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Effectiveness of Colombia's Extradition Policy Questioned

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In the late 1980s, at the urging of the US government, Colombia began negotiating an extradition agreement aimed specifically at prosecuting drug-cartel bosses. Taking as their slogan the words of Pablo Escobar Gaviría, Colombia's major cocaine trafficker at the time, "Better a grave in Colombia than a prison in the US," the drug mafias launched a violent offensive to prevent passage of legislation to implement the agreement.

Since then, some 1,500 Colombians have been extradited to stand trial in US courts. And not all were drug traffickers and their paramilitary allies. In the eight years of the administration of former President Álvaro Uribe (2002-2010), many members of the Fuerzas Armadas Revolucionarias de Colombia (FARC) were also sent to the US. The most recent extraditions were that of Uribe's sister-in-law Dolly Cifuentes Villa, on Aug. 7, and that of Gen. Mauricio Santoyo, his former security chief, on July 3 (NotiSur, July 27, 2012).

In the bloody campaign aimed at blocking the extradition treaty (NotiSur, Feb. 9, 1988), drug traffickers killed three presidential candidates, two ministers of justice (and seriously wounded a third), an attorney general, the director of one of the two most important newspapers in the country, and at least 200 judges and 500 police (NotiSur, Aug. 22, 1989). They also downed a passenger plane and threatened to kill one US citizen for every Colombian extradited.

Extradition no longer a threat

Twenty-five years after the treaty took effect with the July 1987 extradition of drug trafficker Carlos Ledher, positions have markedly changed. The failure of the official strategy has increasingly led to voices—in the judiciary, political circles, social organizations, and the press—suggesting that the treaty be revised or even rescinded.

And drug traffickers have abandoned their slogan, and now, upon being arrested, demand to be extradited to the US as quickly as possible. To accomplish that, they hire the best lawyers, many from the US with rich and notable experience in the judicial system, and they spend huge sums of money.

From a legal perspective, the extradition-policy's failure has two aspects. First, the transfer of those detained and the impossibility of following their cases means that, in reality, Colombia has ceded its legal sovereignty to the US, says Aurora Moreno Torres, a history and social sciences graduate from Colombia's Pontificia Universidad Javeriana, in an essay published in the magazine Encrucijada. And, she adds, Colombia gets nothing in return, and authorities generally learn that extradited criminals have been released when they return to Colombia and go through immigration at the Bogotá airport.

Second, drug traffickers have proved that, by implicating their peers and possible partners and giving the US Justice Department the rich information that they have accumulated, they can leverage that "collaboration" for better prison conditions and lighter sentences.
In the same vein, Gen. Óscar Naranjo, who for seven years, until July 2012, was head of the Policía Nacional, said that US authorities are "notorious" for their lack of collaboration. He did not say specifically that the extradition treaty should be revised, but, in statements reprinted by the magazine Semana, he admitted that for some time there has been "concern because in the US some drug dealers are serving sentences that for us are uncertain. We do not have information on whether the sentences are harsh, whether there are agreements for parole, or if they are agreeing to releases."

Also on the legal side, but with more impact, are other opinions from people relevant to the life of the country. In statements to the daily El Tiempo, former anti-organized-crime prosecutor Alfonso Gómez Méndez said that the time has come to evaluate the validity of extradition. "The country shed its blood to establish extradition as a punishment for drug traffickers, and it turns out that now the drug kingpins prefer to leave. The point is that, once they are before the US courts, they disappear from Colombia’s radar, so that in many cases, authorities only find out that they are coming back when they go through immigration."

Colombia gives up sovereignty, gets nothing

Last July, Sen. Juan Manuel Galán proposed "rethinking the extradition policy or eliminating it" since the mechanism had become "a mockery for the judiciary and for victims of drug trafficking because of the minimal sentences that the kingpins negotiate with US authorities." Galán said Colombia not only gave up its legal sovereignty but also "gets nothing in return; we are left with the pain and suffering while the US hides valuable information from us that they obtain from the drug traffickers." The legislator is the son of Luis Carlos Galán, the Partido Liberal presidential candidate who was assassinated in 1989 by the drug mafias (NotiSur, Sept. 7, 1989).

