

Joint Communiqué # 64
Havana, December 15, 2015

Agreement on the Victims of the Conflict, “Comprehensive System for Truth, Justice, Reparation and Non-Repetition” (“Sistema Integral de Verdad, Justicia, Reparación y No Repetición”), including the Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz*); and Commitment on Human Rights

Compensating the victims is at the core of the Agreement between the National Government and the FARC – EP. In that direction, at the Dialogue Table in Havana, we have discussed and reached agreements on item 5 of the Agenda, “Victims”, which includes sub-items: 1. Victims’ human rights, and 2. Truth, seeking to provide contents that will satisfy the vindications of those who have been affected by the long confrontation. In the pursuit of a political solution, today, through these new consensuses and important de-escalation measures and agreements, we have taken a fundamental step moving forward in building the stable and long-lasting peace and bringing an end to a war that has bled the country for over half a century.

The National Government and the FARC – EP, considering the comprehensive nature that should characterize the development of the numerals comprised in the item on Victims, started their analysis assuming the “*Declaration of principles*” dated June 7, 2014, which would be the basis for the discussion of the topics on which we have reached core agreements regarding: 1. Comprehensive system for truth, justice, reparation and non-repetition and 2. Commitment to the promotion, respect and guarantee of human rights.

These commitments include transcendental agreements such as the creation of the *Commission for the Elucidation of the Truth, Coexistence and Non-Repetition* (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*); the *Special Unit for the Search of People deemed as Missing within the context and due to the conflict* (*Unidad Especial para la Búsqueda de Personas dadas por Desaparecidas en el contexto y en razón del conflicto*); the *Special Jurisdiction for Peace* (*Jurisdicción Especial para la Paz*) and specific reparation measures. All these components have been articulated within a *Comprehensive System for Truth, Justice, Reparation and Non-Repetition* (*Sistema Integral de Verdad, Justicia, Reparación y No Repetición*), also linked to non-repetition measures; regarding this last topic, it is worth noting that, besides the coordinated implementation of all the foregoing measures and mechanisms, as well as of all the items of the Final Agreement in general, additional measures will be implemented, which will be agreed within the framework of Item 3 – “End of the Conflict” of the Agenda of the General Agreement.

During the course of the debates on item 5, “Victims”, the Historical Commission of the Conflict and its Victims (*Comisión Histórica del Conflicto y sus Víctimas*) was set in motion, which came up with important conclusions of diverse and plural content concerning the origins and multiples causes of the conflict, the main factors and conditions that have facilitated or contributed to the persistence of the conflict, and the most notorious effects and impacts of the conflict on the population, all of which have

been considered as an essential input for the work of the *Commission for the Elucidation of the Truth, Coexistence and Non-Repetition*.

Other first-order measures taken within the framework of the discussions on item 5, “Victims”, have been: the signature of measures and protocols to undertake the programs for the cleansing and decontamination of the territories from anti-personnel mines (APMs), improvised explosive devices (IEDs), unexploded ordnance (UXO) or explosive remnants of war (ERWs) (*minas antipersonal [MAP], artefactos explosivos improvisados [AEI], municiones sin explotar [MUSE], o restos explosivos de guerra [REG]*); immediate humanitarian measures for the search, location, identification and dignified delivery of the remains of people deemed as missing within the context and on occasion of the conflict.

The armed conflict, which has multiple causes, has inflicted suffering and damages to the population, unparalleled in our history. There are millions of Colombians who have been victims of forced displacement, hundreds of thousands of deaths, tens of thousands of missing people of all sorts, and a wide number of collective groups and populations affected throughout the territory, including peasant, indigenous, Afro-Colombian, black, “*palenquera*” and “*raizal*” and Rom communities, and political parties, social and labor union movements, and economic guilds, among others. This, without forgetting other less visible but not less painful forms of victimization, such as sexual violence, psychological impacts, or the mere coexistence with fear.

In recognition of this national tragedy, since the Exploratory Meeting of 2012, we agreed that compensating the victims had to be at the core of any agreement; and that the agenda for ending the conflict should include an item on the victims, as set forth in the General Agreement dated August 26, 2012.

For that same reason, before addressing this item of the Agenda, we agreed on the aforementioned “Declaration of principles” that reflects that commitment to the victims and which has served as the compass for the dialogues in order to ensure that the comprehensive satisfaction of their rights to the truth, justice, reparation and non-repetition remains at the core of the agreement.

Concurrently, we broadened the participation mechanisms. More than 3,000 victims took part in four forums held in Colombia, organized by the United Nations and the National University (*Universidad Nacional*), and sixty victims traveled to Havana to provide their direct testimonies to the Dialogue Table and offer their recommendations, with the support of the Episcopal Conference, the United Nations and the National University. This, without leaving aside the more than 17 thousand proposals sent by different means by the victims and other citizens to the Dialogue Table. Furthermore, 18 Colombian women organizations and 10 experts on sexual violence were heard by the Dialogue Table in full. All the proposals that we received from the victims were fundamental for achieving the agreements.

