



# INTERNATIONAL COMMISSION OF JURISTS

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## PRESS RELEASE

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### **Guatemala: Draft Laws on Military Justice Incompatible with Human Rights**

Draft laws that seek to reform the military justice system in Guatemala contain key provisions that are contrary to international human rights law, said the ICJ today in a legal memorandum addressed to Guatemala's Congress. The approval of such draft laws would be a serious step back in Guatemala's international human rights obligations.

"We understand that the military justice system that was created in the 19<sup>th</sup> century needs to be reformed. But all reforms should comply with Guatemala's international human rights obligations on the administration of justice", said the ICJ. "After conducting a detailed analysis of the proposals, there is no doubt that, if approved in their current form, the draft laws would result in impunity for past human rights violations and will allow impunity in the future".

The ICJ's main criticism of the draft laws is that they would give military courts jurisdiction for all crimes committed by current and former military personnel. Such jurisdiction would take away from ordinary courts cases of human rights violations and thereby make it significantly more likely that such crimes will go unpunished.

"The draft laws do not take into account the body of international jurisprudence on military courts, which clearly says that the jurisdiction of military courts should be limited to crimes that are of a strict military nature, and should never include human rights violations", said the ICJ. "If these draft laws are passed, Guatemala would move back several decades in the fight against impunity".

The ICJ called on Guatemala's Congress to introduce significant amendments to the draft laws. In particular, the ICJ called on Congress to:

- 1) Limit the jurisdiction of military tribunals to military personnel for crimes of a strictly military nature. Ordinary crimes committed by military personnel should be expressly excluded from the tribunals' competence.
- 2) Expressly state that, under no circumstances, will a military tribunal exercise jurisdiction over a member of the armed forces for a crime that would imply a violation of human rights as recognised in Guatemala's Constitution, the treaties the country has ratified international human rights standards. These crimes should continue to fall under the exclusive jurisdiction of ordinary courts.
- 3) Clearly define what constitutes a military crime, in full compliance with the principle that crimes shall only be considered to be of a military nature when a legally protected interest of military order is affected.

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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4) Article 7 of the draft law on military procedure should be deleted, as it would transfer from ordinary courts to military courts all cases that have not reached the trial phase. This transfer would be a formula for ensuring impunity for human rights violations, contrary to Guatemala's obligations under international law.

5) Review the draft law on the organisation and functioning of military courts (*proyecto de ley de organización y funcionamiento de la jurisdicción militar*), particularly articles 11, 14 and 15, which require that all military judges are members of the armed forces, for such a requirement would compromise the right to a fair trial by an independent and impartial tribunal.

The legal memorandum is available at: [www.icj.org/news.php?id\\_article=3923&lang=es](http://www.icj.org/news.php?id_article=3923&lang=es)

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