

COLOMBIA

Human Rights and USA Military Aid to Colombia

IV

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With the end of formal peace talks between the government and Colombia's largest guerrilla group, the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo*, FARC-EP), Colombia's war intensified in 2002. The FARC-EP escalated attacks on civilians, among them hundreds of mayors, city council members, and other local officials, threatened and sometimes killed in a bid to cause turmoil as a new president took office. The day President Álvaro Uribe Vélez was sworn in, guerrillas launched an attack with mortars in Bogotá that killed at least eleven people. Meanwhile, paramilitary groups operating with the tolerance and often support of Colombia's military continued to be responsible for numerous massacres, selective killings, and threats throughout the country. Political killings of non-combatants now top 4,000 people per year. Close to three million Colombians have been forcibly displaced. Guerrillas are linked to over 1,700 kidnappings annually and the number of people forcibly disappeared now averages five per day.

Even as we condemn the guerrillas' abusive tactics, we also are deeply concerned about the policies of President Uribe, who has implemented new policies that menace accountability, threaten to weaken the ability of state institutions to monitor and investigate alleged human rights violations, and may usher in a resurgence of outlawed paramilitary groups.

This new attitude was made clear by President Uribe's choice to fill the combined position of Justice and Interior Minister, Fernando Londoño. Since taking office, Minister Londoño has accused Colombia's Constitutional Court of, among other things, usurping executive authorities and excessive judicial activism. The court plays a crucial role in ensuring that the human rights provisions enshrined in Colombia's 1991 constitution are upheld, in principle if not in practice. Among its most important decisions was the 1997 ruling that upheld civilian jurisdiction over alleged human rights violations committed by members of the security forces. The court has also restricted the president's ability to impose extraordinary measures that limit or suspend rights.

Londoño has also announced that the new government planned to re-establish the executive's ability to declare a "state of siege," a power that was intentionally removed from the country's 1991 constitution. If put into practice, this new power would give the president extraordinary powers to curtail civil liberties for an unlimited period. Londoño has said that all public rights and freedoms can be curtailed in the name of security. As announced, the measures would violate a number of Colombia's obligations under international human rights treaties and covenants, which forbid the derogation of certain rights even during a state of emergency.

Only four days after taking office, President Uribe declared a “state of internal commotion,” an emergency measure that gives the authorities special powers to suspend certain guarantees against illegal searches and seizures, among other things. This declaration suggests that the government intends to reintroduce several of the measures already struck down by the Constitutional Court, including the granting of judicial powers to the military. In the past, the armed forces abused similar powers to mask their responsibility for human rights violations and falsify evidence against civilians they accused of support for guerrillas.

President Uribe has also announced a plan to recruit thousands of civilian informers and a force of 15,000 peasants to collect intelligence and, if called upon by the military, to fight guerrillas. The strategy threatens to repeat the tragic history of the 1980s, when similar laws authorized military commanders to set up so-called “self-defence” organizations. Within two years of their formation, these paramilitary groups were linked by government investigators to hundreds of murders and forced disappearances, actions that were often coordinated with the military and funded by drug traffickers, local landowners, and businesses. In 1994, President Samper repeated this mistake by proposing what he called CONVIVIR groups, embraced by then-Antioquia Governor Uribe. Both Amnesty International and Human Rights Watch have documented numerous cases linking CONVIVIR groups with massacres and the murders of civilians, often in coordination with the Colombian armed forces.

