

Victims and Reparations: Limitations and Challenges Colombia Victims Law (Act 1448 of 2011)

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Abstract

This paper presents an analysis of the current Colombia Victims Law (Act 1448 of 2011). The Law constitutes a remarkable effort for all the Colombian victims who have suffered direct damage by an offense as a result of violations of international humanitarian law or gross violations to the international human rights standards, which occurred during the internal armed conflict. The main objective of this paper is to analyze the limitations and the challenges of the victims Law and provide some recommendations that could guarantee the effectiveness of the application of the Victims Law in a country with an ongoing conflict.

Keywords: Victims, reparations, internal armed conflict, Transitional Justice.

Introduction

This paper presents an analysis of the current Colombia Victims Law (Act 1448 of 2011). The Law constitutes a remarkable effort for all the Colombian victims who have suffered direct damage by an offense as a result of violations of international humanitarian law or gross violations to the international human rights standards, which occurred during the internal armed conflict. The key questions are: what are the limitations and the challenges of the Victims Law and what are the recommendations that could guarantee the effectiveness application of the Victims Law in a country with an ongoing conflict?

The thesis is that the Victims Law (VL) is seen worldwide as a success of the current President Juan Manuel Santos. However, the success is for the victims. The VL is an Act that was enacted in middle of the conflict, but the Law brings with it the hopes of repair for the victims of the human rights violations. Colombia cannot wait for the conflict to end in order for it to start the reparations process for the victims. With this I am not ignoring the limitations of the VL, on the contrary, I am admitting the challenges of the law. Because of that the recommendations are focused on the effective application of the law. The main objective of this paper is to analyze the limitations and the challenges of the Victims Law and provide some recommendations that could guarantee the effectiveness of the application of the Victims Law in a country with an ongoing conflict. Consequently, I start with a background of the Colombian context which could let us understand the importance of the Law; then, present the Victims Law (VL), where I analyze who is a victim under the Law and the fundamental rights of the victims; next, there is an explanation for the reparations specifically compensation measures and guarantee of non-repetition. Finally, I discuss the scope of the law, the limitation, the challenges, and present some recommendations that could guarantee the effectiveness of the Law.

1. Colombian context

For many years, “acts of violence that were perpetrated by the actors in the internal armed conflict have resulted in serious human rights violations and/or violations of international humanitarian law against the civilian population. The Inter-American Commission On Human Rights (IACHR) has expressed its concern over the perpetration of acts of violence that have worsened the humanitarian crisis which affects over two million persons and has caused thousands of casualties. Colombia is immersed in a dramatic spiral of violence affecting all sectors of society, undermining the very foundations of the State, and moving the international community as a whole.”¹

¹Organization Of American States, Inter-American Commission On Human Rights, Executive Summary of IACHR Office of the Rapporteur on the Rights of Women, Summary on Violence and Discrimination against Women in the Armed Conflict in 152

Clearly, this “is one of the most difficult and serious human rights situations in the Continent”². The struggle for territorial, economic and military control is conducted by the Security Forces, in defense of the State, and by two illegal armed groups: the guerrilla – mainly represented by the *Fuerzas Armadas Revolucionarias de Colombia* (hereinafter "FARC-EP") and the *Ejército de Liberación Nacional* (hereinafter "ELN"), and paramilitary forces, mainly grouped into the *Autodefensas Unidas de Colombia* (hereinafter "AUC"), comprising a number of blocks operating in different areas of the country. Guerrilla groups arose in the decade of the sixties and grew during the seventies and eighties.³ In fact, in Colombia’s armed conflict, violence against women, primarily that of a sexual nature, has the objective of wounding, terrorizing and weakening the enemy to advance in the control over territories and economic resources.⁴ “Women can be direct or collateral victims of different forms of violence, as a result of their affective relationships as daughters, mothers, wives, partners or sisters. Through acts of physical, psychological and sexual violence, the armed actors seek to intimidate, punish and control women for having affective relationships with members of the opposing faction, for disobeying the norms imposed by the armed actors or for participating in organizations perceived as the enemy. These acts, however, do not solely intend to dehumanize the victims as women. These aggressions additionally serve as a tactic to humiliate, terrorize, and wound the “enemy”, either in the family nucleus or community of the victim.”⁵

Today, after former President Alvaro Uribe who supposed to finish with the Paramilitaries groups, and return the security in the country; there are "two Colombia's" (Janisch, 2010). One for the urban rich and one in which rural-dwelling Afro-Colombian minorities and indigenous groups are terrorized. The new paramilitary groups continue the reign of terror, violence and forced displacement their predecessors began decades ago and there are more victims created every day (Janisch, 2010).

Conservative Politicians estimates by the Colombian National Police put the new paramilitary groups numbers at over 4,000. They have a substantial presence in 24 of Colombia’s 32 departments, most heavily concentrated in the city of Medellin, the Uraba region of Choco state, and the states of *Meta* and *Nariño*. They take names like the “*Aguilas Negras*” (Black Eagles), the “*Rastrojos*” (Weeds) and the “*Nueva Generacion*” (New Generation) (Janisch, 2010).

