

August 2010

The Honorable Hillary Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Clinton,

As Juan Manuel Santos begins his presidency in Colombia, we ask you to ensure that U.S. policy focuses strongly on the critical human rights issues facing that nation. It is a moment to increase – rather than ease – pressure on the Colombian government to make substantial improvements in the protection and promotion of human rights.

We ask you to ensure that U.S. policy presses consistently for results in five areas: 1) ending and effectively prosecuting extrajudicial executions by the army; 2) ending and effectively prosecuting intelligence service abuses; 3) ensuring a safe climate for those working at risk for the rule of law, including human rights defenders, union leaders, judges, prosecutors, journalists and Afro-Colombian and indigenous community leaders; 4) dismantling paramilitary and new illegal armed networks; and 5) protecting the rights of and returning land to internally displaced persons and refugees.

We urge the State Department to use all the policy tools at hand to achieve these important goals, including: making public statements on human rights concerns; publicly demonstrating support for human rights defenders; withholding certification on human rights conditions attached to military assistance when appropriate, as is the case now; enforcing the Leahy Law by cutting off assistance to abusive security force units; using progress on the five aforementioned issues as well as compliance with international worker rights standards as preconditions for advancing the free trade agreement; refining aid programs to better target these problem areas; and private diplomacy. In the Colombian context, however, private diplomacy in the absence of strong, specific public statements and visible action on human rights by high-level U.S. policymakers is a deeply inadequate response.

In April, our organizations discussed with the State Department's DRL and WHA bureaus the development of a human rights action plan for U.S. policy towards Colombia that would encompass commitments on many of these issues. We now wish to learn how this action plan is being vigorously implemented. Below, we include a summary of concerns and recommendations in the five areas.

1) Extrajudicial executions. Nearly 3,000 people were allegedly killed outside of combat by the Colombian security forces, the great majority by the army, during the Uribe Administration.¹

¹ The total of extrajudicial executions being investigated by the civilian justice system now reaches nearly 3,000 (cases involving 2321 victims in the human rights unit of the Attorney General's office plus cases involving 604 victims in regional sections of the Attorney General's office, according to *Conditions attached to Military Aid to Colombia: Lack of Compliance and Steps Backward*, A report by the Working Group on Extrajudicial Executions of the Coordinación Colombia

These are not civilians caught in the crossfire but deliberately killed, often in response to incentives for body counts. Mr. Santos, as defense minister from 2006-2009, played a major role in putting in place the incentives that encouraged these abuses. He then, responding to pressure from the U.S. government and the UNHCHR, put in place reforms that greatly reduced the number of new cases, although human rights groups report that increased cases of disappearances may mask continued extrajudicial executions by the army.

Disturbingly, in the last year we have observed a significant step backward in investigating and prosecuting these cases. Markedly fewer suspected homicide cases are being transferred from military courts, where they languish in impunity, to civilian courts, as constitutionally mandated. Mr. Santos's successor as defense minister, now ambassador to the United States Gabriel Silva, strengthened the military's system of defense lawyers without strengthening victims' families' access to justice. This has resulted in continuous delays and obstacles, even in the most high-profile cases, such as the Soacha murders of young men (in which more than two years later there have been no convictions and none of the more than 30 high level officials dismissed in the wake of the scandal have been formally charged), and the February 2005 San José de Apartadó massacre (in which ten soldiers were just exonerated). There are also unaddressed problems with the manner in which extrajudicial executions are handled in the new accusatory justice system.

Mr. Santos, under pressure from a strong backlash from the military high command, is likely to seek accommodations that make effective prosecutions even less achievable. The U.S. government must, using the certification process, Leahy Law and public statements, press for serious progress on investigating, prosecuting and securing convictions in the civilian justice system. To ensure this, the U.S. government should accept no backtracking on the agreement between the Attorney General's office and the military justice system aimed at increasing the transfer of cases from the military to civilian courts. USAID and DOJ should create and apply indicators to encourage U.S. aid to the offices of the Attorney General, Inspector General and Ombudsman to be more effective in reducing impunity in these and other human rights cases, while protecting due process. The U.S. government should encourage President Santos to pick a new "terna" of well-qualified, tough and independent jurists as attorney general candidates, and then express confidence in the justice system rather than seeking to confront and undermine it. In addition, the U.S. government should encourage the Defense Ministry to remove all incentives that could continue to drive abuses.

2) End intelligence abuses. The DAS presidential intelligence agency conducted massive illegal surveillance of Colombia's human rights defenders, political opposition leaders, Supreme Court and Constitutional Court judges, unions, faith-based groups and journalists. It also carried out death threats and a variety of criminal activities aimed at undermining legitimate democratic actors. These criminal activities are deeply engrained in the mindset of members of Colombia's intelligence apparatus, and will continue unless there are serious consequences for those who ordered, consumed and carried out these illegal actions. While President Uribe promised to disband the DAS, legislation to replace it has not passed the Congress. Although the Attorney General

opened an intensive investigation, there are no convictions to date, and judges and prosecutors are operating under death threats and political pressure. The U.S. government must press hard for a restructuring of Colombia's intelligence apparatus featuring the establishment of effective oversight mechanisms over all intelligence units, including military and police, and a dismantlement of the DAS and assurance that implicated intelligence officers will not simply be recycled into new structures.

