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**Judgment C-694/15**

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**REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Modifications** of Law 1592 of 2012 to Law 975 of 2005

**REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Criteria** for prioritisation in investigation and prosecution

**REINCORPORATION OF MEMBERS OF ARMED GROUPS OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Reintegration** of ex-combatants into civilian life

**REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Definition** of victims

**REINCORPORATION OF MEMBERS OF ARMED GROUPS OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Guarantees** and protection measures for groups at greatest risk

**REINCORPORATION OF MEMBERS OF ARMED GROUPS ARMED OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Development** and definition of truth, justice and reparation as victims' rights

**REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Requirements** for access to the benefits of the demobilisation process

**REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL** PEACE-Voluntary **resignation** to the justice and peace process

**REINCORPORATION OF MEMBERS OF ARMED GROUPS ARMED OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Effectiveness** and timely applicability of the right to reparations

**REINCORPORATION OF MEMBERS OF ARMED GROUPS ARMED OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL** PEACE-Eligibility **requirement** related to delivery or denouncement of goods acquired to guarantee the right to reparation

**INTEGRAL VICTIMS' COMPREHENSIVE REMEDIES IN THE FACE OF TERMINATION OF PROCEEDINGS-Duty** of benefit applicants to actively contribute to the process

**SHREDDING THE TRUTH-Modification** lies in the fact that the perspective must be from the perspective of the pattern of macro-criminality in the actions of armed groups operating outside the law.

**JUSTICE AND PEACE INVESTIGATIVE PROCESSES-Collaboration** of demobilised combatants with the judicial police to find the whereabouts of kidnapped or disappeared persons.

**FORCED LAND DISPOSAL AND ABANDONMENT-Establishment** of a pattern of macro-criminality when the victim has reported it

**DEMOBILISATION AND REINTEGRATION PROCESS-Prosecutor** General's **Office** receives information on names of members of illegal armed groups willing to contribute to the process

**REINCORPORATION OF MEMBERS OF ARMED GROUPS ARMED OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSECUTION OF NATIONAL PEACE-Law** admits the possibility of conflicts or collisions of jurisdiction between High Courts and any other judicial authority/REINCORPORATION **OF MEMBERS OF ARMED GROUPS ARMED OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSECUTION OF NATIONAL PEACE-Competence** of the Justice and Peace Chamber of Knowledge

**VICTIMS' RIGHTS-Attorney** General of the Nation must determine publicly known prioritisation criteria with binding force for the exercise of criminal **action/PRIORITIZATION** CRITERIA **TO SCARIFY MACROCRIMINALITY PATTERN IN ACTION BY ARMED GROUPS ON THE FRINGE OF THE LAW-Purpose**

**EXCLUSION FROM THE LIST OF BENEFICIARY APPLICANTS IN JUSTICE AND PEACE** PROCESSES-Additional measures/BREACH OF **THE COMMITMENT TO DELIVER, OFFER OR DENOUNCE ILLICITLY ACQUIRED PROPERTY-Modification regarding** free version and confession of benefit applicants

**INTEGRAL VICTIMS' REPARATION-Incorporation of the** figure of extinction of ownership to achieve more active participation of illegal armed groups.

**EXTINCTION OF DOMAIN-Determination** of assets seized in justice and peace proceedings/EXTINCTION **OF DOMAIN-Possibility** of extinguishing the right even if assets are subject to succession due to death or ownership by heirs of those who have applied for benefits

**EXTINCTION OF DOMAIN - Imposition of** precautionary measures on assets in justice and peace proceedings

**EXTINCTION OF DOMAIN-Incident of** opposition by third parties to precautionary measures on assets seized in justice and peace proceedings.

**JUSTICE AND PEACE** PROCESS-Early **termination** when defendant accepts responsibility

**APPLICATION FOR SUBSTITUTION OF PRISONER'S DETAINMENT IN JAIL WITH NON-PRIVATIVE PRISONER'S DETAINMENT-Possibility** of the applicant for benefits having demobilised while at liberty

**CONDITIONAL SUSPENSION OF THE EXECUTION OF THE SENTENCE IMPOSED IN ORDINARY JUSTICE-Application** by an applicant for benefits sentenced by the ordinary criminal justice system.

**CONDITIONAL SUSPENSION OF THE EXECUTION OF THE SENTENCE IMPOSED IN ORDINARY JUSTICE-Revocation** when the applicant for benefits incurs in any cause for revocation.

**JUSTICE AND PEACE PROCESS-Suspension** of investigations against a candidate for benefits by the Public Prosecutor in ordinary jurisdiction.

**SUSPENSION OF JUSTICE AND PEACE PROCEEDINGS IN ORDINARY JURISDICTION-Classification** as provisional and final

**INCIDENT OF INTEGRAL REPARATION-Replacement** by incident of identification of damages caused to victims

**IDENTIFICATION OF AFFECTIONS CAUSED TO VICTIMS IN REPARATION PROCEDURES-Scope** and procedure

**REINCORPORATION OF MEMBERS OF ARMED GROUPS OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Guarantees**

**REHABILITATION, RESTITUTION, INDEMNIFICATION, SATISFACTION AND GUARANTEES OF NON-REPEATMENT-Adoption of** measures articulated according to the victimising event

**JUSTICE AND PEACE PROCESS-Causes** for revocation of alternative sentences

**JUSTICE AND PEACE PROCESS-Appeal** against judgments and orders that resolve substantive issues without the prior filing of an appeal for reconsideration.

**JUDGMENT STAGE IN JUSTICE AND PEACE PROCEDURES-Attribution of** competences

**INTEGRAL VICTIMS'** REPARATION-Contribution **acts**

**LEGAL AND MATERIAL RESTITUTION OF LAND TO DISPLACED AND DISPLACED PERSONS-Referral** to Law 1448 of 2011

**JUSTICE AND PEACE PROCESS-Integration of** transitional justice measures

**RIGHT TO JUSTICE-Effectiveness/RIGHT TO JUSTICE-Adoption of** measures to facilitate the participation in judicial proceedings of applicants for benefits who are in a foreign jurisdiction as a result of extradition granted.

**RIGHT TO FULL REPARATION-Effectiveness** in relation to assets handed over, offered or denounced by extradited applicants for benefits

**RIGHT TO INTEGRAL REPARATION OF VICTIMS-Implementation** of tax remission and compensation programmes that affect real estate destined for reparation or restitution.

**INTEGRAL REPARATION OF VICTIMS-Financing** of the payment of administrative reparation **programmes/INTEGRAL** REPARATION **OF VICTIMS-Imposition** of precautionary measures on property, for the purposes of forfeiture of ownership and legal and material restitution of land to dispossessed and displaced persons.

**JUSTICE AND PEACE** PROCESS-Exceptional **procedure** for land restitution

**JUSTICE AND PEACE PROCESS-Restitution** of property and cancellation of fraudulently obtained titles and registrations

**LAND RESTITUTION PROCEDURE-Rules**

**IDENTIFICATION OF VICTIMS' AFFECTIONS - Validity**

**JUSTICE AND PEACE PROCESS-Charges** of unconstitutionality with respect to the possibility of applying prioritisation criteria

**PRIORITIZATION IN JUSTICE AND PEACE** PROCESSES-Serious, impartial and timely **investigation** of human rights violations does not violate victims' rights

PRIORISATION-Criminal policy instrument/PRIORISATION-Scope

**PRIORISATION-Object** of the criminal process

**FIGHT AGAINST ORGANISED CRIMINALITY-Importance/FIGHT AGAINST ORGANISED CRIMINALITY-Scope**

**STATES PARTIES TO THE SAN JOSE PACT OF COSTA RICA-Obligation** to investigate serious human rights **violations/INTER-AMERICAN** COURT OF **HUMAN RIGHTS-Conditions** to be met by criminal investigations in order to comply with international standards in this area.

**RIGHT TO EQUALITY OF VICTIMS OF NON-PRIORITIZED CASES-No** violation by prioritization criteria insofar as it is based on rational criteria.

**PRINCIPLE OF EQUALITY-Materialization**

EQUALITY-Objective and subjective **dimension**

**PRINCIPLE OF THE RIGHT TO EQUALITY -** Complementary **manifestations**

**RIGHT OF EQUAL ACCESS TO THE ADMINISTRATION OF JUSTICE-Duty of** the State to adopt instruments of criminal policy

**TEST OF EQUALITY IN PRIORITIZATION TECHNIQUES-Examination**

**EQUALITY TEST-Purposes** of prioritisation

**PRIORISATION-Requirement of** necessity

**PRIORISATION-Test** of proportionality in the strict sense of the term

**RULES ON THE REINCORPORATION OF MEMBERS OF ARMED GROUPS OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Scope**, interpretation and application of the law

**RULES ON REINCORPORATION OF MEMBERS OF ARMED GROUPS OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Prioritisation**

**RESEARCH IN THE FIELD OF TRANSITIONAL JUSTICE-Reform** on the application of prioritisation criteria

**TRANSITIONAL JUSTICE INVESTIGATION-Criteria** for prioritisation do not disregard the international duty to conduct criminal proceedings in a serious, impartial manner and within a reasonable timeframe/ **TRANSITIONAL JUSTICE INVESTIGATION-No** violation of victims' rights insofar as the reconstruction of macro-criminal patterns allows for the explanation of multiple crimes

**RULES ON THE REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT ARE OUTLAWED BY LAW AND CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Criteria** for prioritisation in the interpretation of a differential approach

**JUSTICE AND PEACE PROCESSES-Duty to take** into account differential criteria in investigations and trials in order to adopt affirmative measures for the benefit of the most vulnerable population groups

**NATIONAL PROSECUTOR GENERAL'S OFFICE-Criteria** for prioritisation are in line with those adopted by international criminal courts.

**TRANSITIONAL JUSTICE-Criteria** for prioritising investigations

**RIGHT TO THE TRUTH-Effectiveness**

**RIGHT TO THE TRUTH-The content** is not the same in ordinary crimes as in international crimes, nor in the way they are investigated.

**NATIONAL PROSECUTOR GENERAL-Criteria** for prioritisation to overcome inconveniences in investigations for human rights violations or serious breaches of international humanitarian law.

**NATIONAL PROSECUTOR GENERAL - Power** to participate in the design of the State's criminal policy

**LAND DISPLACEMENT AND COOPERATION BETWEEN THE NATIONAL PROSECUTOR GENERAL'S OFFICE AND THE SPECIAL ADMINISTRATIVE UNIT FOR THE RESTRICTION OF DISPLACED LAND - Clarification**

**LAND DISPLACEMENT AND COOPERATION BETWEEN THE NATIONAL PROSECUTOR GENERAL'S OFFICE AND THE SPECIAL ADMINISTRATIVE UNIT FOR THE RESTRICTION OF DISPLACED LAND-Application of** prioritisation criteria

**LAND REPRESENTATION - Adoption of** criminal investigative techniques

**NATIONAL PROSECUTOR GENERAL - Power** to define prioritisation criteria

**RULES ON THE REINCORPORATION OF MEMBERS OF ARMED GROUPS OUTLAWED BY LAW WHO CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Criteria** for prioritising cases

**NATIONAL PROSECUTOR GENERAL'S OFFICE-Use of** prioritisation strategy does not disregard victims' rights

**JUSTICE AND PEACE** PROCESS-Free **version** and confession of the applicant to benefits

**REGULATION ON THE REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE - Acceptance of** charges and prioritisation

**MACROCRIMINALITY PATTERN-Concept**

**CRIMINAL ANALYSIS-Support** on various sciences and theories

**CRIMINAL PATTERNS-Classification**

**CRIMINAL PATTERNS-Methodologies**

**CRIMINAL PATTERNS-Complexity** in identification

**CRIMINAL PATTERNS-Recommendations**

**CRIMINAL PATTERNS-Reconstruction**

**STANDARD ON THE REINCORPORATION OF MEMBERS OF ARMED GROUPS THAT CONTRIBUTE TO THE CONSTRUCTION OF NATIONAL PEACE-Measure** to expedite transitional justice processes

**MACROCRIMINAL** PATTERNS-Technical **construction** gives those affected a full and true picture of what happened.

**VICTIMS OF THE MACROCRIMINALITY PATTERN IN JUSTICE AND PEACE PROCESSES ACCORDING TO PRIORITIZATION** CRITERIA-Constitutional res judicata in Judgment C-286/14

**INDIVIDUAL CRIMINAL LIABILITY-Scope of liability**

**PRINCIPLE THAT THERE IS NO CRIME WITHOUT** CONDUCT-Constitutional **enshrinement**

**PRINCIPLE OF GUILTABILITY-Consequences**

**CRIMINAL** PROCEDURE-Primary **purpose/CRIMINAL PROCEDURE-Determination** of individual criminal liability

**INDIVIDUAL CRIMINAL LIABILITY-Non-existence** of violation

**RECEPTION OF COLLECTIVE OR JOINT FREE VERSIONS IN TRANSITIONAL JUSTICE-Not** Affecting the Principle of Act Liability

**RECEPTION OF COLLECTIVE OR JOINT FREE VICTORIES IN TRANSITIONAL JUSTICE-Not** Affecting Victims' Rights

**CHARGES, FORMULATION AND ACCEPTANCE OF COLLECTIVE CHARGES-Do not** lead to improper investigation of the facts.

**NATIONAL PROSECUTOR GENERAL'S OFFICE-Regulation** and adoption of methodologies for the reception of collective or joint versiones libres

**COLLECTIVE HEARINGS ON CHARGES OR ACCEPTANCE OF CHARGES-The holding of collective hearings** does not imply that individual responsibility should not be determined for each person seeking benefits.

**JUDICIAL** PROCEDURES-Legislator's **margin** of configuration

**JUDICIAL PROCEEDINGS AND PROCEDURES PROPER FOR EACH JUDGMENT-Ample** power of the legislator to set the rules of law

**LEGISLATOR'S MARGIN OF NORMATIVE CONFIGURATION IN JUDICIAL PROCEEDINGS-Limits**

**DISCRETIONALITY IN DETERMINING PROCEDURAL OR ADMINISTRATIVE ACTIONS-Not** absolute

**LEGITIMACY OF PROCEDURAL RULES - Proportionality** and reasonableness

**JUSTICE AND PEACE PROCESS-Concentration** of hearings does not violate victims' right to **participation/JUSTICE AND PEACE PROCESS-Concentration** of hearings does not ignore the State's duty to conduct serious and impartial investigations

**JUDICIAL PROCEDURES-Constitution of** a concentrated hearing constitutes a configuration power of the legislator.

**CONCENTRATED HEARING ON CHARGES AND ACCEPTANCE OF CHARGES - Purpose**

**CONCENTRATED HEARING IN JUSTICE AND PEACE PROCEDURE-No** disregard for victims' rights to participate in the process

**JUSTICE AND PEACE PROCESS-Concentration** of hearings ends up shortening the term of the process

**JUSTICE AND PEACE PROCESS-Participation** and identification of harm caused to victims or their representatives

**ANTICIPATED TERMINATION OF JUSTICE AND PEACE PROCESS BY ACCEPTANCE OF RESPONSIBILITY-No** violation of victims' right to the truth

**ACCEPTANCE OF LIABILITY IN CRIMINAL** PROCEDURE-Procedural **figure**

**ACCEPTANCE OF CHARGES-Prerequisites**

**ANTICIPATED SENTENCING-A form** of abbreviated termination of criminal proceedings that responds to a criminal policy.

**ANTICIPATED JUDGMENT-Constitutionality**

**ANTICIPATED JUDGMENT-Respect** for due process

**SPECIAL HEARING-Modification** of the Code of Criminal Procedure/SPECIAL HEARING **AND ANTICIPATED SENTENCING-Difference**

**ARRAIGNMENT ON CHARGES AND PRE-AGREEMENTS AND NEGOTIATIONS-Figures** of early termination of proceedings under Law 906 of 2004.

**UNILATERAL ACCEPTANCE OF CHARGES-Form of** early termination of the criminal process

**PRE-COVENANTS AND NEGOTIATIONS-Forms** of early termination of criminal proceedings

**PRE-Agreements and Negotiations-Figures** that do not violate due process/PRE-Agreements **and Negotiations-Limited** by legal restrictions that protect victims' rights

**EARLY TERMINATION OF CRIMINAL PROCEEDINGS FOR ARRAIGNMENT ON CHARGES OR PRE-ARRANGEMENTS AND** NEGOTIATIONS-Constitutional **Jurisprudence**

**CONSENSUED JUSTICE-Based** on pre-agreements and **negotiations/CONSENSUED JUSTICE-Purposes**

**JUSTICE AND PEACE** PROCESS-Early **termination** when the facts imputed to the person applying for benefits form part of the pattern of macro-criminality clarified by sentence according to prioritisation criteria.

**EARLY TERMINATION OF JUSTICE AND PEACE PROCEEDINGS AFTER THE FORMULATION OF THE CHARGE-Norma** demandada did not eliminate versión libre or formulation of charges

**EARLY TERMINATION OF JUSTICE AND PEACE PROCEDURES-Modification** guarantees principles of efficiency and celerity

**EARLY TERMINATION OF JUSTICE AND PEACE PROCEEDINGS-Norm** only allows for the application of early sentencing

**EARLY TERMINATION OF JUSTICE AND PEACE PROCESS-Investigation** focused on revealing patterns of macro-criminality through prioritisation, thanks to macro-processes for the solution of non-prioritised cases through information gathered.

**INSURANCE** MEASURES-Legal **nature** and preventive character

**PREVENTIVE** DETENTION-Precautionary **measure**

**PREVENTIVE DETENTION AND SENTENCING-Distinction**

**DEPRIVATION OF** LIBERTY-Exceptional **character**

**PREVENTIVE DETENTION-Character** limited in time

**PREVENTIVE DETENTION-Requirements** for it to proceed

**INSURANCE MEASURES-Subjection** to strict requirements that structure their legality/INSURANCE **MEASURES-Criteria** of necessity in their application and purposes

**LEGISLATIVE FREEDOM OF CONFIGURATION IN THE AREA OF SECURITY MEASURES-Limits**

**CAUTIONARY MEASURES-Broad** margin of discretion of the **legislator/CAPTIONARY MEASURES-Reasonableness** and **proportionality/AFFORDABILITY** MEASURES-Material **restrictions** on their applicability

**SUBSTITUTION OF SECURITY MEASURE-Scope of** normative configuration/SUBSTITUTION OF **SECURITY MEASURE-Establishes** a special instrument that motivates demobilised persons to contribute to the restoration of victims' rights and ensures that they will not continue to commit crimes/SUBSTITUTION **OF SECURITY MEASURE-Restrictions** and conditions that if not met will lead to revocation of the benefit.

**INSURANCE MEASURES-Ample** power of the legislator to regulate whether they are appropriate or **inappropriate/INSURANCE MEASURES-Limits** to regulation by the legislator based on criteria of reasonableness and proportionality

**PRISONER OF PRIVATIVE DETENTION-No** need under strict **circumstances/PRISONER OF PRIVATIVE DETENTION-Replacement** by non-custodial measure

**SECURITY MEASURE-Regulation** establishes obligations to fulfil purposes once the benefit is granted

**CONDITIONAL SUSPENSION OF THE EXECUTION OF A** SENTENCE-Procedural **figure**

**CONDITIONAL SUSPENSION OF THE EXECUTION OF A SENTENCE** -Regulatory **margin** without disregarding victims' rights to truth and justice

**CONDITIONAL SUSPENSION OF THE EXECUTION OF A SENTENCE IN JUSTICE AND PEACE PROCESS-Guarantees the** aims of re-socialisation and reintegration inherent to the transitional justice process.

**CONDITIONAL SUSPENSION OF THE EXECUTION OF THE SENTENCE-Requires** that the applicant for benefits has been deprived of liberty.

**CONDITIONAL SUSPENSION OF EXECUTION OF SENTENCE-Principle** of prevention

**CRIMINAL** SUBROGATES-Substitute **measures** for imprisonment and **detention/CRIMINAL SUBROGATES-Purposes**

**CONDITIONAL SUSPENSION OF EXECUTION OF SENTENCE OR CONDITIONAL** RELEASE-Objective and subjective **factors** for the granting thereof

**CRIMINAL SUBROGATES-Faculty** of the legislator to establish grounds, conditions and regulation for reasons of criminal policy

**CRIMINAL SUBROGATES-Criteria** of reasonableness and proportionality

**POTS OF CONFIGURATION OF THE LEGISLATOR WITH REGARD TO CAUSES FOR GRANTING PROVISIONAL RELEASE -** It is **not** absolute but relative.

**JUSTICE AND PEACE PROCESS-Subject matter**

**JUSTICE AND PEACE PROCESS-Benefit** of alternative sentencing

**JUSTICE AND PEACE PROCESS-Accumulation** of proceedings and sentences

**CONDITIONAL SUSPENSION OF THE EXECUTION OF THE SENTENCE IN ORDINARY JUSTICE-Permission** when the conduct was committed during and on the occasion of membership of an armed group operating outside the law.

**JUSTICE AND PEACE LAW-Commission** of a crime not only implies the loss of the benefit of conditional substitution of sentence but also immediate exclusion of the applicant for benefits.

**EXTRADITION IN** COLOMBIA-Legal **status**

EXTRADITION-International cooperation **mechanism** to combat crime and eradicate impunity

EXTRADITION-Basis/EXTRADITION-Special **procedure**

**EXTRADITION-Characteristics**

**INTERNATIONAL COOPERATION IN THE FIELD OF EXTRADITION-Respect** for national sovereignty/ INTERNATIONAL COOPERATION **IN THE FIELD OF EXTRADITION-Limits**

**RIGHT TO JUSTICE AND GRANTED EXTRADITION-Adoption of** measures against applicants for benefits in foreign jurisdiction

**RIGHT TO INTEGRAL REPARATION-Adoption of** measures against seizure of assets handed over, offered or denounced by extradited applicants for benefits

**EXTRADICTION-Norm** ensures guarantee of the right to truth and reparation

**LAND RESTITUTION PROCESS-Remission** of Law 1592 of 2012 to Law 1448 of 2011.

**LAND RESTITUTION-Should** be governed by Law 1448 of 2011 unless there are precautionary measures on property.

**RIGHTS OF THE VICTIMS IN THE MATTER OF LAND RESTITUTION UNDER THE JUSTICE AND PEACE PROCESS-No** violation exists.

**JUSTICE AND PEACE PROCESS AND RESTITUTION OF DISPOSED OR ABANDONED PROPERTY-Develops** principles of the civil **service/JUSTICE AND PEACE** PROCESS **AND RESTITUTION OF DISPOSED OR ABANDONED PROPERTY-No** violation of victims' rights

**LAND RESTRICTION PROCEDURE AND CRIMINAL PROCEDURE-Independence**

**LAND RESTRICTION PROCEDURE-Objective**

**LAND RESTITUTION-Safeguards** rights through mechanisms that prevent fraudulent disposition of assets

**SPECIAL ADMINISTRATIVE UNIT FOR THE INTEGRAL CARE AND REPARATION OF VICTIMS AND/OR SPECIAL ADMINISTRATIVE UNIT FOR THE MANAGEMENT OF THE RESTITUTION OF DISPLACED LAND-DELIVERY** OF GOODS

**VICTIM REPARATION-Assets** handed over by benefit claimants

**VICTIM REPARATION AND DELIVERY OF PROPERTY BY BENEFICIARY APPLICANTS-Purpose**

**VICTIM REPARATION AND DELIVERY OF PROPERTY FOR DEMOBILISED PERSONS - Purpose**

**DELIVERY OF PROPERTY BY DEMOBILISED PERSONS-Reparation** under Law 975 of 2005

**RIGHT TO REPARATION OF VICTIMS IN JUSTICE AND PEACE PROCESSES-Serious** affectation by allowing demobilised persons' assets to be transferred to the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims, when reparation is not administrative but judicial.

**RESTITUTION OF LAND TAKEN OVER IN JUSTICE AND PEACE PROCESS-Collaboration** in the exchange of information

**JUSTICE AND PEACE LAW-Process** to extinguish ownership of demobilised persons' assets

**VICTIMS' RIGHT TO REPARATION-Procedure** for the imposition of immediate precautionary measures on demobilised persons' assets

**INTERIM RELIEF MEASURES ON PROPERTY OF DEMOBILISED** PERSONS-Special **procedures** to avoid obstacles to land restitution process

**PROVISIONAL MEASURES ON PROPERTY OF DEMOBILISED PERSONS-Do not** affect the rights of the victims, on the contrary, they safeguard them in two stages

**SPECIAL ADMINISTRATIVE UNIT FOR THE ADMINISTRATIVE MANAGEMENT OF THE RESTRICTION OF DISPOSSESSED LAND-Transfer** of property immediately after precautionary measures have been decreed when there is a request for restitution.

**PROTECTIVE MEASURES ON PROPERTY OF DEMOBILISED PERSONS IN CONNECTION WITH LAND** RESTITUTION-Constitutional **purposes**

**SPECIAL ADMINISTRATIVE UNIT FOR THE INTEGRAL ATTENTION AND REPARATION OF VICTIMS-Legitimacy** to file appeals

**RIGHT TO INTEGRAL REPARATION OF VICTIMS WITH REGARD TO THE TAX RELIEF AND COMPENSATION-Referral** to Law 1448 of **2011/TAX** RELIEF **AND COMPENSATION OF PROPERTY SUBJECT TO RESTITUTION OR REPARATION PROCEEDINGS-Not** affecting the right to reparation by allowing tax debts to be written off.

**PROCESS OF RESTITUTION OF DISPOSED PROPERTY-Presumptions** of dispossession and compensation in kind/RIGHT **TO VICTIMS'** RIGHTS **TO REPARATION-Presumptions** of dispossession and compensation in kind

**PROCESS OF RESTITUTION OF DISPOSSESSED PROPERTY-Application of** essential figures for it to be effective and to be carried out within a reasonable period of time.

**JUSTICE AND PEACE** LAW-Reparative **vocation** of goods offered by applicants for benefits

**TERMINATION OF THE JUSTICE AND PEACE PROCESS AND EXCLUSION FROM THE LIST OF APPLICANTS-Causes/JUSTICE AND PEACE PROCESS-Termination** when a person applying for benefits has not handed over, offered or denounced assets acquired by himself or by an armed group operating outside the law.

**TERMINATION OF THE JUSTICE AND PEACE PROCESS AND EXCLUSION FROM THE LIST OF** POSTULATES-Fraudulent **delivery** of assets that do not have a reparatory vocation

**TERMINATION OF JUSTICE AND PEACE PROCESS AND REMOVAL FROM THE LIST OF POSTULATES-Request** for hearing

**RIGHT TO TRUTH, JUSTICE AND REPARATION-Affectation** by excluding a victim from the possibility of requesting a hearing for the termination of the justice and peace process/RIGHT **TO TRUTH, JUSTICE AND REPARATION-Exclusion** from the list of applicants to benefits

**ACCION PENAL-Preclusion of** investigation as a consequence of extinction due to the death of a postulate to benefits

**VOCACION REPARADORA DE BIENES OFFERED BY BENEFICIARY APPLICANTS-Preclusion of** investigation as a consequence of extinction by death

**REPARATION PROCEDURE-Continuation** when the applicant dies after the delivery of the property

**CRIMINAL PROCEDURE-Death of** the accused implies termination of criminal action and criminal proceedings.

**REPARATION PROCESS-Continuation** with regard to assets offered or denounced by demobilised combatants if they have not been handed over

**PROCESO DE REPARARACION-Supply of** information to decide on the adoption of precautionary measures

**RIGHT TO INTEGRAL REPARATION-Interest** of victims in providing information on assets with a reparation vocation in order to guarantee effective reparation.

**PROCESO DE REPARACION-Elegibility** of the applicant for benefits despite the non-existence of assets with a reparation vocation.

**VICTIMS' RIGHTS-Demand** for reparation of assets

**TRANSITIONAL JUSTICE PROCESS-Reparation** requires efforts to identify assets of demobilised combatants of illicit provenance

**JUSTICE AND PEACE LAW-Development of** the enlistment phase as a stage to analyse and determine the degree of reparatory vocation of denounced assets.

**JUSTICE AND PEACE LAW-Lack of** reparation cannot be attributed to the intention of benefit applicants to defraud victims' rights/ **JUSTICE AND PEACE LAW-Right of** victims to denounce assets of benefit applicants or of third parties that have been illegally transferred

**JUSTICE AND PEACE LAW-Delivery** of goods destined for comprehensive reparation and land restitution programmes.

**JUSTICE AND PEACE LAW-Afectation** of assets of applicants for benefits acquired as a result of the reintegration process.

**TRANSITIONAL JUSTICE** PROCESSES-Special positive **prevention** through resocialisation for reintegration of armed actors

**TRANSITIONAL JUSTICE-Guarantee of** the right to truth, justice and reparation for victims that allows for economic reintegration of members of armed groups

**TRANSITIONAL JUSTICE PROCESS -** Resocialising **component**

**TRANSITIONAL JUSTICE - Does not** affect assets acquired in the reintegration process, the fruits thereof, or those acquired lawfully after **demobilisation/TRANSITIONAL JUSTICE** PROCESS **-** Real **reconciliation** of society

**JUSTICE AND PEACE LAW-Revocation** of precautionary measures at the request of third parties

**LIFTING OF PRECAUTIONARY MEASURES-Recognises** rights of bona fide third parties over measures ordered in respect of demobilised persons' assets

**CAUTELARY MEASURES IN JUSTICE AND PEACE** PROCEDURES-Direct **claim** for compensation that constitutes materialisation of the right to prevent fraud in relation to the transfer of assets to third parties.

**JUSTICE AND PEACE PROCESS-Limitation** of procedural remedies

**LIMITS TO DOUBLE** INSTANCE-Constitutional **jurisprudence**

**RIGHT TO DOUBLE JUDGMENT-Not** absolute

**APPEAL -Limits**

**JUSTICE AND PEACE** PROCESS-Appeals against judgments and interlocutory orders

**JUSTICE AND PEACE PROCESS-Speeding up**

**FREEDOM OF CONFIGURATION OF THE LEGISLATOR-Limitation of** the appeal to substantive matters in judicial matters does not affect procedural guarantees

**JUSTICE AND PEACE PROCESS-Appeal for** reconsideration **is admissible.**

**APPEAL IN JUSTICE AND PEACE** PROCEEDINGS-Material res judicata in Judgment C-370/06

**JUSTICE AND PEACE LAW-New** Temporary Application of Law 975 of 2005

**JUSTICE AND PEACE PROCESS-Postulation** and imputation of facts

**JUSTICE AND PEACE** LAW-Administrative **stage**

**JUSTICE AND PEACE LAW-Demobilization**

**JUSTICE AND PEACE LAW-Application** to demobilised persons

**JUSTICE AND PEACE LAW-Postulation**

**JUSTICE AND PEACE LAW-Reform** establishes definitive closure of the application system

**JUSTICE AND PEACE LAW-New** applications and time **restrictions/JUSTICE AND PEACE LAW-Application of** demobilised combatants to the special criminal procedure

**JUSTICE AND PEACE LAW-Types of** nominations

**JUSTICE AND PEACE** LAW-Judicial **phase/JUSTICE AND PEACE LAW-Verification** of eligibility processes for individual and collective demobilization

**JUSTICE AND PEACE** LAW-Pre-procedural **stage** before the Attorney General's Office/ **JUSTICE AND PEACE** LAW-Free **version of** demobilised combatants

**JUSTICE AND PEACE** LAW-Procedural **stage/JUSTICE AND PEACE LAW-Formulation of** charges of facts

**JUSTICE AND PEACE LAW-Phases** of indictment and acceptance of charges

**REFORM IN TEMPORARY EFFECT OF THE JUSTICE AND PEACE LAW - Scope**

**POSTULATION AND CHARGING OF FACTS IN JUSTICE AND PEACE LAW-Distinction** between restrictions

**JUSTICE AND PEACE LAW-Restriction** on new **applications/JUSTICE AND PEACE** LAW-Temporary **restriction** on applications and exclusion of new collective demobilisations

**JUSTICE AND PEACE LAW-Closing of** collective applications and special deadlines for demobilised individuals

**JUSTICE AND PEACE LAW-There** will be **no** new collective demobilisations and therefore it will not apply to new illegal groups created in recent years.

**JURIDICAL FRAMEWORK FOR PEACE-Distinction of** events in which the Justice and Peace Law regime applies

**JUSTICE AND PEACE LAW-Constitutionality** with regard to the extension of the term of the facts

**TRANSITIONAL JUSTICE-Extension of** the framework of measures to achieve **peace/TRANSITIONAL JUSTICE LAW-Simply** extending the effects is not unconstitutional.

**POTESTATUS OF THE LEGISLATOR-Determination** of the validity of the Justice and Peace Law

**TEMPORARY EFFECTIVENESS OF JUSTICE AND PEACE** LAW-Constitutional **Jurisprudence**

**TERM OF JUSTICE AND PEACE LAW-Extension** in the face of new facts does not imply disregard for the temporality of transitional justice.

**SPECIFIC VALIDITY OF THE JUSTICE AND PEACE LAW-Extension** in the face of new facts does not affect victims' rights

**LEGISLATOR-Facility** to issue transitional justice regulations

**TRANSITIONAL JUSTICE-Model** to be applied by virtue of extending the validity of the rule to demobilisations after 25 July 2005 is the same as that of justice and peace/AMPLICATION OF **THE RULE TO DEMOBILISATIONS AFTER 25 JULY** 2005-Constitutional **Jurisprudence**

**JUSTICE AND PEACE LAW-Extension** of the time limit for the application of Law 975 of 2005 to new facts guarantees the aims of transitional justice for a greater number of applicants for benefits and victims.

**TRANSITIONAL JUSTICE-All** processes of profound social and political **transformation/TRANSITIONAL JUSTICE-Extension** of values and principles through the extension of the validity of the Justice and Peace Act

**EXTENSION OF THE JUSTICE AND PEACE LAW - Guarantees** reintegration into society of persons in the same factual circumstances as those demobilised before 25 July 2005.

**EXTENSION OF THE JUSTICE AND PEACE LAW'S VALIDITY-guarantees** prevention of actions or omissions by which victims' rights are violated or threatened.

**JUSTICE AND PEACE LAW-Extension** of the term allows for definitive clarification of the legal situation and reintegration of demobilised combatants after Law 975 of 2005 came into force.

**JUSTICE AND PEACE LAW-Extension** of the term in the face of new facts does not affect the application of the Legal Framework for Peace.

Reference: D - 9818

Unconstitutionality complaint against articles 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 16, 17, 17, 18, 18, 22, 23, 24, 26, 27, 30, 31, 32, 33, 36, 37, 38, 39, 40 and 41 (all in part) and in full articles 19, 20 and 29 of Law 1592 of 2012.

Plaintiffs: Alirio Uribe Muñoz, Iván Cepeda Castro, Judith Maldonado Mojica, Blanca Irene López Garzón, Gelasio Cardona Serna, Lilia Peña Silva, Luis Alfonso Castillo Garzón, Vilma Gutiérrez Méndez, Diógenes Manuel Arrieta Zabala, Elías Sebastián Castro Ramírez, Dora María Macías Montero, Ricardo Rosas Viso and Félix Tomás Jiménez.

Magistrate Rapporteur:

ALBERTO ROJAS RÍOS

Bogotá, D.C., eleven (11) November 2015.

The Full Chamber of the Constitutional Court, composed of Judges María Victoria Calle Correa, who presides, Luis Guillermo Guerrero Pérez, Jorge Iván Palacio Palacio, Luis Ernesto Vargas Silva and Alberto Rojas Ríos, and Associate Judges Gustavo Cuello Iriarte and Enrique Gil Botero, in exercise of its constitutional powers and in compliance with the requirements and formalities established in Decree 2067 of 1991, has delivered the present judgment on the basis of the following

**I. BACKGROUND**

On July thirty (30) of two thousand thirteen (2013), in the exercise of the public action of unconstitutionality, the citizens Alirio Uribe Muñoz, Iván Cepeda Castro, Judith Maldonado Mojica, Blanca Irene López Garzón, Gelasio Cardona Serna, Lilia Peña Silva, Luis Alfonso Castillo Garzón, Vilma Gutiérrez Méndez, Diógenes Manuel Arrieta Zabala, Elías Sebastián Castro Ramírez, Dora María Macías Montero, Ricardo Rosas Viso and Félix Tomás Jiménez sued Articles 1, 3, 4, 5, 7, 8, 8, 10, 11, 12, 13, 14, 16, 17, 17, 18, 22, 23, 24, 26, 27, 30, 31, 32, 33, 36, 37, 38, 39, 40 and 41 (all partial) and in full Articles 19, 20 and 29 of Law 1592 of 2012 [[1]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn1%22%20%5Co%20%22) . This lawsuit was assigned case number D- 9818, which was admitted on 2 September 2013.

**1. THE CONTESTED RULES**

The text of the contested provisions is as follows. The contested paragraphs are underlined:

***"LAW 1592 OF 2012***

***By means of which amendments are introduced to Law 975 of 2005 "whereby provisions are issued for the reincorporation of members of organised illegal armed groups, which effectively contribute to the achievement of national peace and other provisions are issued for humanitarian agreements" and other provisions are issued.***

*"****Article 1.*** *Modify article* [*2*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#2) *of Law 975 of 2005, which shall read as follows:*

***Article 2.*** *Scope of the law, interpretation and normative application. This law regulates the investigation, prosecution, punishment and judicial benefits of persons linked to organised illegal armed groups, as perpetrators or participants in criminal acts committed during and as a result of their membership of these groups, who have decided to demobilise and contribute decisively to national reconciliation, applying criteria of prioritisation in the investigation and prosecution of these conducts.*

*The interpretation and application of the provisions of this law shall be carried out in accordance with constitutional norms and international treaties ratified by Colombia. The incorporation of some international provisions in the present law should not be understood as the negation of other international norms that regulate the same matter.*

*The reintegration into civilian life of persons who may be granted pardon or any other legal benefit established in Law 418 of 1997 and the regulations that modify, extend or add to it, shall be governed by the provisions of this law. The reintegration into civilian life of those who undergo the procedures referred to in this law shall be governed exclusively by the provisions of Article 66 of this law.*

***Article 3.*** *Law 975 of 2005 will have a new article* [*5A*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#5) *which will read as follows:*

***Article 5A.*** *Differential approach. The principle of a differential approach ­recognises that there are populations with particular characteristics due to their age, gender, race, ethnicity, sexual orientation and disability. For this reason, the participation of the victims in the special criminal process dealt with in this law, as well as the judicial process and the investigation that is carried out, must take this approach into account, without prejudice to the application of prioritisation criteria.*

*The State shall offer special guarantees and protection measures to those groups exposed to greater risk of the violations referred to in Article 5 of this law, such as women, young people, children, older adults, people with disabilities, peasants, social leaders, members of trade union organisations, human rights defenders, victims of forced displacement, and members of indigenous, ROM, black, Afro-Colombian, Raizal and Palenquero peoples or communities, when they are at risk of the violations referred to in Article 5 of this law, members of trade union organisations, human rights defenders, victims of forced displacement and members of indigenous, ROM, black, Afro-Colombian, Raizal and Palenquero peoples or communities, when the risk is generated by their participation in the special judicial process referred to in this law.*

***Article 4****. Modify article* [*6*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#6) *of Law 975 of 2005, which will read as follows:*

***Article 6.*** *Rights of victims. Victims have the right to truth, justice and comprehensive reparation. The definition of these rights is developed in Law 1448 of 2011. For these purposes, victims shall have the right to participate directly or through their representative in all stages of the process referred to in this law, in accordance with the provisions of Law 1448 of 2011. The judiciary shall ensure that this is the case.*

***Article 5****. Law 975 of 2005 will have a new article* [*11A*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#11) *which will read as follows:*

***Article 11A.*** *Grounds for termination of the Justice and Peace Process and exclusion from the list of applicants. The demobilised members of organised illegal armed groups who have been nominated by the national government to access the benefits provided for in this law shall be excluded from the list of nominees following a reasoned decision, handed down in a public hearing by the corresponding Justice and Peace Chamber of the High Court of the Judicial District, in any of the following cases, without prejudice to any others determined by the competent judicial authority:*

*1. When the applicant is unwilling to appear at the trial or fails to comply with the commitments of the present law.*

*2. When it is verified that the candidate has failed to comply with any of the eligibility requirements established in this law.*

*3. When it is verified that the applicant has not handed over, offered or denounced assets acquired by him or by the illegal organised armed group during and on the occasion of his membership of the same, either directly or through an intermediary.*

*4. When none of the acts confessed by the postulated person have been committed during and on the occasion of his or her membership of an organised illegal armed group.*

*5. When the postulated person has been convicted for intentional crimes committed after demobilisation, or when, having been postulated while deprived of liberty, it is proven that he/she has committed crimes from the detention centre.*

*6. When the applicant fails to comply with the conditions imposed at the hearing for the substitution of the detention order referred to in Article 18A of this law.*

*The request for a termination hearing may be made at any stage of the proceedings and must be submitted by the prosecutor of the case. A decision on the termination of the proceedings of several applicants may be taken at the same hearing, as deemed appropriate by the prosecutor of the case and as stated in the request.*

*Once the decision to terminate the special Justice and Peace criminal proceedings is final, the Examining Chamber shall order copies of the proceedings to be sent to the competent judicial authority so that it may carry out the respective investigations, in accordance with the laws in force at the time of the commission of the acts attributable to the postulate, or adopt the necessary decisions.*

*If there are prior injunctions for investigations or ordinary proceedings suspended by virtue of the special Justice and Peace criminal process, once this has ended, the Sala de Conocimiento shall, within the following thirty-six (36) hours, inform the competent judicial authority so that the suspended investigations, proceedings, arrest warrants and/or security measures may be reactivated immediately, if necessary.*

*In any case, the termination of the Justice and Peace process reactivates the statute of limitations for criminal action.*

*Once the decision to terminate the justice and peace process is final, the competent authority shall send a copy of the decision to the national government, for the purposes of its competence. The demobilised person may not apply again for access to the benefits established in the present law.*

***Paragraph 1. In*** *the event that the applicant does not appear at the Justice and Peace process, the procedure established in this article for the termination of the process and exclusion from the list of applicants shall be followed. It shall be understood that the postulated person does not appear in the justice and peace process when any of the following events occur:*

*1. His whereabouts have not been established despite the activities carried out by the authorities to locate him.*

*2. Without just cause, fails to attend the public summons made through audiovisual or written media, or the summons made on at least three (3) occasions in order to ensure his or her appearance at the hearing of the free version of the facts referred to in the present law.*

*3. fails, without just cause, to resume his or her participation in the hearing of the person who has given his or her version of the facts or in the hearings before the magistrate, if these have been suspended.*

***Paragraph 2.*** *In the event of the death of the postulate, the Delegate Prosecutor shall request before the Justice and Peace Chamber of the High Court of the Judicial District, the preclusion of the investigation as a consequence of the extinction of the criminal action.*

***Paragraph 3.*** *In any case, if the postulate dies after the assets have been handed over, the process shall continue with regard to the extinction of ownership of the assets handed over, offered or denounced for the contribution to the comprehensive reparation of the victims, in accordance with the rules established in the present law.*

***Article 7.*** *Law 975 of 2005 will have a new article* [*11C*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#11) *which will read as follows:*

***Article 11C.*** *Reparatory vocation of the assets handed over, offered or denounced. The assets handed over, offered or reported for handing over by the applicants covered by this law must have a restorative vocation. Reparatory vocation is understood to be the aptitude that all the assets handed over, offered or reported by the applicants within the framework of this law must have in order to make effective reparation to the victims.*

*Assets that cannot be identified and individualised, as well as those whose administration or reorganisation would be detrimental to the victims' right to full reparation, are understood as assets without a reparation vocation.*

*When deciding on the adoption of precautionary measures, the magistrate with functions of control of guarantees of the Justice and Peace Chambers shall determine whether or not the property has a reparation vocation, based on the information provided by the delegated prosecutor in the case and by the Special Administrative Unit for the Attention and Integral Reparation of Victims -Victims' Reparation Fund-. When the magistrate in charge of the control of guarantees considers that the property does not have a reparation vocation, the property may not enter the Fund for the Reparation of Victims under any circumstances. Exceptionally, the Prosecutor's Office shall provisionally hand over to the Victims' Reparation Fund the assets handed over, offered or denounced by the applicants that must be administered immediately by that entity in order to avoid their deterioration, while the preliminary hearing for the imposition of precautionary measures is being held.*

*The Special Administrative Unit for Attention and Integral Reparation to Victims - Fund for the Reparation of Victims -, prior to the process of receiving the property for administration, shall jointly with the Office of the Attorney General of the Nation and other entities that have relevant information, carry out an update of the readiness of the property under administration that allows for the establishment of its physical, legal, social and economic conditions.*

***Paragraph.*** *When the property offered or denounced by the postulated person cannot be effectively handed over due to a lack of reparation, and it is demonstrated that the postulated person does not have any other property with reparation vocation, the evaluation of the eligibility requirement will not be affected, nor the condition to access the substitution of the security measure referred to in article 18A of this law.*

***Article 8.*** *Law 975 of 2005 will have a new article* [*11D*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#11) *which will read as follows:*

***Article 11D.*** *Duty of postulants to contribute to the comprehensive reparation of victims. For the purposes of complying with the requirements set out in sections 10.2 and 11.5 of Articles 10 and 11 respectively of this law, demobilised combatants shall hand over, offer or denounce all assets acquired by them or by the organised illegal armed group during and as a result of their membership of the group, either directly or through an intermediary. These assets shall be placed at the disposal of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land forfeited so that they may be used for the comprehensive reparation and land restitution programmes referred to in Law 1448 of 2011, as appropriate. Victims who are accredited in special justice and peace criminal proceedings shall have preferential access to these programmes.*

*The Office of the Attorney General of the Nation shall take all necessary measures to pursue the assets referred to in this article, which have not been handed over, offered or denounced by the postulate. The postulate who does not hand over, offer or report all the assets acquired by him or by the illegal organised armed group during and on the occasion of his membership of the same, either directly or through an intermediary, ­shall be excluded from the Justice and Peace process or shall lose the benefit of the alternative punishment, as appropriate.*

***Paragraph.*** *In no case shall the assets of the postulants acquired as a result of the reintegration process, the fruits thereof, or those acquired in a lawful manner after demobilisation, be affected.*

***Article 10.*** *Modify article* [*15*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#15) *of Law 975 of 2005, which will read as follows:*

***Article 15.*** *Clarification of the truth. Within the procedure established by this law, public servants shall make the necessary arrangements to ensure that the truth about the pattern of macro-criminality in the actions of the organised illegal armed groups is clarified and that the contexts, causes and motives of the same can be uncovered.*

*The investigation shall be carried out in accordance with the prioritisation criteria determined by the Attorney General of the Nation in accordance with Article 16A of this law. In any case, the right of defence of the accused and the effective participation of the victims shall be guaranteed.*

*The information that emerges from the Justice and Peace processes should be taken into account in the investigations that seek to shed light on the support and financing networks of the organised illegal armed groups.*

*With the collaboration of the demobilised combatants, the Attorney General's Office, with the support of the judicial police, will investigate the whereabouts of kidnapped or missing persons and will inform the families of the results obtained in a timely manner.*

***Paragraph.*** *In appropriate events, the Office of the Attorney General of the Nation shall ensure the protection of victims, witnesses and experts it intends to present at the trial. The Ombudsman's Office shall be responsible for the protection of witnesses and experts that the defence intends to present. The Superior Council of the Judiciary shall be responsible for the protection of the Magistrates of the Superior Courts of Judicial Districts to whom functions are assigned for the implementation of this law.*

***Article 11.*** *Law 975 of 2005 shall have a new Article* [*15A*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#15) *which shall read as follows:*

***Article 15A.*** *Clarification of the phenomenon of land dispossession and cooperation between the Attorney General's Office and the Special Administrative Unit for the Restitution of Land Restitution. When the victim has denounced the dispossession or forced abandonment of their property by members of organised illegal armed groups, the delegated prosecutor, in coordination with the judicial police authorities and in accordance with the prioritisation criteria, will order the necessary investigative work to be carried out with the aim of clarifying the pattern of macro-criminality of dispossession and forced abandonment of land. The same shall be done informally in the case of alleged dispossession or forced abandonment of property identified by the Attorney General's Office.*

*When the Attorney General's Office finds information relevant to the land restitution process from the material evidence or legally obtained information, it shall make it available to the Special Administrative Unit for the Management of Restitution of Land Restitution, in order to contribute to the procedures it is carrying out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011.*

***Article 12.*** *Modify article* [*16*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#16) *of Law 975 of 2005, which will read as follows:*

***Article 16.*** *Competence. Once the Attorney General's Office has received the name or names of the members of organised illegal armed groups willing to contribute effectively to the provisions of this law, the corresponding delegated prosecutor, in accordance with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of this law, shall immediately assume jurisdiction to:*

*1. To hear investigations into criminal acts committed during and on the occasion of membership of an organised armed group operating outside the law.*

*2. To hear investigations against its members.*

*3. To take cognizance of investigations to be initiated and of which it becomes aware at the time of or after demobilisation.*

*The High Court of the Judicial District to be determined by the High Council of the Judiciary, by means of a resolution issued before any proceedings are initiated, shall be competent to try the punishable conducts referred to in this law.*

*In the event of conflict or collision of jurisdiction between the High Courts of Judicial Districts that hear the cases referred to in the present law and any other judicial authority, the jurisdiction of the Justice and Peace Chamber shall always prevail, until it is determined that the act was not committed during and on the occasion of the postulated person's membership of the organised illegal armed group.*

***Article 13.*** *Law 975 of 2005 shall have a new Article* [*16A*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#16) *which shall read as follows:*

***Article 16A.*** *Criteria for prioritisation of cases. In order to guarantee the rights of victims, the Attorney General of the Nation shall determine the prioritisation criteria for the exercise of criminal action, which shall be binding and of public knowledge.*

*The prioritisation criteria will be aimed at clarifying the pattern of macro-criminality in the actions of the organised illegal armed groups and at uncovering the contexts, causes and motives, concentrating investigative efforts on those most responsible. To this end, the Attorney General's Office will adopt the "Integral Prioritised Investigation Plan" by means of a resolution.*

***Article 14.*** *Modify article* [*17*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#17) *of Law 975 of 2005, which will read as follows:*

***Article 17.*** *Free version and confession. The members of the organised illegal armed group, whose names are submitted by the national government for consideration by the Attorney General's Office, who expressly accept the procedure and benefits of the present law, shall give a free version before the delegated prosecutor, who shall question them about the facts of which they have knowledge.*

*In the presence of their defence counsel, they shall state the circumstances of time, manner and place in which they have participated in the criminal acts committed during their membership of these groups, which predate their demobilisation and for which they are benefiting from the present law. In the same procedure, they shall indicate the date and reasons for their joining the group and the assets that they will hand over, offer or denounce to contribute to the comprehensive reparation of the victims, whether they are their real or apparent property or that of the organised illegal armed group to which they belonged.*

*The version given by the demobilised person and the other actions taken in the demobilisation process will be immediately made available to the National Prosecutor's Office for Justice and Peace so that the delegated prosecutor and the Judicial Police assigned to the case, in accordance with the prioritisation criteria established by the Attorney General of the Nation, can draw up and develop the methodological programme to initiate the investigation, verify the veracity of the information provided and clarify the patterns and contexts of criminality and victimisation.*

***Paragraph.*** *The Attorney General's Office may regulate and adopt methodologies aimed at receiving collective or joint versiones libres, so that demobilised persons who have belonged to the same group can provide a clear and complete context that contributes to the reconstruction of the truth and the dismantling of the apparatus of power of the organised illegal armed group and its support networks. The holding of these hearings will allow the indictment, formulation and acceptance of charges to take place collectively when the legal requirements are fully met.*

***Article 16.*** *Law 975 of 2005 will have a new article* [*17B*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#17) *which will read as follows:*

***Article 17B.*** *Imposition of precautionary measures on assets for the purposes of forfeiture of ownership. When the postulate has offered assets of his real or apparent ownership or denounced those of the organised illegal armed group to which he belonged, or the Prosecutor's Office has identified assets not offered or denounced by the postulates, the delegated prosecutor shall order the carrying out of the relevant investigative work for the full identification of those assets and the documentation of the circumstances related to the possession, acquisition and ownership of the same. The Special Administrative Unit for the Attention and Integral Reparation of Victims - Fund for the Reparation of Victims - shall participate in the work of preparing the assets susceptible of being seized, in accordance with the provisions of Article 11C, and shall provide all available information on them. This information shall be submitted to the magistrate in charge of the control of guarantees at the respective hearing for the decision on the imposition of precautionary measures.*

*When from the material evidence collected or from the information legally obtained by the Prosecutor's Office, it is possible to infer the real or apparent ownership of the postulate or of the organised armed group outside the law, with respect to the assets subject to prosecution, the delegated prosecutor shall request the magistrate with functions of control of guarantees to schedule a preliminary hearing for the request and decision of precautionary measures, to which the Special Administrative Unit for the Attention and Integral Reparation of Victims -Fund for the Reparation of Victims- shall be summoned.*

*In this reserved hearing, the delegated prosecutor shall request without delay from the magistrate the adoption of precautionary measures of seizure, sequestration or suspension of the dispositive power over the assets; likewise, the measure on deposits in financial institutions, inside and outside the country in accordance with the judicial cooperation agreements in force shall proceed. In the case of movable assets such as securities and their yields, the delegated prosecutor shall request an order not to pay them, when it is impossible to physically seize them. In the case of legal persons, the magistrate at the time of decreeing the precautionary measure shall order the Special Administrative Unit for the Attention and Integral Reparation of Victims as administrator of the Fund for the Reparation of Victims to exercise the social rights corresponding to the shares, quotas or parts of social interest subject to the same until a final judicial decision is produced and in the meantime those who appear registered as partners, members of the social bodies and other administrative bodies, legal representative or fiscal auditor, may not exercise any act of disposition, administration or management over them. If the magistrate with the function of control of guarantees accepts the request, the precautionary measures shall be adopted immediately.*

*The assets affected by the precautionary measure will be placed at the disposal of the Special Administrative Unit for the Attention and Integral Reparation of Victims -Fund for the Reparation of Victims-, which will have the capacity of sequestrator and will be in charge of the provisional administration of the assets, while the sentence of extinction of ownership is issued.*

***Paragraph 1.*** *If the Special Administrative Unit for the Attention and Integral Reparation of Victims - Fund for the Reparation of Victims - is administering assets that do not have precautionary measures, it may request the magistrate with the function of control of guarantees, directly or through the Office of the Attorney General of the Nation, to impose precautionary measures on the assets.*

***Paragraph 2.*** *When the precautionary measure is decreed on assets in respect of which a request for restitution is subsequently filed, such assets and the request for restitution shall be transferred to the Fund of the Special Administrative Unit for the Management of the Restitution of Land for the purpose of processing them through the procedures established in Law 1448 of 2011 and its complementary regulations, without the lifting of the precautionary measure by the judiciary being required.*

***Paragraph 3.*** *If the assets handed over, offered or denounced by the applicants or identified by the Attorney General's Office under the terms of this article, have a request for restitution before the Special Administrative Unit for the Management of the Restitution of Land Restitution or before the Special Administrative Unit for the Attention and Integral Reparation of Victims -Fund for the Reparation of Victims-, the delegated prosecutor shall request the precautionary measure on them and once decreed shall order the transfer of the request for restitution and the assets immediately to the Fund of the Special Administrative Unit for the Management of the Restitution of Divested Lands, for the purposes of its processing through the procedures established in Law 1448 of 2011 and its complementary regulations.*

***Paragraph 4.*** *When the assets handed over, offered or denounced by the applicants are involved in a process of forfeiture of the right of ownership carried out within the framework of Law 793 of 2002, the delegated prosecutor for Justice and Peace shall request the precautionary measure on the asset. Once the measure has been decreed, the prosecutor hearing the forfeiture of ownership proceedings shall declare the inappropriateness of the forfeiture of ownership action on this property and shall order the National Narcotics Directorate, or whoever takes its place, to immediately place the property at the disposal of the Fund for the Reparation of Victims. In this case, in accordance with the provisions of Article 11C, assets without a reparation vocation may not be transferred to the Fund for the Reparation of Victims.*

***Paragraph 5.*** *Exceptionally, the delegated prosecutor, taking into account the circumstances of imminent risk, irreparable damage or loss of assets, may appear before the magistrate with functions of control of guarantees so that he may take the urgent and necessary measures for the conservation of the assets, from the very moment of the demobilised person's application to the procedure of the present law.*

***Paragraph 6.*** *Subsequent to the imposition of precautionary measures and prior to the reception of the property for its administration, the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims - Fund for the Reparation of Victims - shall jointly with the Attorney General's Office and the other entities that have relevant information on the property, carry out the review of the readiness referred to in the final paragraph of Article 11C of this law.*

***Article 17.*** *Law 975 of 2005 shall have a new Article* [*17C*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#17) *which shall read as follows:*

***Article 17C.*** *Incident of opposition of third parties to the precautionary measure. In cases where there are third parties who are considered to be in good faith and free of guilt with rights over the assets seized for the purposes of forfeiture of ownership under Article 17B, the magistrate with the function of control of guarantees, at the request of the interested party, shall order the processing of an incident which shall be carried out as follows:*

*Once the request has been presented by the interested party, at any time up to the beginning of the hearing for the formulation and acceptance of charges, the Magistrate with the function of control of guarantees shall convene a hearing within the following five (5) days in which the applicant shall provide the evidence he intends to present and the transfer of which shall be given to the Prosecutor's Office and the other intervening parties for a period of 5 working days so that they may exercise their right to contradict. Once this period has expired, the magistrate shall decide on the incident and shall order any measures that may be necessary.*

*If the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure. Otherwise, the proceedings for forfeiture of ownership will continue and the decision will be part of the sentence that puts an end to the Justice and Peace process.*

*This incident does not suspend the course of the proceedings.*

***Article 18.*** *Modify article* [*18*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#18) *of Law 975 of 2005, which will read as follows:*

***Article 18.*** *Formulation of charges. The delegated prosecutor for the case shall request the magistrate who exercises the functions of control of guarantees to schedule a preliminary hearing for the formulation of charges, when from the material evidence, physical evidence, legally obtained information, or from the voluntary statement it can be reasonably inferred that the demobilised person is the author of or participant in one or several crimes being investigated within the pattern of macro-criminality in the actions of the illegal organised armed group that is to be clarified.*

*At this hearing, the prosecutor will make the factual accusation of the charges investigated and will request the magistrate to order the preventive detention of the accused in the corresponding detention centre, in accordance with the provisions of this law. Likewise, he/she shall request the adoption of precautionary measures on the assets for the purpose of contributing to the comprehensive reparation of the victims.*

*From this hearing and within the following sixty (60) days, the Office of the Public Prosecutor of the Nation, with the support of its judicial police group, shall carry out the investigation and verification of the facts admitted by the accused, and all those of which it has knowledge within the scope of its competence. At the end of the term, or earlier if possible, the prosecutor in the case shall request the trial chamber to schedule a concentrated hearing for the formulation and acceptance of charges.*

*With the filing of the indictment, the statute of limitations on criminal prosecution is interrupted.*

***Paragraph.*** *When the facts for which the defendant is charged form part of a pattern of macro-criminality that has already been clarified by a Justice and Peace ruling in accordance with the prioritisation criteria, and provided that the effects caused to the victims by such a pattern of macro-criminality have already been identified in the respective ruling, the defendant may accept responsibility for the conduct charged and request the early termination of the proceedings. In such cases, the supervisory magistrate shall send the case file to the court in order for it to proceed to issue a sentence in accordance with article 24 of the present law, within a period that may not exceed fifteen (15) days from the hearing at which the charges were brought. The early termination of the proceedings shall not, under any circumstances, imply access to criminal benefits in addition to the alternative penalty.*

***Article 19.*** *Law 975 of 2005 shall have a new Article* [*18A*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#18) *which shall read as follows:*

***Article 18A.*** *Substitution of the security measure and the duty of the applicants to continue in the process. The postulate who has demobilised while at liberty may request a hearing before the magistrate with supervisory functions for the substitution of the security measure of preventive detention in a prison establishment for a non-custodial security measure, subject to compliance with the provisions of this article and the other conditions established by the competent judicial authority to guarantee his appearance at the proceedings referred to in this law. The magistrate in charge of the control of guarantees may grant the substitution of the security measure within a period of no more than twenty (20) days from the respective request, when the applicant has complied with the following requirements:*

*1. Have spent at least eight (8) years in a prison after demobilisation, for crimes committed during and on the occasion of their membership of an organised illegal armed group. This period shall be counted from the time of imprisonment in an establishment subject to the full legal rules on prison control;*

*2. Have participated in available re-socialisation activities, if these are offered by the National Penitentiary and Prison Institute (Inpec) and have obtained a certificate of good conduct;*

*3. To have participated and contributed to the clarification of the truth in the judicial proceedings of the Justice and Peace process;*

*4. To have handed over the assets to contribute to the comprehensive reparation of the victims, if applicable, in accordance with the provisions of this law;*

*5. Not having committed an intentional crime after demobilisation.*

*In order to verify the above requirements, the magistrate shall take into account the information provided by the applicant and supplied by the competent authorities.*

*Once granted, the substitution of the detention order may be revoked by the magistrate with supervisory functions at the request of the Attorney General's Office or of the victims or their representatives, when any of the following circumstances arise:*

*1. That the defendant ceases to participate in the judicial proceedings of his or her justice and peace process, or that it is proven that he or she has not contributed to the clarification of the truth;*

*2. The applicant fails to comply with the conditions set by the competent judicial authority;*

*3. That the applicant does not participate in the reintegration process designed by the national government for applicants to the Justice and Peace Law in accordance with Article 66 of this law.*

***Paragraph.*** *In cases in which the applicant has been deprived of liberty at the time of the demobilisation of the group to which he/she belonged, the term provided as a requirement in numeral 1 of the first paragraph of this article shall be counted from the time of his/her application for the benefits established by the present law.*

***Article 20****. Law 975 of 2005 shall have a new Article* [*18B*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#18) *which shall read as follows:*

***Article 18B.*** *Conditional suspension of the execution of the sentence imposed in ordinary justice. In the same hearing in which the security measure has been substituted under the terms of Article 18A, the applicant who has also been previously sentenced in the ordinary criminal justice system may request the Justice and Peace judge for the conditional suspension of the execution of the respective sentence, provided that the conducts which gave rise to the conviction were committed during and on the occasion of his or her membership of the organised armed group operating outside the law.*

*If the Justice and Peace Guarantees Control Magistrate can reasonably infer that the conducts that gave rise to the conviction in the ordinary criminal justice system were committed during and on the occasion of the applicant's membership of an organised armed group operating outside the law, he/she shall send, within a period not exceeding fifteen (15) days of the request, copies of all the proceedings to the judge responsible for the enforcement of sentences and security measures in charge of supervising the respective conviction, who shall conditionally suspend the execution of the ordinary sentence.*

*The suspension of the execution of the sentence shall be revoked at the request of the Justice and Peace guarantees control magistrate, when the applicant incurs in any of the grounds for revocation set out in Article 18A.*

*In the event that the sentences imposed in ordinary justice proceedings are not accumulated in the Justice and Peace sentence, or that having been accumulated, the Justice and Peace court has not granted the alternative sentence, the conditional suspension of the execution of the sentence decreed by virtue of this article shall be revoked. For these purposes, the statute of limitations of the sentence in the ordinary justice system shall be suspended until the Justice and Peace sentence becomes enforceable.*

***Article 22.*** *Modify article* [*22*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#22) *of Law 975 of 2005, which will read as follows:*

***Article 22.*** *Suspension of investigations. Once the security measure has become final and until a sentence has been handed down in the ordinary courts against a Justice and Peace process candidate, with regard to an act committed during and on the occasion of his or her membership of an organised armed group operating outside the law, the prosecutor who is hearing the case in the ordinary courts shall suspend the investigation. If the proceedings in the ordinary jurisdiction are at the trial stage, the respective judge shall order the suspension. The investigation or trial shall only be suspended with respect to the person involved and the fact that led to his or her involvement. The prosecutor or judge of the ordinary courts shall inform the National Prosecution Unit for Justice and Peace, sending a copy of the decision on the merits and of the suspension.*

***Paragraph.*** *The suspension of the proceedings in the ordinary jurisdiction shall be provisional until the end of the concentrated hearing for the formulation and acceptance of charges held before the Justice and Peace Trial Chamber of the High Court of the corresponding Judicial District, and shall be definitive, for the purposes of accumulation, if the accused accepts the charges. For these purposes, the statute of limitations for the exercise of the criminal action in the ordinary jurisdiction shall also be suspended until the end of the concentrated hearing for the formulation and acceptance of charges.*

***Article 23.*** *Modify article* [*23*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#23) *of Law 975 of 2005, which will read as follows:*

***Article 23.*** *Incident to identify the harm caused to the victims. At the same hearing in which the Chamber of the corresponding High Court of the Judicial District declares the legality of the total or partial acceptance of the charges brought, the incident for the identification of the effects caused to the victims by the criminal conduct shall be initiated ex officio, within eight (8) days following the receipt of the proceedings. This incident may not be extended for more than twenty (20) working days.*

*The hearing of the incident shall begin with the intervention of the victim or his legal representative or court-appointed lawyer, so that he may explain the effects caused by the criminal conduct. Summary evidence shall suffice to substantiate the alleged harm and the burden of proof shall be shifted to the defendant, if he/she disagrees.*

*The Chamber shall examine the victim's version and shall reject it if the person promoting it is not a victim, a decision which may be challenged in accordance with the terms of this law.*

*Once the victim's version has been admitted, the Chamber shall inform the accused who has accepted the charges. If the defendant agrees, the content of the victim's version shall be incorporated into the decision ruling on the incident, together with the identification of the harm caused to the victim, which in no case shall be assessed. If not, it shall order the taking of the evidence offered by the accused, if any, shall hear the basis of the respective versions, and shall rule on the incident in the same act.*

*The Chamber will incorporate in the judgment what was said by the victims in the hearing in order to contribute to the clarification of the pattern of macro-criminality in the actions of the organised illegal armed groups, as well as the contexts, causes and motives for the same, and will forward the file to the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of the Restitution of Land for the inclusion of the victims in the corresponding registers for preferential access to the programmes of comprehensive reparation and land restitution provided for in Law 1448 of 2011.*

***Paragraph 1.*** *The Ombudsman's Office, prior to the hearing of the incident of identification of the effects caused, shall explain to the victims participating in the process in a clear and simple manner, the different routes of access to the comprehensive reparation programmes referred to in Law 1448 of 2011.*

***Paragraph 2. The*** *granting of the alternative penalty may not be refused in the event that the victim does not exercise his or her right to participate in the proceedings referred to in this article.*

***Paragraph 3. The*** *Special Administrative Unit for the Comprehensive Attention and Reparation of Victims shall be summoned to the hearing to identify the effects caused to the victims in order to provide the information required by the High Court of the Judicial District and to inform the victim about the procedures for comprehensive reparation under Law 1448 of 2011.*

***Paragraph 4.*** *If a plurality of persons who claim to hold the status of a subject of collective reparation participate in the incident referred to in this article, the Chamber shall order the referral to the ­Special Administrative Unit for the Attention and Comprehensive Reparation of Victims so that it may preferentially assess whether or not they are a subject of collective reparation under the terms of Law 1448 of 2011. If the Special Administrative Unit for Attention and Integral Reparation for Victims, on assessing the information provided, considers that the person is indeed a subject of collective reparation, it shall initiate the administrative collective reparation process.*

***Paragraph 5.*** *The Chamber of the corresponding High Court of the Judicial District and the Office of the Attorney General of the Nation shall take all necessary measures to ensure that the victims corresponding to the pattern of macro-criminality that is being clarified within the process participate in the incident of identification of the harm caused to the victims, in accordance with the prioritisation criteria.*

***Article 24.*** *Law 975 of 2005 shall have a new Article* [*23A*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#23)*, which shall read as follows:*

***Article 23A.*** *Comprehensive reparation. In order to ensure comprehensive reparation for victims, the Special Administrative Unit for the Attention and Comprehensive Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land Restitution, as appropriate, shall adopt coordinated measures for rehabilitation, restitution, compensation, satisfaction and guarantees of non-repetition, as appropriate for the victimising event, in accordance with the reparation model set out in Law 1448 of 2011 and its complementary norms.*

*In accordance with Article 23 of the present law, the Chamber shall forward the file to the Special Administrative Unit for the Attention and Integral Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land Restitution in order for the victim to be subject to the integral application of the different transitional justice measures adopted by the Colombian State.*

***Article 26.*** *Modify article* [*25*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#25) *of Law 975 of 2005, which will read as follows:*

***Article 25.*** *Convictions subsequent to the alternative sentence and assets found afterwards. If the beneficiaries of the alternative sentence in accordance with this law, after the alternative sentence has been granted, are charged with crimes committed during and on the occasion of their membership of the organised illegal armed groups and before their demobilisation, and which have not been recognised or accepted by the postulated person within the framework of the special process referred to in this law, these conducts shall be investigated and judged by the competent authorities and the laws in force at the time of their commission.*

*Additionally, if after the sentence issued as a consequence of the exceptional procedure established in this law, and until the end of the ordinary sentence established therein, the competent judicial authority determines that the beneficiary of the alternative sentence did not hand over, did not offer or did not denounce all the assets acquired by him or by the illegal organised armed group during and on the occasion of his membership of the same, either directly or through an intermediary, he shall lose the benefit of the alternative sentence.*

*When the competent judicial authority verifies any of the breaches referred to in this article, it shall proceed to revoke the legal benefits and order the execution of the principal sentence contained in the Justice and Peace sentence.*

***Paragraph 1.*** *The grounds for revocation of the alternative sentence contained in this article shall be made known to the demobilised combatant during the proceedings and shall be contained in the sentence.*

***Paragraph 2.*** *The provisions of this article shall apply as long as they do not concern partial indictment proceedings, early termination of proceedings, formulation and acceptance of charges, or partial sentences handed down in the framework of Justice and Peace proceedings.*

***Article 27.*** *Modify article* [*26*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#26) *of Law 975 of 2005, which will read as follows:*

***Article 26.*** *Appeals. Appeals may only be lodged against the sentence and against orders that resolve substantive matters during the hearings, without the need for the prior lodging of an appeal for reconsideration. In these cases, the procedure shall be in accordance with the provisions of articles 178 and following of Law 906 of 2004 and the regulations that modify, substitute and add to them.*

*For other decisions in the course of the special procedure of the present law, there shall only be room for an appeal for reconsideration, which shall be sustained and resolved orally and immediately at the respective hearing.*

*The appeal shall be granted with suspensive effect when it is lodged against the judgement, against the order that rules on absolute nullity, against the order that decrees and rejects the request for preclusion of the proceedings, against the order that denies the taking of evidence in the trial, against the order that decides on the exclusion of evidence, against the order that decides on the termination of the Justice and Peace process and against the ruling of the incident of identification of the effects caused. In the other cases it will be granted with devolutive effect.*

***Paragraph 1.*** *The processing of appeals referred to in this law shall take precedence over other matters within the jurisdiction of the Criminal Chamber of the Supreme Court of Justice, except for those related to tutela actions.*

***Paragraph 2. The*** *extraordinary review action shall be heard by the Criminal Chamber of the Supreme Court of Justice, under the terms set out in the Code of Criminal Procedure in force.*

***Paragraph 3. An*** *appeal in cassation shall not lie against the decision of second instance.*

***Paragraph 4.*** *The Special Administrative Unit for the Attention and Integral Reparation of Victims may appeal decisions related to the assets administered by the Fund for the Reparation of Victims.*

***Article 29.*** *Modify article* [*44*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#44) *of Law 975 of 2005, which will read as follows:*

***Article 44.*** *Acts of contribution to comprehensive reparation. At the time of issuing a sentence as a consequence of the exceptional procedure dealt with in this law, the Examining Chamber may order the defendant to carry out any of the following acts of contribution to comprehensive reparation:*

*1. The public statement restoring the dignity of the victim and of the persons related to the victim.*

*2. Public acknowledgement of responsibility, public declaration of repentance and commitment not to engage in punishable conduct.*

*3. Participation in the symbolic acts of redress and redignification of the victims that may take place in accordance with the programmes that may be offered for this purpose.*

*4. Effective cooperation in locating abducted or missing persons and locating the bodies of victims known to them.*

*5. To carry out social service actions.*

***Paragraph.*** *Probation shall be subject to the execution of the acts of contribution to full reparation which have been ordered in the sentence.*

***Article 30****. Modify article* [*46*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#46) *of Law 975 of 2005, which will read as follows:*

***Article 46.*** *Restitution. The legal and material restitution of land to the dispossessed and displaced shall be carried out through the process established in Law 1448 of 2011 and the norms that modify, substitute or add to it.*

*In order to integrate transitional justice measures, there shall be no direct restitution in the course of judicial proceedings under this law.*

***Article 31.*** *Law 975 of 2005 shall have a new Article* [*46A*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#46)*, which shall read as follows:*

***Article 46A.*** *Extradited applicants. In order to contribute to the effectiveness of the right to justice, the Colombian State shall promote the adoption of measures conducive to facilitating the participation in judicial proceedings of the applicants who are in foreign jurisdiction as a result of extradition granted. To this end, the state should seek the adoption of measures conducive to the collaboration of these applicants with the administration of justice, through testimonies aimed at clarifying facts and conducts committed during and in the course of the internal armed conflict.*

*In particular, measures should be taken to ensure that extradited applicants disclose the motives and circumstances in which the conduct under investigation was committed and, in the case of death or disappearance, the fate of the victim.*

*These measures may include promoting the transmission of the proceedings carried out with the applicants, guaranteeing protection measures for their families, as well as all those measures that lead to the effective realisation of the rights of the victims.*

*In order to contribute to the effectiveness of the right to comprehensive reparation, measures must be adopted to facilitate that the assets handed over, offered or denounced by the extradited applicants are seized and destined for the Fund for the Reparation of Victims referred to in the present law, or for the Special Administrative Unit for the Management of the Restitution of Land Restitution, as the case may be. In order to comply with this measure, within the framework of the different international judicial cooperation agreements, the Office of the Attorney General of the Nation shall carry out the necessary investigative work to identify and prepare the assets in accordance with the provisions of article 17B of this law, as well as to identify and prosecute assets located abroad.*

***Article*** ***32.*** *Law 975 of 2005 will have a new article* [*46B*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#46) *which will read as follows:*

***Article 46B.*** *Legal redress of assets. In order to contribute to the satisfaction of the victims' right to comprehensive reparation, the departmental assemblies and municipal or district councils shall implement programmes for the remission and compensation of taxes that affect property destined for reparation or restitution within the framework of Law 1448 of 2011. In the event that debts are forgiven under this article, the departments, municipalities or districts may not be penalised, be subject to any type of sanction or be negatively assessed for obtaining credits, due to a reduction in the respective tax collection.*

*Likewise, the delinquent portfolio of public utilities shall be understood to be cancelled and the liens that have been constituted to obtain credits with the financial sector by a demobilised combatant shall be lifted, without prejudice to the maintenance of the obligation to pay these credits on his or her behalf.*

***Article 33.*** *Article* [*54*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#54) *of Law 975 of 2005 shall have a paragraph 5 with the following content:*

***Article 54.****Fund for the Reparation of Victims. (…)*

***Paragraph 5.*** *The resources of the Fund for the Reparation of Victims, both those handed over by the applicants in the framework of the special criminal process referred to in this law and those that come from the other sources of the Fund, shall be used by the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims for the payment of the administrative reparation programmes that are developed in accordance with Law 1448 of 2011. The above without prejudice to the provisions of the third paragraph of article 17B and article 46 of this law.*

***Article 36.*** *Modify article* [*72*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#72) *of Law 975 of 2005, which will read as follows:*

***Article 72.*** *Validity, repeals and temporary scope of application. This law repeals all provisions contrary to it and shall be in force from the date of its promulgation. In the case of collectively demobilised persons in the framework of peace agreements with the national government, this law shall only apply to events that occurred prior to the date of their demobilisation.*

*In relation to individual demobilised combatants, i.e. those whose demobilisation act is certified by the Operational Committee for the Abandonment of Arms (CODA), the procedure and benefits enshrined in this law will only apply to events that occurred prior to their demobilisation and in any case prior to 31 December 2012.*

***Article 37.*** *Application of demobilised combatants to the special criminal procedure. Those who have demobilised individually or collectively prior to the entry into force of this law and who wish to access the benefits enshrined in Law 975 of 2005, must request their application before 31 December 2012. Once this period has expired, the national government shall have two (2) years to decide on their application.*

*Those who demobilise individually after the entry into force of this law will have one (1) year from the date of their demobilisation to request their application to participate in the process referred to in Law 975 of 2005, and the Government will have one (1) year from the date of the request to decide on their application.*

***Article 38.*** *Exceptional land restitution procedure within the framework of Law 975 of 2005. If, on the entry into force of this law, there is a precautionary measure on a property on the occasion of a request or offer of restitution within the framework of the procedure of Law 975 of 2005, the competent judicial authority shall continue the process within the framework of this procedure. In other cases, the provisions of Law 1448 of 2011 shall be observed.*

***Article 39.*** *Restitution of assets and cancellation of titles and registrations obtained fraudulently. When the exceptional situation referred to in article 38 above arises, the magistrate in charge of supervisory functions, in a preliminary hearing, shall carry out the restitution procedure under the following rules:*

*In order to decide on the restitution of the property forcibly dispossessed or abandoned and the cancellation of the fraudulent titles and registrations, the magistrate with control of guarantees functions shall order the processing of an incident to be carried out in accordance with the provisions of the second paragraph of Article 17C of Law 975 of 2005, to guarantee the exercise of the right of contradiction and opposition of the affected third parties, who must demonstrate their good faith free of guilt. In the event that the third parties are able to prove their good faith without fault, the magistrate shall order the payment of the compensation provided for in Article 98 of Law 1448 of 2011 in their favour, charged to the Fund of the Special Administrative Unit for the Management of the Restitution of Land Restitution.*

*During the processing of the incident that will take place for the restitution of dispossessed or forcibly abandoned property, the presumptions of dispossession provided for in article 77 of Law 1448 of 2011 may be applied, even if the properties are not registered in the Register of Forcibly Abandoned and Displaced Land. Similarly, the figure of compensation in kind and relocation will be applicable in cases in which it is not possible to return the dispossessed property to the victim as provided for in Article 97 of Law 1448 of 2011, charged to the Fund of the Special Administrative Unit for the Management of Restitution of Dispossessed Lands.*

*The order ordering restitution shall contain the aspects listed in Article 91 of Law 1448 of 2011. The Special Administrative Unit for the Attention and Integral Reparation of Victims - Fund for the Reparation of Victims - or the Special Administrative Unit for the Management of the Restitution of Dispossessed Land, as the case may be, shall be summoned to this hearing.*

***Article 40.*** *Entry into force of the incident of identification of the harm caused. Incidents of comprehensive reparation in the special criminal justice and peace process which have been opened prior to the entry into force of this law shall continue their development in accordance with the procedure, scope and objectives of the provisions of the incident of identification of the harm caused, as set out in article 23 of this law, which modifies article 23 of Law 975 of 2005.*

***Article 41.*** *Validity and repeals. This law is in force from the date of its promulgation, and repeals all provisions that are contrary to it, in particular articles* [*7*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#7)*,* [*8*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#8)*,* [*42*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#42)*,* [*43*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#43)*,* [*45*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#45)*,* [*47*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#47)*,* [*48*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#48)*,* [*49*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#49)*,* [*55*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#55) *and* [*69*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#69) *of Law 975 of 2005".*

**2. THE CLAIM**

The plaintiffs claim that the accused norms do not respect the victims' rights to truth, justice and reparation; the State's obligations to investigate, prosecute and punish serious human rights violations; and the guarantee of non-repetition, formulating the following charges, which are described extensively in the text of the complaint:

**2.1. Charge regarding the possibility of prioritisation of cases in justice and peace processes (challenged expressions of Articles 1, 3, 10, 11, 12, 13, 14, 18 and 23 of Law 1592 of 2012).**

The complainants state that the expressions "*applying prioritisation criteria in the investigation and prosecution of such conduct"* in Article 1, *"without prejudice to the application of prioritisation criteria"* in Article 3, *"The investigation shall be carried out in accordance with the prioritisation criteria determined by the Attorney General of the Nation in accordance with Article 16A of this law"* in Article 10, "*and in accordance with the prioritisation criteria"* in Article 11, *"in accordance with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of this law"* in Article 12, "*prioritisation"*, *"prioritisation" and "concentrating investigative efforts on those most responsible"* in Article 13, "in *accordance with the prioritisation criteria established by the Attorney General of the Nation"* of Article 14*, "the victims corresponding to the pattern of macro-criminality that is being clarified within the process, in accordance with the prioritisation criteria"* of paragraph 5 of Article 23 and the paragraph of Article 18 of Law 1592 of 2012, enshrine the possibility of applying prioritisation criteria in the investigation of serious human rights violations and serious breaches of international humanitarian law, without guaranteeing the rights of victims to justice, truth, full reparation, non-repetition and equality, as set out in the Preamble and Articles 1, 2, 13, 93 and 229 of the Constitution, and Articles 8 and 25 of the American Convention on Human Rights, for the following reasons:

They state that prioritisation violates the right of victims to the investigation of human rights violations in a serious, impartial manner and within a reasonable period of time, as required by international human rights law and as required in particular in various decisions of the Inter-American Court of Human Rights, such as in the cases of Velásquez Rodríguez v. Honduras, 19 Comerciantes v. Colombia, Maritza Urrutia v. Guatemala, Bulacio v. Argentina, Juan Humberto Sánchez v. Honduras, Las Palmeras v. Colombia and Godínez Cruz v. Honduras.

They affirm that for the Inter-American Court of Human Rights, the complex situations of the internal armed conflict are not sufficient to exempt the State from its international responsibilities to investigate and punish serious, impartial and promptly serious human rights violations.

They argue that ICRC norms 151, 152, 153, 154, 155 and 158 establish that States have the obligation to investigate and punish conduct that they consider to be war crimes, and that although in transitional processes there may be agreements and special measures, certain minimum standards related to guaranteeing the rights of the victims of the armed conflict to truth, justice, full reparation and non-repetition must be respected.

They express that the prioritisation criteria would be affecting the right to equality of the victims of the non-prioritised cases with respect to the fulfilment of their guarantees to truth, justice, comprehensive reparation and non-repetition.

They explain that in the process of transitional justice with the paramilitaries, contemplated in Laws 975 of 2005 and 1592 of 2012, progress has been made but the effective guarantee of the rights to truth, justice and reparation has not been obtained as a result, because: (i) there is no real transition in Colombia from armed conflict to peace, (ii) there has been no open, sincere and definitive dialogue with the armed actors and (iii) the structures that sustain paramilitarism continue to exercise their power, which has prevented guarantees of non-repetition from materialising.

They argue that in the case of the La Rochela Massacre, the Inter-American Court of Human Rights stated that the domestic mechanisms available to the Colombian state, including Law 975 of 2005 and its regulatory decrees, are not the most suitable or effective for guaranteeing the victims' rights to truth, justice, comprehensive reparation and guarantees of non-repetition.

They consider that the burden of inefficiency and ineffectiveness of the State in investigating the conducts that have led to their victimisation cannot fall on the victims, as there has not been a serious policy of investigation and dismantling of paramilitarism on the part of the State. In this respect, they point out that prioritisation is not an ideal mechanism for the aims that Law 975 of 2005 seeks to achieve, such as peace and reconciliation, as the state has had to implement other types of measures such as strengthening the judicial apparatus, the Attorney General's Office or the justice and peace jurisdiction by increasing the budget or personnel.

They argue that the investigation of situations that are not prioritised is not only a state obligation, but also guarantees the victims' rights to truth, justice and reparation. They also allow for true reconciliation by giving the offender the possibility to acknowledge the crime, to repent and to make the judicial process a possible mediation for reconciliation with the victims and with society.

**2.2. Charge related to the establishment of special criteria for the protection of victims (challenged expressions of Articles 3 and 10 of Law 1592 of 2012).**

The citizens point out that the paragraphs *"when the risk is generated on the occasion of their participation in the special judicial process referred to in this law*" in article 3 and *"in the events that may arise"* in article 10 of Law 1592 of 2012, are unconstitutional, as they imply the renunciation of the State's duty to guarantee the protection of all citizens and in particular of the victims of the armed conflict.

