

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

Please provide:

1. Please provide information on the Colombian army and, in particular, any reports on officers in the Colombian army being pressured by colleagues and superiors to violate human rights?

Please also provide any reports on officers claiming they were dismissed for refusing to obey orders to violate human rights?

2. Please provide any information on “criminal irregularities” that the army claims was the reason officers were evaluated as being ‘deficient’.

3. Is there any other information of relevance.

RESPONSE

1. Please provide background information on the Colombian army. Include any reports more generally on officers in the Colombian army being pressured by colleagues and superiors to violate human rights or any reports on other officers claiming they were dismissed for refusing to obey orders to violate human rights.

This question provides information on:

[Background information on the Colombian army](#) (including High Mountain Battalions)

[Human Rights abuses by the Colombian army](#) (including High Mountain Battalions)

[The military justice system and impunity](#)

[Pressure on officers to violate human rights](#)

[Dismissal of officers for refusing to violate human rights](#)

Background information on the Colombian army

According to the Jane's Information Group publication, *Jane's World Armies*, the Colombian army is made up of seven divisions with a total of 19 brigades, an Army Aviation Brigade, the anti-narcotics Brigade and the Rapid Deployment Force. It comprises infantry (which includes the High Mountain Battalions), armour, artillery, engineers and logistics. The total strength of army is estimated at 208,400 ('Colombia' in *Jane's World Armies*, 2008, Jane's Information Group, 7 January, pp.1-2 – Attachment 1).

Jane's World Armies provides the following assessment of the Colombian army:

Given the threats facing Colombia and the number of fighters in both guerilla and parliamentary rebel groups, the army is woefully small. It is now almost wholly tailored towards counterinsurgency, with little conventional capability. In the event of a conventional war involving Colombia's neighbours, only Venezuela would prove a problem due to its armoured divisions and modern attack aircraft, however Colombia's combat experience would be a plus.

The average Colombian soldier has historically been poorly led, unmotivated and only competently trained, but the mobile brigades, counter-guerrilla battalions, anti-narcotics battalions and Special Forces, many of whom have received US Special Forces training, are quality troops made even more impressive by their combat experience ('Colombia' in *Jane's World Armies*, 2008, Jane's Information Group, 7 January, p.2 – Attachment 1).

Officers are trained at the Military School of Cadets 'General José María Córdova' located in the capital, Bogotá. It offers a five-year course leading to a commission in the rank of second lieutenant ('Colombia' in *Jane's World Armies*, 2008, Jane's Information Group, 7 January, p.12 – Attachment 1).

High Mountain Battalions

Jane's World Armies also provides information on the specialist units of the High Mountain Battalions, which includes Battalion No. 5 'General Urbano Castellanos' based in Génova in Quindío province:

There are plans for eight High Mountain Battalions, of which all six are operational. The idea behind these units is to dominate strategic corridors in the Andes mountains, where the rebels move weapons, drugs and kidnap victims. Conditions are tough at some 3,500 m above sea level and, owing to adverse weather conditions, air support is unreliable. The battalions are therefore designed to be able to fight independently and, if attacked, hold out for at least five days, the time needed for troops on foot to reach their eyries. Made up of 1,200 men, the High Mountain Battalions have integrated infantry, cavalry, engineering and artillery units. Their bases are specially designed with trench and bunker systems and mortar emplacements.

The operational High Mountain Battalions are:

- No 1 'Teniente Coronel Antonio Aredondo', based in Sumapaz, (Cundinamarca);
- No 2 'General Santos Gutiérrez Prieto', based in El Espino, (Boyacá);
- No 3 'Rodrigo Lloreda Caicedo', based in Los Farallones mountains outside Cali, (Valle del Cauca);
- No 4 'General Benjamin Herrera', based in Santiago (Cauca province);
- No 5 'General Urbano Castellanos' based in Génova (Quindío province);

No 6 Mayor 'Daniel Robinson Ruiz', based in the Sierra Nevada de Santa Marta (Magdalena province).

No 7

No. 8 in La Diana, Florida (Valle del Cauca) ('Colombia' in *Jane's World Armies*, 2008, Jane's Information Group, 7 January, p.10 – Attachment 1).

Further detailed information on the Colombian army, including deployment, command, organisation, training, procurement and equipment, is provided in: 'Colombia' in *Jane's World Armies*, 2008, Jane's Information Group, 7 January – Attachment 1.

Attached is a map of Quindío which shows the location of Génova where the High Mountains Battalion No. 5 'General Urbano Castellanos' is based. Also attached is a map of Colombia on which Quindío is highlighted ('Quindío' 2000, *Microsoft Encarta Atlas 2000* – Attachment 2; Central Intelligence Agency 2001, 'Colombia', 15 June, Reliefweb website http://www.icg.org/library/documents/latin_america/negotiating_with_the_paramilitaries.pdf – Attachment 3).

Human Rights abuses by the Colombian army

Over the years sources have reported human rights abuses by members of the Colombian army, including the High Mountain Battalions. Civilian courts have tried military personnel for human rights abuses and investigations of killings have proceeded, albeit slowly. Only in a few cases have investigations into human rights abuses been completed.

