

# INFORMATIVE CAPSULE

09 February 2021

## JUDGMENT ON CASE 001: WHAT HAPPENED AND WHAT TO EXPECT?

### 1 What is Case 001 about (Taking hostages and severe deprivation of liberty perpetrated by FARC-EP)?

Case 001, initiated on July 4th, 2018 by JEP's (Special Jurisdiction for Peace – JEP, by its Spanish acronym – Jurisdicción Especial para la Paz) Chamber of Recognition deals with hostage-taking and severe deprivation of liberty of persons, which were perpetrated by FARC-EP between 1993 and 2012. Within the scope of this case, JEP is investigating approximately 9 thousand events that took place during this period. In order to do that, it has been analyzing and comparing information received during 2019, particularly reports presented by the following entities:

- ✓ The Office of the Nation's Public Prosecutor (three reports included in the document regarding "unlawful arrests carried out by FARC-EP")
- ✓ Organizations, such as País Libre
- ✓ The Colombian Association of Victims of Enforced Disappearances and other Victimized Events (ACOMIDES)
- ✓ Organizations of victims who were kidnapped
- ✓ The National Centre of Historical Memory

Besides those reports, Case 001 also includes information provided by witnesses who have offered their voluntary versions – individual and collective – regarding the events, particularly by persons who allegedly were the main responsible or decisive perpetrators of those crimes.



In that regard, the Chamber carried out a comparing examination of the information, which considered, among others: the remarks of the victims and the observations of the Nation's Attorney General.

### 2 Why wasn't the case named "kidnapping"?

Case 001 was initially named "Unlawful arrests of persons by FARC-EP", and is now titled "Taking hostages and other severe deprivations of liberty," since "kidnapping" does not technically comply with the legal qualification of the conducts – as indicated by JEP Magistrate and Rapporteur for Case 001, Julieta Lemaitre, during a press conference which took place on January 28th, 2021. In this regard, the technical elements that need to be considered are as follows:

- This case deals with severe deprivations of liberty.
- These events took place during an armed conflict involving FARC-EP.
- These events were carried out in a systematic or widespread manner, and according to the policies of the armed group.

These technical aspects correspond to the elements that are required by international criminal law in order to attest the existence of the war crime of hostage-taking and the crime against humanity of imprisonment.



JEP has the prerogative of determining conducts according to international law: on the basis of legislative act 01 of 2017 and its Statute, JEP has the prerogative of determining conducts according to international criminal law and international humanitarian law.

On the basis of the technical elements and JEP's prerogative to decide about the juridical determination of conducts, the Chamber of Recognition concluded that, the conducts traditionally characterized as kidnapping in national law may be considered as crimes against humanity and war crimes in international law. This determination not only implies that these crimes are not susceptible to amnesties – which would also apply if they were characterized as kidnapping – but also result in the following:

- The acknowledgment about the international relevance of the conducts, insofar as they could be under the jurisdiction of the International Criminal Court, or of other States by virtue of universal jurisdiction – in case they are not investigated by domestic institutions.
- The recognition that the conducts are more serious than domestic crimes, since they not only seriously harmed the victims, but also: (i) affected humanity as a whole, (ii) they are not isolated events, but are a part of a policy, and (iii) violated norms of international law.

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### 3 What did JEP decide in its judgment of 26 January 2021?

On January 26th, 2021, the JEP's Chamber of Recognition issued its Judgment No. 19 of 2021. In said decision, the Chamber determined the facts and conducts that might be attributed to the members of the Secretariat of FARC-EP, within the case regarding "taking hostages and other severe deprivations of liberty." The Chamber decided that there are sufficient elements to determine that:

#### 1 The facts took place:

The Chamber was able to establish that FARC-EP carried out large-scale deprivations of liberty, and identify the following practices and patterns:

- Deprivation of liberty of civilians with a view to financing their activities, by means of demanding monetary payment for their release.
- Deprivation of liberty of civilians and members of the security forces, in order to interchange them with imprisoned guerrilla members.
- Deprivation of liberty of civilians as a means to achieve social and territorial control.
- Conducts carried out during the deprivations of liberty which violated human dignity and caused serious harm and consequences to victims and their family members.

The Chamber included in the judgment some concrete examples that illustrate each pattern and policy. Nevertheless, these cases are merely illustrative and, according to the decision, are examples of those conducts, but are not the only cases which may be attributed to those criminally charged and those who acknowledge their responsibility.

