

The Disputed Identity of the Victim of Mass Atrocity and the Strategic Use of International Legal Concepts in Colombia

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I. Introduction

Victims of mass atrocities have become an important constituency in Colombia. The country has endured an internal armed conflict that has lasted for over 50 years, in which three main armed actors have battled against each other — namely the Colombian state, the insurgent guerrillas, and the paramilitary groups. But the group that has been most affected by the clashes between these armed actors is the civilian population. The proportion of victimisation is enormous. For each combatant killed, four civilians have died. (GMH 2013.) And, as of January 2020, the Unified Registry of Victims counts almost nine million victims (Unidad Víctimas). With a population of around 48 million, this represents more than 20% of Colombia's total population.

While the victims of the conflict have in fact been accumulating for a while, the category of the victim of mass atrocities, brought in by

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international law,¹ has had a fairly recent and sinuous trajectory in Colombia.² In this trajectory, the framework of transitional justice³ has been particularly important for victims of mass atrocities, providing a language that has allowed them to articulate their demands in terms of rights.⁴ It was only in the period between 2003 and 2005, with the peace negotiations between the Colombian government and a nation-wide coalition of paramilitary groups, that the framework of transitional justice was introduced, discussed and, to a certain extent, adopted in the text of the Justice and Peace Law. (Aranguren Romero 2012.)⁵

In this paper, I would like to show how the category of ‘victims of mass atrocity’ produces a disputed identity. In this dispute, the different ways in which victims relate to the category are important as they move in different directions, producing and reproducing conflicting notions of victimhood. Often the actions of victims who seek relief to their situation by applying to governmental benefits for victims of mass atrocities can, unwillingly, end up by supporting a stereotype of a disempowered and defenceless victim. Other times, instead, the ways in which victims relate with the category of victim are profoundly empowering as they do not limit to only invoking the category of victim but they fill it with specific and strategic contents.⁶

¹ The references to international law in this paper, encompass those disciplines that deal with victims of mass atrocities, namely human rights law, international humanitarian law, and international criminal law. Moreover, these are all considered in the emerging practice of transitional justice, commonly understood as the ‘conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes.’ Ruti Teitel, ‘Transitional Justice Genealogy’ (2003) 16 *Harvard Human Rights Journal* 69. Thus, although transitional justice is an area of practices that includes domestic as well as international norms, with regards to its conception of victim, it is heavily influenced by human rights norms. Moreover, in this paper, I confine my reflections to the victims of mass atrocities, that is, those direct and indirect victims of the crimes normally included in the major international criminal tribunals, namely crimes against humanity, genocide, and war crimes.

² Colombian civil society has utilised the language of human rights and international law for a long time, victims’ groups actions strategically using this language, though connected, are more recent. See: Winifred Tate, *Counting the Dead* (University of California Press, 2007).

³ On the definition of Transitional Justice, see footnote n 2.

⁴ The rights of the victims to truth, justice, reparations and guarantees of non-recurrence have been particularly important in this role. See for instance: UN Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 27 August 2014, A/HRC/27/56.

⁵ This process of discussion is analysed in: Gómez Sánchez, Gabriel: *Justicia transicional en disputa*. Universidad de Antioquia, Medellín 2014; and Fundación Social, *Trámite de la Ley de Justicia y Paz: Elementos para el control ciudadano al ejercicio del poder político*. Fundación Social, Bogotá 2006.

⁶ It should be noted here the victims are not a homogenous group. A consequence of this is that contestation does not necessarily go in one direction from the victims as a homogenous group against the state. The identity of the victim can be infused with meanings that may undermine the very status of other victims. In Colombia, because of the existence of different armed groups (state, guerrilla and paramilitary groups) this is actually the case. While there are few that would challenge the status of guerrilla victims, the struggle of some groups of victims was a struggle for recognition of their status as victims in a context that did not

In turn, the ways in which the government reacts to the pressures of civil society and grassroots groups is also important in shaping the disputed identity of the victim. Indeed, a series of successive legal responses have attempted to tackle the problems of the growing victimised population, from 2005 onwards, explicitly using the category of the victim.⁷ But, as any legal category, victimhood produces spaces of inclusion and exclusion. These spaces are crucial when incorporating the category of victim to the domestic context where the abstract and general language of human rights and international law is adapted to the specificities of the country. Thus, in actively creating these spaces of exclusion, while at the same time responding to the pressures to incorporate international law standards into domestic legislation, the state acts in a strategic way. Moreover, the way in which the government implements the international standards also affects the way in which the victim's identity is developed: When offering redress but failing to comply, the state is actively contributing to maintain victims in a vulnerable position.

There is a growing amount of literature focusing on the political effects of the category of victim in the context of Colombia's internal armed conflict. Some of these works reflect on the category of victim as one with an emancipatory potential, while others focus on its limitations. (Delgado Barón 2011; Fuentes-Becerra & Atehortúa-Arredondo 2016, 65, 67; Acebedo Pérez 2016; Gómez Sánchez 2014; Jimeno et. al. 2015; Gomez Correal 2015.) For instance, for Jimeno, Varela and Castillo, the category of victim grants a language to express personal pain and allows to create 'emotional communities' that place victims of a particular violent event together with wider audiences, exceeding ethnical and regional limits, situating them in a global political longing. At the same time it is a language that allows them to

recognised the existence of state crimes. Moreover, some groups of victims are also suspected — sometimes by other victims — of belonging to or sympathising with the guerrilla, which would undermine their status as victims. Other group who has recently resorted to the category of victim is the Colombian army, with regards to its members injured or killed during the conflict. See: Nathalie Pabón Ayala et al, *Memoria y Víctimas en las Fuerzas Militares* (Editorial Universidad del Rosario, 2018). This may be a way to clean the army's image in the wake of cases such as the so called 'false positives'. The name 'false positives' refers to a widespread practice in which random people — often of poor background - were kidnapped, killed, and dressed as *guerrilleros* by security forces in order to respond to the pressures of the institution to increase their body counts of guerrilla members killed. See, Rojas Bolaños, Omar Eduardo and Benavides Silva, Fabián Leonardo: *Ejecuciones Extrajudiciales en Colombia 2002-2010*. Ediciones USTA, Bogotá, 2017.

⁷ Before the Justice and Peace Law, a 'pre-victim' legislation from 1997 already regulated the situation of internally displaced persons, the major form of victimisation in Colombia (Law 287/1997). Following the Justice and Peace Law, in 2008, a decree established a programme of administrative reparations that would complement the framework of the Justice and Peace Law, in order to access reparations outside the context of criminal processes. But it is in 2009, with the so called 'Victims Law' that the transitional justice framework was more decidedly adopted.

communicate and negotiate with public institutions. (Jimeno, Varela & Castillo 2015, 295–298.) Moreover, Jaramillo (2014, 228) observes that the fact that ‘victim’ is a familiar category, widely used by social movements, has contributed to its effectiveness as a tool for governing that can be used to articulate gender and ethnic-racial hierarchies by attributing specific forms of agency to subaltern groups.

