

Legal perspectives for Colombian peace: Some pro-equality economic considerations

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This paper is part of a recent open line of research by the Legal Department of the University of the Andes, in which we aspire to direct legal reform proposals to the national government for better post-conflict public policy.¹ For this, the pro-equality economic considerations are inarguably of inevitable analysis, still more so in that there are economic causes that gave way to the Colombian conflict, and which require, therefore, a normative and institutional redesign for the implementation of economic policies in a setting of peace. The sustainability of a peace agreement will depend in large part on the legal-economic tools for combatting inequality, the final topic central to SELA 2015.

In examining the economic considerations that should be taken into account for the legal framework for the eventual peace agreements in our country, I found that despite the little that has been written in Colombia on this theme, the international literature has some insights that can at least preliminarily shed light on our case.² It is in this way that, despite the fact that the Colombian government since the beginning of the peace negotiations agreed with the guerrillas not to include the economic model in the agenda,³ it is unquestionable that it has been

¹ Retomo el marco teórico del capítulo de mi autoría titulado “Perspectivas Jurídicas para la Paz”, incluido en una obra colectiva, liderada por las profesoras Alviar & Jaramillo (Uniandes), que se encuentra en proceso de evaluación de pares. La parte aplicada para Colombia es actualizada con algunos nuevos desarrollos normativos, básicamente la última reforma tributaria (diciembre 2014) y el proyecto de ley de Plan Nacional de Desarrollo 2014-2018 que a la fecha de elaboración de este escrito se encuentra en discusión en el Congreso de la República.

² Para Brauer & Dunne (2010) las cicatrices que deja en el largo plazo los conflictos han sido poco estudiados. Sin embargo, citan el relevante trabajo de Blattman & Miguel (2010) sobre la economía de las guerras civiles que resalta la importancia de las instituciones para lograr un paz estable y la minimización del riesgo de reincidencia.

³ Información disponible en <http://www.caracol.com.co/noticias/actualidad/no-se-esta-negociando-el-modelo-economico-ni-el-sistema-democratico-de-la-calle/20121221/nota/1814777.aspx>, y, <http://www.wradio.com.co/noticias/economia/presidente-santos-dijo-que-modelo-economico-no-cambiara-por->

tangentially discussed, and turns out to be fundamental to the achievement of such a longed-for accord, and for its future stability.

It is important to specify that the approach of this text is essentially theoretical, and seeks, aside from touching on international experience, to outline some of the legal aspects to consider in the design of an economic policy that would satisfy post-conflict needs.

In this way, it attempts to make “visible,” to use Miller’s (2008) terms, the relevant “economic” questions along the way to or *iter* conflict, that is to say, in the pre-conflict phase, during the peace negotiation, and in the post-conflict phase;⁴ this is a differentiation by periods which some do not agree with because of the transversality of the problem but that turns out to be illustrative and instructive as shown by Brauer in his different writings on this theme (Brauer & Marlin, 2010, p. 16; Brauer & Dunne, 2010; among others).

I. The international literature

a. The measurements

In the international context there are more than a few bodies, which have been preoccupied with the relationship between peace and the economy. It is in this way that, for example, the Institute for Economics and Peace is fundamentally dedicated to the global study of peace as a “positive means, achievable and tangible, of human well-being and progress.”⁵ Some years ago this institution came to produce an interesting measurement, the Global Peace Index (hereinafter, GPI), which measures the impact of violence on the economy at a global level. To arrive at this

dialogo-con-las-farc/20130418/nota/1883690.aspx, consultado el 10 de marzo de 2015.

⁴ Para Z. Miller (2008), existen costos económicos de la invisibilidad como, por ejemplo, i) un incompleto entendimiento de los orígenes del conflicto, ii) la falta de identificación del necesario cambio estructural de lo económico en el posconflicto por centrarse estrictamente en las “reparaciones”; y, iii) la posibilidad de nueva violencia causada por los problemas de desigualdad y de redistribución no saneados.

⁵ Información disponible en <http://economicsandpeace.org/>, consultado el 10 de marzo de 2015.

figure, it calculates 22 indicators (e.g. military cost, incarcerated population) for 162 countries, seeking to find out the cost of war to gain in a perspective of peace. As of late, this indicator is used just as much by many international organizations, governments, and NGO's (e.g. the World Bank, the OECD, and the United Nations), as it is by academics.

Finally there is the case of Brauer & Marlin (2010, p. 13), who besides the GPI⁶ calculate the Peace Gross World Product, or the projected world product under the assumption of the cessation of violence, concluding that under conditions of peace, the gross world product would increase by between 4.8 and 6 trillion USD (8.7% to 9.2% of the gross world product), the actual amount of which will depend on the approximate fluctuations of the exchange rate which affects the value of the American dollar and the fact that there are places which require analysis with other currencies. This paper recognizes as well that the estimate can be made with other indicators, such as, for example, the World Economic Forums Business Competitiveness Index or the World Bank Ease of Doing Business Index,⁷ and that perhaps its major contribution is the special analysis it undertakes for the North American economy, taking into consideration different sectors of its economy by state (e.g. airlines tourism, hospitals, industry, entertainment). The study also notes other measures in which, for Latin America, the suppression of crime and violence not stemming from war would cause the region's product to increase by 14.2% (Heinemann & Verner, 2006, p. 2). By using different factors and data points for Latin America, Brauer & Marlin (2010) come to a product increase of between 13.7% and 17%, extreme minimums and maximums where, as we see it, the estimate of the World Bank is placed.

⁶ Para Brauer & Marlin (2010) constituye el "*bottom line number*" que utilizan para calcular el valor monetario de la actividad económica que se libera si cesa la violencia o, en sus términos, el "dividendo dinámico de paz" para 20 subsectores económicos.

⁷El uso de diferente "*bottom line number*" así como la refinación de las simulaciones e iteraciones hacen que incluso, en un contexto conservador, para Brauer & Marlin (2010) pueda llegarse a un incremento del 10% del producto mundial bruto.

