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Case Studies on Transitional Justice and Displacement

Truth-Telling and Internal Displacement in Colombia

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Transitional Justice and Displacement Project

From 2010-2012, the International Center for Transitional Justice (ICTJ) and the Brookings-LSE Project on Internal Displacement collaborated on a research project to examine the relationship between transitional justice and displacement. The project examined the capacity of transitional justice measures to respond to the issue of displacement, to engage the justice claims of displaced persons, and to contribute to durable solutions. It also analyzed the links between transitional justice and other policy interventions, including those of humanitarian, development, and peacebuilding actors. Please see: www.ictj.org/our-work/research/transitional-justice-and-displacement and www.brookings.edu/idp.

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Introduction

An internal armed conflict involving the government, leftist guerrillas, and a variety of paramilitary groups and criminal bands has endured in Colombia for the last 60 years. The conflict has generated 3.6 million internally displaced persons (IDPs),¹ as well as 113,233 refugees, 282,344 people in refugee-like situations, and 59,954 asylum seekers.² A comprehensive truth commission that investigates major human rights violations, including the uprooting of millions of Colombian citizens, will be essential to a transition to peace. However, given the ongoing nature of the armed conflict, a consensus exists between the state and civil society that the establishment of an official national truth commission should be postponed to a future, post-conflict period. In the meantime, other types of truth-telling initiatives, sponsored by official and unofficial actors, have made important contributions to upholding the rights of the internally displaced.

In order to maximize the role that truth-telling will play in the consolidation of peace and the resolution of displacement in Colombia, proponents must respond to several challenges. Beyond determining the appropriate timing of an official national truth commission, these challenges include enabling the secure participation of displaced persons in truth-telling processes, navigating social and political contestation of the priorities of these processes, and responding effectively to the ways in which the Colombian government and other actors have used the rhetoric of truth-telling and transitional justice to advance their own interests.

This paper offers a contextual analysis of the many truth-telling initiatives that may help direct the country toward peace, as well as the appropriate timing of a truth commission. It also calls for particular consideration of the demands and expectations of internally displaced people with regard to truth-telling, who have found that recognition of their IDP status and the existence of a humanitarian tragedy is still contested by relevant sectors of government and conservative groups of civil society.³ The paper consists of four parts. The first provides an overview of the armed conflicts and internal displacement in Colombia. The second section is concerned with the diverse array of Colombian truth-telling initiatives that have been undertaken in the recent past, by both official state and private actors. The third section describes the role of IDPs in the truth-telling processes, and the final section discusses particular issues and concerns raised by the Colombian case.

Internal Displacement in Colombia

Sixty Years of Internal Armed Conflict

Colombia has experienced a permanent state of internal armed conflict, with varying intensity, since the 1950s. Over more than 60 years, many armed actors have come and gone from the conflict. From 1940 to 1957, the traditional political parties—liberal and conservative—were involved in a civil war. The parties signed an agreement in 1957 to share control of the state and alternate the presidency between them, with all other parties legally excluded—a provision that mainly targeted the communists. In the 1960s, armed groups of peasants who had been expelled from their lands, together with the Communist Party, launched the Revolutionary Armed Forces of Colombia (FARC), a guerrilla group that continues insurgent hostilities against the state to this day. Beginning in the 1970s, an assortment of other leftist guerrilla groups also joined the confrontation, with varying degrees of impact.

In the 1980s, drug dealers involved in the production, refinement, and trade of coca leaves for cocaine emerged as a new group of actors in the Colombian conflict. Guerrillas began targeting land owners, including drug dealers, through extortion and kidnappings. In response, drug dealers created paramilitary groups in collusion with land owners and the Colombian army in an effort to combat the leftist guerrillas.⁴ From the 1990s onward, the U.S. government has supported the Colombian government's struggle against the drug trade, and, soon after its inception, this support program was extended to include fighting leftist guerrillas. At present, after a sustained and aggressive campaign against them, the FARC guerrillas have suffered heavy losses but still maintain important military power in some regions of the country. Despite the efforts of the Colombian and U.S. governments, drug trafficking has had a significant economic impact over the last 10 years. Most importantly, the armed conflict continues.

Over the course of this long confrontation, several peace agreements have been reached. The most successful peace initiative culminated with the constitutional reform of 1991, when four guerrilla groups were demobilized and integrated into the political arena as successful parties in the democratic system. Unfortunately, these groups did not include the FARC. In 1998, a period of public and direct negotiations between the FARC and the Colombian government ended in failure and the continuation of the conflict. By 2005, in a separate peace initiative, the main paramilitary federation, the United Colombian Self Defense Army (AUC), was demobilized.⁵

Contemporary Colombian history can perhaps best be described as consisting of chronic armed conflict paired with chronic peace negotiations. However, periods of relative peace have not led to sustained decreases in fighting. On the contrary, lulls in the conflict have offered the armed actors opportunities to reinforce their fighting capacities. Furthermore, in Colombia, peace and stability coexists with armed conflict, a situation made possible by the great differences between urban contexts and the countryside and between geographical regions that are characterized by distinct economic, social, and cultural traits.

