

Smoke and Mirrors

Colombia's demobilization of paramilitary groups

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I. Summary and Recommendations

The demobilization... is a farce. It's a way of quieting down the system and returning again, starting over from another side.

—Demobilized paramilitary fighter, April 2005.

Colombia's right-wing paramilitary groups are immeasurably powerful. Through drug trafficking and other illegal businesses, they have amassed enormous wealth. They have taken over vast expanses of the country's territory to use for coca cultivation or as strategic corridors through which they can move drugs and weapons. In recent years, they have succeeded in expelling left-wing guerrillas and strengthening their own control of many parts of the country. And thanks to this power, they now exert a very high degree of political influence, both locally and nationally.

Paramilitaries accrued their power and influence by force. "It is stipulated that there are borders and you have to win people's respect, and so we had to kill people to show that you could not come in or go out of certain areas," a demobilized paramilitary told Human Rights Watch. "It was not a fight for Colombia. It was a drug trafficking war," said a former squad commander, discussing his experience as a paramilitary.

Considered terrorist organizations by the United States and Europe, over the last two decades paramilitaries have killed thousands of civilians; tortured, kidnapped, and stolen from tens of thousands more; and threatened and otherwise disrupted the lives of literally hundreds of thousands of Colombians, with almost no consequences for the perpetrators. To the contrary, paramilitaries have historically enjoyed the collaboration, support, and toleration of units of the Colombian security forces, a fact that has led many to refer to the paramilitaries as a "sixth division" of the army. Today, paramilitaries have made major gains in consolidating this impunity, along with their economic and political power, with the collusion of the Colombian government.

Two years ago, paramilitary commanders initiated demobilization negotiations with the administration of President Álvaro Uribe in the hope that they could obtain a deal that would allow them to avoid extradition and potentially lengthy prison terms in the United States for drug trafficking. Since the start of negotiations, thousands of paramilitaries have started to turn in weapons and enter government reintegration programs. This trend accelerated towards the end of 2004, when five paramilitary blocks entered the demobilization process by turning in weapons. The process is poised to accelerate much

more rapidly: on June 21, 2005, the Colombian Congress approved a demobilization law that gives paramilitaries almost everything they want.

The Colombian government has mounted an enormous media and diplomatic campaign to build up domestic and international support for its law, with visits from President Uribe and senior officials to Europe and the United States. President Uribe has been defending the law as a compromise between competing goals of justice and peace, stating that his goal is to “reach peace without impunity; apply justice without surrender.”

But while a genuine demobilization of paramilitaries is obviously an important objective, the process as currently structured is unlikely to achieve its aims. To the contrary, it is likely to compound the country’s problems.

Under the newly approved law, which is theoretically applicable to both guerrillas and paramilitaries, the government will drastically reduce terms for investigation of these groups’ crimes and grant enormous sentence reductions to members responsible for atrocities. It will also give up its leverage—the threat of extradition—over their commanders, but it will demand almost nothing in exchange.

The new law does not ensure that paramilitaries confess their crimes, disclose information about how their groups operate, or turn over their illegally acquired wealth. Nothing in the law effectively disbands these mafia-like groups. Disarmed troops can be easily replaced through new recruitment and promises of high pay. Commanders convicted of atrocities or other serious crimes, such as drug trafficking, will get away with sentences little longer than two years, probably in agricultural colonies. When they reenter society, their wealth, political power, and criminal networks will be intact.

As detailed in this report, the government’s record to date gives no reassurance that the defects in the new law will be overcome. To the contrary, the new law merely codifies many aspects of the approach the government has been applying in recent demobilizations. This report, which is the first to document the government’s practices in recent demobilizations, drawing on interviews with recently demobilized paramilitaries, shows that such demobilizations have yielded virtually no truth or reparation for victims and have failed to hold most paramilitaries accountable for atrocities. With the economic power of these groups intact, they remain capable of continued violence even while their forces have partially disarmed. Their already substantial political control, backed by intimidation and bribery, is not only intact but also gaining new vigor.

This dismal record is the logical outcome of the Colombian government's ineffective and poorly conceived and implemented demobilization policies. In implementing the demobilizations, the government focuses almost exclusively on disarming and giving benefits to paramilitary troops. But it does not make a real effort to determine whether these troops are responsible for serious crimes, to uncover the truth about past abuses, or to provide reparation to victims. And it completely ignores the difficult—yet crucial—problem of how to dismantle the underlying structures and financial power of these groups.

The current demobilization process in Colombia is not comparable to the demobilization of other armed groups after conflicts elsewhere in the world. Elsewhere, “successful” demobilizations have usually been conducted in the context of a political transition from conflict to peace, in which disarming fighters was an important symbol and step to secure the peace.

But in Colombia there is not merely a risk that conflict will be reignited; conflict is ongoing. And the country's paramilitaries and guerrillas are far more than a collection of armed individuals fighting for a political cause. They are extremely sophisticated and powerful mafia-like organizations, largely motivated by profit. The paramilitaries have well-entrenched networks that increasingly exert local political control through threats and extortion, and they continue to have close ties with units of the Colombian security forces, which the Colombian government has yet to make meaningful progress in breaking.

In this context, simply disarming paramilitary or guerrilla troops will do little, if anything, to put an end to the violence and abuses of these groups. As long as these groups keep their wealth and power intact, it will be very easy for them to purchase new guns, and replace demobilized fighters with new recruits.

To be effective, demobilization of Colombia's paramilitaries must advance the larger goal of dismantling the political power, underlying criminal structure, and wealth of these groups. To put an end to their activity, the government needs effective tools to find and seize their wealth and investigate the financing streams and criminal networks with which they may hire new killers. Recent developments described here confirm that the Uribe government has not even sought these tools, let alone put them to use.

At the same time, the demobilization process has profound implications for human rights. The deal offered to the paramilitaries in the June 2005 law (and which is, presumably, applicable to the guerrillas as well) will have a direct impact on accountability for abuses,

insofar as it severely limits the scope of investigations and offers dramatically reduced sentences for individuals responsible for atrocities. The Colombian government has obligations under international law to provide effective remedies—including thorough investigation, prosecution, and punishment of perpetrators, truth, and reparation—to victims of rights violations. Current demobilization practices and laws make it virtually impossible for the government to provide such remedies in most cases.

This report is based on interviews with numerous demobilized paramilitaries, officials from various branches of the Colombian government, and victims of paramilitary atrocities, among others, conducted in the Colombian cities of Medellín, Cali, Montería, and Bogotá between March and May of 2005. The report also uses copies of recordings of negotiations between Colombia's High Commissioner for Peace and the paramilitary leadership, leaked to the media in September 2004.

The Government's Record to Date

Recently demobilized paramilitaries who spoke with Human Rights Watch openly described their own and their group's involvement in serious crimes, including massacres, killings, kidnappings, and extortion. None of them had been arrested for those crimes, or even questioned about them.

Over five thousand paramilitaries have participated in "collective demobilization" ceremonies so far. Of these, as of April 2005, only twenty-five had been detained for atrocities committed before the demobilization. As of June, another fifty-five who did not demobilize had voluntarily gone to Santa Fe de Ralito, a specially designated zone where they would be protected from arrest while the government drafted legislation that would allow them to receive sentence reductions for their crimes. The Attorney General's office claims that it is still conducting background checks on most of the demobilized paramilitaries. However, given the government's lack of information about most paramilitary crimes, it is unlikely that many of them will be found to have a record of atrocities.

Demobilized paramilitaries have not confessed the truth about what they did, and have not disclosed substantial information about their groups' criminal networks, illegal activities, sources of financing, or assets. Their victims have yet to receive any form of reparation.

Paramilitaries have repeatedly flouted the cease-fire declaration they made at the start of negotiations, without suffering serious adverse consequences. To the contrary, a top

commander is being allowed to go through the demobilization process and receive all attendant benefits despite having allegedly ordered the assassination of a Congressman as recently as April 2005.

Moreover, paramilitary groups continue to exercise enormous influence in areas where demobilizations have happened. In Medellín, for example, it is clear that members of the demobilized Cacique Nutibara Block continue to have control, backed by force, over much of the city. This group is not at present committing widespread atrocities, in large part because it already defeated the city's other armed groups. However, commanders continue to exert authority in many neighborhoods. We received reports of continued use of threats and extortion by paramilitaries in the city, a fact that is troubling in light of demobilized paramilitaries' increasing organized involvement in local politics. Mid-level paramilitary commanders in Medellín are free, receiving benefits, and, in one case, running for national political office. Elsewhere, there are signs that demobilizations of blocks have been only partial, or that new paramilitary groups are filling the void left by the old ones.

Meanwhile, there is no sign that the process has touched the economic power of paramilitary groups. Several demobilized paramilitaries described their work protecting coca fields and cocaine processing labs, and told us that they were sure their commanders were hiding assets. But so far, paramilitary commanders have made only one symbolic turnover of assets to the government.

Nearly all demobilized paramilitaries with whom we spoke told us that an important reason they joined their groups was because the groups pay a relatively high monthly salary. Paramilitary groups have retained their capacity to pay such high salaries, and recruitment has continued despite the demobilization process.

Implementation of Demobilizations

Why has the demobilization process to date been so ineffective? From the beginning, the government has failed to put in place policies and mechanisms that would allow it to uncover useful information about these groups, their crimes, and assets, to hold their members accountable for abuses, and to truly dismantle their structure and power.

The following are some of the most glaring examples of government failures:

- The government does not require paramilitaries to disclose their aliases before demobilizing. Thus, it is impossible to match up names of demobilizing

paramilitaries with the many open cases in which the perpetrator is identified only by his alias.

- The government does not keep a record of which weapons were turned in by each individual in demobilization ceremonies. As a result, even if the weapons subsequently are tested to determine whether they were used in a particular crime (so far, this has not happened) they could not be matched up with the individuals who used them.
- The Office of the Attorney General does not include members of the Human Rights Unit (which handles the most sensitive cases against paramilitaries for atrocities) in the team of prosecutors who interview demobilizing individuals.
- In interviews with demobilizing paramilitaries, the Office of the Attorney General does not systematically ask specific questions about their involvement in or knowledge about the atrocities attributable to their groups, the group's financing streams, assets, and supporters, or the group's criminal operations.
- The system for monitoring demobilized paramilitaries is not designed to ensure that they are not still participating in paramilitary or other illegal activities.
- The central government does not give local and regional authorities sufficient information to conduct close monitoring of demobilized paramilitaries in their jurisdictions. As a result, it is extremely difficult to know the extent to which any demobilized individual is still involved in paramilitary activity.
- The government has not put in place any policies to prevent recruitment into paramilitary groups. Thus, it is very easy for the groups to replace demobilized troops by simply recruiting new members with promises of high salaries.

The OAS Mission in Colombia

The Organization of American States (OAS) established a Mission to Support the Peace Process in Colombia (the "OAS Mission") in February 2004 to provide technical support to the verification of the ceasefire and cessation of hostilities, demobilization, disarmament, and reintegration initiatives in Colombia.

The OAS Mission is supposed to act in a manner consistent with the international human rights obligations of the OAS member states. But in practice, the Mission has played a highly questionable role, serving primarily as a rubber stamp for the actions taken by the Colombian government. Throughout, the OAS Mission has been completely silent about the problems with the process. To the contrary, it has frequently made statements in favor of the government's handling of demobilizations, even dismissing international concerns. As a result, the OAS Mission has helped to give the process a veneer of international legitimacy that it does not deserve.

But even setting aside the OAS Mission's failure to publicly address the serious problems of the demobilization process, there is no reason to believe that the OAS Mission is playing a useful role as a monitor of the process.

OAS Mission representatives accompany Colombian government officials as they carry out their own tasks, make lists of the weapons paramilitaries choose to turn over (without keeping a record of who turned them in), and are stationed at reference centers for the demobilized to observe the reintegration process.

In all these tasks, the OAS Mission's role is mostly passive: to be present and accompany existing government institutions as they implement their own demobilization policies. The OAS Mission does not behave like an independent observer, nor does it apply international standards to evaluate the government's policies. It simply accepts the policies and helps the government implement them.

Nor is there any indication that the OAS Mission has played a useful and distinct role in the verification of the cease-fire declared by the paramilitary groups. The OAS Mission receives reports of cease-fire violations through various sources. But it is far from clear what the OAS Mission does with these reports. In meetings with Human Rights Watch, Mission officials could not describe the criteria and procedures they used to determine what constituted a cease-fire violation. The Mission does not promptly verify all violations of which they receive reports. And even when the OAS Mission does verify a violation, it does not publicly denounce it, or even report it to the OAS Permanent Council. Rather, it merely attempts "to dissuade" the paramilitaries from committing violations—a practice of questionable effectiveness, and one on which the OAS Mission has reported little to the OAS Permanent Council.

Future of the Demobilization Process

The legal framework recently approved by the Colombian Congress to grant sentence reductions and other benefits to paramilitaries responsible for atrocities only aggravates the implementation problems outlined above. This law, misleadingly referred to as the “Justice and Peace Law,” gives extremely generous benefits to members of armed groups, including the opportunity to shield themselves from extradition, at the expense of justice for the victims of serious rights abuses. At the same time, the law fails to establish effective mechanisms to ensure the dismantling of these powerful, mafia-like groups. In particular, the law presents the following major problems:

1. **Investigation and prosecution of abuses is greatly restricted:** Prosecutors are required to bring all charges against members within 36 hours of taking their statements, and complete their investigations within the next 60 days. The overwhelming majority, who will probably not be charged, will receive a pardon for their membership in the group. These deadlines are completely unrealistic. Thus, very few members of groups will be charged; even fewer will be tried, and nearly all will escape justice.
2. **Individuals responsible for serious crimes can receive enormous sentence reductions simply by accepting charges:** Paramilitary members can have their sentences reduced—however heinous the offense, however many innocent civilians they might have killed—by just “accepting” charges. Reduced sentences are nominally set at five to eight years. But in practice, perpetrators of serious crimes could serve a single reduced sentence of little more than two years for all their crimes, probably on agricultural colonies instead of prisons.
3. **The law gives paramilitaries no incentives to confess or disclose information on rights violations:** The law does not condition sentence reductions on a full and truthful confession. Demobilized members of paramilitary groups receive greatly reduced sentences even if they refuse to talk about their criminal networks, or their group’s structure and assets.
4. **Groups can keep their illegal wealth:** The law says members should turn over their illegal assets. But the requirement is toothless: even if members are later found to have withheld most of their illegal wealth, they can keep their sentence reductions. Once granted, sentence reductions are locked in.

5. **Commanders receive sentence reductions regardless of whether they ensure that their forces end abuses:** Commanders do not have to ensure their troops' full demobilization, compliance with the cease-fire, or cessation of criminal activities.

6. **The government gives up its leverage, including the threat of extradition, over commanders and their groups:** By admitting their involvement in all the crimes for which their extradition has been requested, commanders can trigger a prosecution for those crimes in Colombia under the demobilization law. And by accepting the charges, they can ensure that they receive a greatly reduced sentence for those crimes. Double jeopardy would then apply to bar their extradition to other countries.

In short, under this law the demobilization process will seriously damage respect for human rights, the rule of law, and efforts to bring justice to Colombia's victims of abuses, without making real progress towards peace. Without confession, real incentives for the disclosure of information, turnover of illegally acquired assets, and serious investigation of these groups' criminal networks, it will be virtually impossible for the Colombian government to actually dismantle these groups' structures. Once commanders have shielded themselves from extradition, Colombia will have lost the leverage that brought these groups to the negotiating table in the first place.

The problems identified here will be equally serious if the law is eventually applied to guerrillas: as currently drafted, the law will simply allow members of these groups to obtain enormous benefits without having to really give up their power.

The law has yet to be reviewed by Colombia's Constitutional Court, and it is possible that it will be overturned due to the negative impact it has on victims' rights. Yet it may take several months for the Court to review the law. In the meantime, the Colombian government is likely to move quickly to implement its demobilization law, thus ensuring acquittals or sentencing benefits for many persons responsible for atrocities. Because the Court's rulings are not usually retroactive, such benefits may be permanent.

Recommendations

To the Colombian Government:

- Suspend implementation of the demobilization law until the following amendments have been made to the law:
 - a. Eliminate provisions that (1) require prosecutors to bring charges within 36 hours after receiving statements from demobilized individuals and (2) limit the time for investigation to 60 days after charges are brought. Such drastic limitations virtually ensure that the vast majority of those responsible for serious crimes will never be charged, much less convicted.
 - b. In exchange for sentence reductions, paramilitary commanders should be required to give a full and truthful confession and to fully disclose their knowledge of their groups' operational structure, sources of financing, and illegally acquired assets. Otherwise, it will be practically impossible for the government to obtain the necessary information to uncover the truth about atrocities and dismantle these groups.
 - c. The law should provide that paramilitaries will lose all their sentencing benefits if they are found to have deliberately concealed or lied to the authorities about their crimes, operations, and finances, or to have kept illegally acquired assets. This provision is necessary to ensure that the requirements of turnover of assets, confession, and disclosure of information are meaningful.
 - d. Top paramilitary commanders should be barred from receiving sentencing benefits through "individual" demobilizations until the troops they command fully demobilize and cease engaging in the most serious crimes, termed "atrocities" under Colombian law. This provision is essential to ensure the credibility of the process.
 - e. The time paramilitary leaders have spent negotiating should not be considered as time served on their sentences.

