



Secretariado Nacional de Pastoral Social
Cáritas Colombiana

The Colombian Conflict: For the Rights of the Victims May 2009

Introduction

The National Social Pastoral of the Colombian Episcopal Conference (SNPS) and the Caritas Internationalis (C.I.) Confederation are committed to a negotiated solution to the internal armed conflict that has afflicted Colombia for more than forty years. This conflict has created and sustained one of the largest internal displacement and refugee situations in the world, and the Catholic Church in Colombia and C.I. Confederation' *Peace is Possible in Colombia* Campaign, have prioritized the necessity for increased attention and response to this large scale humanitarian tragedy.

This document examines the situation of the victims of the Colombian conflict, central concerns that need to be addressed and recommendations for action. It draws primarily on analyses from the Colombian Bishops' Conference, supported by data from additional governmental and civil society sources. Because the situation of the victims cannot be understood apart from the demobilization of illegal armed groups and individual fighters between 2003 and the present (generally referred to as the Justice and Peace Process after the title of the principal law that governs it), the document also briefly analyses this process. The law was intended to "facilitate peace processes and the individual and collective reincorporation of members of illegal armed groups, guaranteeing the rights of the victims to truth, justice and reparation"¹.

The Colombian internal conflict and the victims of the conflict

Colombia, as a result of the prolonged internal armed conflict, is faced with one of the world's highest levels of human rights violations with a disproportionate, generalized, and systematic impact on the civilian population.

Colombia is second only to Sudan in the number of internally displaced persons according to figures of the United Nations High Commission on Refugees (UNHCR). In the period between 1985 and 2008 it is estimated that over 4.5 million people were forcibly displaced in Colombia², the equivalent of 10% of the population of the country. Many of the forcibly displaced in Colombia experience this violent dislocation repeatedly, and have been pushed into long-term sustained impoverishment. A recent survey of the internally displaced in Colombia found that 97% were living below the poverty line.

¹ Ley 975 de 2005, Preamble

² According to the Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), the most well-known civil society organization tracking such information.

Colombia has also suffered high rates of forced disappearances, massacres, selective assassinations, and a largely hidden epidemic of gender-based violence. Additionally, Colombia has the highest number of victims of anti-personnel landmines, and the only country in the world where landmines continue to be laid. Between 1990 and 2008, 7,451 Colombians, including 372 women and 722 children, were victims of these mines.³

The overwhelming majority of the victims of the conflict have been civilians: poor farmers, indigenous and African-Colombian populations, community activists, trade unionists, human rights defenders and many thousands of ordinary people caught in the cross-fire between the armed groups.

“I was forced to flee my home with my daughter when illegal armed groups burnt down my home in the countryside. I now live in a shanty town in Huila with my daughter who is 8 years old. My home is a little shack made out of wood and plastic. There is only one bedroom and I have no toilet or running water” AB a single mother aged 44 from Huila.

The ‘typical’ victim of the conflict in Colombia is a poor woman, single-head of household, she earns minimum wage, only has minimum primary school level education and has been displaced by violence -According to the National Reparation and Reconciliation Commission-CNRR’s profile of a ‘typical’ victim.

The impact of forced displacement on Afro-Colombian and indigenous communities has been dramatic, both in terms of the disproportionate targeting these traditionally marginalized populations by armed actors, but also in the scale of their dispossession from their communally owned lands. In 2009 the Constitutional Court found that Afro-Colombians were one of the most impacted groups, with nearly half of the entire Afro-Colombian population affected by internal displacement. The 2009 Constitutional Court Decree specified three main causes of the disproportionate levels of displacement of Afro-Colombians: 1. the structural exclusion of Afro-Colombians increases their vulnerability. 2. Agricultural and mining projects which operate illegally in Afro-Colombian community’s territory and 3. The lack of judicial and institutional protection of Afro-Colombians collective territory.⁴

In terms of indigenous communities, last year the National Organization of Indigenous Peoples in Colombia (ONIC) stated that 32 indigenous groups are at risk of disappearing, with forced displacement notably contributing to this crisis. According to CODHES, 13,500 indigenous persons became displaced in Colombia in 2008 alone. Indigenous communities in 2008 and 2009 faced both internal displacement and confinement by armed groups in which they were unable to leave, or receive adequate food, medicine and other essential supplies. One of the largest recent displacements in the Pacific Coastal Department of Chocó took place this year when 2,000 Embera indigenous persons were forced to flee the Baudó River area⁵.

Labor union members and activists have been the victims of yet another category of human rights violations. The International Labor Organization (ILO) has called union activity the most dangerous and risky activity in Colombia and according to figures from the National Labor School, a union member has been murdered every three days for the last 21 years. This painful statistic translates into 2,534 victims murdered between January 1, 1986 and July 30, 2007. These 2,289

³ “7.451 víctimas de minas antipersonal” [“7,451 Victims of Anti-Personnel Landmines”] *El Espectador*, March 2, 2009.

