International Center for Transitional Justice

REPARATIVE JUSTICE

From Principles to Practice

Challenges of Implementing Reparations for Massive Violations in Colombia

October 2015

ICTJ Justice Truth Dignity

Cover Image: Trujillo, Valle del Cauca, Colombia.
Relatives commemorate victims after eight years of violence and killings, 2012 (Andersson Lizarazo and and Lady Rojas/ICTJ).

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About ICTJ
ICTJ assists societies confronting massive human rights abuses to promote accountability, pursue truth, provide reparations, and build trustworthy institutions. Committed to the vindication of victims' rights and the promotion of gender justice, we provide expert technical advice, policy analysis, and comparative research on transitional justice approaches, including criminal prosecutions, reparations initiatives, truth seeking and memory, and institutional reform. For more information, visit **www.ictj.org**

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ACRONYMS

AUC	United Self Defenses of Colombia
BACRIM	“Criminal Bands” (*Bandas Criminales*)
CNRR	Comisión Nacional de Reparación y Reconciliación or National Commission for Reparation and Reconciliation
CODHES	Consultants on Human Rights and Displacement (Consultoría para los Derechos Humanos y el Desplazamiento)
CONPES	National Council on Economic and Social Policy (Consejo Nacional de Política Económica y Social)
COP	Colombian peso
FARC	Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia)
IACHR	Inter-American Court of Human Rights
OHCHR	UN Office of the High Commissioner of Human Rights
USD	United States Dollar

1. Introduction

For more than 50 years Colombians have struggled with an internal armed conflict that has resulted in more than 300,000 murders and enforced disappearances, the displacement of more than 6 million people, and thousands of cases of enforced disappearance, forced recruitment of minors, sexual and gender-based violence, and other serious violations. Until 1995, few public policies addressed the consequences of these violations, as successive governments refused to accept their magnitude, in part as a way of denying the importance of the conflict that had caused them. The Colombian armed conflict is now the longest-running conflict in the Western Hemisphere.

With the passage of the Victims' and Land Restitution Law in 2011,[1] the Colombian government established a comprehensive reparations policy to address the harms suffered by victims. However, the law is only one step in a complex process to vindicate victims' rights. Implementing the law is the real challenge.

The ongoing nature of the armed conflict and weakness of state institutions have limited the government's capacity to access some areas to execute the policy, which requires the joint effort of regional and local governments. Indeed, in some regions, the program faces violent opposition from those who have benefited for years from land dispossession and will resort to any means, including physical violence, to maintain the status quo. These challenges also add to the difficulties inherent in implementing any reparations program, namely, reaching all victims and designing measures that can truly improve victims' lives.

This report examines Colombia's Victims' and Restitution Law and assesses the challenges of implementing it under current conditions. It also identifies some of the difficulties and obstacles encountered in Colombia's past reparations efforts, which help to explain why the current law has run into certain difficulties.

1 Ley 1448 "por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones" approved on 10 June 2011 [hereinafter, Law 1448].

2. The Victims and Land Restitution Law

The Victims' and Land Restitution Law (Victims' Law or Law 1448) consolidates previous efforts to provide reparations to victims of Colombia's internal armed conflict. The program includes humanitarian assistance for those displaced by the conflict and other victims; land restitution; and a notion of comprehensive reparations, based on definitions in international law. It also addresses protection measures and attempts at guaranteeing non-recurrence of violence.

Because of the complexity of the policy, it requires coordinated the efforts and intervention of many different actors. The law establishes an implementation structure headed by two institutions:

1. **Victims' Unit**, part of the Social Prosperity Department (under the Presidency), and
2. **Land Restitution Unit** (under the Ministry of Agriculture).

It also establishes different coordination structures to guarantee the involvement of local government and authorities at the provincial and local levels. Finally, it also includes a structure to ensure victims' participation through representatives at the local, provincial, and national levels.[2]

Several features of the law deserve closer attention, in particular how beneficiaries are defined or excluded, protections for special groups, humanitarian assistance, and land restitution.

Definition of Victims

The Law defines victims broadly to include all of those who individually or collectively suffered harm as a result of infractions of international humanitarian law or gross and serious violations of international human rights law committed after January 1, 1985, whether committed by members of illegal armed groups or state agents.[3] It also includes as victims the direct relatives of those who were killed or disappeared.

This broad definition of victims sends a strong message regarding the common dignity of all victims and the inalienability of victims' rights, particularly as a previous effort by the Colombian government limited its definition of victims to those harmed by illegal armed groups.

2 The government passed regulations specifying the provisions of Law 1448, in particular, Decree 4800 of 2011, which defines each of the programs and the institutional framework required for implementing the law. Decrees 4633, 4634, and 4635 (all approved in 2011) were passed to establish special regulations in regards to victims belonging to ethnic minority groups, including indigenous communities, Roma or Gypsy peoples, and Afro-descendants. Decrees 4801 and 4829 regulate the Land restitution Unit and some aspects of the land restitution process. Decree 4802 establishes the structure of the Victims' Unit.
3 Law 1448, art. 3.

However, the law excludes a number of groups from receiving benefits, such as members of illegal armed groups who were not demobilized before reaching adulthood (18 years of age) and victims of "ordinary crimes."[4]

Civil society organizations and victims have challenged limitations in the law relating to the period of time the law covers and what victims are eligible for benefits, bringing cases before the Constitutional Court. However, the court has upheld most of the exclusions, affirming Congress's authority to define the program and exclude certain groups, as long as exclusion does not entail discrimination.

Exclusion of Victims of Ordinary Crimes

At first glance the exclusion of victims of so-called ordinary crimes seems reasonable, as Law 1448 was conceived of as an extraordinary reparations mechanism to address the rights of victims of the armed conflict. However, in the Colombian context, the distinction between ordinary crimes and conflict-related crimes can be ambiguous. This is especially true when assessing the activities of groups of former paramilitaries that were supposedly demobilized but that have since reorganized as criminal groups, committing "ordinary crimes." The government has labeled such groups—and those paramilitaries that never fully demobilized—as "criminal gangs" (bandas criminales or BACRIM). The nature of their crimes cannot always be clearly established, as there are often blurred lines between political crimes, crimes committed to protect economic interests that have their origins in the conflict, and crimes perpetrated to intimidate the leaders of human rights or land restitution groups.

The refusal to recognize victims of these organizations may be motivated by the state's unwillingness to acknowledge the failure of the demobilization process and resistance to granting members of these groups combatant status.

The Constitutional Court has adopted a more nuanced approach to handling cases involving victims of so-called ordinary crimes. In situations of uncertainty, an interpretation in favor of the victim is preferred. Further, the court has found that the law does not imply a restrictive interpretation of armed conflict when defining victims who are entitled to reparations. The court has also established that excluding victims of ordinary crimes from benefits under the law does not limit the rights of victims of displacement to receive assistance or register as victims, as they are still covered by Law 387 (1997) on humanitarian assistance.

Exclusion of Members of Illegal Armed Groups

The exclusion of members of illegal armed groups is a more difficult issue. First, it creates uncertainty in registering victims, as it is unclear how membership in an illegal armed group is to be verified. Second, if members of illegal groups have been captured and tortured by the state, for example, there is no reason not to recognize these crimes as violations that should give rise to reparations.

Yet, allowing people who may be responsible for committing serious crimes to be considered victims and receive benefits from the state is politically complex in the midst of an ongoing conflict. This is especially true when it is impossible to investigate, try, and sentence the perpetrators of all crimes, even the most serious ones, or where it is difficult to establish the facts.

4 The concept expands the definition of victim used in Decree 1290 as wellas Law 418 (art. 15), which was limited to members of the civilian population who directly suffered harm affecting their rights to life, personal integrity, or property.

The Constitutional Court's main argument for upholding this exclusion is that the law does not deny victim status to members of illegal armed groups who suffered violations of international humanitarian law, but only the special benefits that the law establishes for certain victims, specifically those who were not members of illegal armed groups. Again, the court has affirmed Congress's capacity to define specific benefits for victims, which include a system of registry that presumes the good faith of the deponent and only certain kinds of victims based on the legality of their past actions. Even if the reasoning behind this exclusion seems fair, the obstacles these victims face to accessing remedies through judicial proceedings make almost illusionary their right to be recognized as victims of severe human rights violations and to redress.

This is not a clear cut issue. Throughout South America, reparations programs for victims of human rights violations have approached it differently, depending on each context. In Chile, reparations were granted to victims whether or not they had belonged to repressive organizations or subversive groups. However, victims of torture who were also members of repressive organizations (usually left-wing activists who turned into agents after torture) represented only a small portion of victims, and crimes attributed to members of subversive groups represented a small portion of all violations committed. In Brazil, reparations were granted to those benefiting from the 1979 amnesty law, which covers political crimes and crimes with a political nexus. In Peru victims of violations by state actors or subversive groups are entitled to reparations, but members of subversive groups are excluded from it. In Argentina, all victims of state repression were included, whether or not they had committed a crime, but victims of crimes committed by armed subversive groups were not included.