The US Department of State's *Country Reports on Human Rights Practices for 2006 – Colombia* reported the following killings involving the army:

The Office of the UN High Commissioner for Human Rights (UNHCHR) expressed concern over the January 4 killings of Edimer Witer Hernandez Giraldo, Ricardo Arley Jaramillo, and John Jairo Guzman in Montebello, Antioquia. According to the allegations, members of the Fourth Brigade's Pedro Nel Ospina Battalion summarily executed the victims and subsequently presented them as enemy combatants.

According to CINEP [The Jesuit-founded Center for Popular Research and Education], on March 4, soldiers from the Fourth or 17th Brigade killed Nelly Johana Durango in San Jose de Apartado. CINEP alleged that the soldiers subsequently presented her as an enemy combatant.

The UNHCHR expressed concern over the March 9 killing of John Jairo Gomez Garces in Bello, Antioquia. According to the allegations, soldiers from the Fourth Brigade's Pedro Nel Ospina Battalion summarily executed the victim and later claimed he was killed in cross-fire with the AUC.

In May the UNHCHR requested the government provide an explanation for 15 reports of alleged unlawful killings. Of the 15 reports, 11 involved the Fourth Brigade, one involved the 17th Brigade, one involved the Sixth Brigade, and two were unidentified. In June the UNHCHR requested the Office of the Inspector General (Procurador General) to investigate 37 cases of alleged killings of persons who had been presented as enemies killed in combat. In response to these requests, the government subsequently identified 29 cases. Of these, the military justice system was investigating one case, the Supreme Council of the Judiciary was reviewing another for jurisdiction, and the remaining 27 were being investigated by the Prosecutor General's Office (Fiscal General). As of September, the Prosecutor General's Office had issued seven preventive detention orders in two of its cases.

In September the Prosecutor General's Office detained Army Major Jorge Alberto Mora Pineda, commander of the antikidnapping unit in Barranquilla, for his role in an alleged false kidnapping operation on August 14 in which members of the unit killed six persons. The Prosecutor General's Office investigated six members of the governmental GAULA (Unified Action Groups for Personal Liberty, an entity formed to combat kidnapping and extortion) and one agent from the Department of Administrative Security (DAS).

In the February 2005 case of eight civilians killed in San Jose de Apartado, the Human Rights Unit of the Prosecutor General's Office continued collecting evidence against members of the army's 17th Brigade for their alleged involvement. However, the Prosecutor General's Office reported difficulty in collecting testimony from the members of the peace community in San Jose de Apartado, which impeded the investigation.

On February 20, the Prosecutor General's Office indicted seven members (including the commander) of the "Pantero Uno" Squad from the army's 12th Infantry Battalion ("Alfonso Manosalva Florez") for homicide and criminal conspiracy in the killings of Wilman Guillermo, Arriaga Arboleda, and Jefferson Moreno Lopez in July 2005 in Condoto, Choco.

The Prosecutor General's Office detained army soldier Miguel Angel Molina Delgado on charges of homicide and trafficking firearms owned by the armed forces, for launching a grenade into a house, which caused the death of a minor and injuries to three persons in September 2005.

...

In September the Prosecutor General's Office detained one officer, one noncommissioned officer, and four soldiers in the October 2005 killing of Luis Orozco and Mario Pineda in Tierralta, Cordoba. According to the Prosecutor General's Office, the soldiers originally presented the victims as insurgents killed in combat, but a subsequent investigation revealed the soldiers had summarily executed the victims. The case was pending at year's end.

...

In September the Prosecutor General's Office ordered the detention of eight soldiers for killing Juan Daza in 2004 in Atanquez, Cesar. The army had presented the victim as an insurgent killed in combat, but the prosecutor general's investigation determined the suspects summarily executed the victim.

In August the Prosecutor General's Office detained a noncommissioned officer and three soldiers for the 2003 killing of Jesus Montero in Rioseco, Cesar. The army had presented the victim as an insurgent killed in combat, but a subsequent investigation determined the soldiers summarily executed the victim.

...

There was no information available regarding developments in the following killings that CINEP attributed to army units in 2005: in February, two peasants by Battalion 21 Vargas in Meta Department and two civilians by the Santander Battalion in Cesar Department and in March, three persons in Arauca Department by Second Division troops...(US Department of State 2007, '1.a. Arbitrary or Unlawful Deprivation of Life' in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – Attachment 4).

The US State Department has also reported torture by armed forces personnel:

...CINEP also reported that during the first six months of the year there were 32 victims of torture by the armed forces. On January 25, a group of soldiers allegedly tortured army conscripts at a training center in Tolima. The Prosecutor General's Office investigated five officers, nine noncommissioned officers, and one soldier in the case and placed six of them in preventive detention. They were all under indictment.

CINEP reported that on February 1, soldiers assigned to the 40th Battalion Heroes de Santuario tortured Mario Varela in Puerto Rico, Meta Department.

In February CINEP alleged that army soldiers tortured William Alberto Idagarra Agueirre in Arauquita, Arauca Department (US Department of State 2007, '1.c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment' in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – Attachment 4).

Other abuses were also reported by the US State Department in: US Department of State 2007, '1.g. Use of Excessive Force and Other Abuses in Internal Conflicts' in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – Attachment 4.

