

A Lasting Peace? Indigenous Exclusion in the 2016 Colombian Peace Accords

Hannah Dean

Abstract:

In September 2016, delegates from the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) signed a peace accord, symbolically ending a fifty-year civil war that had caused inordinate human rights violations, displacements, and general insecurity among the country's people. The accords introduced many provisions for a successful transition into peace, including illicit crop substitution program, the creation of a special transitional justice court to address human rights abuses, and an agricultural development program intended to support small-share landholders. Yet amidst all of these remarkable reforms, the accords hardly mentioned the perspectives and participation of Colombia's indigenous population. This exclusion seems particularly contradictory in light of the constitutional rights granted to indigenous peoples in Colombia's landmark 1991 Constitution, which included self-governance, land ownership, and political participation. In this paper, I argue that despite such legislation, indigenous Colombians' civil rights, and in turn, their inclusion in the peace accords process, is compromised by the state's commitment to an extractive economic model. In addition to actively undermining indigenous land rights by continually changing or evading prior consultation laws for extraction projects, the government refuses to protect indigenous activists who actively protest this model's effects on their communities. My analysis of Colombian newspaper articles, reports from international NGOs, and the language of the peace accords themselves, indicates the insufficiency of indigenous inclusion in the peace accords process. I also found that the accords do not address the continual conflict between an extractive economy and its effects on autonomous indigenous land use. My research suggests that this concept of territorial peace will continue to cause conflict in Colombia long after the accords are ratified, particularly in indigenous communities. Effective, meaningful inclusion of indigenous demands and perspectives could help address this issue, but until that occurs, Colombia will not achieve the lasting, stable peace that it promised in the accords.

In September 2016, Colombia achieved a near-unimaginable milestone. After fifty years of conflict between the government's military, paramilitary forces, and guerrilla soldiers of the Revolutionary Armed Forces of Colombia (FARC) over political control of the country, hundreds of thousands of civilian deaths, the displacement of five million people, and three previous attempts at a peace process, delegates from the Juan Manuel Santos administration and leaders of the FARC signed a lengthy accord that promised to bring a "stable, lasting peace" to Colombia's citizens. Yet academics and international NGO leaders questioned whether the accords would truly bring peace to all if delegates had hardly included Colombia's indigenous population. Though Colombia's indigenous peoples have relatively significant political power granted by the country's constitution and experienced the worst of the civil war in terms of human rights violations and loss of land ownership, they were not genuinely included in the accords process until its final months. Their political activism, combined with international pressure, ultimately pushed the Colombian government to include an Ethnic Chapter in the accords, but this chapter scarcely addressed the ongoing conflict between indigenous land rights and Colombia's extractive economic model or the increased risks of human rights violations that indigenous leaders faced as they protested unauthorized use of their land by the government, the FARC, or multinational extraction companies. Despite their constitutional rights to land ownership and self-governance, Colombia's indigenous population has been largely excluded from the peace accords process due to the government's commitment to an extractive economic model that profoundly affects these communities and its inability to address land conflicts that prevent indigenous communities from achieving the "stable, lasting peace" that they have promoted. Without appropriate consultation of indigenous communities, and genuine planning

and coordination to protect their lands from natural resource extraction, Colombia will never achieve true peace.

In this paper, I will briefly explain the timeline of the most recent peace accords process in Colombia, in order to provide a general context for the remainder of my analysis. In Section 1, I will outline some of the rights granted to indigenous peoples by the 1991 Constitution and address how these rights should have worked in tandem with indigenous activism to provide political participation and better conditions for indigenous communities across the country. In Section 2, I will delve into my analysis on the inclusion of indigenous peoples in the accords process and how it is inherently limited by Colombia's dependency on an extractive economic model that does not comply with its constitutional promise to protect natural resources and the environment. I will also highlight the increased risks that indigenous environmental activists face in Colombia, and how the negotiating parties did not include protection of these activists in the accords. In Section 3, I will use my own analysis of the peace accords process, via the accords themselves and Colombian newspaper articles, to argue that indigenous inclusion in the accords was a rushed afterthought, and has been limited by the factors mentioned above. This paper cultivates an interdisciplinary approach to this topic by including research from a variety of fields, from political science to geography. Indigenous participation in the accords process and indigenous rights in general are complicated topics. An interdisciplinary approach has allowed me to conceptualize this problem from multiple viewpoints, then combine those perspectives to create a unique conclusion. It has also helped me understand that a complicated situation requires an interdisciplinary solution. Though I do not necessarily propose a solution for this issue within the scope of this paper, I do make a conscious effort to create an interdisciplinary understanding

for the readers, therefore fostering potential solutions that draw from the variety of perspectives and realities involved in this issue.

Colombia has spearheaded several peace accords processes in an effort to end its lengthy civil war, but only the most recent negotiations have achieved such a high degree of success, at least in terms of defining the provisions of the negotiations clearly and receiving endorsement via the signatures of the Colombian government and the FARC. This process began in November 2012 under the government of President Juan Manuel Santos, and after nearly four years of negotiations mediated by several international actors and guaranteed by the governments of several countries, it reached a definitive agreement on a bilateral ceasefire in June 2016. The official final peace accords were signed by both parties and all sponsors on September 26, 2016, and was put up for ratification by public referendum on October 2, expected to coast to a double-digit victory. However, vocal dissenters such as ex-president Alvaro Uribe created enough resistance to ultimately strike down the ratification by an incredibly narrow margin - 50.22% to 49.78%.¹ This verdict came as a surprise to both the negotiating parties and international actors, who had expected that the majority of Colombians wanted to pass the accords in order to begin the implementation of a peace process. FARC stated that it would maintain the bilateral ceasefire agreed upon in June, and President Santos renewed his commitment to continuing the negotiation process until they had created a set of accords acceptable to the Colombian people. However, international news outlets sought to understand the reasons behind Colombians' rejection of the accords, and what the process would look like moving forward. Uribe's "no"-vote campaign focused on the apparent leniency in the accords in terms of punishment for war crimes and

¹ John Otis. "What Comes Next for Juan Manuel Santos and Colombia?" *Time*, October 7, 2016.

political inclusion of the FARC, which ultimately struck a chord with many Colombians who wanted to see harsher punishment for the FARC's crimes.

