Lost in transition: the legal pathway for demobilization in Colombia

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Resumen

En medio de un conflicto armado aún existente, Colombia asume hoy un proceso de transición hacia la paz, dotado de herramientas tanto legales y judiciales, como extrajudiciales y políticas. Un modelo de justicia alternativa para el procesamiento de excombatientes, un proceso de desarme y desmovilización en curso y una ley para garantizar la verdad, la justicia y la reparación a las víctimas, son algunos de los mecanismos con los cuales se busca la creación de escenarios de reconciliación nacional. Las falencias del proceso, sin embargo, se acentúan en la falta de estabilidad y seguridad jurídica en el procesamiento judicial de los excombatientes de bajo rango, sumidos en un limbo jurídico permanente que les impide la adecuada reinserción social. Es obligatorio evidenciar la gravedad de este fenómeno, teniendo en cuenta que es precisamente la reintegración, el proceso con el cual concluye definitivamente el ciclo de violencia y se generan garantías efectivas de no repetición.

Palabras clave: desmovilización, justicia transicional, ley 1424/2010, reintegración.

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Abstract

Amidst an unceasing armed conflict, Colombia currently undertakes a process of transition towards peace, for which it is equipped with legal, judicial, extrajudicial, and political means. A model of alternative justice for the prosecution of ex-combatants; an active process of Disarmament and Demobilization; and a law to guarantee truth, justice, and reparations for victims of armed violence, are among the mechanisms available with which to seek the creation of the spaces appropriate for national reconciliation. However, this process has been accentuated by a lack of judicial stability and security in the legal prosecution of low-ranking ex-combatants, who, as a consequence, become permanently mired in a legal limbo that inhibits their necessary social reinsertion. It is crucial to highlight the gravity of this phenomenon considering that it is precisely the process of Reintegration that can definitively conclude the endless cycle of violence and that can generate effective Guarantees of "Non-Repetition".

Keywords: demobilized, transitional justice, reintegration, law 1424/2010, guarantees of "Non-Repetition".

Introduction

The current national context in Colombia with regard to the armed conflict is determined by the existence of a series of legal, political, judicial, and extrajudicial mechanisms whose purpose is the creation of spaces to enable durable peace and the non-repetition of crimes in a hostile and unfavorable context, in which wanton and brutal violence is far from an end.

The official recognition of the Colombian internal armed conflict generated the necessity to enact more integral and structurally focused instruments that protect the rights of victims as well as promote the appropriate reintegration of ex-combatants.

On one hand, the legislation of Law 1448 of 2011, otherwise known as the "Victim's Law" (Ley de Víctimas), created various valuable institutional mechanisms for the material guarantee of the right to truth, justice, and reparations. On the other hand, numerous proposals to modify Law 975 of 2005, the Law of Justice and Peace (Ley de Justicia y Paz), including the proposition of the Law Framework for Peace, evidence a growing tendency towards the recognition of the flaws that plague existing measures and the fixing of these flaws through legislative means.

With regard to Disarmament, Demobilization, and Reintegration (DDR), transition policy constitutes a series of provisions that cover all demobilized combatants, but that give differential treatment, according the category of the ex-combatant in question. This categorization is based on their rank within the organization in which they operated and on the type of crimes committed, and for each of these outlines a specific legal pathway for prosecution. In the case of ex-members of paramilitary organizations, there exist at

least two categories. The first is composed of leaders and mid-level officers that are guilty of crimes against humanity and follows legal procedure as defined in Law 975. The second category in question is composed of rank and file ex-combatants, demobilized since 2003, who are guilty of conspiracy to break the law aggravated by their membership in a criminal organization, and for whom the legal pathway for prosecution has been unclear. To the contrary, the legal framework has been ambiguous, changing, and contradictory, made up of norms that are frequently created and abolished or modified. The last of these, Law 1424 of 2011, was submitted to a review of constitutionality and was declared constitutional, which gives some clarity to a visibly uncertain situation that is a direct cause of desertion and illegal re-arming.