They consider that numeral 7 of Article 250 of the Political Constitution enshrines the duty of the Attorney General's Office to ensure the protection of victims, which cannot be left to the discretion of the judicial operator and even less so in a situation of armed conflict. In this regard, they emphasise that the law does not provide protection to all victims of the conflict, but rather establishes a series of restrictions so that protection is granted *"when the risk is generated by their participation in the special judicial process that this law deals with",* or *"in the events in which it is applicable".*

**2.3. Charge regarding the referral of the version given by the demobilised person to the National Prosecutor's Office for Justice and Peace (contested part of Article 14 of Law 1592 of 2012).**

The plaintiffs request that the expression *"the version given by the demobilised person and the other actions carried out in the demobilisation process shall be immediately made available to the National Unit of Prosecutors for Justice and Peace so that the delegated prosecutor and the Judicial Police assigned to the case, in accordance with the prioritisation criteria established by the Attorney General of the Nation, to prepare and develop the methodological programme to initiate the investigation, verify the veracity of the information provided and clarify the patterns and contexts of criminality and victimisation"* of Article 14 of Law 1592 of 2012, be declared conditionally exequitable. This is so that this information is also sent to the relevant prosecutor's units - Human Rights Unit - and is part of the proceedings being carried out against the postulants or against the bloc, or in the cases of so-called parapolitics or para-economy, or companies that supported or financed them in their actions.

In this way, it guarantees compliance with the Colombian state's obligation to investigate, as set out in Article 250 of the Constitution, the victims' rights to truth, justice and reparation, and ensures that, in the event that the applicant fails to comply with his or her commitments, he or she does not receive a significant reduction in punishment, is excluded from the process or renounces it.

**2.4. Charge regarding the referral of the regulation of victims' rights in justice and peace processes to the rules of Law 1448 of 2011 (challenged expressions of Articles 4, 8, 11, 16, 23, 24, 24, 27, 30, 32, 33, 38, 39, 40 and 41 of Law 1592 of 2012).**

The plaintiffs argue that the challenged sections of Articles 4, 8, 11, 16, 23, 23, 24, 27, 27, 30, 32, 33, 38, 39, 40 and 41 of Law 1592 of 2012 are contrary to the constitutional obligation of the Colombian State to guarantee the rights of victims of the armed conflict to truth, justice, comprehensive reparation and guarantees of non-repetition, since by referring the victims of the processes of Law 975 of 2005 to the procedures contemplated in Law 1448 of 2011, which is limited in terms of guaranteeing rights, it contradicts the preamble and articles 1, 2, 13, 93 and 229 of the Political Constitution, articles 8 and 25 of the American Convention on Human Rights and articles 2 and 26 of the International Covenant on Civil and Political Rights.

They claim that the express reference made by Article 4 of Law 1592 of 2012 to the concept of victim in Law 1448 of 2011 violates their rights to truth, justice and reparation, as it is a law limited in time and by crimes. This means that not all victims who are part of the Justice and Peace processes can access their rights, either because of the time limit of Law 1448 or because it does not cover all the criminal conduct of the armed groups.

In relation to time, victims who are part of the Justice and Peace processes and who suffered human rights violations prior to the dates established by Law 1448 of 2011, would not have access to the right to restitution of any of their property, nor to compensation, if the violation occurred before 1 January 1985 and before 1 January 1991, in the case of land restitution.

With regard to the type of crime, the application of Law 1448 of 2011 only includes victimising events, so that if those affected did not suffer one of these events defined by Decree 4800 of 2011 - homicide, kidnapping, forced disappearance, torture, sexual violence, serious attacks on physical and mental integrity, forced displacement and land dispossession - they would be unprotected in their rights.

They explain that judicial responsibility is being converted into administrative responsibility and thus the responsibility is being transferred from the perpetrator to the State and paid through public funds. Therefore, they argue that the reference to Law 1448 of 2011 can be understood as a refusal by the Colombian State to allow victims access to ordinary, special or contentious-administrative justice (direct reparation action). They consider that these provisions contradict the principle of separation of powers contemplated in Articles 1, 113, 116 and 228 of the Constitution, by indicating that bodies or agents of the Executive Branch exercise functions for the comprehensive care and reparation of victims - victims' reparation fund.

They argue that the referral to Law 1448 of 2011, made by articles 38 and 39 of Law 1592 of 2012 - in matters of land restitution - imposes an additional burden on victims who are demanding their rights to restitution, as they have to endure a new judicial process for this, when it should be the same justice and peace process that guarantees their rights, and thus not subject the victims to other processes, with other judges and requirements. They add that the justice and peace processes entail danger, physical and emotional exhaustion, investment of resources and, after eight years, have not had the best results, so that now the victims have to undergo another process with longer waits, formalities and wear and tear, which entails an unbearable burden and possible re-victimisation.

Taking into account the above, they request, principally, that the challenged expressions be declared unconstitutional and, in the alternative, they request a declaration of conditional exequality, in the sense that the reference to Law 1448 of 2011 will be understood to be voluntary and exceptional, and in any case the victims can resort to other means or other more favourable legal provisions will be used as parameters of interpretation in order to make their rights effective.

**2.5. Charge regarding the limitation of the functions of the Ombudsman's Office (paragraph 1 of Article 23 of Law 1592 of 2012).**

The plaintiffs specifically point out that paragraph 1 of Article 23 arbitrarily limits the functions of the Ombudsman's Office by stating that it should only explain to the victims who participate in the process the routes of access to the comprehensive reparation programmes referred to in Law 1448 of 2011, which they consider unconstitutional, since the victims have many more remedies such as group actions, direct reparation, the tutela action, the specific rights of victims of forced displacement and the international mechanisms established in the Inter-American Human Rights System or the United Nations System. Therefore, they consider that establishing that the Ombudsman's Office only has the mechanisms contemplated in Law 1448 of 2011 does not recognise the constitutional functions of the Ombudsman's Office.

In the case of paragraph 1 of Article 23 of Law 1592 of 2012, they request that the Constitutional Court declare it to be unenforceable or, alternatively, conditionally enforceable, in the sense that the Ombudsman's Office has the constitutional obligation to advise victims of the armed conflict on all national and international legal mechanisms or routes to access their rights.

**2.6. Charge on cooperation with ordinary criminal proceedings (Article 11 of Law 1592 of 2012)**

The citizens claim that the expression "*shall make it available to the Special Administrative Unit for the Management of Restitution of Land Restitution, in order to contribute to the procedures that it carries out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011"* in Article 11 of Law 975 of 2005, establishes the possibilities for cooperation between Justice and Peace processes with the Special Administrative Unit for the Restitution of Land Restitution, but does not establish cooperation between Justice and Peace processes with other criminal proceedings that are being carried out in the ordinary justice system or in investigations that are being carried out in different units of the Prosecutor's Office.

In the case of Article 11, they also request a declaration of the conditional constitutionality of the section being challenged, in the sense that the Justice and Peace Unit must cooperate with and provide information to other entities of the Attorney General's Office or with processes of the ordinary justice system that are carrying out investigations or prosecutions of matters related to land dispossession.

**2.7. Charges relating to the non-requirement that the assets of the postulados have a reparation vocation and the power that victims would have to file certain appeals and intervene in certain hearings related to them (Article 5, partial; paragraph of Article 7; paragraph of Article 8 and 17, partial of Law 1592 of 2012).**

The plaintiffs consider that the challenged expressions of Articles 5, 7, 8 and 17 of Law 1592 of 2012 do not require that the assets offered by the applicants to the Justice and Peace Law have a reparation vocation, which would affect the duties of the applicants and the right to reparation of the victims. Similarly, they invoke the right that victims would have to file certain appeals and to intervene in certain hearings related to them.

In relation to numeral 3 of article 5 of Law 1592 of 2012, which reads: "*When it is verified that the postulated person has not delivered, offered or denounced goods acquired by him or by the organised armed group outside the law during and on the occasion of his membership of the same, directly or through an intermediary*", they request a declaration of conditional exequibilidad, in the sense that it will be a cause for termination of the process or exclusion from the list of postulated persons the fact that the goods that are delivered, offered or denounced do not have a reparatory vocation.

With regard to the expressions *"and must be presented by the prosecutor of the case"* and *"as deemed appropriate by the prosecutor of the case and as stated in his request in paragraph 2 of Article 11A*", both of Article 5 of Law 1592 of 2012, the citizens request that they be declared exequitable, on the understanding that the victims also have the right to request the termination hearing of the Justice and Peace process for one or several applicants, a power that should not remain solely in the hands of the prosecutor of the case, so that the fundamental right of victims to participate in the process is guaranteed.

With regard to the expression *"after the assets have been handed over" in* paragraph 3 of Article 5, they request that it be declared conditionally constitutional, in the sense that even if the postulate dies and has not handed over the assets, investigations must continue and, if applicable, the forfeiture of ownership of the assets that the postulate has offered, that other postulates have denounced, that the deceased had or those that are found by investigations after the death, in order to guarantee the right of the victims to full reparation.

In the same sense, they request the declaration of conditional exequibilidad of the expression *"by the delegated prosecutor of the case and by the special administrative unit for the attention and integral reparation to the victims - Fund for the Reparation of Victims"* of the third paragraph of article 7, in the sense that the victims have the right to decide which assets have or do not have a reparatory vocation for them, as well as to present their arguments and demonstrate before the judge of control of guarantees their considerations in this respect, to exclude or not an asset for the integral reparation to the victims.

In relation to the paragraph of Article 7, they claim that it should be declared unconstitutional for making the requirements for applicants to the Justice and Peace Law more flexible, as it does not provide for adequate reparation for the victims by the applicants, as it does not demand that the goods they hand over, denounce or offer have a reparatory vocation in order to access the benefits granted by the law.

In this regard, they recall that the Constitutional Court established in judgment C-370 of 2006 that *"financial reparation from the perpetrator's own assets is one of the necessary conditions to guarantee the rights of victims and promote the fight against impunity", a position confirmed by the Supreme Court of Justice in its judgment of 27 April 2011.*

In relation to the paragraph of article 8, they consider that it should be declared conditionally executory, in order to guarantee the victims' right to full reparation, in the sense that investigations should continue into the licit assets that the postulados acquire after demobilisation, as the links of the armed groups, especially the paramilitaries, with drug trafficking and the use of front men to hide the illicit origin of the assets, are clear.

Likewise, they demand the conditional exequibilidad of the expression *"if the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure"*, contemplated in paragraph 3 of article 17, in the sense that the victims have the right to lodge appeals against the decision to lift the precautionary measure ordered by the magistrate.

**2.8. Charge raised on joint or collective versiones libres (paragraph of Article 14 of Law 1592 of 2012).**

The plaintiffs point out that, according to the expressions *"collective or joint"* and "*collectively"* contemplated in the paragraph of article 14 of Law 1592 of 2012, collective or joint versiones libres may be carried out and that the indictment, formulation and acceptance of charges may be done collectively, which they consider unconstitutional for the following reasons:

The Colombian penal system is based on individual criminal responsibility, so that establishing collective proceedings directly violates this fundamental constitutional right.

The charging, formulation and acceptance of collective charges lead to the improper investigation of the facts that gave rise to the violations of human rights and International Humanitarian Law, preventing the use of investigative techniques that tend to establish possible contradictions between versions, and to clarify the individual responsibility of the persons who participated in the group's actions.

**2.9. Charge raised against the concentrated hearing and the early termination of proceedings (Articles 18(4) and 22 of Law 1592 of 2012).**

They claim that Article 18(4) and the expression *"concentrated"* in Article 22 of Law 975 of 2005 provide that a concentrated hearing for the formulation and acceptance of charges may be scheduled, which they consider unconstitutional for the following reasons:

They argue that the concentration of the hearings leads to the violation of the victims' right to participate in the Justice and Peace process and to the adequate and serious investigation of the punishable conducts by the State, since a concentrated hearing does not provide the guarantees for the victims to have the opportunity to analyse the respective charges, Especially in those situations in which the accused partially accepts the charges, leaving the victims of those charges that the accused does not accept without the possibility of continuing the Justice and Peace process, forcing them to continue the process against the accused through the ordinary justice system.

They state that it is after the acceptance of the charges by the accused that the incident of comprehensive reparation, now known as the identification of damages, takes place, which is why it is extremely important that there is a prudent moment for the victims, or their representatives, to be able to analyse the charges, especially those that were not accepted. In addition, these charges can be varied by the supervisory judge, which is an important procedural moment for the victims, if there is any variation in the charges, and for this reason, the necessary time must be given for analysis.

In this regard, they explain that the Constitutional Court in Sentence C-370 of 2006 stated that: *"disproportionately reduced procedural terms entail the curtailment of the accused's right to defence and the denial of justice to the victims, as they prevent the truth of the facts from being clearly established and fair reparation from being obtained"*.

**2.10. Charge regarding the early termination of proceedings by acceptance of liability (paragraph of Article 18 of Law 1592 of 2012).**

They argue that the paragraph of article 18 of Law 1592 of 2012, according to which early termination of the Justice and Peace process may be requested if the defendant accepts responsibility for the alleged conduct that forms part of a pattern of macro-criminality that has been clarified, is unconstitutional, for the following reasons:

They consider the request for early termination of the proceedings to be contrary to the Constitution, insofar as charges would be brought on the basis of information related to a pattern of macro-criminality and not on the basis of a free, truthful and complete voluntary confession of the facts of which the accused has knowledge. In this sense, they state that although the pattern of macro-criminality is important to understand the "*modus operandi"* of the group to which the accused belonged, it is not sufficient to know the exact conduct and circumstances of time, manner and place in which the violations committed by the accused or the group to which he or she belonged were carried out.

In this sense, they argue that the request for early termination of the process under the conditions established in the paragraph being challenged would not provide a complete version of the facts by the defendant, and would violate the rights of the victims to the truth and would not comply with what the Constitutional Court considered fundamental in the justice and peace process, This would violate what the Constitutional Court considered fundamental in the justice and peace process, in the sense that the versiones libres should be complete and truthful, forgetting also that the benefits received by the postulados are conditional on their actions being aimed at the effective achievement of the victims' rights to truth, justice and reparation.

**2.11. Charge related to the substitution of the security measure and conditional suspension of the execution of the sentence, new concessions and privileges for applicants to the detriment of victims' rights (Articles 19 and 20 of Law 1592 of 2012).**

They point out that articles 19 and 20 of Law 1592 of 2012 establish new concessions and privileges for the applicants, to the detriment of the rights to truth, justice, reparation and guarantees of non-repetition of the victims, in that the State grants benefits without complying with the duty to conduct a thorough investigation of the human rights violations, war crimes or crimes against humanity committed by the applicants to the process, for the following reasons:

Article 19 allows for the substitution of the preventive detention measure in a prison establishment for a non-custodial measure, the requirements for the granting of which are characterised by their laxity and the ineffectiveness of the Colombian state, as they do not establish an effective judicial mechanism for the investigation, prosecution and punishment of the postulants:

Article 19 stipulates as a requirement for the substitution of the sentence, that the person must have spent 8 years in a prison after demobilisation, which shows that during this time it has not been possible to get the postulate to give a full free version and it has not been possible to convict all the postulates, which is a sign of the inefficiency of the process and the violation of the rights of the victims.

Article 19(3) of paragraph 2 establishes that the applicant must have participated and contributed to the clarification of the truth; however, this requirement is more lax than what the Constitutional Court established with regard to the duty of the applicants in the sense that their free version must be complete and truthful, and if a serious and exhaustive investigation of the facts is not carried out, the victims' right to know the full and reliable truth of what happened would be disproportionately sacrificed.

This means that it is not necessary for the postulate to hand over assets, nor for them to have a reparation vocation, nor for assets belonging to other postulates of the group to which they belonged to be denounced or offered; on the contrary, it makes the benefit of substitution subject only to the handing over of such assets if they have them, thus violating the rights of the victims to integral reparation.

Paragraph 3 of Article 19 provides that in order to verify compliance with the requirements for access to the benefit of substitution, the Magistrate will take into account the information provided by the applicant or by the competent authorities, but does not allow for the participation of the victims or their representatives to contradict or affirm what the applicant or the respective authority affirms, which clearly violates the right to participation of the victims in each of the procedural stages, according to the jurisprudence of the Constitutional Court.

In the paragraph of Article 19, it provides that if the postulate was deprived of liberty at the time of demobilisation, he or she may also have access to the benefit, without considering that the sentence is being executed by the ordinary justice system, in a way that ignores the independence of the ordinary regime, which does not conflict with the transitional process.

With respect to Article 20, which establishes the conditional suspension of the execution of the sentence imposed by the ordinary justice system, it considers that it should be declared unconstitutional, as it openly ignores the proceedings in the ordinary process and the factual and legal grounds that led to the conviction and the execution of the sentence by the postulate who demobilises while at liberty. It adds that this situation violates the rights of the victims to justice, insofar as the postulate, who was previously convicted and is serving the respective sentence of the ordinary justice system, would in any case be convicted for those conducts that he committed during and on the occasion of his membership of the organised armed group, thereby causing impunity.

Furthermore, paragraph 4 of Article 20 establishes that the only person authorised to revoke the request for a stay of execution of the sentence is the Magistrate for the control of guarantees on the grounds for revocation established in Article 18A, which leaves the victims or their representatives with no possibility of requesting the revocation of the measure, thus violating their right to participation.

**2.12. Charge regarding the change of the incident of comprehensive reparation to the incident of identification of the effects of the lack of respect for the right to comprehensive reparation (challenged expressions of Articles 23, 24, 40 and 41 of Law 1592 of 2012).**

The citizens state that the challenged expressions of articles 23, 24, 40 and 41 of Law 1592 of 2012 repeal the provisions that contained the provisions related to the incident of comprehensive reparation, with which the victims are left without the possibility of exercising this right through the process of the Justice and Peace Law, in a way that contradicts the purpose of Law 975, one of which is to guarantee the right of the victims to reparation, for the following reasons:

They claim that these provisions violate Articles 1, 2, 12, 250, 93 and 94 of the Political Constitution, which provide that the Social State of Law is based on human dignity, that the authorities are also established to protect people's rights and freedoms, the right not to be subjected to torture, cruel, inhuman or degrading treatment, the constitutionalisation of victims' rights and the interpretation of the rights and freedoms enshrined in the constitutional order.

They argue that article 23 of Law 1592 of 2012 completely disregards the right of victims to access full reparation through the judicial process of the Justice and Peace Law, thus negating one of the purposes for which it was given legal life.

They state that the incident no longer seeks comprehensive reparation for the victims, but is limited to establishing the effects that they have suffered as a result of the criminal conduct of the armed group and leaves aside the concept of harm. In this regard, they state that the notion of harm says nothing to the law or to the national and international legal tradition that has consolidated a doctrine on harm.

In view of the above, the applicants make the following requests to the Constitutional Court:

They request the conditional exequibilty of the expressions "*identification of the damages caused", "identification of the damages caused", "the damages caused" and "the damages"*, challenged in Article 23 of Law 1592 of 2012, in the sense that the incident referred to therein will be understood to remain as an incident of comprehensive reparation and that it must contain the certain and specific personal identification of the damages caused to the victims.

They also request the declaration of the unenforceability of the expression "*which in no case shall be assessed*", in paragraph 5 of article 24 of Law 1592 of 2012, considering that this provision is contrary to the right to full reparation and to the concept of reparation of damages, since the amount of the damage must be proven, recognised and established by the judicial authority in order for it to be effectively repaired.

They ask that the conditional exequibilidad of paragraph 2 of article 23 of Law 1592 of 2012 be declared, on the understanding that the granting of the alternative sentence to the applicant will be denied until the situations that led to the victim being unable to participate in the incident of comprehensive reparation - including threats to his life, personal integrity or that of his family, or difficulties in moving - cease, and the guarantee of his effective participation in the process is established.

In relation to Article 29 of Law 1592 of 2012, there is also evidence of a lack of protection of the right to comprehensive reparation in relation to Article 45 of Law 975 of 2005, prior to the amendment of Law 1592 of 2012, which provided that reparation includes the duties of restitution, compensation, rehabilitation and satisfaction, components that disappear in the current article. Therefore, they ask the Constitutional Court to conditionally declare article 29 of Law 1592 of 2012 constitutional, in the sense that comprehensive reparation also includes the duties of restitution, compensation, rehabilitation and satisfaction and that the granting of the alternative sentence and the right to enjoy the benefit of probation, includes the obligation to provide for the Victims' Reparation Fund and the delivery to the State of goods for reparation to the victims.

They claim the declaration of the unconstitutionality of the expressions "*in the entry into force of the incident of identification of the effects caused"* and *"in accordance with the procedure, scope and objectives of the provisions of the incident of identification of the effects caused",* which completes article 40 of law 1592 of 2012, on the grounds that it is contrary to the right to full reparation of the victims.

They also request the invalidity of the repeal of articles 7, 8, 42, 43, 47 and 48, established in article 41 of Law 1592 of 2012, as these articles were the ones that established the guarantees for comprehensive reparation for victims in the special process of Law 975 of 2005.

**2.13. Charge on convictions subsequent to the alternative penalty and assets found afterwards (contested expressions of Article 26 of Law 1592 of 2012)**

They point out that the expression "*and until the term of the ordinary sentence established therein"* contained in Article 26 of Law 1592 of 2012, provides that after the sentence issued in the Justice and Peace process and until the term of the ordinary sentence established therein, if the competent authority finds that the beneficiary of the alternative sentence has not handed over, offered or denounced all the assets acquired by him or by the armed group, he will lose the benefit of the alternative sentence, which they consider unconstitutional because it is contrary to the victims' rights to truth and comprehensive reparation. Consequently, they request that it be interpreted in the sense that during the time the alternative sentence is being served or during the probation period, they can proceed in accordance with Article 26 to revoke such benefits and proceed to order the execution of the main sentence contained in the Justice and Peace sentence. Additionally, they request that the victims or their representatives have the power to denounce before the competent judicial authority the reprehensible conduct established in this article and request the revocation of the legal benefits.

**2.14. Charge on the limitation of remedies in the Justice and Peace process (article 27 of Law 1592 of 2012)**

They claim that the challenged expressions *"only"* and *"on the merits"* in paragraph 2, *"other"* and *"only"* in paragraph 3 and paragraph 3 of Article 27 of Law 1592 of 2012, violate the right of victims to effective participation in the Justice and Peace process, as they reduce their possibilities to resort to ordinary remedies such as appeals, throughout the course of the process and limit it only to the judgment and orders that resolve substantive issues, to the detriment of their right to access judicial remedies.

In this sense, they add that, in the specific case of Article 27, the non-appeal of the cassation appeal against the second instance decision violates the right of the victims to be heard by the highest court of the ordinary justice system, and because they consider that, due to the speed of the transitional justice processes, the grounds established for cassation in the Code of Criminal Procedure may be applicable.

**2.15. Charge regarding the extradition of Justice and Peace applicants (challenged expressions of Article 31 of Law 1592 of 2012).**

The plaintiffs claim that the expressions "*Of the extradited applicants", "by effect of extradition granted", "the extradited applicants"* and *"by the extradited applicants"* contemplated in Article 31 of Law 1592 of 2012, which enshrine the rules related to the extradition of Justice and Peace applicants, have become an instrument to generate impunity and violate the rights of victims to justice and truth, as it has prevented extradited paramilitary leaders from continuing to reveal those most responsible for paramilitarism in Colombia and allows assets that should be used for reparation to be made available to other governments to access benefits and reduced sentences, for the following reasons:

They argue that extradition cannot become an instrument that generates impunity and an absence of truth in the face of serious human rights violations.

They state that the assets that should have been destined for the reparation of the victims are now at the disposal of the US government in order for the extradited applicants to access benefits and reduced sentences.

They explain that the office in Colombia of the United Nations High Commissioner for Human Rights warned that the extradited paramilitaries have committed serious human rights violations and breaches of International Humanitarian Law which are not subject to any statute of limitations and cannot be subject to amnesty or pardon, and therefore, States have the responsibility to punish them for having committed them.

They argue that the extradition of paramilitary leaders has prevented the justice and peace processes from moving forward and has also made it difficult for victims to participate in the versión libre hearings.

For the above reasons, the plaintiffs request the declaration of the conditional exequibilidad of the challenged expressions of Article 31 of Law 1592 of 2012, on the understanding that, in no case shall it be understood that the prison time of the sentences served by the paramilitaries due to extradition to another country for crimes other than those investigated under the special process of Law 975 of 2005, are part of the alternative sentence to be served in the Justice and Peace process, in the event that this culminates in the granting of an alternative sentence, or that they are part of the sentence to be served at the end of the process before the ordinary justice system in the event that the applicants are excluded from the Justice and Peace process for non-compliance with their commitments.

**2.16. Charge of violation of the right to peace, guarantees of non-repetition and victims' rights due to the new applications and new temporary application of Law 975 of 2005 (challenged expressions of Articles 36 and 37 of Law 1592 of 2012).**

The citizens consider that the expressions "*In the case of collectively demobilised persons in the framework of peace agreements with the national government, this law shall only apply to events that occurred prior to the date of their demobilisation"* and *"prior to their demobilisation and in any case prior to 31 December 2012"* in Article 36 and "*prior to 31 December 2012. Once this period has expired, the national government will have two (2) years to decide on their application"* and paragraph 2 of Article 37 of Law 1592 of 2012 are unconstitutional, as they provide for a change in the temporal application of the law and in particular of the benefits granted to persons who wish to undergo a transitional justice process, for the following reasons:

They argue that the challenged sections of article 37 of Law 1592 of 2012 are contrary to the rights to life, to not be subjected to enforced disappearance and to not receive cruel, inhuman or degrading treatment, to peace, to access to the administration of justice and to a just political, economic and social order and to the authorities protecting all persons residing in Colombia in their life, honour, property, beliefs and other rights and freedoms and to ensure the fulfilment of the social duties of the State.

They add that with the modification made, the intended objective of peace is lost, since Law 975 of 2005 allows groups that did not demobilise to continue committing crimes, giving them the opportunity to access the benefits granted by the Justice and Peace Law, even though it had been established that crimes committed after the entry into force of Law 975 of 2005 would not be subject to transitional justice measures, but would be judged by the ordinary justice system, as a coercive measure against armed groups, especially the paramilitaries.

They point out that this modification gives the armed groups a free hand to continue committing crimes with the guarantee that they will have access to the benefits of transitional justice, thus contradicting the right of the victims and society in general to guarantee the non-repetition of the atrocious acts committed by paramilitary groups and, therefore, contradicting the right to peace.

In addition, they consider that the most serious aspect is that there is no established deadline by which the groups must submit themselves to justice in order to receive the benefits of the transitional law, but that they will be tried under the Justice and Peace Law for crimes committed up to the date of their demobilisation, without the law establishing a deadline by which they must submit themselves to justice.

In this sense, they state that the State itself has given licence to the armed groups to continue their criminal activity, thus contravening its obligations to protect citizens from human rights violations and breaches of International Humanitarian Law, to prosecute crime, to guarantee peace, and to establish guarantees of non-repetition of such violations and breaches. In this sense, they bring up a series of rulings in which the Supreme Court has clearly determined the validity of the Justice and Peace Law [[2]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn2%22%20%5Co%20%22).

**2.17. Final considerations on the continuity of paramilitary groups and the rights of victims of the armed conflict.**

The plaintiffs conclude that in addition to the few guarantees of the rights of victims of serious human rights violations and breaches of international humanitarian law committed by these groups, the Justice and Peace Law has also been a failure in terms of guarantees of non-repetition, as not all armed groups demobilised and their regional and national political and economic structures have not been dismantled.

They add that in the face of the failure of the strategy to dismantle paramilitary groups, the government has decided to divert attention by calling the same groups Criminal Gangs.

They point out that the Supreme Court itself has noted that these groups continue to commit crimes under new names that have no real difference with paramilitary action.

In this regard, they emphasise that the international community, especially the UNHCHR, the Inter-American Commission on Human Rights and the International Committee of the Red Cross, have expressed their concern about the actions of the groups known as "Bacrim" and their relationship with paramilitary groups, which has also been recognised by the Constitutional Court in the Follow-up Chamber to Ruling T-025 of 2004.

**3. INTERVENTIONS**

**3.1. Intervention by the Ministry of Justice and the Law**

The Vice-Minister of Criminal Policy and Restorative Justice, Miguel Samper Strauss, requested the declaration of the constitutionality of the laws being challenged on the basis of the following arguments:

It points out that Articles 2, 5A, 15, 15A, 16, 16A, 17, 18 and 23 of Law 975 (1, 3, 10, 11, 12, 13, 14, 18 and 23 of Law 1592 of 2012), which establish a new approach to investigation and prosecution aimed at clarifying patterns of macro-criminality, are constitutional for the following reasons:

He states that after 8 years of implementation of the Justice and Peace Law, the challenges of investigating 4,490 people for 356,322 punishable acts under a procedure in which 445,346 have reported more than 427,628 crimes have become evident, which is why it is necessary to implement a strategy aimed at clarifying patterns of macro-criminality in order to guarantee the rights of victims as much as possible.

It affirms that because of the above, a prioritisation strategy was implemented with the main objective of improving and making effective the implementation of the justice administration system with a series of elements that guarantee that the prioritisation is not capricious or arbitrary and does not affect the rights of the victims: (i) it must obey a series of criteria established in a prioritised investigation plan created by the Attorney General's Office; (ii) the criteria must be binding and of public knowledge; (iii) the criteria must be aimed at clarifying the pattern of macro-criminality in the actions of the organised illegal armed groups and at unveiling their contexts, causes and motives; (iv) the prioritisation criteria should direct the concentration of the Prosecutor's Office's investigative efforts towards those most responsible; (v) the figure of early sentencing is established as a tool to be implemented in cases that are not prioritised; and (vi) prioritisation is not equivalent to renouncing the duty to investigate and punish criminal conduct that has not been prioritised.

It argues that the identification of patterns of macro-criminality in a specific context can be highly useful for the following reasons: (i) it helps to establish the degree of criminal responsibility of the members of the organised illegal armed group; and (ii) it helps to reveal the structure and *modus operandi of* the organised illegal armed group and the operations of all kinds that made their execution possible. Furthermore, because it promotes and integrates the appropriate construction of the context of criminal activity of the group under investigation.

It expresses that the identification of contexts of criminal actions has multiple essential elements that improve the effectiveness of the State in the investigation of serious violations of human rights and international humanitarian law, such as: (i) investigating criminal conduct not as isolated acts but as the result of the actions of criminal organisations within a given context; (ii) creating new structures for managing investigations; (iii) accumulating files for the purpose of determining patterns of conduct, chains of command and those most responsible; (iv) forming specialised groups of prosecutors to take on the investigation of specific cases.

It stresses that within the Inter-American Human Rights System, the Inter-American Court [[3]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn3%22%20%5Co%20%22) has established the existence of a series of State obligations that can be fulfilled through this special investigative system, such as: (i) establishing the existence of complex criminal structures and their connections that made the violations possible; (ii) directing the efforts of the state apparatus to unravel the structures that enabled the violations, their causes, their beneficiaries and their consequences; (iii) clarifying the truth as a right as a whole and not only as an individual right; (iv) guaranteeing security and maintaining public order; and (v) advocating for reconciliation.

He explains that within transitional justice processes, investigating those most responsible is one of the most efficient strategies for understanding the motivations behind the victimising events and the hierarchical structures of criminal groups.

It submits that the provisions of Law 1592 of 2012 that refer to integral reparation are constitutional for the following reasons:

It considers that despite the reference made by Article 23 of Law 1592 of 2012 to Law 1448 of 2011, the Justice and Peace process retains an important function within the satisfaction component of comprehensive reparation. In this regard, it points out that in the incident of identification of damages, the victims or their representatives expose the damages caused by the criminal conduct and their version will be taken into account for the clarification of the truth and the provision of specific measures of satisfaction.

He argues that the reparation system in place before Law 1592 of 2012 was not providing a prompt, effective or comprehensive response to the victims, as the investigations had an individual focus and the assets offered for reparation were not sufficient to compensate the victims and also had legal problems of titling, prescription and documentation. Therefore, he concludes that the referral to Law 1448 of 2011 is not only constitutional, but also indispensable to guarantee the rights of the victims.

He adds that the system of protection for victims contemplated in Law 1448 of 2011 is much more complete, as it not only includes compensation but also rehabilitation, priority access to housing subsidies, measures in relation to credits and liabilities, and accompaniment in the correct investment of resources.

It notes that the effectiveness of the massive administrative reparation programme enshrined in Law 1448 of 2011 is being demonstrated in the 2 years since its adoption:

**(i)** As of May 2013, the Special Administrative Unit for the Attention and Integral Reparation of Victims granted compensation through administrative channels to 165,131 victims, which implies that the compensation paid amounts to $ 962,211'042,458.73.

**(ii)** 126,543 Comprehensive Care, Assistance and Reparation Plans were granted by May 2013.

**(iii)** With regard to women victims of sexual violence, 89 cases were attended to in March 2011 out of a total of 123 reported cases.

**(iv)** With regard to land restitution, by December 2012, 15 judges had been appointed to the special civil chambers for land restitution in the courts of Medellín, Cartagena, Cúcuta, Cali and Bogotá and 39 civil circuit judges specialising in land restitution.

**(v)** By June 2013, 43,590 applications had been submitted to the Register of Forcibly Abandoned and Displaced Land, for the equivalent of 2,915,687 hectares. As of May 2013, there were 93 accumulated rulings in response to 351 restitution requests that benefited victims of dispossession and forced displacement.

It states that the change from the incident of comprehensive reparation to the incident of identification of damages does not entail a violation of the victims' right to comprehensive reparation as the plaintiffs claim; on the contrary, it contributes to the effective satisfaction of the victims' right to comprehensive reparation by contributing to overcoming the evidentiary difficulties that the original Justice and Peace process entailed.

In this way, the victims will not have to bear the burden of proving the damage or the causal link, a burden which on many occasions limited effective access to the right to reparation, as happened in the case of Justice and Peace processes No. 34.547 and 38.222. The reparation incident is conceived as a scenario for proving the damage suffered, the causal link between the damage and the actions of the illegal armed group to which the postulate belonged, and in the determination of the amount of compensation.

In accordance with Article 23 of Law 1592 of 2012, the incident of identification of damages must be incorporated into the sentence so that in the analysis of the pattern of criminality, the trial judge must take into account the damages narrated by the victims to support his or her decision, constituting a form of contribution to the truth and the satisfaction of the victims.

He affirms that the reform, far from preventing the compensation of victims, aims to generate stricter mechanisms for the demobilised combatants to contribute with their assets to the reparation of victims for the following reasons:

**(i)** Article 11 of Law 975 of 2005 establishes as eligibility requirements for the special criminal justice and peace process the handing over of all assets resulting from illegal activity in order to compensate the victims.

**(ii)** Article 5 of Law 1592 of 2012 establishes as one of the grounds for the termination of the Justice and Peace process and exclusion from the list of applicants, the verification that the applicant has not delivered, offered or denounced assets acquired by him or her or by the organised illegal armed group during and on the occasion of his or her membership of the group.

**(iii)** Article 8 of Law 1592 of 2012 imposes the duty of the applicants to contribute to the comprehensive reparation of the victims, by offering or denouncing all the assets acquired by them or by the organised illegal armed group during and as a result of their membership of the group, so that they may be placed at the disposal of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of the Restitution of Land Restitution and destined for the comprehensive reparation and land restitution programmes of Law 1448 of 2011.

**(iv)** Article 29 of Law 1592 of 2012 establishes the acts of contribution to comprehensive reparation to be carried out by the demobilised person.

**(v)** Therefore, the assets handed over by the perpetrators are destined precisely for the reparation and land restitution programmes contemplated in Law 1448 of 2011 and although it is true that the specific victim will not be repaired with the assets of their perpetrator, this does not mean that they will not be compensated. In this sense, they point out that reparation through administrative channels grants equality to victims as it does not make compensation dependent on the perpetrator having handed over assets.

It argues that for the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur for the Promotion of Truth, Justice, Reparation and Guarantees of Non-Repetition, the satisfaction of the right to reparation in contexts of massive violations are oriented in accordance with international recommendations and are in line with the national reality.

He states that the doctrine of reparations in the field of transitional justice has held that the standard of justice in contexts of mass violations cannot consist simply of the traditional restitution to the previous state of affairs, but that principles such as recognition, civic trust and social solidarity must be applied. It adds that in contexts of transitional justice, the best way to make comprehensive reparations to victims is through massive programmes that incorporate both a sum of money and other measures that together constitute a comprehensive reparation programme that addresses the various negative consequences of human rights violations in people's lives.

It also indicates that it is not true that a significant group of victims who are part of the Justice and Peace Law process would be excluded from the benefits in terms of assistance, care and reparation enshrined in Law 1448 of 2011 given the temporal and material limitations of the process for the following reasons:

**(i)** Article 23 of Law 1592 of 2012 does not at any time refer to Article 3 or Article 75 of Law 1448 of 2011, which establish the temporal or material limits of this programme.

**(ii)** Victims whose victimising event occurred prior to 1985 will be entitled to the victims' law programme once they are recognised by the judicial sentence that ends the justice and peace process.

**(iii)** The temporal limitation in relation to land restitution for dispossessions that occurred before 1 January 1991 was declared constitutional by the Constitutional Court in judgment C-250 of 2012.

**(iv) It** cannot be considered that there is a material limit related to the crimes established in Law 1448 of 2011 for reparation, as the law does not make a referral in this sense.

**3.1.1. Measures aimed at the special protection of certain sections of the population**

They explain that for the plaintiffs, Articles 5 and 15 of Law 975 of 2005 violate the victims' right to protection, given that the duty to guarantee personal security is a permanent function of the Attorney General's Office, which they cannot renounce. In relation to this affirmation, they argue that the texts of the norms do not transgress the right to equality and much less do they establish that protection will only be given to members of the mentioned populations if they participate in the justice and peace process, since the meaning of this article is to reaffirm that those who participate in the justice and peace process deserve a special level of protection, recognising the difference in risks that a person may face.

**3.1.2. Concerning the functions of the Ombudsman's Office**

He argues that Article 23 of Law 1592 of 2012, which provides that the Ombudsman's Office must explain the comprehensive reparation programmes referred to in Law 1448 of 2011, at no time limits the functions of that body, but rather develops those contemplated in Article 118 of the Political Constitution. In this regard, he points out that the only thing established in the law is a specific duty to provide clear and simple information on the programmes of the Victims Law, without this implying that the information provided is restricted only to those topics.

**3.1.3. Strengthening the asset tracing mechanism**

He considers that the reform establishes that if, after the criminal sanction has been imposed on the postulated person and during the time equal to the ordinary sentence, the Prosecutor's Office finds an asset that was not handed over by the demobilised person in the justice and peace process, the judicial benefits must be revoked, which constitutes a drastic sanction that was not contemplated in the original text of Law 975 of 2005.

In relation to Article 25, he argues that this provision seeks to guarantee a legitimate aim in constitutional terms, as it seeks to realise the rights of the victims and to compel the defendant to comply with the commitments that led to the granting of such an important benefit as the alternative sentence. Likewise, it is a proportional and reasonable term and conditionality in the understanding that it coincides with the sentence originally imposed in the framework of the Justice and Peace process.

**3.1.4. On joint free releases**

He adds that the holding of joint testimonies does not compromise individual responsibility, allows for speedier proceedings and better guarantees the victims' right to the truth. He also states that, contrary to what the plaintiffs claim, this type of procedural proceedings allows for the unveiling of macro-criminal structures and also promotes procedural economy.

**3.1.5. On concentrated hearings**

It indicates that the joining of the indictment and indictment proceedings occurred because it was evident that, in practice, the indictment hearing does not differ from previous hearings, and on the contrary, the proceedings carried out in previous stages and hearings, such as the indictment, are repeated, which does not affect the rights of the victims or the defendants.

**3.1.6. On early termination of proceedings**

He emphasises that, contrary to what the plaintiffs claim, the anticipated sentence, as a form of early termination of the process, in no case represents an undermining of the rights of defendants or victims. In his opinion, this figure simply seeks to fulfil criminal policy purposes aimed at achieving greater efficiency and effectiveness, as it allows the judicial operator to dispense with procedural stages and save efforts by the justice system.

It points out that the new structure of the process does not leave out the cases of some victims, as the applicants' interpretation suggests. Instead, the effective satisfaction of the right of all victims to know the truth of what happened is guaranteed through the identification of the criminal actions of a group, in an area, through the macro processes aimed at revealing the pattern of macro-criminality as well as the causes, contexts and motives of the criminal actions. Therefore, the early termination of the process will only proceed in those non-prioritised cases in which the harm caused to the victims has been previously identified and the pattern of macro-criminality has already been clarified by means of a previous judgement.

**3.1.7. On the restorative vocation of goods**

He affirms that the provisions being challenged in relation to the reparatory vocation of the assets, contrary to what the actors claim, do not violate the right to comprehensive reparation of the victims, but rather establish mechanisms to ensure that the assets destined for comprehensive reparation are suitable and allow for effective compensation, and thus solve the various problems that arose in relation to the regulation of the early termination of the process, the lack of resources in the victims' reparation fund. This also makes it possible to address the challenges identified in the denouncement and handing over of assets by the postulants, as the Supreme Court of Justice pointed out in its Order of 13 December 2010.

He argues that the laws in question raise the type of requirements demanded of the demobilised persons, so that their contribution to the reparation of the victims is real and not merely apparent, which is evidence of the constitutionality of the laws. In this sense, the requirement of the reparatory vocation of the assets is not intended to exclude relevant assets for the compensation of the victims, but on the contrary, to identify those that cannot be individualised or identified, or those whose administration or reorganisation would be detrimental to the victims' right to full reparation.

Finally, he argues that the paragraph of articles 5 and 7 of Law 1592 of 2012 do not relax the obligations of the postulants, as they have the duty to denounce all the assets that they have or that the group has in their possession, and it will be up to the magistrate to indicate which of these assets have a restorative vocation.

**3.1.8. On the limitation of remedies in the justice and peace process**

It states that providing that the appeal may only be lodged against judgments and interlocutory orders that resolve substantive issues in the proceedings does not disregard higher provisions and, on the contrary, seeks to guarantee the speed of the proceedings precisely because of the need for timely justice.

On the other hand, it explains that this limitation corresponds to the freedom of legislative configuration in the area of procedures recognised on many occasions by the Constitutional Court.

**3.1.9. On the flow of information between justice and peace and the ordinary courts**

It states that the amendments made to the Justice and Peace Law at no time restrict the possibility of information collected in Justice and Peace proceedings being referred to proceedings brought against third parties, as it is perfectly possible that within these proceedings copies may be ordered against other persons, in accordance with the rules of evidence.

On the other hand, it indicates that in those cases in which the Justice and Peace criminal process is terminated, the evidence collected must be sent to the ordinary criminal justice system so that it can carry out the respective trial and establish the criminal responsibilities that may be applicable. Therefore, this article aims to guarantee that those who are excluded from Justice and Peace are effectively tried under ordinary proceedings, in order to establish their responsibilities and thus contribute to the victims' rights to truth, justice and reparation.

**3.1.10. On the substitution of the detention measure**

In relation to the substitution of the security measure, he points out two clarifications: (i) the purpose of the security measure in the Justice and Peace process is to discount the sentence that would be imposed at the end of the process regulated by the Justice and Peace Law, so it is not reasonable for a security measure to have a longer duration than the maximum term of the sentence imposed; (ii) the substitution of the security measure will not operate automatically with the completion of 8 years of imprisonment, but requires another series of requirements to guarantee the rights to truth, justice and reparation of the victims, such as: to participate and contribute to the clarification of the truth, to comply with all the obligations established by the judicial authority, and to participate in the reintegration process designed by the National Government for the applicants to the Justice and Peace Law.

**3.1.11. On the closure of applications and the application of the special Justice and Peace criminal procedure**

It stresses that the extension of the temporal validity of the Justice and Peace Law does not create any license to commit crimes or reward recidivism, but rather ensures that the collective demobilisations of the self-defence groups are covered by the regime of application of the Justice and Peace Law, 82 percent of the demobilised paramilitaries demobilised after 25 July 2005, which is why the law does not allow for the application of this law to acts committed after demobilisation, but rather to acts that occurred before demobilisation, as opposed to those demobilisations that occurred after 25 July 2005.

In relation to the questioning of the complainants about the possibility that the reform of the Justice and Peace Law will apply to the BACRIM, the Vice Minister expressly points out that under no circumstances does the possibility of collective demobilisation extend to new self-defence groups or the BACRIM, The National Government definitively closed the collective and individual demobilisation of members of the illegal self-defence groups in 2008, as President Juan Manuel Santos reiterated on 7 February 2011 in the conclusions of the National Security Council on the BACRIM.

On the other hand, it assures that Law 1592 of 2012 allows for the strong sanction of recidivism through exclusion from the list of applicants, as stated in Article 11A of Law 975 of 2005.

Finally, it reiterates the National Government's commitment to strengthen the fight against organised crime in a context of transitional justice and to avoid the creation of perverse incentives that allow the demobilisation of criminal structures such as the BACRIM, on which the full weight of justice must simply fall.

**3.2. Intervention by the Ministry of National Defence**

The special representative of the Ministry of National Defence requested the declaration of the constitutionality of the norm being challenged, based on the following arguments:

It points out that the drafting of Law 1592 of 2012 took into account both the position of all sectors of society in the public hearings held in Congress, as well as the opinion of the Office of the United Nations High Commissioner for Human Rights.

One of the central objectives of the project is the fight against macro-criminality and thus the dismantling of armed groups and their criminal activities.

The drafting of the bill took into account human rights treaties and conventions such as the American Convention on Human Rights, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention to Prevent and Punish Torture. The reports and recommendations of the Inter-American Commission on Human Rights and judgments of the Inter-American Court of Human Rights were also consulted.

It argues that the law allows for a more effective application of the right to due process of the accused and of the victims, guaranteeing a more agile procedure and respect for the rights of the accused.

He says that through this law it will be possible to combat macro-criminality and not only the top leaders of the self-defence groups, as has been the case so far in the Justice and Peace processes.

It asserts that the instruments provided for in Law 1592 of 2012 make it possible to guarantee the right of victims to comprehensive reparation and truth by improving the structure of the procedures.

It explains that the law takes into account the design of a comprehensive programme that links all combatants and not only their leaders.

It argues that the law does not grant a de facto amnesty, as at no point does it authorise the waiver of criminal prosecution, but rather continues to contemplate the alternative punishment mechanisms contemplated in Law 975 of 2005.

It considers that the concept of victims contemplated in Law 1592 of 2012 is fully in line with the jurisprudence of the Constitutional Court, in particular in Judgment C-370 of 2006.

In view of the foregoing, it requests the Court to follow the decision in relation to Articles 4, 5, 7, 8, 8, 10, 15 to 30, 32, 34, 36, 37, 37, 41, 44, 49, 58 and 64 of Law 975 of 2005, as they were already analysed in Ruling C-575 of 2006.

**3.3. Intervention by Universidad Sergio Arboleda**

The Centre for Studies on Transitional Justice, Victims and Land Restitution of the Sergio Arboleda University, by means of a brief presented by Orlando Gallo Suárez, Executive Director of this Department, and Carolina Rosas Díaz, Legal Director of the same, expressed the position of their intervention in the following terms:

Initially, in relation to the criteria of prioritisation and the State's obligation to investigate human rights violations and breaches of International Humanitarian Law, it reiterates the position of this Centre for Studies in maintaining that the State has the obligation to investigate, prosecute and punish serious human rights violations as imposed by the Political Constitution and the different international treaties signed and ratified by Colombia, which is why, for this Department, it is clear to rule out the possibility of applying any law with shades of impunity.

Secondly, it argues that the prioritisation of cases is a subjective classification method that will limit the right to truth, justice and reparation of many victims who will be left off the list, given that the guarantee of the effectiveness of the rights enshrined in the Charter is realised when it covers all persons and does not take into account subjective prioritisations, leaving out others who require equal consideration.

Finally, he asserts that the issues related to victims' rights, postulation, alternative sentences and their procedures, were already decided in Judgement C-370 of 2006 by the Constitutional Court itself, which is why it is not appropriate to revive these issues.

**3.4. Intervention by the Ministry of Agriculture and Rural Development**

Mr Andrés Bernal Morales, Head of the Legal Advisory Office of the Ministry of Agriculture and Rural Development, as legal representative of the Nation, presented a written intervention in which he opposed the declaration of the unenforceability of the articles being challenged, based on the following analysis:

Firstly, it mentions that the method of prioritisation in criminal investigation, and specifically with regard to the crime of dispossession and forced abandonment, is a working methodology that seeks to make the state's capacity to investigate, prosecute and punish serious human rights violations effective and efficient, so that it is a technique that allows for the effective enjoyment of the right to access to justice in the framework of material equality.

In the same vein, he states that in accordance with laws 975 of 2005 and 1448 of 2011, an expeditious system has been created that allows information on forced abandonment and dispossession of land to be sent to the Land Restitution Unit, which contributes to the procedures it carries out and, to that extent, is in line with the parameters of transitional justice defended by the Political Constitution.

Thus, it expresses that from the reading of Law 1448 of 2011 it does not follow that the remission of this type of information is exclusive of cooperation and exchange with other State entities.

Secondly, it refers to the reference made by Law 975 of 2005 and Law 1592 of 2012 to the norms of Law 1448 of 2011, with regard to which it argues that the Constitutional Court in multiple rulings established the criteria of temporality, nature of the damage and context, to identify the victims who are the recipients of special measures of attention, for which reason the prioritisation system is justified in light of the obligations of the Colombian State in terms of human rights and International Humanitarian Law.

Furthermore, it adds that the definition of victim contained in Article 3 of the norm that is the subject of this lawsuit does not modify in any way the concept of victim properly considered in international human rights instruments, but rather constitutes an operative definition for the purpose of recognising a series of special measures of assistance, care and reparation.

Based on this consideration, it considers that it is not true that a person who does not meet the requirements of temporality, nature of the harm and context, adopted in Law 1448 of 2011, does not have another mechanism to enforce their rights to truth, justice and comprehensive reparation, since in those cases where these criteria are not met, the ordinary law regime or other regulations on transitional justice can be used.

Thirdly, he alleges that the contested norms do not violate the principle of the natural judge and the effective judicial remedy in matters of reparation, on the occasion that it is the specialised judge who decides on the merits of the right to land restitution of the victims of dispossession, in accordance with the provisions of Article 91 of Law 1448 of 2011. To this end, he explains that the restitution process consists of a judicial and an administrative stage, where the Constitutional Court, in judgment C-715 of 2012, declared that the latter stage does not ignore the victims' right of access to justice, and furthermore, stated that this measure is in line with the Constitution in the sense that it passed the proportionality test.

Linearly, it adds that the administrative stage is constitutional as it aims to achieve restitution that meets the criteria of massiveness, organisation, planning, equality, efficiency, among others, and at the same time, guarantees that victims have access to an effective judicial remedy that guarantees their right to restitution.

Finally, he concludes his intervention by arguing that the referral to the land restitution process of Law 1448 of 2011 does not imply additional or unjustified burdens on victims, since this measure aims to articulate two transitional justice processes that allow victims to obtain the respective reparation tools, and to optimise the land restitution process.

Thus, he cites Ruling C-715 of 2012, handed down by the Constitutional Court, from which he infers that the constitutional body determined that all restitution requests submitted to the Restitution Unit will be processed through a special procedure that allows the concentration of all judicial, administrative and other processes in order to obtain *"a legal and material decision with criteria of comprehensiveness, legal certainty and unification for the closure and stability of the rulings"* [[4]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn4%22%20%5Co%20%22) .

This in turn is reinforced by statistics presented by the intervention, which show that as of August 2013, 8,482 applications had been received, of which 3,191 (38%) have completed the administrative stage of the restitution process.

**3.5. Intervention by the Faculty of Law of the Universidad Libre**

Jorge Kenneth Burbano Villamarin, intervenes in the proceedings in his capacity as Coordinator of the Observatory of Constitutional Citizen Intervention of the Faculty of Law of the Universidad Libre de Bogotá D.C., by means of a written statement in which he sets out the following considerations:

He affirms that prioritisation, as a legal figure, is a mechanism in accordance and compatible with the reform introduced to the 1991 Constitution by Legislative Act 01 of 2012, although the declaration of the rule's enforceability should be conditional on it not implying in practice an unconditional renunciation of the criminal prosecution of "non-prioritised" cases, as well as those responsible for serious human rights violations that are not considered to be the most responsible.

It also argues that in order to grant powers to the Attorney General of the Nation for the purpose of establishing prioritisation criteria, a specific statutory law is necessary, since this type of powers are framed within a legal reserve that characterises fundamental rights, which is why it should be unconstitutional for an ordinary law to grant these powers to the Prosecutor General.

Finally, it argues that, in order for the Attorney General to be able to adopt the "Integral Prioritised Investigation Plan" by resolution, it is necessary for the Court to establish a constitutional framework to guide this activity, in order to prevent its implementation from generating situations of impunity.

**3.6. Intervention by the Colombian Commission of Jurists.**

In order to present the reasons for their intervention, the citizens Mary de la Libertad Díaz Márquez and Juan Camilo Rivera Rugeles, as lawyers of the National Advocacy area of the Colombian Commission of Jurists, presented a brief in which they support the constitutionality claim under study, in consideration of the following reasons:

The first reason for their intervention focuses on specifying that the incident of identification of the harm caused to the victims is contrary to their right to obtain reparations, but they also emphasise that there is an element of the law that is particularly unknown by the reform introduced by Law 1592 of 2012, which is the right of victims of serious human rights violations to have an effective judicial remedy to obtain reparations.

Thus, they consider that the incident of identification of the effects caused to the victims of serious human rights violations cannot be considered as an effective judicial remedy to guarantee reparation, since it also eliminated the effective judicial remedy that the victims had to obtain the guarantee of their rights.

Secondly, they argue that articles 23, 24 and 40 of Law 1592 of 2012, as well as other norms that develop, complement or make mention of the incident of identification of the effects caused to the victims, should be declared unconstitutional in their entirety, as they consider that the Constitutional Court should integrate other norms into this study in order to form a normative unit.

As a third aspect, they also focus on the issue of the incident of identification of the effects caused to the victims, from which they assert that the Constitutional Court must rule in order to effectively protect the victims' right to reparation, in particular their right to an effective judicial remedy to obtain reparations. Thus, they assert that it is not enough to issue a simple ruling of non-existence, but that article 23 of the incident of integral reparation should also be reincorporated into the legal system.

**3.7. Intervention by the University of Rosario**

Julián Hoyos Bucheli, a member of the Public Actions group of the Faculty of Jurisprudence of the Universidad del Rosario, requests that the laws in question be declared unconstitutional.

His intervention refers only to the second charge raised by the plaintiffs, to which end he states his position with respect to: (i) the rules challenged and the violation of superior norms that would occur in their application; (ii) rules of international law and of domestic application relevant to the case; and (iii) rules of domestic law that have been violated by the challenged provisions.

**3.7.1. On the referral to administrative redress provided for in Law 1448 of 2011, by Laws 975 of 2005 and 1592 of 2012.**

The intervener points out that Laws 975 of 2005 and 1448 of 2011 contemplate two non-exclusive ways for victims of the armed conflict to access comprehensive reparation. In the first of these, based on the principle of State solidarity, the victim is offered the possibility of accessing reparation through administrative channels at the expense of the public treasury in those cases in which the perpetrators and those responsible are unknown; the victim must only demonstrate the harm suffered, although they will receive an amount that does not correspond to the magnitude of the harm, but rather to overcome the victim's condition of vulnerability. It indicates that the second way in which victims can be compensated is by judicial means, which occurs in those events in which the perpetrator and the damage caused are fully identified, so that the victim can request full compensation within the Justice and Peace process.

However, it states that victims are deprived of the possibility of obtaining an amount in accordance with the damage suffered, by establishing full reparation through judicial channels as an accessory means to the administrative instance. Furthermore, he argues that the referrals provided for in Laws 975 of 2005 and 1592 of 2012 to Law 1448 of 2011 would mean that those victims who have been included in Justice and Peace processes would lose the possibility of being fully compensated through judicial channels as the principal means, and instead would be compensated according to the parameters established by the Legislator, which frustrates the legitimate expectation that they will receive reparation in accordance with the magnitude of the harm suffered.

**3.7.2. Violation of the rules of international law**

At this point he refers to Article 93 of the Political Constitution and cites the SU-254 judgment of 2013, to explain in a broad sense that the norms of international law and the pronouncements of the high international courts that do not form part of the constitutional bloc in *stricto sensu,* involve an interpretative criterion when determining the scope of the essential core of fundamental rights.

Thus, he states that the norms of international law that form part of the constitutional bloc in the strict sense of the term have the potential to create normative criteria for declaring a norm of a lower hierarchy to be unenforceable, and therefore, the international treaties ratified by Colombia in the manner referred to in the complaint constitute a degree of constitutional violation.

It also states that in relation to the judgments and norms of international law that are not strictly speaking part of the constitutional block, but in a broad sense, they offer interpretative criteria to extend the application of the essential core of fundamental rights, which is why it is necessary to refer to the Universal System and the Regional System to understand the concept of the right of victims, as well as those of justice, reparation and truth.

**3.7.3. Universal system**

It explains that there is no legal reason in the domestic law of the countries parties not to comply with the provisions of the Covenants against Torture and Cruel Treatment or Punishment, which, according to the Human Rights Committee, define that every citizen has the possibility to file complaints and that these complaints should be dealt with and investigated promptly and impartially by the authorities.

It also mentions that in relation to the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, every human rights violation gives rise to a right of the victim to reparation, either from the State or from the perpetrator.

In this regard, it cites the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which establishes the obligation of offenders or responsible third parties to make fair restitution to their victims, their families and dependants.

By virtue of the above, he assures that determining preferably administrative measures for the reparation of the victims of the armed conflict is in breach of the norms of international law that are part of the Constitutional Block, since they imply the reduction of the tools available to the victims to access comprehensive reparation.

**3.7.4. Regional System: Inter-American Human Rights System**

Firstly, he refers to the case of the Moiwane Community v. Suriname, in the jurisprudence of the Inter-American Court of Human Rights, which states that the obligation of countries to make reparations must be aimed at restoring the violation of the victim's human rights, and in this sense, the obligation of states to make reparations cannot be breached by the state by invoking reasons of domestic law.

It also cites the case of La Rochela v. Colombia, where the Inter-American Court determined that full reparation for a violation of a right protected by the Convention cannot be reduced to the payment of compensation to the relatives of the victims.

By virtue of these arguments, it considers that the measure of referring to administrative remedies as the main form of reparation is contrary to the jurisprudence of the Inter-American Court of Human Rights.

**3.7.5. Domestic law**

The intervener cites Judgments C-099 of 2013 and SU 254 of 2013, from which he explains that the Constitutional Court has defined that reparation is a concept that is not limited solely to monetary compensation, but goes beyond that insofar as it includes both measures aimed at satisfying the truth and historical memory, as well as measures aimed at ensuring that justice is done, and that those responsible are investigated and punished. However, it argues that these forms of reparation cannot be guaranteed if they are carried out preferably through administrative channels, which only respond to monetary values established by the legislator without the possibility of a judge assessing all the damages to which the victim may have been subjected during the armed conflict.

**3.7.6. Right to Equality**

It alleges that there is a violation of the right to equality contemplated in article 13 of the Constitution, given the evident differentiation made between the victims of the conflict, and that those subjected to the Justice and Peace process will lose the time they were subjected to in order to access full reparation if they do not take part in the events that qualify them as victims; on the other hand, others will be able to access the methods of full reparation through the courts or directly.

Thus, he adds that the references expressed in the reform of Law 1592 of 2012 to Law 1448 of 2011 propose a massive system of compensation in which judicial reparations are left in the background.

**3.7.7. Division of Powers**

In relation to this issue, he mentions that according to articles 113, 115 and 116 of the Political Constitution, and in accordance with the provisions of Ruling C-170 of 2012, the functions of public power must be separated and collaborate harmoniously with each other in accordance with a model of specialisation of state tasks, each of them corresponding to a specific organ. It is for this reason that the intervener argues that the function attributed to the Administrative Units does not contravene the principle of the division of powers, but removing the judicial function completely from mass reparations is an excessively harmful measure for the victims.

**3.8. Intervention by the Ministry of Finance and Public Credit**

The Ministry of Finance and Public Credit submitted a written intervention through its legal representative, Nelson Javier Alvarado Zabala, who requested the constitutionality of the accused norm based on the following arguments:

Initially, it indicates that the accused provisions are part of a massive public policy of administrative reparation that aims for an adequate, transformative and effective reparation, respecting constitutional principles. It also explains that the tensions that arise between justice and peace must always be analysed and taken into account for the implementation and success of transitional processes, although it recognises that it is notorious that the strategies that are intended to be applied to this type of process necessarily imply the sacrifice of one of the values in tension, which is why it is necessary to design a model of transitional justice for each specific case that is adapted to the particular conditions of that case.

Therefore, he considers that the circumstances of the Colombian case make it necessary to adopt measures that make values more flexible in order to obtain reparative justice for the victims of atrocious crimes, which is complemented by the search for a transitional model based on the identification of the responsibility of the armed actors, as well as a balance between the rights of the victims and the granting of pardons under the principle of proportionality.

The intervention states that the comprehensiveness of the administrative reparation incorporated in the Law is not based on traditional components of judicial reparation, such as consequential damages and loss of earnings, but that the proposed administrative reparation programme includes the adoption of measures of satisfaction that seek to restore the victim to the effective enjoyment of their rights, understood as a series of actions aimed at preventing the serious human rights violations from continuing to be committed. In this way, it affirms that the transitional scheme constitutes a parameter of analysis for the subsequent definition of the amount to be awarded to the victims and for the conditions of restitution, which should not and cannot be equated with the concepts of consequential damages and loss of earnings related to a judicial process of strict evidentiary rigour.

In this sense, it argues that the contested norm aims to reduce a burden of proof that the victims of serious and massive human rights violations are not capable of bearing.

In this sense, he specifies that in the framework of transitional justice, the element of harm is the central axis of the discussion, as it is the basis for defining the victimising event, the rights of the victims and the social forgiveness for the perpetrators of the harm. In this way, the reparatory effect that transitional justice seeks to establish is not equivalent to the compensation that can be claimed in ordinary civil proceedings, as it incorporates symbolic duties and guarantees of non-repetition that go beyond mere pecuniary compensation.

To this extent, it argues that limiting victims' rights to pecuniary reparation is not admissible under the Colombian legal system, as pecuniary compensation does not constitute the essential element of effective reparation, as accepted by the Constitutional Court in Judgment C-228 of 2002.

Along the same line of reasoning, he asserts that the law being challenged guarantees comprehensive reparation to all victims under equal conditions, since in any case, persons linked to organised illegal armed groups will be investigated, prosecuted and punished. It also maintains that the right to the truth is realised in the sense that it contributes to the clarification of the pattern of macro-criminality in the actions of organised illegal armed groups.

It also argues that by including victims as participants in the Justice and Peace process in the comprehensive reparation and land restitution programme, they are guaranteed humanitarian aid, attention, assistance and reparation in conditions that vindicate their dignity.

Thus, it states that Law 1448 of 2011 creates an articulated programme in which the victim is offered and guaranteed humanitarian aid, attention, assistance and comprehensive reparation within a sustainable framework, which allows the State to develop these measures in a continuous and progressive manner, in order to guarantee their viability and effective compliance.

In relation to the right to the truth, he stated that the law recognises the importance of the victims being aware of the facts that caused the harm, and therefore the State must guarantee the right of the victims to access information and give them the possibility of knowing what happened. On this understanding, it declares that at no time does the law in question disregard the victims' right to the truth; on the contrary, it has been a way of guaranteeing compliance with this right and of giving effect to the right to full reparation.

With regard to the right to justice, he said that this is framed within the duties of effective investigation that allows for the clarification of the violations, the identification of those responsible and their respective punishment, in such a way that it must be articulated with different national norms and those of the constitutional bloc. This responsibility has not been ignored by the State and, in this sense, the laws being challenged do not violate this right, if it is taken into account that the State will fail to carry out the necessary investigations to find those responsible for the acts and clarify the situations in which they have occurred.

It also states that in order to comply with the measures and rights contemplated in Laws 1448 of 2011 and 1592 of 2012, the existence of CONPES 3712 and a Financial Plan that responds to the need to finance over time the different measures recognised by Law 1448 of 2011 is important, in order to allow the construction of a common language between the effective enjoyment of the rights of the displaced population and fiscal sustainability, which in turn seeks to promote economic stability.

Finally, the Ministry concludes its intervention by making a pronouncement in relation to the charge against the references made by Law 1592 of 2012, from which it considers that the plaintiff omitted the pronouncement of the Constitutional Court in Ruling C-250 of 2012, by which it declared the exequibilidad of the terms *"from the first of January 1985"*, contained in Article 3 of Law 1448 of 2011, and "*between the first of January 1991 and the term of validity of the Law"*, contained in Article 75 of Law 1448 of 2011, and therefore, it considers that it is not possible to appreciate the argument according to which the norm being challenged would be unconstitutional for having a temporary nature when defining the time periods for the victims to be admitted within the procedures established by the Law.

**4. OPINION OF THE ATTORNEY GENERAL OF THE NATION**

The Attorney General of the Nation requests the Constitutional Court to declare Articles 1, 3, 10, 11, 12, 12, 13, 14, 14, 18, 18, 19, 20, 23 and 29 of Law 1592 of 2012 (2°, 5A, 15, 15A, 16, 16A, 17, 18, 18A, 18B, 23 and 44 of Law 975 of 2005), as well as the sections of Articles 4, 5, 7, 8, 11, 14, 16, 17, 18, 22, 23, 24, 26, 27, 30, 31, 32 and 33 of the same law (6°, 11A, 11C, 11D, 15A, 17, 17B, 17C, 18, 22, 23, 23A, 25, 26, 46, 46A, 46B and 54 of Law 975 of 2005) of the same Law, and Articles 38, 39, 40 and 41 of Law 1592 of 2012, on the charges analysed here, and declare that it is not authorised to rule on Articles 36 (72 of Law 975 of 2005) and 37 of Law 1592 of 2012, on the following grounds:

**4.1. On the application of prioritisation in Justice and Peace processes**

It points out that the establishment of criteria for prioritising cases, or prioritisation as such, is respectful of both constitutional norms and the international obligations signed by Colombia, insofar as it allows the Prosecutor's Office and the criminal justice system to give priority to crimes of greater social importance, just as, in fact, other judicial and administrative authorities can, in our legal system, give priority to the processing and ruling on certain cases.

In any case, it clarifies that prioritisation must be distinguished from selection, i.e. criteria that allow the State to waive the investigation and prosecution of certain crimes, which is substantially different and which this Office understands as contrary to Colombia's international commitments to protect human rights, as well as violating the human dignity of the victims of those conducts that are not selected, and their rights to equality, due process, access to justice and, above all, their rights to truth, justice and reparation.

It states that in any case, prioritisation must respond to reasonable and proportional parameters such as those contemplated in the C-579 judgment of 2013 and at the same time it has specific limits, which are based, in particular, on the constitutional bloc.

**4.2. On the reference to the victims' law**

In relation to the charge of the reference made in several of the contested provisions of Law 975 of 2005 to the definitions, institutions and administrative procedures established in Law 1448 of 2011 ("*Victims Law*"), The Court states that *prima facie* it is impossible to conclude that any of the above seventeen (17) normative propositions against which the plaintiffs raise their charges contradict the constitutional norms and those of the constitutional block that they invoke as violated, insofar as the latter undoubtedly do not have the degree of specificity that the former do, nor do they refer to the matters, whether procedural or technical, that are regulated therein.

In this sense, he argues that the plaintiffs' reproaches, rather than against Law 975 of 2005, are directed against Law 1448 of 2011 (not sued), "*By which measures of attention, assistance and comprehensive reparation to the victims of the internal armed conflict and other provisions are dictated*", and against the transitional justice model that the Legislator adopted there, and in the Justice and Peace Law (modified by Law 1592 of 2012, which was only partially sued).

It states that the aim pursued by the Legislator, with the changes introduced to the Justice and Peace Law by Law 1592 of 2012, is to separate the criminal process from that of the law itself, which in any case sought to recognise and respect the rights of the victims, from the strictly reparation measures now established in Law 1448 of 2011, without seeking to ignore or undermine this or the other rights of the victims.

It argues that the right to comprehensive reparation for victims does not necessarily imply that they have the right to an incident of comprehensive reparation within the special criminal proceedings against members of illegal armed groups who demobilise, as originally provided for in the Justice and Peace Law, nor does it prohibit or make it impossible for the State to adopt a public policy of comprehensive reparation for the victims of the armed conflict, by administrative means, which is harmonised with the measures, conditions, requirements and aims of reparation that are also present in the criminal process - which, on the other hand, do not eliminate or prevent the victims from claiming the satisfaction of this right, insofar as administrative and judicial actions, as has already been explained in the case law cited above, should be understood as complementary and not exclusive.

**4.3. On the collective or joint versiones libres and the arrangement of hearings**

It does not consider that on the grounds of victims' rights, the legislature cannot authorise collective or joint versiones libres; allow hearings to be concentrated -which in no way contradicts the higher mandate of individual responsibility insofar as it does not imply that convictions can be handed down against individuals for the conduct of third parties-; or grant any new benefits to demobilised combatants or restrict, in any way, the participation of victims in the Justice and Peace criminal process, as is the case with some of the laws in question, where, for example, victims are prevented from appealing mere procedural decisions.

It also indicates that the Legislator has a wide margin of configuration when designing the tools of justice and peace [[5] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn5%22%20%5Co%20%22) and the rights of the victims in no way prevent him, as the plaintiffs suppose, from setting a term to determine whether the beneficiaries of the Justice and Peace Law, for example, effectively fulfilled their duty to hand over, offer or denounce the ill-gotten assets that they have or that they know the armed group to which they belonged has.

**4.4. On the temporal application of Law 975 of 2005**

He stresses that he considers that the legislator is prohibited from modifying the rules of validity or temporal application of the Justice and Peace Law, or that this automatically or necessarily affects the rights of the victims, nor does he note that the modifications of this nature that were made by means of Law 1592 of 2012 promote that members of armed groups outside the Law can become beneficiaries of the Justice and Peace Law without guaranteeing or cooperating with the comprehensive reparation of the victims.

In relation to the charges brought against the temporal application of Law 975 of 2005 and the benefits granted in transitional justice, they point out that the conclusions put forward by the plaintiffs do not meet the requirements of certainty and relevance, insofar as, beyond the possible different conceptions or criticisms that may be made from the point of view of legislative technique, as well as possible and reprehensible errors that may be committed in the application of the laws being challenged, they do not establish the logic or the effects that the plaintiffs reproach.

In this regard, it states that the law establishes that: (i) for those who have been part of collective demobilisations, Law 975 of 2005 applies only to events that occurred prior to their demobilisation (even without a deadline being set), and (ii) for those who have demobilised individually, it applies only to events prior to their demobilisation or, in any case, prior to 31 December 2012; and not that the rules being challenged authorise demobilised persons to continue committing crimes and that the victims' right to non-repetition is dispensable or irrelevant.

**II. CONSIDERATIONS**

**JURISDICTION OF THE COURT**

Pursuant to Article 241(4) of the Constitution, the Court has jurisdiction to examine the constitutionality of the expressions being challenged.

**2. STRUCTURE OF THE JUDGMENT**

This complaint raises numerous charges of unconstitutionality against various articles and regulatory segments of Law 1592 of 2012, which introduces amendments to Law 975 of 2005 or the Justice and Peace Law.

For methodological reasons, each of the aspects to be analysed by the Court (admissibility, considerations, precision and resolution of the charges of unconstitutionality, and summary) will be grouped according to the three central thematic axes of the complaint: (i) design and implementation of methodologies for the investigation of war crimes and crimes *against humanity* (*prioritisation*); (ii) some procedural aspects of Law 1592 of 2012; and (iii) victims' rights (*truth, justice, comprehensive reparation, guarantees of non-repetition, protection and participation in the process*).

The structure of the judgment is as follows:

1. Examination of the fulfilment of the requirements of the claims of unconstitutionality.

2. Clarification of the charges of unconstitutionality.

3. Considerations on: (i) transitional justice in the Social State of Law; (ii) the fundamental right to comprehensive reparation; and (iii) importance of prioritisation techniques and their relationship with the design and implementation of Law 1592 of 2012.

4. Description of the background and essential aspects of Law 1592 of 2012.

5. Examination and resolution of each of the charges of unconstitutionality, regrouped in accordance with the three central axes of the process (prioritisation, procedural aspects and fundamental rights of victims).

**3. EXAMINATION OF THE FULFILMENT OF THE REQUIREMENTS FOR CLAIMS OF UNCONSTITUTIONALITY**

**3.1. Requirements to be met by applications of unconstitutionality.**

The citizen who brings a public action of unconstitutionality against a specific legal norm must precisely indicate the *object* being challenged, the *concept of the violation* and the reason why the Court *has jurisdiction* to hear the case. These are the three elements developed in Article 2 of Decree 2067 of 1991, which make a decision on the merits by this Constitutional Court possible.

In order for an imputation or charge of unconstitutionality to really exist in the complaint, it is essential that the arguments put forward in the complaint allow the Constitutional Court to carry out a true confrontation between the accused norm and the constitutional provision that has allegedly been violated.

Article 2 of the aforementioned Decree sets out the requirements that all claims of unconstitutionality must contain, one of which is the third paragraph of the aforementioned provision, namely: *the indication of the reasons* why the constitutional norms invoked are considered to have been violated.

The Constitutional Court has repeatedly ruled on this requirement, in the sense of warning that although it is true that the public action of unconstitutionality is not subject to greater rigour and informality must prevail [[6]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn6%22%20%5Co%20%22), there must be minimum requirements and content in the complaint that allow the Constitutional Court to satisfactorily carry out the examination of constitutionality, that is, the accusatory libel *must be capable of generating a true constitutional controversy.*

For this reason, this Corporation has interpreted the scope of the material conditions that the claim of unconstitutionality must fulfil and has systematised, without falling into technical formalisms, incompatible with the popular and civic nature of the action of unconstitutionality, that the charges formulated by the plaintiff must be *clear, certain, specific, pertinent and sufficient*[[7]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn7%22%20%5Co%20%22) . 7] This means that the accusation must be sufficiently comprehensible (clear) and truly relate to the content of the accused provision (certain). Furthermore, the plaintiff must show how the provision violates the Charter (specificity), with arguments that are of a constitutional nature, and not legal or doctrinal or referring to purely individual situations (pertinence). Finally, the accusation must not only be fully formulated but must also be capable of raising the slightest doubt as to the constitutionality of the challenged provision (sufficiency).

**3.2. ARGUMENTS IN THE APPLICATION AND CLARIFICATION OF THE CHARGES OF UNCONSTITUTIONALITY**

**3.2.1. ANALYSIS OF THE ADMISSIBILITY OF THE GLOBAL CHARGE OF UNCONSTITUTIONALITY RELATED TO THE DESIGN AND IMPLEMENTATION OF METHODOLOGIES FOR THE INVESTIGATION OF SYSTEM CRIMES (*PRIORITISATION*), IN A CONTEXT OF TRANSITIONAL JUSTICE**

The plaintiffs allege the unconstitutionality of the expressions "*applying prioritisation criteria in the investigation and prosecution of such conduct"* (Article 1); *"without prejudice to the application of prioritisation criteria"* (Article 3); *"The investigation will be conducted in accordance with the prioritisation criteria determined by the Attorney General of the Nation in accordance with Article 16A of this law"* (Article 10); *"and in accordance with the prioritisation criteria"* (Article 11); "in accordance *with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of this law" (*Article 12), "*of prioritisation"*, *"of prioritisation" and "concentrating investigative efforts on those most responsible"* (Article 13) *"in accordance with the prioritisation criteria established by the Attorney General of the Nation"* (Article 14); the paragraph of Article 18 of Law 1592 of 2012 and the expression: *"the victims corresponding to the pattern of macro-criminality that is being clarified within the process, in accordance with the prioritisation criteria"* of paragraph 5 of Article 23, contemplate the possibility of applying prioritisation criteria in the Justice and Peace process.

Such provisions, according to the plaintiffs, disregard the Colombian State's obligation to carry out a serious, impartial and timely investigation of punishable conduct and affect the right to equality of those cases not selected, violating the victims' rights to justice, truth, full reparation, non-repetition and equality, as contemplated in the Preamble and in Articles 1, 2, 13, 93 and 229 of the Constitution and Articles 8 and 25 of the American Convention on Human Rights.

The Court considers that the overall charge of unconstitutionality formulated with respect to the challenged expressions of Articles 1, 3, 10, 11, 12, 13 and 14, as well as the paragraph of Article 18 and paragraph 5 of Article 23 of Law 1592 of 2012 meets the requirements of clarity, certainty, specificity, relevance and sufficiency, according to the following considerations:

The requirement of *certainty* is met, as Law 1592 of 2012 effectively incorporates the possibility of applying prioritisation criteria in justice and peace processes, a circumstance that modifies the criminal procedural system of Law 975 of 2005 and establishes special rules for the conduct of investigations.

Likewise, the charge is clear and pertinent, as the plaintiffs raise two (2) constitutional challenges to the accused norms, which are: (i) the affectation of the State's obligation to carry out a serious, impartial investigation within a reasonable period of time, in accordance with the Preamble and Articles 1, 2, 13, 93 and 229 of the Constitution and 8 and 25 of the American Convention on Human Rights and; (ii) the violation of the right to equality of the victims whose cases are not prioritised.

This is sufficient, as the plaintiffs make an extensive and well-founded argumentation of the reasons why they consider the accused norms to be unconstitutional, which they reinforce by citing the jurisprudence of the Inter-American Court of Human Rights, among which they mention the cases of 19 comerciantes v. Colombia, Juan Humberto Sánchez v. Honduras, La Rochela v. Colombia, among others. They also cite customary norms numbers 151, 152, 154, 155 and 158, systematised by the International Committee of the Red Cross (ICRC), which oblige states to investigate and punish war crimes.

The Court considers that the overall charge of unconstitutionality raised by the applicants is:

The legislator violated: (i) its constitutional and international duty to conduct a serious, impartial and timely investigation into the commission of system crimes; and (ii) the right to equality of victims whose cases are not prioritised, insofar as it introduced **prioritisation criteria** in various provisions of Law 1592 of 2012, referring to the following aspects: (i) scope of interpretation and normative application (art.1, partial); differential approach among victims (art.3, partial); establishment of the truth (art.10, partial); clarification of the phenomenon of land dispossession and cooperation between the Attorney General's Office and the Special Administrative Unit for the Restitution of Land Restitution (art. 11, partial); establishment of prioritisation criteria by the Attorney General of the Nation (art. 12, partial); prioritisation criteria by the Attorney General of the Nation (art. 12, partial); prioritisation criteria by the Attorney General of the Nation (art. 12, partial); prioritisation criteria by the Attorney General of the Nation (art. 12, partial). 12, partial); criteria for prioritisation of cases (art. 13, partial); free version and confession (art. 14, partial); formulation of indictment (para. 18); and identification of the effects caused to the victims corresponding to the pattern of macro-criminality (art. 23, para. 5),

Finally, this Corporation specifies that the admission of a global charge of unconstitutionality [[8]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn8%22%20%5Co%20%22) does not restrict its competence to examine the conformity of each of the accused legal articles or normative segments alluding to the prioritisation criteria.

**3.2.2. ANALYSIS OF THE ADMISSIBILITY OF THE CHARGES OF UNCONSTITUTIONALITY RAISED ON SOME PROCEDURAL ASPECTS OF LAW 1592 OF 2012.**

**3.2.2.1 Count 1: cooperation with ordinary criminal proceedings (Article 11 of Law 1592 of 2012)**

The applicants consider that the expression "*shall make it available to the Special Administrative Unit for the Management of the Restitution of Dispossessed Land, in order to contribute to the procedures that it carries out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011"* in Article 11 of Law 1592 of 2012, regulates the possibilities of cooperation between the Justice and Peace processes with the Special Administrative Unit for the Management of Restitution of Divested Lands, but does not provide for cooperation between the Justice and Peace processes with other criminal proceedings of the ordinary justice system or with the investigations that are being carried out in different units of the Prosecutor's Office. This violates the victims' rights to truth, justice and comprehensive reparation.

Article 11 of Law 1592 of 2012 enshrines the cooperation of the Attorney General's Office with the Special Administrative Unit for the Management of Restitution of Divested Lands:

"When from the material evidence or legally obtained information, the Attorney General's Office finds relevant information for the land restitution process, it shall make it available to the Special Administrative Unit for the Management of Restitution of Land Restitution, in order to contribute to the procedures it is carrying out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011".

The Court notes that the transcribed text does not contain any expression that excludes or closes the possibility that the cooperation of the Attorney General's Office and the Special Administrative Unit for the Restitution of Divested Lands may be extended to the ordinary justice system.

Thus, at no time does the provision for special cooperation between the Justice and Peace processes and the Special Administrative Unit for the Restitution of Divested Lands imply that there is no obligation to cooperate with the ordinary justice system.

Article 21 of Law 975 of 2005 [[9]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn9%22%20%5Co%20%22) establishes that in cases where charges have not been accepted by the accused, they must be referred to the competent judge to be tried in accordance with the laws in force at the time the crimes were committed.

Similarly, Law 1592 of 2012 has articles that reflect the interaction between the Justice and Peace process and the ordinary justice system. Article 20[[10]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn10%22%20%5Co%20%22) and the paragraph of Article 21[[11] of](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn11%22%20%5Co%20%22) this law provide for the duty of the Sala de Conocimiento to send copies of the proceedings to the competent official in accordance with the law in force at the time of the events, in order to continue the process under the ordinary justice system.

Likewise, Article 22 of the same Law 1592 of 2012 grants the possibility of provisionally suspending the ordinary proceedings against a Justice and Peace defendant until the hearing for the formulation and acceptance of charges has been completed and the defendant has accepted the charges.

It should be pointed out that these norms highlight the possibility of initiating or resuming the ordinary process in those cases in which the Justice and Peace process is frustrated, especially in cases where the defendant does not accept the charges.

Thus, the Court considers that the charge of unconstitutionality directed against the expression: "*it shall place it at the disposal of the Special Administrative Unit for the Management of the Restitution of Dispossessed Lands, with the aim of contributing to the procedures that it carries out for the restitution of dispossessed or abandoned lands in accordance with the procedures established in Law 1448 of 2011*", of Article 11 of Law 1592 of 2012, lacks certainty, which is why it will refrain from carrying out an in-depth examination of its conformity with the Constitution and will issue an inhibitory ruling.

**3.2.2.2.2 Second plea: exclusion of the extraordinary appeal in cassation**. **Substantial res judicata.**

Paragraph 3 of Article 27 of Law 1592 of 2012 states that *"no appeal in cassation may be lodged against the decision of second instance"*, a text that exactly reproduces paragraph 3 of Article 26 of Law 975 of 2005, according to which *"no appeal in cassation may be lodged against the decision of second instance"*.

Paragraph 3 of Article 26 of Law 975 of 2005 was challenged in case D - 6032 on the charge of constituting a restriction of the right to an effective judicial remedy, given that in ordinary proceedings there is the possibility of filing an appeal in cassation [[12]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn12%22%20%5Co%20%22) . This charge was decided in Ruling C-370 of 2006 [[13] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn13%22%20%5Co%20%22) which declared this paragraph constitutional, taking into account that the exclusion of the appeal in cassation as a means of challenging the ruling handed down in the second instance by the Supreme Court of Justice does not entail an infringement of the rights and procedural guarantees of those involved in the process:

*“6.2.3.2.3.5. The exclusion of the appeal in cassation as a means of challenging the judgment handed down at second instance by the Supreme Court of Justice, Criminal Chamber, does not entail the infringement of the procedural rights and guarantees of those involved in the proceedings, nor the impossibility of enforcing substantive law, as the plaintiffs claim. Certainly, the cassation remedy is not the only one suitable for guaranteeing the effectiveness of such rights. The legislator's freedom to configure the procedures that are assigned to the legislator entails a requirement to adapt them to the specificities of the processes, their nature and objectives. It is clear that Law 975/05 regulates a procedure that has its own particularities, one of which, perhaps the most relevant, is that it is based on the full and reliable confession of the defendant, which also generates specific procedural needs. It is therefore unfortunate to maintain the unconstitutionality of the provision that excludes cassation in this procedure, on the assertion of an alleged discriminatory treatment for those involved in the special procedure, taking as a parameter of comparison the ordinary procedure, which responds to a different nature and purpose.*

*6.2.3.3.2.3.3.6 The Court does not find that the legislator, in exercising its power to configure the procedures, has exceeded the limits set by the Constitution in terms of respect for fundamental rights, and particularly due process, in the design of the means of challenge. On the contrary, it observes a concern to protect all decisions made in the course of the process with some mechanism of control.*

*6.2.3.3.2.3.3.7. For the above reasons, the charge does not succeed and, consequently, paragraph 3 of Article 26 of Law 975 of 2005 will be declared constitutional"*[[14]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn14%22%20%5Co%20%22) .

In the present case, the plaintiffs are challenging paragraph 3 of Article 27 of Law 1592 of 2012, as they consider that the inappropriateness of the cassation appeal against the second instance decision violates the right of victims to access the administration of justice of the highest court of the jurisdiction, creating a discriminatory rule compared to the ordinary system, which is why the charge raised coincides with that decided in Judgment C-370 of 2006.

For the foregoing reasons, it is clear that the phenomenon of res judicata has been established in relation to paragraph 3 of article 27 of Law 1592 of 2012, without there being any additional reason that justifies a new analysis of this paragraph. Consequently, the Court will declare that it will abide by the decision in Judgment C-370 of 2006.

