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## Colombia's Peace Accord on the Missing

### Summary

- A new accord on the missing made between the Colombian government and the Colombian Revolutionary Armed Forces (FARC-EP) in October 2015 commits the parties to a series of confidence-building humanitarian measures and institutional changes to alleviate the suffering of the families of those who disappeared in the context of Colombia's internal armed conflict.
- Interactions between family members of the missing, civil society, and the state helped shape the accord and have opened opportunities for collaboration in its implementation.
- Peace negotiators have established immediate measures to locate and identify the missing and provide a dignified return of their remains; to that effect, they are setting up a new search committee to search proactively for the missing.
- Implementation challenges include a paucity of information, geographic and technical barriers to finding and identifying the missing, uncoordinated data management systems and weak interinstitutional collaboration, stigmatization of and security threats to those searching for the missing, and strained relationships between victims and the state.
- Administrative challenges include the vast number of victims of forced disappearances, the lack of follow-up mechanisms between civil society and state officials, and unclear routes for receiving state services.

### Introduction

As peace talks in Havana between the Colombian government and the FARC-EP enter their final stretch, both parties are producing agreements to de-escalate the conflict, build confidence in the peace process, and address the legacies of a half-century of internal armed conflict. The accord on the missing, signed on October 17, 2015, does all three.

On April 22, 2016, the U.S. Institute of Peace (USIP) and the Latin America Working Group Education Fund (LAWGEF) convened experts to take stock of the accord and its implementation. This meeting,<sup>1</sup> part of the USIP Colombia Peace Forum series, featured Uliánov Franco Vanegas, the executive director of Familiares Colombia, an association of family members of the missing; Carlos Eduardo Valdés Moreno, the general director of the National Institute of Forensic Medicine; Diana Arango Gómez, the executive director of the independent forensic team Equitas; and Christoph Harnisch, the head of the International Committee of the Red Cross (ICRC) delegation in Colombia

(via Skype). Participants were joined by members of the U.S. executive and legislative branches and human rights experts. This brief shares insights from these discussions on advances made thus far, the role of victims in achieving and implementing the accord, challenges for implementation, and recommendations for moving forward.

## The Missing in Colombia

Until recently, forced disappearances remained a hidden problem in Colombia, due in part to the nature of the crime and the victims that were targeted. Forced disappearances<sup>2</sup> are defined in international human rights law as the unacknowledged arrest, detention, or abduction of persons by state agents or with state acquiescence. In Colombia, paramilitary militias acting with the acquiescence of the state carried out many of the forced disappearances. Victims of forced disappearances include the rural and urban poor, labor and peasant organizers, journalists, human rights defenders, politicians, and Afro-Colombian and indigenous leaders.

But the problem of missing persons in the context of the conflict is broader than that definition. People have gone missing at the hands of all the armed groups (paramilitary militias, guerrillas, and government security forces). Kidnap victims who died or were killed in captivity, and members of the military and guerrillas who fought in the conflict and remain unaccounted for, are not considered to be forcibly disappeared, but they are counted among Colombia's missing and are covered by the accord.

No one knows how many people were forcibly disappeared in the context of Colombia's internal armed conflict, but the number is vast and disappearances continue as peace talks proceed. As of May 2016, the Colombian government's victims unit registered more than 45,000 forcibly disappeared persons, with indirect victims at about three times that number. Another database managed by the National Institute for Forensic Medicine puts the total number of missing persons at 111,588—the earliest in 1938—with more than 22,000 of these classified as forced disappearances.<sup>3</sup> Men constitute 88 percent of those forcibly disappeared; the departments where disappearances occur most often are Antioquia, Meta, Valle del Cauca, Cesar, Caquetá, and Putumayo. Unidentified bodies languish in unmarked graves within cemeteries; in mass graves near illegal armed groups' camps; in town dumps, such as Medellín's La Escombrera; and in rivers and jungles.

In the absence of a body, victims' rights to truth, justice, reparations, and guarantees of non-repetition prove difficult to pursue. Prosecution of the perpetrator, even when known, is problematic. Without the body, families lack the proper burial or funeral rites that might ease their grief and offer closure. In the midst of an ongoing conflict, with the perpetrators still at large, efforts to seek information about forced disappearances often provoke stigmatization, threats, and violence. Families remain in limbo—torn between their desire to know the truth and their fear of what might have happened to their loved ones.<sup>4</sup> As Colombian scholar Alfredo Molano has noted, disappearance has a profound impact on family members: "To the torment of absence is added the sorrow of doubt."