An adequate legislative design for demobilization that is clear, stable, inclusive, and that reinforces the rule of law, is imperative considering that the successful reinsertion of ex-combatants to civil life is a fundamental precondition for the creation of processes of reconciliation and social reconstruction. The point is especially salient as, in the words of Eduardo Pizarro Leongómez, Colombia attempts to "repair the boat at high sea".

The aim of this article is to put in evidence the shortcomings of a potentially successful and prolific demobilization process, like Colombia's, when the appropriate spaces for Reintegration are not created and the legal and social destiny of a group of ex-combatants that is determined to lay down their arms and believe in the system is left in limbo.

In order to do this, the first section gives a general summary of the long and intricate legal process proposed for the 19,000 plus low ranking demobilized combatants since 2003 through the declaration of the constitutionality of Law 1424 in October of 2011. The second section is an evaluation of the current state of this issue and the challenges still presented by the existing legal framework, both of which have important consequences for guarantees of non-repetition and of a durable peace for the country.

I. The legal pathway for demobilization in Colombia

A. Law 418 of 1997 and Regulatory Decree 128 of 2003: the previous legal framework

The mass demobilization that occurred in the later half of 2003 under the legal framework of the peace process with paramilitary groups cast serious doubts as to its effectiveness. The existing norms in terms of negotiations and peace accords were, among others, Law 418 of 1997 and Regulatory Decree 128 of 2003, which authorized the national government to pursue peace negotiations with any illegal armed groups that satisfied a series of preconditions. These mandated that the group must have a clearly defined and recognized hierarchy, have the capacity to carry out and sustain military operations, and also that have the capacity to maintain control of territorial zones during

said military operations. Additionally, the two laws presupposed exemption, amnesty, cessation of the process, resolutions of preclusion or inhibitory resolutions for those that had not committed grievous crimes.

International Human Rights Law has emphatically prohibited any measure that hinders or avoids the prosecution of individuals that have committed grievous human rights violations, as this allows for impunity and makes impossible the indemnification of or reparations for victims and is a detriment to national reconciliation[1].

Given the impossibility of a policy of "pardon and forget" for ex-combatants that have committed grievous human rights crimes, the national government and Congress undertook the task of designing alternative ways to prosecute this specific group of demobilized individuals. This led to the creation of Law 975 of 2005 (also known as "The Law of Justice and Peace"), to deal with officers and leaders of armed groups, and included a continuity of the provisions defined by Law 783 for ex-combatants who were only under investigation for belonging to an illegal armed group.

B. First challenge: Supreme Court ruling of July 11, 2007

On July 11, 2007 the Colombian Supreme Court delivered the first ruling that would deny the possibility for the litigation of low-ranking ex-combatants under the provisions previously agreed upon. According to the Court's decision, merely belonging to an illegal armed group implies the criminal offense of aggravated conspiracy to break the law, which is not the same as or comparable to the crime of sedition. Due to the fact that the former is not a political crime, it is not subject to amnesty, exemption, or any other exception of this kind, which would otherwise generate impunity.

> To accept that instead of conspiring to break the law the crime committed by the members of these paramilitary groups constitutes the punishable infraction denominated "sedition", is not only equivalent to presupposing that these individuals acted with altruistic intentions in the collective interest, but also to disregarding the right of the victims and of society to justice and to the truth. In the case of the latter offense, the facts could remain obscured by the complete impunity –understood by the Interamerican Human Rights Court as a lack of investigation, pursuit, capture, prosecution and sentencing of those responsible for violations of the rights protected by the American Convention– given by amnesties and exemptions, both decisions made at the discretion of the Executive or Congress without judicial oversight, which would hinder the search for the complete truth,

1 Data. UN, S/2004/616; International Human Rights Court: Velázquez Rodríguez *vs*. Honduras (1988); Godínez Cruz *vs*. Honduras (1989); Massacre of Dos Erres *vs*. Guatemala (2009); Moiwana Community *vs*. Suriname (2007).

> the responsibility of remembering, and the right to know with surety the facts of the case (Supreme Court, 2007: Proceso No. 26945).

