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Early lessons from the Colombian Peace Process.

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ABSTRACT.

Colombia has suffered one of the longest internal armed conflicts in the world. This long and tainted war has been active for over five decades and its magnitude was, and still is greater than many major internal conflicts around the world. During the last four years the Colombian government and the FARC-EP guerrillas have been engaged in peace talks with the aim of putting an end to armed struggle. Throughout this process both parties have deployed a number of innovative strategies and techniques that are setting new standards in the field of conflict resolution. These new approaches are now informing developments in peace-making, peace-building, security, human rights, and international law at the regional and global levels. The aim of this policy brief is to describe and discuss three emerging lessons from the on-going peace process: the role of diplomacy; the importance of preparation and design of the negotiation context and strategy; and the inclusion of victims' rights as a central issue in the process.

Key words: Colombia, peace process, diplomacy, strategy, transitional justice, victims.

INTRODUCTION.

Thirty years ago the Colombian war was a forgotten internal conflict, neglected by the international community as being complicated, entangled with the transnational cocaine trade, and rooted in the bygone era of the Cold War. The Colombian conflict was difficult to understand and politically too sensitive to intervene into in any way that might contribute to a lasting solution.

During the last four years the Colombian government and the FARC-EP left-wing guerrillas have been engaged in peace talks with the aim of ending the armed violence. Currently, the parties have reached unprecedented agreement on four of the six topics of negotiation set at the beginning of the peace talks in a framework agenda (General Agreement, 2012): a comprehensive agrarian development policy; political participation; a solution to the problem of illicit drugs; and victims' rights and transitional justice. It is the first time in the history of Colombia that the government and the FARC-EP have reached such agreements. Parties are now working on the issues of disarmament, demobilisation and reintegration (DDR) along with implementation, public consultation, and verification mechanisms. Moreover, as part of a programme of confidence building measures (CBM), the parties are working together on small demining projects in the remote rural areas of Antioquia and Meta. Recently, the leaders of the two sides, President Juan Manuel Santos and Rodrigo Londoño Echeverri (alias "Timochenko") jointly announced from Havana an agreement to sign a final peace deal on the 23rd of March 2016, and to start the DDR process two months thereafter.

During the negotiations both sides deployed a number of innovative strategies and techniques that are setting new standards in the field of conflict resolution. These new approaches are already informing debates at the regional and global levels over issues related to peace-making, peace-building, security, human rights, and international law. Other countries aiming to end conflict through negotiation and dialogue are studying the Colombian approach in order to learn lessons, good practices, and also what to avoid both in the design of and during the negotiations. The aim of this policy brief is to advance the debate by describing and discussing three of the key lessons that have emerge along the way from the Colombian peace process: the role of diplomacy; the importance of preparation and design of the negotiating context; and the inclusion of victims' rights as a core subject of the negotiation. I have chosen specifically these three critical elements because they speak directly to issues faced by other countries in the Global South which stand on the verge of a peace process: how to manage the international political and legal context, and how to prepare, develop and deliver a successful peace process so as to end intractable conflicts with millions of victims.

During conflict, irregular armies, mainly FARC-EP and ELN guerrillas, waged war on the State and paramilitary forces throughout most of the country. The Colombian situation is one of the longest-running internal armed conflicts in the world. As the following figures suggest, this devastating confrontation has been active for over five decades and its magnitude was, and still is greater than many major inter-state wars in the world.

- As at the end of 2014, 38 million people around the world had been forced to flee their homes by armed conflict. Colombia ranks second in the world according to the number of internally displaced people (IDP), with around 6 million IDPs, only surpassed by Syria with 7.6 million. Iraq holds third place with 3.3 million. The IDP population of Colombia is equivalent to the whole population of Singapore or Denmark (IDMC, 2015).
- The Colombian government's reparations programme set up in 2011 has so far registered 7.7 million victims of displacement, murder, torture, sexual violence, disappearance and kidnapping, and other grave violations of human rights. This tally implies that almost 14% of the total population has suffered directly from the conflict and consider themselves victims (Colombia, Unidad de Víctimas, 2015).
- Colombia ranks third in the world in terms of landmine victims; only Afghanistan and Cambodia have more victims of landmines (Colombia, PAICMA, 2015).
- 220,000 killings have been registered during the conflict, 80% of them civilians (Colombia, Centro de Memoria Histórica, 2013). This includes three Presidential candidates, one Attorney General, one Minister of Justice, 200 judges, 175 Mayors and sixteen Congressmen who were assassinated during the conflict.
- Colombia has registered 100,000 victims of involuntary 'disappearance', a sum equal to all reported cases under the dictatorships of Argentina, Chile and Brazil combined (Colombia, Centro de Memoria Histórica, 2013).
- 3,000 militants of a single political party, the Unión Patriótica, were killed in a period of ten years during the internal war (Dudley, 2006).
- The authorities have registered 39,058 kidnappings in the period between 1970 and 2010. This implies that, during that period, one person was abducted every 12 hours for political or economic ends (Colombia, Centro de Memoria Histórica, Informe Secuestro 2013).
- Governmental authorities and non-governmental organisations together have registered about 5,000 extrajudicial killings carried out by the military (Human Rights Watch, 2015).

