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IMPACT OF THE USE OF MILITARY CRIMINAL JUSTICE ON IMPUNITY FOR HUMAN RIGHTS VIOLATIONS IN COLOMBIA

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by Amnesty International Ltd

Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Design and layout
Eric Javier Muñoz Pérez

[amnesty.org](https://www.amnesty.org)

1 EXECUTIVE SUMMARY



Demanding justice for human rights violations and crimes under international law committed by members of the military forces or the National Police in Colombia often takes decades and compels those who do so to dedicate time and resources to combatting the institutional inertia generated by impunity. For decades this has involved claiming their right to have their judicial guarantees respected, including the right to be heard by competent, independent and impartial judges and courts previously created by law. To pursue their complaints, individuals often need to approach both the ordinary criminal justice system and the military criminal justice (JPM), a special criminal justice system that operates for cases where active duty members of the military forces or the National Police are investigated or tried for the commission of crimes related to the service they provide within these institutions.

For decades, the human rights movement has shone a spotlight on the impact of the JPM on investigations and trials concerning the responsibility of members of the military forces or the National Police for crimes that could constitute human rights violations or even crimes under international law. Cases involving enforced disappearances, extrajudicial executions, torture and other offences have been mired in impunity, facilitated by the use of the JPM. Victims and their supporters have been forced to use the law to seek to correct these situations, and the law has ruled in their favour. At times, Colombian institutions, and in particular the Constitutional Court, have enforced this right. Amendments to the constitutional and legal framework governing the JPM have also been made. Despite this, being the victim of a human rights violation or an international crime committed by a member of the military or the National Police – particularly an attack on the right to life or personal integrity – today means having to demand something as basic as ensuring that the institution to which the alleged perpetrator belongs should not be responsible for delivering justice in the case.

1.1 INTERNATIONAL OBLIGATIONS RELATING TO MILITARY CRIMINAL JUSTICE

Everyone has the right to equal treatment before the courts and tribunals of justice. Such courts and tribunals must be established by law, act only within their area of jurisdiction, and be independent and impartial. This implies, in principle, that when the authorities become aware of a crime having been committed, they must pursue an investigation through the ordinary justice system. Nevertheless, international human rights law exceptionally allows for the creation or application of special procedures or courts for the investigation of specific categories of crimes or for specific groups of people. However, as this is an exception to the general norm, these special mechanisms must meet two requirements. Firstly, investigations and trials must take place under conditions that comply with the due process guarantees to which every person is entitled when accessing justice. Secondly, the establishment of a special court or procedure must be based on grounds that are objective, reasonable and robust enough to

support the differential treatment of those being tried there rather than before the ordinary courts.

Military criminal justice is one of such special procedures or courts, since under certain conditions it exempts members of the state military forces from appearing before the ordinary criminal justice system when they are accused of committing a crime. However, for its establishment and operation to be consistent with international human rights law, military criminal justice must comply with the two requirements explained above. Firstly, it must guarantee a capacity to act independently and impartially and only in areas within its jurisdiction. Secondly, its operation must be framed around the objective, reasonable and sufficiently robust grounds that were used to justify its establishment.

International human rights law and standards have already set out what this means and what meeting these two requirements entails. For military criminal justice to be a special criminal mechanism for delivering justice in accordance with the international human rights obligations adopted by states, its jurisdiction must be limited to offences of a strictly military nature, committed by persons who are members of the military forces, acting within the framework of those forces. Civilians can therefore not be subject to military criminal justice as they are not members of the military forces. Similarly, crimes that are not strictly military, including those that may constitute human rights violations or crimes under international law, also fall outside the jurisdiction of military criminal justice.

If either of these conditions is breached, the judicial guarantees of both the defendant and the victims of such offences are put at risk or violated. The protection afforded by international human rights law in this regard covers both alleged perpetrators and victims. If a person who is not a member of the military forces is subjected to investigation and trial under the military criminal justice system, their guarantees would be violated. If a victim of a human rights violation has to submit to military criminal justice to seek truth, justice and reparation, their guarantees would also be violated.

1.2. THE SCOPE OF MILITARY CRIMINAL JUSTICE IN COLOMBIA

Norms recognizing a special judicial jurisdiction for the military forces have been applied in Colombia since colonial times. The first Military Code was issued at the end of the 19th century, and the Political Constitution of 1886 – which remained in force for almost the entire 20th century – consolidated the existence and operation of military courts and tribunals. These, now known as the JPM, were initially limited to crimes committed by active duty military personnel in the course of their service.

The 20th century saw a progressive expansion of the scope of the JPM's jurisdiction in Colombia. The idea that only active duty soldiers could be investigated or tried by the JPM was abandoned, meaning that civilians could also be subject to its jurisdiction. This included members of the National Police – an armed body that was civilian in nature – and individuals accused of taking up arms against the state. Furthermore, the concept of “in the course of service” was constantly tested in an attempt to expand the JPM's jurisdiction to an increasingly wide range of matters, including alleged crimes not strictly of a military nature, in particular those constituting human rights violations or crimes under international law. Ultimately, the JPM was for decades considered as simply one more component of a security strategy that demands protection for individuals who may have committed serious crimes while serving in the security forces. These attempts to expand the jurisdiction of the JPM have been opposed by victims and human rights movements, with the support of a number of Colombian institutions and international mechanisms for the protection of human rights.

