

The role of the ombudsman in transitional justice processes

Comparative studies of Brazil, Colombia, Ecuador and Guatemala experiences



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Ecuador and Guatemala experiences



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» Foreword





FIO Chair

The history of nations is marked by episodes, moments and contexts that, over time, build the communities' identity. It is true that the past - glorious or infamous - conditions what we are today, although it does not determine it. It is also true that memory and the way in which we look at this same past indelibly marks the lives of citizens, especially when they have lived through situations in which their fundamental rights have been disrespected by the State. For this reason, it is important -for human progress to be achieved- to rigorously know the political and institutional solutions and good practices to overcome the difficult circumstances experienced in many Iberoamerican countries.

It was with this perspective that in 2015 the General Assembly of the Iberoamerican Ombudsmen Federation welcomed the joint proposal to develop the present study on the role played by the institution of the ombudsman in the search for individual and community peace. This proposal was presented by the Federal Prosecutor for the Rights of the Citizen of Brazil, the Ombudsman of Colombia, the Ombudsman of Ecuador and the Ombudsman of Guatemala. Thus, with the support of the Auschwitz Institute for Peace and Reconciliation and the PROFIO project of the Gesellschaft für Internationale Zusammenarbeit (GIZ), this report was prepared so that our fellow citizens of public institutions and civil society institutions know what has been implemented in the promotion and defense of human rights, in particular with respect to transitional justice processes that result from the affirmation of the strong ideas of freedom, equality, justice and law.

We have long known that the establishment and strengthening of institutional means for the defense of citizens against the State's arbitrary power, and redress for the injustices of its action or omission, are closely related to the advent of democracy. The figure of the ombudsman is a paradigmatic example, understood as a guarantee of individual freedom, provider of justice or public advocate. By its nature, its powers and its action, from the beginning it played an essential role in promoting the culture of human rights and, hence, in consolidating the democratic rule of law that is in its genesis.

It is true that today thousands and thousands of men and women still feel the pain of wounds resulting from the violent and inhuman State action in dark periods of humanity. However, out of respect for this same pain and on behalf of social peace restoration, indispensable for collective development, human rights institutions have been able to develop strategies and actions that mitigate the adverse effects of the past, taking into account the respect for historical memory, thus bequeathing a whole perspective of future.

Established trust between citizens and the State is undoubtedly one of the fundamental community pillars. It is fragile by nature. Sometimes in our collective history, it crumbles and plunges the common good into a crisis. Those who defend human rights in Ibero-America do an extremely fine work in reconstructing this relationship. This report inspires and reinforces the commitment we all make with respecting, promoting and defending the most basic human rights without compromise.

JOSÉ DE FARIA COSTA

Ombudsman of Portugal

Chair of the Iberoamerican Ombudsmen Federation (FIO)



FIO institutions which participated in this research

Due to its nature, reflection on transitional justice is a long and challenging process involving many actors responsible for promoting and defending human rights in their respective regions. Up to now, reflections on this subject have been strengthened and many studies have been developed with the aim of better understanding the functions and actions carried out in these processes. Although all the efforts and perspectives addressed in these studies are important, there was a need for comparative research to make visible the actions promoted by ombudsmen offices, public advocates' offices and the offices of prosecutors for the defense of citizen rights in Latin America.

The purpose of this paper is to compile, compare and analyze the role that ombudsmen offices and their counterparts have had in transitional justice processes in the Iberoamerican countries. And, as you can see, our offices have fulfilled the mission of search for truth, justice, memory and reparations. The very concept of ombudsman is connected with transitional justice, since we are mostly State bodies created as an instrument to overcome authoritarian legacies. In fact, our countries have gone through periods of dictatorships and conflicts and, in order to face up to that past and expand the capacity of the Rule of Law, ombudsman offices, public advocate offices and prosecutor offices have been set up to defend male and female citizens' rights. We are the result of institutional reforms and, although they are not initially conceived within the framework of transitional justice itself, we are part of that process. In short, there is a feedback: we exist as part of the **Never Again** policies and we also exist for them. We work with the promotion of citizenship and human rights, and with that we live for democratic consolidation and for the guarantee of non-repetition.

We particularly acknowledge the Auschwitz Institute for Peace and Reconciliation (AIPR) and the Project for the Strengthening of the Iberoamerican Ombudsmen Federation (PROFIO) supported by the Gesellschaft für Internationale Zusammenarbeit (GIZ) for this report, which results from joint research. To both, our gratitude.

We cannot fail to thank our technical teams, who directly participated in data collection, and shared valuable comments during the discussion of the document.

We hope that this publication will help to make the role of Iberoamerican ombudsmen visible in transitional justice processes. We trust that this document will enable self-reflection on the challenges of how to move towards memory, truth and justice policies.

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For the AIPR, it is certainly very pleasing to accompany this collective initiative that illustrates in a document the efforts that the Ombudsman Institutions organized around the FIO have consolidated regarding transitional justice measures.

Since its creation in 2006, the Auschwitz Institute has accompanied the States in their challenges and in their strategies focused on preventing atrocities, where transitional justice measures are a fundamental pillar, especially in resilient societies that are ready for a true *Never Again*.

In regional terms, this accompaniment is evidenced by the technical assistance provided by the AIPR to the Latin American Network for the Prevention of Genocide and Mass Atrocities and the strengthening of strategic links such as that which was consolidated with the FIO and its member institutions through the signing of a Memorandum of Understanding in 2014 and especially through this publication. In that regard, I particularly value coordination by María Eugenia Carbone, Director of AIPR's Program for Latin America. This project lies within that program's scope.

This paper stems from such arrangement. The emergence of the Ombudsman or Prosecutor is the result of the States' commitment to democracy and the strengthening of their institutions. Therefore, systematizing and making visible the actions of these offices re-signifies them and calls for a collective reflection in the face of the challenges entailed by having agendas and public policies with a prevention approach.

I also value the initiative and dedication of the Federal Prosecutor for the Rights of the Citizen of Brazil, the Colombian Ombudsman, the Ombudsman of Ecuador, their Ombudsmen and technical teams, as well as the institutions that added their contributions and visions to strengthen this work.

I am also grateful for the support of the Technical Secretariat of the FIO (Office of the Ombudsman of Portugal) and PROFIO - a GIZ Project for the Strengthening of the Iberoamerican Ombudsmen Federation. Finally, Clara Ramirez Barat, who coordinated consolidation and analysis of information developed by Emilio Peluso Neder Meyer, Mariana Rezende Oliveira and Gabriel Rojas.

I hope that this work will be strengthened as a tool for the visualization of good practices that will allow to deepen the Ombudsman Institutions' virtuous processes in the last decades. That is our institutional stake.

TIBI GALIS

Executive Director

Auschwitz Institute for Peace and Reconciliation



PROFIO - GIZ

After approximately 40 years of having created the first ombudsman institutions in Latin America, it is time to reflect on the role they play in the different processes and moments that Latin American countries are currently undergoing.

Thanks to the efforts of Iberoamerican nations, the transition processes have been successfully completed and today the nations live in relative peace and with mostly consolidated democratic regimes. This peaceful reality is also experienced through the application of different transitional justice instruments. Some are truth commissions in Argentina, Chile, Peru, El Salvador and Guatemala or reparations for victims, including compensation, rehabilitation and symbolic redress. Added to this, there have been institutional reforms of the police, the armed forces, the judiciary, the inception of ombudsmen offices and the construction of places of memory. The most recent was the one inaugurated in Lima, on December 17, 2015 as a token of memory, tolerance and social inclusion.

However, as Latin American realities demonstrate, new challenges can always arise that require transitional justice instruments to achieve peaceful and lasting transformation of conflicts, to discover the truth about committed crimes, to identify those responsible and to restore the victims' dignity.

This study systematically analyzes the actions taken by Ombudsman offices in the context of transitional justice processes in four Latin American countries: Brazil, Colombia, Ecuador, and Guatemala. The paper describes how ombudsman institutions promote judicial processes, support commissions of truth, contribute to the dissemination of their results, or monitor reparations to victims, among others.

This joint effort is possible thanks to an innovative alliance between the FIO, the Auschwitz Institute and the German Cooperation agency through its PROFIO project, which accompanies the Ibero-American Ombudsmen Federation for strengthening institutional capacities in its members. This opportunity allows us to contribute to the protection of the human rights of vulnerable groups. We are happy to be able to join in this substantial contribution to building societies that are fair and respectful of human rights.

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» 1



1. Introduction

1.1. WHY THIS STUDY: REASONS AND OBJECTIVES

In 2015, the Federal Prosecutor's Office for the Rights of the Citizen of Brazil, the Prosecutor for Human Rights of Guatemala and the Colombian and Ecuadorian Ombudsmen presented a collective proposal at the Annual Meeting of the Iberoamerican Ombudsmen Federation (FIO).

The objective of this collective proposal was to systematize and publicize the actions carried out by Ombudsman's offices or Ombudsman institutions¹ within the framework of the transitional justice processes that have been experienced in most Latin American countries. The processes considered were those that contributed to the prevention of atrocities such as those that ravaged the region in the recent past, and which also served as instruments for the consolidation of democracy.

This initiative was supported by the Auschwitz Institute for Peace and Reconciliation (AIPR) and the PROFIO project of the German cooperation organization Die Gesellschaft für Internationale Zusammenarbeit (GIZ).

In many countries in Latin America, as well as in Spain and Portugal the Ombudsman

emerged in contexts of transition to democracy and hence transitional justice and historical memory issues somewhat naturally took a good part of their concerns and actions. The ombudsman is by definition a mediating, conciliatory and guarantor institution. Often more political than legal, it needs a broad social consensus to achieve implementation and effectiveness of proposed measures.

In this scenario, and in accordance with the general competencies of the different Ombudsman Offices belonging to the FIO, it was relevant to explore -in a comparative and systematic way- the different tasks undertaken by these institutions in support of transitional processes. The purpose was to highlight experiences and good practices in the performance of these institutions to serve as guides to other institutions with similar competencies and responsibilities, both by FIO members and by similar institutions internationally.

1.2. METHODOLOGY AND CASE ANALYSIS

Design and preparation of this project included three phases. In the first one, a team made up by representatives from Brazil, Colombia and Ecuador, con AIPR technical aid and accompanied by GIZ, prepared a

1// Ombudsman means the "State institutions responsible for the defense, promotion and dissemination of human rights". The Iberoamerican Ombudsmen Federation of the Ombudsman. A reflection on public issues and the role of the Ombudsman in the protection of democracy and the general interest. Bogotá: Colombia Ombudsman's Office and FIO, 2014, 19.

comprehensive questionnaire that aimed at collecting, in a coordinated and systematic way, various activities related to transitional justice processes and that have been developed by the Ombudsman institutions belonging to the FIO (see model in the Annex).

Once the form was completed, it was circulated in the FIO so that member institutions interested in participating in the study could complete it. After a month, the team received the questionnaires from Brazil, Colombia, Guatemala and Ecuador.

In the second phase, the team resumed the collected data and researched and reviewed the relevant literature. Subsequently, they prepared the first draft of this report in which experiences are systematized and compared. Also the most relevant conclusions are shared with the remaining Ombudsman offices belonging to the FIO. The idea is that the report should also be a platform for further comparison and systematization of experiences.

In the third phase, the consolidated version was distributed among the institutions participating in the study, so that they could make any pertinent observations.

The report presented here is the end result of this collective effort. Its purpose is also to provide a framework for reflection on the role and challenges of ombudsman offices as accompanying actors and actors in transitional justice processes, as well as to share a framework of good practices from the

inputs provided by these same institutions. The study also adopts a comparative view of the various transitional justice measures. In this regard, the research results are marked by the particularity of the studied contexts, so any generalization about their relevance to specific cases must be adequately evaluated.

1.3. REPORT STRUCTURE

The document is divided into five sections. The first presents a brief methodological introduction and the second introduces the figure of the ombudsman in relation to the emergence and consolidation of the term and transitional justice practices in the Iberoamerican context. The third section is in turn divided into three subsections; The first presents an overview of the normative framework and relevant jurisprudence in relation to transitional justice processes in the countries analyzed in this study and in the second one, the actions in transitional justice processes and measures developed by the different ombudsman offices are analyzed country-by-country. In the last subsection, attention is paid to criminal justice measures, truth clarification, reparation and guarantees of non-repetition. The fourth section presents and discusses some challenges in the work of the ombudsman in transitional justice processes from various national experiences. Finally, to conclude, the document presents a series of general reflections on the potential of the ombudsmen's work in relation to transitional justice.



