

The reversal of the decentralization process in Colombia: The peace agreement with Farc as an opportunity to re-decentralize the country

By Julián Arévalo Bencardino*, David A. Ortiz Escobar** and Andrea García Albarracín***

Abstract: Despite the ambitious reforms executed from the 80's aimed at increasing the political, fiscal and administrative independence of Colombia's sub-national entities (municipalities and departments), there has been a reversal in the decentralization process in the country that manifests itself most clearly in the fiscal area. In addition to redesign the fiscal structure in order to empower municipalities and departments, the country can address this decentralization crisis by considering two sets of policy actions. The first one is the implementation of the notion of "territorial peace" which is one of the key components of the peace agreement with Farc. This notion emphasizes bottom-up initiatives as well as citizen's participation in the development of the reforms and policies proposed by the agreement itself. The second relates to the re-thinking of the territorial organization of Colombia, as it requires a differentiated approach according to the conditions and realities of the territorial entities.

A. Introduction

In the second half of the 1980s, Colombia began a decentralization process in a context of state weakness, social non-conformity and constant disputes over territorial control between the State and several illegal armed groups. This process had successful results and made Colombia a model of decentralization in Latin America. Despite this success, there is a renewed debate about the loss of regional and municipal autonomy in the country.

According to Tullia Falleti,¹ this transformation was sequentially developed in three stages: political, fiscal and administrative. In the first one, a set of reforms sought to delegate political authority and give representation to the territories. As a result, municipal mayors and state governors started to be popularly elected in 1986 and 1991, respectively. The

* Professor, Facultad de Economía, Universidad Externado de Colombia

** Professor, Facultad de Economía, Universidad Externado de Colombia

*** Research assistant, Facultad de Economía, Universidad Externado de Colombia

1 Tullia G. Falleti, *Decentralization and subnational politics in Latin America. Decentralization and Subnational Politics in Latin America*, New York 2010.

second phase encompassed a group of policies aimed at increasing the fiscal authority of subnational governments; this implied the raise of direct transfers from the central government to local authorities, as well as the decentralization of tax collection. In the last stage, the central government assigned the responsibility of social services such as education, health and social welfare to regional entities. This process meant an increase in the autonomy and power of governors and mayors, as well as a shift in the national balance of power, which now privileged subnational interests. However, the current national reality seems to go in a different direction.

While political decentralization has allowed representative democracy to reach the entire Colombian territory (through figures such as popular election), fiscal and administrative decentralization has not been as successful as expected. At the fiscal level, regions are heavily dependent on national transfers and royalties,² as these are the most important source for education, health, housing and social welfare expenses. Additionally, municipal and state governments are not fully autonomous in determining their tax structure. Moreover, cadastral coverage, which is a key input for local taxes, has large gaps in terms of information about property and land usages.

Factors such as corruption of regional political elites and the lack of confidence on the State add to the failure of the decentralization process. The solution that the central government implemented to solve these problems was to centralize resources, through changes of transfer and royalty laws. While the first of them established the amount of money directed to social services in the territories, the second determined the distribution, objectives, administration, execution, control, efficient use and the destination of income from non-renewable natural resources.

These facts show the difficulties that the national government has faced to increase territorial autonomy. Moreover, the central administration has not been able to establish a new form of relationship between the nation and subnational entities that responds to the heterogeneity of the territories.

This paper argues that Colombia can address these decentralization challenges by considering two sets of policy actions. The first one is a rigorous implementation of the peace agreement, as it contains the notion of “territorial peace”. This notion emphasizes bottom-up initiatives, as well as citizen’s participation in the development of the reforms and policies contemplated in the agreement. The second set of policies relates to the re-thinking of the territorial organization of Colombia, which requires a differentiated approach based on the conditions and realities of the territorial entities.

This paper is divided in three sections: In the first one, we develop a narrative about the decentralization and recentralization process in Colombia. In the second one, we describe the current picture of fiscal decentralization and explain the undesirable consequences of the lack of fiscal autonomy of subnational entities (low efficiency of public-goods provi-

2 *Mauricio García Villegas/ José Rafael Espinosa R.*, Los efectos legales del apartheid institucional en Colombia, Bogotá 2013.

sion and poor state capacity). In the third section, we develop the idea that the implementation of the Havana peace agreements with Farc is an opportunity to reverse the recentralization process and increase local autonomy in the country.

B. The decentralization and recentralization processes in Colombia: a short narrative

According to Falleti³, the decentralization process of the 1980s and 1990s was implemented sequentially in three areas: political, fiscal and administrative. At the end of the process, subnational entities gained significant power vis-a-vis the national government.

