

REPARATIONS FOR VICTIMS IN COLOMBIA: COLOMBIA'S NEW LAW ON JUSTICE AND PEACE

INTRODUCTION:

- For the last 50 years Colombians have suffered from political violence from illegal armed groups both coming from the extreme left, mainly FARC and ELN, and from the extreme right self-defense groups or so-called paramilitaries. In the past different efforts were made to achieve peace, some successful, some not. In the early 90s agreements were reached with several guerrilla groups such as the M-19, the ELP, and the Quintín Lame. All of its members were granted amnesties and victims' rights to truth, justice and reparation were not recognized. Today some of the former members of these groups are important members of Congress. Some make part of a large opposition party.
- More recently between 1998 and 2002 the most ambitious effort to achieve peace with the largest guerrilla group, the FARC, took place, but unfortunately after almost 4 years of negotiations the peace process failed because of the lack of will of this guerrilla group.
- However negotiations with the paramilitary groups that started in 2002 have succeeded and up until today 31.000 of its members have demobilized and have entered into a reintegration program with the support and verification of the OAS. Among which are 57 of the top national leaders who are in jail awaiting investigations and trials based on the law on Justice and Peace.
- When the peace process started to advance the question was raised about what to do with those members of the paramilitary that had violated human rights and were responsible for serious crimes. Were they entitled to amnesties or should they be prosecuted according to ordinary criminal law. The dilemma was of course between justice and peace.
- After analyzing Colombia's international obligations and evaluating the best alternative, the Government presented the so-called law on Justice and Peace which aimed at making a correct balance between these two values. Too much emphasis on justice would lack the "carrot" needed to convince the paramilitaries to continue in the peace process, too much peace would mean a lack of "stick" with the consequence of impunity and limited or no recognition of the victims' rights.
- This law was debated for over two years in the media, the academia, both nationally and internationally and was subject to comments by international organizations, political parties, and NGOs. Everybody had something to say about the law. After much debate, the Colombian Congress passed the law with many modifications introduced throughout the discussions and after its approval it was reviewed by the Constitutional

Court who found it to be constitutional, although it introduced significant modifications making it much stricter in its application and wider with regards to the rights of victims to truth, justice and reparation.

- The law contains two main parts, the first refers to the judicial process and the conditions under which the members of illegal armed groups (either paramilitary or guerrilla) can benefit from an alternative punishment. That is among others to fully confess their crimes, depose their weapons, enter into a peace agreement, and stop their interference in public affairs, release the people they have kidnapped, contribute to finding the victims of forced disappearance, among other.
- The second part of the law refers to the rights of the victims to truth, justice and reparation.
- For the first time in Colombia's history victims came to the center of the attention as it was understood that they were the hinge between justice and peace. Beneficiaries will only be entitled to an alternative punishment if, and only if, they confessed all their crimes, were subject to a criminal procedure by independent prosecutors and judges and, most important of all, if they repaired the victims of their atrocities.
- Let me then give you an overview of the mechanism established in the Law to assure the rights of the victims, focusing of course on the issue of reparations.
- With regards to the right of victims to truth:
 - The law establishes the obligation for members of illegal armed groups to fully confess all crimes in which they have participated as members of the group. Not only confess their personal crimes but those of the group as well. If crimes are hidden benefits will be lost and the ordinary criminal code will apply.
 - There is a specific obligation to give the location of the victims of forced disappearance. Up until now more than 200 graves have been uncovered and the bodies returned to their relatives. There is information up until now of more than 2000 other victims of forced disappearance, a large number, especially taking into account that the confession just started last December. There are insufficient means and it will take time.
 - Confessions have also led to uncover the links between the paramilitaries and certain politician and members of the army. The Supreme Court of Justice has issued arrest warrants against 9 Member of Parliament, which are already in jail. It will be for the Court to finally decide if they are responsible or not. Several members of the army are also currently under investigation, and these investigations have been transferred from the military justice to the ordinary justice system.
- With regards to the right of the victims to justice:

- The law established a judicial procedure carried out not by a Truth and Reconciliation Commission or other quasijudicial mechanism but by members of Colombia's judiciary. A group of 20 prosecutors (Medellín, Bogotá, Barranquilla) have been appointed and 8 judges (Bogotá y Barranquilla) have been selected to conduct the investigations and the trials. The fact that it is the ordinary judicial system that will be responsible for the investigations and trials has the additional benefit of helping to strengthen Colombia's judiciary.
- Victims have been recognized the right to participate in all the stages of the judicial process from the beginning and to request reparations both material and moral, from the perpetrators.
- Two weeks ago a Prosecutor heard a group of 165 victims.
- There are templates where victims can describe the crimes that have been committed against them and ask for reparations.
- In order to effectively exercise their rights they can be assisted by a public attorney.
- The equivalent to an Ombudsman will also participate in all judicial proceedings in order to guarantee the rights of the victims and the protection of the assets for reparation. (12 procuradores delegados have been appointed)
- There has been a discussion about the publicity of the public hearings. Not that victims cannot participate, but if these should be transmitted by television. It seemed a good idea but could also have negative effects. In any case they have been authorized and will commence in the near future.
- The right of the victims to justice also entails an effective punishment of 5-8 years of jail, that should be paid in ordinary prison conditions and not in less harsh detention sites as it was initially foreseen.

