



Humanitarian Action and the Politics of Transition: The Context of Colombia

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Executive Summary

What challenges are inherent for humanitarian practitioners when operating in a context of transition from protracted conflict to peace? This paper examines this question, focusing on Colombia as a case study. As a result of the decades long conflict in Colombia, as well as natural disasters, a host of serious humanitarian concerns persist in the country. The ongoing peace process between the government and the largest anti-government armed group in the country—the Revolutionary Armed Forces of Colombia, or FARC—while certainly a welcome development, yields an environment not only of protracted conflict but also of protracted transition. This paper discusses four particular issue areas relevant to operating in this context: grappling with the politics of denialism; the gap between the political negotiation agenda and the humanitarian issues facing the country; interactions between humanitarian actors and national transitional justice measures; and building linkages between humanitarian organizations and actors operating in other fields, such as development and peacebuilding.

Introduction

This paper examines key challenges arising from humanitarian action in transitional settings, focusing on the context of Colombia. In many ways, Colombia is distinct from the various “Level 3” emergencies that garner the majority of international donor and media attention. While the country struggles to emerge from decades of internal armed conflict, the presence of a relatively strong central government in Colombia has meant that the role of humanitarian organizations is primarily to “support,” rather than to “substitute,” the activities of the state.¹ Furthermore, peace talks between the government and Revolutionary Armed Forces of Colombia (FARC) have been underway since 2012, and the government has already instituted certain transitional justice measures, providing the sense that the country could be on the precipice of a transition to a post-conflict phase.

However, in light of the fact that peace talks have been taking longer than initially anticipated and that hostilities have escalated even as talks have continued, humanitarian actors are left to grapple with an environment defined not only by a protracted armed conflict but also by a protracted peace process with mixed prospects of success. Serious humanitarian needs persist, but the situation in Colombia has been dubbed a “forgotten”² or “invisible” crisis.³ This

¹ See Elizabeth Ferris, “Changing Times: The International Response to Internal Displacement in Colombia,” Brookings-LSE Project on Internal Displacement, Brookings Institution, Washington, DC (2014): 4, <http://www.brookings.edu/~media/research/files/papers/2014/12/29-idp-humanitarian-reform-reports/changing-timesthe-intl-response-to-internal-displacement-in-colombia-december-2014.pdf>.

² “Forgotten Crisis Assessment 2014,” European Commission's Humanitarian Aid and Civil Protection department, http://ec.europa.eu/echo/files/policies/strategy/fca_2014_2015.pdf; and Rainer Lucht, “Colombia—The dangers of civil-military cooperation in a forgotten humanitarian crisis,” *Voice out loud Newsletter* 13, (2011): 11, <http://www.ngovoice.org/documents/voice%2013%20HD.pdf>.

³ “Colombia’s Invisible Crisis,” *UNHCR*, <http://unhcr.org/v-49b7ca8d2>.

paper aims to contribute to understanding the dynamics for humanitarian practitioners of operating in such an environment, with a specific focus on the challenges that arise from the politics of the prolonged transitional process.

I. The Conflict in Colombia: Background and Recent Developments

Since the 1960s, Colombia has been ensnared in a low-intensity non-international armed conflict (NIAC) between government armed forces and numerous paramilitary groups, left-wing guerrilla organizations, and organized crime groups. Though consensus is lacking among Colombians about the nature of the drivers of the conflict, many analysts emphasize the role of structural issues, such as socio-economic inequality and political exclusion.⁴ The conflict escalated in the 1980s as armed groups and criminal networks became active in the illicit drug trade, using revenue from drug trafficking to finance weaponry and a major surge in personnel, contributing to an increase in urban violence in the country and severe security threats for the Colombian state.⁵

Efforts to bring the conflict to an end manifested in the 1990s as several agreements struck between the government and various armed groups.⁶ Then, from 2002 to 2010 (first under President Álvaro Uribe, and then under Juan Manuel Santos after Santos became president in August 2010), Colombia launched a military offensive that greatly reduced the size of FARC's forces, the largest guerilla group in the country.⁷ In August 2012, the Government of Colombia and FARC adopted the "General Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace," which outlines a framework for peace talks focused on six areas: 1) rural development and land reform, 2) democratization, including rights and guarantees for exercising political opposition, 3) ending the conflict, 4) solving the illicit drug trade problem, 5) truth-telling and human rights of the victims of the conflict, and 6) the implementation of the agreement.⁸ The government has also been engaging in preliminary talks with the National Liberation Army (ELN), though this process has not yet led to an agreement on a framework for formal peace talks.⁹

⁴ See Fernan E. Gonzalez, "The Colombian Conflict in Historical Perspective," *Accord* 14, (2004): 10, http://www.c-r.org/downloads/Accord%2014_2The%20Colombian%20conflict%20in%20historical%20perspective_2004_%20ENG.pdf.

⁵ See Vanda Felbab-Brown, "The Colombia Analogy and Its Limits" in *The Violent Drug Market in Mexico and Lessons from Colombia*, Policy Paper 12, Foreign Policy at Brookings, (2009): 9, http://www.brookings.edu/~media/research/files/papers/2009/3/mexico-drug-market-felbabbrown/03_mexico_drug_market_felbabbrown.pdf.

⁶ See "The Day after Tomorrow: Colombia's FARC and the End of the Conflict," *Latin America Report* No. 53, International Crisis Group, (2014): 3, <http://www.crisisgroup.org/~media/Files/latin-america/colombia/053-the-day-after-tomorrow-colombia-s-farc-and-the-end-of-the-conflict.pdf>.

⁷ *Ibid.*, 5.

