



## **State Department Memorandum of Justification on 2002 Human Rights Conditions, September 9, 2002**

### **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. The Secretary of State made this determination and certification on May 1, 2002 releasing the first 60 percent of those funds for assistance to the Colombian Armed Forces. Furthermore, section 567(a) (2) states that the remaining 40 percent of such funds may be obligated only after June 1, 2002 and after the Secretary of State once again has made a determination and certification with respect to these human rights conditions.

This memorandum lays out the justification for the Secretary of State's Determination that the factors in section 567(a)(1) have again been met. This memorandum also fulfills the reporting requirement found in section 567(c).

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. Newly elected President Alvaro Uribe and his Administration have stated repeatedly their commitment to improving the human rights situation in Colombia. One of President Uribe's proposals to combat the illegal armed groups is the training of civilians as defense or intelligence forces. The United States Government is studying this evolving plan, but we have received assurances from both President Uribe and Defense Minister Ramírez that any civilian defense or intelligence forces will respect human rights and be accountable to the central government. We take all human rights abuses seriously and are committed to continue working with the Government of Colombia on concrete measures that it should take to make further progress in improving the human rights performance of its Armed Forces and in 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 (Fiscalía) 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 currently comprised of more than 160 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.

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, military personnel alleged to have committed gross violations of human rights or to have aided or abetted paramilitary groups.

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. 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 FOAA, 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 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.

The Human Rights Unit of the Prosecutor General's Office reports that between March 2002 and August 2002 it issued seven individual orders for the preventive detention of military personnel credibly alleged to have committed gross human rights violations or to have collaborated with paramilitaries. These cases are in addition to the twelve military personnel identified in the first report as having been detained and suspended by the Armed Forces between January 2001 and April 2002; nine of whom remained in preventive detention and were suspended as of August 2002. With respect to the three who are no longer suspended, two (Army Captain Juan Carlos Fernandez Lopez and Army Colonel Victor Matamoros) had their preventive detention orders overturned on appeal, and one (Army Captain Jorge Ernesto Rojas Galindo) retired from the service. Rojas Galindo's case, however, is still under investigation by the Prosecutor General's Office and he is being detained by civilian authorities.

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. Additionally, between March and July 2002, five military personnel were indicted, suspended from duty and had trial proceedings initiated against them in civilian courts.

The following 16 individuals remained in preventive detention and were suspended as of August 2002:

1. **Army Sergeant Manuel Antonio Mirando Mejia.** Detained and suspended upon an order of preventive detention issued on June 13, 2002 on credible evidence of aggravated homicide, conspiracy and obstruction.
2. **Army Sergeant Luis Reina Sanchez.** Detained and suspended upon an order of preventive detention issued on June 13, 2002 on credible evidence of aggravated homicide, conspiracy and obstruction.
3. **Army Lieutenant Gustavo Gutierrez Barragan.** Detained and suspended upon an order of preventive detention issued April 19, 2002 on credible evidence of aggravated homicide.
4. **Army Soldier Sergio Fernandez Romero.** Detained and suspended upon an order of preventive detention issued April 19, 2002 on credible evidence of aggravated homicide.
5. **Army Soldier Juan de Jesus Garcia Gualteros.** Detained and suspended upon an order of preventive detention issued April 19, 2002 on credible evidence of aggravated homicide.
6. **Army Soldier Orbein Giraldo Sanabria.** Detained and suspended upon an order of preventive detention issued April 19, 2002 on credible evidence of aggravated homicide.
7. **Army Major Jaime Esguerra Santos.** Detained and suspended upon an order of preventive detention issued March 8, 2002 on credible evidence of aggravated homicide.

