IS IT IMPOSSIBLE TO PAY REPARATIONS?

THE CASE OF THE REPARATIONS POLICY FOR SURVIVORS OF SEXUAL VIOLENCE AND VICTIMS OF THE ARMED CONFLICT IN COLOMBIA

Executive summary

Diana Esther Guzmán
Paola Molano
Paula Valencia
Randy Villalba

Dejusticia

GLOBAL SURVIVORS FUND
FOR AND WITH SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE

Reparations for serious human rights violations is a right that generates broad consensus when it comes to law. There are multiple international standards on the subject and the literature coincides in pointing out its importance as a transitional justice mechanism that directly benefits victims. However, when it comes to massive situations of human rights violations, it is common to hear perspectives that consider reparations an unfeasible mechanism, as they are very costly and difficult to implement (Special Rapporteur for the promotion of truth, justice, reparation and guarantees of non-repetition, 2014).

Are administrative reparations an unworkable and financially unsustainable mechanism? Although there is extensive literature on the right to reparations, these types of questions about the financial viability of reparations programs have been little developed. This paper provides elements for reflection and analysis on the political economy of reparations by analyzing the Colombian case since 2011, when the policy for victims of the armed conflict was created through Law 1448.

Colombia's victims' policy is ambitious and complex. It provides victims with assistance, humanitarian aid and reparation. In terms of reparation, it seeks to provide more than 7 million victims with compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition from a transformational and differential approach to inequalities. This makes it the most ambitious program at a comparative level, as no other country has attempted to repair such a large universe of victims, which represents about 14% of the country's population.

The fact that such a policy has been created and implemented over the past 12 years shows that administrative reparations programs are viable. As previous studies on the political economy of reparations suggest (Segovia, 2006), the viability of these programs—understood as the possibility of having the necessary resources to be effectively created and implemented—depends not only on financial considerations, but also on factors such

as the political backing of the governments in power and social support for the victims and their rights. In the Colombian case, these political and social factors were present and decisive in the approval of the law that created the reparations policy. This allowed a country with high levels of inequality and scarcity of resources to decide to end the internal armed conflict through policies that guarantee rights. However, the challenges for the financial sustainability of the program are great.

Since 2011, the State has invested considerable amounts of economic and institutional resources in this process, including those necessary to provide compensation to almost 1.5 million victims.[1] These results exceed what has been achieved by other reparations programs in similar countries. For example, in Peru, the universe of registered victims amounts to 182,350 individuals and 7,678 communities, and in Guatemala it amounts to 54,000 victims. In Indonesia, although there is no registry of victims, it is estimated that 233,282 individuals in 1,724 communities have been direct beneficiaries of collective reparations and another 30,000 individuals have been beneficiaries of cash payments through individual reparations (Harvard Carr Center, 2015). However, this number of compensation payments represents only 16% of the people entitled to receive this type of measure, as the goal is 7 million people (Unidad de Víctimas, 2023).[2]

Given the large number of victims who have yet to receive full reparations under the terms of the law—not only compensation but the full set of measures to which they would be entitled—there are new concerns about

1 According to the latest figure from the Victims Unit, 1,446,000 administrative compensations have been paid as of July 31, 2023 with an investment of more than 10 billion pesos. Available at: https://www.unidadvictimas.gov.co/es/reparacion-individual/con-mas-de-10640-millones-de-pesos-son-reparadas-849-victimas-en-antioquia#:~:text=In%20total%2C%20more%20than%20of%201,446,the%2010%20billions%20of%20pesos

2 Although the number of people registered in the Single Registry of Victims exceeds 9 million, there are approximately 7 million who are subject to reparations because they meet the requirements established in Law 1448.

the financial sustainability of the policy. In fact, a ten-year extension was necessary for the policy to meet its goals. The answer to this issue of sustainability is not simple and requires nuance.

The analysis of the Colombian case allows us to identify both successes and failures that can help illuminate debates in other countries and the future of reparations in Colombia. In terms of successes, for example, we can highlight the recognition of sexual violence as a human rights violation that must be repaired. In addition, through administrative channels, the need to establish reparations for children who are the consequence of sexual violence has also been considered. Unlike other transitional contexts, where it has been excluded or minimized, in Colombia sexual violence must be repaired in a comprehensive and transformative manner, in the terms defined by Law 1448, and granting all procedural and symbolic guarantees to its survivors.

Another relevant success is that, once this policy was established in Law 1448 of 2011, the government carried out a cost determination or costing process of reparations with broad criteria, based on the empirical evidence available at the time, and including transparent methodologies. To this end, it carried out an estimation of the universe of victims, which at that time was unknown, and established the approximate value of the measures to be delivered as reparations in accordance with the Law. Based on the results of this process, the government planned the budget necessary to implement the policy. However, the costing exercise was conservative and resulted in the underestimation of the universe of victims and the cost of reparations. This underestimation has been deepened by the progressive increase of the universe of victims, associated with the persistence of the armed conflict in the country and judicial decisions that have broadened the definition of 'victim'.

