

DOI: 10.5281/zenodo.122.12645

# THE ARMED VICTIM: NORMATIVE AND PHILOSOPHICAL FOUNDATIONS FOR THE RECOGNITION OF LAW ENFORCEMENT AGENTS AS VICTIMS IN THE INTERNAL ARMED CONFLICT IN COLOMBIA

Helver Javier Cadavid Ramírez<sup>1</sup>, Juan Carlos Quintero Calvache<sup>2</sup>

<sup>1</sup>Escuela Superior de Administración Pública (ESAP), Colombia, Email: [helver.cadavid@esap.edu.co](mailto:helver.cadavid@esap.edu.co) Orcid ID: <https://orcid.org/0000-0002-3272-0526>

<sup>2</sup>Escuela Superior de Administración Pública (ESAP), Colombia, Email: [juan.quintero@esap.edu.co](mailto:juan.quintero@esap.edu.co) Orcid ID: <https://orcid.org/0000-0002-6771-1777>

Received: 01/12/2025

Accepted: 02/01/2026

## ABSTRACT

*Colombian society has experienced violence in various forms, including bipartisan persecution (1930–1948), insurgency (1960s), drug trafficking (1970s), paramilitarism (1970s), criminal gangs (2000s), residual groups of the FARC (2010s), and organized armed groups serving international drug trafficking (2020s). These phenomena have seriously affected millions of citizens who have become victims of these acts of terror (Historical Commission of the Conflict and its Victims, 2015). For more than 70 years, Colombian history has been marked by violence that flares up whenever attempts are made to extinguish it. The result of this hatred expressed through weapons, death, and dispossession is that more than 10 million people have been affected, with close to 11 million displaced by the internal armed conflict, mostly rural populations and agricultural workers. More than a million people have been murdered, more than 262 thousand have disappeared, and about 52 thousand have been victims of sexual violence, mostly women (Single Registry of Victims, 2025). Those who have had to defend the institutional order without stoking or motivating the war are the least talked about. These are the members of the Public Force, exceeding 460 thousand troops. This paper identifies the reasons why victims of the security forces are protected by the same guarantees as victims of the internal armed conflict in Colombia. It analyzes the configuration of the notion of victim based on guilt and the international normative systems that delimit the status of victim. It also examines the key points that characterize the condition of victim.*

**KEYWORDS:** Victims Of the Armed Conflict, Public Forces, International Humanitarian Law, Victims Law (Law 1448 Of 2011), Internal Armed Conflict, Human Dignity.

## 1. INTRODUCTION

In the face of the long periods of multiple violence that Colombia has experienced, from the conception of a political country<sup>1</sup>, the only way to overcome part of these forms of violence, especially that derived from political factors and social exclusions, appears to be the recognition of the existence of a non-international<sup>2</sup> armed conflict and the admission that the most effective route to end it is negotiation, the end of hostilities and the linking of the agents of the insurgency to the institutionality, recognizing them as political agents.

This suggests that the outcome of the armed confrontation can in no way constitute another factor of marginality and exclusion, as had been the concentration of power on account of the two-party system – the bloody disputes between liberals and conservatives – since the center of the negotiation that was carried out with illegal armed organizations was called to link other agents as victims. That without having promoted confrontation against the institutions of the State, they have paid a very high price in the development of the internal armed conflict.

In order to defuse the conflict, laws 975 of 2005 were issued; 1448 of 2011 and its regulatory decrees 4800 of 2011; 4829 of 2011 and 1592 of 2012, which expressly recognize various measures and guarantees for the victims of the conflict. This seems to be the reason why the government and the authorities have been arranging that a task of recognition of the victims of violence should be promoted, and particularly of those considered within the non-international armed conflict.

Thus, the measures and guarantees of the victims recognized by Law 1448 of 2011 are based on the American Declaration of Human Rights, as the Constitutional Court has upheld in judgment C-370 of 2006, which demonstrates the binding nature of the Colombian State with the international postulates on victims.

This international manifestation has also been recognized in global provisions as minimum human rights standards, incorporated into domestic law binding norms through the constitutional block, which is why they become binding on the Colombian

State, which implies compliance with obligations related to the satisfaction of these measures and guarantees to the victims of serious violations of human rights and breaches of IHL. and to the prevention that these same phenomena demand.

In this sense, the transition made by an agent in the capacity of not affected by hostilities to the condition of victim of the armed conflict passes in our rationalized context through the fragility of compliance with the rule of belligerence in a scenario, where the purpose is the elimination of the opponent. However, the rule must be complied with and in that logic the victim acquires his condition to the extent that the agents in the development of hostile confrontations damage, affect or injure the body and psyche of the person or his material and immaterial goods when he was never obliged to bear the damage caused by the armed conflict.

Thus, among many cases there is now that of members of the security forces, who, by being recognized by national legislation as victims of the armed conflict, have a different perspective for them in the face of the usual image that has always been held of the victim as a civilian subject who does not take part in the belligerence and who is affected by it. This is a new and somewhat recurring issue, since the agents of the regular armed forces place the interest of protecting citizens above their own lives daily; therefore, their position entitles them to benefits not guaranteed in other special regimes. However, the purpose is not to qualify their status as victims, but, on the contrary, to recognize and accept that the members of the security forces have suffered and have been affected in their rights, and therefore the State is obliged to contribute to the materialization of those measures and guarantees that have historically been denied to them in the peace processes with guerrilla groups other than the FARC.

A recognition of this nature in the context of the internal armed conflict poses a special guarantee for the members of the security forces, since the principle of equality is ensured and materialized, since this guarantee is not an end in itself, and its non-recognition would imply a concomitant violation with other fundamental rights, so that, if the legislator had ignored the status of victims of the conflict to the members of the security forces, it

<sup>1</sup> It is a term associated with territory and the exercise of political power, particularly in a form of government such as democracy, of Greek origins.

<sup>2</sup> "Non-international armed conflict is characterized by confrontation between the armed forces of a State and dissident or rebel armed forces. The law applicable during such conflicts has long been regarded as a purely internal matter for States. The realization of a typology or characterization of the Colombian

armed conflict is an unfinished academic activity and subject to continuous pressures and revisions based especially on political-ideological arguments, for which it is necessary to make it clear that there is no single theory that explains or analyzes the nature and characteristics of the different internal armed conflicts. since, due to the complexity and longevity of the case, and the changing political-military dynamics of its actors, it is very difficult to place it in a pre-established category" (Trejos, 2013, p. 57).

would have opted for a transgression of the rights to truth, justice, reparation and non-repetition.

Thus, the right to equality that is being discussed in favor of the members of the security forces is linked to the right to dignity of people, regardless of any other condition. In other words, it has priority over any normative content, so that no provision can be contrary to it.

Consequently, the theoretical problem is that members of the security forces who have been affected by violations of human rights and international humanitarian law are violated in their human dignity and require the same treatment with the measures and guarantees that have been recognized to the victims of the non-international armed conflict.

The methodology of this work has a qualitative approach with documentary analysis, which considers the implementation of the analysis and review of documents, debates of the high courts, interpretations of the law, and contributions of national and international doctrine related to the subject. In other words, the analysis is developed on three axes as follows: Axis 1: (i) the configuration of the notion of victim based on guilt; (ii) violence as a legal category that defines the contour of the victim based on guilt; (iii) the victim because of institutional legal actions; (iv) armed actors as victims of their own conflict. Axis 2: (i) international normative systems that delimit the status of victim; (ii) the key points that characterize the victim condition; and in axis 3: (i) victims of the security forces in the non-international armed conflict; and (ii) measures of care, assistance and reparation for victims of the security forces.

## 2. CONFIGURATION OF THE NOTION OF VICTIM BASED ON GUILT

The evaluation of human actions is based on the degree of anticipation with which the process of carrying out his physical movements is built in man's mind, which seek to achieve a specific result or product of that realization. In fact, this realization is traversed by a series of categories that allow us to attribute to the human being the effects or consequences that this realization has on the external world, on the state of affairs and on others (Gehlen, 1987; Castoriadis, 1975).

Properly planned human realization becomes a binary relationship that delimits the condition of the actor in relation to others, such as, for example, good and bad, just and unjust, equal and unequal. Gehlen (1987) What is the basis of this binary relationship in the development of human activities that seek a

specific result? What kind of human achievements change the condition of the subjects involved in them? What conditions do the subjects linked to this human realization acquire based on the degree of satisfaction or dissatisfaction of the realization and its result? To these questions we must add a fourth that allows us to know: What is the necessary condition in any realization whose final product is the satisfaction of the interests of one subject and the misery of the other?

The fourth question will be answered first, because it is the basis of every binary relationship in which good and bad, just and unjust are involved, where the categories of morality determine the condition of the agents engaged in a movement of physical realization to be called victim and victimizer. Precisely the answer to this question is a necessary condition for approaching the notion of victim from different perspectives.

