groups, with reparations tacked on, the victims of state agents were never considered. While for some victims, the act of participating in the legal proceedings itself can have reparative effects,⁹³ the reparative mechanisms afforded victims by Law 975/2005 are broad and follow the international law principles set out in the 2005 UN Basic Principles of the Right to Remedy and Reparations. For compensation purposes, the system established that the main person responsible for the payments would be the defendant. If their resources were insufficient, the armed bloc to which s/he belonged or the armed group would collectively take on this responsibility the grounds of solidarity.⁹⁴ The Fund for the Reparation of the Victims it created contained both legal and illegal assets seized or supplied by ex-combatants.⁹⁵

Due to the slow pace of the proceedings, the lack of access by victims, the limited assets handed over by ex-combatants, and the few opportunities to assess collective damages, this process fell short of its reparative potential. In light of its predicted failure, Decree 1290/2008 created an 'Administrative Programme for Individual Reparations.' Victims registered in the judicial processes of Law 975/2005 could obtain compensations in advance from the public budget for the categories the programme recognises, namely murder, enforced disappearance, kidnapping, torture, sexual violence and forced recruitment. Once proceedings were completed, the amount obtained in this way would be deducted from the final reparations sum. Nevertheless, this programme was created as a response to a particular problem, not a policy framework to address the structural problems of reparations. It did not represent a coherent and systematic strategy aimed to resolve the problem of the armed conflict and its victims. Compensation awards were not based on the acknowledgement of victims and the state's responsibility in relation to them, but on the principle of solidarity with their plight. As Law 975/2005 had not covered victims of violations and crimes committed by state agents, neither did Decree 1290/2008, a key grievance of the victims' and human rights movement in Colombia.

92 Article 23, Law 975/2005.

93 Interview with research team COL02, Belfast, U.K., 11 April 2018.

94 Article 42, Law 975/2005.

95 Constitutional Court Ruling C-370/2006 added all legal assets seized from those individuals who demobilised



Enilda Jiménez Pineda in her family's lands

Photo Credit: Personal archive Enilda Jimenez

Enilda Jiménez Pineda fled her home as a result of the conflict the first time as a child and the second time as a young woman. Her brother was killed by a guerrilla group in 1987 and, as a result of the Justice and Peace Process, she learned that her father was killed by a paramilitary group in 1995 as they took over her family's lands. She has been working in the humanitarian sector for nearly 20 years and, for the last ten years, she has been representing her family in the Justice and Peace hearings. She met José Everth Veloza García, alias HH, her father's confessed killer, in an effort to understand the truth behind that murder and to press for receiving reparations for her family. This is Enilda in a visit to some of the lands that belonged to her father.

Given the small number of judicial proceedings that had been completed under this legislation, a discussion began in 2012 about the need for reform. There was consensus amongst legal professionals about the fact that difficulties relating to reparation incidents emanated from their high resource and time demands and the lack of adequate knowledge on the side of judges about how damages should be assessed. Yet, there was little agreement about how to respond to these challenges. While some believed that the reparations incident should be eliminated completely so that reparations would be granted exclusively through the administrative channel, others thought the reparations incident should be moved to the end of the process after the defendant was sentenced.⁹⁶ Law 1592/2012 introduced a substantial reform that adopted prioritisation and macro-criminality criteria in the legal process. It also simplified the comprehensive reparation incident into an incident for the identification of damages and established the standardisation of the judicial reparation system for individual and collective reparation under the administrative programmes already in existence under Law 1448/2011.

2.2. Reparations in Law 1448/2011

Pressure from national and human rights groups who criticised the absence of comprehensive reparations that seemed to privilege welfare of (ex-)combatants over the rights of victims, repeated intervention of the Constitutional Court over the treatment of internally displaced persons, and international scrutiny through the Inter-American Human Rights System as well as various UN bodies were key in the expansion of the transitional justice framework on reparations.⁹⁷ Consequently, the reparation proposal of Law 1448/2011, or *Ley de Víctimas y Restitución de Tierras*, the Law of Victims and Land Restitution⁹⁸ and its complementary norms⁹⁹ is ambitious. Although Law 1448/2011 does not constitute an acknowledgement of state responsibility as an agent generating damages, it presents an important advancement by comparison to Law 975/2005. It is the first official recognition of the existence of the armed conflict. Further, as it is not primarily a demobilisation and reintegration instrument, shifts focus to the care, assistance, and comprehensive reparation of victims, regardless of their victimisers.

96 Paul Selis. 'Propuesta de criterios de selección y priorización para la ley de Justicia y Paz en Colombia'. 2012 Available at: <<https://www.ictj.org/sites/default/files/ICTJ-COL-PaulSelis-Propuesta%20de%20criterios%20de%20selecci%C3%B3n%20y%20priorizaci%C3%B3n-2012.pdf>> Accessed: 7 November 2018.

97 Nicole Summers. 'Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict?'. *Harvard Human Rights Journal*. 2012. 25, 223-4.

98 Referred to as the Victims' Law from here on.

99 Legislative Decrees 4633/2011, 4634/2011 and 4635/2011 have the same normative standing as Law 1448/2011.

First, there is no requirement that the victimiser should have demobilised or come forward before a Justice and Peace Court. Second, it eliminates the bias against victims of state agents. Unlike Law 975/2005, the Victims' Law establishes a specific policy strategy for the reparation of victims and a new specialised institutional framework.

The Victims' Law contains measures across all the comprehensive reparation components established in international law, namely restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. It is based on the understanding that repairing those who have suffered harm arising from the violation of their human rights and violations of international humanitarian law in the context of the armed conflict implies contributing to the reconstruction of the life and dignity of victims in their individual, collective, material, moral, and symbolic dimensions.¹⁰⁰ Furthermore, in line with the strict conceptual distinction between humanitarian assistance measures, reparation, and social policy measures drawn by the State Council,¹⁰¹ the Constitutional Court,¹⁰² and the Inter-American Court of Human Rights,¹⁰³ the law recognises the distinct function of each of these mechanisms. Thus, reparations cannot simply offer social public services or humanitarian assistance as these are already rights that victims are entitled to as citizens. There are two cut-off dates in Law 1448/2011 that determine the scope and the coverage of the reparation measures, 1 January 1985 and 1 January 1991. Victims of events taking place before 1 January 1985 can only receive symbolic reparations and do not have to register in the Single Registry for Victims.¹⁰⁴ Article 141 defines these measures to be all actions that aim to preserve historic memory, non-repetition, public acceptance of the harms, the public request for forgiveness and re-establishing the dignity of the victims. 1 January 1991¹⁰⁵ is used as a cut-off date for land restitution.

Reparative efforts are coordinated by *Unidad Administrativa Especial para la Atención y Reparación a las Víctimas* (Special Administrative Unit for the Assistance and Reparation of Victims, UARIV or Victims' Unit)¹⁰⁶ and the *Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas* (Special Administrative Unit for the Management of the Restitution of Dispossessed Lands or Land Restitution Unit),¹⁰⁷

100 See Chapter I, articles 1-2, and Chapter IX for measures of satisfaction of Law 1448/2011.

101 State Council, Contentious Administrative Chamber, Ruling Case 08001-23-31-000-2009-00878-01(AC)/ 29 April 2010: fifth section; State Council, Ruling Case 08001-23-31-00-2009-00895-01(AC)/ 8 April 2010.

102 Constitutional Court Ruling C-1199/ 2008; First Revision Chamber Ruling T-085/ 2009; Sixth Revision Chamber Ruling T-510 of 2009; Ninth Revision Chamber Ruling T-458 of 2010; Constitutional Court Ruling C-914/ 2010.

103 Inter-American Court of Human Rights. *Case of González et al. ("Cotton Field") v. Mexico* Judgment on Preliminary Objection, Merits, Reparations and Costs, 16 November 2009, Series C No. 205.

104 Article 3 of Law 1448/2011.

105 Article 75 of Law 1448/2011.

106 From hereon Victims' Unit.

107 From hereon Land Unit.

both newly created government entities by this legislation. Land restitution, or where in-kind restitution is impossible, compensation, mixes a judicial and administrative component. The administrative reparations programme deals with components of in-kind housing restitution, satisfaction, rehabilitation and guarantees of non-repetition. Law 1448/2011 creates an individual and a collective pathway for reparations. Access is defined through the *Plan Nacional de Atención y Reparación Integral a las Víctimas* (National Plan for Victims' Care and Reparation). Due to the comprehensive nature of reparation and its complementary approach, the individual and collective routes it delineates are regarded as interdependent.

This reparations' model is differential and transformative. Despite terminology like restitution that would suggest that Law 1448/2011 operates on a rationale of returning the victims to their position before the harm was sustained, this piece of legislation is actually inspired by a forward-looking logic that would see reparations being used to improve victims' socio-economic status. As it is believed that the marginalisation of certain groups and individuals affected them in their capacity to fully exercise their citizenship and contributed to their vulnerability to conflict-related harm, Law 1448/2011 seeks to deliver reparations with a distributive justice mind-set that aims to attack the causes of the conflict. The tangible benefits made available to victims through this legislation aim to have a sustained positive effect that reduces, if not altogether eliminate, the socio-economic exclusion of victims, transforming their everyday lives.¹⁰⁸ The direct link between this way of understanding the armed conflict and its victims and the ultimate goal of achieving social transformation through the application of the Victims' Law is the differential treatment given to protected groups and individuals. Article 13 of Law 1448/2011 gives differential treatment that prioritises access to humanitarian assistance, care and comprehensive reparations to 'populations based on age, gender, sexual orientation and disability.' The measures adopted will have to 'respond to the particularities and degree of vulnerability of each of these populations' in order to 'contribute to the elimination of the discrimination and marginalisation that could have caused the victimisation.'

Standards for victim participation and guidelines for effective coordination between national and local entities are outlined in Law 1448/2011. Victims' active participation is necessary both for the differential approach to take effect and because victims are in charge of selecting the reparation pathway they consider most suitable. Participation is promoted through the accompaniment model, which includes accompaniment to the compensation's investment and comprehensive support of the victim, more thoroughly explained below. Granted that no single entity is responsible of fulfilling the complex obligations of victims' care, Law 1448/2011 created the *Sistema Nacional de Atención*

¹⁰⁸ For an in-depth analysis, see Rodrigo Uprimny Yepes. 'Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice'. *Netherlands Quarterly of Human Rights* 2009, 27(4).

