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Law of Impunity Can Be Approved Today in Colombia (Bulletin Number 3)

WITH NO GUARANTEE OF THE RIGHT TO REPARATION

Random Reparation for Victims

The bill of law called “Justice and Peace” that Congress is preparing to approve before concluding its present session on June 20, 2005 includes a generous definition of reparation: symbolic reparation, indemnity, restitution and guarantees of non-reiteration. But in reality, it does not guarantee the victims’ right to reparation for grave, widespread and systematic violations of human rights and of humanitarian law for several reasons.

1. Victims are not taken into account when defining the criminal acts for which reparation must be granted. Victims cannot be parties to the judicial proceedings. They can only participate during the incidence of reparation, after the sentencing. Therefore, they are limited to requesting reparation for the acts that have been sentenced, not for all of the acts of which they were victims (Article 23). In addition, the burden of the petition for reparation does not lie on the State but on the victim; so, if victims do not request reparation for the incidents (because they do not have knowledge of the proceeding or cannot intervene), the benefit of “alternate sentence” must be conceded to the condemned person (Article 46).

2. Perpetrators Will Not Have to Guarantee Reparation with All of Their Assets. Persons responsible for crimes, who are benefited by this bill of law, merely have to hand over or report their illegally obtained assets; and only such assets will be used for reparation (Articles 10.2, 11.5, 13.4, 45.1, and 46). The bill of law does not set forth any measure for handling the criminals’ insolvency when such insolvency is fraudulently stated to avoid having to respond for the victims’ right to reparation. Thus, if the assets have been passed over to a front person, using fraudulent maneuvers that go against the victims’ rights, or have simply been assigned to third parties, the victims cannot obtain the resources, not even when such resources were originally their own property, as in the case of lands belonging to displaced persons.

3. There Will Be a Reparation Fund with Resources That Are Not Assured but Precarious. This bill of law provides for a reparation fund administered by the governmental office called Social Solidarity Network that would be the entity in charge of settling and paying the indemnities ordered by the court. That is to say, payment of such indemnities depends on the fund. The fund would consist of the assets or resources that the persons who benefit from this law hand over, of resources from the national budget, and of donations (Article 55).

But the bill of law does not provide for a fixed national budget allotment for the fund; donations are contingent and, as we saw in the above point, the resources that the perpetrators would hand over are solely those illegally obtained. Therefore, there are no guaranteed resources for reparation. On the contrary, the bill of law sets forth that the

settlement and payment of indemnities that the Social Solidarity network must make and the victims' rehabilitation measures must respect budget limits and be conditioned to the budget availability of said fund (Articles 43 and 56).

4. If There Is No Sentence, There Is No Reparation. This bill of law does not order the State to give reparation to all of the victims but only to victims of crimes for which the perpetrators have been sentenced. If demobilized persons do not have any judicial proceedings initiated before their demobilization, regarding crimes that cannot be amnestied or pardoned even if they have effectively committed those crimes, this bill of law would not apply. Decree 128 of 2003 would; it grants the right to not be judicially investigated. The victims of those cases cannot seek reparation through the procedures provided for in this law and cannot be fund beneficiaries. The same occurs if the perpetrator is deceased because in that case there would be no sentence.

Under these conditions, reparation for the victims is random because it depends on proceedings regarding only cases being opened before the "demobilization", on the trials leading to establishing those responsible without the victims' participating in the debate, and on there being economic resources, which the State is not committed to guarantee. That is why, there will also be impunity regarding the issue of reparation.

Bogota, June 20, 2005

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