



State Department Memorandum of Justification on 2002 Human Rights Conditions, May 1, 2002

DETERMINATION RELATED TO COLOMBIAN ARMED FORCES UNDER SECTION 567 (a) (1) OF THE KENNETH M. LUDDEN FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS, 2002 (P.L. 107-115)

Pursuant to the authority vested in me as Secretary of State, including under section 567 of the Kenneth M. Ludden Foreign Operations, EXport Financing, and Related Programs Appropriations Act, 2002 (P.L. 107-115) (the "FOAA"), I hereby determine and certify that: (A) "[t]he Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary groups;" (B) "[t]he Colombian Armed Forces are cooperating with civilian prosecutors and judicial authorities (including providing requested information, such as the identity of the persons suspended and the nature and cause of the suspension, and access to witnesses and relevant military documents and other information), in prosecuting and punishing in civilian courts those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary groups;" and (C) "[t]he Colombian Armed Forces are taking effective measures to sever links (including by denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation), at the command, battalion, and brigade levels, with paramilitary groups, and to execute outstanding orders for capture for members of such groups." The Department of State has consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the conditions contained in section 567(a)(1).

This determination shall be published in the Federal Register and copies shall be transmitted to the appropriate committees of Congress.

(signature)

Secretary of State

MEMORANDUM OF JUSTIFICATION CONCERNING HUMAN RIGHTS CONDITIONS WITH RESPECT TO ASSISTANCE FOR COLOMBIAN ARMED FORCES

Section 567 of the Kenneth M. Ludden Foreign Operations, Export Financing and Related Programs Appropriations Act, 2002 (P.L. 107-115) ("FOAA") lays out conditions under which assistance using funds appropriated under the FOAA may be made available for the Colombian Armed Forces. In particular, section 567(a)(1) provides that not more than 60 percent of such funds may be obligated after the Secretary of State has made a determination and certification with respect to certain human rights related conditions. This memorandum lays out the justification for the Secretary of State's Determination that the factors in section 567(a)(i) have been met.

The Colombian military is suspending military officers credibly alleged to have

committed gross violations of human rights or to have aided or abetted paramilitary groups; is cooperating with civilian prosecutors and judicial authorities; and is taking effective measures to capture, arrest, and sever links with paramilitary groups.

Although the Secretary has determined that the Colombian Armed Forces' efforts justify certification at this time, the U.S. and Colombian governments recognize that the Colombian government and military need to do more to protect human rights and to sever military-paramilitary ties. We take all human rights abuses seriously and are committed to continue working with the Government of Colombia on concrete measures it should take to make further progress in improving the human rights performance of its Armed Forces and severing military ties with paramilitary groups.

Following is a detailed discussion of the Colombian Armed Forces' compliance with the factors contained in section 567(a) (1).

Section 567 (a)(1)(A) requires a determination that:

The Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary groups.

The Prosecutor General's Office is responsible for the criminal investigation and prosecution of military personnel alleged to have committed violations of human rights or to have aided or abetted paramilitaries. The Human Rights Unit of the Prosecutor General's Office is a special 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. The Human Rights Unit of the Prosecutor General's Office is committed to prosecuting military personnel who have committed violations of human rights or have colluded with paramilitaries, but it is hampered by competing demands and scarce resources.

Colombia's Criminal Procedure Code establishes the legal basis on which the Armed Forces can suspend military personnel pursuant to a preventive detention order. Under Article 359 of Colombia's Code of Criminal Procedure, all government institutions, including the Armed Forces, are required to suspend from duty at the request of the Prosecutor General's Office any public servant against whom the Prosecutor General's Office has issued an order for preventive detention. When the Prosecutor General's Office orders an individual in the Armed Forces to be "preventively detained", the Armed Forces either hold that individual in custody at military facilities or turn him over to civilian authorities.

The Prosecutor General's Office issues an order for preventive detention during its investigation of a case, prior to formally charging a suspect with a crime. It will make a request for suspension of the suspect if it finds that there is credible evidence of the suspect's involvement in a criminal act and if the criminal act is serious enough to warrant the issuance of an order for preventive detention. Under Colombian criminal procedure, credible evidence warranting the issuance of a preventive detention order (medida de aseguramiento) is defined as "at least two reliable pieces of evidence developed in an investigation linking the suspect to a crime."

We understand that acts that would constitute gross violations of human rights are crimes under Colombian law, and that aiding and abetting paramilitary groups, including organizing, financing or participating in an illegal armed group, is considered a crime

under Presidential Decree 1194, issued on June 8, 1989. Further, these crimes are considered sufficiently serious to lead the Prosecutor General's Office to issue an order for preventive detention and to request the suspension from active duty of an individual credibly alleged to have committed such a crime.