For these reasons, and

> (…) according to the presented information, it is not possible, under any circumstance, to consider that the behavior displayed by the indicted fits in any way the description of a political crime. The actions of which Caballero Montalvo stands accused are simply to be considered common crimes. The crimes that the indicted is charged with are aggravated conspiracy to break the law and the illegal production, trafficking, and carrying of weapons legally exclusive to use in the military (Supreme Court, 2007: Proceso No. 26945).

The above, established with the aim of assuring effective guarantees for the rights of victims, generated, in practice, great inconsistencies regarding the legal protection and the proportionality of sentences for perpetrators. While low-ranking ex-combatants would be prosecuted under regular criminal law to serve ten year sentences for conspiracy to break the law, those officers and leaders of illegal armed groups responsible for crimes against humanity would serve reduced sentences, under the stipulations of Law 975 of 2005, of only eight years.

C. Principle of Opportunity for the demobilized: Law 1312 of 2009

These conditions generated mistrust for the process amongst those seeking to demobilize. According to the data of the High Ministry for Reintegration, by December of 2009, there were 52,226 demobilized ex-combatants, 31,671 were part of collective demobilizations and 20,555 individual (ACR, 2011). The second report of the National Commission for Reparation and Reconciliation (Comisión Nacional de Reparación y Reconciliación, CNRR), "Reintegration: Achievements amidst rearmaments and unresolved issues", indicates that an important percentage of members of the nascent illegal armed groups, denominated Criminal Bands (Bandas Criminales or Bacrim), are ex-members of paramilitary groups. According to the report,

> (…) it has been established that at least 17% of the members of said illegal armed groups are ex-members of the AUC paramilitary organization (Autodefensas Unidas de Colombia). Although this is a minority percentage, it is composed of ex-national, regional, and front bosses as well as of instructors and personnel with military experience. This minority percentage constitutes a considerable military potential, and, in many cases, a political and economic potential as well, to the point that some have been key factors of the new paramilitary phenomenon.

This phenomenon, inevitably associated with the lack of confidence in a changing process with insufficient guarantee of security, has generated a constant worry, which, in turn, led the national government and Congress to create a series of alternative measures for judicial processing. In October of 2008, Congress contemplated the possibility of prosecuting the "group of 19,000" (the name given to the group of low-ranking ex-combatants) under the Principle of Opportunity.

Law 906 of 2004 institutes and defines the Principle of Opportunity as that apparatus of criminal policy that enables the National Attorney's Office to "suspend, interrupt, or renounce the pursuit of punitive prosecution", given a series of grounds for such actions established in the same law (art. 323 and on). In general terms, this has to do with the power, held by the National Attorney's Office, or whichever body acts in the capacity of plaintiff in these cases, to decline to initiate or continue with a criminal case for reasons of convenience and in certain specific instances.

> For example, someone who is a minor link of the larger chain of a criminal organization can collaborate in order to dismantle said organization in exchange for not being prosecuted. This is based on the hypothesis that it could result more beneficial for the State not to prosecute, giving impunity to the lesser criminal, in order to capture and bring to justice the officers and leaders of the same criminal organization (Reyes, 2008).

The application of this principle in such cases implies that though the State would initiate criminal investigations of each and every demobilized ex-combatant, it could decline to further pursue these cases with the end goal of contributing to peace and to the reintegration of these individuals to society, given that they would be complying with a set of commitments to the rights of victims to the truth, justice, and integral reparation.

On June 15 of 2009, through law 1312 of the same year, Congress approved a reform of the Principle of Opportunity that would include the application of this principle to low-ranking ex-combatants.

D. Unconstitutionality of number 17, article 2, Law 1312 of 2009: Sentence C-936 of 2010

On November 23 of 2010, nevertheless, the Supreme Court declared unconstitutional number 17, article 2 of this law, reasoning that its application precluded the possibility of ensuring the protection of the rights of victims to the truth, justice, and reparation, and that it grievously violated the principle of legality of the Rule of Law.

