



BETWEEN **SOLIDARITY** AND **OBLIGATION**

CHALLENGES FOR THE PARTICIPATION OF BUSINESSES IN SYMBOLIC REPARATION



Institute for Business Ethics



University of St.Gallen

The **Regional Business and Responsible Entrepreneurship Center (CREER by its Spanish acronym)** researches, evaluates, and promotes respect for human rights and sustainable development in the framework of business activities. Along with the **Institute for Human Rights and Business (IHRB)**, CREER aims to drive a comprehensive agenda that connects governments, communities, businesses, and civil society organizations through the collective construction of knowledge, spaces for dialogue based on trust, and local capacity building.

The **Institute for Business Ethics (IWE by its German acronym)**, founded in 1989 at the University of St. Gallen (Switzerland), has one of the longest institutional traditions in Europe. It has been a pioneer in the investigation and teaching of topics related to business ethics, corporate social responsibility, and business and human rights. The Institute enjoys an international reputation for its expertise in fundamental and applied research. IWE creates and drives collaborative initiatives and research with other institutions in the public and private sectors, as well as with civil society.

All rights reserved. The responsibility of the opinions expressed here is only that of the **Regional Business and Responsible Entrepreneurship Center (CREER) and the Institute for Business Ethics (IWE)**. CREER and IWE permit the free reproduction of extracts from this publication as long as appropriate recognition and citation is given. Authorization from each of these two entities is required for the reproduction and translation of this publication.

CREER Executive Director
Luis Fernando De Angulo

IWE Director
Florian Wettstein

Coordination of the research and content
Laura Cotrina, Jordi Vives, and Germán Zarama

This report was translated from Spanish to English by Cristal Downing

June 2019

ISBN: 978-958-59805-9-4

This project was possible thanks to the One Year Research Merger Grant awarded by the Leading House for the Latin America Region - State Secretariat for Education, Research and Innovation (SERI). Furthermore, the project enjoyed the generous academic support from the Pontificia Universidad Javeriana de Bogotá.



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Swiss Confederation

Federal Department of Economic Affairs,
Education and Research EAER
**State Secretariat for Education,
Research and Innovation SERI**



Pontificia Universidad
JAVERIANA
Bogotá

TABLE OF CONTENTS

Presentation	5
List of Acronyms	7
1 Introduction	8
2 Methodology	10
3 Reparations for violations of human rights	12
3.1. Symbolic and material reparations: two sides of the same coin	13
3.2. The Inter-American Human Rights System's approach to symbolic reparations	15
3.3. Background to symbolic reparations in Colombia	17
3.4. Symbolic reparations and business	20
4 Symbolic reparations in the business sector: desk research	22
4.1. Socioeconomic initiatives	22
4.2. Initiatives for the reconstruction of the social fabric and culture of peace	23
4.3. Conclusions of the desk research	23
5 Findings from the in-depth study of three cases	25
5.1. Context in which the analyzed business initiatives were managed and developed	27
5.2. Internal barriers and obstacles to the development of symbolic reparations initiatives and strategies used to overcome them.	28
5.3. The role of workers and upper management.	30
5.4. Identified positive benefits and impacts	31
5.5. Lessons learned from the case studies	32
5.6. Reflections on symbolic reparation from the business sector	34

5.6.1.	Solidarity or obligation? Routes for reconciliation and non-repetition.	35
5.6.2.	The scope of language and concepts for the participation of the business sector in symbolic reparations initiatives	36
5.6.3.	Perspectives on the Integral System for Truth, Justice, Reparation, and Non-Repetition	37
6	Conclusions	40
6.1.	The construction of trust as a means for reparation and non-repetition	40
6.2.	Small and medium businesses and other economic sectors in symbolic reparation	41
6.3.	The transitional justice process in Colombia, and restorative justice	42
6.4.	The analysis of the past as a mechanism for construction of effective human rights policies.	43
7	Proposals	44
7.1.	For the business sector	44
7.2.	For the State	44
7.3.	For the Integral System of Truth, Justice, Reparation, and Non-Repetition, with emphasis in the Special Jurisdiction for Peace	45
7.4.	For NGOs, unions, and other relevant actors	46
7.5.	For the United Nations Working Group on Business and Human Rights and OHCHR	46
8	Annex 1: Symposium: Between solidarity and obligation. Challenges to business participation in symbolic reparations	48
	» Limitations on the concept of reparations	48
	» State obligations and business responsibilities	49
	» The construction of symbolic reparations	49
	» Promotion of symbolic reparations	50

PRESENTATION

The post-agreement context in Colombia has uncovered several challenges to guarantee victims' rights and sustainability of processes that aim to consolidate peace and reconciliation at the regional level. One of these challenges has been the participation of the business sector in different mechanisms, including those generated by the Peace Agreements, conceived by the State for this end.

This document is framed within the *Region, Reconciliation, and Coexistence* strand of action and research,¹ through which the **Regional Business and Responsible Entrepreneurship Center (CREER)** promotes a new agenda so that businesses and economic sectors can contribute to the consolidation of peace at the regional level. This is to ensure a greater presence of the State for the protection of citizens, and institutional strengthening at the local level for coexistence and conflict transformation.

Under this work strand, CREER and the **Institute for Business Ethics (IWE)** of the

University of St. Gallen, with support of the **Swiss State Secretariat for Education, Research, and Innovation**, carried out a project to address the challenges from the academic and practical standpoints, and to foment the participation of the business sector in symbolic reparations initiatives, as well as to identify the expectations of victims, businesses, the State, and other interested parties, and to use symbolic reparations to address the business sector's role in the armed conflict and peacebuilding.

Addressing symbolic reparations in general is one of the greatest challenges to guarantees of victims' rights and the consolidation of regional peace. Until now, administrative and individual reparations have dominated in the framework of transitional justice processes carried out in Colombia, as has the identification of responsible legal and illegal armed actors in a conflict that has in fact seen participation by other actors and sectors.

¹ Further information about this work strand can be accessed at: www.creer-ihrb.org/territorioyreconciliacion



For the management of human rights violations through symbolic reparations, whether or not they took place in the armed conflict, this research is based on the premise that each actor contributes through their tasks, capacities, and obligations.

In this way, the business sector is confronting a dilemma: on one hand, the expression of its solidarity with the victims and recognition of their suffering can contribute – symbolically and intangibly – to reparation and reconciliation processes; and on the other, the sector can contribute, through its participation, in clarification of the events that occurred and its assumption of responsibility.

The resolution of this dilemma is complex and depends in large part on a favorable context and predisposition with a great variety of actors. This is why this report presents recommendations not only to businesses but also to other actors who promote broader and more effective participation of the business sector in processes of symbolic reparation.

We are grateful to businesses, workers, communities, victims, academics, and public servants, among others, for their willingness to speak about a topic that has been little addressed in Colombia, despite being relevant to achieving a more just society. We are also grateful to the Pontificia Universidad Javeriana for its enthusiasm and generosity in hosting the International Symposium on 29 April 2019 in Bogota, where this report was presented.

Finally, we are especially grateful for the support provided by Leading House for Latin American Studies, the Centro Latinoamericano-Suizo at the University of St. Gallen, and the Swiss State Secretariat for Education, Research, and Innovation, who made this research possible.

LIST OF ACRONYMS

CCTCN	Commission for the Clarification of Truth, Coexistence, and Non-repetition
CREER	Regional Business and Responsible Entrepreneurship Center
CSR	Corporate Social Responsibility
FARC-EP	Revolutionary Armed Forces of Colombia – People’s Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo)
IHL	International Humanitarian Law
ISTJRNR	Integral System of Truth, Justice, Reparation, and Non-repetition
IWE	Institute for Business Ethics, University of St. Gallen
OHCHR	Office of the High Commissioner for Human Rights
Peace Agreement	Final agreement for the termination of the conflict and the construction of stable and lasting peace
SJP	Special Jurisdiction for Peace
SMB	Small and medium businesses
UNGP	UN Guiding Principles on Business and Human Rights



1.

INTRODUCTION

In light of diverse international instruments and particularly of the UN Guiding Principles on Business and Human Rights (UNGPR), adopted unanimously by the UN Human Rights Council in 2011², efforts have been made to address the need for businesses to contribute resources in cases in which they have caused or contributed to – directly or indirectly – negative impacts on human rights.

Any business initiative that aims to provide complete reparation for damage caused to individual and/or collective victims must recognize their dignity and address particular needs in terms of re-establishing their rights. Material restitution and financial compensation can contribute, but they do not address the aspect of dignity inherent in human rights.

In contrast, forms of symbolic reparations (e.g. public apologies, commemorations, and homage to victims, etc.) are recognized as remedy mechanisms uniquely positioned to address the intangible emotional and moral dimension of human rights violations, and to

contribute effectively to the restoration of victims' dignity.³

This topic bears particular relevance in the Colombian case, where the internal armed conflict has left more than eight million victims⁴ and constitutes a context in which one of the central factors for peacebuilding is integral reparation for grave violations of human rights and international humanitarian law (IHL). This is presented as a challenge to the definition of strategies, actions, and tools to respond to the broad demand for truth and justice.

However, in the field of business and human rights, symbolic forms of reparation continue to be little discussed. Even if theory and practice of symbolic reparations have been the subject of extensive discussion when States are involved, and particularly in

² Human Rights Council, Guiding Principles on business and human rights: implementation of the UN framework to "protect, respect, and remedy". Report of the Special Representative of the Secretary General on the question of human rights and transnational and other businesses, A/HRC/17/31 (2011). Art. 22.

³ See Minow, M. (1998). *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press; and United Nations. (2008). *Rule of Law Tools for Post-conflict States: Reparation Programmes* (Vol. HR/PUB/08/1). New York and Geneva: Office of the United Nations High Commissioner for Human Rights.

⁴ According to the Victims' Registry and statistics from the National Center for Historical Memory. See: <http://www.centrodememoriahistorica.gov.co/micrositios/informeGeneral/estadisticas.html> Accessed on 1 March 2019.

transitional justice contexts,⁵ the reality and potential role of business actors in reparations has barely been explored.

The topic of business and reparations presents complex questions: Is it necessary for businesses to assume responsibility in order to carry out symbolic reparations? Is it possible to speak of symbolic reparations in terms of ethical obligations, for example, when there has not been direct responsibility for negative impacts on human rights, but such impacts have been yielded in the framework of an armed conflict? Is it possible to speak of symbolic initiatives that contribute to the reparation of victims when the initiatives have spearheaded a spirit of solidarity for peacebuilding?

This document reveals the main findings of the research carried out in Colombia, a country that offers an excellent opportunity to understand, test, and evaluate different approaches and ideas with respect to symbolic reparations by businesses, and how they can decisively contribute to peacebuilding in transitional contexts.

Similarly, the research presents a series of specific recommendations about possible involvement of the business sector in symbolic initiatives that contribute to victims' reparations, with an emphasis on – but not

limited to – commitments established in the *Final Agreement for the Termination of the Armed Conflict and the Construction of Stable and Lasting Peace* (Peace Agreement) signed by the Colombian government and the FARC-EP, especially point 5 establishing the Integral System of Truth, Justice, Reparation, and Non-repetition (ISTJRNR), incorporated into the Colombian judicial order through Legislative Act No. 01 of April 2017.

