

Transitional Justice in Colombia and Assurance Measures for the Indemnity of Victims: Between Memory, Truth and Effective Jurisdictional Enforcement

Luiz Guilherme Marinoni¹

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1. Introduction

This paper aims to establish a relationship between the transitional justice that is being built in Colombia and procedural law, especially with the assurance measures of indemnity for the protection of victims. The approach obviously cannot do without consideration of the transitional moment lived in Colombia.

The speech is organized and structured in two parts. The first part covers the fundamental concepts that make transitional justice, the rights to memory and truth and the need to compensate the victims as a presupposition for the reconciliation, in addition to brief consideration of cases in which Colombia was convicted of violation of human rights by the Court. In the second part is established a relationship between the process of reconciliation, the fundamental right to effective judicial protection and the

¹ Membro do "Council" da *International Association of Procedural Law* (IAPL) e Diretor do *Instituto Iberoamericano de Derecho Procesal*. Professor Titular de Direito Processual Civil da Universidade Federal do Paraná (UFPR), Brasil. Pós-Doutor pela *Università degli Studi di Milano* e pela *Columbia University*. Professor Visitante em várias Universidades da América Latina e da Europa. Vice-Presidente da Associação Brasileira de Direito Processual Constitucional.

measures to assure indemnity, demonstrating that these have great importance for the implementation and development of the peace process.

2. Transitional Justice, Truth, Memory and the Role of the Inter-American Court of Human Rights

If transitional justice is characterized by the nominal element that defines it - transition - it is certain that it refers to a past time that needs to be (re)known, faced, associated with and overcome². It is important at the outset to clarify that it is the transitional justice from the transitional element (temporary) that defines it, it is not intended to say that the transitional justice adds, even in the distant future, any element of forgetfulness. It is the opposite. To establish a transitional justice to (re)know, to face, to associate and to overcome the conflictive state of a community does not mean to ever forget. This is not oblivion, but memory. Only the truth about the conflict can bring to light the proper and required memory and build it on a broad public basis, plural and collective. And it is from them (truth and memory), with and upon them that (transitional) justice is carried out, is accomplished, knows and recognizes the past, remembers the conflict and provides a leading role to the victims, thus creating the possibility of conditions to build a new future. Therefore, transitional justice is, at the same time, process and substance, form and content, consisting of truth, memory and reparation³.

Transitions experienced by different countries in always distinct and peculiar situations, since its first phase with the defeat of Germany and Japan in 1945, through the second phase between 1970 and 1989 with the countries of southern Europe, the resurgence of democracies in Latin America post

² It is important to note that the definition of transitional justice is associated with periods of political change, characterized by the existence of legal responses that have the scope to address the crimes that took place in previous political regimes. See TEITEL, Ruti, Genealogía de la justicia transicional, In: *Justicia Transicional. Manual para América Latina. Comisión de Amnistía del Ministerio de Justicia de Brasil*, 2011, p. 135.

³ The restorative model of transitional justice is characterized by an institutional mechanism permeated by the existence of truth commissions. These committees have been the subject of important global support for constituting investigative models inspired on the right to truth and memory. See TEITEL, Ruti, ob. cit., p. 149.

military dictatorships, the decline of the Soviet Union and the consequent resurgence of countries (not without external and internal conflicts), and more recently, the third phase with the called "Arab spring" countries keep a common element: a set of violations - from state actions or groups - the minimum and basic rules of protection of human rights⁴. If the transition processes in these countries have peculiarities given the specificities of the conflict, all seek to equate the human rights violations and build a new foundation for the future. One future to come on such violations; not to hide them, but to remind them and repair them.

Thus, transitional justice is defined by a set of institutional (political and legal, especially)⁵ and social responses to the human rights violations perpetrated by the State or groups within the country. Thus, the transitional justice knows and recognizes not only historical facts, but in this equates to project the future. This current construction and future projection involves the accountability of violator agents, for reparation to victims and the guarantees of non-repetition.

It is true that there is no single model or standard for the transitional justice process. This process is always a peculiar way in which the society of each country seeks to find his way to widely understand and deal with the violence of the past, equating them by implementing mechanisms to guarantee the rights to memory and truth. In any case, the community and the international doctrine always lists four duties to be fulfilled: (i) reasonable steps to prevent human rights violations; (ii) mechanisms and instruments for the elucidation of situations of violence; (iii) legal apparatus that enables the accountability of agents who committed violations and (iv) material and symbolic reparation for victims⁶. The structural measures for clarification of

⁴ TORELLY, Marcelo D. *Justiça de Transição e Estado Constitucional de Direito: perspectiva teórico-comparativa e análise do caso brasileiro*. Belo Horizonte: Fórum, 2012, p. 105.

⁵ Note that the institutional framework inherent in the transitional justice comprises several levels. As ELSTER states, "la justicia transicional puede comprender numerosos niveles: institucionales supranacionales, estados-nación, actores corporativos e individuos". See ELSTER, Jon. *Rendición de cuentas*. Madrid: Katz Editores. 2007, p. 114. In the colombian case, the State is the main actor in the transition process after the war with the FARC.

⁶ SOARES, Inês Virgínia Prado. *Verbete Justiça de Transição*. In: Escola Superior do Ministério Público da União. *Dicionário de Direitos Humanos*. 2012. See also:

human rights violations allow the accountability of perpetrator agents, reparations for victims and the adoption of preventive measures to avoid future situations of violence. These are the core terms of transitional justice⁷.

Colombian state actions have, step by step and over time, tried to realize these requirements. They are gradual constructions, with advances and setbacks, achievements and losses. Anyway, these structural predictions of a transitional justice process have as an origin and confirmation in international precedents on the subject⁸. Therefore, one must stress the repeated trials of the Inter-American Court of Human Rights that have condemned the Colombian State for murders, massacres and internal displacement. These trials demonstrate the need for measures to be taken, as part, thus, of the construction that is required and expected of a transitional justice.

From the leading case *Velásques Rodrigues Vs. Honduras* on Forced Disappearance, the Inter-American Court of Human Rights has created and consolidated firm understanding of the need for limitation of institutionalized violence and rejection of acts of terrorism and barbarism committed by the state apparatus in the name of security.

Of the several convictions of Colombia for human rights violations, six resulted in massacres (*Las Palmeras, Diecinueve Comerciantes, Masacre de Mapiripán, Masacre de Pueblo Bello, Masacres de Ituango* and *Masacre de la Rochela*) and were demanding of greater economic and financial expenditures by the state. It is important to remember that in the case *Caballero Delgado y Santana vs. Colombia* and *Las Palmeras vs. Colombia* indemnities were limited to pecuniary compensation to the victims. Just from the case

FACHIN, Melina Girardi. Direito humano ao desenvolvimento e justiça de transição: olhar para o passado, compreender o presente e projetar o futuro. In: PIOVESAN, Flávia; SOARES, Inês Virgínia Prado (Coords.). *Direitos Humanos Atual*. Rio de Janeiro: Elsevier, 2014, p. 145-148.

