SPOTLIGHT

SPECIAL JURISDICTION FOR PEACE & CRIMES NOT ELIGIBLE FOR AMNESTY

Point Five (Victims) of the accords includes a Comprehensive System for Truth, Justice, Reparations and Non-Repetition (SCVJJNR) comprising five core elements: (1) comprehensive reparations, (2) guarantees for non-repetition, (3) a truth commission, (4) the unit for the search for disappeared persons, and (5) the Special Jurisdiction for Peace (JEP, by its Spanish acronym).

Among these five elements, the JEP assumes responsibility for processes related to both the punitive and restorative justice goals outlined in the accord. The objectives of the JEP include the following: satisfy the right of victims to justice, provide the truth about the armed conflict to Colombian citizens, protect the rights of victims, contribute to stable and durable peace, and create clear legal statuses for those who participated either directly or indirectly in the armed conflict. The December 2016 Spotlight provided an in-depth analysis of the Chamber of Amnesty and Pardon within the JEP. This Spotlight analyzes the processing of cases that are NOT eligible for amnesty or pardon along with key debates and questions surrounding the implementation of this primordial component of the final peace accords, currently under review in Colombia’s legislative branch in the form of a Legislative Act.

Below are the recently selected members of the Selection Committee for the JEP. Five individuals have been named for the commission charged with selecting the nearly one hundred magistrates who will comprise the JEP, and who will be responsible for determining the fates of all guerrillas, military members, and business leaders charged with crimes committed within the framework of the armed conflict.

Diego García-Sayán
Named by the United Nations

Claudia Patricia Vacca González
Named by the Commission of the Public University System in Colombia

Worked in the private sector fighting the pricing practices of pharmaceutical companies. Currently a lecturer at the National University and Director of the Center for Thought on Medications, Information, and Power

José Francisco Acuña
Named by the Criminal Chamber of the Supreme Court

Colombian legal scholar specializing in adolescent and adult criminal justice

Álvaro Gil Robles
Named by the European Council of Human Rights

Public defender in Spain for five years and Commissioner of Human Rights for the European Council

Juan E. Méndez
Named by the International Center for Transitional Justice in Colombia

An Argentine tortured in his youth under the dictatorship in his home country who later converted into an ardent defender of human rights

JEP Selection Committee
Autonomous and independent from the JEP

Responsible for selecting JEP magistrates, Director for the Investigation & Indictment Unit, and JEP President, among others

POINTS OF CONTENTION SURROUNDING THE JEP

The implementation of the JEP has resulted in significant political, legislative, and public debates over the content and spirit of the novel and comprehensive transitional justice mechanism. Two of these debates include how military members will be processed through the JEP, and whether or not certain details of the mechanism undermine the spirit of “non-repetition” that the JEP is intended to ensure.

Regarding the first point, military leaders had been promised that Article 28 of the Rome statute would not be included in the final accord, which, in sum, holds military commanders responsible for the actions of their subordinates. The premise of this assurance was that this was a negotiation between the GOC and the FARC, and the military were not to be a part of it, and thus it would be unjust to manage the sanctions component without their inputs. Nonetheless its likeness is included in the legislative act currently under consideration in the legislative branch, and the military leaders are calling for a revision of the content in order to clarify the bounds of commander responsibility.

A second debate surrounds assurances of non-repetition: public prosecuting attorney Néstor Humberto Martínez has been an outspoken critic of the constitutional reform currently under review that would place “continuous crime” cases (cases that occur over an extended period) exclusively under the purview of the JEP. The limited time frame of the JEP could present significant challenges in continuous crime cases such as forced disappearances, in which evidence is often found decades after the crime. Martínez is also concerned about the fact that the JEP would have jurisdiction over kidnappers with victims who are still not yet free, who he feels should instead fall within the realm of ordinary, rather than transitional justice. His arguments are based on the JEP cutoff date for crimes committed after December 1, 2016, except in the case of continuous crimes. He argues that one of the key principles of the peace accords – ensuring non-repetition – is violated when crimes that extend beyond the December 1 date are still included within the JEP proceedings, which offer more lenient sentencing for offenders. Because offenders who still retain kidnapping victims are continuing criminal behavior after the signing of the peace accord, Martínez feels that they should be submitted to the more stringent ordinary justice mechanisms.

Both of these issues remain unresolved at the time of this Spotlight’s writing, but remain core items of debate as the legislative branch reviews the proposed legislative act. It is anticipated that there will be a final vote on the act in early March.
CRIMES NOT ELIGIBLE FOR AMNESTY

Below is the standard path for processing crimes through the JEP that are NOT eligible for amnesty or pardon; should they be eligible, they would instead pass through the Chamber for Amnesty and Pardon, the supporting processes of which are analyzed in the December 2016 Spotlight. The following diagram depicts the processing of cases through the alternative Chamber for the Acknowledgment of Truth and Responsibility and the identification of acts and conducts.

Once all testimonies have been received, the Chamber will determine whether or not the alleged conduct occurred, if the person(s) under investigation committed the acts, and if the crimes are eligible for amnesty. If the crimes are not eligible for amnesty or pardon, and the acts and individuals are confirmed, those accused will have the opportunity to appear before the chamber and either deny the charges or contribute to the “recognition of the truth and responsibility.”

At this point, the accused has the following potential paths through the JEP:

- Deny the charges of the chamber and move on to the Unit for Investigation & Indictment, which will determine whether or not the charges have merit. If so, the Unit will pass the case on to the Tribunal for Peace.
- Agree with the findings of the Chamber and provide a full, detailed, and exhaustive account of what occurred in order to recognize truth and responsibility.
- Enter the Tribunal for Peace: First Instance Section for cases in which recognition of truth and responsibility have NOT occurred

At this point, the accused has the following three possible outcomes:

- Assert that the charges were not valid and, if found guilty, receive the harshest of the sanctions, which are those of ordinary justice.
- Concede that the charges were indeed valid while the proceedings are still in process, and receive alternative sanctions that are more harsh than those of the Chamber, but still less harsh than those of ordinary justice.
- Receive most lenient of all possible sanctions for crimes not eligible for amnesty.
- Absolved by this Section.

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