Consequently, the first thing that must be reviewed is the notion of guilt, to determine the moment in which the physical movement of realization developed by an agent transforms the state of affairs that surrounds the life of another agent into his desires and expectations, converting the new state of affairs into states of dissatisfaction, misery and misfortune; guilt appears in the relationship with others from the moment that the performance of the agent constitutes a misfortune for one of them.

When it is stated that an agent develops an action directed at another, reference is made to the planned notion oriented to the notion of anticipation that Gehlen (1987) attributes to the achievements of human animals, whose lack of extra-specific instincts is compensated by the ability to anticipate each of their movements in order to achieve a specific result. a result put in advance in his mind.

The actions that mediate man's relationships in his *natural cultural environment* (Gehlen, 1987) pass through a categorical framework, which delimits the ways in which the individual must perform his physical movements; each intersubjective relationship develops a type of imaginary institution (Castoriadis, 1975) which represents the corporate agreement for the execution of a particular action. The rupture of this categorical framework or the omission of the limits defined for the performance of physical movement supposes that the agent has broken the pre-established agreement in the intersubjective relationship.

The breach of the agreement implies a change of condition in the intersubjective relationship, since there is a rupture of the balance between equals with advantages not agreed upon for the one who

breaches the agreement, and loss for those who fall the advantage of the other, which conditions from a new perspective, the actions of the one who breaks the agreement. The attempt to restore equilibrium implies taking the broken intersubjective relationship to another stage, where the quality of each of those involved in the new relationship is redefined, here the conditions and position of each one in relation to the other will be based on imbalance and inequality.

The new conditions generated by the breakdown of the agreement will be defined based on the moral behavior assumed by each of the agents in the intersubjective relationship. Nietzsche in *"The Genealogy of Morals"* it shows that the categories of guilt and justice flow in a capitalist context in which the rupture of institutionalized agreements in market relations are what determine the condition of those who fail to comply with the agreement; that is, it determines the fault for the one who violates the agreement. (Nietzsche, 1994)

This rupture in intersubjective relations can be seen in the rationalization of the different spaces of human relationships, whether of a commercial, social, family, or productive nature. Just to cite one example, the Maritime Law of Rhodes, believed to have operated three centuries before the Christian era, already defined the way in which those in charge of maritime transport were obliged to the owners of the cargo to respond in the event of loss or damage to the transported merchandise (Berman, 2001, p. 356).

However, the category of fault appears when the performance of the physical movement of an agent produces a result that affects another involved in the intersubjective relationship, which supposes that dissatisfaction, misfortune and misfortune because of physical movement, also understood as damage or affectation, generates guilt as a category that allows determining the intentionality of the agent in the generation of the result. In other words, guilt is a category that redefines the intersubjective relationship based on the result of an action that disgraces another and allows establishing the limits to which the agent has the capacity to perform the physical movement, and the power to perform the result (Gehlen, 1987).

Guilt as a category that changes the condition in the intersubjective relationship arises from the breaking of the agreement and derives in a direct obligation of the subject who breaks the agreement with the one who suffers the breakdown of it, being an obligation that flows directly from the desire and the realization of the result product of the

deployment of a whole duly planned physical movement. This is regarding the realizations that are voluntarily executed by the agent.

Although fault appears as a necessary category of the production of damage or affectation, it is also a category that gives the affected party the power to submit the person causing the damage to his will, to procure from him the reparation of what has been affected and, in the same order, fault represents for the person causing the damage the loss of his or her power to make demands against the affected party. In short, fault is the power that the affected party has to subdue the person causing the damage, but it is also the loss of powers of demand for those who act contrary to the law (Gehlen, 1987).

If guilt redefines the intersubjective relations of the agents involved in a physical realization, it also redefines the quality of each of the agents from the result of the physical realization. In other words, from this category the quality of victimizer and victim appears in the subjects with special conditions that will define the course in the new intersubjective relationship product of the harmful realization.

Guilt as that category that conditions the intersubjective relationship and reformulates the condition of the subjects involved as victim and victimizer from the rupture of the agreement, gains strength when intersubjective relations are limited through juridization. Normative regulation marks the moment in which the limits of physical realization are exceeded, intervening as a third party that characterizes the subjects, who violate the boundaries of the action, granting and subtracting powers to the agents involved based on the limits set by guilt. (Gehlen, 1987).

In fact, in the second century of the Christian era the Roman Empire had outlawed revenge as a way of seeking "reparation" for the damage caused, which meant that those who suffer consequences due to the action of another agent did not have the power to seek by their own means to recover or repair the affected property. Thus, irrigating weeds in a sown field to take revenge for the damage caused by someone was considered a crime in Roman law. In Digest (9.2.27.14) the jurist Ulpian narrates the case of a subject who sowed weeds on the cultivated land of another person, ruining his entire crop, and points out the legal actions of the owner of the damaged crop against the person who caused the damage, to receive compensation for the damages.

Although the juridization of human actions implies the appearance of fundamental categories for the characterization of the agents linked in the breach of the agreement, the limitation of actions by means

of juridization appears when the breach of the intersubjective agreement affects one of those involved in the relationship. The damage is the basis for the delimitation of actions and confers powers on the affected party to seek reparation, but it is the juridization of the damage that gives strength to the notion of victim and recognition to the victim in order to get out of misfortune.

In such a way that the juridization of actions defines the form and the moment in which the performance of an action that exceeds the limits defined in the law changes the conditions of equality between agents, suppresses the powers of the offender, and grants the affected party powers over the offender to make him do everything possible to repair what was affected.

Therefore, the first thing that was talked about was revenge as compensation that justice procures for the offended party and that gives him faculties to act against the aggressor and achieve his satisfaction, that retribution is nothing more than the principle of *retaliation* in which violence is reproduced by reversing the role of the victim attacked to the aggressor of his victimizer. "(...), the offender is first and foremost an 'offender', someone who has broken the contract or the word in respect of all the goods and comforts of common life in which he has hitherto participated. The criminal is a debtor who not only returns the advantages and advances that were given to him but even attacks his creditor." (Nietzsche, 1994, p. 81-82).

Thus, the misfortune generated by the action of an agent transforms the conditions of the agent and subjects him to the force of an obligation that falls against him in order to make the desires and the pleasure of making the victimizer suffer come true. However, the powers conferred by law are not absolute, they are subject to the power of the victim to be demanded of his victimizer. In such a way that the victim may, if he wishes, stop acting against his victimizer in order to obtain from him the performance of actions that seek to repair the damage and misfortune that was caused to him.

For Nietzsche, suffering will be a compensation for debts "to the extent that doing-suffering produces well-being to the highest degree, to the extent that the injured person exchanges the damage, as well as the displeasure that it produced for an extraordinary counter-enjoyment: the making-suffering". (Nietzsche, 1994, p. 74-75).

In summary, with the juridization of human actions and intersubjective relations in different areas of the social world, the notions of justice, guilt, responsibility and damage also appear, which

introduce the categories of victim and victimizer as obligated subjects in a new legal relationship.

These categories of victim and victimizer change the conditions of the agents in the intersubjective relationship and invert the burdens of obligations in a new sphere that flows from actions against the law or actions that affect the situation in general or particular. The notion of victim will find its basis not in the damage generated by the performance of another, nor in the fault that exists in the agent generating the damage, but in the degree of will with which the action was carried out.

### ***2.1. Violence As a Legal Presupposition That Defines the Role of the Victim Based on Guilt***

The category of victim is of special interest when human actions involve violence in their execution with a view to obtaining the result duly anticipated by the agent. The anticipation that had become the basis of the action determines the limit between aggression and violence. Achievements deployed with physical or psychological force with the purpose of obtaining a specific result will no longer be understood as biologically justified reactions but will be achievements capable of affecting others. It could be said that this difference is fundamental to delimit legitimate and illegitimate harm in the legal sphere (Poulain, 1993).

The fact that man only has a system of intra-specific instincts that does not allow him to function under the stimulus-reaction-consummatory action scheme (Poulain, 1993, p. 25) causes his system of aggression to function under a planned form that is inhibited by a higher violence or by the threat of violence contained in the law.

In fact, Elton B. McNeil (1992) recognizes that human aggression occurs as a consequence of the need to respond to the attack of another (p. 50) functioning as a defense mechanism that operates at the intra-specific level; however, his relationship between aggression, emotion and frustration is a bit confusing because by admitting that aggression responds to the emotions of the individual, and that aggression functions as a response to frustrations, involves aggression with planning or anticipating the responses that occur due to the impossibility of bearing the anguish that originates from failure.

Frustration may be due to an extreme satiety of a task from which there is no escape, or it may be caused by a discrepancy between an individual's desire to solve a problem and their ability to achieve it (...). The ideal way to deal with frustrations or to resolve conflicts would be to face them as problems to be solved and achieve the best possible

compromise. (McNeil, 1992, p. 50-51).

Just as in antiquity, after the Second World War, the victim acquires a sacred character, since his quality is tied to the rationalization of actions, all Western law will be focused on his recognition, protection and care. The gaze of the law is directed towards the victim, empowering him before those who disgraced his life.

