



RELEASE 006 2021

## THE SPECIAL JURISDICTION FOR PEACE (SJP) CHARGES FORMER FARC-EP'S SECRETARIAT WITH CRIMES AGAINST HUMANITY AND WAR CRIMES FOR KIDNAPPINGS

- The Secretariat holds responsibility for the crime against humanity of severe deprivation of physical liberty and of the war crime of taking hostages. As well as other war crimes and crimes against humanity committed in connection with the kidnapping such as murder, forced disappearance, torture, cruel treatment, sexual violence, and forced displacement.
- The appearing who would not acknowledge their responsibility could be sentenced to up to 20 years of prison.
- SJP stands out the important participation of more than 2 thousand kidnap victims who insisted on the necessity to establish a full truth of what has occurred and to identify those, who were responsible.
- Some of the appearances have already acknowledged their responsibility and contributed with the truth about the policies that resulted in these crimes, as well as the facts that illustrate the criminal patterns.

**Bogotá, January 28<sup>th</sup> of 2021.** The Chamber for Acknowledgment of Truth, Responsibility, and Determination of Facts and Conducts (Acknowledgment Chamber) of the Special Jurisdiction for Peace (SJP) charged eight former members of Farc-EP's Secretariat with crimes against humanity and war crimes in regards to the case 01, now denominated "*Taking of hostages and other severe deprivation of physical liberty.*"

Those responsible for these facts are the former members of Farc-EP's Secretariat who are subjected to the SJP: Rodrigo Londoño Echeverry, Pablo Catatumbo Victoria, Pastor Lisandro Alape Lascarro, Milton de Jesús Toncel, Juan Ermilo Cabrera, Jaime Alberto Parra, Julián Gallo Cubillos, and Rodrigo Granda Escobar. Individual responsibility varies by the command positions assumed during armed conflict.

This is the first Ruling of Determination of Facts and Conducts from the Jurisdiction, which prefaces the Resolution of Conclusions and the trials in front of the Tribunal for Peace. In the year, other decisions, in which it will be determined the responsibility of middle-rank former members and direct executors, will be added to this present Ruling.

Deprivation of people's liberty, and imposing conditions for their liberation, as well as for their wellbeing, their integrity, and their life, constitutes a war crime, specifically the one of taking hostages. As a product of this crime, the Acknowledgment Chamber also charged the former members of the Secretariat with other war crimes related to the treatment of hostages, such as murder, torture, cruel treatment, outrages upon personal dignity, sexual violence, and forced displacement.

### **Also Crimes Against Humanity**

These facts were crimes against humanity when were committed with the fulfilled intention of generally and systematically attacking the civil population in places where Farc-EP made a presence. Among these, there are severe deprivation of physical liberty, as well as murders, tortures, cruel treatments, sexual violence, and forced displacements committed along with the kidnappings.

The Chamber found that dispositions related to policies which Farc-EP called "retentions", which were linked to different deprivations of physical liberty, were oriented in general form against people of all kinds of social status and, in practice, did not distinguish territories, gender conditions, age or conditions of special vulnerability.

The motivations were: to finance the armed organization, to force the exchange with jailed guerrilla men, and to exercise population control through punishment for various reasons, such as conducting investigations for its alleged closeness to the guerrilla's enemies or controlling the presence and activities of companies and public servers.

In regards to the treatment given to hostages, the Chamber determined that, although there was an instruction of good treatment, in practice it was concentrated on keeping the hostage alive, and all considerations about human dignity were left in hands of the commander, or the guard on shift. To describe this treatment, the Chamber took into account detailed testimonies from victims and survivors — which state the humiliations and cruel treatments — to conclude that there were committed crimes such as torture and even cases of sexual violence. The Chamber also highlights the special vulnerability



of children and women, who were held captive and experienced fear and vulnerability in a differentiated way, for being minors, and for being women.

In Colombia, according to current law at the time of these facts, Farc-EP committed crimes of extortive kidnapping, simple kidnapping, and taking of hostages, as well as other crimes in the concurrence. SJP holds the duty to proportionate its legal qualification of these facts identifying if there were committed any war crimes and crimes against humanity, according to international criminal law.