The Constitutional Court found that the power of reform of the legislative branch reaches its limits in matters such as those in which the State is legally obligated by

International Human Rights Law, International Criminal Law, and International Humanitarian Law, because

> (…) the violations of human rights and of International Humanitarian Law are much graver and more unacceptable than those offenses committed in other forms of criminality, due to the inherent implications for and effects on the human dignity of these. For these reasons, the Colombian State has united itself with the international community in the effort to sanction these conducts. The gravity of these behaviors exceeds the impassable limit of human dignity, in such a way that, for reasons of proportionality and of respect for its international commitments, the legislative branch could not forego criminal prosecution in these cases (Constitutional Court, C-095/07, C. J. 6.2.3.5.1).

For the same reasons the Court concluded:

> (…) the denial of the State to investigate and sanction those crimes that grievously affect human dignity is unacceptable as an expression of the criminal prosecution policy of the State. Such procedure is inadmissible, in apparent or real states of transition to peace, whether under the criteria of political convenience or public utility. The absence of investigation and sanctioning of this type of crimes translates to a disregard for the rights of victims to access effective judicial protections, and, through this, access to the truth, justice, and integral reparations. Such procedure also violates the international obligations of the State –customary and conventional– to investigate, indict, try and sentence the perpetrators of grievous human rights violations, crimes against humanity, and war-crimes, which sets the stage for the chronic repetition of these conducts (Constitutional Court, C-093/10, C. J. 63).

This conclusion of the Court created a need to establish a definitive legal framework that would resolve in an urgent fashion the situation of the thousands of demobilized individuals awaiting litigation and that would dissuade them from continuing to commit criminal acts. Again, the future of the "group of 19,000" remained uncertain and at the mercy of the ability of the State to quickly yet definitively resolve their legal situation.

E. "The Accord for Contribution to Historical Truth and Reparation": Law 1424 of 2010 and Regulatory Decree 2601 of 2011

On December 16, 2010, fifteen days following this urgent call to the national government to resolve the situation, Senate project 202 and House project 149 were approved, both with the aim of once and for all clarifying the legal status of the demobilized of low rank. With the purpose of giving "provisions of transitional justice that guarantee

truth, justice, and reparation to the victims of demobilized members of illegal armed groups", Law 1424 of 2010 states the following.

Table 1

Content of Law 1424 of 2010

Obligations of the demobilized	**The new functions of the Center for Historical Memory**	**Access to Information**
To be active or to formally end the reintegration process that is being led by the High Ministry for Reintegration (**Alta Consejería Presidencial para la Reintegración, ACR**).	To collect, classify, systematize, analyze, and preserve the information that emerges from the Acuerdos de Contribución a la Verdad Histórica y la Reparación defined in the law, as well as the information that is received, individually and collectively, by the demobalized combatants who have signed the Acuerdo de Contribución a la Verdad Histórica y la Reparación and those persons who voluntarily wish to make a statement about those issues which pertain to or are of an interest to the truth and historical memory.	All State entities, by virtue of the principle of coordination, will collaborate with the Centro de Memoria Histórica in order to accomplish its purposes. They must also offer any and all information they have at their disposal which relates to the Acuerdo de Contribución a la Verdad Histórica y la Reparación that the Law address, except when said information is confidential.
To not commit any crimes subsequent to demobilization.	To sign agreements, contracts, and all other legal acts that are necessary for the execution of its funtions and the develepment of its mandate.	The Centro de Memoria Histórica will be able to solicit the National Agency for Justice and Peace (Unidad Nacional para la Justicia y la Paz), of the National Attorneys Office, the documentation and information that is found in the legal phase with the purpose of contributing to the progressive construction of historical memory that guarantees the right to truth, justice, reparations, and non-repetition.

To sign a document which commits them to contribute to truth, history and reparation. The period to sign this accord expires on December 28th of this year. By not signing, they forfeit the possibility of accessing the benefits of the Law.	To produce periodical general reports that inform Colombian society of its advancement. These reports will be published and distributed by the media that is most conducive to reaching all of Colombian society.	
To participate in the social service and reparation activities that are established by the **Alta Consejería Presidencial para la Reintegración.**		
To sign the Accord for Historical Truth and Reparations before the **Alto Consejero Presidencial para la Reintegración.**		
To present themselves before the **Mecanismo no Judicial de Contribución a la Verdad y la Memoria Histórica,** where they should provide a clarification as to the structure of the illegal armed groups, the general context of their participation, and a guarantee that they will not repeat any violent acts.		

