

COLOMBIA: THE 2008 EXTRADITIONS AND THE SEARCH FOR JUSTICE

Katherine C. Reilly*

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*J.D., University of Notre Dame Law School, 2009; B.A., Bowdoin College, 2004. Ms. Reilly has worked on human rights issues in Latin America since 2003 when she worked as an Intern at the Inter-American Foundation, Washington DC and in various capacities in Chile (2004 – 2006).

Whatever the motivation behind the extraditions, one thing remains clear: investigations into the self-confessed crimes against humanity . . . must continue. Truth and reconciliation processes are integral components of successful conflict resolution. Acknowledgement of, and punishment for, crimes such as mass killings, torture, and forced displacement, attributable to the AUC, will facilitate the establishment of a sustainable peace.¹

I. Introduction

Since 2002, more than seven hundred Colombians have been extradited to the United States.² However of the extraditions thus far, the majority of the men extradited did not have leadership roles in the armed conflict in Colombia and were from lower level positions. To understand this high rate of extradition, one must appreciate the political context that currently exists between the U.S. and Colombia. President Alvaro Uribe, who has been president of Colombia since 2002, and President George W. Bush, who was president of the US since 2001, had developed a close alliance throughout their respective presidencies. Uribe, “considered by the Bush administration to be an

¹ Jessica Bryant, *Colombia: Uribe, Extradition and the Fight for Justice*, COUNCIL ON HEMISPHERIC AFFAIRS, May 29, 2008, <http://www.coha.org/2008/05/colombia-uribe-extradition-and-the-fight-for-justice/>.

² Simon Rimero, *Colombia Extradites 14 Paramilitary Leaders*, N.Y. TIMES, May 14, 2008, http://www.nytimes.com/2008/05/14/world/americas/14colombia.html?_r=1&sq=colombia%20extradition&st=cse&oref=slogin&scp=1&pagewanted=print.

unswerving caretaker for Washington's drug war in Latin America,"³ was without a doubt Bush's closest ally in the region. Under their administrations, the two had worked together on the war against drugs, through Plan Colombia,⁴ and a proposed free trade agreement between the two countries. Therefore, it is not surprising that under the administration of President Uribe, more defendants have been transferred to the US than under any other president in Colombia's history.⁵

Despite the increasing frequency of extraditions in US/Colombian relations, Uribe surprised many when he extradited fifteen of the most notorious Colombian paramilitaries to the United States in May of 2008. "The extradition of so many paramilitary leaders at once was unprecedented in Colombia's long history of trying to dismantle the hydra-headed syndicates that export cocaine to the United States."⁶ The extradition came as a surprise not only because of the number of men extradited, but also because of the critical leadership roles the men had played as paramilitaries in the armed conflict in Colombia. The extradited paramilitaries were all members of the United Self Defense Groups of Colombia (AUC), a U.S. Department of State-designated foreign terrorist organization.⁷

It is important to understand who are these individuals: they are key players in the Colombian conflict. The men constitute almost the whole leadership of the AUC, which was the paramilitaries' command structure, responsible for terrorizing an entire country, and actively promoted,

³ Juan Forero, *Bush Ally Coasts to Second Term in Colombia*, N.Y. TIMES, May 29, 2006, http://www.nytimes.com/2006/05/29/world/americas/29colombia.html?_r=1&scp=3&sq=Uribe%20and%20Bush&st=cse&oref=slogin.

⁴ "Despite the disbursement of more than \$600 million a year in aid from the United States to fight drug trafficking and leftist guerrillas, Colombia remains the world's largest cocaine producer and the source of about 90 percent of the cocaine consumed in the United States." Romero, *supra* note 89.

⁵ *Byrant*, *supra* note 88.

⁶ Romero, *supra* note 89.

⁷ *Id.*

organized and executed crimes against humanity on scales larger than that of any drug trafficking shipment made to the U.S.⁸

After the extraditions, only a handful of AUC commanders with the same knowledge remain in Colombia. All of the senior paramilitaries extradited were part of the ongoing Justice and Peace Law process in Colombia. “These men are not going to be held accountable for the human rights violations they committed. Victims in Colombia will not be able to confront their tormentors and receive the reparations they deserve,” said Jose Miguel Vivanco, America’s director for Human Rights Watch, after the extraditions were announced.⁹

Despite empty promises made by the US and Colombian governments at the time these men were extradited, their presence in the US has almost entirely paralyzed their participation in the peace process and has stripped victims of their right to hold the men accountable for the human rights violations that they committed in Colombia. Although some praise the extraditions because they guarantee that these men will be behind bars, many others complain these men will not be held accountable for the brutal crimes they committed in Colombia. This paper highlights the facts behind this historic extradition and the political motivations underlying it, and analyzes the best options currently available to ensure Colombian victims’ rights are respected and that international norms regarding the right to justice are adhered to.

II. The Extradition: Background & Details

⁸ Mayra Sofia Moreno, *Extradition: Shipping Out the Truth*, FELLOWSHIP OF RECONCILIATION COLOMBIA PROGRAM, <http://forcolombia.org/monthlyupdate/sept2008/extradition>.

⁹ Romero, *supra* note 89.

On May 7th, 2008, Carlos Mario Jimenez Naranjo (alias “Macaco”), a senior leader in the AUC and leader of the Central Bolívar Block (a group within the AUC commanding an estimated 7,000 combatants) was extradited to the United States.¹⁰ The Colombian Attorney General estimates that in just one of the zones that Macaco controlled in Colombia, there are 3, 000 mass graves, which only represents a fraction of his victims.¹¹ Macaco was indicted in the District of Colombia “for conspiracy to manufacture and distribute five kilograms or more of cocaine, with intent to import cocaine into the United States, and with engaging in drug trafficking with the intent to provide something of pecuniary value to a terrorist organization.”¹²

On May 14, 2008, the Colombian government extradited fourteen more of the AUC’s most notorious paramilitary leaders for drug related charges. Nodier Giraldo-Giraldo, Hernan Giraldo-Serna (alias “El Patron”), Edwing Mauricio Gomez-Luna, Eduardo Enrique Vengoechea-Mola, Rodrigo Tovar-Pupo (alias “Jorge 40”), Salvatore Mancuso-Gomez, Juan Carlos Sierra-Ramirez¹³ and Martin Peñaranda-Osario¹⁴ were all charged in the District of Colombia with “conspiracy to manufacture and distribute

¹⁰ Press Statement, *Colombia: Extradition of Carlos Mario Jiménez*, US Department of State, May 7 2008, <http://www.state.gov/r/pa/prs/ps/2008/may/104450.htm>.

¹¹ Letter from Movimiento Nacional de Victimas de Crimenes de Estado to Jose Luis Ocampo, April 10, 2008, <http://www.colombiasupport.net/news/2008/04/victims-movement-writes-to.html>. The Colombian government announced Macaco’s exclusion from the peace process the same day that the US embassy in Colombia delivered his extradition request to the Colombian government. He continued to take part in the voluntary confessions until March 2008. International Crisis Group, *Correcting Course: Victims and the Justice and Peace Law in Colombia*, Oct. 30, 2008, [http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/EDIS-7KWPQL-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/EDIS-7KWPQL-full_report.pdf/$File/full_report.pdf).