Special Protection for Women, Children, and Ethnic Minorities

Law 1448 includes provisions recognizing the specific impacts of human rights violations on women, children, indigenous groups, Afro-descendants, and other ethnic minorities. These provisions include special forms of protection and treatment in criminal investigations as well as requirements for their participation (or consultation) in any decisions on reparations that affect them. A concrete benefit of this targeted approach to delivering reparations to vulnerable victims is that members of protected groups can access the maximum amount of compensation offered through the program. However, it is unclear how some of these principles may apply to specific reparations provisions, such as compensation, education benefits, and rehabilitation programs.

In many cases, it is common for families who have suffered dispossession to have split up, considering the resulting trauma and the amount of time that has elapsed since the initial violation.[5] Thus, the law requires applicants to the land restitution program to include their spouses or permanent companions at the time of dispossession in the application process and mandates that restituted property be registered in the name of both spouses or long-term partners if both parties were victims of dispossession, even if only one spouse or partner requests the restitution.[6]

While this provision appears to provide important protections for women, the current approach could cause obstacles and delays in the implementation of the program. It may be difficult for applicants to find their former spouses, if they are interested in finding them at all. And verifying the civil status of the applicant at the time of the dispossession may be an additional burden on the government body responsible for implementing this policy, because in Colombia many marriages are not officially recorded, many civil unions are not formalized, and the civil registration system is incomplete, particularly in rural areas.

5 This difficulty was cited by Ricardo Sabogal, General Director of the Special Administrative Unit for the Management Restitution of Dispossessed Land (hereinafter, the Land Restitution Unit) in the TV program Semana en Vivo, on 23 January, 2013.
6 Law 1448, art. 118.

A 12-year commemoration of massacre committed by paramilitaries in Mampuján, Bolívar, in 1990 (Rosángela Roncallo/ICTJ).

A study verifying if this requirement represents in practice an obstacle or delay might be needed. However, an alternative approach might have been to establish a waiting period for applicants registering without a spouse, during which time the applicant is prevented from selling his/her land in order to give the absent spouse the chance to claim his or her share and in order to allow omitted spouses to request their share of the property without any statute of limitations. After the waiting period the spouse would still be able to sue for his or her share, but only to obtain compensation from the initial beneficiary, in addition to criminal actions for misappropriation. Another alternative could be to force beneficiaries who decide to sell their land to deposit half of the proceeds from the sale or compensation amount in a bank, giving an absent spouse the chance to claim her or his share until a given date, after which the seller/beneficiary would be allowed to claim the remaining half.

Humanitarian Assistance

The law reaffirms the state's obligation to respond to the immediate needs of victims of the conflict by providing humanitarian assistance.[7] This includes the obligation of local governments to provide shelter and food to those in need and the obligation of public and private hospitals to provide immediate care to victims. The law also establishes the state's obligation to register victims in cases of terrorist attack and massive displacement. Following the Deng Principles,[8] as well as the jurisprudence of the Constitutional Court,[9] Law 1448 establishes measures to guarantee that child victims receive health care and education. It also guarantees payments for funeral expenses.

The Victims' Unit has tried to distinguish between forms of humanitarian assistance and reparations. It has designed a method to certify who among the displaced meet criteria to receive humanitarian assistance. Victims are entitled to receive reparations only after they have overcome their situation of extreme need, and are no longer eligible to receive humanitarian assistance. Through this approach,

7 Law 1448 also complements the existing legal framework for assistance to victims of displacement, established by Laws 387 and 418 of 1997. The new law eliminates the six-month limit that Law 387 established for emergency assistance, replacing it with an evaluation of the victim's condition of vulnerability.

8 Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

9 The court defined a follow-up process after its T-025 judgment. See Constitutional Court, judgment T-025 of January 22, 2004.

the Victims' Unit is trying to define conditions under which those who suffered displacement will not continue to claim humanitarian assistance. To be effective, the law must be accompanied by policies that help individuals and families who have depended for years on humanitarian assistance to effectively overcome their situation of vulnerability.

Indeed, the impact of Colombia's humanitarian assistance program will be limited if the government does not also adopt socioeconomic policies that improve the quality of life of most Colombians, including policies for job creation. It has been reported that 80 percent of victims of the conflict live in poverty and 35.5 percent live in conditions of extreme poverty (30 percent and 9 percent, respectively, in the general population).[10] Socio-economic programs would help to reduce the demand for humanitarian assistance, and enable victims to use reparations to address their needs that cannot be met by improved socio-economic policies or humanitarian assistance.

10 Comisión de Seguimiento y Monitoreo al Cumplimiento de la Ley 1448 de 2011, Segundo Informe al Congreso de la República, 2014–2015, Agosto de 2015, 16–17.

3. Reparations Under Law 1448

It must be understood that the goal of a reparations program for massive violations, like Colombia's, cannot be to provide full reparations to each victim based on an individual assessment of the different dimensions of harm he or she suffered,[11] as a court can attempt to do, but to provide meaningful redress to all victims of the most serious crimes in a way that can recognize and account for the worst consequences of such violations. Therefore, administrative reparations (i.e., those provided under Law 1448) cannot be based on the same criteria as judicial reparations. For such programs, expediency and accessibility are essential factors.

In order to address victims' needs and rights and increase the chance of helping victims overcome the consequences of violations they suffered, Law 1448 uses the notion of *comprehensive reparations*.[12] While Law 1448 is ambitious in creating multiple programs, it combines—and somewhat confuses—reparations, humanitarian assistance, and social policies for guaranteeing social and economic rights.

Comprehensive Reparations

In concrete terms, the law offers the payment of compensation to victims of the most serious human rights violations,[13] as well as to displaced families; the creation of a program on Comprehensive Psychosocial and Health Care; a program on house restitution through subsidies (for selected victims); debt alleviation, access to educational training, and access to employment (for selected victims); and exemption from the mandatory military services for male youth. These programs do not have universal coverage, and health care is further limited in terms of the types and number of services provided.

The government initially allocated a significant amount of money to a large array of programs on humanitarian assistance and reparations (COP 54.9 trillion or USD 17.5 billion).[14] This amount was recently increased to an estimated COP 90 trillion (USD $29 billion).[15] Never-

11 For a more complete discussion of this issue, see Cristián Correa, "Making Concrete a Message of Inclusion: Reparations for Victims of Massive Crimes," in Letschert, R., Haveman, R., Brouwer, A. M., & Pemberton, A., (eds.), Victimological Approaches to International Crimes: Africa (Cambridge/Antwerp/Portland: Intersentia, 2011), 185–233.

12 United Nations General Assembly. Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and of Serious Violations of International Humanitarian Law, hereinafter, Basic Principles on the Right to Reparations, A/RES/60/147, para. 18.

13 Violations that give rise to compensation amount include: killing, enforced disappearance, kidnapping, bodily harm resulting in different degrees of disability, torture, sexual violence, and forced recruitment of minors.

14 According to the National Council for Economic and Social Policy (CONPES). Document 3726, of December 1, 2011, which defines the guidelines, budget and mechanisms for the execution and follow up of the comprehensive support reparations to victims program Conversion rate for this report is 1 USD/3,109 COP.

15 Ministerio de Hacienda y Crédito Público, Marco Fiscal de Mediano Plazo 2015, 92.

theless, most of the investment is in humanitarian assistance, as reparations measures for 2015, for example, comprise just 19 percent of the total funds.[16]

The large number of victims and the open registration process has threatened the state's ability to fully comply with the policy. The number of victims has increased since initial projections were made, mostly as a result of a more efficient and accessible victim-registration process.

The table below presents the 2011 estimate of the number of violations (made when the law's initial budget was defined); the number of violations that has been effectively registered, and the projected costs of the compensation program (alone) based on registration numbers.

