

Pro bono in the post-conflict scenario – the Colombian experience - Pro Bono Committee, May 2018

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Colombians have lived for more than 60 years in a complex internal armed conflict that has destabilised the country and left millions of victims - including dead, displaced, disappeared, tortured, kidnapped, men, women and children, young and old, social leaders, human rights defenders, military and civilian authorities, politicians and public officials. Consequently, this conflict has led to a serious humanitarian crisis. According to the *Registro Único de Víctimas* (RUV), there are 8,625,631 victims, of which 6,589,325 can access the attention and reparation measures established in law.^[1]

To advance on the path to peace and reconciliation and to guarantee the rights of victims to truth, justice and repair, Colombia is undergoing a peace process that will end the conflict thanks to the signing of a Peace Agreement between the Colombian government and the ex-guerrilla group *Fuerza Alternativa Revolucionaria del Común* (FARC) in November 2016, after more than four years of negotiations.

The Peace Agreement raised six important points to ensure the peace construction:

1. rural reform that seeks to give back lands that were taken from victims;
2. more diverse voices in politics, including former combatants;
3. FARC members leaving their weapons and re-joining civil life, ensuring security guarantees for all;
4. pacts to fight the problem of illicit drugs;
5. a transitional justice model in which justice is regulated for the crimes in the conflict, a fair reparation for the victims and a guarantee that the crimes will not be repeated; and
6. implementation, verification and endorsement that follows up on the components of the Agreement and verify compliance.^[2]

Fundación ProBono Colombia (the 'Foundation') is the only provider of pro bono services in Colombia, comprising 50 law firms and in-house departments. Therefore, the Foundation has created two projects that seek to comprehend the role of pro bono lawyers in the peace-building and post-conflict scenarios and to ensure access to justice through legal workshops to empower communities, victims and former combatants.

The legal transition in Colombia: the role of the legal community

The Foundation is aware that the implementation of the Peace Agreement will change the legal services provided by lawyers, both to their paying clients and their pro bono clients. Therefore, the Foundation, in coordination with the Bogota Chamber of Commerce, the Rosario University and some outstanding leaders of the legal

community in Colombia, developed the project: 'The Legal Transition in Colombia: The Role of the Legal Community'.

This project aimed to create a forum for discussion and technical debate regarding the relationship between the legal system, the peace agreements and the roles to be performed by lawyers and companies in this context.

During the project, the foundation conducted five 'Guided Dialogues' in 2017, inviting different stakeholders, such as business leaders, civil society leaders, leaders of the legal community and decision-makers, to analyse the legal challenges stemming from the implementation of the Peace Agreement. The subjects of these debates were:

- *Political Participation, Democratic Opening and Communities*: the debate focused on the participation of new actors in democratic scenarios, such as the previous consultation for indigenous communities and priority representation for territories affected by armed conflict;
- *Rural Development Policy, Development Models and Legal Regime*: the discussion focused on the implementation of Integral Rural Reform brought by the Peace Agreement. This reform implies first an opportunity for national and foreign companies to invest in the Colombian rural territories; and second, the reform generates significant tensions regarding land, human rights and the rights of foreign investors;
- *Public Procurement and Post-Conflict*: the speakers of this forum pointed out that the current legislation on public procurement does not allow new actors to participate in contracts needed for the implementation of the Peace Agreement. Therefore, a new regime of public procurement is desirable to assure the stability of the peace process and the participation of communities in its implementation;
- *Alternative Dispute Resolution Mechanisms*: the use of alternative dispute resolution mechanisms in the peace construction is essential to assure access to justice. These mechanisms can be the solution for ordinary controversies in rural areas affected by the conflict, where armed justice prevailed; and
- *The Role of Law Firms and Companies in Transitional Justice*: this discussion focused on the participation of companies in transitional justice, both as victims of extortion and as funders of armed groups. Moreover, the speakers pointed out that companies will be key players on the process of uncovering the truth and the creation of rural development plans.

After the debates, it was possible to clarify some of the legal needs that arise from the implementation of the Peace Agreement, some of which affect both the private provision of legal services and the stability of the Agreement in the regions affected by armed conflict. Moreover, the conclusion was that law firms will play an important role in the administration of justice in the post-conflict scenario. First, private clients will require the legal assistance of lawyers that can implement investment projects which have to be respectful of human rights standards and the transitional process that will take place in Colombia. Second, pro bono work is an opportunity for lawyers to participate in the construction of peace, through the provision of free legal services for victims, former combatants and communities affected by the armed conflict. In conclusion, reintegration, reconciliation, administration of transitional justice, guarantees for the victims and access to justice in the territories affected by the armed

conflict, are subjects that will affect both the private counselling for companies and the pro bono services.

