

SOCIO-LEGAL CONCEPTUAL ANALYSIS OF THE REPARATION OF VICTIMS OF THE ARMED CONFLICT, AS SEEN FROM THE PEACE AGREEMENT WITH THE FARC EP



Julián Camilo Forero Agudelo
Catholic University of Colombia
<https://orcid.org/0000-0001-9261-4920>
jcforero49@ucatolica.edu.co

DOI: 10.37594/cathedra.n16.550

Reception date: 08/09/2021

Revision date: 24/09/2021

Acceptance date: 21/10/2021

ABSTRACT

The purpose of this article is to identify the paradigm of socio-legal conceptual interpretation of the reparation of victims of the armed conflict, seen from the peace agreement with the FARC EP, for this the reader will find three moments, first on the paradigms of socio-legal conceptual interpretation of the reparation of victims of the armed conflict in light of the peace agreement with the FARC EP, then the processes of creation of a paradigm and finally a paradigm of interpretation will be formulated, where it is intended to generate a new conceptual dynamic, to which the qualitative method will be applied, with a conceptual approach, inductively (Cerdeña Gutierrez, p. 45-60).

Keywords: Victims, Armed Conflict, Paradigm, Public Policy.

* Chapter that exposes research results of the project entitled: “Contemporary Challenges for the Protection of Human Rights in Post-Conflict Scenarios: Phase II” which is part of the research line: Foundation and Implementation of Human Rights, of the research group “Person, Institutions and Demands of Justice”, recognized and categorized as Type A1 by MINCIENCIAS and registered with the code COL 0120899, linked to the Socio-legal Research Center (CISJUC), attached and financed by the Faculty of Law of the Catholic University of Colombia. 1 Lawyer from the Cooperative University of Colombia, Arauca campus; Master in Administrative Law from the Universidad Simón Bolívar; Conciliator in law; specialization in Government, Management and Development, and PhD student in Law at the Catholic University of Colombia. Currently Co-researcher in the group “Person, Institutions and Demands of Justice”, registered with the code COL 0120899 in MINCIENCIAS, linked to the Center for Socio-legal Research (CISJUC) of the Faculty of Law of the Catholic University of Colombia (Bogotá). Advisor to the Congress of the Republic of Colombia.

Methodology: the methodology used in this article is documentary, with a hermeneutic approach, carrying out a systematic analysis of the information, especially legislation, doctrine and jurisprudence, in which the reader is offered a study tool.

I. PARADIGMS OF SOCIO-LEGAL CONCEPTUAL INTERPRETATION OF THE REPARATION OF VICTIMS OF THE ARMED CONFLICT

This chapter aims to describe the different paradigms of socio-legal conceptual interpretation of the reparation of victims of the armed conflict in the light of the peace agreement with the FARC EP, to accomplish the above it is necessary to be clear that a paradigm arises from an objective communication in a community, to which its reiteration is transformed into a truth and in turn into a paradigm (Kunh, pp. Well, it is necessary to review what is set forth in the peace agreement and the national and international norms, which have served in a general way for the interpretation of the concept of reparation.

In the same sense, it is necessary to make a clarity, in the Colombian State, there have been moments of peace agreements, on which they have tried to generate spaces for the search for peace and with this the reparation of the victims, in that order of ideas the antecedents of the legislation are found in the Laws 387 of 1997, 782 of 2002, as well as in the same Law 975 of 2005 called Law of Justice and Peace, in which a conception of victim is given and some provisions for their attention are established (Republic of Colombia, 2020).

Law 1448 of 2011 with the name of Law of Victims and Land Restitution, was approved by President Santos and in Article 3 is located the definition of victim: “Victims are considered victims, for the purposes of this law, those persons who individually or collectively have suffered damage from events that occurred after January 1, 1985, as a result of violations of international humanitarian law or serious and gross violations of international human rights law, occurred on the occasion of the internal armed conflict.