THE ROLE OF DIPLOMACY AND THE INTERNATIONAL CONTEXT.

An important feature of the Colombian peace process is that it has been exclusively led by the national government (Haspeslagh, 2015); while at the same time interactively engaging third parties and the international community as a whole. The role played by diplomacy partially explains why the peace effort is moving forward and achieving success; the international community as a whole and many leading states, which have become part of the process, have been a key to progress.

From the beginning of his term in 2010, President Santos recognised that Colombia had to reboot its foreign policy and rebuild diplomatic ties with the world at large and with the Latin American region, especially its close neighbours Venezuela and Ecuador. The government of Alvaro Uribe (2002-2010) had escalated confrontations with other states in the region, accusing them of harbouring and supporting “terrorists”. At the global level, the international community had mistrusted the Colombian government because of its poor record on human rights, corruption, and for some, for its alignment with the Bush Administration during the first years of the “war on terror”. In early 2010 the international context was not appropriate to start negotiations to end one of the longest conflicts of the Western Hemisphere, one heavily influenced by the international drug trade, and one in which FARC-EP, the Colombian military forces, and various the paramilitaries were all involved in war international crimes.

President Juan Manuel Santos and his Ministers knew that if a peace agreement were reached, the outcome would impact many foreign political agendas, such as US relations with Cuba and Venezuela, the limits of international criminal law, and the global debate over the war on drugs, among others. This is why Santos has been active and very successful in changing the negative trend inherited from the past. All nations in South America now fully support the Colombian peace process, and many countries around the world are ready to contribute to the implementation and verification of the final agreements on matters ranging from investment in rural infrastructure, to reintegration of ex-combatants, to victims’ rights.

Diplomatic relations with Venezuela and Ecuador were rebuilt and trust restored to the point that Venezuela could be accepted as a sponsor of the peace talks. Colombian diplomacy was strategic enough to enlist and appoint Cuba as the host country and guarantor of the process, alongside Norway, while keeping the US on board. So far, the USA, UNASUR, the European Union, Germany, the Vatican, and the United Nations have appointed special envoys to the process, which suggests a growing interest in the outcome and a commitment to addressing the challenges thereof. For example, when US Secretary of State John Kerry appointed Bernie Aronson the US Special Envoy, he stated:

We also recognized that we needed somebody who had the ability to ensure that the United States is effectively contributing to the process and helping the parties come closer to the peace that they seek. Needless to say, we wanted someone who knows the region inside out and who has experience in negotiations like these. So it is with our confidence and the confidence of the Colombian Government, and the men and women in Colombia who have been working tirelessly and for far too long for an end to this war, that I am today pleased to announce that Bernie Aronson will serve as the United States special envoy for the Colombian peace process (United States State Department, 2015).

Another key innovation of the Colombian peace process regarding international involvement is the participation role of international advisors. Both sides of the table have access to teams of international experts who can advise them on various matters, as provided by the framework agreement. This resource mechanism has been available in discussions on political participation and transitional justice, where international experience has proved invaluable. International input has played a positive role in bringing lessons and experiences learned from other peace processes around the world to bear on Colombia's situation, and offering the parties a variety of solutions and ideas to the tactical and strategic dilemmas of the talks.

Another important feature of the peace process is the role played by the guarantor countries, Norway and Cuba, and by the observer countries, Chile and Venezuela. The guarantors' role is to ensure that both parties abide by the agreed-upon rules, as trust can wane as negotiations wear on (Beittel 2013: 27). There are also observers whose role is to clarify the disputed points in the case of a crisis that may lead to misunderstandings and misinterpretations (Armengol 2013, 6). However, there is no appointed international mediator in the Colombian process (Gienger 2013). The role of these four countries has been key in settling disputes during negotiations; building trust between the parties; and solving the many day-to-day logistical issues.