Their proliferation has coincided with a significant increase in the national rates of internal displacement from 2004 at least through 2007. Much of the displacement is occurring in regions where successor groups are active, and indigenous and Afro-Colombians are the most affected (Janisch, 2010). Uribe and his successor, former defense minister and now-president Juan Manuel Santos, call them emerging criminal bands (*bandas criminales emergentes-BACRIM*),⁶ nothing more than loosely organized groups of thuggish drug traffickers. But the language of the threats reveal a far more complex situation, with claims that targets are “opponents of the government,” are undermining Uribe's democratic security doctrine” and are “impeding economic progress” (Janisch, 2010).

Colombia, October 18, 2006, OEA/Ser.L/V/II. Doc. 67. Sectio II, page 11-14. See United Nations, Report of the High Commissioner for Human Rights on the situation of human rights in Colombia, E/CN.4/2005/10, 28 February 2005; United Nations, Report submitted by Mrs. Radhika Coomaraswamy, Special Rapporteur on violence against women, its causes and consequences: Mission to Colombia (1-7 November 2001), E/CN.4/2002/83/Add. 3, 11 March 2002; Amnesty International, Colombia, Scarred Bodies, Hidden Crimes: Sexual Violence against Women in the Armed Conflict, AMR 23/040/2004; United Nations Development Fund for Women, Report on the Situation of Women in Colombia, September 2005; Report Enforcement, Protection and Violation of Women’s Human Rights in a Country at War, Colombia 2005, report submitted to the IACHR Rapporteur during her on-site visit to Colombia by platforms, organizations and groups of women, June 2005, Section 2.1; Third Report on the Human Rights Situation in Colombia, OAS/Ser.L/V/II.102, Doc. 9, rev. 1, 26 February 1999 and in its Report on the Demobilization Process in Colombia, OAS/Ser.L/V/II.120, Doc. 60, 13 December 2004.

²Id.

³Id.

⁴Id.

⁵Id.

⁶ "(Bandas criminales Emergentes, BACRIM)"; on the other hand, some political sectors and civil society see them as the seed of a possible "third generation paramilitary (*Tercera generacion de Paramilitares*)." National Commission for the Reparation and Re-conciliation, *Comisión Nacional de Reparación y Reconciliación (CNRR), Disidentes, rearmados y emergentes: ¿Bandas criminales o tercera generación paramilitar?*, 2007. at, 6, 19. Visited on: http://www.cnrr.org.co/new/interior_otros/informeDDR.pdf (December 11, 2012)

Regarding this Colombian Context, the question is: what about the Victims of the conflict? For decades, a large number of Colombians were victims of gross human rights violations; all because of internal armed conflict. Another question is: Do the victims play an important role under the Justice and Peace Law (JPL)? In 2005, the Government ruled the Justice and Peace Law (JPL). The law defined the victim as a person who has individually or collectively suffered direct harm as a consequence of actions by illegal armed groups in violation of the criminal law.⁷ The Justice and Peace Law provide examples of different types of harm that could lead to a person being a victim. These include temporary or permanent injuries that cause some type of physical, psychological or sensory disability, emotional suffering, financial loss, or the infringement of fundamental rights (Mark, 2007).

Also, the Justice and Peace Law recognizes that the definition of victim can include spouses and other relatives. The Constitutional Court has interpreted this provision to include relatives beyond the first degree of consanguinity or first civil that have suffered the requisite harm.⁸

Moreover, the status of victim is acquired independently of whether the perpetrator of the criminal conduct has been identified, apprehended, prosecuted, or convicted, and without consideration of any family relationship between the perpetrator and the victim (Mark, 2007).

The Human Rights Council in the Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, established that the importance of the Colombian process of transitional justice has been internationally recognized, as recent references in the Secretary-General and the High Commissioner's report on human rights and transitional justice demonstrate.⁹

In addition, the Report said that despite efforts made by the Attorney General's Office, progress in the realization of victims' rights under Justice and Peace Law has been modest. The victims who participate in the process are increasing the scepticism and re-victimization.¹⁰

Regarding the right to reparations, the Report established that Decree 1290 of 2008¹¹ on the administrative reparations programme does not seem to have yet attained the necessary distribution of financial resources. By December 2009, of the over 275,000 requests received, resources had been approved for 10,593 persons¹² and by the end of 2009 there were 280,420 victims registered under Justice and Peace Law and is concerned that to date judicial reparation for victims has been awarded in only one case.¹³

Other efforts, such as the Regional Commissions for Restitution of Property of the National Commission on Reparations and Reconciliation remain isolated and limited. The Trust Fund for victims provided for in Justice and Peace Law (which is meant to receive cash and properties from perpetrators admitted in the procedures provided by the Law), has not received expected resources.¹⁴

⁷ Article 5. Justice and Peace Law. See also: Richards, Marks, (May, 2007). The design and implementation of an optimal reparation program: How should limited resources for material reparation be distributed across victims of the Colombian conflict. Page. 13. Visited on: http://www.cerac.org.co/assets/pdf/Other%20publications/CERAC_WP_5.pdf (November 24th, 2012).

