



# Risky Business: The Duque Government's Approach to Peace in Colombia

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*Preventing War. Shaping Peace.*

## Table of Contents

Executive Summary.....	i
I. Introduction .....	1
II. The FARC's Transition to Civilian Life.....	3
III. Rural Reform and Illicit Crop Substitution.....	7
IV. Transitional Justice .....	11
V. Security Threats.....	14
VI. Conclusion .....	19
APPENDICES	
A. Colombian Presidential Run-off Results by Department .....	21
B. Map of Colombia .....	22
C. Acronyms.....	23
D. About the International Crisis Group .....	24
E. Crisis Group Reports and Briefings on Latin America since 2015 .....	25
F. Crisis Group Board of Trustees .....	26

# Principal Findings

**What's new?** Iván Duque, from the Democratic Centre party, won Colombia's presidential election and assumes office on 7 August 2018. His party and his political mentor, former President Álvaro Uribe, campaigned against the 2016 peace agreement with the Revolutionary Armed Forces of Colombia (FARC) guerrilla. Duque promises to "modify" it once in power.

**Why does it matter?** Colombia's transition from war to peace is threatened by the spread of armed groups, illicit economies, troubled borders and flaws in the FARC deal's implementation. Duque's presumptive policies on former guerrilla reintegration, transitional justice, rural reform, illegal crop substitution and security challenges foster further uncertainty.

**What should be done?** Once in office, President Duque should resist calls by allies to undercut the peace deal, especially provisions aimed at reversing rural inequality and underdevelopment. Civil society, the opposition, the deal's foreign backers and the FARC itself should impress upon Duque the benefits of the accord for Colombia's security and economy.

## *Executive Summary*

Colombian President-elect Iván Duque hails from a political party, the Democratic Centre, that spearheaded a fierce campaign against the hard-won 2016 peace agreement with the guerrilla Revolutionary Armed Forces of Colombia (FARC). Duque and his party promise to “modify” the accord. Precisely how they will do so remains unclear, given that aspects of the deal are enshrined in law or enjoy considerable support, particularly in rural areas hard hit by half a century of conflict. The FARC agreement may not be perfect, but it has ended Colombia’s decades-long battle against its largest guerrilla movement and offers the best path to peace in rural areas. If the government obstructs rollout of the deal or starves the responsible bodies of funds, it could spark renewed violence, hinder the extension of state authority and legal economic activity to long-neglected peripheries, fuel the growth of illicit armed groups and, over time, impede the sustainable reduction of drug production.

After a polarising election season, Iván Duque won a presidential run-off by 54 per cent to 42 per cent for a left-wing candidate, Gustavo Petro (the remaining 4 per cent were blank votes). After his victory, Duque stressed the need to bridge the country’s conspicuous social and ideological divides, but the result has stirred considerable anxiety over the future of the FARC peace agreement. Duque’s right-wing party is led by former President Álvaro Uribe, who led a vociferous No campaign against the agreement in an October 2016 referendum, in which the Colombian public rejected the deal by a wafer-thin margin. Though the accord was later adjusted and approved by Congress, Duque and his party have promised to amend it once in office.

Interpretations of what this pledge means for the agreement diverge starkly. Duque’s supporters and party insist that they will correct flaws in the deal, notably the “impunity” it allegedly offers FARC members and the subsequent proliferation of armed groups and boom in coca cultivation. Duque’s comfortable majority in Congress, where some of the legislation needed to carry out the peace accord is still pending, puts him in a strong position to steer the deal’s fate in a direction he and his supporters prefer.

On the other hand, Duque’s critics, many of them from the Colombian left, fear the demolition of the agreement, arguing that the new president – under his political godfather Uribe’s aegis – has no interest in preserving it and would rather lead the country back to war. But this prognosis underestimates the many incentives for the government to persevere with the agreement’s main tenets, notably the rising public support and strong international backing it enjoys. It also exaggerates Duque’s ability to scrap the accord, given that parts of it have been enshrined into Colombian law.

The incoming administration appears more likely to offer conditional backing to a few, specific aspects of the accord, while withholding political and financial support from newly created agencies charged with rolling out key reforms. Though the transitional justice system for crimes committed during the war has been approved by Congress and begun to operate, the Duque government could invigorate probes into crimes allegedly committed by former combatants after the 2016 accord and try to give ordinary courts, rather than the special mechanism in the peace deal, a greater role. It could try to reorient the plans FARC leaders agreed to regarding the rein-

tegration of their fighters, moving away from former guerrillas' preferred model for their transition to civilian life. It might take steps to curtail the political representation of FARC leaders, though such steps would likely run into protracted legal challenges.

Perhaps most perilously, the new government might be tempted to repeal the rural reforms outlined in the peace deal, which appear to contradict its predilections about the Colombian countryside. The accord promises support for small farmers and landless labourers who were long the main victims of conflict; Duque may instead pursue policies friendlier to agri-business. Rural Colombians would likely regard such a reorientation as confirmation that the state is callous. Together with the military campaign, Duque has pledged to tackle burgeoning coca cultivation and expansion of armed groups, but the reversal of rural reforms could further alienate small farmers and labourers and nudge them into the armed groups' embrace.

That said, Duque could be constrained by both Colombia's domestic politics and its international relations. The strong performance of Petro, a staunch supporter of the peace deal who qualified for the run-off, together with an aggregated vote total of over 51 per cent in the first round for candidates who firmly backed the deal, suggests that public backing for the agreement has strengthened. Duque's expected closeness to the U.S. might harden his stance on aspects of the peace deal related to the voluntary substitution of coca crops. His party's abhorrence of the Venezuelan government will count against it continuing talks with another guerrilla group, the National Liberation Army (ELN), which has entered negotiations with the current Colombian government but uses Venezuela as a safe haven with the acquiescence of authorities in Caracas. Still, strong backing for the peace agreement from the UN Security Council, the European Union and other Latin American states, the presence of a UN mission in the country, and a civil society dedicated to saving the accord could all act as a brake on any effort to ditch it.

Despite his party's tough stand, President Duque should resist calls from his allies to take a hardline approach toward the deal. His government should:

- ❑ Continue to work alongside the FARC's leadership in the National Reincorporation Council, the body responsible for developing plans to reintegrate former guerrillas and, ideally, permit ex-FARC cadres their preferred reintegration model of collective, cooperative businesses rather than individual schemes;
- ❑ Leave intact and properly fund agencies responsible for carrying out the peace deal's provisions on rural development, notably the National Agency for Land and the Agency for Territorial Renewal;
- ❑ Honour without exception the agreements signed by rural communities to substitute coca for other crops;
- ❑ Continue to promote laws and efforts to demobilise illegal armed groups, including transitional justice mechanisms that respect victims' rights; and
- ❑ Tone down the preconditions it currently threatens to impose for the continuation of negotiations aimed at ending the conflict with the National Liberation Army (ELN).

Supporters of the peace deal, notably the FARC itself, Colombian civil society and the political opposition, should keep open lines of communication to Duque and do everything within their power to persuade him and his party of the agreement's merits. They should stress the clear business and security benefits the deal can bring to Colombia's countryside, while pointing to the real danger of a regional, cross-border escalation of violence and the further growth of drug trafficking and other armed groups should it – and the ELN talks – collapse. For their part, FARC leaders, especially those who will take seats in Congress, can help protect the transitional justice system by actively participating, telling the truth and apologising for their crimes.

The FARC peace deal may not answer all of Colombia's security challenges. But the deal still provides a clear opportunity to address the inequality and underdevelopment in rural areas that underpin much of Colombia's violence. Attempting to derail the deal or adopting policies that impede its aspirations, on the other hand, would likely herald greater instability, hinder the return of state authority to Colombia's peripheries and, over time, fuel violence and drug trafficking. President Duque should avoid taking the country down that path.

**Bogotá/Brussels, 21 June 2018**

# Risky Business: The Duque Government's Approach to Peace in Colombia

## I. Introduction

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With 54 per cent of the vote, President-elect Iván Duque comes to office after a polarising election. The 2016 peace deal that the government of his predecessor, Juan Manuel Santos, signed with the guerrilla Revolutionary Armed Forces of Colombia (FARC), emerged as the main bone of contention between the two camps that made it to the second round of polling. Duque's party, the Democratic Centre, has led opposition to that deal over recent years. Party leader Álvaro Uribe, who sees Duque as a protégé, is its most prominent critic.<sup>1</sup> Moreover, though the peace agreement ended over 50 years of conflict with the FARC and enjoys considerable support from Colombian civil society and many Western and Latin American governments, a large number of Colombians regard the deal, above all its provisions on the guerrilla leaders' political participation and transitional justice, with scepticism.<sup>2</sup> Understandably, supporters of the deal fear for its survival.

