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■ AQ FEATURE

Law and Reconciliation in Colombia

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Here's how to achieve both justice and reconciliation.

Ultimately, the success of any peace agreement between the Colombian government and the country's largest guerrilla group, the *Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia—FARC), will hinge on reconciliation. A successful process of reconciliation requires finding the balance between defending the rights of victims and gaining the trust of former combatants—members of the armed forces and the FARC—that they are not being unfairly punished.

But this balance already appears complicated by widespread public suspicion of the FARC. According to a survey conducted earlier this year by *La Observatoria Democrática* at the *Universidad de los Andes*, most Colombians' vision of peace in their country does not include any political role for former guerrillas. While a majority (90 percent) supports a negotiated end to the conflict, 70 percent of the population disapproves of members of demobilized armed groups participating in politics, and around 50 percent say they would not accept local election results if a demobilized FARC member were to win. The survey results reflect the lingering fears and bitterness of a society emerging from a violent 50-year-long civil war. While it may be possible to disarm the combatants, defusing decades of hatred will be much more complicated.

Reconciling with the Enemy

For some, reconciliation assumes the existence of processes of forgiveness and atonement. Such processes allow victims and perpetrators to build strong bonds of trust, even of solidarity, so that the conflict is emotionally diffused and its impact weakened over time. This perspective is linked to religious tradition, under which, by means of atonement, sinners rebuild community and return to unity with God.

After so many years of division, this appeals to many who long for a return to the pre-conflict “community of brothers.” But it also incorporates an element that seems necessary in all post-war reconciliation processes: for parties that were once enemies to be able to coexist in political unity. But this ambitious vision is problematic. Not only is it difficult to attain beyond specific, small communities; it also imposes on the victims a “duty” to forgive, which is not a reasonable demand.

At the same time, though, reconciliation cannot mean that we merely cease fire and stop killing one another. Hatred lingers in political communities with already weak bonds of trust and civility, such as in Colombia.



The Día de la Memoria y Solidaridad con las Víctimas (National Day of Remembrance and Solidarity with Victims of the Armed Conflict) in April this year featured marches throughout Bogotá. Photo: Guillermo Legaria/AFP/Getty

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One option is to envision the peace accords as “democratic reciprocity,” where victims are not obligated to forgive or forget, and peace does not mean the suppression of social conflicts, which still remain. There is no reason to see a former foe as a brother—which may never be possible—or to deny that differences persist in perspectives and interests. Rather, rivals are no longer seen as enemies who must be eliminated. We recognize ourselves as a “community of citizens,” though not necessarily a community based on affection.

The challenge, then, is for all Colombians, regardless of the roles they may have played during the conflict, to accept one another as citizens possessing equal rights. We should not expect to agree on everything—as long as we agree that everyone has the right to participate in, and contribute to, the democratic process of decision-making.

Building a Comprehensive Legal Framework

For a society such as Colombia’s to reach democratic reconciliation, at least six mechanisms are necessary—four of them tied to what is known today as transitional justice.

First, victims must receive reparations so they can rebuild their lives and participate as full citizens in society. Second, a mechanism for investigating the atrocities committed during the conflict and naming those responsible, such as a truth commission, must be established. This will help construct a social memory that not only dignifies the victims, but also cultivates the democratic culture necessary to prevent violence from recurring.

The next step is establishing a process for justice. This involves two parallel legal obligations: providing legal guarantees to former combatants who demobilize, and requiring those responsible for the worst atrocities to account for their actions to prevent impunity.

Fourth, the reintegration of demobilized combatants in civilian society is equally necessary. They must be allowed to recover their status as full citizens, as long as they honor both the letter and spirit of the peace agreement.

Once victims and former combatants are accounted for, Colombia must implement institutional reforms to prevent the repetition of atrocities. These include transforming military justice to make it more independent, while limiting its scope to military issues. And finally, the legal system must be reformed to enable universal political participation, so that spaces can exist for the peaceful resolution of social conflicts—a process that will depend on the existence of clear guarantees for political opposition and social protest.

Problems with the Current System: The Example of Reparations

How much has the Colombian legal system advanced in this realm? The answer is mixed.