Recently, the Institute for Economics and Peace calculated the GPI for the year 2014 finding that the consequences of global violence are on the order of 9.8 trillion USD, which is equal to 11.3% of the gross world product, something like double the size of 54 countries in the African economy, according to its calculations. The report notes that, for Latin America, its data is found to be at the top of the global measure, with important improvements for Argentina, Bolivia, and Paraguay; at the same time it notes that Uruguay maintains its position as the most peaceful country in the region, but that its score deteriorated a bit because of growth in the number of police and security forces; and that Colombia and Venezuela have the worst grades in the region for the internal tensions that exist.⁸

Finally, there exist another series of measures, which have to do with the economic consequences of civil wars. For Brauer & Dune (2010), civil wars annually reduce the rate of growth by 2.2%, and they calculate that the average duration of those same wars is seven years, for a total product decrease of 15 percent over the cycle of war.

Nevertheless, these estimates, like all measures of social phenomena, have been the object of criticism. Some observe a serious risk of double counting and that, moreover, those calculations don't have a clear differentiation of the economic impact according to the nature of the conflict (e.g. civil or interstate), its duration (e.g. short or very long like Colombia's) and the level of development in the affected countries (Brauer & Dunne, 2010). Others believe that these final tallies of product can exclude informal markets and that they also erroneously include an "apparent" product generated by military forces (Brauer & Marlin, 2010).

⁸ Disponible en http://www.visionofhumanity.org/sites/default/files/GPI%202014%20Global%20Media%20Release_1.pdf, consultado el 10 de marzo de 2015.

What the international literature inarguably agrees on are the economic harms of conflict, just as much as it agrees on the virtuous cycle that peace produces by being the best reversal to stimulate the growth and prosperity of the economy (Brauer & Marlin, 2010).

b. The economic response in the face of a setting of peace and the risks

A great deal of the literature recognizes the benefits of making “visible”⁹ the economic causes that gave life to the conflict, although they are often left to one side by the peacemakers in order to concentrate more on the military and political aspects (Wenmann, 2010). Among the benefits it is argued that the economic aspects are, in some proportion, the intrinsic part of armed conflict, and therefore, are indispensable to insuring that the conflict does not perpetuate itself or that the factors, which caused it, do not emerge again. It is in this way that, for example, for Miller (2008), it is fundamental to understand the economic roots and the consequences of the conflict, just as much as the prioritization of these “bad things” which affect equality in the end, so that in this way the instruments of transitional justice “narrate, pursue, and move beyond” them.

Nevertheless, it is necessary for some countries like Angola and Nepal to leave aside the economic causes of the conflicts in order to optimize the negotiation process; while others have included them with the objective of discuss in the agreement the necessary institutional and economic arrangements. For example, in the negotiation between North Korea and South Korea, they arrived at a consensus on the contractual items for the best management of natural resources, the source of the economic nature of the conflict.

In that way, the tensions of an economic nature that arise *iter* conflict have rarely been dealt with by the literature in their pre-conflict phases and during peace negotiations, but much studied for

⁹ Usando de nuevo la terminología de Miller (2008).

the post-conflict period. So then the question that the majority of inquiries that explore the relationship between the economy and peace is, “How should the economy respond to a subsequent socioeconomic situation in a peace agreement to achieve the stabilization of the economy and avoid relapse into conflict?”

The first broad conclusion in the literature, for which empirical evidence exists, is that the size of the State should increase for a post-conflict period to be successful. Carmignani & Gauci (2010), for example, use a *probit analysis* to estimate the effect of fiscal policy on the probability of maintaining peace in the post-conflict period in certain African countries. Their results indicate that in this type of transition, the size of the state grows with regard to everything that has to do with the cost of investment and not so much in the state’s operation, though sometimes the two go hand-in-hand. Interestingly, it also turns out that the success of fiscal policy depends in essence on the strength of the budget to respond to the new economic needs, more on the side of income -- or the “budgetary grants,” to use their term -- and less on the size of the debt or capital resources.

In second place in the literature is the idea that the interaction between economy and peace requires a good relationship between the economy and politics as well as flexible norms to confront the novelties. So then the policymakers should be able to act within a wide normative framework that allows them to – informed, hopefully, by information as close to perfect as possible – make those distributive and “supportive”¹⁰ adjustments necessary to properly fund the post-conflict period. In the terminology of Carmignani & Caucie (2010), the stability of the peace depends on how the different actors supply their economic needs through the allocation of

¹⁰ Brauer & Dunne (2010) al referirse a las características de los *policymakers* para minimizar los costos del posconflicto incluyen que estos deben i) estar debidamente informados, ii) mantener una necesaria flexibilidad, y iii) ser “*sympathetic*” (entendible el término como “solidarios y compasivos”).

a peace payoff that guarantees a just distribution in order to maintain the stability of the agreement. This last concern Miller (2008) has also addressed, concluding that this allocation should preferably be made by the executive or the legislative branches (e.g. by means of ideal “plans of development”) and not the courts. And it is in this moment, in the relationship between the economy and politics, that the existence of strong, credible, and above all, transparent institutions becomes credible. Moreover, it has also been empirically demonstrated that the elimination of violence is not immediate once a peace agreement has been achieved, and that it requires, more than armed forces, an institution which guarantees that the consequent “micro-insecurity” does not become once again “macro-insecurity”¹¹ that distorts the culminated process of negotiation.

In third place is the macroeconomic policy which appears to be ideal in responding to the post-conflict social necessities, which according to Brauer & Dunne (2010) should be framed within the three goals which we take up again for their relevance: i) Rebuild capital, ii) create an irreversible economic, social, and legal framework, iii) break down the former economic conditions of inequality which contributed to the outbreak of conflict, and in doing so avoid the criminalization of the economy. To the above goals must be added the necessary coordination of the macroeconomic tools that are being utilized, the ease and practicality of their implementation, the indispensable transparency in their execution, and the minimization of the data problems, which usually arise in designing and applying public policy.

Some of the macroeconomic policy recommendations for post-conflict periods have been the following:

¹¹ *Ibidem*, Brauer & Dunne (2010).

i. The necessary increase in revenue, principally taxes. As mentioned above, it's inarguable that in a post-conflict scenario the size of the state will grow. To be able to defray the cost of the economic necessities of actors reentering civil life, which translates principally into more public benefits allocated by the state, directly or indirectly by means of the private sector, major revenue is required which, according to a large part of the doctrine, should preferably be appropriate to the fiscal reality, rather than indebtedness, though the latter, being necessary, makes support from the international community essential to budgeting the post-conflict with the possibility of cancelation of the debt in the long term (debt relief) (Brauer & Dunne, 2010; Carmignani & Gauci, 2010; Wennmann, 2010). It also seems necessary not to depend excessively on the revenue stemming from the exploitation of natural resources.

