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ECCHR Dossier

General Freddy José Padilla de León

Colombian Ambassador to Austria,
Non-Resident Ambassador to Croatia, Serbia, Slovakia, Slovenia,
Czech Republic and Hungary as well as
Permanent Representative to the United Nations in Vienna

*General Freddy Padilla's alleged involvement in international crimes committed in
Colombia*

submitted on 19 August 2013

to the Ministries for Foreign Affairs of
Austria, Croatia, Serbia, Slovakia, Slovenia, Czech Republic and Hungary as well as
to the Office of the United Nations in Vienna (UNOV)

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1) Introduction

Since 18 October 2010 the former General Commander of the Armed Forces of Colombia, General Freddy José Padilla de León, has been the Colombian Non-Resident Ambassador in Austria. He is accused of bearing responsibility for numerous crimes against international law committed by the military.

For over 40 years, Colombia has been plagued by an armed conflict that has claimed over 200,000 lives. The main actors in the conflict on the side of the Colombian state are the police, the armed forces and the now defunct domestic intelligence agency *Departamento Administrativo de Seguridad* (DAS / Administrative Department of Security). These are joined by a number of right-leaning paramilitary groups which until a few years ago were combined under the umbrella organization *Autodefensas Unidas de Colombia* (AUC). On the other side of the conflict are left-leaning guerilla groups, in particular the *Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo* (FARC-EP) and the *Ejército de Liberación Nacional* (ELN).¹

General Freddy Padilla is suspected of being criminally liable for extensive crimes against international law committed against the civil population, in particular in the context of extrajudicial killings in the “false positives” (*falsos positivos*) scandal. The term *falsos positivos* refers to a series of murders of civilians, which were knowingly falsely presented as guerilla fighters killed in combat. There were also numerous crimes against trade unionists and human rights defenders committed during General Padilla’s time in office and there are concrete indications that he holds responsibility for murders carried out during a paramilitary massacre.

ECCHR has been following the conflict in Colombia for a number of years and has repeatedly filed legal actions for those responsible for crimes against international law committed in the course of the violence to be brought to justice. In October 2012 ECCHR submitted a communication to the Office of the Prosecutor of the International Criminal Court (ICC) in The Hague. The submission was designed to persuade the ICC to take action regarding systematic violence against human rights defenders and particularly against trade unionists in Colombia, including in connection with General Freddy Padilla.

Padilla’s acts amount to crimes against international law and under the ICC Statute which must be prosecuted by any state. This obligation arises from the Geneva Convention which places a duty on member states to prosecute persons responsible for grave violations or to extradite them to a state that is willing to prosecute for the crimes.² The same principle applies to cases of inhumane treatment or torture in accordance with the UN Convention against Torture.³ It is also in accordance with the complementarity principle contained in the Rome Statute of the International Criminal Court (ICC Statute), that state parties – including the

¹ For further background information on the Colombian conflict and on the human rights situation in Colombia see e.g. *Amnesty International*, Annual Report 2013, available at <http://www.amnesty.de/jahresbericht/2013/kolumbien?destination=node%2F2959>; or *Human Rights Watch*, Annual Report 2012, available at <http://www.hrw.org/world-report/2013/country-chapters/colombia> (last accessed on 31 July 2013).

² Art. 49 First Geneva Convention; Art. 50 Second Geneva Convention; Art. 129 Third Geneva Convention; Art. 146 Fourth Geneva Convention.

³ Art. 5 (2) and 7 of the UN Convention against Torture.

state in which the crime occurred, the state of which the accused is a national, and third party states with jurisdiction over the crimes – initiate criminal proceedings in cases of international crimes.⁴

ECCHR is addressing this dossier and the demands contained herein to the Austrian Foreign Ministry, since the diplomatic immunity presumably currently enjoyed by Padilla is impeding the commencement of criminal investigations in this case. However, Europe must not be allowed to act as a safe haven for war criminals.

ECCHR calls on the Austrian government to take seriously the allegations of war crimes leveled against General Padilla as well as his alleged individual criminal liability for these crimes. In order to comply with their obligations under international law, the government must take action by revoking General Freddy Padilla's diplomatic visa and declaring him *persona non grata* in accordance with Article 9 of the Vienna Convention on Diplomatic Relations.⁵ Furthermore, the government and the relevant prosecution authorities should give serious consideration to investigatory proceedings in relation to the alleged crimes committed in Colombia and should further investigate the evidence presented in the following pages.

⁴ Preamble of the ICC Statute, 6th recital: "Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

⁵ Art. 9 (1): "The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State."

2) Freddy José Padilla de León – Personal Details

Freddy José Padilla de León, born on 10 October 1948 in Montería, Córdoba, Colombia, is a retired General of the Army of Colombia.⁶ As of 18 October 2010 he is the Colombian Ambassador to Austria as well as Colombian Permanent Representative to the United Nations in Vienna.⁷ In this function he is also accredited as Ambassador to Croatia, Serbia, Slovakia, Slovenia, Czech Republic and Hungary.⁸ He also serves as Permanent Representative to various UN programs in Vienna, e.g. the International Atomic Energy Agency, the Industrial Development Organization and the Office on Drugs and Crime.⁹



Freddy Padilla de León
*Embajador Plenipotenciario y
Extraordinario de la República de
Colombia ante los gobiernos de Austria,
Croacia, Eslovaquia, Eslovenia, Hungría,
República Checa y Serbia.*

From 1966 to 2010 General Freddy Padilla was a member of the Colombian armed forces. Since 7 August 2009 he holds the rank of a four-star general, which in Colombia is awarded only very rarely.¹⁰ From 23 May to 7 August 2009 he served as interim defense minister of the Republic of Colombia¹¹ and was as such second only to the President in the military chain of command.¹²

During his time in the military General Freddy Padilla acted in the following leading positions:¹³

⁶ On his career see e.g. *Wikipedia*, Freddy Padilla de León, available at http://en.wikipedia.org/wiki/Freddy_Padilla_de_Le%C3%B3n; and *La Silla Vacía*, Freddy Padilla de León, available at <http://www.lasillavacia.com/perfilquien/19378/freddy-padilla-de-leon> as well as <http://biografiasybiografias.blogspot.de/2009/09/freddy-padilla-de-leon.html> (last accessed on 31 July 2013).