Table 1: Initial Estimate of Numbers of Violations, Numbers of Registered Violations, and Projected Costs[17]

TYPE OF VIOLATION	NUMBER OF VIOLATIONS (2011 ESTIMATE)	NUMBER OF REGISTERED VIOLATIONS	PROJECTED COMPENSATION BASED ON REGISTERED VICTIMS (IN COP MILLIONS)
Forced Displacement	618,000	1,590,075	17,417,602
Killing	134,000	264,812	6,825,264
Enforced Disappearance	22,500	45,497	1,172,640
Kidnapping	15,900	36,675	945,261
Mines/Explosive Devices	6,300	13,269	341,995
Torture	6,400	9,603	185.631
Illegal Recruitment	4,800	7,732	149,463
Sexual Violence	14,000	10,821	209,175
TOTAL	**830,000**	**1,978,484**	**27,247,031 (USD $8.8 billion)**

The projected cost of the compensation program alone, which represents a fourth of the overall cost of the reparations policy, are expected to be more than four times higher than what was initially budgeted (and projected).[18]

The financial sustainability of the policy is an issue flagged by the Follow-up and Monitoring Committee for the Implementation of Law 1448, a group comprising autonomous state-monitoring bodies, which has warned of the government's inability to comply with the law. In a recent announcement, it stated that increasing the budget for humanitarian assistance and repa-

16 Ibid.

17 The estimate of the total number of displaced families was obtained by dividing the total number of victims registered for forced displacement (6,044,151) by an average family size of four, according to the 2005 census. The estimate was based on all families receiving 17 monthly minimum salaries; however, a high number of these families are entitled to receive 27 salaries, as they were registered before Law 1448 was passed.
The category of mines/explosive devices is not included among victims to receive compensation, but it serves as an indicator of victims who suffered incapacitating harm. Decree 4800 grants 40 minimum monthly salaries in cases of permanent disability and 30 in cases of partial disability. Because there are no public numbers on these two categories, the estimate was based on a compensation amount of 30 minimum monthly salaries for all victims of explosive devices.
The figures are not exact, as a result of the factors indicated in previous footnotes. Another factor to consider is that 7 percent of registered victims have been affected by more than one type of violation, in which case they are entitled to a maximum amount of 40 minimum monthly salaries. Additionally, as compensation for victims who received payments as part of humanitarian assistance programs based on Law 418 of 1997, some victims that appear in the registry are not entitled to any compensation. However, the general projection still serves to indicate the high costs of the program and the general impact of including displaced families as part of compensation.

18 The initial projection was COP 6,395,000 million. See National Council for Economic and Social Policy, CONPES Document 3712 of 2011, which defines the financial plan for the sustainability of Law 1448 of 2011, 45.

rations to COP 9.5 trillion per year (two times the amount defined in the original budget plan) still might not be enough, and that an updated budget plan is needed. The committee warned that considering the current number of victims being registered, even with such an increase, a significant deficit is projected for the compensation and house restitution programs alone.

The government has responded that the deficit is partly the result of a Constitutional Court decision that ordered compensation for victims of forced displacement to be paid in cash, not subsidies. However, that order by itself could not have resulted in such a deficit, as those subsidies should have been included in the original budget. The only reason for the increase in cost is the higher-than-expected registration of victims, which shows poor planning in the design of the program.

Still, there is a tendency in Colombia to design policies and establish them in law without fully outlining many of their directives as concrete actions or carefully defining how they might be implemented or how much they will cost. Indeed, overpromising and insufficient delivery have been a persistent problem with previous efforts to provide humanitarian assistance and reparations to victims in Colombia, which is demonstrated by the persistent unconstitutional state of affairs of the displaced population for more than 11 years (as established by the Constitutional Court through its follow-up proceedings on these policies). A combination of unrealistic standards and inability to implement results in frequent frustration by victims.

Further, approximately 64 percent of the total cost of the compensation program is allocated to victims of forced displacement. Even considering the devastating effects of forced displacement (especially on farmers and people with strong economic, social, and cultural links to their land they possessed), it can hardly be equated with the killing or enforced disappearance of a next-of-kin or suffering torture or rape. (This does not mean diminishing the rights of those who suffered displacement to receive the means to voluntary return or resettle.[19]) Those who suffered forced displacement as result of having directly experienced violence, intimidation, or threats certainly have the right to be resettled or to return in conditions of socioeconomic sustainability. They are also entitled to the social and economic conditions that the Colombian Constitution guarantees to all people. However, they do not necessarily have a right to reparations at the same level as those who suffered serious violations, such as killing or torture. This kind of prioritization, where the compensation effort is focused on the most serious violations, was done in Peru, another country with a high number of victims of displacement.

The distinction in the treatment of victims of serious violations of human rights and victims of forced displacement has been recognized by the Inter-American Court of Human Rights. When deciding a case involving the killing of a political leader and the massive displacement of an entire community due to a military operation that involved destruction of goods, threats, and violence, the court recognized that the reparations that are provided under Law 1448 were sufficient for those who had suffered displacement and ordered the state to prioritize the victims in the case in the implementation of the law.[20] However, in regards to the murder victim, the court ordered specific forms of reparations for the victim's relatives, without making reference to Law 1448.

Other reparations programs, like in Peru and Chile, include access to health care or scholarships that go beyond the regular compensation programs established for every citizen. Given the lower number of victims and stronger economy, Chile was able to effectively implement these policies. However, even if the number of victims in Chile is not comparable to those in Colombia, they are still signifi-

19 Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principle 28.
20 Inter-American Court of Human Rights, *Case of the afro-descendant communities displaced from the Cacarica river basin (Operation Genesis) v. Colombia*, preliminary objections, merits, reparations and costs, judgment of November 20, 2013.

cant. In Chile, children of 3,216 victims of killing and enforced disappearance, as well as 38,254 victims of torture or one of their descendants, are entitled to university scholarships; and 606,437 victims of different violations are registered in the Comprehensive Reparations and Health Care Program – PRAIS (Instituto de Investigación en Ciencias Sociales – ICSO, Medidas de Reparación en Chile desde 1990.[21] This means that compensation amounts or pensions are not used to pay for basic services like education or health care, which is provided through other reparations programs, and so can be used to help generate productive investments that could have a longer-term impact for victims.

Satisfaction of Social and Economic Rights as Reparations

Titles IV, V, and VII of Law 1448 establish some measures that can be important for victims in providing access to concrete benefits to overcome some of the socioeconomic effects of crimes committed in the course of the conflict. These include housing restitution, loan assistance, occupational training, and access to jobs in the public sector, with some conditions. However, it has been debated to what degree these policies can be considered appropriate reparations. The lack of a clear acknowledgement on the part of the state that these subsidies and services are a response to wrongdoing makes it difficult to consider them truly reparative.[22] Indeed, acknowledgment of responsibility is the main difference between benefits provided under humanitarian assistance and reparations programs (see Section 5 below).

A march in the town of Pueblo Bello, Antioquia, during a 2012 rally organized by the relatives of 43 farmers disappeared in 1990 by paramilitaries (Alejandro González/ICTJ)

There is debate about the difference between programs for guaranteeing social and economic rights to citizens and reparations programs for victims of human rights violations. The Inter-American Court of Human Rights has stressed that:

21 See www.icso.cl/wp-content/uploads/2011/03/Descripcion-de-medidas-reparacion-MAYO2012.pdf

22 The Inter-American Court of Human Rights rejected as a form of reparation compensation payments from a victims' fund being given on the condition that the recipient(s) not question the identity of the remains being returned, which included a clause denying any state responsibility for the violation. The court did not consider as reparations measures housing support either, as they consisted only in the foundations for building two rooms, in a dangerous far-away area that lacked basic services; neither were considered reparations access to a productive projects program. Inter-American Court of Human Rights, *Gonzalez et al. ("Cotton Field") v. Mexico*. Merits. Judgment of November 16, 2009, series C 205, 558, para.s 550–560.

> the social services that the State provides to individuals cannot be confused with the reparations to which the victims of human rights violations have a right, based on the specific damage arising from the violation. Hence, the Court will not consider any government support that was not specifically addressed at repairing the lack of prevention, impunity and discrimination that can be attributed to the State in the instant case as part of the reparation that the State alleges to have made.[23]

This court decision was used as a precedent by victims' groups and human rights organizations to challenge the constitutionality of Law 1448. They claimed that the law reduces the rights established by previous Colombian laws or imposes new restrictions on them; violates the progressivity and incremental clauses that govern social, economic, and cultural rights; and confuses three different types of obligations, namely, the duty to satisfy social and economic rights, the obligation to provide humanitarian assistance under international humanitarian law, and the obligation to provide reparations for human rights violations.

The Constitutional Court has made several decisions regarding these objections. It affirmed that new provisions in Law 1448 cannot be understood as limitations of, or derogations from, previous laws that granted greater benefits. It found that humanitarian assistance and reparations cannot be confused with social services provided by the government. Further, it clarified that state assistance to the displaced population can be considered reparations only if it consists of timely, specific, and adequate measures that respond to the special vulnerabilities that affect such a population.[24]

Even with these court decisions, it is questionable whether current policies of humanitarian assistance and subsidies comply with the criteria defined by the court.

A closer examination of the housing restitution program may help to illuminate this issue. Law 1448 establishes a housing restitution program through housing subsidies for qualifying victims; however, not all of those who lost their homes are guaranteed in-kind restitution. It is understandable that not all of those who lost their homes can obtain a new home, so there is a need to prioritize those who are most vulnerable and those who have no other possibilities of obtaining a home.

If reparations for such vast numbers of victims living in poverty are not accompanied by a strong policy for poverty alleviation, it can run short.

