

STATE OF THE LEGAL FRAMEWORK FOR IMPLEMENTING THE PEACE ACCORDS

As we end the FARC disarmament process, core elements of the legal framework for implementing the bulk of the final peace accord come to the fore as critical for next steps for stabilizing peacebuilding efforts in Colombia. This Spotlight analyzes key milestones and next steps for the juridical processes undergirding the implementation of the final peace accord.

THE SPECIAL JURISDICTION FOR PEACE (JEP)¹

One challenge in developing the legal framework for implementing the peace accord is that the original document defers to future deliberations for some critical details, which has opened the floor for debate between all sides up until the present moment.

For example, it is still unclear whether or not, and under what conditions victims will be able to participate in the Chambers when perpetrators of violence provide their testimonies. Additionally, while it is clear that a perpetrator of violence needs to fully participate in providing complete testimonies, repairing victims, and guaranteeing non-repetition, the consequences beyond being excluded from the JEP for those who do not comply, or who are found to tell incomplete versions are also to be determined by a future law. Furthermore, key structural elements are still

ambiguous, such as the relationship between the Peace Tribunal, the Truth Commission, and the Mechanism for Searching for Disappeared Persons, whose attendant penalties have also not been defined. Many of the mechanisms related to this are currently waiting in the wings in the form of a statutory law for Congress to begin its next session on July 20th.

Additionally controversial, the norms of the JEP in the accord do not address the issue of FARC-EP assets and how they will be distributed to victims of the conflict. However, one of the decrees that Santos signed in the last week of May (Decree 903), calls for 1) all FARC-EP assets to be handed over by the end of the time of the transitional zones, and 2) government administration of the value of these assets based on the recommendations of the CSIVI (and not, for example, direct transfer to the general Victims' Fund).

THE FAST TRACK AND EXTRAORDINARY PRESIDENTIAL FACULTIES

The Congressional fast track mechanism went into effect on December 14, 2016 for a term of six months, potentially renewable for six additional months. The mechanism situates within a Legislative Act that contains the following provisions: (1) reduces required sessions for approving constitutional reforms from eight to four and gave preferential treatment to those proposals related to the accords (i.e., the fast track), (2) attempts to guarantee continuity in implementation beyond the current government, and (3) grants the President extraordinary powers to issue decrees in order to implement the accords.

On Wednesday, May 17th, the Colombian Constitutional court rejected two items (Rules H&J) which, respectively, required that acts could only be amended as long as they conformed to the accord and had the previous backing of the government, and that projects would also be decided upon in their entirety - as a single block - also with previous government approval. These rules were rejected on the grounds that the requirement for prior endorsement of the national government represented a substitution of powers that contradicts the principle of separation of powers guaranteed by the constitution.

Analysts suggest three significant near-term effects to the Court's decision: 1) approval and implementation of various projects related to the accord will be slower, because they will not be voted on in their entirety and because there is no screening process for who may propose changes to elements of the project; 2) there may emerge inconsistencies in elements of the approved norms because there is

no prior government approval process permitted for proposals; and 3) it has created tensions on the side of the FARC-EP, who now fear that the GoC will not complete its end of the bargain with regards to implementing the accords.

Nonetheless, the decision is not anticipated to derail the peace process for four principal reasons. First, that which has already passed will remain in effect: key elements such as the Amnesty Law, the organization of the Comprehensive System for Truth, Justice, Reparations, and Non-Repetition, and all of the mechanisms for satisfying the rights of the victims. Second, despite speculation to the contrary, the Constitutional Court decision does not open up the final accord to revisions, and several elements of the content of the remaining fast track and the public statements of the Court back this assurance. For example, the fast track mechanism may only even be used if it is to facilitate implementing aspects of the accord as it is written. Third, even though the Court rejected the requirement that fast track projects be voted on in their entirety, it is still an option that Congress may choose to mobilize. Fourth, this single Constitutional Court decision does not necessarily portend a hard line against the peace accord in all future proceedings.

The most reasonable risk is that what emerges is a "minimalist peace," meaning, that congress persons will arrive at the minimal common denominator through their debates, and reduce the original degree of the impact intended by the final accord.