⁷ Decree No. 3438 of the Colombian Foreign Ministry from 7 October 2010, *Presidencia de la República*, General (r) Freddy Padilla de León, nuevo Embajador ante los organismos de Naciones Unidas en Viena, 9 October 2010, available at http://wsp.presidencia.gov.co/Prensa/2010/Octubre/Paginas/20101007_09.aspx; see also http://www.bmeia.gv.at/aussenministerium/buergerservice/auslaendische-vertretungen-in-oesterreich.html?dv_staat=83&cHash=1e07e3c04da65b81dae4524ffd55b67d (last accessed on 31 July 2013).

⁸ Since 11 April 2011 for the Czech Republic; since 31 May 2011 for Hungary; since 13 June 2011 for Slovenia; since 12 July 2011 for Slovakia; since 18 October 2011 for Croatia; since 21 February 2012 for Serbia, see e.g. the photo gallery of the Colombian Embassy in Vienna, available at <http://www.flickr.com/photos/embajadaenAustria/sets/> (last accessed on 31 July 2013).

⁹ Since 13 October 2010 for the Office on Drugs and Crime, since 27 October 2010 for the International Atomic Energy Agency; since 1 November 2010 for the Industrial Development Organization; since 4 November 2010 for the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization; see the blog from the Colombian Embassy in Vienna, available at <http://embajadaenAustria.blogspot.de/search?updated-min=2010-01-01T00:00:00-08:00&updated-max=2011-01-01T00:00:00-08:00&max-results=9> (last accessed on 31 July 2013).

¹⁰ *La Silla Vacía*, Freddy Padilla de León, 4 November 2010, available at <http://www.lasillavacia.com/perfilquien/19378/freddy-padilla-de-leon> (last accessed on 31 July 2013).

¹¹ See *Ministerio de Defensa Nacional*, Lista de Ministros de Guerra y Defensa desde 1821, available at <http://www.mindefensa.gov.co/irj/portal/Mindefensa?NavigationTarget=navurl://6e3a98d57e9f90eae26a183b51b5697> (last accessed on 31 July 2013).

¹² See Law No. 102 from 3 December 1944 (Diario Oficial No. 25,759, 6 February 1945); <http://www.ejercito.mil.co/?idcategoria=26> (last accessed on 31 July 2013).

¹³ On the command structure of the Colombian Armed Forces see annex as well as Law No. 102 from 3 December 1944 (Diario Oficial No. 25,759 from 6 February 1945), available at http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Normatividad%20Leyes/LEY%20102%20DE%201944.pdf; and Art. 7 of Decree No. 835 from 16 April 1951 (Diario Oficial No. 27,595 from 4 May

a. General Commander of the Armed Forces (August 2006 to August 2010)

General Freddy Padilla was General Commander of the Colombian Armed Forces from 15 August 2006 until 6 August 2010 (Comandante General de las Fuerzas Militares).¹⁴ As



General Commander, all soldiers of the Colombian army (Ejército Nacional de Colombia), the entire navy (Armada de la República de Colombia) and the air forces (Fuerza Aérea Colombiana) were subordinate to Padilla.¹⁵ In Colombia, the General Commander of the Armed Forces is the highest planning and strategic unit of all military institutions.¹⁶ As such, General Freddy Padilla was tasked with the protection of human rights by the Colombian armed forces and issued various directives on the

matter.¹⁷

b. Joint Chief of Staff of the Armed Forces (November 2003 to August 2006)

From 19 November 2003 until 15 August 2006 General Freddy Padilla was Joint Chief of Staff of the Colombian Armed Forces (Jefe de Estado Mayor Conjunto de las Fuerzas Militares).¹⁸ This position is directly below the General Commander in the military chain of command.¹⁹ In accordance with Article 5 of Presidential Decree No. 835 from 1951, the army Joint Chief of Staff is responsible for the technical and strategic preparation and development of military operations.²⁰

1951), available at http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Normatividad%20Leyes/DECRETO%20835%20DE%201951.pdf; see also <http://www.ejercito.mil.co/?idcategoria=26> (last accessed 31 July 2013).

¹⁴ See *Comando General Fuerzas Militares de Colombia*, Salón de Comandantes, available at <http://www.cgfm.mil.co/CGFMPortal/faces/index.jsp?id=6772>; *Ejército Nacional de Colombia*, General Freddy Padilla De León new Military Forces Commander, 15 August 2006, available at <http://www.ejercito.mil.co/index.php?idcategoria=188140> (last accessed on 31 July 2013).

¹⁵ On the command structure see annex with further references.

¹⁶ See *Comando General Fuerzas Militares de Colombia*, ¿Quiénes somos? – Nuestra institución, available at <http://www.cgfm.mil.co/CGFMPortal/faces/index.jsp?id=5784>; Art. 3 of Decree No. 835 outlines the General Commander's responsibility for the administration, discipline, behavior and operations of the armed forces: „Será responsable ante el Ministro, de la administración, disciplina, conducta y empleo de las Fuerzas Militares.“ (last accessed on 31 July 2013).

¹⁷ See *General Freddy Padilla de León - Comando General Fuerzas Militares*, Directrices del Comando General de las Fuerzas Militares sobre Derechos Humanos y DIH en Colombia, July 2008, available at http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Directivas%20DDHH%20CGFM%20ESP.pdf (last accessed on 31 July 2013).

¹⁸ See *Ejército Nacional de Colombia*, General Freddy Padilla De León new Military Forces Commander, 15 August 2006, available at <http://www.ejercito.mil.co/index.php?idcategoria=188140> (last accessed on 31 July 2013).

¹⁹ On the command structure see annex with further references.