- In addition to amending the law (an essential prerequisite for a genuine demobilization), the government should put in place the following policies:
 - a. Require that the list the government compiles of individuals who wish to receive demobilization benefits include all names and aliases, rank, area of operation, and date of entry into the group for each person who wishes to receive benefits.
 - b. Make a record identifying the individual who possessed each weapon that is turned in as part of the demobilization process.
 - c. Check and certify that the weapons turned in by each demobilized person are in working order.
 - d. Include members of the Human Rights Unit of the Office of the Attorney General in the team of prosecutors who interview demobilizing individuals so that they can more effectively question demobilizing individuals about their potential involvement in atrocities, and so that the Unit can obtain information from demobilizing paramilitaries about its ongoing investigations of paramilitary crimes.
 - e. In interviews with demobilizing paramilitaries, the Office of the Attorney General should systematically ask detailed questions about their involvement in or knowledge about the atrocities that were committed in their group's area of operation, the location of bodies and kidnapping victims, as well as the group's financing streams, assets, supporters, and structure.
 - f. Thoroughly review each demobilizing paramilitary's background, including by reference to his aliases, to determine whether he was involved in atrocities or should be questioned in connection with ongoing investigations.
 - g. Thoroughly review all open cases for abuses that may be attributable to paramilitaries, to determine whether demobilizing individuals should be prosecuted or questioned further in connection with those investigations.

- h. Bar members from receiving benefits for demobilization if they have committed atrocities in violation of the cease-fire declaration.
- i. Establish rigorous monitoring systems for each demobilized paramilitary, involving local as well as national law enforcement officials, to ensure not only that they are receiving benefits, but also that they are not still engaged in paramilitary activities. The system should include input from a broad cross-section of members of the communities where the demobilized persons reside, as well as from organizations and entities that receive complaints about abuses.
- j. Establish and aggressively implement new policies designed to collect information about, find, and seize the illegal assets of the demobilized groups and their members.
- k. Establish and implement new policies designed to prevent recruitment of adults by paramilitary or other armed groups.

To the Member States of the OAS:

- Withdraw the OAS Mission to Support the Peace Process in Colombia until such time as the Colombian government amends the demobilization law and its practices in accordance with the recommendations set forth above.
- Firmly express to the Colombian government their opposition to the terms of the demobilization law and the government's practices in implementing demobilizations.

To International Donors to Colombia and the OAS Mission:

- Condition any support for the demobilization process on amendments to the demobilization law and the Colombian government's policies for implementation in accordance with the recommendations set forth above.
- Withdraw their support for the OAS Mission to Support the Peace Process in Colombia until such time as the Colombian government amends the

demobilization law and its practices in accordance with the recommendations set forth above.

- Firmly express to the Colombian government their opposition to the terms of the demobilization law and the government's practices in implementing demobilizations.

To the United States Government:

- Condition any support for the demobilization process on amendments to the demobilization law and the Colombian government's policies in accordance with the recommendations set forth above.

II. Background: Paramilitary Violence, Wealth, and Power

Colombia's paramilitaries are no ordinary armed group fighting in self-defense or for a political cause. As confirmed by demobilized paramilitaries themselves, these groups are powerful mafia-like organizations. Much of their membership is composed of young men recruited with promises of high salaries, and they are well funded through drug trafficking and other criminal activities. They exert enormous and increasing political control, backed by the threat—frequently acted upon—of force.

Profits from Drugs and Crime

In May 2005 investigators from the Colombian judicial police (*Dirección Central de Policía Judicial* or DIJIN) found fifteen tons of cocaine loaded on yachts in the Colombian state of Nariño. The cocaine belonged to several different owners, including both the guerrillas of the Revolutionary Armed Forces of Colombia-People's Army (*Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo*, or FARC-EP) and paramilitary groups.¹ Another ton of cocaine, belonging to the paramilitary block Libertadores del Sur and valued at roughly U.S.\$30 million, was found the following week at the same location.²

¹ "The Mexican Connection," *Semana*, May 22, 2005, <http://semana2.terra.com.co/opencms/opencms/Semana/articulo.html?id=87044> (retrieved July 17, 2005).

² "In Tumaco (Nariño) a ton of cocaine belonging to the paramilitaries is seized," *El Tiempo*, May 20, 2005 http://eltiempo.terra.com.co/coar/NARCOTRAFICO/narcotrafico/ARTICULO-WEB-_NOTA_INTERIOR-2075283.html (retrieved June 27, 2005). Colombia's paramilitaries are not a single unified group, but are

The drug business is a major source of funding for many if not all paramilitary blocks, and it is extremely profitable. Colombia's General Comptroller estimates that drug traffickers now control 48 percent of the best lands in the country.³ Several paramilitary commanders were deeply involved in drug trafficking even before they joined or started paramilitary groups.⁴

As a result, paramilitary activity in some regions is not so much directed at fighting guerrillas as at obtaining control over valuable areas. In recent years paramilitary groups have engaged in combat against one another because of the business. And there have been reports, such as that described above, suggesting that paramilitaries even work alongside the FARC-EP in some drug trafficking operations.

In interviews, demobilized paramilitary members told Human Rights Watch about their involvement in the drug business, and how it affected their armed actions. One young man who had been a squad commander said:

On the plains we had to look for chemicals. We charged the farmers who were processing the coca a tax [*vacuna*] of 30, 40, 50 percent. Lately, we had gotten into a fight with the *Buitragos* [commanders of another paramilitary group] to take over a zone. It was not a fight for Colombia. It was a drug trafficking war.⁵

instead divided into separate blocks, under separate leadership. Several of these blocks belong to a larger coalition known as the United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia or AUC).

³ General Comptroller of the Republic, "The Administration of the Agrarian Reform and the Process of Confiscation and Termination of Rural Assets" ("*La Gestión de la Reforma Agraria y el Proceso de Incautación y Extinción de Bienes Rurales*"), June 2005, <http://eltiempo.terra.com.co/judi/2005-06-09/ARCHIVO/ARCHIVO-2101378-0.doc> (retrieved June 29, 2005).

⁴ A clear example is that of Diego Murillo Bejarano, also known as "Don Berna" or "Adolfo Paz." Known as the Inspector General of the AUC paramilitary coalition, Murillo is a former security chief for the Galeano family, associates of Pablo Escobar and members of the Medellín Cartel. Murillo has also been linked by the authorities to Medellín gangs used to carry out high-profile assassinations. In recent years, Murillo became the commander of several paramilitary blocks, including the Cacique Nutibara Block, which went through the demobilization process in 2003.

Another example is that of the "twins," Victor Manuel and Miguel Angel Mejía, well known drug traffickers who allegedly paid the AUC U.S.\$ 2 million to operate a block in Arauca. See "The Metamorphosis," *Semana*, June 4, 2005, <http://semana.terra.com.co/openncms/openncms/Semana/articulo.html?id=73835> (retrieved June 5, 2005).

⁵ Human Rights Watch interview with demobilized paramilitary, Bogotá, 2005. All of the interviews with demobilized paramilitaries used in this report were conducted between March and June, 2005, in the Colombian cities of Bogotá, Montería, and Medellín. The interviews were conducted on condition of anonymity. Therefore, we have not used the names of the individuals we interviewed, and have not included identifying information beyond, in some cases, their rank and the paramilitary block to which they belonged.

The paramilitaries “wanted to get the guerrillas off the land because of the coca. They said that it was to liberate the people, but it’s for the coca,” said another member.

In the region of Norte de Santander, one man told us, his group made money through the coca crops that they had on land that they had “recovered” from guerrillas.

Paramilitary groups’ involvement in the drug business frequently goes beyond simply taxing growers, and includes processing and direct trafficking. One paramilitary who had been part of the Central Bolívar Block described his tasks as “buying the coca, guarding the area, and looking for guerrillas.” The local commanders would “buy the coca base from the farmers, refine it, and send it to the bosses.”

“In Casanare some commanders have laboratories. Boyaca is one of the places that is best suited for crystallization... It’s very lucrative,” said a former member of the Peasant Self-Defense Forces of Casanare and Boyaca (*Autodefensas Campesinas del Casanare y Boyaca* or ACC).⁶

A paramilitary who had operated in the Catatumbo Block told us that, because he had handled chemicals in a previous job, once he joined the paramilitary block he was sent to provide security in drug processing labs and to “participate, as a chemist, in the elaboration of coca paste.”

Aside from the drug business, paramilitaries have also traditionally financed their operations through contributions from wealthy persons. One demobilized paramilitary who had operated in the departments of Catatumbo and Córdoba said that “a majority of the money came from the large farming capitalists. They paid us as though we were their security guards.”

The forced taking of property and land are also common, a fact that has contributed to Colombia having one of the highest rates of internal displacement in the world. And, according to reliable investigative reports, paramilitaries have been closely associated with numerous other mafia-like businesses, including the sale of stolen gasoline, smuggling of contraband, and the provision of credit at usurious interest rates.⁷

⁶ The ACC, under the command of alias “Martin Llanos,” is not at the negotiating table.

⁷ See, e.g., “Paramilitaries infiltrated regional economies,” *El Tiempo*, July 2, 2005, http://eltiempo.terra.com.co/coar/ANALISIS/analisis/ARTICULO-WEB_NOTA_INTERIOR-2132275.html (retrieved July 16, 2005); “The ‘Chepitos’ of the Coast,” *Semana*, April 23, 2005, <http://semana2.terra.com.co/openccms/openccms/Semana/articulo.html?id=86217> (retrieved June 27, 2005).

Through extortion, they have managed not only to make money, but also to assert control over entire sectors of local economies, such as the transportation sector in Valledupar.⁸

Political Control and Corruption

Paramilitary groups in Colombia have enormous political power, at many levels. Locally, paramilitaries frequently supplant the state, charging taxes for “security,” regulating economic activity, and controlling even the smallest details of citizens’ everyday life, such as their attire—a phenomenon that residents of Medellín described in interviews with Human Rights Watch.⁹

Increasingly, paramilitaries also exert control over who holds political office. By threatening and even killing candidates they do not like, paramilitaries are able to make sure that their favorites run unopposed.¹⁰ Colombian prosecutors recently ordered the arrest of paramilitary commander “Don Berna” for having allegedly ordered the April 10, 2005 assassinations of Colombian Congressman Orlando Benítez, his sister and his driver, after Benitez refused to follow Don Berna’s order that he stop campaigning in the region.¹¹

According to top paramilitary commander Vicente Castaño Gil, about 35 percent of the Colombia’s national Congress consists of paramilitaries’ “friends,” and “by the next election, [the paramilitaries] will have increased that percentage.”¹² Another AUC leader, Ivan Roberto Duque (a.k.a. “Ernesto Baez”), has recognized that “for many years... [the

See also Hugh Bronstein, “Mafia-Style Crime Plagues Colombia’s War Refugees,” Reuters, June 30, 2005, <http://www.alertnet.org/thenews/newsdesk/N20524514.htm>, (retrieved July 20, 2005).

⁸ Ibid.

⁹ Human Rights Watch interviews with Medellín residents, Medellín, March 12, 2005.

¹⁰ “The tentacles of the AUC,” *Semana*, April 23, 2005, <http://semana2.terra.com.co/opencms/opencms/Semana/articulo.html?id=86215> (retrieved June 27, 2005); “Para-politics,” *Semana*, August 16, 2003, <http://semana.terra.com.co/opencms/opencms/Semana/articulo.html?id=72366> (retrieved June 27, 2005); “The New *Caciques*,” *Semana*, April 23, 2005, <http://semana2.terra.com.co/opencms/opencms/Semana/articulo.html?id=86218> (retrieved July 18, 2005).

¹¹ “Witnesses assure that ‘Don Berna’ was holding assassinated congressman Orlando Benitez to account,” *El Tiempo*, May 31, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2088332.html (retrieved June 1, 2005).

¹² “Vicente Castaño Speaks,” *Semana*, June 4, 2005, <http://semana.terra.com.co/opencms/opencms/Semana/articulo.html?id=87628> (retrieved June 5, 2005).

paramilitaries] have intervened in politics, intimately and permanently penetrated local and regional political processes, and built structures of regional and local politics.”¹³

Their close relationships with local politicians and government officials have allowed paramilitaries to make money off government operations. Thus, for example, the paramilitary commander known as “Jorge 40” recently admitted to mounting complex schemes in collusion with local authorities to divert funds from Colombia’s health system.¹⁴

Local governments frequently handle enormous sums of money, particularly in regions where mining or the oil and gas business result in significant royalties for the governments. Yet, as has been documented in audits, such royalties have in several recent cases vanished through their investment in irregular contracts and “atomization” of the funds.¹⁵

Perhaps more importantly, by increasing their political influence paramilitaries can not only make financial gains, but also position themselves to better protect their economic and legal interests, and continue their illegal businesses undisturbed. One widely cited recent study concludes that paramilitaries are essentially enormous mafias whose main objective “is to achieve the monopoly over a set of activities that are susceptible to the

¹³ “Paramilitaries aspire to become a political movement, Ernesto Baez confirmed,” *El Tiempo*, July 21, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2155531.html (retrieved July 22, 2005).

¹⁴ “Para-Health,” *Semana*, Sept. 4, 2004, <http://semana2.terra.com.co/opencms/opencms/Semana/articulo.html?id=81549> (retrieved June 28, 2005). “Jorge 40” discusses the issue on the recordings of negotiations between High Commissioner for Peace Luis Carlos Restrepo and the paramilitary leadership first published in *Semana* in September 2004. “Explosive Revelations,” *Semana*, September 25, 2005, <http://semana.terra.com.co/opencms/opencms/Semana/articulo.html?id=82024> (retrieved June 5, 2005).

¹⁵ This has happened, for example, in the municipality of La Jagua de Ibirico, in the department of Cesar (much of which is controlled by the AUC’s North Block. According to a report by the General Comptroller’s Office, this municipality received approximately U.S. \$14 million in mining royalties from 2004. Yet only 39 percent of that amount was invested in the manner required by law (75 percent should have been invested in health, water systems, and education). About one third of the money was invested in 603 different contracts, 99.3 percent of which were entered without the required public bidding. See General Comptroller of the Republic, Powerpoint presentation: “Meeting of the Committee Monitoring the Investment of Royalties, Municipality of La Jagua de Ibirico, Cesar” (2004). Similar irregularities were found with respect to royalties from oil and gas in other municipalities in Sucre, Casanare, and Arauca, where paramilitaries also exert an influence. It is impossible to reach any conclusions about paramilitary involvement in irregular contracts or diversion of royalties based solely on the auditing reports on these municipalities. Nonetheless, these reports do illustrate how lucrative such involvement might be.

control of organized crime, such as wholesale food markets, racketeering, drug trafficking, and, as a superior goal, the appropriation of political power in the cities.”¹⁶

Ivan Roberto Duque has said that his organization will not disappear as a result of the demobilization process, but that instead he wants to “legitimize the AUC’s power and build it into a big political movement.”¹⁷ Indeed, in recent years paramilitaries have even shown an interest in holding public office. In Medellin, demobilized commander Giovanni Marin is reportedly running for a seat in the national chamber of deputies.¹⁸

In this context, it is understandable that some Colombian politicians have expressed concern that, unless the demobilization process effectively dismantles these groups’ underlying structures, Colombian democracy will be “subordinated” to paramilitaries’ interests.¹⁹

High Pay for the Troops

The profits from the drug trade and other criminal activity allow paramilitary groups to easily recruit troops among the many poor and unemployed in Colombia. Demobilized members of paramilitary groups give a wide array of personal reasons for joining the groups, ranging from their own forcible recruitment as children to their fascination with firearms.²⁰ However, the one reason we heard most frequently was that they simply wanted a job, and the paramilitaries paid better than most.

¹⁶ Gustavo Duncan, *From the Countryside to the Cities in Colombia: The Urban Infiltration of Warlords* (Bogotá: University of the Andes, 2005), p. 2.

¹⁷ Luis Jaime Acosta, “Feared Colombian militias want political party,” Reuters, July 21, 2005, <http://www.alertnet.org/thenews/newsdesk/N21549519.htm> (retrieved July 22, 2005). See also “Paramilitaries aspire to become a political movement, Ernesto Baez confirmed,” *El Tiempo*, July 21, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2155531.html (retrieved July 22, 2005).

¹⁸ “Heads of the Self-Defense Forces are campaigning with representative Rocio Arias,” *El Tiempo*, April 27, 2005, http://eltiempo.terra.com.co/poli/2005-04-28/ARTICULO-WEB-_NOTA_INTERIOR-2051897.html (retrieved June 28, 2005). The national chamber of deputies is one of the two chambers of Colombia’s Congress. The other chamber of Congress is the Senate.

¹⁹ “Paramilitarism is a project of accumulation of political power and economic wealth through the use of arms.... For this reason, more than a matter of peace, which in and of itself is crucial, this negotiation will define what type of democracy we will have.” Rafael Pardo Rueda, “The Essence of Paramilitarism is not Being Dismantled,” *El Tiempo*, February 2, 2005, p.1-14.

²⁰ One young man who had gone through the demobilization process described how he had been sold at age sixteen to a paramilitary front: “I did not want to study more because of our bad economic situation. So I started to work for four months, but then I lost my job. A man from our neighborhood told me and two others to come work planting rice. But instead, he sold us for \$100,000 pesos each. I was sixteen, another was fifteen, and the last nineteen. They gave us to the Buitragos, who are the owners of Martin Llanos’s Block.” Human Rights Watch interview with demobilized paramilitary, Bogotá, 2005.