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y *Reparación Integral a las Víctimas* (The National System for the Assistance and Comprehensive Reparation of Victims, SNARIV). As the table below shows, this system is made up of a set of governmental and public agencies at both national and regional level as well as private organisations in charge of formulating and implementing specific plans and projects. Difficulties of coordination have been known to arise more than occasionally. The fact that the Victims' Unit is not hierarchically superior to any of these (state) agencies and institutions, but has a role that is limited to advising and managing the safe passage of victims through the reparations' pathway, has not helped matters. The efficiency of delivery of reparations is curbed to some extent by the fact that the Victims' Unit is not in a position to enforce its orders relative to the responsible agencies and ministries.

Assistance Measures

Measure	Component	Responsible Agency
Healthcare	Enrolling victims in the social security system	Territorial agencies/ Municipality
	Comprehensive care protocol with a psychosocial focus	Ministerio de Salud
Educational support	Educational spaces for early childhood	National government in coordination with territorial agencies
	Free access to education	
	School retention measures	Municipality
	Adult literacy	Programa Nacional de Alfabetización
	Priority in admission for secondary education	Public secondary education institutions
	Priority in educational loans	Instituto Colombiano de Crédito y Becas en el Exterior (ICETEX)
	Career counselling	Servicio Nacional de Aprendizaje (SENA)

Measure	Component	Responsible Agency
Humanitarian aid for victims of forced displacement	Immediate humanitarian assistance	Territorial agencies
	Emergency humanitarian assistance	Unidad de Víctimas
	Transitional humanitarian assistance	Territorial agencies, Unidad de Víctimas and Instituto Colombiano de Bienestar Familiar
	Support for return and relocation processes	
Reparation measures		
Measure	Component	Agency Responsible
Housing restitution	Preferential access to subsidy	Ministerio de Vivienda and Ministerio de Agricultura
	Capacity building for territorial agencies in the formulation of plans	
Credits and liabilities	Debt relief and forgiveness	Territorial agencies
	Access to loans	Instituto Colombiano de Crédito y Becas en el Exterior (ICETEX)
Compensation via administrative route	Compensation	Unidad de Víctimas
Rehabilitation measures	Psychosocial and healthcare program	Ministerio de Salud
	Meeting centers and the rebuilding of social fabric	Ministerio de Salud
Satisfaction measures	Symbolic reparation	Unidad de Víctimas
	Military service suspension	Unidad de Víctimas, Ministerio de Defensa
	National Victims’ Day	Centro de Nacional de Memoria Histórica

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Measure	Component	Responsible Agency
	National Memory Museum	Centro de Nacional Memoria Histórica
	Human rights and historical memory programme	Ministerio de Educación, Ministerio de Cultura, Programa Presidencial para la Protección y Vigilancia de los Derechos Humanos y Derecho Internacional Humanitario, Departamento Administrativo de la Ciencia, Tecnología e Innovación, Alta Consejería para la Equidad de la Mujer, among others
Prevention and protection measures as well as guarantees of non-repetition Guarantees	Risk map	Programa Presidencial para la Protección y Vigilancia de los Derechos Humanos y del Derecho Internacional Humanitario
	Network of Human Rights Observatories	Ministerio del Interior, Observatorio de Derechos Humanos y Derecho Internacional Humanitario del Programa Presidencial y Unidad de Víctimas
	Early Warning System	Defensoría del Pueblo
	Community Leaders Program	Defensoría del Pueblo
	Contingency Plan	Territorial agencies
	Training of public officials	Ministerio de Educación, Ministerio Público y Programa Presidencial para la Protección y Vigilancia de los Derechos Humanos y del Derecho Internacional Humanitario
	Training for public force officials	Ministerio de Defensa

Measure	Component	Responsible Agency
	Strategy against impunity	Programa Presidencial para la Protección y Vigilancia de los Derechos Humanos y del Derecho Internacional Humanitario
	Communication strategy for non-repetition	Unidad de Víctimas
	Reconciliation pedagogy	Unidad de Víctimas
	Collective reparation programme	Unidad de Víctimas

Table 3. Institutional responsibilities for the implementation of reparations through Law 1448/2011 based on Decree 4800/2011.

2.2.1. Land Restitution under Law 1448/ 2011¹⁰⁹

Estimations of the amount of lands that have been lost throughout the conflict vary between 4 and 10 million hectares and more than 40% of the internally displaced persons in the Single Registry for Victims have abandoned lands.¹¹⁰ Law 1448/2011 envisioned a massive, fast, and strong restitution mechanism as the solution to conflict-related land dispossession. The restitution action is a mixed transitional mechanism guided by specific rules like the reversal of the burden of proof in favour of the victims. The Land Unit, created by this legislation, is in charge of the courts and judges specialised in land restitutions. Restitution procedures before the courts bar figures of common civil law such as the procedural accumulation, the excluding of co-adjuvant intervention, and previous exceptions. Given this expedited process, decisions on restitution are reached only once in an absolute four-month term after a 30-day probation period. Once the Land Unit receives the victims' request, it brings the lawsuit before the judges on their behalf in those areas previously declared zones affected by generalised violence by the government. Monetary compensation is due to third parties who are in good faith exempt from fault and to those whose original assets cannot be restored. Said compensation is paid at market value at the moment of the ruling with domestic public debt titles.

109 Description based on articles 71-201 of Law 1448/ 2011.

110 Office of the United Nations High Commissioner for Refugees. 'Operación Colombia. Las tierras de la población desplazada'. 2012. 2, Available at: <https://www.acnur.org/fileadmin/Documentos/RefugiadosAmericas/Colombia/2012/Situacion_Colombia_Tierras_-_2012.pdf> Accessed: 24 January 2019.

There has been significant criticism against the scope, measures, and implementation of land restitution under Law 1448/2011.¹¹¹ First, the obligation to exhaust all the administrative channels of the Land Restitution Unit before taking a legal route as a procedural requisite has been criticised along with the creation of a supposed right of surface that limits restitution where an agro-industrial project is involved.¹¹² The exclusive focus of the restitution on property, excluding movable assets, and, until Constitutional Court Ruling C-360/2016, failure to include second occupiers in the universe of victims due land restitution, have also come under fire. Although the presumption that all those who are found occupying land previously in the use of victims are victimisers had now changed, when judges specialised in restitution administer the compensations of second occupiers, they are left wondering “how victimised or vulnerable are these people so that they went on to occupy somebody else’s land? It is very difficult to say how far they participated in the conflict. It is clear that they benefitted from the situation, but did they displace people?”¹¹³ Given that land titling on this scale has never been attempted in Colombia, the Victims’ Law represents an important positive step. One specific transformative element of Law 1448/2011 that has been lauded is its commitment to joint land titling to underscore gender-justice and address the traditional marginalisation of women as landowners.¹¹⁴

2.2.2. Administrative Programme for Individual Reparations¹¹⁵

According to the model put forward here, comprehensive reparation goes beyond restitution and compensation. It includes state accompaniment that guarantees the effective enjoyment of rights related to, amongst others, education, health, housing, employment and income generation programs. Additionally, the state must take actions to restore victims’ dignity, preserve memory, recover truth, and create the conditions to guarantee non-repetition of the events.

Victims enter the ‘reparation pathway’ by registering a form managed by the Victims’ Unit. This can be filled out by the victim at the Victims’ Unit, the Office of the Ombudsman, the Office of the Public Prosecutor, or any office of the Municipal Ombudsman. The

111 For a summary of these arguments, see the position put forward by the plaintiffs in Constitutional Court Ruling C-781/2012.

112 Aura Patricia Bolívar Jaime et al. *Debates sobre la acción de restitución*, (DeJusticia 2017).

113 Focus group interview with research team COL16, Cali, Colombia, 7 September 2018.

114 Claudia Marcela Rodríguez Rodríguez. ‘La ley de restitución de tierras desde la perspectiva de género’. *Justicia Juris*, 10(1), 63. Available at: <<http://www.scielo.org.co/pdf/jusju/v10n1/v10n1a06.pdf>> Accessed: 24 January 2019.

115 Description based on article 132 of Law 1448/2011, article 149 of Decree 4800/2911, Decree 1377/2014, and Victims’ Unit Resolution 64/2012.

Public Ministry has also organised massive registration events around the country. The facts related to the violation suffered should be stated in a precise, clear manner in this declaration. They should include the date and all the circumstances relating to the harm(s) suffered and any evidence such as documentation of complaint filed with the Police at the time. The form will then be transferred to the Victims' Unit, which is given 60 days to evaluate it. Inclusion in the Single Registry of both individual and collective victims is based on the initial analysis of the application on formal grounds, the identification of the individual or collective victim, and the verification of the facts, especially their relationship to the conflict.¹¹⁶ While this process is ongoing, the victim is entitled to immediate humanitarian assistance from the regional agencies of the Unit. The Unit must inform the person who made the statement or an immediate family member of its decision. If it finds in favour of the victims and they are included in the *Registro Único de Víctimas* (the Single Registry for Victims), the civil servant who notifies them of the outcome is responsible to explain the steps to follow. If the decision is negative, the victims can file a *recurso de reposición* (an administrative appeal) with a civil servant of the Unit who then has five days to respond. If this appeal is not granted, the victim has the possibility of escalating the appeal to the Director of the Unit who will respond within five days. Once they are registered, the Unit offers victims legal and psychosocial accompaniment through the reparative process. The only measure the Unit is directly responsible for is compensation, with the rest of the measures being granted by the agencies in charge of the appropriate social policy as shown in the table above.

Monetary Compensation Measures

The compensation offered to victims aims to account for the nature and impact of the victimising act, the damage caused, and the victims' current state of vulnerability,¹¹⁷ using a differential approach and following the principles of progressiveness and gradualness. The victimising acts and corresponding amounts are laid out in article 149 of Decree 4800/2011¹¹⁸ and are as follows:

116 Jairo Rivas. 'Official Victims' Registries: A Tool for the Recognition of Human Rights Violations'. *The Journal of Human Rights Practice*, 8(1), 2016, 121.

