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**PEACE WITH JUSTICE:
THE COLOMBIAN EXPERIENCE
WITH TRANSITIONAL JUSTICE**

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EXECUTIVE SUMMARY

To wind down a 50-year war, the Colombian state and the Fuerzas Armadas Revolucionarias de Colombia-Ejército Popular (FARC-EP) agreed in November 2016 to stop the fighting and start addressing the underlying causes of the conflict—rural poverty, marginalization, insecurity, and lawlessness. Central to their pact is an ambitious effort to address the conflict’s nearly 8 million victims’ rights to truth, justice, reparations, and guarantees of non-repetition through a comprehensive process of transitional justice.

Thirty months after Colombians adopted the historic agreement to much international applause, what can be said about Colombia’s complex process to mete out enough justice to heal the wounds of war and prevent a return to violence? Can the Colombian government deliver on the promises of peace, and does it have the political will to do so? Which elements of the transitional justice process are working, and which are at risk? How should the United States and other members of the international community play their parts? And, assuming implementation stays on track, does Colombia’s peace with justice strategy offer a new model for resolving other conflicts around the world?

This paper, based on nine months of research and field-based interviews with key actors involved in implementation of the Colombian peace accord, attempts to answer these questions surrounding Colombia’s approach to peace and transitional justice. It finds that, after an initial if improvised phase of demobilization and disarmament, implementation has become trapped in a pattern of intense political contestation and controversies. Political disputes surrounding national elections in 2018 and the acceptance of the accord itself (particularly its justice-related elements) have hampered progress and raised questions about its fate.

Nonetheless, key aspects of the accord relating to transitional justice—a commission on truth and reconciliation and on missing persons, a special tribunal for determining accountability for human rights violations, protection for ex-FARC-EP fighters and community leaders, and reparations to victims—are moving forward in fits and starts. The heavy

demands of addressing multiple challenges simultaneously—reintegrating ex-combatants, tackling illicit drug production, fighting reorganized criminal armed groups, and building a state presence for rural development—are taxing, if not overwhelming, the government’s capacity to keep the process on track. Mixed signals from the administration of President Iván Duque, along with defections from within the FARC leadership and splintering of armed groups, are raising serious questions about whether the accord will achieve its ultimate aims of incorporating all Colombians into a process of building peace and security.

To build on earlier progress, the Colombian government must now accelerate implementation of measures to address the underlying structural causes of the conflict, especially rural development, land reform, and crop substitution. Critically, it must establish a permanent presence of effective civilian and security institutions throughout the country. It is essential also to strengthen protection for victims, social leaders, and demobilized fighters and allow the transitional justice institutions to do their jobs with the resources they need for a robust, nationwide effort toward reconciliation and peacebuilding. The central bargain of the peace deal—ending the fighting and cooperating with the truth and justice process in exchange for more lenient punishments for certain crimes—is worth protecting and deserves active support and continued monitoring from the United Nations and its member states, especially the United States.



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INTRODUCTION

Colombia’s peace agreement with its longest-running guerrilla army in late 2016 solidified new ways of thinking about peace not only as the end of fighting, but as a process for changing the conditions that fueled a five-decade conflict that left nearly 8 million victims in its wake. Central to the Colombian model of a sustainable peace is an unparalleled comprehensive and integrated approach to these victims’ rights to truth, justice, reparations, and guarantees of non-repetition.

This paper seeks to unpack the complex dynamics surrounding implementation of Colombia’s peace accord with the Fuerzas Armadas Revolucionarias de Colombia-Ejército Popular (FARC-EP) with a special focus on its approach to transitional justice. Compared to other peace processes, Colombia’s is more advanced in its comprehensive and detailed approach to the problem, integrating all four components of the transitional justice paradigm: victims’ right to truth, justice, reparations, and guarantees of non-recurrence.¹ Based on interviews with key actors involved in implementation of the agreement in Colombia, the report analyzes the most important provisions relating to truth, justice, and non-recurrence in the context of the country’s turbulent political and security situation; assesses the first two years of implementation regarding these issues; and concludes with findings and recommendations for strengthening Colombia’s historic efforts to build a sustainable peace with justice.

Colombia has long been a country riven with conflicts of a particularly toxic mix—ideological, economic, criminal, historical, urban/rural, and ethnic, fueled by illicit drugs—each intersecting at different periods and with different effects on its citizens and the wider region. Since the two main political parties ended their bloody civil war in 1958, Colombia

has gradually emerged as a more democratic, prosperous, and less violent country.² It continues to wrestle, however, with a variety of armed groups determined to control territories important to both licit and illicit economies, from cattle grazing and minerals to coca and coal, as well as a chronic absence of state authority throughout its territory.

Of the more than dozen armed groups typically operating in the country, the largest and most capable fighting force was the FARC-EP. A Marxist-Leninist guerrilla movement founded by farmers and peasants in 1964, the FARC-EP deployed a variety of tactics, including kidnappings, bombings, and military raids, to advance its goal of establishing a revolutionary government to redistribute wealth. Over time, particularly as some of its top leaders were killed or jailed, it lost some of its ideological fervor and turned increasingly to drug trafficking and extortion as a way to maintain operations, mainly in the countryside.

In response, right-wing paramilitary forces, often in coordination with conservative political and business leaders, organized to fight FARC units and their supporters directly. They also targeted social leaders, union representatives, journalists, politicians, and other political actors that challenged the conservative order. These groups, operating under the banner of the United Self-Defense Forces of Colombia (AUC), reached a deal in 2003 to begin to disarm, and in 2005 they accepted the government's controversial offer of reduced jail terms and protection from extradition.

After years of intermittent efforts to negotiate a peace deal with the FARC-EP, followed by a more aggressive military campaign by the Conservative government of Álvaro Uribe (2002-10), the Liberal government of President Juan Manuel Santos (2010-18), who had previously served as Uribe's defense minister, succeeded in negotiating a comprehensive peace accord ending over five decades of conflict.³ The accords, signed November 24, 2016, ended a civil conflict that killed at least 260,000 Colombians and displaced nearly 7.5 million people.⁴ This historic achievement, widely applauded by the international community⁵ and key sectors of Colombian society, represents the most important breakthrough in Colombia's long-term efforts to extend state control over its sovereign territory.

Nonetheless, the peace process has faced major challenges in political legitimacy and implementation from the start. Notably, Colombian citizens narrowly rejected the deal in a national plebiscite held in October 2016 that drew only 37.4 percent of voters.⁶ This setback led to some important revisions adopted by the parties and quickly approved by both houses of the Colombian Congress, but these moves did not fully repair the political harm caused by the failed plebiscite vote. Former President Uribe—Santos' immediate predecessor whose military operations against the FARC had severely weakened the rebel army—came out strongly against the peace agreement on grounds it was too lenient toward FARC guerrillas and did not do enough to break up their criminal activities. He remains the most influential leading voice calling for its revision.

Despite these challenges, implementation of the first phase of ceasefire, disarmament, and demobilization, with important support from the international community, proceeded relatively smoothly. Notably, the FARC-EP upheld its promise to lay down arms, a key concession. But the second phase of implementation, in which structural factors like land reform, impunity, and state presence in rural zones are paramount, is proving to be much more difficult. The country's main actors are struggling to manage this more costly and destabilizing stage of tackling multiple tasks simultaneously: reintegrating

ex-fighters, combatting soaring illicit drug production, controlling reorganized criminal armed groups, stimulating rural development, and paying reparations to victims. In this second phase, the state must lead, but, to date, it is falling seriously behind.