He observes how in Colombia, the category of victim has become a place defined by vulnerability, where gender and ethnic features intersect. Agency is thus acknowledged, but limited to the claim for humanitarian assistance (cf. Jaramillo 2014, 227). This work contributes to this discussion by showing how these two effects of the category of victim coexist, as all the actors that resort to this category are contributing to the formation of a disputed abstract identity. The category of victim is neither emancipatory nor limiting, but each actor can - willingly or unwillingly - effect in the construction of an identity associated with such category. And the effects of this construction are mixed.

In previous works I have reflected on how victims of mass atrocities’ organisations at times act – using the vocabulary of international law – in ways that contrast with its prevailing representation of victims as subjects essentially defenceless, passive and docile (Tapia Navarro 2018, 2019, and 2020). In this paper, I seek to follow the sinuous trajectory of the category of victim and explore the different ways in which victims of mass atrocities relate to it by identifying with it or challenging it as well as its effects. By contrasting the different legal frameworks with which the government addresses the question of the victims of the conflict, on the one hand, and on the other, the different ways in which victims relate to these legal concepts, I suggest that these frameworks and actions produce and reproduce conflicting notions of victimhood. An identity emerges from that interrelation, a conflicting identity that is never fully realised.

In what follows, I begin by unpacking some of the conceptual underpinnings of this paper. More specifically, I develop three concepts that will allow the reader to better understand the argument I present: identity, interlegality and indeterminacy (Section 2). Then, I situate the reader in the Colombian context by briefly referring the context of the internal armed conflict, and then, examining the different legal responses towards the situation victims in the context of Colombia (Section 3). Next, I turn to examine the ways in which victims identify with the norm (Section 4). I argue that, when victims of mass atrocities identify with the category produced in the law, they seek recognition and redress, but in this process they also contribute to reaffirm the state’s legitimacy. Moreover, in offering redress but failing to comply, the state contributes to create an identity of a victim essentially helpless and vulnerable. I then go on to examine some examples of dis-identification (Section 5). Dis-identification entails a challenge to the category of

victim, and it may take different forms. It may seek legal reform, in which case it challenges the contents while at the same time reaffirming the power of the state. It may challenge deeper political aspects such as, gender equality, social justice, economic regime, and neoliberalism.

I conclude that, the strategic use of the international law has mixed effects. On the one hand, victims gain the opportunity to push for legal change and through this, they are also able to challenge deeper political questions. As a response however, the government can strategically use the norm to comply with international law and, at the same time, ignore the deeper claims of victims. In this back and forth movement, a dynamic identity is shaped, always in dispute. The fact that victims use the norm strategically allows for some of their claims to enter in this dispute but not to prevail.

2. Identities, interlegality and indeterminacy

Several works in the area of human rights, transitional justice, and international criminal law have underscored that victims are usually portrayed as defenceless and passive.⁸ In this context, one may affirm that the prevailing abstract identity of the victim of mass atrocities is that of a subject who has suffered a great a violation of their rights, and that finds herself in a vulnerable position in need for the assistance of others. This is, of course, a stereotype. But a stereotype that is relevant as it prevails in the discussions around victimhood and that inspires the interpretations of the rights that international law grants to victims.⁹

However, there are different stories of victims using the language of the law and the category of victim in ways that are far from merely vulnerable, and that highlight different aspects of victimhood.¹⁰ An interesting conclusion that comes from observing these stories is that victims do not limit themselves to simply 'wield' the category of victim, but instead, they infuse it with contents that align to their own struggles (Tapia Navarro 2019). In this sense, they may use the category

⁸ There are several works reflecting on the stereotype of the victim as passive and defenceless in international law, human rights law, international criminal law and transitional justice. I review these different works thoroughly in: Tapia Navarro 2020.

⁹ See for instance, in relation with general human rights law: Mutua 2001; Wilson 2009; Kennedy 2002; Urueña, 2012, 93. In relation with the practice of transitional justice: Madlingozi 2010. In relation to international criminal law: Kendall & Nouwen 2014; Fletcher 2015; Branch 2011; Clarke 2009; Schwöbel-Patel 2016.

¹⁰ I have developed two such cases in separate works, see: Tapia Navarro 2018 and 2019.

strategically,¹¹ with the intention of achieving purposes that cannot be reduced to the mere application of the legal standards.

In this paper, I resort to the idea of identity in order to make sense of the diversity of ways to relate to the category of victim. Following Hall (1996, 3), I do not adopt an essentialist concept of identity, but rather, a strategic and positional one. Identities, then, do not ‘signal that stable core of the self’ but instead, they signal to the ‘process of becoming’, which means that identities are not constituted outside the process of representation but within it (Hall 1996, 4). In this sense, identification ‘is always a process of articulation (...) an over-determination or a lack, but never a proper fit’ (Hall 1996, 3). And it is precisely in this over-determination or lack, where there is room for strategy in the use of these concepts because it is in that over-determination or lack where the victim itself may dispute the formation of the abstract identity of the victim.

As will be seen later in this article, the different ways in which victims themselves relate to the concept of victim with different and sometimes adverse effects. In strategically using the ‘label’ of victim, for instance, grassroots victims’ groups may access sources of financing that allow them to continue their work. (Sandvik & Lemaitre 2015, 251–271.) But at the same time, it may also inscribe them as vulnerable beings, and its agency becomes thus defined in the expression of a claim for humanitarian assistance (e.g. Jaramillo 2014, 227). A similar thing happens with the single victim that, in applying for victims’ redress, gives the state the power to decide which stories are to be told, and how to tell them, and finally finds as herself waiting for a long time for redress.

At the same time, in strategically resorting to international law in their actions, victims groups have succeeded in introducing different nuances to the category of victim. I have grouped these actions under the level of ‘dis-identification’, which is nothing more than a form of identification in which the subject invokes the category of victim and at the same time disputes it by introducing separate claims. In this paper, I show four such examples, in which victims introduce questions of gender, land distribution, the state as a perpetrator of violence, and the idea that victims’ lives, their political motivations and dreams should be highlighted and upheld (instead of only focusing on the harm they suffered).

Because the category of victim has been adopted in Colombia as a result of the incorporation of the language of human rights, and more recently, transitional justice, victims that invoke it are also often referring to victims’ rights under international law. When victims are

¹¹ I use the word strategy here in a colloquial way, that is, strategy is understood as a plan that intended to achieve a particular purpose. See, Oxford Lerner’s Dictionaries 2020. In this case the ‘particular purposes’ are the specific struggles of each group.

able to frame their claims as demands that have the international law's support, they are making a powerful statement, putting their 'grievances as claims of universal entitlement, at the same level as claims made by other members of the community' (Koskenniemi 2003, 106; see also Koskenniemi 2009, 103). In this sense, the use of international law concepts is an important tool for victims of mass atrocities that want to uphold different causes.