In October 2007 an International Observation Mission on Extrajudicial Executions and Impunity in Colombia, comprising 13 experts from a range of countries, reported on extrajudicial executions in Colombia. The mission was at the invitation of the Coordinación Colombia-Europa-Estados Unidos (CCEEU), a network of over 180 Colombian NGOs. It had the support of the UN Office of the High Commissioner for Human Rights (International Observation Mission on Extrajudicial Executions and Impunity in Colombia 2007, *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*, October, Latin American Working Group website, p.1 http://www.lawg.org/docs/EE_Preliminary_Report.pdf – Accessed 16 January 2008 – Attachment 5).

The mission noted that between July 2002 and June 2007 there were at least 955 cases of extrajudicial killings and 235 cases of forced disappearances. The Inspector General's Office was investigating disciplinary proceedings in 670 cases, having issued 11 disciplinary judgments to October 2007 (International Observation Mission on Extrajudicial Executions and Impunity in Colombia 2007, *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*, October, Latin American Working Group website http://www.lawg.org/docs/EE_Preliminary_Report.pdf – Accessed 16 January 2008 – Attachment 5).

The International Observation Mission noted that according to testimonies received and meetings with local authorities the following patterns in extrajudicial killings:

- (a) Extrajudicial executions take place in the context of anti-insurgent military operations, although witnesses state that there was no combat.
- (b) In a large number of cases, victims are illegally detained in their home or workplace and taken to the place where they are executed.
- (c) Those who are killed or disappeared are generally peasant farmers, indigenous people, labourers or very impoverished people. A significant percentage are community leaders.
- (d) They are reported by the armed forces as insurgents killed in combat. The victims frequently are found in uniform with various types of arms and military equipment although, according to the testimonies, they were wearing their usual civilian clothing and were unarmed when they were taken or disappeared.

- (e) On many occasions the victims are first pointed out by anonymous informers, masked demobilised guerrillas, who are prone to provide false information due to their own precarious situation; on other occasions, the victims appeared to be selected randomly.
- (f) Usually the body is removed by the same members of the armed forces who had killed the person “in combat”.
- (g) The crime scene is not preserved, nor is the evidence.
- (h) Autopsies are carried out superficially.
- (i) Frequently, signs of torture appear on the bodies. Various testimonies reported the use of torture.
- (j) Personal items are removed from the bodies and ID documents go missing.
- (k) On many occasions, the bodies are moved to municipalities far from where the person was detained, which means families have to travel to the military barracks to look for information, and to places where the bodies were finally left. There are also unjustified delays in issuing death certificates.
- (l) There are serious impediments both for the families to gain access to the bodies, and for the families to identify the bodies.
- (m) Bodies are buried as unidentified corpses even when they have been identified by relatives or others (International Observation Mission on Extrajudicial Executions and Impunity in Colombia 2007, *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*, October, Latin American Working Group website http://www.lawg.org/docs/EE_Preliminary_Report.pdf – Accessed 16 January 2008 – Attachment 5).

The US State Department reported that the Ministry of Defense had relieved soldiers from duty in 2006:

During the year the Human Rights Unit of the Prosecutor General’s Office issued preventive detention orders for 66 members of the armed forces for human rights violations or paramilitary collaboration. However, impunity continued to be widespread due to a lack of resources for investigations, protection for witnesses and investigators, coordination between government entities, and in some cases obstruction of justice. **Between January and October, the Ministry of Defense relieved 147 members of the armed forces from duty for inefficiency, unethical conduct, corruption, and reasonable doubt regarding possible violations of human rights** (US Department of State 2007, ‘Role of the Police and Security Apparatus’ in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – Attachment 4).

Human rights abuses by High Mountain Battalions

A British NGO, Justice for Colombia, has noted that the Colombian army is “heavily implicated in human rights abuse” which “is particularly apparent with the ‘High Mountain Battalions’” which specialise in counter-insurgency work (Justice for Colombia 2006, *Rule of Law? Report of a lawyers’ delegation to Colombia*, May, p.25 <http://www.justiceforcolombia.org/ruleoflaw.pdf> – Accessed 12 March 2007 – Attachment 6).

Allegations of abuses by High Mountain Battalions reported by the UN High Commissioner for Human Rights are (note: dates of the abuses were not provided in some instances):

- Ill-treatment during detentions were carried out by High Mountains Battalion No.3 in Valle (UN High Commissioner for Human Rights 2006, 'Report of the High Commissioner for Human Rights on the situation of human rights in Colombia', *United Nations Economic and Social Council*, E/CN.4/2006/009, 20 January, para. 34/pp.19-20 – Attachment 7).
- In May 2005 there were allegations involving the detention and subsequent execution of three people in Almaguer (Cauca) which were attributed to High Mountain Battalion No. 4 (UN High Commissioner for Human Rights 2006, 'Report of the High Commissioner for Human Rights on the situation of human rights in Colombia', *United Nations Economic and Social Council*, E/CN.4/2006/009, 20 January, para. 3/p.69 – Attachment 7).
- The execution of three young peasants, sons of Unión Patriótica activists, who were presented as guerrillas killed in combat, was attributed to the High Mountains Battalion based in Sumapaz (Bogotá) (UN High Commissioner for Human Rights 2006, 'Report of the High Commissioner for Human Rights on the situation of human rights in Colombia', *United Nations Economic and Social Council*, E/CN.4/2006/009, 20 January, para. 3/p.69 – Attachment 7).
- 24 people were detained in Santa Rosa (Cauca) by members of High Mountain Battalion No. 4, *Departamento Administrativo de Seguridad* (DAS), the Attorney-General's Office and Technical Investigation Corps of the Attorney-General's Office (CTI). A "denunciation" was made that the Attorney-General's Office had arrived with a blank arrest warrant which was filled in on the basis of a hooded informant (UN High Commissioner for Human Rights 2005, 'Report of the High Commissioner for Human Rights on the situation of human rights in Colombia', *United Nations Economic and Social Council*, E/CN.4/2005/10, 28 February, para. 17/p.51 – Attachment 8).
- Allegations have been made that two 14-year-old girls were made pregnant by soldiers of the High Mountain Battalion, due to their proximity to, and occasional occupation of, the local school in Pichindé, Cali (Valle) (UN High Commissioner for Human Rights 2005, 'Report of the High Commissioner for Human Rights on the situation of human rights in Colombia', *United Nations Economic and Social Council*, E/CN.4/2005/10, 28 February, para. 51/pp.57-58 – Attachment 8).

