

PTQ3639

RELEASED IN FULL

CONFIDENTIAL PTQ3639

PAGE 01 BOGOTA 08776 01 OF 03 162238Z  
ACTION ARA-01

INFO	LOG-00	ACDA-08	ACDE-00	INLB-01	AID-00	ACQ-01	INL-01
	OASY-00	SRPP-00	DS-00	EB-00	OIGO-01	TEDE-00	INR-00
	L-01	ADS-00	PM-00	ASDS-01	PMB-00	DSCC-00	DRL-04
	MR-00	/019W					

-----E52F4A 162239Z /38

O 162235Z SEP 97  
FM AMEMBASSY BOGOTA  
TO SECSTATE WASHDC IMMEDIATE 8715  
INFO DEPT OF TREASURY WASHDC  
SECDEF WASHDC  
DEPT OF JUSTICE WASHDC  
USIA WASHDC 3087  
DEA WASHDC  
NDIC JOHNSTOWN PA  
SECDEF WASHDC//OCDEPS//  
DIRNSA FT GEORGE G MEADE MD  
FBI WASHDC  
DIA WASHDC  
CIA WASHDC  
DIRONDCP WASHDC  
USCINCSO QUARRY HEIGHTS PM  
NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 BOGOTA 008776

STATE FOR ARA/AND, DRL; L/LEI  
NSC FOR JAMES DOBBINS

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BOGOTA 08776 01 OF 03 162238Z  
ONDCP FOR JANET CRIST

UNCLASSIFIED

SOUTHCOM ALSO FOR POLAD  
DEA FOR OF, OFL, OC, AX  
JUSTICE FOR CRIM. WARREN, RICHARD AND NDDS/VAN VLIET  
FBI FOR CID/IRS/IRU2  
USIA FOR AR, I/GAR  
TREASURY FOR FINCEN

E.O. 12958: 09/30/07

TAGS: PHUM, KJUS, MCAP, PINS, PREL, PGOV, SNAR, KCRM, CO  
SUBJECT: COLOMBIAN GOVERNMENT PROPOSES MILITARY JUSTICE REFORMS

CLASSIFIED BY POLOFF MICHAEL J. FITZPATRICK. REASON 1.5(D).

1. (C) SUMMARY: THE SAMPER ADMINISTRATION HAS SUBMITTED TO CONGRESS BILLS TO REMOVE FROM THE MILITARY COURTS THE ABILITY TO PROSECUTE HUMAN RIGHTS ABUSES COMMITTED BY GOVERNMENT FORCES AND TO GOVERN THE PROSECUTION OF MILITARY PERSONNEL BY THE CIVILIAN COURTS. AS PART OF ITS ONGOING EFFORTS TO IMPROVE BOTH THE NATION'S HUMAN RIGHTS IMAGE AND THE CHANCES FOR PEACE TALKS WITH INSURGENT GROUPS, THE GOVERNMENT HAS ALSO ANNOUNCED EFFORTS TO REFORM THE POLICE CODE, CRIMINALIZE "FORCED DISAPPEARANCES" AND COMPENSATE THE FAMILIES OF SOME HUMAN RIGHTS VICTIMS. END SUMMARY.

2. (C) AFTER MORE THAN TWO YEARS IN THE MAKING, THE SAMPER GOVERNMENT SUBMITTED TO CONGRESS SEPTEMBER 9 A BILL TO FUNDAMENTALLY OVERHAUL THE COLOMBIAN MILITARY JUSTICE SYSTEM. IN DOING SO, THE GOVERNMENT HAS TAKEN ON ONE OF THE MOST CONTROVERSIAL, YET KEY, ELEMENTS OF HOW THE COLOMBIAN STATE NOT ONLY FIGHTS AGAINST THE GUERRILLAS AND NARCOTICS-TRAFFICKING  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BOGOTA 08776 01 OF 03 162238Z  
MAFIAS, BUT PROTECTS BOTH THE RIGHTS OF ITS CIVILIAN POPULATION AND THE LEGITIMATE INTERESTS OF THOSE CALLED UPON TO DO COMBAT. THE REFORM BILL WAS HAMMERED OUT AFTER INTENSE NEGOTIATIONS AMONG, INTER ALIA, THE INSPECTORS GENERAL OF THE ARMED FORCES AND OF THE SEVERAL SERVICES, THE OFFICES OF THE ATTORNEY GENERAL, PROSECUTOR GENERAL, THE HUMAN RIGHTS OMBUDSMAN, AND OF THE MINISTER OF DEFENSE, AS WELL AS THE PRESIDENTIAL ADVISOR ON HUMAN RIGHTS, AND THE COLOMBIAN COMMISSION OF JURISTS.