With the aforementioned, it will be observed what was contemplated in the normative development, prior to the peace agreement with the FARC-EP, now, regarding the issue of reparation, where it is observed, in point 5 of the PEACE agreement, regarding the Agreement on the Victims of the Conflict and seeks to generate the “*Integral System of Truth, Justice, Reparation and Non-Repetition*”, including the Special Jurisdiction for Peace; and Commitment on Human Rights, to compensate the victims is at the center of the Agreement between the National Government and the FARC-EP.

The National Government, together with the Havana talks table, conceives it in such a way: In this sense, at the Havana Talks Table, we have discussed and reached agreements on item 5 of the “*Victims*” Agenda, which includes the sub-items: 1: Human rights of the victims and 2. Truth, trying to give contents that satisfy the claims of those who have been affected by the long confrontation regarding whose political solution today, through these new consensus and important measures and de-escalation agreements, we have taken a fundamental step forward for the construction of stable and lasting peace and the end of a war of more than half a century that has bled the country dry.

The National Government and the FARC-EP, considering the comprehensiveness that should characterize the development of the items included in the item Victims, began our analysis of the item by assuming the “Declaration of Principles” of June 7, 2014. These principles were taken into account throughout the work for the development of Item 5 – Victims, and should radiate its implementation: • The recognition of victims: It is necessary to recognize all victims of the conflict, not only in their condition as victims, but also and primarily, in their condition as citizens with rights. • Recognition of responsibility: Any discussion of this point must start from the recognition of responsibility towards the victims of the conflict. We will not exchange impunity. • Satisfaction of the rights of the victims: The rights of the victims of the conflict are not negotiable; it is a matter of agreeing on how they should be satisfied in the best way within the framework of the end of the conflict. • Victims’ participation: The discussion on the satisfaction of the rights of the victims of serious human rights violations and breaches of International Humanitarian Law during the conflict necessarily requires the participation of the victims, by different means and at different times.

• Clarifying the truth: Clarifying what happened throughout the conflict, including its multiple causes, origins and effects, is a fundamental part of satisfying the rights of the victims and of society in general. Rebuilding trust depends on full clarification and recognition of the truth. • Victims’ reparation: Victims have the right to be compensated for the damages they suffered as a result of the conflict. Restoring the rights of victims and transforming their living conditions in the framework of the end of the conflict is a fundamental part of building stable and lasting peace.

• Guarantees of protection and security: Protecting the life and personal integrity of the victims is the first step towards the satisfaction of their other rights. • Guarantees of non-repetition: The end of the conflict and the implementation of the reforms arising from the Final Agreement, constitute the main guarantee of non-repetition and the way

to ensure that new generations of victims do not arise. The measures adopted in point 5 as well as in the other points of the Agenda must aim at guaranteeing non-repetition so that no Colombian is again placed in the condition of victim or at risk of being a victim.

- Principle of reconciliation: One of the objectives of satisfying the rights of victims is the reconciliation of all Colombian citizens in order to move towards civility and coexistence.
- Focus on rights: All agreements reached on the points of the Agenda and in particular on Point 5 “Victims” must contribute to the protection and guarantee of the effective enjoyment of the rights of all. Human rights are inherent to all human beings equally, which means that they belong to them by the fact of being human beings, and consequently their recognition is not a concession, they are universal, indivisible and interdependent and must be considered globally and in a fair and equitable manner. Consequently, the State has the duty to promote and protect all rights and fundamental freedoms, and all citizens have the duty not to violate the human rights of their fellow citizens. In accordance with the principles of universality, equality and progressiveness, and for the purposes of compensation, the violations of economic, social and cultural rights caused by the conflict shall be taken into account.

