

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Peace and Victims' Rights in Colombia

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STATEMENT SUBMITTED FOR THE RECORD

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To the Co-Chairmen, the Executive Committee, and other members of the Tom Lantos Human Rights Commission, I thank you for your kind invitation to submit testimony for the record about how the United States can provide essential support to truth- and justice-seeking efforts in Colombia and in so doing help to guarantee the rights of victims and a lasting peace.

This is a pivotal moment in Colombia. After five decades of conflict, with thousands of FARC insurgents now disarmed and demobilized, Colombia finally has a chance at a more peaceful future. But a durable and lasting peace in Colombia will require years of determined and sustained effort on many fronts.

Success means reintegrating thousands of ex-combatants into society, re-tooling the Colombian armed forces for other missions, guaranteeing that former insurgents are able to participate in the political process, and returning long-displaced populations to their homes.

Colombia's plan for "transitional justice" is equally important and equally challenging. The Integrated System for Truth, Justice, Reparations and Non-Repetition consists of three main bodies, each with a distinct function.

- The **Special Jurisdiction for Peace (JEP)** will investigate and prosecute human rights crimes and violations of international humanitarian law;
- the **Commission for the Clarification of the Truth, Coexistence, and Non-Repetition (CEV)** will investigate the causes of the conflict and issue a final report;
- and the **Search Unit for Disappeared Persons (UBPD)** is charged with locating and identifying the thousands of people who went missing during the conflict.

The task is formidable. The investigators, prosecutors, judges, and truth commissioners of the Integrated System are bringing closure to the Western Hemisphere's longest civil war, which has

cost over 220,000 lives, displaced over six million people and produced an untold number of violations of human rights and international humanitarian law.

Underlying this comprehensive effort to bring closure to the conflict is a focus on the **rights of victims**: to truth, to justice, to reparations, and to know the fate of their loved ones. The Integrated System places these rights—already Colombian law—front and center in the transitional justice process.

Among the most important rights is the guarantee that victims and survivors can recover, access, publish and utilize all relevant evidence and information to seek justice and reparations and to help guarantee non-repetition of grave human rights violations. Victims have made clear that one of the key outcomes of the peace accord for them is knowing what happened to them and to their loved ones.

Time is short. The 11-member Truth Commission, for example, has only three years to produce a final report on the conflict.

But the critical challenges relate to access. In a positive development, the Constitutional Court this year ruled that prosecutors and investigators working in the Integrated System would have access to all records needed to complete their objectives.

Despite the ruling, just this week we learned that the Colombian armed forces have succeeded in placing key intelligence files off limits. The Truth Commission's formal request for military records included documents on the organization and personnel of Colombian intelligence agencies, which are blamed for an array of serious human rights abuses during the conflict. But the military objected to the release of these files, including especially the biographic sketches of key intelligence officers, and the Commission withdrew its request.¹

This is not the first time the Colombian military has worked to shut down human rights investigations. Victims are routinely denied access to state records relevant to their cases. The National Center of Historical Memory (CNMH), which has produced an important series of official reports on the conflict and is charged by law with creating a national "Human Rights Archive," has had virtually no access to intelligence files and has instead relied largely on legal records and media reports.

The Importance of U.S. Files on Colombia

So while access to Colombia's own archives should be the top priority, it is already clear that key Colombian intelligence files will remain secret if Colombian government agencies continue to resist requests for information from victims, government investigators and judicial authorities.

¹ "Comisión de la Verdad desistió de pedir hojas de vida," by Juan David Moreno Barreto, *El Espectador*, Jul 12, 2018 <https://colombia2020.elespectador.com/verdad-y-memoria/los-archivos-de-inteligencia-para-reconstruir-la-verdad>

Even before this recent news, the truth commissioners and other investigators from the Integrated System had told us that they view U.S. government documents as an important source of information to support their investigations. My organization, the nongovernmental National Security Archive, has been consulting with members of the Truth Commission, providing access to our own declassified collections, and helping them prepare a formal request to the U.S. government for the expedited declassification of additional records to support their mission.

U.S. government files may end up being the most important single source of detailed, day-to-day government reporting on Colombia's conflict. Colombia has been a major focus of U.S. intelligence reporting since the founding of the Central Intelligence Agency (CIA) in 1947, and the United States has been Colombia's closest military and intelligence partner since the 1950s. The U.S. has committed billions of dollars in security assistance to Colombia over the years and has been involved in multiple reorganizations of the Colombian military and intelligence forces. The intelligence-sharing relationship between the two countries has expanded dramatically since those early days and has developed into a sophisticated network that now includes specially-vetted police units and real-time information sharing on the most-sensitive Colombian military operations.

The depth of its involvement with Colombia's security forces has made the U.S. government one of the keenest observers of the conflict and the associated violence, producing an enormous amount of relevant primary-source data. For example:

- Military situation reports track the day-to-day developments in the conflict.
- U.S. military biographic sketches track the careers of key military, guerrilla and paramilitary officials.
- Intelligence reports describe the organization and activities of combat units on all sides.
- Diplomatic cables shed light on key human rights cases, especially those with implications for U.S. security assistance.
- DEA reports describe U.S. and Colombian efforts to combat drug trafficking and uncover corruption.
- U.S. Military Group reports track how U.S. military and police aid was used and the U.S. Embassy's human rights officers worked to ensure that aid recipients were not linked to human rights abuses.
- Other documents show how the U.S. government pressured Colombia to disband notorious military and intelligence units and remove corrupt officials, including those tied to illegal paramilitary groups.

Access to U.S. documents would help shed light on a number of important issues and episodes stemming from the conflict, including:

- The origins of Colombia's illegal armed groups and the military, police and intelligence structures that were put in place to counter them;
- FARC kidnappings, paramilitary massacres and the role of narcotraffickers in compromising officials at all levels of government;

- the “Los Pepes” affair, in which a joint U.S.-Colombian “Search Bloc” collaborated and shared intelligence with Colombian paramilitaries in the hunt for fugitive narco trafficker Pablo Escobar;
- the repressive tactics of the disbanded Administrative Department of Security (DAS), a U.S.-backed intelligence agency that plotted murders with violent paramilitary groups and ran an illegal surveillance program targeting journalists, human rights defenders and Colombia’s own Supreme Court;
- the so-called “false positives” cases, in which members of the Colombian Army kidnapped and executed civilians, many of whom are still missing, to artificially inflate the guerrilla body count;
- and the human rights abuses of notorious military units like the Colombian Army’s 20th Military Intelligence Brigade (disbanded in 1998 under intense pressure from the U.S. government), and a secret Colombian naval intelligence network linked to paramilitary groups and assassinations in the early 1990s.

Declassified Diplomacy Supports Peace and Reconciliation

Declassified documents have been informing truth and reconciliation processes around the world for more than 30 years, either as the result of expedited declassifications directed by both Democratic and Republican presidents or ordinary requests under the Freedom of Information Act (FOIA), or both. They have been used to prosecute human rights crimes and have helped bring closure to the families of thousands of victims. Access to U.S. archives can open new lines of investigation, promote democratic governance by leveraging greater access to information in those countries, and help build human rights legal capacities in national and international courts.

- **El Salvador** - In 1992 and 1993, the United Nations Truth Commission in El Salvador faced enormous obstacles to obtaining even the most basic data about the Salvadoran armed forces—information the commission needed in order to understand the institutional causes behind the human rights violations it was charged with investigating. The Commission’s final report blamed the state for 85% of documented human rights abuses, prompting President Clinton to order the expedited declassification of interagency records on the conflict in June 1993. Within five months, the U.S. government had reviewed, declassified and released some 12,000 records from the National Security Council, the Department of State, the Department of Defense and the Central Intelligence Agency.
- **Guatemala** - In 1995, President Clinton ordered an exhaustive review of U.S. intelligence activities and human rights abuses during the Guatemalan civil war that led to the expedited declassification of approximately 6,000 records from the State Department, CIA and the Pentagon. These documents, along with thousands more obtained through FOIA efforts, were crucial evidence for a pair of truth commissions investigating Guatemala’s conflict in 1997-1998 and in subsequent prosecutions of Guatemalan officials for human rights crimes. As President Clinton said in ordering the release: “Conducting expedited declassification reviews of U.S. documents bearing on past human rights violations” supports “regional efforts to balance justice and national reconciliation.”

