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In search of solutions for victims following the extradition of paramilitary leaders to the United States

Introduction

Since May of 2008, the Colombian government at the request of the U.S. government has extradited eighteen paramilitaries to the United States to face criminal charges relating to drug-trafficking.¹ These individuals include notorious leaders of the paramilitary group “United Self-Defenses of Colombia”. They are some of the worst war criminals known in the Western Hemisphere, guilty of grave crimes against humanity, including massacres, assassinations, forced disappearances, torture, sexual violence, child recruitment and forced displacement.²

The Colombian government has declared the existence of agreements that guarantee the continuation of human rights investigations following the extradition, when these agreements do not exist. Meanwhile, the U.S. government has adopted a policy of inaction, which has led to the obstruction of attempts made to continue with human rights investigations in Colombia. The result is at least 239,758³ Colombian victims who remain without truth, justice and reparation.

The extradition forms part of Colombian government strategy, consistent with using all means at its disposal to frustrate the rights of victims, and promote impunity for those most responsible for the crimes committed by paramilitary groups over the past 25 years: politicians at local, regional and national level, members of the Colombian Armed Forces, State officials, corporations and large landowners.

In 2003, the Colombian government issued Decree Number 128, which granted total impunity to paramilitaries who had not been sentenced or who had no criminal prosecutions pending.⁴ Using the Decree, the government absolved from criminal responsibility close to 30,000 alleged paramilitary members without even investigating whether these individuals had committed or had knowledge of war crimes or crimes against humanity.⁵

¹ According to other sources, as many as 23 paramilitaries have been extradited since May 2008, with a further seven paramilitaries extradited in 2006 and 2007.

² Between 1996 and 2008, paramilitaries killed or disappeared at least 15,000 civilians (Colombian Commission of Jurists, *Human Rights Violations and Socio-political violence in Colombia*, June 9, 2009, www.coljuristas.org). The Justice and Peace Unit of the Prosecutor General is investigating 246,000 crimes attributable to paramilitary groups. So far the paramilitaries have confessed close to 21,000 homicides (Noticias 24, “Ex paramilitares colombianos confesaron 21.000 homicidios, July 13, 2009, www.noticias24.com). The paramilitaries are responsible for the displacement of millions from their land. 4,629,190 people have been displaced in Colombia since 1985. (Consultancy on Human Rights and Displacement (CODHES), *Boletín informativo*, No. 75, Bogotá, April 22, 2009, p.3). It is possible to estimate that paramilitary groups are responsible for at least 30% of these cases. (See Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *Séptimo Informe de Verificación sobre el Cumplimiento de Derechos de la Población en Situación de Desplazamiento* [Seventh Verification Report on the fulfillment of Rights of the Displaced Population], Bogotá, October 20, 2008, p. 27).

³ Colombian Mission to the United Nations, Statement by the President of the Republic of Colombia, 64th Session of the United Nations General Assembly, General Debate, New York, September 23, 2009, p.2. This figure does not include the victims of forced displacement. See footnote number 1.

⁴ Decree 128 of 2003, articles 13 and 21.

⁵ Interamerican Commission on Human Rights, OEA/Ser.L/V/II.129, Doc. 6, October 2, 2007, paragraphs 34 and 35.

In 2005, the government obtained the approval of law 975, known as the “Justice and Peace” law. Under this law paramilitary commanders and other members of paramilitary groups who did have sentences or criminal prosecutions pending could receive prison sentences of between five and eight years.⁶ The Colombian Congress, backed by the Colombian government, passed the law in a way that made it easy for the paramilitaries to lie about their crimes. In the unlikely event of being discovered lying, a paramilitary would only be penalized by an increase in his sentence of about one year.⁷ The Constitutional Court later declared various sections of the law unconstitutional and made the granting of benefits conditional upon the “full and truthful” confession of all crimes committed by the paramilitaries.⁸

The government has not implemented law 975 of 2005 in conformity with the Constitutional Court’s sentence. However, information supplied by the paramilitaries and other witnesses has led to investigations by the Supreme Court and the Prosecutor General against members of Congress for links with paramilitary groups. At least 85 members of Congress elected in 2006, the majority being allies of the current President, have come under investigation.⁹