The most fraught challenge, however, is posed by the accord's complex approach to truth, justice, and reconciliation.⁷ Recent events suggest that President Iván Duque Márquez, elected in June 2018 partly on promises to revise key provisions of the accord, is determined to undermine the pact's central bargain of peace for conditional amnesty. He seeks to satisfy his conservative coalition partners, who never fully accepted the deal, in the lead-up to regional elections in October 2019. His decision, for example, to veto portions of the transitional justice statutory law in March 2019 prompted leaders of both the FARC political party and the pro-peace Santos faction to declare the move a grave threat to the peace accord and to its subsequent ratification by the Constitutional Court and the Congress. Meanwhile, guerrillas who never signed up for or have since left the arrangement are pairing up with other criminal armed groups to destabilize a security environment already under growing strain from the influx of over 1.2 million people fleeing the crisis in Venezuela.

PEACEBUILDING REALITIES: “VARIABLE IMPLEMENTATION”

As with any post-conflict situation, sustaining implementation of contentious decisions by formerly warring parties is inherently difficult and beset by ups and downs. Colombia, with its multifaceted concoction of challenges, was always more prone than most countries to setbacks. Nonetheless, initial steps toward ending the conflict went surprisingly well. But a change in presidential leadership from champion to hearty skeptic—just 18 months after the accord's approval—was disruptive and continues to thwart its proponents' best intentions.⁸

Positives: Disarmament, demobilization, reintegration, and elections

Given the complexity of Colombia's security situation, it is no small achievement that the first stage of implementation of the peace accord proceeded as well as it did. The initial ceasefire operation was “almost spotless and one of the best examples in the world,” according to a senior U.N. official monitoring implementation on the ground. While initial assessments of the proposed zones for demobilization of FARC fighters revealed a number of practical difficulties, these were overcome by the time FARC units received orders to move to the concentration zones and began to disarm. According to another knowledgeable observer, both sides were professional, disciplined, and maintained hierarchical control.⁹ As of March 2019, 13,061 former FARC members had been accredited officially. Disarmament of FARC weapons on a more than one-to-one basis, plus 700 caches of rifles, grenades, and mines, proceeded in accordance with international standards and Colombian precedents. These weapons were then transferred to Bogotá where the media amply covered their destruction and repurposing as memorials.

Throughout these processes, an integrated tripartite mechanism composed of representatives of the government and the FARC and chaired by officials of the U.N. verification mission worked closely together to monitor and verify implementation. The U.N. Security Council, which has repeatedly authorized a mission of approximately 500 personnel, visited the country in August 2017 and expressed satisfaction with the results.¹⁰ Initial progress on monthly stipends for demobilized fighters, who received 90 percent of minimum wage transferred through a card payment system, along with delivery of social services like food and water provisions, health care, and electricity, was slow at first but

steady. Unlike an earlier effort to negotiate peace with the FARC under the presidency of Andrés Pastrana (1998-2002), the active presence of international institutions and donors on the ground ensured Colombian decisionmakers and public opinion felt some external pressure to comply with the accord.¹¹

In the same vein, the formal process surrounding Colombia's national elections for president and Congress, held in March, May, and June 2018, marked a significant improvement from prior contests beset by political violence. Relatively few security incidents were reported during the months of campaigning and virtually none on election days; in addition, no voting centers had to be moved for security reasons, despite the bitterly polarized political atmosphere generated by the peace accord.¹² To address rising intolerance on the campaign trail, especially through social media, candidates signed a national pact committing to avoid all language fostering discrimination and exclusion and to reject acts of violence. Voter turnout in all three rounds reached the highest levels in decades.

As the electoral observation mission of the Organization of American States (OAS) noted, the elections, the first since the signing of the peace accord, were the most peaceful in several decades, a fact "worth underscoring, recognizing and celebrating."¹³ With the FARC participating as a bona fide, legally registered political party for the first time, and with elections closely supervised by international actors, the parties took another concrete step to reduce the risks of a return to conflict.¹⁴ While the FARC candidates performed badly at the polls, they will still occupy five guaranteed seats in each house of the legislature through 2026, as agreed in the negotiation (to Uribe's great dismay).¹⁵

Despite these important confidence-building steps, the next and more difficult stage of reintegration and protection of ex-fighters ran into deep structural problems in Colombian society. As Santos' former foreign minister quipped, "It's one thing to put an end to conflict, and something else to build the peace."¹⁶

Negatives: Polarization, justice, and endemic insecurity

Before the ink was dry on the final agreement, opponents rallied to undermine such core tenets as legalizing the FARC as a political party and guaranteeing it seats in the legislature, as well as the apparent leniency in the transitional justice chapter. This ongoing campaign has been led by former President Uribe and his followers in the Centro Democrático party, who have exerted significant pressure on candidate and now President Duque to revise and delay implementation of the accord. Such critics typically complain that the peace process was "badly designed, badly planned, badly conducted and badly implemented," and that the FARC "does not represent anyone, they are criminals."¹⁷ They lack confidence in the tribunal known as the Special Jurisdiction for Peace (JEP) because, they claim, its members and those of the Commission for the Clarification of the Truth, Reconciliation, and Non Repetition (Truth Commission) are mainly leftists; these same critics even tried (unsuccessfully) to bar from the commission anyone who had previously brought human rights cases against the government.¹⁸

Opponents of the peace deal are especially bothered by what they perceive as equivalent treatment of members of the FARC and the government's armed forces. They have sought, so far unsuccessfully, to create a parallel structure that would be composed mainly of judges and prosecutors from the military justice system, as well as other forms of preferential treatment.¹⁹



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This, they assert, would more appropriately judge state agents in the context of a military following the orders of democratically elected civilian presidents, not military-controlled governments like the ones judged in Argentina, Chile, and Brazil a few decades ago. This effort is particularly important to those former and current military and defense officials exposed to charges of war crimes, most notoriously for the *falsos positivos* scandal in which armed forces personnel killed innocent civilians then presented them as armed rebels, often in exchange for a casualty "bonus." Their call for a separate transitional justice process that, they hoped, would lead to more lenient treatment was rejected by the Constitutional Court.²⁰

Critics of the accord also contest the JEP's competence to decide whether crimes allegedly committed by ex-FARC fighters occurred after the signing of the final agreement, which would make them eligible not only for prosecution in the ordinary criminal justice system but also extraditable to the United States. This is not a theoretical concern: In a celebrated and increasingly controversial case, former senior FARC commander Seuxis Hernandez, a.k.a. Jesus Santrich, is wanted by the United States on drug trafficking charges. Recently, a JEP prosecutor was caught up in allegations of trying to derail Santrich's case. Meanwhile, the Constitutional Court has ruled that the JEP does have competence to decide the jurisdictional issue regarding extradition.²¹ In May 2019, the special tribunal decided against extradition of Santrich who, upon release, was immediately re-arrested on other charges, only to be released again and sworn into office as one of the FARC's designated members of Congress.

