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International Commission of Jurists (Geneva) and Andean Commission of Jurists (Lima) Affiliate
LEGAL CORPORATE ENTITY: RESOLUTION 1060, AUGUST 1988 BOGOTA MAYOR'S OFFICE

Impunity Law Approved in Colombia (Bulletin number 6)

WITHOUT PEACE AND WITHOUT JUSTICE

Last minute modifications made to the draft bill failed to overcome its gravest problems.

On Wednesday, June 22nd, the Colombian Congress approved the definitive text of the impunity law known as the "justice and peace" law. The legislation was approved with certain modifications in an attempt to placate insistent critics. However, these modifications are completely insufficient and the law unfortunately lacks elements to ensure the dismantling of paramilitary structures or to guarantee truth, justice and reparations for the gravest crimes committed by the law's beneficiaries. On the contrary, approval of this legislation completes the legal framework for impunity initiated through the promulgation of Decree 128 of 2003 (that supposedly implements but actually contradicts Law 782 of 2002). These affirmations are explained below.

1. Decree 128 + "justice and peace" law = impunity

Combatants volunteering for demobilization fall under two categories. In the first one, they may not be the subject of ongoing trial proceedings or court sentences. In the second, they may indeed be the subject of trial proceedings or court sentences. In the first case, according to decree 128, the person has the right to judicial immunity if he has a certificate from the Committee on Giving Up Arms (CODA, from its Spanish initials) of the Ministry of the Interior and Justice (articles 2 and 13 of the decree). In the second case, two new possibilities arise. On the one hand, the person volunteering for demobilization may have ongoing judicial proceedings against him for crimes to which amnesty or pardon is applicable, which under the constitution can only be political crimes. In that case, the person would have the right to have the judicial proceedings closed, whatever their status, or the sentence revoked. That is to say, he can receive the benefit of a resolution of abstention, cessation of the trial proceedings, preclusion or pardon depending upon the status of the proceedings (article 13 of the decree). Finally, the person may be the subject of trial proceedings or sentences for crimes not subject to amnesty or pardon, that is to say, common crimes and violations of human rights and humanitarian law. Only in this case is the "justice and peace" law applied.

It should be underlined that in cases resolved through the application of Decree 128, no investigation is made whatsoever in order to determine whether the demobilized person could have responsibility or information with respect to other crimes attributable to the armed group in the region in which it operated. Without carrying out any investigation and lacking any account or confession, the person is benefited. In this manner, all crimes in which criminal proceedings have not been opened, or crimes in which they have been opened but no member of the paramilitary forces has been specifically named as the alleged perpetrator, remain in impunity by means of Decree 128. The immense majority, approximately 19,900 paramilitaries, is being demobilized using the procedure laid down

by decree 128. A very small number of them, around 100, who are the paramilitaries in the concentration zones, will be subject to the recently approved law.

2. The law does not guarantee dismantlement of the paramilitary groups because:

2.1. It does not favor collective demobilization. Under this legislation, benefits do not constitute a concession on punishment in exchange for peace. Such a significant reduction in sentencing for such grave crimes should only be provided in exchange for a collective commitment to demobilization. However, according to the law, benefits may be granted in cases of individual and collective demobilization (articles 10 and 11). Therefore, under this law, the benefits are applicable to members of the paramilitary and guerrilla forces who demobilize individually, even though it is already clear that there will be no dialogue, demobilization or peace with the guerrillas. For that same reason, there will also be no peace with the paramilitaries, because there is no need for a responsible leader to make a commitment to demobilize a group in order to gain access to benefits. If the negotiation process fails, it is all the same to the paramilitaries whether they demobilize individually or collectively.

2.2. There is no recognition, or mention, of the state's responsibility in the formation and activity of the paramilitary groups. Nor is impunity with respect to actions committed with the acquiescence, tolerance or omission of state agents addressed in any way. Historical truth will not emerge. Truth in the context of this law is limited to partial and incomplete versions in each individual case, while ignoring the connection between them. Such a system will make it impossible to establish the factual and normative conditions that made possible the commission of atrocities or the identities of government employees and private citizens who sponsored or covered up the crimes of those groups. Nor have any measures been taken aimed at making what happened known to the public as a necessary step in preventing the repetition of such events.