» 2





2. The figure of the ombudsman and transitional justice processes

The concept of ombudsman in Latin America and in the countries of the Iberian peninsula emerges as a constitutional response of the States in those regions to human rights violations by authoritarian regimes in the second decade of the century XX.² Under a liberal logic of checks and balances in the rule of law, promotion and dissemination of human rights becomes the axis on which the national constitutions of the 1980s and 1990s set the transformative project of the Democracies in the Iberian peninsula and Latin America. In this sense, ombudsman offices, public advocate offices or, in some cases, prosecutors for the rights of citizens, are born as spaces for protecting constitutional texts and as independent control entities within the State's structure. Their aim is to be alert to possible power excesses against the fundamental rights of citizens. This is what the Latin American Ombudsmen Institute states when describing the reasons that gave rise to the institution of the ombudsman in 1984:

Its central objective was to promote the figure of the ombudsman in Latin America and to contribute to the consolidation

of democratic processes and respect for human rights following de facto governments, institutional violence and State terrorism. Likewise, the political experiences in the Iberian Peninsula, in terms of the recovery of democracy, the inception of a democratic and social State ruled by law and the institution of a system of guarantees that would truly make effective all the rights that the constitutional texts adopted, made possible the incorporation of the figure of the ombudsman in Portugal as a Provider of Justice in 1975 and in Spain as an Ombudsman in 1978, as institutions of guarantees and defense of rights.³

The creation of ombudsman offices in Iberoamerica has served as a transitional mechanism, which has allowed to establish an institutional turning point between an arbitrary exercise of the executive power and a democratic and rights-based constitutional order with the capacity to contain or limit such power. The transition entailed by the inception of ombudsman offices in countries which, to a great extent, emerge from dictatorships, is to equip States with

2// In the Colombian case, it is not a question of an authoritarian regime, but of a closed and exclusive political system that gives rise to the 1991 Constitutional Assembly with which the Ombudsman's Office is created as a space for protection of the constitutional text.

3// Instituto Latinoamericano de Ombudsman Defensor del Pueblo. Historia. Available at <http://www.ilo-defensordelpueblo.org/historia/>. Retrieved on September 6 2016.

institutional tools to observe, promote and protect the human rights of their citizens and thus prevent situations of institutional violence or State terrorism from recurring.

In this context, the transitional spirit in the genesis of ombudsmen explains their intrinsic concern for political change initiatives that guarantee the protection of the constitutional rights of citizens and the rule of law. These initiatives may refer to the consolidation of a stable democracy after periods of massive human rights violations by authoritarian governments or situations of lack of citizen protection in protracted internal armed conflict scenarios⁴ and, hence, specifically, to transitional justice measures.

From a historical perspective, what we now understand by transitional justice has its origin in The processes of transition to democracy that started in the Southern Cone of the American continent in the mid-eighties.⁵ After the fall of the military regimes, first in Argentina and later in Uruguay, Brazil and Chile, human rights

activists and defenders who during the dictatorial governments had focused their efforts on locating and demanding the appearance of the disappeared, adopted a new agenda in the emerging democratic contexts, which should bring truth, justice and reparation, if there was respect for the normative principles that governed their legitimacy.

Thus, in a vindication process with various advances and setbacks, there is also another series of episodes of political transformation in Eastern Europe with the fall of the Berlin Wall in 1989 and in South Africa with the end of apartheid in 1990.⁶ Other regulatory principles start being developed with these processes within the international framework for the protection of Human Rights and the International Criminal Law, especially the *Set of updated principles for the protection and promotion of human rights through the fight against impunity*⁷ and the *Basic principles and guidelines on the right of victims of gross violations of international human rights norms and grave breaches of*

4// The case of the Ombudsman's Office in Colombia is emblematic, as it exemplifies how a control body born in a transition context, such as the creation of a new political constitution, devotes much of its efforts to the consolidation of a democracy that is respectful of its inhabitants' human rights in the context of an internal armed conflict. It should be noted that the Political Constitution of 1991 was the result of a student, trade union and academic movement that demanded profound changes in Colombian democracy in the framework of a process of transition towards peace with insurgent groups (M19 and EPL).

5// Some authors trace the origin of transitional justice measures back to the end of World War II. See, for example, Ruti Teitel, "Transitional Justice Genealogy," *Harvard Human Rights Journal*. 16, (2003) 69-94. Jon Elster goes further and considers that the presuppositions of transitional justice can be found even in Greek antiquity (Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective*, Cambridge, Cambridge University Press, 2004). Without neglecting these precedents, however, we consider here that the concept of transitional justice, as it is now known and recognized in the United Nations, was forged in the last decades of the last century in the light of events in the Southern Cone of Latin America.

6// See, among others, John Herz, *From Dictatorship to Democracy. Coping with the Legacies of Authoritarianism and Totalitarianism* (Westport: Greenwood Press; 1983); Neil J. Kritz (ed) *Transitional Justice*, (Washington D.C.: United States Institute of Peace Press, 1995), James A. McAdams (ed) *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame: University of Notre Dame Press, 1997) and A. Barahona de Brito et al. (eds), *Las políticas hacia el pasado: juicios, depuraciones, perdón y olvido en las nuevas democracias* (Madrid: Istmo, 2002).

7// UN Document, E/CN.4/2005/102/Add. February 1 2005—based on the principles with the same name and prepared in 1997 by Louis Joinet (E/CN. 4/Sub. 2/1997/20/Rev.1).

*international humanitarian law to file suits and seek redress.*⁸ The United Nations is showing increasing interest in the context of the growing demand to intervene in post-conflict societies, in places ranging from East Timor to Sierra Leone and Liberia to former Yugoslavia. That is why in 2004 the Secretary-General's Report was drafted and published on *The Rule of Law and Transitional Justice in Societies Undergoing Conflict or which Have Undergone Conflict*.⁹ In 2012, the United Nations appointed Pablo de Greiff as the first Special Rapporteur for the promotion of truth, justice, reparation and guarantees of non-repetition¹⁰ thus ratifying their interest for the specificity of transitional justice.

In this context, transitional justice can be defined as a set of judicial and non-judicial measures that have been implemented throughout the world, usually following a

repressive regime or an armed conflict, to deal with and promote accountability in the face of the legacy of patterns of systematic abuses of human rights and serious crimes under international law. In a context in which it is understood that looking to the past is a necessary step towards building a possible future, the objectives of justice are to acknowledge victims, promote civic trust and consolidate the rule of law with the ultimate intention of preventing recurrence of such abuses.¹¹ According to the report by the Secretary-General, the mechanisms that make up transitional justice "may be judicial or extrajudicial and have different levels of international participation (or may be completely lacking), may include prosecution of persons, redress, the search for truth, institutional reform, background research, removal from office, or combinations of all of them."¹²

8// Resolution 60/147, adopted by the General Assembly on December 16 2005.

9// UN Document S/2004/616. See, <http://www.unrol.org/files/2004%20report.pdf>.

10// See, <http://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx>.

11// For a theoretical approach to this concept, see, Pablo de Greiff, "Theorizing Transitional Justice," in *Nomos LI: Transitional Justice*, ed. Melissa Williams et al. New York: NYU Press, 2012, 31–77.

12// *The Rule of Law and Transitional Justice*, Secretary General Report, 6.



» 3

3 The role of the ombudsman in transitional justice processes: experiences and good practices

3.1. COMMENT ON THE REGULATORY FRAMEWORK AND JURISPRUDENCE

In Latin America, the prerogatives, functions and scope of action of the ombudsman depend on the normative framework of domestic law that configures ombudsman offices. However, considering that the common objective of these institutions is to protect the interests of citizens against the State,¹³ the role of ombudsmen in the transition to democracy processes is based on norms shared among the International Human Rights Law, International Humanitarian Law and International Criminal Law. As a result, the questionnaires in Brazil, Colombia, Ecuador and Guatemala show how the treaties, conventions, customs and other instruments that make up the International Humanitarian Law and the Universal and Interamerican Human Rights Systems were used by Ombudsmen in their actions during the 's respective transitional processes. They also highlight the influence they have had on domestic legislation.

As regards International Humanitarian Law, all countries have ratified the main instruments. In Brazil, the Geneva Conventions of 1949, ratified by the country in 1957, the First

Additional Protocol ratified in 1992 and the Second Additional Protocol ratified in 1993, were used within transitional justice legal processes as a basis for arguing Brazil's link to international custom. In Guatemala, adoption of the Geneva Conventions took place in 1952, and in 1988 the country ratified both Additional Protocols, thus facilitating reforms of the Criminal Code. The Guatemalan Constitution also establishes the pre-eminence of international law in the field of human rights, as well as the obligation to subject internal rules to the control of convention to ensure their conformity with international human rights principles.¹⁴ Ecuador ratified the Geneva Conventions in 1954 and both Additional Protocols in 1979. In Colombia, Law 5 of 1960 approved adherence to the Geneva Conventions, while the first Protocol was approved in 1992 and the second in 1994. War crimes are also provided for in domestic legislation. Title II of the Colombian Criminal Code deals with crimes against persons and property protected by international humanitarian law, considering a wide range of crimes going from the murder of protected persons to sexual and reproductive violations, such as rape

13// Luis Jorge Maiorano El Ombudsman en América Latina, *Revista de Informação Legislativa* 23 (92), (1986): 243.

14// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Guatemala, July, 2016, 2.

and forced Sterilization, or the use of illicit warfare.¹⁵

The situation is the same in relation to the International Human Rights Charter composed by the instruments of the Universal System. Brazil signed the accession to the Universal Declaration of Human Rights in 1948, the date of its proclamation. The rights therein are broadly reflected in the Federal Constitution of 1988. In 1992 the country acceded to the International Covenant on Civil and Political Rights (ICCPR). Both instruments, according to the Federal Public Prosecutor's Office for the Defense of Citizens (PFDC), were used in actions connected to Transitional justice in Brazil.¹⁶ In addition, in 1992 the Federative Republic of Brazil acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, in 2009, to the First and Second Optional Protocols to the ICCPR. However, these three instruments have not been used in the debate about transitional justice in the country.

Colombia acceded to the Universal Declaration of Human Rights in 1948 and in 1968 to the ICCPR, its First Optional Protocol, and the ICESCR. As regards the Second Optional Protocol to the ICCPR, the National Accession Law was passed in 1996. Equally, in 1948 Ecuador signed and ratified the Universal Declaration of Human Rights, the ICCPR and its First Optional Protocol in 1969, and the

ICESCR in 1969. In addition, in 1993 it adhered to the Second Optional Protocol to the ICCPR. Guatemala also adopted the Universal Declaration of Human Rights in 1948. The country's Constitution provides for some rights in conformance with the Declaration. It also enshrines the prevalence of International Law over internal law on human rights matters.¹⁷ Non-inclusion of any rights inherent to persons in the Constitution does not mean they are excluded from the juridical order.¹⁸ The country acknowledges that its international relationships should be ruled by international principles, rules and practices towards peace.¹⁹ Guatemala also ratified the ICCPR in 1992 and the ICESCR in 1988, and the rights envisaged in both are incorporated in the 1985 Political Constitution. As regards the Optional Protocols to the ICCPR, the country acceded to the ICCPR in 2000, but has not yet signed or ratified the second. The Convention on the Rights of the Child ratified in 1990 and its Optional Protocol also generated some changes in Guatemalan legislation.

With regard to other instruments of the Universal Human Rights Protection System, in 1952 Brazil acceded to the Convention on the Prevention and Punishment of the Crime of Genocide, hereinafter referred to as the Convention on Genocide, and in 1968 to the International Convention for the Elimination of All Forms of Racial Discrimination. It also acceded to the Convention on the Elimination of All Forms of Discrimination Against Women

15// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, July, 2016, 4.

16// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Brasil, July 2016, 1.

17// República de Guatemala, *Constitución Política de la República de Guatemala*, (Amended by Legislative Decree 18-93 dated November 17 1993) Art. 46.

18// Ibid, Art. 44.

19// Ibid, Art. 149.

in 1984 and ratified its optional Protocol in 2002. This list is supplemented by the Convention on the Rights of the Child in 1990 and its Optional Protocol in 2004, the United Nations Declaration on the Rights of Indigenous Peoples in 2007 and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2002. In 1985, Brazil had ratified the Declaration on Fundamental Principles of Justice for Victims of Crimes and Abuse of Power. However, none of these instruments has been used in the debate on transitional justice in the country. In contrast, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified in 1989 and the International Convention for the Protection of All Persons from Enforced Disappearances were used in the transitional justice process. In fact, it is interesting to note that the ratification of this last Convention in 2010 was a direct result of the transitional justice process in Brazil.

Colombia acceded to the Convention on Genocide in 1959. This accession was ratified by Constitutional Judgment C-177 of 2001. The crime of genocide,²⁰ as well as the ways to Access justice for sexual violence victims²¹ are part of the internal juridical order. In 1981, Colombia ratified the International Convention for the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination

against Women in 2003. In 1986, it acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although it had not ratified the Optional Protocol. In addition, Colombia has also failed to ratify the United Nations Declaration on the Rights of Indigenous Peoples. On the other hand, it adopted in 1991 Convention 169 on Indigenous and Tribal Peoples in Independent Countries of the International Labor Organization (ILO). It also created two directions in the Ministry of the Interior on Indigenous Peoples and the Presidential Program towards the Formulation of Strategies and Actions for the Integral Development of Indigenous Peoples. In 1991, the Colombian State ratified the Convention on the Rights of the Child and in 2003 its Optional Protocol. In compliance with these instruments, the Colombian Criminal Code provides for a number of types of criminal offenses that specifically protect children and adolescents in situations of armed conflict, including illicit recruitment. Regarding the International Convention for the Protection of All Persons from Enforced Disappearances, although it was ratified by Colombia in 2010, the crime of forced disappearance was incorporated in the country's Criminal Code in 2000.²²

Colombia, has also approved several laws on the matter, including Law 971 of 2005, which regulates the urgent search mechanism and Law 1408 of 2010 that pays homage to

20// Law 599 on the Criminal Code, adopted by the Colombian Congress, *Official Gazette No. 44.097*, July 24 2000, art 101.

