



Following the conflict: facts and analysis

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The Justice and Peace Law in Practice

By: Dynamics of Conflict and Peace Negotiations Area

On 25 July, the Justice and Peace Law (Law 975 of 2005) marked its fourth anniversary of having come into effect in the Colombian legal system. Having endeavored, during that time, to implement the law's provisions to ensure the right to truth, justice, and reparation for victims of paramilitary groups, the law has reached a critical point. On 19 March the first and only conviction¹ so far, was handed down, although many cases have reached the stage of bringing charges and going to trial.²

To a considerable extent, during this first phase the law has been put into effect mainly by the National Unit of Prosecutors for Justice and Peace (UNJP), a division of the Prosecutor General's Office, and to a lesser extent by the Justice and Peace Courts.

This FIP report aims to review some of the points related to the implementation of the Justice and Peace Law, its main challenges, and questions that remain answered.

FIP considers the Justice and Peace Law to be a legal-institutional instrument that has made it possible to find out about and tackle criminal incidents that would otherwise have gone unknown. In other words, it has served as an additional mechanism for reducing impunity, that encompasses the crimes committed by the paramilitary groups and their military-political wings, which managed to penetrate the local and national political class, and Colombia's security forces. As such, this instrument has provided a window of opportunity which, despite its shortcomings, had never before been present in Colombia's history.

The Work of the National Unit of Prosecutors for Justice and Peace (UNJP)

Since it went into effect in August 2006, the UNJP has received 3,810 applications from people seeking to take advantage of its benefits, including 2,927 members of paramilitary groups, 25 former paramilitary commanders, and 131 members of guerrilla groups.³ Of the paramilitaries who have applied, only 18% (694), remain in custody.

Likewise, Law 975 has made it possible to register 230,516 victims, of whom 59,582 registered in one of 320 local municipalities. To date a total of 1,867 deposition hearings have been held, of which 1,215 were declared as having been terminated, and although only five made full confessions of the crimes involved.⁴

At the deposition hearings, 27,147 victims have been involved. As of 30 June this year, the incidents reported and confessed at the hearings referred to 10,542 crimes involving 13,125 victims, including 6,549 murders.⁵ The statements and confessions have made it possible to exhume 1,997 graves in which 2,439 bodies were found, of which 571 have been returned to the families.

Likewise, confessions in the Justice and Peace proceedings have made it possible to begin investigations of 209 politicians, 140 members of the Armed Forces, and 40 public officials, among others.

Progress and Challenges

It is undeniable that the Justice and Peace proceedings have made it possible to achieve significant progress toward justice. The Prosecutor General's Office and the UNJP have made concerted efforts to ensure that these proceedings work and produce results. Since August 2006, when the UNJP officially began to operate, and over the course of time to date, the UNJP has undergone a process of transformation and expansion of its capacities and resources (human and technical),⁶ which has resulted in a greater understanding of the law, better coverage by the procedures and, above all, a greater degree of understanding of what the paramilitary phenomenon has meant in Colombia. Of course, problems still crop up in the work, and the process has not been exempt from criticism, as we shall see later.

Furthermore, the counterpart in the institutional architecture that should complement the work of the Prosecutor General's Office, is also experiencing serious problems with coordination and implementation.

Recurrent Criticisms

Aside from the extremist views that express complete disagreement with the purpose of Law 975, there are still valid critiques concerning its implementation.

In terms of the truth that is emerging from the deposition hearings, despite the progress, some sectors feel that the proceedings give more credibility to the accounts of the perpetrators rather than those of the victims.⁷ This is because of shortcomings in the investigative process by the prosecutors and judges,⁸ in which participation by victims who have adequate conditions of safety and legal advice, is dubious.⁹

The pursuit of truth has also been compromised by the extradition of the leading paramilitary commanders,¹⁰ which is a clear sign

that the war against drug trafficking is taking precedence. According to the International Center for Transitional Justice (ICTJ), the alleged evidence that the former paramilitary leaders were committing crimes from prison has not been made public. Furthermore, no mechanisms are in place to ensure continuity and have these persons continue testifying in the context of the Justice and Peace Law.¹¹

The first ruling that resulted from Justice and Peace proceedings dealt with Wilson Salazar Carrascal, alias “El Loro,” a foot soldier with the Hector Julio Becerra Peinado Front of the AUC’s Northern Bloc. The case took 3.5 years to resolve, meaning that efficiency was also in question. Although the course of this first ruling, which only addressed three charges, faced several complications that are inherent to any first time process,¹² it is effectively the country’s first point of reference for justice and reparation.

Another criticism is that serious shortcomings still exist in terms of the safety, protection, and guarantees of non-repetition that the State must ensure for the thousands of victims that the paramilitary phenomenon has left, and continues to produce, now under the guise of emerging criminal gangs.

