

The 1991 Colombian National Constituent Assembly

Turning Exclusion into Inclusion, or a Vain Endeavour?

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IPS Paper 1

Abstract

At the beginning of the 1990s, Colombia held its first publicly elected National Constituent Assembly. The new Constitution of 1991 was seen as the key to end decades of political crisis and armed conflict through inclusivity in the bargaining of a new political settlement. Although the Assembly clearly failed to achieve that objective, it is still worth asking to what extent the primary goal of increasing inclusivity in decision-making has been reached. In order to take stock of this unique experience in Colombian history, this paper conducts an analysis of the actual degree of inclusivity in all four phases of the process: the preparation, negotiation, and the final codification and implementation of the new Constitution of 1991. This paper is part of the research project 'Avoiding Conflict Relapse through Inclusive Political Settlements and State-building after Intra-State War', and is one out of four papers written on the case of Colombia.

About the Publication

This paper is one of four case study reports on Colombia produced in the course of the collaborative research project 'Avoiding Conflict Relapse through Inclusive Political Settlements and State-building after Intra-State War', running from February 2013 to February 2015. This project aims to examine the conditions for inclusive political settlements following protracted armed conflicts, with a specific focus on former armed power contenders turned state actors. It also aims to inform national and international practitioners and policy-makers on effective practices for enhancing participation, representation, and responsiveness in post-war state-building and governance. It is carried out in cooperation with the partner institutions CINEP/PPP (Colombia, Project Coordinators), Berghof Foundation (Germany, Project Research Coordinators), FLACSO (El Salvador), In Transformation Initiative (South Africa), Sudd Institute (South Sudan), Aceh Policy Institute (Aceh/Indonesia), and Friends for Peace (Nepal). The views expressed in this paper are those of the authors and do not necessarily reflect the views and opinions of the Berghof Foundation, CINEP/PPP, or their project partners. To find more publications for this project please visit www.berghof-foundation.com. For further information, please contact the project research coordinator, Dr. Véronique Dudouet, at v.dudouet@berghof-foundation.org.

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List of Acronyms

ADM-19	<i>Alianza Democrática M-19 / Democratic Alliance M-19</i>
ADO	<i>Auto Defensa Obrera / Workers Self Defence</i>
ANC	<i>Asamblea Nacional Constituyente / National Constituent Assembly</i>
CGSB	<i>Coordinadora Guerrillera Simón Bolívar / Simón Bolívar Guerrilla Coordinating Board</i>
ELN	<i>Ejército de Liberación Nacional / National Liberation Army</i>
EPL	<i>Ejército Popular de Liberación / Popular Liberation Army</i>
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia / Revolutionary Armed Forces of Colombia</i>
M-19	<i>Movimiento 19 de Abril / 19th of April Movement</i>
MAQL	<i>Movimiento Armado Quintín Lame / Armed Movement Quintin Lame</i>
MSN	<i>Movimiento Salvación Nacional / National Salvation Movement</i>
PCC-ML	<i>Partido Comunista de Colombia – Marxista Leninista / Colombian Communist Party – Marxist Leninist</i>
PRT	<i>Partido Revolucionario de los Trabajadores / Workers’ Revolutionary Party</i>
UP	<i>Union Patriótica / Patriotic Union</i>

1 Introduction

“Your responsibility is [...] the future of Colombia, with the children of our children, with all our fellow citizens. Advancing the century, they will remember with gratitude that Constituent Assembly from which emerged a constitution that helped to consolidate peace, to found a just order and to strengthen a democracy open to the participation of all Colombians”¹ (Gaviria 1991). When President César Gaviria inaugurated the National Constituent Assembly (*Asamblea Nacional Constituyente* – ANC) in 1991, he bluntly defined the assembly’s tasks. By establishing a more inclusive political settlement,² the new Constitution was thought to put an end to the protracted Colombian armed conflict and, by doing so, fulfil the profound expectations of many Colombians who were hopeful that the new charter could represent a peace pact.

More than 20 years after the new Constitution was signed, the optimism of the early 1990s seems to have completely vanished. Colombia is still at war with guerrilla groups that stress political exclusion and injustice as the main reasoning for their struggle. The issue of political participation has become one of the central negotiation points in current peace talks between the Colombian government and the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia* – FARC). Several sections of the recently published pre-agreement concerning the second agenda point of the ongoing negotiations in Havana (i.e. political participation) are still directly related to issues that were already highlighted during the peace agreements of the 1990s and the ANC, such as the “promotion of democratic citizen participation” and “pluralism and political inclusion” (Comunicado Conjunto 2013). In this light, one is easily left with the suspicion that the ANC has generally failed. Is such a harsh judgement really justified?

This paper endeavours to answer this question based on a review of the existing literature on the ANC, primary sources such as interviews, original peace agreement texts and official communications, as well as speeches and meeting minutes of the ANC. In order to be able to take stock of the ANC’s achievements it is crucial to understand the eventful chapter of Colombian history of the early 1990s. The Assembly’s failure or success cannot be measured in light of whether or not the new charter led to peace – a matter that also depends on other variables including whether the new Constitution succeeded in opening democracy and, thus, increased the degree of inclusivity in Colombian politics. Inclusivity will be defined here as the degree of access to governance and decision-making by various sectors of society. Assuming that it incorporated the possibility of all sectors of society to influence and participate directly or indirectly in decision-making in order to have their concerns addressed, two main dimensions of inclusivity have been identified – input and output inclusivity. While the former embodies the principle of ‘government by the people’ and refers to both the simple possibility and the actual degree of participation by (previously) marginalised communities within decision-making structures, the latter materialises the principle of ‘government for the people’ and refers to the levels of representativeness and responsiveness of the state towards different sectors of society. By analysing formal and informal mechanisms of participation created and implemented through the new political settlement, this paper primarily discusses the input dimension.

Based on the assumption that the antecedent process of bargaining matters just as much as the final product of the 1991 Constitution, this paper reviews the ANC’s preparation, negotiation, codification, and implementation in order to assess the level of inclusivity in the Colombian political settlement. The first section addresses questions related to the process that led to the installation of the ANC: which sectors of society demanded the creation of an assembly, which opposed it, and how inclusive was the preparatory phase? The second section analyses the negotiation of a new political settlement taking place within the ANC: the inclusivity of the bargaining process itself as well as the different positions held by the delegates concerning issues of inclusivity. The third section discusses

¹ All quotes in this article have been translated from Spanish into English by the authors.