Let us return to the first question that was raised: What is the basis of this binary relationship in the development of human activities that seek a specific result? The figure of the victim necessarily implies a close relationship between good and bad, just and unjust, where a religious character is appreciated that entails compliance with the moral dispositions that guide human actions in the face of the state of things.

Although guilt constitutes the center of misfortune in the intersubjective relationship, which marks the condition of victim and victimizer from the moment the legally recognized agreement is broken, this category is not sufficient to determine whether the agent wanted to carry out the action so that the result would occur. In Paul Ricoeur's (1991) reconstruction of the notion of guilt, he recognizes two situations produced by the legalization or juridization of human actions: 1) the awareness of the fault, and 2) the engendering of the fault itself (p. 296). In other words, the law produces in the agent the psychological effect of what constitutes an infraction and, at the same time, recognizes the fault as an action whose performance is possible. In addition to the above, there is a third situation that corresponds to the awareness of the sanction that the agent must understand as a response to the infraction and as an inhibitor of the prohibited performance.

This psychological effect that the law entails is what marks in the agent the degree of will or desire that is determined for the performance of the action, that psychological effect that the existence of the law entails is what is known as guilt in the agent subject to the law. The existence of the fault in the law itself and the awareness of it make the agent a judge and part of his own thoughts, which as an anticipation of its realizations constitute the final judgment made by the agent to design the steps or movements of his physical realization with a view to achieving the result he proposes.

Thus, each realization must consider three situations: the authorization or prohibition of what is to be carried out, the condition of legality or illegality of what is intended to be carried out and the attention or disregard of the inhibitors of the realization (the sanction). In fact, guilt will appear when the action whose illegality is in the conscience of the agent and

has as a response institutional punishment; in such a way that "guilt represents the expression par excellence of the promotion of conscience for the supreme court" (Ricoeur, 1991, p. 263).

Hence, the difficulty of the will in carrying out the action occupies an important role in the problem of guilt; in it appears the desire to perform what is forbidden together with its result and as a consequence the imputation to the agent of that realization. Thus, the desire to carry out evil plus the imputation constitute axes of guilt, allowing the burden of the institutional response represented in the sanction to be attributed to the perpetrator, and the burden for the "court" in which the victim is constituted when judging and demanding compliance with the obligations derived from the prohibited action. In this movement, punishment makes an important contribution since it has "the courage to awaken in the guilty the feeling of guilt; because in punishment we seek the authentic instrument of that psychic reaction called "bad conscience", "remorse of conscience" (...)" (Nietzsche, 1994, p. 92).

Thus, guilt will delimit the greater or lesser will that the agent has for the performance of the action, which means that the performance of the action involves the recognition of the perverse or evil of the action and the damage generated by its execution. This implies that the agent acknowledges in advance responsibility for a harmful result as a result of a legally prohibited action affecting a third party; that is, it is an anticipatory judgment of guilt that makes the agent responsible for its realization both in his internal judgment and in the objective judgment.

Guilt implies what we might call a judgment of personal imputation of evil; such an individualization of guilt breaks with the "we" of the confession of sins. (...). This term is only reached at the cost of liquidating the religious sense of sin; then man is guilty to the extent that he feels guilty; thus guilt in its pure state becomes a modality of the *man-measure*. This possibility of a complete split between guilt and sin is foreshadowed in the three modalities (...): the individualization of the crime in the penal sense, the meticulous awareness of scruples and, above all, the hell of damnation (Ricoeur, 1991, p. 263).

Such an inner judgment of guilt entails an anticipated condemnation that the agent executes upon himself and, at the same time, trusts that this judgment will not take place in the external institutional world, because he believes that the way in which he will execute the action will keep him out of the reach of the legal sentencing procedures.

The recognition of the evil that the agent does in advance in relation to the planned realization confers certainty on both the individual and the institutional court that the agent is fully aware of the content of its execution; that is, the result that is produced and the damage that is caused to another. This is why the awareness of the content and the final product of the action give clues to establish the degree of possibilities that the agent had to carry out the action opposed to the normative mandate and the degree of responsibility that must be attributed to the individual.

After this, it is pertinent to answer the second and third questions with which we try to identify: What kind of human achievements change the condition of the subjects involved in them? And what conditions do the subjects linked to this human realization acquire from the degree of satisfaction or dissatisfaction of the realization and its result? Since these two questions are intrinsically related, and their answers will be addressed together.

In principle, it has been pointed out that all those achievements that imply a rupture of the agreement of wills between the agents and that at the same time generate a result that affects one of them transform the state of affairs that relates to individuals, and grant advantages to those who break the agreement and subject the cause of the rupture to the judgment of responsibility that he has to attend before the "court" of the affected party.

It is also clear that when the relations between the agents move from moralization to juridization, the agreement acquires the condition of legality, conditioning the intersubjective activity to the ritualization of the movements of the realization, and makes legality postulate the prohibition of the action, the negative effects, and the consequences for the performance of the prohibited action.

With juridization, two states of the condition of the social agents appear in the process of carrying out the actions: one that represents the fulfillment of the ritual of execution and another that is involved with the rupture of the rite where the modification of the figure of the contracting parties is marked to give rise to the figure of victimizer and victim.

With the ritualization of intersubjective relations, the obligations of the participants in the ritual are defined on the one hand to comply with the legal conditions, which define the development of the action, and on the other to determine the burden or burdens that must be assumed by those who cross the limits of the ritual or who do not comply with the conditions of the ritual.

The fact of having complied with the ritual and

having submitted to the conditions set in the juridization of intersubjective relations gives the victim the dominant position in the new relationship resulting from the rupture of the juridical rite. In this order of ideas, there is a position that the victim has and that allows him to subdue his victimizer while having the institutional support to make it possible for the victimizer to reconstruct the state of affairs that was guaranteed by the law.

It must be clear, first of all, that the notion of victim implies a human activity, which negatively changes the situation of one of the agents in the intersubjective relationship duly regulated by law. It is not possible to link this notion in a human relationship with things and with nature, since they do not act under rationalized logics in their movements, nor do they conceive their movements as realizations that will affect the human being; In other words, things and phenomena in nature do not perform actions conceived in advance. Hence, it is inappropriate to transpolate the notion of victim to a relationship of man with his environment and with things in the sense in which certain authors present it, to affirm that a person is a victim of an avalanche or a volcanic eruption or a victim of the climate when these are phenomena that do not occur with the mediation of an interest in affecting the human being, they are not mediated by a teleological interest. (Arias, 2012)

The victim is the result of a process mediated by the relationship between two or more agents interacting in a particular situation, which may be regulated by law or by an interpersonal agreement, and where the planned and anticipated performance of one or more agents affects an equal number of individuals, producing an alteration in the victim's state of affairs that has not been desired, and that completely changes the intersubjective relationship conditioned by the law or by the agents themselves. The purpose of the action carried out by one of the agents is conceived in advance to achieve a goal closely related to the activity being carried out.

In short, from all of the above, the victim can overcome the misfortune caused by his victimizer and, in that sense, "Telling a victim that it is possible to overcome is not revitalizing the aggressor's crime. However, when the victim heals and manages to transform his pain into combat, the aggressor can seem less monstrous" (Cyrulnik, 2001, p. 24). But if the condition of victim derives from a juridically mediated intersubjective relationship, this means that the notion has a close relationship with the illegality of human actions. Likewise, when reference is made to the victim and it is said that a human

achievement is illegal, for the victim to appear, there must necessarily be an action that violates the legally defined conditions in a special situation.

## 2.2. *The Victim as a Result of Institutional Legal Actions*

The State-society link is a sufficient condition for social groups or individuals to be affected by institutional actions or omissions. There is a particularity in this relationship, and that is that individuals or groups can become victims of actions or omissions that, being legal, affect the situation and generate dissatisfaction in social agents. A variant of the conventional notion of victim appears and is the victim of actions legally carried out by state institutions.

This variant finds its basis in the ways in which the State recognizes its social agents through the different institutional policies, linking them with a differentiated recognition or marginalizing them by leaving them out of the reach of the government's social programs; In this case, we may be facing a victimization of an institutional nature within the legal order.

The fact that institutions deny recognition to the subject can be understood as something that marks the difference between agents linked to the same state order, where the condition of victim due to marginality goes unnoticed thanks to the principle of equality before the law. It is this principle that has prevented governments from understanding that the members of the collectivities have to accept each other as different and recognize each other as different and not as equals. Dussel (1988) considers that "there must be an awareness that it is necessary to recognize each participant as a distinct ethical subject (not just the same), as another of the self-referential system or as different from all the rest, and with always possible principles of dissent; that possibility of dissent of the other is to allow him to participate in the community with the right to the de facto irruption of that other as a new other" (p. 310).