While Duque has declared that quashing the entire peace agreement is off the table, he and his party have pledged to "modify" it.<sup>3</sup> But even obstructing aspects of it or adopting policies that flout its spirit could entail high political costs and in some cases lengthy legal battles.<sup>4</sup> Some provisions have been incorporated into law and ratified by the courts; reversing them could thus require major political effort and sacrifice, even for an incoming president with strong public backing. The more ambitious parts of the agreement, including plans to bring economic development and public services to the neglected countryside, would be easier to roll back, having so far been implemented only partially or not at all. But Petro's strong overall electoral showing and his victories in the capital Bogotá, as well as along the Pacific

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<sup>1</sup> Fernando Londoño, then Democratic Centre "honorary director", said in 2017 that the party should tear up the agreement. Though Londoño's is not the official party position, many on the left believe it more likely than the modifications proposed by Duque. "Hacer trizas' el acuerdo con las FARC: ¿es posible?", *Semana*, 8 May 2017. The former chief government negotiator in the FARC peace process and presidential candidate for the Liberal Party, Humberto de la Calle, called on Duque to explain to victims how he would "tear up" the peace agreement. Humberto de la Calle, "Se están tirando la paz", 29 April 2018. In early June, Petro's vice presidential running mate stated that, in the second round, Colombia had to choose between "war and peace". "Colombia debe elegir entre paz o guerra, afirma Ángela María Robledo", *El Mundo*, 4 May 2018.

<sup>2</sup> For a discussion of the plebiscite, which saw peace deal opponents win by less than 0.5 per cent, and how its aftermath affected the agreement's political legitimacy, see Crisis Group Latin America Report N°60, *In the Shadow of "No": Peace after Colombia's Plebiscite*, 31 January 2017.

<sup>3</sup> Duque uses the word "modifications" to refer to his position on the peace agreement. See "No acabaré con los acuerdos, pero sí haré modificaciones": Duque", *El Tiempo*, 3 June 2018.

<sup>4</sup> Crisis Group interview, former government negotiator in FARC peace process, Bogotá, 13 June 2018. The Constitutional Court ruling that obliges the next three governments to implement the peace agreement uses the phrase, "preserving the content, commitments, spirit and principles of the final agreement". See "Comunicado No. 51", Corte Constitucional, 11 October 2017, p. 1.

coast and in the southern state of Putumayo (see the map in Appendix A), point to possible resistance to counter-reforms in major regions. Different parts of the 310-page peace accord, as well as efforts to negotiate peace with other armed groups, are likely to face different degrees of pressure from the Duque government, with some better protected than others.

Overall, the fate of the accord and the broader peace process under the new government will hinge on Duque's policies in four areas: first, the reintegration of former FARC guerrillas; secondly, rural reform, and in particular illicit crop substitution; thirdly, transitional justice, notably the mandate of the Special Jurisdiction for Peace (JEP); and, fourthly, handling security threats in the wake of the FARC's withdrawal, as well as the related question of how civil authorities can reach deeper into rural Colombia. This report, based on interviews and research in Bogotá and conflict-affected regions of Colombia, including Tumaco, Arauca, Chocó, Cauca and Norte de Santander, examines how Duque's government might approach each of these areas and suggests ways for the peace deal's Colombian and foreign supporters to dissuade the incoming president from taking measures that undercut its provisions or its broader aspirations.

## II. The FARC's Transition to Civilian Life

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Both Duque and former President Uribe have stated they are in favour of guaranteeing the reintegration of FARC foot soldiers who handed over their weapons as part of the peace agreement.<sup>5</sup> In a recent interview, Duque stated that, to unite Colombians around peace, “we need great generosity with the guerrilla base”.<sup>6</sup> In another interview, he added, “disarmament, demobilisation and reinsertion should be fulfilled completely .... [W]e must guarantee [low-level FARC members'] security ... and that they make the transition to a productive life”.<sup>7</sup>

The peace agreement laid out provisions for the short-term “reinsertion” of former guerrilla fighters, involving payment of monthly stipends and financial support for new business projects, as well as their long-term “reincorporation”.<sup>8</sup> Thus far, the latter process has progressed more slowly than expected, mainly because of irreconcilable differences between government and FARC representatives on the National Reincorporation Council (NRC), the body created by the accord to decide on and oversee long-term reintegration activities. Most of these differences relate to whether former combatants should reintegrate through cooperative business projects, which the FARC prefers as an expression of their ideology and group solidarity, or through the individual training and vocational programs provided by the Colombian state for more than a decade. Until now, government representatives have pushed for the latter, arguing that experience shows that collective projects are difficult to implement, unsustainable and wasteful of public money.<sup>9</sup>

The FARC's lack of know-how as to the design of reintegration projects has also contributed to delays. FARC leaders have struggled to propose a general reintegration plan that is viable on a technical level. According to the most recent reports, the NRC has approved and funded only one (out of a total of four) cooperative business project the guerrillas have presented.<sup>10</sup> Low-level FARC members have responded by creating their own initiatives, self-financed and independent of the NRC; over 100 such initiatives are already functioning but their ad hoc nature means many are likely to fail.<sup>11</sup> The government has provided short-term reinsertion benefits, with 87 per cent of guerrillas receiving a monthly stipend. But overall efforts to connect these payments, scheduled to end in August 2019, to long-term reintegration activities

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<sup>5</sup> As of March 2018, from a list of 14,000 FARC members handed in by the guerrillas, around 13,000 have been accredited as such. “Report of the Secretary-General on the United Nations Verification Mission in Colombia”, United Nations Security Council, 2 April 2018, p. 4.

<sup>6</sup> “No acabaré con los acuerdos, pero sí haré modificaciones”: Duque”, *El Tiempo*, 3 June 2018.

<sup>7</sup> “No aceptaré algo distinto a una negociación bilateral con Nicaragua”, *El Tiempo*, 12 May 2018.

<sup>8</sup> “Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera”, 24 November 2016, pp. 75-76.

<sup>9</sup> Crisis Group interviews, senior diplomat, Bogotá, 25 April 2018; government official, Bogotá, 27 July 2017.

<sup>10</sup> “Report of the Secretary-General on the United Nations Verification Mission in Colombia”, United Nations Security Council, 2 April 2018.

<sup>11</sup> *Ibid.*

have made only halting progress. Here Duque will find a major challenge to overcome in his first months in power.<sup>12</sup>

Thousands of ex-combatants have abandoned the camps where the reintegration was to have occurred. Some have started their own collective farms, informally funded via their monthly benefits, or moved to new settlements; many have simply gone home. Should this dispersion continue and the FARC unravel as a result, the state may find itself unable to track how – and whether – former combatants have made the transition into civilian life.

For now, it remains unclear how Duque will treat FARC participation in the NRC and address the deadlock in that body, or how far his government will seek to compel former combatants to reintegrate through the pre-existing individual program instead of in cooperative ventures. The former guerrilla force is likely to meet with outrage any attempt to thwart the support promised in the peace deal for collective business activities; they would argue the government is trying to undermine their efforts to rejoin civilian life, and even pushing former fighters toward FARC dissident or other illegal armed groups.<sup>13</sup>

More objectionable than the fate of foot soldiers in the eyes of Duque's party is the political participation of FARC members, above all those who will assume the seats the peace agreement allocated to the movement in the Senate and Lower House (five seats in each chamber for a period of eight years).<sup>14</sup> Most of the FARC's top commanders are set to fill those seats, though they have yet to pass through the transitional justice process laid out in the peace deal, according to which they are required to confess their role in the conflict, pay reparations to the victims and comply with the sentences handed down by the transitional justice mechanism – the Special Jurisdiction for Peace. So long as the FARC members meet that body's conditions, their punishments almost certainly will not include jail.

As yet, however, the Special Jurisdiction is not fully up and running. Until it is, FARC leaders can participate in political life only having signed a commitment to eventually participate in transitional justice mechanisms and respect obligations regarding truth, reparations and justice.<sup>15</sup>

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<sup>12</sup> "Report of the Secretary-General on the United Nations Verification Mission in Colombia", op. cit., p. 5.

<sup>13</sup> Crisis Group interview, government official, Bogotá, 10 May 2018. The peace agreement promised both collective and individual reintegration, to be determined based on FARC members' preferences and coordinated by the National Reincorporation Council. "Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera", 24 November 2016, p. 75.