According to the civilian director of the Human Rights Unit of the Prosecutor General's Office, the Colombian Armed Forces - in accordance with Colombian law and practice - are suspending, upon the receipt of an order for preventive detention-and at the request of the Prosecutor General's Office (Fiscalía), military personnel alleged to have committed gross violations of human rights or to have aided or abetted paramilitary groups.

As used in this memorandum, suspension refers to suspension under Colombian law, which means removal from active duty and a fifty percent reduction in pay. (The Joint Explanatory Statement of the Committee of Conference accompanying the FY 2002 FOIA, on the other hand, defines "suspending" as the "removal from active duty and assignment to administrative duties only without combat responsibilities or command of troops in the field, pending investigation and prosecution, when civilian prosecutors determine there is credible evidence to support such allegations.")

The Human Rights Unit of the Prosecutor General's Office reports that between October 1995 and December 2001 it issued 125 individual orders for the preventive detention of military personnel credibly alleged to have committed gross human rights violations or to have collaborated with paramilitaries. According to the Prosecutor General's Office, the Armed Forces complied with the order for the preventive detention of each individual when notified, and suspended the military personnel involved when asked to do so by the Prosecutor General's Office.

Of the 125 military personnel against whom the Prosecutor's General's Office has issued orders for preventive detention since 1995, nineteen military personnel - including six Army officers, four sergeants and : two soldiers - were detained and suspended by the Armed Forces between January 2001 and April 2002 based on credible allegations that they have committed gross human rights violations or have collaborated with paramilitaries. The following twelve individuals remained in preventive detention and were suspended as of April 2002:

- 1) Army Soldier Willinton Romana Tello. Detained and suspended upon an order of preventive detention issued on April 11, 2001 on credible evidence of aggravated homicide.
- 2) Army Second Sergeant Fernando Barrero Sandro. Detained and suspended upon an order of preventive detention issued on April 16, 2001 on credible evidence of aggravated homicide, kidnapping, and aiding and abetting paramilitaries.
- 3) Army Second Sergeant Humberto Blandon Vargas. Detained and suspended upon an order of preventive detention issued on April 16, 2001 on credible evidence of aggravated homicide, kidnapping, and aiding and abetting paramilitaries.
- 4) Army Major Cesar Alonso Maldonado Vidales. Detained and suspended upon an order for preventive detention issued on April 24, 2001 on credible evidence of aggravated homicide and aiding and abetting paramilitaries.
- 5) Marine Sergeant Ruben Dario Rojas Bolivar. Detained and suspended under an order of preventive detention issued on May 4, 2001 on credible evidence of aiding and abetting paramilitaries.
- 6) Army Major Alvaro Cortes Murillo. Detained and suspended upon an order for

preventive detention issued on July 12, 2001 on credible evidence of aiding and abetting paramilitaries.

7) Marine Sergeant Euclides Bosa Mendoza. Detained and suspended upon an order of preventive detention issued on July 26, 2001 on credible evidence of homicide and conspiracy.

8) Army Sub-Lieutenant Nelson Jose Granados Gonzalez. Detained and suspended upon an order of preventive detention was issued on August 1, 2001 on credible evidence of aggravated homicide and conspiracy.

9) Army Lieutenant Oscar Yesid Cortes Martinez. Detained and suspended upon an order of preventive detention issued on December 11, 2001 on credible evidence of aggravated homicide and conspiracy.

10) Army Captain Juan Carlos Fernandez Lopez. Detained and suspended upon an order of preventive detention issued on December 18, 2001 on credible evidence of conspiracy and collaboration with paramilitaries.

11) Army Colonel Victor Matamoros. Detained and suspended upon an order of preventive detention issued December 18, 2001 on credible evidence of conspiracy and collaboration with paramilitaries.

12) Army (Rank Unknown) Jorge Ernesto Rojas Galindo. Detained and suspended upon an order of preventive detention issued on February 23, 2001 on credible evidence of aggravated homicide and conspiracy.

The remaining seven of the nineteen military personnel suspended and placed in preventive detention at the request of the Prosecutor General's Office during 2001 for alleged human rights violations were subsequently released when the Prosecutor General revoked the preventive detention orders based on exculpatory evidence.

567(a)(1)(B) requires a determination that:

The Colombian Armed Forces are cooperating with civilian prosecutors and judicial authorities (including providing requested information, such as the identity of the persons suspended and the nature and cause of the suspension, and access to witnesses and relevant military documents and other information), in prosecuting and punishing in civilian courts those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary groups.

