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An Appraisal of the Colombia DDR Process in Light of the Revised Peace Agreement between the Government and the FARC¹

Una evaluación del proceso de DDR de Colombia a la luz del Acuerdo de Paz revisado entre el Gobierno y las FARC

Uma avaliação do processo de DDR na Colômbia, à luz do acordo de paz revisto entre o Governo e as FARC

FRANCESCA CAPONE²

ABSTRACT

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After more than four years of negotiations the Colombian Government and the FARC have reached a historical peace agreement, signed on 26 September 2016 and, in a shocking turn of events, ultimately rejected in an up-or-down referendum held on 2 October 2016. Only 41 days after the plebiscite the two parties have revised the original deal and submitted a new version to the Congress, which approved it on 30 November 2016. The deal, upon which relies the possibility to finally achieve a stable and lasting peace, covers several crucial issues, including what will happen to the FARC rebels once the armed conflict is officially over.

1. Article of reflection linked to a research project of the Institute of Law, Politics and Development of the Scuola Superiore Sant' Anna, Italy
2. Doctor in Law of the University of Naples Federico II, Italy. Licensed in Law of the University of Naples Federico II, Italy. Main Investigator and coordinator of the Mastery in Human Law and Management of Conflicts in the Scuola Superiore Sant'Anna, Italy. Senior Research Fellow in Public International Law. Scuola Superiore Sant' Anna. Contact: f.capone@santannapisa.it

The establishment of an effective DDR process is an essential step to ensure that FARC members will meaningfully transition into civilian life and it represents one of the most controversial aspects of the peace agreement. Moving from the assumption that DDR programmes are not stand alone mechanisms, but fall within a broader framework that covers a number of important and intimately entwined aspects, like the issue of accountability and the rights of victims, the present article, after looking at Colombia's past attempts to reintegrate former combatants, aims at discussing the DDR process envisaged in the current peace deal, highlighting its main strengths and shortcoming.

RESUMEN

Después de más de cuatro años de negociaciones, el Gobierno colombiano y las FARC han alcanzado un acuerdo histórico de paz, firmado el 26 de septiembre de 2016 y rechazado en un choque de acontecimientos en un referéndum celebrado el 2 de octubre de 2016. Sólo 41 días después del plebiscito las dos partes han revisado el acuerdo original y presentado una nueva versión al Congreso, que la aprobó el 30 de noviembre de 2016. El acuerdo, sobre el cual se basa la posibilidad de alcanzar finalmente una paz estable y duradera, cubre cuestiones cruciales, incluyendo lo que sucederá con los rebeldes de las FARC una vez que el conflicto armado haya terminado oficialmente. El establecimiento de un proceso eficaz de desarme, desmovilización y reintegración es un paso esencial para asegurar que los miembros de las FARC tengan una significativa transición a la vida civil y representan uno de los aspectos más controvertidos del acuerdo de paz. Partiendo del supuesto de que los programas de DDR no son mecanismos autónomos, sino que se inscriben en un marco más amplio que abarca una serie de aspectos importantes e íntimamente entrelazados, como el tema de la rendición de cuentas y los derechos de las víctimas. El presente artículo, tras una revisión de pasados intentos de reintegración de ex combatientes en Colombia, tiene como objetivo discutir el proceso de DDR previsto en el actual acuerdo de paz, destacando sus principales fortalezas y deficiencias.

RESUMO

Depois de mais de quatro anos de negociações, o Governo Colombiano e as Farc chegaram a um acordo de paz histórico, assinado em 26 de setembro de 2016 e, em uma impactante reviravolta nos eventos, recentemente o rejeitou em um referendo de aprovação, ocorrido em 2 de outubro de 2016. Somente 41 dias depois do plebiscito, as duas partes revisaram o acordo original e submeteram uma nova

versão ao Congresso, que a aprovou em 30 de novembro de 2016. O acordo sobre o qual reside a possibilidade de finalmente alcançar uma paz estável e duradoura, abarca diversos temas cruciais, incluindo o que acontecerá com os rebeldes das Farc, uma vez terminado oficialmente o conflito. O estabelecimento de um efetivo processo de DDR é um passo essencial para garantir que os membros das Farc vão significativamente transitar para uma vida civil. Esse processo representa um dos mais controversos aspectos do acordo de paz. A partir do pressuposto de que o programa de DDR não é um mecanismo autossustentável e independente, e que está contido em um contexto mais amplo que cobre um grande número de aspectos importantes e intimamente relacionados, tais como a divulgação dos números do conflito e o direito das vítimas, o presente artigo, após um olhar sobre as tentativas passadas da Colômbia para reintegrar ex-combatentes, tem o objetivo de discutir o processo de DDR previsto no presente acordo de paz, destacando suas principais fortalezas e debilidades.

INTRODUCTION

Colombia is closer than ever to finally ending five decades-long civil war³ among the government's forces; paramilitary groups and their successors;⁴ the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP or FARC)⁵ and the National Liberation Army -Ejército de Liberación Nacional: ELN- (Kemper, Roshani & Bonilla-Portilla, 2012). "The main actors involved in this complex armed conflict are the State's armed forces, the paramilitary groups generally aligned with the protection of elite landowning interests and the guerrilla (or rebel) forces traditionally associated with the left" (Legal, 2010). "The violence stemming from the country's internal armed conflict has forcibly displaced more than 5.7 million Colombians, and about 200,000 continue to flee their homes each year, generating the world's second largest population of internally displaced persons (IDPs)" (Internal Displacement Updates, 2012). "Moreover, the conflict has taken more than 220,000 lives and four of every five victims were civilians" (Centro Nacional de Memoria Historica, 2013).