The report is structured into six chapters. After this introduction and the presentation of the research methodology, the third chapter briefly explores the concept of reparation, with emphasis on the participation of the business sector. Similarly, it shows how reparations efforts have been carried out in the Colombian legislature.

The fourth chapter discusses observations obtained through desk research and interviews in the field. The fifth chapter describes the reflections suggested by the case studies and presents open questions to continue to make progress in the understanding of symbolic reparations in the business sector. Finally, the sixth chapter presents proposals for different actors to promote the participation of the business sector in symbolic reparations initiatives.

⁵ See for example Dudai, R. (2011). Closing the gap: symbolic reparations and armed groups. *International Review of the Red Cross*, 93(883), 783-808. doi: 10.1017/S1816383112000082; Mégret, F. (2009). The International Criminal Court Statute and the Failure to Mention Symbolic Reparation. *International Review of Victimology*, 16(2), 127-147. doi: 10.1177/026975800901600202; and Hamber, B., & Wilson, R. A. (2002). Symbolic closure through memory, reparation and revenge in post-conflict societies. *Journal of Human Rights*, 1(1), 35-53. doi: 10.1080/14754830110111553.



2.

METHODOLOGY

The report presents findings from desk and qualitative research about the role of the business sector in initiatives that target peacebuilding and reconciliation. First, there was a mapping and analysis of cases documented by businesses, NGOs, foundations, the State, and others. Each initiative identified:

- » Location: department, municipality, and whether it was rural or urban.
- » Actor who led the initiative and other involved actors: business, State, NGO, civil society organization, among others.
- » Timing.
- » Financing.
- » Type of initiative: social inclusion, work inclusion, economic investment, institutional strengthening, peacebuilding, and reconciliation.

The contributions of the sector to initiatives were framed in terms of corporate social responsibility (CSR) or in peacebuilding and reconciliation projects, as well as internal processes that were carried out to manage human rights. The desk research shed light on a limited number of cases in which symbolic reparations or the objectives that this implies have had a high-profile role.

The research was therefore broadened by carrying out three focus groups with businesses and businesspeople, state institutions, academics, and experts, to address the role of the business sector in symbolic reparations initiatives from the perspectives of each of these stakeholders.

Three specific cases of Colombian businesses who have started to address the symbolic from the perspective of historical memory and dignification of the victims were chosen with the objective of giving more depth to the research. These cases present large businesses engaged in the hydrocarbon and mining sectors whose activities have a significant impact in the regions in which they operate.

The case studies involved a total of 22 semi-structured interviews with actors who participated in the implementation and monitoring of these initiatives. In the sample of interviewees, there were business managers, victims, community representatives, NGO representatives who supported implementation of the processes, and academics who have monitored the initiatives.

It is important to take into account that the lack of understanding and trust about reparations that exists in the business sector,

in part because of its legal or reputational implications in terms of responsibility in the armed conflict, has meant that the processes or projects are not carried out under the label of symbolic reparations. As will be explained later, some of the findings of this research show that the three selected cases are on track to fulfill the objectives of community reparations, but none of the businesses studied assumes or recognizes responsibility for infractions of human rights in the armed conflict.

The three cases are not analyzed individually, but together, because the document aims to identify good practices, challenges, and limitations that could apply to other business actors. Rather than explaining the detail of each case, efforts focused on the identification of common patterns and variables.

Given the business sector's reservations about the topic of reparations, and the interest in not affecting the processes carried out by businesses and communities, the research team opted to maintain the anonymity of the people interviewed and mentioned, as well as the organizations they represent. This decision allowed a better climate of trust and, as a result, better quality input.

Finally, it is necessary to clarify that throughout the text, reference is made to the business sector as the group of businesses of different economic sectors, sizes, types, places of operation, etc. that served as a source for research and dialogue. However, the use of the concept "business" does not aim to present businesses as a homogenous set of actors that relate to the regions in the same ways or that experienced the consequences of the armed conflict in similar manners.

Therefore, the information obtained in this research, the conclusions of the businesses and interest groups that participated in the interviews, and the general reflections about business participation in peacebuilding, especially in symbolic reparations, do not necessarily represent the interests and motivations of all businesses, associations, economic sectors, etc. that operate in the country.



3.

REPARATIONS FOR VIOLATIONS OF HUMAN RIGHTS

In a simple way, reparations can be understood as those initiatives that aim to alleviate, resolve, or remedy a damage suffered. Other more legalistic perspectives define reparation as those efforts that aim to restore something or someone to a prior state in a structured or just way, through reparation or compensation.⁶

In the academic literature on human rights, the concept of reparations is not understood as a series of specific acts or mechanisms, but as a set of processes that contribute to alleviating the suffering of victims and provide justice through the elimination of negative consequences suffered, as well as preventing future violations of rights.⁷

The concepts of reparation and the right to reparation are present in a large number of declarations, treaties, and conventions in

the international body of human rights.⁸ It is therefore possible to affirm that there is a recognized and established body of law in the international context. In the framework of international law, Resolution 60/147 of the UN General Assembly⁹ recognizes the right of people who have suffered human rights violations to access reparations.

The overarching idea in the majority of international treaties is that victims have the right to “just and adequate” reparation. Resolution 60/147, in its articles 15 and 18, emphasizes the need for reparations to be appropriate, effective, complete, rapid, and proportionate. In addition, it recognizes five different types of reparation:

6 See Hamber, B. (2006). Narrowing the Micro and Macro. A Psychological Perspective on Reparations in Societies in Transition. In P. De Greiff (Ed.), *The handbook of reparations* (pp. xxxiii, 1020 p.). Oxford; New York: Oxford University Press. p. 562.

7 See David, R. & Choi, S. Y. P. (2005). Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic. *Human Rights Quarterly*, 27(2), 392-435. p. 393.

8 Some examples: the Universal Declaration of Human Rights makes use of the term “effective resource” (art. 8). The American Convention on Human Rights speaks of the “right to be compensated according to the law” (art. 10) and “just compensation” (art. 63). The International Pact for Civil and Political Rights highlights the “effective right to obtain reparation” (art. 9).

9 Resolution 60/147 approved by the General Assembly on December 16, 2005, Basic Principles and Guidelines on the Rights of Victims of Violations of International Norms of Human Rights and Grave Violations of International Humanitarian Law. Available at: <https://www.ohchr.org/sp/professionalinterest/pages/remedyandrepairation.aspx>

- » Restitution, as long as it is possible, has to return the victim to the situation prior to the violation of their rights (art. 19);
- » Indemnity should be given for all economic damages as a consequence of the violation (art. 20);
- » Rehabilitation should include medical and psychological assistance as well as judicial and social services (art. 21);
- » Satisfaction measures, including those that aim to clarify facts and truth, the search for disappeared persons, official declarations that re-establish the dignity and good name of the victims, public apologies and recognition of responsibility, commemorations, and homage to victims, etc. (art. 22);
- » Guarantees of non-repetition, which include measures that aim to prevent, for example, the strengthening of justice and security institutions according to international standards, the protection of human rights defenders, human rights education, etc. (art. 23).

Despite this extensive and varied catalogue of internationally recognized reparations measures, in reality, in both practical and academic terms, the ideal that prevails is the restoration of the *status quo ante*.¹⁰ The idea predominates that it is necessary to do everything possible so that the victims are in the same situation that they were in before the damage suffered. This has resulted in the prevalence of mechanisms that aim to

¹⁰ See De Greiff, P. (2006). Repairing the Past: Compensation for Victims of Human Rights Violations. In P. De Greiff (Ed.), *The handbook of reparations* (pp. xxxiii, 1020 p.). Oxford; New York: Oxford University Press. p. 455.

compensate and restore through payments, services, or provision of material assets.¹¹

However, human rights violations are frequently irreparable by nature,¹² so reparations confront the paradox of trying to repair what is irreparable. This is why the dimension of satisfaction takes on particular relevance. In contrast to other material mechanisms such as restitution or indemnity, satisfaction measures are usually intangible and therefore symbolic.¹³ It is precisely their symbolic character that allows them to recognize the irreparability of the damage suffered and therefore contribute in a unique way to reparation and non-repetition.

3.1. Symbolic and material reparations: two sides of the same coin

Reparations can be generically divided into two groups: material and symbolic. The first are linked to restitution, compensation, or rehabilitation, and are associated with the provision of economic or material resources such as the payment of indemnity, the provision of medical services, lodging, education, etc. These measures, however,

¹¹ See Mégret, F. (2009). The International Criminal Court Statute and the Failure to Mention Symbolic Reparation. *International Review of Victimology*, 16(2), 127-147. doi:10.1177/026975800901600202. p. 14. See also United Nations. (2008). *Rule of Law Tools for Post-conflict States: Reparation Programmes* (Vol. HR/PUB/08/1). New York and Geneva: Office of the United Nations High Commissioner for Human Rights.

¹² See Hamber, B. (2006). p. 567.

¹³ See Mégret, F. (2009). p. 3.



have limits on whether they can completely repair victims and their relatives.¹⁴

Symbolic reparations appeal to a greater variety of victims' concerns and take seriously the need for recognition, respect, dignity, and hope for a better future.¹⁵ They can take an infinite number of forms and, given their intangible character, are frequently used to support artistic expression and collective manifestations in order to get their message across.

Apologies are probably the most paradigmatic form of symbolic reparations, and the most demanding. They require, at a minimum, acceptance of responsibility and expression of regret by those who offer them. Memorials and commemorative activities can provoke a reaction, whether it is public recognition, reflection, mourning, pride, sadness, etc.¹⁶ Their main function is to preserve memory,¹⁷ and they can take forms such as monuments, ceremonies, museums, archives, education centers, etc.

Finally, initiatives to clarify the truth play an important role in reconciliation, in that they can pave the way for recognition of responsibility. Understanding the truth about key facts in the past, including about those responsible, could help victims to overcome

the trauma and suffering that often follows the lack of information about what exactly happened.¹⁸

The line that separates material measures from symbolic measures is tenuous. In fact, the payment of indemnity, the restitution of an asset or a judicial sentence can have an elevated connotation of recognition. However, as is affirmed by the Office of the High Commissioner for Human Rights (OHCHR), the great potential of symbolic reparations is in the fact that they have meaning and capacity to help victims in particular and societies in general to build meaning around the tragic events of the past.¹⁹

Material and symbolic reparations are not exclusive measures, but complementary. They cover different needs within the realm of reparations. Failing to achieve balance between the two can exacerbate conflict instead of placating it and limiting its effectivity.²⁰ Initiatives that are excessively oriented towards material reparation can result in victims being perceived as economic agents, and negates the moral dimension of the effort. On the other hand, in cases in which reparation is limited to symbolic efforts, victims could perceive them as tactics to divert attention away from legitimate claims to compensation or material restitution.

14 See Minow, M. (1998). *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*. Boston: Beacon Press. p. 103.

15 See Mégret, F. (2009). p. 6.

16 See Bickford, L. (2014). Memoryworks/Memory Works. In C. Ramírez-Barat (Ed.), *Transitional Justice, Culture, and Society. Beyond Outreach*. New York: Social Science Research Council. p. 494.

17 See Radzik, L. (2015). Reconciliation. *Stanford Encyclopedia of Philosophy*. Summer 2015. Retrieved from <http://plato.stanford.edu/archives/sum2012/entries/tolerance/> . p. 7.

