

Peace under Siege? Ivan Duque's Election and the FARC

Written by Diogo Monteiro Dario

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DIOGO MONTEIRO DARIO, JUL 19 2018

Ivan Duque, from the Democratic Center Party, won the Presidential election in Colombia with 54% of the votes and will be taking the office this August. He and his party worked unrelentingly against the peace process since its foundation in 2013, which raised a lot of concern from those involved on the implementation of the agreement. In an attempt to moderate his narrative, Duque stated, in June, that a complete dismantle of the deal is 'off the table', but that he would try to modify it [1]. In order to understand what are the stakes for him and his allies regarding the war, the peace and the terms of the deal, in the first part of this piece we discuss the context of polarization that intensified divisions within Colombian society, and then we will focus on his positions regarding transitional justice, the political participation of the FARC, and the reforms in the rural areas.

The Origins of Polarization

Ivan Duque's election consolidates a return of polarization in Colombian society that began in mid-2013 when the support for President Santos' peace talks with the Revolutionary Armed Forces of Colombia (FARC in Spanish) started to lose momentum. The capacity of his party to mobilize society around their opposition against the agreement was demonstrated when they defeated the government in the referendum of October 2016, convincing a significant part of the country's population to reject an agreement that promised to end 50 years of war.

Duque's presidential victory also indicates the return of the political agenda of former President Alvaro Uribe, founder of the Center Democratic Party. Uribe rose to power in Colombia in 2002. His bet in the total mobilization of society towards a confrontation against the guerrilla sounded so unlikely one year before his election that he lost the nomination from the Liberal Party and decided to run as an independent candidate (under the flag of the movement 'Colombia First', created by himself). But the deterioration of a long and complicated peace process conducted by Andres Pastrana between 1998 and 2002 and the momentum created by the discourse of the 'War on Terror' by George W. Bush after September 11 created the perfect environment for him to completely reverse the expectations of Colombian society. He skyrocketed for an overwhelming first round victory and a clear mandate to wage war against the group.

His support in the beginning was so significant that he could take very arbitrary measures with little consequence. Among the scandals that began to see the light of the day during his second mandate, the most significant were the wiretapping of the political opposition using the National Intelligence Service (the DAS in Spanish, which had to be closed down) – the scandal of the '*chuzadas ilegales*' and the artificial boosting of the kills of FARC members by police officers through disguising ordinary killing victims with guerrilla uniforms – the so-called '*falsos positivos*'. But such a strong position took its toll on society and wore off part of the President's popularity. As in 2009 he couldn't change the constitution to run for a third four-year mandate, he decided to support his Minister of Defense, Juan Manuel Santos, who won in 2010 backed almost exclusively by his mentor's political capital.

However, the context in which Santos took office was very different. Civil society was putting a lot of pressure on the government and, besides, the configuration of violence in Colombia was changing. If in 2002 the FARC was at the top of its military and mobilization capacity, after 8 years of war, the group was in its weaker position since the early 1980s.

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Furthermore, this process was powering up the so-called '*bandas criminales*', the result of the fragmentation of the paramilitary units that over the 1980s and 1990s worked intensely to destroy the guerrilla but started to be demobilized after an agreement with Uribe in 2003. Their central structure – The United Self-Defenses of Colombia (AUC in Spanish) – was indeed dismantled, but with a failed reintegration strategy most former AUC members reorganized as local level militias in the cities where the organization previously did business. The intense confrontation fomented by the government during the two Uribe mandates created the perfect window of opportunity: instability was on the rise in some cities, and their services as 'protection' militias therefore in demand. As they expanded there was a need for fighters – and many of those were abandoning the FARC at the same time. The older generation of the guerrilla would never join what remained of their enemies, but for the medium and lower rank members, whom were less ideological oriented and knew no reality outside a very long war, it was much less of a problem [2].

