



Peace Accords Matrix Barometer Initiative Briefing
Comparative Analysis of Alvaro Uribe's Proposals

Already in the Accord:

1. Protection for FARC Members that agree to stop all criminal activities, drug trafficking and extortion included.	
Relevant Stipulations in Accord	Comparative Analysis
<p><i>The accord already calls for FARC members to halt criminal activities.</i></p> <p>Protocol on Ceasefire pg. 199: "The FARC commits to ceasing...illicit activities to finance its organization."</p> <p><i>The accord already calls for protection of FARC members who have halted criminal activities.</i></p> <p>Agreement on the End of the Conflict pg. 79: "The National Government will create a subdivision of the UNP, specialized in the security and protection of members of the new political party or movement that stems from the FARC's transition to legal activity, its activities and headquarters, as well as the former FARC members that reintegrate into civilian life and their families....the subdivision on specialized security and protection will have the active and permanent participation of at least 2 representatives of the new political party or movement that stems from the FARC's transition to legal activity."</p>	<p>The accord already addresses this proposal, however to make it more specific, the following wording could be added:</p> <p>"The FARC commits to ceasing...illicit activities [including drug trafficking and extortion] to finance its organization" (Protocol on Ceasefire pg. 199.)</p>
2. Amnesty for low-level guerrilla members who are not charged with crimes against humanity.	
Relevant Stipulations in Accord	Comparative Analysis
<p><i>Amnesty is already offered in the accord for low-level guerrilla members NOT charged with crimes against humanity.</i></p> <p>Agreement on Victims pg. 133:</p>	<p>The accord already addresses this issue in detail.</p> <p>It references the Rome Statute which defines a crime against humanity as the (paraphrased) widespread commission</p>



“When hostilities come to an end, according to IHL, the Colombian State can grant an amnesty “as broad as possible” to the rebels who belong to organizations that have subscribed to a final peace agreement, according to that established in article 10, as well as to those persons who have been accused or condemned for political or related offences through orders handed down by justice. The broadest possible amnesty will be granted....There are crimes for which amnesty or pardon cannot be granted...crimes against humanity and other crimes defined in the Rome Statute cannot be offered amnesty.”

against civilians of: murder, extermination, enslavement, deportation or forcible transfer, imprisonment, displacement, torture, rape, forced disappearances, persecution of a particular group, apartheid, and inhumane acts. The Rome Statute defines a “war crime” as the large-scale commission of: willful killing, torture, willfully causing injury, extensive destruction of property, taking hostages, confinement, and deportation.

3. Prioritize the manual eradication of illicit drugs, without the government losing the right to fumigate when it is necessary, being careful not to harm humans, animals or natural resources.

Relevant Stipulations in Accord	Comparative Analysis
<p><i>The accord already prioritizes manual eradication, but allows for fumigation.</i></p> <p>Agreement on Illicit Crops pg. 97: “In cases where there is not agreement with the communities, the Government will proceed with eradication of illicit crops, prioritizing manual eradication when possible, respecting human rights, the environment and wellbeing. The FARC-EP believes that any eradication should be manual.”</p>	<p>The accord already addresses this issue in detail.</p>

Requires Clarification:

4. Define the nature of the punishment for those charged with heinous crimes under the Special Jurisdiction for Peace.

Relevant Stipulations in Accord	Comparative Analysis
<p><i>The accord states that those accused of crimes not eligible for amnesty will serve five to eight years in “effective confinement,” but does not define what “effective confinement” is.</i></p> <p>Agreement on Victims pg. 147: “The Special Jurisdiction for Peace says that sanctions applied to those who recognize the truth and their responsibility before the Recognition Chamber for Infractions will have a minimum duration</p>	<p>The “no” coalition wants “effective confinement” to be defined in the text of the accord instead of being defined by the Special Jurisdiction for Peace after its creation.</p> <p>The “no” coalition suggests that one possible “effective confinement” mechanism could be work farms. Another possibility is that individuals charged under the Special Jurisdiction for Peace could participate without</p>



<p>of five years and a maximum of 8 years...They will include effective restriction of liberties and rights, such as the right of residence and movement...Effective restriction means that there are appropriate mechanisms for monitoring and supervising to guarantee the fulfillment of the restrictions...the Special Jurisdiction for Peace will decide on the effective restriction of liberty that will be necessary to assure the fulfillment of the sanction, conditions that in no cases should be understood as prison, or similar security measures.”</p>	<p>payment in public works projects mentioned under point six of this document.</p>
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5. Drug trafficking should not be defined as a political crime under any circumstance.

