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COLOMBIA: REFORM, STAGNATION AND NEW HOPES FOR PEACE

**A MID-TERM ASSESSMENT OF THE
UNIDAD NACIONAL GOVERNMENT**

Stefan Jost

In August 2010, Juan Manuel Santos took over as the new President of Colombia. In the two years since his inauguration he has pushed through a new domestic and foreign agenda, despite massive criticism from his predecessor, Álvaro Uribe. When a few weeks ago Santos declared that peace talks would begin with the guerrillas Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (FARC-EP)¹, and negotiations actually commenced in Oslo on 17 October, this marked the political high point of the first two years of his government of Unidad Nacional (national unity).²

The debate that has sprung up around the Santos government's various legislative projects has generally revolved around the question of whether his policies are a continuation or a discontinuation of those of the previous government, of which he was also a member as a well-known and successful minister of defence. Disillusioned former supporters now say he betrayed both what they sought to achieve as well as the legacy of his predecessor, Uribe. Aside from this party political perspective, it is difficult to find a meaningful or clear answer to the question of continuity and discontinuity in particular policy areas. Furthermore, this simple categorisation is insufficient for making a detailed analysis of the complexities of Colombian politics. Instead, a categorisation of the first two years of the

1 | The addition of "EP" (People's Army) was made in 1982, but the guerrilla organisation is generally still referred to as the "FARC".

2 | See the end of this article for a detailed list of acronyms.

Santos administration must be guided by the criteria of “Reform” and “Stagnation”, without totally excluding the criteria of continuity and discontinuity.



In 2010, Secretary of Defence Juan Manuel Santos was elected to be Colombia’s new President with 69 per cent of the vote. | Source: Center for American Progress (CC BY-ND).

THE EARLY DAYS OF THE SANTOS ADMINISTRATION

In early 2010, after the Colombian constitutional court rejected the proposal by the incumbent President, Uribe, to change the constitution so that he could stand for a third term, Juan Manuel Santos seemed the natural candidate for the presidency of the party that he and Uribe had co-founded, the Partido Social de la Unidad Nacional, known for short as “la U”, even if he was not the chosen candidate of Uribe himself. In the first ballot, Santos came out clearly ahead of the five other candidates. In the second ballot he was elected to be the country’s new President with 69.05 per cent of the vote, corresponding to around nine million votes.³

In record time, Santos surprised the public by setting an agenda that went way beyond any initiatives launched by the Uribe government. This new agenda made it crystal

3 | For more on the elections, see Stefan Jost, “From Uribismo to Unidad Nacional – Colombia After the Congressional and Presidential Elections”, *KAS International Reports*, Sep 2010, 143-163, <http://kas.de/wf/en/33.20399> (accessed 6 Nov 2012).

clear that Santos had been preparing for the presidency for a long time. It also became obvious that Santos could not simply be made out as a one-dimensional hard-liner on defence and security issues, which was hardly surprising in light of the previous political offices he had held as well as positions in the private sector.

He gained his first coup by creating the government of *Unidad Nacional*. Under this umbrella, he was able to bring to the cabinet table the two former members of the governing coalition under Uribe, “*la U*” and the Colombian Conservative Party (PCC), along with the Partido Liberal (PL) and the Cambio Radical (CR), a party that like “*la U*” came from the liberal wing. In this way, Santos kept the promise he had made before the second ballot and at the same time achieved three central strategic goals:

1. By bringing together the four biggest parties in Congress to form his coalition, and the addition of the small Partido Verde (Green Party)⁴ in 2012, Santos built for himself an unparalleled power base.⁵ It is basically a ruling coalition that includes almost the complete party spectrum and that is left with almost no opposition in Congress. The only parties that are not members of the coalition are the left alliance Polo Democrático Alternativo (Alternative Democratic Pole) that refused to be integrated into the *Unidad Nacional*; the rightist Partido de Integración Nacional (Party of National Integration, PIN) that has links to the paramilitary and the drugs trade; and a few splinter parties. Apart from a few high-profile personalities, the “*Polo*” no longer represents serious opposition to the ruling coalition, as it has been deeply divided since its candidate in the 2010 presidential elections, Gustavo Petro, left the party.
2. Santos has constructed a coalition that revolves around him and that is run in oligarchic fashion. To do this, he has built two main pillars. Firstly, the various parties have to receive a presidential “invitation” to join his government. Agreements are made between him and the

4 | Partido Verde is not comparable to other Green parties in Europe.

5 | The *Unidad Nacional* currently holds over 80 of 102 seats in the Senate and 131 of 166 seats in the House of Representatives.

parties in question, so there is no general coalition agreement. He also selects the ministers, which in turn leads to ministers feeling a sense of loyalty to the President rather than to their parties. This has been reinforced, at least in some coalition parties, by the emergence of obvious breaks between parties and “their” ministers in instances where Santos particularly appointed *santistas*, i.e. his supporters, to the cabinet and other leading positions, such as in the case of the PCC.

The more parties there are in the coalition, the less influence each individual member has, and they become expendable in the event of disputes. This significantly reduces the influence of each individual party, who otherwise could threaten to leave the government. If the President decides to break up the coalition, the parties risk losing the small number of posts (*cuota burocrática*) they do hold.

The definition of the joint agenda of the Unidad Nacional and its implementation is the responsibility of the Mesa de la Unidad Nacional, the roundtable and coordination committee of the grand coalition. Before each session of Congress, the President releases a certain number of initiatives for discussion in the Mesa de la Unidad Nacional, but the dominance of the presidency is unmistakable. Specific stipulations for the main legislative projects emanate from the presidential palace, even if it is one party or particular member of Congress that has officially tabled a legislative proposal.

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On top of this, the composition of the Mesa de la Unidad Nacional soon led to mutterings within the parties and factions. Only the President, the party leaders and the Presidents of the two Congressional chambers (House of Representatives and Senate) were initially able to set the coalition’s agenda. Since then, the spokespersons for the various factions have been brought into the discussions on a more-or-less regular basis. But since Presidents of the Congressional chambers, most party leaders and faction spokespersons generally change each year, it is impossible for any lasting opposition to form against the President.

3. In this way, Santos has managed to turn party opposition into an internal government issue. Most negotiations take place within the executive. He has had little difficulty controlling the few sporadic attempts at opposition, particularly by the Conservative Party or some of his critics within "la U". In the latter case, this is particularly down to the fact that he has managed to achieve a "de-Uribisation" without any significant opposition, i.e. he has transformed it from being pro-Uribe to pro-Santos. The Conservative Party's opposition is due to its wavering between the Santos line and an Uribe-supporting minority and because it is clearly not prepared to place the coalition at risk, even if it were to have a unanimous opinion. An exception to this is the opposition of his predecessor Uribe, mainly voiced via Twitter and in interviews, but which does not represent the majority of "la U" and does not possess a base in Congress. It remains to be seen how the Puro Frente Democrático will develop an alliance created by Uribe in July 2012.

Santos has significantly reduced the competitiveness of the Colombian party system at national level and brought more power into the hands of the President. Even the regional and local elections in October 2011 in the 32 departments and Colombia's capital district,⁶ in which the coalition parties of the Unidad Nacional took part and competed in a vast array of guises had no effect on the Unidad Nacional, despite a wide range of different results.

THE UNIDAD NACIONAL REFORM PROGRAMME

Two projects stand out from the Santos government's legislative programme⁷ during its first two years in office and have given it its reputation for being a government of

6 | See also Stefan Jost, "Stimmungsbarometer für die Parteien der 'Nationalen Einheit' und Präsident Santos. Ergebnisse der Regional- und Kommunalwahlen in Kolumbien", *KAS International Reports*, Jan 2012, 6-28, http://kas.de/wf/doc/kas_29962-544-1-30.pdf (accessed 6 Nov 2012).

7 | Other relevant laws should be mentioned such as the Ley del Primer Empleo, the anti-corruption statute and the Regla Fiscal law, none of which attracted the same national attention, and no international attention, compared to the two reform laws referred to above. The other notable law, the Ley marco jurídico para la paz is looked at within another context ("The Agenda behind the Agenda").

reform. They are the Victims and Land Restitution Law, and the Royalties Law.

