Sentence C-250/12

TEMPORARY LIMIT ON PREVIOUS MEASURES FOR VICTIMS - justified by constitutionally legitimate purposes and not disproportionate to situations prior to the dates set by the **legislator/PREVIOUS** MEASURES **FOR** VICTIMS-Temporary **delimitation**

VICTIMS OF INTERNAL ARMED CONFLICT-Measures for comprehensive care, assistance and redress

INCONSTITUTIONALITY DEMAND-Enunciated defendant has an autonomous and complete normative content, which does not depend on the content of other provisions and therefore does not require integration of legal proposal.

VICTIM-Evolution of the concept in public international law

VICTIMA-Concept in the jurisprudence of the Constitutional Court

GENERAL PRINCIPLE OF EQUALITY AND RIGHT TO EQUALITY-Constitutional Jurisprudence/IGUALITY-Triple role in the constitutional order/EGUALITY **AS VALUE, PRINCIPLE AND FUNDAMENTAL RIGHT-FUNDING/IGUALITY-Lack** of specific material content/IGUALITY-It does not protect any specific area of the sphere of human activity but can be invoked against any unjustified differential treatment.

TEST OF EQUALITY-Constitutional **Jurisprudence**

CONSTITUTIONAL JURISPRUDENCE-Equal **treatment of** equals and unequal treatment of equal treatment of unequal treatment of unequal treatment of unequal treatment of unequal treatment of unequal treatment of unequal treatment of unequal treatment of unequal treatment of unequal treatment of unequal treatment of equal treatment of unequal treatment of equal treatment of unequal treatment of unequal treatment of equal treatment of unequal treatment of unequal treatment.

PRINCIPLE OF EQUALITY-Mandates comprising

The principle of equality can in turn be broken down into four mandates: (i) a mandate for identical treatment of recipients in identical circumstances, (ii) a mandate for entirely differentiated treatment of recipients whose situations do not share any common elements, (iii) a mandate for equal treatment of recipients whose situations have similarities and differences, but the similarities are more relevant despite the differences, and (iv) a mandate for differentiated treatment of recipients who are also in a partly similar and partly different position, but in which case the differences are more relevant than the similarities. These four contents are underpinned by article 13 of the Constitution, since while the first paragraph of the above-mentioned precept provides for equal protection, treatment and enjoyment of rights, freedoms and opportunities, as well as the prohibition of discrimination; the second and third paragraphs contain specific mandates for differential treatment in favour of certain marginalized, discriminated or especially vulnerable groups.

TEMPORARY LIMIT ON MEASURES PROVIDED FOR VICTIMS-No disproportionate **measure/TEMPORARY** LIMIT **ON MEASURES PROVIDED FOR VICTIMS-Justification**

There are evident difficulties in establishing relevant milestones in a long-standing conflict such as the one that Colombia has suffered. To that extent, all the dates adopted can be the object of discussion and objections because they imply adopting positions on their nature and historical evolution. Faced with this difficulty, it could be argued that any temporal delimitation is unconstitutional, since in principle reparation measures of a patrimonial nature should be guaranteed to all victims. However, such a position would disproportionately limit the Legislator's freedom of configuration, in addition to being openly irresponsible from the perspective of the state resources available for reparation of the damages caused, since it would generate expectations of impossible satisfaction that would entail subsequent responsibilities for the Colombian State. In other words, it would imply the sacrifice of constitutionally relevant goods, which is first and foremost the effectiveness of the victims' rights to be repaired, since the limitations of state resources that can be invested for this purpose cannot be ignored.

TEMPORARY LIMIT ON MEASURES PROVIDED FOR VICTIMS-Free legislative configuration in a judgement of equality

It is the Congress of the Republic that is called upon to set the time limits for the application of the reparation measures provided for in the law, after a broad debate in which different perspectives on the armed conflict and those who should be repaired have been presented. It is precisely for this reason that an extensive section is inserted in the body of providence in which the discussions that took place on the date from January 1, 1985 are reported, and how this was the fruit of consensus and agreements within the different political currents represented within the legislative

body. In addition, according to the statistical data provided in the various interventions, it is clear that the number of victims of the internal armed conflict has increased substantially since the 1980s, and that the conflict has deteriorated especially since that date, without it being possible to establish a precise historical moment that serves as a definitive milestone. It is therefore assumed that the time limit provided for in article three is not an arbitrarily exclusive date because it precisely covers the period in which the greatest number of violations of human rights and international humanitarian rights occurred, the historical period of greatest victimization.

VICTIMS-The non-inclusion of those prior to a date, with respect to the enjoyment of reparatory measures of a patrimonial nature, does not make them invisible nor does it imply an additional affront to their condition.

TRANSITIONAL JUSTICE-Time-limits

VICTIMAS-Differentiated **treatment** between two groups

TEMPORARY LIMIT ON PREVIOUS MEASURES FOR VICTIMS - Suitability to ensure fiscal sustainability

TEMPORARY LIMIT ON THE RIGHTS OF VICTIMS - The measure is **not** disproportionate.

LEGAL SAFETY PRINCIPLE-Scope

On legal certainty is stated in judgment T-502 of 2002: "3. Legal certainty is a central principle in Western legal systems. The Court has pointed out that this principle has constitutional rank and has derived it from the preamble of the Constitution and from Articles 1, 2, 4, 5 and 6 of the Charter // Legal security is a principle that cuts across the structure of the rule of law and encompasses several dimensions. In general terms, it is a guarantee of certainty. This warranty accompanies other principles and rights in the law. Legal certainty is not a principle that can be wielded autonomously, but something that is preached about. Thus, legal certainty cannot be invoked autonomously to disregard the hierarchy of norms, in particular with regard to the guarantee of the effectiveness of the constitutional and human rights of persons // In matters of competence, legal certainty operates in a twofold dimension. On the one hand, it stabilizes (without which there is no certainty) the competences of the administration, the legislator or the judges, so that citizens are not surprised by changes in competence. On the other hand, it provides certainty as to when the resolution of the matter under consideration by the State will occur. In the constitutional plane it is appreciated in the existence of peremptory terms to adopt legislative decisions (C.P. arts. 160, 162, 163, 166, among others) or constituent (C.P. Art. 375), to try certain public actions (C.P. art. 242 numeral 3), to solve the judgments of abstract constitutional control (C.P. art. 242 numerals 4 and

5). In the legal sphere, procedural rules establish terms within which judicial decisions must occur (Codes of Civil Procedure, Labor and Social Security, Criminal and Contentious-Administrative), as well as in administrative matters (in particular, Contentious-Administrative Code) // 4. The existence of a term to decide guarantees members that they can foresee the maximum moment at which a decision will be adopted. This also implies the certainty that regulatory changes that occur after that term will not affect their claims. In other words, there is certainty about the rules governing the legal conflict or the legal situation in respect of which the decision is sought. This is resolved in the principle according to which legal relations are governed by the rules in force at the time the relationship is formed, which, to a large extent, is reflected in the principle of the non-retroactivity of the law; In criminal matters, it should be noted that there is a clear exception, by application of the principle of favourability, which confirms the general rule // In the area of legal certainty and stability (legal certainty), the existence of precise terms for the administration or the judge to take decisions and the principle of knowledge of the rules applicable to the specific case, it follows that these terms lay down conditions for stabilisation with regard to regulatory changes. Hence, during the existing term for taking a decision, the person has the right to have the rules in force during that term applied. It could not, except in exceptional circumstances in which favorability operates or for indisputable reasons of equality, request that those provisions that enter into force once the decision has been taken be applied to it. In other words, once the time limit for taking a decision has expired, a consolidation of the legal rules applicable to the specific case takes place. Consolidation that becomes a right by reason of the principle of legal certainty and, in addition, constitutes an element of the principle of legality inscribed in the right to due process".

Reference: cumulative D-8590, D-8613 and D-8614 files.

Complaint of unconstitutionality against article 3 and article 75 of Law 1448 of 2011 *"by which measures of attention, assistance and integral reparation are dictated to the victims of the internal armed conflict and other dispositions are dictated".*

Actors:
Germán Calderón Spain
Aníbal Carvajal Vásquez
Fernando Antonio Vargas Quemba

Magistrate Rapporteur:
HUMBERTO ANTONIO SIERRA PORTO

Bogotá D. C., twenty-eighth (28) March, two thousand twelve (2012)

The Plenary Chamber of the Constitutional Court, in compliance with its constitutional powers and the requirements and procedures established in Decree 2067 of 1991, has ruled as follows

FEELINGS

I. BACKGROUND

In the exercise of the public action enshrined in article 241 of the Constitution, citizens Germán Calderón España (Case D-8590), Aníbal Carvajal (Case D-8613) and Fernando Antonio Vargas Quemba (Case D-8614) request the declaration of unconstitutionality of the first paragraph of article 3 and article 75 of Law 1448 of 2011 *"by which measures of attention, assistance and integral reparation are dictated to the victims of the internal armed conflict and other provisions are dictated"*. In the Plenary Chamber session held on July 6 of this year, it was decided to accumulate the claims so that they could be processed jointly and decided in the same sentence.

By order of twenty-five (25) of July of two thousand and eleven (2011) the demands were admitted, in the same order the substantive Magistrate ordered their fixation in the list in the General Secretariat of this Corporation and decided to communicate the initiation of this process to the President of the Congress; to the President of the Republic; to the Minister of Finance and Public Credit and the Minister of Agriculture and Rural Development Director; so that within ten (10) days following the receipt of the respective communication, they may pronounce themselves indicating the reasons that, in their opinion, justify the constitutionality or unconstitutionality of the precept demanded.

In the same order, it requested the Historical Memory Group of the National Commission for Reparation and Reconciliation to submit a report on the history of the armed conflict in Colombia. It also invited the International Center for Transitional Justice (ICTJ), the Colombian Commission of Jurists, the José Alvear Restrepo Lawyers' Collective, the State Crimes Movement, De Justicia, the Office of the High Commissioner for Human Rights in Colombia, the Fundación País Libre, CODHES, ASFADDES, REDEPAZ, and the history faculties of the National Universities of Colombia, the Andes, and Javeriana; to intervene in the process, if deemed appropriate. Finally, it ordered the Attorney General to be transferred to issue the corresponding concept.

Subsequently, by order of September 12, 2011, the process was continued and the New Rainbow Corporation, the Social Pastoral, the Women's Initiative for Peace, Viva la Ciudadanía, the National Movement of Victims of State Crimes -MOVICE and the Social Foundation were invited to present a written statement of intervention and indicate the reasons that, in their opinion, justified the constitutionality or

unconstitutionality of the normative statements demanded.

Within the term of fixation in the list, the documents of intervention presented by the citizens (i) Freddy A were attached to the file. Guerrero Rodríguez research professor at the Department of Anthropology of the Faculty of Social Sciences of the Pontificia Universidad Javeriana; (ii) Pablo Felipe Robledo del Castillo, Vice-Minister of the Ministry of Justice and Law; (iii) Cristina Pardo Schlesinger, Legal Secretary of the Presidency of the Republic; (iv) Gustavo Gallón Giraldo, Director of the Colombian Commission of Jurists; (v) Marlon Andrés Bernal Morales, Head of the Legal Office of the Ministry of Agriculture and Rural Development; (vi) Lina Quiroga Vergara representing the Ministry of Finance and Public Credit; (vii) Diego Andrés Molano Aponte, Director General of the Presidential Agency for Social Action and International Cooperation - Social Action; (viii) Pedro Santana Rodríguez, President of Corporación Viva la Ciudadanía; and (viii) Helberth Augusto Choachí González. Subsequently, the written statements subscribed by: (i) Sergio Bolaños Cuellar, Dean of the Faculty of Human Sciences of the National University of Colombia; (ii) Monsignor Héctor Fabio Henao Gaviria, Director of the National Pastoral Secretariat. On October 24 of last year, the concept issued by the Attorney General of the Nation was filed with the Secretary General of this Corporation.

Once the corresponding constitutional and legal steps have been completed, the Court will decide on the request for reference.

1. Defendant provisions

The normative statements demanded are then transcribed underlined.

LAW 1448 OF 2011
(June 10)
Official Journal No. 48.096 of 10 June 2011
CONGRESS OF THE REPUBLIC
By which measures of attention, assistance and integral reparation are dictated to the victims of the internal armed conflict and other dispositions are dictated.
THE CONGRESS OF THE REPUBLIC
DECREE:

ARTICLE 3 VICTIMS. For the purposes of this law, victims are considered to be those persons who, individually or collectively, have suffered damage as a result of events that occurred after January 1, 1985, as a consequence of violations of International Humanitarian Law or of serious and manifest violations of international human rights norms that occurred on the occasion of the internal armed conflict.
Also victims are the spouse, permanent partner, same-sex partners and first degree of consanguinity, first civilian of the direct victim, when the victim has been killed or is missing. In the absence of these, those who are in the second degree of ascending consanguinity will be.
Similarly, persons who have suffered harm by intervening to assist the victim in

danger or to prevent victimization are considered victims.

The status of victim is acquired regardless of whether the perpetrator is individualized, apprehended, prosecuted or convicted of the punishable conduct and the family relationship that may exist between the perpetrator and the victim.
PARAGRAPH 1 When the members of the security forces are victims under the terms of this article, their economic reparation shall correspond for every concept to which they are entitled according to the special regime applicable to them. In the same way, they shall have the right to the satisfaction measures and guarantees of non-repetition indicated in the present law.
PARAGRAPH 2 Members of organized armed groups outside the law shall not be considered victims, except in cases in which children or adolescents have been separated from the organized armed group outside the law as minors.
For the purposes of this Act, the spouse, permanent partner, or relatives of members of organized paramilitary armed groups shall be considered as direct victims for the damage to their rights under this article, but not as indirect victims for the damage suffered by members of such groups.
PARAGRAPH 3 For the purposes of the definition contained in this Article, persons who have suffered damage to their rights as a result of acts of common criminality shall not be regarded as victims.
PARAGRAPH 4 Persons who have been victims of events that occurred before 1 January 1985 have the right to the truth, symbolic reparation measures and the guarantees of non-repetition provided for in this law, as part of the social conglomerate and without the need for them to be individualized.
PARAGRAPH 5 The definition of victim contemplated in this article shall in no case be interpreted or presumed to be of any political nature with respect to terrorist and/or illegal armed groups that have caused the damage to which this law refers as a victimizing act, within the framework of international humanitarian and human rights law, in particular as established by the third (3rd) common article to the Geneva Conventions of 1949. The exercise of the powers and functions corresponding to the Armed Forces by virtue of the Constitution, the law and the regulations to combat other criminal actors shall not be affected at all by the provisions contained in this law.

ARTICLE 75. HOLDERS OF THE RIGHT TO RESTITUTION. Persons who were owners or possessors of land, or exploiters of vacant lots whose property is intended to be acquired by adjudication, who have been dispossessed of these or who have been forced to abandon them as a direct and indirect consequence of the facts that constitute the violations referred to in article 3 of this Law, between January 1, 1991 and the term of validity of the Law, may request the legal and material restitution of the land dispossessed or forcibly abandoned, in the terms established in this chapter.

2. The demands

In the opinion of the plaintiffs, the underlined normative statements contained in article 3 and article 7 of Law 1148 of 2011 violate article 13 of the Constitution, as they are

contrary to the principle of equality and the right to equality. Although it is the common charge formulated in the three accumulated lawsuits, each actor uses specific reasons that will be explained below.

Citizen Germán Calderón España (Case D-8590) maintains that the expression as *of January 1, 1985,* contained in Article 3 of Law 1448 of 2011 violates the principle of equality because it excludes those who were victims before that date from the reparation measures established in that body of law, from that violation follows the transgression of the right to equality of those subjects excluded from the benefits contemplated in the law.

It also affirms that the statement *between January 1, 1991 and the term of validity of the Law,* contained in article 75 of the same normative body, violates the principle of equality, because it does not include persons who own or own land or exploit vacant lots that were dispossessed or forced to abandon them prior to that date, which in turn would lead to a violation of the right to equality of those who were not included since they could not invoke the provisions of Law 1448 to request the legal and material restitution of land dispossessed or forcibly abandoned.

It states that equality has in the legal system the character of value, principle and fundamental right and therefore becomes a limit to the freedom of legislative configuration. It considers that the accused precepts infringe the right to equality because they establish a differentiated treatment based on an arbitrary date, since the Colombian armed conflict dates back to the sixties of the last century. He then submitted an addendum to the lawsuit in which he referred to the freedom of configuration of the legislator and pointed out that in any case such power is subject to limits since it cannot be exercised in an unreasonable and disproportionate manner, as he considers happened in articles 3 and 75 of Law 1448 of 2011, when iniquitous time limits were set to the measures of reparation provided for in the law and to the right to restitution of land.

Citizen Aníbal Carvajal Vásquez (File D-8613) maintains that the expression *as of January 1, 1985,* contained in Article 3 of Law 1448 of 2011, violates the principle of equality because *"**of all the victims** of the armed conflict in Colombia, only the legislator recognized as victims those who suffered damage on or after **January 1, 1985** (...) **depriving** those who suffered damage prior to January 1, 1985 (...) of that recognition and the compensation benefits that it brings to those who suffered damage for events that occurred prior to January 1, 1985 (...)"* (original bold and underlined).

It considers that the date indicated is an arbitrary criterion of differentiation and that it constitutes a new symbolic affront for the victims prior to that historical moment, as well as depriving them of the possibility of claiming the damages suffered.

With regard to the wording *between 1 January 1991 and the expiry of the Act* contained in article 75 of the same body of legislation, it argues that it infringes the principle of equality, because those stripped prior to that date *"are excluded from the possibility of*

recovering the lands from which they were once unlawfully expelled". It is evident that the Legislator intends to take the Universe of people who were stripped of their land as a result of the internal armed conflict in Colombia and facilitate ONLY ONE GROUP OF THEM (...) to recover materially and legally their land, without there being any moral, legal or constitutional reason to apply negative or positive discrimination within the group of people seeking to return to the place where they should never have been banished by groups outside the law" (original capital letters).