117 Based on the jurisprudence of the Constitutional Court, a document of the National Planning Department explains that a victim is considered vulnerable when s/he does not enjoy the rights of identification, health, education, food, housing, family reunification, and income generation. Available at: <<http://colaboracion.dnp.gov.co/CDT/Politica%20de%20Victimas/Anexo%20Te%CC%81cnico%20-%20SSV.pdf>> Accessed: 7 November 2018.

118 These amounts are the same as in Decree 1290/2011, which regulated the reparations programme of Law 975/2005. According to article 148 of Decree 4800/2011, the exact amount due is determined by the Victims' Unit based on a number of factors like the nature of the impact, whether it is individual or collective, the relationship to the victimising act, the type of impact, i.e. loss of material assets, medical and psychological impacts, physical impacts, food-related risk and livelihood risk, the time passed between the victimising act and the compensation request, and the differential approach.

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Category of Victim	Amount in minimum salaries	Rough amount in USD ¹¹⁹
(1) Forced disappearance and (2) assassination (to be paid out to relatives, i.e. indirect victims)	40 to be paid out per individual and divided amongst the family nucleus ¹²⁰	USD 10,500
Direct victim of (3) kidnapping and (4) injuries that result in permanent Disability	40 to be paid out per individual	USD 10,500
Direct victims of (5) torture, inhumane, and degrading treatment, (6) crimes against sexual integrity and freedom, (7) forced recruitment torture if released before 18 years-old	30 to be paid out per individual	USD 7,900
(8) Forced displacement	17 to be paid out per household ¹²¹	USD 4,500

Table 4. Compensation amounts available for different categories of victims.

A tool titled *Programa de Acompañamiento para la Inversión Adecuada de los Recursos* (Accompaniment Programme for Adequate Resource Investment) is also part of this pathway. The Unit offers accompaniment through this mechanism on the most adequate option for victims to invest their compensation so that they may build their livelihood, in line with their expectation, personal needs, and local realities. Within the different kinds of investment open to victims, there are redeemable bonuses or access to technical or professional training, the possibility of creating or strengthening of productive enterprises or assets, acquiring new or used housing and improving these, as well as a provision for rural land acquisition.

119 Based on the 2019 minimum salary of COP 829.116 and the COP-USD exchange rate on 17 January 2019.

120 The distribution of compensation amongst the relatives follows the guidelines set out in article 150 of Decree 4800/2011.

121 Compensation for forced displacement is granted to the family unit in line with paragraph 3 of article 132 of Law 1448/2011 and article 159 of Decree 4800/ 2011. Constitutional Court Ruling C-462/ 2013 found household compensation in this case to be constitutional.

“The government does not seem to understand that when they sign up for these productive products like growing avocados, it takes a year or two years for them to actually be productive. So, what happens in the meanwhile? How are people going to feed themselves or their children? What the state should do is give money in cash so that people can provide for themselves and their children in the time that it takes for these crops to become productive. This is a real problem because they end up in debt by the time it takes for them to be productive. For instance, I have a field where I grow green beans, having borrowed money from different people. Now I get enough to feed myself and my family and to pay the loans. Once I sell all that, I have to start over by borrowing more money and by continuing the cycle where I grow crops by going into debt.”¹²²

Rehabilitation Measures

Rather than defining the concept of rehabilitation, Law 1448/2011 specifies the measures that it comprises. Article 135 stipulates that rehabilitation will consist of a ‘group of strategies, plans, programmes and actions of a legal, medical, psychological and social nature,’ which aim to ‘restore the physical and psychosocial conditions of the victims.’ The state is charged with the establishment of a rehabilitation programme that includes ‘both the individual and collective measures that allow victims to work in their family, cultural, work, and social environment and to exercise their basic rights and liberties in an individual and collective manner.’

Under Law 1448/2011, rehabilitation is focused on one substantive measure, namely *Programa de Atención Psicosocial y Salud Integral a Víctimas* (Programme for Psychosocial and Comprehensive Healthcare for Victims, PAPSIVI). It establishes its guidelines in line with the orders of the Constitutional Court and determines its structure, functions, and operation.¹²³ Decree 4800/2011 further regulates these aspects and Conpes¹²⁴ document 3726/2012 deals with the political strategy for implementation. This programme considers victims’ psychosocial and health damages in the individual, family and community spheres. It aims to mitigate the emotional suffering, contribute to their physical and mental recovery, and the reconstruction of the communities’ social fabric.¹²⁵ From a perspective of comprehensive reparation, the psychosocial approach is

122 Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018.

123 The guidelines of this programme articulated by the Department of Health and the Victims’ Unit are available at: <<https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/PS/Documento-Marco-papsivi-2017.pdf>> Accessed: 7 November 2018.

124 The National Council on Social and Economic Policy (*Consejo Nacional de Política Económica y Social*) is a mechanism that advises the government on socio-economic development.

125 Chapter IV of Law 1448/2011.

deemed transversal as it will have to be included in all of the interventions on behalf of the victim. Access to the programme does not spell the end of the reparation process, but is a mandatory step so that victims can leverage the other care and reparation measures. Its two main components are psychosocial and comprehensive healthcare, both of which are based on a characterisation and/or diagnostic of the damages suffered and articulated in a care plan.

“While the programme adheres to a holistic vision of rehabilitation that aims to rebuild victims’ livelihoods and mitigate damages sustained, implementation has revealed this concept to be aspirational as the focus has primarily been on physical and psychological measures.” “There are a lot of protocols and a lot of legal means through which victims could access reparations in terms of health. But the question is how far are these actually implemented on the ground by doctors? For instance, the current measures that are in place do not really deal very well with violence that is not recent... There are problems with continuity of design and a lack of understanding of the harms that women suffered in different regions with PAPSIVI. If you are Psychology graduate and you have your degree this doesn’t necessarily mean that you are able to deal with victims. Even as graduates, a lot of medical professionals are not able to understand issues of gender because they never received this kind of training and lack an understanding of gender as something that goes through all types of harm. With the Victims’ Law, there are a lot of promises on paper and a lot of things that health care professionals should comply with, but they lack implementation.”¹²⁶

There are three main types of measures afforded to victims as legal accompaniment. Chapter II of Law 1448/2011, which is especially dedicated to victims’ rights within judicial proceedings, establishes a set of obligations related to information, counselling, and victims’ support with respect to legal avenues. Victims can access legal accompaniment services and assistance from specialised personnel in any claim or stage of the process. In the case of forced disappearance, for instance, victims may ask for support in the exhumation or identification stages. Furthermore, the law introduced special measures to facilitate the access to justice of female victims, and especially, of sexual violence victims.

126 Interview with research team COL03, Bogota, Colombia, 4 September 2018.



Sylvia Quintero showing us her family's box in the garden of the Museo Casa de la Memoria in Medellín.¹²⁷

Photo credit: Luke Moffett

Three members of Silvia Quintero Cano's family have been disappeared. Luis Carlos Quintero Cano, Silvia's brother, was disappeared in 1992 presumably by the FARC in Bello, Antioquia. His disappearance was followed by that of another sibling, Jaime Enrique Quintero Cano, in March 1995 when serving in the military. He was only 23 and the father of now football star Juan Fernando Quintero, playing in the national Colombian team. Carlos Quintero Palacio, Silvia's father, is disappeared since 1999 when he was working on a farm in Doral, Magdalena Medio, presumably by paramilitaries. While approximately 9000 bodies have been recovered, leading to the identification and return of over 4000 victims of forced disappearance,¹²⁸ the Office of Prosecutor General reports that it will not be possible to identify nearly 2000 bodies of those recovered.¹²⁹ Silvia is still waiting for her three family members to be returned.

127 For the story of the Memory Garden and the Museum, see <<https://www.eltiempo.com/archivo/documento/CMS-15772216>> Accessed: 30 November 2018.

128 Interview with research team COL20, Bogotá, Colombia, 10 September 2018.

129 Fiscalía General de la Nación. 'Día internacional de las víctimas de desaparición' 2018. Available at: <<https://www.fiscalia.gov.co/colombia/derechos-humanos/dia-internacional-de-las-victimas-de-desaparicion-forzada/>> Accessed: 30 November 2018.

Satisfaction Measures

This component aims, among other things, to recognise the right of victims, their family members, and Colombian society more generally to know the truth about the events, motives and circumstances surrounding the violations. It covers two dimensions, historic truth, produced by state agencies and civil society, and judicial truth, emerging from judicial proceedings against perpetrators of atrocious crimes. Although the latter is developed in the criminal justice component, it is understood as a complement of the former. Judges operating within the land restitution system are aware that ‘truth, reparation and justice work together’ and they “are contributing to reconstructing the truth about the conflict [as they] are telling a different story about what happened.”¹³⁰

Satisfaction measures accessible through the regional bodies of the Victims’ Unit, the National Centre for Historical Memory (CNMH),¹³¹ and judicial rulings, regardless on which side of the cut-off date of 1 January 1985 the harm was suffered. Non-judicial truth is based on Law 1424/2010 and Law 1448/2011 and has two main lines developed under the National Victims’ Plan, *Programa de Derechos Humanos y Memoria Histórica* (The National Programme of Human Rights and Historical Memory) and *El Mecanismo No Judicial de Contribución a la Verdad Histórica y la Reparación* (Non-Judicial Contribution Mechanism to Historical Truth and Reparation). Other satisfaction measures are the suspension to the duty to serve in the military, the National Day of Memory and Solidarity with Victims, the National Museum of Memory. Following the guidelines of the Local Committees on Transitional Justice,¹³² the Victims’ Unit must previously consult with the victims on the type of satisfaction measures requested and the best fashion to implement these.

130 Focus group interview with research team COL16, Cali, Colombia, 7 September 2018.

131 Chapter IX of Law 1448/ 2011 calls for the creation of the *Centro Nacional de Memoria Histórica* (Centre for Historical Memory, CMH), which was to absorb the work done by the *Grupo Nacional de Memoria Histórica* (Historical Memory Group, GMH) under the National Commission for Reparation and Reconciliation (CNRR) of the Justice and Peace Law, both of which shut their doors in December 2011.