In this context, based on official sources, interviews with key officials, and analysis of secondary literature, we describe the costing process and the

financing of the victims' policy in the country from 2011 to the present. With this analysis, which we deepen in the full version of this summary, we identify the following challenges and recommendations.

Challenges of financing the reparations policy in Colombia

The challenges presented below allow us to outline some fundamental elements for thinking about how to respond to the demands of the Colombian case. We also use them to reflect on aspects that could be considered by programs in other countries to strengthen their administrative reparation policies in the face of massive and serious human rights violations.

Political and institutional challenges

a. Recognition of sexual violence but lack of specific and disaggregated data on its cost and financing

Different countries that have undergone transitional processes have excluded sexual violence from the human rights violations eligible for reparations, at least in the early stages of the transition. The practical effect of this exclusion is the lack of effective access of survivors, mostly women, to specialized health and psychosocial care, among others.

Colombia recognized sexual violence as a serious human rights violation, even before the design stage of the public policy on reparations. It has also developed reparations programs with specific and differentiated components for survivors of sexual violence, such as the Psychosocial and Comprehensive Health Care Program for Victims (PAPSIVI).

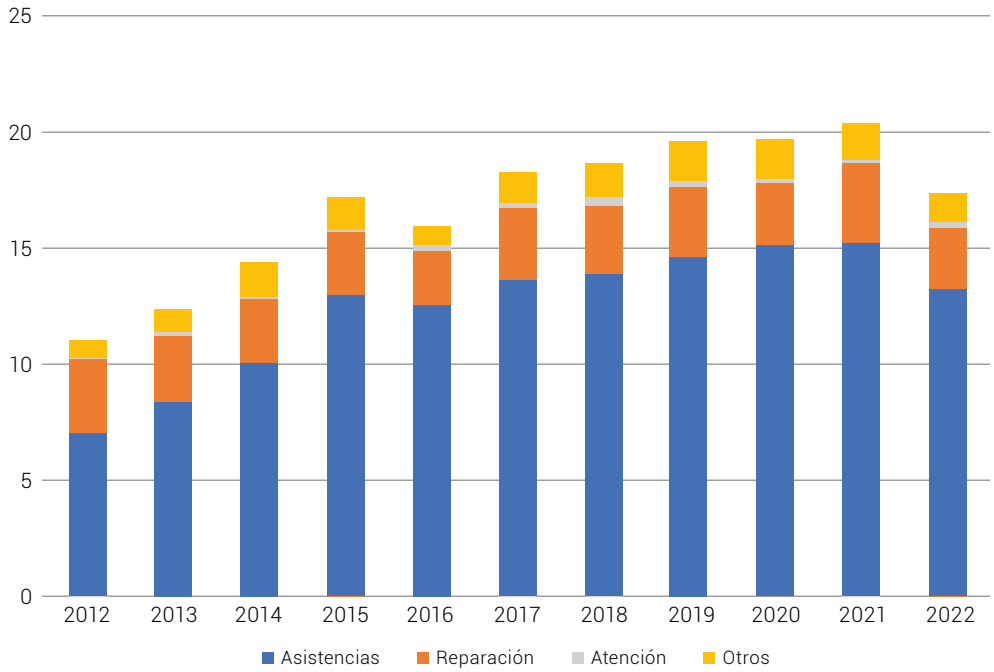
Despite this, Colombia has not developed specific tools to analyze the costs and financing for reparations of sexual violence survivors. The costing process included this violation but did not take into account some of its

particularities, such as the enormous underreporting of these cases and the difficulties for victims to report them. Likewise, neither the budget nor the way in which budget monitoring is carried out allows for the disaggregation of this human rights violation. This makes it difficult to make a more concrete assessment of the costs of reparations for sexual violence in Colombia, and to follow up to make adjustments when necessary. Greater disaggregation contributes to greater transparency in the use of resources for reparations and how these are specifically attributed to the reparation of specific violations, which can help generate better public policy inputs.

b. Subordination of reparations to other measures in favor of victims and survivors

Law 1448 of 2011 recognizes a broad set of rights for victims of the conflict: reparation, care, and assistance. These are independent measures that address different dimensions of victimization and diverse needs of victims that should be treated with equal relevance.

However, assistance measures have received more institutional efforts than reparation. Although a large part of the resources for assistance come from the General System of Participation (SGP), which are resources transferred to the territorial entities to meet the basic needs of the population, and not from resources specifically directed to the victim population, in the aggregate implementation of Law 1448 there is no balance between what is globally allocated to this measure and to reparation.