There are two important factors that contribute to the use of international law concepts: interlegality and indeterminacy. On the one hand, domestic law and international law represent 'different legal spaces operating simultaneously on different scales' and, because of this 'interlegality,' (Santos 2002, 427) victims can, at the same time, resort to the category of victimhood in international law, and challenge the category produced domestically. On the other hand, the fact that human rights norms are formulated in universal, abstract terms to reflect 'different, and at times conflicting, purposes – interests and values – of the drafters, as well as the reciprocal assumptions that the drafter had about the world (...),' (Petman 2012, 147) makes them especially susceptible to being appropriated for different purposes. This indeterminate character of human rights means that 'there is nothing in the right itself that would decide them (sic): the right receives meaning only when it is viewed by reference to some context or purpose' (Koskenniemi 2009, 143).¹² While indeterminacy is usually conceived with regards to adjudicative or legislative functions, a different corollary to this quality of the norm is that not only the legislator or the adjudicator can formulate opposite legal claims on the basis of the same norm, but also other – and perhaps powerless – groups can use the language of international law. And they can do this, because international law gives them an enhanced legitimacy and visibility to produce these claims.

3. The context

3.1. The conflict and its victims

During the 1960s, what is commonly understood as the Colombian internal armed conflict began with the establishment of the first

¹² As Petman (2012, 126) has thoroughly explained, indeterminacy does not necessarily lead to arbitrariness, instead there are patterns in decision making that can be explained by institutional culture. 'The claim of indeterminacy is quite simply that none of these patterns and regularities are necessary consequences of rules.' On the idea of indeterminacy in international law see: Koskenniemi, 2009.

guerrillas.¹³As part of the efforts to confront these insurgent groups, different private armies began to be formed which were, at times, authorised by the law.¹⁴ Both these groups evolved over time, the drug trafficking being a catalyser factor for their growth and evolution. (GMH 2013, 134-135; Reyes Posadas 2016, 124–125. Paramilitary groups evolved into armed mafias with important allies, such as, entrepreneurs and politicians, singlehandedly organising different legal and illegal businesses (Reyes Posadas 2016, 27).¹⁵ Between 2002 and 2010, during the presidency of Alvaro Uribe, a strong military offensive diminished the power of the guerrillas. During this time, the whole existence of an internal armed conflict was denied in the official discourse, and guerrillas were no longer considered as revolutionary insurgent groups, instead they were simply considered as terrorists. (GMH, 2013, 179 et seq.)¹⁶ During Santos' administration (2010-2018), the official discourse changed again, acknowledging once more the existence of an internal armed conflict while decidedly adopting the language of human rights and transitional justice.¹⁷

The Historical Memory Group contends that all armed groups, including the public forces, attacked the civilian population as a part of their strategies, though the types of crimes and the target population vary. The public forces' violence included arbitrary detentions, torture, selective killings and forced disappearances; the guerrillas' violence included kidnappings, selective killings, pillage, terrorist attacks, and illegal recruitment, among others; and the paramilitary crimes include

¹³ There is no agreement on the commencement of the internal armed conflict. For instance, the Historical Memory Group considers from 1958 onwards, others consider the initiation of the conflict with the assassination of Jorge Eliécer Gaitán in 1948.

¹⁴ Already in the 1960s, a national law allowed the army to hand weapons and support civilian groups of self-defence against insurgency, while in 1994, a law created special private security services to operate in combat areas, also known as 'Convivir' Decreto 3398 de 1965 y Ley 48 de 1968. In 1989 the Colombian government suspended the application of this legislation, see: Guzmán, Sanchez & Uprimny Yepes 2010, 97.

¹⁵ In 2006 a former paramilitary commander revealed the ties that these groups had with politicians, entrepreneurs, and elites in Colombia. This scandal was known as 'para-política'.

¹⁶ The shift on the discourse can partly be explained as a result of the failed peace negotiations between the guerrillas and the previous government of President Pastrana, but also the international political environment following the 9/11 attacks which allowed the conflict to be interpreted under the prism of the fight against terrorism. See: Vargas Velásquez 2012, 179 et seq; Reyes Posadas 2016.

¹⁷ Although initially Santos presented himself as a continuation of Uribe's government, soon after his arrival to power, he distanced himself from him and eventually Uribe became one of his major opponents. According to some commentators, while both Santos and Uribe represent right wing interests, Santos would be much more influence by a "Third Way" political philosophy, which would explain his more tempered political style which reflects also in other topics, such as his foreign policy towards countries such as Cuba and Venezuela. Generally on the differences between Santos and Uribe see: Rodríguez 2014, 254; Orjuela, 2015, 52 . On Santos' change of discourse regarding victims and the conflict, see: For instance, in 2011 a special Transitional Justice Direction (Dirección de Justicia Transicional) was created (by Decree 2897 de 2011) within the Ministry of Justice.

selective killings, massacres, forced displacement, blockades, and sexual violence. GMH, 2013, 35.) The victims of internal displacement tend to be poor peasants from the Colombian countryside, often belonging to afro-descendant or indigenous communities. The victims of kidnappings tend to be wealthier and more powerful. Today, several sources confirm that the actions of paramilitary groups were at times tolerated and at other times even supported by the army, which saw them as an ally who could do the ‘dirty work’ it was not allowed to do. (Guzmán et. al. 2010, 99–100; GMH, 2013, 140.)

3.2. Inclusion and exclusion through the definition of victimhood

The framework of transitional justice and its definition of victim began to be incorporated into Colombia’s norms in 2005.¹⁸ Even though a ‘pre-victim’ legislation can be found already in 1997 with Law 387 regulating the situation of internally displaced persons (IDPs), (Pérez 2016, 219)¹⁹ the introduction of the concept of the victim of mass atrocities was the result of the peace negotiations between the government and paramilitary groups. The outrage sparked by these negotiations — perceived as a negotiation between allies that would grant impunity to an actor that had severely affected the lives of massive amounts of civilians — inspired different forms of mobilisation that used the language of international law to call for measures of accountability and reparations. In its final text, the law that would regulate the process of demobilisation (law 975 of 2005, henceforth, the ‘Justice and Peace Law’) departed from previous demobilisation processes in that it included, for the first time, provisions on the rights of victims, including reparations.

Article 5 of the Justice and Peace Law defined victims as ‘the person who individually or collectively suffered direct harms (...).’ In this, it followed closely the ideas of the main documents of international law, such as, the “UN Basic Principles and Guidelines on the Right to a

¹⁸ Similarly, Sánchez 2014, 93.

¹⁹ As internal displacement reached major proportions in Colombia during the nineties, Law 387 of 1997 defined the conditions under which the state should provide a series of benefits for internally displaced persons (IDPs or *desplazados*). Even though the condition of *desplazado* allowed to access assistance for a period of three months, the reality of forced displacement in Colombia was that, once displaced, IDPs normally do not return, and stay displaced for life, potentially for many generations. As IDP numbers in Colombia grew every year, the numbers of applications for the benefits provided by Law 387 overflowed the system. As a result, victims began to submit complaints before the Constitutional Court. In 2004, the Court issued its landmark decision T-025 where it declared an ‘unconstitutional state of affairs’ (*estado de cosas inconstitucional*), giving specific orders to state institutions, and remained seized of the matter in order to monitor its compliance. See: Duica Amaya, 2016, 124; Hampton 2002, 87; Vidal López 2007; Shultz et. al. 2014, 15.

Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (henceforth, the Principles) (UN General Assembly 2006). However, by the end of the article it clarified that ‘the harms must have been a consequence of actions that breached criminal law, by armed groups organised outside the law.’²⁰

This last part of the article is important because it reflects the political choice of the government at the time. Indeed, during the process of discussion of the law, all direct or indirect references to the internal armed conflict or to the international humanitarian law were eliminated (Fundación Social 2006, 174). Thus, as Castillejo observes, the law crystallises a conceptual shift from what an armed conflict with insurgent groups entails, to what ‘armed groups organised outside the law’ englobe (Castillejo 2014, 53.) To refer to guerrillas as ‘armed groups organised outside the law’ puts them in the same category with paramilitary groups, concealing the political motivations of the guerrillas that aimed at deep social change. But at the same time, the focus on ‘groups organised outside the law’, excludes the possibility that state agents may have also produced harms that can be repaired under this legal framework, thus making some harms, invisible (Castillejo 2014, 53). This result was certainly the product of a heated political debate, where the initial legal project was withdrawn and then replaced by seven different proposals with different degrees of inclusion of international standards.²¹ However, in these discussions, the question of the responsibility of the state did not play a major role as efforts were concentrated on including a framework for the recognition of victims’ rights and to avoid the impunity of demobilised groups.²² In this sense, the Justice and Peace Law can be understood as the expression of a strategic choice by the government: to incorporate the idea of transitional justice into the process of the demobilisation of an armed group, while maintaining its policy towards the internal armed conflict.²³

In 2008, Governmental Decree 1290 introduced a program for administrative reparations to complement judicial administrations of

²⁰ Unofficial translation of the author. The article goes on to include family members of direct victims as well as members of state forces who have suffered harms by groups organised outside the law.

²¹ On this debate see: Gómez Sánchez 2014; Fundación Social 2006.

²² A summary of the different projects can be found in: Fundación Social 2006, 105–115.

²³ Understanding how this was possible is out of the scope of this paper. However, a couple of elements that the reader should bear in mind are, first, two years after the passing of the Justice and Peace Law, a corruption scandal burst unveiling the links between several members of the congress and the paramilitary forces; second, the presence of left wing parties in the Colombian congress is small as several left wing politicians have been killed, a famous case being the case of the Patriotic Union, were it is said that around 1500 members were killed. See: Murillo Delgado 2008, 141; Verdad Abierta, 2016.

the Justice and Peace Law. This norm improved the conditions of the victims, who could now access reparations without having to wait for a judicial decision. But it did not modify the definition of victimhood and, instead, maintained the ideas of the Justice and Peace Law. Accordingly, administrative individual reparations would only cover those acts attributable to ‘armed groups organised outside the law’. The idea that the State had no connection with these groups is highlighted by the explicit notion that reparations are based on the principle of solidarity, as opposed to the principle of responsibility. Though the decree explicitly states that the principle of solidarity on which reparations are based is ‘without prejudice to the responsibility of the perpetrators and the subsidiary or residual responsibility of the State’, the context in which this decree was issued gave very little meaning to this reservation.²⁴

After the failure of the ‘Victims’ Statute’ during Uribe’s administration, the Victims Law – and the adoption of transitional justice, more generally – became one of the main elements in Santos’ campaign. In 2011, Law 1448 (henceforth, the Victims’ Law) was passed. It fully embraced the framework of transitional justice,²⁵ establishing different judicial, administrative, social and economic – both individual and collective – measures for the benefit of victims of the conflict.²⁶ Article 3 of the Victims Law of 2011 defined victims in more general terms, without explicit reference to the perpetrators, and incorporating an explicit recognition of the international armed conflict.²⁷ Thus, the law now implicitly extends to victims of state crimes.

²⁴ Indeed, the decree was issued during Uribe’s administration and in the middle of the legislative discussions of a ‘Victims’ Statute’ that would not come to a successful end mainly because of government pressures arguing a lack of funds to implement the law.. Fundación Social, *La Agenda de las Víctimas...* p. 52; the main reason officially argued by the government was the lack of money to finance the programmes included in the law. See: Eusse Guerra 2009.

²⁵ See for instance, article 8 which defines ‘transitional justice’ as ‘different judicial and extrajudicial processes and mechanisms associated with the society’s attempts to guarantee that those responsible for the violations contained in article 3 of the present law, are held accountable for their actions, the rights of victims to justice, truth and integral reparation are satisfied, institutional reforms are undertaken to achieve non-repetition, and the illegal armed structures are dismantled, all with the ultimate goal to achieve national reconciliation and sustainable and lasting peace’. (Unofficial translation of the author).

²⁶ See articles 1 and 3, Law 1448/2011.

²⁷ Victims are defined as ‘those persons that individually or collectively have suffered harm by facts occurred from the 1st of January of 1985, as a consequence of breaches to International Humanitarian Law or gross violations of international norms of human rights, with the occasion of the internal armed conflict.’ (Unofficial translation of the author) The original article reads: ARTÍCULO 3°. VÍCTIMAS. Se consideran víctimas, para los efectos de esta ley, aquellas personas que individual o colectivamente hayan sufrido un daño por hechos ocurridos a partir del 1° de enero de 1985, como consecuencia de infracciones al Derecho Internacional Humanitario o de violaciones graves y manifiestas a las normas internacionales de Derechos Humanos, ocurridas con ocasión del conflicto armado interno.

4. Identification

For every legal framework that the Colombian government has created to provide redress for victims, thousands and even millions of individuals have flooded into governmental offices in order to register, be thus acknowledged, and ultimately, receive different forms of benefits. Law 387/1997 established humanitarian measures for IDPs;²⁸ the Justice and Peace Law allowed for victims' participation and reparations in the context of criminal trials;²⁹ the Governmental Decree 1290 incorporated an administrative reparations programme; and the Victims Law unified these different reparation programmes while establishing a special programme for land restitution. Today there are almost nine million victims registered in the Unified Registry of Victims (*Registro Unico de Víctimas*).

These many overlapping mechanisms, as Sandvik and Lemaitre show, created both opportunities and challenges for grassroots victims' groups influencing the way grassroots groups of women identify themselves (Sandvik & Lemaitre 2015, 251—271, 262—263.) On the one hand, victims would take some strategic — and at times, cosmetic — choices, such as changing the name of the organisation by adding the word 'victim,' or including demands for reparation as part of their purposes. But, on the other hand, by putting IDPs and other victims under the same designation, an emerging political mobilisation — of poor forcibly displaced peasants claiming for social justice — was being concealed, as well as the specific circumstances that surround victimisation, which vary depending on the crime. (Sandvik & Lemaitre 2015, 263.) Instead, reparations, as a part of the transitional justice framework, are based on past harms and on the need of redressing them, regardless of the social condition of the victim. Thus, claims are no longer based on demands for social change, but only on the proof of the damage. (Sandvik & Lemaitre 2015, 263.)

