

**CERTIFICATION RELATED TO
FOREIGN MILITARY FINANCING FOR COLOMBIA
UNDER SECTION 7045(b)(6) OF THE DEPARTMENT OF STATE, FOREIGN
OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2017
(Div. J, P.L. 115-31)**

Pursuant to the authority vested in the Secretary of State, including under section 7045(b)(6) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, P.L. 115-31) I hereby certify and report that:

- (1) The Peace Tribunal and other judicial bodies within the special jurisdiction for peace are independent and have authority to document "truth declarations" from perpetrators of gross violations of human rights and to sentence such perpetrators to meaningful sanctions, including victims' reparations, guarantee of non-repetition, and deprivation of liberty;
- (2) Military personnel responsible for ordering, committing, or covering up cases of false positives, including those in command authority, are being investigated, prosecuted, and appropriately sanctioned, and military officers credibly alleged to have committed such crimes are removed from positions of command authority until the completion of judicial proceedings; and
- (3) The Government of Colombia is continuing to dismantle illegal armed groups, taking effective steps to protect the rights of human rights defenders, journalists, trade unionists, and other social activists, and protecting the rights and territory of indigenous and Afro-Colombian communities.

This Certification shall be published in the *Federal Register* and, along with the accompanying Report and Memorandum of Justification, shall be transmitted to the appropriate committees of Congress.

SEP 11 2017

Date



Rex W. Tillerson
Secretary of State

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

TABLE OF CONTENTS

<i>LEGISLATIVE CONTEXT AND SCOPE OF REPORT</i>	- 2 -
<i>CRITERION (1)</i>	- 3 -
<i>Independence of Special Jurisdiction for Peace Judicial Bodies</i>	- 3 -
<i>Authority of Special Jurisdiction for Peace to Document "Truth Declarations" from Perpetrators of Gross Human Rights Violations (GVHRs)</i>	- 4 -
<i>Authority to Sentence Perpetrators of GVHRs to Meaningful Sanctions Including Victims' Reparations, Guarantee of Non-repetition, and Deprivation of Liberty</i>	- 5 -
<i>CRITERION (2)</i>	- 7 -
<i>Investigations, Prosecutions, and Appropriate Sanctions for False Positives</i>	- 7 -
<i>Removal from Positions of Command Authority of Military Officers "Credibly Alleged" to Have Committed False Positive-Related Crimes</i>	- 9 -
<i>CRITERION (3)</i>	- 10 -
<i>Dismantling Illegal Armed Groups</i>	- 11 -
<i>Protecting Rights and Territory of Indigenous and Afro-Colombian Communities</i>	- 16 -

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LEGISLATIVE CONTEXT AND SCOPE OF REPORT

Section 7045(b)(6) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, P.L. 115-31) (SFOAA) provides that 20 percent of Foreign Military Financing funds appropriated for assistance for Colombia may be obligated only in accordance with the conditions in the Joint Explanatory Statement accompanying the SFOAA. The Joint Explanatory Statement provides three conditions the Secretary of State must certify and report to the Committees on Appropriations have been met before such funds can be obligated.

Criterion 1: The Peace Tribunal and other judicial bodies within the special jurisdiction for peace are independent and have authority to document "truth declarations" from perpetrators of gross violations of human rights and to sentence such perpetrators to meaningful sanctions, including victims' reparations, guarantee of non-repetition, and deprivation of liberty;

Criterion 2: Military personnel responsible for ordering, committing, or covering up cases of false positives, including those in command authority, are being investigated, prosecuted, and appropriately sanctioned, and military officers credibly alleged to have committed such crimes are removed from positions of command authority until the completion of judicial proceedings; and

Criterion 3: The Government of Colombia is continuing to dismantle illegal armed groups, taking effective steps to protect the rights of human rights defenders, journalists, trade unionists, and other social activists, and protecting the rights and territory of indigenous and Afro-Colombian communities.

This report and memorandum provides the justification for the certification that the criteria referenced above have been met and provides the report required by section 7045(b)(6). It contains information covering the period from June 1, 2016, to June 1, 2017.

CRITERION (1)

The Joint Explanatory Statement accompanying the FY 2017 SFOAA, as incorporated by reference in section 7045(b)(6), requires a certification that:

(1) “[T]he Peace Tribunal and other judicial bodies within the special jurisdiction for peace are independent and have authority to document ‘truth declarations’ from perpetrators of gross violations of human rights and to sentence such perpetrators to meaningful sanctions, including victims’ reparations, guarantee of non-repetition, and deprivation of liberty;”

The Colombian government has begun to implement the final peace accord with the Revolutionary Armed Forces of Colombia (FARC). In April 2017, the Colombian government ratified legislation to implement a Special Jurisdiction for Peace (SJP) that includes an independent Peace Tribunal and other related judicial bodies with the authority to document truth declarations from perpetrators of gross violations of human rights and to sentence such perpetrators to meaningful sanctions, including victims’ reparations, guarantee of non-repetition, and deprivation of liberty. At the end of the relevant period, the SJP Executive Secretary was in place and carrying out administrative duties, but the SJP’s other mechanisms were not operational.

Chapter 5 of Colombia’s peace accord with the FARC (“the accord”) calls for the creation of independent transitional justice mechanisms through an “Integrated System of Truth, Justice, Reparations, and Non-repetition” (SIVJRNR). Under the accord, the SIVJRNR includes: 1) a Commission for Truth, Coexistence, and Non-repetition; 2) a Special Search Unit for Persons Disappeared in the Context and as a Result of the Armed Conflict; 3) comprehensive reparations measures for peace-building; and 4) the SJP as an institution to grant amnesties or pardons for political crimes and administer justice for conflict-related crimes constituting “grave International Humanitarian Law offenses or serious Human Rights violations.”