Few articles mentioned the reactions of the indigenous and Afro-Colombian groups that had fought to have their voices included in the accords process, whose communities had experienced some of the worst devastation throughout the fifty-year civil war. In the last few months of negotiations, these groups were able to pressure the negotiating parties to add a sixth component to the accords that focused specifically on indigenous communities and their rights. The news outlets that did cover indigenous reaction to the rejection of the peace accords noted that many indigenous Colombians voted in favor of the accords, and several indigenous organizations participated in the march for peace that occurred in Bogota's streets a few days after the rejection.² Given this reaction, one would assume that the peace process had created a satisfactory means for inclusion for indigenous people, and that the final accords accurately reflected their demands and provided for a better future for these communities. However, analysis of the peace process and the state of indigenous rights in Colombia casts doubt on the country's ability to uphold the rights that indigenous people have held for decades and on the legitimate inclusion of indigenous voices in the peace accords process, especially in consideration of the general political activism of indigenous organizations across the country. The question of inclusion in such an important aspect of Colombia's future reflects whether the country will achieve genuine peace after the accords' passage, and examines whether the lengthy battle between Colombia's neoliberal economic model and its alleged protection of its pluralistic heritage and the rights of its indigenous population has been resolved.

² Alvaro Corzo. "Indígenas y afrodescendientes por fuera de la paz." *El Espectador*, February 16, 2016.

The Legacy of Indigenous Rights in Colombia – Section 1

Before evaluating the level of inclusion within the most recent peace accords process in Colombia, it is essential to understand the legislative rights that the country has in place for its indigenous population, as these rights have in theory created a legacy of indigenous political inclusion. The history of indigenous inclusion in Colombia since the Spanish Conquest is far too extensive to include in the scope of this paper, therefore I will focus generally on inclusion since the emergence of neoliberal economic and political reforms that sparked significant responses from indigenous organizations in the 1980s. As Latin American governments began to implement neoliberal reforms in an effort to transform their economies, many incorporated extractive economic models, in which they sought to develop their economies based on the extraction of natural resources like coal, natural gas, and oil. This model inherently posed a threat to indigenous communities, especially when multinational companies contracted by the government ended up intruding upon indigenous territories. Given the essential role that land plays in the worldview of many indigenous communities, extraction of natural resources through tactics that blatantly ignored environmental impact in the pursuit of economic gain represented a complete departure from the way that indigenous communities conceived of land use. Additionally, these companies often left the land they had used for extraction in unusable condition, which left acres of land without a foreseeable future. This was especially devastating when the land belonged to indigenous communities that needed it for agricultural use. The negative implications of the neoliberal model pressured indigenous organizations to protest, and eventually led to a movement for indigenous autonomy that would respect their original jurisdiction over the land that they occupied. Miguel Gonzalez corroborates this, noting: "...the mobilization for autonomy emerged as a platform of rights with a high territorial context, one

which in the perspectives of indigenous peoples could represent a timely defense strategy for the preservation of their habitats, their communal lands, the protection of the mother Earth and the surrounding natural resources without which the very existence of indigenous societies would be at risk.”³ In Colombia, as in several other Andean countries with high percentages of indigenous populations, the movement for indigenous autonomy along with other political factors led to the incorporation of indigenous rights into national legislation. The process of creating this constitution occurred alongside some of the primary efforts to end Colombia’s civil war, and therefore some of its provisions reflected the disproportionate effects of the conflict on indigenous communities.

Colombia’s 1991 Constitution presented a radical recognition of Colombia’s multiethnic population and of indigenous peoples’ rights to the land that they occupied. There are several articles related to indigenous rights but they are beyond the scope of this paper; in this analysis I focused on Article 1, Article 79, and Articles 286-288. Article 1 recognizes Colombia as a pluralistic nation and makes the first mention of indigenous autonomy. Pluralism, defined as “the empirical verification of the existence of diverse interests, organizations, social structures, values, and behaviors within society that converge in the game for political power”⁴ in Manrique Reyes’ analysis of the 1991 constitution, finally provided formal recognition of the variety of races and ethnicities in Colombia, including Afro-Colombians and indigenous peoples. This recognition in the very beginning of the constitution laid an important framework for the remaining legislation therein, particularly in relation to indigenous rights. Additionally, pluralism

³ Miguel Gonzalez. “Indigenous Territorial Autonomy in Latin America: An Overview.” *Latin American and Caribbean Ethnic Studies* 10 (2015) no 1: 13.

⁴ Alfredo Manrique Reyes. *La Constitución de la nueva Colombia: con comentarios y concordancias*. Bogotá: CEREC, 1991.

represented a primary means of rejection of the protracted history of exploitation at the hands of the white, European-descended elite in Colombia.