Citizen Fernando Antonio Vargas Quemba (Case D-8614) maintains that the time limitation contained in Article 3 of Law 1448 of 2011 violates the principle of equality because it *"recognizes the existence of the internal armed conflict as of January 1, 1985, which is not only an unacceptable bias that contravenes the truth of the conflict and historical memory, but also invisibilizes more than 30 years of victims prior to the date capriciously consigned in article 3 of the law demanded, since it is the same internal armed conflict that generated thousands of victims in previous years (...)".* It affirms that the violation of the principle of equality is evident because the accused precept *"benefits some and discriminates against others of the same condition, victims of the same armed conflict".*

It exposes that the armed conflict in Colombia dates back to before January 1, 1985, and originated in the confrontation between communist guerrillas and state forces since the 1950s. He mentions different historical episodes to justify this position, he explains that since the fifties the FARC has been constituted as an armed group and has taken action against the civilian population in Tolima and the Llanos Orientales, which is why it is possible to identify the victims of the internal armed conflict since that date. It considers that although there is no detailed record of those who suffered damage during the period prior to January 1, 1985, this is not a sufficient reason to exclude them from the ownership of the reparation measures provided for in Law 1148 of 2011.

He understands that the same reasons justify the unconstitutionality of the date contemplated in article 75 of the complaint, because it is a precept that gives rise to unjustified differentiated treatment, which ignores the right to restitution of those who were victims of the dispossession of land by the communist guerrillas before January 1, 1991.

3. Official and citizen interventions.

In view of the numerous interventions which were linked to the file, the main arguments put forward by the interveners are grouped in two headings below.

3.1. Interventions requesting a declaration that the accused provisions are unconstitutional.

Citizens Gustavo Gallón Giraldo, Pedro Santana Rodríguez, Helberth Augusto Choachí González, Sergio Bolaños Cuellar, Monsignor Héctor Fabio Henao and Freddy A. Guerrero Rodríguez, filed briefs in which they requested a declaration of

unconstitutionality of the accused provisions, based on the following reasons:

- –· In the first place, they refer to the date indicated in the third article of Law 1448 of 2011 and state that although there is no single database where this information is recorded, if different bibliographic sources are used, it is possible to demonstrate "*the effective existence of victims of violations of human rights and international humanitarian law, prior to 1985, which as such, should be included in the aforementioned law*".
- –· They point out that *"[t]he first paragraph of Article 3 states that, for the purposes of the law, those persons who individually or collectively have suffered harm as a result of events that occurred after January 1, 1985 are considered victims, what the legislator establishes is a denial of recognition as a victim. Added to this, by establishing in paragraph 4 of the same article that these persons have the right to the truth, symbolic reparation measures and the guarantees of non-repetition provided for in the law, but not as individual victims who have suffered harm, but as part of the social conglomerate, what the legislator establishes is a limitation on the scope, specifically, of the rights to the truth, to symbolic reparation and to guarantees of non-repetition, with respect to persons who suffered serious violations before 1985.*
- –· They recognize the need to establish precise technical and chronological criteria that allow the application of the law and that *"restrict the possible abuses of an opportunistic victimization that lacks real foundations",* however they consider that these criteria will have deep sociocultural impacts and discrimination on the social conglomerate, reason why the establishment of a time limit *"must (...) represent not only the technical needs of the application but a rigorous and sustained reflection on the genealogy and facets of the Colombian armed conflict. In that sense, it is necessary for the government to feed its vision of our war through the contributions of academia and historical discipline in such a way that its interpretation of reality is not limited to contemporary episodes and the prevailing interests in them, but adopts a more comprehensive approach that deciphers the signs of our tragedy in the future of our society.*
- –· They point out that the date stated in Article 3 of Law 1148 of 2011 does not correspond to the chronology of the armed conflict in Colombia recognized by the Colombian Government and cite the official website of the Presidency of the Republic in which the following reference can be consulted: *"From 1960 the communist influence gave a different character to the conflict. Thousands of families abandoned their lands and organized themselves in the mountains where many established themselves as armed groups. The violence began to manifest itself as the confrontation between the Marxist-Leninist guerrillas and the armed forces. The ELN (Ejército de Liberación Nacional) emerged in 1965, the EPL (Ejército Popular de Liberación) emerged in 1967 and finally in 1973 the M-19 made its first appearance. In 1974, the National Front was finished and the system of free election was returned. In this period smuggling and drug trafficking begin to*

consolidate their actions in the country. During the 1982-1986 presidential period, the first peace negotiations with the guerrilla groups took place. These gave the first results with the demobilization of the M-19 and the EPL during the administration of Virgilio Barco (1986-1990). They therefore consider that *"the Government recognizes that there is continuity between the different historical episodes of the armed conflict, even though their stages show different facets"* and that therefore the time limitation provided for in the article under appeal is contrary to the historical reality recognized by the Colombian Government.

- –· They suggest that the date of January 1, 1985 is arbitrary because there are other dates that can serve as milestones in terms of the ownership of reparation measures contemplated in Law 1148 of 2011, such as September 6, 1978, when Decree 1923 of the same year was promulgated, known as the Security Statute, or even December 24, 1965 when Decree 3398 came into force, pointed out in several judgments of the Inter-American Court of Human Rights as a temporary reference within the armed conflict in Colombia.
- –· They propose that the time limit provided for in article 3 of Act No. 1448 of 2011 should be subject to a strict equality trial because it entails *"a negative impact on persons to whom the Constitution recognizes equal rights and who are in a manifest state of weakness having been subjected to serious crimes (...) and who to that extent are entitled to special protection".*
- –· They state that the purpose of the temporal limitation with respect to the measures foreseen for the reparation of the victims of the armed conflict does not appear in the text of the law and in order to identify it, it is necessary to investigate the debates that took place during the legislative process. They point out that the bill initially presented by the National Government did not establish a time limit for the ownership of measures other than the restitution of land but that from the second debate in the plenary chamber different dates were proposed and was finally adopted on January 1, 1985. They indicate that arguments of a budgetary and economic nature seem to have led to this decision. They then assume that the purpose of the temporal limitation indicated in the third defendant article is fiscal sustainability.
- –· They explain that *"within the framework of the general normativity of the State there are rules that establish rights and other rules that refer more to issues of state structure and functioning, including the rules on "the economic regime and public finance". The current legal system arises from the combination of these rules. Fiscal rules are the regulations that are included in the organic part of the Constitution regarding resources for the functioning and operability of the State. They must be in harmony with the set of norms established in the Charter, that is, with the fundamental principles, with constitutional rights and with the other organic norms. Therefore its use as an argument to justify a measure must ensure that this harmonic sense is not broken, because it would imply a lack of knowledge of the mandates of the Constitution.*
- –· They appreciate that in the specific case of Law 1448 of 2011 the principles and rights whose effectiveness is at stake are individual rights and

freedoms, human dignity, life, integrity, access to justice, an effective remedy, truth, reparation and justice for those who have suffered harm as a result of serious violations of human rights and serious breaches of international humanitarian law, and they consider that these are disproportionately affected based on a temporal limitation that pursues a purpose of an economic and budgetary nature.

- They maintain that the freedom of configuration of the legislator is limited by the fundamental rights recognized in the Constitution, and that decisions of an economic nature must be subordinated to the primacy of the victims' rights. They add: *"[t]he obligation to fully guarantee the rights to justice, truth and reparation for the victims of atrocious crimes has a constitutional origin and in international human rights law (Arts. 1, 2, 12, 29, 93, 229, 250 numerals 6 and 7 Political Constitution). In this sense, denying victims' rights for economic reasons is a violation of the right to access to justice and of Colombia's international human rights commitments, as well as an inamisible and merely utilitarian excuse that damages the dignity of the victims. It is not possible to oppose economic reasons for circumventing state obligations in relation to the rights of victims of serious violations of human rights and international humanitarian law".*
- They conclude that *"being the object of the law (Art. 1) establish a set of individual and collective judicial, administrative, social and economic measures for the benefit of the victims, within what the law refers to as "a framework of transitional justice", measures that "make it possible to make effective the enjoyment of their rights to truth, justice and reparation with a guarantee of non-repetition, so that their status as victims is recognized and dignified through the materialization of their constitutional rights"; there is no recognition of the existence of a constitutionally valid end (in the strict sense) that can be invoked to propose: (i) neither that the passage of time denies or limits the rights of persons who have suffered these violations, (ii) nor that for budgetary reasons, the passage of time after the occurrence of a human rights violation or serious breaches of international humanitarian law is a criterion that validly authorizes the legislator to give certain victims (those who suffered atrocious crimes several years ago) differential treatment. Since the measure for this is disproportionate to the right to equality, it is unconstitutional."*
- They question the constitutionality of article 75 because they consider that the time limit provided for in this provision violates the right to restitution of victims of dispossession. They state that this date was adopted in order to guarantee legal certainty on the understanding that judicial decisions declaring rural properties to belong by virtue of the figure of the extraordinary purchasing prescription of the domain could not be reviewed. However, they consider that this argument is not coherent if one considers that the Civil Code was modified by Law 791 of 2002 and that the period for the extraordinary prescription was reduced to ten years, and that in addition *"it starts from the irrevocable character of the sentences that give rise to the recognition of the property of third parties by acquiring prescription by virtue of the possession*

that they exercised over an asset affected by violence, which is not correct. The restitution process should be designed precisely to address the complexity of dispossession and, in particular, should contribute to the inapplication of certain procedural and substantive figures of civil law that have been identified as functional to the dispossession of lands and territories affected by violence and serious human rights violations, or, in other words, so that the restitution judge has the power to deny the opposition of a third party when the latter seeks to justify a legal relationship with the object of restitution, by virtue of one of those legal concepts, which includes, precisely, irregular possession understood as the possibility of acquiring control of an asset even in cases in which the possession derives from force, fraud or violence through extraordinary prescription".

Interventions in favour of the enforceability of the contested provisions.

They filed briefs in defense of the constitutionality of the accused precepts representing the Presidential Agency for Social Action and International Cooperation and the Ministries of Agriculture, Finance and Public Credit, Justice and the Legal Secretariat of the Presidency of the Republic. The arguments put forward were as follows:

- –· They raised the substantial ineptitude of the lawsuits. They argued that the plaintiffs filed charges relating to the alleged violation of the right to equality that do not meet the requirements for a substantive determination, in accordance with constitutional jurisprudence. They consider that the plaintiff in Case D-8590 merely *"pointed out in an abstract and imprecise manner that the establishment of a date for recognition as a victim within the framework of Law 1448 of 2011, entails* per se *a violation of the fundamental right to equality of persons who find themselves outside of that factual situation, for which, part of personal and subjective appraisals without constitutional grounds, and therefore,* they add that the plaintiff alleged that the date stated in the first article was disproportionate and unreasonable without setting forth the reasons that justify such assertion, since it alluded to historical references that are out of context, according to which the armed conflict in Colombia dates back to the sixties without providing evidence that would justify such an assertion. They add that the plaintiff did not integrate a complete legal proposal because they consider that the date set forth in Article 1 is not relevant for advancing an equality trial, because this provision provides that Law 1448 of 2011 will be applied to victims who have suffered damages for events subsequent to January 1, 1985, to that extent the unjustified differential treatment would be configured with the combination of this provision with each of the subsequent provisions of the law that make up a special regulation on reparation, they affirm that the Constitutional Court cannot correct this defect informally and must declare itself inhibited from doing so, and must declare itself inhibited from doing so. They affirm that the Constitutional Court cannot correct this defect informally and must declare itself inhibited.

With respect to Case D-8614 they refer that *"although the plaintiff raises certain useful elements for the constitutionality trial for violation of the right to equality, such as the differential element, the groups of persons that are being compared and in a superficial manner the alleged unequal treatment, in no way analyzes the possible materialization of the violation, that is, the divergence between the accused norm and the constitutional text, much less questions the reasonableness, proportionality or purpose of the provision".* Finally, they maintain that the complaint corresponding to file D-8614 contains numerous references to the historical evolution of the armed conflict in Colombia, but this argument is not relevant to the analysis of constitutionality for violation of the right to equality, in accordance with the criteria established by the Constitutional Court.

- –· They explain that Law 1448 of 2011 is a transitional justice law and that in the Colombian case *"the term "transition" must be understood (...) primarily as the transition from a conflict situation to a peace situation. A transition of this nature entails much greater levels of complexity, since the conflict persists over time and its different chapters gradually close, as happened with the demobilization of the so-called United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia). This gradualness becomes an enormous challenge for the balanced satisfaction of victims' rights, since in some cases their perpetrators have demobilized and in others have not. This means that in the case of Colombia there is not a single transitional moment but several transitional moments with the gradual closing of various chapters of violence.*
- –· They believe that Law 1448 of 2011 should be understood as the most significant and inclusive historical effort in the transition to peace, and therefore the legislative body has a margin of appreciation to define all aspects related to the concept of victim, and in general, to attention and reparation within the framework of transitional justice because "***[t]he Constitution does not indicate precise formulas for it, because those decisions correspond to historical, social and political moments that must be evaluated by the political bodies, the main responsible for the conformation of our country's legal system"*** (original bold). They consider that the Legislator was empowered to set time limits on the concept of victim for the purposes of reparation, and that the time limits set out in the provisions being sued are necessary to guarantee legal security and certainty, due process, the principle of celerity, the effectiveness of substantive law and to give effect to the principle of procedural equality.
- –· They expose that the violence that has been registered in Colombia during the last decades has had different contexts, scenarios, types and meanings and has undergone permanent changes in its dynamics and intensity, therefore it was not possible to issue legislation covering all its forms. For this reason, they consider that it was necessary to delimit the effects generated by violence in time. Textually, they maintain that *"[t]he fixation and recognition since the 1980s of the armed conflict is due to the concession, the analytical effort and the product of the contributions of*

documentary sources of data, the participation of the actors and spokespersons representing the different social, economic, cultural and political forces and organizations, and the theoretical contributions of those inside and outside the country who have been thinking about this situation of violence and, in general, about the subject of violence in humanity, to establish that in the last decade the presence of the conflict and the situation of extreme vulnerability in diverse sectors that generated as a consequence victims of violence is evidenced with greater intensity."

- –· They refer to massive reparation programs in the following terms: "*the measures contained therein seek to encompass a broad and complex universe of victims they face, not only by seeking satisfaction of individual claims, but also by recognizing victims and strengthening citizens' trust and social solidarity. In this sense, reparations support other purposes and measures of transitional justice and take into account the context in which States find themselves, gathering a public or collective need to rebuild or strengthen the rule of law, and broadening the notion of justice. On the other hand, the implementation of massive reparation programs, instead of judicial resolution on a case-by-case basis, dealing with massive and systematic violations of human rights and breaches of international humanitarian law, guarantees victims equitable access to the measures contemplated in the program, without the need to submit to lengthy trials that may not lead to reparations and without the risk of generating situations of inequality in recognized reparations that may have a divisive effect among the victims, because even though equity generally does not require equal treatment, in cases of systematic abuse in which people feel they are victims of the same system and in which they are being repaired through the same procedures and more or less simultaneously - which makes it particularly likely that they will compare the results - this becomes a serious problem.*
- –· They state that the process of creation of Law 1448 of 2011 and the development of the concept of victim contained therein are due to the joint effort of the Legislator and citizen participation, for which the voices of leaders and representatives of different social and human rights organizations, actors and spokespersons representing the different social, economic, cultural and political forces and organizations were heard, thus respecting the dignity of the victims, recognizing them as subjects of rights and not only as objects of assistance. They affirm that the *"fixation of the concept of victim is the fruit of the general consensus of the most representative population, being attended by the Legislator, together with the analysis, socio-temporary of the time of greater violence in the national territory and through which, the horrors of the war were reflected in citizens who became victims of this violence.*
- –· They refer to state duties towards the victims of the internal armed conflict, but understand that the Legislator may establish criteria for determining the scope and amount of compensation, a position that they assert has been recognized by the Constitutional Court. They specify that the victims' right to full reparation is not absolute, therefore it can be limited and

must be the object of normative configuration, an area that they consider cannot be the object of control since the constitutional judge cannot replace the legislator in the appreciation of the interests at stake and in the design of transitional justice.

- –· They explain that a transitional justice law is a special norm that creates mechanisms for truth, justice and reparation for victims of serious violations of human rights in the context of an internal armed conflict, therefore its temporal scope of application must be clearly defined by the Legislator, in exercise of his power of configuration.
- –· They refer to other transitional justice experiences and present in detail the cases of South Africa, Peru, Guatemala, Germany and Argentina. From the analysis of these cases, they conclude that each country has adopted different reparation mechanisms, some have favoured economic compensation, while others have given greater importance to symbolic forms. However, they note that in all cases time limits have been established for the application of special measures aimed at satisfying the rights of victims of serious human rights violations, which were associated with the periods when the greatest violence was perpetrated against the civilian population or when the conflict was particularly degraded.
- –· They indicate that the plaintiffs are not right when they point out that the temporal limitations established in Law 1148 have exclusively an economic criterion, and therefore privilege economic criteria over the right of the victims to be compensated. They clarify that those who reason in this way *"do not know that fiscal sustainability is the only instrument capable of guaranteeing that equity really materializes, through the real and effective existence of resources that allow guaranteeing the full exercise of the rights of all Colombians, but they also relativize the importance of a criterion of constitutional rank that establishes a criterion of action applicable to all public powers, including the Legislative one".*
- –· With regard to the date specified in article 3 of Law 1148 of 2011 (1 January 1985), they explain that this date does not define the concept of victim but establishes a time limit for certain reparation measures. They note that this date was the fruit of a broad deliberative process within the Congress of the republic as can be seen from the reading of the Congressional Gazettes that account for the legislative iter.
- –· They explain that the inclusion of the phrase on the *occasion of the internal armed conflict* in this precept implies not only the recognition of the type of transition in which Colombia finds itself, and the need for transitional justice mechanisms to facilitate this transition, but also makes it clear that "*the legislator understood that it was necessary to limit the universe of victims benefiting from this Law to those who had suffered damages caused during the internal armed conflict"*. They add that *"rather than a measure of fiscal sustainability, this limitation responds to the need to offer a public policy specifically targeted at these particular victims. The risk of indeterminately opening up the universe of beneficiaries is that the reparations program becomes a welfare state that serves the most vulnerable sectors of society, but*

that loses sight of the repairing effect. In Colombia, the need to resort to transitional measures instead of ordinary justice is only justified in the effort to overcome the effects of the massive violence of recent decades, close the cycle and consolidate peace. An essential part of this effort is the recognition of victims of such violence through the restitution of their rights with exceptional measures. And the most accurate description of that situation that is intended to overcome in order to close the cycle and turn the page, as well defined by the legislator is the internal armed conflict.