Appropriation by type of measure under the Victims Law between 2012 and 2022 (billions of pesos–2023 prices)[3]

Source: Prepared by the authors based on the tenth follow-up report on Law 1448 (2023).

The urgent need for humanitarian assistance on the part of communities has led to a significant portion of spending being concentrated on urgent assistance measures (Elementa, 2021). These assistance measures are provided in emergency situations and therefore require immediate action. Additionally, the Constitutional Court has established a hierarchy of humanitarian assistance over reparation. Even while the latter is a fundamental right, it specified that it cannot be considered absolute, nor can its immediate compliance be demanded, because unlike humanitarian assistance, it does not jeopardize the essential core of the right to basic minimum needs (Auto 206, 2017).

3 With SGP, which are resources for health and education of the territorial entities that are not focused exclusively on the victim population, but are intended for the entire population.

In addition to the fact that emergency actions are still necessary due to the persistence of the armed conflict, these measures allow for high levels of execution and show efficiency in management. In fact, they usually take the form of pre-established packages that are delivered to family groups in emergency situations due to the conflict. Reparations, on the other hand, are more complex conceptually and logistically, so they tend to be more difficult to implement. A collective reparations program, for example, requires prior work with the communities or groups to establish expectations, needs, and appropriate reparations mechanisms, and then a whole institutional deployment to translate the design of the plan into concrete actions.

In countries where reparations are being designed, it is important to consider the need for them to be linked to other measures in favor of victims and other general policies of the State, but ensuring their independence. To this end, at the budgetary level, it is advisable to have a good disaggregation of reparations associated with specific public policy commitments and goals that can be reviewed and adjusted over time.

c. Confusions between reparations and state social policy

The victims' policy in Colombia developed from Law 1448 of 2011 recognizes the difference between reparation measures, humanitarian assistance, and social policy. By virtue of this difference, it is understood that reparation is both a right of the victims and an autonomous measure of the others, even if it benefits people in conditions of socioeconomic vulnerability, exclusion, or discrimination. This conceptual differentiation is important to prevent reparations from being diluted in the State's social policy and not achieving their purpose of repairing those who have suffered serious human rights violations (Uprimny and Guzmán, 2010). Law 1448 seeks to maintain the independence of these types of measures but, at the same time, ensure coordination and articulation between them.

Combining social policy and reparations policy without distinction leads to the dilution of the reparations component and, as a result, it is not clear when a victim has been fully repaired within the public reparations policy. For example, since the objective of social policy is to overcome poverty, the confusion between the two could lead to the assertion that comprehensive reparation only occurs when the victims overcome poverty, which is unrealistic for such a large universe of victims in a period of 10 years.

Budgetary challenges

a. Steady increase in the number of victims

The universe of victims in Colombia has been in constant expansion throughout the conflict, and even since the creation of the reparation policy in the country. In 2011, the universe of victims was estimated at 830,000 victims (Conpes 3712[4]). Since 2012, the Single Registry of Victims (RUV) monitors the universe of victims subject to reparation and has documented a progressive increase in its size. Currently, the RUV registers 9 million 423 thousand 138 victims.[5] Although not all officially registered victims are subject to reparations (around 7.5 million are), the difference between the estimated and registered number of victims is close to 6 million.

Victimizing events registered in the RUV and estimated in Conpes 3712

Victimizing event	RUV*	Conpes 3712
Terrorist act / Attacks / Combat / Clashes / Harassments	79845	No estimate
Threat	611070	No estimate
Crimes against sexual freedom and integrity during the armed conflict	37760	13000

4 Conpes documents are public policy planning instruments prepared by the National Planning Department with the participation of central level entities related to the policy in question.

5 This information is available and regularly updated at: https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394

Victimizing event	RUV*	Conpes 3712
Forced disappearance	136476	66600
Forced displacement	6898167	618000
Homicide	746179	217800
Anti-Personnel Mines, Unexploded Ordnance and Improvised Explosive Device	10226	No estimate
Abduction	28957	13300
Torture	8695	3400
Involvement of Children and Adolescents in Activities Related to Armed Groups	8568	3500
Abandonment or Forced Dispossession of Land	35201	No estimate
Loss of Real or Personal Property	113758	No estimate
Physical Personal Injuries	15999	4000
Psychological Personal Injuries	13078	No estimate
Confinement	120172	No estimate
No information	42610	N/A

***Cut-off date:** July 31, 2023. These figures include only the registered population that is subject to reparation.

Source: Author's own elaboration based on RUV and Conpes 3712.

Although the Conpes 3712 was based on valid estimates for spending at that time, it was only updated once due to the extension of the Victims Law for ten more years, through Law 2078 of 2021. This extension was necessary to comply with the objectives of Law 1448 because, at the end of the first ten years of the Law, the attention and reparation to victims was still far from covering the universe established in the RUV.

