

How to address the role of corporate actors in the Colombian conflict?

Context

The Colombian peace negotiations between the government and the FARC led to the design of a Transitional Justice (TJ) system which includes judicial and extra-judicial mechanisms. Its objective is to address holistically the responsibilities of the various actors of the armed conflict. This includes third party actors, that is persons who did not belong to an armed group (such as corporate actors, landowners, politicians etc) and who participated in the commission of international crimes during the conflict, for example through funding armed groups or providing them with other help to carry out massacres, forced displacement etc.

The situation of corporate actors under the Peace Agreement

Many questions of detail are still open, but the approach of the Peace Agreement (whose terms are currently being renegotiated) to dealing with the responsibility of third party actors in the TJ process can be summarised as follows:

- ▶ Only individuals whose involvement in the conflict reached the level of determinative or habitual participation with the armed groups in the most serious international crimes will face criminal sanctions.
- ▶ If they fully engage with the transitional justice mechanisms, admitting their involvement and contributing to reparations, they will benefit from the diminished punishment of 5 to 8 years of "effective deprivation of liberty". If they fail to do so and are found guilty by the tribunal, their punishment could be up to 20 years of imprisonment.
- ▶ All cases of third party actors that fall below this severity threshold would be dealt with through the truth and reparations measures. Truth and reparations measures can also apply to corporations.

The situation of corporate actors without being included in the TJ mechanisms

- ▶ They would fall under the jurisdiction of ordinary criminal courts without benefiting from the alternative punishments offered by the TJ mechanisms.

Essex Transitional Justice Network/ Dejusticia Research Project

Objectives

- ▶ To assess the role of corporate actors in the Colombian conflict, using as a starting point the ample information on the relationship between armed and corporate actors provided in the decisions handed down under the Justice and Peace framework (the TJ mechanism primarily applicable to demobilised paramilitaries).
- ▶ To develop workable legal criteria to distinguish between those who participated to a degree that justifies criminal sanctions and/or responsibility to provide reparation to victims, and those who did not. years of imprisonment.

Our research

- ▶ Analysis of all 34 decisions under the Justice and Peace framework until December 2015 to create a data base on the mentions of corporate actors in the context section of the decisions (under Justice and Peace the courts do not have jurisdiction over third party actors, but their involvement plays an important role when establishing the context in which the crimes of the paramilitaries were carried out).
- ▶ Qualitative research interviewing judges, prosecutors and their assistants in order to realize the methodology on which they based their decisions whether or not to include mention of a third party actor in a judgement.

Conclusions to date

- ▶ The fragmented approach of the Justice and Peace process which provided those who demobilised with the benefit of alternative punishments, while normal criminal penalties apply to corporate actors, can lead to the situation that a corporate actor who assists a

paramilitary in committing a serious crime faces much harsher punishment than the principal actor. The inclusion of corporate actors into the TJ framework of the Peace Agreement could thus be beneficial for corporate actors.

- ▶ An approach to the role of third party actors during the armed conflict must take into account the singularity of their involvement. A collection and analysis of data demonstrating different patterns of involvement is therefore necessary to inform the work of the future TJ mechanisms.

UNGP in transitional justice contexts

- ▶ TJ policies can contribute to expediting an effective access to remedies (Pillar III) for victims of violations of human rights committed during armed conflict where the role of corporate actors was significant.
- ▶ Including corporate actors in TJ mechanisms, unveiling the truth of their involvement and prosecuting the most serious acts of corporate involvement in crimes committed, reaffirms the importance of the corporate responsibility to respect (Pillar II) and of the state's duty to protect (Pillar I) human rights.

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