President Uribe has surrounded himself with advisers and appointees who have been implicated in alleged human rights crimes or who have a public record of hostility to human rights and the organizations or individuals who defend them, among them:

1. **Pedro Juan Moreno** is a former vice governor to Uribe and architect of the CONVIVIR program in Antioquia. While in office, Moreno sent a threatening letter to Apartadó mayor Gloria Cuartas after she expressed concerns about CONVIVIR links to paramilitary groups. Moreno accused her of harbouring pro-guerrilla beliefs, a reckless charge levelled frequently by the military and its supporters against local officials critical of their activities. More recently, Moreno has advised President Uribe on the design of a new intelligence service that he claims will coordinate civilian informants with the government intelligence services. The sharing of intelligence remains the most important link between the military and members of paramilitary groups. In a September 2002 interview with *El Tiempo*, Moreno said that a key task of the new service will be to “counter disinformation circulated by some international non-governmental groups.”² Similar language is used by the military and its supporters to attack human rights groups, who are often accused — as Moreno has done in the past — of being guerrilla sympathizers.
2. **General Carlos Ospina Ovalle** was promoted by President Uribe to command Colombia's army despite widespread and credible reports of a series of massacres, executions, and torture that troops under his command committed while he led the

² “contrarrestar la desinformación que propagan algunas ONGs internacionales.” “Hay que armar a la gente de bien,” *El Tiempo*, September 1, 2002.

Fourth Brigade in 1997 and 1998. General Ospina was never suspended and no formal investigation was launched. The fact that the crimes were allegedly committed by subordinates would not relieve General Ospina of criminal responsibility if he knew or had reason to know that the subordinates planned or carried out these acts. The concept of command responsibility extends to a failure to take necessary and reasonable measures to prevent such acts or to punish the perpetrators. Several of General Ospina's battalion commanders were later convicted by Colombian civilian courts of working with paramilitaries. After being charged and supposedly detained, two of them left the brigade headquarters where they were under General Ospina's responsibility and joined paramilitary groups. The case involving just one of these massacres, which took place in El Aro, Antioquia, in 1997, was accepted for review by the Inter-American Commission on Human Rights in 2001.

3. **Miguel Posada Samper** is a businessman who has served on Uribe's team of security advisers. Posada frequently accuses international human rights groups and specifically Human Rights Watch of being "sympathizers with Marxist guerrillas" and, together with the State Department, of forming a "strange and shameful alliance with drug traffickers."³ It is of concern that President Uribe has chosen to publicly associate himself with the author of these groundless accusations.
4. **General Rito Alejo Del Río**, currently under investigation by the Attorney General's office for ties to paramilitary groups, is also a close adviser to President Uribe. In 1999, President Andrés Pastrana cashiered Del Río because of the convincing evidence against him; the United States also cancelled his visa.

While the armed forces have improved cooperation with judicial authorities in some areas, this has had little effect due to dramatic changes in the office of the Attorney General. These changes have blocked or derailed key human rights cases in ways that promise to enshrine impunity. Since July 2001, when Attorney General Osorio took office, a marked hostility to human rights investigations and an on-going effort to purge the institution of officials willing to pursue these investigations has become the rule. Within seventy-two hours of Osorio's arrival, he forced the resignations of a number of high ranking and veteran officials, among them the current and former directors of the Human Rights Unit, which has received almost \$9 million in U.S. assistance.

In December 2001, Attorney General Osorio fired four top Technical Investigations Unit (*Cuerpo Técnico de Investigaciones*, CTI) directors, all described as outstanding professionals by other prosecutors and former officials in the Attorney General's office and CTI managers. The firings were so devastating that CTI director General Ismael Trujillo, a retired police officer, later resigned, arguing to an assembly of CTI employees that he could no longer do his job without these trusted professionals.

³ "Guerra en Colombia - La Batalla de Washington" is available under the link "*artículos anteriores*" at the web site of Posada's organization, which calls itself the Centro de Análisis Sociopolíticos at <http://www.cas.org.co>.

In April 2002, seven prosecutors with the Attorney General's Human Rights Unit and one member of the CTI received credible and serious threats related to their work on investigations into high-profile cases of human rights violations. Attorney General Osorio failed to take any measures to protect the officials. Subsequently, they filed for precautionary measures from the Inter-American Commission on Human Rights. Dozens of other prosecutors and investigators have either resigned or fled Colombia since Osorio took office.

