



Ministry of National Defense
República de Colombia

HUMAN RIGHTS DEPARTMENT

SEPTEMBER 9, 2009 NATIONAL HUMAN RIGHTS DAY

COMMITMENT AND TRANSPARENCY:

A REPORT ON THE COMPREHENSIVE
POLICY FOR HUMAN RIGHTS
AND INTERNATIONAL
HUMANITARIAN LAW AT THE
MINISTRY OF NATIONAL DEFENSE

INTRODUCTION

Zero tolerance for human rights violations and legitimacy as the center of gravity have been the current administration's guidelines for orienting the Armed Forces and Police as they fulfill their constitutional duties. The mandate from the President and the Minister of Defense has been clear: **Restore security under the law.**

The results of the Democratic Defense and Security Policy and of the Consolidation Policy are notable - reductions in all crime rates and a decrease in terrorist acts, including collective homicides, attacks on towns, illegal checkpoints, and kidnapping. What it implies is a substantial improvement in security for all Colombians. The country's social and political actors all recognize this improvement, backed by statistics. Just to mention one, the crime rate for Colombia went from +1.97 in 2002 to -1.39 in 2008.

Convinced that these statistics are not only known but also felt by all Colombians today, we will not repeat them here. Instead, on National Human Rights Day we would like to share with public opinion the constant and daily efforts made by this institution to generate the conditions that make it possible to enjoy our human rights, in the framework of total commitment and adherence to the Law.

We will therefore briefly describe the status for the implementation of the strategies of the Comprehensive Policy for Human Rights and International Humanitarian Law, **whose results can be seen mainly in a reduction in complaints to the Office of the Procurator General of the Nation and in the favorability rating for the Armed Forces and the National Police among Colombians - 82% and 70%, respectively¹.**

¹ Gallup Poll, July 2009

1. REVIEW OF INSTRUCTION: TOWARD INTERNALIZING HUMAN RIGHTS

1.1 Restructuring the Armed Forces Educational System. The Armed Forces Educational System is the foundation for the excellence of the education of our military services. **It has been designed to form well-rounded human beings, with an unhesitating military or police spirit, who respect the Law and human rights and are skilled at investigation and technological development.** In application of the Comprehensive Policy, the Department of Education and Joint Doctrine works to establish a high quality educational model for the services. The Armed Forces are currently implementing the 16 objectives marked out for the Educational System, starting with a diagnosis to measure progress and develop initiatives to help meet those objectives.

1.2 Instruction by Levels, Sole Educational Model. The Sole Educational Model provides a guideline for gradually including human rights and IHL standards in educational programs at Armed Forces Schools and Instruction and Training Centers. It is broken down into six levels according to the rank and responsibility of the person receiving the instruction. Its goal is to orient operational decision-making in accordance with the law.

To date the Sole Educational Model for human rights and international humanitarian law has been implemented in the curriculum and instruction plans for the Armed Forces Training and Education Schools and Centers for Instruction and Training. The process has included the construction of new human rights and IHL training fields to guarantee that knowledge and skills will be internalized, aiding in the resolution of complex problems when carrying out a mission.

To reinforce this exercise, a contract was signed between the Armed Forces General Command and Universidad Javeriana to develop human rights and IHL manuals and instructor guides, including a guide for giving training greater impact and measuring that impact. This last guide is being developed by the Escuela de Administración Pública, ESAP (School of Public Administration), in the framework of an agreement with the Ministry of National Defense. All of this will strengthen the curriculum, the teaching methodology, the grading system, and teacher training.

So far in 2009, Instruction and Training Centers and Schools have trained 76,644 officers, NCO's and civilians in the Army, 6,891 officers, NCOs and civilians in the

Navy, and 2,237 officers, NCOs and civilians in the Air Force.

In order to strengthen training on a regional level, the Army has also created 24 Instruction and Training Battalions throughout the country to give the troops better tools for facing situations that involve a risk of human rights violations or IHL infractions. This includes special training in operational tactics, techniques, and procedures for the correct application of the rules of engagement.

1.3 Lessons Learned. In order to learn from both errors and successes in operations, **members of the Armed Forces and Police have engaged in self-evaluation exercises**

to learn from past experiences. This will help us repeat positive procedures and avoid repeating errors that need to be corrected. This year two lesson-learned workshops have been held for the Second and Seventh Army divisions with the accompaniment of the ICRC. The workshops analyzed allegations presented by the ICRC to the Ministry of Defense, such as alleged homicides by state agents, attacks on persons not involved in the hostilities, lack of respect for mortal remains, mistreatment of persons held in the custody or under the protection of the Armed Forces or Police, or the occupation of civilian property. They also reviewed orders for operations to ensure they are properly framed within IHL.