¹² Press Release, *Colombian Paramilitary Leader Extradited to the United States to Face U.S. Drug Charges*, U.S. DEPARTMENT OF JUSTICE, May 7, 2008, <http://www.usdoj.gov/opa/pr/2008/May/08-crm-388.html>.

¹³ Juan Carlos Sierra Ramirez , in addition to the crimes mentioned, is also charged with “conspiracy to possess with intent to distribute cocaine on board a vessel subject to U.S. jurisdiction, possession with intent to distribute cocaine on board a vessel subject to U.S. jurisdiction.” Department of Justice, *14 members of Colombian Paramilitary Group Extradited to the United States to Face U.S. Drug Charges*, May 13, 2008, <http://www.usdoj.gov/opa/pr/2008/May/08-opa-414.html>.

¹⁴ Penaranda is also charged with “distribution of cocaine with intent to import into the United States.” *Id.*

cocaine with intent to import into the United States, aiding and abetting the conspiracy and a forfeiture allegation.”¹⁵

Diego Fernando Murillo-Berjano (alias “Don Berna”) was charged in the Southern District of New York with a “dual object narcotics conspiracy: to import cocaine into the United States, and to distribute cocaine, knowing and intending that it would be imported into the United States,” as well as conspiracy to commit money laundering.¹⁶ Diego Alberto Ruiz-Arroyave was charged in the Southern District of Texas with conspiracy to provide material support and resources to the AUC.¹⁷ Ramiro Vanoy-Murillo (alias “Cuco”) and Francisco Zuluaga-Lindo (alias “El Gordo”) have both been charged in the Southern District of Florida with “conspiracy to distribute cocaine, conspiracy to import cocaine into the United States, and money laundering conspiracy.”¹⁸ Finally, Guillermo Perez -Alzate and Manuel Enrique Torregros-Castro were charged in the Middle District in Florida with conspiracy to import and distribute cocaine as well as forfeiture allegations.¹⁹

All of these men are allegedly responsible for numerous atrocious human rights violations in Colombia. Before Vanoy-Murillo, who was in charge of the Miner’s Block of the AUC was extradited, he confessed to being involved in “over 318 serious crimes, including the murder of 235 inhabitants of the Departments of Antioquia and Cauca. Colombian authorities report being approached by family members of over 1,200 victims

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

of murder and forced disappearance attributed to this block in this region.”²⁰ Francisco Zuluaga Lindo was allegedly involved in a massacre that occurred in the Alto Naya region where residents were removed from their homes and thirty two people were brutally murdered. Some of his victims were decapitated and others were shot at point blank range. Victims were children, including a seventeen year old girl.²¹ Jorge Salazar, a peasant who fled his town in the Alto Naya region commented on Lindo’s extradition stating: “it is worrisome for us victims, because it gives more importance to drug cases and sets aside crimes against humanity. When they extradited them, they trampled over justice and make a mockery of our rights.”²²

Salvatore Mancuso-Gomez oversaw numerous atrocities in Colombia, including the massacre of fifteen civilians and the displacement of more than six hundred people in 1997 in the town of El Aro.²³ In testimony given by Mancuso in January 2007, he admitted to orchestrating the killing of over three hundred people (he also testified regarding agreements between the paramilitaries and the government which will be discussed later in the paper).²⁴ “Jorge 40” ordered the killings of hundreds along the Caribbean Coast, including labor leaders.²⁵

III. Why were they Extradited? Hidden Motivations & Political Agendas

²⁰ Comision Colombiana de Juristas, *Communication from the Colombian Commission of Jurists to Judge Judge K. Moore in Relation to the Sentencing Hearing of October 9th, 2008*, Oct.7, 2008, <http://www.coljuristas.org/archivos/moore.pdf>.

²¹ Frances Robles, *Colombian Paramilitary Leaders to be Sentences*, MIAMI HERALD, Oct. 9, 2008, <http://www.miamiherald.com/news/americas/story/719236.html>.

²² *Id.*

²³ Simon Romero, *supra* note 89.

²⁴ Simon Romero, *Colombian Government Is Ensnared In a Paramilitary Scandal*, N.Y.TIMES, Jan. 21, 2007, <http://www.nytimes.com/2007/01/21/world/americas/21colombia.html?scp=2&sq=salvatore%20mancuso&st=cse>.

²⁵ *Colombia Paramilitaries Appear in U.S. Courts*, USA TODAY, May 14, 2009, http://www.usatoday.com/news/washington/2008-05-14-colombia-paramilitaries_N.htm.

Both the timing and circumstances for these extraditions have raised questions about the motivation behind the extraditions. Shortly after the men were extradited, the Uribe administration claimed that the main reason for their extradition was because the paramilitaries were failing to fulfill and uphold their commitments under the Justice and Peace Law.²⁶ In addition to failing to turnover assets and to make confessions, the men were continuing to engage in criminal activity. In order to qualify for the Justice and Peace law benefits and be entitled to reduced sentences, the paramilitaries were required to have fulfilled the following eligibility requirements in accordance with a Colombian Constitutional Court judgment:

[F]ully demobilized, ceased all interferences with the free exercise of political rights and public liberties as well as any other illicit activity, turned over all recruited minors to the Colombian Family Welfare Institute, released all kidnapped people under its control, and disclosed the fate of all disappeared persons. In addition the group itself cannot benefit from the law if it was organized for the purpose of drug trafficking or illicit enrichment.²⁷

There is significant evidence indicating that the paramilitaries were not fulfilling their duties under the Justice and Peace law, indicating that there is some merit to Uribe's justification.²⁸ However, if the men were not fulfilling the stipulated requirements, many question Uribe's decision to forgo the judicial mechanisms already established in the Justice and Peace Law. The paramilitaries should have been judged under the judicial system in Colombia in accordance with the Justice and Peace Law, thereby stripping

²⁶ "Despite these justifications, many observers question Uribe's decision to forgo the judicial mechanisms previously established by the passage of Law 925, also known as *La Ley de Justicia y Paz*." Bryant, *supra* note 88.

²⁷ *Id.* at 68.

²⁸ Human Rights Watch, *Breaking the Grip?: Obstacles to Justice for Paramilitary Mafias in Colombia* (2008), <http://www.hrw.org/en/reports/2008/10/16/breaking-grip>.

them of the opportunity to get a reduced sentence and increasing their sentences of eight years to around forty years.²⁹

What should have been done under such circumstances, according to Law 975 itself, was to continue judging those paramilitaries within the ordinary justice system and without conceding benefits such as the reduction of sentences. By prioritizing their prosecution for drug trafficking in the United States, rather than the investigation and punishment of crimes against humanity, the Colombian State showed that it is unable or unwilling to pursue justice with regard to those crimes committed against victims in Colombia. Moreover, by these extraditions the Government implicitly recognizes that no real demobilization has taken place, let alone an effective peace process.³⁰

Because of the decision to extradite these men, they are not being held legally responsible for the human rights violations they committed in Colombia, are not accessible to their victims and are not continuing to participate in the peace process. Submitting these paramilitaries to the judicial system in Colombia would not have presented the obstacles to justice that the victims now face that the men are in the United States and would have been the proper decision in accordance with the Justice and Peace Law.