Regarding the investigation and prosecution of persons not belonging to the military forces, following the decisions of the Supreme Court of Justice in the 1980s and the issuance of the Political Constitution of 1991, there is now a constitutional norm in Colombia expressly providing that civilians cannot be investigated or tried by the JPM. However, the 1991 Constitution itself maintains the JPM's jurisdiction with regard to members of the National Police, which is a civilian armed body. In other words, Colombia continues to only partially comply with its international obligations to this day, as it does indeed afford the JPM jurisdiction over a specific group of civilians.



A similar situation exists regarding the investigation and prosecution of crimes of a strictly military nature. Current Colombian regulations and case law provide that the jurisdiction of the JPM is restricted to subjective and functional criteria. The subjective element refers to the person's status as a member of the military or the National Police (as mentioned above), while the functional element refers to the fact that recourse to the JPM is not a privilege afforded to a particular group; rather, the crimes for which a person is being investigated or accused must relate to their service in the military or police institution. Thus, not all crimes committed by members of the military or the police fall under the jurisdiction of the JPM.

The concept of “in the course of service” is the subject of constant debate and serves as a regulatory device to expand or restrict jurisdiction based on the subject matter. Colombian law develops the concept in the current Military Penal Code, which states that “in the course of service” means a crime deriving directly from the military or police duties assigned by the Constitution, legislation or regulations to the members of such institutions, and excludes crimes such as torture, genocide, enforced disappearance, crimes against humanity, violations of international humanitarian law, sexual violence and others that are openly contrary to the constitutional duties of the military or police forces and that, by their very commission, break the functional link between the agent and the service, as these would therefore not fall within the jurisdiction of the JPM. This form of regulation involves a two-pronged approach to JPM jurisdiction based on subject matter. On the one hand, it establishes a specific list of categories (not all of which constitute criminal offences) that cannot fall under the jurisdiction of the JPM and, on the other, it relies on judicial interpretation to define other behaviours that break the functional link for openly contradicting the constitutional duties of the military and the police.

The Constitutional Court has analysed the issue and outlined a set of rules for determining the jurisdiction of the JPM in light of this functional element. In its earlier decisions, the Constitutional Court has stated that for a crime to be related to the service, there must be a clear, close and direct (rather than hypothetical or abstract) link between the crime and the service provided. Furthermore, the crime in question cannot be so serious as to immediately break the functional link, which would include human rights violations and crimes under international law (although the Constitutional Court has used different ways of categorizing these serious crimes over time). Lastly, the relationship between the crime and the service must be clear from the evidence used in the investigation or trial. Moreover, the Constitutional Court has also consistently ruled that, since the JPM is an exceptional mechanism, the ordinary criminal justice is the natural jurisdiction for all people in Colombia, and therefore, in case of doubt, the ordinary criminal justice system must prevail.

At the same time, international human rights protection systems have consistently insisted on the obligation of the Colombian authorities to respect the limitations of the JPM's jurisdiction. Not only have different treaty bodies and special procedures recommended the adoption of measures or voiced their concern on the issue, but the Inter-American Court of Human Rights has also declared that the Colombian state bears international responsibility for the use of its JPM to investigate or try crimes that constitute human rights violations.

Nevertheless, for decades there was insistence in Colombia to have the JPM act in investigations or trials that were clearly outside the parameters of international law and of the Constitutional Court's own interpretation of the applicable regulatory framework. Constitutional and legal reforms were proposed to this end but were opposed by victims and human rights organizations, with some of them being reversed or rejected. However, there were also attempts to simply assign cases to the JPM, despite existing legislation, something which is still the case today, although some positive – albeit insufficient – changes must be recognized. This is done by the JPM initiating investigations into crimes that could constitute human rights violations or crimes under international law, and requesting that cases currently under the ordinary criminal justice system be assigned to it through incidental proceedings of conflict of jurisdiction.

1.3 THE CURRENT IMPACT OF THE USE OF MILITARY CRIMINAL JUSTICE IN CASES INVOLVING HUMAN RIGHTS VIOLATIONS AND CRIMES UNDER INTERNATIONAL LAW

Despite several constitutional and legal reforms, as well as consistent rulings by the Constitutional Court and statements by international bodies, the JPM still opens investigations today for crimes that could constitute human rights violations and crimes under international law. After requesting information from the Special Administrative Unit of Military and Police Criminal Justice (UAEJPM) for two years, Amnesty International found that as of 9 February 2024, there were still 4,081 ongoing investigations for such crimes, specifically crimes against life and personal integrity and, to a lesser extent, crimes against personal freedom. The most worrying crimes on the list were homicide, with 1,828 ongoing investigations, and personal injuries, with 1,046 cases. A year later, as of 30 April 2025, the same institution reported a decrease in ongoing investigations for the same categories of crime, but this still left a total of 3,028 ongoing investigations.

These findings show that the opening of investigations for crimes that may constitute human rights violations or crimes under international law continues. They also show a drop in the number of cases as reported by the UAEJPM, but although this is an improvement, it must be considered in a historical and institutional context. Firstly, it is not clear that the drop in investigations corresponds solely to the transfer of JPM investigations to the ordinary criminal justice system. Secondly, at other times over recent decades there has been a fluctuating pattern between the JPM and the ordinary criminal justice system, with investigations being referred on in some years but not in others, while investigations continue to be opened. Thirdly, Amnesty International found that in most of the debates regarding the JPM's jurisdiction over cases such as homicides, JPM judicial operators have defended the JPM's jurisdiction, despite frequent rulings to the contrary by the Constitutional Court. However, measures such as Internal Circular 018 of 2023, issued by the Executive Directorate of the UAEJPM, are steps in the right direction, as they call on JPM judicial operators to prioritize determining jurisdiction in cases where it is considered that the causal link between conduct and service has probably been broken. While this progress should be welcomed, it is not enough.