⁸ Constitutional Court of Colombia, Sentence No. C-370/2006 (18 May 2006), paras. 6.2.4.2.15 - 6.2.4.2.16 Cited by, Mark Richards, The design and implementation of an optimal reparation program: How should limited resources for material reparation be distributed across victims of the Colombian conflict, May 2007 Page. 13 Visited on Webpage: http://www.cerac.org.co/assets/pdf/Other%20publications/CERAC_WP_5.pdf (November 24th, 2012).

⁹ A/HRC/12/18 of August 2009; See also Human Rights Council, Thirteenth session Agenda item 2 Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia (A/HRC/13/72) March, 2010. At. 16.

¹⁰ Human Rights Council, Thirteenth session Agenda item 2 Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General; Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia (A/HRC/13/72) March, 2010. Page. 16. Also see: <http://www.lawg.org/action-center/lawg-blog/69/691>

¹¹ The Decree is creating the Individual Repair Program for victims of armed groups outside the law. (Administrative Reparations)

¹² Human Rights Council, *Supra* note 10.

¹³ CCPR/C/COL/CO/6, Human Rights Committee Ninety-ninth session Geneva, 12–30 July 2010. Consideration of reports submitted by States parties under article 40 of the Covenant, Colombia, 4 August 2010. At. 3.

¹⁴ By December 2009, funds amounted to approximately Col\$ 27 billion (US\$ 14 million), while the 2009 budgeted amount under Decree 1290 was approximately Col\$ 200 billion (US\$ 100 million). Human Rights Council, *Supra* note 10.

In this respect, proceedings for the confiscation of property rights (*extinción de dominio*) should be expedited and property in the hands of paramilitary proxies should be reverted to legitimate owners.¹⁵ Consequently, the Human Rights Committee (CCPR) was concerned at the discrepancy between normative provisions and their enforcement. In practice, reparation tends to take the form of humanitarian assistance and so far does not provide for full reparation. It is of particular concern to the Committee that Decree No. 1290 did not recognize victims of acts committed by State agents.¹⁶

This above framework is reflecting the real fact of the victims under the Justice and Peace Law. The victims whose is still immersing in impunity, without comprehensive reparation and surviving in the middle of armed conflict. Victims needed a law consistent with international standards. A law that would offer to fill the gaps in the judicial and administrative reparation processes, incorporate mechanisms for restitution of goods and property, including lands transferred to third parties or proxies, and provide for reparations for violations of social, economic, and cultural rights, with differentiated attention according to age, ethnicity and gender.¹⁷ However, for some Colombian Politicians, Colombia is not ready for the application of the new Victims Law.¹⁸ The law obliges the government to adapt all state institutions in the span of six months.¹⁹

2. Victims Law (Act 1448 of 2011)

The Law constitutes a remarkable effort for all the Colombian victims (Individually or Collectively) who have suffered direct damage by an offense as a result of violations of international humanitarian law or gross violations to the international human rights standards, which occurred during the internal armed conflict.

The Law is based on principles of dignity, good faith, equality, the guarantee of due process, transitional justice with the character of its measures, solidarity of the State, internal and external coherence, the differential approach, participation, mutual respect, the punishment of those responsible, progressiveness, gradual approach, sustainability, and complementarity, among others.²⁰

2.1 Analysis of the definition of the victims

Under the Law a victim is considered as any person who has suffered after January 1st, 1985²¹ direct damage by an offense as a result of violations of international humanitarian law or gross violations to the international human rights standards, which occurred during the internal armed conflict (article 3).

Also the Law establishes as a victim the following people:²²

- The constant companion, same-sex couples and family in the first degree of consanguinity, first civil of the victim or second degree.
- People who have suffered harm in intervening to assist victims in distress or to prevent victimization.
- Members of the Armed Forces
- The spouse, constant companion or relatives of the armed groups members will be considered as direct victims for harm suffered in their rights.

Moreover, the Law establishes that vulnerable groups must be considered as victims. In this sense, women, children, indigenous peoples and Room communities, Afro-Colombian, native islanders and Palenque community could be repaired under the law.

¹⁵Human Rights Council, *Supra* note 10.

¹⁶ CCPR/C/COL/CO/6, *Supra* note 13.

¹⁷ A/HRC/12/18. *Supra* note 9, at 17.

¹⁸ Revista Semana, (November 22th, 2011). *¿Está preparado el Gobierno para aplicar la Ley de Víctimas?*, <http://www.semana.com/politica/esta-preparado-gobierno-para-aplicar-ley-victimas/167943-3.aspx>. Visited on December 1st, 2012.

¹⁹ Id.

²⁰ National Commission for the Reparation and Reconciliation, (*Comisión Nacional de Reparación y Reconciliación (CNRR)*), ABC Victims Law. Visited on Webpage: <http://www.cnrr.org.co/new09/ley-victimas-tierras/index.html> (December 1st, 2012)

²¹ Furthermore, it's necessary that victims must fill out a new National Register of victims. People who have suffered damage prior to June 10, 2011, must apply for a term of four (4) years from that date, day of enacted the Victims. Article 154-8

²² Revista Semana, *Supra* note 18.

There are two things important to highlight: First, the inclusion by the definition to the state agent victims. The text adopted is based on the recognition of victimization from the fact and not of the agent, as was erroneously advocated by the previous government. As a result, the text of the Act also expressly recognizes the concept of armed conflict, an issue hotly contested in the country (Uprimny & Sánchez, 2011).