With regards to the victim's rights to reparation

- As I mention victims are entitled both to material and to moral reparations: Following international principles and guidelines of victims right's to reparation it established mechanisms such as:
 - Restitution. Especially important for returning land that has been taken away illegally:
 - 22 houses in Medellín have already been given voluntarily to victims
 - Property titles for 22 families that were victims of two massacres (Honduras and La Negra) committed in 1989 were also given.
 - One curious example of the things that you find is the case of areas of national parks that had been privatized, and now when the question of restitution is raised, there comes the question: to who should it

be restituted, to the victims, but how if this land belongs to the State. It could only be restituted to the State.

- Compensation o indemnization
 - Rehabilitation both physical and psychological
 - Satisfaction: which focuses mainly on moral reparations
 - Measures of non-recurrence. The most important of which is the effective dismantling of the self-defense military structures. In this aspect the OAS is assisting Colombia with a permanent mission of support to the peace process. The reintegration program has been recently given a higher status by appointing a presidential advisor with a ministerial level to coordinate the program. The challenges on this field are immense and will require the cooperation of the international community. The Netherlands for example is partially supporting these efforts. Another example is the decision by the CNRR to melt the more than 17.000 arms that have been handed in as a guarantee of non repetition in favor of the victims.
- But the question is who and with what will victims be repaired.
 - In first place reparation must come from the actual perpetrator who must respond both with their illegal and LEGAL assets. They must respond with ALL their patrimony. They must hand ALL their illegal assets if not they will loose their benefits.
 - But perpetrators must not only respond for the damages they have caused themselves. The law establishes an obligation of solidarity among the member of a specific group. That means that all the members of a specific group must respond for the damages of all the others members.
 - Finally, in the case the perpetrators cannot respond, the State has the obligation to fully repair the individual victims. The Court has said that no budgetary constrain may be used as an argument to excuse the Estate from repairing the victims.
 - All this refers only to individual reparations granted by a judicial decision, but the law also establishes the right of victims to collective reparations, and for that reason it has created a Commission for Reparation and Reconciliation.
- Commission for Reparation and Reconciliation.
 - This is not exactly a truth and reconciliation commission, as this transition process is taking place not at the end of the conflict but in the middle of it, when still other illegal armed groups continue to act. But is should serve as the base for a future TRC.
 - It has a mixed composition, including not only members from the Government and State's control organs, but also by representatives

- from civil society and representatives from the victims. Gender considerations have also been taken into account. Well recognized member from civil society have been appointed to the Commission.
- Although the Commission is still in its initial phase of work. They have issued a document on strategy which include:
 - The definition of victims: "Any person or group of persons, that with the occasion or because of the internal armed conflict, since 1964, has suffered any individual or collective damage by acts or omissions that violate the rights established in the Constitution, in International Law of Human Rights, in International Humanitarian Law and International Criminal Law, and that is considered a crime in Colombian legislation".
 - Include physical and moral harm
 - Allows for individual or collective reparation
 - Makes reference to the international human rights instruments, including the ICC
 - The Colombian Criminal Code has incorporated the crimes of the Rome Statute.
 - The definition of reparations: "Reparation consists in dignifying the victims by measures that will alleviate their suffering, compensate their social, moral and material losses, reconstitute their rights".
 - The creation of two separate programs:
 - Institutional Reparations Program (short term program for collective reparations such as indigenous groups, peasant communities, etc)
 - National Reparations Program (medium term program with a gradual implementation depending on the gravity of the crime, the profile of the beneficiaries, etc. Something that will take 10-15 years)
 - The Commission also has the role of recommending the criteria for judicial reparations. They have already pointed out that any reparation measure must be consulted with the beneficiary of the measures among other things, and given some other guidelines. Yesterday they presented a document which contains these recommendations.
 - These and other documents prepared by the Commission have been consulted and discussed with social organizations (6 meetings have already taken place throughout the country)
 - The Commission will have at least 5 regional offices. (Canada is financing the one in Medellín)
 - In order not to repeat mistakes in other countries the Commission is receiving assistance from the international Organization for

Migrations, and specifically from two lawyers: one that has handled the Iraqi claims fund and the other the German fund for non-Jewish victims from the Nazi Holocaust.

- One of the most difficult challenges when it comes to the issue of reparation is the capacity of the State to seize the assets of the perpetrators. For this reason the law on Justice and Peace created a parallel organ dependent from the Commission:
- The Regional Commissions for the Restitution of Assets: It doesn't directly restitute property but it is responsible for identifying the legitimate owner of land or goods, and their title deeds, and to protect that property for future restitution. This work has just started and small restitutions have taken place, in the form of voluntary restitutions.
- Finally let me refer to the way in which the money and the assets for material reparations will be handled. The Law establishes a Fund for the Reparation of Victims.
 - In charge of paying the judicially ordered reparations
 - As well as those ordered by administration programs.
 - Difficult to establish which property will be used to repair and which to restitute. It could happen that a judge will order that an illegal asset be sold in order to pay for reparations but in the future a victims could claim it for restitution, what to do?
- The challenges Colombia is facing at the moment in relation to victims reparations are immense. Let us hope that this new law is successful in its implementation and contribute to bring peace and reconciliation to our country.