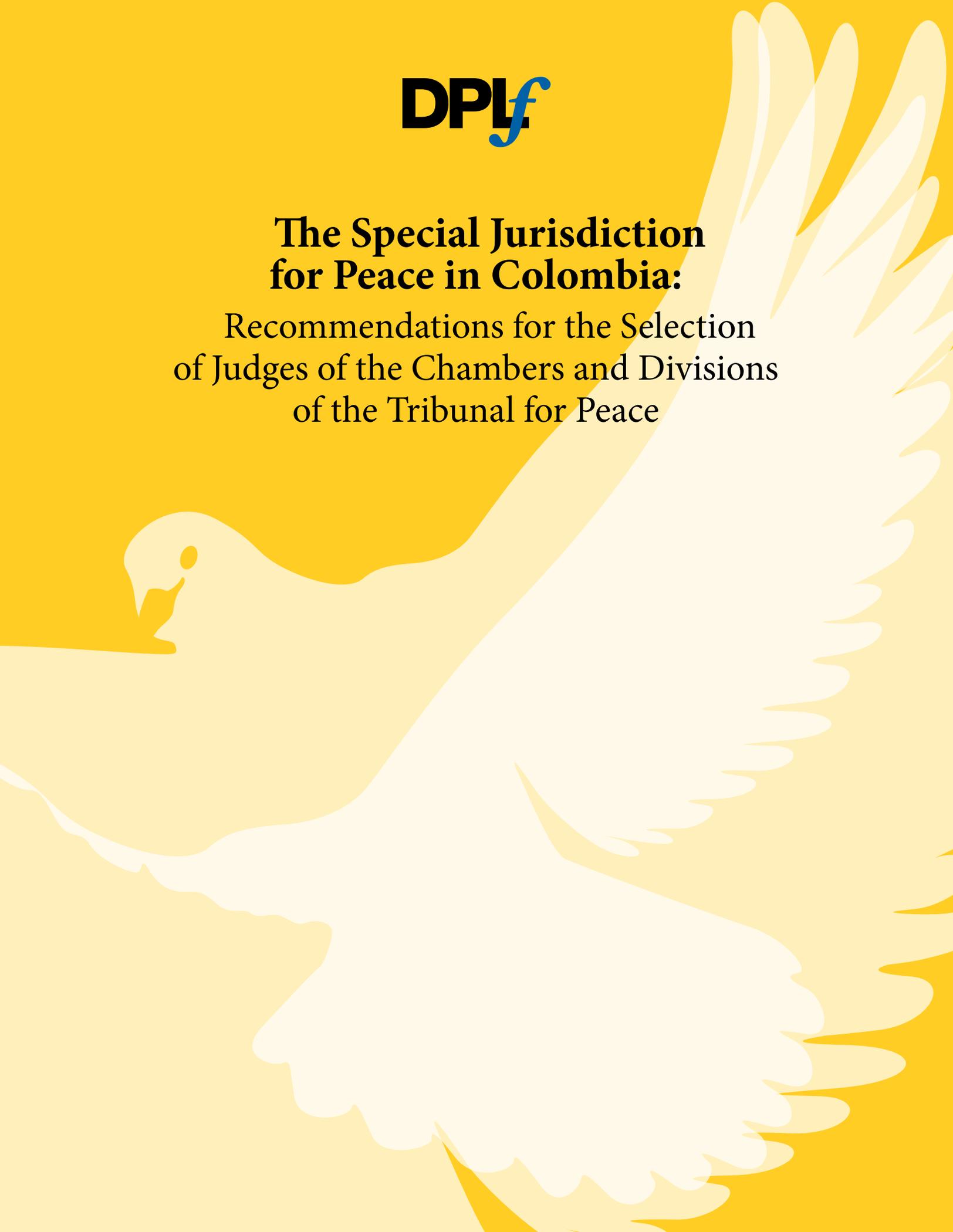




# **The Special Jurisdiction for Peace in Colombia:**

Recommendations for the Selection  
of Judges of the Chambers and Divisions  
of the Tribunal for Peace





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## 1. Introduction

On September 23, 2015, under the framework of the ongoing negotiations to end a 50-plus-year-old conflict, the Colombian government and the FARC-EP announced their decision to create a “Special Jurisdiction for Peace” (SJP). It will constitute the justice component of a Comprehensive System of Truth, Justice, Reparation, and Non-Repitition (SIVJRNR) that seeks to satisfy the victims’ rights to learn the full truth of past events, receive reparations, and obtain guarantees of non-repetition. The system additionally aims to promote the acknowledgement of the responsibility of all who participated in the conflict—directly or indirectly; to construct historical memory; and to reconcile Colombian society in order to move toward a future of civility and peaceful coexistence.

The Special Jurisdiction for Peace will be composed of a group of judicial bodies responsible for investigating, establishing the facts, and imposing the appropriate penalties, pursuant to the special legal framework, for all of the acts committed in connection with the armed conflict, especially those that constitute serious violations of international humanitarian law and/or grave human rights violations. In addition, it will set the conditions for the imposition of those penalties and supervise their enforcement.

The bodies of the SJP will also have jurisdiction to apply special treatment such as amnesty and pardons when appropriate under international law, order protection measures, and even review and issue decisions—in certain cases—with respect to judgments already handed down in the regular justice system, through a special division of the Tribunal for Peace.

It is important to bear in mind that **the SJP is a transitional justice mechanism and not a specialized group of bodies pertaining to the regular justice system**. Accordingly, not only its operation but also its composition must be designed to accomplish the aims pursued by transitional justice, especially the acknowledgement of victims as individual rights-holders, which is at the core of the entire SIVJRNR.

Moreover, unlike other models of justice established in transitional contexts in which mixed international criminal courts have been created, in the case of Colombia the SJP will form part of the **domestic architecture of the State**, in keeping with paragraph 4 of the *Joint Draft Agreement on Victims of the Conflict* of December 15, 2015 (hereinafter, the Agreement on Victims). Nevertheless, the SJP does include some elements that are similar to the ones seen in those types of bodies, such as the mixed composition of its divisions and chambers, which will be comprised by national and foreign judges.<sup>1</sup>

How will the members of the SJP bodies be selected? What are the most appropriate criteria and guidelines for selecting them, in view of the objectives of transitional justice? How can its independence and impartiality be ensured in keeping with the terms of Article 8.1 of the American Convention on Human Rights?

An initial approach to this issue, bearing in mind that Latin America has no prior experience with establishing international criminal courts of transitional justice,<sup>2</sup> leads us to consider the criteria and standards set forth in

<sup>1</sup> The Special Tribunal for Lebanon, the Special Court for Sierra Leone, the Extraordinary Chambers of the Courts of Cambodia, the Special Panel for Serious Crimes in East Timor, and the War Crimes Chamber of Bosnia-Herzegovina are all collegial bodies with a mixed composition that includes both national and foreign judges. These types of transitional justice tribunals are known as “hybrid” or “mixed.”

