

White House report on progress toward human rights and other certification requirements, January 19, 2001

THE WHITE HOUSE
WASHINGTON

January 19, 2001

Dear :

The challenges faced by Colombia are a matter of national security interest to the United States. Our assistance is crucial to maintaining our cooperative counterdrug efforts and aiding the Colombian Government and people to preserve

Colombia's democracy and address their other urgent socioeconomic challenges. I am gratified by the bipartisan support that our assistance to Colombia has received.

Last August, pursuant section 3201 (a) (4) of the Plan Colombia portion of the emergency Supplemental Act, I decided to waive several human rights and drug eradication conditions contained in the Act because I determined that it was in the national security interest of the United States to furnish assistance to the Government of Colombia.

In the period since I made that determination, the government of Colombia has made important progress in a number of the human rights areas covered by these certification requirements. In addition, the Government of Colombia has also made progress on other human rights issues not directly addressed in the legislation. But more needs to be done.

Enclosed is a report outlining the progress the Government of Colombia has made on the conditions contained in section 3201. Curbing the illicit drug trade and promoting human rights are both central issues in our bilateral relations with Colombia. To this end, the United States Government will continue to engage the Government of Colombia on concrete measures it should take to improve all aspects of its human rights performance.

I am confident that the bipartisan support for Colombia which has been shared in the past will continue.

Sincerely,

[William J. Clinton]

PROGRESS REPORT ON HUMAN RIGHTS IN COLOMBIA

The challenges faced by Colombia are a matter of national security interest to the United States. U.S. assistance to Colombia is critical to maintaining our cooperative

counterdrug efforts and aiding the Colombian government and people to preserve Colombia's democracy and address their other urgent socioeconomic challenges. The package is designed to promote regional security and stability, while also contributing to the advancement of human rights.

Colombia confronts a drug emergency that directly affects the United States. In spite of aggressive counterdrug efforts, coca cultivation in Colombia increased 140 percent during the period 1995-1999. This massive rate of increase threatens to offset, and is in fact partly in response to, the dramatic reduction in coca production in Peru and Bolivia. Ninety percent of the U.S. domestic supply of cocaine is grown or processed in, or transported through, Colombia. The U.S. Drug Enforcement Administration estimates that up to 75 percent of the heroin consumed on the East Coast of the United States comes from Colombia. Illegal drugs cost our society 52,000 lives and nearly \$110 billion dollars each year due to health and other social costs, and lost productivity. The drug trade is also fueling the illegal armed groups involved in Colombia's internal conflict, further exacerbating human rights problems.

One of the goals of U.S. assistance to Colombia is to promote the protection of human rights in Colombia by contributing to various human rights and humanitarian programs in Colombia. The U.S. Agency for International Development (USAID) has various activities already in place and is beginning to implement numerous programs to strengthen human rights institutions and to increase the protection of human rights defenders. One of these initiatives, which will soon be operational, is a human rights early warning system. This system will mobilize, when there is credible evidence, government forces and members of civil society in order to prevent massacres, forced displacement and other human rights violations.

USAID programs for strengthening human rights institutions include improving the delivery of human rights services and strengthening the ability of state institutions and civil society organizations to track and monitor human rights cases. Programs for the protection of human rights workers include the improvement and expansion of the security and protection programs administered by the Ministry of Interior and the provision of protection equipment. USAID has also, so far, disbursed \$25 million appropriated under the Act to five international humanitarian NGOs and international organizations. This funding support is for programs that focus on assisting the internally displaced, the promotion of human rights, and the prevention of violence and strengthening of social organizations.

U.S. funding for alternative development programs has also begun to help the Government of Colombia to support voluntary eradication initiatives. On December 2, during a ceremony in a village in southern Colombia's Putumayo Department, 539 farmers agreed to destroy their coca plots in return for government aid to adopt legal alternative crops. Similar agreements are being pursued with a number of other coca-growing communities.