Nevertheless, the literature recognizes the recurring problems of tax policy. For Boyce (2010), for example, this policy has “dysfunctionalities” such as the data problems related to the contributive capacity of entities that ultimately affect the progressiveness of the tax system (who to tax and how much) as well as the efficiency of the institutions charged with collecting taxes. The discussion around what to tax also has renewed relevance; where some propose to tax high-end goods in the economy (luxury taxation¹²), and others to fix the tax system using the new post-conflict contributive capacities and economic variables to incentivize (e.g. capital exemptions), there is inarguable unanimity around the indispensable political commitment to tackle the necessary tax reforms as well as the processes of “socialization” with different actors.¹³

¹² Carmignani & Gauci (2010).

¹³ Al respecto Wennmann (2010), “*successful revenue policy making cannot be purely technocratic preserve; it must be part and parcel of democratic process*”.

ii. The re-arranging of expense. Aside from the fact that over time military expenses will go down after the cessation of conflict, the literature reveals that this decrease will be gradual because of how much in the first post-war phase an equal or slightly lower military cost will be necessary to defend both the peace and the agreements that make it possible. Once past this period there comes the reconfiguration of expenses toward the investments necessary for the construction of a new country, in areas such as health and education (Carignani & Gauci, 2010). It should be noted that in order to avoid occurring fiscal deficits, it's desirable the balanced expansion of income and expenses.

iii. The growth of foreign investment. Since in the great majority of conflicts there is a destruction of assets, the literature has focused its post-conflict economic analysis on the necessity of renewing the foreign investment that had left the country because of security concerns, in order to focus that investment on reconstruction and on the creation of infrastructure in peacetime.

iv. A monetary policy and controlled exchange. Another much-discussed aspect is the control of inflation and the exchange rate, as well as the definition of the functions of regulation and supervision of the financial system (Carmignani & Gauci, 2010).

v. The design of policies for the formalization of enterprise. Economic recovery requires the design of lines of credit for small and medium businesses as well as policies to combat informal enterprise. The reduction of transactional costs is also recommended so that the business sector can be the principal driver of the peacetime economy (Brauer & Dunne, 2010; Carmignani & Gauci, 2010).

vi. A proactive fiscal federalism. In order to repair public finances, it's not desirable to have an excessive dependence on sub-national entities for national transfers. That being the case, the literature suggests that the fiscal strength of these entities is fundamental for the success of post-conflict public finances. (Brauer & Dunne, 2010; Carmignani & Gauci, 2010).

Apart from all of the above recommendations, the doctrine recognizes in essence two risks that can arise post-conflict that the peacetime economy should therefore take into account. On the one hand, there is the possibility of “endemic violence” (to use the terms of Brauer & Dunne, 2010), caused by groups that do not support the peace agreements, which affects the transitional process. The other is that a resurgence of the conflict is possible (“reincidence”) which threatens the agreement; because of this, it is essential to have a selective placement of public expenses. In this way, unobstructed mechanisms should be designed, which allow, once the threat emerges, a response by means of appropriate public policies.¹⁴

c. The necessary actors

According to the literature, the optimal functioning of the aforementioned proposed tools requires the support of at least five actors: i) the business sector ii) the international community, iii) policy makers (the executive and legislative branches), iv) the judicial branch; and v) the community in general.

Wennmann (2010) considers tying in the business community to be indispensable (i. the business sector) for the post-conflict economic future to be realistic, and that moreover the following characteristics of the private sector are desirable during economic transition: a results-based

¹⁴ Los “*early warning mechanisms*” de Carmignani & Gauci (2010).

orientation, a problem-solving attitude, leadership skills, the importance the sector places on the building and use of relational networks, and earned business experience, among others.

For their part, Carmignani & Gauci (2010) and Boyce (2010) insist that the international community (ii) is a fundamental actor for credit assistance and economic and institutional aid (e.g. the design of institutions for efficient tax administration and anti-corruption policies).

The public powers (iii. and iv.) in their task of allocation of collective goods, distribution of resources, and stabilization of the economy -- always seeking economic development -- are fundamental for the post-conflict period. Inarguably the optimal is the development of good public policies that do not end up creating conflict, so that it's not judges who have to undertake the allocation public goods or designate who does so.

Finally, the general community (v.) should be a participant in the redistribution of the economic resources as well as in the necessary growth of public income, for which the design of processes of socialization is fundamental, ideally from the same process of negotiation.

II. The case of Colombia

a. The measurements

A few studies have quantified the costs of armed conflict in Colombia. The work of Rettbert (2008) connects some figures obtained as of the time of the study: i) For Carrasquilla, Colombia would have been 15 to 20 percent richer if it had not experienced armed conflict in the 20 preceding years, which is to say, his calculation is more or less a loss of one percent of GDP per year of conflict; ii) for Cárdenas (2001), the annual growth of GDP falls a whole 2 percent between 1980 and 2000 due to the high levels of criminality associated in large part with the intensification of armed conflict; iii) for other economists between 1999 and 2003, GDP

decreased 7.4 percent, something like a 1.5 percent drop annually (Pinto, Vergara & Lahuyerta, 2004); and iv) Finally, in a smaller annual drop, between 1990 and 1998 (eight years) others calculate costs between 1.5 and 4.5 percent of GDP (Castro, Waterberg & Celis, 2000; Trujillo & Badel, 1998; Rubio, 1997; Granda & Rojas, 1995); while over two years (2005-2006) some calculate decreases on the order of 9 percent of GDP, which is to say 4.5 percent annually (Otero, 2007).

More recently, the Economics Department at the University of the Andes (2014) has been focused on the estimate of the economic and social costs of the conflict, taking into consideration three fundamental sectors of the economy (the manufacturing industry, agricultural production, and foreign investment), without calculating a complete estimate of the drop in GDP caused by the Colombian conflict. It highlights the quantification of Villa, Restrepo and Moscoso (2014) according to which an elimination of 100 percent of armed conflict, *ceteris paribus*, would grow the departmental GDP annually by an average of 4.4 percentage points. So they conclude that if this has oscillated around 3.8 percent for the period between 2000 and 2009, we would be experiencing a departmental increase of 8.2 percent in a setting of peace.

As it can be observed, there is no unanimity with respect to the annual decrease of the gross national product caused by our long armed conflict, but it could be around one percent, in the most optimistic scenario, and 4.5 percent in the most pessimistic.