Also, a news article reported that a High Mountain Battalion unit was said to have killed ten police officers in May 2006. The police were said to have been searching for drugs and suspected drug traffickers. Eight members of the battalion and its commander, Col. Bayron Carvajal, were reportedly detained and Carvajal sacked from the army. According to the article this was not the first time that Carvajal's unit had experienced problems. In 2005 troops under his command reportedly killed 15 guerrillas, some or all of whom later were said to be civilian peasants (Salisbury, Steve 2006, 'Uribe faces scandal on eve of U.S. visit; Orders probe of suspected military executions', *The Washington Times*, 14 June – Attachment 9).

The military justice system and impunity

The Colombian military justice system investigates and prosecutes active duty military and police personnel for crimes “related to acts of military service”. The military penal code specifically defines torture, genocide, massacre and forced disappearance as crimes unrelated to military service. Serious human rights violations are considered unrelated to military service and are heard by the civilian justice system, although sources state that this does not always occur. The military penal code also denies commanders the power to impose military justice discipline on subordinates and extends legal protection to army personnel who refuse to obey orders to commit human rights abuses. Country information also indicates that there is a sense of impunity in cases relating to human rights abuses by the military.

On the military justice system the US State Department wrote in respect of the year 2006:

The military justice system consists of 44 military courts and the Supreme Military Tribunal, which serves as the court of appeal for all cases tried in military courts. The Supreme Court of Justice serves as a second court of appeal for cases in which sentences of six or more years in prison are imposed. In September the minister of defense appointed the first civilian to head the military justice system.

The military justice system may investigate and prosecute active duty military and police personnel for crimes “related to acts of military service.” The military penal code specifically defines torture, genocide, massacre, and forced disappearance as crimes unrelated to military service. All serious human rights violations are considered unrelated to military service and are handled by the civilian justice system. The military penal code specifically excludes civilians from military jurisdiction, and civilian courts must try retired military and police personnel, even for service-related acts committed before their retirement. The military penal code denies commanders the power to impose military justice discipline on their subordinates and extends legal protection to service members who refuse to obey orders to commit human rights abuses.

The Office of the Prosecutor General is responsible for investigations and prosecutions of criminal offenses. Its Human Rights Unit, which included 15 satellite offices in seven regional capitals, specialized in investigating human rights crimes. The unit’s 47 prosecutors were handling 3,789 cases at year’s end.

The Office of the Inspector General, also known as the Public Ministry, investigates allegations of misconduct by public employees, including members of the state security forces. The Inspector General’s Office referred all cases of human rights violations it received to the prosecutor general’s human rights unit.

During the year the Office of the Inspector General opened disciplinary processes against 54 members of the armed forces for human rights offenses; the cases were referred to the prosecutor general for criminal investigation. In addition the Prosecutor General’s Office brought charges against 56 members of the armed forces and found 12 other armed forces members guilty of murders or kidnappings and sentenced them to prison terms ranging between 20 and 38 years.

...

In the military justice system, military judges preside over courts-martial without juries. Counsel may represent the accused and call witnesses, but the majority of fact-finding takes place during the investigative stage. Military trial judges issue rulings within eight days of a

court-martial hearing. Representatives of the civilian Inspector General's Office are required to be present at courts-martial.

Criminal procedure within the military justice system includes elements of the inquisitorial and accusatorial systems. Defendants are considered innocent until proven guilty and have the right to timely consultation with counsel. A Constitutional Court ruling forbids military attorneys from undertaking defense counsel duties. Defendants must retain counsel at their own expense or rely on defenders paid by a special military officers' fund.

Military justice system reforms begun in 2005 aimed to establish a forensic investigative corps, transition to an accusatorial system, and establish a military defense corps. In October Luz Marina Gil became the first civilian to head the military justice system.

In June President Uribe recommended that the Prosecutor General's Office investigate and prosecute through the ordinary justice system military killings of 10 antinarcotics police officers. After a judge returned jurisdiction to the military justice system, the Ministry of Defense voluntarily ceded jurisdiction back to the Prosecutor General's Office. Fifteen soldiers, including the commanding officer, were arrested in connection with the case, and the trial began on December 18. [See also: Salisbury, Steve 2006, 'Uribe faces scandal on eve of U.S. visit; Orders probe of suspected military executions', *The Washington Times*, 14 June – Attachment 9.]