**3.2.2.3 Third count: joint or collective versiones libres (paragraph of Article 14 of Law 1592 of 2012)**

The plaintiffs point out that the expressions *"collective or joint"* and "*collectively" in* the paragraph of Article 14 of Law 1592 of 2012 allow for collective or joint versiones libres and that the indictment, formulation and acceptance of charges can be done collectively. This, according to them, is unconstitutional, as it could affect individual criminal responsibility, the right to truth and justice, as it leads to the improper investigation of the facts that gave rise to violations of human rights and international humanitarian law, preventing the use of investigative techniques that tend to establish possible contradictions between the versions and to clarify the individual responsibility of the persons who participated in the actions of the group.

The charge brought against the challenged expressions of the paragraph of Article 14 of Law 1592 of 2012 meets the requirements of clarity, certainty, specificity, relevance and sufficiency, in view of the following:

The charge formulated is true, insofar as the paragraph of Article 14 of Law 1592 of 2012 effectively establishes that "*The Attorney General's Office may regulate and adopt methodologies aimed at receiving collective or joint versiones libres, so that demobilised persons who have belonged to the same group can provide a clear and complete context that contributes to the reconstruction of the truth and the dismantling of the apparatus of power of the organised illegal armed group and its support networks. The holding of these hearings will allow the indictment, formulation and acceptance of charges to take place collectively when the legal requirements are fully met*". Indeed, it is notorious that the law grants the judicial operator the possibility of using a collective reception for the versiones libres and the acceptance of charges, which is not out of context with the plaintiffs' arguments.

In relation to clarity and relevance, it is specified that the charge meets these requirements, as the plaintiffs argue that joint or collective versiones libres could affect individual criminal responsibility, given that the Colombian State is founded on this principle. Furthermore, they argue that the rights to truth and justice would be affected because the acceptance of collective charges would lead to the improper investigation of the criminal acts, by preventing the use of investigative techniques to clarify contradictions between the versions that are given.

In this regard, the Court also finds that the requirements of sufficiency and specificity are met, given that the plaintiffs develop an argument that directly undermines the provisions under attack by explaining consequences that are directly related to the charge under consideration.

**3.2.2.4 Fourth count: the concentrated hearing and early termination of proceedings (Article 18, paragraph 4 and subparagraph and Article 22 of Law 1592 of 2012, *"concentrated"*).**

The plaintiffs point out that paragraph 4 and the paragraph of Article 18 and the expression *"concentrated"* in Article 22 of Law 1592 of 2012 provide that a concentrated hearing for the formulation and acceptance of charges may be scheduled, which they consider unconstitutional, as it would violate the victims' right to participate in the Justice and Peace process and to an adequate and serious investigation of the punishable conduct on the part of the State, This is unconstitutional, as a concentrated hearing does not provide the guarantees for victims to have the opportunity to analyse the respective charges, especially in those situations in which the accused partially accepts them, thus leaving the victims of those charges that the accused does not accept without the possibility of continuing the Justice and Peace process, forcing them to continue the process against the accused through the ordinary justice system.

The charge formulated meets the requirements of clarity, certainty, specificity, relevance and sufficiency, in consideration of the following:

In the first place, the requirement of certainty in the charge is met, in that indeed the fourth paragraph of article 18 and the expression *"concentrated"* in article 22 of Law 1592 of 2012 allow for the scheduling of a concentrated hearing for the formulation and acceptance of charges [[15]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn15%22%20%5Co%20%22) .

Secondly, the charge is clear and pertinent, as the plaintiffs put forward three (3) arguments to directly undermine the accused provisions: (i) the concentrated hearing does not provide guarantees so that on those occasions when a postulate partially accepts the charges, the victims can continue to claim their rights in the same justice and peace process, so that an additional burden is imposed on them by forcing them to continue through ordinary jurisdiction; (ii) the victims do not have a prudent time to analyse the charges, especially those that were accepted: (iii) according to Judgment C-370 of 2006, the Constitutional Court stated that disproportionately reduced procedural terms impede the protection of the rights to justice, truth and reparation.

The sufficiency and specificity of the charge are established to the extent that the plaintiffs mention in detail and with precision the direct impact on the rights to truth, justice and reparation of the victims as a result of the measures adopted by the accused provisions, which contemplate the possibility of holding a concentrated hearing and the early termination of the proceedings.

In addition, the plaintiffs point out that the paragraph of Article 18 establishes that early termination of the Justice and Peace process may be requested if the defendant accepts responsibility for the alleged conduct that forms part of a pattern of macro-criminality that has been clarified, which they consider unconstitutional, as the charges would be made on the basis of information related to a pattern of macro-criminality and not on the basis of a voluntary, free, truthful and complete confession of the facts, thus violating the victims' right to the truth.

The charge brought against the paragraph of Article 18 of Law 1592 of 2012 complies with the requirements of clarity, certainty, specificity, relevance and sufficiency, based on the following analysis:

The accused paragraph establishes the possibility of early termination of the process when the accused recognises and accepts responsibility for the commission of the crimes. In this respect, the provision establishes that *"When the facts for which the defendant is charged form part of a pattern of macro-criminality that has already been clarified by a justice and peace judgment in accordance with the prioritisation criteria, and provided that the effects caused to the victims by such a pattern of macro-criminality have already been identified in the respective judgment, the defendant may accept responsibility for the acts charged and request the early termination of the proceedings (...)".* Based on this quote, it is evident that there is no inconsistency between the charge and the provision under attack, so that the certainty of the charge has been demonstrated.

Secondly, the applicants put forward two (2) reasons why they consider that this special procedure would affect the victims' rights to truth, justice and reparation: (i) the early termination of the process by acceptance of the postulate's responsibility is not sufficient to know the exact circumstances of time, manner and place in which the criminal acts were carried out, since charges would be made based on information that relates to the pattern of criminality and not on the complete confession of the facts; (ii) the rule forgets that postulates have as a condition for receiving benefits, that their actions are aimed at guaranteeing the rights of the victims through complete and truthful information. By virtue of this exposition, there is no doubt that the requirements of clarity and relevance have been met, as the arguments present the idea they intend to put forward with lucidity and coherence.

Finally, the charge is sufficient and specific, as the citizens present several arguments aimed at describing the ineffectiveness of the accused norms in a precise manner in relation to the victims' rights to truth, justice and reparation. Based on the above, it is clear that the brief does not contain general terms that would lead the judicial operator to infer any other type of meaning.

**3.2.2.2.5. Fifth charge: the substitution of the security measure and conditional suspension of the execution of the sentence, new concessions and privileges for the applicants to the detriment of victims' rights (Articles 19 and 20 of Law 1592 of 2012).**

The plaintiffs point out that articles 19 and 20 of Law 1592 of 2012 enshrine two new concessions and privileges for the applicants, which are the substitution of the security measure and the conditional suspension of the execution of the sentence, which they consider violates the rights to truth, justice, reparation and guarantees of non-repetition of the victims, since the State grants benefits without complying with the duty to conduct a thorough investigation of human rights violations, war crimes or crimes against humanity committed by the applicants to the process.

The charge brought against Articles 19 and 20 of Law 1592 of 2012, fits within the requirements of clarity, certainty, specificity, relevance and sufficiency, for these reasons:

With regard to the certainty of the charge, it should be noted that this is demonstrated because it is true that Articles 19 and 20 of Law 1592 of 2012 establish a series of benefits for applicants to the Justice and Peace process, among which are two new concessions that are the substitution of the security measure and conditional suspension of the execution of the sentence.

As regards the clarity and relevance of the wording, these are also demonstrated, as the applicants put forward the following arguments: (i) the possibility of substituting a custodial sentence for a non-custodial sentence as long as the defendant has spent eight (8) years in a penitentiary establishment, demonstrates that during all this time it has not been possible for the defendant to give a free version nor has it been possible to convict all the accused, which renders the process ineffective; (ii) the requirement that the accused must have participated and contributed to the clarification of the truth is too lax in the sense that the version of the accused must be complete and truthful, accompanied by a serious and exhaustive investigation of the facts that guarantees the rights of the victims; (iii) the requirement to have handed over assets for reparations, if applicable according to the law, means that it is not necessary for the accused to hand over their assets or for these to be used for reparations, which violates the right of the victims to full reparations; (iv) when verifying the requirements for substitution, the Magistrate will take into account the information provided by the defendant or the competent authorities, without giving the victims or their representatives the opportunity to contradict or affirm what the defendant says, which violates the victims' right to participate in each stage of the proceedings; (v) there is a disregard for ordinary justice by allowing defendants deprived of their liberty at the time of their demobilisation to access the benefit without having served their sentence; and; (vi) the conditional suspension of the sentence imposed by the ordinary justice system openly ignores the proceedings of the ordinary process and the factual and legal grounds that led to the conviction, which violates the rights of the victims to justice insofar as the previously convicted postulate receives a benefit.

In relation to sufficiency and specificity, there is no doubt that these requirements have been met, since the plaintiffs present five (5) arguments that accurately describe some possible shortcomings of the accused provisions, leaving no room for ambiguity for the judicial operator.

**3.2.2.2.6. Sixth charge: the extradition of Justice and Peace applicants (challenged expressions of Article 31 of Law 1592 of 2012).**

The plaintiffs point out that the expressions "*Of the extradited applicants", "by effect of extradition granted", "the extradited applicants"* and *"by the extradited applicants"* contemplated in Article 31 of Law 1592 of 2012, allow for the extradition of justice and peace applicants, This has become an instrument that generates impunity and violates the rights of victims to justice and truth, as it has prevented extradited paramilitary leaders from continuing to reveal those most responsible for paramilitarism in Colombia and allows assets that should be used for reparations to be placed at the disposal of the US government in order to access benefits and reduced sentences.

The charge brought against Article 31 of Law 1592 of 2012 meets the requirements of clarity, certainty, specificity, relevance and sufficiency in consideration of the following:

The certainty of the charge has been demonstrated, given that Article 31 expressly permits the extradition of foreign applicants.

It is clear and relevant, as the plaintiffs argue that the challenged norm may affect victims' rights to truth and justice.

It is sufficient, as the plaintiffs make an extensive and well-founded argumentation of the reasons why they consider the challenged rules to be unconstitutional.

**3.2.3. ANALYSIS OF THE ADMISSIBILITY OF THE CHARGES OF UNCONSTITUTIONALITY RAISED REGARDING VICTIMS' RIGHTS**

**3.2.3.1 First charge: establishment of special criteria for the protection of victims (challenged expressions of Articles 3 and 10 of Law 1592 of 2012).**

The plaintiffs point out that the expressions *"when the risk is generated on the occasion of their participation in the special judicial process referred to in this law*" in Article 3 and *"in the events in which it is applicable"* in Article 10 of Law 1592 of 2012, imply restrictions that only protect a specific group of people and not all victims of the armed conflict. This situation would violate the duty of the Attorney General's Office to ensure the protection of victims as provided for in Article 250(7) of the Constitution.

The Court considers that the charge formulated lacks *certainty*, since the expressions in question do not indicate that all the victims of the armed conflict will no longer be protected, but that, on the contrary, some of them will be protected because they are in a special situation.

On the one hand, Article 3 states that as part of the consequences of the principle of a differential approach that permeates the special justice and peace process, the state will offer special guarantees and protection measures to groups at greater risk of having their rights violated. The relevant normative segment reads:

"The State shall offer special guarantees and protection measures to the groups exposed to greater risk of the violations referred to in Article 5 of this law, such as women, young people, children, older adults, people with disabilities, peasants, social leaders, members of trade union organisations, human rights defenders, victims of forced displacement and members of indigenous, Roma, black, Afro-Colombian, Raizal and Palenquero peoples or communities, when they are at risk of the violations referred to in Article 5 of this law, members of trade union organisations, human rights defenders, victims of forced displacement and members of indigenous, ROM, black, Afro-Colombian, Raizal and Palenquero peoples or communities, when the risk is generated by their participation in the special judicial process referred to in the present law".

It should be noted that at no time does this provision foresee that victims who do not fall into the aforementioned categories will not be protected by the state; on the contrary, those who do, due to their particular characteristics, and by virtue of the principle of a differential approach, will have special protection when, by virtue of their participation in the justice and peace process, the risk of their rights being violated increases.

Article 10 of Law 1592 of 2012 states that ***"****In appropriate events, the Office of the Attorney General of the Nation shall ensure the protection of victims, witnesses and experts that it intends to present at trial*", an expression that does not eliminate the protection of victims in other situations, but refers to the legal duty of the Prosecutor General's Office to provide specific protection to victims, witnesses and experts that it intends to present before the Justice and Peace judge.

In conclusion, from the verifiable content of the text of the provisions in question, the hermeneutic scope and the effects alleged by the plaintiffs cannot be deduced. Consequently, as no real charge of unconstitutionality has been structured against the expressions: *"when the risk is generated on the occasion of their participation in the special judicial process referred to in this law*" of article 3 and *"in the events in which it is applicable"* of article 10 of Law 1592 of 2012, the Court will refrain from carrying out a substantive examination on the conformity of the same with the Constitution, and consequently, will declare that it is not authorised to do so.

**3.2.3.2 Second charge: referral of the version given by the defendant to the National Unit of Prosecutors' Offices for Justice and Peace (Article 14 of Law 1592 of 2012).**

The plaintiffs request that the expression *"the version given by the demobilised person and the other actions carried out in the demobilisation process shall be immediately made available to the National Unit of Prosecutor's Offices for Justice and Peace so that the delegated prosecutor and the Judicial Police assigned to the case, in accordance with the prioritisation criteria established by the Attorney General of the Nation, can prepare and develop the methodological programme to initiate the investigation,* Article 14 of Law 1592 of 2012 should be declared conditionally constitutional, on the understanding that this information is also sent to other Prosecution Units such as the Human Rights Unit, and that it is part of the proceedings being carried out against the postulants, the bloc, the "*parapoliticians*"*,* or proceedings being brought against companies that supported or financed them in their actions.

In this regard, the Court finds that Article 14 of Law 1592 of 2012 states that the version given by the demobilised person and the other actions taken in the demobilisation process will be immediately made available to the National Unit of Prosecutors for Justice and Peace, with the clear objective that the delegated prosecutor and the Judicial Police will begin the investigation through the development of the methodological programme, seeking to establish patterns and contexts of criminality and victimisation, in light of the previously established prioritisation criteria.

From the analysis of this provision, it is observed that it does not enshrine any expression that limits or excludes the participation of other Units of the Attorney General's Office, or their access to information within the Justice and Peace process. While it is true that the legislator established the duty of the judicial operator to submit to the National Unit of Prosecutor's Offices for Justice and Peace the free version and the information collected in the demobilisation process, it is also true that the norm does not contemplate excluding expressions such as: only, solely, privatively, among others, which could be understood as closing the possibility for other Units of the Attorney General's Office to use this information or to do so in different processes.

In fact, independently of the promulgation of the accused norm, the information from the Justice and Peace processes has been essential for the initiation of multiple processes against other people, as in the case of *"parapolitics"*.

Some of the voluntary testimonies given by those who have applied for the Justice and Peace process have led to the opening of investigations and subsequent convictions of members of Congress linked to paramilitarism. This has been evident in some of the convictions handed down by the Supreme Court of Justice, such as those handed down against former congressmen Miguel Pinedo Vidal [[16]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn16%22%20%5Co%20%22) and Enrique Rafael Caballero [[17] , based on the](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn17%22%20%5Co%20%22) versiones libres given by former paramilitary commander Hernán Giraldo. Similarly, the versiones libres given before Justice and Peace prosecutors by Ebert Veloza - alias "H.H." - were the starting point for the subsequent conviction of former congressman Juan Carlos Martínez Sinisterra [[18]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn18%22%20%5Co%20%22) for his links with the Calima Bloc.

At the same time, several rulings handed down by the Justice and Peace Courts have been made with the aim of investigating the punishable conduct of members of Congress. Although they are not detailed, some of these rulings exhort the Prosecutor General's Office to compel the relevant copies in order to investigate other participants in crimes, especially political leaders who collaborated with the self-defence groups [[19]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn19%22%20%5Co%20%22).

It does not follow from a plausible interpretation of the provision in question that the versions given by the postulados and other information gathered in the Justice and Peace processes may not be used in other processes or by other units of the Prosecutor's Office, as is indeed proving to be the case.

In conclusion, as there is no real charge of unconstitutionality against the normative segment "*the version given by the demobilised person and the other actions carried out in the demobilisation process will be immediately made available to the National Unit of Prosecutors' Offices for Justice and Peace so that the delegated prosecutor and the Judicial Police assigned to the case, in accordance with the prioritisation criteria established by the Attorney General of the Nation, can elaborate and develop the methodological programme to initiate the investigation, verify the veracity of the information provided and clarify the patterns and contexts of criminality and victimisation", of Article 14 of Law 1592, to elaborate and develop the methodological programme to initiate the investigation, verify the veracity of the information provided and clarify the patterns and contexts of criminality and victimisation",* of Article 14 of Law 1592 of 2012, given that the arguments raised in the complaint lack certainty, the Court will refrain from carrying out a substantive examination of its conformity with the Constitution, and will therefore issue an inhibitory ruling.

**3.2.3.3.3 Third charge: limitations to the functions of the Ombudsman's Office and change of the incident of comprehensive reparation for that of identification of damages (Articles 23, 24, 40 and 41 of Law 1592 of 2012). Constitutional res judicata**

The plaintiffs specifically point out that paragraph 1 of Article 23 arbitrarily limits the functions of the Ombudsman's Office by providing that it should only explain to the victims participating in the process the access routes to the comprehensive reparation programmes referred to in Law 1448 of 2011, which they consider unconstitutional, since they have many more remedies such as group actions, direct reparation, the tutela action, the specific rights of the victims of forced displacement and the international mechanisms established in the Inter-American Human Rights System or the United Nations System. Therefore, they consider that establishing that the Ombudsman's Office only has the mechanisms contemplated in Law 1448 of 2011 does not recognise the constitutional functions of the Ombudsman's Office.

They add that the challenged expressions of articles 23, 24, 40 and 41 of Law 1592 of 2012, repeal the provisions that contained the provisions related to the incident of comprehensive reparation, with which the victims are left without the possibility of exercising this right through the process of the Justice and Peace Law, in a way that contradicts the purpose of Law 975, one of which is to guarantee the right of the victims to reparation.

The Court notes that the phenomenon of constitutional res judicata has operated, and therefore, it is appropriate to abide by the decision in Judgment C- 286 of 2014, by which it declared the unenforceability of the entirety of Article 23 of Law 1592 of 2012.

The Constitutional Court notes that in judgments C-180 and C-286 of 2014, it analysed the change from the judicial reparation system contemplated in the initial text of Law 975 of 2005 to the administrative reparation system established in Law 1592 of 2012, which implied, in turn, replacing the incident of comprehensive reparation with that of *identification of damages*:

**(i)** Ruling C-180 of 2014 considered that the reparation of the victims recognised in the justice and peace process should be judicial and not administrative and therefore decided to declare the expressions *"which in no case will be assessed"* and *"and will send the file to the Special Administrative Unit for the Attention and Integral Reparation of Victims and/or to the Special Administrative Unit for the Management of the Restitution of Land Restituted for the inclusion of the victims in the corresponding registers for preferential access to the programmes for the reparation of victims. to Victims and/or the Special Administrative Unit for the Management of Restitution of Land for the inclusion of the victims in the corresponding registers for preferential access to the programmes of comprehensive reparation and land restitution referred to in Law 1448 of 2011 to which they are entitled"* in Article 23, as well as paragraph 2 of Article 24 of Law 1592 of 2012.

**(ii)** For its part, Ruling C - 286 of 2014, in accordance with Ruling C - 180 of 2014, indicated that the system of judicial reparation for victims contemplated in Law 975 of 2005 should be restored and therefore declared the unenforceability of Articles 23, 24, 40 and 41 of Law 1592 of 2012.

Thus, by means of two (2) rulings of constitutionality, the incident of identification of damages provided for in Law 1592 of 2012 was eliminated and the model of judicial reparation initially regulated in Law 975 of 2005 was revived, and therefore, with regard to this charge, the phenomenon of constitutional res judicata is established and the Court will declare that it will abide by the rulings in Rulings C-180 and C-286 of 2014.

In conclusion, the Court will declare that it will abide by the ruling in Judgment C-286 of 2014, which declared Articles 23, 24, 40 and 41 of Law 1592 of 2012 to be unenforceable.

**3.2.3.4 Fourth count: convictions subsequent to the alternative penalty and assets found subsequently (contested provisions of Article 26 of Law 1592 2012)**

The citizens point out that, by virtue of the expression "*and until the end of the ordinary sentence established therein"* in Article 26 of Law 1592 of 2012, it is provided that if after the sentence issued in the Justice and Peace process and until the end of the ordinary sentence, the competent authority finds that the beneficiary of the alternative sentence has not handed over, offered or denounced all the assets acquired by him or by the illegal armed group, he will lose the benefit of the alternative sentence. They consider that this is unconstitutional as it is contrary to the rights to truth and comprehensive reparation of the victims, as it would prevent the beneficiary from being monitored during the probationary period (equal to half of the alternative sentence) to check whether he or she has reoffended and whether there has been any fraud against the assets.

The Court considers that the charge is not true, as Article 26 of Law 1592 of 2012 did not eliminate the probationary period or the possibility of determining whether the applicant has reoffended and whether he or she has committed any fraud in relation to his or her assets or those of the illegal armed group to which he or she belongs.

In this sense, Judgment C-614 of 2013 recognised that article 26 of Law 1592 did not eliminate the trial period and, on the contrary, stated that during this period it should be verified that the applicant had not acted fraudulently in relation to the assets offered for reparation:

*“2.2.8. Now, with regard to the revocation of the benefit of the alternative penalty, the plaintiff correctly assumes that this event can occur up to the end of the ordinary sentence imposed, but on this basis he subjectively and unjustifiably assumes that this refers to the entire main sentence. Hence, it asserts that the risk of revocation can be so considerable that it can represent the rest of the person's life.* *The above understanding of the rule overlooks several relevant and transcendent details. The first of these is the existence of Article 29 of Law 975 of 2005, which regulates the alternative penalty, and which has not been modified or expressly repealed by Law 1592 of 2012, so that it is, at least in principle, in force, and should be considered in the concept of violation.*

*2.2.9. The fourth paragraph of Article 29 of Law 975 of 2005 provides that once the alternative sentence and the conditions imposed in the sentence have been fulfilled, the convicted person will be granted "probation" for a period equal to half of the alternative sentence, during which time he or she undertakes not to reoffend, to appear before the relevant court and to report any change of residence. The fifth paragraph of the same article, which is relevant to this matter, states that once the probation period has elapsed, if the above obligations have been fulfilled "the main sentence shall be declared extinguished", and if they have not been fulfilled "the sentence initially determined shall be served, without prejudice to the corresponding subrogations provided for in the Criminal Code".*

In conclusion, as no real charge of unconstitutionality has been structured against the expression "*and until the term of the ordinary sentence established therein*" of Article 26 of Law 1592 of 2012, the Court will refrain from carrying out a substantive examination of its conformity with the Constitution and, consequently, will issue an inhibitory ruling.

**3.2.3.5 Fifth count: acts of contribution to comprehensive reparation (Article 29 of Law 1592 of 2012)**

Among the norms that the plaintiffs question for the transformation of the *incident of comprehensive reparation* into an *incident of identification of damages*, they also include Article 29 of Law 1592 of 2012, in relation to which they point out that there is a deficit of protection of the right to comprehensive reparation in relation to Article 45 of Law 975 of 2005 before it was repealed by Article 41 of Law 1592 of 2012, which provided that reparation includes the duties of restitution, compensation, rehabilitation and satisfaction, components that are not mentioned in Article 29 of Law 1592 of 2012. However, Ruling C-286 of 2014, by declaring article 41 of Law 1592 of 2012, which repealed article 45 of Law 975 of 2005, among others, unconstitutional, revived this norm, so that the charge raised by the plaintiffs has lost its basis and currently lacks *certainty*, so that the Court will refrain from conducting a substantive examination on the conformity of article 29 of Law 1592 of 2012 with the Constitution. Consequently, the Court will not rule on the merits.

**3.2.3.6 Sixth charge: referral of the regulation of victims' rights in justice and peace processes to the rules of Law 1448 of 2011 (challenged expressions of Articles 4, 8, 11, 16, 23, 24, 24, 27, 32, 33, 38, 39, 40 and 41 of Law 1592 of 2012).**

The plaintiffs consider that the challenged expressions of Articles 4, 8, 11, 16, 23, 23, 24, 27, 27, 32, 33, 38, 39, 40 and 41 of Law 1592 of 2012 are contrary to the constitutional obligation of the Colombian State to guarantee the rights of the victims of the armed conflict to truth, justice, comprehensive reparation, and guarantees of non-repetition, by referring the victims of the processes of Law 975 of 2005 to the procedures contemplated in Law 1448 of 2011, which is limited in the guarantee of rights, in a way that contradicts the Preamble and Articles 1, 2, 13, 93 and 229 of the Political Constitution, Articles 8 and 25 of the American Convention on Human Rights, 2 and 26 of the International Covenant on Civil and Political Rights.

The plaintiffs focus the charge of unconstitutionality on the reference that the articles in question make to Law 1448 of 2011 for the following reasons: (i) the transformation of judicial responsibility into administrative responsibility; (ii) the restriction of the right to the administration of justice by preventing victims' access to ordinary, special or contentious-administrative justice; (iii) the reference in Article 4 to the concept of victim in Law 1448 of 2011 and thus to its temporal and material restrictions and; (iv) the imposition of an additional burden that affects the rights of victims in land restitution matters.

Ruling C - 180 of 2014 declared unconstitutional the expressions *"which in no case will be taxed"* in the fourth paragraph of article 23 of Law 1592 and the paragraph "*and will send the file to the Special Administrative Unit for the Attention and Integral Reparation of Victims and/or to the Special Administrative Unit for the Management of Restitution of Land for the inclusion of the victims in the corresponding registers for preferential access to the programmes of integral reparation and land restitution referred to in Law 1448 of 2011 to which they are entitled"* in the fifth paragraph of article 23, as well as the second paragraph of article 24 of Law 1592 of 2012.

For its part, Ruling C-286 of 2014 declared articles 23, 24, 25, 33, 40 and 41 of Law 1592 of 2012 and the expression *"and against the ruling of the incident of identification of the effects caused"* contained in paragraph 3 of article 27 of the same law to be unconstitutional.

The Court considers that, by virtue of the decisions recently adopted, the phenomenon of partial res judicata has been established on this charge, in the following aspects:

**(i) In** a material sense, in relation to the decision regarding Articles 23, 24, 25, 33, 40 and 41 of Law 1592 of 2012 and the expression *"and against the ruling of the incident of identification of the effects caused"* contained in paragraph 3 of Article 27 of the same law, as these were declared unenforceable.

**(ii)** In relation to the first two (2) questions raised by the plaintiff: (i) Regarding the transformation of judicial liability into administrative liability and (ii) Regarding the restriction of the right to the administration of justice by preventing victims' access to ordinary, special or contentious-administrative justice, since the Court decided in Judgments C-180 and C-286 of 2014 that compensation for victims recognised in justice and peace processes should be judicial.

Despite the configuration of res judicata in relation to Articles 23, 24, 33, 40 and 41 of Law 1592 of 2012 and the expression *"and against the ruling of the incident of identification of the effects caused",* of paragraph 3 of Article 27 of the same law, the Chamber finds that the same phenomenon is not present in relation to the charge of unconstitutionality directed against Articles 4, 8, 11, 16, 27 (except for what has been declared unenforceable), 30, 32, 38 and 39 of Law 1592 of 2012, as regards the two aspects not addressed in Judgments C - 180 and C - 286 of 2014, namely:

**(i)** The reference in Article 4 of Law 1592 of 2012 to the concept of victim in Law 1448 of 2011, and thus to its temporal and material limitations.

**(ii)** The referral of Law 1592 of 2012 to the land restitution process contemplated in Law 1448 of 2011.

The admissibility of these two aspects of the charge of unconstitutionality raised in the complaint will be analysed below.

**A. The reference of Article 4 of Law 1592 of 2012 to the rights of victims, as established in Law 1448 of 2011 (Victims Law).**

Article 4 of Law 1592 of 2012 states that *"Victims have the right to truth, justice and comprehensive reparation. The definition of these rights is developed in Law 1448 of 2011"* establishing that the rights of victims are those found in that law. By virtue of this rule, the plaintiffs state that the express reference made to Law 1448 of 2011 violates the rights to truth, justice and reparation, because it is a law limited in time, as well as by the crimes it covers to guarantee their rights. According to the plaintiffs, this means that not all victims who are part of the Justice and Peace processes can access the protection of their rights, either because of the time limit of Law 1448 of 2011 or because it does not cover all the criminal conduct of the armed groups:

**(i)** In relation to time, the plaintiffs point out that Law 1448 of 2011 only applies to events that occurred since 1 January 1985, a time limit that would also apply to victims in the justice and peace processes by virtue of the reference made by the expression challenged in Article 4 of Law 1592 of 2012.

**(ii)** With regard to the type of crime, the actors claim that the application of Law 1448 of 2011 only includes victimising events, and therefore, if the victims did not suffer one of the crimes defined by Decree 4800 of 2011, such as homicide, kidnapping, forced disappearance, torture, sexual violence, serious attacks on physical and mental integrity, forced displacement and land dispossession, they would be unprotected in their rights.

The Court considers that the charge of unconstitutionality does not meet the requirements of certainty, sufficiency, specificity, clarity and relevance, for the following reasons.

According to judgment C-456 of 2012, certainty is understood as the following:

*"This means that the claim must be based on a real and existing legal proposition "and not simply on one deduced by the plaintiff, or implicit" and even on other rules in force which, in any case, are not the specific object of the claim. Thus, the exercise of the public action of unconstitutionality presupposes the confrontation of the constitutional text with a legal norm that has a verifiable content based on the interpretation of its own text; "this technique of control differs, then, from that which is aimed at establishing non-existent propositions, which have not been supplied by the legislator, in order to try to deduce their unconstitutionality when they do not emerge from the normative text".*

In the specific case, there is no **certainty** because Article 4 of Law 1592 of 2012, has the structure of a referral clause, and therefore lacks an autonomous normative content.

The principle of coherence of the legal system aims at understanding law as a system, and the latter as a set of interrelated parts, governed by common principles. In the words of Del Vecchio, "*Particular legal propositions, although they can by themselves be considered in their abstraction, naturally tend to constitute a system. The need for logical coherence leads to the drawing together of those which are compatible or respectively* ***complementary****, and to the rejection of those which are contradictory or incompatible*" [[20]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn20%22%20%5Co%20%22) .

One of the techniques used by continental European law, especially French law, to ensure the coherence of the legal system consists of creating *clauses de renvoi* (*clauses of renvoi*), which make it possible to articulate the contents of various legal texts. The aim is to avoid legal loopholes and ensure legal certainty.

In other words, the charge of unconstitutionality lacks certainty, insofar as, in the case of a renvoi clause, i.e. a provision that merely establishes a connection between two laws, it is impossible that *per se it* violates any constitutional provision.

The requirement of **sufficiency** is also not met, since the arguments put forward by the plaintiffs do not succeed in generating a doubt as to its constitutionality, in relation to the existence of an alleged undue limitation on the rights of the victims by the legislature. The foregoing, it is insisted, because it is a normative provision that lacks an autonomous normative content.

Likewise, the citizens' arguments are not **clear, insofar** as they end up alluding, in terms of offences, to an infra-legal regulation (Decree 4800 of 2011), without explaining the existence of a direct connection between this and article 4 of Law 1592 of 2012.

Similarly, the requirement of **relevance** is not met, since the concept of violation is based on subjective interpretations of the citizens.

In this order of ideas, the Court considers that the plaintiffs failed to raise a charge of unconstitutionality against Article 4 of Law 1592 of 2012, and therefore, the Court will declare that it is unable to issue a ruling on the merits, due to an ineffective claim.

The Court specifies that, the declaration of inhibition with respect to article 4 of Law 1448 of 2011, in no way prevents victims from resorting to the jurisdiction of the contentious administrative courts to claim payment of comprehensive reparation.

**B. The referral of Law 1592 of 2012 to the land restitution process contemplated in Law 1448 of 2011.**

The plaintiffs challenge Articles 8, 11, 16, 27, 30, 32, 38 and 39 of Law 1592 of 2012 in relation to an aspect that was not analysed in Judgments C-180 and C-286 of 2014: the imposition of an additional burden on victims recognised in the justice and peace processes with respect to land restitution, since in order to obtain it they will have to initiate a special judicial process contemplated in Law 1448 of 2011. This charge is considered admissible as it meets the requirements of clarity, certainty, specificity, relevance and sufficiency, as set out below:

**(i)** It is true, as Law 1592 of 2012 refers victims of the processes of Law 975 of 2005 to the procedures contemplated in Law 1448 of 2011 in relation to land restitution.

**(ii)** It is clear and pertinent, as the plaintiffs are raising the imposition of an additional burden that affects the rights of victims in land restitution matters, in that they have to initiate a judicial process other than the Justice and Peace process to do so, a charge that is clear and of great constitutional relevance. In this regard, it is important for the Court to review at this time the reference made by Law 1592 of 2012 to Law 1448 of 2011 in relation to land restitution, as this issue was not defined in judgments C-180 and C-286 of 2014, being an essential aspect in the recognition of the rights of victims.

**(iii)** It is sufficient and specific, as the applicants set out their reasons in detail by explaining the factual and legal consequences of the contested provisions in relation to the State's constitutional obligations.

**3.2.3.7 Seventh charge: the non-requirement that the assets of the postulados have a reparation vocation and the power that victims would have to file certain appeals and intervene in certain hearings related to them (Article 5, partial; paragraph of Article 7; paragraph of Article 8 and 17, partial of Law 1592 of 2012).**

The plaintiffs consider that the challenged provisions of Articles 5, 7, 8 and 17 of Law 1592 of 2012 do not require that the assets offered by the applicants to the Justice and Peace Law have a reparation vocation, which would affect their duties, as well as the right to reparation of the victims. Similarly, they claim the right that these victims would have to file certain appeals and to intervene in certain hearings, related to the possibility of requesting the termination of the Justice and Peace process, which, according to the provisions being challenged, is only in the hands of the prosecutor in the case.

In relation to numeral 3 of article 5 of Law 1592 of 2012, which reads: "*When it is verified that the postulated person has not delivered, offered or denounced goods acquired by him or by the organised armed group outside the law during and on the occasion of his membership of the same, directly or through an intermediary*", they request a declaration of conditional exequality, in the sense that it will be a cause for termination of the process or exclusion from the list of postulated persons the fact that the goods that are delivered, offered or denounced, do not have a reparatory vocation.

With regard to the expressions *"and must be presented by the prosecutor of the case"* and *"as deemed appropriate by the prosecutor of the case and so stated in his request in paragraph 2 of Article 11A*", both of Article 5 of Law 1592 of 2012, the citizens request that they be declared conditionally exequitable, on the understanding that the victims also have the right to request the termination hearing of the Justice and Peace process for one or several applicants, whenever the assets handed over do not offer reparation, a power that should not remain solely in the hands of the prosecutor in the case, thus guaranteeing the fundamental right of victims to participate in the process.

With regard to the expression *"after the delivery of the assets" in* paragraph 3 of Article 5, they ask the Court to declare it conditionally executory, in the sense that even if the postulate dies and has not delivered the assets that will serve to repair the victims, investigations must continue and, if applicable, the forfeiture of ownership of the assets that he has offered for reparation, those that other postulates have reported that the deceased had, or those that are found as a result of investigations after the death of the postulate, must continue, if applicable, the extinguishment of ownership of the assets that the postulate has offered for reparation, those that other postulates have reported that the deceased had, or those that are found as a result of investigations after the postulate's death, in order to guarantee the victims' right to full reparation.

In the same sense, they request the declaration of conditional exequibilidad of the expression *"by the delegated prosecutor of the case and by the special administrative unit for the attention and integral reparation to the victims - Fund for the Reparation of Victims"* of the third paragraph of article 7, in the sense that the victims have the right to decide which assets have or do not have a reparatory vocation for them, as well as to present their arguments and demonstrate before the judge of control of guarantees their considerations in this respect, to exclude or not an asset for the integral reparation to the victims.

In relation to the paragraph of Article 7, they claim that it should be declared unconstitutional for making the requirements that applicants to the Justice and Peace Law must fulfil more flexible, as it does not provide for adequate reparation for the victims by not demanding that the goods they hand over, denounce or offer have a reparatory vocation in order to access the benefits granted by the law.

In this regard, they recall that the Constitutional Court established in judgment C-370 of 2006 that *"financial reparation from the perpetrator's own assets is one of the necessary conditions to guarantee the rights of victims and promote the fight against impunity", a position confirmed by the Supreme Court of Justice in its judgment of 27 April 2011.*

In relation to the paragraph of Article 8, they consider that it should be declared conditionally executory, in order to guarantee the right to full reparation for the victims through the delivery of assets with a reparatory vocation, in the sense that investigations should continue into the licit assets that the applicants acquire after demobilisation, as the links of the armed groups, especially the paramilitaries, with drug trafficking, and the practice of using front men to hide the illicit origin of the assets, are clear.

Similarly, they demand that the expression *"if the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure"*, contained in paragraph 3 of Article 17, be declared conditionally exequal, in the sense that the victims have the right to lodge appeals against the decision to lift the precautionary measure ordered by the Magistrate.

In this regard, the Court considers that some of the charges of unconstitutionality meet the requirements of clarity, certainty, specificity, relevance and sufficiency, as will be explained below:

In relation to numeral 3 of Article 5 of Law 1592 of 2012, it is true that, expressly, the questioned regulatory segment does not provide that the surrender of assets that do not have a reparation vocation on the part of the postulated person constitutes grounds for termination of the justice and peace process. Hence, a doubt arises as to its conformity with the Constitution.

With regard to the expressions *"and must be presented by the prosecutor of the case"* and *"as deemed appropriate by the prosecutor of the case and so stated in his request in paragraph 2 of Article 11A*", both in Article 5 of Law 1592 of 2012, the Court considers that an unconstitutionality charge has also been made, insofar as the victims are not allowed to request the termination hearing of the Justice and Peace process for one or several applicants, when the assets handed over do not offer a reparation vocation, a power that, for the moment, is only in the hands of the prosecutor in the case. Hence, the requirements of certainty, sufficiency, relevance and clarity must be met.

With regard to the expression *"after the surrender of the assets" contained in* paragraph 3 of Article 5, the Court considers that an unconstitutional charge has also been made, insofar as the accused expression conditions, in a certain way, the continuation of the proceedings for the extinction of ownership over assets surrendered or offered by the postulated party.

In the same sense, the Court considers that a charge of unconstitutionality has arisen in relation to the expression *"by the delegated prosecutor in the case and by the special administrative unit for the attention and comprehensive reparation of victims - Fund for the Reparation of Victims"* in the third paragraph of Article 7, insofar as it does not expressly provide that the victims have the right to decide which assets have or do not have a reparatory vocation for them, and to present their arguments and demonstrate before the magistrate with the function of control of guarantees their considerations in this regard, to exclude or not an asset for the comprehensive reparation of the victims.

In relation to the paragraph of article 7, the Court considers that an unconstitutionality charge has also been made, insofar as the accused norm allows, under certain conditions, the delivery of goods that do not have a reparation vocation, and to that extent, the right of the victims to obtain comprehensive reparation could be affected.

With regard to the paragraph of Article 8, the citizens consider that it should be declared conditionally executory, in order to guarantee the right to full reparation of the victims through the delivery of assets with a reparatory vocation, in the sense that investigations should continue into the legal assets that the postulants acquire after demobilisation, as the links of the armed groups, especially the paramilitaries with drug trafficking and the use of front men to hide the illegal origin of the assets, are clear.

The paragraph of Article 8 under attack provides:

"In no case shall the assets of the postulants acquired as a result of the reintegration process, the fruits thereof, or those acquired in a lawful manner after demobilisation, be affected".

Although at first sight it can be seen that the citizens are assuming that the demobilised combatants continue to commit crimes and that, therefore, any property acquired by them in a lawful manner, a hermeneutical element that is not included in the rule accused of being unconstitutional, and which, in this sense, would lead to the conclusion that the charge does not meet the requirement of certainty, the Court considers it necessary to carry out an in-depth study of it in the context of the aims of a process of reintegration of ex-combatants into society.

Similarly, the citizens demand the conditional exequibilidad of the expression *"if the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure"*, contemplated in paragraph 3 of Article 17, in the sense that the victims have the right to lodge appeals against the decision to lift the precautionary measure ordered by the Justice and Peace Magistrate.

In this regard, the Court considers that the citizens have established a real charge of unconstitutionality, insofar as the accused regulatory segment does not provide for the victims to participate during the incident of opposition of third parties and lifting of the precautionary measure. Thus fulfilling the requirements to establish a question of constitutionality.

**3.2.3.8 Eighth count: the limitation of remedies in the Justice and Peace process (Article 27 of Law 1592 of 2012)**

The plaintiffs claim that the expressions *"only and on the merits"* in paragraph 2, *"other"* and *"only"* in paragraph 3, and paragraph 3 of Article 27 of Law 1592 of 2012, violate the right of victims to effective participation in the Justice and Peace process, in that they reduce their possibilities to resort to ordinary remedies such as appeals, throughout the course of the process. They allege that the challenged expressions limit the exercise of the remedy of appeal only to the judgment and the orders that resolve substantive issues, which affects the victims' rights to participation, due process and effective access to justice.

The charge brought against the expressions *"solo"* and *"de fondo"* in paragraph 2 and *"demás"* and *"solo"* in paragraph 3 and paragraph 3 of Article 27 of Law 1592 of 2012, meets the requirements of clarity, certainty, specificity, relevance and sufficiency for the following reasons:

This is true, as Article 27 of Law 1592 of 2012 limits the possibility of appealing decisions in the Justice and Peace process by stating that *"Appeals may be lodged against decisions that resolve substantive issues, adopted during the course of hearings, and against sentences. It is filed in the same hearing in which the decision is issued, and is granted with suspensive effect before the Criminal Chamber of the Supreme Court of Justice.*

In the same sense, the charges are consolidated with respect to the requirements of clarity and relevance, as the plaintiffs consistently and precisely state that the accused provisions: **(i)** reduce the possibilities for victims to resort to ordinary appeals such as the appeal, and limit it only to the judgment and orders that resolve substantive issues; and **(ii)** the non-appeal of the cassation appeal against the second instance decision, violates the rights of victims to be heard by the highest court of ordinary justice.

Likewise, the sufficiency and specificity of the charge must be acknowledged, since the arguments presented are not ambiguous, but rather specifically attack the contested provisions.

**3.2.3.9 Ninth charge: violation of the right to peace, guarantees of non-repetition and victims' rights by the new applications and new temporal application of Law 975 of 2005 (Articles 36 and 37 of Law 1592 of 2012).**

The plaintiffs claim that the expressions "*In the case of collectively demobilised persons in the framework of peace agreements with the national government, this law shall only apply to events that occurred prior to the date of their demobilisation",* and *"prior to their demobilisation and in any case prior to 31 December 2012"* in Article 36 and "*prior to 31 December 2012. Once this period has expired, the national government will have two (2) years to decide on their application"* and paragraph 2 of Article 37 of Law 1592 of 2012 are unconstitutional, as they provide for a change in the temporal application of the law and in particular of the benefits granted to persons who wish to undergo a transitional justice process, which may affect the rights of victims to peace, guarantees of non-repetition, truth, justice, and reparation.

The charge brought against these expressions of Articles 36 and 37 of Law 1592 of 2012 meets the requirements of clarity, certainty, specificity, relevance and sufficiency for the following reasons:

(i) The charge is true as Article 36 of Law 1592 of 2012 modified the validity of Law 975 of 2005.

(ii) The charge is clear and pertinent, as the plaintiffs claim that the laws being challenged may affect the victims' rights to truth, justice, reparation and guarantees of non-repetition.

(iii) The charge is sufficient, as the plaintiffs provide an extensive and well-founded argumentation of the reasons why they consider the challenged rules to be unconstitutional.

**4. TRANSITIONAL JUSTICE IN THE SOCIAL RULE OF LAW**

**4.1. Concept and scope**

Transitional justice is constituted by a set of processes of profound social and political transformation [[21] in](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn21%22%20%5Co%20%22) which a wide range of mechanisms need to be used to address problems arising from a past of large-scale abuses in order to hold perpetrators accountable, serve justice and achieve reconciliation [[22]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn22%22%20%5Co%20%22) . These mechanisms can be judicial or non-judicial, have varying levels of international involvement, and include *"prosecution of individuals, reparations, truth-seeking, institutional reform, vetting, removal from office, or combinations of all of these"* [[23]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn23%22%20%5Co%20%22) .

The UN Security Council understands transitional justice as: *"the full range of processes and mechanisms associated with a society's attempts to resolve problems arising from a past of large-scale abuse, in order to hold perpetrators accountable, serve justice and achieve reconciliation"* [[24]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn24%22%20%5Co%20%22).

*In a* similar vein, the Constitutional Court has adopted a definition of transitional justice as: "*a legal institution through which it is intended to integrate various efforts applied by societies to address the consequences of massive violations and widespread or systematic human rights abuses suffered in a conflict, towards a constructive stage of peace, respect, reconciliation and consolidation of democracy, situations of exception to what would result from the application of ordinary criminal institutions"* [[25]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn25%22%20%5Co%20%22) *.*

It is a system of justice with specific characteristics, to be applied on an exceptional basis [[26]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn26%22%20%5Co%20%22) .

Such a process of social transformation seeks to resolve the strong tensions between justice and peace [[27] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn27%22%20%5Co%20%22) between the legal imperatives of satisfying victims' rights and the needs to achieve a cessation of hostilities [[28]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn28%22%20%5Co%20%22) . This requires striking a delicate balance between ending hostilities and preventing a return to violence (negative peace) and consolidating peace through structural reforms and inclusive policies (positive peace) [[29]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn29%22%20%5Co%20%22) .

Each state must design a transitional justice model that adapts to its needs, focused not only on guaranteeing the non-repetition of the conflict, the effective reparation of victims and the discovery of the truth about what happened, but also on promoting full reconciliation. [30]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn30%22%20%5Co%20%22)

**4.2. Aims of transitional justice**

The Constitutional Court has recognised that transitional justice must fulfil the following special objectives [[31]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn31%22%20%5Co%20%22) :

**The recognition of the victims**, who are not only affected by the crimes, but also by the lack of effectiveness of their rights [[32]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn32%22%20%5Co%20%22) . In this sense, the first right of those who have suffered harm as a consequence of the violation of their human rights is the recognition of their status as victims, which has a fundamental and autonomous character and derives from their right to human dignity [[33]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn33%22%20%5Co%20%22) .

In this framework, crime causes a rupture not only between the perpetrator and the state, but also between the victims themselves and society, as in cases of massive human rights violations they can become excluded from the social system itself through displacement, violence and the absence of real mechanisms to assert their rights.

Thus, in a context of democratic transition, victims must recover their dignity and be reintegrated into society as equal citizens [[34]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn34%22%20%5Co%20%22) . On the basis of this recognition, victims must achieve, throughout the process, the restoration of their rights to truth, justice and reparation [[35]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn35%22%20%5Co%20%22), which not only have a specific value but also dignify them as members of a society that recognises that they deserve special protection.

In this regard, this Corporation has stated: "*On these bases it points out that the horrors of the past must be confronted with concrete mechanisms, whose primary objective is the satisfaction of the "rights of the victims (truth, justice, reparation, dignity) and the guarantee of non-repetition of the atrocities (rule of law, institutional reform, democratic reconciliation, public deliberation)"* ***[[36]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn36%22%20%5Co%20%22)*** *.*

**Restoring public confidence by reaffirming the relevance of the norms that the perpetrators violated**[[37]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn37%22%20%5Co%20%22) . Criminal conduct committed on a large scale not only causes particular harm to the victims, but also to the confidence of society as a whole in the effectiveness of public institutions and their ability to protect their rights and guarantee coexistence [[38]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn38%22%20%5Co%20%22) . Therefore, one of the aims of transitional justice must be to restore this confidence in the state [[39]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn39%22%20%5Co%20%22) .

*In* this regard, the Security Council has noted the need to strengthen the rule of law in a conflict situation [[40]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn40%22%20%5Co%20%22) . It has therefore recommended that peace agreements *"give priority attention to the restoration of and respect for the rule of law, expressly providing for support for the rule of law and transitional justice, in particular where United Nations assistance in pre-trial and judicial processes is required"* ***[[41]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn41%22%20%5Co%20%22)*** *.*

**Reconciliation**[[42]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn42%22%20%5Co%20%22) , which implies overcoming violent social divisions, refers both to the successful achievement of the rule of law, and to the creation or recovery of a level of social trust and solidarity that fosters a democratic political culture that allows people to overcome those experiences of loss, violence, injustice, grief and hatred, and to feel able to live with each other again [[43]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn43%22%20%5Co%20%22) . In this sense, transitional justice processes must look backwards and forwards in order to settle accounts about the past but also allow for reconciliation towards the future [[44]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn44%22%20%5Co%20%22) .

**Strengthening democracy**[[45]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn45%22%20%5Co%20%22) by promoting the participation of all, restoring a democratic political culture and a basic level of social solidarity and trust to convince citizens to participate in their political institutions for reasons other than personal convenience [[46]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn46%22%20%5Co%20%22) . In this sense, the need to strengthen the rule of law in societies that are suffering or have suffered conflicts causing serious violations of Human Rights and International Humanitarian Law has been recognised in various international documents of the United Nations:

a. Resolution 40/34 of 29 November 1985 adopting the *"Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power"*, which sets out the rights to *access to justice and fair treatment****[[47]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn47%22%20%5Co%20%22)*** *, to redress****[[48]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn48%22%20%5Co%20%22)*** *, to compensation* ***[[49]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn49%22%20%5Co%20%22)*** *and to assistance****[[50]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn50%22%20%5Co%20%22)*** *for victims of* acts or omissions that constitute violations of national criminal law or that violate internationally recognised human rights standards.

b. The *"Set of principles for the protection and promotion of human rights and the fight against impunity",* drawn up pursuant to decision 1996/119 of the United Nations Commission on Human Rights, which enshrines 42 principles for the fight against impunity and the guarantee of the rights to know, to justice and to reparation.

c. The United Nations Security Council's *"Comprehensive Strategy: Considerations for Negotiations, Peace Agreements and Mandates"* [[51]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn51%22%20%5Co%20%22).

d. 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. This Resolution outlines the scope of the obligation to respect and ensure that these principles are protected, to apply international human rights law and international humanitarian law [[52]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn52%22%20%5Co%20%22) and enshrines the rights of victims to remedies [[53]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn53%22%20%5Co%20%22) , to access to justice [[54]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn54%22%20%5Co%20%22) , to reparation for harm suffered **[[55]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn55%22%20%5Co%20%22)** , to access relevant information on violations and reparation mechanisms **[[56] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn56%22%20%5Co%20%22)** and to non-discrimination **[[57] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn57%22%20%5Co%20%22)** among others.

e. UN Security Council Resolutions 1674 (2006) and 1894 (2009) note the importance of security sector reform and accountability mechanisms in the protection of civilians in armed conflict. They also established mandates in support of the rule of law in many peacekeeping and special political missions, such as those in Afghanistan, Burundi, Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of Congo, Guinea-Bissau, Haiti, Iraq, Liberia, Sierra Leone, Sudan, South Sudan and Timor-Leste [[58]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn58%22%20%5Co%20%22).

f. The report entitled: *"Comprehensive Strategy. Considerations for negotiations, peace agreements and UN Security Council mandates"*, which recognises the importance of the efforts of the Security Council, UN envoys and representatives to promote rule of law and transitional justice initiatives in peace agreements.

It sets out a comprehensive strategy to promote the rule of law, ensure accountability, build confidence in national justice and security institutions, gender equality through increased access to justice, and address new threats and root causes of conflict. It also sets out a number of considerations for negotiations, peace agreements and mandates, including the need to support the implementation of transitional justice and rule of law provisions in peace agreements and to reject any granting of amnesty for genocide, war crimes, crimes against humanity or gross violations of human rights [[59]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn59%22%20%5Co%20%22) .

**4.3. Transitional justice mechanisms**

Transitional justice involves the articulation of a set of measures, judicial or extrajudicial [[60] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn60%22%20%5Co%20%22) and can include prosecution of individuals, reparations, truth-seeking, institutional reform, vetting, removal from office, or combinations of all of the above [[61] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn61%22%20%5Co%20%22) as the UN Security Council itself has recognised [[62]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn62%22%20%5Co%20%22) .

In this sense, the elements of transitional justice are fundamental to achieving true peace: (i) truth will be a condition for peace if it makes it impossible to deny past injustices; (ii) truth will be a condition for civic peace by *screening* officials and politicians who collaborated with the pre-transitional regime; (iii) transitional justice will be a condition for peace if it satisfies demands for retribution; (iv) distributive justice will be a condition for lasting peace if it determines the causes of conflict [[63]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn63%22%20%5Co%20%22) ; (v) justice can prevent new crimes but one must estimate whether a long-term peace justifies prolonging the conflict [[64]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn64%22%20%5Co%20%22) .

For its part, there are also multiple relationships between the elements of transitional justice, in that justice serves truth, as it is a product of the ordinary workings of justice [[65]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn65%22%20%5Co%20%22); truth helps justice by identifying the perpetrators [[66]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn66%22%20%5Co%20%22) and is also an instrument for giving justice to the victims [[67]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn67%22%20%5Co%20%22) .

**4.4. Criminal justice**

Criminal justice is only one of the mechanisms of transitional justice that must be applied in conjunction with truth, reparation and non-repetition measures to satisfy the rights of victims [[68]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn68%22%20%5Co%20%22) . Although in the understanding of part of the population justice is commonly linked to punishment [[69]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn69%22%20%5Co%20%22) , the complexity of transitional justice processes and their need to respond to massive violations mean that they cannot focus exclusively on criminal measures [[70]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn70%22%20%5Co%20%22) and that these have a special scope for the fulfilment of the aims of transitional justice.

In this sense, criminal law in a transitional justice process requires the prevalence of the preventive functions of punishment and fulfils specific objectives fully articulated with the reconciliation of society and the protection of victims' rights [[71]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn71%22%20%5Co%20%22) :

General negative prevention [[72]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn72%22%20%5Co%20%22) in a transitional justice process is fundamental, as the seriousness of the mechanisms and the effective conviction of those most responsible for crimes against humanity, genocide and war crimes committed systematically, will ensure that there is no repetition of these crimes by other armed groups or recidivism by the same perpetrators.

Special negative prevention [[73]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn73%22%20%5Co%20%22) is directly related to one of the essential aims of transitional justice, which is the guarantee of non-repetition of crimes, as one of the essential objectives of the process is to prevent the continuation of crimes against the population. In this regard, it is essential that the process guarantees a real dismantling of the illegal groups and their illicit activities, otherwise they will continue committing massive crimes against the population or will transform themselves into new ones with different names but similar objectives.

Special positive prevention [[74]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn74%22%20%5Co%20%22) is achieved by means of re-socialisation through the serious reintegration of armed actors, which can only be consolidated if the actors' participation in society is guaranteed.

General positive prevention [[75]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn75%22%20%5Co%20%22) is achieved by restoring the confidence of individuals in the legal system through the strengthening of the rule of law, democracy and the dismantling of criminal organisations.

Transitional justice has the great challenge of ensuring peace and justice at the same time [[76]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn76%22%20%5Co%20%22) . In this sense, while amnesty can become a means to facilitate peace and reconciliation, it cannot be transformed into an instrument to ensure personal interests of immunity from justice [[77]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn77%22%20%5Co%20%22) .

In this regard, the Constitutional Court, in referring to the right to justice, has established numerous rules, among which, and with regard to the transitional justice process, the following should be highlighted: *"(i) the obligation of the State to fight against impunity, (ii) the obligation to establish mechanisms for agile, timely, prompt and effective access to justice for the effective judicial protection of the rights of the victims of crimes. In this sense, it establishes the State's obligation to design and guarantee effective judicial remedies so that the affected persons can be heard, and to promote investigations and assert the interests of the victims in the trial, (iii) the constitutional duty to ensure that the internal judicial mechanisms of both ordinary justice and processes of transition to peace, such as amnesties and pardons, do not lead to impunity and the concealment of the truth"* ***[[78].](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn78%22%20%5Co%20%22)***

In this regard, this Court has reiterated what the Inter-American Court of Human Rights has established in relation to the right to justice as an essential element to avoid the perpetuation of impunity [[79]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn79%22%20%5Co%20%22): *"The obligations to investigate, prosecute and punish serious violations of internationally protected human rights, such as torture, summary, extra-legal or arbitrary executions and enforced disappearances, are incompatible with laws or provisions of any kind that provide for amnesties, statutes of limitations or grounds for exclusion of responsibility in respect of these crimes. Such laws or provisions, because they lead to the defencelessness of the victims and the perpetuation of impunity, entail a violation of Articles 8 and 25 in accordance with Articles 1(1) and 2 of the American Convention on Human Rights, and give rise to the international responsibility of the State. Moreover, for these same reasons, such laws "lack legal effect****[[80]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn80%22%20%5Co%20%22)*** *".*

In this sense, the very application of criminal law in transitional justice processes has special characteristics that may imply a more lenient punitive treatment than the ordinary one, either through the imposition of comparatively lower sentences, or the adoption of measures that, without exempting the offender from his criminal and civil liability, make possible his conditional release, or at least the most rapid reduction of the sentences imposed [[81]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn81%22%20%5Co%20%22) .

The Court has pointed out that the duty to prosecute and sentence those responsible for the crimes under investigation to appropriate and proportional sentences can only have exceptions in transitional justice processes, in which human rights violations are thoroughly investigated, the victims' minimum rights to truth and full reparation are restored, and measures are designed to prevent their repetition: *"the determination of limits to the exclusion of criminal responsibility or the reduction of sentences in transitional processes, insofar as it is not admissible to exonerate those responsible for serious violations of human rights and International Humanitarian Law, and therefore the duty to try and sentence those responsible for the crimes under investigation to appropriate and proportional sentences. This rule, as the Court has pointed out, can only have exceptions in transitional justice processes in which human rights violations are thoroughly investigated and the victims' minimum rights to truth and full reparation are re-established, and measures of non-repetition are designed to prevent the crimes from being repeated"* ***[[82]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn82%22%20%5Co%20%22)*** *.*

**4.5. Historical justice**

Knowledge about the past is fundamental in a transitional justice process [[83] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn83%22%20%5Co%20%22) not only as a materialisation of a victims' right to the truth, but also as a fundamental component of real reconciliation and the restoration of trust in the legal system [[84]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn84%22%20%5Co%20%22) . The value of truth is twofold: it is useful to identify collaborators and agents of the previous regime, and to prevent them from sabotaging efforts to rebuild society [[85]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn85%22%20%5Co%20%22) . In this sense, the "Joinet Principles" have recognised the dual nature of the right to truth by pointing out that it has both an individual and a collective value [[86]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn86%22%20%5Co%20%22) .

"(i) At the individual level, the inability to deal with what happened is at the root of the harm they suffer: keeping painful secrets can paralyse people's capacity to love and act [[87] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn87%22%20%5Co%20%22) so when victims are able to tell their side of the story and there is empathy for their suffering, they are respected as individuals and treated with dignity rather than contempt­, as is often the case when such public accounts have not been made [[88]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn88%22%20%5Co%20%22) .

(ii) In the collective field, from the point of view of the right to truth, if there is no collective effort to remember, and no end is put to the dehumanisation that laid the foundations for the atrocities, that society runs the risk of repeating them [[89]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn89%22%20%5Co%20%22) ".

In this respect, the "Joinet Principles" propose the adoption of certain measures to guarantee the truth: *"Two series of measures are proposed for this purpose. The first concerns the setting up, in the short term, of non-judicial commissions of enquiry. Unless there is swift justice, and this is rare in history, the courts cannot quickly punish the murderers and their accomplices. The second series of measures is aimed at preserving archives relating to human rights violations".*

Regarding the right to the truth, the Inter-American Court has affirmed that this implies "*(i) the right of the victims and their next of kin to know the real truth about what happened, (ii) to know who were the perpetrators of the attacks and human rights violations, and (iii) to have the truth about the facts investigated and publicly disclosed. Likewise, (iv) in the case of a violation of the right to life, the right to the truth implies that the relatives of the victims should be able to know the whereabouts of the remains of their relatives. On the other hand, (v) the IACHR has highlighted the dual nature of the right to the truth, which not only applies to the victims and their relatives, but also to society as a whole in order to achieve the perpetration of historical memory. Finally, (vi) the IACHR has highlighted the intrinsic connection between the right to truth and the right to justice and reparation.* ***[90]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn90%22%20%5Co%20%22)*** *”*

Similarly, the Constitutional Court has referred to the right to the truth as one of the instruments in the fight against impunity, and incorporates in this right the following guarantees: *"(i) the inalienable right to the truth; (ii) the duty to remember; (iii) the victims' right to know"* ***[[91]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn91%22%20%5Co%20%22)*** *.*

In its judgment of 22 November 2000, the Inter-American Court of Human Rights [[92] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn92%22%20%5Co%20%22) referred in particular to the right to the truth, stating that it would also constitute a means of reparation. It indicated that such a right implies that the victims know what happened and who was responsible for the events. For example, in the case of homicide, the possibility for the victim's next of kin to know where the victim's remains are located [[93]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn93%22%20%5Co%20%22) implies a means of reparation and, therefore, an expectation that the State must satisfy for the victim's next of kin and society as a whole [[94]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn94%22%20%5Co%20%22) .

Reference should also be made to truth commissions, which can provide valuable assistance to post-conflict societies by establishing facts about past human rights violations, promoting accountability, preserving evidence, identifying perpetrators and recommending reparations and institutional reforms [[95]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn95%22%20%5Co%20%22) . 95] These commissions are official, temporary, non-judicial fact-finding bodies tasked with investigating abuses of human rights or international humanitarian law that have been committed over a number of years. They deal in particular with victims and conclude their work with the presentation of a final report on the findings of their investigation and their recommendations [[96]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn96%22%20%5Co%20%22) .

Truth commissions can contribute to a highly ambitious goal for transitional justice because: (i) their truth-seeking can involve understanding the complex causes of past ­human rights abuses­; (ii) a truth commission will be in a position to make recommendations on institutional reforms; (iii) a truth commission's actions can be directly linked to poverty reduction and racism, through reparations and rehabilitation; (iv) its sectoral approach to institutional reform and long-term development encourages state and private sectors to engage in ­a process of institutional reflection and reform; (v) a truth commission can contribute in the long term to democratisation and equal respect for all citizens by putting into practice in the *process* what it ­preaches in its *outcome*[[97]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn97%22%20%5Co%20%22) *.*

In this sense, the Constitutional Court has highlighted the importance of truth commissions in addressing the many problems that have arisen in post-conflict societies: *"In this way, reaffirming that the full realisation of the rights to truth, justice and comprehensive reparation is the primary responsibility of the State, the importance of truth commissions lies in the fact that they allow for a harmonious approach necessary to construct the truth and address the many problems that have arisen in post-conflict societies. A truth is thus established that takes into consideration the successive phases of the crimes and situations suffered, and can also examine individual cases, from different concepts of truth, whether global, moral, objective or historical, thus serving as an input for the subsequent fulfilment of materialisations that concern state bodies, including the implementation of specific measures of satisfaction and the guarantee of non-repetition of the facts"*[[98]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn98%22%20%5Co%20%22) .

Regarding such commissions, the Joinet Principles require a set of elements necessary for them to be legitimate: guarantees of independence and impartiality; guarantees in favour of victims' testimonies; guarantees concerning the persons charged; publicity of the report; and preservation of the archives concerning human rights violations [[99]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn99%22%20%5Co%20%22) .

**4.6. Relationships between judicial truth and historical memory in transitional justice contexts**

Judicial truth is that which is established at the end of a process, that is, in a discussion scenario in which the parties and victims present their claims, evidence and arguments. In cases of serious human rights violations, it is understood to be that "*official truth obtained through judicial proceedings against the perpetrators of atrocity crimes, and which can either be expressly declared by the judge or inferred from the judicial procedure and decision*" [[100]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn100%22%20%5Co%20%22).

In cases of crimes *against humanity* or war crimes, the judicial truth suffers from certain weaknesses such as: (i) its fragmentary nature, in that it is limited to the conducts and victims that are the object of the *litigation*; (ii) its emphasis is restricted to the examination of the concrete circumstances and facts known to the victims and witnesses; and (iii), in many cases, only the crimes are investigated and not the criminal organisation. In any case, judicial truth offers the following strengths: (i) it provides legal certainty, given that it is the result of a controversy framed in a set of procedural guarantees; (ii) it is based on legal means of proof; (iii) it enjoys publicity and (iv) it is res judicata. [101]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn101%22%20%5Co%20%22)

The aforementioned shortcomings of judicial truth are accentuated when these crimes are investigated not *in context*, as the International Criminal Court [[102]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn102%22%20%5Co%20%22) does, and as the UN Rapporteur on the rights of victims to truth, justice and reparation recommends in the domestic sphere of states, but on *a case-by-case basis*; all the more so as the same factual situation is the subject of several criminal proceedings, which can even lead to contradictory judicial truths.

Historical truth, on the other hand, is not subject to the rigour and logic of a judicial process. In this sense, its forms of construction are different, as are its aims or purposes. Indeed, through instruments of historical memory, such as truth commissions, the aim is not only to establish individual but collective responsibility [[103]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn103%22%20%5Co%20%22) . 103] They seek global and broad explanations for the phenomena of generalised violence, and not the resolution of specific cases. Hence, while numerous testimonies can be collected from victims and perpetrators, they are not subject to the formalities of a trial. Similarly, qualitative and quantitative social science methods can be used. Likewise, the results of these extra-procedural instruments are often contained in reports, conclusions and recommendations.

It should be noted that, whether in judicial or extrajudicial settings, victims have a fundamental right to actively participate in the determination of judicial and historical truths.

In practice, the various judicial and extrajudicial instruments aimed at guaranteeing the right to the truth interact and complement each other. In this regard, the text of the Principles as updated by Rapporteur Diane Orentlicher [[104]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn104%22%20%5Co%20%22) reads as follows:

"PRINCIPLE 5. GUARANTEES FOR THE EFFECTIVENESS OF THE RIGHT TO KNOW It is incumbent upon States to take appropriate measures, including measures necessary to ensure the independent and effective functioning of the judiciary, to give effect to the right to know. **Appropriate measures to ensure this right may include non-judicial processes that complement the role of the judiciary**. Societies that have experienced heinous crimes perpetrated on a massive or systematic basis may benefit in particular from the establishment of a truth commission or other commission of enquiry to establish the facts relating to such violations in order to ascertain the truth and prevent the disappearance of evidence. Whether or not a State establishes such a body, it should ensure that archives relating to violations of human rights and humanitarian law are preserved and made accessible for consultation.

As can be seen, the historical truth is called upon to fulfil the function of complementing what has been established by the judicial truth, reached at the end of various trials. In this sense, the sources of information available to truth commissions tend to include not only judicial sentences, but also all the evidence and probative material in the case files. [105] In](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn105%22%20%5Co%20%22) other words, historical memory is nourished by judicial truth.

At the same time, on occasions, the judicial truth is supported, among other evidentiary elements, with inputs from the historical truth, provided, of course, that they are duly incorporated into the respective proceedings. Thus, for example, the Inter-American Court of Human Rights, in its recent judgement in the case of Rodríguez Vera and others (Disappeared from the Palace of Justice) v. Colombia, considered the following:

"The Court considers that the establishment of a **truth commission**, according to the object, procedure, structure, and purpose of its mandate, can contribute to the construction and preservation of **historical memory**, the clarification of facts, and the determination of institutional, social, and political responsibilities in certain historical periods of a society [[106]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn106%22%20%5Co%20%22). The historical truths achieved through this mechanism should not be understood as a substitute for the State's duty to ensure the judicial determination of individual or State responsibilities through the corresponding jurisdictional means, nor with the determination of international responsibility that corresponds to this Court. These determinations of truth are complementary to each other, as they all have their own meaning and scope, as well as particular potential and limits, which depend on the context in which they arise and the specific cases and circumstances they analyse [[107]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn107%22%20%5Co%20%22) . 107] In the same sense, the use of this report does not exempt this Tribunal from assessing the body of evidence as a whole, in accordance with the rules of logic and based on experience, without having to be subject to rules of evidence [[108]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn108%22%20%5Co%20%22) . 108] In this sense, this Court will take into account the report of the Truth Commission as one more piece of evidence that must be evaluated together with the rest of the body of evidence and the observations made by the State in this regard. [[109]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn109%22%20%5Co%20%22)

In conclusion, judicial and historical truths, although they present important differences in the way they are structured, ultimately complement each other, both contributing to guaranteeing the right to truth of the victims and of society. Consequently, it is insisted that the various procedural rules, as well as the principles that guide the processing of these proceedings, should aim to allow victims to actively participate in the debate that leads to a sentence. On the contrary, denying them such intervention ends up affecting not only the right to the truth in its individual but also in its collective dimension; a state of affairs that is aggravated when the victims are unaware that the same factual assumption is being investigated by different judicial authorities, even geographically located in different regions of the country.

**4.7. Restorative or restorative justice**

In a context of democratic transition, the specific objective of reparations to victims of human rights violations is to restore their dignity and reintegrate them into society as equal citizens. [110]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn110%22%20%5Co%20%22) Indeed, reparation contributes to justice in a complex way, linking the other elements of transitional justice (truth, justice, guarantees of non-repetition) and complementing other transitional justice processes which, without including reparation, would become irrelevant exercises for most victims. Reparation is attributed this role insofar as it constitutes in itself a form of recognition owed to those citizens whose human rights were violated. [111]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn111%22%20%5Co%20%22)

Restorative justice, or what some call restorative justice [[112]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn112%22%20%5Co%20%22) as this Court has recognised, is not limited to the purely patrimonial [[113] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn113%22%20%5Co%20%22) as it contemplates numerous and diverse forms: reparations, remedial damages, indemnification, restitution, compensation, rehabilitation or tribute [[114]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn114%22%20%5Co%20%22) . In this sense, there is an international consensus that: (i) the State is obliged to provide compensation to victims of gross human rights violations perpetrated by the State; and (ii) if the government that incurred the violations does not compensate, the new government is obliged to do so [[115]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn115%22%20%5Co%20%22) . In any case, reparation also has a collective ingredient, since in cases of serious and massive human rights violations, society as a whole suffers damages (*spill over effects*) against which measures must be adopted [[116]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn116%22%20%5Co%20%22) .

In this regard, the Inter-American Court of Human Rights has reiterated the connection between the rights to truth, justice and reparation; in relation to the latter it has emphasised that: "*(i) the victims of serious violations of human rights, international humanitarian law or crimes against humanity are entitled to adequate, proportional, integral and effective reparation in respect of the harm suffered; (ii) reparation takes the form of full or complete restitution, but also of compensation, rehabilitation, collective satisfaction, and the guarantee of non-repetition; (iii) reparation to the victims for the harm caused refers to both material and non-material harm, (iv) reparation is made through both individual and collective measures, and that (v) these measures are aimed at restoring the victim's dignity as a result of the serious harm caused.”* ***[[117]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn117%22%20%5Co%20%22)***

**4.8. Administrative measures**

Within the instruments of transitional justice there are also administrative measures that can be fundamental in a process of social and political transformation such as: reconstruction policies [[118]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn118%22%20%5Co%20%22) , purges [[119]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn119%22%20%5Co%20%22) , demilitarisation [[120]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn120%22%20%5Co%20%22) , the freeing of slaves, economic changes and the imposition of civilian rules [[121]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn121%22%20%5Co%20%22) .

Purges are administrative and *vetting* procedures aimed at the exclusion of certain persons linked to the former regime [[122]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn122%22%20%5Co%20%22) .

In some cases, legislation has established restrictions such as: the reconstruction policy after the Civil War in the United States, which prevented those who had rebelled against the constitution from participating in politics [[123]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn123%22%20%5Co%20%22); the purges in post-war Europe that prevented members of the National Socialist Party from becoming public officials [[124]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn124%22%20%5Co%20%22); the demilitarisation of some states [[125];](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn125%22%20%5Co%20%22) the purification in Spain and El Salvador of military personnel who had participated in human rights crimes.

**4.9. Other measures**

There are other transitional justice mechanisms that can also contribute to the construction of justice and reconciliation in conflict societies, such as disarmament and reintegration, which is a collective process aimed at reintegrating former armed groups into the new society [[126]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn126%22%20%5Co%20%22), as well as traditional forms of justice such as the Gacaca in Rwanda and the Ubuntu in South Africa, or reconciliation rites [[127]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn127%22%20%5Co%20%22).

**5. THE FUNDAMENTAL RIGHT TO FULL REPARATION.**

**5.1. The concept of "integral reparation" and its evolution**

The law of civil liability is based on an essential principle: the equivalence between the damage caused and the reparation to be awarded. [128] In the](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn128%22%20%5Co%20%22) words of the Mazeaud brothers: "*the amount of damages must be neither higher nor lower than the damage suffered by the victim and for which the tortfeasor is liable. The liable party must be ordered to pay compensation for all the damage and only for the damage caused by his fault*" [[129]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn129%22%20%5Co%20%22) . The rule is to compensate "*tout le dommage, mais rien que le dommage*", that is to say, it is a matter of compensating the totality of the damage suffered without exceeding its strict limits.

The aforementioned principles of classical tort law have undergone important developments in constitutional law and international human rights law.

Constitutional jurisprudence, in line with developments in international law, has recognised that victims of serious human rights violations are entitled to the rights to truth, justice and reparation [[130]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn130%22%20%5Co%20%22) . The Constitutional Court has understood that this triad is inseparable [[131]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn131%22%20%5Co%20%22) and is based on the constitutional text itself [[132]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn132%22%20%5Co%20%22) .

In a broad sense, reparations are "*measures that tend to make the effects of the violations committed disappear*" [[133]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn133%22%20%5Co%20%22) . 133] The constant jurisprudence of the Inter-American Court of Human Rights has held that reparation must consist of full restitution (*restitutio in integrum*), which implies the re-establishment of the previous situation. Hence, due to the individual and social impact of serious human rights violations, the holders of the right to reparation are the direct victims or, in many cases, a collective or society as a whole. Therefore, based on the generic definition, it is understood that the scope, modalities and amount of reparation will depend on the damage caused in each specific case.

In the case of serious human rights violations, international law is an essential source for determining reparations, by virtue of the obligations adopted by States to respect and guarantee the full enjoyment of human rights to all persons under their jurisdiction [[134]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn134%22%20%5Co%20%22) . Viewed in this way, the obligation to make reparation is a specific duty that derives from the general obligation of the State to guarantee human rights, since once a human rights violation has been committed, the only way to guarantee the enjoyment of the right is through full reparation, if this is possible, including due compensation [[135]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn135%22%20%5Co%20%22) . In addition to reparation, the content of the duty to guarantee includes the State's obligations to prevent, investigate and impose sanctions on those responsible [[136]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn136%22%20%5Co%20%22) .

This referral to the international sphere is particularly demanding for the countries that make up the Inter-American Human Rights System, due to the way in which the guarantee of reparation has been enshrined in the American Convention and its jurisprudential developments.

On the one hand, because these are human rights matters, States have adopted treaty obligations that require them to adopt international guidelines in domestic law [[137]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn137%22%20%5Co%20%22) . On the other hand, the Inter-American Court of Human Rights, unlike the European Court of Human Rights (ECHR), enjoys full autonomy in determining reparations, one of the reasons for the broad scope that these measures have had in inter-American jurisdiction [[138]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn138%22%20%5Co%20%22) . 138] Pursuant to Article 63(1) of the Convention:

"When it decides that there has been a violation of a right or freedom protected by this Convention, the Court shall order that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also order, if appropriate, reparation for the consequences of the measure or situation that constituted the violation of those rights and the payment of fair compensation to the injured party.

This provision has been understood by the international Court as the legal basis for the concept of "*integral reparation*". While it is true that the Inter-American Court of Human Rights, in its first cases, ordered mainly compensation [[139] , it](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn139%22%20%5Co%20%22) already established two important elements of the concept of integral reparation: (i) an open notion that allowed, later on, to expand the variety of reparation measures [[140]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn140%22%20%5Co%20%22) ; and (ii) a broad autonomy to determine reparations [[141]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn141%22%20%5Co%20%22) .

This initial form of reparation expanded with the definition of new measures, developed not only within the Inter-American Court but also with particular attention to developments in this area within the framework of the United Nations.

**5.2. The broadening of the concept of reparations in Inter-American case law**

It was not until 1998 that the Inter-American Court of Human Rights explained the broadening of the concept of reparation, specifying that:

*"Reparation is the generic term for the different ways in which a state can address the international responsibility it has incurred. The specific forms of reparation vary according to the injury caused: it may consist in restitutio in integrum of the rights affected, in medical treatment to restore the physical health of the injured person, in the obligation of the State to annul certain administrative measures, in the restoration of the honour or dignity that was unlawfully taken from him, in the payment of compensation, etc. [...] Reparation may also take the form of measures aimed at preventing the repetition of the harmful acts."* ***[[142]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn142%22%20%5Co%20%22)***

As can be seen, the aforementioned formula opened up the spectrum of reparation measures and includes guarantees of non-repetition. However, in this judgement, no new decisions were adopted for this purpose. In fact, it was only in the Suárez Rosero case that the heading "*other forms of reparation*" was introduced for the first time, and only in 2004, with the Molina Theissen judgment, was the heading "*measures of satisfaction and non-repetition*" introduced into the ordinary practice of the court. But the importance of the Garrido and Baigorria judgment lies in its outline of the various forms of reparation, as they are known today. Specifically, the Inter-American Court of Human Rights has considered the need to grant various measures of reparation in order to compensate for damages in a comprehensive manner, ordering, in addition to monetary compensation, measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition in accordance with the gravity of the facts and the damage caused [[143]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn143%22%20%5Co%20%22).

**5.3. Reparations within the United Nations Organisation**

The other relevant factor that has encouraged the expansion of the concept and modalities of comprehensive reparation are the instruments, specialised studies and decisions of United Nations bodies.

In general, it can be noted that the right to restitution has been recognised in articles 1, 2, 8 and 10 of the Universal Declaration of Human Rights; articles 1, 2, 8, 21, 24 and 25 of the American Convention on Human Rights; articles 2, 3 and 14 of the International Covenant on Civil and Political Rights, as well as in the Principles on Housing and Property Restitution for Refugees and Displaced Persons, among others [[144]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn144%22%20%5Co%20%22) .

The American Declaration of Human Rights [[145]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn145%22%20%5Co%20%22) and the Universal Declaration of Human Rights [[146]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn146%22%20%5Co%20%22) marked, in 1948, the beginning of a trend in international law to develop instruments guaranteeing the right of all persons to effective judicial protection of their rights, including fair and adequate compensation [[147]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn147%22%20%5Co%20%22) .

As part of this trend, on 29 November 1985, the United Nations General Assembly adopted by consensus the "*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*" [[148]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn148%22%20%5Co%20%22) , 148] according to which victims "*shall have the right to access to the mechanisms of justice and to prompt redress for the harm they have suffered*" and for this it is necessary that *"the views and concerns of victims be presented and considered at appropriate stages of the proceedings, whenever their interests are at stake, without prejudice to the accused and in accordance with the relevant national criminal justice system"* ***[[149]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn149%22%20%5Co%20%22)*** .

In 1996, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights presented the Final Report on impunity for perpetrators of human rights violations, adopted by Resolution 1996/119, which noted that the right of victims to obtain reparation for the harm caused by the crime entailed both individual and collective measures. Individual measures included restitution measures - which should aim at restoring the victim to the situation in which he or she was before the violation, where this is desirable; compensation measures - aimed at financial compensation for physical and moral damages, as well as for loss of opportunities, material damage, attacks on reputation and legal assistance costs; and rehabilitation measures - in particular medical and psychological or psychiatric care. Symbolic reparations were identified as part of the collective measures [[150]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn150%22%20%5Co%20%22).

On the other hand, although the Statutes of the International Criminal Tribunals for the former Yugoslavia [[151]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn151%22%20%5Co%20%22) and for Rwanda [[152] did](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn152%22%20%5Co%20%22) not enshrine the possibility of direct compensation for damages caused to victims, they did adopt certain measures to guarantee such reparation in the States of which those criminally responsible for the crimes tried by those Tribunals were nationals. [153]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn153%22%20%5Co%20%22) This deficiency was corrected in the Statute of the International Criminal Court, which enshrined measures to guarantee the right of victims to material reparations, and even provided for the creation of a trust fund to ensure that this right is effectively guaranteed.

The Human Rights Committee has also recognised that Article 2(3) of the Covenant on Civil and Political Rights requires States Parties to provide a remedy to individuals whose Covenant rights have been violated. Thus, the Committee stated that *"[i]f individuals whose Covenant rights have been violated are not afforded a remedy, the obligation to provide an effective remedy, which is fundamental to the effectiveness of article 2, paragraph 3, is not fulfilled. In addition to the explicit remedy required by Articles 9(5) and 14(6), the Committee considers that the Covenant generally entails adequate compensation"* [[155]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn155%22%20%5Co%20%22) *. 155]* The same body noted that, where appropriate, reparation may involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as the bringing to justice of perpetrators of human rights violations.

For his part, the [Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Repetition of](http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx) the United Nations High Commissioner for Human Rights affirmed that adequate, effective and prompt reparation aims to promote justice by remedying gross violations of international human rights law or serious violations of international humanitarian law: *"Reparation must be proportionate to the gravity of the violations and the harm suffered. In accordance with their domestic law and international legal obligations, States shall provide reparation to victims for acts or omissions attributable to the State that constitute gross violations of international human rights law or serious violations of international humanitarian law"* [[157]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn157%22%20%5Co%20%22).

**5.4. The principle of the integrity or indemnity of the damage in the jurisprudence of the Council of State**

Full reparation is a general principle of law, according to which "all the damage, and only the damage, must be repaired". In the words of the Constitutional Court: "the compensation of the damage must be in direct correspondence with the magnitude of the damage caused, but it cannot exceed that limit. [[158]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn158%22%20%5Co%20%22)

The principle of full reparation is a logical and empirical assumption of coherence, since if the reparation does not coincide with the entity of the damage, the balancing equation simply does not correspond. [159]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn159%22%20%5Co%20%22)

From the normative point of view, article 16 of Law 446 of 1998, adopted jurisprudential constructions in the matter: "the system of equitable valuation" and "the observance of actuarial technical criteria", in the determination or quantification of damages" [[160]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn160%22%20%5Co%20%22) :

"**ARTICLE 16. VALUATION OF DAMAGES.** In any proceedings before the Administration of Justice, the valuation of damages caused to persons and things, shall comply with the principles of **integral reparation** and equity and shall observe the technical actuarial criteria". (emphasis added).

Similarly, Article 8 of Law 975 of 2005 [[161]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn161%22%20%5Co%20%22) , determined the content and scope of the right to reparation, in the following terms:

"The right of victims to reparation includes actions that seek restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition of the conduct.

"Restitution is the carrying out of actions aimed at returning the victim to the situation prior to the commission of the crime.

"Compensation consists of compensating for the damage caused by the offence.

"Rehabilitation consists of actions aimed at the recovery of victims who suffer physical and psychological trauma as a consequence of the crime.

"Moral satisfaction or compensation consists of carrying out actions aimed at restoring the victim's dignity and disseminating the truth about what happened.

"Guarantees of non-repetition include, among others, the demobilisation and dismantling of illegal armed groups.

"Symbolic reparation is understood to be any benefit provided to victims or the community in general that tends to ensure the preservation of historical memory, the non-repetition of the victimising events, public acceptance of the facts, public forgiveness and the restoration of the dignity of the victims.

"Collective reparation should be oriented towards the psycho-social reconstruction of populations affected by violence. This mechanism is especially envisaged for communities affected by the occurrence of systematic violence".

In this respect, constitutional and administrative case law has considered the traditional criterion of compensation to be insufficient, according to which reparation should be limited to a matter of establishing the amount of compensation for the damage, especially in the case of serious violations of human rights or international humanitarian law.

As a result of the so-called "judicial dialogue" between domestic and international judges, the Third Section of the Council, in a ruling of 20 February 2008 [[162] , in a case involving](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn162%22%20%5Co%20%22) National Police officers in the disappearance of four brothers in the municipality of Tuluá (Valle del Cauca), considered that the law of damages should be interpreted and applied, taking into account the advances of the Inter-American human rights system:

"Hence, the work of the contentious-administrative judge, in the proceedings brought before him, on the occasion of the violation or transgression of human rights, is that of a dynamic official, with broad powers of reparation and restoration, provided by the domestic and international legal system itself, aimed at obtaining a true integral reparation of the damage derived from this violation. In this order of ideas, the contentious-administrative jurisprudence must be in line with the guidelines set out by the principles and regulations contained in the Political Constitution and in the legal system, since these provisions prevail over any other norm or rule of law in force, in the terms of Article 93 of the Political Charter.