3 Non-international armed conflicts (NIACs) are armed conflicts in which one or more non-State armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-State armed groups or between such groups only (Fleck, 2013, p. 609).

4 The term paramilitary groups refer mainly to the United Self-Defense Forces of Colombia (AUC) a right-wing umbrella group that was formed in 1997 by drug-traffickers and landowners to combat against the rebels in lieu of the State. The group was officially dismantled in 2006. See Profiles: Colombia's Armed Groups, BBC, 29 August 2013, available at: <http://www.bbc.com/news/world-latin-america-11400950>.

5 The FARC is the oldest and largest group among Colombia's left-wing rebels, it was founded in 1964, when it declared its intention to overthrow the government and install a Marxist regime. Their main founders were small farmers and land workers who had banded together to fight against the staggering levels of inequality in Colombia at the time (Lee, 2012, pp. 28-42).

During his eight years in power (2002-08), President Alvaro Uribe oversaw a massive military assault on the guerrillas, as a result of which the armed forces have constantly expanded their military operations throughout the country. Nonetheless non-State armed groups still remain active in most parts of the Colombian territory. In some of the remote areas of the country, such groups, first and foremost the FARC, for a long time acted as the ruling authority, enforcing the law and even providing public services, thus filling the vacuum created by the, de facto, absence of the State. (Human Rights Watch, 2010).

While the State was losing the pulse of the outlying parts of the country by implementing mainly reactionary policies, the FARC enhanced its connection with the peasants and found support by defending farmers (or their crops and lands) from the threat of displacement or aggression by large companies, the military or paramilitary groups. In the 1980s and 1990s, the FARC's popularity peaked and there was a significant increase in FARC membership as the group's growing wealth attracted a large number of impoverished Colombians. In the course of the years the FARC's tactics became more aggressive, ranging from kidnapping and extortion to murders and bombings. Though the FARC has kidnapped for ransom since its inception, kidnapping became an integral part of the group's revenue.

Starting in 1982, the FARC began relying heavily on the drug trade for income in order to expand and fund direct attacks on the Colombian military. Despite its strong community roots, the FARC's relationship with the population started to deteriorate due to the fact that as the group's wealth grew so did its recourse to violence, thus leading to a negative perception of the population. In 2014 the FARC's approval rating was only 2%, but the group saw a major rise in popular support since it declared a unilateral ceasefire in July 2015 (The Economist, 2016); "and amid increased access to the country's mass media that has allowed the guerrillas to expose their political agenda" (Alsema, 2016).

Many experts say that the Uribe administration's crackdown laid the foundation for the current peace talks. By the time the FARC agreed to negotiations in 2012, their ranks had fallen to around 7,000 members, down from 16,000 in 2001, according to Government's estimates. The group's founder and leader, Manuel Marulanda, reportedly died of a heart attack in 2008, and military raids have claimed other high-ranking officials in recent years. A new generation of leaders, more urban and political, took over, headed by Rodrigo Londoño Echeverri, alias "Timochenko," along with Luciano Marín Arango, alias "Iván Márquez," and they began to seek a dialogue with the State. After 52 years of conflict, the two main parties of the Colombian armed conflict are finally ready to work out a durable solution to reach a much awaited, and needed, peace. One of the main challenges

is clearly represented by the issue of reintroducing FARC rebels into civilian life after decades of fighting and isolation.

“Even though the FARC has some urban groups” (BBC News , 2016), it has always been an overwhelmingly rural guerrilla organisation and many of its members were the sons and daughters of the campesinos. It looks, therefore, particularly challenging to envisage how the FARC can transition from a violent guerrilla group operating in the depths of the “jungle” to a political party rooted in Marxist ideals.

In order to achieve these ambitious goals, in addition to developing a framework for the reintegration of the FARC members, the new accord lays out also the grounds for FARC’s political participation (Oficina de Alto Comisionado para la Paz, 2016). This aspect raised a lot of criticism towards the original peace agreement, but it was not reconsidered in the aftermath of the referendum as allowing the rebels who renounce their weapons to take part in politics is regarded as a crucial means to ensure that both parties respect the deal and work to guarantee its enforcement.

Moving from the assumption that FARC member’s reintegration and the group’s transformation are key components of the peace process and thus essential to achieve a meaningful post-conflict reconstruction, the present article will analyse the main features of the new DDR process, after providing an overview of the previous efforts made by the Colombian Government to set up a DDR framework.

THE KEY FEATURES OF DDR PROGRAMMES

Before diving in the Colombian case it is useful to outline the key principles underpinning a DDR process. The so-called disarmament,⁶ demobilisation⁷ and reintegration⁸ process contributes to security and stability by disarming combat-

6 “Disarmament is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and often also of the civilian population. Disarmament also includes the development of responsible arms management programs”. See United Nations Note by the Secretary-General on Administrative and Budgetary Aspects of the Financing of UN Peacekeeping Operations, 24 May 2005, UN doc. A/C.5/59/31.

7 Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilization may extend from the processing of individual combatants in temporary centers to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or barracks). The second stage of demobilization encompasses the support package provided to the demobilized, which is called reinsertion.”