What it is possible to affirm forcefully is that inarguably the war has been very costly for our country and if it continues the resources couldn't be invested in social spending. To cite a few examples, the sectorial analysis undertaken by the Economics Department at the University of the Andes in the above-mentioned study arrives at the following estimates of costs that must be mentioned: i) For the manufacturing sector, a growth of 10 percent in the rate of attacks for every

100,000 inhabitants increases the rate of exiting the market by approximately 10.3 percent (Camacho, Rodríguez & Zárate, 2014); ii) For the agricultural sector, the conflict makes households to focus on raising less profitable crops and the production of livestock, which entails immediate income but derives fewer permanent products (Arias and Ibáñez, 2014); iii) The aerial spraying of coca crops with pesticides (glyphosate) causes health problems that create long-term effects which affect rural development in the Colombian economy because of the worsening of the health of the inhabitants and their levels of human capital and productivity (Camacho & Mejía, 2014) ; iv) Between 22 and 35 percent of the population displaced by the violence presents with psychological trauma which increases the vulnerability of the victims in the face of poverty; analyzing the per capita cost of psychosocial attention provided by the current programs of policies to support this population, this represents just 0.001 percent of the total investment per displaced person (Moya, 2014) and v) There is no uniform pattern for how the financial markets react in the face of the events of war in Colombia insofar as it depends on the political context as well as internalization which the markets direct as well (Castañeda & Vargas, 2014).

Castellanos (2013) also quantifies some of the costs of construction during the failed peace process under President Pastrana (1998-2002), the costs of the Democratic Security Policy of the Uribe government (2002-2006), and the costs of President Santos's Prosperity for All (2010-2014), all on the order of 230 billion COP¹⁵ (88.461 million USD), concluding that, *"the revision and analysis detailed over ten years of sustained war allows us to suppose what it would cost the country in the coming years to maintain the level of the cost of war, penniless after numerous investments made in the defense sector, in the light of the presidential policies created and carried out by the last four presidents (...)* (i)n 2009, professionals in the Delegated Defense

¹⁵ 1 USD=2.600 COP (a marzo 2015).

Comptroller set forth, in the Colombian Economic Review, that between the year 2013 and the year 2019, the defense and national security sectors would require between 22 and 27 billion pesos a year, respectively, out of the nation's budget, if the conflict continued as it has up to now in spite of the efforts to secure the peace (...)" (p. 123, emphasis mine, the figure translates to between 8.461 and 10.384 million USD annually).

The other path, more profitable in social terms, is peace. The current Finance Minister, Mauricio Cárdenas, has said that the economy during peacetime will increase an additional 2 percent annually under a pessimistic scenario,¹⁶ and that that increase, together with a reduction in the cost of war, will cover the "cost" of peace;¹⁷ nevertheless, in spite of the economic potential at the end of the conflict that the literature has recognized, it is evident that new and important costs will arise as well.

Different figures have been set forth with regard to the cost of making the victims of conflict whole; some suppose that those reparations will be on the order of 54 billion COP (20,769 million USD) for 10 years,¹⁸ others around 70 billion COP (26.923 million USD),¹⁹ and it has also been estimated at 480 billion COP (184.615 million USD) for the next 20 years.²⁰ The reality is that no official figure exists yet, bringing together other costs that will surely arise as

¹⁶ Ver <http://www.elespectador.com/noticias/economia/dividendo-economico-de-paz-daria-colombia-2-puntos-mas-articulo-490608>, consultado el 10 de marzo de 2015. Otros economistas como Laserna y Kalmanovitz coinciden en esta estimación.

¹⁷ Información disponible en <http://www.elespectador.com/noticias/economia/minhacienda-paz-contribuira-financiar-el-posconflicto-c-articulo-539651>, consultado el 10 de marzo de 2015.

¹⁸ Información disponible en <http://www.eltiempo.com/archivo/documento/CMS-13198657>, consultada el 10 de marzo de 2015. Ver también Castellanos (2013). El Plan de Financiación incluido en el Conpes 3712 de 2011 para la sostenibilidad de la L. 1448 de 2011 (ley de reparación de víctimas del conflicto armado interno) estima que se necesitarían \$54,9 billones COP (20.769 millones USD) para atender, asistir y reparar integralmente a las víctimas del conflicto armado interno, hasta el 2021.

¹⁹ Información disponible en <http://www.elespectador.com/opinion/poselecciones-paz-tambien-nos-cuesta-columna-499777>, consultado el 10 de marzo de 2015.

²⁰ Información disponible en <http://www.noticiascaracol.com/economia/video-274190-cuanto-dinero-le-cuesta-a-colombia-la-guerra-y-la-paz>, consultado el 10 de marzo de 2015.

Castellanos (2013) recognizes when he affirms that *“(it) is important to outline a strategy in case there is a true demobilization of the Farc, there would emerge from anonymity an important number of persons who still have not declared themselves victims of the conflict for fear of the well recognized damage the Farc can do to their surroundings. In this way, it is not difficult to calculate that the 54 billion pesos approved to indemnify the victims of the conflict will not be sufficient, and that future chief executives will have to at some point strengthen new policies that utilize other resources to make up the deficit.”* (p. 126).

But beyond “reparations,” the demobilized, the victims, and the general community affected by the conflict will have to enter the labor market and will also require income (or subsidies?) to provide essential public services (e.g. health, education).

As it seems, there exists quite a lot of discussion about the above figures. Well known analysts of the Colombian public finance sector, such as the ex-Minister J.C. Restrepo, estimate that according to the Havana agreement just the implantation of the 12 rural plans that are enumerated in the point number one of the agreement would require between 80 and 100 billion COP annually (between 30.769 and 38.461 million USD annually).²¹

The 2015 budget approved by Congress includes comprehensive items to fulfill the above services, for that which suffers from the necessary particularization of post-conflict public expense and economic transparency with regard to the process of negotiating peace, which apparently will come to an end according the government’s promises.²² The only figure that is explicitly marked for the aid of the 6.7 victims is 4,000 million USD (approximately 10.4 billion

²¹ Información disponible en <http://www.semana.com/nacion/articulo/las-cuentas-del-posconflicto-no-dan/408351-3>, consultado el 11 de marzo de 2015.

²² Información disponible en: <http://www.elspectador.com/noticias/economia/santos-ofrece-un-presupuesto-2015-mas-gasto-articulo-507394>, consultado el 10 de marzo de 2015.