REPLACING IMPUNITY ....

UNCLASSIFIED

UNCLASSIFIED

3. (U) THE CURRENT CODE OF MILITARY JUSTICE (WHICH DATES BACK ONLY TO DECREES PROMULGATED IN 1988, BUT UNDER THE TERMS OF THE CONSTITUTION OF 1886) HAS BEEN THE SUBJECT OF MUCH DOMESTIC AND INTERNATIONAL CRITICISM (BY NGOS, THE OAS, THE UNITED NATIONS, THE DEPARTMENT OF STATE) DUE TO THE ENVIRONMENT OF IMPUNITY WHICH IT HAS FOSTERED, ESPECIALLY WITH RESPECT TO HUMAN RIGHTS VIOLATIONS. THE CURRENT LEGAL SYSTEM ALLOWS THE MILITARY COURTS TO OBTAIN JURISDICTION OVER VIRTUALLY ANY AND ALL CRIMES COMMITTED BY MILITARY AND POLICE PERSONNEL -- WHETHER CONNECTED TO LEGITIMATE ACTS OF SERVICE OR NOT. ONCE TRANSFERRED TO THE MILITARY "FUERO", THE VAST MAJORITY OF CASES OF INVOLVING MILITARY ABUSE OF HUMAN RIGHTS ARE EITHER QUIETLY SHELVED OR END IN OUTRIGHT ABSOLUTION. AND IN THOSE RELATIVELY FEW CASES RESULTING IN CONVICTIONS (TYPICALLY INVOLVING THE MOST JUNIOR OF PERSONNEL), PUNISHMENT AMOUNTING TO NO MORE THAN A SLAP ON THE WRIST IS THE NORM.

4. (U) THE NEW DRAFT CODE SEEKS TO CHANGE MUCH OF THIS, WHILE ALSO MODERNIZING MANY PROCEDURAL ASPECTS OF THE MILITARY JUSTICE  
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 BOGOTA 08776 01 OF 03 162238Z  
SYSTEM. IN PARTICULAR, SEVERAL FUNDAMENTAL REFORMS APPEAR TO INFUSE AND INFORM THE 123 PAGES OF THE DRAFT BILL:

- THE PLACEMENT OF CLEAR LIMITS ON THE REACH OF THE MILITARY COURTS, ESPECIALLY WITH RELATION TO HUMAN RIGHTS VIOLATIONS;
- A NEW, TIGHTER DEFINITION OF "OFFENSES RELATED TO SERVICE";
- THE PLACEMENT OF EXPLICIT LIMITS ON "DUE OBEDIENCE" (I.E., "JUST FOLLOWING ORDERS") AS A REASON FOR AVOIDING PERSONAL RESPONSIBILITY FOR ILLEGAL ACTS;
- THE FULL INTEGRATION OF THE CIVIL PROCEDURE CODE INTO THE PROCEDURES TO BE FOLLOWED BY THE MILITARY COURTS; AND,
- A CLEAR SEPARATION BETWEEN THE JURISDICTION OF THE MILITARY COURTS AND MILITARY COMMANDERS, SO AS PREVENT SENIOR OFFICIALS FROM PASSING JUDGMENT ON THEIR OWN SUBORDINATES (WHO OFTEN WERE FOLLOWING THEIR OWN INSTRUCTIONS TO THEM); AND,
- THE RIGHT OF CIVILIANS AFFECTED BY A PARTICULAR CASE TO BE ACTIVE PARTICIPANTS IN THOSE CASES WHICH REMAIN WITHIN THE MILITARY COURT SYSTEM.

