

To: Foreign policy aides
From: Heather Hanson, U.S. Office on Colombia
Gimena Sánchez-Garzoli, Washington Office on Latin America
RE: Questions to ask the new Colombian Ambassador re: the paramilitary
demobilization process
Date: September 5, 2006

USOC and WOLA are grateful to Congressional offices that have taken steps to integrate human rights standards and the rights of the victims into the Colombian paramilitary demobilization process. U.S. pressure was one of the key factors that led to the Uribe Administration's decision to pursue legal processes for demobilized paramilitaries who plan to take advantage of the reduced sentences for horrific crimes provided by the Justice and Peace Law, as well as guaranteeing that most of the United Self-Defense Forces of Colombia (AUC) leaders are now concentrated at La Ceja detention center in Antioquia. U.S. efforts also resulted in the presentation of the list of the 2,695 paramilitaries who will take advantage of the Justice and Peace Law to the Colombian Attorney General's Office.

Although we welcome these developments, it remains clear that there is little political will within the Uribe Administration to implement this process by seriously applying the standards of the Justice and Peace Law found in the rulings issued by Colombia's Constitutional Court. We are concerned about reports of paramilitary groups re-arming. An August report by INDEPAZ¹ compiled information from credible sources² and found that **there is evidence of at least 43 re-armed groups of ex-paramilitary combatants in 22 departments. They estimate that these groups have 3,838 armed combatants and at least 7,676 unarmed support staff.**

We are aware that the new Colombian Ambassador, Carolina Barco, will soon be visiting Congressional offices. We recommend that Members ask her the following questions that relate to conditions that must be met for receiving U.S. assistance in the 2006 Foreign Appropriations Law:

1. **Dismantlement of paramilitary organizational structures**

What concrete steps has the Colombian government taken to ensure dismantlement of paramilitary structures? In particular, how is the government guaranteeing that paramilitary structures do not remain linked to criminal and drug trafficking networks?

On August 29, U.S. Ambassador Wood publicly stated³ that the U.S. has "credible evidence" that demobilized paramilitaries are participating in illegal activities in several regions of Colombia. Despite this announcement and repeated reports from the international monitoring missions⁴, the Uribe Administration has yet to announce plans to combat these activities.

U.S. legislation requires that Colombia have "concrete and workable" plans for dismantling paramilitary structures as a condition for receiving U.S. aid. However, to date we have seen no clear indication of how the Colombian government plans to tackle the emerging security

nightmares inherent in this demobilization process. The continued engagement of demobilized paramilitaries in criminal and drug trafficking networks is not just a dangerous possibility: it is a reality that must be addressed immediately in order to protect the civilian population in Colombia and to guarantee the rule of law.

In addition, although the Colombian Attorney General has stated that he will not allow drug traffickers to take advantage of the Justice and Peace law unless they can prove their actions were part of maintaining the paramilitary organization, the Colombian Government has included Juan Carlos Sierra on the list of demobilizing paramilitaries that they gave to the Attorney General. It is worth noting that in 2004 the Colombian government removed him from the negotiations because he was deemed more “narco than para”, and that he is currently facing extradition charges in the U.S.. *El Tiempo*⁵ also reports that President Uribe has indicated that 24 demobilized paramilitaries wanted by the U.S. for extradition due to drug trafficking will stay in Colombia if they surrender themselves to the conditions found in the Justice and Peace Law.

2. Pursuit of justice

How will the Justice and Peace Law be rigorously enforced, taking into account the recent rulings of the Colombian Constitutional Court?

The Colombian Government is in the process of releasing two decrees that will regulate the application of the Justice and Peace law. On August 30 the Colombian Commission of Jurists (CCJ)⁶ noted that these decrees do not take adequate account of the ruling of the Constitutional Court: the decrees recognize time spent in the relocation cities during negotiation as part of the time demobilized paramilitaries serve when sentenced, they classify paramilitarism as a political crime, and they make only the illegally acquired property of paramilitaries subject to repossession in order to pay reparations to victims. In addition, paramilitaries who do not fully confess all their crimes will only lose the benefit of reduced sentencing in cases where the victims of the crimes come forward to testify. This unfairly places the burden of justice on the victims, thus taking away the incentive that forces paramilitaries to fully disclose their crimes.

CCJ notes that the decrees make it clear that the government will not pursue cases against third parties who hold titles to property of paramilitaries (testaferros)⁷. On August 28 *El Tiempo*⁸ reported several cases of paramilitary commanders presenting false testimony regarding their property during the demobilization process. These included the August 2005 statement by Diego Murillo, alias “Don Berna”, a well-known drug trafficker wanted by the U.S., claiming that he owns only one house, a small farm and a few cows. Another notorious human rights abuser, Salvatore Mancuso, claimed that he lives off earnings made by selling some cows, and that he rents his apartment and his 4-wheel drive vehicles.

The other serious concern with the justice process relates to the whereabouts of those 2,695 demobilized paramilitaries who hope to take advantage of the Justice and Peace Law. For these individuals to be meeting with the conditions required of those demobilizing under Colombian law, they should all be in government custody at this time. According to Colombian academic Mauricio Romero, who recently visited offices of the U.S. Congress, up to 300 may be in prison. And 16 of the 24 commanders are under custody in La Ceja.