8 Reintegration is the process by which ex combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time frame, primarily taking place in communities at the local level. It is part of the general development of a country and a national responsibility and often necessitates long-term external assistance.”

ants, removing them from military structures, and promoting their social and economic reintegration within society.⁹

Since the end of the Cold War, dozens of DDR programmes have been carried out and over the last 20 years DDR programmes have been set up in more than 30 countries; some of them have included also former child soldiers among the beneficiaries. “In principle DDR programmes shall be kept separate from development aid” (Roht-Arriaza & Orlovsky, 2009), which pursues the aims of alleviating poverty, supporting post-conflict recovery and addressing the socio-economic needs of the population at large; and from reparation programmes, which focus on the victims affected by armed conflicts (Capone, 2011). DDR processes instead target specifically ex-combatants for the purpose of triggering their reinstatement as productive members of the community.

“Despite its narrow focus, DDR ought to be part of a coordinated political strategy in view of the country’s economic and social development as well as a future design of the security system” (Valasek, 2008). Therefore, DDR programmes require a contractual or legal framework which lays down contents, responsibilities, timeframes and coordination mechanisms as precisely as possible. Crucial aspects are, thus, a secure environment and the political will of the parties to the conflict. More in detail several studies have highlighted some context-specific factors that can either facilitate or hamper the implementation of a DDR programme.

Such factors encompass: i) a certain economic threshold that raises the chances of DDR being successful as it becomes easier to find alternative employment for former combatants; ii) functioning government institutions which help to ensure that States can fulfil their commitments and provide the level of security needed for combatants to disarm; iii) the presence of institutionalised and peaceful conflict-solving mechanisms within a wider recovery strategy that embeds DDR in a multi-dimensional peace-building framework, which is essential for success and also to avoid animosity amongst the rest of the population; iv) the presence of a third party on the ground, because even though an external force cannot oblige hostile parties to commit to DDR, it can help to create a framework to solve the security dilemma (Banholzer, 2014).

Since combatants and former combatants can become a major source of destabilisation in post-war countries and significantly increase the risk of hostilities being resumed if they decide not to go along with the peace process, a lot of emphasis is usually placed on DDR processes and all the parties involved in the

⁹ See De Greiff, P. (2010). Research Brief, Establishing Links between DDR and Reparations, ICTJ. Available at: <http://ictj.org/sites/default/files/ICTJ-DDR-Reparations-ResearchBrief-2010-English.pdf>. See also Nezam, T. & Marc, A. (2009). Disarmament, Demobilization and Reintegration, note commissioned by the World Bank’s Department of Social Development, 119.

conflict, as well as the international community, make significant efforts to ensure that the programmes are duly put in force. Of course DDR programmes differ in location, duration, size and scope and it is therefore impossible to affirm that what works in a given country can be easily replicated in other settings (Capone, 2011).

However, some general observations apply to most programmes. With regard to their lengths, it is worth noting that the majority of programmes have a lifespan of one or two years, but some are of longer duration. Furthermore, while most programmes are implemented after the end of a war and are therefore thought to exert a stabilising effect, some DDR programmes are launched while hostilities are still going on and as such aim to have a pacifying effect.

Finally, it has been stressed that conflicts that end with a peace agreement rather than victory by one side, like in the case of Colombia, are more likely to be followed by a successful DDR programme. (Harbom, Hogbladh, & Wallenstein, 2006). Once established the key features of DDR programmes it is possible to focus the analysis on Colombia and its past and current efforts to deal with the disarmament, demobilisation and reintegration of former combatants within a broader transitional justice framework.

THE FIRST ATTEMPT TO ESTABLISH A DDR PROCESS IN COLOMBIA

Previous efforts to demobilise the guerrillas have been undertaken under the Presidency of Belisario Betancur (1982–1986). In a legal environment in which blanket amnesties were offered in exchange for “peace and stability”, Betancur administration adopted and implemented the so-called “Law of Unconditional Amnesty in Favour of Peace” (Law 35) (Transitional Justice, 2007).

Mainly concerned about the amnesty, the Government failed to duly consider the faith of those guerrilla combatants who demobilised. Notably, Law 35 laid down the legal grounds for the “La Uribe Contract” of 1984 in which the FARC agreed to a ceasefire and announced the foundation of a political party, the Unión Patriótica (UP).

The Government championed the UP as a banner organisation behind which the diversity of Colombian insurgencies could run for election as they demobilised and began to compete electorally against the country’s traditional political parties, i.e. the Conservatives and the Liberals. However, while the UP worked to establish its status as a political party and embarked in an electoral campaign focussed on the need to enhance social justice initiatives in poor and marginalised communities, the FARC refused to put a complete end to its armed struggle and

fully engage in DDR programmes. Furthermore, Betancur's democratic opening towards the FARC inconveniently coincided with the actions of the Colombian military during the siege on the Colombian Supreme Court attributed to the M-19 rebels in 1985 (Woody, 2015).

Colombian army immediately mounted an operation to retake the building and free the hostages, but by the time the crisis was resolved, almost all of the 30 to 40 rebels were dead, scores of hostages had been killed or "disappeared," and 11 of the court's 25 justices had been slain (Woody, 2015). The negotiations between the Government and the FARC collapsed soon thereafter under the weight of a presidential transition and due to the increasing violence committed by the right-wing groups.

In this context, the UP, with its origins in the FARC, became the target of a systematic offensive to exterminate the far left's growing voice in Colombian politics. As a result of UP (modest) political success, the party's ranks faced repression throughout the late 1980s and early 1990s, when more than 4,000 UP politicians, municipal leaders, unionists, and activists were killed. As a result of this wave of violence many surviving members of the UP sought exile abroad or went into hiding, and by 2002 the Government officially revoked the party's legal status due to inactivity and insufficient membership.