1. Political decentralization

The first stage was a set of reforms designed to promote spaces for the representation of subnational political entities and to delegate authority to the territories. In 1986, municipal mayors started to be popularly elected, and the interests of municipalities were channeled through the Colombian Federation of Municipalities.

Moreover, constitutional and legal reforms promoted democratic participation through the improvement of citizen's participation mechanisms at the municipal level. Figures like popular consultations and local administrative boards (JAL by its Spanish acronym) were created. Additionally, citizens were able to choose deputies to the departmental assembly and councilors to the municipal council.

Later, the Constitutional Assembly of 1991 allowed the governors to be popularly elected. The new constitution recognized the rights of citizens regarding the election and revocation of authorities. The new fundamental law also introduced a planning system that integrates all territorial levels, ensuring regional participation in the medium-term development plans. Moreover, the former hierarchy of intermediate-level entities (*departamentos, intencencias y comisarías*) was abolished and all intermediate-level entities became departments, enjoying the same political and economic rights within the national context.

2. Fiscal decentralization

The second phase of the decentralization process encompassed a group of policies aimed at increasing the fiscal authority of subnational governments; this implied the raise of direct transfers from the central government to local authorities, as well as the decentralization of tax collection.

During the eighties, municipalities achieved autonomy to set property and industry tax rates within certain ranges defined by law. These measures were mainly directed to intermediate and larger municipalities, where there is an economic base that allows increasing fiscal effort.

3 Falleti, Decentralization (Fn. 1).

However, the bulk of the fiscal decentralization effort has been based on transfers from the central government to subnational entities. At the beginning of the process, territories had a share of the national sales tax resources. The share of sales tax collection transferred to subnational entities rose from 25% to 50% from 1987 to 1992⁴. In addition, the National Government authorized external indebtedness of the municipalities and departments.

The Constitution of 1991 and its regulations established new rules on the assignment, territorial distribution and use of fiscal resources transferred by the nation to the regions. The transfers to the municipalities ceased to be a proportion of the sales tax collection and became a percentage of the current national income. Article 356 of the 1991 Constitution authorized the government to issue a law that would determine the percentage of current revenues that the Nation should give to departments and special districts.

Law 60 of 1993 was issued in order to develop the Constitution's mandates. This law established the responsibilities of departments and municipalities, as well as the distribution of *situado fiscal* (the percentage of the current income of the nation given to departments and municipalities in order to provide certain services). In this way, central government grants continued to be automatic transfers and distributed through a formula that took into account factors such as poverty rates and population size.

Subsequently, the central government created in 1992 the National Co-financing System (SNC) to guide local investments towards national priorities and to promote efficiency in the formulation of projects. Likewise, Law 141 of 1994 created the National Fund of Royalties (FNR), which administered the portion of royalties not assigned to the departments and municipalities involved in the production or transport of extractive resources. These funds were meant to be directed to the promotion of mining, the preservation of the environment and the financing of regional investment projects.⁵

Additionally, the territorial entities kept their right to borrow internally, but measures were issued to limit the ability of subnational entities to take unnecessary or risky debts.

These reforms implied that fiscal decentralization manifested itself mainly in the execution of public spending, albeit under rigid parameters defined by law and tight control by the national government. However, tax collection remained in the hands of the central government, making subnational governments dependent on national transfers (see section C).

3. Administrative decentralization

In the last stage (administrative decentralization), the central government assigned the responsibility of social services —such as education, health and social welfare— to regional entities. This process began in the 1980s, when the government established the statute of decentralization in favor of local governments (through the extraordinary Decree 77 of

⁴ https://colaboracion.dnp.gov.co/CDT/DesarrolloTerritorial/01_Libro.pdf.

⁵ Echeverry et al., *Evaluación* (Fn. 4).

1987) and transferred from the central level the responsibility for the provision of public services, also determining that municipalities should have a five-year investment plan.

The central government also established mechanisms to improve coordination among entities at different levels of government. Ironically, as the territories gained administrative power, they were constrained by a road map given by the central government.

Law 60 of 1993 introduced a reduction in the autonomy to assign the resources received by each municipality. According to this law, out of the total resources devoted to social services, 30% should be destined to education, 25% to health, 20% to potable water and basic sanitation, 5% to culture, recreation and sports, and the remaining 20% to a list of sectors set by law.⁶

However, the high number of responsibilities transferred to the local authorities, coupled with the lack of institutional capacity to fulfill these obligations, undermined the prospects of an effective and responsible territorial and administrative decentralization. The regions have been unable to cover all the basic needs of the diverse populations, and the central government has found it necessary to carry out social protection programs. In the search for regional convergence, the central government has developed a structure of public policies and sectoral programs that is parallel to that of subnational entities. For example, the *Families in Action program* offers economic help to poor households by supporting and encouraging investment in health, nutrition and education.⁷ The focus and impact of the program (now called More Families in Action, MFA) is aimed at the regional and local levels. The geographic coverage of MFA includes all departments, municipalities, districts and *corregimientos*, in accordance with the provisions of article 5 of Law 1532 of 2012.⁸

4. *The reversal*

Although far from perfect, the decentralization process described in the previous sections meant an increase of the autonomy and power of governors and mayors, as well as a shift in the national balance of power, which now privileged subnational interests. However, while political decentralization has allowed representative democracy to reach the entire Colombian territory (through figures such as popular election), fiscal and administrative decentralization have not been as successful as expected. Fiscal crisis, corruption and inefficiency in the execution of public spending at the subnational level were the main triggers of the reversal of the decentralization process.

