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Transitional Justice and Reconciliation in Post-Conflict Colombia: Some Considerations for Future Canadian Engagement

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EXECUTIVE SUMMARY

For countries emerging from conflict, balancing the compromises of peace settlements with the pursuit of justice and long-term reconciliation is a significant challenge. There is no single path that can be prescribed in achieving this balance. Processes of justice and reconciliation are influenced by numerous factors including the impact of the conflict, parameters of the settlement, resources available, the degree of political will and consensus, institutional capacity, cultural norms, etcetera. However, a key lesson from experiences to date is that, regardless of the context, in-depth planning and preparation of strategies for justice and reconciliation must occur well in advance. This requirement has historically presented a challenge for both state and international actors, as attention and resources have understandably tended to focus on the conflict at hand. Accordingly, this paper looks at the issues of post-conflict justice, with a view to future Canadian engagement in Colombia, drawing upon regional and international experiences to date.

‘Transitional justice,’ in this context, is understood as the inter-related processes of prosecution and accountability, truth telling, reparations and institutional reform in the wake of large-scale conflict that contribute to the long-term restoration of social relations.’ This paper focuses on three aspects of transitional justice: legal approaches—both domestic and international mechanisms—, truth commissions, and reparations. It also addresses processes of demobilization and reintegration of arms and armed actors as fundamental preconditions to restoring security and pursuing justice, as well as a brief look at specific elements of the Colombian context that will influence future processes of transitional justice.

RÉSUMÉ

Pour les pays qui émergent d’un conflit, l’équilibre entre les compromis des accords de paix et la poursuite de justice et de réconciliation à long terme constitue un défi significatif. Il n’existe aucun remède simple qui peut être prescrit afin de réaliser cet équilibre. Les processus de justice et de réconciliation sont influencés par de nombreux facteurs tels que l’impact du conflit, les paramètres de l’accord, les ressources disponibles, le degré de volonté politique et de consensus, la capacité institutionnelle, les normes culturelles, etc. Cependant, une leçon principale des



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expériences antérieures est que, indépendamment du contexte, la planification et la préparation détaillées des stratégies pour la justice et la réconciliation doivent se produire bien avant la ratification des accords de paix. Cette condition a historiquement présenté un défi pour l'État et les acteurs internationaux, alors que l'attention et les ressources ont tendance à se concentrer sur le conflit actuel. En conséquence, cet article analyse les enjeux liés à la justice d'après-guerre, avec un aperçu sur le futur de l'engagement canadien en Colombie, en tenant compte des expériences régionales et internationales qui ont prévalu jusqu'à ce jour.

La « justice transitionnelle », dans ce contexte, se définit comme un processus relié entre la poursuite des actes criminels et l'imputabilité, la recherche de la vérité, les réparations de guerre et la réforme institutionnelle à la suite d'un conflit de grande échelle, qui vise à contribuer à la restauration à long terme des relations sociales. Ce document se concentre sur trois aspects de la justice transitionnelle: les approches légales—autant les mécanismes domestiques qu'internationaux—, les commissions de la vérité et les réparations de guerre. Il aborde également les processus de démobilisation et de réintégration des forces armées et des acteurs armés en tant que conditions préalables et fondamentales afin de restaurer un climat de sécurité et de justice. En outre, cet article jette un bref regard sur les éléments spécifiques du contexte colombien qui influencera le futur processus de justice transitionnelle.

RESUMEN

Uno de los mayores retos que enfrentan aquellos países que salen de conflictos armados internos es lograr un equilibrio entre los acuerdos para establecer la paz de un lado y la restauración de la justicia y la reconciliación del otro. Pero no existe una receta única para lograr dicho equilibrio. Los procesos de justicia y reconciliación están bajo la influencia de numerosos factores entre los que se hallan el impacto del conflicto, los términos de su resolución, los recursos disponibles, el nivel de voluntad política y de consenso existente, capacidad institucional, normas culturales, etcétera. Sin embargo, la experiencia actual nos indica que, independientemente del contexto, la planificación minuciosa y elaboración de estrategias de justicia y reconciliación deben producirse con anterioridad suficiente a la instauración de la paz. Históricamente este requerimiento ha sido desatendido tanto por los agentes nacionales como internacionales ya que obviamente la atención y los recursos se han centrado alrededor del conflicto mismo. El presente trabajo aborda el tema de la justicia en la fase pos conflicto y la participación de Canadá en el caso de Colombia a partir de las experiencias regionales e internacionales con que se cuentan hasta la fecha.

En este contexto, la frase “justicia de transición” se refiere a los procesos interrelacionados de enjuiciamiento y rendición de cuentas, difusión de la verdad, indemnizaciones y reforma institucional que se producen a raíz de conflictos de gran magnitud y que contribuyen al reestablecimiento de las relaciones sociales a largo plazo. Este trabajo aborda tres aspectos de la justicia de transición: los mecanismos legales (tanto nacionales como internacionales), las comisiones de la verdad, y las indemnizaciones. Asimismo, trata acerca de los procesos de desarme y desmovilización y inserción de los combatientes como condiciones esenciales para el restablecimiento de la seguridad y el logro de la justicia. Además, se aborda someramente algunos elementos específicos del caso colombiano que podrían influir en procesos futuros de justicia en fases de transición.

LEGAL PROSECUTION

Over the past decade, consensus has grown around the importance of legally prosecuting perpetrators of extreme human rights violations within the country in which they were perpetrated, and if this is not possible, to do so in international courts based on universal jurisdiction. These processes face the challenge of balancing justice with achieving peace. Principles of justice are often compromised in this regard, and certain types of amnesty are invariably granted to enable transitions to peace. However, limiting amnesty as much as possible, adhering to international laws, and successfully prosecuting perpetrators are considered necessary for reconciliation and sustainable peace.

Legal prosecution is particularly important in overcoming cycles of impunity and restoring trust in democratic processes by demonstrating a capacity to effectively administer justice. Post-conflict legal prosecution contributes specifically to²:

- preventing a return to conflict by restoring and maintaining order;
- assigning blame to individuals and punishing offenders;
- provide restitution and set out reparation for victims of conflict;
- re-affirming the rule of law and building confidence in democratic institutions;
- regulating and deterring future violence.

However, there are significant challenges to pursuing formal prosecutions: it often entails a compromise between principles of justice and the realities of achieving and maintaining peace; it can serve to destabilize peace settlements and be perceived as a new source of injustice; a focus on prosecution of perpetrators can come at the expense of attention to victims' needs; the number of prosecutions and evidence required for a legitimate process is often beyond the scope of judicial institutions, particularly where they are weak, and can actually result in a 'crippling' of judicial systems; by focusing on individual responsibility, the broader structural causes underlying the conflict may not be given adequate attention. In the few cases where prosecution has been undertaken domestically, with at least some degree of success (for example Argentina), the allocation of adequate resources as well as clear objectives have been key determinants³

In the context of Colombia, although prosecution in national courts is considered by many to be the most feasible first option for pursuing formal justice against perpetrators of human rights violations, the weakness of the judicial system will make legal prosecution extremely challenging. International support for increasing the capacity of these institutions, through the provision of resources, training and experience is imperative. Although previous programs to strengthen judicial institutions have faced setbacks and challenges, this is an area in which Canada has the legitimacy, experience and capacity to add great value, even at the individual level of exchanges of judicial personnel between Canada and Colombia, for example.

The issue of amnesty

There are few peace settlements that have been achieved without concessions of some amnesty, and based on the current options for 'alternative justice'

for paramilitary groups, it is clear that Colombia is unlikely to be an exception. To balance the imperative of peace, with requirements for justice in order to achieve reconciliation, experiences in other countries demonstrate the importance of limiting and conditioning amnesty as much as possible.

In many instances, granting amnesty to known perpetrators of gross human rights violations has led to a situation in which perpetrators are considered to hold a greater advantage than victims, particularly where reparations are inad-

equated. Amnesties can undermine other processes of justice and the potential for reconciliation (e.g. blanket amnesty for 'political crimes' granted in El Salvador undermined the findings of the truth commission). According to many analysts, impunity for perpetrators of human rights abuses in Guatemala and Haiti, for example, has been a serious setback for the peace process and reconciliation in Guatemala and a source of recurrent conflict in Haiti, preventing deepening of democracy in both instances.⁴

The granting of amnesties can be limited to a specific time period or whom they are awarded to, and/or conditioned upon specific factors such as providing testimony. However, regional experience does not set a strong precedent in this regard. In Argentina, Chile and El Salvador, blanket amnesties were granted—although in the case of Argentina were subsequently limited to lower and middle ranking military

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officers. In the case of Guatemala, although amnesty was granted conditionally to those who applied under the National Law of Reconciliation, critics point out that high rates of impunity and weakness of judicial institutions weaken the conditionality of amnesty granted.⁵

If, as is likely in the case of Colombia, some form of amnesty will be used to reach a peace settlement, creating as stringent a set of guidelines and limitations as possible, with support and pressure from the international community is important to ensure that it does not prevent long-term reconciliation.

