

November 2012

## 'LEGAL FRAMEWORK FOR PEACE'

### Amnesty for Human Rights violations committed by the different actors in the armed conflict

The **constitutional reform known as the 'Legal Framework for Peace'** on transitional justice<sup>i</sup>, adopted on June 19, 2012, includes the possibility of **amnesty for human rights violations committed by the actors in the armed conflict (guerrillas, paramilitaries and state security forces), even in cases of crimes against humanity**. *"The central aspect of the present proposal focuses on the need for alternatives to criminal investigation, in order to make it feasible to prioritize the investigation of certain cases or to make it possible to forgo the criminal prosecution of others"*<sup>ii</sup>. This waiver of investigation and prosecution is in contradiction with international law.

The main elements of concern are:

- The law provides for the definition of criteria for the **selection** of cases by Congress, via a law enacted on the initiative of the government to **"focus efforts on the criminal investigation of those held most responsible for crimes classified as crimes against humanity, genocide, or war crimes committed in a systematic manner"** (Article 1, paragraph 4). The law only allows for the prosecution of *"those most responsible"* and renounces the investigation and punishment of other members of illegal armed groups and state agents that may be responsible for these crimes. For this reason, serious crimes, including crimes against humanity, may be exempted from investigation and punishment. The law also allows for *"those held most responsible"* for committing war crimes to be exempted from prosecution, whenever these crimes are deemed not to have been committed *"systematically"*.
- **For those cases which are not selected, the State may waive criminal prosecution**<sup>iii</sup>. The possibility of not prosecuting minor offences is already provided for under Colombian law. Current legislation expressly prohibits pardons or amnesties *"to those conducting behaviors constituting atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, murder committed outside combat or placing the victim in a helpless state"*. In the new legislation, all these crimes could be subject to pardon or amnesty, which is of paramount concern<sup>iv</sup>.
- The reform provides for the **prioritization** of cases<sup>v</sup> for criminal prosecution which *"could lead to a breach of the duty of the State to investigate crimes in a reasonable timescale, or could even in practice lead to a waiver of investigation for cases which are not prioritized, as a result of budget constraints on the technical investigation bodies"*<sup>vi</sup> (CCJ). To prevent this from happening, it is *"necessary to strengthen the institutional capacity of the Attorney General's Office"*<sup>vii</sup>; however, this is not contemplated under the constitutional reform.
- The framework gives the Colombian Congress the power to **"establish the cases, requirements and conditions for suspending the enforcement of a sentence"** (Article 1, paragraph 4), via a law enacted on the initiative of the government, allowing for the suspension of sentences imposed by the courts against guerrillas, paramilitaries or military personnel convicted of serious crimes, or to grant amnesty for such

crimes, even in cases of gross violations of human rights and / or war crimes or crimes against humanity. This would apply even for *“those held most responsible”*<sup>viii</sup> as in the logic of the framework, only *“those held most responsible”* could be convicted since the investigation and punishment would be limited to them.

The law **extends transitional justice mechanisms to State officials**<sup>ix</sup> (art. 1 paragraph 1). Therefore, these officials will also benefit from these mechanisms for impunity. The Attorney-General himself, Eduardo Montealegre, presented a proposal to Congress to discuss the possibility that the Colombian Constitution contemplates *“conditional amnesties or pardons”* even for *“serious violations”* of human rights and he has stated that he shares the view of the Government and the Legislative to include in the project *“all parties to the conflict”*, i.e. guerrillas, paramilitaries and state security forces. This reform constitutionalises impunity. As emphasized by the CCJ, *“it is noteworthy that some of the proposed measures have already been approved by Congress, without the need for constitutional norms expressly authorizing them”*. Also of concern is the fact that there is no provision for a time limit for the implementation of this *“transitional justice”* legislation<sup>x</sup>.

As stated by the representative in Colombia of the UN High Commissioner for Human Rights: *“Evading responsibilities for violations committed in a conflict through the manipulation of laws and procedures does not work in the long term and instead, weakens the chances of achieving real and lasting positive change”*<sup>xi</sup>.

As recalled by the Office in Colombia of the UN High Commissioner for Human Rights, ***“serious violations cannot be amnestied or forgotten, on the contrary, confronting them will contribute to the transformation of Colombia”***, ***“there is no contradiction between peace and justice”***<sup>xii</sup>. Indeed, the fight against impunity would help ensure lasting peace and a guarantee of non-repetition of the crimes.

**We therefore ask the European Union and its Member States, Switzerland and Norway, to urgently express concern about this reform and to ask the Colombian authorities:**

- To ensure that the legislative and regulatory measures for the implementation of the reform are consistent with Colombia's international obligations for the investigation and punishment of human rights violations.
- To ensure, through the regulation of the reform, that cases of gross violations of human rights, including crimes against humanity, genocide and war crimes, do not go unpunished and that their intellectual and material authors are not eligible for clemency or suspended sentences. This should also apply to the parties in the peace process negotiations.
- That cases which are not prioritized are included in an action plan to ensure their investigation and subsequent punishment.

<sup>i</sup> See [El Tiempo, Carta de Human Rights Watch \(HRW\) al Presidente y al Congreso, May 1, 2012](#) – In Spanish

<sup>ii</sup> Colombian Commission of Jurists (*Comisión Colombiana de Juristas* – CCJ), Commentaries to the “Legal Framework for Peace”, November 23, 2011

<sup>iii</sup> *“the Congress, at the initiative of the Government, may by statutory law determine selection criteria which allow for a focus on the criminal investigation of those held most responsible for all crimes which are classified as crimes against humanity, genocide, or war crimes committed systematically (...) and may authorize the conditional waiver of the criminal prosecution of all cases which are not selected”*. (article 1 paragraph 4 of the law)

<sup>iv</sup> CCJ, prec.

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<sup>v</sup> “The Attorney General’s Office will determine the criteria for the prioritisation of the cases for prosecution.” - article 1, paragraph 4

<sup>vi</sup> CCJ, prec.

<sup>vii</sup> Idem.

<sup>viii</sup> HRW, prec.

<sup>ix</sup> The law makes reference to a ‘differential treatment for the different ilegal armed groups which have been part of the internal armed conflict and also for state agents’ (article 1 paragraph 1).

<sup>x</sup> Although a time limit has been established for Congress to legislate on this matter (sixth debate), no time limit has been established for the period of application of the provisions of “transitional justice”. (article 2)

<sup>xi</sup> For Todd Howland, “Neither prioritization nor selection should be interpreted or applied as mechanisms of impunity for cases not selected or prioritized. There must be a complementary application of judicial and non-judicial mechanisms, and wise use of resources and capabilities to yield results”. Todd Howland, on how to confront human rights violations during the search for peace in [Semana, “Lo que exigen los derechos humanos es que los colombianos hagan la paz y no la guerra”, May 14, 2012](#) – In Spanish

<sup>xii</sup> [OCHCR, Oficina de la ONU para los Derechos Humanos saluda “conversaciones exploratorias de paz”, August 29, 2012-](#) Press release in Spanish