Source: "Constitutional Court clarifies the Law of the demobilized".

Revista Semana, October 13, 2011.

1.6 Charge of Unconstitutionality of Law 1424 of 2010: Press Release No. 41 of 2011 (Sentence C-771 of 2011)

On April 14, 2011, The Attorney's Collective José Alvear Restrepo and congressmen Germán Talero and Iván Cepeda declared various parts of Law 1424 of 2010 as unconstitutional as they ignore and so seriously affect the rights of victims. In the first of three charges, they adduce that applying mechanisms of transitional justice to the simple or aggravated crime of conspiring to break the law "ignores the responsibility of the State to investigate, judge, and sanction human rights violations, crimes against humanity, and violations of International Humanitarian Law". In the second they state that the prohibition of the use of the Accord for Contribution to Historical Truth and Reparation in lawsuits against those who have undersigned it or third parties, also violates the right to truth, justice, and reparation of the victims of confessed crimes. In the last, they claim that the inadmissibility of the court order that communicates to the parties of the process the ex-combatant arrest warrant is a violation of victims rights to justice and due process.

On October 13 of 2011, the Supreme Court passed a ruling on the charges in question and declared Law 1424 constitutional. In response to the first charge, the Court reasoned that the reach of the rights of victims is not universal and is subject to exceptional circumstances as in the application of measures of transitional justice. In this sense, constitutionality should be consonant with the applicable model of justice, with the aim of generating the spaces to ensure the guarantee of rights and reconciliation.

The Court's ruling accepted that Law 1424 is a norm of transitional justice and, for this reason, did not agree that the inclusion of the simple or aggravated crime of conspiring to break the law within the category of crimes whose perpetrators are eligible to be processed under this norm, be it a violation of the responsibility to investigate, try, and sentence such perpetrators. On the contrary, the Court established that

> (…) the application of the provisions of the law, that in this ruling have been explained, do not imply that the Colombian State must forego investigation and ruling in these cases, in particular, in the case of conspiracy to break the law, be it simple or aggravated. In fact, article 5 of this same mandate requires the existence of some judicial action within the framework of the law or, once the sentence given, that the conditional suspension of the fulfillment of the sentence that would have been imposed can be examined or not (Constitutional Court, 2011).

Many academics go even further in affirming that, in a transitional context, the prosecution of every individual involved in a war is impossible, and that it is not mandatory with respect to the international community, which has never established that conspiring to break the law is a crime against humanity or that it is a violation of human rights.

> It is clear that international law requires States to investigate and punish grievous human rights violations and international crimes as established in the famous case of Velásquez-Rodríguez of Interamerican Human Rights Court. However, the Interamerican Court –and much less any other international authority– has never ruled that merely belonging to a criminal group constitutes a human rights violation (Ambos, 2011).

With respect to the second charge, the Court established that within the framework of a transition towards peace, the constitutional precepts that underlay this process, like the privilege against self-incrimination, must be respected.

> Therefore, to permit within the scope of transitional justice that the information provided by an ex-combatant not generate adverse consequences for them, moreover specifically within the context of Law 1424 of 2010, is not contrary to the Constitution and does, in fact, comply with the purpose of the State for it seeks to secure a durable peace, justice, truth, the indemnification of victims, and the social reinsertion of ex-members of illegal armed groups (Ambos, 2011).

This remains true for the case of close family members as well (as mentioned in article 33 of the Constitution).

Finally concerning the third charge, the Court also ruled against the claimants considering that

> (…) this rule cannot be considered harmful to the interest of the victims, as the decision that the norms in question make not exceptionable is that of informing such persons about the request received, which far from harming them could even contribute to the defense of their interests. In fact, once notified of the presented request, and in the absence of any restriction present in the rules to this regard, those who feel affected by the measure of liberty requested by the government, could well deliver a writ or express themselves in some other way, asking the competent judicial authority to negate the benefit that would have been requested.