<sup>2</sup> Although he was referring to the institutions responsible for criminal investigations, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence Pablo de Greiff has rightly stated that “There is no single institutional form that can be replicated from one context to another independently of local circumstances, needs and resources.” United Nations Human Rights Council. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. A/HRC/27/56, 27 August 2014, para. 89.

international law and the best practices observed from the perspective of comparative law for selecting high court judges, given that **the *Agreement on Victims* stipulates that the members of the SJP must meet requirements similar to the ones in place for high court justices**, with the exception of nationality.<sup>3</sup> Their purpose is to ensure that those individuals who are finally selected are suitable, independent, and impartial.

Nevertheless, to the extent that it may be applicable to the Colombian context, it is important to consider how the judges of other **criminal courts of transitional justice** have been selected. The statutes of those courts, for the most part, provide that their members must meet—in addition to other requirements—those established for the judges of the high courts of their respective countries.<sup>4</sup>

The selection of high court justices is an important event in the political and institutional life of a country. These courts have the last word in resolving a society’s most relevant conflicts, and, depending on the model of each country’s court system, they can exercise oversight over the constitutionality of laws and the legality of the acts of the Executive Branch, enforcing the principle of checks and balances among branches of government.

For these reasons, establishing selection processes that make it possible to choose the best individuals to sit on the high courts is a specific measure, but one that has a major impact on the independence of the entire judicial system. To that extent, it helps strengthen democracy and the rule of law by promoting the effective separation of powers as well as mechanisms for the defense of citizens’ human rights.

As previously mentioned, although the agreements signed to date do not expressly place the SJP on par with a high Colombian court, the *Agreement on Victims* does stipulate that the members of the SJP must meet requirements similar to those that exist for high court justices in Colombia.

Moreover, the importance of selecting the best candidates to be members of the bodies of the Special Jurisdiction for Peace is directly related to the historical, political, and social significance of the peace process, and to its main objective of acknowledging the victims and satisfying their rights, particularly their right to justice. The peace process in Colombia must be supported—and shaped—by a solid and independent SJP, whose decisions build trust in Colombian society, offer legal certainty, and reinforce the rule of law.

In that respect, **this document presents various recommendations for the establishment of a selection and appointment procedure consistent with the standards and best practices on the selection of high-level judges in international and comparative law, and with comparative experiences in the composition of other criminal courts of transitional justice around the world, insofar as they may be applicable to the case of Colombia.**<sup>5</sup> DPLF

<sup>3</sup> The coordination mechanisms and relationships among the bodies of the SJP and the high courts of the Colombian justice system should be established—if possible—in the Final Agreement or in the internal rules issued for the effective operation of the SJP.

<sup>4</sup> See Article 11.2 of the Statute of the Special Court for Sierra Leone; Article 9.1 of the Statute of the Special Tribunal for Lebanon; Article 13 of the Statute of the International Criminal Tribunal for the Former Yugoslavia; Article 12 of the Statute of the International Criminal Tribunal for Rwanda; Article 3.3 of the cooperation agreement for the establishment of the Extraordinary Chambers of the Courts of Cambodia. Along the same lines, Article 36.3(a) of the Rome Statute, which establishes the requisite qualifications for judges of the International Criminal Court, states that they “shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.”

<sup>5</sup> It is important to note that, for the most part, existing experience with this issue pertains to the creation of transitional justice mechanisms, in the form of international criminal tribunals. These types of tribunals have been created either by agreement between a specific State and the United Nations (UN), as with the Special Court for Sierra Leone (created by an agreement of January 2002) and the Special Tribunal for Lebanon (created by a January 23, 2007 agreement); or by a UN Security Council resolution, as with the international criminal tribunals for the Former Yugoslavia and Rwanda. The creation of these mechanisms has included a process for the selection of their members whereby the State participates directly in the appointment of national judges, and the UN Secretary General is generally tasked with the appointment of the international judges. The Extraordinary Chambers of the Courts of Cambodia for the prosecution of the crimes committed by the Khmer Rouge are a special case, as they belong to the domestic judicial structure of the Cambodian State and are the result of a cooperation agreement between the State of Cambodia and the UN, approved by General Assembly Resolution 57/228. Under this model, the international judges in the Chambers are selected by the

thus seeks to make a contribution to the Colombian peace process which, through its justice component, will lay the foundation for a lasting peace.

## 2. General guidelines for selecting the judges of the SJP, established in the Agreement on Victims of the Conflict

The *Joint Draft Agreement on Victims of the Conflict* of December 15, 2015 further develops the points of consensus between the Colombian government and the FARC-EP with respect to the composition, structure, duties, and powers of the bodies of the SJP. It is important to underscore that **both parties have expressly recognized judicial independence as one of the governing principles** of the SJP.<sup>6</sup>

The agreement specifies that there will be three Chambers,<sup>7</sup> an Investigation and Indictment Unit, and a Tribunal for Peace. The Tribunal, in turn, will have three Trial Divisions<sup>8</sup> and one Appeals Division.

It also establishes the general procedural guidelines to be applied in cases in which there is an acknowledgement of truth and responsibility, as well as when there is no such acknowledgement,<sup>9</sup> although it is clearly stated that the judges of the SJP will adopt their own rules of organization and operation in the exercise of their administrative autonomy.

With respect to the selection process model, the *Agreement on Victims* indicates solely<sup>10</sup> that **it must build trust in Colombian society** and its various sectors; and that the selection criteria must include the consideration of **gender equity and respect for ethnic and cultural diversity**.

In addition, the document provides a few particulars with respect to the minimum qualifications and desired profile of judges serving on the Tribunal for Peace, the different Chambers of the SJP, and its Investigation and Indictment Unit:

- Twenty Colombian judges and four foreign judges will be selected for the Tribunal for Peace. They must meet the same requirements demanded of justices of the Constitutional Court, the Supreme Court, or the Council of State, with the exception of Colombian nationality.<sup>11</sup>

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Cambodian Council of the Judiciary from a list of candidates nominated by the UN Secretary General, and they work together with Cambodian judges appointed by the regular mechanism. The War Crimes Chamber of Bosnia-Herzegovina, created in January, 2003 as a hybrid court within that country's judicial structure, is another particular case. Initially, the international judges were appointed directly by the High Representative of the international community in the country, established pursuant to the General Framework Agreement for Peace in Bosnia-Herzegovina, or the Dayton Agreement. See Bodgan, I. (2008). *The War Crimes Chamber in Bosnia and Herzegovina. From Hybrid to Domestic Court*. International Center for Transitional Justice.

<sup>6</sup> *Joint Draft Agreement on Victims of the Conflict*, December 15, 2015, para. 14. Available at: <https://www.mesadeconversaciones.com.co/comunicados/borrador-conjunto-acuerdo-sobre-las-v%C3%A1ctimas-del-conflicto>

<sup>7</sup> The three Chambers are: i) Chamber of Acknowledgement of Truth and Responsibility and the identification of acts and conduct, ii) Chamber of Amnesty and Pardon, and iii) Chamber for the Determination of Legal Status; their functions are described in paragraphs 48, 49 & 50 of the Agreement on Victims.