"In this context, and if it is clear that international regulations that recognise and regulate human rights, at the normative and interpretative level, prevail over the domestic system, it is ostensible that the administrative judge has various tools and instruments aimed at ensuring comprehensive reparation derived from the violation of human rights, whenever they are submitted for his consideration, with a view to compensating the damage. Therefore, it is the duty of the judge, in these events, not only to limit himself to decreeing monetary compensation - based on the application of actuarial bases and criteria - but rather, his obligation is to integrate the measures available to him from the domestic legal system in its entirety, as well as from the international legal system, with a view to ensuring that the restoration derived from a human rights violation is materialised.

 "Therefore, it is perfectly feasible, in application of the principle of "integral reparation", as we have seen, for the administrative litigation judge to adopt pecuniary and non-pecuniary measures, in the same or similar sense to those that the jurisprudence of the Inter-American Court of Human Rights has established, among which we find:

a) Restitution, or *restitutio in integrum*, is the restoration of things to their normal or pre-violation state, it is the perfect form of reparation, and only to the extent that such restitution is not accessible should other reparatory measures be agreed.

b) Compensation for material damage suffered by the victims in a particular case, including material damage (consequential damage, loss of profit) and non-material damage.

(c) Rehabilitation, including the funding of medical and psychological or psychiatric care or social, legal or other services.

d) Satisfaction, which are moral measures of a symbolic and collective nature, including non-material damages, such as public acknowledgement by the State of its responsibility, commemorative acts, christening of public roads, monuments, etc.

e) Guarantees of non-repetition are those suitable measures, of an administrative, legislative or judicial nature, aimed at ensuring that the victims are not again subjected to violations of their dignity, including those aimed at disbanding armed groups operating outside the law, and the repeal of laws, among others.

According to Fréderic Sudre [[163]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn163%22%20%5Co%20%22) , inter-judicial dialogue points to the adoption of new forms of communication between different jurisdictions, and in particular to a constant exchange of legal arguments between domestic and international judges. An expression whose origin seems to go back to the reflections of Adriantsimbazovina, who in 1998 stated in a study entitled "*L'autorité des décisions de justice constitutionnelles et européennes sur le juge administratif français*", the following: "*the plurality and interaction of modern legal orders implies complementarity between authorities, necessary for the preservation of coherence between them, and a dialogue between their judges characterised by their plasticity, a quality necessary to understand the complexity of the whole*" [[164]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn164%22%20%5Co%20%22) .

In terms of comprehensive reparation, the "inter-judicial dialogue" between the Council of State and international judges has not been limited to the scope of its components (i.e., restitutio in integrum, satisfaction, rehabilitation, compensation, guarantees of non-repetition). *restitutio in integrum*, satisfaction, rehabilitation, compensation, guarantees of non-repetition), but even in its dogmatic construction, certain concepts from the sphere of international criminal law have been used, bringing up traditional figures such as the position of guarantor (Article 28 of the Rome Statute) or the commission of crimes against humanity (Article 7 of the Rome Statute). In this regard, the Third Section of the Council of State, in its ruling of 26 March 2009 [[165] , in the case of](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn165%22%20%5Co%20%22) the disappearance of peasants who were on the move in the Department of Meta, considered the following:

"In that order of ideas, the fact of analysing a result under the perspective of normative ingredients (e.g. the position of guarantor), fixed by law and jurisprudence is what allows, with greater ease, to establish the factual imputation (material attribution), that is, it is iterated, the assignment of a certain damage to the head of a specific subject.

(…)

"It must be inferred, therefore, that the principle of integral reparation, understood as that precept which directs the compensation of a damage, with the aim that the person who suffers it is brought, at least, to a point close to the one he was at before the occurrence of the damage, must be interpreted and applied in accordance with the type of damage produced, that is, whether it is one derived from the violation of a human right, according to the positive recognition of the national and international order, or it refers to the injury of a legal good or interest that is not related to the human rights system (HR).

"In this perspective, comprehensive reparation in the field of human rights entails not only compensation for the damages and losses that are naturally derived from a violation of the guarantees of the individual, recognised nationally and internationally, but also implies the search for the restoration of the *status quo*, which is why a series of symbolic and commemorative measures are adopted, which aim to restore the essential core of the right or rights infringed, especially if one takes into account that such violations have their origin in crimes or crimes that are classified as crimes *against humanity*".

The dogmatic construction of the concept of "integral reparation" by the Third Section of the Council of State has also made the understanding of basic procedural principles more flexible, such as that of congruence between what was requested and what was decided (*extra* or *ultra petita* decisions). This was the understanding of the Council of State when it ruled in the case of a woman who was contaminated with HIV through a blood transfusion. It was argued that the administrative judge, in the exercise of his interpretative powers, derived from the request for general recognition of a "compensation for non-pecuniary damage of a moral nature", the existence of damage to the life in relation. [166]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn166%22%20%5Co%20%22) Similarly, in cases of unjust deprivation of liberty, where claims for compensation for harm to life in relation were not expressly formulated, the Council of State has recognised it, deducing it from the general request for compensation for damages. [[167]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn167%22%20%5Co%20%22)

Similarly, the Council of State has specified that, in cases of serious human rights violations, the principle of *non-reformatio in pejus is of* a relative nature:

"In the ordinary processes of non-contractual liability of the State, the jurisprudence of the Council of State has outlined a series of principles in relation to the application of the principles of congruence and no *reformatio in pejus*, which could be summarised as follows:

In proceedings in which the harm stems from **serious** human rights violations or the serious or significant violation of fundamental rights, it is possible to decree all types of restorative justice measures in accordance with the principle of *restitutio in integrum* and comprehensive reparation.

Thus, in this type of process, whenever a violation of a human right, whether fundamental or not, is found to have been caused by **a serious injury, it** will be appropriate to adopt all types of restorative justice measures to protect not only the subjective but also the objective dimension of the right affected.

In proceedings in which the damage does not stem from serious harm to human rights, it is possible that the harmful event injures or affects a fundamental right -both in its subjective and objective sphere-, which is why the compensatory measures requested in the claim or those that the judge considers ex officio or at the request of the party may be adopted, but aimed at safeguarding the essential core of the right, whether in its subjective or objective sphere". [[168]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn168%22%20%5Co%20%22)

Another important stage in the "judicial dialogue" between administrative and international judges in matters of comprehensive reparation is the creation of the figure known as "international res judicata". In essence, it is a question of articulating the functioning of domestic and international justice in order to avoid the recognition and payment of double compensation:

"It is not possible that, at a domestic level, a second compensation be determined for the facts that were the object of judgement in the International Court of Human Rights, because such a situation would transgress two pillars of modern constitutional and procedural law: i) the principle of respect for res judicata, in direct relation to the fundamental right to non *bis in idem*, and ii) the general postulate of the prohibition of enrichment derived from the same act; this means that no one can claim to derive double compensation or indemnification from an injury, as this would generate a clear event of unjustified enrichment that is not protected by international or national legislation" [[169]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn169%22%20%5Co%20%22) .

Similarly, the Council of State has been exercising a control of conventionality, with the purpose of determining whether the Colombian State, by action or omission, has breached certain international obligations, and consequently, must make full reparation to the victims. In this regard, in the case of the massacre of Pichilín (Sucre), in a judgment of 9 July 2014, the High Court of Administrative Disputes considered the following:

"In this order, since the domestic jurisdiction, in the exercise of the administration of justice, is called upon to act as an inter-American judge at the national level in cases of serious human rights violations, this Chamber will exercise a conventionality control of the State's active and omissive conduct in the present case and will determine whether it violated international human rights norms" [[170]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn170%22%20%5Co%20%22).

In this vein, the Council of State has developed a solid jurisprudence on the theoretical foundations and components of the principle of full reparation. In this regard, it has understood that its purpose is to guide the compensation of a damage, so that the person who suffers it is brought, at least, to a point close to the one he/she was at before the occurrence of the damage, and such sense, must be interpreted and applied in accordance with the type of damage produced.

In this perspective, comprehensive reparation in the field of human rights implies not only compensation for the damages and harm that naturally derive from a violation of internationally recognised human rights guarantees, but also the search for the restoration of the violated right, which is why a series of symbolic and commemorative measures are adopted, which do not aim to repair the damage (*strictu sensu*), but rather to restore the essential nucleus of the infringed right or rights.

On the contrary, the integral reparation that operates in relation to the damages derived from the injury to a protected legal right, other than a human right, is specifically related to the possibility of fully compensating all the damages that the infringing conduct has generated, whether these are of a material or immaterial nature. Therefore, although in this case the judge does not adopt symbolic, commemorative, rehabilitation or non-repetition measures, this circumstance, *per se*, does not mean that the harm is not fully compensated.

In this context, according to administrative jurisprudence, it is essential to differentiate two scenarios within the law of reparation, which can be expressed in the following terms: i) on the one hand, those relating to the restoration of anti-juridical damages derived from human rights violations and, on the other hand, ii) those relating to the compensation of anti-juridical damages arising from injuries to property or legal interests that do not refer to them. The above distinction will make it possible to establish, within the framework of domestic law, what effects are generated by the pronouncement of an international body or court that judges the facts in which the responsibility of the State for human rights violations is disputed and, additionally, it will serve to determine, in the case of constitutional actions, what powers the national judge has to put an end to the threat or violation of the corresponding right.

**5.5. The consolidation of the concept of comprehensive reparation in the Colombian Constitutional Court and its particular features in a context of transitional justice.**

This vision of reparation, according to which compensation is only one of its component elements, and therefore ordinarily requires other measures to achieve the full restoration of the violated human rights, was also adopted by the Constitutional Court almost simultaneously with the advances of the international system [[171]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn171%22%20%5Co%20%22).

Already in judgment C-228 of 2002, the Court stated that:

*"In international law, it has been considered insufficient for the effective protection of human rights that victims and injured parties be granted only compensation for damages, since truth and justice are necessary for a society to avoid the repetition of situations that led to serious human rights violations and, furthermore, because the recognition of the intrinsic dignity and the equal and inalienable rights of all human beings requires that the judicial remedies designed by States be oriented towards comprehensive reparation for victims and injured parties, because the recognition of the intrinsic dignity and of the equal and inalienable rights of all human beings requires that the judicial remedies designed by the States be oriented towards comprehensive reparation for the victims and injured parties, including financial compensation and access to justice in order to know the truth about what happened and to seek, through institutional channels, the fair punishment of those responsible.* ***[172]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn172%22%20%5Co%20%22)***

In the same decision, the Court held, in relation to the legal sources, that the request for reparation for the harm caused arises: (i) from the very concept of human dignity which seeks to restore the victims to the conditions prior to the unlawful act (Article 1 above); (ii) from the duty of the public authorities to protect the life, honour and property of the residents and to guarantee the full effectiveness of their rights (Article 2 of the Political Charter); (iii) from the principle of participation and intervention in the decisions that affect them (Article 2 of the Constitution); (iv) of the express consecration of the State's duty to protect, assist, provide comprehensive reparation and restore the rights of victims (Article 250, paragraphs 6 and 7, idem) and, (v) of the right of access to the courts to enforce rights, through agile and effective remedies (Articles 229 of the Constitution, 18 of the American Declaration of Human Rights, 8 of the Universal Declaration of Human Rights and 25 of the American Convention on Human Rights. [173]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn173%22%20%5Co%20%22)

Thus, the reiterated jurisprudence of this Corporation has understood that the constitutional right to comprehensive reparation for victims is not only expressly based on the aforementioned constitutional clauses, but also on several norms of international law that are part of the constitutional block and, therefore, binding in our legal system. [174]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn174%22%20%5Co%20%22)

In accordance with the above, Judgment C-370 of 2006 emphasised that reparation: i) includes all actions necessary and conducive to making the effects of the crime disappear, to the extent possible; ii) like the concept of victim, has both an individual and collective dimension; iii) is not exhausted in its purely economic perspective, but has various manifestations both material and symbolic; iv) is a responsibility that primarily concerns the perpetrators of the crimes that give rise to it, but also the State, particularly in relation to some of its components. [175]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn175%22%20%5Co%20%22)

In examining the constitutionality of certain provisions of Law 1448 of 2011, and particularly focusing on the context of transitional justice, this Court had the opportunity to gather and consolidate some of the most important parameters in terms of comprehensive reparation, in harmony with international law and jurisprudence on the matter. In this regard, the Court noted in Judgment C-715 of 2012:

*“(…)*

*(ii) the right to full reparation and the measures that this right includes are regulated by international law in all its aspects: scope, nature, modalities and the determination of the beneficiaries, aspects that cannot be ignored and must be respected by the obligated States;*

*(iii) the right to reparation for victims is comprehensive, insofar as different measures must be adopted, determined not only by distributive justice but also by restorative justice, insofar as it concerns the dignification and full restoration of the effective enjoyment of the victims' fundamental rights;*

*(iv) reparation obligations include, in principle and as a matter of priority, full restitution (restitutio in integrum), which refers to the restoration of the victim to the situation prior to the violation, understood as a situation of guaranteed fundamental rights (...).*

*(vi) comprehensive reparation includes, in addition to restitution and compensation, a series of measures such as rehabilitation, satisfaction and guarantees of non-repetition. Thus, the right to comprehensive reparation entails the right to restitution of the rights and legal and material assets of which the victim has been deprived; compensation for damages; rehabilitation for the harm caused; symbolic measures aimed at vindicating the memory and dignity of the victims; as well as measures of non-repetition to ensure that the organisations that perpetrated the crimes under investigation are dismantled and the structures that enabled their commission are removed, in order to avoid the repetition of continuous, massive and systematic violations of rights;*

*(vii) Full reparation to victims of gross human rights violations has both an individual and a collective dimension;*

*(viii) In its individual dimension, reparation includes measures such as restitution, compensation and rehabilitation;*

*(ix) In its collective dimension, reparation is also obtained through measures of satisfaction and symbolic character or measures that are projected to the community;*

*(x) An important measure of full reparation is the public acknowledgement of the crime committed and the reproach of such an action (...)*

 *(xi) the right to reparation goes beyond the field of economic reparation, and includes, in addition to the measures already mentioned, the right to truth and justice. In this sense, the right to reparation includes both measures aimed at satisfying the truth and historical memory, as well as measures aimed at ensuring that justice is done, and that those responsible are investigated and punished. Therefore, the Court has highlighted the right to reparation as a complex right, in that it is in a relationship of connection and interdependence with the rights to truth and justice, in such a way that it is not possible to guarantee reparation without truth and justice.*

*(xii) Comprehensive reparation to victims must be differentiated from the social assistance and services and humanitarian aid provided by the State, so that they cannot be confused with each other, since they differ in nature, character and purpose. While social services are based on social rights and are provided as a matter of course in order to guarantee these social rights, benefits or public policies relating to housing, education and health rights, and while humanitarian assistance is provided by the State in the event of disasters, reparation, on the other hand, is based on the commission of an unlawful act, the occurrence of an unlawful harm and the serious violation of human rights, which is why they cannot be substituted or assimilated, even if the same public entity is responsible for fulfilling these functions, on pain of violating the right to reparation.*

*(xiii) The necessary articulation and complementarity of the different public policies, despite the clear differentiation that should exist between the State's social services, humanitarian assistance actions and comprehensive reparation measures.* ***[[176]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn176%22%20%5Co%20%22)***

It can be deduced from the above that this Court has not only interpreted the scope of the right to reparation for victims of human rights violations in light of constitutional provisions and international developments in this area, but has also taken on the task of specifying the enforceability of this right in a context of transitional justice. In this sense, as will be indicated below, the different modalities of reparations are complementary - and therefore allow for a certain flexibility and modulation according to the particular circumstances of the specific cases - but, at the same time, this right to reparation constitutes an insurmountable limit for the legislator and the government within a framework of transitional justice.

**5.5. Modalities of repairs**

**5.5.1. Individual and collective remedies**

The right to reparation under contemporary international law has both an individual and a collective dimension. In its individual dimension, it covers all the damages suffered by the victim, and includes the adoption of *individual* measures relating to the right to (i) restitution, (ii) compensation, (iii) rehabilitation, (iv) satisfaction and (v) guarantee of non-repetition. In its collective dimension, it involves measures of satisfaction of general scope such as the adoption of measures aimed at restoring, compensating or readapting the rights of the collectivities or communities directly affected by the violations that have occurred. [177]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn177%22%20%5Co%20%22)

As has been explained, reparation is not always monetary, but may consist of restitution of victims' rights, rehabilitation programmes and symbolic measures, such as official apologies, monuments, memorial ceremonies, among others. Thus, this Court has recognised that:

(i) At the individual level, the Joinet Principles state that reparation to victims may consist of the following: "(a) restitution measures (aimed at enabling the victim to return to the situation prior to the violation); (b) compensation measures (psychological and moral harm, as well as loss of an opportunity, material damage, injury to reputation and legal aid costs); and (c) rehabilitation measures (medical care including psychological and psychiatric care)."

(ii) At the collective level, the Joinet Principles highlight the importance of measures of a symbolic nature, by way of moral reparation, such as public acknowledgement by the State of its responsibility, official declarations restoring the victims' dignity, commemorative ceremonies, naming of public roads, monuments that allow the duty of remembrance to be better assumed. [178]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn178%22%20%5Co%20%22)

**5.5.2. Judicial and administrative remedies**

The Constitutional Court has analysed the differences between the right to reparation for victims through judicial and administrative channels. In this regard, the following clarifications were made in Ruling SU-254 of 2013:

*"In relation to the different ways in which individual and collective victims of crimes in general, as well as of serious human rights violations and forced displacement in particular, can obtain the right to full reparation, in general the legal systems provide for both judicial and administrative remedies.*

*These different avenues of reparation to victims have important differences: (i) judicial reparation emphasises the granting of justice to individuals, examining the violations on a case-by-case basis. In this route, the investigation and punishment of those responsible, the truth in terms of the clarification of the crime, and the reparatory measures of restitution, compensation and rehabilitation of the victim are articulated. The search for full reparation of the anti-juridical damage caused to the victim is typical of this type of judicial reparation.*

*ii) Whereas, on the other hand, reparation by administrative means is comparatively characterised by: (i) for being mass reparations, (ii) for seeking reparation that, although it is comprehensive in that it includes different components or measures of reparation, it is fundamentally guided by the principle of equity, given that full reparation of the harm is not likely to be achieved in this way, as it is difficult to determine the exact dimension, proportion or amount of the harm suffered, and (iii) for being an expeditious way that facilitates the victims' access to reparation, as the processes are quick and inexpensive and more flexible in terms of evidence. The two channels must be institutionally articulated, must be guided by the principle of complementarity between them, and must together guarantee comprehensive, adequate and proportional reparation to the victims".*

Thus, there are various ways of guaranteeing the right to full reparation for victims of serious rights violations in a context of transitional justice. The important thing is that the victim can choose between which reparation route to follow: judicial or administrative.

As in all matters that call for justice, whoever is in charge of interpreting and adjudicating the right - in this case, the right to full reparation - enjoys a margin of discretion whose ultimate limits are defined by the legal principles that regulate the matter. Consequently, it is useful to summarise those constitutional and international principles that have been recognised as essential when establishing the guarantee of the right to full reparation, in favour of specific victims, communities and society as a whole, within a framework of transitional justice.

**5.6. Principles and criteria for awarding repairs**

In view of the developments referred to above, it can be seen that the parameters established by international law and international human rights law define that reparation must be fair, sufficient, effective, prompt and proportional to the gravity of the violations and the extent of the harm suffered [[179]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn179%22%20%5Co%20%22) .

Likewise, and in accordance with what has been stated so far, the Constitutional Court has determined that: (i) reparations have to be integral and full, in such a way that as far as possible *restitutio in integrum* is guaranteed, i.e., returning the victims to the state prior to the act of violation; and (ii) if this is not possible, measures such as compensatory damages should be adopted. [[180]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn180%22%20%5Co%20%22)

In accordance with inter-American jurisprudence, this Corporation has also recognised that: (i) reparation must be fair and proportional to the harm suffered; (ii) reparation must be made for material and immaterial damages; (iii) reparation for material damage includes both consequential damage and lost profits, as well as rehabilitation measures; and (iv) reparation must be individual and collective in nature. [181]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn181%22%20%5Co%20%22)

Among the various principles mentioned above, the principles of integrality and proportionality deserve special consideration. This Corporation has already specified the scope of the principle of integrality in the following terms:

*"The principle of integrality means that victims are subject to reparations of different kinds, which respond to the different types of harm they have suffered, which implies that these different reparations are neither exclusive nor exclusive, as each of them obeys different and irreplaceable reparation objectives.*

*The Inter-American Institute of Human Rights indicated that all reparation measures that are analysed individually possess, however, a dimension of integrality, which is composed of an internal integrality, which assumes that the criteria and execution of the measures are coherent with the meaning and nature of the measure. And an external one, between the different measures, given that the meaning they acquire is interdependent on their relationship."* ***[[182]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn182%22%20%5Co%20%22)***

In short, the comprehensiveness of reparation presupposes and demands that all necessary measures be adopted to eliminate the effects of the violations committed, in such a way as to ensure, to the best extent possible, that the victim returns to the state in which he or she was before the violation - if such a situation is possible and desirable - and, ultimately, that the conditions are created for the realisation of his or her life project, which has been cut short precisely because of the seriousness of the affronts suffered. [183]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn183%22%20%5Co%20%22)

On the other hand, the principle of proportionality indicates that the reparation to which the victims are entitled must correspond to the impact that the human rights violations have had on their lives. In this sense, reparation is called upon to re-establish the rights of the victims - with a harmonious balancing of the different measures noted above - and to improve their living conditions. However, compliance with the other obligations of the state aimed at guaranteeing the rights of the victims will also be judged in the light of the principle of proportionality, namely truth and justice, which, as mentioned above, together with reparation, form an inseparable triad. On this exercise of weighing up the rights of victims and the right to peace in a framework of transitional justice, this Court has already ruled extensively [[184]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn184%22%20%5Co%20%22).

In reiterated jurisprudence, this Corporation has identified as international standards, in addition to Inter-American jurisprudence, the parameters defined in *"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"* (Basic Principles and Guidelines), so that the notion of comprehensive reparation and its guiding principles, as developed in the United Nations, have been incorporated into the Colombian legal system:

*"Adequate, effective and prompt reparation is intended to promote justice by remedying gross violations of international human rights law or serious violations of international humanitarian law. Reparation must be proportionate to the gravity of the violations and the harm suffered. In accordance with their domestic law and international legal obligations, States shall provide reparation to victims for acts or omissions attributable to the State that constitute gross violations of international human rights law or serious violations of international humanitarian law. Where it is determined that a natural or legal person or other entity is obliged to provide reparation to a victim, the responsible party shall provide reparation to the victim or compensate the State if the State has already provided reparation to the victim."* ***[[185]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn185%22%20%5Co%20%22)***

In synthesis, this Corporation has established that the guarantee of the right to reparation for the victims of serious human rights violations, in a framework of transitional justice, must be established in accordance with the principles of comprehensiveness, proportionality, justice, effectiveness and speed, mandates that can be carried out with a harmonious combination of the different modalities aimed at restoring the individual rights of the victims (individual or collective), as well as those of society as a whole.

With regard to the latter measures, it should be noted that while it is true that some reparations have general and collective effects, strictly speaking - and despite the confusion that also occurs at the international level - guarantees of non-repetition are autonomous: they do not necessarily correspond to a form of reparation, although the Inter-American Court has historically developed them in this way. Recognising this difference in no way diminishes the legal effects arising from the state's obligation to ensure that human rights violations are not repeated, established under the name "*guarantees of non-repetition*". In order to clarify its nature, content and scope, this Court will summarise the framework of reference for this specific aspect, which is normally associated with the obligation to provide reparation.

**5.7. Guarantees of non-repetition**

This Court has understood that the guarantee of non-repetition is composed of all actions aimed at preventing the recurrence of conduct that affected the rights of the victims, which must be appropriate to the nature and magnitude of the offense [[186]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn186%22%20%5Co%20%22) . 186] Seen in this light, many of these types of measures, aimed at preventing repeated human rights violations, not only have the virtue of benefiting specific victims, but also have the potential to benefit a collective or even society as a whole. In a transitional justice framework, as can be seen, this variety of measures are essential to achieve the objectives proposed in such exceptional circumstances. Therefore, guarantees of non-repetition are an obligation of the state, not only for individual victims, but for society as a whole.

This obligation of the States Parties to the American Convention, strictly speaking, derives from the general obligations contemplated in Articles 1(1) and 2, from which the general duty to guarantee the prevention of human rights violations can be deduced [[187]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn187%22%20%5Co%20%22) . 187] In this sense, guarantees of non-repetition, as a set of measures aimed at preventing human rights violations, comprise a variety of modalities, not only legal, but also political, administrative and cultural.

Inter-American jurisprudence in this regard is very abundant, particularly since the Loayza Tamayo case in 1999, the first time a state was ordered to repeal domestic legislation and modify it in accordance with the parameters of the Convention. Since then, the Inter-American Court has issued orders to Latin American and Caribbean states seeking to remedy structural problems in the domestic sphere, through the implementation of various measures: repeal of legal norms, creation and adoption of norms, mechanisms, policies and practices within the state, modifications to regulations and institutional practices, guidelines for training in human rights culture for specific actors and society in general. Along the same lines, other international developments can be seen [[188]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn188%22%20%5Co%20%22) .

Some of these international advances, aimed at specifying the content of guarantees of non-repetition as an obligation of the state, are the following: (i) recognise rights at the domestic level and offer guarantees of equality [[189]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn189%22%20%5Co%20%22) ; (ii) design and implement comprehensive prevention strategies and policies; (iii) implement education and dissemination programmes aimed at eliminating patterns of violence and rights violations, and inform about rights, their protection mechanisms and the consequences of their infringement [[190]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn190%22%20%5Co%20%22) ; (iv) introduce programmes and promote practices that allow for effective action in response to complaints of Human Rights violations, as well as strengthen institutions with functions in this area [[191]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn191%22%20%5Co%20%22) ; (v) allocate sufficient resources to support prevention efforts [[192]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn192%22%20%5Co%20%22) ; (vi) adopt measures to eradicate risk factors, including the design and implementation of instruments to facilitate the identification and notification of risk factors and events of violation [[193]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn193%22%20%5Co%20%22) ; and (vii) adopt specific prevention measures in cases where it is detected that a group of persons is at risk of having their rights violated [[194]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn194%22%20%5Co%20%22) .

According to the Joinet Report Principles, the same causes produce the same effects, which is why:

*"(...) three measures are imposed to prevent victims from being confronted again with violations that may violate their dignity:*

*a) Disbanding paramilitary armed groups: this is one of the most difficult measures to implement because, if it is not accompanied by reintegration measures, the cure may be worse than the disease;*

*b) Repeal of all emergency laws and jurisdictions and recognition of the non-derogable and non-derogable nature of the remedy of habeas corpus; and*

*c) Dismissal of senior officials implicated in the serious violations that have been committed. These should be administrative and not repressive measures of a preventive nature and the officials may benefit from guarantees".*

The Principles contain provisions aimed at ensuring society's return to peace, including the following:

***"Principle 37. Disbandment of parastatal armed forces/demobilization and social reintegration of children.*** *Parastatal or unofficial armed groups shall be demobilized and disbanded. Their position in or links with State institutions, including in particular the armed forces, police, intelligence and security forces, should be thoroughly investigated and information thus acquired should be made public. States should establish a reconversion plan to ensure the social reintegration of all members of such groups...".*

*In the* same vein, Resolution 60/140 adopted by the United Nations General Assembly on 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*" provides the following on guarantees of non-repetition:

*“23. Guarantees of non-repetition should include, as appropriate, all or part of the following measures, which will also contribute to prevention:*

*a) The exercise of effective control by civilian authorities over the armed and security forces;*

*(b) Ensuring that all civilian and military proceedings conform to international standards of due process, fairness and impartiality;*

*(c) Strengthening the independence of the judiciary;*

*d) The protection of professionals in the legal, health and healthcare, information and related sectors, as well as human rights defenders;*

*(e ) Education, as a matter of priority and on an ongoing basis, of all sectors of society in human rights and international humanitarian law and training in this field for law enforcement officials, as well as the armed and security forces;*

*(f ) Promotion of the observance of codes of conduct and ethical standards, in particular international standards, by public officials, including law enforcement personnel, prison staff, media, medical, psychological, social and armed forces personnel, as well as personnel of commercial enterprises;*

*(g) The promotion of mechanisms to prevent, monitor and resolve social conflicts;*

*(h) Review and reform of laws that contribute to or permit gross violations of international human rights law and serious violations of humanitarian law.*

*X. Access to relevant information on violations and redress mechanisms".*

The Inter-American Court itself has established that measures of satisfaction and guarantees of non-repetition are not of an economic or monetary nature and consist of the performance by the State of *"acts or works of public scope or impact, such as the transmission of a message of official condemnation of the human rights violations in question and of commitment to efforts to ensure that they do not happen again and that have the effect of recovering the memory of the victims, recognising their dignity or consoling their bereaved" [195].* [[195]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn195%22%20%5Co%20%22) .

In the case of Gómez Lund et al ("Guerrilla do Araguaia") v. Brazil, for example, the Court condemned the State to adopt a set of measures to guarantee non-repetition such as: (i) human rights education in the Armed Forces; (ii) the criminalisation of the crime of enforced disappearance; (iii) the access, systematisation and publication of documents held by the State; (iv) the creation of a Truth Commission; (v) the search for mortal remains; (vi) the clarification of the truth of the facts and the punishment of those responsible; (vii) the adoption of legislation to prevent human rights violations; (viii) public acts of acknowledgement of responsibility; **(ix)** the erection of monuments in honour of the victims, through a public ceremony in the presence of the relatives; **(x)** refrain from applying amnesties, statutes of limitation and exclusions of criminal responsibility to prevent investigation and punishment and disclose the results of the investigations.

Finally, this Court has understood that imposing limits on full reparation through administrative channels on victims of damages caused by crimes against humanity, such as torture, genocide, forced disappearance, extrajudicial executions, and rape, or when several of these acts concur in the same victim and are attributable to agents of the State, generates a disproportionate burden and ignores the principle of non-repetition. In the words of the Court:

*"In the aforementioned events, the right of the victims to receive guarantees of non-repetition would also be violated, since the comprehensive reparation of the victims by the State becomes the real incentive for the State to adopt all the necessary corrective measures to punish those responsible. Given the government's view that the costs of reparation are more important than the effectiveness of rights, due to an alleged impact on fiscal sustainability, the risks of repetition of such events could increase, even if symbolic measures of reparation are appropriate.*

*In these events, it is illegitimate to prioritise the costs of an eventual reparation attributable to the State, in order to almost totally sacrifice the content of fundamental rights and prevent the pacification objective sought by the law from being achieved. In these circumstances, the aim sought by the rule is illegitimate and constitutionally prohibited."* ***[[196]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn196%22%20%5Co%20%22)***

In conclusion, the Court understands that guarantees of non-repetition are an indispensable element for achieving the aims pursued by a transitional justice framework and, in this sense, they also constitute forms of reparation for the victims, even when, due to their nature, purpose and legal effects, they go beyond the pretensions of full restoration of human rights in purely individual situations.

**6. PRIORITISATION AS AN INSTRUMENT OF CRIMINAL POLICY**

The legislator is autonomous to regulate the State's criminal policy, except for constitutional restrictions [[197]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn197%22%20%5Co%20%22) , defined as *"the set of responses that a State deems necessary to adopt to deal with conduct considered reprehensible or causing social harm in order to ensure the protection of the essential interests of the State and the rights of the residents of the territory under its jurisdiction*" [[198]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn198%22%20%5Co%20%22) .

Among the different normative measures that, according to constitutional jurisprudence, form part of the concept of "*criminal policy*" are those that: (i) define the legal assets that are sought to be protected by criminal law, through the classification of criminal conduct [[199]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn199%22%20%5Co%20%22) ; (ii) establish the punitive regimes and procedures necessary to protect such legal assets [[200]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn200%22%20%5Co%20%22) ; (iii) indicate criteria to increase the efficiency of the administration of justice [[201]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn201%22%20%5Co%20%22) ; (iv) enshrine mechanisms for the protection of persons involved in criminal proceedings [[202]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn202%22%20%5Co%20%22) ; (v) regulate preventive detention [[203]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn203%22%20%5Co%20%22) ; and (vi) indicate the terms of the statute of limitations for criminal action [[204]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn204%22%20%5Co%20%22) .

In this context, prioritisation is a criminal policy instrument that leads, through the use of certain criteria and various criminal analysis techniques [[205] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn205%22%20%5Co%20%22) to rationalise and concentrate investigative efforts on a set of crimes and perpetrators, with the aim of making criminal prosecution more effective and efficient. In this sense, prioritisation not only makes it possible to establish a logical order in responding to citizens' demands for justice, but also strengthens the State's investigative activity, especially in the face of various manifestations of organised crime, without implying any waiver of the right to prosecute [[206]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn206%22%20%5Co%20%22) .

Prioritisation has various justifications: (i) the over-criminalisation of the system makes it factually impossible to prosecute all crimes at the same time and with the same intensity; (ii) a vision of criminal law, not only as a mechanism of repression, but in terms of the execution of a public policy aimed at fighting crime, which requires focusing actions on the crimes that most seriously affect the community; (iii) recognition that not all demands for justice offer the same entity[; [207]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn207%22%20%5Co%20%22) and (iv) the need to classify and regroup cases that present the same criminal patterns.

Similarly, there are different scenarios for the use of prioritisation techniques. Indeed, different prioritisation techniques are used in the following contexts: (i) by state criminal investigation bodies; (ii) in transitional justice scenarios; (iii) in the exercise of universal jurisdiction; and (iv) by international criminal tribunals.

In the American adversarial system, prioritisation allows criminal investigation to be used not only as a way of gathering evidence, but also as an active criminal policy mechanism for the prevention and fight against specific forms of criminality, making it possible to concentrate the investigation on the prosecution of: (i) of notorious criminals (*conspicuous lawbreakers*), in order to deter others [[208]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn208%22%20%5Co%20%22) ; (ii) of the most significant *offenders* (*significant offenders*), i.e. those who have committed the greatest offences against society [[209]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn209%22%20%5Co%20%22) ; (iii) *pretextual prosecution*, whereby a less serious crime is investigated [[210] because](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn210%22%20%5Co%20%22) of the impossibility of obtaining sufficient evidence for a more serious crime, or; (iv) secondary prosecution, whereby a lesser crime is investigated in order to obtain evidence of a more serious crime [[211]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn211%22%20%5Co%20%22) .

In the Chilean case, the prioritisation of cases has revolved around two axes. The first is the creation of the Specialised Prosecutor's Offices for High Complexity Crimes and the Prosecutor's Offices for the Treatment of Less Complex Cases, which must take on the prosecutions in a differentiated manner, in accordance with the prioritisation criteria established in the Strategic Plan of the National Prosecutor of Chile. The complexity of the crimes is mainly determined by: (i) the type and gravity of the offence and (ii) access to evidentiary material.

The second axis is built around the early categorisation of cases, by virtue of which all criminal news is initially classified into four groups: (i) definitive file (atypical conduct); (ii) temporary file (typical conduct with unknown perpetrator); (iii) application of the principle of opportunity; and finally (iv) distribution of viable cases. This categorisation means that between 70 and 80% of the cases are initially dismissed, and only 20% of the complaints are assigned to the Deputy Prosecutors.

Prioritisation has played a fundamental role in transitional justice scenarios, for the following reasons: (i) given the high number of perpetrators, crimes committed and victims affected, it is imperative to organise and classify the cases, as it is impossible to process them at the same time; (ii) the investigation of crimes *against humanity*, perpetrated in scenarios of internal armed conflict or during authoritarian regimes, involves regrouping cases and finding macro-criminal patterns, in order to demonstrate: (a) the existence of a criminal plan; (b) the attack against the civilian population; (c) the commission of crimes in a massive or systematic manner (*actus reus*) and (d) the intentional element (*mens rea*); and (iii) allows for the identification of those most responsible for the commission of system crimes.

The main methodologies for applying prioritisation in transitional justice contexts, whether exclusively, simultaneously or successively, have been the following [[212]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn212%22%20%5Co%20%22) :

*The* so-called "*easiest cases*". This is about prioritising those issues that can deliver results in the short term. Its logic is to look for "*low-hanging fruits*". Used well, this technique can help build more complex cases against the leaders of criminal organisations [[213]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn213%22%20%5Co%20%22) .

*The high impact cases*. Priority is given to crimes that have had a profound effect on particular communities [[214]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn214%22%20%5Co%20%22).

*The most serious violations*. It consists of prioritising by type of crime, such as crimes *against humanity*[[215]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn215%22%20%5Co%20%22).

*The most responsible perpetrators*. The aim is to prioritise by person and not by type of crime, especially the heads of criminal organisations. [216]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn216%22%20%5Co%20%22)

The so-called *"symbolic or paradigmatic cases*". Priority is given to certain cases that show the criminal patterns of the criminal organisation, based on the examination of a specific case.

In this sense, a specific case or situation can be prioritised [[217]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn217%22%20%5Co%20%22) , understood as a universe of issues that share macro-criminal patterns.

Similarly, States pursuing criminal prosecutions in the exercise of universal jurisdiction have employed prioritisation methodologies.

In the case of Canada, for example, the "*War Crimes and Crimes against Humanity Programme*", created under the Crimes against Humanity and War Crimes Act, exercises criminal jurisdiction over persons who have committed international crimes in third states. The programme allows for the coordination of different state entities that have the function of investigating and prosecuting alleged perpetrators of international crimes, including migration, police and jurisdictional authorities. The objective of bringing together the different state entities is to avoid duplication of efforts in investigation and punishment. On a monthly basis, it brings together representatives of the Department of Justice, the Department of Nationality and Immigration, the Border Services Agency and the Canadian Mounted Police in the Operations and Coordination Committee of the War Crimes and Crimes against Humanity Programme, which applies the criteria for prioritisation of cases through the Case Review Subcommittee.

The so-called "Case Review Subcommittee" makes recommendations for investigation, analysis or prosecution in cases against alleged perpetrators of international crimes residing in Canada. So far, it has prioritised 57 cases and made a number of recommendations. The prioritisation of these cases is not based on criteria formally adopted by the Office of the Attorney General of Canada, but on criteria adopted by the Subcommittee itself: (i) the case must involve command responsibility; (ii) the evidentiary material must be corroborated; and (iii) it must be easily accessible. Where these three characteristics are not met, but there are reasons of public policy, international justice, international impunity, or a Canadian citizen residing in Canada, the case may also be prioritised. In addition, cases with common criminal elements are associated, either by georeference or by their perpetrators. This prioritisation process was not initially based on the three criteria mentioned above, but on a more extensive catalogue that included the seriousness of the crime, the impact on the victims, or the possibility of expelling the alleged offender from Canadian territory [[218]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn218%22%20%5Co%20%22) .

The International Criminal Tribunals, whether permanent or *ad hoc*, given the large number of crimes and alleged perpetrators that they can investigate, in accordance with their respective competences, often adopt criteria for prioritising situations and cases.

Article 1.1 of the Statute of the Special Court for Sierra Leone provides for the possibility of investigating only those persons who bear *the* "*greatest responsibility*" for crimes under its jurisdiction. The Agreement for the Establishment of the Extraordinary Courts of Cambodia, for its part, provides for the exercise of jurisdiction over "*senior officials of Democratic Kampuchea and those bearing the greatest responsibility*" for crimes committed between 1975 and 1979. Article 1 of the ICTY Statute extends the Tribunal's jurisdiction to "*persons responsible for serious violations of international humanitarian law*", which was interpreted by the Tribunal's First President as a prioritisation of the most serious cases committed by the leaders of the conflict.

The Office of the Prosecutor of the ICC, for its part, adopts three-year strategic plans, in which general investigative objectives are set (e.g., to prosecute those most responsible for the most serious crimes) and methodologies to achieve them (e.g., conducting investigations in context or *focused investigations*). Subsequently, through the use of various investigative techniques [[219]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn219%22%20%5Co%20%22) and the work carried out by specialised analyst units [[220]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn220%22%20%5Co%20%22), situations are delimited or emblematic cases are selected, based on subjective, objective and complementary criteria.

**7. DESCRIPTION OF THE BACKGROUND AND ESSENTIAL ASPECTS OF LAW 1592 OF 2012.**

Law 1592 of 2012 is part of a Transitional Justice System made up of various norms, issued in different contexts, such as: Law 418 of 1997, Law 975 of 2005, Law 1424 of 2010 and Law 1448 of 2011 - Victims Law - consolidated through Legislative Act No. 01 of 31 July 2012, which instituted the so-called "Legal Framework for Peace" in our legal system, as an integral part of the Political Charter.

Despite the differences that may exist between these norms, they all converge in a common objective: to put an end to decades of conflict and barbarism through a process that allows the democratic value of Peace to materialise, while at the same time contributing to the consolidation of our constitutional regime.

The immediate antecedent of Law 1592 of 2012 is the Justice and Peace Law which it seeks to reform, as can be deduced from its title: *"Whereby amendments are made to Law 975 of 2005 "whereby provisions are issued for the reincorporation of members of organised illegal armed groups, which effectively contribute to the achievement of national peace and other provisions are issued for humanitarian agreements" and other provisions are issued"*. For this reason, the Court considers it necessary to make a brief reference to the objectives of this Law, in order to elucidate, in the light of these objectives, what is indeed the purpose of the reform that contains the provisions and regulatory segments questioned by the plaintiffs.

**7.1. Reasons for the reform of the Justice and Peace Law and the legislative process of Law 1592 of 2012**

Article 1 of Law 975 of 2005 establishes the purpose for which it was enacted, in the following terms: *"The purpose of this law is to facilitate peace processes and the individual or collective reincorporation into civilian life of members of illegal armed groups, guaranteeing the rights of victims to truth, justice and reparation. || An organised armed group outside the law is understood to be a guerrilla or self-defence group, or a significant and integral part of them, such as blocs, fronts or other forms of these same organisations, as referred to in Law 782 of 2002.*

This objective was also summarised by Viviane Morales Hoyos, who as Attorney General of the Nation, and recognising that the application of the Justice and Peace Law presented a series of problems that led to excessive delays in the processes, filed on 15 September 2011 in the First Commission of the House of Representatives the Bill that would eventually have the number 096 of 2011 (House). According to the explanatory memorandum of the bill:

"Any assessment of the functioning and implementation of the Justice and Peace Law must take into account that the fundamental objective of this law is to contribute to the consolidation of peace and the reincorporation into civilian life of members of illegal armed groups, guaranteeing, on the one hand, the rights of victims to truth, justice and reparation and, on the other hand, the rights of applicants to due process. In addition, the Prosecutor General's Office should give a timely response to the applicants on the appropriateness of an alternative punishment, as a consequence of effective contributions to the process of national reconciliation.

The achievement of the aforementioned objectives is materialised with the sentences handed down by the magistrates of knowledge, based on the investigative work carried out by the Attorney General's Office. In order for the task entrusted to the Prosecutor General's Office to be carried out in a reasonable amount of time, it is essential for the law to provide for more agile and expeditious procedural stages. [[221]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn221%22%20%5Co%20%22)

Thus, the main purpose of the reform was to implement essential and definitive solutions that would counteract the problematic use of the procedure established by Law 975 of 2005, which affected the effectiveness and speed of the justice and peace model. The then Attorney General justified the presentation of the bill by stating that:

"Since my intervention before the Honourable Supreme Court of Justice, when I was aspiring to the post of Attorney General of the Nation, which I hold today, I expressed my concern about the situation of the Justice and Peace process and expressed the urgent need to seek solutions to the various problems generated by the application of the current procedure.

(…)

During my time at the head of the Attorney General's Office, and after carefully analysing the experience accumulated by the National Prosecution Unit for Justice and Peace during more than five years of application of Law 975 of 2005, I have been able to confirm the need to introduce some specific modifications to the current law, in order to speed up the processing of cases. This, in turn, will make it possible to speed up the response of the investigative body to the expectations of justice coming from both the national and international spheres, in particular, from the international human rights monitoring bodies responsible for monitoring the situation in Colombia". [[222]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn222%22%20%5Co%20%22)

In the aforementioned explanatory memorandum, the Prosecutor also stated that the obstacles hindering the adequate and timely implementation of the Justice and Peace system were mainly concentrated on six points, on which the reform proposal would focus: i) the excessive delay in the processing of cases; ii) the volume of cases and the complexity of their comprehensive investigation; iii) the lack of regulation for the prosecution and securing of assets that should be used for the reparation of victims and the restitution of those that have been taken away from them; iv) the delays that are generated by the lack of a legal framework to ensure that the justice and peace system can be used for the reparation of victims and the restitution of those who have been deprived of their property; iv) the delays generated as a consequence of attempting to investigate and ensure collective reparation under judicial procedures designed under the logic of individual reparation; v) the complexity and delay in the processing of the reparation incident; and iv) the absence of criteria for excluding, in certain circumstances, the postulados from the justice and peace process. [223]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn223%22%20%5Co%20%22)

With regard to the first point related to the delay in the Justice and Peace processes, the Prosecutor, in the exercise of her legislative initiative, considered that this was largely due to the multiple public hearings required in the framework of the procedure established by Law 975 of 2005. As an alternative, the Reform Bill proposed "*the abolition of the hearing before the supervisory magistrate, so that a hearing would be held before the trial chamber, which would concentrate on the formulation and acceptance of the charges, the material and formal legalisation of this acceptance and the announcement of the direction of the ruling.*" [[224]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn224%22%20%5Co%20%22)

The second obstacle to the efficient application of the Justice and Peace process was the volume and complexity of the cases to be investigated by the Justice and Peace Unit of the Prosecutor General's Office, given the large number of victims, confessions and applicants. The response to this difficulty focuses on the prioritisation of investigations, following the model that has proven to be successful in other transitional justice scenarios. In this respect, the explanatory memorandum states:

"The comparative experience of countries and ad hoc international tribunals teaches that in order to achieve prompt justice it is imperative to establish priorities that allow for the preferential investigation of certain cases, either because of the seriousness of the crimes or the rank of the perpetrators or the particular characteristics of the victims or the social impact caused by the act, or because of the strength of the evidence and the concrete possibilities of obtaining results more quickly. These and other criteria, taken into account in other countries and by international criminal tribunals, have guided the adoption of strategies to prioritise the investigation of certain cases, which have allowed results to be obtained more quickly. The current backlog of cases pending investigation and prosecution before the justice and peace authorities requires the immediate adoption of strategies that allow them to prioritise the investigation and prosecution of certain cases." [[225]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn225%22%20%5Co%20%22)

The third problematic element on which the bill seeking to modify the justice and peace system focused was based on the lack of a regulation in Law 975 of 2005 that established the procedure to be followed for the prosecution and securing of assets that would allow for the reparation of victims' rights. Through the inclusion of two articles, the reform intended that before the magistrate for the control of guarantees, it would be possible to request the imposition of precautionary measures against assets, the restitution of those that were the product of dispossession and/or the cancellation of fraudulently obtained titles.

As a fourth point, the reform sought to eliminate the competence of the National Prosecutor's Unit for Justice and Peace to investigate collective harm, leaving this function to the Public Prosecutor's Office and the National Commission for Reparation and Reconciliation. The explanatory memorandum states: *"[t]his assignment of functions takes into account that the reparation of collective harm does not derive in itself from the affectation caused by individual criminal conduct but rather from the collective harm caused by the generalised situation of violence, in the face of which governmental and administrative measures are more effective. || The individual logic of judicial proceedings and in particular of criminal proceedings has serious limitations for establishing collective damages and duly satisfying the right to collective reparation of the communities and peoples affected by the violence in Colombia".* ***[[226]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn226%22%20%5Co%20%22)***

It is important to highlight that in this point of the Reform Bill, the possibility of administrative reparation was identified, headed by the National Government, as the effective modality of reparation for victims, in the face of damages of a collective nature.

In order to avoid the delays that, according to the pragmatic analysis carried out with the Prosecutor's Office, occurred in the justice and peace processes - as a consequence of the procedural moment in which, according to Law 975 of 2005, the incident of reparation had to be filed - the reform proposed as a fifth point to homologate it with the ordinary one, considering that it should be processed once the sentence had been issued.

Finally, as a sixth problem to be solved, the Bill sought to create the *institution of* exclusion from the Justice and Peace process, and of its termination due to the voluntary resignation of the postulants, which had not originally been included in Law 975 of 2005. The reform was intended to empower judicial operators to purge the universe of postulados in three specific circumstances: (i) those who formally appear on the National Government's lists, but had been unable to be located and/or had not appeared in the process; (ii) those who voluntarily do not want to submit to justice and peace or who desist from continuing in the process; and (iii) those who did not satisfy the eligibility requirements set out in the law.

Regarding the legislative process that the Bill followed, the report for the first debate was published in the Congressional Gazette number 801 of 2011 after the designation of rapporteurs in the First Constitutional Committee of the House of Representatives. On 8 November 2011, the rapporteurs, in coordination with the Ministry of Justice and Law, suggested a total amendment to the text proposed for first debate in accordance with Articles 160 and 161 of Law 5 of 1992 [[227]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn227%22%20%5Co%20%22) . 227] New articles and some modifications that were considered necessary were included. [228]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn228%22%20%5Co%20%22) However, the entirety of the draft originally presented was respected. As proof of this, the new version of the bill was published in the Congressional Gazette number 838 of 2011.

Subsequently, on 16 November 2011, the First Committee of the House of Representatives approved the text of the bill in the first regulatory debate, as recorded in Act No. 20 of the same date, published in the Congressional Gazette No. 057 of 8 March 2012. In the framework of the debate that took place in the legislative process in that legislative cell, one of the two Coordinators Speakers expressed his concern about the upcoming completion of the maximum sentence imposed by Law 975 of 2005 (8 years), which would mean that many of the Justice and Peace detainees would regain their freedom. He proposed providing the Prosecutor General's Office, through the reform that developed the Bill, with tools that would allow it to prevent this from happening. [229]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn229%22%20%5Co%20%22)

Likewise, the Coordinator Rapporteur also explained the criteria on which the Draft Law presented by the Attorney General of the Nation was based, which was totally amended in the light of the contributions of the Ministry of Justice, the OAS Justice Support Mission and the Toledo International Centre for Peace. He argued in his intervention before the First Commission:

**"**(...) **[A] criterion of celerity, this criterion of celerity is introduced in Law 975; A prioritisation criterion**, this prioritisation criterion will allow the Attorney General's Office, based on criteria that are established in the law itself, criminal policy criteria, criteria of the importance of the criminal act, but also, the qualities of the Justice and Peace applicant, and also specific conditions of the victims, **generate a prioritisation criterion so that the Prosecutor General's Office can prioritise those cases that need to be resolved more quickly, relegating those cases of less importance, of less national and international impact, and which will give us the possibility that Justice and Peace can be resolved in terms that are more or less in line with the fatal timetable that we have, which is precisely the eight years.**

Also, within this criterion of speed**, the hearings currently established for the different procedures are reduced to two, concentrating in a final hearing, not only the legality of the version assessed by the Prosecutor's Office, but also the sentence**. This concentration will then allow us to eliminate one hearing and streamline the process, also with preclusive terms; within the need to streamline the process, an innovative criterion is established that brings us closer to the Code of Criminal Procedure.

At present, before a sentence is passed, the victims' reparation incident must be processed; and **this process of the victims' reparation incident**, which involves an attempt at conciliation, an evidentiary debate, some versions of the victims to present their own facts, **is preventing sentences from being passed due to a procedural barrier; What is going to be done with this bill is that first the sentence is passed, and once the sentence has been enforced, the incident of reparation for the victims is processed, trying above all ¿for the benefit of the victims¿** to give them an element of certainty, of procedural certainty, that they already have an enforceable conviction, a sentence that must also be based on the clarification of the truth in justice, leaving reparation subject to the enforcement of that sentence.

Another innovation, which we take from the suggestions of the Toledo Centre for Peace, but which also coincide with the recommendations of the OAS, is to **allow, in some cases, the Prosecutor's Office to receive collective versions and formulate collective versions before the respective hearing chamber**, as this plurality of more than 4,000 applicants presents us with cases in which many of them coincide in the facts, many of them support each other in making accusations, and if we continue with the current process, it would oblige the Prosecutor's Office to receive **collective versions and formulate collective versions before the respective hearing chamber.If we continue with the current process, this would oblige the Prosecutor's Office to receive individualised versions, which would generate a plurality of procedural steps that would contribute to continuing to generate congestion in Justice and Peace.**

**Therefore**, by establishing the procedure of collective versions and collective indictments, especially in the case of a type of crime based fundamentally on the collective actions of groups that have taken up arms or armed groups outside the law, this will give the Prosecutor's Office greater possibilities for efficiency in procedural terms; it is also important to note that **the bill places much more emphasis on the oral procedure in the Justice and Peace process.** And finally, an inter-institutional transitional policy committee is created, in which various public offices have a seat, in order to be able to articulate in a harmonious manner and in the spirit of collaboration on an issue that interests us all, above all to protect against the possible intervention of International Criminal Justice, a policy that is going to become a state policy and a policy that undoubtedly has to strengthen the Justice and Peace process, **above all because this bill is going to make a distinction between individual reparation and collective reparation; This collective reparation will no longer be a judicial process but will be left to different administrative bodies, obviously in accordance with the provisions of Law 1448 or the Victims Law; and both the Attorney General's Office and the Ombudsman's Office will play an important role in the Justice and Peace Law for the purposes of collective reparations**. [230]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn230%22%20%5Co%20%22) (Bolding outside the original text).

In the parliamentary debate, an intervention was made by Representative Germán Navas Talero, in which he questioned the modification of the moment in which the victims should file the incident of reparation, according to what was proposed in the Bill. According to what is recorded in the Minutes, the Representative stated that:

"S]uppose that in order to be entitled to the benefits granted by this law, the victims must have been compensated (...) it has always been affirmed that in order to be entitled to these sentence reductions, the victim must have been compensated. || Now I say, I condemn him first and then he compensates; then, how am I going to assess a sentence and say that he is entitled to the benefit, if he has not yet compensated the victim? I take your words and what the text says; this means that the judge would have to rule and grant the benefits without the damages having been paid, that is how I understood it Dr. Velásquez, that is why I would like to clarify it because otherwise we would be giving benefits to those who have not yet compensated the victim." [[231]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn231%22%20%5Co%20%22)

To the concern raised by Representative Navas, the Rapporteur Coordinator -Representative Hugo Orlando Velásquez- responded in the following terms:

"Regarding the issue that worries Dr Navas, the Victims' Reparation Incident, as it is in Law 975, has basically become another obstacle to increase congestion in Justice and Peace, blocking the decision of the different processes, because it has made the sentence conditional on the prior resolution of the victims' reparation incident; what we do is to assimilate it to what is currently in the Code of Criminal Procedure, first the sentence, and then the victims' reparation incident; And Dr. Navas, I share with you all the concerns about the victims, but at the moment it is more uncertain for the victims to be subjected to a sentence that has not arrived and that will not arrive, and to see the applicants free to serve their sentences without a final sentence that declares them responsible, and which will therefore leave the assets that have been handed over in legal limbo, some with the aim of compensation, others because the Prosecutor's Office itself has managed to seize the assets; These assets will certainly not possibly be made available and applied to the compensation of the victims if there is not first a sentence, unless the postulate, the demobilised person, hands them over unequivocally to reparation; but for us, it undoubtedly represents more of a guarantee for the victims to have a guilty verdict; transitional justice is based on a triad: truth, justice and reparation, and there is no truth until we have a sentence, because the sentence is the one that will resolve the entire preliminary investigation and will corroborate the confession made by the defendant; it seems to me, Doctor Navas, that in this aspect we have to understand, because it was also a suggestion of the Prosecutor's Office, that we must first pass the sentence, the sentence must be passed, and then the incident of reparation must be processed, and not place an insurmountable obstacle to the sentence by conditioning it on the prior resolution of the incident of reparation; And this does not affect the dosage of the sentence, as there is an alternative sentence here, as Dr. Osorio pointed out, an alternative sentence that will surely determine the dosimetry to which the Justice and Peace Magistrate must resort at the time of sentencing, undoubtedly the reparation or the reparation incident will not affect this dosage, so this would not affect the fact that first the sentence and then the reparation incident must be carried out. [232]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn232%22%20%5Co%20%22)

Similarly, the Plenary Chamber considers it necessary to highlight the intervention in the First Committee of Representative Carlos Edward Osorio, who, while expressing his support for the Bill, made a statement on four points that he considered should be analysed in depth: (i) although he recognised that the Bill refers to prioritisation and not selection, he considered it appropriate to clarify whether simple membership of a group outside the law constitutes a crime against humanity. (ii) the application of the alternative penalty which suspends the principal penalty only after the sentence has been passed. (iii) the distinction between collective and individual conduct when judging whether the accused meets the requirements to be eligible for the alternative penalty. (iv) The need to harmonise the Bill with the Victims' Law and the Legislative Act under discussion at the time (Legal Framework for Peace).

In particular, the Court considers it appropriate to refer to the analysis made by the Congressman in relation to the second of the points raised by him, related to the difficulties generated by the application of early sentencing:

"A second aspect, Madam Prosecutor, which seems no less important to me, Doctor Navas, is related to alternative sentences, at the moment the current law speaks of imposing a sentence of no more than 40 years, that sentence, once it is determined, once it is enshrined in a sentence, is suspended and there is room for an alternative sentence that can be between 5 and 8 years; what is happening at the moment? The demobilised combatants who will be serving approximately 5 years in detention in December 2011, have a clear expectation, and have the expectation that in the worst case scenario, in the most complex state, they will have 8 years as an alternative sentence, that is to say, that in approximately 3 years they could be free.

What the Supreme Court of Justice has said on the matter, Madam Prosecutor, and you are well aware of it, is that **until a conviction is handed down, the suspended sentence, which can be 30 or 40 years, is suspended, and that only then does it give rise to the alternative sentence, that only until the alternative sentence is handed down, that only until the sentence is handed down can there be room to consider the alternative sentence**, that is, if these people have been deprived of their liberty for 10 years and no sentence has been handed down, they have no right to the alternative sentence, that is, if in 5 years these people have already been in prison for 10 years and no sentence has been handed down, **This places us in a very complex context of legal security and legitimate confidence**, the demobilised person assumes that in the worst case scenario, in eight years they will be on the street, and this is one of the prerogatives that the state, a serious state, regardless of whether or not one likes the demobilisation policy, regardless of whether or not one agrees with transitional justice, this is a reality. [233]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn233%22%20%5Co%20%22) (Bolding outside the original text).

Finally, after numerous interventions, the complete articles of the amended bill, its title and the decision to continue its legislative procedure were unanimously approved by the members of the First Committee of the House of Representatives.

On 6 December 2011, a report was presented for the second debate in the Plenary of the House of Representatives, a document that was published in the Congressional Gazette number 958 of 2011. Consequently, the Bill was debated and approved unanimously and without amendments in the session of 16 December 2011, as recorded in Plenary Act 110 of the same date, published in the Congressional Gazette 63 of 12 March 2012. The final text was published in the Congressional Gazette number 997 of 23 December 2011. [234]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn234%22%20%5Co%20%22)

Following the procedure, the report for the first debate in the First Committee of the Senate of the Republic was presented, as was recorded in the Congressional Gazette number 221 of 11 May 2012. In the report, before entering fully into the study of the reform of Law 975 of 2005, Senators Juan Fernando Cristo -as coordinator- and Roy Barreras -as rapporteur-, made detailed considerations on transitional justice and its impact on our country, in particular on: (i) of transitional justice: complementarity of restorative justice and retributive justice, (ii) The tension between Justice, Peace and Reconciliation. Retributive Justice and Restorative Justice, and (iii) Balance between Justice and Peace: criminal sanction and restorative mechanisms.

Specifically with regard to the reform of Law 975 of 2005, the rapporteurs argued:

"The bill aims to improve the core aspects of the functioning and implementation of the Justice and Peace Law, so that it can make a real and effective contribution to the objective pursued by the Nation with the instruments of Transitional Justice: the consolidation of peace and national reconciliation, as well as the recovery of the Rule of Law, through (i) the investigation, prosecution and punishment of those most responsible for Human Rights violations, (ii) the reintegration of members of illegal armed groups into civilian life, and (iii) the guarantee of victims' rights to truth, justice and reparation.

For the Colombian state, it is now clear that the implementation of Law 975 of 2005 is ineffective and fraught with problems. There is no conflict over the need to improve its procedures in order to turn it into a true instrument for the realisation of justice, truth and reparation for victims, as a contribution to the transitional justice process.

The victims participating in the Justice and Peace judicial processes are demanding an end to the uncertainty regarding the events they denounced; society still has confidence that the Justice and Peace process will lead to the clarification of the causes of the internal armed conflict in Colombia. To a large extent, the re-establishment of social trust in state institutions - which is one of the aims of the Transitional Justice process - depends on the success of the Justice and Peace process. Hence the need to continue strengthening it.

More than retribution for the crimes committed by the demobilised combatants, society, and particularly the direct victims, are demanding a large dose of truth, they are demanding that the perpetrators confess or that the judicial operators establish responsibilities; they are also demanding moral and material reparation for the harm caused to them. Social confidence in the Justice and Peace Law has been weakened: there is no certainty that its development can provide answers to their demands for justice, truth and reparation. Nevertheless, many victims continue to wait patiently for solutions to emerge from the judicial processes.

There are several problematic situations in the Justice and Peace Law that need to be corrected, which is why this bill is currently relevant. Among the most relevant are the following:

Delays in the processing of proceedings, largely due to the multiplicity of hearings that need to be held throughout the proceedings;

The indiscriminate investigation of the totality of the crimes committed by the accused, regardless of whether or not they are related to the systematic understanding of the internal armed conflict.

The lack of regulation regarding the prosecution and securing of assets destined for the reparation of victims, as well as the restitution of property taken from them.

Difficulties in the investigation of collective harm, which contrasts with the individual logic of judicial proceedings, which in turn generates significant delays.

The processing of the incident of integral reparation to the victims greatly delays the procedural time prior to the conviction.

The absence of criteria for excluding justice and peace process defendants from the special criminal procedure in certain circumstances.

The dispersion in the ordinary investigation of facts related to the internal armed conflict, such as the financing and logistical and military support of organised illegal armed groups.

The imminence of legal action by the defendants seeking their freedom, given that Law 975 is about to expire 8 years after its entry into force, which coincides with the maximum period of the alternative punishment provided for in the same law.

The absolute absence of re-socialisation programmes for demobilised combatants tried under Law 975 who are deprived of their liberty does not serve the purpose of the process, which is national reconciliation". [235]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn235%22%20%5Co%20%22)

After the debates and discussions held by the First Committee of the Senate, regarding the twenty-eight amendments consolidated by the rapporteurs to the Bill sent by the House of Representatives (some of a formal nature, others substantial), in session on 12 June 2012, as recorded in the Committee Minutes No. 55 of the same date, which appear in the Congressional Gazette No. 456 of 24 July 2012.

Bearing in mind that the Justice and Peace process, as it had been proposed since the enactment of Law 975 of 2005, had not resolved the circle of impunity evident after 7 years in force, nor had it fulfilled the expectations that society had with its application, Colombia required new investigation strategies, since those that had been tried so far, As evidenced by the Criminal Policy Advisory Commission, which, through statistics on results at the national level, was able to glimpse the percentage of impunity within the national criminal justice system, they demonstrated not only general slowness throughout the system, but also the administrative and infrastructural inability to respond to all the criminal reports received by the Prosecutor General's Office. [236]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn236%22%20%5Co%20%22)

As an example of this, an excerpt from the explanatory memorandum of the ten amendments introduced by the rapporteurs on 8 October 2012 during the second debate in the Senate Plenary is evoked:

"On the basis that the bill enhances the National Government's discretion in the nomination of demobilised combatants who will finally participate in Justice and Peace, with the aim that only those who really want to contribute to peace and reconciliation will be included, the articles include a hearing before a judge for the control of guarantees to evaluate, in particular cases and on an individual basis, when the substitution of the security measure would be appropriate.

Seven years after the entry into force of the Justice and Peace Law, only 13 applicants have been sentenced. As a result, there are 1,900 applicants who are deprived of their liberty, awaiting sentencing. Delays in the processes and the existence of better guarantees in the ordinary system have led more than 1,600 applicants to renounce the Justice and Peace processes.

Of the 1,900 detainees, at least 51 will serve 8 years of imprisonment (equivalent to the maximum alternative sentence) in December 2014, and it is estimated that thereafter about 60 applicants will serve 8 years of imprisonment each year, depending on the date of their entry into the INPEC detention centre.

Although it could be argued that demobilised combatants can remain deprived of their liberty up to the maximum time of the main sentence (between 40 and 60 years), it is no less true that the expectation on the basis of which these persons trusted the state and the process, and on the basis of which they decided to confess to the acts in which they participated, is based on a maximum custodial sentence of 8 years.

In addition, given that going free will be one of their main interests, it is possible to channel that interest into an incentive for the effective contribution to the clarification of the truth and reparation of the victims. And, at the same time, to discourage the desire to pursue their case through the ordinary justice system, where the victims' possibility of knowing the truth is reduced" [[237]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn237%22%20%5Co%20%22) .

**7.2. Amendments made by Law 1592 of 2012 to Law 905 of 2005**

The Congress of the Republic, through Law 1592 of 2012, modified and added several articles to Law 975 of 2005. Among the main changes, there is a substantial transformation of the investigative approach that the Attorney General's Office had been handling until then within the Special Unit for Transitional Justice.

Thus, the first change made can be seen in the modification of Article 2 regarding the scope of application of the law and its interpretation. The new text stipulates that the investigation, prosecution, punishment and judicial benefits of persons linked to organised illegal armed groups, as perpetrators or participants in criminal acts committed during and on the occasion of their membership of these groups, must be carried out by applying criteria of prioritisation in the investigation and prosecution of these conducts.

In this sense, the order to the Attorney General of the Nation is to establish, through "an Integral Prioritised Investigation Plan", criteria for prioritising cases for the exercise of criminal action, which will be binding and which will be made public" [[238]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn238%22%20%5Co%20%22) .

The criteria for prioritisation, in a context of recent and ongoing transition following massive violations of human rights or international humanitarian law, have their logical basis in the factual and normative unsustainability of the traditional standard of prosecution which provides that all those responsible for all crimes against humanity or war crimes must be tried and sentenced to imprisonment.

In fact, as far as the factual reality is concerned, it is impossible to try all the cases, given that the number of crimes and perpetrators is too high, which puts an immeasurable strain on the State's judicial apparatus.

In the normative sphere, the starting point is to understand and recognise that tensions between justice and peace persist, especially when both are constitutionally pursued goals. In this sense, it is the state's duty to strive to harmonise justice and peace. It is at this point that it becomes necessary to appeal to a balancing act, which may make it indispensable to reduce - but not annul - the imperative of punishment in favour of other values such as peace or democratic transition [[239]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn239%22%20%5Co%20%22) .

With regard to the reintegration of ex-combatants into civilian life, Law 1592 of 2012 modified Article 2 of Law 975 of 2005 by stipulating that the process of reincorporation into society of those who submit to the procedures enshrined in the new regulations will be governed exclusively by Article 66 of the latter.

The modification to Article 5 of Law 975 of 2005, concerning the definition of victim, was based on the incorporation of an additional clause that reads as follows: *"Other family members - of members of the security forces - who have suffered harm as a consequence of any other conduct in violation of criminal law committed by members of organised armed groups outside the law will also be victims".*

In relation to the same point, the legislator enshrined the principle of a differential approach by adding Article 5A to Law 975 of 2005. This article orders the State to provide special guarantees and protection measures to groups at greater risk of the violations referred to in Article 5 of Law 975 of 2005, such as women, young people, children, the elderly, people with disabilities, peasants, social leaders, trade union leaders, human rights defenders, victims of forced displacement, victims of the armed conflict, and victims of the armed conflict, as well as those who are victims of the violations referred to in Article 5 of Law 975 of 2005, members of trade union organisations, human rights defenders, victims of forced displacement and members of indigenous, ROM, black, Afro-Colombian, Raizal and Palenquero peoples or communities, when the risk is generated by their participation in the special judicial process referred to in the law.

On the other hand, Article 4 of Law 1592 of 2012 amends Article 6 of Law 975 of 2005 and refers to Law 1448 of 2011, which develops and defines truth, justice and reparation as victims' rights. It also states that victims have the right to participate directly or through their representative in all stages of the process. The main difference with the analogous article of Law 975 of 2005 is that the right to justice became hierarchically superior to the rights to truth and reparation. This is evident to the extent that it was the duty of the public authorities intervening in the proceedings based on this law to attend, above all, to the duty to guarantee justice over truth and reparation.

With regard to members of organised illegal armed groups, Article 11 of Law 975 of 2005 established six requirements to be met by those who wished to access the benefits granted by the demobilisation process. However, the legislator of the time did not contemplate the possibility of candidates for beneficiaries failing to comply with certain of the procedures set out therein, and therefore did not prescribe grounds for termination of the Justice and Peace Process and exclusion from the list of applicants.

Consequently, Law 1592 of 2012 added Article 11 A warning of such a contingency and ordered that

"**Article 11 A:** Demobilised members of organised illegal armed groups who have been nominated by the National Government to access the benefits provided for in this law shall be excluded from the list of nominees following a reasoned decision, handed down in a public hearing by the corresponding Justice and Peace Chamber of the High Court of the Judicial District, in any of the following cases, without prejudice to any others determined by the competent judicial authority:

1. When the applicant is unwilling to appear at the trial or fails to comply with the commitments of the present law.

2. When it is verified that the candidate has failed to comply with any of the eligibility requirements established in this law.

3. When it is verified that the postulated person has not handed over, offered or denounced goods acquired by him or by the illegal armed group during and on the occasion of his membership of the same, either directly or through an intermediary.

4. When none of the acts confessed by the postulated person have been committed during and on the occasion of his or her membership of an organised illegal armed group.

5. When the postulated person has been convicted for intentional crimes committed after demobilisation, or when, having been postulated while deprived of liberty, it is proven that he/she has committed crimes from the detention centre.

6. When the applicant fails to comply with the conditions imposed at the hearing for the substitution of the detention order referred to in Article 8A of this Law.

The request for a termination hearing may be made at any stage of the proceedings and must be submitted by the prosecutor of the case. A decision on the termination of the proceedings of several applicants may be taken at the same hearing, as deemed appropriate by the prosecutor of the case and as stated in the request.

Once the decision to terminate the special Justice and Peace criminal proceedings is final, the Examining Chamber shall order copies of the proceedings to be sent to the competent judicial authority so that it may carry out the respective investigations, in accordance with the laws in force at the time of the commission of the acts attributable to the postulate, or adopt the necessary decisions.

If there are prior injunctions for investigations or ordinary proceedings suspended by virtue of the special Justice and Peace criminal process, once this has ended, the Sala de Conocimiento shall, within the following thirty-six (36) hours, inform the competent judicial authority so that the suspended investigations, proceedings, arrest warrants and/or security measures may be reactivated immediately, if necessary.

In any case, the termination of the Justice and Peace process reactivates the statute of limitations for criminal action.

Once the decision to terminate the Justice and Peace process is final, the competent authority shall send a copy of the decision to the National Government, for the purposes of its competence. The demobilised person may not apply again for access to the benefits established in the present law.

Paragraph 1. In the event that the applicant does not appear at the Justice and Peace process, the procedure established in this article for the termination of the process and exclusion from the list of applicants shall be followed. It shall be understood that the postulated person does not appear in the justice and peace process when any of the following events occur:

1. His whereabouts have not been established despite the activities carried out by the authorities to locate him.

2. Without just cause, fails to attend the public summons made through audiovisual or written media, or the summons made on at least three (3) occasions in order to ensure his or her appearance at the hearing of the free version of the facts referred to in the present law.

3. fails, without just cause, to resume his or her participation in the hearing of the person who has given his or her version of the facts or in the hearings before the magistrate, if these have been suspended.

Paragraph 2. In the event of the death of the postulate, the Delegate Prosecutor shall request before the Justice and Peace Chamber of the High Court of the Judicial District, the preclusion of the investigation as a consequence of the extinction of the criminal action.

Paragraph 3. In any case, if the postulate dies after the assets have been handed over, the process shall continue with regard to the extinction of ownership of the assets handed over, offered or reported for the contribution to the comprehensive reparation of the victims, in accordance with the rules established in the present law".

Likewise, Article 6 of Law 1592 of 2012 adds in Article 11B the express possibility of voluntarily renouncing the Justice and Peace process as long as the request is presented to the prosecutor or magistrate in the case. Law 975 of 2005 had not expressly established the possibility of excluding applicants from the Justice and Peace process when they did not meet the eligibility requirements set out in Articles 10 and 11, which is why this gap had been filled, by way of interpretation, through the jurisprudence of the Criminal Chamber of the Supreme Court of Justice. In this regard, it was expressly stated in the explanatory memorandum that *"Given the vacuum in Law 975 of 2005 in this area, it is proposed to include the institute of exclusion from the process and the termination of the process due to voluntary renunciation by the postulate. This, taking into account developments in case law in this regard. Indeed, criminal jurisprudence has resolved situations such as those set out in the two articles proposed. To this extent, the proposal consists of legally enshrining an already existing practice. Given that the activity of prosecutors and magistrates has evidently been timid and cautious when it comes to purging the universe of those accused, it is necessary to legally enshrine the guidelines established in this area by the Criminal Chamber of the Supreme Court of Justice"***[[240]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn240%22%20%5Co%20%22)** .

The so-called figure of exclusion formally introduced in the reform of the Justice and Peace Law consisted of removing "*from the procedure those applicants who have only formally appeared on the lists sent by the National Government, but who have not been able to be located or to appear in the process. Likewise, it is necessary to exclude those who voluntarily desist from submitting to the Justice and Peace process or freely express their decision not to continue in the process. It is also necessary to exclude from the process those who do not satisfy the eligibility requirements established by law, as soon as this situation is accredited*.

The main objective behind the incorporation of this figure was to ensure that judicial proceedings would be more fluid "to the *extent that the efforts of the different work teams of justice and peace prosecutors and magistrates could concentrate on those cases in which the accused are really collaborating effectively with the reconstruction of the truth, in favour of the reparation of so many victims who hope, at last, to know what happened to their loved ones"****[[241]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn241%22%20%5Co%20%22)*** .

The Prosecutor or the Magistrate, as the case may be, must resolve the request and adopt the corresponding measures with regard to the legal situation of the applicant. If the request is considered admissible, the process may be declared closed and a copy of the proceedings shall be sent to the competent judicial authority, so that it may carry out the respective investigations, in accordance with the laws in force at the time of the commission of the acts attributable to the postulate, or adopt the appropriate decisions. Likewise, it shall send a copy of the decision to the National Government so that the demobilised person can be formally excluded from the list of applicants.

In order to guarantee the effectiveness and timely applicability of the right to reparation for the victims of the conflict, the legislator considered that it was necessary to include some rules on this point in the articles of Law 1592 of 2012. This is why the issue of exclusion became more relevant as the regulatory legislative process progressed.

In this regard, the Constitutional Court considers that expressly enshrining the non-compliance with the eligibility requirement related to the surrender or denouncement of all assets acquired by the postulate or by the organised illegal armed group during and on the occasion of their membership would contribute to the purpose of guaranteeing the victims the right to reparation, on the basis of forcing a definition of the assets that should be subject to prosecution in the framework of the justice and peace process, an aspect that, in practice, had been affecting the effectiveness and efficiency of said process [[242]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn242%22%20%5Co%20%22) .

The duty of the applicants to actively contribute to the reparation process for the victims becomes much more explicit and transcends the generality of the general rule regarding the grounds for termination of the process, establishing a rule that gives "*scope to the eligibility requirements set out in articles 10 and 11 in relation to the surrender, denunciation and offer of the assets acquired by the applicants or by the armed group to which they belonged, which will be made available to the Victims' Unit or the Land Unit, as appropriate. This provision not only reinforces the obligation of the postulants to hand over, denounce or offer the assets, but also sends a clear message of strengthening the system for the prosecution of assets by the Attorney General's Office. It also establishes that a postulate who does not comply with this obligation will be excluded from Justice and Peace or will lose the benefit of the alternative punishment, as appropriate"****[[243].](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn243%22%20%5Co%20%22)***

Thus, the new Article 11D is clear in pointing out the duty of the postulants to contribute to the comprehensive reparation of the victims. And for the purposes of complying with the requirements set out in sections 10.2 and 11.5 of Articles 10 and 11 respectively of the aforementioned law, demobilised combatants must hand over, offer or denounce all assets acquired by them or by the organised illegal armed group during and as a result of their membership of the group, directly or through an intermediary.

In order to fulfil the proposed objective, Article 11D mandates that the assets be placed at the disposal of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Divested Lands so that they can be used for the comprehensive reparation and land restitution programmes referred to in Law 1448 of 2011, as appropriate.

It also refers to the fact that victims who are accredited in special justice and peace criminal proceedings have preferential access to these programmes.

Orders the Attorney General's Office to take all necessary measures to pursue the assets referred to in the article, which have not been handed over, offered or denounced by the postulate.

A postulate who does not hand over, offer or denounce all the assets acquired by him or by the organised illegal armed group during and on the occasion of his membership in it, directly or through an intermediary, will be excluded from the justice and peace process or will lose the benefit of the alternative punishment, as appropriate [[244]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn244%22%20%5Co%20%22) .

The paragraph of article 11D orders not to affect the assets of the postulants that are acquired as a result of the reintegration process, the fruits thereof, or those acquired in a lawful manner after demobilisation.

Article 10 of Law 1592 of 2012 amends Article 15 of Law 975 of 2005. The modification of this article essentially lies in the perspective of clarifying the truth. In the new text, this objective must be pursued from the perspective of a pattern of macro-criminality in the actions of the organised illegal armed groups, with the aim of uncovering the contexts, causes and motives. This element was absent in Law 975 of 2005, as it simply sought, without further ado, to clarify the truth about the facts under investigation, guaranteeing the defence of the accused.

Likewise, prioritisation is reiterated as an investigative criterion as determined by the Attorney General of the Nation in development of article 16A of Law 1592 of 2012. It also makes use of the information obtained after the Justice and Peace investigative processes with the aim of clarifying the support networks and sources of financing of the organised illegal armed groups.

The focus on the collaboration of demobilised combatants with the judicial police in order to find the whereabouts of kidnapped or disappeared persons and the duty of protection of those involved in the investigation and trial processes of the Ombudsman's Office and the Higher Council of the Judiciary are maintained. However, for reasons of systematics, this last topic is included in the new text as a paragraph within the article.

Article 11 of Law 1592 of 2012 creates Article 15A. The purpose of this new article is to establish the pattern of macro-criminality in relation to land dispossession and forced abandonment, when the victim has denounced it. Relevant information on the matter, legally obtained, must be made available by the Attorney General's Office to the Special Administrative Unit for the Management of Restitution of Land Restitution in order to contribute to the procedures that it carries out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011.

Article 12 of Law 1592 of 2012 modifies Article 16 of Law 975 of 2005. In the new text, who receives the information related to the name or names of members of organised illegal armed groups, willing to contribute to the demobilisation and reintegration process, is the Attorney General's Office and no longer the National Prosecution Unit for Justice and Peace, as it was stated in Law 975 of 2005. Subsequently, the corresponding delegated prosecutor, in accordance with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of the new law, will immediately assume the competence granted therein, which remains unchanged.

On the other hand, the new text admits the possibility of conflicts or collisions of jurisdiction between the High Courts of Judicial Districts that hear the cases referred to in Law 1592 and any other judicial authority. It provides, then, that in the event of such an irregularity, the jurisdiction of the justice and peace court shall always prevail, until it is determined that the act was not committed during and on the occasion of the postulate's membership of the organised illegal armed group. This final clause was the subject of a pronouncement by the Constitutional Court, which in Ruling C-575 of 2006 declared it to be executory on the charges formulated.

Article 13 of Law 1592 of 2012 creates Article 16A. The purpose of the incorporation of this article is to guarantee the rights of victims. To this end, it assigns the Attorney General of the Nation the function of determining the prioritisation criteria for the exercise of criminal action. These criteria, in addition to being of public knowledge, according to the new article, will have binding force.

The prioritisation criteria have been conceived with the aim of *"clarifying the pattern of macro-criminality in the actions of the organised illegal armed groups and to unveil the contexts, causes and motives of the same, concentrating investigative efforts on those most responsible. To this end, the Attorney General's Office will adopt the "Integral Prioritised Investigation Plan" by means of a resolution.*

In search of coherence and solidity, other additional measures were adopted on the figure of exclusion, more precisely in relation to the non-fulfilment of the commitment to hand over, offer or denounce illicitly acquired assets. Thus, Law 1592 of 2012, through Article 14, modified Article 17 of Law 975 of 2005, which regulates the free version and confession of the postulants. In this regard, it stipulated that the applicants to the justice and peace process must indicate in detail, among other aspects, "*the date and reasons for joining the group and the assets that they will hand over, offer or denounce to contribute to the comprehensive reparation of the victims, whether they are their real or apparent property or that of the organised armed group outside the law to which they belonged"*.

In order to contribute to the comprehensive reparation of the victims, and to achieve a more active participation of the organised illegal armed groups in the effectiveness of the right to reparation for the victims, the figure of extinction of ownership is developed through the incorporation of articles 17A and 17B.

Article 17A defines the assets that can be seized in accordance with the procedure set out in Article 17B of the same law, for the purposes of forfeiture of ownership. The paragraph of article 17A provides for the possibility of extinguishing the right of ownership of the assets, even if they are the object of succession by cause of death or their ownership is in the hands of the heirs of the postulants.

With regard to the imposition of precautionary measures on assets for the purposes of forfeiture of ownership, Article 17B provides that when the applicant has offered assets of his real or apparent ownership or reported those of the organised illegal armed group to which he belonged, or the Prosecutor's Office has identified assets not offered or reported by the applicants, the delegated prosecutor shall order the relevant investigative work for the full identification of those assets and the documentation of the circumstances related to the possession, acquisition and ownership of the same. The Special Administrative Unit for the Attention and Integral Reparation of Victims ­- Victims' Reparation Fund - shall participate in the work of preparing the assets susceptible of being seized, in accordance with the provisions of Article 11 C, and shall provide all available information on them. This information shall be submitted to the magistrate in charge of the control of guarantees at the respective hearing for the decision on the imposition of precautionary measures.

Article 17 of Law 1592 of 2012 creates Article 17C. It provides for the creation of the Incident of opposition of third parties to the precautionary measures imposed on assets seized for the purposes of forfeiture of ownership, by virtue of Article 17B of Law 1592 of 2012. This incident may be effective in cases where there are third parties who are considered to be in good faith and free of guilt with rights over the assets referred to.

*After the* procedure indicated in the aforementioned article has been followed, "*if the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure. Otherwise, the proceedings for forfeiture of ownership shall continue and the decision shall be part of the ruling that ends the Justice and Peace process"****[[245]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn245%22%20%5Co%20%22)*** *.*

It is important to clarify that the incident of opposition of third parties to the precautionary measures does not suspend the course of the proceedings.

Article 18 of Law 1592 of 2012 modifies Article 18 of Law 975 of 2005. It reiterates that any investigation must take place within a pattern of macro-criminality in the actions of the organised illegal armed group to be investigated. On this understanding, "*the delegated prosecutor for the case shall request the Magistrate who exercises the functions of control of guarantees to schedule a preliminary hearing for the formulation of the indictment, when from the material evidence, physical evidence, legally obtained information, or from the voluntary confession, it may reasonably be inferred that the demobilized person is the author of or participant in one or several crimes*. [[246]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn246%22%20%5Co%20%22)

It also adds a paragraph aimed at speeding up the proceedings, terminating them early after the accused has accepted responsibility, when it becomes evident that the facts with which the accused is charged form part of a pattern of macro-criminality already clarified through a justice and peace sentence in accordance with the prioritisation criteria, after verifying and identifying the effects caused to the victims by the pattern of macro-criminality in the respective sentence. The article in question warns that "*the early termination of the process shall not, in any case, imply access to additional criminal benefits to the alternative penalty".*

Article 19 of Law 1592 of 2012 creates Article 18A. This new article provides for the possibility for the postulate who has demobilised while at liberty to request the substitution of the preventive measure of preventive detention in a prison establishment for a non-custodial measure. This prerogative is subject to compliance with the provisions of this article and the other conditions established by the competent judicial authority to guarantee the appearance at the proceedings referred to in Law 1592 of 2012, from which it is inferred the duty of the applicants to continue in the process. Thus, the Magistrate with control of guarantees functions may grant the substitution of the security measure in a period of no more than twenty (20) days from the respective request, when the defendant has complied with the requirements established for this purpose.

Article 20 of Law 1592 of 2012 creates Article 18B. In accordance with the provisions of the preceding article, the defendant who has been convicted by the ordinary criminal justice system may request, at the same hearing in which the security measure has been substituted under the terms of Article 18, conditional suspension of the execution of the sentence imposed by the ordinary justice system.

