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CONTACT

Suzana Grego
Director of Communications
TEL +1 917 438 9331
E-MAIL sgrego@ictj.org



20 Exchange Place 33rd fl.
New York, NY 10005
tel +1 917 438 9300
fax +1 212 509 6036
www.ictj.org

Brief on Justice and Peace Law Presented to Colombian Constitutional Court

NEW YORK, January 17, 2006—Colombia's Justice and Peace Law (Law 975) continues to provoke opposition from international human rights organizations. Today, the International Center for Transitional Justice (ICTJ), based in New York, presented an amicus curiae brief on the law to the Colombian Constitutional Court. The constitutionality of Law 975 is currently being challenged before the Court.

In the brief, the ICTJ presents the lessons learned from five experiences of peacebuilding or transitions to democracy: those of Northern Ireland, South Africa, Sierra Leone, Timor-Leste, and Argentina. According to the ICTJ's analysis, the experiences of these countries provide lessons for Colombia, in particular that the political and legal difficulties of a peace process are not an "excuse for inaction" and that countries that undermine justice in the name of stability risk creating greater instability.

For example, the case of Sierra Leone -- little understood in Colombia -- clearly demonstrates the risks of entrenching impunity. After rebels in that country received a general amnesty under the framework of the 1999 peace accords, they continued their political activity and returned to violence. As a result of an international intervention that effectively restored peace, Sierra Leone installed an international tribunal which is now trying the principal perpetrators.

The South African experience -- widely cited in Colombia during the debate on the law -- demonstrates that incentives granted to human rights violators in order to obtain the truth do not function effectively if they do not include a rigorous balance between incentives to cooperate and the risk of being tried and convicted under regular criminal proceedings. According to Law 975, however, the risk incurred by a perpetrator who conceals facts in his confession is minimal. Even if it can be proven that he acted in bad faith, the perpetrator only risks a slight increase in penalty.

In its brief, the ICTJ critiques the reduced investigation periods available under Law 975 and argues that this reduction is a violation of Colombia's responsibility to effectively investigate human rights violations and the right of the victims to know the truth about these events. The ICTJ also argues that the law compromises the victims' rights to obtain justice, by weakening their participation in criminal proceedings. Finally, the law violates victims' rights to obtain reparations, in that it protects perpetrators' property in the absence of proof as to its illegal origins, and it reduces the scope of reparations to the return of goods.

Argentine lawyer Juan Méndez, president of the ICTJ, stated that "Law 975 regrettably constitutes a lost opportunity to establish an appropriate balance between the need to demobilize paramilitaries and the obligation to bring justice to victims. Fortunately, the democratic debate about the law has not ended with parliamentary approval and the Constitutional Court has the opportunity to void the law or modify it in a manner that responds to Colombia's international legal obligations."

About the ICTJ

The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and nonjudicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through non-judicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so. By working in the field through local languages, the ICTJ provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments and others.

For more information see the ICTJ web site at www.ictj.org.

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