⁷ FACHIN, Melina Girardi. Direito humano ao desenvolvimento e justiça de transição: olhar para o passado, compreender o presente e projetar o futuro. In: PIOVESAN, Flávia; SOARES, Inês Virgínia Prado (Coords.). *Direitos Humanos Atual*. Rio de Janeiro: Elsevier, 2014, p.148.

⁸ Structural predictions, since 2000, also respond to the organized efforts of victims of violence in legitimate attempt and desire to rebuild their stories and communicate them to the world. See REÁTEGUI, Félix, Las víctimas recuerdan. Notas sobre la práctica social de la memoria. In: *Justicia Transicional. Manual para América Latina. Comisión de Amnistía del Ministerio de Justicia de Brasil*, 2011, p. 359.

Diecinueve Merchants vs. Colombia - the third sentence of the Colombian state - is that the reparations have required acts and symbolic measures, such as the construction of monuments in memory of the disappeared, public apologies and the dissemination of standards on human rights, in addition to knowledge and application of these standards by the state bodies, especially those involved in acts of violations⁹.

The convictions of the Colombian state show that transitional justice and the peace process are marked by advances and setbacks¹⁰. The Court played an important role in initiating the responsibility of the State and demand state recognition for human rights violations, but the Colombian State had important initiatives such as the issue of the Victims and Land Restitution Act (Act 1.448/2011) and now the peace process that is being built with the FARC over several rounds of negotiations in Havana¹¹.

3. In Search of Victims Reparation

3.1. The Victims and Land Restitution Act (Act 1.448/2011): Problems and Possibilities

⁹ However, many of these determinations have not been fulfilled or were delayed to take effect by the Colombian State (*Gutiérrez Soler Vs. Colombia, Masacre de Mapiripán Vs. Colombia, Masacres de Ituango Vs. Colombia, Caballero Delgado y Santana Vs. Colombia*). See *Casos Colombianos Fallados por la Corte Interamericana de Derechos Humanos – estudios a través de la teoría del derecho procesal*. 2013, p. 290.

¹⁰ As Reategui registers with regard to the particularities of the Colombian transitional process and its difficulties: “la sociedad y el Estado colombianos, enfrentados a una violencia armada de décadas constituyen un escenario interesante de esa tensión político-cultural que habita en la globalización. Durante mucho tiempo, a lo largo del siglo XX, las discusiones sobre la paz en Colombia han estado centradas en un esquema institucionalista de negociaciones y de pactos. Hay huellas vivas de esa aproximación en figuras legales como la del *delito político*, tipo penal infrecuente en otras sociedades de América Latina. Ese esquema, no desapareció del todo, convive ahora de manera incómoda con el lenguaje internacional del humanitarismo, centrado en la imposible impunidad para ciertos crímenes atroces y en el lugar central que los derechos de las víctimas han de tener en cualquier opción pacificadora”. See REÁTEGUI, Félix, *ob.cit.*, p. 363. Thus, not only in Colombia but in any country in which to install a transition process, there will be a dichotomy between humanitarianism in the transition process and the desire of those who seek accountability and punishment.

¹¹ The repeated trials of the Court have important symbolic character, in that the sentences for the massacres and forced internal displacement also serve to the memory of the serious human rights violations.

The Colombian Constitutional Court, in 2004¹², recognized the restitution of land as a form of reparation enforcement for victims. The Victims and Land Restitution Act (Act 1.448/2011) has procedural and substantial devices that enable the reparation. This act is an important instrument for the consolidation of the Colombian peace process. It is true that it represents a timely initiative, which should be combined with other many other state measures, but should certainly be seen as one of the elements of the peace building process.

It is assumed that the refund demands have created difficulties. In regulating Act 1.448 / 2011 (Decrees 4.829/2011 and 599/2012), the National Government has set as a requirement for restitution that the immovable property be in an area that has been "macro-focused" and "micro-focused" by the Ministry Defense as a region where there is minimum security conditions for the return of the victims. These safety conditions are seen primarily as a guarantee that the restitution of land will not put the victims in a susceptible position to further violence. From 2012 to April 2015 there were submitted more than 80,000 land restitution requests. Around 31,000 were continued because they were present in micro-focused areas. Of that number, only 11,129 were enrolled in the *Registro Administrativo*¹³. It means that the persistence of the conflict and violence prevents the implementation of the Act. In addition, approximately 80% of the refund claims are not admitted by the lack of previous records on the property or the lack of evidence of ownership. The slowness of the process is another factor that contributes to the low efficacy of land restitution measures¹⁴.

In 2015, the Colombian Constitutional Court ruled¹⁵ that the national government should draw up within six months a strategic plan for land restitution, covering the entire national territory for the return of all

¹² Sentence T025

¹³ SANTANA RODRÍGUEZ. Pedro. *Restitución de Tierras: ¿cómo acelerar el proceso?* Disponible em: <http://www.razonpublica.com/index.php/conflicto-drogas-y-paz-temas-30/9036-restitución-de-tierras-¿cómo-acelerar-el-proceso>.

¹⁴ SANTANA RODRÍGUEZ. Pedro. *Restitución de Tierras: ¿cómo acelerar el proceso?* Disponible em: <http://www.razonpublica.com/index.php/conflicto-drogas-y-paz-temas-30/9036-restitución-de-tierras-¿cómo-acelerar-el-proceso>

¹⁵ Sentence T-679, 2015.

dispossessed buildings (*despojados*) within 10 years - provided on the Victims and Land Restitution Act - indicating how and how much the refund would occur.

The peace negotiations currently underway should mitigate the first difficulty (permanence of conflict and violence). In any case, the requirement of a national plan that takes into account the demarcation of conflict zones, expropriated or abandoned land is an important start. The regularization of land and buildings whose ownership cannot be identified will certainly be benefited by public policies for rural settlement and urban housing. Expropriation and collective actions can also help, as well as the creation of administrative bodies specifically focused on the subject.

The Victims and Land Restitution Act is very important and may have been the first initiative seeking effective response to victims. At the same time, it has a reactive and fragmented response. Therefore, it should be recognized as limited and lacking in continuous improvement.

3.2. The Peace Process and the Agreement on Victims of December 2015: The First Step to Effective Reparations

On August 26, 2012, began the talks that led to the General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace. It has established an agenda based on six points: (i) comprehensive development policy; (ii) political participation; (iii) end of the conflict; (iv) solution to the problem of illicit drugs; (v) victims; (vi) implementation, verification and referendum¹⁶.