6 Echeverry et al., *Evaluación* (Fn. 4).

7 Pablo Villatoro, "Conditional Cash Transfer Programmes: Experiences from Latin America." *CEPAL Review*, no. 86 (2005), http://www.eclac.cl/cgi-bin/getProd.asp?xml=/revista/agrupadores_xml/aes18.xml&xsl=/agrupadores_xml/agrupa_listado-i.xsl&base=/tpl-i/top-bottom.xsl%5Cnhttp://login.ezproxy.ub.unimaas.nl/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=ecn&A

8 *DPS, Guía operativa seguimiento y evaluación programa – Más Familias en Acción*, Bogotá 2017.

The fiscal situation of the country deteriorated at the end of the 1990s. Different entities —such as the Commission on Rationalization of Expenditure and Public Finances of 1995 — attributed the central government's fiscal problem to its failure to reduce spending in exchange of increasing transfers to regions.

As a result, during the 2000s important regulatory adjustments took place, which caused a reduction in the pace and intensity of fiscal and administrative decentralization.⁹ The territorial and sectoral distribution established in Law 60 of 1993 was in force until the 2001 constitutional reform, which introduced the General Participation System (SGP, by its Spanish acronym). Legislative Act 01 of 2001 collapsed the *situado fiscal* and the municipal participation (within the SGP) as a single account. It also set the criteria for distributing GSP resources and made the amount of transfers independent of the current revenues of the Nation. This process of regional autonomy limitation and fiscal control continued with Legislative Act 04 of 2007.

Controls from the central government were tightened as well. Decree 28 of 2008 established a strategy for monitoring territorial expenditures of SGP resources. To execute this strategy, the decree created a Special Administrative Unit, with legal status and its own resources.

According to López-Murcia,¹⁰ economic and fiscal crisis are not the only promoters of recentralization processes. In fact, economic booms, particularly the high prices of oil and coal in the period 2007–2011 induced profligacy and corruption in local administrations.¹¹ As a result, the central government promoted a new set of reforms in order to gain more control over royalty resources.

Legislative Act 05 of 2011 and Law 1530 of 2012 set a framework for the appropriation of royalties by the central government. The General Royalty System (SGR, by its Spanish acronym) had three main purposes: first, to guarantee greater equality in the territorial distribution of royalties; second, to direct resources to the poorest population; third, to keep savings in times of prosperity and to invest them in times of scarcity, so that the expenditure financed with royalties becomes countercyclical; and fourth, to support regional development in all territories through common projects executed by groups of subnational entities.

Moreover, Law 1744 of 2014 imposed new controls on the execution of royalty resources. The national planning agency (DNP) is in charge of implementing these controls through a system of evaluation by scores meant to improve decision-making during both the approval and execution of projects.

9 Antonio Hernández Gamarra, Luis Hernando Barreto Nieto, *Descentralización y finanzas territoriales*, Bogotá 2018.

10 Julian Daniel López-Murcia, *Recentralisation and its causes: Colombia, 1994–2014*, Thesis (Ph.D) Oxford 2017.

11 David A. Ortiz Escobar, Luis Carlos Calixto Rodríguez, *Medición de la corrupción regional en Colombia: una propuesta de indicadores a partir de registros de organismos de investigación y control*, in Juan Carlos Henao, Carolina Isaza Espinosa (eds.), *Corrupción en Colombia*, tomo 1, Bogotá 2018, pp. 223–270.

Partly in response to a number of corruption scandals that involved misspending and steal of royalties, and partly in response to the slowness of the execution of these resources, in 2017 a new constitutional reform of the SGR was approved. The reform tightened the supervision of projects financed by royalties and directed some of these resources to specific projects related to the execution of the peace agreement with Farc.

The previous narrative shows that the decentralization system —specifically in the fiscal area— has been defined from top to bottom. This means that the central government has led the constitutional reforms and has responded to the original failures of the process by restricting and controlling the sphere of action of subnational entities. Thus, the territorial autonomy has been quite limited and subnational entities have been largely dependent on the central government to solve their management and execution shortcomings.