However, this benefit may be effective *"provided that the conducts that gave rise to the conviction were committed during and on the occasion of their membership of the organised armed group outside the law*" [[247]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn247%22%20%5Co%20%22) .

Notwithstanding the above, the suspension of the execution of the sentence shall be revoked at the request of the Justice and Peace guarantees control magistrate, when the applicant incurs in any of the grounds for revocation set out in Article 18A.

Article 22 of Law 1592 of 2012 amends Article 22 of Law 975 of 2005. The new text stipulates that the prosecutor hearing the case in the ordinary jurisdiction will suspend the investigations against a justice and peace process participant *"once the security measure is final and until a sentence is handed down in the ordinary justice system with respect to an act committed during and on the occasion of his or her membership of an organised armed group operating outside the law"*.

It also states that *"if the proceedings in the ordinary jurisdiction are at the trial stage, the respective judge shall order the suspension. The investigation or trial shall only be suspended with respect to the person involved and the fact that was the basis for his or her involvement. The prosecutor or judge of the ordinary justice system shall inform the National Unit of Prosecutor's Offices for Justice and Peace, sending a copy of the decision on the merits and of the suspension"****[[248]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn248%22%20%5Co%20%22)*** *.*

The main difference with the text of Law 975 of 2005 is that in the latter, the demobilised person only had the possibility of accepting the charges set out in the resolution that imposed a security measure at the time of accepting Law 1592 of 2012. There was no suspension of investigations.

On the other hand, a paragraph qualifies the suspension of the process in the ordinary jurisdiction as provisional until the end of the concentrated hearing of formulation and acceptance of charges held before the Justice and Peace Trial Chamber of the High Court of the corresponding Judicial District, and will be definitive, for the purposes of accumulation, if the accused accepts the charges.

The paragraph of the aforementioned article was declared EXEQUIBLE, on the charge examined, by the Constitutional Court by means of Ruling C-015 of 23 January 2014, Judge Dr. Mauricio González Cuervo.

Article 23 of Law 1592 of 2012 amends Article 23 of Law 975 of 2005. It replaces the incident of comprehensive reparation with the incident of identification of the effects caused to the victims. The essential change in relation to this point lies in the fact that in the same hearing in which the corresponding High Court of the Judicial District declares the legality of the total or partial acceptance of the charges brought, the process of the incident of identification of the effects caused to the victims must begin ex officio.

*In contrast*, Law 975 of 2005 stipulated that once the aforementioned hearing had taken place, *"at the express request of the victim, or of the prosecutor in the case, or of the Public Prosecutor's Office at the victim's request, the reporting magistrate shall immediately open the incident of integral reparation of the damages caused by the criminal conduct".*

With the above, through 4 additional paragraphs, the scope and processing of the incident of identification of the effects caused to the victims is developed and specified, seeking the greatest possible effectiveness in the reparation processes.

Some of the guarantees contained in the new text, according to the last paragraph of article 23 of Law 1592 of 2012 and paragraph 3 of the same law, respectively, are *"the inclusion of victims in the corresponding registers for preferential access to the comprehensive reparation and land restitution programmes provided for in Law 1448 of 2011"*, as well as the provision of all the *"information required by the superior court of the judicial district and to inform the victim about the comprehensive reparation procedures of Law 1448 of 2011"* ***[[249]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn249%22%20%5Co%20%22)*** *.*

The modification outlined in the above terms is a substantial advance in the Justice and Peace process, insofar as no additional burden is transferred to the victims in the vindication of their rights, but rather it is the state, headed by the jurisdictional apparatus, which seeks to establish itself as an effective guarantor in the materialisation and protection of the rights of the victims of the armed conflict.

Article 24 of Law 1592 of 2012 creates Article 23A. In accordance with the reparation model contemplated in Law 1448 of 2011 and its complementary norms, through the incorporated provision, articulated measures of rehabilitation, restitution, compensation, satisfaction and guarantees of non-repetition are adopted, as appropriate for the victimising event, in order to ensure comprehensive reparation for the victims.

The Special Administrative Unit for the Attention and Integral Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land Restitution, as appropriate, are responsible for achieving this objective.

Article 26 of Law 1592 of 2012 modified Article 25 of Law 975 of 2005 by establishing a series of grounds for revocation of the alternative penalty. The change lies in the fact that, unlike the provisions of Law 975 of 2005, the postulate can now lose the possibility of the alternative sentence being applied to him/her if, after the granting of the alternative sentence, he/she is charged with crimes committed during and on the occasion of the membership of the organised armed groups outside the law and prior to their demobilisation, and which have not been recognised or accepted by the postulate in the framework of the special process that the law deals with.

Such conduct will be investigated and prosecuted by the competent authorities and laws in force at the time of commission.

Additionally, if after the sentence issued as a consequence of the exceptional procedure established by Law 1592 of 2012, and until the end of the ordinary sentence established therein, the competent judicial authority determines that the beneficiary of the alternative sentence did not hand over, did not offer or did not denounce all the assets acquired by him or by the illegal organised armed group during and on the occasion of his membership of the same, directly or through an intermediary, he shall lose the benefit of the alternative sentence.

Article 27 of Law 1592 of 2012 amends Article 26 of Law 975 of 2005. It provides that an appeal may only be lodged against the judgement and against orders that resolve substantive issues during the hearings, without the need for the prior lodging of an appeal for reconsideration.

Similarly, it provides for the events in which an appeal is granted with suspensive effect when "*it is lodged against the judgement, against the order that rules on absolute nullity, against the order that decrees and rejects the request for preclusion of the proceedings, against the order that denies the taking of evidence in the trial, against the order that decides on the exclusion of evidence, against the order that decides on the termination of the Justice and Peace process and against the ruling of the incident of identification of the effects caused. In the other cases it will be granted with devolutive effect".*

Finally, a fourth paragraph is added as follows: *"The Special Administrative Unit for the Comprehensive Attention and Reparation of Victims may appeal decisions related to the assets administered by the Fund for the Reparation of Victims* ***[[250]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn250%22%20%5Co%20%22)*** *".*

Paragraph 3 was declared EXEQUIBLE, on the grounds analysed by the Constitutional Court, by Ruling C-370 of 18 May 2006.

On the other hand, in relation to the attribution of powers, Article 28 of Law 1592 of 2012, which amended 32 of Law 975 of 2005, delimited and specified in more detail the procedure and the assignment of powers in relation to the trial stage, in addition to determining the mechanism for the selection of the High Judicial District Court Judges referred to in the law in question, as follows:

"Article 32 - Functional competence of the judges of the High Judicial District Courts in matters of Justice and Peace. In addition to the competences established in other laws, the High Judicial District Courts designated by the Higher Council of the Judiciary shall be competent to carry out the trial stage of the proceedings referred to in this law.

Judgment in the proceedings referred to in this Act, at each stage of the procedure, shall be given by the following judicial authorities:

1. Magistrates with supervisory functions.

2. Magistrates with knowledge of the Justice and Peace chambers of the High Judicial District Courts.

3. Judges with sentence enforcement functions in the Justice and Peace chambers of the High Judicial District Courts, who shall be in charge of overseeing compliance with the sentences and obligations imposed on convicted persons, in accordance with the distribution of work established by the Higher Council of the Judiciary in each of the Justice and Peace chambers".

Paragraph. The High Council of the Judiciary shall take the necessary decisions and fill the necessary positions to ensure that the functions of the judicial authorities mentioned in this Article are performed by different Judges.

The Plenary Chamber of the Supreme Court of Justice shall fill the positions of Superior Judicial District Court Judges referred to in this law from the lists sent by the Administrative Chamber of the Superior Council of the Judiciary, which shall be drawn up in accordance with the procedure set out in Article 53 of Law 270 of 1996" [251]. [[251]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn251%22%20%5Co%20%22) .

Article 29 of Law 1592 of 2012 amends Article 44 of Law 975 of 2005. The text of this article refers to acts of contribution to comprehensive reparation. In the new text, the Sala de conocimiento may order the postulate to carry out any of the acts mentioned therein. The main changes made are as follows:

a. It does not contemplate the duties of restitution, compensation, rehabilitation and satisfaction, expressly mentioned in Article 44 of Law 975 of 2005.

b. In the third paragraph (second paragraph of the new text), the duty to apologise to victims is deleted and a commitment is made not only to refrain from engaging in punishable conduct, but also to refer to previously committed punishable conduct.

c. The duty to provide social service is added.

d. The duty to search for the disappeared and for the remains of dead persons, and to help identify and rebury them according to family and community traditions, is replaced by the duty to participate in symbolic acts of redress and re-interment of the victims in accordance with the programmes offered for this purpose.

*e.* A paragraph is added stating that *"Probation shall be subject to the execution of the acts of contribution to full reparation that have been ordered in the sentence".*

Article 30 of Law 1592 of 2012 amends Article 46 of Law 975 of 2005. The new text refers to the process established in Law 1448 of 2011 and the norms that modify, substitute or add to it, for the purposes of the legal and material restitution of land to the dispossessed and displaced. This leaves without effect the restitution scheme set out in Law 975 of 2005, which implied *"the carrying out of acts that seek to return the victim to the situation prior to the violation of his or her rights. It includes the restoration of liberty, the return to their place of residence and the return of their property, if possible".*

Another modification made aims to integrate transitional justice measures by stipulating that *"there will be no direct restitution in the development of the judicial processes dealt with in this law"* ***[[252]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn252%22%20%5Co%20%22)*** *.*

Article 31 of Law 1592 of 2012 creates Article 46A. Article 46A is adopted with the aim of contributing to the effectiveness of the right to justice. To this end, it adopts *"measures conducive to facilitating the participation in judicial proceedings of applicants who are in foreign jurisdiction as a result of extradition granted. To this end, the state must ensure the adoption of measures conducive to the collaboration of these applicants with the administration of justice, through testimony aimed at clarifying facts and conducts committed during and in the course of the internal armed conflict".*

Special emphasis is placed on the adoption of measures to enable extradited applicants to disclose the motives and circumstances in which the conduct under investigation was committed and, in the case of death or disappearance, the fate of the victim.

In order to contribute to the effectiveness of the right to full reparation, and in relation to the assets handed over, offered or denounced by the extradited applicants, measures are adopted so that they are seized and destined for the Fund for the Reparation of Victims, as provided for in Law 1592 of 2012, or for the Special Administrative Unit for the Management of the Restitution of Land Restitution, as appropriate.

In order to comply with this measure, within the framework of the different international judicial cooperation agreements, the Attorney General's Office will carry out the necessary investigative work for the identification and enlistment of assets in accordance with the provisions of article 178 of this law, as well as for the identification and prosecution of assets located abroad.

Article 32 of Law 1592 of 2012 creates Article 46B. The purpose of the creation of this article is to contribute to the satisfaction of the right of victims to comprehensive reparation, for which the departmental assemblies, municipal or district councils have the duty to implement programs of remission and compensation of taxes that affect the properties destined for reparation or restitution according to the provisions of Law 1448 of 2011.

*By* virtue of the measure adopted, and in the event that debts are cancelled, the departments, municipalities or districts *"may not be penalised, be subject to any type of sanction or be negatively evaluated for obtaining credits, due to a reduction in the respective tax collection".*

The same benefit shall be extended to the delinquent portfolio for public utilities. Liens that have been constituted to obtain credits with the financial sector by a demobilised combatant will also be lifted, without prejudice to the maintenance of the obligation to pay these credits on his head [[253]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn253%22%20%5Co%20%22) .

Article 33 of Law 1592 of 2012 creates the Paragraph of Article 54 of Law 975 of 2005. In order to finance the payment of the administrative reparation programmes that are developed in accordance with Law 1448 of 2011, use will be made of the resources of the Fund for the Reparation of Victims, both those handed over by the applicants in the framework of the special criminal process referred to in Law 1592 of 2012 and those that come from the other sources of the Fund. It is up to the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims to give the aforementioned destination to these resources.

This is without prejudice to the provisions of the third paragraph of Article 17B and Article 46 of Law 1592 of 2012. That is to say, without prejudice to the imposition of precautionary measures on assets for the purposes of forfeiture of ownership and the legal and material restitution of land to the dispossessed and displaced.

Article 36 of Law 1592 of 2012 amends Article 72 of Law 975 of 2005. The new text establishes the rules of validity, derogation and temporal scope of application of Law 1592 of 2012 as follows:

a. Repeal: Law 1592 of 2012 repeals all provisions that are contrary to it and is in force as of its enactment.

b. In the case of collectively demobilised persons in the framework of peace agreements with the National Government, Law 1592 of 2012 shall only apply to events that occurred prior to the date of their demobilisation.

c. With regardto individual demobilised combatants [[254] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn254%22%20%5Co%20%22) the procedure and benefits enshrined in Law 1592 of 2012 shall only apply to events that occurred prior to their demobilisation and in any case prior to 31 December 2012.

Article 37 of Law 1592 of 2012. It sets 31 December 2012 as the last date of application for all members of organised illegal armed groups who have demobilised individually or collectively prior to the entry into force of Law 1592 of 2012 and who wish to access the benefits enshrined in Law 975 of 2005. Once this period has expired, the National Government will have two (2) years to decide on their application.

The term for those who demobilise after the entry into force of Law 1592 of 2012 and intend to apply for the process referred to in Law 975 of 2005, is one (1) year from the date of their demobilisation.

Article 38 of Law 1592 of 2012. Establishes an exceptional procedure for land restitution in the framework of Law 975 of 2005. If at the entry into force of Law 1592 of 2012 there is a precautionary measure on a property on the occasion of a request or offer of restitution within the framework of the procedure of Law 975 of 2005, *"the competent judicial authority will continue the process within the framework of said procedure. In other cases, the provisions of Law 1448 of 2011 shall be observed".*

Article 39 of Law 1592 of 2012 incorporates a new provision concerning the restitution of property and the cancellation of fraudulently obtained titles and registrations.

It considers the possibility that the exceptional situation referred to in Article 38 ibidem, that is, the exceptional process of land restitution within the framework of Law 975 of 2005, may arise. In order to address this situation, the article in question provides that the restitution process must be carried out under the following rules:

1. In order to decide on the restitution of property forcibly dispossessed or abandoned and the cancellation of fraudulent titles and registrations, the Magistrate with functions of control of guarantees shall order the processing of an incident to be carried out in accordance with the provisions of the second paragraph of Article 17C of Law 975 of 2005, to guarantee the exercise of the right of contradiction and opposition of the third parties affected, who must demonstrate their good faith free of guilt.

2. In the event that the third parties are able to prove their good faith free of guilt, the Magistrate shall order the payment of the compensation provided for in Article 98 of Law 1448 of 2011 in their favour, charged to the Fund of the Special Administrative Unit for the Management of the Restitution of Dispossessed Lands. During the processing of the incident that will take place for the restitution of dispossessed or forcibly abandoned property, the presumptions of dispossession provided for in Article 77 of Law 1448 of 2011 may be applied, even if the properties are not registered in the Register of Dispossessed and Forcibly Abandoned Land.

3. Similarly, the figure of compensation in kind and relocation will be applicable in cases in which it is not possible to return the dispossessed property to the victim in accordance with the provisions of Article 97 of Law 1448 of 2011, charged to the Fund of the Special Administrative Unit for the Management of Restitution of Land Restitution. The order ordering the restitution shall contain the aspects listed in Article 91 of Law 1448 of 2011. The Special Administrative Unit for the Attention and Integral Reparation of Victims -Jara Fund for the Reparation of Victims- or the Special Administrative Unit for the Management of the Restitution of Divested Lands, as the case may be, shall be summoned to this hearing.

Article 40 of Law 1592 of 2012 Entry into force of the incident of identification of paused affectations. The incidents of comprehensive reparation of the special criminal process of justice and peace that had been opened prior to the entry into force of this law, shall continue their development in accordance with the procedure, scope and objectives of the provisions of the incident of identification of the effects caused by Article 23 of this Law, which amends Article 23 of Law 975 of 2005,

Article 41 of Law 1592 of 2012. Law 1592 of 2012 is in force from the date of its enactment, and repeals all provisions contrary to it, in particular Articles 7, 8, 42, 43, 45, 47, 48, 49, 55 and 69 of Law 975 of 2005.

**8. ANALYSIS OF THE CONTESTED RULES**

**8.1. CARGOS DE INCONSTITUTIONALIDAD CON RESPECTO A LA POSIBILIDAD DE PRIORIZACIÓN DE LOS CASOS EN LOS PROCESOS DE JUSTICIA Y PAZ (ARTÍCULOS 1, 3, 10, 11, 12, 13, 14, 18 y 23 DE LA LEY 1592 DE 2012)**

The Court will analyse the merits of the global charge of unconstitutionality presented in relation to the design and implementation of methodologies for the investigation of system crimes (prioritisation) in a transitional justice context.

Next, it will resolve the charges of unconstitutionality directed against expressions contained in Articles 1, 3, 10, 11, 12, 12, 13, 14, 18 and 23 of Law 1592 of 2012, insofar as each of them contemplate the possibility of applying prioritisation criteria in the Justice and Peace process, which would, according to the plaintiffs, ignore the obligation of the Colombian State to carry out a serious, impartial investigation within a reasonable period of time and would also affect the right to equality of those cases that are not prioritised, violating the victims' rights to justice, truth, comprehensive reparation and non-repetition, This would also affect the right to equality of those cases not prioritised, violating the victims' rights to justice, truth, full reparation, non-repetition and equality, as set out in the Preamble and in Articles 1, 2, 13, 93 and 229 of the Constitution and Articles 8 and 25 of the American Convention on Human Rights.

**8.1.1. EXAMINATION OF THE OVERALL CHARGE OF UNCONSTITUTIONALITY.**

The applicants raise two central arguments against the constitutionality of the prioritisation: (i) violation of the right of victims to have investigations into human rights violations conducted seriously, impartially and within a reasonable period of time, as required by international human rights law; and (ii) the prioritisation criteria do not respect the right to equality of victims whose cases are not prioritised.

The Court considers that the applicants are wrong for the following reasons.

**8.1.1.1.1. Prioritisation does not violate the right of victims to the investigation of human rights violations in a serious, impartial and timely manner.**

Prioritisation is a criminal policy instrument, the use of which is not limited to transitional justice scenarios; it implies that numerous cases, which were previously examined in an isolated and unconnected manner by different officials, are regrouped and investigated jointly, thanks to the application of different criminal analysis techniques [[255]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn255%22%20%5Co%20%22) (e.g. criminal patterns, geo-referencing, data mining, etc.). In this sense, it is not simply a matter of establishing a rational order of rational attention to the demands of justice, but of moving from a traditional *case-by-case* criminal investigation technique to one that aims to: (i) establishing the context in which a criminal organisation operates; (ii) determining its structure and functioning; and (iii) in certain circumstances, explaining the serial commission of crimes committed by a given individual against a specific population group (e.g. sexual crimes perpetrated against minors). All of the above, without renouncing the prosecution of non-prioritised crimes [[256]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn256%22%20%5Co%20%22) .

Prioritisation then implies that the criminal process should aim not only to establish individual criminal responsibility, but also the execution of a criminal policy aimed at: (i) disrupt criminal organisations; (ii) prevent the commission of future punishable conduct; (iii) satisfy the victims' right to the truth, in its subjective and objective dimensions; and ultimately (iv) ensure that the State complies with its obligation to prevent future human rights violations [[257]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn257%22%20%5Co%20%22) **.**

In this regard, the Court has recognised the importance of the fight against organised crime, emphasising that its scope is much greater than that of tackling individual crimes, as it allows for the economic or political subjugation of entire sectors of society, a situation that has led the international community to make a firm commitment to prevent and combat this phenomenon through various international instruments and conventions [[258]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn258%22%20%5Co%20%22) .

Thus, this Corporation considers that prioritisation does not violate the right of the victims of serious human rights violations to a serious, impartial investigation within a reasonable period of time. This is for the following complementary reasons:

The obligation to investigate serious human rights violations is one of the fundamental duties of the States Parties to the Pact of San José, Costa Rica. In this regard, throughout its jurisprudence, the Inter-American Court of Human Rights has specified the following conditions that a criminal investigation must meet in order to comply with international standards in this area:

Officiality. Once they have knowledge of the facts, the corresponding authorities must initiate, on their own initiative, the respective investigation [[259]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn259%22%20%5Co%20%22) .

Timeliness. The investigation should start as soon as possible [[260] , in order](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn260%22%20%5Co%20%22) to avoid the destruction of evidentiary material.

Be advanced within a reasonable period of time. In the terms of the jurisprudence of the Inter-American Court [[261] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn261%22%20%5Co%20%22) the determination of reasonable time depends on an examination of the following factors: (i) complexity of the case; (ii) procedural activity of the interested party; and (iii) conduct of the judicial authorities.

Suitability of officials. The Inter-American Court of Human Rights has emphasised the need for investigations to be conducted rigorously, by competent professionals and using appropriate procedures. [262]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn262%22%20%5Co%20%22)

Independence and impartiality. States Parties must ensure that investigators, prosecutors and judges enjoy guarantees of independence and inspire public confidence [[263]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn263%22%20%5Co%20%22) . 263] The requirement of impartiality, in turn, extends to every stage of the investigation, including the collection of evidence.

Completeness. The criminal investigation must be carried out by all available legal means, to pursue, capture and punish those responsible and, ultimately, to determine the truth of what happened. [264]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn264%22%20%5Co%20%22)

In addition, in *complex cases* involving serious human rights violations, according to international jurisprudence, the State must focus its efforts on analysing a set of issues in order to unravel the structures that allowed these violations to occur. In this regard, the International Court in the judgment in the *Manuel Cepeda Vargas v. Colombia case,* considered:

*"In complex cases, the obligation to investigate entails the duty to direct the efforts of the state apparatus to unravel the structures that enabled those violations, their causes, their beneficiaries and their consequences, and not only to uncover, prosecute and, where appropriate, punish the immediate perpetrators. In other words, the protection of human rights must be one of the central aims determining the state's actions in any type of investigation. Thus, the determination of the perpetrators of the extrajudicial execution of Senator Cepeda can only be effective if it is based on a comprehensive view of the facts, taking into account the background and context in which they occurred and seeking to uncover the structures of participation"****[[265]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn265%22%20%5Co%20%22)****.*

As can be seen, as prioritisation involves an exercise of associating cases by resorting to criminal analysis techniques, it is in line with the standards set out in international jurisprudence to determine whether a criminal investigation can be considered serious, impartial and carried out within a reasonable timeframe. In fact, overcoming the *case-by-case* model of investigation with one that leads to associating a number of cases and then analysing them in context allows the State to provide a more comprehensive response to the claims for truth, justice and reparation of the victims of serious human rights violations.

In the same vein, the Office of the High Commissioner for Human Rights in Colombia, in its report presented to the UN General Assembly on 24 January 2014 [[266] , drew attention to](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn266%22%20%5Co%20%22) the existence of structural problems in the criminal investigation model, which in turn affected the guarantee of the victims' rights to truth, justice and reparation:

“83. During its work with the Attorney General's Office, OHCHR identified a number of challenges related to criminal investigations, including: lack of **case mapping; lack of method in the distribution and assignment of cases**; **compartmentalization of cases**; insufficient examination of command or criminal structures; limited physical reconstruction of crime scenes; failure to identify victims; overcrowding of prosecutors and lack of investigators; insufficient protection capacity for prosecutors; assessment of performance based on the number of prosecutions initiated, rather than the results of proceedings; establishment of protection capacity for prosecutors; assessment of performance based on the number of prosecutions initiated, rather than the results of prosecutions; and the establishment of a clear and transparent system of investigation and prosecution; prosecutorial saturation and lack of investigators; insufficient protection capacity for prosecutors; evaluation of performance based on the number of prosecutions initiated, rather than the results of proceedings; prioritisation for expediency; gaps in legal expertise; insufficient knowledge of military structures and operations; and deference to military authority.” (emphasis and underlining added).

In conclusion, the application of prioritisation criteria does not violate the victims' right to a serious, impartial and timely investigation by the State.

**8.1.1.2. The prioritisation criteria do not violate the right to equality of victims in non-prioritised cases.**

The applicants claim that prioritisation violates the right to equality of victims whose cases are not prioritised. The Court does not agree with the above assertion, for the reasons explained below:

The principle of equality is embodied in four mandates on the legislator: (i) to treat identically citizens who are in the same circumstances; (ii) to accord completely different treatment to addressees whose situations do not share any common elements; (iii) a mandate of equal treatment to persons whose situations present similarities and differences, the former being more relevant than the latter (equal treatment despite the difference); and (iv) a mandate of differentiated treatment to addressees who are also in a position, partly similar and partly different, but whose differences are more relevant than the similarities (different treatment despite the similarity).

Constitutional jurisprudence has considered that equality has a dual dimension: objective and subjective. According to the former, it is a mandate of optimisation addressed to the legislator and the administration, according to which laws must be enacted and public policies adopted that guarantee, to the greatest extent possible, equal treatment among citizens. In turn, the subjective dimension means that the citizen has the right to demand equal treatment when exercising a right, as is the case, for example, with the fundamental right of access to the administration of justice.

The principle-right to equality has two complementary manifestations: equality before the law and equality in the law. In terms of the former, citizens must be treated equally in the administrative and judicial application of the law; in terms of the latter, the legislator is obliged to treat members equally.

In this sense, the realisation of the fundamental right of access to the administration of justice in conditions of equality imposes on the State the duty to adopt criminal policy instruments that allow different treatment to be accorded to different citizen demands for justice. This is because not all crimes have the same social impact, gravity or relevance, nor are the claimants of justice in the same position (e.g. subjects of special constitutional protection).

On the basis of the above postulates, this Court must examine whether the implementation of prioritisation techniques passes an equality test.

As far as the **purposes** of prioritisation are concerned, the Court finds that they are as follows:

Establish a rational order of attention to citizens' demands for justice, based on the following observations: (i) not all crimes offer the same degree of complexity or involve the same degree of harm to legally protected goods; (ii) at the same time, the spectrum of victims offers important differences; and (iii) correlatively, the perpetrators can be isolated individuals or criminal groups with different degrees of organisation and capacity to commit large-scale crimes of diverse nature (e.g. drug trafficking, money laundering, forced displacement, land dispossession, etc.).

To increase the levels of effectiveness and efficiency of the administration of criminal justice, through the technique of case association, based on the discovery and reconstruction of criminal patterns.

Disrupt criminal organisations and prosecute those most responsible.

Promote the historical reconstruction of the most serious human rights violations by conducting a criminal investigation in context.

Allow defendants to exercise their right to defence in an effective manner, insofar as they will not have to face fragmented investigations, conducted by different judicial officials.

The aforementioned aims of prioritisation are fully in line with the constitutional duty to protect legal assets (art. 2 of the Constitution) and international standards on the matter (arts. 1.1 and 2 of the ACHR).

Next, with regard to the requirement of **necessity**, the Court finds that prioritisation is an indispensable measure to achieve valid constitutional ends. Indeed, given the factual impossibility of investigating all crimes at the same time, the use of transparent and public prioritisation criteria not only allows criminal proceedings to be conducted progressively, but in cases of international crimes, it also means that certain basic investigations (based on material perpetrators), once they have been grouped together and macro-criminal patterns have been found, can be used to hold those most responsible accountable (pyramid investigation technique) [[267]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn267%22%20%5Co%20%22), through the reconstruction of factual and legal chains of command.

Finally, prioritisation passes a **strict proportionality** test. This is because the impact that some of those affected may suffer, insofar as their case will be resolved in a longer period of time, is compensated by the benefits that society and an important group of victims of the worst crimes receive.

In conclusion, prioritisation does not violate the right to equality, insofar as it is based on rational criteria for successively meeting citizens' demands for justice.

**8.1.2. ANALYSIS OF THE CONSTITUTIONALITY OF THE CONTESTED EXPRESSIONS RELATED TO THE PRIORITISATION OF CASES AND SITUATIONS.**

The plaintiffs question a set of expressions that allow for the application of prioritisation in justice and peace processes, the scope and constitutionality of which will be analysed below:

**8.1.2.1. Scope of the law, interpretation and application of the law.**

Article 1 of Law 1592 of 2012 includes prioritisation within the following aspects: scope of the law, interpretation and normative application. The text is as follows:

"Scope of the law, interpretation and normative application. This law regulates the investigation, prosecution, punishment and judicial benefits of persons linked to organised illegal armed groups, as perpetrators of or participants in criminal acts committed during and in connection with their membership of these groups, who have decided to demobilise and contribute decisively to national reconciliation, **applying criteria of prioritisation in the investigation and prosecution of such conduct**" [[268]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn268%22%20%5Co%20%22) .

The interpretation and application of the provisions of this law shall be carried out in accordance with constitutional norms and international treaties ratified by Colombia. The incorporation of some international provisions in the present law should not be understood as the negation of other international norms that regulate the same matter.

The reintegration into civilian life of persons who may be granted pardon or any other legal benefit established in Law 418 of 1997 and the norms that modify, extend or add to it, shall be governed by the provisions of this law. The reintegration into civilian life of those who submit themselves to the procedures dealt with in the present law shall be governed exclusively by the provisions of Article 66 of this law".

The application of prioritisation criteria to transitional justice investigations was one of the main reforms introduced by Law 1592 to Law 975 of 2005.

In effect, the so-called "Justice and Peace Law" did not foresee the creation of an investigative strategy that would allow the Attorney General's Office to classify and regroup the numerous criminal conducts confessed by the demobilised combatants, using criminal analysis tools (e.g. cross-referencing of criminal variables, geo-referencing, data mining, etc.) and macro-criminal patterns. This led to: (i) that there was no logical order of presentation of the cases before the judiciary, and therefore, that convictions against those most responsible took too long to be handed down; (ii) that crimes *against humanity* and war crimes perpetrated in a massive or systematic manner were investigated with the traditional methodologies of ordinary crimes, that is, case by case, and not in context; and (iii) that the first sentences handed down against the demobilised combatants did not reflect the true dimensions of the paramilitary phenomenon in Colombia.

In conclusion, the adoption of prioritisation criteria aimed at organising investigations in transitional justice scenarios does not ignore the international duty to conduct criminal proceedings seriously, impartially and within a reasonable period of time. Nor does it violate the rights of the victims, insofar as the reconstruction of macro-criminal patterns makes it possible to explain the commission of multiple crimes, beyond the particularities of the specific case.

*Therefore*, the Court will declare the expression "*applying prioritisation criteria in the investigation and prosecution of these conducts*" in Article 1 of Law 1592 of 2012 to be constitutional on the charges analysed.

**8.1.2.2. Differential approach and prioritisation.**

Article 3 of Law 1592 of 2012 points out the need to take into account the prioritisation criteria in the interpretation of the differential approach:

*­"Differential approach. The principle of differential approach ­recognises that there are populations with particular characteristics due to their age, gender, race, ethnicity, sexual orientation and disability. For this reason, the participation of the victims in the special criminal process dealt with in this law, as well as the judicial process and the investigation that is carried out, must take this approach into account,* ***without prejudice to the application of prioritisation criteria****"****[[269]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn269%22%20%5Co%20%22)****.*

By virtue of the above-transcribed norm, it is a duty to take into account differential criteria in the investigations and trials that are carried out in the justice and peace processes, with the aim of adopting affirmative measures to benefit the most vulnerable population groups.

In this sense, according to the plaintiffs, the expression "*without prejudice to the application of prioritisation criteria*" would violate the right to equality that article 3 of Law 1592 of 2012 seeks to protect, as well as the right to a serious and impartial investigation, within a reasonable period of time. The Court does not agree with this assertion, for the reasons explained below.

The prioritisation criteria used by the Attorney General's Office [[270] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn270%22%20%5Co%20%22) which essentially coincide with those adopted by international criminal courts, are as follows:

**Subjective.** It takes into consideration the particular qualities of the victim (e.g. member of an ethnic group, minor, woman, human rights defender, displaced person, judicial official, journalist, trade unionist, etc.), as well as the characterisation of the perpetrator (e.g. the person most responsible, sponsor, collaborator, financier, material executor of the crime, etc.).

**Objective.** It is based on an analysis of the type of crime perpetrated, as well as its seriousness and representativeness, in terms of (i) the fundamental rights of the victim(s) in particular and of the community in general; and (ii) the way in which the crime was committed.

**Complementary.** There are various complementary criteria such as: region or locality where the crimes were perpetrated; evidentiary richness and viability of the case; the examination of the case by an international human rights protection body and its didactic richness, among others.

As can be seen, the subjective prioritisation criterion takes into account the particularities of the victims, especially those who are subjects of special constitutional protection. Hence, the precision made in Article 3 of Law 1592 of 2012, in the sense that the differential approach must be applied "*without prejudice to the application of prioritisation criteria*", indicates that it will be necessary to examine the other prioritisation criteria, i.e. the objective and complementary criteria. This is because prioritisation is a technique for managing criminal investigations based, among other things, on the cross-referencing of variables. Therefore, the cases will not be grouped by taking into consideration a single variable (quality of the victim), but by cross-referencing it with others such as: victimising criminal organisations, regions, periods in which the crimes were committed, among others. This allows for the reconstruction of macro-criminal patterns, a term on which many provisions of Law 1592 of 2012 are based.

*Therefore*, the Court will declare the expression "*without prejudice to the application of prioritisation criteria*" in Article 3 of Law 1592 of 2012 to be constitutional on the grounds analysed.

**8.1.2.3. Truth-telling and prioritisation criteria.**

Article 10 of Law 1592 of 2012 enshrines the possibility of using prioritisation criteria in investigations carried out in transitional justice scenarios, in the following terms:

"ARTICLE 10. Amend Article 15 of Law 975 of 2005, which shall read as follows:

Article 15. Clarification of the truth. Within the procedure established by this law, public servants shall make the necessary arrangements to ensure that the truth about the pattern of macro-criminality in the actions of the organised illegal armed groups is clarified and that the contexts, causes and motives can be uncovered.

 **The investigation shall be carried out in accordance with the prioritisation criteria determined by the Attorney General of the Nation in accordance with Article 16A of this law**. In any case, the right of defence of the accused and the effective participation of the victims shall be guaranteed.

The information that emerges from the Justice and Peace processes should be taken into account in the investigations that seek to shed light on the support and financing networks of the organised illegal armed groups.

With the collaboration of the demobilised combatants, the Attorney General's Office, with the support of the judicial police, will investigate the whereabouts of kidnapped or missing persons and will inform the families of the results obtained in a timely manner.

Paragraph. In appropriate events, the Office of the Attorney General of the Nation shall ensure the protection of victims, witnesses and experts it intends to present at the trial. The Ombudsman's Office shall be responsible for the protection of witnesses and experts that the defence intends to present. The protection of the Magistrates of the High Judicial District Courts to whom functions are assigned for the implementation of this law shall be the responsibility of the Superior Council of the Judiciary".

The citizens allege that the expression "*The investigation will be carried out in accordance with the prioritisation criteria determined by the Attorney General of the Nation in accordance with Article 16A of this law"*, in Article 10 of Law 1592 of 2012, violates the right to equality of the victims of non-prioritised cases, as well as the right to a serious and impartial investigation, within a reasonable period of time. The Court does not agree with these assertions, for the reasons explained below.

The manner in which the criminal investigation body plans or organises its respective criminal investigations is a relevant factor in determining the extent to which the right to truth has been guaranteed.

The effectiveness of the right to the truth depends, among other things, on the existence of an authentic criminal investigation strategy, which allows for a holistic view of what really happened, a view which, even in the hypothesis of the commission of system crimes, goes beyond the strict framework of traditional criminal investigation (interviews, criminal analysis [[271]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn271%22%20%5Co%20%22) , criminalistics, expert examinations, etc.) to be accompanied by the development of applied social research products (e.g. statistics, geo-referencing, data mining, historical archives, discourse analysis, ethnographic work, social mapping, etc.).) to be accompanied by the development of applied social research products (e.g. statistics, geo-referencing, data mining, historical archives, discourse analysis, ethnographic work, social mapping, etc.), as well as the use of primary and secondary sources [[272]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn272%22%20%5Co%20%22) of information.

This is because war crimes committed systematically and crimes *against humanity* are perpetrated by organisations, whether legal or illegal, and not by isolated individuals [[273]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn273%22%20%5Co%20%22) .

Hence, "*knowing the truth*" is not simply a matter of knowing the names of the material perpetrators of the crime, but of knowing how the criminal plans were conceived, the structure and functioning of the organisation, the criminal patterns [[274] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn274%22%20%5Co%20%22) and, where appropriate, the sponsors or collaborators of the organisation. The content of the right to the truth is therefore not the same for ordinary crimes as for international crimes. The way they are investigated cannot be the same.

On the contrary, the presence of systemic dysfunctions such as the fragmentation and duplication of investigations [[275]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn275%22%20%5Co%20%22) into the same factual assumptions leads not only to a waste of the economic resources of the criminal prosecution body, but can also lead to: (i) contradictory judicial decisions; (ii) those under investigation not having clarity about the conduct with which they are charged; (iii) possible violations of the guarantee of *non bis in idem*; and (iv) and victims and society as a whole not knowing, with certainty, what happened and what the real reasons were.

Precisely for the purpose of overcoming the various disadvantages of conducting investigations into human rights violations or serious breaches of international humanitarian law without a transparent and clear investigative strategy, the legislator provided for the Attorney General to establish prioritisation criteria, specifying that "the *right of defence of the accused and the effective participation of the victims shall be guaranteed*".

The power that the legislator granted to the Attorney General of the Nation to establish prioritisation criteria is also in line with the constitutional competence of the Attorney General to participate in the design of the State's criminal policy (art. 251.4 Superior).

In this regard, the Court, in Ruling C-873 of 2003, specified that the Attorney General could set guidelines on: *"factual or technical aspects of the investigative process, as well as general legal matters of an interpretative nature, and may set* ***priorities****, parameters or institutional criteria for the exercise of investigative activities****, as*** *well as designate special units for certain issues".*

In this order of ideas, the charge of unconstitutionality is not likely to succeed, and consequently, the Court will declare the expression "*The investigation will be carried out in accordance with the prioritisation criteria determined by the Attorney General of the Nation in development of Article 16A of this law"*, of Article 10 of Law 1592 of 2012, to be constitutional, on the charges analysed.

**8.1.2.4. Clarification of the phenomenon of land dispossession and cooperation between the Attorney General's Office and the Special Administrative Unit for the Management of Restitution of Land Restitution.**

Article 11 of Law 1592 of 2012 provides for the possibility of applying prioritisation criteria with regard to land dispossession and cooperation between the Attorney General's Office and the Special Administrative Unit for the Management of Restitution of Land Restitution:

"Law 975 of 2005 shall have a new Article 15A which shall read as follows:

Article 15A. Clarification of the phenomenon of land dispossession and cooperation between the Attorney General's Office and the Special Administrative Unit for the Restitution of Land Restitution. When the victim has denounced the dispossession or forced abandonment of their property by members of organised illegal armed groups, the delegated prosecutor, in coordination with the judicial police authorities **and in accordance with the prioritisation criteria,** will arrange for the necessary investigative work to be carried out with the aim of clarifying the pattern of macro-criminality of dispossession and forced abandonment of land. The same shall be done informally in the case of alleged dispossession or forced abandonment of property identified by the Attorney General's Office.

When from the material evidence or legally obtained information, the Attorney General's Office finds relevant information for the land restitution process, it shall make it available to the Special Administrative Unit for the Management of Restitution of Land Restitution, in order to contribute to the procedures that it carries out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011".

The applicants allege that the expression "*and in accordance with the prioritisation criteria"* in Article 11 of Law 1592 of 2012 violates the right to equality of the victims of non-prioritised cases, as well as the right to a serious and impartial investigation, within a reasonable period of time. The Court considers that the citizens are not right, for the reasons explained below.

The accused legal expression is found in an article that seeks to shed light on the phenomenon of land dispossession and cooperation between the Attorney General's Office and the Special Administrative Unit for the Management of Restitution of Land Restitution.

The clarification of the phenomenon of land restitution, given its magnitude in the context of the Colombian armed conflict, the direct impact on thousands of victims and the criminal plans implemented in different regions of the country by various criminal organisations over the years [[276] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn276%22%20%5Co%20%22) requires the adoption of innovative criminal investigation techniques that allow for the association of cases, the cross-referencing of information and variables, the finding of macro-criminal patterns, the construction of contexts and, ultimately, the prosecution of those most responsible for land dispossession.

The application of prioritisation criteria allows the Attorney General's Office to focus or delimit concrete situations of land dispossession and build contexts [[277] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn277%22%20%5Co%20%22) which leads to examining a criminal phenomenon in its true proportions and impacts on the affected communities.

At the same time, the Land Restitution Unit has been applying prioritisation techniques [[278] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn278%22%20%5Co%20%22) which has allowed it to carry out targeting or micro-targeting exercises in certain regions or sub-regions of the country. For this purpose, administrative investigations are carried out in context, which involves the preparation of social mapping documents and timelines, the probative value of which has been recognised by the judiciary. [279]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn279%22%20%5Co%20%22)

In this order of ideas, the establishment of prioritisation criteria to guide the investigations carried out by the Attorney General's Office, whose use is coordinated with the proceedings of the Land Restitution Unit, rather than violating the rights of the victims, leads the Colombian state to provide a much more complete response to citizens' demands for justice.

Therefore, the Court will declare the expression "*and in accordance with the prioritisation criteria"* in Article 11 of Law 1592 of 2012 to be constitutional on the charges analysed.

**8.1.2.5. Jurisdiction of the Attorney General's Office and criteria for prioritisation**

Article 12 of Law 1592 of 2012 indicates the possibility of applying prioritisation criteria in the exercise of the powers of the Attorney General of the Nation, in the following terms:

"ARTICLE 12. Amend Article 16 of Law 975 of 2005, which shall read as follows:

Article 16. Competence. Once the Attorney General's Office has received the name or names of the members of organised illegal armed groups willing to contribute effectively to the provisions of this law, the corresponding delegated prosecutor, in **accordance with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of this law,** shall immediately assume jurisdiction to:

1. To hear investigations into criminal acts committed during and on the occasion of membership of an organised armed group operating outside the law.

2. To hear investigations against its members.

3. To take cognizance of investigations to be initiated and of which it becomes aware at the time of or after demobilisation.

The High Judicial District Court to be determined by the Higher Council of the Judiciary, by means of a resolution issued before any proceedings are initiated, shall be competent to try the punishable conducts referred to in this law.

In the event of conflict or collision of jurisdiction between the High Courts of Judicial Districts that hear the cases referred to in this law and any other judicial authority, the jurisdiction of the Justice and Peace Chamber shall always prevail, until it is determined that the act was not committed during and on the occasion of the postulated person's membership of the organised illegal armed group".

The citizens allege that the expression "in *accordance with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of this law",* in Article 12 of Law 1592 of 2012, violates the right to equality of the victims of non-prioritised cases, as well as the right to a serious and impartial investigation, within a reasonable period of time. The Court considers that the accused expression is in line with the Constitution, for the reasons explained below.

Article 12 of Law 1592 of 2012 instrumentalises the prioritisation criteria, insofar as it provides that, once the prosecutor receives the names of the members of the organised illegal armed group, he/she will assume jurisdiction over: (i) investigations into criminal acts committed during and on the occasion of membership of the armed group; (ii) investigations against its members and (iii) those that must be initiated and of which there is knowledge at the time of or after demobilisation.

Bearing in mind that the application of prioritisation criteria makes it possible to associate cases, analyse the structure and functioning of the criminal organisation, find macro-criminal patterns, and ultimately prosecute those most responsible, it is logical that once the prosecutor receives the names of the applicants, he or she should organise this information and compare it with other information related to crimes committed by the applicants or the illegal armed group to which they belong. Such investigative activities do not violate the rights of the victims. On the contrary, they guarantee them to the extent that a much more comprehensive and complete investigation will be carried out, and not a fragmentary or partial one, as would be the case if each criminal conduct were investigated in an isolated and unconnected manner.

*Therefore*, the Court will declare the expression "in *accordance with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of this law*", in Article 12 of Law 1592 of 2012, to be constitutional on the charges analysed.

**8.1.2.6. Criteria for prioritisation of cases.**

The citizens are challenging the unconstitutionality of the following expressions of Article 13 of Law 1592 of 2012:

"Law 975 of 2005 shall have a new Article 16A which shall read as follows:

Article 16A. Criteria **for prioritisation** of cases. In order to guarantee the rights of victims, the Attorney General of the Nation shall determine the prioritisation criteria for the exercise of criminal action, which shall be binding and of public knowledge.

The **prioritisation** criteria will be aimed at clarifying the pattern of macro-criminality ­in the actions of the organised illegal armed groups and at uncovering the contexts, causes and motives, **concentrating investigation efforts on those most responsible.** To this end, the Attorney General's Office will adopt by means of a resolution the "Integral Plan for Prioritised Investigation" (Plan Integral de Investigación Priorizada).

The citizens allege that the expressions "*prioritisation*", "*prioritisation*" and "*concentrating investigative efforts on those most responsible*" in article 13 of Law 1592 of 2012 violate the right to equality of the victims of non-prioritised cases, as well as the right to a serious and impartial investigation within a reasonable period of time. The Court considers that the charges are not likely to succeed, for the reasons explained below.

By virtue of Article 13 of Law 1592 of 2012, the Attorney General of the Nation is attributed the competence to define the prioritisation criteria, whose elaboration is presented within the framework of the functions of this body: (i) it derives from the power to participate in the design of the State's policy on criminal matters contemplated in numeral 4 of Article 251 of the Constitution, (ii) at no time does it imply the waiver of criminal prosecution and furthermore (iii) it constitutes a public policy tool to improve the efficiency of the system.

In this regard, the report *"Truth, Justice and Reparation"* prepared by the Inter-American Commission on Human Rights on 31 December 2013 stated: *"In this regard, with regard to the "Prioritisation Strategy" recently adopted by the Attorney General's Office, the Commission appreciates the initiatives aimed at gathering, systematising and analysing information that is scattered in different instances and considers that, in principle, the prioritisation of cases aimed at streamlining the response of the State justice system is not incompatible with the obligations arising from the American Convention"****[[280]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn280%22%20%5Co%20%22)****.*

In this sense, the use of the prioritisation strategy by the Attorney General's Office does not disregard the rights of the victims, but rather allows for a more efficient response to the investigation of serious human rights violations committed in Colombia by focusing the investigation on those most responsible. This does not mean that the other perpetrators will not be investigated, but rather that the investigation can initially focus on those with the greatest responsibility in order to study the phenomenon of macro-criminality in greater depth, and then all the other perpetrators will be investigated and tried by virtue of the findings made in the first macro-processes, giving a more coherent order to the reconstruction of the criminal phenomenon.

*Consequently*, the Court will declare the expressions "*prioritisation*", "*prioritisation*" and "*concentrating investigative efforts on those most responsible*" in Article 13 of Law 1592 of 2012 to be constitutional on the charges analysed.

**8.1.2.7. Free version and confession.**

The citizens object to the following wording of Article 14 of Law 1592 of 2012:

"Article14. Amend article 17 of Law 975 of 2005, which shall read as follows:

Article 17. *Free version and confession.* The members of the organised illegal armed group, whose names are submitted by the national government for consideration by the Attorney General's Office, who expressly accept the procedure and benefits of the present law, shall give a free version before the delegated prosecutor who shall interrogate them about the facts of which they have knowledge.

In the presence of their defence counsel, they shall state the circumstances of time, manner and place in which they have participated in the criminal acts committed during their membership of these groups, which predate their demobilisation and for which they are benefiting from the present law. In the same procedure, they shall indicate the date and reasons for their joining the group and the assets that they will hand over, offer or denounce to contribute to the comprehensive reparation of the victims, whether they are their real or apparent property or that of the organised illegal armed group to which they belonged.

The version given by the demobilised person and the other actions taken in the demobilisation process will be immediately made available to the National Prosecutor's Office for Justice and Peace so that the delegated prosecutor and the Judicial Police assigned to the case, in **accordance with the prioritisation criteria established by the Attorney General of the Nation,** can draw up and develop the methodological programme to initiate the investigation, verify the veracity of the information provided and clarify the patterns and contexts of criminality and victimisation.

Paragraph. The Attorney General's Office may regulate and adopt methodologies aimed at receiving collective or joint versiones libres, so that demobilised persons who have belonged to the same group can provide a clear and complete context that contributes to the reconstruction of the truth and the dismantling of the apparatus of power of the organised illegal armed group and its support networks. The holding of these hearings will allow the indictment, formulation and acceptance of charges to be carried out collectively when the legal requirements are fully met.

The citizens allege that the expression "in *accordance with the prioritisation criteria established by the Attorney General of the Nation"* in Article 14 of Law 1592 of 2012, violates the right to equality of the victims of non-prioritised cases, as well as the right to a serious and impartial investigation, within a reasonable period of time. The Court considers that the charges are not likely to succeed, for the reasons explained below.

Article 14 of Law 1532 of 2012 regulates an essential aspect of the Justice and Peace process, related to the reception of the free version and confession of the postulated person. From that moment on, the prosecutor must develop the respective methodological programme aimed at initiating the investigation, verifying the veracity of the information provided and *"establishing the patterns and contexts of criminality and victimisation*".

It should be noted that, as has been explained, prioritisation is not simply a technique to establish the order of attention to citizens' demands for justice, but an instrument that allows for the construction of more comprehensive criminal investigations into macro-criminal phenomena. This is why its use when designing methodological programmes is fundamental. In effect, the methodological programme is the road map to be followed in order to structure the investigation and determine the degree of participation of an individual in the commission of certain criminal conduct.

The Court considers that linking the construction of the methodological programme to the prioritisation will mean that, from the very beginning of the investigation, the objective will not focus on resolving isolated and unconnected cases, but on constructing a context that will allow: (i) determine the structure and functioning of the criminal organisation; (ii) specify the geographical, temporal, strategic, cultural, social, political and economic factors that allowed the emergence and actions of the illegal armed group; (iii) understand the criminal plans that were being executed (macro-criminal patterns); (iv) delimit the universe of victims; (v) identify those most responsible; and (vi) determine the role played by the demobilised combatant in the design or direct execution of the criminal plans.

This being the case, this Corporation considers that the charges of unconstitutionality are not likely to succeed and that, consequently, it will declare the expression "in *accordance with the prioritisation criteria established by the Attorney General of the Nation"* in Article 14 of Law 1592 of 2012 to be constitutional, on the charges analysed.

**8.1.2.8. Acceptance of charges and prioritisation.**

The citizens are challenging the paragraph of Article 18 of Law 1592 of 2012, which reads as follows:

"Article18. Modify article 18 of Law 975 of 2005, which shall read as follows:

Article 18. *Formulation of charges.* The delegated prosecutor for the case shall request the magistrate who exercises the functions of control of guarantees to schedule a preliminary hearing for the formulation of charges, when from the material evidence, physical evidence, legally obtained information, or from the voluntary statement it can be reasonably inferred that the demobilised person is the author of or participant in one or several crimes being investigated within the pattern of macro-criminality in the actions of the illegal organised armed group that is to be clarified.

At this hearing, the prosecutor will make the factual accusation of the charges investigated and will request the magistrate to order the preventive detention of the accused in the corresponding detention centre, in accordance with the provisions of this law. Likewise, he/she shall request the adoption of precautionary measures on the assets for the purpose of contributing to the comprehensive reparation of the victims.

From this hearing and within the following sixty (60) days, the Office of the Public Prosecutor of the Nation, with the support of its judicial police group, shall carry out the investigation and verification of the facts admitted by the accused, and all those of which it has knowledge within the scope of its competence. At the end of the term, or earlier if possible, the prosecutor in the case shall request the trial chamber to schedule a concentrated hearing for the formulation and acceptance of charges.

With the filing of the indictment, the statute of limitations on criminal prosecution is interrupted.

**Paragraph. When the facts for which the defendant is charged form part of a pattern of macro-criminality that has already been clarified by a Justice and Peace ruling in accordance with the prioritisation criteria, and provided that the effects caused to the victims by such a pattern of macro-criminality have already been identified in the respective ruling, the defendant may accept responsibility for the conduct charged and request the early termination of the proceedings. In such cases, the supervisory magistrate shall send the case file to the court in order for it to proceed to issue a sentence in accordance with article 24 of the present law, within a period that may not exceed fifteen (15) days from the hearing at which the charges were brought. The early termination of the proceedings shall not, in any case, imply access to criminal benefits in addition to the alternative penalty.**

The applicants allege that the paragraph of article 18 of Law 1592 of 2012, with regard to the use of prioritisation criteria, disregards the State's duty to carry out a serious, impartial investigation within a reasonable period of time, as well as the right to equality of the victims whose cases have not been prioritised. The Court considers that the citizens are not right for the reasons explained below.

**A. The concept of a "pattern of macro-criminality".**

So-called "*crime patterns*" are the subject of a relatively new social science known as crime analysis, understood as a systematic set of analytical processes aimed at promoting timely and relevant information to law enforcement and investigative authorities on crime patterns and crime trends [[281]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn281%22%20%5Co%20%22) . According to Sepúlveda Scarpa, it involves searching, organising and analysing data related to crimes, offenders, victims and places (geo-referencing), in order to find meaningful information to prevent and solve them [[282]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn282%22%20%5Co%20%22) .

Criminal analysis is based on various sciences and theories:

Environmental criminology: the study of spatial factors that may influence the increase of criminal activity in a given territory [[283]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn283%22%20%5Co%20%22) .

Rational choice theory: according to Felson and Clarke, people make decisions before committing a crime, according to a perception of opportunity and anticipated reward. [284]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn284%22%20%5Co%20%22)

Pattern theory: according to Brantingham's work, from the analysis of the crime scene, it is possible to determine different varieties of victims and offenders who frequent the crime scene. [285]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn285%22%20%5Co%20%22)

Routine activities theory: they argue that offenders, and even criminal organisations, carry out certain activities on a frequent basis. [[286]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn286%22%20%5Co%20%22)

The International Association of Crime Analysts (IACA) [[287]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn287%22%20%5Co%20%22) classifies crime patterns into six groups:

Series: a set of offences committed by the same person against one or more persons.

Spree: a pattern characterised by a high frequency of crime activity, on an almost continuous basis.

Hot spot (high risk area): occurs when an unusual amount of crime occurs in a location or geographical area, perpetrated by a variety of criminals or criminal organisations.

Hot dot (high-risk person): the same person, or a group of them, are frequently victimised.

Hot product (preferred good): a good is desired or attractive to certain offenders.

Hot target: a certain place is frequently victimised.

As far as the identification of criminal patterns is concerned, specialists [[288]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn288%22%20%5Co%20%22) propose different methodologies:

Deductive: by using various variables (e.g. time, space, frequency, *modus operandi*, selection of victim, quality of perpetrator, etc.), common characteristics between different crimes are found.

Class-based approach: the universe of offences is divided and organised according to the type of offence.

Identification of geographical patterns: this consists of creating maps that allow finding constants between the crimes committed.

The identification of **macro-criminal patterns is** even more complex for the following reasons:

The universe of victims, perpetrators and damage caused turns out to be very large.

Crimes committed on a large scale, on a massive or systematic basis, sometimes over a period of years, carried out in accordance with a plan or policy of a criminal organisation are investigated (Art. 7 of the Rome Statute of the International Criminal Court).

Perpetrators are criminal organisations with various structures (e.g. hierarchical, networks or nodes, hybrid, etc.), forms of financing, *modus operandi* and networks of collaborators.

Criminal groups, responsible for the commission of system crimes, do not usually commit a single variety of crimes (e.g. forced displacement, money laundering, homicides, etc.). This is because the execution of the criminal plan, which takes the form of an attack against the civilian population, includes different criminal conducts. Hence, the technique of regrouping crimes on the basis of a single variable (i.e. type of crime) is insufficient to construct a pattern of macro-criminality.

The aforementioned complexities lead experts to formulate certain recommendations when constructing macro-criminality patterns: (i) take into consideration the geographical, historical, political, social, economic and cultural factors that allowed the emergence and expansion of a criminal organisation (context); (ii) reconstruct the structure of the criminal group and its *modus operandi*; (iii) cross-reference various variables; (iv) select statistical samples appropriately; (v) employ multidisciplinary approaches; (vi) verify and contrast primary (judicial) and secondary (non-judicial) sources; (vii) advance quantitative and qualitative analyses; (viii) employ criminal analysis products (geo-referencing, data mining, network analysis, etc.), among others.

As can easily be seen, the reconstruction of macro-criminal patterns, although based on the examination of specific conducts (e.g. a homicide, a forced displacement of population, a threat against a land claimant, etc.), is not a simple aggregation of them; nor is it a matter of regrouping punishable acts, in accordance with a specific criminal type (e.g. homicide of a protected person, kidnapping, rape, etc.).

The adequate reconstruction of a macro-criminal pattern allows the existence of criminal plans executed on a large scale in a given region of the country to be revealed, and consequently helps to explain the reasons and motives that led to the commission of numerous crimes of a very diverse nature, and also helps to guide the criminal investigation towards those most responsible. It is not, therefore, a question of resolving, *case by case,* an extensive universe of crimes, but rather of regrouping them technically and rationally, and thus being able to advance towards the prosecution of the members of a criminal organisation, especially those most responsible for committing them.

**B. Resolution of the charge of unconstitutionality.**

The paragraph of article 18 of Law 1592 of 2012 enshrines a measure aimed at speeding up the processing of transitional justice processes [[289]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn289%22%20%5Co%20%22) .

In this sense, it is sufficient that the facts that a defendant is accused of: (i) form part of a pattern of macro-criminality; (ii) have been established by a Justice and Peace sentence, issued after a process in which prioritisation criteria were applied; and (iii) provided that the harm caused to the victims of the macro-criminal pattern has been identified in the respective sentence, for the defendant to be able to accept responsibility for the imputed conducts and request the termination of the process.

It should be noted that, by conducting a criminal investigation in context, once the line of action, criminal plans, structure and actions (*modus operandi*) of a specific criminal organisation (pattern of macro-criminality) have been judicially proven at the end of a sentence issued in a proceeding that was conducted based on prioritisation criteria, it is not necessary to demonstrate, in subsequent judicial proceedings, the individual commission of each of the crimes attributable to the members of the illegal armed group. It will be sufficient for each postulate to accept them for the respective proceedings to be terminated.

In this sense, the technical construction of macro-criminal patterns provides those affected with a much more complete and real vision of what happened, since it aims to unveil the deep and hidden causes of their victimisation, without this being a means for the respective judicial authorities to achieve a greater degree of detail in relation to what happened in a specific case.

As the charge of unconstitutionality does not succeed, the Court will declare the paragraph of article 18 of Law 1592 of 2012 constitutional, on the charge analysed.

**8.1.2.9. Victims of the pattern of macro-criminality, established within a process, in accordance with prioritisation criteria. Constitutional res judicata.**

The applicants allege that the expression "*the victims corresponding to the pattern of macro-criminality that is being clarified within the process in accordance with the prioritisation criteria*" in paragraph 5 of article 23 of Law 1592 of 2012, violates the State's duty to carry out a serious, impartial and timely investigation, as well as the right to equality of the victims whose cases have not been prioritised.

In this regard, the Court will declare that it will abide by the ruling in judgment C- 286 of 2014, which resolved:

*"****SECOND.-*** *To declare Articles 23, 24, 25 of Law 1592 of 2012, the expression "and against the ruling of the incident of identification of the effects caused" contained in paragraph 3 of Article 27 of the same regulation, and Articles 33, 40 and 41 of Law 1592 of 2012, to be* ***UNCONSTITUTIONAL****".*

**8.2. RESOLUTION OF THE CHARGES OF UNCONSTITUTIONALITY RAISED IN RELATION TO SOME PROCEDURAL ASPECTS OF LAW 1592 OF 2012.**

In relation to certain procedural aspects of Law 1592 of 2012, the plaintiffs initially raised seven (7) charges of unconstitutionality.

After analysing the fulfilment of the requirements for a charge of unconstitutionality, the Court concluded that: (i) in relation to Article 11 of Law 1592 of 2012 (cooperation with ordinary criminal proceedings), the charge raised lacked certainty, a reason that prevented an examination on the merits; and (ii) with regard to the exclusion of the extraordinary appeal in cassation of paragraph 3 of Article 27 of Law 1592 of 2012, the phenomenon of res judicata materialis was configured. Hence, the Court will examine the merits of the five (5) charges of unconstitutionality that arose in relation to certain procedural aspects of Law 1592 of 2012.

**8.2.1. First charge: the joint or collective versiones libres (paragraph of Article 14 of Law 1592 of 2012) violate the principle of individual criminal responsibility and victims' rights to truth and reparation.**

The plaintiffs point out that the expressions *"collective or joint"* and "*collectively"* contained in the paragraph of Article 14 of Law 1592 of 2012 allow for collective or joint versiones libres and that the indictment, formulation and acceptance of charges can be done collectively, which they consider unconstitutional in that it could affect individual criminal responsibility, the right to truth and justice, as they lead to the improper investigation of the facts that gave rise to the violations of human rights and international humanitarian law, preventing the use of investigative techniques that tend to establish possible contradictions between the versions and to clarify the individual responsibility of the persons who participated in the actions of the illegal armed group.

To resolve the charge of unconstitutionality, the Court will: (i) determine the scope of the principle of individual criminal responsibility; and (ii) examine whether the paragraph of Article 14 of Law 1592 of 2012, insofar as it allows: (i) the reception of collective or joint versions; and (ii) the holding of indictment, formulation and acceptance of charges hearings collectively, disregards the aforementioned principle.

**8.2.1.1.1.The scope of individual criminal liability**

Guilt is an inescapable and necessary assumption of responsibility and the imposition of punishment, which means that the punitive activity of the State takes place only on the basis of the subjective responsibility of those on whom it falls [[290]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn290%22%20%5Co%20%22) . In this sense, in order for the sanctions provided for by law to be applied in the case of a person, it is indispensable that it be established with certainty that the defendant is responsible for the punishable act that has given rise to the trial [[291]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn291%22%20%5Co%20%22) .

Article 29 of the Constitution, in harmony with the definition of the political nature of the State as a Social State based on the rule of law, and the postulate of respect for the dignity of the human person, enshrines the principle that there is no crime without conduct, by establishing that *"no one may be judged except in accordance with the laws that existed prior to the* ***act of which*** *he is accused"*.

In this sense, in order for a penalty to be imposed, it is necessary that the corresponding judgement of reproach be made, for not having complied with the criminal law when the needs of prevention imposed the duty to behave in accordance with the law, in the circumstances in which he found himself [[292]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn292%22%20%5Co%20%22) .

In turn, the *principle of guilt*, derived from Article 29 of the Political Charter, has the following consequences [[293]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn293%22%20%5Co%20%22) :

a) The criminal law of the act, by which "*it is only permitted to punish a man for what he does, for his social conduct, and not for what he is, nor for what he desires, thinks or feels*" [[294]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn294%22%20%5Co%20%22) .

b) The principle according to which there is no action without will, which requires the configuration of the subjective element of the offence. According to this principle, no human act or behaviour can be considered an action if it is not the result of a decision; therefore, it cannot be punished if it is not intentional, that is, carried out with consciousness and will by a person capable of understanding and willing [[295] , which](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn295%22%20%5Co%20%22) is why in our legal system, strict liability has been outlawed [[296]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn296%22%20%5Co%20%22) .

c) The degree of culpability is one of the basic criteria for the imposition of the penalty in such a way that a greater or lesser sanction is applied to the perpetrator, depending on the degree of enforceability, that is to say, the penalty must be proportional to the degree of culpability [[297]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn297%22%20%5Co%20%22) .

By virtue of these consequences, the *main* purpose of any criminal proceeding is the determination of individual criminal responsibility. In this sense, it can be said that it is made up of a set of legal acts and stages that have a chronological, logical and teleological relationship with each other: one is the support and presupposition of the others, and all are oriented towards the same end, which is to establish, beyond reasonable doubt, whether or not a person is responsible for the commission of a given crime. Hence, it is inconceivable that a criminal proceeding that is not oriented towards the achievement of these goals would be inconceivable [[298]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn298%22%20%5Co%20%22) :

*"In short, the central object of criminal proceedings is the establishment of individual criminal responsibility. Hence, the death of the accused or accused person is a reasonable cause for the extinction of the criminal action. In effect, when the person against whom criminal proceedings are being brought dies, the real possibility of establishing his or her responsibility in the commission of a specific criminal conduct is cut short. Similarly, the eventual imposition of a sentence would lack any practical sense."* ***[[299]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn299%22%20%5Co%20%22)***

In conclusion, the focus of criminal proceedings is the determination of individual criminal responsibility.

**8.2.1.2. Resolution of the charge of unconstitutionality.**

The plaintiffs raise two specific challenges to the expressions being challenged: (i) the Colombian criminal system is based on individual criminal responsibility, so that establishing collective proceedings directly violates this fundamental constitutional right and (ii) the indictment, formulation and acceptance of collective charges lead to the improper investigation of the facts that gave rise to violations of human rights and international humanitarian law, preventing the use of investigative techniques that tend to establish possible contradictions between the versions, and to clarify the individual responsibility of the persons who participated in the actions of the group. Both of these questions will be analysed below:

**A. Non-violation of individual criminal responsibility**

The holding of collective or joint versiones libres, in a transitional justice context, does not affect the principle of act responsibility, for the following reasons:

The system crimes that are usually prosecuted in the implementation of transitional justice programmes are characterised by the following: (i) they are carried out by criminal organisations; (ii) in accordance with a plan of a criminal organisation or a state policy; and (iii) the execution takes the form of a massive or systematic attack against a large number of victims.

In this context, the reception of collective or joint versions by former members of an illegal armed group, rather than undermining the principle of individual criminal responsibility, leads to reconstructing the context and the macro-criminal patterns that characterised the commission of numerous crimes.

Thus, it is not simply a matter of seeking greater efficiency in the transitional criminal justice system, at the expense of the principle of individual criminal responsibility, but rather of having a procedural scenario that allows all the versions of the postulants who belonged to a certain bloc to be cross-checked, for example, with those of the victims and with the evidence collected.

The reception of successive versions from several postulates does not affect the rights of the victims either; on the contrary, it allows for greater elements of judgement to reconstruct the structure, functioning and criminal plans of a given illegal armed organisation.

**B. Collective charging, formulation and acceptance of charges do not lead to improper fact-finding.**

The plaintiffs point out that the indictment, formulation and acceptance of collective charges lead to the improper investigation of the facts that gave rise to the violations of human rights and international humanitarian law, preventing the use of investigative techniques that tend to establish the possible contradictions between the versions, and to clarify the individual responsibility of the persons who participated in the actions of the group.

The norm in question establishes the possibility for the Attorney General's Office to regulate and adopt methodologies aimed at receiving collective or joint testimonies, so that demobilised combatants who have belonged to the same group can provide a clear and complete context that contributes to the reconstruction of the truth and the dismantling of the organised apparatus of power.

What is contemplated in the norm is a methodology for receiving versions from various persons that allows officials to reveal macro-criminal structures and contexts of victimisation, in order to prevent the facts from being assessed in isolation and to allow for a complete analysis of the crimes. In this sense, this rule does not exclude the possibility of contradictions in the versions; on the contrary, it makes it easier to contrast the statements if several are presented in a shorter period of time and before the same official, who can examine the coincidences and inconsistencies of the statements. In this regard, if one consults the report for the first debate in the Senate of the Republic, one can conclude that the purpose of the law was precisely to clarify the patterns and contexts of criminality and victimisation:

"**Article 13 modifies Article 17 of Law** 975 of 2005, on the free version and confession. With respect to the original version, it introduces the circumscription of the free version in the prioritisation criteria established by the Attorney General of the Nation, in such a way that the delegated prosecutor will elaborate and develop the methodological programme to initiate the investigation, verify the veracity of the information provided and clarify the patterns and contexts of criminality and victimisation. The procedure is established after the hearing of the voluntary confession and joint or collective confessions are permitted so that the applicants who belong to the same group can provide a clear and complete context that contributes to the reconstruction of the truth and the dismantling of the apparatus of power of the illegal armed group and its support networks".

In addition to the above, it should be pointed out that the holding of collective indictment or acceptance of charges hearings does not imply that the individual responsibility of each of the accused should not be determined.

For the foregoing reasons, the expressions "*collectively or jointly*" and "in *a collective manner*" in the paragraph of Article 14 of Law 1592 of 2012 will be declared constitutional.

**8.2.2. Second charge: the regulation of the concentrated hearing and the early termination of the proceedings (Article 18, paragraph 4 and subparagraph and Article 22 of Law 1592 of 2012) violate the right of victims to participate in the proceedings.**

The actors point out that paragraph 4 and the paragraph of article 18 and the expression *"concentrated"* of article 22 of Law 1592 of 2012 provide that a concentrated hearing for the formulation and acceptance of charges may be scheduled, which they consider unconstitutional, as it would violate the victims' right to participate in the Justice and Peace process and to an adequate and serious investigation of the punishable conducts by the State.

This is because, in their opinion, a concentrated hearing does not provide the guarantees for the victims to have the opportunity to analyse the respective charges, especially in those situations in which the accused partially accepts them, thus leaving the victims of those charges that the accused does not accept without the possibility of continuing the Justice and Peace process, being obliged to continue the process against the accused through the ordinary justice system.

In order to resolve the charge of unconstitutionality, the Court will: (i) examine the legislator's margin of configuration in the design of transitional justice processes; and (ii) determine whether, in the specific case, the Congress of the Republic respected the constitutional limits on the regulation of the concentrated hearing for the formulation and acceptance of charges.

**8.2.2.1. The legislator's room for manoeuvre with regard to judicial proceedings.**

The Constitutional Court [[300]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn300%22%20%5Co%20%22) has pointed out that according to Article 150-2 of the Constitution, it is incumbent upon the Congress of the Republic to "*enact codes in all areas of legislation and to reform their provisions*". Based on this competence and the importance of the law as a source of law, the legislature has, by constitutional mandate, "*broad freedom to define the procedure in processes, proceedings and actions based on substantive law*" [[301]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn301%22%20%5Co%20%22).

In this sense, it has been recognised that the legislator has a broad power of normative configuration in the definition of judicial procedures and the forms of each trial [[302] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn302%22%20%5Co%20%22) on the basis of which, it is up to the legislator to "*evaluate and define the stages, characteristics, terms and other elements that make up each judicial procedure*" [[303]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn303%22%20%5Co%20%22) .

By virtue of this power, the legislature is autonomous in deciding the structure of judicial proceedings, even though, in exercising that power, it is obliged to respect the principles established in the Political Charter. [304]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn304%22%20%5Co%20%22) Therefore, although the legislature has a wide margin of regulatory configuration, it has limits that are specified in the respect for the principles and purposes of the State, the validity of fundamental rights, and the observance of other constitutional norms. [305]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn305%22%20%5Co%20%22)

In this sense, the discretion to determine procedural or administrative actions is not absolute, as it must be exercised with respect for the fundamental values of our political and legal organisation, such as justice, equality and a just order (Preamble) and the fundamental rights of individuals such as due process, defence and access to the administration of justice (C.P., arts. 13, 29 and 229). Likewise, it must enforce the principle of the primacy of substantive law over forms (C.P., art. 228) and be designed in harmony with the proposed purpose, which is to objectively, reasonably and timely implement the substantive law [[306]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn306%22%20%5Co%20%22) in controversy or definition; otherwise, the legal configuration would become arbitrary [[307]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn307%22%20%5Co%20%22) .

The legislator must ensure the balanced protection of all the legal interests involved that are ordered [[308] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn308%22%20%5Co%20%22) complying with the principles of proportionality and reasonableness in relation to the purpose for which they were conceived [[309] , with the aim of](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn309%22%20%5Co%20%22) ensuring precisely the primacy of substantive law (art. 228 C.P.), as well as the fullest possible exercise of the right of access to the administration of justice (art. 229 C.P.), due process (art. 29 C.P.) [[310] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn310%22%20%5Co%20%22) compliance with the postulate of good faith in the actions of private parties (CP art. 83) [[311]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn311%22%20%5Co%20%22) and the principle of impartiality [[312]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn312%22%20%5Co%20%22) .

Therefore, the Court has pointed out that the legitimacy of procedural rules depends on their proportionality and reasonableness *"since only the coherence and balance of the procedural machinery allows for the effective application of the concept of justice and, consequently, makes it possible to protect the interests in conflict"*. [313]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn313%22%20%5Co%20%22) Thus, the violation of due process would occur not only in the case of the omission of the respective procedural rule or its ineffectiveness to achieve the purpose for which it was designed, but especially in the case that it appears excessive and disproportionate to the result sought to be obtained with its use. [314]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn314%22%20%5Co%20%22)

*In order* to ensure respect for these broad limits on legislative power, case law has established a set of criteria initially set out in Ruling C-227 of 2009: "*(i) that it respects the principles and purposes of the State, such as justice and equality, among others; (ii) that it ensures the fundamental rights of citizens* ***[[315]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn315%22%20%5Co%20%22)*** *which in the procedural case (...) may involve rights such as due process, defence and access to the administration of justice (Articles 13, 29 and 229 C. P.) [316]; (iii) that it acts in accordance with the principles of reasonableness and proportionality in the definition of forms [317] and (iv) that it allows for the material realisation of rights and the principle of primacy of the law [318]; and (v) that it allows for the material realisation of rights and the principle of primacy of the law [319] [319].P.)****[[316]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn316%22%20%5Co%20%22)*** *; iii) that it acts in accordance with the principles of reasonableness and proportionality in the definition of forms****[[317]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn317%22%20%5Co%20%22)*** *and iv) that it allows the material realisation of rights and the principle of the primacy of substantive law over forms (Article 228 C.P.)****[[318]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn318%22%20%5Co%20%22)*** " [[319]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn319%22%20%5Co%20%22) .

**8.2.2.2.2. Analysis of the constitutionality of paragraph 4 and subparagraph 18 and the expression *"concentrated"* in Article 22 of Law 1592 of 2012**

The plaintiffs raise two (2) challenges in relation to paragraph 4 and the paragraph of Article 18 and the expression *"concentrated"* in Article 22 of Law 1592 of 2012: (i) the concentration of the hearings gives rise to the violation of the victims' right to participate in the Justice and Peace process and to the adequate and serious investigation of the punishable conducts by the State; and (ii) the laws being challenged do not provide a prudent time for the victims or their representatives to analyse the charges, especially those that were not accepted.

**A. The concentration of hearings in the Justice and Peace process does not violate the victims' right to participation, nor does it disregard the State's duty to carry out a serious and impartial investigation.**

The establishment of a concentrated hearing is an exercise of the legislator's power to shape judicial procedures, which is fully justified by the need to speed up proceedings and which does not affect the rights of defendants or victims.

According to the explanatory memorandum of Law 1592 of 2012, the concentrated hearing of indictment and acceptance of charges aims to reduce the time of the justice and peace procedure in order to provide greater speed and improve efficiency:

"By means of the modification of Article 18 of Law 975 of 2005, it is foreseen that the formulation of charges will no longer take place before the official in charge of the control of guarantees but before the court of knowledge, in a concentrated hearing of formulation and acceptance of charges, in which, in the event that the accused accepts the charges, the control of legality will also take place and the sense of the ruling will be announced.

This eliminates a hearing and significantly shortens the justice and peace procedure, paves the way for quicker sentencing and introduces a more expeditious and streamlined procedure. This procedural design is undoubtedly more in line with the nature of transitional justice and responds to the national and international sentiment of obtaining results in shorter timeframes.

On the other hand, the reform was also justified by the need for the official in charge of prosecution and punishment to know at once all the factual and legal elements that will allow him to take the decisions he must take, as is the case in the adversarial system:

"With the same aim of reducing procedural stages and times, the sixth numeral of the original text, relating to the formulation of charges, is eliminated from Article 13, as it is considered that this should be carried out before the hearing chamber and not before the judge for the control of guarantees. This modification is also consistent with the accusatory criminal system, in which the indictment hearing takes place before the supervisory judge and the indictment hearing is carried out by the examining magistrate.

Holding the hearing to formulate the charges before the justice and peace hearing chamber also allows the facts on which the charges are based to be established and delimited at once before the competent official for the trial and the sanction. The same chamber will be the one to evaluate the facts, for approval, which will necessarily be the basis for the sentence. The reform allows the official in charge of the trial and punishment to know at once all the factual and legal elements that will allow him to take the decisions he must take. In this sense, the amendment implies a significant saving of time which may result in the speeding up of the process in general.

These kinds of measures are valid in a procedural system. Thus, in the accusatory criminal system, the formulation of the indictment and the acceptance of charges are presented at the same hearing, without this circumstance having been considered to affect procedural guarantees or the rights of victims:

"**Article 288**. Content. For the formulation of the indictment, the prosecutor shall express orally:

1. Specific identification of the accused, including his or her name, identifying information and address for service of process.

2. A clear and succinct account of the legally relevant facts, in understandable language, which shall not imply the discovery of material evidence, physical evidence or information in the possession of the Prosecutor's Office, without prejudice to what is required to request the imposition of a security measure.

3. Possibility for the person under investigation to plead guilty to the charge and to obtain a reduced sentence in accordance with Article 351".

In conclusion, the concentration of the hearings for the formulation and acceptance of charges does not violate the victims' right to participation, nor does it disregard the State's duty to carry out a serious and impartial investigation.

**B. The laws under challenge provide a reasonable time for the victims or their representatives to analyse the charges, especially those that were not accepted.**

The plaintiffs point out that the laws in question do not provide a prudent moment for the victims or their representatives to analyse the charges, especially those that were not accepted, since it is after the acceptance of the charges by the accused that the incident of integral reparation is presented.

The concentration of hearings ends up reducing the length of the Justice and Peace process, as a hearing is eliminated in order to achieve greater speed, as recognised in the explanatory memorandum itself, which in principle, as already stated, constitutes an exercise of the legislator's freedom of configuration that is even applied in the ordinary accusatory system, as in the accusatory procedure the acceptance of charges takes place in the same hearing in which the charges are formulated.

In this sense, one might think that victims would have less time to participate in the process or identify their harms if the indictment hearing is eliminated. However, this is not the case, for two (2) reasons: (i) according to Article 6 of Law 975, *"the victims will have the right to participate directly or through their representative in all stages of the process"*, even before the free version of the accused, so that throughout the process the victims will be able to determine what damages have been caused; (ii) the beginning of the comprehensive reparation incident occurs after the acceptance of charges.

*In this regard*, it should be recalled that Judgment C-370 of 2006 was categorical in stating that the participation of the victims begins from the time of the voluntary confession; therefore, from that moment on, they can identify the harm caused: *"The perception of the plaintiffs that the accused provisions exclude the participation of the victim in the proceedings regulated therein is not correct. A systematic view of the rules relating to the procedural powers of the victim within the framework of the principles that underpin them and the jurisprudential developments in force on the matter, leads to the conclusion that, contrary to what is claimed in the complaint, the law guarantees the participation of the victims in the proceedings of free version and confession, formulation of the indictment and acceptance of the charges. This conclusion is reinforced by the law's clear choice of a markedly accusatory procedural system that is developed through hearings to which victims' access cannot be obstructed"* [[320]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn320%22%20%5Co%20%22) .

By virtue of the foregoing, the Court will declare the exequibilidad of paragraph 4 of Article 18 and the expression *"concentrated"* of Article 22 of Law 1592 of 2012, on the charges analysed.

**C. The early termination of the proceedings by acceptance of responsibility (paragraph of article 18 of Law 1592 of 2012) does not violate the victims' right to the truth.**

The plaintiffs point out that the paragraph of Article 18 establishes that early termination of the Justice and Peace process may be requested if the defendant accepts responsibility for the alleged conduct that forms part of a pattern of macro-criminality that has been clarified, which they consider to be unconstitutional, as the charges would be made on the basis of information related to a pattern of macro-criminality and not on the basis of a voluntary, free, truthful and complete confession of the facts, thus violating the victims' right to the truth.

Next, the Court will: (i) analyse the concept of acceptance of responsibility in criminal proceedings; and (ii) resolve the charge of unconstitutionality.

**8.2.3.1. Acceptance of responsibility in criminal proceedings**

In the Colombian procedural system, multiple measures of collaboration with justice have been contemplated that imply an acceptance of responsibility, the constitutionality of which has been endorsed by this Corporation:

Early sentencing was created in Article 36 of Decree 2700 of 1991 and was applied at the request of the defendant and implied a significant reduction in the sentence (by one-third if it was before the close of the investigation and by one-sixth if it was presented before the date of the public hearing*)*[[321]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn321%22%20%5Co%20%22) . In this sense, early sentencing is a form of abbreviated termination of criminal proceedings and responds to a criminal policy aimed at achieving greater efficiency and effectiveness in the application of justice [[322]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn322%22%20%5Co%20%22) . It therefore operates as a simple confession that implies the State's renunciation of its investigative powers and the accused's renunciation of the normal procedural formalities and of the controversy over the accusation and the evidence on which it is based [[323]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn323%22%20%5Co%20%22) .

This figure was declared constitutional in Ruling C-425 of 1996 because it was considered that it respected due process as it fully guaranteed the right to contradict, the presumption of innocence, publicity, good faith and procedural loyalty. It also considered that this figure constituted a way of guaranteeing the speed and efficiency of the proceedings without affecting the constitutional guarantees of the accused:

*"Article 29 of the Charter mandates that proceedings be processed promptly and in a timely manner, without unjustified delays. Consequently, if there is sufficient evidence in the criminal proceedings to demonstrate that the implicated party's acceptance of the charges and his or her responsibility are truthful and in line with reality, it makes no sense to observe a series of procedural rites to demonstrate what has already been sufficiently proven. It is a duty of the State and a right of all citizens to have an efficient judicial system that does not delay proceedings and allows them to be resolved in a timely manner, without disregarding the fundamental guarantees of the accused"****[[324]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn324%22%20%5Co%20%22)*** *.*

Law 81 of 1993 created the special hearing, which deals with the typical nature of the crime, the degree of participation, the form of guilt, the circumstances of the crime, the sentence, and the conditional sentence and allows for a sentence reduction of one-sixth to one-third [[325]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn325%22%20%5Co%20%22) . Unlike an anticipated sentence, in this hearing there are evidentiary doubts about the involvement in the crime or the qualification of some of its constituent elements and it may also be requested by the Prosecutor [[326]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn326%22%20%5Co%20%22) . This figure was analysed by the Constitutional Court in Ruling C 394 of 1994, in which it determined that the agreement between the Prosecutor and the defendant is a matter that directly and specifically concerns the judge, and therefore it is reasonable and in accordance with legal technique for the law to have established the control of the agreement by the judge.

Law 600 of 2000 also contemplated early sentencing with a very similar wording to that of Law 81 of 1993, although with different terms and discounts [[327]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn327%22%20%5Co%20%22) .

Law 906 of 2004 has introduced two types of early termination of proceedings: plea bargaining and pre-agreements and negotiations:

Unilateral acceptance of charges under Law 906 of 2004, which may occur at various procedural stages, represents a form of early termination of proceedings and involves criminal policy objectives similar to those of the previous system, such as achieving greater efficiency and effectiveness in the administration of justice by dispensing with procedural stages that are deemed unnecessary by virtue of the defendant's acceptance of the facts and his or her responsibility as perpetrator or participant in them [[328]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn328%22%20%5Co%20%22) . In this sense, it is an idea of confession in the natural sense, as an unconditional admission of charges, not in the evidentiary sense, since confession does not constitute a means of proof in the new system [[329]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn329%22%20%5Co%20%22) .

Pre-agreements and plea bargains are a judicial means of simplifying proceedings by partially or totally eliminating the evidentiary and argumentative debate as a result of consensus between the parties to the proceedings [[330]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn330%22%20%5Co%20%22) . In this sense, they are also a form of early termination of the process that entails the recognition of responsibility on the part of the accused or accused that implies the free, conscious, voluntary and duly informed waiver of the accused or accused to the public, oral, concentrated and contradictory trial that implies punitive discounts [[331]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn331%22%20%5Co%20%22) .

The Constitutional Court reviewed this figure and determined that it does not, *per se*, violate the fundamental right to due process, since pre-agreements and negotiations are limited by a series of legal restrictions that protect the rights of the victims [[332]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn332%22%20%5Co%20%22) .

For its part, Ruling C-1260 of 2005 ruled on the constitutionality of the early termination of criminal proceedings in relation to both figures in the following sense:

*"For the Court it is clear then, that the possibility of waiving a public, oral trial, through the conclusion of agreements between the prosecution and the accused, as well as the acceptance of guilt at the beginning of the trial by the accused, does not violate the constitutional guarantees of due process, insofar as they must be subject to the control of legality by the corresponding judge and must be approved by the trial judge, verifying the non-violation of fundamental rights and compliance with due process, and that it is a free, conscious, voluntary, duly informed decision, advised by the defence, for which the personal interrogation of the accused or defendant is essential, as well as the presence of the defence counsel".*

*This is because the accused has accepted the facts that are the subject of the investigation and his responsibility as perpetrator or participant, and since there is sufficient evidence in the proceedings for a conviction, it is unnecessary to exhaust each and every one of the stages of the process, so that the ruling can be handed down without having exhausted the entire procedure, in order to provide prompt and complete justice, without unjustified delays, as also enshrined in Article 29 of the Constitution".*

**D. Ruling on the unconstitutionality charges.**

The plaintiffs raise two (2) specific challenges to the provision in question: (i) the request for early termination of the proceedings under the conditions established in the paragraph in question would not allow for a complete version of the facts by the defendant; (ii) the request for early termination of the proceedings would generate charges based on information that is related to a pattern of macro-criminality and not on a free, truthful and complete voluntary confession of the facts. The Court does not agree with these assertions, for the reasons explained below:

Consensual justice, which is based on pre-agreements and negotiations, must be assisted by certain *objectives* such as *(i) humanising* the procedural action and the sentence; *(ii)* the *efficiency* of the system reflected in the prompt and complete obtaining of justice; *(iii)* advocating the solution of the social conflicts generated by the crime; *(iv)* promoting the *comprehensive reparation* of the damages caused by the injustice; *(v)* promoting the *participation* of the accused in the definition of his case (Art. 348) [[333]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn333%22%20%5Co%20%22) .