The Government proved to be incapable of guaranteeing the security of the ex-combatants; and this previous experience of demobilisation and violent repression has been haunting any subsequent efforts to negotiate with the rebel groups. In addition to the violent episodes which de facto hampered the FARC's first attempt to transition into a political movement, it is important to stress that in any case the legal treatment envisaged for the ex-combatants was largely based on an approach described as "forgetting and pardon in favour of peace" (*olvido y perdón en pro de la paz*), a broad statement that left much room for manipulation and as a result of which the ex-combatants ended up enjoying complete amnesty. (Theidon, *Reconstructing Masculinities: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia*, 2009).

Since the presidential elections of 2002, won by President Alvaro Uribe, an increasing number of Colombians demanded for the end of the armed conflict. In principle President Uribe was not inclined to engage in a dialogue with the FARC, whom he considered nothing more than a "terrorist threat". Therefore, instead of exploring the possibility to begin the peace talks between the Government and the FARC, Uribe preferred to negotiate with the paramilitaries, while simultaneously promising to neutralise the guerrillas.

The beginning of the formal talks with the AUC paramilitary was marked by the signing of the Santa Fe de Ralito I agreement on 15 July 2003. According to

the agreement the demobilisation of all combatants should have been achieved by the end of 2005, after concentrating the leadership and troops of AUC in specific locations. The terms of the agreement placed upon the AUC the obligation to suspend all its unlawful activities and respect the unilateral ceasefire, as well as to provide support to the Government in its anti-drug-trafficking efforts (Transitional Justice, 2007).

Following the first agreement a second one, the Santa Fe de Ralito II agreement, was signed as a gesture of goodwill from the Uribe's administration on 13 May 2004 to set up a "concentration zone" (zona de concentración) for the paramilitaries. The agreement had the effect of suspending the arrest warrants for the members of the AUC who were within the perimeters of this zone during the period of its implementation.

The ratio behind the creation of the concentration zone, which was open to AUC's members of all ranks and protected by the National police, was to facilitate and consolidate the process between the Government and the AUC, to improve verification of the ceasefire and to establish a timetable for the demobilisation process. Furthermore, the accord also foresaw the creation of the Mission in Support of the Peace Process of the Organization of American States, which was responsible for monitoring the disarmament and demobilisation of former combatants. The Santa Fe de Ralito agreements ultimately led to the collective demobilisation of 30,151 AUC members.

Besides envisaging the establishment of a DDR programme, the Uribe's administration submitted an "alternative punishment bill" to the Colombian Congress proposing that instead of prison time for the convicted AUC members, the paramilitaries should be allowed to pay fines. Furthermore the bill also attributed to President Uribe the absolute power to decide which AUC members would qualify for a reduced or suspended prison sentence. In return for this leniency, there were a number of conditions imposed on the paramilitaries, including the impossibility to leave the country, to run for elections and the obligation to pay compensation to the victims. Since the bill was strongly criticised both at the national and at the international level, it was ultimately rejected and eventually replaced with the Justice and Peace Law (JPL or Law 975) in 2005.

DDR PROCESS UNDER THE JUSTICE AND PEACE LAW

As explained above during President Álvaro Uribe's administration the main legislative actions undertaken were primarily focussed on inducing paramilitary groups to leave the battlefield. Consistently with this approach, the JPL, signed on 22 July 2005, has been adopted to bring peace by facilitating the

demobilisation and reincorporation into civil society of members of paramilitary groups.

Through the implementation of the JPL the legislator has tried to pursue a manifold goal, namely i) to achieve demobilisation, disarmament and reintegration of illegal armed groups, ii) to recognise and enforce the rights of the victims to truth, justice and reparations and iii) to conduct criminal proceedings against the leaders responsible for the commission of serious crimes (Transitional Justice in Colombia, Junio).

“Despite its ambitious scope the JPL has eventually prioritised the neutralisation of one of the factions engaged in the armed conflict over the rights and the needs of victims” (Human Rights Watch, 2010). In order to achieve its objectives the JPL has established judicial benefits for those who participated in the demobilisation process, i.e. access to reintegration programme’s incentives and reduced sentences of five to eight years if they admitted the crimes committed (Alice Diver, 2016).

“Law 975 has been condemned by international human rights organisations on various grounds in particular because it focussed only on paramilitary groups and left de facto unpunished the many crimes perpetrated during the armed conflict” (Garcia & Andreas Lid, 2010). While officially a large number of paramilitaries passed through the programme, the Government never verified whether all of them actually demobilised, and it was unable to effectively dismantle the groups’ criminal networks and support system (Bonacker, 2013). As a result, some groups or sections of groups either never demobilised, or re-armed right after the process, forming new groups, the so-called “bandas criminales emergentes” (BACRIMs).¹⁰ As of September 2014, only 37 paramilitaries who officially participated in the demobilisation process had been convicted of crimes under the JPL (Capone, 2016).

“Therefore, the convictions covered only an insignificant amount of the nearly 70,000 crimes confessed by defendants seeking access to the JPL benefit” (Moreno, 2014). More in detail, in order to be eligible for benefits, individual demobilised paramilitary candidates were asked to provide information about their paramilitary organisation, sign a statement of commitment to the government and turn over all illegally obtained assets which were then collected in the Reparation Fond (Fondo de Reparación).

