

Article

# The Challenges of Implementing Special Sanctions (*Sanciones Propias*) in Colombia and Providing Retribution, Reparation, Participation and Reincorporation

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## Abstract

The 2016 Final Peace Agreement between the Colombian State and the Revolutionary Armed Forces of Colombia-People's Army (FARC) envisages an innovative approach to victims' reparations from perpetrators including NSAG through special sanctions (*sanciones propias*). They are forms of lenient punishment consisting of effective restrictions of liberty to carry out works or activities, such as developing infrastructure, conditioned on the satisfaction of the rights of the victims, particularly reparation. This retributive and reparatory dimension of special sanctions is also linked to reincorporation of ex-combatants. While ambitious and creative, this approach is not immune from normative and practical implementation challenges that could jeopardize its effectiveness and potential. This article critically delves into eight challenges exploring key issues that are of theoretical and practical relevance for Colombia but also for the Transitional Justice field. It sheds light on potential solutions to these challenges but also notes how an incredibly complex system, like the Colombian one, faces major implementation challenges, something that other transitional justice experiences worldwide should learn as feasibility, without sacrificing victims' rights, should be a key guiding principle of transitional justice efforts.

**Keywords:** Colombia; punishment; reincorporation; reparation; transitional justice

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## 1. Introduction

Colombia has established an ambitious transitional justice process as a result of the Final Peace Agreement (FPA)<sup>1</sup> reached by the Colombian Government and the *Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo* (FARC-EP) (Crisis Group 2013; Casij Peña 2018; Piccone 2019). In a global first, the parties of the conflict agreed to the establishment of a Comprehensive System for Truth, Justice, Reparations and Non-Recurrence (the System) in which all mechanisms are meant to coexist, incentivize, and complement each other (De Greiff 2012a: paras. 22–7; Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army- FARC-EP 2016: 132–203).

The System is significant for the transitional justice field in light of its approach to punishment, reparations, and participation. First, Colombia’s Comprehensive System operates under the assumption that a less retributive approach to punishment is possible if a comprehensive conditionality regime is in place, where perpetrators obtain a punitive benefit in exchange for their contribution to the fulfilment of victims’ rights to truth, justice, reparation, and non-recurrence. If the System fulfils these rights, it will be a major breakthrough in the field of transitional justice (TJ), and may shift the discussions on punishment from strong retributive sanctions to restorative ones. The System’s potential success may therefore open a door for considering alternatives to imprisonment as part of TJ processes. Conversely, if Colombia fails to deliver on the System’s promises, it may reinforce the call for retributive measures still prevalent within TJ and human rights advocates, and particularly strong in the Americas.

Second, Colombia’s domestic reparation programme (the Victims and Land Restitution Law, Ley 1448/2011) is the most ambitious and comprehensive reparation programme worldwide (Sandoval, 2020; Sikkink et al. 2015). The FPA has enhanced opportunities for redress within this programme by creating a link between punishment and reparation. This could be a breakthrough for TJ processes if it shows that it is possible to get other actors, such as members of armed groups, to provide reparation and maximize access to reparation by using different TJ measures (Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army- FARC-EP 2016: 179), despite the challenges to provide reparation in conflict situations (De Greiff 2014: para. 6). The weaknesses and shortcomings of administrative reparation programmes could be counteracted through reparation contributions by non-state armed groups and operationalized through innovative sanctions.

Third, Colombia’s System is built on the idea that victims are at the centre of the TJ process and therefore that their voices need to be heard, but also on the idea that any transition requires reconciliation and restorative justice. The System is set up to provide diverse spaces for participation and reconciliation for victims and perpetrators, all of which should generate truth, reparation, non-recurrence, and the reincorporation of former combatants. From this perspective, Colombia’s System is a testing ground to understand the limits and possibilities of victim participation and of restorative justice, which are key demands of TJ today (Greedy and Robins 2020; Evrard et al. 2021; De Greiff 2012a: para. 68; Andrieu et al 2015: 10).

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1 The version of the FPA used in this article is the English official version of the agreement.

This article looks at these key TJ issues by analysing the promise of special sanctions (*sanciones propias*),<sup>2</sup> a key punitive feature of Colombia's attempt to fulfil victims' rights. Special sanctions, to be applied by the Special Jurisdiction for Peace (SJP), are an alternative form of punishment to imprisonment for those found to be the most responsible, as well as a form of reparation for victims. Special sanctions involve an effective restriction of liberties and rights of perpetrators, provide reparation to victims through activities and work that perpetrators must perform (which also help their own reincorporation process), and are the result of a participatory process between the SJP, victims, and perpetrators.

This article prompts discussion about these key TJ challenges. It generates reflection of what is at stake in the effective delivery of special sanctions, and the potential problems that need to be overcome for this System to genuinely make a major contribution to the satisfaction of victims' rights and to the field of TJ. Colombia's System could transform the TJ field not only in theory but also in practice. However, the approach is incredibly ambitious and faces major challenges in its implementation.

Despite the importance of special sanctions, not much has been written to date on the subject (Cooke 2017; Sedacca 2019; Carrillo-Santarelli 2020; Roccatello and Rojas 2020) and the SJP will have to decide on their implementation in the coming months. The literature so far has focused on the normative question of whether special sanctions pass the legality test under international law (Martínez Vargas 2020) or on comparative examples of similar sanctions worldwide (Moffett et al 2019). This article makes a significant contribution to the literature and practice by providing a real time reflection of the challenges in balancing retribution-reparation-participation-reincorporation in the special sanctions, not just by engaging with theory but also with the actual practice and implementation of these measures.<sup>3</sup> These challenges need attention from TJ scholars and practitioners if the field is to deliver on its intended aims. To demonstrate the complexities of the issue, the article focuses particularly on reparation, although it is recognized that reincorporation, participation and retribution are also important dimensions of special sanctions.