⁸ "Colombia: Peace at Last?" *Latin America Report* No. 45, International Crisis Group, (2012): 34, http://peacemaker.un.org/sites/peacemaker.un.org/files/CO_120826_General%20Agreement%20for%20the%20Termination%20of%20the%20Conflict.pdf.

⁹ "Colombia's ELN Rebels: Peace Talks Near, Rule Out Jail," VOA, April 24, 2015, <http://www.voanews.com/content/reu-colombia-eln-rebels-say-peace-talks-near/2733988.html>.

Governmental efforts to address the needs of victims of the conflict include a series of transitional justice measures implemented since the 1980s. The major domestic legislation enacted includes the “Justice and Peace Law” of 2005, which focused on regulating accountability for demobilized members of armed groups;¹⁰ the “Victims’ and Land Restitution Law” of 2011, which created a reparations process for victims, including restitution for persons displaced as a result of the conflict;¹¹ and the “Reform of the Justice and Peace Law” of 2012, which aimed to correct many deficiencies in the 2005 law.¹² The Constitutional Court of Colombia has played a key role in this process. In a 2004 ruling, the court asserted that the government’s inability to effectively address the needs of internally displaced persons (IDPs) was “unconstitutional,” and in 2009, the court demanded the implementation of land reform to address the situation.¹³ The measures enacted, though, have evoked “peace versus justice” concerns from victims and international non-governmental organizations (NGOs);¹⁴ logistical complications have hindered victims’ access to social services;¹⁵ and security issues have impeded the laws’ implementation—for example, IDPs formally granted restitution have been reluctant or unable to return to their land due to threats or instability resulting from the ongoing conflict, and many land claimants have been assassinated or persecuted.¹⁶

Amidst the implementation of these transitional justice measures, and as the peace process continues to unfold, national and international actors continue striving to attend to Colombia’s humanitarian needs. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has estimated that 4.8 million people in Colombia are in need of humanitarian assistance in 2015.¹⁷ The conflict has led to the forcible displacement of over 6 million people, making Colombia’s IDP population the second highest in the world, surpassed only by Syria.¹⁸ Weapons contamination—including anti-personnel mines, unexploded ordnance, and improvised explosive devices—has resulted in deaths and injuries, adverse psychological effects on the civilian population, and mobility restrictions that limit humanitarian access to

¹⁰ For an overview see Eduardo Pizarro Leongómez, “Victims and Reparation: The Colombian Experience,” June 2010, http://www.icc-cpi.int/iccdocs/asp_docs/RC2010/Stocktaking/CNRR-Pizarro.pdf.

¹¹ For an overview see generally Nicole Summers, “Colombia’s Victims’ Law: Transitional Justice in a Time of Violent Conflict?” *Harvard Human Rights Journal* Vol. 25, no. 1 (Spring 2012), <http://harvardhrj.com/wp-content/uploads/2009/09/Summers.pdf>.

¹² Caitlin Trent, “Govt revises Justice and Peace Law,” *Colombia Reports*, October 18, 2012, <http://colombiareports.com/govt-revises-justice-and-peace-law>.

¹³ Summers, “Colombia’s Victims’ Law.”

¹⁴ See “Transitional Justice and Colombia’s Peace Talks,” *Latin America Report* No. 49, International Crisis Group, (2013), <http://www.crisisgroup.org/~media/Files/latin-america/colombia/049-transitional-justice-and-colombia-s-peace-talks.pdf>.

¹⁵ “A Land Title is Not Enough: Ensuring sustainable land restitution in Colombia,” Amnesty International, (2014): 43-46, <http://www.amnesty.org/en/documents/amr23/0031/2014/en>.

¹⁶ *Ibid.*, 32-37.

¹⁷ “2015 Strategic Response Plan: Colombia,” United Nations Office for the Coordination of Humanitarian Affairs, (November 2014), <http://www.humanitarianresponse.info/en/system/files/documents/files/SRP%20Colombia%202015%20EN.pdf>.

¹⁸ “ECHO FACTSHEET: Refugees and Internally Displaced Persons,” European Commission’s Humanitarian Aid and Civil Protection department, (June 2015), http://ec.europa.eu/echo/files/aid/countries/factsheets/thematic/refugees_en.pdf.

areas in need.¹⁹ Other key issues of concern include sexual and gender-based violence; the impact of the conflict on children, including widespread child recruitment; mobility restrictions due to ongoing insecurity; and a lack of institutional presence and capacity in large swaths of the rural sector, leading to limited access to potable water, adequate sanitation, and health services.²⁰ Furthermore, many Colombians suffer from “double vulnerability” from both conflict and natural disasters, which have included flooding, landslides, earthquakes, volcanic eruptions, droughts, fires, and tsunamis.²¹

Overall, the situation evokes the notion of “pessoptimism,” as asserted by the Head of the International Committee of the Red Cross (ICRC) delegation in Colombia.²² On the one hand, a great deal of hope exists that the current peace talks might finally bring the conflict between the government and FARC to an end. The fact that negotiations have led to various joint agreements (including agreements on five of the six negotiating areas included in the “General Agreement,” as well as a joint demining agreement) and that significant unilateral measures have been announced on key issues (such as FARC’s announcement in February 2015 that the organization will curtail its use of child soldiers) further supports the case for optimism. Furthermore, Colombia has strong and competent institutions, and a number of transitional justice measures are already in place to assist victims of the conflict; as Elizabeth Ferris of the Brookings-LSE Project on Internal Displacement notes, “[t]he government has developed the world’s most comprehensive legal system for IDPs, the constitutional court has played an impressively assertive role in protecting IDPs and civil society organizations in Colombia are among the world’s strongest.”²³ On the other hand, the armed conflict in Colombia continues to foster pessimism, with areas of the country inaccessible to humanitarian actors or state authorities and persistent violence that involves not only the government and FARC but also other armed groups, such as ELN, para-militaries, and criminal groups.²⁴ Furthermore, analysts widely acknowledge that the humanitarian crisis in Colombia will continue even after—and if—a peace deal is reached between the government and

¹⁹ “2015 Humanitarian Needs Overview: Colombia,” United Nations Office for the Coordination of Humanitarian Affairs, (October 2014), https://www.humanitarianresponse.info/en/system/files/documents/files/HNO_Colombia_2015_EN.pdf.