As discussed below, the bulk of human rights abuses in Colombia continue to be perpetrated by paramilitaries and guerrillas. The Pastrana Administration has acted to ensure that government security force personnel adhere to human rights norms. According to the Center for Investigations and Popular Research (CINEP), during the first nine months of 2000 Security force members were responsible for six percent of the extrajudicial killings attributed to either the security forces or the paramilitaries; CINEP did not include extrajudicial killings attributed to the guerrillas in this tally.

A. Presidential Directive and Decrees

As previously reported, on August 17, 2000, President Pastrana issued a directive to the Military Commander and the Director of the National Police and the personnel under

them. This directive requires the military to abide by the Colombian Constitutional Court decision of 1997 (C-358) which directs the military judiciary to relinquish to the civilian judiciary the investigation, prosecution, and trial of grave human rights violations ("crimenes de lesa humanidad") and other crimes not directly related to "acts of service." Furthermore, Article 1 of the new Colombian Military Penal Code (Law 522 of 1999) explicitly restricts military jurisdiction to crimes that are committed by public forces in the course of active service and that are related to such service.

In addition, the Code clarifies that acts of torture, genocide, and forced disappearance can never be deemed to be acts related to service. Although the Department of State understands that determinations of jurisdiction in particular cases will depend in part on decisions in that regard by the military judiciary and the Superior Judicial Council (which has a constitutional mandate to resolve conflicts of jurisdiction between the civilian and military judiciary), the Constitutional Court's C-358 decision provided a stricter interpretation of "acts of service" than that previously applied by the judiciary. It also characterized military criminal justice as an exception to the general rule, and stipulated that in cases of doubt over jurisdiction, the decision should favor the jurisdiction of ordinary (civilian) courts.

The Pastrana directive notes that the new Military Penal Code "raises to the category of Law of the Republic the policies and scope attributed to Article 221 of the Colombian Constitution under judgement No. C-358 of 1997 of the Constitutional Court." The directive goes on to require that the Armed Forces and Police in Colombia implement these norms. The Department of State believes that, by stating that the military penal code gives the C-358 ruling the status of Law of the Republic, and by directing the Military and Police to implement these criteria, President Pastrana has in effect directed that these relevant offenses be investigated and prosecuted in the civilian justice system.

On September 14 the President signed into effect 11 executive decrees which reformed and professionalized the armed forces. These decrees included provisions for disciplinary removal of armed forces members involved in human rights abuses; the suspension of officials under investigation for offenses including abuse of human rights or acts which could constitute support for illegal armed actors including paramilitaries; and, for the first time, discretionary authority for armed forces leaders to remove personnel at any stage in their career.

Based on Executive Decree 1790, Defense Minister Luis Fernando Ramirez announced the dismissal of 388 members of the military forces on October 16, an action unprecedented in the history of the Colombian military.

According to the Ministry of Defense, of the 388 personnel dismissed, 89 were officers and 299 were non-commissioned officers. Among the dismissed were two lieutenant colonels dismissed from the Army; 14 major/lieutenant commanders dismissed from the Army, and one from the Navy; 27 captain/lieutenants dismissed from the Army, two from the Navy, and three from the Air Force; 21 1st lieutenant/lieutenants junior grade dismissed from the Army, one from the Navy, and eight from the Air Force; nine 2nd lieutenant/others dismissed from the Army, and one from the Air Force; and 225 NCOs dismissed from the Army, 47 from the Navy, and 27 from the Air Force.

These dismissals are a major step forward in promoting greater professionalism and accountability within the Colombian Armed Forces. The Government of Colombia, seeking to limit legal actions against it by those dismissed, has not released the specific reasons for each of the dismissals. Therefore, we do not know how many of the dismissed were human rights related. However, the media has reported publicly and Government of Colombia officials have confirmed privately that some of the dismissals were the result of credible allegations of gross human rights violations or of aiding and

abetting paramilitaries.

