

VICTIMS PARTICIPATION AT THE COLOMBIAN SPECIAL JURISDICTION FOR PEACE

*Juliette Vargas**

At the international level, there is a tendency to give a more active role to victims in contexts of transitional justice and international criminal law, particularly in proceedings before judicial mechanisms such as the International Criminal Court (ICC) and the Extraordinary Chambers of the Courts of Cambodia (ECCC), the Special Tribunal for Lebanon (STL), as well as at the Kosovo Special Chambers (KSC). This tendency is based on the idea that participation has the potential to contribute to the victims empowerment and the satisfaction of their rights. Thus, participation is seen as a way to fulfill the victims' right to truth, as a measure towards more effective investigations and as an opportunity to influence decisions regarding reparations.

Nevertheless, on the basis of lessons learned from the experiences at the ICC and ECCC, among others, one can say that achieving effective victims participation in criminal proceedings is a very complex challenge, and that it involves major issues. Hence, some critical voices even consider participation as counterproductive for the interest of justice on the one hand, and for the interest of the victims themselves on the other. Meanwhile, those who advocate for maintaining and even expanding victims participation point out that the pitfalls and shortcomings arising from criminal proceedings in transitional justice contexts cannot simply be attributed to the participation of victims, but rather to problems on the administrative, structural or organizational level within the respective judicial mechanism.

In the Colombian context, this debate is currently relevant, since in accordance with the Final Peace Agreement between the Colombian government and the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP) a transitional justice model has been implemented. Within this model, the Special Jurisdiction for Peace (SJP) is the judicial mechanism, and it contemplates important pathways for victims participation in proceedings. Additionally, guiding principles such as the centrality of the victims, dialogical and pro-victim procedures, as reflected in the Rules of Procedure and Evidence of the SJP, indicate that this participation could have even a *sui generis* character.

* Scientific collaborator of the Colombian- German Peace Institute – CAPAZ and the Center for Latin American Criminal Law and Criminal Procedure - CEDPAL

In a way, the possibility of broad participatory rights at the SJP is considered as an important and necessary achievement towards the satisfaction of victims' rights. However, given the scope of the SJP's mandate and the limitations of its financial and human resources as well as other factors that hinder its potential to meet its goals, the participation of victims is outlined from this early stage of the SJP's functioning as a controversial issue. One of the core problems in terms of legitimacy is that if these participatory rights are poorly applicable, the transitional justice context could easily lead to general frustration and even revictimizations, and the participation would not comply with its goals.

Taking into account the above-mentioned points, the focus of my dissertation are the tensions between victims participation and the interest of victims and justice at the SJP. The central purpose of this research is to observe and determine to what extent the legal framework of the SJP' procedures and their practical development in the early years can be seen as an expression of effective and meaningful participation of victims. To achieve this purpose, I will take into consideration the legal and jurisprudential standards on victims participation at the national and international level. At the same time, I will look into the lessons learned that have emerged from other experiences, as well as the accomplishments, difficulties and failures that may be observed in the experience of the procedures of the SJP in the first years of its work.