Paramilitary troops are highly paid for their “work.” Salaries vary by rank and paramilitary front, but several demobilized paramilitaries from different blocks said that their salaries started at around 360,000 pesos a month and rose rapidly over time. One young man described the Centauros Block’s salary structure:

“The troops made 360,000. Squad commanders made a little more. The nurses make 500,000,” said the man, who had worked as a hired assassin before joining the paramilitaries. “The second in charge makes over one million. Block commanders make thirty, forty, fifty million, and also have land, coca crops, things like that.”

A member of the North Block (commanded by “Jorge 40”) said this was “a good block” because it paid him 500,000 pesos per month.

These salaries are higher than Colombia’s gross national income per capita, and often higher than the minimum wage, which is not available to many poor Colombians.²¹ In addition to receiving salaries, most paramilitaries receive food, shelter, medical care, weapons, and uniforms.

The importance of money as a factor motivating entry into paramilitary groups is borne out by a survey conducted by the office of the Mayor of Medellín: 23 percent of those surveyed stated that their primary reason for joining the Cacique Nutibara Block was economic need.²² For nearly all those we interviewed, the high pay offered by paramilitaries was a powerful incentive to join the group.

According to one member, “people go into the Self-Defense forces because of the money and because of culture, because they belong to paramilitary towns.” Another noted “most of the people who joined our group were young men who were looking for work.”

“If there had been employment, nobody would have gone to the organization,” said a former member of the Córdoba front.

Human Rights Watch has extensively documented the problem of child recruitment by Colombia’s armed groups. See Human Rights Watch, *You’ll Learn Not to Cry* (New York: Human Rights Watch, 2003).

²¹ In 2003, gross national income per capita was U.S. \$1,810 for the year (US \$150.83 per month). See World Bank Group, s.v. “WDI Data Query,” <http://devdata.worldbank.org/data-query/> (retrieved July 13, 2005). Colombia’s minimum wage is currently set at 381,500 pesos per month (approximately U.S. \$198).

²² Office of the Mayor of Medellín, Powerpoint Presentation: “Program of Peace and Reconciliation: Return to Legality”, March 12, 2005. Other important reasons marked in the survey included: a personal vendetta or revenge (25 percent), and threats upon his life (25 percent).

Paramilitary Atrocities

Paramilitaries have a well-known and lengthy record of spine-chilling atrocities including massacres, killings, forced disappearances, and kidnappings.²³ Many of their top commanders are wanted in Colombia for serious crimes.²⁴

Atrocities, which under Colombian law are generally understood to encompass all serious violations of international human rights and humanitarian law, are frequently perpetrated even within the group itself, to punish members who disobey orders, or to train new recruits. A former paramilitary who had deserted explained:

I learned how hard it was because I remember what they did to one of our group, a young girl of fourteen who did not show up for practice and she was wrapped in burlap bags, tied up with barbed wire and burned alive. I remember her screaming and trying to get out of the bags, and with each stretch, her skin got hurt with the barbed wire. We had to set fire to the girl. We were about fifty completing the [paramilitary training] course. We were just following orders.

Other demobilized paramilitaries tried to explain their groups' atrocities: "Because you have a power over the civilian population, you have to make the civilian population obey," one demobilized man told us. If the civilians did not obey, he explained, they would be punished with forced labor. If they still did not obey, "other decisions would be taken." We heard a similar explanation from a former member of the Catatumbo Block, who said that "it is stipulated that there are borders and you have to win people's respect, and so we had to kill people to show that you could not come in or go out of certain areas."

A man who had operated in the Catatumbo region tried to justify his involvement in massacres by arguing that "the organization didn't do it because we felt like it; we did it for the farmers themselves.... I don't consider it a massacre. I consider it defending a community."

²³Human Rights Watch has documented numerous paramilitary atrocities in past reports. 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, *War Without Quarter: Colombia and International Humanitarian Law* (New York: Human Rights Watch, 1998); Human Rights Watch, *Colombia's Killer Networks: The Military-Paramilitary Partnership and the United States* (New York: Human Rights Watch, 1996).

²⁴ According to the Attorney General's office, as of May 5, 2005, it had arrest warrants for the following persons, commonly identified as paramilitary commanders: Diego Fernando Murillo Bejarano (two warrants); Luis Eduardo Cifuentes Galindo (five); Salvatore Mancuso Gomez (nine); Ivan Roberto Duque Gaviria (two); Rodrigo Tovar Pupo (six); Ramon Maria Isaza Arango (one); Ramiro Vanoy Murillo (two); Guillermo Perez Alzate (two).

“Sometimes civilians who worked with the *paracos* [the paramilitaries] by giving information and doing favors died,” said a traumatized young man who had been forcibly recruited into the group and subsequently deserted. “They sometimes talked about things they shouldn’t have, and they were killed. As for people who were associated with the guerrillas, [the paramilitaries] killed even their families.” He explained that, when his group arrived at a “guerrilla town,” their commander would announce that those who had links to the guerrillas had to leave. If they did not, they would have to suffer the consequences. But, he said, “I never knew how they went about investigating them. A lot of innocent people die out there.”

Military-Paramilitary Links

Paramilitaries have often worked closely with Colombian military units, and have committed abuses in collusion with those units. The existence of such links has been extensively documented in past Human Rights Watch reports.²⁵ Today there continue to be credible reports of military-paramilitary links in various parts of the country.²⁶

In interviews, several demobilized paramilitaries confirmed that they had had a close working relationship with military units. “In some areas, we did work with the army,” said one demobilized paramilitary. “This was coordinated at a high level, that of a colonel or battalion commander... We did not work mixed together. Sometimes not even the soldiers themselves knew. [The paramilitaries] would be on one side of the road and the [soldiers] on the other side.”

We heard almost identical statements from a person who had been in the Cundinamarca Block: “We worked jointly. We would coordinate, we would be on one side and the army on the other.”

In some cases, paramilitaries draw troops from the military. One man told us “when I was in the military, we would move around together” with the paramilitaries. After serving in the army for several years, he joined the Central Bolivar Block (*Bloque Central Bolívar* or BCB): “Those who had not served in the military were rejected by the BCB.”

²⁵ See, e.g., Human Rights Watch, *The “Sixth Division”: Military-Paramilitary Ties and U.S. Policy in Colombia*; “The Ties that Bind: Colombia and Military-Paramilitary Links,” *A Human Rights Watch Report*, vol. 12, no. 1(B), February 2000.

²⁶ See, e.g., “Head of Joint Chiefs of Staff is Designated to investigate links between military and ‘paras’ in Chocó,” *El Tiempo*, May 5, 2005, http://eltiempo.terra.com.co/judi/2005-05-05/ARTICULO-WEB-_NOTA_INTERIOR-2059137.html (retrieved June 27, 2005).

The Catatumbo Block, a demobilized member told us, “always knew where the army was... we coordinated to not face each other.” In fact, he said, the group’s practice when they caught a guerrilla was that “if he was wounded and could not walk we would kill him, but if he could walk we would give him to the army after we got information out of him.”

Military units have also been reported to side with one paramilitary group against another. Former paramilitaries who had operated in the regions of Meta and Casanare, either as members of the Centauros Block or of the ACC, consistently told us that the military had recently been working in conjunction with the Centauros Block to fight the ACC. As a result, we were told, the ACC has been decimated, while the Centauros Block has finally asserted control over much of the region. In June 2005, the Colombian government announced that it had started to prepare for the Centauros Block to go through the demobilization process.²⁷

III. Demobilization Negotiations

Throughout its negotiations with the paramilitaries, the government has taken a remarkably weak position. Paramilitaries have repeatedly violated their 2002 cease-fire declaration, which the government had initially set as a pre-condition for talks, yet they have not yet suffered any significant adverse consequence.²⁸ To the contrary, the government has bent over backwards to accede to paramilitary commanders’ demands.

Human Rights Watch obtained copies of secret recordings of several hours of negotiations between Colombia’s High Commissioner for Peace, Luis Carlos Restrepo, and a group of paramilitary commanders. These recordings were initially leaked to the media and partially published by the newsmagazine *Semana* in September 2004.²⁹

²⁷ Office of High Commissioner for Peace, Statements of High Commissioner for Peace, Luis Carlos Restrepo, to Media in Yopal, Casanare, June 1, 2005, http://www.altocomisionadoparalopez.gov.co/noticias/2005/junio/jun_01_05a.htm (retrieved July 21, 2005).

²⁸ In May 2005 the U.N. High Commissioner for Human Rights, Louise Arbour, denounced the paramilitaries’ continuing violations of international humanitarian law and breaches of the ceasefire. The Colombian government responded by asserting that it had increased its use of force against paramilitary groups. However, the government has yet to exclude any paramilitary commander from demobilization benefits for violating international humanitarian laws or breaching the ceasefire.

²⁹ “Explosive Revelations,” *Semana*, September 25, 2005, <http://semana.terra.com.co/opencms/opencms/Semana/articulo.html?id=82024> (retrieved June 5, 2005).

The recordings cover approximately four hours of discussions, and are not necessarily representative of the entirety of the negotiations. Nonetheless, they do tend to undermine some of the government's statements about its conduct in the negotiations, and illustrate the government's general weakness at the negotiating table and its failure to hold paramilitaries to their commitments.

A serious example of this is the government's handling of the cease-fire issue during the recorded meeting. In public, when observers have pointed out cease-fire violations, the government has repeatedly stated that "every time that the AUC violates the cease-fire not only do we respond militarily, but we also make them pay politically at the [negotiating] table for what they do."³⁰ On the recordings, however, it is the paramilitary commanders who raise the issue of cease-fire violations, not to apologize for them, but as a warning to the government of what may happen if they do not get what they want.³¹

Some of the most serious issues in the process—such as what would happen with commanders' massive illegally acquired wealth and their criminal businesses—are not addressed at all in the four hours of recordings.

In interviews with Human Rights Watch, Restrepo stated that he did not "negotiate" with the paramilitaries. "I don't like the word 'negotiation,'" he told us, "I like the word 'grace'—I am a theologian."³² He claimed that even in the recordings, he never negotiated the content of the law. Instead, he explained the law to the commanders with a "pedagogical" focus. The goal, he explained, is to "stimulate them to have acts of good faith with society. It's not about what I give you and what you give me."³³

³⁰ Office of the High Commissioner for Peace, "Interview with High Commissioner for Peace Luis Carlos Restrepo," April 23, 2005, http://www.altocomisionadoparalapaz.gov.co/noticias/2005/abril/abr_23_05.htm (retrieved June 27, 2005).

³¹ The issue comes up during a discussion over paramilitary commanders' demand that they be allowed to leave Santa Fe de Ralito (the government-designated "concentration" zone where paramilitaries are safe from arrest) to go meet with their troops. One of the commanders states that it is important that they be left for a time with their troops to "correct many things... because we are totally isolated and this does not favor the process." Paramilitary commander Salvatore Mancuso then adds "then there are cease-fire violations." Later Mancuso elaborates: "We need to go to the zones to talk with the troops to avoid further violations of the cease-fire.... I, in particular, am having problems with troops because for a long time I haven't spoken with them, with their commanders, with their patrolmen. We are going to have a serious problem in the future. A serious problem in which there could be many disagreements within the self-defense groups... and we do not want to go to those extremes."

³² Human Rights Watch interview with High Commissioner for Peace Luis Carlos Restrepo, Bogotá, March 14, 2005.

³³ *Ibid.*

Restrepo's description appears to be more or less accurate. In the recordings, Restrepo spends a great deal of time explaining the benefits that the government will provide to paramilitaries.³⁴ But it is striking how little he talks about what the government would like to see in exchange for those benefits. The closest Restrepo comes to making a demand of the paramilitaries is his suggestion that the commanders help the process move forward by demobilizing some blocks before the end of the year and his statement that the demobilizations of blocks cannot be partial, as happened in 2003 with the Cacique Nutibara Block.

Restrepo does not once touch upon the groups' vast wealth, or say that they will have to disclose their assets and dismantle their criminal networks as a condition for benefits.³⁵ To the contrary, the discussion is limited to the question of whether the paramilitaries will disarm their troops, without even mentioning the paramilitaries' criminal and financial structures.³⁶

In implementing demobilizations to date, the government has acted in a manner consistent with the approach suggested by the recordings: it has focused solely on disarming troops, without addressing in any way the wealth, criminal networks, and local political control that allow paramilitary groups to continue to operate and that will allow them to replenish their forces into the foreseeable future.

³⁴ He details the economic, health, and educational benefits that will be enjoyed by all who demobilize, and explains that even individuals whose crimes cannot be the subject of a pardon will obtain favorable terms. He notes that: (1) paramilitaries convicted of atrocities will get sentences of 5 to 10 years, which will be reduced by the amount of time spent negotiating in Ralito; (2) sentences will be served on agricultural colonies, possibly in Ralito; (3) extradition problems will be addressed through the President's "discretion." Restrepo further explains that the government cannot offer the paramilitaries a complete amnesty for atrocities because of international pressure, and because, if it did, there would always be the risk that they would be tried by a foreign court exercising universal jurisdiction.

On extradition, he explains that: "There is an offer from the President... who says look, I cannot modify the subject of extradition because it becomes an unmanageable international problem for me. That is to say, I cannot in the middle of an electoral campaign, or in the middle of requests for cooperation like that we have with the United States try to modify that subject because if we seek to modify it, first it generates an unmanageable international storm, and second, the thing could end up worse, that is... with the United States against a process. So in the face of this reality the President says 'to a good listener, I use my discretion as President,'... That is what the President offers."

³⁵ Restrepo has an exchange with Jorge 40 over this commander's recent admission to the media that he had diverted funds from the national health system and had "responsibility of 40 million pesos." But rather than discussing the need for this sort of criminal operation to stop as part of the demobilization, and rather than demanding that the stolen funds be returned as a condition for Jorge 40 to remain at the negotiating table, Restrepo distances himself from the issue, saying that he wants to leave the matter to the Office of the Attorney General. Indeed, Restrepo expresses annoyance at Jorge 40 for having made the statements publicly, because it had created problems for the government and had raised questions about the demobilization process.

³⁶ At one point Jorge 40 says "my commitment is to demobilize this military-social apparatus, leaving only the political one."

IV. Recent Paramilitary Demobilizations

So far, there have been twelve demobilizations of paramilitary blocks in the context of the ongoing negotiations. The first, of the Cacique Nutibara Block (*Bloque Cacique Nutibara* or BCN) and the smaller Ortega Self-Defense Forces (*Autodefensas de Ortega*) occurred in late 2003. Ten more blocks demobilized starting in November 2004, and the government has announced that several additional blocks are starting or are scheduled to start the demobilization process in coming weeks.³⁷

In implementing these demobilizations of whole blocks (known as “collective demobilizations”), the government applied pre-existing laws originally designed to encourage desertion from armed groups: Laws 418 of 1997 and 782 of 2002, and their modifications and regulations.³⁸ These laws provide that members of armed groups may receive pardons for their political crimes, but they bar persons who have committed atrocities from receiving pardons.³⁹ The laws also provide for a series of economic, health, and educational benefits to be afforded to those who demobilize.⁴⁰ Since 2002, 7,150 paramilitaries and guerrillas have participated in “individual demobilization” programs under this set of laws.⁴¹

Legally, the only difference between a collective and an individual demobilization is that to receive benefits, a person seeking to demobilize individually must first receive certification from an inter-institutional government committee, the *Comité Operativo de Dejación de Armas* (CODA), of his membership in an illegal armed group and his will to

³⁷ According to the Office of the High Commissioner for Peace, the blocks that have demobilized so far are: Ortega, Calima, Catatumbo, Bananero, Cundinamarca, AUC del Sur del Magdalena e Isla de San Fernando, Cordoba, SurOeste Antioqueño, Mojana, Heroes de Tolová, and Montes de María, in addition to the Cacique Nutibara Block. At least five more blocks—Heroes de Granada, Autodefensas Campesinas de Meta y Vichada, Libertadores del Sur, Pacífico, and Centauros—are starting the process or scheduled to begin soon. See Office of the High Commissioner for Peace, “Next Demobilizations,” http://www.altocomisionadoparalapaz.gov.co/desmovilizaciones/2004/index_proximas.htm (retrieved July 14, 2005).

³⁸ Law 418 as modified by Laws 548 of 1999 and 782 of 2002 and as regulated by Decrees 128 of 2003, 3360 of 2003, and 2767 of 2004.

³⁹ Law 418, Art. 50, as modified by Art. 19 of Law 782, provides that pardons will not be applied to “those who carry out conduct constitutive of atrocious acts of ferocity or barbarity, terrorism, kidnapping, genocide, homicide committed outside of combat or putting the victim in a state of defenselessness.”

⁴⁰ Decree 128, Arts. 6-8, 1-20.