The conflict involves a diverse array of actors, motivations, regional interests, and victims. It is difficult to propose a universal explanation for the complex relationships among these actors, with many sectors of society having hidden connections with the violence either as victims or perpetrators, and frequently as both.⁶ Colombia is not a dictatorship, yet it is not a completely healthy democracy either. It is a restricted democracy in which both allies and detractors of efforts to expose the truth behind the ongoing conflict are in power.⁷ The nature and scope of the truth-telling processes are defined according to the dynamic of the country's ongoing conflict.

The oscillation between peace-making and war-making, the coexistence of stability and conflict, and the diversity of actors and interests have made it difficult to determine what “post-conflict” means in Colombia, complicating the search for truth in a transitional justice context.⁸ It is commonplace, and accurate, to describe transitional justice efforts in Colombia as attempts to implement transitional justice without a preceding transition from conflict. The real challenge, therefore, is how best to use transitional justice mechanisms during an ongoing conflict. Is it possible to create a transition using transitional justice? Can the mechanisms of transitional justice be a tool for bringing conflict to an end?

Internal Displacement as a Constant Feature of the Armed Conflict and of Processes of Economic Development

The armed conflict has profound negative effects on Colombian citizens. Many civilians are affected by, or involved in, the military operations of the conflict itself, often involuntarily. They are frequently obliged, for example, to contribute and pay bribes to guerrillas and paramilitaries. Furthermore, the guerrillas and paramilitaries forcibly recruit young people and accuse civilians of collaboration with the Colombian armed forces, while, conversely, state authorities charge civilians with political crimes and involvement with the guerrillas. Most of the time, armed groups do not clash directly with other armed groups, but rather attack or threaten civilians. Those who resist are killed; so, for a majority of the population, the only means of defense is to flee their homes.

From the beginning of violence in the 1950s, an urbanization process has resulted from a permanent stream of forced migrants from the countryside, fueled by the armed conflict.⁹ For mainstream social scientists, however, this phenomenon did not represent a major human rights concern meriting examination through truth-telling processes. Rather, it was seen as a “natural” consequence of development, characterized by urbanization and the transformation of an agrarian economy into a manufacturing-based economy. The massive movement of populations from the countryside to the cities has been an object of study by demographers and economists in the field of migration,¹⁰ but it has generally not been viewed within the separate realm of forced migration.

The processes of economic development in Colombia have in fact led to displacement, but here too these movements can often be most accurately characterized as forced. Since the early days of independence in the 19th century, the search for raw materials for export has led to conflicts over the control of territories and populations for use in the growing and extraction of rubber, coffee, sugar cane, tobacco, bananas, coca, and so on. Besides these traditional crops, presently, the growth of palm oil plantations and a public development plan based on a massive expansion of mining operations have also fueled competition over land. Lands have been appropriated through a combination of legal strategies, as well as quite often through the exercise of violence by private organizations

commanded by legal and illegal entrepreneurs. The violent appropriation of territories leads to the forced displacement of peasants and traditional residents, such as indigenous people and black communities.¹¹

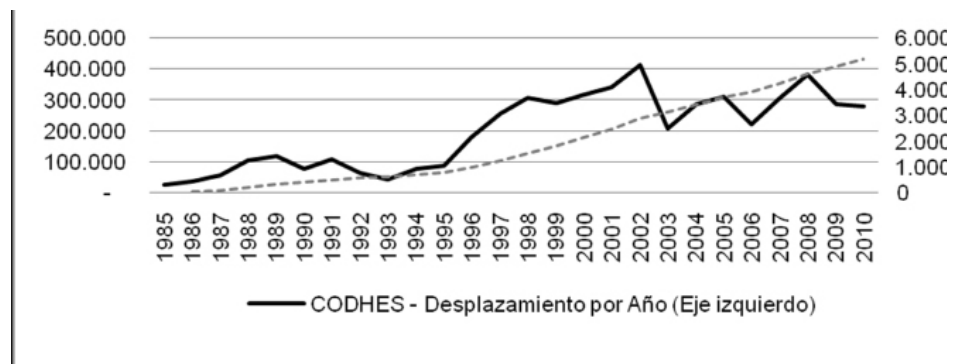
The Present Displacement Context in Colombia

Numbers in Recent Years

NGOs and the Catholic Church introduced the concept of internally displaced people in the Colombian context in 1994, and the first national survey estimated that one million people were displaced between 1985 and 1995.¹² In response, four systems to monitor internal displacement were created: three by civil society organizations and one by the government, the latter in 1995.¹³ Despite important differences in their calculations of total numbers of IDPs in the country, which are the result of disparities based on the date each system started to collect information and the treatment of IDPs who are not officially registered, the three existing systems have counted similar numbers of displaced persons over the last 15 years.

