A comprehensive transitional justice strategy for Colombia

Colombia has lived in war for over 50 years. It has been an armed conflict characterized by the complexity of actors, the massiveness of victims and the ferocity of victimizations. All these years have left us, according to a recent report published by the Center of Historical Memory approximately 220,000 homicides, 5 million IDPs, nearly 25,000 disappearances, almost 2,000 massacres and more than 27,000 kidnappings.[1] There is no doubt that the vast majority of grave human rights violations and breaches of IHL that the Commission has historically documented have been caused precisely by this armed conflict and institutional weaknesses.

Today Colombia is facing the best chance to end the armed conflict, and nothing would do more to protect human rights in the country.

This is why we have launched a methodical process to reach peace. A process that has as its center of gravity the idea of ending the armed conflict in order to move into a peace building stage. This is about ending the armed conflict to be able to dedicate our efforts to reconstruct the regions most affected by conflict, and address the legacy of gross human rights violations and breaches of IHL. Ultimately the goal is to strengthen the rule of law.

Colombia has pioneered the implementation of transitional justice measures during the armed conflict, and this is precisely is why we know that real and full satisfaction of victims' rights can only be achieved when the armed conflict is over.

In recent years Colombia has designed and applied various transitional justice mechanisms. However, it is undeniable that the application of these tools still faces huge challenges. The experiment of its implementation has left us invaluable lessons on how to proceed, and how not to proceed. This is precisely why today Colombia's bid is to design and implement a comprehensive transitional justice strategy that allows us to simultaneously end the armed conflict and achieve the highest possible satisfaction of victims' rights.

The purpose of this comprehensive transitional justice strategy –beyond the specific outcome of one measure or another– is precisely strengthening the rule of law as a result of the full implementation of the various measures. The investigation and punishment of those most responsible for international crimes, the establishment of truth commissions, comprehensive administrative reparation programs for all victims, and institutional reforms are instruments of transitional justice, among many others, whose ultimate goal is not the number of convicted perpetrators, or the number of reports published, or of casualties redressed, but the collective contribution of all these measures to recognize that there were very serious human rights violations during the armed conflict, reaffirm that what happened to us as a society is to be condemned, and confirm that it would be unacceptable for those violations to happen again.

We are committed, of course, with a strategy that is consistent with national and international law. Otherwise it would not be sustainable or legitimate. We are aware that the State's duty to guarantee human rights compels us to take all measures to avoid serious human rights violations, and if exceptionally they occur, to assure that they are investigated, prosecuted and punished.

[1] Centro de Memoria Histórica, *"¡Basta ya!: Colombia, Memoria de Guerra y Dignidad"*, Imprenta Nacional, Bogotá D.C., 2013.

However, the Colombian case is different. Colombia faces one of the most long internal armed conflicts and currently it has the possibility to finish it through a political negotiation. This does not make the human rights violations that have taken place less serious, but it does mean that it is necessary to implement a set of exceptional measures that are different from those that could take place in a context of peace and 'normality', or even in a context of transition from a dictatorship to democracy.

We are aware, as it is obvious, that in light of American Convention on Human Rights[2], Colombia has an international obligation to prevent, investigate and remedy human rights violations occurring within its jurisdiction; ensure an effective remedy for victims; and direct the efforts of the State to unravel the criminal structures that caused the violations, their beneficiaries and their consequences.

However, one must not forget that in addition to these obligations in light of the Inter-American jurisprudence the Colombian State is also required to ensure the non-repetition of human rights violations[3], establish the truth about the violations[4], not only as an individual right but as a collective right of society as a whole[5], ensure safety and maintain public order[6], and seek reconciliation. [7]

These obligations are deeply interrelated[8], interdependent[9] and must be achieved in a comprehensive way, which means that they cannot be interpreted in isolation. Therefore the State must use all available means to comply, to the highest extent possible, with all of these obligations.

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[2] Various of the reflections in this section are taken from: Acosta, Juana Inés y García, Lina María. El SIDH frente a transiciones hacia la paz. *Working paper.*

[3] Corte IDH. *Caso Masacres de Río Negro Vs. Guatemala*. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 4 de septiembre de 2012 Serie C No. 250 párr. 257; Corte IDH. *Caso De la Masacre de las Dos Erres Vs. Guatemala*. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 24 de noviembre de 2009. Serie C No. 211*,* párr. 226, Corte IDH. *Caso Masacres de El Mozote y lugares aledaños Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 25 de octubre de 2012 Serie C No. 252 párr. 305.