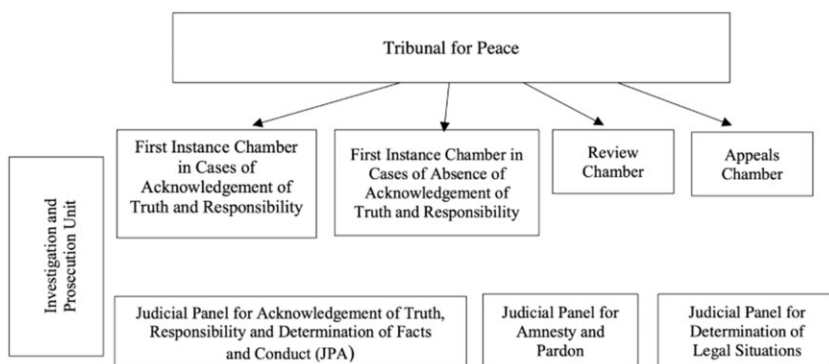
This article is the result of desk-based research, analysis of secondary sources, and thirty semi-structured interviews with relevant stakeholders conducted between September 2020 and January 2021.<sup>4</sup> Individuals interviewed included officials from within the SJP and other State institutions, victims, legal representatives of the FARC-EP and members of the military forces appearing before the SJP, and civil society organizations working on these issues and the macro-cases currently under the jurisdiction of the SJP. To ensure informants' safety and confidentiality, interviews have been anonymized through an alphanumeric code. Interviews were codified using NVivo and analysed considering the project's research

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2 The expression in Spanish is '*sanciones propias*' but there is no equivalent meaningful translation to English. A *sanción propia* means that they are forms of punishment that belong to the SJP. This article refers to them as 'special sanctions' following the English translation of the FPA.

3 This research is the result of three research grants: 'Legitimacy, accountability, victims' participation and reparation in transitional justice settings—lessons from and for Colombia', funded by the Arts and Humanities Research Council (AHRC), Reparations, Responsibility and Victimhood in Transitional Societies (AHRC) and Can Transitional Justice (TJ) be a Vehicle for Development in Post-Conflict Situations?, funded by the Global Challenge Research Fund (GCRF).

4 This article is written primarily using these interviews, but interviews carried out as part of other research projects where the authors are involved have also been used when relevant. This explains the use of different codings.



**Figure 1.** SJP structure.

Source: Graph designed by authors.

questions, which aimed at identifying the challenges faced by the special sanctions regardless of the nature of the perpetrator. However, since this Special Issue focuses on reparations from non-state actors, the article puts emphasis on special sanctions and former FARC-EP combatants.

The article begins by analysing the approach to retribution and reparation under the FPA (section 2), focusing on special sanctions and their retribution, reparation, participation and reincorporation approaches. The article then identifies seven key challenges that arise in fulfilling the goals set by the special sanctions' regime. Some of the challenges are normative, such as whether special sanctions pass the legality test under international law. Others are practical, such as how these retributive measures may be linked to development projects or collective reparations, how to ensure victims participation, or to what extent and how to link them to actual harms (section 3). Some suggestions as to how to overcome these challenges are put forward in this section. The last section concludes by taking stock of the analysis and showing that while special sanctions have a great potential to fulfil retribution-reparation-participation-reincorporation, major obstacles need to be overcome to turn that potential into effective contributions to reparation, peace building, and TJ (section 4).

## 2. The Final Peace Agreement and its approach to punishment and reparations

The SJP is a very complex institution created by the FPA. At its core, it has three judicial panels and a Tribunal for Peace with four chambers (see [Figure 1](#)). Additionally, there is the Investigation and Prosecution Unit, which acts as a special prosecutor for cases in which perpetrators opt to be considered as in the ordinary criminal justice system instead of contributing voluntarily to the transitional process.

The Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts (JPA)<sup>5</sup> is the first point of call for those most responsible for the most

5 The main function of this panel is to prioritize macro-cases for investigation and, within them, receive contributions to truth and acknowledgement of responsibility by those who might bear the greatest responsibility for the most serious violations of human rights.

serious crimes. In this panel they can voluntarily declare all they know about the conflict and the crimes under investigation and acknowledge their role in those crimes. If they do not recognize responsibility, or do so only partially, other chambers of the SJP gain jurisdiction and the nature of the sanction changes (see [Table 1](#)).

The FPA lays out that ‘the comprehensive system places special emphasis on restorative and reparative measures and seeks to achieve justice not only through retributive sanctions’ ([Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army-FARC-EP 2016](#): 136). Thus, if those most responsible provide the full truth and acknowledge responsibility at an early stage before the JPA, they will receive a special sanction resulting from a dialogical and restorative process that enables the perpetrator to provide reparations and guarantees of non-recurrence. The ‘dialogical process’ means that other actors such as victims can contribute to establish the facts and dispute what perpetrators declare (L1922 Art. 1).

If the perpetrator provides truth and recognition of responsibility before the First Instance Chamber of the Tribunal for Peace, the latter decides the case ([Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army- FARC-EP 2016](#): 172). Given that this is at a later stage than the process before the JPA, the perpetrator could receive an *alternative sanction* of imprisonment of five to eight years, a primarily retributive sanction.<sup>6</sup> If the perpetrator does not provide truth and does not acknowledge responsibility, the Tribunal applies an *ordinary sanction* of imprisonment between 15 and 20 years, with a primarily retributive goal. Alternative and ordinary sanctions are considered retributive not because they are proportional to the gravity of the crime, but because the sanction is imprisonment. Nevertheless, they were also designed with a restorative dimension, as all sanctions under the FPA ‘need to have the greatest restorative and reparative function in relation to the harm caused and will always correspond to the degree of acknowledgement of truth and responsibility’ ([Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army- FARC-EP 2016](#): 174).

Ordinary and alternative sanctions at the SJP are different to sanctions for the most serious offences under ordinary criminal law. For example, under an ordinary sanction in the SJP, a perpetrator can receive a maximum of 20 years’ imprisonment for the most serious crimes all taken together, while under ordinary criminal law in Colombia the punishment for wilful killing of protected persons is between 40 and 50 years of imprisonment ([Criminal Code Law 599/2000](#)).