In the course of negotiations in Havana, a Declaration of Principles to the point of discussion 5 - on the victims - was established in order to satisfy

¹⁶ On the General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace, see: <https://www.mesadeconversaciones.com.co/sites/default/files/AcuerdoGeneralTerminacionConflicto.pdf>

the rights of victims to truth, justice, reparation and non-repetition of violence guarantees. Ten principles were established by the parties¹⁷:

1. El reconocimiento de las víctimas: *Es necesario reconocer a todas las víctimas del conflicto, no solo en su condición de víctimas, sino también y principalmente, en su condición de ciudadanos con derechos.*

2. El reconocimiento de responsabilidad: *Cualquier discusión de este punto debe partir del reconocimiento de responsabilidad frente a las víctimas del conflicto. No vamos a intercambiar impunidades.*

3. Satisfacción de los derechos de las víctimas: *Los derechos de las víctimas del conflicto no son negociables; se trata de ponernos de acuerdo acerca de cómo deberán ser satisfechos de la mejor manera en el marco del fin del conflicto.*

4. La participación de las víctimas: *La discusión sobre la satisfacción de los derechos de las víctimas de graves violaciones de derechos humanos e infracciones al Derecho Internacional Humanitario con ocasión del conflicto, requiere necesariamente de la participación de las víctimas, por diferentes medios y en diferentes momentos.*

5. El esclarecimiento de la verdad: *Esclarecer lo sucedido a lo largo del conflicto, incluyendo sus múltiples causas, orígenes y sus efectos, es parte fundamental de la satisfacción de los derechos de las víctimas, y de la sociedad en general. La reconstrucción de la confianza depende del esclarecimiento pleno y del reconocimiento de la verdad.*

6. La reparación de las víctimas: *Las víctimas tienen derecho a ser resarcidas por los daños que sufrieron a causa del conflicto. Restablecer los derechos de las víctimas y transformar sus condiciones de vida en el marco del fin del conflicto es parte*

¹⁷ On the principles for item 5, see: <https://www.mesadeconversaciones.com.co/comunicados/comunicado-conjunto-la-habana-07-de-junio-de-2014#sthash.7Mh6cDVD.dpuf>

fundamental de la construcción de la paz estable y duradera.

7. Las garantías de protección y seguridad: *Proteger la vida y la integridad personal de las víctimas es el primer paso para la satisfacción de sus demás derechos.*

8. La garantía de no repetición: *El fin del conflicto y la implementación de las reformas que surjan del Acuerdo Final, constituyen la principal garantía de no repetición y la forma de asegurar que no surjan nuevas generaciones de víctimas. Las medidas que se adopten tanto en el punto 5 como en los demás puntos de la Agenda deben apuntar a garantizar la no repetición de manera que ningún colombiano vuelva a ser puesto en condición de víctima o en riesgo de serlo.*

9. Principio de reconciliación: *Uno de los objetivos de la satisfacción de los derechos de las víctimas es la reconciliación de toda la ciudadanía colombiana para transitar caminos de civilidad y convivencia.*

10. Enfoque de derechos: *Todos los acuerdos a los que lleguemos sobre los puntos de la Agenda y en particular sobre el punto 5 “Víctimas” deben contribuir a la protección y la garantía del goce efectivo de los derechos de todos y todas. Los derechos humanos son inherentes a todos los seres humanos por igual, lo que significa que les pertenecen por el hecho de serlo, y en consecuencia su reconocimiento no es una concesión, son universales, indivisibles e interdependientes y deben ser considerados en forma global y de manera justa y equitativa. En consecuencia, el Estado tiene el deber de promover y proteger todos los derechos y las libertades fundamentales, y todos los ciudadanos el deber de no violar los derechos humanos de sus conciudadanos. Atendiendo los principios de universalidad, igualdad y progresividad y para efectos de resarcimiento, se tendrán en cuenta las vulneraciones que en razón del conflicto hubieran tenido los derechos económicos, sociales y culturales.*

In Havana, the victims met with the government and the FARC to present their versions of the conflict. This was arranged so that the feelings of more than seven million victims of the conflict in the country could be expressed.¹⁸ Item six in the Declaration of Principles clearly establishes the duty of reparation to victims. In addition to unilateral measures that had been taken by the Colombian State (Victims and Land Restitution Act and recognition by the Colombian Constitutional Court of the unconstitutional state of affairs regarding internal displacement) from this Statement of Principles both parties acknowledge the duty to repair the victims¹⁹. So that repair is no longer solely the responsibility of the State and shall be shared by the other parties to the conflict.

Given the agreement on the reparation of victims, in December 2015 the Joint Statement 64 was held in which was signed the *Acuerdo sobre las Víctimas del Conflicto “Sistema Integral de Verdad, Justicia, Reparación y no Repetición”*²⁰. This agreement establishes the combination of judicial and extrajudicial measures of reparation through “*medidas que buscan asegurar la reparación integral de las víctimas, incluyendo los derechos a la restitución, la indemnización, la rehabilitación, la satisfacción y la no repetición; y la reparación colectiva de los territorios, las poblaciones y los colectivos más afectados por el conflicto y más vulnerables, en el marco de la implementación de los demás acuerdos. Con este fin, se fortalecerán los mecanismos existentes, se adoptarán nuevas medidas, y se promoverá el compromiso de todos con la reparación del daño causado*”.

¹⁸ According to the National Information Network and the Unified Register of Victims (UVR) of the Government of Colombia, there were already recorded until February 1st, 2016, 7,902,807 victims. See: <http://rni.unidadvictimas.gov.co/?q=node/107#sthash.7Mh6cDVD.dpuf>

¹⁹ It must also be noted the creation of the Historical Commission of the Conflict and its Victims, conducting regional and national forums on victims and the historic gathering of victims with the rebels and the government in Havana. The Historical Commission of the Conflict and its Victims was established in August 5, 2014 and in February 2015 delivered a report with 809 pages of notes with different views on the conflict and the complexity of the task of assigning responsibilities to a single actor.

²⁰ On the *Acuerdo sobre las Víctimas del Conflicto “Sistema Integral de Verdad, Justicia, Reparación y No Repetición”, incluyendo la Jurisdicción Especial para la Paz; y Compromiso sobre Derechos Humanos* see: <https://www.mesadeconversaciones.com.co/comunicados/comunicado-conjunto-64-la-habana-15-de-diciembre-de-2015>

4. Reconciliation, Procedural Law and Unnamed Measures of Guarantee

4.1. Reconciliation, Indemnization of the Victims and Right to Effective Jurisdictional Enforcement

The full compensation of victims is presupposed by any transitional justice. In the Colombian case, it was let explicit in the Declaration of Principles that the victims' rights of redress is a fundamental part of building a stable and lasting peace. In other words, the Colombian reconciliation project depends on the full and effective reparations for victims.