⁴¹ Of these, 3,640 were deserters from the FARC; 2,330 were paramilitaries; 968 were ELN members; and 212 were members of FARC militias. Human Rights Watch Interview with Andrés Peñate, Vice-Minister of Defense, Bogotá, May 12, 2005.

abandon it.⁴² This requirement was eliminated by decree for purposes of the collective demobilizations; instead, membership in an illegal armed group is established through the person's inclusion on a list that the group's spokespersons are supposed to give to Colombia's Office of the High Commissioner for Peace.⁴³

Steps in a Collective Demobilization

A typical collective demobilization occurs in the following way:

First, top paramilitary commanders give the Office of the High Commissioner for Peace a list of the people in their block who are demobilizing. According to the Commissioner, his office checks this list with the Ministry of Defense to make sure it matches their estimates of the number of people in each block.⁴⁴

The people on the list are moved to a "concentration zone" (a geographical area designated by the government), where they are asked to fill out surveys about their interests, health, socio-economic background, and education level. Representatives of the Technical Investigative Body (*Cuerpo Técnico de Investigación* or CTI), a branch of the police, take their fingerprints, dental records, and photographs, which are later used to determine whether they have criminal records. The government registrar (*Registraduría*) gives them new government I.D.s if they do not have them. The government also gives out a card that identifies them as demobilized persons entitled to receive benefits for demobilization.

Subsequently, there is a demobilization ceremony in which each paramilitary hands over a weapon to representatives of the government. Representatives from the Mission to Support the Peace Process of the Organization of American States are present at the ceremony, and verify the transfer of weapons.

After the demobilization ceremony, each paramilitary is allowed to return to the place of his or her choice. From then on, they are in touch with a government "reference center," a regional office under the authority of the Ministry of Interior that is supposed to monitor and assist the demobilized persons in the process of reincorporation into

⁴² Decree 128, Art. 12(4). The CODA is composed of one person from each of the following entities: The Ministry of Justice, Ministry of Defense, Public Advocate's office, the Reincorporation Program at the Ministry of Interior, the Colombian Institute of Family Welfare, and the Attorney General's office. Decree 128, Art. 11.

⁴³ Decree 3360 of 2003, Art. 1.

⁴⁴ Human Rights Watch interview with High Commissioner for Peace Luis Carlos Restrepo, Bogotá, March 14, 2005.

society. As of April 2005, there were eight reference centers located in different parts of the country.⁴⁵

Once associated with a reference center, paramilitaries can start receiving benefits, including health care, shelter, clothing for themselves and their families, education or vocational training, psychological assistance, and support in finding jobs or developing government-financed “productive projects.” These benefits are not provided directly by the Ministry of Interior; instead the Ministry’s Reincorporation Program is charged with seeing that these benefits are provided through third parties and other government entities. Some of the demobilized paramilitaries can also receive a monthly stipend.

Also at the reference center, the Attorney General’s office schedules sessions at which all the demobilized paramilitaries in the region are asked to give statements to prosecutors about their involvement in the paramilitary group (this is known as the “spontaneous declaration” or *version libre*).⁴⁶ This statement, in which the individual acknowledges his membership in the paramilitary group and states his desire to demobilize, allows the Attorney General’s office to initiate legal proceedings against him for the crime of “agreement to commit a crime” (or *concierto para delinquir*, the crime traditionally attributed to paramilitaries for their membership in paramilitary groups). Subsequently, assuming he has not been convicted of any other crime and is not being investigated for atrocities, the Attorney General’s office grants him a pardon for agreement to commit a crime.

Those who are wanted for atrocities cannot receive complete pardons under Law 782. So far, these persons have been allowed to wait in a specially designated zone in Santa Fe de Ralito while the government drafted legislation that would offer them sentencing benefits. Under the new legal framework for demobilization, these persons must be charged within thirty-six hours of their spontaneous declarations, and the investigations against them must be completed within the following sixty days. After the sixty days, they will either be tried or, if they accept the charges against them, they will receive generous sentence reductions.⁴⁷

⁴⁵ These are in: Turbo, Montería, Cúcuta, Bogotá, Medellín, Cali, and Yacopí (Cundinamarca). The eighth is a mobile reference center that visits different parts of the country. Human Rights Watch interview with Juan David Ángel, Director of the Reincorporation Program, Colombian Ministry of Interior, Bogotá, March 14, 2005.

⁴⁶ Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005. Marín explained that in only one case, with the Block Magdalena del Sur, were the interviews conducted in the concentration zone.

⁴⁷ Before the passage of the new law, paramilitaries who were wanted for atrocities had the possibility of going to Santa Fe de Ralito, a zone specially designated by the government where all arrest orders were suspended

Failures in Implementation of Collective Demobilizations

Demobilizations to date have suffered from legal defects and flaws in implementation that make it virtually impossible to conduct serious and thorough investigations of atrocities and to dismantle paramilitary structures.

The following are some of the most serious problems we documented in the government's implementation of demobilizations to date:

Failure to Request Aliases

The government has not insisted that demobilizing paramilitaries provide their aliases at any point in the process, even though aliases are often the only way in which perpetrators are identified in criminal investigations.⁴⁸ The government's failure thus makes it impossible to link many paramilitaries to atrocities they may have committed.

One demobilized paramilitary, for example, willingly gave Human Rights Watch his alias—"Anaconda"—but he said that he never gave it to the government because he was never asked about it.

Even though the government collects demobilizing persons' photographs, fingerprints, and dental records, it does not collect their aliases because, according to the High Commissioner for Peace, the identification is "an administrative, civil identification."⁴⁹

Failure to Maintain a Record of Arms Possession

The government does not keep a record of which weapons are turned in by which paramilitary.⁵⁰ As a result, even if a particular weapon subsequently is found to have been used in a particular atrocity (so far, the government is not conducting the requisite forensic testing), it could not be matched up with the person who used it.⁵¹

and they could wait for the approval of the new law granting them sentence reductions. Human Rights Watch interview with High Commissioner for Peace, Luis Carlos Restrepo, Bogotá, March 14, 2005.

⁴⁸ Human Rights Watch interview with Elba Beatriz Silva, Director of the Human Rights Unit, Office of the Attorney General of Colombia, Bogotá, April 4, 2005.

⁴⁹ Ibid.

⁵⁰ Human Rights Watch interview with officials from the Office of High Commissioner for Peace, Bogotá, April 11, 2005. Human Rights Watch interview with Claudia Perez de Vargas, OAS Mission to Support the Peace Process, Bogotá, April 11, 2005.

⁵¹ Ibid.

A representative from the OAS Mission in Colombia told us that the reason neither the Colombian authorities nor the OAS Mission keep a record of the owners of each weapon is that it would be pointless, because all the paramilitaries share their weapons. But this explanation was flatly contradicted by demobilized paramilitaries themselves, who consistently and emphatically told us that they “never” shared weapons. As described by one demobilized member of the Catatumbo Block, each man is responsible for keeping and taking care of his own weapons: “I had the same weapons all the time. Nobody touches your weapons, you keep them very clean and sleep with them. You do not share them.”

Failure to Include Prosecutors from the Human Rights Unit in the Team of Prosecutors Questioning Demobilized Paramilitaries

As already noted, before finally granting a pardon to a demobilizing paramilitary, the Attorney General’s office takes brief statements, known as “spontaneous declarations,” from each person.

In December 2004, the Attorney General’s office created a team of prosecutors that would be charged with traveling to government reference centers throughout the country to take demobilized paramilitaries’ spontaneous declarations. The team is composed of eleven prosecutors from various specialized units of the Attorney General’s office, including the Antiterrorism, Antinarcotics, Asset Laundering, and Anti-kidnapping Units.⁵² However, in a glaring omission, the team does not include prosecutors from the Human Rights Unit.⁵³

The stated reason for this exclusion is that the Attorney General’s office treats the question of whether demobilized paramilitaries can receive benefits as a matter that is unrelated to the Human Rights Unit’s investigations. Ramiro Marin, the prosecutor who has been in charge of coordinating the involvement of the Attorney General’s office in the demobilization process, told Human Rights Watch that “Law 782 [the law governing the recent demobilizations] is not focused so much on penal action but rather on the contemplation of benefits.”⁵⁴ Therefore, he explained, the team of prosecutors is focused exclusively on whether or not benefits can be granted to the demobilized paramilitaries. The Human Rights Unit, in contrast, is kept out of the team so that it can

⁵² Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005. Human Rights Watch interview with Elba Beatriz Silva, Director of the Human Rights Unit, Office of the Attorney General of Colombia, Bogotá, April 4, 2005.

⁵³ Ibid.

⁵⁴ Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005.

continue its investigations independently, without having to develop a “double legal personality.”⁵⁵

But given that the Human Rights Unit is in charge of most major investigations of paramilitary atrocities, it would seem more than reasonable to involve at least some members of the Unit in the process of interviewing demobilized paramilitaries. Prosecutors from the Unit have expertise that could allow them to question demobilized paramilitaries more effectively about their potential involvement in atrocities, which could preclude them from receiving benefits. Moreover, the Unit itself has an interest in obtaining information from demobilized paramilitaries about the many investigations it is handling.

Failure to Ask Questions About Past Crimes or the Groups’ Operations and Assets

When giving a spontaneous declaration, demobilized paramilitaries are under no obligation to answer any of the investigators’ questions. “The spontaneous declaration is the statement [the demobilized paramilitary] wants to make,” according to Elba Beatriz Silva, head of the Human Rights Unit of the Office of the Attorney General.⁵⁶ “Those who demobilize have no incentive to tell the truth.”⁵⁷

The purpose of the spontaneous declaration is a purely technical one: to allow the Attorney General’s office to formally document the paramilitary’s membership in the group, and thus open an official investigation of him for the crime of agreement to commit a crime (which all paramilitaries have presumably committed by virtue of their membership in the group). This, in turn, allows the Attorney General’s office to give the paramilitary the benefit of a pardon for that crime.

If it were serious about dismantling paramilitaries’ complex networks, the government could structure the spontaneous declaration to collect valuable information about the group’s crimes, operations, and assets, evidence which might be helpful in ongoing investigations or eventual efforts to recover illegally acquired assets. For example, in the demobilization of a particular block, it would make sense for the Attorney General’s office to assemble a list of questions concerning atrocities and other serious crimes

⁵⁵ Ibid.

⁵⁶ Human Rights Watch interview with Elba Beatriz Silva, Director of the Human Rights Unit, Office of the Attorney General of Colombia, Bogotá, April 4, 2005.

⁵⁷ Human Rights Watch interview with Luis Santana, Vice-Attorney General of Colombia, Bogotá, March 14, 2005.

committed in that block's area of operation, to determine whether those who are demobilizing know anything about those crimes. This is not, however, happening in practice.

Paramilitaries are not systematically asked whether they participated in or witnessed atrocities or other criminal activity, what assets they own and how they acquired them, or whether they know anything about the location of drug crops or assets illegally acquired by their commanders. Nor are they asked questions about specific cases. In one copy of a spontaneous declaration obtained by Human Rights Watch, a demobilizing paramilitary belonging to the Bananero Block stated that he had been a paramilitary for twelve years and had the rank of "group commander." Although this man probably possessed a great deal of information about the group's operations, past crimes, and assets, he was not asked a single question about these subjects.

According to representatives of the Attorney General's office, the questions asked in a spontaneous declaration vary case by case, but there are six "fundamental questions:" To which block did you belong? When did you join? Who was your commander? Where did you operate? What was your role in the organization? And, why did you demobilize? Additional questions are only asked if the member spontaneously admits his participation in criminal activity.⁵⁸ However, this is a rare occurrence: "it may have happened two or three times."⁵⁹

As Prosecutor Marin acknowledged, "this process does not help the investigations at all."⁶⁰

Interestingly, the conduct of these interviews contrasts sharply with the policies applied to interviews of deserters who are entering individual demobilization programs. According to the Vice-Minister of Defense, persons who try to go through the individual demobilization process are subjected to a "serious military interrogation" in which the goal is to "prevent terrorist activity, find war material, and complete judicial investigations." In general, he compared the questioning to the sort of approach U.S. law enforcement might take with a Racketeer Influenced and Corrupt Organizations (RICO) case. Deserters are subjected to "several" interrogations, "both by the military and the police, as many times as is necessary." Among other questions, deserters are

⁵⁸ Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005.

⁵⁹ Ibid.

⁶⁰ Ibid.

asked how they were recruited, what the criminal structure of their group was, where they held kidnapping victims, whether they know about certain facts that they might be able to clarify, whether they know about drug trafficking, and whether they worked with people in the armed forces.⁶¹ Not one of these is a part of the standard list of questions asked of paramilitaries who are participating in collective demobilizations.

Superficial Checks of Demobilized Paramilitaries' Backgrounds

According to Law 782, members of armed groups are barred from receiving benefits for demobilization if they are “responsible” for the commission of atrocities.

Marin claims that he does not know how the background checks were conducted for the demobilization of the Cacique Nutibara Block, which occurred prior to his involvement in the demobilization process. However, he says that since he was put in charge of the demobilizations, background checks have been conducted in the following manner: first, the office is to check whether the paramilitary is barred from receiving benefits because he shows up on their computer system as having been convicted or being wanted for atrocities. Then, the office is supposed to have members of the CTI conduct a more thorough check of the case-files in each national unit of the Attorney General's office, to determine whether any demobilized person should be questioned further or investigated in connection with open cases.

The effectiveness of this process is, however, questionable given that, according to Ramiro Marin, as of April 2005 it had not caused the Attorney General's office to conduct a single follow-up interview with any demobilized paramilitary.⁶² Unfortunately, Human Rights Watch was unable to interview the members of the CTI charged with conducting these checks, because Marin refused to put us in touch with them, stating: “I am the one who has to answer for that.”⁶³

Inadequate Monitoring of Demobilized Paramilitaries

The national system for monitoring demobilized persons suffers from serious deficiencies, largely because of its limited focus. The International Organization on Migration (IOM), which designed the system, called the Tracking, Monitoring and Evaluation System (TMES), with funding from USAID, has stated: “[t]he System is

⁶¹ Human Rights Watch interview with Andrés Peñate, Vice-Minister of Defense of Colombia, Bogotá, May 12, 2005.

⁶² Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005.

⁶³ Ibid.

designed to support the successful reincorporation into society of demobilized combatants through the continuous monitoring and assessment of their performance in the reincorporation program.”⁶⁴ However, the system is not designed to find out whether the demobilized paramilitary is still involved in criminal activities or is still a part of a paramilitary structure.

So far, the system has been fully implemented only in the city of Medellín. There, the system depends on eleven “coordinators” (psychologists, social workers, and others) and forty “monitors”—themselves demobilized paramilitaries who are selected as monitors due to their leadership skills.⁶⁵ In practice, this means that in at least some cases the monitors are in fact former local paramilitary commanders.⁶⁶

The system consists primarily of collecting information about demobilized paramilitaries via surveys of the demobilized member himself, his family members, service providers (employers or instructors), and community members. The surveys ask questions about a wide variety of issues, including the individual’s satisfaction with the program, drug use, sexual activity, family life, participation in politics, attendance and performance at work or school, and the community’s perceptions. The coordinators are also supposed to conduct interviews with demobilized persons.⁶⁷ The information obtained from these various sources is kept together in a computerized database.⁶⁸

Those who show signs that they are at “risk” (e.g., because they are frequently absent from work or school) are supposed to be given special attention through mentoring, workshops, follow-up phone calls, and other measures.

This system may serve its stated objective of assessing the demobilized individual’s performance in and perceptions of the reincorporation program. However, the system

⁶⁴ See International Office on Migration, “Executive Summary Government of Colombia (GOC) Demobilization and Reincorporation Program, Tracking, Monitoring, and Evaluation System,” n.d. [hereinafter TMES Summary]. The TMES Summary details the objectives of the TMES as follows: “1) determine the degree of reincorporation achieved by beneficiaries; 2) identify those at high risk of abandoning the program and provide them remedial assistance to reduce drop-outs; 3) assess the effectiveness of program activities, such as vocational training and education; 4) enable the GOC to monitor the overall status of the process, i.e., how many individuals are formally considered “reincorporated”, and 5) provide adequate information to adjust the program as required.”

⁶⁵ Human Rights Watch interview with Diego Beltrand, and officials from the International Office on Migration and the U.S. Agency for International Development, Bogotá, April 6, 2005.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.* See also International Office on Migration, TMES Summary. According to the TMES Summary, surveys are conducted every three months, except with respect to service providers, who are surveyed every month.

⁶⁸ International Office on Migration, TMES Summary.

is not designed to detect whether he is still involved in paramilitary groups or is otherwise engaged in illegal activities. It does not include mechanisms for the receipt of complaints about the demobilized persons or population as a whole. Nor is it linked with other entities (e.g., local NGOs, law enforcement) that would be likely to receive such complaints. Although the system includes a survey of community members, that survey is distributed only to a select group.⁶⁹ At most, as explained by Diego Beltrand of IOM, the system might as a side benefit serve to give authorities some indications that “something is going on.”⁷⁰

A demobilized paramilitary could also simply drop out of the system entirely. In that case he would stop receiving benefits. However, he has no obligation to stay in touch with the government on a regular basis.

Aside from the TMES, Restrepo told us that the local police know the demobilized paramilitaries, meet with them periodically, and also monitor crime levels in areas where demobilized people live.⁷¹ As explained below, however, it is unclear how thoroughly this aspect of monitoring is being done.

Failure to Share Information with Local Authorities

Monitoring has been hindered by the reluctance of the Office of the High Commissioner for Peace to share information about demobilized paramilitaries with local authorities. In Valle del Cauca, for example, government officials at both the departmental and municipal levels complained that they had no idea who or where the demobilized paramilitaries were. As a result, it was very difficult for them to know whether that population was, in fact, still engaged in paramilitary activities.

