



Victims and press after the war

Tensions between
privacy, historical
truth and freedom
of expression

*Vivian Newman
María Paula Ángel
María Ximena Dávila*

WORKING PAPER 4

Vivian Newman

holds a law degree from the Universidad Javeriana and is a law graduate by convalidation of the Universitat de Barcelona, with postgraduate studies (DSU) in Administrative Law, and a master's degree (DEA) in Internal Public Law of the Université Paris II Panthéon-Assas and in Cooperation and Development of the Universitat de Barcelona. She is currently Deputy Director of Dejusticia. Her latest publications include: *Datos personales en información pública: oscuridad en lo privado y luz en lo público* (2015), and as co-author, *Acceso a los archivos de inteligencia y contra-inteligencia en el marco del posacuerdo* (2017) and *Sobre la corrupción en Colombia: marco conceptual, diagnóstico y propuestas de política* (2017).

María Paula Ángel

earned a law degree *cum laude* and a political science degree from the Universidad de los Andes. She is studying towards a master's degree in Administrative Law at the Universidad del Rosario. Ms. Ángel is currently a researcher in the Transparency and Privacy sub-area of Dejusticia. She co-authored the books *Acceso a los archivos de inteligencia y contrainteligencia en el marco del posacuerdo* (2017) and *Sobre la corrupción en Colombia: marco conceptual, diagnóstico y propuestas de política* (2017).

María Ximena Dávila

holds a law degree from the Universidad de los Andes. She is a researcher in the Transparency and Privacy area of Dejusticia, where she has worked on issues related to access to public information, investigation and punishment of corruption, and human rights within the framework of the post-agreement.

Victims and press after the war

Tensions between
privacy, historical
truth and freedom
of expression

Vivian Newman

María Paula Ángel

María Ximena Dávila

Working Paper 4

VICTIMS AND PRESS AFTER THE WAR

Tensions between privacy, historical truth and freedom of expression

This project was funded by *Privacy International* and the
International Development Research Centre (IDRC)

ISBN: 978-958-5441-31-6 Digital Version

Center for the Study of Law, Justice and Society, Dejusticia
Carrera 24 N° 34-61, Bogotá, D.C.

Teléfono: (57 1) 608 3605

info@dejusticia.org

<http://www.dejusticia.org>

This document is available at <https://www.dejusticia.org>

Creative Commons Attribution-Non Commercial Share-Alike License 2.5.



Translation & Copy Editing: Paula Corredor

Layout: Diego Alberto Valencia

Cover: Alejandro Ospina

Bogotá, Colombia, January 2018

Contenido

- ACKNOWLEDGEMENTS 9**
- INTRODUCTION 11**
 - The Narration of the Conflict and the
Transition to Peace 11**
 - The Purpose and Methodology of the Investigation 13**
- CRITERIA FOR ESTABLISHING LIMITATIONS BETWEEN
RIGHTS THAT HAVE COME INTO TENSION 15**
 - The Rights to Privacy and Habeas Data: What
Are They and to What Extent Can Interfering
with Their Exercise Be Considered Legitimate? 15**
 - Right to Privacy 16**
 - Right to Habeas Data 28**
 - The Rights to Freedom of Expression and to
Historical Truth in Its Collective Dimension:
What Is Their Content and to What Extent Can
They Be Limited Legitimately? 33**
 - The Right to Freedom of Expression 33**
 - Right to Historical Truth in
Its Collective Dimension 39**
- CASE STUDY 46**
 - Events studied 46**
 - Narration of the Events and Legitimacy of the
Interference with the Right to Privacy of the
Bojayá Victims 47**
 - On the Public or Private Nature of the Behavior
of the Bojayá Victims 48**
 - The Events and Acts that Constitute
the Exhumation Process 50**
 - The Place Where the Events That Make up the
Exhumation Process Occur 54**
 - Legitimacy of the Limitations of the Narrative 57**
 - The Requirement that the Limitation
of Freedom of Expression Be Established
by Law in a Formal and Material Sense 59**

The Compelling Objective That Must Be Sought by the Limitation to Freedom of Expression	64
The Appropriateness of the Measure That Limits the Right to Freedom of Expression	64
The Necessity of Measure That Limits the Right to Freedom of Expression.....	65
The Proportionality, in a Strict Sense, of the Measure that Limits the Right to Freedom of Expression	69
SUB-RULES THAT ARE HELPFUL FOR PROTECTING THE RIGHT TO PRIVACY WITHOUT IGNORING THE RIGHTS TO FREEDOM OF EXPRESSION AND TO HISTORICAL TRUTH.....	71
The Victims of the Armed Conflict Are Not Public Figures	72
When the Events or Acts Involve Private Feelings It Must Be Presumed That They Are Part of the Personal Privacy of the People Who Are Present.....	73
When the Victims Belong to a Recognized Ethnic Minority the Notion of Privacy of Their Cosmvision Should Be Taken into Account	74
When Press Coverage Refers to Acts That Involve the Guarantee of the Victims' Rights to Truth, Justice, Reparation, and Non-Repetition, It Cannot Limit the Guarantee of These Rights	74
The Plurality of Truths About the Conflict and the Transition to Peace Must Be Guaranteed in All Cases	75
The Regulation of the Coverage of the Events of the Armed Conflict and the Transition to Peace Cannot Imply Prior Censorship	76
RECAPITULATION	77
REFERENCES	78
LEGISLATION.....	81
JURISPRUDENCE.....	81
ANNEXES	86

ACKNOWLEDGEMENTS

First and foremost, we would like to recognize the generosity of Leyner Palacios and the other members of the Committee for the Rights of the Bojayá Victims, who welcomed us in their community and their homes, attended our workshop, and shared their stories and perspectives. The reflections set forth in this book are at their disposal.

Our research was possible thanks to the financial backing of Privacy International, to which we express our deep gratitude. The help and support we received from Alexandrine Pirlot de Corbion and Francisco Vera were key for the development of the document.

Joint dialogue with other organizations was a fundamental part of this process. For this reason we would like to extend our appreciation to the members of the National Center for Historical Memory (CNMH), the Foundation for Press Freedom (FLIP), the Friedrich-Ebert-Stiftung in Colombia (FESCOL), the Center for Journalism Studies at the Universidad de los Andes (CEPER), the Antonio Nariño Project (PAN), the New Ibero-American Journalism Foundation (FNPI), and the media outlet Verdad Abierta. The interest in reconciling the rights that have come into tension led us to collectively organize the event *Discussion Between Journalists and Victims: Privacy, Freedom of the Press, and Ethics*.

Likewise, the expertise and ideas of Catalina Botero and Juan Carlos Upegui helped us clarify the gray areas of the debate. In particular, we thank Juan Carlos for the concept note he presented within the framework of this investigation.

Our friends and colleagues from Dejusticia also shared their knowledge to enrich our reflections. Many thanks to Carlos Andrés Baquero and Daniel Gómez for their valuable comments on the contents

of this text, and to Carolina Gutiérrez for supporting and facilitating our fieldwork. Also, to the administrative team of Dejusticia for their constant collaboration in the carrying out of daily tasks. In particular, we thank Elvia Sáenz for her cooperation in the editorial process of this document.