

Research Brief

Transitional Justice and DDR: The Case of Colombia

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The disarmament, demobilization, and reintegration (DDR) process in Colombia aims to guarantee citizens their fundamental rights while still creating space for the integration of demobilized armed groups. It remains to be seen if the Colombian DDR and transitional justice model can be implemented so it satisfies both the requirements for an immediate cessation of violence while also meeting victims' demands for reparation.

Background

Since the mid-1960s, a number of armed groups have operated in Colombia, most notably the left-wing Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). In the 1980s, right-wing paramilitary groups began to emerge as these armed groups increasingly participated in drug-trafficking, attacks on rural landowners, and kidnappings. These paramilitary groups formed an umbrella organization, the United Self-Defense Forces of Colombia (AUC), in 1997 which committed numerous atrocities in the name of protecting civilians' security. The government signed the Santa Fé de Ralito Peace Accord with the AUC in 2003, which provided for a collective demobilization program for the AUC, and an independent demobilization process for combatants from other armed groups.

DDR

The Colombian state is currently working towards the collective and individual demobilization of more than 43,000 members of armed groups. Most of these former combatants belong to the AUC, FARC, and ELN. Those demobilizing collectively are ex-combatants who have laid down their arms as a unit. The process begins when a representative from each illegal armed group provides a list of group members and other affiliated persons. If a combatant is not included on the list, he or she is ineligible for benefits. Moreover, all listed members receive these benefits, regardless of the role they played in the armed group or the types of crimes they may have committed.

Research Project

Transitional Justice and DDR

This project examines the relationship between disarmament, demobilization, and reintegration (DDR) programs and transitional justice measures. It explores the manifold ways in which DDR programs may contribute to, or hinder, the achievement of justice-related aims. The project seeks not only to learn how DDR programs to date have connected (or failed to connect) with transitional justice measures but to begin to articulate how future programs ought to link with transitional justice aims. The project is managed by Ana Patel, Deputy Director of the Policymakers and Civil Society Unit at the ICTJ.

Individually demobilized persons include those who belong to armed groups that are not currently involved in any collective negotiations with the government (mainly the FARC and ELN). Individual demobilizations are proceeding steadily, partly because Decree 128 of 2003 gave de facto amnesty to any former combatants not under investigation for human rights violations.

Reinsertion under current legislation differs from the process established by the original peace agreements. Decree 3043 of September 2006 and the 2006-2010 Development and Investment Plan refocused attention away from reinsertion and toward reintegration. The reintegration programs grant five types of benefits: (1) monthly sustenance costs; (2) affiliation with the subsidized health regime; (3) basic and middle education and job training; (4) psychosocial care; and (5) support for the development of a productive project.

An ex-combatant's monthly allowance initially differed depending on whether he or she demobilized individually or collectively. The collectively demobilized immediately received a monthly payment of CO\$358,000 (US\$161), a sum slightly lower than minimum wage, whereas those individually demobilized had to attend workshops and classes before they receive their stipend. The High Commissioner for Reintegration changed this process in 2007-2008. Currently, the conditions and benefits are the same for both collectively and individually demobilized ex-combatants.

The national government also put in place a series of alternative income generation programs for the demobilized. These include direct employment, internships, or apprenticeships with companies that agree to hire former combatants.

A lack of gender-specific programming is a notable deficiency of the overall DDR program, despite the fact that women account for 9 percent of the population participating in collective demobilization, 26 percent of minors in the reinsertion programs, and 12 percent of the individually demobilized. Armed groups have recruited girls through seduction and deceit, and in many cases, forcibly held girls as sex companions under threat of violence to their families or themselves. Nonetheless, female ex-combatants often reported feeling empowered by war, making a return to civilian life in a patriarchal society particularly difficult for them. But women and girls were given neither a voice nor a vote in the peace negotiations.

The government entrusted the care and protection of minors in the conflict to the Colombian Institute of Family Well-being. As of August 31, 2006, a total of 2,968 minors had ceased participating in the armed conflict. Of these, 77 percent left voluntarily and 23 percent entered the program after being captured by the state. One aspect of the program focuses on minors' protection. Centers for Specialized Care and Youth Homes provide psychosocial care, schooling, and job training.