- –· They note that without a clear frame of reference, such as the expression *armed conflict*, to justify and delimit transitional measures, and without a time limit, the law could have four perverse effects: *"first, the country would be in a situation of permanent transition: there would be no criterion to determine when the universe of victims is closed. The second is no less serious: the weakening of the ordinary judicial system on account of the existence of a parallel transitional justice system. Third, the spectrum of violations that a judicial or administrative authority could consider a serious violation and that could be subject to reparation would be totally indeterminate, which would detract from its reparative effect. If substantial and temporary limits are not set, the final effect could end up being the opposite of what is sought through the law: a permanent and endless characterization of a part of the population as "victims", prolonging the logic of the conflict for decades. The limitation of the universe of victims for the purposes of the law is not only constinctually legitimate, but necessary to ensure a responsible transition to peace.*
- –· They explain that in any case the victims of events prior to 1985 will have access to symbolic reparation and guarantees of non-repetition, that is to say, the law foresees a series of actions in their favor and the community for the preservation of historical memory, the non-repetition of events that violate human rights, the public acceptance of the events, public forgiveness and the restoration of the dignity of the victims.
- –· In relation to Article 75, the interveners explain in detail the phenomenon of violence associated with paramilitary groups and tell that land dispossession, as a mechanism of the armed struggle, worsened in the 1990s. In this regard, the intervention of the Ministry of Agriculture states: *"[a]lthough paramilitary groups have existed since 1982, since 1997 a national coordination arose with the purpose of expanding territorial domains and controlling the power resources of the regions, which was identified as the United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia, AUC). The operating model for the expansion of the AUC was the conclusion of agreements with groups of regional landowners to finance the creation of new self-defense groups, the training and initial leadership of experienced AUC combatants, and the recruitment of local militants to form blocks in the new regions. This model, with very little central coordination, implicitly led to the emergence of new chiefs who accumulated individual power, to the extent that they were able to organize the transfer of rents for drug trafficking, extortion and theft to finance private armies (...)*

The paramilitary domains included, in their developed forms, reorganizations of the population, expelling owners and peasants to appropriate the land and also resettling in part of them their own combatants, in payment for services, to set up social bases similar to the paramilitary domain. Thus, the control of land assumed various forms, from the forced transfer of titles under coercion in the name of the commander or middle command involved, the fencing to include displaced properties, the use of front men or relatives to hide ownership, to the allocation of plots to peasant combatants, often displaced from another region by the guerrillas. All these forms of expropriation were made possible by intimidation, corruption or subordination of the national and local authorities, in charge of ensuring not only compliance with formal rules but also the good faith and legality of property transfers.

- –· They explain that the temporal limitation established in article 75 of Law 1448 is not arbitrary, since its purpose is to guarantee legal certainty by determining a temporal limit for the exercise of the right to restitution, as provided for in the body of legislation being sued. They affirm that modifying the date established by the law *"would open a gap to the legal security of property by allowing the questioning of rights acquired more than 20 years ago, which is the highest existing acquisitive prescription.*
- –· They indicate that the date embodied in Article 75 comes from objective factors which are: (i) most studies on the armed conflict indicate that from 1990 onwards expulsion and dispossession of land became a mechanism regularly used by paramilitary organizations against the civilian population; (ii) records of cases of dispossession and expulsion date back to the 1990s, so that there is no certainty about the previous dates and it is difficult to apply the measure of restitution as regulated by Law 1448 of 2011; (iii) According to INCODER statistics, most of the registered cases of dispossession occurred between 1997 and 2008; the cases prior to 1991 correspond only to 3% of those recorded between 1991 and 2010; (iv) there has been an increase in applications for land protection since 2005, and prior to that date this mechanism was only used sporadically.
- –· They argue that differential treatment is not based on a suspicious criterion, nor does it have a discriminatory purpose, since it is a special law, conceived as a transitional justice mechanism, whose purpose is to establish differentiated mechanisms for the protection of the victims of the Colombian armed conflict.
- –· They point out that, from the early stages of the bill's processing, 1991 was set as the time limit for the restitution of land and that this date lasted throughout the legislative process; they therefore consider that this time limit also enjoyed a broad consensus within the representative body and therefore constitutes a legitimate materialization of the legislator's margin of configuration.
- –· They allude to the equality trial implemented by this Corporation to examine the differentiated treatment in the law, describe the different stages that make up the *test* and finally submit the accused provisions to the constitutionality test in accordance with said criteria. In the first place, they

point out that the time limit established in the accused precepts is not based on a suspicious criterion, and they defend that it pursues a legitimate purpose because *"the purpose of the legislator in establishing the differentiation object of the present process, was to temporarily shelter the most serious and systematic violations of Human Rights and breaches of International Humanitarian Rights through a state response that was based on all the components of reparation (...) In this way, it must be affirmed that the purpose of the legislator is not only compatible with the Political Charter but also that, in addition, it fully develops it (...). it is fully compatible with the Political Charter. In effect, with the introduction of the date, it sought to shelter the temporary period of the armed conflict that the greatest and most serious violations left in the national territory in order to achieve the materialization of all the reparation measures contained in Law 1448*. They maintain that the Legislator established temporal limitation as a means to grant differentiated treatment among the victims of the armed conflict, and that this means is suitable to achieve the purpose pursued by the law and is not arbitrary because it is necessary to *"materialize the measures contemplated in the Law and adjust the mechanisms of Transitional Justice to the needs and possibilities of the State (...) In effect, the following should be asked at this point: What other means could the legislator have used to ensure that only those persons who suffered exceptional harm, in the period when the conflict also took on exceptional proportions, would have access to all transitional reparation measures? Or, in similar terms: What other distinction could have been used not to delimit the universe of victims but, conversely, to provide reparation measures that respond to the limitations of the State and the Colombian context? The absence of an answer to the foregoing questions clearly leads us to affirm that the means used was not only suitable, but was the only one used to achieve the constitutional ends pursued by the legislator"*.

- –· They conclude that *"(i) the distinction generated by the legislator by including a date was not intended to disregard the status of victim but to delimit access to certain measures, which does not correspond to a condition intrinsic to the person; (ii) the aim was to guarantee, within the framework of the Colombian context, that victims of exceptional violations, at times when the armed conflict also acquired exceptional proportions, would have access to all reparation measures effectively and in the face of the limitations of the State; (iii) the means used by the legislator (date) is in accordance with the Political Charter, insofar as it does not make distinctions with respect to the condition of victim, but with respect to the measures to which some will have access, and (iv) the means used was not only suitable and not arbitrary, but perhaps the only one at the disposal of Congress to achieve the desired purpose."*

4. Report of the Historical Memory Group of the National Commission for Reparation and Reconciliation

At the request of the presiding judge, the Historical Memory Group presented a report on the evolution of the armed conflict in Colombia, the most significant sections of which are transcribed below:

> "When one looks at the definition of the mandate of Truth Commissions relatively close to our case, the first surprising fact is the ease with which the studied temporality is determined. Thus, in El Salvador there are l2 years of war, 1980-1991. In Peru, the temporary period was 20 years, with a precise start and end in 1980-2000. Guatemala also left no room for ambiguity 1962-1996, i.e. little more than three decades. In all these cases there was more or less a social and political consensus on the origins and closure of the process to be studied.
>
> In Colombia, on the contrary, to date is to give an interpretation of the origin of the armed conflict, which is controversial. It is insinuating responsibilities and defining inclusions and exclusions. It is the first battle for memory, not only academically but also politically. Where do we begin? From the 1991 Constitution, which to a large extent is seen as the last great Peace Agreement? Or from 1985, a year of multiple meanings with the "holocaust" of the Palace of Justice and the beginning of the extermination of the UP? Or starting in 1964, the time of the emergence of the contemporary insurgency, or even further back, from 1948 and the assassination of Jorge Eliécer Gaitán, a moment widely considered to be the watershed of the country's contemporary history?
>
> Why is it so important to date in Colombia? Because unlike the precise mandates of the Truth Commissions of El Salvador, Guatemala and Peru, in Colombia we have urgencies in the face of the recent conflict, the current one, but we also have debts, pending debts of truth and memory, with previous generations, including the generation of Violence, which is still alive.
>
> This translates into the fact that the mere announcement of the task of historical reconstruction is already seen as a space of opportunity, which generates expectations of tackling unresolved memories, including that of The Violence of the Fifties. To paraphrase Paul Ricoeur, what had remained in the "darkness of collective memory," the National Front's Pact of Oblivion, reappears with new faces. If you want in a situation like the current one in Colombia, there is an exacerbation of memory. And the criterion for resolving this problematic field must of course be an integrative approach to outstanding debts.
>
> On the Violence of the Fifties there is much speculation about the number of dead and victims. The generally accepted figure is two hundred thousand dead. Most of the victims were the result of arson, homicides and massacres. The forced displacement of peasants was also of

enormous magnitude and transformed the country until then predominantly rural.

If a blindly partisan interpretation of Violence usually establishes 1948 as the starting date (or at most 1946 and the blood events associated with the change of government), interpretations that tend to make the characterization of Violence more complex tend to go back to the crisis of the second government of López Pumarejo (1945) or even to the tensions generated by the economic contraction and the change of party in government at the end of the 1920s. In the development of violence during this period, State agents, especially the police and security agencies, and official officials as promoters, were involved as executors.

While it is true that party loyalties and hatred played the dominant role in the period, it cannot be lost sight of the fact that the confrontation between liberals and conservatives produced social dynamics that went beyond party alignments as certain expressions of banditry and guerrilla warfare. In this direction are inscribed the processes of colonization, the very high and not yet quantified dispossession of land, the dispossession of crops and livestock, the ruin in some areas and the prosperity of others. Violence, it was then said, was a parenthesis of our democratic and institutional history, a parenthesis that had to be closed in order to continue with history. That closure took the form of oblivion. Gonzalo Sánchez G points out: "Violence in this first stage remained *as if in parentheses,* as a kind of *dead time,* a forbidden zone (taboo), a territory of *oblivion.* Oblivion was, let us remember, the *leitmotiv* of the National Front, the agreement of the traditional parties to put an end to their violence" (2008: 230-231).

The period of Violence was formally sealed by the National Front and although there were attempts to confront the social impacts through programs such as the Rehabilitation Plan that began in the fifties and the agrarian reform of the sixties, its scope was extremely limited not only in coverage of victims but also of affected regions. A great unresolved problem was therefore left behind: that of reparation to the thousands of victims of the Violence of the 1950s, a historical debt still to be paid. Here there would be big dilemmas: to repair the victims equally for the entire period 1948-2010? Or to repair them differently? Some economically, and others symbolically, by way of recognition in the story, in the museum, the monument or other expressions of memory?

One of the most critical points of the historiographic debate on the armed conflict in Colombia is that of the lines of continuity or rupture between the so-called period of Violence and that of the modern insurgency, which began with the anti-systemic guerrillas of the 1960s. Some insist on the direct link between these guerrillas and some of the guerrillas or self-

defense groups of the 1950s that emerged in some regions of the country, such as the Eastern Plains, Sumapaz and southern Tolima. In the latter case, that of the south of Tolima, the link of continuity would be given, in both periods, by the organic relationship between the guerrillas and the communist party, as the historian Medófilo Medina has pointed out. For others, the guerrillas of the sixties emerge precisely in ideological, organizational and programmatic rupture with the armed expressions of La Violencia. "From now on, it would be a question of frontal challenges to power that would only cease with their inevitable substitution" that would contrast with the expectations of participation and incorporation into the political field that the liberal guerrillas of the 1950s had in the background.

For those who emphasize the factors of rupture between violence and the contemporary armed conflict, the latter begins with the foundational moment of the guerrillas of communist, Maoist or "Cuban" inspiration. In other words, the criteria for interpretation and analysis of this periodical, which is quite common in academic literature on Colombian violence, take into account the history of the armed actors in conflict. The starting point of this story would be given by the dates on which the guerrillas were founded. In the case of the FARC, this is the year 1964, the year in which the well-known Operation Marquetalia took place. The year 1964 was also decisive in the birth of the ELN, although the first time that a communiqué signed by this guerrilla group, the Simácota manifesto, appeared was on January 7, 1965. The demobilized EPL, of which only one faction remains active in the Catatumbo jungles, the Mora Toro Liberal Front, was founded in 1965, although it has only reported armed actions since 1968.

In the 1980s, the emergence of actors such as the paramilitaries and the structure of drug trafficking, which began to play an active role, marked for many a new stage in the confrontation. The decade of the eighties thus has as its distinctive feature the *multiplicity of violence* in terms of its origins, objectives, geography, modus operandi and strategies.

The origins of the paramilitary groups usually date back to the formation of the MAS in 1982 after the kidnapping of Martha Nieves Ochoa at the hands of the M-19, although it is recognized that since the late 1970s there were self-defense structures (as is the case of the Autodefensas Campesinas del Magdalena Medio founded by Ramón Isaza in Puerto Triunfo). For their part, paramilitary organizations were structured as such in the second half of the 1980s. It should be pointed out that this generic name refers to plural actors who have a common enemy: the guerrilla. With regard to the paramilitaries or self-defense groups, following the analyst Mauricio Romero, it has been possible to verify their "association with drug trafficking and its forms of conflict

resolution; with the counterinsurgency strategies of the Armed Forces, and the tactics of dirty war to confront the revolutionary guerrilla; with parainstitutional forms of control of social protest by "mafia" factions of capital, or with the growth of the cattle ranch and the violent eviction of peasants from the land by ranchers. In addition, following the same author, its centrality in containing the processes of democratic opening is added.

In relation to drug trafficking, as analyst Fernando Cubides points out, "until 1983 at the national level, permissiveness prevailed, which is partly explained by the fact that the confrontation and the acts of violence associated with drug trafficking were very sporadic, always linked to the private settlement of accounts", that is, they were circumscribed to the universe of the drug traffickers themselves. Now, since then, the drug cartels would establish instrumental relations with the different armed actors, becoming the fuel of war.

Despite the fact that the guerrilla groups FARC and ELN are derived from Violence, and emerge with a vindicative background largely associated with the land problem, both evolved towards new logics of violence. Indeed, in the 1980s it is possible to trace a transformation in which old political ideals are intermingled with criminal practices such as drug trafficking and since then there has been a shift to a growing indifference of borders with common criminality. In many cases, these are now articulated groups, depending on the region, to specific links in the production and commercial chain of drug trafficking.

The diversification and degradation of war has its maximum expression in the repertoire of punitive actions that all actors, including state actors, carry out against the civilian population. Their exposure and vulnerability to the victimizing action of all actors in the armed conflict will be increasing and notorious. In a way, the civilian population is no longer the support of the warlike action, but its predominant target.

The most disturbing signs of this new era of conflict are not only the numbers of homicides but also massacres, kidnappings and forced disappearances, as well as displacement and land dispossession.

The Massacres

One of the expressions of violence with the greatest social impact is massacres, not only because of their collective character but also because of the destructuring effect on communities and because other modalities such as forced displacement and dispossession are generally associated with them. In this regard, and based on the information constructed by the Historical Memory Group, it is possible to observe how in the early 1980s

(1981-1982) the use of massacres as a recurrent modality of violence began in the armed conflict, and in broad lines it followed an upward trend throughout the decade. Therefore, if we consider **the massacres** as an indicator of the degradation of the war, it is possible to affirm that our war began to degrade at least since 1981. Some massacres, occurred in the decade of the 80 that acquired national notoriety are:

0.-• Massacre of Puerto Boyacá (Boyacá), June 4, 1982,14 fatalities.
1.-• La Germanía Massacre, Santa Helena del Opón (Santander) , 8 February 1983, 14 victims.
2.-• El Roldán Vereda Massacre, Sabana de Torres (Santander), 11 February 1983, 11 fatalities
3.-• Cañaveral and Manila Massacre, Remedios (Antioquia), 4 - 12 August 1983, 20 fatalities. (Perpetrated by paramilitary chief Fidel Castaño)
4.-• Massacre of Segovia (Antioquia) 11 November 1988, 46 fatalities
5.-• Tacueyó Massacre, Toribío (Cauca), November 1985 - January 1986, 125 fatalities. Perpetrated by the dissident front of the FARC Ricardo Franco.
6.-• Massacre of 19 merchants in Puerto Boyacá (Boyacá), October 3, 1987.
7.-• Massacre in Honduras and La Negra in Turbo (Antioquia), 20 fatalities, 4 March 1988.

- –· La Mejor Esquina Massacre, Buenavista, 28 fatalities, April 3, 1988
- –· Punta Coquitos Massacre, Turbo (Antioquia), 23 fatalities, 11 April 1988.
- –· Caño Sibao Massacre, Grenada (Meta), 17 fatalities, 3 July 1988.
- –· El Tomate Massacre, Canalete (Córdoba), 16 fatalities, 30 August 1988.

