COLOMBIA’S DISARMED PARAMILITARIES:
Is Alternative Justice an Option?

by César Torres
About This Note

This FIELDNOTE is based on field research conducted by César Torres Cardenas, an associate of The SecDev Group. César Torres is a Colombian-Canadian lawyer with 25 years experience in humanitarian, human rights and justice issues including civil society dialogue for judicial reform, reintegration of former combatants, mechanisms for community justice and non-judicial alternative dispute resolution in conflict zones. His full study, *Using Alternative Justice to Prosecute or Reintegrate Demobilized Paramilitaries in Colombia: Opportunities and Challenges*, is available on www.secdev.ca.

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At a Glance:

> Is alternative justice a likely solution for processing and reintegrating some of Colombia’s demobilized paramilitaries?

> Colombia is striving to integrate some 30,000 demobilized paramilitary fighters into local communities through a controversial disarmament, demobilization and reintegration (DDR) process.

> **The formal justice system is overwhelmed.** Neither justice nor reconciliation is being consistently served. Some communities are refusing to accept ex-combatants. Some of the demobilized are rejoining paramilitary groups. The DDR process may be contributing to impunity.

> **The legal status of 19,000 ex-combatants is undefined.** Many individuals within this group committed lesser crimes and are strong candidates for alternative justice mechanisms.

> Colombia has a rich array of alternative justice operators already in place. Some have been intervening “de facto” to resolve or diffuse community-level violence involving ex-combatants (many of whom are still armed).

> **Currently in Colombia there is little discussion on the prospects for leveraging alternative justice capacities** to ease the pressure on the formal justice system and speed the process of community reconciliation and reintegration.

> **This research project revealed the need to raise awareness of the potential for alternative justice in Colombia, and to support the diverse local stakeholders** who have signaled an interest in operationalizing alternative justice in support of sustainable DDR.
Background: DDR in Colombia

Between 2003 and 2006 the Colombian government implemented a demobilization process for 37 armed groups that made up the violent, mafia-like, paramilitary coalition known as the AUC (Autodefensas Unidas de Colombia, or United Self-Defense Forces of Colombia). In 2005, as part of this process, the Government passed the Ley de Justicia y Paz (Justice and Peace Law), a controversial law that, most observers agree, is contributing to impunity in Colombia (see Box 1).

The law set the stage for a process that encouraged paramilitaries to collaborate with prosecutors: those who confessed their crimes could win significantly reduced prison terms. As a result, throughout 2007 and 2008, prosecutors began to obtain valuable information from paramilitary commanders about their crimes and accomplices. The government claimed success as more than 30,000 persons went through demobilization ceremonies, pledged to cease criminal activity, and entered reintegration programs offering them training, work, and stipends.

Colombia’s DDR process is considered controversial for many reasons. Human rights organizations claim that there has been little effort to investigate each demobilized individual to verify possible involvement in crimes against humanity. The courts are clogged with outstanding and pending cases, demonstrating the system’s lack of technical, financial and human capacity to handle critical tasks. In addition, observers note that the ranks of the demobilized have been artificially populated by non-paramilitaries, many weapons have not been handed in, and a number of paramilitaries never showed up for demobilization.

The lack of clarity around the reintegration process seems to be a reason why some communities are refusing to accept ex-combatants, and why some demobilized are rejoining paramilitary groups.
BOX 1. Colombia’s Justice and Peace Law

In 2005, Colombia’s Congress passed the “Justice and Peace Law” (Law 975), the principal piece of legislation regulating the current DDR process for paramilitaries. In exchange for their groups’ supposed demobilization, the law offered paramilitaries reduced sentences of five to eight years (which could be reduced further, to less than three years). Paramilitaries who wished to receive radically reduced sentences had to give a statement to the police, but the law established no explicit obligation to tell the truth about their crimes.

In mid-2006, the Colombian Constitutional Court reviewed the law and conditioned its approval on several crucial amendments. The Justice and Peace Law now requires full and truthful confessions. Reduced sentences may be revoked if paramilitaries lie or fail to comply with various requirements. In addition, there are no longer time limits on investigations. Paramilitaries are no longer allowed to serve reduced sentences outside of prison and time spent negotiating is not considered as time served. The Court also ruled that paramilitaries must turn over all illegally acquired assets (such as land taken by force) at the time of demobilization, and they may be liable for payment of reparations from the assets they claim to hold legally. The ruling also held that victims may participate in all stages of the proceedings, as they could in any ordinary criminal case.

