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De Waardt, Mijke; Weber, Sanne

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Beyond victims' mere presence: an empirical analysis of victim participation in transitional justice in Colombia

Mijke de Waardt, INTERVICT, Tilburg University, M.F.deWaardt@uvt.nl
Sanne Weber, University of Birmingham, S.Weber@bham.ac.uk

Abstract

Whereas victims' rights and demands have gained attention in practice and scholarship of transitional justice (TJ), victims are at best consultees and witnesses, not decision makers. Victims' participation as political actors, and the impact of socio-political participation on survivors is still an under-researched area in TJ. This article provides an analysis of how victims' participation is given shape in the everyday functioning of Colombia's Victims' Law. This law offers an excellent case to examine this, since it provides an ongoing and ambitious TJ mechanism with a detailed framework for participation. This allows for a better understanding of this phenomenon in practice, beyond the understanding of victim-centred justice as the mere presence of victims. This article critically engages with victim-centred TJ theories which are based on long-held assumptions of how participation will lead to ownership and citizenship. It moreover explores the impact that participation throughout the different phases of non-judicial TJ procedures has on victims. It asks whether their engagement means that TJ processes indeed respond better to victims' needs, whether victims feel a greater ownership of these processes as a result, and whether victims even want to participate. It concludes by reflecting on the implications for victim-centred TJ, by explaining that participation should privilege genuinely participatory processes which take survivors and their agency as

a starting point. This requires recognising and building upon victims' pre-existent internal organisational and decision-making processes and timeframes, to create a more horizontal way of relating.

Keywords: Colombia, participation, reparations, Transitional Justice, victim-centred

Introduction

The latest Colombian peace process (2012-2016) between the government and the FARC guerrillas has been promoted as paradigm-changing in the field of conflict resolution, especially for including victims in the negotiations. This contrasts with other countries, where peacebuilding and transitional justice mechanisms were long designed by small circles of international experts and advocates and did not reflect the interests of victims¹ or local civil society. While these groups remained largely invisible during the many previous peace negotiations in Colombia, they were now crucial interlocutors (Rettberg 2014). The country is therefore the international showcase for integrating lessons learned regarding local meanings of justice and victim participation. The basis for participation, however, had already been laid. Colombia's unique Victims' Law (Law 1448) of 2011 created an ambitious institutional framework for the implementation of land restitution and reparation,

¹ There has been considerable debate about the use of the term 'victim' in transitional justice (e.g. Mamdani 2002; McEvoy and McGregor 2008; Laplante and Theidon 2007b; Rombouts 2002; De Waardt 2013), as it may connote innocence, passivity and an apolitical attitude which does not do justice to survivors' multiple experiences and initiatives to address legacies of violence. The term might also not be useful in promoting survivors' agency in post-conflict situations. Although we fully agree with these arguments, the terminology used in the theory on 'victim-centred transitional justice' and the victim participation framework of the Victims' Law made it hard to avoid the term throughout this article. We therefore mainly use the term 'victim', although we occasionally talk about 'survivors'.

and prescribes participation of victims in the design, implementation, and evaluation of public policy for victims.

This article starts from the premise that because of the increased attention for victims' participation in justice and reconciliation mechanisms, a critical analysis is needed of victims' role in and impact upon transitional justice (hereafter TJ) procedures. Whereas victims' rights and demands have gained attention in practice and scholarship, leading to the acceptance of the need for 'victim-centred transitional justice' to make these processes more meaningful for victims, the common approach is still often based on narrow or superficial understandings of participation. Initiatives for and debates about increasing victims' participation have been dominated by attempts to allow survivors to share their eye-witness testimonies during criminal procedures or truth-finding programmes, or enable consultations about victims' needs and demands regarding TJ mechanisms. Yet, as we will argue in this article, the goals of victim participation in recent calls for victim-centred transitional justice are more ambitious than simply acknowledging victims' presence in TJ proceedings.

Survivors' participation as decision-makers and as political actors in TJ procedures (García-Godos 2016) and the impact of socio-political participation on survivors is an under-researched area in TJ. In contrast to the often theoretical discussions about the need for victim participation, based on idealised or normative assumptions about victims' impact on post-conflict societies, this article provides an empirical analysis of how victims' participation is given shape in the everyday functioning of Colombia's Victims' Law. The Victims' Law offers an excellent case to

examine this, since it provides an ongoing and ambitious transitional justice mechanism with a detailed framework for participation. This allows for a better understanding of this phenomenon in practice, beyond the understanding of victim-centred transitional justice as the mere presence of victims. In doing so, this article critically engages with victim-centred approaches to TJ which are based on long-held assumptions of how participation will lead to ownership and citizenship. It moreover explores the impact that participation throughout the different phases of TJ procedures has on victims. It asks whether their participation means that TJ processes indeed respond better to victims' needs, leading to a greater sense of ownership as a result, and whether victims even want to participate.

This article is based on empirical research about the implementation of the Victims' Law in several locations in Colombia, including Bogota, Medellin and Valledupar where researcher A worked between June and October 2015, and two communities in Colombia's Caribbean Coast where researcher B worked between August 2015 and April 2016, with a return visit in May 2017. Methods included semi-structured interviews and follow-up and informal conversations with victims, their representatives and state and civil society stakeholders, focus groups, and participant observation. In relation to the interviews, researcher A has conducted interviews with eleven victims and with thirteen stakeholders. Researcher B conducted interviews and focus groups with 32 community participants and 15 non-community stakeholders.