Kidnapping

Kidnapping had a major impact at the political level since the mid-1980s, and became one of the main forms of action by armed actors against the civilian population. Since the early 1980s, the practice of **kidnapping** acquired new meanings and dimensions as it became a strategy with a high political and social impact. In effect, the assault and forced retention of diplomats called "Operation Liberty and Democracy", carried out on February 27, 1980 at the Embassy of the Dominican Republic, by the guerrilla group Movimiento 19 de Abril (M-19) marks a period in the history of the Colombian armed conflict of political use of this crime.

At the same time, the kidnapping and extortion practices aimed at hacienda owners, cattle ranchers and farmers, exercised especially by the FARC guerrillas in Magdalena Medio, and later in other areas such as Antioquia's Urabá, Ariari and southern Córdoba, exasperated numerous

sectors of the population that made up the paramilitary groups, which entered into complex alliances with both drug traffickers and institutional sectors. The MAS (Death to Kidnappers) created in 1981 after the kidnapping of Marta Nieves Ochoa is a clear expression of that process, the consequences of which extend to the present day.

Homicide

In addition to the massacres and kidnappings, it is extremely important to bear in mind the assassinations of presidential candidates Jaime Pardo Leal, Bernardo Jaramillo Ossa, Carlos Pizarro and Luis Carlos Galán, all of them before 1991 in a context of escalation and juxtaposition of violence. Similarly, recognition of the victims of the country's internal armed conflict cannot obviate systematic violence against community leaders of multiple political affiliations and against militants of diverse left-wing groups. These selective homicides of a political nature were intended to deactivate social mobilization and close the space for the participation of political alternatives within the electoral competition. In this context, it should be noted that all the militants of a political movement, the Patriotic Union, which had emerged in the context of the government-insurgency negotiations, were almost exterminated.

Peasant dispossession and displacement

Dispossession and forced displacement are not simply collateral effects of other forms of violence, such as massacres and forced disappearances, but constitute in themselves modalities of victimization that affect specific groups, such as peasants, indigenous and Afro-descendant populations in the territorial dispute and consolidation of armed actors. The chain of liquidation of the peasant movement, dispossession, and forced displacement have been particularly aggravated since the 1980s and are part of the mechanisms and general dynamics of violence.

In the shadow of the armed conflict, and particularly of the consolidation of the paramilitary model, there was an enormous concentration of land that is only now becoming visible. Paramilitarism, as it emerged in the Magdalena Medio since the 1980s and later spread to other regions, became the support for the armed agrarian reconfiguration of many areas, as documented both in the report of the Historical Memory Group on the **La Rochela Massacre** and in the report on **Land in Dispute,** which are attached to this document.

Taking into account not only victimization but also the dynamics of confrontation and its actors, the 1980s is clearly a central period as new actors emerge and existing ones are redefined:

0. a. The **emergence of paramilitary groups** associated with the de-institutionalization of counterinsurgency.
1. b. The **strategic redefinition of insurgent struggle.** The three axes of the strategic change that are expressed in the theses of the VII Conference of the FARC guerrilla in 1982 are the military split of the fronts (territorial expansion of the war), the diversification of finances (escalation of pressure on the civilian population to finance the war through kidnappings), (cooption and subordination of local civil authorities, pressure on traditional political parties that controlled local power and intensification of political work and positioning of left-wing political forces),
2. c. A **new national situation** associated with the opening of a peace process between the government of Belisario Betancur (1982-1986) and the guerrillas provoked a deep political radicalization that manifested itself in the exacerbation of regional authoritarianisms and in a growing tension between the civil power and the Public Force, which ended up strengthening and consolidating paramilitarism. These reactions stemmed from the perception that the peace process was the granting of a strategic advantage to the guerrilla by the civilian power of the state, interfering with the effectiveness of the counterinsurgency effort and increasing the exposure of the civilian population to the predatory action of the insurgency.

A long journey would lead us to specify the following milestones or references of the history of the armed conflict in Colombia from the mid-twentieth century to the present day:

Symbolic milestones

There are some milestone events which, rather than determining the chronology of the armed conflict and the meaning of its history, are an obligatory point of reference for any researcher dealing with violence.

For the second half of the twentieth century we can distinguish five major milestones in relation to the violence associated with the internal armed conflict. First, the assassination of Gaitan in Bogotá on April 9, 1948 and the liberal-led uprising in the capital and in some other major cities. The symbolic charge of that murder, carefully studied by Herbert Braun and Arturo Alape among many others, makes this a decisive event in the illustrated and unillustrated understanding of the Colombian 20th century. Secondly, the year 1964, which, as mentioned above, is associated with the birth of the main guerrillas of communist orientation that still dispute the State's dominion in some regions. The case of Operation Marquetalia in particular, although it is not a daily reference for the ordinary citizen, is of enormous importance in the FARC's understanding of themselves and their struggle today. Thirdly, the administration of Julio César Turbay

Ayala (1978-1982) and in particular the renamed "National Security Statute". This moment coincides with an escalation in armed actions and the appearance of a new logic of war whose developments continue to shape the present. It is a time of degradation of war both from the point of view of the insurgency and of the mechanisms of the State to face it. The war, besides being more intense, becomes dirtier. Fourthly, the constituent process that would lead to the drafting of a new constitutional text in 1991. This process was linked both to concrete negotiations and to the citizen's desire for peace materialised in the opening up of the political system. Fifth, the troubled process of negotiations between the government of President Andrés Pastrana and the FARC in the demilitarized zone. The rupture of those dialogues was read as the last opportunity, wasted by an insurgent group less and less connected with national public opinion, which offered the government for a peaceful negotiated reintegration (...)".

5. Concept of the Attorney General of the Nation

By means of Concept No. 5237, filed with the General Secretariat of the Constitutional Court on October 24 of this year, the representative of the Public Prosecutor's Office requested that the Constitutional Court declare the statements of the defendants enforceable or, failing that, declare itself inhibited from examining the charges raised in the accumulated lawsuits.

Initially, the Procurator clarifies that the declaration of unconstitutionality of the accused statements contained in articles 3 and 75 of Law 1448 of 2011 would not imply a new concept of victim that includes allegedly discriminated subjects but would have the consequence that the law could not be applied *"because it would lack a precise definition of the subjects to which it applies (...) without which it would be operative"*. For this reason, it considers that the complaint corresponding to Record D-8614 does not meet the requirements of clarity, certainty, specificity, pertinence and sufficiency, which is why it only has an inhibitory ruling. It also requests the Constitutional Court to integrate the normative unit of the provisions of the lawsuits with paragraph 4 of article 3 of Law 1448 of 2011, because this precept indicates the rights that victims have for events that occurred before January 1, 1985.

Refers to an earlier concept (Concept No.5207 In this case, the Public Prosecutor's Office stressed the need to understand the notion of victim based on International Humanitarian Law and International Human Rights Law, insofar as it is applicable to internal armed conflicts, and also referred to the lack of a balanced exercise of the principle of free legislative configuration to establish *"definitions, limits and thresholds based on criteria of reasonableness and proportionality, in such a way as to strike a balance between the need to compensate the victims of the internal armed conflict and the real possibilities that the State has in relation to its other tasks."*

The Attorney General considers that the time limits provided for in the accused provisions *"are not the product of the whim or improvisation of the legislator. On the contrary, they are the clear result of a reasonable and responsible debate, in which the spokespersons of the different ideological positions and of the interests involved were listened to, as corresponds to the exercise of the democratic principle".*

It submits that the plaintiffs in formulating the discrimination charges overlook the fact that the reparation of victims, provided for in the Defendant Act, does not imply that the state recognizes its responsibility, since it is a model of transitional justice in which the state privileges the victim, and not a model of ordinary or contentious-administrative justice in which it is necessary to exercise the pertinent actions within the term foreseen in the procedural law, before the competent judges, prove the existence of the damage suffered and quantify it, establish state responsibility for the fact or omission generating the damage and the causal link between the latter two. It emphasizes that Law 1448 of 2011 cannot be understood as an opportunity to revive expired terms of prescription or expiration.

The plaintiffs do not take into consideration that paragraph 4 of article 3 of the law in question recognizes the right to truth, symbolic reparation and the guarantee of non-repetition for persons who suffered damages prior to the dates provided for in the statements of the defendants. Finally, he adds that there must be time limits to reparation*, "otherwise the grievances suffered by the victims would have to be added to a new one, that of a law that remains on paper, that of a promise that cannot be fulfilled, in short, that of a shameful lie".*

For the foregoing reasons, it requests the declaration of exequibilidad of the expressions demanded contained in Articles 3 and 75 of Law 1448 of 2011 and that the Constitutional Court declare itself inhibited to pronounce itself on the merits with respect to the charges contained in the complaint corresponding to File D-8614.

II. CONSIDERATIONS.

1. Competence

This Corporation is competent to know the reference process, in accordance with article 241, numeral 4 of the Political Constitution.

2. The matter under review

In the opinion of the plaintiffs, the normative statements demanded, contained in articles 3 and 75 of Law 1148 of 2011, violate article 13 of the Constitution, as they are contrary to the principle of equality and the right to equality of the victims of the armed conflict who are excluded from the possibility of reparation.

The actors agree that the expression from *January 1, 1985,* contained in article 3 of Law 1448 of 2011 violates the principle of equality and the fundamental right to equality

because it excludes victims who have suffered damages for events that occurred before that date from the reparation measures established in that law. They allege that this is an arbitrary date that ignores the historical memory of the Colombian armed conflict that began in the 1960s (one of the plaintiffs maintains that it began in 1953) and therefore concludes that it is an excluding time limit that serves as a basis for unjustified and therefore discriminatory differential treatment.

They also affirm that the statement *between January 1, 1991 and the expiration of the Law,* contained in Article 75 of Law 1448 of 2011, violates the principle of equality, because it does not include persons who own or own land or exploit vacant lots that were dispossessed or forced to abandon them prior to that date, which in turn would lead to a violation of the right to equality of those who were not included since they could not invoke the provisions of Law 1448 to request the legal and material restitution of land dispossessed or forcibly abandoned.

They maintain that the internal armed conflict began long before January 1, 1985 and had its origin in the confrontation between different armed actors and state forces, which dates back more than thirty years, which is why they consider the date indicated in Article 3 of Law 1448 of 2011 to be unconstitutional because it ignores historical reality. The same argumentation extends it to the statement contained in article 75 of the defendant law.

The interveners who requested the declaration of the inexequibilidad of the expressions demanded maintained that there are registries that account for a considerable number of victims prior to 1985 reason why this date does not constitute a relevant historical milestone to limit the access to reparation measures of the violated rights. They refer to the historical continuity of the Colombian armed conflict from the 1950s onwards, which in their opinion prevents the establishment of relevant differences between the victims on exclusively temporary grounds. They propose that the expression*, as of January 1, 1985,* of article 3 of Law 1448 of 2011, be subjected to a strict equality trial because it is a limitation of the rights of people who are in a state of manifest weakness, and they explain that it does not pass a test of this nature because it pursues a budgetary and fiscal purpose, which is fiscal sustainability, which has less weight than the fundamental rights of victims of serious human rights violations. They use the same arguments to request the declaration of inexequibilidad of the expression *between January 1, 1991 and the term of validity of the law* embodied in article 75 defendant, understand that such temporary restriction seeks to ensure legal security, but argue that this principle has to yield to the right to restitution of persons who have been stripped or have been forced to leave the land of which they were owners, possessors or legitimate exploiters.

Another group of interventions point out the ineptitude of the demands presented and defend the constitutionality of the accused provisions, a position shared by the Attorney General of the nation. On the one hand, they indicate that all claims suffer from the requirements of certainty and pertinence because the plaintiffs did not file the charges against a complete legal proposal, since they not only had to file a lawsuit against Article 3 of Law 1448 of 2011, but also against all the precepts that provide for special

reparation measures contained therein. They also state that the charges are vague and general, that is, they do not meet the specificity requirement because the actors merely allude to the violation of the principle of equality and to the disproportionate and unreasonable nature of the temporary restrictions provided for, without explaining in detail the alleged unconstitutionality of the accused precepts.

They explain that Law 1448 of 2011 is a transitional justice law and that as such it is aimed at restoring the rights of victims of serious human rights violations during the internal armed conflict, in that measure they justify the date of January 1, 1985, the moment from which it sharpened. They state that if no clear time limits are established, the law would lose its nature as a special normative body aimed at guaranteeing the rights of the most affected population. They refer to the fact that the date finally adopted in Article 3 defendant, the first of January 1985, was the subject of extensive discussions during the legislative procedure and is the result of a consensus within the representative body. They explain that this date does not exclude or define the concept of victim because in any case those who suffered damages for events that occurred prior to that date are also subject to reparation measures, although of a different nature. They argue that the purpose of this time limit is not exclusively to guarantee financial sustainability, a criterion that in their opinion should not be discarded either, but that compelling reasons justify its adoption. They argue that legal certainty is a reason justifying the date laid down in Article 75 defendant and, finally, conclude that the accused provisions do not incur unjustified differential treatment because (i) the distinction generated by the legislature by including a date was not intended to disregard the status of victim but to delimit access to certain measures, which does not correspond to an intrinsic condition of the person; (ii) the aim was to ensure, in the Colombian context, that victims of exceptional violations, at times when the armed conflict also took on exceptional proportions, would have access to all reparation measures effectively and in the face of the limitations of the State; (iii) the means used by the legislator is in accordance with the Political Charter, insofar as it does not establish distinctions with respect to the condition of victim, but rather with respect to the measures to which some will have access, and (iv) the means used was not only suitable and not arbitrary, but perhaps the only one at the disposal of Congress to achieve the desired purpose.

In the above terms, the constitutional debate corresponds to this Corporation: (i) study the suitability of the claims filed for the purpose of determining whether there is a finding of substance, (ii) make reference to the concept of victim in public international law, (iii) briefly describe Law 1448 of 2011, (iv) set out the legislative procedure of the articles being sued, (v) reiterate the jurisprudence of this Corporation on the principle of equality and the fundamental right to equality and, finally, (vi) examine the charges brought by the plaintiff.

3. The suitability of the claim filed

Although when he studies a lawsuit to consider its admission, the Sustaining

Magistrate verifies that it meets the necessary requirements for a true constitutional debate to be initiated - among which are the minimum conditions regarding the clarity, certainty, specificity, relevance and sufficiency of the positions proposed by the plaintiff, having successfully passed that first examination does not inevitably lead to a substantive pronouncement on the question raised, because at the time of rendering judgment this Corporation may realize that the accusatory libel suffers from defects that prevent a final decision on the enforceability of the defendant provision.

With respect to the lawsuits that gave rise to the present process, numerous interveners and the Attorney General point out that the charges filed by the plaintiffs, related to the alleged violation of the principle and fundamental right to equality due to the time limitations contained in articles 3 and 75 of Law 1448 of 2011, suffer from various shortcomings that prevent their substantive examination.

First, with respect to article 3, they understand that the accusation does not include all the normative texts that make up the differentiated treatment that the plaintiffs consider unjustified, since they consider that the plaintiffs should have demanded this normative enunciation and each one of the legal provisions that establish special provisions regarding reparation for the rights of victims, contained in Law 1448 of 2011. However, the Corporation does not share this assessment, since it is precisely the wording of the statement of claim that makes it possible to clearly understand the scope of the claim.

In fact, the first paragraph of the precept in question is word for word: For the ***purposes of this law,*** *victims are considered to be those persons who, individually or collectively, have suffered harm as a result of acts that occurred after January 1, 1985, as a consequence of violations of International Humanitarian Law or of serious and manifest violations of international human rights norms that occurred on the occasion of the internal armed conflict* (added bold). As can be seen from the previous wording, this precept expressly refers to the fact that the accused time limitation is relevant to the application of the measures set forth in the law, without it being necessary to detail each of them specifically, precisely because it refers to the fact that they are considered victims *for the purposes of this law*. It is also clear that persons who suffered damage as a result of events occurring before 1 January 1985 are excluded from ownership of these measures. It should be noted that the right to equality allegedly violated would be remedied precisely with a pronouncement related to the accused time limitation, without it being necessary to examine the constitutionality of each of the provisions that individualize the reparation measures of the victims. The above reasons point to the fact that the statement demanded has an autonomous and complete normative content, which does not depend on the content of other provisions and therefore it was not necessary to integrate the legal proposal in the terms demanded by the participants and the Public Prosecutor's Office.

However, these objections, in turn, are related to the alleged lack of specificity of the accusations raised; in effect, the representatives of the State entities that participated in the process understand that the charges formulated were vague, abstract and

general, since the actors simply referred to the fact that in accordance with the time limitations contained in article 3 and article 75, two groups of victims are formed, which are in a different legal situation with respect to access to the benefits provided by law, and that the criterion used to differentiate them, the moment in which the harmful event occurred, is not relevant to differentiate them, due to the historical continuity of the Colombian armed conflict. But as can be seen, this charge, although formulated in a simple manner, includes all the ingredients required to provoke a true constitutional debate on the alleged violation of the principle and fundamental right to equality, since it states that there are two subjects who should receive equal treatment and the legal system distinguishes between them by virtue of a criterion that is not considered relevant, in addition to explaining the reasons that lead to questioning it.

It is true that the plaintiffs repeatedly use disproportionate and unreasonable expressions to criticize the time limitations contained in the accused precepts, without offering arguments to support such value judgments. Nor do they carry out an equality trial in the terms demanded by the jurisprudence of this Corporation that stops on the purpose of the different treatment and if this is justified in the light of the Constitution, however, these failures do not give rise to an inhibitory ruling insofar as they managed to formulate a legal problem that must be resolved by the Constitutional Court.

4. Evolution of the concept of victim in public international law

The concept of victim in public international law has undergone a long evolution, consistent with the profound changes that international society has undergone, especially throughout the twentieth century, as well as the various disciplines that, today, compose it. Therefore, for methodological reasons, we will analyze the different historical stages that the issue of the recognition of the status of victim, and its correlative rights, has known in international law.

Phase I: the confusion between the harm caused to the citizen with that suffered by the State from which it originates

From the Peace of Westphalia (1648), the State became the main protagonist of international relations. Individuals, on the other hand, were not considered in terms of recipients of rights or obligations deriving from international standards.