18 See Hamber, B. (2006). Narrowing the Micro and Macro. A Psychological Perspective on Reparations in Societies in Transition. In P. De Greiff (Ed.), *The handbook of reparations* (pp. xxxiii, 1020 p.). Oxford ; New York: Oxford University Press. p. 580

19 See also United Nations. (2008). p. 23.

20 See Richards, M. (2007). *The design and implementation of an optimal reparation program: how should limited resources for material reparation be distributed across victims of the Colombian conflict?* Retrieved from Bogotá, Colombia. p. 32.

It is worth mentioning that the application of judicial or administrative sanctions to those responsible for violations can also have a great symbolic meaning. However, this research is focused on symbolic non-judicial reparations, as they are the least understood and those that hold the most potential, especially for the business sector.

3.2. The Inter-American Human Rights System's approach to symbolic reparations

It is important to note that under the Inter-American Human Rights System, Member States are obliged to adhere to the jurisprudence of the Inter-American Human Rights Court, which has created a new paradigm for reparations during the last 30 years, in virtue of international human rights law.²¹ Among others, the Court has received a large quantity of claims devised from repressive and violent regimes in Central and South America and, in accordance with its mandate in the American Convention,²² has acted as an adjudication organism for these claims.

²¹ In this way, the Court has developed what many consider to be "the most complete legal regime on reparations in the human rights field of international law". Dean Claudio Grossman, *Reparations in the Inter-American System: A Comparative Approach*, 56:6 AM. U. L. REV. 1375, 1376 (2007).

²² American Human Rights Convention, OAS. Treaties Series No. 36, 1144 U.N.T.S. 123. Entered validity on July 18, 1978. Basic Human Rights Documents from the Inter-American System, OAS / Ser.LV / II.82 doc.6 rev.1 (1992).

One of the emblematic antecedents goes back to 1988, when the Court began a new chapter in the field of reparations with its decision in the *Velásquez Rodríguez vs. Honduras* case. In this case, the Honduran authorities kidnapped, tortured, and presumably executed Manfredo Velásquez-Rodríguez. The government organized his disappearance and then obstructed his family's efforts to find him.

Years later, the Court reviewed the case and, to provide reparations to the Velásquez family, became the first human rights tribunal to demand that the State "prevent, investigate, and punish any violation of rights recognized by the (American) Convention and, if possible, try to restore the violated right and *provide compensation that can be justified by the damages that resulted from the violation.*"²³ [emphasis added].

Through its reasoning in this case, the Court established the bases for an innovative and extensive framework of reparations that will be used to repair victims of a broad range of human rights abuses.²⁴ Similarly, the Court broadened the scope of monetary reparations in order to recognize the "mental anguish, emotional anguish, and pain and suffering of the victim".²⁵

These forms of reparation are recognized as moral or non-pecuniary reparations. Moral reparations can include suffering and anguish

²³ IAHR Court, *Velásquez Rodríguez vs. Honduras*. Sentence 29 July 1988. Available at: http://www.corteidh.or.cr/cf/jurisprudencia2/ficha_tecnica.cfm?nid_Ficha=189&lang=es

²⁴ Jo M. Pasqualucci, *Reparación de víctimas en el Sistema Interamericano de Derechos Humanos: una evaluación crítica de las prácticas y procedimientos actuales*, 18 MICH. J. INT'L L. 1, 23 (1996).

²⁵ *Ibidem*.



caused directly to the victims and their families, and the deterioration of important values, in addition to other forms of suffering that cannot be evaluated in financial terms. This is of utmost relevance for this analysis because the Inter-American Human Rights System has recognized that some types of damage cannot be monetarily quantified and therefore other types of restitution should be provided.

In other cases, given that collective reparations can potentially reach a large number of victims, the IAHRC has manifested that monetary compensation is not always a viable tool for reparation. This can be seen, for example, in the “Street Children” (Villagrán Morales and others) vs. Guatemala case, in which the Court determined that the States responsible for human rights violations should carry out public acts or efforts, or those with broad impact, that have effects such as recovering the memory of victims and re-establishing their reputation, consoling their family members, or transmitting a message of official condemnation for the rights violations in question and commitment to guaranteeing non-repetition.²⁶

This prior example is also significant because it asks for symbolic reparations, given that the Court ordered the State of Guatemala to designate an education center with a name that referred to the young victims of this case, and place a plaque at the center, among other measures.

Finally, it is worth mentioning the case called the Plan de Sánchez Massacre vs. Guatemala, in which for the first time an

international tribunal ordered reparations for the survivors of a large-scale massacre of indigenous communities. In this case, which involved restoration for all the community, the Court determined the creation of a new sanctuary to replace the home that had been lost, and construction of a safe community that could grow without fear of renewed state persecution.

The Court also ordered, as a symbolic measure, that the State should carry out a public act to recognize its responsibility in the acts of the case and redress the victims. This act had to be carried out in the village of Plan de Sanchez where the massacre occurred, in the presence of high authorities and community members.

As has been seen, under the Inter-American System – based on the jurisprudence of the Court – it has been understood that even if moral and collective reparations cannot completely physically or economically repair the victims of human rights abuses, they can effectively contribute to efforts to address the psychological, moral, and symbolic components of the violation of rights.²⁷

²⁶ IAHRC, “Street Children” Case (Villagrán Morales and others) vs. Guatemala. Sentence 27 January 2009. Available at: http://www.corteidh.or.cr/CF/jurisprudencia2/ficha_tecnica.cfm?nld_Ficha=321

²⁷ Alice Riener, *Reparations and the Issue of Culture, Gender, Indigenous Populations and Freedom of Expression: “Children & Reparations”*, 56:6 AM. U. L. REV. 1439, 1442 (2007).

3.3. Background to symbolic reparations in Colombia

In framework of implementation of the mechanisms contemplated in the Peace Agreement – and of the actual instances of transitional justice – reparation for the victims is presented as one of the principal efforts,²⁸ but this has already been addressed in different historical moments and has been developed under diverse judicial frameworks.

The first antecedent can be found in the decade of the 1980s, when an interest was identified in minimizing belligerent confrontations between illegal armed groups and the Colombian State by making possible amnesty for those who committed or were associated with political crimes. Kidnapping, extortion, homicides outside combat, and other crimes were exempt from this.²⁹

It was during the consolidation of the Political Constitution of Colombia in 1991 that special treatment was given to victims of belligerent actions and others by illegal armed groups. It is worth mentioning that the concept of “victims” in Law 104 of 1993³⁰ had the objective of ensuring “peaceful coexistence, protection for rights and liberties of individuals, and

adoption of measures in favor of discriminated or marginalized groups”.

This norm considers to be victims “those people who directly suffer prejudices as a result of terrorist attacks committed with bombs or explosive artefacts and guerrilla attacks that affect the population indiscriminately.” For the first time, the State began to count those affected in the Social Solidarity and Emergency Fund to verify the “characterization of victims” of people included in it and guarantee them the right to receive humanitarian assistance as a tool to resolve urgent needs.

With Legislative Act 03 of 2002 in which the Political Constitution of Colombia was reformed to introduce an accusatory penal system, the term “victim” was defined to refer to “the subject deserving of special treatment” without specifying whether its use is limited to the context of the internal armed conflict. It also declares the responsibility of the Attorney General’s Office to protect “communities and [...] and victims” and to “request [...] the necessary judicial measures to provide assistance to victims, as well as re-establishing rights and providing reparations to those affected by the crime” (art. 2, numeral 6). All of these stipulations take into account the restorative justice mechanisms made available by law.

It was only with the creation and implementation of the Justice and Peace Law (Law 975 of 2005)³¹ that the Colombian State attempted to establish a series of judicial instruments and assign specific tasks

²⁸ *El Espectador*. Las Víctimas en el centro de la paz. See: <https://www.elespectador.com/noticias/paz/victimas-el-centro-de-paz-articulo-605602> Consulted on 1 March 2019.

²⁹ Yesica González Bermúdez and Ruby Stella Jaramillo Marín (2018): “El desafío de la reparación integral de las víctimas del conflicto armado colombiano”, *Revista Caribeña de Ciencias Sociales* (April 2018).

³⁰ “Por la cual se consagran unos instrumentos para la búsqueda de la convivencia, la eficacia de la justicia y se dictan otras disposiciones”.

³¹ “By which dispositions are dictated for the reincorporation of members of organized armed groups, to effectively contribute to national peace and other dispositions for humanitarian agreements are dictated”.



to public institutions for the judgment and reincorporation of demobilized people and assistance and guarantees to victims.³² It is relevant to highlight the fact that this law emphasizes reparation for victims under an integral understanding that goes beyond economic indemnity.

This is why there are actions of symbolic reparations that tend to “ensure the preservation of historical memory, non-repetition of the victimizing acts, public acceptance of the acts, public forgiveness, and re-establishment of victims’ dignity” (art. 8), and that therefore help to restore the rights of victims and communities affected by the armed conflict.

However, it is important to note that the legitimacy of this law has been strongly questioned by different organizational processes because there were no guarantees for the victims and international standards for the exercise of victims’ rights to truth, justice, and reparations were not met. Specifically on the topic of reparation, there was a focus on individual reparations through the administrative route and without judicial processing of those responsible, so the relevance given to economic indemnity cancelled out attention to symbolic reparations or collective processes.³³

It was in 2011, with the issuance of Law 1448 of 2011³⁴ (or the Victims and Land Restitution Law) that for the first time in Colombian legislation, transitional justice appeared as a way to bring about the end of the conflict and the construction of peace and reconciliation. In this law, in contrast to preceding legislation, the central emphasis is on guaranteeing the rights – especially those to truth, justice, and reparation – of those who have suffered damages as a result of infractions of international humanitarian law or grave and manifest violations of human rights. This was established as a *sine qua non* condition for the termination of the conflict, which in previous norms was focused on the demobilization of armed groups.

The definition of victim broadened considerably through this law, by including not only those directly affected by the conflict but also indirect victims. Similarly, it includes violations of human rights that are not necessarily material and individual, but that might have affected collectivities, their traditions, and their gender, for example arson attacks on villages, killings of ethnic communities’ spiritual leaders, or child recruitment.

The contemplated reparations measures include restitution, indemnity, rehabilitation, satisfaction, and guarantees of non-repetition, which proceed from international human rights standards. On this point, it is important to mention that the law also directly alludes to symbolic reparations, such as:

32 Mejía Walker, C. A. (January - June 2011). Approach to the judicial instruments applied to processes of peace negotiations in Colombia. *CES Derecho*, 2(1), 58-71. Available at: <http://revistas.ces.edu.co/index.php/derecho/article/viewFile/1464/932>

33 See, for example, Colombian Commission of Jurists. *Anotaciones sobre la ley de justicia y paz: Una mirada desde los derechos de las víctimas*. 2007.

34 “Through which are dictated measures for attention, assistance, and integral reparation to victims of the internal armed conflict and other dispositions.”

“ *all efforts in favor of victims or the general community that tends to ensure the preservation of historical memory, non-repetition of victimizing acts, public acceptance of the acts, the request for public forgiveness, and the re-establishment of victims' dignity (art. 141).* ”

As one of the symbolic initiatives for victims' reparations resulting from Law 1448, it is important to highlight the creation of the National Center for Historical Memory, a public entity that forms part of the National System for Attention and Integral Reparation of Victims. Its main objective is to bring together and recover oral testimonies, texts, documents, and any information that clarifies acts of violence, and makes visible and dignifies the victims of the armed conflict, their families, and other people who have tried to prevent these human rights violations.