The government has done so by assigning a portion of housing subsidies for the entire population in need to low-income victims, and by increasing the resources allocated for these subsidies. However, it is unclear to victims who among them are entitled to housing restitution, as the program is no different from the country's general housing policy. Prioritizing those who are most vulnerable should not preclude providing a definition with clear parameters of who may apply for a house, who may apply for other forms of housing solutions (like subsidies that can cover part of the costs of a house), and who are not entitled to receive any form of reparation due to a lack of state resources. Providing a clear explanation of what is possible, and what is not, could help to spark a debate about priorities in the national budget and allow relevant bodies to explore other forms of funding, like development credits.

Finally, while the amounts to be allocated through the reparations program are significant, their potential to truly improve the situation of victims, and help them to overcome the

23 *Inter-American Court of Human Rights. Gonzalez et al. ("Cotton Field") v. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 16, 2009, series C 205, para. 529.
24 Constitutional Court, judgments C-280 of May 15, 2013, SU-254 of April 24, 2013, and C-462 of 17 July, 2013.

consequences of the violations they suffered, remains limited. Again, this is due in part to the situation of poverty, often extreme, in which many victims live, as was previously discussed.[25] If reparations for such vast numbers of victims living in poverty are not accompanied by a strong policy for poverty alleviation, it can run short. A reparations program cannot pretend to overcome poverty. That is why it should be paired with a strong development policy.

Compensation or Cash Payments

Law 1448 defines administrative compensation as a one-time cash payment for certain categories of victims. The amounts and beneficiaries for payments are established by Executive Decree 4800 of 2011,[26] not Law 1448. Beneficiaries are the direct victims of kidnapping, serious or invalidating injuries, torture, sexual violence, forced recruitment, and forced displacement. Also included in this measure are the spouses,[27] children, or parents of victims of killing and/or enforced disappearance. Direct victims are included in the case of kidnapping, serious or invalidating injuries, torture, sexual violence, forced recruitment, and forced displacement.

Table 2: Cash Payment Amounts for Different Categories of Victims

CATEGORIES OF VICTIMS	AMOUNT IN MINIMUM MONTHLY SALARIES	APPROXIMATELY AMOUNT IN USD
Relatives of Disappeared or Killed	40	$8,290
Direct Victims of Kidnapping and Injuries with Permanent Disability	40	$8,290
Direct Victims of Other Injuries, Torture, Sexual Violence, and Illegal Recruitment	30	$6,218

Victims who suffered more than one form of victimization are entitled to receive compensation for each violation, up to a total amount of 40 monthly minimum salaries. Those who suffered as result of their age, sex, or ethnicity are also entitled to the maximum amount of 40 monthly minimum salaries.[28] In the case of beneficiaries under the age of 18, the compensation must be invested in a trust fund for the beneficiary, to be defined by the Victims' Unit, until they reach majority.[29]

The method of distributing the amounts among various family members does not anticipate or resolve potential conflicts caused by the possible later appearance of an omitted relative, which often happens with these types of programs. Establishing fixed amounts for each family member helps to provide certainty to each beneficiary and avoid possible conflicts among family members that can have devastating effects for family unity, as was the case with pensions paid in Chile.[30]

The choice to issue compensation as a one-time payment presents some risks, including potential family or community conflicts, misuse, and diluted impact of the compensation in improving

25 Chronic unemployment or sub-employment; obstacles for accessing quality health care, which could result in victims using compensation to pay for private services; costs of higher education and inability to access scholarships; and other situations that characterize the condition of victims can make that the compensation amount have only a limited effect or provide just temporary relief.
26 This decree replicates what was established under Executive Decree 1290 of 2008, the previous reparations program that Law 1448 replaced. It was based on amounts given under the humanitarian program established under Law 418 of 1997, as a form of continuity of the program.
27 If the victim was married at the time of the crime, and also had a living or same-sex partner, both the widow or widower and the partner are entitled to the compensation amount, having to share it in halves.
28 Decree 4800 of 2011, art. 149.
29 Ibid., art.s 160 to 162.
30 Law 19,123 of 1992, art. 20.

victims' living conditions in the long term.[31] It also strains the capacity of the national budget if funded over a few short years (which is why the program is designed to be implemented over 10 years). This means registered victims who have already waited several years, or even decades, for reparations may need to wait even longer, creating more frustrations and reinforcing their sense of unfulfilled promises.

Paying compensation in several installments, or as pensions, could help to distribute the cost over several years, making it possible to begin implementation to all registered victims without further delay. This would prevent victims from having to wait and diminishes the risk of misuse. However, the visual impact of compensation might be lower as would bes victims' ability to invest amounts in a single economic project.[32]

The Victims' Unit since 2012, when it was established and began operations, has proven more effective than previous institutions in delivering payments to victims. The overall effort, including the program that preceded the current law, under decree 1290 of 2008, and judicial compensations under the Justice and Peace Law, has provided payments to almost 500,000 victims.[33] Initially, there were problems in delivering payments to victims, as it was reported in 2012 that 25 percent of payments were not cashed in.[34] While this problem has since been reduced, in 2014 it was reported that there were 17,039 payments that had not been cashed in.[35]

Table 3: Compensation Disbursement Amounts, by Year[36]

YEAR	VICTIMS OF DISPLACEMENT	VICTIMS OF OTHER VIOLATIONS	TOTAL	AMOUNTS (COP)
2009	-	26,026	26,026	199,899,519,385
2010	-	34,774	12,753	301,028,432,853
2011	-	75,205	75,205	507,160,719,435
2012	-	157,951	157,951	936,016,476,537
2013	8,981	89,005	97,986	605,304,126,520
2014	57,118	33,339	90,457	486,824,510,642
TOTAL	**66.099**	**416,300**	**482,399**	3,036,233,785,371

31 Some of the disruptive effects of victims receiving high compensation amounts in lump sums has been reported in the *Mampuján* case. A broader study on reparations for victims of Indigenous Residential Schools in Canada, who received one-time compensation payments, also identifies similar problems. See Aboriginal Healing Foundation, The Indian Residential School Settlement Agreement's Common Experience Payment and Healing: A Qualitative Study Exploring Impacts on Recipients (Aboriginal Healing Foundation, Ottawa, 2010).

32 The use of payment installments and pensions can also have serious limitations, especially if there is no trust that the government will effectively pay. That was one of the issues raised during debates and consultations by Ecuador's truth commission, which finally recommended providing a lump-sum payment to victims. See Comisión de la Verdad de Ecuador, Sin Verdad no hay Justicia: Informe de la Comisión de Verdad, 2009, 412.

33 Based on figures provided to the author on request by the Director of Reparations of the Victims' Unit, May 2015, and the unit's 2014 annual report. In cases of killings, enforced disappearances, and displacement, all family members are entitled to receive a compensation amount, so the total number of victims includes direct victims of certain violations and indirect victims of others. Not all of those who received compensation did so as part of the implementation of Law 1448. 28 percent received compensation before the law started to be implemented. Additionally, according to the Victims' Unit's last published report, up to June 2014 2,088 victims had received compensation from the Reparations Fund based on judicial decisions at the Justice and Peace judicial mechanism, for a total amount of COP 53 billion. (Informe de rendición de cuentas, Unidad para la atención y reparación integral a las víctimas, Octubre de 2014, 44).

34 Comisión de Seguimiento de los Organismos de Control. Segundo Informe de Seguimiento y Monitoreo a la Implementación de la Ley de Víctimas y Restitución de Tierras 2012-2013, 533–535.

35 Comisión de Seguimiento y Monitoreo al Cumplimiento de la Ley 1448 de 2011, Primer Informe al Congreso de la República, 2013–2014, August, 2014, 269.

36 Violations giving rise to compensation include: killings, disappearances, kidnapping, bodily harm resulting in different degrees of disability, torture, sexual violence, and forced recruitment of minors.

Since 2012, Colombia has invested COP 2.5 trillion in reparations, representing 40 percent of the total amount budgeted for the compensation program over 10 years. This shows an implementation pace faster than the original plan. Given the projection made above, based on the total number of registered victims, there will not be enough funds to complete the program by 2021, as the law requires.

Another problem with the compensation program is that the law expressly declares that humanitarian assistance given through cash transfers "constitute" administrative reparations. This is so that those who received humanitarian assistance several years ago cannot also claim reparations. Thus, the provision seeks to retroactively change the nature of what has been given as humanitarian assistance under Law 418 of 1997 to reparations. But in truth, the result is the opposite: it shows that the real nature of reparations under Law 1448 is humanitarian assistance.