This variability in the universe of victims is not explained solely by the persistence of violence and the emergence of new victimizing events. There are other relevant factors. For example, several decisions of the Constitutional Court have expanded the scope of the concept of 'victim' in Law 1448 by allowing the inclusion, in addition to the victims of the actors of the conflict, of those who are victims of other armed actors. After the 2016 Peace Agreement, the scenario regarding the satisfaction of victims' rights

changed. While the importance of maintaining the administrative reparation program was recognized, other spaces emerged that make up the Comprehensive System of Truth, Justice and Reparation that have the purpose of satisfying the rights of victims from a comprehensive perspective.

In those cases in which reparations are post-dictatorship or post-war, the universe of victims should not have so many successive variations over time, except for those related to an increase in victims' confidence to report and the creation of mechanisms to overcome underreporting, which is a good practice in transitional contexts. However, taking into account the possibilities of variation in the universe of victims, it is important that countries in transition that wish to develop reparations programs take seriously the process of estimating this universe. This implies, at the very least, using methodologies that allow for robust estimates based on available information, but also developing information systems that generate more and better information on victimizing events, victims, beneficiaries, and their characterization.

As the Colombian case suggests, it is also important to consider updating these estimates, particularly in those cases in which there are contextual changes that may significantly affect the universe of victims. In order for these updates to be made easier, it is important to ensure the greatest transparency and clarity in the methodologies used in the initial estimation process. These updates should also be accompanied by public debates on the implications of the possible expansion of the universe of victims in terms of the costs of reparations, since this is part of the process of establishing new sources or expanding the participation of existing ones, or of making transparent the time frame in which reparations will be possible.

b. Weaknesses of the Reparation fund: deadlines, types of assets to be delivered, low contributions from perpetrators

The Reparation Fund emerged as an initiative to ensure that reparation could be financed with assets originating from the perpetrators of serious

human rights violations in the context of the armed conflict. The creation of the Fund seemed to be a good idea in Colombia, since it seeks to directly involve the perpetrator of the violation in the reparation. Moreover, it seemed feasible because in Colombia the armed actors in the conflict have profited from illegal economies and therefore it was reasonable to assume that they would have resources to contribute to reparations.

However, the Reparation Fund has experienced several difficulties that have prevented it from fulfilling its purposes. First, there have been no clear deadlines for the delivery of reparation goods. For example, in the case of the paramilitary groups (AUC), the national government did not impose a schedule of dates or delivery of assets, and this has depended on results from asset seizures by the Attorney General's Office (Valencia & Chaverra, 2021). This has contributed to the fact that there is not a good dynamic in the delivery of assets and that the Fund, therefore, has few resources. Secondly, many of the assets delivered during the first phases of the fund did not have a restorative purpose and this generated difficulties for their administration and monetization for reparation purposes. Thus, for example, the Justice and Peace postulates have handed over assets in poor condition whose administration has been more costly than what it can provide for reparations (Valencia & Chaverra, 2021).

Law 1592 of 2012 attempted to overcome these two problems, by providing that the assets delivered must have a purpose to effectively repair the victims. This law clarifies that the following are understood as assets without a reparative purpose: those that cannot be identified and individualized, as well as those whose administration or reorganization would be detrimental to the victims' right to full reparation. However, as indicated above, these two problems persist.

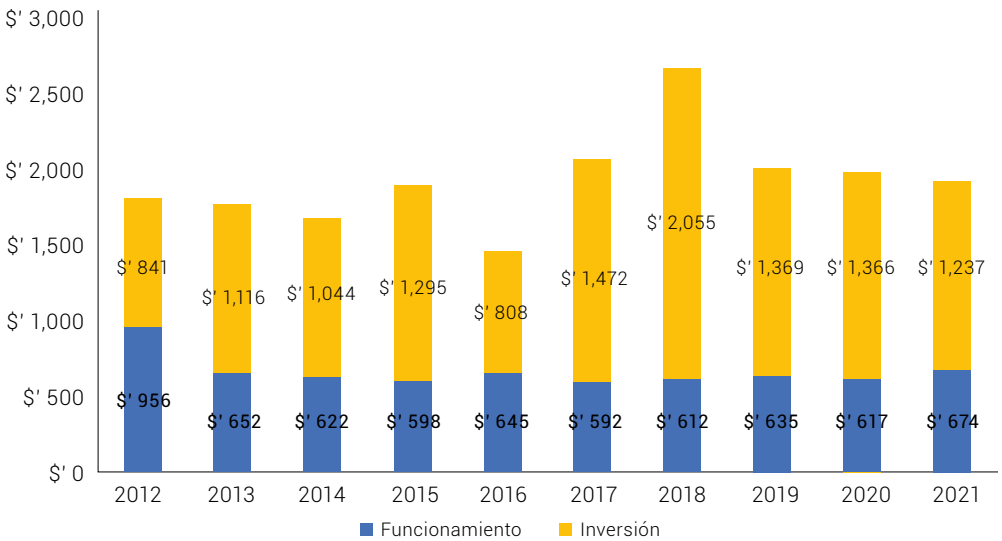
Proof showing the persistence of these problems of the Fund can be found in the delivery of assets of the FARC during the peace process with the national government (2012-2016). This group handed over assets that contribute to reparations, but they also included in their inventory other assets that