This article proceeds as follows: it starts by explaining the concept of victim-centred transitional justice and its assumptions about how participation will create

ownership and citizenship. It then briefly describes the context of conflict and TJ in Colombia, after which it moves on to the empirical analysis of the reality of victim participation in the implementation of Colombia's Victims' Law at the municipal and local level. It concludes by reflecting on the implications for victim-centred transitional justice by explaining some of the shortcomings in the implementation of victim participation and suggesting steps to overcome these.

Victim-centred transitional justice: participation, ownership, and citizenship

In the past two decades, TJ has become an important field of practice and study that aims to understand how societies that have experienced periods of human rights violations during a war or authoritarian regime should best deal with the past (for an overview see Roht-Arriaza 2006; Teitel 2008). In order to understand the emergence of victim-centred TJ, it is important to briefly discuss some of the limitations of TJ here. TJ has often been critiqued for being geographically and culturally distant from the persons affected by conflict, being implemented through 'state-like' structures that do not necessarily respond to the local social reality, survivors' needs and their local understandings of justice and initiatives to address legacies of violence (Weinstein and Stover 2004; Lundy and McGovern 2008; McEvoy 2008; McEvoy and McGregor 2008; Robins 2013). Partly resulting from the strengthened role of international actors in TJ processes, some scholars have argued that TJ has become a 'donor-driven project' (Oomen 2005), which relies too much on international best practices (Miller 2008) and neglects the voices of victims and the communities affected by violence. Some contend that international involvement

inevitably raises fundamental questions about 'local ownership' of post-conflict practices (Donais 2009). In response to these shortcomings, consultations of local affected communities are increasingly implemented to legitimise TJ processes (Lundy and McGovern 2008), and researchers from different disciplinary backgrounds have embraced localised approaches to TJ to explore its possibilities and limitations at particular times and places.

Conflict survivors have not always been at the centre of TJ or criminal procedures. Trials, aiming to establish responsibility for the crimes, tend to focus predominantly on perpetrators. This can cause revictimisation of victims and witnesses who are forced to recount their traumatic experiences to judges and defence lawyers who are only interested in those details that enable them to successfully prosecute cases. This eventually serves the 'framing' of victims' stories into a TJ narrative which neatly delineates good from bad, victims from perpetrators—a narrative which not always leaves space for victims' subjective experiences (Bloomfield, Barnes, and Huyse 2003; McEvoy and McConnachie 2013). Although truth commissions are regarded as more victim-centred than prosecutions, evidence suggests that truth-telling can be a traumatic rather than healing experience, as survivors often relive painful experiences, while testifying tends to raise expectations of justice, reparations and reconciliation that are not always met (Hamber and Wilson 2002; Laplante and Theidon 2007a; de Waardt 2013; Millar 2015).

'Victim-centred' TJ aims to counter this tendency to 'use' survivors' stories to legitimise more general principles and processes which can be alienating,

retraumatizing and disempowering to those testifying. It calls for placing the people affected by conflict, their testimonies and needs at the heart of the planning, decision-making, implementation and management of TJ processes (Lundy and McGovern 2008). This intends to increase survivors' perception of justice being done and enhance healing and reconciliation (Weinstein and Stover 2004; Lundy and McGovern 2008; Buckley-Zistel and Zolkos 2012). The result is a more prominent role for victims, for example in criminal justice proceedings, where survivors in some cases have been able to participate as civil parties (Burt 2016; Hinton 2016). Also the United Nations have adopted principles to facilitate victims' involvement, by committing to 'assess and respect the interests of victims in the design and operation of TJ measures' (UN Security Council 2004). The International Criminal Court (ICC) at its turn allows victims to express their own views and concerns during proceedings and enables them to claim reparations for the harm suffered (Rome Statute 1998). These spaces intend to improve survivors' experience of procedural justice through a greater participation in the process. Active and meaningful participation is thus meant to give survivors a greater sense of ownership over these processes, by being able to influence the TJ processes that affect them (Vinck and Pham 2008). Ownership therefore entails more than simply participating; instead, it should give victims a sense of control over the content, process and outcome of TJ mechanisms.

Yet in spite of these developments to increase ownership, victim participation often boils down to their mere presence, through giving victims a role as witnesses in criminal trials or as statement-givers in truth commissions. Victims'

beliefs are sometimes represented by NGOs, which in some cases can still be perceived as far removed from grassroots communities and problems (Lundy and McGovern 2008). Other authors have critiqued the way in which research on victims' participation has often mainly addressed their satisfaction with criminal justice procedures (Pemberton, Winkel and Groenhuijsen 2007), or their official treatment according to TJ procedures (García-Godos 2016). Victims are at best consultees and witnesses, not decision makers,² and therefore their ownership over these processes remains limited. The actual and potential participation of victims and their organisations in TJ procedures remains little explored (Strassner 2013; de Waardt 2016).