In accordance with the initial idea of this chapter regarding a paradigm, it can be evidenced that the creation of the reparation model is abstract since it is not expressly conceived in the peace agreement, which was subsequently generated by Law 1922 and Law 1957 in its Article 7, which refers to the comprehensive reparation of the victims. And it states that: *Comprehensively repairing the victims is at the center of the “Final Agreement for the termination of the conflict and the establishment of a stable and lasting peace”* of November 24, 2016, signed by the National Government and the rebel organization Revolutionary Armed Forces of Colombia, People’s Army (FARC-EP), so that in compliance with the Final Agreement, the operation and competencies of the Special Jurisdiction for Peace are regulated (Republic of Colombia , 2019).

However, this is not clear enough to know the route and measures to carry out such reparation at the National level, since it is necessary to refer to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law of resolution 60/147 adopted by the General Assembly on December 16, 2005 of the UN (United Nations Organization) where it determines the moments of the comprehensive reparation of a victim:

In the first place, restitution, as the first measure proposed with respect to the victims, seeks to reestablish the order that existed prior to the act that generated the violation, such restitution,

depending on the specific case, includes the restoration of freedom, the enjoyment of human rights, identity, family life and citizenship, the return to their place of residence, reintegration in their employment and the return of their property, this measure being understood in the words of Juana Acosta López and Diana Bravo Rubio (2008) as follows

Those aimed primarily at returning the person whose rights were violated to the situation in which he or she was before the violation, whenever possible, or to reduce the effects of the violation.

Indemnification seek the reparation of the victims, compensating economically for the material damages and in its great majority also for the so-called non-material damages.

Rehabilitation seeks to facilitate the integration of the victims and their relatives back into society through free and effective medical and psychological care, as well as in some cases including the provision of legal and social services to the aggrieved persons.

Measures of satisfaction which provide reparation for those who cannot be quantified and in which the fixing of a pecuniary sanction is not sufficient, according to Vera Pineros (2008) this type of measures essentially refers to:

To the individual moral restoration of the victims and can be seen as a set of direct favorable attitudes on the part of the perpetrators, the State and its officials, especially those of “*high politics*”, due to their level of representativeness and the considerable impact of their assertions on public opinion.

The following are some of the measures of satisfaction to which the victims are entitled in accordance with Principle No. 22 of the aforementioned resolution:

- The verification of the facts and the public and full disclosure of the truth, to the extent that such measure does not bring further harm to the victim and his or her relatives.
- The search for the missing persons, the identities of the kidnapped children and the corpses of the murdered persons, and assistance in recovering, identifying and reburying them according to the explicit or presumed wishes of the victim;
- A public apology that includes acknowledgement of the facts and acceptance of responsibilities.
- The application of judicial or administrative sanctions to those responsible for the violations

- The strengthening of the independence of the judiciary;
- The review and reform of laws that contribute to or permit gross violations of international human rights law and serious violations of humanitarian law.

Guarantees of non-repetition (2008) the expression “*non-repetition*” oriented to the restorative and individual concept encompasses personal commitment of the violators of human rights norms, not to continue with unjust and unlawful actions, and in its public political-moral aspect, it refers to the commitment or social commitment of the State for the “purification” of its structures and officials, as well as the social rejection of what happened.

These are the various concepts that should be chosen at the time of making a concept of reparation, the most appropriate for the case is in accordance with what is referred to in the UN.

II. THE PROCESSES OF CREATION OF A PARADIGM VERSUS THE CURRENT PROCESSES OF REPARATION FOR VICTIMS OF THE ARMED CONFLICT

The purpose of this chapter is to analyze the processes of creation of a paradigm versus the current processes of reparation of victims of the armed conflict. These transformations of the paradigms of physical optics are scientific revolutions and the successive transition from one paradigm to another by means of a revolution is the usual pattern of development of a mature science. However, it is not the characteristic pattern of the previous period, and for this case we must observe the periods through which the attempts of peace agreements and the implementation of the victim reparation model have been carried out. (Kuhn, 1962)

However, the creation of a paradigm has other consequences. When an individual scientist can take a paradigm for granted, he no longer needs, in his major works, to try to completely reconstruct his field, from its principles, and justify the use of each concept presented. This can be left to the textbook writer. With a textbook, however, the creative researcher can begin his research where the textbook leaves off and thus concentrate exclusively on the more subtle and esoteric aspects of the natural phenomena of interest to his group. And in doing so, his research communications will begin to change in ways whose evolution has been little studied, but whose modern end products are evident to all and overwhelming to many (1962).