In April 2017, the Colombian government ratified legislation to implement the SIVJRNR and amend the constitution accordingly. The text of Legislative Act 01 of April 4, 2017 (the “transitional justice (TJ) bill”) will become part of the constitution through the addition of a transitory title, “Provisions Regulating the End of the Armed Conflict and Construction of a Stable and Lasting Peace.” The TJ bill establishes and guides the operations of the SJP and other transitional justice processes outlined in the accord. Transitory Article 7 of the bill provides the SJP will be composed of several divisions including the Peace Tribunal, the Acknowledgement of Truth and Responsibility and Finding of Fact Division, the Legal Status Determination Division, the Amnesty and Pardon Division, and the Investigation and Charging Unit.

Independence of Special Jurisdiction for Peace Judicial Bodies

Echoing language of the peace accord, Transitory Article 5 of the TJ bill provides that the SJP mechanism “shall have administrative, budgetary, and technical autonomy and shall be governed by a separate legal system.” It also states the SJP “shall prevail over the ordinary courts” and have “exclusive jurisdiction over acts committed before December 1, 2016, as a result of, in the course of, or in direct or indirect relation to the armed conflict.” To ensure the independence and

qualifications of the magistrates and other officials composing the SJP, the parties agreed to establish a selection committee composed of one delegate each selected by: the criminal division of the Colombian Supreme Court; the UN Secretary General; the permanent commission for Colombia's state university system; the President of the European Court of Human Rights; and the Colombian delegation of the International Center for Transitional Justice. Presidential Decree 587 of April 5, 2017 grants this selection committee full autonomy and independence to perform its duties in an impartial manner, and specifies the "international standards of judicial independence and the high moral qualities of the candidates" will be taken into account for selection of the magistrates, which should include experts in international humanitarian law, human rights law, and conflict resolution. Transitory Article 7 of the TJ bill also clarified the Executive Secretary of the SJP would be appointed by the Head of the UN Monitoring and Verification Mechanism and confirmed by the Selection Committee.

Once the magistrates are selected, Transitory Article 12 of the TJ bill empowers SJP magistrates to develop internal procedures and norms, guided by guarantees including those of impartiality, judicial independence, and the participation of victims. There are, in addition, procedures in place to ensure that the Constitutional Court can, in coordination with organs of the SJP, review claims that the SJP has taken action that has violated the "fundamental rights" of individuals. Such processes are included in Transitory Article 8 of the TJ bill.

Authority of Special Jurisdiction for Peace to Document "Truth Declarations" from Perpetrators of Gross Human Rights Violations (GVHRs)

Section 5.1.2 of the accord provides for various components of the SJP, including the Peace Tribunal, to document "truth declarations" from perpetrators of conflict-related crimes under its jurisdiction, "particularly with respect to behaviors considered to be grave international humanitarian law offenses or serious human rights violations." Section 5.1.2(47) of the peace accord states, "Acknowledgment of truth and responsibility for acts carried out may be made individually or collectively, orally or in a written document submitted to the SJP." Section 5.1.2(48) of the accord further allows for the SJP Acknowledgement of Truth and Responsibility Division to hold public hearings for the recognition of truth and responsibility in the presence of victims' organizations. The accord requires that the Acknowledgement of Truth and Responsibility Division notify any individual compromised in a report or collective truth declaration so he/she can voluntarily provide a truth declaration with his/her version of the facts. Additionally, individuals convicted and sentenced in the ordinary justice system for crimes subsequently transferred to the SJP may appear voluntarily before the SJP to acknowledge the full truth. Transitory Articles 5 and 11 of the TJ bill specify that in order for perpetrators to be eligible for the alternative sentences permitted under the SJP, they must tell the whole truth, provide reparations to their victims, and pledge non-repetition.

The accord's SIVJRNR also establishes non-judicial mechanisms with the authority to collect truth declarations, namely the Commission for the Clarification of Truth, Co-existence, and Non-repetition ("Truth Commission"). The Truth Commission was formally established by Presidential Decree 588 of April 5, 2017. The decree and accord note the Truth Commission will be a temporary, extra-judicial body tasked with "determining the truth" about the conflict and past events; helping to shed light on violations, offenses, and breaches; providing society as a whole with complete information explaining the complex nature of the conflict; promoting the

acknowledgment and recognition of victims and the recognition of the responsibility on the part of persons directly and indirectly involved in the armed conflict; and promoting coexistence in the territories in order to ensure non-repetition. The information collected by the Truth Commission will not be admissible in court in either the ordinary justice system or the SJP's Peace Tribunal for the purpose of establishing criminal liability, but the Commission will present a final report on its findings. It was not clear by the end of the reporting period whether this information could be utilized by the SJP in other ways, such as determining whether perpetrators are telling the whole truth.

Authority to Sentence Perpetrators of GVHRs to Meaningful Sanctions Including Victims' Reparations, Guarantee of Non-Repetition, and Deprivation of Liberty

The bodies of the SJP are empowered to sentence perpetrators of GVHRs, including commanders, to meaningful sanctions, including victims' reparations, guarantees of non-repetition, and deprivation of liberty. Section 5.1(b) of the accord provides the SJP will "administer justice" and "sanction serious human rights violations and serious breaches of international humanitarian law," while working in concert with other mechanisms established under the SIVJNR framework to provide truth, reparations, and non-repetition guarantees to victims.

In terms of how the SJP will define who is a "perpetrator," Transitory Article 24 of the TJ bill authorizes the SJP to hold commanders accountable for crimes committed by their subordinates where: there is evidence that he/she "had effective control over the conduct in question by his or her subordinates, and that he or she had knowledge of such conduct,... as well as the means to prevent or interrupt such conduct..., or to initiate the appropriate investigations if the acts had already been committed." Transitory Article 24 may not provide for command responsibility in certain circumstances, such as when a commander "should have known" or "had reason to know" of the criminal conduct, or when he or she had effective control over the persons but not specifically the criminal conduct, that would be included in other contexts, such as the definitions in the U.S. Department of Defense Law of War Manual, the U.S. JAG Corps Law Handbook, or the Rome Statute of the International Criminal Court (ICC), to which Colombia is a party. The Colombian government has publicly stated the SJP will abide by "international standards."