²⁰ Ibid.

²¹ Ibid.

²² Jordi Raich, “Colombia: Between the hope for peace and the reality of war,” in *Humanitarian Action in Colombia Activity Report 2012*, International Committee of the Red Cross, (2012): 6, <http://www.icrc.org/eng/assets/files/2013/colombia-report-2012-icrc-eng.pdf>.

²³ Ferris, “Changing Times,” 4.

²⁴ For hostilities between the government and FARC, see “Colombian Rebels Say Escalating Violence Poses Threat to Peace Talks,” Reuters, June 23, 2015, <http://www.trust.org/item/20150623192440-oxbgw>; “4 Colombian Soldiers Die When Helicopter Lands in Minefield,” *The New York Times*, June 22, 2015, <http://www.nytimes.com/aponline/2015/06/22/world/americas/ap-lt-colombia-rebel-attack.html>; “Colombian Farc Negotiator ‘Killed in Bombing Raid,’” *BBC News*, May 27, 2015, <http://www.bbc.com/news/world-latin-america-32897176>. For hostilities with the ELN, see Peter Murphy, “Colombia’s ELN Rebels Likely behind Bogota Blasts -President,” Reuters, July 3, 2015, <http://www.reuters.com/article/2015/07/03/colombia-explosions-eln-idUSL1NoZJoVV20150703>. For paramilitary groups, see Meredith Hoffman, “Paramilitaries Likely to Continue Terrorizing Colombia Even After a Peace Deal,” *VICE News*, November 9, 2014, <http://news.vice.com/article/paramilitaries-likely-to-continue-terrorizing-colombia-even-after-a-peace-deal>.

FARC.²⁵ In this “pessoptimistic” environment, regardless of how peace talks proceed, the humanitarian sector will continue to play a significant role in addressing the needs of Colombia's affected population. In the meantime, humanitarian actors must operate in a context defined by the politics of transition, as elaborated in the next section.

II. Colombia in Transition: Key Challenges for Humanitarian Action

This section addresses key challenges that humanitarian actors have encountered in Colombia, focusing specifically on four areas relevant to the transitional nature of the context. In particular, this section focuses on: 1) the reluctance at the political level to acknowledge the severity of the humanitarian crisis; 2) the divide between the peace talks and the country's humanitarian needs; 3) the interaction between international humanitarian actors and the transitional justice process; and 4) the need to build linkages with other related fields, such as development and peacebuilding. As this section describes, the transitional nature of this context has made these challenges a prominent and inescapable component of the operating environment.

a. The Politics of Denialism

One challenge in the context of Colombia is that—while notable efforts at the national level have been undertaken to support victims of the conflict, as discussed throughout this paper—public administrations have recurrently been reluctant to acknowledge the severity of the conflict, as well as the extent of the country's humanitarian programming needs. Under the Uribe presidency, this denialism manifested as the president's explicit denial of the existence of a NIAC, and therefore, the applicability of international humanitarian law (IHL). Governmental reluctance to qualify a situation of armed internal opposition as a NIAC is, of course, not unique to Colombia. Indeed, Uribe's public comments—branding FARC a “terrorist” group and expressing concerns that applying IHL would lend legitimacy to, and grant legal protections to, the organization²⁶—parallel those cited by other states combatting anti-government armed groups.²⁷

Regarding the impact of NIAC denialism on humanitarian protection efforts in Colombia, one author writes, “[w]ithout this legal framework, there would be no standards by which to observe and judge the behaviour of both actors, insurgency and government, in times of war.

²⁵ Raich, “Colombia: Between the hope for peace,” 6; and Francisco Rey Marcos and Sophie Duval, “The Humanitarian Dimension in the Aftermath of a Peace Agreement: Proposals for the International Community in Colombia,” Norwegian Peacebuilding Resource Centre, (February 2015), <http://www.humanitarianresponse.info/en/system/files/documents/files/Informe%20Final%20IECAH%20Ingl%C3%A9s.pdf>.

²⁶ See generally Sebastian Machado and Guillermo Otálora Lozano, “The Objective Qualification of Non-International Armed Conflicts: A Colombian Case Study,” *Amsterdam Law Forum* 4, no. 1 (2012): 58–77.

²⁷ See Dawn Steinhoff, “Talking to the Enemy: State Legitimacy Concerns with Engaging Non-State Armed Groups,” *Texas International Law Journal* 45, no. 1 (2009): 297.