[4] La Organización de Naciones Unidas ha reconocido la importancia de la determinación de la verdad con respecto a las violaciones manifiestas de los derechos humanos para la consolidación de los procesos de paz y reconciliación. Organización de las Naciones Unidas, Asamblea General, Resolución respecto a las personas desaparecidas en Chipre de 9 de diciembre de 1975, 3450 (XXX), Preámbulo; Resolución respecto de la situación de los derechos humanos en El Salvador de 20 de diciembre de 1993, A/RES/48/149, Preámbulo y párr. 4; Resolución sobre la situación de los derechos humanos en Haití de 29 de febrero de 2000, A/RES/54/187, párr.8; Resolución sobre la Misión de Verificación de las Naciones Unidas en Guatemala de 28 de enero de 2003, A/RES/57/161, párr. 17; Resolución sobre asistencia para el socorro humanitario, la rehabilitación y el desarrollo de Timor Leste de 13 de febrero de 2003, A/RES/57/105, párr. 12; Resolución sobre la promoción y protección de todos los derechos humanos civiles, políticos, económicos, sociales y culturales incluido el derecho al desarrollo de 19 de setiembre de 2008, A/HRC/9/L.23, Preámbulo; Resolución sobre la Proclamación del 24 de marzo como Día Internacional del Derecho a la Verdad en relación con Violaciones Graves de los Derechos Humanos y de la Dignidad de las Víctimas de 23 de junio de 2010, A/HRC/RES/14/7, Preámbulo; Resolución sobre el Derecho a la Verdad de 12 de octubre de 2009, A/HRC/RES/12/12, párr. 1; Resolución sobre Genética Forense y Derechos Humanos de 6 de octubre de 2010, A/HRC/RES/15/5, Preámbulo; Resolución sobre el Relator Especial sobre la promoción de la verdad, la justicia, la reparación y las garantías de no repetición de 26 de septiembre de 2011, A/HRC/18/L.22, Preámbulo, y Resolución sobre el Derecho a la Verdad de 24 de septiembre de 2012, párr.1.

[5]Corte IDH. *Caso Bámaca Velásquez Vs. Guatemala*. Fondo. Sentencia de 25 de noviembre de 2000. Serie C No. 70, párr. 76 y 77; Corte IDH. *Caso Masacres de El Mozote y lugares aledaños Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 25 de octubre de 2012 Serie C No. 252 párr. 298. Comisión Interamericana de Derechos Humanos. Informe 37/00 del 13.04.2000. Pág. 148.

[6] Corte IDH. *Caso Montero Aranguren y otros (Retén de Catia) Vs. Venezuela*. Excepción Preliminar, Fondo, Reparaciones y Costas. Sentencia de 5 de julio de 2006. Serie C No. 150. párr. 70*;* Corte IDH. *Caso Neira Alegría y otros Vs. Perú.* Fondo. Sentencia de 19 de enero de 1995. Serie C No. 20. párr. 75; Corte IDH*. Caso Godínez Cruz Vs. Honduras.* Fondo. Sentencia de 20 de enero de 1989. Serie C No. 5. párr. 162; CORTE IDH. *Caso de los Niños y Adolescentes Privados de Libertad en el "Complexo do Tatuapé" de* FEBEM. Medidas Provisionales*.* Resolución de la Corte de 30 de noviembre de 2005, Considerando decimosegundo.

[7] Corte IDH, *Caso Barrios Altos Vs. Perú. Reparaciones y Costas*. Sentencia de 30 de noviembre de 2001. Serie C No. 87, párrs. 42 y 45, y Corte IDH. *Caso Masacres de El Mozote y lugares aledaños Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 25 de octubre de 2012 Serie C No. 252.

[8] Corte IDH. *Caso Manuel Cepeda Vargas Vs. Colombia.* Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 26 de mayo de 2010. Serie C No. 213. Párr. 171.