<sup>8</sup> These Divisions are: i) Trial Division in the event of acknowledgement of truth and responsibility, ii) Trial Division in the absence of acknowledgement of truth and responsibility, and iii) Judgment Review Division. After the Tribunal for Peace has concluded its duties, the Stability and Compliance Division will be established to ensure effectiveness and compliance with the decisions handed down in the SJP.

<sup>9</sup> The agreements underscore that the mechanisms of the SJP cannot be understood in isolation from the other components of the SIVJRNR upon which they are conditioned. This means that any special treatment granted by the SJP is conditioned—and this must also be verified—upon providing the truth to the victims, acknowledging responsibility, participating in reparation actions, and providing assurances of non-repetition.

<sup>10</sup> Agreement on Victims, December 15, 2015, paras. 65-67.

<sup>11</sup> The requirements for serving as a justice on the Supreme Court, Constitutional Court, or Council of State are established in Article

- The three Chambers of the SJP will be comprised by six members each, meaning that at least 18 judges must be appointed. It is also established that, at the request of the appearing party, the Chambers may include two foreign judges. Although the total number of foreigners to be appointed is not specified, all of them must meet the same requirements provided under Colombian law for judges of the Superior Court of a Judicial District.<sup>12</sup>
- In both cases, they must be “highly qualified” individuals and “experts in different areas of law, with an emphasis on knowledge of international humanitarian law, human rights, or dispute resolution.”<sup>13</sup>
- With respect to the Investigation and Indictment Unit, the document specifies that it will be composed of legal professionals whose number and nationality must be determined prior to the signature of the Final Agreement. It states that these professionals must be “highly qualified in investigation and indictment matters” and must include “experts in different areas of law, with an emphasis on knowledge of international humanitarian law and human rights.”<sup>14</sup>

Accordingly, for the SJP and its different bodies to be operational, **it is necessary to select at least 38 Colombian judges and six foreign judges** in addition to the members of the Investigation and Indictment Unit, whose number remains to be determined. It is also important to underscore that pursuant to the Agreement on Victims the administration, management, and execution of the SJP’s resources will be the responsibility of an Executive Secretary, who will act under the guidance of the Office of the President of the SJP, and who must be a person with “extensive management experience and high moral character.”

### 3. Recommendations for the establishment of a transparent, merit-based selection process

In view of the above-stated main points contained in the *Agreement on Victims*, as well as the current status of the peace process negotiations leading up to the impending signature of the Final Agreement, we present some recommendations and suggestions below that are intended to lend **transparency to the procedure for the selection of SJP judges** and to ensure that the selections are based exclusively on the **merits of the candidates**, resulting in the appointment of the most suitable individuals to the positions.

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232 of the 1991 Constitution of Colombia, as amended by Article 12 of Legislative Act 02 of July 01, 2015, and are as follows:

- i) Must be Colombian by birth and a current citizen
- ii) Must be an attorney
- iii) Must not have been convicted in a court of law to a term of imprisonment, except for political or negligent offenses
- iv) Must have held, for at least 15 years, positions in the Judiciary or the Public Ministry, or practiced, in good standing, the profession of attorney, or professor of law at an officially recognized university, for the same length of time. For the position of Justice of the Supreme Court or the Council of State, university teaching must have been in a legal discipline related to the area of the judgeship to be held.

<sup>12</sup> Under Articles 127 and 128 of the Justice Administration Act, Law 270 of March 7, 1996, in order to serve as a judge on the Superior Court of a Judicial District, a person: i) must be Colombian by birth and a current citizen, and be fully entitled to the enjoyment of his or her civil rights, ii) must have his or her professional title of attorney issued or revalidated according to law, iii) must not be subject to disqualification or conflicts of interest, and iv) must have at least eight years of professional experience.

<sup>13</sup> See *Agreement on Victims*.

<sup>14</sup> *Id.*

These recommendations and suggestions are based on the international standards and best practices developed in the processes for selecting the high court judges in other countries of the region, which DPLF has observed and summarized in the *Guidelines for a transparent and merit-based system for the appointment of high-level judges*.<sup>15</sup>

In addition, and given that the SJP is a transitional justice mechanism, these recommendations have taken account of the procedures used to select the members of other transitional justice mechanisms that exist or have existed in the comparative experience, and of international criminal tribunals like the International Criminal Court (ICC).

Every procedure established in a democratic society for the appointment of judges, and especially high court judges, must be **transparent and based on objective criteria**. This is enshrined in different international instruments, including in Article 4 of the Inter-American Democratic Charter, adopted by the General Assembly of the **Organization of American States** (OAS) on September 11, 2001.<sup>16</sup> Along the same lines, in its report entitled *Guarantees for the Independence of Justice Operators*, the **Inter-American Commission on Human Rights** (IACHR) has stated that **opening the appointment procedures to public scrutiny** may significantly reduce the degree of discretion exercised by the authorities in charge of the selection and appointment process and the potential for interference by other authorities, thus making it easier to identify the merits and professional abilities of the candidates.<sup>17</sup>

For its part, the **Inter-American Court of Human Rights** has held that not all procedures satisfy the conditions required by the American Convention on Human Rights for the establishment of an independent system; rather, the basic parameters of objectivity and reasonableness must be met. The Court has also stated that the absence of those conditions creates a high degree of discretion that makes it impossible to ensure that the individuals chosen are the most suitable for the position.<sup>18</sup>

In keeping with these standards, the **Colombian Constitutional Court** has already held in Judgment C-713 of 2008,<sup>19</sup> and particularly in the more recent Judgment C-333 of 2012,<sup>20</sup> that the selection process for members of the judiciary must be **public, transparent, and based on the candidates' merit**. The latter judgment also recognizes the complexity of the work of Justice and Peace judges, which can be extended to the work that the judges of the SJP will perform, "on which the potential resolution of a situation of endemic conflict depends in large measure."<sup>21</sup>

<sup>15</sup> Available at: [http://www.dplf.org/sites/default/files/guidelines\\_selection\\_of\\_highlevel\\_judges.pdf](http://www.dplf.org/sites/default/files/guidelines_selection_of_highlevel_judges.pdf)

<sup>16</sup> In the same respect, for instance, paragraphs 28 and 48 of Recommendation CM/Rec (2010) 12 on judges, adopted by the Committee of Ministers of the Council of Europe on November 17, 2010, establish that the highest possible degree of transparency must be guaranteed through the adoption of pre-established procedures and reasoned decisions. Available at: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2010\)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C-3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2010)12&Language=lanEnglish&Ver=original&BackColorInternet=C3C-3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383). In addition, Article 9 of the Universal Charter of the Judge, approved by the International Association of Judges on November 17, 1999, states that appointments must be made according to objective and transparent criteria based on the professional abilities of the candidates. Available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/03/IAJ-Universal-Charter-of-the-Judge-instruments-1989-eng.pdf>. See also Article 11 of the Statute of the Ibero-American Judge, approved in 2001 at the Sixth Ibero-American Summit of Chief Justices of Supreme Courts and Tribunals. Available at: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/10/Statute-Iberoamerican-Judge.pdf>

<sup>17</sup> IACHR. *Guarantees for the Independence of Justice Operators: Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V/II. Doc. 44, December 5, 2013, para. 80.