⁴ U.S. Office on Colombia, Summary of the January 2009 Colombian Constitutional Court Decree on Afro-Colombian Internally Displaced Persons.

⁵ As stated in the Washington Office on Latin America’ document, *Special Concerns of Indigenous IDPs*, April 30, 2009

men and 248 women have lost their lives defending, demanding, or simply exercising their fundamental right to participate in labor unions.⁶

Sexual violence and sexual exploitation in the context of the armed conflict—which according to the Constitutional Court are among the most prevalent gender-related risks in the country—are examples of other major crimes where the state has not provided due respect or protection to the victims. Women continue to face many obstacles to denouncing these crimes.⁷ The Attorney General’s Office is investigating 183 cases of sexual violence. Of these cases, 106 are attributed to members of paramilitary groups, 42 to members of the military or police, and 15 to guerrilla groups.⁸

In this sense, the universe of victims is so broad that it cuts across all sectors of society and social classes. It also extends across the entire national territory, as shown by the total area of land — some 5.5 million hectares (21,235 square miles)—from which victims have been forcibly displaced. This is the equivalent of 10.8 per cent of the farming area of the country.⁹

Some areas have improved- many have not

The majority of the people who laid down arms during the demobilization process were members of the paramilitary Autodefensas Unidas de Colombia (United Self-defense Groups of Colombia, AUC). The demobilization process and the ‘Democratic Security’ approach have been central to President Uribe’s two administrations (2002 to 2006 and 2006 to 2010). According to the Colombian Government, these initiatives have dramatically improved national security and the human rights situation and decreased violence overall.

Official figures show that 31,671 members of the AUC were officially registered as demobilized between 2003 and 2006. In the separate process of individual demobilization a further 15,777 people are recorded to have laid down arms in this period. Nearly 12,000 of these belonged to guerrilla groups. Reduction in the number of illegal armed actors functioning in Colombia is of course of considerable importance. However there were serious weaknesses in the design and implementation of the demobilization process, many of the paramilitary actors never demobilized or have re-mobilized in new forms, and both the FARC and ELN guerrillas continue to function, with the civilian population continuing to suffer the violent consequences of this reality.

It must be recognized that there have been some recent and notable advances on the part of the Government of Colombia to dedicate additional funds and expanded services to the internally displaced within Colombia. In January of 2004 the Constitutional Court determined that the Government of Colombia was not in compliance with the landmark Law 387, passed in 1997, which guaranteed the basic rights and assistance to the forcibly displaced population within Colombia. With the judgment of the Court in 2004 (T-025), requirements were laid out for the Government to determine the true number of displaced, their socio- economic situation, and official plans to return to these persons the basic rights negated them for so long.¹⁰ Additionally T-025 cited a number of constitutional rights which had been systematically violated, including the right to a dignified life, the right to physical safety, the right to legal recourse, the right to familial unity and the right to equality.

⁶ *Cultura y Trabajo* magazine, Ed. No. 73, October 24, 2007.

⁷ Constitutional Court, Writ 092 of 2008.

⁸ “Paramilitares y guerrilleros convirtieron la violencia sexual en arma de Guerra” [“Paramilitary Members and Guerillas Turn Sexual Violence into a Weapon of War”] *Cambio* magazine, March 4, 2009.

⁹ Eleventh Report, Commission for Monitoring Public Policy on Forced Displacement, Bogotá, January 19, 2009

¹⁰ CODHES, *Ahora por los Desplazados*.

“The Government of Colombia recognized the social debt that the State and society owes the displaced population, configuring for the first time a structural response, estimating the approximate cost and establishing a designated budget. ...Based in this first exercise the national government formulated the National Plan of Attention to the Displaced Population. Responding to the Constitutional Court, (the National Plan) introduced the focus on rights and established guiding principals as the basis for response. In this manner the National System for Comprehensive Attention to the Displaced Population (SNAIPD) ten years after its creation, and public policy that was constructed during this decade in a dispersed manner, can now utilize a State policy that provides a framework to orient all of its territorial and sectoral operation”.¹¹

Since this time the Government has notably increased resources to respond to this humanitarian situation, and though this is and should be recognized and commended, there are still many areas that have yet to be addressed.

Grave problems persist

While it is true that between July 2002 and December 2007 there has been a marked decline in armed confrontations, kidnappings and assassinations, there were still 13,634 politically motivated murders during this period. Cases of torture remained alarmingly high, and 380,863 people were forcibly displaced in 2008,¹² a 24.47 per cent increase compared with the previous year (in 2007 305,966 were displaced). This is the largest increase in forced displacement in Colombia since 1985.¹³ A disturbingly high percentage of these abuses were committed by paramilitaries who, for most of the period, were supposedly adhering to a cease fire. The guerrilla groups also show a complete disregard for international humanitarian law in making no attempt to avoid civilian casualties, the practices of hostage taking and the recruitment of juveniles, and in their continued use of landmines¹⁴.