## Accord #62: New Measures on the Missing

Victims, including family members of the missing, have played an active role in the Colombian peace process, and their advocacy is yielding results: On October 17, 2015, the negotiating parties in Havana issued a joint communiqué, Accord #62, addressing the plight of Colombia's missing. Accord #62 commits the parties to a series of confidence-building humanitarian measures and institutional changes to alleviate the suffering of the families of the missing.

## Immediate Humanitarian Measures

The parties agreed on immediate measures to accelerate the search for, identification of, and dignified return of the remains of missing persons to their families:

- They called on the ICRC and the National Institute of Forensic Medicine, with the support of the attorney general's office, to consolidate relevant information from the government, the FARC-EP, and victims' organizations.
- The Colombian government agreed to accelerate the identification of those without name—including victims of extrajudicial executions and those who died during security operations and were deposited anonymously in cemeteries—and to turn over their remains to family members.
- The FARC-EP agreed to turn over information to help locate and identify victims.
- The ICRC will assist as needed in contacting family members of the missing members of the FARC-EP.

The parties also called on the existing search commission (Comisión de Búsqueda de Personas Desaparecidas) to produce recommendations for a new commission charged with proactively searching for people who went missing during the conflict. The existing commission, established in 2000, helped document cases of disappearances but, according to family members of the missing, failed to produce sufficient results in locating the missing.

## A New Search Unit for the Missing

The parties agreed that a new search unit for the missing (Unidad de Búsqueda de Personas Desaparecidas) will be created once a final peace accord is signed.

The unit will be one component of the Comprehensive System for Truth, Justice, Reparations, and Non-Repetition, which also includes a Commission for the Clarification of Truth, Coexistence and Non-Repetition and a Special Peace Tribunal. The new search unit will

- contribute to satisfying victims' rights to truth and reparations by establishing what happened to those who disappeared as a result of actions of "agents of the state, members of the FARC-EP, or of any organization that might have participated in the conflict";
- undertake humanitarian actions to search for, locate, and identify the victims of disappearances who are alive. Where the individual has died, the unit will turn over the remains to family members; and
- serve as a high-level, independent, transitory search unit; include robust participation from victims, human rights defenders, and specialized organizations; and issue periodic reports to family members of the missing.

## Initial Follow-Up to Accord #62

As requested, in March 2016, the Havana negotiators received recommendations from the National Search Commission. The Working Group on Forced Disappearances (the convening mechanism for victims' associations and groups providing independent forensic and legal expertise and accompaniment) also submitted a report with recommendations for effective implementation of Accord #62.

During the USIP-LAWGEF discussion in April, participants noted that the accord on the missing marks an advance in the peace process and is a meaningful step in making the problem of the missing more visible. They found the accord to be "hopeful" and "visionary," proposing forward-thinking solutions. Participants applauded the engagement of victims in shaping the accord on the missing

and the opportunities it provides for civil society engagement. Participants welcomed the more aggressive approach in searching for and identifying the missing and ensuring the dignified return of remains. Since the signing of Accord #62, the Colombian government has, on two occasions, returned the remains of forty-four missing victims to their families; this was a positive, albeit limited, step.<sup>5</sup> “The time has arrived for finding the missing,” noted Uliánov Franco.

## Challenges to Implementation

Many challenges remain for the implementation of Accord #62, including the lack of information (even on the scope of missing persons) and the lack of a single database or registry of the missing. Ongoing threats and stigmatization of those searching for the missing make witnesses and family members reluctant to come forward with information. Technical and geographic impediments are exacerbated by the passage of time and the resulting disintegration of evidence. Likewise, the lack of trained judges, bureaucratic red tape, ambiguous jurisdictional questions, and shifting priorities at and around the peace table challenge timely implementation.

The victims’ accumulated frustrations and lack of trust in the state, due to a history of indifference and neglect, an institutional structure that has failed to produce results, and state complicity in forced disappearances will need to be addressed. Family members perceive that bureaucratic needs often have priority over the needs of the families of the missing. Concerted efforts by the state to ensure greater participation by family members, state protocols that recognize the dignity and preferences of the victims’ families, timely compliance with agreements, and strong communication channels can go far to mend this broken relationship. It is likely, however, to be a long, sensitive process that will demand patience.