<sup>14</sup> The peace agreement gives the FARC political party five seats in the Senate (out of 107) and another five in the House of Representatives (out of 171) for a period of eight years, starting in 2018. The peace accord stipulates that transitional justice rulings not impede political participation by former FARC members. "Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera", 24 November 2016, p. 150.

<sup>15</sup> "Comunicado No. 55", Corte Constitucional, 14 November 2017, p. 12. To be able to participate in politics before the JEP is fully functional, FARC members had to sign an act in which they commit to presenting themselves before the body once it is up and running. "Los ocho puntos que aclaró la Corte sobre la JEP", *El Colombiano*, 15 November 2017.

The FARC's political participation has rarely generated much public support, usually ranking as one of the peace deal's most unpopular aspects.<sup>16</sup> During the campaign, Duque took an outspoken position against guerrilla leaders entering politics, saying he preferred that FARC commanders be jailed and serve their sentences before taking up congressional seats. In March 2018, he stated: "We cannot allow [FARC leaders] to participate in politics. That is a catastrophe, until they have provided reparations to their victims, told all the truth and completed their sentences".<sup>17</sup>

But attempts to reverse the provision on political participation and the peace accord's stipulation that transitional justice sentences not affect political participation of FARC leaders would have to clear legal hurdles. Colombia's Constitutional Court has already approved the FARC's future role in Congress, ruling that former guerrillas should maintain their seats as long as they fulfil the terms of transitional justice. Failing to do so would lead specific commanders to lose those seats. In this case, the FARC party would in all likelihood still control the seats but other former fighters would have to take them up instead.<sup>18</sup>

Drafting harsher laws against the FARC would essentially be a lost cause for the Duque government. Colombia's legal system contains a "principle of favourability". This states that if someone is convicted of a crime, but laws have changed or new laws been introduced since that person committed it, courts must apply whichever sentence is most lenient in the new or the old legislation. Because the Special Jurisdiction's punishment system is already written into Colombian law, the principle of favourability means that FARC leaders would not spend time in jail were they to fulfil their obligations to that body, and would qualify for the lighter sentences imposed by the transitional justice system even if new laws creating harsher penalties are introduced.<sup>19</sup>

Once its hearings begin, the Special Jurisdiction's sentences could nevertheless affect FARC leaders' ability to enter politics. It could sentence ex-guerrillas in a way that makes it physically impossible for them to participate in political life, for example by restricting former combatants' mobility to remote rural areas – such a sentence would be within its mandate – and thus preventing them from fulfilling their roles in Congress. In this case, the FARC would not lose its allocation of deputies and senators, but other members would have to replace those sentenced by the special court.<sup>20</sup>

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<sup>16</sup> During the negotiations, the FARC's political participation rarely received more than 25 per cent support in polls. See "Termómetro a la paz: participación política de las FARC", Fundación Ideas para la Paz, 2016.

<sup>17</sup> "Uribismo impulsará reforma para que el narcotráfico no sea delito político", RCN Radio, 28 March 2018.

<sup>18</sup> "Comunicado No. 55", Corte Constitucional, 14 Noviembre 2017.

<sup>19</sup> The JEP covers crimes committed before 1 December 2016. Since that date, the JEP and its sentencing structure have been incorporated into Colombian law. Any new law creating harsher penalties for those same crimes than the JEP will therefore not be applied to FARC commanders. In this scenario, the principle of favourability would mean that, given the existence of two laws after 1 December 2016, the lesser sentence, that of the JEP, would be applied. Juanita León, "¿Podría Duque modificar el acuerdo de paz?", *La Silla Vacía*, 25 May 2018.

<sup>20</sup> If the ordinary justice system rules that a FARC member who took his/her seat in Congress committed certain crimes after 1 December 2016, then the guerrilla party could lose that member's

The Democratic Centre party in theory could aim to strengthen these existing restrictive powers by introducing a blanket ban on political participation by FARC leaders serving transitional justice sentences, and thus in essence derailing the group's political participation. But given the principle of favourability, this move would lead to a drawn-out legal battle, during which time the former guerrilla group would be entitled to take its seats in Congress. Such a prospect appears unlikely to entice Duque, however much his party, playing to its voter base, brandishes its determination to stop the FARC from seeking political representation.<sup>21</sup> The Democratic Centre may instead seek to apply what it calls "social sanctions" by consistently and vocally protesting the FARC's presence in Congress and whipping up public sentiment against the former guerrillas' representation.<sup>22</sup>

While Duque's preferred reforms to FARC political participation face substantial obstacles, the more immediate risk is that the new government ends up blocking the path of low-level former fighters to civilian life, despite its commitment not to do so. A confrontation with FARC leaders over their political participation, a continuing deadlock between FARC and the government over reintegration plans – or even the government pushing ahead with individual rather than collective reintegration – would likely undermine ex-guerrilla leaders' authority. It could send damaging signals to the former guerrilla base at a moment in which illicit alternative livelihoods are thriving in parts of Colombia, driving many toward those activities.

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seat. Renata Segura and Sabina Stein, "The Colombian Peace Process with the FARC: A Mapping of Vulnerabilities", Social Science Research Council, 18 May 2018, pp. 19-20. Given that the Constitutional Court has not ruled on the second regulatory law related to the Special Jurisdiction, this could change or be defined soon.

<sup>21</sup> Duque is aware of the limitations created by the principle of favourability in the case of FARC leaders' political participation. León, "¿Podría Duque modificar el acuerdo de paz?", *op. cit.*

<sup>22</sup> "Farc no pueden confundir sanción social con falta de garantías", Iván Duque", *Periódico Debate*, 10 February 2018.

### III. Rural Reform and Illicit Crop Substitution

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Provisions in the peace accord for equitable rural development and for a program to persuade coca farmers to substitute their crops are particularly vulnerable to revision under a Duque government. Implementation of the reforms laid out in the peace deal has started through three main initiatives: local development plans, known as Territory-Focused Development Plans (or PDETs in Spanish); a scheme to improve 50km of tertiary roads in each of 51 conflict-affected municipalities (the “50 by 51 program”); and a flagship program by the National Land Agency (ANT) for giving legal property deeds to small farmers.<sup>23</sup>

Preparations for the development plans are already underway. Local communities in conflict-affected areas have participated in hundreds of workshops led by the newly created Agency for Territorial Renewal (ART), even in areas where the state is intensely distrusted, and often with great enthusiasm.<sup>24</sup> The workshops’ conclusions will inform the local development plans, which tend to involve projects to improve arable farmland, market access, energy generation and community facilities. Local and national authorities will then put those plans into practice over the next ten to fifteen years.<sup>25</sup>

The 50 by 51 program, and road improvement in general, is also crucial for the economic development of geographically isolated areas, where access to markets is difficult and costly. The ART is also carrying out other small projects to develop local infrastructure throughout the country.<sup>26</sup> These initiatives are integral to the peace accord’s aim of encouraging farmers to replace illicit crops with legal alternatives, the economic feasibility of which depends on cheaper access to regional, national and international markets.

Duque has praised local infrastructure projects in general. But he has also argued that he would scrap the new agencies, such as the ART and ANT, created to foster rural development, and instead bolster the existing Ministry of Agriculture. It is within his power to do so: reforms to Colombia’s institutions can be carried out by presidential decree.<sup>27</sup> Moreover, he appears determined to strengthen agri-business as the primary means of creating jobs for the rural poor. Such an approach would represent a sharp reversal of the provisions of the peace agreement, which embraces bottom-up improvements to Colombia’s rural sector and the empowerment of small farmers. Duque’s preference for agri-business, even if framed in terms of job creation, reflects the historical inequality of power, wealth and land ownership in rural

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<sup>23</sup> The ANT claims to have given land titles to 42,000 rural families in two years, as of June 2018. “42 000 familias campesinas celebran su día siendo propietarias de su tierra con todas las de la ley”, Agencia Nacional de Tierras, 3 June 2018.

<sup>24</sup> Crisis Group interviews, humanitarian aid worker, Cúcuta, 16 April 2018; community leaders, Sinaí, Argelia, Cauca, 3 May 2018.

<sup>25</sup> For example, the ART has carried out over 800 participatory workshops in 143 of the 170 prioritised post-conflict municipalities as part of the PDETs. “La paz avanza en los territorios con obras PIC, 50/51 y rutas PDET”, Agencia de Renovación del Territorio, 1 March 2018.

