

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

**TABLE OF CONTENTS**

LEGISLATIVE CONTEXT AND SCOPE OF REPORT ..... 1  
EXECUTIVE OVERVIEW ..... 2  
    Section 7046(b)(1)(B)(i) ..... 3  
    Section 7046(b)(1)(B)(ii) ..... 4  
    Section 7046(b)(1)(B)(iii) ..... 5  
    Section 7046(b)(1)(B)(iv) ..... 6  
    Section 7046(b)(2) ..... 7  
    Investigating and Prosecuting Human Rights Violations ..... 11  
    Military Cooperation with Judicial Authorities ..... 14  
    Status of Selected Human Rights Cases/Issues ..... 19  
SECTION 7046(b)(1)(B)(ii) ..... 32  
    Severing Links with Paramilitary Organizations or Illegal Armed Groups ..... 32  
    Combating Corruption ..... 33  
    “Parapolitical” Investigations ..... 34  
SECTION 7046(b)(1)(B)(iii) ..... 47  
    Capture and Detention of Former Paramilitary Leaders ..... 47  
    Investigations under the Justice and Peace Law Process ..... 48  
    Extradition of Paramilitary Leaders ..... 49  
    The Prosecutor General’s Office’s Justice and Peace Unit ..... 50  
    Exclusion from Justice and Peace Law Process ..... 51  
    Convictions in Justice and Peace Process ..... 51  
    Reintegration of Demobilized Paramilitary Members ..... 52  
    Reparations to Victims ..... 54  
    Criminal Groups ..... 56  
    Efforts to Combat Criminal Groups ..... 57  
    Efforts to Fight Corruption in the Security Forces ..... 63  
SECTION 7046(b)(1)(B)(iv) ..... 65  
    Government Efforts Regarding Human Rights Defenders ..... 65  
    Protection Issues ..... 67  
    DAS Investigation and Intelligence Reform ..... 69  
    Vulnerable Populations: Journalists ..... 73  
    Vulnerable Populations: Political Opposition/Leaders ..... 74  
    Vulnerable Populations: Religious Leaders ..... 75  
    Vulnerable Populations: Trade Unionists ..... 75

UNCLASSIFIED

Vulnerable Populations: Displaced Persons.....	82
Vulnerable Populations: Indigenous Groups .....	85
Vulnerable Populations: Afro-Colombian Communities.....	92
Consulta Previa.....	95
Land Disputes.....	96
Improving the Human Rights Performance of the Armed Forces .....	99
Distinguishing Between Civilians and Combatants.....	100
Human Rights and IHL Training .....	102
Relations between the Armed Forces and Vulnerable Communities .....	<u>102</u> <del>103</del>
Special Training on Vulnerable Groups.....	103
SECTION 7046(b)(2).....	105
National Plan for Territorial Consolidation (PNCT) .....	105
PNCT Results .....	107
Ongoing Challenges with the PNCT.....	110
Strengthening Institutions .....	115
Respect for International Recognized Human Rights.....	118

UNCLASSIFIED

- 1 -

LEGISLATIVE CONTEXT AND SCOPE OF REPORT

The Full-Year Continuing Appropriations Act, 2011 (Div. B, P.L. 112-10) carries forward Section 7406(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, P.L. 111-117) ("FY 2010 SFOAA"), which incorporates by reference and amends in part subsections (b) and (c) of section 7046 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Div. H, P.L. 111-8) ("FY 2009 SFOAA"), establishes conditions under which assistance using funds appropriated under the FY 2011 Continuing Appropriations Act may be made available for the Colombian Armed Forces. In particular, Section 7406 (b)(1)(A) of the FY 2009 SFOAA allows that up to 70 percent of funds may be obligated prior to a determination and certification by the Secretary of State pursuant to paragraph (b)(1)(B). Paragraph (b)(1)(B) provides that up to 15 percent of such funds may be obligated after the Secretary of State makes a certification with respect to certain conditions related to human rights and paramilitary groups. The balance of funds appropriated under the FY 2011 SFOAA may be obligated after July 31, 2011, if the Secretary of State certifies before such funds are obligated that the conditions described in paragraph (b)(1)(B) are met and additionally, as laid out in paragraph (b)(2), certifies that the Colombian government is conducting vigorous operations to strengthen civilian institutions and respect for internationally recognized human rights in areas under the influence of paramilitary organizations or successor armed groups and guerrilla organizations.

This memorandum provides the justification for the Secretary of State's determination that the criteria referenced above have been met. It contains information covering the period from August 1, 2010 to August 15, 2011.

UNCLASSIFIED

EXECUTIVE OVERVIEW

Since August 2010, the period covered in this review, the Colombian government has taken a series of important steps to improve human rights, both within the Armed Forces and in Colombia at large. During his first year in office, President Santos signed a new Military Penal Code, facilitated the appointment of a Prosecutor General after a 16-month vacancy, supported judicial authorities' efforts to vigorously combat corruption, strengthened efforts to dismantle criminal bands, enhanced the government's strategy to consolidate the security gains of the last decade, increased the presence of civilian institutions in historically marginalized areas, and promoted economic and social development, thus taking concrete and potentially effective actions to address the root causes of Colombia's longstanding conflict. The historic Land and Victims' Law, signed in June, will benefit approximately four million Colombians over the next 10 years with integrated assistance, reparations, and land restitution for victims, including victims of the state.

The Colombian government also significantly improved respect for and recognition of human rights defenders with its "disarming of words" campaign, designed to eliminate loaded commentary by government officials about human rights groups, accompanied by robust outreach to NGOs. On numerous occasions, government officials at the highest levels praised the work of human rights defenders and condemned threats and attacks against them. NGOs generally recognize the Santos administration's improved tone and efforts, but they stress that problems persist, and argue that in some instances the situation has deteriorated. Particular concerns center on the fact that impunity for perpetrators of human rights violations remains common, as does the incidence of threats and attacks against human rights defenders. NGOs underline the negative impact of criminal groups (which they often refer to as "paramilitary successor groups") on the civilian population through intimidation, violence, and displacement. They warn that the implementation of land restitution through the Land and Victims' Law, unless accompanied by a comprehensive security and protection plan, could lead to increased violence and a negative outcome to a positive effort.