As stated in the Department of State's 1999 Country Report on Human Rights for Colombia, the government of Colombia has "demonstrated an increased willingness to remove from duty security force officers who failed to respect human rights, or ignored or were complicit in the abuses committed by paramilitary groups." In several important cases, senior-level officers have been suspended, usually by order of civilian authorities, after charges were brought against them. Examples include Colonel Jorge Plazas Acevedo, who was arrested and suspended in April 1999 in connection with the murder of Benjamin Khoudari; Brigadier General Jaime Humberto Uscategui, who was suspended in April 1999 in connection with the 1997 paramilitary massacre at Mampiripan, Meta; and Lieutenant Colonel Jesus Maria Clavijo Clavijo, suspended in March 2000 after being arrested on charges of collaboration with paramilitaries and involvement in "social cleansing" killings while a member of the Army's 4th Brigade.

According to the March 2000 Human Rights Report of the Colombian Ministry of Defense, 32 members of the Armed Forces were separated from service between 1998 and 1999 for presumed human rights violations. During that same period, the military justice system also ordered the discharge of 65 police officers for presumed human rights violations.

Despite the positive developments noted above, the Administration does not believe that the leaders of the Colombian Armed Forces are sufficiently or promptly suspending members of the Armed Forces who are credibly alleged to have committed gross violations of human rights. The Administration has repeatedly expressed its concern to the Government of Colombia concerning the need for the Government to make further progress in holding military and police personnel accountable for violations of human rights.

In addition, although the Government of Colombia has been explicit in its commitment to treat Paramilitary groups as illegal armed actors, and has increased law enforcement and military actions against paramilitaries, credible allegations of collaboration at some local levels continue to be made. The Administration has raised these issues with the Government of Colombia repeatedly and specifically at all levels of our bilateral dialogue and will continue to work with the Government of Colombia to satisfactorily address these concerns.

The executive decrees signed by President Pastrana in September also created a Penal Military Justice Corps (Cuerpo de Justicia Penal Militar) ("the Corps"), a professional, uniformed military legal corps. Although the Colombian military had previously employed civilian lawyers and had officers who were attorneys, it did not have a separate, uniformed judge advocate corps independent of the chain of command. The new military justice system is independent from the rest of the military structure. The Corps will investigate and prosecute Colombian Armed Forces personnel suspected of misconduct as well as crimes determined to have been committed as an "act of service."

The Colombian Military Penal Justice system is similar, but not identical, to the U.S. Army JAG Corps. The new system will be composed of Magistrates of the Military Court of Appeals, Lower Military Court Judges, Investigating Judges, Prosecutors, and Judge Advocates (Auditor de Guerra) at the Inspector General, Division and Brigade levels. Brigadier General Jairo Pineda has been appointed as the head of Colombia's Executive Directorate of the Military Penal Justice System. Most recently, Brigadier General Pineda served as the Army Chief of Operations in Bogota and Chief of the Strategy Department, Superior War College in Bogota. In his capacity as head of Colombia's Executive directorate, BG Pineda will report directly to the Minister of Defense, a civilian.

Since August 2000, Southcom's Staff Judge Advocate (SJA) and the J5 Human Rights Division have assisted the Executive Directorate of Military Penal Justice system. Our support for the Colombian Corps is intended to strengthen accountability within the military in a way that complements, and does not supplant, enhanced civilian judicial jurisdiction for human rights crimes.

SJA and the J5 Human Rights Division provide ongoing assessments of the Human Rights/Law of war training programs in order to improve, fortify, and strengthen these programs, and the Military Penal Justice system itself. Colombian lawyers underwent an orientation visit to the Judge Advocate General's School of the U.S. Army in Charlottesville, VA and legal offices in Washington, DC in October 2000. According to Brigadier General Pineda, the Colombian military intends to start in February 2001 the construction of a school to train members of the new Corps. Additionally, beginning in January 2001 there will be a U.S. Judge Advocate assigned to extended tours at U.S. Embassy Bogota to further assist in the developing and deploying of the Colombian Corps.

So far, two Colombian "JAG" lawyers are deployed to the Counternarcotics Brigade staff. These lieutenants received training at Fort Benning and Larandia. A U.S. Army Judge Advocate provided operational law and human rights training for the entire Counternarcotics Brigade Staff at Fort Benning and Larandia. According to General Pineda, additional Colombian "JAGs" will be deployed with other units in 2001.