In this way, the rules in question were declared executable and are currently effective as the legal procedure for litigation in the case of low-ranking ex-combatants.

In summary, the following has been the legal pathway for the demobilization of low-ranking ex-combatants:

Table 2

	Law 418 of 1997 (Extended by the Law 728 of 2002 and the Law 1106 of 2011)	**Ruling 11 of July, 2007, Supreme Court of Justice**	**Law 1312 of 2009**	**Law 1424 of 2010**
Objective for creating the reglulation or ruling	To authorize the National Government to grant pardons to low -ranking ex-combatants, who are considered perpetrators of political crimes for their membership in an illegal armed group. Additionally, to give authorize the legal power of the cessation of the proceedings, the resolution of the preclusion of the inhibitory resolution or resolution of said ex-combatants who having been processed, confessed and still have not been convicted.	To establish that membership in an illegal armed group does not constiute a political crime. To declare that the membership does constitute the conspiracy to commit an aggravated crime, which cannot be subjected to amnesty, pardon, nor any measure of this nature.	To establish as grounds for enforcement the Principle of Opportunity in the case of low -ranking ex-combatents that have willingly demonstrated their reconciliation for their reincorporation to society and to collaborate in dismanteling of the blocs and fronts of their illegal armed groups.	To suspend the arrest warrant and the imprisonment of low-ranking demobilized combatants who signed the Acuerdos de Contribución a la Verdad Histórica y la Reparación.

Consequences	Low -ranking ex-combatents remained classified as political criminals, which made it possible to process them through the measures of amnesty and pardon.	Low-ranking ex-combatents lost their classification as political criminals and would be processed by ordinary courts for conspiracy to commit an aggravated crime which carries a charge of 6-10 years in prison.	It would have initiated a criminal investigation for aggravated conspiracy to break the law, but it would have applied the Principle of Opportunity once the demobilized combatent demonstrated their willingness to collaborate and commitment to peace. This law was determined unconstitutional by the ruling C-936 of 2010.	A criminal investigation is carried out and the demobilized combatent is convicted, but they can enjoy their freedom, as long as they have not committed a crime after their demobilization and have contributed to the historical memory and the reparations for the victims. This law was determined unconstitutional by the Constitutional Court.

Sourse: created by the author.

II. Legislation on demobilization in Colombia: the current panorama and topics of debate

As has been argued in this article, Colombian criminal prosecution policy with regard to demobilization has been diverse and inconsistent. Those who avail to Law 975 of 2005 face a long and cumbersome process. The rest have been subjected to uncertain and temporary procedures that contrast sharply with the pacts and promises made prior to their demobilization and make trusting in the process virtually impossible.

The above has not been far removed from the attention of the public authorities and of the consciousness of civil society, which in the long run assumes the consequences, positive or negative, of achieving peace, remaining at war, or being lost in transition. In the rushed search for alternative solutions, the State has created a heterogeneous and improvised set of legal tools, which are sometimes even contradictory, in an attempt to end the controversy surrounding the issue and has shown its incapacity to outline a clear and

consistent direction towards achieving reconciliation and durable peace. This unnecessary legal inflation has created precisely that which it sought to avoid: polemics, conflicts of interest, confusion, but, above all, a growing mistrust among those who would lay down arms in the legal and political institutions leading to their return to delinquent activities.

A. The model for transitional justice in Colombia

One of the clearest structural flaws with regard to peace in Colombia can be found, without a doubt, in its model of transitional justice. The Colombian context is singular in its kind, in which war and peace conflate in the same protagonists, the same victims, and the same spaces. Those who support peace remain alongside those who continue to insist on war, and the victims of innumerable counts of violence must continue to live alongside those who have recently laid down arms, without a previous process to ease into sharing space and to work out forgiveness and reconciliation.