The State Department, both in Washington and through the U.S. embassy in Bogota, consults regularly with NGOs regarding Colombia's human rights performance. Since the last certification, senior Department officials met with Washington-based NGOs, as a group, on five occasions (at the assistant secretary-level or above) and held more than a dozen meetings with individual groups at the working level. Officers in the political section in Embassy Bogota engaged in

outreach to civil society and government officials in more than a dozen cities across Colombia, and regularly met with NGOs and officials in Bogota. In developing its examination and analysis of Colombia's human rights situation, the Department carefully considers NGO views, observations and experience, as well as reports from international organizations such as the OAS and the UN.

The Department also intensified engagement with the Colombian government on human rights issues through the High Level Partnership Dialogue (HLPD), launched in Bogota in October 2010. A second round of meetings was held in Washington in May. The HLPD's Democracy, Human Rights, and Good Governance Working Group discussion was led by Deputy Secretary Steinberg on the U.S. side and by Vice President Garzon on the Colombian side.

**Section 7046(b)(1)(B)(i)**

The Colombian government continued to suspend, investigate and prosecute in the civilian judicial system those members of the armed forces credibly alleged to have committed violations of internationally recognized human rights, including extrajudicial killings, or to have aided, abetted, or benefited from paramilitary organizations or successor armed groups.

In August 2010, President Santos signed a new Military Penal Code that transitions military justice from the written inquisitorial system to the more dynamic oral accusatory system and reaffirms that all accusations of human rights violations must be handled by civilian courts. The code also requires that defense attorneys be available free of charge for defendants, and establishes a Prosecutor General's Office with prosecutors and a technical investigation corps (CTI) for cases handled by military justice as in the civilian system.

In January 2011, Viviane Morales assumed the office of Prosecutor General, and publicly criticized defense attorneys' use of dilatory tactics in human rights cases against members of the armed forces. Still, more than 1,500 cases of alleged extrajudicial killings and more than 4,000 other human rights abuse cases are awaiting resolution, and the Prosecutor General's Office lacks the financial resources and personnel to resolve them quickly. Morales asked the Colombian Congress to approve additional resources for her office to tackle the extensive backlog of human rights cases and improve its overall efficiency.

Despite these challenges, there were advances in several prominent human rights cases, dozens resulting in the conviction and sentencing of military

UNCLASSIFIED

- 4 -

personnel. The first convictions were handed down in one of the Soacha "false positives" cases in June 2011. (The term "false positives" refers to cases in which civilians were extrajudicially killed by members of the armed forces, dressed up as guerrillas, and presented as killed in combat.) All eight military defendants, which included the commander of the Caldas Battalion, were convicted on two counts of aggravated homicide and forced disappearance. As of July 1, there were 10 other pending legal cases involving 14 victims associated with the Soacha murders.

In its most recent annual report, the Office of the UN High Commissioner for Human Rights (UNHCHR) noted that, "In 2010, the drastic reduction in the number of persons presented as killed in combat while under the custody of the army, known as 'false positives,' was consolidated."

The Colombian Armed Forces continued to cooperate with civilian prosecutors and judicial authorities. In June 2011, the Ministry of Defense announced a new set of 15 measures designed to reduce impunity for human rights violations committed by members of the armed forces. Key measures include a new mechanism for rapid case transfers to civilian prosecutors, standing orders for military units to cooperate with prosecutors, stricter conditions for military prisoners and monitoring projects with the UNHCHR and the International Committee of the Red Cross (ICRC).

**Section 7046(b)(1)(B)(ii)**

The Government of Colombia made substantial progress in, and continues to take the necessary steps to, sever links with paramilitary organizations and criminal groups. The Prosecutor General's Office and the Inspector General's Office have investigated and prosecuted numerous members of the security forces as well as elected and appointed government officials who have colluded with former paramilitary members and criminal groups.

The Colombian government continued to vigorously investigate and prosecute "parapolitical" cases. In July, regulations of the 2009 political reform law went into effect, clarifying rules for political parties and electoral campaigns, and including penalties for political parties who support candidates with ties to illegal armed groups.

President Santos signed a new anti-corruption law in July 2011, and has publicly vowed exhaustive government efforts to prevent and eliminate internal

UNCLASSIFIED

corruption. A major goal of the new legislation is to seal the "revolving door" between high-level government jobs and the private sector.

**Section 7046(b)(1)(B)(iii)**

The Colombian government continued to dismantle paramilitary networks, including by arresting and prosecuting under civilian law individuals who have provided financial, planning, or logistical support, or have otherwise aided, abetted or benefited from (now demobilized) paramilitary organizations or other criminal groups.

Since 2003, 31,681 former paramilitary members have collectively demobilized. Of these, 4,100 former United Self-Defense Forces of Colombia (AUC) paramilitary members were identified as potentially eligible to receive benefits under the Justice and Peace Law (JPL) process. Of those, the Colombian government reports that 2,736, including extradited paramilitaries in the United States, have given voluntary confessions (*versiones libres*). Since the last certification, a second paramilitary leader was expelled from the JPL process and a fourth conviction and sentencing were achieved. Lack of clarity in objectives and strategy to complete the process, conflict in the objectives, extreme formalism in the judicial proceedings, and lack of institutional capacity continued to limit progress under the JPL process.

Early in 2011, Colombian National Police (CNP) Director General Oscar Naranjo acknowledged that criminal groups (identified as "BACRIM" for "*bandas criminales*") posed the greatest threat to public security in Colombia. The Colombian government has stepped up its efforts to dismantle these criminal groups, adopting a revised strategy and plans to grow the police from 162,000 personnel in 2011 to 180,000 personnel in 2013. The success of "Operation Troy," an offensive launched in February to disrupt drug trafficking corridors along the Caribbean coast, led to its expansion to two more regions: the Pacific coast and southern Choco. To improve the prosecution of BACRIM members, the Prosecutor General's Office created an Organized Crime (BACRIM) Unit in late 2010 and plans to expand it from 23 to 50 prosecutors.