The institutional characteristics of SGP and SGR illustrate this situation. The first one imposed spending inflexibility due to the pre-allocation of the territories' public expenditure. The system has excluded the possibility for regions to allocate their resources according to their own needs and purposes. Regarding the SGR, although it has achieved a more equitable distribution of resources among the territories, the system has continued to atomize spending among multiple actors and projects with low socio-economic impact.¹² Moreover, the creation and regulation of the SGR has generalized the logic of the SGP regarding the central control of territorial spending.

C. An incomplete tale of fiscal decentralization

In the previous section, we sketched a narrative of Colombia's decentralization-recentralization process. Although there are problems with political decentralization due to corruption and lack of confidence on local institutions, the re-centralization process manifest itself more clearly in the fiscal area. For this reason, in this section we concentrate into the current state of fiscal decentralization.

The fiscal decentralization process in Colombia has been marked by a heavy dependence of subnational entities on central government grants and poor tax collection at the municipal and state levels. This lack of fiscal autonomy of Colombian municipalities and departments induces poor performance in the provision of public goods, which, as we have seen in the previous section, triggers re-centralization dynamics as the central government seeks quick solutions to the lack of local state capacity and corruption.

12 Antonio Hernández, *Fernando Herrera*. Evaluación Del Sistema General de Regalías [Evaluation of the General Royalty System]. 2015, <http://www.co.undp.org/content/dam/colombia/docs/Medio Ambiente/undp-co-evaluacionSGR-2016.pdf>

1. *Lack of fiscal autonomy of Colombian subnational entities: facts and figures*

The fiscal decentralization model in Colombia has been largely based on transfers from the central government to municipalities and departments. According to Sanchez et. al.,¹³ although subnational expenditures grew approximately 6% of GDP during the period 1994–2009, subnational entities' own revenue grew only 1.2% of GDP, implying that “only 20 percent of the change in subnational spending as a percent of GDP was financed through greater fiscal effort on the part of the subnational governments”. In 2016, following calculations by Hernandez-Gamarra and Barreto-Nieto,¹⁴ transferred resources from the central government financed 61% of subnational entities' spending. In particular, transferred resources finance 66% of the municipal budget. Moreover, consecutive reforms to the transfers system have reduced the discretion of subnational authorities in budgeting decisions, as these entities must spend transferred resources on specific budget lines.

The tax structure itself is partly responsible for the poor tax collection performance of subnational entities, especially in the case of departments. Municipalities have two major sources of income: property taxes and industry taxes. This has resulted in an increase of municipalities' tax collection over the past 20 years.¹⁵ However, large horizontal inequalities remain across Colombian municipalities: Only those with fairly actualized cadastral systems and robust economic activities can raise enough resources to reduce their dependency towards national transfers. While in cities like Bogotá national transfers finance approximately 25% of the public spending, in smaller and poorer municipalities 60% or more of the budget is funded by central government grants.¹⁶

Likewise, as departments can only raise taxes on inelastic goods such as liquors and cigarettes and on other minor activities, its main sources of income have been central government transfers and royalties from natural resources. Again, wealthier departments such as Antioquia, Valle and Atlántico have been able to raise more own-resources than poor departments, although this has not been enough to eliminate dependency from central government grants.¹⁷

2. *Lack of fiscal independence induces poor performance in public goods provision and discourages political accountability at the subnational level*

Recent empirical and theoretical literature has shown that not only the rough amount of money administered by subnational units is important: the mix of sources (national transfers vs. autonomous tax collection) also matters for achieving efficient public goods provi-

13 *Fabio Sánchez et al.*, “Sub-National Revenue Mobilization in Latin American and Caribbean Countries: The Case of Colombia.” *SSRN*, 2012, doi:10.2139/ssrn.2234314

14 *Hernandez-Gamarra, Barreto-Nieto*, *Descentralización* (Fn. 9).

15 *Sánchez et al.* *Sub-National* (Fn. 13).

16 *Sánchez et al.* *Sub-National* (Fn. 13).

17 *Sánchez et al.* *Sub-National* (Fn. 13).

sion and political accountability. Weingast, for example, proposes the Second-Generation Fiscal Federalism (SGFF) framework, according to which political economy considerations related to the behavior of local politicians are key to improve the design of fiscal decentralization systems.¹⁸ According to Weingast, “local revenue generation makes local governments more responsive to citizens, reduces corruption, and increases the incentives to provide market-enhancing public goods”.¹⁹

Some empirical studies show evidence in favor of the SGFF theory. Boetti et. al. found that, for a sample of 261 Italian municipalities, those that are more fiscally independent are also more efficient at providing public goods.²⁰ These results are in line with the study of Cavalieri and Ferrante, who found that those Italian municipalities with lower transfer dependency exhibit less infant mortality rates.²¹