<sup>26</sup> The ART has announced that it has finished 135 small infrastructure projects, is implementing 193 and plans to carry out 916 more during 2018. It claims to have improved almost 2,000km of roads as well. *Ibid.*

<sup>27</sup> Juanita León, “¿Podría Duque modificar el acuerdo de paz?”, *La Silla Vacía*, 25 May 2018.

areas. Measures to address such inequality were a centrepiece of the accord between the FARC and the government, and were the first parts of the agreement to be reached.<sup>28</sup>

Duque's proposed steps in this direction could face stiff opposition. Foreign governments' investment, donations and loans to the rural reform measures outlined in the peace agreement constitute a major international commitment to these efforts.<sup>29</sup> Those governments, as well as intergovernmental bodies like the UN, are all too cognisant of the role rural inequality has played in fuelling violence and the drug trade.<sup>30</sup> Local communities, too, will seek to guarantee that projects underway continue. The curtailing of those projects would likely reinforce rural Colombians' lingering mistrust of the state. It would also boost the local legitimacy of illegal armed groups, which have argued consistently that the peace agreement will do little to improve the lot of poor farmers, that the government will not meet its promises, and even that the state wants to displace farmers from their land.<sup>31</sup>

Rural reform does, however, require significant and consistent resourcing and political backing over time. In this light, the Duque government may undercut such reform by stealth, by "starving" relevant agencies, giving them insufficient funding, personnel and political support, and thus in effect impeding them from continuing their work, rather than abolishing them or ending projects directly.<sup>32</sup> If confronted on this issue, the new government could aim to fend off international repudiation by arguing that it has not revoked the authority of, or abolished, any agency, but is merely adjusting its commitments to the state's financial straits. Feeble, erratic support for rural development agencies has been a constant feature of the Colombian state's behaviour.<sup>33</sup>

The peace deal's provisions related to illicit crop substitution are also at risk. Duque has proposed a shift in drug policy toward more coercion of coca growers, involving above all forcible manual eradication but also a return to aerial fumigation, which

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<sup>28</sup> One leading expert on the issue of land in Colombia described the historic accumulation of land by elites as "a patrimonial regime whose secret consisted of monopolising formal land titles for accessible land ... to subordinate the peasantry as a source of manual labour for [large-scale, elite-owned farms]". Alejandro Reyes Posada, *Guerreros y campesinos: el despojo de la tierra en Colombia* (Bogotá, 2009), p. 25. In the original Spanish version, the word in brackets is "hacendados".

<sup>29</sup> The European Union and the UN Food and Agriculture Organization, for example, have provided aid to implement point 1 of the peace agreement, which extends into 2019. Natalia Herrera and Nicolás Sánchez Arévalo, "La deforestación ha impactado áreas de altísima biodiversidad: Neven Mimica, comisario europeo", *El Espectador*, 21 July 2017.

<sup>30</sup> Crisis Group interviews, high-level diplomats, Bogotá, 21 April 2017.

<sup>31</sup> FARC dissidents throughout the country have argued that the government will not fulfil its commitments in the peace agreement; in fact, Gentil Duarte argued this line internally in FARC meetings before leaving to lead the dissident 7th Front. Crisis Group interviews, FARC leaders, Buenos Aires, Cauca, 7 February 2017; community leaders, Retorno, Guaviare, 16 May 2018; international organisation representative, Tumaco, 5 March 2018.

<sup>32</sup> Crisis Group interviews, community leaders, Argelia, Cauca, 4 May 2018; Retorno, Guaviare, 15 May 2018. "Resistencia", Frente Primero Armando Ríos FARC-EP, December 2016.

<sup>33</sup> Inés Paola Trujillo Cueto, "Reformas agrarias en Colombia: experiencias desalentadoras y una nueva iniciativa en el marco de los acuerdos de paz en la Habana", *Ensayos de Economía*, vol. 45 (2014), pp. 35-60.

has been banned in Colombia since 2015.<sup>34</sup> He will not necessarily scrap crop substitution, but he has argued that coca growers must accept either substitution or eradication. In principle, this stance reflects the peace agreement's provisions, which determined that the state would forcibly eradicate coca crops in areas where no substitution agreements are voluntarily reached.<sup>35</sup> In practice, however, a government predisposed to tougher measures could adopt intensified eradication efforts aimed even at farmers who have signed collective agreements to join the crop substitution program. After all, Duque seems more interested in quickly reducing coca cultivation than in displaying trust in coca farmers' good faith.

Whether Duque will stick with crop substitution efforts likely hinges on two factors. The first is the total number of hectares of coca grown in Colombia in 2017, which should be made public at a date close to Duque's inauguration. If those figures show a significant increase over 2016, the new president will face strong domestic and U.S. pressure to scrap the program. Under the administration of President Donald Trump, the U.S. in particular has pushed for more eradication and a renewal of fumigation.<sup>36</sup> Press reports suggest the amount of coca grown in Colombia in 2017 will be greater than in 2016, possibly rising to 180,000 hectares from 146,000 in 2016, according to UN Office on Drugs and Crime estimates.<sup>37</sup>

The second factor is the extent to which the substitution program thus far has been able to reduce coca cultivation. As of 31 March 2018, the program included just over 62,000 families, of whom 51 per cent have received their first payment and, if they have not done so already, will soon eradicate their coca. Those 62,000 families farm around 22,000 hectares of coca, of which close to 30 per cent – 6,300 hectares – have been confirmed as eradicated. According to 2016 figures, the total land used for coca by all 62,000 families represents roughly 15 per cent of all land dedicated to coca production in Colombia, while the area that is reportedly eradicated thus far falls well short of the program's goal of voluntarily removing 50,000 hectares.<sup>38</sup> Duque is likely to argue that the program will need to make far more rapid inroads into the removal of coca crops for it to be maintained.

Shrinking or axing the illicit crop substitution program would alienate farmers and likely undercut efforts by the Colombian state to establish its authority in areas

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<sup>34</sup> The illicit crop substitution program lasts for two years, and includes a series of monthly stipends, as well as technical assistance, so that farmers can remove their coca and begin to grow other crops. After receiving their first payment, coca growers have 60 days to get rid of their coca in order to get the second payment.

<sup>35</sup> "Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera", Oficina del Alto Comisionado para la Paz, 24 November 2016, p. 107. Duque appears to believe this provision on coca eradication does not exist in the accord. Crisis Group interview, journalist, Bogotá, 14 June 2018.

<sup>36</sup> In 2017, the Trump administration issued a threat to decertify Colombia's anti-drug efforts, which would in principle lead to a cut in aid. Mimi Yagoub and Cecilia Orozco Tascón, "Colombia no sabe a cuál Trump tendrá que enfrentar": Adam Isacson", *El Espectador*, 28 October 2017.

<sup>37</sup> This number is not the final official statistic given by the UN, which has yet to be made public. Adam Isacson, presentation at the 2018 Latin American Studies Association Congress, Barcelona, 23 May 2018.

<sup>38</sup> Juan Carlos Garzón and Juan David Gévez, "¿En qué va la sustitución de cultivos ilícitos?", Fundación Ideas para la Paz, May 2018, covering the period up until 31 March 2018.

long controlled by armed groups. Thus far, persuading coca growers to sign up for the program has taken the Colombian state, in partnership with the UN Office on Drugs and Crime, eighteen months, and involved arduous local diplomacy. A decision to reverse the program would reinforce, possibly for decades, those communities' mistrust of the state and the stereotype, in their eyes, of a distant, abusive government.<sup>39</sup> In the southern region of Putumayo, for example, coca growers and civil society are still demanding that the government fulfil its side of agreements signed in 1996; a repeat scenario could do even longer-lasting damage to trust in the state.<sup>40</sup> As a result, while more forceful eradication might lead to a short-term dip in coca production, over time, as more areas remain beyond the state's remit and under the sway of armed groups, it would likely push more farmers to plant coca.<sup>41</sup>

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<sup>39</sup> Crisis Group interviews, local leaders, Guaviare, 1 April 2017, 3 September 2017 and 17 May 2018; regional government crop substitution director, San José de Guaviare, 31 August 2017.

<sup>40</sup> María Clemencia Ramírez, *Entre el Estado y la guerrilla: identidad y ciudadanía en el movimiento de los campesinos cocales del Putumayo* (Bogotá, 2001). Crisis Group interview, peasant leader, Puerto Asís, 27 February 2017.

<sup>41</sup> Coca growers have stated that if substitution fails, they will immediately go back to growing coca. Crisis Group interviews, journalists, Guaviare, 15 May 2018.

