

The No to the peace deal in Colombia: what now?

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The results of the referendum on the peace deal in Colombia shocked the Colombian Government, the FARC-EP, the international community, the Yes voters and even the No voters. The No won by a narrow margin: 50.21% of the votes over the 49.78% of the votes for Yes. Even though the peace deal cannot be implemented, results do not show the existence of a broad majority opposing it. What is more, if results had been reversed, the call for reflection would probably have been the same.

The high abstention also needs to be underlined. 60% of the Colombian population decided not to vote. It is true that this country has a long abstentionist tradition in all kinds of elections. This time, all political sectors (former President Álvaro Uribe's followers, political sectors that are closer to the current President and the left wing), social actors and citizens mobilized their forces to get people to vote, despite which participation was not as high as expected for such a crucial process.

The territorial distribution of the vote is worth mentioning too. The No was mostly reached in the big cities and in those areas where the conflict did not have direct consequences. On the other hand, the Yes was the majoritarian option in those areas most hit by violence, and it even reached substantial majorities in certain municipalities.

The results generated a climate of uncertainty. In this sense it is useful to take a look at Judgment C-379/2016 of the Colombian Constitutional Court on the constitutional challenge of the Law calling the referendum, as it contains some clues as to the referendum legal effects. The Judgment mentions in the first place that the object of the referendum is under no circumstance the definition of the content and scope of the right to peace as laid down by Article 22 of the Colombian Constitution. The reason is that the right to peace is a fundamental right and, as such, it cannot be submitted to public consultation. On the contrary, the object of the referendum is the final agreement that materializes a political stance on the negotiated conditions for the end of the conflict and the achievement of peace. In other words, the referendum is the instrument giving binding effect to the agreement and, upon adoption of the agreement, imposing the obligation to implement it on the President. Likewise, if the number of votes or the majority required are not reached the President is not allowed to implement the agreement.

Be that as it may, the No does not limit the governmental powers to preserve the public order according to the Constitution and especially to sign peace agreements with illegal armed groups in the framework of a negotiated way out of the conflict. The Court Judgment sets forth that, in the event the No wins, the President shall restart the process of negotiation. This means that a negative result does not involve an objection to the whole peace process and does not prevent from finding new ways out of the conflict.

Renegotiating the peace deal has precisely been the decision taken by the negotiating table following the referendum results. The table has not decided to include the No-representatives in the negotiations but to keep holding bilateral discussions between the Government and the FARC-EP and open the dialogue at national level. As a consequence, the negotiating table has received a high number of amendments proposed by the Democratic Center (the political party founded by Álvaro Uribe), by relevant politicians (namely former Presidents), by the Catholic and Evangelical Churches and by the citizenship.

In this new scenario, the key for success will depend firstly on the capacity of the No-voters to specify the core reasons of their disagreement. By doing this, modifications and proposals will not entail an amendment to the whole agreement or the incorporation of new matters with an indirect or incidental relation to the content of the agreement. Similarly, the supporters of Yes will need to clearly point out the essential content of the agreement, that is, those aspects that cannot be modified either because they directly affect the content of the right to peace or because they were not questioned during the agreement discussion.

In any case, specifying and renegotiating the bones of contention in a successful manner will largely depend on the capacity of all actors to leave aside their partisan interests, political personalism and calculations facing the new presidential election, and to adopt instead an approach based on negotiation ethics.

The third key for success is precisely the next presidential election. Too long negotiations would coincide with the 2018 electoral campaign – and the risk of polarization of the peace process channeled through the different candidates is enormous.