²⁰ See Decree No. 835 from 16 April 1951 (Diario Oficial No. 27.595 from 4 Mai 1951), available at http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Normatividad%20Leyes/DECRETO%20835%20DE%201951.pdf (last accessed on 31 July 2013).

c. General Inspector of the Armed Forces (August 2002 to November 2003)

From 24 August 2002 until 18 November 2003 General Freddy Padilla served as General Inspector of the Armed Forces (Inspector General Ejército). This position comes directly after the Joint Chief of Staff in the chain of command.²¹ In accordance with Article 14 of law no. 102 from 1944, the General Inspector's responsibilities include the control and monitoring of the internal administration, discipline as well as schooling and training within the army.²²

d. Previous Positions

In 2002 General Freddy Padilla functioned briefly on an interim basis as army Chief of Operations (Jefe de Operaciones del Ejército) and was as such directly below the General Inspector in the chain of command.²³ From 2001 to 2002 General Freddy Padilla was commander of the fifth division of the army, which encompasses the Departamentos Cundinamarca, Huila, Tolima and Quindío. Before that, Padilla was commander of various brigades: from 1998 to 2000 of the second brigade in the Departamentos Atlántico, Magdalena and Sur de Bolívar and in 1998 of the seventh brigade in Villavicencio in the Departamento Meta.²⁴

3) The Cases of extrajudicial killings

There are strong indications that General Freddy Padilla is responsible for cases of extrajudicial killings, the so-called "false positives", which increased in frequency during his time as General Inspector, Joint Chief of Staff and General Commander of the Armed Forces (2002 to 2010).

a. Definition and background

The term "false positives" is used to refer to a series of murders of Colombian civilians indiscriminately killed by soldiers of the Colombian army during the armed conflict in the country, whose corpses were then presented as the bodies of guerilla fighters in order to boost body counts and secure benefits such as promotions. The victims all fitted the same profile, young men, mostly from poorer rural areas. The *modus operandi* was generally as follows: the victims were lured away with offers of work or arbitrarily arrested and brought to remote

²¹ On the command structure see annex with further references.

²² See Law No. 102 from 3 December 1944 (Diario Oficial No. 25.759 from 6 February 1945): "La Inspección General de las Fuerzas Militares dependerá del Estado Mayor General y será el organismo encargado del control y vigilancia de la disciplina, instrucción y administración de las Fuerzas Militares", available at http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Normatividad%20Leyes/LEY%20102%20DE%201944.pdf (last accessed on 31 July 2013).

²³ See <http://www.ejercito.mil.co/?idcategoria=336771> (last accessed on 31 July 2013).

²⁴ See <http://www.unacolombiaobjetiva.com/uco/index.php/editoriales/230-geenral-freddy-padilla-de-leon>, <http://www.semana.com/nacion/articulo/general-freddy-padilla-leon-renuncio-comando-fuerzas-militares/117064-3>; <http://www.ejercito.mil.co/index.php?idcategoria=239185> (last accessed on 31 July 2013).

areas where guerillas were typically fought. There, the victims were shot, dressed as guerilla fighters and registered as killed in combat.²⁵

Many of these extrajudicial executions carried out by the military in Colombia occurred during the time period in which General Freddy Padilla held top positions within the Colombian military. The *Soacha* killings are an emblematic example of a “falsos positivos” case that occurred during Padilla’s four years as army General Commander (15 August 2006 to 6 August 2010). Between December 2007 and August 2008 at least 16 young men were killed in the Soacha region, Departamento Cundinamarca. All were later registered as having been killed in combat with troops of the Francisco de Paula Santander Battalion, also known as Mobile Brigade 15. In August 2008, because of the public pressure exercised by the families of the dead, the corpses of the men were found 700km away from Soacha in a mass grave in Ocaña, Departamento Norte de Santander, where they had been buried as criminals, paramilitaries or guerilla fighters.²⁶ Following enormous public and international pressure the then Colombian government under President Álvaro Uribe Vélez was forced to introduce various measures which ultimately led to a reduction in the number of cases of “falsos positivos” in Colombia.²⁷

Between 2002 and 2008, instances of extrajudicial executions in Colombia acquired particular characteristics and a clear pattern and displayed a high degree of structure and organization in comparison with previous cases.²⁸ Between 1996 and 2001 there was a total of 664 proven cases of extrajudicial executions; between 2002 and 2008 this figure rose to a total of 3,345.²⁹ Within the military there was a pervading pressure to obtain “positive results”, which were measured according to the number of “enemies” killed.³⁰ This intensified with the introduction of military directives in 2005 and 2006, which set out rules for an incentive scheme for members of the military and their informants.³¹ After these directives came into effect, the number of complaints against the military in relation to extrajudicial executions rose from 73 in 2005 to over 122 in 2006 and 245 in 2007.³² This pressure definitively came

²⁵ On this see the comprehensive analysis in: *International Federation for Human Rights (FIDH)*, Report: “Colombia. The war is measured in litres of blood. False positives, crimes against humanity: those most responsible enjoy impunity” (2012), p. 19 ff, available at http://www.fidh.org/IMG/pdf/rapp_colombie__juin_2012_anglais_def.pdf (last accessed on 31 July 2013).

²⁶ *FIDH*, Report: “Colombia. The war is measured in litres of blood, *supra*, p. 7.

²⁷ E.g. Directive No. 25 / 2007, signed by Freddy Padilla; see also *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 8.

²⁸ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 7.

²⁹ *CCEU Observatory on Human Rights and International Humanitarian Law, Working Group on Extrajudicial Executions*, quoted in *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 17.

³⁰ The immense pressure on members of the military to produce results was reported by the media, since it led to high numbers of people leaving the military, see *El Tiempo*, *Cada día se van unos 17 hombres del Ejército* (Every day ca. 17 men leave the military), 2 July 2006, available at <http://www.eltiempo.com/archivo/documento/MAM-2087862> (last accessed on 31 July 2013); see also *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 10.

³¹ Permanent Ministerial Directive no. 029 / 2005, issued on 17 November 2005 from General Camilo Ospina, the then Defense Minister, available on request. Decree 1400 from 2006 “por el cual se crea la Bonificación por Operaciones de Importancia Nacional, Boina” (setting up a bonus system for operations of national importance), issued by then President Uribe on 4 May 2006, available at <http://www.ramajudicial.gov.co/csj/downloads/archivosSoporteRevistas/3731.doc> (last accessed on 31 July 2013). At this time General Padilla was Chief of Staff of the armed forces and was as such also responsible for the enforcement of orders.

