

Colombia under the Rome Statute

(Talking points for an oral presentation)

Gustavo Gallón

Colombian Commission of Jurists, Director

0. Colombia: a constitutional regime amidst a lengthy armed conflict

0.1. Constitutional regime

- .Elections
- .Different political parties
- .Separation of powers

0.2. Armed conflict

- .Guerrillas since the 60's. Two main groups: Farc and Eln
- .Paramilitaries promoted by the Government also since the 60's
- .Armed Forces involved in serious and systematic human rights violations
- .Since 2002, negotiations between the Government and paramilitary groups presented as a "peace process":

- 31,600 paramilitaries officially declared collectively demobilized in 2004-2006 (but they were 12,000 officially recognized in 2002)
- 28,000 of them were left free arguing that they did not commit crimes because there were not judicial procedures initiated against them before their demobilization (under Decree 128 of 2003). The Supreme Court of Justice declared unconstitutional that decision, but the 28,000 paramilitaries remain free without been persecuted by the authorities
- 3,600 were nominated by the Government to benefit from reduction of punishment by the judiciary (5-8 years imprisonment, instead of 60, under the so called "Peace and Justice Law", or Law 975 of 2005)
- Only 600 out of these 3,600 are effectively participating at the judicial procedures under Law 975 (the remaining 3,000 are free, without been persecuted by the authorities)
- The most important paramilitary leaders who made the agreements with the Government (more than 20) were extradited to the USA since May 2008 to respond for drug-trafficking (the Colombian Government argued that they violated the "peace" agreement because they continued committing crimes ordered from prison, while the legal consequence according to Law 975 should be to be transferred to the ordinary justice missing the benefits of reductions of punishment). Most of the judicial procedures are stopped since the extraditions.

- Some crimes have been discovered through Law 975, as well as some information about complicities and functioning of paramilitary structures, but .paramilitarism has not been dismantled
.there has not been justice (after 5 years of Law 975 there is only one sentence not confirmed yet)
.there has not been reparation (only 5,000 hectares of land have been returned out of 6,000,000 hectares usurped)
.there have not been guarantees of no repetition (out of 12,000 paramilitaries existing in 2002, there are about 10,000 paramilitaries in activity, while the Government argues that they are no more paramilitaries but drug-traffickers): more than 4,300 killings and forced disappearances attributed to paramilitaries since December 2002.

The Colombian State has been unwilling or unable genuinely to carry out the investigation or prosecution of serious international crimes, according to Article 17 of Rome Statute, by:

1. The toleration by the Government of killings and disappearances committed by paramilitaries since 2002.

There have not been procedures conducted consistently with an intent to bring the persons concerned to justice (according to Art. 17.2.c)

2. The freedom given to the 28,000 paramilitaries under Decree 128, which constitutes a *de facto* amnesty.

This decision was made for the purpose of shielding the 28,000 persons concerned from criminal responsibility for crimes within the jurisdiction of the ICC (according to Art. 17.2.a), or

The procedures are inconsistent with an intent to bring the 28,000 persons concerned to justice (according to Art. 17.2.c).

It must be said that not all of these 28,000 paramilitaries were or are “foot-soldiers”. Many of them have been commanders of paramilitary actions, and most of them have committed atrocious crimes.

3. The freedom given to the 3,000 paramilitaries nominated to Law 975 who are not participating at it, without been persecuted by the authorities. The same consideration indicated for the previous is applicable in this case:

This decision was made for the purpose of shielding the 3,000 persons concerned from criminal responsibility for crimes within the jurisdiction of the ICC (according to Art. 17.2.a), or

The procedures are inconsistent with an intent to bring the 3,000 persons concerned to justice (according to Art. 17.2.c).

4. The paramilitary leaders extradited to the USA (more than 20). It indicates that the negotiations between the Government and paramilitaries can not been considered as a peace agreement, or at least as a successful peace agreement.

The Colombian Constitutional Court has stated that these extraditions put the Colombian situation under the competence of the ICC:

“autorizar la extradición de un nacional colombiano requerido en el extranjero por delito de narcotráfico, conociéndose que esa misma persona también debe responder por los más graves delitos de lesa humanidad, constituye una modalidad de impunidad que se repudia desde el mencionado Tribunal Internacional que lo autoriza a intervenir en aquellos Estados que patrocinan tales prácticas” (Corte Suprema de Justicia, Sala de Casación Penal, concepto sobre solicitud de extradición de Luis Édgar Medina Flórez, alias “Comandante Chaparro”, M.P.: Yesid Ramírez Bastidas, 19 agosto de 2009).

The same conclusion has been stated by the Inter-American Commission on Human Rights:

“La Comisión observa que esta extradición afecta la obligación del Estado colombiano de garantizar los derechos de las víctimas a la verdad, la justicia y la reparación de los crímenes cometidos por los grupos paramilitares. La extradición impide la investigación y el juzgamiento de graves crímenes por las vías establecidas por la Ley de Justicia y Paz en Colombia y por los procedimientos criminales ordinarios de la justicia colombiana. También cierra las posibilidades de participación directa de las víctimas en la búsqueda de la verdad sobre los crímenes cometidos durante el conflicto y limita el acceso a la reparación del daño causado. Asimismo, este acto interfiere con los esfuerzos por determinar los vínculos entre agentes del Estado y estos líderes paramilitares.” Comisión Interamericana de Derechos Humanos (CIDH), Comunicado de Prensa número 21/08 del 14 de mayo de 2008, en www.cidh.org.

5. Further considerations

6. Conclusion

The Hague, October 20, 2010