[9] Corte IDH. *Caso Manuel Cepeda Vargas Vs. Colombia.* Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 26 de mayo de 2010. Serie C No. 213. párr. 171. "Si bien cada uno de los derechos contenidos en la Convención tiene su ámbito, sentido y alcance propios, en

Fulfilling these obligations in the context of a transition from armed conflict to peace is particularly complex. However, the comprehensive transitional justice strategy that we want to implement is far from trying to dislodge the State from the duty to fulfill these obligations on the basis of lack of operational capacity. Rather, our objective it is to ensure these obligations as a whole. [10] This is precisely what was recently established by the Inter-American Court, which stated that "*contrary to the cases examined previously by this Court [transitions from dictatorship to democracy], the instant case deals with a general amnesty law that relates to acts committed in the context of an internal armed conflict. Therefore, the Court finds it pertinent, when analyzing the compatibility of the Law of General Amnesty for the Consolidation of Peace with the international obligations arising from the American Convention and its application to the case of the Massacres of El Mozote and Nearby Places, to do so also in light of the provisions of Protocol II Additional to the 1949 Geneva Conventions, as well as of the specific terms in which it was agreed to end hostilities, which put an end to the conflict in El Salvador".*[11]

We believe that through this judgment the Inter-American Court took a major step up from its previous case law, taking into account not only international humanitarian law but the wording of the agreement to cease hostilities in El Salvador. In analyzing these two elements the Inter-American Court concluded that in the case of El Salvador, amnesties could not be granted for international crimes.[12] In sum, the Court elaborate a new *ratio* for cases of transitions from conflict to peace, to state that not every single serious violation of human rights has to be investigates, prosecuted and punished (as is the case in the context of transitions from dictatorship to democracy[13]), but in the particular context of El Salvador, all international crimes must be investigated, prosecuted and punished.

The concurring opinion to the judgment of El Mozote, written by the President of the Inter-American Court and accompanied by four other judges[14], explains in more detail the reasons that led to the Court's reasoning in this case. Among other issues, the vote notes "*it is relevant to consider the shared responsibilities of those involved in an armed conflict with regard to serious crimes. The acknowledgment of responsibility by the most senior leaders can help promote a process of clarifying both the facts and the structures that made such violations possible. Reduction of sentences, alternative punishments, direct reparation from the perpetrator to the victim, and public acknowledgment of responsibility are other ways that can be considered."* [15]

The comprehensive transitional justice strategy we are looking to implement it's framed on these ideas and was designed precisely to meet international obligations, within the particular context of a transition

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ciertas ocasiones, por las circunstancias particulares del caso o por la necesaria interrelación que guardan, se hace necesario analizarlos en conjunto para dimensionar apropiadamente las posibles violaciones y sus consecuencias".

[10] Comisión Interamericana de Derechos Humanos. Informe sobre Seguridad Ciudadana y Derechos Humanos, Capítulo IV. La Seguridad ciudadana y derechos humanos. Párr. 66, 2009.

[11] Corte IDH. *Caso Masacres de El Mozote y lugares aledaños Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 25 de octubre de 2012 Serie C No. 252. párr. 284

[12] Corte IDH. *Caso Masacres de El Mozote y lugares aledaños Vs. El Salvador*. Fondo, Reparaciones y Costas. Sentencia de 25 de octubre de 2012 Serie C No. 252. párr. 265-286

[13] Corte IDH. *Caso Barrios Altos Vs. Peru.* Fondo. Sentencia de 14 de marzo de 2001. Serie C No. 75, párr. 41 a 44; Corte IDH. *Caso Almonacid Arellano y otros Vs. Chile*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 26 de septiembre de 2006. Serie C No. 154. párr. 105 a 114; Corte IDH. *Caso La Cantuta Vs. Perú*. Fondo, Reparaciones y Costas. Sentencia de 29 de noviembre de 2006. Serie C No. 162. párr. 152 y 168; Corte IDH. *Caso Gomes Lund y otros (Guerrilha do Araguaia) Vs. Brasil*. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 24 de noviembre de 2010. párr. 147, y Corte IDH. *Caso Gelman Vs. Uruguay*. Fondo y Reparaciones. Sentencia de 24 de febrero de 2011 Serie C No. 221. párr. 195.

[14] Es decir fue suscrito por cinco de los siete jueces de la Corte IDH.

[15] Corte IDH. *Caso Masacres de El Mozote y lugares aledaños Vs. El Salvador*. Fondo, Reparaciones y Costas. Voto Concurrente del Juez Diego García- Sayán. 25 de Octubre de 2010. párr. 31.

from an armed conflict to a stable and lasting peace. We are convinced that in contexts such as the Colombian, the State obligations can only be fulfilled in their greatest potential when efforts are focused on meeting comprehensively all treaty obligations, and not only those related to criminal investigations, prosecutions and punishments.