Since then, information compiled by the Center for Historical Memory has been made available to the citizenry, researchers, and other interested parties in different ways: publications, activities, exhibitions, and other ways to enrich knowledge of the political and social history of Colombia. In addition, among the symbolic measures for integral reparation, the Center has created agreements on truth, the National Museum of Memory, regional activities, symbolic measures of collective reparations, distribution of memory, and human rights archives.

Based on this, other similar initiatives have developed at the local level, such as the Center for Memory, Peace, and Reconciliation driven by the Bogota Mayor's Office to strengthen participatory processes of peacebuilding, symbolic reparations of victims, and

reconciliation,³⁵ and the Memory and Peace Laboratory of the Meta Governorship's Secretariat for Victims, Human Rights, and Peace.³⁶

Even more recently, it is worth mentioning that the Peace Agreement addresses – among the six agreed points – integral reparation of victims. Here, the agreement was made to strengthen the Program for Integral Victims' Reparations that had been implemented since the creation of Law 1448 of 2011, in order to fulfill the objective of dignifying the victims, contributing to coexistence, reconciliation, and guaranteeing non-repetition. This program includes several measures that point to reparation from different perspectives. Some are:

- » Early acts of recognition of collective responsibility;
- » Concrete actions to contribute to reparation;
- » Collective reparations;
- » Psychosocial reparations;
- » Return and relocation plans for victims of forced displacement;
- » Land restitution measures;
- » Strengthening current spaces for participation.

35 Memory, Peace, and Reconciliation Center. Available at: http://sitiosdememoria.org/es/institucion/centro-de-memoria-paz-y-reconciliacion-2_es/.

36 Meta Governor's Office. Memory and Peace Laboratory, a scenario for the construction of reconciliation. <http://www.meta.gov.co/web/blog/laboratorio-de-memoria-y-paz-un-escenario-para-la-construccion-de-la-reconciliacion>.



The Integral System for Truth, Justice, Reparation, and Non-Repetition, created through Legislative Act 01 of 1 April 2017³⁷ deserves special attention, and gave scope to the commitments made in point five of the Peace Agreement. Its objective is to provide restorative and reparations guarantees to the victims of the armed conflict through judicial mechanisms – the Special Jurisdiction for Peace (SJP) – and non-judicial mechanisms – the Commission for the Clarification of Truth, Coexistence, and Non-Repetition and the Unit for the Search for the Disappeared in the context and as a result of the armed conflict.

The Peace Agreement established that in cases in which there has been an absence of recognition of truth and responsibility, the Tribunal for Peace can establish symbolic reparations obligations of the State and organizations, respecting due process and always in the case that the organization or the State has issued effective procedures to prevent sanctionable conduct.

3.4. Symbolic reparations and business

In 2011, the work of Professor John Ruggie as UN Secretary-General's Special Representative culminated in the unanimous

³⁷ It is worth noting that in November 2017, the Constitutional Court announced the decision about the constitutional review of Legislative Act 01 of 2017, through which the ITJRNRS was created. The Court stipulated that the Special Jurisdiction for Peace (SJP) cannot call third parties (among them public representatives, businesses, and business people), rather that their participation must be voluntary and as witnesses.

approval of the Guiding Principles on Business and Human Rights (UNGPS) by the United Nations Human Rights Council. Since then, these principles have become the international normative reference for all discussions in which the business world is connected to human rights problems. These principles are built around three broad topics or pillars.

- » The first pillar discusses States' obligations to protect and ensure fulfillment of human rights within their territory or jurisdiction (art. 1).
- » The second pillar refers to business' responsibility to respect human rights, that is to abstain from infringing on the rights of third parties and confront the negative consequences they might have caused (art. 11).
- » The third pillar focuses on access to reparations mechanisms and urges States and businesses to establish tools and collaborate to guarantee effective access of victims to judicial and non-judicial reparations.

In terms of business' responsibilities on reparation, the UNGP establish that when businesses have provoked or contributed to provoking negative human rights consequences, they should repair or contribute to reparations through legitimate means (art. 22). They also specify that where negative consequences are produced without the business having provoked or contributed to provoking them, but where they are directly related to the business' commercial operations or relationships, the responsibility to respect human rights does not demand that the business itself repair the damages, but this does not impede its ability to take a role in the reparations process (comment of art. 22).

The UNGP mention different types of reparations: restitution, rehabilitation, economic or non-economic compensation, penal or administrative punitive sanctions, and guarantees of non-repetition. It is worth mentioning that apologies are explicitly recognized as a form of reparation (comment on art. 25).

On different occasions, the UN Working Group on Human Rights and Business has emphasized the need to offer victims diverse forms of reparations. The dimension of satisfaction in reparations is recognized among them. The Working Group takes ownership of the guides offered by the UN Principles and Basic Guidelines for Victims' Rights to Reparation.³⁸

It is important to highlight that the Working Group warns of the difficulties for the business world of forming part of sincere public apologies and, especially, highlights the fear of legal consequences that can come from such initiatives. This is why the Working Group promotes legislation that facilitates and invites businesses to offer apologies without protecting them from legitimate legal action.³⁹

Despite these brief and specific considerations by the Working Group on symbolic reparations or satisfaction measures, the academic literature on the subject is limited. In general terms, one could say that the Working Group has emphasized the problem of access

to judicial and non-judicial reparations, more than the substantive discussion on reparations. To this it is worth adding from the academic and practical fields, reports, works, and testimonies that explain the motivations, difficulties, challenges, and consequences in which symbolic reparations function in the business world are almost non-existent.

With respect to the Colombian case, considering the UNGP as the framework for symbolic reparations for damages that occurred in the armed conflict is a challenge for diverse reasons. First arises the question of how symbolic reparations can be integrated when the conversation is about "irreparable" damages that occurred in contexts in which businesses not only did not conduct due diligence, but also infringed in different ways on the laws and norms of the country.

Second, taking into account that participation by the business sector in the IJRNRS is voluntary and does not guarantee that responsibilities for possible human rights violations will be assumed, it is worth asking how businesses can repair damages when there is no responsible party. Finally, in a scenario in which there is no trust between different actors, the promotion of effective symbolic reparation processes based on interaction, dialogue, and consensus present a challenge.

38 See Working Group report presented to the UN General Assembly on 18 July 2017 (A/72/162). See also point 40 of the Working Group Report presented to the Human Rights Council on 5 May 2014 (A/HRC/26/25).

39 Point 51 of the Working Group Report presented to the UN General Assembly on 18 July 2017 (A/72/162).



4.

SYMBOLIC REPARATIONS IN THE BUSINESS SECTOR: DESK RESEARCH

A review was conducted of 48 initiatives led or supported mainly by large businesses that operate formally in the Colombian territory. The economic sectors to which they belong are strategic for the national economy and, in some cases, generate high social and environmental impact in the zones in which they operate. For this reason, they depend on solid relationships with the region in order to have the social license to operate.

These initiatives aim to socioeconomically transform the territory or build peace and reconciliation. They allow visibility for businesses that have been working on peacebuilding for more than a decade, due to the fact that in one way or another the implications of the armed conflict and the limited presence of the State in some zones of the country make such work necessary.

In addition, it was found that the businesses carry out partnerships mainly with state institutions and organisms that have a relevant role in implementation of the judicial, administrative, social, and economic measures set out in Law 1448 of 2011 for the benefit of the victims of the armed conflict, for example with the Department for Social Prosperity (DSP). The private sector's contribution is always carried out with economic resources and participation in specific areas such as employment

inclusion. They also work in partnership with other businesses, NGOs, embassies, and foundations for the implementation of projects, and not in all cases are the projects led by businesses.

In general, there is a business sector trend towards processes or projects that target reconciliation and regional transformation through material contributions. These projects are supported by an immaterial component of work for cultural and institutional strengthening, and environmental protection. More recently, and very specifically, initiatives have been developed at high symbolic value as historical memory or recognition and dignification of victims. Based on desk research, different cases have been categorized in two areas.

4.1. Socioeconomic initiatives

A large part of the reviewed cases make evident that businesses have developed strategies for economic and social inclusion that range from implementation of employability programs and job creation for poor populations, victims, and ex-combatants, to inclusion of priority groups within the value chain through financing

and promotion of productive projects and commercialization.

Similarly, there are social investment projects that aim to improve quality of life for communities most affected by conflict, through the construction of housing and cultural and recreational spaces, and improvement of communications and education infrastructure. On this point, it is important to mention that there are businesses interested in forming part of the strategy for Zones Most Affected by Conflict (ZOMAC), born of the Peace Agreement.

4.2. Initiatives for the reconstruction of the social fabric and culture of peace

Some initiatives in the reviewed cases seek to contribute to reintegration and reconciliation processes between vulnerable communities and victims, with ex-combatants and demobilized people, and public institutions and businesses. Spaces have been convened to improve the relationships between regional actors through commercial fairs, improve community infrastructure, and others.

These peacebuilding and reconciliation initiatives constantly include education and training for the adoption of tools and capacities that allow healthy conflict resolution. These spaces are also used to discuss human rights and international humanitarian law, citizenship, and democracy, and use methodologies such as Schools of Forgiveness and Reconciliation. The components of culture, art, and sports are well used in this type of initiatives because they help to prevent engagement

with dynamics of armed conflict (such as recruitment of children, adolescents, and youth).

Although scarce, it is worth highlighting initiatives that target the creation and distribution of historical memory, in which work has been carried out with communities affected directly (victims of massacres) and indirectly by conflict. These have included spaces for dialogue between communities and workers from the businesses that lead the initiatives, and their contractors, to identify how conflicts have been managed and jointly discover lessons that ensure non-repetition.

In the same line of work as the symbolic type, there are a few cases in which there has also been interest in contributing to re-signification of spaces that had entered into disuse by communities due to the negative memories they brought back, and to the construction of works (of varying scope) that aim to remind people of the acts that occurred in the framework of the armed conflict and their impact on the lives of the population.

4.3. Conclusions of the desk research

First, the desk research did not identify any cases in which a company or other business actor participated in reparations processes, material or immaterial, as part of an exercise of acceptance of responsibility for the human rights impact of the armed conflict. Even if there are documented cases of businesses that have appeared in the ordinary justice system, accused of grave abuses of human rights, until now none has been conducted outside its judicial territory nor has it explored symbolic options that contribute to effective reparations.



However, there are initiatives that promote the reparation of damages or effects of other legal and illegal actors in the framework of the armed conflict or due to the precariousness of state institutions from different perspectives, although they do not explicitly mention the concepts of reparation or responsibility. One example of this are the historical memory processes with communities of victims of the armed conflict,⁴⁰ or the promotion of actions for environmental recovery.⁴¹

A hypothesis that could explain the trend of businesses and businesspeople to work on initiatives that contribute more in material terms is the existence of purely transactional relationships that society has built with them and that do not allow them to conceive their capacity for action as more than economic. Similarly, another hypothesis could be the priority that the State has given to inviting the business sector to contribute from a socioeconomic perspective.