² Political settlement is defined in this article as an expression of a common understanding about how power is organised and exercised, formalised through legal texts and/or reflected in informal customary rules (political culture).

the content of the new Constitution and to what extent it addresses issues around inclusivity. The last section focuses on the implementation process by analysing the immediate reactions to and effects of the new Constitution up until 1998. It examines to what extent the new charter increased the degree of societal participation in actual politics and whether it reached its goal of transforming the former political settlement.

2 The Long Way to the 1991 National Constituent Assembly

Since the early 1970s, and more clearly during the 1980s, the Colombian state suffered from a considerable political crisis. As a heritage of the National Front – a pact between the two major political parties signed in 1954 in order to depolarise the country and stop inter-party violence – political culture was characterised by a profound tradition of corruption and clientelism. The political arena lacked a solid opposition due to the relatively closed character of the Constitution of 1886 and cooperative practices of power-sharing between the two major political parties (Liberal and Conservative) (Gutiérrez 2007). This resulted in a perceived lack of transparency, accountability, and representativeness (Buenahora 1991; Pécaut 2006). Chronically high abstention rates in presidential and congressional elections reflected a delegitimisation of the political settlement and a growing discontent with political elites (Buenahora 1991; Pécaut 2006). In the absence of a real opposition and alternative mechanisms for participation, social protests were forced to manifest in support of general strikes and, in extreme cases, guerrilla groups.

During the 1980s, the political crisis worsened – largely due to the increasing escalation of two violent phenomena that were both grounded *inter alia* in a struggle for political influence. On the one hand many regional elites saw their political hegemony challenged by a partial democratisation attempt when President Belisario Betancur opened mayoral elections to public vote.³ In an attempt to conserve their influence, these elites built strong alliances with paramilitary groups⁴ which launched systematic and violent campaigns against upcoming left-wing movements. One of the main targets was the Patriotic Union (*Unión Patriótica* – UP), a party that had emerged from the peace talks between the FARC and the government in 1984 to allow FARC members to participate in civil political life (Romero 2003). On the other hand, the Colombian state found itself in an open war with some newly rich segments of the Medellín drug cartel who aimed to impose their political agenda through a series of attacks on infrastructure, civil society, and politicians (Palacios 1995). Both phenomena resulted in the death of hundreds of social activists, journalists, judges, and politicians, highlighting the obvious lack of willingness among some elites to support reforms aimed at increasing the inclusivity of the existing political settlement.

The state's powerlessness to confront the situation became evident and led to increased calls for change. The assassination of a popular Liberal leader and presidential candidate, Luis Carlos Galán, on 18 August 1989 sparked a massive social movement demanding urgent political reforms (Buenahora 1991). For many civil society actors (such as academics and students), the mass media, and even some leaders of the traditional political parties,⁵ opening democracy by increasing the variety of participation mechanisms was perceived as a powerful tool to stop violence and facilitate a negotiated end to the conflict with left-wing guerrilla groups (Villarraga 2009). Since President Virgilio Barco's attempt to reform the Constitution through legal means failed to pass Congress in 1989, many perceived legislative institutions as the main obstacle to change. Demands for alternatives therefore grew louder (Arias 2011).

³ In spite of such political reforms, the Colombian political settlement remained subjected to the decisions of the two main political Parties. There were no legal guarantees for other actors to achieve significant power outside of these traditional elites.

⁴ These paramilitary groups had emerged out of alliances of local traditional or newly-rich drug elites and some factions of the national army.

⁵ Ex-President Carlos Lleras Restrepo, for instance, was one of the leading proponents of the idea to hold a constituent assembly to reform the Constitution of 1886 (Valencia Villa 2012).

In this context, students issued a call to include an unofficial plebiscite in the local and congressional elections of March 1990 in order to create the option of a vote in favour of the convocation of a national constituent assembly. Although this plebiscite – the so-called ‘seventh ballot’ (*séptima papeleta*) – had no legal standing, more than 3 million Colombians expressed their approval of the initiative and transformed the electoral result – a salient indicator of public discontent (Dugas 2001). Reading these signs, Barco introduced a referendum on the ANC in the presidential elections of May 1990 by a decree of martial law. This resulted in all presidential candidates expressing their intention to endorse such an extra-legal mechanism once they were in office. After a clear approval of the initiative by more than 5 million votes – over 97% of the turnout (Santos and Ibeas 1995) – newly elected President Gaviria issued Decree No. 1926 of 1990 which defined a legal framework for the National Constituent Assembly to be held in 1991. The presidential act defined the current institutions as “not sufficient to confront the diverse forms of violence” and therefore initiated the ANC as a peace pact that would “[make] the incorporation of armed groups into civil life possible” (Decree No. 1926 of 1990). Besides being a tool to address the evident political crisis, the ANC was presented by the government as a necessary step towards ending conflict.⁶ As a result, it must be interpreted in the context of the peace negotiations of the late 1980s and early 1990s.

2.1 The Peace Negotiations of the Late 1980s and Early 1990s

Enabled and motivated by the important strategic switches of the Betancur and Barco administrations, the state commenced negotiations with most guerrilla groups during the 1980s. Both office holders recognised the structural causes of the conflict and sought a political solution. By offering a wide amnesty deal to guerrilla groups and the creation of a peace commission, Betancur made a national dialogue with the participation of diverse political forces possible. Based on that, in 1984, the work of the new peace commission led to truce agreements between the government and the 19 April Movement (*Movimiento 19 de Abril* – M-19), the Popular Liberation Army (*Ejército Popular de Liberación* – EPL), the FARC, the Workers Self Defence (*Auto Defensa Obrera* – ADO), and some sectors of the National Liberation Army (*Ejército de Liberación Nacional* – ELN)⁷ (García 1992). While these first rapprochements under President Betancur failed, his successor, Barco, achieved a peace agreement with the M-19 in 1990 and paved the way for agreements with the EPL, the Armed Movement Quintin Lame (*Movimiento Armado Quintin Lame* – MAQL), and the Workers Revolutionary Party (*Partido Revolucionario de los Trabajadores* – PRT), which were later signed under Gaviria’s presidency in 1991.

One key element of all negotiations (including failed attempts with the FARC) was the debate about possible reform of the political settlement. All guerrilla groups eventually proposed to hold some sort of constituent assembly and emphasised constitutional reforms as a necessary step towards mitigating the Colombian conflict. While the EPL and its political wing, the Colombian Communist Party – Marxist Leninist (*Partido Comunista de Colombia – Marxista Leninista* – PCC-ML), had been demanding a constituent assembly since 1984 (Villarraga 2009), in October 1990 the Simón Bolívar Guerrilla Coordinating Board (*Coordinadota Guerrillera Simón Bolívar* – CGSB), an umbrella organisation of all guerrilla groups including the FARC and ELN, declared that a national constituent assembly could become a tool of political change if based on a broad agreement with all sectors of society including guerrilla groups (CGSB 1990).