NGOs continue to allege collusion between BACRIM and government security forces. CNP Director General Naranjo vowed to fight corruption within the institution and to have corrupt officers prosecuted in the civilian justice system. Since 2008, the CNP has carried out thousands of disciplinary investigations against its members, removing from the service and criminally charging hundreds.

UNCLASSIFIED

- 6 -

The Colombian government has made a bold, historic effort to provide reparations and land restitution to Colombia's victims. On June 10, President Santos signed a Land and Victims' Law that will benefit approximately four million Colombians in the next 10 years with integral assistance and reparations to victims, including victims of the state. In anticipation of the Land and Victims' Law, the government began implementing a land restitution and formalization "shock plan" in October 2010, designed to transfer quickly large parcels of land to beneficiaries, in order to underline the government's commitment to progress. By July, the government surpassed its goal of delivering 350,000 hectares to Colombian families, having delivered 361,539 hectares to 17,583 families. Of these, 109,197 hectares were delivered to indigenous communities, 18,119 were delivered to internally displaced persons, and 6,630 were delivered to Afro-Colombian communities. Focus areas of the "shock plan" included Antioquia, Bolivar, Cesar, Choco and Magdalena. With the Land and Victims' Law, the government's new goal is to deliver 1.2 million hectares to 160,000 families by the end of four years.

**Section 7046(b)(1)(B)(iv)**

The Colombian government also significantly improved respect for and recognition of human rights defenders with its "disarming of words" and robust outreach to NGOs. On numerous occasions, government officials at the highest levels praised the work of human rights defenders and condemned threats and attacks against them. In December, President Santos signed a law that stiffens penalties for crimes against human rights defenders and journalists, increasing the murder sentence to 30 years.

The Ministry of Interior and Justice (MOIJ) continued to provide protection to human rights defenders and vulnerable groups, increasing its 2011 budget by \$11 million to \$82 million, covering approximately 11,800 individuals as of May. NGOs and international organizations continue to express concern that these efforts are insufficient, and six groups alleged that the lack of action to investigate and prosecute continuing threats against them calls into question the government's political will to protect human rights defenders. The government is engaging with affected groups on a regular basis as it moves to reform the protection program with the groups' input.

The Prosecutor General's Office continued the 2009 investigation into former Administrative Department of Security (DAS) officials, linked to charges of illegal surveillance and wiretapping. As a result of these investigations, two

UNCLASSIFIED



UNCLASSIFIED

- 7 -

former DAS directors have been barred from holding public office for 20 years. On May 4, President Santos signed a law giving him broad authority to reorganize the executive branch of government. One of the main goals of this reorganization will be to dismantle the DAS. The Santos administration proposed a new Intelligence Reform Law that is a crucial step in implementing intelligence reform. Colombia's Congress approved the new Intelligence Reform Law June 15, and it is now pending review in the Constitutional Court. The law creates a new intelligence agency intended to replace the DAS. This new intelligence agency will have more external guidance and oversight than the DAS. The overarching objective of the law is to strike the balance between the legitimate obligations of the state to collect intelligence to uphold national security with the state's obligations to protect and defend Colombians' civil liberties.

The Colombian government continued to make significant progress in improving the human rights performance of the armed forces, including by implementing and enhancing procedures to distinguish between civilians and combatants, and by promoting a human rights culture in the institution through training and other programs.

**Section 7046(b)(2)**

The Colombian government took vigorous steps to strengthen civilian institutions and respect for internationally recognized human rights in areas under the influence of illegal armed groups. The government markedly strengthened civilian leadership of the National Plan for Territorial Consolidation (PNCT), which aspires to be the engine to move Colombia into a post conflict era and build the framework for transformative change. The Santos administration is building on the PNCT's progress. In July, the administration concluded a strategic review to enhance civilian agency commitment to, and thus effective implementation of, the consolidation methodology. The administration has also created a National Security Council, chaired by President Santos, to increase interagency investment and coordination in a way that is better suited to the development of civilian institutions.

UNCLASSIFIED

**Section 7046(b)(1)(B)(i)**

Section 7046(b)(1)(B)(i) of the FY2009 SFOAA requires a determination that:

**“The Government of Colombia is suspending and investigating and prosecuting in the civilian justice system, those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed violations of internationally recognized human rights, including extrajudicial killings, or to have aided, abetted or benefitted from paramilitary organizations or successor armed groups, and the Colombian Armed Forces are cooperating fully with civilian prosecutors and judicial authorities in such cases.”**

The Colombian government continued to suspend, investigate and prosecute in the civilian judicial system those members of the armed forces credibly alleged to have committed violations of internationally recognized human rights, including extrajudicial killings, or to have aided, abetted, or benefitted from paramilitary organizations or successor armed groups. In general, human rights cases were prosecuted in the civilian judicial system, though the UN and NGOs continued to raise concerns over the slow transfer of cases by the military penal justice (JPM) system to the civilian system. The armed forces continued to provide support to and cooperate with civilian prosecutors and judicial authorities when requested. As reported in the previous certification, defense attorneys continued to employ delay tactics during judicial proceedings to obtain the release of defendants from detention.

Since assuming office in August 2010, the Santos administration has taken a series of important steps to strengthen justice and fight impunity in the armed forces and at large. Just days after being sworn in, President Santos signed a new Military Penal Code that transitions military justice from the written inquisitorial system to the more dynamic oral accusatory system and reaffirms that all accusations of human rights violations must be handled by civilian courts. The code also requires that defense attorneys be available free of charge for defendants, and establishes a Prosecutor General's Office with prosecutors and a Technical Investigation Corps (CTI) for cases handled by military justice as in the civilian system. The new code will be implemented in four phases: first in Bogota, second in the Andean and Pacific region (by August 2012), third in the Atlantic region (by August 2013), and fourth in the southern and eastern regions (by August 2014). Nationwide training and infrastructure development have already begun.