The Bogotá office of the U.N. High Commissioner on Human Rights has called attention to the dismissals and threats against prosecutors and investigators and the lack of support they receive from the Attorney General. His record, the office noted in its annual report, raises "serious concerns about the prospects for strengthening the institution and its commitment to combating impunity. Several events have called into question the independence and autonomy of prosecutors in their investigations into human rights violations, particularly those involving paramilitary groups and public officials." Many of the cases we previously used as benchmarks to assess Colombia's compliance with the human rights conditions are now moribund or closed.

Attorney General Osorio's hostility was on full display in a recent opinion piece published in the *Wall Street Journal*.⁴ He was quoted accusing forty-five members of the U.S. Congress of engaging in a "war" to discredit the Colombian authorities, stemming from their signatures on a letter expressing concern about human rights. This accusation echoes those by high-ranking military officers, who routinely denounce the work of competent prosecutors as part of a "judicial war" backed by guerrillas.

CONDITION (a) (1) (A) 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.

There is no evidence to show that the Commander General of the Colombian Armed Forces is exercising the power held by this office to suspend high-ranking officers. To the contrary, our evidence shows that these officers remain on active duty and in command of troops. In the report language that accompanied P.L. 107-115, the U.S. Congress stipulated that "suspending" means "removal from active duty and assignment to administrative duties only."

A glaring example is **Navy General Rodrigo Quiñones**. There is abundant and credible evidence that General Quiñones planned and ordered the murders of at least fifty-seven trade unionists, human rights workers, and community leaders in 1991 and 1992. This case was closed on appeal because the authorities failed to meet a mandatory time limit, not because of any substantive weakness in the investigation. In August 2002, the Internal Affairs Office (*Procuraduría*) formally charged Quiñones with "omission" for failing to prevent the 2001 Chengue massacre, carried out by paramilitaries who killed at least twenty-six people.

⁴ Mary Anastasia O'Grady, "Capitol Hill Leftists Side With Colombian Terrorists," *Wall Street Journal*, August 23, 2002

On May 1, the State Department relied on the Quiñones case to support its assertion that Colombia had made progress in purging abusive officers, making reference to the fact that he had been transferred out of his post as vice rector of Colombia's War College. Quiñones was appointed to the post of military attaché at Colombia's embassy in Israel. In fact, a review of Quiñones' case proves the opposite point: these officers remain on active duty and in positions of influence. Far from being a punishment that ended his career, the transfer was a reward. Israel is one of Colombia's major weapons suppliers and the position is highly paid. Officers compete for these jobs, since they qualify them to receive double their salaries and fix their pensions upon retirement at the highest possible level.

Another officer who remains on active duty is **General Gabriel Díaz**, commander of the Second Brigade. At his previous command at the Twenty-Fourth Brigade, Díaz's troops regularly worked with and supported paramilitary groups in the department of Putumayo. Human Rights Watch has obtained extensive, detailed, and consistent evidence showing that the Twenty-Fourth Brigade maintained a close alliance with the paramilitaries, resulting in extrajudicial executions, forced disappearances, and death threats. At their base, paramilitaries held a training camp that drew dozens of novice fighters from across Colombia. Human Rights Watch also collected testimony showing that paramilitaries regularly paid military officers for their cooperation. Nevertheless, no serious investigation was ever initiated against General Díaz and he is now in command of the Second Brigade in Barranquilla, Atlántico.

The State Department's May 1, 2002, "Memorandum of Justification" for the year's first certification listed nineteen soldiers suspended and detained in 2001. As discussed below, in at least eight of these cases (numbered according to the State Department document), the actual status of the investigations was in serious question at the time the report was written. Far from acting to investigate the ranking officers allegedly responsible for ordering or tolerating abuses, the military, with the complicity of some government officials, sacrifices low-ranking soldiers who may only have obeyed illegal orders. In its September 2002 "Memorandum of Justification," the State Department includes no officer over the rank of major:

3) **Army Second Sergeant Humberto Blandón Vargas and 6) Army Major Álvaro Cortés Murillo**: Implicated in criminal acts while assigned to the Fourth Brigade in Medellín, these officers were only the lowest ranking among the many officers who contributed to that unit's long record of abuses while it was under the command of **General Carlos Ospina Ovalle**. Despite widespread and credible reports of massacres, executions, and torture by troops under his command, General Ospina was never suspended and no formal investigation of his command responsibility in the abuses was ever initiated.