In this sense, the establishment of mechanisms for early termination of proceedings based on confession and collaboration with justice have been fully approved by this Corporation. Law 975 of 2005 did not contemplate mechanisms for early termination of the process, which were included in the reform carried out through Law 1592 when the facts are part of a pattern of criminality already revealed:

"The article on the formulation of charges includes the possibility of early termination of the process. Taking into account the change in the investigative focus introduced by this reform to Justice and Peace, it is necessary to have the possibility of early termination of the process when the facts for which the accused is charged form part of a pattern of macro-criminality that has already been clarified by a sentence in accordance with the prioritisation criteria".

Likewise, the paragraph of article 18 of Law 1592 of 2012 allows the accused to accept responsibility for the alleged conduct and request the early termination of the process so that a sentence can be passed, when the facts that he or she is accused of are part of a pattern of criminality already established by a justice and peace sentence, a provision that according to the report for the second debate in the Senate of the Republic is based on the following grounds:

"This provision responds to the observations of some Justice and Peace magistrates, as well as civil society organisations, who consider it appropriate that as a consequence of the change in the investigative approach, it should be possible to end the process early and thus not wear down the system with hearings and other stages of the process, when the facts imputed to the accused are part of a pattern of macro-criminality that has already been clarified".

According to the plaintiffs, this provision could affect the victims, as it would prevent them from gaining access to the full truth of the facts through the ordinary process of the proceedings. However, the response to this situation can be found in the report for the second debate in the Senate of the Republic, which states that the rights of the victims are guaranteed by the provision, given that the sentence that clarifies the macro-criminal pattern must have identified the harm caused to the victims:

"It is very important to highlight that under this scheme of early termination of the process, the victims are not neglected, since the sentence that clarifies the macro-criminal pattern must have identified the effects caused to the victims. Early termination occurs when the defendant accepts responsibility for the conduct charged and requests such termination, which in any case does not imply access to criminal benefits in addition to the alternative penalty.

In conclusion, this Corporation considers that this norm does not violate the rights of the victims for the following reasons:

Acceptance of charges has two prerequisites that are fundamental to guarantee that the State collects sufficient information about the acts carried out by the accused: (i) it requires that a free and full version of the facts has been previously presented by the defendant; (ii) it requires that the Prosecutor's Office has previously charged the demobilised person.

The Court has on many occasions recognised the constitutionality of the advance ruling mechanism.

In order to safeguard the special duties of the state with regard to the truth in cases of serious human rights violations and breaches of international humanitarian law, the law contemplates the requirement that the pattern of macro-criminality must have been previously revealed.

Nor does the Court share the assertion that the request for early termination of the proceedings would generate charges based on information related to a pattern of macro-criminality and not on a free, truthful and complete voluntary confession of the facts.

In order to resolve this question, it is necessary to bear in mind that the rule being challenged simply establishes the possibility of early termination of the proceedings after the indictment has been handed down, which means that it did not eliminate the free version or the indictment itself:

**"Paragraph.** When the facts for which the defendant is charged form part of a pattern of macro-criminality that has already been clarified by a Justice and Peace sentence in accordance with the prioritisation criteria, and provided that the effects caused to the victims by such a pattern of macro-criminality have already been identified in the respective sentence, the defendant may accept responsibility for the conduct charged and request the early termination of the proceedings. (…)”.

In this sense, there continues to be a free, truthful and complete confession of the facts through the free version, as required by Ruling C-370 of 2006, as well as a subsequent indictment of the crimes attributed to the accused, so that the modification does not affect the right to the truth, but rather constitutes a way of making the processes more agile, guaranteeing the public function principles of efficiency and celerity contemplated in Article 209 of the Constitution.

In addition, it should be borne in mind that this rule only allows the application of early sentencing "*when the facts for which the defendant is accused form part of a pattern of macro-criminality that has already been clarified by a justice and peace sentence", which* means that for this form of early termination to be applied, the facts of the crimes confessed by the defendant must have already been revealed, otherwise it is clear that this mechanism does not apply.

What the regulation does is to be consistent with the purpose of the reform, which is to change the methodology and focus the investigation initially on revealing patterns of macro-criminality through the prioritisation mechanism thanks to the creation of macro-processes, and subsequently to provide a solution to the particular cases that have not been prioritised through the information gathered in those processes.

In this way, this mechanism does not imply that the individual facts already admitted by the defendant are not investigated, but rather that the macro-criminal pattern, which explains and comprises the commission of those facts, has already been revealed in the macro-process and declared proven in a judicial sentence, which is why they do not have to be investigated again, as the phenomenon of res judicata has operated.

In view of the foregoing, the paragraph of Article 18 of Law 1592 of 2012 will be declared constitutional on the basis of the charges raised by the plaintiffs.

**8.2.3. Third charge: the substitution of the security measure and the conditional suspension of the execution of the sentence constitute "privileges" for the applicants, to the detriment of the rights of the victims (Articles 19 and 20 of Law 1592 of 2012).**

The plaintiffs point out that articles 19 and 20 of Law 1592 of 2012 establish two new privileges for the applicants, which are the substitution of the security measure and the conditional suspension of the execution of the sentence, which they consider violates the rights to truth, justice, reparation and guarantees of non-repetition of the victims, since the State grants benefits without complying with the duty to conduct a thorough investigation of the human rights violations, war crimes or crimes against humanity committed by the applicants to the process.

Next, the Court will analyse the procedural figures of substitution of the security measure and the conditional suspension of the execution of the sentence, in the context of the reform of the Justice and Peace Law. It will then analyse whether their regulation violates the victims' rights to truth and justice.

**8.2.3.1. Examination of the constitutionality of Article 19 of Law 1592 of 2012. (Substitution of the security measure).**

**A. The legal nature and preventive nature of the security measures**

The security measures are part of the so-called precautionary measures, i.e., those provisions that, at the request of a party or ex officio, the judicial authority orders on property or persons, whose purpose is to ensure full compliance with the decisions adopted in the process, guarantee the presence of the parties to the proceedings and strengthen legal and social tranquillity in the community, under the premise that, if they are not carried out, their purpose may be affected by the delay in the judicial decision [[334]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn334%22%20%5Co%20%22) .

Therefore, security measures are eminently temporary, preventive, non-punitive measures that restrict the fundamental rights of the accused and can be adopted by the supervisory judge, at the request of the prosecutor, in the framework of a criminal proceeding [[335]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn335%22%20%5Co%20%22) .

Specifically, preventive detention is a precautionary measure that seeks to secure persons accused of having committed a crime in order to prevent them from fleeing and to guarantee the effective investigation, trial, and imposition of a sentence in the event that the presumption of innocence is rebutted and the criminal responsibility of the accused is determined [[336]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn336%22%20%5Co%20%22) . Likewise, the Constitutional Court has specifically recognised that this measure has a preventive, non-punitive and exceptional nature [[337] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn337%22%20%5Co%20%22) and does not constitute a punishment:

*"As far as detention is concerned, the Political Charter clearly distinguishes between it and punishment. Article 28 refers to the former and requires, in order for it to be carried out, a written order from a competent judicial authority, issued and executed with the legal formalities and for a reason previously defined by law. Article 29 refers to the second, which establishes the presumption of innocence in favour of all persons, stating that for a penalty to be imposed, a prior trial must be held in accordance with pre-existing laws, before a competent judge or court, with full observance of the forms proper to each trial and with all the guarantees that make up due process.*...

*Thus, it is one thing to detain an individual against whom there are serious indications that he may be criminally responsible, so that he may be at the disposal of the administration of justice while the proceedings against him are underway, and quite another when, having completed the procedural steps and held the trial with all the guarantees, recognition and practice of the right of defence, the judge reaches the conviction that there is in fact such criminal responsibility and that, therefore, the sanction contemplated in the law must be applied..." [338].* [[338]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn338%22%20%5Co%20%22) *.*

The Inter-American Court of Human Rights has also pointed out the eminently exceptional nature of deprivations of liberty [[339]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn339%22%20%5Co%20%22) . 339] In this sense, it has affirmed that the decision to deprive a person of his liberty must be based on specific facts and articulated in words, that is, not on mere conjecture or abstract intuitions [[340]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn340%22%20%5Co%20%22) [[341]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn341%22%20%5Co%20%22) . Thus, the State must not detain and then investigate, but is only authorised to restrict a person's liberty when it has sufficient knowledge to be able to bring him to trial [[342]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn342%22%20%5Co%20%22) . In this sense, it was pointed out:

*"Security must also be understood as protection against unlawful or arbitrary interference with physical liberty**. However, this right can be exercised in many ways, and what the American Convention regulates are the limits or restrictions that the State may place on it. This explains why Article 7(1) enshrines the right to liberty and security in general terms, and the other paragraphs deal with the various guarantees that must be provided when depriving someone of their liberty. This also explains that the way in which domestic legislation affects the right to liberty is characteristically negative, when it allows liberty to be deprived or restricted.* ***Freedom is therefore always the rule and limitation or restriction always the exception. "***(Emphasis outside the text) [[344]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn344%22%20%5Co%20%22) .

Likewise, the aforementioned Court emphasised that any violation of paragraphs 2 to 7 of the aforementioned article entails the violation of Article 7(1) of the Convention, since the lack of respect for the guarantees of the person deprived of liberty necessarily implies the lack of protection of that person's own right to liberty. Furthermore, it noted that Article 7(2) of the Convention establishes that "*no one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Political Constitutions of the States Parties or by the laws enacted pursuant thereto*" [[345]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn345%22%20%5Co%20%22) .

From the above it can be concluded that deprivation of liberty must always be exceptional, and that it can only be carried out for truly necessary reasons, already established in the laws of the States. In addition, other requirements must be respected when depriving a person of his or her liberty [[346]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn346%22%20%5Co%20%22) *.* Similarly, in a judgment of the same Court on November 23, 2011, in which it analyzed the case of *"Fleury et al. v. Haiti"* and in which the petitioners alleged that they had been illegally detained and tortured, the Court emphasized the requirements for the deprivation of liberty, since, as mentioned above, as this is the exception and not the rule, it is unavoidable that certain conditions be respected that make it truly necessary to carry it out [[347]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn347%22%20%5Co%20%22).

In other words, the purpose of preventive detention is not to punish a person who has not been convicted, as this would be contrary to the presumption of innocence, but to prevent certain events that, if they were to occur, would jeopardise the criminal proceedings, such as (i) obstruction of the proceedings, (ii) endangering society or the victim, (iii) the absence of the accused or failure to comply with the sentence [348]: (i) hindering it, (ii) endangering society or the victim, (iii) the absence of the accused or the failure to comply with the sentence [[348]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn348%22%20%5Co%20%22) .

Therefore, preventive detention differs from punishment in that the adoption of such a measure does not entail any definition of the criminal responsibility of the accused and even less of his or her conviction or acquittal ***[[349]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn349%22%20%5Co%20%22)*** . In any case, the law allows detention time to be counted as part of the sentence, which is a dictate of justice and equity (Article 406 of Decree 2700 of 1991 and Article 261 of Law 600 of 2000) [[350]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn350%22%20%5Co%20%22) .

The Court has also emphasised the eminently time-limited nature [[351]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn351%22%20%5Co%20%22) of pre-trial detention and the fact that its purpose is not to allow for an early execution of the sentence that may be imposed, so that it is an unavoidable duty of the authorities to prevent the measure from being prolonged beyond a reasonable period of time [[352]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn352%22%20%5Co%20%22) .

From the constitutional point of view, preventive detention is allowed under Article 28 of the Constitution, provided that the following requirements are met: a written order from a competent judicial authority, with the observance of legal formalities and for reasons previously defined in the law [[353]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn353%22%20%5Co%20%22) .

In this sense, the security measures must be subject to compliance with strict fundamental requirements that structure their legality, namely: *"(i) they must be decreed through a judicial authority, in the development of a process to which they have or will have access; (ii) with an eminently provisional or temporary character; and (iii) under compliance with the strict requirements that the Constitution and the law provide. Additionally, (iv) they must be based on one of the constitutionally admissible purposes for their imposition*". In addition, Article 250(1) of the Constitution highlights the criterion of necessity as a guide for the imposition of a security measure, a parameter which is in turn linked to the three purposes established therein: (i) to ensure the appearance of the accused in criminal proceedings; (ii) the preservation of evidence; and (iii) the protection of the community, especially the victims [[354]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn354%22%20%5Co%20%22) .

Preventive detention, within a social state governed by the rule of law, cannot become an indiscriminate, general and automatic mechanism of deprivation of personal liberty, that is, its application or practice must always occur when a person is within the strict limits established by law, given that the Constitution orders public authorities to ensure the effectiveness of the rights and freedoms of individuals, guarantee the validity of constitutional principles (the presumption of innocence), and promote respect for human dignity (Preamble, Articles 1 and 2) [[355]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn355%22%20%5Co%20%22) .

Under this consideration, in order for preventive detention to proceed, it is not only necessary that the formal and substantive requirements imposed by the legal system be met, but it is also required, and with an inescapable scope of guarantee, that whoever has to decree it supports his decision in the consideration of the constitutionally admissible purposes for it [[356]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn356%22%20%5Co%20%22) .

**B. Freedom of legislative configuration in the area of security measures and its limits**

The legislature has a wide margin of discretion in the regulation of precautionary measures, although they must not *"affect the political constitution* and must be *reasonable and proportionate"*[[357]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn357%22%20%5Co%20%22), so that restrictions on liberty cannot become a general rule ***[[358]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn358%22%20%5Co%20%22)*** *.* For the above reasons, there are a series of material restrictions to the appropriateness of the precautionary measure that must be considered both by the legislator and by the judge at the time of its imposition:

**(i)** The first is the need for the security measure. Indeed, it is repugnant to the rule of law, to respect for liberty and the presumption of innocence, as well as to other constitutional rights, for a person under investigation to be remanded in custody when it is not necessary. A measure so burdensome to constitutional rights cannot be taken on the basis of the prosecutor's whim or mere judgement of convenience. On the contrary, the Constitution requires that the measure be based on grounds that justify its necessity in the specific case on the basis of the specific facts of each factual situation [[359]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn359%22%20%5Co%20%22) .

This need is not political or strategic but legal, that is to say, related to the achievement of the objectives of the criminal proceedings in general and to the purposes of each precautionary measure in particular. The measure is necessary when it is indispensable to achieve those general objectives and specific aims, to which this Court has already referred. [360]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn360%22%20%5Co%20%22) The legislature may establish different criteria of necessity [[361]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn361%22%20%5Co%20%22) since the Constitution does not establish a single parameter and may modify these criteria to address changes in criminal policy, as long as it respects the Constitution and international treaties on the matter [[362]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn362%22%20%5Co%20%22) and does not admit that the measure may be dictated by whim or mere convenience. Thus, for example, the criterion of necessity, in the light of criminal policy, may be more or less demanding depending on the seriousness of the crime and the importance of the constitutional values involved [[363]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn363%22%20%5Co%20%22) .

**(ii)** The second element is that of proportionality, the basis and importance of which in the field of criminal law has already been underlined by this Court. [364]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn364%22%20%5Co%20%22) Indeed, the measure must be proportional to the circumstances in which it is legally justified. For example, in the case of pre-trial detention, it would be disproportionate if, despite the fact that the measure is not necessary to guarantee the integrity of the evidence or the appearance of the accused before the courts, pre-trial detention were ordered. [365]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn365%22%20%5Co%20%22)

**(iii)** In addition to these two elements, there is a third: the criterion of conviction regarding the probability that the accused is the perpetrator of the punishable conduct under investigation. Thus, in principle and as a general rule, in order for the prosecutor's decisions on the detention measures to be based on well-founded reasons, there must be two indications in the body of evidence relating to objective facts that indicate with a high probability, beyond mere suspicion or the mere finding of a plausible link between the person and the acts under investigation, that the person is responsible, that is, that he or she carried out a typical, unlawful and culpable conduct [[366]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn366%22%20%5Co%20%22) .

**8.2.3.2. Analysis of the constitutionality of Article 19 of Law 1592 of 2012**

The Court considers that the possibility of applying a substitution of the security measure provided for in Article 19 of Law 1592 of 2012 is constitutional for the following reasons:

The legislator has broad powers to regulate the appropriateness or inappropriateness of security measures, being limited by criteria of reasonableness and proportionality, which are fully complied with in the contested norm.

The security measure has a preventive and not punitive character, and therefore responds to preventive purposes of a political-criminal nature that must be weighed up by the legislator, who, just as he can determine when a measure is necessary, can also indicate when it is possible to dispense with it.

In this sense, the legislator has considered that under strict circumstances a custodial measure of detention is not necessary and that it can be replaced by a non-custodial measure:

"1. Have spent at least eight (8) years in a prison after demobilisation, for crimes committed during and on the occasion of their membership of an organised illegal armed group. This period shall be counted from the time of imprisonment in an establishment subject to the full legal rules on prison control;

2. Have participated in available re-socialisation activities, if these are offered by the National Penitentiary and Prison Institute (Inpec) and have obtained a certificate of good conduct;

3. To have participated and contributed to the clarification of the truth in the judicial proceedings of the Justice and Peace process;

4. To have handed over the assets to contribute to the comprehensive reparation of the victims, if applicable, in accordance with the provisions of this law;

5. Not having committed an intentional crime after demobilisation" [[367]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn367%22%20%5Co%20%22) .

These mechanisms guarantee that this measure can become an instrument to motivate the effective collaboration of the demobilised combatants in the fulfilment of the aims of transitional justice and especially in the re-establishment of the victims' rights to truth, justice, non-repetition and reparation, which is essential for the effectiveness of the justice and peace system. In turn, the requirement of deprivation of liberty for eight (8) years is consistent with the maximum alternative sentence applied in justice and peace, because if the security measure is simply intended to ensure compliance with the sentence and its duration should be taken into account as a discount on a possible sentence, it would not make sense for it to be extended for a term longer than the maximum that could be imposed in a possible sentence under Law 975 of 2005.

For its part, once the benefit has been granted, the same rule establishes a set of obligations that allow the purposes guaranteed by a security measure to be fulfilled, such as: (i) ensuring the appearance of the accused in criminal proceedings; (ii) preservation of evidence; and (iii) protection of the community, especially victims [[368]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn368%22%20%5Co%20%22) :

"Once granted, the substitution of the detention order may be revoked by the magistrate with supervisory functions at the request of the Attorney General's Office or of the victims or their representatives, when any of the following circumstances arise:

1. That the defendant ceases to participate in the judicial proceedings of his or her justice and peace process, or that it is proven that he or she has not contributed to the clarification of the truth;

2. The applicant fails to comply with the conditions set by the competent judicial authority;

3. That the applicant does not participate in the reintegration process designed by the national government for applicants to the Justice and Peace Law in the development of Article 66 of this law".

Therefore, the establishment of the substitution of the security measure is a development of the legislator's freedom of configuration, which, taking into account political and criminal considerations, establishes a special instrument that motivates demobilised combatants to contribute to the re-establishment of the rights of the victims and at the same time ensures that they will not continue to commit crimes through strong restrictions which, if not complied with, will lead to the revocation of the benefit.

In the same vein, the Court considers that the granting of the benefit of the substitution of the security measure is not only conditional on "not having committed intentional crimes after demobilisation" (Article 19.5 of Law 1592 of 2012), but that the perpetration of such conduct leads to the immediate exclusion of the applicant from the benefits of the Justice and Peace Law.

In this order of ideas, the Court will declare Article 19 of Law 1592 of 2012 constitutional.

**8.2.3.3. Examination of the constitutionality of Article 20 of Law 1592 of 2012. (Conditional suspension of the execution of the sentence).**

**A. Conditional suspension of the execution of the sentence**

Criminal surrogates are alternative measures to prison and arrest sentences, which are granted to individuals who have been sentenced to these penalties, provided that they meet the requirements established by the legislature [[369]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn369%22%20%5Co%20%22) . Jurisprudence has indicated that these mechanisms essentially have three purposes:

**(i)** First, the special preventive purpose of the sentence to allow for the re-socialisation of the convicted person and, in this sense, his reintegration into society [[370]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn370%22%20%5Co%20%22) . In this regard, it has pointed out that the rationale behind these criminal surrogates is the right of every convicted person to re-socialisation, since, as this Court has already stated, *"what compromises the existence of the possibility of re-socialisation is not the drastic incrimination of criminal conduct, but rather the existence of systems that, like criminal surrogates and sentence remission systems, guarantee the individual who rectifies and redirects his conduct, effective reintegration into society"****[[371]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn371%22%20%5Co%20%22)*** *.* In this regard, Article 10.3 of the International Covenant on Civil and Political Rights, incorporated into our domestic law by Law 74 of 1968, states: *"The penitentiary system shall consist of treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners"****[[372]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn372%22%20%5Co%20%22)*** *.*

**(ii)** Secondly, the principles of necessity, proportionality and reasonableness [[373]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn373%22%20%5Co%20%22) . In the framework of the rule of law, punishment, as an appropriate instrument to serve the purposes of prevention, retribution and re-socialisation, must be necessary, useful and proportionate [[374]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn374%22%20%5Co%20%22) ; this means that if the same purposes can be achieved by other punitive means, the less severe one should be preferred (since the more restrictive one would cease to be necessary and useful), in order to guarantee the dignity of the convicted person [[375]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn375%22%20%5Co%20%22) . In this sense, the need for punishment requires that it serve to preserve the harmonious and peaceful coexistence of associates not only in terms of its deterrent and intimidating power, but also to allow "the *reincorporation of the perpetrator of the punishable conduct into society in such a way that he can once again be an active part of it, under the same conditions as other citizens in economic, political, social, and cultural development*" [[376]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn376%22%20%5Co%20%22) .

**(iii)** Thirdly, the institution of criminal subrogation obeys a criminal policy aimed at mitigating and humanising the punitive sanction. In this sense, criminal subrogation or alternative sentencing mechanisms and the benefits with which a restrictive sentence is replaced by a favourable one have been regulated in the different procedural statutes for the benefit of persons who have been convicted in cases expressly defined by law and are also based on the humanisation of criminal law [[377]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn377%22%20%5Co%20%22).

In order for the judge to grant conditional suspension of the sentence or conditional release, he must verify both objective factors that refer, in both cases, to the *quantum* of the sentence and partial completion of the sentence in the case of conditional release, and subjective factors related basically to the personal, social, and family background of the sentenced person, as well as the type and seriousness of the conduct, in one case, and good conduct in the prison establishment in the other [[378]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn378%22%20%5Co%20%22) . In all cases, these benefits are strictly monitored and a trial period is granted outside the prison so that, if the sentence is successfully completed, rehabilitation is deemed to have been achieved and the sentence is terminated [[379]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn379%22%20%5Co%20%22) .

This Corporation has recognised that for reasons of criminal policy, the legislator has the power to establish the grounds, conditions and regulation of criminal subrogation [[380] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn380%22%20%5Co%20%22) because they constitute fundamental elements of due criminal process and respond to the State's own evaluations of criminal policy [[381]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn381%22%20%5Co%20%22) .

This freedom may be exercised as long as it does not violate any higher mandate and observes the aforementioned criteria of rationality and proportionality [[382]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn382%22%20%5Co%20%22) . By virtue of the foregoing, the need to ensure respect for procedural guarantees has led the Court to specify that the Legislature's power of configuration with respect to the grounds for granting provisional release is not absolute but relative, insofar as it is limited by the constitutional norms that recognise the right to due process and in particular the presumption of innocence [[383]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn383%22%20%5Co%20%22) .

**B. Conformity of Article 20 of Law 1592 of 2012 with the Constitution.**

The plaintiffs claim that the conditional substitution of the execution of the sentence violates the rights to truth, justice, reparation and guarantees of non-repetition of the victims, because the State grants benefits without complying with the duty to carry out a thorough investigation of the human rights violations, war crimes or crimes against humanity committed by the applicants to the process. The Court does not agree with these assertions, for the reasons explained below:

The justice and peace process aims to facilitate peace processes and the individual or collective reincorporation into civilian life of members of illegal armed groups, guaranteeing the rights of victims to truth, justice and reparation [[384]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn384%22%20%5Co%20%22) . For this reason, the benefit of alternative sentencing is provided for, which consists of "*a benefit consisting of suspending the execution of the sentence determined in the respective sentence, replacing it with an alternative sentence that is granted for the beneficiary's contribution to the achievement of national peace, collaboration with justice, reparation for victims and their adequate re-socialisation*" [[385]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn385%22%20%5Co%20%22) .

This benefit would be incomplete if processes for criminal acts committed during and on the occasion of the demobilised person's membership of an organised illegal armed group are not considered, because if the subject has been convicted or is being prosecuted for committing other crimes, the justice and peace process would not fully define his or her responsibility and would prevent his or her reintegration into society.

For this reason, Article 20 of Law 1592 of 2012 foresees the possibility of applying an accumulation of proceedings with respect to ongoing proceedings and of sentences with respect to proceedings that have already been completed, with the aim that all "*punishable conducts committed prior to the demobilised person's membership of the organised armed group outside the law"* be included in the justice and peace process:

"Accumulation of proceedings and sentences. For the procedural purposes of the present law, proceedings in progress for criminal acts committed during and on the occasion of the demobilised person's membership of an organised illegal armed group shall be joined. In no case shall proceedings be joined for punishable conduct committed prior to the demobilised person's membership of an organised illegal armed group.

When the demobilised person has previously been sentenced for criminal acts committed during and on the occasion of his or her membership of an organised armed group outside the law, the provisions of the Criminal Code on the legal accumulation of sentences shall be taken into account, but in no case may the alternative sentence be greater than that provided for in this law" (underlining outside the text).

In this way, by virtue of the Justice and Peace Law, crimes committed prior to the demobilised person's membership of an organised armed group outside the law would have to be punished within the framework of the justice and peace process, either through the accumulation of proceedings or the accumulation of sentences to such an extent that it is stated that in no case, the alternative penalty may not be higher than that provided for in the present law, as it was thought that it could concentrate the criminal reproach for all the conducts "*committed during and on the occasion of their membership of an organised armed group outside the law".*

Article 20 of Law 1592 simply allows for the conditional suspension of the execution of the sentence imposed in ordinary justice when the conducts that gave rise to the conviction were committed during and on the occasion of their membership of the organised illegal armed group, that is, events in which the Justice and Peace Law itself before the reform allowed for the accumulation of the sentence. Similarly, this measure allows for the suspension of a sentence that is accumulated in the Justice and Peace process. In this sense, the result in terms of the amount of the sentence is the same, as in any case the sentence imposed for acts committed during and on the occasion of their membership of the organised illegal armed group could be subsumed under the alternative sentence contemplated in article 20 of Law 975 of 2005.

The legislator has the freedom to configure the forms of execution of the sentence and particularly for the recognition and regulation of penal subrogations such as conditional suspension as long as it does not violate constitutional norms, a situation that is not present in this case for the following reasons:

**(i) In the** first place, the conditional suspension of the execution of the sentence in the Justice and Peace process makes it possible to guarantee the aims of re-socialisation and reintegration inherent to a transitional justice process. In this sense, this Court has stated with regard to special positive prevention in a transitional justice process that *"this purpose is achieved through re-socialisation through the serious reintegration of the armed actors, which can only be consolidated if the participation of the actors in society is guaranteed"* ***[[386]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn386%22%20%5Co%20%22)*** *.* In the specific case of Article 18 B, the conditional suspension of the execution of the sentence is precisely aimed at guaranteeing re-socialisation and reintegration.

**(ii)** Secondly, the suspension of the execution of the sentence provided for in Article 20 of Law 1592 of 2012 is a measure that is fully consistent with the system for the duration of the alternative sentence of the Justice and Peace Law approved by the Constitutional Court in Ruling C 370 of 2006, as it requires that the applicant has been deprived of liberty for at least 8 years for crimes committed during and on the occasion of his or her membership of an organised armed group operating outside the law, i.e. the maximum term of the alternative sentence even in the case of accumulation of sentences.

As previously explained, Article 20 of Law 1592 of 2012 establishes that when the demobilised person has been previously convicted for criminal acts committed during and on the occasion of their membership of an organised armed group outside the law, the legal accumulation of sentences will be applied and that in no case may the alternative sentence be greater than that provided for in this law, so that the suspension of the execution of the sentence provided for in Article 18 B simply becomes a temporary mechanism applicable while the accumulation of sentences is decided and if this is not decided it will be revoked immediately, as provided for in this rule:

*"In the event that the sentences imposed in ordinary justice proceedings are not accumulated in the Justice and Peace sentence, or that having been accumulated, the Justice and Peace court has not granted the alternative sentence, the conditional suspension of the execution of the sentence decreed by virtue of this article shall be revoked. For these purposes, the statute of limitations of the sentence in the ordinary justice system shall be suspended until the Justice and Peace sentence becomes enforceable.*

**(iii)** Thirdly, the law complies with the principle of prevention, as it provides for a broad system of monitoring of the applicants who are granted conditional suspension of the sentence. In this sense, the measure may be revoked in a series of events that fully guarantee the demobilised person's collaboration with the rights of the victims and the non-repetition of punishable conduct:

 *"1. That the postulate ceases to participate in the judicial proceedings of his or her justice and peace process, or that it is proven that he or she has not contributed to the clarification of the truth;*

 *2. The applicant fails to comply with the conditions set by the competent judicial authority;*

 *3. That the applicant does not participate in the reintegration process designed by the national government for applicants to the Justice and Peace Law in accordance with Article 66 of this law"* ***[[387]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn387%22%20%5Co%20%22)*** *.*

The Court specifies that the commission of a crime not only implies the loss of the benefit of the conditional substitution of the sentence, but also the immediate exclusion of the applicant from the benefits of the Justice and Peace Law.

In this order of ideas, the Court will declare Article 20 of Law 1592 of 2012 constitutional, on the charges analysed.

**8.2.4. Fourth charge: the extradition of the Justice and Peace applicants (the challenged expressions of Article 31 of Law 1592 of 2012) violates the victims' rights to truth and justice.**

The plaintiffs point out that the expressions "*Of the extradited applicants", "by effect of extradition granted", "the extradited applicants"* and *"by the extradited applicants"* contemplated in Article 31 of Law 1592 of 2012, allow for the extradition of justice and peace applicants, This has become an instrument that generates impunity and violates the rights of victims to justice and truth, as it has prevented extradited paramilitary leaders from continuing to reveal those most responsible for paramilitarism in Colombia and allows assets that should be used for reparations to be placed at the disposal of the US government in order to access benefits and reduced sentences.

In order to analyse this charge, the nature and scope of extradition in Colombia will be studied, and subsequently it will be determined whether the special rules contained in Article 31 of Law 1592 of 2012 are constitutional with regard to extradited applicants.

**8.2.4.1. The legal nature of extradition in Colombia**

Extradition is an instrument of international cooperation in criminal matters that, by means of a procedure that is, in principle, brief and summary, which does not involve prosecution and cannot give rise to prejudgment, allows the investigation or trial for a specific punishable conduct, or the enforcement of the corresponding sanction, to take place in the requesting State, when the alleged offender is in the territory of a State other than the one in which the act was committed or which is more seriously affected by it [[388]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn388%22%20%5Co%20%22) .

In this sense, it was conceived by the constituent assembly as a mechanism for international cooperation to combat crime and eradicate impunity [[389]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn389%22%20%5Co%20%22) . In this regard, the Court has stated:

*"It is, therefore, a mechanism of international cooperation designed to prevent criminals who have violated the criminal law of another country from going unpunished by the fact of their escape under the protection of the inviolability of the territory, taking into account the impossibility of the offended State to apprehend them within the territory of another State. Extradition is an instrument of international assistance and solidarity, generally governed by public treaties and, in the absence of such treaties, by domestic law."* ***[[390]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn390%22%20%5Co%20%22)***

The basis of this figure has been international cooperation with the aim of preventing a person who has committed a crime abroad from evading justice by taking refuge in a country other than the one in which the crime was committed. One of the reasons for the emergence of this form of international cooperation has been the interest of states in ensuring that crimes committed in their territory, whether in whole or in part, do not go unpunished [[391]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn391%22%20%5Co%20%22) . In this regard, it has been noted:

*"Extradition is subject to a special procedure that concludes with the issuance of an administrative act of a complex nature, since its preparation and execution involves several State bodies belonging to both the Executive and Judicial branches of government"* [[392]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn392%22%20%5Co%20%22) .

Extradition in turn has the following characteristics: **(i)** the international instrument enshrines the principle *aut dedere aut iudicare,* i.e. "punish or extradite" [[393] , a](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn393%22%20%5Co%20%22) classic principle in international cooperation in criminal matters [[394]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn394%22%20%5Co%20%22) ; **(ii)** extradition requires compliance with the principle of dual criminality [[395]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn395%22%20%5Co%20%22) ; **(iii)** extradition is governed by the principle of speciality, according to which the extradited person may only be prosecuted on the grounds alleged in the request [[396]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn396%22%20%5Co%20%22) ; **(iv)** extradition is based on the principle of reciprocity [[397]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn397%22%20%5Co%20%22) ; **(v)** a State may refuse to extradite its own nationals. [[398]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn398%22%20%5Co%20%22)

*In* this sense, it has been affirmed that international cooperation established through extradition clearly respects national sovereignty (Art. 9 C.P.) insofar as it is with the free consent of the State that extradition is requested, granted or offered [[399]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn399%22%20%5Co%20%22)[[400]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn400%22%20%5Co%20%22)[[401]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn401%22%20%5Co%20%22) . In addition, it provides for a series of limits that safeguard constitutional guarantees: *"respect for the rights of every person, such as the right to a defence (Article 29) or to due process (Article 29), as well as compliance with the prohibitions enshrined in the Charter, such as those relating to the imposition of the death penalty (Article 11) or to subjection to torture (Article 12).* ” [[402]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn402%22%20%5Co%20%22) .

**8.2.4.2. Conformity of the contested provision with the Constitution**

Subsection 2 of Article 31 of Law 1592 of 2012 provides that the Colombian state shall promote the adoption of measures to facilitate the participation in judicial proceedings of applicants who are in foreign jurisdiction as a result of extradition granted:

*"Extradited applicants. In order to contribute to the effectiveness of the right to justice, the Colombian State shall promote the adoption of measures conducive to facilitating the participation in judicial proceedings of those applicants who are in foreign jurisdiction as a result of extradition granted. To this end, the state should seek the adoption of measures conducive to the collaboration of these applicants with the administration of justice, through testimony aimed at clarifying facts and conducts committed during and in the course of the internal armed conflict".*

Subsection 3 states that *"in particular, measures should be taken to ensure that extradited applicants disclose the motives and circumstances in which the conduct under investigation was committed and, in the case of death or disappearance, the fate of the victim".*

For its part, paragraph 5 establishes that in order to contribute to the right to full reparation, measures should be adopted to facilitate the seizure of assets handed over, offered or denounced by extradited applicants for the Victims' Reparation Fund:

*"In order to contribute to the effectiveness of the right to comprehensive reparation, measures must be adopted to facilitate the seizure of the assets handed over, offered or reported by the extradited applicants, destined for the Fund for the Reparation of Victims referred to in this law, or for the Special Administrative Unit for the Management of the Restitution of Land Restitution, as appropriate. In order to comply with this measure, within the framework of the different international judicial cooperation agreements, the Office of the Attorney General of the Nation shall carry out the necessary investigative work to identify and prepare the assets in accordance with the provisions of article 17B of this law, as well as to identify and pursue assets located abroad".*

The Court has considered that *"the extradition of persons accused of having committed the crime, as long as it is carried out in accordance with our Political Charter, is a proportionate mechanism of international cooperation for the eradication of this international crime"* [[403]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn403%22%20%5Co%20%22) *.*

The very act of extradition does not decide, either in the preliminary concept or in its subsequent granting, on the existence of the crime, or on the perpetrator, or on the circumstances of time, manner, and place in which the act was committed, or on the guilt of the accused, or on the grounds for aggravating or diminishing punishment, or on the dosimetry of the penalty, all of which indicates that it is not an act of prosecution, since it does not exercise a judicial function [[404]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn404%22%20%5Co%20%22) . Therefore, extradition is simply an act of international cooperation and in no way affects the responsibility to prosecute crimes for which the individual was not tried abroad.

On 13 May 2008, while the Justice and Peace Law was in force and before the existence of the norm being challenged, the following demobilised paramilitaries were extradited: Rodrigo Tovar Pupo [[405]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn405%22%20%5Co%20%22) alias "Jorge 40"; Eduardo Enrique Vengoechea [[406]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn406%22%20%5Co%20%22) alias "El flaco"; Diego Fernando Murillo [[407]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn407%22%20%5Co%20%22) alias "Don Berna"; Ramiro Vanoy [[408]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn408%22%20%5Co%20%22) alias "Cuco Vanoy"; Hernán Giraldo [[409]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn409%22%20%5Co%20%22) ; Guillermo Pérez Alzate [[410]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn410%22%20%5Co%20%22) alias "Pablo Sevillano"; Manuel Enrique Torregrosa Castro Alias Chan; Francisco Javier Zuluaga Lindo alias "Gordo lindo" [[411]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn411%22%20%5Co%20%22) ; Carlos Mario Jiménez alias "Macaco" [[412]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn412%22%20%5Co%20%22) .

In this sense, far from allowing extradition to affect victims' rights, the law ensures that the rights to truth and reparation are guaranteed in this already existing process:

In relation to the truth, the rule requires the adoption of measures to facilitate the participation in judicial proceedings of the accused who are in foreign jurisdiction as a result of extradition granted:

*"Extradited applicants. In order to contribute to the effectiveness of the right to justice, the Colombian State shall promote the adoption of measures conducive to facilitating the participation in judicial proceedings of those applicants who are in foreign jurisdiction as a result of extradition granted. To this end, the state should seek the adoption of measures conducive to the collaboration of these applicants with the administration of justice, through testimonies aimed at clarifying facts and conducts committed during and in the course of the internal armed conflict.*

*In particular, measures should be taken to ensure that extradited applicants disclose the motives and circumstances in which the conduct under investigation was committed and, in the case of death or disappearance, the fate of the victim.*

*These measures may include promoting the transmission of the proceedings carried out with the applicants, guaranteeing protection measures for their families, as well as all those measures that lead to the effective realisation of the rights of the victims".*

With regard to reparation, the law requires the adoption of measures aimed at facilitating the seizure of assets handed over, offered or denounced by the extradited postulants to the Fund for the Reparation of Victims, or to the Special Administrative Unit for the Management of the Restitution of Land Restituted from Despoiled Lands (Unidad Administrativa Especial de Gestión de Restitución de Tierras Despojadas):

"In order to contribute to the effectiveness of the right to comprehensive reparation, measures must be adopted to facilitate the seizure of the assets handed over, offered or reported by the extradited applicants, destined for the Fund for the Reparation of Victims referred to in this law, or for the Special Administrative Unit for the Management of the Restitution of Land Restitution, as appropriate. In order to comply with this measure, within the framework of the different international judicial cooperation agreements, the Office of the Attorney General of the Nation shall carry out the necessary investigative work to identify and prepare the assets in accordance with the provisions of article 17B of this law, as well as to identify and pursue assets located abroad".

Therefore, it is clear that Article 31 of Law 1592 of 2012 is not a mechanism for the extradition of the applicants to affect the rights of the victims, but on the contrary, for specific measures to be adopted with respect to the extradited applicants in order to guarantee the rights to truth and reparation.

By virtue of the foregoing, the challenged expressions of Article 31 of Law 1592 of 2012 will be declared constitutional on the grounds indicated by the plaintiff.

**8.3. RESOLUTION OF THE CHARGES OF UNCONSTITUTIONALITY OF SOME PROVISIONS OF LAW 1592 OF 2012 RAISED ON THE RIGHTS OF VICTIMS**

With regard to the violation of victims' rights by certain provisions contained in Law 1592 of 2012, the plaintiffs initially raised ten (10) charges of unconstitutionality.

After analysing the fulfilment of the requirements for a charge of unconstitutionality, the Court reached the following conclusion: (i) in relation to the normative segments of articles 3 and 10 of Law 1592 of 2012, the charge raised did not meet the requirement of certainty, a reason that prevented an examination on the merits; (ii) with regard to the expression "the definition of these rights is developed in Law 1448 of 2011", of article 4 of Law 1592 of 2012, the charge lacked certainty, sufficiency, relevance and clarity; (iii) with regard to the segment of Article 14 of Law 1592 of 2012 (referral of the version given by the postulated person to the National Unit of Prosecutors' Offices for Justice and Peace), the charge was not true and as a consequence this Corporation would abstain from examining the merits of the case; (iv) with regard to the limitations to the functions of the Ombudsman's Office alleged as set out in paragraph 1 of Article 23 of Law 1592 of 2012, it warned that the phenomenon of constitutional res judicata was operating; (v) with regard to the expression "*and until the end of the ordinary sentence established therein*" in Article 26 of Law 1592 of 2012, the charge was not true, which prevented the examination on the merits; (vi) with regard to the change of the incident of integral reparation for the incident of identification of damages incorporated by articles 23, 24, 40 and 41 of Law 1592 of 2012, the phenomenon of res judicata was configured; and (vii) in relation to article 29 of Law 1592 of 2012, with the declaration of the unenforceability of article 41 of Law 1592 of 2012 in Judgment C-286 of 2014, the charge was unfounded and in this sense lacked certainty.

In view of the foregoing, the Court will examine the merits of the four (4) charges of unconstitutionality that the Court considered to have arisen against certain provisions of Law 1592 of 2012.

**8.3.1. First charge. The reference in the justice and peace processes to the rules of Law 1448 of 2011 violates the rights of victims to truth, justice, reparation and guarantees of non-repetition. (Expressions of Articles 4, 8, 11, 16, 23, 24, 27, 32, 33, 38 and 39 of Law 1592 of 2012).**

The plaintiffs consider that the challenged sections of Articles 4, 8, 11, 16, 23, 23, 24, 27, 32, 33, 38 and 39 of Law 1592 of 2012 are contrary to the constitutional obligation of the Colombian State to guarantee the rights of the victims of the armed conflict to truth, justice, comprehensive reparation, and guarantees of non-repetition, as they refer them from the processes of Law 975 of 2005 to the procedures contemplated in Law 1448 of 2011. They consider that such referral limits the guarantee of their rights, which contradicts the preamble and articles 1, 2, 13, 93 and 229 of the Political Constitution, articles 8 and 25 of the American Convention on Human Rights and articles 2 and 26 of the International Covenant on Civil and Political Rights [[413]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn413%22%20%5Co%20%22) .

The complainants raise the following objections to the reference to Law 1448 of 2011: **(i)** the transformation of judicial liability into administrative liability; **(ii)** the restriction of the right to the administration of justice by preventing victims' access to ordinary, special or contentious-administrative justice; **(iii)** the reference made by Article 4 of Law 1592 of 2012 to the concept of victim in Law 1448 of 2011 and; **(iv)** the imposition of an additional burden that affects the rights of victims in land restitution matters, as they have to endure a different judicial process (with other judges and other requirements), when it should be the Justice and Peace process itself that should guarantee their rights.

In the examination of the admissibility of the charges, the Court also found that there were grounds to study, in depth, the constitutionality of the norms that establish the referral of Law 1592 of 2012 to the procedures and rules of Law 1448 of 2011 in relation to land restitution. That is, Articles 8, 11, 16, 27, 30, 32, 38 and 39 of Law 1592 of 2012. The study of these elements of the charge will begin with the analysis of articles 30 and 38, since they make a general reference to the land restitution procedure of Law 1448 of 2011, while the others contemplate specific references.

**8.3.1.1. The referral of Law 1592 of 2012 to the land restitution process under Law 1448 of 2011**

**A. Analysis of the general reference to the land restitution process in articles 30 and 38 of Law 1592 of 2012**

Article 30 is the basis for the referral, as it establishes that "*the legal and material restitution of land to the dispossessed and displaced will be carried out through the process established in Law 1448 of 2011 and the norms that modify, substitute or add to it"* and then adds that *"with the aim of integrating transitional justice measures, there will be no direct restitution in the development of the judicial processes dealt with in this law".*

For its part, Article 38 of Law 1592 of 2012 establishes that land restitution shall be governed by the rules of Law 1448 of 2011, unless there are precautionary measures on the property: "*Exceptional land restitution procedure in the framework of Law 975 of 2005. If, on the entry into force of this law, there is a precautionary measure on a property on the occasion of a request or offer of restitution within the framework of the procedure of Law 975 of 2005, the competent judicial authority will continue the process within the framework of this procedure. In other cases, the provisions of Law 1448 of 2011 shall be observed*" [[414]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn414%22%20%5Co%20%22).

The initial reason for the inclusion of rules referring property restitution to the procedures of Law 1448 of 2011 was the difficulty presented by the inexistence of rules within the criminal justice and peace process regulating land restitution, as stated in the draft's explanatory memorandum:

*"The most pressing problems relate to: (...) iii) with the* ***lack of regulation*** *of the prosecution and securing of assets intended for the reparation of victims as well as the* ***restitution of assets when these have been taken from them****".*

*"On the other hand,* ***the absence of a specific regulation in Law 975 of 2005 on the procedure to be followed for*** *the prosecution and seizure of assets that will allow for the reparation of victims' rights explains the need to include in the text of the law provisions that regulate the imposition of liens on assets identified by the Prosecutor's Office or offered by the postulants; to expressly define the assets that are subject to prosecution in the framework of the justice and peace process; and to regulate matters related to the cancellation of fraudulently obtained titles and* ***the restitution to the victims of the assets of which they have been dispossessed****. (…)*

***"Practice has also shown the need to regulate in Law 975 of 2005 the procedure to be followed before the magistrate for the control of guarantees to request the seizure of assets, the restitution of property taken from the victims*** *or the cancellation of fraudulent titles and registrations, in the events in which this is appropriate (Articles 8 and 9 of the draft law)". (Bolding outside the original text)* ***[[415]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn415%22%20%5Co%20%22)*** *.*

This same argumentation is contemplated in the reports for the First [[416]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn416%22%20%5Co%20%22) and Second Debate [[417]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn417%22%20%5Co%20%22) in the House of Representatives and also in the reports for the First [[418]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn418%22%20%5Co%20%22) and Second Debate in the Senate of the Republic and was also expressly pointed out in her intervention before the Plenary of the House of Representatives by Prosecutor Viviane Morales Hoyos [[419]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn419%22%20%5Co%20%22) .

Faced with this problematic situation generated by the lack of regulation, the alternative adopted was the application of the property restitution regime contemplated in Law 1448 of 2011, processed with a procedure and by specialised authorities: *"****Article 18*** *adds a new* ***article 18B*** *to Law 975 of 2005, on the Transitional Regime for the restitution of property. All of the reform provisions are intended to include Law 975 within the larger transitional justice system, so that it is fully coherent with the other mechanisms provided for in other laws. In such a way that Law 1448 of 2011 provides for a special procedure with authorities specially instituted to carry out the restitution of dispossessed lands, it is stipulated that restitution procedures will be carried out in accordance with the latter procedure, with the exception of those assets subject to restitution that have a precautionary measure at the entry into force of this new law. Only exceptionally may the Public Prosecutor's Office, in conjunction with the Land Unit, process restitution cases in accordance with the procedures of Law 975 of 2005, taking into account the will of the victims and uniformity in terms of neighbourhood, location or adjoining properties, pattern of dispossession and geographical area".*

The plaintiffs point out that these norms are subjecting the victims to a new process after the justice and peace procedure, which would violate their rights and delay the resolution of the dispute, a position that is not shared for the following reasons:

**(i) In the** first place, although the land restitution process must be carried out outside the criminal proceedings, this does not mean that it must be carried out after the Justice and Peace process, as they are absolutely independent and therefore the land restitution process could even be initiated first.

**(ii)** Secondly, the particularities of the transitional criminal process, in which it is necessary to establish the criminal responsibility of all those responsible for massive human rights violations, mean that it may last longer than the land restitution process.

**(iii)** Thirdly, property restitution has traditionally been dealt with through civil proceedings, so the rule simply responds to the nature of these proceedings.

**(iv) Fourthly**, property restitution proceedings have a series of circumstances outside the criminal process that may make it convenient to process them outside that process: the current ownership of the property must be determined and there may be opposition from bona fide third parties who have no relation to the dispossession, whose intervention is necessary in order not to affect their rights, but which in criminal proceedings may indefinitely prolong a decision on the merits through a sentence.

**(v)** The land restitution procedure contemplated in Law 1592 of 2012 is not an ordinary process, but a special procedure with multiple tools to guarantee its effectiveness: it has a special register of dispossessed and forcibly abandoned lands [[420]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn420%22%20%5Co%20%22) ; it contains a special system of presumptions of dispossession that do not apply in the ordinary jurisdiction [[421]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn421%22%20%5Co%20%22) ; it contemplates the reversal of the burden of proof in favour of the displaced person; it has specialised judges with special tools for the procedure [[422]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn422%22%20%5Co%20%22) and; it has reduced time limits. In light of the above, it is worth recalling what this Corporation stated in Judgment C-820 of 2012, in which it analysed the importance of guaranteeing a special process dedicated to providing comprehensive reparation to victims of forced dispossession:

*"4.5.3.2. The special nature of this procedure constitutes a form of reparation, in that through a differentiated procedure and with substantive effects not equivalent to those of the common law regime, the rules for the restitution of property to victims defined in Article 3 of Law 1448 of 2011 are established. This speciality, which explains its status as a means of reparation, is based not only on the characteristics of the process defined to process restitution claims referred to above, but also on the substantive rules aimed at protecting the dispossessed in particular. In relation to this last dimension, which is inseparably linked to the procedural one, it is worth highlighting, for example, the regime of presumptions regarding the absence of consent or unlawful cause, the rules of reversal of the burden of proof, the preference of the interests of the victims over other types of subjects, the protection of property through the establishment of restrictions on the operations that can be carried out after restitution, and the system of protection for third parties in good faith - in such a way that the restituted parties are not obliged to pay any value for the improvements made to the property, which must be assumed by the state.*

*4.5.3.3 The special characteristics of the action regulated in Law 1448 of 2011 and its integration with the concept of comprehensive reparation in international law and in the Colombian legal system make it possible to affirm, consequently, that it constitutes an expression of the fundamental right of victims to reparation.*

**(vi)** It should be noted that in the special land restitution procedure, as of 31 March 2015, 75,122 applications had been received for registration in the "Register of Forcibly Abandoned and Abandoned Land" (RTDAF), corresponding to 60,754 plots of land. Similarly, it is important to point out that of the 8,304 applications registered in the RTDAF, 6,513 are in demand, and of these demands "*2,232 applications already have a ruling from the land restitution judges, corresponding to 1,866 plots, 3,127 family nuclei benefited and 94,299 hectares. Of these, 21% have been in Córdoba, another 14% in Tolima and 11% in Nariño and Valle del Cauca. ”* [[423]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn423%22%20%5Co%20%22).

Thus, the land restitution procedure was created with the specific objective of settling in the most appropriate and expeditious manner the claims of victims dispossessed of their places of residence. It is a distinct procedure that implies *per se* a form of reparation. In this sense, if all restitution procedures are channelled into criminal proceedings, the effort made to create a special land jurisdiction would be lost and the victims would have to wait much longer for a solution to an immediate problem such as the return of their property, while other aspects such as the determination of the criminal responsibility of the accused are being resolved.

In relation to decisions C-180 of 2014 and C-286 of the same year, although they require that reparation be judicial and not administrative, at no time do they prevent another transitional judge (not criminal but civil) from making decisions on land restitution, which does not ignore the rights of the victims and can provide a more efficient solution to the problems of land restitution.

In view of the foregoing, the challenged expressions of Articles 30 and 38 of Law 1592 of 2012 will be declared constitutional.

**B. The delivery of the goods to the Special Administrative Unit for the Attention and Integral Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land Restitution (Article 8 of Law 1592 of 2012).**

Article 8 of Law 1592 of 2012 states that the assets handed over by the applicants to contribute to the reparation of victims *"will be placed at the disposal of the Special Administrative Unit for the Attention and Integral Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land Taken from Victims to be used for the programmes of integral reparation and land restitution referred to in Law 1448 of 2011, as appropriate. Victims who are accredited in special justice and peace criminal proceedings will have preferential access to these programmes.*

The purpose of this rule was to channel all the assets of demobilised persons into the reparations system of Law 1448 of 2011, taking into account that the reform incorporated by Law 1592 of 2012 allowed for the compensation of victims of justice and peace processes to also be carried out through an administrative mechanism after the sentence. However, this situation has been clearly modified on the occasion of Rulings C-180 and C-286 of 2014, which revived the original reparations system contemplated in Law 975 of 2005.

By virtue of this situation, allowing the assets of demobilised combatants to be transferred to the Special Administrative Unit for the Attention and Integral Reparation of Victims when the reparation of victims in the justice and peace processes is no longer administrative but judicial, would leave victims in the justice and peace processes without resources, which would seriously affect their right to reparation.

For the above, the Constitutional Court in Ruling C - 286 of 2014 declared the unenforceability of paragraph 5 of Article 33 of Law 1592 of 2012 by virtue of which: *"The resources of the Fund for the Reparation of Victims, both those delivered by the applicants in the framework of the special criminal process dealt with in this law and those that come from the other sources of conformation of the Fund, will be destined by the Special Administrative Unit for the Attention and Integral Reparation of Victims for the payment of the administrative reparation programmes that are developed in accordance with Law 1448 of 2011. The above without prejudice to the provisions of the third paragraph of article 17B and article 46 of this law".*

However, nothing was stated in that judgment in relation to Article 8 of Law 1592 of 2012, which establishes a similar provision whereby the assets of demobilised persons would be placed at the disposal of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Divested Lands for the programmes outlined in Law 1448 of 2011.

Therefore, it is clear that this expression should be declared unconstitutional in order to avoid affecting the rights of the victims of the justice and peace processes, since otherwise the assets destined for their reparation would go directly to the programmes contemplated in Law 1448 of 2011 and not to the judicial reparation carried out under Law 975 of 2005.

**C. Collaboration in the exchange of information (contested expression of Article 11 of Law 1592 of 2012)**

Article 11 of the Law states that *"When the Attorney General's Office finds information relevant to the land restitution process from the material evidence or legally obtained information, it shall make it available to the Special Administrative Unit for the Management of Restitution of Land Restitution, in order to contribute to the procedures it is carrying out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011" (emphasis added).*

The expression in question simply allows for harmonious and effective collaboration between the authorities that participate in the justice and peace process and those in charge of the restitution of dispossessed or abandoned lands, which develops the principles of the public function and does not violate the rights of the victims.

**D. Special procedures in relation to precautionary measures on the assets of demobilised combatants (paragraphs 2 and 3 of Article 16 of Law 1592 of 2012)**

Paragraphs 2 and 3 of Article 16 of Law 1592 of 2012 are presented in the framework of the process of extinguishing the ownership of the assets of demobilised persons, contemplated in the original version of Article 24 of Law 975 of 2005, according to which *"in accordance with the criteria established in the law, the principal and accessory sentences shall be established in the conviction. In addition, the alternative penalty provided for in this law, the commitments to behave for the term established by the Court, the obligations of moral and economic reparation to the victims, and* ***the extinguishment of ownership of the assets to be used for reparation shall also*** *be included"*. (Bold outside the original text).

The main novelty of Law 1592 of 2012 in this regard was to expressly establish a procedure for the imposition of immediate precautionary measures on the assets of demobilised persons, with the aim of ensuring reparation for victims, as stated in the explanatory memorandum of this Law:

*"It is not enough, however, to expressly indicate the assets subject to prosecution. In addition, it is necessary to have clear and expeditious mechanisms and procedures that effectively allow for the imposition of precautionary measures and liens on such assets, in order to guarantee the reparation of victims, in accordance with jurisprudential developments and the purposes of the Justice and Peace Law (Article 8 of the bill).*

*Practice has also shown the need to regulate in Law 975 of 2005 the procedure to be followed before the magistrate for the control of guarantees in order to request the securing of assets, the restitution of property dispossessed from victims or the cancellation of fraudulent titles and registrations, in the events in which this is appropriate (Articles 8 and 9 of the bill). ”.*

The objective of the reform in this aspect was to ensure the rights of victims through the imposition of precautionary measures. However, in order to prevent these measures from creating obstacles to the land restitution process, two (2) special provisions were contemplated:

Paragraph 2 of Article 16 authorises that when restitution of property for which a precautionary measure has been decreed is requested, such property and the request for restitution will be transferred to the Fund of the Special Administrative Unit for the Management of Restitution of Divested Lands without requiring the lifting of the precautionary measure by the judiciary:

*"****Paragraph 2.*** *When the precautionary measure is decreed on assets in respect of which a request for restitution is subsequently filed, such assets and the request for restitution shall be transferred to the Fund of the Special Administrative Unit for the Management of the Restitution of Dispossessed Lands, for the purposes of processing them through the procedures established in Law 1448 of 2011 and its complementary regulations, without the lifting of the precautionary measure by the judiciary being required".*

Therefore, if precautionary measures are decreed in such proceedings, they will not have to be lifted in order for the assets to be transferred to the Fund of the Special Administrative Unit for the Restitution of Land Restitution, which speeds up the procedure and avoids having to carry out the process of lifting the measure independently.

This rule does not affect the rights of the victims; on the contrary, it safeguards them in two (2) phases: **(i) it** allows precautionary measures to be taken immediately when it is identified that a property belongs to a demobilised person, with the aim of preventing its fraudulent alienation, as it must be used to compensate the victims, **(ii) it** facilitates that if the property has been requested in a restitution process, it is immediately transferred to the Fund of the Special Administrative Unit for the Management of Restitution of Land for it to initiate the restitution process. These mechanisms prevent fraudulent disposition of the property and ensure that it is returned to the victims.

Paragraph 3 of Article 16 states that if the requested assets offered or denounced by the applicants or those identified have a request for restitution before the Special Administrative Unit for the Management of Restitution of Land Restitution or before the Special Administrative Unit for the Attention and Integral Reparation of Victims, a precautionary measure may be requested to be imposed on them, the imposition of a precautionary measure on them may be requested and, once decreed, their transfer to the Fund of the Special Administrative Unit for the Management of the Restitution of Divested Lands shall be ordered in accordance with the rules set out in Law 1448 of 2011:

***Paragraph 3.*** *If the assets handed over, offered or denounced by the applicants or identified by the Attorney General's Office under the terms of this article, have a request for restitution before the Special Administrative Unit for the Management of the Restitution of Land Restitution or before the Special Administrative Unit for the Attention and Integral Reparation of Victims -Fund for the Reparation of Victims-, the delegated prosecutor shall request the precautionary measure on them and once decreed shall order the transfer of the request for restitution and the assets immediately to the Fund of the Special Administrative Unit for the Management of the Restitution of Divested Lands, for the purposes of its processing through the procedures established in Law 1448 of 2011 and its complementary regulations.*

In this way, this paragraph allows the transfer of the assets to the Fund of the Special Administrative Unit for the Restitution of Land Restitution immediately after precautionary measures have been decreed over them, in those events in which there is a request for restitution. As is the case with paragraph 2, this provision is also intended to allow the restitution of assets to materialise and thus guarantee the victims' right to reparation in a more agile manner and avoid unjustified delays.

Consequently, both paragraphs seek to guarantee two constitutional purposes at the same time: **(i)** that the assets of the demobilised persons are subject to precautionary measures to safeguard the victims' right to reparation and **(ii)** that these precautionary measures are not an obstacle to the process of restitution of the assets to their victims, for which reason their exequibility will be declared.

**E. The legitimacy of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims to file appeals (paragraph 4 of Article 27 of Law 1592 of 2012).**

Paragraph 4 of Article 27 states that *"the Special Administrative Unit for the Attention and Integral Reparation of Victims may appeal decisions related to the assets administered by the Fund for the Reparation of Victims".* This provision allows the Special Administrative Unit to file appeals by virtue of its legal interest in safeguarding the rights of the victims, which does not violate but rather safeguards their interests and is therefore exequitable.

**F. The reference to the framework of Law 1448 of 2011 related to the remission and compensation of taxes (demanded expression of Article 32 of Law 1592 of 2012).**

Article 32 of Law 1592 of 2012 states that *"In order to contribute to the satisfaction of the right of victims to comprehensive reparation, the departmental assemblies and municipal or district councils shall implement programmes for the remission and compensation of taxes affecting real estate destined for reparation or restitution within* ***the framework of Law 1448 of 2011****" (the accused part is underlined).* This norm does not affect the right of victims to reparation, because on the contrary, it allows for the settlement of tax debts on properties subject to restitution or reparation processes, which is explained to the extent that after the dispossession there may have been long periods of time in which taxes were not paid.

The reference made to Law 1448 of 2011 is presented taking into account that by virtue of Law 1592 of 2012, land restitution is carried out according to the procedure contemplated in the former, which, as already noted, is not considered unconstitutional because: **(i) it** allows the implementation of a procedure specific to land restitution, **(ii) it** grants jurisdiction to a judge specialised in the matter, **(iii) it** contemplates reduced terms, **(iii) it** enshrines a system of special presumptions to favour victims and **(iv) it** may be more agile than the justice and peace process, as it only defines what is related to real estate and not the rest of the matters that must be decided in the process of Law 975 of 2005, which is demonstrated, as to date more than a thousand judgments on land restitution have been handed down.

Consequently, the challenged expression does not affect, but on the contrary, favours the rights of the victims, which is why it will be declared exequitable on the grounds formulated by the plaintiffs.

**G. Presumptions of dispossession and in-kind compensation (Article 39 of Law 1592 of 2012)**

Article 39 of Law 1592 of 2012 states that the presumptions of dispossession provided for in Article 77 of Law 1448 of 2011 may be applied and that the figure of compensation in kind and relocation will also be applicable in cases where it is not possible to return the dispossessed property to the victim as provided for in Article 97 of Law 1448 of 2011, charged to the Fund of the Special Administrative Unit for the Management of Restitution of Dispossessed Land:

*"****Article 39.*** *During the processing of the incident that will take place for the restitution of dispossessed or forcibly abandoned property, the presumptions of dispossession provided for in Article 77 of Law 1448 of 2011 may be applied, even if the properties are not registered in the Register of Dispossessed and Forcibly Abandoned Land. Similarly, the figure of compensation in kind and relocation will be applicable in cases in which it is not possible to return the dispossessed property to the victim as provided for in Article 97 of Law 1448 of 2011, charged to the Fund of the Special Administrative Unit for the Management of Restitution of Dispossessed Lands"* [[424]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn424%22%20%5Co%20%22).

This rule allows for two (2) essential figures to be applied in order for the restitution process to be effective and to be carried out within a reasonable timeframe:

**(i)** The regime of presumptions of eviction, by virtue of which presumptions of fact or law are established, applicable in the following events: the conclusion of contracts from which the existence of constraint to carry out the patrimonial disposition is evidenced; the issuance of subsequent administrative acts that have affected the victims; the impossibility of denying restitution when the applicant has proven ownership, possession or occupation on the grounds that a judgment that became res judicata granted, transferred, expropriated, extinguished or declared ownership in favour of a third party and; the presumption against recognising possession over the property subject to restitution during certain periods of time.

**(ii)** The figure of compensation in kind and relocation in cases where it is not possible to restitute to the victim the property dispossessed in order to guarantee a solution in those events in which it is not possible to order restitution.

In this way, the application of these two (2) measures guarantees the rights of the victims and makes the proceedings more effective, which is why the Full Chamber finds that they are constitutional.

**8.3.2 Second charge. The failure to require that the assets offered by the applicants to the Justice and Peace Law have a reparation vocation, as well as the limits on the possibility for victims to lodge appeals and intervene in hearings related to this issue, violates their right to reparation (Article 5 (partial), paragraph of Article 7, paragraph of Article 8 and Article 17 (partial)).**

The requirement that the assets must have a reparatory vocation was justified during the reform of the Justice and Peace Law, by virtue of the need for them to have the capacity to make pecuniary reparations to the victims: *"Article 7 introduces a new article to Law 975 of 2005, Article 11 C, which contemplates the reparative vocation of the assets handed over or offered, stipulating that the assets of the postulants that the law deals with must have a reparative vocation. In other words, they must make pecuniary reparations to the victims"*[[425]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn425%22%20%5Co%20%22) .

The aim was to solve the different problems that arose in relation to the regulation of the early termination of the process, the lack of resources in the Victims' Reparation Fund, and to address the challenges identified in the reporting and handing over of assets by the postulants. In particular, the legislator aimed to solve a set of problems identified by the Supreme Court of Justice in its Order of 13 December 2010, such as: the surrender of assets with title problems, without title deeds, affected by the extinction of ownership, subject to credits or mortgages, or whose administration is very complicated [[426]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn426%22%20%5Co%20%22) .

In the same Order, the Supreme Court of Justice pointed out the need to establish an efficient strategy to overcome these drawbacks and to examine the real willingness of the demobilised combatant to compensate: *"This type of real drawbacks requires an efficient strategy to overcome them; however, it must be said that the lack of administrative and legal measures (referring to the titling and financial status of the reverted properties to guarantee compensation in the transitional justice process), is not an obstacle to examine the real willingness of the demobilised combatant to compensate"* [[427]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn427%22%20%5Co%20%22) *.*

The plaintiffs consider that the challenged expressions of Articles 5, 7, 8 and 17 of Law 1592 of 2012 do not require that the applicants denounce, offer and deliver goods with a reparation vocation, which would affect the right to reparation of the victims and the duties of the applicants. Each of the laws challenged under this charge will be analysed below:

**8.3.2.1 The termination of the justice and peace process when it is verified that the postulated person has not handed over, offered or denounced assets acquired by him or by the illegal armed group during and on the occasion of his membership of the group.**

Article 5(3) of Law 1592 of 2012 establishes as grounds for the termination of the Justice and Peace Process and exclusion from the list of applicants: *"When it is verified that the applicant has not delivered, offered or denounced assets acquired by him or by the organised armed group outside the law during and on the occasion of his membership of the same, directly or through an intermediary".* In relation to this rule, the plaintiffs point out that it is unconstitutional that demobilised combatants who denounce, offer or hand over denounced assets that do not have a reparation vocation are not excluded.

Although the expression in question does not contemplate the exclusion of demobilised combatants who have fraudulently denounced, offered or handed over assets without a reparation vocation, or those who carry out manoeuvres to conceal those that do have a reparation vocation, a systematic interpretation leads to the conclusion that they should be excluded by virtue of other grounds for termination of the Justice and Peace Process contemplated in article 5 of Law 1592 of 2012:

**(i) Firstly**, any demobilised combatant who carries out fraudulent manoeuvres to hide his assets must be immediately excluded from the Justice and Peace process, as he will be committing the crime of procedural fraud against the state and the victims. In this sense, numeral 5 of Article 5 of Law 1592 states that this is a cause for termination of the justice and peace process: *"When the postulated person has been convicted of intentional crimes committed after his demobilisation, or when, having been postulated while deprived of liberty, it is proven that he has committed crimes from the prison".*

**(ii)** Secondly, any demobilised combatant who transfers illegally obtained assets to third parties should also be immediately excluded from justice and peace, as they will be committing crimes such as money laundering, illicit enrichment and front man, and should therefore also be subject to the grounds for termination of the process set out in numeral 5 of Article 5 of Law 1592.

**(iii)** Thirdly, any demobilised combatant who has not handed over all his or her assets or those of the armed group of illicit origin will also have to be excluded from the Justice and Peace process, as numeral 2 of Article 5 states that it is also grounds for exclusion *"When it is verified that the applicant has failed to comply with any of the eligibility requirements established in this law"*, within which numerals 10.2 and 11.5 of Law 975 of 2005 require *"that the assets resulting from the illegal activity be handed over".* This duty was analysed in Ruling C-370 of 2006, in which it was declared constitutional that only the assets resulting from the illegal activity had to be handed over:

*“6.2.4.1.17. Now, the Court wonders whether, given the personal duty of the responsible party to compensate the victim with his or her own assets, it is necessary to establish as a condition of eligibility for access to the judicial proceedings that may culminate in the benefits provided for in the Law being challenged, that persons must hand over the lawful assets that make up their assets.*

*6.2.4.1.18. The eligibility requirements referred to in Articles 10 and 11, which are partially challenged, are requirements "for access to the benefits established by this law", i.e. they are conditions of accessibility. In these circumstances, it does not seem necessary at this stage for the person to hand over part of his or her lawful assets, since at least technically, there is not yet a title for such a transfer. Certainly, the illicitly derived property does not belong to him and, therefore, the surrender does not imply a transfer of ownership but a return to its true owner - through the restitution of the property - or to the State. However, his licit assets will belong to him until such time as there is a judicial sentence ordering them to be handed over. On the other hand, the assets resulting from illegal activity, all of them without exception, must be handed over as a precondition for accessing the benefits established by Law 975/05. The legislator can establish this eligibility requirement, both for collective demobilisation and for individual demobilisation. For these reasons, the Court does not find the expressions "product of the illegal activity" in numeral 10.2 of article 10 of the Law and "product of the illegal activity" in numeral 11.5 of article 11 of the same Law to be unconstitutional. This will be stated in the operative part of this decision".*

Thus, it is not necessary to declare the conditional exequibilidad of the rule stating that postulants who fraudulently hand over assets that do not have a reparatory vocation will also be excluded, as Article 5 of Law 1592 of 2012 contemplates this situation within other grounds for termination of the justice and peace process.

**8.3.2.2 The request for the termination of the Justice and Peace process and the removal from the list of applicants**

According to the plaintiffs, the challenged expressions of the second paragraph of the sixth numeral of article 5 of Law 1592 of 2012 place the possibility of requesting the termination hearing of the Justice and Peace Process and the exclusion from the list of applicants exclusively in the hands of the Prosecutor of the case:

*"The request for a termination hearing may be made at any stage of the proceedings and must be submitted by the prosecutor of the case. In the same hearing, a decision may be taken on the termination of the proceedings of several applicants, as the prosecutor considers appropriate and so states in the request.*

*Once the decision to terminate the special Justice and Peace criminal proceedings is final, the Chamber of Knowledge will order copies of the proceedings to be sent to the competent judicial authority so that it can carry out the respective investigations, in accordance with the laws in force at the time of the commission of the acts attributable to the postulate, or adopt the decisions that may be necessary" (underlined expressions in the defendant's case).*

By virtue of the above norm, the victim is being excluded from such an important faculty as the possibility of requesting the termination hearing of the Justice and Peace process and the exclusion from the list of postulants, which affects their rights to truth, justice and reparation, as it removes them from a resource that can be effective in verifying compliance with the postulants' duties in relation to the victims and society.

Therefore, the expressions "*and must be presented by the prosecutor of the case"* and "*as deemed appropriate by the prosecutor of the case and so stated in his request*" in Article 5 of Law 1592 of 2012 will be declared conditionally exequitable, on the understanding that victims may also request the termination hearing of the justice and peace process.

**8.3.2.3 Preclusion of the investigation as a consequence of the termination of criminal proceedings**

Paragraph 2 of Article 5 of Law 1592 states that in the event of the death of the postulate, *"the Delegate Prosecutor will request before the Justice and Peace Chamber of the High Court of the Judicial District, the preclusion of the investigation as a consequence of the extinction of the criminal action"*, which is questioned by the plaintiffs for violating the rights of the victims.

This Corporation considers that this power is entirely reasonable and in no way affects the rights of the victims, since in the ordinary criminal system, once the action has been extinguished, the proceedings are terminated and if there is no sentence, the appropriate decision will be to declare preclusion, as would also be the case in the ordinary system.

By virtue of the foregoing, the constitutionality will be declared in relation to the charge on the reparatory vocation of the assets of the expression *"the preclusion of the investigation as a consequence of the extinction of the criminal action"* enshrined in paragraph 2 of Article 5 of Law 1592 of 2012.

**8.3.2.4 The continuation of the process when the applicant dies after the handing over of the goods**

Paragraph 3 of Article 5 of Law 1592 allows the reparation process to continue despite the death of the accused with regard to the assets already handed over, offered or denounced for the contribution to the comprehensive reparation of the victims, as long as the death occurs after the handing over of the assets. This provision states: "*In any case, if the accused dies after the assets have been handed over, the process shall continue with respect to the extinction of the ownership of the assets handed over, offered or reported for the contribution to the comprehensive reparation of the victims, in accordance with the rules established in this law".*

Under the general rules of criminal procedure, the death of the accused entails the termination of the criminal action [[428]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn428%22%20%5Co%20%22) and thus of the criminal proceeding, so although the civil action is not extinguished, the death of the accused means that it must be processed outside the criminal proceeding. Thus, allowing the proceedings to continue after the death of the defendant when he has already handed over assets is a more favourable measure than the one contemplated in the ordinary system, as it would facilitate reparation in the same proceedings.

However, the rule does not indicate what happens when the death occurs after the offer or denunciation of the assets but not their delivery, which can seriously affect the rights of the victims, since if the general rules of the criminal process are followed at that moment the process would have to conclude, without achieving effective reparation.

Therefore, in relation to the charge on the reparation vocation of the assets, the expression "*after the assets have been handed over"* in paragraph 3 of Article 5 of Law 1592 of 2012 will be declared exequibiliad, on the understanding that the process may also continue with regard to the assets offered or denounced by the demobilised person if they have not yet been handed over.

**8.3.2.5 The provision of information for the decision to adopt interim measures**

Paragraph 4 of Article 7 establishes that, when deciding on the adoption of precautionary measures, it must be determined whether or not the property has a reparation vocation, according to the information provided by the delegated prosecutor in the case and by the Special Administrative Unit for the Attention and Integral Reparation of Victims -Fund for the Reparation of Victims- [[429]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn429%22%20%5Co%20%22) . This rule is questioned by the plaintiffs for not allowing the decision to also be made on the basis of the information provided by the victims:

*"When deciding on the adoption of precautionary measures, the magistrate with the functions of control of guarantees of the Justice and Peace Chambers shall determine whether or not the property has a reparation vocation, based on the information provided by the delegated prosecutor in the case and by the Special Administrative Unit for the Attention and Integral Reparation of Victims - Fund for the Reparation of Victims. When the magistrate in charge of the control of guarantees considers that the property does not have a reparation vocation, the property may not enter the Fund for the Reparation of Victims under any circumstances. Exceptionally, the Prosecutor's Office shall provisionally hand over to the Victims' Reparation Fund the assets handed over, offered or reported by the applicants that must be administered immediately by that entity to prevent their deterioration, while the preliminary hearing for the imposition of precautionary measures is being held" (emphasis added).*

With regard to this aspect, the Court identifies that there is a justified constitutional interest of the victims in providing information on assets that may have a reparation vocation, since through them, it can be guaranteed that effective reparation is provided. Excluding this possibility affects their right to full reparation.

It is important to mention that many of the victims who participate in the Justice and Peace Process were affected by the forced displacement of these illegal groups, which is why they themselves can provide information that allows for the identification of assets acquired by these groups during the conflict, as a result of the seizure of land from the civilian population.

It should also be noted that the victims are the ones most interested in speeding up the procedures for the redress of their rights, which inevitably leads to the conclusion that many of them will act diligently in order to support the justice system in identifying the assets with which they will be compensated for the material damage caused by the conflict.

By virtue of the above, the expression *"the prosecutor delegated to the case and by the Special Administrative Unit for the Attention and Integral Reparation of Victims - Fund for the Reparation of Victims" in* paragraph 4 of Article 7 will be declared constitutional, on the understanding that the information provided by the victims must also be taken into account.

**8.3.2.6 Eligibility of the applicant despite the lack of assets with a reparatory vocation**

The paragraph of Article 7 states that the applicant's eligibility will not be affected by the non-existence of assets with a restorative vocation: *"When the asset offered or denounced by the applicant cannot be effectively delivered due to the non-existence of a restorative vocation, and it is demonstrated that the applicant does not have any other asset with a restorative vocation, the evaluation of the eligibility requirement will not be affected, nor the condition for accessing the substitution of the security measure referred to in Article 18A of this law".*

The requirement of the reparatory vocation of the assets means that the reparation process is not hindered by handing over assets in which the ownership of the demobilised person is unclear or which suffer from defects that could affect the process, an aim that safeguards the rights of the victims [[430]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn430%22%20%5Co%20%22) . However, the establishment of this reparation vocation unfortunately does not prevent demobilised combatants from carrying out manoeuvres aimed at defrauding the rights of the victims, such as transferring them to third parties or concealing them.

In this regard, the Court considers that a truly effective reparation system in the framework of a transitional justice process requires that multiple efforts be made to identify all assets of illicit origin of the demobilised combatants, otherwise compensation will be very difficult and could lead to fraud or concealment that could affect the whole process.

In this way, Decree 3011 of 2013, which regulates Laws 975 of 2005, 1448 of 2011 and 1592 of 2012, develops the "*enlistment phase*" as a stage that allows analysing and determining the degree of reparatory vocation of the reported assets, through certain sub-phases in which a study of them is carried out. Allowing the victims to participate in the provision of information related to the assets of the postulados that have a reparation vocation means establishing a narrower margin of control against possible conduct aimed at hiding the assets or circumventing the rights of the victims.

Therefore, the conditional exequibilidad of the paragraph of Article 7 of Law 1592 of 2012 will be declared conditional in relation to this charge, on the understanding that the lack of reparatory vocation cannot be attributable to a purpose of the postulate to defraud the rights of the victims and that the victims also have the right to denounce assets of the postulates or those of third parties to whom they have been illegally transferred.

**8.3.2.7 The delivery of the assets of the applicants at the disposal of the Special Administrative Unit for the Attention and Integral Reparation of Victims and/or the Special Administrative Unit for the Management of the Restitution of Divested Lands.**

The second paragraph of Article 8 states that the assets of demobilised combatants will be placed at the disposal of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land Restitution so that they can be used for the comprehensive reparation and land restitution programmes referred to in Law 1448 of 2011, which was declared unconstitutional in the analysis of the previous charge and therefore will not be studied.

**8.3.2.8 Affectation of the assets of postulants acquired as a result of the reintegration process**

The paragraph of article 8 of Law 1592 of 2012 states that *"In no case will the assets of the postulants acquired as a result of the reintegration process, the fruits thereof, or those acquired in a lawful manner after demobilisation be affected".*

One of the most important functions of transitional justice processes is special positive prevention, achieved by means of re-socialisation through the serious reintegration of armed actors [[431]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn431%22%20%5Co%20%22) . 431] To achieve this end, the material prerequisites for social and economic reintegration into civilian life must be provided.

The State's duty is to structure a transitional justice model that guarantees the victims' rights to truth, justice and reparation, but which also allows for the economic reintegration of members of armed groups into society, otherwise it will be impossible for them to reintegrate into the community. Given this situation, a large part of the effectiveness of the transitional justice process depends on the structuring of programmes that allow those who lay down their arms to carry out a legal economic activity in order to obtain the necessary economic resources to survive and prevent them from committing crimes again in order to obtain illicit profit.

This means that the transitional justice process is not only limited to punitive treatment, but also has an important re-socialising component, making it essential to find an equidistant point between the rigidity of sanctions and programmes aimed at reintegrating the members of these groups into the community.

Therefore, it is completely constitutional and in accordance with the objectives of transitional justice that the assets of the postulants acquired as a result of the reintegration process, the fruits thereof, or those acquired in a lawful manner after demobilisation, should not be affected, as otherwise their re-socialisation would be compromised and with it one of the most important objectives of the transitional justice process, which is to achieve a real reconciliation of society.

By virtue of the foregoing, the exequibilidad will be declared in relation to the charge on the reparatory vocation of the assets, of the paragraph of article 8 of Law 1592 of 2012.

**8.3.2.9 The lifting of interim measures at the request of third parties**

Finally, the plaintiffs challenge the expression *"If the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure"* provided for in Article 17 of Law 1592 of 2012.

This provision is presented in the framework of the incident of opposition of third parties to the precautionary measure ordered with respect to the assets seized for the purposes of forfeiture of ownership and simply allows the precautionary measures to be lifted in the event that the incident is decided in favour of the bona fide third parties by the magistrate with the function of guarantor.

The purpose of this rule is constitutional, as it recognises the rights of bona fide third parties over measures ordered with respect to the assets of demobilised combatants. In any case, at no point does the rule express the possibility of the victims intervening in the incident, which should be completely clear, as the aforementioned measures have a direct claim for compensation and constitute a mechanism for the protection of the right to avoid the existence of fraud in relation to the transfer of assets to third parties.

Therefore, in relation to the charge on the reparatory vocation of the assets, the expression "*If the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure"* contemplated in Article 17 of Law 1592 of 2012, on the understanding that the victims will be able to participate in the incident, will be declared constitutional.

**8.3.3 Third Charge: the limitation of remedies in the Justice and Peace process violates victims' rights to participation, due process and effective access to justice (Article 27 of Law 1592 of 2012).**

The petitioners state that the challenged expressions in Article 27 of Law 1592 of 2012 *"only"* and *"on the merits"* in the second paragraph and *"other"* and *"only"* in the third paragraph and paragraph 3 in their entirety, violate the victims' right to effective participation in the justice and peace process, insofar as they reduce their possibilities to resort to ordinary remedies, such as appeals, during the entire course of the process, limiting their filing only to the judgement and orders that resolve substantive issues, which affects the victims' rights to participation, due process and effective access to justice.

For the study of this charge, the limitation of procedural remedies in Colombia will be analysed and it will be determined whether the restriction of these remedies contemplated in Article 27 of Law 1592 of 2012 is constitutional or not.

**8.3.3.1. Limitation of procedural remedies in Colombia**

The Constitutional Court has referred on numerous occasions to the double instance, pointing out special criteria to analyse the events in which it can be limited:

Decision C-019 of 1993 declared Article 167 of the Juvenile Code (Decree 2737 of 1989) constitutional, provided that it is interpreted and applied in the sense that proceedings involving juvenile offenders are of sole instance when a custodial measure is not decreed or imposed [[432]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn432%22%20%5Co%20%22) .

Ruling C-150 of 1993 declared constitutional the accused parts of Article 16 of Decree 2700 of 1991, according to which *"Any interlocutory ruling may be appealed, except for the exceptions provided for"*[[433]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn433%22%20%5Co%20%22) .

Judgment C-345 of 1993 declared unconstitutional the expression *"However, proceedings on acts of dismissal, declaration of dismissal, revocation of appointment or any others that imply removal from service, shall be heard in sole instance by the Administrative Courts when the monthly salary corresponding to the position does not exceed eighty thousand pesos ($80,000.oo)",* contained in Article 131 of Decree-Law 01 of 1984. In this ruling, the Constitutional Court stated that the rule violated the principle of double instance, as it established discriminatory treatment based solely on the monthly income of the plaintiff [[434]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn434%22%20%5Co%20%22) .

Sentence C-179 of 1995, considered it constitutional that summary verbal and minimum amount executive proceedings should be processed in *"sole instance, considering that the double instance, whose special transcendence in the criminal field is evident, is not, however, obligatory in all matters that are subject to judicial decision"*[[435]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn435%22%20%5Co%20%22) .

Judgment C-657 of 1996 declared the following to be constitutional: (i) the expression *"against which only an appeal for reconsideration may be lodged" contained* in Article 115 of Decree 2700 of 1991, which prevents the filing of an appeal against the sanction imposed on the official who does not declare himself impeded and; (ii) the expression *"decision against which no appeal may be lodged"* in Article 453 of the same decree, which does not allow appeals against the decision ordering the withdrawal of attendees at a public hearing. In this ruling, it was considered that *"The Constitution empowers the law to establish exceptions to the general principle of two instances and, in the present case, it does not deal with convictions"*[[436]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn436%22%20%5Co%20%22).

Sentence C-037 of 1996 declared the constitutionality of Article 27 of the Statutory Law on the Administration of Justice, considering that *"the Court finds that the development of the article under examination is inseparably linked to the principle of double instance, which is why it is constitutional to include it in a statutory law on the administration of justice"*[[437]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn437%22%20%5Co%20%22) .

Ruling C-956 of 1999 declared constitutional the second paragraph of Article 327 of Decree 2700 of 1991 *"which establishes the rules of criminal procedure"*, related to the imposition of appeals against acts of inhibition issued by a Prosecutor delegated to the Supreme Court of Justice [[438]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn438%22%20%5Co%20%22) .