According to the National Commission for Reparation and Reconciliation (CNRR), in “almost three years, 20 leaders have been killed, and in all of the cases the common element has been that of displaced persons demanding the return of what was taken away from them by force and bloodshed.”¹³ Meanwhile, MAPP/OAS stated in September 2008 that the Protection Program for Victims and Witnesses¹⁴ had reported that 414 victims had made formal requests for protection measures, of which 108 were granted.¹⁵

FIP has been able to corroborate that these security problems are giving rise to worrisome dynamics in regions such as Chocó (concerning the issues of land restitution and threats against leaders), Barranquilla (presence of emerging gangs and threats against district ombudsmen), Valle del Cauca (murders by emerging gangs), Guajira (presence of emerging gangs involved in arms and drug trafficking),¹⁶ Antioquia (land restitution and the presence of drug trafficking), and Cundinamarca (displacement). Persecution of leaders and interference in the restitution of land has also been observed in Putumayo, Norte de Santander, Cauca, and the Montes de María region.¹⁷

Finally, because of the way that Law 975 has been set up, it seems to fall short in attempting to encompass the extent of the criminal past (incidents reported and confessed), which suggests that it will be difficult for the Prosecutor General’s Office to complete its investigations in a short time, and under parameters that guarantee the involvement of the victims and ensure that the “truth” that is declared is not the only element that is taken into account during the trial.¹⁸

The Challenges that Law 975 Faces

Implementing the Justice and Peace Law is a process that is unprecedented in the field of criminal proceedings. However, after four years in use, the following challenges urgently need to be resolved or addressed.

- Looking at the number of victims registered, it may be seen that only 12% attend the deposition hearings, which means that the confessions are only partially known. The reasons given for this cite logistics, insufficient funding, security, and even poor organization by the Prosecutor General’s Office. Regardless of the specific reasons, the truth is that this situation has been consistent throughout the three years that the law has been in effect and it is a challenge that remains to be solved.
- In terms of the deposition hearings, at first glance the results deserve to be commended. However, two issues should be considered when assessing this area. First, the hearings that have resulted in full confessions have been few (five). Second, as the latest report by the Colombian Office of the United Nations High Commissioner for Human Rights has outlined, many of the deposition hearings that were started were not completed because the Prosecutor General’s Office did not find grounds to charge the accused with any serious crime.¹⁹
- Research by the team at the www.verdadabierta.com website has corroborated that many of the confessions that commanders of paramilitary groups have made before the Prosecutor General’s Office have not been full confessions; in many cases these have been calculated to omit certain facts or to make false accusations, and in other cases said confessions seem to be made in a pre-planned order that coincides with the deposition hearings of the other paramilitary bloc or front members who are applying for the benefits of the law. However, although this is a situation that is inherent in any criminal prosecution process, the UNJP has gradually found mechanisms to control and reduce this type of behavior. Nonetheless, it continues to endanger the process.
- In terms of turning down applicants, and keeping in mind that this is no easy decision, the Prosecutor General’s Office has come down hard on those who hold out and do not confess their crimes (despite the evidence) or those who try to use a “political guise” to evade responsibility for their crimes.²⁰
- The extradition of 14 former paramilitary commanders who were in the process of deposition hearings before the Prosecutor General’s Office has had a direct impact on the process, and reduced the chances of arriving at truth, justice, and reparation for thousands of victims. Although this was an administrative decision by the executive branch, and grounded in constitutional provisions, the Prosecutor General’s Office did not take a more independent stance to make it possible, at least, to identify or predict the impact that these extraditions would have on the Justice and Peace proceedings that were being pursued. Inclusive, that are still doubts about the legitimacy of the evidence that enabled the government to make the decision to allow the extraditions, which had been suspended since 2006.²¹ Although currently deposition hearings are being pursued in the United States, what cannot be denied is that the extraditions have been an obstacle to fulfilling the objectives of Law 975.²²

- Since the passage of Law 1290 of 2008, which establishes a program to make individual reparation through administrative channels to the victims of the armed conflict, to date no report or analysis has been done of the impact that this mechanism has had on the Justice and Peace process. With a program that is already making economic reparation to the victims,²³ the question that must be asked is whether this financial compensation would discourage victims from being involved in the Justice and Peace process.
- In terms of progress on restoring property, the results have been less than optimal. The National Commission for Reparation and Reconciliation has been slow to create Regional Commissions for the Restitution of Property, and in many regions the issue of land gives rise to security concerns and worries about non-repetition for the victims.
- With the appointment of a new prosecutor general, the new administration at the Prosecutor General's Office must demonstrate heartfelt and formal commitment to the mechanisms for Justice and Peace, including upholding the elements concerning policy on crime, the teamwork that has yielded results, the design of gradual reforms that improve the performance of the UNJP, and lending greater credibility to the victims in these processes.
- Likewise, the new prosecutor general must be able to prevent or handle adequately the problems that have resulted from the extradition of the paramilitary leaders, in terms of the investigations of local politicians and businessmen. The next prosecutor general will have the job of ensuring timely and efficient procedures for incorporating testimony by these paramilitary leaders in the different para-political trials, and prevent delays and obstacles from impeding new investigations based on this testimony.
- Finally, the new prosecutor general must continue to support the work of the Supreme Court, and maintain autonomy and independence in the face of possible political pressures that could arise in cases against politicians who, for the most part, are members of political parties that are allies of the national government.
- After having been in effect for four years, it is appropriate to ask whether Law 975 is enough to produce answers that go beyond clarifying individual cases, and serve to understand, for example, the relationship or involvement of economic, political, and social interests at all levels, with paramilitarism. Is it necessary to consider mechanisms other than the courts to find these answers? Whereas four years ago, and without even having tried legal proceedings, it made no sense to ask this question, nowadays this debate should be addressed.