The opening of investigations within the JPM does not preclude the opening of investigations within the ordinary criminal justice system for the same offences. This creates an untenable situation in which two bodies are simultaneously investigating crimes and individuals in relation to the same acts. It may also be the case that the investigation has only been opened in one of the two systems, but a certain party has an interest for it to be heard in the other, perhaps because it is only under the JPM which is considered to lack the necessary jurisdiction. Such scenarios must be resolved through a conflict of jurisdiction, an incidental procedure in which two judicial authorities contest jurisdiction over a specific case. This may be because they consider themselves to lack the required jurisdiction (negative conflict) or because they both consider themselves to have jurisdiction over the case (positive conflict).

Since 2021, the body in charge of resolving conflicts of jurisdiction has been the Constitutional Court. Similarly to how investigations into crimes that may constitute human rights violations or crimes under international law continue to be opened despite regulatory changes and case law, the Constitutional Court continues to receive conflicts of jurisdiction where there is a dispute between the JPM and the ordinary criminal justice system regarding cases of this type. This is despite the fact that the court has been clear on what the applicable standard is since at least 1997: the JPM does not have jurisdiction over crimes so serious that the link between the act and the military or police service provided is broken.

Amnesty International compiled a structured database using 27 variables to analyse the 398 cases of conflict of jurisdiction between the JPM and the ordinary criminal justice system that the Constitutional Court ruled on between 2 February 2021 and 31 October 2024. The



results of this analysis reveal three issues: (i) the jurisdiction of the JPM over crimes that may constitute human rights violations or crimes under international law committed by members of the military or police forces, in particular crimes against life and personal integrity, is still being debated; (ii) the debate concerning the JPM's jurisdiction over such crimes is driven by judicial operators of both the JPM and the ordinary criminal justice system; and (iii) the fact that it is necessary to follow through with the process of conflict of jurisdiction between the JPM and the ordinary criminal justice system in order to attribute jurisdiction to the JPM is detrimental to both the judicial process and the victims of crime.

1.3.1 THE JURISDICTION OF MILITARY AND POLICE CRIMINAL JUSTICE OVER POSSIBLE HUMAN RIGHTS VIOLATIONS AND CRIMES UNDER INTERNATIONAL LAW IS STILL DEBATED

The first finding arising from this structured information is that, among the 6,051 cases of conflict of jurisdiction opened by the Constitutional Court, 398 refer to disputes between the JPM and the ordinary criminal justice system, representing 6.6% of cases and the fourth most important category in the list of types of conflict that the Constitutional Court rules on. It was also found that most of these cases relate to the possible commission of crimes that may constitute human rights violations or crimes under international law. Thus, for example, 183 cases relate to potential homicide, 45 to personal injuries and 39 to possible abuse of authority through an arbitrary or unlawful act. Though fewer in number, there are also cases of extortion, theft, attempted homicide, culpable homicide and torture, among others. In total, Amnesty International found that in 315 of the 398 cases (79.2%), the debate centred around the jurisdiction of the JPM over possible human rights violations.

This occurs despite the fact that the decision-making pattern is clear. Amnesty International found that, of the 398 cases examined, the Constitutional Court ruled on the jurisdiction of the judicial operator in 147 cases. Of these, the Court ruled that 131 cases should be subject to ordinary criminal justice, with 110 relating to possible human rights violations (including 84 homicides and 11 personal injuries). In other words, the Constitutional Court found that the JPM had jurisdiction in only 16 cases.

Furthermore, the information compiled in the database confirms the consequences of failing to comply with the obligation not to investigate and prosecute civilians within the JPM. Of the 398 cases, 233 relate to potential crimes committed by members of the National Police.

1.3.2 THE DEBATE OVER JURISDICTION IS DRIVEN BY JUDICIAL OPERATORS OF BOTH THE MILITARY AND THE ORDINARY CRIMINAL JUSTICE SYSTEMS

The second finding arising from the analysis of the information contained in the database is that, while JPM judicial operators are responsible for most of the conflicts of jurisdiction against the ordinary criminal justice system reaching the Constitutional Court, judicial operators of

the ordinary system are also sometimes to blame. Among the 398 cases analysed, Amnesty International found that the Constitutional Court had assigned jurisdiction to the ordinary criminal justice system in 131 cases. Of these, the ordinary criminal justice system claimed not to have jurisdiction in 47 cases, including 33 relating to potential human rights violations involving homicides, torture and personal injuries. In the remaining 84 cases, the JPM claimed to have jurisdiction, but the Constitutional Court disagreed. Of these, 77 cases related to potential human rights violations, again including homicides and personal injuries.

Thus, despite regulatory changes and current case law, the notion persists that the JPM has jurisdiction over crimes that may constitute human rights violations. This applies mainly within the JPM, but also within certain sectors of the ordinary criminal justice system. This confirms that the measures that must be taken to prevent the situation from continuing and generating conflicts of jurisdiction between the ordinary criminal justice system and the JPM in cases of potential human rights violations must cover both groups of judicial operators.