There is no doubt, therefore, that the procedural law can contribute to reconciliation. But if reconciliation depends on the full compensation of victims, we must relate it to the fundamental right to effective judicial enforcement.

Suitable forms of indemnity are guaranteed by substantive rights, while reputable procedural techniques derive from the fundamental right to effective judicial enforcement. This perception is important to highlight that the forms of judicial protection of rights and the use of reputable procedural techniques, although they should be regulated by law, cannot be hindered by any Act or by its absence.

The victims of violence in Colombia not only have the right to redress. They are entitled to forms of indemnity of reputable protection of their rights. There is no use to assign rights without ensuring the availability of appropriate forms of enforcement for the protection of such rights²¹. Obviously, there is a great difference between having rights and being entitled to a specific enforcement of reparation and the reparation by the equivalent.

Either way, the forms of protection - such as specific indemnity - do not depend on the procedural law²². Forms of enforcement are corollaries of the substantive right. The existence of human rights has, as a consequence, the predisposition of the forms of indemnity protection reputable for those who

²¹ DI MAJO, Adolfo, *La Tutela Civile dei Diritti*, Milano: Giuffrè, 1993, p. 6 e ss; DI MAJO, Adolfo, *Forme e Tecniche di Tutela*, In: *Forme e Tecniche di Attuazione dei Diritti*, v. 1, Napoli: Jovene, 1989, p. 11 e ss.

²² MARINONI, Luiz Guilherme, *La Efectividad de los Derechos y la Necesidad de un Nuevo Proceso Civil. Libro de Ponencias del II Congreso Internacional de Derecho Procesal*. Lima: Universidad de Lima, 2002, p. 94-103.

suffered damage or violence, such as those committed during the Colombian conflict.

It is true that the victims have, when factually possible, the right to a specific form of reparation. In this situation, there is no way to give them indemnity protection by the monetary equivalent under the assumption that the reparation is being provided. When obtaining compensation in specific or in natural form is concretely feasible, there is no way to turn it into money to repair the victim. The priority of compensation in the specific form need not to be prescribed by law, as it derives from the very nature of the rights and the fundamental right to effective protection²³. This means that when there is the right to restitution of land or of a despoiled building, one cannot pretend to compensate for the equivalent in cash in the event that the return to good ownership is factually possible.

It must be stressed that compensation in the specific form does not mean mere restoration of the situation prior to the offense, but the establishment of the situation that would exist if the damage had not occurred. When it is impossible to establish a similar situation to that which would exist if the damage had not occurred, but the establishment of the situation prior to the damage is feasible, or a situation that fulfills in part the need to its reparation, the compensation in the specific form must be coupled with

²³ As the adequate jurisdictional enforcement is, above all, the enforcement that actually repairs the damage, it is not possible to impose to the injured the equivalent in Money, except for cases of excessive burden. Alluding to the inadequacy of the compensation for the equivalent Jorge Mosset Iturraspe warns that some cases result odious to admit that with money "everything is possible", and that which does not fulfill its obligation or destroys property may be off its responsibility by paying a sum in cash. According to Iturraspe, this thesis is "materialista en exceso y aferrada a una defensa de la libertad del deudor inadmisibile" (MOSSET ITURRASPE, Jorge, *Responsabilidad por Daños*, Buenos Aires: Rubinzal-Culzoni, 1998. p. 380). Treating the preference of compensation in the specific form over the compensation in cash, John Calvão da Silva warns, before the Portuguese law, the first form of compensation "é preferível, pois afasta e remove integralmente o dano real ou concreto, reconstitui o estado de coisas anterior à lesão, restabelece a situação que existiria se não se tivesse verificado o evento que obriga à reparação – dando à vítima aquilo de que foi privada. É o modo ideal de ressarcimento". (SILVA, João Calvão da, *Cumprimento e Sanção Pecuniária Compulsória*. Coimbra: Almedina, 1987. p. 153-154). See MARINONI, Luiz Guilherme, *Técnica Processual e Tutela dos Direitos*, 3ª. ed., São Paulo: Ed. Revista dos Tribunais, 2010, p. 311 e ss).

compensation for the equivalent in cash²⁴. That is, when the indemnity in the specific form is not sufficient to fully repair the damage, this requires the combination of the two forms of compensation. It does not seem that the restitution of land is sufficient to compensate victims; there will always be the need to add to the restitution an amount capable of fully repairing them.

However, the effective reparation of the victims also depends on forms of compensation that do not allow the establishment of the situation that would have existed if the damage had not occurred or indemnify in cash. As previously said, the Inter-American Court itself has called for measures such as the construction of monuments in memory of the disappeared, public apologies and dissemination of standards on human rights. These assumptions are also specific compensations, similar to the cases in which it determines the publication of the judgment or the news rectification to repair the damage²⁵. Such forms of specific broad sense reparation are, especially when the damage cannot be subject to specific finding²⁶, essential for the effective compensation of victims.

²⁴ This is the concept applied on § 249 of the German Civil Code. As Helmut Rübmann explains, “Wer Pflanzen zerstört, muß zur Herstellung solche Pflanzen oder auch Früchte liefern, wie sie sich bis zum Herstellungszeitpunkt beim Gläubiger entwickelt hätten” (RÜBMANN, Helmut, *Kommentar zum Bürgerlichen Gesetzbuch*, Darmstadt: Luchtenhand, 1980, p. 186).

²⁵ Referring to the publication of the sentence as a form of specific protection, says Grazia Ceccherini: “La giurisprudenza, tuttavia, almeno sotto il profilo della funzione, sembra orientata ad accostare tale rimedio alla riparazione in natura. E, almeno da questo punto di vista, non si può negare che i due rimedi presentino una certa similitudine, se si considera che anche la pubblicazione della sentenza di merito ha quale scopo essenziale quello di eliminare gli effetti pregiudizievoli che si ricollegano al fatto illecito lesivo dell’onore, della reputazione, o del prestigio, portando a conoscenza di una determinata cerchia di soggetti interessati, l’accertamento giudiziale della verità o, comunque, di un apprezzamento sulla personalità del soggetto leso contrario a quello suggerito in precedenza dal semplice svolgimento dei fatti o dalla versione soggettiva di essi” (CECCHERINI, Grazia, *Risarcimento del Danno e Riparazione in Forma Specifica*, Milano: Giuffrè, 1989, p. 75-76). Ver, también, CHIANALE, Angelo, *Diritto soggettivo e Tutela in Forma Specifica*, Milano: Giuffrè, 1993, p. 99 e ss.