2.3. The dismantling of paramilitarism in Colombia must necessarily involve the return of lands usurped through violence. Neither the new law nor the government's policy addresses this. The paramilitary groups maintain the economic capacity to replace their weapons and to continue recruiting combatants, as they have in effect been doing.

3. In spite of last minute modifications made to the draft bill, it continues to lack guarantees for the rights of the victims:

3.1. There is no guarantee that the beneficiaries will actually serve prison sentences. In the first place, because a year and a half of the punishment imposed will be accepted as having been served in the concentration zones. It is obvious that the people concentrated in Santa Fe de Ralito are not subject to the control conditions appropriate to a prison establishment. The concentration zones are not a prison establishment. In the second place, the remaining part of the punishment will be served in places to be determined by the National Government but will not necessarily be part of the national penitentiary system administered by the National Prison and Jail Institute – INPEC (art. 31). It has been publicly stated that the sentences will be served at "agricultural colonies," which is a

modality foreseen under the Prison and Jail Code. It is characterized by a lower degree of state control because they are actually large farms without perimeter fences in which agricultural work is carried out. It is unlikely that the beneficiaries of this law will be held at the only existing agricultural colony in Colombia, in Acacías, Meta, because it is located in a zone with a strong guerrilla influence. Past experience with centers for holding paramilitaries during negotiations in no way resembles models of adequate state control. Such is the case of the conditions of imprisonment of Diego Fernando Murillo, alias "Don Berna," who is on a farm and whose considerable expenses are paid by the state¹.

3.2. Full and truthful confession is not demanded. There is no loss of benefits for lack of truthfulness or for omission of facts in confessions. Demobilized persons who do not make a complete and truthful confession can nonetheless gain access to benefits if they collaborate with the justice system or admit to the charges later if the initial omission "was not intentional." If the crime committed is grave, the judicial authorities can increase the sentence by 20%. However, proving that the omission was intentional, which is the only cause for loss of benefits, is practically impossible (article 25).

3.3. 60 days in order for 20 prosecutors to adequately investigate cases of massive and systematic violations of human rights and humanitarian law are absolutely insufficient (article 18). The time limits for trial proceedings mean that they become a sham.

3.4. The victims continue to be barred from participating in the procedure for determining the facts and responsibilities. On the contrary, the victims' participation is reduced to the power to request and participate in the reparation incident after the hearing on acceptance of the charges.

3.5. In addition, despite the modifications, strong obstacles remain regarding effective reparations for the victims. Those who committed the crimes need only hand over for reparations properties they have illegally obtained; a criminal's intentional insolvency is not confronted, reparations are subject to the availability of economic resources and, as if that were not enough, the resources of the reparations fund are administered at random.

4. The law will be promulgated and applied without any prior judicial control.

The law should have been enacted as a statutory law, that is to say, as a law with greater hierarchy than an ordinary law because in its essential nucleus it defines and implements fundamental rights (the rights to truth, justice and reparations) and also regulates its protection mechanisms through a specific procedure (articles 152 and 153 of the Colombian Constitution). Such laws, because of the important effects they can have in reality, require special majorities for approval as well as prior constitutional review, which means that they must be reviewed by the Constitutional Court before they enter into effect. The "justice and peace" law was not enacted as a statutory law and thereby evaded review by the Constitutional Court so that it will be applied without any judicial analysis. In so doing, not

¹ El Tiempo, *250 millones de pesos al mes cuesta cuidar a 'Don Berna'* (250 million pesos a month is the cost of caring for Don Berna), June 17, 2005, pages 1-4.

only were the procedures governing democratic decision-making by the Congress violated, but also the law is to be applied without guarantees of stability regarding decisions subject to subsequent judicial controls.

Under these conditions, the law's approval constitutes a very grave event for Colombia. Paramilitarism and impunity are being consolidated in Colombia behind the victims' backs, without recognizing the rights to truth, justice and reparations, through a congressional debate marked by intolerance for dissident minorities and without respect for procedural forms that govern the democratic decision-making process.

Bogotá, June 29, 2005