Humanitarian and human rights organizations would lose their leverage.”²⁸ Furthermore, a Humanitarian Outcomes report published in 2011 concluded:

The Government of Colombia at the central level is focused on improving the image of Colombia on the international stage and acknowledges neither an ongoing state of internal conflict, nor the need for external assistance for humanitarian response. At least partially as a result, the Government has not allowed a standing UN [United Nations] appeal (or CAP [Consolidated Appeals Process]) in respect of conflict related issues, nor Flash Appeal for flood related issues. Whilst humanitarian actors in Colombia remain seized of the need for ongoing humanitarian programmes, and Government representatives at the local level or in technical positions speak openly of the issues related to armed conflict, any appeal for funds supporting an autonomous, or semi autonomous response mechanism, even informally, in Bogotá, New York or Geneva is extremely sensitive.²⁹

In other humanitarian crises, governments have denied consent for humanitarian operations or explicitly imposed constraints on the delivery of humanitarian relief.³⁰ Yet in this context, as the above quote indicates, the Colombian government has used its influence over governmental donors to control the humanitarian programming of international organizations and agencies operating in the country.³¹

After Santos assumed the presidency in 2010, he reversed course and recognized the existence of a NIAC in Colombia.³² This shift played a role in drawing FARC into the current peace talks,³³ and IHL has since served as a framework for national transitional justice measures and for public and confidential discourses with the government about humanitarian protection.³⁴ In this sense, the transitional context is actually defined not by NIAC denialism but by the

²⁸ Sandra Borda, “Providing relief in times of war: the role of the ICRC in the Colombian conflict during the Uribe administration (2002-2010),” in *Humanitarian Action: Global, Regional and Domestic Legal Responses*, Andrej Zwitter et al., eds., (New York: Cambridge University Press, 2015), 419.

²⁹ Glyn Taylor, “Independent Review of the Value Added of the Central Emergency Response Fund (CERF) in Colombia,” *Humanitarian Outcomes*, (2001): 7, <https://www.humanitarianoutcomes.org/sites/default/files/resources/HumanitarianOutcomesColombiaCERFFinalReport1.pdf>.

³⁰ See “ICRC Q&A and Lexicon on Humanitarian Access,” International Committee of the Red Cross, (June 2014), <http://www.icrc.org/eng/assets/files/2014/icrc-q-and-a-lexicon-on-humanitarian-access-06-2014.pdf>.

³¹ See also “Transitional Justice in Colombia,” *International Center for Transitional Justice*, 2008, <http://www.ictj.org/sites/default/files/ICTJ-Colombia-Justice-Brief-2008-English.pdf>; and “Bridging the Gap Between Policy & Practice,” Caritas Europa, (October 2011): 13, http://www.caritas.eu/sites/default/files/bridgingthegap_endefinite.pdf. Furthermore, during the Uribe presidency, the government imposed explicit constraints on access; see Borda, “Providing relief in times of war,” 420-421.

³² See “Colombia: Recognition of Armed Conflict a Positive Step,” *International Center for Transitional Justice*, May 12, 2011, <https://www.ictj.org/ar/node/6418>.

³³ See Mary Anastasia O’Grady, “Colombia’s Terrorists: Talk Talk, Fight Fight,” *Wall Street Journal*, October 5, 2014, <http://www.wsj.com/articles/colombias-terrorists-talk-talk-fight-fight-1412543243>.

³⁴ See Summers, “Colombia’s Victims’ Law.”

embrace of IHL as a relevant legal framework governing the conflict between the government and FARC.

However, the relevancy of IHL to violence between the government and other armed groups is a hotly debated issue. In the event that the government and FARC succeed in reaching an agreement, governmental acknowledgement of the continued applicability of IHL in the midst of violence with other groups might once again become a contested issue, as it was during the Uribe administration. Additionally, the challenge of matching donor interest with humanitarian needs continues. A 2014 publication from the Brookings-LSE Project on Internal Displacement found that a successful conclusion to the peace talks could actually widen the gap between humanitarian needs and available resources:

While many expect the violence to increase—at least in the short term—after the signing of the peace agreement, at the same time there are real fears about declining international support. Given the large number of major humanitarian crises in the world, will donors reduce their funding for a middle-income post-conflict country like Colombia? Funding for civil society organizations has already decreased and some NGOs have reduced their programs and/or are working more as government contractors. There will also be pressure within international humanitarian agencies to shift funds away from Colombia to other emergencies. As one of the international representatives interviewed said, “my biggest headache is convincing headquarters in Geneva why it’s still important for us to be working in Colombia.”³⁵

The overall challenge that this comment suggests is the need to build on the positive steps that have been taken by cultivating the will to sustain donor attention and humanitarian programming, even when it is the very forward motion toward peace itself that could lead international actors to de-prioritize this context in relation to other humanitarian crises.

b. The Gap Between Political Negotiations and Humanitarian Needs

It is also important to note that, though the peace talks yield the perception that the conflict might soon conclude, the negotiations that are occurring have little to do with the humanitarian crisis in the country. Progress towards peace and reconciliation do not necessarily correlate with humanitarian needs and population-based outcomes, and moreover, successful negotiations do not by themselves improve humanitarian outcomes, nor should they impel the dismantling of protection mechanisms. First, the gap between the items on the agenda for negotiations and the priority issues of concern for the humanitarian sector—such as the needs of IDPs, the impact of the conflict on children, and gender and sexual-based violence—is stark. While, as noted earlier, a number of transitional justice mechanisms have been created to provide reparations and assistance to victims of the conflict, including IDPs, as one analyst has stated, humanitarian issues remain “taboo” in the negotiations.³⁶ Only one item in the “General Agreement” to which the government and FARC agreed relates to the humanitarian needs of individuals affected by the conflict. This item, the fifth agenda item

³⁵ Ferris, “Changing Times,” 40.

³⁶ Rafael A. Prieto Sanjuán, “Humanitarian Action During Transition: Lessons from Colombia,” ATHA podcast, May 28, 2015, <http://www.atha.se/webcast/humanitarian-action-during-transition-lessons-colombia>.

listed in the document, focuses on the importance of transitional justice and states: “Compensating the victims is at the heart of the agreement between the National Government and FARC-EP. In this respect, the following will be addressed: 1. Human rights of the victims. 2. Truth.”³⁷ Though the transitional process has entailed other developments of humanitarian importance—for example, the demining agreement and FARC’s announcement on child soldiers—humanitarian needs are likely to endure unmet even in these areas, as this section examines in greater detail below.