This approach to the implementation of a comprehensive transitional justice strategy in Colombia has implications for at least three issues addressed on the Commission's report about the *in loco* visit. First, regarding the Legal Framework for Peace and the interpretation of the Commission about the duty to investigate, prosecute, and punish. Second, in relation to the characterization of the BACRIM as organized crime groups. And thirdly, regarding the amendment to the Peace and Justice Law.

a. The Legal Framework for Peace

Legislative Act 1 of 2012, also known as "The Legal Framework for Peace" provides the constitutional framework for the comprehensive transitional justice strategy. This Legislative Act incorporated to the Constitution two transitory articles, number 66 and 67, which include the constitutionalization of victims' rights to truth, justice and reparation; the obligation to create a Truth Commission; the duty to investigate, prosecute and punish those most responsible for the commission of international crimes; and a conditionality system that subjects all special criminal treatment to the contribution to the satisfaction of victims' rights, among others.

It is a general framework, which lays the foundation for the development of the comprehensive transitional justice strategy, and sets as its objective achieving the greatest possible satisfaction of victims' rights. Obviously, concentrating prosecutorial efforts on those most responsible for the commission of international crimes is directly derived from the jurisprudence of the Inter-American Court in the case of El Mozote. It is, however, just a general framework that requires statutory laws to develop it and establish the appropriate balancing for its implementation.

In this regard the Constitutional Court of Colombia has already ruled declaring the constitutionality of the Legal Framework for Peace, stating that: "*The Court had to determine whether the elements of transitional justice (...) were incompatible with the duty to respect, protect and fulfill the rights of society and victims, and verify if the change involved a replacement of the Constitution or any of its cornerstones. To perform this analysis the Court started to recognize the need for a balance between different principles and values such as peace and reconciliation, and the rights of victims to truth, justice, reparation and guarantees of non-repetition. The Court considered that to achieve a stable and lasting peace it is legitimate to adopt transitional justice measures such as selection and prioritization mechanisms. (...) The Court considered whether the possibility of focusing the criminal investigation on crimes against humanity, genocide and war crimes committed in a systematic manner, was compatible with the international obligations of Colombia. The Court concluded that under the instruments of Human Rights and International Humanitarian Law, and the pronouncements of its interpreters, it is legitimate to design a special application of the rules of judgment, as long as it is ensured that at least those crimes are prosecuted.*"[16]

[16] Corte Constitucional. Sentencia C-579 de 2013. MP. Pretelt Chaljub. Comunicado Número 34, del 28 de agosto de 2013.

b. Characterization of the BACRIM

Secondly, the vision of the implementation of a comprehensive transitional justice strategy for the end of the armed conflict implies that the State must establish who are party to the conflict. A comprehensive transitional justice strategy most respond clearly what organizations are armed groups that are party to the armed conflict, and which organizations are simply criminal bands that the Colombian State is not at armed conflict with, but that should by prosecuted under the laws of the ordinary criminal justice system.

After the collective demobilization of 31,671 members of the AUC between 2003 and 2006, in the areas were the paramilitary groups had influence, emerged criminal groups that use their armed capacity to maintain territorial, social and economic control, in order to protect the drug trade. Within their ranks, are demobilized paramilitaries who relapsed, former members that never demobilized, as well as people that never belonged to these structures, but that were linked to common and organized crime. In this sense, the demobilization and dismantling of much of the military component of the paramilitary groups did not guarantee the disappearance of the underlying criminal phenomenon primarily associated with drug trafficking.

However, there is enough intelligence information, evidence from criminal investigation, and testimonies of those that have been captured, to suggest that the phenomenon of BACRIM is a classic model of organized crime that expands through the "purchase" of franchises. Regional drug traffickers provide services to drug traffickers with international reach, with the aim of "managing" the business in a region and controlling various illegal sources of income such as drug trafficking, illegal mining and extortion, among others. Therefore, we believe that the BACRIM are a criminal phenomenon as a result of drug trafficking and other illicit economies.