However, through the creation of customary rules, a regime of non-contractual liability between States was built, the main advances of which took place towards the second half of the nineteenth century, thanks to the increasingly frequent recourse to international arbitration. In fact, at present, the efforts made by the UN International Law Commission have not succeeded in crystallizing into the adoption of an international treaty that would regulate, in a comprehensive manner, the issue of international responsibility among States.

In this historical context, the damage caused by one State to nationals of another was

considered to have been actually suffered by the State of origin, which was why the latter could assume the international defence of its nationals. Hence Vattel, around 1700, affirmed that "*anyone who mistreats a citizen indirectly offends the State, which must protect its citizens*".

Similarly, the Permanent Court of International Justice, in the *case of the Mavrommatis concessions in Palestine (Greece v. United Kingdom*), in the text of its judgment of 30 August 1924, by which it ruled on its jurisdiction, considered the following:

> "There is an elementary principle of international law which authorizes a State to protect its nationals injured by acts contrary to the international order committed by another State, from which they have not been able to obtain satisfaction by ordinary means. By taking up the cause of one of its own, by initiating diplomatic protection or international judicial action, the State, in truth, is asserting its own right, that of respecting international law in the person of its citizen.

And further on, at the point of international representation of the injured individual, the ruling holds as follows:

> "It is not relevant, from this point of view, to ask whether, at the origin of the dispute, there is an attack against a private interest, which occurs in numerous disputes between States. From the moment a State takes up the case of one of its nationals before an international jurisdiction, the latter does not know as the plaintiff but as the former".

Thus, the damages caused to the nationals of a country were considered as actually generated to their State of origin, which assumed the international representation of the former. In the same way, they used to create Mixed Commissions of Reparations, such as the one set up by the Jay Treaty, subscribed between the United States and Great Britain (1794); or those between Venezuela and several European countries such as Italy, Germany and Great Britain (1903), as well as those established in 1922 and 1927 between France and Mexico. All of them, in essence, analysed the harm caused to aliens during situations of armed conflict.

In short, during this first phase the individual did not have international legal personality; he was therefore not considered in terms of victim, holder of substantial or procedural rights. Hence, the damages caused to it were considered as actually caused to their respective States of origin, which endorsed their international defense.

Phase II. International recognition of the victim status of certain ethnic minorities

At the end of the First World War, the process of revising the borders of certain European countries was accompanied by the signing of a series of international treaties in which certain ethnic minorities were recognized as victims. This process

was accompanied, on the one hand, by the recognition in favour of those of a set of rights of a substantial nature, in particular, those to have a nationality, to use their language of origin, to preserve their religion, as well as to have the means of communication. Likewise, if they are victims of violations of these rights, a procedural mechanism was established so that they could submit petitions to the League of Nations.

In this regard, the Permanent Court of International Justice, in the *case of minority schools in Upper Silesia*, in its advisory opinion of 15 May 1931, found that children who were taught in German schools, belonging to minority groups, could not be victims of any discrimination on the basis of their origin.

Phase III. Emergence of International Human Rights Law and its relation to the concept of victim

As explained above, classical international law only protected the individual as a foreigner whose rights had been infringed, and the State of origin was the only State entitled to hold the offender internationally liable, through the discretionary exercise of so-called diplomatic protection. In this historical context, a concept of victim did not really develop, without prejudice to the existence of some specific advances in the international protection of human rights, such as (i) the international abolition of slavery (Treaty of London of 1841); (ii) the signing of bilateral treaties between the European monarchs and the Ottoman Empire, aimed at guaranteeing the enjoyment of certain rights to foreigners living in the latter's territories; and (iii) the establishment of minimum labour standards, thanks to the creation of the International Labour Organisation.

After World War II, with the creation of the UN and the subsequent adoption of the Universal Declaration of Human Rights, a new branch of public international law emerged, called "International Human Rights Law", based precisely on the recognition of the international legal personality of the individual. Since then, a universal system for the protection of human rights has been developed and consolidated, on the one hand, and regional systems (European, American and African) on the other.

Beyond the particularities offered by the aforementioned international systems, in particular the nature of their respective bodies (political, quasi-judicial or judicial), as well as the various instruments of control (reports, general observations, individual petitions or complaints, in the European system), the fact is that international human rights law is based on or structured around the following techniques: (i) recognition of a subjective right of an individual or group of persons (e.g. women, children, migrant workers, etc.) in a conventional norm; (ii) incorporation of the international provision in the respective internal state rights; (iii) invocation, in case of violation, of the right before national administrative or judicial instances; (iv) in case of absence of integral reparation, non-existence or ineffectiveness of the internal channels, power to resort to the respective international instance of control of compliance with the treaty.

In this order of ideas, a victim is generally considered to be a person, presided over by his or her nationality, who has suffered harm in the enjoyment of a subjective right recognized in a given international treaty, attributable, by action or omission, to a State Party to that treaty.

However, it is true that the realization of the concept of victim, that is, its content and scope as such, has been the work of international human rights jurisprudence, in addition to the work of some Special Rapporteurs of the former Commission on Human Rights (now the Human Rights Council), as well as certain *soft law* norms.

Phase IV. Advances in the concept of "victim" through the creation of jurisprudence, doctrine and *soft law*

The jurisprudence created at the time by the Permanent Court of International Justice, followed by the International Court of Justice and the regional human rights courts, considered that the extent, modalities and beneficiaries of the international responsibility of States were governed by their own rules. This means that the concept of victim handled by International Human Rights Law may or may not coincide with that elaborated by the internal law of a given State. Hence, for example, it may happen that a person is considered in terms of a victim by international law, but not by the law of the State of which he or she is a citizen, or that a given harm is reparable in the international order but not domestically, or vice versa. Likewise, the proof of the quality of victim is not determined according to the standards required by domestic law. Such disharmonies respond to the very structure of the international legal order and to the unstructured form as it has historically been constructed.

Well, in the American system of human rights protection, the construction of the concept of victim is based on the text of article 63.1 of the Pact of San José de Costa Rica:

> "Article 63
>
> When deciding that there has been a violation of a right or freedom protected in this Convention, the Court shall order that the **injured party** be guaranteed the enjoyment of his right or freedom that has been violated. It shall also provide, where appropriate, for reparation of the consequences of the measure or situation that has led to the infringement of those rights and the payment of fair compensation to the injured party.

The Inter-American Court of Human Rights, for its part, has considered that the obligation to make reparation provided for in Article 63(1) of the American Convention is an obligation of international law, which also governs its modalities and beneficiaries. In other words, although the concept of victim constructed by international human rights law does not coincide, as has been explained, with that elaborated by the various domestic state rights, it does not mean that it has not drawn on these in terms of general principles of law (ICJ Statute, art. 38).

For example, in the *case of Aloebotoe v. Suriname*, in a reparations judgment of September 10, 1993, the Cteidh considered that the following persons should be considered as victims, and therefore repaired:

> "Every human act is the cause of many consequences, both proximate and remote. An old aphorism says in this sense: causa causaæ est causa causati. Think of the image of a stone being thrown into a lake and producing concentric circles in the waters that are increasingly distant and less perceptible. Thus, every human act produces remote and distant effects.
> Forcing the perpetrator of a wrongful act to erase all the consequences that his act caused is entirely impossible because his action had effects that multiplied immeasurably.
> For some time now, law has dealt with the issue of how human acts are presented in reality, their effects and the responsibility they give rise to. At the international level, the arbitral award in the "Alabama" case already addresses this issue (Moore, History and Digest of International Arbitrations to which the United States has been a Party, Washington, D.C., 1898, vol. I, pp. 653-659).
> The solution that the law provides in this matter consists in requiring the person responsible to repair the immediate effects of the illegal acts, but only to the extent legally protected. On the other hand, with regard to the various forms and modalities of reparation, the in integrum restitutio rule refers to a way in which the effect of an international wrongful act can be repaired, but it is not the only way in which it should be repaired, because there may be cases in which it is not possible, sufficient or adequate (see Usine de Chorzów, fond , supra 43, p. 48). Thus, in the opinion of the Court, Article 63(1) of the American Convention must be interpreted.

Based on the foregoing considerations, the Cteidh considered that, in the specific case, the following persons should be considered as victims:

> "The O.I.T. Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989) has not been approved by Suriname and in the law of nations there is no conventional or customary rule that determines who a person's successors are. It is therefore necessary to apply the general principles of law (art. 38.1.c of the Statute of the International Court of Justice).
> It is a common rule in most legislations that a person's successors are his or her **children**. It is also generally accepted that the **spouse** participates in the property acquired during the marriage and some legislations also grant him/her an inheritance right along with the children. If there are no children or spouse, common private law recognizes ascendants as heirs. These rules generally accepted in the concert of nations must be applied, at the discretion of the Court, in the present litigation in order to determine the victims' **successors in relation to** compensation.

These general principles of law refer to "children", "spouse" and "relatives in the ascending line". These terms shall be interpreted in accordance with local law. This, as already indicated (supra, para. 58), is not Surinamese law because it is not effective in the region in terms of family law. It is therefore appropriate to take into account the Saramaca custom. It will be applied to interpret those terms to the extent that it is not contrary to the American Convention. Thus, when referring to "ascendants", the Court will not make any distinction of sexes, even if this is contrary to Saramaca custom.

The identification of the children of victims, their spouses and, possibly, their relatives in the ascending line has presented serious difficulties in this case. They are members of a tribe that lives in the jungle, in the interior of Suriname and expresses itself only in its native language. Marriages and births have in many cases not been registered and, where this has occurred, not enough data have been included to fully prove the filiation of persons. The question of identification becomes even more difficult in a community where polygamy is practised.

(…)

The obligation to make reparation for the damage caused sometimes extends, within the limits imposed by the legal order, to persons who, without being successors to the victim, have suffered some consequence of the unlawful act, a matter which has been the subject of numerous decisions by the domestic courts. The case law, however, establishes certain conditions for admitting a claim for damages brought by a third party.

Firstly, the payment claimed must be based on benefits actually provided by the victim to the claimant irrespective of whether it is a legal maintenance obligation. It cannot be only sporadic contributions, but payments made regularly and effectively in money or in kind or in services. What is important is its effectiveness and regularity.

Second, the relationship between the victim and the claimant should have been of such a nature that it could have been assumed on some grounds that the benefit would have continued if the victim's homicide had not occurred.

Finally, the claimant must have had an economic need that was regularly satisfied by the victim's benefit. In this order of things, it is not necessarily a person who is destitute, but someone who with the benefit benefited from something that, if it were not for the victim's attitude, he would not have been able to obtain on his own" (emphasis added).

In this vein, victims were considered not only those who directly suffered damage to their property or the enjoyment of their fundamental rights, but also certain relatives and dependants, in accordance with the general principles of law, i.e., those common to various domestic legal systems, in the terms explained by the ICJ in the *case of South West Africa* in 1966.

Similarly, the construction of the concept of victim, and its correlative substantial and

procedural rights (rights to truth, justice and integral reparation) has been the work of some Special Rapporteurs of the former UN Commission on Human Rights, whose proposals and studies have served for the adoption of *soft law* norms.

In this regard, on November 29, 1985, the UN General Assembly adopted the "*Declaration on Fundamental Principles of Justice for Victims of Crime and Abuse of Power*", a text that specifies and specifies who can be considered as victims of serious violations of human rights:

> "Victims of crime
> "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, financial loss or substantial impairment of fundamental rights, as a result of acts or omissions that violate criminal laws in force in Member States, including those proscribing the abuse of power.
> 2. A person may be considered a "victim" under this Declaration regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the family relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, family members or dependants who have an immediate relationship with the direct victim and persons who have suffered harm by intervening to assist the victim in danger or to prevent victimization.
>
> 3. The provisions of this Declaration shall apply to all persons without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural belief or practice, property, birth or family status, ethnic or social origin, or physical handicap.

However, the same Resolution specifies that, once the status of victim has been recognized, the person is entitled to various rights such as (i) access to justice and fair treatment; (ii) redress; (iii) compensation; and (iv) medical assistance, among others.

More recently, UN General Assembly Resolution 60/147, adopted on 16 December 2005, welcomed the "*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*". In this text, the victim is defined in the following terms:

> "“8. For the purposes of this document, a victim is any person who has suffered harm, individually or collectively, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights, as a result of actions or omissions that constitute a manifest violation of international human rights law or a serious violation of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" shall also include the immediate family or dependants of the direct victim and persons who

have suffered harm in intervening to assist victims at risk or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation has been identified, apprehended, tried or convicted and regardless of the family relationship that may exist between the perpetrator and the victim.

Correlatively, whoever is recognized as a victim will be entitled to the following rights: (i) to be treated with humanity and respect; (ii) to have measures adopted to guarantee their safety, physical and psychological well-being and privacy, as well as those of their families; (iii) to have resources that allow them effective access to justice; (iv) to be adequately, effectively and promptly compensated for the harm suffered, including *restitutio in integrum,* if possible, as well as compensation, satisfaction measures, rehabilitation and guarantees of non-repetition; (v) to have access to relevant information on violations and reparation mechanisms. In short, to be guaranteed their fundamental rights to truth, justice and full reparation.

Lastly, it should be recalled that these important advances in the area of *soft law* also respond to the contributions made at the time by various rapporteurs of the former Commission on Human Rights, in particular the report prepared by Joinet entitled "*The administration of justice and the rights of detainees. La cuestión de la impunidad de los autores de violaciones de los derechos humanos (civiles y políticos*)" (*The question of impunity for perpetrators of human rights violations (civil and political*)), presented in 1996 before the aforementioned body, during which the central contents of the rights to truth, justice and reparation were presented. Equally important was the work carried out by Rapporteur Theo Van Boven in his report on "*Basic Principles and Guidelines on the Right to Reparation for Victims of Human Rights Violations and International Humanitarian Law*", all of which served to elaborate the aforementioned UN General Assembly Resolution 60/147, adopted on 16 December 2005.

Phase V. Recognition by an international treaty of the active legitimacy of the victim in the event of an international armed conflict to have direct access to an international body

An important step forward in the international construction of the concept of the "victim" and his rights took place with the adoption by the United Nations Security Council of Resolution No. 687 of 3 April 1991.

Indeed, through the creation of the "*United Nations Reparations Commission for the damage caused to the environment by the invasion of Iraq into Kuwait*", natural and legal persons were empowered to submit international claims directly, in order to obtain reparation for the damage suffered during the first Gulf War (1991). That, without a doubt, was a notorious advance in terms of victims' rights because, in the past, after the end of an international armed conflict, the defeated State used to be condemned to compensate the victor, but not directly the victims.

In addition to the foregoing, it should be remembered that international treaties on international humanitarian law, while enshrining various rights in favour of the civilian population, do not contain any real normative developments in the area of rights to truth, justice and reparation for victims. Hence, the issue of guaranteeing the rights of victims of war crimes is, on the one hand, the subject of analysis in the field of international criminal law and, on the other hand, in the various provisions of *soft law,* victims of serious violations of human rights are being placed on an equal footing in terms of rights.

Phase VI. Developments in international criminal law

International criminal law has also discussed the status of victims and their correlative rights, especially procedural rights. In this sense, the evolution has been somewhat different from that known in the field of international human rights law, in that the main discussion on the recognition of the status of victim has kept a close relationship with the debates that are presented in the different domestic procedural systems about, in particular, between the purest accusatory models and the European continental systems.

In this regard, it should be noted that when discussing the international statutes that gave rise to the creation of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for the crimes perpetrated in Rwanda, the central debate lay in determining whether victims should participate as such in criminal proceedings or whether, on the contrary, they should only be summoned as witnesses, their respective claims being a matter reserved to domestic law, a position that was finally accepted.

On the contrary, while the Rome Statute of the International Criminal Court does not define who is a victim, the text of the Rules of Procedure and Evidence (art. 85) provides as follows:

> (a) The term "victim" means any natural person who has suffered harm as a result of the commission of a crime within the jurisdiction of the Court.
> (b) The term "victim" also includes any organization or institution whose property is devoted to religion, teaching, the arts, science or charity, a historical monument, a hospital or any other place used for humanitarian purposes which has suffered direct damage.

It should be noted that the article does not distinguish between direct and indirect victims; nor does it understand legal persons as such, but rather establishes more focused protection for their property, that is to say, for goods intended for worship, health, etc.

Similarly, it is necessary to clarify that, from a procedural point of view, the measures that have been adopted by the ICC differentiate between "victims of a situation" and

"victims of a specific case".

5. The concept of victim in the jurisprudence of the Constitutional Court

On the occasion of the review of the constitutionality of the laws of Law 600 of 2000, Law 906 of 2004 and Law 975 of 2005, this Corporation has had the opportunity to pronounce itself on the concept of victim of punishable acts and serious violations of human rights and international humanitarian law, as well as on the scope of their rights.