The following individuals remain suspended, as noted in the May 1, 2002 memorandum of justification:

1. **Army Soldier Willinton Romana Tello**
2. **Army Second Sergeant Sandro Fernando Barrero**
3. **Army Second Sergeant Humberto Blandon Vargas**
4. **Army Major Cesar Alonso Maldonado Vidales**
5. **Marine Sergeant Ruben Dario Rojas Bolivar**
6. **Army Major Alvaro Cortes Murillo**
7. **Marine Sergeant Euclides Bosa Mendoza**

8. **Army Sub-Lieutenant Nelson Jose Granados Gonzalez**
9. **Army Lieutenant Oscar Yesid Cortes Martinez**

In addition to the military personnel placed under preventive detention listed above, between March and July 2002 five military personnel were indicted, suspended from duty and had trial proceedings (resoluciones de acusación) initiated against them in civilian courts:

1. **Army Major Jesus Mahecha Mahecha.** Indicted and suspended as a result of an order issued on March 2, 2002 to initiate trial proceedings for a charge of aggravated homicide.
2. **Army Sub-Lieutenant Nelson Jose Granados Gonzalez.** Indicted and suspended as a result of orders issued March 11 and July 5, 2002 to initiate trial proceedings for charges of aggravated homicide, conspiracy and material misrepresentation.
3. **Army Sergeant Juan Bautista Uribe Figueroa.** Indicted and suspended as a result of an order issued April 12, 2002 to initiate trial proceedings for a charge of aggravated homicide.
4. **Army First Corporal Floriberto Amado Celis.** Indicted and suspended as a result of an order issued April 12, 2002 to initiate trial proceedings for a charge of aggravated homicide.
5. **Army First Corporal Julio Hernando Rios.** Indicted and suspended as result of an order issued April 12, 2002 to initiate trial proceedings for a charge of aggravated homicide.

Section 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 Arméd Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extrajudicial killings, or to have aided or abetted paramilitary groups.**

The Minister of Defense has designated the Coordinator of the Armed Forces' Group of Human Rights and International Humanitarian Law as the liaison between civilian authorities and the Armed Forces. Additionally, to ensure cooperation on the regional and local levels, the directors of the Human Rights offices of the Armed Forces liaise with the representatives of the Inspector General's (Procuraduria) and Prosecutor General's Offices in their respective jurisdictions.

Elba Beatriz Silva, director of the Human Rights Unit of the Prosecutor General's Office, in a letter to the Colombian Vice President dated August 15, 2002, stated: "We consider that the actions of the Armed Forces in helping the uman Rights] Unit 's investigations have been effective and constitutes a key element in the carrying out of its constitutional mission and, especially, adhere to a strict respect for and defense of human rights."

Eduardo Jose Maya Villazón, Inspector General of the Republic of Colombia, in a statement issued to the Department of State dated August 13, 2002, stated: "Permit me to inform you that the Armed Forces of Colombia have cooperated with the Inspector General of the Nation in investigations of military personnel for violations of human rights or for links with paramilitary groups, and has in general offered access to all the required information pertaining to the investigations. In some exceptional cases low

ranking personnel, in issues involving intelligence matters, have demonstrated some resistance to sharing this information, a situation that is resolved when higher officials have been approached.”

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 offenses 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 the first eight months of 2002, 47 members of the Armed Forces were charged by the Inspector General for human rights offenses. Of these individuals, 12 were soldiers, 3 were corporals, 11 were sergeants., 9 were lieutenants, 3 were majors, 2 were lieutenant colonels, and 7 were of unknown rank.

In addition, the Inspector General announced in August 2002 that five members of the Colombian Navy, including General Rodrigo Quiñones, had been charged with the offense of omission for their failure to prevent the January 2001 paramilitary massacre of 27 civilians in Chengue, Sucre Department. The civilian criminal investigation of this case in the Prosecutor General’s Office also continues.

In June 2002, the Inspector General’s Office ordered the dismissal of 29 military members for human rights offenses for their involvement in the military’s staging of a mock combat in order to cover up the deaths of two civilians suspected of being guerrillas in Antioquía Department. The Armed Forces have cooperated in implementing the dismissals ordered by the Inspector General.

During the administration of former President Pastrana there was 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 Uribe Administration has expressed its commitment to increasing this cooperation.

