



Human Rights and Victims' Organizations Support the Transitional Justice Agreed to in Havana as a Contribution towards the Fight against Impunity

An Open Letter to President of Colombia Juan Manuel Santos; Mr. Rodrigo Londoño, leader of the FARC-EP; Mr. Nicolás Rodríguez, leader of the ELN, and to Colombian Society

The organizations signing below, addressing the process of consultation that is taking place to introduce adjustments to the Final Peace Accord that was signed on September 26 between the government and the FARC-EP, express our support for the Havana Accord, especially the agreement on victims' rights.

We believe that the accord that was reached contains the minimum standards that permit advances in overcoming impunity for grave crimes committed directly or indirectly related to the armed conflict in Colombia. We underscore the constructive attitude with which the government, the FARC-EP and society mobilizing in the streets have taken and we hope that soon it will be possible to move forward towards implementing the accord.

With this constructive spirit we would like to publicly outline the following aspects related to transitional justice which are contained in the accord and which were the subject of distortion regarding their content and scope.

- 1. The accord allows for ALL those who have committed crimes in the armed conflict to take accountability for their actions before the justice system.** The system of justice agreed to makes it possible to advance in overcoming the structural impunity of state crimes committed against organized sectors of social and human rights movements. The victims of these crimes have been small farmers, indigenous and Afro-descendant communities, members of social organizations, trade unionists, human rights defenders, journalists and opposition politicians.
- 2. The accord puts at its center the rights of victims to truth, justice, reparations and the adoption of guarantees that these crimes will not be repeated.** The fulfillment of these rights is the condition for imposing sanctions that all those who are responsible for crimes related with the conflict will receive, whether they are members of the military, guerrillas or civilians involved in such crimes.
- 3. The incorporation of judicial and extrajudicial mechanisms within the transitional justice model that is envisioned** will permit not only that those responsible for grave crimes will be submitted to justice, but it will also contribute to the historical clarification of what happened through the Truth Commission, so that all citizens and above all new generations can know what occurred, its causes and who was responsible, as an essential element to ensure that these events never again take place. The humanitarian mechanisms for searching for all those persons disappeared in the conflict will allow many family members to know the fate and whereabouts of their loved ones. It is estimated that in Colombia there are more than 70,000 missing



persons, of which more than 46,000 are in the Unified Registry of Victims as forcibly disappeared for political reasons.

4. **The transitional justice mechanism created in the accord is temporary, with limited scope and is independent of the regular justice system, and therefore, does not do away with the regular justice system.**
5. **The coverage of all the actors involved in grave crimes ensures that the transitional justice system will operate in an equal manner,** whether such actors are state agents, guerrillas or civilians, all of whom will have the possibility of obtaining benefits according to the truth they offer, the seriousness of the crime, the level of participation and responsibility, and the fulfillment of reparations to individual and collective victims.
6. **The sanctions of restriction of liberty** include carrying out jobs, public works and activities in rural or urban zones and the destruction of munitions and war materials, among other actions, and will allow for advances in collective actions of reparation and restoration of the damages caused to victims and to society. This would not be possible through time in jail or in police or military installations, or though being concentrated on agricultural farms. That said, this does not exclude the possibility of imposing regular prison terms of 15 to 20 years for those who do not divulge the truth and who are tried according to due process and judicial guarantees.
7. **The regular justice system and the so-called “Law of Justice and Peace” have shown their incapacity to advance towards the fulfillment of victims’ rights and overcoming impunity.** After nearly 10 years of applying this law there have been only 46 sentences, and impunity for state crimes reaches 98 percent.
8. **The participation of international judges and commissioners lends confidence to the system.** The incorporation of an international component with highly qualified people in the mechanisms of the transitional system which has been agreed to, not only will allow for the incorporation of international best practices, but will also provide a measure of confidence and international legitimacy which will allow judicial security for those who participate in the process.

On the basis of the preceding statements and starting from a constructive interpretation of the accord, which we recommend, the following should be permitted:

1. **That international human rights and international humanitarian law be the judicial basis for all actors** who participated in grave crimes in the context of the conflict, whether they are military members, guerrillas or civilians.
2. According to national and international law, the acts committed by state agents are much more serious than those committed by the insurgency, in the sense that state actors have been



granted
the

legitimate use of weapons to guarantee rights and protect the citizenry. Therefore, **any granting of judicial benefits to state agents** linked to the commission of grave violations of human rights and infractions of international humanitarian law would have as a precondition their full commitment with truth, reparation and non-repetition of the crimes committed.

- 3. The application of restorative sanctions must be carried out in consultation with the views of victims.** The accord puts in first place access to truth and reparations, above the application of punitive sanctions or mechanisms of retributive justice. For these measures to be accepted by society, they must be consulted with victims and affected communities.
- 4. It is necessary to adopt, in the framework of the processes of dialogue for ending the armed conflict, a serious of reforms to the security policy of the state, especially the National Security Doctrine, in order to guarantee that such crimes will not be repeated.** Such a reform should consider, in addition, reviewing the background of public officials, replacing staff, organizing state archives and preserving them for truth and memory, reducing the armed forces and reforming the National Police.

The Colombia-Europe-United States Coordination, the National Movement of Victims of State Crimes, the Colombian Human Rights, Democracy and Development Platform, Communities Constructing Peace in Territories, the Interchurch Dialogue for Peace, the Colombian Coalition of Social Movements and Organizations, and the Ecumenical Working Group for Peace call on the different sectors of Colombian society to support these proposals, thinking of transitional justice as advancing us to the future and permitting new methods of overcoming impunity as a basis of reconciliation.

We welcome with joy the announcement of the start of the public phase of dialogue between the national government and the Army of National Liberation (ELN) and offer our willingness to participate actively in the scenarios that emerge from this process.

We hope that this new and promising process that is beginning takes the advances agreed to in the chapter regarding victims and reinforces those aspects that will permit the overcoming of impunity and the fulfillment of the rights of victims, advancing much more in terms of guarantees of non-repetition. Finally, we would like to express our commitment and willingness to implement the accord in the region and to contribute to its better understanding.

Bogotá, October 20, 2016

Signed:

Coordinación Colombia-Europa Estados Unidos (CCEEU)

Movimiento Nacional de Víctimas de Crímenes de Estado (MOVICE)



Mesa

Ecuménica por la Paz

Comunidades Construyendo Paz en los Territorios (CONPAZ)

Diálogo Intereclesial por la Paz (DiPaz)

Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo

Coalición de Movimientos y Organizaciones Sociales de Colombia (COMOSOC)