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## Spotlight

### THE JUSTICE AND PEACE LAW: CURRENT STATUS

#### INTRODUCTION: BACKGROUND OF THE JPL

The Justice and Peace Law (JPL)<sup>i</sup> was issued in 2005 with the objective of creating a judicial framework for the demobilization and reintegration of more than 30,000 combatants from the United Self-Defense Forces of Colombia (AUC). This Law established alternative sentences of a maximum of eight years for those AUC members who committed serious crimes, human rights violations, and crimes against humanity. These sentences were conditioned on demobilization, judicial cooperation, handing over assets, non-recidivism, and contributions to truth and reparations. The Justice and Peace process has met challenges that led to the expedition of Law 1592 of 2012, with the objective of establishing criteria for a case prioritization methodology to identify patterns of macro-criminality and macro-victimization and streamline the judicial procedures related to victims' reparations.

#### CHALLENGES TO THE JUSTICE AND PEACE PROCESS

One of the greatest challenges faced by the Justice and Peace process is the conditional freedom (substitution of preventive detention) of the people whose cases are being processed under the JPL and who have finished the eight years established as the maximum alternative sentence. The media has spread the message that a large number (between 170<sup>ii</sup> and 1,147<sup>iii</sup>) of individuals have requested freedom and will leave jail immediately. However, the real number of people who request conditional freedom can only be confirmed when the requests are presented to the authorities. Moreover, the real number of people who will actually leave jail can only be confirmed when the judges make their decisions, thereby approving or rejecting the requests.

Various conditions must be fulfilled to obtain the benefit of conditional freedom. The legal guidelines are complex and subject to discretionary interpretation by each judge. Uncertainty about these conditions is found in two areas. **1) The way in which the eight years of the alternative sentence are counted.** This can be from the date of demobilization or the date of entry to jail. For example, if a person demobilized before the date of the issuance of the Law (July 25<sup>th</sup> 2005), the eight years are counted from the date of demobilization. However, if the person demobilized after the Law was issued, the eight years are counted from the date on which he or she entered jail. In other cases, the eight years would be counted from the date on which the person's case began to be processed under the Law.

In order to identify the start-date of the eight years' sentence for each specific case and according to these guidelines, information must be obtained from a range of entities, which can cause process delays. **2) The verification of fulfillment of the requisites.** In addition to completing the maximum prison term of eight years, in order to receive conditional freedom the individual must have: participated in available re-socialization activities (e.g. courses and work); have obtained a certificate of good behavior; participate in and contribute to the clarification of truth in the Justice and Peace process; handed over assets to contribute to the integral reparation of victims; and not have committed crimes after demobilization. Although these conditions are defined in Law 1592, the parameters to measure their fulfillment are subjective and depend entirely on the interpretation of each judge. This level of subjectivity and discretion of the judges makes it impossible to determine exactly how many people will receive conditional freedom.

#### TWO INTERPRETATIONS OF THE CONDITIONS NECESSARY TO OBTAIN CONDITIONAL FREEDOM

On July 2nd 2014, a judge in the Supreme Court issued a decision<sup>iv</sup> that demonstrates the possible differences in interpretation that can arise with regard to the JPL and its conditions for conditional freedom. The first decision of a judge in the case of José de Jesús Pérez Jiménez (demobilized from the Calima bloc of the AUC) established that he had not fulfilled two necessary conditions: contribution to the clarification of truth, because an insufficient number of judges had certified that he provided information about specific events; and good behavior and participation in re-socialization activities, because he completed only 22 months of work during the eight years he was in jail, liquor was found in his cell, and he was found using social networks online. The first sentence, which rejected the request for conditional freedom, was appealed. The new judge considered that the first interpretation was biased, because the Law does not define a specific amount of time during which the demobilized person has to have participated in re-socialization activities. The second judge also considered that as demobilized people spend so much time fulfilling judicial requisites such as contributions to truth, (which is a priority for the Justice and Peace Law), it is not possible to demand that they also spend a great amount of time in re-socialization activities. In addition, in terms of good behavior, the second judge decided that finding liquor

in the cell and the use of social networks were minor infractions and that to keep Pérez Jiménez in prison would be a disproportional response, especially taking into account that the primary goal of the JPL is for the individual to fulfill the requisite of contributing to truth and victims' reparations. Finally, the judge who issued the second decision highlighted that the JPL does not state that all of the judges who have had contact with a single case must certify that the individual has contributed to truth. If the behavior of the individual is evasive and he or she does not participate in testimony hearings, he or she can be expelled from the Justice and Peace process. If this is not the case, certification from just some of the judges is sufficient for the fulfillment of this requisite. This judge therefore decided to overturn the previous decision and approve conditional freedom for Pérez Jiménez.