2. STRENGTHENING CONTROLS: CONSOLIDATING LEGITIMACY

2.1 Operational Legal Advisors. As of the year 2002 the Armed Forces established the position of Operational Legal Advisor. This person is a military attorney educated in operational law and trained to provide legal advice for the planning, follow-up, and control of operations so that they might be carried out within a framework that will guarantee legality. There are currently 98

Operational Legal Advisors exercising their functions within the Armed Forces: 3 in the General Command, 73 in the Army, 7 in the Navy, and 15 in the Air Force.

Since the role was created, reforms have been made to guarantee standardization of the criteria used by these advisors, and to guarantee their independence. A hierarchy

has been organized to do this, placing them directly under the Operational Legal Consulting departments of each service.

2.2 Inspector Delegates. The Inspector Delegates are directly under the Office of the Inspector General of the Armed Forces and have the main function of dealing exclusively with human rights and IHL issues. They help review operational and intelligence procedures, the role of operational legal advisors, operational files, and the education provided in the area of human rights and IHL. In addition, they provide reports that are sent to Division and Force Commanders for the Commanders to adopt appropriate corrective measures. There are currently Inspector Delegates in all the Services: 7 in the Army Divisions, 1 in the Air Force and 2 in the Navy.

2.3 Reform of the Disciplinary System. Convinced that disciplinary sanctions, when administered in a timely manner and with respect for due process, are not only effective but can be a powerful dissuasive instrument, the Ministry of Defense has included as a strategy of the Comprehensive Policy the modification of the current Armed Forces disciplinary system. The reforms will bring competencies and procedures in line with the current demands of operational law. This process, already completed by the Police with obvious positive results, is being led by the Office of the Inspector General of the Armed Forces. In the second week of September the Inspector General will hold a seminar to disseminate information on progress made and to listen to invited countries describe similar experiences.

2.4 Reforms to the Military Criminal Justice system The Bill creating the accusatory criminal justice system for Military Criminal Justice is ready for approval by the President. Through Ruling No. C-533 of May 28, 2008, the Constitutional Court found grounds for the majority of president's objections to the New Military Criminal Code. Among the objections, one is worth highlighting related to the expansion of the content of article 3 to make it clear that not only the crimes of torture, genocide, and forced disappearance are excluded from the competence of the special jurisdiction, but all those that can be characterized as human rights violations. This initiative by the President of the Republic constitutes an unprecedented advancement in marking out the restrictive scope of military criminal jurisdiction under the terms indicated in constitutional jurisprudence.

2.5 Law of Intelligence. Protection of the basic rights to intimacy and a good reputation, one of the main concerns of human rights organizations, takes a substantial step forward in Law 1288 of March 5, 2009.

In order for a social state under rule of law to effectively fulfill its ends and protect the basic rights of all citizens it must regulate intelligence and counterintelligence activities. To this effect, the national government presented a bill that passed through congress and became a Law of the Republic with the approval of all the political parties.

Law 1288 of 2009 created a legal framework that, on one hand, clearly defines the ends, limits, and principles of the intelligence function. On the other hand it offers proper

protection for the information gathered and for the public servants who carry out these activities at great risk with the goal of protecting our democratic institutions and citizens.

The main advancements of this law include the following:

- It establishes limits and ends for intelligence and counterintelligence activities.
- It expressly indicates which bodies will undertake these activities.
- It establishes the principles of necessity, appropriateness, and proportionality.
- It orders that all intelligence and counterintelligence activities be backed by a written order or mission issued by a competent authority that will answer for its content.
- It indicates that in no case may information be collected based on membership in a union, social, or human rights organization.
- It establishes that in no case may intelligence reports be used as evidence in court cases.
- It creates Data Protection Centers to make sure information gathering is done according to the Constitution and the ends indicated by law.
- It orders the updating and purging of intelligence and counterintelligence files.
- It creates internal controls and external controls, including a congressional committee, to supervise compliance with the law.

This law is currently being codified with the participation of all the institutions authorized to engage in intelligence and counterintelligence.