Section 5.1 of the accord states SJP sanctions will be designed to "achieve maximum justice and accountability." Transitory Article 13 of the TJ bill states "the key purpose of the penalties imposed by the SJP shall be to uphold the rights of victims and consolidate peace" and have "the greatest restorative and reparative value." Transitory Articles 5 and 11 also echo the accord, declaring that in all cases the whole truth must be told, reparations to victims must be made, and non-repetition must be "guaranteed" in order to be eligible for special treatment, including alternative sentences, under the SJP. Transitory Article 13 of the TJ bill states the sanctions will take into account the gravity of the crimes and the degree of the perpetrator's acknowledgement of truth and responsibility, and will be imposed under the terms outlined in section 5.1.2 of the accord in points 60, 61, and 62. Under the "Agreement on Victims of the Conflict" ("victims' agreement") chapter of the accord, section 5.1.2(45) states the SJP will apply two sanctioning procedures: one procedure "in case of recognition of truth and acknowledgement of responsibility" by the perpetrator, and another "in case of absence of recognition of truth and

responsibility” by the perpetrator. According to Section 5.1.2(13) of the accord, “Telling the whole truth means providing, whenever possible, a full, detailed account of the acts and the circumstances under which they were committed, along with sufficient information to attribute responsibility and ensure the victims’ rights to reparation and non-repetition.” However, “The duty to tell the truth does not imply the obligation to accept responsibility.”

Section 5.1.2(60) of the victims’ agreement provides that individuals “acknowledging truth and responsibility” in the SJP for non-amnestied crimes (including war crimes, crimes against humanity, and gross violations of human rights) will be eligible for sentences of five to eight years performing reparative projects for victims. Individuals who did not play a “decisive role” in the most serious and representative violations, however, may be sentenced to two to five years of reparative labor. Reparative work may include activities such as demining work, construction of schools and roads, participation in illicit crop substitution programs, and waste removal. Members of the FARC sentenced to reparative labor will be subject to “effective restrictions of liberty,” not prison. The SJP magistrates will further define the parameters for “effective restrictions of liberty,” but the accord notes this will include monitoring and supervision, as well as confinement to a specific area no larger than one of the transition zones for the FARC’s demobilization and disarmament. Article 52 of Chapter IV of the accord provides that under the concept of “differentiated treatment,” members of the police and security forces will be required to serve their SJP sentences in military or police facilities.

Transitory Article 5 of the TJ bill and Section 5.1.2(60) of the victims’ agreement provide that individuals who do not tell the “whole truth” or who provide false information will be ineligible for alternative sentencing. Instead, the accord provides for the Peace Tribunal to conduct adversarial trials via the SJP for these individuals and impose penalties ranging from 15 to 20 years in prison if found guilty. If an adversarial trial begins without an acknowledgement of truth and responsibility but the individual makes such an acknowledgment prior to sentencing, alternative penalties will be primarily retributive in nature and comprised of five to eight years’ “deprivation of liberty.”

In addition to detailing appropriate sanctions, the peace accord also provides for the SJP to determine how those responsible for GVHRs – including members of the FARC and “the State and government entities” – will contribute to reparations for victims. Under section 5.1.3.2 of the accord, the FARC will “contribute to material reparations for victims and in general to their comprehensive reparation, on the basis of acts identified by the Special Jurisdiction for Peace.” In an October 1 statement, the FARC committed to forfeit all assets – including monetary and non-monetary resources, such as land – in order to fund victim reparations. Presidential Decree 903 of May 29, 2017, provides the FARC will create a definitive inventory of all of its assets, to be submitted to the government via the UN Mission in Colombia and the UN Monitoring and Verification Mechanism, by the date the transition zones legally cease to exist. Article 3 of the Decree creates a Victims Fund to receive the inventoried FARC assets, which Article 4 specifies will be used for the material reparation of victims of the conflict. Transitory article 26 of the TJ bill states members of the armed forces would in all cases contribute to the “non-monetary reparation of victims.”

Section 5.1.2(11) of the accord states “the imposition and serving of sentences provided for under the SIVJRN shall be determined by compliance with conditions...established in the [accord],” including the requirement that “non-repetition must be ensured.” Such conditions are reinforced in the TJ bill as noted above. The victims’ agreement further provides the SJP may, in its sentences, “establish guarantees for non-repetition, such as those found in national and international law,” which could include promoting activities aimed at non-repetition of damages. An individual who has completed his/her sentence may be released, though such release “shall be probationary when the individual agrees to promote activities aimed at non-repetition of damages caused.” Once activities to promote non-repetition are verified by the Peace Tribunal, the probation period will end. Violations of the non-repetition guarantees under the terms of the SJP will render the individual ineligible for the special benefits offered. Transitory Article 5 of the TJ bill states any new crimes committed after December 1, 2016, will be subject to treatment in the ordinary justice system, with ordinary penalties. Additionally, the Amnesty Law states those who qualify for provisional release must sign a document agreeing to fulfill the terms of the SJP, including guarantees of non-repetition; if a released individual violates any of these terms, he/she will be returned to detention.