4) **Army Major César Alonso Maldonado Vidales and 12) Army Captain (ret.) Jorge Ernesto Rojas Galindo**: These individuals were detained in relation to the December 2000 attack on trade unionist Wilson Borja. Cell phone records linked Major Maldonado, assigned to army intelligence at Bogotá's Thirteenth Brigade, to one of the gunmen. On April 23, 2002, Attorney General Osorio abruptly fired the human rights prosecutor handling the case. The replacement prosecutor ordered Major Maldonado's bail reduced significantly, resulting in that suspect's release. Maldonado was later ordered rearrested, but there is credible evidence

that Maldonado continues to do intelligence work from his new location at a Bogotá military police barracks and comes and goes at will. This is common. The State Department has noted that in many cases, “military personnel were not relieved of their regular duties while under either military or civilian formal investigation. In some cases, an officer has remained at his post pending the outcome of his appeal, even after the first instance finding (initial judicial finding) was against the officer.”

5) **Navy Sergeant Rúben Dario Rojas Bolívar and 7) Navy Sergeant Euclides Bosa Mendoza**: Both are charged in relation to the 2001 Chengue massacre. During the investigation, one of the prosecutors and three judicial investigators were murdered. The lead human rights prosecutor also received threats and fled Colombia, putting in serious doubt the outcome of the case. Meanwhile the highest-ranking officer implicated — General Quiñones, mentioned above — remains on active duty.

10) **Army Captain Juan Carlos Fernández López and 11) Colonel Víctor Matamoros**: These officers were indicted for collaboration with and the formation of illegal paramilitary groups between 1997 and 1999 in connection with a series of paramilitary massacres in and around La Gabarra, Norte de Santander, between May and September, 1999. Paramilitaries killed more than 145 people. The military disputed jurisdiction in 2001 and closed the case for purported lack of evidence, thus blocking civilian prosecutors from proceeding. Both officers remain on active duty.

The Colombian government has attempted to demonstrate its compliance with Condition (a) (1) (A) by citing the dismissal of hundreds of soldiers, which the State Department has called “a major step forward in promoting greater professionalism and accountability within the Colombian Armed Forces.”⁵ However, the government has released no information to show that these individuals were dismissed because of involvement in human rights crimes and not other allegations like incompetence or sleeping on guard duty. Human Rights Watch confirmed during a June 2002 visit to Colombia that none of these cases were under investigation by civilian authorities

CONDITION (a) (1) (B) The Colombian Armed Forces are cooperating with civilian prosecutors and judicial authorities (including providing requested information, such as the identity of persons suspended from the Armed Forces 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. Colombia's armed forces continue to dispute the jurisdiction of cases involving the investigation and prosecution of alleged human rights violations by members of the military. This violates both Colombian law and a presidential

⁵ “Conference report accompanying the emergency supplemental Act, 2000 as enacted in the Military Construction Appropriations Act, 2001 (P.L. 106-246),” covering the period September 1, 2001-May 31, 2002), Department of State.

directive issued by President Andrés Pastrana that is cited in the September 2002 “Memorandum of Justification.” Among the most glaring examples is the case involving the La Gabarra massacres, which a Human Rights Unit prosecutor had linked to **Army Colonel Víctor Matamoros and Army Captain Juan Carlos Fernández López**. These officers were alleged to have collaborated with and formed illegal paramilitary groups between 1997 and 1999. During that time, paramilitary groups working with their support allegedly killed over 145 people. The military filed its dispute in 2001, ignoring the on-going civilian investigation. When the prosecutor protested, a military court quickly closed the case for purported lack of evidence, a ruling that blocks the civilian system from continuing an investigation of a case now considered completed or risk committing double jeopardy. Both officers remain on active duty. Several cases of human rights violations implicating senior-ranking members of the security forces were only transferred following judicial rulings by civilian courts that were resisted by the military, among them the July 1997 Mapiripán massacre and the torture, murder, and “disappearance” of Nydia Erika Bautista de Arellana on August 30, 1987.