International criminal law identifies the taking of hostages as one of the most serious violations of the International Humanitarian Law (IHL) because it conditions the liberty, life, or physical integrity of those who are held captive to someone's will of doing or ceasing to do something. Therefore, it is considered a war crime by international criminal law, regardless of whether the victims were civilians or combatants put out of combat. The comments of the International Committee of the Red Cross (ICRC) to the Second Geneva Convention, expressly signal that the prohibition of the taking of hostages includes kidnapping to obtain ransom payments or "war taxes," as well as kidnapping civilians or combatants to force the exchange of prisoners. In regards to crimes against humanity, these are those committed through deliberate attacks against the civil population. It also constitutes a crime against humanity when is related to deprivations of physical liberty to exercise territorial control in which, arbitrarily, civilians were taken captive by the armed organization to make inquiries about their presence in the region or to punish them with forced labor, and other sanctions.

In conclusion, the Acknowledgment Chamber of the SJP stated the responsibility of former members of Farc-EP's Secretariat for orders given to commit kidnap, as well as for omissions on controlling cruel treatments that victims suffered. The Chamber has determined that the severity of the treatment that victims had to experience happened, in some cases, in the independence of their condition as civilians or public force members. This means that some military and police personnel deprived of their physical liberty suffered conditions of the same seriousness as civilians, and these conditions were war crimes.



## How did the Chamber reach these conclusions? SJP's judicial contrasting

The Determination of Facts and Conducts Ruling in the case 01 answers to the legal disposition in which, according to the SJP's Acknowledgment Chamber, must contrast the reports received from social and victims' organizations, as well as those from State entities, the appearing's versions and comments from victims, and put the results of that judicial contrast at the disposition of those involved, for them to acknowledge, or defend from the accusations made.

The Ruling is a product of a rigorous contrast of sources made in three stages. In the first instance, reports from the Office of the Attorney General (OAG), and civil society organizations were put contrasted. In a second instance, these reports were transferred to those who appear as parties responsible for them to render their versions. And in a third instance, these versions were transferred to those accredited victims for them to make their observations.

17 reports, 38 individual versions, and 8 collective versions, in which 257 ex-combatants of the FARC guerrilla participated, were received and contrasted. A total of 1,028 victims, of 2,456 accredited, made comments on those versions. The Acknowledgment Chamber, furthermore, in this contrasting process, included information provided by the OAG in 56 volumes of analysis and documents seized from the extinct guerrilla organization in diverse military operations. Also, complimented it with analysis from academic and specialized publications.

As a result of this contrast, the Ruling was based on both the superiors' liability and their nature as armed actors. Likewise, it describes kidnapping policies and implementation patterns of these policies in the extinct Farc-EP's different blocs. The Ruling clarifies that most of what it describes has already received an early acknowledgment by many ex-combatants of the FARC, and was subject to contrast with the reports and victims' testimonies.

### What comes next?

Former members of extinct Farc-EP's Secretariat can recognize these facts and conducts or reject the accusations made over 30 days. They can also react by providing additional arguments or evidence. Accredited victims and the Public Ministry (Office of the Prosecutor General) have the same time frame to react to the Ruling's determinations.



Once the 30 days frame has ended, and the appearing's answers have been received, the SJP will decide if it sets a date for an Acknowledgment Hearing, taking into consideration the existence of acknowledgment and full truth contribution. If the appear deny their responsibility, the case would be dispatched to SJP's Investigation and Prosecution Unit (IPU).

If there is recognition, once the Acknowledgment Hearing has been held, the Chamber will adopt a resolution of conclusions which is sent to the Tribunal for Peace to impose a special sanction, if it is the case. This sanction must be consulted with the victims, it must have a redress purpose, and it may include effective restrictions on liberty and other rights.

In the year, the Acknowledgment Chamber will emit other determination of facts and conducts rulings for each one of extinct Farc-EP's blocs, so that former middle-rank members and executors of these facts can acknowledge or refuse accusations made to their concern.

### **What contributes to this decision to obtain the full truth?**

The principal contribution of this decision is the grouping of big quantities of individual facts into massive patterns of conduct, which allows for to identification of armed organizations' policies and ways of operation, as well as the liabilities of those who instructed orders but did not execute the facts. Furthermore, SJP's legal frame allows, for the first time in Colombia, to charge those most responsible with crimes against humanity and war crimes, and named them as such, noticing the seriousness of these facts.

The contrasting of what is stated in reports from the State and civil society, ex-combatants of the FARC, and victims, allows for identifying coherently and rigorously which were the patterns and policies, and how they were implemented.

In this analysis, the Acknowledgment Chamber describes the facts of case 01 and it discriminates them into three groups starting from the armed organization's intention. In the first group the Chamber signals that what the country until now has known as kidnappings was an integral part of Farc-EP's financial policies adopted expressly in 1993, and which further finality was to finance not just the war fronts that committed them, but also the eventual siege of Bogotá. All blocs and fronts should finance themselves, among other ways through kidnaps, and should contribute with amounts





to the central organization, which were instructed by the Secretariat, with the finality of achieving the taking of the capital.

