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Gender and the Colombian Peace Process: A Study of how Conflict-related Gender-based Violations Are Addressed in Colombia's Peace Process

Author(s): Hazel Lincy Ebenezer

Email: hle7@kent.ac.uk

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Gender and the Colombian Peace Process: A Study of how Conflict-related Gender-based Violations Are Addressed in Colombia's Peace Process

Hazel Lincy Ebenezer

Colombia's decades-long internal conflict seemingly came to a close in 2012 when the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) declared their intent to engage in peace talks. In this transitional justice period, Colombia aimed to effectively address all the violations that had occurred during the conflict by holding them accountable within its Peace Agreement—including gender-based violations (GBV). This essay will examine the ways in which Colombia's most recent peace process tackles conflict-related GBV in order to study whether these violations were sufficiently and appropriately addressed. The first section of this essay will define gender-based violations and examine how they have been addressed in transitional justice literature so far. The second section will evaluate how successfully Colombia's peace process handles GBV by (a) studying the inclusion of gender perspectives in the peace process and by (b) analysing how the 2016 Peace Agreement provides for (i) truth, (ii) justice, (iii) reparations and (iv) guarantees of non-repetition in terms of GBV.

Gender-based Violations and Transitional Justice

Gender-based Violations

Although gender-based crimes are often instinctively associated with acts of sexual violence towards women, these violations also encompass 'non-sexual attacks on women and girls, and men and boys, because of their gender'.¹ When addressing gender-based violations and their disproportionate effect, the 'patriarchal systems based on domination and gender discrimination' and 'other factors such as

¹ Léa Lemay Langlois, 'Gender Perspective in UN Framework for Peace Processes and Transitional Justice: The Need for A Clearer and More Inclusive Notion of Gender', *International Journal of Transitional Justice*, 12.1 (2017), 146–167 (p. 151). <<https://doi.org/10.1093/ijtj/ijx034>>

social, political and economic marginalization’ must also be considered.² This paper will particularly address conflict-related GBV, which narrows the focus to crimes that have a direct or indirect (temporal, geographic, causal) link to the conflict.³ To sufficiently address GBV, the ‘differential impact of the internal armed conflict on the lives of women and men, LGBTI persons, and boys, girls, and adolescents, as well as the intersectionality between multiple components of identity, including gender, class, age, ethnicity, and region⁴ needs to be taken into account. Furthermore, in Colombia, the gender-based violation is also used ‘to achieve a military objective’, as ‘spoils of war’ and to exercise ‘social and territorial control’⁵ and both the International Criminal Court and the Inter-American Commission on Human Rights have found that all parties to the conflict are guilty of large-scale acts of gender-based sexual violence.⁶

Literature Review of Conflict-related Gender-based Violations

Actors of the Colombian conflict have carried out a variety of gender-based harms, including, to name a few: sexual violence to threaten female activists, forced abortions and contraception on females in the paramilitary and having women and members of the LGBTI community carry out derogatory acts to fortify power structures within society.⁷ Yet when it comes to addressing GBV in transitional justice, there is often a ‘prioritization of sexual violence at the expense of other harms to women’.⁸ Moreover, the discussion on sexual violence itself has also centred around females, while ‘sexual violence against males and gender-based violence more broadly has received little attention from the academic community, the policy-making community, or from the wider public’.⁹ This focus on a particular type of sexual violence when discussing GBV is a popular criticism found in the literature surrounding gender and transitional

² ABColombia, ‘Colombia: Women, Conflict-Related Sexual Violence and The Peace Process — Abcolombia’, *Abcolombia*, (2013), 1–23. <<https://www.abcolombia.org.uk/colombia-women-conflict-related-sexual-violence-peace-process/>>

³ Virginia Bouvier, ‘Gender and The Role of Women in Colombia’s Peace Process’, *UN Women*, (2016), 1–42 (p. 9). <<https://www.unwomen.org/en/digital-library/publications/2017/2/gender-and-the-role-of-women-in-colombias-peace-process>>

⁴ Bouvier, p. 3.

⁵ ABColombia, p. 1.

⁶ Bouvier, p. 7, and ABColombia, p. 2.

⁷ Bouvier, p. 11.