CRITERION (2)

The Joint Explanatory Statement accompanying the FY 2017 SFOAA, as incorporated by reference in section 7045(b)(6), requires a certification that:

“[M]ilitary personnel responsible for ordering, committing, or covering up cases of false positives, including those in command authority, are being investigated, prosecuted, and appropriately sanctioned, and military officers credibly alleged to have committed such crimes are removed from positions of command authority until the completion of judicial proceedings;”

Investigations, Prosecutions, and Appropriate Sanctions for False Positives

Colombia continued to investigate, prosecute, and appropriately sanction military personnel responsible for ordering, committing, or covering up so called “false positives,” crimes in which state actors killed civilians and falsely presented them as guerrilla combatants to increase body counts and/or obtain financial or professional benefits. The Attorney General’s Office reported as of March 15, 2017, with respect to cases related to presumed false positives committed since January 2008, that there were 455 open investigations, 836 cases in the prosecution phase, and 238 cases in the sentencing phase. The Attorney General’s Office reported from 2008 through 2016, it reached convictions in 1,414 false positive-related cases. Available sentencing data confirms those convicted during the reporting period have been appropriately sanctioned according to the Colombian penal code. For example, on April 3, 2017, Lieutenant Colonel Gabriel Rincon Amado and 20 soldiers under his command were convicted for their role in “false positive” killings in Soacha in 2008 and were sentenced to 38 to 52 years in prison. On July 28, 2016, Colonel Carlos Alberto Ayala Pacheco was sentenced to 50 years in prison for a false positive case involving three victims in Manizales. On July 13, 2016, the Superior Court of Manizales ratified a sentence of 37 years and five months in prison for Colonel Robinson Gonzalez del Rio for a false positive case involving two victims in Caldas.

In May 2017, the Ministry of Defense reported that its policy was to immediately provide all necessary support to the appropriate judicial and administrative authorities to quickly investigate and clarify such cases, promoting the administration of justice and the fight against impunity. During the reporting period, the Ministry of Defense took measures to cooperate with the Attorney General's office, as requested, on investigations and judicial proceedings. For example, the Colombian Army stated in a May 15, 2017 press release that it had initiated administrative procedures for the return of Colonel Jose Luis Martinez Suarez, the Colombian military attaché in Austria, to Colombia, where a warrant for his arrest was issued in relation to a false positives investigation.

Investigations and prosecutions of officers, including generals, implicated in false positives continued during the reporting period. According to the International Criminal Court's 2016 annual report on preliminary examination activities, the Colombian government reported the convictions of two colonels, two lieutenant colonels, 12 majors, eight captains, and 29 lieutenants for false positives since 2012. The Attorney General's Office reported that as of the end of the reporting period, there were open investigations related to false positives against 18 retired and active duty generals, although no new investigations were opened in 2016 or 2017. The Attorney General's Office reported investigations against two generals were closed during the reporting period; one resulted in a resolution of dismissal (*resolución inhibitoria*), and one resulted in a resolution of preclusion (*resolución de preclusión de investigación*).

On March 28, 2016, then-Attorney General Eduardo Montealegre announced his office would seek to charge former Army Commander General (retired) Mario Montoya Uribe and issue an arrest warrant for General Henry William Torres Escalante for their alleged connections to false positive cases. As reported in the Department's 2016 human rights certification, both generals have retired and are not in positions of command authority. Torres Escalante turned himself in to the authorities on March 28, the day of Montealegre's announcement. During the reporting period, media reported Torres Escalante was to be called to trial in August 2016, becoming the first general to begin judicial proceedings related to false positives. The Attorney General's office reported the indictment against Torres Escalante was upheld August 10, 2016, and the case was subsequently transferred to the special investigations unit on August 19, 2016. Media reported Montoya Uribe was scheduled to appear before a judge to face charges on May 31, 2016, but the hearing was postponed. The Attorney General's Office reported in June 2017 investigations against Montoya Uribe were in the preliminary investigation and inquiry phase.

In this context, "appropriately sanctioned" will mean sanctions in accordance with the conditions and guidelines set forth in the peace accord and the TJ law. As of the end of the reporting period, it was unclear whether cases involving false positives would be prosecuted in the SJP rather than the ordinary justice system. Transitory Article 17 of the TJ bill notes that for state agents to be eligible for consideration by the SJP, their "conduct must consist of actions or omissions committed in the context and during the course of the armed conflict, and without the intention of illicit personal gain, or in the event of personal gain, this must not have been the determinant of the criminal conduct." The Colombian government stated that once the SJP is established, the magistrates will review false positives on a case-by-case basis to determine the appropriate jurisdiction. "Appropriate sanctions" for false positives must take into account the parameters established in Transitory Article 17; cases in which the SJP magistrates determine

personal gain was the determinant factor should remain in the ordinary justice system and be subject to ordinary criminal penalties. If the magistrates determine personal gain was not the determinant factor and a case is adjudicated in the SJP, “appropriate sanctions” would consist of those outlined under Criterion 1; those who tell the complete and full truth and comply with the SJP requirements would face a maximum eight-year sentence in a military prison if found guilty, and those who do not would face up to 20 years in prison if found guilty.

Article 52 of the December 2016 Amnesty Law authorized the Colombian Ministry of Defense to submit to the SJP executive secretariat the names of state actors who may be eligible to have criminal charges against them transferred from the ordinary justice system to the SJP so that the executive secretary could determine whether to grant such persons “conditional liberty,” pending formal review of their cases by SJP magistrates once the SJP is operational. The Ministry of Defense reported submitting a list of 1,074 persons to the SJP executive secretariat for such review as of March 31, 2017. As of May 6, 2017, Colombian media reported at least 21 members of the armed forces had been provisionally released from detention pending review of their cases by SJP magistrates, including at least two persons convicted in false positive cases. Under the terms of provisional release, individuals must express their intention to participate in the SJP and promise to tell the “whole truth,” provide reparations to their victims, and commit to non-repetition. They must not change their residence or leave the country without prior authorization from the SJP, and they must remain available to appear before the SJP. Provisional release does not represent a final determination on the jurisdiction of these cases. As Colombian authorities review cases and determine under which jurisdiction they should proceed, the Department will monitor developments and communicate to the Colombian government our view that it should sanction under the ordinary justice system anyone who may have killed civilians primarily for personal enrichment to secure economic benefit or improper professional advancement, in accordance with Transitory Article 17.