The goals of victim participation in victim-centred approaches to TJ are nevertheless more ambitious than simply increasing victims' presence in these processes. Echoing philosophies of (human) development, participation is regarded as a necessary step for the empowerment of the beneficiaries of policies. Participation in this view is presented as a political right to equal participation, which will enhance beneficiaries' capabilities and agency to advocate for their own rights (Cornwall 2000). Through participation in TJ mechanisms, it is hoped that survivors will also become able to participate in the formulation of other norms, laws and policies that affect them (Bundschuh 2015). This connects debates on participation to citizenship. Citizenship is closely related to a political practice, which involves the active demanding of rights and the influencing of governance through civic duties of

²Moreover, these consultations are not necessarily binding. In Tunisia for example, participants felt disillusioned because their interests were not reflected, which made transitional justice still a top-down process (Kurze, Lamont and Robins 2015).

participation (Jelin 1996; Cornwall 2000). Participation in development and TJ thus aims to convert people who were previously excluded into rights-bearers, now able to influence governance (Mohan and Hickey 2004; McEwan 2005; Roht-Arriaza and Orlovsky 2009). In this line of ideas, participation in TJ mechanisms is assumed to pave the way for the participation of survivors as equal citizens in the post-transitional society (Bundschuh 2015), in contrast to the failure to guarantee their basics rights as citizens during conflict. This is meant to overcome the often-criticised tendency of TJ to rob victims of their agency, instead strengthening their political subjectivity, acknowledging and respecting their 'capacity to think, to speak, to act, and to revolt' (Madlingozi 2010: 209).

In order to be able to perform this sort of active participation, which allows people to acquire citizenship skills, certain preconditions need to be in place. First, political participation has material and socioeconomic preconditions. This means that people must have work, education, and be in good enough health to be able to exercise their right to participate (Bundschuh 2015). As we will see in this article, participation sometimes implies costs for those participating, which undermines these material preconditions to participate. Secondly, avenues must be in place to make participation effective and meaningful. Such avenues can be provided by the state, in so-called 'invited spaces', or they can be 'popular spaces' which already existed in the communities, for example in the form of community organisations (Cornwall 2004). It is often argued that participation in such spaces, including invited spaces created for victim participation in TJ mechanisms, can create habits of interaction with the state that can be used in other contexts (Roht-Arriaza and

Orlovsky 2009). Yet although invited spaces can be an important avenue for transformative participation, they involve the participation of a heterogeneous array of actors and are often imbued with power relations. Simply participating therefore does not mean that participants' voices are automatically taken into account. Although popular spaces are not free from power dynamics either - for example along gender, class or ethnic lines - since these spaces originated out of local demands they can be expected to better reflect local interests than invited spaces with externally set agendas, and better adhere to local decision-making processes. Participation in any of these spaces requires participants to possess skills for effective engagement, to be able to acquire the necessary information for this, articulate their own experiences and needs, and actively participate in decision-making processes. Political agency is therefore needed, as well as the willingness of the state to effectively open up decision-making processes (Cornwall 2000; 2004).

One measure that is increasingly being used worldwide to expand citizens' influence is participatory budgeting. This measure enables non-elected citizens to take decisions on how public resources designated for their community will be spent. Participatory budgeting first arose in a number of Brazilian cities in the late 1980s (Goldfrank and Schneider 2006). During the 1990s, it spread to other parts of the continent. At the beginning of the new millennium, participatory budgeting projects were initiated in Europe, and more recently, through development cooperation, also in Africa (Sintomer, Herzberg and Allegretti 2013). Yet in spite of its global presence, including in countries in transition, the potential of participatory budgeting as an instrument to make TJ respond better to the local social reality

remains unexplored in literature. This is surprising, since participatory budgeting has ‘the potential to empower and dignify victims, to redress breaches of human rights, and to fulfil ESRs [economic and social rights] at a local or regional level, especially in situations where specific geographical areas have previously been marginalized’ (Szoke-Burke 2015: 489). As such, participatory budgeting initiatives with victims, as is intended in Colombia's Victims’ Law as we will see below, can be a starting point for examining victim participation beyond their mere presence, linking debates about the objectives of citizen’s participation in general and victim-centred TJ. It could encourage more localised decision-making and empower local victims’ socio-political role. At the same time, participatory budgeting in Brazil has been criticized for focusing more on the implementation of already-formulated policies than on providing spaces to allow participants to decide on pressing structural issues (Baiocchi 2017). This exemplifies the risk of the creation of spaces for participation, which can result in inviting people to join ‘a game the rules of which have already been decided’ (Vincent 2004: 113).

Within the range of TJ measures, reparations seem to be the most adequate mechanism for promoting victim participation. Reparations provide the most direct form of redress for harms done by acknowledgement through symbolic and material measures. Beyond redress, reparations are also intended to promote civic trust by restoring bonds of trust between state and survivors through the integration of survivors as equals in society (De Greiff 2006; 2009). Transformative reparations, a concept that has recently gained currency, seem to connect even better to discourses of participation and citizenship, as they aim to transform the social

relations and structural conditions that precipitated conflict (Weber 2018). Participation in reparation processes, as the one described in this article, serves the same purpose of empowering victims to help construct and 'enact visions of state, society and government that respond directly to their self-defined and differential needs, priorities and cultural values' (Brett and Malagon 2013: 259).