Specifically, ruling C-370 of 2006 deals *in extenso* with the issue by examining the constitutionality of articles 5, 47 and 48 of Law 975 of 2005. The plaintiffs accused these provisions of fixing a restrictive and excluding definition of victim, which in turn limited the ownership of the right to an effective judicial remedy, of rehabilitation and satisfaction measures and of guarantees of non-repetition. They pointed out that *"the siblings of a forcibly disappeared or murdered person, or other relatives who are not in the first degree of consanguinity, would not have the right to claim reparation. In the case of a member of the security forces who has been assassinated in the context of the armed conflict, only the 'spouse, permanent partner and relatives in the first degree of consanguinity' shall be victims. With regard to rehabilitation, the law provides that only the direct victim and first-degree relatives shall receive medical and psychological care.*

This Corporation resolved the charges based on the following considerations:

> 6.2.4.2.9. The Constitutional Court and the Inter-American Court of Human Rights have understood that victims or victims are, among others, direct victims and their relatives, without distinguishing, at least in order to recognize their condition as victims of the crime, the degree of relationship or kinship. In this regard, the Inter-American Court has already noted the following:
>
> "This Court has pointed out that the right of access to justice is not exhausted through internal processes, but that it must also ensure, within a reasonable time, the right of the alleged victims or their families to do everything necessary to know the truth about what happened and to have those responsible punished.
>
> 6.2.4.2.10. In the same sense, to cite only a few additional cases, in the Judgment of March 14, 2001, the Court recognized the right of family members - without distinction by degree of kinship - to know the truth about human rights violations and their right to reparation for the same violations. In this regard, among other considerations, the Court noted: "This type of law (referring to self-help laws) impedes the identification of individuals responsible for human rights violations, since it hinders investigation and access to justice and prevents victims and their families

from knowing the truth and receiving the corresponding reparation. In the same sense in the Judgment of the Inter-American Court of Human Rights of November 25, 2003, it stated: "its function (referring to the function of judicial organs) is not exhausted in enabling a due process that guarantees the defense in trial, but it must also ensure in a reasonable time the right of the victim or his next of kin to know the truth of what happened and to have those responsible punished. Finally, in the Judgment of the Inter-American Court of Human Rights of September 15, 2005, it was stated: "219. In fact, it is necessary to remember that the present case is one of extrajudicial executions and in this type of case the State has the duty to initiate ex officio and without delay, a serious, impartial and effective investigation. During the investigation process and the judicial process, victims of human rights violations, or their families, should have ample opportunities to participate and be heard, both in clarifying the facts and punishing those responsible, and in seeking just compensation."In short, the authorized interpreter of the Inter-American Convention on Human Rights, articles 8 and 25 of which are part of the constitutional block, has pointed out that relatives, without distinction, who can prove the harm, have the right to an effective remedy to demand the satisfaction of their rights to truth, justice, and reparation.

6.2.4.2.11 For its part, the Constitutional Court has pointed out that the victim or injured party of a criminal offence must be the person who has suffered real, concrete and specific damage, whatever the nature of the damage and whatever the offence that caused it. The Court underlines that the presumptions set out in Article 5(2) and (5) include defining elements relating to the configuration of certain criminal types. Thus, paragraph 2 states that the condition of family victim is specified when the "direct victim" "has been killed or has disappeared". That is to say, the relatives in the degree indicated there will be considered as victims only in such cases. This could be interpreted to mean that relatives, even in the first degree established in the norm, are not considered victims if a relative was not killed or disappeared. This interpretation would be unconstitutional because it would excessively limit the concept of victim to such an extent that it would exclude from that condition and, therefore, from the enjoyment of the constitutional rights proper to the victims, the relatives of the kidnapped, of those who suffered serious injuries, of those who were tortured, of those who were forcibly displaced, in short, many relatives of direct victims of crimes other than those which, in order to be configured, require proof of death or disappearance. This exclusion is particularly burdensome in cases where the crime falls on entire families, such as forced displacement, or where the direct victim while alive or present has suffered such psychological harm that he refuses to assert his rights for himself, as might occur in a case such as torture. Victims who prove that they have suffered real, concrete and specific damage, as well as their relatives who meet the relevant evidentiary requirements, may

assert their rights.

6.2.4.2.12. In this sense, it would affect the right to equality and the rights to due process and to access to the administration of justice, if the legislator had only one group of relatives as victims of the crime and only for certain crimes, without taking into account that in many cases the degree of consanguinity ceases to be the most important factor in defining the magnitude of the damage caused, and death or disappearance are not the only relevant aspects for identifying the victims of illegal armed groups. In this regard, the above-mentioned judgment pointed out:

There must be real damage, not necessarily of a specific, concrete, patrimonial content, that legitimizes the participation of the victim or of the injured in the criminal process in order to seek the truth and justice, which must be appreciated by the judicial authorities in each case. Once the quality of victim has been demonstrated, or in general that the person has suffered a real, concrete and specific damage, whatever the nature of this, he is legitimated to constitute himself as a civil party, and can orient his claim to obtain exclusively the realization of justice, and the search for truth, leaving aside any patrimonial objective. Moreover, even if the property damage is compensated, when it exists, if it has an interest in truth and justice, it can continue to act as a party. This means that the only essential procedural budget to intervene in the process is to prove the concrete damage, without being able to demand a claim tending to obtain the patrimonial reparation. The determination in each case of who has the legitimate interest to intervene in the criminal process also depends, among other criteria, on the legal good protected by the norm that typified the conduct, its injury by the punishable act and the damage suffered by the person or persons affected by the prohibited conduct, and not only on the existence of a quantifiable property damage.

6.2.4.2.13. Later, in Ruling C-578 of 2002, when studying the constitutionality of Law 742 of 2002 through which the statute of the International Criminal Court was approved, referring to the criteria for weighting the values of justice and peace, the Court said:
"Notwithstanding the foregoing, and in order to make peace compatible with the effectiveness of human rights and respect for international humanitarian law, international law has considered that the domestic instruments used by States to achieve reconciliation must guarantee victims and injured parties of criminal conduct the possibility of access to justice in order to know the truth about what happened and obtain effective judicial protection. For this reason, the Rome Statute, by gathering international consensus on the matter, does not prevent the granting of amnesties that meet these minimum requirements, but it does prevent amnesties that are the product of decisions that do not offer effective access to justice.

> 6.2.4.2.14. In short, according to constitutional law, interpreted in the light of the block of constitutionality, the relatives of persons who have suffered direct violations of their human rights have the right to appear before the authorities so that, having demonstrated the real, concrete and specific damage suffered during the criminal activities, they are allowed to request the guarantee of the rights that have been violated. This does not mean that the State is obliged to presume harm to all relatives of the direct victim. Nor does it mean that all family members have exactly the same rights. What, however, if derived from the norms and jurisprudence cited, is that the law cannot prevent the access of the relatives of the victim of human rights violations to the authorities in charge of investigating, judging, condemning the perpetrator and repairing the violation.
>
> 6.2.4.2.15. For the foregoing reasons, the Court considers that the right to equality and the rights of access to the administration of justice, due process and an effective judicial remedy are violated by the provisions of the Respondent Law that exclude relatives who do not have the first degree of consanguinity with the direct victim from the possibility that, through the demonstration of the real, concrete and specific harm suffered during the criminal activities covered by the Respondent Law, they may be recognized as victims for the purposes of the aforementioned Law. It also violates such rights to exclude relatives of direct victims when they have not died or disappeared. Such exclusions are constitutionally inadmissible, which does not preclude the legislature from relieving the burden of proof on certain relatives of direct victims by establishing presumptions as it did in paragraphs 2 and 5 of article 5 of the accused law.

Finally, it declared the second and fifth paragraphs of article 5 constitutional, on the understanding that the presumption established therein does not exclude as a victim other family members who have suffered harm as a result of any other conduct in violation of criminal law committed by members of illegal armed groups. It also declared enforceable the expression *in the first degree of consanguinity in accordance with the budget of the Fund for the reparation of victims*, contained in article 47, on the understanding that it does not exclude as a victim other relatives who have suffered harm as a result of any other conduct in violation of criminal law committed by members of illegal armed groups. Finally, it declared the *first degree of consanguinity of* numeral 49.3 to be enforceable, on the understanding that it does not exclude as a victim other relatives who have suffered harm as a result of any other conduct in violation of criminal law committed by members of illegal armed groups.

More recently, the Constitutional Court, in Ruling C-052 of 2012, studied the enforceability of one of the provisions under consideration in this process, Article 3 of Law 1448 of 2011. The legal problem examined on that occasion consisted in

determining whether the limitation contained in paragraph 2 of the aforementioned precept, with respect to the group of relatives of the deceased or disappeared victim who will also be considered victims, was unjustified and, to that extent, was a discriminatory measure, contrary to the right to equality enshrined in article 13 of the Constitution.

In order to resolve the issue raised, the Court specified the normative content of the expressions accused, which determine the victims who benefit from the measures of attention, assistance and integral reparation established in that normative body. Thus, he indicated that article 3 contains the rules from which the applicability of the different remedial measures to specific cases will be defined, and then compared the hypotheses contained in paragraphs 1 and 2.

The Court stated that paragraph 1 of this article develops the basic concept of the victim, which, according to the text, necessarily implies the occurrence of damage as a consequence of certain facts, and also includes other references related to the type of infractions whose commission will generate the rights and benefits developed by this law and to the time from which those facts must have occurred. It also pointed out that paragraph 2 establishes a new rule regarding who will be considered victims, a rule that does not directly allude to the fact that the persons envisaged therein have suffered damage resulting from the victimizing acts, but instead requires proof of two factual circumstances that condition such recognition, such as the death or disappearance of the so-called direct victim and the existence of a specific legal relationship or kinship with the victim.

The Court held that this paragraph establishes a presumption of harm that does not refer to the universe of addressees already contemplated in paragraph 1, a statement that recognizes as victims all persons who have suffered harm as a consequence of the acts contemplated therein. He also pointed out that paragraph 2 of article 3 begins with the expression *"they are also victims..."*, which denotes that this new rule does not have a limiting effect, but rather an additive effect as opposed to what was previously determined in the first paragraph.

For the Court, when comparing the different situations regulated by paragraphs 1 and 2 of Article 3, it is found that in reality both rules lead to the same result, which is the recognition of the condition of victim and, with it, access to the benefits developed by Law 1448 of 2011, although by different means, since the first normative enunciation requires accreditation, in the manner provided in the same law, of damage suffered by the alleged victim as a result of the acts referred to therein, while the second, instead, simply requires the existence of a certain kinship, as well as the circumstance that the so-called direct victim was killed or disappeared, circumstances that presume the occurrence of damage, a presumption that can in any case be rebutted.

Based on the foregoing reflections, the Court concluded that if a person has actually suffered harm as a result of certain facts, included within the cases provided for in paragraph 1, a situation that may well be that of a partner and/or close relatives of the

persons directly affected, it is not feasible to understand that only through paragraph 2 could she be admitted as a victim, as the plaintiff stated. On the contrary, it found that any person who has suffered harm as a consequence of the acts provided for in subsection 1 may invoke the status of victim by way of that same subsection 1, with which the restrictions contained in subsection 2, which only favors in the terms of the presumption established therein, would not affect him in any way.

However, in order to prevent a possible restrictive interpretation of the second paragraph of Article 3, excluding persons other than those contemplated therein from the benefits established in Law 1448 of 2011, a situation that would violate the right to equality (Article 13 C. P.), the Court proceeded to declare the conditioned exequibilidad of the normative expressions accused, contained in the cited second paragraph, in such a way that it is understood that those persons who have suffered damage in the terms of the first paragraph of said article are also victims.

From the above-mentioned precedents, it is important to note, for the purposes of the present process, that the Constitutional Court has accepted a broad concept of victim or injured party, defining the person as having suffered real, concrete and specific damage, whatever the nature of the damage and the crime that caused it. The damage suffered does not necessarily have to be of a patrimonial nature, but it must be real, concrete and specific, and from this finding the legitimacy arises for it to participate in the criminal process in order to seek truth and justice and to be the owner of reparation measures. It has also been understood that regulations that excessively restrict the status of victim and exclude categories of injured parties without foundation in constitutionally legitimate criteria do not conform to the Constitution.

6. Brief description of the relevant features of Law 1448 of 2011

In order to introduce some elements of judgement that allow the examination of the constitutionality of the accused normative statements, and without attempting a comprehensive review of Law 1448 of 2011, a brief description of the salient features of this normative body will follow.

The Court agrees with the participants in the qualification of Law 1448 of 2011, *"by which measures of attention, assistance and integral reparation are dictated to the victims of the internal armed conflict and other dispositions are dictated"*, as a transitional justice law. This perception is based on both its title and its normative content, since the first article states that its purpose is to define, within what it calls a framework of transitional justice, concrete actions of both a judicial and administrative nature, as well as actions of a social and economic nature, directed at individuals as well as groups, and intended for victims of breaches of international humanitarian law and serious and manifest violations of international human rights norms that occurred during the internal armed conflict (Art. l). The same provision states that it shall be a matter of measures that would make possible for these victims the effective enjoyment of their rights to truth, justice, reparation and guarantees of non-repetition, in order to recognize their status as victims, their right to human

dignity and the materialization of their constitutional rights (Art. l).

The second article alludes to the issues that will be dealt with by the law, among which are included: (a) the regulation of the rights to humanitarian aid, attention, assistance and reparation, referred to persons who individually or collectively have suffered harm as a consequence of breaches of IHL or serious violations of human rights, occurred on the occasion of internal armed conflict and who are recognized as victims by the same law, and (b) the establishment of *tools so that these* [victims recognized by the same law] *claim their dignity and assume their full citizenship*, that is, the establishment of what should be resources or mechanisms to demand the rights referred to (art. 2).

Law 1448 of 2011 is divided into eight (8) titles that include the following topics: (i) general provisions, which refer to the object, scope, definition of victim and principles (arts. 1 to 34); (ii) rights of victims within judicial processes (arts. 35 to 46); (lii) humanitarian aid, care and assistance, which includes a special chapter on rules of care for victims of forced displacement (arts. 1 to 34); (v) the right of victims of forced displacement (arts. 1 to 34); (vi) the right of victims of forced displacement (arts. 35 to 46); (v) the right of victims of forced displacement (arts. 35 to 46); (vi) the right of victims of forced displacement (arts. 35 to 46); (vii) the right of victims of forced displacement (arts. 35 to 46); (vii) the right of victims of forced displacement (arts. 35 to 46); (vii) the right of victims of forced displacement (arts. 35 to 46); and (vii) the right of victims of forced displacement). 47 to 68); (iv) reparation for victims, which includes specific chapters on: restitution measures, restitution of land including restitution proceedings, establishment of jurisdiction for judges to hear restitution proceedings, and institutionality in charge of restitution; establishment of compensation through administrative channels; rehabilitation measures; satisfaction measures; guarantees of repetition and definition of the existence of collective reparation (articles. 69 to 152); (v) institutions for care and reparation for victims, which, among other things, establish a single register of victims (arts. 153 to 180); (vii) comprehensive protection for children and adolescents (arts. 181 to 191); (viii) [sic] participation by victims (arts. 192 to 3); (viii) the right of the child to be heard (arts. 153 to 191); (viii) the right of the child to be heard (arts. 153 to 191); (viii) the right of the child to be heard (arts. 192 to be heard); (viii) the right of the child to be heard (arts. 153 to 191); (viii) the right of the child to be heard (arts. 192 to be heard); and (viii) the right of the child to be heard (arts. 192 to be heard). to 194); and (ix) [sic] final provisions (arts. 195-208).
A reading of Law 1448 of 2011 shows that the concept of reparation enshrined in this law includes measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, in their individual, collective, material, moral and symbolic dimensions. In addition, the Act develops their legal framework and entrusts the National Government with their implementation through the National Plan of Comprehensive Care and Reparation for Victims, and also empowers it to issue regulations to protect and guarantee the rights and customs of ethnic groups, and makes constant allusions to the inclusion of victims in the process of designing and monitoring the comprehensive reparation measures contained in those

instruments.

The Act provides for the satisfaction of individual claims, but also of a collective nature, since the victims recognized by article 3 are both individuals and groups or communities that share a common identity or life project. In order to guarantee their rights to truth, justice, reparation, and guarantees of non-repetition, a massive reparations program with a differential focus should be implemented. The latter ensures that differences between victims will be taken into account, as well as the difference in harm suffered by them on the basis of their age, gender, sexual orientation and disability status.

7. The legislative procedure of the temporary limitations contained in articles 3 and 75 of Law 1448 of 2011

In order to verify whether the time limitations introduced in articles 3 and 75 of Law 1148 of 2011 were the object of a broad discussion, and without it being understood that an examination of the constitutionality of the procedure of the law is being carried out, reference will be made below to the debate within the two houses of Congress of the Republic of the dates challenged by the plaintiffs in the present process.

The project that finally crystallized in Law 1448 of 2011 was of parliamentary and governmental origin. The initiative was filed by the Minister of Interior and Justice, as well as Senators Armando Benedetti, José Darío Salazar, Juan Francisco Lozano, Juan Fernando Cristo and House Representatives Guillermo Rivera, Germán Barón, among other congressmen. The initially proposed articles did not include time limitations on the ownership of the established repair measures contemplated in the project.

Subsequently, in the presentation for the second debate in the plenary of the House of Representatives, a time limitation was introduced in article 3, which defined the universe of the beneficiaries of the reparation measures provided for in the law, and in article 63, which regulated the right of restitution. The date adopted was the first of January 1993, in this regard is obtained in the Gazette of Congress 1004 of 2010:

> A date was introduced, applicable to the concept of victim, which refers to the year 1993. This date was not the product of the arbitrariness of the speakers, but on the contrary, it responds to the fact that in that year the Colombian State assumed the existence of an armed confrontation and the first Public Order Law known to the country was issued, which made permanent several of the 60 decrees that the Government had adopted in use of the powers of internal commotion. This law marks the beginning of a frontal struggle against the armed groups outside the law and, therefore, of an escalation of the internal armed confrontation in the country. Therefore, although there could have been, as in fact there were, serious and manifest violations of International Human Rights Standards prior to

> 1993, the framework of generalized violence and confrontation, in which massive violations of Human Rights suffered an exponential increase, officially began this year by linking the State, by law, as a party in the confrontation.

In the Gaceta del Congreso 116 of March 23, 2011, the debate that took place in the plenary of the House of Representatives of the bill took place, in which an important part was the determination of the dates related to the ownership of the reparation measures contemplated in the bill and to the right to restitution.