This completely changed Santos' calculations, since those groups were now the most serious long-term security threat for Colombia, and maintaining the war against a guerrilla on the ropes was feeding them. This was when Santos, elected with Uribe's support to continue Uribe's war, made a risky political gamble: he intensified secret contacts to begin a peace process with the FARC. The political cost was considerable. Uribe and he had built a coalition to support his mandate, under the leadership of their 'de la U' Party, that dwarfed the opposition. That support base was now broken in half because he was offering something that many could not accept: peace with the FARC – it was against that prospect that they had rallied alongside Uribe in the first place.

From August 2012 (when he announced the talks) to July 2013, it looked like the move was paying off: within and outside Colombia, the possibility of an historic deal created a lot of mobilization and support. The momentum toward the peace agenda forced the political center to gravitate towards Santos; and only the hardliners led the coalition to join the '*Frente de Unidad en contra de los Terroristas*' (United Front against the Terrorists), Uribe's new movement. However, Santos popularity deteriorated faster than expected. In August 2013, a series of protests began with the mobilization of farmers and cattle ranchers against new trade regulations negotiated at Mercosur. The government downplayed them at first and then seriously mishandled the situation. After the first episodes of violence several sectors were supporting the protesters nationwide, roadblocks left supermarkets without food and hospitals without medicine, and Santos approval rates plummeted as he organized himself for what should have been a safe run for re-election in 2014.

Santos had never been a popular politician, especially in the countryside, and now facing Uribe's opposition his political survival depended on making the negotiations with the FARC work. The result was Santos winning by a very small margin in the 2nd round (after losing in the 1st) and an accelerated polarization around the peace deal that virtually divided Colombian society. The Senate elections that year put Uribe back at the center of the political arena, and what he did was to take the agreement with the FARC, which had been Santos' lifeline, and push for further polarization.

At the moment Duque begun his run for the office, the Democratic Center Party had already capitalized in that polarization to have a strong position in the senate in 2014 and a seminal victory in defeating the referendum in 2016. Therefore, Duque went into the public scene in 2018 with all the incentives to be severely critical of the peace deal. The three areas where he focused his critics during the campaign were the transitional justice, the political participation of the FARC leaders, and the rural development and crop substitution policies.

The Transitional Justice and the Political Participation of the FARC

Transitional Justice became central to regulating the transition from war to peace in Colombia. It was implemented for the first time in 2005 as a way for the Constitutional Court of the country to impose limits on the Uribe government in his attempt to quickly demobilize the AUC. The court decided then to internalize international instruments that defined the rights of victims to truth, justice, and reparation in a post-conflict scenario. In a country with a strong tradition of autonomous political parties making mutual concessions, including amnesties and indults, to provide stability to the agreement; transitional Justice was a game changer. It not only imposed limits on what the executive could do but regulated the rights of the victims – not the armed actors – that had to be met. It became a key asset for

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non-governmental organizations to introduce their agenda in the negotiations and ended up an indispensable condition for legitimating any peace agreement in the eyes of civil society from that moment on.

The agreement with the FARC foresaw the creation of the Special Jurisdiction for Peace (JEP in Spanish), a special court that would judge all crimes related to the war until December 2016. It provided an alternative jurisdiction that former guerrilla members willing to demobilize can have access to, if they confess their participation in the conflict, pay reparations to the victims, and commit themselves not to return to criminal activities.

The terms negotiated between the government and the guerrilla created the conditions so that if the senior leaders of the FARC confessed all their participation and paid reparations to the victims, they were likely to face no jail time. The Democratic Center Party hit particularly hard at this point during the campaign because the research showed that this was the single most unpopular topic of the agreement [3].

Duque, as well as Uribe, argued that the Peace agreement underwrites impunity for the FARC and that members of the Armed Forces should not be placed on an equal footing with the guerrillas in the Special Jurisdiction, but instead be tried by a special tribunal connected to the Supreme Court and by military judges. 1,800 military officers accused of extrajudicial execution are expected to be judged by the JEP [4].