³² *El Espectador*, *Directiva ministerial 029 de 2005, 1 November 2008*, available at <http://www.elespectador.com/opinion/editorial/articulo87344-directiva-ministerial-029-de-2005> (last accessed on 31 July 2013).

to light in 2006 when some members of the military described the “psychological torture” they were continually exposed to in order to produce results every day.³³ A former advisor to the Defense Minister spoke of being under an “insatiable pressure” to provide evidence of enemy killings. It was therefore said to be probable that not every opponent killed was a “man with a weapon”.³⁴ According to one former security advisor a problematic evaluation scheme was implemented within the military: “rewards were given excessively – and occasionally exclusively – for the killing of enemies while operational failures were excessively punished. The consequence: a tendency to produce body count successes without undertaking any risks, without exposing oneself too much – or not at all – to the risk of failure. The result: defenseless civilians who appear to be killed in battles that never existed”.³⁵

There are definite indications that the executions were not simply the acts of individual low-ranking soldiers in the Colombian army but fostered by a high degree of organization and coordination through forged official army documents and the corresponding instructions from higher-ranking officers.³⁶ General Padilla’s individual criminal responsibility in the chain of command as high-ranking member of the armed forces is examined in-depth below in chapter 3) c. The cases of “falsos positivos” were committed in a systematic manner despite occurring in part in different regions and under different commanders, which would in any case have had to report to the same Central Command. The pattern can be established with reference to two criteria: the consistent profile of the victims and the military’s consistently recurring methods. Testimony from military members attests to a high degree of coordination and preparation in relation to military operations which suggests that the acts were part of an intentional plan.³⁷

The same conclusion was reached by Philip Alston, former UN Special Rapporteur on extrajudicial, summary or arbitrary executions. Following a visit to Colombia, in June 2009 he sharply criticized the system of rewards for the killing of opponents introduced by the Colombian military, which according to his investigations led in particular to the high rate of “falsos positivos”. He emphasized the fundamental absence of a system of liability and problems on every level of the military’s internal disciplinary processes and internal investigations.³⁸ In his subsequent report to the UN Human Rights Council the UN Special

³³ *El Tiempo*, Cada día se van unos 17 hombres del Ejército (Every day ca. 17 men leave the military), 2 July 2006, available at <http://www.eltiempo.com/archivo/documento/MAM-2087862> (last accessed on 31 July 2013): “la gente no llega a imaginarse la tortura psicológica de tener que entregar resultados todos los días”.

³⁴ Sergio Jaramillo, in *El Tiempo*, La crisis subterránea del Ejército, 11 June 2006, available at <http://www.eltiempo.com/archivo/documento/MAM-2061221> (last accessed on 31 July 2013): “una insaciable presión por bajas (...) Y por eso también resultan verosímiles las afirmaciones de que no todas las bajas de la IV Brigada han sido hombres con fusil.”

³⁵ Alfredo Rangel, “Qué pasa en el Ejército?”, revista Cambio, Bogotá, no. 677, 19-25 June 2006, p. 27: “ha venido implantando un problemático esquema de evaluación [de desempeño]: valora excesivamente – y, a veces, exclusivamente – las bajas del oponente, y castiga desproporcionadamente los propios fracasos operacionales. Consecuencia: tendencia a lograr bajas sin asumir riesgos, sin exponerse demasiado o, mejor, nada. Resultados: civiles indefensos que aparecen muertos en combates que nunca existieron”, quoted by *Coordinación Colombia-Europa-Estados Unidos (CCEEU)*, “Falsos positivos”: Ejecuciones extrajudiciales directamente atribuibles a la Fuerza Pública en Colombia, julio de 2002 a junio de 2006, Report for the Hearing before the Inter-American Commission on Human Rights on 23 October 2006, p. 6, available at http://iepala.es/IMG/pdf/Falsos_positivos_Ejecuciones_Extrajudiciales_Audiencia2006.pdf (last accessed on 31 July 2013).

³⁶ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 16.

³⁷ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 20.

³⁸ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 7; *UN*, press release from 18 June 2009: Statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions -

Rapporteur reported that the cases of “falsos positivos” were not simply isolated events but instead affected many different parts of the country and military units. He also reported that the military’s internal reward system contributed greatly to this development.³⁹

To date no charges have been brought against generals of the Colombian Army in connection with the “falsos positivos”. All investigations undertaken to date deal only with lower-ranking soldiers, whose cases are being pursued individually without any investigation of an overarching connection or the command structures involved.⁴⁰ For this reason, the “falsos positivos” cases are central to the preliminary examinations being carried out by the Office of the Prosecutor of the ICC in connection with Colombia.⁴¹ Proceedings instigated against General Freddy Padilla in June 2010 by the Colombian prosecution authorities were dismissed by the authorities themselves as being mere formalities and did not produce any results.⁴² This emphasizes the fully inadequate approach of the Colombian law enforcement agencies regarding allegations against members of the armed forces or politicians, which are or were working in the highest positions in the state.

b. The cases of extrajudicial killings (“falsos positivos”) as crimes against humanity and war crimes

The “falsos positivos” cases qualify as crimes against humanity and war crimes because they fulfill all the prerequisites contained in the ICC Statute, which is based largely on customary international law.

Under Article 8 (2)(c)(i) of the ICC Statute, war crimes in non-international armed conflicts include violations of common article 3 of the Geneva Convention – which protects persons taking no active part in the hostilities – such as violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.⁴³ The victims of the “falsos positivos” were civilians with no role in hostilities and who were protected by international humanitarian law. The killing of such persons constitutes a war crime in accordance with the ICC Statute and customary international law.

Mission to Colombia 8-18 June 2009, available at <http://www.unhchr.ch/hurricane/hurricane.nsf/0/C6390E2F247BF1A7C12575D9007732FD?opendocument> (last accessed on 31 July 2013).

³⁹ Report of the *Special Rapporteur on Extrajudicial, Arbitrary, and Summary Executions*, Philip Alston, from 31 March 2010 on his mission in Colombia from 8-18 June 2009, UN Doc. A/HRC/14/24/Add.2, paras. 13 ff.

⁴⁰ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 36.

⁴¹ *El Tiempo*, Casos de ‘falsos positivos’ clave en visita de Corte Penal a Colombia, 17 April 2013, available at <http://www.eltiempo.com/archivo/documento/CMS-12746671> (last accessed on 31 July 2013).