¹⁰ According to the OHCHR 53% of the BACRIM’s members are former paramilitary’s members. Annual Report of the United Nations High Commissioner for Human Rights: Addendum: Report on the Situation of Human Rights in Colombia (Annual Report OHCHR 2012), 31 January 2012, A/HRC/19/21/Add.3. Today the term BACRIMs is used to describe a vast array of different criminal groups and enterprises, essentially any criminal structure not linked to the Marxist rebels.

If the candidate fulfils these requirements, judicial proceedings are initiated which involve the following: investigations by a prosecutor; a confessions process, including the delivery of voluntary depositions (*versiones libres*) in which the person provides a list and details of confessed crimes; arraignment following the completion of the prosecutor's investigation; acceptance of charges by the candidate; a public hearing before a Justice and Peace Tribunal to determine whether the acceptance of charges by the individual was free and voluntary; delivery of the verdict and sentencing (Colombia: The justice and peace law, 2016).

It has been widely argued that the JPL has not been able to strike a much needed balance between fostering paramilitaries' reintroduction into civilian life and promoting the interests of the population at large and especially of those segments most affected by the armed conflict. Even though the JPL's compliance with human rights law has not been peremptorily ruled out, some important issues have been discussed before the Colombian Constitutional Court and the Inter-American Court of Human Rights (IACtHR), which cannot be duly discussed in this article, but shall inform and guide the implementation of the new transitional justice framework and in particular of the current DDR process.¹¹

THE DDR PROCESS OUTLINED IN THE PEACE AGREEMENT WITH THE FARC

Colombia's efforts to finally come to terms with its pervasive and violent internal armed conflict officially began in August 2012, after the signing of the "General Agreement for the End of the Conflict and the Construction of a Stable and Lasting Peace". Following the FARC's declaration of a unilateral ceasefire in July 2015, the negotiations have become more intense and they ultimately led to the achievement of a Final Peace Agreement (FPA), officially signed on 26 September 2016 and rejected by the Colombian population on 2 October 2016 (Brodzinsky, 2016).

In only 41 days the parties reached a revised version of the peace deal. The new peace agreement, which modifies many controversial aspects of the FPA, has been reviewed in a very short lapse of time and it incorporates 56 amendments

11 See Colombian Constitutional Court, Decision C-370/06, the Constitutional Court's judgment stressed a number of shortcomings of the JPL that needed to be amended in order for the law to combat impunity in a more effective way and expand victims' rights. See also *Rochela Massacre v Colombia*, Merits, Reparations and Costs, Judgment of 11 May 2007, IACtHR, Series C No 163, para. 192; in which the IACtHR explained that alternative sentences are not always incompatible with the values upheld by the American Convention on Human Rights, to avoid incompatibility "the State must fulfill its duty to investigate, try, and, when appropriate, punish and provide redress for grave violations of human rights. To achieve this objective, the State should observe due process and guarantee the principles of expeditious justice, adversarial defense, effective recourse, implementation of the judgment, and the proportionality of punishment, among other principles".

suggested by all the factions that were in favour of the rejection of the original deal (The Atlantic, 2016).

The new accord enshrines the amendments collected by the Government, submitted to the FARC and quickly accepted by the armed group, and it has been adjusted on the purpose to promptly address some of the concerns raised by the opposition. The peace agreement consists of six “Puntos”; each of them dealing with one of the issues discussed during the peace talks and agreed upon by both parties.

The first part of the accord tackles the integral rural reform; the second is entitled “political participation: democratic opening to establish the peace”; the third part addresses the aspects most relevant to the present analysis, i.e. the disarmament, demobilisation and reintegration of former FARC members; the last three issues deal respectively with the drug-trafficking, the rights of victims and the new transitional justice framework and, finally, the mechanisms to implement and monitor the peace agreement.

The agreement was approved by the Congress on 30 November 2016, gaining an overwhelming majority of votes in both the House of Representatives and the Senate. The Colombian Government and the FARC have declared that the accord enters automatically in force after the ratification by the Congress and therefore no further referendum will be held.

Moving to the contents of the peace deal as far as the DDR process is concerned, the parties have agreed that an estimated 7,000 FARC members will give up all their weapons and will be moved to 20 “Transitional Village Zones for Normalisation” (in Spanish Zonas Veredales Transitorias de Normalización, ZVTN) and seven camp sites, i.e. Puntos Transitorios de Normalización (PTN) (El Tiempo, 2016). From the outset it is important to stress that according to the agreement the whole DDR process will last only 180 days (six months) and it officially started on 5 December 2016, five days after the “D-day”, i.e. when the peace deal was approved by the Congress.

AN OVERVIEW OF THE KEY STEPS ENVISAGED

During the six-month period in which the DDR process will take place, the armed forces and the FARC have obviously agreed not to conduct military actions against each other (Cese al Fuego y de Hostilidades Bilateral y Definitivo, CFHBD).¹² In order to prevent incidents, the ZVTN and the PTN will be ringed by a one-km

¹² See Revised Peace Agreement; supra note 12, pp. 58-59.

buffer area, Zona de Seguridad, protected along the perimeter by the armed forces and in which only the members of the tripartite monitoring and verification mechanism, i.e. UN, FARC and Government, can patrol.

Another essential aspect is represented by the surrender of arms, *Dejación de las Armas (DA)*, consisting of a technical proceeding, traceable and verifiable, through which the FARC members will consign their entire arsenal to the UN. In a nutshell the FARC will take its personal protection low-calibre weapons, the arms belonging to militia members, grenades and other munitions to the ZVTN.