Article 286 created Indigenous Territorial Entities (ETIs in the Spanish acronym), areas of land that were recognized as official indigenous property and, as established in the following article, were to be governed by the indigenous people who inhabited them. This decision was fundamental to the new constitution - it was the first time that the state had recognized the rights of indigenous peoples to govern the land that they had inhabited for centuries. This decentralization allowed for increased control over fiscal resources, health and education programs, and justice systems, as well as an improved system of prior consultation on potential natural resource projects.⁵ Additionally, the creation of these formal governances also led to increased indigenous representation in the national government, especially after the constitution guaranteed some degree of representation in the Senate and the House of Representatives.⁶ Though not specifically promoted by the constitution, increased representation also led to the formation of two indigenous political parties. This degree of political inclusion not only legitimized the formal governance structures of the ETIs, but also recognized the legacy of indigenous activism in Colombia by providing indigenous peoples with a direct means for decision making in the Colombian government.

Finally, articles 79 and 80 guaranteed governmental protection of the environment. Article 79 definitively states “It is the duty of the state to protect the diversity and integrity of the environment, conserve areas of special ecological importance and promote education for the

⁵ Marcela Velasco Jaramillo. “The Territorialization of Ethnopolitical Reforms in Colombia.” *Latin American Research Review* 49 (2014) no 3: 127.

⁶ Reyes, *Constitucion*.

achievement of these goals,”⁷ while Article 80 guarantees the protection of natural resources for sustainable development and conservation.⁸ These articles are particularly important in the context of 1990s Colombia, given the constant challenges to environmental protection posed by the implementation of an extractive economy. Given the connection between natural resource extraction and the resource-rich lands that some indigenous populations occupied, these articles seemed to imply that the government would improve its efforts to protect indigenous lands from multinational companies looking to extract natural resources, and that it recognized the significance of maintaining these lands for the future of indigenous communities. As the neoliberal reforms promoted by the Washington Consensus grew more popular (and in some cases, became requirements for debt repayment to the World Bank or International Money Fund), these articles symbolized a repudiation of the improper land use and environmental destruction that continued to occur across Latin America.

It is worth noting that Colombia’s indigenous population was very politically active far before their formal inclusion into the country’s governance structure through the Constitution. Indigenous resistance to invasion of their land and unauthorized use of their natural resources, among other issues, has occurred in various forms since colonial times, and continues despite the population’s relatively small size (2-3% of the population).⁹ In terms of modern activism, national indigenous organization Consejo Regional Indígena del Cauca (CRIC) began promoting indigenous autonomy and management of natural resources in the 1980s and also contributed to

⁷ Original Constitution text: Es deber del Estado proteger la diversidad e integridad del ambiente, conservar las áreas de especial importancia ecológica y fomentar la educación para el logro de estos fines translated from Spanish by author of this paper.

⁸ Reyes, *Constitucion*.

⁹ Theodore Rathberger. “Indigenous Struggles in Colombia: Historical Changes and Perspectives.” In *The Struggle for Indigenous Rights in Latin America*, edited by Nancy Gray Postero and Leon Zamosc. Portland: Sussex Academic Press, 2004. 100.

the creation of the Department of Indigenous Affairs at the national Attorney General's office in an effort to bring increased attention to the crimes committed by paramilitary and police forces against indigenous communities during the civil war.¹⁰ CRIC is one of many indigenous organizations in the country, most of which were active participants in negotiating for the rights granted in the 1991 Constitution. Some have even negotiated their own peace agreements with the FARC. In the months after the constitution's passage, two indigenous political parties were formed to further improve indigenous representation in formal governance structures.

Understanding the degree of political involvement within Colombia's indigenous population is essential to interpreting their exclusion in the peace accords process, in large part because their current activism highlights where the government has failed in terms of implementation and continued evaluation of their rights. Despite Colombia's emphasis on indigenous political rights and its promise to preserve its natural resources, many scholarly critiques about the fulfillment of these promises have been published in the past decade and indigenous groups continue to protest the government's commitment to an extractive economic model given its impact on their communities. This pattern inevitably raises questions about the degree of indigenous inclusion in the most recent peace accords process - if the inclusion mechanisms and rights proposed by the 1991 Constitution have been generally ineffective, why would the political aspects of the peace accords process function any differently?

¹⁰ Rathberger, "Indigenous Struggles", 104-5.

The Realities of Indigenous Rights in Colombia – Section 2

In this section, I will highlight two areas in which the Colombian government has failed to uphold indigenous rights in the years after the Constitution's passage. Though the government promised to respect indigenous land rights and protect the country's environmental resources, it has encouraged and supported substantial natural resource extraction across the country, often at the expense of land destruction and population displacement. This pattern disproportionately affects indigenous communities. Indigenous leaders and activists have protested this in growing numbers, leading to increased conflicts over land rights and ownership. Unfortunately, heightened conflict has also led to violence, often culminating in the death of an activist. Despite warnings from several international NGOs about higher risks of human rights violations for activists in Colombia, the government has not implemented any means of protection for them. Here I will discuss how Colombia's commitment to an extractive economic model and its refusal to protect human rights and environmental activists from harm have limited the advances of indigenous rights in Colombia for the past two decades. I argue that these limitations extend to indigenous participation in the peace accords process as well. Exclusion of indigenous voices from the peace accords implies that these issues have not been addressed effectively within the peace process. Therefore, the land conflicts that have continued to plague indigenous communities will not be resolved and will impede the achievement of genuine peace for all Colombians.