Ley de víctimas y restitución de tierras (Victims and Land Restitution Law)

The decades of conflict between the state, guerrillas, paramilitaries and drug cartels have had a dramatic impact on some sections of the Colombian population. The number of (mainly rural) internally displaced people stands at three million – Colombia leads the world in this respect – and the amount of land that has been surrendered is estimated to be more than six million hectares.

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Law 1448 of 10 June 2011⁸ covers two areas of regulation that had already been debated by the previous government but never ratified. The first of these is the issue of restitution for victims⁹ of armed conflicts, and the new law contains a wide range of measures. These include restitution payments, physical and psychological support and an easing of restrictions on access to credit.

The second area relates to land restitution, where it is not a question of expropriation, but of reinstating original legal rights to those land owners who were forcibly displaced and lost their ownership rights. This affects around two million hectares of land owned by 300,000 families. In addition, the time needed to try court cases before special judges will be significantly reduced by reversing the burden of proof.¹⁰ The law retrospectively covers the relevant facts

8 | Cf. Ministerio de Justicia y del Derecho, "Ley de Víctimas y Restitución de Tierras y sus Decretos Reglamentarios", Bogotá, 2011, <http://www.leydevictimas.gov.co/documents/10179/19132/completo.pdf> (accessed 6 Dec 2012).

9 | According to Article 3 of the Law, victims are: "persons who individually or collectively have been harmed since 1 January 1985 within the context of the armed internal conflict as a consequence of the violation of international human rights or who have suffered serious and proven violations of normal standards of international human rights." Members of illegal armed groups are only considered as victims if they are minors at the time the groups are dissolved.

10 | According to the Agriculture Minister, the law should shorten the legal proceeding for the restitution of ownership rights from the current ten to 20 years to a maximum of 18 months (Cf. *El Tiempo*, 29 May 2011, 9).

from 1 January 1985 and remains in effect for ten years from 1 December 2012. The decree of implementation was passed at the end of 2011.

Opponents of this law criticise the cost of making restitution and other payments and the inclusion of state actors as potential wrongdoers. There are also problems with respect to the court proceedings, beginning with forms that have not been agreed by the various authorities, leading to a "bottleneck in registering victims".¹¹ The slow process of selecting judges and the unsuitability of many candidates¹² has made implementation difficult, along with the sluggish pace of setting up the other necessary administrative bodies¹³ and the difficulties of drawing up a consistent register of victims. On top of this, there are fundamental problems relating to the understanding and application of judicial reforms that will be valid for a period of transition and that uphold special, not necessarily traditional, legal rules and their application. The main problem of this law is the fact that it relates to policy for a post-conflict phase that Colombia has not (yet) reached. Even if peace is successfully negotiated with the guerrillas, this does not mean that the specific violent context of the land restitution will simply disappear. These particular dimensions go way beyond the existence of the guerrillas.

Dozens of people have been murdered, particularly the leaders of organisations campaigning for land restitution. So far, the government has no clear security policy.

The implementation of this law has an impact on the manifold interests of those who illegally took ownership of these lands over the last years and decades. Dozens of people have been murdered, particularly the leaders of organisations campaigning for land restitution. So far, the government has no clear security policy for protecting those who want to return to their land. Such a policy was called for during the debate on the bill, not only by representatives of "la U" and others, but also by the UN High Commissioner for Human Rights, and the government gave its assurances

11 | "Comenzó la reparación integral a las víctimas del conflicto armando", *El País*, 10 Jun 2012, <http://elpais.com.co/elpais/colombia/noticias/comenzo-reparacion-integral-victimas-del-conflicto-armando> (accessed 6 Nov 2012).

12 | By the end of 2011 only five of the planned 22 judges had been appointed.

13 | By the end of March 2012 only five of the planned 20 regional director positions had been filled.

that it would be implemented. By mid-2012, around 40,000 of the year's 115,000 planned restitutions had been carried out, and the first court decisions are due in October.

The resignation of the head of Incode, the main authority responsible for the process, demonstrates the importance that the government also places on implementing this law.¹⁴ It emphatically denied the minister's accusation that the process was taking too long, and criticised the inadequate funding from Incode. It also claimed that merely returning land titles was pointless if it was not accompanied by a serious programme of rural development. This is precisely what the Agriculture Minister announced with the *Política integral de tierras y desarrollo rural* (Integrated Policy for Land and Rural Development), combined with a new orientation for agriculture, which also met huge opposition from those interests that were affected. However, no concrete concept has yet been introduced.

Ley de regalías (Royalties Law)

This law governs the use of government revenue from the exploitation of non-renewable resources.¹⁵ Up to now, 79 per cent of this money has been passed directly to the departments and municipalities in the form of royalties (*regalías*). This way of distributing the revenue led to dramatic inequalities, with production areas profiting from it almost exclusively. Between 1994 and 2009, 80.4 per cent of royalties were distributed to just eight of the 32 departments and 112 municipalities, representing just 17.3 per cent of the population.¹⁶ 17 of the 584 municipalities that were entitled to a share only received half of the funds.¹⁷ As

14 | A compact summary of the various problems is given in "La Ley de Víctimas tres meses después", *La Silla Vacía*, 9 Apr 2012, <http://lasillavacia.com/print/historia/la-ley-de-victimas-tres-meses-despues-32574> (accessed 6 Nov 2012).

15 | An excellent overview is provided by a document from the Universidad Nacional de Colombia: http://viceinvestigacion.unal.edu.co/VRI/files/docs/Regalias/SGR_030612.pdf (accessed 6 Nov 2012).

16 | Cf. Departamento Nacional de Planeación (DNP), "Reforma al Sistema de Regalías", http://josedavidname.com/archivos/Proyecto_Reforma_al_Sistema_de_Regalias_Act.pdf (accessed 6 Nov 2012).

17 | Cf. Fedemunicipios, Vortragsdokument (Gilberto Toro Giraldo) zur Audiencia Pública (Acto Legislativo N 123 C-013 S DE 2010), 23 May 2011.

a result, a dramatic gap opened up in terms of the development of the various departments. And on top of this, even the favoured municipalities and departments gained little benefit (to phrase it carefully) from the investment, particularly in terms of having little structural effect. Mal-administration and corruption are the main causes of this, along with institutional, technical and administrative deficits, insufficient processing capacity, a traditional focus on using the money for the purposes of clientelism, the influence of groups operating outside the law and insufficient public participation.

In December 2011 it became clear that the text of the law did not conform to the approvals given by the House of Representatives and Senate, making it necessary to set up a Mediation Commission. This, combined with the need to wait for a decision from the Constitutional Court, led to the law (Law 1530)¹⁸ only coming into force on 5 May 2012.

The new system is fundamentally aimed at achieving fairer distribution between the regions and generations.¹⁹ In future, the two main criteria for distributing 70 per cent of the revenue will be poverty and population numbers. A series of regional funds will be set up in the areas of competitiveness, science and technology, regional development, savings and pension funds. It is also planned that large projects which cross the boundaries between departments and municipalities should receive funding. These major changes to the royalty system lay the foundations for improving the often precarious living conditions and infrastructures in many departments with the long-term aim of at least making a clear reduction to the dramatic inequalities in the living standards of Colombians.

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Even at this early stage, it is clear that there are major problems in implementing this law. Local authorities that were previously awash with cash must now get used to having much less, while the vast majority are being blessed with a cash bonanza that they don't know how to handle because of their lack of administrative capacity. Currently, this has led

18 | Cf. Ley 1530, http://camacol.co/sites/default/files/base_datos_juridico/ley%201530%20de%202012.pdf (accessed 6 Dec 2012).

19 | For a comparison of the use of funds, see DNP, 2010, n. 16, 14.

to large amounts of money being frozen because of an inability to carry out the necessary administrative procedures. Examples are beginning to emerge of national ministries and governors going over the heads of local mayors in order to use the funds as they see fit.

We cannot overemphasise the potential for development and transformation provided by this new system of using the *regalías*. It is certainly the correct strategic decision to invest the 50 billion U.S. dollars expected over the next ten years into this policy. But the critical question will be whether it succeeds in creating effective new institutions and whether the existing political and administrative levels of government can be adapted to meet the needs of this new system. This not only directly involves implementation structures at department and municipality level but also the question of how to institutionalise the link between the decentralised use of funds and a predominantly vertical system of governance.