Concomitantly, over two months after D-day, “unstable armament kept in previously geo-referenced deposits” belonging to the FARC will be destroyed. The DA’s key passages are: registration of the weapons; identification; monitoring and verification of the arms’ possession; recollection; storage; removal of the arsenal and final disposal of the arms, which will be used to build three monuments to be located in Cuba, at the UN Headquarters and in Colombia. “The UN will remove all the weapons and close the ZVTN and the PTN one month after the last arms are handed over, according to a strict timeline” (*Alto comisionado para la paz*, 2016).

The time spent at the ZVTN and in the PTN will mark also the first step to reintroduce the FARC members in the civilian life. As spelled out in the peace agreement both the FARC and the Government are responsible for the design and the organisations of the activities that will be put in place in the ZVTN and in the PTN to promote the acquisition of theoretical knowledge and practical skills that can facilitate the process of reintegration. (*Alto comisionado para la paz*, (S.f)).

The Government and the FARC debated publicly the location of the ZVTN and it was fairly clear from the outset that these would be in areas with civilians living nearby; i.e. in sparsely populated villages where the FARC had been present for a long time. On the one hand, this proximity could lead to the implementation of projects agreed on with the local communities and this would be an important trigger for local peace-building efforts; on the other hand the peaceful coexistence between rebels and peasants can be complicated by the resentment stemming from the perception that FARC members receive benefits while communities struggle to subsist (*International Crisis Group*, 2016).

As the FARC members will remain in the ZVTN and PTN only for six months, the most challenging part of the DDR process is probably represented by what will happen afterwards. The revised peace agreement outlines a number of initiatives that shall promote the gradual transformation of the group’s members in productive citizens. To this end the accord foresees also the establishment of the National Council for the Reintegration, *Consejo Nacional de la Reincorporación (CNR)*,

composed of two representatives of the Government and two members of the FARC, which will be tasked with identifying the activities that shall be undertaken to help the guerrilla's reintegration process.

Moreover, as spelled out in the agreement after completing their stay in the ZVTN and in the PTN the former fighters will receive for the next 24 months a subsidy equal to the 90% of the statutory minimum wage (*Salario Mínimo Mensual Legal Vigente*). Once the two years are over the accord envisages that new forms of financial support will be implemented for those ex FARC members that have been striving to complete their reintegration process.

THE DDR PROCESS WITHIN THE BROADER TRANSITIONAL JUSTICE FRAMEWORK

As already stressed, the current version of the peace deal has been reworked in order to address some of the concerns raised by the FPA's opponents. It is worth mentioning from the outset that the revised deal does not change the fact that the broadest possible amnesty will be granted to the FARC members who have committed "political crimes and crimes connected to them" (*Alto comisionado para la paz, 2016*).

"The details of the amnesty are outlined in the Law on Amnesty, Pardon and Special Criminal Procedures attached to the new deal" (*Ley de amnistia, indulto y tratamientos penales especiales (anexos I Y II del Acuerdo Especial 19 de agosto de 2016), 2016*) In line with the IACTHR jurisprudence on national amnesty legislation,¹³ the most serious crimes will not qualify for amnesty (*Alto comisionado para la paz, 2016*). Such crimes will be addressed under the framework of the Special Jurisdiction for Peace (SJP), which allows for alternative sanctions, better defined in the current version of the deal, for perpetrators of gross human rights violations who admit responsibility, disclose the truth about their actions and contribute to reparations.

"The decision to adopt a lenient approach towards the members of the FARC who accept to play a proactive role in restoring peace and promoting victims' rights has been labelled by some as an attempt to foster impunity" (*Human Rights Watch, 2015*), and it can be easily regarded as one of the main factors that led to the rejection of the FPA. The revised version of the peace deal maintains that the rebels who have previously laid down their arms and accepted to participate in the

13 On the "amnesty jurisprudence" of the IACtHR see Binder, C. (2011). The Prohibition of Amnesties by the Inter-American Court of Human Rights. *German Law Journal*, 12, 1203-1230. See also Mallinder, L. (2016). The End of Amnesty or Regional Overreach? Interpreting the Erosion of South America's Amnesty Laws. *ICLQ*, 65, 645-680.

reconciliation process will not be held in prison, but will benefit from alternative penalties, which will last between five and eight years.

Those opposing the FPA wanted the alternative sentences to potentially include prison time or, at least, confinement in penal farms. The revised version of the agreement instead states that the convicted rebels will be restricted to a very limited geographic area, of the same size of the ZVTN, but will live in a residence during the entirety of their sentence as long as they are actively engaged in consolidating peace (Alto comisionado para la paz , 2016).

Another thorny issue, strongly disapproved by the FPA's detractors, is the political participation of the FARC members. The revised version of the deal did not change the fact that the post-FARC political party will get 10 automatic congressional seats, five in the 166-person House of Representatives and five 5 in the 102-person Senate, between 2018 and 2026. (Colombia peace, 2017).

The political participation is not precluded to those who have committed war crimes and crimes against humanity, a criterion that if applied would have excluded many FARC members and all the FARC top commanders. In response to the accusation that allowing FARC political participation without limitations of any sort could hamper the reconciliation process instead of promoting it, President Santos' reply has been that "the reason for all peace processes in the world is precisely that guerrillas leave aside their weapons and engage in legal politics" (McDermott, 2016).