Secondly, the inclusion as a victim of the indigenous people, ROM, black communities, Afro-Colombian native islanders and Palenque community.²³ The article 205 of the Law establishes the special faculties of the President to regulate the reparation and the restitution of the land for those victims. The Victim and Restitution of the Land Act is an historic opportunity to recognize the rights of the high number of victims of internal armed conflict that has disproportionately affected Afro-Colombians and indigenous peoples (Sanchez, 2011). However, the law does not respect the rights of prior consultation²⁴ and informed consent to the Afro victims (Sanchez, 2011).

On the other hand, the definition of the victims under the law **excludes some people**, for example, will not consider as a victim; a) victims who have suffered damage by common crime; b) the victims of the emerging criminal bands; and c) victims who has suffered before January 1st, 1985 (Uprimny & Sánchez, 2011).

For the first group of victims, the government does not recognize the concept of *Para militarism*. So, the government does not recognize the 'new paramilitary groups' as part of the conflict, they are seen as criminal gangs (Wallace, 2011). The victims' law excludes as a victim the people who belonged to armed groups. The issue here is whether a paramilitary or guerrilla person is tortured; he or her is no longer victim despite being also guilty (Uprimny & Sánchez, 2011).

Secondly, the victims' law excludes the victims of the emerging criminal bands. These new phenomena have been labeled differently. On one hand, the law enforcement agencies, military and state intelligence qualify them as emerging criminal gangs (*Bandas criminales Emergentes, BACRIM*); on the other hand, some political sectors and civil society see them as the seed of a possible "third generation paramilitary (*Tercera generacion de Paramilitares*)"²⁵ However, it is necessary to make the clarification about the existence of the interagency coordinating and information office that links the processes of intelligence, operational and confrontation, called also emerging criminal gangs, and coordinated by the Directorate of Rural Security Police and National Police. The office supports the work of the National Police, the Army and the Department of Administrative Security, among others.²⁶

The office wants to cope with these illegal groups. Since its establishment in mid-2006, the Office has spread reports on emerging criminal gangs, their geographical location, its composition and modus operandi. The Office has made significant military police operations and to confront them in areas where they operate. Several groups have been dismantled and some of their leaders arrested or released. According to the reports, there are 22 groups with approximately 4000 people in its ranks.²⁷

Third, the VL excluded the group of victims who have suffered a human rights violation as a result of the armed conflict before January 1st, 1985.

²³ Also called *Palenqueros*. Is one of the Afro-Colombian communities whose inhabitants live in San Basilio de Palenque, a village just over an hour from Cartagena. Locals claim that in 1713 the inhabitants declared it the first independent community in the Americas. Escaped slaves would head to Palenque, knowing that was their chance at freedom. Palenque: An Afro-Colombian Community, October 29, 2008. Visited on Webpage: <http://adiama.com/ancestralconnections/2009/12/21/palenque-an-afro-colombian-community>. (December 11, 2012)

²⁴ The right to prior consultation is key to ensuring the fundamental rights of African descendants in any legislative and economic issues affecting these communities. WOLA is concerned that the problematic process that took place the formulation of this law is indicative of the manner in which the government of Colombia is planning to interact with these communities in mega-projects of international investment. (...) WOLA is disappointed with the decision of the government of Santos to follow the same consultation process discriminatory and exclusionary (Sanchez, 2011).

²⁵ National Commission for the Reparation and Reconciliation, Comisión Nacional de Reparación y Reconciliación (CNRR), *Disidentes, rearmados y emergentes: ¿Bandas criminales o tercera generación paramilitar?* 2007. At 6. Visited on Webpage: http://www.cnrr.org.co/new/interior_otros/informeDDR.pdf (December 11, 2012)

²⁶ Id. At. 15, 19.

²⁷ Id. At 6, 19.

The reason about that date, is because the Law wanted to cover "emblematic cases" as the holocaust of the Palace of Justice (November 1985), crimes of three presidential candidates, the extermination of the Patriotic Union, and the first victims of the paramilitary offensive.²⁸

At the time of the Law discussions, many victims advocates warned that the law must include cases like those mentioned, because if they do not do it, it would be against the Colombian justice Decisions that have already declared it crimes against humanity.²⁹

Today, the debate about this exclusion is in the Constitutional Court. A citizen sued the constitutionality of the Law based on the violations of the right to equality and non-discrimination of victims before January 1st, 1985.³⁰

But, this is not the only discussion about the date. Some people are criticizing how the law only considers a victim who has suffered a human rights violation as a result of the armed conflict before January 1st, 1985, when is clear that Colombia was immersed in a conflict for over 45 years (Wallace, 2011).

In my point of view, this last criticism is unreasonable, because it is also erroneously thought that the Law must consider all Colombian people as victims. In Colombia not everybody is a victim. In my concern, say that everybody is a victim is ignoring the direct victims' of the armed conflict (i.e., Internal Displacement people IDP) (Duzán, 2010). The fact that Colombia is in violence does not necessarily touch everybody and neither means that all Colombians become victims. The victims in Colombia exist and they are not only as a result of the guerrillas violent acts', also they are victims of *narco-paramilitarismo* and victims of the state agents (Duzán, 2010).