The timing of Uribe's decision creates suspicion regarding his true underlying motives for the extradition. As early as 2006 there was evidence that these leaders were continuing to commit crimes.³¹ Throughout 2006 and 2007, the Colombian government ignored evidence that the paramilitaries were ordering criminal acts from prison.³²

²⁹ "According to the law, only JPL judges can decide whether an ex-combatant can be excluded for not fulfilling JPL requirements, but government decree N 1364 (25 April 2008) authorized the interior and justice ministry to exclude such persons from the list of JPL beneficiaries if deemed not to have fulfilled their responsibilities, including abandoning criminal activities." International Crisis Group, *supra* note 98, at 2.

³⁰ Asamblea Permanente de la Sociedad por la Paz et.al, Report for Universal Periodic Review on Colombia, at 7, <http://www.ddhhcolombia.org.co/>.

³¹ Human Rights Watch, *supra* note 115, at 67.

³² "One example is Rodrigo Tovar Pupo, alias Jorge 40. Computer files prosecutors seized from his associate, Edgar Fierro Florez, contained information about over 500 killings committed by his group just

“Instead of sanctioning the criminals, the government made . . . it easier for them to continue engaging in criminal activity.”³³ Therefore, Uribe’s stated justification for the extradition was likely not the major reason underlying his decision to extradite.

Despite the problems described in the previous section regarding the voluntary statements given by the paramilitaries, the paramilitaries *were* giving confessions regarding their crimes. By mid 2008, under the Justice and Peace Law, the ex paramilitaries had confessed to over 2,700 crimes and more than 1,600 bodies had been exhumed.³⁴ In addition, through their confessions, some of the paramilitaries were giving information regarding agreements between Colombian politicians and paramilitaries.

The decision to extradite came only after some had actually started to cooperate, and others announced plans to do so, by beginning to talk to Colombian investigators about their links with Colombian military and government officials, including generals and politicians close to the president. Many Colombians suspect that Uribe sent these men now to the United States to stop them from naming more names.³⁵

In addition to giving details about collaboration between the government and the paramilitaries, some of the commanders had announced that they would also implicate local businessmen in their testimony.³⁶

in the state of Atlántico, including assassinations of social leaders and trade unionists, corruption schemes in the public sector, drug trafficking, and other criminal enterprises. . . A substantial number of the killings had occurred after the Justice and Peace Law was approved and were therefore not crimes for which Jorge 40 could receive a reduced sentences. The computer also contained evidence that Jorge 40 was keeping a portion of his group active to continue committing crimes after demobilization” *Id.* at 74.

³³ *Id.* at 74. “It was clearly spelled out: if they were committing crimes after demobilizing – as they were doing – they were to be referred to the ordinary courts, as established by the justice and peace law,” where they would face sentences of up to 40 years rather than the light sentences, of no more than eight years, provided for by the agreement with the government, he said.” Constanza Vieira, *Colombia: Extradition of Paramilitary Chiefs – A Blow to Truth*, May 13, 2008, <http://ipsnews.net/news.asp?idnews=42356>.

³⁴ International Crisis Group, *supra* note 98, at 1.

³⁵ Human Rights Watch, *Letter to Attorney General Mukasey*, May 15, 2008, <http://www.hrw.org/en/news/2008/05/15/letter-attorney-general-mukasey>.

³⁶ Vieira, *supra* note 120.

Beginning in 2005, the Constitutional Court began investigations to uncover the truth about the influence that the paramilitaries exerted over the Colombian Congress.³⁷ As a result, over sixty members of Congress, nearly all of them Uribe's supporters, are now undergoing an investigation for collaborating with paramilitaries and more than thirty are in jail,³⁸ including Mario Uribe, President Uribe's cousin and close political ally, who was arrested for conspiring with the paramilitaries.³⁹

At the same time that allegations of the paramilitaries' involvement in the government began to surface, President Bush and President Uribe concluded negotiating a Free Trade Agreement (FTA) in July 2006.⁴⁰ Bush has stated the agreement would advance security interests in the region and help in the war against drugs.⁴¹ Under the agreement, Colombia's biggest exports, such as fruit, oil and clothing would be shipped to the US free of duty and Colombia would be required to eliminate tariffs on U.S. goods and to welcome U.S. companies into its market.⁴² In 2007, Bush, under pressure from Congress, re-negotiated the agreement to include "more stringent environmental and labor standards."⁴³

³⁷ The investigations were promoted after "a senior paramilitary leader boasted after the 2006 election that a third of Congress's members were elected with his movement's backing." *Cousin Mario: "Parapolitics Touches the First Family,"* THE ECONOMIST, April 24, 2008, http://www.economist.com/world/americas/displaystory.cfm?story_id=11089566.

³⁸ Human Rights Watch, *Colombia: Paramilitary Leaders To Face Prosecution in US*, May 12, 2008, <http://www.hrw.org/en/news/2008/05/12/colombia-paramilitary-leaders-face-prosecution-us>.

³⁹ Human Rights Watch, *Colombia: Proposal Threatens 'Parapolitics Investigation*, Aug. 3, 2008, <http://www.hrw.org/en/news/2008/08/03/colombia-proposal-threatens-parapolitics-investigations>.

⁴⁰ Source Watch, *U.S.-Colombia Free Trade Agreement*, http://www.sourcewatch.org/index.php?title=U.S._-Colombia_Free_Trade_Agreement.

⁴¹ *Id.*

⁴² Nicole Gaouette, *Colombia Trade Pact on Hold*, LOS ANGELES TIMES, April 11, 2008, available at: <http://articles.latimes.com/2008/apr/11/nation/na-uscolombia11>.

⁴³ *Id.*

On April 7, 2008, President Bush tried to push the free trade agreement with Colombia through Congress⁴⁴ under “fast track authority” rules, which give the House sixty days to vote, but with no ability to make amendments and then the Senate thirty days following the decision of the House. Unfortunately for Bush, members of Congress did not vote on this bill, but rather voted to revoke the President’s fast track authority, thereby delaying voting and discussion of the agreement until November.⁴⁵ Congress delayed voting again in November until the next presidency, despite the fact that Colombia has spent \$150,000 a month lobbying the US Congress to approve it.⁴⁶ Democratic Party leaders have repeatedly refused to support the legislation based on concerns that the Uribe administration has not done enough to address human rights violations committed in Colombia particularly against labor leaders.⁴⁷

Far more than any previous debate over a trade deal, the political contest over the Colombian agreement has come to focus on the questions of basic human rights – and labor rights in particular – instead of the usual back-and-forth about protectionism, minimum acceptable standards, technical aspects of the agreements’ design, and the proper definitions of ‘free’ and ‘fair.’⁴⁸

Therefore many have viewed the extradition as an attempt by Uribe to show the United States that he is tough on the paramilitaries, to discredit all suspicions of his political

⁴⁴ David Stout, *Bush to Force Vote on Colombian Trade*, N.Y. TIMES, April 7, 2008, http://www.nytimes.com/2008/04/07/washington/07cnd-trade.html?_r=1&scp=9&sq=US%20Colombia%20Free%20Trade%20Agreement&st=cse&oref=slogin..