21// Law 1719 amending some articles of Laws 599 of 2000, 906 of 2004 and adopting measures to guarantee access to justice for victims of sexual violence, especially sexual violence in the context of armed conflict, and other provisions. *Official Gazette No. 49.186*, June 18 2014.

22// Congress of Colombia, Law 599/2000, *Colombian Criminal Code*, Art. 165.

victims of the forced disappearance crime and measures have been passed for their location and identification. Besides, the Colombian Congress has passed a law on reparation and assistance to victims of the internal armed conflict²³ and another law that establishes “the action mechanism for declaring an absence due to forced disappearance.”²⁴

Ecuador has also ratified all the instruments of the Universal Human Rights System mentioned above and in 2011 created the National Mechanism for the Prevention of Torture, Cruel, Inhuman and Degrading Treatment which is directly under the charge of the Ombudsman’s Office.²⁵

In Guatemala, the Genocide Convention was ratified in 1950, so that the crime of genocide figure and its elements, including sexual violence, were used in litigation related to the Guatemalan transitional justice process, such as in the case of the Area Ixil and the Sepur Zarco case. The International Convention on the Elimination of All Forms of Racial Discrimination was ratified in 1982 and the Convention on the Rights of the Child in 1990. In addition, the Convention on the Elimination of All Forms of Discrimination against Women, ratified in 1982 was used in national cases and in the Inter-American System to denounce discrimination and sexual abuse suffered, especially by indigenous women. The Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment, to which Guatemala acceded in 1989, led to the inclusion of the crime of torture in litigation connected to transitional justice. In addition, in 2008, following the ratification of the Optional Protocol to this Convention, Guatemala created the National Mechanism for the Prevention of Torture. Likewise, the 1985 Declaration on the Fundamental Principles of Justice for Victims of Crime and Abuse of Power has been used as a basis for compensation and reparation of victims, as well as for the restructuring of institutional practices related to them. The Declaration for the Protection of All Persons from Enforced Disappearances also influenced the legislation of the country. Consequently, article 201 of the Guatemalan Criminal Code recognizes the permanent nature of the enforced disappearance crime. However, Guatemala has not yet ratified the International Convention for the Protection of all Persons against Enforced Disappearances. Finally, in 2007, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, Guatemala’s Constitutional Court has already developed jurisprudence recognizing the rights of indigenous peoples.

The situation is similar in terms of the Inter-American Human Rights System. Brazil, Colombia, Ecuador and Guatemala have ratified the American Convention on Human Rights, the Inter-American Convention

23// Congress of Colombia, Law 1448 of 2011 by which measures of care, assistance and integral reparation to the victims of the internal armed conflict, and other provisions are passed. *Official Gazette* No 48.096, June 10 2011.

24// Congress of Colombia, Law 1531 which creates the Declaration of Absence by Forced Disappearance and Other Forms of Involuntary Disappearance and its Civil Effects, *Official Gazette* 48440 May 24 2012.

25// The DPE signed *Ombudsman Resolution 111-DPE-2011* to regulate its operation and competencies (Ombudsman of Ecuador, *Mecanismo Nacional de Prevención de la Tortura, Informe Anual de Trabajo 2013* (Quito: Ombudsman’s office, 2013).

to Prevent and Punish Torture, and the Inter-American Convention on Forced Disappearance of Persons. In the case of Brazil, the American Convention on Human Rights was fundamental to the transitional justice process and was used as a basis for the Gomes Lund case of the Inter-American Court of Human Rights (I / A Court HR)²⁶ while the Inter-American Convention to Prevent and Punish Torture was ratified in 2014 as a consequence of the transitional justice process. In Guatemala, this same Convention allowed for the incorporation of the torture crime to judicial cases on transitional justice.²⁷ Meanwhile, the Inter-American Convention on Forced Disappearance had a great influence on the recognition of the permanent nature of the enforced disappearance crime in the Criminal Code, and also allowed for the development of several criminal processes on the internal conflict.²⁸

In the field of International Criminal Law, none of the four countries considered in this study has signed the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In Brazil, however, the principle of non-applicability of statutory limitations to such crimes has been used as a customary rule of international law in several judicial actions in connection to crimes during the dictatorship.²⁹ In 2002 Brazil ratified the Rome Statute of the International Criminal Court, but no corresponding types of criminal offenses have

been created in domestic law. In addition, due to the principle of retroactivity prohibition, such statute is not used in the debate on transitional criminal justice in Brazil. Guatemala acceded to the Rome Statute in 2012, although reforms to the criminal types and the rules of cooperation with the ICC are still pending approval by Congress. Colombia and Ecuador are also States Parties to the Statute.

In addition to the aforementioned international legal instruments, there are also a number of principles of international law whose application has influenced the actions of Latin American ombudsmen in transitional justice actions. In Brazil, the Federal Public Prosecutor's Office has applied the principle of imprescriptibility of crimes against humanity, which has also been recognized by some judges and courts, although the Federal Supreme Court does not recognize it.³⁰ The same applies to the principle of the non-applicability of amnesty for crimes against humanity and serious violations of human rights.³¹

In Guatemala, the 1996 National Reconciliation Act provides that criminal liability for crimes against humanity and serious violations of human rights shall not be extinguished and the principles of imprescriptibility and non-applicability of amnesty for such crimes are considered. As for transitional justice, Guatemalan law also incorporated crimes of a sexual nature

26// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Brasil, 2.

27// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Guatemala, 7.

28// *Ibid.*

29// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Brasil, 3.

30// *Ibid.*

31// *Ibid.*

as genocide, based on the jurisprudence developed by the International Criminal Tribunals for Rwanda and the former Yugoslavia. Finally, in observance of the United Nations 2005 Resolution on the Right to the Truth and the Basic Principles on the Independence of the Judiciary, in 1985 the figure of “Special Inquiry” was created, a special mandate given by a judge to the Office of the Prosecutor for Human Rights or a private person as an investigation aid to the Public Prosecutor’s Office in cases of serious violations to human rights.

In Ecuador, article 73 of the Criminal Code prohibits amnesty for crimes of genocide, torture, forced disappearance, kidnapping and murder for political or reasons of conscience. While in Colombia some principles, such as the case of the Beijing Rules on the administration of juvenile justice, or United Nations Resolution 1612 on Children and Armed Conflict have served to inform actions of transitional justice. Other texts used have been the Pinheiro Principles on the restitution of property of refugees and internally displaced persons, and the Deng Principles on Internal Displacement.

The regulatory framework analyzed reveals many similarities between countries. In general terms, there is a broad adherence to international mechanisms and instruments for the protection of human rights. It also provides a common basis from which ombudsmen can guide their actions in the field of transitional justice, it also facilitates the exchange of information and good practices in the use of international standards.

It is also possible to observe that the particularity of each country has a great influence on topics prioritized in domestic legislation, even if in principle their insertion depends on international obligations. A good example is the extensive and comprehensive legislation in Colombia on the participation of children and adolescents in armed conflicts or the importance given to crimes of a sexual nature in Guatemala.

Besides fulfilling of international obligations by the countries, there is jurisprudence that has been developed by the courts in relation to the violation thereof. The relevance of such jurisdiction in the progress of transitional processes lies in the fact that rulings in individual cases contribute to reinterpreting and limiting the margins of domestic law and often contribute to open internal debates that not only bring to light unknown facts, but sometimes, allow for progress in the process.

A case in this very controversial sense in Brazil is that of Gomes Lund and others “Guerrilha do Araguaia” Vs. Brazil. In this case, in 2010, the Inter-American Court of Human Rights condemned Brazil for failing to comply with the judicial guarantees regarding the crime of forced disappearance and serious violations to human rights. The state of compliance with the ruling, however, varies according to different State bodies and, in a general sense, has advanced in an unstable and tortuous manner.

Thus, while the Public Prosecutor’s office acknowledges the decision and complies with it, the Judiciary does not acknowledge it, and the government has only partially

complied with the sentence.³² Besides, there is also a recommendation by the Inter-American Human Rights Commission (CIDH) in the Vladimir Herzog case, on judicial guarantees for crimes against humanity, and recommends the prosecution of the murder of the journalist who names the case. This recommendation has not been complied with and the case is now before the Inter-American Court. In the Colombian case, there have been pronouncements of the Inter-American Court of Human Rights in which there are references to some transitional justice mechanisms. An example is the case of Afro-descendant communities displaced from the Cacarica river basin (Genesis operation) v. Colombia. The November 20, 2013 ruling on this case explicitly addressed the route of care and repair mechanisms contemplated in Law 1448.³³

Ecuador also has some landmark sentences. In the case of Benavides Cevallos v. Ecuador, in 1998, the Inter-American Court of Human Rights condemned Ecuador for violating rights of recognition and legal personality, life, personal integrity, personal liberty, access to judicial guarantees and judicial protection. The sentence has been partially fulfilled. In the case of Zambrano Vélez and Others v. Ecuador (2007), the State was held liable for extrajudicial execution of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo Cobeña and José Miguel Caicedo Cobeña by members of the Armed Forces and the violation of the rights to life and physical

integrity of the victims was acknowledged. The Court considers that to date the sentence has been only partially fulfilled. Although there was a partial payment of compensation, Ecuador has not yet carried out a rapid and comprehensive investigation of the facts, nor the responsible agents have been punished. Finally, in 2011, in the case of Vera Vera and another Vs. Ecuador, the Court analyzed and found the Ecuadorian State responsible for the death of Pedro Miguel Vera Vera, who was not granted the necessary medical care when in police custody. In the Ecuadorian context, the case of the brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, who were detained by the Ecuadorian National Police in 1988 and whose whereabouts have not been known, is emblematic. Through the IACHR, in October 2000, the father of the victims reached an amicable agreement with the Ecuadorian State. The State acknowledged its responsibility, pledged to indemnify the father of the victims and to seek the bodies of the missing brothers.³⁴ However, to date the remains have not appeared. Finally, in the case of Guatemala, international jurisprudence on human rights violations is more extensive. The country has received 22 rulings from the Inter-American Court. Some of these have been emblematic and have marked important moments in the advancement of justice in Guatemala. Among the Court's cases, there is the 2004 Plan de Sánchez Massacre v. Guatemala case, in which the plaintiffs sued due to the lack

32// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Brazil, 4.

33// IHRC, *Caso de las comunidades afrodescendientes desplazadas de la cuenca del río Cacarica (operación génesis) Vs. Colombia*, Ruling of November 20 2013, *Excepciones Preliminares, Fondo, Reparaciones y Costas*, Paragraphs. 469-72.

34// IHRC, *Caso 11.868, Carlos Santiago y Pedro Andrés Restrepo Arismendy*, Report N° 99/00 October 5 2000.

of justice at the national level. The Court's sentence recognized the violation of the victims' rights to life, integrity, freedom, as well as a dignified and culturally appropriate funeral. Besides, the Court urged Guatemala to investigate the case, punish the culprits and grant money reparations the victims. In response, the government held a public event in memory of the victims and paid compensation. In 2009, in the case of the Las Dos Erres Massacre - which had already been treated within the IACHR in 2000, the Inter- American Court of Human Rights again judged Guatemala on the lack of application of justice at national level in connection with the massacre of 153 persons in the village of Las Dos Erres in 1982. In the ruling, the Court recognized the violation by the State of the judicial guarantees of the victims' relatives, as well as the lack of a complete and thorough investigation. The Court also ordered the investigation and punishment of those responsible, not only for the massacre but also for judicial delays, and called upon Guatemala to amend the 1986 Protection Act, claiming that it had been used to prevent prosecution of serious human rights violations. In 2011, the trial was again held in Guatemala. Only four of the 58 military received an immutable sentence to more than six thousand years of imprisonment. In addition, following the Court's judgment, the State also paid pecuniary reparations to victims and their families, conducted human rights training courses for public officials, as well as various public events and other

measures to preserve the memory of the massacre.³⁵

In the 2012 case of García and relatives Vs. Guatemala that has to do with the disappearance of Edgar Fernando García in 1984, the State was found to be partially responsible and reached an agreement of friendly solution that includes the investigation of the case and sanction to those responsible, the search of the whereabouts of the victim as well as the adoption of measures of pecuniary compensation. In addition, the State was urged to promote the Concord Memorial and to promote the adoption of the bill for the creation of the Missing Persons Commission. Following the ruling of the Court, the trial was held in Guatemala in 2013, several of those responsible were convicted and the PDH received the special investigative mandate that allowed them to participate in the process.³⁶ Also in 2012, the Inter- American Court of Human Rights sentenced Guatemala in the case of José Miguel Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, for the violation of the rights to life and integrity of 24 missing persons, ordered the investigation of the facts and the adoption of several measures of memory.³⁷

Other important cases are the case of Chitay Nech et al. V. Guatemala (2010), in which the Court condemned the State for the disappearance of Florencio Chitay and his son, recognizing, among others, violations of the right to family life. Another case is Molina

35// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Guatemala, 9.