A small exception to the otherwise wide FARC political engagement has been introduced by stating in the revised version of the peace deal that former rebels may not run for the 16 special congressional districts, which will exist between 2018 and 2026, created for the zones that have been hit hardest by the armed conflict. Those seats, in fact, are reserved for the representatives of civil society organisations, including victims' organisations and social movements. (Alto comisionado para la paz , 2016).

CONCLUSIVE REMARKS

One of the main problems in post-war societies is finding effective ways of convincing former combatants to hand in their weapons and reintegrate into civil society. In an attempt to facilitate the transition from war to peace, DDR programmes have become key components of national and international efforts to stabilise post-conflict societies. Concretely helping fighters to turn their lives around and gain a foothold in civil society is essential to prevent them from returning to combat and hence to avoid relapses in the long run.

The DDR programme currently in place in Colombia builds on the attempts made by the Government over the past 30 years and therefore it has the opportunity to learn from the mistakes made. In primis it is worth noting that for the first time in Colombia a DDR process is under implementation at a time where it is largely shared the view that the armed conflict between the FARC and the Government is finally over, whereas the previous programmes have been set up in conjunction with fragile ceasefires.

This represents a significant improvement as it guarantees a certain degree of stability in the country and within the ruling institutions. Nonetheless it shall be noted that the peace accord does not concern other armed groups like the ELN and it does not neutralise the BACRIMs, which can end up recruiting the FARC members dissatisfied with the deal or unwilling to complete the DDR process.

As mentioned above among the other factors that can facilitate the implementation of a successful DDR programme it is important to take into account also the general economic situation of a given country; the existence of conflict-solving mechanisms within a wide recovering strategy and finally the presence of an impartial third party to supervise and monitor the process. When examining the present DDR process against this “list” it is possible to make a number of observations. With regard to the economic aspect it is estimated that the peace process will cost Colombians at least \$16.8 billion over 10 years, thus meaning that it is crucial to keep relying on a strong and enduring commitment from international actors, e.g. the US will give \$450 million in aid to Colombia in 2017 and has been funding the process for years, but there is no guarantee that the support will steadily continue for another decade (Davis & Trinkunas, 24).

As for the establishment of effective conflict-solving mechanisms embedded in a broad recovery strategy, the Government and the FARC in their revised peace accord have outlined in detail the new transitional justice framework which will handle the multifaceted issues of accountability, victims’ rights and reconciliation at large. Therefore the DDR process it is not an isolated and independent effort, but it is part of a multi-layered scheme that includes the establishment of a special jurisdiction for peace, reparations programmes and rebels’ reintegration into civilian life.

Finally, concerning the need of a third, impartial, party on the ground, the UN mission, established by Security Council Resolution 2261(2016), is the international element of the tripartite mechanism with the Government and FARC, which will jointly monitor and verify the ceasefire, cessation of hostilities and handover of weapons. The UN mission, whose intervention has been explicitly requested to the Security Council by both the Government and the FARC, will be mainly composed of unarmed observers from countries belonging to the Community of Latin

American and Caribbean States and will operate at various levels of seniority, with a national board for resolving disputes that cannot be solved locally, eight regional offices and a presence at each of the 27 cantonments.

The mission has been established for an initial time of 12 months and its role as a trustworthy third party is particularly important to keep the peace process and its DDR programme high on the international agenda and to deter other armed groups' threats to the security of FARC, like it happened in the past with the UP, and surrounding communities.

On paper, thus, it seems that the current DDR process satisfies all the apparent requirements for success. Of course much will depend on the goodwill of the parties involved, on the engagement of the whole country and on the population's attitude towards the former rebels, since, as restated throughout this article, the fighters' reintegration represents a challenging and lengthy commitment which risks to be hindered if at the same time the rights of everyone who has been affected by the armed conflict, and in particular those who belong to vulnerable groups, are not guaranteed and promoted.

REFERENCES

- Alice Diver, J. M. (2016). Introduction: An Overview of the Current Situation in Colombia. In *Justiciability of Human Rights Law in Domestic Jurisdictions* (p. 198). New York: Springer Cham Heidelberg.
- Alsema, A. (2016, noviembre 5). Colombia's political parties less popular than FARC guerrillas: Gallup. *Colombia Reports*.
- Alto comisionado para la paz. (s.f.). *Funcionamiento de las Zonas Veredales Transitorias de Normalización (ZVTN) y los Puntos Transitorios de Normalización (PTN)*. Bogotá.
- Alto comisionado para la paz. (2016). *Final agreement to end the armed conflict and build a stable and lasting peace*.
- Banholzer, L. (2014). *When Do Disarmament, Demobilization and Reintegration Programmes Succeed?* Deutsches Institut für Entwicklungspolitik gGmbH.
- BBC News. (2016, November 24). *Who are the Farc?* BBC News.
- Binder, C. (2011). *The Prohibition of Amnesties by the Inter-American Court of Human Rights*. *German Law Journal*, 12, 1203-1230.
- Bonacker, T. S. (2013). *Victims of International Crimes: An Interdisciplinary Discourse*. Springer.