Ruling C-650 of 2001 declared constitutional the expression *"(...) and no appeal may be lodged against it (...)"* enshrined in Article 1, paragraph 268 of Decree 2282 of 1989, which amended Article 507 of the Code of Civil Procedure [[439]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn439%22%20%5Co%20%22) .

Sentence C-154 of 2002 declared unconstitutional numeral 2 of article 7 of Decree 2272 of 1989, which established jurisdiction in sole instance of the processes attributed to family judges, when there is no family or promiscuous family judge in the municipality [[440]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn440%22%20%5Co%20%22) .

Judgment C-040 of 2002 declared constitutional, on the charge examined in this judgment, the accused expressions of Article 39 of Law 446 of 1998 *"en única instancia"* and *"privativamente y en única instancia"*. This article provides for the jurisdiction of the administrative courts in sole instance [[441]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn441%22%20%5Co%20%22) .

Decision C-377 of 2002 declared constitutional Article 36 of Law 472 of 1998, which established that *"an appeal for reconsideration may be lodged against the orders issued during the proceedings of the Popular Action, which shall be lodged in accordance with the terms of the Code of Civil Procedure"*[[442]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn442%22%20%5Co%20%22) .

Ruling C-484 of 2002 declared constitutional the expression *"shall hear exclusively and in sole instance" of the first paragraph of Article 7, paragraph 1 of Law 678 of 2002 "Magistrates of the Constitutional Court, the Supreme Court of Justice, and the Superior Council of the Judiciary"* [[443]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn443%22%20%5Co%20%22) .

Ruling C-788 of 2002 declared constitutional the expression *"The decisions taken by the judge in the development of this article do not admit any appeal"*, contained in the final paragraph of Article 392 of Law 600 of 2000. This norm contemplates the control of the formal and material legality of the security measure and of the measures related to the ownership, possession, holding, or custody of goods in Law 600 of 2000 [[444]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn444%22%20%5Co%20%22) .

Decision C-900 of 2003 declared constitutional the contested part of Article 48 of Law 794 of 2003, according to which *"The executive order is not appealable"* ***[[445]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn445%22%20%5Co%20%22)*** *.*

Ruling C-248 of 2004 declared the expression *"and no appeal shall lie against it"*, provided for in Article 344 of Law 600 of 2000, to be constitutional. This provision establishes the impossibility of imposing appeals against the decision declaring the person under investigation absent in criminal proceedings [[446]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn446%22%20%5Co%20%22) .

Ruling C-103 of 2005 declared constitutional, on the charges studied, the accused part of Article 70, paragraph b), of Law 794 of 2003, which states that small claims proceedings may not have a double instance [[447]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn447%22%20%5Co%20%22) .

Ruling C-1237 of 2005 declared constitutional, on the charges examined in this ruling, the section of paragraph 2 of num. 2 of art. 50 of Law 794 of 2003, according to which: *"the facts that constitute prior exceptions must be alleged by means of a reconsideration against the payment order. If any of them are successful and do not imply the termination of the process, the judge will adopt the respective measures so that the process can continue; or, if this is the case, he will grant the executor a period of five (5) days to correct the defects or present the omitted documents, under penalty of revoking the payment order, imposing an order for costs and damages. The order that revokes the executive order may be appealed in the deferred effect, except in the case of having declared the exception of lack of jurisdiction, which is not appealable."* [[448]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn448%22%20%5Co%20%22) .

Ruling C-934 of 2006 declared the fifth, sixth, seventh, and ninth paragraphs of Article 32 of Law 906 of 2004 to be constitutional, indicating the constitutionality of the trial of high-ranking state officials in sole instance by the Supreme Court of Justice ***[[449]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn449%22%20%5Co%20%22)*** *.*

Decision C-739 of 2006 declared Articles 662, 678, 682, 701, 720, 721, 726, 728, 735, 739, 795-1 and 834 of Decree 624 of 1989 constitutional, only with respect to the charges analysed in this decision [[450]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn450%22%20%5Co%20%22) .

Ruling C-456 of 2006 declared unconstitutional the expressions *"(...) for one time only"* and "*No appeal shall lie against this decision"*, contained in Article 318 of Law 906 of 2004 [[451]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn451%22%20%5Co%20%22) .

Ruling C-863 of 2008 declared Article 435(9) of the Code of Civil Procedure to be constitutional, in relation to the single instance nature of summary oral proceedings, on the grounds that the exception to single instance was not considered discriminatory [[452]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn452%22%20%5Co%20%22) .

Decision C-254 of 2012 declared the expression *"in sole instance"* of Article 1 of Law 144 of 1994, which establishes the impossibility of filing an appeal in proceedings for loss of office, to be constitutional, on the grounds that it constituted a development of the legislator's power to determine appeals.

In this way, it can be concluded that the jurisprudence of the Constitutional Court has established that the right to a second hearing is not absolute, as there are events in which it can be restricted by the legislator, as long as a series of special criteria are respected, such as reasonableness and proportionality in relation to the consequences imposed by the ruling that cannot be appealed.

**8.3.3.2 The enforceability of the contested provisions**

The plaintiffs claim that the challenged expressions in Article 27 *"only"* and *"in substance"* in the second paragraph and *"other"* and *"only"* in the third paragraph and paragraph 3 as a whole, violate the victims' right to effective participation in the Justice and Peace process, which will be analysed separately:

A. The first paragraph of the contested provision states that "*An appeal may* ***only*** *be lodged against the judgment and against orders that resolve* ***substantive*** *issues during the hearings, without the need for the prior lodging of an appeal for reconsideration"*. In this sense, the expression *"only"* limits the appeal to a series of specific events, while the expression on the merits only allows this appeal to be lodged against aspects that decide on matters of substance, which is considered reasonable and proportional, for the reasons set out below.

In the first place, the norm safeguards the possibility of appeals against the most important decisions made in the Justice and Peace process, such as sentences and interlocutory orders.

Secondly, the provision is fully justified in the sense of speeding up the Justice and Peace process, which can be affected by the frequent lodging of appeals against procedural orders.

Finally, in judgments C-150 of 1993, C-657 of 1996, C-650 of 2001, this Corporation has indicated that the limitation of the appeal to matters of substance in judicial matters constitutes an exercise of the legislator's freedom of configuration that does not affect procedural guarantees.

B. The expressions *"other"* and *"only"* in the third subparagraph simply reiterate what is stated in the second subparagraph, establishing that in other cases only an appeal for reconsideration will be allowed, which also does not violate the rights of the victims, as it is considered reasonable and proportional to limit the appeal in this case.

It was previously stated that there is res judicata in relation to paragraph 3, since in Ruling C-370 of 2006, the Court stated that the impossibility of presenting the appeal in cassation in justice and peace proceedings was not unconstitutional.

**8.3.4. Fourth charge: the new applications and the new temporary application of Law 975 of 2005 violate the victims' rights to peace, truth, justice, reparation and guarantees of non-repetition (Articles 36 and 37 of Law 1592 of 2012).**

The plaintiffs claim that the challenged expressions of articles 36 and 37 of Law 1592 of 2012 are unconstitutional, as they provide for a change in the temporal application of the law and in particular of the benefits granted to persons who wish to undergo a transitional justice process, which may affect the rights of victims to peace, to guarantees of non-repetition and to truth, justice and reparation.

**8.3.4.1 The scope of Articles 36 and 37 of Law 1592 of 2012**

Articles 36 and 37 of Law 1592 of 2012 apply to two very different moments of the justice and peace process, namely the postulation and the accusation of the facts, which cannot be confused, otherwise they would be given an incorrect scope, which is why the specific content of these two provisions in the scheme of the justice and peace process will be analysed below in order to determine their scope and effects [[453]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn453%22%20%5Co%20%22) .

**8.3.4.2. Administrative stage**

**A. Demobilisation**

Article 2 of Law 975 of 2005 states that the Justice and Peace Law will only apply to persons who have *"decided to demobilise and contribute decisively to national reconciliation"*[[454] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn454%22%20%5Co%20%22) and therefore, the first requirement for its application is demobilisation, which according to Article 9 of the same Law consists of *"the individual or collective act of laying down arms and abandoning the organised armed group outside the law, carried out before a competent authority"*, which will be done in accordance with the provisions of Law 782 of 2002 [[455]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn455%22%20%5Co%20%22) .

**B. The application**

Demobilisation is not sufficient for the application of the justice and peace procedure, as according to articles 10 and 11 of Law 1592 of 2012, it is also necessary for the demobilised person to be nominated by the National Government. The postulation consists of sending a list made by the Ministry of Justice and Law to the Attorney General's Office.

Law 975 of 2005 did not establish a deadline for the closure of applications, which is why thousands of individual and collective demobilised combatants continued to apply en masse after 25 July 2005. In this sense, Article 72 of Law 975 of 2005 did not limit applications or demobilisations, but rather the acts to which the Justice and Peace Law could be applied, which is why during its ten years in force demobilised combatants have continued to apply for the application of the procedure of Law 975, although with the problem that it can only be applied to acts committed prior to 25 July 2005.

This situation meant that the last collective demobilisation took place on 16 August 2006 [[456]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn456%22%20%5Co%20%22) and in 2008 the National Government decided in CONPES Document number 3554 *that it would "only attend to demobilised combatants who voluntarily abandon their groups and surrender individually"*[[457] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn457%22%20%5Co%20%22) although there was no legal norm formally ordering the closure of applications, which is why they continue to take place.

Faced with this problem, one of the central objectives of the National Government in the reform of the Justice and Peace Law through Law 1592 of 2012 was to establish a definitive closure of the nomination system, as the Vice Minister of Justice pointed out before the Plenary of the House of Representatives:

*"There is another very important point, on which the Government wishes to place special emphasis, and that is the need to close the justice and peace process, a transitional justice process which, in its concept, is exceptional and temporary, must have a definitive closure; We cannot have an ordinary justice system coexisting with many of the problems that we are all aware of, with a transitional justice system that we are also beginning to notice problems; for this reason, the government considers that this issue of closure must be approached from two perspectives; the first, taking into account the issue of applications, that is, how long are we going to allow people to continue agreeing to criminal acts after six years: We have to establish a closure so that they can apply, of course, taking into account all the variables that may come together on this issue"* ***[[458]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn458%22%20%5Co%20%22)*** *.*

In this sense, Law 1592 of 2012 did not extend the scope of validity of the applications, but on the contrary, it established in detail the two events in which new applications can be submitted, establishing time restrictions to them:

 ***"Application of demobilised combatants to the special criminal procedure.*** *Those who have demobilised individually or collectively prior to the entry into force of this law and wish to access the benefits enshrined in Law 975 of 2005, must request their application before 31 December 2012. Once this period has expired, the national government shall have two (2) years to decide on their application.*

*Those who demobilise individually after the entry into force of this law will have one (1) year from the date of their demobilisation to request their application to participate in the process referred to in Law 975 of 2005, and the Government will have one (1) year from the date of the request to decide on their application".*

Therefore, as of the entry into force of Law 1592 of 2012, there can only be two types of applications: **(i) those** who have demobilised individually or collectively prior to the entry into force of Law 1592 of 2012 (3 December 2012), which must be requested before 31 December 2012 and **(ii) those** who demobilise individually after the entry into force of the law (3 December 2012), for which they will have one (1) year from their demobilisation to request their application to the process referred to in Law 975 of 2005.

**C. Judicial phase**

In this phase, the verification of the eligibility processes contemplated in Articles 10 and 11 is carried out in relation to the individual and collective demobilisation contemplated in Articles 10 and 11 of Law 975 of 2005.

**D. Pre-trial stage**

This stage is presented to the Attorney General's Office, which carries out the investigative activities necessary to establish the material truth, determine the intellectual and material authors and participants, clarify the punishable conducts committed, identify the assets, sources of financing and weapons of the respective illegal armed groups, carry out cross-checking of information and other procedures aimed at complying with the provisions of Articles 15 and 16 of Law 975 of 2005. In this phase, the demobilised person is heard in a voluntary confession and must narrate all the crimes he/she has committed during his/her membership of the group.

**E. Procedural stage**

This stage begins with the formulation of the prosecutor's indictment, in which he will ***charge the facts*** that are subject to the provisions of Article 72 of Law 975 of 2005, which were initially restricted to those committed prior to the entry into force of this law, i.e. on 25 July 2005.

The temporal restriction of this law created a serious legal problem, as many people demobilised after that date and therefore continued to incur at least the crime of conspiracy to commit a crime as a result of their membership of the armed group, regardless of whether they had committed other crimes after 25 July 2005.

This meant that more than 20,000 persons demobilised after 25 July 2005 could not have the Justice and Peace Law applied to them, despite having participated in peace agreements, which seriously affected the legitimate confidence of many demobilised persons and created legal insecurity and confusion, a situation that led to the reform of Article 72 of Law 975, as the Vice Minister of Government stated before the plenary of the House of Representatives:

*"The second perspective or the second aspect for the closure, it is important to determine the issue of the validity of the Justice and Peace law; we consider that the Justice and Peace law must be in force at least until the date of demobilisation for the collectively demobilised, for a simple reason and for a legal element, and that is the principle of special legitimate confidence that the State has awakened, and that we have to say clearly, it binds us to those collectively demobilised"****[[459]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn459%22%20%5Co%20%22)*** *.*

After the indictment, there are the phases of indictment and acceptance of charges, the incident of identification of the effects and sentencing, which are also limited by the temporal restriction of the facts to which the law of justice and peace can be applied.

**8.3.4.3 The scope of the reform in the temporary validity of the Justice and Peace Law**

In view of the above, a clear distinction must be made between the restrictions applicable to the nominations (which are provided for in Article 37 of Law 1592 of 2012) and those relating to the imputation of the facts (which are provided for in Article 72 of Law 975 of 2005):

***A. In relation to applications,*** which is carried out in the first phase of the administrative process, the law establishes for the first time a restriction and limits them to two events:

- Those who have demobilised individually or collectively prior to the entry into force of Law 1592 of 2012 and seek to access the benefits enshrined in Law 975 of 2005, who must apply before 31 December 2012. Within these hypotheses, it is clear that only collective demobilisations carried out *"prior to the entry into force of Law 1592 of 2012"*, that is, by 3 December 2012, are allowed.

- Those who demobilise individually after the entry into force of Law 1592 of 2012, who will have one (1) year from their demobilisation to request their application to the Justice and Peace process.

In this perspective, Law 1592 of 2012 restricted for the first time the number of applications, which were still open, so that demobilised combatants could continue to apply for the Justice and Peace Law, even long after 2005.

The Court emphasises that this is the first restriction that must be made, as the first thing that is done is the postulation and then it is within the process where it is determined to which facts the law applies.

***B. In relation to the charging of the facts***, which takes place at a later stage of the judicial process, Article 36 of Law 1592 of 2012 replaced the expression *"shall apply only to facts that occurred prior to its entry into force and is in force from the date of its enactment"* with the phrase *"is in force from its enactment"*, a modification that eliminated the general time restriction on the facts to which the Justice and Peace Law can be applied:

**(i) In relation to** *collective charges****, the*** Justice and Peace Law is authorised to be applied to collective demobilisations carried out after the initial entry into force of the Justice and Peace Law, i.e. 25 July 2005, in respect of events that occurred prior to the date of their demobilisation, stating: *"in the framework of peace agreements with the national government, this law will only apply to events that occurred prior to the date of their demobilisation".*

**(ii)** *In relation to individual charges*, the application of the Justice and Peace Law is authorised to those made after the initial validity of the Justice and Peace Law, in relation to *"events that occurred prior to their demobilisation and in any case prior to 31 December 2012"*.

By virtue of the above, Law 1592 of 2012 cannot be considered to have established an indefinite validity of the Justice and Peace Law, since what it did was to restrict the possibility of new applications to events particularly enshrined in Article 37, which places a temporary restriction on applications for the first time and excludes the possibility of applying this law to new collective demobilisations.

In this sense, in the second debate in the Senate of the Republic, it is completely clear that the regulation implies the closure of collective applications and simply gave special deadlines for people who have already demobilised:

***"Applications***

*Despite the fact that the text closes the deadline for collective and individual demobilised combatants to apply for the Justice and Peace Law procedure, and that the opportunity to encourage new individual demobilisations is restricted, this is not done immediately, but after the law comes into force, there will be a margin of opportunity for those already demobilised and for those who wish to do so individually, as follows: (i) collectively demobilised combatants may apply within six (6) months of the law's enactment; (ii) individually demobilised combatants may apply within six (6) months of the law's entry into force; (iii) new demobilised individuals (i.e. those who demobilise after the law comes into force) may apply within one year of their demobilisation, but in any case, the procedure and benefits enshrined in this law shall only apply to events that occurred prior to the date expressly established in the bill.*

*The National Government may nominate collective demobilised combatants within two (2) years of the entry into force of this law. Likewise, in the case of applications from individual demobilised combatants, it shall decide within one year of the application".*

Under this consideration, it is very clear that there can be no new collective demobilisations, which is why the Justice and Peace Law cannot be applied to the new emerging organised groups outside the law that have been created in recent years.

What the reform did was to allow the Justice and Peace Law to be applied to acts carried out after 25 July 2005, in order to resolve the legal situation of all the people who demobilised after that date and who are in a situation of legal insecurity, as their mere membership of the group after 25 July 2005 could be considered as conspiracy to commit a crime, and this prevented the Justice and Peace Law from being applied to them. By virtue of the above, we will now analyse whether the extension of the application of the law to new acts is unconstitutional.

In any case, a clear distinction must be made between the events in which the regime contained in the Justice and Peace Law is applied and that contained in the Legal Framework for Peace:

|  |  |
| --- | --- |
| **Law 975 of 2005** | **Legislative Act 01 of 2012** |
| Members of illegal armed groups, guaranteeing victims' rights to truth, justice and reparation.An organised armed group outside the law is understood to be a guerrilla or self-defence group, or a significant and integral part thereof, such as blocs, fronts or other forms of these organisations, as defined by law (Art. 1).  | Armed groups outside the law that have been party to the internal armed conflict and also for state agents, in relation to their participation in the internal armed conflict (art. 1).In cases of the application of transitional justice instruments to illegal armed groups that have participated in hostilities, this will be limited to those who demobilise collectively in the framework of a peace agreement or to those who demobilise individually in accordance with established procedures and with the authorisation of the National Government (Paragraph 1).In no case may transitional justice instruments be applied to illegal armed groups that have not been part of the internal armed conflict, nor to any member of an armed group who, once demobilised, continues to commit crimes (Paragraph 2). |

**8.3.4.4 Exequibility of the contested provision**

The plaintiffs raise two concerns about the law: **(i)** the possibility that it could imply an indefinite extension of the Justice and Peace law and **(ii)** the possible violation of victims' rights by allowing this law to be applied to acts committed after 25 July 2005 and that through this the State has given licence to the armed groups to continue their criminal activity, thus contradicting the obligations to protect citizens from human rights violations and breaches of International Humanitarian Law, to prosecute crime, to guarantee peace, and to establish guarantees of non-repetition of such violations and breaches.

As has already been pointed out, the first question is ruled out, as what this law did was the definitive closure of the Justice and Peace Law, which is why we will now analyse whether the application of this law to new acts is unconstitutional.

In this sense, the Constitutional Court considers that the extension of the term of the facts for the application of the Justice and Peace Law, contemplated in Law 1592 of 2012, is constitutional for the following reasons:

**A. The extension of the framework for transitional justice measures has been fully accepted in Colombia.**

The prolongation of the effects of transitional laws in Colombia is not new, but has a very clear precedent in the norms that successively extended the validity of Law 104 of 1993:

**(i)** On 30 December 1993, the Congress of the Republic enacted Law 104 of 1993, which established instruments for the pursuit of coexistence and the effectiveness of justice, establishing grounds for the extinction of criminal action and punishment in the case of political and related crimes, covering the peace agreements signed in 1994 between the National Government and the CRS groups, the Urban Militias of Medellín and the Francisco Garnica Front of the Guerrilla Coordinating Committee [[460]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn460%22%20%5Co%20%22) . This law was analysed in Rulings C - 425 of 1994, C - 055 of 1995, C - 283 of 1995, C - 344 of 1995 and C - 586 of 1995.

**(ii)** On 26 December 1997, Law 418 of 1997 was issued, which extended the validity of Laws 104 of 1993 and 241 of 1995, Congress covered the Peace Agreement signed between the National Government and MIRCOAR (29 July 1998), according to Decrees 1247 of 1997 and 2087 of 1998. This law was declared constitutional in Rulings C-340 of 1998, C-768 of 1998, C-782 of 1999, C-047 of 2001, C-048 of 2001, C-203 of 2005, and C-240 of 2009.

**(iii)** Law 418 of 1997 was extended by Law 782 of 2002, analysed by the Constitutional Court in judgments C-923 of 2005, C-928 of 2005, and C-914 of 2010.

Therefore, it can be concluded that the mere prolongation of the effects of a transitional justice law is not unconstitutional.

**B. The Constitutional Court has admitted that the determination of the validity of the Justice and Peace Law is a power of the legislator.**

The temporal validity of the Justice and Peace Law contemplated in Article 72 of Law 975 of 2005 has been specifically analysed only in Ruling C-1199 of 2008, which *declared EXEQUIBLE "the expression "governs from the date of its promulgation", contained in Article* [*72*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=17161#72) *of Law 975 of 2005, on the understanding that the right to the benefits is obtained upon fulfilment of all the requirements established in the relevant provisions of said law, in accordance with the constitutional interpretation established in Ruling C-370 of 18 May 2006 and other rulings on such provisions".*

In this judgement, it was stated that in the absence of a constitutional norm regulating the issue, the determination of the date of entry into force of a law is a matter that is the exclusive competence of the legislator, and it is not possible for the constitutional judge or any other authority to question the meaning of his decision:

*"In repeated and consistent jurisprudence****[[461]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn461%22%20%5Co%20%22)*** *this corporation has indicated that, given the absence of a constitutional norm regulating the issue, the determination of the date of entry into force of a law is a matter that is the exclusive competence of the legislator, and it is not possible for the constitutional judge or any other authority to question the meaning of his decision".*

Therefore, it concludes that there is no basis for questioning the rule on the validity of Law 975 of 2005 that the legislature, in the legitimate exercise of its constitutional powers, established in Article 72 of the aforementioned law:

*"Therefore, in the face of the charge of unconstitutionality formulated in this case by the actors, it is clear to this corporation that there is no basis for questioning the rule on the validity of Law 975 of 2005 that the legislature, in legitimate exercise of its constitutional powers, established in article 72 of the aforementioned law. Similarly, the Court considers that this rule, according to which all the provisions of this law are in force from the date of its promulgation, does not harm the transitional justice model, the rights of the victims developed by the jurisprudence of this corporation, nor the right to peace, which is why it does not violate any of the superior norms invoked in the complaint, but on the contrary, is clearly executory".*

**C. The extension of the term of validity of the Justice and Peace Law in the face of new facts does not imply a disregard for the temporality of transitional justice.**

In accordance with constitutional jurisprudence, the transitional nature of a measure does not necessarily imply its temporary restriction to an unchangeable term, but rather that it is aimed at establishing processes of profound social and political transformation [[462]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn462%22%20%5Co%20%22) to resolve the problems arising from a past of large-scale abuses:

*"Transitional justice is constituted by a set of processes of profound social and political transformation****[[463]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn463%22%20%5Co%20%22)*** *in which a wide range of mechanisms must be used to resolve the problems arising from a past of large-scale abuses in order to hold perpetrators accountable, serve justice and achieve reconciliation****[[464]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn464%22%20%5Co%20%22)*** *"****[[465]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn465%22%20%5Co%20%22)*** *.*

Thus, transitional justice does not imply the establishment of rigid terms of temporal application, but rather the aim of the process to achieve a social transformation in order to provide a solution to serious human rights violations. In this sense, many transitional justice processes around the world have not established specific timeframes for implementation, but rather they depend on material conditions such as the achievement of reconciliation:

**(i) In Northern Ireland**, the *Good Friday Agreement* was signed on 10 April 1998 by the British and Irish governments and accepted by most Northern Irish political parties, which agreed to the disarmament of [paramilitary](http://es.wikipedia.org/wiki/Paramilitar) groups, the transformation of the [Royal Ulster Constabulary](http://es.wikipedia.org/wiki/Real_Polic%C3%ADa_del_Ulster) into a civilian police service and the release of paramilitary prisoners belonging to organisations that respected the ceasefire [[466]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn466%22%20%5Co%20%22) . In this sense, a gradual release was presented, based on the analysis of the concrete situation of each prisoner and with the commitment to collaborate with peace in their own communities [[467]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn467%22%20%5Co%20%22) .

**(ii) In South Africa,** in the early 1990s the social, political and legal system underwent a profound transformation aimed at the elimination of apartheid. In March [1992](http://es.wikipedia.org/wiki/1992), a [referendum](http://es.wikipedia.org/wiki/Refer%C3%A9ndum) was voted that empowered the government to move forward with negotiations for a new constitution with the African National Congress, the preamble of which proclaims the need to move towards conciliation to overcome the conflicts of the past [[468]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn468%22%20%5Co%20%22) . The process saw the enactment of numerous successive amendments on the promotion of national unity and reconciliation [[469] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn469%22%20%5Co%20%22) on judicial matters [[470]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn470%22%20%5Co%20%22) and on public service laws [[471]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn471%22%20%5Co%20%22) .

**(iii) Guatemala has been one of the countries that has applied the most amnesties,** with Decree Laws 33 of 1982, 27 of 1983, 8 of 1986, 71 of 1987 and 145 of 1996.

**(iv) In Peru**, the most recent amnesty laws were Decree Law No. 18692, Law No. 26,479 of 15 June 1995 and Law No. 26,492, the first aimed at participants in the uprisings of the Revolutionary Left Movement (MIR) and the other two at members of the security forces and civilians during the period of Alberto Fujimori.

**(v) In Honduras,** some amnesties were also granted, most notably through Decrees 11 of 1981, 199 of 1987 and 87 of 1991.

**(vi) El Salvador** has suffered a very prolonged armed conflict in which some amnesties have taken place, such as the one granted through Decree 805 of 1987 and the General Amnesty Law for the Consolidation of Peace, which was annulled by the Inter-American Court of Human Rights.

**(vii) In Uruguay,** multiple amnesties were approved through laws 15.737 of 1985, 15.848 of 1986 and 18.831 of 2011.

**(viii) In Mozambique,** the 1992 Comprehensive Peace Agreement was signed between the two historical guerrillas, FRELIMO and RENAMO. After two years of intense negotiations between the government and the guerrillas, Mozambique returned to peace on 4 October 1992 with the signing of the Rome Accords. This is a negotiated peace between the government and the rebels, thanks to the mediation of the Community of Sant'Egidio and a group of volunteers [[472]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn472%22%20%5Co%20%22) .

In Colombia, as long as the armed conflict continues, measures to achieve peace cannot be excluded, as long as they comply with the necessary parameters to guarantee the rights to truth, justice, reparation and non-repetition.

**D. The extension of the specific validity of the Justice and Peace Law to new facts does not affect the rights of victims.**

The legislature has the power to issue regulations on transitional justice [[473] ,](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn473%22%20%5Co%20%22) for which it can create new models or extend existing ones, as was the case with Law 104 of 1993. Law 1592 of 2012 only modified the temporal conditions for the application of Law 975 of 2005, but not its factual assumptions, as the reform left intact article 1, which states that it will be aimed at the demobilisation of organised illegal armed groups, that is, *"guerrilla or self-defence groups, or a significant and integral part of them such as blocs, fronts or other forms of these same organisations, as referred to in Law* [*782*](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=6677#0) *of 2002".*

In this sense, the transitional justice model that would be applied by virtue of the extension of the rule's validity to demobilisations after 25 July 2005 is exactly the same as that of justice and peace, which has already been approved in repeated rulings by the Constitutional Court:

**(i) Ruling C-319 of 2006** analysed whether Law 975 should have been processed through a statutory law, concluding that neither the regulation of criminal procedure, nor the classification of crimes, nor the provision of sanctions are reserved for statutory law, and also concluded that it does not contain provisions that "*(i.) affect the general structure of the administration of justice, (ii.) establish or guarantee the effectiveness of the general principles on the subject, or (iii.) develop substantial aspects of this judicial branch of public power".*

**(ii) Ruling C-370 of 2006** carried out a profound and extensive analysis of Law 975 of 2005, reviewing a lawsuit filed against Articles 2, 3, 5, 9, 10, 11.5, 13, 16, 17, 18, 19, 20, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 34, 37 paragraphs 5 and 7, 46, 47, 48, 54, 55, 58, 62, 69, 70 and 71 of Law 975 of 2005 and against the law in its entirety. This judgement lays the foundations for essential aspects of transitional justice processes:

It recognises that peace can be considered as one of the fundamental purposes of international law and as a right enshrined in the Political Constitution, and points to the importance of transitional justice for peace in a democracy with stable and solid judicial institutions.

It points to a number of important findings for the constitutionality review: **(i) it** recognises that victims or injured parties of a crime enjoy constitutional protection in the form of their rights to truth, justice and reparation, **(ii) it** indicates that the rights of victims of serious human rights abuses are closely linked to the principle of human dignity; **(iii) it** affirms that they have the right to an effective judicial remedy; **(iv)** argues that disproportionately shortened procedural terms lead to the curtailment of the defendant's right of defence and the denial of the victims' right to justice; **(v)** states that procedural rules that reduce their interest in obtaining compensation for damages at the final stage of the criminal proceedings do not respect the rights of the victims; **(vi)** points out that amnesties issued with the aim of consolidating peace have been considered compatible instruments, under certain conditions such as the cessation of hostilities, with respect for International Humanitarian Law, as long as they do not represent an obstacle to effective access to justice; **(vii)** states that criminal proceedings are not subject to any statute of limitations with regard to crimes such as the forced disappearance of persons; **(viii)** affirms that punishable acts involving serious violations of human rights and international humanitarian law and a severe threat to collective peace allow for the participation of society - through a popular actor - as a civil party in criminal proceedings, in order to satisfy the collective right to know the truth [[474]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn474%22%20%5Co%20%22) .

It recognises the possibility of applying the method of weighing peace, justice and victims' rights in transitional justice processes such as Law 975 of 2005 [[475]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn475%22%20%5Co%20%22) .

It analyses the elements of the alternative penalty and concludes that as a measure aimed at achieving peace, it is in accordance with the Constitution insofar as, as derived from Articles 3 and 24, it does not disproportionately affect the value of justice and also points out that it does not constitute a pardon or a disguised amnesty.

**(iii) Ruling C-531 of 2006** declared that it would abide by the rulings in Rulings C-319 and C-370 of 2006, declined other charges and only carried out a substantive analysis of the charge of approval of the text of the articles outside the session of the First Committee of the House of Representatives, declaring this rule to be exequitable in relation to the same.

**(iv) Judgment C-575 of 2006** declared that it would comply with Judgments C-319 and C-370 of 2006, and declared constitutional**,** on the charge analysed, **(i)** the fourth paragraph of Article 5, **(ii)** the expression *"promote"* contained in Articles 4 and 7, **(iii)** the expressions *"and inform the relatives of the relevant facts"* contained in Article 7, (**iv)** the paragraph of Article 10, (**v)** the expressions *"on the facts under investigation"* and *"to the relatives"* contained in Article 15, **(vi)** the last paragraph of Article 16, **(vii)** Article 22, **(viii)** paragraphs 1 to 4 of Article 23, **(ix)** the expressions *"obligations of moral and economic reparation" contained in* Article 24, (**x)** paragraphs 1 to 5 of Article 29, **(xi)** Article 30 for the charge relating to the alleged disregard of Article 113 of the Constitution, **(xii)** the expression *"executed"* in Article 32, **(xiii)** the expression *"shall assist"* contained in Article 34, **(xiv)** the expressions *"whenever they are threatened"* contained in numeral 38.2 of Article 37, **(xv)** the expression *"facilitate" contained in paragraph* 38.4 of Article 37, **(xvi)** Article 41, **(xvii)** the expression *"more"* contained in paragraph 45.2 of Article 44, **(xviii)** the expressions *"and their relatives"* contained in the first paragraph of Article 58, and **(xvix)** Article 64, all of Law 975 of 2005, insofar as it considered that they did not violate the victims' right to reparation [[476]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn476%22%20%5Co%20%22) .

On the other hand, the Justice and Peace Law has also been analysed by the Inter-American Commission on Human Rights, which has highlighted that despite some specific shortcomings, this law - together with Judgment C-370 of 2006 - constitutes an important step forward in the recognition of victims' rights, especially the right to truth and reparation:

*"The Justice and Peace Law entails the morigeration of the punitive power of the State as a consequence of a series of actions aimed at ensuring truth and reparation for the victims. The IACHR stresses the importance that in the application of the Law, the satisfaction of these components of truth and reparation be rigorously examined as an essential condition for the imposition of the mitigated sentence. The Justice and Peace Law must be applied as a system of useful incentives for truth, for the individualisation and punishment of those responsible, and for the reparation of the victims"* [[477].](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn477%22%20%5Co%20%22)

*"The IACHR observes that the Justice and Peace Law establishes provisions aimed at satisfying the right of victims to full reparations for the harm caused by the crimes perpetrated during the conflict. Full compliance with this aspect depends in part on the demobilized beneficiaries returning their illicitly acquired assets"*[[478]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn478%22%20%5Co%20%22) *.*

Under these considerations, although the state could create a new legal model of transitional justice for demobilised persons after 25 July 2005, it preferred to extend the validity of the Justice and Peace Law, which implies applying and improving a model whose legitimacy has already been recognised at the national and international level, and therefore the decision of a new or old system falls to the legislator, so it is not unconstitutional. In addition, it should be borne in mind that the date is being extended for the first time and is not intended to be permanent due to the aforementioned limitation on applications, which means that the requirement of the necessary temporality of transitional justice is fulfilled.

**E. The extension of the deadline for the application of Law 975 of 2005 to new facts, far from violating the constitution, makes it possible to guarantee the aims of transitional justice for a greater number of applicants and victims.**

Transitional justice is constituted by a set of processes of profound social and political transformation [[479]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn479%22%20%5Co%20%22) in which it is necessary to use a wide variety of mechanisms with the aim of achieving reconciliation and peace, realising the rights of victims to truth, justice and reparation, restoring confidence in the state and strengthening democracy, among others, that is, important constitutional values and principles [[480]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn480%22%20%5Co%20%22) that can be extended through the extension of the Justice and Peace Law:

**(i)** Firstly, it guarantees the reintegration into society of those persons who are in the same factual circumstances as those demobilised before 25 July 2005 but who, for whatever reason, were unable to carry out this procedure previously.

Reintegration is one of the purposes of the sentence in transitional justice processes applicable to those persons who, despite having committed a crime, have decided to demobilise: *"Special positive prevention****[[481]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn481%22%20%5Co%20%22)****: this purpose is achieved through re-socialisation, which is achieved through the serious reintegration of the armed actors, which can only be consolidated if the participation of the actors in society is guaranteed".*

 Therefore, the possibility of applying the Justice and Peace Law to acts committed after 25 July 2005 maximises the objectives of transitional justice by achieving the full reintegration into society of a larger number of people who meet the same requirements as the initial applicants.

**(ii)** Secondly, it increases the degree of compliance with the guarantee of prevention of actions or omissions by which victims' rights are violated or threatened.

In its first judgment [[482],](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn482%22%20%5Co%20%22) the IACHR Court related the general obligation to guarantee in Article 1.1 of the ACHR to the duty to prevent, which *"encompasses all those measures of a legal, political, administrative and cultural nature that promote the safeguarding of human rights and that ensure that possible violations of human rights are effectively considered and treated as an unlawful act which, as such, is liable to entail sanctions for those who commit them, as well as the obligation to compensate the victims for their harmful consequences"*. This is therefore a positive obligation on the part of the State that is part of the general duty to guarantee, as the Court itself has indicated that as a consequence of this obligation, States must prevent, investigate and punish any violation of the rights recognised in the Convention.

Regarding this specific obligation, mention should be made of the case of González et al (Campo Algodonero) v. Mexico (2009), in which the Court affirmed that States must adopt comprehensive measures to comply with due diligence in cases of violence against women, *"In particular, they must have an adequate legal framework for protection, with effective application of the same and with prevention policies and practices that allow them to act effectively in response to complaints. The prevention strategy must be comprehensive, that is, it must prevent risk factors and at the same time strengthen institutions so that they can provide an effective response to cases of violence against women. States must also adopt preventive measures in specific cases where it is evident that certain women and girls may be victims of violence. All this must take into account that in cases of violence against women, States have, in addition to the generic obligations contained in the American Convention, a reinforced obligation under the Convention of Belém do Pará"****[[483]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn483%22%20%5Co%20%22)***.

 Similarly, the UN Special Rapporteur on violence against women has formulated guidelines on what measures States should take to meet their international due diligence obligations in terms of prevention, which may include: ratification of international human rights instruments; constitutional guarantees on women's equality; existence of national laws and administrative sanctions that provide adequate redress for women victims of violence; policies or action plans that address the issue of violence against women; gender sensitisation of the criminal justice system and the police, accessibility and availability of support services; existence of measures to raise awareness and change discriminatory policies in the field of education and in the media; and data collection and statistics on violence against women [[484]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn484%22%20%5Co%20%22) .

 In this sense, it should be noted that the extension of the Justice and Peace Law will allow for the demobilisation of more individuals and groups and thus prevent them from continuing to commit crimes.

 In this regard, it should be noted that the Inter-American Court of Human Rights itself, in the judgment in the case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia, pointed out that the application of the Justice and Peace Law and the demobilisation of the paramilitaries has boosted investigations into human rights violations, which has also produced valuable information that has been decisive in the advancement of other proceedings:

*“403. With regard to the investigations of members of paramilitary groups, the Court notes that although the facts submitted for the Court's consideration took place more than 15 years ago, it is only since the demobilisation of paramilitary and guerrilla groups and the subsequent enactment of the Justice and Peace Law that investigations into crimes committed by their members have gained momentum.*

*With regard to these investigations of members of paramilitary groups, there are two distinct periods in the development of the investigation. The first, between 1997 and approximately 2004, when the demobilisation process began; and the second, between 2004 and the present day. On the one hand, with respect to the first period, the omission of not having carried out investigations until more than seven years later is clear and, therefore, the notable excess of the reasonable period of time. However, from the beginning of the demobilisation of illegal armed groups, and mainly with the entry into force of the Justice and Peace Law, the State has carried out uninterrupted investigations to determine the responsibility of paramilitaries in human rights violations, in general, and in the present case, in particular. Although the proceedings have not been concluded, the State has informed this Court that the free versions are being verified, that two paramilitaries have been subjected to an indictment hearing, and that most of the accused have been deprived of their liberty, awaiting sentencing, since the beginning of their demobilization, several years ago. Likewise, the actions carried out by the Attorney General's Office since 2004 have produced valuable information that has been decisive in advancing other proceedings related to the facts of this case, and, according to expert witness Ciurlizza and informant Samper, have been decisive in revealing information related to other judicial proceedings"****[[485]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn485%22%20%5Co%20%22)*** *.*

**F. The extension of the term of the Justice and Peace Law allows for the definitive clarification of the legal situation and the reintegration of all persons who have demobilised after the entry into force of Law 975 of 2005.**

The extension of the term of the Justice and Peace Law for events after 25 July 2005 allows for the definitive clarification of the legal situation of the more than 20,000 people who demobilised after 25 July 2005, to whom the Justice and Peace Law procedure can be applied directly, which can facilitate their reintegration into society.

The temporal validity of Law 975 of 2005 has been the subject of many discussions to the point that it was one of the main arguments for its reform [[486]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn486%22%20%5Co%20%22) . The problem is that thousands of individual and collective demobilisations took place after Law 975 of 2005 came into force, i.e. 25 July 2005, as the following tables show:

**Collective demobilisations** **[[487]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn487%22%20%5Co%20%22)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **Name of demobilised bloc** | **Date** | **Number of demobilised persons** | **Total** |
| 2003 | Cacique Nutibara Bloc | November 25 | 868 | 1035 |
| 2004 | Ortega's self-defence groups | December 07 |  | 2645 |
|   | Banana Block | November 25 | 451 |   |
|   | Autodefensas del Sur del Magdalena | December 4 |  |   |
|   | Cundinamarca Block | December 9 | 148 |   |
|   | Catatumbo Bloc | December 10 | 1434 |   |
|   | Calima Block | December 18 | 564 |   |
| 2005 | Cordoba Block | January 18 | 925 | 10.417 |
|   | South Western Antioquia Block | January 30 |  |   |
|   | Mojana Block | February 2 | 109 |   |
|   | Heroes of Tolová Block | June 15 | 464 |   |
|   | Montes de María Block | July 14 | 594 |   |
|   | Libertadores del Sur Bloc | July 30 | 689 |   |
|   | Heroes of Granada Block | August 1 | 2033 |   |
|   | Autodefensas Campesinas de Meta y Vichada (Peasant Self-Defence Groups of Meta and Vichada) | August 6 | 209 |   |
|   | Pacific Block | August 23rd | 358 |   |
|   | Centaurs Block | September 3 | 1134 |   |
|   | North-western Antioquia Bloc | September 11 | 222 |   |
|   | BCB Vichada Front | September 24 | 325 |   |
|   | Tolima Block | October 22nd |  |   |
|   | Northeast Antioquia, Bajo Cauca and Magdalena Medio Fronts | December 12 | 1922 |   |
|   | Guática Martyrs Front | December 15 | 552 |   |
|   | Victors of Arauca Bloc | December 23rd | 548 |   |
| 2006 | Miners Block | January 20 | 2789 | 17.573 |
|   | Autodefensas Campesinas de Puerto Boyacá (Peasant Self-Defence Forces of Puerto Boyacá) | January 28th | 742 |   |
|   | Central Bolivar Block - santa Rosa del Sur | January 31 | 2519 |   |
|   | Tayrona Resistance Front | February 3 | 1166 |   |
|   | Autodefensas Campesinas de Magdalena Medio (Peasant Self-Defence Groups of Magdalena Medio) | February 7 | 990 |   |
|   | The Caguan Proceres, Heroes de los Andaquies and Heroes de Florencia Fronts | February 15 | 552 |   |
|   | Southern Putumayo Front | March 1 | 504 |   |
|   | Front Julio Peinado Becerra | March 4 | 251 |   |
|   | Northern Block (El Copey - Chimila) | March 8 | 2215 |   |
|   | Northern Block (La Mesa - Valledupar) | March 10 | 2544 |   |
|   | Heroes del Llano and Heroes de Guaviare Fronts | April 11 | 1765 |   |
|   | Waterfront | April 12 | 309 |   |
|   | Pavarandó and Dabeiba Fronts | April 30 | 484 |   |
|   | Middle Northern Front Salaqui | August 16 | 743 |   |
|   | TOTAL DEMOBILISED |   |   | 31.671 |

**Certified individual demobilisations**

**by year 2003 - November 2012** **[[488]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn488%22%20%5Co%20%22) .**

|  |  |
| --- | --- |
| **YEAR** | **Number of demobilised combatants** |
| 2002 | 730 |
| 2003 | 2.638 |
| 2004 | 2.720 |
| 2005 | 2.501 |
| 2006 | 2.556 |
| 2007 | 2.934 |
| 2008 | 2.855 |
| 2009 | 2.792 |
| 2010 | 2.228 |
| 2011 | 1.354 |
| 2012 | 780 |
| Total | 23.354 |

The existence of demobilisations after 25 July 2005 is a problem in itself, regardless of whether or not the subject has committed specific crimes, as his or her mere membership of the group implies a conspiracy to commit a crime, and he or she would therefore automatically be considered a recidivist.

Thus, in Colombia, more than 20,000 people have demobilised after Law 975 of 2005 to whom the Justice and Peace Law does not apply, and multiple options have been sought, such as the issuing of Law 1424 of 2010, which provides a temporary solution by granting special benefits such as the suspension of the arrest warrant or the conditional suspension of the execution of the sentence, but which does not provide a definitive solution applicable to all these people, clearly affecting the principle of legitimate confidence of the State.

**8.3.4.5 Conclusion on the charge**

Law 1592 of 2012 restricted the possibility of new applications to events particularly enshrined in Article 37 and excludes the possibility of new collective demobilisations, so it cannot be considered to have indefinitely prolonged its scope, the change made refers specifically to new events that have occurred since 25 July 2005, which is constitutional for the following reasons:

The extension of the framework for transitional justice measures has been fully accepted in Colombia.

The Constitutional Court has admitted that the determination of the validity of the Justice and Peace Law is a power of the legislator.

The extension of the term of validity of the Justice and Peace Law in the face of new facts does not imply a disregard for the temporality of transitional justice.

The extension of the specific validity of the Justice and Peace Law in the face of new facts does not affect the rights of victims.

The extension of the deadline for the application of Law 975 of 2005 to new facts, far from violating the constitution, makes it possible to guarantee the aims of transitional justice for a greater number of applicants and victims.

The extension of the term of the Justice and Peace Law allows for the definitive clarification of the legal situation and reintegration of all persons who demobilised after Law 975 of 2005 came into force.

The extension of the term of the Justice and Peace Law in the face of new facts does not affect the application of the Legal Framework for Peace.

By virtue of the foregoing, the challenged expressions of Articles 36 and 37 of Law 1592 of 2012 will be declared constitutional on the grounds indicated by the plaintiffs.

**9. SUMMARY**

For the sake of clarity, the Court will regroup its conclusions, based on three thematic axes: (i) criminal investigation management techniques (prioritisation); (ii) some procedural aspects of Law 1592 of 2012; and (iii) charges related to victims' rights.

**9.1 PRIORITISATION**

**9.1.1 Resolution of the global charge of unconstitutionality against prioritisation.**

The Court concludes that the overall charge of unconstitutionality directed against the adoption of the prioritisation technique, in the sense that it violated the State's duty to carry out a serious, impartial investigation within a reasonable period of time, as well as the right to equality of the victims of non-prioritised cases, does not succeed. This was for the following reasons:

Prioritisation is a criminal policy instrument that allows not only to rationalise the order in which citizens' demands for justice are dealt with, through the adoption of transparent criteria (i.e. objective, subjective and complementary), but also to deal much more efficiently and effectively with the investigation of complex criminal phenomena, through the use of criminal analysis techniques.

Hence, prioritisation is used, with various nuances and particularities, in different scenarios: (i) in some countries, prioritisation has focused on the prosecution of organised crime, and has even been used to prevent the justice administration system from becoming congested with complaints of conduct that is not criminally relevant; (ii) in those States that exercise universal criminal jurisdiction (e.g., Canada, France, Spain, etc.), given that they deal with cases linked to very diverse and distant realities, prioritisation has been used to prevent the administration of justice from becoming congested with complaints of conduct that is not criminally relevant. Canada, France, Spain, etc.), given that they deal with matters linked to very diverse and distant realities, prioritisation helps to contextualise investigations and to decide the logical order they should follow; (iii) in situations of transitional justice, prioritisation helps to focus investigative efforts on those most responsible and the most serious crimes; and (iv) international criminal bodies use it, admitting that they do not have the logistical capacity to prosecute all the perpetrators of international crimes over whom they can exercise their jurisdiction.

In this sense, the use of prioritisation does not constitute any violation of the state's duty to carry out a serious, impartial and timely investigation.

Similarly, the Court decided that the charge of unconstitutionality for violation of the right to equality, in relation to the non-prioritised cases, was not successful for the following main reasons: (i) the application of prioritisation is based on the observation that, objectively, not all victims are the same; (ii) the crimes cause varying degrees of impact on society, and (iii) the perpetrators are different (e.g. individual criminals, organised crime, illegal armed groups, State agents, etc.). In conclusion, prioritisation is based on a criterion of material equality. Likewise, it does not entail a renunciation of the state's right to prosecute, but rather its rationalisation. In effect, from a theoretical point of view, prioritisation is a criminal investigation management technique, which consists of grouping individual cases according to criminal patterns, constructed from the cross-referencing of various variables (time, geography, quality of the victim, etc.), and thus concentrating investigative efforts on certain suspects or criminal organisations.

**9.1.2 The various charges of unconstitutionality against certain articles of Law 1592 providing for the use of prioritisation.**

The Constitutional Court has not only limited itself to resolving the global charge of unconstitutionality raised by the plaintiffs against prioritisation, but has also examined the constitutionality of each of the articles that provide for it in the text of Law 1592 of 2012. The purpose of this is to determine whether, specifically, the expressions and articles accused by the citizens entail a disregard for the State's duty to carry out a serious and impartial investigation within a reasonable period of time and whether, similarly, the right to equality of the victims of non-prioritised cases is disregarded.

In this regard, this Corporation has examined the references made to the concept of prioritisation and its criteria in the provisions of Law 1592 of 2012 referring to: (i) interpretation and application of the law (art.1); differential approach (art.3); clarification of the truth (art.10) and of the phenomenon of land dispossession and cooperation between the Attorney General's Office and the Land Restitution Unit (art.11); competences of the Attorney General's Office (art.12); criteria for prioritisation of cases (art.13); free version and confession (art.14); and acceptance of charges and prioritisation (art.18).

After examining each of the uses that the legislator gave to prioritisation throughout Law 1592 of 2012, the Court concludes that the charges of unconstitutionality are not likely to succeed.

Finally, in relation to the expression "*victims corresponding to the pattern of macro-criminality with prioritisation criteria*", in paragraph 5 of article 23 of Law 1592 of 2012, the Court finds that the phenomenon of constitutional res judicata has been established, as in Judgement C-286 of 2014, article 23 of the aforementioned law was declared unenforceable.

**9.2. SOME PROCEDURAL ASPECTS OF LAW 1592 OF 2012.**

Initially, the plaintiffs raised seven (7) charges of unconstitutionality related to various procedural aspects of Law 1592 of 2012.

After analysing the fulfilment of the requirements for a charge of unconstitutionality, the Court concludes that: (i) in relation to article 11 of Law 1592 of 2012 (cooperation with ordinary criminal proceedings), the charge raised lacks certainty, a reason that prevents an examination of the merits, and consequently, an inhibitory ruling is appropriate; and (ii) with regard to the exclusion of the extraordinary appeal in cassation of paragraph 3 of article 27 of Law 1592 of 2012, the phenomenon of res judicata materialis is configured.

Hence, this Corporation only examines the merits of the four (4) charges of unconstitutionality that were brought in relation to some procedural aspects of Law 1592 of 2012.

**9.2.1. First charge: he warns that the joint or collective versiones libres (paragraph of Article 14 of Law 1592 of 2012) violate the principle of individual criminal responsibility and the victims' right to truth and justice.**

The Court considers that the charge of unconstitutionality is not likely to succeed because: (i) the accused norms do not exempt the State from its duty to prove the criminal responsibility of each postulate in the commission of certain crimes, in other words, a system of collective criminal responsibility was not established; (ii) the holding of joint or collective versiones libres allows for a better reconstruction of the context of the commission of the crimes of the illegal armed group; and (iii) neither are the rights of the victims to truth and justice ignored, as the versiones libres will be compared with other evidence in the case file or that is subsequently collected.

**9.2.2 Second charge. The petitioner claims that the regulation of the concentrated hearing and the early termination of the proceedings (Article 18, paragraph 4 and paragraph 2, and the expression *"concentrated"* in Article 22 of Law 1592 of 2012) violate the right of victims to participate in the proceedings.**

The Court considers that the figure of the concentrated hearing in the Justice and Peace process does not disregard the rights of the victims to participate in the process, as it is a measure aimed at eliminating unnecessary procedural formalities and speeding up the actions of prosecutors and judges, with a view to obtaining sentences in less time. The same is true of the early termination of the process, as the accused admit their responsibility in the commission of innumerable crimes, through the technique of macro-criminal patterns.

The Court considers that the charge of unconstitutionality is not likely to succeed, for the following reasons:

The acceptance of charges has two prerequisites that are fundamental to guarantee that the State collects sufficient information about the acts carried out by the accused: (i) it requires that a free and full version of the facts has been previously presented by the defendant; and (ii) that the Prosecutor's Office has previously charged the demobilised person.

The Constitutional Court has declared, on multiple occasions, the constitutionality of the early sentencing mechanism.

In order to safeguard the special duties of the state with regard to the truth in cases of serious violations of human rights and breaches of international humanitarian law, the law contemplates the requirement that the pattern of macro-criminality must have been previously revealed.

Finally, the early termination, regulated in article 18 of Law 1592 of 2012, does not imply that the individual facts admitted by the defendant are not investigated, but rather that the macro-criminal pattern, which explains and comprises the commission of those facts, has already been revealed in the macro-process and has been declared proven in a judicial sentence, which is why they do not have to be investigated again, as the phenomenon of res judicata has operated.

In conclusion, the Court will declare the 4th subsection and paragraph of Article 18 and the expression "*concentrated*" of Article 22 of Law 1592 of 2012 to be constitutional on the charges analysed.

**9.2.3 Third charge: This is aimed at establishing that the substitution of the security measure and the conditional suspension of the execution of the sentence constitute "privileges" for the applicants, to the detriment of the rights of the victims (Articles 19 and 20 of Law 1592 of 2012).**

The Court considers that, with regard to the substitution of the security measure, the legislature acted within its sphere of normative configuration. In effect, taking into account political-criminal considerations, it established a special instrument that would motivate the demobilised persons to contribute to the re-establishment of the rights of the victims and that, in turn, would ensure that they would not continue to commit crimes. This was accompanied by strong restrictions and conditions which, if not met, would lead to the revocation of the benefit.

Similarly, in relation to the figure of the conditional suspension of the execution of the sentence, the Court considers that the legislator has acted within its margin of normative configuration, without disregarding the rights of the victims to truth and justice. This is for the following reasons:

In the first place, the conditional suspension of the execution of the sentence, in the Justice and Peace process, makes it possible to guarantee the aims of re-socialisation and reintegration inherent to a transitional justice process. In the specific case of Article 18 B, the conditional suspension of the execution of the sentence is precisely aimed at guaranteeing re-socialisation and reintegration.

Secondly, the suspension of the execution of the sentence, contemplated in Article 20 of Law 1592 of 2012, is a measure that is fully consistent with the system of alternative sentence duration of the Justice and Peace Law declared constitutional by the Constitutional Court in Decision C-370 of 2006, as it requires that the applicant has been deprived of liberty for at least 8 years for crimes committed during and on the occasion of his or her membership of an organised armed group operating outside the law.

Thirdly, the law complies with the principle of prevention, as it provides for a broad system of monitoring of the applicants who are granted conditional suspension of the sentence. In this sense, the measure may be revoked in certain cases, fully guaranteeing the collaboration of the demobilised person with the safeguarding of victims' rights and the non-repetition of punishable conduct.

**9.2.4 Fourth charge: The petitioner argues that the extradition of Justice and Peace applicants (the challenged expressions of Article 31 of Law 1592 of 2012) violates the victims' rights to truth and justice.**

The Court considers that the plaintiffs are not right in the sense that the accused norm would violate the victims' rights to truth and justice, concluding that Article 31 of Law 1592 of 2012 regulates *in extenso* the duties of the Colombian State in relation to extradited applicants. In this regard, the accused norm provides that the Colombian authorities must adopt measures aimed at ensuring that extradited applicants: (i) continue to cooperate with justice; (ii) reveal the motives and circumstances in which the conduct under investigation was committed; (iii) facilitate that the assets handed over, offered or denounced, are seized and destined for the Fund for the Reparation of Victims.

In conclusion, the Court will declare the expressions "*de los postulados extraditados*", "*por efecto de la extradición concedida*", "*los postulados extraditados*" and "*por los postulados extraditados*" of Article 31 of Law 1592 of 2012 to be constitutional on the grounds analysed.

**9.3 SOME CHARGES RAISED ON VICTIMS' RIGHTS**

With regard to the violation of victims' rights by certain provisions contained in Law 1592 of 2015, the plaintiffs initially raised eleven (11) charges of unconstitutionality.

After having analysed the fulfilment of the requirements to establish charges of unconstitutionality, the Court concludes: (i) in relation to the normative segments of Articles 3 and 10 of Law 1592 of 2012, the charge raised does not meet the requirement of certainty, a reason that prevents an examination of the merits; (ii) with regard to the expression "The definition of these rights is developed in Law 1448 of 2011", of Article 4 of Law 1592 of 2012, the charge lacks certainty, sufficiency, relevance and clarity; (iii) with regard to the segment of Article 14 of Law 1592 of 2012 (referral of the version given by the postulated person to the National Unit of Prosecutors for Justice and Peace), the charge is not true, and as a consequence, this Corporation abstains from examining the merits of the case; (iv) with regard to the limitations on the functions of the Ombudsman's Office, set out in paragraph 1 of Article 23 of Law 1592 of 2012, it notes that the phenomenon of constitutional res judicata operates; (v) with regard to the expression "*and until the term of the ordinary sentence established therein*" in Article 26 of Law 1592 of 2012, the charge made is not true, which is why it prevents the examination of the merits from proceeding; (vi) with regard to the change of the incident of integral reparation for the incident of identification of damages incorporated by Articles 23, 24, 40 and 41 of Law 1592 of 2012, the phenomenon of res judicata has been established; and (vii) in relation to Article 29 of Law 1592 of 2012, with the declaration of the unenforceability of Article 41 of Law 1592 of 2012, in Judgment C-286 of 2014, the charge is unfounded and in this sense lacks certainty.

Therefore, the Court will only examine the merits of four (4) charges of unconstitutionality.

**9.3.1.2. The referral of Law 1592 of 2012 to the land restitution procedure of Law 1448 of 2011**

Secondly, with regard to the reference made in the articles of Law 1592 of 2012 to the land restitution procedure regulated in Law 1448 of 2011, the Court analyses each of the expressions being challenged, concluding:

**A. With regard to the normative segments of Articles 30 and 38 of Law 1592 of 2012**

With regard to the normative segments "*The legal and material restitution of land to the dispossessed and displaced will be carried out through the process established in Law 1448 of 2011 and the norms that modify, substitute or add to it"* and "*with the aim of integrating the measures of transitional justice, there will be no direct restitution in the development of the judicial processes that this law deals with"* of Article 30, *and "exceptional"* and "*In other cases, the provisions of Law 1448 of 2011 shall be observed"* of Article 38 of Law 1592 of 2012*, which* refer property restitution processes to the provisions of Law 1448 of 2011, the Chamber considers that the rights of the victims have not been violated for the following reasons:

**(i)** Although, by virtue of the norm being challenged, the land restitution process must be carried out outside the penal process, this does not imply that it must be carried out after the justice and peace process, as they are absolutely independent, and therefore, the land restitution process could even be initiated first.

**(ii)** The particularities of the transitional criminal process, in which it is necessary to establish the responsibility of all perpetrators of massive human rights violations, mean that it can last longer than the land restitution process.

**(iii)** Restitution of property has traditionally been dealt with in civil proceedings, so the rule simply responds to the nature of these proceedings.

**(iv)** Property restitution proceedings have a series of circumstances outside the criminal process that may make it convenient to process them outside the criminal process. This is because (i) the current ownership of the property must be determined; (ii) there may be events in which it can be demonstrated that restitution is appropriate but not the crime; and (iii) there may be opposition from bona fide third parties who have no connection with the dispossession.

**(v)** The land restitution procedure, provided for in Law 1592 of 2012, is not an ordinary process, but a special procedure with multiple tools to ensure its effectiveness.

**B. In relation to Article 8 of Law 1592 of 2012**

Article 8 of Law 1592 of 2012 states that the assets handed over by the postulados to contribute to the reparation of victims should be destined to a common fund to develop the programmes of Law 1448 of 2011. This provision allows the assets of demobilised combatants to be transferred to the Special Administrative Unit for the Attention and Comprehensive Reparation of Victims, and/or to the Special Administrative Unit for the Management of Restitution of Divested Lands, despite the fact that the reparation of victims of the justice and peace processes is no longer exclusively administrative but judicial, by virtue of what was decided by this Corporation in Rulings C-180 and C-286 of 2014.

The Court considers that this regulation leaves the victims in the justice and peace processes without resources, seriously affecting their right to reparation. Therefore, it declares the expression "*These assets will be placed at the disposal of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land Taken from Victims to be used for the comprehensive reparation and land restitution programmes referred to in Law 1448 of 2011, as appropriate, to* be unconstitutional. *Victims who are accredited in special justice and peace criminal proceedings will have preferential access to these programmes.*

The declaration of partial unenforceability of Article 8 of Law 1592 of 2012 is consistent with the Court's decision in Judgment C-180 of 2014:

*the normative paragraph "and shall forward the file to the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land for the inclusion of the victims in the corresponding registers for preferential access to the programmes for comprehensive reparation and land restitution referred to in Law 1448 of 2011 to which they are entitled" of the fifth paragraph of Article 23 and the second paragraph of Article 24 of Law 1592 of 2012 are unconstitutional. of Article 23(5) and Article 24(2) of Law 1592 of 2012 are unconstitutional because they prevent the Chamber of the High Court of the Judicial District from adopting reparation measures relating to rehabilitation, restitution, compensation, satisfaction and guarantees of non-repetition, in favour of the victims, which ignores the fact that by virtue of Article 2 of the Political Constitution, it is the responsibility of the authorities to guarantee the effectiveness of the rights of the victims and in accordance with this and by mandate of paragraphs 6 and 7 of Article 250 of the Political Constitution, it is the responsibility of the criminal judge of knowledge to adopt in a concrete manner the measures of comprehensive reparation within the respective process.”*

In short, this declaration of unenforceability, rather than contradicting the precedents set in Rulings C-180 and 286 of 2014, complements them, giving greater internal coherence to the system of comprehensive reparation for the victims of the internal armed conflict.

**C. Regarding the normative segment of Article 11 of Law 1592 of 2012**

Likewise, this Corporation declares the constitutionality of the expression "*shall place it at the disposal of the Special Administrative Unit for the Management of the Restitution of Land Restitution, with the aim of contributing to the procedures that it carries out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011"* of Article 11 of Law 1592 of 2012, considering that they allow for harmonious and effective collaboration between the authorities participating in the justice and peace process and those in charge of the restitution of dispossessed or abandoned land, which develops the principles of public service and does not violate the rights of the victims.

**D. In relation to paragraphs 2 and 3 of Article 16 of Law 1592 of 2012**

With regard to paragraph 2 of Article 16 of Law 1592 of 2012, the Court declares it to be executory, as far from generating negative consequences for the victims, it allows for the safeguarding of their rights through two mechanisms that prevent the fraudulent disposal of the property, guaranteeing that it is returned to the victims: **(i) it allows** that immediately it is identified that an asset belongs to a demobilised person, precautionary measures are dictated over it, with the aim of preventing its alienation, as it must be destined to repair the victims; and **(ii) it** facilitates that if the asset has been requested in a restitution process it is immediately transferred to the Fund of the Special Administrative Unit for the Management of the Restitution of Dispossessed Lands, in order to initiate the restitution process.

Paragraph 3 of the same Article 16 allows for the transfer of assets to the Fund of the Special Administrative Unit for the Restitution of Land Restitution in those events in which there is a request for restitution, immediately after a precautionary measure has been decreed, which aims to guarantee the restitution of the assets and thus the right to reparation of the victims, avoiding unjustified delays.

**E. With regard to the contested expression of Article 27 of Law 1592 of 2012**

The Court considers that the expression in Article 27 of Law 1592 of 2012 which establishes that ***"****the Special Administrative Unit for the Attention and Integral Reparation of Victims may appeal decisions related to the assets administered by the Fund for the Reparation of Victims" is in* accordance with the Constitution. This provision allows for appeals by the Special Administrative Unit, in compliance with its legal duty to ensure the rights of victims.

**F. With regard to Article 32 of Law 1592 of 2012**

Article 32 of Law 1592 of 2012, for its part, states that *"In order to contribute to the satisfaction of the victims' right to comprehensive reparation, the departmental assemblies and municipal or district councils shall implement programmes for the remission and compensation of taxes that affect real estate destined for reparation or restitution within the framework of Law 1448 of 2011" (the accused part is underlined).* This Corporation considers that this segment of the law does not affect the right of victims to reparation, because, on the contrary, it allows for the clearing of tax debts on real estate subject to restitution or reparation processes.

**G. Regarding Article 39 of Law 1592 of 2012**

With regard to the charges raised by the plaintiffs that the reference in Law 1592 of 2012 to Law 1448 of 2011 violates the rights of the victims, the Court concluded that the expressions *"may"* and "*as provided in Article 97 of Law 1448 of 2011, from the Fund of the Special Administrative Unit for the Management of Restitution of Land Restitution"* in article 39 of Law 1592 of 2012 are constitutional, as they allow for the application of the presumptions of dispossession provided for in article 77 of Law 1448 of 2011 and the figure of compensation in kind; two elements that it deems necessary to guarantee the victims' right to reparation.

**9.3.2 Second charge: The failure to require that the assets offered by the applicants to the Justice and Peace Law have a reparation vocation, as well as the limits on the possibility for victims to lodge appeals and intervene in hearings related to this issue, violates their right to reparation**.

The plaintiffs consider that the challenged expressions of articles 5, 7, 8 and 17 of Law 1592 of 2012 do not require the applicants to denounce, offer and deliver goods with a reparation vocation, which would affect the duties of the applicants and the right to reparation of the victims.

**9.3.2.1. In relation to the normative segments of Article 5 of Law 1592 of 2012**

The Court considers that the expression *"when it is verified that the postulated person has not delivered, offered or denounced assets acquired by him or by the organised illegal armed group during and on the occasion of his membership of the same, directly or through an intermediary*", contemplated in numeral 3 of article 5 of Law 1592 of 2012, is constitutional, in relation to the charge regarding the reparatory vocation of the assets. It considers that, although this numeral only allows the sanctioning of events in which assets acquired during and on the occasion of their membership of the group are not handed over, offered or reported, there are other grounds in Article 5 of Law 1592 of 2012, which lead to the exclusion from justice and peace of those demobilised combatants who: (i) fraudulently hand over assets that lack a reparation vocation; or (ii) who, having the obligation to hand over one that does have a reparation vocation, fail to do so.

On the other hand, after studying the expressions contained in numeral 6 of Article 5 of Law 1592 of 2012, the Court considers that not allowing the victims to request a hearing for the termination of the justice and peace process, when the applicants have incurred in the grounds set out in the law, affects their rights to truth, justice and reparation. Consequently, it declares the conditional executory validity of the challenged expressions, on the understanding that the victims will also be able to request the hearing for the termination of the justice and peace process.

This Corporation declares the constitutionality of the expression *"the preclusion of the investigation as a consequence of the extinction of the criminal action",* of paragraph 2 of article 5 of Law 1592 of 2012, given that in the ordinary criminal system, once the criminal action has been extinguished, the process is terminated; and if there is no sentence, the appropriate decision will be to declare the preclusion, as it would operate in the ordinary criminal system, demonstrating that there is no violation of the rights of the victims.

With regard to the expression "*after the delivery of the assets",* contemplated in paragraph 3 of Article 5 of Law 1592 of 2012, the Constitutional Court concludes that it is executory, on the understanding that the process may also continue with regard to the assets offered or denounced by the demobilised person, if they have not yet been delivered. This is because the law did not indicate what happens when the death occurs after the offer, or the denunciation of the assets, but not their delivery, affecting the rights of the victims, since if the rules of the criminal process are followed, the process would have to conclude without achieving effective reparation.

 **9.3.2.2. With regard to the contested expressions of Article 7 of Law 1592 of 2012**

The challenged expression of paragraph 4 of Article 7 of Law 1592 of 2012 does not require that the information provided by the victims be taken into account in order to decide on the adoption of precautionary measures, thereby affecting their rights. By virtue of the foregoing, it was declared conditionally executory on the understanding that the information provided by the victims must also be taken into account.

Likewise, the conditional exequibilidad of the paragraph of article 7 of Law 1592 of 2012 was declared conditional, on the understanding that the lack of reparation could not be attributable to the postulate's intention to defraud the rights of the victims and that they can also denounce assets belonging to the postulates or to third parties to whom they have been illegally transferred.

**9.3.2.3. In relation to Article 17 of Law 1592 of 2012**

The Court declares the constitutionality of the expression "*If the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure",* contemplated in article 17 of Law 1592 of 2012, on the understanding that the victims may participate in the incident, given that the regulation does not express at any point the possibility of the victims intervening in it, which should be completely clear, as they have a direct claim for compensation and the right to avoid the existence of fraud in the transfer of assets to third parties.

**9.3.3 Third charge: The limitation of resources in the Justice and Peace process violates the victims' rights to participation, due process and effective access to justice.**

This Corporation concludes that the limitation of remedies in the Justice and Peace process established by the expressions *"only"* and *"substantive"* in the second paragraph *"other"* and *"only"* in the third paragraph of Article 27 of Law 1592 of 2012, is proportionate and does not violate due process, as it is fully justified by the purpose of speeding up the Justice and Peace process. On the other hand, in relation to paragraph 3 of Article 27 of Law 1592 of 2012, it was considered that there is res judicata, as the same normative content enshrined in that provision was declared constitutional in Judgment C-370 of 2006 on the same charge raised by the plaintiffs, without there being additional arguments that justify analysing it again.

**9.3.4 Fourth charge: the new applications and the temporary application of Law 975 of 2005 violate the victims' rights to peace, truth, justice, reparation and guarantees of non-repetition.**

Law 1592 of 2012 restricted the possibility of new applications to events enshrined in Article 37, and excluded the possibility of new collective demobilisations. This provision cannot be considered to have indefinitely prolonged its scope, as the change made specifically refers to new events that have occurred since 25 July 2005. Consequently, the Court declares articles 36 and 37 of Law 1592 of 2012 to be constitutional, since:

The extension of the framework of transitional justice measures has been fully accepted in Colombia [[489]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn489%22%20%5Co%20%22) .

This Corporation has admitted that the determination of the validity of the Justice and Peace Law is a power of the legislator [[490]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn490%22%20%5Co%20%22) .

The extension of the term of validity of the Justice and Peace Law, in the face of new facts, does not imply a disregard for the temporality of transitional justice.

The extension of the specific validity of the Justice and Peace Law to new facts does not affect the rights of victims.

The extension of the deadline for the application of Law 975 of 2005, in the face of new facts, far from violating the Constitution, makes it possible to guarantee the aims of transitional justice, with respect to a greater number of applicants and victims.

The extension of the term of the Justice and Peace Law allows for the definitive clarification of the legal situation and the reintegration of all persons who demobilised after Law 975 of 2005 came into force.

The extension of the term of the Justice and Peace Law in the face of new facts does not affect the application of the Legal Framework for Peace.

**III. DECISION**

For all of the above reasons, this Corporation, exercising the administration of justice, in the name of the people and by mandate of the Constitution,

**RESOLVES**

**FIRST.-** To declare the following expressions and provisions related to the application of the prioritisation criteria to be **EXCEQUENT on the** grounds of the charges analysed:

The expression "*applying prioritisation criteria in the investigation and prosecution of such conduct"* in Article 1 of Law 1592 of 2012.

The expression "*without prejudice to the application of prioritisation criteria"* in Article 3 of Law 1592 of 2012.

The expression "*The investigation will be carried out in accordance with the prioritisation criteria determined by the Attorney General of the Nation in accordance with Article 16A of this law"* in Article 10 of Law 1592 of 2012.

The expression "*and in accordance with the prioritisation criteria"* in Article 11 of Law 1592 of 2012.

The expression *"in accordance with the prioritisation criteria established by the Attorney General of the Nation in accordance with Article 16A of this law"* in Article 12 of Law 1592 of 2012.

The expressions "*prioritisation"* in the second paragraph and *"prioritisation"* in the third paragraph and "*concentrating investigative efforts on those most responsible"* in Article 13 of Law 1592 of 2012.

The expression *"in accordance with the prioritisation criteria established by the Attorney General of the Nation"* in Article 14 of Law 1592 of 2012.

Paragraph of Article 18 of Law 1592 of 2012.

**SECOND.-** To declare itself **INHIBITED** to issue a ruling on the merits, in relation to the expression: "*shall place it at the disposal of the Special Administrative Unit for the Management of the Restitution of Dispossessed Lands, in order to contribute to the procedures that it carries out for the restitution of dispossessed or abandoned lands in accordance with the procedures established in Law 1448 of 2011*", of Article 11 of Law 1592 of 2012, due to lack of sufficient grounds for the claim.

**THIRD.-** To declare Article 23 of Law 1592 of 2012, in relation to the expression "*the victims corresponding to the pattern of macro-criminality with prioritisation criteria*", of paragraph 5 of Article 23 of Law 1592 of 2012, to be **INTEGRAL.**

**FOURTH:** Declare that the decision C-370 of 2006, which declared paragraph 3 of Article 26 of Law 975 of 2005, in relation to paragraph 3 of Article 27 of Law 1592 of 2012, to be constitutional, **be upheld.**

**FIFTH.-** To declare the expressions "*collectively or jointly*" and "in *a collective manner*" in the paragraph of Article 14 of Law 1592 of 2012 to be **EXQUALIFIED, on the** grounds analysed.

**SIXTH.-** To declare Article 18, paragraph 4 and subparagraph 4 and the expression "*concentrated*" of Article 22 of Law 1592 of 2012 to be **EXECUTIVE,** on the grounds analysed.

**SEVENTH.-** Declare Articles 19 and 20 of Law 1592 of 2012 to be **EXEQUIBLES**, on the grounds analysed.

**EIGHTH.-** To declare the expressions "*de los postulados extraditados*", "*por efecto de la extradición concedida*", "*los postulados extraditados*" and "*por los postulados extraditados*" of Article 31 of Law 1592 of 2012 to be **EXQUALIFIED**, on the grounds analysed.

**NINTH.-** To declare that **it is INHIBITED** to issue a ruling on the merits in relation to the expressions: *"when the risk is generated on the occasion of their participation in the special judicial process referred to in this law*" in Article 3 and *"in the events in which it is applicable"* in Article 10 of Law 1592 of 2012, due to an ineffective claim.

**TENTH.** Declare that it is **INHIBITED from ruling** on the merits in relation to the regulatory segment: "The *version given by the demobilised person and the other actions carried out in the demobilisation process shall be immediately made available to the National Prosecutor's Office for Justice and Peace so that the delegated prosecutor and the Judicial Police assigned to the case, in accordance with the prioritisation criteria established by the Attorney General of the Nation, to prepare and develop the methodological programme to initiate the investigation, verify the veracity of the information provided and clarify the patterns and contexts of criminality and victimisation",* of Article 14 of Law 1592 of 2012, due to lack of sufficient grounds.

**Eleventh.- To** declare Articles 23, 24, 40 and 41 of Law 1592 of 2012 to be **unconstitutional.**

**TWELFTH.-** To declare that **it is INHIBITED** to rule on the merits in relation to the expression: "*and up to the term of the ordinary sentence established therein*" of Article 26 of Law 1592 of 2012, due to an ineffective claim.

**THIRTEENTH.-** To declare that **it is INHIBITED** to rule on the merits in relation to Article 29 of Law 1592 of 2012, due to an ineffective claim.

**FOURTEENTH -** On charges of violation of victims' rights to truth, justice, reparation, and guarantees of non-repetition, as a result of the referral of Law 1592 of 2012 to the procedures contemplated in Law 1448 of 2011:

- Declare itself **INHIBITED** to rule on the merits, in relation to the expression: "*The definition of these rights is developed in Law 1448 of 2011",* of Article 4 of Law 1592 of 2012, due to lack of sufficient grounds.

*-* **Declare** the regulatory segment: *"These assets shall be placed at the disposal of the Special Administrative Unit for the Comprehensive Attention and Reparation of Victims and/or the Special Administrative Unit for the Management of Restitution of Land forfeited so that they can be allocated to the comprehensive reparation and land restitution programmes referred to in Law 1448 of 2011, as appropriate. Victims who are accredited in special justice and peace criminal proceedings will have preferential access to these programmes"* of Article 8 of Law 1592 of 2012.

- Declare the following expressions and provisions related to the referral of the Justice and Peace process to the procedures contemplated in Law 1448 of 2011 to be **EXECUTIVE,** on the charges analysed:

The expression: *"shall make it available to the Special Administrative Unit for the Management of Restitution of Land Restitution, in order to contribute to the procedures that it carries out for the restitution of land that has been dispossessed or abandoned in accordance with the procedures established in Law 1448 of 2011"* in Article 11 of Law 1592 of 2012.

Paragraphs 2 and 3 of Article 16 of Law 1592 of 2012.

Paragraph 4 of Article 27 of Law 1592 of 2012.

Article 30 of Law 1592 of 2012.

The expression: "*in the framework of Law 1448 of 2011*" in Article 32 of Law 1592 of 2012.

The expressions: *"exceptional"* and *"In other cases, the provisions of Law 1448 of 2011 will be observed"* in Article 38 of Law 1592 of 2012.

The expressions: "*may"* and *"as provided for in Article 97 of Law 1448 of 2011, charged to the Fund of the Special Administrative Unit for the Management of Restitution of Land Restitution"* in Article 39 of Law 1592 of 2012.

**FIFTEENTH.-** On the charges related to the non-demand that the assets offered by the applicants to the Justice and Peace Law have a reparation vocation, as well as the limits to the possibility for victims to file appeals and intervene in hearings related to this issue:

- The following expressions and provisions are declared **EXCERTABLE** on the grounds of the charges analysed:

The expression: "*When it is verified that the postulated person has not handed over, offered or denounced assets acquired by him or by the organised illegal armed group during and on the occasion of his membership of the same, directly or through an intermediary",* in numeral 3 of article 5 of Law 1592 of 2012.

The expressions: "*and must be presented by the prosecutor of the case"* and "*as deemed appropriate by the prosecutor of the case and so stated in his request*" in Article 5 of Law 1592 of 2012.

The expression: *"the preclusion of the investigation as a consequence of the extinction of the criminal action"* enshrined in paragraph 2 of Article 5 of Law 1592 of 2012, on the understanding that victims may also request the hearing for the termination of the justice and peace process.

The expression "*after the assets have been handed over",* provided for in paragraph 3 of Article 5 of Law 1592 of 2012, on the understanding that the process may also continue with regard to the assets offered or denounced by the demobilised person if they have not yet been handed over.

The expression ***"****the delegated prosecutor of the case and by the Special Administrative Unit for the Attention and Integral Reparation of Victims - Fund for the Reparation of Victims"* in paragraph 4 of Article 7 of Law 1592 of 2012, on the understanding that the information provided by the victims must also be taken into account.

The paragraph of Article 8 of Law 1592 of 2012, for the charge on the reparative vocation of the assets.

The expression "*If the decision of the incident is favourable to the interested party, the magistrate shall order the lifting of the precautionary measure"* in Article 17 of Law 1592 of 2012, on the understanding that victims may participate in the incident.

- Declare the paragraph of article 7 of Law 1592 of 2012 **EXECUTIVE, on the** understanding that the lack of reparation cannot be attributed to an intention of the postulate to defraud the rights of the victims and that the victims also have the right to denounce assets of the postulates or those of third parties to whom they have been illegally transferred.

SIXTEENTH**.-** To declare the expressions *"solo"* and *"de fondo"* in the second paragraph, and *"demás"* and *"solo"* in the third paragraph of Article 27 of Law 1592 of 2012 to be **EXECUTIVE** on the grounds analysed.

**SEVENTEENTH.-** To declare the expressions "*In the case of collectively demobilised persons in the framework of peace agreements with the national Government, this law shall only apply to events that occurred prior to the date of their demobilisation",* and *"prior to their demobilisation and in any case prior to 31 December 2012"* of Article 36, and "*prior to 31 December 2012*" of Article 36, and "*prior to 31 December 2012, to* be **EXECUTIVE,** on the grounds analysed. *Once this period has expired, the national government will have two (2) years to decide on their application"* and paragraph 2 of Article 37 of Law 1592 of 2012.

Notify, communicate, comply with, publish, insert in the Gazette of the Constitutional Court and archive the file.

MARÍA VICTORIA CALLE CORREA

President (e)

*With a partial dissenting vote*

LUIS GUILLERMO GUERRERO PÉREZ

Magistrate

GLORIA STELLA ORTIZ DELGADO

Magistrate

*Accepted impediment*

JORGE IVÁN PALACIO PALACIO

Magistrate

*Accepted impediment*

JORGE IGNACIO PRETELT CHALJUB

Magistrate

ALBERTO ROJAS RÍOS

Magistrate

LUIS ERNESTO VARGAS SILVA

Magistrate

*Absent with leave*

GUSTAVO CUELLO IRIARTE

Judge

ENRIQUE GIL BOTERO

Judge

MARTHA VICTORIA SÁCHICA MÉNDEZ

Secretary General

**PARTIAL DISSENTING OPINION OF THE JUDGE**

**MARÍA VICTORIA CALLE CORREA**

**TO JUDGMENT C-694/15**

**CAUSES FOR TERMINATION OF THE JUSTICE AND PEACE PROCESS AND EXCLUSION FROM THE LIST OF POSTULATES-The law** does not contemplate as a cause for exclusion from the benefits of justice and peace, that the applicant to the legal favour denounces, (Partial dissenting opinion)/CAUSES **FOR TERMINATION OF THE JUSTICE AND PEACE PROCESS AND EXCLUSION FROM THE LIST OF POSTULATES-The law** omits to provide for a duty on the part of the State to investigate and impose effective sanctions, in *addition* to the exclusion of the individual, for possible illegal acts of fraud against justice, as had been required in Ruling C-370 of 2006 (Partial dissenting opinion).

**STANDARD ON EXCLUSION OF JUSTICE AND PEACE BENEFITS-The** constitutionality of the rule **should** be conditioned on the exclusion of benefits operating without prejudice to the State's obligation to investigate and punish fraud against justice, in accordance with the criminal rules on the matter (Partial dissent).

**FORMULATION OF CHARGES AND ACCEPTANCE OF CHARGES IN JUSTICE AND PEACE PROCEDURES-The** constitutionality of the accused norm **must** be conditioned (Partial dissent)

**DIRECT LAND RESTITUTION IN TRANSITIONAL JUSTICE-The** rule **should have** been declared unconstitutional for implying that victims' procedural burdens are multiplied by subjecting them to another process for comprehensive reparation of damages (Partial dissenting opinion).

**JUSTICE AND PEACE PROCESS-Court** should have declared itself inhibited based on the assumption that the postulate has been extradited to facilitate a contribution to truth, justice and reparation even though it does not state either permission, order or prohibition to extradite them (Partial dissent).

Reference: File D-9818

Unconstitutionality complaint against articles 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 16, 17, 17, 18, 18, 22, 23, 24, 26, 27, 30, 31, 32, 33, 36, 37, 38, 39, 40 and 41 (all in part) and in full articles 19, 20 and 29 of Law 1592 of 2012.

Plaintiffs: Alirio Uribe Muñoz, Iván Cepeda Castro, Judith Maldonado Mojica, Blanca Irene López Garzón, Gelasio Cardona Serna, Lilia Peña Silva, Luis Alfonso Castillo Garzón, Vilma Gutiérrez Méndez, Diógenes Manuel Arrieta Zabala, Elías Sebastián Castro Ramírez, Dora María Macías Montero, Ricardo Rosas Viso and Félix Tomás Jiménez.

Magistrate Rapporteur:

ALBERTO ROJAS RÍOS

With all due respect, I partially dissent. Although I agree for the most part with the decisions adopted in this judgment, I dissent from the decision taken with respect to the following four provisions: paragraph 3 of Article 5, paragraph 3 of Article 18, and Articles 30 and 31 (partial) of Law 1592 of 2012. I set out the reasons for my disagreement below:

1. Article 5(3) of the Law should have been subject to conditions. As the actors argued, the law does not contemplate as grounds for exclusion from the benefits of justice and peace, that the applicant for legal favours denounces, offers or hands over only goods *without a* reparation vocation. Furthermore, the law omits to provide for a duty on the part of the state to investigate and impose effective sanctions, in *addition* to the exclusion of the individual, for possible illegal acts of fraud against justice, as had been demanded in Ruling C-370 of 2006. In the latter, the Court controlled a legal scheme that contemplated the obligation for the postulados to give a free version, without specifying that it should be *truthful*, *full* and *integral*. It also stated that if, after the "*versión libre*", the State discovered the convicted person's participation in a crime not mentioned in his statement, the State had to demonstrate that the omission - on the part of the defendant - was intentional. Otherwise, the defendant retained the benefits granted by law, extended to the unconfessed crime. On the other hand, if the State was able to prove that the omission had been voluntary, then the person retained the benefits for all confessed crimes, but not for unconfessed crimes. In this regard, the Court said that it was not enough to simply withdraw the benefits of the Justice and Peace Law, but that it was also necessary to impose effective (additional) sanctions for the fraud of justice:

"The minimum content of the victims' right to the truth protects, in the first place, the right to have the most serious crimes investigated. This implies that such crimes must be investigated and that the state is responsible by action or omission if there is no serious investigation in accordance with national and international standards. One form of violation of this right is the absence of measures to sanction fraud of justice or incentive systems that do not take these factors seriously into account and do not seriously and resolutely promote the pursuit of the truth.

6.2.2.1.7.7. Additionally, the right to the truth incorporates the right to know the causes and the circumstances of time, manner and place in which the crimes were committed. All of this leads to the victim's pain being publicly acknowledged and his or her full citizenship recognised in terms of his or her recognition as a subject of rights. It also leads to the affected persons being able to know, if they so wish, the reasons and conditions under which the crime was committed.

