

For Immediate Release

Colombia: Fix Flaws in Transitional Justice Bill

(Washington, DC, June 12, 2012) – On Wednesday, June 13, 2012, Colombia’s Senate will hold the eighth and final congressional debate of the “Legal Framework for Peace” bill. While some positive changes were introduced to the bill on June 4, during its seventh congressional debate, they did not correct several of the proposal’s fatal flaws. This Wednesday’s debate will thus be Congress’ last opportunity to modify the proposed constitutional amendment so that it complies with Colombia’s obligations under international law and protects—rather than denies—victims’ basic rights.

Three fundamental problems persist in the most recently approved version of the bill:

- 1) The amendment empowers Congress to suspend the sentence of any guerrilla, paramilitary, or military member convicted of war crimes or crimes against humanity, including those deemed “most responsible” for such abuses. Congress would thus have the authority to guarantee that top FARC commanders convicted of atrocities do not spend a single day in prison. If Colombia’s Constitution provides guerrilla leaders with the opportunity to avoid incarceration, it is only to be expected that they will demand it—and nothing less—the day they sit down to negotiate with the government.
- 2) The amendment limits the prosecution of atrocities to those individuals found “most responsible,” and empowers Congress, and subsequently justice officials, to exempt from criminal prosecution countless guerrillas and paramilitaries responsible for war crimes and crimes against humanity.
- 3) Military personnel responsible for heinous crimes will be eligible to benefit from dropped prosecutions and sentence suspensions. These benefits would even extend to military members responsible for extrajudicial executions known as “false positives,” despite the claim by the bill’s sponsor in the Senate, Roy Barreras, that such individuals should not be eligible since “that was never the intention or the spirit of the legislators.” Irrespective of the asserted intent of the legislators, the most recently approved version of the amendment applies to “state agents, in relation to their participation in [the internal armed conflict],” and on multiple occasions, Colombian justice authorities have found that false positive cases are related to the internal armed conflict. Cases of false positives have repeatedly been prosecuted as “homicides of protected persons,” a strictly conflict-related crime defined by the Colombian penal code as “caus[ing] the death of a protected person *due to and in the course of the armed conflict*” (emphasis added).

The version of the bill approved on June 4 also incorporates some positive changes:

- a) Members of paramilitary successor groups, labeled “emerging criminal gangs” (Bacrim) by the Colombian government, do not appear to be eligible to benefit from the amendment.¹ These groups had been excluded from the amendment’s benefits until May 30, when the bill as proposed for its seventh congressional debate was modified. The continued exclusion of paramilitary successor groups thereby only corrects a recent modification of the bill that would have exacerbated an already deeply flawed proposal.
- b) The bill now appears to provide that all cases of crimes against humanity and war crimes must be criminally investigated.² By contrast, under previous versions of the bill, only the cases that could be linked to those deemed “most responsible” would have been criminally investigated. Nevertheless, as described above, Congress, and subsequently justice officials, could still exempt from prosecution individuals who planned, participated in, or covered up atrocities—but are not considered “most responsible.”

The Legal Framework for Peace is essentially an amnesty in disguise. Colombia’s victims will see that if they have to watch their abusers walk free without spending a day in prison. Moreover, the International Criminal Court (ICC) is watching the situation in Colombia and has a mandate to open an investigation if Colombia is unwilling or unable to prosecute war crimes or crimes against humanity. Adoption of legislation that provides a “get out of jail free card” to those most responsible for the worst crimes would send a strong signal of unwillingness on the part of the Colombian government to move forward with accountability, and could therefore open the door to an investigation by the ICC.

¹ The most recently approved version of the bill applies to “illegal armed groups that have been party to the internal armed conflict.” The Colombian government does not recognize paramilitary successor groups to be party to the internal armed conflict. However, in the future, the groups could be deemed party to the conflict, which would allow for their members to be eligible for benefits under the amendment.

² The most recently approved version of the bill provides that Congress, under the initiative of the government, can “through statutory law determine the criteria for selection that will permit focusing efforts on the criminal investigation of those most responsible for *all* crimes that acquire the connotation of crimes against humanity, war crimes, or genocide” (emphasis added). The addition of the word “all” implies that all crimes against humanity and war crimes will have to be criminally investigated.