Arranging a positive and supportive international context has been indispensable to the peace process because it helped shore up external legitimacy; gave much-needed access to lessons learnt in other countries; and served as an important indicator of progress for an often-incredulous public opinion at home. Negotiation of the topics in the framework agreement, especially those of illicit drugs and transitional justice, will have important international ramifications. The international ambience set up before and kept in place during the process will certainly conduce to dealing with them in a constructive and positive way.

PREPARATION, STRUCTURE AND DESIGN.

The Colombian peace talks are an example of preparing and designing a negotiation adequately to reach the desired endgame. During the exploratory talks, or what is commonly known in the literature as "talks about talks", the parties agreed on three features that have proved crucial for the development of the public phase of the process.

First, the government and FARC-EP agreed that the goal of the negotiation was simply to put an end to armed conflict, rather than to “make peace” in any positive sense. This may sound obvious, but it is essential to manage internal and external expectations of what a process can achieve. In past attempts, Colombia governments “sold” peace talks to the public as a panacea, promising that the peace agreement would instantly bring about development and other benefits besides the silencing of guns. This proved to be a mistake insofar as adversarial parties could simply not deliver on this process, damaging the government’s popularity and credibility and defrauding the public’s expectations. By contrast, the government’s simple agreement with FARC-EP to limit the desired outcome proved a powerful focal point, such that from the outset the political will existed to seek common ground. The framework sets an agenda with the clear objective of ending political violence in order to give way to a peace-building phase, namely where the agreements will be implemented with the participation of the whole population on their own territories. The framework agenda, agreed in the secret phase of the talks, was designed to include only the topics necessary to guarantee an end to armed conflict and to lay the basis for a separate peace-building phase. The six topics mentioned above were chosen because both sides agreed that putting these reforms and mechanisms in place would end political violence and allow peace to flourish in Colombia.

The parties agreed not only on the desired outcome, but also on a shared vision of the sequencing of the process:

- Phase One – the exploratory secret talks, which lasted around six months;
- Phase Two – the public talks, which were announced at a public event in Oslo, Norway in October 2012; and
- Phase Three – the beginning of the “transition” and the local implementation of the agreements (also known as the territorial peace-building stage).

The second feature of the talks was that, against all odds, the government and FARC-EP’s agreed agenda was clear and concise: it comprised just six topics (viz. five substantive topics and one procedural point on implementation, verification and endorsement). This evidenced the will of the parties to reach a concrete outcome in a relevant time-frame by engaging a finite number of issues. Limiting the agenda proved absolutely essential to organising the process in Havana. The fixed agenda has been valuable above all for separating the often-technical talks from the more political deliberations taking place within the appropriate institutions of Colombian democracy. Of course all six issues are tightly related to matters off the negotiating table (e.g., agrarian policy, the transitional justice mechanisms for national military forces, the policy on the war on drugs), but the wording of the agenda

has been the criteria separating the conversations taking place in Cuba and in Colombia.

The third key feature of the peace process design is the operational rulebook included in the framework agenda. This regulates issues of confidentiality; the interaction of the parties with the media during negotiations; the talks' outreach strategy; the authorised number of delegates of each party; the creation of participation mechanisms for civil society; and many other procedural issues that, if not regulated, could easily derail or obstruct the negotiations. For example, Rule VI states, "A mechanism for jointly communicating progress made by the Table shall be set up. Discussions held at the Table shall not be made public and an efficient communications strategy shall be implemented".

The design and preparation of the Colombian peace process is setting a new standard for future peace talks around the world. The Colombian case has shown that a well thought-out process can prove an advantage for both parties. It gives hope that most crises are solvable on the basis of the rules and mechanisms established in a framework agenda, as these initial agreements give the whole subsequent negotiation stability by providing a common ground and a sense of predictability and common purpose.

VICTIM'S RIGHTS, TRANSITIONAL JUSTICE AND PARTICIPATION.

Victim's rights and the question of how to deal with the legacy of the past have been neglected or poorly managed in many peace processes around the world, because of their complexity and sensitivity. Disputes over how to deal with the grievances of warring parties often prove to be a deal-breaker. Many negotiations have chosen to leave the issue of victim's rights to future political debate, to avoid "contaminating" the process with "insoluble" issues that might derail it. This stems from a specious contradiction between justice and peace. Past trials at peace-making have given priority to reaching the peace agreement, regardless of justice, truth or reparations. Experience has exposed this approach as fundamentally flawed, because postponing the demands of justice to future generations, and leaving unattended the seeds of potential conflict, achieves only an unstable and short-lived peace.