Where nationally based courts lack the necessary capacity and legitimacy to prosecute war crimes or crimes against humanity, international mechanisms are looked to as an accompanying or alternate recourse. Some of the opportunities and constraints of turning to international mechanisms in assisting in judicial processes, relevant to the Colombian context, are reviewed below.

International Legal Mechanisms

There are advantages and disadvantages to pursuing prosecution of war criminals in international courts. On the one hand, international jurisdiction can provide a perceived and actual legitimacy and neutrality and prevent risks of ‘victor’s justice’ in trials (vs. domestic / state bias) important for the perception of justice being done; it has, in some cases, more capacity and resources than states where democratic judicial institutions are extremely weak or non-existent; there is less likelihood that international courts can be influenced or threatened by armed actors; their very existence can act as a deterrent to future perpetrators; they can provide greater likelihood of international standards and human rights norms to be upheld, and can set important precedent for justice and multilateral engagement in transitions to peace.

However, international tribunals also face constraints in meeting expectations for justice and contributing to reconciliation, including: a limited ability to sanction and enforce; the fact that they take place outside the national context and often over lengthy time periods, limits their contribution to national reconciliation; they can realistically prosecute on a small percentage of primarily high level alleged per-

petrators, rather than all of those responsible, particularly at middle and lower levels.

Given the compromises that are inevitably struck to achieve peace, the principles and standards set by international frameworks for prosecution of human rights violations are not always fully implemented; however, at a minimum they provide important parameters for all aspects of transitional justice, and guidelines for the international community. Two international sets of institutions—the Inter-American Court on Human Rights and the Inter-American Commission on Human Rights, as well as the United Nations Human Rights Commission and a set of tribunals including the International Criminal Court, have had an impact on processes of justice in the region and internationally that are likely to set precedents for the Colombian context.

The Inter-American system of human rights: Setting limits on amnesty

The Inter-American Court on Human Rights and the Inter-American Commission on Human Rights have issued groundbreaking decisions that have countered the application of amnesty laws in transitions to peace, and led to investigations and reparations for victims of human rights abuses. As L. Joinet, reported to the UN Commission on Human Rights, “...the Inter-American Court of Human rights...in a groundbreaking ruling, found that amnesty for the perpetrators of serious human rights violations was incompatible with the right of every

individual to a fair hearing before an impartial and independent court”—this ruling was supported by the Vienna Programme of Action and recommended for adoption to the UN (UNCHR Report: *Question of the impunity of perpetrators of human rights violations*, 1996).

This reversal of amnesty rulings is significant given the broad amnesties and high levels of impunity that have prevailed throughout Latin America. IACHR rulings have shaped the course of national legislation, particularly post-transition to democracy. Argentina, Chile, the Dominican Republic, El Salvador, Mexico, Nicaragua, Panama, and Paraguay, have all recognized the compulsory jurisdiction of the Inter-American Court to address future human rights abuses.⁶ The Commission and the Court have also, in some instances, requested that national govern-

ments modify legislation such that it conforms to the higher standards of the Inter-American system—particularly with regard to amnesty laws. This is reflected in Argentina, where courts have applied Inter-American jurisprudence rendering existing amnesty laws void. The IACHR also set an important precedent in its ruling that Peru’s 1995 all-encompassing amnesty laws invoked by Fujimori to shield the military from prosecution, were invalid and could not be used to prevent the prosecution of members of the Peruvian military in the Barrios Altos case,⁷ leading to a reopening of the case by the Peruvian Supreme Court. The recent Peruvian Truth and Reconciliation Commission also invoked the standards set by the IACHR in its final report, rejecting options of amnesty and calling upon the state to work within the “strict framework established by the Inter-American Court of Human Rights” (*Report of Peru’s Truth and Reconciliation Commission – Recommendations, 2003*).

The IACHR’s retroactive rulings and reversal of amnesty laws should be taken into account by the Colombian state, as well as international actors, in decisions affecting the degree of amnesty granted to alleged perpetrators of violence, to achieve peace. They also present a post-settlement recourse which victims and third parties can invoke if justice has not been adequately pursued. The fact that Canada is not a signatory to the Inter-American Charter is not only detrimental to the IACHR’s credibility and strength in the hemisphere, but limits Canada’s ability to leverage its support as a potentially important mechanism to support justice and reconciliation in Colombia.

The International Criminal Court: An unlikely recourse for Colombia

The different types of international tribunals that have emerged over the past decade are well known, and include the ad hoc tribunals set up by the UN Security Council (the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993, and the International Criminal Tribunal for Rwanda (ICTR) in 1994), and hybrid international-national courts, for example for Sierra Leone, consisting of national and international judges. Since coming into effect in 2002, the International Criminal Court (ICC) is the main international mechanism for prosecuting war crimes in an international court. It holds advantages over earlier tribunals and other mechanisms of being permanent, not restricted to a single place or context, and a mandate that includes internal conflicts. Any State that is signatory to the Rome Statute, upon

which the ICC is based, can refer a matter to the ICC, as can independent prosecutors and the UN Security Council.

Jurisdiction of the International Criminal Court

The ICC has a mandate to prosecute:
Genocide - (Article 6) acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group.
Crimes against humanity - (Article 7) crimes committed as part of a widespread or systematic attack directed against any civilian population: murder, extermination, enslavement, deportation, or severe deprivation of physical liberty in violation of fundamental rules of international law including sexual violence, apartheid persecution, forced disappearance, etc.
** Genocide and crimes against humanity are punishable irrespective of whether they are committed in time of “peace” or of war.*
War crimes – (Article 8) entail severe violations of the Geneva Conventions of 1949 and other serious violations of the laws of war, committed on a large scale in international as well as internal armed conflicts, particularly those committed against non-combatants.

Adapted from 1998 Rome Statute of the International Criminal Court
(www.un.org/law/icc/statute/rome fra.htm)

Colombia is a signatory to the Statute of Rome, and amended its Constitution to explicitly authorize ratification, so cannot foreclose the possibility of ICC jurisdiction.⁸ However, the ICC is unlikely to be looked to as a key instrument to pursue prosecution. The fact that the court’s jurisdiction is not retroactive, and therefore can only prosecute crimes committed after July 1, 2002, limits its effectiveness for the Colombian conflict, which has spanned over forty years. Moreover, upon Colombia’s ratification of the ICC, then-President Pastrana invoked Article 124, which precludes the ICC from having jurisdiction over alleged war crimes for a period of seven years.⁹ Requests by human rights groups and the Colombian Attorney General that this decision be overturned by President Uribe have not been fulfilled (although this article does not necessarily preclude ICC involvement during this period as many of the crimes associated with the Colombian conflict would likely also fall under ‘crimes against humanity’). Also, under the ICC’s ‘principle of complementarity’ the International Criminal Court will “act only when national courts are unable or unwilling to exercise jurisdiction. If a national court is willing and able to exercise jurisdiction, the International Criminal Court cannot intervene and no nationals of that State can be brought

before it” (*Coalition for the International Criminal Court*). Despite significant institutional weaknesses and high levels of impunity, Colombia is considered to have an institutionalized judicial system, and there is domestic pressure to punish leaders of armed groups nationally.

As Colombia’s most important ally and primary supplier of economic and military support, the U.S.’s strong opposition to the ICC also affects the likelihood that it would be sought as a recourse—evident in Colombia’s recent agreement to ‘bilateral impunity’ that would exempt U.S soldiers from ICC prosecution. (Central American countries’ reluctance to ratify the ICC is considered to reflect U.S opposition). The U.S. position would also likely limit any attempts for other countries to seek ICC referral through the Security Council. Given these limitations, most analysts feel that the prosecution will remain with national-level courts. However, it is hoped that the ICC may be able to focus international attention on legal processes in Colombia, and leverage support for increasing the capacity of state-level institutions for prosecution, and serve at least as a guideline or symbolic check to limit the application of amnesty.

Justice and Gender: Considerations from UN - Women, War and Peace

Integrating gender perspectives in all aspects of justice and reconciliation remains an ongoing challenge. The United Nations Development Fund for Women (UNIFEM) has recently created a web portal on Women, Peace and Security (www.women-warpeace.org) to collect resources specifically of the experience and needs of women. The Canadian International Development Agency (CIDA) and the International Development Research Centre (IDRC) are also leading work and research in this area. Key points from the portal and the UN *Women, War and Peace* report on women and justice (Chapter 7, 2002), specifically legal prosecution, are listed below.

- Historically, women have been under-represented in judicial processes. Ensuring accountability to women within the justice system requires a range of strategies that can be carried out at national, regional, or international levels and through a variety of judicial methods: the ICC, ad hoc tribunals, special courts and tribunals and national justice system.