In Colombia, there is also some evidence pointing out to the superiority of own-revenue collection in order to efficiently provide public goods. Sánchez and Pachón found that municipalities that are more fiscally independent are more efficient in the provision of water and sanitation services.²² Interestingly, the authors identify political competition as the main channel through which municipalities are more eager to increase tax collection: where there are well established political elites with connections with the central government, there are less incentives to increase property taxes or actualize the cadastral system. It is not surprising, therefore, that Colombian departments and municipalities with lower poverty rates tend to depend less on central government grants.²³

Fiscal autonomy not only promotes a more efficient use of public resources. It also makes subnational entities more accountable. In their study about individual-level accountability perceptions of Colombians, Escobar-Lemmon and Ross found that citizens see departments that are administrative and fiscally more autonomous as more accountable.²⁴ This is consistent with the current institutional framework: it privileges accountability towards the central authorities (upward accountability) over accountability towards citizens

18 Barry R. Weingast, Second generation fiscal federalism: The implications of fiscal incentives. *Journal of Urban Economics*, *Journal of Urban Economics*, 65 (2009), 279–293.

19 Weingast, note 18, p. 290.

20 Lorenzo Boetti, Massimiliano Piacenza, Gilberto Turati, Decentralization and Local Governments' Performance: How Does Fiscal Autonomy Affect Spending Efficiency?, *FinanzArchiv: Public Finance Analysis*, 68 (2012), pp. 269–302.

21 Marina Cavalieri, Livio Ferrante, Does fiscal decentralization improve health outcomes? Evidence from infant mortality in Italy, *Social Science and Medicine* 164 (2016), pp. 74–88.

22 Fabio Sánchez, Mónica Pachón, “Descentralización, Esfuerzo Fiscal y Progreso Social en Colombia en el Nivel Local, 1994–2009: ¿Por qué Importa La Política Nacional?” *Serie Documentos Cede*, 2013–38, no. 1657–719 (2013) p. 76, doi:10.2202/1538-0645.1460.

23 Hernandez-Gamarra, Barro Nieto, (Fn. 9).

24 Maria Escobar-Lemmon, Ashley D. Ross, Does Decentralization Improve Perceptions of Accountability? Attitudinal Evidence from Colombia, *American Journal of Political Science*, 58 (2014), 175–188

(downward accountability), especially for the less autonomous departments and municipalities.

In order to correct this situation, some authors have proposed measures to increase the fiscal autonomy of subnational entities. For departments, Sanchez et. al. propose a VAT surcharge and a retail sales tax.²⁵ Each department can establish the tax rates, but collection can be done directly by the national tax authority (DIAN). For municipalities, these authors propose to raise the institutional capacity to actualize the cadaster system in rural areas and small municipalities, which would increase the tax base of property taxes.

However, as there are large economic imbalances among Colombian regions, it is likely that, even with these reforms, horizontal inequalities remain, and a national transfers system must be kept in place so that departments and municipalities can provide the social services they are responsible for. The challenge is precisely to balance incentives so that transfers to subnational entities do not discourage local fiscal efforts.²⁶ Moreover, it is important to foster local participation and accountability even in those regions characterized by heavy fiscal dependence on central government grants.

D. Policy actions: The peace agreement with Farc as a means to boost decentralization

As shown in the previous section, given the present Colombian context, purely fiscal measures would not be enough in order to correct subnational imbalances, promote local participation and foster local political accountability. In this section, we argue that the peace agreement with Farc provides tools that correct the re-centralization trajectory Colombia is facing today and addresses participation and accountability issues in those regions most affected by the internal conflict.

In the past, other countries have looked to decentralization in order to reconstruct themselves after long civil wars or internal conflicts. Sierra Leone, for example, implemented a set of decentralizations reforms from 2004 in order to increase political legitimacy and state capacity after a civil war that lasted a decade.²⁷ However, this example shows that political decentralization itself is not enough in order to increase state capacity in peripheral regions: local governments should have the administrative and fiscal resources in order to deliver basic goods and services to citizens, thereby reducing the probability of reemergence of conflict.

25 *Sánchez et al.* Sub-National (Fn. 13).

26 *Alberto Porto, Carlos Pineda Mannheim, Huáscar Eguino*, Decentralización y autonomía fiscal subnacional en América Latina: Panorama comparado de Brasil, Colombia, México y Perú, BID 2018, <https://publications.iadb.org/bitstream/handle/11319/8735/Descentralizacion-y-autonomia-fiscal-subnacional-en-America-Latina-panorama-comparado-de-Brasil-Colombia-Mexico-y-Peru.PDF?sequence=1&isAllowed=y>, last accessed on 27 November 2018.

