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Policy and Practice Note

## Official Victims' Registries: A Tool for the Recognition of Human Rights Violations

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### Abstract

Victims' registries are tools traditionally used in transitional justice processes to identify the population that has suffered human rights violations and to guide reparation programmes. Based on the experience of devising an official registry in Colombia, this paper analyses the conditions that make it a valid instrument for documenting human rights violations and for ensuring the recognition of victims. I argue that official registries are useful tools if they adopt appropriate elements (institutional design, the definition of victim, the methodology for analysis) from the outset and if they develop effective implementation. The political, legal, or administrative decisions that are adopted to resolve the challenges of the process have an impact on the utility of the registry as a tool for the recognition of victims and for the later implementation of reparation programmes.

**Keywords:** Colombia; documentation of human rights violations; register of victims; victims

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Victims' registries are instruments traditionally used in transitional justice processes to identify the population that has suffered human rights violations. Fourteen official registries have been established on four continents. Some of them were born of the work carried out by truth commissions (in Argentina, Chile, Guatemala, Ecuador, Brazil, and South Africa); in other cases, this task was given to existing or new government entities which took on the mission of identifying victims of gross violations of human rights (Rwanda, Sierra Leone, Peru, Uruguay, Colombia, Kuwait, Nepal, and Spain). In both contexts, the purpose of the registries is clear: to document the magnitude of human rights violations in a specific context, and to determine and specify the list of beneficiaries of the reparation programmes.

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In the transitional justice field, there has been little interest in analysing the consequences of organizing a victims' registry, perhaps because it is an administrative procedure that supports broader processes. However, merely deciding on the creation of a registry does not immediately make it a valid tool for the documentation of human rights violations. The development of these registries requires a blend of political, legal, and technical decisions. This policy note proposes a framework that organizes the issues that need to be resolved and shows the way in which they have been addressed in a concrete case: the Single Registry of Victims in Colombia, mandated through Law 1448/2011 (the Victims' Law), which became operational in 2012. With more than seven million persons recognized to date,<sup>1</sup> it is the world's largest official victims' registry.<sup>2</sup> Given its magnitude, it illustrates the way in which the Colombian authorities have handled this task so as to understand the challenges of registering victims in contexts where mass human rights violations have taken place. In such situations, an appropriate victims' registry is a means to the end of transitional justice.<sup>3</sup>

### What is a victims' registry and how is it organized?

Following the adoption of United Nations (UN) guidelines (UN General Assembly 2005), the recognition of the right to reparations of persons or groups that have suffered human rights violations has become widespread. Comprehensive reparations, according to the specialized literature (Beristáin 2008: 2, 11; Botero and Restrepo 2005: 44), connect a group of people sharing a certain characteristic (having suffered the violation of their rights) with a desirable legal situation (the restitution of rights). However, academic analysis has not paid sufficient attention to the administrative tools that would permit the realization of the right to reparations (although at a practical level there are initiatives such as Action on Armed Violence (2014)). One of these tools is the victims' registry, the integrity of which lies in the access it gives to individual and collective victims to exercise this right. We understand the official victims' registry as **an administrative procedure that permits named**

- 1 7,821,641 persons had been included in the registry by 1 December 2015. This information is updated monthly and is available at the website of the RNI (Red Nacional de Información para la Atención y Reparación a las Víctimas, National Information Network for Attention and Reparation of Victims) (<http://rni.unidadvictimas.gov.co/?q=node/107>).
- 2 In a recent document, the Carr Center for Human Rights Policy at the Harvard Kennedy School (2014: 18) stated the following: 'We cannot find any other reparation programme in our database that has such an exhaustive list of victimizing acts and with such a large number of victims . . . no other case in our database comes close to the number of victims already included in the Single Registry of Victims.'
- 3 Law 1448/2011 explicitly acknowledges the existence of an internal armed conflict. This decision adopted by the administration of President Juan Manuel Santos is a radical change from the stance of former President Álvaro Uribe, who denied the existence of an armed conflict in Colombia, proposing instead that the violence committed by guerrilla groups could only be considered as 'terrorist acts'. The Victims' Law was made possible by this recognition and is understood by the administration as a pillar of peacebuilding. For example, in a recent speech at the Oslo Forum, President Santos pointed out that 'normally these types of laws are only implemented after a conflict has ended. In our case, the Law is being executed already, with enormous fiscal costs, while the conflict unfortunately continues. For my administration restituting land to dispossessed peasants and offering financial reparations to victims and to millions of displaced families has become another way to conquer peace.' ([http://wp.presidencia.gov.co/Noticias/2015/Junio/Paginas/20150616\\_01-Palabras-Presidente-Republica-Colombia-Juan-Manuel-Santos-Foro-Oslo.aspx](http://wp.presidencia.gov.co/Noticias/2015/Junio/Paginas/20150616_01-Palabras-Presidente-Republica-Colombia-Juan-Manuel-Santos-Foro-Oslo.aspx))

