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ONDCP FOR JANET CRIST

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

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

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

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

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SYSTEM. IN PARTICULAR, SEVERAL FUNDAMENTAL REFORMS APPEAR TO INFUSE AND INFORM THE 123 PAGES OF THE DRAFT BILL:

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

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5. (U) The central role human rights concerns played in the development of the new code are unmistakable from the very first chapter. The very first article of the code declares that offenses "related to service" committed by active duty personnel of the security forces (i.e., military or police) shall be tried in military courts. The second article defines such offenses as those "directly derived from the exercise of military or police functions which are proper and in accordance with the governing constitutional, legal and regulatory provisions."

6. (C) The third article then defines "offenses unrelated to service" thusly: "in no case may an offense be considered related to service for crimes of torture, genocide, forced disappearance, nor any other offense which constitutes a grave violation of human rights, nor crimes against sexual freedom, against human dignity, nor conspiracy to commit a crime." The
7. (U) EVEN AS HE PROPOSED SUCH A FUNDAMENTAL "CLIPPING OF THE WINGS" OF THE MILITARY COURTS, PRESIDENT SAMPER SIMULTANEOUSLY PROPOSED A SEPARATE BILL TO GOVERN HOW MILITARY PERSONNEL MAY BE TRIED IN THE CIVILIAN COURTS. THIS SECOND BILL PROPOSES THAT OFFICERS BE FIRST TRIED IN SUPERIOR COURT, WITH APPEALS HEARD DIRECTLY BY THE SUPREME COURT OF JUSTICE. ENLISTED PERSONNEL AND NON-COMMISSIONED OFFICERS WOULD BE JUDGED IN THE CIRCUIT COURTS, WITH APPEALS HEARD BY THE SUPERIOR COURTS.

IT'S ALL PART OF A PLAN

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

COMMENT
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10. (C) THE SAMPER ADMINISTRATION HAS UNCORKED A FEW PROJECTS THAT HAVE CLEARLY BEEN LONG IN DEVELOPMENT, AND WHICH, IN THE EYES OF MANY, ARE LONG OVERDUE. WHILE THE DEVIL IS ALWAYS TO BE
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FOUND IN THE DETAILS OF ANY LEGISLATIVE PROPOSAL WHICH RUNS TO 641 ARTICLES, THE GOVERNMENT'S OVERARCHING IMPULSE IN ATTEMPTING TO REFORM THE MILITARY PENAL CODE IS AS CLEAR AS IT IS POSITIVE. THE BASKET OF HUMAN RIGHTS INITIATIVES SHOULD ALSO BE SEEN AS PART AND PARCEL OF THE GOVERNMENT'S LARGER EFFORTS TO "HUMANIZE THE WAR" AND TO BUILD MOMENTUM BEHIND, AND CONFIDENCE IN, ITS PEACE OVERTURES WITH THE GUERRILLAS. AS POSITIVE AS THESE MEASURES ARE, HOWEVER, THEY ARE JUST FIRST STEPS IN WHAT MUST BECOME A LONG AND COMPLICATED PROCESS OF REFORM -- THE BENEFITS OF WHICH WILL NOT BE EVIDENT FOR AN EVEN LONGER TIME.

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

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THIS PERCEPTION HAS BEEN ERODED, BUT NOT TOTALLY, BY THE INCREASING PUBLIC PERCEPTION OF MILITARY INCOMPETENCE.

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

FRECHETTE