In November the Prosecutor General's Office sentenced two army officers to 38 years and 15 years, respectively, for aggravated homicide in the 1998 La Cabuya massacre (US Department of State 2007, '1.e. Denial of Fair Public Trial' in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – Attachment 4).

Amnesty International also stated that, although in 1997 the Constitutional Court ruled the human rights cases against military personnel must be investigated by the civilian system, the military justice system continued to deal with such cases; however, some cases were transferred to the civilian system. Amnesty International noted that impunity was "a serious problem" (Amnesty International (undated), *Amnesty International Report 2007 – Colombia* – Attachment 10).

A June 2007 news article also reported that a 2004 Constitutional Court ruling allowed both federal and public prosecutors to re-open investigations where violations of human rights and international humanitarian law are alleged. The article stated that despite the enhanced authority no army official has been dismissed or convicted (Goodman, Joshua 2007, 'Colombia Reopens Army Abuse Probes', *Associated Press Newswires*, 10 June – Attachment 11).

According to Human Rights Watch in its report on events for 2006:

Colombia's long-running failure to effectively investigate, prosecute, and punish human rights abuses has created an environment in which abusers correctly assume that they will never be held accountable for their crimes.

The problem is particularly acute in cases of military abuses, including cases involving credible allegations of military-paramilitary links. Low-ranking officers are sometimes held accountable in these cases, but rarely is a commanding officer prosecuted.

Early in 2006, scores of allegations were made public that units of the army had executed civilians and dressed the corpses as guerrillas so that they could record them as killed in

combat. In another case, 21 military recruits were allegedly tortured by their supervisors during training, subjected to beatings, burning, and sexual abuse.

In May 2006, an army unit shot and killed 10 elite anti-narcotics police officers who had been trained by the US Drug Enforcement Administration. Prosecutors labeled the killings intentional, not accidental. Investigation of the case, however, was initially hampered by the fact that the civilian judge charged with the case refused to review it. As of this writing, prosecutions were ongoing.

In one encouraging development, prosecutors announced that they had obtained new evidence in a case involving the “disappearances” of 10 people in the 1985 retaking by security forces of Colombia’s Palace of Justice (which housed the Supreme Court), after its invasion by the M-19 guerrilla group (Human Rights Watch 2007, *World Report 2007 – Colombia* – Attachment 12).

On extrajudicial killings and the military courts the International Observation Mission on Extrajudicial Executions and Impunity in Colombia wrote that:

3. The majority of extrajudicial executions are investigated by the military judicial system, which does not ensure an impartial investigation.
4. In those cases that are within the civilian justice system, there is a weak and inadequate performance by the Public Prosecutor’s Office (Fiscalía), as well as serious deficiencies in the investigation. The Public Prosecutor’s Office has not been effective in reclaiming civil jurisdiction from the military courts (International Observation Mission on Extrajudicial Executions and Impunity in Colombia 2007, *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*, October, Latin American Working Group website, p.4
http://www.lawg.org/docs/EE_Preliminary_Report.pdf – Accessed 16 January 2008 – Attachment 5).

The mission continued on military tribunals:

5. Right from the beginning, jurisdiction to investigate these incidents is given to military tribunals, which makes an impartial investigation more difficult.
6. In many cases the Public Prosecutor (Attorney General’s office, Fiscalía), does not present a challenge to the jurisdiction being military rather than civilian; furthermore, passivity and undue delays are noted in the proceedings.
7. There are procedural difficulties for relatives in obtaining access to the investigation.
8. A number of judicial and supervisory bodies co-exist, with overlapping jurisdictions to investigate the facts and to carry out disciplinary investigations into members of the armed forces. The co-ordination between the bodies charged with disciplinary investigations is notoriously inadequate.
9. There is a general atmosphere of intimidation, with threats to family members and witnesses, which makes the relatives’ access to justice difficult. Some witnesses have been killed or forced to flee their homes, which leaves the relatives in a very vulnerable situation.
10. Human rights defenders and other professionals working on the investigation and trial of these incidents are threatened and intimidated.

11. In most cases, members of the armed forces who are implicated in these incidents are not provisionally suspended from their duties, but remain in their usual posts.

12. Only a tiny number of those responsible for extrajudicial executions are convicted, leading to a situation of generalised impunity (International Observation Mission on Extrajudicial Executions and Impunity in Colombia 2007, *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*, October, Latin American Working Group website, p.3
http://www.lawg.org/docs/EE_Preliminary_Report.pdf – Accessed 16 January 2008 – Attachment 5).

In addition the Latin America Working Group (LAWG), a US-based coalition of over sixty organisations promoting US policies toward Latin America supporting human rights, stated that Colombian government officials have criticised international human rights experts investigating extrajudicial killings. It reported:

...For example, On (sic) **July 25, 2007, President Álvaro Uribe, in a public speech, proclaimed that those who denounce extrajudicial executions are at the service of guerrilla groups and wish to discredit the Armed Forces.** Likewise, on August 29, 2007, Colombian Minister of Defense Juan Manuel Santos, who was called to a hearing in the Colombian Congress, said that complaints about extrajudicial executions are part of the “political and legal war” being waged by guerrilla groups...(Latin America Working Group 2007, ‘U.S. groups, alarmed by increase in extrajudicial executions in Colombia, urge stricter enforcement of U.S. human rights conditions’, Latin America Working Group website, 18 October <http://www.lawg.org/docs/eejointmemo.pdf> – Accessed 16 January 2008 – Attachment 13).