Coordinating Compensation with Judicial Reparations

One important challenge for an administrative reparations program is defining its relationship with judicial reparations. Judicial reparations are supposed to cover and respond to all of the damages a victim has suffered as a result of a crime, as established by a court of law. Thus, victims who receive reparations through a court decision should not have the right to claim additional reparations through the administrative process. However, the same principle may not necessarily apply to victims who have received administrative reparations: they should not have to waive their right to claim additional reparations through the courts. The only exception would be if the amounts provided by the administrative process are sufficient or equivalent to what a court may grant. This is the position adopted by the UN Committee Against Torture, which has affirmed that administrative reparations, while welcomed, should not prevent the exercise of the right to obtain effective remedies, including judicial reparations.[37]

Under Argentina's reparations program, victims who received reparations through the administrative process implied relinquishing the right to receive any other form of compensation for the same crimes, but the amounts provided were equivalent to what they might have obtained through litigation.[38] A similar requirement was imposed on victims of forced labor and slave labor of the Nazi regime who participated in a massive compensation process against Germany and some German companies, resulting from litigation. In that case, victims of slave labor received payouts of up to EUR 7,669 and victims of forced labor EUR 2,556.[39] In other cases, like the reparations policies of Chile and Peru, there is no such provision.[40]

Law 1448 created an innovative mechanism to deal with this difficult situation. Article 132 offers the possibility of paying an additional amount of compensation to those who waive their rights to pursue judicial action against the state for the violations. The provision was based on the civil law figure of the transaction contract, which is an analogy with only partial application. The nature of the "credit" that victims have against the state makes it difficult to reduce the problem to its financial dimension, as such a credit has an origin in the state's violation of, or failure to guarantee, the fundamental and inalienable rights of the "creditors." Perhaps this is the reason why it risks

37 UN Committee Against Torture, General Comment No. 3, November 19, 2012, CAT/C/GC/3, para. 20.

38 Law 24,043, art. 9; Law 24411, art. 4 ter; and Law 25,914, art. 5.

39 International Organization for Migration, Property Restitution and Compensation: Practices and Experiences of Claims Programmes,2008, 95.

40 In the case of Peru, where victims received a lump-sum equivalent to USD $3,700, there is only an eligibility issue for victims who already received reparation through another source, for instance, as a result of a decision by the Inter-American Court of Human Rights, settlements with the Inter-American Commission on Human Rights, or a reparations measure provided by other laws (Decree 015-2006-JUS, art. 44). In the case of Chile, victims who received a pension for life, which averaged USD $537 per month per family and was later increased by 50 percent (Laws 19,123 on 1992 and 18.980 of 2004), are still able to pursue judicial compensation.

reducing a debate about recognizing the human dignity of victims to a mere commercial problem. The system remained unimplemented for several years and was recently repealed by law.[41]

The debate on this issue has led to government efforts to limit victims' rights to judicial reparations, particularly in cases related to violations by demobilized paramilitaries. Such judicial proceedings are part of a special judicial mechanism established by the Justice and Peace Law, whereby a Reparations Fund, which receives contributions from demobilized groups and the state, is responsible for financing reparations for crimes committed by defendants. The Constitutional Court declared unconstitutional an attempt to limit the state's subsidiary responsibility to what Law 1448 offers as compensation.

The attempt to limit state liability in these cases is not without merit; however, it should be considered that in many cases paramilitary groups operated with the support or acquiescence of the Army or the National Police. If the state denies its responsibility in these cases, it cannot participate as a *partie civile*. If state responsibility is clearly part of what the court examines in the trial, the state could defend itself and present evidence and arguments to try to limit its responsibility through a transparent process. The problem shows the inconsistency in a system that only partially addresses the need for justice and reparations for crimes committed by paramilitaries without clearly recognizing the state's involvement in that criminal phenomenon. The proposed framework for accountability being discussed in the peace negotiations with FARC offers an opportunity to correct this inconsistency, where all actors could assume their responsibility.

It is unclear to what extent an effective reparations program can serve as a disincentive for victims to demand compensation through the courts without requiring them to forfeit their claims. The ability of a reparations program to limit state liability may depend not only on the amounts paid, but also to what extent victims perceive that they have been treated fairly and their suffering has been acknowledged.

Because victims frequently litigate to obtain the acknowledgment that they have not otherwise obtained from the state, provisions intended to shield the state from liability could have the opposite effect, as victims could interpret them as persistent denial of responsibility. Requiring courts to recognize payments provided through an administrative process might be a better way of guaranteeing certain limits to state liability without sending the message to victims that they have to waive their rights. However, as argued by the Inter-American Court of Human Rights, this requires that the administrative reparations program clearly states that compensation is given as a form of reparations, that is, it acknowledges the state's responsibility for the violations.[42]

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Personalized Approach to Defining the Individual Comprehensive Reparations Plan

An interesting and progressive feature of the compensation program is the Individualized Comprehensive Reparations Plan. These plans are based on individual interviews held by staff in the Victims' Unit with each victim, during which an assessment is made of the different impacts

41 Constitutional Court. Case D-9214, Judgment C-099/13. The Constitutional Court admitted the constitutionality of the transaction clause, but limited it to crimes other than crimes against humanity involving the responsibility of the state. More recently, though, the paragraphs in art. 132 of Law 1448 that established the transaction contract were repealed by Law 1753 of June 9, 2015, establishing the National Development Plan 2014-2018, art. 132.

42 Inter-American Court of Human Rights, Gonzalez et al. ("Cotton Field") v. Mexico. Merits. Judgment of November 16, 2009, series C 205, para. 558.

suffered by the victim and matches them with programs that the victim can access for assistance, rehabilitation, restitution, compensation, satisfaction, and guarantees of non-repetition. Interviews are performed by professionals (social workers, psychologists and lawyers), called "reparations liaisons" (*enlaces de reparación*), who are skilled and highly motivated.[43] Additionally, victims are offered assistance on how to invest their compensation funds, focusing on four main areas:

1. Technical or professional education for victims or their children
2. Creation or strengthening of a business
3. Purchasing or improving housing
4. Purchasing rural property[44]

However, victims are not obligated to invest the compensation in these areas, and participation in the program is voluntary.[45]

The personalized interviews and the assessment of individual reparations plans can make a significant contribution to the Law 1448's overall effectiveness and make the reparations policy more meaningful to victims. A personal encounter with a civil servant who is willing to listen and provide guidance in navigating the bureaucracy of different programs can help victims to perceive that the state cares about their situation and recognizes their dignity and individuality. It can also help to identify concrete resources and services available at the local level.

However, there are implementation problems. The cost and complexity of providing technical assistance to hundreds of thousands of victims can be significant, consuming part of the resources appropriated for victims. It might be possible to provide one initial interview per applicant and fewer follow-up interviews. Moreover, the slow implementation of many of the programs offered in the individual reparations plan, especially in the areas of education, health care, psychosocial support, and housing, runs the risk of making those plans a list of unfulfilled promises, reinforcing victims' feelings of frustration and distrust.[46]

One concrete example of this potential frustration is the limited number of scholarships offered through the reparations program. This means that, in many cases, identifying educational goals as part of an individual reparations plan may not translate into much; victims may end up using their compensation amount to pay for continuing studies.[47] Nevertheless, if these implementation challenges are addressed, and programs are increased so as to at least cover victims of the most serious violations, the accompaniment program and the personal touch it adds can provide the symbolic component that many reparations programs lack as well as the ability to respond to victims' individual needs.

Rehabilitation

Following international law, article 135 of Law 1448 includes legal, medical, psychological, and social services under the concept of rehabilitation.[48] It mandates the creation of a rehabilitation program, with individual and collective components, that is open to all victims who are

43 Based on author's direct observations during trainings he performed to liaisons from the departments of Antioquia, Atlántico, Bolívar, Cesar, Guajira, and Santander, in April 2013.
44 Law 1448, art. 134.
45 Decree 4800, art. 157.
46 These problems have been reported by victims interviewed by ICTJ. See Ana Cristina Portilla and Cristián Correa, Estudio sobre la implementación del programa de Reparación Individual en Colombia, 2015, 27–28.
47 Ibid., 25–28.
48 Basic Principles on the Right to Reparations, para. 21.

recognized under the broad definition of "victim" contained in article 3 of the law. It creates a Comprehensive Psychosocial and Health Program for the Support of Victims, which is intended to provide interdisciplinary services that are defined as free of charge, and cover drugs and transportation to centers where services are provided for the duration of the victims' needs. It includes individual and family therapy as well as community actions.

While Decree 4800 of 2011, which regulates the provisions of the law in this matter, assigns the rehabilitation program to the Ministry of Health and Social Protection,[49] the role of the ministry is solely to design, coordinate, and monitor the program. Services at the local level are responsible for its direct implementation.[50] The Ministry of Health and Social Protection started its implementation in 2014, taking more than one and a half years to design the program.[51] A total of COP 25 billion was allocated to 30 prioritized areas, to provide individual, family, or community services to 82,156 victims; but resources and goals for 2015 were drastically cut by 40 percent.

In parallel, the Victims' Unit is implementing another mode of intervention with more modest and concrete goals, based on nine sessions of group therapy and strengthening victims' own coping resources. While a very interesting approach, it lack sufficient funding to respond to the high level of demand from victims.