Second, though humanitarian actors have expressed the importance of advocacy in the context of the peace talks, humanitarians have remained largely excluded from the formal peace process. The confidential nature of the negotiations has evoked criticisms that the voices of humanitarian actors, victims, local communities, and civil society groups have not been appropriately considered and heard.³⁸ Such criticisms did lead to the organization of public forums at the national and regional level, organized by the United Nations Development Programme (UNDP) and Universidad Nacional, to collect input from civil society groups on each of the five points; nonetheless, views of the process among civil society are diverse and complex, making it difficult to effectively channel broader participation into concrete outcomes, and the absence of civil society and humanitarian groups at the negotiating table remains a point of contention.³⁹ Indeed, the exclusion of humanitarian voices has largely proceeded in parallel with the exclusion of humanitarian agenda items during the negotiations. However, greater participation in what is essentially a political process could also bring humanitarians’ neutrality into question, jeopardizing their ability to operate effectively in the future. Only the ICRC has directly played a key role in supporting the talks by facilitating the transfer of members of FARC to Cuba, where the negotiations are proceeding.⁴⁰ Beyond this operational role, though, the impact of humanitarian actors on the negotiations appears to be rather minimal.

Third, the extent of the progress made in the negotiations evokes the “pessoptimism” inherent in this context. On the one hand, over the past several years, the government and FARC have reached a series of piecemeal agreements: in May 2013 on land reform,⁴¹ in November 2013 on the political participation of ex-rebels,⁴² in May 2014 on ending the drug

³⁷ “Colombia: Peace at Last?” 35.

³⁸ Jorge Orlando Melo, “Challenges facing the Colombian peace negotiations,” Norwegian Peacebuilding Resource Centre, (November 2013): 2, http://peacebuilding.no/var/ezflow_site/storage/original/application/eod5646f08cb959623b952bca6e27903.pdf.

³⁹ Liliana Zambrano and Felipe Gómez Isa, “Participation of civil society in the Colombian peace process,” Norwegian Peacebuilding Resource Centre, (July 2013), http://www.peacebuilding.no/var/ezflow_site/storage/original/application/ab5b7f705279f72c3dee76a00eafdfef.pdf.

⁴⁰ “Humanitarian Action in Colombia Activity Report 2012” International Committee of the Red Cross, (2012), <http://www.icrc.org/eng/assets/files/2013/colombia-report-2012-icrc-eng.pdf>.

⁴¹ Juan Forero, “Land Reform a Breakthrough in Colombian Peace Talks,” *The Washington Post*, May 26, 2013, http://www.washingtonpost.com/world/the_americas/land-reform-a-breakthrough-in-colombian-peace-talks/2013/05/26/9e4453fc-c645-11e2-9245-773c0123c027_story.html.

⁴² “Colombia Agrees Farc Political Participation,” *BBC News*, November 6, 2013, <http://www.bbc.com/news/world-latin-america-24842432>.

trade,⁴³ in March 2015 on a joint demining effort,⁴⁴ in June 2015 on forming a truth commission,⁴⁵ and in July 2015 on de-escalating the conflict, creating cause for optimism.⁴⁶ On the other hand, it is important to note that the agreements struck during the peace talks do not formally take effect until both parties sign a final agreement. As stated in the “General Agreement” outlining the framework for the negotiations, “The talks will be held under the principle that nothing is agreed until everything is agreed.”⁴⁷ Moreover, further delays are likely to arise from the phased implementation of the framework itself, and given the likely persistence of humanitarian needs even after an agreement is reached, the need for humanitarian operations will continue.

Furthermore, in relation specifically to FARC's unilateral announcement in February 2015 on child soldiers and the announced joint demining effort, the forward motion achieved belies the difficulties that remain ahead. Regarding child soldiers, FARC announced that the organization would cease recruiting soldiers under the age of seventeen and would discharge thirteen child soldiers under the age of fifteen.⁴⁸ However, by setting the minimum recruitment age at seventeen, this announcement does not bring FARC's policies into alignment with the language of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which states that “armed groups [...] should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.”⁴⁹ Additionally, the question remains of the fate of other presumed child soldiers used by the FARC—some estimates place the number in the thousands⁵⁰—as well as those children used by various other armed groups in the country. As Frederick Spielberg of the United Nations Children's Fund (UNICEF) in Colombia has stated:

We think it's a good sign that this statement has been made. We welcome it. But there's still a great distance to go. I should point out also that even though FARC is the organization, the non-state armed actor, that's negotiating with the government in Havana, there are several other non-state armed groups in the country that are still very much active, including the ELN, the National Liberation Army; the EPL [Ejército Popular de Liberación]; various post de-mobilization groups, which are basically the

⁴³ “Colombia and Farc Rebels Agree on Drug Trade Plan,” *BBC News*, May 17, 2014, <http://www.bbc.com/news/world-latin-america-27451784>.

⁴⁴ Christian Voelkel, “Demining the Path to Peace in Colombia,” *International Crisis Group*, March 10, 2015, <http://blog.crisisgroup.org/latin-america/2015/03/10/demining-the-path-to-peace-in-colombia>.

⁴⁵ “ICTJ Welcomes Historic Agreement to Create Truth Commission in Colombia,” *International Center for Transitional Justice*, June 11, 2015, <http://www.ictj.org/news-colombia-ictj-welcomes-truth-commission>.

