



# Center for International Policy

1717 Massachusetts Ave, NW Suite 801

Washington, D.C. 20036

PHONE: (202) 232-3317 FAX: (202) 232-3440

E-MAIL: [cip@ciponline.org](mailto:cip@ciponline.org) WEB SITE: [www.ciponline.org](http://www.ciponline.org)

## Memorandum

July 14, 2005

**From:** Adam Isacson, CIP Colombia Program  
**To:** Interested Colleagues  
**Re:** **A response to the Colombian Embassy's July 12 letter to Congress regarding paramilitary demobilizations**

On July 12, many members of Congress received a fax from the Colombian Embassy offering "information about the Justice and Peace Law recently passed by the Colombian Congress." We have posted a PDF copy of the letter to our website at [www.ciponline.org/colombia/050712emba.pdf](http://www.ciponline.org/colombia/050712emba.pdf).

This new law, which will govern the demobilization of as many as 15,000 paramilitary fighters, is highly controversial. It passed Colombia's Congress with a paper-thin majority, and outside observers worry that it is riddled with loopholes that will allow people responsible for large-scale narcotrafficking and grave human rights abuses to evade meaningful punishment. Worse, it may allow them to remain in command of violent criminal networks.

By basing its arguments on partial information, the embassy's July 12 letter makes the "Justice and Peace" law sound far more reasonable than it actually is. It is likely that the administration may ask Congress to help fund the demobilization process that will be guided by this law. Before deciding whether to approve any such funding, please consider the following responses to the Colombian embassy's letter.

### 1. Claims of progress

Over the past three years, the Uribe government has strengthened the state's ability to go after the terrorists. As a result, homicides are down 40%, kidnappings have been reduced by 70%, and terrorist attacks have declined substantially. More than 12,000 individual members of these terrorist groups have already disarmed and demobilized. Support for Plan Colombia by the United States Congress has contributed significantly to these results. We have consulted regularly with the U.S. Congress on these efforts and many Members have had the opportunity to visit Colombia to see first hand the progress we are making.

- Unfortunately, this downward trend is not uniform. For instance, human rights violations committed directly by the Colombian military are on the increase. The UN [reported](#) earlier this year that in 2004, "There was an increase in reports of extrajudicial executions attributed to members of the security forces and other public officials."
- While statistics for 2005 are so far unavailable, progress is threatened by a strong upsurge in guerrilla attacks that began early this year. "The trend is being ruptured by a wave of rebel attacks that have tarnished the president's law-and-order image as he pushes for re-election," the *New York Times* [reported](#) on July 3. "Three hundred soldiers have died just this year." As part of this disturbing turn, guerrilla attacks on local elected officials have risen dramatically.

- The demobilization statistic is also worth some extra scrutiny. Colombia’s Defense Ministry claimed earlier this year [[Excel file](#)] that, between August 2002 (when President Álvaro Uribe was inaugurated) and December 2004, 9,906 members of terrorist groups had demobilized, 23,842 had been captured, and 5,587 had been killed. This adds up to 39,335 fighters taken out of circulation, which is about equal to the combined estimated memberships of the FARC, ELN and AUC. This makes no sense.

## 2. Origin of the law

However, because demobilization of the AUC, FARC and ELN will occur on a scale never before attempted in Colombia, and because this peace process is so critical to the future security and well-being of the nation, the Uribe government sought a legal framework for peace talks. For nearly two years, the Colombian Congress has intensely debated procedures and conditions of

- The scale of the effort is not the reason a new legal framework was sought. The new law was deemed necessary because existing Colombian law mandated jail terms of up to 40 years for crimes against humanity, thus making voluntary demobilizations unlikely.

this peace process. Every part of Colombian society and many in the international community, including the United States, actively participated in this democratic process. The process was open, pluralistic and transparent. On June 22, the Congress passed its law.

- Hopes for an “open, pluralistic, transparent” process were dashed during the second half of February 2005, when Uribe government officials gave up on seeking compromise. In a series of evening meetings at Colombia’s “White House” with pro-government legislators, the government’s chief peace negotiator, Luis Carlos Restrepo, drew up the very lenient “Justice and Peace” bill and assembled a bare majority in favor. This group shepherded the bill through congressional committees in March and early April, and the full Congress in June, overcoming determined opposition from a broad spectrum of legislators.
- The resulting “Justice and Peace” bill is not a consensus piece of legislation. In fact, on the evening of June 21, it was approved by a bare quorum of Colombia’s House of Representatives. The only representatives who voted – 89 out of 166 members – were those who remained after catcalls, boos and pounding on desks – partially instigated by peace negotiator Luis Carlos Restrepo – silenced the bill’s opponents and hounded them from the chamber. In the Senate, the Colombian daily *El Tiempo* [reported](#), only 54 to 58 Senators – out of 102 total – supported the bill.