132 These entities have a multitude of tasks, such as developing action plans under the framework of local development plans for the comprehensive care, assistance and reparations of victims, coordinating the actions of the agencies that make up the SNARIV at the department, district, and municipal levels, and coordinating the inclusion and social investment activities for the vulnerable population.

2.2.3. Administrative Programme for Collective Reparations

Law 1448/2011 created a programme of collective reparations. It was aimed at social and political groups and organisations as well as communities defined through a legal, political or social recognition of the collective based on their culture, the area they inhabit, or their common purpose. According to its articles 151 and 152, collective reparation covers the damage produced by the violation of collective rights, the serious and clear violation of members' individual or collective rights, or the collective impact of the individuals' rights' violation. This pathway is a methodological and institutional tool with two main stages, the formulation and approval of the *Plan Integral de Reparación Colectiva* (Comprehensive Collective Reparation Plan, PRIC) and its implementation. As the trust deficit in the state is quite high as a result of the human rights violations and breaches of international humanitarian law suffered by these groups, both stages can be said to have reparative effects as they contribute to acknowledgement, restoration of dignity, and recognition of rights. As one civil society actor stated,

the reason why we are interested in collective reparations is that oftentimes individual reparations have become tied together with economic reparations so that now reparations are seen as indemnities for damage suffered as an individual, and, thus, unrelated to any kind of truth process. People get their money and they forget about digging deeper into the truth.¹³³

Decree 4800/2011 specifies that the programme contain measures of restitution, compensation, rehabilitation, satisfaction, and non-repetition guarantees, developed through the Comprehensive Collective Reparation Plans. Insofar as 'it aims to eliminate discrimination and marginalisation schemes of collective subjects, which could have contributed to the victimising events,' collective reparation will have a transformative and differential approach.¹³⁴ Article 226 of this decree explains it comprises the following components:

- i) recovery of the state's own institutional structures through actions and measures seeking to strengthen the permanent presence of institutions;
- ii) collective construction of political citizenry through the promotion of participation and the strengthening of subjects to collective reparation in the public aspects of decision-making and advocacy;

¹³³ Interview with research team COL07, Medellín, Antioquia, Colombia, 5 September 2018.

¹³⁴ Article 222, para. 2, of Decree 4800/ 2011.

- iii) reconstruction of the community, social and/or political projects affected through the recognition of victimisation, collective damage and its reparation through material, political and symbolic measures;
- iv) reconstruction of the social and cultural fabric of the subjects to collective reparation;
- v) community rehabilitation linked to psychosocial attention;
- vi) reestablishment of the conditions that allow and strengthen the existence and role of communities, groups, and social and political organizations;
- vii) linkage of collective reparation material measures with other public policy measures on social, economic, cultural, and political rights; and
- viii) historical memory construction as a contribution to the right to truth of collectives.

Ethnic Law, Decree 4633/2011, Decree 4634/2011, and Decree 4635/2011 further regulate this programme for the benefit of indigenous peoples, Roma people, Black, Afro-descendant and Raizal communities. While under international law collective reparations have traditionally concentrated on indigenous groups and ethnic minorities, Decree 4800/2011 has allowed other civil society to seek redress for their collective harm, such as human rights defenders and trade unions. As one civil society group argued,

the labour movement isn't looking for money, it is looking for more measures of a symbolic kind, like the reconstruction of historic memory so that the country understands who are the victims, who are the people responsible for their victimisation and who benefited as a result of that violence that occurred. They also want to appeal to the government to transform labour legislation adopted during the conflict that contained regressive rights.¹³⁵

135 Interview with research team COL10, Medellin, Colombia, 5 September 2018.

The Performance Of Reparations In Colombia

These reparations programmes are one of the most ambitious public policy efforts by the Colombian state. A recent report found that ‘the number of victims that Colombia’s reparation programme aims to serve is far broader and larger than any other reparation programme, in both absolute terms and relative to population size’ even excluding land restitution measures.¹³⁶ While 19% of Colombia’s total population are registered victims due to receive reparations, no other case studied had reached more than 1%. The programme shows similar ambition with regard to the victimising acts included as it is the most comprehensive programme across 45 reparation policies in 31 countries in transition studied. For instance, the decision to extend compensation to internally displaced persons has placed a high burden on the state, even if is distributed at a household level, rather than individually. The nearly 7.5 million such victims in the Single Registry for Victims make up more than 88% of total number of victims. The report warns that there is a risk that its very ambition in terms of size, implementation, and compliance will ultimately lead to its downfall.¹³⁷ The question of whether the government had promised to do too much and will end up delivering too little was a recurring theme in our interviews. Many have doubts about the concrete progress of implementation and the (lasting) effects of these policies on the lives of those they aimed to “make good.”¹³⁸

This section attempts to capture the progress of the implementation of reparations, but it is worth noting that such an evaluation is met with a series of difficulties. First, like in the case of land restitution, there is a great deal of disparity between the main conclusions of existing reports. While some sectors report considerable success,¹³⁹

136 Kathryn Sikkink et al. ‘Evaluation of Integral Reparations Measures in Colombia. Executive Summary’. 2015, 6. Available at: <https://pdf.usaid.gov/pdf_docs/PA00KSXQ.pdf> Accessed: 7 November 2018

137 *ibid.*, 5.

138 Interview with research team COL03, Bogota, Colombia, 4 September 2018; Interview with research team COL03, Bogota, Colombia, 3 September 2018. Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018; Focus group interview with research team COL16, Cali, Colombia, 7 September 2018; Interview with research team COL25, Bogota, Colombia, 20 September 2018.

139 The main proponents of the success and progress of restitution have been the Colombian state, particularly the government and the judicial branch, and like-minded sectors. Op-eds by former Secretary of Agriculture, Juan Camilo Restrepo, illustrate the main points of this group. Available at: <<https://www.semana.com/nacion/articulo/juan-camilo-restrepo-defiende-politica-tierras/342186-3>> Accessed: 24 January 2019.

others show mediocre implementation results.¹⁴⁰ These disparities have different origins. First, this may be due to the type of the measurement used and kind of study carried out. The benchmark of the victimisation based on estimates paints a different picture than progress based on real numbers of victims who have been in receipt of reparations. Moreover, primarily quantitative process indicators, such as investment amounts and numbers of measures have been granted, that may be indicative of coverage, do not match the qualitative perception indicators on the victims' personal satisfaction.¹⁴¹ Second, the information on the different components and interventions is not only not systematised, but the baselines used by the different reports do not coincide with the reported actions. For example, in the case of reparations directed to individuals belonging to ethnic minorities, the reports of the last two years are contradictory as the tools used to collect data changed between the two reports.¹⁴² Third, reports on specific types of reparations, like the Victims' Unit account of rehabilitation, present inaccuracies or ambiguities as they use different reference categories for a total amount of victims, rather than simply referring to the totals in the Single Registry for Victims.¹⁴³

1. Reparations under Law 975/2005

As of December 2016, nearly COP 80 billion, or USD 25.1 million,¹⁴⁴ mostly from public funds, has been distributed in compensation. That amount was allocated to little over 4,000 victims of the 6,884 individuals recognised by rulings of Justice and Peace Courts. This is an insignificant number considering that half a million victims are registered claimants victims under Law 975/2005.¹⁴⁵ Out of the 25 enforced sentences, only 13 compensations ordered have been paid out.¹⁴⁶

140 The main points of these critiques are summarised by Polo Democrático Alternativo Senator Jorge Enrique Robledo at: <<https://www.polodemocratico.net/blogs-pda/117-jorge-enrique-robledo/2456-la-verdad-se-abre-paso-en-restitucion-de-tierras>> and the NGO Forjando Futuros at: <http://www.forjandofuturos.org/noticia_interior.php?id_ent=404> Accessed: 24 January 2019.

141 For a comprehensive study on land restitution, see Aura Patricia Bolivar Jaime et al. *Debates sobre la acción de restitución* (DeJusticia 2017).

142 Comisión de Seguimiento y Monitoreo a los Decretos Leyes 4633, 4634 y 4635 de 2011 de Comunidades Étnicas Víctimas del Conflicto. 'Seguimiento y Monitoreo a los decretos Leyes de Comunidades Étnicas Víctimas del Conflicto. Quinto Informe al Congreso de la República de Colombia'. 2017, 65. Available at: <<https://www.contraloria.gov.co/documents/20181/462047/Quinto+Informe+al+Congreso+Decretos+Leyes+de+V%C3%ADctimas+%C3%89tnicas+-+Final+18-08-2017.pdf/362636ae-59f2-4185-bed0-2ee9394f4eb8?version=1.0>> Accessed: 7 November 2018

143 For instance, the National Development Plan 2014-2018 refers to 800,000 victims while the psychosocial care goal referred by the Department of Health for 2014-2018 was of 490 000, but this figure is nowhere near the millions of victims in the Single Registry.

144 Based on the COP-USD exchange rate on 28 January 2019.

145 Unidad de Víctimas, 'Informe Ejecutivo'. 2006. 2. Available at: <<http://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/informeejecutivoseptiembre2016.pdf>> Accessed: 7 November 2018.

146 *ibid.*, 7 – 8.