2.2. The fundamental rights of victims

Victims have the right to truth, justice and reparation. In addition, the law establishes an extensive list of rights. Hence, the article 28 provides that the victims will have³¹:

1. The right to truth, justice and integral reparation.
2. Right to resort to scenarios of institutional and community dialogue.
3. Right to be a beneficiary of affirmative action taken by the State to protect and guarantee the right to life under dignified conditions.
4. Right to request and receive humanitarian assistance.
5. Right to participate in the formulation, implementation and monitoring of public policy regarding prevention, assistance and comprehensive reparation.
6. Right that the public policy addressed in the present law has a differential approach.
7. Right to family reunification when, by reason of their type of victimization, the family unit has been divided.
8. Right to return to their site of origin or resettle in terms of willingness, safety and dignity in the context of a national security policy.
9. Right to restitution of land if they had been deprived of it under the terms established by this law.
10. Right to information on the routes and means of accessing the measures provided for in this Law.
11. Right to know the status of judicial and administrative processes that are underway, in which they have an interest as part or interveners.
12. Women's right to live free of violence.

In this regard, is important to highlight the rights of integral reparation. In article 25 the Law establishes that victims have the right to be properly repaired, differentiated and effective repaired for damage suffered as a result of the violations.

²⁸ Revista Semana, April 6, 2011. *Ley de víctimas: reparación desde 1985*. Visited on Webpage: <http://www.semana.com/politica/ley-victimas-reparacion-desde-1985/154670-3.aspx> (July 11, 2013)

²⁹ Id.

³⁰ Id.

³¹ Article 28, Victims Law. Also see: National Commission for the Reparation and Re-conciliation, (*Comisión Nacional de Reparación y Reconciliación (CNRR)*), ABC Victims Law. Visited on Webpage: <http://www.cnrr.org.co/new09/ley-victimas-tierras/index.html> (March 12, 2013)

3. Reparations for victims³² (Victims Law Act 1448 of 2011)

Under the VL, victims are entitled to be repaired properly,³³ with a differential approach, and in a transformative and effective manner, for the damage they have suffered, including restitution, compensation, rehabilitation, satisfaction and guarantees of non repetition, in its individual, collective, material, moral, and symbolic dimensions.³⁴

For the purpose of the paper it is important to remark A) the compensation and; B) Guarantees of non -repetition.

A) Compensation: The Law establishes that the victim may voluntarily express agreement of the delivery and receipt of the administrative compensation through a settlement agreement (Article 132).

The Government through the Administrative Unit for the Care and Repair Victims (*Unidad Administrativa para la Atención y Reparación a las Víctimas*) will implement a program to promote accompanying adequate investment of resources that the victim receives as compensation, with the purpose of rebuild its draft life, and focused mainly on (Article 134):

1. Technical or vocational training for victims or the children of these.
2. Creation or strengthening of productive enterprises or assets.
3. Acquiring or improving new or used housing.
4. Acquisition of rural property.

For the implementation of those reparation the Law create, the following institutions:

A) National Information Network for the Care and reparation of the Victims (*Red Nacional de Información para la Atención y Reparación a las Víctimas*)

B) National System of Care and comprehensive reparation of the Victims (*Sistema Nacional de Atención y Reparación Integral a las Víctimas*)

C) National Plan of Attention and Integral Reparation to Victims (*Plan Nacional de Atención y Reparación Integral a las Víctimas*)

D) Reparation Fund for Victims of Violence (*Fondo para la Reparación de las Víctimas*)³⁵

Reflecting on the Compensation reparation, it is important to discuss some questions: Firstly, where will the money come from for Reparation Fund to Victims? are there enough resources for all the victims?, or which victims should receive priority? Should some receive full reparation and others little or none? Or should everyone get something?

The Colombian Government has recognized that about four million people have been victims of violence (...) about a million families, including IDPs. Reparations to the people who have been victims of violence in Colombia and return the land to those who have been violently stripped of it; is the goal of the Victim Law.³⁶

³²The established judicial definition of reparation under international law is said to include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. United Nations, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005), article 18.

³³Nevertheless, the VL not just consider reparations as a properly remedy, as a result the Law establish humanitarian and remedial measures. So, the victims will be receive humanitarian aid according to immediate needs directly related to the fact victimizing, in order to help, assist, protect and serve their needs for food, grooming, management of supplies, kitchen utensils, medical and psychological emergencies, emergency transportation and temporary housing in decent conditions. Remedial measures: The Colombian government, through the National Plan for the Care and Reparation for the victims, pretend to return of the victim to their place of residence and restoration of their rights or property. Indeed, the Law established financial measures for the victims and programs for generating rural employment and city to support self-sufficiency of victims.

³⁴National Commission for the Reparation and Re-conciliation, *Supra* note 25.