⁴⁵ Philip Cryan, *Labor and the Colombia Free Trade Agreement*, FOREIGN POLICY IN FOCUS, Sept. 18, 2008, <http://www.fpif.org/fpiftxt/5540> . “While the Colombia accord was never officially voted down it was nevertheless the first bilateral trade deal Congress rejected.” *Id.*

⁴⁶ Joshua Goodman, *Bush Excluded By Latin Summit as China, Russia Loom*, BLOOMBERG, Dec. 15, 2008, <http://www.bloomberg.com/apps/news?pid=20601080&sid=azzqp51ik6lw&refer=asia>.

⁴⁷ *Byrant*, supra note 88.

⁴⁸ Goodman, supra note 133. “Yet out of more than 2,000 documented cases over the last two decades of Colombian unionists being murdered, there have been convictions in less than 50.” *Id.*

party's ties with the paramilitaries and to demonstrate his commitment to human rights.

"As well as sending a warning to other right-wing paramilitaries, the aim is to show Democrats in Washington that Mr. Uribe means what he says about breaking with paramilitary groups who continue to murder trade unionists and other left-wingers."⁴⁹

Bruce Bagley, an expert on the Andean drug war at the University of Miami responded to the extraditions: "This is an astonishing move for Uribe, who is trying to demonstrate to the U.S. that rumors of his ties to paramilitaries are false. This should go over well with the Democratic Congress."⁵⁰

The Bush administration was also interested in hiding Uribe's poor human rights' record in order to promote the passage of the FTA. According to the Council of Hemispheric Affairs, "the Bush White House repeatedly has tried to push such matters under the rug in order to advance the prospects of successfully achieving a FTA with Colombia and to avoid the implications that prosecution of such abuses might have for US corporate interests and officials abroad."⁵¹ Human Rights Watch ("HRW") has written letters to both the US House of Representatives and Senate asking them to continue to delay ratification of the Free Trade Agreement with Colombia⁵² "until the Colombian government shows concrete, significant, and sustained results over a reasonable period of time in addressing these serious problems."⁵³ HRW also believes the possibility of a future FTA between Colombia and the US is the most powerful tool the

⁴⁹ *Free Trade in Thugs: Getting Tougher with Right-wing warlords*, THE ECONOMIST, May 15, 2008, http://www.economist.com/world/americas/displaystory.cfm?story_id=11376365.

⁵⁰ Romero, *supra* note 89.

⁵¹ Bryant, *supra* note 88.

⁵² Human Rights Watch, *Letter to the US House of Representatives*, May 20, 2008, <http://www.hrw.org/en/news/2008/05/19/letter-us-house-representatives>. Human Rights Watch, *Letter to the US Senate*, <http://www.hrw.org/en/news/2008/05/19/letter-us-senate>

⁵³ *Id.*

US has to ensure that the Colombian government advances “efforts to dismantle the country’s paramilitary mafias and hold their leaders and accomplices accountable.”⁵⁴ In fact, HRW has stated that as a result of US pressure in regard to the FTA, “Colombia has started to take some positive steps on impunity for anti-union violence.”⁵⁵

IV. The Situation Today

Upon extradition of the fifteen paramilitaries, the US and Colombian governments made empty promises to victims, claiming that the extraditions would not greatly disrupt the peace process and that there was still a possibility of securing justice.⁵⁶ On June 10, 2008, the U.S. and Colombian governments signed a memorandum of cooperation respecting the continued implementation of the Justice and Peace Law.⁵⁷ According to the Uribe administration, the extradited paramilitaries still remain subject to the Justice and Peace process, “as they can only be removed from it via a court order if it’s proven that they broke their commitments.”⁵⁸ President Uribe also stated that “the government has requested, and the United States has accepted, that the Colombian State

⁵⁴ *Id.* “As Human Rights Watch has repeatedly noted, any free trade agreement should be based on respect for fundamental human rights, particularly the rights of the workers producing the goods to be traded. Colombia still does not meet that standard due to the high levels of violence against trade unionists, the near-total impunity for that violence, and the government’s failure to fully dismantle the paramilitary groups that are primarily responsible for that violence.” *Id.*

⁵⁵ Human Rights Watch, *Colombia: Not Time For a Trade Deal*, Nov. 20, 2008, <http://www.hrw.org/en/news/2008/11/20/colombia-not-time-trade-deal>.

⁵⁶ President Uribe stated that “the government has requested, and the United States has accepted, that the Colombian state and the People may send representatives to the judges in the U.S. with the objective of continuing in the search of truth; the truth about the crimes investigated, committed in their majority before this government; the truth about the processes under way made possible by the strength of our security police.” *Texto de la alocucion presidencial con ocasion de la extradicion de los jefes paramilitares*, EL TIEMPO, May 13, 2008, <http://www.eltiempo.com/archivo/documento/CMS-4162344>.

⁵⁷ International Crisis Group, *supra* note 98, at 98.

⁵⁸ Human Rights Watch, *supra* note 115, at 82.

and the People may send representatives to the judges in the U.S. with the objective of continuing in the search of truth; the truth about crimes investigated.”⁵⁹ In addition, the US Ambassador to Colombia, William Brownfield, stated that there is a commitment on behalf of the U.S. Department of Justice (“DOJ”) to “try to facilitate direct access, on the part of Colombian prosecutors responsible for the application of the Justice and Peace Law . . . to the extradited persons.”⁶⁰ Also, according to Brownfield, Colombian victims have five options available to pursue justice while the men remain in US custody, but none of the options presented involved the DOJ prosecuting the men for crimes other than drug trafficking and the only form of judicial remedy offered to the victims was civil claims.⁶¹

Despite these empty promises, in reality the extraditions have brought the paramilitaries’ confessions and collaborations with the Justice and Peace investigations to a complete halt and there have been no assurances of justice for Colombian victims.⁶² Since October 2008, several months after the paramilitaries were extradited, only one leader, Mancuso, has given new statements to the Colombian authorities by video-conference.⁶³ Members of the Colombian Attorney General’s office have traveled to the US, but have had only limited access to the paramilitary leaders.⁶⁴ In addition, there

⁵⁹ *Id.* at 83.

⁶⁰ Press Conference with Ambassador William Brownfield on the Extradition of 14 AUC Ex-paramilitary Leaders, May 13, 2008, http://bogota.usembassy.gov/pc_001_13052008.html.

⁶¹ *Id.* The options offered by Brownfield were the following: the Colombia government has access to the U.S. legal system, any Colombian court has access to request direct on the part of US courts through the examination process, any victim has the right to a civil trial in the US, the prosecutors in the Justice Department will share evidence and information with the proper Colombian authorities and finally, if a Colombia prosecutor requires direct access to one of the extradited individuals, the Justice Department will try to facilitate this process. *Id.*

⁶² Human Rights Watch, *supra* note 115, at 83.

⁶³ *Id.* at 84.