In this case, it would be very risky to generate a new paradigm of the scheme or mold that was tried for the reparation of victims in Colombia, however, considering this and the object of the document, it is intended to create a new paradigm on the subject of the reference.

III. PARADIGM OF SOCIO-LEGAL CONCEPTUAL INTERPRETATION OF THE REPARATION OF VICTIMS FROM THE PEACE AGREEMENT WITH THE FARC EP

The purpose of this chapter is to formulate a possible paradigm of socio-legal conceptual interpretation of the reparation of victims since the peace agreement with the FARC-EP. I understand that the question has arisen as to what is the paradigm of socio-legal conceptual interpretation of the reparation of victims of the armed conflict?

The above in the understanding that the peace agreement with the FARC EP is not entirely clear regarding the reparation measures to which it has been necessary to refer to the doctrine as in the case of Maria Teresa Uribe De Hincapie, among others, and the UN Resolution No. 60 of 2005, as well as the norms that have been generated from the various interpretations to which it is necessary to create unification of the interpretation criteria to make reparation for the victims.

In this order of ideas, it is necessary to carry out in an efficient, practical and concrete way a pedagogy not only to officials but to the population in general in order to unify the criteria of reparation of victims in accordance with the constitution and the law, for this it is necessary to generate a public policy for the establishment of a measure of reparation of the victims.

In order to understand what public policies are, it is necessary to differentiate two concepts that in our language have no translation: Politics (politics) and policies (policies). The first is understood as power relations, electoral processes, confrontations between social organizations and the government. The second has more to do with the actions, decisions and omissions on the part of the different actors involved in public affairs (Aguilar Astorga and Lima Facio, p. 2), therefore, public policies are carried out by the State in order to improve social conditions. In the same sense, public policies must allow and be directed towards the generation of real and material conditions for the fulfillment of the State's obligations and therefore the improvement of the quality of life of all people (Bogota Mayor's Office, n.d., p. 2).

In view of the above, the reparation model should be understood as that measure through which the Colombian state guarantees the protection and reparation of the legal assets of Colombians or non-victims of the armed conflict, where the life, honor, and integral projection of the rights of the victims of the armed conflict are respected, This is so that the reparation is not only seen as an economic figure but also as a recovery of the social fabric, in harmony with international norms and without transgressions of the treaties or conventions to which we are parties, thus avoiding condemnations of the Colombian state by the Inter-American Court of Human Rights or retaliation

by the Inter-American System of Human Rights, or individual responsibility by the International Criminal Court.

Since the starting point of this model is the Political Constitution of Colombia, although it is true, the 1991 Constitution in its Article 90 mentions that the State shall be liable for the antijuridical damages that are attributable to it, caused by the action or omission of the public authorities. In the event that the State is condemned to the patrimonial reparation of one of such damages, which has been a consequence of the fraudulent or seriously negligent conduct of one of its agents, the State must repeat against the latter, (1991) it is thus the State who must guarantee the adequate mechanisms for the protection of the persons who live within the State.

Once the subject has been identified by whom its protection and reparation must be generated, the model of integral reparation will always be in the hands of the State, but its components cannot ignore the international system, it is necessary that there be a range of compositions on the same, however, a route of access to the citizen must be generated, which will be called public policy, where the sense of reparation of the victims of the armed conflict is collected and determined.