With a few exceptions, there has been a sustained displacement of around 300,000 people per year. That equates to a constant rate of 800 persons displaced daily for 15 years. After almost 20 years of monitoring, the official total is around three million IDPs. Independent monitoring systems calculate four million to five million IDPs in a country with 46.3 million inhabitants, the equivalent of 8 percent of the population. The graph below shows the evolution of forced displacement from 1985 to 2010. The numbers in the left column show the annual amount of displaced persons. The column on the right, expressed in millions, show the number of displaced people accumulated over the course of the past 25 years.

COLOMBIAN INTERNAL DISPLACEMENT 1985–2010¹⁴



In addition, internal displacement has been accompanied by increased migration to other countries, mainly neighboring Ecuador and Venezuela.¹⁵

The state system for registering IDPs has established that, for the year 2010, 32 percent of IDPs were displaced by guerrillas, 15 percent by paramilitary groups, 15 percent by other groups, 0.5 percent by the national army, and 0.1 percent by criminal gangs (for the rest, it was not possible to establish the actor responsible for their displacement).¹⁶ In contrast to this official data, the private information system on internal displacement and human rights managed by CODHES has established a strong connection among economic development, state military activity, and displacement. The report shows that 32.7 percent of IDPs were expelled from the zones of consolidation where the Colombian state has concentrated its military presence against the guerrillas. In these regions, a larger amount of land was stolen by forcing residents off the land; 14 percent of these municipalities have palm oil crops and 25 percent have mining projects, economic projects that, as suggested above, are fueling the competition over land that leads to displacement.¹⁷ Nevertheless, internal displacement has affected every region of the country. The displaced are mainly women and children, with a particular impact on ethnic minority groups of Afro-Colombians and indigenous communities.

The State's Response to Displacement

In 1997, the Congress of Colombia enacted Law 387, which created a state system for the prevention of forced displacement and protection of internally displaced people.¹⁸ The main pillars of the system have been the acknowledgment of the state's responsibility to the displaced and the recognition of the constitutional rights of IDPs. This early Colombian legislation on IDPs was strongly influenced by the human rights discourse of the Inter-American System and the process of consultations leading to the writing of the *Guiding Principles on Internal Displacement* by Francis Deng, then the special representative of the UN secretary-general. Since 1997, this system has been developed, adjusted, and expanded. However, the Colombian government has preserved the original conception of a system that brings together several institutions to work for the prevention of displacement and to provide attention and stabilization to IDPs.

Even before Law 387 was adopted, the judiciary had started to produce decisions addressing the fulfillment of the constitutional rights of displaced persons. By 2004, the Constitutional Court, given the stagnation in the achievement of these rights, took an important step forward. Ruling T-025 of 2004 declared that Colombia's internal displacement situation represented an "unconstitutional state of affairs,"¹⁹ a doctrinal mechanism with some precedent in international jurisprudence. This mechanism allowed the Constitutional Court to produce orders for the government directed toward the protection of the rights of the entire displaced population, not only those who were part of the original case. At the same time, the court introduced an important innovation that allowed it to remain involved in the case beyond the execution of the decision: a permanent monitoring system that has been in place ever since, whose activities include public hearings with IDP organizations and civil society organizations, the ongoing production of new and specific orders to the government, and the support of commissions of scholars and experts.²⁰

The Constitutional Court has stated that the unconstitutional state of affairs will endure until the government achieves the full guarantee of the constitutional rights of IDPs. In practical terms, this means that the monitoring will be in place indefinitely.²¹ The official government policy toward IDPs

encompasses a complex system supported by a significant amount of public resources. However, evaluation of the system has demonstrated that it is far from achieving the goal that the court has set for it.²²

In June 2011, the Colombian government published Law 1448, which established a package of judicial, administrative, social, and economic measures directed toward persons who suffered damages caused by violations of international humanitarian law or international human rights law that took place after 1985 and were a consequence of the internal conflict.²³ IDPs were included in the law as a class of victims. Given that they are already accounted for in a separate system of protection and attention, however, it is not clear if the grouping of IDPs with other victims will be an advance for the protection of their rights or a regressive measure.²⁴

Truth-Telling and Internal Displacement

There has not yet been a truth commission in Colombia. However, multiple truth-telling initiatives have been associated with diverse peace processes during different phases of the conflict. Many of these processes have addressed internal displacement and issues related to the persistence of the country's displacement crisis or have involved IDPs directly.