³⁵ Reparation Fund for Victims of Violence was created for the Justice and Peace Law (Article 54 of Law 975 of 2005). The Fund shall consist of all the assets or resources in any capacity delivered by the persons or illegal armed groups referred to in this Act. Functions: 1. Liquidate and pay the compensation; 2. Managing the Reparations Fund for Victims, 3. Overtaking other repair actions when applicable instead. Visited on Webpage:

<http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=455&conID=1667&pagID=11197> (March 14, 2013)

Under new Victims Law the government pretends to give reparations to about 100,000 families each year, 8,500 families per month and 350 about every day in the next ten years.³⁷The reparation Fund to Victims will get that money from the following resources: a) The proceeds of fines imposed on individuals or armed groups outside the law in the framework of judicial and administrative proceedings; b) Voluntary contributions from Governments, international organizations, individuals, corporations and other entities; c) Amounts collected by financial institutions as a result of voluntary donation option at the end of ATM transactions and Internet transactions; d) The amounts collected by large chain stores and supermarkets by way of voluntary donation of the amount required for the rounding of the turns; e) The amount of economic condemnments those who have been convicted of conspiracy for organizing, promoting, arming or financing of armed groups. f) The amount stated in the decision due to the support provided by companies that have funded armed groups; g). The proceeds of the forfeiture (*Extincion de Dominio*).³⁸

Then moving to the question about the resources for the victims' reparation, two things are important to say: 1. The Colombian state must have the enough resources for guarantee the compensation for all the victims; 2. The goal of the VL is give them integral reparation under equality principle.

Consequently, the Government approved the financing plan for Victims Act, which states that all entities of the State must appropriate sufficient resources to properly care for all victims. In addition, to ensure the money of the implementation of the law, the national budget for next year includes resources by 6.1 billion pesos.³⁹These resources are accounting for 1% of gross domestic product (GDP) by 2012. This budget is divided into two sections: one of 2.3 billion pesos for education and health of victims, and another 3.8 trillion for health care programs the IDP. Throughout, the implementation of the VL, which will last 10 years, will amount to 0.5 of GDP in 2021.⁴⁰Besides, the international community has been so active with the VL. European Union said that they would donate 3 million euros for implementation of the law.⁴¹

The Law establishes the Complementarity Principle. In this senses, all measures of attention, service and reparation must be established in harmony and work for the protection of the rights of victims (Article 21). That means that the reparation system for the victims must be unified.⁴²

B) Guarantee of non-repetition in its individual, collective, material, moral and symbolic dimensions. In article 149of the VL⁴³sustain that the Colombian state must to adopt Guarantee of non-repetition. In this sense, I pretend to remark some of those measures, and there are:

³⁶ Angelino Garzón (Vice President of Colombia), *Colombia presenta Ley de Víctimas en la ONU*, February 28, 2011. Visited on Webpage: <http://www.radiosantafe.com/2011/02/28/colombia-presenta-ley-de-victimas-en-la-onu/> Also see: Indemnizarán a víctimas de la violencia en Colombia, Infobae, Edición Argentina. Visited on:

<http://america.infobae.com/notas/19887-Indemnizar-a-victimas-de-la-violencia-en-Colombia> (May 28th, 2013)

³⁷ Id.

³⁸ Article 177. VL.

³⁹ Departamento para la Prosperidad Social, November 2, 2011. Visited on Webpage:

<http://www.colombiaenaccion.gov.co/victimas/?p=3569> (March 9, 2013)

⁴⁰ Revista Semana, (December 1st, 2011). *Asegurada financiación de la Ley de Víctimas hasta el año 2021*. Visited on Webpage: <http://www.colombiaenaccion.gov.co/victimas/?p=3681> (December 22, 2013)

⁴¹ Departamento para la Prosperidad Social, November 2, 2011. Visited on Webpage:

<http://www.colombiaenaccion.gov.co/victimas/?p=3569> (March 9, 2013)

⁴² With this principle Colombia is trying to unify the cost of the reparation of the victims of Justice and peace Law. The discussion over reparation process under the Justice and Peace Law is not my goal.

⁴³ Article 149. Repeat No Guarantees. The Colombian State shall, inter alia, the following non-repetition:

- a) The demobilization and dismantling of armed groups outside the law;
- b) The verification of the facts and full and public disclosure of the truth (...)
- c) The application of sanctions against those responsible for dealing with violations.
- d) The prevention of violations referred to in Article 3 of this Act, for which special offer preventive measures to the most at risk groups as women, children and adolescents, older adults, community leaders, members of trade unions, human rights defenders and victims of forced displacement, which aims to overcome stereotypes that foster discrimination, particularly against women and violence against them in the context of armed conflict;
- e) The creation of a social pedagogy that promotes the constitutional values that founded reconciliation in relation to the events in the historical truth;
- f) Strengthening technical criteria for allocation of humanitarian demining (...)

- a) The demobilization and dismantling of armed groups outside the law;
(...)
- d) The prevention of violations referred to in Article 3 of this Act, for which special offer preventive measures to the most at risk groups as women, children and adolescents, older adults, community leaders, members of trade unions, human rights defenders and victims of forced displacement, which aims to overcome stereotypes that foster discrimination, particularly against women and violence against them in the context of armed conflict;
(...)
- i) Strengthening the effective participation of vulnerable populations and / or vulnerable in their community settings, social and political, to contribute to the exercise and enjoyment of cultural rights;

Regarding the measures of demobilization and dismantling of armed groups it is necessary to review the results of the demobilization process under the Justice and Peace Law, which is not my focus in this paper.⁴⁴ However, is calling my attention how is the Colombian Government going to guarantee the demobilization and dismantling of armed groups (perhaps when this was the purpose of the Justice and Peace Law). Then, other question: How the State can ensure the effectiveness of the reparations program, especially the measures of non-repetition, when it is very likely that the victims might suffer a new act of violence during the armed conflict?. All those questions are now being debated, and most of those are related with one of the limitation that I will explain in the later pages.

