



Q&A:

**SPECIAL JURISDICTION FOR PEACE**

**1. About the penalties**

**1.1. How will the confinement (imprisonment) system be? Will there be prisons under INPEC surveillance?**

It depends on each case. The Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz – JEP*) contemplates a differentiated confinement regime:

- For those who recognize their responsibility in an early fashion for the most serious crimes, penalties will involve the effective restraint of liberty for 5 to 8 years. It will be a liberty restraint system under a surveillance and control regime, but with a degree of flexibility to enable the fulfillment of the reparation and restoration functions of the penalties, such as contributing to de-mining or crop substitution.
- For those who recognize their responsibility in a late fashion, the sanction to be imposed will involve prison sentences for 5 to 8 years, which shall be served in the ordinary confinement regime.
- Those who fail to recognize their responsibility and are declared guilty by the Tribunal for Peace, who shall in any case fulfill the agreed conditions, will be sentenced to prison terms of up to 20 years, to be served under the ordinary confinement regime.
- Penalties will be graded taking into consideration the level of determinant participation in the most serious and representative conducts.

**1.2. In which places will the convictions be served?**

The ways in which the penalties involving the effective restraint of liberty will be enforced, such as the places and the conditions of the regime, have not been agreed yet.

**1.3. Those responsible for heinous crimes will be convicted? Will they serve prison time?**

As previously mentioned, a differentiation will be made when imposing penalties based on the recognition of responsibilities. Those responsible for the most serious and representative cases committed in the context and by reason of the conflict who have recognized their responsibility must serve a penalty of 5 to 8 years of effective restraint of liberty, to be determined by the Tribunal for Peace. In turn, those who fail to recognize their responsibility or do so in a late fashion, shall serve prison sentences at ordinary prison facilities.

#### **1.4. What is the penalty involving the effective restraint of liberty and what is the difference with the penalties involving prison sentences?**

Penalties involving prison sentences will be served in ordinary conditions, which implies that they will be served under the ordinary prison regime. On the other hand, the penalties involving the effective restraint of liberty imply a special enforcement regime, subject to a special mechanism for their administration, surveillance and control that will enable, in turn, the fulfillment of the reparation and restoration functions to be imposed by the Tribunal for Peace.

### **2. About the relationship with the ordinary justice system**

#### **2.1. What is the relationship of the Special Jurisdiction for Peace with the ordinary justice system?**

Had it not been for the investigation work carried out by the Prosecutor General's Office (*Fiscalía General de la Nación*) and the proceedings and convictions of the ordinary justice bodies, including the Justice and Peace proceedings, it would not have been possible to reach this "Agreement for the creation of a Special Jurisdiction for Peace". It is thanks to the progress achieved by ordinary justice that it is possible to create this jurisdiction.

Despite the fact that the Agreement creates a special jurisdiction, separate from the ordinary justice system, there is a close relationship with ordinary justice and the existing proceedings and convictions. It is evidenced in three main aspects: (i) The JEP will start from the investigations and convictions of the ordinary justice system; (ii) In certain cases, the enforcement regime for the applicable penalties will be the ordinary regime; (iii) For the cases where there is no recognition of responsibility, the investigation and indictment will be supported on the Prosecutor General's Office (*Fiscalía General de la Nación*); and; (iv) The legal situation of the cases judged cases will be resolved taking into consideration the convictions already imposed.

#### **2.2. What will happen with the existing investigations and convictions under the ordinary justice system?**

All those who have directly or indirectly participated in the conflict will have the opportunity to recognize the truth and the responsibility in regard to the facts and conducts pursuant to investigation and conviction reports that, among other things, will be submitted by the Prosecutor General's Office (*Fiscalía General de la Nación*) and the administration of the judiciary branch. In this sense, the investigations carried out within the ordinary justice system and the existing convictions will be the bases for the judgments and convictions imposed in the JEP.

#### **2.3. The decisions of the Tribunal for Peace may be reviewed or revoked by the ordinary justice system?**

The Tribunal for Peace has been conceived as the closing body for the JEP. This means that the Tribunal for Peace will be the competent body to address and determine the final decisions regarding any appeals against the decisions of the different Chambers and Sections of the JEP.

### **3. About the amnesties or pardons**

#### **3.1. Which crimes are subject to amnesty or pardon?**

Upon the termination of the hostilities, in accordance with IHL, amnesty or pardon will be granted for political or related/connected crimes. In the case of the guerrillas, amnesty or pardon

will be granted for the crime of rebellion. Now therefore, in the development of that rebellion, other crimes have also been committed, such as illegal possession of weapons or conducts not forbidden by IHL, which could be considered as related/connected crimes. However, under no circumstances crimes against humanity, genocide or grave war crimes, among others, may be considered as crimes related/connected to political crimes. In any case, an amnesty law will be the one to determine which crimes may be subject to amnesty or pardon, and which will be the criteria to rule whether or not certain crimes are related/connected.

### **3.2. How will the relation/connection be determined?**

An amnesty law will determine which crimes may be subject to amnesty or pardon, and which will be the criteria to rule whether or not certain crimes are related/connected.

### **3.3. Who will grant the amnesties or pardons?**

Amnesties or pardons will be granted by a Chamber within the Special Jurisdiction for Peace, in accordance with the provisions set forth by the Amnesty Law. In regard to related/connected conducts, the Chamber will evaluate the fulfillment of the relation/connection criteria.