Landmines – the story of Olga

In 2006, 65 children were injured by landmines.¹⁵ Olga stepped on a landmine in the region of Caquetá when she was 8 years old. She lost her leg but she was too afraid to admit that a landmine had caused her injury, telling the hospital instead that it was a snake bite. The guerrilla groups in the region had threatened to kill anybody claiming to have been injured by a landmine, and the army was suspicious of anybody arriving at the hospital with landmine injuries, believing them to be possible supporters of the guerrilla. Today, Olga cannot access rehabilitation or prosthesis because she is not on the official list of landmine victims¹⁶.

Although some advances have occurred in reducing the number of guerrilla actors functioning in Colombia and their geographic control of territory, a recent analysis by the Jesuit human rights organization CINEP suggests, however, that this success has been far from decisive:

¹¹ Betty Pedraza Lopez and Dario Restrepo Botero, *Las entidades territoriales en la realizacion de derechos de la poblacion desplazada*, CODHES p 20-21.

¹² CODHES

¹³ According to a report to the UN Human Rights Council for the 2008 Universal Periodic review prepared by a broad platform of human rights, peace and social organisations in Colombia – including SNPS - of the cases where the author of the violation is known, 17.5% were directly committed by members of the armed forces, and 58% by paramilitaries with the acquiescence or collaboration of the armed forces. 25% of the abuses were committed by guerrilla forces. In the same period nearly 1,000 cases of torture were registered, of which some 32% were directly attributed to the armed forces, nearly 60% to paramilitaries and close to 10% by guerrilla groups. See: <http://www.asambleaporlapaz.com/?q=node/96>. Displacement figures: See Latin America Working Group So Far to Go: Human Rights in Colombia, April 2008, www.lawg.org/docs/So%20Far%20To%20Go.pdf

¹⁴ Around 3,000 people are presently being held hostage. According to Landmine Monitor Global Report 2008 Colombia now has the highest number of landmine victims in the world with 895 casualties in 2007 (193 people killed and 702 injured).

¹⁵ http://www.unicef.org/infobycountry/colombia_39301.html

¹⁶ ABColombia, Fit for purpose: how to make UK policy on Colombia more effective. A contribution from ABColombia, p. 15

“It is true that the government has achieved a significant shift in the strategic balance of the relationship with this guerrilla group: it has inflicted significant damage on it in the military field and an even greater political reverse. Despite this, a complete military defeat of the FARC is still a distant prospect. This becomes clear from a study of the evolution of the armed conflict and violations of International Humanitarian Law. There was an indisputable fall in the levels of violence between 2002 and 2005/06. Nevertheless current (2007/08) levels remain deeply worrying: various indicators are at or above the levels prevailing in Colombia in the first half of the 1990s, when Colombia entered the international classifications as a country with a serious armed conflict. In other words, although the government’s achievements in security have been significant, they are far from solving the problem, as can be seen from the continuance of the drugs trade, which feeds the conflict, and of the phenomenon of the paramilitaries, which, despite the government-sponsored demobilization process, shows clear signs of being very much alive.”¹⁷

CINEP’s analysis demonstrates the potential for the continuance and further degradation of the social and armed conflict that afflicts the country, and further delay in securing genuine justice for the victims.

In recent years, Colombia has also experienced a serious increase of violations of International Humanitarian Law and extrajudicial killings by state actors. The Attorney General’s office is currently involved in 914 investigations of members of public security forces allegedly involved in the homicides of 1,454 civilians, 51 of which are under eighteen years of age. Seventy-two percent of the cases have been attributed to the National Army. This does not include older cases filed against the Colombian government in the Inter-American Human Rights Commission and Inter-American Human Rights Court where, for example, there is one case involving the complete elimination of the *Union Patriótica* political movement through violence. In this case, the Colombian state is accused of crimes against more than 5,400 recorded victims, among them 2,800 murder victims.¹⁸

The Justice and Peace Law and its associated legal framework:

The Justice and Peace Law 975 was passed in 2005 as the legal framework for implementing a process of negotiations with paramilitary or self-defense groups. Its objective is to “facilitate peace processes and the individual and collective reincorporation of members of illegal armed groups into civilian life, guaranteeing victims’ right to truth, justice, and reparations.” Since then, it has become clear that there is a large group of victims of crimes whose primary perpetrators are paramilitary groups according to the confessions recorded in the “Justice and Peace” processes. According to the Attorney General’s Office, confessions of 1,700 criminal acts had been recorded by the second half of 2008, including homicides, forced disappearances, and recruitment of minors. In addition, 143,000 victims have been registered. Another large group of victims not included under the Justice and Peace law, but who have been able to achieve some visibility, are victims of state crimes.