Demobilization of Paramilitary Groups and Measures of Transitional Justice

In 1998, the Colombian government began a peace process with the FARC guerrillas, but this effort eventually failed in 2002. One of the outcomes of the failed peace negotiations was a widespread negative perception of, and a sense of distrust toward, the guerrillas on the part of civil society. In this context, a conservative coalition government promised the recovery of territorial control, an attempt to militarily defeat the guerrillas, and the adoption of a national security plan. After inviting combatants to reintegrate into civilian life, the government signed a peace accord with the extreme right-wing AUC. Between 2003 and 2006, 30,431 paramilitary combatants were demobilized.²⁵ In 2005, the Colombian Congress approved Law 975, also known as the "Justice and Peace Law,"²⁶ creating a special criminal procedure for prosecuting demobilized paramilitaries charged with gross human rights violations.²⁷

The Colombian Constitutional Court introduced particular requirements to Law 975: the conditions for obtaining the benefits of the demobilization agreement included a full confession of crimes committed in the armed conflict. There was a stated duty to tell the truth about past crimes, including forced displacements.²⁸ However, the paramilitary commanders who were indicted only partially observed their duty to tell the truth. In a controversial decision by the Colombian president, several paramilitary commanders were extradited to the United States in 2009 on drug charges. The extradition completely altered the dynamic of the truth-telling process. At present, most paramilitary leaders have largely stopped participating in the criminal process, as their contributions have been restricted by the plea bargains that they reached with U.S. prosecutors. Many have objected to this measure because it subordinates the prosecution of and truth-telling about serious human rights violations in Colombia to the prosecution of drug trafficking abroad.

To date, five years after the system began, with more than 3,000 paramilitary leaders indicted, the special jurisdiction of peace and justice created by the law has produced two decisions based on the voluntary confessions of the indicted, and only one has finished the appeals process. Nevertheless, in this context, the criminal process has uncovered an unexpected amount of useful information about the worst violations of human rights, massacres, and the locations of thousands of individual and mass graves. The confessions of the paramilitary leaders helped the judiciary and civil society to understand that internal displacement was not only an unintended result of the military clash between the army and nonstate actors, but also often part of a systematic pattern of forced movement of populations that indicated the plundering of the land and property of millions of peasants, particularly among indigenous and Afro-Colombian groups. Their properties were illegally appropriated by commercial groups and allocated to development projects of industrial agriculture, cattle-raising, and mining.

The National Commission for Reparation and Reconciliation and the Historical Memory Group

The Justice and Peace Law also ordered the creation of the National Commission for Reparation and Reconciliation (CNRR). The commission worked under the direction of the vice president of the republic, with the participation of representatives of civil society designated by the president, including a representative of IDP organizations. Its main functions were to propose and then to create and develop a restitution program; to act as a guarantor of the participation of victims in criminal procedures; and to produce a report on the abuses of the conflict, a function related to truth-telling.²⁹ In compliance with its legal capacities, the CNRR created a Historical Memory Group (HMG), which prepared reports on the origin and development of armed groups. The commission treated memory as a political issue involving recognition of both armed actors and victims, and stated that the HMG went beyond the tradition of amnesty, pardons, and secrecy that have characterized past Colombian policies of peace.³⁰

The HMG was committed to society's right to the truth, but it stated that it was not a truth commission as such because it was conducting research in the midst of a conflict. The assumption was that an authentic truth commission operates in a post-conflict setting. The HMG, on the other hand, began by investigating massacres and other significant events that had occurred earlier in the conflict and has since moved to more recent violations of human rights and humanitarian law. The selected cases have all been connected in some way with the causes of forced migration,³¹ but only the group's final report, which it began developing in June 2011, is focused directly on internal displacement.

The HMG did, however, consider itself to be a step toward a truth commission in the future, warning that memory and the right to the truth cannot wait until an uncertain peace agenda is concluded and the end of the conflict has been reached.³² In three years of work, the HMG has produced 10 reports on representative cases of the worst human rights violations that have taken place in Colombia in the past 20 years. Most of the cases that it examined had already been investigated and closed by the judiciary. However, the HMG has increasingly worked on cases that were still open in the courts or that were connected with ongoing processes of violence. The group has made relevant contributions to the truth-telling process.

Monitoring Commission for the Observance of Decision T-025 of the Constitutional Court

The Constitutional Court, in observance of Decision T-025 of 2004, embraced the creation of a Civil Society Commission for supporting and monitoring public policies on displacement.³³ With the support of the Civil Society Commission, the Office of the UN High Commissioner for Refugees (UNHCR), and NGOs, the court also created a set of indicators of the satisfaction of the rights to truth, justice, reparation, and guarantees of nonrepetition of displacement for IDPs. These indicators are the primary tools for evaluating the government's response to IDPs and the observance of its duties.³⁴ Their introduction into the judicial monitoring process, however, has been contested by the government. After a tense public debate with the extensive participation of NGOs and UNHCR, the court ordered the compulsory application of 35 of the more than 200 indicators, which encompassed the satisfaction of the main rights of IDPs.³⁵ At the end of 2010, the government reported that it had partially applied the indicators and admitted that its policies had fared poorly; the court argued, however, that the arrival of new a government meant the report should be disregarded.