do not have a reparative purpose, such as infrastructure works (like rural roads, for example); and others that they did not have in their possession and could not be recovered.[6] The assets handed over by the former FARC after the Peace Agreement, once purged by the Special Assets Society, exceed 247 billion pesos. It has only been possible to monetize around 45 billion pesos. Assets equivalent to some 811 billion pesos have yet to be monetized.[7] This is insufficient to make reparations to the victims and repeats the situation of Justice and Peace, where the Fund did not achieve enough contributions to fund reparations. According to an interviewee who was an official of the Victims Unit, what could be monetized for the reparation of the victims of the paramilitaries was equivalent to what was required to compensate only 50,000 victims; therefore, the main burden of paying reparations falls on the State.

In addition to this are the high operating costs of the Fund, which represent a large percentage of the budget allocated to reparations; in particular, the resources for reparations compete with the operating costs of the Reparations Fund. Initially it was intended as a tool to contribute to satisfying compensation through administrative indemnities, however, its operation ends up monopolizing resources that are not destined to investment programs for reparations.

6 There is not much official information available. However, the following information is reported in the press: Reuters. "Colombia dice que entrega de bienes de FARC deja un pobre balance al culminar plazo" https://www.reuters.com/article/colombia-paz-idESKBN2951P2; El Tiempo. "Bienes de las Farc: Estado solo ha ocupado 8 de los 722 del listado" https://www.eltiempo.com/justicia/investigacion/balance-de-recuperacion-de-bienes-de-las-farc-para-reparar-a-victimas-329346; Revista Semana. ¿Por qué las Farc no han entregado los bienes para reparar a las víctimas? https://www.semana.com/nacion/articulo/por-que-las-farc-no-han-entregado-los-bienes-para-reparar-a-las-victimas/202058/

7 We do not have official information available, however, the following information is available in the media: https://caracol.com.co/2023/07/22/jep-pide-verificar-la-existencia-de-finca-de-salvador-arana-en-la-que-habria-desaparecidos/



Types of reparation expenditures (billions)

Source: Prepared by the authors based on information from the Ministry of Finance.

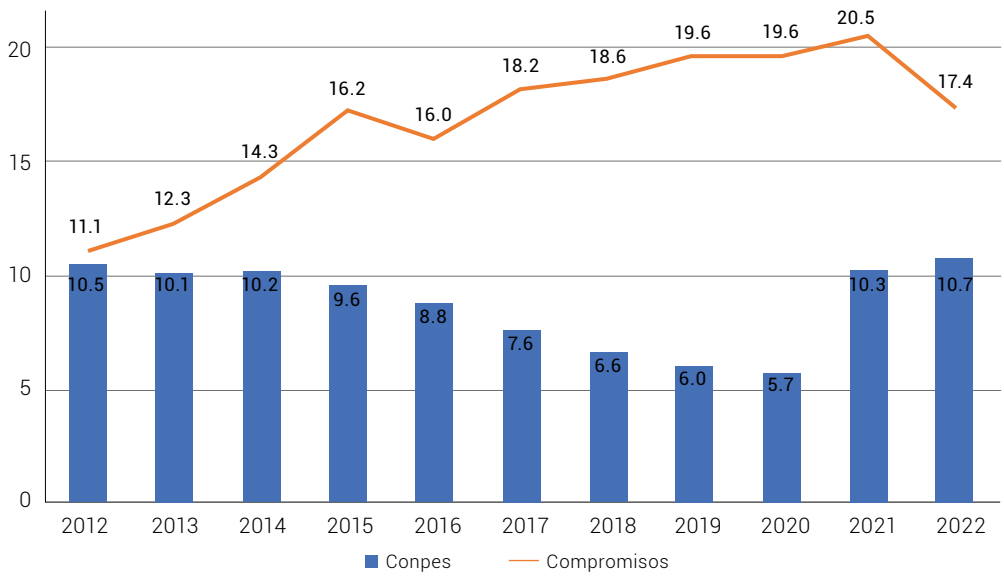
These difficulties of the Fund in fulfilling its purposes have contributed to its near irrelevance in debates about the cost of reparations and to its being questioned by some sectors of the victims' movement and civil society. Indeed, these sectors had high expectations regarding the amount of assets that would be included in these funds. The contrast with the low delivery of assets that has occurred in practice has meant that, for some victims and organizations, this is a sign of the lack of interest of the armed groups in making reparations for the acts committed during the armed conflict. In turn, this generated more distrust in the peace processes and demonstrated the State's lack of capacity to pursue the assets resulting from illegal activities of those who committed human rights violations.