⁶⁴ International Crisis Group, *supra* note 98, at 10. “Since then, there has been an exchange of diplomatic notes between Colombia and the United States establishing that Colombian requests for judicial

have been no assurances on behalf of the U.S., or Colombia, that these men will be held accountable for human rights violations. “The big losers with this extradition are the victims who may never have a chance to confront their tormentors in court.”⁶⁵

While in the US, under drug trafficking charges, the men have no incentive to give more information or to cooperate with the peace process in Colombia. Eduardo Bocanegra, an attorney for one of the men extradited “Jorge 40,” said that, “the idea that the US will require the paramilitaries to collaborate with victims is a lie that is being sold to the country.”⁶⁶ At this point, the paramilitaries realize that they face incarceration in the US and have no incentive to further implicate themselves and give information regarding past crimes they committed. Santiago Rodriguez, the former lawyer for Colombia drug trafficker Hernando Gomez Bustamente, who was previously extradited to the US, said “everything that the extradited paramilitaries say from this moment on can be used against them.”⁶⁷ In fact, two of the paramilitaries have already been sentenced, thereby further complicating the search for justice. On October 9, 2008, Lindo and Vanoy were sentenced in the Southern District of Florida to twenty-one and twenty-four years, respectively.⁶⁸ Both pleaded guilty to an “Operation Millennium” indictment in a plea bargain.⁶⁹ Human rights supporters are greatly disappointed because in reaching these plea agreements the DOJ did not seem to consider the victims in Colombia. “The plea agreements do not condition the reduced sentences on continued cooperation with the

cooperation are to be submitted to the justice attaché at the US Embassy in Colombia.” Human Rights Watch, *supra* note 115, at 83-84.

⁶⁵ Human Rights Watch, *supra* note 125.

⁶⁶ Romero, *supra* note 89.

⁶⁷ Vieira, *supra* note 120.

⁶⁸ Press Release, *Former Colombian Paramilitary Leaders Sentenced*, US Attorney’s Office for the Southern District of Florida, Oct. 9, 2008, <http://www.usdoj.gov/usao/fls/PressReleases/081009-02.html>.

⁶⁹ Robles, *supra* note 108.

Colombian judicial process. Nor do the agreements confirm the individuals' return to Colombia to fulfill outstanding obligations in the Colombian justice system as defendants, witnesses or otherwise."⁷⁰ The recent sentences create a high risk that these men will never be charged with the crimes that they committed in Colombia.

V. How Can Justice be Achieved?

Regardless of the true motives behind the extraditions, the big question today is how to achieve justice for the victims of human rights violations in Colombia. There are six potential options for consideration. They include: plea bargains, civil claims in the US, extradition back to Colombia once the men have completed their sentences, the ICC, criminal charges in the US and extradition back to Colombia as soon as possible. Before they can be tried in the US, the existing extradition treaty between the US and Colombia would have to be amended. Article 15 of the extradition treaty articulates the doctrine of specialty, prohibiting prosecution of a defendant for a crime other than the crime for which he was extradited, unless the requested state consents to the proposed change.⁷¹ Therefore, if the existing treaty is not amended, the options for victims would be to pursue favorable plea bargains, a civil law suit in the US, under the Alien Tort Statute

⁷⁰ Comision Colombiana de Juristas, *supra* note 107.

⁷¹ Extradition Treaty Between the United States of America and the Republic of Colombia, Sept. 14, 1975, http://www.internationalextradition.com/colombia_bi.htm#start. "A person extradited under the Treaty shall not be detained, tried or punished in the territory of the Requesting State for an offense other than that for which extradition has been granted, nor be extradited by that State to a third state, unless (c) the Executive Authority of the Requested States has consented to that person's detention, trial or punishment for another offense, or to extradition to a third State, provided that the principles of Article 4 of this Treaty shall be observed." *Id.* at Article 15 (c).

(“ATS”), 28 U.S.C. § 1350 and extradition back to Colombia once the paramilitaries have completed their sentences in the U.S.

Plea Bargains

The DOJ could offer plea bargains to the paramilitaries that ensure their participation in the peace process in Colombia. “The DOJ could create meaningful incentives to get the paramilitary leaders to talk not only about their drug trafficking crimes, but also about their atrocities and accomplices in Colombia, and to cooperate with the ongoing proceeding there.”⁷² As the situation stands, many fear that the US government will reward the men for participating in the drug investigations but do little to encourage their assistance with regard to the crimes they committed in Colombia. The lawyer of Don Berna, one of the men extradited, has said that Don Berna “hopes to get away with a reduced sentence of as little as five years by talking about the drug business.”⁷³ However, according to some news sources, the DOJ appears to be taking the Colombian peace process into greater consideration with regard to plea bargains. One source indicates that Salvatore Mancuso made a preliminary deal before his sentencing with the DOJ that if he continues cooperating with the Justice and Peace process in Colombia, he will not be sentenced to more than thirty years in prison.⁷⁴

⁷² Human Rights Watch, *supra* note 115, at 85.

⁷³ *Id.*

⁷⁴ *Mancuso to Receive No More Than Thirty Years, say Lawyers*, Dec. 5, 2008, COLOMBIA REPORTS, <http://colombiareports.com/colombian-news/news/2247-mancuso-to-receive-no-more-than-30-years-say-lawyers.html>. Earlier confessions of Mancuso had already led to numerous arrests of politicians in Colombia. *Id.*

Claims under ATS

The ATS⁷⁵ provides federal subject matter jurisdiction in the US for cases filed against aliens based on a violation of the law of nations committed anywhere in the world. The *Filartiga v. Pena-Irala*⁷⁶ case, decided in 1980, breathed life back into the statute which had been stagnant for nearly two hundred years.⁷⁷ In *Filartiga*, the plaintiffs were citizens of Paraguay who accused Americo Noberto Pena-Irala, also a citizen of Paraguay, of wrongfully causing the death of their son, Joelito. They sought compensatory and punitive damages of ten million dollars.⁷⁸ At the time of the crime, Pena was the Inspector General of Police and Dr. Filartiga was an opponent of former President of Paraguay, Alfredo Stroessner. Dr. Filartiga alleged that Pena-Irala kidnapped and tortured his son to death. In 1978, Pena came to the US and overstayed his visa; while pending deportation he was charged. The court ultimately held that the torture committed by Pena violated established norms of international law.⁷⁹

Based on the reasoning of the *Filartiga* case, Colombian victims may be able to assert jurisdiction over the paramilitaries under the ATS by asserting that these men committed crimes in Colombia that violated the law of nations, such as war crimes and crimes against humanity. For reasons described later in the paper, it is unlikely that the men could be tried for torture under the ATS. However, US case law indicates that the

⁷⁵ The ATS provides original district court jurisdiction over “all cases where an alien sues for a tort only [committed] in violation of the law of nations or a treaty of the United States.” 18 U.S.C § 1350 (2000).

⁷⁶ 630 F.2d 876 (2d Cir. 1979).

⁷⁷ Carolyn A. D’Amore, *Sosa v. Alvarez-Machain and the Alien Tort Statute: How Wide Has the Door to Human Rights Litigation Been Left Open*, 39 Akron L. Rev. 593 (2006). “It went essentially unused for nearly 200 years following its enactment.” *Id.* at 600.

⁷⁸ *Filartiga*, 630 F.2d at 880

⁷⁹ *Id.* at 880. “We find the norms of contemporary international law by ‘consulting the work of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law.’” *Id.* at 880 (quoting *United States v. Smith*, 18 U.S. 153, 160-61 (1820)).

ATS is not limited to acts of torture.⁸⁰ In *Kadic, Et Al v. Karadzic*,⁸¹ the court held that other violations of the law of nations, besides torture, provide subject matter jurisdiction under the ATS and that private persons may be held liable for these acts.⁸²

Extradition to Colombia after Sentences

Finally, if it is fairly certain that the paramilitaries could be sent back to Colombia after completing their drug-related sentences in the US.