It remains to be seen if the Colombian DDR and transitional justice model can be implemented so it satisfies both the requirements for an immediate cessation of violence while also meeting victims' demands for reparation.

Transitional Justice

Colombia is one of the few countries attempting to prosecute those most responsible for committing atrocious crimes during a major conflict. In fact, judicial proceedings currently form the only official bases for truth and reparation.

Prosecutions

Following the first DDR phase in 1992, the Constitutional Court reviewed thousands of cases in which plaintiffs challenged the constitutionality of the legal statutes that protected ex-combatants from prosecution. In response to an outcry from victims, the Santa Fé de Ralito Accord featured explicit elements of transitional justice for the first time in negotiations between the Colombian government and an armed group.

The resulting government policy purports to bring the human rights violators among the demobilized to justice. The AUC leadership, however, was not interested in being subjected to criminal proceedings. In 2005, the government passed Law 975, better known as the Justice and Peace Law (JPL).

Within the terms of the JPL, a combatant charged with human rights violations is eligible for a trial and for the subsequent benefits of reintegration programming after he hands over any property he acquired illegally and proves he is no longer engaged in any further illegal activities. Armed groups that demobilize collectively must hand over all the child soldiers in their ranks as well as all the kidnapping victims. Individually demobilized combatants cannot benefit from the JPL until they provide information on the group they abandoned. As of this writing, 2,695 demobilized individuals have applied for benefits through the Justice and Peace Law.

A demobilized person convicted under the JPL may then become eligible to accelerate his or her rehabilitation process through participating in the alternative sentencing program. Here, the courts may choose to suspend enforcement of the JPL-imposed sentence and replace it with a sentence of at least five and no more than eight years based on the seriousness of the crimes committed. In order to benefit from alternative sentencing, the convicted person must demonstrate that he or she genuinely cooperated with judicial authorities, made reparations to his or her victims, and is adequately re-socialized.

Truth-Telling

In Colombia, there has been an explicit choice not to establish a truth commission, at least for the time being. The Colombian Congress opted for two alternative solutions to satisfy victims' right to truth: (1) a legal reconstruction of the truth is now part of the prosecutions of demobilized individuals; and (2) the National Center for Reparation and Reconciliation is mandated to create a public report on the reasons for the emergence and expansion of the illegal armed groups.

About the Authors

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Reparations

Formally, the JPL includes five forms of reparations for victims: 1) rehabilitation, such as actions aimed at ensuring victims regain their mental and physical health; 2) compensation for damages caused to the victims of criminal acts; 3) restitution, which includes actions aimed at restoring victims to their status prior to the crime; 4) satisfaction, which encompasses actions to reestablish victims' dignity and publicize the truth; 5) non-repetition, which is expressed primarily in the demobilization and dismantling of the armed groups. The process of making reparations to victims depends largely on the property and money that the authorities are able to amass from recovering assets legally or illegally obtained by the perpetrators of human rights abuses. Until the prosecutions are over, the total amount of assets that demobilized persons surrender to the authorities through the JPL process will remain uncertain.

Conclusion

The transition process in Colombia aims to guarantee citizens their right to truth and reparation while still creating space within the regime for the reintegration of demobilized armed groups. Colombia adopted a new system for dealing with issues of demobilization and victims' rights in the Santa Fé de Ralito Peace Accord, which took a positive step forward by formally acknowledging the importance of transitional justice.

Some serious challenges remain, however. The country lacks the institutional tools necessary for the adequate implementation of the transitional process promised in the peace agreement. This is especially true given the immense practical challenge of prosecuting more than 2,500 persons for atrocious crimes and guaranteeing more than 25,000 victims respect for their promised right to truth and reparation. The most serious challenge obstructing the prospects for transitional justice in Colombia is, of course, the fact that the country remains entrenched in an ongoing, multi-front conflict.

Overall, the consequence of these challenges is that the Colombian DDR process has been disjointed. Overall, it benefits former AUC combatants and individuals who have abandoned active guerrilla groups, while failing to address the needs of victims.

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