Second, the research finds that most of the documented initiatives involve large businesses from economic sectors that require large investments and infrastructure, and whose operations have high impact on the territory (hydrocarbons, transport, or mining). It is well-known that the desk research has not identified any initiative driven by, or in which participated, small or medium businesses or any business associated with them.

Third, it is worth highlighting that many of the initiatives that aim to build peace and reconciliation, specifically those of a material nature, are framed within business CSR policies. These initiatives frequently position themselves beside diverse others with greater or lesser strategic impact for business and with eminently philanthropic goals. One hypothesis that would explain the preference for the use of the term CSR could be business sector resistance to working directly on peace due to the possible judicial repercussions that could imply a need for reparations processes.

40 Available at: https://www.isagen.com.co/informe-de-gestion/2016/pdf/Construccion_paz.pdf

41 Available at: <http://nacionesunidas.org.co/blog/2014/12/29/en-buenaventura-se-siguen-construyendo-puentes-para-la-reconciliacion/>

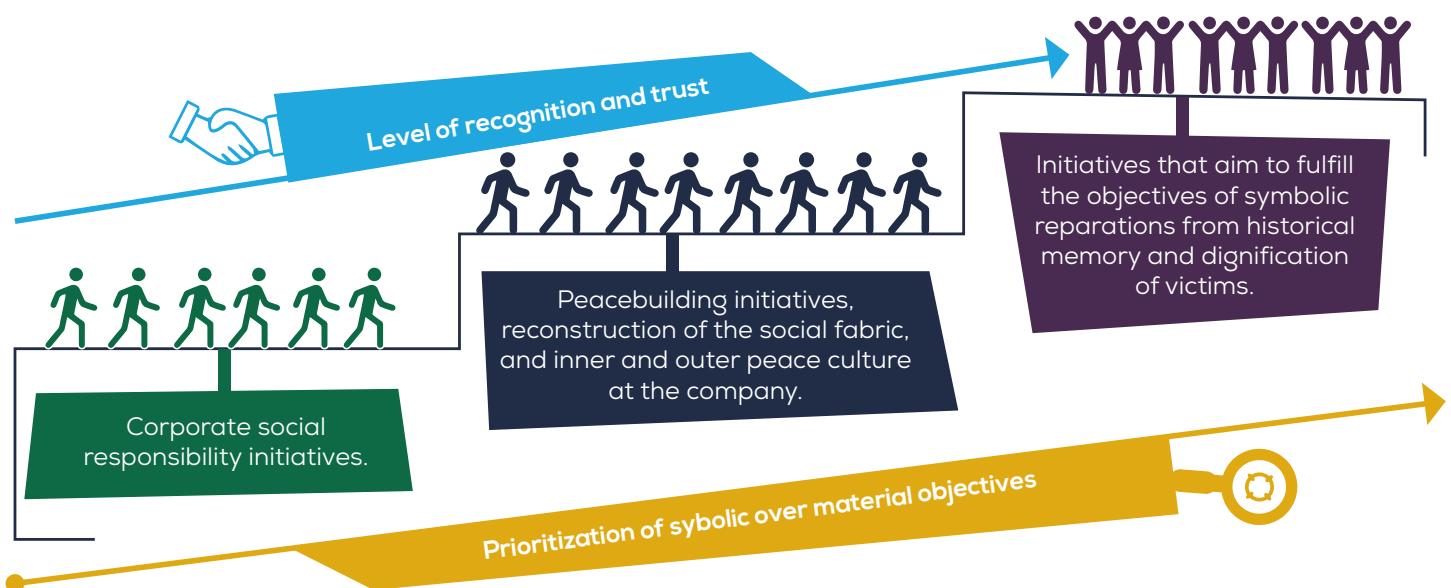
5.

FINDINGS FROM THE IN-DEPTH STUDY OF THREE CASES

As was mentioned previously, there are no initiatives presented as reparations in the Colombian business sector. However, for this research three cases were taken into account, of businesses that have contributed symbolically to: 1) the reconstruction of historical memory of their workers and contractors; 2) support for the reconstruction of historical memory of a community affected by armed conflict; and 3) recognition of the quality of "victim" of a community for their dignification, with an eye to building trust.

Even if none of these initiatives mentions an objective of repairing the participants, one of the main findings of the research is that these businesses could address the dimensions of memory and recognition of the population's status as victim, after having worked on constructing closer relationships based on trust with their interest groups and in their area of operation.




Figure 1 The relationship between different levels of recognition and trust on symbolic reparation vs. material reparation.



Source: Own creation.



Table 1 Study of three cases.

	Case study 1	Case study 2	Case study 2
	ENERGY 	ELECTRICITY 	MINING 
Ownership	Public/Private	Private	Private
Symbolic initiative	Internal work on historical memory with workers, contractors, and their families. Each participant told the story of how they lived the conflict during their employment with the company.	Construction of historical memory of a community of victims of the armed conflict. Psychosocial support to direct victims and construction of community historical memory.	Business support for commemorations of Victims' Day in a village community in its zone of operations.
Target audience	Employees and contractors who are victims of the armed conflict during their employment by the business.	Community of victims of the armed conflict.	Community of victims of the armed conflict.
Possible motivation of the business to carry out the initiative	Social license + act of solidarity with the victims inside the company, which aims to generate a more favorable internal working climate.	Social license + act of solidarity with the victims of the armed conflict, which was born of the genuine belief that the business can contribute to peacebuilding.	Social license + act of solidarity with the victims, which strengthens trust building processes between the business and the community + protection of reputation.
Context in which the initiative took place	2015. One of the business interest groups brought up the need to work on historical memory in a meeting with the human rights committee.	2014. The business had been working with the community on psychosocial support processes.	2017. The business was invited by the community to participate in a victims' commemoration event.
Status of the initiative	Finalized	Finalized	In process

Source: Own creation.

The results of the case studies make it possible to see that businesses, workers, and victim communities were found or are being found in trust-building spaces that positively influence coexistence and reconciliation. There, they have worked on recognition of the other (state-business-communities) through conversations about how to jointly think about the future.

"We have to talk about the future to talk about the past" – Community Leader

The hypothesis of the research is that these spaces try to reach some of the objectives of symbolic reparation, but each actor has different expectations of processes that can arise later. The tension between solidarity expressed by businesses and the workers' and communities' need for businesses to fulfill their reparations obligations is evident where there have been human rights infractions in the framework of the armed conflict.

For workers and communities, the fact that businesses work on historical memory or the dignification of victims has made it possible to set out the foundation to contribute to the clarification of truth about what has happened and effectively contribute to peacebuilding and the guarantee of victims' rights, in the future and under joint agreements.

For their part, businesses seem to find work on historical memory and the dignification of victims to be a way to manifest their recognition of the regional impact of the armed conflict, as well as their solidarity with those who most suffered and were, or are, vulnerable to dynamics of violence.

5.1. Context in which the analyzed business initiatives were managed and developed

In the three cases analyzed, the businesses have a close relationship to the armed conflict because their infrastructure is in zones of vulnerability in which there have been violations to the rights of their workers, contractors, and interest groups, or because in the absence of the State, they have had a significant role in the integral development of the regions in which they operate. In this panorama, the analyzed businesses have had to make decisions with respect to the demands of illegal armed actors (such as terminating their operations or operating under security protocols), the call for workers and communities whose rights are being violated in the framework of the armed conflict (cases of forced displacement or kidnapping of contractors) or because of structural violence (absence of road infrastructure, education, health).

The international context in which human rights violations are managed and prevented in contexts of economic activity has had a strong influence over the type of decisions that businesses take to manage human rights, and the moment in which they take them.

"With the fall of oil prices, they started asking themselves, - if I pursue this project, how many salaries will I not be able to pay?" – Manager responsible for the initiative



In the analyzed cases, the three initiatives were carried out because the workers or communities asked the businesses, meaning that they assessed that the context guaranteed the conditions to work on historical memory and dignification of victims. In the Energy Case and Mining Case, it is specified that the social and political context of negotiations around the Peace Agreement positively influenced the business climate, and allowed the development of the initiatives.

"The project did not end because of the Price (of oil), it just stopped being important for the management" – Manager responsible for the initiative

In the Energy Case, the actors diverge with respect to the reasons why they ended. On one hand, some affirm that the economic context negatively influenced the continuity of the initiative due to the fall in the price of oil, which meant that the leadership opted to take expense reduction measures and prioritize other activities. On the other hand, some say that this had nothing to do with it, as the initiative did not imply a high quantity of resources and the decision to end it had to do with the lack of interest in and awareness of the topic.

Finally, the Mining Case was implemented thanks to the fact that the region in which the community lived was the area of operation of the business, and its security conditions improved. This has allowed the community to feel a higher level of trust to carry out commemorations that allude to collective

victimization, and has meant that the business and its workers can have a real presence in the region, including in activities promoted by the community.

5.2. Internal barriers and obstacles to the development of symbolic reparations initiatives and strategies used to overcome them

It has been identified that a considerable number of barriers or elements, internal and external, have somehow limited the development of business initiatives with symbolic objectives. The recognition of these limitations is of great importance as it allows the identification of fears and strategies implemented by the managers to overcome them.

"The internal reaction of the vice president of the legal department was: - this is a shot in the foot" – Manager responsible for the initiative

In the legal departments of the three cases, there was great resistance to the development of symbolic initiatives, because they were unclear about the scope and possible legal and reputational consequences of the work in terms of historical memory. In addition, they believed that addressing these topics

could mean that society perceived that the business had some sort of responsibility in the armed conflict.

In terms of the question on how internal fears were addressed in order to carry out the initiatives, in the Energy Case the interviewees point out three effective strategies implemented in parallel. First, intense internal pedagogical work with departments and people most wary of the initiative.

*"From the legal department they were asking themselves:
- Why should we intervene if we have not done anything?"*

Second, the human rights committee played a key role: at that time, the committee had direct participation by the Secretary-General of the business and the unions, which allowed the initiative to be discussed within the high levels of the hierarchy of the organization. In the committee, in collaboration with the judicial area, there was exhaustive monthly monitoring of the evolution of the project, and the methodology and scope of the project were documented in a detailed way.

"The objective is not framed within the search for the judicial truth or identifying perpetrators. We are not going to start pointing fingers, because that is what the judicial bodies are for" – Manager responsible for the initiative

Everything that related to the armed conflict and therefore the same exercises of historical memory as were developed around it have a high political and ideological charge. This is why a third key factor for the initiative was to clearly establish that the exercise did not aim to accuse anyone, but rather share a history and dignify the victims in a depoliticized and non-ideological way.

"We have seen so much violence that we are used to it. We are anesthetized" – Manager responsible for the initiative

Another factor that acted as a barrier was the lack of awareness within and outside the businesses with respect to the violence and the armed conflict. Some of the interviewees pointed to the lack of a favorable social context in Colombia for symbolic initiatives and historical memory. These exercises, according to one of those responsible, aim to generate empathy and decrease attitudes that lack solidarity or that are insensitive.

Finally, at a more operational level, another barrier that the promoters of the symbolic initiatives found was difficulty in identifying performance indicators that showed the value of the project to the rest of the organization. Given its nature, the symbolic initiatives are irremediably intangible and, as a result, their impact is difficult to quantify and translate to a table of results. The lack of economic indicators was highlighted as an internal impediment to show and convince the upper management of the value of these initiatives to the business.