The construction of a reliable system to monitor public policies, based on indicators supported by a broad consensus among state institutions and civil society organizations, creates a new opportunity for the protection of victims' rights. These techniques for measuring rights fulfillment allow social actors to replace the general and unclear language used by the state, which used to control the sources of information, with more accurate data. Despite the conflict between the judiciary and the government, the monitoring system has led to important outcomes for IDP's enjoyment of their rights.

In a separate strategy, as a result of Law 387 of 1997, the government, with the support of international aid, created a program for the protection of the land and assets of displaced persons. The program included the implementation of a national database of lost properties, which could operate in the future as a basis for the program of property restitution for displaced persons that is called for in the new law on the protection of victims and restitution of land.³⁶

The Role of Displaced Populations in the Truth-Telling Process

Colombian civil society is highly organized. As a result, many memorialization and truth-telling initiatives have emerged from diverse communities and NGOs. The main objective of these efforts has been commemoration, rather than the elaboration of a structured account of the facts.³⁷ However, some NGOs—such as the Centro de Investigación y Educación Popular (CINEP) operated by the Jesuits, the Conference of Catholic Bishops, and the Consultancy in Human Rights and Displacement—have developed extensive databases about human rights violations, including internal displacement. These databases will support future truth-telling exercises. Already, the first report of the state Historical Memory Group has drawn heavily on the unofficial reconstruction of events developed by CINEP.

The organizations of displaced persons in Colombia are numerous and complex, and over the past 10 years, many have consolidated and regrouped. Colombian IDP groups have both a local and national presence; they are respected, have strong leaders, and operate very effectively. Currently, hundreds of local organizations and national federations participate in governmental and mixed institutional committees, and IDP groups have played an active role in monitoring public policy through the legal process led by the Constitutional Court.³⁸ However, at the same time, organizations of IDPs in

Colombians have been threatened and persecuted by all parties to the conflict. Their leaders have been tortured and killed. IDP organizations are systematically targeted, particularly when their activities are connected to processes of restitution of lost property, especially land. Security is the main concern of IDPs and the primary obstacle to durable solutions, truth, justice, and reparation in the Colombia.³⁹ The Colombian government has enacted measures to provide land restitution and administrative compensation to victims. These initiatives have spurred the mobilization of organizations of victims of displacement and other violations in an attempt to immediately allocate the new resources stemming from such policy changes. Armed groups, however, have resisted cooperation between internally displaced persons and the government around the restitution of land. The country's president has referred to such groups as radical right-wing forces that are trying to deter the process of land restitution through intimidation. Despite the public position taken by the government, however, between 2005 and 2011, 50 leaders of IDP organizations were killed.⁴⁰

It is clear that illegal armed actors are not alone in targeting IDPs. State authorities at the national and regional levels contribute to the situation of insecurity as well, as some of them have been co-opted by armed groups. Judicial investigations have discovered that during the past eight years, connections have existed between the paramilitary groups and the national authority on land reform, the presidential department of security, members of Congress, and members of the armed forces. The threats and attacks against IDPs have resulted in the intimidation of displaced person activists. IDPs do not have enough confidence in the authorities or in the peace process to participate in a national and public process of truth-telling. Nor do they have confidence in the government's ability to provide security for the lives and integrity of the victims.

Challenges Raised by the Colombian Case

Timing of Truth-Telling Processes

The first challenge that arises in the Colombian case is that of conducting truth-telling processes during an ongoing conflict. There is a consensus in the country about the relevance of a truth-telling process, a belief that has only strengthened in response to the diverse and complex outcomes of the criminal proceedings against paramilitary leaders, as these have led to the revelation of new information about the worst crimes and violations of human rights, including internal displacement, despite the restricted participation of victims in the judicial procedures. In addition, as mentioned above, for decades many groups have been gathering information about violence, human rights violations, and the effects of the conflict, including displacement, which will be available to future truth-telling processes.

However, the government, victims' organizations, NGOs, and members of the international community agree that conditions are not presently adequate for starting a public and comprehensive truth-telling process. They hold this belief for many reasons, including:

1. The ongoing conflict entails insuperable security risks for individuals and organizations.
2. Many groups currently are not interested in or lack incentives for discussing past violations.

3. A truth-telling process could be used by the parties to the conflict as a political tool directed at obtaining advantages in the conflict and in peace negotiations.

It is difficult to determine the correct timing for a truth commission, which should not be seen as an isolated part of a transition to peace. In Colombia, the pursuit of truth should be connected to other processes:

The transformation of key conflicts: Given the many overlapping conflicts in Colombia, it would be very difficult to transform all of them into a single, definitive peace process. But it is possible to hope for the transformation of some of these conflicts through a new process with paramilitaries or the demobilization of mafia gangs along with criminal prosecutions, if these were separated from negotiations with the FARC. Recent experience with partially demilitarized paramilitary groups demonstrates the value of advancing truth-telling processes, despite their inevitable shortcoming of only involving a small portion of the total number of actors. Each process generates different demands for truth from the victims of each actor. In advance of a full transition, it is useful to implement incremental truth-telling measures rather than wait for all fighting to stop.