B. Cooperation with Civilian Authorities

During the Pastrana Administration there has also been a gradual, but steady, improvement in the cooperation between civilian authorities and the Colombian Armed Forces in the investigation, prosecution, and punishment in the civilian courts of military personnel who are credibly alleged to have committed gross violations of human rights. Former Attorney General Jaime Bernal Cuellar, whose office can impose only administrative sanctions on state agents, has told the U.S. Embassy he has encountered no obstacles from the military when pursuing investigations of military personnel. Documents, witnesses, site investigations, and other information have been readily provided by military sources when requested, according to the former Attorney General.

The military high command, under the leadership of Defense Minister Ramirez and General Tapias, has stated repeatedly that it will not tolerate collaboration between military personnel and paramilitary groups. President Pastrana has, through administrative actions or direct intervention, ended the careers of at least four generals and numerous mid-level officers and NCOs widely believed to have been either collaborating with paramilitaries or tacitly permitting them to operate. Additionally, on July 6, 2000 President Pastrana signed into force a law codifying forced disappearance, genocide, and forced displacement as crimes. The reformed Military Penal Code, which took effect on August 12, 2000 reiterates that acts unrelated to service (including torture, genocide and forced disappearance) are crimes that may be tried only in civilian courts.

Civilian judicial authorities are increasingly investigating, and prosecuting, military personnel credibly linked to major crimes, human rights violations or collusion with the paramilitaries. The Prosecutor General and Attorney General often launched investigations parallel to, and sometimes in competition with, each other's or the military's investigations. The human rights unit of the Prosecutor General's Office (Fiscalia) investigated, indicted, or prosecuted 303 security force members during 1999, including at least 12 officers, on a variety of charges including homicide, torture, and sponsorship of paramilitary groups. The Attorney General's Office (Procuraduria) and the public security forces demonstrated a greater willingness during the year to follow up with instructions that those ordered arrested be removed from their duties, denied

the right to wear a uniform, or turned over to civilian judicial authorities.

On December 21, 2000 the Attorney General formally charged 17 police and nine army officials with collusion with paramilitaries in the "social cleansing" murders of 160 people in eastern Antioquia between 1995 and 1998. Additionally, five Colombian generals and 22 other officers are being investigated by the Attorney General's Office for failing to protect residents from paramilitary massacres or allegedly collaborating with paramilitaries. In July 2000 the Attorney General's Office reopened the case against four army generals and one lieutenant colonel for failing to take appropriate measures to protect the residents of Puerto Alvira from a May 1998 paramilitary attack. One of these officers is Brigadier General Jaime Humberto Uscategui, who was rearrested on July 31, 2000 in connection with the ongoing trial of the alleged perpetrators of the 1997 Mapiripan massacre. An investigation was also opened concerning the former commander of the 5th Brigade, Brigadier General Alberto Bravo Silva, along with other military and public security force officers for failure to act to prevent the August 21-22, 1999 paramilitary massacre in the areas of Tibu and La Gabarra. Moreover, the Attorney General has taken administrative sanctions against members of the military found to have abetted paramilitary activities, including requiring the removal from services of Brigadier General Uscategui.

According to the Executive Director of the Military Justice Office of the Colombian Ministry of Defense, from August 12 to November 30, 2000 there were 27 cases that had been sent to the civilian courts; however, the Department of State does not have a breakdown of the nature of these cases. Civilian investigative and court proceedings are notoriously slow in Colombia, and their failure to come to resolution quickly is not unique to cases involving the military.

Since the August 1997 Constitutional Court ruling which more narrowly defined the constitutional provision that crimes by state agents unrelated to "acts of service" must be tried in civilian courts, the military judiciary has turned 864 cases (through August 2000) over to the civilian judiciary for investigation and possible prosecution. Military courts heard 540 cases during that time that involved human rights-related accusations within the context of military service (e.g., accidental shooting resulting in death, abuse of authority, illegal detention). Among the cases transferred to the civilian justice system during 1999 were those of three full colonels - representing the first time that the military judiciary turned over cases concerning high-ranking officers. However, many of the cases included in the above figures did not involve gross violations of human rights.