The Colombian peace process defies this approach. Both parties have agreed from the start that victims' rights must be a distinct and central issue on the agenda. This acknowledgement responds to the sheer magnitude of human suffering in the country: there are seven million victims of the various warring parties so far, 80% of whom are civilians. The government and FARC-EP recognised that an agreement that did not place victims' rights at its core would be not only be unlawful, but also immoral, illegitimate and ephemeral. International law as it stands today provides for justice, truth and reparations to the victims of internationally recognised crimes. In acknowledgement of the value of the Colombian case, the International Criminal Court (ICC) is looking closely at it to understand how international criminal law

might be harmonised with the right of states to pursue peace for their peoples and future generations. Currently, both parties are aiming for a peace deal that looks to the future but also recognises and acknowledges what happened in the past. There is a common understanding that in order to initiate the peace-building phase, not only the parties to the conflict but also the whole population must face the past in a constructive, reflective and comprehensive way.

To carry out the principle of prioritising victims' rights, the parties have created three mechanisms to empower victims to take their rightful place in the talks. The Colombian peace process is a world-class example of how victims can participate directly in peace talks. In past peace processes around the world, victims and their organisations only had a chance to be involved after an agreement was reached, either participating in truth commissions or in trials against perpetrators. In the Colombian process, victims have been actively participating from the outset.

The first mechanism created was a direct channel, via electronic or conventional mail, for sending proposals to both delegations, so that victims could directly contribute to the drafting of the agreements. To date, the government and FARC-EP have received 24,475 proposals regarding victims' rights issues (Colombia, Office of the High Commissioner, 2015).

The second mechanism was participation in several events in Colombia expressly created for victims to impact the negotiations in Cuba. The delegations appointed a collegiate third party, composed of the United Nations, the Universidad Nacional de Colombia, and the Catholic Church, to organise regional events where victims from all over the country could deliver their views, expectations and proposals. These events were attended by 3,162 victims and 4,617 victims' organisations, from whom the parties received an additional 22,146 proposals (Colombia, Office of the High Commissioner, 2015).

The third mechanism consisted of public hearings in Havana, where victims were invited to engage directly with both delegations. The sessions took place before and during the discussion of victims' rights and transitional justice with the aim of hearing victims in person tell of their expectations and demands, in hopes that this would enlighten the talks while they were still on going. In five hearings, sixty victims from different regions, who had suffered diverse violations of their rights at the hands of many armed actors, were able to confront the delegations and by their narratives convey their suffering, expectations and needs. This unprecedented mechanism was pivotal for starting the difficult negotiations about how to deal with the past in Colombia.

After a long year of negotiations on the topic of victims' rights and transitional justice, the parties agreed three key elements of a broader transitional justice regime. In June 2015 they agreed the creation of a Truth Commission. On the 23rd of September 2015 the President of Colombia, Juan Manuel Santos, and the FARC-EP's Timochenko announced an agreement to create a Special Jurisdiction for Peace, a mechanism to investigate, prosecute and punish international crimes. Finally, on the 18th of October 2015, the delegations announced an agreement to create a specialised unit (in addition to the CBM mentioned above) to search for people who disappeared as a result of the conflict, which will start operations after the peace agreement, is signed.

Victims' participation has been essential to the delegations' work and to the peace process as a whole. The views expressed by victims are currently informing many agreements on the topic. Putting victims' rights at the centre of the peace process has been one of the main contributions of the Colombian peace process.

CONCLUSION.

According to many experts, Colombia is currently the main peace process in the world and a cynosure of international peace-building. The Colombian case is proof that protracted internal armed conflict can be addressed through dialogue (Herbolzheimer, 2014). I have discussed three main contributions that have emerging from the Colombian process: (i) a role for active diplomacy to enable a respectful international engagement, while at the same time conserving national ownership of the process; (ii) a robust strategic plan that observes the difference between negotiating the end of the conflict and building peace, between peace talks and the peace process; (iii) the commitment to victims' rights, which has led to a national and global debate over the possibilities and limits of applying international criminal law in the context of peace negotiations, and the meaning of reconciliation. Colombia is a timely reference for a global community standing at the crossroads of ways to address complex violence in the age of accountability.

The treatment given to diplomacy, the importance of contextual preparation and design, and the inclusion of victims' rights as a central issue all evidence that Colombia's peace process is setting new standards in many fields and is becoming an exemplar for peace endeavours around the world. Colombia is developing a new model that other countries, especially in the Global South, can adopt to satisfy the increasing global demands for accountability, while also helping those in conflict to achieve a stable and lasting peace.

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