### AFTER CONDITIONAL FREEDOM

After fulfilling the requisites defined by the Law, implementation of the JPL must continue in order to give the process legitimacy (by providing the conditional benefits as stated by law) and so that the individuals do not continue in judicial insecurity due to the lack of clarity about certain aspects of the process and the differences in interpretation of the conditions. This is even more important when taking into account the possible demobilization of guerrilla groups, as it is crucial that they see that this type of judicial mechanism is legitimate and issues the conditional benefits it promises. It should also be noted that the freedom given is *conditional*, so the judge can impose conditions such as electronic monitoring, periodic check-ins with the tribunal in the geographic area of the individual, inability to leave the country, and others. If the individual stops participating in Justice and Peace activities, if it is proved that he or she has not contributed to truth, or if he or she is not active in the reintegration process, the conditional freedom can be revoked and he or she can be sent back to jail and processed under ordinary justice, not the JPL. It is also important to highlight that the Justice and Peace process continues to be valid until the case receives a decision, even if the decision is made after the eight years in prison have been completed. The obligations of the demobilized person under the Law do not change with conditional freedom and he or she cannot leave the Justice and Peace process.

### OTHER CHALLENGES TO CONDITIONAL FREEDOM

Various other challenges relate to the conditional freedom of people being processed under the JPL. One of these is the reintegration process that must be completed by high and mid-level commanders, because

after having exercised power and authority within the illegal armed groups, they have different reintegration expectations and needs than the regular foot soldier combatants. The difficulties presented could in many cases have been exacerbated during the time they spent in jail, which means that the ACR must prepare to adapt its programs for this new population of ex-combatants. In addition, the return of these individuals to their communities could represent security risks: on one hand there is the possibility that they will return to crime against the receptor community and break the guarantees of non-repetition given to victims. On the other hand there is the possibility that the residents turn them into targets of violence, which could have negative implications with respect to motivations for the possible demobilization of high and mid-level commanders from the guerrilla groups. This arrival to the community could result in unexpected encounters between victims and victimizers, which represent a challenge to reconciliation and peaceful coexistence. Another challenge is maintaining the Justice and Peace process active for those who gain conditional freedom. A lack of monitoring could result in discrepancies in the fulfillment of conditions such as check-ins with regional tribunals and continuing to contribute to truth.

### CONCLUSION

The lack of clarity surrounding the possible conditional freedom of some individuals being processed under the JPL implies significant institutional challenges. One of these is the need to establish criteria so that judges can make case decisions that take into account that this is a transitional justice process that should be interpreted differently from ordinary justice, without diminishing the judges' autonomy. In addition, it should be noted that the institutions involved in this process are preparing to receive the conditional freedom requests, and the ACR is preparing to implement a special reintegration route for this population. To date, four individuals have left jail and approximately 60 requests are being processed. However, the freedom will not be given automatically but rather approved individually and conditionally. In the case that an individual does receive conditional freedom, he or she cannot leave the Justice and Peace process, but rather must continue to fulfill the conditions required by the Law.

<sup>i</sup> Law 975 – Justice and Peace Law (2003). [www.eclac.cl/oig/doc/col2005ley975.pdf](http://www.eclac.cl/oig/doc/col2005ley975.pdf)

<sup>ii</sup> '¿Qué va a pasar con los exparamilitares que salgan libres?' Verdad Abierta, July 22nd 2014. <http://goo.gl/JFJieZ>

<sup>iii</sup> 'Libertad que se les dará a 'paras' manda mensaje a guerrilla' El Tiempo, July 21st 2014. <http://goo.gl/RpQNsP>

<sup>iv</sup> Corte Suprema de Justicia. Magistrado José Leonidas Bustos Martínez. AP 3589-2014 Radicación n° 43696 (Aprobado Acta No. 202) <http://goo.gl/70f2lr>