## 2.1 The special sanctions

While the conditionality regime that has been explained applies to all of those appearing before the SJP, special sanctions can only be imposed on those bearing the greatest responsibility for the most serious crimes if they comply with certain conditions. This means that those deemed ‘most responsible’ must make a significant contribution to the ‘satisfaction of victims’ rights’ to be eligible for a special sanction. For example, in the case of kidnapping by the FARC (Case 01), eight members of the leadership of the FARC could potentially receive special sanctions ([JPA 2021](#): paras 815–16) if they fulfil ‘conditions on truth, reparations and non-recurrence’ ([Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army- FARC-EP 2016](#): 155). Those deemed less responsible and who also comply with the conditionality regime could obtain special sanctions of two to five

6 Similar to the approach of the Justice and Peace Law that applies to paramilitary groups (Law 975/2005).

**Table 1.** Possible sanctions for those being prosecuted, investigated, and punished at the SJP

Situation of selected person	Instance of SJP	Type of sanction	Features
Persons deemed most responsible acknowledge exhaustive, complete and detailed truth and accept full responsibility before the Judicial Panel for Acknowledgement of Truth and Responsibility (JPA).	JPA sends the case to The First Instance Chamber of the Tribunal for Peace in Cases of Acknowledgement of Truth and Responsibility through a ‘resolution of conclusions’ where a proposal for sanctions is made. The First Instance reviews and ultimately decides on the content of the sanction proposed.	Special sanction	5–8 years of effective restriction of liberty and TOAR or 2–5 years of effective restriction of liberty and TOAR in cases of less responsibility. The punishments predominantly have a reparative and restorative dimension.
If persons do not acknowledge responsibility and truth before <i>JPA</i> , the latter sends the case to the Investigation and Prosecution Unit for prosecution. An adversarial proceeding might start at <i>The</i> First Instance Chamber of the Tribunal for Peace in Cases of Absence of Acknowledgement of Truth and Responsibility (FIA)			
Persons who acknowledge truth and responsibility at FIA prior to the ruling.	FIA decides on sanction.	Alternative Sanction	5–8 years of imprisonment or 2–5 years of imprisonment in cases of less responsibility. The punishments mostly have a retributive nature.
Persons who do not acknowledge either responsibility or truth at any stage and are defeated at the adversarial proceeding.	FIA decides on sanction.	Ordinary Sanction	15–20 years of imprisonment. The punishment preforms the same functions that ordinary prison sentences according to Colombian criminal law.

Source: Table designed by authors.

years' restriction of liberty (Government of Colombia – Revolutionary Armed Forces of Colombia, People's Army- FARC-EP 2016: 176; Appeals Section 2020: para. 31).

While the FPA refers to various forms of reparation that may be provided by perpetrators, including symbolic ones, one of its most innovative approaches to reparations is its special sanctions (Díaz 2020: 195). Those found to be most responsible for crimes under the jurisdiction of the SJP still need to contribute to reparations (Government of Colombia – Revolutionary Armed Forces of Colombia, People's Army- FARC-EP 2016: 174). Special sanctions impose effective restrictions on liberty by guaranteeing the fulfilment of work or activities with reparative content, such as the development of infrastructure in specific locations.

The System permits perpetrators, particularly those demobilized from the FARC, to match their Disarmament, Demobilization and Reintegration (DDR) and political work with their punishment and reparation to society (Martinez Vargas 2020: 438). This means that their reincorporation activities might coincide with the reparatory dimensions of the special sanctions and reinforce each process (retribution-reincorporation-reparation). In fact, former FARC-EP combatants have welcomed this merging of DDR duties with reparation activities, arguing that it has eased their relationship with military personnel and civilians where they have jointly performed some activities (LV1 2 March 2019). Thus, it is possible that a similar impact may emerge from the confluence between DDR and work/activities as part of special sanctions, something that will only become clear when these sanctions are imposed. This is an opportunity to be welcomed, as TJ has often operated detached from and not in connection with DDR, which might have undermined the effectiveness of transitions (Haider 2011, De Greiff 2010: 1).

The special sanctions also aim to contribute to reconstructing the social fabric. Perpetrators will contribute to Development Programmes with a Territorial Approach (PDETs by its Spanish acronym) in any of the 170 most deprived and conflict affected municipalities in Colombia (Government of Colombia – Revolutionary Armed Forces of Colombia, People's Army- FARC-EP 2016: 22–4), and/or to collective reparations programmes that already exist in the regions as part of Colombia's domestic reparations programme. This type of retributive-reincorporation-participation-reparation sanction is expected to generate spaces of coexistence and reconciliation between perpetrators, victims, and communities ravaged by conflict.

### 3. The challenges of operationalizing special sanctions

The use and objectives of special sanctions are unprecedented in transitional settings. Other such TJ approaches include South Africa's conditionality regime based on amnesty in exchange for full disclosure of the truth used by its TRC (Boraine 2001), the community reconciliation work put in place in East Timor as part of CAVR (Burgess 2006), or the *gacaca* in Rwanda (Bornkamm 2012), yet none of these resemble what the FPA has set out to achieve. Despite the challenges, special sanctions present a unique opportunity for the future of TJ and peacebuilding in Colombia and across the world since they combine retribution-reincorporation-participation and reparation.

Yes, they face challenges. Some challenges are normative, such as the legality of special sanctions under international law. Other more practical challenges are also underpinned by conceptual questions such as how to reconcile the legal principles, aims, and goals included and recognized in the FPA. This article focuses on the challenges where lack of clarity and action can jeopardize the ambitious goals of the FPA and TJ efforts.

### 3.1 The legality of special sanctions under international law

Does the application of special sanctions to the most responsible interfere with Colombia's duty under international law to punish perpetrators? Some, like Human Rights Watch, have maintained that sanctions under the FPA 'make it virtually impossible that Colombia will meet its binding obligations under international law' (HRW 2015). Yet international human rights law and international criminal law treaties do not establish the exact forms of punishment that must be applied regarding international crimes. Instead, they give examples of punishment, indicate principles that should apply, or qualify the type of punishment that should be established with words such as 'severe penalties', 'appropriate punishment', or 'proportionality' (Uprimny Yepes and Sánchez León 2019: 30–3).

For example, the American Convention on Human Rights and the European Convention on Human Rights are silent on the issue. Some specific treaties do establish that States must make violations 'punishable by severe penalties that take into account their serious nature' (Inter-American Convention to Prevent and Punish Torture, Article 6), that States parties must 'impose an appropriate punishment commensurate with its extreme gravity' (Inter-American Convention on Forced Disappearance of Persons, Article 1), or that acts of violence are to be punished 'by effective, proportionate, and dissuasive sanctions, taking into account their seriousness' (Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 45).

The International Convention for the Protection of All Persons from Enforced Disappearance, while establishing the obligation to punish with appropriate penalties 'which take into account its extreme seriousness' (Article 7.1), considers that each State party may establish mitigating circumstances for those who help clarify cases of enforced disappearance or to identify the perpetrator of the crime (Article 7.a). This is further accentuated in Africa by the African Union Transitional Justice Policy that, while not a treaty, is ground-breaking in establishing that plea bargains and pardons, certain amnesties, as well as mitigation and alternative forms of punishment at the stage of sentencing, could be imposed on perpetrators if they fully contribute to the truth (African Union TJ Policy 2019: 17–18).