According to Alba Beatriz Silva, director of the Human Rights Unit of the Prosecutor General's Office, the Armed Forces are cooperating with civilian prosecutors and judicial authorities in prosecuting and investigating military personnel credibly alleged to have committed human rights abuses or to have aided or abetted paramilitary groups. This cooperation has included transferring cases to civilian courts, providing information to civilian prosecutors in the form of military records, turning over suspects, and making available witnesses.

For example, Colombian Armed Forces' cooperation with the Prosecutor General's office was key in the Tibu paramilitary massacre case in July 1999. In this investigation, officials from the Prosecutor General's Office reported good cooperation by officers of the Army's Fourth Brigade. Civilian prosecutors said the Army detained suspects, confiscated and turned over to civilian investigators relevant documents, and

cooperated in a judicial inspection of Brigade facilities. This cooperation led to formal criminal charges of homicide and complicity with paramilitary groups against former Tibu military base commander, Army Colonel Mauricio Llorente Chavez, and seven policemen in 2001.

Officials of the Prosecutor General's Office also report that the Armed Forces cooperated in the investigation of the Chengue massacre case by providing access to military witnesses and to military records. The military also suspended, detained and placed at the disposition of civilian authorities two Marine sergeants, Ruben Dario Rojas and Euclides Bosa Mendoza. Rojas and Bosa have been formally charged with conspiracy to commit a crime with an illegal armed group.

Carlos Arturo Gomez, Vice Inspector General, also reports good military cooperation in disciplinary investigations of military personnel alleged to have committed human rights abuses, including providing access to military records and witnesses. The civilian Inspector General's Office (Procuraduria) conducts disciplinary investigations and can impose administrative sanctions, including suspension or dismissal, on military personnel. Although seldom used, the Inspector General also has the authority to order the provisional suspension of personnel during the investigation of offences involving gross misconduct. Under Colombia's Military Criminal Justice Code, the Inspector General's Office is required to exercise oversight of the military legal system. Colombian military investigators immediately notify the Inspector General's Office of the opening of any criminal investigation by military legal authorities of military personnel and provide the Inspector General with regular updates throughout the investigation.

In April 2002, the Inspector General's Office ordered the dismissal of four military personnel, including a Colonel, two sergeants and a corporal, for their involvement in the July 1997 paramilitary massacre in Mapiropan. They were dismissed from the Armed Forces the same month and are facing criminal charges. In 2001, the Inspector General's Office sanctioned 20 Armed Forces personnel for human rights offenses including collusion with paramilitaries and involvement in extrajudicial killings. The Inspector General ordered nine military personnel to be dismissed from the Armed Forces and eleven others to be suspended. The Armed Forces have cooperated in implementing the sanctions ordered by the Inspector General, including the dismissals ordered in 2002.

Human rights groups allege that Colombian military courts are reluctant to transfer to civilian authorities cases of military personnel alleged to have committed human rights violations or to have aided or abetted paramilitaries, and claim that this is a major obstacle to punishing in civilian courts members of the Colombian military who are credibly alleged to have committed human rights violations. During the Pastrana Administration there has been a steady improvement in Colombian Armed Forces' cooperation with civilian authorities in the investigation, prosecution, and punishment in civilian courts of military personnel credibly alleged to have committed gross violations of human rights or to have aided and abetted paramilitary groups.

The Pastrana administration, Colombian judicial authorities and the military have created the necessary framework to ensure civilian prosecution of human rights crimes committed by state agents, including military officials and personnel. On July 6, 2000, President Pastrana signed 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 military service (including torture, genocide and forced disappearance) are crimes that may be tried only in civilian courts. On August 17, 2000, President Pastrana issued a directive to the Armed Forces Commander, the Director of the National Police, and their subordinates requiring them to abide by a 1997 Colombian Constitutional Court ruling (C-358) that crimes by state

agents unrelated to "acts of service" must be tried in civilian courts. The Presidential directive ordered the military judiciary to relinquish to the civilian judiciary the investigation, prosecution, and trial of military personnel alleged to have committed grave human rights violations ("crimenes de lesa humanidad") or other crimes not directly related to "acts of service."

The military courts have been complying with the new legal framework. The Superior Military Tribunal reports that between the August 1997 Constitutional Court ruling and December 2001, the military courts voluntarily turned 622 cases involving military personnel over to the civilian judiciary for investigation and possible prosecution. The 622 cases break down as follows: 429 Army, 156 Navy, and 37 Air Force.