But even in those cases where the victims resort to the label of 'victim' in a strategic way. This process of identification contributes to the shaping of an identity, where victims appear as subjects in need and the

²⁸ The measures established in this law, and the inability of the different governmental offices to provide them, were source of a large mobilisation of victims that, instead of identifying with the category of victim, considered themselves as internally displaced persons. This mobilisation eventually brought the issue to the Constitutional Court of Colombia which, after different decisions covering individual cases, decided to issue one of its most iconic decisions declaring that the situation of IDPs entailed an 'Unconstitutional State of Affairs' [*Estado de Cosas Inconstitucional*]). About this situation, see: Rodríguez Garavito & Rodríguez Franco 2015.

²⁹ The Justice and Peace Law also created a special commission for historical memory. Though this measure can be considered as a form of symbolic reparation to victims, because of the more general effects that this kind of measure has towards the society as a whole, I have decided not to include it in my analysis.

state is legitimised as the one to provide redress. Moreover, the fact that the state offers redress but fails to deliver it also affects in the formation of this identity. Certainly, the exorbitant amount of victims puts any governmental efforts under enormous pressure and, in Colombia, where most of the victims are in dire need of immediate alleviation, there are important consequences to offering redress and not delivering it.

I would like to show here that, even with the improvements that aim at acknowledging a greater degree of agency for the victims, there seems to be a strong tendency in which, many of the setbacks of these different legal frameworks end by extending the — now officially acknowledged — condition of vulnerability of its beneficiaries, while at the same time, reaffirming state legitimacy. These effects are partly the result of applying and continuously waiting for reparations. Indeed, with only ten percent of the applicants having actually received reparations, waiting for reparations becomes the norm, putting the applicant victims in a helpless position where vulnerability is coupled with suspense. In addition, when victims submit their stories to be assessed by the state bureaucracy, they acknowledge the state's legitimacy to decide, not only which kinds of violence are recognised, but more importantly, which kinds of stories can be told and how to tell them. Thus, with the implicit agreement that the state is the one that administers the victims' relief, coupled with the willingness of the victims to wait for it, the state's legitimacy and sovereignty are reaffirmed. (Jaramillo 2012, 42; Mora-Gómez 2016, 75.) In what follows, I present different examples of this.

4.1. The Justice and Peace Law

Under the Justice and Peace Law's proceedings, victims were allowed to participate in the proceedings and seek for reparations. Participation could be done in two stages, during the so-called 'free version' hearings (*versiones libres*) before the prosecutors' office and, once they were officially recognised as victims, they could seek for reparations within those criminal trials. In practice, during the 'free version' hearings, demobilised combatants appeared in person before the prosecutor. The fact that the versions are 'free' means that the former combatant decided how to tell the story of the crimes they participated in and sometimes even justified the crimes as part of a service to their country. (Aranguren Romero 2012, 46 et seq.) Conversely, victims were given the chance to participate but from, a separate, 'victims' room,' equipped with a screen that showed the confession in real time (Castillejo-Cuellar 2013, 3, 22-23). Participation thus was in practice reduced to observing the confession through the screen and, sometimes, question the accused. Questioning, however, was also heavily mediated. It was done through a

written format passed to the prosecutor, who would then read the question to the accused, or sometimes, through an assistant from the prosecutor's office, who talked with the victim, and 'translated' it using a microphone connected with the hearing room (Castillejo-Cuellar 2013, 32). In addition to all this, participation faced other important practical obstacles that hindered the attendance of, often poor, victims living in the countryside, such as, the length of the hearings;³⁰ the distance of the hearings from rural areas;³¹ and the risks inherent to attendance and participation as victims were still subject to threats from non-demobilised groups.³² Because of all these reasons, this way of participating, was highly criticised.³³

It was only with regards to reparations that victims could finally appear openly face to face with their perpetrators.³⁴ But these too, faced major obstacles. First, only officially recognised victims could submit their requests for reparation and discuss it in a public hearing especially devised for this purpose (*incidente de reparación integral*).³⁵ Official recognition depended on the fact that the harms suffered by those victims were part of the prosecutor's case against the perpetrator and thus, the harms discussed in this incident represented a small fraction of the crimes he actually participated in. (CMH 2012, 75–76.) Second, this was one of the final stages of the process and, due to the length of the procedures, after five years of initiated procedures by the Justice and Peace Law, only two of these hearings had taken place (CMH 2012, 75 et seq.) Finally, actual reparations awarded by these courts were also limited. Even though the Justice and Peace Law provided a wide range of reparations for victims, namely restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, both symbolic or material and individual or collective,³⁶ the Supreme Court

³⁰ Hearings could last for several weeks. Castillejo-Cuellar 2013, 23–28.

³¹ The proceedings were only carried out in few major cities. Aranguren Romero 2012, footnote 13.

³² For instance, Aranguren tells the case of a victim who was subjected to threats in attending the free versions and was eventually killed. Aranguren Romero 2012, 125–129.

³³ While seemingly based on a recognition of the victim as an active political subject, the procedure in fact, relegated victims to a marginal corner of the process, reducing them, as Castillejo (2013, 32) puts it, to a spectre that appears in the form of a voice but never as a bodily presence, unlike the perpetrator who is able to decide how to tell story of the crimes committed. Also on the difference between the place of the victim and the accused in the context of the Justice and Peace Law: Aranguren Romero 2012.

³⁴ Indeed, the possibility of seeing the victims and the perpetrators facing each other prompted the interest of the media that covered the first hearings. CMH 2012, 75 et seq and 584 et seq.

³⁵ Article 23 Justice and Peace Law.

³⁶ Article 8 Justice and Peace Law. In 2007, a pilot programme of administrative collective reparations was initiated by the National Commission on Reparations and Reconciliation (Comisión Nacional de Reparación y Reconciliación, CNRR). Though the recognition of communities as collective victims is positive in the sense that it entails the recognition of harms that affected the social fabric of communities, Firchow suggests that they can also lead to re-victimisation especially because many of these communities lacks basic social services.

stated that the orders could not include duties by other public institutions. Even though the first decision of the Justice and Peace Law included a wide range of order of reparations, the Supreme Court stated later that this first reparation order had exceeded the authority of the chamber and infringed on the principle of separation of powers in granting wide reparations which included orders to public institutions. From then onwards, the Justice and Peace Chambers began a practice of exhorting administrative offices to take certain measures to redress the victims.³⁷ However, these exhortations have unclear legal effects and the victims have no means to demand their implementation.

Due to its many flaws, the Justice and Peace procedures entered into a legitimacy crisis, visible as early as 2008-2009 (CMH 2012, 544). Different factors contributed to it, many of which were reviewed above. For instance, the limited consideration given to victims in the 'free versions' soon materialised in a decrease on the victims' assistance (CMH 2012). Moreover, by 2010, only two sentences, which included two reparations orders, had been pronounced. In general, the system was overflowed. As a reaction, public institutions directed their efforts to put victims at the centre of the coverage regarding the Justice and Peace Law but, in the assessment of the Centre for Historical Memory, they were not able to achieve a re-legitimation of the process (CMH 2012, 546).³⁸

In 2008, a governmental decree introduced the possibility to seek administrative reparations outside the context of the judicial proceedings. This decree would simplify the procedure of receiving reparations, so that victims should no longer have to wait for a sentence against an individual. In this sense, the decree entailed an improvement to the situation of those victims already acknowledged by the Justice and Peace Law, but for the victims of state crimes the situation still was that, if they wanted to seek for reparations, they had to initiate complex civil procedures.