The main problem for the Colombian state is the fact that in many respects Colombia is over-institutionalised but that quality institution-building is not exactly one of the strengths of Colombian politics. If, in the extreme case, this new system for distributing the *regalías* simply leads to a better-organised decentralisation of corruption, then we have to ask the fundamental question of whether the land possesses any real potential for development. In contrast to the Victims and Land Restitution Law, the *regalía* system takes a great deal of control out of the hands of the national government.

But in both cases, the government runs the risk of carrying the responsibility if these policies either fail or fail to function adequately.

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Interim results of the reform programme

Mention of the many problems the government has had in implementing these two laws is not meant as a criticism of the administration's capabilities. Indeed, the implementation of these laws is a Herculean task that presents the government with immense problems. Despite all the difficulties, passing these laws was in fact the easiest phase in

this complex process. Passing laws during a heated reform phase and actually implementing them are two different things in Colombia. But it is necessary to give a rough outline of the main problems in order to grasp how, after the initial and understandable sense of euphoria about the passing of the laws, the subsequent long process of implementation plays its part in changing views on the performance of the Santos government as it reaches the halfway point of its term of office.

FOREIGN POLICY UNDER SANTOS

Overall, foreign policy can also be placed on the positive side of the balance sheet when assessing the first two years of the Santos administration. The restoration of diplomatic relations with Ecuador, which were destroyed after Santos authorised an attack on a FARC camp on Ecuadorian territory during his time as Defence Minister, and the increased closeness to Venezuelan President Hugo Chávez, who Santos described as his “new best friend” – to many people’s amazement and horror – show that Santos is keen to pursue a foreign policy that is less confrontational than that of his predecessor, at least in its style.

Extensive travel on the part of diplomats; the amicable agreement with Venezuela on who should hold the position of Secretary General of UNASUR;²⁰ the seat on the United Nations Security Council; the successful attempt to act as a mediator (in the case of Honduras); the launch of initiatives designed to create a stronger pacifist orientation and the articulation of its claim to be leaders in the region; the diversification of the international agenda to go beyond security and drugs and the associated semblance of “de-Americanisation” in Colombian foreign policy: overall, these factors have been welcomed by the international community. There can also be no doubt that the détente in relations with Venezuela has been an essential prerequisite for beginning peace negotiations with the FARC.

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20 | Unión de Naciones Suramericanas (Union of South American Nations), a union of 12 South American nations founded in 2008.

Despite this generally positive public opinion, some experts have taken a more sober view. Foreign policy has initially been held up as a prime example in the debate over whether Santos' policies are a continuation of those of his predecessor, Uribe.²¹ For many observers, Colombian foreign policy had already begun to diversify in 2008. Until then, the country had concentrated mainly on its direct neighbours, but difficult relations with Ecuador and Venezuela forced it to think about more diversification in its foreign relations.

There is a prevailing belief that the political and economic goals of Colombian foreign policy remain unchanged, but that it is being pursued with a more flexible strategy that has rid itself of ideology and gained both a more conciliatory style as well as a kind of pragmatism that has almost become an end in itself. Indeed, some believe this pragmatism has even become a permanent improvisation because of the lack of a fundamental vision.

The public's positive view of the "new foreign policy" is also due to the fact that Santos has managed, with a great deal of media support, to create an accepted version that tells of how Colombia managed to transcend its isolation in terms of foreign policy, particularly during the final phase of the Uribe government. But despite the media's echoing of this political fairytale, it is no longer sustainable, and it is now time to take a more differentiated view. Uribe polarised and sought confrontation, particularly with Chávez and Ecuadorian President Rafael Correa. In this question, foreign policy was and remains inextricably bound up with domestic policy. However, this was not the fundamental concept underpinning his ideological foreign policy, which was focused on major issues such as security and the drugs trade. Under Uribe, rapprochement with Ecuador had already begun, the negotiations for a seat in the UN Security Council were well advanced and active steps were being taken on peace agreements. Even supposed new innovations such as the

Uribe polarised and sought confrontation, particularly with Chávez and Ecuadorian President Rafael Correa. In this question, foreign policy was and remains inextricably bound up with domestic policy.

21 | For more on this issue cf. Konrad-Adenauer-Stiftung, "La política exterior colombiana y la percepción de los expertos: cambio o continuidad en la era Santos?", *KAS Papers*, No. 15, Bogotá, 2011, <http://kas.de/wf/doc/6679-1442-4-30.pdf> (accessed 6 Nov 2012).

pacifist initiatives already had their forerunners, such as the Arco del Pacífico created in 2006 between Colombia, Mexico, Chile and Peru.

Critics also point to the fact that these diverse foreign policy initiatives are often not mirrored in domestic policy. Santos is a master at using the international stage to push forward particular issues without tackling them on the home front. Examples of this are the debate on legalising drug consumption, Colombia's proposals at the Rio+20 conference and the country's near-invisibility in the United Nations Security Council.

All the rhetoric cannot hide the fact that neither the political nor the economic elites in the country have a clear idea on what should be Colombia's role in Latin America and in its international relations.

Although this debate might seem artificial at times, in the medium-to-long term it could serve to kick off a totally different debate on the country's international identity, something that is important for Colombia and

Latin America as a whole. All the rhetoric cannot hide the fact that neither the political nor the economic elites in the country have a clear idea and they certainly do not have a unanimous opinion as to what should be Colombia's role in Latin America and in its international relations.²²

REGIONAL AND LOCAL ELECTIONS 2011: A CHANCE TO GAUGE PUBLIC OPINION

Just over a year after Santos took office, the regional and local elections were held at the end of October 2011. From the start it was clear that an analysis of the elections in the sense of "winners" and "losers" with respect to the grand coalition and in relation to Santos would not be an easy task. The results threw up three important considerations for Santos. Firstly, none of the coalition parties were punished by the voters to such an extent that they would feel obliged to leave the coalition; secondly "la U", which remained more of an election alliance than a true party, came out as victors; and thirdly the fact that the direction being taken by the Unidad Nacional government was generally seen to be confirmed.

22 | For a broad academic assessment, see Stefan Jost, *Colombia: una Potencia en Desarrollo – Escenarios y Desafíos para su Política Exterior*, Bogotá, 2012.

In summary, the reasons behind the evaluation that the first two years of the Santos regime have been a success are as follows: the election of Santos as President was done in the expectation that he would bring a continuation of the Uribe government. The positive start made by his government was partly due to the ease of constructing the Unidad Nacional coalition. This was the first main expression of a tangible change in political style by ceasing Uribe's polarising and confrontational style in both foreign and domestic policy. This change was particularly noticeable in the foreign policy initiatives aimed at rapprochement, particularly with Venezuela.

This was linked to an increasingly concrete agenda that was not limited to mere announcements but had its roots in his very wide power base in Congress. This agenda tackled issues that the broad majority of the population considered to be appropriate solutions to existing or upcoming problems. Santos ignored early criticism that he was betraying *uribismo* and generated a widespread sense that he could create the necessary balance between maintaining continuity with his (still) very popular predecessor Uribe and providing the discontinuity needed for Colombia's future development.

This sense contrasts with the capacity of some sections of Colombian politics to process changes within their historical context and not simply categorise them in terms of short-term party politics. So it was clear to the wider public that Andrés Pastrana, the conservative

President between 1998 and 2002, would probably not have been elected without the scandals of the government under his liberal predecessor, Ernesto Samper. It is equally

It is clear that Uribe would not have become President without the public trauma caused by the failed peace talks with the FARC in Caguán.

clear that Uribe would also not have become President without the public trauma caused by the failed peace talks with the FARC in Caguán.²³ And without Uribe's two terms in office – during which the Colombian state took a decisive stand against the guerrillas and extended the state monopoly on the legitimate use of force into large swathes of the country – Santos has been unable to garner support for his agenda. And this is also likely to be the reason why Uribe's growing criticism of his predecessor largely dissipated.