From this perspective, the victim is a subject who lacks recognition for his difference and by virtue of this he is marginalized by official institutions, thus being publicly condemned and subjected to multiple forms of human suffering. Dussel (1988) clearly exposes the way in which political and economic systems generate a considerable number of victims by virtue of the exclusion and domination of subjects. For Dussel, "a good part of humanity is the victim of profound domination or exclusion, being immersed in 'pain', 'unhappiness', 'poverty', 'hunger', 'illiteracy', 'domination'." (1988, p. 310).

The impossibility that the subject feels to satisfy his needs and achieve the ethical ideal is what, in the long run, is directly related to the exclusion that institutions exercise over individuals, this makes any subject openly express his disagreements with institutions, especially when "he finds himself in situations in which he cannot realize what he desires and aspires for himself and for those he esteems" (Estivill, 2003, p. 13).

In the words of Dussel (1988), the imperfection of systems, the actions of institutions and legally instituted norms pressure the victimization of individuals; in this sense, he states that "the victims are those who suffer the imperfections, errors, exclusions, dominations and injustices of empirical, non-perfect or finite institutions, of existing systems; that is, the "fact" that there are victims in every empirical system is categorical and therefore criticism is equally necessary." (p. 369).

The criticism that the subjects formulate against the systems for preventing the full development of their lives is what evidence the condition of victims that the subjects hold.

In the first place, abstractly and universally, the criterion of criticality or criticism (theoretical, practical, driven, etc.) of every norm, act, microstructure, institution or system of ethics is based on the real existence of "victims", whatever they may be for now. It is "criticizable" that does not allow us to live. For his part, the victim is inevitable. Its inevitability derives from the fact that it is empirically impossible for a norm, act, institution or system of ethics to be perfect in its validity and consequences (Dussel, 1988, p. 369).

We are faced with the problem of the victim of legal systems and institutional models that exclude social agents from the conditions of life and public participation, which are vital for their collective performance. The way in which the state of affairs of these subjects is affected is removed from the illegal nature that the victimizing action commonly entails, since, in this case, the victim appears as a consequence of a legally institutional performance.

In this way, legally established institutional processes generate actions that affect the conditions of social agents, reducing their possibilities of performance thanks to the fact that they are not recognized as political and social agents that should be immersed in government policies, and the fact that it marginalizes them from official projects and programs and from the processes of political participation in social decisions.

Therefore, the way in which policies of exclusion, differentiation and marginalization are reproduced



increases the capacity to victimize entire populations, because the State restricts access to favorable conditions of life and individual and collective development. The same is multiplied more strongly in different entities and institutions of a private nature, where the value of the particular is imposed on collective interests, where the latter have to give way in the form of profits to increase individual capital.

In this way, the restricted view of the condition of victim will continue to pass through the sieve of legality, on the understanding that the notion of victim has to be associated only with the illegality of the action carried out by an agent; This is the principle with which the notion of victim is constructed in the context of an international or non-international armed conflict.

In short, it is evident that victimization is possible through positive or negative actions associated with the legality and illegality of the actions. In the first case, it is related to the performance and performance of actions by state or private institutions within the framework of legality, in the application of an institutional policy or with the issuance of a law in which the value of certain groups or individuals is enhanced, to the detriment of others. In the second case, actions that transgress a normative order of which they are affected are necessarily involved.

### ***2.3. Armed Actors as Victims of Their Own Conflict***

The non-international armed conflict necessarily involves the production of a victimizing variant subject to the normative order that occurs because of non-compliance with the norms that regulate this type of action. In this order of ideas, the provisions that define the way in which the actors must develop confrontation implicitly carry out the moment and the conditions in which the subjects can derive or become victims of the hostile confrontation in which they participate as actors.

It is true that in confrontation civilians have the condition par excellence of acquiring the status of victims by actions derived from the conflict, either because the armed actors evade compliance with the rules by action or omission, or by an action legally valid for the opposites that ends up affecting them; but it is also true that the opposing troops can also be victims of the conflict itself, which they make and practice. Because despite being the ones who develop the confrontations, they participate in them and are obliged to comply with the international norms that regulate the conduct of military actions in each of the possible scenarios; the parties that confront each

other are protected by the same legality that regulates the confrontation, which leads to the assumption that they are victims of the opposing actions under the condition that the effects they suffer are the result of the development of actions that contravene the provisions related to the regulation of the conflict; Here the victim also appears for the execution of a performance based on the desire not to abide by the rules agreed upon for the confrontation of hostile forces.

This broadened perspective of victim to members of armed forces in confrontation is based on the legalform notion of victim, which aims to protect in a rationalized way intersubjective relations, ranging from a contractual agreement, through the contractual relationship of the subject with the State to the confrontation to the death between individuals.

In this order of ideas, it is paradoxical that in a hostile scenario where death is the rule, in the physical and material annulment of the other, victims appear as subjects affected by something, which necessarily has to happen to those who are involved in a bloody relationship; however, what is rescued as a victim of this death scenario is the fact that the armed actors violate the rules of the contract for "dignified death" that are the norms of IHL.

Although the entire positive world order in terms of the treatment and end of armed conflicts determines for States obligations of recognition, protection, defense and guarantee of justice for the victims of crimes committed in the context of armed conflicts, it is worth considering that each conflict offers particularities that make it different, since each conflict emerges with different purposes. it has particularities in terms of the agents against whom it is directed, the agents involved or, if they are nations that occupy the same territorial space or if imaginary borders are crossed, and especially, what the emergence of confrontations responds to.

However, after the traumatic event, the victims consider a different logic in front of their lives, initiating a process of change that allows them to face the new scenario that they have involuntarily had to assume, so their resilience "is not something that must be sought only inside the person, nor in their environment, but between the two, because it ceaselessly ties an intimate process with the social process." (Cyrulnik, 2001, p. 192). Therefore, in this process, justice begins with the recognition of the victims, including them as subjects and agents of a case in which they are granted the category of judges of the "court" that will judge the guilt of those who broke the legal agreement in the case of civilians not

involving them in the confrontations. and in the case of the armed actors linked to armed confrontation, by failing to comply with the protocols to eliminate the life of the other with dignity; there will begin its repair process.

In short, the first moment to ensure reparation for the victims is to recognize them, equally, as agents capable of surviving the disturbances and suffering experienced during the hostilities, so that, once the reparation process has been exhausted, they resume the course of their lives, in the midst of conditions different from those that existed before the disturbing event.

Resilience is understood as "the ability of a person or a group to develop well, to continue to project themselves into the future in the presence of destabilizing (disturbing) events, difficult living conditions, severe and/or repeated trauma" or also understood as "the ability of a subject to overcome unique circumstances of difficulty, thanks to his or her mental qualities, of behaviour and adaptation" or as "the ability to move forward in a way that is acceptable to society despite stress or adversity that normally entails serious risks of a negative outcome" (Cyrulnik, Manciaux, Sánchez, Colmenares, Balegno, & Olaya, 2002, p. 373); with this, the agent has the possibility of overcoming the negative effects left on him by the marginalization produced by the non-recognition from the institutions.

#### ***2.4. A Broad Perspective of the Notion of Victim in Non-International Armed Conflicts***

We must not lose sight of the fact that in the context of internal armed conflicts, two variants of victims emerge, on the one hand, the direct victims of the actions carried out by members of insurgent groups and regular military forces, in this case those who suffered massacres, kidnappings, forced disappearances, forced displacements, murders, etc. among other actions; and, on the other hand, the victims embodied in the agents of the regular forces affected by irregular actions carried out by their opponents in the development of armed confrontations, as in the case of all those who are wounded, killed or disappeared in actions that violate the rules that regulate the development of hostilities on the battlefield.

There is no need to give continuity to the characterization of good and bad victims when talking about civilian victims and military victims,

because the legality that supports the characterization of those affected by the confrontation does not make a distinction between victims of one side or the other<sup>3</sup>, but that the affected party is always the one who has been affected by practices disapproved by international regulations.

Harm gives the victim the saving power of his victimizer. Only she, in her supreme position before her executioner, can free him from the weight that represents for him the guilt he feels for all the evil displayed in the victim's humanity, in such a way that the executioner is now at the mercy of the will of the victim, who will be the only one who can redeem him from the atrocities carried out and relieve his conscience of the torment that is not eliminated by judicial condemnation. That forgiveness has to be complete, which means, in terms of Derrida (2002), that only forgiveness will be true forgiveness to the extent that it is unconditional and free from all sovereignty of the victim (p. 31).

So who is the real victim? Because, when the media record a terrorist attack, they refer to the victims of the event; so they are right. Another question arises when there are subjects who die as a result of a bombing by the Military Forces: wouldn't they also be victims? No. The media treats them as objects that deserve to die, and therefore they are considered as objects rather than victims. The same happens with the violent death of a Westerner and a Palestinian: the death of the former is the result of an unjustified act, but that of the latter was something deserved, just. The first is a victim while the second is a terrorist, so the victim depends on the side that falls, not on the circumstances in which the victimizing event occurs. The question that arises then is: who is the victim, who is considered a victim?" (Badiou, 2004).