4.2. The Victims' Law

In 2011, the Victims' Law took a different approach establishing a comprehensive administrative process that included reparations as well

The state includes these basic services as a part of its community reparation programme, but this blurs the reparative effect as basic development programmes are considered as reparation. Firchow 2013, 59–60.

³⁷ Cf. González de Lemos 2011, 39–40.

³⁸ In 2012, further modifications were introduced to the Justice and Peace Law aimed at reducing the amount of cases in the system by imputing patterns of macro-criminality (patrones de macrocriminalidad) instead of focusing on individual responsibility. Fiscalía General de la Nación 2014, 43–44.

as land restitution and that would unify the preceding systems. In order to apply for reparations, victims have to be included in a unified registry. In practice, victims apply through an interview, in which, a civil servant fills out a complex form with a recount of the events, attaching to it, any proof material that the victim may have. (Mora-Gómez 2016, 79–81). After the interview, victims receive certain emergency benefits, such as vouchers for food, and a guaranteed stay of 15 days in a Red Cross shelter (Mora-Gómez 2016, 82).³⁹ But there is a waiting time of about 90 days, in which the applicants, in order to ensure the provision of the social benefits for their condition as victims, cannot obtain a permanent job that includes such benefits (Mora-Gómez 2016, 82.) The process eventually results in the inclusion of some individuals and the exclusion of those applicants whose stories do not qualify as part of the violence officially recognised (about 20 percent of the applications are rejected) (Mora-Gómez 2016, 88). Once an individual is acknowledged as a victim by the state, they are entitled to receive certain humanitarian assistance, but actual reparations take much longer. Indeed, of the total universe of 8 million victims, only 10 percent (8 hundred thousand) have received individual reparation (Santos 2019).

This process of application serves to shape an identity of the victim through the administration of a bureaucracy that decides the kinds of violence that are relevant, the stories can be told and how to tell them. As suggested by Mora-Gómez (2016, 95), when individuals offer their narratives to be represented and translated by the state, they are also granting the state a new legitimised status. In this new legitimised status, the legal adoption of human rights standards plays a significant role. Furthermore, in the identity that comes out as a result of these procedures, waiting for reparations — and not reparations themselves — becomes the normal state. Because of this, Jaramillo (2012, 41, 55) suggests that reparations for victims do not only entail the definition of the identity of the victim, but also, the possibility to keep them waiting. While the recognition of debt sets a certain hierarchy between the creditor — in this case, the victim — and the debtor — in this case, the state — the fact that the latter can keep victims waiting inverts this relation. Thus, when reparations fail to materialise, as observed by Counter in his study on victims of land mines, the Victims' Law actually produces victimising effects (Counter 2018, 124).⁴⁰

³⁹ This is not a new way of administering this sort of benefits, for instance, with Law 387/1997, victims of forced internal displacement had to submit a testimony before the authority in order to receive the benefits. While this information was processed, they were entitled to receive assistance during a period of 15 days. Once the information was confirmed to be truthful, the system granted them assistance for a period of three months, which could be extended exceptionally for an additional period of three months. See: Aparicio 2012, 134; Decree 173/1998.

⁴⁰ Similar things can be said about land restitution, which is administered to a separate set of procedures and offices. While the law establishes the possibility of forcibly displaced peasants

Thus, despite the fact that the Colombian state is interested in adopting the latest standards in transitional justice, the effects of this adoption continue to be mixed. Another example of this is the article in the Victims' Law aimed at allowing victims to participate 'in the design, implementation, execution and monitoring of the compliance of the law and the plans, projects and programmes that are created with its occasion.'⁴¹ The idea of this mechanism is to provide a space for the population affected by the conflict to interact with the state (Unidad para la Atención y Reparación Integral a las Víctimas 2014, 13). Such mechanism follows the idea that victims should be considered as right holders and have their human dignity respected so that they recover trust in public institutions (Unidad para la Atención y Reparación Integral a las Víctimas 2014, preamble). However, in a study of the first instances of participation, Lemaitre (2013) shows how there was an open discouragement of victims debating or criticising the system imposed by the Victims' Law.⁴² Instead, for this author, the process was designed so as to legitimise the government and its newly embraced system of transitional justice. As a result, the victims' voices were actually silenced. Thus, the implementation of this mechanism is, to an important degree, both influenced by, as well as perpetuating of, an identity of a victim who is essentially vulnerable.

Moreover, the mechanism of participation included in the Victims' Law does not allocate any new resources to the municipalities which are in charge of implementing them (Vargas Reina 2012, 192–195).⁴³ As a result, the mechanism is insufficient and uncoordinated.⁴⁴ In failing to provide sufficient means, the state actually debilitates the victims' mobilisation as victims' organisations that invest time and effort in following the officially organised participation, while neglecting other kinds of mobilisation (Vargas Reina 2012, 203). Once again, victims had to seek external channels to participate, rendering ineffective those channels provided by the state. Indeed, in 2017, 70,000 victims from departmental tables jointly submitted a complaint before the Constitutional Court denouncing several failures of the system (Columbia Plural 2017).

In this section, I have sought to show how, in identifying with the category proposed by the government, victims legitimise the state as the one who decides which kinds of violence are recognised, and the way in

to recover their lands, it has been argued that it does not allocate sufficient funding or capacities to face the attacks from newly created 'anti-restitution armies. Montoya & Vallejo 2016, 90; see also Martínez Cortez 2013.

⁴¹ Article 192 Law 1448/2011.

⁴² Victims were often asked to abstain from referring to their particular situations and limit their comments to only 'concrete proposals. Lemaitre Ripoll 2013, 13-14, 22-25.

⁴³ Other problems are the lack of coordination and capacitation from the municipality to the Victims' Table, see: Cerón Arboleda 2017, 101.

⁴⁴ Lack of coordination is often cited as a problem. See: Martín Berrío, 2013, 5.

which victims' stories are to be told. At the same time, in continuously failing to deliver the benefits promised to victims, their vulnerability — while now officially acknowledged — is extended through time. A victim's identity is shaped in these different moves, its main characteristic being the victims' vulnerability. In the following section, I show how victims seek to challenge the government in using the very concept of victimhood. In doing so, they dis-identify from the category proposed and challenge it.

5. Dis-Identification

Victims' groups included in this section use the categories of international law to highlight the incompleteness of the domestic categories. But in this, international law is an instrument for another, substantive purpose that varies depending on the case. In what follows, I briefly examine some cases of grassroots groups and the way they relate to international law concepts, specifically the concept of 'victim'. I contend that these actions are important to understand what I have described as sinuous trajectory of the category of victim of mass atrocity in Colombia as they represent challenges that are later responded to by the government in different ways. Because of this they are only partly successful. They are successful to the extent that, in invoking the international, law grassroots groups are heard and the category of victim is later incorporated and modified to respond to these challenges. But, just as this represents a strategic use of international law, the government can also find ways to respond to these challenges without addressing the substantive concerns of the victims.