Official transitional initiatives: The demobilization of paramilitary groups in Colombia generated numerous legal, judicial, and administrative measures of transitional justice. Among the official measures that have had truth-telling implications thus far are the confessions of paramilitary leaders that became part of criminal proceedings. In addition, the new act on victims and land restitution includes the internally displaced among those who will have access to truth-telling programs.

Civil society–led truth-telling initiatives: As mentioned previously, in Colombia, a number of important investigative initiatives have been launched by communities, NGOs, churches, and victims' organizations. Databases of human rights violations exist, and fact-collection exercises conducted by civil society organizations have provided information that can advance truth-telling processes. Any official truth-telling initiative should build on the expertise and work of these civil society-led initiatives. Overall, decisions regarding the establishment of a formal truth commission in Colombia should be informed by a holistic analysis of the relevant social and political dynamics and the anticipated effects on conflict transformation.

Social and Political Contestation of the Truth

In 2010, two separate, major demonstrations against the armed conflict took place in principal Colombian cities. The first was organized by activists using the Internet and was supported by the government. It attracted massive numbers of middle-class, urban residents in a public statement against the FARC and widespread kidnappings. A few days later, a second demonstration of similar size was led by NGOs, unions, victims' organizations, and traditional social movements, protesting in part against the FARC, but primarily against paramilitary and state agents that had carried out massacres and caused internal displacement.

The political situation in Colombia changed when a new government was elected in August 2011, one that has advanced the construction of a public consensus around the institutions charged with the protection of victims' rights and land restitution, including IDPs. The present context seems

more favorable to national and comprehensive exercises of truth-telling in the near future. However, the two demonstrations serve as evidence of the profound differences in experiences of the conflict in Colombia, which make the construction of a consensus around truth-telling a challenge for society. The demonstrations revealed the interest of the urban and middle-class sectors in truth-telling about guerrillas and kidnapping, and while IDPs too want to know about guerrilla activities, they also demand the truth about land evictions, the conduct of paramilitary groups, and their connections with the army and private companies. While the conflict continues, truth-telling processes other than a national commission can address the demands of particular groups of victims, such as IDPs. As discussed, this partial approach is not new in the Colombian context.

Rhetorical Use of Transitional Justice

I use the phrase “rhetorical use of truth-telling” to refer to the widespread inclusion of truth-telling in the Colombian public discourse without the capacity either to implement related mechanisms or to introduce real changes that would prevent additional internal displacement or create conditions of security that might enable durable solutions. The rhetorical use of the term produces benefits for the state: it creates an illusion of achievement despite failed peace processes. In fact, the Colombian state used the rhetoric of transitional justice to produce an image, mainly aimed at the international community of donors and human rights organizations, that the country enjoys stability, an end to the war, and a post-conflict situation. For IDPs in particular, the rhetorical use of truth-telling has caused disappointment because state agents have used it to deny the existence of internal displacement or to minimize the relevant figures, mainly in international forums. The rhetorical use of truth-telling and the “invention” by state actors of a transitional, post-conflict situation in Colombia can bring serious risks of social division and distrust to the use of truth-telling mechanisms, thereby hindering the future possibility of a truth commission in Colombia.

Conclusion

Truth-telling processes have been described as transitional or post-conflict strategies for dealing with rights violations that occurred during past conflicts or authoritarian governments. This paper has considered the role of truth-telling initiatives related to forced migration in the context of the ongoing conflict in Colombia. The fact that the conflict is ongoing presents many obstacles for truth-telling initiatives. While there has not yet been a national, comprehensive truth commission in Colombia, many public and private institutions have been involved in truth-telling initiatives. A wide consensus exists about the relevance of truth-telling processes and about the merits of postponing the creation of an official truth commission until a more peaceful time. The timing of a future truth commission, I would argue, should in part depend on the progress made by the processes of transitional justice, the achievements of nonofficial initiatives of truth-telling, and the transformation of different conflicts in society in the context of multiple peace processes. Some amount of prepeace truth-telling is needed in order to make all this possible.

IDPs have created many organizations that work in connection with a wide range of human rights defenders and social movements. They have articulated multiple demands for the protection of their rights, and these have been embraced by the Constitutional Court of Colombia. The Constitutional Court has identified and developed the rights of IDPs to truth, justice, and reparation, and has also created indicators for monitoring the success of activities undertaken by the government to ensure these rights. While these are important steps, unfortunately, the participation of IDPs in truth-telling initiatives has been hindered by threats against and the killing of IDP leaders and others involved in the public defense of IDP rights. Even the IDP leaders who are working with government institutions have been victims of threats from armed groups. The poor security conditions and the IDPs' lack of confidence in the government prevent them from participating openly in truth-telling processes at the present time.