identification of persons or collectives that have suffered the violation of their human rights, with the related objective of ensuring the realization of their right to reparations. This definition emphasizes three elements that merit additional comment:

- a. The design and administration of an *official* registry is the responsibility of the state, and it is thereby appropriate to understand it as an *administrative procedure*, that is, a standardized and ordered sequence of actions that, based on objective criteria, conclude in a decision paralleled by an administrative action. Accordingly, a registry is not merely a list, nor should it be confused with the computing system that supports it. Like all procedures, its effectiveness depends on the degree of access that victims have to it.
- b. *Named identification* is an immediate objective of the registry, consisting of the organized collection of specific information about persons or groups and the violations they suffered. This characteristic differentiates it from other forms of accounting for victims, especially in contexts of ongoing conflict, where the difficulties on the ground necessitate the use of statistical projections or approximations from a combination of sources (CODHES 2009: 1; Internal Displacement Monitoring Centre 2015: 73–9).
- c. The *purpose* of a victims' registry depends on the particular context. Due to the accounts of violations contained in the registry, it can become a repository of memory (Consejo de Reparaciones 2013: 74). It is also common for it to be used as a form of symbolic recognition for victims. In other cases, the information can be useful in criminal trials against the perpetrators of crimes. Notwithstanding these last examples, in the majority of cases, as in the case of Colombia, the effort to identify victims is undertaken in order to determine what population has a right to some kind of reparation.

As an administrative procedure, a registry requires an ordered sequence of actions, a team of public servants to implement them, and a body of resources (jurisprudence, information, data systems) that support the decision-making process. Fig. 1 indicates the key elements that normally guide the design of a registry, elements that, moreover, facilitate the transformation of the registry into a useful tool for the recognition of victims. Fig. 2 summarizes the steps to be taken in the implementation of the registry.

The following is a brief description of the way in which these steps have been addressed by the Colombian victims' registry.

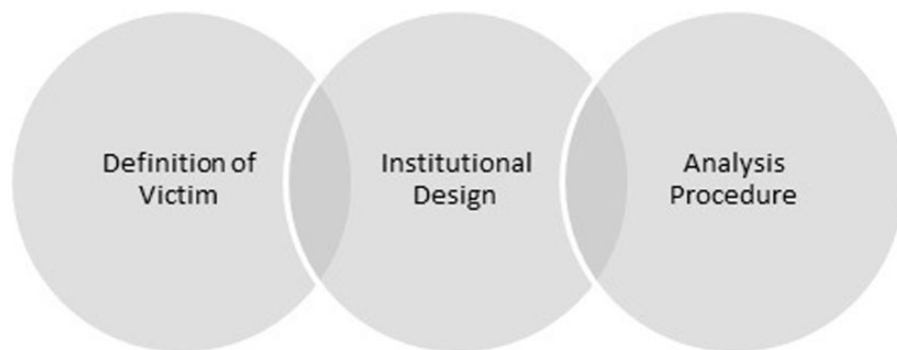
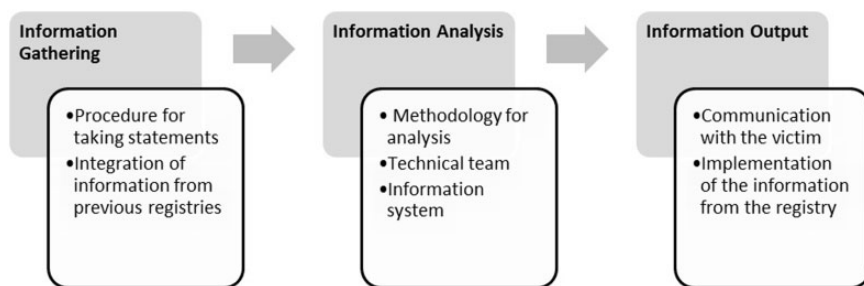