Among others, the intervention of the representative Óscar Fernando Bravo Realpe is worth mentioning:

> It is the duty of the State to restore these lands to the dispossessed, it is necessary for this, and this is the proposal of this law, to resort to transitional justice with special norms of protection for people who were dispossessed of their lands. Transitional rules will apply to events, the paper said, that occurred between January 1, 1993 and January 1, 2011.
> I must clarify that we had previously reached an agreement on applying the Victims Act, from 1984, and the Land Restitution Act, from 1990. Subsequently, about 15 days ago, in a meeting held in the Palace, with spokespersons from all parties, the Ministers, in the presence of the President of the Republic, had reached an agreement, at the request of the Vice-President of the Republic, that 1991 should be the starting year, and not 1984, which is more a symbol of violence than of National Unity.
> There, Dr. Rafael Pardo proposed the year 1993 to commemorate the first law of public order, and we have turned it around and we have slept with the date. And our interest, obviously, as a Congress, is to cover the widest possible range of victims. That is why today we are reaching, and only today, a consensus after consultation with the Government so that it will be the first of January 1985, when the application of this law begins.
> Of course, the question would be, and why not 1940 or 1950, or since the Thousand Days War, because we have to be fiscally responsible, and the State and the Government have to tell us exactly from what date it undertakes to compensate those victims or to restore those lands, and while there is no magic date that the Holy Spirit has placed on our minds, it is a date of consensus and it is a date of agreement that the Conservative Party accepts, because it was precisely the one that proposed it, when we initially discussed the date, the first of January 1985 and not as it was, 1984 or 1993.

Representative Iván Cepeda Castro said:

> Finally, Mr President, the date on which this law comes into force for the victims is an essential issue, the government had proposed the date of 1993, but it seems, fortunately, that date has been changed at the last

> minute, at the last minute, to the date of 1985; that is still clearly insufficient. But it can allow at least 35,000 people who were killed in that second stage of the 1980s to be repaired, not to mention the people who were displaced at that time.
>
> It suffices to say that the drug cartels reached their culminating point, with which the paramilitary groups were formed and expanded in regions like Córdoba, like Urabá, like Meta, which in that cruel decade were also led to the failure of peace processes with different guerrilla groups. And all this generated such a spiral of violence that no day went by in the 1980s that news like the La Rochela massacre, like the death of peasants in La Mejor Esquina in Córdoba, the death of four presidential candidates at the end of the 1980s, did not have to be recorded; that is why I invite you to maintain that date, which, I repeat, is totally or at least significantly insufficient, but it can help advance the reparations process.

The representative Oscar Fernando Realpe intervened again:

> President, I want to explain to the House what happened to the date. Let's act with complete clarity. In particular, I am addressing the dear comrades of the U Party; we had agreed in the First Committee with the Government on the date of 1 January 1984. Because it was said that that year the violence intensified, especially with some fronts of the FARC, with fronts of the ELN. That the homicide rate was increased considerably. Then, in a meeting we had in a palace with all the parties, there the Vice President of the Republic, Dr. Angelino Garzón, proposed that instead of commemorating a negative event such as the increase in violence, we commemorate a positive event such as the new Constitution of Colombia and consequently proposed the year 91.
> At the same table, the President of the Liberal Party, Dr. Rafael Pardo, proposed that it should not be 91 but 93, to commemorate the first law of public order. Afterwards, I must say that Dr. Rafael Pardo made a mea culpa before the President of the Republic, telling him that evidently this was not in conformity with what had been proposed in the First Commission for almost all the benches, and we left him back on that date.
> Today we have consulted with the Government, particularly with the Minister of the Interior, I say verbatim with whom, with the Director of Social Action, with the Minister of Agriculture, and there was an agreement on the date proposed by the President of the Republic that he does not want it to be the year 84, because the President agrees that violent events should not be commemorated, but that he accepts, it is that I have not finished, that it should be from the first of January 1985, and that is why we have accepted that date.

The Minister of Agriculture, Juan Camilo Restrepo, also participated in the following sense:

(...) I understand that there has been, and now there is even a certain political agreement around January 1, 1985, but I did not want to stop recording that as far as Land Restitution is concerned, the Ministry of Agriculture is reassured by the date of 1993 and I explain the reasons.
You know very well that there is a figure called the extraordinary prescription of domain; if the date of entry into force of the Land Restitution Law is more than 20 years, as would happen with 85, we are probably going to have a great avalanche of applications and resources, alleging an acquisition prescription of domain that can be distorted but does not stop incorporating a great complexity to the process. And secondly, the studies, let us say cadastral studies that we have been able to do, show that the more you go back in time, the more diffuse and less clear the cadastral precision and the scriptural documentation of all these properties. Then there may be difficulties.
I understand, and the government is not going to make a *casus belli*, so to speak, of this date, but I would like to record these concerns in the minutes of this meeting.

Guillermo Abel Rivera Flórez said:

Thank you, Mr President. I would just like to appeal to the arguments, and I would ask that we do not turn this issue into an inter-party pulse within the government coalition.
It has always been complex to set a deadline backwards, because any date is arbitrary. One does not have arguments to think from 1948 onwards to give just one example, a year in which there have been no human rights violations in Colombia.
Then, this has been a dilemma that has taken a lot of time and many reflections. 1991 was spoken of because it was the date when the Constitution was issued, 1993 was spoken of because it was the date when the first law of public order was issued; but I would like to offer you arguments to defend the idea of 1985, without that, as the Minister of Agriculture puts it, becoming a matter of honor, it is a matter of arguments, and the arguments are the following Representatives.
In 1984 the seventh conference of the FARC was held, and the FARC at that conference took the decision to develop a structural relationship with drug trafficking and expanded throughout the country. And its military apparatus grew and, as a result, human rights violations by this criminal organization increased. It was in the mid-1980s when drug traffickers created the MAS, created the macetes, and somehow the version of paramilitary organization we know today from the mid-1980s deployed its criminal actions.
It was in the mid-1980s when the Medellín cartel's narco-terrorism began to deploy its selective homicide actions, but also indiscriminate homicides throughout the country. Think of the bomb in the Avianca airplane, think

of the bomb in the commercial center of Carrera 15 and Calle 93, think of the assassination of Luis Carlos Galán in 1989, think of the assassination of Bernardo Jaramillo at the same time, think of the bomb in the commercial center of Carrera 15 and Calle 93, think of the assassination of Luis Carlos Galán in 1989, think of the assassination of Bernardo Jaramillo at the same time.

But also all these organizations since the mid-80s, began to record for the misfortune of Colombian society the bloodiest massacres, La Rochela, Segovia, the genocide of the Patriotic Union. Then, Representatives, if we were to take the respectable decision here to admit the year 1993 as the backward deadline, we would be excluding remarkable facts, not only against the country but also against the world in terms of violations of international human rights norms and breaches of international humanitarian law.

Dr. Augusto Posada, asked me, ah Soto, and informally, that he would like someone to tell him how much the victims cost from 1985 to 1993. And I would tell him that of course they have a cost, I would also tell him that some of those victims have already been compensated monetarily, and that maybe they would not go to that figure.

But this bill, as we mentioned at the beginning of the presentation of the context of the article, also has symbolic measures. This bill also enshrines truth measures, and all such measures would be excluded, and would be excluded for the filing of human rights violations under this law. All these reprehensible events, reprehensible, but which have marked a milestone in the history of violence in this country.

And I conclude by saying the following, Mr. President, and this is a respectful call for attention to the National Government, it is true that the year 1993 was agreed upon at the National Unity table for the reasons already explained, but it is also true that Dr. Rafael Pardo communicated with the President of the Republic, and as the Ministers are aware, the President of the Republic accepted that January 1, 1985 be incorporated as the deadline backwards. Then, to come on behalf of the Government and say that they are more comfortable with 1993, but that it is not a cause of honor, is an ambivalent and ambiguous message before the Plenary of the House of Representatives.

I would like, Mr President, and I shall end here, to ask you to offer the floor to the Minister of the Interior, to offer it to Dr Diego Molano, who are exceptional witnesses of the last decision accepted by the President of the Republic in his capacity as head of the coalition of the Government of National Unity.

Finally, the text approved by the House of Representatives adopts the date of January 1, 1991 both for the ownership of the reparation measures provided for in the law and in relation to the right to restitution, as recorded in the Gazette 1139 of December 28, 2010:

> Art. 3. Victims. For the purposes of this law, victims are considered to be those persons who, individually or collectively, have suffered an impairment of their fundamental rights as a result of events that have occurred since 1991, provided that such impairment is the consequence of violations of International Humanitarian Law or of serious and manifest violations of International Human Rights Standards.
>
> Art. 63. Holders of the right to restitution. Persons who owned, possessed, held or occupied land, and who have been dispossessed of it, or who have been forced to abandon it as a direct and indirect consequence of the events between 1991 and 1 January 2011, and who constitute the violations covered by article 3 of this law, may request the restitution of land or rural housing under the terms established in this chapter, without prejudice to any other reparations that may be available in accordance with the provisions of this law.

The paper for the first debate in the First Committee of the Senate of the Republic proposed different dates regarding the ownership of reparation measures and the right of restitution. In the Congress Gazette 63 of 2011 is consignated:

> After repeated discussions and analysis of the text to be proposed to the First Committee, the Senator Rapporteurs proposed the following modifications, among others:
> Dates. The House of Representatives approved 1991 as the date from which victims could avail themselves of the measures provided for herein. The Senators agreed to modify the date to January 1, 1986.

It is also suggested that the article on land restitution be amended to read as follows:

> Land restitution. The purpose of the text proposed in the section corresponding to land restitution is to make the right to the restitution of land dispossessed and forcibly abandoned by generalized acts of illegal armed violence in an expeditious and secure manner from 1991 until the present law came into force, through the Special Administrative Unit for Land Restitution Management, which will promote the process, provide the evidentiary elements that allow the Magistrate of the Land Restitution Chambers of the Superior District Courts to pass sentence with sufficient elements of judgment, in such a way that in a short term a definitive sentence is produced, which restores the land to the dispossessed and determines the sums that should be paid to third parties that have demonstrated their legitimate rights in the process.

One of the speakers, Senator Luis Carlos Avellaneda, leaves the following record:

> The establishment of two different dates for the recognition and reparation of victims, on the one hand, and for the restitution of land, on

> the other, is not consistent with the totality intended by accumulating these two initiatives since their processing in the House of Representatives; with the aggravating circumstance that the initial date for reparation to victims of January 1, 1986, contained in this paper for first debate in the Senate of the Republic, while improving the final proposal approved by the House in the first period of this legislature, is not satisfactory in light of the rights to truth, justice and reparation, for facilitating impunity for countless criminal acts. As an example of this phenomenon, between 1980 and 1985, around 5,000 criminal acts were perpetrated, including murders, torture and forced disappearances attributable to agents of the State and paramilitarism; 330.012 has been stripped or forced to abandon, between 1980 and 1992, according to the III National Survey of Verification of the Commission of Follow-up to the Public Policy on Forced Displacement and the National University; the seizure and retaking of the Palace of Justice that left 55 dead, among them 11 magistrates, and 11 disappeared; and likewise, during the 80's the paramilitary structures of Magdalena Medio and Puerto Boyacá were strengthened, the latter financed by Gonzalo Rodríguez Gacha and trained by Yair Klein, perpetrators of multiple crimes.

In the presentation for the second debate in the Senate of the Republic, the discussion that took place within the First Commission regarding the aforementioned dates is explained. That's what it's all about:

> With regard to the dates, the proposed amendment proposed 1 January 1986 as the date from which victims could benefit from the measures contemplated in the present one. Sen. Avellaneda and Londoño expressed their disagreement and insisted as a counterproposal on January 1, 1980. In the course of the discussion, Senator Barreras, on behalf of the Partido de la U, requested that the proposal be modified to apply as of January 1, 1985, a proposal that was finally accepted by the Commission. In addition to this, the coordinator rapporteur proposed for victims prior to this date, access to symbolic reparation measures, the right to the truth and guarantees of non-repetition.
> The restitution processes continue with the statement of the document, that is to say, the cases between January 1, 1991 and the end of the validity of the present law.

It is therefore proposed to amend the text of Article 3 to read as follows:

> Article 3. Victims. For the purposes of this law, victims are considered to be those persons who, individually or collectively, have suffered harm as a result of acts that occurred after 1 January 1985, as a consequence of breaches of international humanitarian law or serious and manifest violations of international human rights norms that occurred on the occasion of the internal armed conflict.

The dates in question were also widely debated in the plenary of the Senate of the republic, as can be seen from the reading of the speeches recorded in Gazette 469 of June 30, 2011.

Thus, for example, Senator Juan Fernando Cristo Bustos gives a general description of the content of the law and points out that Article 3 has been the object of *"hours and hours of debate, not only among the speakers of the initiative in the Senate, also in the chamber of representatives, also in academia, also in different sectors of opinion and in victim organizations*. On the date of January 1, 1985 note:

> The first, victim is anyone who has suffered damage since January 1, 1985 according to this law, we reached consensus on January 1, 1985, that there is a debate, that everyone does not like for one reason or another, that is the consensus: January 1, 1985, violations of human rights and international humanitarian law, and also victims are the spouse or permanent partner, same sex partner and first degree of consanguinity, first civil of the direct victim, so far we are going, all on the occasion of the internal armed conflict (...).
> There are two concluding observations on this topic of article 3 that we are submitting here for consideration by the Plenary.
> The first one that was already approved in the First Commission is that this date of January 1, 1985 be adopted as the date for the effects of the measures of economic reparation to which the victims are entitled, that is to say, the compensation, the measures of assistance in health, in education, in housing, but for effects of right to the truth, of the symbolic reparation, of the guarantees of non-repetition, the victims prior to January 1, 1985 are also included within the law.
> That is to say, the law incorporates all victims at all times, it simply differentiates the victims as of January 1, 1985 for the economic measures that have a fiscal cost for the Colombian State, but all the victims in this country on the occasion of the conflict are going to be recognized and dignified in this law.

For his part, Senator Luis Carlos Avellaneda Tarazona expressed the reasons that led him to disagree with that date:

> The date of 1985, for the reparation of the victims, which we believe, should be from January 1, 1980, because if you see the picture we have there, since 1981, an extreme victimization begins in the country. In the year 81, two hundred and sixty-nine political assassinations, in 82, five hundred and twenty-five, in 83 five hundred and ninety-four, in 84 five hundred and forty-two, in 85 six hundred and thirty political assassinations. And in the whole decade we are going to register a total of political assassinations of 14,150, disappeared in the year 81 hundred and one, in 82 hundred and thirty, in 83 hundred and nine, in 84 hundred and

twenty-two and in 85 and eighty-two, for a total in the whole decade of the year 80 of disappeared, of 1,588. In social cleansing, in the years 89 to 91, we registered a total of victims of three hundred and eighty-nine, and the total of victims of all that period 81 to 91, gives us 17 thousand 31 victims (...) The guerrilla came to have presence in near 600 municipalities, managed to consolidate for the year 82, twenty-seven fronts and ten years later already reached 50 fronts, the FARC.

Well, guerrilla kidnappings are going to start, say, in 1980, they're not going to start in 1980, but we have this record since 1980, they start with 16 and they're going to end in 91 with 802 and in total we attribute them to the guerrilla, we have 2,938 kidnappings. A crime against humanity, a crime that all of us abhor, that helped to discredit the guerrillas, that helped to take away their sympathy, and that is part of the victimization that we have in the country today.

In this subject of victimization and in accordance with the doctrine of national security, narco-violence appears, with it narcoparamilitarism, and then these horrendous episodes of our history appear on the national stage: the massacres, massacres that in the year 199¿, in the year 1988 70 massacres are registered, in the year 89 sixty-seven, in the year 90 sixty-nine and after the year 97 we have 116 massacres and such its highest point we have it in the year 2000 with two hundred thirty-six massacres, within which are those massacres that are represented in photographs that, I repeat, make us horrify, bristle us when we see those images and show us up to where the villainy has been able to arrive.

Between 1996, January 1996 and June 1997, 36,677 people were displaced, but here too we must record the high rates of poverty and concentration of property, which contribute to victimization. At the beginning of this century, we still had 56 percent poverty, 47.2 percent in urban areas, 79.6 percent in rural areas, we had 12,000 landowners who represented 6 percent of the land and who owned 79 percent, sorry, we had 12,000 landowners in 6 percent of the territory who owned 20 percent of the total agricultural land and 82 percent, in contradiction in 82.4 percent of the country's rural properties, were smallholdings, and only occupied 15.6 percent of the country's rural area.

There we also need to record all union violence, a violence that from 1986 to 2010 registered 2,842 murders of union leaders, and that union issue does not end there, we need to show how the unionization rate, Senator Lozano, has fallen to 4.2 percent, 4.2 percent and how the rate of collective bargaining in the world of work only represents 0.47 percent of the total number of workers, with these figures we can practically say that here in Colombia there is no right of union association, it exists on paper, but not in practice, and the right to collective bargaining does not exist, which implies that employers unilaterally impose working conditions.

(...) Having shown this picture of horror, of fear that is victimization, I would like to move on to a second chapter, to say again that the Alternative Democratic Pole, my party, is willing to vote positively on

> this bill, but we find Senators and Senators many problematic aspects, and that is why we are going to call everyone's attention, as should be done in any democracy, listen to the opposition, with reason, to know if the opposition is right or not, and collect from it what is adequate for the general welfare.
> (...) A second problematic aspect that we find in the definition of victim in article 3 of the majority opinion is that there is talk that for the reparation of victims, we are going to talk about January 1, 1985, and for the restitution of land on January 1, 1990, we consider with all due respect that this date is inadequate, although we consider that any date, as Senator Hernán Andrade said repeatedly during all the debates, We believe that the entire decade of the 80's cannot be ignored by this Congress, for the effect of reparation for the victims and for the effect of restitution of the land, and we say this because of what we already meant before, the significant number of victims during the entire decade of the 1980's and because in the entire decade of the 80's we had a land dispossession and forced abandonment, which approaches 248,342 hectares.
> For this reason, I repeat, in our proposal we are setting the date of January 1, 1980 as the sole date for both administrative reparation and land restitution.

