

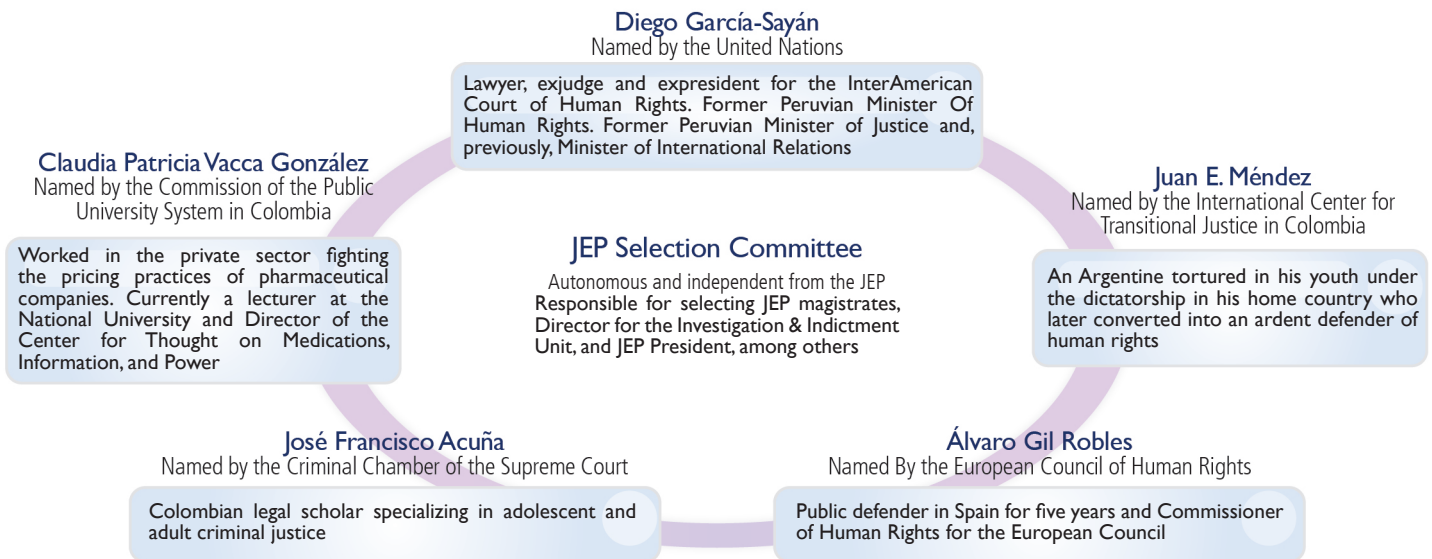
SPECIAL JURISDICTION FOR PEACE & CRIMES NOT ELIGIBLE FOR AMNESTY

Point Five (Victims) of the accords includes a Comprehensive System for Truth, Justice, Reparations and Non-Repetition (SCIVJRNR) 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.



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.