⁸ Julieta Lemaitre and Kristin Bergtora Sandvik, ‘Beyond Sexual Violence in Transitional Justice: Political Insecurity as A Gendered Harm’, *Feminist Legal Studies*, 22.3 (2014), 243–261 (p. 244). <<https://doi.org/10.1007/s10691-014-9274-0>>, p. 2. also addressed in Catherine O’Rourke, ‘International Law and Domestic Gender Justice: Why Case Studies Matter’, *Transitional Justice Institute Research Paper*, 11–04 (2011), 1–36. <<https://doi.org/10.2139/ssrn.1804928>>

⁹ Bouvier, p. 7.

justice. The first step towards solving this issue would be to have a more expansive definition of gender itself so as to include, as Langlois highlights, ‘the intersectional experiences of women with violence during conflict, violence based on sexual orientation and gender identity, and gendered violence committed against men’.¹⁰

Another prominent aspect of this discussion is the question of how to address gender-based harms within the transitional justice framework. Many scholars acknowledge that the differential impact of crimes needs to be considered from a gender perspective given factors such as ‘their pre-existing socioeconomic and legal status, as well as the gender constructions in patriarchal societies’.¹¹ Others emphasise how, given that GBV reflects discrimination, the transitional justice and peace process is also influenced by these discriminatory attitudes.¹² Unfortunately, the literature on how to address both GBV as a whole as well as specific gendered harms is still in its preliminary stages. In their essay addressing transitional justice and the gendered harm of political insecurity, Lemaitre and Sandvik criticise how ‘the question of how to repair the gender-specific harms of displacement is compounded by the very recent and so far, limited overlap between transitional justice and displacement’.¹³ Traditional solutions, such as taking these cases to court, are also called into question. Turano, for example, calls to attention how ‘the harms committed against women during armed conflicts are quite different than the crimes prosecuted by criminal tribunals’.¹⁴

The authors that seem to have made the most substantial comments on tackling GBV are Bell and O’Rourke, who ask for the participation of women in transitional justice in order to properly address the gender-specific harms of the past and the gender-specific needs in the present.¹⁵ They go on to emphasise how ‘the argument for representation is not just aimed at the inclusion of women, but at

¹⁰ Langlois, p. 147.

¹¹ Lemaitre and Sandvik, p. 3.

¹² Langlois, p. 154.

¹³ Lemaitre and Sandvik, p. 3.

¹⁴ Laura C. Turano, ‘The Gender Dimension of Transitional Justice Mechanisms’, *International Law and Politics*, 43 (2011), 1045–99 (p. 1065).

¹⁵ Christine Bell and Catherine O’Rourke, ‘Does Feminism Need a Theory of Transitional Justice? An Introductory Essay’, *International Journal of Transitional Justice*, 1.1 (2007), 23–44 (p. 30). <<https://doi.org/10.1093/ijtj/ijm002>>, also mentioned in Christine Chinkin, ‘Gender, Human Rights and Peace Agreements’, *Ohio State Journal of Dispute Resolution*, 3 (2003), 867–886.

transformative feminist engagement with international politics. The hope is that, by changing the players, the nature of the game will change in turn, thereby allowing a different set of priorities to emerge'.¹⁶ These authors have also been known to emphasise the practical importance of reparations for women as a means of gaining material security and possibly improving their socio-economic status.¹⁷

Although there is much research still to be done, this literature comes together to place emphasis on an inclusive definition of both gender and gender-based violations so as to acknowledge its pervasive and intersectional nature. It also collectively emphasises the need for special and gender-sensitive attention in the transitional justice process that may or may not coincide with traditional solutions such as trials. Beyond the subjectivity of possible solutions, importance is given to the inclusion of women in the transitional justice process—in addressing both GBV specifically and conflict resolution as a whole.

Gender-based Violations and Colombia's Peace Process

The Peace Negotiations

For gender-based violations to be effectively incorporated into the Peace Agreement, it is important for women who are leaders, women who are victims and women who are both to be present and a part of every step of the agreement's creation. This helps to fully acknowledge and address the pervasive nature of gender-based violations in multiple aspects of the conflict. Although many international and national bodies have acknowledged this need, including UN Security Council Resolution 1325,¹⁸ women have constantly struggled to be a part of the transitional justice process in their own country and get a seat at the peace-making table. Inclusion has been an even bigger challenge for women from ethnic minorities and LGBTI persons. The following section will trace the role of women in the peace negotiations from 2012, when peace talks first began, to 2016, when a final agreement was reached.

¹⁶ Ibid.

¹⁷ Lemaitre and Sandvik, p. 2.