- National Approaches: getting indictments for crimes against women has proven to be most difficult at the national level. A just and effective national system is vital for women; without it and without laws that adequately protect them from domestic violence, rape and other gender-based violence, women cannot seek justice or compensation.
- International Criminal Court (ICC): the Rome Statute is one of the most significant examples of gender mainstreaming in an international treaty. It explicitly includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and sexual violence as war crimes and crimes against humanity. Trafficking is encompassed within the crime against humanity of enslavement. Also, for the first time, gender-based persecution is included as a crime against humanity.

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Some Recommendations of Independent Experts on Justice from UN Women, War and Peace report include:

- State Parties to the Statute of the International Criminal Court to undertake national law reform to ensure compatibility with the Statute as a matter of priority, with particular attention given to the substantive and procedural provisions regarding crimes against women.
- National legal systems to penalize and remedy all forms of violence against women in conflict and post-conflict situations. Specially trained police units should be established to investigate crimes against women and law enforcement officials, including judges, police and armed forces, should be sensitized about such crimes. Women’s access to justice should be ensured through legal literacy programs, support services and legal aid.
- Incorporate gender equality in constitutional, legislative and policy reforms. Special attention should be given to family, civil and labour laws and land reforms.
- Need for rapid establishment by the UN of interim judicial systems capable of dealing effectively with violations against women by family members and society at large. Rape and sexual violence should be addressed by post-conflict truth and justice-seeking mechanisms at national and local levels. The treatment of crimes against women in traditional mechanisms should be consistent with international standards.

TRUTH COMMISSIONS

Truth commissions are considered one of the most fundamental tools in processes of justice and reconciliation, not as alternatives to, or substitutes for, legal processes, but rather as integral and complementary components of reconciliation. The implementation of truth commissions has varied in different contexts, ranging from official inquiries into human rights abuses mandated by the state with direct links to judicial processes, to non-governmental initiatives to document violations. Common characteristics of truth commissions include: their status as a non-judicial body; their mandate to investigate patterns of violations committed over a specified period of time; their temporary nature (often from one to two years); and a mandate that includes a final report with conclusions and recommendations for redressing violations, including reparations and institutional reforms.¹⁰ Truth commissions are considered to contribute to justice and reconciliation in several ways that are distinct from, and/or add-value to formal prosecution [See Hayner (1999), Lerche (2000), Hamber (1998); www.ictj.org]:

- They create a public space for victims to be heard and acknowledged;
- They allow for collective and institutional responsibility, unlike formal legal processes that are restricted to the individual;
- They can contribute directly to legal judicial procedures or make prosecution more likely in the future;
- They offer an opportunity to make recommendations regarding the reconciliation processes including reparations and institutional reforms, as well as putting in place funding structures required, like special funds, etc.;
- They establish a shared understanding of the past, which is important for reconciliation.

Given these functions, it has been argued that overall, truth commissions have been more successfully implemented, and have contributed more to processes of national reconciliation than war crimes tribunals."

In spite of their advantages, truth commissions can be controversial and risky. Revealing the truth and uncovering the path can de-rail peace initiatives and trigger conflict, particularly if it is perceived as a sub-

stitute for retributive justice. Also, it is a psychologically painful process, and is susceptible to manipulation or reinterpretation by certain parties.¹² The design, structure and implementation have a major influence on the outcomes of commissions, and it is important that they be given careful consideration by national as well as international actors.

Structuring Truth Commissions: Lessons Learned From Experiences to Date

There is an extensive body of research and analysis on the goals and implementation and outcomes of truth commissions based on different countries' experiences. Although truth commissions over the past decade have been influenced by early experiences in the Southern Cone, including Argentina's *National Commission on the Disappeared* (1983), and Chile's *National Commission on Truth and Reconciliation* (1990), as with other aspects of justice,

there is no standard procedure or form. Truth Commissions across countries have differed in their composition, duration and scope; their links (or lack of) with court trials; the type of information they gather and what they release; the way in which it is gathered (public or private); the type of recommendations made and subsequent follow-up.

International experience to date has shown that the success of a truth commission is contingent on the existence of sufficient time, capital, and human resources; operational independence and a flexible but "powerful" mandate; the broad inclusion of actors in all

aspects of the process; and political consensus in support for the commission and implementation of recommendations.¹³ Lessons from specific country cases provide concrete examples of how these elements have shaped the process and outcome of truth commissions.

With regard to the commission itself, *who* is selected to sit on it, and *how* this selection takes place affects the legitimacy, implementation and ultimate success of the commission. Countries where commissions were composed of a mix of representative international and national actors, and/or were formed on the basis of an inclusive consultation process overall fared better. South Africa's and Sierra Leone's truth commissions have been pointed to as examples of this, see Box next page.

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Composition of truth commissions

The nomination process for the South African Truth and Reconciliation Commission was highly consultative, involving a call for public nominations that were submitted from all social sectors. Fifty candidates from the submission process were interviewed in a public session. The final commission was politically and geographically representative with a high level of legitimacy.

The process in Sierra Leone was also considered to be successful. The Special Representative of the UN Secretary General was designated as coordinator of the selection process. A selection panel with representatives from government, armed opposition forces, and a variety of civil society organizations was created. In turn they selected four national candidates. The UN High Commissioner for Human Rights selected three international candidates.

Source: IDEA, *Reconciliation After Violent Conflict*, 2003.

With regard to the provision of sufficient national and international financial and human resources, the South African Truth and Reconciliation Commission (SATRC) is often cited as an example. It costs approximately US\$18 million per year for two and a half years; a staff of three hundred, and four official offices. The SATRC is also considered to be an example of transparency and high level of consultation, and provides a useful model in this regard, albeit not one that can be easily replicated.

In contrast, examples from Central America, including El Salvador, highlight some of the problems that result from inadequate resources as well as lack of political consensus, and sufficient domestic presence on the Commission. A. Segovia, Executive Director of *Democracy and Development*, at a recent conference organized by the International Development Research Centre Peacebuilding Initiative, with the International Center for Transitional Justice (March 2004), pointed out that although El Salvador has successfully implemented its peace accords, its Truth Commission was less successful and none of its recommendations for reparation or institutional reform have been implemented. He cited several key problems:

- Lack of political consensus required to support the Commission and implement recommendations;

- Inadequate structure as it had weak links with government, and disbanded immediately after a report was completed without mechanisms for domestic follow-up.
- Weak recommendations without necessary funding structures; e.g., a reparations fund to follow through on recommendations.
- Lack of strong, cohesive political groups capable of pressuring government to follow through on recommendations.

(For more information see www.idrc.ca/peacebuilding)

The degree to which truth commissions have contributed to justice and reconciliation has also been contingent on the extent to which commissions have been linked to legal prosecutions. This link is important for achieving just outcomes, particularly if the truth commission publicly names individual perpetrators as it promotes due process, although it can be a disincentive for full participation. The truth commissions in Peru and Argentina provide useful lessons on commission-court links. Within the Peruvian Truth and Reconciliation Commission, an office was created to investigate specific cases with the intent of providing information to the judicial authorities, who had already begun to take steps to prosecute these cases. Similarly, Argentina's truth commission, the National Commission on the Disappeared, submitted all of its files to the courts, which were subsequently used to prosecute key perpetrators.¹⁴

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Maximizing international engagement

Although truth commissions are nationally owned, international support is pivotal in providing resources, capacity-building for participation as well as historical information and documentation where relevant (for example, in Colombia, international human rights workers have also maintained documentation of violations). International actors have an equally important role to play in promoting and supporting the reforms and recommendations of the

commission. As the Peruvian TRC recommended, complementary international financial support is instrumental in the implementation of recommendations and reparations.

International engagement has been successfully undertaken through support for UN involvement in

The Peruvian Truth and Reconciliation Commission: Lessons for Colombia?

The Peruvian Truth and Reconciliation Commission is an interesting example for potential future processes in Colombia. Not only is it the most recent example from the region, but it is one of the only commissions that has dealt with third party armed actors—i.e., paramilitary and multiple guerrilla groups, and therefore a useful parallel with the Colombian context. Also, the Peruvian TRC created a judicial institution as part of the process to make specific recommendations for prosecution; it also set up a national coordinating body and funding mechanisms to implement the reparations process.

In the conclusions of the Peruvian TRC's report, the role and responsibilities of all actors in the conflict, including the Communist Party of Peru-Shining Path, the Revolutionary Movement Tupac Amaru, state police and military forces and self defence committees, as well as specific governments, particularly that of the Fujimori government, as well as legislatures and the judiciary are outlined in detail. The conclusions are comprehensive and specific, acknowledging positive steps to uphold democracy as well as abuses, taking into account the impact of contributing factors such as economic crisis, the failure of representation across the political spectrum, and the inadequacies of the education system. Human rights organizations and media outlets and journalists are also included in the report, for their positive role in condemning, preventing and ending violence acknowledged.