Comprehensive System for Truth, Justice, Reparation and Non-Repetition

In compliance with our commitment to place the victims at the core of the Agreement, and in response to their testimonies, proposals and expectations, which we heard directly from them, the National Government and the FARC – EP agreed to create the *Comprehensive System for Truth, Justice, Reparation and Non-Repetition*, and for that same reason we have adopted the measures described above.

The Comprehensive System starts on the basis of the principle of recognizing the victims as citizens with rights; on acknowledging that the full Truth about what has happened should be sought; on the principle of recognizing responsibility on the part of all of those who took part, directly or indirectly, in the conflict and were involved in one way or another in severe human rights violations and severe infringements of International Humanitarian Law; on the principle of satisfying the victims' rights to the truth, justice, reparation and non-repetition, based on the premise of not exchanging impunities, additionally taking into account the basic principles of the Special Jurisdiction for Peace, among which there is a provision stating that "damages caused shall be repaired and restored whenever possible".

The end of the conflict should contribute to ensure the end of the violations and infringements, and it is also an opportunity to guarantee the satisfaction of the victims' rights. La final and definitive end of the hostilities provides conditions for the victims to express themselves without fear and to receive the recognition they are entitled to; an opportunity for all of those who bear responsibility for human rights violations or infringements upon IHL to recognize them accordingly; and consequently, an opportunity to apply measures more effectively, aimed at ensuring truth, justice, reparation and non-repetition.

International experience demonstrates that the effectiveness of these measures is greater if they are applied in an articulate and complementary manner. For that reason, the System intends to be comprehensive, in order for the measures to achieve the maximum justice and accountability for the human rights violations and the infringements on IHL occurred throughout the conflict. The comprehensive nature of the Systems contributes as well to the elucidation of the truth about the conflict and to the construction of the historical memory.

We understand that a broad and genuine response to the rights of the victims –within the framework of the implementation of all the other agreements, which also guarantee rights- is the basis for justice.

In order to fulfill this purpose and move forward in the fight against impunity, the Comprehensive System combines judicial mechanisms that enable the investigation and punishment of grave human rights violations and severe infringements against International Humanitarian Law, in the terms set forth by the Special Jurisdiction for Peace, with complementary extra-judicial mechanisms that may contribute to the elucidation of the truth about what happened, the searched for the missing loved ones, and the reparation of the damages caused to people, collective groups and entire territories.

Additionally, judicial mechanisms will be created outside of the Special Jurisdiction for Peace, such as a

unit for investigating and dismantling criminal organizations, including criminal organizations denominated as successors to paramilitarism, and their support networks, referred to in item 3.4 of the Agenda of the General Agreement.

The Comprehensive System has a differential and gender-based approach, which adjusts and responds to the particular characteristics of the victimization in each territory and each population, and in particular to the needs of women and children.

The Comprehensive System places special emphasis on restorative and reparative measures, and seeks to achieve justice not only through retributive sanctions.

The System should also and concurrently guarantee the legal security of all of those who embrace the justice measures, as an essential element of the transition to peace.

The success of the Comprehensive System is also dependent on achieving the broadest acceptance among society.

Lastly, the comprehensive nature of the System contributes to laying the foundations for the recovery of trust, for coexistence in a peace-building scenario, and for a real reconciliation among all the Colombian people.

Goals:

In summary, the different measures and mechanisms of the Comprehensive System should contribute to the fulfillment of the following purposes:

- ***Satisfaction of the victims' rights***, through the combination of judicial and extra-judicial mechanisms.
- ***Accountability***, through the establishment of responsibilities, all the participants in the conflict, directly or indirectly, as combatants or non-combatants, shall assume their responsibilities for the grave violations and infringements committed in the context and by reason of the armed conflict.
- ***Non-repetition***, through the application of all the measures of the System –as well as of other to be agreed on Item 3 of the Agenda- to prevent re-victimization and repetition, to encourage society's rejection of war and its effects, to secure the termination of the conflict, and to prevent the emergence of new forms of violence.
- ***Territorial, differential, and gender-based approach***, through the differentiated treatment of territories and populations, in particular of women and children victims, and of the most deprived and most vulnerable populations and collective groups, and therefore most affected by the conflict.
- ***Legal security***, through the fulfillment of the conditions of the Comprehensive System, and

in particular the Special Jurisdiction for Peace, with the necessary due process guarantees.

- **Coexistence and reconciliation**, through the construction of trust in one another starting from the positive transformations generated inside society by the peace agreements, in particular through the recognition of the victims, the acknowledgment and the establishment of responsibilities and, in general, the acknowledgment by society as a whole of the need to take advantage of this opportunity to build a future based on social justice, respect and tolerance.
- **Legitimacy**, responding to the expectations of the victims, society in general, and to the national and international obligations of the Colombian State, including compliance with the covenants set forth in the Final Agreement.

