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“Political prisoners exist in Colombia, are discriminated against and persecuted”

Franklin Castañeda, Colombian human rights lawyer

José Antonio Gutiérrez D.

July 18, 2012

On June 27, as part of his European tour, we had the opportunity of speaking in Dublin with the Colombian human rights lawyer, Franklin Castañeda, president of the Foundation, Solidarity Committee with Political Prisoners (FCSPP in Spanish acronym), as also spokesman of the Movement of the Victims of State Crimes (MOVICE in Spanish acronym)

Given his work in defence of victims, as also assuming the defence of political prisoners and prisoners of war, he has suffered constant threats and harassment which obliged him to abandon his city of birth, Barranquilla¹. We spoke with him about the current prison situation, the existing humanitarian crisis in the country's prison system, of initiatives such as the

¹ See omct. The United Nations recently expressed its worry for death threats against human rights defenders, among whom appear Franklin Castañeda, linked to the fight to return land to the displaced peasants.

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Legal Framework for Peace and the impact that Europe has in the social and armed conflict in Colombia. We think that this reflection is essential in knowing a major part of the reality hidden by the Colombian regime, that of political imprisonment, above all now that the political prisoners have started to mobilise actively to reclaim their human condition from a State that not only tortures them but also denies their existence.

1. What is the current situation of persecution against social movements and the Opposition in Colombia?

There has been a significant regression on the matter of political prisoners; well the government has pushed through legislation that will allow more people to be jailed for longer. This is the spirit of the Law of Citizens' Security, a law focused on the persecution of social protest. This has converted crimes related to social protest in the only class of crimes in Colombia in which a person condemned to minor punishment of less than four years is bound to pay with prison. With any other Colombian law, anyone with a punishment of less than four years in prison can complete their sentence outside. This law has been turned into something of propaganda because it treats as a crime an employer impeding the exercise of the right to unionisation. This has been sold abroad, particularly in the USA in the context of the free trade agreement with that country, as a guarantee of respect for union freedom in Colombia. That is, if someone is forming a trade union and the employer sabotages this attempt or throws out people linked with union organisation, this person could pay with two or four years' prison. But this crime, as distinct to others in the law, certainly is not paid with imprisonment. Moreover, no one has been judged for this crime, or even investigated, in circumstances where others are indeed being judged under the Law of Citizens' Security for other crimes.

2. The government denies the existence of political prisoners and, according to human rights organisations, there are about 9,500 political prisoners. Why this difference in interpretation?

The government denies the existence of political prisoners in Colombia. They consider that the crimes the guerrillas have committed are common crimes; that rebellion, that is political crimes par excellence, is comparable to common crime. The government says that the only political prisoners are those imprisoned for their opinions or those whose due process has not been respected. Human Rights Watch had a very vehement posture to deny in the same terms as that of the Santos government the existence of Colombian political prisoners. It is said that in Colombia defence rights and judicial guarantees are respected and this is the basis for saying there are no political prisoners. We then have a paradoxical situation, in which on one side there is judicial recognition of political crime but what is made out for political reasons is that political criminals do not exist. In this situation the problem cannot be properly tackled if its existence is denied.

There exists, then, a denial of the political situation of the political prisoners on part of the government, but they are finger-pointed and stigmatised with a real politics of hate, a policy clearly directed by the intelligence organisations of the State who designed an “Operation Internet”... Every time the theme of political prisoners comes up, there is an identical reaction on the part of certain users who repeat the same arguments, straight copies of one to the other.

3. Could you put together a radiocopy of the prison situation in Colombia? Is there a markedly discriminatory treatment of the political prisoners?

The prison situation in Colombia is gravely unusual. But those who suffer are the political prisoners and the prisoners of war because those who are soldiers, paramilitaries, parapoliticians and the corrupt are prisoners of another grade: privileged

and getting a treatment that would be enviable for the majority of common Colombians. The prisoners who do not belong to this select group suffer from overcrowding, restricted access to water, unhealthy conditions, lack of medical attention, maltreatment by the guards, maltreatment of their visits, collective punishment, torture, degrading treatment and isolation. All prisoners suffer this but especially the political prisoners, to whom INPEC (National Penitentiary and Prison Institute) shows no mercy and who particularly suffer certain forms of mistreatment.