At one reference center, a policeman told us that he was supposed to be in touch with demobilized paramilitaries in his area, but he was not able to do so because several months after the demobilization he still had not received the list of those people he should be monitoring.

⁶⁹ The community members are selected by members of the monitoring team who know the main actors in the community. Human Rights Watch interview with Diego Beltrand, and officials from the International Office on Migration and the U.S. Agency for International Development, Bogotá, April 6, 2005.

⁷⁰ Ibid.

⁷¹ Human Rights Watch interview with High Commissioner for Peace Luis Carlos Restrepo, Bogotá, March 14, 2005.

Moisés Góngora, the director of the Cali reference center, noted that “municipal and departmental authorities do not receive lists [of demobilized paramilitaries] because these are normal people... The idea is to remove the stigma of being a ‘reinserted’ person.... [T]he legal system has already said [their status] has been resolved.”⁷²

But the failure to communicate with local authorities could eventually result in serious monitoring difficulties, particularly with respect to paramilitary blocks whose members are dispersed. Unlike in Medellín, where most members of the Cacique Nutibara Block stayed after the demobilization, in other parts of the country demobilized paramilitaries are widely dispersed.⁷³ Thus, regular monitoring will depend on local authorities’ involvement.

Inadequate Policies to Prevent Recruitment

The government has yet to put into place policies to prevent new recruitment into paramilitary groups. Thus, even while many troops are demobilizing, paramilitary groups could easily be recruiting new troops from the same large pool of impoverished, poorly educated young men from which those now being demobilized were originally drawn. The promise of a regular and relatively high salary is as likely to draw new recruits now as it was five or ten years ago. Demobilization, as it is currently structured, does nothing to address this problem.

While the government has policies aimed at preventing recruitment of children into illegal armed groups, it lacks “a strong policy of prevention of recruitment of adults,” as one official at the Office of the High Commissioner for Peace put it.⁷⁴

⁷² Human Rights Watch interview with Moisés Góngora, director of the Cali reference center, Cali, March 9, 2005.

⁷³ For example, of the 557 paramilitaries who demobilized as part of the Calima Block, only fifty-five are in Cali. Approximately 300 more are spread out throughout the department of Valle del Cauca, and others are even further away, in other departments such as Cauca and Risaralda. Human Rights Watch interview with senior law enforcement official, Cali, March 2005. Yet all the demobilized paramilitaries in Valle del Cauca and neighboring departments are monitored by a reference center in Cali. Thus, a staff member of the Cali reference center “could lose a whole day just to visit one or two persons.” Human Rights Watch interview with Moisés Góngora, director of the Cali reference center, Cali, March 9, 2005.

⁷⁴ Human Rights Watch interview with Roberto Mora, legal counsel at the Office of the High Commissioner for Peace, Bogotá, April 11, 2005.

V. The Government's Record to Date

Accountability

So far, over five thousand persons have participated in “collective demobilizations” of paramilitary groups. As of April 2005, only twenty-five of them were under investigation or had been convicted for atrocities committed before the demobilization.⁷⁵

The Attorney General's office claims that only members of the Cacique Nutibara Block have already received pardons and that it is still in the process of checking its files to determine whether any of the paramilitaries who demobilized in the 2004 and 2005 demobilizations are being, or should be, investigated.⁷⁶ Because the initial background checks for outstanding convictions or pending investigations were performed early on in the process, however, paramilitaries from these groups would be barred from receiving benefits only if new evidence has come to light in the intervening period and such information is identified when the Attorney General's office checks the files.

Given how little information is being collected about paramilitary crimes through the spontaneous declarations, it is hard to see how cross-checking of files will yield any additional results. Marin himself concedes that so far the cross-checking has not resulted in a single follow-up interview with a demobilized paramilitary.⁷⁷

The small percentage of demobilized paramilitaries that have been barred from receiving benefits because of their involvement in atrocities so far (less than 1 percent of the total demobilized population, and less than three percent of the demobilized membership of the BCN) is shocking when one considers the number of atrocities that have been attributed to paramilitary groups over the last decade. According to the Colombian Commission of Jurists, paramilitaries have killed over 12,999 persons in Colombia since

⁷⁵ Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005. As of June 2005, approximately fifty-five others who did not demobilize had voluntarily gone to Ralito, where they were protected from arrest while they waited for the government to pass a demobilization law that would regulate their benefits. International Office on Migration, “Demobilization Process Summary Chart,” June 9, 2005. See also Human Rights Watch interview with High Commissioner for Peace Luis Carlos Restrepo, Bogotá, March 14, 2005.

⁷⁶ Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005. Marín said that of the 867 members of the Block Cacique Nutibara, 205 were involved in prior crimes, but only twenty-five were involved in crimes considered atrocities such as terrorism, kidnapping and extortion.

⁷⁷ Human Rights Watch interview with Ramiro Marín, Prosecutor before the Supreme Court, Office of the Attorney General of Colombia, Bogotá, April 6, 2005.

1996 alone—this number does not include kidnappings, acts of torture and extortion, forced displacement, and other serious crimes committed by members of these groups.⁷⁸

The small percentage denied benefits is also striking in light of demobilized paramilitaries' own statements in interviews. In fact, most of the demobilized paramilitaries Human Rights Watch interviewed admitted their involvement in massacres, killings, kidnappings, and/or extortion. Yet none of them had been charged or detained for those crimes, or even seriously questioned about their own or their commanders' responsibility.

For example, two demobilized members of the BCN acknowledged in interviews that they had killed civilians, although they could not estimate how many. One also recognized that, along with others, he had sometimes abducted people he considered "subversives" and had "taken information out of them by force."

But both of them had already had their legal situation "resolved" (i.e., they had received their pardons for membership in the group). They knew that a few other members of their group had been arrested for preexisting crimes, but they said that "it was because of bad luck that they were caught." To their minds, it was "unjust because they had turned in their weapons" too.

Another paramilitary who had operated in the Cordoba Block under the command of Salvatore Mancuso, admitted his involvement in massacres and gruesome killings of civilians he viewed as supportive of guerrillas: "These were people who felt powerful and were friends of the guerrillas." As for children who were killed, he felt that "in any war, there are times that innocents pay... A bullet does not ask where it is going." Although he usually used firearms, "sometimes you killed them with the machete because you didn't have anything else left." However, he said the government had given him a certificate stating that he did not have any legal problems.⁷⁹

Demobilized members of the Catatumbo and Cundinamarca Blocks also told us about their own and their groups' involvement in killings and torture. One told us that "if we found collaborators... we killed them. We also killed child combatants." Another said

⁷⁸ See Colombian Commission of Jurists, "A Metaphorical Justice and Peace," June 21, 2005. In addition to the material authors, it is crucial that top commanders be held accountable for these serious crimes.

⁷⁹ This does not mean he has necessarily received the pardon for agreement to commit a crime. The certificate is probably his criminal record, which shows that he is not wanted or under investigation for atrocities.

that “we tortured people who became guerrillas or collaborated with other narcotraffickers.”

In Medellín, we spoke with several men who claimed to have been mid-level commanders of the BCN, just below the group’s top commander, Don Berna. But at the time of the interviews, none of them had cases pending against them; they were now heading the “Democracy Corporation” (*Corporación Democracia*), a non-profit association of all the demobilized members of the BCN. One of them, Giovanni Marin, is campaigning for a seat in the Colombian Chamber of Deputies.

Truth and Reparation

So far, the demobilization process has yielded very little progress in terms of truth or reparation for victims of paramilitary atrocities. Demobilizing paramilitaries have not confessed their past crimes, or voluntarily disclosed any meaningful amount of information to the authorities that would have helped clarify the facts about those crimes. Without such information, most cases of paramilitary atrocities as well as other crimes such as drug trafficking are likely to remain unsolved.

In turn, without progress in investigations, it is impossible to determine who should pay reparations to victims. It may also be difficult to determine who is a victim of a paramilitary crime, and therefore entitled to reparations. So far, there has been no significant progress with respect to reparations.

Of the twelve paramilitary blocks to have demobilized so far, the only one to turn over any assets to the government has been the Catatumbo Block, which turned over some land, ten motorboats, forty-five mules, and eleven vehicles.⁸⁰ That property is supposedly being returned to its original owners, if it was stolen; however, no payment has been made in reparation to the victims of the many paramilitary atrocities in the Catatumbo region, or elsewhere in the country.

This record with respect to reparations and truth reflects how little attention is being paid to victims in the process as a whole. As noted by Colombia’s General Accounting Office, it is also “troubling that while the funds destined by the government in 2000-2003 to fully take care of an entire displaced family were on average \$5.5 million pesos [around U.S. \$2,000], the funds directed at demobilizing and fully reintegrating a

⁸⁰ A detailed listing of the assets turned over is available at “List of assets turned over by the Catatumbo Block of the Self-Defense Forces of Colombia,” http://www.altocomisionadoparalapaz.gov.co/noticias/2004/diciembre/dic_11_04.htm (retrieved June 30, 2005).

member of an armed group on average were \$19.5 million pesos [around U.S. \$9,000], a fact that makes evident the differentiation in the way the State's policies work with respect to victims and perpetrators.”⁸¹

Lasting Peace and Dismantling of Paramilitary Structures

The government likes to present the demobilizations that have been conducted so far as tremendous successes that are resulting in a genuine and lasting peace. But while the demobilization process has disarmed some paramilitary troops, it has failed to touch the massive wealth that fuels paramilitary groups' activities. Nor is there any sign that the demobilizations have done anything to interfere with paramilitaries' illegal businesses or the political and economic control they exert over much of the country. And given that their wealth remains intact, the groups will be able easily to replace the demobilized troops with new recruits, and old weapons with new.

Cease-fire

Paramilitaries have repeatedly committed abuses in breach of the cease-fire declaration they made in December 2002. According to a September 2004 report by the Public Advocate that covered only eleven of the country's thirty-two departments, in the first eight months of the year there had been 342 paramilitary violations of international humanitarian law in breach of the cease-fire, including massacres, forced disappearances, and kidnappings.⁸² A separate report by the Public Advocate for the department of Tolima (which had not been included in the broader report) stated that during that same period, paramilitaries had presumably committed at least 177 violations in Tolima alone.⁸³ There were 133 targeted assassinations, five massacres, thirty-three forced disappearances, and seven acts of extreme cruelty to victims. According to one Colombian organization, as recently as June 2005 the paramilitaries were holding 509 people hostage.⁸⁴

⁸¹ Delegated Comptroller for the Defense, Justice, and Security Sector, "Public Policy About Forced Displacement in Colombia: Only Good Intentions?," www.contraloriagen.gov.co/html/RevistaEC/pdfs/307_4_1_La_politica_publica_sobre_el_desplazamiento_forza_do_en_colombia.pdf (retrieved June 27, 2005).

⁸² Office of the Public Advocate of Colombia, "Monitoring of the Cessation of Hostilities Promised by the United Self-Defense Forces as a Sign of their Will for Peace for the Country," September 24, 2004, http://www.defensoria.org.co/pdf/informes/informe_107.pdf? (retrieved June 6, 2005).

⁸³ Office of the Public Advocate of the department of Tolima, "Report on Monitoring of the Agreement of Santa Fe de Ralito—Córdoba—About Cessation of Hostilities Against the Civilian Population in Tolima," October 15, 2004.

⁸⁴ "NGO says that paramilitaries have 509 hostages in their power," *El Tiempo*, June 16, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2110132.html (retrieved July 17, 2005).

The government itself recognizes that there have been numerous cease-fire violations, but argues that the cease-fire has nonetheless resulted in a significant reduction in the number of atrocities committed by paramilitaries.⁸⁵ While official statistics show a decrease in some major indicators atrocities committed by both paramilitaries and guerrillas, the start of this trend does not coincide with the cease-fire declaration or with the start of demobilization negotiations.⁸⁶

There are numerous factors that may have contributed to the decrease in official indicators of abuses, including a change in tactics by Colombia's armed groups, the consolidation of paramilitary control in some areas, and a strategic retreat by the guerrillas in response to an increase in military action against them. And it is far from clear how long the decreases will last.

In Medellín, for example, homicide rates have been dropping steadily in recent years, going from 3721 in 2002 to 2013 in 2003, and 1177 in 2004.⁸⁷ The drop began before the BCN's demobilization, and coincides with the BCN's consolidation of its control over the city after the defeat of most of the guerrillas and competing paramilitary groups (such as the Metro Block) in the city. BCN commanders themselves told us that they had brought peace to the city by taking it over.

In May 2005, the U.N. High Commissioner for Human Rights, Louise Arbour, visited Colombia and raised concerns about the paramilitaries' continued cease-fire violations. President Uribe responded publicly by arguing that every time a paramilitary group violates the cease-fire, the government combats it.⁸⁸

⁸⁵ "Paramilitaries who do not respect the cease-fire are combated militarily," said President Álvaro Uribe," *El Tiempo*, May 12, 2005, http://eltiempo.terra.com.co/coar/DER_HUMANOS/derechoshumanos/ARTICULO-WEB-_NOTA_INTERIOR-2065760.html (retrieved May 20, 2005).

⁸⁶ For example, official statistics show that the number of massacres dropped dramatically between 2001 and 2002. See Human Rights Observatory of the Vice-Presidency of the Republic, "October 2002 Report – Massacres," <http://www.derechoshumanos.gov.co/modules.php?name=informacion&file=article&sid=263> (retrieved July 17, 2005). Official sources registered significant drops in the number of kidnappings per year between 2000 and 2001, and then again between 2001 and 2002. See Human Rights Observatory of the Vice-Presidency of the Republic, "October 2002 Report—Kidnappings," <http://www.derechoshumanos.gov.co/modules.php?name=informacion&file=article&sid=262> (retrieved July 17, 2005).

⁸⁷ Office of the Mayor of Medellín, Powerpoint Presentation "Program Peace and Reconciliation: Return to Legality," March 12, 2005.

⁸⁸ The President supported his argument by noting that according to official statistics, since the start of his term in August of 2002 until May 2005, 9,864 paramilitaries had been arrested, 7,000 had demobilized, and 1,125 had been killed. These statistics are, however, notoriously unreliable. They contain gaps and bad definitions that lead to systematic underreporting and false reporting (e.g., people executed by paramilitaries have been reported as having been killed in combat by security forces). And there are major discrepancies in statistics kept by different government agencies. See United Nations, *Report of the High Commissioner for Human*

However, the government has yet to make public any concrete examples of ways in which it has enforced the cease-fire. To the contrary, despite their repeated cease-fire violations, paramilitaries have consistently been able to avoid accountability.

The most flagrant case of such impunity is that of the notorious paramilitary commander Don Berna. In late May, Colombian prosecutors ordered the arrest of Don Berna for the April 10 assassinations of Colombian Congressman Orlando Benítez, his sister, and his driver, on a road near Santa Fe de Ralito. Don Berna had allegedly ordered the assassinations after Benitez refused to stop campaigning in the region.

Announcing that the peace process could not become a “paradise of impunity” and that Berna’s alleged crime constituted a cease-fire violation, President Uribe authorized an enormous operation in which hundreds of security forces entered Ralito to arrest Don Berna. Don Berna evaded arrest for two days, finally turning himself in on May 27, 2005.

Despite Don Berna’s alleged responsibility for three atrocities in breach of the cease-fire, however, Colombian authorities subsequently announced that Don Berna would be allowed to demobilize and, presumably, receive all attendant benefits.

Continued Paramilitary Control

There are signs that powerful paramilitary structures have remained intact even after the demobilizations of the various blocks.

One revealing fact is that during their spontaneous declarations (which have in some cases occurred months after the demobilization ceremonies) at the reference centers, the demobilized paramilitaries have not requested public defenders to represent them. Instead, according to government officials, the demobilized paramilitaries have consistently been represented by the same handful of lawyers, apparently hired by their former commanders.⁸⁹

In Medellín, BCN commanders continue to exert a great deal of authority in many neighborhoods through their non-profit association, the “Democracy Corporation” (or

Rights on the situation of human rights in Colombia, Annex IV: Note on Statistics, E/CN.4/2005/10, February 8, 2005, <http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/informes.php3?cod=8&cat=11> (retrieved June 15, 2005).

⁸⁹ Human Rights Watch interview with officials from the Office of the High Commissioner for Peace, Bogotá, April 12, 2005.

Corporación Democracia), and through the monitoring process itself (in at least some cases, low-level commanders were selected as “peace coordinators” due to their leadership skills).⁹⁰ There have been reliable reports that members of the Democracy Corporation are taking advantage of their position to start illegal businesses, in which they take others’ land and sell or rent to displaced people.⁹¹ While leaders of the Democracy Corporation have stated that all they are doing is “social work,” people who spoke with Human Rights Watch claimed to have been threatened and abused by demobilized paramilitaries in the city for refusing to follow orders or resisting extortion.⁹²

In interviews, the heads of the Democracy Corporation admitted that they were still in touch with their top commander, Don Berna.⁹³ And, in an example that some have described as a model for other parts of the country, the Democracy Corporation is, under the guidance and overarching leadership of Don Berna, increasingly involved in politics, both at a local level and through campaigns for national public office.⁹⁴

Don Berna, in turn, appears to exert extraordinary power in the city, where many believe that the reduction in crime levels is a direct result of Berna’s orders.⁹⁵ After authorities ordered Don Berna arrested for the assassination of Congressman Benitez, bus transportation was paralyzed in Medellín, reportedly because drivers were threatened by Berna’s men.⁹⁶

Outside of Medellín there have also been reports of continued paramilitary activity in regions where paramilitaries have demobilized. For example, in Valle del Cauca, where the Calima Block demobilized, Human Rights Watch received reports from residents of the towns of Calima Darien and Florida (areas that had been under the control of the

⁹⁰ Human Rights Watch interview with Diego Beltrand, and officials from the International Office on Migration and the U.S. Agency for International Development, Bogotá, April 6, 2005. Human Rights Watch interview with demobilized paramilitary commander, Medellín, March 11, 2005.