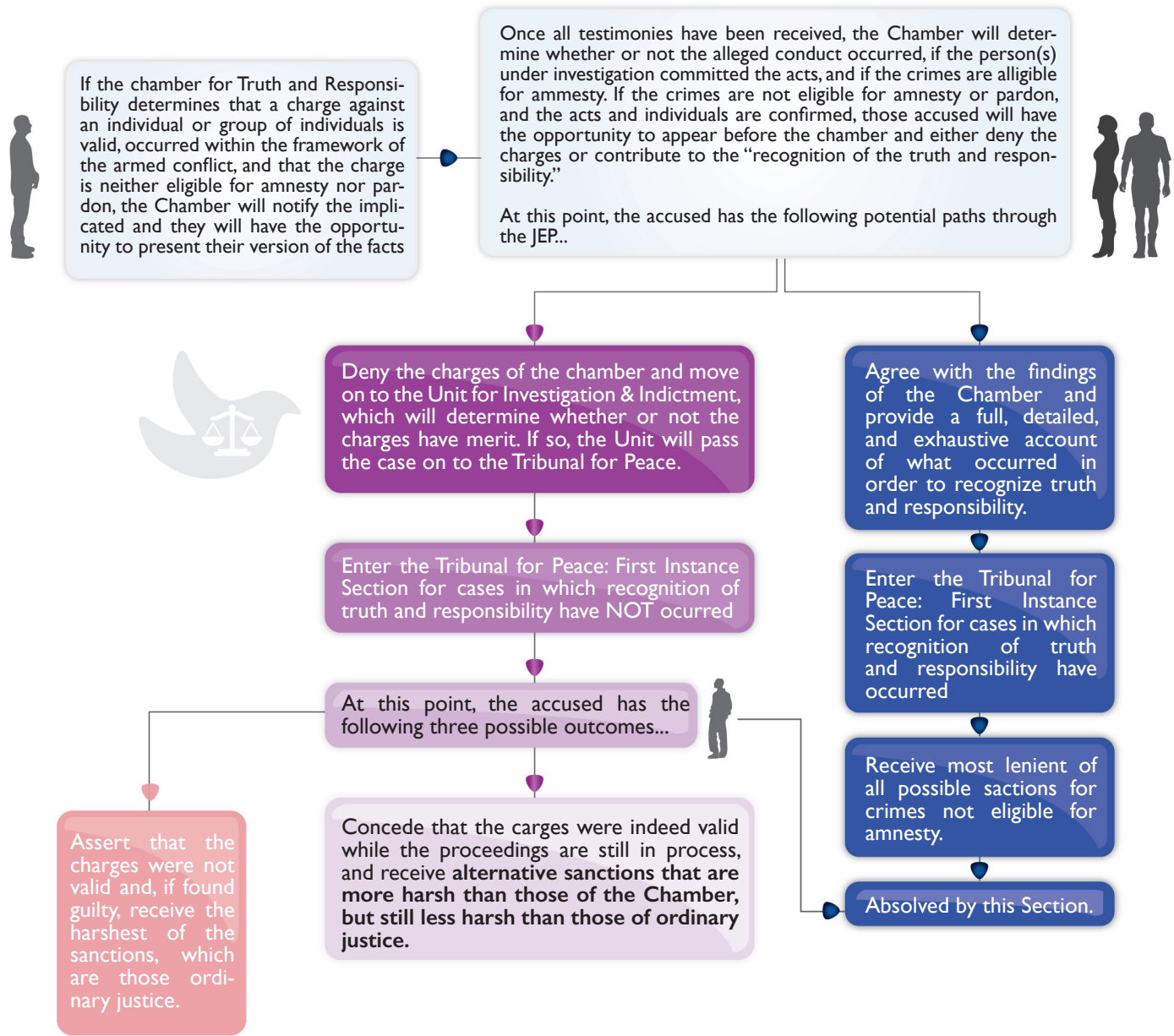
A second debate surrounds assurances of non-repetition: public prosecuting attorney Néstor Humberto Martínez has been an outspoken critic of the constitutional reform currently under review that would place “continuous crime” cases (cases that

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.**



Individuals or groups will receive alternative sanctions if they claim responsibility for their acts within the Chamber of Truth and Responsibility, in the First Instance Section for cases in which recognition of truth and responsibility have occurred, or in the First Instance Section for cases in which recognition of truth and responsibility have NOT occurred but in which there is an acknowledgment of responsibility throughout the trial process. Alternative sanctions include “effective restriction of freedoms and rights” – but nothing resembling incarceration – for between five and eight years. If the individual

passes through the First Instance Section for cases in which recognition of truth and responsibility have NOT occurred and are subsequently found responsible (i.e., not absolved), they will be subjected to ordinary justice, which requires a mandatory 15 years (max 20) of restriction of freedoms and rights. Though not depicted in the above figure, the Tribunal for Peace does include several options for appealing both previous decisions prior to the JEP, and those findings emanating from the two First Instance Sections within the Tribunal for Peace.