Most urgently, the U.S. government must press for the completion of vigorous Attorney General and Inspector General investigations, encouraging these investigations to encompass activities up to the present and to include those outside the DAS, including presidential staff and advisors, who may have ordered and been the consumers of illegal intelligence. The U.S. government should end all funding for the DAS as well as for those military intelligence units (RIMES) and police intelligence units credibly alleged to have misused their intelligence powers to persecute human rights defenders. The U.S. government must urge the Colombian Defense Ministry to allow unannounced reviews, by the Inspector General's office, of intelligence reports to exclude specious information regarding human rights defenders. Similarly, U.S. intelligence agencies should conduct a review to remove any false information on legitimate human rights defenders, journalists and political opposition leaders that has been passed from Colombia's agencies to our own.

3) Establish a safe climate for human rights defenders. Human rights defenders under the Uribe Administration were killed, threatened, illegally wiretapped, maliciously prosecuted and repeatedly labeled as terrorists by President Uribe and other top-level officials including, at least once, by now-President Santos as defense minister. The U.S. government must urge the Santos Administration to reach out and build bridges with human rights defenders and others whose legitimate and basic rights were grievously violated during the past eight years. Easily achievable first steps for the Santos Administration would include: publicly announcing that the government will dialogue with Colombia's human rights community; ensuring that the President and high-level officials refrain from using rhetoric that places defenders in danger; and issuing a presidential directive that calls on officials to refrain from such comments. To end specious prosecution of defenders, the government should be encouraged to develop a special protocol for prosecutors to follow in cases involving human rights defenders, and the government should be encouraged to end the practice of hosting prosecutors on the premises of military bases, who have developed many of these inappropriate cases.

The U.S. government should urge a more vigorous response to threats and attacks against human rights defenders. Human rights defenders, including trade unionists and Afro-Colombian and indigenous leaders, continue to receive serious death threats from illegal armed groups. Such threats, while not as visible and sensational as assassinations, have the undeniable effect of chilling human rights and labor rights activity. However, virtually none of the hundreds of threats received each year are effectively investigated. Substantial efforts must be undertaken to investigate and prosecute non-lethal human rights violations, including death threats. To help encourage these steps The State Department should also encourage the Colombian government to review the existing protection program with the human rights defenders it seeks to protect, thus ensuring it responds adequately to their needs – which is not currently the case.

4) Dismantle paramilitary and new criminal networks. Action against paramilitary and new emerging criminal networks languished as the Uribe Administration sought to portray the paramilitaries as completely demobilized and to minimize continued threats, murders and brutal control of civilian populations as ordinary crime. However, the last two years have seen a new expansion of paramilitary and emerging group power, along with the continued existence of links between these groups and official security forces. The U.S. government should press the new government to much more effectively seek to dismantle such illegal groups. This includes ordering the military to report the existence of such groups to police and judicial authorities and to act directly against them if police have inadequate presence. It also includes investigating and prosecuting any official credibly alleged to tolerate, aid or abet such groups. It entails encouraging effective prosecutions of politicians involved in paramilitary collaboration and far more vigorous investigations of the financial backings of paramilitary networks and the assets held by paramilitary leaders, including those demobilized. Finally, the United States should better support Colombian efforts to dismantle paramilitary power by creating more effective judicial cooperation between our nation's judicial agencies regarding the extradited paramilitary leaders, helping to create meaningful incentives for extradited paramilitary leaders to reveal the details of their crimes.

5) Return land to internally displaced persons. Very few lands have been returned to Colombia's over 4 million displaced persons. Community leaders who have sought to reclaim or resettle land have been threatened and assassinated, with over 37 IDP leaders killed since March 2002. In many parts of the country, threats and attacks by paramilitary, successor and guerrilla groups are continuing to generate displacement and prevent safe return. Even one of the most important cases of land return, in Jiguamiandó and Curvaradó (Chocó), which has been closely followed by the US Embassy, is jeopardized by a recent attempt by the Uribe Administration to return the lands to parties of dubious legitimacy, and the Government's failure to evict illegal occupants and dismantle paramilitary networks. The Santos Administration, however, has signaled its interest in increasing land returns and its willingness to dialogue on this issue. The U.S. government should politically support an open dialogue on land that includes strong representation by displaced community leadership, Afro-Colombian and indigenous authorities and church and civil society organizations involved in IDP and land issues, and should encourage AID to support land registry and titling initiatives, with careful attention to protecting the land rights of those whose land was stolen by violence and intimidation.

Finally, we believe there is an opportunity for peace in this transitional moment in Colombia. Mr. Santos appears to be interested in building a better relationship with Colombia's neighbors, including Venezuela and Ecuador. In reference to regional tensions, he declared in his inaugural speech that "the word 'war' is not in my dictionary." The U.S. government should take care to adhere to careful, low-decibel statements encouraging the reduction of regional tensions.

Within Colombia itself, even small steps towards creating a climate in which negotiations could take place would be enormously beneficial. President Santos indicated in his inauguration speech that while his government will combat the guerrillas without quarter, "the door to peace is not locked with a key." The U.S. government could help create a climate more conducive to peace, for example, by encouraging the Colombian government to permit greater latitude for local, regional and civil society initiatives for dialogue, peacebuilding, and efforts to humanize the conflict. It could signal to the Colombian government that the United States would be supportive of

a negotiated process with guerrilla groups and open to initial steps like the appointment of interlocutors and facilitators. It is important that the United States make clear that it views the door to peace as “open.”

We appreciate our dialogue with the State Department on these important matters of U.S.-Colombian relations.

Sincerely,

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