However, the Defense Minister mentioned above has also pledged co-operation with prosecutors investigating civilian killings by the army. An April 2007 news article stated that:

Colombian Defense Minister Juan Manuel Santos has pledged to cooperate with prosecutors investigating as many as 100 active and former officers and soldiers for human-rights abuses and other crimes, including the massacre outside La Union.

“If anyone in the military was involved in this massacre ... they should be punished with all the severity of the law,” Santos said in an interview (Marx, Gary 2007, ‘Fighting impunity in Colombia; The massacre sparked international outrage and could jeopardize U.S. aid. Will security forces finally be brought to justice?’, *Chicago Tribune*, 1 April – Attachment 14).

During 2007 the following news articles reported action taken against soldiers who had violated human rights.

- In February 2007 the Attorney General announced that 69 members of the army’s 17th Brigade were to be called in for killings in 2005. Some observers reportedly “hailed the announcement as a tentative step toward ending the near impunity enjoyed by Colombian security forces that have committed murders and other crimes” (Marx, Gary 2007, ‘Fighting impunity in Colombia; The massacre sparked international outrage and could jeopardize U.S. aid. Will security forces finally be brought to justice?’, *Chicago Tribune*, 1 April – Attachment 14).
- A June 2007 news article reported that the Public Prosecutor’s Office had re-opened 131 disciplinary investigations of soldiers killing civilians presented as leftist rebels

killed in combat. Most of the investigations were said to have been shelved after internal investigations went no farther than gathering testimony from the soldiers involved. The Public Prosecutor's Office in almost every case identified three common elements in the cases: the victims appeared to be falsely presented as leftist rebels killed in combat; there was tampering of crime-scene evidence; and there was only a cursory investigation by the military's criminal justice system (Goodman, Joshua 2007, 'Colombia Reopens Army Abuse Probes', *Associated Press Newswires*, 10 June – Attachment 11).

- In October 2007 it was reported that retired army officers were convicted and sentenced for their part in a July 1997 massacre of 36 people in the south-central province of Meta ('3 sentenced for 1997 massacre in Colombia' 2007, *EFE News Service*, 23 October – Attachment 15).

Pressure on officers to violate human rights

Sources suggest that there is pressure on officers to violate human rights by obtaining "positive results" reportedly outlined in a government decree and statement. However, this has been denied by high-ranking army officers. The decree has been repealed and replaced by a decree reminding the military to respect civilians and use only proportionally necessary force.

The International Observation Mission on Extrajudicial Executions and Impunity in Colombia states that there are "economic and professional incentives and rewards for obtaining 'positive results'". It interpreted "positive results" as the "death of suspected guerrillas". In respect of the "economic and professional incentives" the Mission's report refers to a "Decree 1400 of 5 May 2006, Defence Ministry (BOINA)" and a Ministry of Defence statement "'Special Benefits for Operations of National Importance" dated 9 May 2006. It noted that Decree 1400 was repealed by Decree 1664, dated 14 May 2007 (International Observation Mission on Extrajudicial Executions and Impunity in Colombia 2007, *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*, October, point 4, Latin American Working Group website http://www.lawg.org/docs/EE_Preliminary_Report.pdf – Accessed 16 January 2008 – Attachment 5).

A full-text of Decree 1400, the Ministry of Defence statement and Decree 1664 (in either Spanish or English) were not found in the sources consulted. However, the Global Legal Information Network (GLIN)¹ summarised Decree 1400 in English as follows:

Decree 1400 of 5 May 2006 creates the Bonus for Operations of National Importance, BOINA, for the members of the Public Police and the Security Administrative Department (DAS) participating in operations of national importance. It defines these operations as those whose result is the capture of the leaders included in levels I and II of the Directive prepared by the National Defense Ministry. **It establishes the amount of the bonus and the procedure for the determination of those awarded with the bonus, including the deceased in acts of service.** (7 provisions; p. 38) ('Summary Record: Decreto 1400 Crea la Bonificación por Operaciones de Importancia Nacional, BOINA / Decree 1400 Creates the

¹ The Global Legal Information Network (GLIN) is a public database of official texts of laws, regulations, judicial decisions, and other complementary legal sources contributed by governmental agencies and international organizations. Its website is at <http://www.glin.gov/search.action>

Bonus for Operations of National Importance, BOINA, dated 5 May 2006' 2006, Global Legal Information Network (GLIN), 12 May
<http://www.glin.gov/view.action?glinID=186152> – Accessed 18 January 2008 – Attachment 16).

The Defense Ministry has reportedly also taken steps to address this issue. According to the LAWG:

The Defense Ministry issued on June 6, 2007 a special directive, “Underscoring the obligations for authorities charged with fulfilling the law and avoiding homicides of protected persons,” Directive No. 10-2007. This directive, which reminds military authorities of the need to respect civilians, identify military objectives properly, and use only proportionally necessary force, also calls on military authorities to allow civilian authorities to conduct investigations where there are possible cases of extrajudicial executions. This directive is a positive step. But it is unclear whether the directive is reaching all levels of the armed forces or, if so, how it is being put into practice (Latin America Working Group 2007, ‘U.S. groups, alarmed by increase in extrajudicial executions in Colombia, urge stricter enforcement of U.S. human rights conditions’, Latin America Working Group website, 18 October
<http://www.lawg.org/docs/eejointmemo.pdf> – Accessed 16 January 2008 – Attachment 13).