I want to be very specific about this, and that the legal system in Colombia has not lost absolutely any possibility of continuing with a penal process with these 14/15 extradited men. In other words, once they have completed their process in the US, the trial, the sentencing, the sanction and if it is so, the imprisonment, in that moment they will be available to the Colombian legal system, according to the law, rules and norms of the Colombian Constitution.⁸³

However, two of the men have been sentenced to over twenty years. If the men returned to Colombia after this time length of time, there would be very difficult evidentiary problems; in addition, it would force victims to wait for twenty years before justice could be achieved.

International Criminal Court (ICC)

⁸⁰ *Kadic, Et Al v. Karadzic*, 70 F.3d 232, 241 (2d. Cir. 1995).

⁸¹ *Id.* The case was brought by victims of the Bosnian-Serb military forces, Croat and Bosnian citizens of Bosnia-Herzegovina, against Karadzic, the president of the Bosnian-Serb republic, "Srpska."

⁸² However, if a claim was successful under the ATA, it might be difficult for the paramilitaries, despite their wealth, to pay damages. Ambassador Brownfield has stated: "Colombia, its institutions, the State, the legal system still have jurisdiction and responsibility for whatever property is found in Colombia. The United States, its legal system, does not have the right to touch, control or even request these goods and property. This, of course, will stay in the hands of the Colombian legal system and its institutions." Press Conference with Ambassador William Brownfield on the Extradition of 14 AUC Ex-paramilitary Leaders, May 13, 2008, http://bogota.usembassy.gov/pc_001_13052008.html.

⁸³ *Id.*

Another possible but unlikely option is that the men could be tried by the International Criminal Court (“ICC”). Colombia ratified the Rome Statute on August 5, 2005, but signed a declaration that it would not accept the jurisdiction of the court for war crimes for seven years (up until 2009).⁸⁴ Since 2002, the ICC has had jurisdiction over genocide and crimes against humanity committed in Colombia. Therefore, the ICC potentially could assert jurisdiction over these men for genocide and for crimes against humanity. Under the Rome Statute, the Court has jurisdiction over crimes committed on the territory of a State party or by a national of a State party.⁸⁵ Multiple credible reports indicate that the paramilitary groups continued to engage in serious crimes after 2002.

Since the beginning of the peace process, ICC Prosecutor Luis Moreno Ocampo has expressed an interest in the extradited paramilitaries and their ties to Colombian politicians, writing letters to the Colombian government as well visiting Colombia last year. In 2008, Ocampo, in a letter to the Colombian Ambassador in The Hague, Francisco Jose Lloreda regarding the paramilitaries’ extradition to the US and its impact on ensuring the accountability for human rights crimes asked:

How will the trial of those most responsible for crimes under the jurisdiction of the ICC, including political leaders and members of Congress who are presumably linked to the demobilized groups be ensured? In particular, I would like to know if the investigations conducted so far point to the omission of conducts sanctioned by the Rome statute and whether the extradition of paramilitary leaders presents any obstacle to the efficient investigation of the aforementioned politicians.⁸⁶

However, it does not look likely that the ICC will assert jurisdiction for three reasons. First, the ICC can assert jurisdiction based on a referral from a State Party

⁸⁴ Human Rights Watch, *supra* note 115, at 131.

⁸⁵ Rome Statute of the International Criminal Court, A/CONF.183/9, July 17, 1998, at Article 12.

⁸⁶ Human Rights Watch, *supra* note 115, at 132-133.

government, from the UN Security Council or by the ICC prosecutor using his *proprio motu* powers, which enable him to act on his own initiative.⁸⁷ So far there has been no indication that any of these initiatives will be or is being taken. Second, the jurisdiction of the Court is complementary to domestic national justice systems. Therefore, in order for the Court to exercise jurisdiction it must prove that Colombia is unable or unwilling to do so.⁸⁸ Suffice it to note however that since the peace process has begun, not one paramilitary has been convicted in Colombia.⁸⁹ And the “authorities have opened investigations on few of the over 123,000 crimes reported by victims since November 2006.”⁹⁰ In addition, the extradition of these key paramilitary leaders to the U.S. could serve as evidence that the Colombian and the U.S. governments are unwilling to carry out the necessary investigations and prosecutions for human rights violations. Third, the U.S. has not signed the Rome Statute and does not have an obligation to extradite the paramilitaries and is unlikely to do so.⁹¹

Trials in the US

A second option is that if the US-Colombia extradition treaty was amended, the paramilitaries could be tried in the United States, most likely for terrorism and possibly for torture. Despite customary international law, few human rights crimes are codified

⁸⁷ *Id.* at Article 13.

⁸⁸ Under Article 17, the State party must be willing and genuinely able to carry out the investigation or prosecution. Rome Statute of the International Criminal Court, *supra* note 172, at art. 17.

⁸⁹ International Crisis Group, *supra* note X, at 8. “Of the more than 2,200 still in the process, 329 are currently delivering confessions but none have been convicted.” *Id.*

⁹⁰ *Id.* at pg. 8.

⁹¹ “It should be noted that the U.S. has entered into close to 100 bilateral agreements with different countries on the non-surrender of U.S. nationals to the ICC.” Bassiouni, M. Cherif, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE XV, (2007).

under U.S. law.⁹² “Current U.S. law does not grant U.S. courts jurisdiction to prosecute crimes against humanity, except for torture and certain forms of international terrorism, committed outside the United States.”⁹³ There would be a stronger argument to try the men for terrorism under 18 U.S.C. § 2332 (b), rather than torture, based on the wording of Extraterritorial Torture Statute. 18 USCS § 2332b gives federal courts jurisdiction over foreign nationals that engage in acts of international terrorism. Because all the extradited paramilitaries belonged to the AUC, a US Department of State-designated foreign terrorist organization, trying the paramilitaries for terrorism is a very likely possibility. Some human rights group, such as HRW, have urged the US Department of Justice to try these paramilitaries under Extraterritorial Torture Statute (“ETS”) (18 U.S.C. § 2340 A), but this would not be an easy argument. The Statute states:

Whoever, outside the United States, commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death, or imprisoned for any term of years for life.⁹⁴

⁹² Douglass Cassel, *Empowering United States Courts to Hear Crimes Within the Jurisdiction of the International Criminal Court*, NEW ENG. L. REV. 421, 429 (2001). “With regard to crimes within the ICC Statute, the express provisions of current U.S. law provide only partial jurisdictional and codification coverage: *Genocide* is codified by U.S. law, but may be prosecuted by U.S. courts only if the crime is committed in the U.S. or the offender is a U.S. national. *Crimes against humanity* are not codified as such in the United States. However, if committed in the United States or by members of U.S. military, most such crimes would violate domestic criminal laws or military laws against murder, aggravated assault, or the like. If committed outside the United States, crimes against humanity may be prosecuted in the U.S. civil courts only if they involve torture or attempted torture, or certain forms of international terrorism.” *Id.* at 429-430.

⁹³ *Id.* at 437. “In criminal jurisdiction, however, we lag behind such other democracies as Australia, Belgium, Canada, Denmark, France, Germany, Israel, Italy, Spain, Switzerland, and the United Kingdom, in ensuring that our courts have jurisdiction to bring to trial the ‘enemies of all humanity.’” *Id.* at 426.

⁹⁴ 18 U.S.C. § 2340A (a) (2000).

The Torture Act, which specifically applies to non US nationals,⁹⁵ was adopted specifically to fulfill the U.S.'s obligations under Article 4 and 5 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT").⁹⁶ Torture is defined under the statute as "an act committed by a person acting *under the color of law* specifically intended to inflict severe physical or mental pain or suffering. . . upon another person within his custody or physical control."⁹⁷

The only case that has been tried under this statute occurred in 2008 against Charles "Chuckie" McArthur Emmanuel, the son of former Liberian president Charles Taylor.⁹⁸ He headed a military unit called the Anti-Terrorist Unit (ATU), which "committed torture, including violent assaults, beating people to death, rape and burning civilians alive" during Liberia's armed conflict from 1999 to 2003.⁹⁹ In March 2006, Mr. Taylor was taken into custody in the Miami airport. He was originally charged with passport violation, but while he was in custody, human rights groups publicly called for an investigation of the war crimes and torture that he committed in Liberia. On October 30, 2008, he was found guilty and faces between twenty years to life imprisonment for

⁹⁵ 18 U.S.C. § 2340A(b)(2000) states: "There is jurisdiction over the activity prohibited in subsection (a) if (1) the alleged offender is national of the United States; or (2) the alleged offender is present in the United States, irrespective of nationality of the victim or alleged offender."⁹⁵

⁹⁶ Human Rights Watch, *supra* note 115, at 84. The Extraterritorial Statute went into effect on November 20, 1994, which was thirty days after the US ratified CAT. Elise Keppler, Shirley Jean, and J. Paxton Marshall, *First Prosecution in the United States for Torture Committed Abroad: The Trial of Charles 'Chuckie' Taylor, Jr.*, HUMAN RIGHTS WATCH, Aug. 26, 2008, http://www.hrw.org/sites/default/files/related_material/HRB_Chuckie_Taylor.pdf.

⁹⁷ *Id.*

⁹⁸ The case coincides with the trial of Mr. Emmanuel's father in a war crimes tribunal in The Hague.

⁹⁹ Keppler, Jean and Marshall, *supra* note 183. "One witness described having flaming plastic metal melted into his skin. Others accused Liberian soldiers of cutting their genitals or forcing prisoners to play 'stone football', kicking large stones until their bare feet were bruised and bleeding." Yolanne Almanzar, *Tales of Torture Overseas in a Case Testing U.S. Case Law*, N.Y. TIMES, Oct. 3, 2008, <http://www.nytimes.com/2008/10/03/us/03taylor.html>.

the crimes he committed in Liberia.¹⁰⁰ This case, praised by human rights lawyers, is a hopeful sign that the DOJ is taking international human rights violations into greater consideration:

It signals an effort by the Department of Justice to prosecute human rights violations, no matter where they occur, and to ensure that the U.S. is not a safe haven for these perpetrators. As the first case, it's an important step. But they're going to need a lot more like this to solidify the Department of Justice's commitment to seeking justice for these atrocities.¹⁰¹

However, to fall within the definition of torture under this statute the defendant must have acted "under actual or apparent authority, or under the color of law."¹⁰² In this case, because the defendant was the son of the president of Liberia and headed a military unit, the court easily concluded that he acted "under the color of law." It may be difficult to prove the Colombian paramilitaries acted under the color of law.¹⁰³ "A private individual acts under color of law. . . when he acts together with state officials or with significant state aid."¹⁰⁴ Therefore, in order to bring a claim against the Colombian commanders under the Act, it must be proved that there was government involvement in the torture.¹⁰⁵ Based on the *parapolitics* scandal, there is a possibility that the government was involved with the torture committed by the paramilitaries, but this would be very difficult to prove, especially if the paramilitaries were sent to the U.S. to be silenced.

¹⁰⁰ Amnesty International, *Chuckie Taylor Convicted of Torture*, Oct. 31, 2008,

<http://www.amnesty.org/en/news-and-updates/good-news/chuckie-taylor-convicted-of-torture-20081031>.

¹⁰¹ Almanzar, *supra* note 183.

¹⁰² "However, torture and summary execution are proscribed by international law only when committed by state officials or under the color of law." *Kadic*, 70 F.3d at 243.

¹⁰³ Although the Statute unambiguously states that the court has jurisdiction over acts of torture committed in the US and abroad, the court seemed a bit more confident in its decision based on the fact that Chuckie Taylor is a US national. Kepler, Jean and Marshall, *supra* note 183.

¹⁰⁴ *Kadic*, 70 F.3d at 245.

¹⁰⁵ The statute "does not attempt to deal with torture or killing by purely private groups." *Id.* at 246.

Immediate Extradition

Finally, the best option for the victims is for the US government to send the paramilitaries back to Colombia so that they may continue to contribute to the ongoing peace process and to offer Colombian victims the justice they deserve.¹⁰⁶ Over 155,000 victims have registered with the Attorney General's Justice and Peace Unit (JPU)¹⁰⁷ in Colombia. The US is aware of the crimes against humanity that have been committed by these men in Colombia¹⁰⁸ and must not forget these crimes in its efforts to convict them on drug trafficking charges.

The United States must remain mindful of this uncontested assessment of the terror inflicted by the AUC and take care to prevent its own partisan political interests and its backing of Uribe from subverting the achievement of justice which is so vital to the establishment of a sustainable peace in Colombia.¹⁰⁹

Whether or not the paramilitaries are sent back to Colombia, unfortunately, seems to be a matter of politics. The passage of the FTA could have great implications on whether these men will be extradited back to Colombia or not. Its passage was a top priority of the Bush administration; however the new President Barack Obama has said he opposed the agreement because Colombia has not done enough to curb violence

¹⁰⁶ Since two paramilitaries have already been sentenced, and it is likely that there will be men sentenced before this issue is resolved, an agreement would have to be reached so that the men could finish their sentences in Colombia. Although there is no existing treaty on the serving of sentences between the U.S and Colombia, there is an Inter-American Convention on Serving Criminal Sentences. Although Colombia is not a party, the US is, which implies that the US would agree to permitting the men the finish their sentences in Colombia. Article Two of that Convention states that "in accordance with the provisions of this convention (a) a sentence imposed in one state party upon a national of another state party may be served by the sentenced person in the state of which he or she is a national." Inter-American Convention on Serving Sentences Abroad, art.2, May 25, 2001, <http://www.oas.org/Juridico/english/treaties/a-57.html>.

¹⁰⁷ International Crisis Group, *supra* note 98, at.1

¹⁰⁸ "The US has acknowledged the terror inflicted on the Colombian population by the AUC up to 2001 when it classified the illegally armed group as a terrorist organization. It was on that occasion that Colin Powell recognized in a speech that the illegally armed group was guilty of such abuses as: 'the massacre of hundred civilians, the forced displacement of entire villages, and the kidnapping of political figures to force recognition of AUC demands.'" *Colombia: Uribe, Extradition, and the Fight for Justice*.