UNCLASSIFIED

- 9 -

In December 2010, President Santos' outreach to the Supreme Court facilitated the selection of a new prosecutor general, who assumed office in January after a 16-month vacancy in this important post. Viviane Morales, Colombia's first female prosecutor general, vowed to improve the administration of justice in Colombia and quickly appointed new leadership to key posts, such as the Human Rights and Justice and Peace Units.

In March, the Ministry of Defense presented a bill to congress to create the Comprehensive Defense Service (*Servicio Integral de Defensoria*), funded by the national budget, to fulfill the new code's requirement that defense attorneys be available free of charge to active duty and retired members of the armed forces accused of crimes that occurred during their service. The bill is under congressional debate. Currently, many military defendants are represented by the *Defensoria Militar* (DEMIL), one of several private entities funded by contributions deducted from the salaries of active duty members of the Armed Forces. The press, the UN, NGOs, and even some judges have criticized DEMIL's lawyers for employing delay tactics during judicial proceedings to obtain the release of defendants from detention. Some have also criticized DEMIL for putting the interest of the military institution above that of individuals' right to defense.

In May, the new Prosecutor General wrote a letter to the Supreme Judicial Council (*Consejo Superior de la Judicatura*) asking for an investigation of the conduct of defense attorneys that stall cases, citing as examples the case against Lieutenant Raul Munoz for the homicide of three children in Arauca, and the "false positive" cases of Soacha. According to the Prosecutor General's Office's Human Rights Unit, of 1,592 investigations of "false positive" cases, approximately 200 have reached sentencing, in large part due to such delay tactics. As of July 1, the Supreme Judicial Council continued to investigate the matter.

Despite these positive efforts, more than 1,500 cases of alleged extrajudicial killings and more than 4,000 other human rights abuse cases await resolution, and the Prosecutor General's Office lacks the financial resources and personnel to resolve them quickly. The Prosecutor General's Office reported as of June, it was pursuing 1,592 cases involving 2,731 victims of alleged extrajudicial executions committed by members of the armed forces between 1985 and 2010. Of the 1,592 cases, the Human Rights Unit achieved 138 convictions and brought charges against 1,223 people involved in 206 cases. In total, 4,121 people were implicated in the 1,592 cases.

UNCLASSIFIED

UNCLASSIFIED

- 10 -

In addition, the Prosecutor General's Office is hampered by the loss of thousands of experienced personnel after a February 2010 Supreme Court decision ordered the Office to comply with the results of a November 2007 entrance exam, as reported in the previous certification. The new Prosecutor General has asked the Colombian Congress for additional resources to tackle the extensive backlog of human rights cases and improve its overall efficiency.

Congress and the high courts continued to debate judicial reforms to improve the administration of justice in Colombia. While both agree that reforms are necessary, they disagree on how to best reform judicial institutions and ensure that they retain their autonomy. In August, the Santos administration presented judicial reform legislation to the Colombian Congress.

Though progress was made in several key cases, throughout the judicial system progress remained slow in investigations and prosecutions of human rights cases and cases of links between public forces and criminal groups. However, there were examples of notable efficiency by the Prosecutor General's Office and cooperation by the armed forces during the certification period. For example, in the case against Lieutenant Raul Munoz for the homicide of three children in Arauca, the armed forces facilitated access to investigators of the Prosecutor General's Office and made 60 officers assigned to the area available for interviews and DNA testing as soon as the victims' bodies were found in mid-October. In about a two-week period, Lieutenant Munoz was formally charged with the homicide of the three children, the rape of the eldest girl, and the rape of another girl from the area. Observers have noted that despite the Prosecutor General's Office's efforts, bringing human rights cases to conclusion depends largely on judges, who often do not manage their dockets efficiently and allow dilatory tactics by defense attorneys in their courts. The case against Lieutenant Munoz, for example, has stalled since November 2010 due to repeated changes in his defense counsel.

The armed forces reported it suspended a total of 117 military personnel, including 10 officers, between August 1, 2010 and April 15, 2011. Those who were removed included three from the air force, 12 from the navy, and 102 from the army. The military may remove personnel for a range of reasons and does not categorize the removals by reason.

UNCLASSIFIED

## **Investigating and Prosecuting Human Rights Violations**

As reported in past certifications, the Prosecutor General's Office has created two units and several sub-units to investigate and prosecute human rights-related cases. The Office's Human Rights Unit handles most human rights-related crimes, with the aid of its Extrajudicial Killings and Labor Sub-Units. As of June, the Human Rights Unit was handling 5,731 active cases, 4,766 under the old inquisitorial system (Law 600) and 965 under the new accusatorial system (Law 906). The Prosecutor General's Office reported that the Unit's budget for 2010 was 9.3 billion pesos (\$4.65 million).

As of August 1, the Unit employed 102 prosecutors and plans to add 60 additional prosecutors by early 2012. Fourteen new prosecutors will work in the Labor Sub-Unit; five will join Victim Attention Centers in Bucaramanga, Bogota, Cali, Medellin, and Cartagena; and 41 will work exclusively on extrajudicial executions. The majority of these new prosecutors will be recruited from within the Prosecutor General's Office, ensuring these positions are filled by experienced prosecutors. Additional support staff and investigators will be added to work with these prosecutors.

During the certification period, NGOs continued to complain that threats against human rights defenders were not being appropriately investigated and prosecuted.