In the second place, the Acknowledgment Chamber indicates that Farc-EP also committed kidnappings to force the exchange of guerrilla men held in prison. In this group there can be found as victims both civilians and police and military members; these were long-term kidnappings where direct victims and their families have contributed with detailed and moving testimonies about their suffering.

In third place, the Acknowledgment Chamber details the kidnappings whose purpose was to contribute to maintaining control of a specific territory held by a front or column, submitting to punishment those who disobeyed the armed organization, and controlling the presence and transit of people in these areas through serious deprivations of liberty. In many of these cases, victims disappeared and their families are still searching for their bodies.

The determination of facts and conducts' Ruling annexes the facts described by accredited victims, one by one, presented in anonymity to protect their intimacy. This same procedure was implemented in the Ruling when the identity of the victim was not publicly known.

### **What is left to acknowledge? The debate over treatment**

Farc-EP's statutes contained a disposition of "*good treatment*" for those kidnapped which was mentioned by former members of the Secretariat in their versions, insisting that it was the instruction given.

However, testimonies from accredited victims, and the reports given to the Chamber by civil society organizations, reiterate in detail manner the experience of bad treatments. These were inflicted by many commanders and guards who caused intense physical and psychological pain, motivated by the desire to humiliate, coerce and punish those who were kept captive. Facing these treatments, the Acknowledgment Chamber determined that former members of the Secretariat hold command responsibility, in terms of what is stated in the Final Peace Agreement.

In its analysis, the Acknowledgment Chamber determined that the instruction of "*good treatment*" only concerned the preservation of the captive's life and not of their human



dignity. Which was left under consideration of the commanders responsible for those kidnapped. Even though firing squads should have the authorization of a superior, treatment was left to the discretionary judgment of commanders and guards, and superiors omitted to give explicit instruction, a follow-up, or sanctions that would permit the preservation of human dignity. Therefore, they have command responsibility.

The Acknowledgment Chamber determined the existence of a bad treatment pattern in kidnaps made by all Farc-EP's blocs, which manifests in repeated facts stated in the majority of reports and testimonies of accredited victims. It concerns facts like holding with chains and ties as a form of humiliation and punishment; forced walks without taking into consideration their circumstances of vulnerability; physical and psychological aggressions with strikes, shouts, mockery, and shoves; total violation of intimacy, even during defecation while observed by armed guards; the existence of camps where the confinements were such that caused additional suffering because of overcrowding, lack of light, air and basic hygiene; lack of medical care, even when they were able to offer it; lack of food or in a bad state.

Also, the Acknowledgment Chamber established that facts of special severity were held during captivity, such as forced isolation, beatings during interrogation, sexual violence, and forced displacement as a way of punishment. It also shows, in a consistent manner, the suffering caused to the families by hiding the fate of those captive, the sale of corpses, double ransom payments, exchanging a relative that paid for another and charging again, mockery, threats, insults, and other forms of emotional violation that were held without the consideration of the suffering inflicted.

### **Reflections on suffering and harm done**

Considerations about treatment cannot be separated from the suffering as a self-truth of kidnapping, a suffering that is not just a result of bad treatments but because of the kidnapping itself, and victims describe it as an act that must be acknowledged by Farc-EP's appearing. Victims suffered because of separation from their families, from their loved ones, their life projects, and routines, and because of knowing themselves defined as exchange subjects. As a consequence, the constant fear and intimidation also fractured affective ties and caused a loss of confidence in terms of family, community, business, and society.



Meanwhile, families had to face intense moral and emotional suffering that even persisted when they were able to be reunited with their loved ones. Through the victims' testimonies, the Acknowledgment Chamber was able to confirm the pain inflicted by the lack of contact with their families and the uncertainty that this generated, especially in long-term kidnappings.

These facts marked a before and after in people's life. Upon this, it adds the moral pain caused because of rumors in terms of reputation, since the kidnapping sometimes was presented as a result of an alleged act of corruption by a public server, or was justified as a reaction to some "*bad behavior*". These justifications reached validation in social and communitarian contexts, causing unfair stigmas and rejections, which sometimes were fed by the own guerrilla's justifications.