In the case of the guerrillas, there is no formal process for negotiating a peace agreement, and that makes it difficult to identify the full scope of their victims. One of the most serious crimes attributed to the guerrillas is kidnapping, or hostage-taking. This has been a sensitive issue with the Colombian population and has generated massive mobilizations calling for an end to kidnapping and the unconditional freedom of all hostages. According to figures of the Government of

¹⁷ Mauricio Garcia SJ *El Conflicto Armado Colombiano: ¿El Fin Del Fin?* Bogota, 2008, Executive Summary.

¹⁸ “El ‘Baile Rojo’” [The ‘Red Dance’] *Semana* magazine, August 11, 2007.

Colombia's Fondelibertad, guerrillas have kidnapped 12,324 people between January 1996 and June 2008.

The overall situation is even more serious because of the environment of hostility against victims who have participated in the "Justice and Peace" process. To date, three years after the law went into effect, twenty leaders of victims' groups have been murdered. All of these people had been subject to brutal campaigns to run them off of their lands and had lodged complaints as victims of displacement."¹⁹

By 2005, when the Justice and Peace Law was enacted, the maximum penalty, even for those who confessed the most heinous crimes against humanity, was set at eight years. The law allowed for penalties to be further reduced by time spent in designated zones where the paramilitaries had gathered during the lengthy negotiating period. There was a stipulation that if demobilized fighters wished to access the incentives offered by the law, they were obliged to provide full information on illegally obtained assets, turn over child soldiers, release kidnap victims, and cease all activities aimed at discouraging activities such as the free exercise of political rights.

Colombian human rights groups, including the SNPS, mounted a challenge to the law's constitutionality. On July 13, 2006, the Constitutional Court ruled that it was constitutional, but established strict guidelines covering its implementation. These included the extension of time available to prosecutors, the loss of benefits if it were to be proved that truth had been withheld, and a requirement that reparations should be paid not only from their illegal assets but from any they might have acquired legally as well. It also extended the rights of the victims to attend the hearings to be carried out under the law.

The Justice and Peace law was vague about the nature of reparations; it allowed for economic and symbolic reparations, both individual and collective. It left open the possibility that government social programs could be considered as reparations, a concept criticized by the Colombian Inspector General (*Procurador*) and the Inter-American Commission of Human Rights (IACHR) as permitting the government to label as reparations the minimal services it was already obliged to provide for its citizens.

So how successful has the Justice and Peace process been so far in meeting its commitment to ensure "the rights of the victims to truth, justice, reparation and non-repetition"?

Truth

Of the 47,448 people who have handed over their weapons during the demobilization process (31,671 as a part of the collective demobilization, and 15,777 individuals)²⁰, only 3,284 have decided to testify under the Justice and Peace Law. The majority of the demobilized fighters have benefited from Decree 128, which governed members of illegal armed groups who were not under investigation for human rights offences at the time of their demobilization. These received *de facto* amnesties for any crimes they may have committed. There was no obligation for them to confess to criminal acts, nor to provide information about the acts of others, including those who provided political, economic or military support to them.

¹⁹ "Van 20 Líderes De Víctimas Asesinados" ["20 Leaders of Victims Assassinated"] *El Tiempo*, February 22, 2009

²⁰ Of the individual demobilisations, 9,559 were from the FARC, 2,088 the ELN, 3,682 the AUC and 448 from dissident groups. 13,200 were men, 2,577 women and 2,387 under 18: www.mindefensa.gov.co

Furthermore, the Attorney General's office (*Fiscalía*) received just over 1,000 confessions, of which 951 were subsequently withdrawn, leaving less than then 50 who were prepared to testify.²¹ It appears that the overwhelming majority of the demobilized have gambled that the justice system will fail to bring them to justice.

Little advantage was taken by the authorities of the first opportunity to expose paramilitary operations, which was offered at the point when the authorities registered the demobilized. This was the only occasion when most of the demobilized were interviewed. According to the IACHR, the prosecutors involved at this stage were given no special training and used a poorly designed questionnaire to try to uncover crimes that might have been committed. The government later admitted that the procedure “did not have the purpose of having the demobilized reveal other members of the armed unit, let alone acknowledge the crimes committed.”²² According to the IACHR, some 90 percent of the 28,000 people processed at this point “offered no significant information on illegal acts or crimes committed by the paramilitary units to which they belonged.”²³

Consequently, the overwhelming majority of the paramilitaries were simply not obliged to confess to abuses they might have committed, to provide information on the structure of their group, drugs-related activities or contacts and supporters. In July 2007, a ruling of the Constitutional Court declared these benefits to be unconstitutional, and 19,000 cases were re-opened, to be dealt with under ordinary justice. Given the levels of impunity in Colombia, it will be very important to monitor the progress of these processes.

