Abstract

ter moving a significant step forward towards enduring peace and reconciliation through the Congressonal enactment of the Victims and Land Restitution Law, in September 2012 the Colombian government publicly announced the formal initiation of peace talks with the Revolutionary armed forces of Colombia (FARC), the oldest still standing guerrilla movement in the country. However, this news did not come entirely by surprise. Just two months before, on July 31st 2012, the Colombian Congress had passed a constitutional amendment– known as the Legal Framework for Peace– exclusively designed to facilitate peace talks by providing the legal foundations of transitional justice mechanisms. This article aims to analyze the scope and meaning of the participation in politics provision of the Legal Framework for Peace, which paves the way to negotiating a political settlement for the non-state armed groups that agree on a ceasefire and a peace commitment. Based on an analysis of the criteria that have been commonly applied to define which type of common crimes should be considered to be associated with a political offence, and taking into account the political participation provision as a basic commitment to any successful transition, I will conclude by addressing the need that the statutory law –that will develop the Legal Framework for Peace– refrain from referring to an exhaustive list of crimes. Rather, I propose that the legislative implementation of the last provision of the Legal Framework for Peace should rely on criteria that will structure a more flexible and responsive case-by-case analysis. In any case, it is necessary to take into account that unlike the cases of South Africa and Northern Ireland, as well as the traditional understanding of the political offence in the Colombian context as exclusively referred to the granting of amnesties or pardons, article 3 is aimed to opening the possibility for the armed groups –and their members– to enter the mainstream of the democratic process. Although the idea of the FARC participating in parliamentary elections and transforming into a political party seems disquieting for an important portion of the public opinion, the truth is that this issue constitutes a groundbreaking condition for a successful political transition in Colombia.

Keywords

Legal Framework for Peace, armed conflict, political participation, political offence, peace process, transitional justice, demobilization, guerrillas, Colombia, amnesty, statutory law, political action.