In an extremely polarized civil society, the truth about displacement is contested. Important sectors of society tend to deny the existence, or the scope and seriousness, of the worst violations of human rights, including internal displacement. Often the government and public servants have attempted to justify displacement as a necessary consequence of waging war against the guerrillas. This contestation illustrates the necessity of an official truth commission that deals with the truth of displacement. But it also demonstrates the difficulties that such an initiative would face at present. In spite of the obstacles to a truth commission, though, many unofficial truth-telling initiatives have been launched by NGOs and IDP organizations, from the creation of databases of human rights violations, including internal displacement, to community-based exercises for protecting memories. These initiatives contribute to the fulfillment of the rights of IDPs, but they do not replace the need for the state to shoulder its responsibility to completely fulfill IDPs' rights to truth, justice, reparation, and guarantees of nonrepetition of displacement.

Notes

- ¹ República de Colombia, Agencia Presidencial para la Acción Social y la Cooperación Internacional (ACCIÓN SOCIAL), “Informe del Estado Colombiano sobre Desplazamiento Interno presentado a la Comisión Interamericana de Derechos Humanos,” 2010, retrieved February 2, 2011, from <http://www.dps.gov.co/contenido/contenido.aspx?catID=295&conID=6501>.
- ² United Nations High Commissioner for Refugees (UNHCR), *UNHCR Global Trends 2010: 60 Years and Still Counting* (Geneva: UNHCR, 2011), Table 2.
- ³ I understand civil society in its modern sense, as “a realm of social life—market exchanges, charitable groups, clubs and voluntary associations, independent churches and publishing houses—institutionally separated from territorial state institutions,” John Keane, “Civil Society: Definitions and Approaches,” entry in the *International Encyclopedia of Civil Society*, ed. Helmut K. Anheier and Stefan Toepler (New York: Springer, 2010).
- ⁴ Grupo de Memoria Histórica, Comisión Nacional de Reparación y Reconciliación (CNRR), *La Rochela: Memorias de un Crimen Contra la Justicia* (Informe del Grupo de Memoria Histórica de la Comisión Nacional de Reparación y Reconciliación, September 2010), 290.
- ⁵ Previous peace negotiations have occasionally included representatives of drug cartels, but such efforts were typically made in secret. Such was the case with the government’s negotiations with Pablo Escobar in 1990.
- ⁶ Gonzalo Sánchez Gómez, “Plan Área de Memoria Histórica” (Grupo de Memoria Histórica de la CNRR, February 20, 2007), http://memoriahistorica-cnrr.org.co/arch_plan/plan_estrategico_v1.pdf, 3.
- ⁷ Ibid.
- ⁸ Ibid.
- ⁹ Roberto Vidal, “Informe de Investigación sobre la Participación de los desplazados internos dentro de los procesos de Paz en Colombia: ¿Cuál participación? ¿Encontró alguna?” (Report for the Brookings-Bern Project on Internal Displacement, 2006).
- ¹⁰ J. Bejarano and L. H. Briceño, *La guerra y la paz en la segunda mitad del siglo XX en Colombia* (Bogotá: ECOE ediciones, 1999), 164.
- ¹¹ See Alejandro Reyes Posada, *Guerreros y Campesinos: El Despojo de la Tierra en Colombia* (Bogotá: Norma, 2009).
- ¹² Roberto Vidal, *Derecho Global y Desplazamiento Interno* (Bogotá: Universidad Javeriana, 2008).
- ¹³ In Colombia there are four institutions that produce data on internal displacement, using different methodologies and goals. From 1995 through 2011, the Colombian state has produced statistics based on the population already registered in the public systems. The other three systems are operated by

the International Committee of the Red Cross, the Conference of Catholic Bishops, and a Colombian NGO called CODHES.