### *Investigations and Prosecutions by Prosecutor General's Office*

During the certification period, the Prosecutor General's Office and Inspector General's Office continued to take action on cases of human rights violations and collusion with criminal groups. In the past, NGOs have noted that while low-ranking officers may be held accountable in cases of human rights violations, high-ranking officers (which for the purposes of this section we define as major and above) are rarely prosecuted. Between August 1, 2010 and June 15, 2011, the Colombian government reported that among the 267 military personnel detained for alleged human rights violations by the Prosecutor General's Office were 13 lieutenants and 16 sergeants. During the same period, the Prosecutor General's Office also indicted 338 military personnel, including at least two colonels, 14 lieutenants, and five majors in human rights-related cases. In addition, the Prosecutor General's Office continued case proceedings in human rights-related cases against at least two generals (one retired), two colonels (one retired), two lieutenant colonels, and eight majors. At least 101 members of the

UNCLASSIFIED

- 12 -

armed forces were sentenced for human rights-related crimes, including two retired generals and one major.

In sum, between August 1, 2010 and June 15, 2011, the Prosecutor General's Office detained 267 individuals involved in 78 cases where military personnel allegedly committed human rights violations or collaborated with paramilitary groups. During the certification period, the Office indicted (*resoluciones de acusación*) at least 338 military personnel involved in 64 cases of alleged human rights violations. The Office continued judicial proceedings against 4,121 members of the armed forces involved in at least 1,592 of alleged extrajudicial executions. The Office also concluded case proceedings against at least 105 members of the armed forces in 19 cases for violations of human rights and for collaborating with paramilitary groups.

*Investigations and Prosecutions by Inspector General's Office*

The Colombian government reported that between August 1, 2010 and June 1, 2011, the Inspector General's Office did not open new disciplinary processes against military personnel for alleged violations of human rights. The government noted that this is a reflection of the improved performance of the armed forces. During that period, the Inspector General's Office continued to make progress on cases opened previously, formally charging 198 individuals involved in 41 cases, including seven majors and eight captains. The Inspector General's Office also concluded 18 cases involving 51 individuals, 25 who were absolved and 26 who were removed, including two captains. Those removed also were barred from public service for twenty years.

During the certification period, the Inspector General suspended nine members of the armed forces in three cases of violations of human rights and barred them from government service. For example, an army sergeant was removed from the military and prohibited from government service for the September 2008 killing of three civilians. In May, the Inspector General suspended three soldiers including a second lieutenant and barred them from government service for 20 years. The Inspector General's Office also suspended four professional soldiers for the 2004 killing of a man and his 13-year-old son in Antioquia.

In addition, in May, the Prosecutor General created a "Group to Monitor Disciplinary Processes with Regard to the Justice and Peace Law" which will analyze allegations by demobilized paramilitaries against public servants. The group will convene for one year and will develop a proposal for the management

UNCLASSIFIED

of information derived from JPL proceedings and for the establishment of suitable procedures following allegations of irregularities with regard to the conduct of public servants.

*Investigations into Alleged Extrajudicial Killings*

Investigations into cases of extrajudicial killings are proceeding, albeit slowly. The estimated number of extrajudicial killings varies by organization because of the different standards applied to data collection and analysis.

As of June, the Extrajudicial Killings Sub-Unit within the Prosecutor General's Office had been assigned 1,592 cases (involving 2,731 victims) of extrajudicial killings allegedly committed by members of the armed forces between 1985 and 2011. This caseload reflects an increase of 536 cases (involving 1,023 victims) over the 1,056 cases (involving 1,708 victims) reported in the last certification. This increase is principally due to delayed reporting of the alleged crimes, or can result if the case only recently was assigned or re-assigned to the Extrajudicial Killings Sub-Unit. Of the 1,592 cases that the Sub-Unit is handling, convictions were reached in 138 cases (*con condena*) and 326 people were sentenced. This is a significant increase over the totals reported in 2010, when convictions were achieved in 48 cases against 200 people. Overall, the Sub-Unit opened investigations into 674 cases (*aperturas de instrucción*), issued 1,500 arrest warrants (*ordenes de captura*), issued 611 preventive detention orders (*medidas de aseguramiento*) involving 1,738 people, and issued 326 indictments (*resoluciones de acusación*) against 1,223 people involved in 203 cases. These statistics also reflect significant advances over the figures reported one year ago when the Sub-Unit had opened investigations in 305 cases and 757 arrest warrants had been issued. In total, the caseload of the Extrajudicial Killings Sub-Unit involved 4,121 individuals implicated in extrajudicial killings (*vinculaciones*).

Although numbers differ, international organizations and NGOs agree that numbers of extrajudicial killings have fallen substantially since October 2008. In its most recent annual report, UNHCHR noted that "in 2010, the drastic reduction in the number of persons presented as killed in combat while under the custody of the army, known as 'false positives,' was consolidated."

In May, local NGO Center for Investigation and Popular Education (CINEP) published a report describing an increase in extrajudicial executions in 2010 over 2009. According to CINEP's database, in 2010 there were 12 cases involving 23 victims, as compared to seven cases involving 16 victims in 2009. The report acknowledged a dramatic decrease in new cases following the measures



implemented after the Soacha scandal in 2008 when CINEP documented 113 cases involving 219 victims. Despite this improvement, CINEP's report recognizes the problem continued. The Prosecutor General's Office reports it is investigating nine cases of alleged extrajudicial investigations from 2010 and none from 2011. CINEP reports six cases of alleged extrajudicial investigations from 2011.

In December 2009, the Ministry of Defense agreed to a UNHCHR proposal to monitor jointly seven of the 15 measures that were set forth by the Ministry in 2008 in large part to prevent extrajudicial executions. In August 2010, the Ministry of Defense and the UNHCHR formally agreed on the implementation procedures, and UNHCHR staff began the first phase of the project by visiting military bases to monitor compliance with four of the measures. The first four measures to be evaluated include the role of Inspector Delegates, Operational Legal Advisors, Inspections Teams, and the complaints system. During these visits, the Ministry and the armed forces have granted UNHCHR staff broad access to files and to interview military personnel to determine if the measures are being implemented effectively. The results of UNHCHR's analysis will be shared confidentially with the Ministry and the Commander of the Armed Forces to help ensure the measures are implemented uniformly across the country and to increase the implementation of the Ministry's human rights and international humanitarian law policies. This project is particularly significant as it represents the first time the Ministry of Defense has been so willing to engage with UNHCHR in the creation of such a monitoring arrangement. This initiative is a new experience for UNHCHR and is the first time such an arrangement has been reached with a military anywhere in the world.