The Environmental Impact of Neoliberal Reforms

The general spirit of Colombia after the passage of the 1991 Constitution was one of general optimism and excitement - grassroots and civic organizations across the country had pushed for significant change at the governmental level in an effort to combat embedded elitism,

exclusion, and class divides, and they seemed to have succeeded in negotiating a solution. The constitution's recognition and empowerment of indigenous communities was perhaps its most radical step towards its overall objectives of equal representation and rights for all in Colombia. However, as the country moved toward actual implementation of these rights, alongside various efforts to negotiate for peace with the FARC, neoliberal economic reforms began to clash with the inclusive goals that Colombia had set, and scholars began to question whether the Constitution truly represented a rejection of Colombia's past treatment of its indigenous communities. As clarified by scholar Marcela Velasco Jaramillo, "this legislative overhaul on ethnic rights boldly transformed governance in one-third of the country, only to clash with national economic growth priorities that hinge on competitive, market-based plans in resource- and land-intensive economic activities", particularly in areas inhabited by indigenous people.¹¹ Geographer Sarah Radcliffe adds that in all Latin American countries that implemented indigenous autonomy in the 1990s, "civil and political rights are now formally established on paper, [yet] social and economic rights are more insecure in practice, and the political and cultural basis for state-indigenous negotiations have been transformed."¹² In other words, the government has provided political access and formal rights for indigenous peoples, but they have essentially been negated by the Colombia's commitment to an extractive economic model. The platforms for interaction between the state and these indigenous communities exist, but they fall far short of the platforms proposed by the constitution, particularly given the incredibly slow pace at which the government has implemented these reforms. As of 2007, only 18% of Colombia's indigenous territories had fully implemented the new legal framework created by the

¹¹ Velasco Jaramillo, "Territorialization of Ethnopolitical Reforms", 132.

¹²Sarah A. Radcliffe. "Latin American Indigenous Geographies of Fear: Living in the Shadow of Racism, Lack of Development, and Antiterror Measures." *Annals of the Association of American Geographers* 97, 2007, no 2: 390.

constitution.¹³ While indigenous communities struggled to negotiate territorial rights that forced them to re-conceptualize their ideas of land ownership and property, neoliberalism strengthened its hold on the national government. Several laws were passed in the years following the constitution, particularly in the Cesar Gaviria, Andres Pastrana, and Alvaro Uribe administrations, that essentially created means for development projects to occur without free, prior, and informed consultation of the indigenous communities in which they would take place. The lengthy impact evaluation procedures put in place after the 1991 Constitution, which required indigenous consultation in some form, was reduced to single environmental licenses, which involve a much more streamlined procedure with limited or no interaction with indigenous *cabildos*.¹⁴ ¹⁵ In January 2015, the Santos administration passed Decree 2041, commonly referred to as “decreto de licencias expresse,”¹⁶ which further simplified the application procedure for development projects. Though it was intended to improve efficiency in approving or rejecting projects, “environmental, civil society, and indigenous organizations immediately recognized that the decree would significantly reduce the bureaucratic, legal, and institutional hurdles that had acted... as safeguards under the previous licensing decree.”¹⁷ This decree was passed during the most recent peace accords process, before efforts were made to include indigenous voices, and its provisions have not been changed despite indigenous and environmental organizations’ vocal opposition. This decree, among all the others that have been signed into law in the twenty years since the passage of the 1991 Constitution, invalidate the rights granted to indigenous communities and repudiate the government’s commitment to preserving and protecting the

¹³ Marcela Velasco Jaramillo. “Territorialization of Ethnopolitical Reforms”, 130.

¹⁴ John-Andrew McNeish. "Extracting Justice? Colombia's Commitment to Mining and Energy as a Foundation For Peace." *International Journal of Human Rights* 20.5 (2016): 10.

¹⁵ *Cabildos* are the governing bodies of Indigenous Territorial Entities.

¹⁶ “Express licensing decree” in English.

¹⁷ McNeish, “Extracting Justice”, 9.

environment, particularly those territories that belong (in a traditional sense or otherwise) to indigenous people.

Additionally, according to NACLA's 2016 report on indigenous displacement in the country, the government has broken up *tierras baldias* (untitled state-held lands) into natural resource concessions that they sell to national and multinational corporations for natural resource exploration or extraction.¹⁸ Many of the lands in question are indigenous and Afro-Colombian territories, which seems to indicate a direct challenge to the land ownership and political autonomy granted to these communities. Land use of this nature also contradicts the government's recognition of the sacred knowledge and practices of indigenous communities, given that it prevents indigenous people from maintaining the lands for communal hunting, fishing, and gathering of plants for medicinal use.¹⁹

Despite significant resistance from indigenous communities that have been affected by this apparent disconnect between their land and governance rights and the government's permissive nature in relation to extractive development projects, the government has maintained its dependence on natural resource extraction for the advancement of the economy. Several scholars note that the 2010-2014 National Development Plan reflects this priority, as it advocates for Colombia's position as a "strong, energy producing economy" that depends on significant land use for hydrocarbon and mining extraction.²⁰ In his article on the extractive economic model's impact on indigenous rights in the accords, environmental policy scholar John McNeish notes that energy and mining accounted for "25% of total government revenues (a 12% increase

¹⁸ Emma Banks. "We are Victims Too: Incorporating communities displaced by natural resource extraction in Colombia's post-conflict agenda." *NACLA*, August 31, 2016.

¹⁹ Banks, "We are Victims Too", 2016.

²⁰ Velasco Jaramillo, "Territorialization of Ethnopolitical Reforms", 134.

since 2011), 70% of total exports, and 55% of foreign direct investment.”²¹ These figures clearly demonstrate the prominence of resource extraction in the Colombian economy, and cast doubt upon the government’s commitment to preserving its natural resources, specifically those in indigenous territories. McNeish adds that capital acquired from new natural resource extraction projects may be utilized as a means for funding the implementation of the accords, which is estimated to cost US\$45 billion. Land that had been previously inaccessible to the government or multinational companies due to occupation by the FARC would theoretically become ‘free’ land after the passage of the peace accords, and the government could allow multinational companies to utilize that land for resource extraction, which would produce revenue to help cover the cost of accord implementation.²² Though some of this land belongs to indigenous territories who should have jurisdiction over the land’s future, Colombia’s history of invalidating indigenous land rights via the passage of contradictory environmental laws indicates that their jurisdiction would not be respected.