UNCLASSIFIED

UNCLASSIFIED

... WITH SUBMISSION TO CIVIL LAW

CONFIDENTIAL

NNNNPTQ3640

CONFIDENTIAL PTQ3640

PAGE 01 BOGOTA 08776 02 OF 03 162239Z  
ACTION ARA-01

INFO	LOG-00	ACDA-08	ACDE-00	INLB-01	AID-00	ACQ-01	INL-01
	OASY-00	SRPP-00	DS-00	EB-00	OIGO-01	TEDE-00	INR-00
	L-01	ADS-00	PM-00	ASDS-01	PMB-00	DSCC-00	DRL-04
	MR-00	/019W					

-----E52F4E 162239Z /38

O 162235Z SEP 97  
 FM AMEMBASSY BOGOTA  
 TO SECSTATE WASHDC IMMEDIATE 8716  
 INFO DEPT OF TREASURY WASHDC  
 SECDEF WASHDC  
 DEPT OF JUSTICE WASHDC  
 USIA WASHDC 3088  
 DEA WASHDC  
 NDIC JOHNSTOWN PA  
 SECDEF WASHDC//OCDEPS//  
 DIRNSA FT GEORGE G MEADE MD  
 FBI WASHDC  
 DIA WASHDC

UNCLASSIFIED

UNCLASSIFIED

CIA WASHDC  
DIRONDCP WASHDC  
USCINCSO QUARRY HEIGHTS PM  
NSC WASHDC

C O N F I D E N T I A L SECTION 02 OF 03 BOGOTA 008776

STATE FOR ARA/AND, DRL, L/LEI  
NSC FOR JAMES DOBBINS

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BOGOTA 08776 02 OF 03 162239Z  
ONDCP FOR JANET CRIST  
SOUTHCOM ALSO FOR POLAD  
DEA FOR OF, OFL, OC, AX  
JUSTICE FOR CRIM. WARREN, RICHARD AND NDDS/VAN VLIET  
FBI FOR CID/IRS/IRU2  
USIA FOR AR, I/GAR  
TREASURY FOR FINCEN

E.O. 12958: 09/30/07  
TAGS: PHUM, KJUS, MCAP, PINS, PREL, PGOV, SNAR, KCRM, CO  
SUBJECT: COLOMBIAN GOVERNMENT PROPOSES MILITARY JUSTICE REFORMS

=====

5. (U) THE CENTRAL ROLE HUMAN RIGHTS CONCERNS PLAYED IN THE DEVELOPMENT OF THE NEW CODE ARE UNMISTAKABLE FROM THE VERY FIRST CHAPTER. THE VERY FIRST ARTICLE OF THE CODE DECLARES THAT OFFENSES "RELATED TO SERVICE" COMMITTED BY ACTIVE DUTY PERSONNEL OF THE SECURITY FORCES (I.E., MILITARY OR POLICE) SHALL BE TRIED IN MILITARY COURTS. THE SECOND ARTICLE DEFINES SUCH OFFENSES AS THOSE "DIRECTLY DERIVED FROM THE EXERCISE OF MILITARY OR POLICE FUNCTIONS WHICH ARE PROPER AND IN ACCORDANCE WITH THE GOVERNING CONSTITUTIONAL, LEGAL AND REGULATORY PROVISIONS."

6. (C) THE THIRD ARTICLE THEN DEFINES "OFFENSES UNRELATED TO SERVICE" THUSLY: "IN NO CASE MAY AN OFFENSE BE CONSIDERED RELATED TO SERVICE FOR CRIMES OF TORTURE, GENOCIDE, FORCED DISAPPEARANCE, NOR ANY OTHER OFFENSE WHICH CONSTITUTES A GRAVE VIOLATION OF HUMAN RIGHTS, NOR CRIMES AGAINST SEXUAL FREEDOM, AGAINST HUMAN DIGNITY, NOR CONSPIRACY TO COMMIT A CRIME." THE

UNCLASSIFIED

UNCLASSIFIED

CHAPTER CONCLUDES BY EXPLICITLY PROHIBITING THE INVESTIGATION OR  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BOGOTA 08776 02 OF 03 162239Z  
JUDGMENT OF CIVILIANS BY MILITARY COURTS. (NOTE: EMBASSY IS  
POUCHING COPIES OF THE DRAFT MILITARY CODE OF JUSTICE TO DRL AND  
ARA/AND, FOR DEPARTMENT'S CONSIDERATION AND FOR SHARING WITH  
ADMIRAL GRANT OF DOD'S JAG CORPS. END NOTE.)