Relevant Stipulations in Accord	Comparative Analysis
<p><i>It is not clear from the accord if drug trafficking is considered a political crime. Political crimes are eligible for amnesty in the accord.</i></p> <p>Agreement on Victims pg. 133: “When hostilities have ended...the widest possible amnesty will be applied to rebels that belong to the organizations that sign the peace agreement...and people who have been accused or sentenced for political crimes.”</p> <p><i>The accord is clear that drug trafficking is not in the list of crimes ineligible for amnesty (point 40, pg. 136).</i></p>	<p>We suspect that the fear of the “no” campaign on this issue is that people in prison accused of drug trafficking in Colombia could be released if the accord considers drug trafficking a political crime. Political crimes are currently eligible for amnesty in the accord; hence Uribe wants drug trafficking to not be considered a political crime.</p> <p>Currently, in the accord drug trafficking appears to be eligible for amnesty (point 40, pg. 136). That is, drug trafficking is not on the list of crimes ineligible for amnesty.</p> <p>Issues for clarification: Is drug trafficking considered eligible for amnesty, for whom and for what time period? For example, many FARC members have engaged in the drug trade, and we assume they will receive general amnesty. This begs the question: What about drug traffickers currently in prison that were FARC members? What about drug traffickers currently in prison that were not FARC members?</p> <p>One possible solution is to define that drug trafficking is not a political crime <i>nor</i> a crime ineligible for amnesty. The following wording could be added to the accord: “Under the Special Jurisdiction for Peace, drug trafficking is not considered a political crime, nor is it considered a heinous crime/crime against humanity. Therefore, low-level FARC members who</p>



	have engaged in drug trafficking during the armed conflict can receive general amnesty.”
6. FARC members receiving the 24-month stipend should be required to engage in illicit crop eradication programs.	
Relevant Stipulations in Accord	Comparative Analysis
<p><i>The accord states that all former FARC members will receive a stipend.</i></p> <p>Agreement on End of Conflict pg. 67: “Each one of the men and women that belong to the FARC-EP upon the termination of the cantonment zones will receive for 24 months a monthly stipend equal to 90% of the minimum wage, as long as they do not have a contractual agreement that generates income.”</p>	<p>This objection may be rooted in the concept of all FARC members automatically receiving a stipend for two years without working.</p> <p>Alternatives could include: (1) a one-time smaller payment for all FARC-EP members; (2) After receiving one-time payment, FARC members can join the public works coca eradication plan as suggested by Uribe; (3) Create additional public works projects for FARC members to earn the stipend who may not live near coca-regions</p>
7. The commitments to the FARC should be fulfilled within the fiscal and financial capabilities of the country, that is without affecting fiscal norms, confidence in investment in the private sector etc.	
Relevant Stipulations in Accord	Comparative Analysis
<p>The accord does not specify how much implementation will cost. Narrowing the topic to direct payments to FARC combatants for 24 months at 90% of the minimum wage would cost \$5,120.64 per combatant or a total cost of \$30 million—based on an estimate of 6,000 FARC combatants.</p>	<p>Based off the \$600 million donor pledge from the European Union, for instance, fulfilling the FARC stipend requirement would leave \$570 million in this one fund.</p>
8. The commitments made to the FARC should not interfere with decentralization, nor the obligations of mayors and governors to equally address the needs of all citizens.	
Relevant Stipulations in Accord	Comparative Analysis
<p>There are numerous stipulations in the accord that seek to increase the decentralization of governance to local levels (for example see Agreement on Political Participation pg. 43).</p> <p>At the same time numerous stipulations in the accord give municipal and departmental governments new mandates from the central government, specifically on budgeting and taxation (for example see Agreement on Comprehensive Rural Reform pg. 15)</p>	<p>This proposal may reflect concern regarding central government overreach which may violate current structures of separation of powers/decentralized governance. However, it is unclear which specific stipulations Uribe actually objects to. Perhaps this could be addressed by adding language to protect and preserve existing commitments to local government autonomy.</p>



9. Community consultative processes should be limited in time by Government legal decrees as to not hinder balanced development in the country.	
Relevant Stipulations in Accord	Comparative Analysis
<p>There are 35 “consultative processes” across the accord.</p> <p>Many consultative processes are framed in the accord as mechanisms for enhancing the fidelity of implementation through planning, acquisition of local feedback, monitoring of implementation etc. Therefore, it could be argued that these consultative mechanisms are tied to implementation mandates and thus could be subject to expiration.</p>	<p>The objection here may be that these consultative processes appear to have no end date.</p> <p>In order to address these concerns, a sunset clause could be written into the consultative processes. For example, one of the 35 consultative processes is linked to the implementation of the Development Programs with a Territorial Focus (PDET). This consultative process could be linked to the implementation timeline of the PDET or linked to implementation progress on the PDET. For example, it could be specified that consultative mechanisms will expire when high levels of implementation are achieved for the associated stipulations. Where there is no specific program attached to the consultative process, it could have a mandate of 3-5 years. Alternatively, the accord could state that local governments could decide to continue the processes after the defined period.</p>
10. The ceasefire with the FARC-EP should not end on October 31.	
Relevant Stipulations in Accord	Comparative Analysis
<p>This timeline was declared post accord.</p> <p>The Ministry of Defense has declared that the ceasefire can be renewed after October 31.</p>	<p>The objection here may be that the ceasefire limit puts undue pressure on the “no” campaign’s negotiations with the government.</p> <p>Santos could institute a three-month renewable ceasefire to lessen the pressure. A central question in light of this discussion is the scope of amnesty coverage. Is a ceasefire violation in the coming months covered under amnesty?</p>