On the other hand, an unexpectedly large number of victims have presented themselves in the hope of uncovering the truth despite the fact that the legal framework does not guarantee legal representation for the victims nor enshrine their right to cross-examine those they allege were responsible for the abuses they or their families and loved-ones suffered. By September 2008, some 138,000 victims had filed reports under the Justice and Peace law, of whom 80,000 were female.²⁴ The question of gender-based violence had been completely overlooked under the Justice and Peace Law.

According to the human rights ombudsman's office, 17.7 per cent of women victim of displacement reported sexual violence as the cause of displacement.²⁵

In Colombia, compared to many other countries in conflict, the scale of rape and sexual violence as part of the nearly five decade conflict is largely unknown. Local and national women's organizations report thousands of cases of sexual violence – by both paramilitaries and guerrillas – that more often than not, go unreported. “The problem is not yet being seen in its full dimension,” says Patricia Buriticá, who leads an NGO known as Women's Peace Initiative....”Sexual violence was a constant in every massacre carried out by paramilitary forces as they expanded their control throughout the country between 1997 and 2005”, says Ms. Buriticá, who interviewed survivors of massacres about the level of sexual violence throughout Colombia²⁶.

²¹ As of 2008.

²² *ibid*, cited in LAWG, *The Other Half of the Truth*

²³ Inter-American Commission on Human Rights, *Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings*, Washington, D.C., 2 October 2007, p. 7.

²⁴ Eleventh report MAPP/OAS: www.oas.org/consejo/Documents%20DOC.asp

²⁵ Human Rights Ombudsman office (Defensoría del Pueblo), *Promoción y monitoreo de los derechos sexuales y reproductivos de mujeres víctimas de desplazamiento forzado con énfasis en violencia intrafamiliar y sexual*, Bogotá, June 2008, p. 173.

²⁶ Sibylla Brodzinsky, *Colombia, rape now being prosecuted as weapon of war* May 12 2009. The Christian Science Monitor, <http://www.csmonitor.com/2009/0511/p06s10-woam.html>

Justice

The Colombian judicial system struggles in the face of woefully inadequate financial, technical and human resources. There are only 23 prosecutors in the Justice and Peace unit of the Attorney General's office, each of whom has only three to four investigators and two to three legal assistants – meaning that each prosecutor has on average a caseload of more than 800 victims. In April 2008 it was revealed that only 8,634 victims of the more than 125,000 who had at that time registered had actually participated in the Justice and Peace hearings, and only 10,716 had received legal counsel from the Ombudsman's office.

Located only in Bogotá, Barranquilla and Medellín, the prosecutors have the responsibility to cover the entire national territory, including many areas still in conflict. Three years after the Justice and Peace Law came into effect, not a single prosecution had been achieved and of the 11,505 cases which have emerged through the testimonies of demobilized fighters, not a single one has been brought to a conclusion by the ordinary justice system; many had already been archived for technical or evidential reasons before the current process began. Bringing them to justice now constitutes a major challenge for the justice system.²⁷

There is also profound concern regarding the decision made in May 2008 to extradite 14 principal paramilitary leaders to the United States, on the grounds that they had continued drug trafficking activity and promoted further acts of violence in breach of the condition under the Justice and Peace Law which prohibited them from committing further crimes. This decision was opposed by human rights organizations and by the IACHR, on the grounds that the decision not only affected "the obligation of the Colombian State to guarantee the rights of the victims to truth, justice and reconciliation" but also "interfere[d] with efforts to determine the links between state agents and the paramilitaries"²⁸. In his visit to Colombia in May 2008, Luis Moreno Ocampo the Prosecutor of the International Criminal Court (ICC) stated that this decision, and the plans to extradite another leader, might oblige the Court to intervene. The Colombian Attorney General, Mario Iguarán has responded in the following terms: "It's very clear to us that if we fail with regard to this promise, if we generate impunity, the ICC in all rightfulness will intervene"²⁹.

In the interests of justice, as well as truth, it is vital that the victims should be able to participate fully in the investigations. As stated earlier the victims of violence in Colombia continue to be subject to widespread intimidation and at least 20 who were engaged in the formal processes have been murdered and more than 200 have received threats³⁰. The Constitutional Court has judged the protection program for victims and witnesses involved in the Justice and Peace process to be deficient and have ordered its reform.³¹ It is also the case that the procedures stipulated in the legislation do not guarantee that victims or their representatives may cross-examine the testimonies provided by the demobilized fighters; a situation that goes against the clear guidelines of the UN Human Rights Commission which in a 2005 Resolution that has subsequently been emphasized by the Colombian Constitutional Court, encouraged States to ensure that victims should be guaranteed this right³².

²⁷ Revista Semana "Luces y Sombras" 26 July 2008.