Components:

The Comprehensive System will consist of the following five mechanisms and measures:

- **Commission for the Elucidation of Truth, Coexistence and Non-Repetition (Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición)**: It will be a temporary body with an extra-judicial nature, which seeks to learn the Truth about what happened and contribute to the elucidation of the violations and infringements, and to offer a broad explanation to the entire society about the complexity of the conflict; to promote the recognition of the victims and of the responsibilities of those who directly and indirectly took part in the armed conflict; and to promote coexistence in the territories in order to guarantee non-repetition.
- **Special unit for the search of people deemed as missing in the context and by reason of the armed conflict (Unidad especial para la búsqueda de personas dadas por desaparecidas en el contexto y en razón del conflicto armado)**: It will be a high-level special unit with a humanitarian and extra-judicial nature, whose goal is to direct, coordinate and contribute to the implementation of humanitarian actions for searching and identifying all the people deemed as missing within the framework of the conflict who are still alive, and in the cases of those deceased, whenever possible, for the location and deserving delivery of their remains. The Unit's activities may not substitute or prevent the corresponding judicial investigations to be carried out in fulfillment of the State's obligations.
- **Special Jurisdiction for Peace (Jurisdicción Especial para la Paz)**: On September 23 we announced that we had reached an agreement on the Special Jurisdiction for Peace. Today, we publicly release the full text of that agreement.

The Special Jurisdiction for Peace will exercise judicial functions in an autonomous and preferential manner over the matters within its competence.

The purposes of this Jurisdiction are to satisfy the victims' rights to justice, offer the truth to the Colombian society, protect the rights of the victims, contribute to the achievement of a stable and long-lasting peace, adopt decisions granting full legal security to those who directly or indirectly take part in the internal armed conflict, and emphasis shall be placed on bringing an end to impunity.

The Jurisdiction will consist of a series of justice chambers, among which there will be a Chamber on Amnesty and Pardon (*Sala de Amnistía e Indulto*), and a Tribunal for Peace (*Tribunal para la Paz*), to administer justice and investigate, elucidate, prosecute and sanction grave human rights violations and severe infringements against International Humanitarian Law.

All actions taken in the justice component, in accordance with the rules applicable to the Special Jurisdiction for Peace, will respect the fundamental rights to due process, defense, legal counsel assistance, presumption of innocence, and the independence and impartiality of the magistrates of the Chambers and sections, as well as of the members of the Investigation and Indictment Unit (*Unidad de Investigación y Acusación*). All judicial decisions pertaining to the responsibilities and penalties imposed on individuals will be duly motivated and grounded on reliable and admissible evidence before justice tribunals.

The Special Jurisdiction includes a specific chapter on the contents, scopes and limits for the concession of amnesties and pardons, stating, among other aspects, that "Upon the end of the hostilities, in accordance with IHL, the Colombian State may grant the "amplest possible" amnesty. Crimes against humanity, genocide, grave war crimes, among others grave human rights crimes and violations, will not be subject to amnesties, pardons or equivalent benefits.

- ***Comprehensive reparation measures for building peace (Medidas de reparación integral para la construcción de la paz):*** These are measures that seek to ensure the comprehensive reparation of the victims, including the rights to restitution, indemnification, rehabilitation, satisfaction and non-repetition; and the collective reparation of the territories, the populations and the collective groups most affected by the conflict and most vulnerable, in the framework of the implementation of the other agreements. For this purpose, the existing mechanisms will be strengthened, new measures will be adopted, and everybody's commitment to the reparation of the damages caused will be promoted.
- ***Non-Repetition Guarantees (Garantías de No Repetición):*** The non-repetition guarantees are the result, on the one hand, of the coordinated implementation of all the foregoing measures and mechanisms, as well as, in general, of all the items of the Final Agreement; and on the other hand, of the implementation of non-repetition measures agreed within the framework of Item 3 – "End of the Conflict".

The different mechanisms and measures for truth, justice, reparation and non-repetition, inasmuch as

they are part of a system that seeks a comprehensive answer to the victims, may not be understood in an isolated manner. They will be interconnected through relationships of conditionality and incentives to have access to and maintain any special justice treatment, always based on the recognition of the Truth and the responsibilities. Compliance with these conditional provisions will be verified by the Special Jurisdiction for Peace.

No mechanism of the System shall prevail over another one. Each mechanism shall fulfill its main function in the most agile manner possible, and without duplicating those of the other mechanisms; for this purposes, the necessary collaboration protocols will be established.

Finally, we want to thank the victims for their determined participation, their generous testimonies and their proposals, without which it would not have been possible to build this Agreement, and we encourage them to actively participate in their implementation and in the construction of peace.

We hope that with the implementation of this and of all the Agreements, the dignification of the victims will be ensured, justice will be done, and the foundations will be laid to bring an end to the violence of the conflict in the country forever, and to ensure that nobody else in Colombia becomes a victim.