After the Court ruling, the Uribe administration issued several executive decrees that watered down important aspects of the decision and enhanced opportunities for impunity. For example, one of the decrees provided that paramilitaries who had entered the demobilization program before the Court’s ruling (i.e., the overwhelming majority) can count the time they spent negotiating in Santa Fe de Ralito as time served. Other provisions weakened paramilitaries’ obligations to pay reparations to victims, and established that the Attorney General may apply the principle of “opportunity” to persons who serve as front men, holding assets for paramilitaries in their own name (which allows prosecutors to refrain from pressing charges).

The process has also created a situation of legal limbo for a group of some 19,000 demobilized individuals. The 30,000 ex-combatants officially registered with the Attorney General’s Office break down into four different legally-defined groups: those who are incarcerated, those who entered the Justice and Peace program, those who benefited from jurisprudence that allowed the Attorney General’s Office to issue a resolution to halt prosecution (resolución inhibitoria), and a final group (the 19,000) who fall outside of both of these legal measures.

**Alternative Justice in Colombia: Rich Potential**

In other post-conflict countries, lesser conflict-related crimes (similar to those committed by some of the 19,000) have been dealt with by alternative or traditional justice approaches (for example, Sierra Leone, East Timor, Uganda, Mozambique and Northern Ireland). Is Colombia a suitable candidate for leveraging alternative justice mechanisms in a similar manner?

The field research revealed five important findings in favour of an alternative justice process:

1. **Colombia has a rich and diverse tapestry of alternative justice operators already in place.** Some 125 indigenous and Afro-Colombian authorities administer traditional forms of justice within their communities. In addition, more than 700 justices of the peace and 3,000 “equity conciliators” (conciliadores en equidad) who are vetted by the government offer mediation, arbitration and conciliation services as well as more formal direct rulings (see Box 2).

2. **Colombia’s legal framework enables the use of alternative justice to resolve lesser criminal acts.** Indigenous authorities, justices of the
BOX 2. Alternative Justice in Colombia

In Colombia, “alternative justice” has grown out of a mixed legacy that includes popular and indigenous practices (in Indian and Afro-Colombian communities), alternative dispute resolution methods, and leftist approaches. In general, it includes a series of participatory, conflict resolution and special jurisdiction mechanisms. Practitioners combine alternative conflict resolution methods and principles with the knowledge and experience developed by traditional law practiced by ethnic groups. There are two main types of alternative justice mechanisms in Colombia: community-based and externally authorized.

Community-based alternative justice mechanisms are characterized as follows:

- Conflict resolution mechanisms are grounded in the social norms of communities, and enjoy a high degree of local legitimacy;
- Ethnic or ancestral communities impart justice through specialized members or bodies using knowledge based on communal social life;
- Highly symbolic sites are used to ensure that each resolved conflict will reinforce the consolidation of community norms and values;
- Capacities include some 25 types of Afro-descendent community justice, and approximately 100 indigenous authorities who resolve conflicts within their respective communities (or between some of their members with mestizo or white communities, or with individuals or the laws of those communities).

“External” alternative justice mechanisms are:

- Practiced by populations with fewer traditional bonds and less community organization;
- Often “imposed” on the community through external processes by judicial operators who are not members of the community;
- Applied by individuals who have been trained in accordance to curricula approved by government entities for conflict resolution, although they also look for indicators of what the respective population group believes to be just and fair;
- Carried out across different regions, such that practitioners do not consider the symbolic importance of the place in which the conflict is resolved;
- Practiced by some 3,000 equity conciliators and 700 justices of the peace.

Sources: Torres 2010 and Rosembert 2009.5
3. Peace and equity conciliators all have statutory status, and there is historical precedent for using alternative methods.

4. Despite this potential, the authorities have not authorized Colombia’s existing alternative justice bodies to undertake judicial processes involving demobilized paramilitaries, even though the formal justice system is not able to guarantee the effective delivery of justice.

5. Even without official sanction, some operators of alternative justice have been involved in addressing conflicts in which at least one of the parties involved is a demobilized paramilitary (see Box 3).