1.3.3 CONFLICTS OVER JURISDICTION ARE DETRIMENTAL FOR BOTH VICTIMS AND THE JUDICIAL PROCESS

The third finding arising from the analysis of the database compiled by Amnesty International is that, despite the fact that when the Constitutional Court rules on the merits of a conflict, it does so on the basis of the international obligations adopted by Colombia and its own case law, the reality is that there is a prevalence of inhibitory decisions that must be addressed. Furthermore, procedures relating to conflicts of jurisdiction are detrimental to both the victims and the judicial process on at least three levels.

On a first level, Amnesty International found that conflict of jurisdiction proceedings often start during the later stages of a case. As this is an unregulated procedure, the intervention of a judicial operator to claim jurisdiction can occur at any time as long as the judicial process has not ended. This means that, of the 398 cases analysed, 80 relate to events that occurred between 1992 and 2014, 130 between 2015 and 2019 and 137 between 2020 and 2024. A comparison of the date of the crime with the date on which a conflict of jurisdiction was declared and referral to the Constitutional Court was ordered reveals that an average of 1,829 days (approximately five years) elapsed.

This is not necessarily a negative thing, as the history of assigning jurisdiction over potential human rights violations to the JPM and information on the opening of investigations today show that the JPM continues to undertake investigations and trials that it should not be taking on. The appropriate procedure to prevent this from continuing is to declare a conflict of jurisdiction. However, bringing the conflict at such a late stage in the investigation process would only be justifiable if the intention is to address a situation where human rights are being violated. An example would be where the JPM has spent decades investigating a potential enforced disappearance that clearly does not fall within its jurisdiction and the conflict procedure seeks to remedy that situation. This applies to some of the cases mentioned above relating to crimes committed around the first decade of the 2000s. However, in other scenarios, a late debate on a conflict of jurisdiction can have negative impacts, particularly where the ordinary criminal justice system has made progress in the investigation and trial and a conflict of jurisdiction prevents proceedings from continuing, especially when the case involves a potential violation of human rights and the applicable rule is clear.

On a second level, Amnesty International found that when the Constitutional Court began hearing conflicts of jurisdiction between the JPM and the ordinary criminal justice system, the *prima facie* processing time exceeded what could be considered reasonable, but that over the years the situation improved. Thus, while cases filed in 2021 took an average of 10.6 months to be resolved and sent back to the corresponding judicial operator, those filed in 2024 took an average of 3.4 months. This improvement was confirmed as being consistent with institutional efforts to learn and implement tools aimed at shortening procedures and eliminating bottlenecks.



The positive impact of this finding is mitigated by the consequences of the third finding. Although the Constitutional Court is resolving conflicts of jurisdiction more quickly, the truth is that 61.1% of the 398 cases analysed did not receive a substantive response. This means that, whether the case was ten or three months with the Constitutional Court, approximately three out of every five cases ended up back where they started, with no decision as to whether the jurisdiction corresponded to the ordinary criminal justice system or the JPM.

The Constitutional Court reaches an inhibitory decision when it finds that one of the three criteria constituting a conflict of jurisdiction is not met, whether subjective (the conflict did not arise from two judicial authorities belonging to different jurisdictions), objective (there is no judicial case on which the controversy falls) or normative (the authorities involved failed to provide the constitutional or legal reasons for considering that they have or do not have jurisdiction). Amnesty International found that, in the vast majority of cases, inhibition occurs as a result of a breach of the subjective criterion, either because only one judicial operator is involved in the conflict (141 cases) or because one of the judicial operators involved is the Attorney General's Office, despite not having the necessary authority (84 cases).

In general, the result of an inhibition is that the conflict between the ordinary criminal justice and the JPM ends without a clear resolution as to who has jurisdiction over the case, either because such conflict never existed or because the proper process was not followed. Thus, when the Plenary Chamber of the Constitutional Court reaches an inhibitory decision, it orders that the case be returned to the judicial operator who referred it in the first place. This means reinstating the case as it was and addressing jurisdiction issues through the appropriate channel. This outcome could have negative impacts on the case and the victims in at least three ways.

Firstly, a number of inhibitions relate to cases where there is no real conflict and where the decision of the Constitutional Court would be sufficient to provide judicial operators with the tools required to resolve the matter on their own, such as when the Court finds that both judicial operators were in fact in agreement regarding the issue of jurisdiction, or that one of the judicial operators had not been asked regarding their position on the issue but were actually in agreement with the operator incorrectly raising the conflict in the first place. In these scenarios, the problem arises not as a result of what may happen after inhibition, but because of what happened before, as both the victims and the individuals being investigated or put on trial had to go through the process of declaration, referral and definition of a conflict of jurisdiction between the ordinary criminal justice system and the JPM only to end up where they started. In other words, the process served no purpose other than to burden the judicial system and the persons involved.

Secondly, inhibition extends the period of uncertainty regarding the correct allocation of jurisdiction between the ordinary criminal justice system and the JPM and, in many cases, the untenable situation of two simultaneous investigations into the same facts and the same individuals taking place in two different jurisdictions, a period that was already protracted when the case reached the Constitutional Court. Amnesty International found that in cases where the Constitutional Court reached an inhibitory decision, an average of around 56.3 months (4.7 years) had passed between the date on which the alleged crime occurred and the completion of the incidental procedure for determining jurisdiction, with referral of the file back to the judicial operator originating the claim once the inhibitory decision had been adopted. This time period is then further extended if the conflict is again submitted to the Constitutional Court for a final resolution.