COP), which is obviously insufficient to attack the problem. This underlines the existence in the budget of a major budget for the raising of the allocation of military costs as well as an increase in the resources for the repayment of debts contracted with the outside world. Moreover this budget appears not to be balanced (by 12.5 billion COP; 4.807 million USD); at the end of last year the government had to pass an urgent tax reform to resolve a similar shortfall (L. 1739 of 2014). What's more, the legislative discussion included additional resources for the three following years (in total 54 billion COP until 2018; 20.769 million USD).

b. The necessary future response of the economy in a setting of peace

For Leibovich (2014), position shared, the financing of the post-conflict period, *“must be the result of a combination of re-allocation of public expenses and greater taxes. This reallocation involves trimming expenses or halting spending increases in some areas. With respect to greater taxes, it will require a new tax reform. All of the above will require great leadership and power of persuasion by the new administration of the National Government, working hand-in-hand with the new Congress of the Republic. In execution, major surgery must be performed on some of the State institutions for them to have the capacity to fulfill the commitments in an effect, efficient, and proven manner.”* We see, in light of the recommendations of the literature indicated above, the necessary response of the Colombian economy (or better yet of the makers of economic policy) within a wide and flexible judicial framework such as the Colombian constitutional economy (Lozano, 2014), but which requires normative modifications at the level of the law, and it turns out to be fundamental not to fall into the risks already mentioned (“endemic violence” and “relapse”).

- i. The necessary growth of income, principally taxes.** Given the inequality and inefficiency of the Colombian tax system, it is inarguable that it must be redesigned in its entirety by means of legal reforms.

Inequality is the result of the fact that our tax rules are plagued by tax benefits that perhaps once had a social purpose or were simply established by lobbyists, but which in today's time should be eliminated. In recent assessments on the subject, the InterAmerican Development Bank and the World Bank concluded that in Colombia there is a worrying tendency to create tax expenditures, defined as the transference of public resources carried out by the reduction of tax obligations (tax benefits or incentives) with respect to a tax framework (benchmark) (2012, p. 25). According to this investigation *“there are around 200 tax expenditures (TE's) with distinct public policy goals, in income taxes and value added taxes (VAT) ... aside from the loss of revenue it entails (estimated to be around 25 billion pesos...), the tax expenditures can have indirect and undesirable effects on economic efficiency and inequality, increasing the complexity of the tax system ... (a)dditionally, they increase the cost of administration and compliance, at the same time that they promote new forms of fraud and evasion”* (p. 1, emphasis mine. The figure translates to 9.615 million USD). The figure above does not take into account the tax benefits included in the tax code for other types of taxes on the national level, nor those defined by Municipal Councils and Departmental Assemblies at the local level.

Inefficiency results from the above as well as from “inflation” or the normative dispersion to which I will refer, which causes problems of interpretation and application for actors in the legal realm and which facilitates aggressive tax planning that reduces tax revenue.

In spite of the above, the government insists on partial normative modifications because of the difficult politics of the legislative debate. This being the case, they have recently formed, by legal mandate, a Commission of Experts that will propose gradual tax reforms, taking into account the fiscal policy recommendations that the Organization for Economic Cooperation and Development (OECD) proposed recently. The increase in the rate of sales tax, the establishment of dividends tax (currently deductible in our country), the redefinition of the abused special tax regime (that has more benefits) for non-profit organizations, and the elimination of excessive benefits for some sectors of the economy, are mandatory subjects on the agenda of the Commission.

Looking to the past, and as concluded above, the last tax form, L. 1739 of 2014, was in essence a “fiscal” reform in as much as it sought to fund the budget imbalance caused by high expenses and by the drop in the price of oil (by approximately 50 percent), the latter of which was a particularly grave situation in an economy excessively dependent on these resources.²³ Therefore, to obtain more resources, they revived the wealth tax (now called “impuesto a la riqueza”) and the tax on financial transaction, policies which, beyond not solving the lack of progressiveness and efficiency in our tax system, push out capital, affect our financial system anti-technically, provoke legal creativity for the evasion and avoidance of taxes, and delegitimize a government that recurrently fails to fulfill its economic electoral promises.²⁴ Moreover, this reform includes norms which strongly distort the equity of the system because of how much it permits the sanitization of omitted assets and ignored liabilities in past declarations as well as “temporary”

²³ Característica, como vimos, indeseable para las finanzas posconflicto.

²⁴ El Presidente Santos además de haber prometido en su primera campaña que no crearía más impuestos, lo hizo; y en su segundo periodo presidencial también incumplió su promesa de desmontar el gravamen a los movimientos financieros.

mechanisms of early termination of tax processes and conditions of special payment, in clear favorable treatment of defaulted taxpayers.

As laid out in the appendix, and taking into account the tax reforms of this government (L. 1607 of 2012 and L. 1739 of 2014), the taxes at the national level in Colombia (income tax and its compliments, the occasional gains tax, equity income tax, sales tax, consumption tax, wealth tax, and financial transaction tax) as well as taxes on the territorial level (industry and trade, and its complements advertisement tax, property tax, and others), create a dispersed and chaotic system in which analyzing exclusively the grave economic facts leads to the conclusion that there are various taxes that levy *consumption* (e.g. sales tax, national consumption tax, taxes on the consumption of beer, sodas, mixes of fermented drinks with non-alcoholic drinks, the tax on the consumption of cigarettes and tobacco products, taxes on the consumption of liquor, wine, snacks and similar goods, and the gas tax), taxes that levy *estates* (e.g. the wealth tax, property tax, taxes on motor vehicles, the betterment levy, the tax on the slaughter of large and small livestock, the surplus tax, and the tax on the urban boundary), taxes on the provision of services (e.g. sales tax, industry and commerce tax, hydrocarbon transport tax, and the national tax on the mining of gold, silver, and platinum), taxes on *gambling and games of chance* (e.g. sales tax, complimentary tax on occasional earnings and lottery taxes), taxes on *imports* (e.g. sales tax and taxes on consumption with regard to the importation of foreign goods on the Department of San Andrés), *net income taxes* on commercial, industrial, and service activities (e.g. income tax and tax on industry and commerce), and taxes on financial transactions (e.g. levy on financial transactions, tax on registration and contribution for contracts of public works), among others.