Also, in January 2007 the Colombian Commission of Jurists reported on “positive” results for the period 2002-2006 as follows:

Another factor that has a decisive influence on the increase in the violations of the right to life by State forces is the pressure for “positive” results exerted by the President on the State forces. Although high-ranking military commanders and the Minister of Defense deny that the urgency for “positives” to show the success of the war against terrorism encourages this type of human rights violations, some members of the National Army have made public statements to the contrary.

According to five Army officers, “*people cannot possibly imagine the psychological torture of having to show results every day*”. According to a former consultant to the Ministry of Defense, there is “*an insatiable pressure for casualties (...). And that is another reason why the statement seems credible according to which not all the casualties of the Fourth Brigade have been men with guns*”. In the opinion of a former national security adviser, the Army “*has been implementing a troublesome scheme of evaluation [of performance]: it places an excessive value – and sometimes exclusive value – on casualties of the opponent, and it punishes disproportionately its own failures. The consequence: a tendency to obtain casualties without taking risks, without exposing themselves too much or, better still, not at all. The results: defenseless civilians are shown as dead in battles that never occurred*” (Colombian Commission of Jurists 2007, *Colombia 2002-2006: Situation regarding human rights and humanitarian law*, January, pp.5-6, International Commission of Jurists website
http://www.icj.org/IMG/CCJ_Ingles.pdf – Accessed 18 January 2008 – Attachment 17).

The Colombian Commission of Jurists also reported that General Mario Montoya, the Army Commander, denied pressure to obtain operational results had anything to do with arbitrary violations of civilians’ right to life (Colombian Commission of Jurists 2007, *Colombia 2002-2006: Situation regarding human rights and humanitarian law*, January, footnote 6/p.5 International Commission of Jurists website
http://www.icj.org/IMG/CCJ_Ingles.pdf – Accessed 18 January 2008 – Attachment 17).

It is also of interest that there are reports implicating army officers in civilian killings.

The June 2006 article on the killing of ten police officers by a High Mountain Battalion stated:

According to the weekly *Semana*, judicial sources say that **intercepted cell-phone text messages or calls between Col. Carvajal and his men before the killings led prosecutors to suspect that Col. Carvajal was planning an ambush of the anti-narcotics police and that phone intercepts after the incident seem to show attempts by the soldiers to coordinate alibis.**

In a few comments that have surfaced in the local Colombian press, Col. Carvajal and his legal counsel have denied this, saying that the colonel's purported messages were misinterpreted and that the killings were the result of confusion and accidental "friendly fire." (Salisbury, Steve 2006, 'Uribe faces scandal on eve of U.S. visit; Orders probe of suspected military executions', *The Washington Times*, 14 June – Attachment 9).

In other cases a November 2007 news article reported that:

Thirteen members of the Colombian army were arrested in two separate cases involving the abduction and murder of civilians **who the soldiers falsely presented to their superiors as rebels killed in combat**, the Attorney General's Office said Friday.

...

Acting on the orders of Maj. Gustavo Enrique Soto, Lt. John Alexander Suancha and five of his men allegedly grabbed Perez Vega from an Internet cafe in Villavicencio and loaded him into an SUV before setting out for a town in Casanare province.

When they arrived at their destination, they told army superiors that the captive – by now dead – was a member of the Revolutionary Armed Forces of Colombia, or FARC, who they had killed in combat.

Arrested in the second case were a lieutenant and five soldiers stationed in Monteria, capital of the northwestern province of Cordoba, **all accused in the slaying of two peasants.**

John Freddy Camargo and Darwin Antonio Rivera, two young men from the neighboring province of Antioquia, traveled to Monteria in February 2006 after being recruited to work on an area farm.

The day after they arrived, their dead bodies were taken to the garrison in Monteria, where the soldiers accused in the case identified the pair as FARC fighters who fell in battle ('Colombia arrests 13 soldiers on murder charges' 2007, *EFE News Service*, 2 November – Attachment 18).

Dismissal of officers for refusing to violate human rights

No information was found in the sources consulted on officers being dismissed for refusing to obey orders to violate human rights. However, it is reported that the military penal code extends legal protection to those who refuse to obey such orders.

According to US State Department's human rights report the 2006 year:

The military justice system may investigate and prosecute active duty military and police personnel for crimes "related to acts of military service." The military penal code specifically defines torture, genocide, massacre, and forced disappearance as crimes unrelated to military service. All serious human rights violations are

considered unrelated to military service and are handled by the civilian justice system. The military penal code specifically excludes civilians from military jurisdiction, and civilian courts must try retired military and police personnel, even for service-related acts committed before their retirement. **The military penal code denies commanders the power to impose military justice discipline on their subordinates and extends legal protection to service members who refuse to obey orders to commit human rights abuses** (US Department of State 2007, '1.e. Denial of Fair Public Trial' in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – **Attachment h**).

2. Please provide any information on “criminal irregularities” that the army claims was the reason officers were evaluated as being ‘deficient’.