## 3. Key provisions of the law

### a. Confessions

• Combatants will come forward, either as individuals or groups, identify themselves, and admit to past crimes.

- Those who confess will not be required to reveal what they know about who commanded them, who supported them, or the structure of their organizations. Though this information is crucial to achieve the full dismantlement of paramilitary groups, prominent legislators who sought to put this requirement in the “Justice and Peace” law

(including several supporters of President Uribe) were thwarted by government opposition. (Removing this requirement also allows wealthy or powerful individuals who supported the paramilitaries – both civilian and military – to remain unnamed.)

- “Because it does not include complete confession and the obligation to contribute effectively to justice through the provision of all information related to the actions of the demobilized person and his group,” [writes](#) the UN High Commissioner for Human Rights’ Bogotá office, “access to the truth is not guaranteed. Without this, the illegal structures cannot be confronted adequately to guarantee their real dismantlement.”
- The “dismantlement” question is of crucial importance, as many observers worry that the paramilitaries may neither disband nor cease illegal activity after a “peace” agreement is negotiated. They are instead concerned that the AUC’s leaders will continue to consolidate political power and control over illegal activity in Colombia, perhaps acting less like parallel armies and more like mafias who control local politics, steal from public treasuries, participate heavily in the drug trade, and kill opponents. By not requiring paramilitaries to provide information about their organizations, and by giving investigators little time to do their job, the “Justice and Peace” law does nothing to prevent this likely outcome.

(For a discussion of the paramilitaries’ growing power and influence, see the Center for International Policy’s July 2005 report, *Peace or “Paramilitarization,”* at [www.ciponline.org/colombia/0507ipr.htm](http://www.ciponline.org/colombia/0507ipr.htm).)

- Meanwhile, there is a strong incentive for those demobilizing to conceal some of their involvement in past crimes, and especially to conceal some of their ill-gotten assets. If un-confessed crimes or unmentioned illegal assets are later revealed, there is no penalty for omission: the ex-paramilitary needs only to confess to them, and to state that his earlier lack of disclosure was unintentional.

**• Any crime the individual intentionally does not confess to can be investigated and tried by ordinary courts, with no benefits from the law and stiffer prison sentences if found guilty.**

- How does one prove that the failure to confess the crime was “intentional”? If the ex-paramilitary simply claims that he “forgot” about the crime, how can it be determined that he is lying? As the Colombian newsweekly *Semana* [put it](#), “It is easier to prove a massacre than to prove bad faith.”
- In one of its most controversial sections, the law provides for only 20 prosecutors and 150 investigators, who will be given only 60 days to investigate each of up to 15,000 demobilizing paramilitaries. As a result, it is enormously likely that thousands of serious crimes will remain unsolved, and that their perpetrators will slip through the cracks.

#### ***b. Asset seizures***

**• Combatants must turn in weapons; release kidnap victims and identify and hand over illegally-gained assets.**

- Again, with weak penalties for partial confession, there is a strong incentive for ex-paramilitaries to seek to keep some of their illegally gained assets.

- The Colombian newsmagazine *Semana* [notes](#), “The legislators whose proposals were defeated alleged that it is unfair that the [paramilitaries] must only declare the assets that they obtained *illegally*. When someone crashes his car into another’s car, he pays the damages with his legally obtained assets. Assets’ illegality must be proved through a complicated asset-seizure process, which is very difficult since so many illegal properties are laundered by putting them in others’ names.” Through such practices, paramilitaries can even declare themselves bankrupt while maintaining estates and bank accounts in others’ names.

