



## Transitional Justice in Colombia

Colombia has endured the longest-running armed conflict in the Western Hemisphere. Successive waves of confrontation among guerrilla, government and paramilitary groups have caused enormous loss of life and weakened the rule of law. The shifting boundaries between drug trafficking and political crime and the tension between security and human rights pose particular challenges for those seeking accountability for past abuses and respect for human rights.

### BACKGROUND

In the early 1970s, Colombia earned notoriety as a major producer of cocaine. By the 1980s and '90s, much of the world viewed Colombia as lawless. At the same time, the conflict between the state and the FARC (Revolutionary Armed Forces of Colombia) created a humanitarian crisis involving millions of internally displaced people, as well as widespread and systematic crimes, including extra-judicial executions, forced disappearances and armed fighters' recruitment of children. Most other rebel groups exchanged their guns for progressive political reforms, including the approval of a modern constitution, in 1991.

The drug economy helped drive the expansion of both the FARC and its right-wing nemesis, the paramilitary United Self Defense Forces of Colombia (AUC), into rural armies. Drugs also internationalized the conflict and, in the late 1990s, brought U.S. forces onto the scene as military allies of the Colombian state. FARC and AUC leaders alike stand accused in Colombian courts of running drug cartels through their armed organizations.

In 2002, Álvaro Uribe won the presidency and instituted a policy of "Democratic Security" that centered on the mass mobilization of economic and human resources for war. With strong U.S. support, Uribe successfully used the Colombian Army to force the FARC into defensive positions, mobilizing civilians and recovering state control over key areas of the country. Uribe's popularity surged, and he was re-elected in 2006.

Uribe's focus on the FARC and strong international pressure led the AUC to demobilize more than 30,000 combatants between 2003 and 2006. Special legislation pardoned the rank-and-file fighters and offered a plea-bargain system to more than 2,000 mid- and high-level commanders. The AUC hoped that demobilization would allow for the creation of a legal AUC political party, but trials have discredited the organization by exposing its atrocities and control of corrupt politicians. Court testimony has also revealed close ties – past and present – to supporters of President Uribe.

### RULE OF LAW

Despite intense armed conflict, Colombia maintains a strong array of rule of law institutions. The 1991 constitution includes a comprehensive bill of rights, provisions securing the independence of the judiciary, and other checks and balances on executive power. Since 1991, the Constitutional Court has developed a progressive jurisprudence that affirms the rights of victims of human rights violations and protects the liberties of individuals and communities.

In the face of fierce resistance, the attorney general has arrested and prosecuted dozens of high-level government officials for complicity with paramilitary groups. The judiciary's standards for adjudicating conflicts over complex social issues – from abortion and the rights of sexual minorities to war atrocities – are far more progressive than most others in the hemisphere.

The “Justice and Peace Law,” passed by parliament in 2005 to help the paramilitary demobilization, was criticized by human rights advocates as being too lenient on AUC leaders. Advocates successfully challenged the law before the Constitutional Court, securing stronger victims' rights to participate in the process, seek reparations and learn the full truth from perpetrators.

Implementation of the law has been checkered and slow because of the many people and institutions responsible for it as well as because of government resistance. Some paramilitary leaders have confessed, and thousands of victims have participated in the processes, though several have paid with their lives. Judges and prosecutors have arrested politicians for protecting paramilitary warlords, but also had to fend off attacks by the presidency. In May 2008, the government took a step backward from efforts to secure truth and justice by extraditing 14 jailed paramilitary leaders to the United States. Extraditing the paramilitary figure, at best, delays victims' opportunities to confront the accused in court.

## CIVIL SOCIETY

Colombia has strong, sophisticated civil society organizations. The human rights and labor rights movements have successfully used all forms of advocacy, from monitoring violations to international litigation, in fighting impunity. Entire communities in conflict-ridden areas have mobilized for peace, as have religious organizations and women's groups that focus on the victimization of women and girls in the violence. The press maintains high professional standards in spite of significant danger and an incentive for self-censorship.

## ICTJ ACTIVITIES

ICTJ, which has a permanent office in Colombia, works in these areas:

**Truth-seeking:** Supports unofficial truth-seeking initiatives in Antioquia, Valle and the Atlantic Coast; gives technical support to the truth commission that the Supreme Court established to investigate the November 1985 massacre committed at the Palace of Justice in Bogotá.

**Reparations:** Researches public policies of the national government. ICTJ has also advised the Ministry of Interior and Justice on preparation of an administrative reparations program, and gives technical advice to the Congress regarding a general law on reparations and humanitarian assistance for victims.

**Prosecutions:** Supports efforts by the attorney general's office to include victims in the proceedings established by the Justice and Peace Law; gives technical advice on property restitution and mental health policies; supports training initiatives for public defenders and magistrates of the Justice and Peace Tribunals. ICTJ also has provided advisory services for the Supreme Court of Justice in connection with the investigations involving high-level politicians and their connections to paramilitary groups.

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## CHALLENGES

- **Impunity must be reduced, and paramilitary crimes must be punished.** Citizens will have no faith in the rule of law unless those responsible for atrocities are held accountable and victims are vindicated.
- **Colombia must avoid the risk of authoritarian politics.** President Uribe's success in his offensive against the FARC has raised his popularity and provoked speculation about changes to the constitution to allow him to run again for re-election.
- **Rule-of-law institutions must preserve their independence.** As courts continue to expose paramilitaries' influence in the government, sectors of the government including the presidency have reacted angrily. Colombia needs to protect its courts as the best guarantee against further degradation of a protracted conflict.
- **The international community must coordinate its efforts.** International aid and monitoring are often inconsistent, with the domestic politics of donor countries trumping Colombia's needs. The role of human rights institutions in the U.N. system and the Organization of American States must be strongly affirmed as a guiding force for the international community.