While these treaties and Policy do not fully exhaust the scope and reach of the obligation to punish, regional and United Nations treaty monitoring bodies have maintained the existence of this international obligation (Velásquez Rodríguez *v.* Honduras 1988: para. 166; La Rochela *v.* Colombia 2007: para. 196; ECHR, *Kaya v Turkey*, App Nos. 158/1996/777/978: para. 107; Pinto 2018; Mallinder et al. 2014). Nevertheless, there is no jurisprudence to date establishing that the only possible form of punishment is imprisonment and/or that punishment for serious offences demands long-term imprisonment.

Under international criminal law, while the main form of punishment is imprisonment (Rome Statute Article 77), international tribunals have not always applied the highest possible length of imprisonment for the most serious crimes (Holá et al. 2011). As D'Ascoli indicates, 'the current status of international sentencing presents a panorama which is not regulated by exact norms and pre-defined principles. Currently, there is no established body of international principles regarding the determination of sentences' (2011: 2). This is one of the reasons why Ms. Fatou Bensouda, the former International Criminal Court prosecutor, placed more emphasis on 'effective punishment' than on the specific form of punishment to ensure accountability for international crimes (Bensouda 2017: para. 50). In this



respect, the ICC prosecutor has indicated that to consider whether certain forms of punishment comply with the Rome Statute one should bear in mind that:

In a context of transitional justice, the reduction of the forms of punishment is possible as far as the person condemned satisfies certain conditions that could justify a lower sentence, such as the recognition of criminal responsibility, guarantees of non-repetition and full participation in mechanisms to establish truth, among others (Bensouda 2017: para. 51) (translation by authors).

If this analysis is correct, three elements constitute the criteria to consider the legality of special sanctions: (1) that the lenient form of punishment is given in exchange for the fulfilment of certain conditions; (2) that punishment is proportional to the gravity of the violation(s) at stake; and (3) that the lenient form of punishment is effective both as a form of retribution but also as a form of reparation.

International law imposes the duty on States to satisfy the right of victims to truth, justice, and reparation. Given that perpetrators contribute to the fulfilment of these rights through special sanctions, such conditions may be considered legitimate and reasonable grounds for lenient punishment (Colombia's Constitutional Court 2018; JPA 2020). This view is supported by many scholars (Carrillo-Santarelli 2020; Maculan et al. 2020; Mayans-Hermida and Holá 2020; Sedacca 2019). From this perspective, the Colombian approach is in line with international law as it aims to fulfil all victims' rights, something that has not been sought in any other system worldwide based on conditionality. For example, in South Africa, amnesties were given to perpetrators if they made full disclosure, emphasizing the right to know the truth but leaving aside the right to justice or reparation (Promotion of National Unity and Reconciliation Act 34/1995, Section 4(c); Chapman and van der Merwe 2008; Taylor 2016).

International treaties addressing the obligation to punish frequently address the need for 'proportionality' between punishment and the gravity of the violations or harm caused to victims. The word 'appropriate' in other treaties also appears to refer to proportionality. In the case of special sanctions, proportionality should involve balancing the form of punishment not only with the crimes committed by the perpetrator, but also with the tools it provides to victims to respond to the harms they have suffered (Maculan and Gil Gil 2020). Proportionality should also be seen from a gradation point of view. The SJP should order special sanctions bearing in mind various factors, including the gravity of the crime as well as the degree of responsibility accepted, and apply a commensurate period of restriction of liberty (5 to 8 years) (Colombia's Constitutional Court 2018: part on article 16; 2006: para. 6.2.1.4.7).

The question of whether special sanctions are proportional to the gravity of the crimes and the harm caused is further complicated by the fact that the SJP does not decide on individual cases, but rather deploys a macro-criminality approach looking at large scale patterns of criminality. For instance, in case 01 on taking of hostages and serious deprivations of liberty carried out by the FARC, the JPA did not decide on individual cases but rather established the facts and conducts that made this crime one committed on a large scale in Colombia. This allowed the JPA to consider it a crime against humanity and a war crime of which the Secretariat of the FARC was responsible (JPA 2021). Furthermore, it is likely that a perpetrator identified as one of the most responsible in one case, such as case 01, could also be found responsible in another case under the jurisdiction of the SJP. It is not clear what impact this would have on special sanctions.

### 3.2 The logistical challenges of implementing anticipated TOARs and special sanctions

TOARs stand for ‘work, activities and actions with reparative content’ (according to the Spanish phrase). TOARs can be carried out by perpetrators either after sentencing, and therefore as part of the special sanction imposed on them (as part of conditions set in the ruling), or from the moment they first appear before the SJP. In this case, they are considered ‘anticipated’ TOARs, and can also be considered as part of the special sanction if they effectively contribute to the reparation for victims (JPA 2020: 6 and 8; Statutory Law, Articles 139–140). In this manner, perpetrators can begin to provide reparation to victims even before the SJP decides on a case, and, for members of the FARC, these activities are also part of their DDR process. TOARs can take place in urban or rural areas and include a gender and territorial approach (Law 1922/2018, Article 65).

Some lessons in relation to TOARs were learned early on during the peace negotiations in Havana, through a demining pilot project in El Orejón (Antioquia), one of the places in the country most affected by antipersonnel mines. FARC members and the Colombian military worked together, with the FARC providing information about the location of the mines and the military carrying out the demining (Office of the High Commissioner for Peace 2015). Besides demining, infrastructure projects were carried out such as the construction of a bridge, a school, and a library. It certainly played a restorative role and helped to build trust between the parties and with the community (Cosoy 2015). This view was reinforced by negotiators of the peace agreement who witnessed this process (SP7 2020). While this pilot serves as inspiration about how TOARs could contribute to restoration, challenges still exist.

The concept of the ‘most responsible’ is still a debatable issue in TJ scenarios, including in Colombia (Michalowski et al. 2020; Appeals Section 2020). As there is no legal certainty in relation to who would be classified as such before the SJP, a perpetrator would not know in advance whether they could be considered as the most responsible in a macro-case investigated by the JPA. Perpetrators therefore do not have strong incentives to undertake anticipated TOARs, because they cannot predict if they would be selected as the most responsible. Only those who have already been investigated by the ordinary criminal justice system and where there is enough evidence of their responsibility might carry out TOARs to receive criminal benefits.