#### 2 The facts are not susceptible to amnesties:

The Chamber decided that, given the juridical classification of the facts (as international crimes and gross human rights violations), they are not susceptible to amnesties. The Chamber classified the facts as follows:

- The deprivations of liberty may characterize:
  - ✓ The war crime of taking hostages
  - ✓ The crime against humanity of imprisonment or other severe deprivation of liberty.
- The facts that took place during or in relation to the deprivations of liberty may characterize:
  - ✓ The war crimes of willful killing, torture and cruel treatment, attacks against personal dignity, sexual violence and forced displacement.
  - ✓ The crimes against humanity of murder, enforced disappearance, torture, other inhumane acts, sexual violence and forced displacement.

#### 3 Former members of the Secretariat of FARC-EP participated in the events.

The Chamber decided that the following persons took part in those international crimes:

- ✓ Rodrigo Londoño Echeverry
- ✓ Jaime Alberto Parra
- ✓ Milión de Jesús Toncel
- ✓ Juan Hermilio Cabrera Díaz
- ✓ Pablo Catatumbo Torres
- ✓ Pastor Lisandro Alape
- ✓ Julián Gallo Cubillos
- ✓ Rodrigo Granda Escobar



The persons mentioned in said judgment will be charged according to the following modalities of criminal conduct

- Co-perpetration: insofar as they participated in the planning and execution of the policies regarding deprivations of liberty, thus may be charged as perpetrators.
- Command responsibility: regarding the conducts that took place during or in relation to the deprivations of liberty, in case there was failure to act in order to prevent and repress the conducts being perpetrated by subordinates, which constitute international crimes.

### 4 What happens to the remaining perpetrators of deprivation of liberty who were not included in the judgment of 26 January 2021?

The Chamber of Recognition decided in its judgment that it only refers to the former members of the Secretariat of FARC-EP, and that it shall later issue other judgments about facts and conducts, in which main perpetrators and co-perpetrators belonging to each section or joint command of FARC-EP will be identified. In this regard, these subsequent decisions shall focus on the regional dimensions of the patterns of deprivation of liberty. The Chamber also informed that it has summoned and will continue calling upon commanders of each Section who might be identified by the victims.

→  The case shall continue identifying perpetrators – who may be intermediary commanders or direct executors – thus this judgment does not exhaust the facts, and further perpetrators shall be investigated, prosecuted and punished within Case 001.

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### 5 What will happen with regard to the political participation of those included in the judgment of 26 January 2021?

- ✓ Law 1957 of 2019 established that JEP has the duty to “determine the compatibility between convictions and political participation.” In this regard, the “special jurisdiction shall determine in each case the adequate goal of the punishment, and define whether said penalty is compatible with a genuine intention to be criminally responsible, while duly considering the proportionality of the penalty with the seriousness of the crime and the level of criminal responsibility of the person in question; and the type and level of restriction of liberty.”
- ✓ Moreover, the Constitutional Court, in its Judgment C – 080 of 2018 determined that, “those responsible for gross human rights abuses and violations of International Humanitarian Law, including crimes against humanity, war crimes and genocide, ‘shall not be part of any security force, State–defense force, Judicial branch or control mechanisms’ (Article 122, 3 of the CP), except for the participation of former members of FARC–EP in the security mechanisms for political exercise, in accordance with the Final Agreement.”
- ✓ Judgment C – 674 of the same tribunal also asserted that, since the investigation, persecution and punishment of gross human rights violations and transgressions of International Humanitarian Law constitute a mandatory State duty, which must be carried out by the Judiciary; the Court understands that transitory Article 20 must be understood in the sense that JEP maintains the prerogative to examine in each case whether the penalty imposed is compatible or not with the simultaneous reintegration into public life and the exercise of the right to participate in government.

In order to do so, JEP shall take the following into account, among other factors:

- ✓ The nature of the punishment imposed, the elements thereof, and the aims of dissuasion, retribution, rehabilitation and restoration.
- ✓ The seriousness of the crime committed.
- ✓ The level of criminal responsibility.
- ✓ The genuine intention of the perpetrator to be held criminally liable.



In a sum, JEP shall determine whether compliance with the sentence is compatible with the enjoyment of political participation, while guaranteeing the State’s duty to investigate, prosecute and punish gross human rights abuses and violations of International Humanitarian Law, as well as the obligation to ensure the rights of victims to truth, justice, reparation and non–repetition.

### 6 Which measures were adopted in relation to Case 001?

- ✓ The judgment issued by the Chamber of Recognition is the result of an intricate procedure, which is contemplated in Colombian legislation:

- ✓ Receiving reports (2018)
- ✓ Combination, concentration and rioritization of information (until 21 June 2018)
- ✓ Opening the general case (4 July 2018)
- ✓ Initiating the phase of “recognition of the truth, responsibility and determination of facts and conducts” (13 July 2018)
- ✓ Comparison among reports received within the general case (12 December 2018)
- ✓ Voluntary testimonies (2019 – 2020)
- ✓ Interview and affidavits from persons who had information about the general case (2019 – 2020)
- ✓ Submission of the voluntary testimonies to the victims (2020)
- ✓ Judgment of 26 January 2021: Determination of facts and conducts.