### **Military Cooperation with Judicial Authorities**

The Colombian Armed Forces have continued to make progress in cooperating with civilian prosecutors and judicial authorities. Per its Memorandum of Understanding (MOU) with the Prosecutor General's Office, the Ministry of Defense has been taking steps to ensure that the Prosecutor General's Technical Investigative Unit (CTI) carries out the legal inspection of bodies of individuals allegedly killed in combat. The previous certification reported that the MOU was provisionally suspended pending Council of State review of the MOU's constitutionality. It also reported that the Ministry of Defense and the Inspector General's Office issued challenges to the suspension, and the Prosecutor General's Office objected. On December 9, 2010, the Council of State revoked the December 2009 order to suspend the MOU provisionally. In June, the Prosecutor General, Inspector General, and Minister of Defense signed a new agreement with



UNCLASSIFIED

- 15 -

procedures designed to ensure that cases are investigated expeditiously by the appropriate authorities. The procedures are designed to facilitate investigations and ensure crimes do not go unpunished while jurisdiction is debated.

In some cases, as required in sentences handed down by judicial authorities, Colombian Army officials have publicly asked for forgiveness for extrajudicial executions. On May 13, 4th Brigade Commander General Alberto Mejia asked families of five victims of extrajudicial executions for forgiveness in a public ceremony. The sentence handed down from the Superior Court of Antioquia ordered, in part, the army to apologize publicly for the killings of Jesus Quintero, Jhon Fredy Lopera, Luis Alfredo Perez, Gildardo Martinez, and Francisco Perez. The five men were killed in the municipalities of San Carlos, Bello, Narino, and Angostura between 2004 and 2007.

On July 21, 11th Brigade Commander General Leonardo Pinto Morales asked for the forgiveness of the families of three men, including a minor, Edwin Madera Marmol, Miguel Enrique Arriola, and Leonardo Bertel Navaja, killed by the army on June 26, 1994 in Zaragoza (Antioquia). The men were later presented as guerrillas killed in combat. The court ordered the State to pay each victim's family more than \$500,000, apologize publicly, and build a monument in honor of the three victims.

Neither General Mejia nor General Pinto were in charge of the army brigades in question when the extrajudicial executions occurred.

In April, weekly publication *Semana* reported on prisoner conditions at the Tolemaida Military Reclusion Center. The story revealed that many of the approximately 300 military officers and enlisted men detained (most who were convicted, some for serious crimes including torture and homicide) were living in privileged conditions and that the facility did not comply with numerous prison system regulations. Allegations included that convicted soldiers were still receiving salaries and retirement pensions; inmates were allowed to leave the facility at will, including on vacation; some ran businesses; and some lived in private "cabanas" built with donations from retired officials, equipped with internet and satellite television.

In response, the Ministry of Defense immediately stood up a verification commission to investigate the allegations. The commission was composed of the Inspector General of the Armed Forces, the Inspector General of the Army, the Vice-Minister of Defense for Policy and International Affairs, and the Director of

UNCLASSIFIED

UNCLASSIFIED

- 16 -

the National Prison Institute (INPEC), the Colombian entity in charge of prisons. In its report, released in May, the commission admits that the Tolemaida Reclusion Center had become "an unprecedented administrative mess, with high levels of corruption" and makes recommendations to ensure the facility complies with INPEC regulations and prevent a similar situation from taking place in other military reclusion centers. The full report is available on the Ministry of Defense's website:

[http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Informe\\_carcel\\_tolemaida.pdf](http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Informe_carcel_tolemaida.pdf)

The Colombian government reports that the director of the Tolemaida Reclusion Center was replaced, and all directors of military reclusion centers have received training on INPEC regulations.

Despite this high-level attention, NGOs and the press have reported that high-level military officers continue to enjoy privileged detention conditions. For example, according to these reports, Colonel Alfonso Plazas Vega, General Jesus Armando Arias Cabrales, and General Jaime Humberto Uscategui, all convicted and sentenced for serious crimes, are held at a large military base (the *Escuela de Infantería*) in Bogota, where they live in apartments, enjoy freedom of movement within the base, eat in the officers' dining room, and interact with active duty officers. Under Colombian law, a prisoner may request to leave detention temporarily for illness, close relatives' funerals, or important life events. In June, a magistrate granted Plazas Vega permission to leave the military base, with an armed escort, for eight hours to attend his son's wedding at an upscale Bogota country club.

*Assistance to Civilian Investigators*

During the certification period, the Prosecutor General's Office reported that the armed forces provided civilian judicial authorities access to the locations of combat deaths, ensured transport to remote locations, and generally assisted investigators as requested.

The Colombian government reported that the armed forces have permanently designated an officer with the rank of lieutenant colonel to facilitate cooperation between the armed forces and the Prosecutor General's Office's Human Rights Unit. As a result of this cooperation:

- Between August 1, 2010 and April 12, 2011, the Prosecutor General requested the testimony of 26 members of the armed forces in 47 instances

UNCLASSIFIED

in relation with 26 cases of violations of human rights or collusion with paramilitaries. The armed forces allowed those implicated to testify in 16 of these cases;

- The armed forces provided aerial support and security for crime scene reconstructions and other procedures on 69 occasions;
- The armed forces located and transferred 88 persons to facilitate interrogations and interviews;
- The armed forces located and presented 316 persons for formal testimony (*indagatoria*); and
- The armed forces made available 366 persons with issued arrest warrants.