The Recommendations are also comprehensive and unambiguous, and include specific recommendations in the areas of:¹⁵

- strengthening democratic authority and consolidating democratic institutions, including reform of the Armed Forces, the National Police, and the intelligence services to ensure civilian democratic leadership of national defence and internal security tasks;
- reforming and strengthening the system for the administration of justice;
- reforms to education to promote democratic values;

It also includes a comprehensive for reparations by different means: symbolic reparations, health reparations, education reparations, financial reparations, restitution of citizenship, collective and individual, based on clearly defined beneficiaries and criteria. Significantly, it sets up a national coordinating body to oversee and implement the reparations process, recommends the creation of a National Reparations Fund to fund it, using public funds, recovered funds, and international support via complementary financing. Moreover, it lays out an elaborate plan for anthropological and forensic investigation, as well as a mechanism to implement the TRC's recommendations including an Inter-Institutional Working Group, and a law establishing a National Council for Reconciliation.

The Peruvian TRC clearly sets an impressive, comprehensive precedent for other regional contexts. The degree to which its recommendations and reparations plan are implemented remains to be seen.

Source: Peruvian Comisión de la verdad y reconciliación (<http://www.cverdad.org.pe>); Recommendations (translated in English) are also available from the International Center for Transitional Justice website www.ictj.org

both El Salvador and Guatemala. Capacity-building for civil society organizations to participate in the process; funding of opportunities to exchange lessons learned (for example, from Central American and Peruvian processes), integration of gender considerations and other cross-cutting issues, support for secure environment without fear of reprisals (which limited El Salvador's process significantly) and public education about the process are all areas that would benefit from Canadian assistance both through existing multilateral mechanisms or bilaterally. With regard to Colombia, it is unlikely that a truth commission could be held prior to a viable peace agreement, given the prerequisites of security and inclusiveness, which are constrained by limited access to certain regions.¹⁶

REPARATIONS¹⁷

In spite of growing resources available on transitional justice, reparations have yet to receive adequate attention and analysis, including implications and options for the donor community. For this context, *reparations* refers to reparative or compensatory measures with massive coverage to victims of conflict-related crimes including war crimes, genocide, gross violations of human rights, etc. Reparations in this sense can be material or symbolic, ranging from money, social services, and land, to official apologies, monuments, days of commemoration etc. These reparations are most often set through truth commissions' recommendations and/or legal trials.

The growing consensus that victims of human rights abuses have a right to be compensated, is reflected

in numerous international human rights documents, including the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. Quantifying reparations for individuals, particularly when the status quo cannot be restored; i.e., when abuse led to death, has been addressed by some of these international bodies. For example, the Inter-American Court of Human Rights has defined the “material and moral damages” as being worth the victim’s projected income, multiplied by the time left in earning potential, minus 25 percent to account for what might have been spent, then adding the Court’s subjective estimate of ‘moral’ damages, with court rulings requiring payments ranging from US\$150,000 to US\$200,000.¹⁸ However, compensation in the context of mass reparation in the wake of large-scale conflict presents a greater challenge, as this type of process and compensation are untenable, and reparations become proportional. [P. de Greiff (2004) points out that in Peru, for example, if this amount were awarded it would cost approximately US\$6 billion, for a country whose total yearly budget is approximately US\$9 billion].

In light of this, post-conflict mass reparations contribute to justice and reconciliation in three broad ways, they:

- recognize and publicly acknowledge victims;
- can build civic trust between citizens and institutions and other citizens; and,
- foster a sense of social solidarity and support.¹⁹

A conference on reparations organized by the International Development Research Centre (IDRC) and the International Center for Transitional Justice (ICTJ), March 2004 addressed issues surrounding reparation programs.

The fact that massive, reparations whether material or symbolic, can never fully compensate for victims’ loss or experience remains a challenge for reconciliation. However, holding trials and truth commissions without any compensation for victims delegitimizes these processes, and limits their contribution to reconciliation; alternately, to provide reparations without acknowledgement by trial or truth-telling, can constitute a ‘pay off’ for victims’ silence.²⁰

Some general lessons learned from experience to date regarding reparations programs:²¹

- The successful creation and implementation of reparation programs is contingent upon political consensus to ensure will and sustained support. This consensus (not just around reparations but for the commission or trials from which they originate) is built upon extensive and inclusive consultation with all sectors of society affected by the conflict. Consensus is more likely to emerge where extensive consultation and inclusion of victims in all aspects of the process has occurred.
- As with other aspects of justice and reconciliation, reparations must be coherent with other processes of justice, and must be addressed transparently and with equity – especially in contexts of high socio-economic and political inequality;
- Reparations must be explicitly addressed as such; i.e., described as reparations, distinct from broader development activities and objectives if they are to contribute to a sense of justice and reconciliation. They must also be addressed in a reasonably timely way, particularly given tensions that can arise from reintegration of perpetrators without adequate prioritization of victims’ needs.

One of the most persistent challenges in implementing reparation programs has been securing and sustaining adequate funding

Financing and Distribution

One of the most persistent challenges in implementing reparation programs has been securing and sustaining adequate funding. According to many of the researchers at the IDRC / ICTJ conference on reparation (March 2004), there is pressing need for more analysis of the economic and financing dimensions of reparation programs. Reparations are most often funded either through the creation of a special fund, or directly by the state through public budgets.

Based upon international experiences, A. Segovia, in his presentation at the IDRC / ICTJ conference, suggested that the latter financing option—directly by the state through public budgets—has been more successful to date. He cited several reasons for this: the international community has been relatively unforthcoming with funding for reparation programs; and, funding reparation programs through the public budget is only possible where there is political consensus on the need to ‘repair.’ Several reasons were suggested as to the lack of international funding for reparations: the view that by their very nature, reparations are the responsibility of the state; i.e., to make up for past wrongdoing; due to the often highly political nature of reparations and concern about potential controversy or conflict they

may generate; and the fact that support for legal procedures is considered administratively and financially more viable. International donors have generally preferred to fund related (less politicized) development initiatives that in some cases overlap with reparative measures. There is also a legitimate concern not only among international donors but also states about the need to balance investment in reparations with broader development priorities. However, the blurring between reparations and general 'development' programs was identified at the ICTJ / IDRC conference as problematic. For reparations to contribute to justice, healing and reconciliation, they need to be explicitly identified as reparations—as public acknowledgement of victims' suffering.

In terms of international mechanisms, UN principles on reparations remain in draft form. The Rome Statute also outlines the development of a trust fund to support the implementation of reparations decided upon by the International Criminal Court—this may be an option in the future but faces conceptual challenges of incorporating mass or collective reparations.

Public financing is also successful in that it implies a degree of political consensus, required for leveraging adequate funds and the implementation of reparations programs overall. In cases where consensus has been weak, reparation programs have either faltered or been only partially responsive to specific sectors with the capacity to exert political pressure. The example of Chile, in contrast to El Salvador and Guatemala, was used to support this point. In Chile, widespread political support for reparations was a key factor in their extensive implementation (see table below); whereas in El Salvador and Guatemala, political alliances were weak, and reparations were only given to the best organized pressure groups, guerrilla veterans in the former and paramilitary/military in the latter. This type of discrepancy and inequality in the allocation of reparations serves to undermine processes of justice and long-term reconciliation.

Insufficient attention to the *mechanisms* for funding reparations either in legal or truth commission recommendations presents an additional challenge. The recent report by the Peruvian Truth and Reconciliation Commission may present an innovative model in this regard: the Final Report sets out a "Comprehensive Plan for Reparations" for victims, including recommendations for the creation of a

Extensive Reparations in Chile

Chile is considered an important experience in the extensive implementation of reparations not only to surviving victims but also their families. Based on recommendations of the Chilean Commission, in 1992 the Chilean legislature enacted a law that established a "National Corporation for Reparation and Reconciliation" under the Ministry of the Interior with a two-year mandate to provide compensation to victims' families and develop programs to foster a "culture of respect for human rights" in Chile. Claims for reparations are tied to the work of the truth commission; i.e., if a victim's name is included in the report, it is sufficient evidence to obtain benefits.

Reparations include monthly pensions, fixed-sum payments, health benefits, and educational benefits. The pension is distributed by giving 40 percent to the surviving spouse, 30 percent to the decedent's mother (or father in the mother's absence), 15 percent to the mother or father of the natural children of the victim, and 15 percent to each child of the victim under the age of 25 and to disabled children of any age. Each beneficiary is also entitled to collect a one-time annuity equivalent to twelve monthly pensions, which is not considered taxable income.

Reparations also confer the right to free health care services in the national health care system to victims' relatives whose income is below the poverty line. In addition, a program of 'Reparation and Integral Health Care' was established to cover individuals affected by human rights violations, with both physical and mental repercussions, including families of victims.

The children of victims are entitled to exemption from mandatory military service and special educational benefits including scholarships for students to pay for tuition fees and costs of living.

Although the Chilean model is often regarded as a benchmark, the law has also been criticized for not providing adequate compensation, and for excluding victims of torture. Despite these shortcomings, however, the Chilean law has generally been viewed as a precedent-setting case.

Source: J. Edelstein, *Centre for the Study of Violent Conflict and Reparation - Seminar No. 6, Rights, Reparations and Reconciliation: Some comparative notes, 1994*

National Reparations Fund to finance the implementation of reparations coordinated by a national agency whose creation was also recommended. Although these are only recommendations, and the political will / capacity for implementation remains to be seen, they set potentially useful precedent for other processes in their explicit attention to different financing mechanisms.

