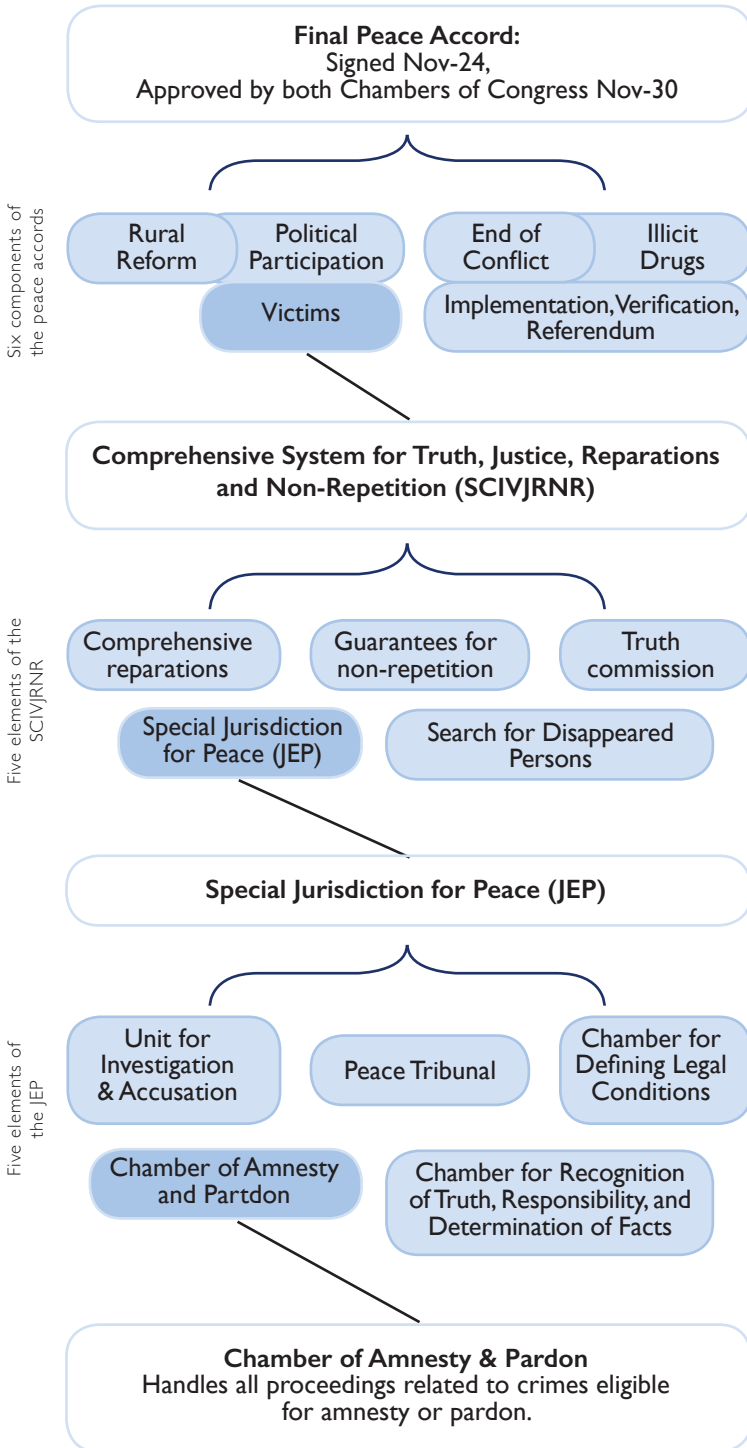


JUSTICE & AMNESTY IN THE PEACE ACCORD

Structure of Justice Component of the Comprehensive System for Truth, Justice, Reparations, and Non-Repetition.



While legislators and other political leaders debate the details of implementing multiple aspects of the final accords - signed on November 24th and approved by both Chambers of Congress six days later - the pending content of the amnesty provisions within the accord are the most pressing concern.

The final accord contains six primary components: (1) comprehensive rural reform, (2) political participation, (3) end of conflict, (4) solutions to the problem of illicit drugs, (5) victims, and (6) implementation, verification, and referendum (pictured at left). This spotlight analyzes the justice and amnesty sub-components of Point Five: Victims.

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). Among these five elements, the JEP assumes responsibility for processes related to both the punitive and restorative justice goals outlined in the accord. The JEP is neither permanent nor is it intended to substitute for ordinary justice, as it is dedicated solely to acts that occurred within the framework of the armed conflict.

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 JEP also has five sub-components, one of which is the Chamber of Amnesty and Pardon.

Amnesty has historically been used in peace negotiations as a means to facilitate the end of wars and peace processes. In this case, the bulk of the beneficiaries from any amnesty benefits would be the rank-and-file FARC members. Amnesty arguably offers a politically and economically efficient means to reintegrate a large swathe of demobilizing guerrillas without clogging already beleaguered penal systems and creating enormous strain on state budgets. It is contentious, however, because of attendant concerns about impunity for crimes committed during the war and for potentially leaving victims feeling as though, ultimately, justice has not been served.