Taking into account this diagnosis, in February 2011 the Government decided to design and implement a multidimensional and interagency policy to combat these criminal groups. This strategy was discussed and approved under the National Security Council. The policy is based on the characterization of BACRIM as a complex macro-criminality phenomenon. Unlike the armed groups party to the armed conflict, the structure of these bands is not strictly hierarchical: you cannot clearly identify all members or identify a military chain of command. On the contrary, the decisions of the regional leaders do not respond to orders from the national drug traffickers. The interests of the members of each level are independent and are associated only to the extent that they gain mutual benefit.

Furthermore, the available intelligence information suggests that the territorial control of these groups is highly reduced and that although they have considerable armed capacity, its ability to conduct sustained and concerted military operations is very limited. Its armed apparatus is fully dedicated to protect the drug trade, and not to attack the State armed forces or the guerrillas. In fact there is more evidence of partnerships between the BACRIM and the guerrillas than of confrontation between them.

The decision to characterize the BACRIM as criminal bands was also associated with the more general strategy to end the armed conflict. When an organization is characterized as an armed group party to the armed conflict, two main consequences derive: i) the ability of the State to conduct offensive military operations within the framework of IHL, including those directed to neutralize military targets (therefore expanding the level and type of authorized force); and ii) the expectation of a possible political negotiation and an eventual demobilization is generated.

The first consequence is derived from international humanitarian law, in particular from the possibility of considering military targets the members of an armed group that is a party to the armed conflict. As a consequence, there is a possibility to make use of lethal force as a first option. In contrast, the Government's vision is that these organizations must be dismantled through the criminal justice system. As the armed conflict with the guerrillas comes to an end in the country we will need strong security forces that can protect people and combat ordinary crime, but not using lethal force under IHL –as could be the case in an armed conflict– but precisely in the context of "law enforcers" and strengthening the capacities to prosecute and punish these organizations. However, this is only possible if the BACRIM are understood as organized crime groups, and not as parties to an armed conflict.

Secondly, if all common crime associated with drug trafficking in the country is characterized as a manifestation of a non-international armed conflict, a huge perverse incentive is created: the more militarized the group, the more likely they will be treated as a political interlocutor. Clearly, these are the claims of several BACRIM, that are starting to use uniforms and produce operational "handbooks" in order to enter into a negotiation process with the government that allows them to demobilize and get legal "benefits". As a result, a "revolving door" effect between criminal bands and demobilizations would be created, what would cause more impunity.

Conversely, by characterizing them as organized crime groups the Colombian State is rightfully responsible to ensure that the law enforcement authorities develop operations to dismantle these structures within the framework of the ordinary criminal justice system.

It is important to note that the decision to characterize them as organized crime groups does not imply that the government should not provide humanitarian assistance to their victims, or that they are not entitled to different types of redress. The Colombian government has been registering those displaced by these groups and providing humanitarian assistance provided by the IDP law. These efforts can certainly be complemented and enhanced significantly. But characterizing BACRIM as parties to the armed conflict, with the sole purpose of including their victims in the administrative reparations program, generates perverse effects that can end up creating more human rights violations.

c. Amendment to the Peace and Justice Law

Finally, the implementation of a comprehensive transitional justice strategy also requires adapting the various instruments of transitional justice that are currently in place so that they conform to the more general strategy. This is why the amendment to the Peace and Justice Law was promoted, with the objectives of: i) transforming the investigative and prosecution approach to prioritize the most serious crimes and the most responsible; (ii) establish links between the criminal procedure and the administrative reparations program; (iii) further accelerate the procedures; and (iv) ensure the exceptionality of peace and justice system, creating rules for a progressive closure. While this is not the time to refer to all these elements, we will address at least two: the closure of the peace and justice process and the coordination with the Victims' Law.

Prior to the enactment of Law 1592 of 2012, there had been a conflict of interpretations between the application of Articles 2 and 72 of the Peace and Justice Law. This was due to the fact that while Article 2 referred to "acts committed during and related to the membership" to the armed groups, Article 72 limited the scope of the law to events that occurred prior to July 25th 2005, regardless of the actual time

of demobilization. This tension was resolved by the Supreme Court, which held that the Peace and Justice Law was to be applied only to acts committed prior to July 25th 2005.[17]

As a result of this interpretation 82% of the members of the AUC, about 25 blocks and fronts, demobilized after July 25th 2005, were left out of the implementation of the Peace and Justice Law. Consequently, about 3600 criminal events attributable to paramilitaries were excluded from the process.