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## IV. Transitional Justice

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The Special Jurisdiction for Peace, which in March 2018 began to scrutinise the cases of over 6,000 FARC members, almost 1,800 members of the armed forces, 44 civil servants and six civilians, is the target of unrelenting criticism by opponents of the peace deal.<sup>42</sup> One of its main flaws, according to the critics, is that it converts into law a concession to FARC demands by accepting that ex-guerrilla commanders and combatants will not necessarily spend time in jail; this, they argue, is tantamount to impunity. The Special Jurisdiction has also weathered a bout of internal bureaucratic mudslinging and accusations that rival judges and officials were misusing its resources.<sup>43</sup> Nonetheless, the new government will find that efforts to do away with, or debilitate, transitional justice measures face fierce resistance. International and civil society pressure will be particularly sensitive to this issue given the eight million victims in Colombia's conflict, the legal necessity of transitional justice and the progress already made – albeit slow – on rolling out these measures.

Duque, his party and Uribe insist that the peace accord underwrites impunity for the FARC and that guerrilla leaders should serve jail time for their crimes. The president-elect and his allies also argue 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.<sup>44</sup> Finally, they make the case that drug trafficking should not be considered “a connected crime” and treated as part of the insurgents' war effort, as it is in the peace agreement. Instead, former FARC fighters should face standard prosecution and sentencing for drug-related crimes.<sup>45</sup>

Changing the transitional justice sentencing system will not be easy, however. The principle of favourability in Colombian law means that FARC leaders, if convicted, would not have to spend time in jail, even for crimes related to drug trafficking, given that the Special Jurisdiction is now largely enshrined in the Colombian legal system.<sup>46</sup> Duque, aware of these constraints, has suggested that his tough line on

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<sup>42</sup> “Report of the Secretary-General on the United Nations Verification Mission in Colombia”, United Nations Security Council, op. cit., p. 2. Civilians who could be considered third-party actors in the armed conflict are no longer obligated to appear before the JEP due to a Constitutional Court ruling, undermining its ability to investigate civilians who supported paramilitary groups during the conflict. Renata Segura and Sabina Stein, “The Colombian Peace Process with the FARC: A Mapping of Vulnerabilities”, op. cit., p. 14.

<sup>43</sup> “Un grupo de magistrados vieron en la JEP un botín burocrático: Correa”, *Caracol*, 26 April 2018. Colombia's Congress and Constitutional Court also came under fire for adopting a definition of “command and control” that fails to meet international transitional justice standards. See “Escrito de amicus curiae de la fiscal de la Corte Penal Internacional sobre la Jurisdicción Especial para la Paz”, International Criminal Court, 18 October 2017.

<sup>44</sup> The Democratic Centre presented a bill in October 2017 to this effect. “Uribismo propone que militares no sean juzgados por la JEP”, *El Espectador*, 19 October 2017.

<sup>45</sup> For a succinct summary of Duque's positions on transitional justice, see Juanita León, “¿Podría Duque modificar el acuerdo de paz?”, op. cit. For a text arguing that transitional justice will be improved under Duque, see Camilo Rubiano Becerra, “La JEP y la segunda vuelta”, *Los Irreverentes*, 4 June 2018.

<sup>46</sup> The Special Jurisdiction will consider case by case if drug trafficking was carried out to finance the rebellion or for personal gain. It will be extremely difficult to prove the latter, and therefore

drug trafficking would apply primarily to cases in which FARC members are found guilty of crimes they committed after the peace agreement's signing.

The new government thus would likely focus on cases such as that of Jesús Santrich, a former guerrilla commander arrested in April on charges of involvement in drug trafficking between 2017 and 2018, which were filed in the U.S. courts.<sup>47</sup> If it adopts such an approach – prioritising investigation of crimes committed after the peace deal – it may not need to amend laws. The precise regulations governing the Special Jurisdiction's workings, which – unlike the provisions on the body's creation, mandate and basic procedures – have yet to be passed into law, are likely to determine that any case related to crimes during the armed conflict will be adjudicated by the Special Jurisdiction, whereas cases involving crimes committed after the peace accord's approval will be handled by the normal courts.<sup>48</sup>

Nor would a wave of U.S. requests for the extradition of FARC members for their alleged links to drug trafficking guarantee that more ex-guerrillas end up in U.S. jails.<sup>49</sup> Colombia's Supreme Court must grant extradition requests. Recent cases suggest that it will not allow the accused to be sent abroad before he or she has made a full confession of crimes committed during the armed conflict to the appropriate transitional justice mechanism – in this case, the Special Jurisdiction.<sup>50</sup> This requirement would at the very least delay extradition.

As for the judicial treatment of members of the armed forces, the political incentives for Duque's incoming government to change procedures in the ways they have already proposed are not clear-cut.<sup>51</sup> For now, the cases of almost 1,800 military officers accused of extrajudicial executions are expected to be handled by the Special Jurisdiction; many of these officers have already been freed from prison as they await trial.<sup>52</sup> Any change to their status could prompt considerable resistance within the military, including its high command. At the same time, the Special Jurisdiction's checks on attributing criminal responsibility to senior army commanders, which were negotiated as part of the peace accord but have been criticised by the International Criminal Court for seeking to protect the top brass, may convince officers accused of extrajudicial executions that the Special Jurisdiction offers them prospects of lighter sentences than normal courts.<sup>53</sup>

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FARC leaders will most likely receive the sentences provided by the JEP for their drug trafficking crimes as well.

<sup>47</sup> "Jaque mate a Jesús Santrich", *Semana*, 11 April 2018.

<sup>48</sup> The Democratic Centre has already made an effort to suspend congressional discussions and voting on the remaining law needed to make the Special Jurisdiction for Peace fully operational. "El uribismo gana pulso en el Congreso: ¿se aplaza el funcionamiento de la JEP?", *Semana*, 18 June 2018. "Ley de procedimiento de la JEP, aprobada en primer debate en Congreso", *El Espectador*, 29 May 2018.

<sup>49</sup> Soon after Santrich's arrest, the chief FARC negotiator in the peace talks, Iván Márquez, left for a FARC camp in a remote region of the country. His nephew, Manuel Marín, is collaborating with U.S. investigations into drug trafficking and corrupt use of funds destined for the peace process. "Iván Márquez se traslada a Caquetá", *El Espectador*, 19 April 2018.

<sup>50</sup> "La extradición y los procesos de Justicia y Paz", *El Espectador*, 19 February 2010.

<sup>51</sup> See the previous page for the Democratic Centre's proposals for military officers.

<sup>52</sup> "El 97 % de postulados a la JEP por Mindefensa son del Ejército", *El Tiempo*, 18 November 2017.

<sup>53</sup> Crisis Group interviews, International Criminal Court representatives, Bogotá, 18 March 2017 and 14 September 2017. Many officers in the Colombian armed forces are under investigation for

The international cost of any effort by the new government to undermine the judicial mechanisms laid out in the peace agreement would also be high, given the magnitude of foreign backing for the transitional justice system and victims' rights in general.<sup>54</sup> At the same time, the incentives informing Duque's policymaking could evolve. Once the Special Jurisdiction court begins hearing cases involving FARC leaders, failure by the former guerrillas to comply with its conditions on truth telling or reparations for victims, or public and political outcry over the sentences it hands down, could prompt his government to intensify its campaign to undermine the special court's legitimacy or even pressure it to allocate more cases to the normal judicial system. It is hard to say at present whether these gestures would be anything more than symbolic.<sup>55</sup>

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killing civilians and claiming they were guerrilla fighters. Estimates of civilians killed as part of the practice known as "false positives" range from 4,000 to 10,000. "Más de 4 mil casos de falsos positivos son investigados por la Fiscalía", *El Espectador*, 27 September 2014. "Falsos positivos serían más de 10.000, según coronel retirado", *Blu Radio*, 9 May 2018.

<sup>54</sup> During 2017, for example, the budget for the JEP was funded completely by the international community. "La JEP gastó 3,7 millones de dólares en un año", *El Colombiano*, 7 January 2018.

<sup>55</sup> Natalia Arbeláez Jaramillo, "La gente sobrevalora la importancia de la JEP", *La Silla Vacía*, 16 April 2018. "El difícil despegue de la JEP", *La Silla Llena*, 4 February 2018.

## V. Security Threats

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Duque will be the first president in over half a century to assume power in Colombia facing no threat from the FARC insurgency. Nonetheless, his government will confront an array of non-state armed groups: numerous dissident FARC factions that reject the peace process, the insurgent National Liberation Army (ELN) and drug trafficking groups, especially the largest among them, the Gaitán Self-Defence Forces. It will have to respond, too, to the recent expansion of illicit economies, increasingly unruly border areas and the murders of hundreds of community leaders since the peace agreement was signed.<sup>56</sup> Though these phenomena are only occasionally related directly to the deal with the FARC and have taken shape in the aftermath of the peace process, the way the Duque government deals with them will prove critical to implementation of the peace deal in Colombia's rural peripheries.