²⁶ The German doctrine admits the specific reparation is applicable to damages of patrimonial and non-patrimonial nature. According to Othmar Jauernig, “im Rahmen der Naturalrestitution besteht *keine* Trennung zwischen Vermögensschaden und Nichtvermögensschaden (vgl Anm II vor § 249), § 253 gilt nur für den Geldersatz. Bsp: Widerruf einer beleidigenden Behauptung (BGB 37, 187); Abdruck einer Gegendarstellung bei einer Ehrverletzung (Köln NJW 62, 1348); Entfernung eines unrichtigen Zeugnisses aus der Personalakte (BAG NJW 72, 2016); Herausgabe von Abschriften eines widerrechtlich kopierten Briefes (RG 94, 4)” (JAUERNIG, Othmar,

On the other hand, the procedural law has a duty to establish the procedural techniques to facilitate obtaining the protection promised by the substantive law²⁷. That is, the procedural law should be concerned with the procedures and suitable techniques to reach the enforcement of rights. It is a State regulatory duty (of the legislature), whose fulfilment is essential for the protection of human rights²⁸.

The establishment of procedures and procedural techniques are not given to the freedom of the legislator. He cannot establish any procedure or procedural technique; he has a duty to draw the procedural instrument

Bürgerliches Gesetzbuch mit Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen, München, CH, Beck'sche Verlagsbuchhandlung, 1994, p. 225). In the same sense, Helmut Rubmann speaks of intangible losses that relate to the general sphere of personal rights. He notes, then, that the rectification of a slanderous claim is a form of non-pecuniary damage repair. (RÜBMANN, Helmut, *Kommentar zum Bürgerlichen Gesetzbuch*, cit, p. 188).

²⁷ Under Italian law, it is argued that art. 24 of the Constitution guarantees the right to effective and timely judicial review. Comoglio, commenting that provision of the Italian Constitution reads as follows: "Al di là di ogni diatriba teorica, il problema cruciale dell'accesso alla giustizia sta, in ultima analisi, nell'*effettività* della tutela giudiziaria. Non basta riconoscere, in astratto, la 'libertà di agire' e garantire a 'tutti', almeno formalmente, l'occasione di esercitarla, proponendo al giudice la domanda di tutela. Limitarsi a tale configurazione, nel catalogo tradizionale delle libertà civili, significa disconoscere il senso profondamente innovativo dei diritti 'sociali' di libertà (ed, in particolare, di quello attribuito ai non abbienti dal 3 comma della norma in esame), nei loro inevitabili riflessi sull'amministrazione della giustizia. Occorre, dunque, assicurare a qualsiasi individuo, indipendentemente dalla sua abbenza o dalle condizioni personali e sociali, non certo (in termini statistici) la probabilità, né tantomeno la certezza, ma in ogni caso la possibilità, seria e reale, di ottenere *adeguata tutela* dall'organo giurisdizionale adito" (COMOGLIO, Luigi Paolo, *Commentario della Costituzione*, (a cura di G. Branca), Bologna-Roma, Zanichelli-Foro italiano, 1981, p. 10). Ver, ainda, PISANI, Andrea Proto, Brevi note in tema di tutela specifica e tutela risarcitoria, *Foro Italiano*, 1983, p. 128 e ss; TARUFFO, Michele, Note sul diritto alla condanna e all'esecuzione, *Rivista Critica del Diritto Privato*, 1986, p. 635 e ss; ANDOLINA, Italo; VIGNERA, Giuseppe, *Il modello costituzionale del processo civile italiano*, Torino: Giappichelli, 1990, p. 89 e TOMMASEO, Ferruccio, *Appunti di diritto processuale civile*. Torino: Giappichelli, 1995, p. 169 e ss.

²⁸ An important consequence of the objective dimension is to establish for the State a duty of protection of fundamental rights. This protection attenuates "a separação entre a ordem constitucional e a ordem legal, permitindo que se reconheça uma irradiação dos efeitos desses direitos (*Austrahlungswirkung*) sobre toda a ordem jurídica" (MENDES, Gilmar Ferreira, *Âmbito de proteção dos direitos fundamentais e as possíveis limitações*, *Hermenêutica constitucional e direitos fundamentais*, Brasília: Brasília Jurídica, 2002, p. 209). Before him is the State obliged to protect fundamental rights through normative (norms) and factual (concrete actions) installments.

suitable to allow the effective protection of the substantial right²⁹. The legislature is not free to establish the procedural technique that, while allowing the protection of the right, does not allow the effective judicial protection of the right. There is no legitimate choice between greater or lesser effectiveness of procedural technique; there must always be elected the procedural technique that allows for the effective provision and protection of the right³⁰.

Well so, the judge - who also has a duty to protect fundamental rights, including the fundamental right to effective judicial protection - cannot fail to provide effective jurisdictional enforcement for the absence of reputable procedural techniques under the law. Now, if fundamental rights have vertical effectiveness of the state and therefore also affect the judge³¹, the omission of the legislator obviously does not justify the judge³². If the fundamental right to effective protection requires that the court is provided with sufficient power for the effective protection of rights, the absence of a reputable procedural technique is a sign of insufficiency on the enforcement of effective judicial protection, which opens the opportunity for judicial review in the case³³.

²⁹ MARINONI, Luiz Guilherme; MITIDIÉRO, Daniel, Direitos fundamentais processuais, in: *Curso de Direito Constitucional (Sarlet, Marinoni e Mitidiero)*, 5a. ed., São Paulo: Saraiva, 2016, p. 729 e ss.

³⁰ MARINONI, Luiz Guilherme, Il Diritto alla Tutela Giurisdizionale Effettiva nella Prospettiva della Teoria dei Diritti Fondamentali, In: *Studi di Diritto Processuale Civile in Onore di Giuseppe Tarzia*, v. 1, Milano: Giuffrè, 2005, p. 93-162; MARINONI, Luiz Guilherme; PEREZ RAGONE, Alvaro, *Fundamentos del Proceso Civil*, Santiago: Abeledo-Perrot/Thomson Reuters, 2011.

³¹ When speaking in the vertical and horizontal efficacies of fundamental rights, one wishes to allude to the distinction between the effectiveness of fundamental rights in the government and in relations between individuals. There is vertical effectiveness in linking the legislator, administrator and judge to fundamental rights. There is horizontal effectiveness - also called "private efficiency" or "effectiveness against third parties" ("Drittwirkung", the German expression) - in relations between individuals, although it maintains that, in the case of manifest inequality between two individuals there can also be vertical effectiveness. Ver MARINONI, Luiz Guilherme; ARENHART, Sérgio Cruz; MITIDIÉRO, Daniel, *Novo Curso de Processo Civil*, São Paulo: Ed. Revista dos Tribunais, 2015, p. 82 e ss.