Where are the other 2,379 ex-combatants who are on the list given to the Attorney General's office? It should be unacceptable to U.S. Members of Congress that important paramilitary commander Vicente Castaño remains at large. Vicente Castaño allegedly ordered another paramilitary commander to murder his brother Carlos.⁹ It is noteworthy that Rodrigo Tovar (alias "Jorge 40") did not turn himself in until September 4. "Jorge 40" is reportedly working with politicians, including Senators, to take control of the entire northern region of Colombia. Colombian officials should be asked why it took so long for key commanders to finally turn themselves in when they are supposedly supportive of the peace process.

We are also concerned about the Colombian Government's political will to finance with its own funds the aspects of the process that ensure that justice is served. On August 28th the President of the Colombian Supreme Court, Judge Mauro Solarte, announced¹⁰ that the institution did not have funds to cover the costs of judges and logistical expenses necessary to open and pursue legal processes against demobilized paramilitaries who will begin to give testimony as part of the implementation of the Justice and Peace Law.

3. Protecting the rights of victims

What concrete steps is the Colombian government taking to ensure that the National Commission on Reparations and Reconciliation is meeting with its mandate to protect victims' rights and to guarantee that evidence of paramilitary crimes is protected so there can be truth and justice in Colombia?

The National Commission on Reparations and Reconciliation is plagued with political and technical problems that make its credibility and legitimacy questionable at best. First, although the Commission aims to incorporate and give voice to victims, to date they have not made serious attempts to dialogue with the National Victims of the State Movement – the largest and most representative victims' organization in Colombia. While Commission members readily sat down to meet with paramilitary commanders to discuss with them what sort of reparation they would find acceptable, they have not called a similar meeting with representatives of the National Victims Movement. During a recent visit to Colombia, WOLA asked prominent victims organizations about the CCR process. One answer we received was "how will they ever repair the damage caused by the disappearance and murder of my husband?" If the CCR does not take into account the Victims Movement, then what legitimacy does it have to ensure that a proper reparations and reconciliation process take place? In fact, one of the Commissioners – Jaime Jaramillo – instead attacked the Movement in a newspaper editorial in *El Mundo* newspaper, saying that their political position is the same as that of guerrilla groups. This is a serious offense to Colombian civilians who have lost family members and friends as a result of paramilitary violence.

In addition, the mechanisms in place to protect evidence necessary to reveal truth and build justice in Colombia are severely inadequate. The Justice and Peace Unit of the Colombian Attorney General's office now has information needed to uncover an estimated total of 1,880 bodies buried in mass graves throughout the country. However, they do not have space to store the cadavers while scientific tests are undertaken, nor have they been able to positively identify any of the bodies recovered in exhumations of 95 bodies completed so far in 2006. While the National Commission on Reparations and Reconciliation has proposed a genetic

bank to assist with positive identification of cadavers, they have not yet compiled a full and systematic list of those disappeared in Colombia – meaning that it is not yet clear which members of the Colombian population should be presenting genetic material for comparison. They also have not yet established full legal guarantees that the genetic material collected will be used only for identification of lost family members. Most alarmingly, the public security forces have no plan or mechanism in place to protect grave sites against tampering, and in several cases it has been reported that ex-paramilitaries are digging up mass graves and burning remains to destroy valuable evidence.

Why has the Commission been unable to promote real dialogue with victims? Why have they been unable to compile a complete list of those disappeared whose remains need to be recovered as part of the process? Why has the Colombian government been unable to protect the integrity of mass grave sites that hold invaluable evidence?

These are just a sampling of the many questions that USOC and WOLA believe Members of Congress should be asking the new Colombian Ambassador.

For further information, please contact:

Heather Hanson
Executive Director
U.S. Office on Colombia
(202) 232-8090
heather_hanson@usofficeoncolombia.org

Gimena Sánchez-Garzoli
Senior Associate for Colombia and Haiti
Washington Office on Latin America
(202) 797-2171
gsanchez@wola.org

¹ INDEPAZ, Instituto de Estudios para el Desarrollo y la Paz, a Bogotá based think tank.

² Includes reports written by the Organization of American States (OAS), the Colombian Ombudsman's Office (*Defensoría*), Colombian Churches and NGOs.

³ "Para EEUU hay indicios confiables sobre la continuidad de actividades ilegales de los paras," *El Espectador*, August 29, 2006.

⁴ The United Nations and Organization of American States.

⁵ "Gobierno divulgó lista de 24 paramilitares desmovilizados que Estados Unidos solicita en extradición," *El Tiempo*, August 30, 2006.

⁶ Comisión Colombiana de Juristas. "Gobierno quiere evadir sentencia de la Corte Constitucional sobre ley de justicia y paz," comunicado de prensa, August 30, 2006.

⁷ Testaferros are individuals, most often close family or friends, who hold title to property, allowing paramilitaries and drug traffickers to conceal their wealth and protect it in the event of legal action against them.

⁸ "Tres mentiras en que han sido descubiertos los 'paras' durante su desmovilización" *El Tiempo*, August 28, 2006.

⁹ "Estudio forense confirma que los restos óseos son Carlos Castaño," *Terra Colombia-AFP*, <http://www.terra.com.co/actualidad/nacionales/03-09-2006/nota293737.html>

¹⁰ "Corte Suprema de Justicia se declara sin presupuesto para juzgar a los paramilitares desmovilizados," *Agence France-Presse*, August 28, 2006.