Despite these difficulties of the Fund, a mechanism such as this can be useful in other cases in which the question of how to finance reparations is faced. The Colombian experience is relevant for establishing a design that avoids the mistakes it made in developing the Fund. Thus, funds with these purposes can be established with clear definitions of the assets that have a reparative purpose and that, consequently, can be received and quickly monetized to contribute to reparations. They should also

incorporate a timeframe for delivery and an explicit incentive scheme for the timely delivery of assets. The implementation of the Fund should avoid generating enormous bureaucratic burdens and be accompanied by clarity about the actual scope of the Fund. Nevertheless, even under ideal operating conditions, a fund such as the Colombian one cannot be considered the major source of financing for reparations.

c. Feasibility of reparations

The constant increase in the universe of victims, the difficulties in the way sources of financing have been developed, such as the Fund, the size of the budgetary effort (which far exceeds what was estimated in the planning exercises), and the very characteristics of the transformative reparations with differential approaches that Colombia aspires to deliver contribute to the narrative that reparations for all victims is financially unfeasible. This narrative of the financial unfeasibility of reparations raises the debate as to whether states, even those with scarce resources, can finance and pay reparations for massive human rights violations.



Resources budgeted in the Conpes (3712 and 4031) versus resources committed for the measures by Law 1448 between 2012 and 2022 (billions pesos-2023 prices)

Source: Prepared by the authors of the tenth follow-up report on Law 1448 (2023).

In order to address this debate, it is relevant to start with some conceptual and normative precisions regarding the standard that should guide a reparation program such as the Colombian one. Administrative reparations programs emerged as an alternative to judicial reparations, in order to address massive situations of human rights violations. Judicial reparations are reparations that seek to redress the breadth and depth of the damages suffered through a set of measures that meet the standard of integral reparation. Unlike these, administrative reparations programs are based on a partially different idea of justice. They address the damage, not in a comprehensive manner, but rather seeking a universal response (covering all victims), which allows recognition of the victims and generates solidarity (De Greiff, 2006). To this end, they establish reparation rates by type of victimization, which are the same for all victims, regardless of the damages suffered or the particularities of each case.

The reparations policy in Colombia developed from Law 1448 of 2011 takes the form of administrative reparations. This policy decision arose from the need to cover a broad universe of victims and from the realization that the judicial reparations that were to be granted in the context of the Justice and Peace judicial processes were not progressing. The Law establishes that it will be a comprehensive, transformative and integral reparation (Article 25, Law 1448 of 2011).

This definition of the right of victims in the context of reparation programs in Colombia seems to set a particularly high standard. However, when speaking of comprehensiveness, the Law is committed to ensuring that reparation is not reduced to a tariffed compensation, but is accompanied by a broad set of additional measures such as restitution and satisfaction (Article 25, Law 1448 of 2011). Thus, for example, survivors of sexual violence not only receive compensation but also access to rehabilitation and other possible measures. The standard of transformative reparations, on the other hand, implies that the measures granted by the State should not attempt to return the victim to the previous situation, but rather to transform the conditions of exclusion and discrimination that would have

given rise to the victimization suffered (Uprimny, 2009). This transformative approach requires going beyond the restitutive approach that has traditionally accompanied reparations but, at the same time, recognizes the limitations imposed by a context characterized by the scarcity of resources and, consequently, admits the prioritization of victims according to the severity of their conditions of poverty, exclusion, or discrimination (Uprimny & Guzmán, 2010). Thus, although it seems more demanding, in practice it allows greater balancing according to the material conditions in which reparation must be granted.

Therefore, the standard in Colombia is that of a tariffed administrative reparation accompanied by supplementary measures and with the possibility of prioritization. Being tariffed, it allows amounts that respond to the fiscal realities of the State, as long as they are provided through procedures that ensure the recognition and dignity of the victims and survivors. Therefore, from a theoretical and normative point of view, it is a demanding but achievable standard.

Despite this, after more than ten years of implementation, Colombia would need to significantly increase its level of reparations spending to pay the reparations it has committed to through various norms. The Commission for Follow-up and Monitoring of the Implementation of Law 1448 of 2011 and the Comptroller's Office have indicated that more than $301.4 billion (about $65.3 billion dollars or $60.2 billion euros) is required to attend to and repair the more than 9 million victims of the armed conflict by 2031. This is equivalent, on average, to $7,256 dollars per victim. The Comptroller's Office costing highlights the following resources required for reparation measures: Individual and collective compensation: $74 billion; Housing: $53 billion; Income generation: $15 billion; and returns and relocations: $13 billion. In addition to these values are the resources required by the

territorial entities for this policy and the resources required to comply with land restitution sentences.[8]

The Conpes 4031 of 2021 estimated resources for the entire policy for a value of $142 billion (at 2022 prices it would be $154 billion) until 2031. If we compare this figure with the amount estimated by the Comptroller's Office to pay all victims, there would be a gap of more than $150 billion. Now, with regard to reparations, as an example, for administrative compensation (the most costly measure), the Conpes estimate is $11 billion pesos, while the Comptroller's estimate is $65 billion (at 2021 prices). The allocated amount is clearly insufficient to comply with the State's commitments in relation to the policy of attention and reparation to victims (Comisión de Seguimiento a la Implementación de la Ley 1448, 2021).