⁹¹ “Don Berna’s’ demobilized men are accused of promoting four invasions of neighborhoods in Medellín,” *El Tiempo*, July 21, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2155495.html (retrieved July 22, 2005).

⁹² *Ibid.* Human Rights Watch interviews with residents of Medellín, Medellín, March 12, 2005.

⁹³ Demobilized paramilitaries in Bogotá also admitted to us that they were still in communication with members of their groups, including their commanders in El Ralito.

⁹⁴ Enrique Rivas G., “Demobilized ‘paras’ proselytize in Medellín: ‘Don Adolfo’ is their Political Leader,” *El Espectador*, July 10, 2005, http://www.elespectador.com/historico/2005-07-10/contenido_MI-2996.htm (retrieved July 18, 2005).

⁹⁵ “The Pacifier,” *Semana*, April 23, 2005, <http://semana2.terra.com.co/opencms/opencms/Semana/articulo.html?id=86216> (retrieved June 27, 2005).

⁹⁶ “The power of Diego Murillo, ‘Don Berna’, in Medellín, remains intact,” *El Tiempo*, May 26, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2082945.html (retrieved May 27, 2005).

Calima Block) that paramilitaries, apparently from the Calima Block, were still committing abuses there. Law enforcement and other government authorities, as well as the office of the U.N. High Commissioner for Human Rights in Cali, had received similar reports.

Partial Demobilizations

A serious problem with the demobilizations is the lack of clarity about the membership of paramilitary groups, and whether the demobilizations of those groups have been complete.

This issue gained a great deal of public attention in connection with the demobilization of the BCN. After that demobilization, there were reports that common criminals had posed as paramilitaries, and in recordings of the negotiation leaked to the media, Restrepo stated that the Medellín demobilization had been an “embarrassment.” According to Medellín’s Mayor, Sergio Fajardo, this is inaccurate: the city is full of different types of criminal organizations, including gangs, but the paramilitaries had incorporated those gangs into their structure.⁹⁷

Whether or not non-paramilitaries participated in the Medellín demobilization, we did receive reports that members of the BCN had remained active in the area. A demobilized low-level commander told us that not all the troops under his command were allowed to demobilize because his commanders had given him only forty slots to fill with demobilized troops.

Very recently, the Colombian government announced that 800 men from the Héroes de Granada, a little-known paramilitary block reportedly formed two years ago near Medellín, also under Don Berna’s command, had started the demobilization process.⁹⁸ According to news reports, the block includes four hundred men from the so-called “Envigado Office,” a highly sophisticated network of assassins and criminals that Don Berna inherited from Pablo Escobar, and that has not traditionally been considered a paramilitary group.⁹⁹ The start of the demobilization was preceded by allegations that Don Berna was recruiting people to pose as paramilitaries for purposes of

⁹⁷ Human Rights Watch interview with Sergio Fajardo, Mayor of Medellín, Medellín, March 10, 2005.

⁹⁸ “Allegations that the number of paramilitaries in the ‘Héroes de Granada’ paramilitary block is inflated,” *El Tiempo*, July 21, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2155496.html (retrieved July 22, 2005).

⁹⁹ “The Office of Envigado, one of the most feared organizations of the criminal world, ends,” *El Tiempo*, July 20, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2153967.html (retrieved July 21, 2005).

demobilization, and was offering them salaries of 360,000 pesos on top of the stipend they would receive as demobilized individuals.¹⁰⁰

It is also possible that in some areas the vacuum left by demobilizing paramilitaries is being filled by other, in some cases new, paramilitary groups. One demobilized man told us that he believed the groups had a strategy to replace the demobilized blocks with new ones: "I once worked with the Calima Block... I saw the day they turned themselves in. I had worked with about 200 men... but none of them was at the negotiation. I think they have remained active." In April and May there were reports of new paramilitary groups being formed in Valle del Cauca and in the Catatumbo region.¹⁰¹

Some demobilized paramilitaries suggested that a partial demobilization might be the goal of the paramilitary leadership: "Those of us who are not big commanders will demobilize. But aside from Mancuso there is another one... who will not demobilize and will take over the reins of the business," said one.

A former senior member of the Catatumbo Block told us that his group had intentionally left a portion of its troops active. According to another demobilized paramilitary, the demobilization process is "a farce. It's a way of quieting down the system and returning again, starting over from another side."

Wealth and New Recruitment

Beyond the question of what happens with the troops, what may turn out to be more important is the question of what happens with the commanders' and the groups' wealth. The new demobilization law provides that to be eligible for demobilization benefits, paramilitary groups must turn over assets resulting from illegal activity. However, the law fails to include any penalties if it is later discovered that paramilitary groups or commanders withheld substantial portions of their illegally acquired wealth.

¹⁰⁰ "Paramilitary chief 'Don Berna' allegedly recruited false combatants to later demobilize them," *El Tiempo*, July 11, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2142884.html (retrieved July 17, 2005).

¹⁰¹ In April of 2005, there were reports, which the Office of the High Commissioner for Peace could not confirm, of the creation of a new group called Autodefensas Unidas del Valle in the area formerly occupied by the Block Calima. Human Rights Watch interview with Colonel Alvaro Acosta and officials from the Office of the High Commissioner for Peace, Bogotá, April 11, 2005. In March 2005, there were reports of actions by demobilized paramilitaries in Catatumbo to create new paramilitary blocks in that region. See "Three former paramilitaries who were forming a new group called 'Reinserted people for Colombia' were arrested," *El Tiempo*, March 23, 2005,

http://eltiempo.terra.com.co/coar/ACC_JUDI/accionesjudiciales/ARTICULO-WEB-_NOTA_INTERIOR-2016938.html (retrieved June 30, 2005).

As long as paramilitary groups hold on to their wealth and sources of financing, they will be able to entice new troops to join.

So far the only paramilitary block to turn in any assets to the government is the Catatumbo Block, and members of that block did not turn over any cash.

Several demobilized paramilitaries told us that they were certain their commanders were hiding assets: “If one is going to demobilize, one doesn’t leave the assets in one’s own name. One builds front companies,” said one demobilized paramilitary who said his group was involved in drug processing. “They can give that land to other people they trust,” said another.¹⁰²

One man elaborated further, telling us that the paramilitary commanders would never let go of their illegal businesses because if they did, “how will they finance themselves?” In his view, “the demobilization process is a way to try to clean the biggest guys, [and] move all their money into legality. They have a lot of it because it’s a big business.... There is a system: they enter a farm, kill or throw out a rancher, and that farm is then transferred to a hardliner. To discover that is very complicated. When they enter legality [by demobilizing], they are going to say that they already had that land from before.”

It is also doubtful that paramilitary groups have been turning over all their weapons. Several demobilized paramilitaries told us that they had more than one weapon, and in some cases they had three or more. But in the demobilizations that have been conducted so far, on average each member turned over about one weapon.¹⁰³ And one demobilized man from the Catatumbo Block directly admitted to us that “the weapons were not all turned over.”

Paramilitary groups have continued to recruit new troops. In at least some cases, paramilitaries are even recruiting from the ranks of the demobilized. A demobilized man

¹⁰² Drug traffickers and armed groups are known to use elaborate methods to disguise their control over land. General Comptroller of the Republic, “The Administration of the Agrarian Reform and the Process of Confiscation and Termination of Rural Assets” (*La Gestión de la Reforma Agraria y el Proceso de Incautación y Extinción de Bienes Rurales*), <http://eltiempo.terra.com.co/judi/2005-06-09/ARCHIVO/ARCHIVO-2101378-0.doc> (retrieved June 29, 2005).

¹⁰³ According to the Office of the High Commissioner for Peace, as of June 2005, 5,285 paramilitaries had participated in collective demobilizations, and approximately the same number of weapons—5,828—(this number includes 2,335 grenades) had been turned over. See Summary Chart, n.d., http://www.altocomisionadoparalapaz.gov.co/desmovilizaciones/2004/index_resumen.htm (retrieved June 27, 2005).

in Bogotá told us that “there are people from the guerrillas who [after deserting] have joined the AUC. On the corner [outside the reference center] they are recruiting for the self-defense forces. They are paying 400,000 pesos.... They have also gone to the shelters to recruit.” Another told us that he had been approached “several times” by recruiters, and that “many” of the people who had demobilized with him had rejoined armed groups. Such statements have been corroborated by news reports about other demobilized persons, who claim that the people who are trying to recruit them are also purchasing new weapons.¹⁰⁴

VI. The Role of the OAS Mission

In February of 2004 the Organization of American States (OAS) established a Mission to Support the Peace Process in Colombia (“OAS Mission”). The purpose of the OAS Mission is to “enable the OAS to provide technical support to the verification of the ceasefire and cessation of hostilities, demobilization, disarmament, and reintegration initiatives” in Colombia.¹⁰⁵

In its authorizing resolution, the OAS Permanent Council emphasized “the importance of the principles of truth, justice, accountability, and reparation to victims in laying the foundations for lasting peace in Colombia.”¹⁰⁶ It also specifically resolved “to ensure that the role of the OAS is fully consistent with the obligations of its member states with respect to the effective exercise of human rights and international humanitarian law, and to invite the Inter-American Commission on Human Rights to provide advice to the Mission.”¹⁰⁷

In practice, however, the OAS Mission has played a highly questionable role, serving primarily as a rubber stamp for the actions taken by the Colombian government.

¹⁰⁴ “Groups of self-defense forces are recruiting reinserted people in shelters in Bogotá,” *El Tiempo*, May 4, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2058961.html (retrieved May 5, 2005). Some authorities told us that they were concerned that demobilized members of the Calima Block may have already become involved with other paramilitary blocks operating in the region, such as the Pacifico Block, or with drug trafficking gangs such as the Machos and Rastrojos. Human Rights Watch interview with law enforcement officials, Cali, March 2005.

¹⁰⁵ Organization of American States Permanent Council, *Support to the Peace Process in Colombia*, OEA/Ser. G CP/RES. 859 (1397/04), February 6, 2004, <http://www.oas.org/main/main.asp?sLang=S&sLink=http://www.oas.org/documents/spa/colombia.asp> (retrieved July 17, 2005).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

Throughout, the OAS Mission has been silent about the problems with the process, and as a result, has helped to give the process a veneer of international legitimacy.

According to mission officials, the OAS Mission is not allowed to publicly give its opinion about the problems with the process because it has no reporting function. In the words of one official, "I envy Fruhling [the head of the Office of the U.N. High Commissioner for Human Rights in Colombia] because he has a reporting function."¹⁰⁸ Also, mission officials claim that they are not responsible for determining whether the legal framework they are working with is consistent with international standards. Instead, "that is what the Inter-American Commission on Human Rights is for."¹⁰⁹

This explanation is puzzling because the OAS Mission has actually made a number of statements in favor of the government's handling of demobilizations, even dismissing international concerns.¹¹⁰ And it continued to do so despite the Inter-American Commission on Human Rights' strong criticism of the process.¹¹¹

¹⁰⁸ Human Rights Watch interview with Claudia Pérez de Vargas, OAS Mission, Bogotá, April 11, 2005.

¹⁰⁹ Ibid. In the Mission's fourth report to the OAS, it stated "MAPP/OAS assumes its mandate based on the premise that its work is consistent with the obligations of the OAS member states with respect to the full exercise of human rights, international humanitarian rights, and the advisory services that the IACHR should provide to the Mission in this area." Organization of American States, *Fourth Quarterly Report on the Mission to Support the Peace Process in Colombia* [hereinafter Fourth Quarterly Report], OEA/Ser. G., CP/doc. 3989/05, March 11, 2005, <http://www.oas.org/main/main.asp?sLang=S&sLink=http://www.oas.org/documents/spa/colombia.asp> (retrieved June 9, 2005).

¹¹⁰ For example, in November 2004, the head of the Mission stated that the process should be supported "with all its imperfections," that he had "never seen a peace process that is so conditioned," and that one should bear in mind that in other places whole armies had been demobilized to "defend the human rights of those who are alive." See "OAS asks the world for more help for massive demobilizations of paramilitaries," *El Tiempo*, November 9, 2004, http://eltiempo.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-1894470.html (retrieved November 10, 2004). See also Margarita Martínez, "OAS Reproaches U.S., EU over Colombia," *The Miami Herald*, December 14, 2004, <http://www.miami.com/mld/miamiherald/news/world/americas/10412269.htm> (retrieved December 14, 2005).

¹¹¹ In December 2004, the Inter-American Commission on Human Rights released a report that criticized the Colombian government's demobilization bill and its handling of the process. Organization of American States, *Report of the Inter-American Commission on Human Rights about the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, Doc. 60, December 13, 2004, <http://www.cidh.oas.org/countryrep/Colombia04sp/indice.htm> (retrieved June 30, 2005). In June 2005, OAS Mission chief Sergio Caramagna defended the process from criticism, stating that it was the only demobilization process in Latin America that was being carried out without amnesties and that "I would like to ask these critics which persons have been amnestied, forgiven, or been given the benefit of having the crimes committed forgotten. There is not a single case, absolutely not a single case." "Chief of OAS Mission in Colombia defended process with the paramilitaries," *El Tiempo*, June 24, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2120529.html (retrieved July 17, 2005). He also stated that the demobilization process was "on a good path." See "Sergio Caramagna: The Peace Process with the AUC is on a good path," *Radio Caracol*, June 10, 2005, <http://www.caracol.com.co/noticias/178052.asp> (retrieved June 10, 2005).

In recent days, the Inter-American Commission has publicly criticized the demobilization law approved by the Colombian Congress for its failure to include adequate mechanisms to protect victims' rights to truth, justice and reparation.¹¹² It remains unclear what action the Permanent Council will take with respect to the OAS Mission in light of the Inter-American Commission's analysis.

But even putting aside the OAS Mission's failure to publicly uphold these international standards on victims' rights, there is no indication that the OAS Mission is playing a useful role in the verification of the demobilization process.

In its reports to the OAS, the OAS Mission states that it verifies the lists of demobilized combatants, as well as the weapons that are turned over by paramilitaries going through the process.¹¹³ But neither the government nor the OAS Mission has independent information about who all the members of each group are, or what weapons they own. So their "verification" appears limited to making a list of the weapons that the groups choose to turn over, and making sure that the persons who say they are going to demobilize are the same ones who in fact go through the ceremony. Beyond that, representatives of the OAS Mission are present during the destruction of explosives, and frequently assist the Office of the High Commissioner for Peace in carrying out tasks (for example, transporting those who have signed up to demobilize to the place where the demobilization ceremony will take place).

The OAS Mission has representatives stationed at the various reference centers for demobilized persons to verify the reintegration process. It also supposedly does work with communities affected by violence, although in its own words, "the work of the Mission was basically to develop awareness activities regarding the mandate and the process of a return to civilian life and assisting the Office of the High Commissioner in promoting the transition to institutionalism."¹¹⁴

In all these tasks, the OAS Mission's role is mainly to be present and accompany existing government institutions as they implement their own demobilization policies. The OAS Mission does not behave like an independent observer, nor does it apply international

¹¹² See Inter-American Commission on Human Rights, Press Release No. 26/05: IACHR Issues Statement Regarding the Adoption of the "Law of Justice and Peace" in Colombia, July 15, 2005, <http://www.oas.org/main/main.asp?sLang=S&sLink=http://www.oas.org/documents/spa/colombia.asp> (retrieved July 17, 2005).

¹¹³ Fourth Quarterly Report.

¹¹⁴ *Ibid.*

standards to evaluate the government's policies. It simply accepts the policies and helps the government implement them.

The OAS Mission has not even played a useful and distinct role in the verification of the cease-fire declared by the paramilitary groups. To the contrary, the OAS Mission has been practically invisible on this issue. In interviews, officials from the OAS Mission acknowledged that the paramilitaries have not fully complied with the cease-fire and said that "from the first day, the OAS has made clear" that it is impossible to fully verify the cease-fire without a complete "concentration" or gathering of all paramilitary troops in a single region within Colombia.¹¹⁵ As a result, they view their mission as "trying to make them fulfill the cease-fire, with the understanding that it cannot be done without a concentration."¹¹⁶

The OAS Mission receives reports of cease-fire violations through various sources. Those sources have included, in recent months, the Public Advocate's office and a Colombian NGO called the Security and Democracy Foundation. In addition, OAS Mission representatives are members, alongside government officials and the AUC itself, of a Verification Committee that is supposed to receive complaints of cease-fire violations.

However, it is far from clear what the OAS Mission does with reports of cease-fire violations. Mission officials claim that they verify those violations by opening an "investigation,"¹¹⁷ interviewing the people who filed the complaints and others who might have relevant information. But in meetings with Human Rights Watch, Mission officials could not describe the criteria and procedures they used to determine what constituted a cease-fire violation.¹¹⁸

Nor does the Mission, apparently, promptly verify all violations of which they receive reports.¹¹⁹ The Public Advocate's office has been submitting reports to the Mission every month, but the Mission does not systematically follow up on the reports with the office.