As Naranjo said, for a long time "authorities have been concerned" by the lack of results that they obtain from turning over their nationals to the US Justice Department, but the volley of criticism jumped in April, when it became known that drug trafficker Phanor Arizabaleta was on his way back to the country. The case of Arizabaleta, a key person in the Cali cartel structure, is the most dramatic example of what, in various ways, Moreno Torres, Naranjo, Gómez Méndez, and Galán are criticizing.

Arizabaleta's experience has become known as "the case." His extradition and jail time totaled only nine months. He was arrested in September 2010, turned over to US Drug Enforcement Administration (DEA) agents for transfer to the US in June 2011, and in March 2012 was back in Colombia, free, because he had supposedly served his sentence. US Ambassador to Bogotá Peter McKinley cited "humanitarian reasons" to explain Arizabaleta's release. When questioned by Semana, the diplomat said that Arizabaleta "is a sick, old man."

The magazine concluded that "the Phanor case ended up shattering any trust in the extradition process. It confirms fears rampant in Colombia that drug traffickers now understand that Escobar Gaviria was wrong when he said that a grave in Colombia would be better than prison in the US."

Fast-track extradition coveted by criminals

Criticism is now coming from all sides, but last year there were no opposition voices when, on June 24 at the behest of President Juan Manuel Santos, the citizen-security law (Ley de Seguridad Ciudadana) was passed. The law, which seems to have been crafted in drug-traffickers' interests,
includes "simplified extradition." Though that process, drug traffickers can ask the Corte Suprema to not review their cases and the extradition process can thus be reduced from two years to six months. Of 158 cases, 53 asked for expedited extradition.

"One in three prefers to go to the US. Now they all try to be the first to arrive, since whoever arrives first has a greater advantage: being able to give information that others don't have. Those who arrive later don't have information of value," Cuban American lawyer Humberto Domínguez, who says he is an "expert in extraditable and extradited persons," told Semana.

The defense lawyer for drug traffickers disclosed a piece of information that could lead to the conclusion that the war on drugs has been lost. Or, at least, that the extradition policy is dead. Domínguez said that several US personalities who "stood out in the fight against drugs" and who are now retired or have resigned from public office have become advisors to prisoners deemed extraditable and their lawyers.

Semana said, "This is the case with Bonnie Klapper, assistant US attorney until May 2011, and Robert Feitel, a former District of Columbia prosecutor." Feitel became Víctor Patiño's defense lawyer. Klapper visited drug trafficker Andrés Arroyave on April 5 in La Picota prison in Bogotá and since then has been an advisor to his defense team.

Domínguez rationalized this radical change in former public figures by saying, "The pay is substantial: they receive US$500,000 for defending a drug kingpin, US$300,000 for a midelevel drug lord, and between US$100,000 and US$150,000 for the lowest-ranking drug traffickers, but there are a lot of them." He is right. There are between 130 and 170 such cases each year.

Sen. Galán says extraditions have become the US's most powerful weapon in the fight against drug trafficking. The volume of information that Colombian criminals bring regarding the activities of their partners or peers, not only in Colombia but also in Mexico and around the world, is extremely powerful.

Gen. Naranjo does not say it directly, but his acceptance of Galán's statements are implicit in his criticism of the lack of reciprocity between the US and Colombia.

In its investigation, Semana gathered the impression that "each piece of information is worth gold." And it cited some examples. One drug dealer's testimony led to the capture of more than 120 traffickers in the US and, for that, his sentence "ended up being minimal." But "the most impressive case was that of an extradited person who revealed how drug trafficking had penetrated the highest echelons of a foreign government, which the US was unaware of until then. Thanks to the information, the drug trafficker spent hardly any time behind bars."

For a long time, criminals have not trembled at the thought of US justice. That is why former prosecutor Gómez Méndez says that extradition is a fiasco.

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