Colombia's Victims' Law of reparations and land restitution has taken the assumptions of victim-centred TJ and victim participation to heart, by designing different ways in which survivors – at different levels – can participate in decisions on TJ mechanisms. For researchers, this law thus offers the possibility to go beyond a theoretical analysis of the treatment of victims according to official procedures and beyond an examination of victims' presence in TJ activities, instead allowing for observations of the perspectives of victims on their actual and potential socio-political engagement. In this article we will explore to what extent these spaces are actually achieving survivors' participation, and what effect they have on wider processes of citizenship building, assessing whether the assumption of participation as a step towards a greater sense of ownership and citizenship hold true.

Conflict and transitional justice in Colombia

Colombia has been the site of one of the world's longest internal armed conflicts between a weak state, left-wing guerrillas and paramilitary groups. Conditions of extreme inequality in the distribution of land, wealth and social services were at the heart of the conflict, which led to large-scale human rights violations against the

civilian population, causing the deaths of over 200,000 people and the displacement of millions of Colombians.³

Colombia has been recognised as a pioneer in the design and implementation of ambitious TJ mechanisms, starting with the 2005 Justice and Peace law of demobilisation – of both paramilitary groups and individual guerrilla members – in which amnesties and reduced prison sentences were exchanged for truth-telling and reparations. Several human rights and victim organisations challenged this law before the Constitutional Court for failing to protect victims' rights, after which the Court strengthened the opportunities for victims' participation (Guembe and Olea 2006; Laplante and Theidon 2007a). Nevertheless, victim participation in the process has proved challenging because of logistical and financial challenges for victims, many of whom were moreover inhibited by fear and insufficient victim protection (García-Godos 2013; O'Rourke 2013).

The Victims' Law (Law 1448), adopted in 2011, reserves a more prominent place for the victims of the conflict. Hailed as one of the world's most complex and integral reparation programmes, combining individual and collective reparations with land restitution (Sikkink et al. 2015), it will be the focus of rest of this article. The law provides multiple measures to attend, assist and offer integral reparation to victims. Finally, yet another ambitious TJ programme is being implemented in Colombia as a result of the peace agreement signed between the government and the FARC guerrillas in late 2016.

³ By 1 November 2016, the National Victim Register included 7,011,027 victims of internal displacement (García-Godos and Wiig 2018).

The foregoing illustrates that Colombia is a strongly legalised country, with an impressive number of ambitious TJ mechanisms. The Constitutional Court's judgments have also played an important role in protecting the human rights of conflict survivors. Unfortunately, the progressiveness of these policies and judgments has not always been matched by the political will or capacity of the state to effectively protect survivors' and human rights (O'Rourke 2013: 234). It has therefore been suggested that Colombia has used law, and TJ in particular, to legitimise the government by presenting an image of peace and stability, while shifting attention away from the continuation of violence and the state's inability to structurally combat poverty and inequalities (Sandvik and Lemaitre 2015). This understanding should be kept in mind when reading the remainder of this article.

Regulating victim participation in Colombia

The Victims' Law created an ambitious institutional framework for the implementation of land restitution and reparations, composed of the Land Restitution Unit (LRU) and the Victims' Unit (VU), as well as special branches of land restitution judges and magistrates. It incorporates the lessons of 'victim-centred' TJ by providing spaces for victims' participation in the 'design, implementation, execution and evaluation' of the law (Ministerio del Interior y de Justicia 2011: art. 192–93).

The basis for the participation of victims in public policy was however already created in 2004. The Constitutional Court drew attention to the vulnerability

of the situation and rights of internally displaced people (IDPs). It indicated that although its responsibility towards IDPs was already mandatory since 1997,⁴ the state did not have adequate policies to recognise and assist the millions of IDPs. The Court therefore ordered the development of public policies to support IDPs, and pointed out the need to enable IDPs to participate in the design, implementation and monitoring of these policies at the municipal, departmental and national level (Vargas Reina 2014).

The 2011 Victims' Law was based on this institutional framework, with two significant changes: participation concerned all victims of the armed conflict, regardless of the victimising experience that they had suffered, and participation became mandatory. The resulting normative framework aims to regulate the democratic participation and inclusion of victims through the creation of *Mesas de Participación Efectiva de Víctimas* (Effective Participation Councils of Victims, hereafter *mesas*) for membership periods of two years at a time. According to this framework, it is the duty of the state to offer victims of the armed conflict institutional spaces at the national, departmental, district, and municipal levels to guarantee their influence on the development, implementation and monitoring of the policies that affect victims (e.g. reparation, prevention, protection), and on how parts of the budget will be allocated to these activities, i.e. participatory budgeting. The law regulates both the composition and the participation of the *mesas*.

In relation to the composition of the *mesas*, the law stipulates that the municipal *mesas* have 24 seats (the other *mesas* have 26 seats) to represent a wide

⁴ Because of a law, Ley 387 de 1997, that creates measures to support and protect IDPs.

variety of victims.⁵ This is in response to often-heard critiques of how TJ tends to exclude certain victims as a result of a focus on specific human rights violations. A distinction is made between people who on the one hand experienced ‘victimising facts’ (*hechos victimizantes*) and represent victim organisations,⁶ and on the other, in line with the law’s differential approach, people who are from victimised sectors (*sectores victimizados*) because of age, ethnicity, gender, sexual orientation and other categories. This distinction means that all members are seen as victim-members representing different groups, consisting either of people who have experienced an acknowledged human rights violation or of people who belong to socially vulnerable sectors. All victims have the right to vote on decisions that influence the policies that affect them. The participating representatives of victim organisations need to be registered as victims in the Victim Registry, and they need to represent an official and pre-registered victim organisation. The members can