In relation to the accords, McNeish adds that “questions regarding the national economic model and its extractive base have consciously been avoided” throughout the most recent accords process, and President Santos informed the media that Colombia’s political and economic model would not be addressed in the accords before negotiations began.²³ Indeed, in the final version of the accords, land reform is addressed but the country’s dependence on natural resource extraction is not. This specific exclusion is important, particularly in relation to Colombia’s indigenous population. It demonstrates that despite the clear contradictions between Colombia’s extractive economic model and the land preservation and autonomous indigenous

²¹ McNeish, “Extracting Justice”, 8.

²² McNeish, “Extracting Justice”, 9-10.

²³ McNeish, “Extracting Justice”, 9.

control over their territories, the government refuses to acknowledge this model as a factor in the country's ongoing conflict over land. Indigenous peoples are aware of these contradictions and have made their frustration clear, but the government has not acknowledged the limitations that its commitment to an extractive economic model place on the accords. Furthermore, the government does not address how this limits genuine peace for indigenous communities, especially those affected by resource extraction during the civil war. As detailed later in this paper, the general lack of inclusion of indigenous peoples in the accords process further exacerbates this problem and indicates a lack of understanding on behalf of the government in terms of the achievement of a true, lasting peace, which cannot occur when conflicts over land use persist.

Indigenous Resistance and Human Rights

Indigenous demonstrations and protests in the past several months also indicate their continued frustration with the country's economic plan. As McNeish recounts:

“In August 2012, Colombia experienced what social activists called a *social earthquake*. Thousands of indigenous peoples, small farmers and small-scale miners from municipalities throughout the country paralysed Colombia for a week through a series of strikes, protests and blockades. The protesters used these actions to highlight public rejection of the government's neoliberal economic model and in particular the terms of recent free trade agreements and the extremely liberal concession terms granted agri-business and extractive corporations.”

Granted, this protest occurred over four years ago, but it is a clear indicator that in the twenty years since the passage of the 1991 Constitution, indigenous peoples are still frustrated with the never-ending clash between their autonomy and right to refuse resource extraction on their land and the neoliberal model that Colombia embraces.²⁴ Their formal inclusion in the government could not overcome this issue, regardless of their degree of participation. This represents an unfortunate harbinger of the peace accords process - despite receiving some degree

²⁴ McNeish, “Extracting Justice”, 11.

of inclusion in the creation of the accords, indigenous communities' autonomy and political inclusion continues to be compromised by Colombia's commitment to a neoliberal model whose policies invalidate their rights. Additionally, the accords do not provide specific protections for indigenous environmental activists – perhaps because they present an impediment to resource extraction – despite the increased assassinations of these activists reported over the past three years.

Some of these protests have turned violent - the International Office of Human Rights - Action Colombia (OIDHAC) has tracked homicides against human rights defenders between 1994-2015 in the country and found an annual average of 33 assassinations per year, the majority of which remain in impunity. Somos Defensores published a report in 2015 declaring that 63 human rights defenders had been killed in that year alone.²⁵ In the previous year, a Global Witness report stated that 25 environmental activists were killed in 2014.²⁶ International human rights organizations such as Human Rights Watch and Amnesty International have denounced the violence against indigenous and environmental activists in Colombia, but their calls for the government to pass legislation that would protect activists have not been acknowledged. Furthermore, the reality of Colombia's legacy of impunity indicates that many perpetrators of these assassinations will not be held accountable for their crimes, just as some of the perpetrators of human rights violations in indigenous communities during the civil war will not be held accountable. Widespread impunity creates a climate of fear for indigenous and environmental activists that may silence their opinions, or cause them to withdraw from political participation in fear for their safety or their community's well-being.

²⁵ Fellowship of Reconciliation Peace Presence Colombia. "Longing for Peace in Colombia." *NACLA*, July 6, 2016.

²⁶ McNeish, "Extracting Justice", 11.

The fact that the high rate of assassinations has continued since Colombia's earliest attempt at peace accords insinuates that though there are mechanisms for inclusion of indigenous opinions, some activists ultimately risk their lives to voice their concerns through informal means like public protest or demonstration. The government is not always at fault for these assassinations, but its failure to protect indigenous activists and their rights to political voice, as well as its preservation of a legacy of impunity for those who commit these crimes, indicates a negligence about the country's indigenous communities, especially in relation to environmental projects that pose threats to their land. Additionally, conflicts over natural resource extraction threaten to derail the current peace process, by "increasing incentives for mass protest, and for disenfranchised people to support or work for guerrillas, paramilitaries, and criminal gangs who offer employment and protection."²⁷ In indigenous communities, the government had directly interfered in employment opportunities by displacing communities from their communal lands and restructuring local conceptions of 'work'. There were 277 recorded conflicts over natural resource extraction zones between 2001 and 2011. As of September 2016, 22 activists and community leaders had been killed and another 45 had received death threats.²⁸ Additionally, 13 activists who were "promoting peace with leftist FARC rebels" were assassinated in the first three weeks after the passage of the bilateral ceasefire.²⁹ Given that indigenous communities were disproportionately affected by the violence of the civil war, many indigenous leaders advocated for peace with the FARC, and continued to do so after the original accords were rejected. As activism for peace and against natural resource extraction continues to grow, the

²⁷ Banks, "We Are Victims Too", 2016.