Despite such objections, President Duque and his high officials have said they will comply with the accord as long as it does not violate the constitution or international standards. Duque's national plan for "peace with legality," announced December 17, 2018, presents a long-term plan for implementation of the accord focused on territorially based development, security, and support for victims and those who remain within the law. His plan makes very clear that the government will not tolerate any return to criminal activity by former FARC-EP members and will comply with the provisions of the peace accords if participants remain similarly committed to legality.²²

Duque's peace implementation plan also aligns closely with the goals of his national defense and security plan, which focuses on strategic military and police intervention in high-violence zones to dismantle drug trafficking networks and organized criminal groups.²³ Duque's high commissioners for peace and for post-conflict have strongly defended the government's record to date and claimed no intention to disrupt the process.²⁴ They assert the government is focused on maintaining pressure on illegal armed groups and accelerating projects for national development.

Critics allege, however, that in practice the Duque administration has slow-rolled implementation and reduced budgetary resources for rural development and other peace accord commitments, messaging that "we can only do so much in four years."²⁵

They also continue to raise a series of legal challenges (“legal sabotage” in the eyes of some) to the transitional justice provisions of the accord (further discussed below). This may all add up to temporary political infighting, i.e., that the Duque administration is trying to placate hardline opponents of the peace accord within its coalition in the run-up to regional elections in October 2019. But supporters of the peace accord, including many in the international community, worry that Duque is permanently beholden to forces determined to weaken the heart and soul of the agreement.²⁶

In addition to growing doubts about the government’s political will to implement the accord, Colombia faces the vexing if not schizophrenic challenge of implementing peace amidst so much conflict, crime, and insecurity around the country. The critical missing ingredient for stabilizing the country remains the lack of state presence—military and civil—in broad swaths of Colombia’s rural departments, especially where coca is grown and trafficking networks thrive. This has been the core of Colombia’s security problem for decades and will take years to resolve; the peace agreement with the FARC-EP was supposed to be an essential step toward that goal.

What surprised many close observers, however, was the lack of readiness on the part of state agencies to fill the security vacuum as FARC units demobilized in

2017. Instead, other criminal groups—paramilitaries in Antioquia, FARC dissidents in Putumayo, the Gulf cartel in Urabá—rushed in or consolidated their control of these territories (for a list of remaining armed factions in conflict with the Colombian state, see Table 1) In some zones, such as Cauca, Tumaco,²⁷ Catatumbo, and border zones with Venezuela and Ecuador, conflict dynamics have actually worsened.²⁸ The Ejército de Liberación Nacional (ELN), which is now the largest leftist guerrilla force in the country, continues to stage attacks, including a devastating bombing of police barracks in Bogotá in January 2019.²⁹



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TABLE 1: AN OVERVIEW OF ACTIVE ARMED GROUPS AND CRIMINAL ORGANIZATIONS IN COLOMBIA³⁰

Category	Name	Members	Criminal activities
FARC dissidents and splinter groups (FARCRIM) ³¹	1st Front (“Armando Ríos” Front)	400	Attacks against security forces, forced recruitment, drug trafficking, coca cultivation, extortion.
	United Guerrillas of the Pacific (Guerrillas Unidas del Pacífico, GUP)	100–300	Homicide, kidnapping, drug trafficking.
	Oliver Sinisterra Front	300–500	Homicide, attacks against security forces, forced recruitment of minors, kidnapping, drug trafficking, coca cultivation, extortion.
	Gente del Orden	100	Contract killing, forced recruitment, extortion.
	7th Front	Unknown	Drug trafficking, coca cultivation, extortion.
	Other criminalized elements (FARCRIM) ³²	Unknown	Drug trafficking, coca cultivation, extortion.
Paramilitary splinter groups and criminal gangs (bandas criminales, BACRIM) ³³	Gulf Clan (Clan del Golfo), also known as the Urabeños or the Gaitanist Self-Defense Forces of Colombia (Autodefensas Gaitanistas de Colombia, AGC)	1,600	Homicide, drug trafficking, illegal mining, extortion, microtrafficking.
	Rastrojos	100–310 ³⁴	Kidnapping, drug trafficking, illegal mining, extortion, contraband smuggling.
	Los Puntilleros	50–135	Drug trafficking, extortion, microtrafficking.
	Caparrapos	150 ³⁵	Homicide, illegal mining, forced recruitment of minors, extortion.
Organized armed groups	National Liberation Army (Ejército de Liberación Nacional, ELN)	1,500-2,500	Terrorism, homicide, attacks against security forces, kidnapping, attacks on economic infrastructure, drug trafficking, illegal mining, extortion, oil theft.
	Popular Liberation Army (Ejército Popular de Liberación, EPL); also known as Los Pelusos	260	Drug trafficking.
Other criminal organizations	Oficina de Envigado	Unknown ³⁶	Contract killing, kidnapping, drug trafficking, money laundering, illicit debt collection, extortion, sex trafficking, arms trafficking, robbery, contraband smuggling, microtrafficking.

What explains the failure of the Santos and Duque administrations (and their predecessors) to fulfill this most basic function of national sovereignty? One answer is that “Colombia has more territory than state,” according to one senior U.N. official, i.e., the Colombian state has neither the will nor the capacity to build up the necessary physical infrastructure and human capital in much of its rural territories. Its efforts to occupy conflict zones with troops often end a few months later with a withdrawal and little left behind—“they throw soldiers at the problem without putting state structures in place,” despite healthy defense budgets, according to one international conflict expert. Some argue that, once the FARC was disarmed, demobilized, and then politically neutralized by the 2018 election results, the government lost interest in following through on structural reforms. Others claimed corruption by drug traffickers and complicity with other powerful forces as a likely explanation. Civilian institutions responsible for working with local populations to develop territorial plans for rural development have been under-resourced and slowed down by important but time-consuming requirements for inclusive, participatory planning processes.

A further complicating factor is that some armed groups are competing effectively with the state to provide public services to rural populations. Those displaced from the conflict are also actively engaged in finding their own solutions to rebuilding their lives.³⁷ The state, in other words, does not enter these territories as blank canvases but rather as fields of competition with irregular forces attempting to establish parallel systems of justice.³⁸

The result of this “variable implementation” of the peace agreement is a reconfiguration of the internal conflict—stabilization in some areas, and deterioration in others. FARC fighters who never agreed to demobilize or have returned to the jungle are growing in numbers. Increasingly, however, they operate as a loose semblance of cartels conducting low-cost criminal operations, not as ideologically inspired forces.³⁹ The recent explosion in coca production, caused in part by a suspension of aerial eradication by Santos in 2015 and the mishandling of crop substitution payments to coca farmers, has coincided with an increased presence of Mexican cartels that ship the drug from relatively uncontrolled Pacific ports. Paramilitary forces continue their efforts to corner the market on Colombia’s rich mineral and agricultural resources. “We are seeing a graduation from conflict actors to organized crime actors that govern locally,” said one government official.⁴⁰ These criminal interests are also threatening and attacking social movement leaders and rural farmers who are attempting to cooperate with the peace process.

As if these problems were not serious enough, Colombia is facing the worst migration crisis in South American history. In the last five years, over 1.2 million Venezuelans have entered the country to escape an economic, humanitarian, and political disaster that will take years to recover from. The Colombian government, with assistance from the United States and others in the international community, is working hard to accommodate the influx but concerns are growing that negative political, social, and security fallouts are around the corner. The migration flows pose a particular threat to the peace process because they are concentrated along border zones that are notoriously unruly and rife with armed ELN, FARC, and criminal groups trafficking in gold, oil, and drugs.