Civilian authorities, including the Prosecutor General's Office (Fiscalia), have expressed concern over the number of prisoners who escape from confinement while awaiting or after trial. Military holding areas, which often are not intended as prisons or detention centers, are no solution. The military has suggested building military prisons for this purpose, but so far resources are not available.

The Government of Colombia needs to take additional steps to ensure that military personnel credibly alleged to have committed gross violations of human rights are brought to justice in the civilian courts, and that military forces are cooperating with civilian authorities to this end. Such measures should include increased cooperation by the military with civilian authorities in executing outstanding arrest warrants against military personnel for alleged human rights abuses or collusion with paramilitary activity; more complete sharing of information with civilian authorities; increased efforts to ensure that alleged perpetrators of human rights violations against whom there are arrest warrants do not escape detention; and implementation of effective measures to protect civilian investigators and prosecutors from threats that impede their work. On balance, the Administration believes that although the Colombian Armed Forces have made some progress, they are not cooperating fully with civilian authorities in investigation, prosecuting, and punishing in the civilian courts. Colombian Armed

in investigating, prosecuting, and punishing in the civilian courts Colombian Armed Forces personnel who are credibly alleged to have committed gross violations of human rights.

C. Actions Against Paramilitaries

The Colombian military, police and law enforcement agencies have also improved their efforts to confront and detain paramilitaries at the same time that continuing guerrilla atrocities have led to an increase in popular support for these illegal paramilitary movements. Arrests, combat operations and intelligence activities against paramilitaries have increased over 1999.

During 2000, military and legal pressures on paramilitaries continued to increase, notably with the November arrest of Jose Efrain Perez, leader of the United Self-Defense Group of Colombia's (AUC) Centauros Bloc and a close associate of AUC leader Carlos Castano. In retaliation, paramilitary forces attacked public security forces in at least one instance, and fought against government forces in several other firefights. For the first time, commanders are required to brief superiors on actions taken against paramilitaries, as well as against guerrillas, on a regular basis.

According to the Ministry of Defense, public security forces including the Prosecutor General's technical police (CTI) captured a total of 556 members of paramilitary groups and killed more than 26 during 1999. The Statistics Center of the Colombian Ministry of Defense provided the following information: From January to October 2000 the military conducted 145 operations against the paramilitaries; capturing 248 and killing or wounding 76. The Ministry of Defense reports that as of October 2000 there were 697 paramilitaries in Colombian prisons. When paramilitaries sought to establish dialogue with the government by kidnapping seven members of Congress, the Government reaffirmed that it would refuse to grant political status to these groups; the members were eventually released.

According to the Ministry of Defense, between January and October 2000 there were 309 arrest warrants, 243 detentions, 517 bonds or other means of assurance, 311 indictments, 33 plea bargains, and 151 investigations against paramilitaries. Among those arrested were Mario James Mejia, charged with leading a February 28 massacre in Barrancabermeja; eight persons associated with the AUC paramilitary group for the 1997 murders of two CINEP human rights workers; and paramilitary leader Reynel Gomez Correa in connection with the 1994 "Trujillo II massacre." Adan Rojas Ospino and Arnoldo Segundo Maza, both close associates of Carlos Castano and key figures in the AUC, were captured in February 2000. In June 2000 six members of a paramilitary organization were each sentenced to 40 years in prison for complicity in at least ten homicides, according to press reports. In September 2000, after Carlos Castano confirmed allegations that his AUC movement receives funds from national and international businesses, the Prosecutor General announced that his office had opened investigations into entities with financial links to paramilitaries.