FARC dissident groups, numbering between sixteen and eighteen and with anywhere from 1,200 to 1,500 members, have multiplied and are increasingly belligerent toward civilians.<sup>57</sup> In Tumaco, on the Pacific coast close to the border with Ecuador, homicide rates have risen as dissident groups vie for control of the city. In the eastern states of Meta and Guaviare, dissidents continue to exert control over towns and the drug trade.<sup>58</sup>

The ELN guerrilla movement has expanded since the start of peace talks with the FARC, engaging in more armed activity and deepening its engagement in illicit businesses even as it continues negotiations with the government. Its expansion into new areas, where its control over territory and overall presence is weaker, has led to significant civilian suffering. In Chocó, along Colombia's Pacific coast, communities have been caught in the crossfire between ELN and Gaitán forces, with violence worsening over the past year. Clashes in recent months between the ELN and a smaller guerrilla movement, the Popular Liberation Army (EPL), in Catatumbo, near the Venezuelan border, have led to an unknown death toll and forcibly displaced thousands.<sup>59</sup>

Colombian security force offensives have reportedly weakened the Gaitanista drug trafficking group and resulted in the death or capture of high-level leaders. Despite these losses, the group's hold over territory appears largely unaffected until recently, as the group's expansion seems to have stalled. The group maintains a militarised, vertical command structure that allows for quick replacement of leaders it

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<sup>56</sup> These issues were discussed in Crisis Group Latin America Report N°63, "Colombia's Armed Groups Battle for the Spoils of Peace", 19 October 2017.

<sup>57</sup> Eduardo Álvarez Vanegas, Daniel Pardo Calderón and Andrés Cajiao Vélez, "Trayectorias y dinámicas territoriales de las disidencias de las FARC", Fundación Ideas para la Paz, April 2018.

<sup>58</sup> Crisis Group interviews, community leaders and humanitarian aid workers, Tumaco, 7-9 March 2018; community leaders, Retorno, Guaviare, 16 May 2018.

<sup>59</sup> Crisis Group interviews, indigenous leader, Quibdó, 9 May 2018; international organisation representatives, Quibdó, 8 May 2018; humanitarian aid worker, Cúcuta, 16 April 2017; international organisation representative, Cúcuta, 17 April 2018. Negotiations with the ELN are the subject of a forthcoming Crisis Group report.

has lost, while subcontracting numerous local gangs to help preserve its trafficking routes.<sup>60</sup>

Beyond drug trafficking, Duque's government will have to tackle other illicit businesses that fill armed groups' coffers. Illegal mining, mainly of gold but also of coltan, is prominent in part of the country, above all in Antioquia and Chocó. Armed groups profit from contraband gasoline along the border with Venezuela, which also lowers the price of coca paste production, itself dependent on the fuel. Illegal businesses and armed groups flourishing along the borders with both Venezuela and Ecuador will pose an acute security and diplomatic challenge. Regions along both borders are the heartland of coca cultivation, and state security responses will have a major influence on efforts to substitute coca and bring alternative development to these rural areas as part of the peace deal.<sup>61</sup>

The killing of community leaders, meanwhile, is a source of great concern for civil society, victims' organisations and diplomats. The increase in such murders owes partly to competition among criminal groups over control of illicit revenues, and partly to the fears of local political and economic elites – who have traditionally used violence to maintain influence – that new political actors will supplant them in Colombia's post-conflict democracy. State prosecutors have made modest progress in arresting suspected hit men, but as of yet the government has been unable to halt or identify those responsible for ordering the killings.<sup>62</sup>

Duque's approach to such security challenges is anchored in the strategy of militarised offensives associated with former President Uribe. Though the Santos government has waged a military campaign against FARC dissidents, Duque promises to enhance it through the use of "all the offensive capacity of the state".<sup>63</sup> He accuses the FARC, in its new form as a political party, of having kept some of its weapons and of being unwilling to share information about the drugs trade, which, he claims, has led to the emergence of dissident groups.<sup>64</sup> At the same time, Duque has not made clear how he would seek to extract this information on drug trafficking from FARC leaders, nor how obtaining that information would necessarily stop dissidents.

Military campaigns against such groups tend to be blunt instruments. Commanders killed in such operations can be replaced, while local support networks remain largely unaffected or potentially even reinforced if security forces' tactics harm and alienate communities. Guaranteeing the reintegration of FARC foot soldiers, which Duque has promised to do, would be an important step in preventing them from

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<sup>60</sup> "Crimen organizado y saboteadores armados en tiempos de transición: radiografía necesaria", Fundación Ideas para la Paz, July 2017, p. 27.

<sup>61</sup> Crisis Group Report, "Colombia's Armed Groups Battle for the Spoils of Peace", op. cit.

<sup>62</sup> According to the national human rights ombudsman, 282 community leaders have been killed since 1 January 2016. "282 líderes sociales y defensores de DD.HH. asesinados en dos años es una cifra aterradora": defensor del Pueblo, Carlos Negret", *Defensoría del Pueblo*, 1 March 2018. Crisis Group interview, high-level diplomat, 11 August 2017.

<sup>63</sup> "Duque exige desarme a las guerrillas o se enfrentarán a la fuerza del Estado", *La Vanguardia*, 18 January 2018.

<sup>64</sup> "¿Cómo combatir a 'Guacho' y a las disidencias de las FARC? Así responden los candidatos", *Caracol*, 25 May 2018.

joining dissident groups, though those factions have already started to tap other sources of recruits.<sup>65</sup>

As regards the ELN, Duque rejects political negotiations but says he is prepared to discuss disarmament, demobilisation and reintegration with the movement. Even those discussions he conditions on the assembly, before negotiations start, of ELN forces in set geographic areas; the suspension of all their criminal activity; and a clear and definitive timeline for negotiations, after which he would allow for talks on ending the conflict but no substantive political negotiations. He has pledged reduced sentences for former guerrillas, but has made clear these would still involve jail time.<sup>66</sup> The ELN has rejected the notion of demobilising without negotiations over its political demands, and previous talks with the group have collapsed as a result of similar preconditions. Duque may be making these demands knowing that the ELN will reject them, thus hastening the end of negotiations while avoiding assuming responsibility for doing so and the political cost it would incur.<sup>67</sup> The breakdown of talks would likely presage a return to a protracted and unwinnable war with the guerrilla.<sup>68</sup>

A bill presented by Duque's party in late 2017 suggested that it might be flexible in its treatment of other armed groups. That bill, a version of which is currently being debated in Congress, foresees allowing large criminal organisations, such as the Gaitanista forces, to surrender to Colombian authorities in exchange for judicial benefits. The groups' leaders and members would receive reduced sentences provided leaders confess to their crimes, pay reparations to victims, hand over ill-gotten assets and do not return to crime.<sup>69</sup> Legislation along these lines would represent a step forward in ensuring victims' rights in such a surrender process. It also might pull the government away from an exclusive focus on police and military action.

That said, despite providing opportunities for surrender, the proposal as it currently stands does little to tackle the reasons that people join such groups, offering no measures to reduce the inequality and lack of legal economic opportunities that underlie much of the illicit business and recruitment by armed groups in Colombia's hinterlands. To extend the state's presence to these areas, Duque has promised to use both military force and civilian institutions, mirroring the Uribe government's "state consolidation", whereby security forces attempted to clear areas of guerrillas and civilian agencies followed to gain a foothold for state authority. This plan en-

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<sup>65</sup> Crisis Group interviews, local authorities, Miraflores, Guaviare, 5 April 2017; church leaders, Tumaco, 5 December 2017.

<sup>66</sup> "¿Firmaría Iván Duque un acuerdo de paz con el ELN si llega a la presidencia de Colombia?", CNN, 9 February 2018.

<sup>67</sup> These conditions were abruptly put in place by then President Uribe, leading the ELN to reject them. Contrary to what Duque has stated, the ELN has never accepted the previous concentration of all its forces, but did demand a demilitarised zone that was never established. See the forthcoming Crisis Group report on the ELN talks. Nicolás Rodríguez Bautista (top ELN commander), "Para pasar la página del conflicto armado", ELN, 12 March 2018.

<sup>68</sup> For an in-depth discussion of this issue, see Kyle Johnson, "¿Se puede derrotar militarmente al Eln?", *El Espectador*, 20 February 2018.