23 | See pp. 28-30.

BETWEEN SCEPTICISM AND STAGNATION

At the halfway point, the Santos administration still enjoys high approval ratings, but there is a growing impression that the President is starting to reach his limits. Santos gave one of his strongest ministers the task of carrying out the plan to build 100,000 free houses for the poor, but this was publicly criticised as populism, an accusation that Santos has so far been unable to counter.²⁴

The Education Law, brought in by the Santos government, encountered a great deal of opposition. In the end Santos was forced to rescind the law in 2011.

Two separate developments were responsible for this. One is the announced reform of the Education Law. This law, brought in by the Santos government, encountered a great deal of opposition from public and private universities and the student body. In the end Santos was forced to rescind the law in 2011 and announce a new motion (which has so far not materialised). But at that time this first failure to push through legislation was not enough to cause any lasting damage to the government in light of the rave reviews being given to the Unidad Nacional coalition.

In Colombia, education and training are very much linked to a family's economic situation. And subsequent entry into the labour market is also strongly influenced by issues other than pure ability, leading to a further cementing of the country's *sociedad estamental*.²⁵ Colombia is a country with very low social mobility, and it is remarkable that this is an issue that is generally not given so much as lip service. It is quite simply not on the radar of most politicians and political parties.²⁶ This reflects how a major socio-political challenge for Colombia is being dramatically underestimated, and is something that could become a political time bomb in the not-too-distant future.

24 | Right at the beginning of his term, Santos quoted U.S. President Franklin D. Roosevelt by saying he wanted to be go down in history as "a traitor to his class". Now he has added that he wants to "make the rich cry". *Semana*, No. 1561, 7 May 2012, 36. This has led to speculation about whether Santos was veering to the left, despite the fact that he had not previously made a name for himself as an advocate of wealth redistribution.

25 | This refers to a "class-ridden society" in which "everyone knows their place" and remains within their social boundaries.

26 | An exception is former Uribe's former Finance Minister, Oscar Zulaga, who has brought up this issue and who is planning to stand for the presidency in 2014.

The fact that, by 2012, policies that were generally positive were being viewed with much more scepticism because of their implementation problems has led to a fairly sober appraisal of the government's performance. But above all, the ongoing issue that is central to Colombian domestic policy – the conflict with guerrilla groups, particularly the FARC,²⁷ along with general security issues – could become the Achilles heel of the Santos administration.

On the one hand, the Santos government has chalked up some spectacular successes in this respect. Shortly after taking office, a massive military campaign led to the killing of one of the most brutal and cynical guerrilla leaders, military commander Víctor Julio Suárez Rojas, alias "Mono Jojoy". After the death of Luis Edgar Devia, alias "Raúl Reyes", in March 2008 and the death from natural causes of Pedro Antonio Marín, alias "Tirofijo", in May 2008, the FARC found itself robbed of three of its highest-ranking leaders. The crucial signal that was sent out was that the conflict had entered a new phase in which it was no longer solely guerrilla foot soldiers who had to pay with their blood, but top commanders were also in the firing line. This indicates the quality of the intelligence work carried out by state bodies, but is also a sign of the disintegration of the guerrilla groups, which have suffered countless desertions over recent years. These military successes on the part of the state were also only made possible by the fact that the FARC itself provided crucial intelligence on the location of their leaders. If any more proof were required, this was supplied by the death of the top FARC leader, Guillermo León Saénz, alias "Alfonso Cano", who was killed in fighting in November 2011. Despite these military successes, it was clear that the media and public continued to believe these at times spectacular attacks were a way of drawing attention.

Military successes on the part of the state were made possible by the fact that the FARC itself provided crucial intelligence on the location of their leaders as shown by the death of the top FARC leader, Guillermo León Saénz.

27 | In addition there is also the ELN (Ejército de Liberación Nacional=National Liberation Army), which is much smaller than the FARC in terms of number of members and the threat it poses. But after a long period of confrontation with the FARC over recent years it has made efforts to improve its coordination with the FARC.

The political debate revolved around the explosive question of whether the Santos administration is in the throes of jeopardising the most important legacy of the Uribe era.

An investigation into the causes led to a debate on whether it was a question of the FARC regaining strength or whether they were actions that were causing a resurgence of guerrillas who had been forced into a corner but had adapted themselves to the new military strategy.²⁸ In contrast, the political debate revolved around the explosive question of whether the Santos administration is near to jeopardising the most important legacy of the Uribe era: the suppression of the FARC and a significant improvement in the security situation.

Even if Uribe's steady barrage of criticism of his successor's policies ends up having no effect on the Santos line, and even if it fails to instigate an anti-Santos front within "la U", it still gives the government a headache. Right from the start, Santos repeated like a mantra that he did not wish to argue with Uribe (whom the weekly magazine *Semana* had dubbed "Dr. No from cyberspace").²⁹ But by the end of 2011 it was becoming clear that Santos might no longer be able to maintain his (at least publicly) passive role in this dispute. The reason for this partial change of strategy was the fear in the Santos camp that Uribe would reveal the government's Achilles heel in the deteriorating security situation and that this could provide an unquestioning opposition with a toehold amongst the population.

FAILED JUDICIAL REFORM

One of the Santos government's prestige issues, judicial reform, has turned out to be a real disappointment, but nevertheless it affords us deep insight into the way Colombia's political system thinks and acts. The government began to tackle this issue immediately after taking office, and with good reason. But after just a few months, Santos

28 | Cf. i.e. León Valencia and Ariel Ávila, "La nueva realidad de las FARC", Corporación Arco Iris, 2011, <http://rebellion.org/docs/132833.pdf> (accessed 7 Nov 2012) or Camilo Echandia Castilla, "Situación actual de las FARC: Un análisis de los cambios en las estrategias y la territorialidad (1990-2011)", Fundación Ideas para la Paz (FiP), Sep 2011, <http://ideaspaz.org/index.php/publicaciones/series/informes-fip/item/25> (accessed 7 Nov 2012).

29 | "Álvaro Uribe, el jefe de la oposición", *Semana*, 26 May 2012, http://semana.com/wf_ImprimirArticulo.aspx?IdArt=177836 (accessed 7 Nov 2012).

had to retract the project, despite his strategy of initiating a broad dialogue. Early on in his term, he sent out a clear signal by announcing his plan to separate the judiciary from the Ministry of the Interior and to set up an independent Justice Ministry. The appointment of Juan Carlos Esguerra as Justice Minister gave the planned reforms an initial boost, but despite the government's many attempts to open up dialogue, it foundered because the judicial institutions were basically unwilling to accept reform and clung to vested interests. Almost to a man, they refused to enter into discussion on legislative reform. The constitutional court was the only exception in this respect.

Areas of contention were the reorganisation of public authorities, institutional changes, changes to areas of authority and attempts to speed up trials. In order to compromise with the judiciary, the terms of office of certain judges were extended from eight to 12 years and a system of cooptation was introduced, meaning that judges could choose their own successors. The law was passed in June by a broad majority shortly before the parliamentary recess, but still required final approval by the arbitration committee of both chambers in Congress.

The passing of the law unleashed a storm of outrage fuelled by NGOs and journalists who drew attention to the details of the agreements made in the closed bi-cameral arbitration committee. The main reason for this massive protest lay in a last-minute decision to dissolve with immediate effect the Supreme Court committee that was responsible for investigating the involvement of members of Congress in illegal activities. If found guilty, members of Congress would no longer automatically lose their seats. This was viewed by the public as an attempt to exempt them from punishment. The introduction of two appeal stages in charges against members of Congress was also criticised. This is basically a principle of the rule of law, but it cannot be put in place in Colombia because of the large numbers of Congress members who are under investigation. The Colombian Congress is largely discredited in the eyes of the public, so this last action proved to be the straw that broke the camel's back. The statement by the Presidents

The main reason for the massive protest lay in a last-minute decision to dissolve with immediate effect the Supreme Court committee that was responsible for investigating the involvement of members of Congress in illegal activities.

of the House of Representatives and Senate that they were so busy they had not had time to handle the details, or even read the text, provides a telling image of the way Colombian politics operate.