Senator Hemel Hurtado Angulo bounded:

> The National Integration Party really supports this project, convinced that it will become an effective tool to achieve that dream, that longed for peaceful coexistence between Colombians, but there are concerns and I will touch on three points briefly.
> The first, which has to do with the date and the graph in the following way, what happens to a victim in an event that occurred on December 31, 1984, by similar circumstances, by the same motives, by the same actors against another victim in an event that occurred on January 1, 1985; that is, 4, 5, 6, 8 or 10 hours later.
> I think that here we are going to make way for a position established by Senator Luis Fernando Velasco in the sense that any person demanding and invoking the principle of equality can break the boundaries that this initiative is really setting in front of the date.

Finally, Senator Luis Carlos Avellaneda proposed several modifications, one of which was that the date for reparation and restitution of land be January 1, 1980, but it was not approved and the third article was approved as it was written in the paper and thus would finally be embodied in the enacted text of Law 1448 of 2011.

8. Some considerations on the general principle of equality and the right to equality

As constitutional jurisprudence has recognized, equality plays a threefold role in our constitutional order because it is simultaneously a value, a principle and a fundamental right. This multiple character derives from its consecration in precepts of different normative density that fulfill different functions in our legal system. Thus, for example, the constitutional preamble establishes equality among the values that the new constitutional order seeks to ensure, while on the other hand Article 13 of the Charter has been considered as the source of the fundamental principle of equality and of the fundamental right to equality. In addition, there are other equality mandates scattered throughout the text of the Constitution, which, where appropriate, act as special norms specifying equality in certain areas defined by the Constituent.

Another aspect of equality that should be pointed out in this short introduction is that it lacks specific material content, that is, unlike other constitutional principles or fundamental rights, it does not protect any specific area of human activity but can be invoked against any unjustified differential treatment. The absence of a specific material content gives rise to the most important characteristic of equality: its *relational* character.

Indeed, as Colombian constitutional jurisprudence has recognized, normative equality necessarily presupposes a comparison between two or more legal regimes that act as terms of comparison; as a general rule, a legal regime is not discriminatory considered in isolation, but in relation to another legal regime. In addition, the comparison generally does not take place with respect to all the elements that form part of the legal regulation of a given situation, but only with respect to those aspects that are relevant taking into account the purpose of the differentiation. This implies, therefore, that equality is also a relative concept, two legal regimes are not equal or different from each other in all their aspects, but with regard to the criteria or criteria used for equalisation.

This relational character is one of the factors that explains the omnipresence of the principle of equality in the jurisprudence of this Corporation, since it makes it possible to invoke it against any action of the public powers regardless of the material scope on which it is projected. It also influences the interpretation of the principle of equality because, as the doctrine has pointed out, from a structural point of view it necessarily involves not only the examination of the challenged legal precept, but also the revision of that in respect of which unjustified differential treatment is claimed in addition to the principle of equality itself. It is therefore a quarterly trial.

The control of constitutionality in these cases is not reduced, then, to an abstract judgment of adequacy between the challenged norm and the constitutional precept that serves as a parameter, but includes another legal regime that acts as a term of comparison. Consequently, an internal regulatory relationship is established which must be approached using special methodological tools such as the *equality test* used by the jurisprudence of this Corporation.

This in turn means that in many cases the result of control is not the declaration of

unconstitutionality of the provision in question, which is why the constitutional courts have had to resort to different types of judgments in order to redress normative discrimination.

However, the absence of a specific material content of the principle of equality does not mean that it is an empty constitutional precept; on the contrary, precisely its relational character entails a plurinomativity that must be the object of conceptual precision. Hence, based on the famous Aristotelian formulation of *"treating the equal and unequal equals and unequal unequals"*, doctrine and jurisprudence have endeavoured to specify the scope of the general principle of equality -at least in its meaning of equality of treatment- from which two norms that bind public authorities are derived: on the one hand, an equal treatment order requiring equal treatment of equivalent factual situations, provided that there are not sufficient grounds for treating them differently, and, on the other hand, the principle of equality also covers an unequal treatment mandate requiring public authorities to differentiate between different situations. However, this second content is not as strict as the first, especially when it is addressed to the Legislator, because by virtue of his recognized freedom of normative configuration, the Legislator is not obliged to create a multiplicity of legal regimes taking into account all the differences, on the contrary it is admitted that with the aim of simplifying social relations he should order similarly different factual situations as long as there is not sufficient reason to impose differentiation.

These two initial contents of the principle of equality can in turn be broken down into four mandates: (i) a mandate for identical treatment of recipients in identical circumstances, (ii) a mandate for entirely differentiated treatment of recipients whose situations do not share any common elements, (iii) a mandate for equal treatment of recipients whose situations have similarities and differences, but the similarities are more relevant despite the differences, and (iv) a mandate for differentiated treatment of recipients who are also in a partly similar and partly different position, but in which case the differences are more relevant than the similarities. These four contents are underpinned by article 13 of the Constitution, since while the first paragraph of the above-mentioned precept provides for equal protection, treatment and enjoyment of rights, freedoms and opportunities, as well as the prohibition of discrimination; the second and third paragraphs contain specific mandates for differential treatment in favour of certain marginalized, discriminated or especially vulnerable groups.

From the various contents of the general principle of equality, the general right of equality arises, the ownership of which lies in all those who are the object of unjustified differential treatment or equal treatment despite being in a special factual situation that imposes different treatment, It is thus a fundamental right that protects its holders against discriminatory or equalizing behaviour by the public authorities, which makes it possible to demand not only that they not be affected by different treatments that lack justification, but also, in certain cases, to claim against equal treatment that does not take into account, for example, special protection mandates of constitutional origin.

Finally, Colombian constitutional jurisprudence has designed a specific methodology for dealing with cases relating to the alleged violation of the principle and fundamental right to equality, namely the integrated equality trial, the constitutive stages of which were described in judgments C-093 and C-673 of 2001. This judgment is based on an examination of the legal status of subjects in comparison, precisely with a view to determining whether there is a problem of differentiated treatment because they are subjects with common features which would in principle require equal treatment on the part of the legislature. The intensity of the equality test is then determined in accordance with the constitutional rights affected by the differential treatment, and finally a proportionality test with its different stages - adequacy, suitability and proportionality in the strict sense - is carried out on the differential treatment.

Based on the above general considerations on the principle and fundamental right of equality, the examination of the constitutionality of the accused normative statements will be addressed.

9. Examination of the constitutionality of the accused provisions

9.1. Examination of the constitutionality of Article 3 of Law 1448 of 2011

The applicants consider that the expression from *1 January 1985,* contained in Article 3 of Law 1448 of 2011, infringes the right to equality of persons who individually or collectively suffered damage as a result of events occurring prior to 1 January 1985, who are not entitled to the reparation measures provided for in the law.

They argue that the date on which the damages occurred is not a relevant criterion for distinction, since they consider that the Colombian armed conflict dates back to the 1950s or 1960s and that therefore all persons who suffered damages as a consequence of breaches of international humanitarian law or international human rights norms should be entitled to the reparation measures indicated in the law.

These are therefore largely historical reasons, since the actors point out that the Colombian armed conflict is perpetuated from the partisan violence of the late 1940s to the present day and therefore it is not possible to distinguish between victims on the basis of a date. This line of argument leads them to conclude that the defendant's statement gives rise to discriminatory treatment since it lacks justification and furthermore does not pursue a legitimate purpose, but simply economic purposes such as financial sustainability.

However, with respect to the foregoing arguments put forward by the plaintiffs, the Corporation considers that the date indicated in article three could only be declared unconstitutional if it were manifestly arbitrary. Indeed, as stated in the report submitted by the Historical Memory Group of the National Commission for Reparation and Reconciliation, there are evident difficulties in establishing relevant

milestones in a long-standing conflict such as the one suffered by Colombia. To that extent, all the dates adopted can be the object of discussion and objections because they imply adopting positions on their nature and historical evolution.

Faced with this difficulty, it could be argued that any temporal delimitation is unconstitutional, since in principle reparation measures of a patrimonial nature should be guaranteed to all victims. However, such a position would disproportionately limit the Legislator's freedom of configuration, in addition to being openly irresponsible from the perspective of the state resources available for reparation of the damages caused, since it would generate expectations of impossible satisfaction that would entail subsequent responsibilities for the Colombian State. In other words, it would imply the sacrifice of constitutionally relevant goods, which is first and foremost the effectiveness of the victims' rights to be repaired, since the limitations of state resources that can be invested for this purpose cannot be ignored.

It is precisely the Congress of the Republic that is called upon to set the time limits for the application of the reparation measures foreseen in the law, after a broad debate in which different perspectives on the armed conflict and those who should be repaired have been exposed. It is precisely for this reason that an extensive section is inserted in the body of providence in which the discussions that took place on the date *from January 1, 1985* are reported, and how this was the fruit of consensus and agreements within the different political currents represented within the legislative body.

In addition, according to the statistical data provided in the various interventions, it is clear that the number of victims of the internal armed conflict has increased substantially since the 1980s, and that the conflict has deteriorated especially since that date, without it being possible to establish a precise historical moment that serves as a definitive milestone. It is therefore assumed that the time limit provided for in article three is not an arbitrarily exclusive date because it precisely covers the period in which the greatest number of violations of human rights and international humanitarian rights occurred, the historical period of greatest *victimization*.

On the other hand, the non-inclusion of victims prior to that date with respect to the enjoyment of reparatory measures of a patrimonial nature does not make them invisible, nor does it imply an additional affront to their condition, as suggested by some interveners, since precisely the same article in its fourth paragraph mentions another type of reparatory measures of which they are the owners, The fact that these are not of a patrimonial nature does not imply a violation of the law under study, since a reflection in this sense implies giving a negative connotation to reparations that are not of an economic nature, which in turn implies a division of reparation measures that does not conform to international instruments in the matter.

It should not be forgotten that transitional justice laws have time limits because they refer precisely to the transition from one historical period to another; therefore, time limitations are an intrinsic characteristic of this type of normative body, which always

presupposes an exercise in legislative configuration.

It then remains to examine the alleged unconstitutionality of the date consigned in the third article of Law 1448 of 2011, on the grounds that it implies unjustified differential treatment between two groups of victims.

As a starting point, it should be clarified that the accused provision provides for differentiated treatment between two groups of persons: (i) those who suffered damages on the occasion of events subsequent to January 1, 1985, who were the holders of the reparation measures indicated in this body of law and (ii) those who suffered damages for events prior to that date who have the right to the truth, symbolic reparation measures and the guarantees of non-repetition provided for in the same law, as part of the social conglomerate and without the need for them to be individualized (paragraph 4 of article 3 of Law 1148 of 2011). The distinguishing criterion is a date *on 1 January 1985*.

First of all, it would be necessary to verify whether the two categories of subjects are comparable, in this respect it must be said that they are persons who have suffered damage as a consequence of breaches of International Humanitarian Law or of serious and manifest violations of international human rights norms, which occurred on the occasion of the internal armed conflict, before January 1, 1985 and after that date, therefore they are subjects who are in a similar situation, at least as far as their condition as victims is concerned and therefore it is necessary to bring forward the equality trial.

The Corporation considers that in order to examine the alleged violation of the right to equality, a methodology must be adopted that privileges the margin of legislative configuration, since this is a matter in which there are no definitive historical milestones that would allow the option adopted to be replaced after a broad debate within the representative body. It is therefore considered that, although the victims' rights to reparation of a patrimonial nature are at stake, in any case in this matter, for the reasons previously explained, the constitutional judge must be respectful of the margin of legislative configuration, since, as previously stated, the date adopted was the result of a broad consensus within the Congress of the Republic, after different alternatives had been explored.

It must therefore be examined whether differential treatment pursues a constitutionally legitimate aim and whether it is suitable for achieving that aim. In this regard, time limitation pursues different purposes, some related to economic rationality and others that transcend these considerations and have to do with the special gravity and virulence of a stage of the internal armed conflict and the need to give it special treatment. However, for the purpose of the present process and due to the arguments presented by the congressmen during the process of the law, of which they were previously aware, it will be understood that the purpose pursued by the project is to preserve fiscal sustainability.

This is a constitutional criterion that recognizes the scarcity of public resources and seeks to ensure the conditions for the State to guarantee the provision and enjoyment of all the rights recognized in the Constitution, within the framework of which the democratic process of setting priorities and adopting public policies is carried out in order to achieve the goals set, without ignoring, in any case, the rights recognized in the Constitution.

However, the criterion of distinction of a temporary nature used in the third defendant article is suitable for guaranteeing fiscal sustainability, since it delimits the group of victims who benefit from measures of reparation of a patrimonial nature.

Finally, the time limitation is not disproportionate with respect to the rights of victims since, on the one hand, the date of 1 January 1985 precisely covers the historical period in which the greatest number of victims occur and violations of international humanitarian law and international human rights law are aggravated; on the other hand, victims prior to that period are covered by other types of reparation measures, indicated in the fourth paragraph of article three of the law, namely: the right to the truth, symbolic reparation measures and the guarantees of non-repetition provided for in this law, as part of the social conglomerate and without the need for them to be individualized.

It is therefore concluded that the expression as *of January 1, 1985,* is enforceable against the office examined in this decision.

9.2. Examination of the constitutionality of article 75 of Law 1448 of 2011

The plaintiffs consider that the expression *between the first of January 1991 and the term of validity of the law,* contained in Article 75 of Law 1448 of 2011, violates the right to equality of the owners or possessors of properties, or exploiters of vacant lots that have been dispossessed have been forced to abandon them since the first of January 1991 and those who were victims of dispossession or were forced to abandon the properties prior to that date, with respect to the ownership of the right to restitution in the terms indicated in the same law.

Once again, in the face of this time limit, the actors use arguments of a historical nature, in the sense that the Colombian armed conflict is perpetuated from the partisan violence of the late 1940s to the present day, and therefore it is not possible to distinguish between victims on the basis of a date for the exercise of the right to restitution. They conclude that the set date gives rise to discriminatory treatment because it does not pursue a legitimate aim, which is why it gives rise to unjustified differential treatment.

In order to resolve these accusations, the considerations set forth in the immediately preceding section are reiterated. That is to say, the legislator has a wide margin of configuration and the established temporal limitation would only be unconstitutional

if it were manifestly arbitrary.

In this respect, it is necessary that the interveners contributed objective elements in defense of the indicated date, such as they are: (i) most studies on the armed conflict indicate that from 1990 onwards expulsion and dispossession of land became a mechanism regularly used by paramilitary organizations against the civilian population; (ii) records of cases of dispossession and expulsion date back to the 1990s, so that there is no certainty about the previous dates and it is difficult to apply the measure of restitution as regulated by Law 1448 of 2011; (iii) According to INCODER statistics, most of the registered cases of dispossession occurred between 1997 and 2008; the cases prior to 1991 correspond only to 3% of those recorded between 1991 and 2010; (iv) there has been an increase in applications for land protection since 2005, and prior to that date this mechanism was only used sporadically.

The foregoing leads to the conclusion that 1 January 1991 is not a date which is manifestly arbitrary and that the legislature's margin of discretion must therefore be respected.

It remains to be analyzed the alleged unequal treatment based on an illegitimate purpose from the constitutional perspective. The starting point for the equality trial is to verify if the two categories of subjects are comparable, in this regard it has to be that the differentiated treatment is preached from subjects who meet the condition of being owners, possessors or exploiters of vacant lots and was also affected their right to property, possession or economic exploitation, then there are common elements between them and therefore it is necessary to advance the equality trial.

The purpose of the differentiated treatment, as can be seen from the intervention of the Minister of Agriculture during the plenary debate of the House of Representatives on the bill, is to preserve legal certainty. The figure of the acquisitive prescription of ownership is mentioned in the Civil Code, which before the amendment introduced by Law 791 of 2002 operated at the age of 20 and the need to protect the acquired rights of bona fide third parties.

Although the right to property and the acquired rights of those dispossessed in any case in this matter are at stake, for the reasons set forth in the preceding section of this decision, the constitutional judge must be respectful of the margin of legislative configuration, since, as previously stated, the date adopted was the result of a broad consensus within the Congress of the Republic, after having explored different temporary alternatives.

It must therefore be examined whether differential treatment pursues a constitutionally legitimate aim and whether it is suitable for achieving that aim. In this regard, legal security is a legal asset of constitutional relevance, as the jurisprudence of this Court has repeatedly pointed out.

The criterion of distinction of a temporary nature used in the third defendant article is suitable for guaranteeing legal certainty, as it delimits the ownership of the right to restitution and prevents the indefinite reopening of the debate on acquired rights in respect of immovable property.

Finally, the time limitation is not disproportionate with respect to the rights of the victims since the date of January 1, 1991 precisely covers the historical period in which the greatest number of victims are dispossessed and displaced, according to the statistical data provided by the Ministry of Agriculture, which were included in section 3.2 of the background to this decision.

It is therefore concluded that the expression *between the first of January 1991 and the term of validity of the law* is enforceable against the office examined in this decision.

III. DECISION

In view of the foregoing, the Constitutional Court of the Republic of Colombia, administering justice in the name of the people and by mandate of the Constitution,

RESOLVE:

First - To declare the expression "exequible" as of *January 1, 1985*, contained in Article 3 of Law 1448 of 2011 for the office examined in this decision.

Second - To declare the expression *between the first of January 1991 and the term of validity of the law,* contained in article 75 of Law 1448 of 2011, enforceable for the office examined in the present decision.

GABRIEL EDUARDO MENDOZA MARTELO
Chairman

MARIA VICTORIA CALLE CORREA
Magistrate

MAURICIO GONZALEZ CUERVO
Magistrate

JUAN CARLOS HENAO PEREZ
Magistrate

JORGE IVAN PALACE PALACE
Magistrate

NILSON PINILLA PINILLA
Magistrate

JORGE IGNACIO PRETELT CHALJUB
Magistrate

HUMBERTO ANTONIO SIERRA PORTO
Magistrate

LUIS ERNESTO VARGAS SILVA
Magistrate

MARTHA VICTORIA SACHICA MENDEZ
Secretary General