Already before the incorporation of the transitional justice framework the identity of the victim in the context of the discussions regarding the internal armed conflict was already subject to challenges. An example of this is the Pacific Route of Women (*Ruta Pacífica de las Mujeres*) which, in 1996, began to problematise how the internal armed conflict affected women in a different way than men.⁴⁵ As the movement evolved through the years, they adopted more decidedly the language of human rights and, once the framework of transitional justice began to be discussed in Colombia, their actions repertoire also increased.

⁴⁵ They defined themselves as a feminist movement that supports a negotiated solution to the armed conflict in Colombia, working to make visible the impact of war in the women's life and demand the rights to truth, justice, reparation and reconstruction of individual and collective historical memory to ensure non-repetition. *Ruta Pacífica de las Mujeres, Colombian Women's Truth and Memory Commission*; about this group also see: Samudio Reyes 2015, 81 et seq and 108 et seq.

In 2013, the report of the “Colombian Women’s Truth and Memory Commission” was published. This is one of their most visible actions, an unofficial truth commission aimed at identifying, monitoring and documenting violations against women in the context of the internal armed conflict (Ruta Pacífica de las Mujeres 2013). The report features testimonies of women, including one thousand individual violations, as well as collective cases. It highlights how women suffer specific forms of harm in the context of war, which are embedded in the patriarchy as the conflict creates new forms of control over the lives of women, reinforcing male domination (Ruta Pacífica de las Mujeres 2013, 22 et seq.). Here the concept of victimhood is central, but they have connected it with the idea that as female victims recover, they become ‘survivors’ (Ruta Pacífica de las Mujeres 2013, 26 et seq.) The dichotomy of the victim/survivor is taken from the work of feminist approaches that have sought to reverse the notion of the victim as a notion associated with silence and helplessness.⁴⁶ Instead, survivors are constructed as more agentic and, in this agency, the act of breaking silence by making abuse visible is central. The very choice of a Truth Commission, as a mechanism focused on collecting and systematising women’s testimonies of the harms suffered during war, is deeply influenced by these ideas. Moreover, unlike other truth commissions focusing on documenting harms, this one is also focused on collecting stories of recovery, precisely to highlight the passing from victimhood to survivorship.

The shift in the way gender is considered as part of the identity of the victim shows its disputed nature as well as the importance of the processes of dis-identification that use international law concepts. As a result of the sustained work of the *Ruta Pacífica* and other feminist groups today it is widely recognised that a large proportion of victims are female, and that the way the conflict affects them is different than the way it affects men. For this reason, a gender focus has been incorporated into all discussions regarding victims of mass atrocities, the latest example being the Final Peace Agreement between the FARC-EP and the Colombian government, which included a gender approach in each of the different topics covered.⁴⁷

Another example of early dis-identification that incorporated the language of international law is the case of the Peace Community of San José de Apartadó (henceforth, simply ‘the Community’).⁴⁸ Created in 1997, the Community was as a way to seek protection in the wake of a violent paramilitary offensive that forcibly displace thousands of

⁴⁶ This was done first in the context of child and sexual abuse. Orgad 2009, 142.

⁴⁷ Here, a gender subcommittee (*Subcomisión de Género*) was created with the task of including a gender approach to the different topics covered by the Final Agreement’s text, an unprecedented measure in peace processes of this nature. Colombia 2020.

⁴⁸ I have analyzed this group in depth in: Tapia Navarro, 2018.

peasants in Urabá, an important geo-strategic area of Colombia (Bejarano 1988; Botero 1990, 25). Instead of leaving the area, about 500 people decided to stay and declared themselves as a ‘Peace Community’ that would maintain a neutral status in the conflict. To maintain their neutral status, they established a set of rules to clearly separate them from armed actors directly invoking international law in these unofficial rules.

As a mechanism for protection, the project of the Community is deeply connected with the identity of the victim and international law, but together with this defensive aspect, a community life project has emerged in the struggles of war. This community life project is deeply influenced by left wing ideas critical to capitalism and neoliberalism,⁴⁹ and entails a re-enactment of traditional peasants’ way of life — a lifestyle deeply threatened by paramilitary violence seeking to displace peasant communities.⁵⁰ This attitude, critical to the neoliberal economical system that the Colombian state has imposed, has turned this group into very special victims. While they uphold the category of victim and resort to international law — for instance, at the Inter-American Court of Human Rights or before the Constitutional Court of Colombia — they have refused to interact with the state and to receive the benefits it provides to victims. Indeed, after the Colombian government begun to incorporate the discourse of transitional justice and the possibility to seek for reparations, the Community modified its rules so as to include the refusal of individual reparations as an additional duty of their members. As a consequence, if a Community member chooses to receive individual reparations, they must resign from the Community. Thus, the identity of victim of the Community, while allowing them to seek for international support and even bring forward notions of historical exclusion and the struggles of peasant communities, it does not fully coincide with the identity proposed by the government.

The results of this kind of dis-identification are less obvious than in the case of the Pacific Route. A crucial difference of these two is that, while both resort to international law in a strategic way, the first aims at both a cultural and normative change, and the second uses international law to frame their project, search for allies and seek protection. In doing so they invoke international law in their own unofficial rules. But they also put in the table political questions such as the historical exclusion

⁴⁹ In this sense, one of the Community leaders said in 2013: “Communitary works and all that the Community of Peace represents, is a reality, we are living it. But the capitalist system is against all that, because it goes against all its interests that instil to the human being that a paper is what matters. A human being is worth nothing. This generates a degradation of humanity because it generates a society around a concept of money instead of life. The struggle of the Community of Peace is for life, in all its senses.” PBI Colombia 2013).

⁵⁰ A thorough analysis of this logic can be found in: Reyes Posada 2016.

of peasant communities. Today these questions have been acknowledged in the recent peace agreement between the FARC-EP and the government, where an integral land reform occupied a central place.

Moreover, both of these two forms of dis-identification also propose a different identity of the victim. While the victim as a result of the process of identification appears as vulnerable and helpless, here the victim appears different, empowered by its recovery and turned into a survivor. Or, empowered by its unwillingness to receive reparations in the form the state proposes. These features are part of the disputed identity of the victim and invoking international law gives them visibility as well as a certain degree of legitimacy that allows them to seek for funds to support their project, and have international allies.

The adoption of the transitional justice framework in 2005, gave way to unexpected consequences as a number of social agents, including victims' organisations, used the language of transitional justice to challenge the normative purpose of the Justice and Peace Law (Vera Lugo 2016). Another consequence of the adoption of this law, was the creation of the Movement of Victims of State Crimes (MOVICE, according to its initials in Spanish, henceforth 'Movice').⁵¹ This group embraces the identity of the victim and the discourse of transitional justice and uses them to problematise the domestic category. To name themselves as victims of state crimes already implies to introduce a proposition absent from the Justice and Peace Law. In doing this, they introduce an alternative reading of the violence of the conflict in which the state is a third perpetrator in the conflict and their actions are deeply connected with paramilitary groups. But the violence suffered by the victims of state crimes cannot fully be understood within the logics of the internal armed conflict. Instead, it is part of a long existing practice of suppression of political opposition through violent means. These violent means exceed the violence that is necessary to suppress the internal conflict adversary. These are all powerful and controversial assertions that were introduced and given visibility in the political conjuncture of the passing of the Justice and Peace Law and later in other opportunities.⁵² Claiming the status of victim and invoking international law gave them legitimacy to make these assertions.