Then, under the highlighted measures, I am glad to remember the Colombian necessity of strengthening the effective participation of vulnerable populations in the reparation process and the participation of women, children and adolescents, older adults, community leaders, members of trade unions, human rights defenders and victims of forced displacement, which aims to overcome stereotypes that foster discrimination.

Vulnerable groups are entitled to the guarantee of non-repetition under the VL. Hence, these measures must be provided with differential approach (or differential focus). Belonging to these vulnerable groups, Colombia has the Indigenous and the Afro-Colombian community.

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- g) Design and implement a communications strategy on Human Rights and International Humanitarian Law, which should include a differential approach;
 - h) Design of a single strategy for training and teaching on respect for Human Rights and International Humanitarian Law, including a differential approach (...)
 - i) Strengthening the effective participation of vulnerable populations and / or vulnerable in their community settings, social and political, to contribute to the exercise and enjoyment of cultural rights;
 - j) Dissemination of information on the rights of victims located abroad;
 - k) Strengthening Early Warning System (*Sistema de Alerta Temprana*)
 - l) The reintegration of children and adolescents who have participated in armed groups outside the law;
 - m) Design and implementation of strategies, projects and policies of reconciliation in accordance with the provisions of Act 975, both socially and at the individual level;
 - n) The exercise of effective control by civilian authorities on Public Force;
 - o) The declaration of invalidity and / or termination of public officials convicted of a violation referred to in Article 3 of this Act
 - p) Promoting mechanisms for preventing and resolving social conflicts;
 - q) Design and implementation of teaching strategies in legal empowerment for victims;
 - r) The repeal of any administrative rules or has allowed or permitted the occurrence of the violations referred to in Article 3 of this Act, in accordance with the respective administrative-law proceedings.
 - s) Development of national campaigns to prevent and condemn violence against women, children and adolescents, the events in the context of the violations referred to in Article 3 of this Act.

(...)

⁴⁴ Nevertheless, at least is important to know that since 2003, more than 30,000 people have participated in a paramilitary demobilization process, although there is strong evidence that many of these people were demobilized paramilitaries, and some never joined paramilitary demobilization. The successors of the paramilitary groups, often under the command of mid-level commanders demobilized paramilitary organizations exert territorial control of some regions and commit atrocities against civilians in the board. Colombia's National Police reported that in July 2010 those groups had 3749 members. However, the Colombian NGO Institute for Development and Peace groups have estimated that with 6,000 armed fighters have expanded their operations to 29 of the 32 departments. Human Rights Watch 21st annual World Report (2011). Visited on Webpage: <http://www.hrw.org/world-report-2011/world-report-2011-colombia> (June 12, 2013).

Indeed, the reparations must take into account the collective nature of the harm caused to the ethnic group. Similarly, it is important that reparations include measures that benefit the group as such, and not just individual victims who are members of the group (Morten & Rodríguez, others, 2010). The Inter-American Court of Human Rights has held in cases involving ethnic groups that “reparations take on a special collective significance”,⁴⁵ and that in light of the fact that the individual victims belonged to a certain ethnic group, an important component of the individual reparations would be the reparations granted to the community as a whole.”⁴⁶ In this sense, as they continue saying reparations to ethnic groups therefore might include affirmative action initiatives that restore and promote access to opportunities and resources for cultural, social and economic development, which were historically denied to them (Morten & Rodríguez, others, 2010).

Finally, the VL makes a great effort to include the vulnerable groups under the guarantee of non-repetition. Of course, that represents a big challenge because the discrimination and the application of the affirmative action is always a complex issue in Colombia.

4. The scope of the Law

In this part, I am not unmindful that the VL represents an advance for the victims in Colombia, but I cannot ignore the multiple limitations and challenges facing it. Taking this into account, let’s start with some remarkable limitations and then some challenges of the VL.

4.1 Limitations:

For the purpose of the paper, I highlight three limitations of the VL

1. The effectiveness of the reparations program, especially the measures of non-repetition (i.e., to guarantee the demobilization and dismantling of armed groups).
2. Limited resources for the unknown number of victims (unexpected number of reparations).
3. Under the definition of victims the VL not consider the victims of the emerging criminal bands.

There are various reasons underlying these limitations, but the most relevant is the implementation of the VL in a country who is trying to use transitional justice⁴⁷ without transition. As Pollack, argues that the main problem for the implementation of the Victims Law is the violence that many people are still exposed and lack of protection by the authorities. He also said the law is to be signed in the midst of increased threats and killings of people who are returning to their lands, displaced community leaders and human rights defenders (Wallace, 2011). In addition, José Hernández the Director of the National Commission of Reparation and Reconciliation unquestionably the victims are still produced, however, we cannot wait to finish the conflict for to begin to compensate the victims (Wallace, 2011).