Thirdly, a percentage of inhibitions will return to the Constitutional Court in the form of other conflicts between the ordinary criminal justice system and the JPM and will have to be analysed again for a ruling to be issued. This usually happens when a conflict is submitted incorrectly, the procedure is then corrected and it transpires that there was indeed a dispute that should have been resolved by the Constitutional Court. The costs in terms of time, effort and other resources for the justice system and the individuals involved are even greater in this scenario. Of the 398 cases analysed by Amnesty International, 27 were found to be grouped into more than one case file and were returned to the Constitutional Court on more than one occasion for a ruling to be issued, with a total of 56 grouped files – representing 14.1% of all files analysed – being currently with the Court. According to the information available, conflicts are usually resolved on this second attempt. Under normal circumstances, however, it would take between about 500 and 750 days from receipt of the first file to the resolution of the last one. However, some cases are not resolved even on the second attempt, with an inhibitory

decision again being issued. In such cases, although the time taken may be shorter, the dispute remains unresolved.

Referring a case to the Constitutional Court for resolution of a conflict of jurisdiction has procedural effects on the original investigation or trial. The guarantee of natural justice is part of every person's right to a fair trial, and in criminal cases this right extends to both the individuals under investigation or on trial and the victims, particularly in cases involving crimes constituting alleged human rights violations or crimes under international law. In this sense, a conflict of jurisdiction should be understood and serve as an instrument for guaranteeing rights, since disputes over natural justice for one or more individuals are resolved through this process.

Colombian history has shown that this is not the case in disputes over the JPM's jurisdiction to hear criminal cases relating to alleged human rights violations and crimes under international law. Conflicts between ordinary criminal justice and the JPM have over the years become part of a broader set of tools seeking to expand the scope and jurisdiction of the JPM, despite multiple and consistent rulings by the Constitutional Court, statements from international human rights bodies and debates for amendment of the regulations governing the JPM. Today, although circumstances have changed, the issue has evolved but still persists. Amnesty International has identified negative impacts deriving from both the bringing of a conflict of jurisdiction between the ordinary criminal justice system and the JPM, and the procedure and decision within the Constitutional Court when the aim is to expand the jurisdiction of the JPM to cases involving crimes that may constitute human rights violations.

Given the nature of the debate, the first and most significant set of negative impacts are those on victims and their search for truth, justice and reparation through the Colombian judicial system. For victims, the debate over jurisdiction forms part of the wider context of the search for justice, and it is impossible to distinguish between the conflict referred to the Constitutional Court for resolution and the general process triggered when victims demand justice. In this sense, the "act of waiting" – knowing that the process is on hold until jurisdiction is determined – is an immediate consequence of initiating a debate on the jurisdiction in the case. The impacts of this waiting period, which are linked to the broader expectations triggered by the start of the process for demanding truth and justice, or even by the victimization act itself, are reinforced when the Constitutional Court makes an inhibitory decision. In general, failure to receive a response only generates in the victims a feeling of a lack of institutional support in a procedure over which they and their representatives have little influence. Furthermore, the risk of having to appear before the JPM to pursue their claims is an additional factor while the conflict remains unresolved.

The second set of negative impacts is observed in the judicial process itself and how it progresses. When a conflict of jurisdiction arises between ordinary criminal justice and the JPM, investigative activities and trials are suspended until the Constitutional Court issues a decision. This can lead to risks and damage, including the loss of momentum in an ongoing investigation, the loss of available evidence and witnesses, enabling the covering up of facts and responsibilities, and the statute of limitations for the crimes continuing to run, as also the term for depriving a person of their liberty on the grounds that they pose a risk to the community, the victims or the process itself.

All of this does not mean that conflicts of jurisdiction between ordinary criminal justice and the JPM should not exist. Ultimately, such conflicts are an instrument for seeking redress when the natural justice guarantee is not upheld. However, their widespread use, in particular when they aim to expand the JPM's jurisdiction to cover alleged human rights violations and international crimes, does cause negative impacts that must be addressed by the Colombian authorities.

1.4 CONCLUSIONS AND RECOMMENDATIONS

The main finding of this report is that the limits of the JPM's jurisdiction, despite decades of debate, continue unresolved in Colombia, and extraordinary and urgent measures are therefore required to guarantee the right to a fair trial for victims of human rights violations and crimes under international law. Specifically, the persistence of efforts to expand the jurisdiction of the JPM to investigations and trials related to possible human rights violations, through the opening



of investigations and the presentation of conflicts of jurisdiction, continues to jeopardize both the validity of a standard that has been clear in Colombia since at least the 1990s, and the right of victims to access a legally established justice system that respects their rights and is competent, independent and impartial.

This report begins by reaffirming the international standard for ensuring the right to a fair trial in situations involving military judges, tribunals and criminal courts. Based on the case law of the Inter-American Court of Human Rights, Amnesty International believes that the JPM in Colombia lacks jurisdiction over individuals who are not members of the military forces or are not on active duty and that, even for those who are, it can only act with respect to crimes or offences that go against the military order. This necessarily implies that the JPM has no jurisdiction over crimes that could constitute human rights violations or crimes under international law. Despite decades of debate, multiple constitutional and legal reforms, and judicial statements at the national and international levels, this standard remains unfulfilled in Colombia, as demonstrated by this report.