Similar to Movice, the movement Sons and Daughters for Memory and against Impunity (*Hijos e Hijas por la Memoria y contra la Impunidad*, henceforth, simply 'Hijos e Hijas') was created in 2006, after the passing of the controversial Justice and Peace Law (GMH 2009, 198–199). The group gathers sons and daughters of people killed or disappeared because of their political affiliations which, in Colombia,

⁵¹ I have analyzed this group in depth in: Tapia Navarro, 2019.

⁵² One such opportunity was the massive rally organised against guerrilla violence in 2008 which had great visibility around the world. Movice responded by organising a rally against victims of paramilitarism, which counted with massive adhesion (Tapia Navarro 2019).

means former union leaders and militants from left wing parties, human rights defendants and others (GMH 2009, 195). But, unlike Movice, they have an explicit critical stance on the adoption of the identity of the victim (GMH 2009, 200). For *Hijos e Hijas*, victimised subjects should speak from a position that boosts them as subjects and political interlocutors, instead of a place that diminishes them, like the identity of the victim (GMH 2009, 202). Similar to the Pacific Route, the movement puts emphasis on memorialisation but, in this case, as a way of upholding of the political views and projects proposed by their parents in their lives. For them, it is necessary to show victims as persons with projects, perspectives, and dreams, and thus, their role is to uphold their memory beyond their victimisation (GMH 2009, 201). On the one hand, *Hijos e Hijas* reclaim their parents' political projects and proposals, mostly left wing ideas critical to capitalism and neoliberalism. (Gomez et. al. 2007.) On the other, in upholding those projects they stress the very existence of state violence, which at the time of their creation, was not acknowledged.⁵³

The strategic use of victimhood in these two groups can also be seen in the relationship between of Movice and *Hijos e Hijas*. While these are two different organisations, a number of the members of *Hijos e Hijas* are also members of Movice despite the different approach the two organisations have towards the category of victim.⁵⁴ Thus, while they are truly critical of the use of the category of victim, they understand that it is important to speak in these terms because in doing so, they are able to speak to power.

Moreover, while these two groups were created in the wake of the controversial Justice and Peace Law, this norm was eventually succeeded by the Victims' Law, which does not distinguish between perpetrators as long as violations have been committed in the context of the internal armed conflict, implicitly including victims of state crimes. However, the deeper contentions of these organisations remain unanswered. They seek for the state to acknowledge its responsibility for the crimes committed by its agents and its ties with paramilitary groups, and they seek for the acknowledgement that a number of these crimes are part of a practice to repress political opposition through violent means, and thus exceed the logics of the internal armed conflict.

Thus, though in the adoption of international law language and the category of victim, these groups speak to power in ways that may be

⁵³ *To find other people that had lived stories similar to ours allowed us to, first, acknowledge similar trajectories in the other, that is, to build relations based in the same silenced story, in an effort to rediscover our lives. Second, to understand that it was necessary to take the issue to another level, that it was not us who kept in silence, but that the society as a whole had been co-participant in this omission.* Gomez et. al. 2007.

⁵⁴ For instance, at least three of Movice's recent spokespersons are also part of *Hijos e Hijas*, namely, Alejandra Gaviria, Erik Arellana and Diana Gomez-Correal.

influential, the relative success of these groups comes in mixed results. While the fight for the legal adoption of international standards has been successful, another question is how these legal standards actually respond to the victims' deeper concerns, on the one hand, and how these standards are actually satisfied in practice, on the other. While the enlarged category of victim now allows victims of different perpetrators to come forward and demand reparation, all these harms still have to be perpetrated in the context of the internal conflict, disguising the existence of political persecution.

Finally, the acceptance of the category of victim in the context of mass atrocities as part of the vocabulary of political discussions now brings a varied array of actors claiming this identity, such as army members and former *guerrilleros*.⁵⁵ The law's indeterminacy is both a strength and a weakness for these groups of victims as their deeper claims for acknowledgment of responsibility, remorse, and most importantly, a change in the way political disagreement is managed, remain unanswered.

6. Conclusions

The legitimacy of international law is crucial in countries like Colombia, where the state does not hold the monopoly of violence, and thus, as Sandvik and Lemaitre (2015, 268) contend, the incorporation of international standards provides renewed legitimacy to the state. In this context, international law becomes an important asset for victims of mass atrocities that strategically use it to push for the introduction of international standards, but also to introduce other, deeper, concerns. The fact that international law is a legal space that exists in parallel to the domestic legal space allows for victims to continue to resort to it once the category of victim is introduced domestically. In turn, the generality of the norms allows them to appropriate them, to translate them into the domestic context in a strategic fashion. However, precisely because the norm's indeterminacy, that can support different conclusions, the state is finally able to respond to their legal demands without necessarily addressing their deeper claims.

Thus, a sinuous trajectory of the category of victim is drawn in this back and forth movement, where groups of victims of mass atrocity challenge the government, the government responds, the groups further challenge the response, and the government, once again, decides to adjust its legislation. But this is not all. At the same time, while some victims' groups are challenging the norm, other thousands of victims in

⁵⁵ On the contended identity of victim in the context of the latest negotiations between the government and the Farc, see: Sáenz Cabezas 2017.

dire need of alleviation pour into governmental offices seeking for redress. There, they find a bureaucracy ready to tell them how to tell their stories, classify the harms, define which harms are to be considered, and which harms are to be excluded. In this identification, they reaffirm the state as the legitimate actor to deal with their suffering. In turn, the state has, in different ways, failed to deliver redress. To be sure, I am not suggesting that failing to comply is part of the state's strategy, instead, without really assessing the causes of this failure, I am thinking about its effects.⁵⁶ The effect of promising redress for victims of mass atrocities that are often also in an extremely vulnerable situation before the violation and failing to deliver it, is that waiting for reparations — instead of reparations themselves — becomes the normal state. Unlike other relations of creditor and debtor that set a hierarchy between the two, the fact that the state can make — and actually makes — victims wait for reparations, has the effect of reaffirming its own power, while perpetuating the victims' vulnerability. (Jaramillo 2012, 41, 51.)

In this sinuous trajectory an identity is being shaped. One that is always in dispute and never fully achieved. In this landscape, perhaps the most empowering attitude for victims is dis-identification, and it is because of this that victims' groups are today considered as important emerging political actors in Colombia (Rettberg 2013; Vera Lugo 2016). However, the effects of this kind of mobilisation limited. For victims, the strategic use of international law allows them to insert certain claims into the political discussions, but not to define their outcome. For the state, the strategic adoption of international law allows it to respond to the challenge without necessarily addressing the victims' deeper claims.

⁵⁶ As Eva Ottendoerfer (2018) has argued: “not only the specific design of a reparations program but also the way it is ultimately implemented are decisive for how victims perceive of reparations and which effects they are able to trigger.”

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