#### *Transfer of Cases from Military to Civilian Judicial Systems*

In its most recent annual report, the UNHCHR noted, "more than 448 active cases still remain in the military justice system. It is imperative that the military justice immediately transfer all cases of possible human rights violations to the ordinary justice system, and that cases that were closed by the military justice without proper investigation be revisited." The Ministry of Defense reported that the MPJ system had voluntarily transferred 231 cases to the civilian judicial system in 2010; 170 cases were transferred in the first six months of 2011. A sizeable portion of these were transferred as part of a *plan de impulso* in which officials from MPJ and the Prosecutor General's Office meet regularly to analyze cases in question in an attempt to reach agreement on cases to be transferred without being referred to a lengthy, higher level review by the Supreme Judicial Council.

In June, the Ministry of Defense announced a new set of 15 measures designed to reduce impunity for human rights violations committed by members of the armed forces. These measures are in addition to the set of 15 measures adopted in November 2008 because of the investigations carried out in the aftermath of the Soacha cases. The full measures are as follows:

Measure 1: Establishes a monitoring mechanism for military cases in which there is a question whether civilian or military prosecutors have jurisdiction. The MPJ's Executive Directorate will submit a quarterly report to the Minister of Defense on the implementation of the mechanism.

Measure 2: Strengthens the MPJ through a technical cooperation program with the UNHCHR, which has been invited to review closed cases in the MPJ archive.

UNCLASSIFIED

- 18 -

Measure 3: Establishes an action plan for the Minister of Defense, the Prosecutor General, and the Inspector General to resolve jurisdictional disputes among prosecutors without having to resort to lengthy court proceedings.

Measure 4: Instructs inspectors general of the armed services to provide immediate, complete and useful information to prosecutors working on human rights and international humanitarian law cases.

Measure 5: Orders inspection panels to verify that appropriate procedures are followed and legal authorities notified following allegations of grave human rights abuses involving the armed forces.

Measure 6: Instructs inspectors general of the armed forces to ensure any corrective measures taken because of a human rights violation are implemented.

Measure 7: Directs inspectors general to monitor closely units in which grave violations of human rights occurred.

Measure 8: Directs inspectors general to monitor closely the behavior of members of the armed forces who served in units in which grave violations of human rights occurred.

Measure 9: Assigns inspectors general with oversight of systems to receive complaints of human rights violations, including taking corrective measures.

Measure 10: Establishes an archive of operations as an investigative tool in the event of a human rights complaint.

Measure 11: Establishes a high-level committee including the Vice Minister of Defense, the inspectors general of the armed services, and the ICRC to assess complaints and make recommendations to prevent violations of international humanitarian law.

Measure 12: Creates a verification committee composed of the Armed Forces Commander and service chiefs, and chaired by the Minister of Defense, to periodically review conditions and complaints and make changes to procedures as needed.

UNCLASSIFIED

Measure 13: Relocates military prisoners to the military prison closest to their respective prosecutorial offices to ensure their participation in court proceedings.

Measure 14: Implements the recommendations of an earlier panel to ensure military prisons are in accordance with the same regulations as civilian prisons.

Measure 15: To ensure that defendants receive due process, the Ministry of Defense commits to lobby the congress to approve the law establishing the *Servicio Integral de Defensoria*.

### **Status of Selected Human Rights Cases/Issues**

Despite the challenges facing the Prosecutor General's Office, between August 1, 2010 and July 15, 2011, there were advances in several prominent human rights cases, some resulting in the conviction and sentencing of military personnel. In others, however, there was little progress. Below is a summary of select human rights cases that were under investigation during the certification period.

#### *Palace of Justice Case*

The previous certification reported the June 2010 sentencing of retired Army Colonel Alfonso Plazas Vega to 30 years in prison for his role in the forced disappearance of eleven people during the recapture of the Palace of Justice on November 7, 1985. Following his conviction, Judge Maria Stella Jara temporarily fled Colombia because of death threats against her and her son. Plazas Vega appealed the decision, which called for his transfer to La Picota prison, and is awaiting the result of his appeal at a military installation in Bogota. The press and NGOs have reported that Plazas Vega enjoys accommodations similar to that of an active duty officer, and has freedom of movement within the base. Although the Prosecutor General's Office has asked for an investigation of these allegations, no changes to Plazas Vega's detention conditions were made by the end of the reporting period.

In August 2010, Angela Maria Buitrago, the prosecutor in charge of the case, was fired under questionable circumstances by the Acting Prosecutor General for alleged inefficiency. Earlier that same month, Prosecutor Buitrago had been cleared by the Superior Judicial Council following an investigation requested by the Prosecutor General's Office into her performance.

UNCLASSIFIED

- 20 -

Days before being dismissed, Buitrago had called three retired generals (Jesus Armando Arias Cabrales, Rafael Hernandez Lopez, and Carlos Augusto Fracica) for questioning in connection with the murder of auxiliary magistrate Carlos Horacio Uran. In 2007, news footage from the palace takeover resurfaced showing that Uran, who until then was presumed dead in the crossfire between the army and M-19 guerrillas, left the palace injured but alive, in the hands of soldiers. The circumstances around his death remain unclear, and the investigation into his murder stalled following Prosecutor Buitrago's dismissal.

In March, a board of three associate judges of the Council of State (*Consejo de Estado*) decided in favor of a complaint (*tutela*) presented by retired General Alvaro Velandia Hurtado, thereby revoking the Inspector General's 1995 decision to remove him, and reinstating him as general, with salary and benefits since 1995. Velandia had been removed for his role in the disappearance of M-19 guerrilla Nidia Erika Bautista. The 1995 decision was challenged and reaffirmed on different occasions in 2002, 2008, and 2009, when the main chamber of the Council of State confirmed the decision against Velandia. Associate judges are called to fill absences and to settle disputes, and in this case, were called to decide on the merits of Velandia's complaint. The president of the Council of State, Mauricio Fajardo, announced he would challenge the decision of the associate judges, claiming they exceeded their powers.