- ¹⁴ The solid line indicates annual displacement figures (per data gathered by CODHES) and the dashed line represents the cumulative figure. Graph from: Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), “Informativo: ¿Consolidación de qué?” (CODHES Informa, Boletín Informativo de la Consultoría para los Derechos Humanos y el Desplazamiento No. 77, Bogotá, D.C, February 15, 2011), 9 available at http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=63&Itemid=50.
- ¹⁵ By 2009, UNHCR counted 389,800 refugees and persons in need of protection outside the country. United Nations High Commissioner for Refugees, “2009 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons” (Division of Program Support and Management, United Nations High Commissioner for Refugees, Geneva, June 15, 2010).
- ¹⁶ ACCIÓN SOCIAL, “Informe del Estado Colombiano sobre Desplazamiento Interno.”
- ¹⁷ CODHES, “Informativo: ¿Consolidación de qué?”
- ¹⁸ Colombia, Law no. 387, “By means of which measures are adopted for the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of persons internally displaced by violence in the Republic of Colombia,” 1997.
- ¹⁹ Colombian Constitutional Court, Sentencia T-025 of January 22, 2004.
- ²⁰ In the process of implementing and monitoring ruling T-025 of 2004, the Constitutional Court has enacted more than 84 complementary decisions and has organized more than 15 public hearings for state agencies and civil society organizations. César Rodríguez-Garavito and Diana Rodríguez Franco, “Un giro en los estudios sobre derechos sociales: el impacto de los fallos y el caso del desplazamiento forzado en Colombia” [“A Turning Point in Studies on Social Rights: The Impact of Judicial Rulings and the Case of Internal Displacement in Colombia”], *Derechos sociales: Justicia, política y economía en América Latina*, ed. P. Arcidiácono, N. Espejo, and C. Rodríguez-Garavito (Bogotá: Siglo del Hombre, Uniandes, CELS and Diego Portales University, 2009), 10.
- ²¹ Colombian Constitutional Court, Auto 385 of 2010.
- ²² The process of evaluation of the system has been carried out by the Constitutional Court and the civil society Monitoring Commission, which was given a specific mandate by the Constitutional Court. The process of monitoring has endured from 2005 to the present.
- ²³ Colombia, Law no. 1448, “On Victims and Land Restitution,” 2011.
- ²⁴ In addition, the new act does not recognize the state’s responsibility for the damages suffered by the victims.
- ²⁵ Catalina Díaz, “Challenging Impunity from Below: The Contested Ownership of Transitional Justice in Colombia,” in *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, ed. Kieran McEvoy and Lorna McGregor (Oxford, UK and Portland, OR: Hart Publishing, 2008).
- ²⁶ Colombia, Law no. 975, “Justice and Peace Law,” 2005.
- ²⁷ Díaz, “Challenging Impunity from Below.”
- ²⁸ Colombian Constitutional Court. Sentencia C-531 of July 12, 2006.
- ²⁹ Colombia, Law no. 975.
- ³⁰ Sánchez, “Plan Área de Memoria Histórica,” 6.
- ³¹ Ibid.
- ³² “No Somos Comisión de Verdad,” interview with Gonzalo Sánchez, by Nicolás Rodríguez, *El Espectador* (Bogotá), September 26, 2009, <http://www.elespectador.com/impreso/nacional/articuloimpreso163545-no-somos-comision-de-verdad>.
- ³³ The Monitoring Commission was created in 2005 through an initiative by civil society organizations. Beginning in 2007, the Colombian Constitutional Court has asked the commission to perform official monitoring of the government’s achievements with regard to the rights of internally displaced persons.

Colombian Constitutional Court, Auto 109 of 2007.

³⁴ As examples, the indicator of “effective enjoyment” for the “right to measures of enjoyment of truth, justice, and reparation,” includes:

All victims of displacement have received: measures of satisfaction such as prosecution and judgment of perpetrators; the wide dissemination of the truth about the reality of displacement and its causes; measures for finding and disseminating an official truth; the searching for disappeared people and the disinterment of remains of the deceased; the public claims of pardon and the construction of monuments and memorials for the victims.

And the “complementary indicators” include: “Number of displaced person’s families that have witnessed that the perpetrators of displacement have been prosecuted and condemned/total number of displaced homes” and “number of displaced homes that have attained an official truth about the conditions of time, manner, and place that surrounded the forced displacement/total number of displaced homes.”

For the “right to guarantee of nonrepetition,” an indicator of “effective enjoyment” of the right is: “All victims of internal displacement have been beneficiaries of measures that guarantee the non-repetition of crimes. And “complementary indicators” include: “Number of institutional and legal measures that point particularly to the guarantee of non-repetition of displacement and land eviction (explaining the kind of measures)” and “number of IDPs who have suffered more than one displacement/total number of displaced persons.” (Author’s translations. Colombian Constitutional Court, Auto 116, May 13, 2008).

³⁵ Ibid.

³⁶ ACCIÓN SOCIAL, “Informe del Estado Colombiano sobre Desplazamiento Interno.”

³⁷ Marcela Briceño-Donn, Félix Reátegui, María Cristina Rivera, and Catalina Uprimny Salazar, eds, *Recordar en Conflicto: Iniciativos No Oficiales de Memoria en Colombia* (Bogotá: International Center for Transitional Justice, 2009), 20.

³⁸ Vidal, “Informe de Investigación.”

³⁹ Marcela Briceño-Donn, Félix Reátegui, et al., *Recordar en Conflicto*, 18.

⁴⁰ “Más de 50 líderes de desplazados han sido asesinados en los últimos 5 años” *RCN Radio*, August 31, 2011, <http://www.rcnradio.com/node/105798#ixzz1vGKwMely>.