The Ministry of Defence has circulated statistics that purport to demonstrate that military tribunals are complying with this condition. Between August of 1997 and December 2001, the Defence Ministry claims that it transferred 1,372 cases to civilian courts. Nevertheless, it is critical to examine these statistics and not take them at face value. An estimated 87% of these cases implicate low-ranking members of the armed forces, not officers. In citing them, a State Department report filed in November 2000 included a crucial caveat: “It is unclear how many of those cases involve human rights violations.” The State Department has also noted that Defence Ministry statistics are notoriously unreliable, occasionally contradictory, and even misleading.

Often, Colombian government statistics prove the very thing they are supposed to deny. For instance, we learned in January 2002 that between October 2000 and October 2001, the Superior Military Tribunal issued eight guilty verdicts for crimes that it described as possible human rights violations. That means that these tribunals continued to adjudicate these cases in violation of the law, the directive issued by President Pastrana, and the requirements of this condition. In the September 2002 “Memorandum of Justification,” the State Department cites jurisdictional disputes filed before Colombia’s Superior Judicial Council since January of 2002. Unsaid is that there would be no disputes at all if the Colombian Armed Forces were abiding by the law and turning over cases involving alleged human rights violations.

CONDITION (a) (1) (C) 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.

Human rights groups continue to receive frequent, credible, and detailed reports showing that paramilitaries continue to operate with the acquiescence and support of the Colombian armed forces and have consolidated and in some areas expanded control. In a new development, large paramilitary units now combat FARC-EP units of equal size, and there are frequent reports that paramilitaries have been assisted by government troops. Throughout Colombia,

paramilitaries are able to move troops and supplies unhindered past military bases, roadblocks, troops, and check points. Although more “measures” are being taken than in years past, they are clearly and demonstrably ineffective.

The State Department acknowledges that there continue to be “credible allegations of collaboration with members of the security forces and paramilitary groups.” In a report to the U.S. Congress, the State Department noted that, “Credible reports persisted of paramilitary installations and roadblocks near military bases; of contacts between paramilitary and military members; of paramilitary roadblocks unchallenged by military forces; and of military failure to respond to warnings of impending paramilitary massacres or selective killings.”⁶

There is no evidence that the Colombian Armed Forces have arrested key paramilitary leaders or high-ranking members of the Armed Forces credibly alleged to have collaborated with paramilitary groups. Although the government describes these ties as the result of the acts of “individual members of the security forces,” and not a matter of policy or even tolerance, it is abundantly clear that the range of acts depend on the approval, collusion, and tolerance of high-ranking officers.

In August 2002, the Defence Ministry reported that 460 paramilitaries were captured in the first six months of 2002. In addition, the ministry reports eleven clashes between the armed forces and paramilitaries. This does represent a new development, since in years past, such reports were unknown.

It must be underscored, however, that these statistics are soft. In terms of arrests, they reflect low-ranking members of these groups or individuals whose participation is alleged, not proven. Indeed, many are later released without charge. In the well-publicized case of the Alto Naya massacre of April 2001, the government reported that over seventy “paramilitaries” who had taken part in the massacre of over forty people had been captured. A year later, however, only sixteen of them were convicted by a Colombian court. Clashes have also failed to produce any lasting result, since the army has failed to dislodge paramilitaries from any part of Colombia; to the contrary, their presence throughout Colombia has grown considerably, including in areas under heavy military control, and paramilitary forces now control key cities, among them Barrancabermeja, Santander, and Cúcuta, Norte de Santander.

Because the military does not make the necessary arrests, the vast majority of arrest warrants for paramilitaries issued by the Attorney General's office languish without action.

