

Human Rights Centre Clinic

Guarantees of Non-Recurrence in Transitional Justice

Partner: Dejusticia

About Dejusticia

Founded in 2005, [Dejusticia](#) is a Colombia-based research and advocacy organisation dedicated to the strengthening of the rule of law and the promotion of social justice and human rights in Colombia and the Global South. Dejusticia promotes positive social change by producing rigorous studies and fact-based policy proposals, carrying out effective advocacy campaigns or litigating in the most impactful forums, and designing and delivering education and capacity-building programs.

Dejusticia, believes that academic work can be committed to social justice and can contribute to effecting change. It applies an 'amphibious' approach to its work, i.e. it dives deep into academic and policy-design research and writing with a clear sense of how such work can and will have an impact on direct action and advocacy.

Project overview

To provide guarantees of non-recurrence (GNR) after periods of massive violence or systematic human rights violations is one of the main obligations of States and one of the pillars of transitional justice.

GNRs are an integral part of the Peace Agreement between the Colombian government and the FARC guerrilla. Far-reaching prevention measures, such as rural reform, can be seen as GNRs. At the same time, GNRs are part of the measures that those who have committed conflict-related international crimes must provide in order to qualify for lower criminal sanctions or even amnesties or waivers of criminal prosecution. However, in practice GNRs are often reduced to promises not to commit crimes in the future.

The Human Rights Centre Clinic will examine what Colombia has done in terms of GNRs to shed light on the failures to date and highlight opportunities for future improvement. The project will also study the experiences of other transitional justice processes to improve the understanding of how to prevent systematic and massive human rights violations in Colombia, as well as in future transitional justice processes elsewhere.

Background

To provide GNRs after periods of massive violence or systematic human rights violations is one of the main obligations of States and one of the four pillars of transitional justice. GNRs are primarily preventive and refer to the obligation of States to adopt a combination of measures to reduce the likelihood of recurrence. At the same time, GNRs are a form of reparation for victims and in that sense also backward looking.

Even though the former UN Special Rapporteur for Truth, Justice, Reparation and Guarantees of Non-Recurrence, Pablo de Greiff, dedicated one of his [thematic reports](#) to the conceptualization of GNRs (in 2015), this is by far the least developed pillar of transitional justice. However, awareness of their crucial importance is increasing, as there is a growing realization that prevention of future violence is crucial for successful transitions to peace. There is also an incipient discussion that GNRs might have transformative potential and could include measures of distributive and redistributive justice and thereby provide a means to address the root causes of armed conflict.

In Colombia, GNRs are an important part of transitional justice. The Victims' Law, that aims to provide integral reparation to victims of the Colombian armed conflict, declared in [Article 150](#) that “[t]he Colombian State will adopt measures conducive to achieve the dismantling of the economic and political structures that benefited from and supported the illegal armed groups, with the aim to ensure the realisation of guarantees of non-recurrence.”

Despite this recognition of the importance of GNRs, in practice they have received very little attention. Nevertheless, GNRs are also an integral part of the Peace Agreement between the Colombian government and the FARC guerrilla. Far-reaching prevention measures such as those intended to implement the rural reform agreed upon could be seen as GNRs. At the same time, GNRs are part of the measures that those who have committed conflict-related international crimes need to provide in order to qualify for the benefits of low criminal sanctions or even amnesties or waivers of criminal prosecution. However, in practice GNRs are often reduced to promises not to commit crimes in the future.

What this shows is that the preventive, transformative and reparatory potential of GNRs is recognised but underexplored and far from fully realised in practice.

Project Output

The HRC Clinic project's findings will be presented in two blog posts in March and May 2023 (1,000 words each) and a 10,000-12,000-word report, which will be submitted to Dejusticia upon completion in June 2023.

One part of the project will focus on Colombia and investigate what Colombia has done in terms of GNRs to shed light on the failures to date as well as highlight opportunities for future improvement. To make recommendations for the definition and implementation of GNRs in Colombia, the project will also identify the experience of other transitional justice processes with GNRs, as well as provide an overview of the

state of the academic debate on this, to improve the understanding of how to prevent systematic and massive human rights violations in Colombia, as well as in future transitional justice processes elsewhere.

In addition to desk-based research that analyses primary and secondary sources, the Clinic Team will carry out interviews of relevant stakeholders, both in Colombia and internationally. These will include magistrates at the Colombian Special Jurisdiction for Peace (SJP), legal representatives of victims before the SJP, officials in the Victims' Unit and (former) members of transitional justice mechanisms in other countries and of relevant international organizations, such as the UN or the International Centre for Transitional Justice. Dejusticia will facilitate these contacts.

The report will describe the current understanding of and debate on GNRs, identify the most important international practice, critically assess the Colombian approach to date, and make recommendations for a better understanding and use of GNRs to prevent gross violations of human rights.

The aim of this project is to create a deeper understanding of the full potential of GNRs to inform Dejusticia's future advocacy work and research. Understanding GNRs in Colombia is essential not only for the implementation of transitional justice mechanisms but also as a tool for understanding and preventing current violence.

Timeline

Phase 1: November – December 2022:

- Preliminary research, understanding the project and developing research/report outline.
- Identifying a list of experts for interviews and questionnaires.
- Securing ethical approval, if necessary.
- Outline and bibliography to be submitted to Dejusticia for comments.

Phase 2: January – March 2023

- Carrying out the interviews online.
- Research and data gathering.
- Report writing.
- Submission of the first full draft to Dejusticia.
- Blog post n. 1, to be posted on Dejusticia and the HRC's websites.

Phase 3: April – June 2023

- Revision and finalising the report based on input from partners.

- Potential presentation of the findings at an Essex Transitional Justice Network event at Essex and in a webinar to an international audience.
- Blog post n. 2.

Essential sources

- UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, "[Report on Guarantees of Non-Recurrence](#)", A/HRC/30/42, 2015.
- Roht-Arriaza, Naomi, 'Measures of Non-Repetition in Transitional Justice - The Missing Link?', in: Gready, Paul, Robins, Simon (eds) *From Transitional to Transformative Justice*, (Cambridge CUP 2019), 105-130.
- Dancy, Geoff; Wiebelhaus-Brahm, Eric; 'Bridge to Human Development or Vehicle of Inequality? Transitional Justice and Economic Structures', (2015) 9 *International Journal of Transitional Justice* 51–69.
- Sharp, Dustin, 'Addressing Economic Violence in Times of Transition: Towards a Positive-Peace Paradigm for Transitional Justice', (2012) 35 *Fordham International Law Journal* 780-813.
- Mayer-Rieckh, Alexander, 'Guarantees of Non-Recurrence: An Approximation,' (2017) 39 *Human Rights Quarterly*, 416–448.
- Davidovic, Maja, 'The Law of 'Never Again': Transitional Justice and the Transformation of the Norm of Non-Recurrence', (2021) *International Journal of International Law* 386-406.
- Sandoval-Villalba, Clara, 'Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition,' in *Justice Mosaics: How Context Shapes Transitional Justice in Fractured Societies*, ed. Roger Duthie and Paul Seils (New York: International Center for Transitional Justice, 2017).
- Compilación de informes presentados por la Iniciativa Barómetro del Instituto Kroc de la Universidad de Notre Dame sobre la implementación del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera. Disponible en: <https://peaceaccords.nd.edu/barometer/colombia-reports?lang=es>
- Compilación de informes de la Secretaría Técnica del componente internacional de verificación del Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera. Disponible en: <https://www.verificacion.cerac.org.co>

Focal Point

- Paola Molano Ayala pmolano@dejusticia.org, Coordinator of the Transitional Justice area, Dejusticia