36// *Ibid.* 11.

37// *Ibid.* 12.

Theissen of 2004, in which the Court ordered the creation of a DNA bank to facilitate the investigation of disappearance cases.³⁸ Finally, in the 2003 Maritza Urrutia case, Guatemala was sentenced for arbitrary detention and torture against the victim, although the Court did not acknowledge violation of the victim's right to freedom of thought and expression. Even if she was obliged to broadcast a TV message against her own ideas.

As for the work of the Inter-American system, the PDH acknowledges that the State of Guatemala committed serious violations to human rights during the internal armed conflict and coaches the victims who so require in following up ICHR rulings or in processes before the Inter-American Commission of Human Rights. In addition, it was part of the group of state institutions and social organizations that, in 2009, established a partially successful dialog with Dr. César Barrientos- then President of the Criminal Chamber - to request that the Supreme Court of Justice declare the rulings of the Inter-American Court of Human Rights to be self-executing.³⁹

3.2. ACTIONS IN TRANSITIONAL JUSTICE PROCESSES AND MEASURES

3.2.1. Brazil

In Brazil, the organ that fulfills the role of ombudsman is the Federal Prosecutor's

Office for the Rights of the Citizen, which is, in turn, part of the Federal Public Prosecutor's Office. The PFDC's mandate has a broad legal basis that allows it to act on all issues related to the protection of human rights, including issues of transitional justice.⁴⁰ The main legislation piece that stipulates PFDC attributions is article 129 (II) of the 1988 Federal Constitution which gives the Public Prosecutor's Office the power of "looking after effective respect by Public Powers and public relevant services of rights guaranteed in the Constitution herein, promoting any necessary measures for guaranteeing them"⁴¹ and Complementary Act 75/1992, which regulates the Federal Public Prosecutor's office, creates the PFDC and provides for its attributions.

The PFDC organizes its work by making up thematic working groups (WGs), whose purpose is to discuss specific issues and propose objectives and procedures for the coordinated action of the Prosecutors for Citizen Rights throughout the country.⁴² The Working Group on the Right to Memory and Truth was created in 2010. It consists of seven part-time federal prosecutors. This group has a series of specific objectives, priorities and lines of action that are formulated from an annual strategic plan.⁴³ In addition, there are other initiatives on transitional justice in the Public Prosecutor's Office -in areas other

38// *Ibid.* 14.

39// *Ibid.* 15

40// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Brazil*, 6. 41// *Brazil, Constituição Federal da República Federativa do Brasil* (Brasília, DF: Senate, 1988).

42// *Ibid.*, 7.

43// *Ibid.*

than PFDC- that act in a coordinated manner. For example, the Criminal Coordination and Review Chamber also has a Transitional Justice Task Force for criminal activities and the Coordination Chamber on Indigenous Peoples has a Working Group on Dictatorship and Indigenous Peoples.

Despite its broad functions, the PFDC has no legal authority to act in court proceedings, to defend the victims, or to file *amicus curiae*. Prosecutors of the PFDC may suggest or recommend to federal and State prosecutors in other areas and other government bodies that intervene or take protective measures in the field of human rights. However, despite these limitations, PFDC prosecutors played a very important role in the progress of the Brazilian transitional justice process. In particular, in 1999, the prosecutors of the São Paulo PFDC were the ones that initiated several claims in relation to the search of the mortal remains of disappeared politicians and demanded disclosure of the truth at a time when, unlike other countries in the region, the processes of reparation in course were completely dissociated from further claims for truth and justice.⁴⁴ Later, in 2007, this same group of prosecutors promoted the criminal and civil prosecution of abuses committed during the dictatorship, the adoption of measures of memory and

of institutional reforms. Even before the creation of a specific working group on this subject, the PFDC was already acting as a driving force for transitional justice measures in the country. In 2007, PFDC pioneered an international seminar on Transitional Justice with the collaboration of the International Center for Transitional Justice (ICTJ) and the Center for Justice and International Law (CEJIL), which for the first time included the notion of crimes against humanity in the national debate.⁴⁵ Experience acquired in this seminar was used in developing actions in the criminal justice field, as the PFDC later developed the judicial argument based on International Human Rights Law and International Criminal Law, from which it became possible to request that prosecutors with criminal attributions initiate the civil prosecution of transitional justice cases in the country. However, the PFDC has no authority to lead or intervene in such processes.⁴⁶

The PFDC does not directly act on material reparation actions, but rather participates in coaching and monitoring ongoing national reparations processes through the participation of entity representatives in other governmental commissions, such as the Special Commission on the Death and Disappearance of Persons and the Amnesty

44// Since 1995 with the proclamation of Law No. 9.140, a program for strictly patrimonial reparations was being implemented in Brazil for families of the dead and missing persons.

45// *Debate Sul-Americano sobre Verdade e Responsabilidade em Crimenes contra os Direitos Humanos*, San Pablo, May 24-25 2007. The conclusions were consolidated in The Charter of São Paulo, the first document in the country in which the creation of a truth commission is proposed and the theoretical framework of transitional justice is discussed. Questionnaire on Transitional Justice Processes in Ombudsmen Offices: Brazil, 10.

46// *Ibid.*, 8.

Commission.⁴⁷ In the matter of intangible reparation, the PFDC played an important role in the case of the “Perus Mass Grave,” located in 1990 in the Dom Bosco cemetery in São Paulo, so that the work of identifying the mortal remains was resumed (around 1.000 groups of unidentified bones) And in the Araguaia Guerilla case, in which it promoted the search and seizure of Armed Forces documents.

The momentum gained by the transitional justice process in Brazil resulted in the creation of a National Truth Commission that operated in the country from 2012 to 2014 and with which the PFDC collaborated in signing an agreement that was not operational because of short-term issues. The PFDC, however, played an important role in demanding the creation of the commission, followed by monitoring of the corresponding bill and a coaching task in the National Congress to ensure its definitive adoption.⁴⁸ Similarly, at the regional level, the Regional Citizens’ Rights Prosecutors also collaborated with the different States truth commissions, including for example Pernambuco and Rio de Janeiro, where this collaboration was very close. Also in the field of the search for truth and recovery of memory, the Public Prosecutor’s office participated in the search and retrieval of archives and in the creation of the ***Brasil Nunca Mais Digital***⁴⁹—an *online* platform that gathers thousands of documents on repression—change

of street and monument names when they pay homage to perpetrators- and establishing memory.

Finally, with regard to guarantees of non-repetition, the PFDC carries out various educational and monitoring actions, including the creation of memory spaces, the guarantee of keeping archives, as well as inclusion in projects to disseminate the normative framework of transitional justice. The PFDC also carries out institutional reform projects in the State security and public order forces.⁵⁰ In collaboration with public prosecutors and various civil society organizations, the PFDC began a discussion project in 2015 with the academia, the public security forces and society at large on the legacies of the dictatorship regarding public security and justice systems. The purpose of this project is to draw attention to the need to reform the system in the face of a very high level of violence in the country, with high rates of lethality and great vulnerability for the professionals themselves.

3.2.2. Colombia

The Colombian Ombudsman’s Office is included, since the 1991 Political Constitution, in the State’s structure, as part of the Public Prosecutor’s Office according to Title X, Chapter 2 of the constitutional text, this office is made up by three autonomous and independent supervisory bodies: the Public Prosecutor’s Office, the Minorities and the People’s Defense, whose joint purpose is

47// *Ibid.*, 8-10.

48// *Ibid.*, 8-11.

49// See <http://bnmdigital.mpf.mp.br>.

50// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Brazil*, 8.

“to safeguard and promote human rights, protection public interest and monitor the official conduct of those who perform public functions.”⁵¹ According to its mission, the Ombudsman’s Office promotes effective human rights of inhabitants in the In the national territory and of Colombians abroad within the framework of the social, democratic, participatory and pluralistic rule of law ⁵²

Based on its mission and objectives, the Colombian Ombudsman has gained institutional and political legitimacy through its remarkable work of assistance, investigation and report of human rights violations by the different armed actors of the internal conflict (The State⁵³, the guerrillas and the paramilitaries) that has marked the country in the last 50 years. The remarkable presence of the Ombudsman’s Office in issuing early warnings about possible human rights violations in the context of the armed conflict, as well as verification of the satisfaction of victims’ rights, differential protection of particularly vulnerable groups and legal and administrative assistance to

citizens has placed it as an indispensable reference in formal transitional justice spaces created in Colombia after the 1991 Constitution.⁵⁴

In terms of transitional justice, there are two legal texts that specifically commission tasks to the Ombudsman: Law 975 of 2005,⁵⁵ in the judicial context, and Law 1448 of 2011 in the administrative context.⁵⁶

Law 975 of 2005, also known as the Law of Justice and Peace, in charge of regulating the demobilization of paramilitary groups, assigned several powers to the Colombian Ombudsman, specifically to the National Public Defender System. This is the unit responsible for assuming judicial representation in favor of people who require this service and who do not have the financial resources to hire a trusted attorney. The National Public Defender’s Office has the Victims’ Judicial Representation Group (RJV), which aims at acting as defenders, and as judicial representatives of victims, along the entire judicial process.⁵⁷ On the occasion of the formulation of a law aimed at attending to and repairing the victims of the armed

51// Colombian Constitution, Art. 118.

52// On its mission, see <http://www.defensoria.gov.co/es/public/institucional/114/Misi3n-y-Visi3n.htm>. Retrieved on September 06 2016.

53// Represented by military forces and the National Police in the specific case of Colombia.

54// According to the reports of the Early Warning System at the Ombudsman’s Office, during the period from 2012 to 2016, 226 risk situations were observed and 1582 observation missions took place in response to the dynamics of the armed conflict.

55// Congress of Colombia, Law 975 of 2005, which provides for the reinstatement of members of outlaw organized armed groups, who effectively contribute to the achievement of national peace and other provisions for humanitarian agreements, *Official Gazette No. 45.980*, July 25 2005.

56// Congress of Colombia, Law 1448 of 2011, by which measures of care, assistance and integral reparation to the victims of the internal armed conflict, and other provisions passed, *Official Gazette No. 48.096*, June 10 2011.

57// The National Ombudsman’s Office has 161 ombudsmen in the Victims’ Program corresponding to Law 975 of 2005 and 365 ombudsmen in the Victims’ Program corresponding to Law 1448 of 2011 for a total of 526 ombudsmen working in the Victims’ Program at large, Questionnaire on Transitional Justice Processes in Ombudsmen Offices: Colombia, 25.

conflict, the Program of Integral Care to Victims of Armed Conflict was also structured in the Ombudsman's Office.⁵⁸

With the approval of Law 1448 in 2011, which provides for measures of care, assistance and integral reparation to victims of internal armed conflict, other provisions - better known as the Victims' and Land Restitution Law - are passed, and new guidelines are established for the Ombudsman's Office aimed at guiding victims with respect to their rights under the programs of care, assistance and Integral repair. According to the decrees that regulate Law 1448 of 2011, the functions of the Colombian Ombudsman in the process are to guide and advise conflict victims in relation to each of the access routes to the measures of care, assistance and integral repairs; as well as to receive the declarations of the victims for the purpose of their inclusion in the Single Registry of Victims⁵⁹ and to file judicial action in rejected cases. The Ombudsman also receives applications for inclusion in the Single Registry of Victims from non-ethnic collective subjects and does coaching in the process of formulating collective reparation measures, also doing their follow-up.

In order to undertake the tasks assigned to the Ombudsman in the framework of the Victims' Law, the entity incorporated a

Delegate for Guidance and Advice to Victims into its organizational structure through Resolution 1372 of 26 December 2011. This Delegate is attached to the office of the Deputy Ombudsman and currently is in charge of 125 officials in the national territory. The following are among the functions assigned to the Delegate: establishing and adopting policies, plans, program lines, procedures and processes related to the orientation, assistance and integral reparation to victims; formulating public policy recommendations that contribute to the realization of victims' rights; supporting the design of instruments to facilitate the Ombudsman's Office monitoring and follow-up work and to support the process of effective participation of victims, among others.⁶⁰ In addition, the Delegate performs a fundamental task in preparing victims through psycho-legal coaching and emotional restraint aimed at mitigating the emotional impacts that can be generated in the victims by their participation in the judicial process.⁶¹

Likewise, according to the Victims' Law, the Ombudsman's Office exercises the technical secretariat of the Participation Roundtables at departmental and national level. This is an instrument designed to encourage the participation of victims in "policy design, implementation, execution and evaluation

58// Ombudsman's Office, Resolution No. 061 adopting the Special Programs and Projects of the Ombudsman's Office, January 12, 2011.