The overcrowding figures speak for themselves. Uribe received a country with a little more than 50,000 prisoners in 2002, leaving the country in 2010 with 80,000 prisoners. Santos is heading for 150,000 prisoners. We have a prison rate growing at a vertiginous rate of 1,7% a month. Ten new prisons were constructed in this period, the so-called Erons that are prisons of up to 4,000 people, which created 26,000 new places in total. As it is, the total places in the country is 75,000, which signifies we have an overcrowding of 40%. But what happens is that the new prisons do not accept overcrowding and this overcrowding is only in the old prisons... then we have prisons like the Modelo with 200% overcrowding or Bellavista with 250% overcrowding. The political prisoners, in general, suffer more torture and degrading treatment, with which all prisoners are punished, but the political prisoners are specially and intensely marked out. INPEC sees the political prisoner as an enemy of the state and the functionaries, frequently indoctrinated with the counter-insurgency mentality, deal with the political prisoners in a militarised way. But there is special guards corps of INPEC that uses military equipment, including camouflages.

4. Does the situation you describe affect all prison establishments? Do the new prisons, the Erons, represent an improvement in humanitarian terms?

The regulations in the new prisons are horrifying. There is a lot of suffering from isolation; later there are restrictions on

which if there are Colombians or others with seizure orders in Swiss territory, they can be deported to Colombia in an expedited manner. And extradition is an important component of this judicial war.

As an organisation, we defend the right of each person to be judged with due process. A democracy should not utilise the judicial apparatus to persecute those it considers enemies. In attacking the enemy, the guarantees cannot be done away with; this is typical of dictatorships that use summary justice or military tribunals. As a human rights organisation, we defend the right for everyone to be judged by due process. The paramilitaries and the soldiers have all the guarantees and many wrongful privileges. The soldiers also have a recently-founded organisation that is thinking of creating an institution with the money of all Colombian contributors to defend all those who for whatever reasons find themselves prisoners, including for sexual crimes and domestic violence. The other organisation protecting the military prisoners, Demil, is not accused by anyone as we are for defending these political prisoners none of whose rights are respected and who are regularly victimised with mistreatment.

9. Now that you are touring Europe, what role do you think the E.U. is playing with the social and armed conflict in Colombia? Do you think that Europe could provide scenarios for a political exit to the current conflict that could help relieve the pressure of Colombia's grave humanitarian crisis?

That the EU considers the Colombian guerrillas as terrorists is something that weighs on the insurgency but it also weighs on civil society that asks for a negotiated settlement to the conflict. The EU is incapable of mediating; you don't speak to terrorists... Apart from Ireland, which now seems to be opening up a bit more and is prepared to play a role in Colombia, the only European government which seems till now to have had a greater receptivity to serving as a place for rapprochement is the Swiss government, but they are not in the European Union. They do not term either FARC or ELN as terrorists. What worries us is that they have signed a cooperation agreement in the framework of the free trade agreement with Colombia, in

communication between prison yards or aisles. The restrictions are stricter, spilling over to being locked up for 14 hours in cells. There are 10 hours in the prison yard but you cannot return to your cell in these hours as you can do in the older prisons. You have fewer visiting hours; they give you only 3 hours of visit every 15 days. The matrimonial visit is only an hour for each 45 days. In the old prisons, there are visits every Sunday and the matrimonial could be in your own cell, that despite the overcrowding you can turn it into a ramshackle housing, and you can be there all day if you so wish. In the new ones, they take you handcuffed to your family, which is very humiliating.