¹⁸ UN Security Council Resolution 1325 (2000). This resolution has interacted with Colombia particularly strongly—even urging the government to commit to including women in the peacebuilding process (Bouvier, p. 18).

The first peace talks took place in Norway between the FARC and the Colombian government, where all the participants were men and the only female happened to be the Norwegian moderator—showing zero gender diversity from either of the Colombian parties present.¹⁹ Even later that same year, when formal talks began in Cuba with ten lead negotiators from each party, only one of the twenty was a woman. In terms of gender inclusivity, the Colombian peace process started off weak, showing a disparity between the reality and the ‘national and international normative frameworks demanding women’s inclusion in peace-making’.²⁰ This is also a scary backslide as, if women were missing from the negotiations, it was very unlikely that ethnic minorities or the LGBTI community would be given a place. The lack of diverse and intersectional inclusion once again reduces the fight for gender inclusion to a struggle that refers to only one group of women to the detriment of other persons on the gender spectrum.

Even though women were not at the forefront, they made sure to have their voices heard. Despite their abysmal representation as lead negotiators, women were shaping the dialogue ‘at the table, around the table, behind the table and at side tables’.²¹ Yet, this participation from the sidelines was not nearly sufficient and, within a year, women’s organisations across Colombia took matters into their own hands. In October 2013, they banded together to organise the National Summit of Women for Peace. This ground-breaking summit resulted in three main demands to the peace negotiators. Their first demand was that all the parties to the peace negotiations remain at the table until they come to an agreement. Their second demand asked for the inclusion of women in both the main table and all the additional peace processes. Their final demand asked that ‘women’s needs, interests, and experiences of conflict be considered during the talks’.²² Within months, both the FARC and the government had integrated women into their core teams and increased the number and roles of women in the negotiation’s periphery committees.²³ Moreover, this led to the creation of a sub-commission of gender—which was seen as a big step forward after several steps back.

¹⁹ Bouvier, p. 19.

²⁰ Ibid.

²¹ Ibid.

²² Ibid., p. 20.

²³ Ibid.

The gender sub-commission was also progressive as it had both women's organisations as well as LGBTI organisations in its membership.²⁴ Labelled as 'an innovation with few global precedents',²⁵ this sub-commission was mandated to go over all the agreements reached by the negotiators in order to make sure that a gender perspective was included.²⁶ This showed that the peace process not only acknowledged but also took action regarding the pervasive and intersectional nature of gender-based violations by making sure that each part of the agreement was amended to include a gender focus. Yet, the gender sub-commission has been criticised for only running surface-deep as they have no decision-making powers when it comes to their suggestions and no assurance that these suggestions will be taken in.²⁷ In fact, many of their contributions were annulled when the first draft of the Peace Agreement was rejected by the public. It was believed that the rejection related to the LGBTI and abortion rights components of the agreement, components that were direct contributions from the gender sub-commission. The agreement was then revised to have its gender components include only the rights of women while LGBTI rights were attached under clauses on equality—which carried a smaller role that was not as representative of the LGBTI experiences. In other instances, mentions of LGBTI groups were replaced by the general phrase of 'vulnerable groups', a broad category that tried to encompass many multi-faceted experiences.²⁸

Aside from the gender sub-commission, women also held a prominent role in the Technical Sub-commission on Ending the Conflict and in regional working groups.²⁹ On the other hand, they were notably absent among the Historical Commission on the Conflict and its Victims and the working group of jurists, raising questions of a patriarchal preference in the very working of these commissions and the reparations and trials that they helped shape, respectively.³⁰ Women victims and peacebuilders were also invited by the negotiators to speak of their experiences and relay gender-sensitive approaches to the peace process. This successfully resulted in action even before the agreement was finalised when

²⁴ Langlois, p.165.

²⁵ Bouvier, p. 21.

²⁶ Langlois, p.165.

²⁷ Bouvier, p. 21.

²⁸ Langlois, p.166.

²⁹ Bouvier, p. 21.

³⁰ Id., p. 22.