⁴² See *Semana*, Inteligencia militar, la marca de Freddy Padilla de León, 27 July 2010, available at <http://www.semana.com/nacion/articulo/inteligencia-militar-marca-freddy-padilla-leon/119806-3>; *El Colombiano*, Fiscalía abrió indagación preliminar contra el general Padilla por falsos positivos, 3 June 2010, available at http://www.elcolombiano.com/BancoConocimiento/F/fiscalia_abrio_indagacion_preliminar_contra_el_general_padilla_por_falsos_positivos/fiscalia_abrio_indagacion_preliminar_contra_el_general_padilla_por_falsos_positivos.asp (last accessed on 31 July 2013).

⁴³ Art. 8(2)(c) ICC Statute: “In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture [...]”.

Under Article 7 (1) of the ICC Statute, crimes against humanity include the killing of persons in the context of a widespread or systematic attack against a civil population.⁴⁴ The huge number of crimes committed against the civil population in Colombia leaves no doubt that an attack was undertaken against the civilian population, based in particular on the national security doctrine implemented by the Uribe government which among other things viewed the civil population as potential supporters of the guerilla groups and therefore legally as domestic enemies. At the basis of this attack is a state policy which fostered these crimes, crimes which occurred not in isolation but which followed certain patterns.⁴⁵ The “falsos positivos” acts were committed systematically. Furthermore, the 3,345 extrajudicial killings, as mentioned above, that occurred between 2002 and 2008 show the widespread nature of these crimes. The cases were qualified as a “general phenomenon” to the US Ambassador William Brownfield by General Carlos Suárez, who had been tasked with carrying out an internal investigation into the cases.⁴⁶ Even General Freddy Padilla himself appealed for the euphemism “falsos positivos” to no longer be used but for the crimes to be called what they were: “murders of protected persons”.⁴⁷

On 31 July 2013, during proceedings against two members of the military, a Colombian criminal court also qualified the extrajudicial killings of the “falsos positivos” cases as crimes against humanity.⁴⁸

c. Padilla’s liability for cases of extrajudicial killings of “falsos positivos” in accordance with the concept of command responsibility under Article 28 (a) of the ICC Statute

The practice of extrajudicial killings in the context of the “falsos positivos” appears as a policy of the then Colombian government and the armed forces, which has been implemented from the highest authority to the executing soldier. The criminal responsibility of high-ranking persons with regards to the execution of the “falsos positivos” policy can be determined on various levels, making independent and effective investigations indispensable. There are substantial indications to suggest that General Freddy Padilla is at least criminally liable in accordance with the concept of command responsibility set out in Article 28 of the

⁴⁴ Art. 7(1) ICC Statute: “For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; [...]”.

⁴⁵ On this see also the extensive analysis in: *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 15 ff.

⁴⁶ *Público*, El asesinato de civiles era algo habitual en el ejército de Uribe, 19 December 2010, available at <http://www.publico.es/internacional/352393/el-asesinato-de-civiles-era-algo-habitual-en-el-ejercito-de-uribe>; with regard to *Wikileaks*, Cable 09BOGOTA542: Military’s Human Rights Initiatives Meet Resistance, 20 February 2009, available at <http://www.powned.tv/wikileaks/cable/2009/02/09BOGOTA542.html> (last accessed on 31 July 2013).

⁴⁷ „En cuanto a los ‘falsos positivos’, como se llama en Colombia a las ejecuciones extrajudiciales cometidas por miembros de los cuerpos de seguridad del Estado, Padilla dijo estar de acuerdo con eliminar ese eufemismo. ‘Se llaman homicidios en persona protegida. Eso de falsos positivos genera confusiones jurídicas y daña la imagen del pueblo colombiano’, anotó.” in: *El Nuevo Herald*, Jefemilitar: al ELN ‘se lo tragó’ las FARC, 13 July 2009: available at <http://www.elnuevoherald.com/2009/07/12/495925/jefe-militar-al-eln-se-lo-trago.html> (last accessed on 31 July 2013).

⁴⁸ *Periodismo Humano*, Crónica de una sentencia histórica: los “falsos positivos” son crímenes de lesa humanidad, 31 July 2013, available at <http://periodismohumano.com/en-conflicto/cronica-de-una-sentencia-historica-los-falsos-positivos-de-soacha-son-crimenes-de-lesa-humanidad.html> (last accessed on 31 July 2013).

ICC Statute for the cases of “falsos positivos” that occurred during his time in office in the military as General Inspector, Joint Chief of Staff and General Commander of the Armed Forces. This is because as long-serving military commander and superior of the soldiers carrying out the killings of civilians, he may be responsible for the crimes against humanity committed by the troops under his command during his time in office.

In order to establish criminal liability for crimes against international law under Article 28 (a) of the ICC Statute, the following criteria must be fulfilled:

- (1) The suspect must be a military commander or a person effectively acting as a military commander;
- (2) The suspect must actually have effective control and command or authority over the military troops that committed the crimes;
- (3) The suspect must fail to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution;
- (4) The crimes of the subordinate soldiers must be the result of the suspect’s failure to properly exercise control over such forces;
- (5) The suspect must have known or, owing to the circumstances at the time, ought to have known that the forces were committing or about to commit such crimes.

As General Commander of the Armed Forces and as Joint Chief of Staff, General Freddy Padilla was a military commander (1).

He also had actual command and control over the troops that committed the murders of civilians (2).⁴⁹ Due to the centralized nature of the Colombian Army, the General Commander of the Armed Forces, which between 2006 and 2010 was Padilla, has direct command over every individual soldier.⁵⁰ As such, he was obliged to take disciplinary action in the case of violations.⁵¹ General Freddy Padilla received much public praise on account of the large-scale and successful military operations against FARC which were carried during his time in office; such acclaim is an indication of the clear extent of his power and command reach during his time as General Commander of the Armed Forces.⁵²

⁴⁹ On the chain of command see annex as well as section 2 with the description of his various roles.

⁵⁰ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 26 f.