3. DEFINITION OF THE LEGAL FRAMEWORK: NEW TOOLS FOR THE PROPER USE OF FORCE

3.1 Rules of Engagement. The rules of engagement are one of a Commander's primary tools for regulating the use of force, and are therefore a cornerstone in the discipline of operational standards. The existence of clear, precise, and simple rules of engagement helps guarantee controlled use of force. **Having two sets of rules of**

engagement gives those who come face to face with scenarios where force must be used a clear and simple understanding of how to proceed in these situations as they meet their legitimate objective.

The Ministry of National Defense through Permanent Internal Directive 17 dated

April 22, 2009 issued two sets of rules of engagement for the Armed Forces and implemented a system for their application and training. Subsequently Permanent Internal Directive 22 dated July 15, 2009 clarified and specified some definitions for these rules of engagement.

Since they were issued, the Ministry of Defense has disseminated these rules to all the Armed Forces in different courses, seminars, and workshops.

3.2 Operational Law Manual. The Ministry of National Defense and the Armed Forces General Command will soon publish the first Manual for operational law. This Manual has the following main objectives:

- To develop a true operational law, which is nothing more than the orderly application of all constitutional and legal standards, as well as human rights and IHL standards, to the planning, execution, and evaluation of operations.
- **To provide the legal tools necessary to help the members of the Armed Forces ensure the legality of operations.**
- To provide criteria for determining authorized and proper use of force to counteract the different threats in each operational environment.
- To give judicial and disciplinary operators access to an orderly compilation of the national and international standards applicable to conducting military operations.

This document is structured in 8 chapters:

- (i) The constitutional foundation for the use of force
- (ii) The use of force in the framework of IHL
- (iii) The use of force in the framework of HR
- (iv) The use of force in a social state under rule of law
- (v) Types of operations, orders for operations, and rules of engagement
- (vi) The role of the operational legal advisor
- (vii) The first responder and coordination of judicial authorities, and
- (viii) Responsibility for the use of force

The rough draft of this Manual was presented to the Force Commanders in April 2009, and was subsequently sent for review and comments to the Armed Forces General Command, the Force Commanders, the International Committee of the Red Cross, the Office of the National Public Prosecutor, the Office of the National Procurator General and the Office in Colombia of the United Nations High Commissioner for Human Rights. Lastly, in August 2009, a discussion workshop was organized with officials from the Office of the National Public Prosecutor and the Office of the National Procurator.

4. PROTECTION FOR VULNERABLE GROUPS: DIFFERENTIATED ATTENTION

4.1 Special Directives. One of the lines of action of the Comprehensive Policy aims at protecting special groups. To do this the Policy has included the Ministerial Directives that contain instructions for the Armed Forces and Police to fulfill their function of guaranteeing respect for and safeguarding the rights of citizens through differentiated attention. **The Armed Forces and Police must thus abide by orders that work in favor of the situation of, for example, indigenous people, afro descendents, victims of displacement and forced disappearance, human rights defenders, and union workers.**

4.2 Situational Training. Strengthening our institutions requires training all the members of the Armed Forces and Police, making sure human rights and international humanitarian law are internalized and applied to all areas, in accordance with the Sole Educational Model. To attain this objective, the Ministry of Defense supervises the extracurricular activities programmed by the Services and the Police to reinforce the diffusion of the directives related to attention for special groups. It also coordinates training in these matters with government entities, non-governmental

organizations, and academic institutions, reviewing the content of courses, seminars, workshops, and other academic settings.

In line with this objective, 16 workshops were programmed in 2009 with the Army and Police and 12 with the Navy. In addition, 12 workshops were programmed for the Military Gaulas, of which 10 have been held to date. So far in 2009 approximately 1,400 men have received training in situational workshops.

4.3 Liaison Officers. **The designation of liaison officers from different units to strengthen relations between communities and the military services and police has been a key factor in the success of differentiated attention.** In order to strengthen this role, in May 2009 a training session was held in Bogotá for Army officers who act as liaisons with the indigenous authorities in all jurisdictions. The goal of the Ministry of Defense is to continue promoting this coordinating role in order to strengthen arenas for respect and for getting to know each other.