Removal from Positions of Command Authority of Military Officers “Credibly Alleged” to Have Committed False Positive-Related Crimes

The Colombian government removed, and continues to take steps to remove, from positions of command authority, military officers credibly alleged to have committed crimes related to false positive killings. For purposes of this report, the Department considers an allegation “credible,” such that it would require removal from command, when there has been a decision by the Colombian Attorney General’s office to initiate criminal proceedings by issuing an arrest warrant or announcing an intent to file charges. The Colombian Attorney General’s office is the body authorized to investigate allegations of criminal activity and initiate judicial proceedings if or when there is sufficient evidence. The Attorney General’s office has a strong track record of seriously pursuing false positive cases, including opening investigations into 21 generals, initiating judicial proceedings when allegations are deemed “credible” (as in the case of General Torres Escalante), and prosecuting more than 1,000 false positive-related cases. The Colombian legal system, in accordance with Law 600 of 2000, restricts the Attorney General’s office from sharing details about active cases in the investigation phase in order to guarantee the fundamental rights of the individual. According to Law 600, the trial phase of a criminal proceeding is public, but information regarding an ongoing investigation is limited to investigators, prosecutors, and those who are subjects in the case. As such, the Attorney General’s office is generally restricted from notifying the Ministry of Defense of investigations to which the Ministry is not a direct

party, unless or until there is sufficient evidence to initiate judicial proceedings (when charges are filed or an arrest warrant is issued). Nevertheless, the Attorney General's office may communicate with the Ministry of Defense through the appropriate liaisons according to the procedural needs in a case involving a member of the armed forces, including to facilitate questioning, an arrest, or a summons to face charges.

The Ministry of Defense further reported in May 2017 that, in application of the Single Disciplinary Code and the Armed Forces Disciplinary Regime (Law 836 of 2003), provisional suspension "is contemplated as a measure that can be adopted" in the case of officials under disciplinary investigation for serious offenses involving human rights violations, including those involving false positives, including when the alleged offender's continuation in the role would interfere with the investigation "or if there is a possibility that the conduct continues or could be repeated." The Ministry of Defense reiterated to the Department its "zero tolerance" policy with respect to conduct constituting a violation or abuse of human rights or violation of international humanitarian law.

The Department is aware of cases in which the Ministry of Defense has removed from positions of command authority officers under investigation for false positives. As noted in the 2016 human rights certification, the Colombian government removed from command authority officers under investigation for false positives, including General Torres Escalante. At the time Torres Escalante was first summoned for questioning in 2015, he was the commander of Joint Command No. 2 "Southwest." The Ministry of Defense subsequently transferred Torres Escalante from this position of command authority to the administrative role he held at the time of his arrest in March 2016, as head of the Historical Memory Center of the Armed Forces. He has now retired from the armed forces. Additionally, in 2016 and 2017, information reviewed by the Department shows the Colombian government removed at least one additional officer from a position of command authority and appeared to be in the process of removing at least one other officer from a position of command authority who was under investigation for false positive-related crimes.

The Department learned both retired and active duty generals were under investigation by the Attorney General's office during the reporting period for crimes related to false positives. The Department is not aware of any arrest warrants issued or charges filed by the Attorney General's Office against active duty officers during this time. The Department will closely monitor this issue and encourage the Colombian government to continue to take appropriate measures to remove from command authority officers credibly alleged of crimes related to false positives.

CRITERION (3)

The Joint Explanatory Statement accompanying the FY 2017 SFOAA, as incorporated by reference in section 7045(b)(6), requires a certification that:

"[T]he Government of Colombia is continuing to dismantle illegal armed groups, taking effective steps to protect the rights of human rights defenders, journalists, trade unionists, and other social activists, and protecting the rights and territory of indigenous and Afro-Colombian communities."

Dismantling Illegal Armed Groups

The Colombian government continued to take steps to dismantle illegal armed groups, including guerrilla groups and organized criminal groups (previously known as *bandas criminales* or BACRIM). Through its peace accord with the FARC, the government began to disarm, demobilize, and reintegrate the largest illegal armed group in the country. As of May 15, 2017, nearly 7,000 members of the FARC were gathered in 26 transition zones undergoing the process of disarming and demobilizing under the supervision of UN observers. Under the peace accord, members of the FARC will go through a reintegration process, and the FARC will convert from an armed insurgency to a new political movement. The government continued to conduct operations against FARC members who refused to demobilize under the accord (the Ministry of Defense reported approximately 300 such “dissidents”), including launching airstrikes against FARC dissidents in Guaviare March 11. On May 16, media reported the Colombian national police killed the finance chief of a FARC dissident division in Caqueta department, and seized pistols, grenades, and bullets in the operation.

In the context of the peace accord, the government committed to take additional measures to prioritize efforts to dismantle illegal armed groups. Accord section 3.4.4 provides for the creation of a special unit within the Attorney General’s Office to dismantle organized criminal groups. Presidential decree 898 of 29 May 2017 formally created the special unit and stated its mandate would include the investigation and prosecution of organizations and criminal actors that are “responsible for homicides, massacres, systematic violence in particular against women, or that threaten or attack people participating in the implementation of the accords and peacebuilding, including criminal organizations that have been designated as paramilitary successor groups and their support networks.” Article 8 of the decree provides the Attorney General will appoint a director, to be chosen from a shortlist of candidates provided by the same selection committee designated to appoint magistrates and other functionaries of the SJP, to head the unit for four years. As of May 15 a director had not been selected, but Presidential Decree 587 of April 5, 2017 outlined the selection process. The Attorney General’s Office reported in June 2017 it determined the special unit would be funded through the national budget and international assistance, including EU support.