27 *Benjamin Edwards, Serdar Yilmaz, Jamie Boex*, Decentralization as a post-conflict strategy: Local government discretion and accountability in Sierra Leone. *Public Administration and Development* 35 (2015), pp. 46–60.

1. Colombia and its historical debt to the regions

Historically, the relation of the Colombian state with its territories has been complex. The presence of the state is differentiated across the country, which has caused fragility in many regions.²⁸ In two hundred years of republican life, the Colombian state has been incapable of offering conditions of security, protection of property, justice administration and provision of basic public goods and services in the whole territory.²⁹ This has been one of the causes of the appearance of illegal armed actors, which emerged precisely to fill the void left by the central state.³⁰

There have been several attempts to correct this situation. In the last four decades, every single Colombian government has attempted to move forward in peace processes with guerrillas or paramilitary groups, not in few cases combining these initiatives with the use of force with the same or other illegal armed groups.³¹ This highlights the need of securing state presence in many territories across the country.

The results of these initiatives have been mixed. In one dimension, some of these processes have been able to disarm, demobilize and reincorporate thousands of ex combatants, notably those processes developed between the late 1980s and the early 1990s that allowed the reincorporation of former members of guerrillas such as the M-19, EPL, CRS, PRT and Quintín Lame. Some members of these organizations have been able to participate in politics and in civil society organizations, and today have an active role in the day-to-day politics of the country.

Nevertheless, in another dimension, those peace processes, as well as those developed in the mid 2000s with paramilitary organizations, have not been able to transform the realities of the territories most affected by the armed conflict.³² The fragility of the state in those

- 28 *Fernán E. González González*, *Poder y Violencia en Colombia*, Bogotá 2014; *Fernán E. González González*, *Ingrid Bolívar*, *Teófilo Vásquez*, *Violencia política en Colombia. De la nación fragmentada a la formación del Estado*, Bogotá 2002.
- 29 *DIAN*, *La Guajira y el Comercio Delictivo: Instituciones, Captura del Estado y Cambio Institucional*. Bogotá 2012; *Mauricio García Villegas*, *Jueces sin Estado. La justicia colombiana en zonas de conflicto armado*. Bogotá 2008; *Mauricio García Villegas*, *Jose Rafael Espinosa R.*, *La debilidad institucional de los municipios en Colombia (Proyecto instituciones ad hoc para municipios en Colombia)*, Bogotá 2012; *Carlos Alberto Patiño Villa*, *Guerra y construcción del Estado en Colombia 1810–2010*, Bogotá 2012; *César Rodríguez Garavito*, *Diana Rodríguez Franco*, *Entre el clientelismo y la modernización: Una etnografía institucional de la administración de impuestos en Colombia*, Bogotá 2008.
- 30 *Gustavo Duncan*, *Más que plata o plomo. El poder político del narcotráfico en Colombia y México*, Bogotá 2014; *Gustavo Duncan*, *Exclusión, Insurrección y Crimen*, in *Comisión Histórica del Conflicto y sus Víctimas* (ed.), *Contribución al entendimiento del conflicto armado en Colombia*, Bogotá 2015, pp. 227–266.
- 31 *Eduardo Pizarro*, *Cambiar el futuro*, Bogotá 2017.
- 32 *Sergio Jaramillo*, *Dilemas Jurídicos de la Transición Colombiana*, Bogotá 2013; *Sergio Jaramillo*, *La paz territorial*, 2014, <http://equipopazgobierno.presidencia.gov.co/prensa/declaraciones/Paginas/paz-territorial-sergio-jaramillo-alto-comisionado-paz-proceso-paz.aspx>

territories, its incapacity to provide goods and services, and the sheer impossibility of guaranteeing conditions of security, coupled with the existence of lucrative business associated to illegal economies, have motivated different actors and organizations to take weapons against the Colombian state.

Therefore, for many experts and policy makers, the idea of putting an end to the conflict and reaching a stable and lasting peace in Colombia is associated not only to offering alternatives for personal development to former guerrilla members, but also to transforming the territories most affected by the conflict.

One key aspect for transforming those territories is actually transforming the way the central state relates to them. The idea of “territorial peace”, which is the backbone of the agreements between the Colombian government and Farc in Havana constructs on that idea and offers important inputs for changing that relationship, thereby contributing to the peace building.³³

As will be argued below, in the current Colombian context, a rigorous implementation of the peace agreements would contribute to both, addressing the major issues identified by the parties in the negotiations and deepening the decentralization process.

2. *The concept of territorial peace*

The agreement between the Colombian government and Farc includes provisions in five different areas: rural development, political participation, end of the conflict (demobilization, disarmament and reincorporation, DDR), solutions to the drug problem and victims. Besides the traditional topics of DDR, the agreement addresses in detail how to attack the difficulties of the regions most affected by the conflict, the problem of illicit crops, how to foster political participation and correct some of the failures of the Colombian political system, and how to deal with the situation of the victims.