The Colombian legal system still allows the JPM to investigate and try civilians. The most obvious and worrying example is the National Police, whose members are investigated and tried under the JPM despite being a civilian armed body rather than a military one. This occurs in the absence of objective and solid grounds demonstrating the need to assign jurisdiction over crimes committed in the context of police duties to the JPM, since the Colombian civil courts should be able to try such crimes.

The Colombian legal system also maintains a certain level of ambiguity in its regulations regarding the JPM's jurisdiction based on subject matter. On the one hand, the Political Constitution seems to imply that the JPM has jurisdiction over crimes that could constitute violations of international humanitarian law. On the other, the Military Penal Code continues to be interpreted in a way that allows investigations into crimes that could constitute human rights violations and crimes under international law, in particular those relating to life and personal integrity.

Amnesty International found that the debate over the right to investigate and prosecute crimes that may constitute human rights violations or crimes under international law continues to be framed in terms of conflicts of jurisdiction. Amnesty International identified 398 conflicts of jurisdiction between the ordinary criminal justice system and the JPM that were referred to the Constitutional Court for resolution between February 2021 and October 2024. A large proportion of these refer to alleged human rights violations (79.2%), and of the 147 cases resolved on merits, 110 were assigned to the ordinary criminal justice system. Most of these cases relate to alleged violations of the right to life and personal integrity, with homicide and personal injuries playing a prominent role.

Amnesty International also found that conflicts of jurisdiction over the assignment of investigations and trials to the JPM are not driven solely by military criminal justice operators. There is also a record of significant action in this regard by ordinary criminal prosecutors and judges, who pursue such conflicts to avoid involvement in the investigation and prosecution of crimes that may constitute human rights violations.

In addition to being pursued in circumstances that are mostly already resolved by domestic and international law, conflicts of resolution often arise at the later stages of an investigation or trial. Amnesty International found that more than half of all conflicts of jurisdiction received by the Constitutional Court were brought at least five years after the events in question occurred. Although there is no regulated procedure for raising conflicts of jurisdiction and no time limitations, in order to guarantee the rights of both the victims and the individuals subject to investigation and trial it is important that the judicial operator responsible for the proceedings is clear from the outset.

The responsibility for resolving conflicts of jurisdiction has been vested in the Constitutional Court since 2021. Amnesty International received information on the negative impact of the procedure for resolving conflicts of jurisdiction, given the time it takes to move the procedure forward. Amnesty International's analysis of cases going through the Constitutional Court found that, while in 2021 and 2022 the average processing time appeared *prima facie* disproportionate, this improved substantially in 2023 and 2024.

Nevertheless, the prevalence of inhibitory decisions regarding conflicts of jurisdiction substantially undermines the improvement in processing times. Amnesty International found

that of the cases processed, the Constitutional Court did not make a substantive decision in 243 cases (61.1%), due to at least one of the criteria for constituting a conflict of jurisdiction not being met. Most of these inhibitory rulings were issued because either only one judicial operator was disputing jurisdiction, or the Attorney General's Office lacked the authority to propose or participate in the conflict of jurisdiction in the case in question (with 225 cases falling into one or both of these categories).

Inhibition is of particular concern in cases involving alleged human rights violations or crimes under international law, for a number of reasons. Firstly, it compromises victims' access to justice, as they lack the power to propose a conflict of jurisdiction but must bear the consequences when judicial operators do so inappropriately. Secondly, it interferes with the obligation of the Colombian authorities to investigate, prosecute and punish human rights violations and crimes under international law, by implying that the procedure was suspended while waiting for a resolution in an unresolved issue. Thirdly, it often perpetuates the untenable situation of having two simultaneous criminal proceedings investigating the same acts, one in the ordinary criminal justice system and one in the JPM. This affects the rights of both the victims and the individuals being investigated or tried.

Amnesty International considers that reducing the number of inhibitions requires action at different levels. Firstly, the implementation of other recommendations made here should bring down the number of conflicts of jurisdiction raised and thus also the number of inhibitions. Secondly, the authorities responsible should provide operators within the ordinary criminal justice system and the JPM with relevant, systematic and comprehensive training on the procedure to be followed and the criteria to be met for correctly submitting a conflict of jurisdiction. Thirdly, where possible, the Constitutional Court should take on a more proactive role in rectifying procedures. This could involve ordering measures to obtain an explicit statement on jurisdiction from an authority that has failed to provide one,¹ reversing the lack of authority of the Attorney General's Office to propose and participate in conflicts of jurisdiction,² and empowering prosecutors and judges to reject outright any requests to transfer investigations and trials relating to crimes that may constitute human rights violations or crimes under international law to the JPM.

Amnesty International recommends that the national government and the Congress of the Republic, in order to remedy the lack of human rights protection resulting from the inclusion of the National Police in the scope of jurisdiction of the JPM, should:

1. Propose, process and approve an amendment to the Political Constitution removing the National Police from the jurisdiction of the JPM and placing it under the jurisdiction of the ordinary criminal justice system and in accordance with general regulations on jurisdiction.
2. Adapt the institutional and territorial structures of the JPM and the ordinary criminal justice system to facilitate the full and unrestricted incorporation of the National Police into the latter's jurisdiction. This should involve reducing the size of the JPM and strengthening the capacities of the Attorney General's Office and the ordinary criminal justice system to address these issues.