The innocence of an agent has become one of the points that differentiates the victim and his victimizer in the armed confrontation, which necessarily means that the armed actors can never acquire the status of victims of the confrontation; however, innocence does not necessarily become a sufficient condition for agents unrelated to the confrontation as Gelman wondered: "Did you have to be "innocent" to have access to the category of "victim of the military dictatorship?" Also, that innocence can be preached in those who, taking part in hostilities, submit to and comply with the rules of war, respecting the legally defined conditions to

<sup>3</sup> "[...] persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, financial loss, or substantial impairment of their fundamental rights, as a result of acts or omissions that violate the criminal

legislation in force in the Member States, including that which prohibits the abuse of power. For the victims of crime and abuse of power." (United Nations Declaration on Fundamental Principles of Justice, 1985)

nullify the enemy and respect the lives and spaces of those who have not taken part in them. (2001)

Thus, the juridization of armed confrontation actions guarantees the victim of the forces in conflict that he will not lose his word in front of his victimizer, and before him and the institutional court he will be able to speak of everything he requires to ensure his resilience and make the victimizer restore his world to its original state. as it was before the legal agreement had been broken to develop a phase of war. The victim's word to speak of the event is conferred on him by the law that regulates the intersubjective relationship; however, the same law may attack the victim when the traumatic event becomes unspeakable, if the victim does not have the evidence to support his testimony and show that his statements are consistent with what happened, without that the victim's word has no value.

However, in the legal framework for the post-conflict, victims are recognized as having the right to narrate the traumatic event without resorting to the presentation of physical or documentary evidence to support their testimony, since their word is sufficient. The law contains that cultural change that is necessary to give the victims back their voice, in the same way that in the eighties the social context allowed Cyrulnik to narrate her story as a victim of the *Nazi holocaust* (Cyrulnik, 2010, p. 35).

Depriving the victims of the floor to narrate the event is an act that condemns them to eternal suffering from which they will probably not be able to escape "(...) The humiliation is much more serious than the beatings. (...) Blows hurt at the moment they are received, while humiliation causes permanent suffering, in the representation of it" (Cyrulnik, 2010, p. 27).

The problem can be seen in the way in which it is conceived of those who, being combatants of the regular forces, were not obliged to suffer the effects of the confrontation, provided that the counterpart had respected the rules of International Humanitarian Law. Many say that combatants are necessarily determined to suffer the suffering, anguish and pain of the wounds of war, which is why they cannot be linked to the category of victims of the conflict, which is why they cannot deserve comprehensive reparation.

The matter must be analyzed from the perspective of the contract; It is true that in an intersubjective relationship there is implicitly an agreement, in which commitments are linked that have to be fulfilled for each of those involved. These commitments with illocutionary content make the agents understand the scope of each one's actions in

the development of the relationship. It has already been mentioned above that the illocutionary scope of the agreement will determine what cannot be done in the relationship, and that supposes that the parties understand these conditions as a law that applies to both and is subject to both.

The same happens in the phase of armed confrontation, although it is a procedure whose actions are aimed at eliminating the other or killing the opponent, it must be taken into account that the execution of death has its rules, and the achievements to make death effective have to comply with a series of conditions for it to be admitted by the normative order; in other words, so that it is a legally recognized execution. In war there are those who are legally killed on the battlefield, and there are others who are badly killed in the course of it, either because the elements used to kill were not authorized by the rules of IHL or because the way in which the death of the opponent was carried out was not in a procedure duly regulated in the law; In other words, it was a death executed inhumanly as if death per se were something human.

The rules for killing in war make it possible to identify at what moment an agent of the military forces was illegally wounded or killed by the opposing armed forces, and in this case the agent of the military corps acquires the status of military victim, since given the conditions in which the war was defined, he was not obliged to bear the result left by the action of war illegally executed by the members or a member on the opposite side.

When these conditions are met, there is no room for denying the character that the members of the security forces have acquired, when the factual prepositions for becoming victims of the confrontation are fulfilled; since the denial of this recognition implies a revictimization of the agent, this time on behalf of the state institutionality. Institutional denial will represent an additional act of violence that reduces the possibilities for the victim to begin his or her path to reparation and begins to configure a state of perpetual victimization that condemns him or her to a state of eternal resentment and that will make it difficult to overcome the victimization of war and institutional victimization on account of legal denialism. This denialism represents the loss of the word before their victimizers and the eternal return to the foundation of hatred towards their victimizers and towards the revictimizing institutions.

The silence to which the victim is condemned for having been denied his or her condition only reduces the chances that the event will not happen again.

When the survivor plays the role of the permanent representative of his own misfortune, it is, in his intimate world, a capital mission. Their witness allows them to transform their humiliation into a constructive message, into a duty of remembrance, so that this will never happen again. He heals himself in this way, since, by restating the event, he transforms the motion. Her senseless misfortune makes sense and becomes bearable as it makes her useful. This does not correspond in any way to the intimate world of the listeners, or rather of the spectators who for their part do not have to do this work of metamorphosis (Cyrulnik, 2001, p. 136).

Revictimization by the condemnation to silence of not being taken into account or listened to, is the experience on the surface of the permanent fears of every victim to be condemned to oblivion, and that his story will be heard under the suspicion of lies or exaggeration; the best exposition of this feeling is narrated by Primo Levi when he gives an account of the anguish due to the fear of oblivion suffered by all the survivors of the Nazi extermination camps.

It seemed to us that we had something to tell, enormous things to tell each of the Germans, and that each of the Germans had to tell them: we felt an urgency to take accounts, to demand, to explain and to comment (...) it seemed to me that I was writhing among mobs of insolvent debtors, as if they all owed me something and refused to pay it to me (...) It seemed to me that everyone would have had to question us, read in our faces who we were, and listen humbly to our story. But none of us looked us in the eye, none accepted the challenge: we were deaf, blind and mute, equipped in its ruins as in strongholds of voluntary ignorance, still strong, still capable of hatred and contempt, still prisoners of the

old complex of pride and guilt. (Levi, 1997, pp. 207-208).

However, the notion of victim will necessarily be implied with a perspective of a political rather than a humanitarian nature, determining who can and cannot be a victim of a given situation, as can be clearly seen in the legislative categorization of the notion of victim. In fact, the Law on Victims and Land Restitution itself has specified the scope of this notion and the subjects whose status as victims of the non-international armed conflict is recognized (Badiou, 2004)<sup>4</sup>, a notion consistent with Badiou, for whom the category of victim responds to a political perspective of the situation in which the affected agent is linked, in this case "the idea of victim supposes a political vision of the situation; in other words, it is from within a politics that it is decided who the victim really is; throughout the history of the world, different policies had different victims; therefore, we cannot start solely from the idea of victim, because victim is a variable term." (Badiou, 2004).

In short, the condition of victim is not eternal, their state must transcend from a search for reparation of suffering and damage to a historical reconstruction of society, in which their commitment to rebuild their lives is reflected in a collective reconstruction of the ways of seeing the world; that is, sharing the same space in the midst of differences of all kinds, and in order to institute reasonable forms of attention and treatment of social conflicts, where there is no room for a return to the annulment of the other through violence.

### 3. INTERNATIONAL NORMATIVE SYSTEMS AND THE DELIMITATION OF VICTIM STATUS IN NON-

<sup>4</sup> **ARTICLE 3. VICTIMS.** For the purposes of this Act, victims are considered to be those persons who, individually or collectively, have suffered harm as a result of events that occurred as of January 1, 1985, as a result of breaches of international humanitarian law or serious and manifest violations of international human rights law, which occurred during the internal armed conflict. (...)

**Paragraph 1.** When members of the security forces are victims under the terms of this article, their economic reparation shall correspond in all respects to which they are entitled in accordance with the special regime applicable to them. In the same way, they will be entitled to the measures of satisfaction and guarantees of non-repetition indicated in this law.

**Paragraph 2.** Members of armed groups organized outside the law shall not be considered victims, except in cases in which children or adolescents have been disassociated from the armed group organized outside the law when they are minors.

For the purposes of this law, the spouse, permanent partner, or relatives of members of organized armed groups outside the law shall be considered as direct victims of the damage suffered in

their rights under the terms of this article, but not as indirect victims of the damage suffered by the members of such groups.

**Paragraph 3.** For the purposes of the definition contained in this article, those who have suffered damage to their rights as a result of acts of common crime shall not be considered victims.

**Paragraph 4.** Persons who have been victims of events that occurred before January 1, 1985, have the right to the truth, measures of symbolic reparation and the guarantees of non-repetition provided for in this law, as part of the social conglomerate and without the need for them to be individualized.

**Paragraph 5.** The definition of victim contemplated in this article may in no case be interpreted or presumed to imply any recognition of a political nature regarding terrorist and/or illegal armed groups, which have caused the damage referred to as a victimizing event in this law, within the framework of International Humanitarian Law and Human Rights. in particular of the provisions of Article 3 common to the Geneva Conventions of 1949. The exercise of the powers and functions that correspond to the Armed Forces by virtue of the Constitution, the law and the regulations to combat other criminal actors shall not be affected in any way by the provisions contained in this law.