⁴⁶ “Colombia, FARC Reach Agreement on de-Escalating Conflict,” *ABC News*, July 13, 2015, <http://www.abc.net.au/news/2015-07-13/colombia-farc-reach-agreement-on-de-escalating-conflict/6614204>.

⁴⁷ “Colombia: Peace at Last?” 36.

⁴⁸ See “Colombian Farc Rebels ‘Will Discharge Fighters under 15,’” *BBC News*, February 17, 2015, <http://www.bbc.com/news/world-latin-america-31501537>; and Adriaan Alsema, “FARC Bans Recruitment of Child Soldiers,” *Colombia Reports*, February 12, 2015, <http://colombiareports.com/farc-bans-recruitment-child-soldiers>.

⁴⁹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted by UN General Assembly, Res. 54/263, 25 May 2000, Annex I, Article 4(1).

⁵⁰ Adriaan Alsema, “FARC Vows to Release Active Child Soldiers under 15,” *Colombia Reports*, June 15, 2015, <http://colombiareports.com/farc-vows-to-release-active-child-soldiers-under-15>.

leftovers from the right wing paramilitaries, which were ostensibly demobilized in the middle of the 2000s but have morphed into urban mafias, which continue to recruit children under the age of eighteen. So yes it's a positive step, but there's still a long distance to go.⁵¹

Similarly, the demining agreement has been welcomed as a positive step forward, but the pilot program currently being implemented focuses only on areas that FARC does not currently deem to be militarily beneficial.⁵² The political will of FARC to demine areas still considered to be essential for the defense of its forces will hinge on the agreement of a bilateral ceasefire between the government and FARC, which thus far has proved to be elusive. In this sense, these issues point to the challenge that the previous section highlighted: the need of humanitarian actors to engage in sustained advocacy with various relevant entities, including the parties to the conflict and donor governments, in order to make it clear that despite progress, there is nonetheless a need for sustained humanitarian operations to address the continued humanitarian needs.

c. Support for the Transitional Justice Process

The agreement reached by the government and FARC to create a truth commission suggests significant transitional justice measures yet to come, though some transitional justice measures have already been put into place before the end of the conflict. Current ongoing efforts, as mentioned earlier in this paper, include an institutional framework for reparations established by domestic legislation enacted since 2005. Notably, the “Reform of the Justice and Peace Law” of 2012 divorced the process of establishing victimhood from the process of establishing criminal culpability. Under this system, persons who qualify as victims under the law, after gaining official victimhood status by presenting a written declaration and supporting evidence demonstrating the events that occurred and the damages suffered, gain access to services that include education, healthcare, and psychological support programs.⁵³ Thus far, approximately 5.2 million people have registered for the official reparations program, and 400,000 have received reparations.⁵⁴

Humanitarian organizations have embraced the role of supporting the reparations program and have hailed their successes at funneling people into the program. The ICRC has provided institutional support for the process, as stated in the organization's 2012 activity report:

There are also many victims who have not been able to file their statement with the Ministry of Public Affairs offices. Aware of the extent of the problem, the ICRC supported the organization of 20 days of massive statement-filing operations in the departments of Córdoba, Chocó, Valle, Putumayo and Nariño. These efforts enabled

⁵¹ Frederick Spielberg, “Humanitarian Action During Transition: Lessons from Colombia,” ATHA podcast, May 28, 2015, <http://www.atha.se/webcast/humanitarian-action-during-transition-lessons-colombia>.

⁵² Adriaan Alsema, “Landmines to Be Removed near Urban Centers 1st and Remote Areas Later: FARC,” *Colombia Reports*, March 24, 2015, <http://colombiareports.com/landmines-to-be-removed-near-urban-centers-1st-and-remote-areas-later-farc>.

⁵³ See Summers, “Colombia’s Victims’ Law.”

⁵⁴ Alvin Powell, “A hard look at war’s reparations,” *Harvard Gazette*, August 7, 2015, <http://drclas.harvard.edu/news/hard-look-war%E2%80%99s-reparations>.

2,520 families (12,445 people) to file their statements which, once assessed by the integrated victim assistance and reparation unit, will enable them to be included in the unified register of displaced persons, making them eligible for assistance and reparation.⁵⁵

The vital role of international humanitarian organizations in cultivating public trust in the reparations program is indicated by recent comments of the Country Director in Colombia for the Norwegian Refugee Council:

So an important part of our work is actually then to provide access to this framework and to allow people to be part of it. You have, just a few days ago, I was out being part of one of these massive registration campaigns that we do together with state institutions, and it was the same attempt that was done for the same population a year ago, and no one came out to register. This year, we saw that the entire community, in a community that had lived among paramilitaries for many years, and where every family had victims, they came out and registered. So we see that us being part of this, as an international humanitarian organization, gives trust, allows people to register and allows people to gain access to their rights.⁵⁶

But there are limits to what can be achieved, given the security environment and the capacity limitations of the national and local entities responsible for the program's administration.⁵⁷ The difficulties faced in restitution efforts particularly demonstrate this issue. The National Victims' Survey found that 15% of displaced persons in Colombia have not registered with the official victim's registry.⁵⁸ In many cases, formal restitution has been granted, but displaced persons cannot actually claim their land due to the ongoing nature of the conflict.⁵⁹ In such cases, when victims have either been reluctant or unable to register, or have registered but still wait for restitution or reparations, there remains a need for humanitarian organizations to fill the assistance gap.

In addition to these complexities, a broader, overarching issue is that the finite list of types of victims who can achieve victimhood status under the law excludes many persons with significant humanitarian needs. The law defines a victims as “any person who has suffered after January 1st, 1985 direct damage by an offense as a result of violations of international humanitarian law or gross violations to the international human rights standards, which

⁵⁵ “Humanitarian Action in Colombia Activity Report 2012,” 35.