In the new prisons, the main punishment is isolation. This is principal type of punishment to which the political prisoners are subjected. When we speak of isolation we are speaking of windowless dungeons where hardly an hour a day is permitted in the sun, where food is flung down through a crack at the bottom of the door, in the style of U.S. prisons... they could legally have you for up to two months in these conditions but we know of cases that have been up to years in these conditions. If a political prisoner has security problems because the paramilitaries have threatened him in prison, then they isolated you in these dungeons supposedly as a protective measure. But this is not a protective method, it is one of punishment.

5. The lack of medical attention to political prisoners as a form of torture has been denounced... What is your opinion of the situation?

The situation is more serious for those captured in combat. Wounded combatants are not given medical attention, many of them come with bullet injuries... they are not attended to if they have terminal illness; there are prisoners with cancer and medical attention is denied to them.

There is a lack of treatment in general but there is always a drug that can be found in prisons: Clozapine, which is a psychiatric drug, a psychotropic substance but which most of the common criminals take. INPEC gives it to them directly but de-

pute a psychiatrist who, for example in the case of La Dorada, visits the prison once a month to attend more than 160 prisoners. The only thing that happens in the visit is that more prescriptions are handed out for this drug, which turns them into addicts, leaves them like zombies and becomes a mechanism of social control of the prisoners. This drug is never lacking in the prisons; it is the only one that is never lacking.

6. *There has been an important debate around the extent of the Judicial Framework for Peace. Critics of the right say that it benefits the “guerrilla” while detractors of the left insist that it is a framework for impunity. What is your understanding in respect to this?*

Public prosecution says the most important bit of the Judicial Framework for Peace is that the human rights violations cannot be subject to pardon or amnesty. The minor violations certainly are reparable, that there can releases only and always when it deals with common violation but the result is that everything fits in this definition of common crimes. In fact, now itself 2,200 soldiers are being pronounced guilty, they are accepting charges of false positives to benefit from the release clause in the Judicial Framework for Peace, as thus they go free. Senator Roy Barreras is behind all this and already 2,200 of the little more than the 2,400 soldiers processed for the crime against humanity say they are disposed to face the sentence. Five thousand more are being investigated at this time. A significant number of officers due for promotion are being investigated for violations in the context of the dirty war because it is not about one or two corrupt official but of a state policy of a dirty war.

In general, beyond this particular legislation, the Colombian government upholds a point that is not negotiable for the insurgency, that the peace process be nothing more than a process of demobilisation and committing the guerrillas to justice... they hardly see them from the premise of rehabilitation, prison release etc. Moreover, there is no guarantee that the proposed

reforms will be implemented. This is how things are; it would seem difficult that these initiatives in themselves will pave the road to peace.

7. *What is the judicial situation in which the political prisoners find themselves? A ‘judicial war’ has been spoken of in the documents of DAS (Colombian secret service). Are there elements to say that the situation is reflected in the objective conditions of the prisoners?*

In Colombia, a penal law for enemies is applied to the political prisoners in which the defence rights are curtailed, with aggravated sentencing for crimes related to insurgency; sentencing is done without any great evidence, evidence that cannot be sustained under a probative examination. It is a real judicial war in which the “right” is used in a partial, arbitrary manner as a weapon in a war in which all types of methods are used.

If you are the commander of a guerrilla front, they hold you responsible for absolutely all the actions of the members of that front. But this same theory does not apply to the army, because if it were so, Juan Manuel Santos, for heading the command, would be prisoner for false positives that occurred in his time as head of the Defence Ministry. If this theory were to be applied to the entire military command, they would be behind bars. Then, we have guerrilla commanders faced with 40 or 60 processes and who also face sentencing in absentia. This is the other feature of the judicial war as it condemns a person without him/her having the right to defence, and with which very stiff sentences are imposed, in reality at times perpetual imprisonment. This type of sentencing, moreover, does not have any beneficial clause for studying or work as in other types of crimes. Then, it is said there are no political prisoners in Colombia but there certainly is a type of prisoners who are clearly discriminated against for political reasons.

8. *Your types have been accused of being “lawyers for the guerrilla”...*