## Recommendations

- Victims have invaluable information relevant to implementing the accord; thus, their participation will be important throughout. However, the state—not the victims—is obligated to, and must, bear the responsibility for advancing the process.
- A follow-up mechanism between negotiators and government implementers with the Working Group on Forced Disappearances should be quickly established to strengthen coordination with victims and allow them to provide input regarding implementation, including setting up the search unit and carrying out the immediate humanitarian measures.
- Government agencies dealing with issues related to the missing should strengthen interinstitutional collaboration and establish a transparent division of labor. The pathways for receiving services should be consulted with, and made clear to, family members of the missing.
- Agencies involved in exhumations and returns should coordinate with the families of individual victims and their advocates to ensure “dignified returns” that provide the appropriate rituals and psychosocial assistance according to individual religious and cultural beliefs and world views.
- The international community should support, monitor, encourage, and fund the accord’s implementation. Support should be directed to civil society organizations, including victims’ associations and groups providing forensic, human rights, and psychosocial accompaniment and expertise. Without such international support, civil society organizations crucial to Accord #62’s success will be less effective. Likewise, support with benchmarks for accountability should be directed to Colombian government institutions, including the new search unit.
- The Colombian government should ask the United States and other governments to declassify documents that could shed light on forced disappearances in Colombia and to

## ABOUT THIS BRIEF

This brief examines an agreement on forced disappearances reached in October 2015 between the Colombian government and the Colombian Revolutionary Armed Forces (FARC-EP) in the context of peace talks under way in Havana, Cuba, and analyzes the implementation challenges ahead. It includes insights from an April 22, 2016, meeting hosted by the U.S. Institute of Peace and the Latin America Working Group Education Fund. Virginia M. Bouvier is the senior advisor for Peace Processes at the U.S. Institute of Peace. Lisa Haugaard is the executive director of the Latin America Working Group Education Fund.

contribute to the work of the search unit and the Commission for the Clarification of Truth, Coexistence, and Non-Repetition.

- The attorney general's office should increase efforts to investigate and prosecute those responsible for ongoing threats and attacks against those searching for the missing.
- It will be important to manage expectations raised by Accord #62 while maintaining momentum in the search for the missing.

## Conclusion

Creating spaces for dialogue, such as those provided by the USIP-LAWGEF discussion, can help build trust between government and civil society. Implementation of this accord is in its early stages and, if done well, could generate greater public confidence in the peace process. Engaging victims in the design and implementation of the measures and providing timely and effective remedies to individuals and communities are important building blocks for peace accord implementation. Assessing the results regularly can allow for mid-course corrections. Formal mechanisms for consultation with relatives of the missing will ensure the effectiveness of the process and help repair relationships damaged by the conflict. The search for Colombia's missing is daunting, but Accord #62 offers a route forward.

## Notes

1. A webcast of the discussion can be accessed online at [www.usip.org/events/colombia-peace-forum-seeking-truth-the-disappeared](http://www.usip.org/events/colombia-peace-forum-seeking-truth-the-disappeared).
2. "Enforced disappearance" is defined by the International Convention for the Protection of All Persons from Enforced Disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." However, in Colombia, victims, as well as government officials responsible for addressing forced disappearance, tend to include the cases of people who vanished in the context of the armed conflict, irrespective of the perpetrator.
3. Instituto Nacional de Medicina Legal y Ciencias Forenses, Dirección General, "Políticas institucionales para la búsqueda, recuperación, identificación y entrega digna de personas desaparecidas" (Bogotá, Colombia: 2016).
4. See Lisa Haugaard and Kelly Nicholls, *Breaking the Silence: In Search of Colombia's Disappeared* (Washington, DC: Latin America Working Group and U.S. Office on Colombia, 2010), <http://lawg.org/storage/documents/Colombia/BreakingTheSilence.pdf>, in Spanish: [www.lawg.org/storage/documents/Colombia/RompiendoElSilencio.pdf](http://www.lawg.org/storage/documents/Colombia/RompiendoElSilencio.pdf).
5. Virginia M. Bouvier, "Accord on Disappeared Shows First Results," *Colombia Calls* (blog), December 17, 2015, <https://vbouvier.wordpress.com/2016/01/14/accord-on-disappeared-shows-first-results/>; Virginia M. Bouvier, "Parties Resume Talks in Havana; Advances in Trust-Building Continue," *Colombia Calls*, April 21, 2016.



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