Colombia is a country without a clear transition. Even if several thousands paramilitaries have demobilized and surrendered their weapons and many top paramilitary leaders are currently on trial, there are a lot of doubts about the effective dismantling of paramilitary economic and political organizations, because their power comes more from their financing power and their collusion with some authorities than from their weapons. In the best scenario, there would be only a partial peace (Uprimny, 2007). Nevertheless, the point is not just the effectiveness under the VL, the point of the transitional justice process is not only to assign blame (in the legal sense) when it comes to solving legacies of systematic and mass violence, but to foster a sense of responsibility for the violations, which obviously goes far beyond the issue of criminal responsibility (Greiff, 2011).

⁴⁵ IACHR, Case of the Yakye Axa Indigenous Community v. Paraguay, Judgment of 17 June 2005, C-125, para. 188. Rodríguez Garavito César, Ethno-Reparations: Collective Ethnic Justice and the Reparation of Indigenous Peoples and Black Communities in Colombia, Visited on Webpage: http://www.fichl.org/fileadmin/fichl/documents/FICHL_6_web.pdf (December 11, 2012).

⁴⁶ IACHR, Case of the Plan de Sánchez Massacre v. Guatemala, Judgment of 19 November 2004 (Reparations), C-116, para. 86; IACHR, Case of the Moiwana Community v. Suriname, Judgment of 15 June 2005, C-124, para. 194.

⁴⁷ In only a couple of years, the term has become known and has been included in discussions among experts, but even more importantly, in civil society, including the media, as well as in the vocabulary used in the drafting of legislation. Although some uses of the term do not seem right to me—a subject to which I will return—there is no doubt an increased general awareness of the status of victims exists, and, therefore, this awareness extends to all citizens as rights bearers, which is one of the main purposes of a transitional justice policy. Pablo de Greiff, Director of ICTJ’s Research Unit, Strategic Challenges of the Justice and Peace Law ICTJ, August 8, 2011. Visited on Webpage: <http://colombia-justicia-priorizacion.ictj.org/en/strategic-challenges-justice-and-peace-law> (December 13, 2012)

Finally, although the limitations aforementioned and the complexity of the effectiveness of the VL, Colombia is working hard for crossing the barriers that the law could have it.

4.2 Challenges

As limitations the VL also has big challenges to address it. First, the regulation of the Law in the domestic Law. This process must to be adequate according with the main objective of the Law. The Law require the regulation for critical main issue like administrative reparations, reparations for indigenous and afro-communities and collective reparations (Uprimny, 2007). Second, Colombia needs to get the money for financing the law and ensure that resources reach the real victims (avoid false victim). Third, preventing the emergence of the new victims. Obviously, the security measures taken for them to respect the human rights of people. Four, ensuring the adequate and safety participation of the victims (Uprimny, 2007). The government must to create tables of Victims Participation (*Mesas de participacion*). The participation of the victims as women, children and adolescents, the elderly victims, is important for the promotion of the effectiveness of the Law.

Finally, the big challenge of the law is definitely the effective application of the Law. The victims hope that Colombian government start with the application of the law, but the fears that may be this is one more of the "good laws" is still something that we are might not be able to avoid.⁴⁸ This point of view, is supported by Marcelo Pollack delegate of Colombia to Amnesty International; he said that "Colombia has always been laws: good laws, good decrees, good resolutions. The problem in the country has always been the issue of implementation. This is a major concern with this law as with other laws."⁴⁹

5. Recommendation

Any recommendation is made on VL should at least, to consider to call the Government, the illegal armed group, the emerging criminal bands, the victims, the vulnerable groups, and the civil society, and require them a public compromise to conduce to the end of the conflict.

As already explained, it is very difficult to implement a law in an ongoing conflict. In other words, it is complex to recommend the application of the transitional justice when there is not transition. However, as the end of the conflict is further each day, it is necessary to adopt reparations measures and avoid more pain for the victims. Consequently, for implementing the VL, I recommend five things:

1. Encourage the Government to regulate the programs and create the institutions that the VL is established.
2. Colombian government shall respect the prior consultation of the indigenous and afro-Colombian community.
3. Reparations must be integral. The humanitarian aid and the remedial measures must be coordinated.
4. The VL requires the creation of an independent entity, which oversees the proper implementation of law. This new institutions could be, for example, a university, or a group of national and international Experts. The main purpose of this will be monitoring the adequate implementation of the law. This institution shall ensure the transparency of the law. The purpose is to prevent corruption.

6. Final thoughts

Victims Law (VL) is seen worldwide as a success of the current President Juan Manuel Santos. However, if the idea were to identify a winner, I would choose the victims of violence in Colombia. The VL is an Act that is enacted in the middle of the conflict, but this arrives with the hopes of repair the victims of the human rights violations.

With this I am not ignoring the limitations of the VL, on the contrary, I am admitting the challenges of the law. As a result, the recommendations are focused on the effective application of the law.

⁴⁸Senator Juan Fernando Cristo (Liberal Party), who was one of the author of the law and who chairs the monitoring committee in the Congress, he believes that despite the renewed commitment by the Government, the acclaimed Victims Act could be only on paper and generate expectations in the universe of victims of the conflict that ultimately can not be met. Revista Semana, *Supra* note 24.

⁴⁹ Revista Semana, *Supra* note 24.

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