<sup>18</sup> I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C No. 197, para. 74. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_197\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf)

<sup>19</sup> Judgment C-713/08 of July 15, 2008. Available at: <http://www.corteconstitucional.gov.co/relatoria/2008/C-713-08.htm>

<sup>20</sup> Judgment C-333/12 of May 9, 2012, para. 6.3.2. Available at: <http://www.corteconstitucional.gov.co/RELATORIA/2012/C-333-12.htm>

<sup>21</sup> Id.

Those standards also appear, to a certain extent, in the procedures for composing the transitional justice mechanisms that exist in the comparative experience, whether they have resulted in the creation of international criminal tribunals or hybrid chambers or divisions within the State's judicial structure. Such procedures have involved, for instance, the prior establishment of a profile of judicial qualifications in the Statutes or agreements creating those mechanisms, as well as the express mention of the requirement of independence and impartiality.

Based on the foregoing, **the recommendations presented below are organized around three topics: i) the selection mechanism, ii) the judge's profile, and iii) openness, transparency, and forms of civil society participation in these types of processes.**

### 3.1 Mechanism for the selection of SJP judges

Identifying an appropriate mechanism for the selection of SJP judges is extremely important. It will directly affect the quality of the applicants and those who obtain the positions, as only an unobjectionable process will attract the most qualified individuals; it will also affect the independence and impartiality of the SJP.<sup>22</sup>

It is a decision that must take account of different types of variables, as the various mechanisms used in the comparative experiences of selecting regular high-level judges present advantages and disadvantages that must be examined **in light of the incentives that each mechanism provides according to its political context.**<sup>23</sup>

In other words, **political variables** must also be weighed in addition to exclusively technical variables, bearing in mind that **the greater the deliberation and need for agreement among the parties to the appointment decision, the greater the incentive to choose individuals who stand out because of their merits** and have no personal or ideological connection to any political force or special interest group.

#### 3.1.1 Mechanisms for the selection of high court judges: comparative experiences

In general terms, the following types of mechanisms for the selection of regular high-level judges can be identified in comparative law:<sup>24</sup>

##### 3.1.1.1 Political mechanisms

This type of mechanism entails the selection of high-level judges by a political authority, such as the Legislature or the Executive Branch (President of the Republic). Within this group, the following subtypes are identified:

- *Single-step mechanisms*, where the selection authority is held by a single political body, which may be the Executive or Legislative Branch. Costa Rica and Peru use mechanisms of this kind to select the members of their Constitutional Courts, conferring this power on their legislative bodies, which decide by qualified majority.
- *Two-step mechanisms*, in which the *nomination* or *preselection* of the candidates (whether individually, or through lists or short lists) is separate from the *confirmation* or final selection, so that a different political body is responsible for each step. In Argentina, for example, the President of the Republic preselects a candidate and

<sup>22</sup> Pásara, L. & Feoli, M. (2013). Los nombramientos siguen siendo políticos en América Latina. Reforma Judicial. Revista Mexicana de Justicia, 21-22, p. 53.

<sup>23</sup> Linares, S. (2013). La política de selección de altos magistrados. In AA.VV. Memoria de la VII Mesa Redonda sobre justicia constitucional de las entidades federativas. México: Tribunal Electoral del Poder Judicial de la Federación, p. 251. Available at: [http://portal.te.gob.mx/sites/default/files/meoria\\_vii.pdf](http://portal.te.gob.mx/sites/default/files/meoria_vii.pdf)

<sup>24</sup> Id., pp. 250-279.

presents him or her to the Senate for approval. In Mexico, the President proposes a short list of three candidates to the Senate for each vacancy, in order for it to select the new high court justice from the list.

- *Representative mechanisms*, in which different sectors of government—as well as civil society—have the power to appoint a “representative” to the high courts. This is the case for the selection of judges for the Constitutional Court of Guatemala, in which the President, Congress, the Supreme Court, the University of San Carlos, and the Bar Association have the authority to choose (through different procedures in each case) a member of that high court.

### 3.1.1.2 Evaluation mechanisms for merit-based competitions

With these types of mechanisms, candidates are selected after having been subjected to an objective, multi-phase evaluation that encompasses his or her legal knowledge, curriculum vitae, and other elements of the profile for the position. This is how high court judges are selected in Peru, through a competitive process administered by the National Judicial Council.

These mechanisms usually require a reasonable period of time to be implemented, and, in spite of their advantages, are not often used to select high-level judges. However, they are used to select lower court judges because they are related to the concept of judicial career training. In order to prevent political influence in appointments made through competitive processes, the mechanisms must be highly institutionalized. There must be detailed oversight of the procedure, the selection criteria, and the passing scores and tables, and the body responsible for administering the competition must be free of political influence.

This group includes the process for the **selection of justices of the Supreme Court and the Council of State in Colombia**, who are appointed by those same bodies, following a public hearing, from a list of candidates proposed by the Judicial Government Council.

Prior to the constitutional reforms enacted by Legislative Act 02 of 2015, the candidates for positions on those courts were proposed on lists drawn up by the Council of the Judiciary, the body responsible for administering judicial training, after an open competition and merit exam.

### 3.1.1.3 Popular election mechanisms

With these mechanisms, judges are appointed through election processes, by direct vote of the citizens. This has been the case in Bolivia since 2009, where citizens elect the members of the Supreme Court from a list of candidates preselected by the Plurinational Assembly. Although these types of mechanisms seek to offer democratic legitimacy to the selection, they can turn the courts into forums for political deliberation.<sup>25</sup>

Although the IACHR has found that public competitions “can be a suitable means to appoint [judges] on the basis of merit and professional qualifications,”<sup>26</sup> most countries still select the members of their high courts through political mechanisms.

Nevertheless, **efforts have been made to streamline them** as much as possible, through standards designed to make them more **transparent** and to **reduce political discretion, through the introduction of objective criteria**

<sup>25</sup> For an assessment of the judicial elections conducted in Bolivia, see DPLF. (March 5, 2015). Judicial Elections in Bolivia: An unprecedented event. Available at: <http://www.dplf.org/en/resources/judicial-elections-bolivia-unprecedented-event>

<sup>26</sup> IACHR. *Guarantees for the Independence of Justice Operators: Towards strengthening access to justice and the rule of law in the Americas*. OEA/Ser.L/V/II. Doc. 44, December 5, 2013, para. 76.

that encourage the participation of good candidates and force the political bodies to select applicants on the basis of merit, through reasoned decisions for which they are held accountable.