²⁸ Banks, "We Are Victims Too", 2016.

²⁹ Grandin, Greg. "Violence Continues in Colombia as the Peace Accords Advance." *The Nation*, September 15, 2016.

number of conflicts in these areas - many of which are also indigenous territories - will also increase, clearly interfering with Colombia's peace process and delaying peace for the indigenous communities. Again, specific protection for indigenous activists, including political actors, is not directly addressed in the accords, therefore leaving them vulnerable to political violence.

Effects on Indigenous Inclusion in the Peace Process – Section 3

Colombia's enduring commitment to an extractive economic model, the government's inability to protect environmental activists, and the genuine threat of increased conflicts over resource extraction projects in supposedly protected areas have all limited indigenous political inclusion and participation. They will also all delay peace if not appropriately addressed in the accords. The fact that these issues have remained prominent throughout the most recent peace accords process indicates that they have compromised indigenous inclusion in a process that should place far greater emphasis on these communities, especially given the disproportionate effect that the civil war had on indigenous peoples. The limitations seem even more impactful when analyzed alongside the actual inclusion of indigenous peoples in the most recent accords process. As mentioned previously, the primary negotiations of the accords began in November 2012, and 'ended' with the Colombian public's rejection of the accords in October 2016. By June 2015, the government had yet to create a formal mechanism for inclusion of indigenous or Afro-Colombian people, despite having made relatively significant progress on the accords themselves. According to the website *Mesa De Conversaciones*, which includes all of the reports and versions of the accords published by the Colombian government, by May 2015, indigenous populations had only been consulted about the illicit crop substitution program, without detail on how the program would be integrated into their governance system.

As the accords advanced, many indigenous groups along with international human rights and advocacy organizations expressed their frustration with the government's apparent exclusion of their communities from perhaps the most important political process in modern Colombian history. In an article published in February 2016, national newspaper *El Espectador* noted the increasing concern about the post-conflict realities in indigenous communities, and argued that indigenous and Afro-Colombians had been left out of the peace process and faced increased exploitation after the passage of the accords. The article included an interview with Gimena Sanchez-Garzoli, a senior advisor at the Washington Office on Latin America (WOLA) who has covered the peace process since 2012. Sanchez-Garzoli argues that indigenous peoples have always been considered 'post-facto' in Colombia, which has led to failures in implementation of laws theoretically intended to protect their land and sovereignty.³⁰ At the time of the interview, indigenous groups had yet to receive any form of inclusion in the accords process, leading Sanchez-Garzoli to contend that this exclusion ignored the two causes of the civil war: inequality and the conflict over land, which have continually affected the implementation of indigenous rights and autonomous control over their territories. Without indigenous inclusion, "there exists the possibility that these problems will worsen, more than anything in the communities most affected by the violence."³¹ Though the accords had addressed land reform and rural inequality to some degree at this point in the process, indigenous populations had not been consulted despite their clear connection to these issues. This apparent exclusion not only indicated the potential for these problems to worsen in indigenous communities, as Sanchez-Garzoli notes, but also suggested that the Santos administration - and the Colombian government in general - did

³⁰ Alvaro Corzo. "Indígenas y afrodescendientes por fuera de la paz." *El Espectador*, February 16, 2016.

³¹ Original quote in Spanish "...se cae en la posibilidad de que los problemas se agudicen, sobre todo en las comunidades más golpeadas por la violencia." Translated by author of this paper.

not recognize the obligation to include indigenous populations in this process, given their constitutional rights and the direct impact of the civil war on their communities.

Six weeks before the agreement was supposed to be signed by its leaders in March 2016, a large group of academics and international organization leaders petitioned the Colombian government to include indigenous and Afro-Colombian peoples in the accords negotiations. Their letter noted that “significant content related to the territories and rights” of these communities was included in the accords, such as its creation of *campesino* reserves, new illicit crop substitution programs, and implications of property formalization, yet the governments of these communities were hardly mentioned. This indicated the possibility of increased marginalization of these communities as a result of the accords. “Without the participation of Afro-Colombian and indigenous people, a durable and sustainable peace is not possible”, they argued, echoing the sentiments of many other scholars and international human rights organizations.³² As noted in this petition, the lack of consultation of indigenous populations in the accords process leads to an incomplete peace because it ignores a population that suffered greatly from the enduring conflict over land in Colombia, particularly during the civil war. Without their inclusion, the government not only proves the fallacies within its constitutional mechanisms for indigenous inclusion, but also sabotages the accords by not completely addressing conflict over land ownership and use, which has caused violence, displacement, and human rights violations for decades in Colombia.

FARC leaders ultimately missed the March signing deadline, therefore extending the negotiation process for a few more months. Indigenous organizations and international NGOs continued to pressure the Colombian government to implement a mechanism for indigenous and

³² Washington Office on Latin America. “GAIDEPAC Urges Inclusion of Afrocolombian and Indigenous people in Colombia Peace Process”, *WOLA*, February 20, 2016.