President Santos came under immense pressure not to sign this into law. Two days later, with the help of an 80-page written statement,³⁰ he announced the cabinet's decision to send the law back to Congress due to constitutional reasons and unsuitability. The leaders of the Unidad Nacional parties all rushed to agree with the President. Congress now voted against the law with the same broad majority with which it had passed it, but rejected the claim of constitutional grounds, accepting only the "unsuitability" of the law that could have "serious consequences" at a political level. In this way, Congress provided a damning indictment of its own incapacity.

If Santos had hoped he would gain a boost in popularity by demonstrating willingness to enter into confrontation with a Congress that was viewed as shameless and inept, and hence with his own Unidad Nacional, he was to be disappointed. He was blamed for this failure to push through judicial reform. And after Congress had been forced to cave in, it became clear that the fight over judicial reform had left behind only losers on the battleground: a Justice Minister who resigned, a Congress and party leaders with egg on their faces and a President buried under the weight of his own project.

It is unlikely that the government will have the time to take up the issue of judicial reform again. Even if the peace process were to be brought to fruition within a year, the elections are already starting to cast their shadow.

Against this political background, it is unlikely that the government will have the time or political clout to take up this issue again. Even if the peace process were to be brought to fruition within a year, the congressional and presidential elections due in mid-2013 are already starting to cast their shadow. This issue is not suitable for tackling during a (pre-) election campaign. This is why the Santos administration has also now run out of time to put into effect its ideas of creating a

30 | "Objeciones Presidenciales al P.A.L. 07 de 2011 Senado, 143 de 2011 Cámara", Bogotá, 25 Jun 2012, http://servoaspr.imprenta.gov.co:7778/gacetap/gaceta.mostrar_documento?p_tipo=2238&p_numero=07&p_consec=33105 (accessed 6 Dec 2012).

constituent assembly to bring about judicial reform.³¹ Santos also has to be prepared for the fact that Congress – which for the first two years has largely bowed down to the issues and particularly the timetable of the government – will be keen to find an opportunity to take its revenge on Santos for his refusal to ratify the judicial reforms.

Santos also has to be prepared for the fact that Congress will be keen to find an opportunity to take its revenge on Santos for his refusal to ratify the judicial reforms.

The failure of judicial reform marks in dramatic fashion the halfway point of the Santos administration. The traditional opposition between liberal and conservative parties, the bitter quarrels within “la U”, and the countless cabinet reshuffles that have served to strengthen the liberal/Santos-supporting camp in the government have, however, failed to reinforce its image with the Colombian people. And the first internal mutterings were being heard about whether the Victims and Land Restitution Laws were being used by Santos to help his re-election campaign. Despite good macro-economic growth, tough discussions were being held on poverty and changes to its measurement indicators. But by announcing peace talks with the FARC³² in early September 2012, Santos has managed to open a new chapter in Colombian history while at the same time, halfway through his term, setting priorities in terms of domestic policy that are likely to outweigh most other policies and problems over the next few months.

NEW HOPE – PEACE IS A TOP PRIORITY

In his inaugural address, Santos made it clear that the “door to dialogue” was not closed and that during his term he hoped “to sow the seeds of real reconciliation between Colombians”.³³ It soon became clear that this was more

31 | However, this option is unlikely to be seriously considered by the government because of fears that a constituent assembly would open the door to the intention of the uribismo to go down this path, to change the rules on reelection and to enable Uribe to stand for a third term.

32 | “Timochenko: La salida no es la guerra sino el diálogo”, YouTube, 4 Sep 2012, <http://youtube.com/watch?v=RjvA518r6TU> (accessed 7 Nov 2012).

33 | Juan Manuel Santos, “Alocución del Presidente de la República, Juan Manuel Santos sobre el ‘Acuerdo General para la Terminación del Conflicto’”, Presidencia de la República de Colombia, 4 Sep 2012, http://wsp.presidencia.gov.co/Prensa/2010/Agosto/Paginas/20100807_15.aspx (accessed 7 Nov 2012).

than just an expression of the usual hopes of Colombian politicians. By the middle of 2011 the contention was already made that it was possible "Santos would risk a new attempt to offer the guerrillas a negotiated settlement".³⁴

The first negotiations under conservative President Belisario Betancourt (1982-1986) produced a partial demobilisation of the FARC.

There have been many previous attempts at resolving the decades-long conflict between the Colombian state and the guerrillas, with very diverse results.³⁵ The first negotiations under conservative President Belisario Betancourt (1982-1986) mainly took place with the FARC and the M-19. This produced a partial demobilisation of the FARC and of some *frentes* of the ELN and the Autodefensa Obrera (ADO), who then came together with members of the Communist Party in 1985 to form the Unión Patriótica. But the majority of FARC members and chiefs remained on the other side of the law. One of the current FARC leaders, at present acting as their chief negotiator in Oslo, is Iván Márquez. He worked for the UP for some time before returning to illegal activities. The UP had some success in regional and local elections and in 1986 gained representation in Congress. Many UP activists and party members were killed in the years that followed.

Under the liberal Presidents Virgilio Barco (1986-1990) and César Gaviria (1990-1994) there was success in achieving the demobilisation of smaller guerrilla groups such as the Ejército Popular de Liberación (Popular Liberation Army, EPL), an armed wing of the Communist Party, the Partido Revolucionario de los Trabajadores (Revolutionary Workers' Party) and the indigenous group Movimiento Armado Quintín Lame. However, attempts to enter into lasting dialogue with the FARC and the ELN continued to fail as the years went by.

The negotiations with the M-19 that began under Betancourt failed, and the attack on the Palace of Justice carried out by the M-19 in November 1985 followed by its storming by the army is still the subject of legal wrangling. Under

34 | Stefan Jost, "Von Uribe zu Santos: eine Zwischenbilanz der 'Unidad Nacional' in Kolumbien", *GIGA Focus*, No. 8/2011, 1-4.

35 | Velásquez Romero and Carlos Alfonso, *La esquivia terminación del Conflicto Armado en Colombia. Una mirada político-estratégica a la confrontación con las FARC durante las tres últimas décadas*, Medellín, 2011.

Virgilio Barco the M-19 demobilised and formed its own party (Alianza Democrática M-19) which came third in the 1990 presidential elections and also performed well in the elections for the Constituent Assembly in 1990 before gradually declining with the “Polo”.

The peace initiative that attracted the most international attention was begun by conservative President Andrés Pastrana (1998-2002) in what became known as the “Caguán process”. For this peace process that went on between 1999 and 2002, the government and FARC demilitarised an area the size of Switzerland. The army was withdrawn, the FARC were given complete control and the talks took place in this zone. Caguán failed for a variety of reasons, the main one being the clash of two parties with two fundamentally different positions and questionable conceptions of themselves and others. On the one side there was a weak state that found itself militarily on the defensive and that sometimes found itself embroiled in hostilities with guerrilla groups that lasted days or weeks and in which it often suffered defeat. The FARC was literally at the gates of the capital, Bogotá, and attempts by the Pastrana government to initiate talks were interpreted by the guerrillas as weakness. The FARC was at the peak of its military power, but nevertheless did not recognise that this was also the historic high point of its potential political influence. In a cynical mixture of blindness, arrogance and hubris, the FARC preferred to use the negotiation period to press on with its terrorist and criminal activities and to build up its military infrastructure in order to deal the decisive military blow. For the FARC, the debate about the more than 100 items on the agenda was just a stage in an ongoing war rather than a step towards a peace agreement.

The failure of Caguán in 2002 led to a deep sense of trauma in Colombian politics and society. However, the modernisation of the Colombian armed forces that was begun in this phase as part of the Plan Colombia and the fundamental transformation in the social climate created a foundation for the state to give a different response to the challenge presented by the guerrillas. This response was formulated by Álvaro Uribe with his concept of a “Democratic Security Policy” that was to characterise his eight years in office.

The fundamental transformation in the social climate created a foundation for the state to give a different response to the challenge presented by the FARC.

Despite many military successes that would have been unimaginable in previous years, the guerrillas were still in a position to hold out, though under ever more precarious conditions. This was largely made possible by drug money. As a result, the majority of the population lost faith in the much-trumpeted “beginning of the end of the guerrillas” and instead realistically expected the conflict to continue for decades. This pessimism provides the context for the generally positive response, despite all the scepticism, of Colombian society to the Santos peace initiative.