²⁸ <http://cidh.org/Comunicados/Spanish/2008/21.08sp.htm>

²⁹ <http://www.rnw.nl/internationaljustice/icc/theicc/080829-Colombia-ICC>

³⁰ See: <http://www.asambleaporlapaz.com/?q=node/96>

³¹ Constitutional Court, Judgment T496 of 16 May 2008, Presiding judge: Jaime Córdoba Triviño.

³² Colombian Constitutional Court, Sentence C-370, 2007

Representatives of victims killed – the case of Yolanda Izquierdo

Yolanda Izquierdo, head of the People's Housing Association – OPV for its Spanish acronym – had taken on the leadership of a victim's group of victims of paramilitary crimes to help them participate in the Justice and Peace tribunals. Yolanda started receiving threats. She alerted state authorities and asked for protective measures for which she did not receive a response. On 31 January 2007 Yolanda was assassinated³³.

Reparation

The Justice and Peace Law states that the principal responsibility to provide reparations lies with the perpetrators of the abuses committed.³⁴ But according to international norms States should also establish national reparation and assistance programs to cover situations where those responsible cannot or will not meet their responsibilities.³⁵ The UN Human Rights Commission adds that States may make reparations available through legislative or administrative mechanisms which may be financed using national or international resources and may be individual or collective in nature. The victims should be able to play a significant role in the elaboration and application of these programs.³⁶

While some very limited progress towards achieving truth and justice has been made as a result of the Justice and Peace process, the results in terms of reparations have to date been much poorer. The most important element of reparations in Colombia revolves around the question of land. In their testimonies the paramilitary leaders who chose to speak have been singularly unforthcoming about the assets they have seized, and the judicial system has been incapable of forcing greater disclosure.

The Justice and Peace Law established the National Commission for Reparation and Reconciliation – the CNRR – among whose many tasks is that of recommending and administering reparations through a National Victims Reparations Fund established by the law. Despite the fact that it includes the participation of well-respected peace and human rights activists, the majority of organizations working with victims do not consider the CNRR to be a body independent of the government. Among its recommendations was a proposal that demobilized paramilitaries could contribute to productive projects that would benefit themselves, displaced persons and other small farmers, and that this would constitute reparations. This prospect horrified victims' groups, who criticized it as a *forced reconciliation* scheme that would oblige displaced persons to live in proximity to, and be dependent upon, those who had victimized them.

This is particularly troubling as there is a near complete absence of mechanisms to clarify ownership when land titles have been lost, stolen, or never existed; indeed the *opportunity principle*, which allows for the waiving of prosecution against individuals deemed to have cooperated with the authorities, is likely to result in the legalization of stolen lands if the use of intimidation and violence has not done so first.³⁷

It is estimated that more than 5.5 million hectares of land were seized by paramilitaries over the years.³⁸ Current policies promoting the exploitation of natural resources, most recently bio-fuels, increase the risk that the lands of the displaced will end up, by dubious or downright illegal means,

³³ ABColombia, Fit for purpose: how to make UK policy on Colombia more effective. A contribution from ABColombia, p. 20

³⁴ Law 975, art. 43.

³⁵ UN General Assembly, Basic Principles, 2006

³⁶ UN Human Rights Commission, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, 2005, E/CN.4/2005/102/Add.1, Principle 32

³⁷ Established in the New Criminal Proceedings Law, 2005.

³⁸ *Revista Iglesia Sinfronteras*. No 310, mayo de 2008. p. 9

in the hands of large scale private sector and agribusiness interests. These lands and other illegally acquired assets declared, were supposed to be passed to the National Reparations Fund, but according to the Inspector General's Office by mid 2008 only 21 rural properties covering 5,439 hectares; seven urban lots; clothing; 4,666 head of cattle and horses; eight vehicles; two helicopters; 739 million pesos; 70 pairs of shoes, and a television in bad repair had been handed over to the fund³⁹. An even smaller amount has actually been returned to the victims. To obtain economic reparations, the burden of proof has been on the victim who would have to know the true identity of those who perpetrated the crime and provide proof of what was stolen, including land titles, which in countless cases is impossibility.

The Colombian government responded to this situation through the establishment of mechanisms to provide "administrative reparations", principally by way of Decree 1290 of 2008 which was introduced with the stated aim of providing reparations when the legal processes fail. Through this process the government will provide reparations directly rather than through the courts, funded by the government's budget rather than relying on the less-than-forthcoming demobilized paramilitaries.