‘as a direct result of these delegation visits to Havana, the FARC initiated a process of acknowledgment, apology and making amends’.³¹

Many scholars and gender-based organisations emphasise the need for gender diversity in the peacebuilding process in order to empower groups that were traditionally discriminated against as well as to accurately address GBV.³² Although Colombia’s gender inclusion in the peace process was slow and uneven, the progressive diversity and the end result was commended by multiple actors in the national and international community. Not only did this process include a sub-commission dedicated to gender, but they also eventually included women in many other roles within the peace process, showing that a gendered perspective can contribute to more than just its own experiences of victimisation.³³ Yet, there is much that this peace process could have done better—from the lack of female perspectives in the inception of the peace talks in 2012 all the way to the rejection of the first draft of the Peace Agreement in 2016 on the grounds of an expansive LGBTI inclusion.

The Peace Agreement

The Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, also known as the Peace Agreement, was signed on 24 November 2016 by the President of Colombia and the Commander-in-Chief of the FARC. This extensive document spans 323 pages and is divided into six thematic sections. The agreement’s formatting mirrors that of a United Nations resolution, starting with a preamble that highlights the current situation and then moving on to clauses that provide solutions.³⁴ Despite such a broad agreement four years in the making, the text fails to provide a definition for the term ‘gender’ to complement where it mentions a ‘gender-based’ or ‘gender-sensitive’ approach. Although this may not seem like a startling omission, given that many international conventions themselves shy away from defining gender, the lack of an inclusive definition does influence the level of accountability that victims

³¹ Ibid.

³² Mentioned by Carla Koppell and Jonathan Talbot, ‘Strengthening Colombia’s Transitional Justice Process by Engaging Women’, *The Institute for Inclusive Security*, (2011), 1–8. <<https://www.inclusivesecurity.org/publication/strengthening-colombias-transitional-justice-process-by-engaging-women/>>

³³ Langlois, p.159.

³⁴ Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace 2016.

can call to this agreement. As already seen with the first failed draft of this agreement, LGBTI victims now need to rely on mentions of an ‘equity-based’ approach instead of the ‘gender-sensitive’ approach that the analysis and response to their crimes deserve. Apart from the lack of definition, this agreement is thorough in separately mentioning all the various categories victimised by the Colombian conflict. Even as early as the preamble, this agreement ‘places special emphasis on the fundamental rights of ‘women, ethnic minorities and the LGBTI community among others’.³⁵ This gender perspective seen in the agreement ‘was applauded by the international community as an example of successful integration of a gender perspective’.³⁶ The following section will specifically examine how the Peace Agreement addresses gender-based violation in terms of four transitional justice mechanisms: truth, justice, reparations, and guarantees of non-repetition.³⁷

Elements of the Peace Agreement

For the most part, Colombia’s Peace Agreement discusses all these four elements in the same chapter—Chapter 5: Victims Agreement—through the creation of a Comprehensive System for Truth, Justice, Reparations and Non-Recurrence. This system is mandated to fight impunity through both judicial mechanisms to investigate and sanction, and extra-judicial mechanisms for truth-seeking and reparations. This comprehensive system is then divided into (1) the Truth, Coexistence and Non-Recurrence Commission, (2) the Special Unit for the Search for Persons deemed as Missing in the context of and due to the armed conflict and (3) the Special Jurisdiction for Peace. It also includes ‘comprehensive reparation measures for peacebuilding purposes and guarantees of non-recurrence’.³⁸ This essay will examine components (1) and (3) as well as the reparations measures and the non-recurrence guarantees.

The purpose of the Truth, Coexistence and Non-Recurrence Commission is to both uncover the truth as well as to promote the recognition of rights and the coexistence of citizens.³⁹ This latter component

³⁵ *Id.*, p. 3.

³⁶ Langlois, p.165.

³⁷ Categories provided by Langlois, p.146, and reflected in the structure of the Peace Agreement.

³⁸ *Id.*, p. 9.

³⁹ Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace 2016. 5.1.1.

highlights a ‘culture of respect and tolerance in democracy’⁴⁰ and promises to ‘take an appropriate action to learn about the different ways in which the conflict affected women, ... indigenous people, ... (and) the LGBTI community’.⁴¹ Gender sensitivity is also seen in the guiding criteria, mandate and duties of this commission. Although there is no specific mention of gender-based violence, the prioritisation of rights and equality within the text of this section holds a promise that such crimes, as well as their multi-faceted nature, will be exposed in this commission’s search for truth. Non-recurrence is also mentioned within the purpose of the commission by emphasising that building a cohesive truth and assisting conditions for coexistence will ‘lay the foundations for non-recurrence, reconciliation and building a stable and long-lasting peace.’⁴² Yet, beyond this vague phrasing and repetition in section 5.1.4,⁴³ the guarantees of non-recurrence remain very vague and contain no overlap with gender whatsoever. This proves to be a huge weakness in the agreement and calls into question the importance that negotiating parties have placed on GBV beyond an immediate crime and punishment scenario.

