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Court Strikes Down Paramilitary-demobilization Law

by LADB Staff

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A May 18 ruling by Colombia's Corte Constitucional (CC) found key provisions of the Justice and Peace Law governing the disarming of death-squad fighters unconstitutional. The court said that fighters who had committed atrocities would have to pay reparations to victims and serve jail sentences longer than the eight-year upper limit ordered by the law. The ruling drew condemnation from paramilitary leaders who said they would choose to "kill ourselves" or return to fighting rather than face lengthy jail sentences for committing atrocities.

Court: No shortened sentences for massacre perpetrators

Since 2004, the Congress and President Alvaro Uribe have promoted the Justice and Peace Law as a key to demobilizing thousands of members of paramilitary groups, most of them organized under the Autodefensas Unidas de Colombia (AUC). The law allowed groups to disarm and move to haven areas where they could be monitored. The law called on paramilitary leaders to confess their crimes, return stolen goods, and compensate victims in exchange for an eight-year limit on prison terms.

Critics, including human rights groups, the UN, and the US government, condemned the law for giving impunity to individuals and groups that had committed serious crimes like murder and drug trafficking (see NotiSur, 2003-12-19, 2004-06-04, 2004-12-17, 2005-06-17, and 2005-07-22). The CC backed the arguments of the law's critics by a 6-3 vote, saying people guilty of atrocities would have to serve long jail sentences. The court ruled paramilitaries convicted of crimes before the peace process would have their sentences suspended. However, the court said warlords who were condemned for massacres could again face decades behind bars if they returned to paramilitary activities.

Human rights groups praise ruling

Diplomats and human rights groups say there has been no way to guarantee that the militias and their drug networks are completely dismantled. Commanders were not required to turn over their vast fortunes or confess to atrocities. Prison terms for war crimes could also amount to less than three years. The CC sought to resolve those objections, saying that the warlords who receive reduced sentences for cooperating must confess to all their crimes and that, if they are found to have lied, they would risk having full prison sentences reinstated. They must pay full reparations to victims' families and direct authorities to the buried bodies of victims. The court also gave prosecutors more time to investigate paramilitary crimes.

Jose Miguel Vivanco, the Americas director for Human Rights Watch (HRW), applauded the decision. "The Uribe administration has been on its knees, essentially turning the country over to drug traffickers and groups that spread terror," he said from Washington, DC. "President Uribe has

been bending over backwards to give the paramilitaries everything they wanted and that included passing a law that was inconsistent with the rule of law," said Maria McFarland of HRW.

New generation of paramilitaries emerging

Since the passage of the law, 30,000 fighters have laid down their arms, twice the number originally expected, and 17,000 weapons have been turned over to the authorities. The law has reportedly reduced the amount of violent crime in areas the group's control. The paramilitary leaders had proceeded with talks on the assurance that they would not serve long prison terms or have to turn over all their wealth. They have also made clear that they would not cooperate if the government moved to extradite them to the US on drug-trafficking charges, a provision Uribe's government agreed to as long as the paramilitaries cooperated. The groups are responsible for some of the worst atrocities in Colombia's civil war, carrying out massacres across this country in the name of a national offensive against the rebels and those accused of supporting them.

The Organization of American States (OAS) has warned that paramilitaries that supposedly had demobilized are still operating. A "new generation" of illegal armed groups has been emerging since the law took effect, according to reports in Bogota daily newspaper El Tiempo, with reports that previously demobilized fighters were among them. The government has said that fighters in these new groups would not be eligible for the benefits of the demobilization law. El Tiempo also reported that many provisions of the law are not being implemented.

Government authorities said in April that militia leaders would hand over 100,000 hectares of land to victims of paramilitary violence. But the fund in charge of that land currently only has 334 estates, equivalent to 25,601 ha. Authorities claim that more land is being processed to hand over to victims' groups.

Militia leaders: "A mortal blow to peace"

The CC ruling drew a swift, threatening response from paramilitary leaders who live on ranches in northern Colombia. The paramilitary groups, financed by landowners and from the profits of drug trafficking, have killed thousands in their quarter-century-old war against rebels, leftist politicians, and union members. "This is a mortal blow to reconciliation in this country," Ivan Roberto Duque, a paramilitary commander, told RCN radio. Ernesto Baez, a leading commander of the AUC, also called the ruling "a mortal blow for peace in this country" and said that his compatriots were thinking of returning to the battlefield. "We don't want this, but I am convinced that the thinking of many of our ex-combatants is that it's preferable to get killed in the mountains than submit oneself to 40-year jail sentences."

The Uribe government took a similarly dim view of the decision. "I'm amazed and perplexed," said Interior and Justice Minister Sabas Pretelt, who oversaw some of the implementation of the law and is one of its staunchest defenders. "I can only have a democratic attitude, but I'm frankly worried." The latest development in the peace process with right-wing militias comes as the government has been besmirched by revelations that Colombia's intelligence service had collaborated with death

squads to assassinate leftist union activists, provided secret information to drug traffickers, and engineered votes for President Uribe in the 2002 election (see NotiSur, 2006-05-12).

"This is very serious, because they are not complying with accords that were made during negotiations," Rocio Arias, a former congresswoman who often speaks for the paramilitary groups, said in comments published by El Tiempo. Paramilitary groups have held meetings to discuss their response to the CC decision and most statements have echoed those above, making veiled threats of a return to combat.

"I think we can discount that the paramilitaries will take up arms against the state because they've never done it before," said Otty Patino, an analyst with the Observatorio para la Paz, a Colombian think tank on security matters. There have been frequent prior instances when paramilitary groups have been linked to the Colombian armed forces (see NotiSur, 2003-07-18 and 2003-07-25).

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