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THE LEGAL FRAMEWORK FOR PEACE

INTRODUCTION

The Legal Framework for Peace (LFFP) provides for the creation of temporary and extraordinary transitional justice mechanisms that aim to facilitate the end of the conflict and an effective transition to lasting and stable peace. It is the legal foundation for the demobilization of illegal armed groups, their sentencing for crimes committed in the conflict, and the victims' exercise of their right to truth, justice, and reparations. The Framework will be the instrument that governs the selection of cases for judicial processing, making it especially significant if the FARC demobilize as part of the current peace process. It will also guide the creation of a truth commission, reparations programs, and other mechanisms that should complement each other and the efforts of the different branches of power and the existing judicial system in the implementation of a peace agreement and transitional justice work. The measure, which comprises Legislative Act 01 of 2012, was approved by Congress on June 14 2012, and despite extensive controversy surrounding its constitutionality, the Act has since been approved in the Constitutional Court. This spotlight summarizes the LFFP's content and discusses arguments for and against it in the context of the GOC-FARC peace process.



FRAMEWORK SUMMARY

Article 1: Forming transitional justice tools

This section establishes that a transitory article will be added to the Constitution. This new article would stipulate that transitional justice mechanisms are exceptional and have the goal of facilitating lasting peace, creating guarantees of security and non-repetition for the Colombian citizenry, and fulfilling the victims' rights to justice, truth, and reparations to the highest degree possible. The illegal armed groups and State armed forces can receive extraordinary judicial treatment as part of these mechanisms, thereby supporting the State's obligation to investigate and sanction certain crimes.



This article also states that a law must create and define the responsibilities of a truth commission. The National Attorney General will be responsible for determining the criteria for the selection and prioritization of cases to be processed under national and international laws dealing with crimes against humanity, genocide, and war crimes, as well as the cases that can receive alternative sentences and judicial benefits. Any special treatment or benefits will be subject to the fulfillment of conditions such as leaving weapons aside, admitting responsibility, contributing to the clarification of truth and the integral reparation of victims, and the freeing of hostages and minors serving as child soldiers in the illegal armed groups.

Additional paragraphs of this article state that these transitional justice mechanisms apply to ex-combatants who demobilize collectively as part of a peace agreement, or individually according to procedures outlined in national law. Transitional justice mechanisms do not apply to criminal groups that are not part of the armed conflict or ex-combatants who continue to commit crimes after demobilization.

Article 2: Legal timeline

The second article states that once the national government has made a Congressional proposal detailing the application of the instruments established by Article 1, Congress will have four years to define and sign into effect all laws governed by the proposal.

Article 3: Political participation

This section states that a transitory article will be added to the Constitution to require passage of a statutory law to regulate the types of crime that are related to political crimes, and affect an individual's ability to participate in politics. Crimes against humanity and genocide cannot be classified as political crimes. Therefore, people whose cases have been processed for these crimes cannot participate in politics.

Article 4: Effectiveness for implementation

The last article declares that the LFFP legislative act takes effect in the moment of its promulgation.¹

ARGUMENTS SURROUNDING THE LFFP

The LFFP caused extensive political debate, most of which focuses on possible impunity.

Arguments supporting the LFFP

The GOC and others who in general support the current peace process made the following points on the LFFP.

1) Criteria for the selection of cases. After 50 years of conflict, maximalist transitional justice proposals that aim to investigate all perpetrators of violence are not realistic. The legal system cannot be open to thousands of accumulated individual cases of murder, extortion, and other crimes. It is therefore necessary to define criteria for the selection of cases against individuals considered ultimately responsible for specific crimes. It is important to be realistic and find a balance between the selection of cases to investigate and available time and resources.

2) Mechanisms to prevent impunity. Complementary instruments like truth commissions that clarify facts will prevent impunity and fulfill the victims' right to truth, as has occurred in other countries.

3) Respect for victims' rights. The Framework advances victims' rights to justice, truth, and reparations. The model designed in Colombia will be applied in a way that does not violate these rights, and will also assure guarantees for non-repetition.

Arguments against the LFFP

Various counter-arguments have been made.

1) International law prohibits amnesty. International norms do not allow amnesties for human rights violations. The selection of emblematic cases to investigate leaves many violent acts aside. This implies that the rights of victims of selected cases are more important than victims of non-"emblematic" cases, in addition to failing to bring all perpetrators to justice.

2) Victims' rights are not upheld. The Framework does not fulfill the victims' right to truth, justice, and reparations, and will therefore be rejected by international transitional justice bodies. This could mean international intervention in the implementation of peace agreements, or at the least a damaged human rights and justice reputation.

3) The LFFP is unconstitutional. The LFFP aims to suspend a Constitutional article that requires the State to investigate all grave human rights violations. In addition to attempting to override Colombia's

governing document, the LFFP alleviates the responsibility of bringing human rights offenders to justice and is therefore unconstitutional.ⁱⁱ

ICC Reaction

International Criminal Court Chief Prosecutor Fatou Bensouda wrote to the Constitutional Court to express concern over the LFFP's implication that sentences for grave infractions of international law could be suspended. She added that international law permits conditional reduction - not suspension - of these sentences.ⁱⁱⁱ

LFFP CURRENT STATUS

On the 28th of August, the Constitutional Court declared the LFFP constitutional. The Court found that a condition of the LFFP's approval was that all grave human rights violations – not just systematic crimes – be processed per international law. Reduced sentencing will be allowed as a conditional judicial benefit, but the suspension of sentences will not be allowed, per the ICC's concern. The selection of cases of ultimately

responsible individuals for investigation and judicial processing is permissible, as long as other cases are also investigated. The Court's statement also highlighted the need to terminate the conflict before the LFFP is implemented. Victims' rights to see an effective investigation of all grave crimes were also prioritized.^{iv} GOC peace process negotiator Humberto de la Calle stated that the greatest challenge for the LFFP is the definition of crimes against humanity and political crimes. These definitions will impact the legal ability of ex-FARC members to participate in politics.^v The question remains of mid-level commanders and how they will be processed.

Reactions to the Court's approval of the LFFP were varied, with the GOC expressing satisfaction that the Act has been approved, and critics their intention to continue fighting its legal implementation.^{vi}

Photo sources : Congressional logo: <http://www.senado.gov.co/sala-de-prensa/noticias>
Congress building and flag: <http://www.alcaldiabogota.gov.co/sidie/index.jsp>

ⁱ http://www.elementosdejuicio.com.co/index.php?option=com_content&view=article&id=1400:texto-del-acto-legislativo-1-de-2012-marco-juridico-para-la-paz&catid=45:archivo&Itemid=283

ⁱⁱ http://www.eltiempo.com/justicia/intenso-debate-por-marco-juridico-para-la-paz_12948362-4

ⁱⁱⁱ <http://www.semana.com/nacion/articulo/una-carta-bomba/354430-3>

^{iv} <http://www.semana.com/nacion/articulo/para-alcanzar-paz-legitima-justicia-transicional-corte/355592-3>

^v <http://www.semana.com/nacion/articulo/los-alcances-del-delito-politico-nudo-del-proceso-paz/356275-3>

^{vi} http://www.eltiempo.com/politica/reacciones-a-aprobacion-de-la-corte-al-marco-para-la-paz_13027302-4