"We didn't have any performance indicators (of the initiative). We couldn't measure the impact and that made it difficult to sell the idea to the management." – Manager responsible for the initiative

5.3. The role of workers and upper management

As was mentioned above, the type of peacebuilding and reconciliation initiative that businesses implement has depended on the national and international context and their relationship with the communities in their context. However, it has also been seen that personal and work experiences of the employees have determined how to manage immaterial damages that have affected the business sector and its interest groups.

In the cases studied, two dynamics have been observed that appear to be decisive in organizations' internal drive to develop symbolic initiatives, although they function in opposite directions.

"This Project is meant to be sold by the heart, not by the head, I was dedicated to touching hearts" – Manager responsible for the initiatives

On one hand, a bottom-up dynamic in which the workers drive the project directly or through union representatives, and highlight to upper management their willingness to work on symbolic aspects that link them and the business to the tragic events of the armed conflict. In the Energy Case and Electricity Case, it was observed how the genuine interest of the promoters and of those responsible for the exercise went beyond what was strictly professional.

There is also the opposite phenomenon, from the top down, in which upper management wishes to work on symbolic initiatives and makes available the resources and decisions for those initiatives to gain traction internally. The case studies show how these two dynamics work complementarily, but make clear that the most decisive factor for these initiatives to function is the commitment and willingness of upper management. In the Energy Case and Electricity Case, the Director-General's commitment is explicit and well-known, which helps to overcome opposition and internal barriers as well as giving legitimacy to the exercise.

"The president of the time was convinced of the subject and its value for the company" – Initiative participant

Different interviewees converge on linking upper management' motivation to support these initiatives with humanistic values, "knowing how to listen", "the will to learn", and to believing in the intrinsic value of the project. What allowed these initiatives to prosper

was business leadership based on values that go beyond strict economics. An example of the importance of this leadership in the two mentioned cases is that in the moment in which there was a change in leadership, the projects lost support for the new direction and were discontinued.

5.4. Identified positive benefits and impacts

During the research, the positive impacts of the initiatives studied were identified in the participants and, more broadly, in the businesses. This was particularly true of the Energy Case, whose historical memory initiative invited participants to tell, through a joint methodology and work sessions, their personal stories of conflict from the perspective of the business.

The impact generated on participants was enormously positive, but also revealed that the concept of reparation is controversial among them. One group of participants affirmed that the exercises had healing and reparative effects, as telling their story allowed them to feel heard and recognized. In addition, the exercise went beyond economic terms as it aimed to raise awareness among workers about the need to not be indifferent about the effects of the conflict.

"To write the story and to cry writing it was healing, dignifying" – Initiative participant

The exercise is described as a great generator of empathy that impacted those who told their story and those who listened. It is worth highlighting that in this case, the historical memory exercises were conducted by a team of professionals who guided the dynamics and actively managed elevated emotions resulting from the exercises.

On the other hand, another group affirms that the exercise can be characterized in terms of reconciliation but not reparation, because at no point did the business recognize or ask for forgiveness for having had one or another role in the armed conflict. In addition, the exercise centered on the lived experience of the conflict and not on the identification of actors and dynamics.

"Reparation implies asking for forgiveness and recognizing wrongdoing – and in this exercise, that was not done" – Initiative participant

With respect to the benefits that implementation of these symbolic initiatives brought to the businesses, the participants' conclusion was that they contributed to more favorable work contexts by channeling emotions and mitigating psychosocial risks and possible consequences of not adequately managing traumatic events of the past (stress, psychosomatic effects, etc.)

With respect to the memory exercises in the Energy Case and the Electricity Case, these were conceived so that the business could understand more about the context in which it operated, in order to identify "self-protection



and risk mitigation measures”, given that “understanding the context helps to make better decisions and this is fundamental for any business”. It also allows the “generation of a broader perspective on risk, from high-level thinking rather than lower level.”

The symbolic initiatives contributed to transforming or reinforcing perceptions that different actors had about the business. For example, some of the employees were proud or satisfied that their businesses promoted this type of initiative.

Community leaders, NGOs, and business directors agree that it’s necessary to indicate that these initiatives contribute to the relationship and construction of trust between businesses and communities, mainly in the Mining Case. In this last case, one director affirmed that dialogue based on recognition of the other has allowed the communities and the business to think of a shared future, where it is necessary to consider regional development not only in economic terms.

“CSR is just managing projects. If they work, good. If not, also good. But for the company the work done goes beyond CSR. For us, peacebuilding is important. Without peace, the operation is affected” – Manager of the company

5.5. Lessons learned from the case studies

Despite the differences in terms of time, place, motivation, duration, and other aspects of the three initiatives, it is possible to identify some common lessons. First, the initiatives were carried out due to the interest of the employees and communities in the business context, who supported their management, design, and implementation. The interviewees who are part of the businesses manifest the need for all projects and initiatives that promote the business sector to have participation by the public towards whom the projects are directed, the interest groups.

“The community has to be able to participate and be critical of everything that we propose” – Manager of the company

In the specific case of memory exercises, they also affirm that these should be implemented where there are interest groups or where communities request it. Beyond conducting an extensive call for participation, the businesses focused on working people and communities who were victims of the conflict, who found in memory the enriching possibility of building peace. In the case of the business that supports a process for the dignification of one of the victim communities in its work environment, the population were the ones who invited them to participate and outlined the conditions for their participation.

"Three or four employees [...] said they wanted to participate, but they didn't know if they could be part of it as they were not victims. They were also included in the exercise because the conflict affected us all" – Initiative lead

Second, in the case of businesses that developed historical memory exercises, it is important to highlight that there was support for a team of experts of different disciplines who helped participants to understand the scope of concepts such as memory and curation, and helped them to understand that the initiative did not aim to seek judicial truth. Their support was fundamental for individual work, as the businesses assumed that without personnel with the capacity to contain their emotions and work towards the future, memory exercises could negatively affect the initiative.

We can participate as allies or promoters, but that would be determined by the process we develop with the communities" – Manager of the Company

Third, the interviewees thought that the analyzed initiatives are totally replicable if two elements are taken into account. One, they should respond to the contextual needs, the communities' experience and knowledge, interest groups, and victims. In other words,

it is not a "step by step" manual. It is also clear that this is not only about giving a voice to and ensuring the participation of victims and victimized communities, but also about businesses who adopted an attitude that allows them to listen to different voices, whether or not they agree with the position or operational style of the business.

"In the community, this subject was born from the process. We have to work in what the process tells us" – Member of Management of the Company

Similarly, it is important that these initiatives are conducted after having carried out trust-building exercises that allow mutual recognition among the parts and look towards the construction of a long-term future. The cases show that, in terms of an attitude of listening, dialogue, and participation, victims and their communities feel more comfortable when they are recognized in their condition as victims. On the other hand, when the businesses show a lack of understanding, disinterest, silence, or even denial with respect to this condition, there are usually reactions of frustration and rejection by the implicated victims and communities.



"These exercises cannot be done in the company overnight. A whole trajectory is necessary. It is necessary to treat everyone as equal, and not to be paternalistic" – Member of management of the company

"There has to be a common point of support for all participants. What brings us together? We must prioritize a higher good that does not generate discussion, for example: making a better country for everyone, or peace." – Initiative lead

Fourth, the businesses were willing to address symbolic reparations in a more depoliticized and non-ideological way, in terms of aiming for the dignification of the victims' suffering, not the realization of an accusatory act. For this, the businesses opted for the use of reconciliatory and respectful language, and designed objectives that allow their relationship with other parts to focus on the possibility of thinking about a shared future.

"We are not looking to replace justice (the law). This is not the space. Whoever is trying to blame somebody has to go to the legal institutions, this is not their initiative" – Initiative lead

In addition, the idea of working jointly for peace is repeatedly used as a common framework in the three cases. This narrative is successful to create bridges and save differences that could exist between the parts who participate in the initiative.

5.6. Reflections on symbolic reparation from the business sector

Based on the desk research exercises and analysis of the presented cases, and with the support of input from the different interviews and panels carried out, below are presented some conclusions around seven topics identified as being key in the outcomes of the research. These seven topics show the challenge of incorporating the perspective of symbolic reparations in the business world, and emphasize its potential as a tool to contribute to the construction of trust, reconciliation, and non-repetition.

Although it could be precipitous to identify trends, common practices, and reflections on symbolic reparations and businesses with only three case studies, it is important to take into account that the field of business action on this topic, as well as its analysis and study, is still very limited, if not non-existent. Despite not having identified any initiative framed strictly within symbolic reparations, the three cases researched allowed the identification of challenges and generation of reflections about the participation of businesses and businesspeople in these processes.

5.6.1. Solidarity or obligation? Routes for reconciliation and non-repetition

In light of the desk research and the three analyzed cases, businesses can generate a positive impact for communities, workers, and interest groups through the implementation of symbolic reparations initiatives, without necessarily assuming or recognizing responsibility for human rights violations. The feeling of solidarity and desire to contribute to peacebuilding can awaken in any business a genuine interest in repairing a damage, even if they have not been responsible for the act.

In this way, in many of the business initiatives it is clear that despite not setting out the objective of repairing the participants, there is a feeling of solidarity and empathy with their pain, and they are recognized as victims to dignify them and contribute to their guarantees of non-repetition.

The solidarity expressed in the initiatives of the cases studied can have great value for all participants, including victims and the business itself. Through these symbolic acts, the businesses actively contribute to better coexistence and the construction of peace, by recognizing people's or communities' status as victim, as well as their suffering. This recognition reinforces the connections of trust between the parts and has a significant value in a context such as Colombia, where businesses and society in general tend to ignore, or even sometimes deny, the existence of a conflict and its victims.

For the victims, the construction of relationships based on trust is a mechanism to address the clarification of truth about the acts, through dialogue in the near future. This

is to say that the victims consider that where it is possible that a business has infringed on human rights, it is not sufficient for it to express its solidarity, but rather it should contribute to the clarification of truth so that there can be effective reparations.

"As a community we have not appealed to litigation but to dialogue, because it is the best mechanism to clarify the truth" – Community leader

This is why there can be direct or indirect engagement, or even silence or inaction, by any business, towards human rights violations. There is a moral obligation to provide symbolic and material reparations to the victims, as well as assuming responsibility. If not, the business stays in the position of solidarity and can be perceived by society as opportunistic and implicitly guilty.

It is important to note, finally, that the victims manifest that the recognition of responsibilities for infractions of human rights is a process that can occur through dialogue based on trust, without going through the process of accusation that is usually used in the ordinary justice system, which does not necessarily contribute to reconciliation and non-repetition.

"Addressing these exercises should start from the question: what happened? And not: who was to blame?" – Initiative participant



According to this report, it would be an error to try to situate symbolic reparations carried out by the business world exclusively as free expressions of solidarity, or even as responses to a moral obligation to action, complicity, or omission of the business with respect to possible human rights violations. The field study shows that there is value in both approaches when they are set out jointly: solidarity as a path that opens doors to trust building between actors and the recognition of pain suffered by victimized individuals and communities.

