

THE JUSTICE AND PEACE LAW: SUMMARY AND ANALYSIS

INTRODUCTION

The Justice and Peace Law (JPL) was drafted in 2003 and approved in 2005 as a transitional justice response to the demobilization of more than 30,000 ex-paramilitaries from the United Self-Defense Forces of Colombia (AUC). The Law offers alternative penal sentences of between five and eight years to members of illegal armed groups who committed serious crimes, in exchange for demobilization, judicial cooperation, and agreement to contribute to truth and reparations. Since implementation, the JPL has met hurdles that led to modifications of the law. These challenges, responses, and lessons learned provide valuable input for future transitional justice measures in Colombia. It is especially important to examine the JPL and its evolution in light of the possible demobilization of the FARC as a result of the current peace talks.

THE ORIGINS OF THE JUSTICE AND PEACE LAW

In July 2003, then-President Alvaro Uribe began negotiations with the AUC that resulted in a series of collective demobilizations between 2003 and 2006. The majority of the former paramilitaries, who had not committed grave crimes, were pardoned under Law 782 of 2002 and Decree 128 of 2003¹, but the Government of Colombia (GOC) lacked a legal framework to reintegrate those who were responsible for grave crimes – mostly mid and high-level commanders.ⁱ The GOC therefore drafted and implemented the Justice and Peace Law (JPL – Law 975 of 2005). The JPL's dual objective was to facilitate the reintegration of ex-combatants responsible for grave violations and fulfill their victims' rights to truth, justice, and reparations. The Law created transitional justice bodies to implement the Law, including the Justice and Peace Unit of the Attorney General's Office, district tribunals, the National Reparation and Reconciliation Commission, and the Victims' Reparations Fund.ⁱⁱ These entities call ex-combatants to give testimonies in hearings and information about assets that could be used in reparations, among other responsibilities. In return for telling the truth about their activity, not committing further crimes, and contributing to victims' reparations, ex-combatants who committed serious crimes have the right to request that their jail-time be terminated after eight years if they fulfill various conditions at the end of that period. The Constitutional Court issued judicial decision C-370 in 2006 to ensure that implementation of the JPL supported its dual objectives and complied with

¹ The pardoning of former paramilitaries under Law 782 and Decree 128 was disallowed in July 2007, creating a series of judicial challenges to the reintegration of ex-combatants who had not committed serious crimes. Details of these challenges and the responses taken by the GOC are outside the scope of this paper.

the Constitution. C-370 states that judicial collaboration must involve telling the absolute truth about crimes. Two especially important aspects of the decision are that it gives constitutional protection to conflict victims' rights to truth, justice, and reparations, and upholds peace as a constitutional priority equal to or greater than justice.

INITIAL ISSUES IN THE LAW'S IMPLEMENTATION

Various issues affected the implementation of the JPL in its first few years. The first is that the Colombian justice system did not possess the institutional capacity to process the more than 4,800 cases that applied to be considered for alternative sentencing. In January 2012, in addition to these 4,800 cases, confessions had been made about 32,000 victims, but only nine sentences had been issued. Although a total of fourteen had been issued by the end of 2012, this pace meant that sentencing all cases would take almost one hundred years.ⁱⁱⁱ

Delays in sentencing also created the sense that the former paramilitaries responsible for grave crimes were being given impunity and the majority would never be brought to justice, violating the victims' rights. Many human rights groups also criticized the Law for not properly defining incentives for ex-combatants to tell the absolute truth, thereby failing to fulfill the victims' rights to truth, reparations, and justice.^{iv}

In addition, a loophole existed whereby some demobilized people entered the reintegration process without passing through judicial processing for either benefits under the JPL or amnesty under Law 782.^v

JUDICIAL RESPONSES TO THESE CHALLENGES

Various judicial responses to these challenges have been issued. Law 1424 of 2010 aims to resolve the judicial limbo of ex-combatants who fell through the loophole. This law focuses on lower-level crimes such as illegal weapons carrying, and conditions benefits on ex-combatants' entry to the Colombian Reintegration Agency (ACR) program. This law has met its own challenges, but has contributed to resolving the judicial limbo of many ex-paramilitaries.^{vi}

In response to the difficulties presented by large numbers of victims and associated efforts to fulfill the victims' rights to reparations in JPL's judicial process framework, Law 1448 or the Victims' and Land Restitution Law was issued in 2011. This law aims to provide for administrative reparations and land restitution, and created new institutions such as the Victims' Unit and the National Center for Historical Memory for its implementation.^{vii}

Law 1592 was issued in 2012 to address some of the institutional issues encountered in the implementation of the JPL. This law laid the groundwork for a strategy to expedite processing of cases through their prioritization based on select criteria, and introduced modifications to

the JPL to make it more efficient. It also introduced additional regulation for the assignation of assets for victims' reparations, and allowed victims to pass from judicial reparations administered as part of JPL case processing to administrative reparations directed at the broader victim population, not just victims of JPL cases.^{viii}

