



*After the Approval of the Law of Impunity in Colombia (Bulletin Number 7)*

## **“STOP BEING THE LOVER AND BECOME THE WIFE”<sup>1</sup>**

The law of impunity is the engagement ring for the institutionalization of paramilitarism

Days after the demobilization of the AUC Cacique Nutibara Block in December 2003, when Carlos Castaño, the paramilitary maximum leader at that time, was asked about the future relationship that his group would have with the Military Forces and political and economic sectors that had supported him and the group, he answered, *“To use a very popular term, one typical of the Antioquia region: Finally, we’re going to stop being the lover and become the wife!”* (Interview granted to the newspaper *El Tiempo*, December 4, 2003, page 1-5). These words announced that the true aim of the peace process was not to dismember paramilitarism but to legalize it and enable it to exercise its power over the State and over the society publicly and “legitimately.” In other words, instead of dismantling paramilitarism, paramilitarism would be institutionalized.

Among other aspects, this intention is reflected in the act of granting exuberant legal benefits to paramilitary group members who have signed demobilization agreements with the present Government. More specifically, the bill of law called “Justice and Peace”, approved last June 22 in the Colombian Congress and pending Presidential sanction, includes provisions that enable a particularly benevolent treatment for perpetrators of war crimes and crimes against humanity. Among them, we mention classifying paramilitarism as a political offense (Article 72 in said bill of law). Below we expound on how this classification is aimed at exonerating the paramilitary from serving sentences that are proportionate to the damage that they have caused, at protecting them from international justice, and at ensuring them participation in politics.

**1. Classifying Paramilitarism as a Political Offense.** One of the most controversial provisions in the above-mentioned bill of law is the one that expands the legal definition of the offense of sedition to include forming or belonging to *“self-defense groups whose actions interfere with the free operation of the constitutional legal order”* (Article 72). This modification puts the crime of paramilitarism into a political category and, therefore, member of such groups may receive a broad list of benefits, as contemplated in the Constitution and by law, for persons who commit political offenses (rebellion, sedition, and mutiny).

*a. They may be amnestied and pardoned.* Articles 150-17 in the Constitution authorizes Congress to grant general amnesties and pardons for political offenses and Article 201-2 in the Constitution authorizes the Government to grant pardons for political offenses pursuant to law. Likewise, 2002 Law 782 provides for granting legal benefits that consist of extinguishing penal action or of pardoning sentences for persons involved in committing political and related offenses, and 2003 Decree 128 regulates how to grant such benefits. That is to say, classifying the crime of paramilitarism as a political offense would permit these groups to form and persons to participate

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<sup>1</sup> The Colombian Commission of Jurists obviously does not agree with the discriminatory nature of this expression against women. This is a verbatim quote of a statement made by a paramilitary leader.

in them, without them being subject to investigation and trial and without the perpetrators receiving any punishment whatsoever.

*b. They may participate in politics and may hold public offices.* The Political Constitution excludes the access to certain public offices to citizens who have been sentenced with incarceration for having committed common crimes, that is to say, crimes other than political offenses (Articles 179-1, 197, 204, 207, 232-3, 249, 266, 267, 299, and 304). By classifying paramilitarism as sedition, persons sentenced for having formed or having been members of paramilitary groups would not be disqualified from holding the high public offices to which the Constitution refers. Thus, demobilized persons could hold, among others, offices such as President of the Republic and Vice-President of the Republic. They could become members of Congress, Governors and Members of Provincial Chambers; Ministers and Directors of Administrative Departments; Constitutional Court Judges, Supreme Court of Justice Judges, and Counsel of State Judges; National Prosecutor General, General Comptroller, and National Registrar. Participation in such public offices would continue to be proscribed for perpetrators of common crimes, but not for persons who are responsible for forming paramilitary groups.

*c. They would not be extradited for this type of crime.* Article 35 in the Constitution, through which the extradition of Colombian nationals is allowed, expressly provides in the third paragraph that “*extradition will not be in order for political offenses*”. Such prohibition also includes offenses that are considered related to political offenses, that is to say, crimes that are inherent of armed group actions (carrying weapons and illegal arms manufacture, use of Public Force uniforms and distinctive insignia, etc...). It is not unlikely that drug trafficking may also be considered an offense related to paramilitarism.