59// The Single Registry of Victims (RUV) of the Unit for Integral Care and Reparation of Victims in Colombia is an instrument through which victims of the conflict, who have suffered acts of violence, can make their particular situation known and become considered to receive benefits that the government has allocated for people in extreme poverty or vulnerability of their rights. According to the RUV, from 1985 to August 01, 2016, at least 7,844,527 victims of the internal armed conflict have appeared before the Registry in Colombia. See, <http://rni.unidadvictimas.gov.co/RUV>.

60// *Ibid.*, 23.

61// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, 27.*

at national, departmental, municipal and district level ...,”⁶² thus guaranteeing “the effective Participation of women, girls, boys, adolescents and elderly victims.”⁶³

More generally, within the framework of the follow-up process to the care and repair programs, the Monitoring and Evaluation Commission has been formed, in which the Ombudsman’s Office exercises the role of Technical Secretariat at the Monitoring and Evaluation Committee of Law 1448 dated 2011, which must submit annual reports to the Congress of the Republic and the entities of the National System for Attention to Victims (SNARIV).⁶⁴ The Office of the Ombudsman also participates in the SNARIV thematic sub-committees (Coordination of Territory, Care and Assistance-Satisfaction-Prevention and Protection Measures, and Guarantees of non-repetition and Differentiated Approach). Besides, it provides assistance to Territorial Transitional Justice Committees departmental level, in which care and reparation policies are established at regional level, including the Mobile Unit and recovery of historical memory actions that the Delegate has carried out, as well as the follow-up to rulings on lands.⁶⁵

As for clarification of historical truth, the Colombian Ombudsman’s Office has participated in three clarification commissions that have acted to date

in relation to episodes of human rights violations. The first of these was the Special Commission for the Investigation of Acts Corresponding to Case Number 11.007, created to investigate 63 events of serious human rights violations in the municipality of Trujillo between the end of 1988 and the beginning of 1990 and in which the Office of the Ombudsman acted as President. Subsequently, the Ombudsman collaborated with the National Reparation and Reconciliation Commission formed by Law 975 dated 2005. Finally, the Office of the Ombudsman was part of the Advisory Commission for the Debugging of Data and Archives with the incorporation of a delegate.⁶⁶ This commission, whose work was completed in July 2016, was intended to contribute to the design and implementation of a system for the debugging of intelligence and counterintelligence data and files, taking into account, among other criteria, the fundamental rights of citizens to good name, dignity, due process, international practices on the subject and the duty to ensure the preservation of the nation’s historical memory.

In addition to participation in independent commissions, the National Directorate of the Public Advocate’s Office (DNDP) has as its policy to hold days of victim assistance and documentary action under Law 975 dated 2005. According to Law 1448 dated 2011 on

62// Law 1448 of 2011, Art. 193.

63// *Ibid.*

64// SNARIV is a system that calls on public entities at governmental and State levels of national and territorial order to formulate and coordinate the integral policy for victims.

65// [Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, 20.](#)

66// Law 1621 of 2013 by means of which regulations are issued to strengthen the legal framework that enables agencies that perform intelligence and counterintelligence activities to fulfill their constitutional and legal mission, Official Gazette No. 48,764, April 17, 2013.

the process of land restitution, the DNDP is in charge of judicial representation to second occupants -victims and non-victims-, going to the regions where the largest number of victims is concentrated, in order to obtain interviews with the users, to form the family group, to prepare the reparation cases according to victims' claims, and to underpin petitions through evidence obtained -to a great extent- through these brigades (psychological and financial expert support).⁶⁷

The Ombudsman also serves as chair of the Commission for the Search of the Disappeared (CBPD), a state body set up as the highest authority on enforced disappearances in Colombia, made up of seven state entities and two social organizations.⁶⁸

The Commission's main function is to support and promote the investigation of the crime of forced disappearance, with full respect for the institutional powers and the powers of the procedural subjects. All efforts are aimed at guaranteeing the rights of the victims, and enable the location, identification and delivery of the bodies of disappeared persons. The Commission has contributed to promote different normative protection mechanisms, among which the National Plan for the Search of Missing Persons stands out,⁶⁹ the Urgent Search Mechanism for Preventing the Crime of Forced

Disappearance,⁷⁰ the National Registry of Disappeared Persons,⁷¹ and the Inter-Institutional Protocol for the Honorable Delivery of Missing Persons' Bodies (launched in 2014) stand out. The Commission has also worked to foster the adoption of various measures and laws to promote the recognition of victims and the guarantee of their rights to truth, justice and reparation. As far as forced disappearance is concerned, the Ombudsman participated in the negotiation tables of Havana, where he presented recommendations for strengthening the search, location, identification and honorable delivery of missing persons. With regard to guarantees of non-repetition, the Ombudsman's Office has collaborated in some outreach projects. In 2008, with the support of German Cooperation, the Ombudsman formulated the project of the oral archive *Narrativas Visibles* (Visible Narratives).⁷² Through this project, the Ombudsman's Office has compiled and disseminated more than 300 testimonies of victims of the armed conflict that counterbalance the truth constructed in judicial settings based on the testimony of demobilized persons from unlawful armed groups. Within the framework of this project, different publications have been made, including a methodological guide and a documentary. In addition, various articles have been written and the voice

67// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, 54-55.*

68// Incepted by Law 589 of 2000 and regulated by Decree 1862 of 2014.

69// Law 1408 of 2010, which pays homage to enforced disappearance victims of and which sets forth measures to locate and identify them, arts. 9 and 11, and Law 1448 of 2011, art. 178 (9).

70// Regulated by Law 971 of 2005.

71// Regulated by Decree 4218 of 2005.

72// See, <http://www.narrativasvisibles.com/index.php/el-proyecto>.

of hundreds of victim families has been disseminated through digital means, radio stations, symbolic and academic events.⁷³ Finally, following the formulation of the Law on Victims, the Ombudsman's Office has promoted, boosted and accompanied -in its 36 regional Ombudsman's offices- actions to commemorate the day for Memory and Solidarity with the victims through marches, conversations, symbolic events and vigils, among others.⁷⁴

3.2.3. Ecuador

The general powers of the Ombudsman in Ecuador (DPE) are provided for in the Constitution of the Republic of Ecuador and in the Organic Law of the Ombudsman's Office.⁷⁵ In addition, specifically and especially relevant to its ability to intervene in transitional justice issues, the Law for the Reparation of Victims and the Prosecution of Serious Violations to Human Rights and Crimes Against Humanity occurred in Ecuador between the 4th and 4th October 1983 and December 31, 2008⁷⁶ established the responsibility of the Ombudsman's Office as a body for the management and coordination of non-pecuniary reparation measures and established that it could create an Administrative Unit dedicated to the reparation and prosecution of acts related to repression. This will aim at

implementing the reparation measures established in this Victims' Law. It was from this mandate that -in 2014- the National Direction of Reparation to Victims and Protection against Impunity was created, incorporated into the Organic Statute on Organizational Management by Processes of the Ombudsman's Office of Ecuador.⁷⁷

The Law for the Reparation of Victims establishes the responsibility of the Ombudsman's Office to manage non-material reparation measures and establishes five lines of work: measures of physical rehabilitation and psychosocial care; representation, advice and legal patronage for the prosecution of cases; implementation of symbolic and satisfaction measures; file maintenance and of the documentary memory of human rights violations in the country, and human rights education and dissemination of the final report of the truth commission.

To achieve these objectives, the Ombudsman works in coordination with other State institutions that have competence as regards the lines of action indicated in the law, promoting the inter-institutional agreement that allows for immediate implementation of non-material reparation measures.⁷⁸ In cases where these measures have

73// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, 38.

74// *Ibid.*

75// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Ecuador, July 2016, 14.

76// Government of Ecuador Official Registry, Year I, n° 143, Quito, December 13, 201, art. 9. The articles in Resolution No. 198-DPE-CGAJ-2014 -dated November 13 2014- include the legal guidelines on the Ombudsman's Office.

77// *Ley para la Reparación de las Víctimas y la Judicialización de Graves Violaciones de derechos Humanos*, Chapter II, art. 4.

78// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Ecuador, 15. In addition, the Office of the Ombudsman has carried out training workshops on victim assistance for 132 public officials from 20 entities with institutional commitments to implement reparation measures, including the Ministry of Education, Labor, Health, Economic and Social Inclusion, Culture, Interior, Defense, Housing, and Justice.

already been implemented, and once an Intangible Reparation Agreement is reached between the Ombudsman and the victim(s), the file is transferred to the Ministry of Justice, Human Rights and Worship to begin a process of material reparation negotiation in which the Ombudsman's Office participates solely as an observer.⁷⁹

In the field of criminal justice, the Reparation Law gives the Ombudsman the power to provide advice, representation and legal patronage for the prosecution of transitional justice cases at the victims' request, although this competence has not yet been implemented.⁸⁰ It should be noted, however, that in 2010 the Public Prosecutor's Office created a Special Directorate to investigate the 118 cases of human rights violations identified by the Truth Commission. Some of these have already been submitted for prosecution.⁸¹

In the field of clarification and recovery of historical truth, in Ecuador there was a Truth Commission created in 2007 with the objective of investigating the serious human rights violations that occurred in Ecuador between 1984 and 2008.⁸²

Following the work of the Commission, the DPE does not have the power to initiate other measures of recovery of the truth and reconstruction of the facts, a task that remains in the hands of the Special

Directorate on the cases of the Truth Commission at the Public Prosecutor's Office.⁸³ In this regard, the DPE's work focuses on dissemination of research carried out by the Truth Commission. In order to comply with the mandate to share the Commission's report, the Ombudsman -in coordination with the Ministry of Education- created a work schedule for 2016 that included a series of sharing workshops with high school students in which students are informed each week about human rights violations in Ecuador and about the investigation carried out by the Truth Commission.⁸⁴

In addition, in coordination with the Ministry of Culture, a process of analysis was begun to implement the creation of the Museum of Memory that will include the victims' participation. In September 2016, an International Seminar was held and the Ministry of the Interior undertook to provide the EXSIC grounds in Quito, one of the torture centers of the years investigated, so that the Museum of the Memory would be built there. There is also a proposal to create memory spaces in five provinces, in coordination with governments and provincial authorities.⁸⁵

3.2.4. Guatemala

In Guatemala, the ombudsman is represented by the Office of the Human Rights Prosecutor (PDH). In its articles 274 and 275, the 1985

79// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Ecuador*, 15.

80// *Ibid.*

81// *Ibid.*, 17.

82// Presidency of the Republic of Ecuador, Executive Order 305, *Official Record* 87, May 18 2007.

83// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Ecuador*, 16.

84// *Ibid.* 16.

85// *Ibid.* 17.

Constitution establishes that its attributions are to investigate all kinds of complaints related to human rights violations and to promote judicial or administrative actions or remedies, in cases in which investigation deems necessary.⁸⁶ This legislation is complemented by the Human Rights Prosecutor's Law, which adds the function of promoting human rights education in public and private schools, either through other promotional actions, or through the development of studies and publications. Likewise, binding legislation allows the *ex officio* filing of actions on possible violations.⁸⁷

With competence throughout the national territory, the PDH is also the priority organ authorized to exercise the so-called "Special Inquiry Procedure" provided for in the Criminal Code,⁸⁸ and has a specific unit to carry out this task. The same unit is responsible for the Unified Forced Disappearance Registry (RUDFOR), which keeps an archive of forced disappearance cases in the country.⁸⁹ To date, the PDH has conducted 35 special inquiry orders.⁹⁰

Although the PDH in Guatemala does not have a specific unit dedicated to transitional justice, it has several departments that carry out actions related to the subject. The PDH has procedural capacity, which allows it to

prosecute cases of transitional justice and, in fact, has a wide margin of action in the area of criminal justice,⁹¹ and it can also file *amicus curiae*.⁹² In particular, the PDH has participated in the Assembly of Member States at the International Criminal Court (ICC), where cases of transitional justice have been treated and discussed.⁹³

PDH performance in reparation processes mainly refers to the monitoring and supervision of compliance by public administration with such procedures, as in the National Reparation Program and Government Agreement 287-2014, which approved a Public Reparation Policy to the communities affected by the construction of the Chixoy Hydropower Plant, and compliance with the ruling by the Inter-American Court of Human Rights in the case of *Diario Militar*.⁹⁴

The 1993 peace agreement, following an internal armed conflict that lasted more than 25 years, established the creation of the Commission for Historical Clarification (CEH) of human rights violations and acts of violence that caused suffering to the Guatemalan population. After a two-year investigation process, in which the PDH did not participate, the CEH presented its final report in 1999: *Guatemala Memoria del Silencio* (Guatemala, Memory of Silence).

86// Republic of Guatemala, *Constitución Política*

87// Congress of Guatemala, *Ley de la Comisión de los Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos*, Decree No. 54-86, October 1 1986, arts. 13 y 14

88// República of Guatemala, *Código Procesal Penal*, Título II, arts. 467-473

89// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Guatemala, 19. 90// Ibid., 20.*

91// *Ibid.*, 30.

92// *Ibid.*, 20. 93// *Ibid.*

94// *Ibid.*, 21.