### *c. Light sentences*

**• If they fulfill all these conditions, they become eligible for a reduced sentence of five to eight years for crimes committed, with no possibility of further reductions in time served.**

- This is simply inaccurate. Time served can be reduced by up to 18 months, as the law allows this much credit for time served while negotiating (and of course, paramilitary leaders have not spent this time in austere conditions). Penalties are really 3 ½ to 6 ½ years.
- The law states that the government can determine the nature of the confinement. It is highly possible that paramilitary leaders will get their wish to spend their terms under house arrest on “rural estates,” or in luxurious “jails” similar to the facility that briefly held Medellín Cartel chief Pablo Escobar.
- It is worth noting that whether they serve time or not, the law does not prohibit demobilized paramilitaries from joining Colombia’s armed forces in the near future.

**• The law does not grant amnesty for serious crimes committed, nor does it provide a statute of limitations or any other legal benefits for crimes not confessed.**

- This is technically true – crimes won’t be amnestied. They will, however, be subject to disproportionately light sentences.

### *d. Narco-trafficking and extradition*

**• No drug-traffickers can receive legal benefits under the law. The government will continue to fully investigate and prosecute narco-trafficking activities.**

- The law declares participation in paramilitary groups to be a “political crime,” which under Colombian law may be amnestied, and is not subject to extradition. Paramilitary narco-traffickers (and their well-paid lawyers) will argue that since their drug-running was fundraising for the paramilitary cause – and thus connected to the “political crime” of paramilitarism – they should not be prosecuted or extradited for such offenses.
- The UN High Commissioner for Human Rights notes that since the law never defines the types of crimes subject to lighter sentences, this vagueness could constitute a loophole for the forgiveness of drug-trafficking crimes. “The law’s absence of references to an internal armed conflict or international humanitarian law leaves no clear limits with respect to the types of crimes that can be covered by the so-called ‘alternative punishment.’ This lack of context and normative clarity can lead to the inclusion of

common crimes and narco trafficking [among offenses eligible for lighter sentences]."

- Earlier drafts of the "Justice and Peace" law had denied lighter sentences to paramilitary members who were involved in narco trafficking *before* becoming paramilitaries. This provision was quietly stripped from the bill shortly before passage. As a result, narco traffickers who have recently become "*comandantes*" in order to avoid prosecution will still be eligible for lighter sentences. This provision's removal indicates that we can expect to see little political will to prosecute paramilitary leaders for drug crimes.

• **The question of extradition is not addressed in the law, preserving the Colombian government's discretionary authority to comply with extradition requests from other countries. The Uribe government has used extradition as a powerful tool against drug trafficking, sending 270 suspects to the United States over the past three years – more than any other country in the world. Colombia's extradition policy has never been subject to negotiation with illegal armed groups and will remain unaltered.**

- For the reasons explained in the previous section, most paramilitary leaders will probably be successful in fighting extradition on drug charges. President Uribe [told](#) the Voice of America on July 1 that "in some cases, extraditions will have to be suspended."
- The "Justice and Peace" law states that it leaves unaffected Article 3, number 10 of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (which states that drug offenses should not be considered "political offences or regarded as politically motivated"). However, number 11 of the same convention states that governments are not obligated to extradite offenders if they are capable of judging them themselves. As the Colombian newsweekly *Semana* [notes](#), "many view this as the 'shield' against extradition."
- The case of top paramilitary leader Salvatore Mancuso is instructive. Last December, Colombia's Supreme Court ordered Mancuso's extradition to the United States on charges of shipping 17 tons of cocaine. President Uribe suspended the extradition on the condition that Mancuso must continue to participate in the negotiations. After negotiations conclude, does anyone believe that Uribe will lift the suspension and extradite Mancuso?

#### ***e. Reparations***

• **The rights of victims are fully guaranteed. The law establishes new institutions to implement key aspects of the peace process, such as a National Reparation and Reconciliation Commission, which will be led by Colombia's Vice President and will include representatives of the victims. In addition it creates a Fund for the Reparation of Victims and Regional Commissions for the Restitution of Property.**

- The UN High Commissioner for Human Rights [notes](#) that the reparations regime is weak because it depends on (1) the paramilitaries' willingness to declare and turn over their stolen assets voluntarily, and (2) the victims' willingness to take the initiative to confront the powerful ex-paramilitaries. "The law does not offer enough mechanisms to overcome the obstacles to an effective reparation of victims. ... Basically, the law makes reparations depend on the goods and resources that the victimizers themselves want to declare and turn over. It puts the burden of obtaining reparations on the victims ... the most vulnerable, exposed and, many times, the weakest parties ... without giving them

adequate government support during the judicial process.”