The Fiscalia is taking vigorous action against a number of military personnel for aiding or abetting paramilitaries. The Fiscalia's Human Rights Special Unit is a task force comprised of more than 100 prosecutors, investigators, and technicians responsible for the investigation and prosecution of human rights crimes. Formed in October 1999, this unit has received specialized training in the United States on conducting criminal investigations of cases involving multiple homicides, bombings, and kidnappings. Although the Fiscalia is committed to prosecuting military personnel colluding with paramilitaries, it remains burdened by competing demands and scarce resources. Our supplemental aid package will help the Fiscalia deal with these challenges by augmenting and expanding the recently created Human Rights Special Unit, and by providing training for judges and public defenders.

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The Government of Colombia has made noteworthy progress in the strengthening of human rights institutions. USAID is funding a program to create an early warning system. This system will mobilize, when there is credible evidence, government forces and members of civil society in order to prevent massacres, forced displacement and other human rights violations. It will strengthen the institutions of the state and will ensure greater accountability, as the government will need to respond quickly to evidence of possible future attacks on civilian populations. The project will be directed by the Human Rights Ombudsman's office and coordinated with the Vice President's office, the Ministry of the Interior, and the Red de Solidaridad (the Solidarity Network). There will be additional coordination with the Ministry of Defense, the Attorney General, international organizations, and civil society. USAID will contribute \$2 million and the Colombian Government will contribute \$1 million to launch the early warning system. In February, the Government created (via executive decree) a Coordinating Center for the struggle against "Self Defense" and other Illegal Armed Groups. To date, however, despite our strong encouragement, this Center has not achieved tangible results and, according to some sources, exists largely on paper.

Despite the progress made, security force actions in the field were not always consistent with repeated statements by President Pastrana and the military high command that they would not tolerate collaboration between military personnel and paramilitary groups. There are credible reports that individual members of the military and the police continue to abet - directly or indirectly - paramilitary activities. Reports of permanent paramilitary bases or roadblocks located near military installations persist in several areas of the country. Moreover, efforts to investigate and prosecute paramilitaries and armed forces that aid or abet them have yielded mixed results.

Overall, the Administration does not believe that the Government of Colombia has made sufficient progress in vigorously prosecuting in the civilian courts the leaders and members of paramilitary groups and Colombian Armed Forces personnel who are aiding or abetting these groups. However, the Administration strongly supports the efforts by the Government of Colombia to undertake all necessary measures to eliminate impunity within the military and the police and to dedicate to the Fiscalía all necessary resources to permit it to investigate and, as appropriate, prosecute members and leaders of the paramilitary groups and members of the Armed Forces and the National Police who assist them.

D. Strategy to Eliminate Coca and Poppy Production

The Colombian Government in Plan Colombia has set a goal of eliminating 50 percent of drug crop cultivation within five years (October 2005). This target is in keeping with the much-publicized reductions achieved in Peru and Bolivia. A 50 percent reduction is significant, realistic, and obtainable.

Any plan for total coca and poppy elimination in this time period would require more resources than are contemplated in Plan Colombia. As the implementation of Plan Colombia proceeds, it may be possible for the Government of Colombia to revise its timetable for drug elimination; this is particularly true for opium poppy elimination. The Administration has asked the Government of Colombia to determine a timetable, and an estimate of resources, that would allow it to work toward a strategy of eliminating coca and poppy production. More immediately, the U.S. funding for alternative development programs has provided support for the Government of Colombia's voluntary eradication initiatives.

With respect to mycoherbicides, we have made clear that the United States will support a program approved by the Government of Colombia of rigorous, carefully supervised research and testing in Colombia to determine whether mycoherbicides are safe, effective, and superior to chemical eradication methods. Such support would require a broader national security assessment, including consideration of the potential impact on

broader national security assessment, including consideration of the potential impact on biological weapons proliferation and terrorism, to determine that the use of this particular drug control tool is in our national interest.

The Government of Colombia has made important progress in developing policies and legislation that will serve as an important base for strong implementation measures to improve the human rights situation. We continue to press the Government of Colombia to improve its implementation of programs designed to enhance respect for human rights and to protect human rights advocates and defenders.



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