⁵ The composition of the *mesas* is as follows:

1. Two seats for representatives of victim organisations that represent victims of acts against life and liberty (homicides, massacres, kidnapping, enforced disappearance), at least one of them a woman.
2. Two seats for representatives of victim organisations that represent victims of acts against physical psychological integrity (torture, land mines), at least one of them a woman.
3. Two seats for representatives of victim organisations that represent victims of sexual violence, at least one of them a woman.
4. Eight seats for representatives of victim organisations that represent IDPs, at least one of them a woman.
5. One seat for a representative of LGBTI victims.
6. One seat for a representative of organisations of female victims.
7. One seat for a representative of young victims (between 18 and 28 years old).
8. One seat for a representative of elderly victims (over 60 years old).
9. One seat for a representative of disabled victims.
10. One seat for a representative of indigenous communities.
11. One seat for a representative of a traditional Afro-Colombian community.
12. One seat for a representative of a Roma community.
13. Two seats for members of organisations who defend the rights of victims.

⁶ The Victims’ Law defines victimised facts as: crimes against freedom and sexual integrity; forced disappearances; forced displacement; homicide; kidnapping; personal injuries resulting in permanent incapacity and personal injuries that do not cause permanent incapacity; torture; forced recruitment of minors; land dispossession and abandonment; accidents with anti-personnel mines; unexploded ammunition; and improvised explosive artefacts and attacks.

stay in the *mesas* for a maximum of two periods (i.e. four years), and the positions within the *mesas* rotate. Representatives of the national-level *mesa* will moreover elect the victims' representatives who participate in the Board of the VU, whereas representatives of the district-level *mesas* will participate in the 'Territorial Transitional Justice Committees' at the departmental and municipal level. These are meant to coordinate the implementation of the reparation and development plans among the involved state institutions (Ministerio del Interior y de Justicia: art. 173).

In terms of the regulation of the participation, the Victims' Law stipulates that during meetings between the *mesas* and the municipalities where they are based, ideas are exchanged about the needs of victims, and support-policies are monitored. During these meetings it is also decided how the parts of the municipal budget dedicated to policies for victims will be spent in the following year. The *mesas* are expected to have at least one meeting a month to guarantee the political engagement of victims. The municipalities and districts are logistically and financially responsible for facilitating these meetings; those with less financial resources need to be supported by the departmental and national governments. Additionally, the Law establishes that municipalities with more than one million inhabitants can create local victim *mesas*.

Hence, through different rules for the composition and functioning of the *mesas*, the Victims' Law created a normative framework to facilitate and regulate victims' influence on the implementation of the Victims' Law. Furthermore, collective reparations, which aim to repair the collective harms suffered by members of a social, ethnic or political group, region or community, also envision an important

role for the survivors, through the participatory elaboration of harms diagnoses and collective reparation plans and the creation of community steering committees.

As such, the aim of this participatory framework coincides with the goal of citizenship building as described above. The Law's 'transformative focus' intends to 'take actions towards the deepening of democracy and the strengthening of the capacities of persons ... to recover civic trust in the institutions' (Ministerio de Justicia y del Derecho 2011: art. 5). The regulations for the composition of the *mesas* resemble what Cabannes (2003: 28) calls community-based representative democracy, referring to a particular form of participatory budgeting that is implemented worldwide. Through an indirect system, decision-making is carried out through leaders, in this case from grassroots victim organisations. Participatory budgeting has existed in Colombia since 1996, and the peace agreement between the FARC and Colombian government also refers to citizen participation in the allocation of funds as a mechanism to promote peacebuilding through local decision-making (Dajer Barguil 2017).

To be able to analyse victims' political participation, it is necessary to examine how this complicated normative framework works in practice. This article examines two levels of this progressive framework for victims' participation: the municipal victim participation spaces and the steering committees to guide collective reparations at the community level. In doing so, it not only analyses the practical implementation of this framework, but also sheds light on how participation affects victims and influences their experience of reparation and emancipation.

Victim participation in practice

The challenges facing victims' political participation

Two broader comments are in place before identifying the challenges facing victims' political participation on the basis of the empirical data. First, not all victims are willing to participate in a victim organisation, let alone be represented by a leader in a *mesa*. According to Rettberg (2014), seven percent of the more than six million registered victims were organised in over 3000 organisations in 2014. This means that there is a possibility that some priorities of victims are not included in the public policies. Second, the *mesas* were in their second period at the time fieldwork was conducted. The elections for the first *mesas* were in 2013, and since *mesas* only exist in a specific composition for two years, new elections were held in 2015. This implies that it was not possible yet to evidence profound changes produced by victim participation in the development, implementation and monitoring of public policies developed to support victims and budget allocation processes.

The analysis of the *mesas* in daily practice demonstrated several obstacles for their optimal functioning. First, there is no mechanism to gain insight into the extent to which leaders of victim organisations represent the priorities of the members of their own grassroots organisations. These organisations need to be officially registered, and the victimising facts that the leaders have experienced need to be registered in the Victim Registry. Victim organisations can apply for different seats. However, the intensity of the contact between the victim leaders and their rank and file, and the number and character of the activities of the grassroots

organisations is unclear. It is for example not transparent how leaders inform their grassroots organisations and how they make an inventory of the priorities of their members. These organisations are not visited or otherwise contacted by officials. When postulating for a position in the *mesa*, leaders do not need to present minutes of meetings of their victim organisations or show the objectives and priorities of their organisations.

