Reparations for Victims in Colombia: Colombia’s Law on Justice and Peace

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The lack of recognition of the injury caused […], that is the source of the injustice […]. Injustice not only because they killed, because they did not pay, because they did not give back, but because from every angle we women have always been treated unjustly: they never recognise the harm that is done to us.¹

Criminal investigations and prosecutions against members of self-defense groups or so-called “paramilitaries” responsible for committing serious crimes, have no antecedents in international practice. Some characteristics make this a unique and unprecedented experience: i) these groups were not defeated militarily but decided to hand in their weapons voluntarily as a result of a political negotiation; ii) the Colombian judiciary started to investigate and prosecute members of the self-defense groups from the outset of the peace process; iii) it is the first attempt to frame the peace process in Colombia within the confines of international criminal justice, and as such it presents the challenge of balancing legal principles with the need to achieve national peace; iv) there are few “standards” in transitional justice that allow one to evaluate the levels of truth, justice and reparation necessary to satisfy victims; v) the current legal framework moves away from previous amnesties and will have lasting impacts on future peace negotiations, given that many armed groups other than the paramilitaries are still active.

This chapter has the purpose of analysing the challenges of applying justice in times of transition and proposing some conclusions that may help guide these processes. Besides this overview and the conclusions, this text is divided in three parts. In the first part a brief explanation of the background of the Colombian conflict is presented. The second part analyses the national legal instruments

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¹ Statement of a female victim taken by the Grupo de trabajo Mujer y género, Recomendaciones para garantizar los derechos as la verdad, la justicia y la reparación de la mujeres víctimas del conflicto armado en Colombia, April 2008, at 108, available at: www.ciase.org/documentos.shtml?s=d&apc=a-151–.

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that have been developed to address the issues of individual criminal responsibility, the truth about serious crimes and the obligations of members of illegal armed groups to repair victims. This part analyses in particular the 2005 Law on Justice and Peace. The third part provides an evaluation of the application of this legal framework and points out the obstacles and challenges in the implementation process.

A. Background to the Conflict

For the last forty-four years Colombians have suffered from political violence arising from an internal armed conflict between the Colombian State, left-wing rebels and right-wing paramilitaries. The main left-wing groups have been the Revolutionary Armed Forces of Colombia or Fuerzas Armadas Revolucionarias de Colombia (FARC), officially established in 1964, and the smaller National Liberation Army or Ejercito de Liberacion Nacional (ELN), founded in 1965. Other leftist groups to emerge were the M-19, a communist group, the indigenous group led by Quintin Lame, and the Ejercito Polular de Liberación EPL. On the other hand right-wing paramilitary groups emerged in the late 1970s to fill the gap left by the State in fighting back against the rebels. In 1997 these groups gathered together to create a confederation under the name of AUC Colombian United Self-Defenses Autodefensas Unidas de Colombia. Both sides have become increasingly active in the illegal drugs trade producing 80% of the world’s cocaine; the millions of dollars raised through drug trafficking and kidnapping allow these groups to continue the violence.

The human cost of the violence on the civilian population can most notably be seen in the fact that Colombia has one of the world’s largest displaced populations, with almost 4 million people displaced by violence between 1985 and 2007. While the FARC is famed for resorting to kidnappings, according to the World Bank, 50–60 percent of displaced civilians are said to have been forced off their land by the paramilitaries.

Over the past decades, various government efforts were undertaken to achieve peace with the leftist guerrillas. Amnesty negotiations in 1982 and a Peace Accord in 1984 with FARC provided some hope. Later the government of

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2 See: www.internal-displacement.org/.
4 The Uribe Accord, was signed on 28 March 1984, under the Belisario Betancur administration. The Accord included initial agreements to address issues such as modernising political