KEY TRANSITIONAL JUSTICE ELEMENTS OF THE FINAL ACCORD

On paper, the “Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace,” signed by President Santos and Timoleón Jiménez, commander-in-chief of the FARC-EP, offered not only a definitive end to the conflict, but an inspiring vision of a sustainable peace that would address its root causes. Chapters on comprehensive rural reform, political participation, security protections, illicit drugs, and human rights contain hundreds of provisions designed to foreclose the possibility of a return to war.

The agreement, which rests on a key provision of Colombia’s 1991 constitution establishing peace as a right and a duty, goes further to interpret peace as a “superior human right and as a prerequisite for the exercising of all other rights and duties,” which include the fundamental rights of legal certainty, physical safety, and non-recurrence of the armed conflict.⁴¹ The text addresses long-standing grievances of exclusion and marginalization of rural populations by emphasizing the Colombian state’s obligations under constitutional and international law to uphold equality, non-discrimination, and tolerance as “a prerequisite for bringing about peace and economic and social progress.” It also underscores the centrality of an effective state presence to “construct a new territorial-based welfare and development paradigm to the benefit of broad sectors of the population that have hitherto been the victims of exclusion and despair.”



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The document takes a rights-based, gender-based, and territorial-based approach throughout its over 300 pages, declaring peaceful coexistence for all citizens as the ultimate objective. To build a climate of trust, the parties agreed to prioritize the rights

of victims and establish accountability for abuses against them. Many participants and observers believe that the presentations by over 60 victims at a special negotiating session in Havana had a direct effect on the agreement’s focus on victims’ rights and reparations.

The methods for achieving the ambitious aims of accountability and reconciliation break new ground by creating a comprehensive system for protecting victims’ rights to truth, justice, reparations, and non-recurrence, recognized as the four key pillars of the transitional justice paradigm.⁴² The key elements of Colombia’s model are:

- an extrajudicial truth, coexistence, and non-recurrence commission to construct a broad explanation of the complexity of the conflict, promote recognition of the victims and of the responsibilities of the protagonists, and encourage peaceful resolution of conflicts;
- a commission on missing persons;
- a special jurisdiction for peace (JEP) to adjudicate the most serious and representative cases of human rights violations⁴³ and to impose sanctions depending on an individual’s level of cooperation with all aspects of the system;
- a system of individual and collective reparations to victims; and
- guarantees of non-recurrence that include holding perpetrators accountable for their violations and protecting more vulnerable sectors, including former FARC members, by dismantling criminal organizations and their support networks (also known as “successors to paramilitarism”).

The paramount aims of the justice chapter are to provide “restorative justice” by granting legal certainty to those responsible for criminal behavior in exchange for a sliding scale of sanctions corresponding to the degree of one’s cooperation with the four components of truth-telling, justice, reparations to victims, and abandonment of violence. In accordance with this restorative justice plank, all actors in the judicial component of the system are instructed to interpret their rules and decisions “in line with the guiding principle that peace, as a right that is the basis of all other rights, is a necessary condition for the exercise and enjoyment of all other rights.”⁴⁴

FINDING TRUTH

On November 29, 2018, the Truth Commission officially initiated its three-year mandate with a public hearing featuring a cross-section of witnesses that typify the complexity of the Colombian conflict and the diversity of its victims: a female indigenous rights leader whose husband was assassinated; a businessman victimized by the FARC; a policeman wounded by an antipersonnel mine during a coca eradication mission; an Afro-Colombian who suffered forced displacement; an army sergeant who faced death threats for reporting extrajudicial executions by his brigade; and a transgender woman who faced forced recruitment and sexual violence. The 11 commissioners also heard from an ex-combatant of the FARC and an ex-commander of an AUC paramilitary unit as an indication of their quest to encourage active participation by the main agents of the violence. In the words of its chairman, Father Francisco de Roux, “the truth must be a public good, a right and an inescapable duty.”⁴⁵

The Truth Commission, an extrajudicial and independent body of the state, is charged with pursuing four objectives: 1) to clarify and explain the 50-year conflict’s complexity; 2) to encourage recognition of victims and individual and collective responsibilities; 3) to foster coexistence in territories; and 4) to lay the foundations of non-repetition. It will seek out participation of women and minority populations most affected by the conflict as well as Colombians living abroad. During the first year, priority will be given to collecting testimonies from victims and responsible parties throughout the country, including via 29 “houses of truth” in rural territories that will also serve as venues for psychosocial services for victims and programs to encourage reconciliation and coexistence. Its second year will concentrate on analysis of the data, and its third year on preparation of the final report. An independent advisory council has already begun convening to provide critical analysis to the Commission, and international donors are actively supportive of its work.

Despite these positive developments, the Commission has faced some difficult challenges from important political actors. The Colombian military and intelligence services tried to bar access to classified files, an effort that was partially blocked by the Constitutional Court.⁴⁶ The Commission’s chair was depicted as a guerrilla sympathizer in doctored video disseminated through social media.⁴⁷ Although President Duque and Vice President Ramirez paid a symbolic visit to its headquarters, the Commission still faces a steady drumbeat of attacks of leftist bias from many of the government’s conservative supporters and the military. A group of military personnel and their families are lobbying to be identified not just as alleged perpetrators of violations but also as victims themselves.⁴⁸

One of the more innovative aspects of the Colombian truth and justice system is its prohibition on the sharing of information from the Truth Commission (and the commission investigating disappearances) to the Special Jurisdiction for Peace (JEP), which will rule

on specific cases of responsibility. Likewise, the commission on missing persons may not pass information to the JEP other than forensic evidence. The JEP, on the other hand, may share information it collects from witnesses with the other two bodies.

The goal of this rule is to incentivize alleged perpetrators to come forward and cooperate fully with the Truth Commission without fear of their revelations being used against them judicially. In practice, this feature may hinder the JEP's ability to build strong evidentiary cases against responsible individuals. On the other hand, it may better protect their due process rights, as the Truth Commission is not a formal judicial body with the requisite protections for defendants and handling of evidence.



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On balance, the formula is weighted in favor of truth-telling, historical memory, and restorative justice for the combatants instead of traditional criminal accountability and retributive justice, in the hope it will facilitate reconciliation and non-recurrence.

To detractors of the peace accords, however, it bends justice too much in favor of the FARC, paramilitary leaders, and military commanders who are most responsible for the severe human rights violations committed during the conflict. In a sign that the truth-telling priority may be working, a number of groups have begun or pledged publicly to cooperate with the Truth Commission, including demobilized fighters from the AUC paramilitary, the FARC, and the ELN,⁴⁹ as well as imprisoned drug traffickers.⁵⁰ They have an obvious self-interest in coming forward now in order to qualify for lighter penalties later. It will take years, however, before we know what the ultimate balance between truth and justice will be.