Restitution of property for the return of refugees and displaced persons

One of the greatest challenges facing reparation planning and implementation in the Colombian context is the restitution of housing and property for the millions of people and communities displaced as a result of the conflict. The 2002 Preliminary Report of the Special Rapporteur, Paulo Sergio Pinheiro, on Housing and Property Restitution to the 5th Session of the UN Commission on Human Rights (Sub-Commission on the Promotion and Protection of Human Rights) sets out potentially useful precedents and guidelines. Drawing upon the experiences of Croatia, Rwanda, Georgia, Guatemala and other cases, primary obstacles in this process are:

- secondary occupation of communities, properties and houses which raises questions of legal ownership and challenges of removing occupiers;
- property destruction;
- loss of property records, disputed legal ownership;
- ineffective institutions, particularly judicial mechanisms to oversee processes;
- discriminatory restitution programs in favour of particular groups.

Roles for the international community in restitution of property processes include peacekeeping and conflict resolution, support for and development of restitution programs, implementation and monitoring. The report recommends that international guidelines and a model restitution policy for housing and property be developed (in addition to existing legislation on housing rights), informed by international law and addressing such issues as: the rights to restitution, the participation of displaced persons in decisions about restitutions; the right of secondary occupiers to housing and relocation; right to adequate compensation in the context of property destruction.

Considerations for Canadian engagement in future contexts, including Colombia

There are international frameworks and recommendations useful for guiding Canadian positions on reparations, including the UN Commission of Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Study concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, T. Van

Boven (1993). In terms of engagement, based on its strengths and experience to date, Canada is well placed to support reparation processes (as part of broader justice and reconciliation activities) through:

- Support for a holistic approach to reparations in the context of broader processes of peacebuilding.
- Providing flexible, well-planned resource contribution with a long-term view.
- Developing capacity for implementation, monitoring and evaluation.
- Promoting bilaterally and multilaterally the implementation of recommendations.
- Sharing expertise on gender mainstreaming.
- Supporting further research on financing and implementation.
- Supporting an inclusive process of consultation by strengthening the capacity of victims and other affected sectors to participate in these processes. This is particularly important in the Colombian context. It is the most socially, politically and economically marginalized groups who have disproportionately suffered the effects of the conflict (including indigenous and Afro-Colombian populations) and need to participate for effective justice and reconciliation processes.

In cases where consensus has been weak, reparation programs have either faltered or been only partially responsive to specific sectors with the capacity to exert political pressure

SECURITY AS A PRE-CONDITION FOR JUSTICE: LESSONS FOR DEMOBILIZATION, DISARMAMENT AND REINTEGRATION PROCESSES

Establishing security is one of the most urgent and challenging prerequisites to post-conflict reconciliation and sustainable peace. Security in this sense is comprehensive, ranging from the safety of all citizens to the reform of security and judicial institutions. This section looks at the specific processes of demobilization, disarmament and reintegration (DDR) that are key to the re-establishment of security and subsequent pursuit of justice.

According to a recent report by the International Peace Academy [International Peace Academy (2002)], the demobilization, disarmament, and reintegration of armed actors to become productive members of society is essential for justice and sustainable peace. *Demobilization*, the process of combatants leaving armed groups, includes not only *disarmament*, i.e., the process of eliminating the military capacity of armed actors and collecting of arms

and ammunition, but also requires that former combatants desist from any further military activities. *Reintegration* is the process by which demobilized combatants are incorporated into society through training and assistant programs, defined as entailing the “immediate and medium term social and economic inclusion of former combatants into their communities of origin or new communities (...)” [IPA, 2002]. Although the first two have been widely studied and in some cases achieved, the longer term and more complex process of reintegrating former combatants has received less domestic and international attention and remains, in most cases, unfulfilled.

In recent years, there has been considerable reflection on these processes and international contributions to them by the World Bank, the United Nations Development Program Bureau for Crisis Prevention and Recovery, as well as non-governmental institutions such as the International Development Research Centre, and the International Peace Academy. It is important that Canada draw upon these resources in future engagement in the Colombian context.

Some broad lessons on DDR

There is general consensus that, as with all aspects of post-conflict transition, there is no blueprint for implementing DDR processes, their timing, what they entail and their likelihood of success depend on context-specific factors. DDR affects and is affected by broader processes of socio-economic development, justice, reconciliation, and resettlement as well as other institutional reforms, including security.

Experience to date has also shown that demobilization and reintegration rely on national consensus or ‘buy-in’ from government, communities, victims, as well as armed actors and their families, as much as actual capacity, and that all aspects must be planned prior to, and incorporated into peace settlements. In the case of Mozambique, for example, Switzerland funded the development of a planning unit for demobilization two years prior to the actual peace agreement, a factor that was considered to contribute to the plan’s success. Lessons taken from this planning process include the importance of establishing in advance:

- A broad-based commission to implement and oversee DDR processes;

- Detailed assessment of financial costs and creation of financing mechanisms and divisions of responsibilities for implementation (nationally and internationally);
- Decisions and consensus around who is considered a combatant and who is eligible for reintegration programs—there must be equal treatment of all armed groups, regardless of allegiance, as well as strategies to address those indirectly involved in armed groups such as dependents;
- How the process will be monitored and sustained over the medium and long term;
- An estimated calculation of numbers of armed actors and arms—a challenge given the disincentives for full disclosure;
- Assessment of labour needs and links to capacity and skills of former combatants, for adequate employment strategies in reintegration;

One of the greatest challenges facing reparation planning and implementation in the Colombian context is the restitution of housing and property for the millions of people and communities displaced as a result of the conflict

employment strategies in reintegration;

- Consideration of other dimensions including: how to incorporate gender / age differences into all aspects of DDR planning; regional implications of DDR processes (particularly in cases such as Colombia in which cross-border spillover has tremendous repercussions), public education programs to promote broad based support and minimize resentment and potential conflict arising from DDR processes.

Source: *International Peace Academy, 2002.*

In terms of timing, most analysts consider peace to be a necessary precondition for implementing DDR, although there are some positive examples of DDR programs initiated prior to the end of conflict that are considered to have been useful in laying the groundwork for peace. Although DDR are national processes, the support of the international community to facilitate these processes is crucial. Key challenges that have tended to inhibit donor support include the lack of coordination with other international and national actors, as well as an overall reluctance to invest resources in a process that is contingent upon sustainable peace. In spite of these challenges, DDR programs depend upon some degree of international support. Important contributions and roles for donors include²²:

- Encouraging DDR to be addressed as part of peace negotiations and settlements;
- Providing flexible but stable funding and long-term support including, for example, ‘Rapid Response Mechanisms’ such as small funds of

money for quick use to respond to changing or unexpected needs, as well as funding for national awareness campaigns and public education;

- Coordinating with other donors and multilateral institutions as well as with national institutions and local organizations is an important pre-requisite. (Coordination and division of responsibilities is often more challenging for reintegration processes. Whereas disarmament and demobilization have often fallen under the jurisdiction of a UN peace keeping force, if present, or national military institutions, reintegration requires involvement of a greater range of actors and institutions);
- Monitoring of DDR processes to enhance legitimacy and maintain momentum.

Country Experiences

Demobilization and Disarmament in Central America:

Despite overall mixed results of these processes in both El Salvador and Nicaragua, many elements of the Salvadoran process of demobilization and disarmament are seen to have worked fairly well. According to a study by D. Spencer (1997), in both cases a lack of national and international funding, and the inability to disarm fully resulted in security threats post-conflict that threatened demobilization processes. In Nicaragua, delays in meeting ex-combatants needs, and the inability of the government to fulfill promises to provide land combined with high un/under-employment rates resulted in many cases in persistent threats to security and a return to violence. In El Salvador, a more carefully elaborated framework and planning for demobilization and reintegration resulted in a relatively more effective process and provided former combatants opportunities for retraining and return to civilian life (despite persistent problems of retained arms and outstanding commitments).²³

The failure of official programs to collect outstanding arms in El Salvador through buy-back initiatives, led to a coalition of civil society organizations forming to implement their own “Goods for Guns initiative” in 1996. Those who participated received vouchers for consumer products in return for handing in weapons. Weapons were collected on twenty-three specified weekends, advertised broadly in the media. The program was coordinated with the government as well as military and police forces, which assisted in collection, storage and destruction of weapons.