6. When questioned, key stakeholders were intrigued with the potential for alternative justice mechanisms to deal with qualifying ex-combatants, but also underlined the many challenges.
“After the demobilization, various paramilitaries returned to our town. Some had been born and grown up here and so this is where they returned after handing in their weapons. Well – handed in their weapons is one way to put it, but in reality, many did not hand in their weapons. One of these guys married his childhood sweetheart. But, like all the men here, he is a real macho. Ever since they had met in school, he has been jealous, following her and watching her every move.

“After he joined an armed group, it was worse than ever. Him with his desire to show everyone what a man he is... [After they got married] it just got worse: He wouldn’t let her see her girlfriends or greet male friends she might pass in the street. He wouldn’t even let her answer the door at their home. He would beat her for the smallest reason, abusing her and insulting her even in public.

“One day, she escaped from their home and went to live with her parents. He followed her there and turned up with a gun and a grenade. There were a lot of people watching and shouting. Some ran away, others took cover. Someone suggested that maybe they should go and get one of the town’s equity conciliators. A group went to the equity conciliator’s house and asked her to accompany them back to the place where everything was happening.

“The first thing the equity conciliator did was ask whether the aggressor wanted to talk with her to explore solutions to the problem. She promised that she wouldn’t involve the police. When he agreed and said that she should come closer so that they could speak, the equity conciliator asked all of the bystanders to go way so that she could speak with him in a calmer environment. He handed over his gun and the grenade and they started to talk. They talked for a long time and later the wife and her parents joined in, hoping that they would be able to arrive at some kind of solution. Today, the couple is living together and they have a baby. I don’t know if they are happy or if he still beats her or abuses her.

“We all knew that it was a very dangerous case because the man involved belonged to the armed group most responsible for terrorizing this region of the country. We also knew that the equity conciliator had no authority to be addressing a case involving two crimes including illegal possession of a weapon and attempted murder. But she did get involved and she managed to prevent a tragedy.”

Source: Interview with an equity conciliator, Colombia, November 2008.
Key Challenges

The fieldwork confirmed that the prospects for leveraging alternative justice in Colombia are vastly understudied. Key stakeholders have not seriously engaged the issue, although this may be changing. The research revealed seven challenges, many of which would benefit from targeted external support:

1. Lack of common vision. The lack of common definition/understanding of the idea of alternative justice amongst key stakeholders in Colombia is a foundational challenge for moving the agenda forward. Both academics and practitioners revealed divergent views on the definition of alternative justice. Interestingly, many Colombians consider the term “traditional justice” — a term that conventionally refers to community-based or traditional, informal practices — to mean formal, state-administered justice. There are also different understandings of terms such as “transitional justice,” “restorative justice” and “alternative justice.” These differing understandings may spring from Colombia’s peculiar circumstances, where the current controversial DDR process is actually termed “transitional justice.” A number of interviewees considered “transitional justice” in Colombia to be an imperfect process that is translating into impunity for perpetrators with no benefits for victims.

2. Lack of legal framework. There is no legal framework that specifies the lower level crimes that could be candidates for alternative justice mechanisms. As noted, the DDR-related legislation does not categorize the differing degrees of seriousness of conflict-related crimes. A nuanced legal framework is a key component underpinning alternative justice processes in other countries. In Colombia, this absence significantly inhibits discussion about the potential for using alternative justice mechanisms in support of DDR and community reintegration.
3. **Unclear jurisdiction of different alternative justice mechanisms.** Stakeholders disagreed about how alternative justice mechanisms, as currently mandated under law, could be operationalized to address conflict-related crimes. Indigenous authorities believed that the scope of the legal mandate of Colombia’s special indigenous jurisdiction could cover conflict-related crimes. Lawyers disagreed. Most other interviewees agreed that the more informal (and less documented) Afro-Colombian models of alternative justice have no legal jurisdiction over conflict-related crimes. A number of key informants expressed an openness to consider the use of alternative justice to prosecute demobilizing paramilitaries as long as the processes involved some kind of coordination with the Attorney General’s Office.