To expedite case processing, the AGO issued Resolution 001 of 2012 to create a prioritization strategy by which sixteen cases were chosen. Under this strategy, the final judicial sentence identifies macro-criminal patterns of conduct by the illegal armed group in a certain context. As this is not case-by-case processing, only some individuals will be fully prosecuted and not all victims' cases will be resolved. The prioritized crimes are: forced disappearance; forced displacement; gender-based violence; illegal recruitment; and homicide as part of massacres and other emblematic cases. Fourteen cases were added to the prioritization strategy at the end of 2013, and the AGO is adjusting its processing strategy to include them.^{ix}

CURRENT ISSUES OF THE JUSTICE AND PEACE LAW

There are two main challenges currently surrounding JPL implementation. The first is that in March 2014, the Constitutional Court declared that it was unconstitutional for Law 1592 of 2012 to deny victims judicial reparations under the JPL. Although exact terms of the Constitutional Court decision have yet to be released, the judgment stated that per constitutional provisions for integral reparations, victims under the JPL must be assigned reparations by a Justice and Peace judge who understands the extent of their victimization in crimes committed in cases processed under the Law. The declaration of unconstitutionality of this part of Law 1592 could present significant delays to these victims' access to reparations, as well as contributing to institutional overload.

The second challenge currently faced by institutions responsible for the implementation of the JPL is that former paramilitaries currently in jail are expected to start requesting an end to their prison sentences now that they have completed the eight-year requisite. Various conditions must be fulfilled for this type of request to be granted, including good behavior and no crimes after demobilization. However, it is unclear how some of these conditions can be met, as interpretation of their legal provisions is complex. It is therefore unclear how many ex-paramilitaries can be expected to make a request for release. Media sources estimate that 200 or more people will be eligible to leave jail, but this number cannot be confirmed until the requests for release are made.^x The ACR and the Ministry of Justice are working to resolve these issues and to receive ex-combatants' requests.

The situation is further complicated by the fact that these ex-combatants are in general mid and high-level commanders, and therefore have distinct reintegration expectations and needs from their foot-soldier

counterparts, a great number of whom have already entered the ACR reintegration route. The difficulties presented by the fact that they held significant power and authority within the armed groups could in many cases have been compounded by the time they spent in jail. This means that the ACR must prepare to adapt and implement its programs for a new population of demobilized people. In addition, the return of these former commanders to their communities could present security risks as much for them as for the residents. While the risk of them perpetrating further crimes could harm their receptor communities, the risk that they themselves will be harmed also has its own implications, as it could act as a deterrent for guerrilla mid and high-level commanders to demobilize or enter GOC transitional justice programs. Preparations have started to confront the various facets implied by the former paramilitaries' requests to leave jail, but the necessary institutional framework still begs consolidation.

CONCLUSION AND LESSONS LEARNED

The FARC would participate in collective demobilization in the case of a final peace agreement resulting from current talks, so it is important that challenges and lessons learned from the Justice and Peace process be taken into account. The legal framework for FARC reintegration may not be the same as the current structure, but the goals of fulfilling victims' rights and facilitating accountability for grave crimes will remain central. Although the entities responsible may not be the same, lessons about institutional capacity and how it can affect the pace of sentencing must be incorporated to the design and implementation of an institutional framework for the FARC demobilization. The strategy of prioritizing cases and crimes has so far expedited sentencing, as it has done in other countries as well, so it could provide important strategic input for transitional justice mechanisms applying to the FARC. Finally, challenges surrounding the lack of clarity regarding ex-paramilitaries leaving jail should serve as a warning that factors such as conditions for alternative sentencing must be absolutely clear from the outset of implementation of associated transitional justice measures. In addition, considerations for mid and high-level commanders will apply to FARC reintegration programs as well as ex-paramilitaries. It remains to be seen how the Justice and Peace process will play out, but it should continue to come under close scrutiny for lessons that could apply to similar future process with the FARC.

ⁱ Human Rights Watch (2010). *The Successor Groups*. <http://bit.ly/1q7fVwZ>

ⁱⁱ Ley 975 – "Ley de Justicia y Paz" (2003). www.eclac.cl/oig/doc/col2005ley975.pdf

ⁱⁱⁱ Verdad Abierta (March 2012). *El año decisivo para Justicia y Paz*. <http://bit.ly/RhnyAg>

^{iv} ICTJ Colombia page. www.ictj.org/our-work/regions-and-countries/colombia and IOM

document (2013) "Escenarios jurídicos que dejan las leyes 975 de 2005 y 1424 de 2010"

^v IOM doc. (2013) "Escenarios jurídicos que dejan las leyes 975 de 2005 y 1424 de 2010"

^{vi} Ibid.

^{vii} Ibid.

^{viii} Ibid.

^{ix} Ibid.

^x Semana Magazine. *Los 200 'paras' que saldrán de la cárcel*. <http://bit.ly/1iz81Ho>