It is worth saying that these figures do not coincide with the nearly COP 100 billion that the fourth report of the *Comisión de Seguimiento y Monitoreo al Cumplimiento de la Ley 1448 de 2011* (Follow-Up and Monitoring Commission on the Implementation of Law 1448/2011) puts forward as the figure for payments made between 2012 and 2016.¹⁴⁷

2. Land Restitution under Law 1448/2011

As of 8 January 2019, the Unit for Land Restitution reports a total of 120,233 registration requests at the administrative stage of land restitution in the *Registro de Tierras Despojadas y Abandonados Forzosamente* (Dispossessed and Forcibly Abandoned Land Registry), presented by 83,645 individuals for 107,922 properties. The administrative proceedings have been finalised in 67,997 of requests, and 43,645 have not been registered and 24,353 have. Of the latter, 17,367 are reviewed by judges. There have been 4,721 rulings covering 8,861 restitution requests, which saw the restitution of 332,251 acres for the benefit of 43,020 people. A total of 52,506 restitution cases have been finalised, counting both the non-registered requests and cases resolved through judicial rulings. This makes up little over 43% of the requests made. Regarding restitution processes for ethnic peoples' territories, the Land Unit reports 279 cases requested or initiated ex officio, 66 have passed the analysis stage, 60 are in process of being analysed, 52 have reached the lawsuits stage, and 101 precautionary measures ordered by judges.¹⁴⁸

Considering that issues around land titling and tenure have been instrumental in causing and sustaining the armed conflict, the low numbers of claims registered points to either the process being too difficult for victims or distrust in the institutions created by Law 1448/2011.¹⁴⁹ Notwithstanding the reversal of the burden of proof, many face difficulties in showing tenure or ownership due to the high levels of informality and a generalised lack of up-to-date or systematic information on landholdings by the state. Moreover, the very nature of the armed conflict and displacement hinders the claimants from making a case for restitution based on use because the neighbours who could support their declarations are missing, probably having been displaced themselves.¹⁵⁰

147 Comisión de Seguimiento y Monitoreo al Cumplimiento de la Ley 1448 de 2011. 'Cuarto informe al Congreso de la República sobre la implementación de la Ley de Víctimas y de la Restitución de Tierras'. 2017, 150. Available at: <<http://observatoriofiscal.contraloria.gov.co/Publicaciones/Cuarto%20Informe%20Comisi%C3%B3n%20de%20Seguimiento%20y%20Monitoreo%20al%20cumplimiento%20de%20la%20Ley%201448%20de%202011.pdf>> Accessed: 7 November 2018

148 Unidad de Restitución de Tierras. 'Estadísticas de Restitución de Tierras'. 2019. Available at: <<https://www.restituciondetierras.gov.co/estadisticas-de-restitucion-de-tierras>> Accessed: 7 November 2018

149 Cristián Correa. 'From Principles to Practice Challenges of Implementing Reparations for Massive Violations in Colombia'. 2015. 23. Available at: <https://www.ictj.org/sites/default/files/ICTJ_Report_ColombiaReparationsChallenges_2015.pdf> Accessed: 7 November 2018.

150 Paula Martínez Cortés. 'The Victims and Land Restitution Law in Colombia in Context. An Analysis of the Contradictions between the Agrarian Model and Compensation for the Victims'. 2013. 15. Available at: <<https://www.tni.org/files/download/martinez-victims-law-web.pdf>> Accessed: 24 January 2019.

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When speaking about secondary occupiers, a judge specialised in land restitution explains, “it is very difficult to characterise the victim who comes and asks for restitution. What is the nature of the violence that made this person leave? We know about the fracture of the social fabric suffered, the neighbours are no longer there, the village has changed so it is very difficult for us to establish what this particular person endured.”¹⁵¹ Furthermore, the continued control of large rural areas by armed groups prevents victims from registering, as many who try are routinely threatened, killed, or displaced again.¹⁵² The slow pace of restitution has been criticised,¹⁵³ but resolution is likely to be even further delayed from now on as more complex cases where several claimants and counter-claimants are involved are only now being forwarded by the Land Unit.¹⁵⁴ Data from the Land Unit showed that the average duration of the judicial phase of was nearly four times longer than the four months given by Law 1448/2011.¹⁵⁵ Experts from the National University have concluded that, at the rate that restitution has been carried out, it would take another century for all the lands dispossessed during the conflict to be returned to owners or users.¹⁵⁶

The restitution of land has social, economic and cultural implications for the victims of dispossession.¹⁵⁷ Displaced *campesino*, or peasant, communities and Afro-Colombian, and indigenous groups have emphasised the importance of ancestral lands to their identity.¹⁵⁸ For instance, more than the positive economic effect that restitution would have for her and her family, Enilda Jiménez Piñeda sees the return of their properties as “very symbolic” because “these things represent our dignity.” Going to court was trying for Enilda because “it’s a painful story, going to the hearings, listening to the paramilitaries confessing their crimes, that was almost destroying [me], listening to those horrible things.” It was also challenging because her family eventually had to seek private legal representation as they “felt neglected in many stages of the process” lasting nearly a decade. The ‘bureaucratic approach’ of the Land Unit seemed to be focused on their performance indicators, rather than the experience of the victim as she engaged with the process. Yet, she thought to herself, “I need the land back, I need

151 Focus group interview with research team COL16, Cali, Colombia, 7 September 2018.

152 Human Rights Watch. ‘The Risk of Returning Home Violence and Threats against Displaced People Reclaiming Land in Colombia’ 2013. 22-52, Available at: <<https://www.hrw.org/sites/default/files/reports/colombia0913webwcover.pdf>>. Accessed: 24 January 2019.

153 Amnesty International. ‘A Land Title Is Not Enough. Ensuring Sustainable Land Restitution in Colombia’ 2014. 43, Available at: <<https://www.refworld.org/pdfid/54788a224.pdf>> Accessed: 24 January 2019.

154 Focus group interview with research team COL16, Cali, Colombia, 7 September 2018.

155 See Constitutional Court Ruling T-415/ 2013 for an analysis of the process in the administrative stage.

156 Quoted by El Espectador in ‘Colombia ajustara sus previsiones sobre restitution de tierras a desplazados’ 2014 Available at: <<https://www.elespectador.com/noticias/judicial/colombia-ajustara-sus-previsiones-sobre-restitucion-de-articulo-520307>> Accessed: 24 January 2019.

157 Peace Brigades International Colombia. ‘Land: Culture and Conflict’ 2017. 80, Available at: https://issuu.com/pbicolombia/docs/181201_land_english_electronic Accessed: 24 January 2019.

158 Interview with research team COL09, Medellin, Colombia, 5 September 2018.

the money we [lost] back then but I also need everybody to know who my father was and who is my family.” In the process of reclaiming her family’s dispossessed lands, Enilda began to reconstruct her father’s story, eventually clearing his name with the community who had accused him of being a guerrilla collaborator. As the issue of the land restitution remains unsettled, victims can find a dignifying element to the truth that these proceedings provide them with.

3. Compensations Received

The Victims’ Unit reports that a total of 615,560 awards of an approximate value of USD \$4.6 billion were granted between 2009 and 2016.¹⁵⁹ These benefited 580,415 victims, 32,557 of whom received two or more compensation awards.¹⁶⁰ 87% of all known compensations were granted to forced displacement victims and immediate family members of homicide victims. When making the comparison between the total universe of victims included in the Single Registry for Victims and the total number in receipt of administrative compensation, the greatest lag is forced displacement. Only 2.7% of the victims of forced displacement have been compensated,¹⁶¹ compared to the 33% of forced disappearances and 30.5% of homicides.¹⁶²

Despite the fact that there are only three years left of implementation, it is clear that compensation based on Law 1448/2011 is at an embryonic stage. Only approximately 7% of victims have been compensated and most compensations resulted from the application of Decree 1290/2008.¹⁶³ The same is true for the prioritisation regime built into Law 1448/2011 with the aim of addressing the vulnerability of protected groups. Prioritisation criteria introduced under this guise only began to be implemented in 2016 under the Victims’ Law and delays in relation to senior citizens over 70 years old, the LGBT+ community, disabled victims, and victims of explosive devices and landmines are now apparent. Thus, the compensations paid out to 16.35% of forcefully displaced seniors and 3.25% of the landmine victims are the result of prioritisation under the previous reparations regimes.¹⁶⁴

Victims are increasingly frustrated with the lack of concrete results and some doubt whether anything else has been achieved with the Victims’ Law other than a “transition

159 The period for the report is justified due to the fact administrative compensations were already being paid out to victims based on Law 418/1997 and Decree 1290/2008 before Law 1448/2011 came into force.

160 Comisión de Seguimiento y Monitoreo al Cumplimiento de la Ley 1448 de 2011, supra n 147, at 146.

161 *ibid.*, 150-1.

162 *ibid.*, 158.

163 *ibid.*, 149.

164 *Ibid.*, 154.

from being ignored by the state to being abandoned by the state, because so much was promised and it is not going to be delivered.”¹⁶⁵ Referring to an older member of an organisation he is directing, one social leader explained that he “lived by himself, he is elderly and in theory prioritised. Getting some sort of resources would change his quality of life and he has heard on the radio that the Victims’ Unit is giving out reparations, but he is wondering why that is not happening.”¹⁶⁶ He added that “it takes 15 to 20 years to recover from a landmine accident and by the time you do, you are facing other health issues as you age.”¹⁶⁷ Deficient implementation is always on victims’ minds as members of different organisations are “dying as we speak” and the “government is delaying, and delaying, and delaying.”¹⁶⁸

Supported by a number of reports quoted above, our research underscored a sense amongst victims and their representatives that the existence of generous legislation like the Victims’ Law is no guarantee for the actual receipt of reparations. Rather, the law is a window of opportunity and it depends on the efforts and persistence of individual victims whether or not they ever see any benefits from it.¹⁶⁹ The issue is that not all victims are able to navigate the system equally well and some may not even be willing to engage in such a long process with unclear results. This was certainly the case of Enilda Jiménez Piñeda and her family. She drew strength from her 21 siblings, but remained the only member of her family group who followed the proceedings against her father’s killer, José Everth Veloza García, alias HH, as he demobilised under Law 975/2005. As she puts it, “I am the only person within my family that did this this, but they also found a way to heal themselves, they found it going to church, found it going to the psychologist and we can see ourselves suffering, having many side effects.”¹⁷⁰ This story is not unique: the way that implementation has worked in practice has meant that, as victims become disillusioned with the delayed response from the state, they seek alternatives and cope or self-care the best way they know how. Some turn to suicide,¹⁷¹ others “talk of divine punishment” in the face of impunity, and still others “engage with an organisation and become social leaders.”¹⁷² Victims are often resilient in the face of hardship, but this resilience should not be forced upon them as a consequence of ineffectiveness of response.¹⁷³

165 Interview with research team COL25, Bogota, Colombia, 20 September 2018.

166 Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018.

167 Idem.

168 Interview with research team COL14, Medellin, Colombia, 6 September 2018.

169 Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018.