Legal education in the post-conflict scenario

After the approval of the Peace Agreement, 23 rural adaptation zones and eight camps were created and named as Territorial Training and Reincorporation Spaces (ETCRs –*espacios de formación territorial y de reincorporación*) which will serve to train FARC members for their reincorporation into civilian life, to prepare productive projects and to assist the technical training needs of the surrounding communities in a model of community reincorporation.^[3]

Access to justice is considered as a fundamental right and as an essential public service in Colombia.^[4] Nevertheless, access to justice in the country is limited because of the existence of obstacles that prevent people from bringing their conflicts to formal justice institutions in conditions of equality. Lack of economic resources, geographical location, post-conflict circumstances and ignorance of rights and duties are the obstacles that stand out the most and deserve attention because those most affected are people in a vulnerable and undeserved condition.

According to the National Planning Department (DNP), the absence of legal knowledge is a barrier for access to justice because the ignorance of rights obstructs the recognition of legal needs and promotes distrust of legal operators. As stated by the *Effective Rate for Access to Justice* of 2017 developed by the DNP, the second largest barrier for access to justice is lack of legal empowerment. The results of this rate showed that the 42 per cent of Colombians do not have the capacity to understand and use the law on their own, consequently investment in promoting and outreach of rights is required for access to justice.^[5]

Facing this new and uncertain context in which all the programmes and activities specified in the Agreement are being applied, urgent challenges emerge. In particular, access to justice is essential for the guarantee of basic legal needs that arise from the reincorporation to civil life and the assurance of human rights. Based on these needs, it is indispensable to carry out actions that address the dynamics and needs of each territorial space, taking into account the cultural and social factors and differences of the communities and members of the FARC, to effectively build peace in the country lands.

In contrast to the general population, former combatants and victims of the armed conflict have more legal needs, not only because of their condition but because of the less knowledge they have about multiple aspects of the justice system and their rights in the post-conflict scenario. Similarly, this group of people suffers a higher relative level of criminal conflicts related to displacement, homicide and personal injuries. This population is resigned to do nothing because of the limitations they find of access to the justice system and because of the little credibility they have for the entities in charge.

When facing the new context of post-conflict and peace consolidation in Colombia, the great challenge of legal attention to those most affected by the armed conflict is unleashed. The geographical obstacles barriers, the parallel justice, the fear to denounce, the presence of armed actors and the lack of knowledge of rights are aspects that must be addressed. For this reason, the Foundation will recognise the

justice needs of the communities involved to ensure timely and effective responses for them.

With the project 'Legal education in the post-conflict scenario', the Foundation aims to conduct educational and advisory legal workshops for victims and former combatants in ETCRs. With the purpose of empowering communities and expanding their legal knowledge according to their specific needs, the Foundation will go to the ETCRs and perform legal education programmes to ensure that, both in the immediate and long term, victims and former combatants have adequate access to justice and have the necessary tools to safeguard their rights when facing the new post-conflict scenario and reincorporation to civil life.

The Foundation aims to empower victims and former combatants through a legal education programme designed according to the problems identified in each community and taking into account their cultural, social, ethnical and natural context. The Foundation wishes to contribute from the social and private sector to the construction of a stable peace through: (1) the promotion of human rights and the rule of law; (2) the democratic resolution of conflicts, thus achieving a true reintegration into the peace; and (3) the legal education to prepare the community and former combatants for the reincorporation to civil life and its effects.

The project 'Legal education in the post-conflict scenario' is intended to make a Cycle of Integral Legal Education in three ETCRs and empower the victims and former combatants located there. This project will take place on the second semester of 2018 and 2019.

Notes

^[1] *Registro único de Víctimas (RUV)* January, 2018. Available at: <https://rni.unidadvictimas.gov.co/RUV>.

^[2] *Alto Comisionado de las Naciones Unidas para la Paz*, 2016. *Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradara*. Available at: www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Documentos%20compartidos/24-11-2016NuevoAcuerdoFinal.pdf.

^[3] Decree 1274 of 2017 and Decree 2026 of 2017 of the Presidency of Colombia. Available at: <http://es.presidencia.gov.co/normativa/normativa/DECRETO%201274%20DEL%2028%20DE%20JULIO%20DE%202017.pdf> and <http://es.presidencia.gov.co/normativa/normativa/DECRETO%202026%20DEL%2004%20DE%20DICIEMBRE%20DE%202017.pdf>.

^[4] It implies the duty to guarantee the satisfaction of the justice needs of the entire community, in a continuous manner and whose responsibility is in charge of those invested with the jurisdictional power (Art 125 of Law 270/1996).

^[5] *Indice efectivo de Acceso a la Justicia*, 2017. Departamento Nacional de Planeación.