Afro-Colombian inclusion, especially as the deadline for signing the bilateral ceasefire approached rapidly. On June 20 & 21, 2016, two days before leaders signed the bilateral ceasefire portion of the accords, negotiators in Havana met with twenty representatives from twelve indigenous organizations from across Colombia to “receive the contributions and proposals of these communities”. The day was split into two meetings in order to appropriately accommodate all of the participants. The negotiating parties also met with ten Afro-Colombian leaders during this time. In its formal report published after the meetings on June 27, the government included only the names of participating organizations and a brief statement noting that “territorial peace will only be possible if the ethnic groups that inhabit [Colombia’s rural territory] are included as mechanisms for the prevention of new conflicts in the implementation of the agreements.”³³ Input from indigenous groups, which included various proposals and petitions that organizations had crafted for months prior, was slated to be included in the sixth section of the accords on implementation, verification, and ratification. In the weeks after the meeting, indigenous activists and organization leaders worked together to draft an “Ethnic Chapter” to be included in the accords, as the government had yet to indicate the input that it planned to include. This chapter was submitted to the Colombian government, but doubts remained about whether it would be implemented in the final draft of the accords, especially given the relatively tight timeline for inclusion (between June 27, 2016 and August 24, 2016).³⁴

Ultimately, intense political pressure from national indigenous groups and international NGOs led the negotiating parties to include a revised version of the Ethnic Chapter in Chapter 6

³³ Comunicado Conjunto #78. Gobierno de Colombia, Delegados del FARC, y los Gobiernos de Cuba, Bolivia, Noruega, y Chile. Havana, Cuba. June 27, 2016. *Mesa de Conversaciones*.

³⁴ Alsema, Adriaan. “Colombia’s 2012-2016 Peace Talks: Fact Sheet.” *Colombia Reports*, September 25, 2016.

of the final version of the accords, completed on August 24, 2016. The ethnic chapter consisted of three and a half pages, of the 297 total; nearly half focused on the illicit crop substitution program and its role in indigenous communities. This section did address the imminent role that the Integral Rural Reform program would have in the lives of indigenous peoples and promised that its implementation would occur “without detriment to their acquired rights.” It also promised the “full and effective” inclusion of indigenous peoples in the implementation process via political representation, particularly in the creation of special political entities designated to assist with the “Special Territorial Subdivisions of Peace” program and in the transitional justice programs created by the accords.³⁵

The inclusion of this chapter in the final version of the accords could easily be considered a victory for state-indigenous relations in Colombia and for the organizations that worked to create it and fought for its incorporation. However, several elements of the entire inclusion process contradict this assumption. Government officials did not meet with indigenous leaders to hear their concerns and demands until June 2016, nearly three and half years after the negotiations began. In a country that has promised repeatedly to respect the rights and perspectives of its indigenous population, it seems inconceivable that these populations were not consulted for their contributions until the very end of the most recent peace process. This reality reflects Sanchez-Garzoli’s claim that indigenous peoples are always considered post-facto in Colombia. In this case, they were consulted before the passage of the accords, but in a manner that indicated that the government viewed their participation as an afterthought rather than an integral aspect of the peace process. An accords process that truly aligned with Colombia’s

³⁵ Acuerdo Final Para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera. Gobierno de Colombia, Delegados del FARC, y los Gobiernos de Cuba, Bolivia, Noruega, y Chile. Havana, Cuba, August 8, 2016. *Mesa de Conversaciones*.

rhetoric and policies about indigenous inclusion would have sought their perspective and participation since 2012, rather than suddenly including twenty leaders two months before the completion of the accords.

The hurried nature of the government's indigenous consultation also led to a general lack of detail within the ethnic chapter itself. The language of the chapter provides many promises to maintain the integrity of indigenous rights and honor their jurisdiction over their territory, but included almost no detail about the plan behind these promises. The chapter did make references to other sections of the accords that explained specific programs in greater detail, yet contained no explanation about how the new programs developed by the Colombian state will include indigenous peoples and avoid interfering with their constitutional rights. It contains no mention of indigenous cabildos, which is particularly concerning given that cabildos were scarcely mentioned in the rest of the accords. Additionally, though the relative insecurity associated with environmental activism in Colombia has been made clear publicly by various human rights organizations, this section does not mention the specific protection of indigenous environmental activists. The chapter does briefly acknowledge the legacy of conflict over natural resource extraction in Colombia, but it does not recognize changes in national legislation that has contributed to that conflict. Though the Ethnic Chapter does recognize the disproportionate impact of the civil war on indigenous communities, and promises protection of the land rights and autonomy promised by the 1991 Constitution, its lack of detail frames it as more of a loose reiteration of rights than a comprehensive plan to ensure that indigenous autonomy and land rights are not violated by the implementation of the accords. If the government genuinely recognized the necessity to fully include indigenous peoples in the accords process, then it would have set up a far more effective mechanism for inclusion, which would have led to an in-depth

ethnic chapter that could have reflected indigenous political participation and inclusion in the *creation* and implementation of the accords in a much clearer manner. Additionally, the current degree of inclusion could easily allow for continued extraction on indigenous lands and does not provide protections for those who continue to protest it, indicating that the government continues to prioritize its economic model over the constitutional rights of Colombia's indigenous population.

Conclusion

Colombia has achieved many milestones throughout the most recent peace accords process, most of which have indicated the entire populations' desire to move into a period of reconciliation that will allow the country to move forward and establish a genuine peace. Unfortunately, this process has largely excluded indigenous populations from the creation of mechanisms and large-scale changes that will address long-standing conflicts and allow all populations to live peacefully. Though the 1991 Constitution firmly established indigenous populations' rights to self-governance, land ownership, and political participation, and formalized the government's duty to preserve and protect natural resources and the environment, Colombia has maintained an extractive economic model that has negated these rights since the Constitution's passage. Various laws passed in the following decade continually minimized the prior consultation requirement for natural resource extraction projects and made the approval process far easier for multinational companies seeking to begin extraction in Colombia. These projects often occur to the detriment of indigenous communities, forcing them to find other land for their own sustainable use and sometimes forcing them to leave the land entirely. In its own development plans, the Colombian government has emphasized its continued focus on energy

and natural resources as the basis of a strong economy, therefore exacerbating the conflict over land by refusing to acknowledge the effects of this model on indigenous communities.