In recent years, the Colombian state has developed a useful set of public policies and legal mechanisms as it managed the demobilization of paramilitary groups and sought to address the demands of their victims. These policy and legal innovations have helped ease the country in its reconciliation. But many of them have design defects, such as the processes for bringing perpetrators of human rights violations to trial and securing reparations for victims.

The flaws in design translated into serious problems in the implementation of judicial processes and policies intended to foster reconciliation.

There are difficulties implicit in all six of the steps mentioned above. Reparations policy serves as a case study of the complexities of creating post-conflict policy.

As part of the efforts over the past decade to demobilize armed groups, the Colombian Congress passed a series of laws and regulations using the language of transitional justice. The Justice and Peace Law, adopted under the government of Álvaro Uribe in 2005, served as the legal framework for the demobilization of paramilitary groups. It required perpetrators to confess their crimes and return any assets or land taken illegally.

However, the lengthy proceedings left very few convicted, and many victims did not receive the promised return of their assets or their reparations. Subsequently, in 2008, the national government issued Decree 1290 (a regulation of the Justice and Peace Law), creating an administrative program for individual reparations that provided a bureaucratic procedure for claiming reparations. But again, the results were limited.

In response to these two unsatisfactory attempts, victims organized to demand additional assurances that stolen property would be returned. Law 1448, or the Victims and Land Restitution Law, enacted in 2011, incorporates all of the comprehensive reparations standards established by the Inter-

American Court on Human Rights. Further, this law acknowledges the existence of the domestic armed conflict and seeks attention, assistance and comprehensive reparations for all victims, including those of state armed forces, eliminating the discrimination that had previously existed against victims of state security forces. Law 1448, which also established special mechanisms for land restitution, constitutes an entire institutional framework that is new, specialized, and intended exclusively for victims' reparations.

Nevertheless, there have been problems related to implementation of the law. Fearing reprisals, many are reluctant to make their claims public. As a result, even under a law guaranteeing reparations, crimes of displacement and pillaging continue unabated. And as long as the armed conflict persists, any hope of outing the perpetrators and demanding recompense is illusory.

At the same time, the new institutions created to implement reparations are advancing slowly and are often inadequate. This is often because they are struggling to coordinate with other state agencies that need to be involved in the process.

And while reparations are essential, they are not sufficient to address the roots of the conflict, or the needs of all those affected by violence that stems from—and contributed to—social exclusion and the absence of state institutions. Many parts of the country lack the state presence and social networks or community bonds necessary for the effective implementation of a program of post-conflict reparations. For this reason, reparations policy must go hand-in-hand with significant social intervention by the state in those territories to establish dialogue and reconciliation, and to foster popular trust in state institutions.

Toward Democratic Reconciliation and Peace

As the negotiations enter their final phase, Colombia has little time to waste. The formal end of hostilities should be considered only a first step in establishing the peaceful society Colombians desire. While an agreement has great symbolic value, it must be backed by a commitment to reinvigorate the reparations process. But even more importantly, the agreement should set in motion an expansion of social programs into areas long considered outside the reach of the Colombian state. And perhaps most profoundly of all, it should generate a commitment by the government to include every citizen in the democratic process.

Regionally focused—rather than Bogotá-centric—peace-building is also essential for meeting the promise of reparations. This requires a territorial vision for regional reconstruction that focuses first on peace-building as a collective community effort. Regions affected by conflict must start by building state institutions and by democratically developing and improving social policies with the participation of various social strata.

Finally, an honest, open reckoning by ex-combatants is essential to determine the basis and scope of reparations and who should contribute. In contrast to past experiences, one of the principal challenges of the peace process with the FARC is ensuring that capital that was accumulated by the illegal armed group during wartime is redirected to reparations. Beyond property, this includes honestly and openly describing the ways in which the group collected assets, their active participation in identifying and returning property, and the rebuilding of public goods—such as infrastructure, public buildings and institutions, and farmland—that were affected by the conflict.

The commitment of ex-combatants to this process of open dialogue and their willingness to contribute to the reparations process is not only necessary, but essential to strengthening the political legitimacy of the peace process itself. It would demonstrate that the benefits of peace will extend beyond those who demobilize, to other sectors of society, especially the victims—laying the foundation for a democratic reconciliation.

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