

Promising Practices

On the human rights-based approach in German development cooperation Peace-building: Support to survivors of gender-based violence and to indigenous people in Colombia

Background

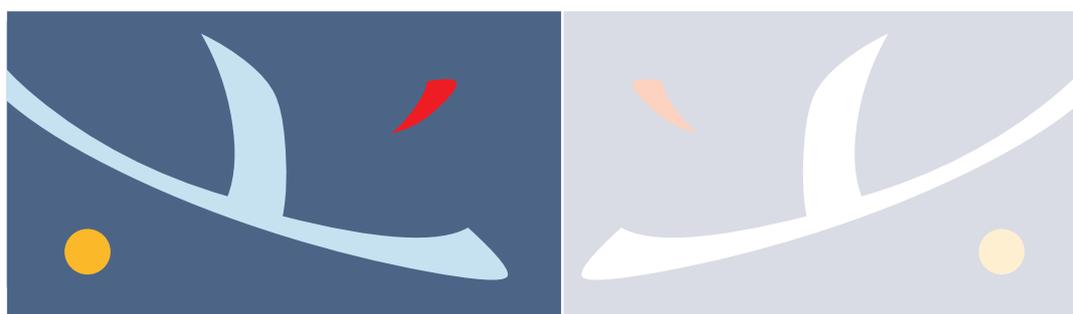
On 26 September 2016, the Colombian government and the guerrilla group FARC (*Fuerzas Armadas Revolucionarias de Colombia*) signed a historic peace agreement. It marked the end of long-lasting peace negotiations. However, the subsequent referendum did not endorse the peace agreement. It was then re-negotiated and adopted by the Senate and Parliament of Colombia shortly thereafter, hence it is now in force.

Since the 1960s, Colombia has been enduring one of the longest-running internal armed conflicts in the world, fought among the Colombian Armed Forces, guerrilla groups and paramilitary structures. War crimes and crimes against humanity have been perpetrated by all parties. Indigenous peoples have often been displaced from their ancestral territories. Sexual violence against women and sexual minorities has been extensively employed as a strategy of warfare.

Transitional justice efforts have been underway for the past decade. In 2003, the Colombian government and the AUC (*Autodefensas Unidas de Colombia*, a paramilitary umbrella organisation) negotiated a peace agreement, which included the general principles of what would later become the Justice and Peace Law (*Ley de Justicia y Paz*). In

spite of this, the armed conflict and ensuing human rights violations and threats against human rights defenders have been ongoing. Beside the FARC, a second guerrilla group, the *Ejercito de Liberación Nacional* (ELN) has been involved in the conflict. As of mid-2016, the Colombian government and the ELN are still negotiating a peace agreement. Some former members of the AUC have re-grouped and formed so-called neo-paramilitary groups. It is therefore important to note that the transitional justice process analysed below has taken place within the context of an ongoing armed conflict as well as high levels of violence caused by organised crime.

The Justice and Peace Law, which was enacted in 2005, constitutes the legal framework for Colombia's transitional justice process. It establishes a series of mechanisms to satisfy victims' rights to truth, reparations and justice, and to promote reconciliation between victims and perpetrators. The AUC declared its willingness to disarm and lead the over 30,000 former combatants to reintegrate into society. Under the law, former combatants are required to fully confess their crimes, admit to their responsibility, and support the judicial investigations; they must also promise not to reoffend. By complying with these requirements, they are granted a sentence ranging from five up to eight years imprisonment instead of up to 60 years.



Human Rights Framework

Transitional justice principles (truth, justice, reparations and guarantees of non-recurrence) derive from several human rights, among them the rights to access to justice and to an effective remedy as well as to physical integrity. These are granted by the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights as well as the Geneva Conventions on international humanitarian law. The recent International Convention for the Protection of All Persons from Enforced Disappearance, in its Article 24, stipulates the right of victims to know the truth regarding the circumstances of enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. States shall take appropriate measures in this regard.

Other relevant human rights instruments are the United Nations Updated Set of Principles to Combat Impunity and the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Colombia has ratified most core international human rights treaties as well as those from the Inter-American human rights system. The Government also recognises international humanitarian law to be fully applicable within the country's internal armed conflict and is a state party to the Rome Statute establishing the International Criminal Court.

Lately, Colombia has made substantial efforts to translate its international obligations into national law. The Gender Equity Law was passed in 2008; additional laws seek to ensure access to justice for survivors of sexual violence within the armed conflict (2014) and legally acknowledge femicide as a crime (2015). The Constitutional Court resolved that the Government has to create programmes to improve the living conditions of displaced women and that the Attorney General's Office has to prioritise investigations of gender-based crimes.

Colombia has ratified the ILO-Convention 169 – Indigenous and Tribal Peoples Convention of 1989. The corresponding Colombian law from 1992 promotes effective fulfilment of indigenous peoples' rights.