¹⁰⁹ Bryant, *supra* note 88.

against labor leaders.¹¹⁰ Because Obama will be less concerned with maintaining a clean image of Colombia to ensure the FTA's passage, he will probably be more willing to send these men home. The Inter-American Dialogue has predicted that:

[H]e will likely seek a compromise with Uribe that would make his support for the free trade agreement contingent on Colombia reducing the deaths of labor union members and prosecuting those responsible for past crimes. Obama's eagerness to close the US facility in Guantanamo signals his administration will not take such human rights abuses lightly.¹¹¹

Therefore based on Obama's position on the FTA and human rights in general, it is more likely that an Obama administration, as opposed to a Bush, would agree to send these men back to Colombia. It is important to note though that some scholars have expressed doubt regarding the extent of Obama's commitment to human rights.¹¹²

Whether Colombia would agree on the amendment of the extradition treaty is another question. The return of the paramilitaries could result in them revealing the truth about Uribe's government's involvement with the paramilitaries and result in problems for his administration, potentially further delaying the passage of the FTA. The Colombian Congress is currently debating whether the constitution should be amended so that Uribe can serve another term as President.¹¹³ Clearly, there is a greater chance that these men will be extradited back to Colombia under a new non-Uribe government that

¹¹⁰ Goodman, *supra* note 133.

¹¹¹ Michael Shifter, *Obama and Uribe, The Odd Couple*, INTER-AMERICAN DIALOGUE, Nov. 14, 2008, <http://www.thedialogue.org/page.cfm?pageID=32&pubID=1663>.

¹¹² After 16 years of robustly militaristic foreign policy—all after the end of the Cold War, when we should have been looking for a new way—Obama should have finally begun that long-overdue approach. Instead, he has surrounded himself with old hawks." Mary Ellen O'Connell, *Old Hawks Wrong For Foreign Policy*, CHICAGO TRIBUNE, Dec. 2, 2008, http://www.chicagotribune.com/news/nationworld/chi-oped1202hawkdec02_0,4506121.story.

¹¹³ Claudio Palacios, *Colombians Debate Third Term For President*, CNN, Dec. 4, 2008, <http://www.cnn.com/2008/WORLD/americas/12/04/colombia.president/>. "Colombian President Alvaro Uribe enjoys one of the highest popularity ratings of any leader in South America, so much that his supporters are pushing for a third presidential term for him." *Id.*

will be less concerned about hiding the *parapolitics* scandal and will have less political credibility riding on the passage of the FTA.

VI. The Right To Justice

Under international norms, victims of gross violations of human rights have the right to “equal access to an effective judicial remedy”¹¹⁴ and therefore States have a duty to ensure that those responsible for these types of violations are brought to justice.¹¹⁵ The Inter American Court of Human Rights in the case of *The Rochela Massacre v. Colombia* held that:

In order for the State to satisfy its duty to adequately guarantee the range of rights protected by the Convention, including the right to judicial recourse, and the right to know and access the truth, the State must fulfill its duty to investigate, try, and, when appropriate, punish and provide redress for grave violations of human rights.¹¹⁶

Accordingly, under the UN Basic Principles, States have a duty to investigate persons who commit gross violations of international human rights law, to prosecute if there is

¹¹⁴ UN GA Res. 60/147 (2005), *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, at para. 12. “States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.” Updated Set of principles for the protection and promotion of human rights through action to combat impunity (updated Set of principles to combat impunity), Addendum to the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, at 12.

¹¹⁵ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, at para. 18. (2004) “As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant.” *Id.*

¹¹⁶ I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits. Judgment of May 11, 2007, Series C No. 163, at para 193.

sufficient evidence and to punish if the person is found guilty.¹¹⁷ Therefore, in order to ensure effective justice, human rights violators may not receive impunity or amnesty and must be held accountable for the crimes that they have committed. According to the UN Human Rights Commission, “amnesties should not be granted to those who commit violations of human rights and international humanitarian law that constitute crimes.”¹¹⁸ In regard to impunity, the Office of the High Commissioner for Human Rights has urged “States to end impunity for violations that constitute crimes by bringing the perpetrators, including accomplices to justice in accordance with international law.”¹¹⁹

However, despite these clear international standards that human rights violators must be punished and amnesty and impunity shall not be permitted, “as an alternative to amnesty, States may allow reduced punishments in return for confessions of perpetrators.”¹²⁰ Therefore, the Justice and Peace Law, as interpreted by the Colombian Constitutional Court, is in accordance with international human rights norms, despite the fact that some gross human rights violators receive reduced sentences for their crimes. However, “with regard to the principle of lenity based upon the existence of an earlier more lenient law, this principle should be harmonized with the principle of

¹¹⁷ “In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him.” UN GA Res. 60/147, *supra* note 201, at para. 4.

¹¹⁸ Written Testimony of Professor Douglass Cassel Before the Constitutional Court of Indonesia, July 6, 2006, pg. 11, <http://www.ictj.org/static/Asia/Indonesia/testimony.eng.pdf> (citing UN Human Rights Commission, Resolution 2005/81, *Impunity*, 21 April 2005)

¹¹⁹ Office of the High Commissioner for Human Rights (OHCHR), *Impunity*, Human Rights Resolution 2005/81, at para. 1.

¹²⁰ Written Testimony of Professor Douglass Cassel Before the Constitutional Court of Indonesia, July 6, 2006, pg. 11, <http://www.ictj.org/static/Asia/Indonesia/testimony.eng.pdf>. “This alternative has been adopted by the International Criminal Tribunals for the former Yugoslavia and for Rwanda.” *Id.*

proportionality of punishment, such that criminal justice does not become illusory.”¹²¹

Therefore, the human rights violations that the fifteen extradited paramilitaries have committed cannot go unpunished. The Colombian state has a duty to punish these men in accordance with the Justice and Peace Law and their recent arrival in the United States does not change this duty.

VII. Conclusions/ Recommendations

Based on the above principles of international law and the gravity of the human rights violations committed by the extradited paramilitaries, they should be sent back to Colombia. The UNCHR has urged “States to assist each other, in accordance with their international obligations and domestic law, in . . . bringing to justice persons. . . suspected of having committed international crimes”¹²² Returning the paramilitaries to Colombia would enable them to continue to participate in the Justice and Peace process and provide the victims with the possibility for justice that they deserve. Even if the United States decided to prosecute the men for the human rights violations they committed in Colombia, the majority of victims and evidence are in Colombia and therefore prosecution in the US would not be as effective. In addition to evidentiary problems, judicial proceedings within the affected country are more effective for reconciliatory purposes.

Reconciliation imposed from outside does not tend to be as effective as reconciliation arrived from within. This is not to say that there is no place for international prosecution in transitional justice; such trials may serve many

¹²¹ *Case of the Rochela Massacre*, *supra* note 203, at para 196.

¹²² OHCHR, *supra* note 206, at para. 8.

purposes, although they are more likely to be effective in sophisticated and wealthy societies where access to news is possible. Rarely, however, do they promote social reconciliation.¹²³

In conclusion, hopefully the US and Colombian governments can put their political agendas aside in order to provide justice and reconciliation for the victims who deserve it most. The crimes of humanity committed by these men in Colombia must not be forgotten in the pursuit US drug trafficking convictions.

¹²³ Jeremy Sarkin and Erin Daly, *Too Many Questions, Too Few Answers: Reconciliation in Transitional Societies*, 35 Colum. Human Rights L. Rev. 661, 691 (2004).