In April, the former commander of the army's 13th Brigade, retired General Jesus Armando Arias Cabrales, was sentenced to 35 years in prison for his role in the case. This is the second most severe sentence in Colombian history for an officer of his rank, after General Jaime Humberto Uscategui's sentence of 40 years, which is currently under appeal. Cabrales was held responsible for giving orders for the identification and interrogation of civilians rescued from the palace. The people rescued from the palace, and subsequently disappeared were: Carlos Augusto Rodriguez Vera, Cristina Del Pilar Guarin Cortes, Bernardo Beltran Hernandez, Ana Rosa Castiblanco, Lucy Amparo Oviedo, David Suspes, Norma Constanza Esguerra, Luz Mary Portela Leon, Hector Jaime Beltran, Gloria Estela Lizarazo Figueroa, and Gloria Anzola. In May, the Inspector General's Office appealed the conviction on the basis that there was no proof that Arias Cabrales had ordered or participated directly in the disappearances. Arias Cabrales continued to be held at a military base in Bogota while his case was pending appeal.

In June, the Inspector General's Office called for the revocation of the conviction against retired Colonel Alfonso Plazas Vega and for the reopening of an

UNCLASSIFIED

UNCLASSIFIED

- 21 -

investigation of Prosecutor Buitrago, questioning the identity of one of the witnesses.

The cases against retired officers Edilberto Sanchez Rubiano, Oscar William Vasquez Rodriguez, Luis Fernando Nieto Velandia, Antonio Rubay Jimenez, Ivan Ramirez Quintero, Fernando Blanco Gomez and Gustavo Arevalo Moreno remain pending.

*La Rochela Massacre*

Progress remained slow in the investigation into the murder of 12 investigators from the Prosecutor General's Office who were killed on January 18, 1989, in Simacota (Santander) while investigating the October 1987 murders of 19 merchants, reportedly by the "Los Masetos" paramilitary forces of Magdalena Medio. Following six complaints by the Inter-American Commission on Human Rights (IACHR), on May 11, 2007, the Prosecutor General's Office reopened its case into the murders. In reopening the case, the office called in three retired generals for questioning: Army General (retired) Farouk Yanine Diaz (on June 6, 2008); Army General (retired) Juan Salcedo Lora (on June 9, 2009); and Army General (retired) Alfonso Vacca Perilla (on June 9, 2009). Retired General Yanine is now deceased. After a May 2010 decision rejecting a request for the prosecutor general to prosecute personally retired generals Alfonso Vacca Perilla and Juan Salcedo Lora, both continued to provide testimony in October 2010.

Proceedings continue against 12 paramilitary members who were linked to the case. Paramilitary leader Alonso de Jesus Baquero Agudelo, alias "Vladimir," was convicted in 1990 for the killings that occurred under his command. He was sentenced to 30 years in prison and is participating in the JPL process, providing key testimony concerning the criminal acts related to La Rochela.

Though former Santander Congressman Tiberio Villarreal Ramos denies any involvement in the murders, in early June 2009, the Prosecutor General's Office called him back for questioning. In 1996 and 1997, the Prosecutor General's Office had opened an investigation into and then dismissed charges against Villarreal. The case file on Villarreal Ramos and the retired generals was transferred to the Supreme Court October 22, 2009. Villarreal Ramos provided additional testimony as recently as April.

*Homicide of Senator Cepeda*

On May 26, 2009, the IACHR found the Colombian government culpable for the August 9, 1994, murder of Patriotic Union Senator Manuel Cepeda. The

UNCLASSIFIED



UNCLASSIFIED

- 22 -

Court ordered a public apology from the government, reparations to Cepeda's family, a monument, and a government-funded university scholarship in his honor. Cepeda's son, current Colombian Congressman Ivan Cepeda, rejected the government's offer to accept responsibility as closure in the case, insisting that the intellectual authors of the crime have not been brought to justice (including former AUC paramilitary leader Vicente Castano). On October 14, 2009, the Prosecutor General's Office announced that it was opening an investigation into former DAS Deputy Director Jose Miguel Narvaez Martinez, who was a consultant for the armed forces at the time of Cepeda's killing, for allegedly encouraging paramilitaries to kill Cepeda. Narvaez was implicated because of testimony by Diego Fernando Murillo Bejarano, aka "Don Berna."

In May, Narvaez was arrested and remains in prison on charges of aggravated homicide as of July. Investigations into Hector Castano Gil, Jose Luis Ferrero Arango and Edinson Manuel Bustamante Garcia were closed due to insufficient evidence. Former paramilitary members Hernando Medina Camacho and Justo Gil Labrador were formally charged with carrying out aggravated homicide, and their cases are pending. Deceased paramilitary leader Carlos Castano Gil was also charged with intellectual authorship of the crime. Others remain under investigation.

*General Rito Alejo del Rio and "Operation Genesis"*

Army General (retired) Rito Alejo del Rio's case was transferred to the Superior Tribunal in April 2010. Del Rio has been detained at the infantry school in Bogota since a September 12, 2008, preventive detention order was issued for his role in the homicide of Marino Lopez Mena. The Prosecutor General's Office indicted him on December 26, 2008, as the material author in the homicide of Marino Lopez Mena, who allegedly was beheaded on February 24, 1997. The AUC's Elmer Cardenas Bloc allegedly entered the town of Bijao, municipality of Riosucio (Choco), and with military collusion intimidated and attacked the residents in "Operation Genesis."

In March 2009, the Supreme Court reopened its case into del Rio's alleged collaboration with paramilitaries in the Uraba region of Antioquia from 1995 – 1997. This followed former paramilitary leaders' Salvatore Mancuso, Ever Velosa (aka "H.H."), and Diego Rivera naming him as collaborating with paramilitary forces in their testimonies under the JPL process. According to media reporting, there have been more than 150 allegations that he was responsible for murders and disappearances in Uraba, his former area of command. In early 2009, two former paramilitary members, Luis Muentes Mendoza (alias, "Vicente" or "El Calvo")

UNCLASSIFIED