### 3.1.2 Recommendations for a mechanism designed to select the most suitable candidates for SJP judgeships

Although choosing a mechanism for the selection of SJP judges is a decision that must be negotiated and adopted jointly by the Colombian government and the FARC-EP in the Final Agreement, we can offer the following recommendations for its design:

- a) Bearing in mind the origin and the objectives of the SJP, it is preferable that the selection of judges not be under the responsibility of any political body of the State. **Neither the Executive nor the Legislative Branch should have a direct influence** on the selection of the judges of the SJP.
- b) It is possible to establish different procedures for the selection of **foreign judges**, as done in other transitional justice tribunals or chambers, where the UN Secretary General is responsible for the appointment.

To that end, it could be stipulated that the Secretary General, or whomever is eventually in charge of this appointment, will have the support or recommendation of a Selection Committee composed of individuals who are or have been part of an international tribunal of transitional justice or the International Criminal Court.<sup>27</sup>

It could also be specified that **a candidate's experience** at an international tribunal of transitional justice or at the International Criminal Court will be especially valued.<sup>28</sup>

- c) With respect to the selection of the **Colombian judges**, it is advisable to **separate the preselection of the candidates** (that is, the evaluation and assessment of their merits) **from their appointment**, granting these powers to different entities.<sup>29</sup>

It is necessary to stipulate what would happen in the unlikely event that the entity in charge of *appointment* objects to the *preselected* candidates, or for any reason refuses to select or complete the appointment of the total number of SJP judges. That is, the mechanism should clearly establish **which entity will have greater weight** and the authority to make the final decision in such circumstances.<sup>30</sup>

In the Colombian case, given the social and historical significance of the work to be performed by the Peace judges and the need to prevent the politicization of the appointments by choosing the most qualified applicants, **we would recommend that this responsibility be given to the entity in charge of the technical evaluation and preselection** of the candidates.

For instance, it could be established that, in the event that the *appointing* entity refuses to complete the appointments within a certain time period, they will be made by the *preselecting*

<sup>27</sup> In the case of the Special Tribunal for Lebanon, it was established that the Secretary General would appoint the judges upon the recommendation of a Selection Committee comprised by two judges who currently sit or have previously sat on an international tribunal, and the Secretary General's representative.

<sup>28</sup> See Article 13 of the Statute of the Special Court for Sierra Leone.

<sup>29</sup> Pásara, L. (2004). Selección, carrera y control disciplinario en la magistratura: principales tendencias actuales. *Reforma Judicial*. Revista Mexicana de Justicia, 4, p. 85. Available at: <http://biblio.juridicas.unam.mx/revista/pdf/ReformaJudicial/4/pjn/pjn7.pdf>

<sup>30</sup> Linares, S. *Op. cit.*, pp. 258-259.

entity, in the order of the candidates' merit (assuming it is determined to exist), or, in the absence of such order, through a lottery among the previously qualified candidates.

d) **With respect to the *preselection of candidates***, it is important for the entity in charge to be **independent** and not subject to pressure from any sector of political or other power. To that end, **a Committee or Panel of Experts** could be formed with the support of the United Nations (UN), the Organization of American States (OAS), the Community of Latin American and Caribbean States (CELAC), or some other multilateral international body the parties can trust.

One experience that may be useful in the formation of this Committee or Panel is that of the **Advisory Committee on Nominations established in Article 36.4 (c) of the Rome Statute to support the Assembly of States Parties in the selection of judges of the International Criminal Court**.<sup>31</sup> It is an independent body of the Assembly whose mandate is to conduct a technical evaluation of the candidates according to the profile established previously in the Rome Statute.

It is made up of nine members, who must be “eminent, interested and willing persons of a high moral character, who have established competence and experience in criminal or international law.” In the case of the ICC, these members are selected by consensus by the Bureau of the Assembly of States Parties to the Rome Statute, reflecting the principal legal systems of the world and an equitable geographical representation, as well as a fair representation of both genders.

This Committee is authorized to communicate with all of the candidates to the ICC, including through written and oral interviews, in order to establish their qualifications and conduct a strict and transparent technical evaluation that, while not binding on the Assembly of States Parties, allows it to make reasoned decisions about the composition of the ICC.

This experience could be drawn upon for the establishment of a Committee or Panel responsible for the technical evaluation of the candidates for the different bodies of the SJP. The number of members could be the same, and support could be requested from the previously mentioned entities for its establishment. It could be useful for some of the members of this committee to have been members of the ICC's Advisory Committee on Nominations, or to have had experience with a transitional justice mechanism, in order to facilitate the identification of the most suitable candidates for the SJP.

Another experience that could serve as an example is that of the ***Independent Panel on the Election of Inter-American Judges and Commissioners***, which in the first six months of 2015 conducted the first independent evaluation of the process for the selection of the judges and commissioners of the Inter-American Human Rights System. The panel, comprised by five independent experts, evaluated the eleven candidates for the four vacancies on the Inter-American Commission on Human Rights and the two on the Inter-American Court of Human Rights, and drafted recommendations for improving both the national processes for nominating candidates and the OAS process for selecting judges and commissioners.<sup>32</sup>

<sup>31</sup> See Resolution ICC-ASP/10/Res.5 adopted by the Assembly of States Parties on December 21, 2011, para. 19, based on the recommendations contained in the *Report of the Bureau on the establishment of an Advisory Committee on nominations of judges of the International Criminal Court*. ICC-ASP/10/36. Available at: [https://www.icc-cpi.int/iccdocs/asp\\_docs/ASP10/ICC-ASP-10-36-ENG.pdf](https://www.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-36-ENG.pdf)

<sup>32</sup> For more information on the Independent Panel, see <https://www.opensocietyfoundations.org/press-releases/new-panel-assesses-candidates-ahead-inter-american-human-rights-vote>

This panel was convened by the Justice Initiative of the Open Society Foundations (OSF) and was backed by more than 80 organizations, including non-governmental organizations, universities, legal clinics, and think tanks. It had complete independence in the preparation of its work methodology, which is described in its Final Report, as well as the criteria it used to assess the candidates. It was based not only on a review of the publicly available information on the candidates but also on their responses to a questionnaire that the Panel sent to them in order to ascertain their points of view on relevant issues and challenges facing both the Court and the Inter-American Commission on Human Rights.<sup>33</sup>

Whatever the ultimate design of the candidate preselection stage, it should conclude with a report that distinguishes the highly qualified candidates **from those who are *unqualified*** to hold the position, and, **if possible, organize the first group into some type of merit-based order.**

e) **The final appointment or election of the judges** of the SJP should provide confidence to both parties (the Colombian State and the FARC-EP), to Colombian society as a whole, and to its constituent sectors.

It is important to bear in mind that, according to paragraph 68 of the *Agreement on Victims*, the appointments cannot be made by the parties at the negotiating table, and therefore **would have to be under the responsibility of a third party.**

There are a number of ways to address this issue. One of them is based on the strong historical tradition in Colombia whereby its own courts select high-level judges. **It could be useful** to draw on this experience and involve those courts in the final selection of the members of the SJP, which could potentially help harmonize the judicial system as a whole. The creation of an *appointing* entity made up of representatives of the Supreme Court, the Constitutional Court, and the Council of State, could be one option to consider in order to maintain this tradition.