Therefore, as different officials explained, there is no way to verify the extent to which a victim leader represents the objectives of their victim organisations or whether they are raising topics on their own initiative (Interview 13 July 2015; 11 August 2015). This means that the emphasis does not lie on victim organisations and the brokerage role of leaders between the *mesa* and grassroots organisations, but on the person who is chosen.

Second, there is insufficient institutional and financial support for the *mesas* in all locations, even if there is sufficient political will. Every four years, agreements are made at the national and departmental level about the budget and the development plan for the implementation of the public policies for victims. It is the responsibility of the governmental institution at the municipal level (i.e. the Victims' Unit, or another entity affiliated with the municipality) to guarantee the participation of the *mesas*. They need to offer spaces to organise the meetings, provide food and drinks during the meetings, (in some municipalities) the transportation of the members, organise informative workshops, inform the *mesas* on the plans and projects implemented for the reparation of the victims in order to

facilitate victims to take decisions on how these public resources will be spent, and support the councils with their application for subsidies for specific activities. Although the Victims' Law prescribes the logistical and financial support of the departmental or national government for the municipalities in case they do not have enough resources, in practice this does not happen enough. Interviewed victim leaders argued that this lack of necessary resources limits their participation (Interviews 25 August 2015; 7 September 2015). Officials at the national VU recognised that insufficient budget limited the possibilities to integrate local priorities in public policies for victims, and the opportunity to diffuse ideas and plans from the local to the district, departmental and national level (Interview 17 September 2015).

Furthermore, there is no economic allowance available for the members in the *mesas*. Victim leaders have pointed out that as a result, every hour of participation means no income. To be able to have influence on the public policies it is important to devote considerable time to activities related to the *mesas*, in order to obtain information and be an interlocutor for institutions. This situation creates a dilemma for some victim leaders who are actively involved in the *mesas* and leaders of victim organisations who did not yet apply for the *mesas*.

Third, it is still very dangerous to be a leader of a social organisation in Colombia today. An estimated 283 Colombian social movement leaders were killed in 2016 and 2017 (Delgado 2017), since the FARC has left the territories they controlled. Expressing priorities for reparation plans is perceived as dangerous, and encouraged some leaders to withdraw or not even take part in the *mesas*. The

suspicion that some members of *mesas* are or were involved in paramilitary activities was expressed by both victim leaders and officials at the municipal entity involved in facilitating the *mesas* (Interviews 25 August 2015; 7 September 2015; 9 September 2015). This is not an uncommon phenomenon in Colombia, where illegal actors have been known to enter the political spectrum before (Gutiérrez 2015). As in other parts of the country (Darjel Barguil 2016), the participation of victims is at risk because of security threats against them, in spite of all the participation measures ensuing from the Victims' Law. Municipalities are not able to guarantee sufficient security and protection mechanisms for those participating in the *mesas*, which jeopardises the possibilities for inclusive representation.

The fourth factor is the difficulty to find representatives in line with the prescribed composition of the *mesas* in the Victims' Law. Victim organisations are generally not organised exclusively in line with a specific type of human rights violation, and their rank and file might belong to different victim categories. In many cases people have experienced different or multiple types of victimising facts (Interviews 25 August 2015; 17 September 2017). For example, a person might be displaced, but also a family member of a disappeared person. Nonetheless, they need to represent the needs of one particular category of victims in the *mesa*. It is also difficult to find people who represent the specific marginalised or victimised sectors of Colombian society. Roma people are rare in Colombia, and because of the social stigma it is difficult to find people who will represent LGBTI persons, let alone that these groups have their own neighbourhood organisations. Accordingly, some *mesas* are incomplete because it is impossible to find the 24 persons who can

represent the different categories - some *mesas* only have six out of 24 members. This implies that the needs of some victim groups might be overrepresented because different people might belong to various victim groups, while they do not officially represent those groups.

In spite of its progressive framework for promoting victim participation, and the efforts taken by public servants and victim leaders to ensure the widest 'effective participation' of victims, this examination shows it has been complicated to explore the possibilities of victim organisations' socio-political engagement to foster localised approaches to TJ.⁷ Some scholars have noted that few studies deal with grassroots activists, such as organised victims of human rights violations (McEvoy and McGregor 2008), while the political participation of victim organisations in TJ procedures and their potential intermediary role is also little explored (Strassner 2013; de Waardt 2016). Gready and Robins (2017) argue that especially victim organisations 'represent a mobilisation of those affected by violations, able to act locally and use a range of repertoires of action, but also engage with a formal TJ process and NGOs' (Gready and Robins 2017: 964). The attempt that has been made here to offer new insights into the opportunities and limitations of TJ, indicates that a gap between the theory and practice of the functioning of the *mesas* hinders the influence that victim organisations can have on public policies.

⁷ In relation to political participation as a result of the Victims' Law, García-Godos and Wiig (2018) also demonstrate limits. In their research on land restitution activities they observed that recruiting IDP representatives was difficult for municipalities due to issues of constituency and organisation (2018: 49).