Figure 1. Elements to be established as a basis for the organization of a victims' registry



**Figure 2.** Steps for the implementation of the victims' registry

## Elements to be established

### The definition of 'victim'

The definition of 'victim' that will be used to shape the registry is, first and foremost, a legal issue, since national and international law are taken into account when identifying human rights violations that occurred in a given context. This matter is not exempt from political tension due to the various connotations that definitions may have (Díaz 2009: 148). As recalled by Lozano (2010: 305), the instruments of transitional justice in Colombia have been used with sophistication so as to deny atrocities committed by the state. As such, the way in which political disagreements were resolved can be observed in the concepts chosen as well as in the concurrently developed rules of exclusion.

Unlike in other countries, in Colombia there was no previously existing historical account addressing the conflict in its entirety, so it was decided to adopt the broad definition established by the UN in the Basic Principles and Guidelines (UN General Assembly 2005).<sup>4</sup> Colombian law, in failing to specify which facts are taken into account, follows legal rather than historical criteria when defining its framework of application, thereby employing the widest possible range of victimization categories.

Rules of exclusion are as illustrative as the above-mentioned definitions. In Colombia, the definition has widened from a limited recognition (of only victims of guerrilla and paramilitary organizations) to a universal recognition (Ciurlizza 2010: 22) of all the victims of the internal armed conflict. However, this claim may be undermined by the rule of exclusion,<sup>5</sup> as can be observed in the debate about victims of 'bandas criminales' (criminal gangs). After the demobilization of paramilitary groups midway through the last decade, the Colombian government worked on the assumption of their total disappearance, so adopted this denomination to point out that persistent violence could only be attributed to

4 The UN Basic Principles and Guidelines define victims as 'persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.' This definition is used by Law 1448/2011, article 3.

5 Law 1448/2011, article 3, does not permit the inclusion of victims of common crime and members of non-state armed groups.

organized crime. Therefore, some human rights violations were labelled as criminal acts and their victims could not be included in the registry or access measures of reparation. In contrast, independent research denounced failures in demobilization policy and argued that 'new' criminal gangs continued paramilitary groups' activities (Granada et al. 2009: 495; Centro Nacional de Memoria Histórica 2013: 186–9), so victims and civil society organizations demanded acknowledgement of victims of criminal gangs in the official registry. This debate was solved by the Colombian Constitutional Court, which ordered that the state analyse every case individually applying objective criteria in order to determine if the facts narrated maintained a 'close and sufficient relationship' with the internal armed conflict (Judgment C-253 A/2012), thereby avoiding categorization of the perpetrator (in this case, a criminal gang) which would have been a basis for arguing for non-inclusion of those victims in the registry (Edict 119/2013). In other words, for the Constitutional Court the recognition of a conflict victim does not depend on the identity of the perpetrator but on the characteristics of the violation. This example shows that the definition of victim can be modified as a result of legal or political decisions<sup>6</sup>—just as, for example, in the case of the proposal of the guerrilla within the current peace negotiations between the government and the FARC–EP guerrilla to recognize 'victim combatants and, particularly, political captives and prisoners' (FARC–EP/Colombia Peace Delegation 2014).<sup>7</sup>

### Institutional design

The body responsible for this registry, whether it is an existing body or a new one, will face a problem from the outset: mistrust. Mistrust arises because different social sectors—including the victims themselves—perceive the state, along with other armed actors, to be responsible for human rights violations in the conflict, and therefore do not trust that it can create a registry objectively. Rather, some consider that this process will make victims invisible, particularly in the case of victims of violations committed by state agents. Mistrust can be reversed only if the registry's independence is guaranteed. Two conditions need to coincide to obtain an impartial registry: an appropriate institutional design, and an objective analysis procedure.