¹ <http://lasillavacia.com/historia/la-reglamentacion-de-la-jep-una-pelea-aplazada-61082>

THE MAY DECREES OF PRESIDENT JUAN MANUEL SANTOS

Arguably in response to the Constitutional Court ruling mid-May, President Juan Manuel Santos used his executive powers to sign into law more than 20 decrees in the last few days of the same month. Below are some of the important initiatives advanced by the President as they pertain to the implementation of the accords, though the review is not an exhaustive one.

Decree 902

Facilitates the formation of the Land Trust to support the implementation of Point 1 (Comprehensive Rural Reform)

Decree 899

Establishes mandate for FARC social, economic, and political reintegration

Decree 885

Creates the National Council for Peace, Reconciliation, and Coexistence

Decree 896

Creates the Comprehensive National Program for the Substitution of illicit Crops (PNIS)

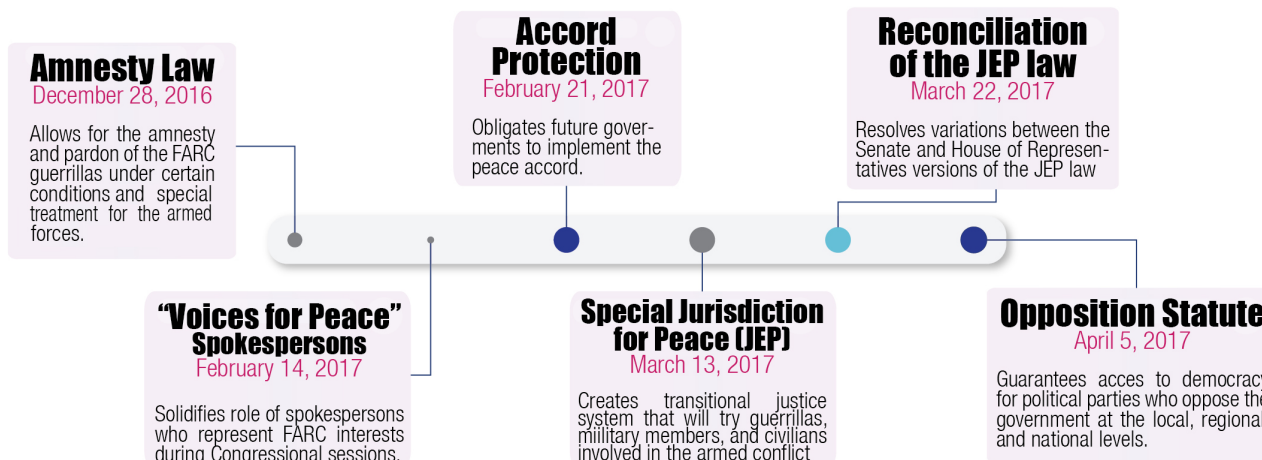
Decree 897

Changes the structure of the ACR and renames the government institution attending excombatants: Agency for Reincorporation and Normalization (ARN).

Source: Presidency of Colombia

WHAT HAS PASSED THROUGH CONGRESS, AND WHAT REMAINS

The figure below details the legal projects that have already passed through Congress, before the third session ended in June.



Source: La Silla Vacía

As noted above, the third legislative session has closed, and the fourth and final session of the 2014-2018 Congress will not begin again until July 20th. One of the key constitutional reform projects that lawmakers will take under consideration addresses the proposed 16 special voting districts – the “peace constituencies”. These special voting districts – already geographically defined – are for areas in which the armed conflict has historically been more intense. Additionally, political parties, including the eventual FARC political party, will not be permitted to participate in these districts; instead, only social organizations and victims’ organizations will be able to participate. The fact that the political parties are excluded from these special voting districts has resulted in rejection of the initiative by some who see their votes as threatened in these areas. Nonetheless, at the close of the legislative session, Congress had managed to just barely pass the first step in approving this project. Remaining advances will need to wait for the fourth session to open in July.

The second project is the statutory law that would govern the JEP and bring into effect all of the chambers, organs, and units within the complex transitional justice mechanism. Among the other elements mentioned earlier, the statutory law will need to delineate how the JEP will process and sentence all actors involved in the armed conflict. A third project awaiting the fourth session centers on the reform of the National Protection Unit. This initiative would allow former guerrillas passing through the current peace process to become bodyguards within this unit.

A fourth project that will be taken up in the second half of 2017 addresses political reform, which is particularly complicated by the fact that any agreed upon reform would end up occurring during the pre-electoral period. That means that, even if an agreement on reform is reached by November, political parties would face significant challenges implementing said reform going into the 2018 election cycle.