⁵¹ Law No. 836 from 16 July 2003 (Diario Oficial No. 45.251, from 17 July 2003): Art. 76 “Competencia del Presidente y de los Altos Mandos Militares. El Presidente de la República, el Ministro de Defensa, el Comandante General de las Fuerzas Militares y los Comandantes de Fuerza tendrán máximas atribuciones disciplinarias sobre todo el personal Militar y para todo tipo de faltas.” Art. 109 „Obligatoriedad de la acción disciplinaria. En el momento en que tenga conocimiento de un hecho constitutivo de posible falta disciplinaria, en desarrollo del presente reglament, procederá a hacerlo en forma inmediata. Si no lo fuere, pondrá el hecho en conocimiento de la autoridad competente [...]” Art. 111: „Oficiosidad. La acción disciplinaria se iniciará y adelantará de oficio [...]”; available at http://www.secretariassenado.gov.co/senado/basedoc/ley/2003/ley_0836_2003.html (last accessed on 31 July 2013).

⁵² Padilla’s time in office as General Commander of the Armed Forces coincided with some of the Colombian military’s most high-profile operations against FARC, e.g. the operations “Jacque” (the freeing of politician Ingrid Betancourt) and “Fénix” (the shooting of the vice commander of FARC Luis Édgar Devia Silva alias Raúl Reyes in Ecuador). See *El Espectador*, Freddy Padilla de León, personaje del año, 12 July 2008, available at <http://www.elespectador.com/noticias/actualidad/articulo96732-freddy-padilla-de-leon-personaje-del-ano>; *Semana*, Inteligencia militar, la marca de Freddy Padilla de León, 27 July 2010, available at <http://www.semana.com/nacion/articulo/inteligencia-militar-marca-freddy-padilla-leon/119806-3> (last accessed on 31 July 2013).

It does not appear that General Padilla took all measures open in order to him to prevent the commission of these crimes; despite his direct command he did not prevent these acts and did not refer the cases to the relevant authorities (3). General Freddy Padilla should have begun to consider reports into such supposed killings of guerilla fighter earlier and should have more forcefully pursued the individuals responsible. The problem of faked military successes was known by autumn 2006 at the latest.⁵³ The cause of this problem, i.e. in particular the high pressure to produce positive results, was also public knowledge.⁵⁴ General Freddy Padilla should have taken appropriate action in response. Instead, in November 2007, in his capacity as General Commander of the Armed Forces, he issued a directive adjusting how the success of military operations should be measured. This was in response to a purported change in strategy on the part of illegal armed groups, which were now, it was claimed, operating in small groups and wearing civilian clothes.⁵⁵ Such a change was said to be necessary in order to prevent killings in the course of hostilities being counted as murders of persons protected under humanitarian law. It was argued that this legal and political opportunity must not be offered to illegal armed groups who would be undermining the legitimacy of the military.⁵⁶ These remarks – which aimed to justify extrajudicial killings and to stigmatize the civilian population as well as the human rights defenders acting on their behalf – are inconsistent with the human rights rhetoric professed by the government.

General Freddy Padilla's failure to adequately exercise the required supervision resulted in the commission of crimes by his subordinates (4). Had he adequately supervised and guided his forces, these crimes could have been prevented. Effective criminal investigations must show, whether General Padilla also exercised an active function in the implementation of the policy of extrajudicial killings.

General Freddy Padilla knew or, owing to the circumstances at the time, ought to have known that his subordinate troops were committing or about to commit such crimes since, as demonstrated, the extrajudicial murder of civilians by members of the military was a

⁵³ See e.g. *Semana* Article from 23 September 2006 from *Antonio Caballero*, No hay plata?, available at <http://www.semana.com/opinion/articulo/no-plata/81126-3>: „[...] víctimas inocentes de los falsos resultados, llamados ‚positivos‘ que fabrican las autoridades para cobrar (además) recompensas. [...] los ‚positivos‘ disfrazados de guerrilleros muertos en combate.” See also NGO reports, e.g. der *Comisión Colombiana de Juristas* from January 2007, “Colombia 2002-2006: Situación de derechos humanos y derecho humanitario”, available at http://www.coljuristas.org/documentos/libros_e_informes/colombia_2002-2006.html; *Coordinación Colombia-Europa-Estados Unidos (CCEEU)*, “Falsos positivos”: Ejecuciones extrajudiciales directamente atribuibles a la Fuerza Pública en Colombia, julio de 2002 a junio de 2006, Report for the Hearing before the Inter-American Commission on Human Rights on 23 October 2006, available at http://iepala.es/IMG/pdf/Falsos_positivos_Ejecuciones_Extrajudiciales_Audiencia2006.pdf (last accessed on 31 July 2013).

⁵⁴ See above under 3.a. as well as e.g. *El Tiempo*(*Sergio Jaramillo*), La crisis subterránea del Ejército, 11 June 2006, available at <http://www.eltiempo.com/archivo/documento/MAM-2061221>; *El Tiempo*, Cadavía se van unos 17 hombres del Ejército, 2 July 2006, available at: <http://www.eltiempo.com/archivo/documento/MAM-2087862>; *Semana* (*Sergio Jaramillo*), La crisis subterránea del Ejército, 7 September 2009, available at <http://www.semana.com/on-line/articulo/la-crisis-subterranea-del-ejercito/80837-3> (last accessed on 31 July 2013).

⁵⁵ Permanent Directive (directiva permanente) No. NR. 300-28 from 20 November 2007, available at www.mindefensa.gov.co/, numeral 2: „redimensionar la medición de los resultados operacionales ante el cambio de estrategia de los grupos armados ilegales, en la medida en que ahora actúan de civil, y en grupos pequeños, con el objeto de evitar que las muertes en combate sean cuestionadas o denunciadas como ‘homicidio en persona protegida’ (...) Evitar ofrecer la oportunidad jurídica y política a los grupos armados ilegales, que con esas denuncias pretendientes legitimar la acción de las Fuerzas Militares.”