The accord provides for increased actions by the national police and armed forces to target illegal armed groups. Accord section 3.4.5, under the “Agreement on Security Guarantees and Combating the Criminal Organizations,” provides for the creation of an Elite Group within the national police “in order to guarantee immediate action by the State against the organizations that are the subject of this Agreement, and to dismantle said organizations.” The Ministry of Defense launched a post-accord security strategy, “Plan Victoria,” in January 2017 to expand state security presence in areas historically controlled by the FARC. The Ministry of Defense stated the Plan aimed to neutralize the National Liberation Army (ELN), illegal armed groups, and other criminal organizations by increasing the presence of security forces in 160 prioritized municipalities, where they would also support social development, economic, infrastructure, security, and justice projects to raise the standard of living in rural and urban areas. Commander of the armed forces General Juan Pablo Rodríguez Barragán publicly stated that under Plan Victoria, in the first quarter of 2017, the armed forces arrested 3,581 criminals, including 111 members of the ELN and 436 members of organized criminal groups; seized 629 weapons,

74,000 munitions, 8.5 tons of explosives, and nearly \$1.5 million in cash; destroyed 627 drug laboratories; and seized 32,546 kilos of cocaine. The armed forces also held three of the 17 planned Development Support workshops planned for 2017, with 31,225 beneficiaries in the departments of Caqueta, Amazonas, and La Guajira. The Ministry of Defense further reported that as part of Plan Victoria, the armed forces responded under its immediate reaction system to citizens' reports of the presence of armed actors. As of March 15, of approximately 70 cases reported, 50 had been resolved, including some that resulted in arrests.

During the relevant period, the Colombian government continued military operations to further weaken the ELN, which numbered approximately 1,505 members in 2016 compared to 1,546 in 2015, according to the Colombian government. In 2016, the Colombian government reported at least one ELN leader was killed and four were captured during law enforcement operations. On March 24, 2017, Santos announced Alvaro Gelves Ortego, alias "Jairo," the top leader of the ELN's Jose Antonio Galan Front, was killed in an armed forces operation in Bolivar department. While security forces operations continued, President Santos announced the government would begin formal peace talks with the ELN to enable the country to "achieve complete peace." The talks were launched in a ceremony February 7, 2017 in Ecuador.

The Colombian government continued to take action against other illegal armed groups, including arrests of high-level leaders. The government reported in 2016, it captured a total of 4,689 members of illegal armed groups and 103 illegal armed group members were killed in the course of law enforcement operations. The government additionally reported in 2016 it seized 1,984 arms; 359,510 munitions; and 2,163 communications devices. In 2017 through April 11, the Colombian government reported it captured 905 members of illegal armed groups and 18 members of illegal armed groups were killed in the course of law enforcement operations. The government additionally reported during the same period it seized 431 weapons; 76,142 munitions; and 654 communications devices. The Colombian government also reported in 2016, in addition to ELN leaders killed and captured, at least four illegal armed leaders of the Gulf Clan and Los Puntilleros were killed, and 11 leaders of illegal armed groups including Los Puntilleros, the Gulf Clan, and La Constru were captured during law enforcement operations. In 2017 through April 11, the Colombian government reported two leaders of the Gulf Clan were killed and two were captured during law enforcement operations.

The Attorney General's Office collaborated in efforts to dismantle illegal armed groups, including through the creation under the 2017 National Police-Attorney General's Office Inter-Institutional Action Plan of an Interagency Articulation Mechanism Against Organized Crime (MAICO). The Attorney General's Office reported that in 2016, it opened 3,927 investigations against members of illegal armed groups, leading to sentences in 1,893 cases. The Attorney General's Office reported in 2017 through June 16, it opened 1,186 investigations against members of illegal armed groups, leading to sentences in 746 cases. The Attorney General's Office reported it continued to investigate third parties suspected of financing or collaborating with illegal armed groups through a special unit launched in 2015 to investigate and prosecute such crimes.

The government continued to carry out operations to counteract and dismantle the Gulf Clan (previously known as Clan Usuga) under Operation Agamemnon, launched in February 2015.

The specialized *Search Bloc*, formally launched in March 2016, played an important role in Operation Agamemnon activities during the relevant period. The *Search Bloc* was created with 500 core members to focus on intelligence, criminal investigation, public safety, anti-kidnapping, counternarcotics, and supporting the *Carabineros*, a rural police unit of the National Police. On March 16, the National Police announced members of the *Search Bloc* killed Fernando Oquendo Estrada, alias “Ramiro Bigotes,” the head of security for the Gulf Clan’s top leader (alias “Otoniel”) and one of the masterminds behind the group’s international drug trafficking operations, during an operation supporting Operation Agamemnon. On May 8, 2017, the National Police announced Operation Agamemnon had succeeded in dismantling half of the Gulf Clan. The National Police reported through Operation Agamemnon, as of May 2017, the security forces captured 1,284 members of illegal armed groups (1,001 of the Gulf Clan and 283 others); seized 94 tons of cocaine (44 through Agamemnon and 50 at the national level); destroyed 81 drug laboratories and two clandestine airstrips; and seized COP 27,447,947,287 and 517 properties valued at COP 338,318,831,900.

Government Efforts to Protect Social Activists

During the relevant period, the Colombian government took effective steps to protect the rights of human rights defenders, journalists, trade unionists, and other social activists. In order to help monitor and verify human rights were respected throughout implementation of the peace accord, the government formally renewed the mandate of the UN Office of the High Commissioner for Human Rights (OHCHR) in Colombia on October 31 for a period of three years. Peace accord section 6.3.4 requests OHCHR include a “special chapter on implementation of the agreements from the standpoint of human rights” in its annual reports.