<sup>69</sup> "Radican proyecto de ley de sometimiento a la justicia para criminales", *El Colombiano*, 13 September 2017.

countered numerous setbacks, however, suffering from erratic backing from state institutions and continuing mistrust from communities.<sup>70</sup>

Duque's border strategy has so far stressed intelligence-led operations rather than military surges. His government will likely also resort to the armed forces in the event of a breakdown of public order, as Santos's government has already done. The number of troops present in the border states of Nariño and Norte de Santander has increased sharply since the beginning of the year, although increased troop levels have not curbed rising violence.<sup>71</sup> Duque has said he would redouble the use of satellite monitoring on all borders. He has pledged to cooperate closely with Ecuadorian forces to combat an armed group led by alias Guacho, a violent and powerful FARC dissident.<sup>72</sup>

He has also promised to create a humanitarian fund to deal with the crisis related to smuggling and the mass exodus of Venezuelans across Colombia's 2,200km-long and highly porous border with Venezuela, using money budgeted for the UN to monitor the implementation of the FARC peace agreement for that purpose. Finally, he has pledged to provide incentives to Venezuelans to encourage their onward journey to other countries, and to make it easier for those Venezuelans with university degrees to qualify legally to work in Colombia.<sup>73</sup> The fate of these proposals will depend greatly on the scale of migration flows from Venezuela, as well as the likely intensification of bilateral tensions once Duque takes power. For now, cross-border incursions, such as the one that killed the FARC second-in-command in Ecuador in March 2008, appear not to be part of the incoming government's plans.<sup>74</sup>

Duque has stressed that he will strengthen investigations into the killings of social leaders, though without specifying how.<sup>75</sup> To do so, and to avoid domestic and international condemnation, he will have to provide sufficient resources to national and local investigators, while also maintaining pressure on relevant judicial and security bodies to ensure the cases remain a priority. He will also have to counteract

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<sup>70</sup> Crisis Group interview, former government negotiator in the FARC peace process, Bogotá, 13 June 2018. Adam Isacson, "Consolidating 'Consolidation': Colombia's 'Security and Development' Zones Await a Civilian Handoff, While Washington Backs Away from the Concept", Washington Office on Latin America, December 2012.

<sup>71</sup> The government has also created a strategy of providing more public services for Tumaco which has worked in some towns, but overall most locals still distrust the government. Crisis Group interviews, community leaders, Tumaco, 4 December 2017 and 7-9 March 2018. "Este año van 3.491 asesinatos: lanzan alerta por aumento del 7%", *El Tiempo*, 19 April 2018.

<sup>72</sup> Jineth Prieto, Ana León and Adelaida Ávila Cabrera, "Las propuestas sobre Venezuela, cara a cara", *La Silla Vacía*, 17 May 2018; "¿Cómo combatir a 'Guacho' y a las disidencias de las FARC? Así responden los candidatos", *Caracol*, op. cit.

<sup>73</sup> Most of the UN mission's budget comes from the UN system, but removing local funds would represent a significant, if symbolic, protest against the UN presence in Colombia. "¿Qué van a hacer los candidatos con Venezuela? Lea sus propuestas en política exterior", *El País de Cali*, 6 May 2018. "Las propuestas de los candidatos para enfrentar los retos en las zonas de frontera", *El Espectador*, 13 April 2018.

<sup>74</sup> Crisis Group interview, high-level diplomat, Bogotá, 25 April 2018.

<sup>75</sup> "Voy a recuperar los ejes de la producción industrial del Tolima": Duque", Iván Duque, 12 May 2018.

a tendency among his colleagues to stigmatise community leaders.<sup>76</sup> His party's rhetoric on the subject, and the National Defence Ministry's tendency to downplay the killings, could hinder the attempt to identify culprits and prevent more murders.<sup>77</sup> Foreign donors' concerns could play an important role in encouraging Duque to make good on his promises to reverse the spate of killings. Colombian civil society will also have to find new ways to pressure and work with the government, as current coordination mechanisms between the government and social organisations have been ineffective, in large part due to disagreements over whether paramilitaries are responsible for the murders.<sup>78</sup>

While these security threats both predate the FARC peace deal and have evolved in its wake, their causes are inextricably linked to concerns at the heart of that agreement. The need to address rural inequality, illicit economies and the armed groups that both prey on, and in some cases protect neglected local communities, underpins the deal's attempt to spur rural development and empower small farmers. Duque's ill-defined pledges of a tough state offensive aimed at weeding out armed groups and eliminating coca crops risk reinforcing these communities' historic estrangement from the state.

Though a military campaign might weaken some armed groups and reduce, in the short term, Colombia's coca harvest, it could goad rural communities into an embrace of armed factions who have long argued that the peace deal with the FARC is a sham and that Bogotá cannot be trusted. A more forceful Colombian state offensive against armed groups using neighbouring countries as safe havens also risks a cross-border escalation in violence. Foreign supporters of the agreement should seek to convey to the Duque government that the long-term improvement in the security and economic and socio-political conditions in Colombia's countryside serves the interests of business investment and regional security.

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<sup>76</sup> Now Democratic Centre Senator María Fernanda Cabal accused local NGOs involved in land restitution in September 2015 of being guerrillas. Numerous activists trying to recover land have been assassinated since 2012, often accused of being guerrilla supporters. "Las afirmaciones de María Fernanda Cabal le valen demandas y rechazos de ONG", *Verdad Abierta*, 6 October 2015.

<sup>77</sup> "Asesinatos de líderes son por 'líos de faldas': ministro de Defensa", *El Espectador*, 17 December 2017.

<sup>78</sup> The National Roundtable on Protection, a forum in which the government and civil society meet to discuss the killings and threats, has been impeded by ongoing disputes over whether these cases are the work of paramilitaries or not. Crisis Group interview, government official, Bogotá, 10 May 2018. "Los asesinatos de líderes sociales en Colombia manchan los acuerdos de paz", *El Diario*, 25 November 2016.

## VI. Conclusion

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The incoming Duque government's wish to modify the peace accord could entail far more than mere tinkering. Starving newly created bodies and initiatives of political support and financial resources would seem the path of least resistance for obstructing the deal's implementation. Opposing parts of the agreement that are already embedded in law, on the other hand, would likely generate high legal and political costs. An issue-by-issue review of the salient parts of the accord shows that political calculations in the short, medium and long terms are often contradictory, and that rural development initiatives and coca substitution appear likely to run higher risks of revocation than transitional justice and FARC reintegration.

Much now depends on how Duque's campaign pledges translate into action when he assumes power. Within his party, the president-elect is considered a centrist, but hardline leaders and factions will almost certainly want to nudge him toward a tougher stance on the deal. Uribe's role will be pivotal. The ex-president accuses his former ally Juan Manuel Santos of treachery in negotiating peace with the FARC and is unlikely to acquiesce should another protégé chart a course he would view as betrayal.

Faced with the risk that pressure from within his party will pull Duque toward aggressive rejection of the peace agreement, civil society and Colombia's foreign partners should encourage the new president to protect the deal's main commitments. Duque should continue the guerrilla's reintegration, respect transitional justice mechanisms and protect the deal's core components regarding the future of Colombia's countryside, as well as adopt security policies broadly consistent with the accord's aspirations. In particular, it is vital that the new government honour coca substitution agreements and respect FARC participation in the reintegration process; acknowledge the high political and legal costs of reversing agreements on transitional justice and FARC political participation; and appreciate the threats to rural pacification and regional security of eliminating development agencies and adopting a heavy-handed approach to armed groups and illicit business in Colombia's hinterland. Full and prompt FARC compliance with the terms of transitional justice would also bolster the legitimacy of the Special Jurisdiction for Peace at a delicate moment.