In the alternative, the UN Secretary General could also be tasked with appointing the Colombian judges, but based on the recommendations of the panel or committee mentioned in point (d) above, as previously *done in the comparative experience*.<sup>34</sup>

f) It is advisable for the selection mechanism to be **open**, so that candidates can be proposed freely and without any type of restriction beyond what is needed to verify the minimum requirements and ensure that the elements of the profile have been met, since all of the candidates must undergo the independent body's technical evaluation and preselection screening process.

g) We recommend that the **selection be conducted on an individual basis (that is, candidate by candidate) rather than *en bloc*, and that it be the product of a reasoned decision**, while still taking account of the overall composition of the bodies in order to maintain a balance among fields of specialization, gender equity, and respect for ethnic and cultural diversity.

h) In compliance with the *Agreement on Victims*, the selection must take account of **gender equity<sup>35</sup> and respect for ethnic and cultural diversity**, applying the criteria established in Law

<sup>33</sup> The Final Report of the Independent Panel on the Election of Inter-American Judges and Commissioners is available at: <https://www.opensocietyfoundations.org/sites/default/files/iachr-panel-report-eng-20150603.pdf>

<sup>34</sup> This system is similar to the one established to compose the Special Tribunal for Lebanon, in which the UN Secretary General is responsible for selecting judges from a list provided by the Judicial Council of Lebanon.

<sup>35</sup> "States should therefore endeavor to evaluate the structure and composition of the judiciary to ensure adequate representation

581 of 2000, which regulates the participation of women at decision-making levels in the different branches and bodies of the government.

### 3.2 The profile: What should a Peace Tribunal Judge be like?

One of the most important elements of the selection process is the profile of the SJP judge. This profile is made up of the **set of skills and personal qualities** that make it possible to ensure that the candidates, in the event of their selection, are capable of responding appropriately to the demands of peace justice.

Defining the profile of the Peace Tribunal Judge is **an indispensable prior step** in the selection process, and entails serious reflection on the skills and qualities that a judge will need to perform his or her duties within the Special Jurisdiction for Peace.

What kind of legal knowledge should this judge have? Must he or she have been a judge previously? What legal tools must he or she be able to use with skill? What should his or her personal temperament be like? Is it important for the judge to have prior experience in the application of the Justice and Peace Law? Is it preferable for this person to have general knowledge of the law, or to have deep and specialized knowledge of one area in particular? Would it be more appropriate to have a formalist judge who adheres strictly to the letter of the law, or one whose decisions are guided by the reasons behind the rules? Is there any difference with respect to the legal knowledge required of those who serve in the Chamber of Acknowledgement of Truth and Responsibility, as opposed to those who will serve in the Chamber of Amnesty and Pardon or the Chamber for the Determination of Legal Status?

The *Agreement on Victims* identifies some aspects that the Colombian government and the FARC-EP have considered important in determining the profile. Nevertheless, we believe that it is important to take account of the following recommendations when fleshing out the design of the profile—or profiles, if it is deemed necessary to have different profiles—in the Final Agreement.

#### 3.2.1 The profile must be pre-established

In order for it to serve as an objective parameter when it comes time to select the judges of the SJP, it is advisable that the profile be fully defined prior to the initiation of the selection process. This not only facilitates the identification of potential candidates but also makes it possible to reduce or neutralize undue influence in the appointments, by allowing for citizen oversight of the match between the judges appointed and the previously established profile. In this case, in order to provide security and trust to both parties, **we recommend that all aspects of the profile or profiles be set forth in the Final Agreement.**

#### 3.2.2 The profile must be clear

All of the skills and qualities that make up the profile should be defined **as clearly and specifically as possible**. This not only means that they should be clearly enumerated but also, if appropriate, the profile should specify the **relative weight that each one will have in the evaluation of the candidates, or whether they will be given equal weight**. In some systems of the region, the rank or specialty of the position to be filled determines that some qualities are considered more important than others.

In this case, paragraphs 65 and 66 of the *Agreement on Victims* establish a formula worth noting: “All of them must be highly qualified and they must include experts in different areas of the law, with an emphasis on

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of women (...).” United Nations. Human Rights Council. Report of the Special Rapporteur on the Independence of Judges and Lawyers. A/HRC/17/30, April 2011, para. 47. Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-30.pdf>

knowledge of international humanitarian law, human rights, or dispute resolution (...).”

It would be advisable for the term “highly qualified” to be developed in the Final Agreement, establishing, to the extent possible, objective parameters for determining when a candidate warrants that assessment. For example, parameters could include the candidate’s academic degrees in the specified subjects (so that a higher academic degree would make the candidate more qualified); his or her prior experience in the application of the institutions of the Justice and Peace Law, if useful; his or her direct or indirect knowledge of the reality to which the laws must be applied (for instance, by verifying field work or direct work with victims), and so on.

Another aspect that should be made clear in the formula is whether the *expertise* or knowledge required of the future Peace Tribunal Judge must encompass all areas of the law specified in the document, or whether just one or more is sufficient. It would also be helpful to identify, in advance, what other areas of law could be valuable or useful in performing the duties of the position.

It might be beneficial in this regard to use a system similar to the one used to select the judges of the International Criminal Court (ICC), which seeks to ensure that its composition strikes a balance between judges with knowledge and experience in criminal law and judges with knowledge of international humanitarian and human rights law. To this end, Articles 36. 3(b) and 36.5 of the Rome Statute provides for two lists of candidates, based on the knowledge they possess, and specifies that the final composition must include a minimum *number of judges from each list*.<sup>36</sup>

### 3.2.3 The profile should not be confused with the minimum requirements for the position

It is important to distinguish the profile from the minimum requirements for the position of Peace Tribunal Judge, as the parameters are different.

The minimum requirements (such as minimum age, profession of attorney, length of time practicing law in different professional capacities, and other similar requirements), are an objective parameter of **negative control**, as they allow for the exclusion of those unable to hold the position of Peace Tribunal Judge, but they do not provide information on who may be a *suitable* candidate to serve on one of the bodies of the SJP.

That **positive control** is, specifically, a function of the profile. The profile contains the description of an *ideal judge* who possesses certain skills and personal traits that make him or her qualified to perform the duties of the position impartially. All of the candidates subject to evaluation (and who have previously met the minimum requirements) must be assessed against each one of the features of this description. This comparison will show that the candidates match the profile in different *degrees*, and are therefore more or less *suitable* to occupy the position.

The **distinction between profile and minimum requirements is important**, because in comparative experiences, confusion between the two has frequently led to the selection of candidates who met only the minimum requirements, based on the erroneous notion that for that reason alone they were *suitable* to serve as high-level judges. Both parameters are important, since they fulfill different functions, as previously highlighted.

