

Serious Setback for Justice in Colombia if Bills to Expand Jurisdiction of Military Courts Approved

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We view with grave concern renewed legislative efforts by the Colombian government that could deny justice for serious human rights abuses—including extrajudicial executions—committed by members of the military and police.

Two initiatives before Colombia's Congress would expand the jurisdiction of military courts in ways that may allow them to judge human rights crimes allegedly committed by members of the military and police. The first, Senate bill 085 of 2013/House bill 210 of 2014, mandates that a homicide allegedly committed by a member of the military must be tried in military courts. Because past extrajudicial execution cases – including those known as “false positives” - have been charged as types of homicide, passage of the bill makes it likely that such crimes would go to military courts, which have consistently failed to deliver justice for human rights abuses committed by members of the armed forces.

As [twelve UN experts](#) warned on September 29, 2014, “we believe that the adoption of the proposed reform would represent a significant step back in Colombia's efforts to comply with its international human rights and humanitarian law obligations. This is especially serious in the context of the significant efforts made by the Colombian State to address and prevent repetition of the notorious human rights violations committed in the past, in particular the extrajudicial killings carried out between 2002 and 2008 by some members of the armed forces (also known as *falsos positivos*).”

The second, Senate draft bill 022 of 2014, would reform the Constitution to mandate that any “infractions” of international humanitarian law and crimes committed by members in active service would be tried by military courts, with the exception of crimes against humanity, genocide, extrajudicial execution, sexual violence, forced disappearance, torture and forced displacement. Extrajudicial executions and several other of these exclusions are not the terms used to name these crimes in Colombian law, leaving wide open the possibility that such crimes would be sent to military courts. Furthermore, the language of this bill appears to allow any human rights violation not in the list of exclusions—such as arbitrary detentions, cruel treatment, kidnapping, or illegal intercepts—to be automatically tried in military courts, not to mention torture, enforced disappearance and crimes of sexual violence, which may sometimes amount to war crimes and, therefore, also be subject to the competence of military courts.

A third initiative, House draft bill 129 of 2014, seeks to apply international humanitarian law as the legal framework for judging military abuses, instead of permitting human rights law to be applied where appropriate. Furthermore, it stipulates a 6-month timeframe for the review and transfer, per

the new framework, of all cases against members of the military and police currently under civilian jurisdiction to military jurisdiction, with the implication that once that timeframe runs out, all disputed cases would go directly to the military system. A rapid timeline such as this makes it likely that some false positives cases currently in the civilian justice system will end up back in military courts.

Military courts may be appropriate for issues of military discipline, failure to obey orders, corruption, and military-related infractions like insubordination, but they have an exceedingly poor record of holding military and police personnel accountable for violating the rights of the civilian population, including cases of extrajudicial execution, rape, and torture. After the false positives scandal broke in 2008, the Colombian government made significant advances in the provision of justice by moving many of those cases to civilian courts. It should not take a giant step backward by creating new laws to shield members of the armed forces from prosecution of human rights violations in civilian courts, where civilian victims have a chance of a fair trial. Furthermore, in the advancing peace negotiations between the Colombian government and the FARC guerrillas, both parties committed not to “trade impunities” and pledged that the rights of victims “are not negotiable.” These draft bills, if passed, would undermine that commitment, as well as Colombia’s international human rights and international humanitarian law obligations.

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