Requires Revision

11. The Transitional Tribunal Court has exorbitant power. The ability of the Special Tribunal for Peace to define criminal conduct is particularly worrying. It would be better to apply the Peace and Justice law to the FARC or to create a new Transitional Chamber of the Supreme Court.	
Relevant Stipulations in Accord	Comparative Analysis
<p><i>The accord mandates the creation of a Special Jurisdiction for Peace and a Peace Tribunal.</i></p> <p>Agreement on Victims pg. 130: "Create a Special Jurisdiction for Peace to carry out judicial function autonomously regarding violations of Humanitarian Law and Human Rights."</p> <p>Agreement on Victims pg. 133: "For the Special Jurisdiction for peace...the sections of the Peace Tribunal, upon handing down sentences, will make an indictment regarding the conduct of the individual, which could be different from indictments by judicial or administrative authorities."</p>	<p>The objection here seems to be the "autonomous" judicial function of the Special Jurisdiction for Peace, and the desire if for greater limits on the power of the Peace Tribunal, and specifically its power to define criminal activity.</p> <p>Uribe proposes using the existing Peace and Justice Law or the creation of a transitional chamber within the existing Supreme Court.</p> <p>The accord already defines crimes that are ineligible for amnesty. Perhaps instead of stating the Special Jurisdiction for Peace will "make an indictment...which could be different from indictments by judicial or administrative authorities," the accord could state: "The Special Jurisdiction can hand down sentences regarding the conduct of each combatant, consistent with point 40 of the Agreement on Victims."</p> <p>(point 40, pg. 136 states that the following crimes are not eligible for amnesty: crimes against humanity, genocide, war crimes, hostage taking, torture, extra judicial executions, force disappearance, sexual violence, abduction of minors, forced displacement, recruitment of minors.)</p> <p>In addition, the word "autonomously" could be removed from the phrase: "Create a Special Jurisdiction for Peace to carry out judicial function autonomously regarding violations of Humanitarian Law and Human Rights" (Agreement on Victims pg. 130)</p>



12. Evaluate the eligibility of FARC members accused of heinous crimes to run for political office, in light of the fact that existing law in Colombia seems to limit eligibility to run for political office for those people convicted under the 8,000 process and those accused of para-politics as well as paramilitaries and many of the 140,000 incarcerated individuals [in Colombia].	
Relevant Stipulations in Accord	Comparative Analysis
<p><i>The accord allows for the creation of a FARC political party, but does not state who can run for political office.</i></p> <p>Agreement on the End of Conflict pg. 62: When the disarmament process is complete, the representatives of the FARC at the negotiation table will present themselves and formally register their decision to transform themselves to a political party with the National Electoral Council.</p>	<p>Uribe does not want FARC members convicted of war crimes to hold political office.</p> <p>One of the following alternatives could be proposed:</p> <ol style="list-style-type: none"> 1. All FARC members are eligible to run for political office except those found guilty of war crimes 2. All FARC members are eligible to run for political office after serving their 5-8 year confinement. 3. Political rights may be returned to all individuals after they have served their sentence.
13. Have Congress pass a law for judicial relief for soldiers and police with "relief without impunity and without making them equal to the FARC."	
Relevant Stipulations in Accord	Comparative Analysis
<p><i>The accord says that state agents as well as FARC members will be subject to the Special Jurisdiction for Peace.</i></p> <p>Agreement on Victims pg. 134: "The justice component will also be applied to agents of the state that have committed crimes related to the armed conflict, and in this event, justice will be applied in a differential manner, granting equal, balanced, simultaneous and symmetric treatment. This treatment should include the guarantee of rights by the state as well as the states monopoly on the legitimate use of arms."</p>	<p>This issue here is a dislike of the "equal treatment" language for FARC members and members of the government armed forces.</p> <p>FARC members will be convicted and punished based on whether their actions during the war constitute a crime against humanity or a war crime. If so, the scale of punishment will depend upon the severity of the crime. Both the crime and the punishment exist on a continuum of "less severe" to "severe." We expect that Uribe would accept a solution in which FARC soldiers are held to a slightly stricter standard than government soldiers and police officers on both continuums.</p>