Transitional justice is a model that applies in contexts of transition towards democracy and peace. It is defined as

> (…) all the varieties of processes and mechanisms associated with the attempts of a society to resolve the problems derived from a past of large-scale violence and violations, with the purpose of holding the perpetrators of abuses accountable for their acts, serving justice, and achieving reconciliation. Such mechanisms can be judicial or extrajudicial and can have varying levels of international participation (or forego it completely). Some examples include, legal prosecution of individuals, reparations, the search for truth, institutional reform, delving into personal histories, removal of charges, and, of course, different combinations of all these (UN, S/2004/616 III Para. 8).

As has been signaled throughout this article, the international community has been emphatic in maintaining that all processes of transition should be conducted with a strong focus on the respect for human rights, especially for the rights of victims to truth, justice, and integral reparations.

This debate has been central to the creation of laws for peace in Colombia. According to the report of the Secretary General of the UN titled, "The Rule of Law and the justice of transition in societies that suffer or have suffered conflicts",

> (…) justice and peace are not opposing forces; when they are constructed appropriately, they promote and sustain each other mutually. It follows then that the question can never be whether or not to seek justice and accountability, but rather when and how to do so (UN, 2004: Consideration No. 21).

Nevertheless, in cases such as Colombia's, the concepts of justice and peace seem to exclude and contradict each other, and so laws like the Law of Justice and Peace are

enacted, which have conciliatory focuses and that attempt to guarantee the rights of victims to truth, justice, and reparations and at the same time guarantee the right of ex-combatants to be reincorporated to civil society. Such laws attempt to encompass much more than what in political, judicial, and legal practice is possible. These laws, like Law 975 of 2005, propose a formula that is as eclectic as unenforceable or, as in the example of Law 1424 of 2010, aspire to process with illusory swiftness each of the total 126,000 demobilized low-ranking combatants involved in the peace process.

This provides strong evidence of the structural flaws of the transitional justice system in the country. We apply alternative forms of legal processing for ex-combatants in return for a fundamental contribution to durable peace, but criminal prosecution policy clearly remains punitive. In the words of Kai Ambos,

> (…) what we find is the development from a minimal criminal law, of *última ratio*, towards a maximal criminal law, of *prima ratio*, a displacement of the classic protective function of human rights faced with the repressive criminal law of the authoritarian State and a proactive and aggressive function for human rights, seeking to protect them through the criminalization of violators (2011).

This position, while viable as a criminal prosecution policy in a normal context, is unsustainable in a context such as Colombia's, in which there is neither the logistical capacity nor the adequate state structure to administer justice to the full extent required by Law 1424.

The full extent of Law 1424 requires the legal processing of each individual that has demobilized, meaning that each ex-combatant has until December 28, 2011, to comply with the proper authorities. For this to happen, the National Attorney's Office must open more than 126,000 cases of aggravated conspiracy to break the law, which also requires the previous signature of the ex-combatant of the Accord for Contribution to Historical Truth and Reparation with the High Ministry for Reintegration. Finally, after this is complete, the National Attorney's Office must also suspend the orders for capture of all those in compliance under the provisions of article 6 of this law.

Obviously, the swiftness and success of these actions are only a utopian desire.

> Everyone with a realistic perspective knows that these demands cannot possibly be fulfilled by the Colombian criminal justice system, nor, in fact, by any justice system in the world. It is purely a symbolic law, with which we return to the infamous attitudes of the colonial agents of the past, "I'll obey, but I won't carry out", and so graphically illustrate the classic divorce between the law and reality in Latin America (Ambos, 2011).

Considered with all the above, the possibility that all those ex-combatants called to register themselves with the High Ministry for Reintegration do so is very small.

> Subtracting the 15,000 guerillas and the 13,000 that aren't covered by the provisions of the law, Law 1424 really targets the 26,000 ex-paramilitaries. The first problem is that nobody has any idea about where a great portion of them are (…). Currently, the High Ministry for Reintegration (ACR), directed by Eder, has registered as active in the process of reintegration a total of 16,000 ex-paramilitaries. The rest, 10,000 more, are, more or less, lost: 6,400 register as "inactive", that is to say that ACR knows who they are, but that they are not participating in the program and their whereabouts are unknown. The remaining 4,000 never registered (*Revista Semana*, October 2011).