Indigenous communities' strong legacy of activism has led to widespread protest over this model, which has only increased over the past decade. The relatively high rate of assassinations of environmental activists and human rights defenders in Colombia has led several international NGOs to declare Colombia one of the least safe countries in which to be an activist, and to denounce the government's continual inability to protect these individuals. It seems inconceivable, then, that provisions for the protection of indigenous environmental activists were not included in the accords, and beyond that, that the accords do not genuinely address the continued conflict between the government's dependency on an extractive economic model and the rights of indigenous communities to protect their lands from extraction projects, or even just to coordinate extraction projects on their own terms.

The exclusion of these essential issues from the accords can be explained in large part by the general exclusion of indigenous peoples from the accords process. Indigenous leaders were not genuinely consulted for their perspectives on the accords until June 2016, two months before the accords were finalized. The constitutional rights granted to indigenous peoples, especially in terms of political participation, would indicate that their level of inclusion should have been far greater in this process, specifically given the impact that the civil war had on their communities. Yet the only inclusion that they received was a single meeting and, after significant political pressure, the inclusion of a brief "Ethnic Chapter" that contained relatively little detail on how indigenous populations would be accounted for in the accords' implementation. The exclusion of indigenous peoples and the issues that affect them most from the accords demonstrates their continued marginalization in Colombia, despite their constitutional rights. It also indicates that

neither negotiating party was willing to fully address the conflict over land that contributed greatly to the civil war, nor was the government willing to acknowledge its complicity in promoting an economic model that inherently limits indigenous land rights and autonomy. Failure to include some degree of a solution to this issue, along with protection for indigenous environmental activists signifies that the peace accords are not complete. The exclusion of these issues and of the indigenous population from the general peace accords process demonstrates that the Colombian government has not followed through on its decades-old promise to include the indigenous population in Colombia's social, economic, and political realms given their importance to the country's cultural heritage and their rights as human beings. Without genuine inclusion of indigenous peoples in the accords process, along with some degree of negotiation over the enduring conflict between an extractive economic model and protection of indigenous land rights, Colombia will be unable to achieve the lasting peace that it has promised its people.

Bibliography

Acuerdo Final Para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera. Gobierno de Colombia, Delegados del FARC, y los Gobiernos de Cuba, Bolivia, Noruega, y Chile. Havana, Cuba, August 8, 2016. *Mesa de Conversaciones*.

Alsema, Adriaan. "Colombia's 2012-2016 Peace Talks: Fact Sheet." *Colombia Reports*, September 25, 2016.

Banks, Emma. "We are Victims Too: Incorporating communities displaced by natural resource extraction in Colombia's post-conflict agenda." *NACLA*, August 31, 2016.

Comunicado Conjunto #73. Gobierno de Colombia, Delegados del FARC, y los Gobiernos de Cuba, Bolivia, Noruega, y Chile. Havana, Cuba, June 2, 2016. *Mesa de Conversaciones*.

Comunicado Conjunto #78. Gobierno de Colombia, Delegados del FARC, y los Gobiernos de Cuba, Bolivia, Noruega, y Chile. Havana, Cuba. June 27, 2016. *Mesa de Conversaciones*.

Chaves-Agudelo, Marcela J., Simon P.J. Batterbury, and Ruth Beilin. "'We Live From Mother Nature': Neoliberal Globalization, Commodification, the 'War on Drugs,' and Biodiversity in Colombia Since the 1990s." *Sage Open* 5 (July-September 2015), no. 3: 1-15.

El Espectador, Colombia.

Fellowship of Reconciliation Peace Presence Colombia. "Longing for Peace in Colombia." *NACLA*, July 6, 2016.

Gonzalez, Miguel. "Indigenous Territorial Autonomy in Latin America: An Overview." *Latin American and Caribbean Ethnic Studies* 10 (2015) no 1: 10-36.

Grandin, Greg. "Violence Continues in Colombia as the Peace Accords Advance." *The Nation*, September 15, 2016.

McNeish, John-Andrew. "Extracting Justice? Colombia's Commitment to Mining and Energy as a Foundation For Peace." *International Journal of Human Rights* 20.5 (2016): 1-17.

Miroff, Nick. "Here are the details — critics would say the devils — in Colombia's peace deal with FARC." *The Washington Post*, August 24, 2016.

Radcliffe, Sarah A. "Latin American Indigenous Geographies of Fear: Living in the Shadow of Racism, Lack of Development, and Antiterror Measures." *Annals of the Association of American Geographers* 97 (2007) no 2: 385-397.

Rathberger, Theodore. "Indigenous Struggles in Colombia: Historical Changes and Perspectives." In *The Struggle for Indigenous Rights in Latin America*, edited by Nancy Gray Postero and Leon Zamosc. Portland: Sussex Academic Press, 2004.

Manrique Reyes, Alfredo. *La Constitución de la nueva Colombia: con comentarios y concordancias*. Bogotá: CEREC, 1991.

Otis, John. "What Comes Next for Juan Manuel Santos and Colombia?" *Time*, October 7, 2016.

Organization Nacional Indígena de Colombia. "Capítulo Étnico incluido en el Acuerdo Final de Paz entre el Gobierno Nacional y las FARC", *ONIC*, August 25, 2016.

Velasco Jaramillo, Marcela. "The Territorialization of Ethnopolitical Reforms in Colombia." *Latin American Research Review* 49 (2014) no 3: 126-153.

Washington Office on Latin America. "GAIDEPAC Urges Inclusion of Afrocolombian and Indigenous people in Colombia Peace Process", *WOLA*, February 20, 2016.