TOARs also need to be crafted bearing in mind that the FPA recognizes the FARC’s transition from a guerrilla group to a political party, and that any special sanction must be compatible with the exercise of their political rights (Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army- FARC-EP 2016: 183; JPA 2020: 14). The challenge is palpable if one looks at the situation of the eight members of the FARC-EP’s leadership who were found responsible for crimes against humanity and war crimes in the taking of hostages case (case 01) of the JPA, and who hold important positions as representatives either of the political party in the Colombian National Congress or within the inner structure of the party<sup>7</sup> (JPA 2021). Although they have not begun to carry out reparative works as TOARs, they did all make early acknowledgements of responsibility following the FPA before the trials began, and also acknowledged crimes as part of the proceedings within case 01 (JPA 2021: 291–316). One such early acknowledgement of responsibility concerned the kidnapping and killing of 12 members of the Valle Assembly by

7 The political party was initially called FARC, but this name was changed to Comunes.

the FARC (Diputados de la Asamblea del Valle), which took place in in December 2016 (CNMH 2018) at a Catholic Church.

Anticipated TOARs do not necessarily include a restriction of the right to personal liberty (JPA 2020: 18) and may be discounted from the special sanction imposed on the perpetrator if they are considered to have a restorative dimension. This could raise concerns regarding lack of proportionality vis-à-vis the seriousness of the violations if they are counted as part of the special sanction that does require a level of restriction of liberty in accordance with its retributive dimension.

An effective monitoring system would be required to inform the SJP, victims, and society in general of the measures the perpetrators are already carrying out as anticipated TOARs, and of their restorative dimension. Such a system would inform relevant stakeholders about the kind of activities, length, duration, location, and conditions upon which they are happening, and, most importantly, their reparatory content. Without such a system, it is not possible to ascertain whether a perpetrator has been carrying out work intended to serve as part of their future sanction, or that these activities have a restorative dimension (SP4 2020). For example, a perpetrator might engage in work considered by victims as inappropriate for the reparation of harm and even revictimizing, such as members of the military offering human rights training (El Tiempo 2020; SP2 2020; SP5 2020). However, such a monitoring system does not exist, and doubts persist as to whether the SJP has the operational capacity to deliver on such a task, because it is not present throughout the territory.<sup>8</sup> There is therefore an urgent need for the SJP to create important synergies with relevant State institutions, including parts of the Comprehensive System such as the Victims Unit, to be able to monitor and follow up on anticipated TOARs.

### 3.3 The right to reparation and special sanctions

Reparation, in its various forms, aims to bring victims back to the situation they were in before the violations took place or at least to wipe out, as far as possible, some of the consequences (PCIJ, *Factory at Chorzów 1928*: para. 60; Velásquez Rodríguez *v.* Honduras 1989: para. 26). Therefore, a link is needed between the harms directly caused to the victims, the violations in question, and the reparations given to the victims. From this perspective, adding a reparatory function to the traditional retributive dimension of punishment presents challenges, particularly regarding who may be classified as a victim, the harms to be redressed (Rubio-Marín et al. 2009), and the direct causal link between victimhood, harm, and violations.

The SJP is not mandated to document harms and order reparations as is done by the International Criminal Court in relation to perpetrators of crimes under its jurisdiction (ICC, Lubanga) or the Inter-American Court of Human Rights (IACtHR 2010 or IACtHR 2013) in relation to State liability. Nevertheless, the restorative proceedings of the SJP could amount to a form of satisfaction and rehabilitation for victims, particularly through the disclosure of full and detailed truth by the perpetrators and their acknowledgment of responsibility before the special sanction is imposed on them (JPA 2020: 13). Subsequently, the perpetrator can propose a special sanction that includes activities or work with reparative content. Such a proposal can be individual or collective but must establish the measures to

8 The SJP has 22 regional teams located in equal number of cities and municipalities across the country. <https://www.jep.gov.co/jepcifras/JEP%20en%20cifras%20-%20septiembre%2025%20de%202020.pdf>. Referenced 10 January 2021.

be taken, the timeframes, and locations (JPA 2020: 13). If the perpetrator does not present a proposal, the JPA will be responsible for designing it.

Those who receive a special sanction are to serve their time in particular areas of the country, but not necessarily where their victims might reside. Through TOARs, they enhance development and collective reparations to address some of the structural poverty and inequality problems that fuelled the conflict.

Who are the victims that must be redressed through special sanctions? In a criminal setting, the perpetrator of the crime has the obligation to provide reparation to victims of the crime as established by the tribunal. This is not the logic behind the work of the SJP and special sanctions, where the link between harm, perpetrator, and reparation is diffused or might not exist. For example, in a case like the ‘false positives’ (case 03), some of the victims were taken from one part of the country to another before being killed (Parking 2018). In Soacha, a municipality of Bogotá’s metropolitan area, young civilians were taken by members of the military to El Catatumbo, a region at the north-east of Colombia, where they were illegally executed and disguised as guerrilla members who died in combat. Under the framework of the FPA, it would be reasonable to expect that responsible members of the military would have to serve their special sanction in Catatumbo, one of the prioritized PDET zones, even if the surviving victims, the next of kin of those killed, are in Soacha.

Equally, not all victims of criminal acts covered by all seven macro-cases currently under investigation by the SJP have been recognized as such or are appearing before the SJP. For example, in case 01, on taking of hostages, the JPA has registered 2,528 (JPA 2021: parr 12) out of a potential 21,396 victims that they have been able to identify in and outside the country (JPA 2021: parr. 73). In other words, the universe of victims is far larger than those participating in the proceedings of the SJP.

While the question poses important challenges to the relationship between punishment, victimhood, harm, and reparation, it could be argued that the FPA, as far as the SJP is concerned, aims to focus on redressing societal rather than individual or collective harm. Collective harm is linked to cultural identity and other common features shared by a group, ranging from an indigenous community sharing ancestral practices and beliefs to an organization defending common interests (for example a trade union) (Odier-Contreras 2018). Societal harm on the other hand, while also collective, is broader. It includes damage to the social tissue and social trust. It denotes a negative impact to the values and norms that shape society and that bring people together (De Greiff 2012b: 42). This type of harm must also be redressed. In this context, reincorporation of ex-combatants from the FARC should make a key contribution as their armed struggle attacked those values and norms. It could also generate spaces for reconciliatory praxis, as communities torn apart by conflict will need to learn how to live with perpetrators and vice-versa. Reincorporation can also provide acknowledgement that these values and norms matter, and that both sides are ready to abide by them.