Among its final recommendations, the CEH called for the creation of a Foundation for Peace and Concord to follow up the recommendations in the report which, due to a number of legal limitations established by government was never incepted.⁹⁵ In view of this situation, in 1999 the PDH promoted the creation of the Multi-Institutional Instance for Peace and Concord, convening various organizations of victims and human rights defenders, as well as several universities in the country. In addition, in observance of the recommendations of the CEH, the PDH supported the creation and initial operation of the National Commission of Search for Missing Children. This Commission supported, among other things, the drafting of the Law on the Search for Missing Persons during the Armed Conflict, which was submitted to the Congress of the Republic, but has not yet been approved.⁹⁶

In 2005, the PDH participated in the discovery of the Historical Archive of the National Police during an inspection carried out by a group of PDH officials at the National Civil Police premises. The archive contains the historical-administrative documentation of the no longer existing National Police from 1882 to 1997.⁹⁷ After this discovery, another 30 smaller files were also found in different

regions of the country that were transferred to the central archive. Following this discovery, the PDH requested the Supreme Court of Justice powers to safeguard said file, granting it powers to investigate it, as special investigator, in connection to eight cases of forced disappearance.⁹⁸

With this mandate, the PDH began to work on the recovery, organization and preservation of the archive, and obtained resources from international cooperation for the hiring of a technical team that exchanged with international experts from the world's largest archives. In addition, an International Committee for Support to PDH for Historical Clarification in Guatemala was established and alliances were established with academic institutions, as well as human rights organizations and churches. As of July 2009, ownership of the file was handed over to the Ministry of Culture and Sports and the Access to Information Unit was created (in accordance with the Law on Access to Public Information), which has allowed public access to the content of more than twelve million and a half of documents that are digitized.⁹⁹

The Unified Forced Disappearance Registry (RUDFOR) was created by the PDH in 2007 based on the Report of the Working Group on Enforced or Involuntary Disappearances

95// Legal limitations related, above all, to tax matters in connection to the creation of a Foundation that was also to be approved by the Ministry of the Interior. In this regard, it should be remembered that when the CEH submitted its report, the President of the Republic did not want to go to the podium to receive it, showing a clear lack of political will to support the process.

96// *Ibid.*

97// The file has more than 7,900 linear meters of pages from 1882 to 1997, in approximately eighty million pages. For more information, see <http://archivohistoricopn.org>.

98// Urgent Provision 58-2005 dated July 12 2005, authorized by the Third Court of the Civil First Instance.

99// PDH, *Informe Anual Circunstanciado 2006* (Guatemala: PDH, 2007), 45-46.

of the United Nations in Guatemala which, having consolidated a list of some 3,000 persons whose location was unknown, called for the unification of various disappearance registries in the country.¹⁰⁰ This work received collaboration of the Association of Relatives of Detainees and Disappeared Persons in Guatemala (FAMDEGUA) and other civil society organizations.¹⁰¹ Despite these efforts, RUDFOR does not include all the cases of forced disappearance that have occurred in the country. Finally, following this joint effort, the PDH and human rights and victims' organizations prepared a proposal for a Law on the National Commission of Search for Missing Persons,¹⁰² which not yet been adopted by Congress.

Among the non-repetition measures developed by the PDH office are human rights education programs, research and reporting. Human rights education is aimed at public officials, civil society, lawyers, judges and prosecutors, as well as schools in the national education system. The PDH also produces an annual report for the nation's Congress on the situation of human rights, which has a section on transitional justice.¹⁰³

Finally, the PDH accompanies the fulfillment of the IACHR ruling on the Myrna Mack case, according to which the Commission urged Guatemala to amend the "Protection Law"

so that it would no longer be used as an instrument for delay and denial of justice. It also suggested the creation of a scientific-technical support institution for justice, the National Science Institute (INACIF) and called for the approval of the Law on Access to Public Information, adopted in 2008, which establishes the PDH as the central guardianship authority for the right to access to information.¹⁰⁴

3.3. SPECIFIC ACTIONS AIMED AT INCLUDING VULNERABLE GROUPS AND/ OR INDIGENOUS PEOPLES IN THE TRANSITIONAL JUSTICE PROCESS

In Brazil, the PFDC has not carried out specific actions to represent or fulfill the rights of groups in a situation of vulnerability and which have, specifically, been affected by repression during the military dictatorship. The PFDC does not have powers within its mandate to deal with indigenous peoples' rights, but this task is developed by the so-called 6th House, the Chamber of Coordination and Review of Indigenous Populations and Traditional Communities (6th CRR).¹⁰⁵ That is why, from the beginning, the issue of indigenous peoples and the repression of the dictatorship remained in the hands of the prosecutors who operate in that area.

100// United Nations, Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Guatemala, February 20 2007, A / HRC / 4/41 / Add.1, paragraph 105.

101// *Ibid.*

102// Congress of Guatemala, *Iniciativa que Dispone Aprobar de Ley para la Comisión Nacional de Búsqueda de Personas, Víctimas de Desaparición Forzada y otras Formas de Desaparición*, Iniciativa 3590, January 18 2007.

103// *Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Guatemala*, 23.

104// *Ibid.*, 24. Also see, Congress of Guatemala, *Decreto Número 57-2008*, September 23 2008.

105// It should be noted, however, that the Brazilian Constitution attributes the specific function of defending the rights and interests of the indigenous population, including juridically, to the Prosecutor's Office.

In fact, from the outset it was understood that the discussion on transitional justice in relation to the violation of their rights should respect their cultural characteristics to avoid the risk of imposing a pattern alien to their interests, needs and culture. It was even considered that there was a risk of re-victimization with the eventual imposition of transitional justice measures outside their cultural parameters. In fact, until now the PFDC and the 6th CCR are critical of the implementation of individual reparation programs for certain peoples who have founded their communities on collective life.

On the other hand, it should be noted that the original peoples of Brazil were not involved in political movements or ideological disputes, although they violently suffered the consequences of the military dictatorship. In fact, respect for their lands and cultures was seen as a barrier to some national development plans, including the construction of hydropower plants, roads and dams, as well as the implementation of agricultural projects. In various cases, the military intervened to intimidate the indigenous people or to expel them from their lands.

At present, there is a working group on Dictatorship and Indigenous Peoples located in the 6th CRR of the Federal Public Prosecutor's Office of which PFDC is a member.¹⁰⁶ As a result of this work, there are currently two civil actions that seek material and immaterial reparations with

an emphasis on collective interest. The first action concerns the Krenak people in Minas Gerais, who were victims of forced internment in a kind of concentration camp, torture and forced displacement.

The other action is on the damage caused to the Tenharim people who had their lands partially occupied for the construction of the Trans-Amazon Highway and which caused serious damage to health and survival conditions.

In turn, the National Truth Commission of Brazil had a specific working group on the topic of indigenous peoples and then drafted a chapter on the subject. The work of this group revealed very important data. For example, during the period of investigation it is estimated that at least 8,350 indigenous people were killed by conflicts generated by the authoritarian development model. The group also revealed the authorship of the State in various massacres against entire villages, one of which is the case of the Waimiri-Atroari people in the Amazon, who opposed the construction of a highway in their reserves.

As for the LGBTI community, the Commission emphasizes that the Truth Commission of Brazil is the first in the world to contain a specific chapter on the violation of LGBTI community's rights during the military regime. It should be noted, however, that this chapter, like the chapter on indigenous peoples, does not form part of the final

106// The *Câmaras de Coordenação e Revisão* of the Federal Prosecutor's Office are sectoral bodies that coordinate, integrate and review the prosecution and sub-prosecution exercise of the Republic. They are organized according to themes; The sixth chamber works on Indigenous Populations and Traditional Communities.

collegiate report, but that is has been incorporated to a secondary volume that gathers individual texts by some commissioners.

In Colombia, with Law 975 dated 2005, the Ombudsman's Office is not only responsible for representing the interests of the accused, but also that of the victims who do not have enough income to hire an attorney. However, with the enactment of Law 1448 of 2011, for the purposes of care, restitution and reparation of human rights violations to ethnic subjects, a specific legal framework is devoted to them. To this end, three decrees with the force of law were approved, which indicate the measures of care and reparation for each ethnic people. These are: Decree 4633 of 2011 for indigenous communities, Decree 4634 of 2011 for the ROM or Gypsy Peoples, and Decree 4635 of 2011 for Black, Afro-Colombian, Palenqueras and Raizales Communities.¹⁰⁷

The Special Decrees established specific mandates for the Ombudsman's Office for the purpose of providing legal assistance, counseling, coaching and training to individual victims belonging to ethnic peoples and communities in their capacity as collective subjects of measures of care and repair. Therefore, the entity must ensure the guarantee and protection of fundamental human, collective and comprehensive rights of ethnic groups, contained in national provisions and international standards. In this regard, it was also given the mandate to be

part of the mechanism for monitoring and evaluation of the design, implementation and execution of the measures specified for these groups. The monitoring process is based on making up monitoring and evaluation commissions for each ethnic group.

An important aspect to mention is that the Colombian Ombudsman's Office, through the Office of International Affairs and in liaison with the other regional delegates and ombudsmen, monitors compliance with the precautionary measures decreed by the IACHR in favor of ethnic groups in a situation of vulnerability because of the armed conflict.

As for land restitution, the Ombudsman's office has a Delegate for Agricultural and Land Issues,¹⁰⁸ who is responsible for monitoring the stabilization phase of families returning to the land subject to restitution. Likewise, this Delegate follows up on restitution rulings in the post-ruling stage, once the person has returned to the property. In addition, the Delegate attends complaints from citizens about the process of land restitution and judicial and administrative processes involving peasants who are victims of violence. For this purpose, the Delegate sends official letters to various entities to document the cases and accompany the peasants in their processes of enforcing their rights. Additionally, the Ombudsman's Office has a Delegate for the Rights of Displaced People, whose mission is to ensure the safeguarding and promotion

¹⁰⁷// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, 23.

¹⁰⁸// Pursuant to Ombudsman's Circular Letter 028, which provides instructions on the articles referred Ombudsman actions in favor of victims of land plundering or abandonment, dated October 5, 2015.

of the rights of communities at risk and of displaced communities. It also monitors compliance by State entities with their integral care obligations. In addition to the decentralized attention provided by the Delegate since 2000 as an effective-presence strategy for the protection and exercise of the human rights of displaced populations and at risk populations, through the figure of the Community Defender there are currently 107 defenders throughout the country, with which the Ombudsman's Office has been able to provide permanent support to communities at risk of displacement.¹⁰⁹

With regard to specific initiatives related to women, the Delegate for Women's Rights and Gender Affairs participates in the Inter-Agency Strategy to Combat Impunity and Comprehensive Care for Victims of Gender-Based Violence in the Armed Conflict,¹¹⁰ which implementation started in 2013 with special service days in each municipality. In 2015, a strategy impact evaluation was carried out and it showed that despite some progress made in the care for female victims, mainly by the National Institute of Legal Medicine and the Prosecutor's Office, women generally continue finding obstacles in access to comprehensive health care, implementation of protection measures, access to justice and in response times at the

Victims' Unit for access to reparation plans. In addition, the Delegate Office for the Rights of Women collaborates with the Center for Historical Memory in the preparation of a special report on sexual violence during the armed conflict,¹¹¹ participate in the Broadened Sessions for Follow-up to Enforcement of Law 1719 of 2014,¹¹² and in the work tables organized for this purpose. They also provide case documentation and report analysis of by the Delegate on sexual violence in the context of armed conflict. The Colombian Ombudsman's Office has also carried out actions to guarantee the protection of children in the transitional justice process that will begin in the country after the consolidation of the peace negotiations between the National Government and the FARC. For example, through the Delegated Ombudsman for Children, Youth and the Elderly, the entity published an Ombudsman Report titled Transitional Justice: Voices and Opportunities for Children and Adolescents in the Construction of Peace in Colombia, which was sent to the negotiating table in Havana. Also included was a protocol proposal for the decoupling of children, girls and adolescents recruited by this armed group, with multiple recommendations on the minimum humanitarian standards that must be considered by the parties in this forum for dialogue, for the integral protection of children and adolescents, satisfaction

109// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Brasil, 25.

110// Article 208, of Decree 4800 dated 2011 corresponding to Law 1448 dated 2011, Victims' Law.

111// The preparation of this report is established in article 29 of Law 1719 dated 2014 which amends rules of the criminal code for the incorporation of crimes against integrity and sexual freedom in the context of the armed conflict, and establishes norms to guarantee access to justice for victims of sexual violence, especially victims of sexual violence in the context of the armed conflict.