The last collective demobilization of paramilitary groups took place on August 26th 2008. By that time the Government decided to end collective demobilizations. However, as Law 975 did not set deadlines for the nomination, despite collective demobilizations had been closed, there were demobilized people requesting nomination, 2, 3 or even 5 years after their demobilization. The Peace and Justice Unit from the Prosecutors Office has documented that sometimes the initiation of an investigation in the ordinary criminal justice system for crimes relates to membership of the armed group, triggered the application request from the demobilized to participate in the Peace and Justice Law.

In this sense, two problems were taking place. On one hand, those who demobilized between July 25th 2005 and August 26th 2008, were out of the implementation of the Peace and Justice Law. Thus, this was not about crimes committed after the demobilization or people who had re-armed (which is ground for exclusion from Peace and Justice Law), but about people who had demobilized after the entry into rule Law 975. The second problem was that regardless of the date of demobilization, people could request their application to the procedure at any time, with no incentive to appear before any process or strongly contribute to the elucidation of truth.

These two problems are those that sought to be solved by the reform. First, ensuring that the law applies to all crimes committed prior to the demobilization, and secondly providing that no application requests would be received beyond December 31st 2012.

The second issue related to the reform of the Peace and Justice Law is related to the integral reparation of the 6 million victims of armed conflict. As the United Nations High Commissioner for Human Rights has stated, the fulfillment of the right to compensation in the context of massive and/or systematic violations cannot reasonably respond to the same standards of justice (*restitutio in integrum*) or operate with the same procedures (judicial procedures even if they are special ones) that in contexts where human rights violations are outstanding. According to Pablo De Greiff, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantee of non-recurrence, on transitional contexts where it comes to justice for victims of massive and/or systematic violations, the implementation of fair, adequate and effective reparation, can best be done through massive administrative programs tailored in accordance with international recommendations and meeting the needs of the national reality.[18] These programs provide a range of both material and symbolic measures aimed, among others, at reaching a greater number of victims, restoring their rights, and recognizing them not only as victims but as active citizens.

As it is well known, in contexts in which human rights violations are outstanding, the standard remedy is restitution to the *status quo ante*. It is about erasing the damage caused, and returning to the situation prior to the violation. In addition, compensation should be estimated in proportion to the harm suffered. To do this, each one of the damages is identified and assessed in money.

[17] CSJ, Radicado. 30999, Febrero de 2009.
[18] DE GREIFF, Pablo. *Justicia y Reparaciones*. En: DÍAZ, Catalina (Edit.), *Reparaciones para las Víctimas de la Violencia Política,* ICTJ, 2008. P. 312.

In situations of massive violations, on the other hand, individual identification and traditional assessment of damages would not be a fair approximation since it generates distinctions between victims based on their economic status prior to the violation. Therefore, the doctrine of reparations in the field of transitional justice has held that the standard of justice in situations of massive violations cannot reasonably be restitution to the traditional "previous state of affairs". As has been explained Pablo de Greiff, justice in reparations when the idea is to compensate a large number of cases, as opposed to individual, isolated cases[19] must be analyzed in terms of achieving three objectives, namely recognition of victims, civic trust, and social solidarity. [20]

Thus, on the basis that the violations committed in the context of the Colombian armed conflict are, by their nature irreparable, the comprehensiveness of the reparations[21] that are granted under the massive program created by the Victims' Law, more than being evaluated on their ability to contribute to restitution from the classical conception, should be evaluated on the internal coherence of the program.[22] That is, the coordinated and complementary implementation of the measures of compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition. In other words, such a program should be evaluated on whether the various profits distributed by a reparations program are compatible with each other and support each other. [23]

On the other hand, the diagnosis of the way in which the Reparations Fund had been working led us to the conclusion that the assets delivered by the paramilitaries were not enough to pay the reparations ordered by the courts. In spite of the fact that the Government has destined 30 million dollars for the implementation of the Peace and Justice Law, a false expectation was being created for victims, because as ordered by the Courts the reparation wouls never be satisfied either by the demobilized or by the State. [24] 50% of the assets delivered to the Reparations Fund were used to pay the compensation ordered in the Mampuján Case, benefiting 0.4% of all victims registered in the Peace and Justice Law. As it is obvious, if we continued to follow that route, not only would it had been impossible to compensate all victims, but it also would create a situation of inequality, because it created a "first come, first serve" logic.

