



Justice or Peace in Colombia

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Timing is everything. On September 20, Pope Francis met with former Cuban leader Fidel Castro in Havana. Three days later, Cuban President Raúl Castro was photographed in a three-way handshake with Colombian President Juan Manuel Santos and Rodrigo Londoño, known as Timochenko, the commander of the Revolutionary Armed Forces of Colombia (FARC). Castro's hands were clasped over theirs as if he were blessing a marital union. And, in a way, he was. The Colombian government and FARC had just announced that, after over two years of negotiations, they had come to an agreement on transitional justice, the last point on their four-point peace talks agenda.

As is the case with the "agreements" on the first three points of negotiation—land reform, the cessation of FARC drug trafficking activities, and FARC's right to form a legal political party—the plan for executing and enforcing the transitional justice scheme has yet to be publicly spelled out. But according to the Santos administration, the details will be finalized and an agreement will be signed within six months' time. At that point, the agreement will go to a public referendum. Until then, any agreements are largely symbolic. To be sure, that did not stop Santos from vaunting his administration's progress toward peace at the United Nations General Assembly this week.

But symbolic progress is still progress. When talks started in 2012, FARC negotiators demanded immunity from future trials. Back then, the demand seemed far-fetched—even insulting to the tens of thousands of men, women, and children whose lives were destroyed or lost at FARC's hands. After years of talks, the negotiators squared the circle by offering no immunity but promising that no demobilized FARC fighter who confesses his or her crimes—no matter how severe—will go to jail. It's hard to imagine many fighters choosing prison time, but those who do will serve five to eight years of something akin to house arrest and will be required to perform community service.

Some FARC members face extradition to the United States on drug trafficking or kidnapping charges. In the talks, FARC negotiators insisted that the Santos administration not comply with the United States in such case. Bogotá conceded to this demand. What's more, days after news of the agreement broke, Colombia's attorney general, Eduardo Montealegre, stated publicly that the Colombian Supreme Court could rule that drug trafficking was a legitimate form of financing a political struggle. In other words, the courts might not consider trafficking by FARC members a crime. Given that most of the \$10 billion Plan Colombia was earmarked for counternarcotics efforts, U.S. lawmakers will no doubt be seething.

Colombian critics of the transitional justice plan decry its lack of true justice, not only for the victims of FARC violence but also for the state. FARC committed terrorist acts that weakened the government's legitimacy and infringed upon Colombian citizens' democratic, civil, and human rights. For that, whether one regards the movement as a terrorist organization or as a political insurgency, FARC should be punished. However, once the Colombian government decided to negotiate with FARC, it was unrealistic to expect that the process would end with FARC facing conventional legal opprobrium. Other countries that have made peace with insurgents have forsaken traditional justice in the interest of peace. For example, in El Salvador, the Salvadorian Peace Accords signed in 1992 led to the government's granting general amnesty to the Farabundo Martí National Liberation Front (FMLN) combatants. and the peace has proved to be lasting.

If the Colombian people approve a peace deal, it remains to be seen whether FARC will hold up its side of the bargain. According to demobilized combatants with whom I spoke, some FARC fronts have stockpiled weapons that they will not surrender during the initial disarmament phase. The demobilized combatants also predicted that certain commanders, especially those who profit greatly from the drug trade, will shed the FARC uniform but will continue operations. The benefits and training offered to demobilized FARC combatants via Colombia's reintegration programs will not always prove to be enough to ensure combatants' ability to make an honest living. And few employers will be willing to hire former combatants without significant government incentives.

But, assuming FARC does, in fact, honor all tenets of the peace agreement, it will become a legitimate political party. This is another practical reason for establishing a transitional justice plan that keeps FARC members out of prison; they could not participate in national politics from behind bars. Seventeen years after evolving into a legal political party in El Salvador, an FMLN candidate was elected president in 2009 and served a five-year term. There's no reason to think that FARC won't evolve accordingly. Given the concessions that Colombian government has made on drug trafficking, it is unlikely that officials will insist that FARC not use (laundered) drug money to finance political campaigns and candidates, if only because it would be impossible to enforce. FARC's leftist and anti-U.S. politics may gain significant traction over time, especially with support by the like-minded in Venezuela, Cuba, Ecuador, and Bolivia.

In the end, it will be the Colombian citizens who accept or reject the peace agreement and all that comes with it, including the premise that transitional justice is necessary, even if it isn't fair. In the end, although justice won't prevail, peace might.

