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# Will Peace Bring Justice to Colombia?

LAUREN CARASIK

September 7, 2016

After more than half a century of war, Colombia stands poised to usher in peace. The internal armed conflict between the Revolutionary Armed Forces of Colombia (FARC) and the government, the longest in the hemisphere, has claimed more than two hundred thousand lives, disappeared tens of thousands, and internally displaced nearly seven million people. Some eight million Colombians are registered on a list of victims, and nearly every Colombian was affected in some way. The peace accord between the warring parties, announced by government and insurgent leaders on August 24, will be put to a popular vote on October 2. Many observers express optimism that peace is finally at hand. But the nation is deeply polarized about the brokered agreement, and its fate is uncertain. If the accord passes, the work of building a just and sustainable peace has only begun.

The four-year negotiation process centered on five main pillars: rural reform; political participation; cease-fire, demobilization, and reintegration of the insurgents; transitional justice and reparations for the victims; and drug trafficking. The 297-page agreement also outlines methods of implementation. Many Colombians, though war-weary, object to the concessions that incentivized the FARC to agree to lay down its arms: the guerrilla group is deeply unpopular. As is the current administration, one must add. Many fear that President Juan Manuel Santos's unpopularity, rather than a rejection of the accord's merits, will sink the referendum.

Among the accord's most contested provisions are those related to transitional justice, which will allow combatants to avoid jail time in exchange for full and honest participation in a truth and reconciliation process. Opponents of the deal, led by former president Álvaro Uribe (whose father was killed by FARC in a botched kidnapping), have blasted the agreement, claiming it confers impunity for grave crimes. "To this terrorist group, they also give impunity, and political legitimacy to all its actors, including those responsible for massacres [and] the most severe offenses, and crimes against humanity," **he said**. President Santos, who staked his reputation on the process, bristled at the notion that the agreement enshrines impunity. "The most responsible [for] crimes against humanity will be investigated, judged, and condemned," he said. "But they will be condemned in a transitional justice, which is the justice that the world has created to allow armed conflicts to reach peace. And that's what we are applying."

To end the conflict and facilitate lasting reconciliation, Colombia developed an innovative framework that prioritizes restorative justice, rejecting retributive justice as ill suited for a society transitioning from five decades of civil war. The model seeks to promote dialogue and healing over revenge, and arose from the historic decision to give victims a key place at the negotiating table. Delegates to the peace talks included victims and representatives from historically marginalized populations, including women and Afro-Colombians, as well as indigenous and LGBTQ groups—in other words, those who

have suffered most in the war. Among the provisions for the victims are the creation of a specialized search unit for those who disappeared during the conflict, a Truth Commission, and reparations for those most affected by the conflict, which will take the form, in part, of rural development initiatives.

Instead of adjudication of crimes in court, a peace tribunal will preside over “**political crimes**.” Combatants who provide full and truthful confessions will be pardoned and reintegrated into civilian society. For more serious crimes, including extrajudicial killings, torture, forced displacement, and sexual violence, a separate unit will handle the charges. Those who confess to grave crimes will not be imprisoned, but instead subjected to alternative sanctions that constitute an “effective restriction of liberties and rights, such as the freedom of residence and movement” for up to eight years. They will also be required to engage in reparative measures. Harsher punishment will be meted out only to those who refuse to confess or dissemble; those that do could face up to twenty years in prison if they are found guilty of human rights abuses or war crimes. The accord also prohibits extradition to another country. **Drug trafficking** that the FARC engaged in to finance the conflict will fall under the rubric of political crimes to be handled by the peace tribunal, though crimes related to personal enrichment will not.

Some human rights groups welcomed an end to the conflict but questioned whether the scheme will satisfy victims’ rights to truth, justice, reparation, and non-repetition. Likewise, they expressed doubt about whether the strictures of the accords meet Colombia’s obligation to investigate, prosecute, and punish violations of international law. “As it stands, the victims’ agreement ensures that those most responsible for these atrocities will escape genuine justice by allowing people who confess their crimes to avoid any remotely serious form of punishment,” **Human Rights Watch** said in a statement. The organization wrote that the agreement contains “ambiguities and loopholes” that could allow perpetrators to evade the sanctions imposed on them. **Amnesty International** also expressed concerns, saying in a statement that many of the crimes were unrelated to the political underpinnings of the conflict. “Many of these human rights violations and abuses have not occurred in the context of direct combat between the security forces and guerrilla groups. Instead, many have been motivated by economic factors linked to the exploitation of lands occupied by Indigenous people and Afro-descendent and peasant farmer communities,” the rights group said. The organization also warned of a serious risk that those crimes will persist after the accord is implemented.

Like other international observers, International Criminal Court (ICC) **Prosecutor Fatou Bensouda** praised the conclusion of the negotiations. The ICC had been watching developments in Colombia closely since initiating a preliminary examination of the country’s transitional justice mechanisms more than a decade ago. “The paramount importance of genuine accountability—which by definition includes effective punishment—in nurturing a sustainable peace cannot be overstated,” the chief prosecutor said. While reiterating Colombia’s obligations to respect international law, Bensouda seemed to signal satisfaction with the compromise struck by the parties, saying she noted, “with satisfaction, that the final text of the peace agreement excludes

amnesties and pardons for crimes against humanity and war crimes under the Rome Statute.”

The compromise on political participation is also unpalatable to many Colombians who oppose legitimizing the rebel group. The FARC, which took up arms to confront egregious conditions of economic and social injustice, will be granted a legislative voice “without a vote” through nonvoting representation in the legislature through 2018, and will be guaranteed 5 seats in the 106-member senate and 5 in the 166-member lower chamber over the next 2 election cycles. The government also agreed to create 12 congressional districts in remote rural areas that have been historically underrepresented.

Like all transitioning societies, Colombia faces a complicated calculus in striking the balance between peace and justice. Neither side prevailed in all its demands but both believe the accord is the best hope to move past the bloodshed and confront and dismantle the structural factors that gave rise to it. Next month, the country’s war-weary citizenry will decide whether an imperfect peace is better than no peace at all.

Source: Lauren Carasik, *Will Peace Bring Justice to Colombia?*, BOSTON REVIEW (Sept. 7, 2016), <http://bostonreview.net/world/lauren-carasik-colombia-farc-peace-accords>