The idea of *territorial peace*, which is present across the specific agreements, can be summarized in three components: institutional design, citizen participation and construction of citizenship. The latter refers to the idea that, after a conflict that took place in a country with 46 million inhabitants and that has caused more than 8 million victims, there is a strong need for truth, justice, reparations and guarantees of non-repetition. Initiatives oriented towards reconstructing the social fabric and carrying on processes of reconciliation are also necessary.

The other two aspects are directly associated with the interplay between the central state and the regions. The component of institutional design starts by recognizing the failures of the current state institutions, which limit the ability of the central government to identify and address the needs of the territories most affected by the conflict. Several elements contribute to this diagnosis:

33 *Gobierno de Colombia, FARC-EP, Acuerdo Final para la terminación del conflicto y la construcción de una paz estable y duradera*, 2016; *Jaramillo 2014*, (Fn. 32).

- i) The state is weak at the local level and, in many cases, coopted by private interests, some of them associated to illegal armed groups. There are multiple examples in which illegal actors have captured state functions such as tax collection or provision of education and health services; transfers of resources from the central government to the regions have ended up in private hands and in some cases directed to the financing of illegal armed groups.³⁴
- ii) There is a high heterogeneity between the way the state functions in the “core” areas of the country and in the “periphery”. High skill work at the public service is highly concentrated in the most integrated areas of the country, which contributes to the fragility of the regions most affected by the conflict.
- iii) The state bureaucracy is very slow for responding to the needs of the citizenry in the regions most affected by the conflict and in many cases does not even consider them.
- iv) The policy design process is highly conducted from the center (mainly, from Bogota), disregarding the specificities of the territories. As it was clear in the first section, systems like the SGP and SGR promote a “one size fits all” rationale, which is very inconvenient for a country with important geographic, historic and cultural heterogeneity.
- v) A “sectoral” approach has characterized policy making in Colombia, which reduces the incentives for making interventions in areas that are not highly populated. This contributes to reproducing the spiral of violence that has affected some of these regions. The traditional sectoral approach would need to be complemented by a “territorial” approach, which recognizes the special needs of some regions, regardless of the size of their populations.³⁵
- vi) Some political units (departments) have responsibilities over municipalities that are isolated both geographically and culturally, which suggest the convenience of an alternative approach for addressing their needs.

Besides the component of institutional design, the second component behind the concept of *territorial peace* addresses the question of “how” to implement the required reforms. It highlights the importance of incorporating citizens and their organizations in the processes of discussion, prioritization, design and implementation of the plans and programs required for the regions.³⁶

Citizen participation imply that local initiatives are openly deliberated and contrasted by initiatives from the government, so that decisions take national plans and programs as an

34 Gustavo Duncan, *Los Señores de La Guerra: de Paramilitares, Mafiosos y Autodefensas en Colombia*, Bogotá 2006; *Hernán Pedraza Saravia, Ángela Olaya, Regalías, Cooperativas y Finanzas Paramilitares en la Costa Caribe*, in Romero (Ed.), *La economía de los paramilitares. Redes de corrupción, negocios y política*, Bogotá 2011, pp. 191–266.

35 *Gobierno de Colombia*, Plan Nacional de Desarrollo 2014–2018. Todos por un nuevo país, Bogotá 2014.

36 *Julián Arévalo Bencardino*, Construcción de paz y un nuevo modelo de construcción de estado: Una lectura de los primeros acuerdos de la Habana, *Revista de Economía Institucional* 16 (2014), 131–169.

input, but also recognize local concerns. As a result, due to a combination of top-down and bottom-up initiatives, public policies become suitable for the specific territories in which they will be implemented.

In this regard, the agreement promotes what Yilmaz et. al. call “social accountability”³⁷ through tools like citizens’ participation in budget and expenditure decisions, and planning and access to financial information of local and state governments. These mechanisms could secure local accountability even in the absence of the accountability forces triggered by fiscal autonomy that were discussed in section C.

A clear example of the way in which these ideas are put in practice is that of Development Programs with a Territorial Approach (or PDETs by their acronym in Spanish). Those programs were agreed upon by the Colombian government and the Farc in Havana and were aimed at making special interventions in the regions most affected by the conflict. In order to choose the 16 PDET areas (which include 170 municipalities), criteria such as levels of poverty, presence of illegal crops, number of victims, as well as other social and economic aspects were considered.³⁸ A key aspect of PDETs is that some of the regions in which they operate are part of one department, whereas others are part of two or more departments. This concept recognizes social and economic realities more than political considerations associated to the current configuration of political units in Colombia.