In 2001, the military courts voluntarily transferred 38 cases involving Armed Forces personnel to civilian courts. A review by the U.S. Embassy in Bogota of case summaries of 31 of the 38 cases revealed that 11 of those cases were transferred for crimes related to gross violations of human rights, including two extrajudicial killings. Another seven cases involved crimes indicating possible collusion with paramilitaries, including acquiescence in the escape of prisoners and illegal arms and explosives trafficking. In each of these cases, the military also transferred the case file to the civilian judicial authorities.

The Supreme Council of the Judiciary (CSJ) resolves jurisdictional disputes between military and civilian prosecutors. Such jurisdictional conflicts occur when both the military and civilian legal systems assert jurisdiction, or when the legal system to which the case has been assigned asserts that it is not competent to hear the case. Military personnel charged with a crime by civilian authorities may also challenge the jurisdiction of the civilian court.

The Ministry of Defense and civilian judicial officials agree that military courts respect the decisions of the CSJ. From August 1997 to March 2000 the CSJ ruled on 67 cases involving Armed Forces personnel - transferring 19 from military to civilian courts. In two high profile cases involving acts of omission by Generals Millan and Uscategui that allegedly led to gross violations of human rights, the CSJ ruled that their acts of omission were "in-service" offenses and assigned jurisdiction to the military courts. The Constitutional Court subsequently ruled in November 2001 in the Uscategui case that acts of omission leading to gross human rights violations are not in-service offenses and should be investigated by civilian authorities and tried in civilian courts. The Prosecutor General's Office is currently reviewing the Uscategui case, but has not yet brought charges in a civilian court.

In 2001, the CSJ ruled on 31 jurisdictional disputes regarding military cases. Of these, 11 were assigned to military courts and 20 were assigned and transferred to civilian courts. Six of the twenty cases transferred from the military to civilian courts involved credible allegations of gross violations of human rights or aiding and abetting paramilitaries.

567(a) (1) (C) requires a determination that:

The Colombian Armed Forces are taking effective measures to sever links (including by denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation), at the command, battalion, and brigade levels, with paramilitary groups, and to execute outstanding orders for capture for members of such groups.

The Colombian Armed Forces are taking effective action to sever links between military personnel and paramilitary units at the command, battalion and brigade levels. The

military high command, under the leadership of Defense Minister Bell and Armed Forces

military high command, under the leadership of Defense Minister Bell and Armed Forces Commander General Tapias, has stated repeatedly that it will not tolerate collaboration between military personnel and paramilitary groups. The Armed Forces Commander recently removed Admiral Rodrigo Quinones from his post as Vice-Rector of Colombia's War College because of his alleged failure to prevent paramilitary massacres at El Salado and Chengue.

The Colombian military leadership has also issued guidance to the Colombian military to address the problem of former service members who join the AUC while maintaining their connections with active duty soldiers. The Colombian military is seeking to identify former career soldiers with ties to illegal armed groups and their active duty contacts, and has expressly restricted the access of such individuals to military facilities. The Armed Forces have also increased base security and force protection measures to deter unauthorized contacts between active duty personnel and criminal elements such as paramilitaries.

The Colombian Armed Forces are active and essential participants in the Government of Colombia's Coordination Center for the Fight Against Illegal Self Defense Groups, a high-level, inter-agency body that meets regularly to coordinate the strategy against paramilitaries. Arrests, combat operations and intelligence activities by the Colombian Armed Forces against paramilitaries rose sharply in 2001. According to Colombian authorities, the Government of Colombia captured 992 paramilitaries (590 captured by the Armed Forces) in 2001, compared to a total warrants in urban areas, but the Armed Forces frequently execute arrests in rural areas or areas where there is no police presence. The Prosecutor General's Office Human Rights unit reports that the Armed Forces and Judicial Police were able to execute, by taking the specified individuals into custody, 86 of the 289 arrest warrants issued by the Unit for alleged paramilitaries between January 1, 2001 and February 15, 2002. The remaining arrest warrants will be executed when the specified individuals are found.

The Armed Forces also supported legal actions targeting paramilitary finances. On May 24, 2001, the Colombian Investigative Police (CTI) and the Colombian Army launched joint raids on homes and offices of suspected paramilitary financial supporters in the cities of Monteria (Cordoba Department), Medellin (Antioquia Department), and in Santander Department. Army units also participated in the seizure of financial records of suspected paramilitary backers in a major raid in Calima, near Buga, in Valle de Cauca department, in October 2001.

The Armed Forces have also played a key role in detaining paramilitaries involved in massacres of civilians. The Prosecutor General's Office reported good support and cooperation from the military, particularly the Marines, in capturing 75 paramilitary suspects following the April 2000 Alto Naya (Cauca department) massacre. With military support, civilian prosecutors were able to promptly interview the suspects and gather additional evidence and testimony in the massacre zone.



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