¹¹⁵ Human Rights Watch interview with Claudia Pérez de Vargas, OAS Mission, Bogotá, April 11, 2005.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ Human Rights Watch interview with Sergio Caramagna and Claudia Pérez de Vargas, Bogotá, November 18, 2004.

¹¹⁹ In its latest report to the OAS the Mission noted that in that monitoring period, the Verification Committee had received 89 reports of cease-fire violations. But over half of those cases (48) were still "in process of verification." Fourth Quarterly Report.

According to the OAS Mission, the verification process “is intended not only to establish concrete cases of violations of the cessation of hostilities but also to discourage violations and thus improve on the commitment undertaken by the AUC.”¹²⁰ But even when the OAS Mission does verify a violation, it does not publicly denounce it, or even report it to the OAS Permanent Council.¹²¹ Rather, all the OAS Mission does with its information about cease-fire violations is to try “to dissuade” the paramilitaries from committing violations through the Verification Committee.¹²²

OAS Mission officials claim that this dissuasion work has, in some cases, prevented mass displacement and other abuses.¹²³ However, it is impossible to determine the extent to which the dissuasion is effective or is even occurring, given that the OAS Mission has not publicly spoken about this work. Aside from a few instances it described superficially in its Third Report, the OAS Mission has not reported on this work to the Permanent Council.¹²⁴

VII. Future Demobilizations

The Colombian government has announced that it hopes to conduct demobilizations of all remaining paramilitary blocks by the end of 2005. The problems with the implementation of recent demobilizations have yet to be addressed in any way, and will almost certainly continue to plague upcoming demobilizations.

The resistance of the Colombian government to conducting demobilizations in a serious and effective manner is reflected not only in its record to date but also in the debate over the demobilization law that the Colombian Congress recently approved.

¹²⁰ Ibid.

¹²¹ In its most recent report to the OAS Permanent Council, the OAS Mission listed the number of violations that were reported and verified, but it did not describe those violations in any way, or even state which paramilitary front was presumably involved. Ibid.

¹²² Human Rights Watch interview with Claudia Pérez de Vargas, OAS Mission, Bogotá, April 11, 2005.

¹²³ Ibid.

¹²⁴ In its third report to the OAS Permanent Council, the OAS Mission cited a few instances in which it claimed its intervention facilitated the release of a hostage, and one in which it lifted a threat. Organization of American States, *Third Quarterly Report of the Secretary General on the Mission to Support the Peace Process in Colombia (MAPP/OAS) in Accordance with Resolution CP/RES 859 (1397/04)*, OEA/Ser.G, CP/doc. 3978/05, December 8, 2004, <http://www.oas.org/main/main.asp?sLang=S&sLink=http://www.oas.org/documents/spa/colombia.asp> (retrieved July 22, 2005). The latest report did not mention a single case like this. See Fourth Quarterly Report.

When confronted with serious proposals for mechanisms to dismantle paramilitary groups, the government repeatedly dismissed them, usually making broad metaphysical statements that failed to address the issue. For example, an oft-repeated mantra of the government has been that the goal of the process is to reach “peace without impunity” and “justice without surrender.”¹²⁵ Frequently, the government has also engaged in personal attacks against politicians and others who criticized its approach to demobilization. Even politicians with strong pro-Uribe credentials, such as Congresswoman Gina Parody, have been accused of being disloyal because of their opposition to the law and their support for an alternate proposal.

The government has argued that those who oppose the law are either politically motivated or poorly informed: the law, they say, furthers victims’ rights to truth, justice, and reparation. Thus, officials point to provisions in the law stating that victims have these rights.¹²⁶ They also point to the fact that the law does not provide for a complete amnesty for atrocities; that it provides for courts, trials, and punishment; and that it establishes a National Commission of Reparation and Reconciliation that is supposed to monitor the process to ensure victims’ rights are protected.¹²⁷

But appearances are deceptive. A closer analysis of the law shows that under the surface, it does not include the necessary mechanisms to make victims’ rights effective, and to guarantee confessions, serious investigation, and reparation in most cases of abuse.¹²⁸ Nor does the law include the necessary mechanisms to ensure a genuine and lasting demobilization and dismantling of paramilitaries’ mafia-like structures.

In the months leading up to its approval, many persons, both within Colombia, and outside, including the U.N. High Commissioner for Human Rights, the Inter-American Commission for Human Rights, several U.S. Senators from both sides of the aisle, and non-governmental organizations, pointed out serious deficiencies in the demobilization law. Human Rights Watch representatives met repeatedly with President Uribe and senior Colombian officials to discuss our concerns over the law.

¹²⁵ This quote from President Uribe crawls across the website of the Office of the High Commissioner for Peace. See Office of the High Commissioner for Peace, <http://www.altocomisionadoparalapaz.gov.co/> (retrieved June 30, 2005).

¹²⁶ The law states that the demobilization process should promote victims’ rights to truth, justice, and reparation. Reconciled Definitive Text of Senate Bill No. 211 of 2005, Chamber of Deputies Bill No. 293 of 2005, published in the *Gaceta del Congreso*, June 21, 2005 [hereinafter *Demobilization Law*], Arts. 4, 6, 7, and 8.

¹²⁷ *Ibid.*, Art. 51.

¹²⁸ Hundreds of members of victims’ groups from around Colombia held a meeting in Bogotá in June 2005 to protest the law’s approval. See Juan Forero, “Relatives of Colombian Victims Protest Concessions to Militias,” *The New York Times*, June 25, 2005, p. A4.

But none of these concerns were ever addressed with anything more than cosmetic changes. And rather than correcting any of the glaring problems in the existing demobilization process, the new law aggravates them. A detailed analysis is presented below.

Investigation and Prosecution of Crimes and Abuses is Greatly Restricted

The initial procedure for demobilization remains largely unchanged. The process begins with the government giving the names of those who are to demobilize to the Attorney General's office. Subsequently, each individual gives a spontaneous declaration.

However, the law introduces drastic reductions in the time prosecutors have to investigate and bring charges against demobilized persons. Under the law, the Attorney General's office will have only thirty-six hours after receiving the spontaneous declaration from each paramilitary to bring charges against him for any crimes in which he may be "reasonably inferred" to have participated, based either on the spontaneous declaration or on any other evidence investigators may have, even if investigations are still at an early stage.¹²⁹

If no charges are brought within thirty-six hours, the paramilitary is off the hook: he will be able to fall within the framework of Law 782, receive a pardon for agreement to commit a crime, and start receiving economic benefits.

If charges are brought, then within the next sixty days "or earlier, if possible," prosecutors are required to complete their investigations and bring the cases to trial.¹³⁰ Under ordinary circumstances, it is virtually unheard of for criminal investigations in Colombia to be completed within such short terms. In the context of massive demobilizations, in which hundreds of paramilitaries could be giving their spontaneous declarations at the same time, it is unlikely that even the most cursory of investigations of their crimes will be conducted.¹³¹

¹²⁹ Demobilization Law, Arts. 17, 18. The Law provides for the creation of a National Justice and Peace Unit within the Office of the Attorney General. Although the law provides for the hiring of new personnel for the Unit, including 150 criminal investigators, it does not provide for an increase in the number of prosecutors. Rather, the unit will include only 20 prosecutors, to be drawn from existing personnel in the Attorney General's office. Art. 34.

¹³⁰ *Ibid.*, Art. 18

¹³¹ The new Attorney General of Colombia, Mario Iguarán, confirmed that it was very unlikely these cases would be investigated in much depth during this period of time. Human Rights Watch interview with Mario Iguarán, newly appointed Attorney General of Colombia, Washington, D.C., July 20, 2005.

To the contrary, charges will probably be brought only against those paramilitaries who are already under investigation. And unless those investigations are already at an advanced stage by the time of their demobilization, or the paramilitary chooses to confess during his spontaneous declaration, there is a serious risk that the prosecutions will end in acquittals.

Moreover, this expedited process may allow paramilitaries to receive acquittals or sentence reductions very quickly, before Colombia's Constitutional Court has even had a chance to rule on the law's constitutionality.¹³²

The government has yet to offer any public justification for these extreme limitations on investigations of known atrocities.

A Single Reduced Sentence as low as Two or Three Years Applies to All "Accepted" Charges

Even in cases where prosecutors happen to have a solid case already prepared, or where the defendant happens to confess, those responsible—however heinous the offense, however many innocent civilians they might have killed—can avoid meaningful punishment by simply “accepting the charges” against them.¹³³ These people will be able to receive reduced sentences set, in theory, at five to eight years.¹³⁴ The sentences for all their different crimes are not served consecutively, but are instead “accumulated.” Thus, the defendant only has to serve a single reduced sentence of five to eight years for all the crimes he committed as a member of the group.¹³⁵

Even if additional charges are brought after sentencing, the paramilitary can avoid any significant increase in his sentence by simply “accepting” the new charges. In that case, he would receive another reduced sentence for the new charges, which might be increased by twenty percent (i.e., approximately another year and a half) depending on

¹³² The Constitutional Court may review the law, but it will probably take several months to do so. In the meantime, the law can be applied. The greatly abbreviated terms for investigation mean that, by the time the Court has ruled on the law's constitutionality, many paramilitaries may have already received their sentence reductions or acquittals. Even if the Court finds the law unconstitutional, it generally does not apply its rulings retroactively, particularly in cases involving criminal procedure.

¹³³ Demobilization Law, Arts. 19, 20, 21. If he does not accept the charges at this stage, he will be ineligible to receive sentence reductions for those charges. *Ibid.*, Art. 21.

¹³⁴ *Ibid.*, Art. 30.

¹³⁵ The defendant only has to serve the longest reduced sentence, which under the demobilization law cannot exceed eight years. *Ibid.*, Arts. 20, 30.

the gravity of the charges.¹³⁶ This new reduced sentence would be “accumulated” with the previous sentence, so that the total time served on all sentences would never exceed eight years.¹³⁷

Moreover, while in theory the reduced sentence is supposed to be between five and eight years, in practice the time served could be much lower. The law provides that eighteen months of the time paramilitaries spend in a concentration zone (i.e., negotiating in Ralito) “shall be computed as time served.”¹³⁸ Also, there is a line of judicial constitutional interpretation that holds that all prisoners should be allowed to receive generally available sentence reductions, including reductions of nearly one third of their sentences for work and study, which could allow them to reduce their sentences by up to one third.¹³⁹ As a result, they could in practice serve as little as two to three years for the totality of their crimes.¹⁴⁰

Political Status

The law provides that membership in a paramilitary group counts as “sedition,”¹⁴¹ a political crime for which extradition is unconstitutional¹⁴² and for which defendants cannot be barred from holding public office.¹⁴³

In addition, all crimes committed in furtherance of paramilitaries’ political goals could also be considered “political.” In Colombia, crimes can be tried jointly and considered “connected” whenever the defendant is charged with “the commission of several crimes, when some have been performed with the goal of facilitating the execution or seeking

¹³⁶ Ibid, Art. 25.

¹³⁷ Ibid. According to Iguarán, the twenty percent increase in the sentence applies on top of the accumulated sentences, and so it is possible that the final sentence would exceed eight years. Human Rights Watch interview with Mario Iguarán, newly appointed Attorney General of Colombia, Washington, D.C., July 20, 2005. But this interpretation is not clear from the text of the law, which states that the twenty percent increase applies to the alternative sentence (as opposed to the accumulated sentence), and in cases of ambiguity, Colombian courts follow a principle of ruling in favor of the defendant. Regardless, the increase –of only one year and a half, which could be reduced further through work and study –would be minimal.

¹³⁸ Demobilization Law, Art. 32

¹³⁹ Citing the principle of equality, the Colombian Constitutional Court has in the past struck down legal provisions that would have limited the application of generally available sentence reductions. See Constitutional Court of Colombia, Decision C-1112/00, August 24, 2000.

¹⁴⁰ For a defendant who has been in Ralito and takes advantage of work and study benefits, the maximum time served would in practice be approximately five years.

¹⁴¹ Ibid., Art. 72.

¹⁴² Constitution of Colombia, Art. 35, as amended by Legislative Act 1 of 1997, Art. 1.

¹⁴³ “Political” crimes can also be the subject of a pardon under Colombian law.

the impunity of others; or in furtherance or as a consequence of the other.”¹⁴⁴ Thus, to the extent that paramilitaries’ drug trafficking and other crimes are found by courts to have been committed in furtherance of their objectives as paramilitaries, paramilitaries’ convictions for those crimes will not bar them from holding public office.¹⁴⁵

Inclusion of this provision in the law was one of the most important demands of the paramilitary leadership, and was the subject of significant controversy before its approval.¹⁴⁶

Opportunity to Avoid Extradition

The United States has sought the extradition of several paramilitary commanders, including Salvatore Mancuso, “Jorge 40,” and Don Berna, for drug trafficking crimes. One of the primary goals of paramilitary leaders in negotiating with the Colombian government has been to find a way to protect themselves from extradition to the United States.¹⁴⁷

Currently, under Colombian law, extradition of Colombian nationals is only possible for non-political crimes committed after 1997. In the 1980s the Colombian Constitutional Court held that the U.S.-Colombia treaty on extradition was inapplicable because of procedural defects in its signature. And the 1991 Constitution strictly prohibited all extradition of Colombian nationals. This prohibition was only partially lifted through a 1997 amendment to the Constitution, which stated that Colombian nationals could be extradited for non-political crimes committed abroad after 1997.¹⁴⁸

The demobilization law does not explicitly bar paramilitaries’ extradition. However, the law gives paramilitaries tools to shield themselves from extradition to the United States.

¹⁴⁴ Colombian Code of Criminal Procedure, Art. 51.

¹⁴⁵ The Colombian Constitutional Court, relying on international law, has held that atrocities may never be considered connected to political crimes for purposes of a pardon. The Court has not yet considered the question of whether atrocities may be considered connected for purposes of extradition, or for purposes of the ability to hold public office.

¹⁴⁶ “In full sessions of Chamber of Deputies and Senate, they will attempt to revive three sensitive subjects of the law of justice and peace,” *El Tiempo*, April 17, 2005, http://eltiempo.terra.com.co/poli/2005-04-18/ARTICULO-WEB-_NOTA_INTERIOR-2040295.html (retrieved April 18, 2005). The First Commissions of the Colombian Senate and Chamber of Deputies (who were charged with the first debate and vote on the law) voted against this article of the law. However, in an unprecedented (and questionable) procedural move, the government appealed this vote to the full Congress, and included the article in the version of the law it submitted for approval to the full Congress. Ultimately, it was approved.

¹⁴⁷ See “Mancuso Speaks,” *Semana*, August 9, 2003, <http://semana.terra.com.co/archivo/resultadosEsp.jsp> (retrieved January 6, 2005).

¹⁴⁸ See Constitution of Colombia, Art. 35, as amended by Legislative Act 1 of 1997, Art. 1.

As part of the demobilization process, paramilitaries may be charged with crimes for which their extradition has been requested. To the extent that they are acquitted or serve reduced sentences for those crimes, paramilitaries will be able to assert the defense of *non bis in idem* (known as “double jeopardy” in common law jurisdictions) to avoid extradition to the United States.

Article 29 of the Colombian Constitution provides that all citizens have a right to “not be tried twice for the same act.” In other words, if a citizen is tried and acquitted or convicted in Colombia for one act, he cannot be tried again for that same act (even if the charges are different). The Colombian Constitutional Court has held that, under Article 29, extradition is not possible “when the person requested by the authorities of another State is... fulfilling a sentence for the same criminal acts to which the request makes reference.”¹⁴⁹

Paramilitaries who wish to avoid extradition can (and will probably be advised by their lawyers to) admit all the criminal acts they have committed in the United States during their spontaneous declaration. Such an admission would immediately trigger a prosecution and trial in Colombia.¹⁵⁰ Once a paramilitary commander is serving a reduced sentence in Colombia for the crimes he committed in the United States, the prohibition on double jeopardy in Art. 29 of the Colombian Constitution will bar his extradition on any charges based on the same acts for which he is serving a reduced sentence. And the reduced sentences under the demobilization law would be far preferable to lengthy prison sentences in the United States.¹⁵¹ This protection from

¹⁴⁹ Colombian Constitutional Court, Decision C-622/99.

¹⁵⁰ Under ordinary law in Colombia, charges are brought against an individual when “based on the material probatory elements, physical evidence, or legally obtained information, it can be reasonably inferred” that he is responsible for a crime. See Colombian Code of Criminal Procedure, Art. 287. The demobilization law alters this standard in two ways:

- (a) Charges must also be brought whenever, based on the demobilizing person’s spontaneous declaration it can be reasonably inferred that he is responsible for a crime. See Demobilization Law, Art. 18.
- (b) The charges must be brought within 36 hours after the spontaneous declaration. See Demobilization Law, Arts. 17, 18.

Thus, if in his spontaneous declaration, a commander decides to “confess” all the criminal acts he committed in the United States, the Attorney General’s Office must charge him for those acts within 36 hours.