In some contexts, confidence is achieved when the registry is operated by an autonomous body staffed by people with ethical authority and acknowledged independence (as is the case with some truth commissions). When the task of the registry is assigned to a government agency, however, the challenge remains. Dividing tasks between different institutions is a way that has been explored to introduce some independence into the process. In Colombia, the Unit for Attention and Reparation of Victims (hereafter, the Victims' Unit), created in 2011 (Law 1448/2011, article 154), operates the Single Registry of Victims with one exception: the statement-taking process has been entrusted to the Public Ministry, composed of three autonomous entities in charge of protecting civil rights. In this way, the Victims' Unit does not define at the outset who is eligible or ineligible to request inclusion in the registry, and consequently has the obligation to evaluate every statement it receives, being unable to hinder access to information which is potentially uncomfortable for the state. This approach was adopted due to the denunciations by civil society organizations of

6 See Rivas (2011) for a similar analysis in the case of Peru.

7 Since 2012 the Colombian government and the FARC–EP guerrilla have held peace negotiations in Havana, Cuba, following a five-point agenda. On the issue of 'victims' rights', this proposal seeks to extend the definition of victim recognized by Colombian law.

the high incidence of under-reporting in procedures of the Single Registry of Displaced Populations (Registro Único de Población Desplazada), the predecessor of the Single Registry of Victims and one of its main sources (CODHES 2012: 11). However, an institutional design is not in itself enough: to ensure the independence demanded by victims, it should be complemented with the following measures.

### Analysis procedure

The core of the procedure—and the second condition for an independent registry—is the information analysis included in the statements. The aim of the procedure is to make the decision whether or not to include a person in the victims' registry. Given its importance, this procedure should accurately describe the criteria and sources that will be used for the analysis, and be published. These requirements seem self-evident, but they are not always met in practice. In Colombia, the Constitutional Court on many occasions challenged the assessment practices of the Single Registry of Displaced Populations when it denied inclusion in the registry on the basis of information unrelated to the dynamics of the conflict, for example, when the site of a victimizing event did not coincide with the place where the victims received benefits from government social programmes (Judgments T-496/2007 and T-215/2009), or where they voted (Judgment T-447/2010). The Victims' Law stipulates a different procedure by assuming that decisions should be based on the verification of the information included in the statement (that is, violations of human rights) (Decree 4800/2011, article 35) using 'legal, technical, and contextual elements' (Decree 4800/2011, article 37). The criteria and methodology for analysis were defined by the government for individual victims (Unidad para las Víctimas 2012) and collective victims (Unidad para las Víctimas 2013), and are available for reference on the website of the Single Registry of Victims. Both documents describe four procedural phases:

- a. initial analysis of the application (a review of compliance with the formal requirements);
- b. identification of the individual or collective;
- c. verification of the facts;
- d. conclusion (decision whether or not to include the applicant in the registry).

Since the third step is crucial, the analysis would begin by considering the information set out in the facts provided by the victim in the statement, followed by an assessment of contextual information and the application of the case law of the Constitutional Court, leaving aside other types of considerations that are not related to the dynamics of the conflict.

### Administering the registry

The elements set out above determine the registry's approach. As an administrative procedure, its administrative implementation has important practical consequences for the recognition of the victims. Best practices expressed in the institutional models to preserve autonomy and inclusive definitions remain mere intentions if they do not, in practice, incorporate the expectations of victims, whose points of view do not always overlap with the bureaucratic logic of the public administration (Rivas 2010: 46). Ultimately, the procedure points to a willingness to recognize victims, so it is important to consider the challenges that victims' registries should resolve.

### Gathering of information

A determination of the origin of information is important for the eventual recognition of victims. Usually, the principal source of information is the victims themselves. Additionally, when the administration of a registry begins, it is common that other government, civil society, or even international entities will have already documented human rights violations, so that the remaining task is to determine the use of existing information.<sup>8</sup> Colombia opted for a mixed method: to collect statements from victims directly, and to integrate pre-existing information from official registries other than the Single Registry of Victims.<sup>9</sup>

On the one hand, the statements allow for the victims' accounts to be organized in a combination of categories that prove useful for a subsequent analysis, a more useful method than unformatted testimony. In this case, the Victims' Unit designed the testimony format (Decree 4800/2011, article 29), including the information necessary to admit the application to the assessment process, identify individual or collective victims, and understand the harm suffered. Well-designed formats facilitate the proper organization of the information gathered.

In choosing to accept statements as a primary source of information, the main challenge becomes guaranteeing victims' access to the process. Experience shows that the inclusion of victims increases if the collection of statements occurs in locations nearest to the affected population. In Colombia, this is, for the most part, resolved because the Public Ministry has offices in all the municipalities of the country. In places where there is a particularly high demand, registration days have been organized where officials of the Public Ministry travel to where victims are. Even though the body in charge of managing the registry does not directly collect the statements of those applying to the registry, it participates actively in the training given to officials responsible for taking the statements, based on the principle that sound preparation facilitates the adequate collection of information on violations. This preparation includes legal aspects (the normative framework on registries and reparations), and technical aspects (use of statement-taking forms and interviewing techniques).