It is apparent, then, that the authorities have little more than two months to undertake the search for the ex-combatants that still have not registered, and these same ex-combatants have the same amount of time to be convinced to submit themselves to the law, amidst the serious doubts that surround the demobilization process.

B. What reintegration means

Lastly, the current situation of low-ranking ex-combatants raises the problem associated with their reintegration to civil life. Even for those who do sign the agreement as the law requires, reinsertion to the labor market will be very difficult. According to the Law 1424, the serving of their sentence will be suspended, but their incimination as perpetrators of conspiracy to break the law will remain on their Criminal Record, which will largely reduce their chances of being hired by potential employers.

In Colombia, the Disarmament, Demobilization, and Reintigration –DDR– process has placed a special emphasis on the first two parts of the process and ignored the third. The data which shows the thousands of combatents that demobilize annually and the number of arms that are turned-in, sharply contrasts with the number of ex-combatents who participate in reintegration programs. This is consistent with the elevated rates of desertion and the alarming outbreak of rearmament and generalized violence. At the same time, it is important to note that the Reintegration process is without a doubt the most delicate and complicated of the three.

> (…) reintegration is directly related to peaceful coexistence and social reconciliation. Neither of these constructive processes can be imposed, rather they must be developed in a interdependent and dynamic manner. This requires the cooperation of an entire society in order to succeed. All of the aforementioned signifies that reintegration is the most important factor in long-term stability and peace (Springer, 2005).

Reintegration implies nothing less than reliable guarantees of non-repetition for the victims, durable peace, and coexistence among old enemies. It also implies the difficult

route of legality over many other possible routes that are less risky and more lucrative, but that are also illegal.

> When a combatent joins an armed group, they are generally abandoning conditions in which they had nothing to lose. Many combatants have formed families and made community into the cornerstone of their livelihood after their involvement with these armies, not before (Springer, 2005).

In the words of Néstor Raúl Correa, there exists in Colombia a dilemma between the needs demanded by reparations of the victims and the importance for reintegration.

> Within the scope of this internal armed conflict and the processes of reinsertion, the question of the rights of the victims arises in order to resolve the tension between the concessions given to the reinserted ex-combatents and the obligation to compensate the victims. Between reinsertion and reparation lies the dilemma. On the side of reinsertion, transitional justice demands that reasonable concessions are made to armed groups that demobilize, given that they were not crushed militarily or politically but were offered a path toward peace. On the side of reparation, the individuals who have been victims of the violation of rights established by international and internal standards have the right to integral reparations (2007).

In response to these various needs, it is fundamental to consider that the reintegration process implies a complexity that requires interdisciplinary approaches. One approach focuses on the reconstruction of identity and morals on the part of the individual who is received by the community, while the other approach focuses, if not on full pardon, at least on peaceful coexistence and cooperation with those who receive them. To make this possible, the State must generate some basic conditions to build trust in the process. "The ex-combatent needs to believe that promises will be fulfilled, that the communities selected for their relocation will be prepared to receive and integrate them, and that their personal security will be relatively guaranteed" (Springer, 2005).

As is shown, the Colombian context is that of a legal route which is unreliable, unstable, and uncertain, which diminishes the possibilities for trust in the process. Moreover, if the legal framework has been confusing, the measures for involving communities in the transition have neem no better. The existing programs are reduced to local initiatives and do not involve civil society as a whole to decide on its options for building peace. Neither the legal, the political, nor the social measures implemented have fostered favorable environments for adequate for reintegration. This has resulted in a growing rate of desertion from the reintegration process and the creation of new illegal armed groups that perpetuate the same violence.

The country still has many obstacles to overcome in the design and implementation of its formula for peace. It must come to terms with the victims, who day-by-day suffer the indifference of a State that still does not recognize their pain. It must deal with the excombatents, who gradually find their willful participation in peace processes gradually

eroded by contradictory, unstable, and harmful legislation and so decide to forego remorse and return to a world of violence. Finally it must attend to civil society, which navigates between polemics and absurdity, adrift without any certainty for when transition will come to an end.

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