Town of Pueblo Bello, Antioquia, Colombia. In 2012 the relatives of 43 farmers forcefully disappeared 22 years before by a paramilitary group met for the first time and organized a rally in memory of the victims (Alejandro González/ICTJ).

Yet, the law does not consider the long-term psychosocial effects of having suffered extreme violence, which frequently expresses itself cyclically, not just as a single symptom that can be cured with one treatment.[52] The availability of psychosocial support for victims of human rights violations should be guaranteed throughout victims' lives—as in Chile's rehabilitation program (Programa de Reparación y Atención Integral de Salud), which recognized that vic-

49 Decree 4800, arts. 163–169.
50 Law 1448, arts. 137 and 138.
51 Ministerio de Salud y Protección Social, Programa de Atención Psicosocial y Salud Integral a Víctimas – PAPSIVI, July 2013.
52 See for example, M. Brinton Lykes and Marcie Mersky, Reparations and mental health, in Pablo de Greiff, *The Handbook of Reparations* (Oxford/ICTJ, New York, 2006), 596.

tims' needs may be ongoing, with possible relapses.[53] Thus, there is a risk that Colombia's program will provide shorter-term rehabilitation to several thousand victims, providing perhaps useful forms of support for a period of time, but then fail to help them to deal with recurrent or subsequent effects of violence. A program of this nature demands the establishment of permanent or long-term forms of support, available to victims according to their changing needs.

The rehabilitation program should be based on local health care services, to guarantee accessibility and continuous support. Local governments may not only need technical assistance to implement this program, but certainly more funding to hire staff and invest in infrastructure and supplies. Without additional funding for these new services, the program will have a very limited impact. The stubborn persistence of the status of unconstitutional affairs of the displaced population is an indicator of the inadequate capacity of local governments to provide services to victims.

Moreover, the policy document that establishes the budget commitment for the reparations programs is vague about the allocation of resources for psychosocial support through the rehabilitation program. It allocates resources for health care assistance, but not for this specific program.[54] An amendment of the policy plan established a goal for the decade of 2012–2021 of providing psychosocial support to 3 million people, but it is unclear if it is understood as a one-time service or limited to a few interventions (which will have very limited impact or could be even counterproductive) or if it will consist of continuous provision.[55] The reported reduction of resources for 2015 demonstrates that the program does not consider services to be continuous.

There are other obligations established by Law 1448 that have not been implemented, like the creation of Centers for the Reconstruction of Communities' Social Fabric. Their loosely defined functions seem more to resemble a wish list than a specific policy. It is unclear where these centers are to be established and with what funds—and if they are the same as the Regional Centers for Assistance and Reparations to Victims (established in another section of Decree 4800).[56] These inconsistencies are a worrisome sign of changes being made in an improvised manner, which might be inevitable when implementing a complex policy like Law 1448, but more transparency is needed to provide victims with certainty about what they can expect, especially given the track record of previous laws and decrees. An important lesson may be learned from this: avoid adding too much complexity to policies of this type without thoroughly assessing what they entail in concrete terms and how they will be implemented.

Collective Reparation

Law 1448 creates a collective reparations program under the broad title of "Other Reparations," which includes harms caused by violations of collective rights, gross violations of the rights of members of collectivities, and the collective impact of violations of individual rights.[57] Many of

53 Ministerio de Salud, Norma Técnica N° 88 para la atencion en salud de personas afectadas por la represión política ejercida por el Estado en el periodo 1973–1990.

54 National Council for Economic and Social Policy, CONPES Document 3712 of 2011, which defines the financial plan for the sustainability of Law 1448 of 2011, 45.

55 CONPES, Document 3726, of December 1, 2011, which defines the guidelines, budget, and mechanisms for the execution and follow-up of the comprehensive support reparations to victims program, 43. Its annex defines the program with a clear ending, after an evaluation of having reestablished the physical and psychosocial conditions of the victim and the completion of the individual rehabilitation plan designed with the victim in the initial session, 50. The policy definition developed by the Ministry of Health and Social Protection in July 2013 also included the definition of a therapeutic plan and the closure of the intervention after the goals of the plan are achieved.

56 Decree 4800, arts. 121–130.

57 Law 1448, arts. 151 and 152. Decree 4800 contains the general definitions of the program, and Decrees 4633, 4634, and 4635 (all 2011) define specific provisions in regards to indigenous, Roma, Afro-descendants, and two other communities with special identity and language recognized by law (*Palenque* and *Raizales*).

the measures that have been proposed as collective reparations relate more to guarantees of non-repetition, or structural reform, than specific forms of collective reparations.

The program defines two ways by which communities and organizations may be eligible to receive benefits under this program:

- by an *offer* made by the state, which means through a registry implemented by the Victims' Unit based on an assessment of communities or groups suffering the most severe forms of collective victimization
- by a *demand* from a group that is not included in the Victims' Unit's registry.[58]

Collectivities recognized by the law include social and political organizations as well as communities based on a shared culture, location, or purpose.[59] The law includes unions and political parties as collectivities whose members have been heavily persecuted during the conflict. This has allowed for the inclusion of the *Unión Patriótica*, a leftist party that suffered heavy repression, including the murder of many of its leaders and representatives in Congress.[60] The inclusion of these groups represents some challenges. The reparations for the collective harms suffered by these organizations seems more like issues to be resolved in the political process, such as incentives for the formation and strengthening of unions; guarantees for the respect of indigenous rights; guarantees for the rights and protection of journalists and freedom of expression; guarantees of the participation of political parties that were subjected to persecution; etc.

Thus, the law goes beyond what other collective reparations programs have defined in the few cases in which such a program has been implemented.[61] Indeed, in the few comparative international experiences, programs have used a more discrete definition of *collectivities*, which has allowed implementation in many of the areas identified as the most affected by collective violations. In Morocco the collective beneficiaries were organizations located in the regions targeted

The House of Culture in Granada, Antioquia, located in the town square, houses a memory center and museum to remember victims, created by relatives and victims' organizations. It also serves as a gathering place for their activities. July 2013. (Cristián Correa)

58 Decree 4800, art. 227.
59 Law 1448, art. 152.
60 Ibid.
61 See Julie Guillerot and Ruben Carranza, ICTJ, The Rabat Report: The Concept and Challenges of Collective Reparations, 2009.

by repressive policies.[62] In Aceh, Indonesia, the program was not labeled reparations, but reconstruction for communities affected by the conflict, with the aim of reintegrating former combatants and securing peace. Peru's program focuses on communities or villages affected by the conflict or groups of returning displaced people.

The design of Colombia's collective reparations policy is based on a pilot program implemented by the Corporación Nacional de Reparación y Reconciliación (CNRR), the Victims' Unit's predecessor; however, none of the eight pilot projects that were started in 2008 have been finished to date, which might be an important sign of the over-ambitiousness of the program.[63]

The program consists in a lengthy process of approaching the community, identifying collective harms, agreeing on a reparations plan, and implementing it.This resembles the criteria that a court might use to define one case of collective reparations, but it seems to be an impossible task for a reparations process to carry out on a massive scale. This is another demonstration of the idea that adding too much complexity to a program can hinder its ability to be effectively implemented.

As of August 2015, the Victims' Unit had registered 303 communities and organizations for the Collective Reparations Program, and approved 72 plans that are being implemented.[64] This falls short, considering the 2021 goal of completing plans in 833 communities. An examination of 55 plans shows that many of the most frequently requested measures involve the implementation of social services that the state already has the obligation to provide, such as health care, education, or access to justice; or of individual reparations under Law 1448 but that lack implementation, such as psychosocial support, skills training, or access to higher education. Some of these are not even part of collective rights but refer to the individual needs of victims who live in the communities.[65]

Satisfaction Measures

Law 1448 establishes a series of measures to be implemented as forms of satisfaction and guarantees of non-repetition, following the general criteria defined by the Basic Principles on the Right to Reparations. This includes the investigation of human rights violations through research, collecting testimonies from victims and those demobilized from illegal armed groups, and the preservation of archives. To carry out and house this work, Law 1448 created the Center for Historical Memory.

The Victims' Unit has started implementing other satisfaction measures, such as supporting initiatives of civil society groups and local governments and organizing ceremonies on its own. A total of COP 10 billion (USD $3.9 million) was appropriated for these activities for 2012, but more concrete activities started to be executed only in 2013, including initiating a National Day of Memory and Solidarity with the Victims, on April 9, instituted by Law.