SEEKING JUSTICE

It would be fair to say that the justice component of the comprehensive transitional justice and reconciliation system established by Colombia's peace agreement with the FARC is among the most complex judicial processes in the world. Its scope is ambitious—to investigate and determine individual responsibility for the most serious and representative crimes committed over 50 years of conflict and enact sanctions corresponding to the defendant's level of cooperation with the system. Its purpose is fundamental to the bargain struck at the negotiating table in Havana—to provide legal security to combatants on both sides of the conflict in a way that also recognizes debts owed to victims and to society at large, all with the ultimate goal of preventing a recurrence of conflict. It seeks to strike a balance between the demand for some kind of retributive justice—a blanket amnesty would be both politically unsustainable and against established inter-American legal norms exempting certain crimes from pardon—and restorative justice in which FARC members, in particular, could return to civilian life after confessing their crimes and doing community service, without fear of renewed prosecutions.

To grapple with this kind of individualized conditional amnesty, the Special Jurisdiction for Peace, which is designed to run parallel to Colombia's ordinary justice system, is expected to function for a minimum of 10 years and handle thousands of cases involving tens of thousands of victims. Such a hybrid system of selectively determining the terms and limits

of judicial accountability for the next 10 or more years gives new meaning to the term “transitional” justice. The risk is that, by sheer scope and longevity of effort, it becomes a semi-permanent body that contests and confuses the ordinary justice system.

Indeed, the peace agreement’s drafters, for good and ill, designed a special judicial process that is remarkably complex: three chambers composed of 18 total magistrates and a peace tribunal composed of four sections and 20 magistrates, as well as a burgeoning and expensive bureaucracy expected to cost around \$96 million for 2019 alone.⁵¹ It operates alongside an ordinary justice system that is notoriously dense and slow, with multiple opportunities for delay and derailment and high rates of impunity. Despite a (deserved) reputation for having a legalistic culture, Colombia scores poorly against international justice and law standards. Compared to other countries in Latin America and the Caribbean, Colombia ranks 20th out of 30 countries in rule of law and 80th out of 126 countries worldwide.⁵²

The JEP has mandatory jurisdiction over ex-members of the FARC-EP and members of the armed forces; state agents who were not members of the armed forces or other third parties may voluntarily apply to subject themselves to the JEP’s process. The JEP’s panel for amnesty and pardons determines whether the alleged violation qualifies for *de jure* amnesty as a politically motivated crime, although certain violations, such as war crimes and crimes against humanity, may not be amnestied in accordance with Colombia’s obligations under the inter-American human rights treaty system, as confirmed by the Colombian Constitutional Court. If the crime is not eligible for amnesty and is determined to be a particularly grave and representative violation, the JEP will investigate and judge the matter with inputs not only from the attorney general and other relevant state institutions but crucially from victims themselves, as well as national indigenous and human rights organizations. If a defendant admits responsibility early in the process, the tribunal would issue sanctions of five to eight years of restricted liberty and participation in restorative community projects (those determined to have played a secondary role are eligible for a lesser punishment of two to four years). Those who accept responsibility later in the process, e.g., before a first instance judgment, are subject to five to eight years imprisonment; and for those who do not accept responsibility and proceed to a full investigation and trial, the potential sanction is 15-20 years of prison.

After much debate regarding its legal status and powers, and most importantly a Constitutional Court decision and legislative statutory act ratifying its mandate, the JEP formally began opening cases in July 2018. It chose as its first set of cases some of the most emblematic and notorious crimes of the conflict:

- Illegal kidnappings by the FARC-EP;
- Grave violations suffered by rural communities in areas most affected by the conflict (Cauca, Choco, Narino);
- Homicides committed by military personnel of civilians falsely presented as combatants (*falsos positivos*);
- Victimization by state agents of members of the Union Patriótica (UP), a leftist political party formed in 1985 after the cessation of conflict with specific units affiliated with the FARC-EP whose deadly fate (over 3,000 were assassinated in the 1980s and 90s) left many guerrillas highly skeptical of the government’s willingness and ability to protect ex-combatants;⁵³ and

- Forced recruitment and deployment of children in the armed conflict, and related crimes.⁵⁴

In her first annual report to the public, JEP President Patricia Linares defended the tribunal's legal standing and highlighted the active participation of victims in the hearings to date. She also reported that 9,687 former members of the FARC-EP have submitted themselves to the JEP's jurisdiction, with a 99% rate of participation; 1,938 members of the armed forces have submitted themselves as well, despite receiving an 18-month suspension in their compulsory appearance; and the JEP has received another 38 voluntary applications from other state agents and third parties.⁵⁵ These parties, as well as victims, have the option of receiving legal assistance from an independent body that supports the work of the JEP.

Controversies

The question of how to determine judicial accountability for the most serious crimes committed during the conflict was always one of the most contentious for the peace negotiators, and for society at large. The notion that thousands of former FARC-EP members would receive restricted liberty rather than jail time still gnaws at Uribe and other defenders of the government's military campaign against the insurgents, who hoped for total surrender rather than a negotiated peace. They are particularly bothered by allowing FARC-EP leaders who are under investigation or sentencing for various acts to hold seats in the Congress before judicial determinations of responsibility are made.

For average Colombians, who face stiff penalties in the ordinary justice system for violations like drunk driving, it is hard to accept the lighter sentences the special jurisdiction offers for FARC crimes like kidnapping or planting mines that killed innocent civilians.⁵⁶ Add to that the lingering confusion over judicial cases handled by the 2011 settlement with paramilitaries, and the overlap with other criminal cases in the ordinary jurisdiction system, such as the prior convictions of armed forces members for the *falsos positivos* scandal, and you get a rather skeptical attitude toward the process. The defeat of the accord in the October 2016 plebiscite gave opponents a further political argument for re-litigating the details at every turn.

These and other controversies reached a fever pitch in early 2019, threatening to do real harm to implementation of the accord. On February 8, the Colombian Congress sent the statutory law of the JEP to President Duque for his signature. After weeks of polarizing debate, Duque decided to veto six of the 159 provisions of the statutory law on grounds of "inconvenience," and announced his intention to propose three constitutional reforms to the law.

Among his objections, Duque said he wants the law to reconfirm that the FARC must repay its victims with assets, clarify the terms of extradition for crimes, and toughen rules over sentencing for war crimes. He also objected to an article that suspends investigations by the ordinary judicial system for those who submit to the JEP. In addition, Duque said he would seek a constitutional reform that would exclude sexual crimes from being taken up in the tribunal, clarify that repeat offenders lose peace accord benefits, and that crimes committed after December 1, 2016, would not go to the JEP but would be tried in the ordinary judicial system.⁵⁷

His position, which represented the first time a Colombian president has vetoed a law already approved by the Constitutional Court, drew applause from the hardline faction of his coalition led by former President Uribe. It also prompted vociferous criticism not

only from former government and FARC negotiators, but also from most opposition parties and leading opinion voices.⁵⁸ The inspector general, Fernando Carrillo, declared the veto incorrectly ignored the rulings of the Constitutional Court, which had previously considered the measure and declared it constitutional. The head of the U.N. High Commissioner for Human Rights mission in Colombia reminded the government of its “historic responsibility to continue with full implementation of the peace accord” and warned against further delays.⁵⁹ And the prosecutor of the International Criminal Court, which has issued a series of warnings about the transitional justice system not undermining Colombia’s obligations to prosecute war crimes and other grave violations, called for support of the JEP.

