

**Questions for Technical Discussions with the Government of Colombia on the
Agreement on the Creation of a Special Jurisdiction for Peace (SJP)**

1. Political crimes and connected conduct

“The justice component foresees that at the end of the hostilities and in conformity with IHL, the Colombian State will grant the broadest possible amnesty for political crimes and connected crimes. A special law concerning amnesty will specify the scope of the notion of connection in this regard. In any case, the criminal offenses under the national legislation that correspond to crimes against humanity, genocide and serious war crimes [...]”

Questions:

- 1.1. Will the government propose legislation concerning “connected crimes”? If so, what conduct is foreseen to be included?
- 1.2. Will the government propose legislation codifying Crimes against Humanity under Colombian laws? Will it adhere to the definition set forth by the Rome Statute?
- 1.3. With regard to “serious” war crimes, what criteria will be used to distinguish between “serious” and “ordinary” war crimes?

2. Jurisdiction of the SJP

“The SJP will have jurisdiction in respect of all of those who, directly or indirectly, have participated in the internal armed conflict, including the FARC-EP and State agents for crimes committed in the context of or because of the conflict, in particular as regards the most serious and representative cases.”

Questions:

- 1.1. Will the SJP have jurisdiction over all levels of State agents who are usually investigated and prosecuted before the Supreme Court (*aforados*), including high ranking officials such as generals of the armed forces?
- 1.2. Has it been estimated how many persons may fall under the jurisdiction of the SJP?

3. Procedure

For people who recognize the truth and responsibility, the SJP envisages that they “will be sentenced, based on the admitted conducts after being cross-referenced with the investigations of the Office of the Attorney General, the sanctions imposed by other State organs and existing judgments [...]”

Question:

- 1.1. What criteria will be used for the selection of “the most serious cases and representative” cases?
- 1.2. Will there be a special organ within the SJP responsible for the selection of cases?
- 1.3. Are prioritization, sequencing and accumulation of cases envisaged? If so, what criteria will be followed?
- 1.4. Will the selection of cases take into account a category of “those most responsible”? If so, what criteria will be used to establish those that fall under such category?
- 1.5. Will the Special Tribunal be able to order investigative steps in cases based on admitted conducts and investigations by the Office of the Attorney General?
- 1.6. How would the investigative process be for persons under investigation, including members of the armed forces currently being investigated for false positives cases?

4. Sanctions

“For all those who recognize responsibilities for crimes under the System jurisdiction, the sanction will be a restriction of liberty and rights component that guarantee compliance of their reparative and restorative functions by means of carrying out specific works, tasks and activities and, in general, for the satisfaction of victims’ rights. The sanctions for those who recognize very serious crimes will be a minimum of 5 years and a maximum of 8 of effective restriction of liberty, in special conditions. The persons that make such recognition before the Tribunal belatedly will be sanctioned with a prison penalty from 5 to 8 years, in ordinary conditions.”

Questions:

- 1.1. What sorts of “restrictions of liberties” are envisaged/agreed upon? How would they be applied in practice?
- 1.2. What type of “special conditions” are envisaged/agreed upon and how would they be applied in practice?

- 1.3. With regard to those who acknowledge responsibility for crimes belatedly, what timeline would be envisaged to determine the early or late timing of the acknowledgement of responsibility?
- 1.4. What type of “specific works, tasks and activities” would the persons subject to restriction of liberties perform?
- 1.5. Will the nature of the crimes and mode of participation of the defendant be taken into account in the imposition of sentences?
- 1.6. Will victims be consulted on whether the said measures satisfy their rights?
- 1.7. What sanctions will be applied to persons who only acknowledge part of the truth and/or part of their responsibility? How will full recognition be assessed?
- 1.8. Will sanctions be compatible with participation in political activities/public affairs?

5. Differentiated treatment for State agents

The agreement between the Government of Colombia and the FARC-EP on the creation of a SJP indicates that the system would also have jurisdiction with respect to State agents; however, the explanation provided by the Office of the High Commissioner for Peace¹ indicates that “[...] 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”.²

Questions:

- 1.1. What procedure is envisaged for State agents?
- 1.2. Would existing investigations and sentences be taken in account to build on the cases?
- 1.3. Will the same criteria for the selection of the most serious and representative cases be used for State agents?
- 1.4. What sanctions are envisaged for State agents? Will State agents be subject to the same sanctions as stipulated in the joint communiqué?
- 1.5. Will there be differentiation according to level of responsibility and nature of the crimes in the imposition of sanctions against State agents,?

¹ *Oficina del Alto Comisionado para la Paz*, Q&A: Special Jurisdiction for Peace, available at: <http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Documents/qa-special-jurisdiction-for-peace.pdf>

² *Oficina del Alto Comisionado para la Paz*, Q&A: Special Jurisdiction for Peace, point 4.