The judgment does not exhaust the events or the perpetrators that shall be investigated, prosecuted and punished within Case 001, since the Chamber will continue its task of clarifying facts, collecting and contrasting information.

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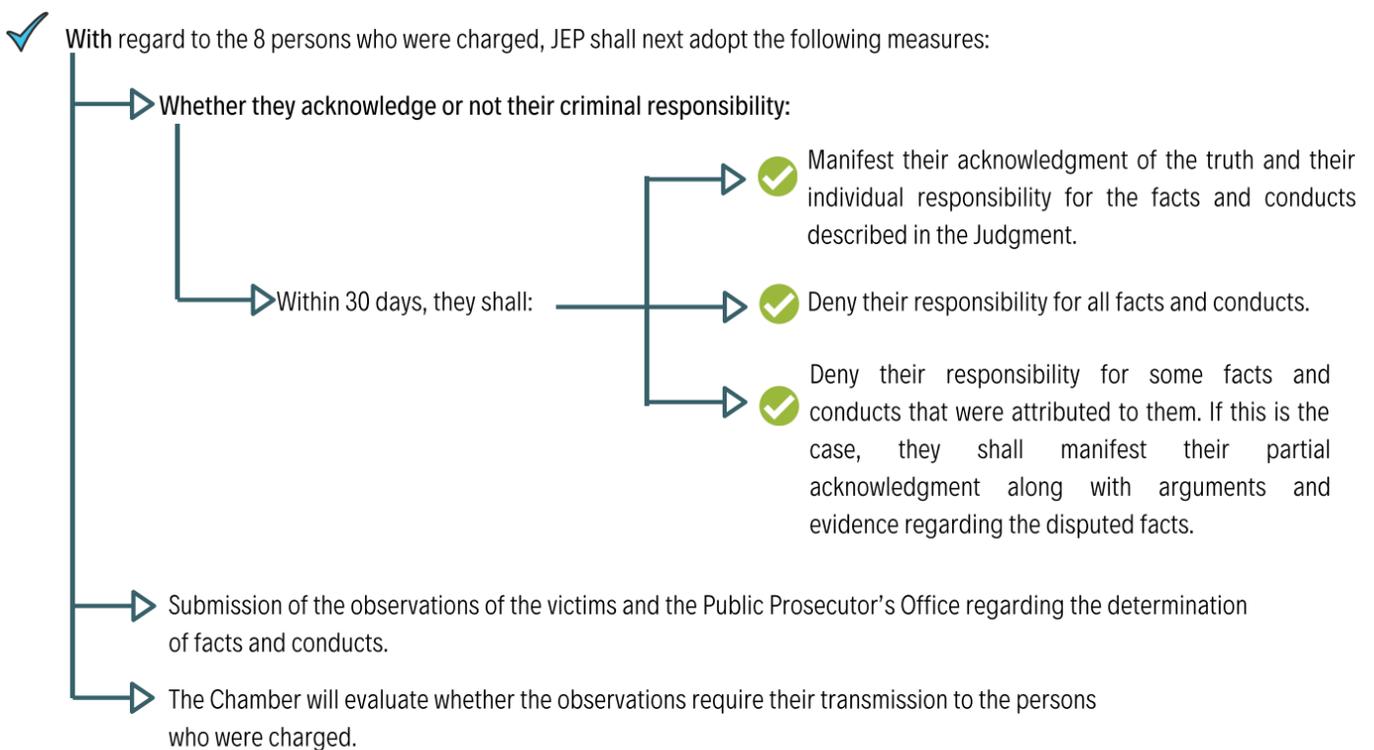
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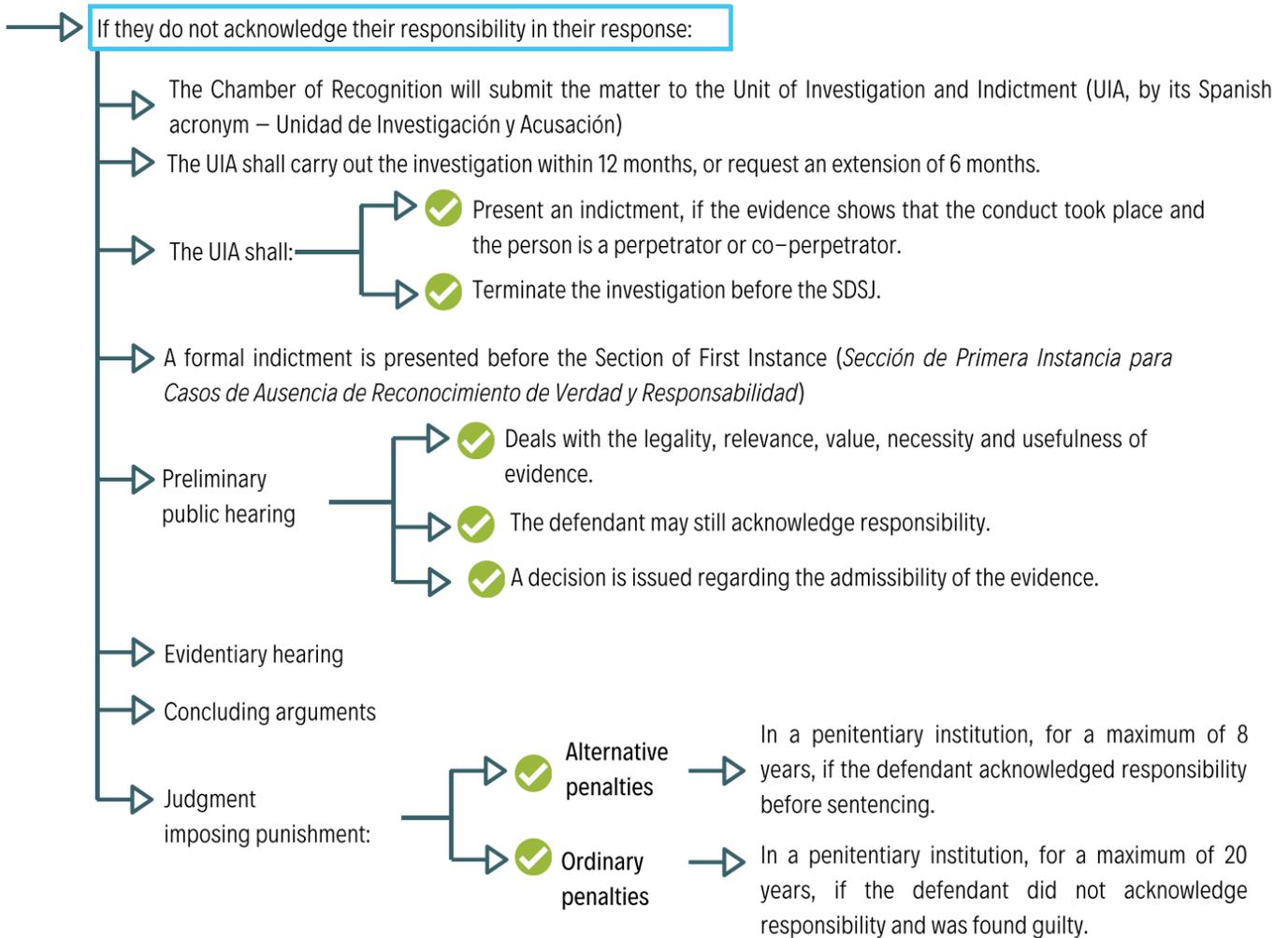
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### 7 What will happen next in Case 001?