170 Interview with research team COL02, Belfast, UK, 11 April 2018.

171 Interview with research team COL04, Bogota, Colombia, 4 September 2018.

172 Interview with research team COL03, Bogota, Colombia, 4 September 2018.

173 Interview with research team COL04, Bogota, Colombia, 4 September 2018.

Debates Surrounding Reparations in Colombia

This section captures some of the most important debates surrounding the delivery of reparations through the transitional justice framework in operation since 2005. The three points addressed here, namely eligibility, responsibility for reparations, and the link between development, assistance and reparations directly map onto the themes of the Reparations, Responsibility and Victimhood in Transitional Societies project. Reparations are the subject of dispute in (post-)conflict societies because they require a great deal of resources, especially when they respond to harms sustained by victims of protracted conflicts as it is the case in Colombia. Moreover, as they engage multiple actors, whose interests are not always easy to harmonise, both the design and implementation stage of reparations are the subject of a balancing act where the rights of victims are the centrepiece.

1. Issues around Eligibility

An issue that caused controversy from the beginning of discussions regarding a reparations programme was who should be considered a victim. Initially, the government's position aligned with Decree 1290/2008, was that only victims of illegal armed groups should be considered amongst possible beneficiaries. The government argued that providing reparations for a victim alleging harm by state agents would violate the presumption of innocence of public officials. Furthermore, it could result in an inflation of claims before the contentious-administrative jurisdiction, as it would appear that the state accepts responsibility for damages caused throughout the armed conflict. The victims' movement and human rights organisations denounced this position for deviating from international definitions and discriminating against victims of state agents. The National Movement of Victims of the Crimes of the State (*Movimiento Nacional de Víctimas de Crímenes de Estado*, MOVICE) is an umbrella organisation of more than 200 victims' groups founded as a result of this exclusion. Since 2005, it has been the most vocal opponents of introducing distinctions between victims of the internal armed conflict based on a selective use of international human rights law or international humanitarian law.¹⁷⁴

174 Juan Pablo Vega Lugo. 'Memorias emergentes: las consecuencias inesperadas de la Ley de Justicia y Paz en Colombia (2005-2011)'. *Estudios Socio-Juridicos*, 17(2), 33.

Law 1448/2011 established a concept of victim-beneficiary that closely matches internationally accepted definitions. The victim is defined by article 3 for the purposes of reparations as a person who has suffered harm (i) caused by a grave violation of human rights or grave infraction of international humanitarian law, (ii) committed 'in connection to the internal armed conflict,' and (iii) which occurred on or after 1 January 1985.¹⁷⁵ Close family members of those extra-judicially executed or forcefully disappeared, as well as those who suffered harm as a result of intervening to assist a victim in danger or to prevent the victimisation, are also considered victims. Further to this, three aspects surrounding the eligibility criteria aroused broad political and legal debate: the reference dates of 1 January 1985 and 1 January 1991 the requirement that the abuse suffered be connected to the armed conflict, and the exclusion of combatants associated with illegal armed groups.

The Constitutional Court revealed itself to be an important transitional justice actor due to repeated interventions in response to *tutela* actions from various sectors of Colombian society. Using this mechanism created by the 1991 Constitution to resolve questions about potential violations of citizens' fundamental rights, the Court closed the debate on each of these points. The first noteworthy contribution of the Court pre-dates the adoption of Law 1448/2011, but had a direct effect on the design of the reparations programme. The analysis of the Court of the treatment of internally displaced persons in Ruling T-025/2004, where it highlighted problems with information and service provision, found their situation to be 'unconstitutional.' As it directed the state to improve its practices, it reserved the right to continuously monitor the measures taken by the state to this effect until it was satisfied with the improvements in their circumstances.

Internally displaced persons had seen some level of recognition with Law 387/1997 that established a range of assistance measures for their benefit, but they were excluded from the coverage of the administrative reparations programme emerging from Law 975/2005. The conceptualisation of internally displaced persons has changed with the Victims' Law. Where they previously were understood as the subjects of collateral damage due to relief, like the victims of disasters, they are now regarded as victims in their own right and displacement – a specific conflict-related harm that should be redressed. This progress is welcome by many as there is growing acceptance of the link between different types of harms and the propensity of certain individuals and groups to be the subject of harm due to historical injustices.¹⁷⁶ Internally displaced victims are covered by compensation measures for the first time, and have specific rights to return

175 Land restitution has 1 January 1991 as a cut-off date and requests for symbolic reparation do not have a cut-off date.

176 Donny Meertens. 'Forced Displacement and Gender Justice in Colombia. Between Disproportional Effects of Violence and Historical Injustice'. 2012. ICTJ/ Brookings. Available at: <http://www.peacewomen.org/assets/file/disp_forced_displacement_and_gender_justice_in_colombia-between_disproportional_effects_of_violence_and_historical_injustice.pdf> Accessed: 24 January 2018.

and the restitution of their previous living conditions,¹⁷⁷ which in some cases includes restitution of land and property.¹⁷⁸ Furthermore, because Law 1448/2011 recognises the precariousness associated with displacement, it introduces a differential approach to dealing with these victims, prioritising them in the delivery of reparations.¹⁷⁹ Nevertheless, due to fiscal concerns, Decree 4800/2011 limits compensation to 17 minimum salaries per family unit, making no provision about how these are to be divided amongst members. Given the high numbers of internally displaced persons, the Constitutional Court found compensation at the household constitutional as it balances the rights of victims to reparations with the interest of fiscal responsibility.¹⁸⁰

Ruling C-250/2012 is another illustration of the role the Constitutional Court has played in mediating between various interests regarding reparations. This judgement referred to the cut-off dates introduced by Law 1448/2011, and as explained above, the Court argued against the seeming arbitrariness of these reference dates. It claimed that, in such a long conflict, any date could be considered arbitrary. Given the principles of legislators' freedom of design and fiscal responsibility, a date would only be considered unacceptable if it were absolutely arbitrary, and, since the Court did not find evidence of this, it struck down the challenge and accepted both cut-off dates as they stood.

The complex nature of the Colombian armed conflict, where multiple actors and violence interact, means that it is not always simple to establish a direct link between harm suffered and the conflict. The violations committed by reconfigured armed groups of paramilitaries that had formally demobilised through Law 975/2005, known as Bacrim, are another case in point. Refusing to acknowledge their relationship with the groups who received the benefits of that piece of legislation, the position of the government was that these groups should be treated as ordinary criminal groups and their victims should not be covered by transitional justice reparations policies. The Constitutional Court adopted 'a broad conception of armed conflict, which recognises the real and historic complexity [of] the Colombian internal confrontation.'¹⁸¹ It stated that doing otherwise would not only violate the rights of victims, but also stand in the way of achieving the objectives of transitional justice with respect to sanctioning perpetrators and the duties of prevention of violations of human rights and international humanitarian law.¹⁸²

177 Article 28 of Law 1448/2011.

178 Article 105 of Law 1448/2011.

179 Article 13 of Law 1448/2011.

180 Constitutional Ruling C-462/2013.

181 Ruling C-253A/2012.

182 Ruling C-781/2012.

The Court urged the Victims' Unit to register victims of Bacrim violence as victims of the armed conflict clarifying that,

the expression *in connection to the armed conflict* has been used as a synonym of *in the context of the armed conflict, as part of the armed conflict, or due to the armed conflict*, to indicate a set of occurrences that this social phenomenon can encompass, but that are not exhausted in the armed confrontation, in the actions of certain armed groups, the use of certain methods or means of combat, or in events that occur in specific geographic areas.¹⁸³

Finally, Law 1448/2011 seems to establish a distinction between three types of victims: i) civilians, which the law's measures prioritise; ii) members of the armed forces who, in the exercise of their duties were victimized, and, in addition to the measures of the law, also have the right to special benefits that their regime provides; and iii) combatants of armed groups, who are excluded from reparations 'except in the cases of boys, girls, or adolescents who left the organised illegal armed group while underage.'¹⁸⁴ It is clear that a narrative of sacrifice underlies this division, where state forces are privileged over civilian victims in terms of speed and access to specialised services like rehabilitation.¹⁸⁵ This distinction was introduced for political and pragmatic reasons as Members of Congress did not consider it politically viable to repair members of illegal armed groups who had committed atrocities against members of the armed forces and civilians.¹⁸⁶ It was also argued that administrative reparation for former combatants was unfair, as they had access to similar benefits through voluntary demobilisation programmes.¹⁸⁷ The Constitutional Court did not find this restriction unconstitutional, as Law 1448/2011 did not eliminate the possibility of accessing reparations through ordinary legal routes for those who considered themselves to be unfairly excluded.¹⁸⁸

183 *ibid.*

184 Being recruited as a minor is not a sufficient condition to be recognised as a victim. According to article 3 of Law 1448/2011, but the person has to have escaped or demobilised while still underage to qualify for reparation.

185 Interview with research team COL04, Bogotá, 4 September 2018: Interview with research team COL06, Chía, Colombia, 4 September 2018.

186 *Semana*. 'Congreso aprobó la Ley de Víctimas.' 2011. Available at: <<https://www.semana.com/politica/articulo/congreso-aprobo-ley-victimas/240307-3>> Accessed: 24 January 2008.

187 For an in-depth account of the negotiations surrounding the adoption of Law 1448/2011, see Juan Fernando Cristo Bustos. *La Guerra por las víctimas: Lo que nunca se supo de la Ley* (Ediciones B 2012).

188 Ruling C-250/2012.



Batallón Guardia Presidencial

Photo credit: Luke Moffett

“Those who suffered harm from landmines as part of the security forces usually have access to different medical services. They have separate services for the emergency, rehabilitation and eventual reintegration. They also have their own hospitals where they are treated separately from the civilian victims who suffered the same harm. Reintegration is also different for victims from the military as they have access to better quality services and socio-economic integration measures when compared to civilian victims... Once they finish their military service they lose a large part of those benefits, being treated in a similar way to the civilian victims. They do not lose all their benefits, but they are certainly reduced.”¹⁸⁹

189 Interview with research team COL04, Bogota, 4 September 2018.

2. State Responsibility and Non-State Actors

Given the costs of maintaining such a complex reparations programme, debates relating to responsibility have been ongoing since the Justice and Peace system came into existence.¹⁹⁰ A group of human rights organisations challenged the provision of Law 975/2005 that the primary source for reparations costs would be the assets of demobilising actors, arguing that this diluted the state's responsibility towards victims. The Constitutional Court decided in Ruling C-370/2006 that requiring the person who caused the harm to repair it was constitutional, and created the Fund for Reparations. The state would act in a subsidiary manner in those cases where the demobilised individual or their armed group could not fulfil their obligations.¹⁹¹ The Court sought to balance the interests of victims in a comprehensive reparation, its origin notwithstanding, and the public interest in holding perpetrators accountable for their actions, including through the provision of reparations.

