
NEWS RELEASE

Colombia: UN experts call on the authorities to reconsider the constitutional reform of military criminal justice

GENEVA (22 October 2012) – Eleven United Nations human rights experts have called on the Government and the Congress of Colombia to reconsider the proposed reform of the country's Political Constitution with regard to military criminal law, as the proposal could have serious implications for the rule of law and the enjoyment of human rights in Colombia.

“Should this reform be approved, it could seriously undermine the administration of justice for cases of alleged violations of human rights and international humanitarian law, including serious crimes, by military or police forces (*Fuerza Pública*),” the UN mandate-holders indicated in an open letter* made public today.

“Such a reform would represent a historic setback in terms of progress achieved by the State of Colombia in the fight against impunity and the respect and guarantee of human rights,” the experts said. “It would send the wrong signal to members of the *Fuerza Pública* of the consequences of committing human rights and international humanitarian law violations.”

The experts noted the fact that the crimes of genocide, crimes against humanity and the crime of enforced disappearances would be excluded from the jurisdiction of military and police tribunals. However, they expressed concern that the proposed changes would expand the jurisdiction of these tribunals, giving them the power to investigate, process and decide on cases of other serious human rights violations, which should also be under the authority of the ordinary criminal justice system and courts.

Those include a long list of violations of international human rights and humanitarian law, including war crimes; sexual violence; extrajudicial executions; child recruitment or use; arbitrary detention; torture and cruel, inhuman or degrading treatment; and other violations such as violence against the person and mutilation; taking of hostages; outrages upon personal dignity, including humiliating treatment; and the obligation to treat persons taking no active part in the hostilities humanely in all circumstances, without any distinction on grounds of ethnicity, religion or faith, sex, birth or wealth, or any other similar criteria, prohibited by the Geneva Conventions. They could also have jurisdiction over crimes committed by private security forces.

“We are very concerned that this proposed constitutional reform intends to allow institutions of military or police criminal justice to be the first to determine whether an element of any of these crimes exists,” the UN experts said. “We are particularly concerned at the possible impact of this, given that the preliminary investigation phase is

essential for the clarification of facts and responsibilities, including specific criteria that could indicate precisely whether the facts suggest the perpetration of crimes against humanity or genocide.”

The UN experts warned that the establishment of a Penal Guarantees Court, as the control court to deal with any accusation against a member of the *Fuerza Pública*, would suggest that the accused was receiving preferential treatment, which could generate a climate of impunity. They also stressed that such a court, which, among other things, would examine cases involving military or police personnel exclusively, would suggest the existence of a parallel system of administration of justice and violate the principle of equality in relation to access to justice for all individuals and impair due process, thus undermining the rule of law.

“We are particularly concerned at the treatment of complaints of human rights violations against the civilian population, including human rights defenders and members of civil society, journalists and persons who find themselves in situations of vulnerability and risk,” they said.

The UN experts offered to provide advisory services to develop the necessary measures to ensure a constitutional and legislative framework that strengthens the fight against impunity and the achievement of peace in Colombia.

(*) Read the Open Letter:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12683&LangID=E>

ENDS

Christof Heyns, Special Rapporteur on summary, arbitrary or extrajudicial executions
El Hadji Malick Sow, President-Rapporteur of the Working Group on Arbitrary Detention
Faiza Patel, President of the Working Group on the use of mercenaries as a means to violate human rights and obstruct the enjoyment of the rights of peoples to self-determination
Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers
Juan E. Méndez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
Kamala Chandrakirana, President of the Working Group on the issue of discrimination against women in law and in practice
Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association
Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders
Olivier de Frouville, President of the Working Group on Enforced or Involuntary Disappearances
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