

Transitional Justice

The structural problem of impunity

Impunity for crimes committed in the context of the armed conflict is a historical and structural problem in Colombia. For example, for the 5,700 or 10,000 cases of extrajudicial killings committed by the state security forces between 2002 and 2008, none of the high-ranking officials were held criminally responsible and therefore those involved have not appeared before the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz - JEP). Of the 83,036 cases of enforced disappearance that have occurred since 1958, 99.96% are still in impunity. Historically, according to the UN High Commissioner for Human Rights, impunity has oscillated between 86 and 94 percent in Colombia.



Photo: PBI Colombia

Law 975 of 2005: Transitional justice without the victims

In 2005, the Colombian government agreed with the United Self-Defence Forces of Colombia (AUC), the demobilisation and disarmament of 31,671 of its alleged members, which was accompanied by a transitional justice process. In this process, the paramilitaries had their sentences reduced from 5 to 8 years in prison in exchange for contributing to the truth. As part of the demobilisation process, 22,374 cases of paramilitary violence were registered. The victims had minimal participation in the process. According to the NGO Indepaz, of the 3,000 current members of the (new) paramilitary groups, 900 are repeat offenders. Many of these people accepted benefits and were reintegrated into their old or new structures, to commit crimes against social leaders. Paramilitaries willing to testify about the involvement of senior state officials in the paramilitary project were extradited to the United States before they could testify, increasing impunity since many of these leaders were quickly released without having responded for their thousands of crimes. Based on the testimonies of the paramilitaries, 16,772 cases were opened by the prosecutor's office to investigate third parties that supported or financed paramilitary structures, but so far these cases have not been investigated.

Transitional justice in the Peace Agreement with the FARC-EP

The Comprehensive System for Truth, Justice, Reparation and Non-Repetition (Sistema Integral de Verdad, Justicia, Reparación y Garantías de No-Repetición - SIJVRNR) created in the Peace Agreement between the Colombian government and the FARC-EP was the result of a wide-ranging process for the victims' participation in the negotiation process. This system creates three main bodies to carry out its activities:

Unit to Search for Disappeared Persons (Unidad de Búsqueda de las Personas Desaparecidas - UBPD)	Special Jurisdiction for Peace (Jurisdicción Especial para la Paz - JEP)	Commission for the Clarification of Truth (Comisión para el Esclarecimiento de la Verdad - CEV)
20-year mandate.	Maximum duration: 20 years.	3-year mandate. Temporary and extrajudicial Mechanism.
Extrajudicial, humanitarian, autonomous and independent mechanism.	11,468 people have submitted to the process to date. It will hear selected cases for crimes which are not subject to amnesty, are not crimes against humanity and are not war crimes.	Composed of 11 Commissioners.
Directs, coordinates and contributes to the implementation of humanitarian actions to search for and localise persons disappeared in the context of and caused by the armed conflict.	Sentences of 5-20 years. 7 macro-cases: Case 001: Kidnappings. Case 002: Nariño. Case 003: False positives. Case 004: Urabá region in the Antioquia and Chocó departments. Case 005: Cauca. Case 006: Unión Patriótica political party. Case 007: Recruitment of minors.	Works in 12 regions in Truth Houses.
		Aims to clarify the patterns and causes of the internal armed conflict.
		Carries out recognition meetings and a final report, among other activities.

The CEV in Europe

More than 25,000 victims registered in the Single Victims' Register reside in other countries. Approximately 6,000 Colombian victims have been registered in different European countries. The CEV (Commission for the Clarification of Truth) considers other countries as a special territory in which to carry out the process of truth, reconciliation and non-repetition; and will organise activities in different European countries.

Delays and obstacles

After the negative result of the plebiscite (referendum) for the Peace Agreement in 2016, changes were made to the chapter on transitional justice in the Agreement that could negatively affect the rights of the victims, including: the appearance of civilian third parties (e.g. businessmen) before the JEP became voluntary and not mandatory, and the criteria to establish the command responsibility of State agents became stricter.

On the other hand, President Duque presented in Congress objections to the Statutory Law on the Special Jurisdiction for Peace, delaying its implementation for more than 9 months. Likewise, in the current government's 2018-2022 National Development Plan, the budget for the different components of the Comprehensive System for Justice, Truth, Reparation and Non-Repetition was reduced to less than half of what had been foreseen.

The victims have criticised the fact that the JEP has accepted hearing cases of high-ranking officers from the Colombian army previously convicted by the ordinary courts for massacres or extrajudicial killings, but who continue to deny their involvement in these events. It is difficult to understand how they will fulfil the condition of contributing to the truth. In the first JEP hearings on these cases, the victims said that they had not been able to participate.

EU support for the Comprehensive System for Truth, Justice, Reparation and Non-Repetition

The European Union gave 3.2 million Euros to support the Search Unit for Disappeared Persons (UBPD), as well as 4.5 million Euros for the Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV) and will support an additional program in the JEP, with the aim of improving victims' access to the SIJVRNR.

The European Union can play an important role in supporting the Comprehensive System for Truth, Justice, Reparation and Non-Repetition:

- Urge the EEAS and the European Commission to maintain economic and political support for the entities of the SIJVRNR. Monitor the centrality of the victims, the guarantees for their participation and the satisfaction of their rights to truth, justice, reparation and non-repetition.
- Urge the EEAS and the European Commission to support activities with victims residing in Europe.
- Ask the EEAS to send the EU Delegation to the hearings of the JEP and the CEV sessions, and to support access to State archives by the SIJVRNR bodies.
- Urge the Public Prosecutor's Office to continue investigating State agents who have not submitted to the JEP for cases of extrajudicial killings, enforced disappearances and relationships with paramilitaries in which they or their troops have been implicated.
- Participate in European Parliament political missions to Colombia and during these missions participate as observers in the activities of the CEV and the JEP, and meet with the Search Unit for Disappeared Persons (UBPD).
- Receive representatives from the JEP, CEV and UBPD in the European Parliament and hold a hearing with the AFET and DROI committees and / or in the DAND and DLAT delegations.
- Promote a new resolution in support of the peace process in Colombia paying specific attention to transitional justice and urging the Colombian Government to comprehensively apply all the commitments in the Peace Agreement.
- Support steps and initiatives to reopen the negotiations with the ELN.

Elaborated by:



With the support of:

