



COLOMBIA: Letting Paramilitaries Off The Hook

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Two years after the start of negotiations for the demobilization of paramilitary groups, Colombian President Alvaro Uribe plans to present a draft law to govern demobilization at an international donors' conference in Cartagena, Colombia, on February 3-4, 2005. Donors should closely scrutinize this proposed legal framework before providing any support—political or financial—to the demobilization process.

The government appears poised to propose a bill that would provide substantial benefits to paramilitaries but would lack adequate mechanisms for investigating paramilitaries for gross human rights violations. Unlike competing proposals in the Colombian Congress the government's proposal would fail to hold paramilitaries to their commitments to cease hostilities, cooperate with authorities, and make reparation for their crimes. Such a law would be ineffective at dismantling paramilitary groups and bringing about actual peace.

Paramilitary leaders—who include notorious drug kingpins and vicious murderers—initiated negotiations with the Colombian government seeking an agreement that would prevent their extradition to the United States, minimize potential prison terms in Colombia, and allow them to retain as much of their illegally obtained wealth as possible. The organizations they command are extraordinarily powerful and complex, well-financed through decades of extortion and involvement in the drug trade, and responsible for some of the most heinous human rights abuses ever committed in Colombia. As a result of their economic power, they also have a significant capacity to replenish their ranks.

With the right legal framework, the demobilization process could have a significant impact in reducing human rights violations in Colombia. But unless the law takes into account the complexity, power, and regenerative capacity of paramilitary mafias, there is a serious risk that the demobilization process will simply give paramilitary leaders the benefits they seek without resulting in any real advances in terms of accountability or peace.

Moreover, the terms, conditions, and benefits contained in the paramilitary demobilization law will be the main precedent to which other illegal armed groups in Colombia, such as the FARC, will look in future peace negotiations. To the extent that other countries support the demobilization process in Colombia, the legal framework governing this process may become a broader precedent and influence the terms according to which governments negotiate with illegal armed groups throughout the world.

It is therefore essential that the Colombian government and the international community ensure that the paramilitary demobilization process in Colombia does not simply benefit paramilitary leaders without satisfying international standards on accountability. The process must be designed to effectively dismantle paramilitary structures as well as to respect the victims' rights to truth, justice, and reparation.

I. Paramilitary Groups: Powerful Organizations Easily Able to Replenish their Ranks

Colombian paramilitary groups trace their origins to small “self-defense groups” formed by local landowners and businessmen to defend themselves and their property against guerrilla violence, and to death squads created by drug cartels in the 1970s and 1980s. Operating with the tolerance of, and often in collusion with Colombian military units, paramilitary groups have a long and horrific history of abuses against civilians, including massacres, assassinations, torture, forced displacement, forced disappearances, and kidnappings.¹

Financed through the drug business, extortion, and forced takings of land, paramilitary groups have a great deal of economic power. They have been estimated to control an enormous share of Colombia's drug trade,² and they illegally own vast expanses of land that they have taken by force.³

These groups also have increasing political influence in Colombia. Through their territorial control, paramilitaries have been able to install or manipulate many local

¹ Human Rights Watch has extensively documented collusion between paramilitary groups and the Colombian military in the commission of human rights abuses and crimes against humanity. See, e.g., Human Rights Watch, *The “Sixth Division:” Military-Paramilitary Ties and U.S. Policy in Colombia*, (New York: Human Rights Watch, 2001); Human Rights Watch, “The Ties that Bind: Colombia and Military-Paramilitary Links,” *A Human Rights Watch Report*, vol. 12, No. 1(B), February 2000.

² Scott Wilson, “Colombian Fighters' Drug Trade is Detailed; Report Complicates Efforts to End War,” *Washington Post*, June 26, 2003, p. A01; Juan Forero, “Colombia's Landed Gentry: Coca Lords and Other Bullies,” *New York Times*, January 21, 2004, p. A4.

³ See “Los Señores de las Tierras,” *Semana*, Vol 1152, May 28, 2004, [online] <http://semana.terra.com.co/archivo/articulosView.jsp?id=79095> (retrieved January 6, 2005).

politicians. Even at the national level, there are now politicians who openly support paramilitary groups.⁴

Paramilitary organizations have been estimated to command as many as 23,000 troops.⁵ Because of their extraordinary wealth and continued involvement in the drug business, they also have an immense capacity to replenish their ranks and continue to operate even while many of their members appear to be demobilizing.

To actually demobilize and dismantle these mafias requires much more than simply trusting paramilitary leaders to turn over their weapons and land and move their troops into government programs for reintegration to society. For a genuine demobilization to take place, it is essential that the Colombian government investigate and attack the structure, sources of financing, and historic sources of political and economic support of these complex groups. It is also crucial that the government hold paramilitaries accountable for, and uncover the truth about the serious human rights and humanitarian law abuses they have committed. And the government must ensure that these groups fulfill their commitments to cease hostilities, turn over their illegal assets and land, cooperate with authorities, and make reparations for their crimes.

II. The Paramilitary Demobilization Process to Date

The government of Colombia has been engaged in negotiations for the demobilization of paramilitary groups since late 2002, when paramilitary leaders unilaterally declared a cease-fire. The cease-fire declaration and the ensuing negotiations appear to have been motivated primarily by paramilitary leaders' desire to obtain a deal that will allow them to avoid extradition to the U.S. while serving as little time in prison for their crimes as possible.⁶ Observers have also pointed out that paramilitary leaders and drug lords at

⁴ See Juan Forero, "Rightist Militias are a Force in Colombia's Congress," *The New York Times*, November 10, 2004, [online], <http://www.nytimes.com/2004/11/10/international/americas/10colombia.html> (retrieved November 10, 2004).

⁵ Comisiones de Paz del Congreso de la Republica, "Informe de Relatoria General," Section 3.1, [online] http://www.consejerosdepaz.org/fileadmin/MATERIAL_DDHH/ANALISIS_COYUNTURAL/ALTERNATIVIDAD_PENAL/Relator_a_Pardo_audiencias_autodefensas.doc (retrieved January 5, 2005).

⁶ "Habla Mancuso," *Semana*, No. 1110, August 9, 2003 [online], <http://semana.terra.com.co/archivo/resultadosEsp.jsp> (retrieved January 6, 2005); Juan Forero, "Colombia Proposes 10-Year Terms for Paramilitary Atrocities," *The New York Times*, November 16, 2004 [online] <http://www.nytimes.com/2004/11/16/international/americas/16colombia.html> (retrieved November 16, 2004).

the negotiating table may view demobilization as an opportunity to launder their illegally acquired wealth.⁷

Paramilitaries have been blatantly flouting the cease-fire. A September 2004 report by Colombia's Public Advocate (*Defensoría del Pueblo*) stated that in the first eight months of 2004 it had received 342 complaints involving apparent paramilitary breaches of the cease-fire, including massacres, selective killings, and kidnappings.⁸ Estimates of violations made by Colombian NGOs are even higher, with the Colombian Commission of Jurists stating that as of August 2004 paramilitaries had killed or forced the "disappearances" of 1,899 people from the date of cease-fire declaration.⁹

Meanwhile, negotiations have proceeded erratically, and the government has yet to put in place a legal framework that would set forth the benefits and conditions for demobilization.¹⁰ Instead, it has been moving forward with demobilizations of thousands of purported paramilitaries by applying existing laws that are inadequate to take apart complex paramilitary structures and ensure accountability for paramilitary abuses.

In late 2003 approximately 868 purported paramilitaries from the Cacique Nutibara Front in Medellín turned in their weapons in massive demobilization ceremonies, and started entering government reintegration programs. But as Colombia's High

⁷ Some have argued that if the government fails to require the disclosure and turnover of illegal assets as part of the demobilization process, these assets will probably not be taken into account in criminal proceedings and rulings against paramilitary leaders, thereby permitting a legalization of the status quo. See "Los Señores de las Tierras," *Semana*.

⁸ Defensoría del Pueblo de Colombia, "Seguimiento al Cese de Hostilidades Prometido por las Autodefensas Unidas de Colombia como Signo de su Voluntad de Paz para el País," September 24, 2004, p. 23 [online], http://www.defensoria.org.co/pdf/informes/informe_107.pdf? (retrieved January 5, 2005).

⁹ Comisión Colombiana de Juristas, "En Contravía de las Recomendaciones Internacionales, 'Seguridad Democrática,' Derechos Humanos y Derecho Humanitario en Colombia: Agosto de 2002 a Agosto de 2004," December 9, 2004, p. 18 [online], <http://www.coljuristas.org/sentencia.htm> (retrieved January 5, 2005).

¹⁰ In the absence of a legal framework to govern the terms of demobilization, the government has apparently been making troubling offers to paramilitary leaders concerning issues such as extradition and the location where individuals will serve their sentences. For example, a September report by the news magazine *Semana* quoted Colombia's High Commissioner for Peace Luis Carlos Restrepo as telling paramilitaries that, with respect to extradition, the President would use his discretion, and that "to a good listener, that is what the President offers." See "Revelaciones Explosivas," *Semana*, No. 1169, September 25, 2004 [online], <http://semana.terra.com.co/archivo/articulosView.jsp?id=82024> (retrieved January 5, 2005). In December 2004, the newspaper *El Tiempo* reported that other leaked tapes indicated that High Commissioner Restrepo told paramilitaries that they could count all the time they spent in concentration zones during negotiations as time served on their final sentences, even though no law provides for such an extraordinary benefit at present. See "Salvatore Mancuso amenaza con tomar de nuevo las armas si no hay solución radical a su extradición," *El Tiempo*, December 5, 2004. Such offers are problematic in that they generate enormous expectations on the part of paramilitaries about the sort of deal that they can ultimately obtain from the government.

Commissioner for Peace¹¹ has acknowledged, that demobilization is now largely viewed as a “public embarrassment” due to the high number of impostors among those who demobilized (the paramilitaries apparently recruited common criminals to pretend to be paramilitaries).¹² According to the Inter-American Commission on Human Rights, this demobilization has not resulted in any significant reduction in violence in Medellín; paramilitary groups apparently continue to control certain neighborhoods in Medellín and commit abuses against those who do not cooperate with them.¹³

In October 2004, paramilitary leaders announced that as a gesture of goodwill they would unilaterally demobilize several thousand troops before the end of the year. In the following two months, 2,624 troops belonging to five blocks purportedly demobilized: the Catatumbo and Calima Blocks, both led by Salvatore Mancuso, and the Bananero, Cundinamarca, and Isla San Fernando Blocks.¹⁴

The government has hailed the 2004 demobilizations as a great success, but their final outcome is yet to be seen. Initial reports appear to indicate that this time paramilitaries did not recruit large numbers of impostors to pretend to demobilize. Another positive fact is that in the demobilization of the Bloque Catatumbo the paramilitaries appear to have voluntarily turned over a large number of weapons and ammunition, as well as some amount of land (apparently around 6,500 hectares).¹⁵

¹¹ The Office of the High Commissioner for Peace in Colombia is charged with, among other functions, advising the President on peace-related policy, and, on behalf of the President, conducting negotiations with illegal armed groups. See Alto Comisionado Para La Paz: Quienes Somos, [online] http://www.altocomisionadoparalapaz.gov.co/documentos/quienes_somos.htm (retrieved January 12, 2005).

¹² “Revelaciones Explosivas,” *Semana*.

¹³ Inter-American Commission on Human Rights, “Informe de la Comisión Interamericana de Derechos Humanos Sobre el Proceso de Desmovilización en Colombia,” paras. 96-97, [online], <http://www.cidh.org/countryrep/Colombia04eng/toc.htm> (retrieved January 7, 2005).

¹⁴ Initially, the High Commissioner’s office had announced that eleven blocks would demobilize before the end of the year; however, several of those blocks apparently later decided against demobilizing at that time. See “Solamente se Desmovilizaron 5 de los 11 Bloques de Autodefensa que Debían Hacerlo,” *El Tiempo*, December 29, 2004. See also Office of the High Commissioner for Peace of Colombia, “Informe de Balance Desmovilizaciones Colectivas 2004,” [online], <http://www.altocomisionadoparalapaz.gov.co/desmovilizaciones/2004/balance.htm> (retrieved January 4, 2005).

¹⁵ “Paramilitares del Bloque Catatumbo desmovilizados devuelven 6.500 hectáreas de tierra,” *El Tiempo*, December 13, 2004, [online], http://eltiempo.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-1921877.html (retrieved December 13, 2004); “¿Es significativa la cantidad de tierras devueltas por los paramilitares?,” *El Tiempo*, December 13, 2004, [online], http://eltiempo.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-1921680.html (retrieved December 13, 2004). This is only a small percentage of the amount of land that paramilitaries own in Colombia, whether directly or through third parties. The Colombian organization Consultoría Para Derechos Humanos y Desplazamiento Forzado (CODHES), which works with displaced people in Colombia, estimates that between 1997 and 2003 alone paramilitaries took five million hectares of land by force. “ONG revela que paramilitares se han quedado con 5 millones de hectáreas de tierra entre 1997 y 2003,” *El Tiempo*, December

The motivation behind these gestures by Salvatore Mancuso's groups is unclear. Some observers suggest that they are strategic moves within the negotiations, and that they will not be repeated.¹⁶ The turnover of land is not something that has occurred with other paramilitary blocks that have demobilized and it is not currently required by law or by the government's procedures for demobilization.

A Legal Vacuum

The demobilizations that have taken place so far have been conducted in accordance with Colombian Law 418 of 1997 and its amendments and implementing decrees.¹⁷

That body of law provides amnesties for certain crimes and economic benefits to all members of illegal armed groups who voluntarily desert or demobilize, and who have not been charged with the commission of a serious violation of international human rights or humanitarian law, such as a massacre or kidnapping.

However, these laws are wholly inadequate to deal with massive demobilizations and the dismantling of complex mafias such as the paramilitaries. Law 418 was initially designed to encourage individual desertion from illegal armed groups. Although later amendments and decrees attempt to extend Law 418 to cover demobilizations, this set of laws does not include the minimum requirements to ensure the complete dismantlement of the group in the context of a peace negotiation.¹⁸ For example, it contains no requirements that, to receive benefits, paramilitaries cooperate with the authorities in investigations, turn over their illegal assets, or disclose information about the group's structure, past crimes, and sources of financing.

21, 2004, [online], http://eltiempo.terra.com.co/coar/DER_HUMANOS/derechoshumanos/ARTICULO-WEB-_NOTA_INTERIOR-1929335.html (retrieved December 28, 2004).

¹⁶ Alvaro Sierra (Editorial), "A Donde Va el Proceso con los Paras?," *El Tiempo*, December 25, 2004 [online] http://eltiempo.terra.com.co/coar/ANALISIS/analisis/ARTICULO-WEB-_NOTA_INTERIOR-1933318.html (retrieved December 28, 2004). Paramilitary groups do not have a unified leadership structure. Thus, there is no reason to assume that the actions of Mancuso's blocks will be repeated by other blocks.

¹⁷ These include Colombian Law 782 of 2002 and Decrees 128 of 2003, 3360 of 2003, and 2767 of 2004.

¹⁸ The report of the Inter-American Commission on Human Rights on the demobilization process makes a similar point. See Inter-American Commission on Human Rights, "Informe de la Comisión Interamericana de Derechos Humanos Sobre el Proceso de Desmovilización en Colombia," paras. 86-93.

The Procedures for Recent Demobilizations: An Assembly Line Approach

Recent demobilizations have been conducted in accordance with very mechanical procedures, following a highly expedited schedule published by the office of the High Commissioner for Peace.¹⁹

According to this schedule, paramilitary groups go through a three-stage demobilization process lasting at most forty-eight days. In the first stage paramilitary leaders give the government a list of the individuals who are demobilizing and the weapons they will turn over.

In the second stage, lasting two to ten days, these individuals are supposedly moved to a concentration zone, where the government verifies their identities,²⁰ makes a determination as to whether or not they are responsible for the commission of an atrocity, and receives each individual's weapons. Supposedly, the determination as to whether the individual is responsible for abuses is based on information provided by the Attorney General's office (*Fiscalía*) and the state's intelligence apparatus. However, in past demobilizations the Attorney General's office has only checked its files to determine whether those who are demobilizing are already the subjects of ongoing prosecutions or convictions for atrocities.²¹

In the third stage, those who are wanted for human rights abuses remain in a concentration zone, and the rest are returned to their places of origin, where they may begin to receive economic benefits and other support from the government.

Key Deficiencies

The following are key deficiencies in the laws and procedures described above:

- **Back-door impunity:** Under current procedures, the government conducts only a cursory check of its records to determine whether the individuals who are

¹⁹ The complete schedule is available at: http://www.altocomisionadoparalapaz.gov.co/noticias/2004/noviembre/nov_03_04b.htm (retrieved January 4, 2005).

²⁰ This includes taking the fingerprints, photographs, and dental records of those who demobilize. See Comisiones de Paz del Congreso de la Republica, "Informe de Relatoría General," Section 3.6 D.

²¹ *Ibid.*

demobilizing are already the subjects of ongoing prosecutions or convictions.²² If they are not, they can immediately start receiving benefits. There is no further effort to carefully investigate each individual to determine whether he might be linked to crimes against humanity or other abuses.²³ Because most paramilitary crimes do not yet have a known author,²⁴ it is very likely that many individuals who have committed massacres, kidnappings, or other crimes will be able to avoid detection and prosecution. In effect, historically endemic failures to properly investigate and prosecute paramilitary abuses would become guarantees of impunity today.

Furthermore, it is questionable whether the government's brief demobilization schedule even allows enough time for an adequate check of existing prosecutions and convictions. The Colombian Inspector General's Office (*Procuraduría*) recently announced that 163 individuals charged with atrocities such as kidnapping and forced disappearances had improperly received judicial benefits in the 2003 Cacique Nutibara demobilization.²⁵

- **Failure to require paramilitary groups or their members to disclose any information about their structure, assets, sources of financing, or past crimes:** Current law does not give investigators the tools (such as required disclosures by paramilitary groups or their members) to conduct even preliminary investigations of the paramilitary groups that are demobilizing, their structure, or their sources of financing. All a group is required to do is provide a list of those who are demobilizing and the weapons they will be turning over. Individual paramilitaries are only required to provide information concerning their identities, such as their names, fingerprints, and dental records, which the government must check within a very short time-frame.

²² The government has been narrowly applying Decree 128, which says benefits may not be provided to individuals who are already being prosecuted or have been convicted for atrocities. See Decree 128 of 2003, Art. 21.

²³ Prosecutors may continue to investigate the facts surrounding reported crimes. However, there is no serious effort to further investigate each individual, or to even obtain information from paramilitaries to determine whether those who are demobilizing are in fact responsible for the crimes that are under investigation.

²⁴ Victims may be able to identify the paramilitary front that committed the violation, but it is unusual for victims to know the names of the specific authors.

²⁵ "Procuraduría impugnó decisiones judiciales que favorecieron a 163 paramilitares desmovilizados," *El Tiempo*, December 13, 2004 [online] http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-1922439.html (retrieved December 15, 2004).

- **Failure to encourage real and complete demobilization:** The government has not put in place effective mechanisms that would encourage leaders to ensure complete demobilization. Leaders can receive generous benefits (including, under the legal framework the government proposed in April 2004, extremely light sentences for abuses) for demobilizing even if their group continues to operate and engage in abuses and other criminal activity.
- **Failure to require paramilitaries to turn over their illegal assets, cooperate with authorities, or make reparation as a condition to receive benefits:** Current law does not require paramilitaries to turn over or even identify their illegal assets, to cooperate with the authorities in investigations, or to make reparation to the victims of their crimes.

III. Competing Proposals: Requiring Effective Demobilizations vs. Trusting Paramilitary Leaders

Since the start of negotiations with paramilitaries, different groups have proposed different legal frameworks to govern the demobilization. These have included the Colombian government's radical proposal to provide amnesties to perpetrators of atrocities in exchange for the payment of a fee (a proposal that was withdrawn after an international and domestic outcry).²⁶ They have also included very tough proposals, such as that of Colombian Senator Piedad Córdoba, which would offer minimal sentencing benefits to those who demobilize, would demand a complete geographical concentration of all paramilitaries before providing those benefits, and would condition benefits on confession before a truth commission.²⁷

For the most part, however, the debate over which law will govern the demobilization process has centered on two prominent proposals. The first is the proposal of a coalition of senators from several parties, including Senators Rafael Pardo and Gina Parody (the "Senate Proposal").²⁸ The second is the proposal circulated by the

²⁶ See Human Rights Watch/Americas, "Colombia's Checkbook Impunity," *A Human Rights Watch Briefing Paper*, September 22, 2003.

²⁷ Senator Córdoba's proposal is available at: http://www.consejerosdepaz.org/fileadmin/MATERIAL_DDHH/ANALISIS_COYUNTURAL/ALTERNATIVIDAD_PENAL/Piedad_Cordoba_Proyecto_de_Ley_VJR.doc (retrieved January 5, 2005).

²⁸ Available at: <http://www.rafaelpardo.com/verdad/8112516.asp> (retrieved January 4, 2005). The proposal was made public in December 2004. However, at the government's request, the Senators delayed the formal presentation of this proposal to the Colombian Congress. See "Congresistas Deciden Aplazar el Proyecto de

government in April 2004 (the “Government Proposal”).²⁹ The government has announced that it will make public a new draft during the Cartagena Meeting on International Support for Colombia on February 3-4.³⁰ However, on key issues this proposal is likely to be very similar to the government’s April draft.³¹

Interestingly, the main differences between the Government Proposal and the Senate Proposal are not related to the severity of the penalties they impose, or the generosity of the judicial benefits they provide: both offer significant sentence reductions to paramilitaries who demobilize.³² Rather, as described below, most differences have to do with the seriousness with which the proposals address the dismantling of the paramilitary groups, which are in effect complex criminal organizations and, as such, will be difficult to eradicate once and for all. The effective dismantling of these groups is essential if demobilization is to further prospects for a genuine peace.

The Senate Proposal, if properly implemented, would be a highly effective tool for dismantling the underlying structures of illegal armed groups. It also reflects a concern for international legal standards on accountability and the victims’ rights to truth and reparation, a fact that has led a large number of human rights NGOs in Colombia to back the proposal.³³ In contrast, the Government Proposal operates on the assumption that paramilitaries can be trusted to fully dismantle their organizations, turn over their

Alternatividad Penal,” *El Tiempo* (December 14, 2004) [online] http://eltiempo.com.co/poli/2004-12-15/ARTICULO-WEB-_NOTA_INTERIOR-1923899.html (retrieved December 15, 2004); “Listo Nuevo Proyecto Que Busca Marco Jurídico Para Grupos Irregulares,” *El Espectador*, December 15, 2004 [online], <http://www.elespectador.com/paz/nota1.htm> (retrieved December 15, 2004).

²⁹ Pliego de Modificaciones al Proyecto de Ley Estatutaria No. 85 de 2003- Senado, “por el cual se dictan disposiciones en procura de la reincorporación de miembros de grupos armados organizados al margen de la ley que contribuyan de manera efectiva a la consecución de la paz nacional” [online], http://www.altocomisionadoparalapaz.gov.co/hechos_paz/abr_26_04a.htm (retrieved January 5, 2005).

³⁰ “Gobierno Presentará Marco Legal Para Desmovilización de Paramilitares el Próximo Mes de Febrero,” *El Tiempo*, December 14, 2004 [online], http://eltiempo.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-1923417.html (retrieved December 14, 2004).

³¹ Human Rights Watch representatives learned the government’s views on the draft demobilization law through meetings with President Uribe and other Colombian government officials in late November 2004.

³² Both the Senate Proposal and the Government Proposal involve sentences ranging approximately between five and ten years for those who have committed atrocities. However, unlike the Senate Proposal, the Government Proposal allows those convicted to receive additional sentence reductions and ultimately serve as little as three years. In addition, the Senate Proposal allows only one year of the time paramilitaries spend in concentration zones to count as time served on their sentences. Senate Proposal, Art. 46. The Government Proposal would allow all the time paramilitaries spend concentrated to count as time served. See Government Proposal, Art. 13.

³³ See “15 Organizaciones Sociales y de Derechos Humanos Suscriben Comunicado – ONGs respaldan proyecto de verdad, justicia y reparación,” *El Tiempo*, December 17, 2004, [online] http://eltiempo.terra.com.co/hist_imp/HISTORICO_IMPRESO/poli_hist/2004-12-17/ARTICULO-WEB-NOTA_INTERIOR_HIST-1926015.html (retrieved December 18, 2004).

illegal assets, cease their abuses of civilians and other criminal activities, and make reparation for their crimes.

In meetings with Human Rights Watch, President Uribe and other Colombian government officials objected to several crucial elements of the Senate Proposal. The following is a summary, based in part on these meetings, of key differences between the Senate Proposal and the Uribe administration's position:

- 1. The Senate Proposal requires disclosure of basic information about the group's structure, the assets it uses for illegal activities, and the location of bodies of the disappeared.**

Under the Senate Proposal, for members of a group to be eligible for benefits, their leader must provide the government with a list containing basic information about each individual being demobilized (name, date of entry), as well as about the group's structure, the assets it uses for illegal activities, and the location of bodies of the "disappeared."³⁴ This list would provide investigators with necessary information about the illegal armed group so that they could effectively investigate its past crimes, leadership structure, and financing streams.

This requirement is extremely important to the pursuit of justice and accountability for the atrocities committed by the illegal armed group. It is also essential to ensure that the truth about these atrocities is uncovered, bodies are found, illegally taken assets are returned, and reparation is made to victims. And it provides crucial information to allow the government to verify that the illegal armed group is actually dismantled.

The government's position is that it should continue applying existing law,³⁵ which does not require any disclosures beyond the identities of those who are demobilizing.³⁶

- 2. The Senate Proposal requires taking brief statements from each individual.**

³⁴ Senate Proposal, Art. 10.

³⁵ The government argues that Law 418 et seq. should continue to apply to the majority of demobilized individuals. In its view, a new law is only necessary to govern the benefits to be provided to individuals who are being prosecuted for or have been convicted of atrocities.

³⁶ Decree 3360 of 2003, Art. 1. This decree is not clear about exactly what information is required to identify these individuals – it simply says that the group must give the government a "list of the demobilized."

Under the Senate Proposal, investigators are required to take a brief statement from each individual who wishes to receive benefits, and check those statements to determine whether further investigation is warranted.³⁷ If after a maximum period of six months there is no indication that the individual was involved in atrocities or other serious crimes, the individual will become eligible to receive benefits including a resolution by the Attorney General's office closing the case against him.³⁸ If the individual does appear to be implicated in atrocities, the Attorney General's office will open a formal investigation.³⁹

These preliminary investigations, like the initial group disclosures, will give the government a minimum of information concerning the group's structure, crimes, and sources of financing, so that the government can ensure that the entire organization is dismantled and its illegal operations ended. This information is also essential so that investigators can uncover the truth about the serious human rights and humanitarian law abuses committed by the illegal armed group, essential to satisfy the victims' rights to truth and reparation.

The government objects to these preliminary investigations; instead, it would prefer to continue to provide benefits to individuals for demobilization after only a cursory check of their names against government records of existing prosecutions and convictions.⁴⁰

3. Under the Senate Proposal, final decisions are made by independent judicial authorities.

Under the Senate Proposal, final decisions concerning individuals' eligibility for parole are made by a special court, the Tribunal for Truth, Justice and Reparation, the members

³⁷ Senate Proposal, Art. 25.

³⁸ Senate Proposal, Art. 25. To receive benefits, the individual must also satisfy other conditions, such as turning over all his illegally obtained assets, confessing his crimes, and cooperating in the dismantlement of his illegal armed group. See Senate Proposal, Art. 26.

³⁹ Senate Proposal, Arts 23, 26.

⁴⁰ As previously noted, the government has been narrowly applying Decree 128, which says benefits may not be provided to individuals who are already being prosecuted or have been convicted for atrocities (Art. 21). But the overwhelming majority of paramilitaries are not already named subjects of prosecutions or convictions because often the identities of the authors of paramilitary crimes are unknown. As a result, the government's plan would allow most of them to rapidly go into reintegration programs without ever being investigated. Indeed, in the government's view, the sole purpose of a new legal framework would be to provide benefits to individuals who, because they are already the subjects of prosecutions or convictions for atrocities, cannot receive benefits under existing laws.

of which are selected through a politically independent procedure like that used to select members of the Colombian Supreme Court.⁴¹

This aspect of the Senate Proposal is extremely important to the rule of law, in that it protects the independence of decision-makers and ensures that decisions about those who demobilize are not arbitrary, but rather follow clear and established principles.

The government does not oppose creation of a tribunal but would deny it meaningful authority. It argues that the president should have complete discretion to reject benefits extended to any individual by the tribunal. This would create uncertainty and a potential for manipulation of the process by outsiders.⁴² The government also would give the president authority to select all nominees for positions on the court.⁴³

4. The Senate Proposal conditions judicial benefits on confession, cooperation with the authorities, reparation, and turnover of illegal assets.

Under the Senate Proposal, individuals convicted of abuses will be eligible for parole (*libertad condicional*) after they have served two-fifths (i.e., five to ten years) of their full prison sentences.⁴⁴ However, a court will grant parole only if the individual satisfies the following minimum conditions: he must confess the facts surrounding his crimes, cooperate with the authorities, turn over his illegally obtained assets, and make reparation to his victims.⁴⁵ All benefits are revocable at any time if the individual violates these conditions.⁴⁶

Through these provisions the Senate Proposal creates a necessary enforcement mechanism to ensure that the demobilized individual actually complies with certain minimum conditions in exchange for receiving benefits. Such an enforcement

⁴¹ See Senate Proposal, Art. 13.

⁴² If the president has the power to reject benefits he may be subjected to pressure from third parties who, because of their personal interests, want to prevent paramilitaries from disclosing certain information and therefore want to influence the provision of benefits (e.g., to punish, through the denial of benefits, those who disclose damaging information).

⁴³ Under the Government Proposal, the president would submit a list of judges to serve on the special court to the Supreme Court, which could vote on only those candidates. At any time, the president could increase the total number of judges on the court from three to five, by submitting additional names to the Supreme Court for a vote. See Government Proposal, Art. 2.

⁴⁴ See Senate Proposal, Art. 30.

⁴⁵ Senate Proposal, Arts. 31, 33. Individuals who have not been convicted of atrocities must satisfy similar conditions to receive the benefit of having proceedings against them closed. See Senate Proposal, Art. 26.

⁴⁶ Senate Proposal, Art. 35.

mechanism is essential so that reparation to victims of atrocities is made and illegally taken assets are returned within a reasonable time after demobilization. It is also crucial to the pursuit of truth and accountability, in that it creates a real incentive for cooperation with the authorities. And it is very important to the goal of a genuine and lasting demobilization in that it creates safeguards against the individual's continued involvement in the operations of the illegal armed group.

The government would not require confession, cooperation with the authorities, or the turnover of illegal assets.⁴⁷ Instead, the government argues that individuals convicted of atrocities should automatically be released on probation (suspensión de la pena) even if they have not satisfied any of the above conditions.

5. Under the Senate Proposal, leaders' benefits are contingent on collective demobilization.

Under the Senate Proposal, for a leader to receive benefits, his group must do more than merely sign a peace agreement with the government: it must have also ceased hostilities, demobilized, and released its hostages.⁴⁸ As a result, leaders cannot take advantage of the very generous benefits of light penalties without actually demobilizing their groups.

The government argues that the law should allow individual leaders to receive benefits even if their group has not demobilized and continues to engage in abuses and other crimes.⁴⁹ The government's position would create a serious risk that paramilitary and guerrilla leaders—including murderers, torturers, and kidnappers—will be able to receive benefits under the law without their group ever having to deliver a real demobilization in exchange for those benefits. It would, in short, allow such groups to continue to operate and continue to commit serious abuses.

6. The Senate Proposal does not allow perpetrators of serious violations of human rights and humanitarian law to cut short the time-frames for investigation of their crimes or to reduce their sentences to less than five years.

⁴⁷ The Government Proposal states that to be set free on probation, individuals must make a "commitment" to perform acts of reparation and "positive acts" in favor of peace to be determined by a court. These acts might, but do not necessarily, include cooperation with the authorities. See Government Proposal, Arts. 16, 24, 29.

⁴⁸ Senate Proposal, Arts. 9, 32.

⁴⁹ The Government Proposal specifically allows benefits to be provided on an individual basis. See Government Proposal, Art. 17.

The Senate Proposal does not allow perpetrators of atrocities to use the Colombian formal plea bargaining system (*sentencia anticipada*) to cut short the time-frames for investigation of their crimes, or to reduce sentences to less than five years.⁵⁰ In this manner, the Senate proposal ensures that paramilitary abuses are fully investigated and the truth about them is uncovered. It also guards against complete impunity for crimes against humanity.

The government would allow paramilitaries to receive additional benefits through plea bargaining. Paramilitaries who admit their involvement in atrocities would be able to automatically cut short the time-frames for their investigation and trial to a few days. They would also be able to shorten their already reduced sentences to less than five years.

IV. Recommendations to Donor Governments:

1. **The governments of donor countries should withhold all support—political and financial—for the demobilization process, unless the Colombian Congress passes a comprehensive demobilization law that meets the following conditions:**
 - a. **The law must create the necessary tools for the dismantling of paramilitary groups.** At a minimum, the law must:
 - Condition benefits on the group’s disclosure of information about its structure, illegal assets, and financing streams.
 - Condition benefits on each individual’s cooperation with the authorities in investigations, confession of his crimes, and turnover of illegal assets.
 - Condition benefits to paramilitary leaders on the group’s complete cessation of hostilities and abuses of civilians.

⁵⁰ See Senate Proposal, Arts. 30, 39(9).

- Provide for investigations of the structure, illegal assets, sources of financing, and past crimes of these groups.

b. The law must create the necessary mechanisms so that paramilitaries responsible for violations of international human rights and humanitarian law are held accountable for their crimes.

At a minimum, the law must:

- Require a thorough check of each demobilizing individual's background against existing government records to determine not only whether he is already the subject of a conviction or prosecution for atrocities, but also whether he might be implicated in such crimes and should be investigated further.
- Provide for punishment of perpetrators of atrocities in a manner proportional to the severity of their crimes.
- Provide that sentences for atrocities include actual incarceration.

c. The law must take into account victims' rights to truth and reparation for the violations of human rights and humanitarian law committed by paramilitary groups. At a minimum, the law must:

- Establish mechanisms that will allow the government to uncover the truth about paramilitary crimes, including the location of bodies of the "disappeared."
- Establish procedures that will allow victims of paramilitary crimes to obtain information about and participate in the proceedings involving them.
- Condition benefits for demobilization on each individual's payment of reparations to the victims of his crimes.

2. Assuming that the above requirements are met, donor governments should condition any aid for the paramilitary demobilization process

on the Colombian government's vigorous implementation of these legal requirements.