Accredited victims' testimonies about their lives after being kidnapped show the harm caused to their mental health, because of the physical, emotional, and moral pain they were put through. Victims reported symptoms associated with damage to their mental health, such as episodes of anxiety, fear, and persistent sadness over the years, after being captive. For many victims, fear is a constant companion, even years and decades after they recovered their physical liberty. Victims also suffer after being liberated because of stigmatization that unfairly is set upon them, with frequency because of rumors that assure that the victim "*deserved*" what happened to them.

Some victims had special conditions of vulnerability which intensified their suffering. Captive women were in a situation of additional vulnerability and lack of protection in a masculine and military context, incrementing fear for their life and integrity. The absence of intimacy while cleaning and defecating and urinating created a differential suffering for women.

In addition, the damage caused to children and adolescent relatives of people kidnapped by Farc-EP was multiple. Children and adolescents suffered because of the absence of their kidnapped fathers, mothers, grandfathers, and grandmothers, having to grow under that absence, especially anguishing, because of long-term deprivations of liberty. Kidnappings left on these generations a legacy of violations and mistreatment of their fathers, mothers, and grandparents; loved ones which always had been figures of safety and shelter.





The Acknowledgment Chamber was able to determine that these deprivations of liberty, in some areas, resulted in a deterioration of quality of life not only for victims but also for peasant communities. The impact on cattle ranchers and farmers impoverished those regions, causing special damage to farmers and ranchers who lived on farms that were distant from the protection of the authorities. The Chamber holds reasons to sustain that these impacts on communities were moral as well. It highly concerns how fear and distrust eroded historical ways of community care present in diverse traditions such as *mingas*, *compadrazgos*, the celebration of religious and patronal holidays, as well as other spaces of solidarity and collaboration.

### **What is the magnitude of the facts?**

The Acknowledgment Chamber, in its contrast duty, unified six different databases, three from Attorney General's Office, one from FONDELIBERTAD, one from País Libre, and one from the National Centre for Historical Memory (NCHM), which were unified through national identification numbers; as well through other shorter lists contributed by civil society reports, as one filled by the radio program Las Voces del Secuestro. Once these lists were unified and duplicated registers were eliminated, the Acknowledgment Chamber found that the following figures can be attributed to Farc-EP:

- 21,396 kidnap victims identified by name and number of national identification.
- 79 percent of them were male, 21 percent female.
- Taking into account the data which reflects the age of victims (55 percent), 95 percent were adults, and 5 percent were minors.
- Among minors, 47 percent were girls.
- 19 percent of adults were 55 years or older.
- In contrast with lists of deceased and disappeared people reported by the Victims' Unique Register (VUR), the Chamber identified that 8.7 percent of kidnap victims disappeared and that 2.9 percent were murdered and their bodies returned.
- In regards to the criminal investigation, in terms of impunity, in the majority of facts (72 and 81 percent of the complaints, in case that the facts were committed before or after the year 2000), it never reached an identification of individual authors.
- In terms of territorial data, the Acknowledgment Chamber was able to identify that a significant part of the kidnappings were committed between the years 1998



and 2001, matching with the period of the Demilitarized Zone, in San Vicente del Caguán.

- The longest period one person was held captive was 14 years.
- The most affected territories, in terms of *per capita*, were the states from the regional areas of Orinoquía and the Amazon, in particular the states of Guaviare, Vaupés, Caquetá, Meta, Vichada, Arauca, and Casanare, the same area of influence of extinct Farc-EP's Eastern Bloc.
- In terms of absolute numbers, Antioquia was the most affected state.
- To understand the magnitude of these facts, during Farc-EP's maximum period of expansion, the guerrilla reported the existence of 60 structures in operation, divided by 5 blocs of fronts and 2 joint commands. Among these blocs and joint commands, the Eastern Bloc was the biggest of all. There was also the Bloc from Magdalena Medio, the Southern, the Northwestern, Western, Central, and Caribe Bloc.
- In 1998, Farc-EP decided to force the exchange of imprisoned guerrilla men for members of the Police and the Military held captive. The Attorney General's No. 2 report mentions 245 soldiers and policemen whose liberty was conditioned to an exchange of prisoners.

However, the Acknowledgment Chamber takes note that the elaboration of these lists was limited by its dynamics of armed conflict, which resulted in unreported cases (cases that never appeared on the lists), as well as over-registrations (false attribution to Farc-EP in some kidnappings). Nevertheless, the Chamber established that these data are sufficient to conclude — using a proper qualification of these facts — that kidnappings were massive and systematic, and committed to attacking the civilian population, to state them as a crime against humanity.

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