After the demobilisation of paramilitary forces in 2005, initial attempts to investigate and prosecute crimes committed in the armed conflict were frustrated by the enormous scope of the task. The Office of the Attorney General of Colombia, the High Courts and the District Tribunals faced the challenge to investigate thousands of crimes and to include hundreds of thousands of victims in the judicial proceedings to ensure justice and accountability. Initially, the investigations treated crimes as isolated incidents committed by individuals. This largely ignored the fact that the crimes were systematically employed as a means of warfare by the paramilitary leaders, which, in turn, meant that they could be classified as war crimes or crimes against humanity. With investigations being only scattered, not a single indictment or sentence was pronounced between demobilisation in 2005 and the year 2010.

Mass sexual and other forms of gender-based violence were under-reported by survivors and rarely confessed to by perpetrators, as were crimes against the indigenous population. Fearing stigmatisation by their social environment and because of shame, many victims of gender-based violence abstained from actively participating in judicial proceedings or including such crimes in their testimony. For indigenous persons, language barriers and a lack of intercultural knowledge on behalf of the investigators aggravated the situation. Public servants did not know how to apply international standards regarding sexual violence to a conflict context. In particular, they did not know how to address and protect victims and witnesses of these crimes. It was evident that there was a need for training transitional justice staff in specialised interrogation techniques and, more generally, on how to translate international legal provisions into practice.

Against this background, in 2008 the Governments of Colombia and Germany (namely the Federal Ministry for Economic Cooperation and Development, BMZ) agreed on working together through the 'Support for the Colombian Peace Process Programme (ProFis)'. The programme's objective was to enable the Attorney General's Office, judges and the Colombian National Human Rights Institution, the *Defensoría del Pueblo*, to implement the Justice and Peace Law in line with international legal standards and by drawing on experiences of transitional justice processes in other countries. Lately, the programme focussed on victims of sexual violence and indigenous victims. It ended in 2015; however, work on transitional justice is being continued by the BMZ-funded 'Programme to support the Construction of Peace in Colombia (ProPaz)'.

Towards a human rights-based approach

The realisation of victims' rights is a prerequisite for sustainable and just peace. It includes the procedural rights of victims to participation and protection among others and the victims' human rights to truth, justice, reparation and guarantees of non-recurrence.

ProFis supported Colombian judicial and other institutions in applying the transitional justice framework effectively and in addressing legal gaps with new statutory provisions. It focused on strengthening the victims' rights of survivors of sexual violence and of indigenous people. It set out to consolidate the rule of law and to protect the human rights of victims by improving access to justice, especially for marginalised population groups.

The key question for integrating human rights into the transitional justice process was how to comply with international standards in the face of an ongoing, decades-old conflict with a high number of crimes, perpetrators and survivors. In this context, it was a highly ambitious objective to guarantee the safety of victims who participated in judicial proceedings. The justice system's very limited resources and capacities had to cope with high expectations by the Colombian society to provide fast justice and reparations for the survivors. In addition, it was under close scrutiny from the international community.

Achievements and impact

With support of ProFis and further international cooperation projects, the Colombian judiciary facilitated effective access of victims to the judicial proceedings through a concerted set of measures.

A **prosecution strategy** acknowledged the high number of victims among women and indigenous people and laid the ground for respective convictions. Initially, it became clear that enhanced participation – while absolutely crucial – was bound to increase the number of cases. It thus required a viable and legitimate strategy for sequencing investigation and prosecution of the crimes and for exposing their systematic nature. Here, ProFis facilitated coordination between the Attorney General's Office, the Ministry of Justice, the High Commissioner for Peace (as part of the President's Office) and the Organisation of American States Mission to Support the Peace Process in Colombia. A strategy was adopted that compelled the institutions to prosecute first the most responsible perpetrators (i.e. paramilitary commanders) and crimes committed against women and groups affected by discrimination and marginalisation. Thus, the crimes against women and indigenous people including gender-based violence, which had been committed in great numbers, were considered in the context of the armed conflict, not as isolated incidents. The convictions of Salvatore Mancuso Gómez (2014) and Orlando Villa Zapata (2015) and the comprehensive indictment of Hernan Giraldo Serna, all of them high level paramilitary commanders, were a direct result of this strategic approach.

Communication by authorities with victims in the country's remote areas was made possible through the purchase of several mobile satellite transmission stations by ProFis. This was a measure of fundamental importance and was subsequently replicated by other agencies such as IOM, USAID and UNDP. ProFis also supported the *Defensoría* in disseminating information about the Justice and Peace Law and the rights of victims across the country, particularly in remote areas.



Indigenous people of the Wayuu people gather to learn about their rights in the transitional justice process, Puerto Nazareth.