The outcry led Duque to send his foreign minister to New York to explain Duque’s decision directly to U.N. Secretary-General António Guterres, and to reassure former FARC-EP fighters that his objections will not affect their quest for legal security.⁶⁰ In response, Guterres called on the government to give “all the political and practical tools required for [the JEP’s] effective functioning under conditions of independence and autonomy.”⁶¹ The matter then went to the national Congress, where the lower house rejected Duque’s partial veto and the Senate could not reach agreement. The case then went for another review before the Constitutional Court, which ruled against Duque. Some analysts considered the whole ploy an attempt to shore up his political base among the Uribe faction leading into regional elections on October 27, 2019.⁶²

Whatever ultimate effect Duque’s objections have on Colombia’s transitional justice system, it represents a serious escalation of his administration and its supporters’ consistent efforts to diminish and delay the JEP’s work. As noted earlier, these include demands for special treatment for members of the armed forces,⁶³ greater authority to extradite former FARC fighters to the United States for drug trafficking, and attacks on the qualifications of the JEP’s magistrates.

While Duque’s ploy to shield his favored backers from punishment is self-evident, even some of the JEP’s supporters acknowledge that the judicial process has become bogged down in bureaucracy and risks “excessive procedural ritualism.”⁶⁴ According to Néstor Raúl Correa, the JEP’s former executive secretary, the problem is even worse: A series of vulnerabilities and attacks have “distorted the role of the JEP to the point that it is no longer a trustworthy reference for the conflicting parties, the victims, or citizens in general.” In addition to repeated attempts to dilute its authority (some successful), the JEP is hobbled by “budget squabbles, bloated staffs, contract disputes ... and lengthy and convoluted proceedings—a Kafkaesque labyrinth.”⁶⁵ These and other controversies and complaints are reportedly encouraging former FARC members to abandon the reintegration process out of fear it will fail to guarantee them the legal security that was one of their highest demands at the peace table. It may also decrease the odds that Colombia’s other leading rebel group, the ELN, will submit itself to peace negotiations with the government any time soon.⁶⁶

Repairing victims and reintegrating combatants

The peace agreement identifies “the unresolved issue of land ownership and, in particular, the concentration thereof, the exclusion of the rural population and the underdevelopment of rural communities” among both the historical causes of the conflict and the conditions that facilitated its persistence.⁶⁷ Preventing the recurrence of conflict depends on addressing these issues, not only through national plans for

rural development but also through measures to reintegrate former combatants and make reparations to victims of the conflict, the majority of whom are from rural areas.⁶⁸ Although some important advances have been made in reintegrating former FARC-EP members and in providing reparations to victims, according to the Kroc Institute of Notre Dame University, more than half of the peace agreement's stipulations regarding reintegration and reparations were either incomplete or had yet to be initiated 18 months after the signing of the agreement.⁶⁹

In the case of reparations, the lag in implementation is even more significant given that the reparations process began years before the signing of the peace agreement with the passage of the Victims' Law in 2011. The 2016 peace agreement strengthened the mechanisms established in this law to ensure victims' access to health and psychosocial services, financial compensation, and community restoration projects, as well as to restitute victims' land, housing, sources of income, and access to credit. The reparations system detailed in the peace agreement also provides for the redistribution of assets obtained from the FARC to victims of the conflict.



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However, the reparations process has fallen short on many of its other promises, especially in the area of land restitution. Since the institution of the Victims' Law, the Land Restitution Unit has received over 120,000 requests, and of the 54,000 cases that they have finalized, less than 10,000 have successfully resulted in the restitution of land.⁷¹ Additionally, of the 634 groups that have been recognized as beneficiaries of collective reparations, only six cases have seen progress in implementation.⁷² A major structural problem is the lack of a comprehensive land titling registry. The government's failure to improve access to land, particularly for indigenous communities, has recently led to widespread and violent protests in rural areas of the country.⁷³

Reintegration of former FARC-EP members has been a similarly slow process, although the government has made some significant advances within the designated territorial reintegration zones. Of the over 13,000 former FARC-EP members accredited by the Office of the High Commissioner for Peace, 5,219 were participating in the formal reintegration process as of March 2018.⁷⁴ Each registered FARC-EP member, once demobilized, received a one-time economic benefit of 2 million pesos (\$675 at time of disarmament in August 2017) to facilitate their reintegration into civil society.⁷⁵ As of March 2019, government reintegration agencies had approved 22 collective and 162 individual income-generating projects benefitting 1,592 former FARC-EP members. In addition, 1,773 former combatants were enrolled in education classes in the reintegration zones.⁷⁶

For the thousands of demobilized FARC members living outside of the official reintegration areas, access to services has been more limited, though the Agency for Reintegration and Normalization hopes to extend benefits to a total of 10,070 former FARC-EP members by August 2019 either through productive projects, training, or housing.⁷⁷ This ambitious goal, however, is unlikely to be fulfilled without significant revisions to the government's

plan. The services offered within the territorial areas for training and reintegration are only guaranteed through August 15, 2019, and the government has yet to determine what will happen to the zones—or the services therein—beyond that time.⁷⁸ The killing of 99 former FARC members since the signing of the peace agreement has further undermined reintegration efforts, fostering distrust in the peace process and leading some former FARC members to abandon it.⁷⁹

It is also worth noting that one critical component of effective reintegration surprisingly is missing from the peace agreement altogether: access to land for former FARC-EP members. While the restitution of land for victims of the conflict has progressed slowly, land access for former combatants is almost nonexistent. The government has identified some potential paths to land ownership for former FARC-EP members, but so far, no land has been granted.⁸⁰

Because both reparations to victims and reintegration of ex-fighters are closely tied to issues of land access and the development of rural communities, the success of these efforts ultimately hinges on achieving broader rural reform. At the center of the government's plan for rural development are the Territorially Focused Development Programs (PDETs), a set of 16 regional plans to bring services, infrastructure, and economic opportunity to the 170 municipalities most affected by the conflict and characterized by high poverty rates, illicit economies, higher rates of conflict, and low fiscal capacity. As a result of an impressive but time-consuming participatory and transparent budgeting process at the municipal level, “the largest in the world” according to a former senior official, initial implementation was slow.⁸¹ President Duque has vowed to push forward with implementation of the PDETs—all 16 of which have now been approved—as well as commercialization plans to increase sales of peasant products.⁸²

Further aggravating the overall situation of rural development and reintegration is the long-standing presence of illicit cultivation of coca in 80 percent of the most conflictive zones of the country. Despite the relative success of the demobilization process, the coca production problem has only worsened since the signing of the accords over two years ago. Due in part to incentives to compensate farmers for switching to legal crops, coca cultivation in Colombia reached an all-time high of 171,000 hectares in 2017.⁸³ Duque's plan for complementing illicit crop substitution with forced eradication, including a return to aerial spraying of glyphosate, a known carcinogen, has drawn heavy opposition, as has his administration's preference for agribusiness over small landholders and peasant farming.

The parties to the peace accord agreed generally to a plan for tackling the coca problem through a combination of crop substitution and eradication. As of January 31, 2019, according to the United Nations Office on Drugs and Crime, 99,097 families had signed up for the National Comprehensive Program for the Substitution of Illicit Crops (PNIS). Approximately 34,767 hectares of coca have been eradicated voluntarily out of 51,824 hectares registered by those families, and voluntary eradication rates have remained high, at approximately 94% of the families who received the initial financial benefits from the Program.⁸⁴ In addition, one year after eradication, only 0.6% of the crops had been replanted in seven of the municipalities analyzed.

