COLOMBIA'S OPPORTUNITY FOR TRANSITIONAL JUSTICE

ANA LUQUERNA IS AN HONORS STUDENT AT VANDERBILT UNIVERSITY WHERE SHE IS DOUBLE MAJORING IN POLITICAL SCIENCE AND HUMAN AND ORGANIZATIONAL DEVELOPMENT AND MINORING IN FRENCH. SHE IS PASSIONATE ABOUT HUMAN RIGHTS AND PLANS TO ATTEND LAW SCHOOL AFTER GRADUATING FROM COLLEGE.

INTRODUCTION

Colombia has had the longest internal armed conflict in the Western Hemisphere, which has delayed the development of a true democratic system where the government protects individual rights and liberties¹. The prolonged conflict is a consequence of opposing political ideologies, tremendous inequality, tension between the elites and the masses, scarce resources, and an unstable democratic government. Among the groups in conflict there are illegal armed groups, leftist groups, paramilitaries, drug traffickers, and the government. This paper will focus on the extreme tension between the Colombian government, the Revolutionary Armed Forces of Colombia (FARC) and the Patriotic Union (UP) political party. Even though Colombia has been labeled a democratic country since the 1970s, its failure to successfully participate in transitional justice has inhibited the growth of a full democracy. In addition to explaining the tensions between the FARC, UP, and the Colombian government, this paper will explain how elements of transitional justice, such as the integration/demobilization of armed groups back into society and a platform for accountability, would result in a stronger democracy. Since the 1970s, Colombia has experienced a civil war, guerrilla groups, violence, drug trafficking, and human

rights violations, which demonstrates weakness in the democratic system. In this paper, the aim is to demonstrate how these tensions have slowed democratic progress and to argue that even though there seems to be a promising chance of achieving transitional justice through current peace talks, Colombia's democracy remains bleak. I will begin by describing the background of the FARC and UP and the concept of transitional justice. This paper will conclude with the current state of the FARC, UP, and the outlook of Colombia's future.

FARC AND UP BACKGROUND

The longest and most persistent conflict in Colombia is between the Colombian government and the FARC, which is the oldest surviving and richest leftist rebel group in South America. As of 2006, the FARC supplied half of the world's cocaine, earning approximately \$500-600 million per year². After La Violencia, a violent civil war lasting from 1948 to 1958, Colombia's main two political parties agreed to the National Front Agreement, which stipulated that power would alternate between the parties every other election. This essentially shut out any participation from third parties. After the Communist Party realized it was shut out from political participation, they officially established the FARC as their military wing in 1966³.

EVEN THOUGH COLOMBIA HAS BEEN LABELED A DEMOCRATIC COUNTRY SINCE THE 1970s, ITS FAILURE TO SUCCESSFULLY PARTICIPATE IN TRANSITIONAL JUSTICE HAS INHIBITED THE GROWTH OF A FULL DEMOCRACY.

COLOMBIA RANKS SECOND ONLY AFTER SUDAN IN NUMBER OF INTERNALLY DISPLACED PERSONS... COLOMBIA IS NOT UPHOLDING ITS COMMITMENT TO THE PROTECTION OF HUMAN RIGHTS.

In order to end the conflicts between the FARC and the government, former President Betancur proposed La Uribe Agreement in 1984, which called for a cease-fire and technically allowed the FARC to become involved in politics. In 1985, the FARC, along with other left-ideological groups such as the Communist Party, announced the start of their own political party, Union Patriótica (UP). UP wanted greater land redistribution, decreased media censorship, and a greater voice for the poor. UP was able to gain various governmental positions⁴. In 1986, they gained 350 local council seats, nine House seats, six Senate seats, and 5% of the presidential vote⁵. The growth of UP was halted by the beginning of systematic killings by the government. People feared UP's connections with leftist ideologies and wanted to suppress its growth. Since the creation of UP was in the midst of the Cold War and America's attempt to prevent the expansion of communism to the West, much of the Colombian public, and the government itself, feared that if UP grew as a political party this would lead to communism in Colombia. UP party members, as well as their families, were targeted and killed by governmental military groups and paramilitary groups. The paramilitary groups were extreme rightists. Because the social stigma with the UP party was that they were either communists or involved in the guerilla groups, there was no public scrutiny