In the case of Colombia, paragraphs 65 and 66 of the Agreement on Victims of the Armed Conflict contain a reference to the requirements for judges of the Supreme Court, the Constitutional Court, and the Council of State (in the case of the judges of the Tribunal for Peace),<sup>37</sup> and to the requirements for judges serving on the Superior

<sup>36</sup> According to these provisions, at least nine judges of the ICC must be elected from List A, which contains the names of candidates with established competence in criminal law and procedure, and at least five must be from List B, which includes candidates with established competence in international law. A candidate with sufficient qualifications for both lists may choose on which list to appear.

<sup>37</sup> See note 6, *supra*.

Court of a Judicial District (in the case of the judges of the Chambers of the SJP). In both cases, the nationality requirement is expressly excluded, due to the decision to include foreign judges in the SJP; it is further established that the career system will not be applicable to the SJP, and that individuals who participated in the drafting of the document cannot serve as judges.

Along these lines, i) being an attorney by profession, ii) not having been convicted in a court of law to a term of imprisonment (except for political or negligent offenses), iii) having practiced law for a certain length of time (whether as a judge, in private practice, or as a university professor), and iv) not having participated in the drafting of the *Agreement on Victims* **are minimum requirements** that all candidates to the Chambers or Divisions of the Tribunal for Peace must meet in order to be considered for an evaluation.

In the case of the Investigation and Indictment Unit, the *Agreement on Victims* mentions only the requirement of being an attorney by profession, although there is nothing to prevent new minimum requirements for this position from being added in the Final Agreement.

The profile or profiles must be developed in the Final Agreement, with the inclusion of elements that describe the skills and qualities of the future members of the SJP (expanding upon the definition of what the *Agreement on Victims* has called a *highly qualified* candidate, among other things). Later, we will discuss some of the most common elements contained in the profiles of high-level judges, as well as some ways in which to verify them.

### 3.2.4 The profile is part of the regulatory framework

The judge's profile should not be understood as a merely referential element for the body responsible for the selection and appointment of the judges of the SJP. In general terms, by virtue of being clearly defined in a pre-established legal provision (which is what must occur after the signature of the Final Agreement and the enactment of the regulations necessary for its application under domestic law) **the profile is part of the regulatory framework**. As such, it gives rise to **the duty to select those candidates who most closely match the profile** over those who lack the skills and qualities stated therein, or who have them but to a lesser degree. Although this distinction may be a matter of *degree*—or of scoring, if such a system has been established—the reasonableness and grounds for this selection can be controlled by requiring the competent body to **state the reasons for its decision**. The selection and appointment of judges, then, must be subject to a reasoned decision based on the verification of each element of the profile.

### 3.2.5 The elements of the profile and its contextual nature

There are certain skills and qualities that normally—at times, under different names—tend to be included in the profile of high-level judges. Nevertheless, the final definition of those characteristics is something that **cannot be separated from the context** and the needs of justice that must be met by the future judge in a specific **time and place**.<sup>38</sup>

In this case, for instance, both the Colombian government and the FARC-EP have asserted that knowledge of international humanitarian law is a necessary tool for resolving the types of conflicts of interest and legal uncertainties that will be raised in proceedings before the SJP, which may be less important in other countries or in the selection of judges in the regular courts. Specifically, **the specialized nature of the SJP reinforces the idea of the contextual nature of the profile** of the Peace Tribunal Judge.

It is also necessary to determine how each element of that profile will be evaluated through **objective**

<sup>38</sup> Article 12 of the Statute of the Ibero-American Judge establishes that “The mechanisms of selection shall be adapted to the necessities of each country and shall be directed, in any case, to the objective determination of the applicants’ suitability.” See note 16, *supra*.

**indicators.** How will the *good repute*, *integrity*, and the *legal ability* of the candidates be determined? How is it possible to know whether a candidate has practiced law *scrupulously*, or has a personal commitment to human rights defense?

Therefore, the following suggestions, based on the elements generally contained in the profiles of high court judges in different countries, may be useful:

### 3.2.5.1 Recognized reputation, integrity, and probity

The UN Basic Principles on the Independence of the Judiciary<sup>39</sup> do not use the terms “good repute” or “probity,” although they do make reference to the related notion of “**integrity**”; nevertheless, all of those terms refer to a person of **irreproachable conduct**. It is an attribute tied to honor, whose content is determined—more than by the presence of some specific factor—by the absence of elements that make it possible to challenge or call into question the individual’s behavior<sup>40</sup>

In that regard, it is important to note that good repute, integrity, or probity do not denote a status that can be “proven” by the candidate through certifications, credentials, or third-party statements about his or her person.

Because this attribute depends upon the absence of serious and proven ethical sanctions, accusations, complaints, or objections (for instance, the candidate’s involvement in cases of human rights violations, or breach of ethical principles) to demonstrate that his or her conduct and career have been impeccable, it is important for the candidate’s background to be made as transparent as possible, and then for the objections and observations of civil society to be investigated and evaluated extensively and seriously. In other words, **in order to prove this element, it is essential to hear what civil society may have to say about the candidate in a forum for public scrutiny.**

Finally, all challenges to a candidate’s good repute, integrity or probity must be based on objective elements that can be confirmed by the evaluating body. Therefore, simple disagreement with the positions of a candidate is insufficient to demonstrate his or her lack of good repute, integrity or probity.

### 3.2.5.2 Ability and competence (with respect to the requirement of “highly qualified” candidates)

The ability and competence required of those who will serve on a country’s highest court refers, first of all, to his or her knowledge of the law.

However, not just any level of knowledge is sufficient in order to meet these requirements. The candidate must establish that he or she possesses extraordinary technical legal knowledge and an efficient command of the tools of legal interpretation, demonstrating that he or she is capable of applying the law in highly complex situations.

Given that the Tribunal for Peace will have an Appeals Division that will be the SJP’s final instance, the individuals selected to serve on that review body should be those—out of all of the candidates evaluated—who demonstrate the most extensive competency in the areas that have been deemed important: international humanitarian law, international human rights law, and dispute resolution.

<sup>39</sup> Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>40</sup> DPLF (April 22, 2014) has more extensively developed the content of the requirement of good repute in the document entitled *La evaluación de la “reconocida honorabilidad” en procesos de selección de cargos públicos*, Available at: [http://www.dplf.org/sites/default/files/dplf\\_-\\_reconocida\\_honorabilidad.pdf](http://www.dplf.org/sites/default/files/dplf_-_reconocida_honorabilidad.pdf)

How can a candidate's legal ability be proven? In comparative experiences, this ability can be assessed on the basis of elements such as:

- The applicant's academic background: Has he or she undertaken graduate or specialized studies in these subjects? Has the candidate held positions in which he or she has had to apply or work with international human rights and humanitarian law? Has he or she done so for many years, or just on occasion? Has he or she taught these subjects at the university level?
- The quality of his or her writing: In the case of a candidate who comes from the judiciary, what are his or her judgments like? Has he or she handed down any decisions applying this knowledge to specific cases? Do these judgments reflect complex, rational, articulate legal reasoning, or are they simply enumerations and transcriptions of legal provisions that do not constitute actual reasoning for the decision? If the candidate has practiced law in private practice, what are his or her professional reports or briefs like? If the candidate is coming from academia, are his or her research papers, articles, or contributions to books or scholarly publications rigorous?