The fact that some municipalities of the same PDET might not belong to the same political unit makes it clear that there are problems in the current political organization of the country that require additional elements for making possible to address the social and economic conditions of these territories. The current political organization and the current levels of decentralization are not enough for generating the transformations that are required for implementing agreements aimed at achieving peace. PDETs are a vehicle for the Colombian state to circumvent difficulties associated to the transformation of the organization of the state in the territories, such as the tensions between the municipalities, departments, and the nation.

Moreover, it is important to emphasize that, despite the triumph of the ‘No’ in the 2016 plebiscite on the peace agreements, a new agreement was negotiated with Farc and put for ratification by the Colombian Congress. This new agreement was also ratified by the Colombian Constitutional Court, which has also underscored the obligation of the subsequent governments to implement the agreement in good faith.

Clearly, the peace agreements can be a powerful tool in order to consolidate the state presence in the territories, stop the reverse of the decentralization process and provide tools to local communities to influence public policy according to their needs. Modifications in the way the Colombian state relates to the territories are difficult to pass through the Congress, as different political interests are at stake. However, implementing agreements

37 *Serdar Yilmaz, Yakup Beris, Rodrigo Serrano-Berthet*, Linking Local Government Discretion and Accountability in Decentralisation, *Development Policy Review* 28 (2010), 259–293

38 *Gobierno de Colombia, FARC-EP*, (Fn. 33).

that enjoy the support of the three branches of power (negotiated by the executive, approved by the Congress and ratified by the Constitutional Court) is a realistic way to strengthen the presence of the state all over the country, something that has not been possible in 200 years of Colombia's republican life.

However, this territorial approach will surely face important administrative and political challenges. One of the most important administrative challenges is to overcome the "sectoral" approach that has dominated policy making in Colombia for decades. Public policies in sectors such as health, education, infrastructure, among others, have been usually design by central government technocratic bodies that narrowly define their own goals and the strategies for achieving them. In many cases, this has meant that policies have emphasized those regions that are more populated and where the numeric effects are more noticeable, but they have left some other regions that are less populated—and where illegal armed actors are present—out of the scope of state policies.

Mechanisms for coordinating policy making across different sectors have played a minor role. That approach has contributed to the cycle of weak presence of the state and violence that has historically characterized some regions of the country.

Another challenge of the territorial approach is of a procedural nature and is related to the political entities that will be in charge of leading it. Colombia's process of decentralization has empowered the lowest level (municipalities) and has left the intermediate level (departments) in a very weak situation. In that scenario, there is no political authority able to foster the (inter-municipal, an even inter-departmental) policies that are required from a territorial perspective. Experiences that show the difficulties of implementing policies that go beyond the municipal level, not to mention those that go beyond one department, have been widely documented. This lack of a supra-municipal authority poses the risk that the central level takes over many responsibilities, which will lead to a new cycle of re-centralization.

Those two challenges highlight the difficulties of giving impulse to a territorial approach to policy making. The peace agreement recognizes those difficulties and creates mechanisms to partially overcome them. However, there must be a clear commitment from political and administrative authorities to materialize and improve these mechanisms in order to achieve a proper implementation of the peace agreements.

E. Conclusions

There has been a reversal in the decentralization process in Colombia that manifests itself most prominently in the fiscal area. The current decentralization scheme privileges upward accountability over downward accountability, deters incentives for raising local revenue and shows very heterogeneous results regarding the efficiency of public goods provision. In order to partially solve these problems, measures must be taken so that subnational entities can rise their tax collection and increase their fiscal autonomy. This would trigger beneficial political and governmental process that foster state capacity at the local level.

However, pure fiscal reforms are not likely to solve the decentralization puzzle in Colombia, as horizontal inequalities are very profound and strong redistribution mechanisms are needed for the state to reach every corner of the country. The correct implementation of the peace agreement with Farc is an opportunity to give a new breath to the decentralization process, as it contains the notions of *territorial peace*, bottom up initiatives, and citizens' participation. These social accountability mechanisms can complement or replace other accountability mechanisms that are more difficult to implement given the Colombian realities.

The political forces now in power exerted a fierce opposition against the peace talks, which raises doubts about the willingness of the current government to implement the agreement. Moreover, the fiscal situation of the country also hampers the capacity of the government to execute the agreement. Another risk is that superficial interpretations of the agreement might over-emphasize the DDR and victims' dimensions at the expense of the ones related to the improvement of the conditions of the territories most affected by the internal conflict.

Finally, fiscal autonomy of subnational entities and the implementation of the peace agreement with Farc should be considered as part of a more general discussion about the best decentralization model for Colombia. This model should address the huge horizontal disparities between regions, as well as the need to tailor state action to the specific needs of citizens in different territories.