5.6.2. The scope of language and concepts for the participation of the business sector in symbolic reparations initiatives

Throughout the research, it was obvious that there was a difficulty around how each actor defines concepts such as “business world” as well as how they think transitional justice works, especially reparations. The dynamic of armed conflict in each region, the position and role that each actor had in the conflict, and the complex relationships between different actors mean that the understanding and scope of concepts such as peace, forgiveness, truth, reparation, reconciliation, business, etc. varies depending on the context and the place in which it is considered.

“The concepts of forgiveness and reconciliation cannot be given by decree, they are personal” – Manager of the initiative

One example of this is how, in the framework of the armed conflict, non-business actors frequently associate business, or large industrial, agricultural, or extractive companies, with the role of victimizer, and of reparations with a recognition of responsibility, or of truth as a story between antagonistic actors (victim-victimizer, community-business, army-guerrilla, etc.).

The topic of language is very relevant; acts of symbolic reparation are, eventually, semantic actions built on language. The study of the cases highlights the need to establish beforehand clear definitions of key concepts (for example, truth, historical memory, responsibility, etc.) as well as determining the scope and frameworks for action within the projects.

“For me, to forgive in terms of truth does not mean that the conflict is going to disappear, but that there is the possibility of managing under trust” – Community member

With respect to the possibility of contributing to the consolidation of peace and integral regional development from a symbolic perspective, the business experts and representatives consulted were in agreement. However, they consider that it is necessary to be wary of the use of language and definitions around symbolic reparations. For example, some suggest framing the initiatives in terms of “solidarity”, “coexistence”, and “future”, and not “reparation”, “justice”, or “truth”.

The joint construction and agreement of these concepts among the parts is important, especially where business realities coincide with very different social realities that might not align. For example, the use of terms that victims do not semantically relate to the recognition of their rights can influence their perception of business motivation for carrying out the projects that aim to consolidate peace. In other words, that a business recognizes and dignifies a victim community for “solidarity” can have little or no impact for the victims, compared to when they receive reparations.

This panorama caused some of the interviewees and focus group participants to propose, first, the re-elaboration of the concept of reparation, in which there doesn't necessarily have to be a recognition of responsibility in the framework of the armed conflict. They consider that this could positively influence businesses to develop or involve themselves in peacebuilding initiatives and symbolic reparations.

A first argument that sustains this possibility is that the complex Colombian context makes necessary the application of “soft law”, in which the concept of reparation is adapted to current conditions in order to satisfy the demands of the victims' rights. This does not mean that the damage should not be repaired in an objective way, or that it should be done as a result of altruism, as it can be insisted that the means of reparation can be built and agreed between the victims and those who caused the damage so that the reparations are effective.

A second argument is that if a direct relationship between reparation and responsibility is not established, it could be perceived that some processes led or supported by companies count as reparations for victimizing acts that have occurred, or not,

in the framework of the armed conflict. These initiatives point towards the opportunity to jointly create conflict resolution mechanisms that strengthen trust and positively influence coexistence in the region.

Second, academics and business representatives set out the need to conceptualize the “business world”, taking into account elements such as the size of the business, type, sector, location, and others. This would lead to an analysis of the business in armed conflict that integrally contributes to truth, and would incentivize business trust in transitional justice mechanisms. It would also allow the realization of a more reflexive exercise about the characterization of damages and responsibility in which the latter is understood not only in terms of blame, as happens currently. That is why reparations agreed to address the damage inflicted should adequately address the specificities of each region.

5.6.3. Perspectives on the Integral System for Truth, Justice, Reparation, and Non-Repetition

Since the draft of the fifth point of the Peace Agreement was presented, on the establishment of the ISTJRN, numerous discussions have been generated about the scope of its components and the role of the business sector. This last point was formally included in the judicial ordinance through Legislative Act 01 of 2017, which specified judicial and non-judicial mechanisms for attainment of its goals.

The Constitutional Court reviewed this Legislative Act to determine whether it would be adjusted to the Political Charter and,



through Sentence 674 of 2017,⁴² ruled for its legality with some stipulations. Among these, the SJP stands out as it does not have competence over investigation of the participation of third parties in the conflict (though these parties could voluntarily form part of the process), as this would fall to ordinary justice.

Despite this decision of the high tribunal, there are still judicial and political questions about the SJP's competencies and procedures. In particular, there are objections presented by the recently elected president Ivan Duque, who objected to six of the 159 articles of the SJP Statutory Law and announced that he would present a constitutional law to modify Legislative Act 01 of 2017. So the law had to return to Congress after passing through a new Constitutional Court review of the President's objectives. However, there is no clarity on the way in which this review would be carried out in either instance.

While these questions are resolved, the SJP continues to operate under a scenario of judicial uncertainty,⁴³ which results in a question of particular interest to this analysis: What are the expectations, as much of society as of the business sector, about business' role with respect to the SJP and, in general, with respect to the transitional justice model?

Providing a satisfactory response to this question is quite complex and could result in more questions. Taking into account the current context of judicial insecurity with respect to the SJP's operations, there has

been broad speculation by all interested parties, including the business sector. This includes not only the business people who were directly or indirectly involved in the deepening of the conflict, but also those who were victims of violent acts such as kidnappings, and those who wish to develop strategies to contribute to peacebuilding.

The fact that there is still no complete clarity about the way in which the SJP will carry out its mandate is slowing down the dialogue with certain business sectors, who have been reticent in talking about what has happened in the conflict. Of course, a *sine qua non* condition for appropriate implementation of mechanisms within the judicial framework of transitional justice is that there is clarity about their procedures, scope, and implications.

In addition, even when the Constitutional Court limited the possibility that the SJP could oblige third parties to appear before it, voluntary initiatives to contribute to truth and reparation are being limited because the scope and procedures of judicial and non-judicial mechanisms are not completely defined.

Under these considerations, and as had been anticipated in previous analysis,⁴⁴ many fears or questions persist, especially in the business sector, with respect to the implications of becoming involved with the ISTJRN, for example in terms of whether or not the narratives or testimonies could at some point have judicial implications.

42 Constitutional Court, Sentence C-674/2017. Available at: <https://www.jep.gov.co/Documents/Transparencia/383809236-C-674-de-2017.pdf>

43 Currently, 1,958 members of the armed forces and almost 3,500 ex-combatants of the FARC have admitted themselves to the SJP.

44 See, for example, "Retos y Oportunidades para el involucramiento de empresas y comunidades en procesos de construcción de paz", CREER 2018. Available at: https://docs.wixstatic.com/ugd/134a42_78d-7817347b54e4880a49c99870f8468.pdf

Finally, there is also the question of how to avoid businesses' reputational and legitimacy concerns becoming part of the discussion when the business enters symbolic initiatives that contribute to the reestablishment of victims' rights, and whether this can be understood as acceptance of direct responsibility for violations of rights. In other words, and as has been shown by this research, there is a willingness to talk about symbolic initiatives framed under reparation, as long as they provide the conditions for this not to be interpreted and managed as acceptance of responsibility.



6.

CONCLUSIONS

This report aims to contribute to the discussion around symbolic reparations by the business sector, which, until now, has not received the attention it deserves. In the Colombian case, there are few documented initiatives and little is known about their implementation, scope, and benefits, so the input generated by this research could result in a deeper understanding of the topic.

Before going into the conclusions, it is necessary to mention that, due to the limitations of the research, work should continue on the following questions, which could contribute to overcoming business sector barriers and fears about working on symbolic reparations.

- » Which reforms or incentives could be offered by the Colombian transitional justice framework so that businesses implement symbolic reparations?
- » What impact do symbolic reparations have between workers and company directors? Do they reformulate their vision and understanding of the organization and its values?
- » What impact do symbolic reparations have on victims' and communities' perception of the company?

- » How can businesses incorporate their own historical memory in their due diligence exercises? In what way can due diligence shape business human rights policies around non-repetition?

6.1. The construction of trust as a means for reparation and non-repetition

One of the topics that has generated the most controversy among all of those upon which consultations were carried out in the elaboration of this study, and in society in general, has been whether or not there is a need for businesses to openly recognize their responsibility for infringements on human rights. This research considers that where there has been responsibility, there is a moral obligation to provide reparations. However, it is also concluded that depending on the path taken, the recognition of responsibility can contribute, or not, to reconciliation and coexistence.

Businesses, communities, academics, institutions, and others who participated in the study constantly stated the need to promote trust-building processes, not only to reach symbolic reparations or the consolidation of

peace, but also as a condition to guarantee the integral and dignified development of the region.

In this sense, trust is shown to be a legitimate means for communities, businesses, and society to mutually recognize each other and achieve a greater understanding of the armed conflict, including the (often changing) roles that each one took, the situations they had to confront, the different degrees to which they were affected or hurt, and what level of responsibility they should assume.

Achieving this understanding and recognition guarantees, from the individual perspective, as communities, sectors, and society, the commitment to not allowing repetition of the violent acts that occurred in the framework of the armed conflict or of those (often legal) dynamics that deepened the structural violence in which the conflict was forged.

“The risk evaluation showed the need to work on managing the past, because of the company’s association with the conflict” – Member of management of the company

Symbolic reparations require businesses to be firmly committed and to work on trust-building with their interest groups. The businesses should not address or try to avoid the assumption of responsibility when there is responsibility, or participation in reparations that mean to be an expression of solidarity or a genuine form of accountability and recognition of possible responsibility. This implies that they permanently run the risk of being labeled as victimizers: when a community or civil society actor denounces

them, when an ex-combatant mentions them in declarations, when classified information is revealed, etc.

“The report helped as a pressure mechanism for companies to start addressing the issue” – NGO that supports victims in the community

These situations also promote the extension and acceptance of discourses that do not recognize the different realities and roles that the business sector had in the armed conflict and therefore continues to legitimize their supposed and “unique” role as victimizer. As a result, the businesses’ relationship with their interest groups and with society in general deteriorates, as does their reputation and legitimacy, which affects their operation and puts at risk their social license to operate.

6.2. Small and medium businesses and other economic sectors in symbolic reparation

Despite the importance of large businesses and strategic economic sectors in the Colombian economy, it is worth asking about the role of other economic actors such as small and medium businesses, which are of particular interest because they are present in all of Colombia and are crucial part of the country’s economic and social fabric.



The more personal character of the small and medium businesses, their roots in the regions, and their smaller size could have exposed them more directly to the dynamics of violence. They have been the subject of extortions, kidnappings, murders, and others.

In addition, these same characteristics give them a greater chance of having violated human rights in one way or another in the framework of the armed conflict. However, this research did not find any symbolic reparations initiative led by these actors.

It therefore seems unavoidable to ask how small and medium businesses can participate in symbolic reparations processes. It is worth insisting on their engagement with material and symbolic reparations processes, which is of great relevance to the guarantee of victims' rights and to reconciliation and regional consolidation of peace, taking into account that their relationship with the region is much closer than that of large companies.

It is also worth asking about the role that chambers of commerce and other business groupings can play in peacebuilding, and specifically in the promotion of symbolic reparations exercises. Many of these institutions bring together groups of businesses and businesspeople, and exercise representation functions of a determined sector or region. Those who enjoy an elevated grade of legitimacy could be well positioned to collectively explore symbolic reparations on behalf of their members.

6.3. The transitional justice process in Colombia, and restorative justice

In order to incentivize participation by the business sector in reparations processes, it is useful to include a restorative justice perspective that aims at the joint construction of reparations measures not only to manage violation of laws, but also the reconstruction, in the present and the future, of relationships between communities and businesses (social damage) through dialogue.

