



## COLOMBIAN COMMISSION OF JURISTS

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LEGAL CORPORATE ENTITY: RESOLUTION 1060, AUGUST 1988 BOGOTA MAYOR'S OFFICE

*Only Five Days Away from the Approval of the Law of Impunity in Colombia (Bulletin Number 2)*

### WITH NO GUARANTEE OF THE RIGHT TO JUSTICE

Perpetrators of war crimes will receive disguised pardons

The bill of law that the Colombian Government is lobbying for the benefit of members of demobilized paramilitary groups disregards the minimum conditions for justice that all peace negotiations must consider. On the one hand, it does not include exhaustive investigations or serious trials with the full participation of the victims under due conditions of security and legal assessment. On the other hand, the bill of law contemplates excessive benefits for the perpetrators of crimes against international law, eluding the State's obligation to penalize the perpetrators of and participants in such crimes, pursuant to the principles of necessity, proportionality, and reasonability.

Indeed, this bill of law that the Congress of the Republic is about to approve in its present period of sessions that ends on June 20, 2005 enables perpetrators of grave human rights violations, war crimes, and crimes against humanity to go unpunished without even one day of incarceration. Thus, we are dealing with the possibility of their receiving a disguised pardon, through the following mechanisms:

**1. The least severe sentences go to those with the most responsibility** (Articles 3 and 30). The benefit of the "alternate sentence" proposed in this bill of law called "Justice and Peace" consists of applying a sentence other than the one set forth in the Criminal Code, which is not calculated in a manner proportionate to the graveness of the crime. In principle, the "alternate sentence" would be somewhere in the range of five to eight years of incarceration, and the actual sentence would be determined based on the beneficiaries' contribution to achieving national peace and their collaboration with justice. This scheme would enable the individuals with the greatest responsibility in committing crimes (who are also those who have the possibility of ordering their troops to disarm and who handle the greatest volume of information) to enjoy the benefit of the least severe sentences. So, instead of establishing sentences that are directly proportionate to the graveness of the crimes and to the ranks that demobilized persons had within the hierarchy of their armed group, the bill of law would grant the least severe sentences to the leaders of the groups and most likely the most severe sentences to rank and file soldiers.

**2. It offers the possibility of establishing sentences of less than five years** (Article 30, fifth paragraph). Although the Government has publicly announced the application of minimum five-year sentences for those condemned of crimes that cannot be amnestied or pardoned, it has introduced a clause into this bill of law for possibly establishing a sentence of less than five years of incarceration when this shorter period is the result of applying provisions set forth in the Criminal Code. That is to say, periods of time for the events contemplated in the Criminal Code, as well as in the Criminal Procedural Code that regulates the application of said Criminal Code, could be deducted from the "alternate sentence".

**3. The time spent in Santa Fe de Ralito counts as incarceration time** (Article 32). In addition to the significant reduction of sentences, this bill of law sets forth the possibility of counting the time spent in a “demilitarized zone” up to 18 months as effectively served incarceration time, no matter what luxuries, commodities, and liberties were enjoyed in said zone. And let us not forget that this Government initiative does not require that the persons who are in demilitarized zones be fully submitted to State control under the same conditions of austerity and restriction of rights as they would have to meet in a penitentiary institution.

**4. The sentence ends up reduced to zero days of incarceration.** Upon executing the mechanisms discussed in the above points, the sentence of incarceration pronounced against those responsible for grave human rights violations, war crimes, and crimes against humanity could in practice be waived, without the criminals spending even one day in incarceration. Indeed, leaders who apply for the benefits of this law would receive, first of all, an alternate sentence of only five years, thanks to their degree of collaboration in the demobilization of the troops under their command. In addition, for accepting their responsibility, they would obtain a reduction of half of that sentence, that is to say, they would have 30 months left to serve. By virtue of the benefit of “parole”, out of these 30 months they would only have to serve two-thirds to be released, that is, 20 months. Out of these 20 months, 18 months would be deemed already served for the time spent in Santa Fe de Ralito, counted from July 1, 2004 (the date on which the “demilitarized zone” was inaugurated) to December 31, 2005 (the date for which the culmination of the process has been scheduled). The two months left would be more than covered by the concept of one day of sentence reduced for every two days of work or study while they were in said zone, that is to say, a reduction of nine months.

In summary, the paramilitary leaders who apply for the benefits under this law would not have to spend one single day incarcerated and they would even have seven months of alleged incarceration left over, which they could use to reduce a sentence on another occasion. The above will be the situation if the reductions permitted in the new Criminal Procedural Code (2004 Law 906) are applied. If, on the contrary, the former Criminal Procedural Code (2000 Law 600) is used as a base, which presently still governs in most of the national territory, the calculation of the reductions will have the same outcome: zero days of incarceration. Pursuant to that set of regulations, out of the five year sentence one third of the sentence would be reduced for accepting the responsibility and requesting the formality called “early sentence”. The same deductions as in the above case would be applied to the remaining 40 months, as follows: for the benefit of “parole” only two-thirds of said sentence would have to be served, that is to say, a little less than 27 months, from which the 18 months spent in Santa Fe de Ralito would be deducted plus nine months for work or study. In both of these cases, the end result would be a guarantee of no days of incarceration for the criminals.

As the above analysis demonstrates, it is not certain that the bill of law called “Justice and Peace” contemplates minimum sentences of five years of incarceration. In addition to fooling the international community and the Colombian society, with such provisions the National Government is disregarding the State obligation to investigate, try and punish those responsible for crimes against international law, as well as its obligation to guarantee the rights of the victims of such crimes.

*Bogotá, June 15, 2005*

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