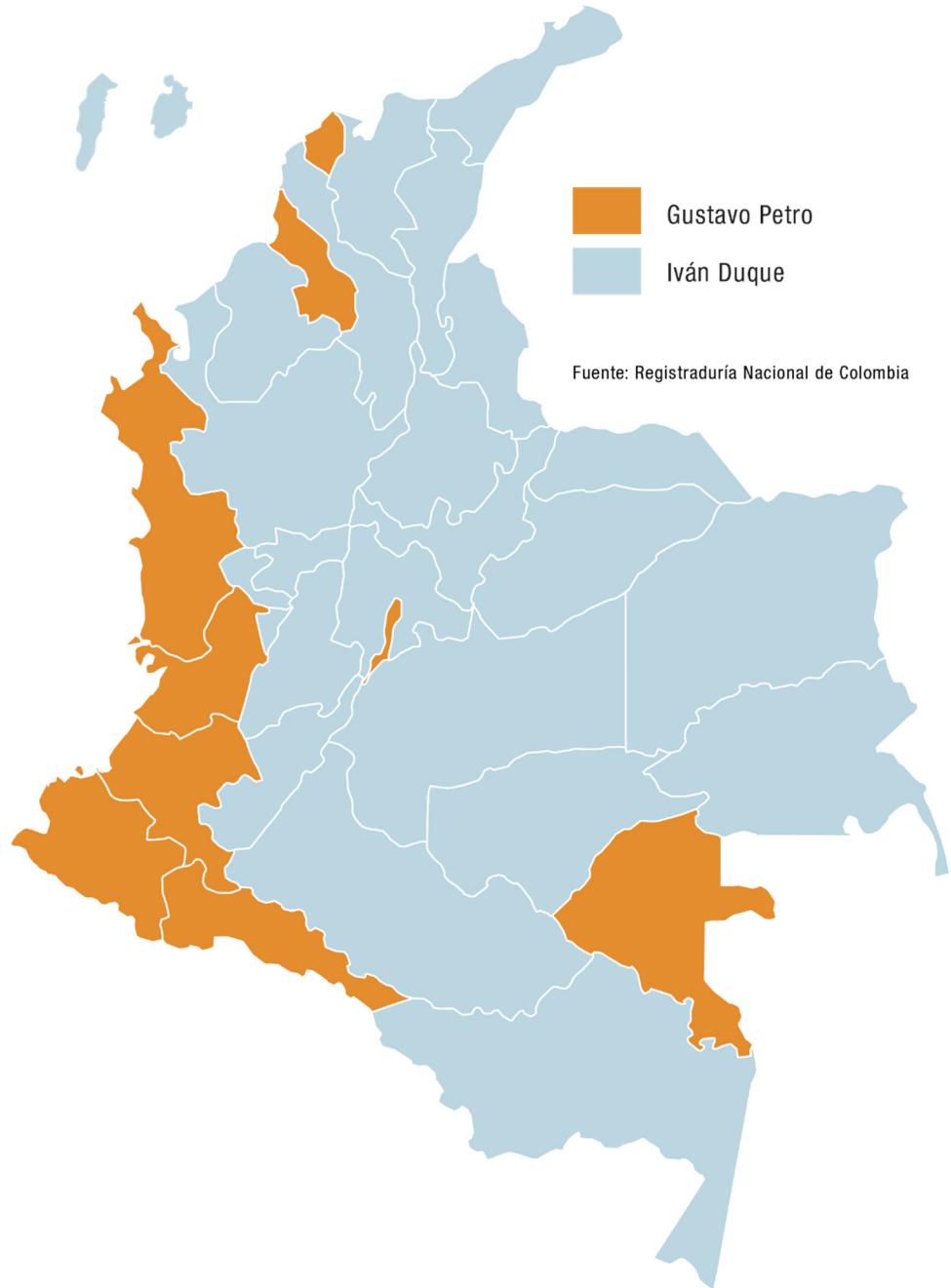
An all-out return to war with the FARC is highly improbable. But upticks in FARC dissident and ELN violence and an expansion of both groups' influence are quite plausible. If the new government backtracks on its commitments in the peace agreement – directly or by stealth – FARC dissidents and ELN hardliners will feel vindicated. They may win new recruits and support more easily, as rural constituencies lose faith that the reforms promised in the deal will materialise and their lingering suspicions of the state surface. In a worst-case scenario, the ELN may decide that it has nothing to gain from further talks, given the government's apparent reservations. The Gaitán Self-Defence Forces' leaders may think twice about surrendering, even if legislation to allow that to happen is passed.

The FARC peace deal may not be perfect – few such deals are – and the Colombian security landscape, which has evolved since the deal was signed, remains enormously challenging, above all along the borders. But attempting to derail the deal, or adopting policies that impede its longer-term aims of addressing inequality and un-

derdevelopment in rural areas, would likely lead to greater instability, hinder the return of state authority to Colombia's peripheries and, over time, boost violence and drug trafficking.

**Bogotá/Brussels, 21 June 2018**

Appendix A: Colombian Presidential Run-off Results by Department



Appendix B: Map of Colombia



### Appendix C: Acronyms

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ANT	National Agency for Land
ART	Agency for Territorial Renewal
ELN	National Liberation Army
EPL	Popular Liberation Army
FARC	Revolutionary Armed Forces of Colombia
NRC	National Reincorporation Council
PDETs	Territory-Focused Development Plans
JEP	Special Jurisdiction for Peace
UNODC	UN Office on Drugs and Crime

## Appendix D: About the International Crisis Group

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early warning bulletin, providing a succinct regular update on the state of play in up to 70 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown. Its Vice Chair is Ayo Obe, a Legal Practitioner, Columnist and TV Presenter in Nigeria.

Crisis Group's President & CEO, Robert Malley, took up the post on 1 January 2018. Malley was formerly Crisis Group's Middle East and North Africa Program Director and most recently was a Special Assistant to former U.S. President Barack Obama as well as Senior Adviser to the President for the Counter-ISIL Campaign, and White House Coordinator for the Middle East, North Africa and the Gulf region. Previously, he served as President Bill Clinton's Special Assistant for Israeli-Palestinian Affairs.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in ten other locations: Bishkek, Bogota, Dakar, Kabul, Islamabad, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Algiers, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Hong Kong, Jerusalem, Johannesburg, Juba, Mexico City, New Delhi, Rabat, Sanaa, Tbilisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Instrument contributing to Stability and Peace, European Commission, Directorate General for Neighbourhood Enlargement Negotiations, Finnish Ministry for Foreign Affairs, French Development Agency, French Ministry of Europe and Foreign Affairs, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Ministry of Foreign Affairs and Trade, Norwegian Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, and the Swiss Federal Department of Foreign Affairs.

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**June 2018**

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## Appendix E: Reports and Briefings on Latin America since 2015

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### Special Reports

*Exploiting Disorder: al-Qaeda and the Islamic State*, Special Report N°1, 14 March 2016 (also available in Arabic and French).

*Seizing the Moment: From Early Warning to Early Action*, Special Report N°2, 22 June 2016.

*Counter-terrorism Pitfalls: What the U.S. Fight against ISIS and al-Qaeda Should Avoid*, Special Report N°3, 22 March 2017.

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*Back from the Brink: Saving Ciudad Juárez*, Latin America Report N°54, 25 February 2015 (also available in Spanish).

*On Thinner Ice: The Final Phase of Colombia's Peace Talks*, Latin America Briefing N°32, 2 July 2015 (also available in Spanish).

*Venezuela: Unnatural Disaster*, Latin America Briefing N°33, 30 July 2015 (also available in Spanish).

*Disappeared: Justice Denied in Mexico's Guerrero State*, Latin America Report N°55, 23 October 2015 (also available in Spanish).

*The End of Hegemony: What Next for Venezuela?*, Latin America Briefing N°34, 21 December 2015 (also available in Spanish).

*Crutch to Catalyst? The International Commission Against Impunity in Guatemala*, Latin America Report N°56, 29 January 2016 (also available in Spanish).

*Venezuela: Edge of the Precipice*, Latin America Briefing N°35, 23 June 2016 (also available in Spanish).

*Easy Prey: Criminal Violence and Central American Migration*, Latin America Report N°57, 28 July 2016 (also available in Spanish).

*Colombia's Final Steps to the End of War*, Latin America Report N°58, 7 September 2016 (also available in Spanish).

*Venezuela: Tough Talking*, Latin America Report N°59, 16 December 2016 (also available in Spanish).

*In the Shadow of "No": Peace after Colombia's Plebiscite*, Latin America Report N°60, 31 January 2017 (also available in Spanish).

*Veracruz: Fixing Mexico's State of Terror*, Latin America Report N°61, 28 February 2017 (also available in Spanish).

*Mafia of the Poor: Gang Violence and Extortion in Central America*, Latin America Report N°62, 6 April 2017 (also available in Spanish).

*Power without the People: Averting Venezuela's Breakdown*, Latin America Briefing N°36, 19 June 2017 (also available in Spanish).

*Colombia's Armed Groups Battle for the Spoils of Peace*, Latin America Report N°63, 19 October 2017 (also available in Spanish).

*Venezuela: Hunger by Default*, Latin America Briefing N°37, 23 November 2017 (also available in Spanish).

*El Salvador's Politics of Perpetual Violence*, Latin America Report N°64, 19 December 2017 (also available in Spanish).

*Containing the Shock Waves from Venezuela*, Latin America Report N°65, 21 March 2018 (also available in Spanish).

*Mexico's Southern Border: Security, Violence and Migration in the Trump Era*, Latin America Report N°66, 9 May 2018 (also available in Spanish).

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