- Only crimes for which ex-paramilitaries have been sentenced will be subject to reparations. Victims of crimes to which nobody admits responsibility – there may be many of these – will have no recourse.
- The Fund for Reparation of Victims will be supported mainly by whatever illegal assets the paramilitaries voluntarily give up (and do not conceal). While some funds will come from Colombia’s national budget and international donors, the bill does not authorize a specific amount of money from the Colombian budget, and amounts of donations are never certain. The new law offers payments to victims only “in conformity with the budget of the Fund for Reparation of Victims.” If the budget is exhausted by a lack of paramilitary contributions, victims may go uncompensated.

#### 4. Final arguments in the letter

- The law does not affect the application of the asset forfeiture legislation in force, which to date has allowed the State to recover 5,042 illegal assets.

- The Colombian government’s asset-forfeiture system is a shambles. Upon assuming office in April, Colombia’s “drug czar,” Juan Carlos Vives – who is responsible for managing seized narco assets – [admitted](#) that “if I asked anyone who works here exactly what assets we currently control, nobody would be able to answer me.” This is not a model to follow.

The law establishes a legal structure that seeks to achieve several goals simultaneously. It will identify thousands of individual combatants, most of whom are today unknown to authorities, and bring them to justice. The government will be able to, for the first time, monitor their actions to ensure they do not return to a life of violence. It also establishes a structure to identify and

- The Colombian government has not proven able to monitor the nearly 5,000 paramilitaries who have participated in collective demobilizations so far. According to the May 27 [Washington Times](#), “In Bogota, where officials say 90 percent of former combatants have settled, Mayor Luis Eduardo ‘Lucho’ Garzon has blamed the [demobilization] programs for rising homicide rates in the southern part of the city.” The May 23 [Los Angeles Times](#) notes, “There have been 200 identified cases of militants who have turned to crimes such as theft and armed robbery.” In April, the head of the OAS verification mission warned that demobilized paramilitaries are being recruited by narcotraffickers, active paramilitary blocs, and criminal networks, and the mission’s last report noted that 22 demobilized paramilitary members were the victims of homicides between December 2004 and February 2005.

There are concerns the law does not go far enough to punish combatants with long prison sentences. This was the fundamental issue legislators had to address – how to strike a balance between protecting people from future violence and terror with the desire to punish people who have committed crimes, in a society where almost everyone uses a different yardstick to measure that balance. In the law, ex-combatants who confess and comply fully with the other

- While this is a concern, we recognize that lighter sentences are a consequence of demobilization processes. Even the “tougher” proposal submitted by many Colombian

legislators, which was roundly defeated, contemplated only 2-3 more years in prison.

- As stated above, a much greater concern is that the “Justice and Peace” law, as currently designed, will fail to dismantle paramilitaries, leaving in place powerful organizations involved in criminality, narco-trafficking, and politically motivated death-squad activity.

The law is far from perfect and because we are seeking peace and justice simultaneously, it is inevitable neither cause will be served perfectly. The goal is to advance peace – that is, to ensure that thousands of illegal combatants no longer threaten our society with violence – and achieve as much justice as possible, with as little leniency as is necessary. In comparison to other peace processes around the world and every previous peace process in our country’s history, Colombia is applying a higher standard of justice by requiring full confessions of violations, and providing a level of punishment, before any legal benefits can be bestowed.

- One reason we expect Colombia to adhere to a higher standard of justice is that, unlike most past peace processes worldwide, the paramilitary negotiations are taking place between a government and a pro-government group. The likelihood of impunity, then, is believed to be much higher.
- In the past 50 years, Colombia has gone through numerous peace processes with armed groups in which crimes were unpunished, truth was unrevealed, and reparations regimes were weak or nonexistent. These processes did not bring peace. Colombia remains near peak levels of violence, and the “forgive and forget” processes of the past are part of the reason why. These have fed the conflict through (a) the anger of those who must live alongside their loved ones’ amnestied killers; (b) the widespread belief, since serious abuses usually end in pardons, that crime in Colombia *does* pay; and (c) a lack of public trust in a government that is not only too weak (or unwilling) to prevent abuses, but too weak (or unwilling) to punish them after they happen.

The “Justice and Peace” law’s many loopholes indicate that this pattern is about to be repeated. Therefore we regret that we must advise the U.S. Congress not to offer financial support to the paramilitary demobilization process.