WHILE PROVIDING SPECIAL RIGHTS AND GUARANTEES  
=====

7. (U) EVEN AS HE PROPOSED SUCH A FUNDAMENTAL "CLIPPING OF THE  
WINGS" OF THE MILITARY COURTS, PRESIDENT SAMPER SIMULTANEOUSLY  
PROPOSED A SEPARATE BILL TO GOVERN HOW MILITARY PERSONNEL MAY BE  
TRIED IN THE CIVILIAN COURTS. THIS SECOND BILL PROPOSES THAT  
OFFICERS BE FIRST TRIED IN SUPERIOR COURT, WITH APPEALS HEARD DIRECTLY  
BY  
THE SUPREME COURT OF JUSTICE. ENLISTED PERSONNEL AND NON-  
COMMISSIONED OFFICERS WOULD BE JUDGED IN THE CIRCUIT COURTS, WITH  
APPEALS HEARD BY THE SUPERIOR COURTS.

IT'S ALL PART OF A PLAN  
=====

8. (U) THESE REFORM BILLS HAVE BEEN SUBMITTED TO CONGRESS IN THE  
MIDST OF A FLURRY OF ADMINISTRATIVE ACTIONS TO IMPROVE THE  
NATION'S HUMAN RIGHTS RECORD (AND IMAGE). PRESIDENT SAMPER  
SUBMITTED A NEW POLICE CODE TO CONGRESS THE FIRST WEEK OF  
SEPTEMBER. HE THEN SUBMITTED TO CONGRESS A BILL TO DEFINE  
"CRIMES AGAINST HUMANITY", WHICH WOULD -- FOR THE FIRST TIME IN  
COLOMBIA -- CRIMINALIZE AND PENALIZE THE ACT OF "FORCED  
DISAPPEARANCE." AND HE HAS ANNOUNCED HE WILL PUSH FOR  
CONGRESSIONAL RATIFICATION THIS FALL OF COLOMBIA'S SUBSCRIPTION  
TO THE INTER-AMERICAN CONVENTION AGAINST TORTURE.

CONFIDENTIAL

CONFIDENTIAL

UNCLASSIFIED

UNCLASSIFIED

PAGE 04

BOGOTA 08776 02 OF 03 162239Z

9. (U) IN MUCH THE SAME VEIN, THE COUNCIL OF STATE RECENTLY ANNOUNCED THAT, UNDER THE TERMS OF RECENT AGREEMENTS WITH AND JUDGMENTS BY THE INTER-AMERICAN HUMAN RIGHTS COURT, THE GOVERNMENT FOR THE FIRST TIME HAS PAID COMPENSATION TO THE FAMILIES OF 89 VICTIMS OF HUMAN RIGHTS VIOLATIONS COMMITTED BY THE SECURITY FORCES. MOST NOTABLE AMONG THESE CASES: THE PAYMENT OF 2,000 GRAMS OF GOLD TO THE FAMILY OF IRMA FRANCO PINEDA, AN M-19 GUERRILLA WHO WAS CAPTURED ALIVE DURING THE NOVEMBER 6, 1985, ARMY ASSAULT TO RETAKE THE NATIONAL PALACE OF JUSTICE, PARADED BEFORE CAMERAS, AND SUBSEQUENTLY TORTURED AND KILLED BY MEMBERS OF THE CHARRY SOLANO BATTALION (NOW KNOWN AS THE 20TH INTELLIGENCE BRIGADE).

COMMENT

=====

10. (C) THE SAMPER ADMINISTRATION HAS UNCORKED A FEW PROJECTS THAT HAVE CLEARLY BEEN LONG IN DEVELOPMENT, AND WHICH, IN THE EYES OF MANY, ARE LONG OVERDUE. WHILE THE DEVIL IS ALWAYS TO BE

CONFIDENTIAL

NNNNPTQ3641

CONFIDENTIAL

PTQ3641

UNCLASSIFIED

UNCLASSIFIED

PAGE 01 BOGOTA 08776 03 OF 03 162239Z  
ACTION ARA-01

INFO LOG-00 ACDA-08 ACDE-00 INLB-01 AID-00 ACQ-01 INL-01  
OASY-00 SRPP-00 DS-00 EB-00 OIGO-01 TEDE-00 INR-00  
L-01 ADS-00 PM-00 ASDS-01 PMB-00 DSCC-00 DRL-04  
MR-00 /019W