⁶ This line of argumentation also came out of legal necessity. Both martial law decrees had to present the ANC as an important step towards peace, as every decree passed during a state of emergency must refer to the cause justifying the martial law in the first place. In this particular case, the martial law had been justified by the ongoing violence caused by the Colombian armed conflict. This argumentation was then required to be confirmed by the Supreme Court (De la Calle 2004).

⁷ After some previous talks, the ELN rejected any possibility of negotiation and did not sign the agreements of 1984 with the Government (García 1992).

During actual negotiation processes and in the final peace agreement with the M-19, 'true democracy' (*democracia plena*)⁸ was established as one of M-19's main goals. Carlos Pizarro, General Commander of the guerrilla group, had already stressed this point during an early stage of the negotiations by including it among the "three rectifications" which he highlighted as necessary conditions to "confront with seriousness, realism and profundity the Colombian crisis" (Pizarro 1989). Reforming the constitution and the electoral system represented the primary themes in the negotiation process, alongside other topics such as coexistence, justice, public order, and socio-economic arrangements (Villamizar 1995). However, the actual "Political Pact for Peace and Democracy" signed on the 2 November 1989 failed to explicitly mention the creation of a constituent assembly. Rather, it included an agreement on constitutional reforms to be initiated by the government and passed by Congress. Only after Barco's constitutional reform failed to pass Congress did the M-19 declare that in a "stuffy atmosphere of intolerance and corruption [...] a great National Constituent Assembly, with the power to reform the State and the Constitution, is required" (M-19 1989). Although the final peace accord which was signed on 3 March treated the issue in Article 1 and highlighted the urgent necessity of launching a constitutional reform, the decision on whether to hold the ANC or not was left entirely to the government (*Acuerdo entre el Gobierno, los partidos políticos y el M-19* 1990).⁹

The peace accords with the EPL, MAQL, and PRT were signed after the establishment of the ANC had already been decided. The prospect of the ANC provided an incentive to bring the different parties to the negotiation table and facilitate negotiations. The Presidential Decree No. 1926 issued on the 24 August 1990 attributed a seat in the ANC to every armed group that was in an advanced stage of negotiations with the government (Decree No. 1926 of 1990). Therefore, the right to participate represented one of the main themes of negotiation and the first item of agreement in all pacts later signed (Villarraga 2009).

In sum, it must be highlighted that the ANC was not the direct result of peace negotiations, but rather the product of a conjunction of different reformist groups within civil society and traditional political parties seeking a modernisation and re-legitimation of the political settlement. While it is true that all guerrilla groups (except the ELN) had at some point proposed holding a constituent assembly (although named differently), and the government had promoted the idea by talking about a peace pact, the crucial initiative came from civil society whose greatest expression was the 'seventh ballot'. As it gained momentum, the process garnered promotion from the mass media and was finally prepared and implemented by the Barco and Gaviria administrations.

2.2 Preparing the National Constituent Assembly

Once holding a national constituent assembly appeared achievable, an animated debate about electoral procedures and thematic limitations dominated public discussion. Gaviria, the newly elected President and Head of the Liberal Party, took the opportunity to seize initiative. In a letter directed to all party leaders represented in Parliament, he announced his decision to design the specifics of the upcoming ANC in close cooperation with the leaders of all political parties which had achieved more than 5% of votes in the parliamentary or presidential elections of March and May 1990. Besides the established political forces, this arrangement included the newly founded Democratic Alliance M-19 (*Alianza Democrática M-19* – ADM-19) headed by former M-19 commander, Navarro Wolff.

Though the presidential initiative aimed for broad participation, it largely disregarded the extra-parliamentary movements and parties which had been the actual driving force behind the initiative to hold an ANC. This led some to criticise, for example, the absence of the UP (which had abstained from both elections in protest against the

⁸ This was a concept used by the M-19 to refer to the kind of democracy they wanted: more inclusive, with social justice, protection of fundamental rights and the redistribution of power, among other demands.

⁹ The agreement identified a constituent assembly as only one possibility among others, such as a simple plebiscite or a constitutional reform by the Congress.

assassination of its popular presidential candidate, Bernardo Jaramillo, in 1990) as a critical barrier to an inclusive process (Buenahora 1995).

Other guerrilla groups such as the PRT, EPL, and MAQL who were conducting peace negotiations during that time also tried (mostly without success) to influence the composition of the ANC by making the terms of their participation a priority of negotiations, and (mainly the MAQL) by advocating for increased participation of indigenous representatives. After the May 1990 referendum on the ANC, both the FARC and ELN demanded that their “legitimate right [to participate in the ANC] as insurgent movement” be upheld (FARC and ELN 1990). In particular, the FARC proposed alternative designs for the assembly on several occasions (FARC 1990).

Based to a great extent on the presidential proposal, all invited political leaders signed a first agreement on the composition, term, electoral procedures, and thematic agenda of the ANC. Accordingly, President Gaviria issued the aforementioned presidential decree, setting the legal framework for the first Colombian National Constituent Assembly. This decree determined the election of 70 delegates and registered party or social movement lists of candidates for 9 December 1990, defined the electoral procedure and requisites to run for the assembly, and limited the term of the ANC to 150 days from 4 February to the 5 July 1991. In its last section, the authoritative order established a limited list of topics for the agenda that was intended for later public approval.

For many critics, the restriction of the topics to be addressed went against the nature of a constituent assembly.¹⁰ The Supreme Court communicated its shared opinion in one of its most controversial decisions in Colombian history. While upholding the constitutionality of the Decree as a whole, a narrow majority of judges declared parts of it as improper. Considering some of the prerequisites to candidacy as an unfair restriction to the principle of equality,¹¹ the Court also affirmed that a restriction on the agenda clearly went against the idea of a “primary constituent [as] ultimate moral and political power” (Sentence No. 9 of 1990). After having stopped former attempts to reform the Constitution during the 1970s and 1980s, the Supreme Court's decision set the scene for the unrestricted elaboration of a new political settlement (Buenahora 1991).¹²

Preparatory commissions were instituted in mid-September 1990. By aiming to collect comments and suggestions and to engage in a public discussion on the presented agenda, almost 1,500 public hearings were held in all regions of Colombia by December 1990. In order to include guerrilla groups engaged in ongoing peace negotiations, some of these public hearings even took place in guerrilla camps, as Dario Mejía, an ex-combatant of the EPL, recalls (author interview 2013). More than 150,000 requests were recorded, analysed, and summarised by 900 experts representing all ideological sectors within Colombian society.¹³ These reports were later used as a basis for discussion in the ANC (Buenahora 1991). Although the participation rate was high and the whole political and social spectrum of Colombian society was represented, some analysts nevertheless highlight the relative domination of intellectual elites. Ordinary people have, to a great extent, been marginalised from the debate since they either did not understand the discussion or were simply not interested (Buenahora 1995).

The electoral campaign commenced immediately after the Supreme Court's decision. The government provided financial support and guaranteed access to mass media for all participating movements and parties (Buenahora 1991). However, coupling the broadcasting time of each party with the percentage of votes they received in the last

¹⁰ The issue of whether the leeway in decision-making of the ANC should be limited or not, or in other words, whether the ANC should reform the existing political settlement or create a new one, had been a matter of debate in the student movement already. While the private university faction supporting Professor Fernando Carrillo pleaded the Liberal Party's idea of punctual reforms, the public university faction clearly sought an unlimited revolution (Villa, author interview 2013).

¹¹ The Presidential Decree No. 1926 established in Article 8 as one requisite, the compulsory deposit of 5 million Pesos to guarantee the seriousness of the application (Buenahora 1991).

¹² During the second half of the 20th century, there were three main attempts to reform the Constitution of 1886. The first was in the mid-1970s, under the presidency of Alfonso López Michelsen. The second was under his successor, Julio César Turbay Ayala, and the last was an initiative of Virgilio Barco, which resulted from the peace process with the M-19 in 1989. All these attempts failed largely because of the mechanisms that had been established by the Constitution of 1886 to reform itself. Therefore, the Supreme Court and the Congress did not permit these processes (Ortiz 2008).

¹³ The most discussed topics were peace, education, reformation of the legislative power and the electoral system (Buenahora 1991).

elections disadvantaged the UP as well as other movements and parties lacking representation in Congress. In the end, the four main political parties decided to distribute only 50% of available airtime to these movements, reserving the remaining 50% for their own campaigns (Buenahora 1991).

Nevertheless, a spirit of change was palpable. Movements, associations, and social groups representing all of Colombian civil society started forming lists and running for the elections. A total of 116 lists were registered, covering a wide variety of social movements and political parties including labour unions and religious groups (Buenahora 1995). A move away from traditional bipartisan political logic appeared possible. This impression was confirmed in opinion polls and, finally, in the electoral results of December 1990 (see Table 1 below). Although the traditional parties won a large share of the votes and 73 of the 116 lists gained less than 10,000 votes each, the ADM-19, perceived by large sectors of society as a primary alternative to bipartisanship, became the most popular party with 26.7% of the votes, trailing only after the Liberal Party which received 31.2% of the votes.¹⁴ The other big winner of the election was the newly-formed conservative National Salvation Movement (*Movimiento de Salvación Nacional* – MSN)¹⁵ which gained twice as many votes as the traditional Conservative Party. The UP secured two seats. Although deprived of the well-trained voting machinery made accessible to bigger parties, some smaller movements (mostly those dependent on ethnic or religious ties) successfully entered the ANC. With 3.1% and 1.5% respectively, both the Christian Union (*Unión Cristiana*) and the Indigenous Movements – represented by the Political Movement Indigenous Authorities of Colombia (*Movimiento Político Autoridades Indígenas de Colombia*) and the National Communal Organization (*Organización Nacional Comunitaria*) – each won 2 of the 70 seats. Together with two representatives of the EPL and two spokespeople from the MAQL and PRT,¹⁶ the election enabled previously excluded social sectors to participate in the ANC (Palacios 1995). Although the absence of any Afro-Colombian representatives implied a non-negligible restriction,¹⁷ traditional elites seemed to have lost some of their influence. The historically unique inclusion of traditionally excluded sectors led to a publicly well-perceived (and celebrated) degree of representativeness for the ANC.

That being said, it is important to highlight two limitations restricting the ANC's inclusivity. With a turnout rate of only 26% – the lowest in 30 years – the legitimacy of the ANC was called into question, provoking some critical discussions. By comparison, previous Congressional elections had witnessed a turnout twice as high, despite the Congress being one of the most criticised of institutions and, for many, the embodiment of the political crisis. Even before it had assembled, this fact seemed to negatively affect the ANC's standing as an institution designed to recover the legitimacy of the political settlement (Buenahora 1995). However, some analysts interpreted the low participation rate as a sign that political elites, underestimating the consequences of the election in the absence of traditional electoral rewards, had not initiated the so-called 'voting machine' (*maquinaria*) – a dense network of clientelistic ties normally used by elites to mobilise votes (Dargent and Muñoz 2011; Santos and Ibeas 1995).

¹⁴ All electoral results are cited from Santos and Ibeas (1995).

¹⁵ The National Salvation Movement was created in 1990 and it remained in the political arena until 2006 (Duque Daza 2006). It emerged as a result of a confrontation between the faction of Misael Pastrana, who represented the traditional elite within the Conservative Party, and the Álvaro Gómez faction, who attempted to claim a return to the national values beyond party interests. Based on this inclusive approach, the MSN ran for the ANC, presenting a list with both liberals and conservatives candidates (Duque Daza 2006).

¹⁶ The PRT and the MAQL only had the right to speak, but not to vote. While the two delegates from the larger ex-guerrilla EPL were granted the right to vote, according to former PRT negotiator Enrique Flórez, this governmental decision reflected Gaviria's fear that the ANC could be dominated by insurgent groups and was mainly a reaction to the ADM-19's overwhelming success in opinion polls before the ANC election (Flórez, author interview 2013).

¹⁷ Unlike the indigenous groups, the much larger Afro-Colombian community presented a very low degree of articulation and organisation in the 1990s. Their process of self-identification was just underway at that time. This lack of organisation hindered the creation of a unique Afro-Colombian list of candidates and clearly affected their ability to mobilise voters along a common ethnic heritage.

ANC Election 1990	
Parties / Movements	Delegates at the ANC
Liberal Party	25
ADM-19	19
National Salvation Movement	11
Social Conservative Party	5
Independent Conservatives	4
Christian Union	2
Patriotic Union	2
Indigenous Movement	2

Table 1: ANC Election Results

On the other hand, a number of crucial actors (and veto-players) such as the drug cartels, the FARC, and the ELN, as well as important representatives of the traditional political elites chose not to participate in the Assembly or were barred from participating by the government. While the absence of the FARC may be attributed to the massive military attack on its headquarter, Casa Verde, ordered by the government on the day of the elections,¹⁸ many regional barons of both the Liberal and Conservative Parties simply underestimated the ANC's scope. Consequently, the ANC mainly represented urban-based reformist sectors of the traditional parties at the expense of the regional elites who traditionally sought to protect the rules of the game allowing them to maintain their clientelistic practices as the foundation of their local stronghold (Dargent and Muñoz 2011). As for the drug cartels, they mainly tried to influence some of the ANC delegates through lobbying and, in some cases, through bribery.

The ANC's inclusivity warrants an ambivalent assessment. Every sector of society was equally able to participate by running for the elections or, in the case of the remaining guerrilla groups, by entering into genuine negotiations with the government. Simultaneously, the actual composition of the Assembly cannot be considered truly inclusive due to the absence of important actors like some sectors of the traditional political elite, the FARC, and the ELN.

3 Holding the National Constituent Assembly

Once the delegates had been defined, the ANC started its work on 4 February 1991. The Assembly was subdivided into five thematic commissions in charge of debating the reports presented by the Preparatory Commissions and elaborating on a final proposal to be discussed and passed during two debates in plenary sessions. All articles in

¹⁸ While the FARC initially assessed the initiative to hold an ANC quite positively, the attack on Casa Verde led to a re-radicalisation of the guerrilla group, thereby ruling out any possibility of negotiations with the government which would have enabled the FARC to send its own delegation to the assembly.

the new Constitution had to be approved by the absolute majority of the ANC's delegates,¹⁹ meaning that no political bench could carry out its proposal without support from other factions.

Approximately one month before the installation of the ANC, the MSN formed an alliance with the ADM-19 in order to confront the Liberal Party's claim for ANC leadership. Although they initially proposed a rotating presidency between the three largest parties, they eventually came to an agreement with the Liberal Party: Antonio Navarro Wolff (ADM-19), Alvaro Gómez Hurtado (MSN), and Horacio Serpa Uribe (Liberal Party) jointly assumed the Assembly's presidency,²⁰ while all other represented movements obtained at least one presidency or vice-presidency of one ANC commission.²¹ All delegates were free to choose which commission to sit in (Alarcón 2011; Buenahora 1995).

A consensual and pluralistic tone characterised the ANC during all 150 days of its existence (e.g. 74% of the articles passed were approved by consensus) (Buenahora 1995). Despite their different political positions, all represented parties and movements shared the conviction that the ANC represented a unique opportunity to form a new political settlement directed towards ending the political crisis.

During the opening sessions, every political group was asked to present its interpretation of the country's political crisis and formulate its proposals for the new Constitution. In doing so, all seemed to agree that the state was undergoing a profound crisis of legitimacy. All speakers expressed that the public no longer perceived state-society relations as being designed and managed effectively, eluding to the ANC's task to restore these relations and create better control mechanisms (Uribe de Hincapié 1995).

There was some disagreement, however, on the sources of the legitimacy crisis. On the one hand, the traditional political parties highlighted the state's perceived inability to guarantee, respect, and/or offer a sufficient range of fundamental rights. Although their diagnoses of the causes of political crisis seemed convergent, their proposals for the new Constitution somewhat diverged.²² Nevertheless, all sectors of the Liberal Party and the Conservative Party (including the MSN) emphasised the need to create an updated and broader range of fundamental rights and guarantees.

On the other hand, delegates from the other parties and movements suggested that the root of crisis lay in the political and social exclusion of wide sectors of society, particularly through the traditional clientelistic system. Essentially, they questioned the fundamental political system itself. Many delegates were not convinced that political parties dominated by traditional elites could promote substantive change in the country's political

¹⁹ In cases where a new issue was only discussed in the second debate of the plenary session, the procedural rules asked for a two-third majority.

²⁰ This was a remarkable achievement for the MSN and ADM-19, given that the Liberal Party had a strong case for claiming the presidency since it had the highest voting for the Assembly and was the governing party.

²¹ The first Commission (principles, rights) was presided by Jaime Ortiz Hurtado from the Christian Union Movement; the second Commission (territorial planning, regional and local autonomy) was headed by Juan Gómez Martínez from the Conservative Party. The third Commission (government and congress) was chaired by Alfredo Vásquez Carrizosa from the Patriotic Union. The fourth commission (justice administration and public ministry) was headed by Fernando Carrillo from the Liberal Party and finally, the fifth commission (economic, social and ecological affairs) was presided by Rodrigo Lloreda from the United Movement of Colombia, a faction of the Conservative Party. The vice presidencies were also quite inclusive: first Commission: Francisco Rojas Birry (Indigenous Movement); second Commission: Lorenzo Muelas Hurtado (Indigenous Movement); third Commission: José Marías Ortiz Sarmiento (PRT); fourth Commission: Jaime Fajardo Landaeta (EPL); fifth Commission: Jaime Benítez Tobón (Liberal Party) (Echeverri 1995).

²² Inside the Liberal Party there were three different tendencies. The first one (headed by Carlos Lemos) was mainly concerned with redefining the limits of the State and giving more space to the private sector in order to guarantee peace and security. The second one (represented by Horacio Serpa), by contrast, saw the crisis as resulting from the absence of the State and its failure to fulfil its duties, especially in the rural areas. Therefore, their proposal was to expand the State and at the same time to regulate its intervention through a wider charter of fundamental rights which would not be amendable by the State. The third tendency saw the crisis as a result of the inequalities caused by the economic system. Therefore, the first step was to make the economic sector more inclusive, which would naturally be inclined to lead to more democratic politics. On the other hand, the conservative parties agreed that the crisis was caused by a lack of a consistent legal system. Their proposal was to reinstate this legal order to guarantee citizens' fundamental rights, in particular, concerning private property (Bohórquez 2001).

culture.²³ With this in mind, their proposal was to reinvent the state in a more participatory way by recognising Colombia's cultural, ethnic, and religious diversity. A central theme was the call for more inclusivity through new participatory governance structures. By making decision-making more accessible and subject to constant public monitoring, state institutions and their policies would regain legitimacy and progress towards social justice. The opening of the political arena to ordinary citizens without the intermediation of political parties would limit the influence of adversely-perceived traditional elites.

Both of these positions were shared by the government to a great extent. While represented only indirectly through the Liberal Party, the Gaviria administration exercised its right to present initiatives to the ANC and articulated that the crisis was a result of inadequate institutions, especially Congress. According to the government's proposal, the new Constitution required enhanced democracy and fundamental rights, increased constitutional flexibility, and greater institutional control both by the state and its citizens (Bohórquez 2001).

Despite a shared conviction regarding the necessity of wider participatory rights, it would be misguided to identify political inclusivity as an objective shared by all delegates. Some conservatives criticised the proposals as a possible gateway to populism (De la Calle 2004).²⁴ Outside the ANC, this view was shared by broad sectors of the traditional political elite.

4 The Codification

Based on the aforementioned consensus, democracy and fundamental rights became central pillars of the new Constitution of 1991. Understanding them as important prerequisites for wider participation, the charter includes an extensive catalogue of fundamental rights and a generous procedure for their justifiability called *tutela*. Additionally, it sets the basis for a participatory and pluralist democracy. Altogether, 65 of the 380 articles mention some form of participation mechanism (Giraldo 2011). Article 2 establishes its responsibility to "facilitate the participation of all in the decisions that affect them and in the economic, political, administrative, and cultural life of the nation" (Art. 2) as an essential state function. In clear contrast to former constitutions, inclusivity had become the leading principle of the Constitution of 1991.

Following this principle, the new charter widens voting rights and introduces a series of national and local mechanisms enabling participation in the "establishment, exercise, and control of political power" (Art. 40). In Article 103, the Constitution introduces a range of instruments such as plebiscite, referendum, popular consultation, open town council meetings, direct legislative initiative, and the recall of officials. By increasing the number of *de facto* citizen consultations through the creation of mayoral and gubernatorial elections, Article 260 broadens traditional rights that had been restricted by the former Constitution.²⁵ Finally, Congress lost its monopoly on constitutional reforms: Article 374 extends this power to all citizens through popular referendum. All of these mechanisms aimed to achieve popular participation beyond organised parties and social movements. They led some analysts to regard the new Constitution as a revolution in the field of participatory rights (Uprimny 2011).

The new charter can be seen as a continuation of a process already initiated in 1985 that aimed to facilitate the creation and participation of new political parties.²⁶ The requirements for legal recognition were lowered, and

²³ This point was especially emphasised by the AMD-19 (in particular by its leader, Navarro Wolff), but other movements inside the ANC also shared this interpretation, such as the MSN and some sectors of the Liberal Party (Dugas 1993).

²⁴ Carlos Lleras de la Fuente particularly refused to accept initiatives seeking more participatory mechanisms with the above mentioned argument.

²⁵ In the 1886 Constitution there were neither regulatory mechanisms for political parties nor guarantees for the participation of citizens. Decision-making was an exclusive attribute of the Congress and the President. Citizens could vote for these two bodies and for the regional Assemblies, but this did not entail any responsibility for the elected towards the electorate.

²⁶ In 1988, Congress passed Law 62 to replace the former system of partisan ballots distributed by each party, with a universal ballot that offered the possibility to vote for every registered party. While the former system clearly favoured large established parties and smaller parties

access to state campaign support was granted. In addition to the 1985 reform, the 1991 Constitution explicitly allows the creation of political movements as a temporary alternative to established political parties (Art. 107). Electoral regulations were reformed to favour the representation of smaller parties. The new Constitution kept the electoral system based on proportional representation, but reformed the electoral districts' magnitude. Senate elections were now to be held in a single national district instead of various departmental ones (Moreno 2005). According to Lijphart (1990), a proportional representation system and large district magnitudes tend to reward small parties with dispersed populations. Further reforms were introduced to influence some criticised electoral practices of the traditional parties (e.g. the separation of election days) (Pizarro 2002).²⁷

Additional innovations of the 1991 Constitution include the 'programmatic vote' (Art. 259) which holds both Congress and the government accountable for the decisions they make in exercising their power once elected. This legal arrangement is also the basis for mandatory recall, another mechanism introduced by the Constitution which allows citizens to revoke their rulers in instances where they do not implement the party programme they presented during elections.²⁸ In addition, through Articles 112-119, the new charter magnifies the subtle system of institutional checks and balances. These arrangements are meant to minimise corruption and maximize transparency (Valencia Villa 2012). The Constitution also introduced new spaces for indirect participation through consultative channels. For example, Article 342 enables public participation in discussing development plans at the local level.

The issue of territorial organisation was also heavily discussed within the ANC and even had its own special Commission. The two principles of administrative decentralisation and political autonomy established in the new Constitution aimed to reform previous constitutional arrangements that allowed anti-democratic practices at the regional level, such as the direct appointment of Governors by the President. The rationale behind this decentralisation was that decision-makers could be controlled more effectively if they were in closer proximity to their constituents. According to these principles, Article 287 included a transfer of economic resources to the local level,²⁹ the autonomy to manage these resources, and the right of citizens to be governed by their own local authorities. The latter was realised by the aforementioned public elections of Governors and Mayors.

Based on Article 7 which commits the state to "... recognise and protect the ethnic and cultural diversity of the Colombian nation" (Art. 7), the Constitution of 1991 contains a series of guarantees and special rights for minorities. Articles 329 and 330, for instance, grant every indigenous community the right to govern its own territory according to its own customs. Article 171 awards two additional seats in the Senate to indigenous representatives elected in a special electoral district. Article 176 enables the Congress to pass by simple law a similar arrangement for the second chamber. The lack of similar arrangements in the case of the larger Afro-Colombian community hints at affirmative action towards indigenous groups. Less organised as an ethnic group and without a delegate in the ANC, the Afro-Colombian community was obliged to wait for a regular law to settle its special legal status according to transitory Article 55 (Arias 2011; Arocha 2004).

Similarly, the new charter expands the rights of religious minorities in this predominantly Catholic country. While the preamble of the former Constitution of 1886 began with the phrase "in the name of God, source of every authority", the former Constitution's Article 38 defined Catholicism as the official state religion, and Article 40 subordinated all other religions to Catholic principles. The 1991 Constitution changed this constitutional bigotry

were often unable to distribute their ballots throughout the whole territory, the new one guaranteed equal chances on the Election Day (Pizarro 2002).

²⁷ For more details about electoral practices of the Liberal and Conservative Party and their exclusionary effects for smaller political movements, see Pizarro (2002).

²⁸ This stood in clear contrast to the Constitution of 1886 which specifically ruled in Article 179: "The vote is made as a constitutional function. The voter or elector do not impose any obligations to the candidate nor confer any mandate to the elected functionary". On the contrary, according to the programmatic vote, citizens vote for a party programme, not for a candidate.

²⁹ Most of the territorial budget was assigned to the municipalities, which were defined as the fundamental entity of the territorial organisation (Art. 311).

through Article 19, stating, “Freedom of religion is guaranteed. Every individual has the right to freely profess his/her religion and to disseminate it individually or collectively. All religious faiths and churches are equally free before the law” (Art. 19).

To summarise, the Constitution of 1991 decisively increased the political settlement’s formal inclusivity. By opening decision-making through a range of new participatory mechanisms and by reforming traditional tools such as electoral and party regulations, it grants access to national and local governance structures across the whole spectrum of Colombian society. This trend is further supported through a series of special rights and guarantees for ethnic minorities. Complementary to these democratic tools, the new charter contains a broad catalogue of fundamental rights, obliging the state to protect the political liberties of its citizens and enable their political participation.

5 The Implementation of the 1991 Constitution

One of the ANC’s last decisions, and perhaps one of the most difficult ones, was a resolution to dissolve the Parliament and call for early elections. By bargaining with traditional political elites who were represented in Congress, the ANC’s delegates accepted a controversial arrangement that barred them from running for Senate and the House of Representatives in the following elections of 1991.

This far-reaching decision was made by the three presidents of the ANC and the government in an extra-official meeting, with the influence of some traditional leaders such as ex-President Alfonso López Michelsen (who was strongly against the ANC from the very beginning). The discussion around the dissolution of Congress was grounded by Decree No. 1926 of 1990 which originally established the ANC’s inability to modify the terms of office for any public institution and disallowed the participation of ANC delegates in the next election process. Since the decree had been delegitimised by the Supreme Court, it gave total autonomy to the ANC. The MSN and the ADM-19 made an unofficial agreement to change these conditions so that Congress would be revoked and all ANC delegates would be allowed to run for office.

Confronted by this difficult situation, the government began a series of extra-official meetings with ex-President López Michelsen, seeking a possible solution in which Congress could be revoked and the ANC delegates would relinquish their right to compete in the next election.³⁰ Considering the enmity between the ANC and some sectors of the traditional elites, both ADM-19 and MSN initially rejected this proposal since they were afraid that a Congress dominated by political opponents to the new Constitution would lead to counter-reforms. Álvaro Gómez Hurtado (MSN leader) likened the act of leaving the Constitution to Congress to “the creature [being] given to Herod” (Alarcón 2011). The pressure imposed by traditional leaders of the Liberal and Conservative Party finally forced Navarro to acquiesce. Against the MSN’s opinion, he joined the government’s campaign and endorsed the ineligibility of all ANC delegates for the next elections (De la Calle 2004).

As can be seen in Table 2, the traditional parties (despite a small decline) returned to the forefront and won the Congressional Elections of 1991. The ‘Rainbow Alliance’ – the inclusive group of new parties and movements represented in the ANC – could not repeat its electoral success. This can be attributed to its lack of experience with the traditional ways of gaining votes. Ignoring the fact that the political culture was not changing at the same pace as the Constitution, these parties attempted to base their success on the opinion vote (Boudon 2001). With only 9 seats in Senate and 13 seats in the House of Representatives, the ADM-19 in particular failed to live up to the high expectations raised after its overwhelming electoral success one year prior.

³⁰ Some liberal Senators exerted personal pressure on Gaviria. De la Calle for instance, recalls one occasion when Name Terán, Senator of the Liberal Party, threatened the President: “The party will never forgive you for this, Gaviria” (De la Calle 2004).

1991 Senate Elections	
Parties / Movements	Seats in Senate
Liberal Party	59
Conservative Party ³¹	26
ADM-19	9
Indigenous Movements ³²	3
Patriotic Union	1
Others ³³	4

Table 2: Results of the 1991 Senate Elections (Pizarro 2002)

The incapacitation of ANC delegates — who were often the leaders of their movements — and poor electoral results had a far-reaching impact on the implementation of the new charter. Further legal specifications that were required for many articles and that had to be passed as regular laws by the Congress now rested in the hands of traditional political elites who, in addition, also had the necessary majority in Congress to launch counter-reforms.

During the following legislative period, some acts were passed to enact the new Constitution and further extend its objective for a participatory, multi-ethnic, and multicultural democracy. For instance, Law 70 of 1993 officially recognised Afro-Colombian communities as ethnic groups, affording them a legal base from which to authorise their control over ancestral territories and extend the mechanism of prior consultation (Arocha 2004). For its part, Law 130 of 1994 further relaxed requirements for the legal registration of new political parties in the electoral arena by only requiring the submission of a party platform, statutes, and 50,000 signatures (or one elected representative in Congress) and adhered to the inclusion of political movements into the electoral arena (Moreno 2005).

However, other laws were introduced with the aim of restricting the new political settlement and reverting back to former procedures. Concerning the participatory mechanisms, Law 134 of 1994 specifies and in many ways limits newly introduced tools by imposing, for instance, high legal requirements.³⁴ In making the application of participatory mechanisms more cumbersome, specification discourages their use (Buenahora 1995; Giraldo 2011). Additionally, the law eliminated some subjects from reaching the legislative and constituent citizenship initiative (e.g. issues related to the national budget or national and local taxes) (García 1997). This led some analysts to the harsh conclusion that “instead of being a development, the law seems to be more a sterilization of participatory

³¹ This list also included the Social Conservative Party, the MSN and the National Conservative Movement.

³² These included Indigenous Authorities, the National Indigenous Organization of Colombia and the Indigenous Social Alliance.

³³ These included the Metapolitical Unitarian Movement (*Movimiento Unitario Metapolítico*), the National Christian Party, the Christian Union, and the ‘Laymen’s Movement’ party (*Laicos*).

³⁴ For instance, to recall an elected state official (e.g. governor or mayor) the new law asks for an approval of at least 70% of the electorate. Nevertheless, it should be noted that the Senate generally lowered the demanded quotas proposed in the government initiative (Buenahora 1995).

democracy” (Gutiérrez 1996). Furthermore, all political forces failed to unify their positions and promote the new participatory mechanisms through, for instance, information campaigns (Giraldo 2011).

In addition, eight constitutional counter-reforms were introduced from 1993 to 1998. Although they did not directly affect the new participation mechanisms, some of these reforms went against the ANC’s original objective. For example, the strongly criticised traditional practice of substitutions (*suplencias*) – enables members of Congress to name substitutes – that had been abolished under the new Constitution was revived in 1993. Based on the Constitution of 1886, substitutions had become the subject of passionate discussions in the ANC and were perceived as supporting clientelism. Moreover, the reform of Article 357 in 1995 reduced financial transfers from the state to local and regional authorities, affecting decentralisation by restricting the manoeuvrability of territorial entities (García Pelayo 2011).

Former delegates and the media interpreted these counter-reforms as winds of political change blowing within the government and Congress, a situation that filled many former delegates with indignation and provoked public criticism of the “epileptic mania that has taken over the Congress to dismember the constitution” (Mercado 1995). During a conference in Rionegro in 1995, a group of former ANC delegates from all parties expressed in the so-called Declaration of Quirama that they “[were] observing with patriotic concern the series of reforms [...] partially directed to deny the most important achievements, regarding issues such as the purge of Congress and the fight against political corruption” (El Colombiano, 1995).

At this time, the implementation of the 1991 Constitution was already strongly affected by the Colombian context of the early 1990s. As a result of failed negotiations with the guerrilla coordination (CGSB) in Caracas (Venezuela) and Tlaxcala (México) between 1991 and 1992, the strengthening and expansion of paramilitary groups and the role of drug money which increasingly financed both paramilitary and guerrilla groups exacerbated conflict. In reaction to the new Constitution, regional elites (especially those associated with the Liberal Party) sought to protect their traditional political influence through agreements with paramilitary groups. These triggered a violent campaign against political and civil movement leaders in order to conserve the traditional elite’s territorial supremacy. National attempts to achieve a more inclusive political settlement were thus threatened by regional elites who opposed the participation of former guerrillas in politics and who did not have any interest in sharing power (López 2010; Valencia 2007). Although grounded in the new Constitution’s principle of inclusion, political participation in many parts of Colombia became a highly dangerous undertaking. Instead of guaranteeing more transparency and a better control over public officials by shifting decision-making processes closer to citizens (i.e. through decentralisation and the creation of new participatory mechanisms) these new democratic spaces were transformed into additional battlefields for armed conflict (Uribe de Hincapié 2002).

A violent context coupled with the aforementioned Law 134 of 1994 and the insufficient socialisation of Constitutional provisions by political elites led to a relatively limited use of newfound participatory tools. While some mechanisms such as open town council meetings, recalls of officials, and popular legislative initiatives were used relatively frequently during the 1990s, the more powerful mechanisms of referendum, plebiscite, and popular consultation were not.³⁵ Until 2011, no plebiscites were held and, with one exception, referendums have only been used to create new municipalities (Giraldo 2011). Though officially in place, the participatory democracy designed by the ANC has never been fully practiced.

Despite all constitutional reforms aimed at opening up the political settlement, the two traditional parties maintained their influence and won the three subsequent congressional elections (1991, 1994, and 1998) with around 80% of the votes. The ADM-19 initially appeared as a possible credible third force in Colombian politics. Having gained 26.7% of the votes in the ANC election, it managed to gain 9.3% of the votes for the Senate elections in 1991, thus appearing to compete with the traditional elites. Yet, by 1994 the party had lost nearly all of its electoral support and did not win a single Senate seat.

³⁵ Popular consultations were implemented only at the local level.

The traditional elites on the other hand adapted quickly to the new rules of the game and even used them to their advantage (Pizarro 2002). During the political crisis of 1994 when evidence revealed that Samper's successful presidential campaign was directly linked to drug money, it became evident that attempts to change Colombia's political culture had failed.³⁶ Referring to Congress, political scientist Fernando Cepeda mused, "I think it would not be unfair to say that never in our history we have had a Congress and Members of Congress more [...] questioned by national public opinion. [...] Yes, the names changed. [But] bad habits continued and even worsened" (1996).

For all these reasons more than two decades after the members of the ANC signed the Constitution of 1991 which aimed to turn a new page in Colombian history by establishing a participatory democracy and the foundation for a new political culture, analysts have come to a sobering conclusion: despite the political leeway granted by the new Constitution, Colombian society never started to use its participation mechanisms. Without political backing, participatory democracy seems unable to take root in the presence of a Congress and an executive branch that remains largely dominated by traditional political elites and a political culture manipulated by informal clientelistic practices and political violence (García 1997; Uribe de Hincapié 1995).

6 Conclusion

When the Colombian National Constituent Assembly was convened in 1991, its delegates were confronted with the ambitious task of bargaining for a new political settlement geared towards restoring a state's legitimacy that, for many, had been lost over endless years of political violence, armed conflict, and the clientelistic practices of corrupt policy-makers. In the context of a deep political crisis, many Colombians regarded the inclusive arena of a publicly-elected assembly with the participation of traditionally excluded sectors of society, including former guerrilla groups, as the perfect way to achieve more political inclusivity and identify a possible solution to protracted armed conflict. For the first time, a new set of rules to the political game would not be imposed by one victorious political party over the other, but, instead, result from a multi-party bargaining process based on compromises and consensus (Valencia Villa 2012). Change seemed possible.

Although the inclusive Constitution of 1991 met these expectations and constructed a foundation for participatory democracy, the ANC suffered from the absence of powerful guerrilla groups like the ELN and FARC as well as large sectors of the traditional political elite. The new charter has neither broken with traditional patterns of Colombian politics nor ended the armed conflict. Although the new formal and inclusive political settlement has proven to be sustainable (albeit with some changes through legal counter-reforms), the exclusive nature of the political culture has remained largely intact.

This latter fact draws attention to the question of whether an inclusive decision-making design and an inclusive outcome are enough to make an informal political culture more inclusive. The experience of the Colombian ANC of 1991 suggests that an inclusive design does not necessarily guarantee the actual participation of all possible veto-players, neither securing the implementation of the bargaining outcome nor resulting in a change of political habits.

More than 20 years after the ANC in Colombia, the optimism and hope of the early 1990s appear dashed. Demands for more inclusivity are still on the agenda of many (left-wing) civil movements and guerrilla groups. However, lessons learned from the ANC experience have led these organisations, including the FARC, to raise the question of whether a new constituent assembly could be a viable option for achieving what the ANC of 1991 could not.

³⁶ Some authors highlight the limited potential of constitutions to result in actual change. In the Colombian case, they do not consider the Constitution to be the basic problem, but rather the traditional weakness of the State to be the problem (Bejarano 2001; Uprimny 2002).

Considering the current context and that of the early 1990s, one should not be too optimistic about the prospect for a new ANC. If the former Assembly could not reach the expected results despite favourable conditions, how should a new ANC be able to realise this given current circumstances? While the first ANC took place under the auspice of a profound desire for constitutional change among all sectors of society, such demands are not shared by large sectors of society today. While demobilised guerrilla groups of the 1990s were largely positively associated with peace, the majority of Colombians now have reservations about the FARC. Finally, while it is true that the absence of key players such as the traditional political elites in the ANC hindered the implementation of the leading principle of inclusivity, this gathering admittedly facilitated a constructive working environment void of ideological polarisation. Today, many doubt that a publicly elected constituent assembly would be able to provide a conducive climate for change. If inclusivity in bargaining processes is a prerequisite for successful implementation, disposition among participants must also be regarded as a crucial prerequisite for achieving an inclusive result based on consensus.

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