## INTERNATIONAL ARMED CONFLICTS

The international normative systems that delimit the status of victim are the Universal Declaration of Human Rights (HR) and the provisions of International Humanitarian Law (IHL) as regulating armed confrontations, which are applied simultaneously in international law<sup>5</sup> (ICRC, 1998). However, the principles and guidelines on the right of victims of gross violations of human rights and serious violations of IHL related to the filing of remedies and reparations in the light of resolution 60/147 of 2005 are instruments that guide States to comply with their treaty obligations for the treatment and dignity of victims<sup>6</sup>.

Therefore, access to justice is aimed at providing victims with adequate treatment so that they can have the judicial and administrative apparatus properly available, so that they can access their right to file appeals. Likewise, in relation to the reparation of the damages that have been suffered, since when a person suffers a violation of human rights, he or she has the right to full and effective reparation consisting of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition; and finally, what has to do with access to relevant information on violations and mechanisms for reparation, and non-discrimination, which also implies the application and interpretation of these basic principles and guidelines, which are in

accordance with the norms of human rights and international humanitarian law, without discrimination of any kind or reason. (ICRC, 1998).

Thus, as has been explained, IHL is a variant of Public International Law that applies to cases of both national and international armed conflicts, and is concerned with guaranteeing respect for the rights of human beings. Being a system divided into Geneva and Hague law, it has had as its objective the limitation of the suffering caused by war and to some extent the mitigation of its effects; because the rules that are dictated in the system are the result of a delicate balance between the demands of the development of conflicts, military necessity, and the legal protection of human beings; but in the face of the delicacy of the norms, they do not admit concessions. It is a normative system that must be respected in all circumstances to guarantee the continuity of the values of humanity and the protection of human life. (ICRC, 1998).

In summary, the recognition of the measures and guarantees of the victims in cases of non-international armed conflicts has played a prominent role in the protection that has been given to the members of the security forces, which historically derives from those first norms or privileges created from the ambition of the humanization of war. and mitigate the suffering caused by it. This is the field that the law of Geneva came to conquer from the first

<sup>5</sup> Among the international normative systems that protect the victim is also resolution 60/147 of 2005 issued by the United Nations (UN), which contains basic principles and guidelines on the right of victims for gross violations of human rights norms and serious violations of IHL to seek remedies and reparations based on a normative system that is based on Article 2 of the International Covenant on Human Rights. Civil and Political Rights. Also, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; article 8 of the Universal Declaration of Human Rights; article 39 of the Convention on the Rights of the Child; victims of violations of IHL, provisions that are part of article 3 of the 1907 Hague Convention on the Laws and Customs of War on Land; article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention IV, article 91 of the Additional Protocol to the Geneva Conventions of 1949; victims of international armed conflicts (Protocol I) of 1977; Article 7 of the African Charter on Human and Peoples' Rights; Article 25 of the American Convention on Human Rights; articles 68 and 75 of the Rome Statute; article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms; and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, resulting from the discussions of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. (ICRC, 1998).

<sup>6</sup> In this way, 13 basic principles for the treatment of victims were approved: the obligation to respect and ensure that the norms of human rights and IHL are respected and applied; that is, each State must ensure compliance with the norms of IHL, whether they are treaties of Customary International Law or the internal law of each

State. In other words, for the purposes of this reflection, a victim shall be understood as any person who has suffered harm individually or collectively, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights, as a result of actions or omissions, which constitute a manifest violation of human rights norms or a serious violation of IHL; that is, in any case, in order to guarantee compliance with these norms of Public International Law, the State, among other things, must have administrative and legislative procedures to prevent violations, investigate appropriately, and have remedies when cases of manifest violations of human rights norms and serious violations of IHL arise; in which case, the State has the obligation to investigate, punish the culprit, and cooperate with the investigations of international bodies, since there will be no statute of limitations for gross violations of human rights norms, nor for serious violations of IHL, which constitute crimes under international law. Also, under domestic law, the term "victim" shall include the immediate family or dependants of the direct victim and persons who have suffered harm while intervening to assist victims in distress or to prevent victimization. However, with respect to the treatment of victims, this principle is aimed at ensuring that the State gives special treatment to victims of human rights violations, which implies that access to justice, reparation and administrative actions does not constitute a new trauma. But, in relation to the rights of victims also to have resources, as a principle that has to do with the fact that victims of human rights violations must be guaranteed equal and effective access to justice, adequate, effective, and rapid reparation, as well as access to information.

treaty, which aimed at the protection of military victims signed in 1864. Similarly, in 1899 in The Hague, international protection was granted to members of the security forces at sea, to the sick and shipwrecked, and later in 1929 to prisoners of war who were in turn placed under the legal protection of Geneva Law.

The purpose of this law has been to protect victims in situations of armed conflict, i.e. military personnel hors de combat, the wounded, the sick or shipwrecked, prisoners of war, the civilian population, and in general all persons who do not take or have ceased to take part in hostilities or conflicts. The system is made up of four conventions which complement each other, and in principle are based on two additional protocols: the first deals with international armed conflicts and the second with non-international armed conflicts<sup>7</sup> (ICRC, 1998).

#### 4. FACTORS THAT RECOGNIZE THE STATUS OF VICTIMS OF MEMBERS OF THE SECURITY FORCES

Among the key points, the Victims Law enshrined a State policy on assistance, care, protection and comprehensive reparation for victims of serious and manifest violations of human rights norms or breaches of IHL, and a differential approach to access to justice that guarantees knowledge of the truth by offering tools for victims to claim their dignity and develop their model of life. (Constitutional Court, 2012).

In this sense, Law 1448 of 2011 and its reform contained in Law 2421 of 2024, specifies, in its Article 2, in the case of members of the Public Force that their status as a victim is configured when "(...) in compliance with their legal duty suffer violations of their rights due to violations of International Humanitarian Law and International Human Rights Law, and their families (...)", for events that occurred as of January 1, 1985 as a result of violations of IHL or serious and manifest violations of human rights norms that occurred during the internal armed conflict.

The law broadened the spectrum for the recognition of the status of victim, and, at the same

time, incorporated a differential approach to the application of protection measures for victims in vulnerable conditions due to their age, gender, sexual orientation, and disability situation. Principles such as progressiveness, gradualness and sustainability, incorporated in the provisions, seek to provide guarantees to victims so that protection measures are materially sustainable and applied gradually and progressively; with which it seeks to ensure that state efforts are financeable in the medium and long term, and implemented throughout the country in a certain time and under respect for the principle of equality. (Constitutional Court, 2012).

On this basis, the Victims Law enshrined "measures of care, assistance and comprehensive reparation for citizens who are victims of the non-international armed conflict and other provisions", since it considered as an initiative the establishment of judicial, administrative, social and economic, individual and collective measures for the benefit of victims, thus seeking to ensure that they have access to the effective enjoyment of their rights to the truth, justice, reparation and the guarantee of non-repetition. Also, measures of attention and humanitarian aid at different times of the process, through the recognition of the status of victim to the dignification and materialization of their constitutional rights, thus promoting the reconstruction of their life project. The main objective of the Victims Law here is to regulate the right to care, assistance and comprehensive reparation of victims of serious violations of human rights norms and breaches of IHL.

In addition, within the framework of the regulations, it was also noted that the Government issued regulatory decrees defining the processes and mechanisms for their implementation after consultations with victims, civil society and territorial entities. To this end, five different decrees were processed that established the legal framework for its effective implementation. The Decrees determined the functioning of the agencies that were responsible for defining public policies for land restitution, care, and comprehensive reparation, as well as the mechanisms for the participation of victims<sup>8</sup>.

<sup>7</sup> However, after the Second World War, the Conventions were revised and expanded so that the Fourth Convention extends protection to a new category of victims: the first Convention dealt with the fate of the wounded and sick in military forces in the field; the second of the fate of the wounded and shipwrecked of the armed forces at sea; the third of the treatment due to prisoners of war; and the fourth on the protection due to civilians in times of war. These conventions were accompanied by three additional protocols: the one on the protection of victims of non-international

armed conflicts; the one relating to the approval of an additional distinctive sign; and the one on the protection of victims in international armed conflicts. The protocols distinguish between the wounded, the sick and shipwrecked in the military, and civilians, but no differentiation is made between the protection of civilians and the military, so that the guarantees of respect and protection are absolutely equal. (ICRC, 1998).

<sup>8</sup> Decree 4800 referred to the mechanisms for the implementation of measures of assistance, care and comprehensive reparation for

From the limits defined in the legislation for victims, Colombia was able to define the temporal boundary and the phenomenal scenarios to determine the status of victim of the internal armed conflict, thus responding to the obligations derived from its commitment to IHL. Thus, only those persons who have suffered affectations as a result of actions carried out in the context of the internal armed conflict will have the recognition conferred on them by law, so that not every crime carried out by armed actors, whether they are called armed drug trafficking groups or criminal organizations or criminal gangs, falls into the category of crime against IHL.