This type of justice allows the creation of conditions so that different actors can express their feelings and emotions and thereby jointly create reparations measures and policies that satisfy their rights and needs. It also contributes to eventually carrying out a discussion about the past to construct the future by building trust.

Restorative justice was born in the field of criminal law, but in recent decades it has successfully expanded to other fields such as conflict management within organizations, bullying in schools, and resolution of family conflicts. In this way it is useful, for example, within businesses, because it contributes to improving the indexes of occupational health or to improving the business culture of conflict resolution.

“Workers, in wellbeing, are twenty times more productive than in distress” – Initiative participant

Finally, in a context such as Colombia in which society prefers punitive sanctions and the use of ordinary justice, the fact that businesses promote or engage with restorative justice initiatives in which forgiveness and reconciliation prevail sets out great challenges for society, especially in terms of the clarification of truth, if it is taken into account that the responsibility should only be assumed as a result of blame and guilt.

6.4. The analysis of the past as a mechanism for construction of effective human rights policies

The UNGP and Business and Human Rights Working Group reports indicate the need to put diverse types of reparations at victims' disposal and highlight the value of symbolic reparations. One of the key factors in this study is the power that symbolic reparations, especially historical memory exercises, has as a source of inspiration for business policies that aim for non-repetition.

It is possible to affirm that reparations from the business sector are not only circumscribed as the third pillar of the UNGP about access to reparations, but that they are also framed, when appropriate, within the second pillar on businesses' responsibility to respect human rights.

This responsibility for human rights requires the business sector to develop due diligence mechanisms to identify the negative human rights consequences that business actions have provoked or contributed to provoking through their activities, or that have a direct relationship to their operations, products, or commercial services.

As a result, exercising due diligence requires understanding and analyzing the past to avoid repetition of the same human rights impacts in the future. Managing the past through symbolic reparations becomes a key part of the internationally recognized business responsibility. Framing symbolic initiatives within the second pillar of the UNGP could be a good strategy to provide them with greater visibility and impact.



7.

PROPOSALS

Here the report offers a series of recommendations that result from analysis and reflection throughout the research. The recommendations, although synthetic, aim to contribute to each actor identifying clear routes to promote the participation of the business sector in symbolic reparations initiatives.

7.1. For the business sector

- » Incorporate the historical memory perspective as a source of information to develop human rights due diligence focused on non-repetition.
- » Seek to support historical memory and symbolic reparations organizations and experts to guide businesses, victims, and communities throughout the process.

“Entrepreneurs have the ability to convince themselves because they speak the same language” – Manager of the initiative

- » Share experiences and lessons on symbolic reparations with other businesses in the sector, and through business organizations to which you belong.
- » Consult with the SJP and the Commission for the Clarification of Truth about how to participate in the construction of strategies and exercises that involve symbolic reparations within their mandates.

7.2. For the State

- » Raise awareness in society, especially the business sector, of the importance of symbolic initiatives for the effective reparations of victims.

“In think government does not understand the importance of memory” – Manager of the initiative

- » Raise awareness in society and the business sector about the possibility that they contribute to the consolidation of peace not only in economic terms, but also to start to transform transactional relationships between them, the State, and the population.

*“Who said companies are experts in peace processes?”
– Member of management of the company*

- » Coordinate with the business sector to distribute the different dimensions that can be addressed, to support the consolidation of peace (socioeconomic, reconstruction of the social fabric, consolidation of a culture of peace, governance and institutional strengthening, security, and human rights, among others) and that can be framed within symbolic initiatives.
- » Meaningfully involve small and medium businesses in all mechanisms that were conceived in the transitional justice system to guarantee victims’ rights.
- » Strengthen the work of ordinary justice and the implementation of laws 975 of 2005 and 1448 of 2011, especially the investigations into the participation of third parties in the conflict. This could motivate businesses who have had impact on human rights infractions to participate in the ISTJRNR.

7.3. For the Integral System of Truth, Justice, Reparation, and Non-Repetition, with emphasis in the Special Jurisdiction for Peace

- » Investigate international experiences and methodologies that facilitate the inclusion of businesspeople and businesses in restorative justice processes.
- » Promote restorative justice mechanisms, especially in zones in which the businesses have also been negatively affected by the conflict, with the goal of ensuring the clarification of acts for all parties involved and affected.
- » Engage actors who are not victims, or at least who are not recognized as such but were affected by the war, in activities of the ISTJRNR so they can address other forms of truth.
- » Create and consolidate key partnerships, especially with local actors, for the construction of trust in the region. It is advisable to convene different organizations that work on peacebuilding, as well as unions and business sector representatives, to create awareness about the need to develop symbolic initiatives for the re-establishment of the victims.
- » Generate clarity for all interested parts about the use of the testimonies contributed to the ISTJRNR.



- » Raise awareness of the approach that bodies such as the Truth Commission and the SJP will have when they arrive in the regions.
- » Promote spaces for dialogue and coexistence that allow the construction of trust between different social actors so that the truth can be a product of a collective effort that takes into account different positions and points of view.
- » Explore the possibility of constructing a soft law mechanism, or public non-binding initiative based on consultation with key actors, to contribute clarity to the business sector about its potential impact on reconciliation and coexistence, as well as channels and tools to achieve this impact.
- » Carry out collective reparations built and agreed with all responsible and affected parts, to guarantee commitments of non-repetition.

7.4. For NGOs, unions, and other relevant actors

- » Inform the victims and communities of the possibility of exploring symbolic reparations without diminishing the importance of other types of reparations or access to available judicial mechanisms.
- » Support victims and communities in reparations processes, respecting their will, time, and needs.

- » Create bridges between different actors, especially between businesses, communities, and victims, which contribute to the generation of trust to openly set out symbolic reparations exercises.
- » Promote academic research that broadly and objectively addresses the role and participation of the business world in the armed conflict.

7.5. For the United Nations Working Group on Business and Human Rights and OHCHR

- » Incorporate, within consultations and fieldwork carried out by the Working Group and OHCHR, the perspective of symbolic reparations in terms of non-judicial reparations, to identify good practices, barriers, and elements that facilitate implementation.

"We have to think of key incentives" – Manager of a company

- » Promote symbolic reparations as an especially relevant measure in transitional justice contexts and as an effective way to contribute to post-conflict reconciliation processes, through the study of cases in different scenarios and economic sectors.

- » Promote historical memory exercises as a source of information to exercise complete due diligence that aims to contribute to non-repetition, in accordance with the second pillar of the UNGP.

Finally, the invitation is extended to deepen, investigate, and experiment on symbolic reparations with all involved actors, public institutions, the business sector, civil society, and especially the academic sector. Better understand how the business world's engagement in symbolic reparations initiatives in all societies transitioning from conflict to peace can provide more ideas about the role that businesses can play in these decisive moments. This report aspires to be a first step in that direction.



ANNEX 1:

SYMPOSIUM: BETWEEN SOLIDARITY AND OBLIGATION. CHALLENGES TO BUSINESS PARTICIPATION IN SYMBOLIC REPARATIONS

MAIN CONTRIBUTIONS GENERATED IN THE FRAMEWORK OF THE DISCUSSION SESSIONS

On 29 April 2019, IWE and CREER jointly organized a debate session about business and symbolic reparations in the Pontificia Universidad Javeriana in Bogotá, Colombia. The event saw participation by 15 panelists and more than 50 participants from different sectors: business representatives, academics, public institutions, members of the Truth Commission and of the SJP, and others.

During the session, a large quantity of aspects related to symbolic reparations and the business sector were debated. The most stand-out points from the debate are as follows, organized around four main themes:

- » Limitations on the concept of reparations
- » Obligations of the State and responsibilities of businesses
- » The construction of symbolic reparations
- » Promotion of symbolic reparations

Limitations on the concept of reparations

The State has carried out the large part of symbolic reparations in Colombia with respect to the armed conflict, and as a result, judicial sentences. However, until today symbolic reparations have not had a strategic role for institutions.

Symbolic reparations are very complex: often, becoming engaged in this type of reparations is explicitly or implicitly associated with assumption of responsibilities because if it were any other way, symbolic reparations would not be understood as reparations. In the session, the panelists emphasized the importance of links between recognition and the damage incurred. This led to discussions about different forms of business involvement in conflict, from complicity to financing of armed groups and organizations that benefited or benefit from the consequences of the conflict even if they were not directly involved.

With respect to this diversity of involvement, the business sector has different options to form part of symbolic reparations. These can be built from solidarity with victims to recognition, when relevant, of business

responsibility. However, the discussion warned of the risk that if business initiatives do not have an explicit correlation with acts occurred, they can be confused with CSR initiatives that do not necessarily coincide with the logic of reparation.

Finally, it is worth highlighting that there was consensus about the UNGP being the frame of reference for the discussion of business reparations, including symbolic reparations.

State obligations and business responsibilities

The basis for this discussion was the idea that the State should lead initiatives in defense of peace: where there is a human rights violation it is the State, first, who should guarantee the corresponding reparation. However, businesses should also support truth processes, even when they are not responsible for the acts, given that some of their activities could have resulted in regional problems.

The possibility that businesses can be recognized as legitimate actors in reparation is a dimension that has not received due attention. One of the obstacles to talking about business reparations is business-community relations based exclusively on economic transactions and not on the generation of trust.

It is also worth noting that business engagement with the regions and with the conflict are differentiated dynamics. A businessperson in Bogota is not the same as one in Medellin or one who has activities in Tumaco. Conflicts and business engagement with them are different depending on zone

and industry, among other variables. It is therefore necessary to pay attention to these factors.

The construction of symbolic reparations

Throughout the session, it was agreed that there is a great need to destigmatize and humanize all victims, including businesses, who are often forgotten or deprioritized. For this, it is necessary to support initiatives that focus on values such as creativity, resilience, and truth. Symbolic reparations enter in this category, even when they see participation by the business sector.

Upon asking the panelists how to develop symbolic reparations with participation by the business sector, these were the main aspects they mentioned:

- » Symbolic reparations have great value for businesses and communities who work on them, but the focus on reparations cannot be exclusively symbolic.
- » There must be a dialogue and listening process for reparations with victims and communities. Communities know what symbolic reparations are, they just have to be asked.
- » The process, not the result, must be prioritized. It is necessary to balance power in dialogue and establish conflict resolution mechanisms. All this is connected to the human condition and the need to permanently relate in the region.




- » It is worth highlighting the importance of recognizing the stories and experiences of different actors, their life stories, struggles, and memories, as a way to humanize. There are multiple truths that should be correctly managed throughout the process.

Promotion of symbolic reparations

Panelists and participants highlighted the need to better understand symbolic reparations, so a greater presence of this kind of content is necessary in university, through both training and research. Finally, emphasis was made on the university's potential as an institution, as a protected forum that feeds dialogue and in which different actors (businesses, businesspeople, communities, victims) can participate and express themselves freely.



www.creer-ihrb.org
creer@ihrb.org
 [@creer_ihrb](https://twitter.com/creer_ihrb)



Institute for Business Ethics

University of St. Gallen

<https://iwe.unisg.ch/>
ethik@unisg.ch
 [@iwehsg](https://twitter.com/iwehsg)

ISBN: 978-958-59805-9-4



9 789585 980594