To impede the investigations into members of Congress, the President and other members of government have tried to discredit and intimidate the Magistrates of the Supreme Court, through verbal attacks by the President himself,¹⁰ a criminal complaint presented by the President against the President of the Supreme Court,¹¹ and offensive intelligence operations against the Magistrates and their families, carried out by DAS, the intelligence agency that responds directly to the President.¹² The Inspector General of Colombia (the *Procurador General de la Nación*) is now threatening legal action against Magistrates of the Court who conduct interviews with the extradited paramilitaries to gather information before the opening of formal investigations against members of Congress.¹³

The decision of the Colombian government to extradite paramilitary commanders at the request of the United States government, has converted extradition from a legitimate mechanism for combatting the international crime of drug-trafficking into a further instrument of impunity for crimes against humanity. This impunity is not only a denial of justice to thousands of Colombian victims and their families, but has permitted the continuation of paramilitary groups, with

⁶ Comisión Colombiana de Juristas, *Anotaciones sobre la ley de justicia y paz, Una mirada desde los derechos de las víctimas* [Notes on Justice and Peace Law, A look from the rights of the victims], Bogotá, 2007, p. 14.

⁷ Law 975 of 2005, article 25, prior to Sentence C-370/06 of the Constitutional Court of Colombia.

⁸ Constitutional Court, Sentence C-370/06, Sentencing Magistrate, Dr Manuel Cepeda Espinosa and others, May 18, 2006.

⁹ See list of Members of Congress being investigated, according to party affiliation, at Verdad Abierta, “Congresistas elegidos en el 2006 procesados por parapolítica”, www.verdadabierta.com, April 1, 2009.

¹⁰ *El Tiempo* (Bogotá) Newspaper, “¿Qué hay tras la denuncia de Palacio contra investigador de la Corte?” [What is behind the complaint of the Palace against the Court investigator], October 9, 2007, p. 1-3; *El Tiempo* (Bogotá) Newspaper, “Alias ‘Tasmania’ ya se retractó ante Fiscalía” [Alias ‘Tasmania’ has retracted], June 22, 2008, p. 1-18; *El Espectador* (Bogotá) Newspaper, “Complot, dice la Corte; tráfico de testigos, Uribe” [Conspiracy, says the Court; traffic of witnesses, says Uribe], August 26, 2008, pp. 2 – 4.

¹¹ *El Colombiano* Newspaper, “Uribe demandará magistrado de la Corte” [Uribe takes legal action against Magistrate of the Court], January 18, 2008, www.elcolombiano.com.

¹² Periódico *El Espectador* (Bogotá) “Así vigilaba el DAS a la Corte” [This is the way DAS supervises the Court], April 23, 2009, p. 2, 3.

¹³ Verdad Abierta, “Corte Ratifica que sus magistrados sí pueden entrevistarse con ‘paras’” [Court confirms that its magistrates can interview ‘paras’], www.verdadabierta.com, September 24, 2009.

devastating consequences for Colombian society. Recent studies indicate there are approximately 10,000 active paramilitary members in Colombia today.¹⁴

This document provides the key facts that demonstrate how the extradition has obstructed investigations into the human rights violations committed by the paramilitary commanders and their allies and includes petitions to the United States Congress.

Facts

1. No agreements exist between Colombia and the United States that guarantee the rights of Colombian victims

The Colombian and U.S. governments pronounced publicly that they had reached agreements to facilitate the continuation of the extradited paramilitaries in Colombian legal proceedings for human rights violations, and to guarantee the rights of Colombian victims to truth, justice and reparation. However, no such agreements exist: the only agreements in place between the two countries are the 1992 Inter-American Convention on Mutual Assistance in Criminal Matters and the so-called “exchange of letters” which took place on July 11th 2008¹⁵ - the latter does little more than confirm the existence of the Convention. Practice shows that these instruments are entirely insufficient to protect the rights of the victims.

2. The “Justice and Peace” process is at a standstill

Of the eighteen paramilitaries extradited since May 2008, only four have continued with their voluntary depositions in the “Justice and Peace” process, even though several others had depositions pending at the time of the extradition. Salvatore Mancuso has participated in ten days of voluntary depositions following his extradition, Ramiro Vanoy in two, Guillermo Pérez Alzate in three and Diego Murillo Bejarano has participated in three days of voluntary depositions.¹⁶ In September 2009, Diego Murillo Bejarano announced he is suspending his participation in “Justice and Peace” as well as other Colombian judicial investigations,¹⁷ and Salvatore Mancuso declared he will make no further voluntary depositions in “Justice and Peace”.¹⁸

3. Procedural obstacles have hampered attempts made to proceed with hearings

Attempts to conduct hearings within “Justice and Peace” and other Colombian investigations have been hampered by repeated procedural obstacles.

For example, a hearing was set for January 13, 2009 for charges to be brought against Salvatore Mancuso. The day of the Court hearing, the Court was informed that the authorization from the

¹⁴ See Corporación Nuevo Arco Iris, Revista Arcano No. 14, 2008 *¿En qué está la guerra?*, ““Bandas Criminales”, Seguridad Democrática y corrupción” [Criminal Bands, Democratic Security and corruption], p. 45, www.nuevoarcoiris.org.co.

¹⁵ President of the Republic, “EU ratifica su compromiso de facilitar versiones libres de extraditados” [US ratifies its commitment to facilitate voluntary depositions of the extradited persons], July 11, 2008, <http://web.presidencia.gov.co/>; The “exchange of letters” consists of a letter from the US Embassy to the Ministry of the Interior and Justice, June 25, 2008, and a letter in reply from the Ministry of the Interior and Justice to the US Embassy, July 8, 2008.

¹⁶ National Justice and Peace Unit, Colombian Prosecutor General’s Office, www.fiscalia.gov.co/justiciapaz/Visiones.asp

¹⁷ Diego Fernando Murillo Bejarano, Letter to Magistrates of the Supreme Court of Colombia, September 17, 2009.

¹⁸ Verdad Abierta, “Mancuso no confesará más” [Mancuso will not confess more], September 30, 2009, www.verdadabierta.com.

U.S. Department of Justice had not been obtained for Mancuso to be present, because the procedures had not been completed by the Colombian judicial authorities. The hearing was postponed until February 19. However, the hearing did not take place that day either. According to the Colombian Court: “*the fundamental reason is the non-authorization of the government of the United States for the transmission to the Center of documentation of the Superior Council of the Judiciary*”. Finally on the sixth attempt, the hearing was held in June 2009.¹⁹

A further hearing with Salvatore Mancuso scheduled for August 11, 12 and 13, 2009 has been suspended and postponed to October 2009. According to the information provided to the presiding Magistrate, the hearing could not proceed because the Colombian judicial authorities lacked the funds necessary to conduct the video-conference. Furthermore, Mancuso’s defense counsel affirmed that their client could not participate in the hearing because during the transfer of their client to a different prison facility, U.S. authorities allegedly confiscated the documents relating to the hearing.²⁰

4. The U.S. and Colombian authorities are permitting inexcusable delays in processing requests for hearings and declarations of the extradited paramilitaries

In August 2008, three months after the extradition, Colombian justice still had no access to the extradited paramilitaries: the Supreme Court and other courts had made requests to the U.S. Department of Justice for 11 virtual hearings with the extradited paramilitaries; as at that time, none of them had been held.²¹ In March 2009, the Supreme Court was obliged to release ex member of Congress Karelly Lara, under investigation for alleged links with extradited paramilitary Rodrigo Tovar Pupo alias “Jorge 40”, because the terms of her capture expired before the Court could hear the declarations of the paramilitaries. The Court said there was no doubt that “*such a situation arose exclusively as a result of the difficulty in taking evidence caused by the extradition of Mr. Tovar Pupo, warned about by the Supreme Court some time ago.*”²² The Court had been trying to organize a virtual hearing with Tovar Pupo for six months, and when the hearing finally took place on December 15, 2008, the US authorities refused to allow the hearing to extend beyond 5 p.m.²³

In November 2008, the Colombian Commission of Jurists wrote to the Head of the Justice and Peace Unit of the Colombian Prosecutor General’s Office, requesting a timetable for the hearings of the extradited paramilitaries in the “Justice and Peace” process. The Justice and Peace Unit responded that the continuation of the extradited paramilitaries in the “Justice and Peace” process “*is subject to the approval of the US Department of Justice, and therefore there is no timetable for the voluntary depositions of each of the extradited paramilitaries.*”²⁴

In April 2009, the Colombian Commission of Jurists wrote to the National Unit of Human Rights and International Humanitarian Law of the Colombian Prosecutor General’s Office seeking information on requests made to the U.S. authorities for judicial proceedings. The reply

¹⁹ *El Espectador* (Bogotá) Newspaper “Mancuso, culpable de más de un centenar de delitos: Fiscalía” [Mancuso, guilty of more than 100 crimes: Colombian Prosecutor General’s Office], www.elespectador.com, June 4, 2009.

²⁰ Superior Tribunal of the Judicial District of Barranquilla, Preliminary Hearing, Case No. 110001-60-00253-2006-80008, August 11th, 2009.

²¹ *El Tiempo* (Bogotá) Newspaper, “Han negado 11 audiencias con ‘paras’ en E.U.” [11 hearings with ‘paras’ denied in the U.S.], August 7, 2008, www.eltiempo.com.

²² *El Espectador* (Bogotá) Newspaper, “Ordenan libertad de Karelly Lara” [Release of Karrelly Lara ordered], March 12, 2009, www.elespectador.com.

²³ Ibid.

²⁴ National Unit for Justice and Peace, Colombian Prosecutor General’s Office, letter no. 011654, December 1, 2008.

from the Unit showed that in response to five requests for hearings with Salvatore Mancuso sent on July 14, 2008, it was only at the end of May 2009 that these hearings were going to take place. Moreover, according to the information supplied by the Unit, as at May 21, 2009, no response had been received by the Unit to a further 45 requests for hearings and declarations of the extradited paramilitaries, some of the requests dating back to July 1, 2008.²⁵ It is not clear whether the U.S. authorities had not responded to these requests or whether the lack of response to the Unit results from the failure of communication channels established between the U.S. and Colombian authorities. However it is clear that as at May 21, 2009 the majority of the requested hearings and declarations had not taken place.

Also in April 2009, the Colombian Commission of Jurists wrote to the Supreme Court Unit of the Prosecutor General's Office. This Unit has responsibility for investigating public officials for alleged links with paramilitary groups. The responses received showed that the Unit had requested declarations from the extradited paramilitaries Salvatore Mancuso, Rodrigo Tovar Pupo, Juan Carlos Sierra Ramírez and Ramiro Vanoy Murillo. By June 1, it had only been possible to hear declarations from Salvatore Mancuso.²⁶ A declaration from Ramiro Vanoy Murillo had been scheduled for May 21 but did not take place because it had not been possible to coordinate with the defense lawyer in the United States.²⁷ In one response, a prosecutor from the Supreme Court Unit informed that while declarations from Salvatore Mancuso had been received, “[t]he date on which possibly declarations can be received from the other [extradited paramilitaries], cannot be provided, as this is an issue dependent on the decision of the authorities of the United States.”²⁸

5. There are still no guarantees that the paramilitaries will return to face Colombian justice

The Justice and Peace Unit of the Colombian Prosecutor General's Office informed the Colombian Commission of Jurists on January 15, 2009 that the subject of repatriation of the extradited paramilitaries had not even been discussed between the Colombian Prosecutor General's Office and the United States authorities.²⁹ The Colombian Prosecutor General's Office repeated this negative response to the Colombian Commission of Jurists, in a letter dated May 18, 2009.³⁰

Furthermore, there is a risk that the extradited paramilitaries will benefit from witness protection programs in the United States, through which they could obtain new identities and would remain beyond the reach of Colombian and international justice. In response to a request for information about this possibility the Colombian Department of Foreign Affairs responded that documentation concerning this matter is “confidential”.³¹ The Colombian Prosecutor General's Office informed that it was taking no action to prevent the paramilitaries from benefiting from such a witness protection program other than to reiterate at a national and international level the necessity that the extradited paramilitaries continue with proceedings in Colombia as the only way that victims can have their rights fulfilled. The Colombian Prosecutor

²⁵ National Unit for Human Rights and International Humanitarian Law, letter no. 02264, May 21, 2009, and a further letter from the Unit, June 9, 2009.

²⁶ Supreme Court Unit, Colombian Prosecutor General's Office, May 18, 2009; Supreme Court Unit, Colombian Prosecutor General's Office, letter no. 3910, June 1, 2009.

²⁷ Supreme Court Unit, letter no. 3967-7, May 22, 2009.

²⁸ Supreme Court Unit, Colombian Prosecutor General's Office, letter no. 3910, June 1, 2009.

²⁹ National Unit for Justice and Peace, Colombian Prosecutor General's Office, letter no. 000271, January 15, 2009.

³⁰ Office of International Affairs, Colombian Prosecutor General's Office, letter no. 005860, May 18, 2009.

³¹ Colombian Ministry of Foreign Affairs, Legal Advice Office, letter no. AOJE. 75, January 16, 2009.

General's Office said: "*In any case, a proposal or initiative from the [Colombian] Prosecutor General would not be able to prevent a foreign State from complying with its internal order.*"³²

Given this situation, there is a serious risk that the extradited paramilitaries will never be investigated and tried for the crimes against humanity committed in Colombia, leaving the victims of these crimes without recourse.

6. There are still no guarantees that the assets of the paramilitaries will be returned to Colombia to provide reparation to the victims

Despite affirmations by the two governments, no guarantees have been given that assets handed in by or confiscated from the paramilitaries in the course of criminal proceedings in the United States will be returned to Colombia for the benefit of Colombian victims. The Colombian Prosecutor General's Office informed the Colombian Commission of Jurists, that the actions taken by Prosecutor General's Office were limited to "*requests and recommendations that the assets affected by the northamerican judicial authorities be handed over in Colombia for the reparation of the victims*" and said that the paramilitaries themselves and their legal representatives are the ones responsible for the delivery of their assets to satisfy the requirements of "Justice and Peace".³³ As long as the two governments fail to put in place a binding agreement, the victims will have no guarantee that their rights to reparation will be satisfied.

7. Colombian government proceeded with the extradition of Ever Veloza alias 'HH', despite knowledge of the damaging consequences for the rights of Colombian victims

On March 5, 2009, the Colombian government extradited paramilitary leader Éver Veloza, alias "HH", ignoring the protests of victims' organizations and bypassing a legal action taken to prevent the extradition. Veloza was one of the few paramilitaries who had collaborated with the Colombian justice system, providing valuable information both about the crimes committed by paramilitaries under his command and the links between paramilitary groups, the Army, the Police, politicians and businessmen. His extradition will deny Colombian victims and society the truth about more than 11,000 crimes attributed to him.³⁴ The extradition took place before the Colombian courts had decided on a motion seeking its postponement until investigations into human rights violations attributed to him had been completed, and the rights of the victims had been satisfied.³⁵

8. The U.S. Department of Justice

A serious problem following the extradition is a lack of openness and even refusal of the U.S. Department of Justice to meet with victims' representatives. Recently, the Department has not even responded to requests for meetings. For example, a delegation of Colombian victims' organizations travelled to Washington between July 27 and July 31 of 2009 to meet with U.S.

³² Office of International Affairs, Colombian Prosecutor General's Office, letter no. 005860, May 18, 2009.

³³ Ibid.

³⁴ *El Espectador* Newspaper (Bogotá), "Extraditado 'HH'" ['HH' extradited], www.elespectador.com, March 5, 2009.

³⁵ Motion for protection of fundamental rights, Case No. 2009-00401-00, Plaintiff: *Colombian Commission of Jurists*. Respondent: *President of the Republic, Ministry of the Interior and Justice and Ministry of Foreign Relations*. Subject: Rights to truth, justice and the reparation of victims of crimes of atrocity committed by Éver Veloza García, alias HH, and his proposed extradition, presented February 25, 2009. The motion was denied by the Tribunal in a sentence handed down March 12, 2009. The Plaintiff lodged an appeal on March 24, 2009 to the Colombian Supreme Court, which also denied the motion. Currently, the motion is pending selection for review by the Constitutional Court.

authorities to explain their concerns about the extradition.³⁶ Requests were made for a meeting with the Department of Justice, but no response was received.

9. Colombian Supreme Court: “the truth is paralyzed”

In its recent decision to refuse the extradition of paramilitary Luis Édgar Medina Flórez, alias “Comandante Chaparro”, the Colombian Supreme Court confirmed the concerns which Colombian human rights organizations have expressed in this document. It said:

“Recent experience demonstrates that extraditions conceded and executed by the State have permitted that in the Justice and Peace processes the learning of the truth is paralyzed, given that the [paramilitaries] extradited have not been able to continue confessing the crimes committed. And in this way, the victims are being left without knowing the truth and society is left without guarantees of non-repetition.”

“[I]n so far as many individuals, including private citizens, public servants and state authorities of every description, participated in different ways in the criminal activity and in the co-opting by the paramilitary groups of the State, it is indispensable that society know and try all those who served as support or help, encouraged or financed, covered up or benefitted from the criminal organization, which can only be achieved, (...) when the participants [in “Justice and peace” proceedings] are permanently at the disposition of the Colombian judicial authorities.”

“It is not admissible that a peace process such as the one promoted by the National Government for the purposes of demobilization of the paramilitaries, be made subject to foreign governments and their good will to permit the reconstruction of truth which Colombian society so demands.”

“It is also a perturbing element that motivates this negative decision [to refuse the extradition request] that the Colombian judicial authorities cannot fulfill the procedural terms of the matters under way. Already there have been occasions when the absence of witnesses - previously extradited - oblige the postponement of hearings scheduled with sufficient advance notice, with the unheard of consequence of providing the basis for freeing the accused, a phenomenon which would not take place if the national authorities had at their disposition the extradited participants.”

“[T]here is no doubt that, concerning conduct related to [drug-trafficking] there exists universal consensus on avoiding impunity and the imposition of exemplary punishment. Nonetheless, (...) the gravity of drug-trafficking pales compared to the crimes of genocide, homicide of a protected person [protected person under international humanitarian law], forced disappearance and forced displacement, torture, and other crimes, committed during recent decades by the members of the demobilized paramilitary groups”³⁷.

³⁶ The delegation was organized by the Washington Office on Colombia (WOLA), Latin American Working Group (LAWG) and Peace Brigades International (PBI). The following Colombian victims’ organizations were represented in the delegation: the Colombian Commission of Jurists, José Alvear Restrepo Lawyers’ Collective, Intereclesial Commission for Justice and Peace, Movement of Victims of State Crimes.

³⁷ Supreme Court of Colombia, Decision on request for extradition of Luis Édgar Medina Flórez, Sentencing Magistrate, Yesid Ramírez Bastidos, August 19, 2009.

Petition to Members of the U.S. Congress

Write to Attorney General Eric Holder

We urge members of Congress to write to the Attorney General Eric Holder, asking him to:

1. Seek a comprehensive agreement with Colombian judicial authorities that guarantees the continuation of Colombian criminal proceedings for human rights violations committed by the extradited paramilitaries and that guarantees truth, justice and reparation for Colombian victims.
2. Take immediate measures that guarantee expedited and unimpeded access for Colombian judicial authorities to the extradited paramilitaries, for the purposes of continuing criminal proceedings for human rights violations.
3. Meet at the earliest date possible with organizations representing Colombian victims.

Bogotá, September, 2009.