⁵⁶ Christian Visnes, “Humanitarian Action During Transition: Lessons from Colombia,” ATHA podcast, May 28, 2015, <http://www.atha.se/webcast/humanitarian-action-during-transition-lessons-colombia>.

⁵⁷ For an overview of the specific obstacles, see “2015 Humanitarian Needs Overview: Colombia.” See also “Overview of UNHCR’s Operational Strategies in the Americas,” Executive Committee of the High Commissioner’s Programme, United Nations High Commissioner for Refugees, February 21, 2013, <http://www.unhcr.org/513f017515.pdf>. On delays in registering IDPs as a result of capacity issues, see “Evaluation of European Commission’s Humanitarian Activities in Colombia: Final Report,” European Commission’s Humanitarian Aid and Civil Protection department, November 2012, <http://ec.europa.eu/echo/files/evaluation/2012/Colombia.pdf>.

⁵⁸ “2015 Humanitarian Needs Overview: Colombia.”

⁵⁹ “A Land Title is Not Enough,” 32-37.

occurred during the internal armed conflict (article 3).”⁶⁰ Yet many concerns have been expressed that the law does not cover people affected by natural disasters, drug violence, and violence from post-demobilization armed groups.⁶¹ Additionally, individuals previously tied to guerrilla or paramilitary organizations are prohibited from lodging a “victim” claim, as are victims of organized criminal groups or common crime.⁶² In other instances, displaced persons have been ineligible for restitution because they fall outside of the recognized categories of victims recognized by law—namely, the law only encompasses those displaced before 1991.⁶³

What does it mean for humanitarian actors to support this system, which is “cause”-based, whereas humanitarian relief is supposed to be fundamentally “needs”-based? The principle of impartiality dictates that humanitarian action should be carried out on the basis of need alone, giving priority to the most urgent cases of distress and without adverse distinction. In this context, though, the concern has been expressed that the transitional justice program creates a “class” system by which certain sectors of the affected population are granted services by the state that are denied to others.⁶⁴ Humanitarian actors have previously encountered tensions between humanitarian principles and support for Colombian state-led programs due to concerns about the politicization of humanitarian action.⁶⁵ Regarding the reparations and restitution program, though, the issue is not politicization but rather a question about how these two distinct paradigms—transitional justice and humanitarian action—can and should operate in coordination with one another.

d. Building Linkages with Related Fields

The transitional nature of the context also necessitates the engagement of practitioners in a wide array of other fields, including development; peacebuilding; disarmament, demobilization, and re-integration; and security sector reform. Yet a recurrent theme running throughout assessments of the transitional process in Colombia is the lack of sufficient

⁶⁰ Xiomara Cecilia Balanta Moreno, “Victims and Reparations: Limitations and Challenges Colombia Victims Law (Act 1448 of 2011),” *International Journal of Humanities and Social Science* 4, no. 5(1), March 2014: 155, http://www.ijhssnet.com/journals/Vol_4_No_5_1_March_2014/19.pdf.

⁶¹ See “Evaluation of European Commission’s Humanitarian Activities in Colombia,” and Moreno, “Victims and Reparations.”

⁶² Anna Wherry, “Defining Victimhood: An Ethnographic Exploration of Colombia’s Victims Law” (Senior Honors Thesis, The Johns Hopkins University, 2014), http://krieger.jhu.edu/woodrowwilson/wp-content/uploads/sites/3/2014/08/Defining-Victimhood_Senior-Thesis-2014_Anna-Wherry.pdf.

⁶³ “15 Facts about Colombia’s Land Restitution Process,” *Amnesty International USA*, November 26, 2014, <http://www.amnestyusa.org/news/news-item/15-facts-about-colombia-s-land-restitution-process>.

⁶⁴ Specifically, a researcher with the National Center for Historical Memory stated that victims of drugs, who do not qualify as victims under the law, “cannot be second class citizens.” See “Colombia’s drug trafficking victims ‘should be recognized as conflict victims,’” *Colombia Reports*, December 1, 2014, <http://colombiareports.com/colombias-drug-trafficking-victims-recognized-conflict-victims>. The concern about a “class” system was also raised by a humanitarian practitioner in an on-line chat discussion hosted by ATHA; see “Humanitarian Action During Transition: Lessons from Colombia,” ATHA podcast, May 28, 2015, <http://www.atha.se/webcast/humanitarian-action-during-transition-lessons-colombia>. See also Charo Mina-Rojas, “Victims Law Decree Fails Afro-Colombian Communities,” *North American Congress on Latin America*, November 5, 2014, <http://nacla.org/news/2012/2/3/victims-law-decree-fails-afro-colombian-communities>.