of these murders. One survivor recalls that the Catholic Church did not even condemn the killings. After her husband's murder, the archbishop prevented any priest from conducting Mass for him because he was deemed a communist⁶. No accountability system existed for these killings. The systematic killings prevented progress on the peace talks that had begun to occur between the FARC and the government in the 1980s⁷. The remaining head figures of the UP party sought asylum in other countries in the mid 1990⁸. By the end of the 90s, UP membership was essentially nonexistent. Support diminished dramatically. At the height of its power in the mid 1980s, more than 320,000 votes were cast by UP supporters; yet by 2002 there were less than 50,000⁹. The irony of these massive killings is the fact that from an outsider's perspective, Colombia was a democratic government that withstood the 70s and the "lost decade" of the 1980s. However, Colombian democracy is an illiberal democracy that holds elections but does not uphold civil rights. Latin American countries faced dual transitions in their political and economic spectrums after the late 1970s. Achieving the dual transition in the political aspect means first, a shift towards democracy, and second, the deepening of that democracy itself¹⁰. Colombia never technically underwent this "dual transition" in the sense of shifting from a dictatorship to

a democracy, which occurred in many other Latin American countries. Colombia was already a democracy before the 70s. The possibility of a democratic deepening during the dual transition did not occur either. The state of Colombia's democracy was stagnant while other Latin America countries were changing from autocratic rule to democratic rule. The Polity Score, which scales democracy from 1-10 (with 6-10 indicating democracy) for Colombia was seven in the 70s, an eight in the 1980s, and a seven in 2014¹¹. A score of ten indicates a full democracy, and scores from six to nine indicate a democracy. Colombia's scores of seven and eight are expected because Colombia has been labeled a "democracy" since the 1970s. However, the quality of Colombian democracy itself did not significantly alter or improve in the last 50 years. The fact that Colombia emerged as the world's leading cocaine producer in the 1980s negatively affected its economy through the 1980s and 1990s. On the economic spectrum of the dual transition, since 1979, Colombia's annual GDP growth has been 2% lower than the annual growth between 1950 and 1980. In the 1970s, the growth had been 5.8% per year, which many economists deemed as an economic success at least compared to Latin American counterparts¹². Worker productivity also declined during the 1980s because more capital and labor was directed towards drug trade and illegal activities. This differed from other Latin American countries, which began to ameliorate their economic conditions after the "Lost Decade".

TRANSITIONAL JUSTICE

Democratic states have the responsibility to prevent human rights violations and uphold the inherent human rights that are mentioned in the Universal Declaration of Human Rights (a source of international law). The International Center for Transitional Justice (ICTJ) defines transitional justice as judicial and non-judicial actions taken in order to make amends for past human rights

abuses within countries. These amends and reparations for past abuses further the idea of democratic states as the gatekeeper of human rights. Colombia has had more than 5.5 million human rights violations in the past 50 years¹³. Due to these violations, Colombia ranks second only after Sudan in number of Internally Displaced Persons (IDPs). These facts demonstrate that Colombia is not upholding its commitment to the protection of human rights. If Colombia were to make amends and reparations for past human right abuses, its commitment to human rights would be stronger not only within Colombia, but within the international community itself. Furthermore, addressing human rights violations is an importance step to building trust among the citizenry, an issue that Colombia continues to struggle with. Elements of transitional justice are not limited to but include criminal prosecutions, reparations, institutional reform, and truth commissions¹⁴. The difficulty of achieving this type of justice lies in the fact that guerilla groups like the FARC are not the only ones violating human rights. The government is also the perpetrator. Even though the government justified its targeting of the UP as a necessity in order to make Colombia a safer and stronger democracy, the killings they resorted to were blatant human rights violations. Under the Universal Declaration of Human Rights, people have the inherent right to life, liberty, and security. These rights are not protected for the Colombian people if joining a minority political party like UP ultimately means the possibility of death.

ATTEMPTS AT TRANSITIONAL JUSTICE

The attempt to transition from war to peace can be observed in two parts of Colombian history. The first round of peace talks in the 1980s attempted to end the tensions of the FARC, UP, and the government. In 1982, former president Betancour proposed an amnesty law that allowed demobilization of guerilla groups without the need of disarmament¹⁵. Then a ceasefire

WHILE VICTIMS DO NEED A DECLARATION AND SUPPORTING EVIDENCE IN ORDER TO OBTAIN THIS LEGAL STATUS, LAW 1448 GIVES VICTIMS THE ABILITY TO BECOME A FORMAL PLAYER IN LEGAL PROCEDURES.