**2. A Proposal That Came from the Beneficiaries Themselves.** This initiative was put to the consideration of Congress in Article 64 of the modification specifications for the bill of law drawn up at the Presidential House, Casa de Nariño, by the Government and the Uribe parliamentary supporters in February and March 2005. The text was a reproduction of Article 37 in the bill of law originally presented by Representative Armando Benedetti and other parliamentarians who stated that, to write it up, they had gathered the recommendations made by the High Commissioner for Peace. However, nor the Government nor those parliamentarians were the first to launch this proposal to classify paramilitarism as a political offense.

As of mid 2003, a document written up by the group of attorneys contracted by the AUC General Staff was made public. Its specific purpose was to propose the legal framework for the demobilization that it would offer the Government. The first aspect of said proposal was that the State had to acknowledge that the crimes committed by the paramilitary groups had exclusively political motives and that, therefore, they should be classified as sedition. The document reads, “*The Criminal Code should be modified to clarify sedition, related offenses, and terrorism, in order to stop abusing (...) forced, accommodating procedures against the AUC militants that classify their acts as terrorist acts and treat them like common criminals*” (“AUC Proposal”, Magazine *Cambio*, July 7, 2003, page 18). Other aspects contemplated in this proposal were also derived from the mentioned modification, such as non-extradition, estoppel of sentence for related crimes, political asylum, and amnesty or pardon. The proposal also argues that massacres are the product of an undeclared war, not acts of genocide or crimes against humanity, and that drug trafficking must be considered an offense related to the offense of sedition.

The identical nature of these proposals does not appear to be mere coincidence. And even less so, when we consider that both the Government and Congress made the course of the bill of law depend on the approval of said article. Indeed, after the proposal was rejected during the first debate in Congress, the Government and the bill's promoters revived the article by using a formality that was not contemplated in the legislative procedure and obtained approval for it by sending it to other Commissions where it had a majority vote guaranteed. After it was approved in the House of Representatives Plenary Session, Representative Roberto Camacho, the coordinator for the promoters, stated that the article that turned the paramilitary into political delinquents was the most important provision in the bill of law, to such an extent that its approval made the rest of the set of articles unnecessary.

**3. Government Contradictions.** Through 2002 Law 782 the present Government modified the legal policy for demobilization, to enable reaching agreements with armed organizations that were not of a political nature. Thus, it paved the way towards the negotiation with the paramilitary groups. Now, some years down the road, within the framework of the bill of law called "Justice and Peace", it has promoted classifying these groups' acts as political offenses. Simultaneously, it has announced that it intends to eliminate the classification of political offenses from the Constitution once it has culminated the paramilitary demobilization process. The Government insists on denying that an armed conflict exists in Colombia but at the same time it is involved in an alleged peace process and requests military aid to fight the guerrilla.

In addition to the contradictions in the Government's discourse as a whole, breaking it down into topics we also observe serious legal absurdities. In particular, the classification of paramilitarism as a political offense disregards the fact that throughout the history of Colombia exclusively persons or groups who get organized for the purpose of modifying, eliminating or substituting the institutional organization of the State have been considered perpetrators of political offenses, not persons or groups who act as its defenders. It also disregards the fact that the paramilitary groups have devoted themselves to defending private interests through systemic attacks against the civilian population, with the support and auspice of the State itself. If such a classification were legally plausible, it would not be necessary to reform the criminal classification of sedition because the interpretation that the judge makes when applying the norm to each specific case would be more than sufficient classification.

Furthermore, the problem with this classification lies not only in absurd concepts but also in the perverse effects that may be derived from applying them. Concretely speaking, the mere idea of a possible broad interpretation of the appurtenances that deem criminal conducts, such as drug trafficking and violations of international law, offenses related to the offense of sedition - as the AUC proposed in the above -mentioned document- is worrying. Considering this situation dangerous, Senator Jimmy Chamorro presented a proposition to explicitly prohibit considering said crimes political or related offenses but his proposal was rejected by the majority party in Congress.

In conclusion, the modification to the Criminal Code that the bill of law called "Justice and Peace" introduces opens the door to allowing pardoning persons, who have participated in forming paramilitary groups and even persons responsible for grave human rights violations, war crimes, and crimes against humanity when such crimes are interpreted as related to a political

offense. More over, the perpetrators of such crimes would be protected against extradition and could freely accede to top level public offices.

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