⁶⁵ See generally Lucht, “The dangers of civilian-military cooperation;” and Borda, “The Role of the ICRC,” 409.

engagement between humanitarian actors and these related fields. For example, the Brookings-LSE Project on Internal Displacement has emphasized the “paucity of creative thinking in coming up with ways for development and humanitarian actors to work together to find solutions”⁶⁶ and the importance of “bridging a wide divide between humanitarian and development actors and those actors working on peacebuilding and security sector reform, at the international, national, regional and local level.”⁶⁷ In the same vein, a Norwegian Peacebuilding Resource Centre publication asserts:

The tensions between these two approaches [humanitarian action and peacebuilding]—resulting from the risk of compromising humanitarian principles and affecting humanitarian access, given the political nature of peacebuilding—has made humanitarians reluctant to support or become involved in longer-term initiatives that do not necessarily respond to humanitarian needs. Nevertheless, there are also cooperation opportunities that allow humanitarian action to support peacebuilding efforts without compromising its principles. For example, the shared interests between the humanitarian and peacebuilding realms in strengthening community-based and institutional response capacities favour more coordination between the two approaches. Moreover, the dialogue between both realms is essential to prevent eventual gaps caused by the decreased involvement of humanitarian organisations or their departure from specific regions.⁶⁸

This issue brings forth a genuine tension for the humanitarian sector. On the one hand, humanitarian action was originally envisaged as a distinct field that would respond to short-term emergencies and guard against the risk of actual or perceived politicization by drawing clear lines around the sector's activities. This manifests itself in operational plans and budgets with short time horizons, lasting sometimes only a few months to a year. On the other hand, in recent years, the chronic and recurring nature of complex emergencies necessitating longer-term engagement and the need for building linkages with other fields has come to be seen to be an important aspect of contributing in a meaningful way to a holistic response to alleviating humanitarian needs in a given context. In transitional settings, this dilemma becomes more acute as attention shifts more prominently to continuing to enhance people's livelihoods once the conflict ends.

III. Conclusion

The case of Colombia highlights a number of the challenges faced by humanitarian actors in transitional contexts. Many of the issues that this paper has examined—politics dictating

⁶⁶ “Ten Years After Humanitarian Reform: How Are IDPs Faring? A Summary,” Brookings-LSE Project on Internal Displacement, Brookings Institution, Washington, DC (2014): 9, <http://www.brookings.edu/~media/research/files/papers/2014/12/29-idp-humanitarian-reform-reports/brookings-idp-study-summary-dec-2014.pdf>.

⁶⁷ Maria Derks-Normandin, “Building Peace in the Midst of Conflict: Improving Security and Finding Durable Solutions to Displacement in Colombia,” Brookings-LSE Project on Internal Displacement, Brookings Institution, Washington, DC (2014): 30, <http://www.brookings.edu/~media/research/files/papers/2014/09/16-displacement-colombia-derks-normandin/building-peace-in-the-midst-of-violenceimproving-security-and-finding-durable-solutions-to-displacement-in-colombia-september-17-2014.pdf>.

⁶⁸ Marcos and Duval, “The Humanitarian Dimension,” 2.

programming and funding, interactions with flawed state-run programs, and struggles to build linkages with related sectors, such as development and peacebuilding—are not unique to transitional settings. However, the transitional nature of the context of Colombia brings these issues to the forefront. Moreover, in several important ways, an exploration of the protracted transitional nature of the context in Colombia yields relevant lessons for humanitarian operations in other transitional settings.

First, the politics of denialism, or reluctance of authorities to recognize the severity of the conflict and resulting humanitarian needs, has hampered humanitarian assistance and protection efforts. Due to the prevailing political environment, the government has an incentive to adopt a public posture that progress is being made, leaving humanitarians to advocate for sustained programming and funding amidst an environment that seems to be transitioning to a post-conflict phase. These issues suggest that transitional settings evoke a different kind of access issue for humanitarians: not a recalcitrant government imposing constraints, but rather a government that is outwardly receptive to international humanitarian access, though with an interest in controlling programming through other means—for example, through political influence over donors.

Second, while peace talks may yield a great deal of hope about the end of conflict, a gap frequently remains between peace agenda items and key humanitarian concerns, especially in the case of protracted conflicts that have produced adverse and pervasive societal effects over years, decades, or even generations. While civil society is finding new ways to participate in formal and informal peace processes, humanitarian actors still tend to play a marginal role, and political negotiations tend to underemphasize priority humanitarian issues, such as, in the case of Colombia: the needs of IDPs, conflict-affected children, and victims of sexual violence; population confinement and restrictions on humanitarian access by armed groups; and the humanitarian consequences of urban violence and crime. As a result, in such contexts, significant humanitarian needs will continue beyond the conclusion of a formal peace agreement.

Third, the history of peace processes indicates that political actors reaching peace agreements do have an incentive to address the needs of victims of the conflict and tend to do so through the lens of transitional justice. While this is a positive development, it can also lead to the problems discussed in this paper: certain vulnerable populations are left out and humanitarian actors are placed in the difficult position of maintaining adherence to the principle of impartiality, which dictates that humanitarian assistance be “needs”-based, while supporting transitional justice efforts that are essentially “cause”-based and that establish hierarchies of victimhood linked to the conflict.

Fourth, protracted humanitarian crises necessitate that humanitarian actors make linkages with other fields—especially peacebuilding and development—leading to tensions between the needs of the transitional context and the short term and the emergency-minded mandates of the organizations and agencies responding. In such transitional contexts, humanitarian practitioners recognize the necessity of addressing the underlying causes that drive humanitarian vulnerability and need but struggle with challenges resulting from differences in mandates and organizational capacity, different organizational cultures in these fields, a lack of coordination mechanisms, and the politicized nature of some of these other activities.

Despite the fact that these issues are common to a number of transitional settings, insufficient research and policy attention has been devoted to the implications of these trends for humanitarian action in such contexts. It would benefit the humanitarian sector to cultivate a firmer understanding of the different challenges and dilemmas inherent to transitional settings as unique operational contexts, especially given the trend of protracted internal conflicts necessitating protracted humanitarian engagement. Such an understanding could be facilitated by a comparative analysis of humanitarian action in different transitional settings, to inform the further development of humanitarian and government policy and operations not only in Colombia but also in other transitional settings. Devoting a higher degree of analytical attention to this area could only further the humanitarian sector's efforts to cultivate agility in terms of adapting approaches and strategies to the needs of different environments.

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