³² MARINONI, Luiz Guilherme, L'insufficienza di Tutela Normativa al Diritto Fondamentale di Azione, *Rivista Trimestrale di Diritto e Procedura Civile*, 2015, p. 915 e ss.

³³ Claus-Wilhelm Canaris stresses that the role of fundamental rights of imperative enforcement needs, for its implementation, the transposition by infra law. As a result, he says that for legislator is open a wide margin of maneuver between the failure of prohibitions and excess. This margin, however, is not the same that is released to judicial intervention. About this it is important to realize with Canaris that the prohibition of failure does not coincide with the duty of protection, but is rather an

4.2. Restitution of Land and Immediate Immission in Possession

The Agreement of December 2015 (*Acuerdo sobre las Víctimas del Conflicto “Sistema Integral de Verdad, Justicia, Reparación y No Repetición”, incluyendo la Jurisdicción Especial para la Paz; y Compromiso sobre Derechos Humanos*) is a firm step in order for the rights of victims to be effectively repaired by the state, the FARC and the others involved in the conflict. In this sense, the collective territorial approach, mentioned when approaching the problems facing the Victims and Land Restitution Act, may present itself as an important indemnity mechanism. The reparation of a community of people who were forcibly displaced from their lands can find adequate response in return areas through collective action. The application of collectivization techniques of individual demands has the advantage of individual causes coalesce under the responsibility of only one subject. This will represent the group in a special kind of legitimacy, at the same time ordinary and extraordinary, so that the effects of the judgment can be valid for all and since observed due representation³⁴. This type of demand collectivization also enables any third party (current occupants of the land, for example) to have their interests taken into account³⁵.

It would not be appropriate, when solving the problem, that another was created. The return of dispossessed communities to areas they once occupied cannot serve as a motto for the creation of another serious social problem, consisting of the simple removal of the current residents, without

autonomous function in relation to this. These are two distinct argumentative paths by which, first, it controls whether there is a duty to protect, and then on what terms should this be done by the ordinary law without descending below the minimum legal and constitutionally required protection. Therefore, the lack of control can only ensure that the protection meets the minimum requirements in their efficiency. The judge only fulfills the lack of control, he cannot go beyond that. See CANARIS, Claus-Wilhelm, Grundrechtswirkungen und Verhältnismäßigkeitsprinzip in der richterlichen Anwendung und Fortbildung des Privatsrechts, *JuS*, 1989.

³⁴ MARINONI, Luiz Guilherme; ARENHART, Sérgio Cruz, Collective Tort Litigation and Due Process of Law: the Brazilian Experience, *International Journal of Procedural Law*, 2014, 4, p. 42 e ss.

³⁵ ARENHART, Sérgio Cruz, *A Tutela Coletiva de Interesses Individuais*: para além a proteção de interesses individuais homogêneos, São Paulo: Revista dos Tribunais, 2013. p. 205-207.

giving them another place to live. In this sense, the technique of collective protection by allowing the focus of the problem in its proper range, can contribute to the accommodation of the matter in its entirety.³⁶

Moreover, as the delay of the process, clearly on the right to land restitution, exacerbates the damage caused to the victims³⁷, it is important to provide a technique that allows, evidenced *prima facie* certain requirements, immediate immission of the victim in possession of the land or building they are entitled to obtain as indemnity. This technique has a clear anticipation function of protection of the substantive right.³⁸

4.3. Permanent Indemnity Fund and Reparation Enforcement Measures

The supply of material resources through the goods and financial resources that the parties have may provide the reparation for the equivalent in cash to victims. This form of enforcement should still be subject to further consideration. Anyway, the creation of a Permanent Fund of Indemnity, to be fed by both the state and the FARC, can be a concrete way and long-term compensation for the victims. Considering the Fund, the state could provide resources gradually and permanently, while the FARC could deliver financial resources and assets so they can be auctioned off and turned into money.

³⁶ BERIZONCE. Roberto Omar, Las tutelas procesales diferenciadas como proyección del movimiento del acceso a la Justicia, in: *Tutelas procesales diferenciadas de los derechos económicos, sociales y culturales*. (Coord. Roberto O. Berizonce e Felipe Fucito), La Plata: Facultad de Ciencias Jurídicas y Sociales, 2014, *passim*.

³⁷ Remember that the length of the process affects more sharply those who have fewer resources. The delay can certainly be understood as a cost, and this is all the more difficult the more dependent is the author of the book value sought in court. When the author is not economically dependent on the value in dispute, it is obviously not affected as the one who has his life linked to the attainment of good or capital object of the process. As Cappelletti warned in “*O processo como fenômeno social de massa*”, “a duração excessiva é fonte de injustiça social, porque o grau de resistência do pobre é menor do que o grau de resistência do rico; esse último, e não o primeiro, pode normalmente esperar sem grave dano uma justiça lenta” (CAPPELLETTI, Mauro, El proceso como fenómeno social de masa, in: *Proceso, ideologías, sociedad*, Buenos Aires: EJE, 1974, p. 133-134). The Italian Superior Counsel of Magistracy has said that a slow and intricate judgment gives rise to compression phenomena of the fundamental rights of citizens. (See CARPI, Federico, *La provvisoria esecutorietà della sentenza*, Milão: Giuffrè, 1979, p. 12).

³⁸ MARINONI. Luiz Guilherme, *Antecipação da tutela*, 12a. ed., São Paulo: Ed. Revista dos Tribunais, 2012, *passim*.

Thus, the Permanent Fund repair would be made multilaterally and enable the permanent and continuous reparation of the victims.

In this dimension, the procedural measures of guarantees may be aimed at ensuring the minimum contributions to be established by stakeholders (Government, FARC, paramilitary). Thus, the injunction could work in favor of ensuring an effective remedy, similar to what occurs in other processes (bankruptcy and civil insolvency), in which the principle of *par conditio creditorum* is applied, preventing some to benefit at the expense of others. Thus, so that the fund is not emptied, the monetary reparations should be paid at once - with the delivery of a single global value to each victim - but by installments - for example every month - permanently and continuously³⁹.

Note that in this way, the right to request interim or warranty measures for the indemnity enforcement would not be reserved only to a particular victim, but any being legitimized to the protection of victims. This does not mean that one only victim has no right to request the measure or cautionary assurance. In fact, one cannot remove the individual right of the victims for guarantee. The decision to recognize the right to guarantee or caution obviously benefits other victims.