Increased capacities of criminal justice staff in their dealings with victims of gender-based violence and indigenous victims have facilitated access to justice. ProFis supported the Attorney General's Office in the implementation of a unified investigation and prosecution strategy for all regional offices across the country. Since 2011, more than 1,000 prosecutors and investigators have been trained in enquiry and interrogation techniques, data analysis and in applying a psychosocial approach in their interaction with indigenous people and survivors of gender-based violence. The latter led to improved assistance to women to collaborate with investigations and to participate in judicial proceedings.

The **right to truth for victims of sexual violence** was at last brought to bear. For the first time ever in Colombia's history, verdicts, in this case against the paramilitary leaders Salvatore Mancuso Gomez and Orlando Villa Zapata, refer to gender-based violence as a systematic and generalised practice to install fear amongst the population, thereby using it as a strategy of warfare. The verdict against Orlando Villa Zapata includes an extensive characterisation of gender-based violence within the Colombian armed conflict. The prosecutors' findings reveal that murders of women and enforced disappearances were usually committed in connection with torture and sexual abuse. It is the first verdict in Colombia that refers to such crimes as femicide. Gender-based violence was incorporated as a crime in both the constitutional amendment known as the Legal Framework for Peace and the 2012 reform of the Justice and Peace Law.

Violations of indigenous people's rights were duly acknowledged. Violence and intimidation by armed groups seriously impeded indigenous people from cooperating with justice institutions and thus realising their rights to justice and truth. However, an extended intervention of

a ProFis interdisciplinary group of legal, psychological and anthropological experts facilitated indigenous people's participation in the transitional justice process. The participation of indigenous victims brought about Giraldo's conviction in 37 cases of sexual violence against indigenous women and over 500 crimes against indigenous victims.

In the case against paramilitary leader Giraldo, **ProFis provided legal and technical support** to both the General Attorney's prosecutors and the Ombudsman's Office's public defenders. Both institutions had to adequately process more than 12,000 case files containing crucial information for the identification of victims. Complementarily, the programme's interdisciplinary team supported civil society organisations in developing approaches to mitigate the armed conflict's negative repercussions on indigenous peoples, including adequate psychological rehabilitation measures and individual and collective reparations. Special attention was given to the management of victims' expectations.

The judicial proceedings laid out here have set an example of **how to apply a gender-sensitive and culturally appropriate approach** to working with victims of gender-based violence and with indigenous victims. In the face of horrendous crimes, it demonstrated that effective and meaningful reparation measures should include psychological treatment, psychosocial rehabilitation, access to education and health care as well as collective reparations for indigenous communities.

These achievements were highly recognized by the Colombian partners. Germany has been invited to be part of the group of countries that will accompany the coming transitional justice process regarding demobilized FARC combatants.



Indigenous victims of the conflict participate in a court case concerning their compensation.



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Indigenous victims of the Kogúie people participate in the exhumation of one of their relatives, La Guajira.

Challenges

There was a clear need for personnel to be trained in dealing with victims of armed conflict. In order to avoid re-victimisation of women and indigenous people during the proceedings, specially trained psychologists, anthropologists, sociologists, lawyers and social workers were required. In spite of this, the Attorney General's Office and the Ombudsman's Office insisted on hiring ever more lawyers. While this profession is undoubtedly important, victims of crime need more than legal representation – just as transitional justice is more than the right to justice.

Judicial mechanisms should ideally be complemented by reconciliation and reintegration measures. Unfortunately, many of the former paramilitary combatants in Colombia have completed their jail sentences without having been prepared properly for a civil life outside prison. A comprehensive peace-building strategy must address these long-term social issues.

To consolidate institutional knowledge and individual expertise, it will be crucial to effectively address the above-mentioned issues in future transitional justice processes with the FARC and ELN guerrillas as well as with the Colombian Security Forces.

Lessons learned

A holistic approach to transitional justice encompasses criminal justice as well as the promotion of truth-telling mechanisms, reconciliation, reparations and reintegration.

Building and maintaining trust in particular is essential to bolster participation in the Colombian transitional justice process. The holistic approach promoted by ProFis places the realisation of the victims' human rights at the centre. Complementing judicial proceedings with a sound psychosocial and culturally appropriate approach must be the basis for any intervention involving women and indigenous people. This enables them to transcend from being passive victims to becoming active rights holders. In Colombia, women and indigenous people have, through their increased participation in the investigations and judicial proceedings, enriched the reconstruction of subjective truths and historical facts.

The safety of all parties and participants is key. The importance attached to this has been crucial for the success of the Colombian transitional justice process. The emergence of new illegal armed groups with ties to former paramilitary structures revived fears among victims of becoming a target when actively collaborating with the justice system. Such fear can significantly hinder participation. Protection schemes and emergency measures must be considered integral components of any implementation strategy.

Finally, it is important to be 'in the right place at the right time'. To really play a significant role in Colombia's very dynamic peace process, with a grand variety of actors and a fast changing political environment, it has been essential to identify, and get involved with, all key actors, as well as to pro-actively propose viable solutions.

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