On January 28th, Rodrigo Londoño, Pablo Catacumbo, Julián Gallo, Jaime Parra, Pastor Alape and Rodrigo Ganda praised the progress achieved by JEP, expressed their commitment with peace and the rights of the victims, and stressed that they will present their observations within the proposed deadline.

✓ In view of the response that may be presented by the defendants, the following procedures might follow:



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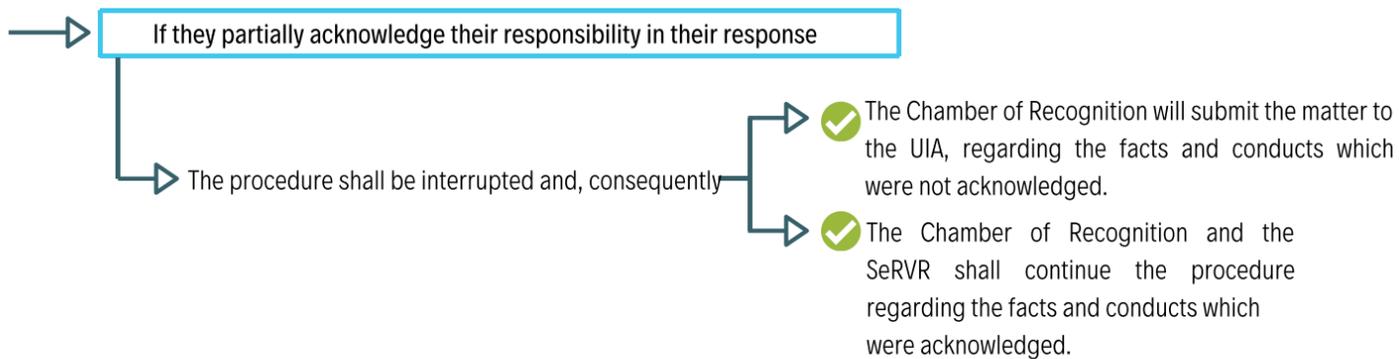
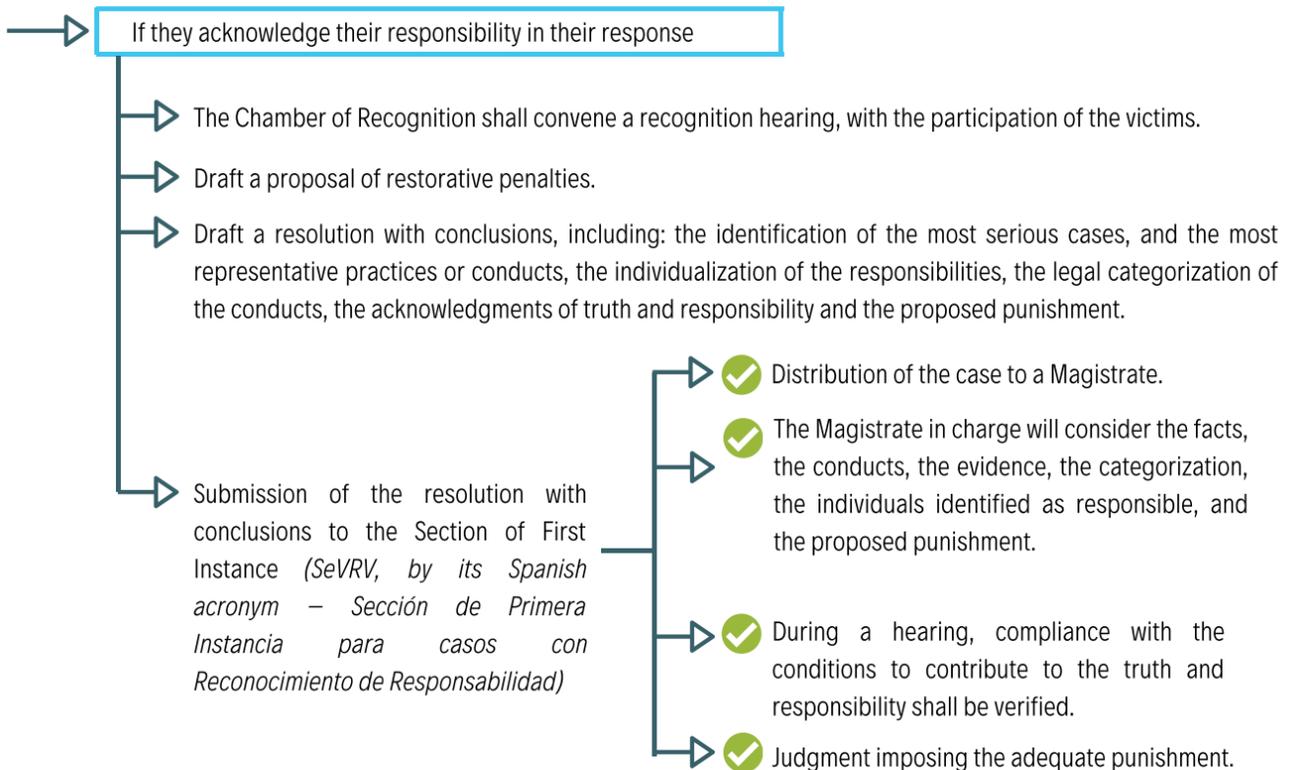


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### ¡FINAL NOTE!

In keeping with the principle of integrality, the Chamber of Recognition issued the following orders to the defendants who were charged:



- Submit to the Unit of Search for Disappeared Persons (UBPD, by its Spanish acronym – Unidad de Búsqueda de Personas Desaparecidas), within 30 business days, the available information to continue the search, location, identification and delivery of the remains of persons who are considered as disappeared and were identified within this case.
- Present a detailed plan before the UBPD, with a schedule for the gathering of information with a view to materializing the search, location, identification and delivery of the remains of persons who are considered as disappeared and were identified within this case.

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