112// By which some articles of the Criminal Code are amended and measures are taken to ensure access to justice for victims of sexual violence, especially sexual violence in the armed conflict.

of victims' rights, clarification of the truth, reparation of victims, guarantees of non-repetition, and the approach of children's rights and their protection.¹¹³

The recommendations included in the report were the result of a consultative exercise through focus groups with children and adolescents, civil society organizations and State and governmental entities responsible for guaranteeing their rights, and were justified, among other elements, in the urgency of avoiding the mistakes of the past. Errors such as those that occurred in the process of demobilization that took place through the Justice and Peace Law, and the need to bring to the table the voices of children and adolescents victims of armed conflict.¹¹⁴ In fact, the Ombudsman's Office, through the Delegate Office for the Rights of Children, Youth and the Elderly, was called to participate in the context of the aforementioned negotiations in the process of decoupling minors from the conflict. It should be noted that in terms of protection of children's rights, there are sufficient legal elements that, from the legal point of view, should be enough to fully guarantee their rights, even in transitional justice processes. In this regard, the call of the Ombudsman's

Office consisted in maintaining that these normative frameworks in favor of children and adolescents, even in contexts of transitional justice, should be strengthened through their preferential application, do to their condition as subjects of special protection.¹¹⁵

Finally, a pioneering initiative is the project "Promotion, counseling and support to the victims of the internal armed conflict that are part of the Colombian penitentiary and prison population", which was established with the objective of finding out what obstacles the victims who are deprived of their liberty to access measures that seek the restoration of their rights as victims encountered in connection to the criteria established in Law 1448 of 2011. For the development of this project, five prisons were visited in the national order in which the population deprived of their liberty reaches 24,163 people. The main findings were: (i) 8.3% of the prison population that answered the questionnaire stated that they were victims of the internal armed conflict; (ii) 76.4% of the victims stated that before being deprived of their liberty Before being deprived of their liberty they had not received information on the rights they have as victims. **Este**

113// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, 41.

114// See, http://www.defensoria.gov.co/public/pdf/InformeCompleto_Justiciatransicional.pdf.

115// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Colombia, 22. The Ombudsman's Office, headed by Dr. Alfonso Cajiao Cabrera, through Joint Communiqué no. 70 of the Havana Talks on May 15, 2016, which defined the "Agreement on the release of children under 15 years from FARC EP camps, and the commitment to develop a roadmap for the departure of all other minors and a special comprehensive program for their care", was convened to lead -together with the Ministry of Human Rights of the Presidency of the Republic- the creation of a technical round table that, together with civil society organizations, UNICEF and international cooperation agencies, will draw up a protocol for the exit of children and adolescents under 15 years of age who are in the hands of the FARC-EP armed group. These entities should also make a proposal regarding a special comprehensive integral reparation program for all those under 18 years of age to be delivered by said armed group.

porcentaje aumentó a un 92 % después de que la víctima fue privada de la libertad.

In addition, 47.86% of the victims said that being deprived of their liberty is the reason why they cannot assert their rights as victims.¹¹⁶

In Ecuador, the Truth Commission report also dealt specifically with the issue of indigenous peoples. According to the report, under the Presidency of Febres Cordero (1984-88), “the government provided large areas corresponding to territories inhabited by native peoples of the Amazon and the Coast to national and foreign companies that deforested and polluted waters and rivers, appropriated communal lands, and harassed and cornered uncontacted indigenous peoples during the oil exploration work.”¹¹⁷ In addition, during the Durán Ballén administration (1992-1996), the repression of social protest was intensified, using the National Security Law to repress, among others, indigenous uprisings.¹¹⁸

The most violent episode against the Kakwa Anakisga community in Sarayaku occurred in 2005, following a protest organized by the community against Occidental Exploration and Production in order to complain against noncompliance with an agreement regarding community needs. An army battalion began firing rubber bullets,

striking people and firing tear gas at them, which left several wounded.”¹¹⁹

In connection with this fact, the report of the Truth Commission recognized three victims. In addition, the report more broadly recognized the psychosocial impact on indigenous communities as a result of the years of repression and emphasized that in the case of such communities, “the consequences of human rights violations affect practically all walks of life, so the links with the land, their forms of work and leadership, among others, are frequently altered. Even the forms of expression of affections are different and therefore, it is necessary to attend to them differently and with the greatest possible respect for their language and beliefs.”¹²⁰

In response to the situation suffered by indigenous communities, the report of the Truth Commission established a series of recommendations. Among them, it requested “the General Prosecutor’s Office to investigate the acts of violence perpetrated by private individuals or illegal armed groups linked to the dispossession of indigenous territories and the illegal invasion and/or appropriation of land;” called on the government to “implement the right to consent and prior consultation of indigenous and tribal peoples regarding the projects and policies affecting them,

116// Colombian Ombudsman’s Office, *Informe de la Defensoría del Pueblo Delegada para la política criminal y penitenciaria sobre la situación de los derechos de las víctimas del conflicto armado interno que hacen parte de la población penitenciaria y carcelaria colombiana* (Bogotá: Ombudsman’s Office and GIZ, 2016).

117// Truth Commission of Ecuador, *Informe de la Comisión de la Verdad. Sin verdad no hay justicia, Resumen ejecutivo* (Quito: Truth Commission, 2010), 29.

118// *Ibid.*, 39.

119// *Ibid.*, 158.

120// *Ibid.*, 157-8.

pursuant to Convention 169 of the International Labor Organization and the United Nations Declaration on the Rights of Indigenous Peoples” and to “implement the content of the 2007 United Nations Declaration on the Rights of Indigenous Peoples, based upon the constitutional framework and international law, with the aim of strengthening the protection of rights.”¹²¹ No specific actions have been carried out for indigenous peoples as a group in connection to these measures, although the Ombudsman’s Office has broad powers that allow it to act specifically on issues that affect vulnerable groups within the framework of the victims’ law, because there is no victim of indigenous origin within the program.¹²²

The CEH report in Guatemala concluded that 83% of the victims of repression in Guatemala were of Maya origin, which means that the majority of the victims who approach the PDH are of indigenous origin and more generally that, broadly, public policies related to transitional justice include specific mechanisms for the indigenous population. Specifically, through the Office of the Ombudsman for Indigenous Peoples, a PDH unit accompanies victim organizations to ensure that the National Compensation Program adequately fulfills its functions.¹²³

The Guatemalan indigenous population is mostly composed of Maya ethnic

groups, who have their own mechanisms and processes to manage and confront situations of conflict, including issues of transitional justice. The accompaniment of the PDH has allowed the authorities to make visible the indigenous population and the differences in their care, not only because they were the great majority of the victims of the armed conflict, but because they have their own vision. In this regard, the PDH has identified the importance of defining culturally relevant measures related to transitional justice, understanding that violence -as it affects women differently- also affects people differently by their ethnic origin. In the case of indigenous peoples, it has also been essential to pay attention to their languages and cultural practices. For example, the accompaniment of the PDH has made it possible to guarantee staff in the regional offices of the PNR who speak the local languages.

Another element that has been made visible in this work, although it has not yet been adequately incorporated by the National Prosecutor’s Office, is the respect or inclusion of the Mayans vision of justice, which does not always correspond to the Western system’s criminal justice. On the other hand, it is important to consider that a large part of the indigenous population lives in poverty and many of them live in rural areas. This situation has facilitated that the remedial

121/ *Ibid.*, 417-27. Recommendations 71, 115, y 151.

122// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Ecuador, 19.

123// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Guatemala, 24-25.

measures that have been implemented as part of the collective reparations program have focused on the implementation of development projects and not on reparation for human rights violations. However, it is important to point out that one of the fundamental issues for several

indigenous communities is that of the land, and for this reason, several groups have demanded the recovery of ancestral lands. Finally, the accompaniment of the PDH has led authorities to include the victims' participation in the formulation of collective reparations.



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4. Challenges for Ombudsmen in transitional justice processes

In general, ombudsmen challenges in the work of promoting national transitional justice processes are marked by the competencies and size of the institution, as well as by the immediate socio-political context. Likewise, the political climate and the economic situation, which in turn mark the support that the government gives to this type of policies also directly affect the possibilities for ombudsmen's action and effectiveness. More specific challenges are usually referred to technical or legal issues. For example, in Brazil, the first and most important obstacle to progress in the transitional justice process is the Federal Supreme Court's interpretation, which would be the Constitutional Court, of the Amnesty Law of 1979 and the Constitutional Amendment 26/1985.¹²⁴ Thus, in its ruling in the Petition for Non-compliance with the Basic Precept 153 (ADPF) filed by the Brazilian Bar challenging the amnesty for State representatives who, during the military dictatorship, committed acts of torture, the Supreme Court adopted the thesis that the amnesty considered in the law should apply to political prisoners and State authorities.¹²⁵

To date, this interpretation has been used by other courts as an argument to prevent prosecution of perpetrators of human rights crimes and of crimes against humanity. On the other hand, the ruling on the Gomes Lund Case pronounced by the Inter-American Court of Human Rights, in which the Brazilian amnesty law was declared incompatible with the American Convention and the consequent absence of its effects with regard to the investigation and punishment of serious violations of human rights,¹²⁶ is not applied by all the Brazilian Judiciary. It must be noted also that the Supreme Tribunal has made no pronouncement on this law.

The small structure and lack of prosecutors exclusively dedicated to PFDC work, coupled with the current political and economic crisis in the country, tends to reduce the few resources dedicated to human rights initiatives and reveals an unfavorable picture in the advancement of transitional justice policies in Brazil.¹²⁷

The challenges of the process in Colombia are also determined by the political and social context in the country. The main

¹²⁴// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Brazil, 5.

¹²⁵// *Ibid.*

¹²⁶// IHRC, *Caso Gomes Lund y otros ("Guerrilha do Araguaia") Vs. Brasil*, Ruling/Sentence, November 24 2010, 113. See, http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_por.pdf.

¹²⁷// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsmen: Brazil, 11.

challenge facing the institution is to adapt its management model to the post-agreement process and to respond as a guarantee of rights to victims in the context of creating a stable and lasting peace. One of the challenges facing the Ombudsman is the need to take women and girls into account as main conflict victims, considering that, according to data collected by the Single Victims Registry, at least 50 % of victims of forced displacement are women, and in cases of sexual violence, women and girls account for more than 80% of victims. In this regard, there is a consensus between the women's rights movement and the government, which in post-conflict contexts, violence against women (intra-family violence and sexual violence) tends to increase exponentially, along with attacks against people because of their gender identity or their sexual orientation. This reality demands the strengthening of the ombudsman in Colombia, to guarantee the institutional presence in areas where historically illegal armed groups exercised territorial control and in which greater guarantees should be provided for the civilian population and in particular for women and children.

In the area of civil and agrarian transitional justice processes, as the processes of restitution of land have been called, the Ombudsman's Office has the challenge of articulating the work of different delegates in face of the current demands of this process, such as attention to peasants in situation of

“second occupants”¹²⁸ and the orientation towards their defense in the face of a new agrarian jurisdiction. The Ombudsman's Office must put its extensive experience in accompanying the rural population, so that the design of new institutions and programs to be created for post-conflict as the agrarian jurisdiction, the Development Plans with a Territorial Approach (PDETs) are designed according to the needs of these communities and positively impact their human development, community coexistence, as well as the interaction among victims, perpetrators and community.

In the case of Ecuador there was an initial scenario of great openness during the creation of a truth commission and the subsequent approval of a law to repair the victims. In this context, the Ombudsman's Office assumed and invested its own resources to create an administrative unit, the National Victims' Directorate, which is responsible for implementing a program of differentiated, direct and priority attention to victims, as well as managing and coordinating reparation measures with all State institutions that have responsibility and competence according to the measures requested or established in the recommendations of the Truth Commission and the Law for the Reparation of Victims. To the extent that many of these measures did not depend on the Ombudsman's Office to be implemented, the work team has had to undertake an arduous and

128// Although Law 1448 of 2011 does not define the term “second occupants”, it refers -according to the United Nations High Commissioner for Human Rights- to “families who today inhabit abandoned and plundered property, and who are not related to illegal armed actors, figureheads or buyers in bad faith.” See <http://www.hchr.org.co/migracion/index.php/informacion-publica/compilacion-noticias/93-tierras/5763-segundos-ocupantes-la-otra-cara-de-la-restitucion>.

sometimes slow task to achieve individual agreements with appropriate institutions. However, once these commitments have been made, the Directorate has to carry out a permanent follow-up task to ensure that they are complied with and that public victim assistance policies are developed.¹²⁹ In addition, the National Directorate team has often encountered barriers in the way these policies are implemented since officials in the ministries responsible for implementing them do not have specific training in dealing with victims of human rights abuses.

In Guatemala, the conditions of the political and social context have a marked negative impact on the development of a transitional justice process that, strictly speaking, has been open for more than 20 years. The situation is doubly complex; On the one hand, governmental and State authorities do not emphasize promoting the corresponding measures and, on the other hand, society has not yet committed itself extensively to the promotion of peace and the construction of democracy. The history of the armed conflict is not known by youth and schools evade

the subject. In fact, the State does not have a policy for disseminating the Report of the Commission for Historical Clarification. In this context, a negative social vision persists about the work of human rights defenders, including those who defend the right to truth, memory and justice, who are accused of “living from the armed conflict”.¹³⁰

At present, government actions do not prioritize strengthening mechanisms related to transitional justice. This is evident in the weakening -since 2012- of the National Recovery Program initiated in 2003. The problem is that this situation directly affects victims who are often re-victimized because processes are canceled or delayed, among other situations, forcing them to testify or participate in the process several times. In this context, it is not surprising that the government refused to receive the United Nations Special Rapporteur on the promotion of truth, justice, redress and guarantees of non-repetition, as well as other representatives of international protection mechanisms.

129// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Ecuador, 21.

130// Cuestionario sobre los Procesos de Justicia Transicional en los Ombudsman: Guatemala, 28.



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5. Conclusions

If it is accepted that the main motivation for the creation of ombudsman offices in Latin America responds to a need to shield young democracies from possible excesses of past dictatorial governments or political violence, then it is possible to affirm that their reason to exist is, in fact, consistent with the aims and objectives of transitional justice processes. This means that ombudsman offices reflect an institutional policy change aimed at guaranteeing respect for human rights of citizens and prevent a scenario of serious crimes. And, in fact, it would be possible to say that in some cases, the creation of ombudsman offices can be understood as measures of institutional reform and guarantees of non-repetition.

This study shows that ombudsmen or ombudsman institutions have not only many possibilities of influencing transitional justice processes. Rather, this action is carried out from a specific standpoint, as regards the status they enjoy as autonomous and independent bodies, whose main vocation is the protection of 's human rights.

In general terms, it is possible to determine Ombudsmen's actions at three different stages of the process:

- As initiators of transitional justice measures or processes (Brazil).
- As implementers, based on their management and participation in executing specific measures (Ecuador and Colombia), observers and monitors of the process, based on technical and situation reports (Brazil, Colombia, Ecuador and Guatemala).
- As process continuators, both explicitly responsible for the management and coordination of some established policy (Colombia and Ecuador), and responsible for following-up actions carried out by another institution (Brazil and Guatemala). In this regard, national human rights institutions also have a great deal to contribute to transitional justice processes, since they must promote public non-repetition and prevention policies.

As for the diversity of transitional justice measures, it is interesting to confirm that Ombudsman Offices considered in this study have performed tasks in each and every one of these aspects, showing a great choice of possibilities for action. It is necessary, however, take into account that the possibility of intervening in each scenario depends to a large extent on the competences assigned to each institution as well as the size and means they have available for them.¹³¹ Thus, for

¹³¹// In this regard, the enormous task developed by the Ombudsman's Office in Colombia, as opposed to the much more limited scope of the PFDC in Brazil, is worthy of note, given the size and human resources that both have.

example, while the Brazilian PFDC has no jurisdiction in the area of criminalization of human rights crimes, the Ombudsman's Office in Guatemala and Ecuador have a greater margin of action in this regard, while the Colombian Office assumes a direct role of representing victims in these processes. It also highlights the active role played by the Ombudsman's Office in Ecuador in the area of reparations, as well as the accompanying work in this process of the Colombian Ombudsman's Office and the Guatemalan Prosecutor's Office.

As to clarification of historical truth processes, and with the exception of the work carried out by Guatemala with the Unified Registry of Forced Disappearance (RUDFOR) and Colombia, as chairman of the Commission for the Search of Missing Persons (CBPD), the work of the institutions analyzed has been more of collaboration and follow-up to independent mechanisms 'normally commissions of truth'. It also highlights the work carried out in recovery, preservation and habilitation processes for access to archives (Brazil, Guatemala and Ecuador).

Finally, it is in the area of guarantees of non-repetition that the role of the ombudsman poses more possibilities over time, beyond the work of dissemination and recovery of memory. In this regard, as noted above, the figure of the ombudsman

has a number of specific characteristics that optimize the work ombudsmen do as State institutions, however, independent institutions that enjoy temporary stability outside government changes, tend to play an intermediary role with society and have a broad territorial structure which provides them with great capacity for action and legitimacy.

For example, the active participation of the Colombian Ombudsman in the mechanisms of integral reparation of the Victims' Law has made it a fundamental actor in the implementation of transitional justice institutional initiatives. Its role as a bridge between communities, grassroots organizations and State services has vested it with unusual trust on the part of inhabitants of the regions most affected by the armed conflict.¹³² In Brazil, one of the main qualities of PFDC is its proximity to victims and civil society organizations that recognize it as a reference entity of public power regarding the right to truth and memory.¹³³

This intermediation work is increased by the flexibility Ombudsman institutions have to establish alliances and agreements with a large number of national and international organizations, from civil society, the academia, churches, trade unions, to international cooperation agencies and regional and international organizations.

132// As an illustrative anecdote, the Ombudsman's Office is informally called the State NGO among humanitarian assistance organizations operating in Colombia. This contradiction seeks to connote the critical position of the ombudsman's office with respect to State institutions that do not comply with the duty to promote and protect human rights. In addition, through this language, emphasis is placed on the closeness between non-governmental organizations and the Ombudsman's Office. The capacity for dialogue and joint work maintain the good image of the organization in the field of human rights organizations in Colombia and highlight its important role in transitional justice scenarios.

133// *Ibid.*

Finally, one of the strengths of the role played by ombudsmen in transitional justice processes is to make the situation of victims visible and to make institutional responses effective concerning restitution and redress of their rights. This advocacy also has an additional possibility in the development of differential, gender, ethnic and age approaches

to shaping public policy with special attention to the most vulnerable groups or populations with specific needs and realities. From this perspective, ombudsmen can promote the inclusion and participation of vulnerable sectors in decisions that consolidate democracy and enrich transitional processes in the region.



» **Annex**

Questionnaire on the Role of the Ombudsman in Transitional Justice Processes

1. INTERNATIONAL LAW

For the purposes of this research, we would be grateful if you shared the following information on international documents, standards, treaties, principles and ius cogens incorporated in your country.

Document	Ratification/ Accession	Implementation Status
International Humanitarian Law.		
The Geneva Conventions (1949).		
The two additional protocols to the Geneva Conventions (1977).		
International Charter of Human Rights. Universal Declaration of Human Rights (1948).		
International Covenant on Civil and Political Rights (1966).		
International Covenant on Economic, Social and Cultural Rights (1966).		
Optional Protocol to the International Covenant on Civil and Political Rights (1976).		
Second Optional Protocol to the International Covenant on Civil and Political Rights (1989).		
Second Optional Protocol to the International Covenant on Civil and Political Rights (1989).		
Other universal instruments for the protection of Human Rights		
Convention on the Prevention and Punishment of the Crime of Genocide (1948).		
Convention on the Elimination of All Forms of Discrimination against Women (1979).		

Document	Ratification/ Accession	Implementation Status
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984-87).		
Declaration on the Fundamental Principles of Justice for Victims of Crime and Abuse of Power (1985).		
Convention on the Rights of the Child (1989). Declaration on the Protection of All Persons from Enforced Disappearance (1992).		
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999).		
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).		
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002).		
The International Convention for the Protection of All Persons from Enforced Disappearances (2006).		
United Nations Declaration on the Rights of Indigenous Peoples (2007).		
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984-87).		
Interamerican Human Rights		
American Convention on Human Rights (1969).		
Inter-American Convention to Prevent and Punish Torture (1985).		
Inter-American Convention on Forced Disappearance of Persons (1994).		

Document	Ratification/ Accession	Implementation Status
International Criminal Law		
Convention on the Non- Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968).		
Rome Statute, 1998.		

Document	Ratification/ Accession	Implementation Status
Other Resolutions, Principles and Guidelines		
<p>Considering other relevant texts on transitional justice, such as the <i>Basic Principles and Guidelines on the Right of Victims of Gross Violations of International Human Rights Laws and Serious Violations of International Humanitarian Law to Appeal and Reparation</i> (A / RES / 60/147 of 2005); the <i>Updated Set of Principles for the Protection and Promotion of Human Rights through the Fight against Impunity</i> (E / CN.4 / 2005/102 / Add.1, 2005) or the <i>General Assembly resolution on the Right to Truth</i> (A / RES / 68/165, 2014), consider which principles and guidelines are recognized and applied by the judicial, executive and legislative institutions of your country.</p>		
The non-applicability of statutory limitations regarding crimes against humanity and / or serious violations of human rights.		
The non-applicability of amnesty for crimes against humanity and / or serious violations of human rights.		
Other principles that you want to point out.		

2. INTERNATIONAL JURISPRUDENCE

For the purposes of the present research, we request you to please share the following information regarding **compliance with resolutions and/or pronouncements** issued by international bodies dealing with transitional justice, specifically addressed to your States.

Complete the information with at least 5 landmark cases.

Type of pronouncement	Case	Cause/Controversy Subject	Resolution/ Decision	Compliance Status(*)
Ruling/Sentence				

(*) Please also describe the actions implemented by your institution to guarantee follow-up or verification of compliance with these resolutions.

3. INTERNAL LAW

- A. Are there **internal rules / laws** specific to your country's transitional justice processes? If yes, point out which ones, when they were approved and what kind of standards they are.

Also describe if these rules establish explicit responsibilities entrusted to your institution.

- B. For the purpose of this research, please **identify which internal regulatory aspects should be amended, removed or highlighted to effectively promote the guarantee duty** in connection to transitional justice processes. Specifically point out if you consider that any of these reforms should be devised to strengthen the role of the Ombudsman as a significant collaborator towards such duty.

4. TRANSITIONAL JUSTICE AND OMBUDSMEN COMPETENCES

- A) For the purposes of this research, we would like you to please identify and describe briefly the **Rules of Internal Law/International Law that enable your institution to intervene and/or participate in transitional justice processes.**

- B) **Does your institution have a specific area that works on transitional justice issues?** If your answer is yes, please provide a description of its place within the organizational structure, what size it has, when it was created, what status it has, and who the responsible authorities are.

In case you do not have a specific unit, please indicate the unit responsible for this topic and its place within the institution's organizational structure.

- C) What are **your institution's powers** regarding transitional justice processes? Describe the type of competencies your institution has (pronouncement, counseling, monitoring,

research, etc.) and the timing within the transitional justice process in which they are developed (before-preparation, during-accompaniment, after-follow-up)

1. Criminal Justice. Participation in transitional justice judicial procedures; patronage of cases before ordinary justice or accompaniment, judicial representation of victims, presentation of *amicus curiae*, etc.
 2. Reparations
 - i. Participation in administrative reparation procedures. These can be either material procedures (restitution and compensation), or symbolic or immaterial procedures (rehabilitation and service packages, and measures of satisfaction, such as memory events, etc.)
 - ii. Participation in legal compensation procedures for both non-material and material damages.
 3. Clarification and recovery of historical truth
 - i. Was there a truth commission or similar investigative commission in your country? What was the role / participation of your institution in that Commission?
 - ii. Has your institution promoted or participated in the promotion of other measures of truth recovery and fact reconstruction, -such as habeas corpus follow-up, archival recovery, evidence recovery, search for missing persons, exhumation and identification of bodies, etc.?
 4. Guarantees of non-repetition. Has your organization participated in the implementation or promotion of non-repetition measures both at institutional level (State reform, supervision and monitoring) and at cultural level (memory, education, promotion of cultural and community activities, etc.)
 5. Other measures that have not been considered so far. (Follow-up of international resolutions, sponsorship of investigations, etc.)
- D) Describe whether **your institution has intervened / participated** in any initiative to ensure the representation and enforcement of the rights of vulnerable groups (women, children, elderly people, LGBTI community, or other vulnerable populations) in transitional justice processes.
- E) Describe whether transitional justice processes in your country have specifically addressed the situation of indigenous peoples, indigenous groups or ethnic peoples. If so, also describe whether **your institution has intervened / participated** in any initiative to ensure the representation and fulfillment of these groups' rights.

5. COOPERATION/RELATIONSHIP WITH OTHER INSTITUTIONS

- A) What relationship (competence or complementarity) does the Ombudsman's Office have with other State institutions (judicial, legislative and executive) in relation to the monitoring and enforcement of transitional justice processes? Are there other State institutions obliged to cooperate with ombudsmen in transitional processes?
- B) What relationship does the Ombudsman's office have with other non-State organizations regarding the monitoring and enforcement of transitional justice processes? Consider
- o With international entities, which? (International organizations, governments of other countries, etc.)
 - o With civil society organizations Which? (NGOs, victim groups, the academia, trade unions, religious groups, etc.)

6. GOOD PRACTICES AND LESSONS LEARNED

- A) Please describe in more detail the **practices and / or experiences developed by your institution that you wish to highlight as examples of good practices** in transitional processes. Please follow the guidelines established by item 4C to consider measures of criminal justice, reparation, clarification and recovery of historical truth, guarantees of non-repetition and other measures.
- B) Please identify the strengths and **weaknesses or challenges of Ombudsmen** in the follow-up and support of transitional justice processes. What are the **favorable conditions in your country** to enhance the work of your Institution in the field of transitional justice? What are the **challenges facing your institution** in your country's transitional processes? How could they be overcome?
- C) Please point out if you are interested in getting to know the TJ experiences from any country in the region. What and why?

7. CONCEPTUAL CONTRIBUTIONS. THE ROLE OF OMBUDSMEN IN TRANSITIONAL JUSTICE PROCESSES

We would be grateful if, thanks to your experience and institutional knowledge, you could suggest to us some **Ombudsman common/minimum criteria for transitional processes. In your opinion, what do the Ombudsmen contribute or can contribute** specifically to transitional justice processes?