The above, and given that the tax system has been created over time by the legislative branch in a disorderly manner, brings us to the production of “double internal taxation,” a term used to describe the phenomenon that occurs when identical or similar economic situations are taxed two or more times by national or subnational taxes; in spite of the fact that the law has responded to the phenomenon by allowing certain tax breaks (e.g. industry and commerce for income tax), they are unnecessary costs to the economy which create inefficiencies.

Moreover, there are other conclusions to be reached by an analysis of the tax system as a whole (both national taxes and sub-national taxes). In the first place, the rules that govern the tax system in Colombia are dispersed and changing. As a matter of fact, to understand the tax system in Colombia, it is indispensable to know the constitutional regulations, which govern it, such as the multiple laws, which have been issued over time and their different regulations. To complicate the above situation even further, the administrators of the tax system apply “interpretations” of the rules through the “concepts” that they put forth, knowledge of which is fundamental to know which course the actors in the tax administrative system are going to follow; and what’s more, judges, in resolving controversies involving tax issues, also interpret the legislation. The above combines to create an overall situation that is chaotic and unstable, in detriment to the investment and growth of the economy.

In second place, the list of taxes in Colombia is extensive. The annex provides only the economic facts of taxes at the national level as well as “some” territorial taxes, leaving aside the long list of fees and contributions that we also have in our country. As such, the number of tax categories is excessive, where surely a smaller number would bring about

better control of the system of tax administration, and a greater fulfillment of taxpayer obligations in the face of a simpler and less burdensome tax system.

As if that weren't enough, there remain other problematic issues – for example, the fact that by establishing certain sub-national taxes not entirely regulated by law, there arises a high level of discretion by sub-national entities in setting the elements of tax liability, affecting contributive capacities and the coherent economic design of the tax system.

Likewise, both the existence of costly procedures in the administration of the tax system and judges create problems of efficiency and speed in the resolution of tax controversies between the administration and the taxpayers.

Unfortunately, the last reforms did not solve the aforementioned chaos; on the contrary, they deepened it. Analyzing only economic facts related to taxes, the L 1607 of 2012 apparently tilted the balance to more heavily tax natural persons, weakening the contribution of other agents with important economic capacities, and in this way affecting the equity and progressiveness of the system; while L. 1739 of 2014 includes more taxes on natural persons that were already overburdened, and noticeably increases income tax on legal persons, worsening the situation of those who do not possess the excessive tax benefits that others have gained, and making them, moreover, less competitive in the international context.²⁵ Moreover, these rules have focused on national taxation leaving pending the necessary sub-national tax reform.

So it is that there are currently problems with funding essential public services; the situation tends toward worsening into a “post-conflict” situation, which will demand the

²⁵ La tarifa potencial del impuesto sobre la renta, adicionándole la del CREE y su sobretasa (que también gravan los ingresos), oscila entre un 39% y 43% para el periodo 2015 a 2018.

satisfaction of more and better services. These last are to be financed in large part by resources from the national budget, principally taxes at the national level which go into the common purse and from which the expenses will be covered in virtue of the principal of “unidad de caja” or a “single fund system.”

Nevertheless, and although in our country there have emerged strategies aimed at shoring up the fiscal strength of sub-national entities through specifically allocated taxes to defray the costs of social investment, they are still not sufficient. They are found to be “unfocused” in the legal regime, they coexist with non-tax funds, and they are very difficult to control (e.g. cigarette and liquor taxes that fund health,²⁶ and education²⁷ spending). Other essential public services like sports, recreation and culture, housing, and water and basic sanitation, have multiple sources of funding, national and sub-national, though once again the former predominated, which ends up corresponding with taxes at the national level.²⁸

²⁶ Dentro de las *fuentes tributarias* que financian la salud se encuentran las provenientes del Sistema General de Participaciones (en últimas, impuestos nacionales), los recursos del Presupuesto General de la Nación para salud pública (impuestos nacionales, nutridos ahora con el impuesto CREE), el IVA cedido a cervezas nacionales e importadas, el impuesto al consumo las cervezas y sifones (departamental), el impuesto al consumo de cigarrillos y tabaco elaborado (departamental), el impuesto al consumo de licores, vinos, aperitivos y similares (departamental) y los recursos que destinen entidades territoriales (impuestos locales). Por su parte, las *fuentes no tributarias* están compuestas, entre otras, por: los pagos (cotizaciones) que hacen empleados que devenguen más de 10 salarios mínimos y empleadores y administran entidades promotoras de salud (donde se vuelve tributaria para empleadores de empleados que devenguen menos de 10 salarios mínimos, pues ahora pagan un impuesto nacional CREE y no pagan contribuciones parafiscales para salud), la cuenta pública Fosyga (Fondo de Solidaridad y Garantía, donde el régimen contributivo financia al subsidiado), un porcentaje de las contribuciones parafiscales a cajas de compensación familiar, un porcentaje del seguro obligatorio de accidentes de tránsito (SOAT), y las rentas obtenidas por regalías y de los monopolios de juegos de suerte y azar y licores (departamental).

²⁷ Las fuentes de financiación de la educación en Colombia son, en esencia, tributarias. Estas son las provenientes del Sistema General de Participaciones (en últimas, impuestos nacionales), los recursos del Presupuesto General de la Nación para educación (impuestos nacionales nutridos ahora con CREE, donde se eliminan también las contribuciones parafiscales al SENA para educación técnica), las rentas obtenidas en el ejercicio del monopolio de licores y juegos de suerte y azar (no tributarias), y otros recursos que destinen las entidades territoriales (regalías, impuestos locales).

²⁸ Para deporte, recreación y cultura: los recursos del Presupuesto General de la Nación para deporte, recreación y cultura (impuestos nacionales), el impuesto nacional al consumo, el impuesto al consumo de cigarrillos y tabaco elaborado (departamental), y los recursos que destinen entidades territoriales (regalías, otros impuestos locales). Para vivienda: los recursos del Presupuesto General de la Nación para vivienda (impuestos nacionales), y los recursos que destinen entidades territoriales (regalías, impuestos locales). Finalmente, para agua y saneamiento básico: los

In conclusion, the Santos government, facing an eventual post-conflict period should “rethink” the financing of essential public services (especially health and education), through a structural legal reform of national and sub-national taxes, as much in substantive aspects as in procedural aspects.

