

# Expanding Military Jurisdiction in Colombia: A Major Setback for Justice

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Colombia's recent passage<sup>1</sup> of a constitutional amendment that expands military jurisdiction in cases of human rights violations is a major setback for justice. The reform would allow grave human rights crimes to be investigated and tried by the military justice system, in direct conflict with years of jurisprudence of Colombia's high courts and the Inter-American Court of Human Rights.<sup>2</sup>

The amendment gives the military justice system—notorious for high levels of impunity—"exclusive jurisdiction" over all military abuses "related to the conflict," with the exception of a list of seven crimes: crimes against humanity, genocide, forced disappearances, extrajudicial executions, sexual violence, torture and forced displacement. However, there is a serious risk that cases involving two of these crimes, "extrajudicial executions" and "sexual violence", would be sent to military courts, as they are not codified as crimes in Colombian law.<sup>3</sup> Moreover, other serious human rights violations such as arbitrary detentions and cruel, inhuman, or degrading treatment would be tried in military courts. Many of the "false positive" cases, extrajudicial killings of civilians presented as combat kills, could be transferred from civilian to military courts.

Furthermore, the military justice system, rather than the civilian Attorney General's office, will now carry out preliminary investigations of alleged violations committed during military operations, making it unlikely that cases of extrajudicial executions and other grave crimes will be identified and prosecuted. When doubts about jurisdiction arise, a mixed commission with military and civilian participation will determine jurisdiction, rather than a civilian judicial body. Finally, the provision to ensure military members, including those convicted of serious crimes, serve their time in special "reclusion centers" rather than regular jails is also concerning.

This amendment undermines the real advances that the Colombian government and civilian judicial system have achieved in recent years in ensuring that members of the military credibly alleged to have committed gross human rights violations are held accountable. It is a response to strong pressure from Colombia's armed forces, following some of the first successful prosecutions of senior officers for human rights crimes. It should concern the U.S. government, whose

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<sup>1</sup> The bill was passed on December 11, 2012

<sup>2</sup> See, for example, Colombian Constitutional Court, Sentence C-358/97; Colombian Superior Council of the Judicature, No. 110010102000200601121 00, Decision of August 14, 2006; Colombian Supreme Court, Case Number 26137, Decision of May 6, 2009; Inter-American Court of Human Rights, Case of Almonacid Arellano *et al* v. Chile, Judgment of September 26, 2006, Inter-Am.Ct.H.R., Series C. No.154, para. 131; Case of the Rochela Massacre v. Colombia, Judgment of May 11, 2007, Inter-Am.Ct.H.R., Series C No. 163, para. 200; Case de Radilla Pacheco v. Mexico, Judgment of November 23, 2009, Inter-Am.Ct.H.R., Series C No. 209, paras. 272 and 274.

<sup>3</sup> Most of the "false positive" cases have been tried as "homicides of protected persons," a crime that is considered a violation of international humanitarian law rather than a human rights violation. Under the new law, violations of international humanitarian law routinely go to military courts.

representatives have long contended that U.S. engagement and assistance would reduce impunity for human rights violations in Colombia. It is our acute fear that the opposite is happening.

What can be done now that this amendment is law? The international community can insist that the Colombian government limit the damage caused by this ill-conceived constitutional reform. It can hold the Colombian government accountable to its pledge to ensure that “extrajudicial executions” and “sexual violence” are codified in law, and it can closely monitor the impact of this shift, including whether extrajudicial execution cases are being transferred from civilian to military courts.

The U.S. State Department should withhold human rights certification on Colombia, as military aid subject to conditions in U.S. foreign operations appropriations law requires that all cases involving credible allegations of gross human rights violations by members of Colombia's Armed Forces “are promptly referred to civilian jurisdiction for investigation and prosecution.”