- **Chile** - In 1999, President Clinton used his executive discretion to order a special declassification project leading to the release of some 24,000 documents from the CIA, NSC, FBI, Defense Department, and State Department on human rights violations in Chile, many of which have been used by victims and survivors of abuses during years of military rule in that country.
- **Peru** - The administration of President George W. Bush also made significant contributions to truth and reconciliation efforts in Latin America, albeit with more limited results. Expedited declassifications for truth commissions in Panama and Peru were limited to State Department records. While some valuable information came from these releases—including key evidence used in the prosecution and conviction of former president Alberto Fujimori—the lack of documentation from other U.S. agencies limited the overall impact was a major shortcoming of the Bush-era declassifications.
- **Argentina** - In March 2016, President Barack Obama ordered the declassification of military and intelligence records on Argentina’s “Dirty War.” The announcement came on the 40th anniversary of the U.S.-backed coup that brought the Argentine military junta to power in 1976. The President said he hoped that shedding light on this dark period would help to “rebuild trust” between the two countries, while National Security Adviser Susan Rice said the gesture was meant to highlight the two governments’ “shared commitment to human rights.”

An Expedited Declassification Project for Peace in Colombia

Based on more than 30 years of experience in supporting truth commissions, special prosecutions and transitional justice in Latin America, the National Security Archive respectfully requests that the Lantos Commission and its members:

- call upon the Colombian government to identify and provide all active and historical records requested by the Colombian Truth Commission, the Special Jurisdiction for Peace, and the Search Unit for Disappeared Persons;
- call upon the Colombian government to secure and protect files of historical interest or that can conceivably be used to clarify human rights violations and other crimes relating to the Colombian conflict;
- call upon the U.S. government, and where possible work with the Executive Branch, to organize the expedited declassification of records on Colombia’s conflict, especially any records requested by the Truth Commission, the Special Jurisdiction for Peace, or the Search Unit for Disappeared Persons;
- and continue to monitor this process, emphasizing that access to information is a human right, and calling attention to cases where the Colombian government denies access to human rights evidence.

Ideally, an expedited declassification program would be directed by the White House and under the direct supervision of the National Security Council Staff, which is the only office with the

authority and resources to coordinate the collection and review of records from all agencies that might hold relevant information, including the active and retired files of diplomatic, military, intelligence and law enforcement agencies.

But Congress does not have to wait for the Executive Branch to act, and can support transparency in Colombia through its own legislation.

In perhaps the most well-known example, in 1992 Congress passed the “President John F. Kennedy Assassination Records Collection Act,” aimed at dispelling conspiracy theories and other suspicions that the U.S. government covered up the real story behind the assassination of President Kennedy. The law was designed to promote the maximum level of public disclosure, guaranteeing that even documents normally considered too sensitive to release were made available in declassified form and in a manner that protected all security requirements.

In another example, Congress added a provision to the Intelligence Authorization Act for Fiscal Year 2000 (the Hinchey Amendment) requiring the Intelligence Community (IC), led by the National Intelligence Council, to declassify records relating to the 1973 military coup that toppled the government of President Salvador Allende and ushered in the dictatorial regime of Gen. Augusto Pinochet.

In Colombia, outgoing President Juan Manuel Santos has shown leadership on the issue of transparency, signing the country’s first access law and in doing so asserting that “information is a right not a privilege.” As Santos leaves office, the U.S. has an opportunity to build upon this momentum, support human rights, strengthen the rule of law, and promote trust-building efforts and reconciliation. Indeed, there has never been a more compelling need for speedy access to credible information on Colombia’s conflict.

An expedited declassification project would be a timely and important contribution toward truth and reconciliation in Colombia and the “new era of openness” in Colombia. This Commission and the U.S. Congress should champion this effort to support Colombia’s transition to peace by promoting the maximum level of transparency of diplomatic, military, intelligence and policymaking records relating to grave human rights abuses and the fate of the disappeared in Colombia.