An essential point that the Victims and Land Restitution Act does not address and which also faces certain opacity in the current building peace agreement is *the accessibility of Colombian refugees who are outside the reparation mechanisms*. This means ensuring the access of refugees to the consular authorities without the loss of international protection provided by the refuge country⁴⁰. Looking for the victims is also not forgetting those who had to leave and thus ensuring them access through the consular authorities to reparatory enforcements due to victims.

Both the precautionary measures, as the anticipatory measures of protection of the right, are guaranteed the fundamental right to effective judicial protection. Obviously, this fundamental right cannot be limited to the

³⁹ On these difficulties, see HENSLER, Deborah, *et alli*, *Class action dilemmas – pursuing public goals for private gain*, Santa Monica: RAND, 2000, p. 109 e ss.

⁴⁰ On the rights of refugees and the peculiar situation of Colombian refugees, see the detailed study of the Journal of the United Nations High Commissioner for Refugees Protection: GODOY, Gabriel Gualano de. *Asilo e Hospitalidade: sujeitos, política e ética do encontro*. Tese (Doutorado em Direito), Rio de Janeiro, 2016. Faculdade de Direito. Universidade do Estado do Rio de Janeiro (UERJ). p. 122-123.

right to obtain the protection of the right at the end of the procedure. In certain cases, it is essential to advance the protection of substantive law, be it due to urgency, be it because of the evidence of the right claimed by the author and the weakness of the defense of the defendant, that is, to prevent the delay in the process to become a damage that is merely a consequence of its use. Similarly, the interim or warranty enforcement may also be essential for the effective protection of the substantive right⁴¹. Thus, the prediction of anticipatory and precautionary techniques is nothing more than proper regulatory response to the fundamental right to effective judicial protection. In other words, such procedural techniques obviously cannot be suppressed when the effective reparation for victims is in game, especially because the lands and the monetary claims should be seen as assets essential to the ransom of the conditions of human dignity.

4.4. Guarantee Measures, Confidence and Social Peace

If the reparation of victims' rights is a fundamental part of building stable and lasting peace, as explained in paragraph 6 of the Declaration of Principles on the Victims, ensuring measures to guarantee such protection is not only a procedural function.

Faced with the assurance measures of indemnity protection, the Declaration of Principles begins to connect with state instruments that give victims the possibility of having guarantees for the effective range of repairs. Note that the security measures in this dimension are related to public trust in agreements and the development of the peace process. As is known, legal certainty and confidence have a close relationship, considering that the protection of confidence is related to the subjective aspects of security,

⁴¹ Under Italian law, it is assumed that the injunctive relief is implicit in the right to effective judicial protection. Thus, COMOGLIO, Luigi Paolo, *La Garanzia Costituzionale dell'Azione ed il Processo Civile*, Padova: Cedam, 1970; PISANI, Andrea Proto, *Lezioni di Diritto Processuale Civile*, Napoli, Jovene, 1994; RAPISARDA, Cristina; TARUFFO, Michele, Inibitoria, *Enciclopedia Giuridica Treccani*, v. 17, p. 8-9.

especially the calculability of citizens as to the content and effectiveness of the Government's actions⁴².

The reconciliation and the development of social peace depends on the trust of the population and the victims in the agreements between the government and the FARC, for the procedural law can actually collaborate. The statement to the effect that the effective redress for victims is unswerving precondition for the construction of stable and lasting peace confirms that the effectiveness of reparatory protection is essential for reconciliation. So that the function developed by unnamed measures reimbursement guarantee, to generate greater confidence and expectation for the practical implementation of the agreements and thus prevent the principles set forth therein can be seen as mere proclamations, it has great importance in the reconciliation process.

5. Final Considerations

It is with these considerations that one can highlight not only the instrumental role, but also substantial role that the procedural law and its unnamed precautionary measures can develop to make possible the conditions for reconciliation and lasting peace, facing the conflict, knowing and recognizing the history and ensuring the rights to memory and truth, not to repeat, and especially the full and effective reparations for victims. Of course, the proposals presented here do not claim to be an exact recipe, ready and finished. Rather, they are ingredients possibilities, which should be the object of reflection so that procedural law can take its place on the challenge posed by the conflict experienced by Colombian society.

Bibliographical References

ANDOLINA, Italo; VIGNERA, Giuseppe; *Il modello costituzionale del processo civile italiano*, Torino: Giappichelli, 1990.

⁴² CANOTILHO, José Joaquim Gomes, *Direito Constitucional e Teoria da Constituição*, Coimbra: Almedina, 2002, p. 257.

ARENHART, Sérgio Cruz, *A Tutela Coletiva de Interesses Individuais: para além a proteção de interesses individuais homogêneos*, São Paulo: Revista dos Tribunais, 2013.

BERIZONCE, Roberto O., Las tutelas procesales diferenciadas como proyección del movimiento del acceso a la Justicia, in: *Tutelas procesales diferenciadas de los derechos económicos, sociales y culturales*. (Coord. Roberto O. Berizonce e Felipe Fucito), La Plata: Facultad de Ciencias Jurídicas y Sociales, 2014.

CANARIS, Claus-Wilhelm, *Grundrechtswirkungen und Verhältnismäßigkeitsprinzip in der richterlichen Anwendung und Fortbildung des Privatrechts*, JuS, 1989.

CANOTILHO, José Joaquim Gomes, *Direito Constitucional e Teoria da Constituição*, Coimbra: Almedina, 2002.

CAPPELLETTI, Mauro, El proceso como fenómeno social de masa, in: *Proceso, ideologías, sociedad*, Buenos Aires: EJEA, 1974.

CARPI, Federico, *La provvisoria esecutorietà della sentenza*, Milão: Giuffrè, 1979.

CECCHERINI, Grazia, *Risarcimento del Danno e Riparazione in Forma Specifica*, Milano: Giuffrè, 1989.

CHIANALE, Angelo, *Diritto soggettivo e Tutela in Forma Specifica*, Milano: Giuffrè, 1993.

COMOGLIO, Luigi Paolo, *Commentario della Costituzione*, (a cura di G. Branca), Bologna-Roma, Zanichelli-Foro italiano, 1981.

_____, *La Garanzia Costituzionale dell’Azione ed il Processo Civile*. Padova: Cedam, 1970.

CUASTUMAL MADRID, Julio César. *Casos Colombianos Fallados por la Corte Interamericana de Derechos Humanos – estudios a través de la teoría del derecho procesal*. 2013.

DELGADO, Natalia; TRUJILLO, Ángela. Entre la justicia y la paz: los estándares normativos de la justicia transicional: qué soy capaz de hacer por la paz y la reconciliación? In: *III Congreso de Responsabilidad Social Justicia Transicional y Escenarios de Reconciliación*. Memorias...Bogotá, 2014.