THE “AGENDA BEHIND THE AGENDA”

The announcement of the peace talks gave justification to all those who believed from early on that it was not just a medium-term “agenda behind the agenda” but that the government had made contact with the guerrillas at a very early stage. In this way it could benefit from contacts that had been made during the time of the Uribe administration. The *hoja de ruta*, the Colombian roadmap for peace, has a very clear chronology. Particularly worthy of mention are the following four laws that have already been passed:

1. In December 2010 the government instigated changes to the Ley de Orden Público. This law, passed in 1997, gives the President the right to take action for the “resolution of the armed conflict”. This “Public Order law” has been extended until 21 December 2014. One of the main amendments was the removal of the passage that allowed the creation of a demilitarised zone or any other military retreat from parts of national territory. This removed the territorial basis for a new Caguán.
2. The “Victims and Land Restitution Law” was the next step on this roadmap. Along with the previously-mentioned rulings, shortly before the legislative procedure was completed Santos pushed through the use of the term “armed conflict” to describe the conflict between the state and the guerrilla groups. For years, the Uribe administration had vehemently fought against the use of this phrase due to fears that it would allow the guerrillas to be given the status of combatants in international law. By legally recognising the “armed

Santos pushed through the use of the term “armed conflict” to describe the conflict between the state and the guerrilla groups. For years, the Uribe administration had vehemently fought against the use of this phrase.

conflict”, the government created a Gordian knot for the domestic and international public and came out in clear contrast to the Uribe administration that, even internationally, it had wasted time on details such as insisting that “farc” be written in lower case.

3. The law on the *regalías* should also be viewed in this context, even though this has not been the subject of public debate. By promoting more equal development of the country’s different regions it aims to help minimise or at least reduce the roots of conflict, particularly in rural areas.
4. With the introduction of the Ley Marco Jurídico para la Paz (Legal Framework for Peace),³⁶ even the most sceptical observers finally had to admit that the Santos administration’s programme of legislation had a certain internal cohesion. Although this law was tabled by a senator from “la U”, it was an open secret that it had been drawn up in the presidential palace and that Santos had afforded it top priority. This legal framework involves changes to the constitution and has attracted support and criticism in equal measure.³⁷ It gives the government the right to initiate legislation giving special rights to groups or individuals involved in the conflict. With an eye to the International Criminal Court (ICC), judicial or extra-judicial instruments of transitional justice would guarantee the state’s duty to investigate and mete out punishment. This revolves around the selection of certain crimes that should be prosecuted according to a set of criteria that still have to be specified. It is also planned to set up a Truth Commission.

Judicial or extra-judicial instruments of transitional justice would guarantee the state’s duty to investigate and mete out punishment. This revolves around the selection of certain crimes.

36 | Planeta Paz, “Marco Jurídico para la paz, Texto conciliado 19 de Junio”, 21 Sep 2012, <http://planetapaz.org/index.php/15-noticias-planeta-paz/noticias-varias/584-marco-juridico-para-la-paz-texto-conciliado-19-de-junio> (accessed 7 Nov 2012); Legis Colombia, “Todo sobre el Marco legal para la paz”, http://legis.com.co/BancoConocimiento/T/todo_sobre_el_marco_legal_para_la_paz/todo_sobre_el_marco_legal_para_la_paz.asp (accessed 7 Nov 2012).

37 | Rafael Guarín, “Paz Justa. En contra de la impunidad y a favor de las víctimas, la justicia y la paz. Análisis sobre el marco jurídico para la paz”, *Debate Político*, No. 49/2012, <http://libretadeapuntos.com/wp-content/uploads/2012/06/LIBRO-PAZ-JUSTA.pdf> (accessed 7 Nov 2012).

However, the real problems will only emerge in their full diversity once work on the implementing act begins. At this stage, the selection criteria for the crimes that are to be prosecuted are to be limited to those who are “most responsible”. This may seem to make sense, but it is very hard to imagine a peace process that involves the most culpable FARC members being prosecuted and imprisoned.

If we look at individual aspects of the agreement between the government and the FARC, it also becomes clear how difficult it is likely to be to combine Colombia’s international obligations with the peace process.

Finally, annex offences are to be defined as “political offences” so that those responsible can take part in the political process. This excludes perpetrators of systematic crimes against humanity and genocide in so far as they “have been selected and convicted of this” – here perhaps providing the best channel for an amnesty formula. If we look at individual aspects of the agreement between the government and the FARC, it also becomes clear how difficult it is likely to be to combine Colombia’s international obligations with the peace process.

This legislation raises the question of whether it should be viewed as a stage in ongoing secret talks – something that is denied, even by insiders – or whether it is a down-payment by the Santos administration with an eye to future peace negotiations. The answer would seem to be the former. Another law is also due to be passed shortly that will pose problems for judicial reform. In Colombia there is ongoing controversy about the legal treatment of the armed forces when illegal actions are committed during armed conflict. The *fuero militar* law now aims to place such actions under the jurisdiction of military law unless they involve serious human rights abuses. This is a sign of political support for the armed forces. It is no coincidence that this legislative programme has an inherent cohesion that ties in with the commencement of peace talks.

ORGANISATION AND CONTENT OF THE PEACE TALKS

The peace talks are due to take place in three phases. The first phase was completed at the end of August with the agreement to hold official talks. The second phase, which began in Oslo in the middle of October and is due to continue in Cuba, will comprise the actual negotiations themselves. The outcomes from these talks will then be implemented during the third phase.

Santos has promised that they will not “repeat the mistakes made in the past”. By this he means the Caguán talks. Indeed, there are some significant differences between the current peace talks and those held at Caguán: for example, no demilitarised zone has been established. No ceasefire has been agreed and so clashes between the military and the FARC continue unabated. Santos has warned the public the FARC may even step up its attacks. The talks are not being held in public and under permanent media scrutiny but are taking place abroad.

There are some significant differences between the current peace talks and those held at Caguán. No demilitarised zone has been established and clashes between the military and the FARC continue unabated.

It is not yet clear whether there will be a time limit on the talks. When Santos said the phases should last “months, not years,” the guerrillas responded immediately by disagreeing. But even they must realise that, if the talks continue indefinitely, this is effectively the same as them failing. It would be politically unacceptable for the talks to drag on into the 2014 election year without any signs of tangible progress.

One major difference to Caguán is the “roadmap,” which is designed to systematically lay the groundwork for the negotiations and to reduce to a minimum the potentially chaotic nature of such talks. This roadmap and the involvement of the country’s President would suggest that the talks between the government and the guerrillas have already made more progress than has been officially recognised.

The “General agreement for the termination of the conflict”³⁸ covers five main issues: integral agricultural development (access to land, dealing with the problem of unproductive areas, developing infrastructure in under-developed regions, social development including health, education, housing, eradication of poverty); guarantees for the exercise of political opposition and citizen participation (especially for new movements that arise following the signing of the final agreement, access to media, mechanisms to promote greater participation at all levels); ending

38 | Observatoire Politique de l’Amérique latine et des Caraïbes, “Acuerdo General para la terminación del conflicto y la construcción de una paz estable y duradera”, <http://opalc.org/web/images/stories/AcuerdoTerminacionConflicto.pdf> (accessed 7 Nov 2012).

of the armed conflict (abandonment of arms, re-integration of FARC members into civil life); combating the drugs trade (crop substitution programmes, prevention programmes and finding a “solution to the phenomenon of production and trading of drugs”) and finally recognising the rights of victims and establishing the truth.

ISSUES AFFECTING THE PEACE TALKS

The decision to hold peace negotiations was first and foremost a political one. The government is on thin ice, because Columbia has to observe international criminal law.

A number of background issues need to be taken into account when considering the likelihood of the peace talks being successful.