No information was found in the sources consulted on “criminal irregularities” in connection with the evaluation of a Colombian soldier’s service. Of interest may be a US State Department report that refers to criminal procedure within the military justice system and a news article refers to army officers facing criminal investigations by federal prosecutors. The US State Department also reported that members of the armed forces were relieved from duty in 2006 for unethical conduct, inefficiency, corruption and reasonable doubt regarding possible human rights violations.

The US State Department reported that:

Criminal procedure within the military justice system includes elements of the inquisitorial and accusatorial systems. Defendants are considered innocent until proven guilty and have the right to timely consultation with counsel. A Constitutional Court ruling forbids military attorneys from undertaking defense counsel duties. Defendants must retain counsel at their own expense or rely on defenders paid by a special military officers’ fund (US Department of State 2007, '1.e. Denial of Fair Public Trial' in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – **Attachment h**).

A June 2007 news article reporting on the re-opening by the Public Prosecutor’s Office of some disciplinary investigations into civilian killings by soldiers stated that:

The public prosecutor’s office, Colombia’s government ethics watchdog, can dismiss soldiers as well as other civil servants and ban them from public sector work for up to 20 years. **Many officers implicated in the killings also face criminal investigations by federal prosecutors** waging a separate battle to take control of the cases from the military (Goodman, Joshua 2007, 'Colombia Reopens Army Abuse Probes', *Associated Press Newswires*, 10 June – **Attachment p**).

The US State Department also reported that the Ministry of Defense had relieved soldiers from duty in 2006:

During the year the Human Rights Unit of the Prosecutor General’s Office issued preventive detention orders for 66 members of the armed forces for human rights violations or paramilitary collaboration. However, impunity continued to be widespread due to a lack of resources for investigations, protection for witnesses and investigators, coordination between government entities, and in some cases obstruction of justice. **Between January and October, the Ministry of Defense relieved 147 members of the armed forces from duty for inefficiency, unethical conduct, corruption, and reasonable doubt regarding possible violations of human rights** (US Department of State 2007, 'Role of the Police and Security

Apparatus' in *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March – Attachment h).

3. Is there any other information of relevance?

No further information is included in this response.

List of Sources Consulted

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Center for Defense Information <http://www.cdi.org/index.cfm>
Center for International Policy – Colombia <http://www.ciponline.org/colombia/cipanal.htm>
Center for Strategic and International Studies <http://www.csis.org/researchfocus/Americas/>
Colombia Support Network <http://colhrnet.igc.org/>
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Office of the High Commissioner for Human Rights
<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

Databases:

FACTIVA (news database)
BACIS (DIAC Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue
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2. 'Quindío' 2000, *Microsoft Encarta Atlas 2000*.
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4. US Department of State 2007, *Country Reports on Human Rights Practices for 2006 – Colombia*, 6 March.
5. International Observation Mission on Extrajudicial Executions and Impunity in Colombia 2007, *Preliminary Report of the International Observation Mission on Extrajudicial Executions and Impunity in Colombia*, October, Latin American Working Group website http://www.lawg.org/docs/EE_Preliminary_Report.pdf – Accessed 16 January 2008.

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7. UN High Commissioner for Human Rights 2006, 'Report of the High Commissioner for Human Rights on the situation of human rights in Colombia', *United Nations Economic and Social Council*, E/CN.4/2006/009, 20 January, pp.19-20,68-71.
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9. Salisbury, Steve 2006, 'Uribe faces scandal on eve of U.S. visit; Orders probe of suspected military executions', *The Washington Times*, 14 June. (FACTIVA)
10. Amnesty International (undated), *Amnesty International Report 2007 – Colombia*.
11. Goodman, Joshua 2007, 'Colombia Reopens Army Abuse Probes', *Associated Press Newswires*, 10 June. (FACTIVA)
12. Human Rights Watch 2007, *World Report 2007 – Colombia*.
13. Latin America Working Group 2007, 'U.S. groups, alarmed by increase in extrajudicial executions in Colombia, urge stricter enforcement of U.S. human rights conditions', Latin America Working Group website, 18 October <http://www.lawg.org/docs/eejointmemo.pdf> – Accessed 16 January 2008.
14. Marx, Gary 2007, 'Fighting impunity in Colombia; The massacre sparked international outrage and could jeopardize U.S. aid. Will security forces finally be brought to justice?', *Chicago Tribune*, 1 April. (FACTIVA)
15. '3 sentenced for 1997 massacre in Colombia' 2007, *EFE News Service*, 23 October. (FACTIVA)
16. 'Summary Record: Decreto 1400 Crea la Bonificación por Operaciones de Importancia Nacional, BOINA / Decree 1400 Creates the Bonus for Operations of National Importance, BOINA, dated 5 May 2006' 2006, Global Legal Information Network (GLIN), 12 May <http://www.glin.gov/view.action?glinID=186152> – Accessed 18 January 2008.
17. Colombian Commission of Jurists 2007, *Colombia 2002-2006: Situation regarding human rights and humanitarian law*, January, pp.3-7 International Commission of Jurists website http://www.icj.org/IMG/CCJ_Ingles.pdf – Accessed 18 January 2008.
18. 'Colombia arrests 13 soldiers on murder charges' 2007, *EFE News Service*, 2 November. (FACTIVA)