DI MAJO, Adolfo, *Forme e Tecniche di Tutela*, In: *Forme e Tecniche di Attuazione dei Diritti*, v. 1, Napoli: Jovene, 1989.

_____, Adolfo, *La Tutela Civile dei Diritti*, Milano: Giuffrè, 1993.

DIANE, Orentlicher. Settling accounts: the duty to prosecute human rights violations of a prior regime. In: *The Yale Law Journal*. v. 6, n. 8, jun. 1991.

ELSTER, Jon. *Rendición de cuentas*. Madrid: Katz Editores. 2007.

FACHIN, Melina Girardi. Direito humano ao desenvolvimento e justiça de transição: olhar para o passado, compreender o presente e projetar o futuro. In: PIOVESAN, Flávia; SOARES, Inês Virgínia Prado (Coords.). *Direitos Humanos Atual*. Rio de Janeiro: Elsevier, 2014.

GODOY, Gabriel Gualano de. *Asilo e Hospitalidade: sujeitos, política e ética do encontro*. Tese (Doutorado em Direito) - Faculdade de Direito. Universidade do Estado do Rio de Janeiro (UERJ), 2016.

HENSLER, Deborah, *et alli*, *Class action dilemmas – pursuing public goals for private gain*, Santa Monica: RAND, 2000.

INTERNATIONAL CRISIS GROUP. Justicia transicional y los diálogos de paz en Colombia. In: *Informe sobre América Latina*. n.º 49. s/l, s/v, n. 49, 2013.

JAUERNIG, Othmar, *Bürgerliches Gesetzbuch mit Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen*, München, CH, Beck'sche Verlagsbuchhandlung, 1994.

MARINONI, Luiz Guilherme. Il Diritto alla Tutela Giurisdizionale Effettiva nella Prospettiva della Teoria dei Diritti Fondamentali, In: *Studi di Diritto Processuale Civile in Onore di Giuseppe Tarzia*, v. 1, Milano: Giuffrè, 2005.

_____, L'insufficienza di Tutela Normativa al Diritto Fondamentale di Azione, *Rivista Trimestrale di Diritto e Procedura Civile*, 2015.

_____. La Efectividad de los Derechos y la Necesidad de un Nuevo Proceso Civil. *Libro de Ponencias del II Congreso Internacional de Derecho Procesal*. Universidad de Lima.

_____. *Antecipação da tutela*, 12a. ed., São Paulo: Ed. Revista dos Tribunais, 2012.

_____; PEREZ RAGONE, Alvaro, *Fundamentos del Proceso Civil*, Santiago: Abeledo-Perrot/Thomson Reuters, 2011.

_____; ARENHART, Sérgio Cruz, Collective Tort Litigation and Due Process of Law: the Brazilian Experience, *International Journal of Procedural Law*, 2014.

_____; MITIDIERO, Daniel, Direitos fundamentais processuais, in: *Curso de Direito Constitucional (Sarlet, Marinoni e Mitidiero)*, 5a. ed., São Paulo: Saraiva, 2016.

_____; ARENHART, Sérgio Cruz; MITIDIERO, Daniel, *Novo Curso de Processo Civil*, São Paulo: Ed. Revista dos Tribunais, 2015.

MENDES, Gilmar Ferreira, Âmbito de proteção dos direitos fundamentais e as possíveis limitações, *Hermenêutica constitucional e direitos fundamentais*, Brasília: Brasília Jurídica, 2002.

MUSSET ITURRASPE, Jorge, *Responsabilidad por Daños*, Buenos Aires: Rubinzal-Culzoni, 1998.

PISANI, Andrea Proto, Brevi note in tema di tutela specifica e tutela risarcitoria, *Foro Italiano*, 1983.

_____, *Lezioni di Diritto Processuale Civile*, Napoli, Jovene, 1994.

RAPISARDA, Cristina; TARUFFO, Michele, Inibitoria, *Enciclopedia Giuridica Treccani*, v. 17.

REÁTEGUI, Félix, Las víctimas recuerdan. Notas sobre la práctica social de la memoria. In: *Justicia Transicional. Manual para América Latina. Comisión de Amnistía del Ministerio de Justicia de Brasil*, 2011.

RÜBMANN, Helmut, *Kommentar zum Bürgerlichen Gesetzbuch*, Darmstadt: Luchtenhand, 1980.

SANTANA RODRÍGUEZ, Pedro. *Restitución de Tierras: ¿cómo acelerar el proceso?* Disponible em: <http://www.razonpublica.com/index.php/conflicto-drogas-y-paz-temas-30/9036-restitución-de-tierras-¿cómo-acelerar-el-proceso>

SARLET, Ingo Wolfgang; MARINONI, Luiz Guilherme; MITIDIERO Daniel. *Curso de Direito Constitucional*. 5ª ed. São Paulo: Saraiva, 2016.

SILVA, João Calvão da, *Cumprimento e Sanção Pecuniária Compulsória*. Coimbra: Almedina, 1987.

SOARES, Inês Virgínia Prado. Verbete Justiça de Transição. In: Escola Superior do Ministério Público da União. *Dicionário de Direitos Humanos*. 2012.

TARUFFO, Michele, Note sul diritto alla condanna e all'esecuzione, *Rivista Critica del Diritto Privato*, 1986.

_____; RAPISARDA, Cristina; Inibitoria, *Enciclopedia Giuridica Treccani*, v. 17.

TEITEL, Ruti, Genealogía de la justicia transicional, In: *Justicia Transicional. Manual para América Latina. Comisión de Amnistía del Ministerio de Justicia de Brasil*, 2011

TOMMASEO, Ferruccio, *Appunti di diritto processuale civile*. Torino: Giappichelli, 1995.

TORELLY, Marcelo D. *Justiça de Transição e Estado Constitucional de Direito: perspectiva teórico-comparativa e análise do caso brasileiro*. Belo Horizonte: Fórum, 2012.

TRUJILLO, Ángela; DELGADO, Natalia. Entre la justicia y la paz: los estándares normativos de la justicia transicional: qué soy capaz de hacer por

la paz y la reconciliación? *In: III Congreso de Responsabilidad Social Justicia Transicional y Escenarios de Reconciliación. Memorias...*Bogotá, 2014.

UPRIMNY YEPES, Rodrigo; SÁNCHEZ DUQUE, Luz María; SÁNCHEZ LEÓN, Nelson Camilo. *Justicia para la paz: crímenes atroces, derecho a la justicia y paz negociada*. Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad: Dejusticia, 2014.

VIGNERA, Giuseppe; ANDOLINA, Italo *Il modello costituzionale del processo civile italiano*, Torino: Giappichelli, 1990.