The decision to hold peace negotiations was first and foremost a political one. From an international perspective, the government is on thin ice, because, as a signatory to the Statute of the International Criminal Court (ICC), Columbia must observe international criminal law. The moment of truth will come when a peace agreement has been drawn up and it becomes clear just how much room for manoeuvre the ICC has, whether outside intervention could be counterproductive to the peace process, or whether a point of no return has been reached and the ICC has to intervene. That the government is aware of this potential problem became clear when Eduardo Pizarro Leongómez, an recognised expert on the guerrilla issue, was appointed as the Colombian ambassador to the Netherlands, the seat of the ICC, in September 2011. Santos has also managed to internationalise the peace process by involving Venezuela, Chile, Cuba and Norway as guarantors, with the involvement of Venezuela and Cuba appearing to be particularly necessary for the success of the talks.

Another important factor is the desire of the much smaller guerrilla army, the ELN, to take part in the peace process, something the government seems prepared to accept.³⁹ Their involvement, in whatever form, is urgently needed, otherwise they could become a refuge for elements of the FARC who might, under certain circumstances, be unhappy with the peace agreement. This in turn could lead to an extension of the guerrilla war in Columbia.

39 | David Aponte and Andrés R. Vargas, *No estamos condenados a la guerra. Hacia una estrategia de cierre del conflicto con el ELN*, Bogotá, 2011.

In light of what has happened with past peace initiatives, it is understandable that there is a certain amount of scepticism regarding the outcome. However, there is one factor that could point to a potentially successful resolution, and that is the fact that the military balance of power has dramatically changed in recent years. Despite the FARC's seeming unstoppable growth in the 1980s and 1990s, it is still just far from gaining political power as when it started.⁴⁰ The guerrillas are facing a government whose military actions have significant levels of support within society. The idea developed at the end of the 1980s of "combining all forms of struggle", which in reality meant the inclusion of drug trafficking, kidnapping, extortion and the murdering of civilians, effectively led to the political aspirations of the earlier years being all but forgotten and resulted in the FARC being almost totally discredited within society. Just how much pressure the FARC is under to negotiate can be seen in the fact that even the death of the top guerrilla leader, Alfonso Cano, in November 2011 did not result in the pre-negotiation phase being broken off.⁴¹ What is also worth noting is the fact that, against all expectations, Cano's successor has so far been in a position to guarantee a united leadership, at least on the surface.⁴²

The idea of "combining all forms of struggle", which meant the inclusion of drug trafficking, kidnapping, extortion and the murdering of civilians, effectively resulted in the FARC being almost totally discredited within society.

In spite of all the military successes, there was a growing feeling towards the end of the Uribe government, and even more so under Santos, that the shift in the balance of power which had started in 2002 did not mean there was an end in sight to the guerrilla war, and that the conflict could indeed drag on for a long time, whatever military successes the government might have. The ominous question of whether the conflict can be won militarily, and the recognition that such a campaign has resulted in a great deal of bloodshed over the years and consumes tremendous amounts of

40 | Daniel Pécault, *Las FARC. Una guerrilla sin fin o sin fines?*, Bogotá, 2008; Eduardo Pizarro Leongómez, *Las FARC (1949-2011). De guerrilla campesina a máquina de guerra*, Bogotá, 2011.

41 | International Crisis Group, "Colombia: Peace at last?", *Latin America Report*, No. 45/2012, 32.

42 | Raúl Reyes' successor Joaquín Gómez, though, who is heading the influential Southern Bloc of the FARC that also controls the drugs trade, until now did not play a role in the peace negotiations.

resources and ties up personnel that could be better put to other uses in Columbia, has paved the way for another attempt at a peace process. At the moment, Santos has broad institutional and social support for the peace initiative, including among the armed forces.

There are some highly complex issues that should not lead to any illusions. This includes Santos' hopes that the FARC could help in the fight against drug trafficking.

It is clear that the political agenda of Santos' first two years in power effectively anticipated the key issues on the agenda of the current peace negotiations. Nevertheless, we should not lose sight of the fact that, even on this limited agenda, there are highly complex issues that should not lead to any illusions. This includes Santos' hopes that the FARC could help in the fight against drug trafficking.⁴³ This would be the first time in history that a drugs cartel would voluntarily disband. It is more likely that the income from the drugs trade will become the catalyst to the breakdown of the current unity within FARC and lead to something that has been feared for a long time, a Balkanisation of the FARC – a split into several independent *frentes* that are no longer held together by a single command. Such a Balkanisation would in fact lead to a further increase in organised crime.

Compared to Caguán, the underlying factors surrounding the current talks would appear to offer more chance of success.⁴⁴ While Pastrana was attempting something new but necessary, and did so with a great deal of courage but little in the way of preparation, it would appear that Santos is not prepared to take the same kinds of risks. Even if the initial talks in Oslo have shown that it is not going to be a walk in the park, the next few weeks will give us a better idea of what has already been agreed in the last two years and is now to be fed into the official negotiations under the obligatory media applause.

43 | "Santos plantea que las FARC podrían ayudar en la lucha contra el narcotráfico", *Camino a la paz*, 25 Sep 2012, <http://noticiascaracol.com/nacion/video-275669-santos-plantea-farc-podrian-ayudar-la-lucha-contra-el-narcotrafico> (accessed 7 Nov 2012).

44 | Alfredo Rangel, "Los Diálogos de Paz. Por: Alfredo Rangel Diálogos de Conveniencia", *El Delantero*, 17 Sep 2012, <http://eldelanteroiokpg.blogspot.mx/2012/09/los-dialogos-de-paz-por-alfredo-rangel.html> (accessed 7 Nov 2012).

Irrespective of any individual solutions that might be negotiated and the interests affected by them, the acceptance of any final agreement will in principle be determined by whether it is perceived as an acceptable balance between justice and peace. In a country in which security and peace are seen as “competing and not complementary”,⁴⁵ people should not assume that, after decades of conflict and of FARC’s reign of terror, justice will be subordinated to peace.

In a country in which security and peace are seen as “competing and not complementary”, people should not assume that, after decades of conflict and of FARC’s reign of terror, justice will be subordinated to peace.

RE-STRUCTURING OF THE PARTY SYSTEM

The founding of the Unidad Nacional was seen from the very onset as more than Santos merely keeping one of his election promises. He was surely seeking to establish a broad base within Congress and persuade the opposition to support some of his planned policies in advance. Peace negotiations were clearly on his agenda, but just as clearly not on the agenda of the various parties concerned.

More importantly, this Unidad Nacional was seen as a strategic umbrella under which Santos could re-unify those parties that had grown out of the liberal political wing, and more specifically out of the Liberal Party (PL) itself.⁴⁶ Three of the four coalition parties at that time had their roots in Colombian liberalism, or had liberal agendas – the Partido Liberal (PL), the Partido Social de Unidad Nacional (generally known as “la U”) and the Cambio Radical (CR).⁴⁷ Although he initially proceeded with some caution, it soon became increasingly clear that this was a project that Santos was truly interested in. In contrast to his predecessor Uribe, who was also from the liberal camp, he regularly and openly referred to his liberal roots.⁴⁸

45 | Günter Maihold, “Kolumbien vor Friedensgesprächen. Prekäre Voraussetzungen für einen überfälligen Verhandlungsprozess”, *SWP-Aktuell*, 53/2012, 2, http://swp-berlin.org/fileadmin/contents/products/aktuell/2012A53_ilm.pdf (accessed 7 Nov 2012).

46 | Jost, n. 3.

47 | This name cannot be compared to the European understanding of the term for all parties. The Liberal Party is a member of Socialists International (SI), while “la U” and the CR do not belong to any international party alliances.

48 | After a euphoric appearance at the PL party conference, Santos had to make it clear to the public that the “la U” was still his party.

Santos' allies in "la U" also wanted to get their party to commit to going down this path, something they have not yet succeeded in doing.

In 2011, he began to pursue this liberal reunification more aggressively and even discussed it in public. The heart of the plan consisted in bringing the PL and the CR together. The first step was to merge the two factions in Congress, together with the announcement that they would in future have a common party leadership. The plan to have a referendum, run in conjunction with the regional and local elections in October 2011, in which the people would be asked if the liberal parties should merge, was rejected by the country's electoral court. Santos' allies in "la U" also wanted their party to commit to taking this route, something they have not yet succeeded in doing. This is not so much for ideological or anti-Santos reasons, as for reasons of organisational independence, even though the "la U" is not the most structured party when it comes to organisation. However, its electorate are slightly more discriminating, with the majority of its officials and elected representatives being liberals, while a small number are from the more conservative or "Uribist" camp. It seems certain that when it comes to the moment of truth, the liberal reunification project will cause the "la U" to split, but not necessarily to fold.