Within the Peace Agreement, the sections on justice and reparations are even more extensive than those on truth and non-recurrence. The Special Jurisdiction for Peace⁴⁴ contains more than seventy-five clauses on its workings and an extensive list of specific sanctions for various wrongdoings. It is very practically divided into two procedures subject to whether the perpetrator confessed to the crime or not, as well as topical judicial sub-bodies. This section holds the promise for justice against gender-based crimes as it outlines that amnesties will not be provided for any crimes mentioned in the Rome statute or any common crimes that are unrelated to the conflict.⁴⁵ Yet, although sexual violence is prohibited under the Rome statute, perpetrators of other gender-based crimes may still receive amnesty in the absence of an inclusive list of common crimes. Despite this subjectivity, victims are eligible for reparations regardless of the amnesty their perpetrators may enjoy.⁴⁶ Section 5.1.3 of the Peace Agreement highlights different

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace 2016. 5.1.4.

⁴⁴ Ibid., 5.1.2.

⁴⁵ Id, p. 156, 157, 161 and 162.

⁴⁶ Id, p. 162.

types of reparations for different categories of violations.⁴⁷ Two of these, the national collective reparation plan, and the Victims Law, stand out for their focus on gender-based reparations.

The national collective reparation plan focuses on providing reparations to gender-based groups and organisations in various communities throughout the country.⁴⁸ Such reparations are vital as they, in turn, help gender-based organisations empower victims within their own communities in a knowledgeable and gender-sensitive manner. The Victim's Law, which was created in 2011, is referred to extensively in the Peace Agreement for guidance on carrying out reparations. It stands central to gender-based reparations as it 'establishes preferential treatment for women seeking restitution after having been expelled from their lands and provides specific reparations for women and girl survivors of sexual violence.'⁴⁹ Such consideration is not only novel but extremely promising in terms of its acknowledgement of the disproportionate effect of gender-based violence⁵⁰ and the need for special attention regarding their reparations.

Conclusion

Despite all the promises that this agreement contains in theory, whether they will be fulfilled in practice, it is yet to be seen. Given that only a year and a half has passed since this agreement was finalised, it is still too soon to judge the effectiveness of the truth, justice, reparation, and non-recurrence mechanisms in terms of GBV. Additionally, for all the gender sensitivity that these categories do include, they still fall short given, for example, their exclusion of LGBTI within gender crimes. Violence against LGBTI groups also falls under gender-based crimes as they are targeted for challenging gender norms.⁵¹ Consideration of these and other intersectional experiences could have been more thoroughly developed within the text in order to make sure that they are addressed in the application of this agreement.

⁴⁷ Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace 2016. 5.1.3.

⁴⁸ Id, p. 191.

⁴⁹ Bouvier, p. 12.

⁵⁰ Also mentioned on Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace 2016, p. 205.

⁵¹ Langlois, p.151.

Showing a capacity for inclusion, the Colombian Peace Agreement does adopt a gender-inclusive and gender-sensitive approach, both in addressing violations—within chapter 5—as well as within clauses on other matters throughout the rest of the agreement. Yet, the struggle for inclusion in the peace process shows that there is still progress to be made before gendered perspectives in addressing crimes are automatically considered as part of the transitional justice process. Moreover, despite the chance to be more expansive through the gender sub-commission, this agreement still equates gender with a certain group of women to the detriment of everyone else subjected to gender-based crimes. Despite this, there is hope that the Commission’s promise to learn about intersectionality in the crimes committed against women, ethnic minorities and the LGBTI community will lead to a more expansive definition of gender as this agreement is put into practice. Finally, a further constant initiative is required to make sure that the guarantees of non-recurrence provide concrete solutions for gender-based crimes so that the Peace Agreement can help lay the groundwork for preventing gendered harms beyond the conflict as well. This essay traces through the highs and lows of the overlap between Colombia’s peace process and gender-based violations and observes how this reflects on gender and transitional justice as a whole. Hopefully, academic literature, the international community and other peace processes can use Colombia’s take on gender-based violations as a guide—on what to do well and what to do better—so that the recognition of and protection from these harms is only increased here on out.

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