

**Colombia: Amend “Legal Framework for Peace” Bill
By The Human Rights Watch
31 May 2012**

(Washington, DC) - On Friday, June 1, 2012, Colombian Senator Roy Barreras will meet in Washington D.C. with José Miguel Vivanco, Americas director at Human Rights Watch. Sen. Barreras requested the meeting in order to discuss the “Legal Framework for Peace” bill, a proposed constitutional amendment that he is sponsoring in the Senate. Human Rights Watch welcomes the opportunity to propose key modifications to the bill that would allow Colombia to pursue peace efforts without violating the basic rights of victims of war crimes and crimes against humanity.

Human Rights Watch abhors the internal armed conflict’s devastating toll on civilians. During five decades of conflict, thousands of Colombians have been murdered, forcibly disappeared, tortured, kidnapped and raped, and millions more have been forcibly displaced from their homes. We fully support efforts to end this brutal chapter of Colombian history. But any efforts to achieve peace should not abandon justice. Unfortunately, as currently drafted, that is exactly what the Legal Framework for Peace bill would do. Indeed, rather than correcting the proposal’s fatal flaws, the most recent version of the bill could expand the scope of impunity offered by the amendment by allowing for former National Intelligence Service (DAS) officials to receive its benefits.[1]

The amendment would violate a basic right enshrined in international law: access to a judicial remedy for violations of fundamental rights.[2] The bill would limit the scope of prosecutions of atrocities to cases that can be traced to a small group of guerrillas, paramilitaries, and military members who are deemed “most responsible.” Justice authorities would drop criminal investigations and prosecutions of all other cases of crimes against humanity and war crimes that cannot be linked to the “most responsible” individuals.[3] The victims of those excluded cases would be denied their basic right to access a court of law. Instead, Colombia’s Constitution would offer them the opportunity to be included in a truth commission report.

Even the “most responsible” individuals who are convicted of crimes against humanity and war crimes as a result of the amendment would be eligible for suspended prison sentences.[4] Consequently, the “most responsible” individuals convicted of Colombia’s worst crimes could avoid spending a day in prison, thus converting the limited number of prosecutions into nothing more than a parody of justice. By excusing those “most responsible” of their punishments, Colombia would in effect shield them from criminal responsibility, which would be indicative of an unwillingness genuinely to prosecute them. As a result, Colombia would expose itself to an investigation by the International Criminal Court.[5]

Despite some changes made to the most recent version of the bill, the amendment continues to offer dropped prosecutions and suspended prison sentences to military personnel responsible for crimes against humanity and war crimes.[6] These benefits constitute unnecessary and illogical concessions to perpetrators of atrocities.

Even worse, a change incorporated in the most recent version of the bill could expand the scope of beneficiaries under to amendment to include former DAS officials. While the previous version of the bill offered dropped prosecutions and sentence suspensions to “the different parties that have participated in the hostilities,” the amendment now authorizes those same benefits “for the different illegal armed groups and for state agents”(emphasis added). The key difference is that while the old version would have limited benefits to state agents that participate in the conflict—military and police personnel—the new version appears to make all state agents eligible, which could allow for former DAS officials to receive benefits under the amendment. Thus, the amendment could empower Congress to release from prison former DAS director Jorge Noguera, who was convicted in 2011 of having put the intelligence agency at the service of paramilitary groups, including in the assassination of a social activist. Congress could also exempt from investigation and prosecution the vast majority of former DAS officials responsible for illegal surveillance of Supreme Court justices, human rights defenders, journalists and trade unionists.

The latest version of the bill also includes a positive—but insufficient—change. Specifically, the bill now provides that the amendment’s implementing laws will be “statutory laws.” Statutory laws require prior review by Colombia’s Constitutional Court, whose rulings have consistently safeguarded victims’ rights. However, there is complete uncertainty as to how the Court would rule in this case, especially given that it will make its determination based on an interpretation of the Constitution that has been amended by the Legal Framework for Peace, and thus contains fewer protections for victims’ rights. What is certain is that the best way to uphold victims’ rights is to ensure that the constitutional amendment that authorizes the laws is consistent with international human rights law.

Supporters of the Legal Framework for Peace have invoked the failures of the Justice and Peace Law to justify the amendment. In doing so, they have created a false dilemma. It is true that the Justice and Peace Law has largely failed to deliver justice for atrocities committed by paramilitaries. But Colombia’s options are not the Justice and Peace Law or the Legal Framework for Peace. Colombia could give priority to prosecutions of cases involving the worst crimes and most responsible individuals, and provide significant sentence reductions to individuals who fulfill certain requirements.

With these considerations in mind, we strongly recommend that the Senate modify the bill in order to ensure that: 1) victims of crimes against humanity and war crimes have access to an effective judicial remedy; 2) those “most responsible” for atrocities should receive punishments after a court conviction that are proportional to the gravity of the crime; and 3) state agents, including military personnel, are not eligible for dropped prosecutions and sentence suspensions under the amendment.

[1]Informe de ponencia para primer debate en senado (segunda vuelta) al proyecto de acto legislativo No. 14 de 2011 Senado – 094 de 2011 Cámara, May 30, 2012.

[2]See, for example, American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System,

OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), Art. 25; Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), Art. 8.

[3]The amendment provides that Congress, under the initiative of the government, can “through statutory law determine the criteria for selection that will permit focusing efforts on the criminal investigation of those most responsible for crimes that acquire the connotation of crimes against humanity, war crimes, or genocide...and authorize the conditioned dropping of criminal judicial persecution of all the cases that are not selected” (emphasis added). The latest version of the bill proposed for its seventh congressional debate provides that the conditions would include “handing over weapons, contributing to the clarification of the truth, and integral reparations for victims.”

[4]The bill provides that Congress “can through statutory law...establish the cases in which the suspension of the execution of the punishment will proceed.” The bill does not provide any restrictions as to whom the suspension of the sentences can be applied.

[5]Article 17(a) of the Rome Statute provides that the Court shall determine that a case is inadmissible in which “The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution” (emphasis added).

[6]The latest version of the bill proposed for its seventh congressional debate includes a provision stating that “In pursuance of the aims of transitional justice instruments, in the case of state agents, the tools that this [amendment] refers to could be designed in a specific way so that they can be applied, at the end of the armed conflict, to those who have infringed penal norms.”