The debate reopened when a Justice and Peace Court ruled in the first collective case, awarding approximately 1,000 victims, counting the family unit of direct victims, approximately COP 32 billion. As the assets in the Fund for Reparations did not cover even 1% of this amount, the state was required to assume the reparation by virtue of subsidiarity, as indicated by Constitutional Court ruling mentioned above. In light of the existing administrative programme, this sparked a public debate that mixed fiscal sustainability in terms of state capacity to cover comprehensive legal reparations with equity among victims. While some believed that victims should be prohibited from obtaining reparations through both pathways, others held that limiting judicial reparation due to fiscal burden violated victims' right to reparation. In response to this, Law 1448/2011 determines that the amount of the judgment would be discounted from what had already been paid in the administrative proceeding.¹⁹² It also charges the state with paying judicial reparations in subsidiarity when those responsible did not, but only up to the amount established in the administrative programme.¹⁹³

Law 1592/2012, which further regulates the Justice and Peace Law, complemented this by reforming the *incidente de reparación* or hearings stage of the criminal proceedings. In addition to expediting the process,¹⁹⁴ it established that judges, upon identifying the victims, would refer them to the institutions created by Law 1448/2011 for reparations. Victims' organisations challenged these provisions on the grounds that these norms

190 According to Constitutional Court Writ 373/2016, the government informed the Constitutional Court that the projected expenses for the implementation of Law 1448/2011 until 2021 would be around COP 90 billion.

191 Ruling C-370/2006.

192 Article 20 of Law 1448/2011.

193 Article 10 of Law 1448/2011.

194 To limit the intervention of the courts, the name was changed to incident of effects caused (*incidente de afectaciones*).

limited the right of victims have a judge analyse the harm caused. The Constitutional Court sided with the petitioners and declared these modifications unconstitutional.¹⁹⁵ Nevertheless, the maximum amount the state is required to pay in subsidiarity is defined by the amounts specified in Decree 4800/2011 as Law 1448/2011 was already in force at that stage. For victims recognised in the Justice and Peace Process, the court estimates the total harm during the reparations hearing stage and refers them to the Victims' Unit. For the purposes of compensation, the Unit gives the victims the amount that corresponds to the administrative compensation set by the programme. It then reviews the existing value contributed by the ex-combatants or the bloc they belonged to before they demobilised to the Fund and divides this among the victims included in the proceedings. The total sum obtained by victims in this manner has been lower than what the judgments ordered in all cases where the sentence stage has been reached. Moreover, as explained above, the vast majority of reparations have come from public funds, as the assets surrendered or confiscated from ex-combatants have been insufficient.¹⁹⁶ Not only were few assets were actually seized, but the value of those the specialised prosecutors of Law 975/2005 had access to was low. Most assets were real estate in poor conditions and remote areas.¹⁹⁷

3. Reparations, Humanitarian Assistance and Development Policies

The current reparation programmes were preceded by a group of humanitarian assistance measures directed towards victims of terrorist attacks and forced displacement.¹⁹⁸ Given the scale of displacement in Colombia, these measures have had a significant impact on social policy and budgetary and resource allocation debates for three decades. When the new transitional justice framework was being debated in Congress, a question that generated controversy was how to articulate these measures with reparations and other social policies. The position of the state that came through in Law 975/2005 was that 'the social services offered by government for victims, in accordance with the rules and laws in force, make part of reparation and rehabilitation.' Yet, the Constitutional Court ruled that 'common social services offered by the

195 Ruling C-286/ 2014.

196 By the end of 2016, the Fund disbursed a sum of USD 27 million for sentence payment, 89% of which came from the national budget, 3.62% from the Fund of Assets Seized from Drug trafficking activities, and 6.4% from resources given up by ex-combatants. For a full account of compensations paid, see Unidad de Víctimas. 'Informe Ejecutivo'. 2006. 8-9. Available at: <<https://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/informeejecutivoseptiembre2016.pdf>> Accessed: 28 November 2018.

197 Pacifista. 'Diez años de Justicia y Paz: ¿Cómo le ha ido a las víctimas'. 2015. Available at: <<http://pacifista.co/diez-anos-de-justicia-y-paz-como-le-ha-ido-a-las-victimas/>> Accessed 28 November 2018.

198 Law 387/1997 provides for the care, protection, consolidation and socioeconomic stabilization of the population internally displaced by violence. Law 104/1993 provided for the humanitarian assistance of victims of terrorist attacks, massacres, and civilians who were killed in combat or by guerrilla attacks.

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Government, even when these are given to the victims of the crimes outlined in Law 975 of 2005, do not correspond to any of the actions through which the reparation of the harmful consequences of the crime must be sought.¹⁹⁹ The Court determined that, despite the interrelationship between these measures, a policy where one included the others could not exist. Thus, the state had to continue its assistance policy for those requiring immediate support due to natural or man-made disasters, its social policies to guarantee minimum satisfaction of economic, social and cultural rights, and a specific policy on victims' reparation. Victims echo the position of the Court when they criticise the use of collective reparations by the government as a way to get off easy. One interviewee argued that "people say the State should built this bridge as reparation, but it is the duty of the state to do that anyway, not because there are victims there, but because people need a bridge."²⁰⁰

The challenge is how to do this concretely, especially in a reality where the ongoing conflict is adding new victims in need of these measures. For instance, the director the Victims' Unit recently stated in an interview that victims of massive forced displacement will be registered although the Single Registry has been closed for over two years.²⁰¹ The government proposed that social or assistance measures could be granted as reparation titles if the norm that granted them clearly established the purpose is repair, meaning, if they were intentionally granted with a 'reparative effect.' Further, certain measures should be understood as reparations if the services offered were specifically directed to victims of human rights violations.²⁰² As one civil society actor commented,

we are not just talking about returning the victim or the group of victims to their initial position, but we are talking about creating conditions that the labour movement has never had in Colombia because the labour movements has been largely stigmatised and excluded, so we see reparations as an opportunity to strengthen the labour movement and the victims movement."²⁰³

The policymakers behind Law 1448/2011 had to respond to this debate. On one hand, Law 1448/2011 raised victims' expectations by introducing the idea of transformative reparations to respond to the traditional marginalisation of protected groups and individuals, as explained above. Due to the limited time it has been in operation, and the fact that prioritisation has only been applied since 2016, it is still difficult to

199 Ruling C-1199/2008.

200 Interview with research team COL13, Medellín, Colombia, 6 September 2018.

201 Ramón Rodríguez quoted by RCN Radio. 'Cerca de 200 mil personas se hicieron pasar por víctimas para recibir indemnizaciones'. 2018 Available at: <<https://www.rcnradio.com/judicial/cerca-de-200-mil-personas-se-habrian-hecho-pasar-como-victimas-para-recibir>> Accessed: 24 January 2019.

202 Nelson Camilo Sánchez. '¿Perder es ganar un poco? Avances y frustraciones de la discusión del Estatuto de Víctimas en Colombia'. Catalina Díaz Gómez, Nelson Camilo Sánchez and Rodrigo Uprimny Yepes (eds) *Reparar en Colombia. Los dilemas en contextos de conflicto, pobreza y exclusión* (DeJusticia 2009).

203 Interview with research team COL10, Medellín, Colombia, 5 September 2018.

determine whether it has delivered on this promise. On the other hand, the Victims' Law introduced the idea that some reparations could be granted through social policy subsidies. Thus, it established that an administrative compensation for displacement victims would be given to each household, through money or measures like a land subsidy, property exchange, land allocation, or a rural or urban housing subsidy.²⁰⁴ This is reflected in the reparation investment plan for this group. When victims and human rights organisations sued the norm arguing it violated displacement victims' right to reparation, the Constitutional Court ruled in favour of the plaintiffs. It pointed out that measures such as social policy on subsidies could only be considered as reparation as long as they were *additional* to the administrative compensation that must be paid out in money.²⁰⁵ This decision will have significant effects for the state budget, as nearly 7.5 million, that is 90% of victims in the Single Registry for Victims, are internally displaced persons.

The Court produced a transcendental shift in policy by forcing the state to repair all victims through monetary compensation. This is in line with what victims ask for, because as one NGO director pointed out, "the majority of victims are very poor and they were made even poorer by the conflict."²⁰⁶ Considering that crimes like forced disappearance and extrajudicial killings often eliminate the male head of household, compensation is an important means of survival for people in rural areas, especially in those cases where "women became the sole responsible for the upkeep of the children as a consequence."²⁰⁷ It has been estimated that USD 40.5 billion would cover all compensations in light of this decision, meaning that the compensation payment goal would be met only in 2037 with a sustained investment of COP 10 trillion annually.²⁰⁸ Recognising that victims are hard-pressed to fulfil immediate needs like settling debts and may even spend their compensations on trivial purchases,²⁰⁹ one judge specialised in restitution advocates for sustainability rather than "giving victims some money now, some money tomorrow, and some money the next day." Yet, there are risks to further reparative standardising practices. Productive projects given to victims with transformative aims can become a "ready-to-wear item" that will have the "perverse component of making everybody into something they are not." If they do not respond to the needs of victims, they will do no more good than "fill Colombia to the brim with hairdressers and bakers."²¹⁰ Used to deal with socio-economic inequalities in this way, reparations seem to be losing their

204 Article 132 of Law 1448/2011.

205 Ruling C-462/2013.

206 Interview with research team COL03, Bogota, Colombia, 4 September 2018.

207 Interview with research team COL13, Medellin, Colombia, 6 September 2018.

208 Constitutional Court, Writ A-373/ 2016; Victims' Unit. Report in relation to Constitutional Court Writ 373/ 2016 [Unpublished Report].

209 Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018.

210 Focus group interview with research team COL16, Cali, Colombia, 7 September 2018.

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specificity. While it is certainly important for victims to avoid falling into a ‘poverty trap’ and for the causes of conflict to be addressed, inequality would be more adequately dealt with through broad nationwide development or assistance programmes.