Despite the fact that these issues are sensitive to his support base, it is unlikely that he can change the prerogatives the constitutional court granted the FARC with the JEP. What he can do is to push for severe penalties for crimes committed after the peace deal was signed, in December 2016 (crimes committed after the agreement was signed are outside the jurisdiction of the JEP).

Another problem related to the JEP is the political participation of the FARC. According to the Communication n.55 of the Constitutional Court from November 2017, in order to participate in politics before the Special Jurisdiction for Peace (JEP) is completely functional, all the guerrilla members have to do is to commit to immediately present themselves before the body once it is operating. Since those provisions are clearly integrated into the Colombian law at this point, there is not much the government could do to stop them from participating in the country's politics. Even if you could exclude particular individuals from the benefits of transitional justice, those individuals would lose their right to take the seat, but the group would still have the right to indicate someone else.

However, the situation will not be the same with the National Liberation Army (ELN in Spanish). Santos had also started conversations with that group, but Duque left very clear that he would not engage in any kind of political negotiations with that guerrilla. The only thing that would be on the table for them was the possibility of military demobilization.

Rural Reform and Crop Substitution

One of the things the new government could do is try to repeal the rural reforms outlined in the peace deal, which does not appeal to Duque's support base. The agreement creates agencies to foment small local farmers and provide infrastructure to make them viable economically as a way to stimulate the substitution of coca crops for alternative forms of cultivation.

Duque was a candidate strongly associated with the agribusiness, and thinks that the big businesses should be the main force for creating jobs in the rural areas. He already suggested that the agencies created by the accord are a waste of money and resources, and that this should all be coordinated from above by the Ministry of Agriculture. This is a change that is completely within his capacity to implement, since it could be done by decree without consulting the legislative.

The terms that regulate illicit crop substitution could also be altered. Instead of stimulating voluntary substitution, Duque intends to reinforce forcible manual eradication and even the return of aerial fumigation, which had been banned in Colombia since 2015. He wants to take measures to enforce crop substitution, rather than simply providing incentives to the farmers [5].

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Conclusion

The victory of Ivan Duque for the presidency in Colombia marks the definitive return of an agenda of social polarization that made its way into contemporary Colombia through the set of events regarding the election of Alvaro Uribe. It receded given the difficulties of the war and withdrawn after Santos rallied support for opening talks with the FARC. But it was quickly brought back as the President lost support and betting against the peace started to pay-off. The result of the 2016 referendum could not be more symptomatic of how divided this society became. In his attempt to weaken the provisions of the agreement, it will be difficult for Duque to attack the transitional justice mechanisms and the political participation of the FARC, as those issues are more solidly consolidated into domestic law. However, there are clear suggestions that he will move toward changing the model of rural development supported by the agreement and shift from a voluntary approach to coca crop substitution to forcible eradication and aerial fumigation.

Notes

[1] Estas serían las modificaciones que le haría el uribismo al acuerdo de paz. El Espectador, 27 jun 2018.

[2] Crimen organizado y sabotadores armados en tiempos de transición: radiografía necesaria, Fundación Ideas para la Paz 2017, p.27.

[3] Termómetros a la paz: participación política de las FARC. Fundación Ideas para la paz, 2016.

[4] Uribismo propone que militares no sean juzgados por la JEP. El espectador, 19 octubre 2017.

[5] Risky Business: The Duque Government's Approach to Peace in Colombia Crisis Group Latin America Report, n.67, p.8, 2018.

[6] Idem.

About the author:

Diogo Monteiro Dario has a PhD in International Relations from the University of St Andrews and is currently Assistant Professor at the Institute of International Relations and Defense at the Federal University of Rio de Janeiro (IRID/UFRJ). His research interests are: Theory of International Relations, Political Theory, and Humanitarian and Security Issues in Latin America.