Mayors, municipal officials, governors, human rights groups, the Public Advocate's office and even some police detachments regularly informed the appropriate authorities about credible threats by paramilitaries or even planned massacres. Yet only rarely do military forces take effective action. One tragic example is the case of Boyajá, Chocó. In April 2002, the Catholic Church and Public Advocate as well as local human rights groups sent repeated warnings about the presence of large groups of guerrillas and paramilitaries, who travelled freely along

⁶ “Conference report accompanying the emergency supplemental Act, 2000 as enacted in the Military Construction Appropriations Act, 2001 (P.L. 106-246),” covering the period September 1, 2001-May 31, 2002), Department of State.

the Atrato River. On its banks are permanent and mobile checkpoints maintained by the army's Seventeenth Brigade and the Navy's River Battalion No. 50, a unit that has received U.S. training and weapons. The region is also used by the FARC-EP. Nevertheless, the Colombian military failed to take prompt action to prevent attacks on the civilian population.

As predicted by locals, guerrilla and paramilitary forces clashed at the town of Bellavista on May 1, 2002. During fighting, the guerrillas launched at least one gas cylinder bomb that hit a church where refugees were gathered, killing 119, including at least forty-eight children. The Bogotá office of the U.N. High Commissioner on Human Rights concluded that guerrillas were responsible for the refugees' deaths. At the same time, U.N. investigators on the ground received credible reports that despite the arrival of Colombian military troops, paramilitaries remained in the region long after the church bombing and soldiers even met with one paramilitary commander. On July 9, 2002, the Internal Affairs office opened an investigation of the commanders of the security force units responsible for the region: Major General Gómez Estrada, Commander of the Colombian Army's First Division; Fourth Brigade officers Brigadier General Mario Montoya and Colonel Ricardo Díaz Torres; Police General Jorge Enrique Linares; Lieutenant Colonel Orlando Pulido Rojas, commander of "General Manosalva Florez" Infantry Battalion No. 12; and Captain William Ariel Ruiz Mesa, commander of the Navy Riverine Infantry Battalion No. 50.

None of the cases that we forwarded as benchmarks for previous certifications in 2000 or 2001 have resulted in the arrests of the individuals who planned, coordinated, and paid for the murders of human rights defenders or government prosecutors. Only the actual gunmen and women have been arrested or convicted, while abundant evidence points to others as having ordered these attacks.

APPENDIX A

Sec. 567. (a) Determination and Certification Required. —

Notwithstanding any other provision of law, funds appropriated by this Act or prior Acts making appropriations for foreign operations, export financing, and related programs, may be made available for assistance for the Colombian Armed Forces as follows:

1. Not more than 60 percent of such funds may be obligated after a determination by the Secretary of State and a certification to the appropriate congressional committees that:
 - A. 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.
 - B. The Colombian Armed Forces are cooperating with civilian prosecutors and judicial authorities (including providing requested information, such as the identity of persons suspended from the Armed Forces 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.

C. 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.

2. The balance of such funds may be obligated after June 1, 2002, if the Secretary of State determines and certifies to the appropriate congressional committees that the Colombian Armed Forces are continuing to meet the criteria contained in paragraphs (1)(A), (B), and (C).

(b) Consultative Process.--At least 10 days prior to making the determination and certification required by this section, and every 120 days thereafter during fiscal year 2002, the Secretary of State shall consult with internationally recognized human rights organizations regarding progress in meeting the conditions contained in subsection (a).

(c) Report.--One hundred and twenty days after the enactment of this Act, and every 120 days thereafter during fiscal year 2002, the Secretary of State shall submit a report to the Committees on Appropriations describing actions taken by the Colombian Armed Forces to meet the requirements set forth in subsections (a)(1)(A) through (a)(1)(C).

(d) Definitions.--In this section:

1. Aided or abetted.--The term "aided or abetted" means to provide any support to paramilitary groups, including taking actions which allow, facilitate, or otherwise foster the activities of such groups.
2. Paramilitary groups.--The term "paramilitary groups" means illegal self-defence groups and illegal security cooperatives.