⁵⁶ Permanent Directive No. NR. 300-28 from 20 November 2007, numeral 3: „Evitar ofrecer la oportunidad jurídica y política a los grupos armados ilegales, que con esas denuncias pretendientes legitimar la acción de las Fuerzas Militares.”

widespread practice (5). Ignorance of the crimes on the part of Padilla as General Commander of the armed forces would hardly have been possible given the reports of the crimes by the media, NGOs and international organizations. The General Commander also sent a delegate to the monthly meetings of the “Technical Oversight Committee”, which was established by Directive 029 (2005) and which monitored the allocation of rewards to members of the military for successful strikes against members of the opposition as part of the “Democratic Security Policy”.⁵⁷

On 20 November 2007 the General Command of the Armed Forces under Padilla issued Directive No. 388-28, which did purport to favor the arrest as opposed to the killing of oppositionists by the military. This directive, however, had no practical impact; from 2008 the practice of extrajudicial executions continued unchanged.⁵⁸

The gravity and widespread nature of the “falsos positivos” cases means that they could not have occurred without the knowledge of the top military commanders, including Padilla.⁵⁹ In 2006 and 2007, while Padilla was General Commander, complaints made against the military for extrajudicial executions numbered 122 and 245 respectively. Since 2005 incidents of “falsos positivos” had also been regularly brought up in reports by the UN Special Rapporteur.⁶⁰ Furthermore, high ranking commanders of those brigades and division responsible for the most cases of “falsos positivos” were systematically promoted. When complaints of extrajudicial executions were made by the population, investigations were not initiated against the relevant commanders; on the contrary, the commanders received rewards from their superiors in the form of promotions.⁶¹

4) Indications of further international crimes

Apart from the “falsos positivos” cases General Freddy Padilla may also be responsible for further international crimes: for the persecution and murder of trade unionists by military members and for a paramilitary massacre against the civilian population in 1998 which, despite requests for help, he did not prevent.

a. Crimes against humanity against trade union members

General Freddy Padilla was General Commander or Joint Chief of Staff of the armed forces during a time in which many murders of trade union members were carried out and he may be liable as a superior for these crimes. Colombia is one of the most dangerous countries – if not the most dangerous – for trade unionists; between 1986 and 2012, 2,927 of them were murdered.⁶² The vast majority of these acts are attributed to the paramilitaries and state security forces. There is also a very high rate of impunity for these crimes. Colombia is

⁵⁷ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 30.

⁵⁸ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 30; *Semana*, Combat deaths or murders?, 29 September 2008, available at <http://www.semana.com/international/print-edition/articulo/combate-deaths-or-murders/95675-3> (last accessed on 31 July 2013).

⁵⁹ Similarly *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 30.

⁶⁰ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 31.

⁶¹ *FIDH*, Report: “Colombia. The war is measured in litres of blood”, *supra*, p. 32.

⁶² *ITUC*, Annual Survey of Violations of Trade Union Rights, 2012, available at <http://survey.ituc-ksi.org/Colombia.html?edition=336&lang=de> (last accessed on 31 July 2013).

unwilling or unable to provide effective protection to trade unionists and to investigate and prosecute for crimes committed against them.⁶³

Because of the high number of murders of trade unionists, which can be considered a crime against humanity in accordance with Article 7 (1) (a) of the ICC Statute, ECCHR submitted a communication in October 2012 to the Office of the Prosecutor of the International Criminal Court in The Hague calling on the authorities to open investigations.⁶⁴ In the communication General Freddy Padilla is listed as a suspect for the murders of trade unionists by members of the Colombian armed forces between 2002 and 2010. His alleged criminal liability arises at least from the concept of command responsibility in accordance with Article 28 of the ICC Statute.

b. The massacre of Caño Jabón

Lastly, the massacre of Caño Jabón (4 May 1998) occurred while Padilla served as Commander of the VII Army Brigade. Padilla may be liable for the massacre on the basis of negligent manslaughter through omission. The massacre, carried out by members of paramilitary groups, resulted in the deaths of at least 20 civilians. The paramilitaries belonged to the umbrella organization *Autodefensas Unidas de Colombia* (AUC), with which the military often cooperated. At the time of the massacre the VII Brigade was stationed nearby. Before the massacre, the population of Caño Jabón, church representatives, the local ombudsman office and human rights organizations turned to the military for help after receiving information that a massacre was imminent.⁶⁵ Yet the army, under the command of General Freddy Padilla, did not intervene and the paramilitary groups were able to act unimpeded, while Padilla's brigade was stationed less than 70 kilometers away.⁶⁶

The local military's inactivity and indifference has been sharply criticized in many quarters, most recently in March 2013 by the Colombian Council of State (Consejo de Estado), and it is suspected that the military was complicit with the AUC in relation to the massacre of Caño Jabón.⁶⁷ The Council of State noted that the army, with its base less than 70 kilometers from Caño Jabón, violated its constitutional obligation to protect the civil population. It found that there was an obligation on the military as well as on the government to heed the calls for help and to take appropriate measures. The Council found that the state had left the public "at the

⁶³ For a comprehensive analysis see ECCHR, ICC Communication on Violence against Trade Unionists in Colombia, submitted on 9 October 2012, available on request to info@ecchr.eu; further information available at <http://www.ecchr.de/index.php/kolumbien.html>.

⁶⁴ ECCHR, ICC Communication on Violence against Trade Unionists in Colombia, submitted on 9 October 2012.

⁶⁵ See *Corporación Jurídica Libertad*, Abandono e impunidad dominan en Caño Jabón, 4 May 2012, available at http://www.cjlibertad.org/index.php?option=com_content&view=article&id=584:abandono-e-impunidad-dominan-en-cano-jabon-&catid=62:memoria&Itemid=97 (last accessed on 31 July 2013).

⁶⁶ *Caracol*, Condenan a la Nación por masacre de 20 campesinos en Caño Jabón, Meta, 1 March 2013: "El alto tribunal advierte que el Ejército, que tenía una base militar a menos de 70 kilómetros del sitio, incumplió con su deber constitucional de proteger a la población civil", available at <http://www.caracol.com.co/noticias/judicial/condenan-a-la-nacion-por-masacre-de-20-campesinos-en-canon-de-jabon/20130301/nota/1851198.aspx> (last accessed on 31 July 2013).