In addition to tax funds, there will be the possibility of taking on greater debt, but within the principle of fiscal sustainability established in the Constitution (art. 334) and respecting the legally defined fiscal rule (L. 1473 of 2011, art. 5).²⁹ Perhaps the amortization of capital, which the government plans to do for 2015 is to improve the credit score of the country with the end goal of being able to go to the international community with greater legitimacy to solicit loans. Nevertheless, these fiscal solutions are temporary; the debts must be paid (they are not donations), their costs would be high, and the appropriations would follow the rule of being allocated to finance the investment spending, and not government function (L. 385 of 1997). They are even already talking about credit lines from the IDB³⁰ and the German government, through the International Bank for Reconstruction and Development (IBRD), recently gave us a loan for 100 million USD for the peace process, anticipating beyond two loans for the next two

provenientes del Sistema General de Participaciones (en últimas, impuestos nacionales) y los recursos que destinen entidades territoriales (regalías, impuestos locales).

²⁹ “**Artículo 5º. Regla Fiscal.** El gasto estructural no podrá superar al ingreso estructural, en un monto que exceda la meta anual de balance estructural establecido. El déficit estructural del Gobierno Nacional Central no será mayor a 1% del PIB a partir del año 2022. **Parágrafo transitorio.** El Gobierno Nacional seguirá una senda decreciente anual del déficit en el balance fiscal estructural, que le permita alcanzar un déficit estructural de 2,3% del PIB o menos en 2014, de 1.9% del PIB o menos en 2018 y de 1.0% del PIB o menos en 2022”.

³⁰ Información disponible en <http://www.elcolombiano.com/gobierno-y-bid-analizan-creditos-para-financiar-el-posconflicto-MI1219907>, consultado el 11 de marzo de 2015.

years.³¹ Some analysts affirm that quite surely the government will have to resort to the issuance of public debt to cover the coming expenses.³²

In conclusion, the best alternative is to finance the lot of these essential public services through taxes created by the higher levels of economic activity associated with peacetime. In this way, it turns out to be indispensable to normatively direct the tax system towards becoming a system with fewer but simpler taxes, one that therefore is more efficient at raising funds. Such a reform must also bear a sensible study of contributive capacities to guarantee appropriate levels of equality. Moreover, the process of socialization is fundamental; everyone will have to pay for peace and in the end, everyone benefits from the totality of economic activity. This social commitment is still not clear in the national outlook.

On the national level, the proposal would be thus: a only “flat universal income tax for peace,” that is to say, eliminating the tax on local industry and commerce, and with very few or almost no tax breaks, which consequently results in the taxing of dividends; a single added value tax, eliminating the multiple specific taxes on consumption, with a wide taxable base, large tariff, and redistribution via public expense, and a robust wealth tax, eliminating other national (presumptive income) and local taxes which levy wealth components, would be the proposal.

For the subnational system, an efficient mechanism would have to be designed for transferring the above-mentioned national resources to the different territories and to

³¹ Información disponible en <http://www.eltiempo.com/politica/proceso-de-paz/alemania-anuncia-credito-de-us100-millones-a-colombia-para-la-paz/14782735>, consultado el 11 de marzo de 2015.

³² Declaraciones de J. M. Laserna en <http://www.eltiempo.com/archivo/documento/CMS-13904422>, consultado el 10 de marzo de 2015.

shore up its fiscal strength through updated appraisals of the land registries of real property which are subject to local tax as the Constitution permits. With respect to the other territorial taxes of today, we would have to go over which to include in a local tax law to determine clearly the elements of the tax liability.

With regard to tax procedure, the design of less time-consuming processes is fundamental, processes which entail more technical decisions, through special courts for the tax system or by means of establishing tax arbitration, as well as the elimination of recurring tax “amnesties” which are counterproductive in terms of equity.

- ii. **The re-composition of expense.** Quite surely in peacetime items of expenditure will have to be reorganized (lower military expenditure and higher expenditure on health and education, for example), but in a gradual way the literature has suggested because of the risks of relapse into conflict. The abovementioned re-composition is also made difficult by the existing rigidities of the budget, which is to say, because of the existence of unavoidable expenses such as, for example, pensions.³³

Unfortunately at the time of writing this chapter, we don't know the definite economic plan for future post-conflict expenses. The appropriate setting for such a plan is the law that defines the National Plan of Development, 2015-2018 (NPD), currently being debated in Congress.

In a review of this project, one finds that one of the three pillars of the NPD is peace, in addition to fairness and education, which reflects the political will of the government to build sustainably within an effective focus on rights (art. 3).

³³ Disponible en http://www.larepublica.co/el-desaf%C3%ADo-pensional-para-el-segundo-periodo_153686, consultado el 12 de marzo de 2015.

Additionally, the NPD anticipates the creation of an Inter-institutional Post-conflict Council, a consultative organ and post-conflict coordinator that will facilitate decision-making in the implementation of the agreements derived from the conversations between the government and illegal armed organizations, consisting of the Ministers of Finance, Interior, Defense, and other state representatives.

As one of the strategies/objectives the National Plan of Investment 2015-2018, they are contemplating the inclusion in the NDP, by constitutional mandate, of \$137.4 billion COP (52.692 million USD) for security, justice, and democracy for peace building. This amount represents 19.4 percent of the total value of the investments to be made during this period; the bulk of the contribution of resources is made by the central government, directly, or through transferences to territorial entities, indirectly (art 5).³⁴ This strategy/goal seeks to strengthen access to judicial services, the mechanisms of transition toward peace, the effective enjoyment of the rights of victims, the promotion and respect of human rights, the security and defense of the nation, a criminal policy with a restorative focus, and the comprehensive effort against anti-personnel mines.

Moreover, this emphasizes the need to close the gaps of inequality between urban and rural areas -- especially with regard to the high levels of poverty and problems of coverage for the public services of health and education -- by means of a “reformulation” of property tax and update of the underlying land register, with the

³⁴ Se propone financiar esta estrategia así: 129,6 billones COP (49.846 millones USD) aportados por gobierno central; 0,1 billones COP (38.4 millones USD) por el sector descentralizado; 2,6 billones COP (1.000 millones USD) por los entes territoriales; 0,4 billones COP (153.8 millones USD) por el sector privado; 4,4 billones COP (1.692 millones USD) por transferencias de la Nación (Sistema General de Participaciones, SGP); y, 0,3 billones COP (115.3 millones USD) de la explotación de recursos naturales no renovables (Sistema General de Regalías, SGR).

end goal of strengthening and making more efficient the collection of property taxes by municipalities. The last proposal is laudable, but nevertheless, it contributes to the abovementioned chaos in the tax system, a chaos which can be seen in how many laws nominally unrelated to taxes modify aspects of the tax code, and which increase the complexity of the system and impede a systematic debate in the legislature about the tax system.