Despite these encouraging numbers, the Duque government is failing to deliver timely payments and other technical assistance to farmers, who are increasingly giving up hope.⁸⁵ The government is focusing instead, at the urging of Washington, on ambitious

targets for forced eradication, which historically has higher rates of a return to coca planting. The result is growing insecurity in the coca-growing regions where vulnerable families are facing not only food insecurity but growing recruitment and violence by criminal forces, and a further weakening of peace process implementation.⁸⁶ The issue is not whether the government should prioritize coca eradication, but how it should do so, and what effect those choices have on the overall goal of rural development and reducing violence.⁸⁷

PREVENTING REPETITION OF CONFLICT

The fourth pillar of Colombia's integral system for transitional justice—guarantees of non-repetition—represents the ultimate aim of any peace process: a sustainable peace with respect for human rights for all. In both theory and practice, it is also the least developed goal, both internationally and in the case of Colombia.

After the genocides of the 1990s, scholars and policymakers working in the field of transitional justice, impunity, and atrocity prevention began to underscore the importance of guarantees of non-recurrence and articulated a series of measures that contribute to prevention of human rights violations. These include: securing “gateway” rights such as legal identity; effective civilian control of military and security forces and vetting them for future employment based on human rights standards; strengthening the independence of the judiciary; protecting civil society, journalists, and human rights defenders; and establishing early warning mechanisms.⁸⁸ The U.N. Human Rights Council subsequently created a new special rapporteur mandate to study and make recommendations to states on strengthening the right to truth, justice, reparations, and non-repetition, which further advanced the global understanding of the interrelationships among these pillars of transitional justice.⁸⁹

Among these, the emphasis of the international human rights community has been on the link between justice and conflict prevention, especially after the creation of the International Criminal Court. For example, according to a joint study in 2018 by the special rapporteur on transitional justice and the special adviser to the secretary-general on the prevention of genocide, “criminal justice, through the assertion of accountability ... generates a deterrent effect; signaling that no one is above the law, which is important for social integration.” Accountability also disrupts criminal networks and the most violent manifestations of discrimination, key risk factors for further violence.⁹⁰

Nonetheless, experts concur that criminal justice is not enough. Without deeper structural reforms that allow citizens to resolve conflicts without violence, there is little hope for moving from “negative peace”—the absence of warfare—to “positive peace” in which governing institutions, social norms, inclusion, and local authorities each play a crucial role in preventing conflict.⁹¹ Increasingly, experience with post-conflict peacebuilding also suggests that there is no one-size-fits-all remedy for recurrence of conflict. Rather, a more à la carte menu of preventive measures adapted to fit unique local circumstances is appropriate.⁹² Reducing the risk factors for old and new forms of violent conflict is the goal, but the path to get there can take many routes.

Beyond the more structural and institutional approaches to guaranteeing non-repetition, there is a more victim- and perpetrator-oriented way of understanding the concept. States have an obligation under international law to cease violations by specific actors against specific victims and prevent their repetition. Locking up perpetrators found to be

guilty in a court of law is one very tangible way of stopping the violation from happening again; granting state security protection to the victim is another. In a generalized conflict with many complex factors driving violence and thousands of cases to adjudicate, this more victim-centered approach, which has its merits, also has its limitations.

In the case of Colombia, the peace negotiators broadly embraced the concept of non-recurrence as both an imperative for societal renewal and an obligation to protect victims of the conflict and those who lay down their weapons. The parties committed themselves to “the emergence of a new culture that outlaws the use of arms in the exercise of politics and to working together to achieve a national consensus involving all political, economical and social sectors, and make a commitment to the exercise of politics where the values of democracy, freedom of ideas and civilized debate are paramount and where intolerance and political persecution are outlawed.”⁹³ The final agreement’s repeated inclusion of terms like peaceful co-existence (*convivencia*), national reconciliation, tolerance, and inclusion signaled to society at large that peaceful resolution of conflicts and a democratic culture of respect for different perspectives were indispensable to achieving sustainable peace. It was also a way to complete the unfinished work of implementing Colombia’s 1991 constitution, which promised broader inclusion of different political viewpoints and greater citizen participation over two decades ago.⁹⁴

Beyond these general goals, the parties elaborated two main methods for “guaranteeing non-recurrence” of violence as it relates directly to victims and ex-combatants. First, in chapter three of the final agreement, titled “End of the Conflict,” the parties agreed to effectively reincorporate FARC-EP members into the social, economic, and political life of the country (further explained above). State guarantees of human rights, access to justice, citizen participation, and a gender-based approach were among the key guiding principles cited for effective implementation. To ensure reintegration did not result in revenge violence against former FARC-EP members, a legitimate fear given Colombia’s history, the government agreed to adopt specific measures for dismantling and prosecuting paramilitary and other criminal organizations responsible for systematic violence, particularly against women, human rights advocates, social and political movements, and active supporters of the peace.⁹⁵ These measures included:

- a special investigative unit in the attorney general’s office charged with dismantling and prosecuting criminal organizations and their support networks for attacks against anyone participating in peace accords implementation;
- specialized protection of FARC political opposition leaders;
- the creation of a security and protection corps composed of trusted personnel from the new FARC political party alongside government security forces;
- a comprehensive security and protection program for affected communities led by the Ministry of the Interior;
- a rapid response system, under the office of the ombudsman, for monitoring and early warning activities;
- a national mechanism for supervision of private security and surveillance services;
- measures to contain penetration of criminal conduct in politics (a reference to the infamous *parapolitica* scandals of the last decade);

- background checks for public servants; and
- reform of intelligence agencies, in part to remove information relating to opposition and human rights organizations.

Delivering on all of these promises would be the job of a national commission on security guarantees, led by the president, several cabinet ministers, security force commanders, human rights experts, and others responsible for drafting an action plan.

Unfortunately, according to data collected by the Kroc Institute, which the parties named as their official monitor of implementation of the accords, these guarantees of security and community protection are woefully broken. “The gravest threat to the success of the peace process is the pattern of assassinations and attacks in prioritized municipalities against human rights defenders and social leaders who are seeking to advance implementation of the accord, and against former FARC members and their families,” its report on the first 18 months of implementation declared.⁹⁶ Although the government has made substantial efforts to deploy military and police forces to conflict zones, attacks by organized militias, common criminals, and other illegal armed groups continue, particularly against social leaders working on rural development, land restitution, environmental protection, citizen participation, and crop substitution.⁹⁷

The most recent numbers are chilling: The United Nations has received reports of the murder of 454 human rights defenders and social leaders since the signing of the peace agreement, and of the 163 murders they have verified, 110 occurred in 2018.⁹⁸ As of March 8, 2019, the United Nations had received reports of an additional 27 murders of human rights defenders in 2019.⁹⁹ The United Nations has also verified the murder of 99 former FARC-EP members since the signing of the peace agreement.¹⁰⁰ These ongoing attacks, and the relatively high rates of impunity,¹⁰¹ underscore the fearsome challenge of building peace in the midst of so much conflict and violence.