Finding, Identifying, and Reburying Victims

Other symbolic measures established by Law 1448 include a policy for finding, identifying, and reburying the remains of victims of enforced disappearance, an important component of providing reparations

62 Collective reparations consist of a development policy for the 11 regions affected by the conflict, as well as the creation of a fund for community and memorialization projects for organizations from those regions. For a comprehensive discussion about different collective reparations programs see ICTJ, The Rabat Report, The Concept and Challenges of Collective reparations (ICTJ, 2010). See also Julie Guillerot, Maria Ezzaouini and Widad Bouab, Morocco: Gender and the Transitional Justice Process, September 2011.
63 So far 5,697 communities affected by the conflict have been registered. After five years, small projects are being implemented in 1,946 of those communities. For further analisys of this policy see ICTJ, APRODEH ¿Cuánto se ha reparado en nuestras comunidades?, 2011), and Cristián Correa, ICTJ, Reparations in Peru: From Recommendations to Implementation, 2013.
64 Comisión de Seguimiento y Monitoreo al Cumplimiento de la Ley 1448 de 2011, Segundo Informe al Congreso de la República, 2014–2015, Agosto de 2015, 12.
65 Ibid., 165.

to their families that requires highly technical capabilities; and the pursuit of criminal investigations. Law 1448 does not describe how these two policies should be implemented or by whom, as they fall under the jurisdiction of the forensic services, the judiciary, and the National Prosecutor.

Still, the Special Prosecutors Unit for Justice and Peace reported some significant progress in finding and identifying the disappeared. The Victims' Unit provided measures of satisfaction by holding 720 ceremonies in which the remains of victims of disappearance were returned to their families.[66]

"Dignifying Letter"

One concrete form of symbolic reparations that the Victims' Unit has started to issue to victims along with their compensation payments is a "dignifying letter" (carta de dignificación). This is a personalized letter from the state expressing remorse for the violation and offering to pay "a long-owed debt." This seemingly small gesture can have a significant impact in terms of communicating a reparatory message to victims. The way these letters are handed to victims, during their interview to define their individual reparations plan, reinforces the personalized nature of the message and its potential as a form of satisfaction. Notably, the letter is signed by the general director of the Victims' Unit, , although having the Colombian president sign could have increased the letter's potential impact. It would also be better if the letter expressly recognized the state's responsibility for the violations, arising from either its actions (commission of violations) or its failure to guarantee the protection and the rights of victims.

Exemption from Military Service

Another measure that can have an important reparative effect for victims is exemption from military service. Victims often appreciate having this obligation waived in a context of massive use of conscription, especially of poor young men, due to the risks associated with the persistent conflict, as well as for the associated costs, fees, and fines. It has taken a long time to put in place a coordinated procedure for guaranteeing this measure. There are still discussions about the possibility of exempting all victims from having to pay fines for failing to register at military recruitment offices, as well as not forcing victims to stay in military compounds while the Ministry of Defense processes their exemptions, which can take up to ten days.[67]

Victims often appreciate having military service waived, due to the risks associated with the persistent conflict as well as the associated costs, fees, and fines.

Commitments

Law 1448 lists the state's 20 policy commitments to implement guarantees of nonrecurrence; they follow the types of measures defined by the Basic Principles on the Right to Reparations. Some of these commitments go beyond the object of the law, and lack an enforcement mechanism. Others are drawn from mechanisms established by other laws, such as demobilizing illegal armed groups, criminal prosecutions (established also as a commitment under measures of satisfaction), verification of the facts about violations, strengthening the technical criteria that guide the demining process, and dismantling economic or political structures that benefited or supported the conflict. The commitments also mention human rights education, including training for the security forces, as well as prevention and protection, which comprise early-alert policies and the provision of security conditions for displaced populations who are returning home or relocating.

66 Reported by the Victims' Unit, www.unidadvictimas.gov.co/index.php/en/83-interna
67 Ana Cristina Portilla and Cristián Correa, Estudio sobre la implementación del programa de Reparación Individual en Colombia, 2015, 59.

4. Land Restitution

One of the major features of the conflict has been the displacement of millions of people from their homes and communities. In the late 1990s through the 2000s, the conflict increased as paramilitaries created the United Self Defenses of Colombia. This resulted in new waves of displacement, including approximately 300,000 per year from 1999 to 2007.[68] Even with the recent reduction in violence, victims have not returned to their places of origin in significant numbers. This explains why Colombia's problem of displacement, as well as addressing land restitution, is so critical.

Law 1448 establishes a program that makes the resolution of claims for land accessible and expedient through a combination of administrative and judicial measures, including the creation of special courts to try cases. It addresses one of the primary factors of the conflict: fierce competition over land through the use of violence in rural areas, where historically there has been minimal state presence.
The law recognizes that land abandoned by displaced populations due to violence, fear, and threats should be treated with special consideration. Therefore, it reverses the burden of proof; current owners or occupiers of land where people had been evicted, dispossessed, or displaced as a result of the conflict have to provide evidence of their bona fide possession and the legitimacy of their claim to the land.[69]

After the passage of the law, it took one year to set up the land restitution system and hire and train staff and specialized judges for the Land Restitution Unit, which handles these cases. It established 18 regional directions, 36 specialized courts, and 5 specialized revision chambers.

When the policy was first designed, the state estimated the total number of claims at 360,000.[70] As of August 2015, 81,050 claims have been received. However, not all of these claims have been immediately addressed. The process is focused on regions selected based on their degree of security, so a first filter for addressing claims is location. Only 37,878 of claims received relate to regions declared as safe. Of these claims, 21,708 completed the administrative process; 12,092

68 Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), Desplazamiento Creciente y Crisis Humanitaria Invisible. See also Documentos Codhes 25 (Bogota, 2012), 13.

69 The process starts with the registration of claimed properties by a claimant or by the agency responsible for administering the registry, the Land Restitution Unit. Then the current possessor is notified and has the opportunity to oppose the process. If there is no opposition, the Land Restitution Unit submits a request to a special judge, dedicated solely to this purpose, to approve the claim and order a new property title in favor of the claimant. If there is opposition a higher court, also created for this purpose, decides the case. No appeals for the courts' decisions are accepted. The choice of having a mixed, administrative and judicial process is complicated, as courts could be slow in adjudicating cases or subject to delay tactics.

70 National Council for Economic and Social Policy, CONPES Document 3712 of 2011, 30.

of these have been registered and transferred to the judicial process. According to Law 1448, it should take four months from the time of registration to the judicial decision,[71] but the courts have made decisions in just 2,591 cases, involving 18,797 beneficiaries.

Table 4: Progress in Providing Land Restitution

STEP IN THE PROCESS	NUMBER OF CASES (DECEMBER 2014)	NUMBER OF CASES (AUGUST 2015)	VARIATION (%)
Claims Received	72,623	81,050	+11.6%
Cleared for Safety and Geographical Focalization	25,215	37,878	+50.2%
Registered at Administrative Level	9,695	12,092	+24.7%
Sent for Judicial Decision	7,269	8,523	+17.2%
Approved by Judicial Decision	1,922	2,591	+34.8%

The undertaking is significant. A comparison of figures from December 2014 and August 2015 shows progress being made in first eight months after the process and institutions were consolidated. It is relevant that there was a more than 50 percent increase in claims cleared as safe, which allowed the government to start the process, as well as an almost 35 percent increase in cases decided at the judicial level.

However, despite the effort, the figures demonstrate the complexity of the policy and the inability of the mechanism set in place to respond to it. The low numbers of claims in comparison to original estimates show that the registration process is either too burdensome (considering the historical deficit in land registries) or that there are not enough resources dedicated to complying with the policy in an expedient way. The lengthy registration process and the number of cases that are still unregistered or pending in one of the several stages means that solving current claims might take several years. A review of the policy is needed to identify the obstacles victims now face in each step of the process, and to determine if the Land Restitution Unit requires additional staff and/or resources to process claims or if the complexity of the policy makes it impossible to provide results for a significant portion of victims.

Further, the low number of judicial decisions in comparison with the bulk of the demand also shows that the courts are incapable of responding to the demand with the required speed. It might not be a problem of the judges being slow, but of unrealistic design, either by requiring a judicial decision for each case or of not having enough courts, which are frequently a very expensive resource. The lesson from the Justice and Peace Law, which tried to address criminal and civil responsibility in cases of confessed crimes through a special judicial process, shows how slow and burdensome judicial proceedings can be. Adopting an administrative process for cases that do not involve any disputes or controversy might be advisable, to speed up the process. However, the main bottle neck is still at the administrative level (preceding the judicial level), which must be recognized in any redesign of the policy.

71 Law 1448, art., 91, para. 1.

Finally, persistent violence is another challenge in some regions, explaining part of the state's inability to process claims. Community leaders demanding land restitution have been frequently attacked. The UN Human Rights Council gave Colombia specific recommendations during the country's 2013 Universal Periodic Review on improving protections for individuals claiming land restitution.[72] The budget of the National Protection Unit was lowered in 2015, but remains higher than before. If its efforts are successful it would bring some relief to victims and help to dismantle criminal enterprises that continue to benefit from land dispossession.