Special strategies were also developed to provide a differentiated treatment for victims of sexual violence, aiming to overcome a double difficulty: that of the victims in narrating what happened, and that of the registrars in identifying this type of situation. In 2013, the Victims' Unit and four women's rights institutions (SISMA Mujer, Iniciativas de Mujeres por la Paz, Ruta Pacífica de Mujeres, and Casa de la Mujer) developed a project with combined strategies oriented towards victims of sexual violence (Gobierno de Colombia 2014a: 152). To build confidence, victims' networks encouraged some women to narrate their experience and to give a statement for the Registry. Psychological assistance was also provided. In this regard, the registry is an expected output but not the core of a wider process of emotional recovery. Although it is probable that many of these crimes are still hidden,

8 Registries worldwide are principally based on statements or requests presented by victims. In Peru and Colombia governments also accepted information from other official registries. Only Chile and Guatemala have used databases provided by non-governmental actors. See *Sloboda and Minor (2012)* for a wider discussion of these options.

9 Decree 4800/2011, article 24, mentions 'registries and information systems' managed by ten governmental agencies as sources of the Single Registry of Victims.

Colombia's registry is gradually overcoming the under-recording of acts of sexual violence committed within the context of the armed conflict.<sup>10</sup>

On the other hand, experience gained from previous registries facilitates the elaboration of a master registry, to the benefit of victims. However, the integration of registries introduces technical problems, since these sources are created for different purposes, and usually organize information in different ways. As such, the integration of data into a unified system is not always simple and straightforward. One possible option is to integrate the registries without modifying the original databases, defining instead which of their fields are useful for the validation of information from victims. Colombia took a different path, improving the information in the registries before integrating them. The first option is advantageous for being speedy, while the second one favours improved information about victims. In Colombia, six information sources managed by four governmental institutions (of ten mentioned in regulations) have been integrated into the Single Registry of Victims. Selection of these sources was guided by a specific protocol, which also established criteria to improve the quality of data before it is incorporated into the Single Registry of Victims (for a description of the process see *Gobierno de Colombia 2014b*: 30). Technical challenges in this process included the identification of complementary databases to complete information about victims; procedures to standardize recording of names, numbers, dates, and so on in original registries; and criteria for making decisions on incomplete or contradictory records.

### Information analysis

This is one of the critical points where the logic of victims' narratives does not coincide with the administrative rationale of state entities in charge of registries. In the first of these, lived experience is especially important, primarily because of the harm and pain inflicted on the victims; the second requires evidence to corroborate the account of events. Bodies in charge of the registry have the power to bring these two together by making the administrative criteria more adaptable. In the case of Colombia, the law mandates that victims' accounts are accepted in good faith, so that the state is only responsible for gathering and analysing the evidence that confirms or contradicts the facts stated in the declaration (Law 1448/2011, articles 5, 61, and 158). When assessing the statements, in addition to using the victims' own accounts, the analysis team makes use of contextual information about the area where the events mentioned in the declaration happened, to corroborate the account. In addition, the analysis team has access to press information and to reports by non-governmental and international agencies, which provide additional data on events of victimization throughout the country. These basic corroboration methodologies seem a good practice in order to minimize risk of error.

Experience shows that a degree of flexibility in the administrative logic is more suitable for achieving an effective recognition of the victim population. This conclusion can best be appreciated when difficult cases are being analysed. The reality of victimizations has always proved more complex than the legal definitions. This tension has required a decision to be made on how to tackle cases that do not fall clearly within the prescribed legal definitions.

10 The registry includes 12,572 people who suffered crimes against sexual freedom and integrity (by 1 December 2015). Before the Victims' Law, there were few statements presenting these facts (670 in 2008; 602 in 2009; just 328 in 2010). After 2011, statements received by the Victims' Unit have notably increased (1,385 in 2012; 2,473 in 2013; 4,619 in 2014; 2,673 in 2015) (*RNI 2015*).