Just how vague these differentiations might be became clear when, in the middle of 2011, the "la U" forged closer ties to the Conservative Party at various different levels, some of them unofficial. These closer ties became public knowledge when a pact was agreed between the two party factions in the House of Representatives, a move which took even the party factions in the Senate by surprise. By the end of 2011, this move was superseded by two further developments. Firstly, the internal party power struggles in the "la U" had assumed much greater proportions and could no longer be hidden from the public. The argument was about who should succeed Juan Lozano, who was very open to this particular cooperation. By October 2012, this issue had still not been resolved and came down to whether the "Santists" or the "Uribists" would prevail. While all this was going on, the Conservative party decided to indulge in a bout of navel-gazing and reforming their statutes, which dragged on well into the second half of the year. The reason behind this introspection was their poor showing in the local and regional elections of October 2011. Within

the space of a few months, the political context that might have provided the foundations for a more clearly defined official cooperation between the two parties had completely changed.

Just as “la U” does not have only “Uribists” or even, suddenly, only “Santists,” the Conservative Party is also far from being united. Uribe still has his supporters, while those opposed to Uribe have for a long time rallied around the former state President Andrés Pastrana, who has an intense personal dislike of Uribe. As the Conservative Party seems to regularly think about by changing its name to signal a (partial) shift in policy in order to improve its election chances, we cannot exclude the possibility that the impetus for a restructuring of the country’s party system might come from this direction. One option would be to follow the Spanish example⁴⁹ and change the party’s name to “Partido Popular” and thus attempt to create a broader and more regional organisation that would encompass parts of “la U” and overcome the view of the party as being simply “the Right”.

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It became clear that neither the Conservative Party as a coalition partner in the Unidad Nacional gathered behind an Uribe who was viewed as being the sole opponent of the Santos government nor Uribe in “his la U” would be able to prevail in the central issues against Santos. In July 2012 this led to the foundation by Uribe of the Puro Centro Democrático. Now it has more the character of a *movimiento*, a movement that is attempting to bring together a range of currents under one roof. But it is likely to be only a matter of time before this movement has the status of a legitimate party. It seems very probable that Uribe will stand for the congressional elections in March 2014 on its ticket, and perhaps even be the top candidate on a Senate

49 | The Spanish “Partido Popular” has offices in several countries in Latin America. Through its foundation FAES the party tries to influence the political environment that it is associated with.

list.⁵⁰ It is not impossible that another constitutional amendment will be agreed that for a short period will allow a change of party without the loss of a seat. As if this were not enough, Santos' announcement of peace talks with the guerrillas in September 2012 throws an additional factor into the mix that is hard to evaluate and that could have an impact on the short- and medium-term trend of a (partial) restructuring of the Colombian political party landscape.

Even at the start of the Unidad Nacional, it was observed that, with this formation, Colombia could enter into a phase that was comparable with that of the Frente Nacional between 1958 and 1974. This "National Front" consisted of the conservative and liberal parties, which rotated the presidency and divided up all other positions of power between them. The fear was that this grand coalition could do permanent damage to the core of the multi-party system and have an effect on the return to the traditional two-party system that was being envisaged by Santos and other party leaders.

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There is no doubt that the presidential elections of 2010 uncovered latent potential breaking points in some of the parties concerned and increased the likelihood of conflict. This was and remains a source of the

potential restructuring of the Colombian party system. But the differentiation of Colombian society and politics is too far advanced for the idea to be convincing that the Unidad Nacional will almost inevitably lead to a return of the two-party system.

The peace process could, however, have consequences in this direction. It remains to be seen what will be the outcome of the peace negotiations and how they will be received. It cannot be ruled out that the ongoing restructuring of the political parties will not have an influence, at

50 | Furthermore, for some time now there has been open speculation and debate about whether Uribe might return to the stage, perhaps as a candidate for Vice-President under his former Finance Minister Oscar Zuluaga or under the current Colombian Vice-President, the left-leaning Garzón. Most legal experts believe this will not happen because a third presidential term is barred by the constitution, and if Uribe were Vice-President he would automatically take over presidential duties if the President were absent or unable to fulfil his duties.

least in the medium-term, on this core issue of Colombian domestic policy, the associated agendas and the 2014 elections.⁵¹ Even if, for the reasons previously cited, this does not necessarily mean a return to the traditional two-party system, it could lead to a dualistic party system of two opposing blocs and a significant increase in polarisation.

The development of the party system is also subject to one great unknown. Despite the experiences with the UP from the mid-1980s onwards, there is a fair likelihood that a successful peace process could lead to an organised form of political participation for the former guerrillas. This is precisely the scenario envisaged in the Ley Marco Jurídico para la Paz. At the moment, the potential effects of this on the existing structure of the party system are impossible to assess. But the potential risk should not

be underestimated at the start. If a peace agreement were to lead to a Balkanisation of the FARC, then it is possible that one part would form itself into a political party to act solely as the long political arm of the guerrillas,

A Balkanisation of the FARC could lead to an extremely problematic new dimension for the cooptation of the political system and to an explosive territorialisation of the distribution of power.

with their structural, and above all financial, support. This could lead to an extremely problematic new dimension for the cooptation of the political system,⁵² something that has already been the subject of much discussion in Colombia, and also to an explosive territorialisation of the distribution of power.

A more permanent institutionalisation of the Colombian party system has to be assessed very carefully. The focus on political leaders continues to promote the ease with which *movimientos* can successfully establish themselves within a very short space of time and be in a position to shift the balance of where votes are cast. It may be very difficult to predict the political future of Colombia, but one thing is clear: the Colombian party system is going to change.

51 | The congressional elections (House of Representatives and Senate) will take place in March 2014, with the presidential elections following in May, and a second ballot in June if required.

52 | For more on this issue see Garay Salamanca, Luis Jorge et al., *La captura y reconfiguración cooptada del estado en Colombia*, Bogotá, 2008.

TIME IS RUNNING OUT

Santos has made a spectacular start with his Unidad Nacional. His boldness in introducing a new agenda has brought about new initiatives that have gained recognition at home and abroad. But they have also brought with them the pains of day-to-day problems, stagnation and failure. Santos was in danger of suffering the Obama effect, i.e. a

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certain disenchantment in light of the high – perhaps unrealistic – expectations placed on him in the face of stubborn realities. At the halfway point in his term, Santos has so far managed to avoid this by significantly raising the bar for his government with the start of the peace process. The remaining 21 months of the Santos administration will be imbued with two challenges. Firstly, Santos has to bring the peace process to a conclusion. Secondly, he must above all use his remaining time in office to press on with the implementation of his reforms so they become as far as possible irreversible. He only has a little over 12 months to do this before the next election year rolls around.

The campaign for the congressional elections will begin in mid-January 2014, with the presidential elections following in May. Experience of Colombian politics has shown that this is a time when Congress shifts down several gears, and there is no time or space for fundamental measures to be taken or for reforms to be pushed through. Santos could find himself going down in the history books, or he could fail spectacularly. Time is running out.

ACRONYMS

ADO	Autodefensa Obrera
CR	Cambio Radical (Radical Change)
EPL	Ejército Popular de Liberación (People's Liberation Army)
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia – Ejército Popular (Revolutionary Armed Forces of Colombia – People's Army)
ICC	International Criminal Court
PCC	Partido Conservador Colombiano (Colombian Conservative Party)
PIN	Partido de Integración Nacional (Party of National Integration)
PL	Partido Liberal (Liberal Party)
POLO	Polo Alternativo Democrático (Alternative Democratic Pole)
PSUN	Partido Social de Unidad Nacional (Social Party of National Unity)
PV	Partido Verde (Green Party)
UNASUR	Unión de Naciones Suramericanas (Union of South American Nations)
UP	Unión Patriótica (Patriotic Union)