4. **Different alternative justice operators have different levels of social and legal legitimacy.**

The perceived legitimacy of alternative justice operators conditions their respective capacities to effectively address DDR-related cases. Of the different mechanisms reviewed under this study, operators of indigenous justice appear to possess the highest level of legal and social legitimacy across the board. Traditionally, sentences handed down by indigenous justice operators are respected by community members and by state judicial authorities. The same cannot be said of the other alternative justice practitioners. The justices of peace and the equity conciliation system do not have the same level of autonomy or legitimacy within communities (see Box 2 above). Even those justices that are elected by local populations have weaker social and symbolic legitimacy than indigenous authorities. For their part, demobilized paramilitaries (consulted through this research) expressed a fear that any agreements eventually reached through alternative justice means would not be definitive, meaning that they could still be liable for prosecution through the formal court system.
5. **Lack of capacity, requiring investments in specialized training and support.** A number of those interviewed were concerned that operators of alternative justice lacked sufficient training, resources, and protection to address conflict-related crimes (even if they were to be given formal legal sanction). Interviewees from the equity conciliator and Justic of the Peace communities highlighted a desire for specialized training and stronger support from state officials in the commission of work involving demobilized paramilitaries.

6. **Protection: Who will protect those that participate?** The study confirmed that little information exists about the individual identities and whereabouts of most of the paramilitaries who have been demobilized. Interviewees stated that some of the demobilized are re-joining a new generation of paramilitary groups, which are offering economic incentives to demobilizing individuals. In this climate, security is a real problem for victims, ex-combatants and families. Would there be sufficient security guarantees for those who choose to engage with alternative justice mechanisms? How would these be constituted and effectively operationalized?

7. **The risk of impunity: Is community level justice “real” justice?** Victims and human rights activists interviewed for the study were virtually unanimous in their rejection of the use of alternative justice mechanisms to address conflict-related crimes. The negative reaction of these groups could be attributed to their beliefs that:

   - “alternative justice” is basically a form of “substitute justice.” This simplified equation reveals confusion around the terms, as well as a lack of awareness of alternative justice processes in other countries. Unfortunately, this perspective has been reinforced by definitions of alternative justice provided in government
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documents including a brochure of the Colombian High Commissioner for Peace;

a formal judicial process is essential for restoring society’s trust in the institutions of justice and overseeing a process of material and/or moral reparations;

alternative justice operators at the community level would be vulnerable to intimidation and coercion by demobilized paramilitaries. They also expressed a fear that any agreements eventually reached through alternative justice would not be binding, enabling more impunity. For their part, the demobilized paramilitaries who were interviewed voiced some doubts about the fairness of community level justice processes and suggested that their chances of receiving a fair hearing would be better served in the formal state justice system.

Perspective: Engagement Required

Colombia’s formal justice system faces a stark incapacity to deal with the backlog of its demobilized combatants. Given the large caseload of lower-level crimes, the prospects for alternative justice mechanisms should be aggressively entertained, especially given Colombia’s large pool of already existing traditional and formally-trained alternative justice operators.

The present research effort raised interest in alternative justice among members of the NGO and academic communities, as well as amongst alternative justice practitioners in Colombia. However, human rights activists were largely negative in their views. Most interviewees concurred that Colombia’s political class do not seem to be concerned about the rights of victims, nor the need to reintegrate demobilized combatants.
Overall, it is fair to argue that the topic of alternative justice in Colombia begs more informed engagement by Colombian civil society. This is not to argue that alternative justice is definitely appropriate for Colombia. Rather, it is to underline that the issue has not received sufficient consideration. Key stakeholders, as well as the Colombian public, require more information about how alternative justice has worked in other countries, and how it has been functioning within some of their own communities. Support should also enable them to effectively engage the debate on how alternative justice could work for Colombia.

Key areas for further engagement include:

1. **Documentation of alternative justice processes already underway to build the evidence-base and raise awareness.** This study confirmed that alternative justice processes involving demobilized paramilitaries are already underway in certain Colombian communities. Documenting these instances — mapping their locations, mechanisms, legitimacy and outcomes — would provide grounded evidence suitable for: raising public awareness about alternative justice; feeding debate on the prospects for a wider application; and, building political will at various levels to further engage and explore this potential.