### **3.4. Will they be subject to conditions?**

In the first place, access to the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (*Sistema Integral de Verdad, Justicia, Reparación y No repetición* - SVJRNR) is contingent on the fulfillment of the commitments emerging from the Final Agreement, in particular the laying down of arms. In second instance, any special justice treatment within the framework of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition will be contingent on the contribution to the satisfaction of the victims' rights to truth, reparation and non-repetition. The conditions for the concession of pardons and amnesties will be determined in the Final Agreement.

### **3.5. The victims lose their rights to the truth, justice and reparation in the cases in which those responsible are granted amnesties or pardons?**

Absolutely not. In the first place, the Comprehensive System of Truth, Justice, Reparation and Non-Repetition incorporates judicial and extra-judicial mechanisms aimed toward the satisfaction of the victims' rights. For that reason, an agreement was reached to create the Commission for the Elucidation of Truth, Coexistence and Non-Repetition (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición*). That is also why all the victims of the armed conflict have access to the administrative reparation program, regardless of the judicial processes. Additionally, the Special Jurisdiction for Peace will administer justice, particularly for the most serious and representative crimes. In any case, the amnesties or pardons will be contingent on the fulfillment of the provisions set forth in the Final Agreement, in particular regarding the contribution toward the satisfaction of the victims' rights.

## **4. About the State agents**

### **4.1. Crimes committed by agents of the State will also be brought before the JPE?**

Yes. The efficacy in the materialization of the purposes of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition requires the participation of all those who directly or indirectly took part in the armed conflict, including the members of the FARC and the State

agents. The treatment for the agents of the State will be differentiated, but in any case it shall be equitable and balanced, and will be applied concurrently. The participation of all those involved simultaneously guarantees the satisfaction of the rights of all the victims and the legal security for those who committed crimes in the context and by reason of the conflict.

#### **4.2. State agents will also receive amnesties or pardons?**

As previously stated, the State agents will be subject to a special justice treatment that will be differentiated, simultaneous, balanced and equitable. However, the State agents may not receive amnesties or pardons because the Constitution authorizes the application of this measure to those responsible for political crimes and those related/connected to them; and as it is obvious, the agents of the State do not commit this kind of crimes.

### **5. About drug trafficking**

#### **5.1. Will drug trafficking be subject to amnesty or pardon?**

An amnesty law, which shall be democratically debated in the Congress of the Republic, will determine which crimes may be subject to amnesty or pardon, and which will be the relation/connection criteria, in particular which conducts aimed at funding rebellion may be considered as related/connected. In any case amnesties or pardons may not be granted for crimes that are unrelated to rebellion.

#### **5.2. How will drug traffickers be prevented from benefitting from this agreement?**

The Comprehensive System of Truth, Justice, Reparation and Non-Repetition, and in particular the Special Jurisdiction for Peace, will only be applied to those who have directly or indirectly participated in the armed conflict. In that sense, the Jurisdiction will not have competency over crimes committed outside of the armed conflict, or in regard to individuals who have not been linked to it. Specifically, different Chambers of the Jurisdiction will have the function of evaluating the relationship with the conflict, so as to prevent the access of “gate crashers” to the System. In any case, common crimes committed outside of the context of the armed conflict will not be brought before the Special Jurisdiction for Peace.

### **6. Other general questions**

#### **6.1. This agreement will be applied to other guerrilla groups?**

This agreement has been signed only by the FARC guerrillas. Any application of the special justice treatments to the ELN will be contingent on the signature of an agreement in which they commit to lay down their arms, to reincorporate into civilian life, and to contribute to the satisfaction of the rights of the victims to truth, justice, reparation and non-repetition.

#### **6.2. When will the Special Jurisdiction for Peace start operating?**

The Special Jurisdiction for Peace will be implemented after the signature of the Final Agreement. The sequence between the different mechanisms of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, as well as among these and the implementation of the other agreements, in particular those related to the laying down of arms and the reincorporation to civilian life, will depend on whatever is agreed on item 6 of the Agenda.

**6.3. How will the Magistrates of the Tribunal be elected? What will be the participation of the FARC in that election?**

In order to be elected as a Magistrate of the Tribunal for Peace, the candidates must meet the same requirements needed to be a Magistrate of the Constitutional Court, the Supreme Court of Justice or the Council of State, and should be knowledgeable on Human Rights (HR), International Humanitarian Law (IHL), or conflict resolution. The conformation of the Tribunal shall take into consideration both gender equity and respect for ethnic and cultural diversity. The selection process shall bestow confidence on the different sectors of the Colombian society. The delegations of the Government and the FARC will establish, by mutual agreement, the selection process for the Magistrates.

**6.4. This agreement is compatible with international standards?**

Based on the important aggregate of investigations, processes and convictions against those who committed serious crimes in the course of the Colombian internal armed conflict that has been produced by the Colombian justice system, the JEP will continue fulfilling the duty of the Colombian State to investigate, prosecute and penalize grave human rights violation and grave breaches of IHL, in particular those that constitute international crimes. Moreover, in order to have access to any special treatment within the framework of the JEP, there is the need to contribute to the elucidation of the truth and the reparation of the victims, and to guarantee non-repetition.

**6.5. What will be the consequences for those who fail to meet the conditions or return to engage in criminal activities?**

Whoever breaches the conditions, and, in particular those who reengage in committing crimes, will lose any special justice treatment. The Tribunal for Peace and the competent Chambers will supervise and certify the fulfillment of the convictions with the support of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition.