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Only six Days Away from the Approval of the Law of Impunity in Colombia

WITHOUT ANY GUARANTEE OF THE RIGHT TO TRUTH

This bill of law rewards lying and hinders shedding light on war crimes and crimes against humanity

Just a few days away from the June 20, 2005 completion of its regular sessions, the Colombian Congress is preparing to give its definitive approval of the bill of law called "Justice and Peace", through which paramilitary group members demobilizing within the framework of the conversations that the Government is forwarding with said groups will be granted impunity. Unfortunately, this bill of law is far from being an efficacious tool for building peace in Colombia. On the contrary, it is a strategy for the social legitimization of paramilitarism. In particular, concerning the right that the victims and the Colombian society must have knowledge of the events and to recall them, this bill of law suffers the shortfalls that we describe below.

1. It does not encourage complete, trustworthy confession (Article 17). Demobilized persons' full confession of the crimes they have committed and their collaboration in shedding light on the events must be indispensable conditions for granting them legal benefits. By this, we do not mean, as does the bill of law, the simple fact of demobilized persons admitting that they were involved in the crimes for which they are undergoing judicial proceedings, but that they must be obliged to speak of events or circumstances other than those of which the prosecutor or judge already has knowledge. Indeed, taking into account that the bill of law contemplates such generous benefits as granting an alternate sentence that may even represent zero days of effective incarceration, conceding such benefits must demand as a minimum that demobilized persons substantially contribute to shedding light on the truth of the events and on establishing the identity of those responsible.

No matter whether such declarations occur under the label of "confession" or the qualification of "voluntary statement" or "acceptance of charges", demobilized persons must not be able to apply for the alternate sentence benefit unless they have given a complete declaration regarding the events in which they were involved, their level of command, and who ordered them or collaborated with them in committing the crimes. Likewise, even after demobilized persons have admitted their responsibility, that fact must not inhibit the judge or prosecutor from making further inquiries, beyond what these persons have owned up to.

2. It rewards lying and hiding information (Article 25). This bill of law sets forth that, if, after demobilized persons obtain their benefits, the authorities discover that said demobilized persons were involved in other crimes that they did not include in their confession or voluntary statement, a new procedure will be started for such events and, if they come to be sentenced, they can once again apply for the alternate sentence benefit.

That is to say, persons who have hidden information or who have lied regarding their participation in serious punishable conduct, instead of being penalized and losing their benefits, are rewarded with another alternate sentence. In this case, the time incarcerated by virtue of the first imposed sentence will be considered time served under the new sentence.

Off the record, we have knowledge that, in reaction to the comments made by a group of United States congressmen, the Government has the intention of incorporating an article into the bill of law, which sets forth the loss of benefits for demobilized persons who “deliberately” omit stating their participation in crimes. Therefore, any omission that demobilized persons make must be considered as an involuntary omission and these persons’ bad faith in making such omissions would have to be proven. The enormous difficulties that such burden of proof would entail make this new proposal a mere cosmetic operation that does not substantially modify the bill of law.

3. It does not include serious investigations or trials (Articles 17, 18, and 19): According to this bill of law, after demobilized persons state their participation in crimes committed while they belonged to the armed group (“voluntary statement”), one of two things may happen. One, if the prosecutors deem that the demobilized persons have been involved in other crimes that they did not declare in their voluntary statement, the prosecutors must request a hearing within 24 hours to file charges against the demobilized persons and they will have maximum thirty days to investigate such charges. Two, if, on the contrary, the demobilized persons accept their responsibility for all of the crimes for which they are being investigated, then there is no need for any investigation and the prosecutors must immediately send the cases to the judges. In the second case, the judges who receive the prosecutors’ resolutions must pronounce a sentence within ten days time. That is to say, when demobilized persons totally accept their responsibility, there will be no investigation much less a trial and, if they do not accept their responsibility for all of the charges, an investigation will be forwarded during the ridiculous term of thirty days.

In this sense, lengthening the investigation term (from 30 to 60 days), which is what the Government is going to propose in response to the United States congressmen’s comments, does not imply a substantial change in the matter because it will be restricted to demobilized persons who do not accept all of the charges made against them. Bearing in mind that what is best for all demobilized persons is to accept the responsibility for all of the crimes for which they are under investigation, said term lengthening would only have some transcendence in an extremely small number of cases. This format does not guarantee a serious inquiry to get to the bottom of the events nor does it enable gathering evidence that may contradict the statement that the demobilized persons have made. War crimes and crimes against humanity committed in Colombia in a widespread, generalized manner require much longer terms for light to be shed on them, in order to avoid their being reduced to a mere formality to cover up impunity. Thirty days or even sixty days are not sufficient for merely twenty prosecutors - the number provided for in the bill of law - to make a complete, serious investigation of the crimes committed by more than twenty thousand demobilized persons - the figure that the Government has announced.

4. It does not seek the historical truth (Articles 7, 15, 57, 58, and 59). The bill of law does not contemplate any mechanism for guaranteeing shedding complete light on events of

mass violence. On the contrary, in this bill of law the truth is limited to partial, incomplete statements established in each individual case, ignoring the connection between them. This schema would make it impossible to conduct an inquiry of the situation and regulatory conditions that have enabled committing such atrocities and of the identity of those who have sponsored or covered up the actions of such groups. Also, except for the measures that the bill of law includes to protect judicial files and facilitate access to them, it does not set forth any provisions aimed at allowing public knowledge and disclosure of the events, which is a necessary measure to prevent history from repeating itself.

If we seek a true reconciliation of the Colombian society, the significant contribution to rebuilding historical recall by shedding light on events of violence must also be an indispensable requirement for any legal benefit.

Due to the above, unless this bill of law is substantially modified, it will not guarantee the right to truth to which the victims and the Colombian society are entitled.

Bogota, June 14, 2005