6.2.2.1.7.8. On the other hand, when it comes to the crime of enforced disappearance of persons, the right to the truth entails the right to know the final fate of the disappeared person. According to international jurisprudence, keeping the relatives of a victim of enforced disappearance in uncertainty about the fate of their loved one violates the right not to be subjected to cruel, inhuman or degrading treatment.

6.2.2.1.7.9. Naturally, all these rights entail the inalienable duty of the state to investigate seriously and thoroughly the crimes committed and to report on the outcome of its investigations.

6.2.2.1.7.10. As far as the collective dimension of truth is concerned, its minimum content includes the possibility for societies to know their own history, to elaborate a relatively reliable collective account of the events that have defined it and to have a memory of those events. This requires impartial, comprehensive and systematic judicial investigations into the criminal acts for which a historical account is sought. A system that does not benefit the reconstruction of historical truth, or that establishes only weak incentives for it, could compromise this important right." [[491]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftn491%22%20%5Co%20%22)

In accordance with this decision, in my opinion, the constitutionality of the law should be conditioned on the exclusion from the benefits of justice and peace, without prejudice to the State's obligation to investigate and punish fraud against justice, in accordance with the criminal law on the matter.

2. Article 18, paragraph 18, should also have been conditioned, since it allows for the early termination of the process without requiring the defendant to go beyond simply acknowledging his responsibility and make a contribution to clarifying what happened, and to define what his specific role was in the framework of the macro-criminality. This, in my opinion, affects the right to the truth, since it could then be terminated without fully clarifying the specific circumstances in which the events in which the accused participated took place, or what his level of responsibility was. Certainly, I recognise that acceptance of responsibility by the applicant for legal benefits can be interpreted in the comprehensive sense of stating the truth about the facts, with sufficient specificity to satisfy the rights of the victims, and a statement about his or her participation in the events. However, in my opinion, for the sake of clarity in the future, the Constitutional Court should have made an explicit condition that would specify precisely this point, as a guarantee for victims and defendants.

3. Article 30 (2) should, for its part, be declared unconstitutional. While I agree that the legal and material restitution of land can be voluntarily carried out through the process provided for in Law 1448 of 2011, I disagree with the constitutionality of the absolute prohibition for the justice and peace jurisdiction to decree a direct restitution of land. This necessarily entails multiplying the procedural burdens of the victims, as it subjects them to another process for the comprehensive reparation of the damage, which undermines their rights to prompt and fair justice. In the interests of equality, this substantial increase in legal burdens for victims should not have been admitted. Finally, the Court should have declined to rule on Article 31 (partial) of the Law. The norm states what should be done when a justice and peace candidate has been extradited, in order to guarantee his or her contribution to justice, truth and reparation. In other words, it assumes that the defendant has already been extradited, and tries to answer the question of what should be done in this hypothesis in order to facilitate his or her contribution to truth, justice and reparation. The public action and the majority of the Full Chamber argue, however, that the norm allows for the extradition of Justice and Peace applicants, even though it does not actually provide for permission, an order or a prohibition to extradite them. Therefore, the charge was uncertain.

For these reasons I therefore partially abstained from voting.

 *Date ut supra,*

MARÍA VICTORIA CALLE CORREA

Magistrate

[1]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref1%22%20%5Co%20%22) Attached to the complaint was an annex with one hundred and forty-two (142) signatures of support and nine (9) individual writings also supporting the complaint signed by David Martínez Durán, Alcides Flores Nuñez, Eliana Ruth Garzón, José Tapia, Miriam Moreno Castro, Elkin Dario Ramírez C., Rosmira Rojas, Víctor Alfonso Cabrera, Yenney Burbano Rodríguez.

[2]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref2%22%20%5Co%20%22) Judgments of 16 July 2008, 18 November 2008, 24 February 2009, 13 May 2010, 4 May 2011, 26 May 2011, among others.

[3]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref3%22%20%5Co%20%22) In judgments such as the Case of the Santo Domingo Massacre v. Colombia and the Case of the Rochela Massacre v. Colombia, Case of the Dos Erres Massacre v. Guatemala, Case of Manuel Cepeda Vargas v. Colombia, among others.

[4]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref4%22%20%5Co%20%22) Article 95 of Law 1448 of 2011.

[5]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref5%22%20%5Co%20%22) Just to cite one example of this, it should be noted that in Judgment C-250 of 2012 (M.P. Humberto Sierra Porto), the Constitutional Court declared that it was executory for the Legislature to establish even a temporal restriction to classify a person as a victim of the armed conflict (art. 3 of Law 1448 of 2011) and, for this reason, it concluded that limiting pecuniary reparation to victims of events that occurred after 1 January 1985 was reasonable, among other reasons, because although *"*[...] it *could be argued that any temporal delimitation is unconstitutional, since in principle pecuniary reparation measures should be guaranteed to all victims, however, such a position would disproportionately limit the Legislator's freedom of configuration, Moreover, it would be openly irresponsible from the perspective of the state resources available for the reparation of the damages caused, as it would generate expectations that are impossible to satisfy, which would entail* [sic] *subsequent liabilities for the Colombian State [...*] *it would imply the sacrifice of constitutionally relevant assets, which is, in the first place, the effectiveness of the rights of the victims that it is intended to repair, as the limitations of the state resources that can be invested for this purpose cannot be ignored".*

[6]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref6%22%20%5Co%20%22) Constitutional Court, Order of 29 July 1997, file D-1718.

[7]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref7%22%20%5Co%20%22) See, among others, judgments C-1052 of 2001 and C-1256 of 2001.

[8]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref8%22%20%5Co%20%22) The Constitutional Court has admitted, on numerous occasions, the raising of global charges of constitutionality, without this constituting a disregard for the requirement of certainty. See for example: C- 791 of 2011; C- 397 of 2011; C- 301 of 2011; C- 978 of 2010; C- 568 of 2010; C- 398 of 2010; C- 149 of 2010; C- 070 of 2010; C- 897 of 2009; C- 682 of 2009; C- 134 of 2009, among others.

[9]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref9%22%20%5Co%20%22) Article 21 of Law 975 of 2005: ***"****Ruptura de la unidad procesal. If the accused or accused person partially accepts the charges, the procedural unity shall be broken with respect to those charges not accepted. In this case, the investigation and trial of the charges not accepted shall be processed by the competent authorities and the procedural laws in force at the time of their commission. In the case of accepted charges, the benefits provided for in this law shall be granted*.

[10]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref10%22%20%5Co%20%22) Article 20 of Law 1592 of 2012: *"Conditional suspension of the execution of the sentence imposed in ordinary justice. In the same hearing in which the security measure has been substituted under the terms of Article 18A, the postulate who has also been previously convicted in the ordinary criminal justice system, may request the Justice and Peace judge for the conditional suspension of the execution of the respective sentence, provided that the conducts that gave rise to the conviction have been committed during and on the occasion of his or her membership of the organised armed group operating outside the law.*

*If the Justice and Peace judge for the control of guarantees can reasonably infer that the conducts that gave rise to the conviction in the ordinary criminal justice system were committed during and on the occasion of the applicant's membership of an organised armed group operating outside the law, he shall send, within a period not exceeding fifteen (15) days of the request, copies of all the proceedings to the judge for the enforcement of sentences and security measures in charge of supervising the respective conviction, who shall conditionally suspend the execution of the ordinary sentence.*

*The suspension of the execution of the sentence shall be revoked at the request of the Justice and Peace guarantees control magistrate, when the applicant incurs in any of the grounds for revocation set out in Article 18A.*

*In the event that the sentences imposed in ordinary justice proceedings are not accumulated in the Justice and Peace sentence, or that having been accumulated, the Justice and Peace court has not granted the alternative sentence, the conditional suspension of the execution of the sentence decreed by virtue of this article shall be revoked. For these purposes, the statute of limitations of the sentence in the ordinary justice system shall be suspended until the Justice and Peace sentence becomes enforceable*.

[11]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref11%22%20%5Co%20%22) Paragraph of Article 21 of Law 1592 of 2012: *"If at this hearing the accused does not accept the charges or retracts those admitted in the voluntary confession, the Examining Chamber shall order copies of the proceedings to be sent to the competent official in accordance with the law in force at the time of the commission of the conduct under investigation. For this purpose, the Chamber shall take into account the provisions of the third, fourth and fifth paragraphs of article 11A of this law".*

[12]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref12%22%20%5Co%20%22) According to Constitutional Court Ruling C-370 of 2006, "The plaintiffs dispute the provisions of paragraph 3 of Article 26, which states that *'No appeal in cassation may be lodged against the decision of the second instance'.* They explain that an appeal in cassation is indeed admissible in ordinary criminal proceedings in cases such as those to be submitted to Law 975/05, as provided for in Articles 205 of Law 600/02 and 184 of Law 906/04. They also point out that the purpose of the cassation appeal is not simply formal, "but seeks the realisation of material law and constitutional guarantees, both for the defendant and the victim" - and recall in this regard that both Law 906/04 and Law 600/00 state that the purposes of cassation are "the effectiveness of material law, respect for the guarantees of those involved, the redress of the grievances inflicted on them and the unification of jurisprudence", which is why cassation is directly related to the realisation of the constitutional rights to due process and justice. On the other hand, they assert that the purposes of cassation, given its specificity, cannot be replaced by the extraordinary remedy of review.

Based on the above, they assert that while the Legislature has the power to regulate the remedy of cassation, it cannot do so in order to generate discriminatory treatment in cases of human rights violations, "in relation to which procedural guarantees must be extreme in order to adequately guarantee the realisation of justice".

[13]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref13%22%20%5Co%20%22) Sentence C 370 of 2006; "**Twentieth:** To declare paragraph 3 of Article 26 of Law 975 of 2005 to be **EXEQUIBLE**, on the charges examined, and to declare the rest of the provision to be **INHIBITED**".

[14]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref14%22%20%5Co%20%22) Constitutional Court ruling C-370 of 2006.

[15]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref15%22%20%5Co%20%22) Article 18 of Law 975 of 2005: *"(...) the prosecutor in the case shall request that the magistrate who exercises the function of supervisory control of guarantees schedule an arraignment hearing within ten (10) days of the request, if necessary.*

*Article 22: If at the time when the demobilised person avails himself of this law, the Public Prosecutor's Office is conducting investigations or has brought charges against him, the accused, assisted by his defence counsel, may accept orally or in writing the charges set out in the decision imposing the detention order, or in the indictment, or in the decision or indictment, as the case may be. This acceptance shall be made before the magistrate who fulfils the function of control of guarantees under the conditions provided for in this law.*

[16]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref16%22%20%5Co%20%22) Supreme Court of Justice. Criminal Cassation Chamber. Judgment of 1 February 2012. Case No. 27.199.

[17]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref17%22%20%5Co%20%22) Supreme Court of Justice. Criminal Cassation Chamber. Judgment of 9 March 2011. Case No. 33.416.

[18]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref18%22%20%5Co%20%22) Supreme Court of Justice. Criminal Cassation Chamber. Judgment of 8 June 2011. Case No. 30.097.

[19]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref19%22%20%5Co%20%22) Superior Court of the Judicial District of Bogotá. Justice and Peace Chamber. Sentencing against Armando Madriaga Picon and Jesús Noraldo Basto. December 6, 2013. Radicación 110016000253-200782862

[20]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref20%22%20%5Co%20%22) Norberto Bobbio, *Teoría General del Derecho,* Bogotá, Temis, 2007, p. 183.

[21]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref21%22%20%5Co%20%22) Elster, John: Rendición de cuentas. la justicia transicional en perspectiva histórica, katz, Buenos Aires, 2006, 15; Webber, Jeremy: forms of transitional justice, in: Williams, Melissa / nagy, rosemary / Elster, John: transitional justice, New York University Press, New York, 2012, 98; Pensky, Max: el pasado es otro pueblo. un argumento a favor de los derechos póstumos como limitaciones normativas a las amnistías, in: de Gamboa Tapias, camila: justicia transicional. teoría y praxis, universidad del rosario, bogotá, 2006, 113; Uprimny Yepes, rodrigo: las enseñanzas del análisis comparado: procesos transicionales, formas de justicia transicional y el caso colombiano, in: Uprimny Yepes, Rodrigo / Saffon Sanín, María Paula / Botero Marino, Catalina / Restrepo Saldarriaga, Esteban: ¿justicia transicional sin transición? verdad, justicia y reparación para colombia, centro de estudios de derecho, justicia y sociedad, bogotá, 2006, 13. sentencia c-771 de 2011.

[22]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref22%22%20%5Co%20%22) Ambos, Kai: el marco jurídico de la *justicia* de transición. especial referencia al caso colombiano, editorial *temis*, Bogotá, 2008, 8; de greiff, Pablo: theorizing transitional justice, in: Williams, Melissa / Nagy, Rosemary / Elster, John: transitional justice, New York University Press, New York, 2012; orozco, iván. 2009. justicia transicional en tiempos del deber de memoria. Bogotá, temis - Universidad de los Andes, 9; Forer, Andreas: justicia transicional, editorial Ibañez, Bogotá, 2012, 19.

[23]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref23%22%20%5Co%20%22) Constitutional Court Decision C-771 of 2011.

[24]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref24%22%20%5Co%20%22) The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, United Nations Security Council, 4.

[25]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref25%22%20%5Co%20%22) Constitutional Court Rulings C-771 of 2011; C-052 of 2012.

[26]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref26%22%20%5Co%20%22) Constitutional Court Decision C-771 of 2011.

[27]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref27%22%20%5Co%20%22) Orozco, Iván: Justicia transicional en tiempos del deber de memoria. Bogotá:

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[28]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref28%22%20%5Co%20%22) Elster, John: Justice, Truth, Peace: in: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, New York, 2012, 88; Malamud - Goti, Jaime: Lo bueno y lo malo de la inculpación y las víctimas, in: de Gamboa Tapias, Camila: Justicia Transicional. Teoría y Praxis, Universidad del Rosario, Bogotá, 2006, 158 and 159; de Gamboa Tapias, Camila: La transición democrática y la responsabilidad de la comunidad por su pasado, in: de Gamboa Tapias, Camila: Justicia Transicional. Teoría y Praxis, Universidad del Rosario, Bogotá, 2006, 150.

[29]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref29%22%20%5Co%20%22) Malamud - Goti, Jaime: Lo bueno y lo malo de la inculpación y las víctimas, in: de Gamboa Tapias, Camila: Justicia Transicional. Teoría y Praxis, Universidad del Rosario, Bogotá, 2006, 158 and 159; Elster, John: Justice, Truth, Peace: in: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, New York, 2012, 77 and 78; De Gamboa Tapias, Camila: la transición democrática y la responsabilidad de la comunidad por su pasado, in: de Gamboa Tapias, Camila: Justicia Transicional. Teoría y Praxis, Universidad del Rosario, Bogotá, 2006, 150.

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[31]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref31%22%20%5Co%20%22) Constitutional Court Ruling C - 579 of 2013.

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[33]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref33%22%20%5Co%20%22) Constitutional Court Rulings T-265 of 2010; T-141 of 2011; C-253A of 2012.

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[[35]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref35%22%20%5Co%20%22) De Greiff, Pablo: Theorizing Transitional Justice, en: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, Nueva York, 2012, 43.

[36]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref36%22%20%5Co%20%22) Constitutional Court ruling C-771 of 2011.

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[38]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref38%22%20%5Co%20%22) Jescheck, Hans - Heinrich: Tratado de Derecho Penal, Parte General, Editorial Comares, Granada, 2002, p. 2.

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[44]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref44%22%20%5Co%20%22) Orozco, Iván: Justicia transicional en tiempos del deber de memoria, Temis - Universidad de los Andes, Bogotá: 2009, 37 and 38.

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[46]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref46%22%20%5Co%20%22) Pensky, Max: El pasado es otro pueblo. Un argumento a favor de los derechos póstumos como limitaciones normativas a las amnistías, in: de Gamboa Tapias, Camila: Justicia Transicional. Teoría y Praxis, Universidad del Rosario, Bogotá, 2006, 114.

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[51]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref51%22%20%5Co%20%22) See the document: "Post-Conflict National Reconciliation: The Role of the United Nations: A Comprehensive Strategy. Considerations for negotiations, peace agreements and Security Council mandates", para. 64. Para. 64. Ensure that peace agreements and Security Council resolutions and mandates: *"(a) Give priority attention to the restoration of and respect for the rule of law, with explicit provision for support for the rule of law and transitional justice, in particular where United Nations assistance is required in pre-trial and judicial processes;*

*(b) International standards of fairness, due process and human rights in the administration of justice are respected, incorporated by reference and applied;*

*(c) Amnesty in cases of genocide, war crimes or crimes against humanity, including international crimes related to ethnicity, gender and sex, be rejected, and ensure that any amnesty previously granted does not constitute an obstacle to prosecution before any court established or assisted by the United Nations;*

*(d) The Organisation does not establish or participate directly in any tribunal that provides for the death penalty as a possible sanction;*

*(e) All judicial processes, courts and prosecutions should be credible, fair and consistent with international standards on the independence and impartiality of the judiciary, the effectiveness and impartiality of prosecutors and the integrity of the judicial process;*

*(f) The rights of victims and the accused are recognised and respected, in accordance with international standards, paying particular attention to groups most affected by conflict and the breakdown of the rule of law, such as children, women, minorities, prisoners and displaced persons, and ensuring that reparation procedures include specific measures for their participation and protection; (g) The differential impact of conflict and the absence of the rule of law on women and the need to take gender aspects into account in the restoration of the rule of law and transitional justice, as well as the need for women's full participation, are recognised;*

*h) Avoid imposition of external models and provide for and fund a national needs assessment and national consultation process, with meaningful participation of government, civil society and key national constituencies to determine the course of transitional justice and restoration of the rule of law;*

*(i) Where mixed courts are envisaged for a divided society and there are no clear guarantees of the real and perceived objectivity, impartiality and fairness of the national judiciary, consideration be given to appointing a majority of international judges, taking into account the views of different national groups, to enhance the credibility and improve the image of impartiality of such courts among all social groups;*

*(j) The government's full cooperation with international and hybrid tribunals be insisted upon, including in the surrender of accused persons, when requested;*

*(k) A comprehensive rule of law and transitional justice approach be adopted, including appropriate programming and timing for the implementation of peace processes, transitional justice processes and elections, as well as other transitional processes;*

*(l) Adequate resources are provided for the restoration of the rule of law and the establishment of a transitional justice system, including a viable and sustainable funding mechanism. Where UN-sponsored tribunals are established, they should be at least partially funded through assessed contributions;*

*(m) Consideration be given to the establishment of national human rights commissions as part of the transitional arrangements".*

[52]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref52%22%20%5Co%20%22) United Nations, UN. General Assembly Resolution 60/147 of 2005, "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": II. Scope of the Obligation: *"3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for in the respective legal systems includes, inter alia, the duty to:*

*(a) Adopt appropriate legislative and administrative and other measures to prevent violations;*

*(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;*

*(c) Give those who claim to be victims of a violation of their human rights or humanitarian law equal and effective access to justice, as described below, irrespective of who is ultimately responsible for the violation; and*

*(d) Provide victims with effective remedies, including reparations, as described below".*

[53]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref53%22%20%5Co%20%22) United Nations, UN. United Nations General Assembly Resolution 60/147 of 2005, "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": paragraph VII.

[54]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref54%22%20%5Co%20%22) United Nations, UN. United Nations General Assembly Resolution 60/147 of 2005, "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": paragraph VIII.

[55]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref55%22%20%5Co%20%22) United Nations, UN. United Nations General Assembly Resolution 60/147 of 2005, "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": paragraph IX.

[56]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref56%22%20%5Co%20%22) United Nations, UN. United Nations General Assembly Resolution 60/147 of 2005, "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": numeral X.

[57]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref57%22%20%5Co%20%22) United Nations, UN. United Nations General Assembly Resolution 60/147 of 2005, "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": paragraph XI.

[58]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref58%22%20%5Co%20%22) United Nations, UN Security Council. Resolutions 1674, 5430th session, 2006, and 1894, 6216th session, 2009; in which the fundamental role of education and the contribution of regional organisations in the protection of civilians in armed conflicts are recognised.

[59]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref59%22%20%5Co%20%22) Comprehensive Strategy Report. Considerations for negotiations, peace agreements and UN Security Council mandates.

[[60]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref60%22%20%5Co%20%22) De Greiff, Pablo: Theorizing Transitional Justice, en: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, Nueva York, 2012, 63.

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[62]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref62%22%20%5Co%20%22) United Nations, UN. Report of the Secretary-General at the request of the Security Council. "Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies". Para. 4.

[[63]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref63%22%20%5Co%20%22) Elster, John: Justice, Truth, Peace: en: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, Nueva York, 2012, 94.

[64]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref64%22%20%5Co%20%22) Ibid, p. 87.

[65]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref65%22%20%5Co%20%22) Ibid, p. 81.

[66]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref66%22%20%5Co%20%22) Elster, John: Justice, Truth, Peace: in: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, New York, 2012, 82; Crocker, David: The Role of Civil Society in Truth Making, in : Transitional Justice, in : Minow, Martha / Crocker, David / Mani, Rama : Transitional Justice, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** 124.

[67]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref67%22%20%5Co%20%22) Elster, John: Justice, Truth, Peace: in: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, New York, 2012, 83 and 84; Crocker, David: The Role of Civil Society in Truth Making, in : Transitional Justice, in : Minow, Martha / Crocker, David / Mani, Rama : Transitional Justice, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** 124.

[68]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref68%22%20%5Co%20%22) Teitel, Ruti: Trasitional Justice, Oxford University Press, New York, 2000, 55.

[69]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref69%22%20%5Co%20%22) Teitel, Ruti: Trasitional Justice, Oxford University Press, New York, 2000, 27.

[70]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref70%22%20%5Co%20%22) De Gamboa Tapias, Camila: La transición democrática y la responsabilidad de la comunidad por su pasado, in: De Gamboa Tapias, Camila: Transitional Justice. Teoría y Praxis, Universidad del Rosario, Bogotá, 2006, 154.

[71]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref71%22%20%5Co%20%22) Constitutional Court Decision C-579 of 2013.

[72]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref72%22%20%5Co%20%22) Constitutional Court Decision C-144 of 1997: "*The function of criminal law in a secularised society and in the rule of law is to protect, through coercive social control, certain fundamental legal rights and certain basic conditions for the functioning of society. It is therefore concluded that, as this Court has pointed out on various occasions, the legislative definition of penalties in a State governed by the rule of law is not guided by rigid retributive aims but by general prevention objectives, i.e., it must have dissuasive effects, since the criminal law aims "to ensure that associates refrain from engaging in criminal behaviour on pain of incurring the imposition of penalties". On the general prevention of punishment:* Roxin, Claus: Derecho penal. Parte general. Civitas, Madrid, 1997, 89. Jescheck, Hans - Heinrich: Tratado de Derecho penal. Parte general, Comares, Granada, 2002; Muñoz Conde, Francisco / García Arán, Mercedes: Derecho Penal. Parte General, Tirant lo Banch, Valencia, 2007, 48; Feijoo Sánchez, Bernardo: Retribución y prevención general, B de F, Buenos Aires, 2006, 26.

[73]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref73%22%20%5Co%20%22) Special negative prevention states that punishment can also have the mission of preventing the offender from committing new crimes against society (see Liszt, Franz: Tratado de Derecho penal, T II, Reus, Madrid, 10; Roxin, Claus: Derecho penal. Parte general. Civitas, Madrid, 1997, 85; Jescheck, Hans - Heinrich: Tratado de Derecho penal. Parte general, Comares, Granada, 2002, 5; Mir Puig, Santiago: Derecho Penal. Parte General. Reppertor, 2011, 84; Muñoz Conde, Francisco / García Arán, Mercedes: Derecho Penal. Parte General, Tirant lo Banch, Valencia, 2007, 48).

[74]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref74%22%20%5Co%20%22) Special positive prevention or resocialisation states that the function of punishment is the reintegration of the individual into society (Constitutional Court Ruling C-806 of 2002).

[75]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref75%22%20%5Co%20%22) For positive general prevention, the purpose of punishment is the recognition of the norm with the aim of re-establishing the validity of the norm affected by the crime in order to maintain the necessary structures of a society (Constitutional Court Judgement C-806 of 2002. On negative general prevention, see. Jakobs, Günther: Derecho penal. Parte General, Marcial Pons, Madrid, 1997, 18 and 19.

[76]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref76%22%20%5Co%20%22) Teitel, Ruti: Trasitional Justice, Oxford University Press, New York, 2000, 51. Constitutional Court Rulings C-771 of 2011 and C-579 of 2013.

[77]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref77%22%20%5Co%20%22) Teitel, Ruti: Trasitional Justice, Oxford University Press, New York, 2000, 53.

[78]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref78%22%20%5Co%20%22) Constitutional Court Ruling SU-254 of 2013.

[79]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref79%22%20%5Co%20%22) Constitutional Court ruling C-936 of 2010.

[80]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref80%22%20%5Co%20%22) Judgment of the Inter-American Court of Human Rights of 14 March 2001.

[81]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref81%22%20%5Co%20%22) Constitutional Court Judgment C-771 of 2011: *"Having examined the concept, it should be noted that there are common institutions in transitional justice, most of which are usually formally adopted by States through the adoption of laws or the issuance of other types of legal norms, including, in some cases, constitutional reforms. Among such tools, all those rules of a criminal nature, both substantive and procedural, which imply a more lenient punitive treatment than the ordinary, whether through the imposition of comparatively lower sentences, the adoption of measures which, without exempting the offender from his criminal and civil responsibility, make possible his conditional release, or at least the most rapid reduction of the sentences imposed, should be highlighted"*.

[82]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref82%22%20%5Co%20%22) Constitutional Court Decision C-715 of 2012.

[[83]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref83%22%20%5Co%20%22) Kritz, Neil: The Dilemmas of Transitional Justice, en: Kritz, Neil: Transitional Justice. How Emerging Democracies Reckon with Former Democracies, V. I, United States Institute of Peace, Nueva York, 1995, 28. TEITEL, Ruti: Trasitional Justice, Oxford University Press, Nueva York, 2000, 69.

[84]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref84%22%20%5Co%20%22) Crocker, David: El rol de la sociedad civil en la elaboración de la verdad, in: Justicia Transicional, in: Minow, Martha / Crocker, David / Mani, Rama: Transitional Justice, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** 114***.***

[[85]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref85%22%20%5Co%20%22) Elster, John: Justice, Truth, Peace: en: Williams, Melissa / Nagy, Rosemary / Elster, John: Transitional Justice, New York University Press, Nueva York, 2012, 81.

[86]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref86%22%20%5Co%20%22) *"It is not only about the individual right that every victim, or their relatives or friends, has to know what happened as a right to the truth. The right to know is also a collective right that has its origin in history in order to prevent future violations from recurring. On the other hand, the state has a "duty of memory" to prevent the distortions of history known as revisionism and negationism; indeed, the knowledge of the history of a people's oppression is part of its heritage and must be preserved as such. These are the main purposes of the right to know as a collective right.*

[87]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref87%22%20%5Co%20%22) Minow, Martha: Truth commissions, justice and civil society, in: Transitional Justice, in: Minow, Martha / Crocker, David / Mani, Rama: Transitional Justice, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** 85.

[88]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref88%22%20%5Co%20%22) Crocker, David: El rol de la sociedad civil en la elaboración de la verdad, in: Justicia Transicional, in: Minow, Martha / Crocker, David / Mani, Rama: Transitional Justice, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** *129.*

[89]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref89%22%20%5Co%20%22) Minow, Martha: Truth commissions, justice and civil society, in: Transitional Justice, in: Minow, Martha / Crocker, David / Mani, Rama: Justicia Transicional, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** 85; Crocker, David: El rol de la sociedad civil en la elaboración de la verdad, in: Justicia Transicional, in: Minow, Martha / Crocker, David / Mani, Rama: Transitional Justice, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011, *129****.***

[90]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref90%22%20%5Co%20%22) Constitutional Court Ruling SU-254 of 2013.

[91]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref91%22%20%5Co%20%22) Constitutional Court Decision C-936 OF 2010.

[92]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref92%22%20%5Co%20%22) *"Inter-American Court. Case of Bámaca Velásquez v. Guatemala. The facts that gave rise to this case consisted of the arrest of the guerrilla leader Efraín Bámaca by the Guatemalan army. While in detention, he was tortured so that he would reveal information. He was then disappeared, without any information on his whereabouts being available up to the time of the judgement".*

[93]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref93%22%20%5Co%20%22) "*Cf. I/A Court H.R., Castillo Paez Case, Judgment of 3 November 1997. Castillo Páez Case, Judgment of 3 November 1997. v. Peru, para. 90; Caballero Delgado and Santana Case v. Colombia. Reparations (art. 63(1) American Convention on Human Rights). Judgment of January 29, 1997, para. 58; and Case of Neira Alegría et al. v. Peru, Judgment of January 19, 1995, Reparations, para. 69.*"

[94]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref94%22%20%5Co%20%22) Constitutional Court decision C-579 of 2013.

[[95]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref95%22%20%5Co%20%22) Olsen, Tricia D./ Payne Leigh A. / Reiter, Andrew G./ Wiebelhaus-Brahm, Eric: When Truth Commissions Improve Human Rights, When Truth Commissions Improve Human Rights, The International Journal of Transitional Justice, Vol. 4, 2010, 457-476.

 Ambos, Kai: El marco jurídico de la *justicia* de transición. Especial referencia al caso colombiano, Editorial *Temis*, Bogotá, 2008, 54; Crocker, David: El rol de la sociedad civil en la elaboración de la verdad, in: Justicia Transicional, in: Minow, Martha / Crocker, David / Mani, Rama: Justicia Transicional, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** *129;* Crocker, David: El rol de la sociedad civil en la elaboración de la verdad, in : Justicia Transicional, in : Minow, Martha / Crocker, David / Mani, Rama: Justicia Transicional, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011, *129****.***

[96]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref96%22%20%5Co%20%22) The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, United Nations Security Council, 20.

[97]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref97%22%20%5Co%20%22) Crocker, David: El rol de la sociedad civil en la elaboración de la verdad, in: Justicia Transicional, in: Minow, Martha / Crocker, David / Mani, Rama: Transitional Justice, Siglo del Hombre Editores; Universidad de los Andes; Pontificia Universidad Javeriana-Instituto Pensar, Bogotá, 2011***,*** 129.

[98]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref98%22%20%5Co%20%22) Constitutional Court ruling C-771 of 2011.

[99]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref99%22%20%5Co%20%22) UN. Commission on Human Rights. The question of impunity for perpetrators of human rights violations (civil and political). Final report prepared and revised by M. Joinet in the implementation of Sub-Commission decision 1996/119, (2 October 1997), Doc. E/CN.4/Sub.2/1997/20/rev.1. annex II para. 20: *"Experience shows that it is desirable to ensure that these commissions are not diverted from their purpose so that their investigations cannot be brought before a court. Hence the idea of proposing basic principles, inspired by the comparative analysis of the experiences of existing or former commissions, principles on which the credibility of such commissions will depend. These principles comprise major aspects, which we analyse below.*

*A) Guarantee of independence and impartiality.*

*21. Non-judicial commissions of enquiry must be established by law. They may also be established by a statutory act or by a conventional act in the context of a process of restoration of democracy and/or peace or transition to democracy and/or peace. Its members must be irremovable for the duration of their mandate and must be protected by immunity. If necessary, the commission should be able to request the assistance of the police, to summon and to visit the sites involved in the investigations. The pluralism of opinion of the members of a commission is also an important factor of independence. Its statutes should clearly state that the commission is not intended to replace the judiciary, but to safeguard memory and evidence. Its credibility must be ensured by sufficient financial and personnel means.*

*b) Guarantee in favour of victims' testimonies.*

*22. The testimony of victims and testimony given on their behalf may only be requested on the basis of voluntary statements. For protection purposes, anonymity may be admitted subject to the following reservations: it must be exceptional (except in cases of sexual abuse); the President and a member of the Commission must be empowered to ascertain that the request for anonymity is well-founded and, confidentially, the identity of the witness; the content of the statement must be mentioned in the report. Victims' testimonies should be assisted by psychological and social support, especially in the case of victims who have suffered torture and sexual abuse. Witnesses and victims should be duly compensated for all expenses that may be incurred in giving their testimony.*

*c) Guarantees concerning the persons charged.*

*23. If the commission is empowered to disclose their names, the persons charged, unless they have testified, must at least be summoned for that purpose and must be able to exercise their right of reply in writing. Their report must be added to their file.*

*d) Publicity of the report.*

*24. If the confidentiality of the proceedings can be justified in order to avoid pressure on witnesses or to ensure their safety, the report should, on the other hand, be made public and as widely disseminated as possible. The members of the Commission should be granted immunity from prosecution for defamation offences.
2. Preservation of archives concerning human rights violations.*

*25. Especially after a transition process, the right to know implies that archives should be preserved. The measures to be taken for this are related to the following points:*

*(a) Measures for protection and enforcement against theft, destruction or concealment;*

*b) Draw up an inventory of available archives, including those existing in third countries so that, with their cooperation, they can be consulted or, where appropriate, returned;*

*c) Adaptation to the new situation, of the regulations on access to files and their consultation, mainly by granting the right to any person who is charged the guarantee of their right to reply and to have it included in their file".*

[100]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref100%22%20%5Co%20%22) Rodrigo Uprimny and María Paula Saffón, "Verdad judicial y verdades extrajudiciales: la búsqueda de una complementariedad dinámica", in *Las víctimas frente a la búsqueda de la verdad y la reparación en Colombia*, Universidad Javeriana, Bogotá, 20076, p. 152.

[101]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref101%22%20%5Co%20%22) Jorge Enrique Ibañez Najar, *Justicia transicional y las comisiones de la verdad,* Bogotá, Biblioteca de Derechos Humanos, 2014, p. 238.

[[102]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref102%22%20%5Co%20%22) ICC, Office of the Prosecutor, Prosecutorial strategy 2009- 2012, 1 February 2010, The Hague.

[103]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref103%22%20%5Co%20%22) María Teresa Uribe de Hincapié, "Esclarecimiento histórico y verdad jurídica: notas introductorias sobre los usos de la Verdad", in *Justicia transicional: teoría y praxis,* Bogotá, Universidad del Rosario, 2006, p. 333.

[104]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref104%22%20%5Co%20%22) E/CN.4/2005/102/Add. 1 Economic and Social Council United Nations, Promotion and Protection of Human Rights.

[105]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref105%22%20%5Co%20%22) Jorge Enrique Ibañez Najar, *ob. cit.,* p. 614.

[106]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref106%22%20%5Co%20%22) *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs.* Judgment of November 25, 2003. Series C No. 101, paras. 131 and 134, and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 27, 2013. Series C No. 275, para. 55.

[107]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref107%22%20%5Co%20%22) *Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2006. Series C No. 160, para. 197, and *Case of García and Family v. Guatemala. Merits, Reparations and Costs.* Judgment of November 29, 2012. Series C No. 258, para. 176.

[108]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref108%22%20%5Co%20%22) *Cf.Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of January 28, 2009. Series C No. 194, para. 101, and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 27, 2013. Series C No. 275, para. 55.

**[109]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref109%22%20%5Co%20%22)** I/A Court H.R., Case of Rodríguez Vera et al. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of 14 November 2014. Series C No. 287.

[[110]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref110%22%20%5Co%20%22) Malamud-Goti, Jaime y Grosman, Lucas Sebastián. "Reparations And Civil Litigation: Compensation For Human Rights Violations In Transitional Democracies" en: De Greiff, Pablo (ed.): *The Handbook Of Reparations*, Oxford University Press, New York, 2006, p. 541.

[[111]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref111%22%20%5Co%20%22) De Greiff, Pablo. "Justice and Reparations" en: De Greiff, Pablo (ed.): *The Handbook Of Reparations*, Oxford University Press, New York, 2006, p. 459.

[112]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref112%22%20%5Co%20%22) De Greiff's preferred term for the following reasons: (i) it expresses the idea that, in order to respond to the diverse needs of victims, perpetrators and an entire society made up of survivors, a variety of responses is needed; (ii) it would not seek uniform responses for all countries, but would strive to find specific responses according to the national situation and with a view to the affected country deciding on them; (iii) it would strive to give meaningful participation to the local population.

[113]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref113%22%20%5Co%20%22) Constitutional Court decision, C-280 of 2013.

[114]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref114%22%20%5Co%20%22) Teitel, Ruti: Trasitional Justice, Oxford University Press, New York, 2000, 119.

[[115]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref115%22%20%5Co%20%22) Kritz, Neil: The Dilemmas of Transitional Justice, en: Kritz, Neil: Transitional Justice. How Emerging Democracies Reckon with Former Democracies, V. I, United States Institute of Peace, Nueva York, 1995, xxix.

[[116]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref116%22%20%5Co%20%22) De Greiff, Pablo: Transitional Justice, security, and development, World Development Report, October 29, 2010, 9.

[117]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref117%22%20%5Co%20%22) Constitutional Court Rulings SU-254 of 2013 and C-280 of 2013.

[118]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref118%22%20%5Co%20%22) Teitel, Ruti: Transitional Justice, Oxford University Press, New York, 2000, 154.

[119]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref119%22%20%5Co%20%22) *Ibidem,* p. 157.

[120]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref120%22%20%5Co%20%22) *Ibid,* p. 173.

[121]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref121%22%20%5Co%20%22) *Ibid,* p. 149.

[122]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref122%22%20%5Co%20%22) Ambos, Kai: El marco jurídico de la *justicia* de transición. Especial referencia al caso colombiano, Editorial *Temis*, Bogotá, 2008, 71.

[123]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref123%22%20%5Co%20%22) Teitel, Ruti: Trasitional Justice, Oxford University Press, New York, 2000, 154.

[124]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref124%22%20%5Co%20%22) *Ibid,* p. 157.

[125]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref125%22%20%5Co%20%22) *Ibid*, p. 173.

[126]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref126%22%20%5Co%20%22) Ambos, Kai: El marco jurídico de la *justicia* de transición. Especial referencia al caso colombiano, Editorial *Temis*, Bogotá, 2008, 72.

[127]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref127%22%20%5Co%20%22) Ambos, Kai: El marco jurídico de la *justicia* de transición. Especial referencia al caso colombiano, Editorial *Temis*, Bogotá, 2008, 73.

[128]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref128%22%20%5Co%20%22) Henri Mazeaud, Leon Mazeaud and André Tunc. *Tratado teórico y práctico de la responsabilidad civil delictual y contractual*, Buenos Aires, Ejea, t. iii, vol. i, 1963, pp. 549 et seq.

[129]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref129%22%20%5Co%20%22) *Ibid.*

[130]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref130%22%20%5Co%20%22) See, for example, Ruling C-370 of 2006, which analyses the jurisprudence of the Inter-American Court of Human Rights that had been developed up to that point in relation to the content and scope of these obligations, in addition to analysing the *"Report on the demobilisation process in Colombia"*, issued on 13 December 2004 by the Inter-American Commission on Human Rights. In the same vein, see Ruling C-454 of 2006, which reflects the jurisprudential line that had so far been developed in relation to the rights of victims in criminal proceedings.

[131]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref131%22%20%5Co%20%22) The doctrine on the interdependence of these victims' rights has been constant jurisprudence of the Court. In this regard, see, for example, Judgment C-775 of 2003, which examined the constitutionality of Article 21 of Law 600 of 2000 on restoration of rights and reiterated the trilogy of rights to which victims are entitled: truth, justice and reparation. The ruling highlighted the value of these rights as cardinal goods of a society that pursues a just order and the interdependence that exists between them, such that "it is not possible to achieve justice without truth. It is not possible to achieve reparation without justice". In the same sense, see judgments C-370 of 2006, C-180 of 2014.

[132]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref132%22%20%5Co%20%22) In this regard, see Ruling C-228 of 2002, which recognises these rights on the basis of constitutional norms (Arts. 1, 2, 15, 21, 93, 229 and 250). See also: Ruling C-409 of 2009. According to this jurisprudence, the right to reparation is based not only on the provisions that contemplate the functions and competences of the Attorney General's Office (Art. 250, 6th and 7th) in the wording of the amendments introduced by Legislative Act No. 3 of 2002, but also on human dignity and solidarity as foundations of the Social State of Law (Art. 1), on the essential purpose of the State to give effect to rights and to fulfil the duty of the authorities to ensure the validity of a just order (Preamble and Art. 2), on the mandate of the authorities to ensure a just order (Preamble and Art. 2), on the right to reparation (Art. 3), on the right to a fair trial (Art. 3) and on the right to a fair trial (Art. 3). 2°), in the mandate to protect persons in circumstances of manifest weakness (art. 13), in provisions contained in treaties that are part of the constitutional block or that serve as criteria for the interpretation of rights (art. 93), in the right of access to justice (art. 229) and, not to be ruled out, in the general principle of the law of torts according to which "pain with bread is less" (art. 230).

[133]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref133%22%20%5Co%20%22) See, among others, one of the first judgments to so declare: I/A Court H.R. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs. Judgment of 22 February 2002. Series C No. 91, para. 41.

[134]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref134%22%20%5Co%20%22) In this sense, it can be explained that Colombia's obligation to abide by international law in this matter also derives from an international obligation. See Article 1.1 of the American Convention: "The States Parties to this Convention undertake to *respect* the rights and freedoms recognised herein and to *ensure to* all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

[135]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref135%22%20%5Co%20%22) See Pelayo Moller, Carlos María and Ferrer Mac-Gregor, Eduardo. "La obligación de "respetar" y "garantizar" los derechos humanos a la luz de la jurisprudencia de la Corte Interamericana". Centro de Estudios Constitucionales de Chile Universidad de Talca, Year 10, No. 2, 2012, pp. 141-192. ISSN 0718-0195.

[136]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref136%22%20%5Co%20%22) See, among others, Inter-American Court. Case of González et al. ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of 16 November 2009. Series C No.205, para. 236.

[137]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref137%22%20%5Co%20%22) The so-called general obligations of the States Parties to the American Convention, in addition to the aforementioned Article 1(1), include Article 2 of the American Convention, which establishes the obligation to adopt provisions of domestic law to ensure the guarantee of human rights. This provision reads: "If the exercise of the rights and freedoms referred to in Article 1 is not already ensured by legislative or other provisions, **the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms**. (Bolding outside the original text)

[138]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref138%22%20%5Co%20%22) A comparative aspect between the two systems of human rights protection concerns reparations. While in the Inter-American system the notion of full reparation and the autonomy of the court in its determination are based on Article 63(1) of the American Convention, the European Court has a more restricted power, due to Article 41 of the European Convention, which establishes the figure of just satisfaction, according to which the court may only order reparation measures when the domestic law of the condemned State is imperfect for this purpose.

[139]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref139%22%20%5Co%20%22) I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of 21 July 1989. Series C No. 7 and subsequent jurisprudence up to the I/A Court H.R. Case. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs. Judgment of 10 September 1993. Series C No. 15, judgment in which a measure is introduced that opens the door to new forms of reestablishment of the right: the IACHR Court orders Suriname to "reopen the school located in Gujaba and provide it with teaching and administrative staff so that it can function permanently as of 1994 and to put into operation during that year the existing dispensary in that place".

[140]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref140%22%20%5Co%20%22) The IACtHR defined that: "Reparation of the damage caused by the breach of an international obligation consists of full restitution (restitutio in integrum), which includes the re-establishment of the previous situation and reparation of the consequences that the breach produced and the payment of compensation for pecuniary and non-pecuniary damage, including moral damage". I/A Court H.R. Case of Velásquez Rodríguez v. Honduras, para. 26.

[141]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref141%22%20%5Co%20%22) In that first judgment, the Inter-American Court specified that "[n]o part of this article [63.1] mentions or conditions the provisions of the Court on the effectiveness of the instruments of reparation existing in the domestic law of the State Party responsible for the violation, so that reparation is not established on the basis of the defects, imperfections or inadequacies of domestic law, but independently of it". Consequently, the Court affirms that its only reference points for establishing "compensation" are the American Convention and the principles of international law applicable to the matter. I/A Court H.R. Case of Velásquez Rodríguez v. Honduras, paras. 30-31.

[142]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref142%22%20%5Co%20%22) Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para.41.

[143]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref143%22%20%5Co%20%22) In this regard, see the judgments in which the Colombian State has been condemned, among them, IACHR Court. Case of 19 Merchants v. Colombia. Merits, Reparations and Costs. Judgment of 5 July 2004. Series C No. 109; I/A Court H.R., Case of the "Mapuche Massacre. Case of the "Mapiripán Massacre" v. Colombia. Judgment of September 15, 2005. Series C No. 134; I/A Court H.R., Case of the "Mapiripán Massacre" v. Colombia. Case of the Pueblo Bello Massacre v. Colombia. Judgment of 31 January 2006. Series C No. 140; IACourtHR. Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006 Series C No. 148; I/A Court H.R., Case of the Santo Domingo Massacre v. Colombia. Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of 30 November 2012. Series C No. 259; I/A Court H.R., Case of the Afro-descendant Communities. Case of the Displaced Afro-descendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of 20 November 2013. Series C No. 270; I/A Court H.R., Case of Rodríguez Vera et al. Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of 14 November 2014. Series C No. 287.

[144]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref144%22%20%5Co%20%22) Constitutional Court Decision C-715 of 2012.

[145]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref145%22%20%5Co%20%22) *American Declaration of the Rights and Duties of Man*, OAS Res. XXX, adopted at the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/IL82 doc.6 rev.1 p. 17 (1992). Article XVIII. Right to Justice. Everyone has the right to take proceedings before the courts to enforce his rights. He must also have access to a simple and brief procedure by which the courts can protect him against acts of the authorities that violate, to his detriment, any of the fundamental rights enshrined in the Constitution.

[146]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref146%22%20%5Co%20%22) *Universal Declaration of Human Rights*, GA Res. 217 A (III), U.N. Doc. A/810 p. 71 (1948). Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

[147]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref147%22%20%5Co%20%22) This trend towards recognition of reparation in international instruments is also found in other instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted and opened for signature, ratification and accession by the United Nations General Assembly in its resolution 39/46 of 10 December 1984), which provides for reparation for damages caused to victims. In article 14, this convention establishes the obligation of states to ensure that "1. (...) their legislation guarantees the victim of an act of torture redress and the right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or any other person to compensation that may exist under national law.

[148]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref148%22%20%5Co%20%22) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Adopted by General Assembly resolution 40/34 of 29 November 1985. Redress. 8. Offenders or third parties responsible for their conduct shall, where appropriate, make fair restitution to victims, their families or dependants. Such restitution shall include the return of property or payment for damage or loss suffered, reimbursement of expenses incurred as a result of the victimisation, the provision of services and the restoration of rights. 9. Governments shall review their practices, regulations and laws so that restitution is considered as a possible sentence in criminal cases, in addition to other criminal sanctions. 10. In cases where substantial damage is caused to the environment, the compensation required shall include, to the extent possible, environmental rehabilitation, reconstruction of infrastructure, replacement of community facilities and reimbursement of relocation expenses where such damage causes the break-up of a community. 11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal law, victims shall be compensated by the State whose officials or agents were responsible for the damage caused. In cases where the Government under whose authority the victimising act or omission occurred no longer exists, the successor State or Government shall provide compensation to victims. Compensation **12. Where compensation from the offender or from other sources is not sufficient, States shall endeavour to provide financial compensation: (a) To victims of crime who have suffered significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) To the family, in particular dependants, of victims who have died or become physically or mentally incapacitated as a result of the victimisation** (emphasis added).

[149]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref149%22%20%5Co%20%22) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Article 6(b).

[150]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref150%22%20%5Co%20%22) The Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights presented the Final Report on impunity for perpetrators of human rights violations (civil and political rights), adopted by Resolution 1996/119: "41. At the individual level, victims, whether direct victims or family members or dependants, shall have an effective remedy. The applicable procedures should be publicised as widely as possible. **The right to reparation should cover all damages suffered by the victim.** In accordance with the set of principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law (...) this right includes the three types of reparation (...).) this right comprises the following three types of measures: (a) restitution measures (which should aim at restoring the victim to his or her former situation); (b) compensation measures (covering physical and moral damages, as well as loss of opportunities, material damage, attacks on reputation and legal aid costs); and (c) rehabilitation measures (medical and psychological or psychiatric care). At the collective level, measures of a symbolic nature, as moral reparation, such as public and solemn acknowledgement by the State of its responsibility, official declarations of restoration of the dignity of the victims, commemorative acts, christenings of public roads, and erections of monuments facilitate the duty to remember. Standards cited, among others, in Judgment C-579 of 2013.

[151]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref151%22%20%5Co%20%22) Statute for the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, (unofficial translation) Article 22. The International Tribunal provides in its rules of procedure and evidence for the protection of victims and witnesses. The protective measures include, at a minimum, in camera hearings and protection of their identity**.** In development of this, in Rule No. 106 of the Rules of Procedure and Evidence for the Yugoslavia Tribunal, the obligation to make reparation to victims is dealt with before the national authorities of the State of which the convicted person is a national and provides as follows: "(b) Taking into account relevant national legislation, the victim or those acting on his or her behalf may claim before national courts or competent authorities the compensation due; (c) For the purposes of the claim for damages, the decision of the Tribunal establishing the criminal responsibility of the person tried shall be final and binding." (Bolding outside the original text). Rules cited, among others, in Judgment C-454 of 2006.

[152]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref152%22%20%5Co%20%22) Statute of the International Tribunal of Rwanda. Article 14. Rules of Procedure and Evidence. For the purposes of the proceedings before the International Tribunal for Rwanda, the judges of the International Tribunal shall adopt the Rules of Procedure and Evidence applicable to the pre-trial, trial, appeals, admission of evidence, protection of victims and witnesses and other relevant matters of the International Tribunal for the Former Yugoslavia, with such modifications as they deem necessary. Article 19. Commencement and conduct of the trial. The Trial Chamber shall ensure that the proceedings are fair, expeditious and conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and with due regard for the protection of victims and witnesses. Article 21. Protection of victims and witnesses. The International Tribunal for Rwanda shall make provisions in its rules of procedure and evidence for the protection of victims and witnesses. The protective measures shall include, at a minimum, in camera hearings and protection of their identity. (Bolding outside the original text). In 1996, the Government of Rwanda adopted the Organic Law on the Organisation of Accusations of Offences Constituting Crimes of Genocide or Crimes against Humanity (Organic Law No. 08 of 1996), which establishes instruments to compensate victims of such crimes. See Corrin Melanie K. Compensation of Victims Unnamed in an Indictment, at www.nesl.edu/center/wcmemos/2001/corrin.pdf . See also Bassiouni, Chrif, The Right to Restitution Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Final Report of the Special Rapporteur, submitted to the United Nations Commission on Human Rights, U.N. Doc.E/CN.4/2000/62 (2000). Standards cited, inter alia, in Judgment C-454 of 2006.

[153]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref153%22%20%5Co%20%22) United Nations, Security Council, Resolution 827 established the following: "the Tribunal shall carry out its functions, without prejudice to the right of victims to seek, through appropriate means, compensation for damage caused as a result of violations of international humanitarian law".

[154]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref154%22%20%5Co%20%22) Law 742 of 2002, which approves the Rome Statute of the International Criminal Court, adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. (A/CONF.183/9, 17 July 1998.) **Article 75**. **Reparations to victims**. 1. The Court shall establish principles applicable to reparation, including restitution, compensation and rehabilitation, to be provided to victims or their successors in title. On this basis, the Court may, upon application or on its own motion in exceptional circumstances, determine in its decision the extent and magnitude of the damage, loss or injury caused to victims or their successors in interest, indicating the principles on which it is based. 2. The Court may issue a decision directly against the convicted person indicating **the appropriate reparation, including restitution**, compensation and rehabilitation, to be provided to victims. 3. The Court, before making a decision under this article, shall take into account any observations made by or on behalf of the convicted person, victims, other persons or States having an interest. 4. In exercising its powers under this article, the Court may, after a person has been convicted of a crime within its jurisdiction, determine whether, in order to give effect to a decision under this article, it is necessary to request measures in accordance with article 93, paragraph 1. 5. A State Party shall give effect to a decision under this article as if the provisions of article 109 applied to this article. 6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law. **Article 79**. **Trust Fund**. 1. A trust fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court and of the families of such victims. 2. The Court may order that any sums and property received by the Court by way of fine or forfeiture be transferred to the Trust Fund. 3. The Trust Fund shall be administered in accordance with criteria to be established by the Assembly of States Parties.

[155]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref155%22%20%5Co%20%22) General Comment No. 31, General Comments adopted by the Human Rights Committee, The Nature of the General Legal Obligation Imposed, 80th Session, U.N. Doc. HRI/GEN/1/Rev.7 at 225 (2004). Standards cited, inter alia, in Judgment C-579 of 2013.

[156]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref156%22%20%5Co%20%22) Ibid.

[157]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref157%22%20%5Co%20%22) Referring to the reparation of damages suffered by victims of gross violations of international human rights law or serious violations of international humanitarian law in resolution 2005/35 of the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights Law and International Humanitarian Law".

[158]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref158%22%20%5Co%20%22) Constitutional Court, Judgment C-197 of 1993.

[159]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref159%22%20%5Co%20%22) Enrique Gil Botero, *Responsabilidad extracontractual del Estado*, Bogotá, edit. Temis, 2013, p. 128.

[160]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref160%22%20%5Co%20%22) *Ibid,* p. 127.

[161]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref161%22%20%5Co%20%22) By which provisions are issued for the reincorporation of members of organised illegal armed groups, who effectively contribute to the achievement of national peace, and other provisions are issued for humanitarian agreements.

[162]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref162%22%20%5Co%20%22) Council of State, Third Section, judgement of 20 February 2008, file: 16.996, plaintiff: María Delfa Castañeda and others, Adviser rapporteur: Enrique Gil Botero.

[163]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref163%22%20%5Co%20%22) Sudre, F., *Le dialogue des juges,* Montpellier, Cahiers de l'IDEDH, 2007, p. 7.

[164]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref164%22%20%5Co%20%22) Adriantsimbazovina, J., *L'autorité des décisions de justice constitutionnelle et européennes sur le juge administratif francais.* Paris, Edit. L.G.D.J., 1998, p.441.

[165]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref165%22%20%5Co%20%22) Council of State, Third Section, judgement of 26 March 2009, exp. 17.994, C.P. Enrique Gil Botero.

[166]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref166%22%20%5Co%20%22) Council of State, Third Section, judgement of 29 January 2004 (exp. 18.273).

[167]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref167%22%20%5Co%20%22) Council of State, Third Section, judgement of 5 May 2005 (exp. 14.022).

[168]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref168%22%20%5Co%20%22) Council of State, Third Section, judgment of 4 May 2011, Radicación número: 76001-23-25-000-1996-02231-01(19355) -22231, 22289 and 22528- Acumulados), C.P. Enrique Gil Botero. In the same sense, see judgment of 21 November two thousand thirteen (2013), Radicación número: 05001-23-31-000-1998-02368-01(29764), C.P. Enrique Gil Botero. Similarly, in a judgment of 12 June 2013, in the case of "Los doce apóstoles" (Exp. 25.180, C.P. Enrique Gil Botero), the Council of State considered the following: Consequently, it is insisted, nothing prevents the claim from requesting restorative justice measures aimed at fully repairing the damage, but this must be expressly stated in the respective introductory libel, unless the damage is derived from serious violations of human rights or fundamental rights, in which case the administrative judge must ensure that the reparation of the damage is comprehensive given the magnitude of the facts.

[169]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref169%22%20%5Co%20%22) Council of State, Third Section, Judgment of 19 October 2007, C.P. Enrique Gil Botero (exp. 05001-23-31-000-1998-02290-01(29273)A).

[170]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref170%22%20%5Co%20%22) Council of State, Third Section, Subsection "C", judgment of 9 July 2014, case of the massacre of Pichilín (Sucre), C.P. Enrique Gil Botero.

[171]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref171%22%20%5Co%20%22) In Judgment C-579 of 2013, this Court expressly recognised, in light of international developments - in particular, 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" - a wide range of measures aimed at guaranteeing comprehensive reparation to victims of serious violations of human rights and international humanitarian law. In this sense, the Court specified: "This right would in turn compromise their rights to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition: (i) Restitution which "is to return the victim to the situation prior to the gross violation of international human rights law or the serious violation of international humanitarian law" and includes "restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to his or her place of residence, reintegration into his or her employment and return of his or her property." (ii) Compensation to be awarded in a manner appropriate and proportional to the gravity of the violation and the circumstances of each case, for all economically assessable damages resulting from gross violations of international human rights law or serious violations of international humanitarian law, such as the following: "(a) Physical or mental harm; (b) Loss of opportunities, including employment, education and social benefits; (c) Material damage and loss of income, including loss of earnings; (d) Moral damage; (e) Costs of legal or expert assistance, medication and medical services, and psychological and social services." (iii) Rehabilitation, which should include medical and psychological care as well as legal and social services. (iv) Satisfaction which shall include, where relevant and appropriate, all or part of the following measures: (a) Effective measures to ensure that violations do not continue; (b) Verification of the facts and full and public disclosure of the truth; (c) A search for missing persons, for the identities of abducted children and for the bodies of those killed, and assistance in recovering, identifying and reburying them according to the explicit or presumed wish of the victim or the cultural practices of his or her family and community; (d) An official statement or judicial decision restoring the dignity, reputation and rights of the victim and those closely associated with him or her; (e) A public apology including acknowledgement of the facts and acceptance of responsibility; (f) The application of judicial or administrative sanctions against those responsible for the violations; (g) Commemorations and tributes to the victims; (h) The inclusion of an accurate account of the violations that occurred in the teaching of international human rights law and international humanitarian law, as well as in educational material at all levels". (v) Guarantees of non-repetition, which include a series of measures for prevention: "(a) The exercise of effective control by civilian authorities over the armed and security forces; (b) Ensuring that all civilian and military proceedings conform to international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) The protection of legal, health and health care, information and related professionals, as well as human rights defenders; (e) The education, as a matter of priority and on an ongoing basis, of all sectors of society in human rights and international humanitarian law and the training of law enforcement officials, as well as the armed and security forces, in this field; (f) Promotion of the observance of codes of conduct and ethical standards, in particular international standards, by public officials, including law enforcement, prison, media, medical, psychological, social and armed forces personnel, as well as personnel of commercial enterprises; (g) Promotion of mechanisms to prevent, monitor and resolve social conflicts; (h) Review and reform of laws that contribute to or permit gross violations of international human rights law and serious violations of humanitarian law.

[172]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref172%22%20%5Co%20%22) Sentence C-228 of 2002.

[173]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref173%22%20%5Co%20%22) In this regard, see Constitutional Court rulings C-228 of 2002 and C-210 of 2007.

[174] Regarding the](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref174%22%20%5Co%20%22) breadth of the concept of comprehensive reparation for the harm caused by the crime, see, among others, judgments C-805 of 2002 and C-916 of 2002. Regarding the constitutional and international basis of the right to reparation for victims, see Constitutional Court judgments C-570 of 2003; C-899 of 2003; C-805 of 2002; C-715 of 2012.

[175]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref175%22%20%5Co%20%22) Sentence C-1199 of 2008.

[176]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref176%22%20%5Co%20%22) Sentence C-715 of 2012.

[177]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref177%22%20%5Co%20%22) Cf. Art. 33 of the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. The consistent jurisprudence of the Inter-American Court noted above, see supra pp. 14. Other international developments, among them, see supra pp.21. In the same vein, see Constitutional Court Judgment C-454 of 2006.

[178]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref178%22%20%5Co%20%22) Sentence C-579 of 2013.

[179]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref179%22%20%5Co%20%22) Constitutional Court Ruling SU-254 of 2013.

[180]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref180%22%20%5Co%20%22) Cf. Constitutional Court Ruling SU 254 of 2013.

[181]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref181%22%20%5Co%20%22) Cf. Constitutional Court Ruling SU 254 of 2013.

[182]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref182%22%20%5Co%20%22) Constitutional Court Judgment C-454 of 2006: "The right to reparation, under contemporary international law, also has an individual and a collective dimension. In its individual dimension, it covers all the damages suffered by the victim, and includes the adoption of individual measures relating to the right to (i) restitution, (ii) compensation, (iii) rehabilitation, (iv) satisfaction and (v) guarantee of non-repetition. In its collective dimension, it involves measures of satisfaction of general scope such as the adoption of measures aimed at restoring, compensating or readapting the rights of the collectivities or communities directly affected by the violations that have occurred.

The comprehensiveness of reparation entails the adoption of all necessary measures aimed at eliminating the effects of the violations committed, and at returning the victim to the state in which he or she was before the violation. Reiterated in Judgment C-579 of 2013.

[183]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref183%22%20%5Co%20%22) In a complete analysis by Sergio García Ramírez, former judge of the Inter-American Court of Human Rights, of the jurisprudence of that international court on reparations, cases come to light in which reparation must not only seek to re-establish the right by reversing the effects of the violation to place the victim in the state prior to the occurrence of the offence (something that is almost impossible in most cases), but also, in exceptional situations, when the previous circumstances were not dignified either, reparation should seek to place the victim in a situation that enables the full enjoyment and exercise of their human rights and the realisation of their life project. For a detailed review of the relevant Inter-American jurisprudence, see: García Ramírez, Sergio, El amplio horizonte de las reparaciones en la jurisprudencia interamericana de derechos humanos, *El control del poder, Homenaje a Diego Valadés*, T.I, Instituto de Investigaciones Jurídicas, UNAM, 2011. The first judgment of the IACHR Court to recognise the notion of life project was in the case of Loayza Tamayo v. Peru. Reparations and Costs. Judgment of 27 November 1998. Series C No. 42.

[184]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref184%22%20%5Co%20%22) On the need to balance the rights of victims and society's right to peace, see, in particular, judgments C-370 of 2006 and C-579 of 2012.

[185] United Nations](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref185%22%20%5Co%20%22) General Assembly, Resolution 60/147 of 16 December 2005. "*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*", Principle IX - Reparation for the harm suffered.

[186]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref186%22%20%5Co%20%22) Constitutional Court Ruling C-979 of 2005.

[187]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref187%22%20%5Co%20%22) On the duty to prevent human rights violations, see the development of the IACHR Court in the judgment in the case of González et al ("Campo Algodonero") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of 16 November 2009. Series C No.205. For a more extensive discussion of guarantees of non-repetition as a concretisation of the general obligations of the American Convention, see: Londoño Lázaro, María Carmelina, *Las garantías de no repetición en la jurisprudencia interamericana: Derecho Internacional y cambios estructurales del Estado*, Tirant lo Blanch, 2014.

[188]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref188%22%20%5Co%20%22) Similarly, art. 4.f of the Declaration on the Elimination of Violence against Women provides that states should *"generally adopt preventive approaches and all such legal, political, administrative and cultural measures as may promote the protection of women against all forms of violence"*. On the obligation to adopt preventive measures in different areas of human rights, see: arts. 7.d and 8 of the Convention of Belem do Para; UN General Assembly, A/RES/52/86 "*Crime prevention and criminal justice measures for the elimination of violence against women"*, 2 February 1998; Inter-American Commission on Human Rights, IACHR, report *"Access to Justice for Women Victims of Violence in the Americas"*, OEA/Ser.L/V/II. Doc. 68, 20 January 2007;

[189]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref189%22%20%5Co%20%22) United Nations, *"Violence against women in the family"*: Report of Ms. Radhika Coomaraswamy, Special Rapporteur on violence against women, submitted in accordance with Commission on Human Rights resolution 1995/85, UN Doc. E/CN.4/1999/68, 10 March 1999, para. 25. Quote taken from I/A Court H.R., Case of González and others (Campo Algodonero) v. Mexico, Judgment of 16 November 2009. For an exhaustive review of Inter-American jurisprudence on guarantees of non-repetition, see: Londoño Lázaro, María Carmelina, *Las garantías de no repetición en la jurisprudencia interamericana: Derecho Internacional y cambios estructurales del Estado.*

[190]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref190%22%20%5Co%20%22) For example, in the Universal System of Human Rights Protection, Art. 3.a of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, requires States to take measures to *"(a) modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women".*

[191]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref191%22%20%5Co%20%22) See I/A Court H.R., Case of González et al (Campo Algodonero) v. Mexico, Judgment of 16 November 2009. Para. 258.

[192]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref192%22%20%5Co%20%22) For example, article 4.h of the Declaration on the Elimination of Violence against Women highlights the importance of allocating sufficient resources to prevent and eliminate violence against women.

[193]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref193%22%20%5Co%20%22) See UN. Committee on the Rights of the Child, Convention on the Rights of the Child, General Comment 13 on "The right of the child to be free from all forms of violence" (18 April 2011).

[194]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref194%22%20%5Co%20%22) See I/A Court H.R., Case of González et al (Campo Algodonero) v. Mexico, Judgment of 16 November 2009. Para. 258.

[195]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref195%22%20%5Co%20%22) I/A Court H.R., Case of the Gómez Paquiyauri Brothers v. Peru, para. 211. Case of the Gómez Paquiyauri Brothers v. Peru, para. 211 and Case of the 19 Merchants v. Colombia, Judgment on the Merits, Reparations and Costs, para. 244.

[196]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref196%22%20%5Co%20%22) Sentence C-099 of 2013.

[197]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref197%22%20%5Co%20%22) Constitutional Court Rulings C-873 of 2003; [C-1116 of 2003](http://www.corteconstitucional.gov.co/relatoria/2003/C-1116-03.htm): C- 034 of 2005 and [C-936 of 2010](http://www.corteconstitucional.gov.co/relatoria/2010/C-936-10.htm).

[198]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref198%22%20%5Co%20%22) Constitutional Court Rulings C-646 of 2001 and C-873 of 2003.

[199]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref199%22%20%5Co%20%22) Constitutional Court decision C-599 of 1998.

[200]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref200%22%20%5Co%20%22) Thus, in Ruling C-198 of 1997, it was stated: "*The selection of the legal assets worthy of protection, the identification of the conducts capable of affecting them, the distinction between crimes and misdemeanours, as well as the consequent differences in sanctioning regimes and procedures, are the result of the State's criminal policy, in the conception and design of which the legislator is granted a margin of action that falls within the so-called freedom of configuration in matters not directly regulated by the Constitution, and which is inscribed within the so-called freedom of configuration.* ”. In the same sense, the Court pronounced itself in Ruling C-093 of 1993.

[201]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref201%22%20%5Co%20%22) Constitutional Court decision C-227 of 1998.

[202]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref202%22%20%5Co%20%22) Constitutional Court Decision C-344 of 1995.

[203]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref203%22%20%5Co%20%22) Constitutional Court Decision C-327 of 1997.

[204]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref204%22%20%5Co%20%22) Constitutional Court Rulings C-345 of 199 and C-873 of 2003.

[205]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref205%22%20%5Co%20%22) Attorney General's Office, *[La priorización: Memorias de los talleres para la construcción de los criterios del nuevos sistema de investigación penal](http://www.fiscalia.gov.co/colombia/wp-content/uploads/123719-Libro-de-priorizaci%C3%B3n-web.pdf%22%20%5Co%20%22Ver%20archivo%22%20%5Ct%20%22_blank)*, Bogotá 2013, p. 6.

[206]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref206%22%20%5Co%20%22) Constitutional Court decision C-579 of 2013.

[207]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref207%22%20%5Co%20%22) Lafavre, Wayne et al: *Criminal Procedure*, West, New York, 2008, 981 and 982.

[[208]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref208%22%20%5Co%20%22) United States vs. Virgil Raymond Catlett, III. Nov. 19 of 1894. Court of Appeals, Sixth Circuit, United States.

[[209]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref209%22%20%5Co%20%22) The People of the State of Colorado, Plaintiff-Appellant vs. Earl Wayne Garner, Defendant-Appellee, October 23, 1989. Supreme Court of Colorado, En Bank of the United States of America.

[210]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref210%22%20%5Co%20%22) For example, if an initial investigation is filed for conspiracy to commit an offence but insufficient evidence is obtained in respect of that offence but sufficient evidence is obtained in respect of a less serious offence such as breaking and entering.

[[211]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref211%22%20%5Co%20%22) Whitebread, Charles / Slobogin, Christopher: Criminal Procedure, Thomson / West, New York, 2008, 599 a 605.

[212]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref212%22%20%5Co%20%22) See in this regard: A/HRC/27/56, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, 27 August 2014.

[213]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref213%22%20%5Co%20%22) Morten Bergsmo and María Paula Saffon, "Facing a row of past atrocities: How to select and prioritise cases of core international crimes?" in Kai Ambos, ed., Selección y prioritisación como estrategia de persecución en los casos de crímenes internacionales, Bogotá, 2011, p. 26.

[[214]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref214%22%20%5Co%20%22) Siri Frigaard, "Some introductory remarks", en Morten Bergsmo, ed., Criteria for Prioritizing and  Selecting Core International Crimes Cases, FICHL Publication Series No 4 (2010), págs. 1 a 3.

[[215]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref215%22%20%5Co%20%22) Morten Bergsmo y otros, *The Backlog of Core International Crimes Case Files in Bosnia and*  Herzegovina, FICHL Publication Series No 3 (2009), págs. 57 a 86.

[[216]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref216%22%20%5Co%20%22) Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo*, 2014.

[217]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref217%22%20%5Co%20%22) The notion of situation, which is not a procedural concept, is broader than that of material and procedural connection, and its use is intended to ensure that a comprehensive investigation is conducted, which is not always achieved due to the coexistence of different procedural systems. Hence, although formally different cases cannot be formally connected, the formation of teams of prosecutors, analysts and investigators allows the delimitation of situations and work by situations and not by isolated cases.

[218]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref218%22%20%5Co%20%22) Beitner, Terry M.; "Canada's Approach to File Review in the Context of War Crimes Cases", in *Criteria for Prioritizing and Selecting Core International Crime Cases (*Morten Bergsmo ed.),

[219]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref219%22%20%5Co%20%22) For example: strategic criminal analysis, data mining, historical analysis, geo-referencing, cross-referencing of criminal variables, etcetera.

[220]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref220%22%20%5Co%20%22) The ICTY, like the International Criminal Court, has specialised units of analysts in charge of constructing macro-criminality contexts, which fulfil the following functions: (i) they structure and guide investigations; (ii) they help to select the form of authorship and participation that will be used by prosecutors; (iii) they allow cases to be linked; (iv) and they constitute a means of proof (expert witness), which, together with other evidence (testimony, documents, etc.), will lead to determining the degree of responsibility of an accused in the commission of international crimes. In other words, these international investigations are conducted in context, in the sense of guiding the elaboration of methodological programmes and the collection of evidence (means) and, in turn, lead to the construction of contexts (end).

[221]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref221%22%20%5Co%20%22) Congressional Record 690 of 19 September 2011.

[222]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref222%22%20%5Co%20%22) *Ibid.*

[223]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref223%22%20%5Co%20%22) See, Congressional Record 690 of 19 September 2011.

[224]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref224%22%20%5Co%20%22) Congressional Record 690 of 19 September 2011.

[225]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref225%22%20%5Co%20%22) *Ibid.*

[226]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref226%22%20%5Co%20%22) *Ibid.*

[227]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref227%22%20%5Co%20%22) Law 5 of 1992 "Whereby the *Rules of Procedure of the Congress, the Senate and the House of Representatives are enacted*", ARTICLE 160. Any Member of Congress may present amendments to bills in progress. In order to do so, the following conditions must be observed, in addition to those established in these Rules of Procedure: 1a. The author or proposer of an amendment, addition or deletion may raise it in the respective Constitutional Committee, even if it is not an integral part of it. || 2nd. The deadline for its presentation is until the close of the discussion, and it shall be made in writing addressed to the Presidency of the Commission. || 3a. Amendments may be to the whole of the bill or to its articles. ARTICLE 161. AMENDMENTS TO THE WHOLE. Amendments to the whole shall be those that deal with the timeliness, principles or spirit of the Bill, or those that propose a complete alternative text to that of the Bill.

[228]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref228%22%20%5Co%20%22) Congressional Record 681 of 10 October 2012.

[229]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref229%22%20%5Co%20%22) Congressional Gazette 57 of 8 March 2012, Minutes of Commission 20 of 16 November 2011: *"This bill addresses important reforms to Law 975, a law that, together with the one we are going to approve, will also make it possible to articulate a policy especially in procedural matters with respect to the provisions enshrined in Law 1424 and also in Law 1448 or the Victims Law; it is a bill that urgently needs to be passed. A situation that has completely overwhelmed the capacity of the Prosecutor General's Office to resolve 4,634 cases of applicants to the Justice and Peace Law, more than 26,000 criminal acts confessed by those same applicants and, be careful, Representatives, what we have before us is a worrying panorama, isn't it? In August 2013 the term of the maximum alternative sentence established in Law 975 will expire, which means that in August 2013 many of those currently detained before Justice and Peace, accused of crimes against humanity or of belonging to armed groups, will be released on completion of their sentences and without a conviction, a situation of impunity which will open the doors to International Criminal Justice to intervene in Colombia, given the inefficiency of the Colombian judicial apparatus. It is therefore a question of giving reason to the Attorney General of the Nation, so that Congress can give the Attorney General of the Nation instruments to speed up the procedures currently underway in the transitional justice system".*

[230]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref230%22%20%5Co%20%22) Congressional Record 57 of 8 March 2012, Commission Minutes 20 of 16 November 2011.

[231]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref231%22%20%5Co%20%22) *Ibid.*

[232]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref232%22%20%5Co%20%22) *Ibid.*

[233]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref233%22%20%5Co%20%22) Ibid.

[234]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref234%22%20%5Co%20%22) Congressional Gazette 997 of December 23, 2011: *"In the plenary session of December 16, 2011, the final text was approved in the second debate, without amendments, of bill number 096 of 2011 House, which introduces amendments to Law 975 of 2005, by which provisions are issued for the reincorporation of members of organised armed groups outside the law that effectively contribute to the achievement of national peace and other provisions are issued for humanitarian agreements. This is in order for the aforementioned bill to follow its legal and regulatory course and thus comply with the provisions of Article 182 of Law 5 of 1992. The above is recorded in the Minutes of Plenary Session number 110 of 16 December 2011, after its announcement on 15 December of the current year, according to the Minutes of Plenary Session number 109".*

[235]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref235%22%20%5Co%20%22) Congressional Record No. 221 of 11 May 2012.

[236]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref236%22%20%5Co%20%22) (Criminal Policy Advisory Commission, 31 March 2012).

[237]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref237%22%20%5Co%20%22) Gazette of the Congress of the Republic No. 681 of 10 October 2012.

[238]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref238%22%20%5Co%20%22) Selección y priorización de delitos como estrategia de investigación en la justicia transicional, LÓPEZ, Claudia, Revista Facultad de Derecho y Ciencias Políticas, Vol. 42, Nº 117, Págs. 529-531, Medellín - Colombia, 2012.

[239]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref239%22%20%5Co%20%22) Ministry of Justice and Law, Comisión Asesora de Política Criminal, Informe Final, Diagnóstico y propuesta de lineamientos de política criminal para el Estado colombiano June 2012, p. 89.

[240]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref240%22%20%5Co%20%22) Congressional Record No. 690 of 19 September 2011, p. 10.

[241]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref241%22%20%5Co%20%22) Congressional Record No. 690 of 19 September 2011, p. 10.

[242]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref242%22%20%5Co%20%22) Constitutional Court of Colombia, Sentencia C-752, October.

[243]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref243%22%20%5Co%20%22) Congressional Gazette number 681 of 2012. Second Debate in the Senate Plenary.

[244]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref244%22%20%5Co%20%22) Congress of the Republic of Colombia, Law 1592 of 2012, Article 11D.

[245]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref245%22%20%5Co%20%22) Article 17 of Law 1592 of 2012

[246]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref246%22%20%5Co%20%22) Article 18 Law 1592 of 2012

[247]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref247%22%20%5Co%20%22) Article 20 Law 1592 of 2012

[248]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref248%22%20%5Co%20%22) Article 22 Law 1592 of 2012

[249]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref249%22%20%5Co%20%22) Article 23 of Law 1592 of 2012

[250]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref250%22%20%5Co%20%22) Article 27 of Law 1592 of 2012

[251]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref251%22%20%5Co%20%22) Congress of the Republic of Colombia, Law 1592 of 2012, Article 32.

[252]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref252%22%20%5Co%20%22) Article 46 of Law 975 of 2005.

[253]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref253%22%20%5Co%20%22) Article 32 Law 1592 of 2012

[254]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref254%22%20%5Co%20%22) Those whose act of demobilisation is certified by the Operational Committee for the Abandonment of Weapons (CODA).

[255]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref255%22%20%5Co%20%22) Fundación Paz Ciudadana, *Análisis delictual: enfoque y metodología para la reducción del delito*, Edited by Patricio Tudela Poblete, Santiago de Chile, 2010.

[256]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref256%22%20%5Co%20%22) Constitutional Court decision C 579 of 2013.

[257]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref257%22%20%5Co%20%22) Judgment of the Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*. Para. 175.

[258]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref258%22%20%5Co%20%22) Constitutional Court Ruling C-334 of 2013.

[259]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref259%22%20%5Co%20%22) Inter-American Court of Human Rights, *Pueblo Bello v. Colombia*, Judgment of 31 January 2006, para. 143.

[260]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref260%22%20%5Co%20%22) Inter-American Court of Human Rights, *Bueno Alves v. Argentina*, Judgment of 11 May 2007, para. 111.

[261]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref261%22%20%5Co%20%22) Among many others, see: Inter-American Court of Human Rights, Case of *Ricardo Canese v. Paraguay*, judgment of 11 August 2004 and *Case of the 19 traders v. Colombia*, judgment of 5 July 2004.

[262]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref262%22%20%5Co%20%22) Judgment of the Inter-American Court of Human Rights, *Ximenes Lopes v. Brazil*, Judgment of 4 July 2006, para. 179.

[263]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref263%22%20%5Co%20%22) Judgment of the Inter-American Court of Human Rights, *Case of Herrera Ulloa v. Guatemala*, Judgment of 2 July 2004, para. 171.

[264]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref264%22%20%5Co%20%22) Judgment of the Inter-American Court of Human Rights, *Heliodoro Portugal v. Panama*, judgment of 12 August 2008.

[265]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref265%22%20%5Co%20%22) I/A Court H.R. Judgment, Case of Manuel Cepeda Vargas v. Colombia, para. 118.

[266]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref266%22%20%5Co%20%22) A/HRC/25/19/Add.3\*, Report of the Office of the High Commissioner for Human Rights.

[[267]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref267%22%20%5Co%20%22) ICTY, *Manual on Developed Practices*, La Haya, 1996, párr. 18

[268]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref268%22%20%5Co%20%22) Underlined and in bold.

[269]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref269%22%20%5Co%20%22) Underlined and in bold.

[270]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref270%22%20%5Co%20%22) See Directive 0001 of 2012 of the Attorney General's Office, "*Whereby criteria for prioritising situations and cases are adopted, and a new criminal investigation and case management system is created in the Attorney General's Office".*

[271]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref271%22%20%5Co%20%22) Martha Sepúlveda Scarpa, Análisis delictual: conceptos básicos. Chile, Fundación Paz Ciudadana, 2010.

[272]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref272%22%20%5Co%20%22) Primary sources of investigation are all those that have a judicial origin (e.g. sentences, declarations, expert opinions, documents, etc.). In turn, secondary sources are all those that do not have a judicial character (e.g. reports from NGOs and international organisations, press information, historical archives, etc.). Context analysts transform these sources into products of criminal analysis (maps, statistics, context reports, tables, charts, etc.), which should be incorporated as evidence in the respective judicial process, and to that extent, be the object of controversy.

[[273]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref273%22%20%5Co%20%22) Schabas, W, "Customary law or judge-made law: judicial creativity at the UN Criminal Tribunals", En: *The legal regime of the International Criminal Court. Essays in honour of Professor Igor Blishchenko*. Lieden: Martinus Nijhoff Publishers, 2009, p. 232.

[[274]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref274%22%20%5Co%20%22) Morten Bergsmo, *Criteria for prioritizing and selecting core international crimes cases*, Oslo, Torkel Opsahl Academic Publisher, 2010, p. 45.

[275]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref275%22%20%5Co%20%22) See Directive 0001 of 2012 of the Attorney General's Office, "*Whereby criteria for prioritising situations and cases are adopted, and a new criminal investigation and case management system is created in the Attorney General's Office".*

[276]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref276%22%20%5Co%20%22) Various authors, *Land restitution in Colombia: from dream to reality, Ministry of Agriculture, Land Restitution Unit*, 2014.

[277]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref277%22%20%5Co%20%22) On contexts as means of evidence see: Justice and Peace Chamber of the High Court of Bogotá, judgment of 20 November 2014, judgment against Salvatore Mancuso and other paramilitary leaders.

[278]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref278%22%20%5Co%20%22) Various authors, *Land restitution in Colombia: from dream to reality, Ministry of Agriculture*, Land Restitution Unit, 2014.

[279]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref279%22%20%5Co%20%22) See in this regard: Sala Civil Especializada en Restitución de Tierras de Antioquia, judgment of 8 April 2015.

[280]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref280%22%20%5Co%20%22) Recital 48 of the report.

[281]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref281%22%20%5Co%20%22) Martha Sepúlveda Scarpa, "Análisis delictictual: conceptos básicos", *Análisis delictual: enfoque y metodología para la reducción del delito*, Fundación Paz Ciudadana, Chile, 2010, p. 57.

[282]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref282%22%20%5Co%20%22) *Ibid.*

[[283]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref283%22%20%5Co%20%22) Clarke R. y Eck, J.E., *Crime analysis for problems solver in 60 small steps*, Washington, 2005.

[[284]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref284%22%20%5Co%20%22) Felson M. y Clarke, R., *Opportunity makes the thief*, London, 1998.

[[285]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref285%22%20%5Co%20%22) Brantingham, *Environmental criminology*, Rev. Prospect Heights, Illinois, 1991.

[[286]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref286%22%20%5Co%20%22) Cohen, M. y Felson, M., "Social change and crime rate trends: A routine activities approach", *American Sociological Review*, 1979.

[[287]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref287%22%20%5Co%20%22) Bruce, C., *Identifying crime patterns*, New York, IACA, 2002.

[288]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref288%22%20%5Co%20%22) Martha Sepúlveda Scarpa, *ob. cit.,* p. 69.

[289]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref289%22%20%5Co%20%22) Some International Criminal Tribunals have also resorted to techniques to expedite proceedings for the commission of crimes against humanity, genocide or war crimes perpetrated on a massive or systematic basis. Thus, the International Criminal Tribunal for Rwanda, in its Rules of Procedure and Evidence, includes a regulation on notorious facts and adjudicated facts:

Notorious facts (Rule 94(A)): the Rwandan genocide is considered by the ICTR to be a notorious fact.

Adjudicated facts (Rule 94(B)): facts proven in previous cases may be carried over to new cases as presumptions which the Prosecution does not have to prove, but which the Defence may rebut, provided that: (i) they are proven beyond reasonable doubt (they cannot be the product of pre-settlement); (ii) they cannot be legal characterisations (e.g. "armed conflict in Bosnia in 1992"), these must be determined in each new case by the Tribunal; (iii) they cannot be subject to appeal; and (v) they cannot relate to the conduct or mental state of the Prosecutor. (ii) they cannot be legal characterisations (e.g. "armed conflict in Bosnia in 1992"), these must be determined in each new case by the Tribunal; (iii) they cannot be subject to appeal and (v) they cannot relate to the conduct or state of mind of the accused.

[290]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref290%22%20%5Co%20%22) Constitutional Court decision C-626 of 1996.

[291]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref291%22%20%5Co%20%22) Constitutional Court ruling C-626 of 1996.

[292]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref292%22%20%5Co%20%22) Constitutional Court Decision C-370 of 2002.

[293]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref293%22%20%5Co%20%22) Constitutional Court Decision C-365 of 2012.

[294]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref294%22%20%5Co%20%22) Constitutional Court Rulings C-239 of 1997; C-179 of 1997; and C-228 of 2003; C-077 of 2006.

[295]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref295%22%20%5Co%20%22) Constitutional Court Rulings C-239 of 1997; C-616 of 2002; and C 928 of 2005.

[[296]](https://www.corteconstitucional.gov.co/relatoria/2015/C-694-15.htm%22%20%5Cl%20%22_ftnref296%22%20%5Co%20%22)