“The elderly people we support to get economic reparations almost never think about themselves. We tell them to think about their own health, think about whether you have the right kind of bed to sleep in, if you maybe want a TV to watch the news. What tends to happen with older people is that they pay off their debts or taxes, or they invested in their sons and daughters who are not always very productive because they are battling alcohol or drug addictions. Economic reparations do not go very far for the elderly.”²¹¹



211 Interview with research team COL13, Medellin, Colombia, 6 September 2018.

Findings and Conclusion

Colombia has followed a long path of institutional adaptation in order to address the rights of the victims of armed conflict. The first non-judicial measures adopted offered victims of terrorist attacks staged by drug-trafficking cartels relief. The escalation of the conflict generated a humanitarian crisis and internally displaced persons were the next group covered by assistance measures. Mobilisation by victims of kidnapping and enforced disappearance led to the adoption of some measures to alleviate their specific situation. This spelled the advent of a series of disjointed measures that, together with ordinary administrative and judicial mechanisms, did not adequately respond to the scope and depth of victimisation suffered throughout the conflict.

The Colombian state began to think in a more holistic and systematic way about the conflict and its victims with the Justice and Peace process, which sought to dismantle the paramilitary groups. With Law 975/2005 we see a tentative step taken towards a new institutional phase under the guise of transitional justice. The process is strengthened years later with Law 1448/2011. Where the former piece of legislation limited the universe of victims to those who suffered harm by members of illegal armed groups, and put the onus for reparations primarily on the perpetrators, the latter expanded the scope of the coverage to include all the victims of the armed conflict and charged the state with providing for victims. Six years on, an overview of the implementation efforts yields both reasons for hope and frustration. The task of implementation has not been easy as coordination between agencies responsible for delivering reparations has been difficult and the sheer number of victims appears to have overwhelmed the system. Even those victims who are prioritised by the provisions of the Law 1448/2011 for protected groups have been disappointed by the slow pace of progress. One judge went as far as calling their problems in engaging with the Victims' Unit "institutional autism", as she explained that the Unit is so inefficient and "disarticulated" that it is basically inoperative in the case of restitution.²¹² Victims' expectations rose as the Victims' Law and its regulatory decrees established tight deadlines and an expeditious reparations process, but the institutional capacity to deliver is still lacking.²¹³ As victims wait for reparations to be delivered, their rehabilitative and reintegration needs are growing as they and their families become older. For instance, some victims speak about putting themselves in debt while they wait for returns from the productive projects they received through the Victims' Law.²¹⁴

212 Focus group interview with research team COL16, Cali, Colombia, 7 September 2018.

213 Interview with research team COL25, Bogota, Colombia, 20 September 2018.

214 Focus group interview with research team COL09, Algeciras, Colombia, 8 September 2018

Findings and Conclusion

Although Colombia is far from meeting the needs of all its victims, not all efforts have been lost and the resourcefulness of legal professionals, government agencies and the new institutional framework developed gives us some optimism for the future.

As both President Santos and the FARC tirelessly repeated that the “victims [were] at the center of the Agreement”, victims’ expectations were raised once more.²¹⁵ Indeed, the 2016 Final Peace Agreement established few additional concrete reparation measures. Instead, it proposing deepening the collective measures and enable their implementation by including these in the *Planes de Desarrollo Territorial* or Territorial Development Plans, which set up the development strategies at the regional level. The Final Peace Agreement focuses on the creation of institutions dealing with of truth and clarification of responsibilities, putting forward a truth commission²¹⁶ and a commission for the search for the disappeared and justice measures,²¹⁷ and alternative sanctions.²¹⁸ These measures can have a significant reparative effect as they will contribute the missing state-sanctioned narrative of the conflict and assist in the demobilisation and reintegration of FARC combatants. Nevertheless, they are removed from the specific reparative measures offered by Law 975/2005 and Law 1448/2011 that focused on the concrete victims of the harms. The Final Peace Agreement is based on two premises as far as reparations are concerned. First, that the implementation of the Agreement will be an opportunity to strengthen the comprehensive reparation programme in existence and facilitate its implementation. Second, that all those who directly or indirectly participated in the armed conflict must contribute to reparations through their recognition of responsibility for the damages incurred and concrete actions of symbolic and material reparation. Thus, the FARC have committed to contributing to demining and, as it was the case with Law 975/2005, use their assets for reparations. The Agreement established a strict obligation to surrender assets, under penalty of losing the benefits of the alternative sanctions. Thus, after they demobilised, the FARC provided the commission responsible for verifying the fulfilment of the agreement with a list of their assets, estimated at COP 1 trillion.²¹⁹

215 Statements quoted by El Espectador ‘Las víctimas fueron el centro del Acuerdo’. Available at: <<https://www.elespectador.com/noticias/politica/victimas-fueron-el-centro-del-acuerdo-articulo-669699>> Accessed: 24 January 2019.

216 Titled Commission for the Clarification of Truth, Coexistence and Non-Repetition, its functioning is regulated by Decree 588/2017.

217 Decree 589/2017 creates and regulates the Unit for the Search of Persons Assumed Missing within the Context and Due to Armed Conflict.

218 Legislative Act 01/2017 creates

(The Comprehensive System of Truth, Justice, Reparation and Non-Repetition, SIVJNRN), which includes the Special Jurisdiction for Peace whose objective is to try crimes committed in the context of the armed conflict by both government forces and FARC combatants.

219 It is believed that the value of the assets that can be used for reparations is likely to be much lower as this amount includes the value of the weapons surrendered, which have been destroyed, and the owners of many of these assets, especially land, are yet to be determined.

“Contributing towards demining means that the FARC recognise that they committed a serious fault in planting these mines as these affected the life of the civilian population and violated international humanitarian law. Contributing to demining together with the military also builds trust and gives optimism to the implementation of the Agreement.”²²⁰

Furthermore, one of the central aspects of the accountability system set up by the Final Peace Agreement is the contribution of ex-combatants to the rights of victims in exchange for an alternative sanction. This alternative sanction may include contributions to community restoration and the reparation of victims through personal activities such as demining and the construction of public works for a period of five to eight years. Restoration by the offender is a point of convergence of three objectives as far as the Accord is concerned: *retribution* in the component of condemnation and punishment of the criminal conduct; *reparation*, insofar as the actions undertaken have the capacity to erase the effects of the harm caused; and *restoration* as it is undertaken within a process that seeks to rebuild the social and community ties broken by the conflict. For many, “reparations start with truth because it is important to acknowledge that there was serious harm and a serious fault. An exercise of truth-making is important in building trust ... and victims require truth to move on.”²²¹ As the new institutions promoted of the Agreement have faced a series of legal and political difficulties throughout the year, doubts remain about how both sanctions and reparation and restoration will work in practice.

220 Interview with research team COL06, Chía, Colombia, 4 September 2018.

221 Idem.

Recommendations

Colombia is the site of one of the most comprehensive reparations programmes in the world. In order to become more responsive to victims, the Colombian government should consider the following recommendations in moving forward with the implementation of the Final Peace Agreement:

- ▶ **Clarity:** provide victims with clear information about: (i) their rights under current reparations regime which integrates the system emerging from the Final Peace Agreement with the Victims' Law; and (ii) how to navigate the legal and institutional system to best realise them. The goal should be enabling victims to make informed and empowered decisions. This should take the form of accessible mediums (social media, live chat functions, leaflets, radio broadcasts and SMS messaging) and in relevant languages.
- ▶ **Meaningful to the recipients (in line with needs) – consultation:** consult with victims in major decisions regarding the future of reparation in Colombia, in particular any decisions which will impact future awards under current legal frameworks. This should be in accessible language, location and time for victims in different regions, as well as allowing them sufficient notice and time to respond. The transformative aspect of victim participation in decisions that affect them should be endorsed.
- ▶ **Modesty:** accept the focused and modest role of reparation within the broader nexus of development, peacebuilding, and assistance by, for example, separating the reparations function from the assistance function within the Victims' Unit. The Victims' Unit would perhaps be better placed to refer victims to other agencies, leaving them to provide aid to vulnerable populations, instead of coordinating assistance. Other government institutions should be focused in addressing socio-economic inequalities for affected communities and victims.
- ▶ **Follow-through:** follow-through on all obligations and promises made under Law 1448/2011, while prioritising financial compensation. Consider dropping or reshaping certain modalities, like the accompaniment of victims and productive practices component, in consultation with victims. Reparations should respond to the harms suffered by the victims in a way that recognises their needs, rather than impose one-size-fits models, as has been the case with some of these projects.
- ▶ **Financial and institutional sustainability:** in line with the above recommendations, ensure sustainable funding for the reparations program according to the estimates of its long-term cost. Ensure that institutional knowledge, lessons learned and other resources of existing institutions are

integrated, consolidated, and passed on as new institutional forms are created to deliver redress.

- ▶ **Institutional coordination:** to realise the full potential of a comprehensive approach to reparations, provide victims with as comprehensive an institutional presence as possible by improving normative and institutional coordination: (i) within normative systems, for instance between the Victims' Unit and the various ministries and agencies involved in delivering reparations under Law 1448/2011 or between the Special Jurisdiction for Peace and the Commission for the Clarification of Truth; and (ii) across normative systems, like the Victims' Unit and the Commission for the Clarification of Truth, to take an example. Promote a coordinated and streamlined means of communication between the state and the affected communities and victims.
- ▶ **Meaningful reparations from extraordinary criminal processes:** use the experience gained from the Justice and Peace process to inform the delivery of truth and reparations through the Special Jurisdiction for Peace. Victims must be heard concerning their needs, continuously engaged and informed about the proceedings and allowed to determine the degree to which they want to participate.

Reparations, Responsibility

 Victimhood in Transitional Societies

REPARATIONS IN COLOMBIA: WHERE TO?

Mapping the Colombian Landscape
of Reparations for Victims of the
Internal Armed Conflict

Dr. Luke Moffett
School of Law
Queen's University Belfast
Main Site Tower
University Square
BT7 1NN

t: 028 90973893

e: info@reparations.qub.ac.uk

w: <https://reparations.qub.ac.uk>