The Pastrana administration, Colombian judicial authorities and the military 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, then-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 (“crímenes 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. A review by the U.S. Embassy in Bogotá of case summaries in August 2002 revealed that 165 of these cases were crimes related to "grave" violations of human rights and for aiding or abetting paramilitaries and were transferred to civilian courts.

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 ("positive" conflicts), or when the legal system to which the case has been assigned asserts that it is not competent to hear the case ("negative" conflicts). 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.

Since January 2002, the CSJ has ruled on 26 jurisdictional disputes. Of these, 12 were "positive" conflicts and 14 were "negative" conflicts. Of the 12 "positive" conflicts, six involved the military and five of those were cases of "grave" violations of human rights or aiding and abetting paramilitaries. Of these five, two cases were transferred to the civilian judiciary, one was transferred to the military judiciary, and the CSJ refused to rule on two. Of the 14 "negative" conflicts seven involved the military, of which five cases were assigned to the civilian justice system and two to the military system. Two of the cases assigned to the civilian judicial system involved charges of aiding or abetting paramilitaries.

Section 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. Newly elected President Alvaro Uribe and Defense Minister, Marta Lucia Ramirez have stated repeatedly that they will not tolerate collaboration between military personnel and paramilitary groups.

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. The Uribe Administration is also exploring additional ways to combat these illegal armed groups.

This is in addition to the substantial efforts of the outgoing- Pastrana Administration. Arrests, combat operations and intelligence activities by the Colombian Armed Forces

against paramilitaries were steady in the first eight months of 2002. According to

against paramilitaries rose sharply in the first eight months of 2002. According to Colombian authorities, the Armed Forces captured 416 paramilitaries in the first eight months of 2002 (compared to 590 in all of 2001) and killed in combat 160 paramilitaries (compared to 96 in all of 2001). Since January 2002, the Colombian military has seized 431 weapons, 289 grenades, 143 radios, 190 vehicles, ten boats, and one airplane. In addition, the military has destroyed numerous drug labs, operated or controlled by the AUC, several AUC camps, and an AUC instruction center.

The Colombian Armed Forces' progress in combating the paramilitaries can be seen in the following operations:

- On May 8, 2002, the Fifth Brigade launched an operation near Convencion, Norte de Santander Department that resulted in the destruction of an AUC camp that could house 30 paramilitaries and the confiscation of equipment, ammunition, and AUC uniforms.
- On May 14, 2002, the Air Force protected Army troops engaged in battle with the FARC and AUC in Campamento, Antioquia Department. The air assault killed 15 AUC and 11 FARC members.
- From May 14-16, 2002 the Colombian Air Force intensively bombed 3 AUC camps near Serrania de San Lucas, Bolivar Department, killing, according to the Colombian Armed Forces, approximately 100 AUC members,
- On May 23, 2002 troops of the Second Army Brigade captured 12 paramilitaries and killed two during combat in Becerril, Cesar Department. In the operation, 9 rifles, 4 pistols, grenades and 8 radios were seized.
- On June 3, 2002 troops of the Second Brigade captured 8 paramilitaries in Sabana Grande, Atlantico Department. The operation netted 4 rifles, 5 pistols, ammunition, communication equipment and 2 gas cylinders.
- On June 13, 2002 units of the Fourth Brigade and Air Force helicopters attacked paramilitary units in an operation in Sonson, Antioquia Department, killing 18 paramilitaries and capturing another 11. Also seized were 28 rifles, a 60mm mortar, ammunition and communications equipment.
- On June 19, 2002 troops of the Fifth Brigade captured 3 paramilitaries in Chima, Santander Department. In the operation 20 rifles, grenades, ammunition, and communication equipment were seized.
- On June 19, 2002, troops of the Fifth Division captured two AUC members in El Llano, Santander Department, and seized 11 rifles, grenades, other armaments, and ammunition, uniforms, armbands and bulletproof vests.
- On June 23, 2002, the Second Division's Third Mobile Brigade killed two AUC members and captured six during an operation in which 9 rifles, ammunition, and bulletproof vests were seized.
- On July 31, 2002, the Colombian Navy's Marine Infantry Unit engaged the AUC's "Liberators of the South" Bloc in Puerto Saija, near the border of Cauca and Narino Departments. During the firefight, one AUC member was killed and five were captured. The Navy seized five boats and seven motors that the AUC had intended to use to transport drugs. They also confiscated 18 AK-47 rifles, two M-16 rifles, other armaments, ammunition, grenades, and radios.
- On August 9, 2002 the Colombian Army's Second Division carried out a major operation against paramilitary forces near the town of Segovia, in eastern Antioquia Department, when an AUC truck ran a Colombian Army roadblock. Twenty paramilitaries were killed and another 17 wounded and captured. The operation netted 28 rifles, 25 grenades, 5,000 rounds of ammunition, and the truck. Three Colombian military personnel were wounded during this operation.