It could be further argued that special sanctions can enable perpetrators to have an impact, even if limited, on wiping out some forms of individual harm, as the link between victims and harm is not always diffused. For example, some victims of sexual violence have indicated that a potential special sanction with a reparatory dimension would include asking perpetrators to build multi-service centres where victims could access specialized healthcare and other services (SP9 2020; Interview 01, 29 January 2020). This type of activity would contribute towards their rehabilitation and satisfaction. This could potentially happen in some of the territorial macro-cases such as those of case 002 (prioritizing some municipalities in Antioquia and Chocó), and case 005 (prioritizing the situation in various

municipalities in the north of Cauca). In these cases, the link between special sanctions, TOARs, PDETs, and collective reparation can directly help to remedy harms suffered by victims of the crimes covered by the macro-cases.

In addition, this approach to reparation through special sanctions is consistent with international law, particularly if fulfilment of the right to reparation is done through access to various forms of reparation, from all those responsible, and provided to victims through different sources (Sandoval 2020). Indeed, the Comprehensive System includes various mechanisms that also contribute to reparations in different ways. For example, perpetrators are appearing before the Truth, Coexistence and Non-recurrence Commission to tell the truth, and some are also contributing to finding the bodies of missing people through the humanitarian work carried out by the Special Unit for the Search for Persons deemed as Missing. Victims should also obtain reparation through the domestic reparation programme.

### 3.4 Balancing the right of victims to participate and ex-combatants' reincorporation

The 2016 FPA is 'the most victim-centred comprehensive peace agreement ever negotiated' (Quinn and Joshi 2019: 208). This is clearly reflected in chapter 5 of the FPA establishing the Comprehensive System, responding in part to the growing literature and practice noting that lack of participation of victims in TJ clearly hampers its outcomes (De Greiff 2012a: para. 68; Andrieu et al 2015: 10).

The normative framework of the SJP is based on a victim-centred principle, a key goal of which is the fulfilment of the rights of victims to truth, justice, reparation, and non-recurrence (Law 1957/2019, Art. 13). The right of victims to participate before the SJP is a key tool for the satisfaction of that principle (Law 1957/2019, Art. 14). Furthermore, the normative framework has clearly established the need to consult with victims on special sanctions (Law 1922/2018, Art. 27; Law 1957/2019, Art. 141; JPA 2020).

This normative framework, however, does not indicate who is to be consulted, how such consultation is to happen, and what type of influence in the decision-making process victims will have (Tsai and Robins 2017: 11, 24). In November 2020, the SJP published an operational Protocol on Victim Participation (SJP 2020) that provides an understanding of what the right entails from both a substantive and procedural justice point of view. The Protocol includes principles and standards to guide victims' participation in relation to special sanctions (SJP 2020: 167–8). Nevertheless, the implementation of the Protocol remains a challenge two years after its adoption.

Given that not all victims of a particular crime are registered before the SJP, it is not clear who should participate. Victims registered in the specific macro-case? Victims of the investigated facts even if they are not registered as victims in the macro-case before the SJP? Victims and communities located in the area where the perpetrator intends to carry out its TOARs? All of the above? It could be argued that all victims registered in a case should be consulted as they have expressed a clear interest in the case. Consultation is a particular form of participation where the influence of victims is greater as they are truly able to voice their views and concerns in relation to issues that affect them. Communities where TOARs would be implemented should also be consulted, as the type of special sanctions carried out by perpetrators will affect the territory they inhabit. They therefore have interests at stake even if they are not victims.

Another challenge is how to implement victims' participation within special sanctions. The Colombian Constitutional Court ruled that, given the institutional complexity of the

SJP, the scope of victims' participation depends on the stage within the criminal restorative process (Colombia's Constitutional Court 2018: par. 4.1.11). However, despite the centrality of victims and the need for dialogue with the offender to determine adequate sanctions (SP6 2020), it is not possible for the SJP to listen to all victims as the effectiveness of its work delivering justice could also be compromised. Accordingly, the Appeal Section of the SJP ruled favouring victims' participation through collective means, such as submitting written observations or attending hearings (Appeals Section 2019: para. 109; Law 1922/18: Art. 2 and Art. 10). However, according to Vargas (2020), there are too many unsolved questions about collective victim participation. For example, how are their voices to be heard? In cases where thousands of victims are accredited, and where big communities are at stake, how is the process to ensure that everyone has a voice and that their level of vulnerability does not preclude their right to participate (Kistralli 2019)?

Furthermore, given that special sanctions also have a reincorporation dimension, the question about how far victims' participation should go is important. In other words, how can the need to ensure participation be reconciled with the need for reincorporation? It is unclear whether victims could demand that sanctions be changed to be truly reparative, or even reject them with some form of veto power. While the system is designed to allow both the perpetrator and the victims to have a voice, the final decision on special sanctions rests with the First Instance Chamber in cases of Acknowledgment of Truth and Responsibility of the Tribunal for Peace. This Chamber is called to 'assess the correspondence between the conducts, those responsible and the sanctions and will have full autonomy to decide about the project presented to it in the resolution of conclusions' (JPA 2020: 14; see also Colombia's Constitutional Court 2018: section 4.1.9). Nevertheless, victims and affected communities should be given reasonable time to comment on the proposal made by the perpetrator or the one made by the Judicial Panel. They should also be able to alert the SJP regarding security or other equally serious concerns that would need to be averted, managed, or prevented to ensure that the sanction can be effectively imposed on the perpetrator and that it can deliver on its reparatory and reincorporation goals.

The FPA mentions the word 'restorative' in many parts of the agreement, including in chapter 5, therefore appearing to also pursue a restorative justice goal. Proponents of restorative justice advocate for bringing together perpetrators and victims and promoting dialogue between them as key means towards reduction of crime, crime prevention, and reconciliation (Braithwaite 1999: 1728). However, a member of the government negotiators' team in Havana indicated that they neither relied on a clear distinction between restorative justice and reparation, nor on a technical definition of restorative justice. Instead, reparations were understood in the same way as in the Victims Law, focusing on ensuring that perpetrators contribute to the domestic reparation programme, and that reparations could be integrated at a territorial level with PDETs being crafted as an outcome of the FPA to generate restoration for victims (RC11 2021).