On the other hand, the lack of proper coordination between the judicial decisions of the Peace and Justice Law Tribunals and the administrative reparations program had caused that compensation ordered by the Courts concentrated exclusively on the monetary component. Judges exhorted different

[19] DE GREIFF, Pablo. *Justicia y Reparaciones*. En: DÍAZ, Catalina (Edit.), *Reparaciones para las Víctimas de la Violencia Política,* ICTJ, 2008. P. 302.
[20] Ibídem. P. 302.
[21] Respecto del derecho a la reparación integral, la CorteIDH "ha considerado la necesidad de otorgar diversas medidas de reparación, a fin de resarcir los daños de manera integral, por lo que además de las compensaciones pecuniarias, las medidas de restitución, satisfacción y garantías de no repetición tienen especial relevancia por los daños ocasionados". CorteIDH. *Caso de la Masacre de Santo Domingo vs Colombia.* Sentencia del 30 de noviembre de 2012. Serie C No. 259. Párrafo 292. Adicionalmente, la Asamblea General de la Organización de Naciones Unidas establece que "Conforme al derecho interno y al derecho internacional, y teniendo en cuenta las circunstancias de cada caso, se debería dar a las víctimas de violaciones manifiestas de las normas internacionales de derechos humanos y de violaciones graves del derecho internacional humanitario, de forma apropiada y proporcional a la gravedad de la violación y a las circunstancias de cada caso, una reparación plena y efectiva, según se indica en los principios 19 a 23, en las formas siguientes: restitución, indemnización, rehabilitación, satisfacción y garantías de no repetición". Asamblea General de la Organización de Naciones Unidas. Resolución 60/147. *Principios y directrices básicos sobre el derecho de las víctimas de violaciones manifiestas de las normas internacionales de derechos humanos y de violaciones graves del derecho internacional humanitario a interponer recursos y obtener reparaciones*. Aprobada el 16 de diciembre de 2005. (A/RES/60/147). 21 de marzo de 2006. Párr. 18.
[22] DE GREIFF, Pablo. *Una concepción normativa de la Justicia Transicional*. En: RANGEL SUÁREZ, Alfredo (Edit.) *Justicia y paz: ¿Cuál es el precio que debemos pagar?* Intermedio Editores Ltda. y Fundación Seguridad y Democracia, 2009. Pp. 33 - 35.
[23] Alto Comisionado de las Naciones Unidas para los Derechos Humanos, *Instrumentos del Estado de Derecho para sociedades que han salido de un conflicto. Programas de reparaciones*. Naciones Unidas, Nueva York y Ginebra 2008. Nota al pie 62.
[24] According to art. 10 of Law 1448/2011 the State must only compensate in subsidiarity to the extent of the administrative reparation thresholds.

State agencies to meet various compensatory measures, but in practice such recommendations were not implemented because they were detached from a structured public policy planning process.

Taking into account all the elements presented above, the amendment to the Peace and Justice Law integrated the two systems. It seeks to ensure that the peace and justice procedures concentrate on clarifying the patterns of macro-criminality and on seeking to find the truth, and refers integral reparation to the administrative reparations program, so that victims are redressed through various measures that ensure the comprehensiveness of the reparation.

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These three cases are just examples of the steps that are being taken by Colombia to implement a truly comprehensive transitional justice strategy that aims the end of the armed conflict and the highest possible satisfaction of the victims' rights. Clearly there is still much to develop, and there are elements of the strategy that must be substantially improved for true victim satisfaction.

On the other hand, the fact remains that if we cannot end the internal armed conflict for good, all efforts in addressing victims' rights will be partial. It is precisely the definitive end of the armed conflict that will allow us to effectively protect the human rights of all citizens.

Colombia is committed to implementing a comprehensive transitional justice strategy that is consistent with our national and international obligations. However, for this to be possible, it is necessary that the Inter-American system address the Colombian case as a country in armed conflict that is seeking to find a political settlement to end it, and begin a transitional phase to achieve lasting peace.

In this context, serious human rights violations and breaches of international humanitarian law committed during the armed conflict must be addressed through a comprehensive and exceptional transitional justice strategy, where different elements of judicial and extrajudicial nature, as recognized by the Colombian Constitutional Court, play a determinant role for the overall satisfaction of victims' rights. A comprehensive strategy that does not aim to sacrifice justice to achieve peace, but to achieve peace as a necessary condition to satisfy victims' rights to truth, justice and reparation, to the highest possible extent.