On May 20, 2002, Colombian Army Major Orlando Alberto Martinez Ramirez was

On May 30, 2002, Colombian Army Major Orlando Alberto Martínez Ramírez was dismissed for his alleged role in trafficking 7,640 rifles from Bulgaria to the AUC in 1999 while he was Commander of an Army artillery company in Bogotá. At the time of his dismissal Martínez was assigned to the Army's elite Rapid Reaction Force (FUDRA). This is the first time an active duty Army officer has been caught — and dismissed — for trafficking arms to the AUC. The Prosecutor General's Office is continuing to build its criminal case against Martínez, and based on available evidence, is also investigating the involvement of several others.

Colombian authorities have also increased operations against the AUC's gasoline cartel, which is believed to be responsible for 80 percent of the gasoline and diesel fuel stolen from state oil concern Ecopetrol's pipeline. Strikes against the gasoline cartel included:

- On January 6, 2002, troops from the Second Division's "Ricaurte Battalion" launched "Operation Magara" against the AUC's financial structure in Magara. The Army captured four AUC members, including "Bedoya", the leader of the AUC front in the area. In addition, they seized weapons and 80,000 gallons of gasoline found in subterranean tanks.
- On June 14, 2002, the Second Division took down a gasoline theft operation in Barrancabermeja, Santander Department, in which it captured seven AUC members and confiscated five vehicles.

The Armed Forces have also provided support to civilian prosecutors and judicial authorities investigating and prosecuting alleged paramilitaries. The Colombian National Police are responsible for executing arrest 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 were able to execute, by taking the specified individuals into custody, 20 arrest warrants issued by the Unit for alleged paramilitaries between February 15, 2002 and August 30, 2002. The remaining arrest warrants will be executed when the specified individuals are found.

As an example of this support, on August 2, 2002, with logistical and transportation support provided by the Colombian Air Force and security provided by the Army, prosecutors of the Sixth and Seventh unit of the Prosecutor General's Office in Villavicencio entered Vista Hermosa, formerly part of the demilitarized zone, and captured four individuals as well as weapons, ammunition, communications equipment, and armbands belonging to the AUC. These individuals were arrested (two for narcotics trafficking and two for paramilitarism) and are currently being detained by the Prosecutor General's Office.

The Prosecutor General's Office also reported good cooperation by the military in the highly conflictive area of the Department of Arauca when a commission of 27 prosecutors and investigators traveled to Saravena, Tame, Araqueta and Cravo Norte. The Army provided the necessary security and transportation throughout the commission's six-week-long investigations. In Cravo Norte, when the commission investigated a gravesite of AUC massacre victims, the Armed Force's secured the area, assisted with the verification of information and the location of the site and facilitated the return of the commission to the city of Arauca. The investigations resulted in progress in approximately 100 human rights cases and led to the capture of six paramilitaries and the arrest and dismissal of five policemen.

Additionally during an investigation in early February 2002 of the 2001 Guamalito massacre the Prosecutor General's Office reported that the army provided transportation and security for the investigators who needed to travel to the massacre site.



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