Threats and attacks against human rights defenders and members of vulnerable groups continued during the relevant period. An increase in the killings of human rights defenders and social activists during the relevant period raised concern among government, NGOs, and civil society actors. According to the Attorney General’s Office, OHCHR verified 63 killings of human rights defenders in 2016 (compared to 41 in 2015). Of the 59 killings that had been verified by OHCHR at the time of release of its 2016 annual report, only one had been attributed to a state actor (during a social protest), while the vast majority (74.5 percent) were linked to criminal interests, and the remainder to guerrilla groups, FARC dissidents, and private actors. The Attorney General’s Office reported eight sentences for such crimes in 2016, including four related to cases from prior years and four related to cases from 2016. As of March 17, 2017, the Attorney General’s Office reported OHCHR had verified 17 killings of human rights defenders in the year to date. During the same period, the Attorney General’s Office reported two sentences for killings of human rights defenders, as well as a “sanctioning sentence” (for a minor) for crimes committed in prior years.

OHCHR in its annual report stated that, of those human rights defenders killed in 2016, 15 were indigenous, seven were Afro-Colombian, and three were leaders belonging to the LGBTI community. The National Union School (*Escuela Nacional Sindical*) indicated 19 members of trade unions were killed in 2016, compared to 18 in 2015, and reported two unionists killed through March 13, 2017. The Inter-American Commission on Human Rights (IACHR) in its 2016 “Annual Report of the IACHR to the Committee on Juridical and Political Affairs of the Permanent Council of the Organization of American States” (“IACHR 2016 annual report”)

chapter on Colombia recognized the government's efforts to protect journalists, highlighting a decline in violence against them and noting there were no killings of journalists reported in 2016.

The government made efforts to use its political influence to provide protection and support to social activists and human rights defenders. Colombian government officials, including President Santos, Ombudsman Carlos Alfonso Negret Mosquera, and Attorney General Nestor Humberto Martinez all made high-level public statements praising the work of human rights defenders and social activists and denouncing violence against them. The Attorney General stated in a September 22, 2016 press release his office would prevent impunity for those responsible for recent attacks against human rights defenders and social activists, and stated his office had begun to prioritize recent cases under an initiative dubbed "Plan Esperanza." The Attorney General's Office reported as of March 2017, 70 killings of human rights defenders were being investigated under "Plan Esperanza," including 64 killings from 2016 and six from 2017. The Attorney General's Office reported advances in "clarifying" (through new investigations, prosecutions, sentences, and arrest warrants) 27 of the cases (or 38 percent), including 58 arrests and 74 individuals identified for links to the killings. The remaining 43 cases remained under investigation with active arrest warrants as of March 2017.

President Santos issued a presidential decree February 6, 2017, to formally establish the new National Commission on Security Guarantees, an entity provided for in peace accord section 3.4.3 to design and monitor interagency policies aimed at dismantling criminal organizations that threaten social movements, human rights defenders, and individuals engaged in peacebuilding. The commission is chaired by the President and includes the ministers of interior, defense, and justice; the attorney general; the ombudsman; the inspector general; and the director of a dedicated special unit of the Attorney General's office. The Commission also includes representatives of human rights NGOs and OHCHR. The Colombian government reported as of the end of April, the Commission had met four times – December 6, February 1, February 23, and March 21. The Commission has continued to meet since the end of April. At a May 3, 2017 meeting of the Commission, President Santos asked Vice President Oscar Naranjo to "lead the fight" against those threatening human rights defenders and announced a series of actions to strengthen protections for social leaders. He ordered the establishment of a new group of judicial police investigators focused exclusively on cases of threats and killings of human rights defenders and civil society activists; announced the Ministry of Interior would create regional prevention and alert systems to help guarantee the exercise of leaders' political activity; and promised to work with the Attorney General to strengthen legal mechanisms to target criminal organizations responsible for much of the violence against human rights defenders.

During the relevant period, the Attorney General's Office took actions to improve its investigations of threats against human rights defenders. According to OHCHR's annual report on Colombia, in 2016 there were a total of 389 aggressions against human rights defenders, including 210 threats. In 2015, OHCHR reported 295 attacks against human rights defenders and 151 threats. In the second half of 2016 and into 2017, the Vice Attorney General led an effort to design a strategy to prioritize the investigation and prosecution of aggressions against human rights defenders and social activists. On March 6, 2017, the Attorney General's Office coordinated a workshop to analyze the crime of threats. National and regional public prosecutors discussed judicial and technical challenges to investigations and prosecutions for the crime of

threats against human rights defenders and social activists, as well as strategies to advance these efforts. On May 9, 2017, media reported a former National Protection Unit (UNP) body guard was convicted and sentenced for sending death threats to 18 human rights defenders and political leaders from an internet café in 2014, the first conviction in Colombia for threats against human rights defenders. The Attorney General's Office reported Diego Alexander Cespedes Moreno was sentenced to 50 months in prison and a fine of 27 monthly minimum salaries.

The UNP, established in 2011 and located within the Ministry of Interior, continued to protect at-risk citizens and communities. The UNP consolidates all government protection entities' databases and administers a protection program for vulnerable persons, including providing communications equipment, bodyguards, armored cars, reinforced doors or windows, and relocation assistance, among other measures. The type and scope of protection provided varies according to the specific threat level, as assessed by the UNP.

Though the UNP has faced challenges including budget shortages and an increased protection caseload, the IACHR 2016 annual report "recognize[d] the actions implemented by the State to protect a large and growing number of persons at risk...as well as the endowment of considerable economic resources so that the program can perform its functions." In 2016, the UNP reported it received 28,782 requests for protection (compared to 20,203 in 2015); however, many of these requests were incomplete or not relevant to the UNP's mission. The UNP accordingly conducted 5,843 risk assessments in 2016, of which 3,425 cases were categorized as "extraordinary risk," 27 as "extreme risk," and 2,391 as "ordinary risk." The UNP reported providing protection to 6,501 individuals in 2016. As of March 30, 2017, the UNP reported it received 13,045 requests for protection and carried out 1,361 risk evaluations, of which 823 cases were categorized as "extraordinary risk," five as "extreme risk," and 533 as "ordinary risk." The UNP reported as of March 30, 2017, it was providing protection measures to 6,067 people.