The decree sets a monetary value for different abuses. Clearly, economic restitution has its place, and, given the limited capacity of the judicial system to deal with the hundreds of thousands of cases emerging as a result of the demobilization process, it is to be welcomed that additional legislation has been passed. But the decree is seriously flawed in the crimes it defines and in the fact it excludes acts committed by state agents from its purview. It does not guarantee the participation of victims in the legal processes, thereby further marginalizing them and making it less likely that truth will emerge; and it tacitly assumes that the paramilitaries will not hand over the lands and properties they have seized over the years. Additionally to date return or compensation for stolen lands have not been included as part of the reparations considered. "Victims groups backed by the Constitutional Court and Inspector General, argued forcefully that restitution must include land for Colombia's 4 million displaced. While the government agreed to make displaced persons eligible for reparations, it made few efforts to even identify, much less return, land obtained by violence".⁴⁰

SNPS supported an initiative by Senator Cristo for a new victim's law which sought to redress the inadequacies of the norms governing reparation. The Law would, among other things, increase protection for victims, guarantee their right to legal representation and to cross-examine the accused, and ensure that administrative reparations do not supplant legal redress. However the original draft of the bill was changed beyond recognition by the pro-government majority in the First Commission of the House of Representatives following a vote on 13 November 2008. The modified legislation was altered to such a degree that victims rights advocates withdrew support, citing among other reasons that "the new draft, if approved, will create a discriminatory hierarchy of victims, with those claiming compensation because of abuses by guerrilla and paramilitary groups more likely to receive it than victims of the security forces"⁴¹, thus failing to comply with International Humanitarian Law.

³⁹ "Relación de bienes ingresados al FRV," chart prepared by Procuraduría General de la Nación with information from Acción Social and *El Tiempo*. Cited in LAWG *The Other Half of the Truth*

⁴⁰ Latin America Working Group, *The Other Half of the Truth*, Executive Summary, p. 3

⁴¹ See Amnesty International Press release 25 November 2008

<http://www.amnesty.org/en/news-and-updates/news/colombia-victims-law-discriminatory-20081125>

Non-repetition

Colombian human rights and victims' groups do not only speak of the rights to truth, justice, and reparations—they also speak of the right to “non-repetition.” This means the victims' right to a guarantee that the violations will never take place again.

While there has undoubtedly been a significant demobilization of paramilitary fighters, it is not clear that all those who participated in the ceremonies to hand over weapons were even active fighters; indeed in their testimonies some of the paramilitary leaders have admitted that people were recruited simply to take part in the ceremonies. This helps to explain why so many demobilized were registered when estimates at the start of the process suggested there were between 10,000 and 20,000 paramilitary combatants⁴². It also helps explain the fact that, despite demobilization, there are still thousands of paramilitary fighters active in Colombia.

Estimates of total numbers of these "remobilized" or new paramilitary fighters vary widely. Figures produced at the start of 2008 generally suggested between 3,000 and 9,000.⁴³ It is hotly disputed whether these armed groups should be designated as paramilitaries or – the term used in official documents – as criminal groups. In 2007, the OAS Mission which was established to monitor the process reported the existence of 22 rearmed groups⁴⁴. The US State Department's Human Rights Report for 2007 described them thus: “The AUC demobilization led to a reduction in killings and other human rights abuses, but paramilitaries who refused to demobilize and new criminal groups continued to commit numerous unlawful acts and related abuses, including: political killings and kidnappings; physical violence; forced displacement; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; recruitment and use of child soldiers; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists.”⁴⁵ In other words, we are far from being able to guarantee that human rights abuses will not be repeated as a result of the process.

Additionally, despite the reverses suffered by the FARC in 2007 and 2008, any claims to overall victory against these groups must be treated with skepticism at best.

Deep rooted causes

Parapolitics The Supreme Court and Offices of the Attorney General (*Fiscalía*) and the Human Rights Ombudsman have played key roles in important cases such as the recent ‘parapolitics’ scandal which has seen 22 percent of the members of Congress and the Director of the state security services, DAS, investigated and detained for alleged links with the paramilitaries. It is important to note as the parapolitics scandal moves forward, only three Members of Congress to date— one Senator and two Representatives - have been found guilty.

The efforts of the Courts on the parapolitics cases has been deliberately undermined and attacked, in particular through a systematic questioning of the principle of the separation of powers, which has been jeopardized through a proposal, (which the Government of Colombia was subsequently obliged to withdraw) to alter the constitution by removing jurisdiction over the parapolitics scandal from the Supreme Court.

⁴² See Amnesty International, *The Paramilitaries in Medellín: Demobilization or Legalization?*, 2005; AMR 23/019/2005

⁴³ International Crisis Group, *Colombia's New Armed Groups*, 10 May 2007:

<http://www.crisisgroup.org/home/index.cfm?id=4824&CFID=54445312&CFTOKEN=89141339>

⁴⁴ Organization of American States, “Tenth Report of the Secretary General to the Permanent Council on the MAPP/OAS Mission,” 31 October 2007

⁴⁵ www.state.gov/g/drl/rls/hrrpt/2007/100633.htm

These and other maneuvers, such as the management of proposals for political reform⁴⁶, undermine confidence in the independence of the judiciary – despite the valiant efforts of so many individuals at all levels of the institutions. The complicity with paramilitarism present within the Colombian Congress reflects the inability of the state to prevent infiltration, the double morality displayed by many within the political class, and the complicity of broad swathes of civil society which have stood by as these events have unfolded.