By using legal elements and examining the context of the conflict, the Victims' Unit has established an internal dynamic for the analysis of these particular cases. In addition, the most complex cases are studied in a working group with the participation of other institutions, which define specific evaluation criteria, always paying attention to legal standards and contextual analysis. Decisions adopted for these cases have been oriented towards broader definitions of victim and victimization.<sup>11</sup>

A technical team assesses the statements. In the author's experience, training this team in the new criteria established in the law was one of the principal challenges of the Colombian registry. These professionals had experience in the previous registry of the displaced population, when the analysis employed exaggerated the use of 'technical evidence' to 'demonstrate' that the victims had given statements with false information. Successive training and close supervision were necessary to change this habitual reasoning and replace it with an analysis that assumes the narrative of the victims as truthful and is based on the use of legal and contextual arguments. The success of this transformation is evident in the increased percentage of cases included in the registry.<sup>12</sup>

An easily-accessed and constantly improved information system facilitates the analysis of the statements (for instance, the online consultation with diverse sources of information) and the supervision of the process (each analyst's work can be observed). The challenges of this task are numerous, but in this note it is not possible to go into more detail.

### Information output

The registry is not an end in and of itself, but it has an instrumental function. The information it contains serves two purposes: to communicate to victims that they are recognized by the state, and to administer benefits to those who qualify for recognition.

The manner by which the victim is informed of the decision whether or not he or she will be included in the registry is as important as the decision itself, as it represents an opportunity for the state to express its solidarity for the pain the victim has suffered. If reparations can be understood as a message of acknowledgement of the dignity and rights of victims (Correa 2014: 12), communication of the decision about the registry—be it oral or written—constitutes a symbolic act that can either affirm or contradict the intended general message. In Colombia the communication about inclusion in the registry is simply an administrative notice, and, as such, it does not imply any symbolic element that would communicate a message of commitment and investment in the dignity of victims. However, this message is later given to victims by the Victims' Unit once the reparation process is initiated, by way of a personalized letter expressing the state's solidarity and its commitment to reparation. On some occasions, this communication is given during symbolic acts with groups of victims present.

- 11 For example, in Colombia it is usual to understand forced displacement as the forced relocation within the borders of the country due to coercion and violence. This definition, adopted by the Constitutional Court, was challenged by statements from victims who took refuge in neighbouring countries. After analysis, the Victims' Unit decided to include them in the register, modifying the initial definition.
- 12 Between 1997 and 2011, the average inclusion rate in the Single Registry of the Displaced Population was 78.4 per cent of the cases submitted, although in the years prior to Law 1448/2011 the registration hit historic lows: 67.4 per cent in 2009, and 61.1 per cent in 2010. Between 2012 and 2014, under the new guidelines of the Single Registry of Victims, the average inclusion rate for the displaced population rose to 92.9 per cent.

The use of information from the victims' registry for the ends defined in the legal framework presents particular challenges. For the purpose of the procedure, the registry needs to collect only the information necessary to assess the events suffered by the victims, but generally those in charge of the reparation measures will require additional information to that included in the registry and need to make additional efforts to obtain it. The possibility for disagreements is great and can cause difficulties for later tasks, for example, when people's identity documents are not entered in the registry because they were not on hand or were forgotten, or simply because this information was not necessary for the initial assessment, despite being a legal requirement for the receipt of benefits. Problems also occur when there is not a reliable listing of victims' relatives, and it is necessary to determine who will receive compensation. That list is not necessary for the registry, but is indispensable for implementing the reparation measure.

### Final reflection

The experience described in this policy note indicates that, in contexts of mass human rights violations, a victims' registry can become a useful instrument for the recognition of victims if appropriate decisions with regard to the definition of victim, institutional design, and the methodology of analysis are adopted from the outset and the administrative tasks for the implementation of the registry are carried out effectively. It has been shown that the registry definitions as well as their implementation can be modified and improved in practice, to serve legal, political, and technical decisions. Consequently, it is not enough to decide to create a registry for the adequate mapping of the magnitude of human rights violations in the context of conflict; that purpose is achieved only when the operation of the registry is reviewed in order to determine if it is guaranteeing a broad recognition of victims, and if the information that it contains will prove useful for reparation programmes.

The emphasis on the legal and administrative aspects should not hide the fact that a register of victims is not only a technical instrument. Although they have not been discussed in this note, the recognition of a person or social group as a victim has important policy implications: the state asserts the existence of the violations committed, undertakes to establish an official memory of the victims and assumes the responsibility of redress for those who were affected. Taken as a whole, these fundamental tasks are important contributions to the current peace process in Colombia.

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