It is in this context that Colombia's president, Gustavo Petro, made assertions regarding the impossibility of paying reparations. Although the figures required to ensure reparations to all victims are high, according to the estimates of the Comptroller's Office, and require a fiscal effort on the part of the State that may compete with other central policies for the government and for the State, this does not imply that it is impossible to do so. This is an issue that requires an open and plural public discussion, which also allows us to understand the government's investment priorities. This debate should also take into account the way in which reparations have been financed, explore possible alternative sources, and their subordination to other measures in favor of the victims. The estimates of the Comptroller's Office, for example, are for attending to and repairing victims.

One possible alternative is to make the financing of reparations independent, provide them with specific funds, prioritize them over other measures, and seek ways to expedite them. In the past, there have been attempts to try

8 Official communiqué from the Comptroller's Office, available at: https://www.contraloria.gov.co/es/w/se-requieren-m%C3%A1s-de-301-billones-para-cumplirle-a-las-v%C3%A-Dctimas-a-2031-contralor%C3%ADa

some formulas in this regard; for example, there were institutional discussions in Colombia aimed at streamlining access to the registry, however, no initiative was successful. Hand in hand with this discussion, attempts were made to streamline reparations through, for example, collective reparations programs. Despite this, the purpose was not achieved either, because the way in which it was implemented at the beginning ended up creating collective reparation plans that were impossible to comply with and fiscally unfeasible. There were also attempts to adjust the way in which compensation was awarded, since the family nuclei continued to grow and this also had an impact on the amounts to be awarded and the budget estimates. But there was no change in this sense either, beyond the prioritization of certain population sectors, such as the elderly. Thus, before declaring the impossibility of reparations, there are policy alternatives that should be explored by the state in order to guarantee the right to reparations

Recommendations

The Colombian case allows us to explore the complexities of calculating and financing administrative reparations in the face of massive human rights violations. It demonstrates that financing reparations is possible, even in contexts characterized by scarce resources, but it is a difficult and challenging task. Based on our analysis of the Colombian case, we propose some recommendations that may be relevant for contexts in which reparations are being designed or modified.

1. On the financing of reparations in cases of sexual violence

Countries that undertake the design of reparations programs should:

- Recognize sexual violence as a human rights violation and incorporate it into the list of violations to be repaired. Sexual violence should be part of the reparations costing process, which implies taking into account

those characteristics that have been identified in comparative literature, such as its disproportionate impact on women and the underreporting that usually accompanies it.

- Improve information systems so that it is possible to disaggregate investment in reparations by victimizing event. This is especially important to account for how women victims of sexual violence are positioned in this scenario.

- Make an effort to disaggregate the resources allocated to reparations for sexual violence. This would allow for better monitoring of who the reparations reach and how the financing of this component can be improved. Greater disaggregation contributes to greater transparency in the use of resources for reparations and can help generate better public policy inputs.

2. About costing

- Design administrative reparations programs to include robust and transparent reparation costing exercises from the outset. This implies adopting clear and consistent methodologies that take into consideration the available official and unofficial data and make explicit the criteria used to make methodological decisions in the estimation. This costing exercise should also be linked to the strengthening of available official information through, for example, the creation of information systems.

- Taking into account the barriers to making estimates that are more adjusted to the implementation scenarios, we consider that in order to maintain transparent and useful planning exercises for public policy, periodic costing updates should be made in the different countries that implement administrative reparations, which also take into account the macroeconomic scenarios and the needs for investment in social policy that will also benefit victims. In the Colombian case, such updates should take place periodically over the next 10 years.

3. On financing

- The growing budgetary demands resulting from unforeseen scenarios make it clear that the victim reparation policy requires periodic evaluations and updates. A policy established at a given moment does not necessarily correspond to the challenges that emerge over time. As we have already pointed out, the increase in the universe of victims is the most notorious.

- In Colombia, in order to confront the debate on the financial unfeasibility of providing reparations to the remaining universe of victims, it is necessary to have a plural and diverse debate on the scope of reparations. This debate must recognize the current material conditions of reparation, but also the possibilities offered by its conceptualization. In addition, mechanisms aimed at reviewing, updating and rationalizing existing programs could be established. For example:

  – The Colombian State could review the instruments that regulate the amounts and procedures for awarding indemnities in order to rationalize them. Among the elements to be taken into account, factors such as the definition of the family nuclei, floors and ceilings are suggested, in order to make it more efficient and increase its coverage.