Yet, as noted, special sanctions could be a blueprint for restorative justice, particularly when linked to the reincorporation process. For members of non-state armed groups, special sanctions could be pivotal in helping to address the root causes of conflict.<sup>9</sup> Hence, their willingness to take part in such activities (LV1 2020). From this perspective, special sanctions

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9 Interviewees did not say that special sanctions could be crucial to address root causes of conflict, but they constantly referred to the potential of special sanctions to connect with PDETs and to transformation of the countryside.

would be a sort of ‘constructive penalty/punishment’, as opposed to punishments such as imprisonment that predominantly produces useless harm (FARC-RH1 2019). Infrastructure work may in and of itself be restorative for both parties involved. The necessary interaction between victims and offenders in areas where new infrastructure is being built combined with the active participation of members of communities in the decision-making process may reduce demonization of former combatants and facilitate mutual recognition, trust-building between victim and offender and, ultimately, favour reincorporation (LV1 2020).

More generally, dialogue with communities, which is essential to the definition of special sanctions, may bring about new ideas on how to repair conflict related harm. In this way, TOARs could trigger healing and reconciliation processes (LV1 2020). For this to be a potential opportunity for reconciliation, work is needed before the special sanction stage at the SJP begins. It is essential to create safe spaces for dialogue between communities, victims, and perpetrators and for them to listen to one another (Sotelo Castro 2020) so that they can seize a one-time opportunity to create reconciliatory praxis. All of this may be possible thanks to the participatory approach that guides the SJP’s work.

### 3.5 Development and punishment

According to the FPA, the objective of PDETs ‘is to achieve the structural transformation of the countryside and the rural environment and to promote an equitable relationship between rural and urban areas’ (Government of Colombia – Revolutionary Armed Forces of Colombia, People’s Army- FARC-EP 2016: 22). The PDETs include 170 municipalities organized in 16 areas where the same number of plans (called ‘action plans for territorial transformation’, or PATR by its Spanish acronym) were drafted in a participatory process with the communities and will be in place for at least a decade (Decree 893/2017).

PDETs include eight different pillars, one of which is reconciliation, coexistence, and peace (pillar eight), but also include others such as rural health, education, housing, food, rural property, infrastructure, and land. Which PDET pillars should be linked to special sanctions is currently under discussion, with some focusing on the eighth pillar, and others arguing for the need to relate sanctions to other pillars such as health, education or housing. Given the need to keep in mind the nature of the harms caused to victims and communities, some pillars might be more relevant than others to explore the reparatory dimension of special sanctions, even if, as already indicated, the direct link between individual harm, reparation, and violations is often diffuse. Equally important is determining the type of work the perpetrator is fit to perform, as they should not be expected to contribute to activities that pose a danger to their health or personal integrity.

The PDETs are an important development tool to produce social change in the territories most affected by conflict. They could also generate spaces for coexistence of victims and perpetrators, as well as processes of reconciliation. Nevertheless, effectively linking special sanctions with PDETs becomes problematic as five years after the signature of the peace agreement, only a handful of the 16 PDETs have been turned into workable and implementable development plans. Moreover, PDETs were meant to be designed with the communities. Although their participation in the design of such projects was good in the early stages, this ceased after the PATRs were agreed, generating further criticism (FIP 2020: 9). It is also not clear how the design of the PDETs included considerations of the extent to which the special sanctions would or should be connected to these development initiatives, if at all (SP1 2020; SP7 2020).

Another challenge faced by the implementation of PDETs is the lack of governmental support. Indeed, from an economic perspective, the investment for PDETs was meant to be 4.67 billion pesos in 170 municipalities for the duration of the plans (15 years). Nevertheless, by 2022 the budget for such institutions effectively remains below pre-pandemic levels (Rodríguez Llach and Martínez Carrillo 2022a, 2022b, Goebertus 2020). This situation is consistent with the government's decision to implement the FPA in a way that does not alter its austerity measures on fiscal matters, resulting in PDETs being underfunded (Mora Cortés 2020: 2; CEPDIPO 2020: 9–10).

### 3.6 Collective reparations and special sanctions

PDETs and chapter 5 of the FPA on victims' rights make important references to collective reparations. The FPA considers that an important contribution can be made to peacebuilding by granting collective reparations to certain communities or enhancing existing collective reparation processes (Government of Colombia – Revolutionary Armed Forces of Colombia, People's Army- FARC-EP 2016: 188–191). Furthermore, the agreement indicates that PDETs will 'include collective reparation plans, while in areas where these plans are not put into effect, plans for communities which have been particularly victimised will be strengthened, prioritising community initiatives' (Government of Colombia – Revolutionary Armed Forces of Colombia, People's Army- FARC-EP 2016: 190). Such collective reparations require victims' participation, clear actionable plans, material and symbolic forms of reparation, and the involvement of those that caused harm.

In Colombia, as a result of the implementation of the Victims Law, there are approximately 768 collectives registered as beneficiaries of collective reparations (SP1 2020; Commission 2021). PDETs go beyond collective reparations, but there are ways in which they overlap. Indeed, the Commission to follow up on the implementation of the Victims and Land Restitution Law considered that 50 per cent of the collectives that classify as victims entitled to collective reparation are in PDET locations (Commission 2020: 314), and that 1,000 actions to be taken under 69 collective reparation programmes also coincide with 762 elements of the PATR (Commission 2020: 314). However, it is not clear how many of these elements could be part of TOARs under special sanctions, namely, which of those initiatives or elements a perpetrator could take part in.

While this overlap exists, approximately 200 out of 768 potential collective reparation projects are currently moving towards implementation, with only 28 having been fully implemented (Commission 2021: 294). Most communities have not agreed on a collective reparation plan. This means that if PDETs were meant to be articulated in relation to existing collective reparation projects, the lack of implementation (and even the existence) of such projects creates serious challenges to PDETs. If PDETs want to be linked to existing collective reparation projects or enhance/enable progress of such projects, no changes should take place without victim participation, something that has proven complex in the negotiations of collective reparations in Colombia.

Another important dimension to note here is that collective reparations in Colombia have changed over time. Indeed, the first collective reparation projects that were designed and implemented by the Reparations and Reconciliation Commission created under Law 975/2005 aimed to provide communities with material transformations and development projects such as access to potable water or infrastructure. These are easier to link to potential TOARs as a perpetrator could be expected to work on an



infrastructure project. Current collective reparation programmes, as managed by the Victims Unit, aim primarily to satisfy moral harm by providing symbolic forms of reparation that tend to exclude or do not prioritize access to other services, such as health or sanitation (SP1 2020). This newer approach appears to limit their potential linkages with both PDETs and special sanctions.

While PDETs and collective reparations offer opportunities for the fulfilment of the reparatory, retributive, participation and reincorporation dimensions of special sanctions, it is yet to be thought how best to make effective linkages between them as they stand today. The linkages also depend on the ability of State institutions with a mandate related to any of these points to be able to work together, something that has proven to be a challenge so far.