Amnesty International recommends that the national government and the Congress of the Republic, in order to adapt the legislative framework governing the JPM and its regulations on jurisdiction to the international obligations adopted by Colombia, as well as to move forward in closing the impunity gap for human rights violations and crimes under international law, should:

1. Propose, process and approve an amendment to article 221 of the Political Constitution to make it unequivocally clear that the JPM cannot investigate or prosecute individuals for crimes that could constitute human rights violations or

[1] This is something that the Constitutional Court repeatedly does in other jurisdictional conflict resolution scenarios, especially those involving the Special Indigenous Jurisdiction and ordinary criminal justice. In this regard, see: *Corte Constitucional Autos A-2683 de 2023 y A-255 de 2023* [Constitutional Court writs A-2683 of 2023 and A-255 of 2023].

[2] It is important to note that the SU-190 ruling of 2021 opened the possibility that the Attorney General's Office, despite not being a jurisdictional authority, could propose and participate in conflicts of jurisdiction. However, the Constitutional Court itself, through Order 704 of 2021, limited this possibility to cases relating to crimes that could constitute "serious" human rights violations, and this acts as current case law.



crimes under international law, even if committed in the context of the armed conflict, or that could be categorized as violations of international humanitarian law.

2. Propose, process and approve an amendment to Article 3 of the Military Penal Code that excludes from the jurisdiction of the JPM all crimes that could constitute human rights violations or crimes under international law.
3. Adhere promptly and without reservation to the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes.

Amnesty International recommends that prosecutors and judges of the JPM, in order to uphold and guarantee the right to natural justice of victims of human rights violations and crimes under international law, should:

1. Refrain from opening investigations into crimes that could constitute violations of human rights or crimes under international law, except for the sole purpose of transferring such cases to the Attorney General's Office and guaranteeing the integrity of the investigation within a framework of due diligence.
2. In the case of ongoing investigations, comply with Internal Circular 018 of 2023 from the Executive Directorate of the UAEJPMP to prioritize the procedure for determining jurisdiction for each of such ongoing investigations and refer to the Attorney General's Office all investigations relating to crimes that could constitute human rights violations.

Amnesty International recommends that the Attorney General's Office, the Superior Council of the Judiciary and the UAEJPMP, in order to facilitate the transfer of investigations and trials for crimes allegedly committed by law enforcement agents that could constitute human rights violations or crimes under international law, should:

1. Create a coordination mechanism to analyse cases relating to crimes that could constitute human rights violations or crimes under international law and facilitate their referral to the ordinary criminal justice system without the need to submit conflicts of jurisdiction.
2. Strengthen the training of judicial operators within the ordinary and military criminal justice systems on international law and standards for the operation of the JPM, including its scope of action and the limits to its jurisdiction. This training should be accessible to all judicial operators involved in decision-making processes, not only those at the central level of each institution.

Amnesty International recommends that the Inspector General's Office and the Ombudsperson's Office, in order to fulfil their role of promoting human rights and supporting victims of human rights violations, should:

1. Strengthen training for prosecutors and public defenders on international law and standards for the operation of the JPM, including its scope of action and the limits to its jurisdiction.

Amnesty International recommends that the Attorney General's Office and the UAEJPMP, in order to promote early discussion on jurisdiction over an investigation or trial for a crime that may constitute a human rights violation or a crime under international law allegedly committed by a member of the security forces, should:

1. Within the coordination mechanism for the referral of investigations and trials relating to crimes that may constitute human rights violations, include a general procedure for transferring information that would allow the early identification of new investigations opened within the JPM, and determine whether they fall under the scope of the ordinary criminal justice system as soon as possible. If no agreement is reached, a conflict of jurisdiction must be submitted to the Constitutional Court.

Amnesty International recommends that the Attorney General's Office, the Superior Council of the Judiciary and the UAEJPMP, in order to reduce procedural errors when submitting conflicts of jurisdiction that result in inhibitory decisions by the Constitutional Court, should:

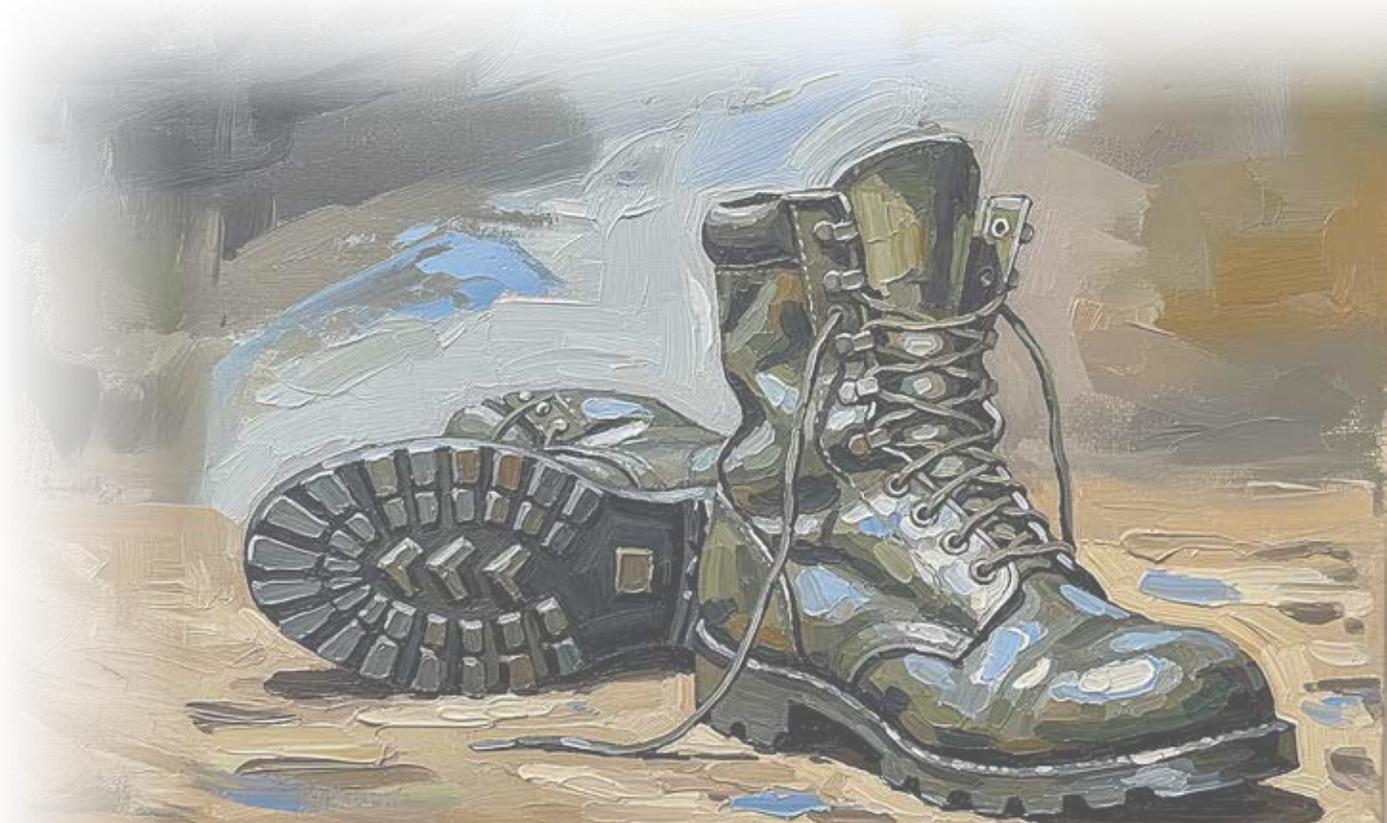
1. Adopt measures to include comprehensive training on the jurisdiction of the JPM and

the processing of conflicts of jurisdiction for ordinary and military criminal judges and prosecutors, taking into account the international human rights standards applicable in Colombia.

2. Adopt measures to include the number of conflicts of jurisdiction submitted and their results in the performance evaluation of ordinary and military criminal judges and prosecutors.

Amnesty International recommends that the Constitutional Court, in order to mitigate the impact of the prevalence of inhibitory decisions in the resolution of conflicts of jurisdiction between the ordinary criminal justice system and the JPM, should:

1. Adopt case law criteria to encourage substantiating bodies to seek to avoid inhibitory decisions in conflicts of jurisdiction involving possible human rights violations. Other measures to be taken as a result of this decision include:
 - a. Promote the ordering and carrying out of measures to address lack of compliance with any of the criteria that constitute a conflict of jurisdiction.
 - b. Reverse the lack of authority of the Attorney General's Office to propose or participate in conflicts of jurisdiction, or at least allow it to do so in cases relating to potential human rights violations of any kind, and not only those deemed "serious".
 - c. Adopt decisions that acknowledge the existence of a pattern of conflicts of jurisdiction between the ordinary criminal justice system and the JPM regarding crimes that may constitute human rights violations, so that the judicial operators concerned are advised to submit them only in cases where a substantial dispute arises.



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HAPPENS TO ONE PERSON,
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CONTACT US

 info@amnesty.org

 +44 (0)20 7413 5500

 [amnesty.org](https://www.amnesty.org)

 Amnesty International
Peter Benenson House
1 Easton Street
London WC1X 0DW,
Reino Unido

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INSIST, PERSIST,

RESIST AND NEVER GIVE UP?

IMPACT OF THE USE OF MILITARY CRIMINAL JUSTICE ON IMPUNITY FOR HUMAN RIGHTS VIOLATIONS IN COLOMBIA

In Colombia, demanding justice for human rights violations and crimes under international law committed by members of the military forces or the National Police often compels victims to fight against the institutional inertia generated by impunity and assert their right to have their judicial guarantees upheld. To pursue their complaints, individuals often need to approach both the ordinary criminal justice system and military criminal justice, a special system that deals with cases involving active duty members of the military forces or the National Police who are being investigated or tried for the commission of crimes related to the service they provide. For decades, cases involving enforced disappearances, extrajudicial executions, torture and other offences have been mired in impunity, facilitated in part by the use of military criminal justice. Victims and their supporters have been forced to use the law to seek to correct these situations, and for decades the law has also ruled in their favour. Despite this, being the victim of a human rights violation or an international crime committed by a member of the military or the National Police today still means having to demand something as basic as ensuring that the institution to which the alleged perpetrator belongs is not responsible for delivering justice in the case.



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