It must also be stated in the clearest possible terms that those politicians and public figures implicated in a further scandal known as the *FARC-politics* scandal, which erupted after the seizure of a laptop belonging to the FARC leader ‘Raul Reyes’, who was killed in a military operation in March 2008, has also led to the initiation of an investigation into three congress members and two journalists. These investigations must be thoroughly pursued as well.

Local and regional power: It is apparent that the truth that has emerged thus far as a result of the process, has not told the whole story of life at regional and municipal levels. The phenomenon of parapolitics which up till now has been apparent nationally is considered to be even stronger at local and regional levels.

An examination of paramilitary (and guerrilla activity) at local level shows that it is intimately associated with the local culture governing business dealings, decisions on municipal contracts, alliance building and a myriad of other activities. This translates into a terrible fragility of the democratic institutions, a fragility which might be the result of identification with the aims and practices of a particular group or respond merely to the pragmatic choices that individuals confront when faced with the pressure of armed groups.

The UN High Commissioner for Human Rights highlighted this aspect in her 2007 report when she stated that in some areas of the country, a reduction in violence is actually a symptom of the fact that paramilitary groups now hold political and economic power, and no longer have to fight for it.⁴⁷

Role of Church and victims movements

The Catholic Church, in company with Protestant churches and faith-based organizations has worked tirelessly to accompany Colombia's victims. Local and National Church organizations work closely with a broad spectrum of victims' organizations to emphasize the central importance of access to the truth of what has occurred, and what continues to occur in Colombia's conflict, and to seek justice and reparations as the necessary basis for the construction of national reconciliation.

Countless parish priests and lay groups dedicate themselves to this work. The National Social Pastoral (SNPS) itself runs important projects including the Testimony, Truth, and Reconciliation project (TeVeré "I will see you again"), which helps victims to gather testimonies in the hope that they will be able to locate their loved ones or at least find out what happened to them; and the RUT project documents the experiences of the internally displaced in several regions of Colombia and constitutes one of the most important and authoritative sources of information on stolen lands. The SNPS also carries out advocacy activities, supporting, for example, the original draft of the proposed Victim's Law, and participates actively in ongoing monitoring of the Constitutional Courts' decrees on the Colombia's legal and budgetary obligations to the internally displaced.

⁴⁶ A proposed political reform to prohibit the participation of members under investigation for paramilitary links was defeated because government supporters feared that the measure would destroy the majority in Congress.

⁴⁷ Report of the UNHCHR on the situation of human rights in Colombia, 2007

The Catholic view of peace and reconciliation

We believe that peace cannot be reduced to the absence of war, nor to a development model based merely on economic growth and a healthy investment climate; real peace requires that the multiple and deep-rooted causes of the conflict be addressed. In the case of Colombia, this includes the need to combat the economic causes of the conflict, which are rooted in the inequitable exploitation of land⁴⁸.

We recognize that the process of constructing Peace and achieving Reconciliation will be a long one, in which the whole nation needs to be actively involved, and that while we recognize that some progress has been towards these goals, enormous challenges remain.

Conclusion

It is very important that Colombia's institutions should prevail and that the deep economic, social and political roots of paramilitarism and of guerrilla violence be brought to an end. Accepted international norms make it clear that the State has the duty to guarantee the investigation of human rights abuses and infractions of International Humanitarian Law, to pursue, capture, judge and punish those responsible through rapid, detailed, independent and impartial legal proceedings.⁴⁹

However, the current legal framework does not fully satisfy international norms governing transitional justice; the original framework has been eroded rather than strengthened; access to Truth, Justice and Reparation remains precarious amid grave concerns at the erosion of the institutions and the renewal of paramilitary violence. In the meantime, despite some recognized successes of the Democratic Security Policy in confronting guerrilla groups, principally the FARC, they remain viable and active.

Our deep concern with the demobilization and reintegration process is that rather than rooting out paramilitarism – as the guerrilla violence must also be rooted out – the process has allowed the vast majority of those guilty of the most heinous crimes against humanity to go largely unpunished, their roots in society when uncovered to be largely ignored, and the rights of the victims to be denied. If current conditions are not addressed there can be no true Reconciliation, and the cycle of violence and abuse will continue.

⁴⁸ Including, but not exclusively by any means, in order to cultivate and export narcotics

⁴⁹ Convention of Belém do Pará, International Covenant on Civil and Political Rights, Inter-American Convention on Human Rights, and Convention against Torture