  – In terms of updating the financing policy, the promotion of collective territorial reparations anchored to existing territorial programs, such as the Development Programs with a Territorial Approach, can favor a more efficient approach to spending and be closer to the expectations of communities, thus reducing the effects of the dispersion caused by an individual approach.

  – Considering the importance of keeping the purpose of reparation at the center, we consider it crucial to promote technical discussion on the criteria for establishing when it can be understood that

comprehensive reparation has been achieved within the public policy route, and to adjust the information systems accordingly. This should be done in such a way that those who are beneficiaries of the policy have greater certainty about the moment of entry and exit of the transitional reparation policy and, at the same time, the State can rationalize its efforts and resources to be flexible in its offerings.

- In order to ensure efficiency in spending, states should separate assistance and care measures from reparation measures. As much as possible, the former should be addressed as a route focused on the state's social policy of overcoming poverty, while the latter, once the criteria of the previous recommendation have been defined, should focus on the reparation dimension of the interventions and as a part of the transitional policy of Law 1448.

- For Colombia, it is also important to evaluate the operation of the Reparation Fund in order to assess possible adjustments to reduce its operating costs and implement measures that facilitate the monetization of assets and, as a result, contribute to the payment of compensation.

References

Comisión de Seguimiento y Monitoreo a la implementación de la Ley 1448 de 2011 (2022). *Noveno Informe De Seguimiento Al Congreso De La República 2021- 2022.* https://www.camara.gov.co/sites/default/files/2022-08/Informe%20-%20Victimas.pdf

Comisión de Seguimiento y Monitoreo a la implementación de la Ley 1448 de 2011 (2023). *Décimo Informe De Seguimiento Al Congreso De La República 2021- 2022.* https://www.contraloria.gov.co/documents/20125/2968467/DE%CC%81CIMO+INFORME+DE+LA+COMISIO%CC%81N+DE+SEGUIMIENTO+Y+MONITOREO+A+LA+LEY+DE+VI%CC%81CTIMAS+2023.pdf/04e96fe0-f643-6b76-6b42-2becab5803c8?t=1692884462619

Congreso de la República de Colombia. (2011, 10 de junio). Ley 1448 de 2011, por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones. [Ley]. Recuperado el 29 de marzo de 2023, de https://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/ley-1448-de-2011.pdf

Conpes 3712 de 2011. Plan de Financiación para la Sostenibilidad de la Ley 1448 de 2011. Recuperado de: https://colaboracion.dnp.gov.co/CDT/portalDNP/politica-de-atencion-a-victimas/3712.pdf

Conpes 4031 de 2021. Política Nacional de Atención y Reparación Integral a las Víctimas. Recuperado de: https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/4031.pdf

De Greiff, P. (Ed.). (2006). *The handbook of reparations*. Oxford University Press.

Elementa. (2021). *Reparar para seguir: Retos de la reparación colectiva.* https://elementaddhh.org/wp-content/uploads/2021/06/reparar-para-seguir.pdf

Segovia, A (2006) *Financing Reparations Programs: Reflections from International Experience*, en: de Greiff (Ed) The Handbook of Reparations. New York: Oxford University Press

Special Rapporteur for the promotion of truth, justice, reparation and guarantees of non-repetition (2014) *Report A/69/518*, disponible en: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/564/67/PDF/N1456467.pdf?OpenElement

Uprimny-Yepes R. & Guzmán-Rodríguez D., (2010) *En búsqueda de un concepto transformador y participativo para las reparaciones en contextos transicionales*, 17 International law, revista colombiana de derecho Internacional, 231-286.

Uprimny, R y Saffon, M. (2005). *La ley de "justicia y paz": ¿una garantía de justicia y paz y de no repetición de las atrocidades?* Revista Foro, (55), 49-62.

Uprimny, R y Saffon, M. (2009). *Reparaciones transformadoras, justicia distributiva y profundización democrática.* En: C. Díaz Gómez, N. Sanchez & R. Uprimny

Yepes (Ed.), Reparar en Colombia: los dilemas en contextos de conflicto, pobreza y exclusión (pp. 31-70). ICTJ, Dejusticia, Unión Europea.

Valencia, G. y Chaverra, D. (2011). *Los fondos para la reparación de las víctimas del conflicto armado en Colombia. Estudios Políticos* (Universidad de Antioquia), 61, pp. 9-21. DOI: 10.17533/udea.espo.n61a01

Dejusticia


GLOBAL
SURVIVORS FUND
FOR AND WITH SURVIVORS OF
CONFLICT-RELATED SEXUAL VIOLENCE