

Right to full reparation

23

Implementation of recommendations from the previous period

In 2018, the Philippines recommended “ensuring that victims of the armed conflict, particularly women and Indigenous peoples, have access to justice and that their rights to truth and comprehensive reparations be guaranteed.”

While the right to reparation has been recognized at constitutional and legal levels, as well as in the transitional justice system, there are still serious deficiencies with administrative and judicial redress mechanisms.

Current status

Reparations in Law 1448 of 2011. This law recognizes the right to comprehensive reparations for victims, their families, and society for damages suffered as a result of the armed conflict. (1)

In terms of administrative compensation, according to FGN (2) (2021), the Victims Unit had only made 10.5% of the total payments, ten years after the law came into force. If payments continue at this rate, it would take the UARIV 62 years to provide compensation to the current number of registered victims. In relation to land restitution, 5,609 orders issued by land restitution judges have not been complied with and no further progress has been made with the titling and granting of land to victims.

The President of the Republic (2023) stated that there are insufficient funds to provide reparations to victims nor to achieve the objectives of the Final Peace Agreement (AFP). (3)

The expiration of direct reparation actions. On January 29, 2020, the Third Section of the Council of State issued a Unification Ruling regarding the expiration of direct reparation actions for the judicial compensation of victims in cases where the State is liable. (4)

The Council declared that the action must be filed within a non-extendable term of two years counted from: i) the occurrence of the harmful event; ii) the moment in which the interested party had knowledge of the event; or, iii) the moment in which the party became aware or had the possibility of knowing that the State participated in said event and that the damage was imputable. This interpretation is being applied in a generalized manner, even for direct reparation actions filed before January 2020.

This judicial interpretation is considered regressive, considering that the Council of State itself had previously declared that the two-year term began on the date of a decision regarding the responsibility of state agents, generating a legitimate expectation for victims. (5) Both the norm and its interpretation contradict international human rights standards that establish the imprescriptibility of crimes against humanity.

This standard is applicable to judicial mechanisms involving access to the right to reparation. In addition, these cases face excessive delays in Colombia, with no measures in place to speed up the process.

(1) In order to meet this obligation, the law included provisions to establish the National System for Attention and Reparation to Victims (SNARIV), which consists of a number of public entities including: the Land Restitution Unit; the Unit for the Attention and Comprehensive Reparation of Victims; and the National Center for Historical Memory. These entities are responsible for carrying out actions that involve administrative compensation, land restitution, symbolic reparations, and measures aimed at the construction of historical memory and a peace culture.

(2) Office of the Attorney General of the Nation.

(3) See: Petro afirma que no hay dinero para Acuerdo de Paz ni para indemnizar a víctimas del conflicto (Petro affirms that there is no money for the Peace Agreement or to compensate victims of the conflict) | EL ESPECTADOR

(4) Article 164, paragraph i) of Law 1437 of 2011.

(5) I/A Court H.R., Case of Órdenes Guerra et al. v. Chile. Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs. Judgment issued on November 29, 2018.

The Comprehensive System of Truth, Justice, Reparation, and Non-Repetition. The JEP's (6) mandate includes the power to order restorative but not compensatory measures. In cases before the SRVR (7) where participants have acknowledged responsibility and contributed to the truth, the Chamber may present a draft resolution of conclusions with the imposition of its own sanctions (measures that include a restorative approach).

In 2022, three decisions of this type were issued. Despite a consultation process with victims, there was no evidence of their willingness to participate in these decisions. Furthermore, there are still doubts about the reparative approach included in the measures that are ordered, their reparative potential, and the role of participants in these processes. (8) The Executive Secretariat of the JEP can determine whether proposals for Projects, Public Works, or Activities with Reparatory Content (TOAR) initiative that are presented by participants comply with the relevant requirements. There are no possibilities for victim participation in this space, nor are they allowed to provide their opinions about the actions' relevance. A positive action carried out by the JEP has been the inclusion of the victims from Case 003 in the Single Registry of Victims (RUV) so that they can access comprehensive reparation measures, including administrative compensation. This should be extended to all macro-cases.

(6) Special Jurisdiction for Peace.

(7) Chamber of Acknowledgment of Truth, Responsibility, and Determination of Facts and Conduct.

(8) SRVR. Resolution of Conclusions 01, in the framework of Case 03 "Murders and forced disappearances of persons illegitimately presented as combat casualties by State agents"; Norte de Santander Sub-case; Resolution of Conclusions 02, in the framework of Case 01 "Taking of hostages, serious deprivations of liberty, and other concurrent crimes committed by the FARC-EP" and, Resolution of Conclusions 03, in the framework of Case 03 "Murders and forced disappearances of persons illegitimately presented as combat casualties by State agents"; Caribbean Coast Sub-case.

International human rights protection organizations (IAHRS- UN). Although the Colombian State has demonstrated its formal willingness to comply with the reparations ordered by the IAHRS and the UN Human Rights Committee, evidenced by establishing mechanisms such as the Ministry of Foreign Affairs' Monitoring Group for the Orders and Recommendations of International Human Rights Bodies, it has either not complied with international decisions or has complied with them in a delayed, disjointed, and incomplete manner.

The bill titled "Application in domestic law of judgments, rulings, and other decisions of international courts and competent multilateral bodies on human rights and international humanitarian law", recently filed by the Ministry of Foreign Affairs and the Ministry of Justice, seeks to respond to this situation. However, this bill does not solve the problems described above, as it merely reminds institutions of their obligation to comply with international decisions in accordance with the State's acceptance of the jurisdiction and competence of the international organizations that issue them.

Recommendations

1. Modify Article 164, paragraph i) of Law 1437 of 2011 so that the statute of limitations does not apply to cases involving serious human rights violations and crimes against humanity.
2. Adjust measures ordered by the JEP in decisions that incorporate a restorative approach so that there is a close relationship between the events that occurred and the measures intended to redress the damages.
3. Adopt a participatory approach for cases involving the recognition or realization of Projects, Public Works, or Activities with Reparatory Content (TOAR) so that they are in accordance with victims' expectations and respect their rights.
4. In relation to administrative compensation, as established in Law 1448 of 2011, make a budget allocation in accordance with the universe of victims who have not yet received compensation and strengthen the national government's proposal to use assets seized from the mafia that are administered by the Special Assets Society (SAE) in order to address the budgetary deficit related to fulfilling victims' rights.
5. Establish a protocol to coordinate the implementation of international decisions, led by a high-level authority with the capacity to convene and execute a budget, engage in dialogue and coordination actions with victims and their representatives, and convene other control and follow-up authorities (such as FGN, Ombuds Office) and territorial entities that may be affected, to achieve an effective compliance of international decisions.