The UNP reported that it expanded the number of regional offices in 2016, including branches in Choco, Armenia, and Barrancabermeja. The IACHR 2016 annual report states, according to the Colombian government, none of the UN-verified human rights defenders killed in 2016 were undergoing a risk assessment or had a pending request for protection measures with the UNP. In some cases, UNP body guards saved the lives of human rights defenders. In December 2016, a UNP body guard was credited with saving the life of Rodrigo Ramirez, a member of the civil society organization Movimiento Nacional de Victimas de Crimenos del Estado (MOVICE), when two armed men on motorcycles targeted Ramirez and another MOVICE member as they were on their way to a meeting. The guard reacted immediately by firing at the aggressors, who fled. The UNP continued efforts to improve protection services for vulnerable groups, including presenting a new Protocol for Attention to Cases of Journalists and/or Social Communicators on September 23, which aimed to provide more robust risk studies and meet the particular needs of this group. In September 2016, the UNP also released a Protocol for Attention to Women, which includes guidance for receiving requests for protection, conducting risk evaluations, and assigning protection measures with a "differential gender focus."

In addition, the peace accord outlines expanded responsibilities for the UNP. Sections 3.4.7.3 and 3.4.7.3.1 provide for the UNP to protect members of the FARC's future political party or

political movement, demobilized guerrillas returning to civilian life, and the families of the aforementioned individuals, “consistent with their levels of risk,” under a new “comprehensive protection program.” The accord directs the government to “make any adjustments necessary to increase the number of UNP personnel, if needed.” On February 23, President Santos issued six presidential decrees to implement these obligations through a restructuring of the UNP, but the decrees were ruled unconstitutional for exceeding budget spending limits. Instead, the Colombian congress introduced legislation to fulfill this purpose. The pending legislation creates the UNP’s Specialized Subdivision for Security and Protection (SSSP) to protect demobilized FARC and the Technical Table of Security and Protection to oversee the SSSP, and significantly expand the size of the UNP in light of its new responsibilities, including 12 security professionals, 92 administrative positions, and 1,200 armed escorts. The decrees also reassert a peace accord provision whereby the FARC’s future political party members are presumed to face an “extraordinary” level of risk, which will facilitate the efficient provision of protection by waiving the application and risk assessment processes.

Protecting the Rights and Territory of Indigenous and Afro-Colombian Communities

During the relevant period, the Colombian government took effective steps to protect the rights and territory of indigenous and Afro-Colombian communities. OHCHR stated in its 2016 annual report that although greater attention has been paid to the members of the indigenous and Afro-descendant communities since a 2004 Constitutional Court declaration of an “unconstitutional state of affairs,” including by acknowledging the disproportionate impact of the armed conflict on these groups, challenges remained in implementing economic, social, and cultural rights. Law 1833 of May 4, 2017 created a legislative commission in the Colombian congress that will work to ensure the protection of the “individual and collective rights” of Afro-Colombian persons and communities. The commission will begin its work after 2018 congressional elections and will be expected to generate legislative proposals that guarantee or advance the rights of Afro-Colombians. The commission will be tasked with: exercising influence within the national government and drawing attention to issues affecting the Afro-Colombian community; monitoring compliance with local, regional, national and international commitments signed by the national government to safeguard the rights of Afro-Colombians; and serving as a conduit between Afro-Colombians and congressional representatives.

During the relevant period, the Colombian government increased the inclusion of Afro-Colombian and indigenous communities in the peace process with the FARC. Sixty individuals, including Afro-Colombians and indigenous persons, traveled to Havana June 26-27, 2016, to provide testimonies to negotiators, discuss the specific needs of their communities, and outline mechanisms for their increased participation in the peace process. As a result, the final accord recognizes the disproportionate victimization of certain communities, including ethnic and minority groups, in the conflict. The accord includes an “Ethnic Chapter,” section 6.1.12, which establishes principles applicable to the entire accord that guarantee the rights of Afro-Colombians and indigenous peoples under domestic law – including the protection and participation of these communities, including recognition of self-governance structures, communal land rights, and the need for prior consultation before undertaking projects in Afro-Colombian and indigenous communities. NGOs and civil society groups welcomed the inclusion of the Ethnic Chapter. The parties committed to establish a high-level ethnic group authority to work with the Implementation, Monitoring and Verification and Resolution of Differences Commission. As of March 2017,

members of the Ethnic Commission representing Afro-descendent and indigenous groups were in contact with the Technical Secretariat of the Agreement to determine who would form part of the high-level commission. High Counselor for Post-Conflict Rafael Pardo affirmed in a May 13 meeting with the community of Las Colinas in San Jose del Guaviare, "All aspects of the peace process and its implementation clearly respect consultation with ethnic communities."

The Colombian government demonstrated respect for territory held or occupied by indigenous and Afro-Colombian communities through active engagement and execution of prior consultation processes during the relevant period. In 2016, the government reported it carried out 4,193 prior consultations with Afro-Colombian communities (882 consultations) and indigenous communities (3,311 consultations) in the departments of Antioquia, Atlantico, Cauca, Cesar, Choco, Cordoba, La Guajira, Putumayo, Narino, Valle del Cauca, and others. In 2017 through March, the government reported it had carried out 360 consultations with Afro-Colombian communities and 993 with indigenous communities in the departments of Antioquia, Bolivar, Cuca, Cesar, Choco, La Guajira, Magdalena, Putumayo, Santander, and Sucre.

During the relevant period, the government processed hundreds of collective reparations requests from groups registered with the Victims' Unit, which has the governmental lead on attention to victims, who suffered harm during the armed conflict. The IACHR noted in its 2016 annual report that, according to the Colombian government, of 342 groups whose collective reparations were being processed, 178 were ethnic groups, of which 37 communities were officially engaged in the prior consultation stage and three had a Comprehensive Collective Reparation Plan in place at the implementation phase.