- iii. The growth of foreign investment.** During the last few administrations, which have strengthened security in Colombia, foreign investment has grown. In peacetime it could grow more, always and whenever the tax system allows it, and in this way act as an engine for a great reactivation of the economy.
- iv. A monetary policy and controlled exchange rate.** Colombia has been characterized by a technical and controlled monetary policy and exchange rate, principally because of the strict actions of the Central Bank. Additionally, the functions of regulation and supervision of banking are undertaken by institutions that are traditionally strong and credible. Nevertheless, given the necessary coordination of constitutionally defined economic policies, and the presence of the Ministry of Finance presiding over the board of Directors of the Central Bank, fiscal and monetary efforts should be aligned to resolve post-conflict economic problems.
- v. The design of policies for the formalization of businesses.** Formalization of businesses will depend in large measure on the simplicity of the tax and labor regulatory system. A solid socialization process with the business sector must be insisted on in these reforms so that it will lead, hand in hand with the government, the post-conflict economic process.

- vi. A proactive fiscal federalism.** Given the limited effort (in terms of taxes) of sub-national entities, they depend excessively on the exploitation of non-renewable natural resources (royalties of SGR) and the transferences of income by the nation to territorial entities (in essence: national taxes, SGP), distorting the “decentralized” focus of our Constitution.

In terms of the SGR, the principal problem in the investment of these resources has been corruption, in spite of the existence of citizen involvement and the territorial comptrollers and their control and monitoring. To combat these and other deficiencies of the system in 2011 (A.L. 5) the mechanism of territorial distribution was reformulated through some funds which, according to some territorial entities, because of the technical complexity and the consequent transactional costs, have made their access very difficult. Moreover, it is clear that these resources will be diminished by the drop in the price of petroleum as discussed above.

For its part, the principal argument in relation to the SGP is related to the formula of total annual growth; its constitutional establishment has been the object of multiple reforms. Initially it was the “average of the percentage of variation that the current national income has had during the four preceding years,” but because of certain factors, especially financial ones, the more recent constitutional reform on the subject established an increase equal to the rate of inflation plus a rate of increase of 3 percent for the years 2011 to 2016. In 2016 we will have once again a debate in the legislative for the modification of the constitutional formula.

c. The necessary actors and institutional arrangements

Under a peace agreement, all the related economic actors described above, (the business sector,³⁵ the international community,³⁶ the policy makers, the judicial branch, the general community) will be fundamental to mitigate risks in perpetuity (“endemic violence”) and relapse into conflict in our country.

To achieve the above, a solid institutional capacity is essential to the “*provision of security, the protection of property rights, the administration of justice, the collection of taxes and the safeguarding of economic, cultural, and social rights, and the provision of public goods and services,*” as Arévalo (2014) recognized. Leivobich (2014) as well, in analyzing just the first point on the negotiation agenda in Havana concerning the policy of comprehensive agricultural development, affirms that not only are important resources required to fulfill the tasks of the agreements but also a transparent and efficient set of institutions.

It is in this way that, for example, proposals such as that created by the Minister of National Security³⁷ can diminish the probability that post-conflict “micro-insecurity” will turn into “macro-insecurity,” as discussed in the section on theory above.³⁸

III. Preliminary conclusion

³⁵ Rettberg (2008, p. 40) en su documento sobre el dividendo de la paz explora los impactos del conflicto en el sector privado colombiano, y al realizar encuestas a los empresarios, estos afirman que, en ausencia de conflicto, invertirían más en productividad, en innovación y en emplear más trabajadores. Todo lo anterior por cuanto los costos del conflicto son altos no sólo por su impacto directo sino también por los elevados costos de transacción que genera, las afectaciones en la inversión, las limitadas oportunidades de expansión empresarial y el comportamiento de los consumidores.

³⁶ El Banco Mundial asesoró al gobierno nacional en la creación de un Fondo Multidonante para la Paz y Posconflicto que administrará las donaciones que realicen gobiernos extranjeros para consolidar la paz. Ya el gobierno sueco donó \$7 millones USD y se espera otra donación de Canadá. Así mismo, en noviembre de año pasado el Presidente Santos realizó una gira por seis capitales europeas buscando el apoyo político para el proceso de paz así como posibles recursos para su financiación.

³⁷ Información disponible en <http://www.elspectador.com/noticias/politica/santos-promete-crear-ministerio-de-seguridad-ciudadana-articulo-489323>, consultado el 12 de marzo de 2015.

³⁸ Al respecto, también Rettberg (2003) quien se refiere, retomando a la ONU, a las “*acciones dirigidas a identificar y apoyar estructuras tendientes a fortalecer y solidificar la paz para evitar una recaída al conflicto*”, construye una interesante matriz sobre las interpretaciones de la construcción de paz desde una visión minimalista a una maximalista donde relaciona importantes aspectos institucionales (ver Cuadro No. 1 de ese documento).

This article evaluated several concepts drawn from the international literature to consider in the design of an economic policy that would satisfy the post-conflict necessities of our country. As a first step, we explored a few ways of measuring gross product under a scenario of the end of war as well as national economic projections of probable growth in product under an eventual peace agreement in our country; all of the above was derived from estimates of the costs associated with conflicts. Aside from noted problems with measurement, it's clear that a setting of peace is better from an economic perspective than one of conflict, but we also conclude that more than this, there are adjustments that must be made in terms of foreign investment, monetary policy, and the formalization of the business sector, among other necessary adjustments. The major effort that is required is fiscal, just as much on the national level as on the sub-national level.

It is in this way that, without digging deeply into the economic framework of the Colombian constitution, we mentioned the space and flexibility for the normative re-design of the Colombian tax system, seeking simplicity, fairness, and efficiency, as much in substantive aspects (national and sub-national) as in procedural aspects. We also mentioned the necessary and gradual normative budgetary adjustments for the re-configuration of post-conflict expenses and the current problems with their numeric estimation.

Inarguable, all of the above will be successful if there is proactive participation in the discussion, approval, interpretation, and application of all of the above-mentioned reforms by the business sector, the international community, the policy makers, the judicial branch, and the general community. This should be accompanied by a strong institutional system that is legitimate and, above all, transparent.