It is clear to the Constitutional Court that among the key points that characterize the condition of victim is the implementation of a State public policy on assistance, care, protection and comprehensive reparation for victims of serious and manifest violations of human rights norms or breaches of IHL. Also, the recognition of victims who, individually or collectively, have suffered damage because of events that occurred since January 1, 1985, linked to the internal armed conflict. Likewise, measures of care, assistance and comprehensive reparation for civilians' victims of the internal armed conflict and other provisions. In addition, the measures of attention and humanitarian aid at different times of the process that goes from the recognition of the status of victim to the dignification and materialization of their constitutional rights. Likewise, the Regulatory Decrees that defined the processes and mechanisms of implementation, after consultations with victims, civil society and territorial entities; likewise, comprehensive assistance and reparation; the Center for Historical Memory; the legal system provided to guarantee the rights to truth, justice, reparation and guarantees of non-repetition; and finally, the status of member of an organized armed group outside the law linked to the confrontation, is relevant to determine the application or not of the set of special benefits for victims provided for in the Law; in addition, the guarantee that the other victims can access justice

through other mechanisms known in ordinary law, in the constitutional block or in international instruments, which globally bind the Colombian State.

#### ***4.1. Victims Of the Security Forces in the Non-International Armed Conflict***

In the Victims Law, it was clearly defined in article 3 that when members of the security forces are considered victims, *their economic reparation will correspond in all respects to that to which they are entitled in accordance with the special regime that is applicable to them*, in such a way that it is considered that they will be entitled to the measures of satisfaction and guarantees of non-repetition contained in the aforementioned Law.

This reference to the special regime in economic matters is clearly useless and exclusive if it is a question of granting members of the security forces a category that expands their possibilities for overcoming a traumatic event generated by the confrontation even if they are actors in it.

The fact that the law lists the members of the security forces as an agent who can reach the category of victim implies that in the context of the internal armed conflict the agent did not have the obligation to suffer the damages implied by armed confrontation outside the normative framework of IHL. Also, that the agent of the Public Force can only be "legally" affected by the war and is obliged to bear the effects of it, if the opponent behaves in accordance with the internationally established norms for the development of it, otherwise, he will be a victim.

This means that in the context of the internal armed conflict, the agent of the security forces can reach two conditions: one derived from the burden that corresponds to him for the fulfillment of his legal and constitutional functions of defending the institutional order when military operations do not exceed the limits established by IHL, and the other, the status of victim that is acquired when the agent of the security forces is affected in the development of confrontations by events or actions carried out or

---

victims, regulated registration in the Unified Registry of Victims, and established the measures of socioeconomic stabilization, health care, education, and comprehensive reparation necessary to materialize the rights of victims; Decree 4801 established the internal structure of the Unit for the Management of the Restitution of Dispossessed Lands, whose function is to keep a record of the properties that were dispossessed or abandoned because of the CANI and to receive the requests for restitution; Decree 4802 designed the internal structure of the Special Administrative Unit for Comprehensive Attention and Reparation to Victims, whose objective is to coordinate the National System of

Attention and Reparation for Victims, and the execution and implementation of the Public Policy for Comprehensive Care, Assistance and Reparation, under the terms established in the Law; Decree 4803 established the internal structure of the Center for Historical Memory, whose objective was to centralize all the functions of recovery, collection, preservation and analysis of historical memory in a single entity; and Decree 4829 instituted the rules that apply in administrative actions for the registration of lands forcibly dispossessed and abandoned due to the conflict. (Muñoz, n.d.).

caused by the forces in conflict in violation of the norms of IHL, under which conditions he is not obliged to endure the evils received.

Therefore, it is worth specifying that the condition of affected does not exclude the condition of victim and vice versa, since there are cases in which an agent can be affected but not have the status of victim; but a victim will always have the double connotation that allows recognition by the legal system for the post-conflict.

In this order of ideas, what the special regime compensates economically is any damage suffered by a member of the security forces in the exercise and development of the armed conflict, but this does not mean that this special regime recognizes the member of the security forces as a victim; Under this premise, it must be taken into account that not everyone affected by the armed conflict who is financially compensated through this special regime can be considered a victim or, in other words, everyone is affected, but not everyone is a victim.

According to the special regime, any damage suffered by a member of the security forces necessarily implies that the agent is affected by the confrontation, but the damage is not a sufficient condition to acquire the status of victim; for this it is required that the damage suffered by the agent be the result of an irregular development of hostilities.

In this sense, the above argument is reinforced in that the special regime that mentions the Public Force is based on labor or social security guarantees and is based on a regime that protects members of the Public Force with norms, which regulate police and army personnel.

In summary, the Constitutional Court, in relation to the special regime, infers that members of the security forces who suffer injuries that do not cause disability, forced displacement, homicide, forced disappearance, torture, cruel or degrading treatment, crimes against sexual and reproductive freedom and

integrity, or injuries that cause disability, are subject to a regime that does not generate specific reparation for having been a victim of such unlawful acts; that is, cases that are not considered as violations of IHL or violations of human rights norms in the context of the internal armed conflict.

#### **4.2. Measures Of Care, Assistance, And Reparation for Victims of the Security Forces**

Articles 3 and 27 of the Victims Act incorporate the criteria that define the status of victim of an active law enforcement officer, which is in line with the IHL budgets regarding the manner in which hostilities are conducted and the treatment of detainees and wounded in combat. Along these lines, the Unit for the Reparation of Victims assumes evaluation criteria that are adjusted to the different victimizing events that occur in the context of the internal armed conflict. This differentiated analysis also applies to victims belonging to the Armed Forces. These criteria allow us to observe that the Military Forces are always not absorbed by the state apparatus, a situation that will allow their dignity as persons to be recognized and their possibility of having the same rights as other citizens recognized in the Victims' Law <sup>9</sup>(Constitutional Court, 2016).

On the other hand, the Council of State in a historic decision delved into who are victims in non-international armed conflicts and made it clear that this class includes family members and members of the security forces who have been affected in attacks by illegal armed groups. For the high court, "the concept of victim rests on the basis of universality", so that the relatives of military personnel who die in attacks by groups outside the law may enter the category of victims and even more so "in the framework of the non-international armed conflict" (...) because as a result of this situation serious violations of human rights norms and IHL can be derived<sup>10</sup>.

<sup>9</sup> The lawsuit filed before the Constitutional Court claiming the same treatment, revolved on the one hand on the arguments of those who ruled in favor of the unenforceability of the Law and based their points of view on the fact that compensation for reduced work capacity cannot be confused with facts related to the service, with comprehensive reparation under the terms of Law 1448 of 2011; members of the security forces, like all victims of the internal armed conflict, have the right to receive comprehensive reparation, there are no valid reasons to establish a different treatment for members of the security forces. Although there are special regulations on career, benefit and disciplinary regimes, there are no regulations on economic reparation in favor of members of the Public Force. The military and police acquire the status of victims when they violate the norms of IHL, and the international provisions on human rights that enshrine the same rights for all victims. But, on the other hand, there are the

arguments of those who bet on asking the Court to declare the accused expression enforceable, raising the following argument: the different treatment is based on not exceeding the economic capacities of the State and that the means selected is suitable and effective for it. The legislator has a margin of regulatory configuration to achieve a balance between the need to compensate the victims of CANI and economic limitations. (Constitutional Court, 2016).

<sup>10</sup>The debate here was promoted by the Third Section of the Council of State, with a presentation by Judge Jaime Orlando Santofimio, although in previous rulings the high court had already condemned the State for attacks by illegal armed groups, as in the case of the guerrilla takeover of the Las Delicias base, where it ordered millions in compensation to relatives of fallen uniformed officers. On this occasion, the decision of the high court condemns the Nation to pay about 920 million pesos to the



## 5. CONCLUSION

Despite having the status of armed actors, members of the Military and Police Forces who participate in hostilities in the context of the internal armed conflict in Colombia may be recognized as victims and enjoy the guarantees and rights conferred by law on all victims, provided that in the exercise of their functions they are affected by actions carried out by irregular armed groups in violation of the rules of International Humanitarian Law. This implies that not every act in which a member of the security forces is affected leads to his or her recognition as a victim, since the character that is acquired as a victim implies the fulfillment of necessary conditions without which the effects will only constitute situations associated with the provision of public service. Hence, in order for an agent of the security forces affected by an act of service to be recognized as a victim of the internal armed conflict, it is required that this affectation be the result of the execution of armed actions deployed by irregular groups that, being subjects of hostilities, have carried out acts of war in violation of Protocols I and II of the Geneva Conventions and common Article 3 that refers to conflicts non-international armed forces.

In this way, the members of the security forces affected by violations of IHL and human rights, in the context of the internal armed conflict, have had to suffer a burden of suffering that comes from the illegality of the irregular forces during the exercise of war actions, for which the status of victim is acquired due to a practice that breaks with the guarantees of proportionality and equality that the parties involved in the conflict must comply in the conduct of hostilities. In line with this, the benefits, guarantees and mechanisms of reparation conferred by law for victims are fully extended to members of the security forces declared victims of the internal armed conflict in application of the principle of equality and human dignity.