-----E52F55 162239Z /38

O 162235Z SEP 97  
FM AMEMBASSY BOGOTA  
TO SECSTATE WASHDC IMMEDIATE 8717  
INFO DEPT OF TREASURY WASHDC  
SECDEF WASHDC  
DEPT OF JUSTICE WASHDC  
USIA WASHDC 3089  
DEA WASHDC  
NDIC JOHNSTOWN PA  
SECDEF WASHDC//OCDEPS//  
DIRNSA FT GEORGE G MEADE MD  
FBI WASHDC  
DIA WASHDC  
CIA WASHDC  
DIRONDCP WASHDC  
USCINCSO QUARRY HEIGHTS PM  
NSC WASHDC

C O N F I D E N T I A L SECTION 03 OF 03 BOGOTA 008776

STATE FOR ARA/AND, DRL, L/LEI  
NSC FOR JAMES DOBBINS

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BOGOTA 08776 03 OF 03 162239Z  
ONDCP FOR JANET CRIST  
SOUTHCOM ALSO FOR POLAD  
DEA FOR OF, OFL, OC, AX  
JUSTICE FOR CRIM. WARREN, RICHARD AND NDDS/VAN VLIET  
FBI FOR CID/IRS/IRU2  
USIA FOR AR, I/GAR  
TREASURY FOR FINCEN

E.O. 12958: 09/30/07

UNCLASSIFIED



UNCLASSIFIED

TAGS: PHUM, KJUS, MCAP, PINS, PREL, PGOV, SNAR, KCRM, CO  
SUBJECT: COLOMBIAN GOVERNMENT PROPOSES MILITARY JUSTICE REFORMS

FOUND IN THE DETAILS OF ANY LEGISLATIVE PROPOSAL WHICH RUNS TO 641 ARTICLES, THE GOVERNMENT'S OVERARCHING IMPULSE IN ATTEMPTING TO REFORM THE MILITARY PENAL CODE IS AS CLEAR AS IT IS POSITIVE. THE BASKET OF HUMAN RIGHTS INITIATIVES SHOULD ALSO BE SEEN AS PART AND PARCEL OF THE GOVERNMENT'S LARGER EFFORTS TO "HUMANIZE THE WAR" AND TO BUILD MOMENTUM BEHIND, AND CONFIDENCE IN, ITS PEACE OVERTURES WITH THE GUERRILLAS. AS POSITIVE AS THESE MEASURES ARE, HOWEVER, THEY ARE JUST FIRST STEPS IN WHAT MUST BECOME A LONG AND COMPLICATED PROCESS OF REFORM -- THE BENEFITS OF WHICH WILL NOT BE EVIDENT FOR AN EVEN LONGER TIME.

11. (C) THE BILL TO REFORM THE MILITARY CODE OF JUSTICE WILL NOW BE SUBJECT TO ALL THE TUGS AND TUSSLES OF CONGRESSIONAL POLITICS -- INCLUDING FORCEFUL, IF QUIET, MILITARY PRESSURES. THERE EXISTS IN COLOMBIA, INCLUDING WITHIN THE CONGRESS, MANY DISTINGUISHED AND RESPONSIBLE PERSONS WHO ARE AMENABLE TO THE PROPOSITION THAT THE MILITARY'S HANDS SHOULD NOT BE "TIED" BY HUMAN RIGHTS CONCERNS -- ESPECIALLY WHEN THEIR ARMED OPPONENTS THEMSELVES HAVE BEEN SO ABUSIVE OF THE RIGHTS OF THE CITIZENRY.

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BOGOTA 08776 03 OF 03 162239Z  
THIS PERCEPTION HAS BEEN ERODED, BUT NOT TOTALLY, BY THE INCREASING PUBLIC PERCEPTION OF MILITARY INCOMPETENCE.

12. (C) WE FULLY EXPECT SOME ELEMENTS OF THE BILL TO BE REVISED BY CONGRESS. BUT CERTAIN FUNDAMENTALS SIMPLY CAN NO LONGER BE ROLLED BACK, FOLLOWING THE AUGUST CONSTITUTIONAL COURT DECISION TO MOVE ALL PROSECUTIONS FOR "CRIMES AGAINST HUMANITY" TO THE CIVILIAN COURTS. AS MILITARY FORCES COMMANDING GENERAL BONETT HAS TOLD THE EMBASSY ON SEVERAL OCCASIONS: THAT IS A DECISION THE MILITARY MAY NOT LIKE, BUT ONE IT IS COMMITTED TO RESPECT.

FRECHETTE

UNCLASSIFIED

UNCLASSIFIED

CONFIDENTIAL

NNNN

UNCLASSIFIED