Victims' experiences of local participation in collective reparations

The following section describes the way participation took shape in the collective reparation process in two remote rural communities of small-scale cattle farmers in Chibolo, in Colombia's Magdalena department. Participation here did not lead to a greater sense of ownership, due to two main factors. The many different types of participation activities and groups in relation to the reparation process made participation time-consuming, impacting the time and energy people had for their own activities, and for local forms of participation. Furthermore, the way that state officials had shaped participation made victims feel that participation became a tool employed by the state to legitimate the process, rather than creating ownership.

The people in these communities of Chibolo were displaced by paramilitary group *Bloque Norte* in 1997, and returned ten years later, in a so-called voluntary return, without state accompaniment. In 2012 they embarked upon the process of land restitution. In the same year they were included as subjects of collective reparations, which sparked the participatory development of a *diagnóstico de daño* (harms diagnosis) led by the VU, to identify the harms suffered by the communities. This diagnosis formed the basis for the creation of collective reparation plans in a process that took two years and proved frustrating for the community members, who felt that not all their expressed needs were taken into account. This coincides with experiences in other parts of Colombia (Sikkink et al. 2015). This frustration was compounded by the fact that most collective reparation measures, which for example included the reconstruction of communal wells and schools, the recovery of

the community's authentic forms of organisation and commemorative activities, had not yet been implemented by the time fieldwork finalised in 2017.

In spite of this, the collective reparation process involves the creation of a plethora of organisation spaces. To implement the collective reparation plans, the VU created a *comité de impulso* (steering committee) in each community, consisting of approximately twenty community members. In addition, the VU implemented the psychosocial support programme *Entrelazando* (Weaving together), which was led by an additional group of community *tejedores* (weavers), some of whom were also part of the *comité de impulso*. Furthermore, the work to reconstruct historical memory with the National Centre for Historical Memory – also part of collective reparations – was managed by a group of *gestores de memoria* (managers of memory) in each community. These three committees only cover the processes directly related to the reparation process. In addition, the state's social services department implemented a welfare programme which had its own steering committee, while some community members also participated in the municipal and departmental *mesas* described above. It should moreover not be forgotten that these communities already had their own community organisations.

For some people in these communities, participation had been important. The fact that the state listens to people's experiences and demands is an important step towards the recovery of trust in the state: 'here we never really participated, because of fear and all that, and now the institutions are gathering us and that has helped a lot' (Interview 15 October 2015). Yet although participating in TJ processes can create a sense of ownership among beneficiaries, it can also be experienced as

an additional burden (Laplante and Theidon 2007b; Millar 2015). This was true for the communities in Chibolo. People here, as in other parts of the country, mentioned that the *comités de impulso* were formed without proper instruction about what these committees and participation in them should entail. As a result, some of its members recognised they did not know what they were expected to do, beyond simply attending the meetings. Most community members were feeling overwhelmed by the number and length of meetings. These often took up half a day and consequently required people to take time off from their work and daily activities. Participation in this and other committees was therefore irregular, leading to reproaches by the VU.

In response, the state, United Nations and NGOs frequently organised training workshops to help people understand and perform their roles. As these trainings targeted the numerous communities involved in collective reparation processes around the country, they were generally held in Bogota, Santa Marta or Cartagena. Although travel allowances and lodging were provided, attending these trainings required a considerable investment in time. As a result, some of the community leaders almost seemed like professional reparation leaders, albeit they were unpaid and sacrificed working on their own plots of land or their family relations. The family tensions of one community leader were well known. His wife was unhappy, being left alone in a house that nearly fell apart while her husband travelled almost every week to attend trainings. Their oldest son had to replace his father in working on the land, obstructing his possibilities to finish secondary school. Participation therefore implied costs in terms of time, work or goods, which explains

why not all beneficiaries necessarily wanted to be involved in ‘deep participation’ (Cornwall 2000).

Furthermore, people felt that the state used participation to delegate its reparation responsibilities. Similar to survivors involved in collective reparations processes elsewhere, whose experiences were heard during a national-level meeting (Meeting notes 10 December 2015), various committee members expressed the feeling that the VU had created these committees in order to share the responsibility for implementing the reparations with the community, instead of taking all responsibility itself (Focus group 19 March 2016). Indeed, during several community meetings attended, the VU seemed to place the blame for the poor functioning of the committees and therefore the slow implementation of collective reparations on the beneficiaries rather than on the poor instruction they had received. In several meetings the VU not only made clear that other institutions were responsible for most of the reparation measures, pointing at their own limited responsibility, but also urged the communities to start ‘getting their house in order’, know the Victims’ Law and its protocols, and attend municipal meetings – which the municipalities repeatedly failed to convene. They even indicated that most of the work needed to be done by the *comités de impulso* rather than the VU. The committee members expressed feeling uncomfortable with the unrealistic expectations placed on the *comités de impulso*. Although they felt a strong responsibility towards their community, they also felt powerless in their role of steering reparations. They perceived that the local governments did not pay attention to the requests of the *comités de impulso*, whose members moreover had

not been adequately trained on the required skills to lobby the wide range of local and national state institutions involved in the implementation of the often complicated collective reparation plans.