The rules for killing in war make it possible to identify at what moment an agent of the military forces was illegally wounded or killed by the opposing armed forces, and in this case the agent of the military corps acquires the status of military victim, since given the conditions in which the

hostilities were defined, he was not obliged to bear the result left by the action of war illegally executed by the members or a member on the opposite side.

The international normative systems that delimit the status of victim are binding on the law of Geneva from the first treaty that refers to the protection of military victims signed in 1864, the Hague Treaty of 1899 that recognizes international protection to members of the security forces at sea, to the sick and shipwrecked. and later in 1929 when prisoners of war are mentioned, who were themselves placed under the legal protection of Geneva Law. In the same way, the thirteen basic principles for the treatment of victims, International Human Rights Law, and International Humanitarian Law; resolution 60/147 of 2005 issued by the UN, which issued the guidelines on basic principles and guidelines on the right of victims of gross violations of international human rights standards and serious violations of IHL to seek remedies and obtain reparations, determine the conventional normative spectrum for States to assume the commitment to recognize members of the security forces as victims, and to ensure the materialization of the rights and guarantees that emerge from having that condition.

The fundamental aspects that define the status of victim are linked to a public policy of the State with regard to assistance, care, protection and comprehensive reparation for victims of serious violations of human rights or breaches of IHL; and in this sense, the Victims Law has recognized that victims are those persons who individually or collectively have suffered damage as a result of events that occurred as of January 1, 1985, associated with the internal armed conflict. Similarly, the measures of care, assistance and comprehensive reparation for citizens who are victims of the internal armed conflict, and other provisions, are attributed to members of the security forces as a result of this recognition.

However, the declaration of victims to the members of the security forces constitutes an acknowledgement of the breakdown of legality in the development of war actions, and, at the same time, that death, as a necessary effect of war, must be carried out in strict compliance with the provisions that regulate the exercise of hostilities by the parties in the conflict.

**Acknowledgments:** This work is part of the results of the research project ID 81 entitled "Reincorporation of insurgency into political processes in Colombia", funded by the Higher School of Public Administration, ESAP, in the 2018 call.

---

relatives of 3 uniformed men, who fell during the FARC attack on an Army military company in Cerro Patascoy (Nariño) on November 21, 1997, with this decision the debate on whether or

not the uniformed men are considered CANI victims was closed. (El Tiempo, 2014).

## REFERENCES

- Arias, A. (4 de 2012). Teoría crítica y Derechos Humanos: Hacia un concepto crítico de víctima. *Nómadas. Revista crítica de ciencias sociales y jurídicas*(36), 1-30
- Badiou, A. (02 de Junio de 2004). <http://www.catedras.fsoc.uba.ar/>. Recuperado el 8 de Diciembre de 2016, de [http://www.catedras.fsoc.uba.ar/: http://www.catedras.fsoc.uba.ar/heler/justiciabadiou.htm](http://www.catedras.fsoc.uba.ar/:http://www.catedras.fsoc.uba.ar/heler/justiciabadiou.htm)
- Berman, H. (2001). *La formación de la tradición jurídica de occidente* (Primera reimpression de la primera edición en español ed.). (M. U. Neira, Trad.) México D.F., México: Fondo de cultura económica.
- Castoriadis, C. (1975). *L'institution imaginaire de la société*. Paris, Francia: Éditions du Seui.
- Comisión Histórica del Conflicto y sus Víctimas (2015) *Contribución al entendimiento del conflicto armado en Colombia*. Bogotá
- Comité Internacional de la Cruz Roja (1998) El derecho Internacional Humanitaria y la protección de las víctimas de la guerra. Recuperado en: <https://www.icrc.org/spa/resources/documents/misc/5tdle2.htm>
- Corte constitucional (2016) Sentencia C-161/2016
- Corte Constitucional, Sentencia C-253A/12
- Corte Constitucional: sentencia C-253/12
- Cyrułnik, B. (2001). *La maravilla del dolor. El sentido de la resiliencia*. (G. González-Zafra, Trad.) Barcelona, España: Granica.
- Cyrułnik, B. (2010). *Me acuerdo...El exilio de la infancia*. (R. Salleras, Trad.) Barcelona, España: Gedisa.
- Cyrułnik, B., Manciaux, M., Sánchez, E., Colmenares, M. E., Balegno, L., & Olaya, M. M. (2002). *La resiliencia. Desvictimizar a la víctima*. Cali, Colombia: Casa Editorial Rafue.
- Derrida, J. (2002). Política y perdón. En A. C. Amaya, & A. C. amaya (Ed.), *Cultura política y perdón* (pág. 246). Bogotá, Colombia: Centro Editorial Universidad del Rosario.
- Diario Oficial (2004) Decreto 4433 Recuperado en: <http://diario-oficial.vlex.com.co/vid/decreto-4433-43217651>
- Dussel, E. (1988). *Ética de liberación en la edad de la globalización y de la exclusión*. Madrid, España: Trotta.
- El tiempo (24 de octubre de 2014) Fallo cerró debate sobre si militares son víctimas del conflicto. Recuperado en: <http://www.eltiempo.com/politica/justicia/militares-son-victimas-del-conflicto/14739906>
- Estivill, J. (2003). *Panorama de la lucha contra la exclusión social, conceptos y estrategias*. Ginebra, Suiza: Oficina Internacional del Trabajo.
- Gehlen, A. (1987). *El hombre . Su naturaleza y lugar en el mundo*. Salamanca, España: Sígueme.
- Gelman, J. (25 de Marzo de 2001). Página 12. Recuperado el 15 de Diciembre de 2016, de Página 12: <http://www.archivo.pagina12.com.ar/2001/01-03/01-03-25/INDEX.HTM>
- Levi, P. (1997). *La Tregua*. Barcelona, España: Muchnik.
- McNeil, E. B. (1992). La naturaleza de la agresión. En E. B. McNeil, & E. B. McNeil (Ed.), *La naturaleza del conflicto humano* (pág. 407). San Francisco Coyoacán, México: Fondo de cultura económica.
- Naciones Unidas (2005) Principios y directrices básicos sobre el derecho de las víctimas de violaciones manifiestas de las normas internacionales de derechos humanos y de violaciones graves del derecho internacional humanitario a interponer recursos y obtener reparaciones. Recuperado en: <http://www.ohchr.org/SP/ProfessionalInterest/Pages/RemedyAndReparation.aspx>
- Nietzsche, F. (1994). *Genealogía de la moral*. Madrid, España: Alianza editorial.
- Poulain, J. (1993 B). *La neutralisation du jugement ou la critique pragmatique de la raison politique*. Paris, Francia: L'Harmattan.
- Presidencia de la Republica (1989) Decreto 094 Recuperado en: <http://www.sanidadfuerzasmilitares.mil.co/?idcategoria=23573>
- Ricoeur, P. (1991). *Finitud y culpabilidad*. (A. G. Valdés., Trad.) Buenos Aires, Argentina: Taurus Humanidades.
- Secretaria General del senado (2000) Decreto 1790 Recuperado en: [http://www.secretariasenado.gov.co/senado/basedoc/decreto\\_1790\\_2000.html](http://www.secretariasenado.gov.co/senado/basedoc/decreto_1790_2000.html)
- Secretaria General del senado (2000) Decreto 1791. Recuperado en: [http://www.secretariasenado.gov.co/senado/basedoc/decreto\\_1791\\_2000.html](http://www.secretariasenado.gov.co/senado/basedoc/decreto_1791_2000.html)
- Secretaria General del senado (2000) Decreto 1793. Recuperado en: [http://www.secretariasenado.gov.co/senado/basedoc/decreto\\_1793\\_2000.html](http://www.secretariasenado.gov.co/senado/basedoc/decreto_1793_2000.html)
- Secretaria General del senado (2000) Decreto 1796 Recuperado en: [http://www.secretariasenado.gov.co/senado/basedoc/decreto\\_1796\\_2000.html](http://www.secretariasenado.gov.co/senado/basedoc/decreto_1796_2000.html)

- Secretaria General del senado (2009) Ley 1279 Recuperado en:  
[http://www.secretariasenado.gov.co/senado/basedoc/ley\\_1279\\_2009.html](http://www.secretariasenado.gov.co/senado/basedoc/ley_1279_2009.html)
- Transicional, C. I. (2012). *El proceso de justicia y paz: compilacion de autos y sentencias de la sala penal de casación penal de la Corte Suprema de Justicia*. Bogotá: Centro Internacional para la Justicia Transicional.
- Unidad para las víctimas. (2025). <https://www.unidadvictimas.gov.co/>
- Uprimny, R. (2011) Ley de víctimas, avances y limitaciones y retos. Recuperado en:  
[www.unperiodico.unal.edu.co](http://www.unperiodico.unal.edu.co)