5. STRENGTHENING COOPERATION: TEAM WORK WITH INTERNATIONAL ORGANIZATIONS AND RESEARCH GROUPS

5.1 Relations with the Office in Colombia of the United Nations High Commissioner for Human Rights, UNHCHR. Since Directive No. 10 of 2007 was issued, the UNHCHR office participates as a permanent guest in the meetings of the Committee to follow-up on denouncements of alleged homicides of protected persons. This Office also presents reports to the Ministry of National Defense to orient actions and review cases that have been documented in the field. The Office has accompanied 21 visits to the 7 Army Divisions to review cases that appear to have the characteristics of a homicide of a protected person. The Minister of National Defense reviews and evaluates the procedures for these cases with the Military Commanders and with the accompaniment of the delegates from the UNHCHR office.

5.2 Relations with the International Committee of the Red Cross, ICRC. Since Directive No. 10 of 2007 was issued the ICRC office participates as a permanent guest in the meetings of the Committee to follow-up on denouncements of alleged homicides of protected persons. The ICRC also periodically sends confidential reports to the Ministry of National Defense describing operations that have been documented in the field. During the year 2009, the ICRC has accompanied

two lessons learned exercises, in the Second Division (Bucaramanga) and in the Seventh Division (Medellín). The same exercise is programmed to be held soon in the rest of the Divisions.

5.3 Cooperation with the Justice System. Since Directive No. 10 of 2007 was issued, the National Public Prosecutor and the Procurator General of the Nation participate as permanent guests in the meetings of the Committee to follow-up on denouncements of alleged homicides of protected persons. The Office of the National Public Prosecutor has designated a permanent liaison from the Judicial Police to military units in order to support the development of operations and thus guarantee the preservation of scenes of events and the custody chain. The Office of the Public Prosecutor and the Office of the Procurator General participate actively in all public audiences to give an accounting.

6. TRANSPARENCY: RENDERING ACCOUNTS AS A BASIS FOR CREDIBILITY

In development of the policy for transparency and strengthening of legitimacy as the center of gravity, the Ministry of Defense issued Directive No. 25 of 2008 to implement a specific system to receive complaints at the national level. The system opens up new arenas for citizens to make denouncements, without prejudice to the functioning of other complaint systems created by law. It also created a method for public and periodic rendering of accounts to ensure fluid dialogue with civil society.

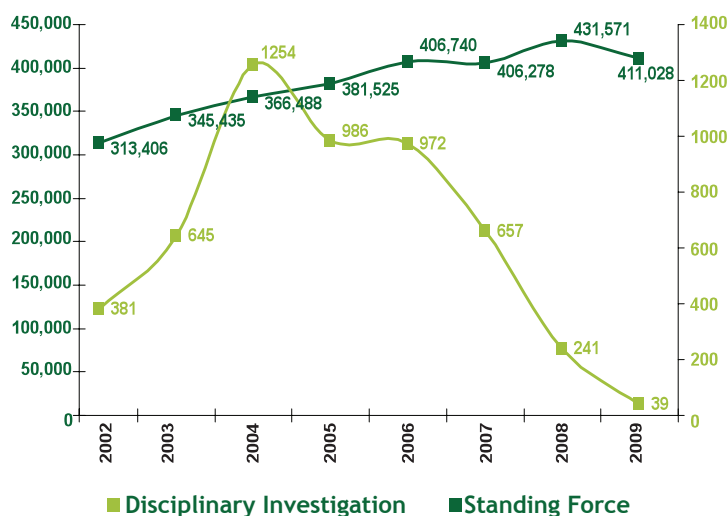
This system permits follow-up, evaluation, and review of the procedures taken inside the Armed Forces and the Police in response to complaints received through three channels: The HR offices in military and police units, which provide easy access to the public, the free phone lines for attention to citizens, and special links on the web pages of the Armed Forces and the National Police.

A report on the follow-up given to complaints received is broadcast on national television. To date, 7 televised audiences, led by the President of the Republic, have been broadcast. The President has been accompanied by the Minister of Defense, the Commander-in-Chief of the Armed Forces, the Army, Navy, and Air

Force Commanders, the National Police Director, the Inspector Generals, and the Heads of Human Rights Departments. Those audiences have received constant accompaniment from the Public Prosecutor, the Office of the Procurator General, and the Office of the Public Defender.