### 3.7 Monitoring implementation of special sanctions and reparations to victims

The retribution-reparation-participation-reincorporation dimensions of special sanctions need to be effectively monitored (Colombia's Constitutional Court 2018). According to the FPA and the guidelines for special sanctions and TOARs (JPA 2020), it is down to the SJP to monitor and verify the effectiveness of the sanctions. Monitoring will also be supported by the UN Verification mission in Colombia (Government of Colombia – Revolutionary Armed Forces of Colombia, People's Army- FARC-EP 2016: 177; UN SC Res 2574 2021: 2). The SJP (through its Tribunal) is to carry its mandate with the administrative support of its Executive Secretariat of the SJP (JPA 2020: 11). The UN verification mission is a guarantor of the implementation of the reincorporation of the FARC into civilian life, including political, economic, and social life (Government of Colombia – Revolutionary Armed Forces of Colombia, People's Army- FARC-EP 2016, Section 6.3.3), as well as of security conditions for human rights defenders and members of the FARC. Furthermore, the UN gives confidence to the parties of the armed conflict and to society in general regarding the legitimacy and effectiveness of the measures.

Nevertheless, both institutions remain insufficient to monitor the effectiveness of special sanctions. First, issues of accessibility are raised by the fact that sanctions apply to members of the guerrilla groups, to members of the military, and to third parties, all in different areas of the country (at least 16 judging by the PDETs). Second, not all perpetrators will carry out the same activities or work. This means that a very local approach must also be developed to monitor daily the effectiveness of the measures and the security conditions (for both perpetrators and communities). Institutions in the communities and civil society organizations could also carry out a monitoring role that complements that of the SJP and the UN verification mission.

At the time of writing, the monitoring issue is still work in progress. A multi-actor system is needed to ensure adequate and effective monitoring of the three dimensions. This includes the work of the Victims Unit in relation to reparations, of the Agency for Reincorporation in relation to DDR, and of a body representing the military to effectively monitor the special sanctions to be carried out by some of their members.

## 4. Conclusions

Colombia is engaging in the most ambitious TJ system ever created. This is not only because of its holistic approach bringing to life various TJ mechanisms to fulfil victims' rights, but also, as this article has shown, because it challenges dominant world views on punitive

measures and reparation and provides the ground to reflect on retribution-participation-reincorporation-reconciliation. Special sanctions have been designed with these goals in mind.

Despite the attention they have drawn internationally and in Colombia, a lot remains to be done to ensure that the special sanctions serve their ambitious goals. While they are incredibly innovative, this article has shown the many complexities that exist to put them in motion, demonstrating to TJ stakeholders that these are not easy questions to be resolved through the law alone. Grappling with the complexities behind the design and implementation of any such measure is key to making them viable and distilling lessons for the field of TJ.

This article has noted the multiple obstacles that need to be overcome for Colombia's approach to avoid becoming one more TJ system which fails to reckon with impunity or provide reparation and participation to victims. While complexity remains part of TJ processes, this article has shown the need to create simple systems that can be implemented without great difficulty. A complex system like the Colombian one has proven very difficult to implement, in part due to the multiple set of actors and institutions that need to be involved in the process. Feasibility, without sacrificing victims' rights, is a key principle that should guide TJ efforts.

The article has also identified other key normative and practical challenges from the Colombian case that have an impact on the TJ field. It offered potential interpretations of harm and of the obligation to punish to reconcile the reparatory and retributive dimensions of special sanctions. The article also emphasized the need to ensure the effectiveness of special sanctions through a multi-actor system that includes the SJP, the UN Verification Mission, as well as other institutions like the Victims Unit or the Agency for Reincorporation. Importantly, this system needs to be built with a territorial approach and where ownership of the process is also given to victims, local institutions, and civil society organizations.

If these challenges are effectively confronted, special sanctions have the potential to transform practices of punishment within TJ. Envisaging forms of punishment other than imprisonment for the gravest human rights violations while emphasizing reparation of the social tissue damaged by the crimes committed, including their contribution to non-repetition, will undoubtedly expand our collective imagination and create possibilities to deal with international crimes in ways that progressively tend to substitute retribution for restoration. What is at stake is the possibility of imagining and practising different ways of dealing with the consequences of crimes.

Special sanctions are also part of a Comprehensive System. Reparation for victims must come from all those responsible and not only from the State or the few convicted in a criminal setting. Seen in this light, various forms of reparation can coexist and magnify the positive impact on victims and communities. However, linkages between institutions of the System remain fundamental for reparations to be effective, comprehensive, and timely. A piecemeal approach defeats the objective of reparation and would deepen the wounds of victims.

Thus, beyond conceptions of reparations as primarily owed by States, special sanctions embody an approach where members of a non-state armed group (in this case demobilized after signing a peace agreement) willingly contribute to reparations. If such an approach materializes, it could also make a more explicit contribution to other forms of harm, such as social harm, as perpetrators help to rebuild the social fabric.

In relation to victims' participation, many questions remain as to how to ensure that they take centre stage. At the very least, those victims accredited in the cases and communities where special sanctions apply need to be duly consulted on the project. Ideally, a process should exist enabling victims and communities to provide their views before the formal submission of a project to or from the perpetrator. Furthermore, to ensure that victims' participation does not defeat the objective of reincorporation, it is crucial to ensure that spaces for dialogue and reconciliatory praxis are created between perpetrators and victims. This implies a delicate balance trying to facilitate an honest and sometimes painful conversation that may also more meaningfully trigger healing processes at the individual, community, and societal level. This experience might shape future attempts at dealing with the gravest crimes, not by keeping victims and perpetrators fully separated, but by promoting a constructive and potentially healing dialogue.

The article has also noted that Colombia has promised to provide transformation and development to the poorest and most affected communities of the country. One way to achieve this while providing reconciliation is through special sanctions and their link to PDETs and collective reparation. However, no meaningful discussions are taking place about how to link these processes and maximize their transformative potential. This means, and this is a serious challenge, that the potential for transformation and reconciliation through special sanctions might be lost.

Beautiful ideas are just that. Victims need to see and experience justice, reparation, and truth, and that the perpetrators are taking real measures not to repeat the crimes of the past. Perpetrators also need to know that they are being offered an unprecedented opportunity to pay back for their wrongs but also to become meaningful agents of change in communities, and to show that their commitment to non-repetition can be trusted.

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