The meagre reparation results led to tensions at the community level. Community members questioned whether the representation of their communities was actually their leaders' prime motivation, or if they rather enjoyed travelling. Moreover, the knowledge acquired in these trainings was hardly ever transferred to the wider communities, reinforcing discontent. It was unclear whether the institutions providing the trainings were aware of these divisions and power dynamics and of their own role in reinforcing them, since their infrequent and short visits made it difficult for them to gauge the depth and impact of the tensions. This resembles the municipal-level participation process, where the state also seemed to have surprisingly little possibilities to ascertain whether information was actually passed on to the wider victims' organisations.

The state seemed more interested in enforcing the formal rules of participation than in ensuring that participation was meaningful for the community members. The message sent by the state was not only that the survivors should work hard to make their own reparation a reality, but moreover that they should work in a specific way, as facilitated and prescribed by the state in 'invited spaces' for which the rules had already been set and in which participants felt they had little influence. This evidently produced frustration:

One community member seemed sceptical about the meeting. He said he's been here for six years going to all the meetings, and now he has even less than when he came here. He said they have drawn the community, its past and future at least twenty times and nothing ever changes (Field notes, 10 March 2016).

As several authors have argued (Cornwall 2004, Baiocchi 2017), invited spaces can still provide opportunities for transformative participation or even 'subversion'. This however requires a process of building capabilities for the political engagement in democratic processes (Cornwall 2000), which these communities did not demonstrate and which the state or accompanying civil society organisations did not help building.

Meanwhile, the state's creation of 'invited spaces' risks weakening the 'popular spaces' of the communities, where community members have previously demonstrated political engagement, for example through the organised return to the land in 2007. Although the VU encouraged the communities to have their own meetings and organisation, the state-prescribed forms of participation were so time-consuming that there was ever lower interest for the communities' own organisation. As a result, by May 2017, membership of the community association had almost halved, contradicting the measure of 'recovery of the community's organisational spaces' included in the collective reparation plans. This shows how aid and well-intended programmes can cause harm by undermining local strengths such as community organisation (Anderson 1999).

This lack of space for genuine participation in decision-making was not lost on the community members:

One sees that the institutions are eager to show something. But in reality, there is nothing! I mean, what we are saying is that they are only interested in coming, gathering five people and taking the pictures (Focus Group 19 March 2016).

This comment demonstrates that participation does not automatically lead to an increased sense of ownership or a step towards citizenship building. If survivors sense that the state is mostly interested in 'ticking the box' of victim participation, they can experience feelings of frustration or powerlessness, for wasting their time in participatory spaces that are not producing any changes (Kelly 2004). These dynamics risk turning participation into a form of legitimization of the reparations programme instead of a genuine or effective attempt to increase victims' ownership.

Conclusions

As laid out in the introduction of this article, victims' role in judicial and non-judicial TJ activities has evolved from passive to more active during the last decade. In this article however, we argued that this role cannot only be evaluated based on victims' mere presence during judicial TJ procedures or by analysing normative frameworks to encourage the influence of victims. We have used an empirical approach to explore the possibilities and limitations of victims' socio-political engagement.

Colombia's Victims' Law created an impressive and progressive normative framework to recognise and acknowledge victims' views and expectations vis-à-vis TJ mechanisms, and to enhance beneficiaries' capabilities and agency to advocate for their own rights. Colombia has thus set an example for the world by giving victims themselves the right to be interlocutors through victims' *mesas* and community committees. Because of the different regulations for participation, victims' rights and objectives must be taken into account in the design, implementation and monitoring of the different decisions, policies, projects and activities for victims. This could have the potential to yield and recognise contextualised approaches to TJ. Studying this law thus also offers researchers the opportunity to study victims' participation in TJ, beyond their mere presence as statement givers or consultees.

This article has illustrated how in spite of the Victims' Law's noble intention for promoting victim participation, reality is far more complex. The resulting framework is so rigid in its attempt at inclusion that it fails to respond to the more messy reality on the ground, while continuing power relations prevent victims from participating in decision-making processes in many instances. Furthermore, the complex array of 'invited' participation spaces created by the Victims' Law is not only confusing but also time-consuming and costly for survivors, to the extent of weakening their own, 'popular' spaces of participation and organisational structures. The observations analysed in this article show how victim participation in Colombia's Victims' Law seems to have become a goal in itself, rather than a means to achieve increased local ownership over TJ and citizenship building. Instead, it mainly serves

to legitimise the Victims' Law process for being 'victim-centred' and 'grassroots-oriented'.

To overcome these challenges and live up to the promise of participation as a step in the process of increasing victims' satisfaction with and ownership over TJ, turning victims into rights-bearers and citizens, a different approach is needed. Instead of imposing forms of organisation and participation that are little feasible and practical in practice and risk weakening 'popular' participation spaces, victim participation frameworks should respond better to existing forms of participation and organisation on the ground, such as local victims' associations or regional and national victims' networks that have existed in different periods, despite fluctuations in official support and threats posed by violent actors. Rather than focusing on complying with the normative framework for this participation, states should direct their attention to facilitating this participation in practice, by providing information and the financial, moral and logistical means to enable victims to maintain and strengthen their own channels. It goes without saying that these local forms of organisation can be fraught with power imbalances, for example along gender or ethnic lines, and these of course need addressing. This could however be a more feasible and sustainable way of allowing victims to genuinely have ownership over TJ processes, and enable Colombia to really live up to its expectations as a frontrunner in innovative and victim-centred approaches to transitional justice.

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