The implementation of these complaint response systems has demonstrated that there is a strong downward trend in complaints, as seen in the statistics from the Office of the Procurator General:

Disciplinary Complaints received by the Procurator General relative to the number of members of the Armed Forces and Police



Source: Procurator General of the Nation, Armed Forces General Command, and National Police (Jan-Jul -09)

7. MEETING INTERNATIONAL COMMITMENTS: TOTAL OPENNESS

7.1 Universal Periodic Review. In December 2008 Colombia presented for the first time the Universal Periodic Review in the framework of the third Session of the United Nations Human Rights Council. The country volunteered for this exercise to promote an analysis of its situation and to seek better understanding and cooperation from other states. **So far, in compliance with its constitutional duty and the commitments made in the framework of the EPU, the Ministry of Defense has continued to produce decisive results in the fight against violent groups and criminal organizations as destabilizing agents in terms of the peaceful coexistence of citizens and the exercise of freedoms.** We continue to work on preventing homicides of protected persons and to give a special push to reviewing human rights and IHL instruction as described above. The Colombian state is currently preparing a progress report to be presented to the United Nations Human Rights Council.

7.2 Visit by Special Rapporteurs from the United Nations. During 2009, in compliance with another of the commitments acquired under the EPU, Colombia has invited and hosted visits by three Special Rapporteurs on human rights from the United Nations.

Mr. Philip Alston, United Nations Special Rapporteur on Extra Judicial Executions, visited from June 8 to 18, 2009. On that occasion, the Ministry of National Defense together with other competent authorities in the national government had the opportunity to share the main advancements made and challenges facing the policy to prevent homicides of protected persons. Those advancements include the following:

- Directives 10 and 19 of 2007 reiterating the duty to fully abide by the principles of international humanitarian law, support investigations, guarantee the presence of judicial police at sites of events to engage in urgent actions after a death in combat, and give restricted application to military criminal jurisdiction
- Directives issued to adapt the system for measuring results giving priority to demobilizations over captures, and to captures over casualties
- The establishment of Operational Legal Advisors and Inspector Delegates
- The activation of the Immediate Inspection Committee to review the operational procedures used in situations under question

- Visits with the accompaniment of the United Nations Office in Colombia of the High Commissioner of Human Rights to each Division in order to review complaints
- Continual coordination with and support for investigative bodies
- Drastic administrative decisions that have resulted in the removal of more than 50 military personnel
- The system to give an accounting on television relative to alleged human rights violations by the Armed Forces and Police, which is a mechanism unprecedented in history, as pointed out even by the United Nations High Commissioner for Human Rights.

Although analyzing statistics on alleged homicides of protected persons always presents an enormous challenge, it is important to clarify that it is impossible to determine a priori the arbitrariness or legitimacy of conduct, bearing in mind that certainty can be provided only by a firm court ruling. Likewise, a diversity of sources and methodologies complicates the analysis of statistics, and even more so bearing in mind that it is always possible to present complaints about events in prior years, making it impossible to consolidate annual figures.

Although all sources report a drastic reduction in complaints, we continue to follow-up on prevention measures, and we will spare no effort to implement any that are necessary in the future. In fact the Committee to Follow-up on Denouncements, which was created as a temporary committee, is today a permanent arena for evaluating measures adopted.

The Presidential Human Rights Program has reported the following statistics to date:

YEAR	CASES
2002	15
2003	29
2004	85
2005	134
2006	143
2007	98
2008	47
2009	0
TOTAL	551

The great majority of the denouncements correspond to events that took place before October 2008. The few cases denounced by some sources after that date are being investigated by the competent authorities, and so far there have been no confirmations of homicides of protected persons.

We are aware that there will always be complaints. In order to respond to them we have strengthened our systems for reception and internal control, because each case is important and deserves our full attention. Therefore, the Minister of Defense has ordered that each new case will activate the Immediate Inspection Committee and receive strict follow-up by the Inspector General and Inspector Delegates. In addition, disposition and a complete commitment to support the judicial and disciplinary authorities is a guiding principle that orients our actions relative to these issues. We know, and we accept the fact that each complaint must be treated as such as long as there is no judicial certainty relative to the alleged responsibility.

In conclusion, not only has the Ministry of Defense publicly recognized the seriousness of these cases, but the prevention measures adopted have been institutionalized, becoming permanent policy to prevent such events from being repeated.

On his part, the Special Rapporteur for the Basic Rights of Indigenous Peoples held meetings with the Minister of Defense and with local authorities from the Armed Services and Police in Nariño and Cauca. He was informed on progress made in the implementation of Directive 16 of 2006 and about the dedicated commitment by the Armed Forces and Police to the protection of the individual and collective rights of these communities.



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