The second way in which the peace accord seeks to guarantee non-recurrence is through coordinated implementation of the comprehensive system of truth, justice, and reparations. Of those three pillars, the Truth Commission has the most explicit mandate to guarantee non-recurrence by ensuring public recognition of victims as equal citizens, obtaining acknowledgements of responsibility, and promoting coexistence, particularly in the territories most affected by violence. The restorative justice element, which focuses on the obligation of responsible parties to repair damages suffered by victims, also has non-recurrence aims. A further ingredient of non-recurrence is that ex-combatants, in order to qualify for special treatment from the special judicial process, must pledge never to return to violence or other criminal activity, and face harsher criminal penalties if they violate that pledge.



The transitional justice system, even if it manages to operate effectively, cannot guarantee non-repetition on its own.

This multifaceted, victim-oriented, and integrated approach to non-repetition is laudable. But is it functional? According to some experts, the transitional justice system, even if it manages to operate effectively, cannot guarantee non-repetition on its own—more systemic issues like the state’s provision of security, development, rule of law, and justice services in the territories are key.¹⁰² Indeed, the final agreement itself states that non-recurrence will be the result of a coordinated implementation of all elements of

the accords to change conditions throughout the country and resolve historical causes of conflict.¹⁰³ Yet civil-military deployments to conflictive areas have been too slow and inconsistent to fill the security vacuum left by the FARC-EP demobilization. The state's failure to address the illicit crop crisis is particularly glaring and worrisome.

Another noteworthy deficit of the accord is the lack of any serious treatment of security sector reform. According to the government's negotiators, the Colombian peace process, unlike other cases in Latin America, was not a transition from authoritarian or military government to democratic, civilian rule.¹⁰⁴ Furthermore, they argued, the government had already undertaken a process of military professionalization during the Uribe administration and any additional reforms should be carried out through democratic institutions, not the peace process. Hence, the final agreement says nothing about the topic. This is lamentable, however, given the pattern of impunity for abuses committed or overseen by military personnel throughout the war. It remains an open question as to whether the JEP and Truth Commission will be able to reverse this pattern, but one discouraging sign is President Duque's recent decision to promote at least nine officers implicated in extrajudicial executions and other abuses to key positions in the army, according to Human Rights Watch.¹⁰⁵ Revelations in May 2019 that one of these top commanders may be raising targets for captures of criminals and guerrillas, along with lower levels of evidence of culpability, is raising new alarms about a potentially new turn toward harsher tactics.

CONCLUSIONS AND RECOMMENDATIONS

Colombia has adopted an approach to resolving its long-standing internal conflict that is as complex and multifaceted as the roots of the conflict itself. That is both appropriate—indeed laudable—and overly ambitious at the same time. To succeed, it will require a momentous effort by all of Colombian society to deepen a process begun some decades ago to reform the old order controlled by elite interests by including all groups—especially women, minority and indigenous communities, and rural populations—in the political, economic, and social life of the country.

In some ways, Colombia has already reaped important human rights and peace dividends from the impressive strides it has made to disarm and demobilize the country's largest rebel fighting force and allow them to compete in politics. To lock in these gains, it must now accelerate implementation of measures to address the more structural underpinnings of the conflict, especially rural development and land reform, including crop substitution plans. Crucially, the government must establish a permanent presence of effective civilian and security institutions of the state throughout the country. The Colombian government also must follow through on implementation of the peace accord's key provisions regarding security guarantees, reparations for victims, reintegration of ex-fighters, and transitional justice.

The four pillars of the transitional justice provisions of the peace accords, if implemented appropriately, should lead to improved conditions for achieving the ultimate goal of the process—a sustainable peace. The growing tensions around the special judicial element of the agreement, however, are overshadowing other, critically important aspects that should serve as building blocks toward meaningful accountability.

The Truth and Reconciliation Commission, in particular, is a bedrock piece of the puzzle that will help knit together a historical narrative that should give voice to the thousands of victims who suffered disproportionately from the conflict. Its work, which depends on cooperation from perpetrators and victims alike, will serve as a crucial testing ground for society's ability to resolve its differences and, more specifically, for the parties' willingness to cooperate with the transitional justice mechanism in exchange for leniency. The Commission to Search for Missing Persons should bring some closure to families still waiting for news of the fate of their loved ones. A national system of reparations for victims offers individual and collective approaches to health and employment services, financial compensation, and other forms of redress.

These steps, if carried out in good faith, will build confidence among key parties and help ease the path toward trials and penalties for the worst crimes of the conflict. Only then will Colombia reach the ultimate goal—non-repetition—which rests principally on a combination of special attention to victims, accountability for serious human rights abuses, reintegration into civilian life, protection for ex-combatants and social leaders long victimized by state and non-state armed forces, and prosecution of their attackers.

Unfortunately, the Colombian model of a comprehensive system of truth, justice, reparations, and non-repetition is facing a series of daunting tests and may not be able to withstand the current “death by a thousand cuts” tactics of Duque and his allies. While its ambitious scope and complex details may have looked sophisticated and intelligent at the time, in practice the system may prove too cumbersome and slow to prevent a return to conflict. Non-recurrence elements like vetting and reform of the security sector, for example, are largely missing from the agreement, and attacks on social leaders and ex-FARC members continue to undermine progress. If, on the other hand, Colombia's key actors are able and willing to build on the early positive returns around disarmament and demobilization, carry out effective reparations and reintegration programs (especially in rural areas), and improve protection for political opposition and social movement leaders, they may be able to navigate their way through the thicket of the justice and accountability stages of the project. But such an outcome won't be easy and is not at all certain.



The international community should continue to play a positive role in supporting implementation financially and diplomatically.

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- The United Nations, the OAS, and the donor community should stick with their commitment to see the peace process through this critical second phase of implementation, despite the current political turmoil.
- The U.N. Security Council in the summer of 2019 should renew its mandate to monitor and verify implementation of the accord for another year.
- The International Criminal Court should remain vigilant in monitoring the judicial aspects of the peace agreement, but not overplay its hand.

- The United States, as the main patron of Colombia's efforts to retake its territory and contain drug trafficking, has a special responsibility to contribute to peace. It should do so by shifting away from an insistence on aerial eradication of coca in favor of a much more robust investment in alternative development of licit crops and other economic activity in rural zones.
- The U.S. ambassador in Bogotá should step back from meddling in Colombia's internal debates around implementation of the accord, particularly its transitional justice elements, and become a more constructive advocate for U.S. national interests in fulfilling all aspects of the accord in a timely manner.
- Support to the Colombian military and police should focus on developing a permanent presence in conflictive zones alongside civilian institutions like courts, schools, and social services.
- The White House and relevant agencies should initiate an urgent declassification review of all its information on human rights abuses committed by relevant actors to share with Colombia's transitional justice institutions and ultimately with the public.
- The U.S. Congress should allocate additional funding for the truth and justice system and make military assistance conditioned on its full cooperation with all aspects of the system.
- Special efforts should be made to help Colombia's justice system investigate, detain, and prosecute actors responsible for attacks on social leaders and ex-FARC fighters supporting the peace process.

In the end, Colombia's ambitious design for a sustainable peace is achievable if its leaders follow through with their commitments in good faith and with sufficient resources to build a functioning government throughout its territory. The truth, justice, and reconciliation components of the system, if implemented in a balanced way, could serve as the indispensable keystone bridging the main divides between a return to conflict and a civilized peace.

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33 Most of the BACRIM arose from the remnants of the United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia, AUC) after the group’s demobilization in 2006. This list is non-exhaustive; many of these groups have splintered over time.

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