The truth about the barbarism of the paramilitary and guerrilla groups cannot be kept hidden. As such, the attempts at truth, justice, and reparation that have been pursued within the framework of the Justice and Peace Law deserve to continue with permanent institutional support.

- ¹ High Court of Bogotá, Justice and Peace Chamber. Ruling from 19 March 2009 on the case of Wilson Salazar Carrascal. Presiding magistrate Eduardo Castellanos. The ruling was challenged before the Supreme Court's Penal Appellate Chamber.
- ² As of May 2009, the UNJP had brought charges in 93 cases, most of these with other charges still pending, before the Justice and Peace courts, presided over by the magistrates who ensure procedural guarantees and hearings.
- ³ All of this information comes from the National Unit of Prosecutors for Justice and Peace. Performance report to 15 July 2009.
- ⁴ These deposition hearings were the ones in which all of the crimes that were alleged were confessed and, as such, that part of the process has been completed.
- ⁵ It must be stated that many more crimes were reported: 27,382 incidents in all, including 22,130 homicides and 1,853 forced disappearances, among others.
- ⁶ In 2008 the Prosecutor General's Office spent 27.358 billion pesos on Justice and Peace proceedings. In 2009 the idea is to double this amount, spending 53.684 billion pesos on this area. (Figures from the National Department of Planning, *Matriz de Presupuesto Justicia y Paz*, May 2009).
- ⁷ Alejandro Matos, Representative of Intermón Oxfam. International Forum on Comprehensive Truth, Justice, and Reparation: a debt pending with women victims of violence. 24-25 June 2009.
- ⁸ Speech by Camilo Bernal of the International Center for Transitional Justice (ICTJ) Colombia program, at the seminar "Application of the Justice and Peace Law in Colombia: Achievements and difficulties from the perspective of the victims." Los Andes University, 16 March 2009.
- ⁹ National Movement of Victim of Crimes by the State – Colombian Commission of Jurists. *Sin Garantías del Derecho a la Justicia*, August 2005.
- ¹⁰ See Policy Brief No. 1 Use and Abuse of Extradition in the War on Drugs. Peace-Building and Post-Conflict Area, Ideas for Peace Foundation, 20 April 2009.
- ¹¹ Interview with Camilo Bernal and Nicolás Arana of the International Center for Transitional Justice (ICTJ) Colombia program, done 10 July 2009.
- ¹² See: "El Loro" y el primer fallo de justicia y paz. *Verdad Abierta*, 27 January 2009; "El Loro", el primer condenado por Justicia y Paz *Verdad Abierta*, 19 March 2009.
- ¹³ See: "Van 20 representantes de víctimas asesinados en tres años y la cifra podría dispararse." *El Tiempo*, 22 February 2009.
- ¹⁴ Decree 3570 of 2007, through which the Protection Program for Victims and Witnesses under Law 975 of 2005 is created. Presidency of the Republic.
- ¹⁵ Twelfth quarterly report by the Secretary General to the Permanent Council on the work of the Mission to Support the Peace Process in Colombia. (MAPP/OEA). 9 February 2009.
- ¹⁶ See: "Rearme en la Guajira." *Verdad Abierta*, 1 December 2008; "La guerra entre los "Paisas" y "Don Mario" por el control de la Guajira." *Verdad Abierta*, 2 March 2009.
- ¹⁷ FIP Interviews of different regional sources who preferred to remain anonymous (June-July 2009).
- ¹⁸ Interview with Camilo Bernal and Nicolás Arana of the International Center for Transitional Justice (ICTJ) Colombia program, done 10 July 2009.
- ¹⁹ "Of the 1,626 people who started deposition hearings, 1,189 did not continue the process because the Prosecutor General's Office did not find grounds to accuse them of any serious crime (as of 19 December 2007, a total of 1,057 deposition hearings had been held, of which 941 were suspended for this reason)." Report by the United Nations High Commissioner for Human Rights on the human rights situation in Colombia 2008, 19 February 2009; p. 16.
- ²⁰ See: "Ultimátum de la Fiscalía a Baéz." *El Espectador*, 4 July 2009.
- ²¹ See: "Fiscal dice que no había razones para extraditar a jefes paramilitares." *Verdad Abierta*, 29 May 2009.
- ²² See: Policy Brief No. 1 Use and Abuse of Extradition in the War on Drugs. Peace-Building and Post-Conflict Area, Ideas for Peace Foundation, 20 April 2009.

- ²³ On 5 July 2009 in Popayán (Cauca) the government made the first payments to 300 families as part of administrative reparation for the victims of violence. Presidency of the Republic – SNE, “Ningún gobierno había tomado decisión de hacer reparación a las víctimas, destaca MinInterior,” 5 July 2009.