was supposed to occur from 1984-1987 between the FARC and government, but neither event was successful because the FARC refused to demobilize and also because the government lashed out and killed UP members in the 80s. Because the growth of a new political party was publicly stopped by systematic killings, tension was high between the FARC, the Colombian government, and UP. There was no trust between political parties, paramilitaries, or the government, which led Colombia to fail at their attempt of transitional justice. The second attempt at transitional justice has been occurring since former President Uribe's administration (2002-2010) and continues with the Santos administration. Uribe targeted his efforts toward the demobilization of paramilitary groups, specifically the United Self Defense Forces (AUC) that had become involved with narco trafficking. While some demobilization occurred, there are rumors that the AUC is still active in many parts of the country¹⁶. After their apparent demobilization, new criminal gangs with past paramilitary members emerged. In 2005, Law 975 was passed and gave demobilized group members alternative sentences and ways to reenter civilian life. Under this law, if perpetrators gave reparations, their sentences would be reduced¹⁷. However, the process could not begin unless the victim came first and reported a crime, which rarely occurred due to fear. By 2008, only 24 people had been given reparations¹⁸. In 2004 and 2010, the Constitutional Court reminded the government they had to provide land restitutions because the situations with the IPDs was unconstitutional¹⁹. In 2010, Law 1424 established non-judicial truth seeking organizations that helped members in il-

legal groups get legal help in exchange for pertinent information that could help the government uncover truths about past conflicts. However, it must be noted that this law does not apply to those organizations that have committed crimes against humanity, which include the FARC. President Uribe (2002-2010) differed from current President Santos because his approach was more aggressive in nature overall, while Santos really focused on peace talks with the FARC. Peace talks begun in 2012 in Cuba are still occurring today. The talks moved from its exploratory phase to formal phase, and the legal framework focuses on "(1) rural development and land policy; (2) political participation of the FARC; (3) ending the armed conflict including reinsertion into civilian life of rebel forces; (4) illicit crops and illegal drug trafficking; (5) victims' reparations, and (6) the implementation of the final ne-

CIVILIANS GATHER IN PROTEST AGAINST THE FARC.

gotiated agreement, including its ratification and verification”²⁰. While the end date to these peace talks is unclear, this is the first time in Colombian history where the FARC seems to be formally embracing a new structure of formal peace²¹. Within the legal sphere, Santos continued supporting laws that aid the achievement of transitional justice. In 2011, after receiving Congressional approval, Santos signed into law the Victim’s Law, Law 1448. This law gives victims reparations and land distributions as well as the right to restitution for those who have lost their land or been displaced. It also formally defines the term “victim.” While victims do need a declaration and supporting evidence in order to obtain this legal status, Law 1448 gives victims the ability to become a formal player in legal procedures. This law is the most serious attempt to achieve transitional justice because it recognizes victims’ rights and acknowledges an internal armed conflict, which had not been formally acknowledged in the past. Lastly, a constitutional amendment called the Legal Framework for Peace embraced other techniques of reaching transitional justice in order to achieve negotiations and peace²². The most significant effect of this amendment is the creation of truth commissions to investigate grave human rights violations. By 2013, the Justice and Peace Tribunals, created by Law 975, had tried more than 2000 past paramilitaries. However, only fourteen

had been sentenced²³. While these examples demonstrate advance for Colombia on its way to transitional justice, current facts demonstrate that in paper, progress seems to be occurring; yet in reality, implementation is a challenge.

THE FARC TODAY

The government has taken steps toward transitional justice over the past 15 years. Even though the FARC is still the largest rebel group in Latin America, its power has diminished since 2008. After the deaths of two major leaders, Marulanda in 2008 and Mono Jojoy in 2010, the FARC was severely weakened. Estimates suggest that their membership dropped more than half since 2001, with somewhere around 8,000 members²⁴. Former president Alvaro Uribe’s offensive attacks from 2002 on have only further weakened the FARC and included five high profile hostages who were rescued from the FARC. The most significant step towards achieving peace, however, is the peace talks that began in 2012. The Santos administration’s peace talks are the first attempt of this kind in a decade, and the fourth try in the last thirty years²⁵. According to the International Crisis Center, a transitional justice regime cannot occur until human right violators are prosecuted and victims gain reparations²⁶. In 2013, the agenda for negotiations still lacked several aspects of