Now then, the model of integral reparation identified by the author oscillates from the constitutional starting point mentioned above to the regulations that the Congress has generated through Law 1922 and 1957, together with the resolution of the 060 and 64 of 2005 UN, especially when there is a basic measure of reparation, which is estimated as follows:

Restitution	<ul style="list-style-type: none"> • Restoration of liberty, identity, family life and citizenship • Return to their place of residence • Return of material goods, real estate, property
Indemnification	<ul style="list-style-type: none"> • Material Damages • Immaterial, social damages
Rehabilitation	<ul style="list-style-type: none"> • Medical and psychological care • Social and legal counseling • Talks of recovery of the social fabric (acceptance of the facts without revictimization).

Satisfaction Measures	<ul style="list-style-type: none">• Moral Satisfaction.• Judicial Satisfaction (review of proceedings).• Satisfaction in memory or atonement of the victims.• Creation of social support centers for victims.
Non-repetition guarantees	<ul style="list-style-type: none">• It refers to the measures aimed at guaranteeing the restructuring and purging of state structures in order to guarantee the observance and permanent respect for human rights and international humanitarian law.
Resocialization	Measures to seek education and vocation free investment support for victims of the conflict.

Structure generated by the author of the document, supported by the history of victim reparations.

Thus, the above is the model that is intended to be generated for the measure of reparation of the victims of the armed conflict, seen from the peace agreement with the FARC EP, although it is true that every model has shortcomings, however, the paradigm exposed intends to generate a comprehensive reparation and for this it must be generated through the implementation of a public policy that concerns the entire community.

REFERENCIAS BIBLIOGRÁFICAS

- Acosta López, J. I., & Bravo Rubio, D. (2008). El cumplimiento de los fines de reparación integral de las medidas ordenadas por la Corte Interamericana de. *Revista Colombiana de Derecho Internacional*, 323-362. doi:<http://www.redalyc.org/articulo.oa?id=82420293010>>
- Aguilar Astorga y Lima Facio. (Septiembre de 2009). ¿Qué son y para qué sirven las Políticas Públicas? Obtenido de en *Contribuciones a las Ciencias Sociales*: www.eumed.net/rev/cccss/05/aalf.htm
- Alcaldía Bogotá. (s.f.). Obtenido de http://www.alcaldiabogota.gov.co/sisjur/adminverblobawa?tabla=T_NORMA_ARC_HIVO&p_NORMFIL_ID=1812&f_NORMFIL_FILE=X&inputfileext=NORMFIL_FILENAME.
- Cerda Gutierrez, H. (1993). *Elementos de las Investigacion*. Bogotá, D.C.: E.D. El Bicho.
- Kuhn, T. S. (1962). *La Estructura de las Revoluciones Científicas*. México: Fondo de Cultura Económica. Obtenido de <https://materiainvestigacion.files.wordpress.com/2016/05/kuhn1971.pdf>
- Organización de las Naciones Unidas . (16 de Diciembre de 2005). Oficina del alto comisionado . Obtenido de Principios y directrices básicos sobre el derecho de las víctimas de violaciones manifiestas: <https://www.ohchr.org/SP/ProfessionalInterest/Pages/RemedyAndReparation.aspx>
- República de Colombia . (2019). ley 1957 de 2019. Obtenido de Estatutaria de la Administración de Justicia en la Jurisdicción Especial para la Paz: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=94590>
- República de Colombia. (1991). Constitución Política de Colombia. Obtenido de Consulta de la Norma : http://www.secretariasenado.gov.co/senado/basedoc/constitucion_politica_1991_pr_002.html#90
- República de Colombia. (03 de 02 de 2020). Consulta de la norma. Obtenido de <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=6677>

- Vera Piñeros , D. (Jul/Dic de 2008). Desarrollo internacional de un concepto de reparación a las víctimas de violaciones a los derechos humanos e infracciones al derecho internacional humanitario: complementos a la perspectiva de la ONU*. Papele Político , 739 - 773. Obtenido de <http://www.scielo.org.co/pdf/papel/v13n2/v13n2a11.pdf>