2. **Research on the legal viability of using alternative justice mechanisms for conflict-related crimes in Colombia.** Most other post-conflict countries that have used alternative justice mechanisms have developed sophisticated legal frameworks to categorize conflict-related crimes according to seriousness. The absence of such a typology in Colombia is a significant gap. Key informant interviews also surfaced contradictory views about the legal feasibility of using alternative justice. Interviewees indicated that it is unclear whether these mechanisms can be used or not for these circumstances.
3. Research on the capacities of community-level alternative justice operators in relation to conflict-related crimes. What training is needed in the requisite legal, technical and psychological (trauma) areas? What other resources and protection mechanisms need to be instituted?

4. Capacity-building for an Alternative Justice Research and Advocacy Network. This present research effort uncovered diverse stakeholders (across government, academia and NGOs) who are interested in further exploring the potential for using alternative justice mechanisms within the Colombian DDR context. However, these different stakeholders are not necessarily in contact with each other. There would be enormous value in harnessing the different capacities and energies of these different groups to stimulate the formation of an Alternative Justice Research and Advocacy Network. Nurturing this effort would advance Colombian research capacity around these issues, while increasing the knowledge of the opportunities and constraints for pursuing alternative justice in Colombia, and building political will.
Endnotes


2. For research methods and sources, please see the last page of this note (page 16).

3. The research also indicated, however, that further changes to the existing legal framework would be needed to allow alternative justice mechanisms to address lower-level conflict-related crimes.

4. Meaning those that committed only lower-level conflict related crimes.


6. Of course one could argue that Colombia is unlike other “post-conflict countries,” in that there has not been a true political process to negotiate the end of hostilities between adversaries. This lack of real political transition raises questions about the viability of implementing transitional justice policies and programs in Colombia.

7. In Colombia, the lack of true political transition has coloured local understandings of the term “transitional.” Thus, while a political process appears to have been brokered with the paramilitaries, and a DDR process legalized, the armed conflict continues with other illegal groups. There are no accompanying actions for democratic institutional reform, a process that generally tends to be part-and-parcel of most transitional justice experiences. In this scenario, many question whether Colombia is in fact, in the midst of a process of political transition.
Research Methods and Sources

The lead researcher undertook two research trips to Colombia, consulting some 125 stakeholders, including government officials, alternative justice operators, victims of the armed conflict, demobilized paramilitaries, lawyers, social and political activists, relevant NGOs and research groups, academics, international aid agencies, as well as men and women involved in indigenous and Afro-Colombian processes of traditional justice. Interviews and focus groups were held in Bogotá (Cundinamarca), Medellín (Antioquia), Bucaramanga (Santander), Cartagena (Bolivar) and Sincelejo (Sucre). On the second trip, stakeholders reviewed and validated the findings.

The research yielded rich qualitative data, which revealed the widely varied perceptions of different stakeholders concerning the ongoing DDR process, the paramilitaries, and the prospects for reintegration and reconciliation. The overwhelming finding, however, was these key stakeholders’ overall lack of awareness about the legal and social limbo of some 19,000 of the 30,000 individuals demobilized, as well as the prospects for an alternative justice solution to regularize their status while aiding reconciliation and lasting reintegration. Interestingly, the research project itself stimulated the development of new interdisciplinary networks of interested stakeholders who began to engage these issues.

1 Including those linked to National Commission of Reparation and Reconciliation (CNRR), Ministry of Interior and Justice, Superior Judicial Council and Accion Social.

2 Including: Corporacion Nuevo Arcoiris, Asociacion Colombiana de Conciliadores en Equidad (Colombian Association of Equity Conciliators), Instituto para la Formacion y la Investigacion en Justicia y Democracia (IUSDE), and Fundacion Social.

3 A more broad-based household survey methodology would have been a useful compliment to this work – helping to contextualize the range of perceptions discussed in-depth – but was impossible due to budgetary limitations.
About FieldNotes

FieldNotes captures the main findings of field research conducted by The SecDev Group on issues of security and development. For more information, contact the series editor, Deirdre Collings-Rohozinska at fieldnotes@sedev.ca.

About The SecDev Group

The SecDev Group is an Ottawa-based operational think-tank working at the cross-roads of global security and development. Our focus is countries at risk from violence, insecurity and underdevelopment. Our goal is to fill the gaps between research, policy and practice. Our methods combine deep field research with advanced data-mining and visualization techniques to generate policy-relevant analysis. We represent a global consortium of practitioners, scholars and former policy-makers with expertise in development, conflict and recovery, armed non-state actors, security, intelligence and the cross-cutting impacts of cyberspace.