⁶⁷ See e.g.: *Colombia Reports*, Colombia's state council condemns army's complacency in 1998 massacre, 1 March 2013, available at <http://colombiareports.com/colombia-news/news/28354-colombias-state-council-condemns-armys-complacency-in-1998-massacre.html>; *El Espectador*, Condenan al Estado por masacre de Caño Jabón, 28 February 2013, available at <http://www.elespectador.com/noticias/judicial/articulo-407624-condenan-al-estado-masacre-de-cano-jabon> (last accessed on 31 July 2013).

mercy of murderers”⁶⁸ and ordered the state to pay compensation to the families of the massacre victims.⁶⁹

There has to date been no legal action taken to establish the liability of the military and in particular of Commander Freddy Padilla for the massacre. General Freddy Padilla may be liable for negligent manslaughter through omission in over 20 individual cases. At the time of the massacre, Padilla was the guarantor of the lives of the civilians in Caño Jabón, knew of the danger and did not prevent the crimes even though this would have been possible for him.

5) Demands on the Austrian government

Austria and Europe should not be allowed to be safe havens for those responsible for grave international crimes.

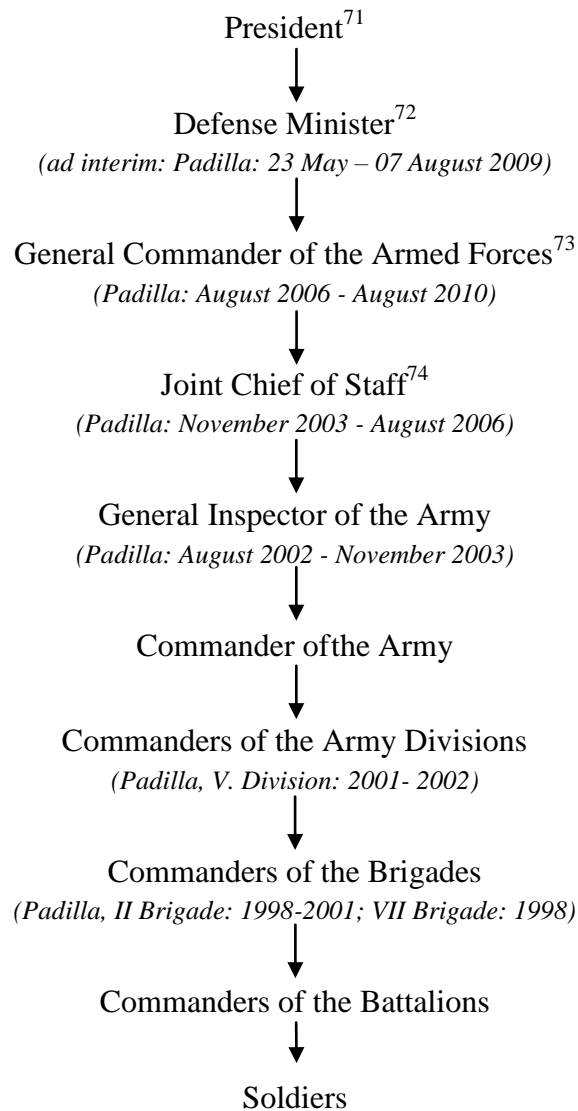
Due to the alleged responsibility of General Freddy Padilla for grave human rights violations and international crimes, we call on the Austrian government to:

- revoke the diplomatic visa of General Freddy Padilla;
- declare General Freddy Padilla ‘*persona non grata*’; and
- give serious consideration to initiating formal investigatory proceedings against General Freddy Padilla.

⁶⁸ See *Colombia Reports*, Colombia’s state council condemns army’s complacency in 1998 massacre, 1 March 2013, available at <http://colombiareports.com/colombia-news/news/28354-colombias-state-council-condemns-armys-complacency-in-1998-massacre.html>; *Caracol*, Condenan a la Nación por masacre de 20 campesinos en Caño Jabón, Meta, 1 March 2013, available at <http://www.caracol.com.co/noticias/judicial/condenan-a-la-nacion-por-masacre-de-20-campesinos-en-canon-de-jabon/20130301/nota/1851198.aspx> (last accessed on 31 July 2013).

⁶⁹ See *Caracol*, Condenan a la Nación por masacre de 20 campesinos en Caño Jabón, Meta, 1 March 2013, available at <http://www.caracol.com.co/noticias/judicial/condenan-a-la-nacion-por-masacre-de-20-campesinos-en-canon-de-jabon/20130301/nota/1851198.aspx> (last accessed on 31 July 2013).

6) Annex: Chain of Command of the Colombian Military⁷⁰



⁷⁰ Law No. 102 from 3 December 1944 (Diario Oficial No. 25.759 from 6 February 1945), available at http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Normatividad%20Leyes/LEY%20102%20DE%201944.pdf, as well as Art. 7 of Decree No. 835 from 16 April 1951 (Diario Oficial No. 27.595 from 4 May 1951), available at http://www.cgfm.mil.co/CGFMPortal/Cgfm_files/Media/File/pdf/Normatividad%20Leyes/DECRETO%20835%20DE%201951.pdf; see also <http://www.ejercito.mil.co/?idcategoria=26> (last accessed 31 July 2013).

⁷¹ Art. 189 of the Colombian constitution: “Corresponde al Presidente [...] 3. Dirigir la fuerza pública y disponer de ella como Comandante Supremo de las Fuerzas Armadas de la República.”

⁷² See *Ministerio de Defensa Nacional*, “Objetivos y funciones del Ministro”, inc. “Dirigir las Fuerzas Militares y la Policía Nacional, de acuerdo con la Constitución y la Ley”, available at <http://www.mindefensa.gov.co/irj/portal/Mindefensa?NavigationTarget=navurl://0d579cca72d664883b8c3e66e008185c> (last accessed 31 July 2013).

⁷³ Institution established by Art. 2 of Decree No 835. Art. 3 of the decree sets out the responsibility of the General Commander for the administration, discipline, behavior and operations of the armed forces: “Será responsable ante el Ministro, de la administración, disciplina, conducta y empleo de las Fuerzas Militares.”

⁷⁴ Art. 5 of Decree No. 835 describes the functions of the Chief of Staff, who is responsible for the development and preparation of strategic plans for the deployment of the armed forces: “El Estado Mayor General de las Fuerzas Militares será el organismo netamente Técnico encargado de la elaboración y preparación de los planes estratégicos relacionados con el empleo de las Fuerza Militares en la defensa nacional.”