¹⁵¹ Paramilitaries might be able to add a second layer of protection from extradition by arguing that the narco-trafficking crimes for which they were requested in extradition are “connected” to their paramilitarism, and thus are also “political” crimes for which extradition is unconstitutional. In other words, if a judge convicted a paramilitary of narco-trafficking as a “connected” crime to paramilitarism, the paramilitary could then argue that it is unconstitutional to extradite him for that crime.

The government disagrees that this would be a viable defense, arguing that the demobilization law refers to a provision of the 1988 U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which says that narco-trafficking should not be considered a political crime for purposes of extradition. See 1988

extradition would apply to many paramilitary commanders, and could easily extend to so-called “pure” drug traffickers, who joined or formed paramilitary groups for the sole purpose of receiving benefits.¹⁵²

Although it is not necessary, paramilitaries may also be protected from extradition through the exercise of presidential discretion. For an extradition request to be granted in Colombia, the Supreme Court must first approve it. However, even after the Court’s approval, the President retains the discretionary authority to grant or deny the request. With respect to demobilized paramilitary leaders, President Uribe has stated that it may be necessary “in some cases... to suspend the extradition.”¹⁵³

Full and Truthful Confession is not a Condition to Get Sentence Reductions

As already described, the law requires paramilitaries to give a spontaneous declaration to the authorities in which they “will” describe their “participation in criminal acts.”¹⁵⁴ However, the declaration is an unsworn statement in which there is no obligation to tell the truth. A full and truthful confession is not required.

U.N. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Art 3 (10). The Convention, however, contains several qualifications in favor of domestic law, and Colombian courts have yet to interpret Art. 3(10).

In any case, this additional layer of protection is not necessary: if paramilitaries manage to get convicted under the demobilization law of the crimes for which they have been requested for extradition, they will be able to avoid extradition thanks to the principle of non bis in idem, regardless of whether the narco-trafficking crime is considered political.

¹⁵² The Colombian government removed from the law provisions that could have prevented drug traffickers from receiving benefits under the law. A prior version of the bill provided that individuals who had been involved in drug trafficking before joining the paramilitary group could not receive sentencing benefits. Thus, so-called “pure” drug traffickers who had joined paramilitary groups for the sole purpose of receiving sentencing benefits would have been barred from doing so. But the version of the bill that the government submitted to the full Congress, and which was finally approved, deleted these articles.

The government nonetheless argues that the law only provides sentencing reductions for the crimes they committed during their membership in the paramilitary group—not for crimes they had committed before then. See Demobilization Law, Article 2. This is technically accurate. However, for this limitation to effectively bar drug lords from receiving benefits for crimes they committed before they were paramilitaries, prosecutors would have to be able to prove when the defendants joined the paramilitary groups. In most cases, prosecutors will likely have little evidence of the date of entry in the group other than the drug lords’ own self-serving statements that they joined the group before they committed all the crimes for which their extradition has been requested. And prosecutors will have only a small window of time to find evidence to the contrary. In fact, there are already signs that drug traffickers and other criminals are trying to associate themselves with paramilitary groups to receive sentence reductions for their crimes. See, e.g., The Office of Envigado, one of the most feared organizations of the criminal world, ends,” *El Tiempo*, July 20, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2153967.html (retrieved July 21, 2005).

¹⁵³ Voice of America interview with President Alvaro Uribe, Bogotá, July 1, 2005.

¹⁵⁴ Demobilization Law, Art. 17.

The government has made two arguments against conditioning sentence reductions on a full and truthful confession. First, according to Restrepo, benefits cannot be conditioned on confession because that would violate defendants' constitutional rights against self-incrimination as interpreted by the Constitutional Court.¹⁵⁵ In fact, however, this is a misinterpretation of the holding of the Constitutional Court. The single decision on which Restrepo bases this claim deals with the question of what constitutes a coercive environment for interrogation, but does *not* hold that conditioning benefits on truthful confession would be problematic in any way.¹⁵⁶

Restrepo has also argued that to condition benefits on confession would be equivalent to “confession under torture, something very typical of physical duress in the times of the inquisition as well as under dictatorships.”¹⁵⁷ For this reason, Restrepo claims that it is enough and plenty, for purposes of establishing the truth, if paramilitaries merely “accept the charges” against them, without disclosing any information about their involvement in the atrocities or other crimes in question. Beyond that, he believes no further investigation is really necessary.

But to condition benefits on a full and truthful confession is a common practice in many countries, such as the United States, where confession is a standard part of a plea bargain. It does not necessarily have to be a coercive element, particularly where the defendant understands there is no compulsion to do so and that he may instead defend himself in court against any and all charges—a possibility under the law. Without some inducement to encourage paramilitary members to provide a full and truthful account of the facts, there will be little that investigators can do to make headway against the impunity of these highly organized criminal gangs.

The government claims that Article 25 of the law creates an effective incentive for disclosure of all crimes.¹⁵⁸ In fact, it does not. As previously described, Article 25 states that if after receiving sentence reductions, or after receiving benefits under Law 782, a defendant is charged with new crimes he can still receive reduced sentences by accepting

¹⁵⁵ “Responses of the High Commissioner for Peace, Luis Carlos Restrepo, to Parliamentarians from the Second Commission of the Senate about the Justice and Peace Bill,” April 13, 2005, http://www.altocomisionadoparalopez.gov.co/noticias/2005/abril/abr_14_05.htm (retrieved June 30, 2005).

¹⁵⁶ See Constitutional Court of Colombia, Decision C-621 of 1998.

¹⁵⁷ “Responses of the High Commissioner for Peace, Luis Carlos Restrepo, to Parliamentarians from the Second Commission of the Senate about the Justice and Peace Bill,” April 13, 2005, http://www.altocomisionadoparalopez.gov.co/noticias/2005/abril/abr_14_05.htm (retrieved June 30, 2005).

¹⁵⁸ Human Rights Watch interview with Mario Iguarán, newly appointed Attorney General of Colombia, Washington, D.C., July 20, 2005.

the charges.¹⁵⁹ Judges may impose a twenty percent increase on the new reduced sentence, but the new sentences are accumulated with the old ones, so it is very unlikely that the defendant will ever serve more than eight years.¹⁶⁰ Even if the twenty percent increase could go over eight years, it would translate into at most another year and a half. This is not a meaningful penalty or incentive for disclosure of crimes.

In the overwhelming majority of cases, even those involving commanders, demobilizing persons' incentive will be to disclose as little as possible during their spontaneous declarations, in the hope that the Attorney General's office will not have enough information to bring any charges, and that they will be able to pass, undetected, into the framework of Law 782. This is illustrated by a recently published interview with Daniel Angel, considered to be the second in command of the Office of Envigado, immediately under Don Berna. In the interview, Angel, who has started the demobilization process, is asked what crimes he will admit. He responds that "[t]he Attorney General's office will determine with what it is going to charge us."¹⁶¹

No Incentives to Ensure Turnover of All Illegal Assets and Disclosure of Information about the Group's Structure and Finances

The law states under the title "requirements of eligibility" that for a demobilized person "to accede to" sentence reductions "the assets resulting from illegal activity must be turned over."¹⁶² It also states that those who participate in individual demobilizations (but not collective demobilizations) must "deliver information or collaborate with the dismantling of the group to which he belonged."¹⁶³

These are initial requirements to become eligible for sentence reductions. However, the law does not include a section on revocation of benefits. Thus, once they have gone through the process and received their sentencing reductions, those reductions are

¹⁵⁹ Demobilization Law, Art. 25. The sole exception to this rule is that, if the government proves that the omission of the crime was intentional, sentence reductions cannot be received for the intentionally omitted crime. However, intentional omission is virtually impossible to prove under Colombian law, because of the constitutional presumption that any omission is in good faith. Constitution of Colombia, Art. 83.

¹⁶⁰ As previously noted, Colombia's Attorney General told us he thought the law could be interpreted to allow a twenty percent increase over the total accumulated sentences.

¹⁶¹ The Office of Envigado, one of the most feared organizations of the criminal world, ends, " *El Tiempo*, July 20, 2005, http://eltiempo.terra.com.co/coar/NEGOCIACION/negociacion/ARTICULO-WEB-_NOTA_INTERIOR-2153967.html (retrieved July 21, 2005).

¹⁶² Demobilization Law, Art. 10.2. The same condition for eligibility applies in individual demobilizations: to be eligible for benefits, each individual must "deliver the assets resulting from illegal activity so that reparation is made to the victim, when [such assets] are available." *Ibid.*, Art. 11.5.

¹⁶³ *Ibid.*, Art. 11.1

locked in. Paramilitaries can keep their sentence reductions even if they are later found to have withheld assets or information, or even to have lied to authorities with respect to the group's structure, financing streams, assets, and operations. As a result, these conditions are toothless.

Nor is there any other applicable sanction for lying to the authorities about the group's operations, or failing to turn over all illegal assets. The sanctions for perjury do not apply because paramilitaries' spontaneous declarations are not sworn statements.¹⁶⁴

According to officials from the Office of the High Commissioner for Peace, the government does not need to deal with paramilitaries' assets through the demobilization law because it can just continue to apply existing law that provides for forfeiture of illegal assets. But this is beside the point: the government does not know what or where paramilitaries' assets are, and because of paramilitaries' complex systems for hiding assets (often through third parties) it will be virtually impossible for the government to find and seize them on its own.¹⁶⁵ If the government is going to give the paramilitaries such generous benefits, then the burden should be on the paramilitaries themselves to disclose and turn over their illegal assets.

Unless the law includes real incentives for demobilized members to turn over illegally acquired assets and disclose what they know about the group, the group's criminal networks, financing streams, and assets will almost certainly remain intact. As a result, the state will have failed in its obligations to give effect to victims' rights to reparation and society's right to know the truth about these groups' abuses. And the process will almost certainly fail to dismantle these groups and result in a real and lasting peace.

Commanders Can Receive Sentence Reductions without Ensuring their Forces' Cessation of Abuses

Under the law, leaders of paramilitary groups can receive sentence reductions even if their group continues engaging in criminal activities and atrocities.¹⁶⁶ The law draws no distinction between leaders and "members" of paramilitary groups—they can each

¹⁶⁴ Perjury or "false testimony" under Colombian law only occurs when the false statement is made under oath. See Colombian Criminal Code, Law 599 of 2000 as modified by Law 890 of 2004, Art. 442.

¹⁶⁵ According to news reports, only 205 paramilitary assets have been confiscated under the 2002 Law of Termination of Dominion (Ley de Extincion de Dominio), Law 793 of December 22, 2005. See "Paramilitaries infiltrated regional economies," *El Tiempo*, July 2, 2005, http://eltiempo.terra.com.co/coar/ANALISIS/analisis/ARTICULO-WEB-_NOTA_INTERIOR-2132275.html (retrieved July 16, 2005).

¹⁶⁶ Demobilization Law, Art. 11.

receive the same benefits by demobilizing “individually,” regardless of whether their group demobilizes.

Restrepo told us that he did not understand why Colombian Senator Rafael Pardo and others were criticizing this aspect of the law, because “[i]f they already demobilized, why do you need to ask for a cease-fire?”¹⁶⁷

The importance of conditioning benefits for leaders on their groups’ cease-fire and cessation of criminal activities is that otherwise, leaders may demobilize alone, while their groups remain active. Alternatively, leaders may leave portions of their group operating and engaging in hostilities. To ensure that the demobilization is real and lasting it is crucial that leaders’ benefits be conditioned on their groups’ compliance with the cease-fire and cessation of criminal activities.

VIII. Colombia’s Obligations under International Law

Colombia is a party to numerous international human rights treaties relevant to the current paramilitary demobilization process.¹⁶⁸ These treaties require Colombia to give effect to the right to an effective remedy for the abuses committed by armed groups. Among the remedies required are prompt, thorough, independent, and impartial investigation, prosecution, and punishment of those responsible for abuses, effective guarantees of non-repetition, compensation to victims, and measures that uphold the right of victims and the community to know the truth about the abuses.

The American Convention on Human Rights, for example, states that every person has “the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”¹⁶⁹ This obligation to provide an effective remedy

¹⁶⁷ Human Rights Watch interview with High Commissioner for Peace Luis Carlos Restrepo, Bogotá, March 14, 2005.

¹⁶⁸ Colombia has signed and ratified the International Covenant on Civil and Political Rights and the American Convention on Human Rights, the Convention on the Rights of the Child, as well as the Geneva Conventions, among others.

¹⁶⁹ American Convention on Human Rights, 1144 U.N.T.S. 123, entered into force July 18, 1978, ratified by Grenada on July 18, 1978, Art. 25. See also International Covenant on Civil and Political Rights, (ICCPR), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Colombia on 29 Oct 1969, Art. 2; Convention on the

extends not only to abuses committed by agents of the state, but also to abuses committed by private parties and members of armed groups.¹⁷⁰

In turn, an effective remedy incorporates obligations to thoroughly investigate, prosecute, and punish those responsible for violations. As held by the Inter-American Court of Human Rights, “the State has the obligation to use all the legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”¹⁷¹

The recent report of Independent Expert Diane Orentlicher, appointed by U.N. Secretary General Kofi Annan to update the United Nations principles on combating impunity, provides valuable guidance on interpreting the rights implicated in ensuring a remedy and reparations for the most serious violations of human rights.¹⁷² One injunction under the updated set of principles produced by Orentlicher (“Updated Principles”) is the duty of a state to “adopt and enforce safeguards against any abuse of rules such as those pertaining to prescription, amnesty, right to asylum, refusal to extradite, *non bis in idem*, due obedience, official immunities, repentance, the jurisdiction of military courts and the irremovability of judges that fosters or contributes to impunity.”¹⁷³ The Updated Principles provide that even in cases where they are intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesties and other measures of clemency may not be granted to perpetrators until the State has fulfilled its obligations with respect to thorough investigations of violations, prosecution, trial, and punishment.¹⁷⁴

Of particular relevance to Colombia’s demobilization process, the Updated Principles state:

Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, ratified by Colombia on February, 27, 1991, Art. 39. United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (April 19, 2005).

¹⁷⁰ *Velasquez-Rodriguez case*, Judgment of July 29, 1988, Inter-Am. Ct. H.R., (Ser. C), No.4 (1988), p. 176-77. Also note that Colombia’s armed groups, including the paramilitaries, themselves have obligations under international law pursuant to common Article 3 of the Geneva Conventions.

¹⁷¹ *Paniagua Morales et al*, Judgment of March 8, 1998, Inter-Am Ct. H.R., No. 3, para. 173.

¹⁷² United Nations, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, February 8, 2005.

¹⁷³ *Ibid.*, Principle 22.

¹⁷⁴ *Ibid.*, Principles 24 and 19.

The fact that an individual has previously been tried in connection with a serious crime under international law shall not prevent his or her prosecution with respect to the same conduct if the purpose of the previous proceeding was to shield the person concerned from criminal responsibility, or if those proceedings otherwise were not conducted independently or impartially... and were conducted in a manner that, under the circumstances was inconsistent with an intent to bring the person concerned to justice.¹⁷⁵

States are increasingly understood to have obligations to take measures to give effect to society's and victims' "right to know" or right to truth.¹⁷⁶ "Recent developments in international jurisprudence and State practice have strongly affirmed both the individual and the collective dimensions of the right to know, although the contours of this right have been delineated somewhat differently by various treaty bodies."¹⁷⁷

Finally, Colombia has an obligation to provide for reparation to victims of gross violations of international human rights and humanitarian law, in proportion to the gravity of the violation.¹⁷⁸

IX. Conclusion

President Uribe and other senior Colombian officials have been touring Europe and the United States to seek governments' political and financial support for their demobilization law.

¹⁷⁵ Ibid., Principle 26(b)

¹⁷⁶ Ibid, Principles 2, 4, and 5.

¹⁷⁷ United Nations, *Report of the independent expert to update the Set of Principles to combat impunity*, Diane Orentlicher, E/CN.4/2005/102, February 18, 2005.

¹⁷⁸ *Velasquez-Rodriguez* case, Judgment of July 29, 1988, Inter-Am. Ct. H.R., (Ser. C), No.4 (1988), p.166. The duty of the state to make reparations to victims of serious violations of humanitarian law is made express in, for example, Article 3 of the Hague Convention IV, as well as in Article 8 of the Universal Declaration of Human Rights and Article 2(3)(a) of the ICCPR. "In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim." United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/ L.10/Add.11, April 19, 2005, Art. 15.

In Europe, the response has been lukewarm, though both the Spanish and British governments have indicated a willingness to become involved in verification of the process through the European Union. The member states of the OAS have yet to speak to the issue.

In the United States, responses have been mixed. Several Senators –both Republican and Democrat –have taken a strong and clear position: support depends on Colombia’s correcting serious problems in the law, and actually destroying the structure and power of these armed groups. The U.S. Ambassador to Colombia, however, has made statements in favor of the law.

As demonstrated by this report, the government’s record and practices so far should not inspire any confidence that the problems in the new law will be overcome in implementation. To the contrary, there is every indication that this process is serving primarily the interests of paramilitary commanders and doing little to advance peace or justice. And once the law has been implemented, and sentence reductions granted, it will be too late for the Colombian government to correct its mistakes and recover its leverage over the paramilitary leadership.

We therefore urge the Colombian government to take immediate action to reform its demobilization law and policies. And we urge other countries and international institutions to abstain from lending their credibility to this process. To do so would be to turn themselves into tools of drug traffickers and killers, and accomplices to a process that undermines human rights, justice, and the already weak rule of law in Colombia.

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