

URGENT ACTION

PROPOSED BILL COULD LEAD TO MILITARY IMPUNITY

A proposed bill under consideration in the Brazilian Senate would transfer to the Military Court the ability to try human rights violations, such as killings and extrajudicial executions, which have been carried out by military personnel against civilians. If approved, the proposal would contradict the fundamental principles of fair trial, judicial independence and impartiality of the decisions.

Bill No. 44/2016 currently under consideration in the Brazilian Senate will amend, if passed, Law No. 9.299/2016, so that human rights violations, including crimes against life (murder or attempted murder, among others) committed by military personnel against civilians would be tried by the Military Court. The current legislation in Brazil, based on Article 125 of the Federal Constitution, establishes that crimes committed by military personnel against civilians must go to trial in the Jury's Court. If approved, the Bill would violate Brazil's obligations under international law, including the right to a fair trial, as military courts do not guarantee at all judicial independence. The Bill has already been approved by the House of Representatives and will now be voted on by the plenary in the Senate after 10 October.

Brazilian authorities have increasingly used the Armed Forces to police urban areas in Brazil, which has resulted in a vast number of human rights violations. This Bill also raises additional concerns, since it will increase impunity in the cases of human rights violations committed by the military. Human rights and civil society organizations in Brazil have informally named the Bill as a "license to kill".

The Inter-American Court of Human Rights has repeatedly stated that military jurisdiction must be restrictive and exceptional, applied only to the members of the military for breaches of military discipline. The Inter-American Court has already directly ruled that Brazil must refrain from using military jurisdiction to investigate and prosecute military personnel for human rights violations.

1) TAKE ACTION

Write a letter, send an email, call, fax or tweet:

- Urging the Brazilian Senate to reject Bill No. 44/2016 that transfers the power to try crimes, including killings, committed by the military against civilians to the Military Court;
- Urging them to ensure that any legislation affecting the criminal justice system is in full line with international fair trial law and standards.

Contact these two officials by 20 November 2017:

President of Federal Senate

Eunício de Oliveira

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Salutation: Dear Senator

Ambassador Sergio Silva do Amaral

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Phone: 1 202 238 2700

Fax: 1 202 238 2827

Twitter: @BrazilinUSA

Salutation: Dear Ambassador

2) LET US KNOW YOU TOOK ACTION

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ADDITIONAL INFORMATION

Trials by military courts of serving military personnel for alleged breaches of military discipline are not considered incompatible with international human rights standards, as long as the courts are independent and impartial and the alleged breaches are not “ordinary crimes”, violations of human rights or crimes under international law. If the offence is “criminal” in nature under human rights law, fair trial rights must be respected.

The current Superior Military Court is composed of 15 ministers, three Generals of Aeronautics, four Generals of the Army, and three Generals from the Navy. The composition of the Court is closely linked to the Armed Forces, and the military ministers of the Superior Military Courts do not dissociate themselves from the Armed Forces, according to article 3, paragraph 2, of Law No. 8.457/92.

Brazilian authorities have used the Armed Forces for policing major urban areas in a strategic attempt to contain the high levels of violence. Brazil has the highest number of murders in the world, with 59,080 murder victims in 2015. Murder rates, as well as other criminal rates, have been increasing throughout the country over the past few decades. In an attempt to fight insecurity and reduce violence, the security forces have made widespread use of extrajudicial executions. In the state of Rio de Janeiro, police killed more than 10,000 people between 2005 and 2016, while in the state of São Paulo police killed more than 2,000 people between 2015 and 2016.

Through the Law and Order Guarantee (GLO) operations, an instrument regulated by the Federal Constitution, the federal government has increasingly used the military forces to act as police in certain cities throughout the country. However, the actions of the Armed Forces not differed from the violent practices by police. In June 2007, a policing intervention with the support of the National Forces in Complexo do Alemão, Rio de Janeiro, resulted in 19 people killed, some with strong evidence of extrajudicial executions, according to independent experts. In June 2008, military personnel who had been deployed to Morro da Providência, Rio de Janeiro, were responsible for the death of three young men, who were handed over by the military themselves to a criminal group. In December 2011 a teenager was killed in Complexo do Alemão and eight military personnel were found responsible. Between 2014 and 2015 the Armed Forces remained in the Maré Complex for 15 months, a period marked by a number of human rights violations committed by the military. The most emblematic case is that of Victor Santiago, who had to amputate his leg after being shot at by the military (for more information, see *A legacy of violence: Killings by police and repression of protest at the Rio 2016 Olympics*, <https://www.amnesty.org/en/documents/amr19/4780/2016/en/>).

In the beginning of October, the Army Commander Eduardo Dias da Costa Villas Bôas publicly said that military personnel do not have legal guarantees for their performance in law and order or policing operations. He added that it is necessary to provide security to the military when in “combat” against criminals. This public statement has increased concerns about the possible approval of Bill no. 44/2016 in the Senate, as it clearly opens a path to impunity.

This Bill, if passed, will violate the principles of judicial independence and fair trials guarantees. In addition, the UN Human Rights Committee, the UN Committee against Torture, the Inter-American Court, and the Inter-American Commission on Human Rights have similarly stated that the jurisdiction of military courts should be limited to military judgments for offences against military discipline.