- Brodzinsky, S. (2016, October 3). Colombia referendum: voters reject peace deal with Farc guerrillas. *The Guardian*.
- Capone, F. (2016). Children in Colombia: Discussing the Current Transitional Justice Process against the Backdrop of the CRC Key Principles. In J. M. Alice Diver, *Justiciability of Human Rights Law in Domestic Jurisdictions* (p. 198). New York: Springer.
- Centro Nacional de Memoria Historical. (2013, Julio 18). Centro Nacional de Memoria Historica. Retrieved from <http://www.centrodememoriahistorica.gov.co/en/about-the-national-center-about-the-national-center/content/60-english-version>
- Colombia peace. (2017, April 18). Colombia peace. Retrieved from <http://colombiapace.org/2017/04/18/alvaro-uribes-questionable-message-to-u-s-authorities-about-colombias-peace-effort/>
- Colombia: The justice and pace law. (2016). The center for Justice and peace law. Retrieved from <http://cja.org/where-we-work/colombia/related-resources/colombia-the-justice-and-peace-law/>
- Davis, C., & Trinkunas, H. (24, March 24). Brookings. Retrieved from <https://www.brookings.edu/blog/order-from-chaos/2016/03/24/the-colombian-peace-process-deadline-passes-with-no-accord-whats-next/>
- De Greiff, P. (2010). Research Brief, Establishing Links between DDR and Reparations, ICTJ. Available at: <http://ictj.org/sites/default/files/ICTJ-DDR-Reparations-ResearchBrief-2010-English.pdf>
- El Tiempo. (2016, Diciembre 5). Todo listo para el inicio de la concentración de las Farc. *El Tiempo*.
- Fleck, D. (2013). The Law of Non-International Armed Conflict (p. 609). In Fleck, D. (Ed.). *The Handbook of International Humanitarian Law*. Oxford: Oxford University Press.
- Garcia, J., & Andreas Lid, K. (2010, September 1). *Journal of Latin American Studies*. Retrieved from <https://www.cambridge.org/core/journals/journal-of-latin-american-studies/article/transitional-justice-and-victims-rights-before-the-end-of-a-conflict-the-unusual-case-of-colombia/29C196E8C4A1AB34FAFBA9A4975F7912>
- Harbom, L., Hogbladh, S., & Wallenstein, P. (2006, September 1). *Sage Journal*. Retrieved from <http://journals.sagepub.com/doi/abs/10.1177/0022343306067613>
- Human Rights Watch. (2010). *WORLD REPORT*. New York: Copyright.
- Human Rights watch. (2015, September 28). Human Rights watch. Retrieved from <https://www.hrw.org/news/2015/09/28/colombia-dealing-away-justice>
- Internal Displacement Updates. (2012, Agosto 23). Internal Displacement Updates. Retrieved from <http://www.internal-displacement.org/>

- International Crisis Group (ICG). (2016, September 7). Colombia's Final Steps to the End of War. Colombia. Retrieved from <http://www.refworld.org/docid/57d2a7744.html>
- Kemper, Y., Roshani, N. & Bonilla Portilla, M. (2012). No One to Trust: Children and Armed Conflict in Colombia, Watchlist on Children and Armed Conflict. Available at: <http://watchlist.org/wordpress/wp-content/uploads/Watchlist-ColombiaReport-LR.pdf>
- Lee, C. (2012). The FARC and the Colombian Left Time for a Political Solution?. *Latin American Perspectives*, 39, 28-42.
- Legal, F. p. (2010). *Las víctimas y la justicia transicional*. Washington, DC: Fundación para el Debido Proceso Legal.
- Ley de amnistía, indulto y tratamientos penales especiales (anexos I Y II del Acuerdo Especial 19 de agosto de 2016). (2016). *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera: 13*. Bogotá.
- Mallinder, L. (2016). The End of Amnesty or Regional Overreach? Interpreting the Erosion of South America's Amnesty Laws. *ICLQ*, 65, 645-680.
- McDermott, J. (2016, Noviembre 14). Colombia Has a New Peace Deal, But Challenges Remain. *Insight Crime*.
- Moreno, M. C. (2014, December 8). ICTJ. Retrieved from <https://www.ictj.org/news/uncovering-colombia-systems-macro-criminality>
- Nezam, T. & Marc, A. (2009). *Disarmament, Demobilization and Reintegration*, note commissioned by the World Bank's Department of Social Development, 119.
- Oficina de Alto Comisionado para la Paz. (2016, Noviembre 12). Oficina de Alto Comisionado para la Paz. Retrieved from <http://www.altocomisionadoparalapaz.gov.co/Prensa/Paginas/2017/Mayo/El-Acuerdo-de-paz-en-ingles.aspx>
- Roht-Arriaza, N., & Orlofsky, K. (2009). *A Complementary Relationship: Reparations and Development*.
- The Atlantic. (2016, August 25). *A Peace Deal for Colombia*. The Atlantic.
- The Economist. (2016, junio 25). *The government declares an end to its war against the FARC*. The Economist.
- Theidon, K. (2007, Marzo 1). *Transitional Justice*. Retrieved from <https://academic.oup.com/ijtj/article-abstract/1/1/66/2356776/Transitional-Subjects-The-Disarmament?redirectedFrom=fulltext>
- Theidon, K. (2009). *Reconstructing Masculinities: The Disarmament, Demobilization, and Reintegration of Former Combatants in Colombia*. The Johns Hopkins University Press.

Transitional Justice in Colombia. (Junio). Justice and Peace Law: an experience of truth, justice and reparation. Review Conference of the Rome Statute, (p. 2010).

Valasek, K. (2008). Security Sector Reform and Gender. Keystone: Cover picture.

Woody, C. (2015, November 7). Business Insider. Retrieved from <http://uk.businessinsider.com/colombia-palace-of-justice-siege-2015-11?r=US&IR=T>.