72 Report of the Working Group on the Universal Periodic Review, Colombia, A/HRC/24/6, July 4, 2013, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/154/35/PDF/G1315435.pdf?OpenElement

5. The Nature of the Reparations Granted

Law 1448 is not based on the recognition of state responsibility for the violations suffered by victims;[73] instead, it understands the state's role as providing reparations and assistance as a subsidiary effort, given the difficulties that most victims might experience in claiming their rights against those responsible. There is no recognition of the state's responsibility for failing to guarantee the rights of victims (omission) or for tolerating or supporting the creation and operation of paramilitaries, or even of direct participation of state agents in some violations. On the contrary, several provisions of the law make it clear that the recognition of victim status does not entail the acknowledgment of any responsibility on behalf of the state in the violations established.[74]

This is not new in Colombia, as previous government efforts to address victims' needs rested on the idea of providing humanitarian assistance. The predecessor of Law 1448, Decree 1290 of 2008, precisely introduced the confusion of establishing a reparations program that, because it was limited to crimes committed by illegal armed groups and did not acknowledge violations committed by state agents or any state responsibility, based its provisions on the notion of subsidiarity and solidarity. As mentioned before, when Law 1448 declares that previous humanitarian assistance provided by other laws were in fact reparations, its makes the nature of the current reparations effort even less clear.

Based on the assumption that the state is not responsible for violations committed during decades of internal armed conflict, article 10 of Law 1448 imposes a limit on courts in deciding reparations for crimes committed by individuals other than state agents, namely, the amount of the administrative compensation established by article 132 of the law. Later, Law 1592 of 2012 tried to apply that limit also to the Justice and Peace process until it was declared unconstitutional.

At the same time, provisions on land restitution have a clear reparative component. Law 1448 sets out what is supposed to be an expedient process of restitution based on presumptions that help to lift some of the burden of proof off victims and provide victims with effective access to

73 Responsibility for violations of the obligation to guarantee human rights is difficult to establish and has a high threshold. It is necessary to make the distinction between the state's responsibility for supporting and tolerating the formation and operation of paramilitary groups; its responsibility for the direct involvement of its agents as perpetrators or accomplices in violations; and its political responsibility for its failure to guarantee and protect the rights of victims during the persistence of conflict over decades. For some of these there is a clear administrative and civil responsibility of the state, especially considering the support or open toleration of the formation and operation of paramilitary groups over several decades, but additionally, there is also a clear political responsibility that involves all of the situations mentioned.

74 For example, art. 3, para. 5; art. 9; and art. 10.

justice. The state provides a small budget for a compensation fund, but does not expressly acknowledge any responsibility for tolerating the massive dispossessions that had occurred. Thus, the system makes the current occupant accountable as part of an economy of dispossession, even if the land had changed hands several times.

The message to victims that accompanies reparations must be clear for them to have a true reparative effect.

But the message to victims that accompanies reparations must be clear for them to have a true reparative effect. In Argentina, for example, despite the amounts given, victims received reparations with mixed feelings, and even open opposition, because they were not accompanied by an official apology and they were implemented by the same government that was pardoning perpetrators and blocking criminal investigations—something that was corrected only several years later, when Argentina's impunity laws were repealed and annulled.[75]

Recognizing state responsibility for violations committed or tolerated is an essential component for reparations.

State responsibility might also refer to the levels of marginalization and income disparities experienced by some groups that do not correspond to the size and capacity of the country's economy or the sophistication of its institutions. This failure is also reflected in the 11 years during which the basic rights of the displaced population have gone unprotected, despite the situation having been defined as a political priority and subjected to a hands-on monitoring system by the Constitutional Court.

The eventual creation of a truth commission, as outlined in a 2015 proposal between the government and the FARC rebels, may contribute to determining these different forms of responsibility; the responsibility that different institutions may have, including the security forces, the judiciary, local governments, the national government or congress; and the role the institutions may have played in different forms of violations against victims.

75 On the Argentinean reparations program, see María José Guembe, "Economic Reparations for Grave Human Rights Violations: The Argentinean Experience," in Pablo de Greiff, *The Handbook of Reparations* (Oxford/ICTJ, New York, 2006), 21–54; and Cristián Correa, Reparations Programs for Mass Violations of Human Rights: Lessons from Experiences in Argentina, Chile and Peru, in Félix Reátegui (ed.), *Transitional Justice Handbook for Latin America* (Ministry of Justice of Brazil/ICTJ, Brasilia-New York, 2011, 409–441.

Conclusions

Colombia is making an unprecedented effort to fulfill its commitment to the rule of law and respond to the consequences of decades of violence by providing comprehensive reparations to victims of its internal armed conflict. Approving the Victims' and Land Restitution Law (Law 1448) and initiating peace negotiations with the FARC are signs of strong political leadership. Efforts made during the last three years to implement the reparations program defined under the law and create a policy to confront the legacy of land dispossession also show a significant change in direction over previous policies, which has proven inadequate. There are also strong indications that Colombia is on course to significantly improve the condition of victims. The country has substantial human and material resources, as demonstrated in the substantial budget committed to reparations, as well as a strong, diverse civil society.

However, the challenges of implementing reparations in Colombia are also immense. These include the persistence of violence; the particular dimensions of the conflict, which have left hundreds of thousands of victims and caused the displacement of millions; the country's intricate geography; disparities and difficulties of delivering social and reparations services to rural areas; and a decentralized system of government that gives room for participation, but often hinders coordination and allocation of resources, or tests the loyalty of local officers to the policy. A high degree of poverty and inequality also makes the reparation effort more difficult, as state obligations to provide basic social and economic rights to victims remain unsatisfied.

One challenge will be the translation of the elaborate concepts in multiple reparations laws and regulations into meaningful and simple actions. Law 1448, as well as preceding norms and regulating decrees, defines reparations policies with ambitious adjectives¸ such as *comprehensive*, *transformative*, and a differentiated approach "*aiming at reestablishing the victims' life project,*" which are no more than ambitiousness that increases victims' expectations if they do not translate into specific action. There is a risk of their being just rhetorical affirmations, instead of sources of rights that could be claimed by victims.

Some of the debates about the constitutionality of Law 1448 and the monitoring process established by the Constitutional Court, as well as by Congress and independent state institutions, apparently fall into the same dynamic of examining the program according to rigid legal reasoning, instead of using practical capabilities to effectively implement them. It probably would be good to moderate the discourse on definitions by providing certainty, resources, and mechanisms for victims to demand rights and reparations.

Conversely, a modest approach that acknowledges the state's limited ability to provide reparations for the dimensions of violations that were suffered by so many may be preferable, instead of overselling an effort that continues to leave many victims waiting. This could help to change the discourse with victims.

Law 1448 also provides an important lesson for designing future policies and laws that avoid using ambitious rhetoric that cannot be translated into concrete action and resources. There is little merit in creating a comprehensive and broad reparations program if it is impossible to implement it. The recurrent inability to comply with guarantees to victims established by law should be taken seriously, indicating a more careful legislative decision-making process is needed in Colombia.

A decisive government policy to overcome poverty is also needed. Narrowing the disparities between the conditions of people living in urban areas and rural settings, and between social classes, is not something that a reparations program can do. One specific strategy could be to better distinguish between displacement and more serious human rights violations, addressing the former through a policy of sustainable return or resettlement, including social and development policies, and focusing the reparations effort on the latter. If the government provides health care and education to victims, their ability to use compensation funds for more significant investments would increase, resulting in long term improvement of their living conditions. Rehabilitation and educational programs to victims could be more targeted, and may better address victims' specific needs. Reparations and return or resettlement policies could also have a more sustainable impact if they were accompanied by economic, agricultural, and social policies capable of improving the ability of low-income people in Colombia to earn a living and guarantee a protection network.

This might result in difficult discussions and legal debates, but it does not seem possible for the country to fulfill what it has overpromised in terms of reparations. In addition, a huge agenda for reconstruction and addressing marginalization is needed, which might require investments of most of the resources that the consolidation of peace should bring.

While conflict over land has a prominent place in current peace talks, negotiations are not about land restitution in relation to land taken by the FARC, but about agrarian and land policies, especially in areas controlled by the FARC. Those dispossessed by the FARC are entitled to present claims for land restitution according to Law 1448. However, solving individual claims might be insufficient when responding to the challenges of land tenure and rural and agrarian development of communities that have suffered not only from the conflict but from a high degree of marginalization. The discussion about how to deal with those who were dispossessed by FARC actions may require a broader debate about land concentration and the nature of rural policies in those areas.

Finally, Law 1448 requires the state to design policies and funds that can guarantee the provision of effective services that give substance to the notion of reparative "comprehensiveness." This is the only way to implement a reparations program that involves permanent or long-term services to victims. While the accompaniment program offers the possibility of improving the local coordination of services for victims, it cannot rely on local actors alone. A simplification of policies, where the responsibilities of each actor are clearly defined and where resources for each program are clearly allocated, could help to overcome some of the most serious obstacles to implementing reparations and provide certainty to victims that the state takes their rights seriously.

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