JUSTICE & AMNESTY IN THE PEACE ACCORD

DETERMINING ELIGIBILITY FOR AMNESTY IN TERMS OF THE PEACE ACCORD

The Chamber of Amnesty and Pardon is one sub-component of the Special Jurisdiction for Peace (JEP), and will handle all proceedings related to crimes eligible for amnesty. It is designed to favor the rank-and-file guerrillas who have been connected to political and related crimes. No aspect of the JEP substitutes for ordinary justice, and it is designed to only manage crimes directly or indirectly related to the armed conflict. The design of the criteria for amnesty is such that the “broadest possible” terms will be permitted within the framework of the final accords, International Human Rights Law, International Humanitarian Law, and the Rome Statute. As such, in the event that

amnesty has not already been explicitly prohibited for a particular crime within these frameworks, the principle of favorability will be applied (i.e., the crime will be considered eligible). All cases will be determined on a case-by-case basis. Individuals who receive sanctions within this and other processes of the SIVJRNR will not be restricted in any way from political participation. Additionally, neither amnesty nor pardon of an offender will interfere with a victims’ right to receive reparations. The final accord proposes the below distinctions between crimes that do and do not qualify for consideration for amnesty, pardon, or special penal treatment.

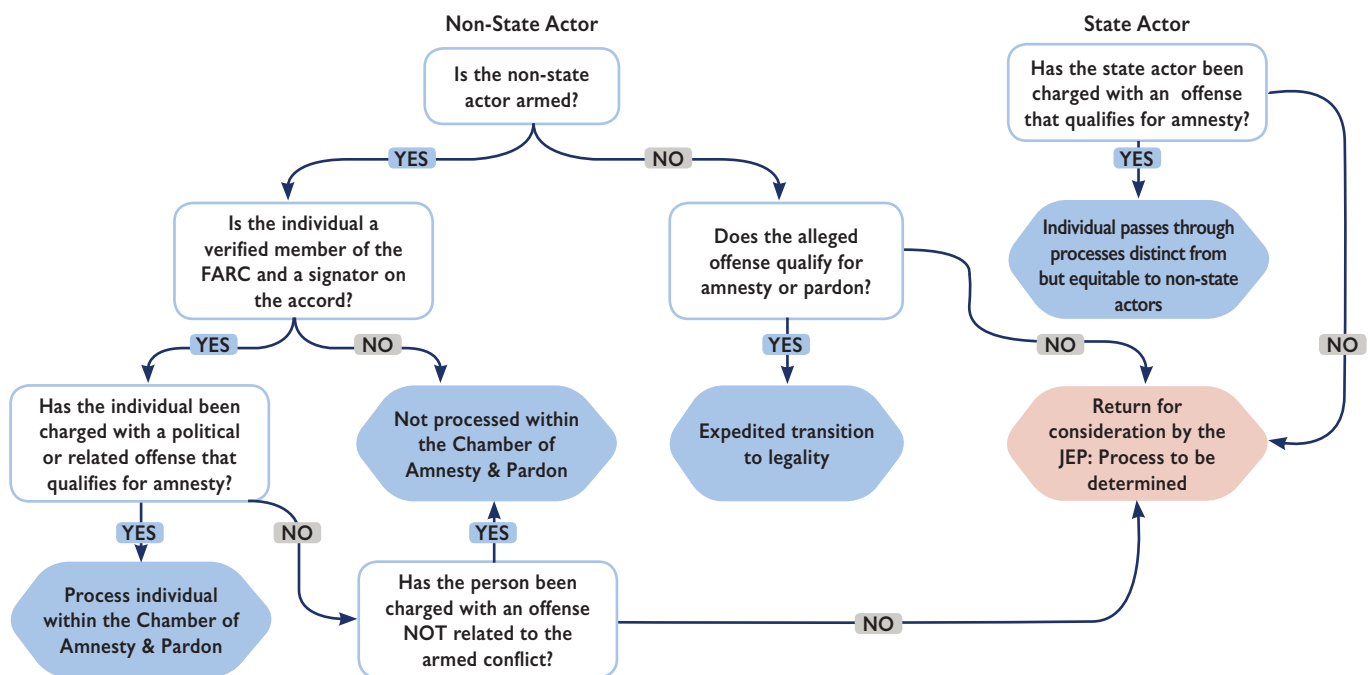
CRITERIA FOR ELIGIBILITY FOR AMNESTY OR PARDON

- Political and related crimes defined by one set of inclusive criteria and one exclusive criterion. Inclusive criteria: (1) those crimes related to the development of the rebellion committed within the armed conflict; (2) crimes in which the passive subject of the conduct is the state and its current constitutional regiment; (3) acts intended to facilitate, support, finance, or hide the development of the rebellion. Exclusive criteria: Excludes international crimes and those covered by international law and the Rome Statute.
- Political and related crimes may include: rebellion, sedition, coup, illegal possession of arms, combat deaths that conform to International Humanitarian Law standards, conspiracy to commit rebellion, and related crimes.
- If the crime involves illicit crop cultivation, the relation to rebellion will be evaluated using existing Colombian jurisprudence, applying the principle of favorability.

CRITERIA FOR NON-ELIGIBLE CRIMES

- Crimes named in the following three overarching frameworks: International Human Rights Law, International Humanitarian Law, and the Rome Statute.
- Such crimes named in the frameworks above include the following: crimes against humanity, genocide, serious war crimes, taking hostages, grave privation of liberty, torture, extrajudicial killings, forced disappearance, sexual violence, child abduction, recruitment of minors, forced displacement.
- Other crimes that will not be considered for amnesty or pardon are common offenses unrelated to the rebellion.

The following decision tree delineates individuals’ eligibility for amnesty and pardon within the Chamber of Amnesty, Pardon, and Special Penal treatments. The Chamber comprises one component of the proposed Special Jurisdiction for Peace (JEP) and the analysis grounds in the content of the recently approved revised peace accords.



Source: IOM analysis of Final Peace Accord