Nearly 10,000 weapons and 150,000 rounds of ammunition were collected. The program was considered a success not only in the reduction of arms, but for the awareness that was raised about this issue. Regionally and internationally the program has gained recognition and looked upon as a model for similar cross-sector programs elsewhere.²⁴

Lessons in demining for Colombia

In addition to disarming combatants of held weapons, other weapons of war— notably landmines— also need to be dismantled. Colombia is the only country in the region where mines continue to be used regularly, and according to the International Campaign to Ban Landmines (ICBL) and the Colombian government, at least 422 of 1,097 municipalities in 30 out of 32 departments are mine-affected, and 38 percent of mine victims from 1990-2003 are children. Although Colombia is signatory to the

Mine Ban Treaty, it officially stopped using mines and began destroying its stockpile of over 23,000 mines in 1999. However, the UN reported in 2003 of the continued use of antipersonnel mines by the Colombian military. Although no systematic mine clearance is underway, in February 2003, the government approved a National Mine Action program with the support of the Organization of American State (OAS). February 2005 has been flagged as the

date by which the destruction of the military stockpile will be completed. However, mine use by both the guerrilla and paramilitary forces continues to increase. As in other countries on this issue, Canada has played an important role in the implementation of the Ottawa Treaty in Colombia, in providing assistance to victim services and providing support to the dismantling of current stockpiles (recently in March 2004, 5000 were destroyed) all of which should be pursued. Lessons learned from other cases suggest that stipulations for demining post conflict is most effective if built into peace settlements.

There is significant bilateral and multilateral support and experience for mining-related activities, including demining, education, survivor rehabilitation, etc. Given its pivotal role in the creation of new mechanisms and support for demining, Canada should continue bilateral and multilateral support through the OAS Unit for the Promotion of Democracy’s Comprehensive Action against Antipersonnel Mines (AICMA), which expanded its activities in Colombia in 2003 (in part via the Technical Agreement on

Although DDR are national processes, the support of the international community to facilitate these processes is crucial

Assistance with Colombia), and other initiatives, for example, UNICEF's mine awareness program in Colombia and Canadian Landmine Fund to assist Colombia in meeting its mining activity commitments as expressed in the Ottawa Convention and the Managua Declaration. Canada should also promote lessons learned from its own, as well as other international experiences in this process are evaluated and applied, including those of the OAS-UPD's Assistance Program for Demining in Central America.

Some general lessons from demining experiences in Central America include²⁵:

- The importance of extensive, well-planned and well-funded public education campaigns as a first priority.
- The importance of security (including medical and life insurance) for those carrying out demining—e.g., the lack of insurance and financial constraints brought a halt to demining operations in Nicaragua in mid-1994.
- The need to implement demining operations based on a national mine clearance plan that reflects national priorities with the support of all levels of government and diverse social sectors including communities and zones most affected.
- The need to integrate and coordinate civil-military participation of national government, international actors, civil society organizations, and individual communities in all demining processes. Responsibilities need to be clearly defined and coordinated ideally through the creation of a national commission on mine action. Although international involvement is crucial in providing capacity, resources and can help guarantee adherence to international standards, the coordinating body benefits from being nationally based as it affects and reflects the degree of national political consensus to implement and sustain demining programs.

Reintegration in Uganda

Reintegration is perhaps the most challenging and arguably one of the most crucial determinants of establishing security and ensuring peace. Without adequate options for a new livelihood, former combatants tend to miss their old lifestyle including the feeling of belonging and power it conveyed. As Sánchez (2001) points out, "...many former combat-

ants...see their return to civilian life as a loss of identity, income, and prestige because not infrequently society resists the full reincorporation of ex-guerrillas into professional, economic and social life... The worst that can happen to a peace process is that its participants perceive it as a simple confiscation of arms, a repudiation of their ideals, or as having more disadvantages than advantages."²⁶

A UNDP synthesis of lessons learned from global experience in this area (2002) highlighted the need for reintegration programs to include: classification of ex-combatants based on need, skill level, interest; provision of basic transitional safety nets; sensitizing communities through education and inclusion; coordinating processes centrally but decentralizing implementation authority to regional or district level; and connecting reintegration processes to other development and peace-building activities.²⁷

In Nicaragua, delays in meeting ex-combatants needs, and the inability of the government to fulfill promises to provide land combined with high un/under-employment rates resulted in many cases in persistent threats to security and a return to violence

The reintegration process in Uganda in 1991 reflected some of these recommendations, and was considered relatively successful as a result. Credit was given to: the distribution of an 'incorruptible' identification mechanism for former combatants to facilitate administration and implementation of reintegration support; the rapid 'discharge' of former combatants to reintegration areas once demobilized, which prevented lengthy internments; couples and families received joint discharge and reintegration placements; support meetings and counselling were made widely available; decentralizing the

responsibility to oversee reintegration process, with local communities directly involved; and financial management systems for reintegration were well-managed, creating incentives for longer term donor support.²⁸

Cross-cutting considerations: child soldiers

Among the many cross-cutting issues that affect DDR processes, including gender and ethnicity, the prevalence of child combatants in Colombia represents a particular challenge. A child soldier is defined as any person under eighteen years of age who is part of any regular or irregular armed force or group.²⁹ A Human Rights Watch report (2003) states that Colombia has one of the highest rates of child soldiers in the world, with estimates of more than 11,000 children fighting with guerrilla and paramili-

tary forces, of which a significant percentage are girls.³⁰

There is a growing body of resources on best practices and lessons learned from country experiences on demobilizing and reintegrating child soldiers. From the outset, planning for, and accommodating the specific needs of children must be considered. Benefits and safety nets provided must be equitable to those of adults, but tailored to their needs. Tracing of families and bringing children and youth up to par in basic education are often key challenges, as many lag far behind having spent formative years in combat. Reinserting former child soldiers in regular schools presents its own set of obstacles, including awkwardness over age differences and pressure to forgo school to earn an income. Providing special schooling or access to vocational training has not been well implemented to date.³¹ Reuniting children with their families, where possible, is highlighted as key for successful integration. (A survey of former child combatants in El Salvador found that 84 percent felt that their family played the most important role in their reintegration into civilian life).³² (For more comprehensive information, see B. Verhey's paper: *Child Soldiers: Preventing, Demobilizing and Reintegrating*, (2001), which provides useful 'checklists' for demobilization and reintegration of child soldiers, drawing upon lessons learned from Angola and El Salvador).

THE COLOMBIAN CONTEXT

Processes of peace, justice or reconciliation are ultimately defined by the particular social, political, historical, cultural and economic contexts in which they unfold. Given the paper's orientation to future engagement in Colombia, this final section looks briefly at some of the elements that will shape post-conflict transition in Colombia, including the nature of the conflict; past precedents for peace, the capacity of the state and civil society, as well as the current negotiations underway.

Nature of the conflict

The duration of Colombia's conflict (over four decades), the human costs it has entailed, the multiple armed groups that are involved, its links with drugs and organized crime, as well as the broad destruction of civic norms of trust and reciprocity,

will all shape what type of justice is appropriate, pursued, and achieved. The often-cited complexity of Colombia's conflict distinguishes it from others, and that means that some of the basic lessons from other experiences cannot be easily applied, including recommended pre-requisites for a full ceasefire before negotiating or initiating demobilization, reintegration, justice and reconciliation. Multiple armed actors and fragmentation within these groups, combined with the unlikelihood of economic exhaustion due to the financial fuel from illegal drugs, make it more likely that peace settlement and transitions processes will be carried out in stages—as current negotiations with paramilitary attest.

Past precedents for peace

Colombia's past experience with negotiations and demobilization will undoubtedly affect conditions and concessions of future transition processes. In the past two decades, peace agreements have been signed with the Democratic Alliance/M-19 (1990), the Popular Liberation Army (EPL) (1991), the Revolutionary Worker's Party (PRT) (1991), Quintin Lame (1991), and the Current for Socialist Renewal (CRS) (1994).³³ In each of these cases, the near tunnel-vision focus on political incorporation with little consideration for social integration resulted in failure. In signing agreements and laying down arms, former combatants became targets for their former peers and other guerrillas (for example, within three years after integration, nearly 300 former members of the EPL were assassi-

nated, primarily by remaining guerrillas). Rather than contributing to the resolution of the conflict, the net effect of these negotiations was to divide and reposition the remaining armed actors.

The more recent negotiations with the guerrillas by former President Pastrana, and ongoing demobilization and reintegration of paramilitary groups will also set precedents for future negotiations as well as processes of justice and reconciliation. In the latter case, the signing of the Ralito Accord in July 2003 marked the beginning of unprecedented negotiations to demobilize and reintegrate three paramilitary forces. The Accord includes conditions of ceasefire, the demobilization of approximately 13,000 Autodefensas Unidas de Colombia (AUC) troops by the end of December 2005, the designation of an area of the country where paramilitary signatories

Reintegration is perhaps the most challenging and arguably one of the most crucial determinants of establishing security and ensuring peace

A checklist for national and international actors in planning for DDR

The Institute for Security Studies (ISS) summarizes an extensive list of considerations for demobilization and reintegration programs oriented specifically towards developing countries:

- Significant financial support for demobilization and reintegration programs, coordinated well in advance.
- Key elements of a demobilization program include provision of an assistance package, simplicity of delivery, a decentralized program for implementation, and building on existing social capital.
- Socio-economic surveys are important to identify the needs, aspirations and capabilities of former combatants.
- Possible components of a reintegration support program include: cash payments, transport to the resettlement area, orientation on the resettlement area, food (for a specific period), access to health care, health care advice, family planning advice, support for children's school fees, civilian clothing, basic household utensils, building materials, tools, seeds and agricultural implements, counselling, stress and conflict management training, information packages, legal advice, banking advice, business advice, credit facilities, job placement advice, housing support, assistance to find accommodation, wage subsidies, skills enhancement training, educational training support.
- HIV/AIDS should be a key concern for reintegration management. Awareness campaigns should specifically include former combatants and their families.
- Major consideration must be given to psycho-social problems of former combatants.
- Civic education, designed to give former combatants a knowledge of civil society, has proven useful in some cases.
- An information and sensitization program is useful for both former combatants and the communities into which they are to be reintegrated.
- A transitional safety net should be provided to bridge the gap between demobilization and reintegration.
- Communities play an important role in problem solving; every effort should be made to maximize community support.
- Urban reintegration has proven to be more difficult and requires a more diversified approach with comprehensive planning. Key components for success are counselling, job placement and referral, vocational and apprenticeship training, along with employment subsidy schemes.
- The regular provision of useful information to former soldiers about skills enhancement and educational and job opportunities can significantly enhance economic reintegration.
- The potential impact on the communities into which former combatants settle needs to be carefully assessed with the aim of providing a corrective intervention if necessary.
- Detailed co-ordination within government and between government and other relevant actors (NGOs) is important to maximize the effectiveness of reintegration programs. The best administrative model appears to be central co-ordination complemented by decentralized implementation. At the same time, transaction costs should be minimized in order to maximize benefits for demobilized personnel.
- The entire demobilization and reintegration program needs to be monitored in order to redesign, or redirect interventions where necessary, and to ensure transparency, public confidence and accountability.
- From the outset, strong political commitment and support, along with a delivery of promised resources, are essential for the success of any demobilization and reintegration program.

Source - *Demobilization in Developing Countries; Monograph 59, 2001, Institute for Security Studies- ISS, Demobilization in Developing Countries Monograph 59, 2001*

will congregate, reintegration programs for former paramilitary, and most controversially, amnesty for demobilized paramilitary, largely at the discretion of President Uribe. On November 25th 2003, 850 members of the Bloque Cacique de Nutibara paramilitary unit publicly laid down their weapons (although this only amounted to an estimated 200 firearms, primarily pistols). A bill was also presented to Congress that defined the conditions under which this process would occur—including suspended and/or alternative sentences, being barred from seeking elected office, carrying arms, etc.—based on disarmament and promises not to commit further crimes. Colombian and international human rights organizations have expressed concern about the impunity that this agreement entails, as well as the absence of

provisions in the bill to ensure impartial investigations, prosecutions or mechanisms for truth-telling (Human Rights Watch 2003). There is also concern that adequate measures for long-term security, including in-depth planning for the reintegration of former combatants have not been taken. These factors will have an impact on the potential for future justice and reconciliation.

Capacity of state institutions and civil society

There is also concern that the weakness of judicial institutions will constrain transitional justice in Colombia. In particular, the high rates of impunity (over 95 percent) and the declining ability of the Attorney General's Office to investigate and prosecute human rights violations have been identified as

key obstacles by the UN Commission on Human Rights. These weaknesses will not only impede the prosecution of armed actors accused of gross human rights violations, but will be an obstacle to long term reconciliation given the high level of violence and organized crime that exist beyond the parameters of political conflict. Citizen security is a pre-requisite for justice and related processes such as truth commissions. Human rights violations, collusion with armed actors and corruption also undermine the legitimacy of state institutions, in particular the armed forces and the police. Without meaningful reform and a restoration of public trust in these institutions, justice and long-term reconciliation will remain elusive.

The capacity of Colombian civil society organizations to participate in justice and reconciliation processes will also affect the success of post-conflict transition and sustainability of peace.

Colombia's past experience with negotiations and demobilization will undoubtedly affect conditions and concessions of future transition processes

Despite historic weaknesses and fragmentation within this sphere, successful mobilization (including the implementation of concrete peace initiatives such as the Peace and Development Programme of the Magdalena Medio and the coordination of women's organizations) speaks to a growing capacity within civil society to play a key role in transitional justice and peace. There is a strong foundation for civil society participation in peace-building processes, apparent in the creation of the civil society assembly for peace— an independent national conciliation commission— and the national network for development and peace programs (REDPROPAZ), among others. Despite the undermining of civil society organizations under the current government, the growing networks for peace, if maintained through transition, will be tremendously important for post-conflict reconciliation.

MATRIX

Processes for Justice and Reconciliation	Some Key Considerations	Areas of Canadian / International Engagement
<p>Demobilization, Disarmament and Reintegration</p>	<ul style="list-style-type: none"> • Advance Planning; • Public / community level support; • Adequate assessment of labour needs, skills, numbers of combatants and arms; • Equitable treatment of different groups of combatants; • Integration of gender / age considerations; • Long-term monitoring; • Public awareness campaign; • Central coordination / decentralized administration; • Transitional safety-net; • Physical / psychosocial concerns (HIV, provision of counselling; support groups). 	<ul style="list-style-type: none"> • Support for advance planning and inclusion in peace settlements; • Provision of flexible, long-term funding through multilateral channels; • Application of best practices and Canadian-funded research and expertise; • Application of lessons from other country-contexts; • Continued support for demining program (bilateral and through the OAS); • Capacity-building to integrate gender approaches; • Advocate against full amnesty as part of DDR process through bilateral / multilateral channels; • Resources for, and participation in local level long-term monitoring of DDR processes; • Resources for civil society organizations in facilitating roles.
<p>Legal Prosecution – National Courts</p>	<ul style="list-style-type: none"> • Capacity and legitimacy of judicial institutions; • Benefits of domestic prosecution for reconciliation; • Re-affirming rule of law; • Limit to number of trials/prosecutions. 	<ul style="list-style-type: none"> • Resources and capacity-building of judicial institutions; • Exchange of best practices: penal reform, judicial reform, access to information, personnel exchanges, IT technology; • Promote adherence to international legal standards; • Promote broadest scope feasible regarding prosecution, and against full impunity; • Promote linkages with complementary processes; e.g., traditional justice, truth commissions; • Support equitable inclusion of women and ethnic minorities in judicial processes.
<p>Legal Prosecution – International Tribunals</p>	<ul style="list-style-type: none"> • Jurisdiction of the ICC; • Length of process, limited time frame of court; • Limited ability to sanction and enforce; • Limit to number of prosecutions; • Precedents of the IACHR / ICC and other international tribunals on amnesty; • U.S. opposition; • Lesson from hybrid tribunals; • Providing legitimacy to processes. 	<ul style="list-style-type: none"> • Explore options complementary to national processes; • Support for actualization of ICC; • Promote international tribunals as a recourse if national-level mechanisms are not effective; • Look to international mechanisms as a means to focus international attention and support on national processes and adherence to international legal standards; • Promote ICC–Rome Statute as framework gender mainstreaming in international or national processes.

MATRIX (continued)

Processes for Justice and Reconciliation	Some Key Considerations	Areas of Canadian / International Engagement
<p>Truth Commissions</p>	<ul style="list-style-type: none"> • Composition of the commission (national / international); • Broad political consensus / support; • Resources allocated (domestic / international); • Scope of commission – time-line, which aspects investigated, will individuals be named etc.; • Secure environment; • Access to information state / international documents; • Reparations and recommendations; • Public / private hearings; • Mechanisms for funding; • Legal powers of commission, links with legal prosecution; • State buy-in and follow-up of recommendations. 	<ul style="list-style-type: none"> • Early, in-depth consultation and research on optimum roles for international community; • Promote national and international representatives on Commission – suggest credible Canadian actors to participate; • Financial support, resources for capacity-building; • Provide relevant information, support information sharing of Canadian civil society organizations with relevant information; • Provide technical resources and expertise; • Support to ensure secure environment; • Promote and support broad consultative and inclusive processes; • Promote formal links with other legal processes; • Build capacity of victims and civil society organizations to effectively participate; • Promote equitable participation of victims (particularly women, indigenous groups, etc.).
<p>Reparations</p>	<ul style="list-style-type: none"> • Political consensus; • Allocating public funding; • Long-term support from international community; • Coherency with other processes of justice; • Inclusive process of consultation; • Distinct from broader development initiatives; • Mechanism of oversight of implementation and follow-up. 	<ul style="list-style-type: none"> • Providing flexible, well-planned resource contribution with a long-term view; • Support for a holistic approach to reparations in the context of broader processes of peacebuilding; • Develop capacity for implementation, monitoring and evaluation; • Promoting bilaterally and multilaterally the implementation of recommendations; • Support research and shared expertise on gender mainstreaming; • Promote research on best practices for financing and implementation and role of the international community; • Promote and fund inclusive processes of consultation and strengthen capacity of marginalized sectors to participate.

Appendix 1

List of institutions working in the area of peacebuilding, justice and reconciliation, internationally and in Colombia:

- International Peace Academy, [www.ipa.org]
- International Development Research Centre (IDRC) – Peacebuilding and Reconstruction PI, [www.idrc.ca/peacebuilding]
- Canadian International Development Agency (CIDA) – Peacebuilding Initiative and Compendium
- International Institute for Democracy and Electoral Assistance (IDEA), [www.idea.int]
- International Center for Transitional Justice, [www.ictj.org]
- Institute for Security Studies, [www.iss.org]
- UNDP Disarmament, Demobilization and Reintegration Resource Center
- The Bonn International Center for Conversion (BICC), [www.bicc.de]
- World Bank – Conflict Prevention and Reconstruction Unit
- UNDP – Bureau for Crisis Prevention and Recovery, [www.undp.org/erd]
- UN Office for the Coordination of Humanitarian Affairs (OCHA)
- Post-War Reconstruction and Development Unit, University of York, [www.york.ac.uk/depts/poli/prdu]
- Project on Justice in Times of Transition, Harvard University, [www.ksg.harvard.edu/justiceproject]
- Truth and Reconciliation Commission, South Africa, [www.truth.org.za]
- Initiative on Conflict Resolution and Ethnicity (INCORE), [www.incore.ulst.ac.uk]
- CRInfo: A Comprehensive Gateway to Conflict Resolution Resources, [crinfo.org/index.cfm]
- Beyond Intractability.Org, [www.beyondintractability.org]
- Canadian Institute of Strategic Studies (CISS)
- Center for the Study of Violence and Reconciliation (South Africa), [www.csvr.org.za]
- Conflict Research Consortium, University of Colorado, [www.colorado.edu/conflict/]
- Law Commission of Canada (Project on Restorative Justice), [www.lcc.gc.ca]
- Stockholm International Peace Research Institute, [www.sipri.se]
- The Peacemakers Trust, Canada, [www.peacemakers.ca]
- Coalition for International Justice, [www.cij.org]
- Conflict Development and Peace Network, U.K. (CODEP), [www.codep.org.uk]
- Canadian Consortium on Human Security (CCHS), [www.humansecurity.info]
- Center for Global Peace (CGP), American University, [www.american.edu]
- Harvard Program on Humanitarian Policy and Conflict Research, [www.preventconflict.org]
- Canadian Peacebuilding Coordinating Committee (CPCC), [www.cpcc.ca]
- Forum on Early Warning and Early Response (FEWER), U.K, [www.fewer.org]
- Fundación Arias para la Paz y el Progreso Humano, [www.arias.or.cr]
- Regional Coordinator of Economic and Social Research (CRIES), [www.cries.org]
- UNIFEM - Women War and Peace Web Portal, [www.womeanwarpeace.org]
- Project Ploughshares, Canada, [www.ploughshares.ca]
- Initiative on Conflict Resolution and Ethnicity (INCORE), [www.incore.ulst.ac.uk]
- UN Institute for Disarmament Research, [www.unidir.org]
- Strategic Choices in the Design of Truth Commissions, [www.truthcommission.org]
- Institute for Justice and Reconciliation, South Africa, [www.ijr.org]

In Colombia

- Fundación Ideas para la Paz, [www.ideaspaz.org]
- Asamblea Permanente de la Sociedad Civil por la Paz, [www.asamblea.porlapaz.org.co]
- Centro de Investigación y Educación Popular (CINEP), [www.cinep.org.co]
- Comisión Colombiana de Juristas (CCJ)
- Centro de Investigaciones Sociojurídicas, Universidad de los Andes (CIJUS) [www.uniandes.edu.co]
- Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) [www.codhes.org.co]
- Fundación Instituto para la Construcción de la Paz (FICONPAZ), [www.ficonpaz.org]
- Instituto de Estudios Políticos y Relaciones Internacionales (IEPRI)
- Red Nacional de Iniciativas por la Paz (REDEPAZ), [www.colombiaenpaz.org]

Notes

¹ As defined by P. de Greiff, International Center for Transitional Justice (ICTJ), in a presentation on Reparations held at IDRC, March 11 2004. 'Justice' in this paper, refers specifically to 'transitional justice' post-conflict.

² Adapted from H. Van der Merwe "The Truth and Reconciliation Commission and Community Reconciliation," Centre for the Study of Violence and Reconciliation, 2000.

³ Notes from Seminar on Transitional Justice and Rule of Law, Dec. 2003, International Center for Transitional Justice.

⁴ See Human Rights Watch Thirst for Justice: A Decade of Impunity in Haiti, 1996; International Peace Academy Sustainable Peace Through Democratization: The Experiences of Haiti and Guatemala, 2002.

⁵ Strategic Choices in the Design of Truth Commissions – Amnesty, www.truthcommission.org.

⁶ See M. Popkin, *Latin America: The Court and The Culture of Impunity*, Crimes of War Project, Dec. 2003, p.4.

⁷ Barrios Altos case – the Peruvian military were implicated in the murder of fifteen people, *ibid*.

⁸ M. Popkin 2003. The amendment further states that "the admission of a different treatment of guarantees contained in the Constitution in substantive matters under the Rome Statute will only have effect with respect to matters regulated by that Statute." (Article 93), *ibid*. p.5.

⁹ At that time, President Pastrana also stated that "None of the provisions of the Rome Statute about the exercise of jurisdiction by the ICC impedes the concession of amnesties or pardons for political crimes by the Colombian State, providing that these benefits are awarded in conformity with the Constitution and the principles and norms of international law accepted by Colombia" (Popkin 2003:6).

¹⁰ IDEA, *Reconciliation After Violent Conflict*, 2003 p. 18.

¹¹ C. Lerche, *Truth Commissions and National Reconciliation: Some Reflections on Theory and Practise*, 2000.

¹² B. Hamber "How Should We Remember? Issues to Consider When Establishing Commissions and Structures for Dealing with the Past," Initiative on Conflict Resolution and Ethnicity, Conference Paper, 1998.

¹³ P. Hayner, "In Pursuit of Justice and Reconciliation," in *Comparative Peace Processes in Latin America*, Ed. C. Arnsion, Washington: Woodrow Wilson Center Press, 1999.

¹⁴ P. Hayner, (ICTJ) *The Truth Commission as an Institution for Transitional Justice*, Paper presented in Nairobi, Kenya, Transparency International Conference, March 28, 2003 p.3.

¹⁵ These recommendations (translated in English) are available from the International Center for Transitional Justice website at www.ictj.org.

¹⁶ Comments by P. Hayner Seminar: *Verdad y Justicia en Procesos de Paz*, Bogota, 1999:236.

¹⁷ This section reflects recent research and discussions on reparations at a conference organized by the International Center for Transitional Justice and the International Development Research Centre, March 2004. The ICTJ, with support from IDRC, is undertaking some of the most current work on this issue, and is an excellent resource for more information (www.ictj.org).

¹⁸ P. de Greiff, *Justice and Reparations*, Paper, International Center for Transitional Justice, 2004:9.

¹⁹ *Ibid*, p. 2.

²⁰ *Ibid*, p.17.

²¹ Based on research presented at IDRC / ICTJ Conference on Reparations, March 11, 2004.

²² *Ibid*..

²³ See D. Spencer "Demobilization and Reintegration in Central America" Paper N.8, Bonn International Center for Conversion, (1997).

²⁴ E. Laurance and W. Godnick "Weapons Collection in Central America: El Salvador and Guatemala." January 2000.

²⁵ Adapted from *Lessons Learned from Demining Operations in Central America*, Col. Carl Case, Inter-American Defense Board, 1998.

²⁶ G. Sánchez, 'Prospects for Peace' in *Violence in Colombia 1990-2000* Eds. C. Bergquist, R. Penaranda and G. Sanchez, SR Books, 2001 p.28.

²⁷ UNDP Demobilization and Reintegration of Combatants: Some Lessons from Global Experience, 2002.

²⁸ Adapted from N. Colletta 'Case Studies in War-to Peace Transition: Demobilisation and Reintegration of Ex-combatants in Ethiopia, Namibia and Uganda' Working Paper. Africa Technical Department. Washington, D.C.: World Bank. (1996) and 'The Transition from War to Peace', World Bank (1999).

²⁹ B. Verhey, *Child Soldiers: Preventing, Demobilizing and Reintegrating*, WB Working Paper Series, 2001 p.1.

³⁰ See Human Rights' Watch Report: "You'll Learn Not To Cry": *Child Combatants in Colombia* (2003) for more detailed information.

³¹ B. Verhey, *Child Soldiers: Preventing, Demobilizing and Reintegrating*, WB Working Paper Series, 2001 p.19.

³² B. Verhey, *Child Soldiers: Preventing, Demobilizing and Reintegrating*, WB Working Paper Series, 2001 p.15.

³³ See G. Sánchez "Prospects for Peace" in *Violence in Colombia 1990-2000: Waging War and Negotiating Peace*, eds. C. Bergquist, R. Penaranda and G. Sanchez, SR Books, 2001.

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