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Guest Author

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[The following article by Colombian journalist Mario Barbosa is reprinted with the permission of Noticias Aliadas in Lima, Peru. It first appeared in the May 10, 1999, edition of the weekly publication Latinamerica Press.]

A controversial system of anonymous judges is scheduled to end, but it is still not clear how the transition will be made. After 15 years and amid fierce debate, Colombia's controversial system of "faceless judges" is to end June 30. The system, which allows judges, prosecutors, and witnesses to remain anonymous their faces concealed and voices distorted in cases of drug trafficking, terrorism, and paramilitarism, was meant to protect them in cases that could put their lives in danger. As the date nears for the measure to expire, its supporters are pressing for an extension while critics insist that it violates the basic norms of due process.

In 1984, when terrorism was on the increase and the Medellin drug cartel frequently attacked government officials, the administration of then President Belisario Betancur (1982- 1986) passed legislation allowing anonymity for special judges handling cases of kidnapping, extortion, and terrorism. Laws passed in 1988 and 1990 incorporated these judges into the regular courts, and the 1991 Constitution made permanent a system that was originally meant to be temporary. The judges' powers were broadened, and only in 1996 was a time limit set for the much-criticized system. Those who support the system, including the jurists and various government and state officials, say that without anonymity the safety of judges and witnesses would be at risk.

Between 1979 and 1991, 211 judicial authorities were assassinated, according to the attorney general. Supporters say the system of faceless judges has led to the investigation and trial of drug cartel bosses, people charged with serious human rights violations, hundreds of guerrillas, and accused paramilitaries. An editorial in the daily newspaper El Espectador said, "Many question whether conditions in the country are radically different from those that existed in the second half of the 1980s. And obviously, it would be absurd to give judges in ordinary courts cases that are pending that would put them in danger."

Critics say, however, that the system violates all principles of due process. It has been proven that false evidence was presented in many cases, but the secrecy surrounding the proceedings blocks any chance of appeal. In April, the Colombia office of the UN High Commissioner for Human Rights published a report that condemned proposed legislation to extend the system of anonymous judges, saying the law would continue to violate norms of due process. Sen. Ingrid Betancur agreed with the criticism, saying the system "was created to get rid of [drug] cartel bosses and ended up trying union leaders."

Various national and international nongovernmental groups charge that the high number of cases involving false witnesses and anonymous judges, in which defendants do not even know what

evidence has been presented, has led to the imprisonment of innocent people. These organizations have recommended that the administration of President Andres Pastrana end the system because it violates the fundamental right to a public trial. Critics also point out that some of the strongest opposition to the system comes from members of Congress and government officials who are under investigation.

Various organizations have called for a temporary, exceptional system that does not violate due process. Robert Goldman, president of the Organization of American States' Inter-American Commission on Human Rights, asked Pastrana to seek alternative mechanisms "so as not to make martyrs of witnesses or those responsible for administering justice." He said such a mechanism must guarantee "a minimum degree of due process" to "maintain the integrity of the judicial system." If a temporary mechanism is not established before the system of anonymity is abolished, however, most of the 29,662 cases presently under investigation before anonymous judges will be dropped.

The time frame for trying cases before the anonymous judges is twice that allowed for other cases. If the system is abolished and the cases are passed back to regular courts, many could be dismissed and the defendants freed because the time limit for trying the case will have expired. In a recent report, Attorney General Alfonso Gomez Mendez said eliminating the system would free 5,913 persons currently being held on charges of drug trafficking, paramilitary activity, and murdering human rights workers.

But some critics say quick approval of a law to avoid mass release of prisoners would also be dangerous. "Legislation approved in a hurry could contain hidden norms favoring the interests of those who might benefit from eliminating the system of faceless justice," one lawyer said. The regular judges of Colombia's five superior courts have asked that they not be assigned cases involving drug trafficking, terrorism, kidnapping, and paramilitary activity. They also have urged special protection for the 362 circuit judges and 179 magistrates in Bogota alone. If these cases do pass to their jurisdiction, the Bogota Superior Court judges said, "it would be difficult to handle them with the necessary diligence and care...which obviously would lead to impunity."

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