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a transitional justice regime, including reparations and accountability mechanisms for individuals²⁷. However, I estimate that a resolution between the FARC and the government will not be reached for a number of years. Both the Colombian government and the FARC have publicly admitted to the challenges of agreeing on a solution that both parties approve. The international community has indeed become involved in this conflict. A prime example is the United Nations Development Programme's Transitional Justice Programme, which not only assists the government in transforming itself but also provides education workshops to locals about their rights as victims²⁸. Venezuela, Chile, Cuba, Norway, and U.S. are among some of the countries that support the peace talks²⁹. The road to achieving transitional justice is not easy nor fast, and these peace talks will not necessarily signal the achievement of transitional justice. Even if the talks include more elements of transitional justice, there must be accountability for government and non-state actors in order to achieve true implementation. Mechanisms must be established in order to prevent the corruption that has impeded democratic stability in the past from continuing to keep the Colombian state as an illiberal democracy. The first step towards this goal is for both parties to lay out a road map for the future that ensures long-lasting effects for the country. The plan should not be too ambitious but instead remain possible to implement such as previous laws like the Justice and Peace Law of 2005.

UP TODAY

UP, the political party created by the FARC in

1985, grew in its beginning states, yet most of its members were killed by people who feared UP's leftist ideologies. Today, UP technically still exists, but it is very weak. One of the ways the government addressed the past political killings was by making an exception for UP and allowing them to be considered a political party even though their numbers were extremely scarce. In 2002, UP was banned from political participation, but in 2013, the Colombian Peace Commission allowed the UP to participate³⁰. The new UP party differs from the old UP party as its members do not have the strength to stand on their own. Instead of running as an independent party, UP members have merged with similar political parties who have more standing in today's politics. In 2014, UP party candidate Aida Avella, who had been an UP asylee in Switzerland for almost two decades, ran as the vice presidential candidate for the Alternative Democratic Pole, a more prominent leftist party in Colombia. Running as vice president gave her greater chance of succeeding in politics. This leftist party received 2 million votes, which is a significant increase from the 50,000 they had had in 2002. This election demonstrated that even though UP is pretty much non-existent today, its members are aligning themselves with other similar parties in order to continue being involved in politics.

COLOMBIA'S FUTURE

On October 20, 2014, the District Attorney stated that 34 of the UP murders in the 80s and 90s were considered crimes against humanity³¹. However, no prosecution decisions have been made so far. While progress is indeed being made,

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WHILE THE GOVERNMENT MIGHT BE MAKING PROGRESS TOWARD CHANGING THEIR INSTITUTION THEMSELVES, OTHER FORCES HAVE NOT CHANGED THEIR PAST VIEWS ON HOW TO GET RID OF OPPOSING POLITICAL IDEOLOGIES.

it is important to note that violence and threats against UP members still continue today on a smaller scale. Around 200 members of UP disappeared or were killed during Uribe's term³². In 2012, leftist Congressman Ivan Cepeda and nine other related members received death threats from the paramilitaries. Since the attempts to disband the paramilitaries in 2006 were not successful, their goal of eliminating leftist ideals by violence and murder continues. The direct and clear threats of annihilation of the "guerilla groups," which they associate with these political leaders, demonstrate that the violence of the 1980s has not disappeared from Colombia. While the government might be making progress toward changing their institution themselves, other forces have not changed their past views on how to get rid of opposing political ideologies. The parallels to the 80s are daunting. In the 80s, peace talks were attempted, violence erupted, massive killings occurred, and a prominent leftist party was annihilated. Currently, peace talks are being attempted once again, yet the change is that the Colombian government is much stronger than before. However, what Colombian society refers to as the "dark forces" still remain. These dark forces, extreme rightists, paramilitaries, corrupt government officials, et cetera are still a clear threat to the transition to transitional justice today. The transition failed in the past, and if these "dark forces" overtake the system and once again commit crimes against humanity towards the newly emerging left, the current transition will fail. Colombia's situation differs from the 1980s by the fact that the FARC has made an attempt at formal peace talks, and all signs point to seeking a peace resolution now more than ever before.

CONCLUSION

Colombia's long history of democracy has never signaled a true democracy or respect of human rights. Due to the internal conflicts between the government, FARC, leftist political groups, and paramilitaries, thousands of people have fallen victim to human rights violations, which have not been prevented by the government. The thousands of murders of UP members by the government and other groups prevented the achievement of transitional justice and any attempts at peace talks during this time. Currently, internal conflicts are still very much alive within Colombia, but the chance of transitional justice is available to them once again. The different factor is that today, the FARC has finally showed an interest in a formal and more thorough framework for peace. Colombia is at a critical point in time: progress towards transitional justice is indeed an exciting possibility. Nonetheless, if the "dark forces" resort back to massive exterminations and genocide in order to suppress opposing political views, then the attempted transition to transitional justice will fail like it did in the 1980s.

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