Some of these issues can also be confirmed or explored in greater depth during the candidate's personal interview.<sup>41</sup>

### 3.2.5.3 *Personal ability and competence*

Ability also has a personal dimension, which in this case concerns the candidate's capacity to appropriately manage the demands of the position of Peace Tribunal Judge.

This category may include various **skills and personal qualities** of the Peace Tribunal Judge, such as his or her **oral and written communication skills and analytical ability**; sensitivity and ability to deal with the public (in this case, especially with victims); **knowledge and understanding of the causes of the conflict and the real-world situations in which his or her decisions will be implemented**; the ability to act with independent judgment; his or her vision regarding the objectives of the SIVJRNR and the way in which his or her actions would help accomplish them; **commitment to the institutional culture of the SJP** and to the protection of victims' rights, and the ability to prioritize cases involving the most serious and symbolic acts and to consolidate similar cases. In addition, it is highly relevant that the Peace Tribunal Judge have the ability to understand the **social and legal consequences of his or her decisions**.

It is also very important to ensure that the candidate's background does not include serious and evident violations of essential due process guarantees, especially in the case of applicants who have served as judges previously. Due process takes on special relevance in the context of transitional justice, as it contributes significantly to building trust in the system and its impartiality.

These characteristics can be assessed through: i) the review of texts and documents written by the candidate, especially past decisions issued by those who have served as judges; ii) his or her work history; iii) interviews with work subordinates and/or colleagues; iv) the evaluations of the decisions, initiatives, actions, or cases in which the candidate has been involved, which demonstrate his or her personal commitment to certain values; and v) the questions asked and answered during the personal interview.

<sup>41</sup> The personal interview is a key instrument in assessing the candidates. On this point, see DPLF (April 16, 2014) La entrevista personal en la selección de autoridades judiciales. Available at: [http://www.dplf.org/sites/default/files/la\\_entrevista\\_personal\\_en\\_la\\_seleccion\\_de\\_autoridades\\_judiciales.pdf](http://www.dplf.org/sites/default/files/la_entrevista_personal_en_la_seleccion_de_autoridades_judiciales.pdf)

### 3.2.5.4 Commitment to the protection of human rights, the rule of law, and democratic values

In addition to possessing technical legal knowledge of human rights, high court judges must demonstrate their effective commitment to these values. In the case of the SJP, it may be important for the candidate to have a demonstrated commitment to the value of peace.

In order to assess this commitment, it is necessary to examine the candidate's life experience and background: Has he or she made public statements or written opinion pieces that demonstrate a commitment to the defense of certain rights? Has the candidate worked as a human rights defender? Was his or her acceptance of or resignation from a past position motivated by this commitment? If the candidate has served as a judge, have his or her decisions effectively protected human rights? If the candidate has been in private practice, has he or she done any pro bono work in defense of human rights? If the candidate comes from an academic background, has he or she taught human rights law at the university level or participated in relevant legal clinics?

These are just some examples of aspects of a candidate's background that can be examined. This commitment can also be explored in greater depth in the public interview.

### 3.2.5.5 Other criteria: work efficiency

The notion of efficiency refers to the **proper use of material and human resources in the performance of duties**, and, to this extent, reveals how the candidate might behave in the future if he or she is appointed as a Peace Tribunal Judge.

This quality can be evaluated by investigating his or her employment history, especially as it concerns the imposition of sanctions, the accomplishment of work objectives, performance evaluations, punctuality and attendance record, and the ability to simultaneously manage a large number of highly complex cases. Information can also be requested from the professional associations and groups to which the candidate belongs or has belonged in the past.

For those candidates who have previously served as judges, this issue can be evaluated during the interview through questions that shed light on his or her ability to lead and organize the business of the court, and proposals for streamlining procedures and/or enforcing judgments. This element is especially relevant given the demanding workload anticipated in the SJP.

## 3.3 Openness, transparency, and mechanisms of citizen participation in the process for the selection of members of the SJP

Third, it is essential that the selection mechanism for the judges of the SJP be transparent, not only to accomplish the objective of building trust among the parties, Colombian society, and all of its various sectors, but also because transparency helps reduce the degree of discretion in the appointments and the potential for undue influence by government authorities or special interests and facilitates the identification of the candidates' merits.<sup>42</sup> The final objective of carrying out a transparent process is to prevent arbitrariness in the appointment of judges.

Consistent with the international standards and best practices observed in comparative law, a public, transparent, and participatory selection process would include the following:

- a) **The notice of competition, the minimum requirements, the profile or profiles of judges, the selection procedure—including each one of its steps—the deadlines, and ways to apply, must be publicized in advance.**

<sup>42</sup> See note 8, *supra*.

**b) The list of candidates, and all of the information about them in the possession of the competent body, must be available to the public.**

This includes the information submitted by the candidates themselves, as well as that obtained by the evaluating body and submitted by civil society. This information must be made available as soon as possible after it is received, in order to facilitate the public scrutiny of the procedure and the candidates' background within a reasonable time period.

**c) A mechanism must be established to allow any interested party to challenge or support the candidates within a reasonable period of time.**

d) The procedure should provide a challenge period to afford any person or organization the opportunity to object to the candidates, support them, or generally express whatever they deem appropriate about the candidates and to provide information that is useful to the evaluation procedure. In order for this to be possible, the information about the candidates must be available with sufficient anticipation. Maximum time periods can be established for this stage, but they must be set prior to the initiation of the selection process. This opportunity should also be provided to the State and to the FARC-EP.

For example, Argentine law grants citizens a 15-day period for this purpose, calculated from the date of the final publication of the call for candidates, which runs for three days in the official gazette and in two other nationally distributed newspapers.<sup>43</sup>

A candidate must be informed of any challenges to his or her candidacy, in order to have the opportunity to present his or her position on the matter. This reply must also be published, provided that it does not negatively affect the dignity and privacy of the candidates or of third parties.

**e) The direct interview or evaluation of candidates must be conducted at a hearing that is open to the public.**

At these sessions, the candidates should be interviewed and examined in order to verify whether they meet the requirements of the profile. They should also be given the opportunity to clarify and respond to any challenges or remarks concerning their candidacy, while safeguarding their dignity and privacy.

These sessions should additionally include some mechanisms to allow civil society to submit proposed questions for the candidates to the evaluating body to the greatest extent possible. It is advisable that these sessions be recorded and made public as soon as possible.

**f) Finally, the deciding body must state the reasons for its decision.**

In some countries that have selection systems administered by political bodies, a secret vote is avoided and each member of the deciding body is asked to cast his or her vote publicly. In the case of collegial bodies, the requirement that they state the reasons for their decision means that each and every element of the profile must be met and substantiated with respect to each candidate.

<sup>43</sup> Article 6 of Decree 222/2003 of June 19, 2003. Available at: <http://infoleg.mecon.gov.ar/infolegInternet/anexos/85000-89999/86247/norma.htm>







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