

Colombia: The Special Jurisdiction for Peace, Analysis One Year and a Half After its Entry into Operation

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International Commission of Jurists
P.O. Box 91
Rue des Bains 33
Geneva
Switzerland

Colombia: The Special Jurisdiction for Peace, Analysis One Year and a Half After its Entry into Operation

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This report was written by Rocío Quintero M., legal adviser with the International Commission of Jurists, and reviewed and revised by Commissioners Robert Goldman, Carlos Ayala, Wilder Tayler and Philippe Texier. The report also used documents prepared by Federico Andreu-Guzmán.

Translation from Spanish by Leslie Carmichael.

Note: The translation into English of Colombian institutions and legal concepts is unofficial, adopted from various sources. There is no single authoritative translation of many of these terms. Additionally, due to the fact that some legal concepts might be confusing or difficult to understand for those who are not familiar with the Colombian legal framework, some additional explanatory footnotes have been added in the English version.

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I. EXECUTIVE SUMMARY

The International Commission of Jurists (ICJ), in furtherance of its objective to promote accountability, justice and the rule of law in Colombia, has been continuously monitoring the implementation of the mechanisms and institutions created as the result of the peace negotiations between the Colombian National Government and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP). Among these mechanisms and institutions, the Special Jurisdiction for Peace (JEP) is of particular importance because it is the institution that was designed to investigate, prosecute and punish those responsible for the most serious human rights violations committed during the armed conflict in Colombia. Furthermore, the JEP has broad responsibility in relation to guaranteeing the rights of the victims of violations and abuses arising from the conflict.

The ICJ recognizes the importance of supporting the JEP’s work from a critical but constructive perspective, to facilitate the strengthening and implementation of its functions in full compliance with international law, in particular regarding the rights of victims. Indeed, guaranteeing the rights of victims is fundamental for the JEP’s legitimacy and is also necessary to consolidate peace in Colombia.

For this reason, the ICJ sent a high-level mission to visit Colombia from January 21 to 25, 2019, to analyse and evaluate the implementation of the Special Jurisdiction for Peace. This mission was made up of Commissioners Carlos Ayala (ICJ Vice-President, Venezuela), Wilder Tayler (Uruguay) and Philippe Texier (France) who spoke to a wide range of people. The mission’s initial findings have been expanded upon and complemented with an analysis of the JEP’s main decisions. Additionally, it was reviewed and analysed the actions undertaken by other authorities when these are relevant to the JEP’s implementation.¹

This report presents the findings of the ICJ’s mission and review.² In general, the findings indicated considerable advances in the implementation of the JEP, exposing both strengths and challenges. The ICJ was accordingly able to recommend concrete actions to strengthen effective participation by victims in JEP’s proceedings and guarantee their right to justice and comprehensive reparations. Finally, the findings demonstrated the importance of guaranteeing the JEP’s judicial independence to ensure the proper exercise of its functions.

A. Strengths identified

Strength 1. Quick entry into operation. Within a year and a half of its entry into operation, the JEP had begun to take actions to prevent impunity for the serious human rights violations and abuses that were committed during the armed conflict, as well as ensuring that the victims shall receive reparations for these violations and damages. These processes are even more significant considering that the JEP has been operating in a highly polarized atmosphere, and without its Statutory Law, which was only passed on June 6, 2019.

Strength 2. Coordination among the Comprehensive System of Truth, Justice, Reparation and Non-repetition’s institutions. The Comprehensive System (SIVJRNR for its acronym in Spanish) comprises three institutions: the Truth, Coexistence, and Non-

¹ Review and analysis up to June 7, 2019.

² The report also presents the international human rights framework as a point of reference for the national implementation of transitional justice instruments and mechanisms (Chapter III); a description of Colombian law relevant to the JEP (Chapter IV) and; a detailed analysis of the JEP’s operations and procedures (Annexes).

Recurrence Commission (CEV); the Search Unit for Persons Presumed Disappeared in the context and by reason of the armed conflict (UBPD); and the JEP. This design requires coordinated work among the institutions that make up the system.

In general, the JEP, the CEV, and the UBPD have aimed to work jointly and in coordination. When it has considered appropriate to do so, the JEP has informed the CEV and the UBPD of its decisions and invited them to be part of its proceedings.

Strength 3. Respect for the JEP's jurisdiction by Colombian high courts. Within the framework of their powers, Colombian courts have acknowledged that it is important that the JEP exercise its jurisdiction with the legal tools and mechanisms necessary to fully guarantee victims' rights and legal certainty for the accused.

Strength 4. Widespread support from the international community. The international community has given broad political, financial and resource support to the process of implementing the peace agreement in Colombia. The entities that make up the SIVJRNR have international legitimacy. The international community has supported the JEP's work and has emphasized the importance of having all the necessary tools for action.

Strength 5. Implementation of the differential approach in the proceedings before the JEP. The JEP has begun to take actions to use the differential approach³ in its proceedings. In particular, it is worth highlighting the creation of three permanent committees within the JEP (the Territorial and Environmental Committee, the Ethnic Committee and the Gender Committee), the use of the differential approach in the cases opened by the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts (Judicial Panel for Acknowledgement of Truth), and diversity among the judges within the jurisdiction.

Strength 6. Implementation of criteria for prioritization. In order to carry out its function to investigate the most serious and representative crimes committed during the armed conflict, the Judicial Panel for Acknowledgement of Truth issued a document on "Criteria and methodology to prioritize cases and situations." This document establishes a case management methodology focused on the identification and delimitation of types of cases, based on patterns and macrocriminality. Despite some critique that the definition of criteria has attracted, this document has made it possible for the Panel to be more organized and transparent in its handling of cases.

Additionally, the methodology proposed in the document could contribute to better access to justice for victims. It also may help manage victims' expectations concerning the proceedings before the Panel. For this to be achieved, it is important that the public and victims are aware of the prioritization criteria and efforts are made to ensure that victims understand the rationale for these criteria with a view to gaining their acceptance. In the same vein, measures should be implemented to guarantee the rights of victims in non-prioritized cases.

Strength 7. Coordination with the Indigenous Peoples Jurisdiction. The JEP has undertaken actions and made progress to establish permanent and fluid dialogue with the indigenous authorities. Of particular importance has been the work with the *Permanent Board for Consultation with Indigenous Peoples and Organizations* to guarantee the right of

³ The "differential approach" (*enfoque diferencial*) essentially involves the interpretation and application of the law using a perspective that contemplates the specific needs of certain sectors of the population such as women, ethnic groups, and the LGBTI Community.

Regarding human rights violations, it takes into account that the harm and consequences of a violation may not be the same for all victims. Therefore, the measures adopted to guarantee victims' rights cannot be uniform and unique. For instance, considering gender inequality and the disproportionate impact of the armed conflict on women, the design and implementation of reparation measures should have a specific component to reduce gender gaps and address specific harms suffered by women.

indigenous groups to prior consultation in relation to the instruments that govern the JEP. Furthermore, the Judicial Panel for Acknowledgement of Truth has coordinated with indigenous authorities and has invited indigenous communities to submit reports concerning the cases the Panel is handling.

Strength 8. Opportunities for dialogue with victims and their associations. The JEP has organized several events to explain to victims (i) its operation, (ii) the opportunities of participation in its proceedings, (iii) the procedure to receive legal advice, and other topics. The JEP has also undertaken actions to be recognized as a court that guarantees victims' rights and that counters impunity for serious human rights violations committed during Colombian armed conflict. Nevertheless, several challenges persist in this area, which will be discussed below.

B. Challenges

B.1. Challenges regarding judicial independence

The success of the JEP depends, to a large extent, on how it effectively fulfills its functions in light of its purposes and objectives. However, the influence of external factors cannot be disregarded. In particular, in order for the JEP to function adequately, public authorities must recognize its judicial independence. On this point, the JEP faces several challenges:

Funding

For 2019, the JEP received less budget than it had requested. The same is true of the CEV and UBPD. In particular, the UBPD only received 32 percent of the funding it had requested. Although this underfunding does not necessarily indicate that there is a specific intention to weaken the functioning of the SIVJRNR's entities, it does point to a worrying change in the new government's priorities. Furthermore, it raises questions about the amount of State funding for the SIVJRNR in coming years.

In this regard, the national government must keep in mind that the SIVJRNR was created to guarantee the rights of the victims of the conflict. Therefore, it is essential for the State to finance the system in order to comply with international human rights obligations.

Recognition and respect for the JEP as a court of justice

Some authorities have questioned the JEP's ability to tackle impunity in cases of serious human rights violations, and to adopt measures that guarantee victims' right to reparation and non-repetition. This has heightened polarization about the JEP and has affected its legitimacy. Therefore, even when they do not agree with the JEP's decisions, it is important that the authorities exercise their functions with a view to strengthening and not undermining the JEP. Furthermore, it is essential that clear and concrete language be used to transmit criticisms and propose reforms. The authorities should not underestimate the negative impact of spreading partial truths or unverified information, particularly because the peacebuilding process is taking place in a complex context.

B.2. Challenges regarding victims' rights

Challenge 1. Need for concrete actions to apply the principle of centrality of the victims. The justice system that was created by the final Peace Agreement will not be successful unless it effectively guarantees victims' rights. Although this task does not fall exclusively to the JEP, the JEP has a leading role as the judicial component of the SIVJRNR. As a consequence, the Colombian State's compliance with its international obligations to effectively investigate and punish serious human rights violations relies, to a considerable extent, on how the JEP fulfills its functions. Despite the JEP's efforts to guarantee victims' rights, it faces some important challenges:

Effective participation

Accreditation. The JEP must establish clear and uniform procedures to accredit victims. This is essential so that victims may exercise their rights before the JEP.

Opportunities for participation. Participation by victims must be guaranteed in all proceedings and all stages, which will require expanding the current opportunities for such participation. In particular, victims must be allowed to participate in the hearings for cases that are before the Judicial Panel for Acknowledgement of Truth.

Similarly, regarding the Judicial Panel for Determination of Legal Situations and the Judicial Panel for Amnesty or Pardon, victims should be given the same opportunities for participation in the different proceedings. Particularly, victims should have the same opportunities of participation in the proceedings where (i) temporary legal benefits are granted⁴ and (ii) the individual criminal responsibility of the alleged perpetrators is established.

Defining the right to participate. Unless there is clarity about the specific parameters of victims' participation at each stage of the proceedings, and resources are available to make this possible, it would be meaningless to say that broad participation by victims in the proceedings is guaranteed. Victims must have clear and complete information about the purpose of the hearings and other procedural opportunities in which they participate.

Victims not only have the right to be heard, but to present arguments and evidence that could influence the JEP's decisions. This is not possible unless they have information about the specific stages of the proceedings. Therefore, the JEP should produce a guide to participation to explain the objectives and purposes of the different stages of the proceedings.

Reparations

Although the JEP adopts a restorative approach in accordance with its functions, including the imposition of sanctions, it still has the obligation to guarantee victims' right to full and effective reparation. As a consequence, the restorative component of the sanctions should be understood as the mechanism through which full and effective reparation will be made effective.

Additionally, considering the JEP is not the only State entity that has responsibilities for delivering reparations, it is essential that it works jointly with the other public entities that have obligations in this area.

⁴ These benefits include granting freedom, changing or revoking custodial measures and the suspension of arrest warrants.

Finally, it should be emphasized that the above does not imply changes in the JEP's regulations. On the contrary, given that the regulations recognize and seek to guarantee victims' rights, the JEP must simply interpret the regulations in a way that develops, deepens and implements, in the best manner, the principle of centrality of the victims in its proceedings.

Challenge 2. The role of reporting as a way for the victims to participate in the JEP.

The victims' organizations' reports⁵ presented before the Judicial Panel for Acknowledgement of Truth are considered to be one of the most important forms of participation in the JEP. Certainly, presenting a report has often been greatly symbolic and has served to emphasize victim's role inside the JEP. Likewise, some of the reports submitted by victims have contributed to drawing attention to some crimes committed during the conflict with a low level of investigation and prosecution by the ordinary courts.

In spite of the above, the presentation of reports entails some challenges in terms of guaranteeing the victims' right to participate. First, there is the management of expectations, in particular in relation to reports about crimes that will not be prioritized by the Judicial Panel for Acknowledgement of Truth. In such cases, the JEP needs to have a procedure to live up to the expectations of victims' organizations concerning the JEP's work.

Second, it is important that victims understand that making a report is one of many opportunities for participation in the JEP. The presentation by victims of a report should not be conceived as the main mechanism for participation or as an essential element for the Judicial Panel for Acknowledgement of Truth to receive information about serious human rights violations committed during the conflict. This is because the State has the obligation under international law to investigate these violations regardless of victims' participation in the legal proceedings.

Finally, the confidentiality and safety of victims must be guaranteed throughout the proceedings, even after the report has been presented. In that regard, the Judicial Panel for Acknowledgement of Truth must be especially careful with information provided to alleged perpetrators. Extra care must be taken when the reports contain information related to criminal responsibility of persons over whom the JEP has no jurisdiction or are not fulfilling their legal obligation with the JEP.

Challenge 3. Protective measures for victims. It is necessary to adopt corrective measures to ensure the protection of victims who participate in JEP proceedings. Considering that the JEP's justices and the Investigation and Prosecution Unit⁶ (UIA) have responsibilities in this area, good internal coordination is essential.

⁵ The JEP's regulation allows and encourages victims' organizations to present reports on human rights violations committed during the armed conflict. In general terms, it is expected that the information provided by the organizations includes human rights violations against one of their members. However, they are free to include any information they consider would be useful for the JEP.

The idea is that victims' organizations provide the information they have collected throughout the years. In that regard, the reports may have valuable information to clarify crimes and identify those responsible. Certainly, due to the high level of impunity and threats against witnesses and victims' families, it is possible the victims' organizations have crucial information that they have not shared with the ordinary justice system.

Finally, it should be highlighted that State institutions, such as the Office of the Attorney General, military forces and ministers, must present reports to the JEP. Specifically, considering their functions, State institutions' reports should contain information on criminal and disciplinary investigations on human rights violations, as well as human rights violations committed against public servants.

⁶ The UIA is part of the JEP. It is in charge of investigating and prosecuting alleged perpetrators of serious human violations who do not acknowledge truth or responsibility before the Judicial Panel for Acknowledgement of Truth. It is worth noting that the Judicial Panel activates the functions of the UIA. Specifically, when the Panel concludes that a person is not telling the truth or a person does not accept their responsibility, the Panel sends the case to the UIA. Once, the Unit receives the case, it will start the process of investigation. The UIA does not have the autonomy to investigate a person without the authorization of the Judicial Panel.

Additionally, effective action must be undertaken to enforce protection measures. As it is likely that some of the measures will depend on other State institutions, such as the National Protection Unit, the JEP must have effective communication and coordination channels with these entities.

Challenge 4. JEP's training and publicizing decisions. Although there have been efforts to explain the JEP's role as justice tribunal, many victims and the general public still do not understand the JEP's functions and its decisions. This is particularly true in remote rural areas and in places where no victims' organizations are present or operative. Therefore, workshops about the JEP and publicizing its decisions should not merely continue but be stepped up.

Challenge 5. Consolidate the role of the JEP as the justice component of the Final Peace Agreement and encourage the voluntary acceptance of JEP's jurisdiction for those who do not fall under mandatory jurisdiction. The JEP has the challenge of encouraging civilians and State agents who are not members of the military forces to accept JEP jurisdiction voluntarily.⁷ Clearly, if the JEP has jurisdiction to investigate and prosecute the crimes committed by those individuals, it will be able to offer victims a satisfactory response in terms of truth and accountability.

To this end, in addition to the legal benefits offered by the SIVJRNR, the voluntary acceptance of JEP jurisdiction must be encouraged by consolidating the JEP as the court of justice for serious human rights violations and abuses committed during Colombian armed conflict. This means that proceedings to determine truth and responsibility should provide victims with answers they have not been able to get from the ordinary justice system, especially concerning crimes that have high levels of impunity. This aims to ensure that the voluntary acceptance of JEP jurisdiction is not seen as a form of impunity or a technique of sidestepping the sanctions of the ordinary justice system.

In order to achieve the former, the JEP must correctly apply its system of sanctions to guarantee the rights to justice, reparation and guarantees of non-recurrence. This implies that, although the JEP exercises its functions from a restorative perspective, it must comply with international law and standards concerning the prosecution of those responsible for serious human rights crimes. In this regard, it must be kept in mind that the JEP's sanctions regime might be controversial from a victims' rights point of view and the duty of the State to effectively sanction serious human rights violations, especially in cases related to crimes under international law. Certainly, light sentences that do not entail any time spent in custody may not only be offensive to victims' right to justice but could even encourage impunity and future repetition of such crimes.

Therefore, the application of the JEP's sanctions regime must be preceded by serious work to investigate and verify the truth and responsibility confessed by the alleged perpetrators. This is to ensure that the special legal benefits do not undermine victims' rights.

⁷ Given a decision of the Colombian Constitutional Court, the JEP has mandatory jurisdiction only over two groups of people: previous FARC-EP members and members of the military forces. Over a third group (civilians and State agents who are not members of the military forces, such as politicians or public servants) the JEP has voluntary jurisdiction. This means that the JEP can investigate and prosecute the crimes committed during the conflict by members of the third group only if they accept JEP jurisdiction voluntarily. The voluntary acceptance of JEP jurisdiction is individual.

II. INTRODUCTION

A. International Commission of Jurists' mission to Colombia and purpose of the report

The International Commission of Jurists (ICJ), as part of its projects in Latin America, is monitoring the implementation of the mechanisms and institutions that were created as the result of the peace negotiations between the National Government and the Revolutionary Armed Forces of Colombia – People's Army (FARC-EP).

Among these mechanisms and institutions, the Special Jurisdiction for Peace (JEP) is of particular importance because it is the institution that was designed to investigate and sanction—within the boundaries of Colombian law—those responsible for serious human rights violations committed during the armed conflict in Colombia. Similarly, the JEP has broad responsibility for guaranteeing the rights of the victims of violations and abuses arising from the conflict. Among other things, the JEP must guarantee victims' rights in its proceedings, impose sanctions that help repair the harm suffered, and contribute to the reconstruction of the social fabric.

The ICJ recognizes the importance of supporting the JEP's work from a critical but constructive perspective, to facilitate the strengthening and implementation of its functions in full compliance with international law, in particular regarding victims' rights. Precisely, respect and guarantee for victims' rights is fundamental for the JEP's legitimacy and is necessary to consolidate peace in Colombia.

For this reason, the ICJ sent a high-level mission to Colombia from January 21 to 25, 2019, to analyse the implementation of the Special Jurisdiction for Peace. This mission was made up of Commissioners Carlos Ayala (ICJ Vice-President, Venezuela), Wilder Tayler (Uruguay) and Philippe Texier (France) who spoke with a wide range of peoples, including opponents and strong critics of the peace process. Additionally, the ICJ carried out an analysis of the JEP's main actions, in particular, those related to victims' participation in its proceedings. The ICJ also reviewed the actions undertaken by other authorities when these were relevant to the JEP's implementation.⁹

This report presents the findings of the ICJ's mission and follow-up analysis of the JEP's implementation. The report is divided into five parts. The first section, which includes this introduction, provides a brief description of the current context in Colombia in relation to the JEP's implementation. The second section presents the international human rights framework as a point of reference for the implementation of transitional justice instruments and mechanisms in Colombia. The third section describes the JEP's legal framework and victims' rights in the JEP's proceedings. The fourth section presents the findings, which are divided into two categories: strengths and challenges. This section also provides the overall conclusions. Finally, the fifth section contains a series of annexes that describe in detail the JEP's operations and proceedings.

⁸ The persons consulted included justices from the Special Jurisdiction for Peace (JEP), members of the Truth, Coexistence and Non-Recurrence Commission (CEV), members of the Search Unit for Persons Presumed Disappeared in the context and by reason of the armed conflict (UBPD), legislators, victims, and representatives of the international community.

⁹ The review and analysis cover the period up to June 7, 2019.

B. Brief description of the current Colombian context in relation to the implementation of the Peace Agreement

On August 26, 2012, the government of then-President Juan Manuel Santos Calderón and the FARC-EP signed an initial agreement¹⁰ in which they established the rules for conducting “direct and uninterrupted” peace talks in Havana (Cuba). Unlike other attempts to reach a negotiated solution to the Colombian conflict, a precise six-point agenda¹¹ was established to conduct the peace talks. After almost four years of talks, on August 24, 2016, the delegations of the National Government and the FARC-EP released a joint statement¹² in which they announced that they had reached a “final, comprehensive and definitive agreement.”

Although it was not a constitutional or legal requirement, President Santos had declared that the final outcome of the negotiations would be subject to public approval as a mark of legitimacy. To do this, he organized a plebiscite so that Colombians could vote to approve or reject the text of the agreement.¹³ The result of this vote would be binding. The plebiscite was scheduled for October 2, 2016.

Campaigns for and against approving the text of the agreement heightened polarization in the country. In order to encourage people to vote in favor of the text of the agreement, the National Government and the FARC-EP held a ceremony and signed the agreement in *Cartagena de Indias* (Colombia) on September 26, 2016. The ceremony was attended by representatives of different sectors that had supported the peace process and international guests, including the United Nations Secretary at that time, Ban Ki-moon.¹⁴

Despite these efforts, the National Government was unsuccessful. With low voter turnout,¹⁵ 50.21 percent of the people who voted in the plebiscite rejected the text of the peace agreement signed with the FARC-EP.¹⁶ This result led to reopening the talks and forced the National Government to meet with the leaders who led the vote against the text of the agreement.

Following some modifications to the original text of the agreement, and after President Santos had already been notified that he had won the Nobel Peace Prize,¹⁷ a new agreement was reached. Accordingly, on November 24, 2016, the National Government and the FARC-EP signed at the Teatro Colón in Bogotá (Colombia), the final version of the peace agreement:

¹⁰ General Agreement for Ending Conflict and Building a Stable and Lasting Peace. English version available at: <https://farc-peace.org/background/item/25-general-agreement-for-the-termination-of-the-conflict-and-the-construction-of-a-stable-and-lasting-peace>

Original version available at: http://www.altocomisionadopalapaz.gov.co/procesos-y-conversaciones/acuerdo-general/documentos%20compartidos/Acuerdo_General_para_la_terminacion_del_conflicto.pdf

¹¹ The six agenda points were (i) Rural development policy, (ii) Political participation, (iii) End of the conflict, (iv) Solution to the problem of illicit drugs, (v) victims and, (vi) implementation, verification and endorsement.

¹² National Government and FARC-EP, Joint statement 93, August 24, 2016. English version available at: <https://farc-peace.org/communiques/joint-communiques/item/1544-joint-communique-93.html>

Original version available at: <http://equipopazgobierno.presidencia.gov.co/prensa/Paginas/comunicado-conjunto-firma-acuerdo-final-paz-gobierno-farc-colombia.aspx>

¹³ Law 1806 of 2016.

¹⁴ President Santos said, “A flame of hope had been lit in Cartagena a week earlier, when we signed the agreement in the presence of world leaders”. English version available at: <https://www.nobelprize.org/prizes/peace/2016/santos/26112-juan-manuel-santos-nobel-lecture-2016-2/>

Spanish version available at: <https://www.nobelprize.org/prizes/peace/2016/santos/26111-juan-manuel-santos-nobel-lecture-2016/>

¹⁵ According to official figures from the National Registry of Civil Status, 13,066,047 of the 34,899,945 people eligible to vote participated in the plebiscite, which is a voting rate of 37.43 percent.

Information in Spanish available at: https://elecciones.registraduria.gov.co/pre_plebis_2016/99PL/DPL77777777777777777777_1.1.htm

¹⁶ Official figures from the National Registry of Civil Status. Information in Spanish available at: https://elecciones.registraduria.gov.co/pre_plebis_2016/99PL/DPL77777777777777777777_1.1.htm

¹⁷ President Santos was awarded the Nobel Peace Prize “for his resolute efforts to bring the country’s more than 50-year-long civil war to an end.” He received the Nobel Prize on December 10, 2016.

English information available at: <https://www.nobelprize.org/prizes/peace/2016/santos/facts/>

Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace (Final Peace Agreement)¹⁸. Subsequently, as a mark of democratic legitimacy, the Congress of the Republic gave its approval to the Final Peace Agreement.¹⁹

The Final Peace Agreement, unlike agreements that were signed with illegal groups in the past,²⁰ addressed a fundamental issue: the matter of serious human rights violations, impunity and the rights of the victims of the internal armed conflict.²¹ Until then, peace processes and agreements had mainly focused on resolving the legal situations of people who had demobilized. Serious human rights violations, crimes against humanity and war crimes committed by all the parties in the armed conflict, as well as victims' rights, were not considered to be a central part of the agreements.²² At most, certain crimes made people ineligible for amnesties and pardons, as happened, for example, with Law 35 of 1982,²³ Law 77 of 1989,²⁴ Law 418 of 1997²⁵ and Law 782 of 2002.²⁶

By contrast, one of the central elements of the Final Peace Agreement was the creation of mechanisms that would allow former members of the FARC-EP to rejoin civilian life, but without trampling the rights of the victims of the conflict. To this end, the Final Peace Agreement created the Comprehensive System of Truth, Justice, Reparation and Non-Repetition (*Sistema Integral de Verdad, Justicia, Reparación y no Repetición* - SIVJRNR), which is made up of three institutions:²⁷ the Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz* - JEP); the Truth, Coexistence and Non-Repetition Commission (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición* - CEV); and the Search Unit for Persons Presumed Disappeared in the context and by reason of the armed conflict (*Unidad de Búsqueda de Personas dadas por Desaparecidas en el contexto y en razón del conflicto armado* - UBPD).

In order to put the Final Peace Agreement into effect, the SIVJRNR was created under Colombian law, with constitutional status, via Legislative Act 01 of 2017.²⁸ In the same vein,

¹⁸ An official English translation of the Final Peace Agreement can be found at: <https://undocs.org/en/S/2017/272>

¹⁹ On this point, see: Council of State, Consultation and Civil Service Chamber, file 2323, decision of November 28, 2016, Justice: Germán Alberto Bula Escobar. See also: Law 1820 of 2016, article 1.

²⁰ See the peace agreements that the Government signed with: 19th of April Movement (M-19) on March 9, 1990; Revolutionary Workers Party (PRT) on January 25, 1991; People's Liberation Army (EPL) on January 29, 1991; and Quintín Lame Armed Movement on March 6, 1991. See also the failed Uribe Agreements that the government of President Belisario Betancur signed with the FARC-EP (*Agreement for Ceasefire, Peace and Truce*) on March 28, 1984.

²¹ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, point 5.

An official English translation of the Final Peace Agreement can be found at: <https://undocs.org/en/S/2017/272>

²² Although it was not the result of a peace agreement, Law 975 of 2005 (Justice and Peace Law), which was the law that allowed members of paramilitary groups and other illegal groups to demobilize, established that demobilizing persons have responsibilities concerning victims' rights to truth, justice, and full and effective reparation. In multiple judgments, the Constitutional Court has interpreted and extended victims' rights in the application of the Justice and Peace Law, among which Judgment C-370 of 2006 stands out.

On the other hand, in addition to specific peace processes and agreements, different laws have been passed to guarantee the rights of the victims of the Colombian armed conflict. Among these, Law 418 of 1997 stands out because it established the right of victims, particularly victims of forced displacement, to receive humanitarian assistance, healthcare, housing, loans, and education.

More recently, Law 1448 of 2011 (Victims Law) was passed, which contains the most ambitious reparation program for victims in Colombia's history. The Victims Law establishes a complete reparation program that includes a wide range of measures, including special measures for women and children. The law also includes measures for land restitution and humanitarian assistance.

²³ The law excluded "killings outside of combat" from eligibility for amnesty (article 3). (Free translation)

²⁴ The law excluded from pardon "killings committed outside of combat, with cruelty, having placed the victim in a state of defenselessness, and acts of brutality or barbarity" (article 6). (Free translation)

²⁵ The law excluded from pardon "those whose conduct constitutes acts of atrocity, brutality or barbarity, terrorism, kidnapping, genocide, killing outside of combat, or having placed the victim in a state of defenselessness." (article 50). (Free translation)

²⁶ The law excluded from pardon persons "who commit acts constituting heinous brutality or barbarity, terrorism, kidnapping, genocide, killing outside of combat or having placed the victim in a state of defenselessness." (article 19). (Free translation)

²⁷ In addition, the SIVJRNR is made up of "guarantees of non-repetition and full and effective reparation measures for the construction of peace".

²⁸ Although the Final Peace Agreement is not a law and, therefore, is not binding for public officials other than the President, the Colombian Constitutional Court, in Judgment C-332 of 2017 and C-554 of 2017, declared that the agreement can be used as hermeneutical for the interpretation of the laws that are passed for the implementation of the Final Peace Agreement.

Similarly, Legislative Act 02 of 2017, which the Constitutional Court upheld as constitutional in Judgment C-630 of 2017, establishes that the standards referenced in the Havana Agreement "that correspond to norms of international humanitarian law or fundamental rights defined in the Constitution, and others related to the above, will be mandatory parameters for interpretation and reference in the enactment of the regulations and laws created for the implementation of the Final Agreement.

since the signing of the Final Peace Agreement, the Congress has passed constitutional and legal reforms that were needed to implement the Final Peace Agreement. These include Legislative Act 02 of 2017, which defined the obligation of the State to comply with the Final Peace Agreement in good faith; Legislative Act 03 of 2017 that allocated seats in Congress for the new political party that was created from the demobilization of the FARC-EP; Legislative Act 05 of 2017 prohibiting paramilitaries and self-defense groups; the law that created the National Farming Innovation System;²⁹ the Law on Amnesty and Pardon;³⁰ the Opposition Statute,³¹ the law that contains the regulations for the JEP's procedures,³² and the JEP's Statutory Law.³³ Likewise, the decrees that established the CEV³⁴ and the UBPD³⁵ were enacted.

Despite the above, other laws that are critically important for the consolidation of lasting peace have not been enacted yet. For example, the Special Transitory Circumscriptions for Peace bill (*circunscripciones especiales para la paz*)³⁶ and the political reform bill³⁷ did not get enough support in Congress to pass.

At present, the outlook for the enactment of other laws required to implement the Final Peace Agreement is uncertain and difficult. The legislative elections in March 2018 resulted in a new Congress that took office on July 20, 2018, in which sectors that have repeatedly expressed opposition to the Final Peace Agreement have played a predominant role. In particular, the role of the Democratic Centre party should be highlighted.

This political party, headed by former President Álvaro Uribe Vélez, was strongly opposed to the talks with the FARC-EP in Havana, and has expressed the intention to make significant reforms to the SIVJNR and, in particular, to the JEP. During the second legislative period of 2018, the Democratic Centre party unsuccessfully proposed two constitutional reforms with profound implications for the SIVJNR's operations.³⁸ Similarly, during the 2019 legislative period, the party's spokespersons have announced that they will insist on modifications to the JEP's structure.

On top of this is the new government's change in priorities and policies. When President Iván Duque Márquez took office on August 7, 2018, the Democratic Centre party became the ruling party. President Duque's government program is based on the motto "Legality,

The interpretation should respect the Constitution. The institutions and authorities of the State have the obligation to comply in good faith with the provisions of the Final Agreement. Consequently, the actions of all entities and authorities of the State, the laws created for the implementation of the Final Agreement, and their interpretation and application must be consistent with the agreement, preserving the content, commitments, spirit, and principles of the Final Agreement." (Free translation).

²⁹ Law 1876 of 2017.

³⁰ Law 1820 of 2016.

³¹ Law 1909 of 2018.

³² There were some difficulties in the passage of Law 1922 of 2018 and some of its provisions were questioned. For example, article 54 established that the Revision of Sentences Chamber of the JEP was not allowed to collect or require evidence in the proceeding of the application of the non-extradition guarantee set out in the transitory clause 19 of article 1 of Legislative Act 01 of 2017. In addition, article 75 suspended cases against members of military forces until Congress had passed a special procedure for their cases to be heard before the JEP. These provisions were declared unconstitutional by the Constitutional Court in Judgment C-112 of 2019.

³³ Law 1957 of 2019 was passed on June 6, 2019. The Constitutional Court, in Judgment C-080 of 2018, has already ruled on its constitutionality.

³⁴ Decree Law 588 of 2017.

³⁵ Decree Law 589 of 2017.

³⁶ Initially, the bill to create the Special Circumscriptions for Peace passed on November 30, 2017, however, before it could enter into force, it was challenged for not having received the necessary number of votes in parliament.

³⁷ The government presented a Bill for Political Reform ("through which political and electoral reform is adopted that allows democratic broadening for the construction of stable and lasting peace") in May 2017. The bill was sunk on November 29, 2017, after seven months of discussion.

³⁸ One bill proposed preventing the JEP, the CEV and the UBPD from accessing documents and information under legal reserve or for reasons of national security. The other bill proposed the creation of a special chamber within the JEP for members of the Military Forces.

Entrepreneurship and Equity.”³⁹ The implementation of the Peace Agreement is not one of his priorities.⁴⁰

In the face of pressure from national and international sectors—the European Union, the International Monetary Fund, and the United Nations—President Duque has stated on several occasions that he will not break the Final Peace Agreement. However, he has made several statements about alleged shortcomings and errors by the JEP and has said that he will propose modifications to the JEP.⁴¹

In March 2019, for example, President Duque objected to six articles in the bill for the JEP’s Statutory Law, alleging reasons of inappropriateness.⁴² This not only delayed the law’s entry into force, but also aggravated polarization concerning the JEP’s capacity to deliver justice and reparation to the victims of the conflict. Finally, after intense debate in Congress and a review by the Constitutional Court,⁴³ the President signed the bill and it became law in June 2019.

Along the same lines, recently, President Duque criticized the decision by the JEP’s Revision of Sentences Chamber on the case of Seuxis Paucias Hernández Solarte, also known as “Jesús Santrich”. In his statement, although the President expressed his respect for judicial decisions, he stated that he shared “the Colombian people’s indignation over the decision by the Special Jurisdiction for Peace.”⁴⁴ Furthermore, the President reaffirmed the need for reforms and said that “justice must always, always be at the service of the victims and not the perpetrators.”⁴⁵

In addition, since the signing of the Final Peace Agreement, violence (attacks and murders) against social leaders and human rights defenders in Colombia has intensified. In this regard, the Inter-American Commission on Human Rights (IACHR) has affirmed that murders and threats have exhibited a “sustained increase since the implementation of the peace agreement,” and that there is a “pattern of impunity.”⁴⁶ In that regard, in 2018 alone, the Office of the United Nations High Commissioner for Human Rights in Colombia reported that 110 human rights defenders had been murdered.⁴⁷

³⁹ Inaugural speech by President of the Republic Iván Duque Márquez, “Pacto por Colombia.”

Spanish version available at: <https://id.presidencia.gov.co/Paginas/prensa/2018/El-Pacto-por-COLOMBIA-Discurso-de-Posesion-del-Presidente-de-la-Republica-Ivan-Duque-Marquez.aspx>

Along the same line, see: article 1 of the National Development Plan 2018-2022, “Pact for Colombia, Pact for Equity”.

⁴⁰ Achieving peace is considered to be an element that foments legality. In his inaugural speech, President Duque said: “(...) Colombians, we must all build peace and to do this we must be clear about the importance of a culture of legality based on the essential premise that a society where security and justice go hand in hand, guarantees the application of the law, there will be no way for violence to threaten individual freedoms. (...) Building peace, Colombians, also means that we defeat the drug cartels that threaten different parts of the national territory. We will be effective in the eradication and substitution of illicit crops, hand in hand with the communities, with the implementation also of economic projects, and we will break the logistics supply chains of drug trafficking organizations.” (Free translation)

Spanish version available at: <https://id.presidencia.gov.co/Paginas/prensa/2018/El-Pacto-por-COLOMBIA-Discurso-de-Posesion-del-Presidente-de-la-Republica-Ivan-Duque-Marquez.aspx>

⁴¹ Presidency of the Republic, “Presidente Duque presentará reforma constitucional al Congreso de la República sobre tres aspectos de la Jurisdicción Especial para la Paz (JEP),” March 10, 2019.

Spanish version available at: <https://id.presidencia.gov.co/Paginas/prensa/2019/190310-Presidente-Duque-presentara-reforma-constitucional-Congreso-Republica-sobre-tres-aspectos-de-Jurisdiccion-Especial-P.aspx>

⁴² Presidency of the Republic, “Por razones de inconveniencia, el Gobierno nacional hace objeciones a 6 de los 159 artículos de la Ley Estatutaria de la Jurisdicción Especial para la Paz,” March 10, 2019.

Spanish version available at: <https://id.presidencia.gov.co/Paginas/prensa/2019/190310-Por-razones-inconveniencia-Gobierno-nacional-hace-objeciones-6-de-159-articulos-de-Ley-Estatutaria-de-Jurisdiccion-E.aspx>

⁴³ Constitutional Court, Ruling 282 of 2019.

⁴⁴ Presidency of the Republic, “Declaración del Presidente de la República, Iván Duque Márquez, frente a la decisión de la Jurisdicción Especial para la Paz (JEP) sobre el caso de alias ‘Jesús Santrich’,” May 15, 2019.

Spanish version available at: <https://id.presidencia.gov.co/Paginas/prensa/2019/190515-Declaracion-Presidente-Republica-Ivan-Duque-Marquez-frente-a-la-decision-de-la-Jurisdiccion-Especial-para-la-Paz.aspx>

⁴⁵ Ibid.

⁴⁶ IACHR, Press Release 008/19, “IACHR Completes Working Visit to Colombia to Assess Alarming Issue of Murders of Social Leaders and Human Rights Defenders,” January 15, 2019. Similarly, see: IACHR, Press Release Press 160/16, “IACHR Condemns the Increase in Killings of Human Rights Defenders in Colombia,” November 2, 2016.

⁴⁷ United Nations, Annual Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Colombia, February 4, 2019, A/HRC/40/3/Add.3, para. 15.

Added to this situation are the actions of the National Liberation Army (ELN). In particular, in January 2019 this guerrilla group carried out a car bomb attack on the General Santander Police Academy in Bogotá.⁴⁸ This car bomb attack, which killed 22 people and wounded 68, caused the government to finally call off the peace talks with the ELN. In addition, the attack led the government to establish its hardline stance against terrorism into a priority policy.⁴⁹ Simultaneously, there was an outpouring of criticism from various sectors of society about the ineffectiveness of the Final Peace Agreement with the FARC-EP, as well as the ineffectiveness of the institutions created that were based on the Agreement.

In light of the above, it is possible to conclude that the implementation of the Final Peace Agreement has been unfolding in a polarized environment, with skepticism in different sectors of Colombian society about the possibilities for peace consolidation and reparation for the victims of the conflict. As the JEP is the most visible of the mechanisms and institutions created by the Final Peace Agreement, much criticism has focused on its work and decisions. For this reason, it is through the actions of the JEP that, to a considerable extent, the legitimacy and success of the SIVJRRR and the Final Peace Agreement are at stake.

⁴⁸ The ELN took responsibility for the attack in an editorial published on its website "ELN voices" on January 21, 2019. Spanish version available at: <https://eln-voces.com/el-camino-es-la-solucion-conflict-policy/>

⁴⁹ See, among others, "La nueva versión de Duque," *Semana*, 26 January 2019.

Spanish version available at: <https://www.semana.com/nacion/articulo/ivan-duque-tiene-hoja-de-ruta-despues-del-ataque-del-eln-y-la-crisis-en-venezuela/599208>

III. INTERNATIONAL FRAMEWORK

It is a general principle that, regardless of its type of democratic regime, each State must guarantee certain fundamental elements: (i) the full enforcement of the rule of law, the principle of separation of powers, and legality in the actions of its authorities; (ii) the independence and impartiality of the judiciary; (iii) the enforcement of human rights and; (iv) democracy and political pluralism.

States do not have absolute freedom to act and must organize their apparatus to be compatible with their international obligations, including the full enforcement of the rule of law, the independence and impartiality of the judiciary, and the promotion, protection and fulfilment of human rights.

A. Judicial independence and impartiality⁵⁰

Under international law, every person has the right to be judged by an independent, impartial and competent court, with the observance of the basic guarantees of due process inherent to a fair trial. The independence and impartiality of the courts are principles that are universally recognized in international instruments.⁵¹ International humanitarian law also protects this right.⁵² On this point, the Human Rights Committee (HRC) has indicated that trial by an independent and impartial tribunal "is an absolute right that is not subject to any exception."⁵³ For its part, the IACHR has stated that "most fundamental fair trial requirements cannot justifiably be suspended under either international human rights law or international humanitarian law."⁵⁴

The notion of independence refers to the fact that every court or judge must be independent from the executive branch and the legislative branch,⁵⁵ as well as being independent from the parties in the case.⁵⁶ Meaning that neither the judiciary nor its judges may be subordinate to other branches of the State or the parties involved in the case.⁵⁷ The courts must be effectively independent and remain free from influence or pressure from any of the other branches of

⁵⁰ This section is based on the following ICJ documents: Venezuela: the judgement of civilians by military courts (2018), The Supreme Court of Justice of Venezuela: an Instrument of the Executive Branch (2017) and Practitioners' Guide No. 2: The right to a remedy and to reparation for gross human rights violations (2006).

All ICJ documents are available on the ICJ website: <https://www.icj.org>

⁵¹ See, among others: Universal Declaration of Human Rights (article 10); International Covenant on Civil and Political Rights (article 14.1); International Convention on the Elimination of All Forms of Racial Discrimination (article 5, a); Convention on the Rights of the Child (articles 37.d and 40.2); Basic Principles on the Independence of the Judiciary; Guidelines on the Role of Prosecutors, and the Basic Principles on the Role of Lawyers.

In terms of regional human rights systems, it is worth highlighting: the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 6.1); Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges; Guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism (Guideline IX); Charter of Fundamental Rights of the European Union (article 47); American Declaration of the Rights and Duties of Man (article XXVI); American Convention on Human Rights (article 8.1); African Charter on Human and Peoples Rights (articles 7 and 26); African Charter on the Rights and Welfare of the Child (article 17); Arab Charter on Human Rights (article 13); and Charter of Paris for a New Europe: A new era of Democracy, Peace and Unity.

⁵² It is worth mentioning common article 3 of the Geneva Conventions of 1949. Similarly: Geneva Convention relative to the Treatment of Prisoners of War (articles 84 and 130); Geneva Convention relative to the Protection of Civilian Persons in Time of War (articles 54, 64 to 74 and 117 to 126); Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts, Protocol I (article 75); Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, Protocol II (article 6).

⁵³ HRC, General Comment 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), August 23, 2007, CCPR/C/GC/32; and HRC, González del Río v. Peru, Communication 263/1987, Views of October 28, 1992, CCPR/C/46/D/263/1987 (1992), para. 5.2.

⁵⁴ IACHR, Report on Terrorism and Human Rights, 22 October 2002, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., para. 261.

⁵⁵ ECHR, Ramos Nunes De Carvalho E Sá v. Portugal, Case 55391/13, 57728/13 and 74041/13, Judgment of November 6, 2018, para. 144; ECHR, Stran Greek and Stratis Andreadis Refineries v. Greece, Case 22/1993/417/496, Judgment of December 9, 1994, para. 49 and; HRC, General Comment 36: Article 6 (Right to life), October 30, 2018, CCPR/C/GC/36, para. 45.

⁵⁶ ECHR, Ringeisen v. Austria, Case 2614/65, Judgment of July 16, 1971, para. 95.

⁵⁷ IACHR, Case of Reverón Trujillo v. Venezuela. (Preliminary Objection, Merits, Reparations, and Costs) Judgment of June 30, 2009, Series C No. 197.

government or other sectors.⁵⁸ To achieve this, States have the obligation to adopt concrete measures that guarantee judicial independence and that protect judges from any form of political influence, whether through their appointment, remuneration, dismissal or imposition of disciplinary sanctions, among others.⁵⁹

For its part, impartiality presupposes an absence of pre-established ideas and prejudices on the part of those conducting the investigation.⁶⁰ The Inter-American Court of Human Rights (Inter-American Court) has indicated that guaranteeing this implies that the judge who hears a case must undertake an analysis of the facts “without, subjectively, any prejudice and, also, providing sufficient guarantees of an objective nature that inspire the necessary trust and confidence in the parties to the case and in the citizens of a democratic society.”⁶¹ For example, investigations into human rights abuses committed by security and military forces must be investigated and sanctioned by the organs of the ordinary justice system, which have independence and impartiality.⁶²

Finally, it should be noted that the principle of independence and impartiality of the courts is not meant to grant personal benefits to judges. It is meant to protect individuals from the abuse of authority and ensure the fair administration of justice.

B. Accountability for serious human rights violations⁶³

In accordance with the provisions of customary international law and international and regional human rights instruments, States have both negative and positive duties regarding the protection, respect and guarantee of all human rights.

Negative duties refer to not interfering with the legitimate enjoyment of rights, for example, respecting the non-derogable right of all persons not to be arbitrarily deprived of life. For their part, positive duties involve adopting legislative, administrative, judicial, educational and other measures to protect the legitimate exercise of rights from interference by others.

⁵⁸ United Nations, Basic Principles on the Independence of the Judiciary, Principles 1, 2, 3 and 4.

⁵⁹ HRC, *Eligio Cedeño v. Bolivarian Republic of Venezuela*, Communication 1940/2010, Views of October 29, 2012, CCPR/C/106/D/1940/2010, para. 7.3. See also: HRC, General Comment 32: article 14 (Right to equality before courts and tribunals and to a fair trial), August 23, 2007, CCPR/C/GC/32, para. 19.

⁶⁰ ECHR, *Ramos Nunes De Carvalho E Sá v. Portugal*, Case 55391/13, 57728/13 and 74041/13, Judgment of November 6, 2018, para. 145 to 150; ECHR, *Kyprianou v. Cyprus*, Case 73797/01, Judgment of December 15, 2005, para. 118 and; HRC, *Arvo. Or Karttunen v. Finland*, Communication 387/1989, Views of October 23, 1992, CCPR/C/4 /D/387/1989 (1992), para. 7.2.

⁶¹ Among others, see the judgments: *Case of Palamara Iribarne v. Chile*, Merits, Reparations and Costs, Judgment of November 22, 2005, Series C No. 135, para. 146; *Case of Usón Ramírez v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 20, 2009, Series C No. 207, para. 117; *Case of Herrera Ulloa v. Costa Rica*, Preliminary Objections, Merits, Reparations and Costs, Judgment of July 2, 2004, Series C No. 107, para. 171; *Case of Argüelles et al. v. Argentina*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 20, 2014, Series C No. 288, para. 168.

⁶² On this point, see the following judgments of the Inter-American Court: *Case of Alvarado Espinoza et al. v. Mexico*, Merits, Reparations and Costs, Judgment of November 28, 2018, Series C No. 370, para. 232; *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 14, 2014, Series C No. 287, para. 189 et seq and; *Case of Durand and Ugarte v. Peru*, Merits, Judgment of August 16, 2000, Series C No. 68, para. 117.

⁶³ This section is based on the following ICJ report: *Achieving Justice for Gross Human Rights Violations in Venezuela* (2017). All ICJ reports are available on the ICJ website: <https://www.icj.org>

With regard to serious human rights violations, the State's positive duties include defining these conducts as crimes,⁶⁴ as well as to investigate, prosecute, and sanction them.⁶⁵ The preceding is a necessary requisite for the free and full enjoyment of human rights. On this point, the Inter-American Court has stated:

"...States must prevent, investigate, and punish all violations of the rights recognized in the Convention, and seek, in addition, the reestablishment, if possible, of the violated right and, where necessary, repair the damage caused by the violation of human rights. If the State's apparatus functions in a way that assures the matter remains with impunity, and it does not restore, in as much as is possible, the victim's rights, it can be ascertained that the State has not complied with the obligation to guarantee the free and full exercise of those persons within its jurisdiction."⁶⁶ (emphasis added)

In this sense, the State would fail to comply with its international obligations if it only conducted an investigation but did not seek to punish those responsible for serious human rights violations.⁶⁷

Therefore, it is necessary that the State must conduct a serious, impartial, effective and thorough investigation.⁶⁸ In other words, an investigation that "aims for the determination of the truth and the persecution, arrest, and eventual prosecution and punishment of the perpetrators of the incident."⁶⁹

The above requires that investigations are carried out by independent and impartial investigating authorities. Additionally, for the investigations to be thorough and effective, the authorities carrying them out must have adequate capacity and resources.⁷⁰

Similarly, the European Court of Human Rights (ECHR) and the Inter-American Court have stressed that investigations must allow those responsible for the violations to be identified.⁷¹ As a consequence, when expeditious, thorough, independent and impartial investigations

⁶⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 4); International Convention for the Protection of All Persons From Enforced Disappearance (articles 7 and 25); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and the use of children in pornography (article 3); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (article 4); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (article 5); Inter-American Convention to Prevent and Punish Torture (article 6); and Inter-American Convention on Forced Disappearance of Persons (article III). See also: ICJ, Practitioners' Guide No. 7: International Law and the Fight Against Impunity (2014), especially chapter VI.

⁶⁵ United Nations, Updated set of principles for the protection and promotion of human rights through action to combat impunity, February 18, 2005, E/CN.4/2005/102/add.1; HRC, General Comment 31 (Nature of the General Legal Obligation Imposed on States Parties to the Covenant), May 26, 2004, CCPR/C/21/Rev.1/Add.13, para. 18 and; Inter-American Court, Case of Gelman v. Uruguay, Merits and Reparations, Judgment of February 24, 2011, Series C No. 221, para. 183.

⁶⁶ Inter-American Court, Case of Gelman v. Uruguay, Merits and Reparations, Judgment of February 24, 2011, Series C No. 221, para. 190 and 191.

⁶⁷ Inter-American Court, Case of Arrom Suhurt et al. v. Paraguay, Merits, Judgment of May 13, 2019, Series C No. 377, para. 136; Inter-American Court, Case of Alvarado Espinoza et al. v. Mexico, Merits, Reparations and Costs, Judgment of November 28, 2018, Series C No. 370, para. 212; Inter-American Court, Case of Velásquez Rodríguez v. Honduras, Merits, Judgment of July 29, 1988, Series C No. 4, para. 166.

⁶⁸ HRC, General Comment 36: Article 6 (Right to Life), October 30, 2018, CCPR/C/GC/36, para. 28.

⁶⁹ Inter-American Court, Case of Arrom Suhurt et al. v. Paraguay, Merits, Judgment of May 13, 2019, Series C No. 377, para. 142 (Free translation). Similarly, see the following judgment by the Inter-American Court: Case of Alvarado Espinoza et al. v. Mexico, Merits, Reparations and Costs, Judgment of November 28, 2018, Series C No. 370, para. 215 and; Case of Velásquez Rodríguez v. Honduras, Merits, Judgment of July 29, 1988, Series C No. 4, para. 177.

⁷⁰ On this point, see the following ICJ guides: Practitioners' Guide No. 9: Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction (2015), p. 146-151 and Practitioners' Guide No. 7: International Law and the Fight Against Impunity (2014), especially chapter V.

Also recommended are: United Nations, Manual for Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 2004.

⁷¹ In relation to the ECHR, see, among others, the following judgments: *Finucane v. United Kingdom*, Case 29178/95, Judgment of July 1, 2003, para. 69; *Oğur v. Turkey*, Case 21594/93, Judgment of May 20, 1999, para. 88; *Assenov et al. v. Bulgaria*, Case 90/1997/874/1086, Judgment of October 28, 1998, para. 102; *Kaya v. Turkey*, Case 158/1996/777/978, Judgment of February 19, 1998, para. 86 and; *McCann v. United Kingdom*, Case 18984/91, Judgment of September 27, 1995, para. 161. From the Inter-American Court, following judgments are recommended: Case of *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 7 September 2004, Series C No. 114, para. 159 and Case of *Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 7, 2003, Series C No. 99, para. 186.

conclude *prima facie* that serious violations of human rights have been committed, the alleged perpetrators—including their superiors involved—must be prosecuted, in accordance with the procedures specified under international standards on fair trial.⁷²

Crucially, when prosecution leads to a conviction, the punishment imposed must be proportional to the seriousness of the crime.⁷³ In the case of serious human rights violations, it is worth noting that light or insignificant sentences can constitute a form of impunity. In that regard, the Inter-American Court has set out:

“In view of the rule of proportionality, States must ensure, in the exercise of their duty to prosecute these serious violations, that the sentences imposed do not constitute factors for impunity, taking into account different aspects such as the characteristics of the crime and the defendant’s involvement and guilt. Similarly, the granting of undue benefits in the execution of the sentence might eventually lead to a form of impunity, particularly in the case of serious human rights violations (...) Although in cases of serious human rights violations, international law admits that certain circumstances or situations may result in a lesser punishment or reduced sentence due to, for example, effective cooperation with justice by providing information that allows the clarification of the crime, the Court considers that the State should evaluate the application of such measures in the present case, because granting these improperly might eventually lead to a form of impunity.”⁷⁴ (emphasis added)

Similarly, when it comes to serious human rights violations, States must conduct official (*ex officio*) investigations expeditiously, thoroughly, independently and impartially.⁷⁵ This is because carrying out investigations *ex officio* is a “fundamental element essential for the protection of the rights affected”⁷⁶ by a serious human rights violation. Likewise, it is an obligation that persists even when there is an internal armed conflict⁷⁷ and regardless of whether the perpetrator was a State agent or a private individual.⁷⁸

In other words, under no circumstances should the duty to investigate serious human rights violations depend on the initiative of the victims or their families. In this respect, the Inter-American Court has said:

“(...) The investigating body must use all available means to carry out all the necessary actions and inquiries in order to try to obtain the desired result. Also, it is necessary to avoid omissions in the pursuit of logical lines of investigation. If relevant, ‘the investigation with due diligence requires taking into account what has happened in other [incidents] and establishing some kind of relationship between them. This must be done

⁷² In this regard, see: HRC, General Comment 36: Article 6 (Right to Life), October 30, 2018, CCPR/C/ GC/36, para. 41; and Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol), 2016, para. 1. Similarly, see: ICJ, Practitioners’ Guide No. 7: International Law and the Fight Against Impunity (2014).

⁷³ On this subject, see: ICJ, Practitioners’ Guide No. 7: International Law and the Fight Against Impunity (2014).

⁷⁴ Inter-American Court, Case of Barrios Altos v. Peru, Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of September 7, 2012, para. 55 and 57 (free translation).

Similarly, see: Inter-American Court, Case of Barrios Altos and Case La Cantuta v. Peru, Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of May 30, 2018, para. 31.

⁷⁵ Inter-American Court, Case of Arrom Suhurt et al. v. Paraguay, Merits, Judgment of May 13, 2019, Series C No. 377, para. 138 and Inter-American Court, Case of Anzualdo Castro v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of September 22, 2009, Series C No. 202, para. 65.

⁷⁶ Inter-American Court, Case of Kawas Fernández v. Honduras, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, para. 75.

⁷⁷ Inter-American Court, Case of the “Mapiripán Massacre” v. Colombia, Judgment of September 15, 2005, Series C No. 134, para. 238.

⁷⁸ Inter-American Court, Case of Kawas Fernández v. Honduras, Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, para. 78.

ex officio, the onus to take this initiative not being on the victims and their families”.⁷⁹
(emphasis added)

On the other hand, States must not grant amnesties, nor establish statutory limitations or exemptions from responsibility with the objective of preventing or obstructing the investigation and punishment of those responsible for serious human rights violations.⁸⁰ Such measures violate the rights of victims and their families to truth, justice and reparation.⁸¹

Finally, in transitional justice scenarios, it should be stressed that, although truth commissions or similar mechanisms constitute an important aspect of the right to truth, as an element of reparation for victims, their function is not sufficient to guarantee victims’ rights. Therefore, they should be used in combination with the criminal investigation of grave human rights violations with the purpose of prosecuting those responsible for them.⁸²

C. Access to effective remedies and reparation for victims of serious human rights violations⁸³

Every person who is a victim of a human rights violation⁸⁴ has the right to effective remedy and to receive reparation measures. In general terms, this implies that victims are entitled to demand their rights; to obtain a legal decision, regarding the merit of the case and recognition of the violation, within a reasonable time; to demand that any ongoing violation is halted; and to receive full and effective reparation for the harm suffered. Similarly, it is also fundamental that victims have equal and effective access to justice, particularly to the judicial organs that have jurisdiction to rule and issue legally binding decisions on remedies and reparation.⁸⁵

⁷⁹ Inter-American Court, Case of Omeara Carrascal et al. v. Colombia, Merits, Reparations and Costs, Judgment of November 21, 2018, Series C No. 368, para. 212. (Free translation)

⁸⁰ HRC, General Comment 31 (The nature of the general legal obligation imposed on States Parties to the Covenant), May 26, 2004, CCPR/C/21/ Rev.1/Add.13, para. 18; HRC, General Comment 20 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment), 1992, HRI/GEN/1/ Rev.7, para. 15; Inter-American Court, Case of Gelman v. Uruguay, Merits and Reparations, Judgment of February 24, 2011, Series C No. 221, para. 197 and; Inter-American Court HR, Case of Barrios Altos v. Peru, Merits, Judgment of March 14, 2001, Series C No. 75, para. 41.

⁸¹ Inter-American Court, Case of Barrios Altos v. Peru, Merits, Judgment of March 14, 2001, Series C No. 75, para. 43.

⁸² Inter-American Court, Case of La Cantuta v. Peru, Merits, Reparations and Costs, Judgment of November 29, 2006, Series C No. 162, para. 224.

⁸³ This section is based on the following ICJ documents: Achieving Justice for Gross Human Rights Violations in Venezuela (2017); Practitioners’ Guide No. 10: Enforced Disappearance and Extrajudicial Execution: The Rights of Family Members (2015); Practitioners’ Guide No. 7: International Law and the Fight Against Impunity (2014), and Practitioners’ Guide No. 2: The Right to a Remedy and to Reparation for Gross Human Rights Violations (2006).

All ICJ documents are available on the ICJ website: <https://www.icj.org>

⁸⁴ The concept of the victim of a human rights violation is a fundamental notion to determine who has the right to effective remedy, investigation, justice, truth, reparation and guarantees of non-repetition. However, it should be noted that the direct victim is not the only one who has these rights; right-holders may include family members and others, such as a victim’s guardian. In reality, these categories often overlap.

On this issue, the Inter-American Court has considered as victims, and therefore with the right to receive reparation measures, not only the one who suffered the violation directly (direct victim) but also the members of their immediate family. In this regard, see the following sentences: Case of Juan Humberto Sánchez v. Honduras, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 7, 2003, Series C No. 99, para. 156; Case of Molina Theissen v. Guatemala, Reparations and Costs, Judgment of July 3, 2004, Series C No. 108, para. 47 and 48.

On this same point, see also: United Nations, General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, A/RES/60/147, principle 8.

⁸⁵ In this regard see: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, A/RES/60/147, principle 8.; and International Commission of Jurists, Practitioners’ Guide 2, revised edition: The Right to a Remedy and Reparation for Gross Human Rights Violations (2018), chapter III.

C.1. Right to effective remedy

The right to effective remedy is enshrined in international human rights treaties⁸⁶ and instruments.⁸⁷ It is a central element of international human rights law and constitutes one of the most fundamental rights for the effective protection of other human rights.⁸⁸ In this sense, although the right to remedy is not specifically mentioned in several international treaties as a non-derogable right, it is one of the essential rights for the effective protection of other human rights and must be guaranteed, even in times of emergency.⁸⁹

The concept of effective remedy has been gradually interpreted and developed by international human rights entities.⁹⁰ In general, the concept of effective remedy consists of access to an independent authority that has the power (i) to decide if a violation of human rights has occurred or is occurring, (ii) to order the violation to stop, and (iii) to decree reparation measures for the damage caused.⁹¹

The right to effective remedy implies more than the State's obligation to incorporate in the domestic legislation a legal recourse. On the contrary, as established by the Inter-American Court, States must also "ensure due application of said recourse by its judicial authorities."⁹² The effectiveness of the remedy depends on: (i) adequacy,⁹³ (ii) availability,⁹⁴ (iii) legal

⁸⁶ International Covenant on Civil and Political Rights (article 2); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (article 13); International Convention on the Elimination of All Forms of Racial Discrimination (article 6); International Convention for the Protection of all Persons from Enforced Disappearance (articles 8, 12, 17.2. F and 20.2); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (article 6.2); American Convention on Human Rights (articles 24 and 25); Inter-American Convention on Forced Disappearance of Persons (article X) and Inter-American Convention to Prevent and Punish Torture (article 8).

⁸⁷ Universal Declaration of Human Rights (article 8); Declaration on the Protection of all Persons from Enforced Disappearance (articles 8 and 13); Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principles 4 and 16); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (articles 2, 3, 11, 12, 13 and 14); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (article 9); American Declaration of the Rights and Duties of Man (article XVIII); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Principles 4 to 7); Vienna Declaration and Program of Action (article 27) and; Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (articles 13, 160-162 and 165).

⁸⁸ United Nations, Report of the Special Representative on human rights defenders, September 10, 2001, A/56/341, para. 9; United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, January 31, 2002, E/CN.4/2002/83, para. 116; Inter-American Court, Case of Castillo Páez v. Peru, Merits, Judgment of November 3, 1997, Series C No. 34, para. 82 and; HRC, General Comment 29 (Derogations during a State of Emergency), August 31, 2001, CCPR/C/21/Rev.1/Add.11, para. 14.

⁸⁹ HRC, General Comment 29 (Derogations during a State of Emergency), August 31, 2001, CCPR/C/21/Rev.1/Add.11, para. 14; United Nations Commission on Human Rights, Habeas Corpus, February 28, 1992, E/CN.4/RES/1992/35, para. 2; Inter-American Court, Habeas Corpus in Emergency Situations, Advisory Opinion OC-8/87 of January 30, 1987, Series A No. 8, para. 42 and; Inter-American Court, Judicial Guarantees in States of Emergency, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, operative paragraphs 2 and 3.

⁹⁰ See the following ICJ publications: Practitioners' Guide No. 7: International Law and the Fight Against Impunity (2014), Chapter IV and Practitioners' Guide No. 2: The right to a remedy and to reparation for gross human rights violations (2006), Chapter III.

⁹¹ Inter-American Court, Case of Castañeda Gutman v. Mexico, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 6, 2008, Series C No. 184, para. 118 and ECHR, Nikitin et al. v. Estonia, Case 23226/16, Judgment of January 29, 2019, para. 207.

⁹² Inter-American Court, Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment of June 17, 2005, Series C No. 125, para. 99. Similarly, see: ECHR, Mirzoyan v. Armenia, Case 57129/10, Judgment of May 23, 2019, para. 77.

⁹³ A remedy is adequate if it makes it possible to establish whether a human rights violation has occurred. In other words, it must result in a decision and, if appropriate, provide what is necessary to remedy the violation.

On the subject, see, among others, the following judgments of the Inter-American Court: Case of Durand and Ugarte v. Peru, Merits, Judgment of August 16, 2000, Series C No. 68, para. 102; Case of Cantoral Benavides v. Peru, Merits, Judgment of August 18, 2000, Series C No. 69, para. 164; Case of Ivcher Bronstein v. Peru, Merits, Reparations and Costs, Judgment of February 6, 2001, Series C No. 74, para. 136; and Case of Las Palmeras v. Colombia, Merits, Judgment of December 6, 2001, Series C No. 90, para. 58.

⁹⁴ This requirement refers to the remedy being enshrined in the legislation accurately and unambiguously. In this regard, the Inter-American Court has indicated that States must regulate "judicial recourses so that the individual has legal certainty and guarantees of his conditions of access" (Castañeda Gutman v. Mexico Case, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 6, 2008, Series C No. 184, para. 110).

effects,⁹⁵ (iv) accessibility,⁹⁶ (v) the duration of the procedure,⁹⁷ and (vi) the proceeding and its implementation.⁹⁸

C.1.1. Effective remedy and criminal proceedings

As right-holders of the right to effective remedy, victims of serious human rights violations, as well as their families, have the right to access the criminal justice system, that is, access to an independent, impartial and competent court. This has not only been set forth in international human rights jurisprudence, but also has been progressively enshrined in international instruments.⁹⁹

In that context, the Inter-American Court has indicated that during all stages of the criminal proceeding (both the investigation and the trial) victims and their families must have full access, the ability to act, and ample procedural opportunities to present claims and evidence. The foregoing applies to the clarification of the facts, sanctioning of those responsible and petition for fair reparation.¹⁰⁰ Likewise, the Inter-American Court has indicated that the claims by victims and their families, and the evidence provided, must be analysed completely and seriously by the judicial authorities, before deciding on the facts, responsibilities, sentences and reparations.¹⁰¹

⁹⁵ The recourse must be applicable or executable. That is, its compliance and execution cannot be disregarded at the discretion of the administration. On this issue, the HRC and the ECHR have declared that administrative procedures in which the decision of the State entity, such as an Ombudsman's Office or a National Human Rights Commission, is a recommendation without binding effects, cannot be considered as an effective recourse (HRC, Case of Mr. C. v. Australia, Communication No. 900/1999, Opinion of October 28, 2002, CCPR/C/76/D/900/1999, para. 7.3; HRC, Case of Madaffer v. Australia, Communication No. 1011/2001, Opinion of July 26, 2004, CCPR/C/81/D/1011/2001, para. 8.4; ECHR, Tomov and Others v. Russia, Case 18255/10, Judgment of April 9 2019, para. 148).

⁹⁶ Accessibility refers to the State's obligation to ensure that victims and/or their families have real access to the resources enshrined in the legislation. In this regard, the HRC has indicated that "[s]uch remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person" (General Comment 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant), May 26, 2004, CCPR/C/21/Rev.1/Add.13, para. 15).

⁹⁷ The remedy, to be effective, must be addressed and resolved by the authorities within a reasonable time. International norms and standards do not specify the duration of a reasonable period. However, the Inter-American Court has established four criteria to determine the reasonableness of the duration: (i) the complexity of the matter, (ii) the procedural involvement of the interested party, (iii) the conduct of the judicial authorities and (iv) the effects that delaying the case could have on the legal status of the victim.

On this issue, the following judgments by the Inter-American Court may be consulted, among others: Case of Osorio Rivera and family members v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 26, 2013, Series C No. 274, para. 201; Case of Baldeón García v. Peru, Merits, Reparations and Costs, Judgment of April 6, 2006, Series C No. 147, para. 151; Case of Valle Jaramillo et al. v. Colombia, Merits, Reparations and Costs, Judgment of November 27, 2008, Series C No. 192, para. 155; and Case of Luna López v. Honduras, Merits, Reparations and Costs, Judgment of October 10, 2013, Series C No. 269, para. 189. From the ECHR, see: Ruşen Bayar v. Turkey, Case 25253/08, Judgment of February 19, 2019, para. 91 to 98; Fil LLC v. Armenia, Case 18526/13, Judgment of January 31, 2019, para. 47; and Pélissier and Sassi v. France, Case 25444/94, Judgment of March 25, 1999, para. 67.

⁹⁸ This requirement refers to the fact that the remedy must be applied in accordance with the rules of due process and the authorities' duty to act with due diligence. Due diligence implies that the authorities must implement, in a timely manner and without delay, the necessary and appropriate legal and other means to ensure that the remedy achieves the objective for which it was designed. In this regard, see, among others, the following judgments of the Inter-American Court: Case of Chitay Nech et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, Judgment of May 25, 2010, Series C No. 212, para. 190; Case of the Las Dos Erres Massacre v. Guatemala, Preliminary Exception, Merits, Reparations and Costs, Judgment of November 24, 2009, Series C No. 211, para. 104 and; Case of Baldeón García v. Peru, Merits, Reparations and Costs, Judgment of April 6, 2006, Series C No. 147, para. 143.

⁹⁹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (article 8); Rome Statute of the International Criminal Court (articles 68.3 and 75); Rules of Procedure and Evidence of the International Criminal Court; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (article 6.2); Internal Rules of the Extraordinary Chambers in the Courts of Cambodia for the Processing of Crimes Committed during the Democratic Kampuchea Regime (Rule 23); Statute of the Special Court for Lebanon (articles 17 and 28) and; United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, March 28, 2013, A/RES/67/187.

¹⁰⁰ See, among others: Case of González Medina and family members v. Dominican Republic, Preliminary Objections, Merits, Reparations and Costs, Judgment of February 27, 2012, Series C No. 240, para. 207; Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, Merits, Judgment of November 19, 1999, Series C No. 63, para. 227; Case of Ximenes Lopes v. Brazil, Judgment of July 4, 2006, Series C No. 149, para. 193 and; Case of the Ituango Massacres v. Colombia, Judgment of July 1, 2006, Series C No. 148, para. 296.

¹⁰¹ Case of Ximenes Lopes v. Brazil, Judgment of July 4, 2006, Series C No. 149, para. 193 and Case of the Ituango Massacres v. Colombia, Judgment of July 1, 2006, Series C No. 148, para. 296.

Consequently, in order to guarantee the right to effective judicial remedy, States must make sure that victims and their families have broad procedural legitimacy in criminal proceedings. Regardless of the legal terminology used to express procedural legitimacy —such as civil party, private plaintiff or *actio popularis*— victims and their families must be empowered to act as procedural subjects. Consequently, victims and their families must be able to:

1. Present and request evidence.
2. Present, request, and secure witnesses to appear.
3. Have access to documentation and evidence.
4. Question their witnesses and those presented by the opposing party.
5. Question or challenge the evidence and witnesses presented by the defense.
6. Request and obtain the participation of experts.
7. Challenge or appeal the decisions by the judge or court, including the judgment or other relevant decisions.

Additionally, effective participation also implies the adoption of measures to facilitate this participation. In particular, victims and their families must have access to the assistance of social workers and mental health professionals, legal counsel, translation services, and reimbursement for expenses.¹⁰² Finally, the State must ensure, *ex officio*, protection for the families of the victims when, in the context of the investigations, they are subjected to harassment and threats with the objective of hindering the clarification of the facts.¹⁰³

C.2. Right to reparation

Reparations for human rights violations, especially for international crimes, are essential to protect and guarantee victims' rights.¹⁰⁴ In this sense, reparation has been recognized as a general principle of customary international law.¹⁰⁵ Therefore, reparation is an "inseparable corollary to human rights violations."¹⁰⁶

¹⁰² ECHR, *Airey v. Ireland*, Case 6289/73, Judgment of October 9, 1979, para. 33. See also: United Nations, Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, November 29, 1985, Resolution 40/34, Principles 14-17; United Nations, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, February 18, 2005, E/CN.4/2005/102/add.1, Principle 10; and Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle H.

¹⁰³ Inter-American Court, *Case of Martínez Coronado v. Guatemala*, Merits, Reparations and Costs, Judgment of May 10, 2019, Series C No. 376, para. 90 and; Inter-American Court, *Case of Omeara Carrascal et al. v. Colombia*, Merits, Reparations and Costs, Judgment of November 21, 2018, Series C No. 368, para. 253.

¹⁰⁴ United Nations, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, August 6, 2009, A/HRC/12/18, 2009, para. 52.

¹⁰⁵ On this issue, see the following Inter-American Court cases: *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Exception, Merits, Reparations and Costs, Judgment of June 7, 2003, Series C No. 99, para. 148; *Case of Chocrón Chocrón v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2011, Series C No. 227, para. 143; and *Case of Coc Max et al. (Xamán Massacre) v. Guatemala*, Merits, Reparations and Costs, Judgment of August 22, 2018, Series C No. 356, para. 143. Similarly, the International Committee of the Red Cross (ICRC) has concluded that the State's obligation to redress violations of International Humanitarian Law is "a norm of customary international law applicable in both international and non-international armed conflicts" (Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I, Standards, p. 537).

¹⁰⁶ Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict*. Cambridge University Press, 2012. p. 42.

International law has recognized that reparation entails:¹⁰⁷ restitution (restitution *in integrum*),¹⁰⁸ compensation,¹⁰⁹ rehabilitation,¹¹⁰ satisfaction¹¹¹ and guarantees of non-repetition.¹¹²

Although not all forms of reparation are necessary in all cases, States cannot choose to grant only one type of reparation. On the contrary, according to the circumstances of each case, all types of reparations needed should be used to guarantee the right to full and effective reparation. Therefore, the different types of reparation measures do not exclude each other. Generally, they are cumulative.¹¹³

On this point, the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* establish that reparation should be “proportional to the gravity of the violations and the harm suffered”¹¹⁴ and take into account “the circumstances of each case”¹¹⁵ to be “full and effective.”¹¹⁶ Finally, it should be noted that the satisfaction of the right to reparation does not exempt the State from complying with its obligations regarding

¹⁰⁷ United Nations, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, March 21, 2006, A/RES/60/147; United Nations. Updated Set of principles for the protection and promotion of human rights through action to combat impunity, February 18, 2005, E/CN.4/2005/102/add.1; and HRC, General Comment 36: article 6 (Right to Life), October 30, 2018, CCPR/C/GC/36, para. 28. In the same vein see: United Nations, Final report presented by the special rapporteur Theo van Boven, July 2, 1993, E/CN.4/Sub.2/1993/8/1993; United Nations, Final Report prepared by Special Rapporteur L. Joinet, October 2, 1997, E/CN.4/Sub.2/1997/20/Rev.1; United Nations, Final Report of the Special Rapporteur M. Cherif Bassiouni, January 18, 2000, E/CN.4/2000/62.

¹⁰⁸ The purpose of restitution is to reverse or render without effect an event or conduct (action or omission) that caused a human rights violation in order to, insofar as possible, “undo” the harm caused. It has been established that, when possible, restitution should be the guiding principle in reparations.

In this regard, see the following ECHR judgments: *Papamichalopoulos et al. v. Greece*, Case 14556/89, Judgment of October 31, 1995, para. 34; *Stojanovski et al. v. Former Yugoslav Republic of Macedonia*, Case 14174/09, Judgment of February 7, 2019, para. 10. Also see: ECHR, Rules of Court, November 14, 2016, para. 10.

¹⁰⁹ Compensation provides monetary awards to victims for their loss. It is an economic substitute when full restitution is not possible. In this sense, victims receive money in order to “replace” their loss.

On this subject, see the following judgments of the ECHR: *Stojanovski et al. v. Former Yugoslav Republic of Macedonia*, Case 14174/09, Judgment of February 7, 2019, para. 13; and *Vistiņš and Perepjolkins v. Latvia*, Case 71243/01, Judgment of March 25, 2014, para. 33. From the Inter-American Court, see: *Case of Garrido and Baigorria v. Argentina, Reparations and Costs*, Judgment of August 27, 1998, Series C No. 39, para. 48; *Case of Loayza Tamayo v. Peru, Interpretation of the Judgment on Reparations and Costs*, Judgment of June 3, 1999, Series C No. 53, para. 147 and; *Case of Velásquez Rodríguez v. Honduras, Reparations and Costs*, Judgment of July 21, 1989, Series C No. 7, para. 49.

¹¹⁰ Rehabilitation measures provide physical and mental care to restore a victim's health after a grave attack on physical/mental integrity.

The Inter-American Court has established that physical and psychological or psychiatric treatment extends to both the direct victim and their family. Likewise, the Court has clarified that rehabilitation measures must not be confused with the public healthcare offered by the State as a social service (*Inter-American Court, Case of the Miguel Castro Castro Prison v. Peru, Merits, Reparations and Costs*, Judgment of November 25, 2006, Series C No. 160, para. 449 and *Inter-American Court, Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, Reparations and Costs Fund*, Judgment of November 20, 2012, Series C No. 253, para. 338).

¹¹¹ The goal of satisfaction is to help restore a person's dignity, mental well-being and reputation. These are non-monetary or symbolic remedies to repair moral damage. These measures include public acts of acknowledgement of responsibility by the State, the creation of museums on behalf of the victims, the construction of monuments, among others.

On this issue, see, among others, the following judgments by the Inter-American Court: *Case of Cuscul Pivaral et al. v. Guatemala, Preliminary Objection, Merits, Reparations and Costs*, Judgment of August 23, 2018, Series C No. 359, para. 220 and *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, Reparations and Costs Fund*, Judgment of November 20, 2012, Series C No. 253, para. 345 and 346.

¹¹² Guarantees of non-repetition cover different kinds of measures that are designed to ensure that human rights violations that have taken place will not occur again in the future.

On this point, see: *Inter-American Court, Case of Chocrón Chocrón v. Venezuela, Preliminary Objection, Merits, Reparations and Costs*, Judgment of July 1, 2011, Series C No. 227, para. 162 and HRC, General Comment 36: article 6 (Right to life), October 30, 2018, CCPR/C/GC/36, para. 28.

¹¹³ In this regard, see the following judgments by the Inter-American Court: *Case of Martínez Coronado v. Guatemala, Merits, Reparations and Costs*, Judgment of May 10, 2019, Series C No. 376, para. 91; *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia, Preliminary Objections, Merits, Reparations and Costs*, Judgment of November 14, 2014, Series C No. 287, para. 549; *Case of Reverón Trujillo v. Venezuela, Preliminary Objection, Merits, Reparations and Costs*, Judgment of June 30, 2009, Series C No. 197, para. 126 and; *Case of Garrido y Baigorria v. Argentina, Reparations and Costs*, Judgment of August 27, 1998, Series C No. 39, para. 41. See also: International Criminal Court. *Lubanga Case*, Decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06, 7 August 2012, para. 222 and 239.

¹¹⁴ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, article 15.

¹¹⁵ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, article 18.

¹¹⁶ *Ibid.*

investigation, prosecution and punishment of those responsible, establishing the truth, and providing protection to victims and their families.¹¹⁷

¹¹⁷ United Nations, Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, presented pursuant to Commission on Human Rights Resolution 1993/71 (Question of the violation of human rights and fundamental freedoms, in any part of the world, with particular reference to colonial and other dependent countries and territories), December 7, 1993, E/CN.4/1994/7, para. 711.

IV. NATIONAL FRAMEWORK

A. Comprehensive System of Truth, Justice, Reparation and Non-Repetition (SIVJRNR)

The Final Peace Agreement recognized victims' rights as a central element and established the creation of a Comprehensive System of Truth, Justice, Reparation and Non-Repetition (*Sistema Integral de Verdad, Justicia, Reparación y no Repetición*- SIVJRNR) to guarantee their rights. Therefore, although the SIVJRNR grants legal benefits¹¹⁸ to perpetrators of human rights violations and serious violations of international humanitarian law, the principles that imbue the SIVJRNR focus on victims and their rights. In that regard, the Final Peace Agreement declares that:

"The underlying principles on which the comprehensive system is founded are the recognition of the victims as citizens with rights; the acknowledgement that the full truth about what happened must be uncovered; the acceptance of responsibility by all those who took part, directly or indirectly, in the conflict and were involved in one way or another in severe human rights violations and serious infringements of international humanitarian law; the realization of victims' rights to the truth, justice, reparation and non-repetition, based on the premise of non-negotiation on impunity, additionally taking into account the basic principles of the special jurisdiction for peace, one of which is that 'damage caused shall be repaired and made good whenever possible'".¹¹⁹

Additionally, the SIVJRNR takes an intersectional approach to recognize the differential impact that the armed conflict has had on victims due to the sector of the population they belong and the locality of the Colombian territory they live. In this regard, the Final Agreement declares that:

"The comprehensive system adopts an equity-based and gender-based approach, which is tailored to the particular characteristics of the victimization in each territory and each population, and in particular to the needs of women and children."¹²⁰

As a consequence of the above, access to the SIVJRNR and its legal benefits, requires that those responsible for human rights violations must commit to realizing the right to truth, reparation for the victims, the attainment of peace, and national reconciliation.¹²¹ Precisely, transitory clause 1 of article 1 of Legislative Act 01 of 2017¹²² sets forth the general condition to qualify for the benefits of the System:¹²³ contribution of the full truth and acknowledgement of responsibility.

Thus, receiving and keeping the legal benefits of the SIVJRNR is not unconditional, but rather is subject to compliance with obligations related to the satisfaction of victims' rights. As per Legislative Act 01 of 2017, this is known as the *conditionality regime (régimen de*

¹¹⁸ In judgment C-080 of 2018, the Constitutional Court enumerated the following legal benefits of the SIVJRNR: "(i) special criminal proceedings; (ii) special penitentiary treatment; (iii) exemption from disciplinary and administrative responsibility; (iv) the termination of the obligation to compensate, in some cases, without prejudice to the general obligation of those responsible and the State to offer reparations; (v) the non-extradition guarantee; and (vi) special treatment regarding inabilities to hold public positions." (Free translation)

¹¹⁹ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, 24 November 2016, p. 110. English version available at: <https://undocs.org/en/S/2017/272>

¹²⁰ Ibid. p. 110.

¹²¹ On this point see: Constitutional Court, Judgment C-674 of 2017.

¹²² Legislative Act 01 of 2017, "By means of which a title of transitory provisions to the Constitution is created for the termination of the armed conflict and the construction of a stable and lasting peace and other provisions are given." (Free translation)

¹²³ In the same way, see transitory clause 5 of article 1 of Legislative Act 01 of 2017.

condicionalidad).¹²⁴ This regime obliges those who apply for the benefits of the SIVJNR, to make a specific, planned and clear commitment to the realization of victims' rights.¹²⁵

In light of the above, the conditionality regime is considered an essential part of the SIVJNR. The regime ensures that only those people who are committed to the System and to realizing victims' rights may receive its benefits.¹²⁶ On this point, the Constitutional Court has ruled:

"(...) This [Comprehensive System of Truth, Justice, Reparation and Non-Repetition] [S]ystem is shielded by a system of conditions among the different components, so that the satisfaction of each of these is a condition for the realization of others, and in such a way that access to the special justice regime is subject to compliance with the obligations inherent to the instruments of truth, reparation and non-repetition, after verification and assessment by the JEP.

With respect to this conditionality regime, the Court considers that it is a structural element of the system of truth, justice, reparation and non-repetition, insofar as the satisfaction of the rights of society and the victims comes from, not the sum or aggregate of the measures contained in Legislative Act 01 of 2017, but from the particular articulation among them all. (...) The logic that underlies the legislative act translates into a rule of conditionality, which ensures that to access and keep all the components of the special criminal regime in the transitional scenario is on the condition of effective and proportional contribution to the reconstruction of the truth, reparation for the victims of the armed conflict, and the implementation of guarantees of non-repetition."¹²⁷ (emphasis added)

Ensuring the fulfillment of the objectives of the SIVJNR is the responsibility of one institution of a judicial nature: the Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz* - JEP); and two of an extrajudicial nature: the Truth, Coexistence and Non-Repetition Commission (*Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición* - CEV) and the Search Unit for Persons Presumed Disappeared in the context and by reason of the armed conflict (*Unidad de Búsqueda de Personas dadas por Desaparecidas en el contexto y en razón del conflicto armado* - UBPD). The JEP is supposed to operate for up to 15 years, the CEV for

¹²⁴ Concerning the criteria to evaluate the fulfilment of conditionality regime by those who have received legal benefits from the SIVJNR, the Constitutional Court has enshrined the following: "(i) laying down of arms; (ii) obligation to contribute actively to guarantee success in the process of comprehensive reintegration into civil life; (iii) obligation to provide the full truth in the terms of transitory clause 5 of article 1 of the Law 01 of 2017; (iv) guarantee non-repetition and refrain from committing new crimes, or continuing crimes, after the first (1st) of December 2016, in particular, conduct associated with any stage of the production of illicit crops and their derivatives; (v) contribute to offering reparation measures to victims and, in particular, tell the truth in the procedures to inventory all goods and assets; and, (vi) hand over minors, in particular the specific obligations established in section 3.2.2.5. of the Final Agreement." (Free translation). In this regard, see: Constitutional Court, Judgments C-674 of 2017 and C-025 of 2018.

¹²⁵ JEP, Appeals Chamber, TP-SA 020 of August 21, 2018.

¹²⁶ On this point, it is worth mentioning that in accordance with the provisions of transitory clause 12 of article 1 of Law 01 of 2017, the Constitutional Court established that the access and perpetuation of the legal benefits of the conditionality regime are governed by the criteria of gradualness, comprehensiveness and proportionality. In view of the content of these criteria, in Judgment C-080 of 2018, the Court stated the following: "The principle of comprehensiveness implies that all benefits are subject to conditions, which are intended to achieve the purposes of the SIVJNR, conditions that, therefore, cannot be understood in isolation. The principle of proportionality involves that the consequences for non-compliance with the conditions must be proportional to the nature and severity of the breach, and the type of benefit granted. Finally, according to the principle of gradualness, not every breach would result in the loss of all benefits, but the consequences may be ranked, distinguishing different levels of responsibility, the gravity of the alleged incidents and the seriousness of the breach." (Free translation) In that matter, see also Judgments C-674 of 2017 and C-007 of 2018.

¹²⁷ Colombian Constitutional Court, Judgment C-674 of 2017. Similarly, see Judgment C-007 of 2018. (Free translation)

three years, and the UBDP for 20 years, renewable by passing a law. Furthermore, the SIVJNRN includes guarantees of non-repetition¹²⁸ and full reparation measures to build peace.¹²⁹

It is important to highlight that although the JEP, given its judicial nature, is the one that grants the legal benefits, this does not mean that those who receive these benefits only have to appear before the JEP. On the contrary, people who submit to the SIVJNRN and receive legal benefits also acquire commitments before the two extrajudicial institutions. In this regard, Law 1820 of 2016¹³⁰ establishes that benefits granted by the JEP will be stripped from those who refuse “repeatedly and unjustifiably” to appear before the UBDP and/or CEV, despite having the obligation to do so by order of the Chambers of the Tribunal for Peace of the JEP.¹³¹ Regarding this topic, the Constitutional Court has stated:

“(...) As in the case of the CEV, the UBDP must demonstrate to the JEP whether those who apply for special treatment have appeared and contributed effectively. Failure to appear before the UBDP, or making non-effective contributions at an appearance or providing false information, especially when a person has been summoned by said entity, may imply the loss of the SIVJNRN’s benefits, rights and guarantees, under the principles of *comprehensiveness, proportionality and gradualness*.”¹³² (emphasis added)

In the same vein, the SIVJNRN’s design requires the three institutions that comprise it to work in coordination, since individually they cannot fully guarantee victims’ rights. In this sense, each of the different mechanisms cannot be understood in isolation from the others, and nor is there a hierarchy of one over the other.¹³³

Finally, it is worth mentioning that, in order to implement the Final Peace Agreement, the SIVJNRN was formally created under Colombian law, with constitutional status, by means of Legislative Act 01 of 2017. Similarly, to ensure the proper functioning of the SIVJNRN’s three institutions, different laws have been passed that regulate their structure, functions and procedures.¹³⁴

A.1. Truth, Coexistence and Non-Recurrence Commission (CEV)

The CEV is an autonomous and independent national body of an extrajudicial nature. Unlike other truth commissions, the function of the CEV goes beyond establishing the truth about what happened during the conflict. In accordance with the Final Peace Agreement,¹³⁵ Legislative Act 01 of 2017¹³⁶ and Decree Law 588 of 2017,¹³⁷ the Commission has three main purposes:

¹²⁸ The Final Peace Agreement defines the guarantees of non-repetition as follows: “The guarantees of non-repetition are the result, on the one hand, of the coordinated implementation of all of the abovementioned measures and mechanisms, as well as, in general, all the items of the Final Agreement; and on the other hand, of the implementation of any non-repetition measures agreed upon within the framework of item 3 — ‘End of the Conflict.’” (Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016, p. 112).
English version available at: <https://undocs.org/en/S/2017/272>

¹²⁹ Law 01 of 2016, transitory clause 1 of article 1.

¹³⁰ “Through which provisions on amnesty, pardon and special criminal treatment and other provisions are issued.”

¹³¹ Law 1820 of 2016, articles 14, 31, 35 and 50.

¹³² Judgment C-080 of 2018, para. 4.1.12.2. (Free translation)

¹³³ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016, p. 112.

English version available at: <https://undocs.org/en/S/2017/272>.

In this regard, see also Annex E, “Functions and interrelationship between the components of the SIVJNRN”, in this report.

¹³⁴ Thus, for example, Decree Law 588 of 2017 regulates the operation of the CEV; Decree Law 588 of 2017 regulates the operation of the UBDP, and Law 1922 of 2018 establishes the procedures of the JEP.

¹³⁵ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016, p. 112.

English version available at: <https://undocs.org/en/S/2017/272>.

¹³⁶ Legislative Act 01 of 2017, transitory clause 2 of article 1.

¹³⁷ Decree Law 588 of 2017, article 1.

1. **Contribute to clarifying what happened.** The CEV should offer a broad explanation of the complexity of the conflict and promote society's understanding of the conflict, especially its lesser known aspects.
2. **Promote and contribute to acknowledgement.** The CEV's work must be done at three levels. First, regarding victims, which entails acknowledgement of their rights. Second, acknowledgement of individual and collective responsibility by those who participated in the conflict. Finally, in terms of society, acknowledgement means rejecting what happened and demanding that acts that violate human rights are not committed again.
3. **Promote coexistence in the territories.** To this end, the CEV's work must contribute to creating a transformative environment in the territories that allows the peaceful resolution of conflicts.

Pursuant to its mandate, the CEV will prepare a final report that will contain the recommendations and conclusions of its work.¹³⁸ In addition, it was established by law that the CEV's body of declarations and documents will not be used to bring criminal charges before any judicial authority nor will it have probative value.¹³⁹

A.2. Search Unit for Persons Presumed Disappeared in the context and by reason of the armed conflict (UBPD)

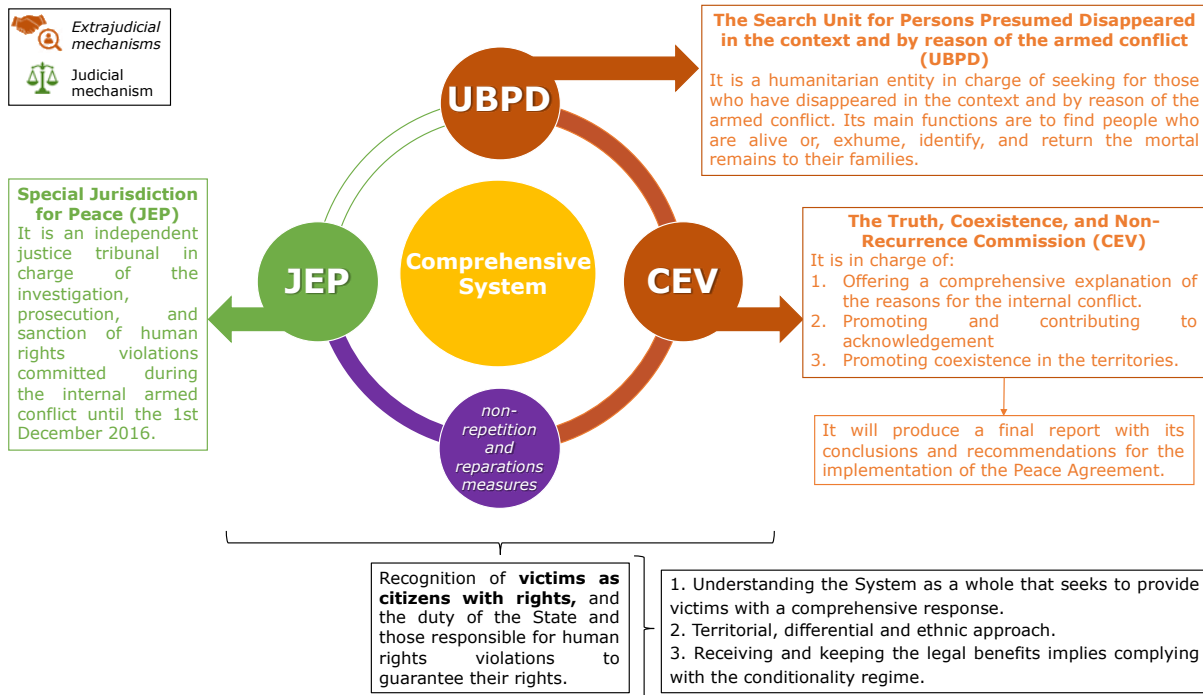
The UBPD is an autonomous and independent judicial body that is extrajudicial and humanitarian in nature. The UBPD's objective is to direct and coordinate humanitarian actions to search for persons who are presumed disappeared in the context and by reason of the conflict, whether they are alive or dead. When it is established that a person has died, the UBPD must recover and identify the remains and return them with dignity to the relatives. In every case, the Unit must give the relatives a report on the information discovered concerning the disappeared person.

Additionally, given the humanitarian and non-judicial nature of the UBPD, its work does not replace or preclude judicial investigation. Similar to the CEV, the information uncovered or produced by the Unit must not be used to make indictments in legal proceedings, nor does it have probative value. As an exception to the foregoing, judicial authorities may request the UBPD's technical-forensic reports and material evidence pertaining to a body.¹⁴⁰

¹³⁸ Decree Law 588 of 2017, article 13.5.

¹³⁹ Ibid. article 4.

¹⁴⁰ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016, p. 122. English version available at: <https://undocs.org/en/S/2017/272>).



Graph 1. Source: own elaboration.

B. Special Jurisdiction for Peace (JEP)

The JEP is the court in charge of administering justice and granting legal benefits to those who submit to the SIVJRNR and abide by its conditions. The JEP was designed as an autonomous and preferential jurisdiction,¹⁴¹ which does not depend on any of the branches of government. Additionally, it has financial and budgetary autonomy.¹⁴²

The scope of the JEP's jurisdiction is defined by three concurrent factors:

- 1. Subject-matter (*ratione materiae*):** The JEP shall investigate crimes committed by reason, occasion or directly or indirectly related to the armed conflict.¹⁴³ The foregoing includes political and related crimes, serious human rights violations, crimes against humanity and war crimes.
- 2. Personal (*ratione personae*):** The JEP is authorized to investigate crimes committed by three main groups: (i) members of the FARC-EP,¹⁴⁴ (ii) members of the State's military forces, and (iii) State officials who are not members of the military forces and

¹⁴¹ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016; Legislative Act 01 of 2017, transitory clauses 5 and 6 of article 1.

¹⁴² Legislative Act 01 of 2017, transitory clauses 1 and 5 (paragraph 2) of article 1.

¹⁴³ On the concept of armed conflict, it is worth mentioning the observations of the Colombian Constitutional Court in Judgment C-781 of 2012. In this judgment the Court concluded that the concept of armed conflict "far from being understood from a restrictive perspective that is limited strictly to military confrontations, or to a specific group of armed actors to the exclusion of others, it has been interpreted in a broad sense that includes all the complexity and factual and historical evolution of the Colombian internal armed conflict." (Free translation). The JEP has also made similar declarations, in this regard consult: JEP, Appeals Chamber, TP-SA 021 of August 21, 2018, para. 24 and 25.

¹⁴⁴ The primary means of proving the FARC-EP's membership is the inclusion in the lists prepared by the FARC-EP and verified by the Office of the High Commissioner for Peace. Likewise, as determined by the Colombian Supreme Court of Justice, in terms of the benefits of Law 1820 of 2016, the benefits of the JEP may also extend to other persons investigated, accused or convicted as members of the FARC-EP.

In this regard see: Supreme Court of Justice, Criminal Appeals Chamber, File 49979 of April 19, 2017, Justice: Luis Antonio Hernández Barbosa.

third parties (civilians).¹⁴⁵ Regarding the third group, the Constitutional Court, in Judgment C-674 of 2017¹⁴⁶, set out that the JEP can investigate and prosecute the crimes committed during the armed conflict by State officials who are not members of the military forces and third parties only if they accept JEP jurisdiction voluntarily. The voluntary submission (*sometimiento voluntario*) to the JEP is individual. However, once a person has expressed the intention to submit to the JEP, that submission is “comprehensive, irreversible and unrestricted.”¹⁴⁷

- 3. Temporal (*ratione temporis*):** The JEP has jurisdiction over the crimes committed during the armed conflict prior to December 1, 2016. It also has jurisdiction over crimes eligible for amnesty closely linked to the process of laying down arms, committed as of December 1, 2016. Neither the Final Peace Agreement nor the legal texts for its implementation establish the start date of the internal armed conflict.

When these three factors are present, the JEP has “prevalent” and “exclusive”¹⁴⁸ jurisdiction. In terms of subject-matter and personal criteria, it should be noted that, although the JEP has “prevalent” jurisdiction, it must prioritize cases based on criteria of the severity and representativeness of the crimes, the victims’ vulnerability, the differential approach¹⁴⁹, the extent of involvement and responsibility for illegal acts.¹⁵⁰

Additionally, it is important to note that until the JEP has issued a ruling on a person’s legal status, the ordinary justice system must continue to pursue investigations of crimes that would be within the JEP’s jurisdiction. Nevertheless, once a person has been accepted as subject to the jurisdiction of the JEP, the ordinary justice system must refrain from: (i) issuing judgments or rulings that establish responsibility, (ii) issuing custodial measures, (iii) issuing subpoenas for judicial proceedings, and (iv) issuing or enacting arrest warrants.¹⁵¹

B.1. JEP’s structure¹⁵²

The main structure of the JEP has two levels. The first level consists of three Justice Panels (*Salas de Justicia*) and the second level consists of four Chambers that make up the Tribunal for Peace (*Secciones del Tribunal para la Paz*). The Tribunal for Peace is the highest body within the jurisdiction. Additionally, the JEP has a prosecution unit: the Investigation and Prosecution

¹⁴⁵ Including people who participated in protests or public disturbances.

¹⁴⁶ Regarding persons who have held the office of President of the Republic, paragraph 1 of transitory clause 5 of article 1 of Legislative Act 01 of 2017 establishes the following rule: “The creation and operation of the Special Jurisdiction for Peace will not modify the regulations in force applicable to persons who have held the office of President of the Republic, in accordance with the provisions of article 174 of the Political Constitution of Colombia. In the event that the JEP receives information that implicates a person who has held the office of President of the Republic, said information will be sent to the House of Representatives as this corresponds to it, remittance that will be made at the time deemed appropriate by the JEP, after having carried out the relevant verification.” (Free translation)

¹⁴⁷ JEP, Appeals Chamber, Ruling TP-SA 019 of August 21, 2018.

¹⁴⁸ Legislative Act 01 of 2017, transitory clause 6 of article 1.

¹⁴⁹ As mentioned in footnote three of this report, the “differential approach” (*enfoque diferencial*) essentially involves the interpretation and application of the law using a perspective that contemplates the specific needs of certain sectors of the population such as women, ethnic groups, and the LGBTI Community.

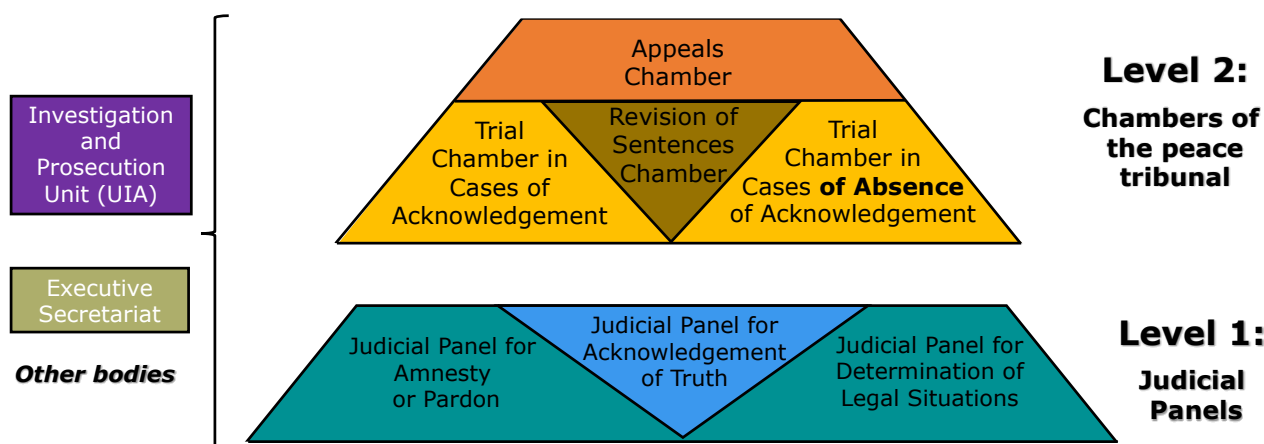
Regarding human rights violations, it takes into account that the harm and consequences of a violation may not be the same for all victims. Therefore, the measures adopted to guarantee victims’ rights cannot be uniform and unique. For instance, considering gender inequality and the disproportionate impact of the armed conflict on women, the design and implementation of reparation measures should have a specific component to reduce gender gaps and address specific harms suffered by women.

¹⁵⁰ Legislative Act 01 of 2017, transitory clause 7 of article 1, and article 3; and Law 1957 of 2019, article 19. For these purposes, in June 2018, the JEP prepared a “Guide for the prioritization of cases and situations in the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts.”

¹⁵¹ Law 1957 of 2019, article 79 (j). In this regard see also Colombian Constitutional Court Judgments C-025 of 2018 and C-080 of 2018.

¹⁵² More information on the procedures and functions of the JEP can be found in Annex B (Sanctions regime and measures of extinction of criminal responsibility before the JEP), Annex C (Proceedings before the JEP) and Annex D (Amnesty, pardon, and stay of criminal proceedings).

Unit (*Unidad de Investigación y Acusación - UIA*), an Executive Secretariat (*Secretaría Ejecutiva*), and an Information Analysis Group (*Grupo de Análisis de la Información - GRAI*).



Graph 2. Source: own elaboration.

At the **first level**, each of the **Panels** fulfills a different function:

- a. **Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts** (*Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas*).¹⁵³ The Judicial Panel for Acknowledgement of Truth is considered to be the gateway to the JEP since its function is to decide whether incidents and conducts are within the jurisdiction of the JEP. Likewise, this panel is where those responsible for human rights violations make the first acknowledgement of truth and responsibility, the veracity and completeness of which is evaluated by the Panel.¹⁵⁴

In cases where truth and responsibility are fully acknowledged, the Panel is responsible for presenting concluding resolutions (*resoluciones de conclusiones*) to the Trial Chamber in cases of Acknowledgement. The resolutions identify (i) the most serious and representative crimes, (ii) the individuals responsible, (iii) the definition of the conducts according to criminal law and, (iv) the proposals on sanctions to people whose criminal responsibility has been established in the resolutions.

However, because the Judicial Panel for Acknowledgement of Truth must concentrate on the most serious and representative cases, it may remit to the Judicial Panel for Determination of Legal Situations cases concerning persons or conducts that do not qualify for amnesty or pardon, and nor will these be addressed in its concluding resolutions.

Finally, when the Panel decides that the acknowledgement of truth and responsibility was not complete, or there is no acknowledgement of truth and criminal responsibility, it may remit the case to the Investigation and Prosecution Unit (UIA). If the UIA determines that there is merit, it will begin proceedings before the Trial Chamber in Cases of Absence of Acknowledgement.

¹⁵³ The functions of the Panel are set forth in article 79 of Law 1957 of 2019. See also articles 27 et seq of Law 1922 of 2018.

¹⁵⁴ On the proceedings before the Judicial Panel for Acknowledgement of Truth, see in this report Annex C.1, "Proceedings based on the determination of truth and responsibility".

- b. Judicial Panel for Amnesty or Pardon (*Sala de Amnistía o Indulto*).**¹⁵⁵ This Panel is responsible for amnesty and pardon proceedings.¹⁵⁶ In the case of crimes that are not eligible for amnesty, these are remitted to the Judicial Panel for Acknowledgement of Truth. Likewise, this Panel resolves the requests by members of the FARC-EP to submit to the SIVJNR and, if certain requirements are met, it also grants them conditional release from custody (*libertad condicional*).¹⁵⁷
- c. Judicial Panel for Determination of Legal Situations (*Sala de determinación de conductas jurídicas*).**¹⁵⁸ This Panel is responsible for defining the legal situation of those who are not eligible for amnesty, and whose cases have not been addressed in the concluding resolutions by the Judicial Panel for Acknowledgement of Truth. In making its decisions, this Panel has the power to determine whether a conduct was related to the armed conflict.

This Panel determines the legal situation of those individuals who did not have a decisive participation in the most serious and representative crimes. Among other provisions, it might decide to (i) suspend the execution of a sentence, (ii) stay criminal proceedings or order another type of early termination for ongoing criminal, disciplinary or administrative proceedings, and (iii) define how sentences previously handed down by the judicial system will be handled.

On the other hand, the Panel decides on submissions by State agents¹⁵⁹ and civilians to the SIVJNR and, if the requirements are met, it also grants them “provisional, conditional, and early release from custody” (*libertad transitoria, condicionada y anticipada*). The Panel may grant members of the military forces the benefit of being held in custody at a military or police base if they do not meet the requirements for provisional, conditional, and early release.¹⁶⁰ It is important to note that the Panel can grant these legal benefits *sua sponte*.¹⁶¹

Finally, the Panel is also in charge of taking measures to halt proceedings with a view to terminate prosecution in the case of incidents related to the exercise of the right to protest or internal disturbances.

For its part, the Tribunal for Peace, the **second level**, is the highest authority within the JEP. It is made up of four **Chambers**:

- a. Trial Chamber in Cases of Acknowledgement of Truth and Responsibility**
(*Sección de Primera Instancia en Caso de Reconocimiento de Verdad y*

¹⁵⁵ The functions of the Panel are enshrined in article 81 of Law 1957 of 2019.

¹⁵⁶ In addition to these proceedings, articles 15 to 18 of Law 1820 of 2016 established a proceeding before the ordinary justice system (Prosecutors and judges) to grant “*de jure* amnesty.” This proceeding was established before the JEP, and the Judicial Panel for Amnesty or Pardon had entered into operation. In fact, the great majority of amnesties and pardons for former FARC-EP’s combatants were granted using the proceeding before the ordinary justice system. For more information about crimes eligible for amnesty, see Annex D, “Amnesty, pardon, and stay of criminal proceedings”, in this report.

¹⁵⁷ On this point, see Annex C.2, “Proceedings for granting release to the alleged perpetrators”, in this report.

¹⁵⁸ The functions of the Panel are set forth in article 84 of Law 1957 of 2019. See also Law 1820 of 2016, articles 44 et seq.

¹⁵⁹ To date, the Judicial Panel for Determination of Legal Situations has handled submissions from State agents, including concerning serious human rights violations. However, the Judicial Panel for Acknowledgement of Truth has maintained that it has the authority to decide in some cases on the submission by State agents who are not members of the military forces. In this regard, the Judicial Panel for Acknowledgement of Truth has declared: “[In accordance with] what is established in the Final Agreement, the bill of the JEP’s Statutory Law, and Law 1820 of 2016, when it comes to the voluntary submission by a State agent who is not a member of the military forces, who is involved in the most serious cases and most representative conducts or practices, the Judicial Panel for Acknowledgement of Truth has the authority to decide the matter.” (Free translation). (JEP, Judicial Panel for Acknowledgement of Truth, Ruling 079 of November 20, 2018 and Ruling 027 of February 26, 2019).

¹⁶⁰ On this point, see Annex C.2, “Proceedings for granting release to the alleged perpetrators”, in this report.

¹⁶¹ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, paras. 24 to 35.

Responsabilidad).¹⁶² This Chamber is responsible for issuing first instance judgments in cases where the perpetrators' acknowledgment of their criminal responsibility is complete and comprehensive. It does so based on the information provided by the Judicial Panel for Acknowledgement of Truth in its concluding resolutions. In doing so, the Chamber must examine "the correspondence between the conduct acknowledged, those responsible and the sanctions in the Panel's resolution."¹⁶³ Once the correspondence has been determined, the Chamber imposes the respective sanction and establishes the conditions and manners of executing the sanction.

- b. Trial Chamber in Cases of Absence of Acknowledgement of Truth and Responsibility** (*Sección de Primera Instancia para Casos de Ausencia de Reconocimiento de Verdad y Responsabilidad*).¹⁶⁴ This Chamber is responsible for first instance trials and sentencing in cases where the perpetrators have not acknowledged truth and responsibility. This Chamber goes into operation when the Investigation and Prosecution Unit presents an indictment.
- c. Revision of Sentences Chamber** (*Sección de Revisión de Sentencias*).¹⁶⁵ This Chamber carries out several functions, among which are: (i) handing down the first instance sentences of writs of amparo (*acciones de tutela*), (ii) first instance decisions on the application of the non-extradition guarantee¹⁶⁶ (*garantía de no extradición*), (iii) reviewing and modifying sanctions, investigations and sentences handed down by the ordinary justice system.
- d. Appeals Chamber** (*Sección de Apelación*).¹⁶⁷ This chamber rules on challenges to the judgments of any of the Trial Chambers. It is also the second instance for decisions eligible for appeal that come from the Judicial Panels and the Revision of Sentences Chamber.¹⁶⁸

In addition, transitory clause 15 of article 1 of Legislative Act 01 of 2017 establishes the creation of a **Stability and Effectiveness of Resolutions and Judgments Chamber**. This Chamber is in charge of guaranteeing the stability and effectiveness of the Resolutions and Judgments issued by the justice component of the SIVJNR, as well as ensuring their compliance once the Chambers of the Tribunal for Peace have done their job. In accordance with the aforementioned transitory clause 15, this Chamber may be created "without any limitations of duration (...) at any time necessary." So far, this Chamber has not been put into force.

Finally, the functions of the **other bodies** that make up the main structure of the JEP are the following:

- a. Investigation and Prosecution Unit** (*Unidad de Investigación y Acusación - UIA*).¹⁶⁹ The UIA is the JEP's prosecution unit and is responsible for carrying out judicial police functions inside the JEP. The UIA's main functions are: (i) investigate and indict, if grounds exist for this, before the Trial Chamber in Cases of Absence of Acknowledgement, persons whose cases have been remitted to it by the Judicial Panel

¹⁶² The Chamber's functions are set forth in article 92 of Law 1957 of 2019.

¹⁶³ Law 1957 of 2019, article 92 (a).

¹⁶⁴ The Chamber's functions are set forth in article 93 of Law 1957 of 2019.

¹⁶⁵ The Chamber's functions are set forth in article 97 of Law 1957 of 2019.

¹⁶⁶ On the non-extradition guarantee, see transitory clause 19 of article 1 of Legislative Act 01 of 2017.

¹⁶⁷ The Chamber's functions are set forth in article 97 of Law 1957 of 2019.

¹⁶⁸ On the subject of decisions that may be appealed, see article 13 of Law 1922 of 2018.

¹⁶⁹ The Chamber's functions are set forth in article 87 of Law 1957 of 2019 and in articles 82 to 87 of the General Regulations of the JEP.

for Acknowledgement of Truth; (ii) decide on protective measures for victims, witnesses and other interveners and; (iii) request that the Trial Chamber in Cases of Absence of Acknowledgement orders arrest warrants and precautionary measures.

- b. Executive Secretariat.**¹⁷⁰ The Secretariat is responsible for the administration, management and execution of the JEP's resources, under the guidance of the JEP's governing body and the JEP's Presidency. Additionally, it is in charge of guaranteeing participation and representation of victims before the JEP's Panels and Chambers, as well as ensuring psychosocial support during the judicial proceedings when necessary.

The Executive Secretariat was created in January 2017, one year before the JEP's Panels and Chambers entered into operation, on January 15, 2018. During that "transitory" phase, the Executive Secretary exercised judicial functions and was authorized to order precautionary measures to preserve documents related to the armed conflict.¹⁷¹ Once the Judicial Panels and the Chambers came into operation, the judicial functions were transferred to them.¹⁷²

- c. Information Analysis Group (GRAI).**¹⁷³ It performs analyses of the context, organizations, patterns and practices that were carried out in the context of the armed conflict. The GRAI's work aims to support the work conduct by the JEP's Panels and Chambers.

B.2. Victims' rights in the JEP

As already mentioned, the SIVJNR makes "the centrality of the victims"¹⁷⁴ (*Centralidad de las víctimas*) its guiding principle. With regard to the JEP, its regulations make it clear that victims' rights must be protected and guaranteed, even in periods of transition.¹⁷⁵ In that regard, Legislative Act 01 of 2017 establishes that the JEP's objectives include the satisfaction and protection of victims' rights.¹⁷⁶ In particular, the Legislative Act stipulates:

"[t]he norms that will govern the Special Jurisdiction for Peace, will include guarantees on proceedings, fundamental rights, evidence and access, aimed at ensuring that victims can satisfy their rights to truth, justice and reparation within the framework of the JEP with differential and special measures for those who consider themselves subject to special constitutional protection."¹⁷⁷

In a similar vein, the JEP's regulations establish, as part of the guiding principles, the principle of "pro victim"¹⁷⁸. The "full and effective reparation to victims"¹⁷⁹ is considered an interpretive criterion. Similarly, the "effective participation of victims"¹⁸⁰ is another principle that governs the operation of the JEP. To guarantee this last principle, it has been established that the JEP must adopt measures so that victims may (i) access information, (ii) receive technical and

¹⁷⁰ The Executive Secretariat's functions are set forth in transitory clause 7 of article 1 of Legislative Act 01 of 2017, articles 111 and 112 of Law 1957 of 2019, and article 2 of Law 1922 of 2018.

¹⁷¹ Legislative Act 01 of 2018, transitory clause 7 of article 1.

¹⁷² General Regulations of the JEP, article 130.

¹⁷³ The GRAI was created through Agreement 004 of 2018 by the Governing Body of the JEP.

¹⁷⁴ See, among others: Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, points 5.1.1.1.1 (CEV) and 5.1.2 (paragraph 6); Legislative Act 01 of 2017, transitory clause 12 of article 1; Law 1820 of 2016, articles 6 and 14 and; Law 1957 of 2019, article 13.

¹⁷⁵ Constitutional Court, Judgment C-080 of 2018.

¹⁷⁶ Legislative Act 01 of 2017, transitory clause 5 of article 1. Similarly, see Law 1957 of 2019, articles 2 and 9.

¹⁷⁷ Legislative Act 01 of 2017, transitory clause 12 of article 1. (Free translation)

¹⁷⁸ Law 1922 of 2018, article 1, section d.

¹⁷⁹ Law 1957 of 2019, article 7.

¹⁸⁰ Law 1957 of 2019, article 14.

psychosocial assistance, (iii) provide evidence and file legal actions and, (iv) obtain protective measures if they are risk as the result of their participation before the jurisdiction. The above must be guaranteed with a differential approach.¹⁸¹

Against this backdrop, it is worth highlighting some rights that victims have in proceedings before the JEP:¹⁸²

1. Be the beneficiaries of specific measures that materialize their right to truth, justice, reparation and non-repetition.¹⁸³
2. Be recognized as victims and participate in the different proceedings before the JEP, as part of their right to access effective judicial remedy.¹⁸⁴ This participation must be guaranteed with a differential approach, according to the specific conditions of the victims, especially when victims have experienced sexual violence, are minors or belong to an ethnic group.¹⁸⁵
3. Receive psychological support and legal aid.¹⁸⁶
4. Present evidence and file legal actions.¹⁸⁷
5. Request and receive protective measures.¹⁸⁸
6. Participate in the definition of *restorative projects (proyectos restaurativos)* that are parts of the sanctions for perpetrators. For example, in the proceedings to determine truth and responsibility,¹⁸⁹ the Judicial Panel for Acknowledgement of Truth shall include in its concluding resolutions a draft of sanctions with a restorative approach and a proposal of restorative measures, which must consider the observations and proposals of victims.¹⁹⁰
7. Be heard in the process of selection and prioritization of cases.¹⁹¹

Finally, it should be stressed that, as a general rule, victims must be accredited to be able to participate in the different proceedings before the JEP.¹⁹² The accreditation (*la acreditación*) is a procedure through which any of the JEP's Panels or Chambers recognizes that a person is a victim and, therefore, they are authorized to participate in one or more proceedings before the JEP. Once accredited, victims acquire the title of special intervenors (*interveniente especial*).¹⁹³ This means that victims are not considered as parties in the proceedings before the JEP.¹⁹⁴ As a consequence, victims do not have full powers as legal parties with individual and independent status.

¹⁸¹ Law 1957 of 2019, articles 14, 15, 17 and 18.

¹⁸² The list is based on the provisions of the different regulations that govern the JEP, which does not preclude victims from having other rights established by national and international instruments on victims' rights.

¹⁸³ Legislative Act 01 of 2017, transitory clauses 1 and 5 of article 1.

¹⁸⁴ Legislative Act 01 of 2017, transitory clause 12 of article 1 and Law 1957 of 2019, articles 14 and 15. On this point see: Constitutional Court, Judgments C-007 of 2018, C-674 of 2017 and C-080 of 2018.

¹⁸⁵ Legislative Act 01 of 2017, transitory clause 12 of article 1 and Law 1957 of 2019, articles 14, 16 and 18.

¹⁸⁶ Law 1957 of 2019, article 15.

¹⁸⁷ Law 1957 of 2019, articles 14 and 144. On this point, see also: Constitutional Court, Judgments C-007 of 2018 and C-080 of 2018.

¹⁸⁸ Law 1922 of 2018, article 22; Law 1957 of 2019, article 17.

¹⁸⁹ On the procedure carried out by the Judicial Panel for Acknowledgement of Truth, see Annex C.1, "Proceedings based on the determination of truth and responsibility", in this report.

¹⁹⁰ Law 1922 of 2018, articles 27 and 27D.

¹⁹¹ Law 1922 of 2018, article 27D.

¹⁹² Law 1922 of 2018, article 3.

¹⁹³ Legislative Act 01 of 2017, transitory clause 12 of article 1.

¹⁹⁴ In this regard see: Law 1922 of 2018, articles 3 and 4.

B.2.1. Reports by victims' organizations

In the design of the JEP, a special kind of participation before the Judicial Panel for Acknowledgement of Truth was established¹⁹⁵: the presentation of reports by victims' organizations.¹⁹⁶ The presentation of reports has been considered as a mechanism for access to justice and "the primary expression of the victims' right to participation"¹⁹⁷ before the JEP.

On this subject, it should be recalled that, within the proceedings focused on the determination of truth and responsibility,¹⁹⁸ which always begin in the Judicial Panel for Acknowledgement of Truth, the reports submitted by victims' organizations have great value. The reports are one of the inputs that the Panel uses to create cases¹⁹⁹ on widespread and serious crime committed during the conflict or on a specific locality of the Colombian territory that suffered high levels of violence.

In this context, the Judicial Panel for Acknowledgement of Truth has considered that the reports by victims' organizations serve several purposes:²⁰⁰

1. Activate and materialize the right to access to justice.
2. Activate the JEP's jurisdiction to investigate the incidents, facts, and conducts mentioned in the report. However, the JEP cannot declare a person's criminal responsibility based only on the content of a report. To determine responsibility, the Judicial Panel for Acknowledgement of Truth must carry out compare-and-contrast activities to analyse the information given in a report with other reports, statements from the alleged perpetrators who have appeared before the JEP, and the body of evidence that has been collected.
3. Allow the JEP to know about the facts and circumstances in which the victims' organizations consider that their human rights were violated.
4. Grant victims' organizations the ability to act in judicial proceedings before the JEP. In that sense, this mechanism is not intended for victims to act personally and directly.
5. Facilitate the functions of the Judicial Panel for Acknowledgement of Truth. In particular, the functions related to (i) comparison of information received from public authorities, (ii) analysis of context and victimization patterns, (iii) identification of the most serious and representative cases and their alleged perpetrators; and (iv) identification of victims.
6. Seek to ensure that the JEP's decisions materialize the victims' right to justice.

¹⁹⁵ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, letter c and Law 1957 of 2019, article 79, letter c.

¹⁹⁶ Regarding what is understood to be an organization, the Judicial Panel for Acknowledgement of Truth has established the following: "(...) Any association or freely formed group of people who are victims of the Colombian armed conflict or who represent them or have the purpose of protecting their interests; or have in common the promotion, protection, and defense of human rights. This includes, among others, associations made up of victims, grassroots organizations, groups, platforms, networks, non-governmental organizations, etc." (Free translation) (Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts, *Documento guía para la presentación de informes elaborados por organizaciones de víctimas, indígenas, negras, afrocolombianas, raizales, palenqueras, Rrom y de derechos humanos colombianas*, May 24, 2018, p. 5.).

¹⁹⁷ Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts, *Documento guía para la presentación de informes elaborados por organizaciones de víctimas, indígenas, negras, afrocolombianas, raizales, palenqueras, Rrom y de derechos humanos colombianas*, May 24, 2018, p. 4.

¹⁹⁸ On the proceedings of the Judicial Panel for Acknowledgement of Truth, see Annex C.1, "Proceedings based on the determination of truth and responsibility", in this report.

¹⁹⁹ It should be noted that cases opened by the Judicial Panel for Acknowledgement of Truth do not aim to resolve individual crimes, their objective is to identify crime patterns and establish links between perpetrators. In that sense, instead of using a case-by-case approach to the investigations, the Judicial Panel follows a more systematic approach to identifying those most criminally responsible. So far, the Judicial Panel for Acknowledgement of Truth has opened 7 cases. On this regard, see Annex A, "Cases opened by the JEP", and Annex C, "Proceedings before the JEP".

²⁰⁰ Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts, *Documento guía para la presentación de informes elaborados por organizaciones de víctimas, indígenas, negras, afrocolombianas, raizales, palenqueras, Rrom y de derechos humanos colombianas*, May 24, 2018, p. 4, 12, 13.

In the same vein, the reports also create obligations for the Judicial Panel for Acknowledgement of Truth. In particular, the Panel must guarantee the correct and proper use of the information given. For example, in the cases that the Panel orders copies of the reports are handed over to the alleged perpetrators, to guarantee their rights to defense and due process, the panel has to make sure that confidential and sensitive information is protected. The panel also must guarantee the safety of victims.²⁰¹ Likewise, reports that refer to cases of sexual violence must be handled with appropriate confidentiality measures.²⁰²

It is worth clarifying that obligations in relation to the reports do not begin when these are received but from the moment of their preparation. Indeed, *ex officio* or at the request of the party, the Judicial Panel for Acknowledgement of Truth must take appropriate and relevant measures when victims or another person's life or personal safety is at risk due to the documentation, preparation or presentation of a report.²⁰³

On the other hand, as a mechanism to promote and facilitate the presentation of reports, the Executive Secretariat has the obligation to design and implement "strategies for dissemination, advice and support to organizations."²⁰⁴ Victims may also request technical support from the Executive Secretariat on how to structure the report, especially with regard to the systematization of information.²⁰⁵ It should be noted that these activities are the responsibility of the Secretariat because one of its functions is to guarantee victims' participation.²⁰⁶

Lastly, it is important to mention that there is a time limit within which the victims' organizations must present their reports. The initial deadline for the delivery of reports is March 15, 2020. However, the Judicial Panel for Acknowledgement of Truth may decide to extend the deadline to March 15, 2021.²⁰⁷ Likewise, in accordance with its agenda of prioritized cases, the Panel may provide a calendar of dates and deadlines for the delivery of reports.²⁰⁸ The Panel will determine if it will make exceptions to receive reports beyond the scheduled dates.²⁰⁹

B.2.2. Reparation measures for victims

On the subject of reparation measures for victims, the regulations governing the SIVJRNR recognize the obligation to make full and effective reparation to the victims, in accordance with national and international standards. Likewise, it was determined that guaranteeing reparation measures for victims is not only the responsibility of the JEP, but of the entire SIVJRNR. In this regard, transitory clause 18 of article 1 of Legislative Act 01 of 2017 establishes the following:²¹⁰

"Within the framework of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, the State shall guarantee the right to reparation for victims of serious violations of human rights and international humanitarian law who have suffered damages, individually or collectively, by reason of the armed conflict. Reparations will be guaranteed by the State in a comprehensive, adequate, differentiated and effective

²⁰¹ Ibid. p. 14.

²⁰² Ibid. p. 15.

²⁰³ Ibid. p. 18.

²⁰⁴ Ibid. p. 18.

²⁰⁵ Ibid. p. 12.

²⁰⁶ Law 1957 of 2019, article 114, numeral 14.

²⁰⁷ Legislative Act 01 of 2017, transitory clause 15 of article 1 and; Law 1957 of 2019, article 80.

²⁰⁸ Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts, *Documento guía para la presentación de informes elaborados por organizaciones de víctimas, indígenas, negras, afrocolombianas, raizales, palenqueras, Rrom y de derechos humanos colombianas*, May 24, 2018, p. 10.

²⁰⁹ Ibid. P. 11.

²¹⁰ Along the same line, see: Law 1957 of 2019, articles 7 and 38. (Free translation)

manner, prioritizing the distribution of reparation measures among victims, taking into account the set of victims of the armed conflict and seeking equal access and equity in the distribution of available resources, and giving preference to care for persons subject to special constitutional protection.”

Although the design of the SIVJRNR means that reparation measures for victims does not fall to a single institution, this does not mean that the JEP does not have a defined role in this area. In particular, a restorative justice approach was established as a measure to be used by the JEP to guarantee victims’ rights, including the right to reparation. On this point, transitory clause 1 of article 1 of Legislative Act 01 of 2017 states:

“One of the guiding paradigms of the JEP will be the application of restorative justice that preferably seeks restoration for the harm suffered and reparation for the victims affected by the conflict, especially to end a situation of social exclusion that the victimization has caused. Restorative justice primarily addresses the needs and dignity of victims and is applied with a comprehensive approach that guarantees justice, truth and non-repetition of what took place.”²¹¹ (emphasis added)

In accordance with the above, there are two essential elements in the JEP regarding reparation: the restorative justice approach and the full and effective nature of reparations. With regard to the guarantee of full and effective reparation, the JEP has an important limitation because it cannot order former members of the FARC-EP and members of the military forces to pay compensation. This type of reparation must be assumed by the State through the mass reparation program of Law 1448 of 2011.²¹² The above is in accordance with the provisions of transitory clauses 18²¹³ and 26²¹⁴ of article 1 of Legislative Act 01 of 2017.

Notwithstanding the former general rule, the Constitutional Court has clarified that, concerning persons who voluntarily submit to the SIVJRNR, that is to say civilians and State agents who do not belong to the military forces, the JEP does have the authority to demand that they pay compensation:

“When amnesty or pardon is granted to members of guerrilla groups or criminal prosecution of members of the military forces is stayed, those responsible for the obligation to compensate the victims are exempted and, consequently, legal actions against them for that purpose shall not be enacted (transitory clause 18 of Legislative Act 01 of 2017 and art. 150-17 of the Constitution). However, in accordance with transitory clause 18, they still have the general obligation to make reparation to the victims through non-compensatory measures, which may consist of reparation measures imposed by the JEP in compliance with the provisions of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, as provided in articles 41 and 42 of Law 1820 of 2016. These obligations are part of the conditions that those responsible must meet. (...) in contrast to the provisions concerning members of the military forces and members of the FARC, the Legislative Act did not exempt civilians or third parties from the obligation to compensate damages.”²¹⁵ (emphasis added)

²¹¹ Legislative Act 01 of 2017, transitory clause 1 of article 1. (Free translation)

²¹² In this regard see: Colombian Constitutional Court, Judgment C-080 of 2018.

²¹³ In the relevant section, this article states: “In cases where amnesty, pardon or stay of criminal prosecution is applied, no legal action will be taken against the beneficiaries of said measures for compensation for the victims. In any case, they must contribute to the clarification of the truth, reparation of the victims and guarantee non-repetition.” (Free translation)

²¹⁴ The content of the article is as follows: “In the case of members of the military forces who have committed crimes by reason of, during, or in direct or indirect relation with the internal armed conflict, the action of reimbursement to the State and the impleader petition established in article 90 of the Constitution will apply. In any case, they must contribute to the clarification of the truth, non-monetary reparation of the victims and guarantee non-repetition.” (Free translation)

²¹⁵ Colombian Constitutional Court, Judgment C-080 of 2018. (Free translation)

It is important to note that the fact that former members of the FARC-EP do not have the duty to pay compensation as individuals does not mean that the FARC-EP does not have the duty to pay compensation as a group. Precisely, Decree Law 903 of 2017 determined that the properties and assets of the FARC-EP would be used for “the material reparation of the victims of the conflict, within the framework of full and effective reparation measures.”²¹⁶ These assets include those that are subject to asset forfeiture proceedings.²¹⁷

Finally, as part of the conditionality regime²¹⁸ that must be respected by all people who receive legal benefits of the SIVJNR, the JEP has the obligation of verifying the fulfilment of the following obligations related to reparation measures:²¹⁹

1. Carry out actions with restorative content when imposed as a special sanction²²⁰.
2. Hand over the assets received as the result of illegal activities.²²¹ In the case of members of the FARC-EP, they must inventory their assets and hand these over so that these can be used to make reparation to victims.²²²
3. Provide the full truth and acknowledge responsibility²²³ as a measure for satisfaction. This includes (i) providing information about crimes, even if they are just witnesses without criminal responsibility, and (ii) contributing to the location and identification of disappeared persons.
4. Contribute to the work carried out by the CEV and the UBPD.
5. Not commit new crimes or join illegal groups, as a measure of non-repetition.

B.2.3. The Office of the Inspector General and victims

Numeral 7 of article 277 of the Constitution establishes that one of the functions of the Office of the Inspector General (*Procuraduría General de la Nación*) is to intervene in judicial proceedings “to defend the legal order, public assets, or fundamental rights and guarantees.” This constitutional function, in relation to the JEP, translates into ensuring respect and guaranteeing victims’ rights. The preceding is expressly declared in transitory clause 12 of article 1 of Legislative Act 01 of 2017 and in article 77 of Law 1957 of 2019.

Initially, Legislative Act 01 of 2017 set out that the Office of the Inspector General could only be part of JEP’s proceedings if there was a request of the JEP’s justices.²²⁴ However, the Constitutional Court, in Judgment C-674 of 2017, determined that this restriction prevented the Office of the Inspector General from carrying out its constitutional role, and left victims’ rights unprotected. Therefore, the Constitutional Court established that the Office of the Inspector General has the competence to decide in which cases it will act to fulfill its constitutional functions.

²¹⁶ Decree Law 903 of 2017, article 4.

²¹⁷ Constitutional Court, Ruling 155 of 2019.

²¹⁸ On this point see section A, “Comprehensive System of Truth, Justice, Reparation and Non-Repetition (SIVJNR)” in this chapter.

²¹⁹ Constitutional Court, Judgment C-080 of 2018. See also, Law 1957 of 2019, article 20.

²²⁰ Special sanctions are imposed when a person makes a full and exhaustive acknowledgement of truth and responsibility before the Judicial Panel for Acknowledgement of Truth. These sanctions have a length of between five to eight years. The sanctions consist of restrictions on freedom of movement and/or residence. They also include participation in programs in favor of the victims. They do not contemplate prison time.

In this regard, see: Legislative Act 01 of 2017, transitory clause 13 of article 1. On the sanctions imposed by the JEP, see Annex B, “Sanctions regime and measures of extinction of criminal responsibility before the JEP”, in this report.

²²¹ Legislative Act 01 of 2017, transitory clause 5 of article 1.

²²² Decree Law 903 of 2017.

²²³ In Judgment C-080 of 2018, the Constitutional Court has interpreted providing the full truth to mean: “(...) to report, when the elements are available to do so, in an exhaustive and detailed manner, the conducts committed and the circumstances of their commission, as well as the necessary and sufficient information to attribute responsibility. The fulfillment of this condition does not imply, however, the obligation to accept responsibility when there is no reason to do so.” (Free translation)

²²⁴ Legislative Act 01 of 2017, transitory clause 12 of article 1.

As a consequence of the ruling of the Constitutional Court, the Office of the Inspector General has broad power to intervene in the JEP's proceedings. At the same time, this competence serves as an institutional mechanism that aims to guarantee victims' rights and ensure that the checks and balances system is respected inside the JEP.²²⁵

In this context, given the JEP's uniqueness, the importance of guaranteeing victims' rights and the consolidation of peace in Colombia, the Office of the Inspector General has established a special delegate division that is exclusively responsible for intervening in the JEP's proceedings, as well as submitting legal opinions before the JEP.²²⁶ As of June 2019, the Office of the Inspector General has exercised its competence in different proceedings, including hearings to sign minutes of submission to the SIVJNR (audiencia de firma de acta de sometimiento),²²⁷ hearings of the alleged perpetrators before the Judicial Panel for Acknowledgement of Truth,²²⁸ hearings for the verification of compliance with the conditionality regime,²²⁹ proceedings of the application of the non-extradition guarantee,²³⁰ among others. The Office of the Inspector General has also presented a report on disciplinary cases committed in the context of the armed conflict²³¹ and legal opinions on legal benefits²³² and the JEP's jurisdiction on the crimes committed by some individuals.²³³

²²⁵ Constitutional Court, Judgment C-674 of 2017 and C-080 of 2018.

²²⁶ The Office of the Inspector General, Resolution 052 of February 2, 2018.

²²⁷ Although it is not mandatory, the signature of the minutes of submission can take place in a hearing before JEP's judges, victims, victims' lawyers, a representative of the Office of the Inspector General, and other people who have any interest in the hearing.

The signature of the minutes of submission implies that the JEP recognizes, *a priori*, that it has jurisdiction to investigate and prosecute the crimes committed by a person (an alleged perpetrator). At the same time, the alleged perpetrator who signs the minute commits to respect the conditionality regime. It should be noted that the conditionality regime obliges those who apply for the benefits of the SIVJNR, to make a specific, planned and clear commitment to the realization of victims' rights. For more information on the conditionality regime, see section A, "Comprehensive System of Truth, Justice, Reparation, and Non-Repetition (SIVJNR)", of this chapter.

Finally, regarding the participation of the Office of the Inspector General in these hearings, among others, the Office of the Inspector General participated in General Montoya Uribe's hearing to sign the minute of submission before the Judicial Panel for Determination of Legal Situations, which is discussed in the next section.

²²⁸ For example, see: "Comparecencia de Rodrigo Londoño a la JEP es el primer paso para la verdad y la no repetición que reclaman las víctimas": Attorney General's Office, February 14, 2019.

Spanish version available at:

<https://www.procuraduria.gov.co/portal/comparecencia-rodrido-londono-timochenko-jep-verdad-victimas-procuraduria.news>

In terms of the procedure by the Judicial Panel for Acknowledgement of Truth, the role of the Office of the Inspector General may be consulted in Annex C.1, "Proceedings based on the determination of truth and responsibility", in this report.

²²⁹ For example, see: the Office of the Inspector General, "Por incumplimientos de 'el paisa', Procuraduría pide a la JEP que ordene su captura y la pérdida de beneficios," April 9, 2019.

Spanish version available at:

<https://www.procuraduria.gov.co/portal/Por-incumplimientos-el-paisa-Procuraduria-JEP-que-ordene-su-captura-y-perdida-de-beneficios.news>

²³⁰ For example, see: the Office of the Inspector General, "Procuraduría apelará decisión de la JEP de conceder garantía de no extradición a 'Jesus Santrich'," May 15, 2019.

Spanish version available at:

<https://www.procuraduria.gov.co/portal/procuraduria-apelara-decision-de-la-jep-de-conceder-garantia-de-no-extradicion-a-jesus-santrich.news>

²³¹ The Office of the Inspector General, "Procuraduría entregó a la JEP primer informe sobre 1.588 procesos disciplinarios relacionados con el conflicto armado," December 11, 2018.

Spanish version available at:

<https://www.procuraduria.gov.co/portal/Procuraduria-entrego-a-la-JEP-primer-informe-sobre-1.588-procesos-disciplinarios-relacionados-con-el-conflicto-armado.news>

²³² For example, see: W Radio, "Procuraduría condiciona el ingreso de alias Sonia a la JEP," May 8, 2019.

Spanish version available at:

<https://www.wradio.com.co/noticias/actualidad/procuraduria-condiciona-el-ingreso-de-alias-sonia-a-la-jep/20190508/nota/3900069.aspx>

²³³ For example, see: the Office of the Inspector General, "Procuraduría se opone a que general (R) Maza Márquez se acoja a la JEP," November 21, 2018.

Spanish version available at:

<https://www.procuraduria.gov.co/portal/Procuraduria-opone-general-Maza-Marquez-acoja-JEP.news>

B.2.4. Case studies

In order to complement the legal and regulatory explanations of this chapter and to illustrate how victims have been participating to date (to June 2019), three examples of victims' participation in different proceedings before the JEP are analysed below²³⁴. These examples are presented by way of illustration. They are not all-encompassing nor is the aim to present a global analysis of victims' participation before the JEP.

<i>First case study</i> <i>General Montoya Uribe's hearing to sign the minutes of submission before the Judicial Panel for Determination of Legal Situations</i>	
General background to the case	<p>Mario Montoya Uribe is an active reserve general who commanded the Colombian National Army between 2006 and 2008. His command coincided with the period in which extrajudicial killings committed by members of the army increased.</p> <p>In that regard, in 2006, the Office in Colombia of the United Nations High Commissioner for Human Rights reported that there was a significant increase in reports of extrajudicial killings allegedly committed by members of the army. The Office also identified the existence of a pattern: the victims were presented as members of illegal armed groups killed in combat.²³⁵</p> <p>By 2009, the number of extrajudicial killings committed between 2006 and 2008, allowed the Office of the High Commissioner to declare that these were not isolated incidents, but a widespread practice by military units throughout the country.²³⁶ According to the Office, some of the reasons that would explain this practice are:</p> <p style="padding-left: 40px;">"The absence of effective control by army commanders (...) Economic incentives, additional days of leave and recognition given without proper control of those who presented these "deaths in combat," might have also encouraged the establishment and continuation of this disturbing practice. At the same time, the lack of a clear message rejecting such a practice inside the army could have allowed the perpetuation of such violations."²³⁷</p> <p>Similarly, the NGO Human Rights Watch has stated that there is evidence of extrajudicial killings committed by General Montoya Uribe's subordinates</p>

²³⁴ During the ICJ's high-level mission in January 2019, different individuals that the Commissioners interviewed mentioned the importance of the cases analysed here. Additionally, some of the victims and lawyers interviewed had been involved in these cases. They told the Commissioners about their experiences and impressions concerning how the JEP handled the cases.

On the other hand, the representativeness of the cases was also established by their prominence in the media, the characteristics of the victims and the perpetrators. It should be clarified that the fact that these cases mainly focus on victims of crimes committed by State agents is due to the way in which victims' participation has been handled within the JEP.

The participation by victims of the FARC-EP has been mainly through the presentation of reports and access to the recordings of the hearings of FARC-EP's members, within the cases before the Judicial Panel for Acknowledgement of Truth. Those topics, participation in the hearings and access to the recordings, are discussed in Chapter V (Findings), in this report. Finally, it is important to highlight that the information and opinions of the victims of the FARC-EP interviewed were used as input for the analysis and recommendations made on reparation measures and protection for the victims, in Chapter V.

²³⁵ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 5, 2007, A/HRC/4/48, Annex I, para. 1.

²³⁶ Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, annual report, February 19, 2009, A/HRC/10/032, para. 12.

²³⁷ Ibid. para. 14.

	<p>since 2001.²³⁸ This organization has also said that the general instructed his subordinates to destroy evidence about the killings.²³⁹</p> <p>For these incidents, as well as for allegations of enforced disappearance and illegal detention of persons, multiple investigations against General Montoya Uribe were opened in the ordinary justice system. Despite investigative advances in the different criminal cases, General Montoya Uribe has not been formally charged with any crime. For his part, General Montoya Uribe has always denied responsibility for any illegal action committed under his command.</p>
<p>Type of proceeding before the JEP</p>	<p>On July 17, 2018, General Montoya Uribe presented a brief in which he set out his willingness to submit to the JEP concerning criminal investigation number 13797-3²⁴⁰, conducted by the Office of the Attorney General, specifically, by the Office of the Third Prosecutor before the Supreme Court of Justice.</p> <p>The legal determination about whether a person may submit to the JEP requires a preliminary examination of the three concurrent factors to establish JEP's jurisdiction in a specific case. In this regard, it must be determined whether the alleged crimes were related to the internal armed conflict (subject-matter factor), committed prior to December 1, 2016 (temporal factor), and whether the person is eligible to submit (personal factor).²⁴¹</p> <p>Once these three factors have been established, the person may be tried by the JEP. To formalize this process, "a minutes of submission to the JEP" (<i>acta de sometimiento a la JEP</i>) is signed stating that the person must respect the conditionality regime.²⁴² Likewise, the minutes contain the person's commitment to providing the full truth, reparation and guarantees of non-repetition. This commitment must be clear, concrete and have a timeline.²⁴³</p> <p>It should be noted that when a person applies to submit to the JEP, they are not required to contribute immediately to the truth or admit responsibility for the alleged crimes committed during the armed conflict. That will be required to receive or retain certain special treatment at other stages of the proceedings before the JEP and the SIVJNRN.²⁴⁴ However, the commitments included in the minutes of submission must contain certain necessary elements, the "raw material," that will become enforceable at later stages in the proceedings before the JEP and the SIVJNRN.²⁴⁵</p>

²³⁸ José Miguel Vivanco, "Una Carrera Militar Marcada por Falsos Positivos," November 17, 2018.

Spanish version available at:

<https://lasillavacia.com/silla-llena/red-de-la-paz/historia/una-carrera-militar-marcada-por-falsos-positivos-68887>

²³⁹ José Miguel Vivanco, "El Problema Grande Que El General Montoya Quería Ocultar," October 27, 2018.

Spanish version available at:

<https://lasillavacia.com/silla-llena/red-de-la-paz/historia/el-problema-grande-que-el-general-montoya-queria-ocultar-68586>

²⁴⁰ This criminal investigation is related to the extrajudicial execution of Daniel Padilla on April 4, 2007.

²⁴¹ On these factors see section B, "Special Jurisdiction for Peace (JEP)", in this chapter.

²⁴² It is important to highlight that any benefits that a person receives through the JEP are not acquired or kept unconditionally. On the contrary, to receive and keep the legal benefits of the SIVJNRN, it is necessary to respect the conditionality regime.

On this point see, section A, "Comprehensive System of Truth, Justice, Reparation and Non-Repetition (SIVJNRN)", in this chapter.

²⁴³ On this point see: JEP, Appeals Chamber, TP-SA 019 of August 21, 2018 and TP-SA 021 of August 21, 2018.

²⁴⁴ JEP, Appeals Chamber, TP-SA 019 of August 21, 2018.

²⁴⁵ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 174.

	<p>Finally, it is necessary to mention that there is no regulation that states that the minutes of submission must be signed at a hearing. The minutes may be signed formally before the clerk of the respective JEP's Judicial Panel.</p>
<p>Specific background to the proceeding before the JEP</p>	<p>As General Montoya Uribe was a State agent, the Judicial Panel for Determination of Legal Situations had the competence to establish whether the JEP had jurisdiction to investigate and prosecute the alleged crimes committed by General Montoya. In other words, the Panel was in charge of accepting or rejecting General Montoya's request to submit to the JEP.</p> <p>In this context, the Panel issued a resolution on August 1, 2018, indicating that on August 28, 2018, a hearing to sign a minutes of submission would take place. In addition, the Resolution ordered the JEP's Executive Secretariat to identify and locate the victims of criminal investigation number 13797-3.</p> <p>On August 17, 2018, the Judicial Panel for Determination of Legal Situations issued a resolution in which it requested information from the Office of the Attorney General²⁴⁶ about the criminal proceedings and the victims from criminal investigation number 13797-3.</p> <p>On August 22, 2018, not having received information about the victims and their whereabouts from the JEP Executive Secretariat or the Office of the Attorney General, the Judicial Panel for Determination of Legal Situations decided to postpone the hearing to sign the minutes of submission. The Panel set a new date for September 13, 2018.</p> <p>On August 28, 2018, the Office of the Third Prosecutor before the Supreme Court of Justice of the Office of the Attorney General sent to the Panel the requested information on the criminal investigation number 13797-3. Likewise, the Office of the Third Prosecutor informed the Panel that it was conducting other investigations related to human rights and international humanitarian law violations that implicated General Montoya.</p> <p>On the same day, the Judicial Panel for Determination of Legal Situations ordered the Investigation and Prosecution Unit (UIA) conduct a judicial inspection of the criminal investigations conducted by the Office of the Third Prosecutor that implicated General Montoya. The main objective of the inspection was to identify and locate the victims.</p> <p>From August 30 to September 7, 2018, the UIA conducted said inspection and determined that there were four criminal investigations that implicated General Montoya Uribe. However, due to the length of the investigations, the UIA was unable to complete the judicial inspection and identify all the victims of the four investigations.</p> <p>With the preliminary identification of some of the victims in the criminal investigations conducted by the Office of the Third Delegate, the Judicial Panel for Determination of Legal Situations began the process of notifying</p>

²⁴⁶ In accordance with article 250 of the Colombian Constitution, the main function of the Office of the Attorney General is to initiate and carry out criminal prosecutions as well as to investigate alleged crimes.

	<p>the victims and their lawyers about the hearing to sign the minutes of submission.</p> <p>Additionally, the Judicial Panel asked the victims to provide evidence to accredit them before the JEP. The Judicial Penal also requested victims to send copies of any special powers of attorney if they had appointed a lawyer to represent them during the hearing.</p> <p>Concurrently, the Panel summoned some of the victims’ lawyers to a preliminary meeting to explain the objective and stages of the hearing to sign the minutes of submission. The Panel also held a preliminary meeting with General Montoya Uribe’s lawyers.</p>
<p>Relevant activities conducted during the proceeding before the JEP</p>	<p>The General Montoya Uribe’s hearing to sign the minutes of submission took place over two dates: September 13, 2018 (part one) and October 17, 2018 (part two). In the interim between the two hearings, the Judicial Panel for Determination of Legal Situations carried out relevant procedural actions (intermediate part).²⁴⁷</p> <p><u>PART ONE</u></p> <p>The hearing on September 13, 2018 focused on the reading of Resolution 282 of 2018 that granted accreditation to some of the victims and legal recognition for their lawyers. The same Resolution refused victim status to some people. This was because the panel considered that they had not provided sufficient evidence to be accredited as victims.</p> <p>After the reading of Resolution 282 of 2018, the Panel gave the floor to General Montoya Uribe’s defense lawyer, the victims’ lawyers, and the representative of the Office of the Inspector General,²⁴⁸ for their opinion on the content of Resolution 282 of 2018, and if deemed necessary, to challenge the decisions adopted in the Resolution²⁴⁹.</p> <p>General Montoya Uribe’s defense lawyer objected to the accreditation of the victims. First, he argued that the recognition of victims under the ordinary justice system was not binding in the JEP. Therefore, the fact that a victim had been recognized in the ordinary justice system did not imply that the person should automatically be recognized by the JEP. Second, he declared that the material perpetrators of the crimes were not General Montoya Uribe’s subordinates. In his view, operational law lays out that only the division commanders would be considered General Montoya Uribe’s subordinates. Therefore, crimes committed by the subordinates of his subordinates could not be attributable to him. Finally, the defense lawyer said that, in any case, the subordination relationship would not be enough to attribute criminal responsibility.</p>

²⁴⁷ The description that follows on General Montoya Uribe’s hearing to sign the minutes of submission focuses on the main aspects of victims’ rights. For this reason, some procedural issues are not mentioned to provide further clarity to the story.

²⁴⁸ On this point, it should be noted that in accordance with article 277 of the Constitution, one of the functions of the Office of the Inspector General is to “intervene in legal proceedings before the judicial or administrative authorities when it becomes necessary to defend the legal order, public assets, or fundamental rights and guarantees”.

Additionally, transitory clause 12 of article 1 of Legislative Act 1 of 2017 established that the Office of the Inspector General is in charge of “the defense of the fundamental rights of victims in the proceedings before the Special Jurisdiction for Peace.”

²⁴⁹ Given the nature of the decision, it was possible to request a motion for reconsideration and appeal.

For their part, the victims' lawyers also expressed their disagreement with Resolution 282 of 2018, but for different reasons to the defense. For example, a lawyer for one of the victims who did not receive accreditation from the Panel underlined that his client had been recognized as a victim in several decisions by the ordinary justice system. Another lawyer protested that the victim that he represented was not mentioned in the Resolution although the victim had been summoned for the hearing and had provided the necessary documentation to be accredited.

In addition, there was a general consensus among the lawyers representing the victims that the Panel should not accept the arguments presented by General Montoya Uribe's defense. In this regard, the lawyers emphasized that a person's criminal responsibility should not be analysed during hearings to sign minutes of submission.

On the other hand, a group of the victims' lawyer informed the Panel that they had filed a petition for the annulment of the hearing.²⁵⁰ Among other reasons, the lawyers asked for the annulment because all the victims identified in cases before the ordinary courts had not been accredited and summoned.

As for the representative of the Office of the Inspector General, she emphasized that General Montoya Uribe's case before the JEP was at a preliminary stage, and it was not fitting to analyse criminal responsibility.

At this point in the hearing, after almost three and a half hours, the Judicial Panel for Determination of Legal Situations suspended the session to study the petitions presented by the defense and the victims' lawyers concerning Resolution 282 of 2018. The result was that the hearing was suspended without having recognized all the victims present, some of whom, as one of the lawyers informed the Panel, came from remote areas of the country and faced security risks.

INTERMEDIATE PART

To improve victims' participation in the second part of the hearing, the Judicial Panel for Determination of Legal Situations decided to publicize the hearing more. With this objective, on September 26, 2018, the Panel published a legal notice in which it called upon all victims of the alleged crimes for which General Montoya Uribe was under investigation in the ordinary justice system.

In the legal notice, victims were also asked to provide the relevant documentation to be accredited and participate in the hearing. The notice was posted at the judicial offices in Bogotá and Medellín, and on the JEP's website.

²⁵⁰ The victims' lawyers also requested an exception of unconstitutionality (*excepción de inconstitucionalidad*) of article 75 of law 1922 of 2018 to be applied in the case. The article, which had been cited as one of the justifications for the hearing by the Panel, contained a provision that allowed the creation of special courts for the military. The Judicial Panel for Determination of Legal Situations turned down the request. Subsequently, the Constitutional Court declared that the provision was unconstitutional.

In addition, on October 12 and October 16, 2018, the Panel issued three resolutions in which it accredited more than forty victims. Notifications about these resolutions had not been issued when the hearing began on October 17, 2018.

PART TWO

On October 17, 2018, General Montoya Uribe's hearing to sign the minutes of submission resumed. The Judicial Panel for Determination of Legal Situations made the decision to provide a simultaneous transmission of the hearing to a conference room in the city of Medellín where a group of victims was gathered with their lawyers.

The hearing began with the protocol presentation. A group of victims and their lawyers were included in this presentation; some of them had not been notified of whether they were accredited.

Fifty minutes later, when the presentations were finished, the Panel proceeded to resolve the petitions made concerning Resolution 282 of 2018.²⁵¹ In this regard, the Panel did not accept the arguments presented by the defense lawyer for the non-recognition of the victims. According to the Panel, because submission is a preliminary stage of the proceedings before the JEP, it does not address the content or scope of the alleged crimes, or the investigations or cases for which a person has been investigated. Along the same lines, the Panel emphasized the comprehensive nature of submission, which covers all crimes committed by the person in the context of the conflict, and not only the cases with which the person applies to submit to the JEP. In addition, the Panel partly modified what had been decided in Resolution 282 of 2018 and proceeded to accredit a victim whose accreditation had previously been denied.

At that point in the hearing, the Panel announced that, in accordance with the agenda established, General Montoya Uribe would sign the minutes of submission. The announcement sparked displeasure from the victims and their lawyers.

One of the victims' lawyers took the floor and told the Panel that it was giving prevalence to the interests of General Montoya Uribe over the interests of the victims. The lawyer said that many victims who were present had not been accredited and had not received a response from the Panel. Therefore, the procedure that the Panel had established was demotivating and disappointed the expectations of the victims who were waiting to be recognized at the hearing.

Notwithstanding the foregoing, the Panel insisted on keeping to the agenda previously set and said that the victims would have an opportunity to speak towards the end of the hearing.

²⁵¹ At this point, it should be remembered that General Montoya Uribe's defense lawyer and the victims' lawyers challenged some of the decisions adopted in Resolution 282 of 2018.

As a consequence, one of the victims asked to speak to inform the Panel that she was withdrawing from the hearing because she had not been accredited as a victim, and the interests of General Montoya Uribe were being given priority. At the same time, for similar reasons, several victims and their lawyers withdrew from the hearing.

In response to the situation, the Panel said that prior to the hearing it had issued three resolutions in which it had accredited some victims. In order to provide more details to the victims, the Panel proceeded to read the resolutions and clarified that the resolutions were in the process of being notified.

After the reading of the resolutions, another victims' lawyer asked for the floor and said that the victims who she represented, and who were at the hearing, were not mentioned in the resolutions. The lawyer emphasized that she had presented the required documents on time. Therefore, she asked the Panel to inform her if her clients were not going to be recognized, so as to withdraw from the hearing.

In response to the lawyer's words, the Panel said that at the end of the hearing it would explain the reasons why some victims had not been accredited. The Panel added that both the lawyer and the victims she represented were entitled to withdraw from the hearing if they so desired.

Upon not receiving a satisfactory response, the lawyer proceeded to withdraw from the hearing. Other victims and their lawyers in Bogotá and the conference room in Medellín left. The conference room in Medellín emptied completely.

Despite the situation, the hearing continued, and General Montoya Uribe signed the minutes of submission. The minutes did not contain specific or detailed obligations. On the contrary, it established, briefly and in general terms, General Montoya Uribe's duty to: (i) contribute to truth, reparation and non-repetition, (ii) abide by the requirements of the JEP and the SIVJRNRR and, (iii) report any address change. General Montoya Uribe made no comment on the duties included in the minutes.

Once the minutes were signed, the Judicial Panel for Determination of Legal Situations declared that the case would be transferred to the Judicial Panel for Acknowledgement of Truth where the substantial and procedural aspects of General Montoya Uribe's submission would begin.²⁵² In particular, the Panel emphasized that the accreditation of the 450 identified victims,²⁵³ some of whom had already submitted a request for accreditation, as well as other victims who were identified later, would continue before the Judicial Panel for Acknowledgement of Truth.

²⁵² On this transfer, it should be noted that the Judicial Panel for Acknowledgement of Truth is considered the gateway to the JEP since its function is to decide whether the incidents and conducts are within the JEP's jurisdiction. Likewise, before the Judicial Panel for Acknowledgement of Truth, those responsible for human rights violations make the first acknowledgement of truth and responsibility, the veracity and completeness of which is evaluated by the Panel. In this regard see, among others, section B.2, "Structure of the JEP" in this chapter.

²⁵³ At a later stage of the hearing, the Panel said that 550 victims had been identified.

The Panel also noted that the Judicial Panel for Acknowledgement of Truth was already working on a case (Case 003: Deaths illegitimately presented as casualties in combat by State agents) in which the crimes allegedly committed by General Montoya Uribe would be analysed. In the same vein, the Judicial Panel for Determination of Legal Situations informed General Montoya Uribe that it would be before the Judicial Panel for Acknowledgement of Truth that he could decide whether or not to accept responsibility for the alleged crimes for which he had been investigated in the ordinary justice system.

Having completed the stage of the signature of the minutes of submission, the Panel communicated its decision on the application for annulment, which several of the victims' lawyers had presented. According to the Panel, the fact that all of the victims from the criminal investigations carried out by the ordinary justice system had not been notified was not grounds for annulment. The main argument was that victims' accreditation was an ongoing process, which did not need to be completed before the Judicial Panel for Determination of Legal Situations. On the contrary, the identification and accreditation of the victims would continue in the Judicial Panel for Acknowledgement of Truth where the victims would have other opportunities for participation. Additionally, the Panel reminded that the victims' appearance was not a requirement to accept the submission of a person to the JEP and that the representative of the Office of the Inspector General protects the interests of victims who have not been identified.²⁵⁴

At the end of the hearing, the Panel allowed the victims and their lawyers to speak. The few victims' lawyers who were still present expressed to the Panel their disagreement with the manner in which the hearing had unfolded.

According to the victims' lawyers, the announcement that the panel would hold a hearing to sign the minutes of submission created expectations for the victims that were not fulfilled. They argued, among other reasons, that the Panel did not accredit all the victims who had been acknowledged by the ordinary justice system, nor did it resolve the requests presented by other victims who asked to be recognized. The victims' lawyers also said that the representative of the Office of the Inspector General could not represent the interests of victims who have been fully identified, who should have the right to appoint a lawyer.

Additionally, the lawyers questioned the purpose and the legal grounds for the hearing. In particular, they considered that it was an unregulated hearing²⁵⁵. Furthermore, there was no point in holding the hearing if the

²⁵⁴ This decision was appealed by the victims' lawyers. However, the Appeals Chamber upheld the decision. In that regard, the Chamber stated, among other things, that: "the intervention of victims must be proportionate to the characteristics, purposes and relevance of each stage of the proceedings. Although it is imperative to favor their participation, this goal must be harmonized with the achievement of other equally decisive interests. As the Constitutional Court has presented, mass participation by the victims could obstruct the performance of a strictly temporary jurisdiction and, in that way, threaten the rights of all those who appear before it, including the victims themselves. For that reason, in the initial stages, full and effective participation is not foreseen." (free translation) In this regard, see: JEP, Appeals Chamber, Ruling TP-SA 131 of 2019 of March 20, 2019, para. 31.

²⁵⁵ According to the Judicial Panel for Determination of Legal Situations, the basis for the hearing was articles 9 and 75 of Law 1922 of 2018. In particular, article 9 establishes that "the proceedings before the JEP's Panels and Chambers may be done in writing or orally" (free translation). However, according to one of the victims' lawyers who participated in the hearing, this basis was inadequate because it does not establish the specific procedure that must be followed at the hearing (purpose of the hearing, stages, among others). Additionally, as stated by the lawyer, this regulatory vacuum contributed to the fact that the victims were not clear about the purpose of their participation.

	<p>objective was only the signature of the minutes of submission, which was a clerical procedure. On this point, one of the lawyers stressed that, prior to the hearing, the Panel had handed out a pamphlet indicating that General Montoya Uribe would present a plan of the manners in which he would contribute to the truth, reparation, and guarantees of non-repetition.²⁵⁶ That did not happen.</p> <p>Additionally, a victims' lawyer informed the Panel that a policeman, who was present at the hearing, had prevented one of the victims from displaying a photograph of his deceased relative, citing security reasons. Although the victim could later show the photograph of his relative during the hearing, the representative considered that what had taken place was a form of revictimization.</p> <p>As for the representative of the Office of the Inspector General, she said that it was important that the victims' expectations be considered when they are convened to a future hearing.</p> <p>Thus, after more than three and a half hours, the Panel terminated the hearing. There had been no intervention by the victims.</p>
<p>Victims' rights in the proceeding</p>	<p>Despite the fact that the hearing was supposed to be an opportunity for the victims to participate, the way in which it unfolded did not allow this objective to be fulfilled. On the contrary, the hearing created false hopes among the victims for several reasons.</p> <p>First, although from the beginning the Judicial Panel for Determination of Legal Situations had stated that the hearing was for the signature of the minutes of submission, this information was not sufficient to enable the victims to understand the purpose of the hearing. This is in part due to the fact that the Panel had said that General Montoya Uribe would present a plan on the manner he will contribute to the truth, reparation and guarantees of non-repetition.</p> <p>Additionally, the complexity of the JEP's structure must be considered. In fact, the distribution of functions within the JEP implies that several Panels and Chambers conduct different proceedings over the same people and crimes. Moreover, the JEP's proceedings are not equivalent to the proceedings of the ordinary justice system. In this sense, it is not easy for a person with little knowledge about the JEP's operations to comprehend the limitations of a hearing to sign the minutes of submission.</p> <p>Second, the hearing was the victims' first encounter with General Montoya Uribe. This was historic, as many of them had waited a long time to face a senior army officer. It was reasonable to expect that the victims would want to have some sort of involvement during the hearing, and not just be spectators at the signature of a document by which General Montoya Uribe could begin to receive legal benefits from the JEP. For the victims, the hearing was an opportunity to acknowledge responsibility and recognize their condition as victims. This belief was reinforced by the Judicial Panel</p>

²⁵⁶ In the same vein, on September 11, 2018, the JEP published Press Release 72.

for Determination of Legal Situations since it had invited them to participate in the hearing and seek accreditation.

Third, the Panel did not adequately define the purpose of the hearing and the timeframe for victims' accreditation. This problem was evident several times during the hearings of September 13 and October 17, 2018. For example, the defense lawyer questioned the accreditation of some victims. This was not only outside the scope of the hearing but also tarnished the JEP's legitimacy. Indeed, the hearing became a scenario where an alleged perpetrator was allowed to not recognize people, who have suffered serious human rights violations, as victims. Additionally, the lack of information on victims' accreditation led many of them to withdraw from the hearing, which also affected the JEP's credibility as a guarantor of victims' rights.

Fourth, the Panel did not define the scope and content of the victims' participation at the hearing to sign the minutes of submission. The Panel did not take the necessary measures to guarantee effective participation by the victims, with real possibilities to have an impact on the outcome of the hearing. To have done so would have helped the victims understand the purpose of the hearing.

Specifically, the Panel could have had the victims and their representatives make statements on at least two points: (i) whether General Montoya Uribe was eligible to submit to the JEP, and (ii) a preliminary draft of the plan on General Montoya Uribe's contribution to the truth, reparation and guarantees of non-repetition. The latter, with the limitations of being at a preliminary stage of the proceedings.

Fifth, the Panel held the hearing without being clear about the number of victims. Although, as the Panel stated, the process of victims' accreditation does not take place at a single opportunity, the Panel should have given the same treatment to the victims who had been located and identified in the criminal investigation carried out by the ordinary justice system. This was particularly important since the Panel sent out a general invitation in which it asked the victims to present the necessary documentation for accreditation. In spite of this, many of these victims will have to wait for the decision by the Judicial Panel for Acknowledgement of Truth.

Along the same lines, the possibility of giving automatic accreditation to all the victims who had been identified as such by the ordinary justice system should have been considered. Given that many of them live in vulnerable conditions, demanding that they present documentation that has already been filed in the ordinary justice system could be onerous and unnecessary.

In conclusion, although it was laudable that the Judicial Panel for Determination of Legal Situations wanted to make General Montoya Uribe's submission visible, as a high-ranking officer of the military forces, the result was counterproductive. It underlined the importance of clarifying victims' participation in all stages of the proceedings. In the same vein, additional efforts must be made so that victims understand the limits of their participation at each procedural stage, so that participation is more effective and can have a direct impact on the JEP's decisions. Finally, given

	the travel costs and possible security risks for victims who participate in proceedings before the JEP, the jurisdiction must ensure that there will be substantial opportunities for victims' participation during the hearings and that necessary security measures are adopted.
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Second case study Request for the adoption of protective measures in favor of Alfamir Castillo Bermúdez	
General background to the case	<p>Alfamir Castillo Bermúdez is an Afro-Colombian leader and a victim of the Colombian conflict who has sought justice for the murder of her son, Darney Mosquera Castillo, who was killed on February 8, 2008.²⁵⁷ The murder was committed in the context of extrajudicial killings executed by members of the Army, with the aim of presenting the deceased as members of illegal armed groups.</p> <p>To date, for the death of Darney Mosquera Castillo, the ordinary justice system has convicted five soldiers, some of whom have received legal benefits from the JEP (provisional, conditional, and early release from custody).²⁵⁸ Five other soldiers are being investigated for this crime, including army reserve General Mario Montoya Uribe.</p> <p>Since her son was murdered, Alfamir Castillo Bermúdez and her family have been the victims of multiple death threats. The threats have come as text messages, intimidating emails, harassment on the street, illegal surveillance and being threatened with firearms in public. Because of the seriousness of the threats, the IACHR ordered precautionary measures in 2012.²⁵⁹</p> <p>The threats have intensified over the years, coinciding with new developments in the criminal proceedings against the soldiers allegedly responsible for the death of Darney Mosquera Castillo. The latest threats coincided with General Montoya Uribe's hearing to sign the minutes of submission before the Judicial Panel for Determination of Legal Situations.</p>
Type of proceeding	Alfamir Castillo Bermúdez was one of the victims who attended General Montoya Uribe's hearing to sign the minutes of submission before the Judicial Panel for Determination of Legal Situations. During the second part of said hearing, which was held on October 12, 2018, the Panel accredited

²⁵⁷ The facts of the case are as follows: On February 7, 2008 three young men, Darney Mosquera Castillo, Alex Hernando Ramírez Hurtado and José Didier Marín Camacho, arrived in the city of Pereira (Risaralda) with the promise of a job. The job offer had come from professional soldier Alonso Iván Palacios who, as it was later determined, was acting in coordination with Army Major Josué Yobanny Linares Hernández of the Army's 8th Brigade. At midnight on February 7, 2008, following the instructions they had been given, the three young men boarded a taxi that drove them along the road that leads to the city of Manizales (Caldas). The taxi entered a dark passageway where it was intercepted by armed men who identified themselves as members of the Army. The three young men were forced to get out of the taxi and were questioned about their reasons for being there. Then the soldiers shot at the three. One of them, José Didier Marín Camacho, managed to escape because the weapon aimed at him jammed. On February 8, 2008, Major Linares Hernández wrote to the Commander of the 8th Brigade, Julio César Toro, to inform him of the results of "Operation Phoenix" in the locale of Java (Caldas). According to Major Linares Hernández, the operation had resulted in the death of two terrorists as they were preparing to collect extortion money. Additionally, weapons had been seized. Major Linares Hernández requested congratulations for the men of the "Mártires de Puerres" Anti-guerrilla Battalion 57 who had been part of the operation.

For more on the background of the case, see: *Red de Defensores y defensoras de derechos humanos en Colombia (dhColombia), Folios de impunidad, Caso N°2, 2011.*

²⁵⁸ On this point, it should be highlighted that "provisional, conditional, and early release from custody" (*libertad transitoria, condicionada y anticipada*) is one of the legal benefits that the JEP grant to the military. This benefit does not require making an acknowledgement of truth or responsibility. Nor does the benefit resolve the person's legal situation before the JEP. On this point, see Annex C.2, "Proceedings for granting release to the alleged perpetrators", in this report.

²⁵⁹ IACHR, Resolution MC 225/12.

	<p>her as a victim.²⁶⁰ Due to her participation at the hearing, Alfamir Castillo Bermúdez again began to receive threats, which she reported to the Judicial Panel for Determination of Legal Situations.</p> <p>In accordance with article 22 of Law 1922 of 2018, since the threats were related to a proceeding before the JEP, it was the JEP’s responsibility to adopt protective measures. In addition, article 17 of Law 1957 of 2019 establishes that, at the request of one of the parties or <i>ex officio</i>, the JEP must adopt necessary and adequate measures to protect victims “when their fundamental rights to life and personal safety are threatened because of their participation in a case before the JEP.”</p> <p>In a same vein, article 87 of Law 1957 of 2019 establishes that the UIA must “decide, <i>ex officio</i> or at the request of the JEP’s Panels or Chambers, protective measures applicable to victims, witnesses and other intervening parties.”</p>
<p>Relevant activities conducted during the proceeding before the JEP</p>	<p>As has already been mentioned, the threats against Alfamir Castillo Bermúdez intensified following her participation at the General Montoya Uribe’s hearing to sign the minute of submission. Because of this, on October 16, 2018, one day before the second part of the hearing, her lawyer submitted a brief to the Judicial Panel for Determination of Legal Situations reporting the threats.</p> <p>On October 17, 2017, during General Montoya Uribe’s hearing, Alfamir Castillo Bermúdez once again told the Judicial Panel for Determination of Legal Situations about the threats she had received for participating at the hearing.</p> <p>For this reason, at General Montoya Uribe’s hearing, the Panel ordered the UIA to take the corresponding steps to assess Alfamir Castillo Bermúdez’s security situation. In order to do so, the UIA should work in conjunction with the National Protection Unit²⁶¹ and the Office of the Attorney General. This determination was not communicated to Alfamir Castillo Bermúdez or her lawyer.</p> <p>Subsequently, on October 23, 2018, Alfamir Castillo Bermúdez’s lawyer presented a new brief in which he informed the Judicial Panel for Determination of Legal Situations about new threats that had occurred. The Panel transferred this document to the UIA.</p> <p>During the months of November and December 2018, Alfamir Castillo Bermúdez continued to be subjected to threats and harassment. In spite of the seriousness of the threats, the JEP did not make any determination</p>

²⁶⁰ Subsequently, on December 7, 2018, the Judicial Panel for Acknowledgement of Truth accepted and confirmed said accreditation in connection with Case 003: Deaths illegitimately presented as casualties in combat by State agents. This took place because the Judicial Panel for Determination of Legal Situations transferred General Montoya Uribe’s case to the Judicial Panel for Acknowledgement of Truth after the hearing.

²⁶¹ The Unit is a national entity, under the Ministry of the Interior. In accordance with article 3 of Decree 4065 of 2011, the objective of the Unit “is to link, coordinate and carry out the provision of protection services to persons determined by the National Government who, by virtue of their activities, condition or situation of a political, public, social, humanitarian, cultural, ethnic, gender nature, as a victim of violence, displaced person, human rights activist, are in a situation of extraordinary or extreme risk of suffering harm to their life, safety, freedom and personal security or because they exercise a public office or other activities that may generate extraordinary risk, such as leading a union, NGO or group of displaced persons, and to guarantee the timeliness, efficiency and suitability of the measures granted.” (Free translation)

during 2018. As a consequence, Alfamir Castillo's lawyer contacted the National Protection Unit directly, which offered her protective measures.

Additionally, on December 3, 2018, the United Nations Special Rapporteur on the Situation of Human Rights Defenders expressed concern about the threats that Alfamir Castillo Bermúdez had received as a result of her participation at General Montoya Uribe's hearing before the JEP.²⁶²

In January 2019, not only did the threats against Alfamir Castillo Bermúdez continue, but they materialized on January 11, 2019 when she became the victim of an assassination attempt. That day, Alfamir Castillo Bermúdez was in a vehicle provided by the National Protection Unit when individuals on a motorcycle fired at her three times. The quick reaction by her security team saved Alfamir Castillo Bermúdez's life.²⁶³ This incident was reported to the Office of the Attorney General.

The attack was widely covered in national media.²⁶⁴ Likewise, the Office of the United Nations High Commissioner in Colombia²⁶⁵ and the IACHR condemned the attack and asked the JEP and other corresponding authorities to adopt urgent measures.

On January 12, 2019, the JEP issued a press release that condemned the attack. Additionally, it asked the National Protection Unit to strengthen Alfamir Castillo Bermúdez's security and asked the Office of the Attorney General to take action on the investigation of the incidents.²⁶⁶

On January 23, 2019, a full 12 days after the attack, the UIA delivered Alfamir Castillo Bermúdez's risk analysis report to the Judicial Panel for Determination of Legal Situations. It should be noted that this risk analysis had been requested since October 2018.

On January 25, 2019, based on the UIA report, the Judicial Panel for Determination of Legal Situations issued a resolution in which it requested the adoption of a series of measures to guarantee the safety of Castillo Bermúdez and her family. Among other measures, the Panel asked:

²⁶² Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders, End of Mission Statement, Visit to Colombia (November 20 to December 3, 2018), December 3, 2018, p. 24.

English version available at: https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf

Spanish version available at: https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_SP.pdf

A similar declaration was made by the Office of the High Commissioner for Human Rights. In this regard see: United Nations, Annual Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Colombia, February 4, 2019, A/HRC/40/3/Add.3, para. 51 .

²⁶³ More information about the attack and the threats received by Alfamir Castillo Bermúdez may be found at: dhColombia, *Acción urgente atentan contra Alfamir Castillo Bermúdez, madre de joven ejecutado por el Ejército Nacional y quien viene siendo amenazada desde la audiencia contra el General Mario Montoya Uribe*, January 12, 2019.

Spanish version available at: <http://www.dhcolombia.com/2019/01/12/atentan-contra-alfamir-castillo-bermudez-madre-de-joven-ejecutado-por-el-ejercito-nacional-y-quien-viene-siendo-amenazada-desde-la-audiencia-contra-el-gral-mario-montoya-uribe/>

²⁶⁴ See, for example: El Espectador, "No podemos permitir que esto siga pasando: Alfamir Castillo, tras atentado en su contra" January 12, 2019.

Spanish version available at: <https://www.elespectador.com/noticias/judicial/no-podemos-permitir-que-esto-siga-pasando-alfamir-castillo-tras-atentado-en-su-contra-articulo-833759>

²⁶⁵ Office of the High Commissioner for Human Rights in Colombia, Press release, "ONU Derechos Humanos Condena atentado contra Mamá víctima de ejecución extrajudicial", January 12, 2019.

Spanish version available at: <http://www.hchr.org.co/index.php/informacion-publica/comunicados-de-prensa/440-ano-2019/8998-onu-derechos-humanos-condena-atentado-contra-mama-victima-de-ejecucion-extrajudicial>

²⁶⁶ El Espectador, "JEP solicita con urgencia protección para Alfamir Castillo tras atentado en su contra", January 12, 2019.

Spanish version available at: <https://colombia2020.elespectador.com/jep/jep-solicita-con-urgencia-proteccion-para-alfamir-castillo-tras-atentado-en-su-contra>

	<ul style="list-style-type: none"> i. The National Protection Unit to take the necessary actions to relocate Alfamir Castillo Bermúdez and her family. ii. The Office of the Attorney General to conduct, in a coordinated manner, the investigations into the attempted murder and the threats of which Alfamir Castillo Bermúdez was a victim. iii. The JEP’s Executive Secretariat to provide psychosocial support to Alfamir Castillo Bermúdez. <p>Additionally, the Panel convened a closed-door hearing to discuss the protective measures and the circumstances of the case. The hearing was held on February 14, 2019 and was attended by Alfamir Castillo Bermúdez, her lawyer, justices from the Judicial Panel for Determination of Legal Situations, UIA’s staff, a representative of the National Protection Unit and a representative of the Office of the Inspector General.</p> <p>On February 22, 2019, pursuant to the discussions at the closed-door hearing, the Judicial Panel for Determination of Legal Situations issued a resolution in which it confirmed the measures taken and ordered additional measures.</p> <p>Of particular importance among the new measures, was the determination of holding a hearing to review compliance with the conditionality regime by the soldiers convicted of the murder of Darney Mosquera Castillo, who had been granted provisional, conditional, and early release from custody. The measure was needed since at the closed-door hearing it was revealed that when Alfamir Castillo Bermúdez had met with some of the soldiers, they had mocked her.</p> <p>As of June 9, 2019, the measures decreed by the Judicial Panel for Determination of Legal Situations had not been implemented.</p>
<p>Victims’ rights in the proceeding</p>	<p>Although in the end the JEP ordered protective measures in favor of Alfamir Castillo Bermúdez, the JEP’s actions were not cogent with the specific circumstances of the case. In particular, the UIA did not take immediate action to assess Alfamir Castillo Bermúdez’s security risks and to prevent the threats from materializing, as indeed happened. Likewise, the Judicial Panel for Determination of Legal Situations should have undertaken follow-up petitions to make sure its orders were carried out.</p> <p>What happened not only disregarded victim’s rights, but also undermined the JEP’s legitimacy. It will not be possible to realize the principle of centrality of victims in the SIVJRN, if victims decide not to turn to the JEP because they believe that their personal safety and that of their families is at risk.</p> <p>In light of the above, it is essential that protective measures be implemented faster. This will require that when any of the JEP’s Panels or Chambers convenes a hearing, the JEP must be clear about possible security risks for those attending, and as a consequence, the JEP’s Panels or Chambers must also take necessary security measures before, during and after the hearing.</p>

	<p>In addition, the JEP must keep closer watch to ensure that those who submit and receive benefits are complying with the conditionality regime. Regarding this specific case, it is essential that, in a reasonable time, the Judicial Panel for Determination of Legal Situations hold the hearing to review compliance with the conditionality regime.</p> <p>Finally, it is worrying that although the JEP ordered protective measures, they were not enacted immediately. To resolve this problem, the JEP must strengthen its communication and cooperation channels with other State institutions.</p>
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Third case study Reports presented by the Peace Community of San José de Apartadó to the Judicial Panel for Acknowledgement of Truth	
General background to the case	<p>San José de Apartadó is a district of the municipality of Apartadó, located in the Urabá region of Antioquia, in northern Colombia. Due to its strategic location, for at least 25 years, its inhabitants have been victims of serious human rights violations: threats, targeted killings, torture, forced displacement, massacres, and blockades, among others. Paramilitary groups and members of the National Army have been behind these violations, as well as guerrilla groups to a lesser extent.</p> <p>On March 23, 1997, having been the victims of two massacres by paramilitaries, in September 1996 and February 1997, 500 residents of San José de Apartadó²⁶⁷ declared themselves to be a peace community. In its declaration, the community promised not to participate directly or indirectly in hostilities, nor to support military operations by any of the actors in conflict.²⁶⁸ In addition, since its creation, the San José de Apartadó Peace Community has embraced a model of community development and civil resistance against violence.</p> <p>With this declaration, the residents expected that their land and their lives would be respected. However, acts of violence against the members of the Peace Community still continue today.</p> <p>Additionally, since its founding, the Peace Community has thoroughly documented most of the violations committed against its members, as well as those committed against people from the surrounding rural community. The Peace Community has shared this information with the corresponding national authorities, but no justice has been seen in any of the cases. On the contrary, its reports have only resulted in new threats and reprisals against members of the community. For this reason, in 2009, the Peace Community declared “a rupture with the justice system” (<i>ruptura con la justicia</i>), based on the provision for conscientious objection of article 18 of the Constitution.</p>

²⁶⁷ Some of these people were not living in San José de Apartadó because they had fled violence in the area.

²⁶⁸ San José de Apartadó Peace Community, *Declaración Relativa a la Comunidad de Paz de San José de Apartadó*, March 23, 1997.

Spanish version available at: <http://www.cdpsanjose.org/node/13>

	<p>Consequently, the Peace Community decided to turn to international entities. As such, it has delivered information periodically to the IACHR and the Inter-American Court.²⁶⁹ Although the Colombian authorities have had access to this information, no effective measures have been implemented.</p>
<p>Type of proceeding</p>	<p>On September 11, 2018, through Ruling 040 of 2018, the Judicial Panel for Acknowledgement of Truth opened its fourth case: "Case 004: Regional Situation in Urabá Region" (<i>Caso 004: Situación Territorial de la Región de Uraba</i>). The objective of this case is to analyse and determine the human rights violations committed in the Urabá region by members of the military forces and the FARC-EP between January 1, 1986 and December 1, 2016.</p> <p>Concerning the victims in the Urabá region, Ruling 040 of 2018 indicates that there is enough information about the victimization to which the Peace Community of San José de Apartadó has been subjected.²⁷⁰ In fact, in the ruling the Judicial Panel for Acknowledgement of Truth stated:</p> <p style="padding-left: 40px;">“(...) social organizations such as the San José de Apartadó Peace Community, which was created in 1997 as a neutral zone against the interventions of armed actors in their territories, ‘have been subjected to constant threats, harassment, and attacks over the years, allegedly by paramilitary groups and the Army’ and actions of the FARC-EP in the dispute for the territories”.²⁷¹</p> <p>Ruling 040 of 2018 also made a general invitation, calling for reports related to human rights crimes committed in the Urabá region.</p>
<p>Relevant activities conducted during the proceeding before the JEP</p>	<p>Considering that Case 004 includes crimes that involved the San José de Apartadó Peace Community, the Community presented a petition to the JEP asking for more information about the proceedings related to the Case 004. The petition was submitted since the Community was uncertain about participating in the JEP’s proceedings and sharing with the JEP the information gathered on the human rights violations suffered by the Community.</p> <p>In its petition, the Community expressed its concerns about the JEP’s proceedings and its capacity to guarantee justice, reparation and non-repetition. Among many other questions, the community asked the JEP:</p> <p style="padding-left: 40px;">“Can we trust that the JEP will finally establish the truth about everything we have suffered and will correct the causes of our suffering and destruction? And can the JEP assure us that so many horrors will not continue to be repeated, as has happened in these more than two decades, despite so many false promises that have been made to us?”²⁷²</p> <p>Additionally, the Community indicated that it did not consider testimony from the victims to be necessary. The Community said that:</p>

²⁶⁹ They have also presented information to the International Criminal Court.

²⁷⁰ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 040 of 2018, para. 17.b and 21.a.

²⁷¹ Page 13. (Free translation)

²⁷² Petition to the JEP, presented by Father Javier Giraldo Moreno as authorized representative of the San José de Apartadó Peace Community, December 5, 2018, p. 17. (Free translation)

Spanish version available at: <http://www.javiergiraldo.org/spip.php?article273>

	<p>“(…) [it] does not believe that the key to new justice is declarations by the victims of so many horrors; [who have] already had enough of the manipulation of testimony and the multitude of tactics by the judicial apparatus to invalidate it, misrepresent it, accommodate it to the political preferences of the judicial operators, their fears and cowardice, and directive strategies of systemic impunity. It would be enough for the JEP to review the petitions presented over more than two decades and four presidencies, to examine command responsibility, and judge the fatal effects of failed compliance, denial and evasion”.²⁷³</p> <p>On February 18, 2019, the Judicial Panel for Acknowledgement of Truth responded to the Peace Community’s petition. In the response, which was highly technical and legal in content, the Panel reiterated the regulations that govern its operations and the Constitutional Court’s interpretation of these regulations. In particular, the Panel emphasized that the JEP has a restorative and prospective approach to justice, and a commitment to guaranteeing justice, full and effective reparation, and non-repetition for the victims of the armed conflict.</p> <p>Likewise, the Panel reiterated “the serious nature of the victimizing acts suffered by the members of the Community,”²⁷⁴ as well as the importance that victims’ organizations’ reports have for the Panel’s work. Finally, the Panel also expressed to the Community its willingness to hold a meeting to expand on the answers to the questions that were raised.</p>
<p>Victims’ rights in the proceeding</p>	<p>Although the JEP’s response aimed to answer the questions raised by the Community, in terms of its jurisdiction and its role in guaranteeing victims’ rights, the Community was not satisfied with this response. Consequently, the Community is still debating whether it would be useful to present information to the JEP.</p> <p>According to the Community, the JEP’s answer “confirms to a considerable extent those doubts about the real possibilities for truth, justice, reparation and guarantees of non-repetition.”²⁷⁵ This is largely due to the fact that the crimes of which the Community has been a victim still remain unpunished, despite national and international laws on the State’s duty to investigate and punish serious human rights violations. For this reason, an account of the JEP and the Judicial Panel for Acknowledgement of Truth’s regulations, no matter how laudable and comprehensive, was not enough to create trust and confidence in the Community.</p> <p>This situation exemplifies the importance that the JEP, and particularly the Judicial Panel for Acknowledgement of Truth, must develop mechanisms to guarantee participation by communities and people who, for various reasons, are not interested in presenting reports, at least not initially. Hence, it is essential that the presentation of the reports must be considered as one of the mechanisms for victims’ participation, but not as</p>

²⁷³ Ibid. (Free translation.)

²⁷⁴ Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct, response to the petition, February 18, 2019, p. 1. (Free translation)

Spanish version available at: <http://www.javiergiraldo.org/spip.php?article273>

²⁷⁵ Father Javier Giraldo Moreno, *Desde los márgenes, Consulta a la JEP en Derecho de Petición y Respuesta de la JEP*, March 16, 2019. (Free translation)

Spanish version available at: <http://www.javiergiraldo.org/spip.php?article273>

	<p>the main mechanism or as the gateway for guaranteeing said participation. Even when victims and their organizations decide not to use this form of participation, they should continue to see the JEP as a place where their rights can be recognized and guaranteed.</p>
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V. FINDINGS

In order to contribute to strengthening the JEP's work, an analysis of the ICJ Commissioners' findings from the January 2019 high-level mission is presented below. The analysis was complemented and expanded through an examination and review of the actions undertaken by the JEP and other authorities and institutions, up to June 2019.²⁷⁶

The findings are divided into two categories: strengths and challenges. The section on strengths analyses the actions that, within the framework of the JEP's functions, have contributed to the protection and guarantee of victims' rights. This does not mean that further actions or improvements should not be made. Rather the intention is to highlight the actions that have enabled the JEP to begin fulfilling its role as the transitional justice mechanism created by the Final Peace Agreement.

The section on challenges presents and analyses different aspects, which if not addressed and approached in an appropriate manner, have the potential to cause negative effects on the JEP's operations and, consequently, the guarantee of victims' rights. Therefore, this section makes recommendations to address the challenges. Finally, section D presents the general conclusions on the state of the JEP's implementation.

A. Strengths identified

Strength 1. Quick entry into operation

Within a year and a half of its entry into operation, the JEP had begun to take actions to prevent impunity for the serious human rights violations and abuses that were committed during the armed conflict, as well as ensuring that the victims would receive reparations for these violations and damages.

More than 11,000 people have submitted to the JEP and an estimated 820,000 victims have been identified in the seven cases opened by the Judicial Panel for Acknowledgement of Truth.²⁷⁷ Similarly, the Victims' Assistance Department (*Departamento de Atención a Víctimas*) and the Autonomous System for Legal Advice and Defense for People who Have Submitted to the JEP (*Sistema Autónomo de Asesoría y Defensa de los Comparecientes*) are operating under the JEP's Executive Secretariat. The JEP has also begun to consolidate its presence throughout the country with 19 branches, which have allowed it to have more direct contact with social organizations and the authorities at the territorial institutions.²⁷⁸

In terms of the actions by the JEP's judicial bodies (Panels and Chambers), it is worth noting that the Judicial Panel for Acknowledgement of Truth has begun summoning those most responsible²⁷⁹. In that regard, the Judicial Panel for Acknowledgement of Truth has held at least 91 hearings taking voluntary statements (*versiones voluntarias*) of former FARC-EP members and State agents.²⁸⁰ Additionally, this Panel has made some decisions concerning alleged perpetrators who have not respected the conditionality regime. For example, it ordered the

²⁷⁶ The cut-off date is June 7, 2019.

²⁷⁷ Statistics on the JEP can be found at: <https://www.jep.gov.co/Paginas/Inicio.aspx>

²⁷⁸ Regarding the JEP's territorial branches, see: <https://www.jep.gov.co/Paginas/Servicio-al-Ciudadano/enlaces-territoriales.aspx>

²⁷⁹ In particular, it is necessary to highlight the voluntary statements hearings of FARC-EP leaders, in the context of Case 001: Illegal retention of persons by the FARC-EP.

²⁸⁰ JEP, *La JEP en cifras*, May 8, 2019.

Spanish version available at: <https://www.jep.gov.co/Infografias/cifras-8-mayo.pdf>

arrest of former FARC-EP leader Hernán Darío Velásquez Saldarriaga,²⁸¹ also known as “*El Paisa*”. The Panel has also initiated a proceeding on verification of compliance with the conditionality regime (*incidente de verificación de cumplimiento del régimen de condicionalidad*) in the case of former FARC-EP leader Iván Luciano Márquez²⁸².

In the same vein, in 2018, the Judicial Panel for Determination of Legal Situations held 13 hearings; the Judicial Panel for Amnesty or Pardon issued 29 resolutions for conditional release from custody; and the Revision of Sentences Chamber handed down the first instance sentences of 336 writs of amparo, and opened 54 proceedings of the application of the non-extradition guarantee.²⁸³

In 2019, due to the backlog of cases before the Judicial Panel for Amnesty or Pardon and the Judicial Panel for Determination of Legal Situations, the JEP carried out an improvement plan that accelerated the assignation of cases to the justices inside the Panels. This plan increased case assignment by more than 70 percent inside the Judicial Panel for Amnesty or Pardon.²⁸⁴

In light of the above, it is clear that within a short period of time the JEP has made significant progress. This progress is even more significant considering that the JEP has been operating in a highly polarized atmosphere,²⁸⁵ and without its Statutory Law, which was only passed on June 6, 2019.

Strength 2. Coordination among the Comprehensive System of Truth, Justice, Reparation and Non-repetition’s institutions

The SIVJNR’s design requires coordinated work among the institutions that make up the system. In general, the JEP, the CEV and the UBPD have aimed to work jointly and in coordination. Regarding the JEP, when it has considered appropriate to do so, the JEP has informed the CEV and the UBPD of its decisions²⁸⁶ and invited them to be part of its proceedings.²⁸⁷ Likewise, the JEP has worked together with the CEV and the UBPD in different scenarios. In that sense, the JEP’s approach to its work aims to materialize what is established in the Final Peace Agreement and the regulations for its implementation, which seek to ensure that guaranteeing victims’ rights does not fall exclusively to a single entity.

One of the most important joint activities implemented was the preparation and holding of prior consultations.²⁸⁸ Since prior consultations are important to guarantee the rights of ethnic communities, those joint activities have demonstrated the SIVJNR’s commitment to using the

²⁸¹ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 061 of April 26, 2019.

²⁸² JEP, Judicial Panel for Acknowledgement of Truth, Ruling 076 of May 29, 2019.

²⁸³ IACHR. IACHR Monitors Progress and Challenges Concerning Colombia’s One-Year-Old Special Jurisdiction for Peace, May 29, 2019.

English version available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/130.asp

Spanish version available at: <http://www.oas.org/es/cidh/prensa/Comunicados/2019/130.asp>

²⁸⁴ El Tiempo, Así descongestionó la JEP su sala más represada en un 76%, May 23, 2019.

Spanish version available at:

<https://www.eltiempo.com/justicia/jep-colombia/jep-logro-descongestion-de-casos-en-sus-salas-y-secciones-366080>

²⁸⁵ United Nations, United Nations Verification Mission in Colombia, Report of the Secretary-General, 26 March 2019, S/2019/265, para. 2.

²⁸⁶ On the subject see, for example, Ruling 002 of July 4, 2018, through which, the Judicial Panel for Acknowledgement of Truth opened Case 001.

²⁸⁷ Among other examples, the Judicial Panel for Acknowledgement of Truth decided that the CEV and UBPD could participate in the hearing for verification of compliance with the conditionality regime in the case of former FARC-EP leader Hernán Darío Velásquez.

²⁸⁸ For more information on the subject, see: JEP. La JEP cumplió el mandato constitucional sobre consultas previas, April 5, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-cumplió-el-mandato-constitucional-sobre-consultas-previas.aspx>

differential approach in its proceedings. Similarly, the activities help society to see the SIVJNRN as a system that is made up of different institutions that work jointly.

Similarly, the JEP, CEV and UBPD have made joint public statements as members of the SIVJNRN. For example, when the ELN perpetrated a terrorist attack at the General Santander Police Academy, the three entities issued a joint statement in which they rejected the attack and expressed their solidarity with the victims.²⁸⁹ These joint declarations contribute to the understanding that there is more than one institution created by the Final Peace Agreement. More importantly, it reinforces the idea that there is a system whose institutions complement each other.

In the same direction, the Office of the Ombudsman has announced the creation of an Inter-Institutional Working Group to work with the SIVJNRN. The group's work will include promoting and publicizing the institutions that make up the SIVJNRN, taking advantage of the Office of the Ombudsman's presence throughout the country.²⁹⁰ This type of initiative provides opportunities for the JEP, CEV and UBPD to interact and cooperate with other State institutions, to strengthen the SIVJNRN as a whole and not in a disjointed way.

In conclusion, the work done to date shows that the three SIVJNRN institutions have worked together in a coordinated manner. This increases the possibilities that victims' rights will be fully guaranteed.

Strength 3. Respect for the JEP's jurisdiction by Colombian high courts

To guarantee the fulfillment of JEP's functions, the State institutions need to respect and abide by the JEP's decisions. This, in turn, requires recognition that the JEP exercises powers that were previously held by other institutions. In that regard, in several cases, the recognition of JEP's functions and jurisdiction is difficult due to the high complexity of the SIVJNRN, legal gaps and contradictions. As a consequence, it has been necessary to interpret the rules governing the JEP.

On this matter, the interpretations by the Colombian high courts, within the scope of their jurisdictions, should be highlighted. The high courts have resolved some gaps and contradictions, with the understanding that the JEP has the primary jurisdiction for handling matters related to the Colombian armed conflict. For this reason, the Colombian courts have acknowledged that it is important that the JEP exercise its jurisdiction with the legal tools and mechanisms necessary to fully guarantee victims' rights and provide legal certainty for the alleged perpetrators. A good example of the above is the recognition of the role of the Revision of Sentences Chamber over the extradition proceedings.

In accordance with transitory clause 19 of article 1 of Legislative Act 01 of 2017,²⁹¹ this Chamber is responsible for the application of the non-extradition guarantee. Although the

²⁸⁹ CEV, Declaración conjunta del Sistema Integral de Verdad, Justicia, Reparación y No Repetición, January 19, 2019. Spanish version available at: <https://comisiondelaverdad.co/actualidad/comunicados-y-declaraciones/declaracion-conjunta-del-sistema-integral-de-verdad-justicia-reparacion-y-no-repeticion>

²⁹⁰ Ombudsman's Office, Anuncian Mesa Interinstitucional para trabajo conjunto y coordinado entre la Defensoría del Pueblo y el SIVJNRN, March 21, 2019.

Spanish version available at: <http://www.defensoria.gov.co/es/nube/destacados/7803/Anuncian-Mesa-Interinstitucional-para-trabajo-conjunto-y-coordinado-entre-la-Defensor%C3%ADa-del-Pueblo-y-el-SIVJNRN-SIVJNRN-Defensor%C3%ADa-del-Pueblo-JEP.htm>

²⁹¹ The article reads: "Transitory clause 19. On extradition. Extradition may not be granted nor may custodial measures be enacted for purposes of extradition with respect to facts or conducts covered under this system and in particular the Special Jurisdiction for Peace, caused by or that occurred during the internal armed conflict or because of it, until it ended, whether these are eligible or not for amnesty, and especially concerning any political offense, rebellion or other related to the foregoing, whether having been committed inside or outside Colombia.

article defines the beneficiaries of this guarantee, it does not clearly establish the relationship between this proceeding and the ordinary extradition proceedings. Likewise, there is no mention of whether the Revision of Sentences Chamber can require evidence in order to grant the guarantee.

As part of its functions, the Constitutional Court has ruled on this subject. The Court determined that, with the entry into operation of the JEP, the ordinary extradition proceedings were modified, with the introduction of a new stage before the JEP's Revision of Sentences Chamber for cases involving a possible beneficiary of the non-extradition guarantee. Additionally, the Court decided that the Chamber could request any necessary evidence to guarantee the right to due process.²⁹²

For its part, the Supreme Court of Justice has also recognized that the extradition proceedings now have a new stage before the JEP's Revision of Sentences Chamber. In that matter, the Supreme Court has decided that the JEP is the natural jurisdiction to handle the cases of people who have submitted to the SIVJRNR. In these cases, it is only if the JEP denies the application of the non-extradition guarantee, that the ordinary extradition proceeding would be activated before the Supreme Court of Justice.²⁹³

These kinds of interpretations have made it easier for the JEP to exercise its functions. In addition, they have created confidence in victims and alleged perpetrators concerning the JEP's role. Hence, within the exercise of their functions, the High Courts have facilitated the proper functioning of the JEP.

Strength 4. Widespread support from the international community

Since the beginning of the peace talks with the FARC-EP, the international community has played a fundamental role. Not only has the international community supported the process in terms of achieving the demobilization of the FARC-EP, but it has also advocated respect and guarantee for victims' rights. Victims' central role in the Final Peace Agreement is due in part

This non-extradition guarantee covers all members of FARC-EP and persons accused of forming part of said organization, in relation to any conduct taking place before the signing of the Final Agreement, for those people who agree to abide by the rules of the SIVJRNR.

When it is alleged, with regard to a member of FARC-EP or a person accused of being a member of that organization, that the conduct stated in the request for extradition occurred after the signing of the Final Agreement, the Revision of Sentences Chamber will evaluate the conduct stated in order to determine the precise date on which it took place and decide the appropriate procedure. In the event that the conduct occurred prior to the signing of the Final Agreement or when the conduct is closely linked to the process of laying down arms and it took place before this was completed, the Chamber will be referred to the Panel for Acknowledgement in respect of matters within its sphere its competence, in this case always excluding extradition. In the event that the conduct began after the signing of the Final Agreement and was not closely linked to the process of laying down arms, the case will be referred to the competent judicial authority for investigation and prosecution in Colombia, without excluding the possibility of extradition.

For conduct committed prior to the signing of the Final Agreement only, when there is an extradition request involving relatives, up to the second degree of consanguinity or first degree of affinity, of members of FARC-EP or a person accused of or singled out in an extradition request as being a member of that organization, this situation may be submitted to the Revision of Sentences Chamber of the Peace Tribunal to decide whether the request involves incidents or conduct related to belonging, or the accusation of belonging, to the FARC-EP by the relative whose extradition is being requested. Should this be the case, because it relates to an accusation or indictment of conduct that has never before been the object of an extradition request and does not meet the conditions required for it, the Chamber may refuse the extradition and, in that case, decide whether the action or conduct is within the sphere of competence of the SIVJRNR or whether it needs to be investigated or tied through Colombia's ordinary criminal jurisdiction. The above situation may be submitted to the Revision of Sentences Chamber for any of the former members of FARC-EP that have signed the Final Agreement.

The JEP must resolve issues raised with regard to extradition within a period of exceeding 120 days, except in justified cases that depend on the collaboration of other institutions." (Free translation based on the official translation of the Final Peace Agreement)

²⁹² Constitutional Court, Ruling 401 of 2018 and Judgment C-080 of 2018.

²⁹³ Supreme Court, Solicitud de extradición de Seuxis Hernández debe pasar por la JEP, April 11, 2019.

(<http://www.cortesuprema.gov.co/corte/index.php/2018/04/11/solicitud-de-extradicion-de-seuxis-hermandez-debe-pasar-por-la-jep/>)

to international pressure to respect international standards in human rights and international humanitarian law.

Additionally, thanks to the economic support from the international community, it has been possible to move quickly to implement several projects and instruments contemplated in the Final Peace Agreement. This reflects the international community's broad support and commitment to achieve peace through the use of transitional justice instruments, such as those designed in the Final Peace Agreement.²⁹⁴ The European Fund for Peace in Colombia alone has invested 300 million euros in post-conflict projects.²⁹⁵ For its part, the United Nations Multi-Partner Trust Fund for Sustaining Peace in Colombia, created in 2016, has harnessed 85,668,040 dollars and has benefited 1.4 million people in its first phase.²⁹⁶

With regard to the JEP, the contributions from the Multi-Partner Trust Fund were essential in enabling it to go into operation quickly. For example, in 2017, a grant of 4,717,416 dollars from the Fund made it possible for the JEP's Executive Secretariat to begin working.²⁹⁷ This, in turn, facilitated the necessary conditions for the JEP's Panels and Chambers to start operating in 2018.

International cooperation has also allowed the JEP to carry out some functions that would not have been possible with the resources from the national budget alone. As an example, in May 2019, the JEP signed a memorandum of understanding with the German-Colombian Peace Institute (Capaz) and the Research Centre for Latin American Criminal Law and Criminal Procedure (CEDPAL). The foregoing will provide the JEP with additional resources to strengthen its regional presence and carry out educational activities on transitional justice.²⁹⁸

Additionally, the international community's support has helped the JEP to perform its functions in a highly polarized environment. In that regard, the international community has constantly highlighted the importance of the SIVJRNR for achieving peace in Colombia and fulfilling victims' rights. In addition, it has declared that the JEP allows the Colombian State to comply with its international human rights obligations.²⁹⁹

The international community has also pointed out the risks of not offering sufficient guarantees for the proper operation of the SIVJRNR. In this regard, the international community's position over the delay in presidential assent for the JEP's Statutory Law was of particular importance. Indeed, several countries and international organizations called for the JEP's Statutory Law to go into effect.

In this matter, in its 2018 annual report, the IACHR, after expressing concern about not enacting the JEP's Statutory Law, urged "the Colombian State to adopt the necessary measures

²⁹⁴ In this subject, see, for example: Delegación de la Unión Europea en Colombia, *Unión Europea anuncia fondos para el Sistema Integral de Verdad, Justicia, Reparación y No Repetición*, April 12, 2019.

Spanish version available at: <https://eeas.europa.eu/delegations/colombia/61015/uni%C3%B3n-europea-anuncia-fondos-para-el-sistema-integral-de-verdad-justicia-reparaci%C3%B3n-y-no-es>

²⁹⁵ Caracol Radio, *UE ratifica inversión para posconflicto en medio de discusiones sobre JEP*, May 3, 2019.

Spanish version available at: https://caracol.com.co/radio/2019/05/03/internacional/1556919778_082156.html

²⁹⁶ UN Multi-Partner Trust Fund for Sustaining Peace in Colombia, *Términos de Referencia de la Fase II*, November 27, 2018, p. 4.

Spanish version available at: <http://mptf.undp.org/factsheet/fund/4CO00>

²⁹⁷ UN Multi-Partner Trust Fund for Sustaining Peace in Colombia, *Programa: Apoyar a la Jurisdicción Especial para la Paz - JEP (en el marco del Sistema Integral de Verdad, Justicia, Reparación y Garantías de No Repetición) a través de la puesta en marcha de su Secretaría Ejecutiva (SE)*, *Informe narrativo final*, 2017.

²⁹⁸ JEP, *La JEP aumentará su presencia territorial gracias al apoyo de Alemania*, 2 de mayo de 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-aumentar%C3%A1-su-presencia-territorial--gracias-al-apoyo-de-Alemania.aspx>

²⁹⁹ United Nations, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, February 4, 2019, A/HRC/40/3/Add.3, para 10.

to advance in the definition and entry into force of the regulatory framework of the JEP.”³⁰⁰ The United Nations and the Verification Mission in Colombia,³⁰¹ the United Nations Security Council,³⁰² the International Criminal Court,³⁰³ and the ambassadors and representatives in Colombia of Germany, Belgium, Norway, Netherlands, United Kingdom, Sweden, Switzerland and the European Union³⁰⁴ made similar comments.

In the light of the above, it is clear that Colombia has broad international support to implement the necessary actions to consolidate peace, guarantee victims’ rights, and achieve national reconciliation. In particular, for the international community, the entities that make up the SIVJRNR have a high degree of legitimacy as mechanisms to guarantee victims’ rights and contribute to peace.

Finally, it should be noted that given Colombia’s political and social climate, the international community’s support will continue to be essential to make the implementation of the Final Peace Agreement successful. Additionally, the magnitude of the conflict and the large number of victims suggests that financial support from the international community will be necessary to ensure that the JEP can provide adequate response to the victims of the conflict.

Strength 5. Implementation of the differential approach³⁰⁵ in the proceedings before the JEP

Recognition of the differential impact that the Colombian conflict has had on different groups and sectors of the population (*enfoque diferencial* - differential approach) is one of the characteristic elements of the JEP’s design. Although the task of implementing the differential approach is complex - since it includes taking into consideration different approaches such as gender, ethnicity, and territory-, the stipulation of the differential approach in the JEP’s regulations is itself important. Certainly, the explicit mention of the concept in the JEP’s framework means that it is more likely that the JEP’s final decisions, which assign responsibility and impose sanctions, respond to the specific needs of different groups that historically have been victimized.

Similarly, regarding the implementation of the differential approach, the JEP has made significant progress. In particular, it is worth highlighting the creation of three permanent committees³⁰⁶ within the JEP: the Territorial and Environmental Committee, the Ethnic Committee and the Gender Committee.³⁰⁷ Among other functions, these committees aim to:

³⁰⁰ IACHR, Annual Report 2018, Chapter V (Follow-up to recommendations made by the IACHR in its country or thematic reports), Colombia, para. 43.

³⁰¹ United Nations, The United Nations System and the Verification Mission in Colombia reaffirm the importance of the special jurisdiction for peace as the main instrument for guaranteeing victims’ rights to justice, March 11, 2019.

English version available at: <https://colombia.unmissions.org/en/united-nations-system-and-verification-mission-colombia-reaffirm-importance-special-jurisdiction>

³⁰² JEP, *Consejo de Seguridad de ONU pide pronta aprobación de la Ley Estatutaria para la JEP*, April 12, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Consejo-de-Seguridad-de-ONU-pide-pronta-aprobación-de-la-Ley-Estatutaria-para-la-JEP.aspx>

³⁰³ JEP, *Corte Penal Internacional insiste en que JEP tenga un marco legal definido*, February 20, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Corte-Penal-Internacional-insiste-en-que-JEP-tenga-un-marco-legal-definido.aspx>

³⁰⁴ El Espectador, *La comunidad internacional, el gran apoyo de la JEP*, March 16, 2019.

Spanish version available at: <https://colombia2020.elespectador.com/jep/la-comunidad-internacional-el-gran-apoyo-de-la-jep>

³⁰⁵ As mentioned before in this report, the "differential approach" (*enfoque diferencial*) essentially involves the interpretation and application of the law using a perspective that contemplates the specific needs of certain sectors of the population such as women, ethnic groups, and the LGBTI Community.

Regarding human rights violations, it takes into account that the harm and consequences of a violation may not be the same for all victims. Therefore, the measures adopted to guarantee victims’ rights cannot be uniform and unique. For instance, considering gender inequality and the disproportionate impact of the armed conflict on women, the design and implementation of reparation measures should have a specific component to reduce gender gaps and address specific harms suffered by women.

³⁰⁶ Additionally, there is a Participation Committee created by the Governing Body in Agreement 009 of 2019.

³⁰⁷ General Regulations of the JEP (Agreement 001 of 2018), article 100.

(i) formulate methodologies and develop protocols, (ii) submit proposals so that the JEP's resolutions and judgments include a differential approach, (iii) support the creation of criteria for prioritization and selection, (iv) promote measures to protect vulnerable groups, (v) support the creation of research methodologies, (vi) promote studies on topics of interest, and (vii) seek mechanisms that facilitate participation.³⁰⁸

In that sense, the JEP has developed mechanisms and internal scenarios to make sure that the necessary inputs for the implementation of the differential approach are created. For instance, the Gender Committee has issued a legal opinion on violent sexual crimes and armed conflict.³⁰⁹ As the document is public, it serves not only as a reference for the different JEP's Panels and Chambers, but also provides the victims with additional information so that they can demand their rights, for example, concerning protective mechanisms and measures that prevent revictimization.

Additionally, the application of the differential approach may be seen in several of the cases that the Judicial Panel for Acknowledgement of Truth has opened. With regard to the gender approach, case 007 is investigating acts of violence and sexual enslavement of minors who were victims of recruitment.³¹⁰ In relation to the ethnic and territorial approach, the Panel has opened cases 002, 004 and 005.

Finally, it is worth mentioning that the JEP's justices are more diverse than those of any other Colombian High Courts: 53 percent of the JEP's justices are women and 20 percent are Afro-Colombian and indigenous.³¹¹ This makes the JEP a court with a more comprehensive vision, which considers the different perspectives, impacts and consequences that the Colombian armed conflict has had on the population.

Strength 6. Implementation of criteria for prioritization

The magnitude of the Colombian conflict, which over five decades left more than 8 million victims,³¹² implies a huge challenge in terms of investigating and prosecuting those responsible. In terms of transitional justice, this challenge was initially broached by Law 975 of 2005 (Justice and Peace Law). However, its early results were not optimal. As a matter of fact, the first person sentenced under the Justice and Peace Law, four years after the law came into effect, was a low-ranking member of the self-defense groups. Furthermore, two of the three crimes³¹³ for which he was convicted were not serious human rights violations.³¹⁴ Subsequently, the Justice and Peace Law was modified to apply prioritization criteria.³¹⁵ Likewise, "macrocases" were prepared, which have revealed criminal structures and patterns of macrocriminality.

With regard to the JEP, the regulations for its operation draw on lessons learned from the Justice and Peace Law. These regulations acknowledge that it will not be possible to investigate and prosecute all crimes committed during the conflict, and therefore, efforts should focus on

³⁰⁸ Ibid, articles, 102, 104 and 105.

³⁰⁹ JEP, Gender Committee, views file 2017-120080101268E, June 25, 2018.

³¹⁰ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 029 of 2019, which advises addressing the recruitment and use of children in the armed conflict as a priority case for the Panel, Case 007, March 1, 2019, para. 6.

³¹¹ JEP, *Conozca la JEP*.

Spanish version available at: <https://www.jep.gov.co/Infografas/conozcalajep.pdf>

³¹² Victims' Unit, National Information Network.

Spanish version available at: <https://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394>

³¹³ The individual was convicted of having murdered three people, extortion and forging public documents.

³¹⁴ For an analysis of the sentence, see: María Paula Saffón Sanín, *La primera sentencia de Justicia y Paz, mucho qué desear*, Dejusticia, April 23, 2009.

Spanish version available at: <https://www.dejusticia.org/la-primera-sentencia-de-justicia-y-paz-mucho-que-desear/>

³¹⁵ Law 1592 of 2012, article 1.

the most serious and representative cases.³¹⁶ Along these lines, the Judicial Panel for Acknowledgement of Truth and the Judicial Panel for Determination of Legal Situations must pursue “their work according to prioritization criteria based on the severity and representativeness of the crimes and the degree of responsibility in them.”³¹⁷

In order to carry out its function to investigate the most serious and representative crimes committed during the armed conflict, the Judicial Panel for Acknowledgement of Truth issued a document on “criteria and methodology to prioritize cases and situations” (*Criterios y metodología de priorización de casos y situaciones*). The document abandons the “case-by-case” approach, and adopts one based on the construction and delimitation of categories of cases, prioritized according to the criteria defined by the Panel.³¹⁸ Likewise, the document states that in the application of the prioritization criteria, the Panel must “identify and analyse plans or policies, elements of systematicity, and patterns of macrocriminality”.³¹⁹

Despite some critique that the definition of the criteria has attracted³²⁰, this document has made it possible for the Panel to be more organized and transparent in its handling of cases. For example, in the rulings to open the seven cases, the Panel used the prioritization criteria, which makes it possible to ensure that the Panel is accountable for its work.

Additionally, the methodology proposed in the document could contribute to better access to justice for victims.³²¹ It also may help manage victims’ expectations concerning the proceedings before the Panel. For this to be achieved, it is important that the general public and victims are aware of the prioritization criteria, and efforts are made to ensure that victims understand the rationale for these criteria with a view to gaining their acceptance. In the same vein, measures to guarantee the rights of victims in non-prioritized cases should be implemented.

Finally, it should be noted that before the document was adopted, the Judicial Panel for Acknowledgement of Truth released a preliminary draft to the public in order to receive proposals and comments from victims and civil society organizations.³²² Additionally, it held a public hearing to assess the definitive criteria. This hearing was an important opportunity for discussion on how to guarantee victims’ rights in the JEP, and a large number of authorities, academics, victims’ organizations, and others from civil society participated.³²³

³¹⁶ Law 1957 of 2019, articles 19, 79 (sections t, o), 84 (sections f, g, h) and 87 (section d). In addition, it is worth mentioning that the Constitutional Court analysed the possibilities and limitations of prioritization and selection criteria in transitional justice in Judgments C-579 of 2013 and C-080 of 2018.

³¹⁷ Legislative Act 01 of 2017, article 7. (Free translation)

³¹⁸ According to the Judicial Panel for Acknowledgement of Truth, prioritization is a technique to manage its workload in order to establish a strategic order for investigation and prosecution. Additionally, taking into consideration the guidelines that the Office of the Attorney General has created on the subject, the Judicial Panel for Acknowledgement of Truth considers two aspects in the prioritization criteria: impact and availability of information. Impact has a subjective component (victims' characteristics) and an objective component (facts).

In this regard, see: JEP, Judicial Panel for Acknowledgement of Truth, *Criterios y metodología de priorización de casos y situaciones*, June 28, 2018, para. 16, 33 et seq.

³¹⁹ JEP, Judicial Panel for Acknowledgement of Truth, *Criterios y metodología de priorización de casos y situaciones*, June 28, 2018, para. 33 et seq. (Free translation).

³²⁰ Regarding this topic, see: Colombian Commission of Jurists, *Algunas consideraciones sobre el anteproyecto de Guía de priorización de casos y situaciones en la Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas*, June 13, 2018.

Spanish version available at: <https://www.coljuristas.org/documentos/tmp/Comentarios%20de%20la%20CCJ%20sobre%20Guia%20Priorizacion%20JEP.pdf>

³²¹ The Judicial Panel for Acknowledgement of Truth has addressed this point. See: JEP, Sala de Reconocimiento de Verdad, *Criterios y metodología de priorización de casos y situaciones*, June 28, 2018, para. 24.

³²² JEP, Comunicado 38, *La JEP presenta propuesta de criterios para la priorización de casos*, May 31, 2018.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/38.Comunicado-38---La-JEP-presenta-propuesta-de-criterios-para-la-priorización-de-casos.aspx>

³²³ On the hearing, see: El Espectador, *Víctimas, eje central de la audiencia sobre criterios de priorización en la JEP*, June 13, 2018.

Spanish version available at: <https://www.elespectador.com/noticias/judicial/victimas-eje-central-de-la-audiencia-sobre-criterios-de-priorizacion-en-la-jep-articulo-794219>

Strength 7. Coordination with the Indigenous Peoples Jurisdiction

One of the most important elements of the 1991 Constitution is the recognition that Colombia is a pluralistic state.³²⁴ With regard to indigenous peoples, the Constitution recognizes their right to exercise jurisdictional authority within their territory, with their own rules and procedures (*Jurisdicción Especial Indígena* - Indigenous Peoples Jurisdiction).³²⁵ This right was also recognized and guaranteed in the Final Peace Agreement, in the following terms:

“In the framework of the implementation of the special jurisdiction for peace, mechanisms will be created for liaison and coordination with the special indigenous jurisdiction as mandated by article 246 of the Constitution.”³²⁶

In expanding on the foregoing, Law 1957 of 2019 establishes the JEP’s duty to respect the Indigenous Peoples Jurisdiction, and to establish mechanisms for linkage and coordination between the two jurisdictions.³²⁷ In the same vein, the abovementioned law declares that coordination with indigenous authorities is required in order to collect evidence and verify compliance with the JEP’s sanctions in indigenous territories.³²⁸

In consideration of the fact that the indigenous communities were particularly victimized during the Colombian conflict,³²⁹ coordination between the two jurisdictions is essential to guarantee the rights of indigenous victims, as well as to prosecute and punish indigenous offenders. The foregoing has been recognized by the JEP, which has not only carried out actions aimed at implementing an ethnic approach in its decisions but has also carried out various activities to establish permanent and fluid dialogue with the indigenous authorities.

In that regard, in 2017, when only the JEP’s Executive Secretariat was operating, the first dialogues and meetings with indigenous communities began. Of particular note among the initial activities carried out, was the coordination protocol signed with the Regional Indigenous Council of Cauca (*Consejo Regional Indígena del Cauca* - CRIC).³³⁰ The objective was to establish the procedure on how FARC-EP members who belong to Cauca’s indigenous communities would submit to the JEP. Likewise, it sought to establish a coordination process to guarantee the collective rights of the Nasa indigenous community.³³¹

In 2018, the JEP, together with the CEV and the UBPD, established a methodology with the Permanent Board for Consultation with Indigenous Peoples and Organizations (*Mesa Permanente de Concertación con los Pueblos y Organizaciones Indígenas*)³³² to hold prior consultations on the instruments that govern the JEP.³³³ To this end, activities were carried out in 64 municipalities with representatives of 102 indigenous groups.³³⁴

³²⁴ Constitution, article 1.

³²⁵ Constitution, article 246.

³²⁶ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016. Point 6.2 Ethnic perspectives. p. 176 et seq.

³²⁷ Law 1957 of 2019, articles 3 and 35.

³²⁸ Law 1957 of 2019, articles 79 (section u) and 35.

³²⁹ On this subject, consult: Constitutional Court, Ruling 009 of 2009.

³³⁰ The Spanish version of the protocol is available at the following link: <https://paxencolombia.org/wp-content/uploads/2018/02/Procedimiento-para-15-detenidos-patio-prestado-1.pdf>

³³¹ JEP, Executive Secretary, *Informe de Gestión 2017*, p. 17.

³³² In accordance with article 11 of Decree 1397 of 1996, “the object of the Permanent Board for Consultation with Indigenous Peoples and Organizations is to arrange between them and the State all administrative and legislative decisions that may affect them, evaluate the execution of the State’s indigenous policy.” (Free translation) Along with members of the National Government, the board is made up of five national indigenous organizations: ONIC, CIT, Gobierno Mayor, AICO and OPIAC.

³³³ Law 1922 of 2018, *Reglamento general de la JEP* (Agreement 001 of 2018), and *Protocolo de acceso, comunicación y participación de las víctimas de la Unidad de Investigación y Acusación*.

³³⁴ JEP, Ethnic Committee, *Balance 2018 y proyección 2019*, January 2019. Spanish version available at: <https://www.jep.gov.co/SiteAssets/Paginas/Transparencia/Balance2018-Proyeccion-2019-JEP/8.%20Comisión%20Étnica.pdf>

Along the same line, the JEP's Ethnic Committee has issued at least eight legal concepts on interjurisdictional coordination.³³⁵ Moreover, the Committee monitored a proceeding related to the definition of jurisdiction: Indigenous Peoples Jurisdiction or JEP's jurisdiction³³⁶. It was the case of an indigenous person convicted of homicide by the traditional indigenous authorities in Cauca, who applied to the JEP, arguing that he had committed the homicide as a member of the FARC-EP.³³⁷

Finally, it is worth noting that in the context of the cases involving indigenous groups, the Judicial Panel for Acknowledgement of Truth has undertaken coordination activities and invited indigenous groups to submit reports on the cases before the JEP. These activities include, among others: (i) a meeting³³⁸ held to discuss the facts of case 002,³³⁹ (ii) a report that the National Indigenous Organization of Colombia (*Organización Nacional Indígena de Colombia-ONIC*) presented to the JEP,³⁴⁰ and (iii) the production of informational materials in eight indigenous languages, inviting indigenous groups to submit reports to the JEP.³⁴¹

Strength 8. Opportunities for dialogue with victims and their associations

Regarding the protection and guarantee of victims' rights, although there are some challenges that will be mentioned later,³⁴² the JEP has recognized the importance of victims in its proceedings. On the subject, the JEP has organized several events and activities to explain to victims (i) its operation, (ii) the opportunities of participation in its proceedings, (iii) the procedure to receive legal advice, and other topics.

Among those events and activities, the activities related to the presentation of reports before the Judicial Panel for Acknowledgement of Truth should be highlighted. In that regard, the Panel's justices have travelled to different parts of the country to receive reports from the victims, which could be considered a form of recognition of victims, especially in areas with limited state presence. Additionally, it should be noted that, in Case 001,³⁴³ Colombian society had the opportunity to hear the public statements (oral reports) from the FARC-EP's kidnap victims. At the hearings, some victims proposed some reparation measures to be included in the sanctions of those responsible.³⁴⁴

The JEP has also taken measures aimed at guaranteeing victims' participation and to ensure that victims understand the JEP's proceedings. A good example of this was a public hearing of retired Colonel Gabriel de Jesús Rincón Amado held in March 2019.³⁴⁵ At the hearing, the victims were told about the proceedings that were taking place concerning their cases. In

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ The proceeding was based on the provisions of Constitutional Court Judgment T-365 of 2018.

³³⁸ El Tiempo, *La JEP articula su trabajo en el caso 002 con jurisdicción indígena*, November 14, 2018.

Spanish version available at: <https://www.eltiempo.com/justicia/jep-colombia/la-jep-articula-su-trabajo-en-el-caso-002-con-jurisdiccion-indigena-293360>

³³⁹ This case addresses crimes committed in the municipalities of Tumaco, Ricaurte and Barbacoas, where at least 89% of the population are members of ethnic communities. The Awá indigenous people is settled in these municipalities.

In this regard see: JEP, Judicial Panel for Acknowledgement of Truth, Ruling 004 of 2018, which refers to the situation in the municipalities of Tumaco, Ricaurte and Barbacoas in Nariño Department, addressing the incidents allegedly committed by members of the FARC-EP and the Military Forces between 1990 and 2016.

³⁴⁰ ONIC, *ONIC entrega Primer Informe a la Jurisdicción Especial para la Paz - JEP*, August 9, 2018.

Spanish version available at: <https://www.onic.org.co/comunicados-onic/2494-onic-entrega-primer-informe-a-la-jurisdiccion-especial-para-la-paz-jep>

³⁴¹ JEP, *La JEP se conecta con los pueblos indígenas*, February 21, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-se-conecta-con-los-pueblos-%C3%ADndigenas.aspx>

³⁴² See, among others, Section C, "Challenges regarding victims' rights", in this chapter.

³⁴³ Illegal retention of persons by the FARC-EP.

³⁴⁴ Their statements are available at: <https://www.youtube.com/channel/UCay5mclHBbWQTQ8fhoNCWow>

³⁴⁵ The video of the hearing is available in Spanish at: <https://www.youtube.com/watch?v=r0EQ4-13j4I>

addition, the hearing allowed the victims to express their expectations about the JEP's proceedings, and ask specific questions directly to retired Colonel Rincón Amado, who stated his commitment to tell the full truth.

Similarly, the JEP has held information and educational events and meetings in different parts of the country to explain victims' rights and types of reparation. This has been part of the efforts by the JEP to decentralize its activities.³⁴⁶ In particular, on National Victims Day, the JEP held talks, forums and events in 17 places around the country.³⁴⁷

In sum, the JEP has made efforts so that victims can participate in its proceedings and understand their rights. These efforts also aim to inform society in general about the central role of victims within the JEP. Specifically, the JEP has taken actions to be recognized as a court that will guarantee victims' rights, and that will counter impunity for serious human rights violations committed in the Colombian conflict.³⁴⁸

B. Challenges regarding judicial independence

The success of the JEP as a mechanism for transitional justice depends largely on how it effectively fulfills its functions, in particular, those related to the protection and defense of victims' rights. However, the influence of external factors cannot be disregarded. In particular, in order for the JEP to function adequately, public authorities must recognize its judicial independence. This includes respecting its decisions and not launching unjustified challenges that undermine its legitimacy as a court of law. Likewise, the JEP must have the necessary resources to function properly. In this regard, the JEP faces several challenges which could have serious repercussions on the exercise of its functions.

Funding

Firstly, the allocation of resources from the General Budget of the Nation must be addressed. In 2019, not one of the three entities that make up the SIVJNR received the resources requested for its operations. The JEP had requested 372 billion pesos and it received 292.465 billion pesos, a little less than 80 percent of what had been requested.³⁴⁹ The CEV and the UBPD saw alarming cutbacks. In particular, the UBPD received 33.332 billion pesos, which was only 32 percent of the funding it had requested.³⁵⁰

Although this underfunding does not necessarily indicate that there is a specific intention to weaken the functioning of the SIVJNR entities, it does point to a worrying change in the new

³⁴⁶ JEP, *Desafíos de la JEP en materia de derechos de las víctimas*, March 11, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Comunicado-034-de-2019---La-JEP-y-la-Procuradur%C3%ADa-lideran-estrategia-para-fortalecer-la-participaci3n-de-las-v%C3%ADctimas.aspx>

³⁴⁷ JEP, *La JEP conmemora el Día de las víctimas*, April 8, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-conmemora-el-D%C3%ADa-de-las-V%C3%ADctimas.aspx>

³⁴⁸ On this point, it is worth mentioning that the JEP asked the IACHR to hold a thematic hearing during the 172nd period of sessions. For the JEP, thematic hearings are an opportunity to demonstrate its unequivocal commitment against impunity in cases of serious human rights violations committed within the framework of the internal armed conflict. The hearing was held May 9, 2019 in Kingston (Jamaica).

In this regard, see: JEP, *La JEP solicitó audiencia temática en la Comisión Interamericana de Derechos Humanos*, May 2, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-solicit%C3%B3-audiencia-tem%C3%A1tica-en-la-Comisi%C3%B3n-Interamericana-de-Derechos-Humanos.aspx>

³⁴⁹ El Espectador, *Las consecuencias territoriales del recorte al sistema de justicia transicional*, March 31, 2019.

Spanish version available at: <https://colombia2020.elespectador.com/colombia-en-transicion/las-consecuencias-territoriales-del-recorte-al-sistema-de-justicia>

³⁵⁰ Ibid.

government's priorities. Certainly, the implementation of the Final Peace Agreement does not appear to be a priority when deciding the allocation of resources.

In the same vein, in addition to the budget cuts, implementation of the Final Peace Agreement is not among the 20 main goals in the 2018-2022 National Development Plan. Nor does the plan mention the consolidation of peace, national reconciliation or guaranteeing the rights of the victims of the internal armed conflict.³⁵¹ On this subject, the government's opposition parties have criticized the Plan as "far from being the route for peacebuilding."³⁵² Among other things, the opposition parties have emphasized that the Plan pays no attention to the need to offer the victims comprehensive reparation, and it only focuses on compensation measures.³⁵³

This raises questions about State financing for the SIVJRNR in the coming years. It is important that the National Government keep in mind that compliance with the commitments made to the FARC-EP guerrillas is at risk, as well as the State's international obligations regarding human rights and victims' rights. The Office of the United Nations High Commissioner for Human Rights in Colombia has already drawn attention to this issue in the following terms:

"OHCHR recalls that the majority of the commitments assumed by the State under the peace agreement are contained in the human rights agenda, as set out in many of the treaties, mechanisms, recommendations and guidelines of the United Nations and the inter-American human rights system to which Colombia is a State party. Therefore, effective implementation of the agreement also reflects the willingness of the State to fully comply with its international human rights obligations".³⁵⁴(emphasis added)

Recognition and respect for the JEP as a court of justice

Secondly, some authorities have affected, to varying degrees, the JEP's judicial independence. This is a serious matter because, although criticism and divergent opinions are valid within a democratic state, the judicial function should not be hindered. Indeed, guaranteeing the judicial independence is essential not to undermine the rule of law.

In this context, the situation that unfolded around presidential sanction for the JEP's Statutory Law stands out. In late 2018³⁵⁵, there was a considerable anticipation about whether President Duque would give presidential sanction to the bill for the Statutory Law, or if he would object to its content and send it back to the Congress of the Republic for modifications before granting sanction.³⁵⁶

In March 2019, President Duque objected to six of the 159 articles in the bill for the Statutory Law.³⁵⁷ This decision was preceded by the then-Attorney General's petition asking President

³⁵¹ National Department of Planning, *Las 20 metas del Pacto por Colombia, pacto por la equidad*.

Spanish version available at: <https://www.dnp.gov.co/DNPN/Paginas/Metas-del-Plan-Nacional-de-Desarrollo-2018-2022.aspx>

³⁵² Juanita Goebertus (Green Party Legislator), *¿Cómo quedó la paz en el Plan Nacional de Desarrollo?*, May 3, 2019.

Spanish version available at: <https://www.juanitaenelcongreso.com/noticias/como-queda-la-paz-en-el-plan-nacional-de-desarrollo>

³⁵³ Ibid.

³⁵⁴ United Nations, Annual Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Colombia, February 4, 2019, A/HRC/40/3/Add.3, para. 10.

³⁵⁵ Although it was in December 2018 that the Constitutional Court handed down Judgment C-080 of 2018, which examined the constitutionality of the bill on the JEP's Statutory Law, the Senate only remitted the bill to the Office of the President on February 11, 2019.

³⁵⁶ According to articles 165, 166 and 167 of the Constitution, the National Government may object to any bill. In the case of bills for statutory laws, its objections may be over inappropriateness, but not unconstitutionality. That is because these types of laws will already have been fully reviewed by the Constitutional Court.

³⁵⁷ The articles of objection were article 7 (full and effective reparation of victims), paragraph 2 of article 19 (principle of selection), article 63 (personal competence), the third paragraph of section j of article 79 (functions of the Judicial Panel for

Duque to object to the bill.³⁵⁸ Despite the fact that President Duque and the then-Attorney General had different reasons to object to the bill, the message that the public received about the JEP's role was similar. Unfortunately, the message was negative, and it undermined the legitimacy of the JEP.

Specifically, both the then-Attorney General and President Duque cast serious doubts about the JEP's ability to guarantee that there would be no impunity in cases of serious human rights violations, and whether it would be able to adopt measures to guarantee the victims' rights to reparation and non-repetition. In addition, both officials insinuated that the current JEP's design could potentially trigger action by the International Criminal Court.

In addition to the above, there were obstacles and delays in the congressional debates over the objections.³⁵⁹ For example, during a public hearing in the Senate, there were heated clashes between different political sectors and victims concerning the legitimacy of the Final Peace Agreement and the mechanisms to guarantee victims' rights.³⁶⁰

Consequently, in public opinion, there is an open debate on the JEP's role. In particular, although the objections referred to very specific aspects, the complexity of the issue and the grounds cited contributed to the fact that many groups, including victims' organizations, believed that the objections aimed to make structural changes to the JEP.

Additionally, the objections exacerbated the country's polarization around the implementation of the Final Peace Agreement.³⁶¹ Not to mention that the JEP had to begin operating without having a complete legal framework, which increased potential risks concerning legal certainty for alleged perpetrators and protection of victims' rights.

It is also alarming that this situation is not the only circumstance that has affected the JEP's independence. Among other incidents, it should be mentioned that the Minister of Foreign Affairs asked the IACHR to cancel a thematic hearing that was scheduled with the JEP.³⁶² Although the hearing took place, it is clear that communication between the JEP and the Minister of Foreign Affairs was not good. In fact, the JEP learned of the request for cancellation through the media.³⁶³

Also worth noting is the statement that the then-Attorney General made when five people were arrested, including a UIA's prosecutor, as they were allegedly receiving money to influence some of the JEP's decisions. In his initial statements, he said that the incident concerned a bribe for the case of Seuxis Paucias Hernández Solarte,³⁶⁴ also known as "Jesús Santrich," one

Acknowledgement of Truth), article 150 (extradition for conduct committed after the signing of the Final Peace Agreement) and article 153 (extradition of those who are confessing the truth to the SIVJRRN).

³⁵⁸ The request was made in February 2019.

The Spanish version of the request is available at: https://www.fiscalia.gov.co/colombia/wp-content/uploads/_Statutory_Law_Letter_JEP.pdf

³⁵⁹ On this subject see, for example: El Espectador, *Senado levanta plenaria y sigue sin discutir las objeciones a la JEP*, April 29, 2019.

Spanish version available at: <https://www.elespectador.com/noticias/politica/sesion-estancada-senado-continua-sin-discutir-las-objeciones-la-jep-articulo-852969>

³⁶⁰ La Nación, *Nuevo agarrón en el Congreso*, March 19, 2019.

Spanish version available at: <https://www.lanacion.com.co/2019/03/19/nuevo-agarron-en-el-congreso/>

³⁶¹ Revista Semana, *Sube la temperatura: las objeciones tienen la polarización al límite*, April 27, 2019.

Spanish version available at: <https://www.semana.com/nacion/articulo/objeciones-a-la-jep-tienen-la-polarizacion-politica-al-limite/611377>

³⁶² RCN Radio, *JEP responde al Gobierno tras solicitud de cancelar audiencia ante la CIDH*, May 5, 2019.

Spanish version available at: <https://www.rcnradio.com/colombia/jep-responde-al-gobierno-tras-solicitud-de-cancelar-audiencia-ante-la-cidh>

³⁶³ JEP, *oficio 0191700183231 dirigido a Ministro de Relaciones Exteriores*, May 5, 2019.

³⁶⁴ The Office of the Attorney General, *Medida de aseguramiento contra exfiscal Carlos Bermeo y el exsenador Luis Alberto Gil, por actos de corrupción en la JEP*, March 15, 2019.

Spanish version available at: <https://www.fiscalia.gov.co/colombia/seccionales/medida-de-aseguramiento-contra-exfiscal-carlos-bermeo-y-el-exsenador-luis-alberto-gil-por-actos-de-corrupcion-en-la-jep/>

of the most high-profile cases before the JEP, as he was a high-ranking member of the former FARC-EP whose extradition had been requested by the United States. Although the then-Attorney General subsequently retracted the claim of having evidence that proved a link between the persons arrested and Hernández Solarte's case,³⁶⁵ his initial statements caused the public to question the competence and transparency of the JEP.

Against this background, it is clear that there is a huge challenge to guarantee the JEP's judicial independence. In that sense, public authorities must exercise their functions with full respect for the independence and legitimacy of the JEP, which has constitutional status.³⁶⁶ Among other things, the authorities must recognize that the JEP plays an important role in the State's fulfilment of its international obligations on human rights, and in particular victims' rights.

Respecting the JEP's judicial independence does not mean it is not possible to criticize the JEP's structure or its decisions. On the contrary, within the scope of their legal competence, every authority and branch of government should take relevant actions to strengthen the JEP and the SIVJNR. Thus, for instance, the Office of the Inspector General has been playing an important role in guaranteeing victims' rights and alleged perpetrators who appear before the JEP. Among other measures, the Office of the Inspector General filed a writ of amparo to guarantee the right to appeal in the proceeding of the application of the non-extradition guarantee³⁶⁷. It has also worked jointly with the JEP to strengthen victims' participation in the territories.³⁶⁸

Lastly, it is essential that clear and concrete language, with sound arguments, be used to transmit criticism and propose reforms. In criminal matters, allegations must be duly proven, according to the evidentiary standards for each stage of the criminal proceedings. The authorities should not underestimate the negative impact of spreading partial truths or unverified information, particularly because the peacebuilding process is taking place in a complex context. This could also create false or unrealistic hopes about the JEP's work, which could have negative effects on effective access to justice.

C. Challenges regarding victims' rights

Challenge 1. Need for concrete actions to apply the principle of centrality of the victims

The transitional justice system that was created under the Final Peace Agreement will not be successful unless it effectively guarantees victims' rights. Although this task does not fall exclusively to the JEP, the JEP has a leading role as the judicial component of the SIVJNR. As a consequence, the Colombian State's compliance with its international obligations to effectively investigate and punish serious human rights violations relies, to a considerable extent, on how the JEP fulfills its functions. In addition, in the matters within its jurisdiction, the JEP is responsible for guaranteeing the right of access to criminal justice for victims of

³⁶⁵ United Nations, United Nations Verification Mission in Colombia, Report of the Secretary General, March 26, 2019, S/2019/265, para. 20.

³⁶⁶ Legislative Act 01 of 2017.

³⁶⁷ The Office of the Inspector General, *Por tutela de la Procuraduría decisiones de la JEP en el trámite de garantía de no extradición podrán ser apeladas*, March 1, 2019.

Spanish version available at: <https://www.procuraduria.gov.co/portal/JEP-acoge-tutela-Procuraduria-tramite-no-extradicion-pueden-ser-apelados-news>

³⁶⁸ The Office of the Inspector General, *Procuraduría y JEP lideran estrategia territorial para fortalecer la participación de las víctimas*, March 11, 2019.

Spanish version available at: https://www.procuraduria.gov.co/portal/Procuraduria_y_JEP_lideran_estrategia_territorial_para_fortalecer_la_participacion_de_las_victimas.news

serious human rights violations and their families.³⁶⁹ In that sense, the effective implementation of the principle of centrality of the victims is decisive for the JEP's legitimacy.

As discussed earlier in this text,³⁷⁰ the Final Peace Agreement and the JEP's regulations recognize the central role of victims in the SIVJNR. Therefore, it is not surprising that the centrality of the victims is one of the guiding principles of the JEP. The JEP's actions to guarantee victims' rights and materialize this guiding principle can be divided into two categories.

On the one hand, there are *actions to guarantee effective participation* before the JEP. This category refers to the opportunities for victims to participate in the proceedings before the JEP, which must respect international standards in this area.³⁷¹ On the other hand, there are *actions to guarantee the right to reparation*. This category covers the actions that the JEP must carry out so that the reparation measures that are decreed will provide victims with full and effective reparation.³⁷² This will require coordination with other State entities that also have responsibilities related to reparation for victims.

First category: actions to guarantee effective participation

This category is applicable in every stage of the JEP's proceedings in which an alleged perpetrator's legal situation is being defined, temporarily or permanently. Consequently, effective participation should be guaranteed not only in proceedings before the Judicial Panel for Acknowledgement of Truth, but also in proceedings before the Judicial Panel for Amnesty or Pardon and the Judicial Panel for Determination of Legal Situations. In other words, the JEP must provide ample opportunities for victims' participation in the proceedings that aim to determine the truth, as well as in the proceedings for granting release from custody to the alleged perpetrators,³⁷³ and granting other provisional benefits.³⁷⁴

In order to guarantee victims' right to participation properly, the JEP must make some adjustments.³⁷⁵ Indeed, on this subject, the Office of the United Nations High Commissioner for Human Rights in Colombia found that victims' next of kin and victims' organizations have faced several obstacles to participating in preliminary hearings and being recognized as victims in the proceedings before the JEP.³⁷⁶ In that regard, below are some recommendations on how the JEP can overcome the current victims' participation obstacles.

³⁶⁹ See, among others, Inter-American Court of Human Rights, Judgment of August 16, 2000, Case of Durand and Ugarte v. Peru, Series C No. 68, para. 129; HRC, Opinion of March 17, 2011, Communication No. 1458/2006, González v. Argentina, para 11; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (Resolution No. 67/187 of the United Nations General Assembly of December 20, 2012).

³⁷⁰ On this subject, see section B.2, "Victims' rights in the JEP", in Chapter IV, "National Framework", in this report.

³⁷¹ See, among others, Inter-American Court of Human Rights, Judgment of July 1, 2006, Case of the Ituango Massacres v. Colombia, Series C No. 48, para. 296; and Judgment of December 6, 2001, Case of Las Palmeras v. Colombia, Series C No. 90, para. 59. See also: Updated Set of principles for the protection and promotion of human rights through action to combat impunity, principle 19 (2).

³⁷² In relation to this point, see section C, "Access to effective remedies and reparation for victims of serious human rights violations", in Chapter III, "International Framework", in this report.

³⁷³ On the subject of procedures, see Annex C, "Proceedings before the JEP", in this report.

³⁷⁴ For example, changing or revoking custodial measures and suspending arrest warrants.

³⁷⁵ The strengths identified in terms of victim participation are mentioned in the section A, Strength 8, "Opportunities for dialogue with victims and their associations", in this chapter.

³⁷⁶ United Nations, Annual Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Colombia, February 4, 2019, A/HRC/40/3/Add.3, para. 50.

Accreditation

Firstly, the JEP's Panels and Chambers must establish clear and uniform procedures to accredit victims.³⁷⁷ This is essential so that victims may exercise all their rights before the JEP. In the meantime, while a unified procedure is adopted for all JEP's Panels and Chambers, as a temporary measure, inside of each Panel and Chamber, uniform accreditation parameters should be used.

In defining a unified accreditation procedure, the JEP should consider not to ask victims to provide information that is already documented in judicial proceedings or other sources of information to which the JEP has access.³⁷⁸ It is common that victims do not have these documents, and in order to obtain them, they would have to travel to locations other than their places of residence. This could be a disproportionate and unnecessary burden on victims, especially when victims belong to vulnerable sectors of society or their security is at risk. Therefore, deciding what documents to request from victims is a form of applying the differential approach.

In addition, in cases where several Panels have overlapping competence, it is not reasonable to require victims to be accredited more than once, even if they are not asked for additional information. Otherwise, victims might not understand clearly in which proceedings they may participate. Just as submission to the SIVJRN by alleged perpetrators is done once, the same should apply to the accreditation of victims. The foregoing should not preclude a person from being recognized as a victim of more than one victimizing act.

Finally, the accreditation process should be more expeditious for victims who have already been identified in the ordinary justice system, including for those who have not turned to the JEP. In this regard, as mentioned in a previous chapter,³⁷⁹ the possibility of allowing automatic accreditation for these victims should be considered. Having a gradual and progressive accreditation process is reasonable if the objective is to allow unidentified or undetermined victims to be recognized at any stage during the proceedings. In particular, it would be worrisome that cases before the Judicial Panel for Acknowledgement of Truth could reach the stage of public hearings, or even the stage of the concluding resolutions, without having accredited all victims identified in the ordinary justice system.

Opportunities for participation

Secondly, victims' participation must be guaranteed in all proceedings and all stages, which will require expanding the current opportunities for such participation. Currently, victims' participation is not guaranteed in some proceedings. In particular, the Judicial Panel for Acknowledgement of Truth has decided that the voluntary statements hearings (*versiones*

³⁷⁷ On this subject, it is worth mentioning that the Appeals Chamber, in its first interpretative judgment, suggested the creation of a guide document containing, among other things, good accreditation practices (JEP, Appeals Chamber, Interpretative Judgment of 3 April 2019, TP-SA-SENIT 1 of 2019, para. 76). Although this is a good first step in addressing the problem, a mandatory procedure to be used by all the Panels and Chambers is needed.

³⁷⁸ It is worth highlighting that, in its first interpretative judgment, the Appeals Chamber proposed as one of the measures to standardize accreditation, the creation of a "data capture" instrument or single accreditation format. It proposed that the instrument should contain, among other things, the person's identification, the judicial proceedings carried out, and a recounting of the facts (JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA- SENIT 1 of 2019, para. 129 et seq). Although having an instrument containing the information about each victim is clearly important, it is apparent that, in a large number of cases, this information is already contained in the case files. Moreover, the information has been systematized. Thus, for example, in the case of the Justice and Peace Law cases, the information is found in the "SIJYP" information system.

Therefore, it is not reasonable for victims to again have to provide the information they have already supplied to the justice system. This is particularly relevant in cases such as sexual violence, when a new recounting of the incidents can be painful and even revictimizing. The above, however, should not prevent the JEP from requesting additional information from victims in special cases and after it has done an analysis and verification of the information available.

³⁷⁹ In this regard, see section B.2.3, "Case studies", in Chapter IV, "National Framework", in this report.

voluntarias) are private, and victims cannot attend. To guarantee victims' rights, the Panel has established that accredited victims may have access to recordings of the hearings and may submit their comments in writing. However, this is not enough to guarantee their rights.

Although the reasons that the Judicial Panel for Acknowledgement of Truth has cited reflect valid concerns,³⁸⁰ these are not substantial enough to veto victims' participation in these hearings, especially considering that this proceeding is not governed by the principles and rules of ordinary criminal cases. On the contrary, the voluntary statements hearings are non-adversarial proceedings, and they are governed by the principle of "the dialogic construction of the truth" (*principio dialógico*).³⁸¹ Accordingly, and considering victims' right to participate, the Panel should review its decision not to allow the victims to be present at the voluntary statements hearings.

Furthermore, the Panel should take into account the fact that the Office of the Inspector General, which is present at the hearings, is responsible for safeguarding the interests of victims who have not been identified, while the identified victims have the right to appoint a lawyer to represent their specific interests. In this sense, the identified and accredited victims lack representation at the voluntary statements hearings. More importantly, several victims told the ICJ mission in January 2019 that they disagreed with not being able to participate in the hearings. These victims considered that the measure did not contribute to preventing revictimization but rather restricted their rights.

It should be recognized that, as with other opportunities for participation, the presence of the victims during the voluntary statements hearings could create challenges for the work of the Judicial Panel for Acknowledgement of Truth. However, these risks could be mitigated if the Panel, together with the Executive Secretariat, informs victims of the purpose of the voluntary statements hearings and advises them on the limits of their participation. Additionally, participation would be more effective if actions were taken to provide victims with psychosocial support and protective measures. Furthermore, given that the Panel defines the agenda in the voluntary statements hearings, this is also an element that could serve to guide victims' participation and channel their expectations.

In general, ample participation by victims in the early stages of the proceedings has enormous advantages for guaranteeing effective participation by victims in the later stages. On the one hand, it allows victims to embrace the process, which in itself may be considered recognition of their status as victims and a mechanism for reparation. On the other hand, the statements hearings may serve an opportunity for victims to meet, facilitating unity on common issues, and promoting organized group representation in later stages of the case.

At this point, it should be noted that recently, in case 003,³⁸² the Judicial Panel for Acknowledgement of Truth decided to allow victims and their representatives to participate in the voluntary statements hearings.³⁸³ This decision should be applied to the other six cases that are before the Panel, and cases that will be opened in the future. This would ensure that

³⁸⁰ On the subject of keeping voluntary statements hearings private, the Panel has given different reasons, among which are the need to avoid revictimizing victims and the fact that statements, during the investigative stage, are reserved in the ordinary justice system. Furthermore, as the Office of the Inspector General is present at the hearings, victims' interests could be considered safeguarded.

On the other hand, the decision to keep the hearings private could also be explained by what happened at several statements hearings by paramilitaries under the Justice and Peace Law. In that regard, it should be noted that the paramilitaries made some offensive comments to victims during the hearings.

³⁸¹ On the proceedings before the Judicial Panel for Acknowledgement of Truth, see Annex C.1, "Proceedings based on the determination of truth and responsibility", in this report.

³⁸² Deaths illegitimately presented as casualties in combat by State agents.

³⁸³ JEP, *Víctimas podrán participar en versiones de la Sala de Reconocimiento de la JEP*, June 6, 2019.

Spanish version at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/V%C3%ADctimas-podr%C3%A1n-participar-en-versiones-de-la-Sala-de-Reconocimiento-de-la-JEP.aspx>

all victims, regardless of the case, would have the same rights and opportunities for participation.

In the same way, the proceedings before the Judicial Panel for Determination of Legal Situations and the Judicial Panel for Amnesty or Pardon, through which provisional benefits are granted to alleged perpetrators, should have the same participation opportunities as those provided during the proceedings to permanently define an alleged perpetrator's legal status.

In this regard, a recent decision by the Appeals Chamber is worrying. Indeed, in the decision, although the Chamber recognized the right of victims to participate in the proceedings before the panels,³⁸⁴ it ruled that victims' participation shall be proportional to a criterion of *intensity level*.³⁸⁵ To put it simply, this criterion means that victims' participation "must be proportional in intensity and extent according to the characteristics of the jurisdictional exercise required by the JEP for the discussions and issues that are debated at each stage of the proceedings."³⁸⁶

Based on the above criterion, for the Appeals Chamber, since the proceedings to determine provisional benefits are "incipient" and "intermediate" stages of the proceedings before the JEP, victims' participation may be limited. In that sense, full and unfettered participation by the victims will only take place at the stages in which alleged perpetrators' legal statuses are defined.³⁸⁷ According to the Chamber, "massive and disorderly participation"³⁸⁸ by the victims could affect the efficiency of the administration of justice.

Concerning the Chamber's arguments, it is important to mention the fact that provisional benefits granted to alleged perpetrators might have a considerable impact on victims' rights. Just because a legal benefit is provisional, it does not mean it is irrelevant for victims' interests. What is more, legal benefits granted temporarily may become permanent. Clearly, if an alleged perpetrator upholds all their responsibilities within SIVJNR's, when their legal situation is resolved permanently, a provisional benefit might be granted as permanent. The foregoing, without prejudice, that when resolving an alleged perpetrator's legal situation, the JEP might grant additional benefits or impose new obligations regarding the fulfilment of victims' rights.

Consequently, the extent and type of participation by the victims in the proceedings should not be tied to a chronological order in which, as the proceedings progress, more opportunities for participation are created, as proposed by the Appeals Chamber. Clearly, Chamber's criterion does not consider that relevant and substantial benefits are granted from the start of the proceedings before the JEP, long before the first decisions on attributions of responsibility are made. For example, while the Judicial Panel for Acknowledgement of Truth has held 91 voluntary statements hearings,³⁸⁹ in 2018 alone, the Judicial Panel for Determination of Legal Situations issued 653 resolutions related to provisional benefits to alleged perpetrators who had submitted to the JEP.³⁹⁰

It is therefore essential to guarantee victims' participation in proceedings to grant provisional benefits. In these proceedings issues relevant to victims' interests may be raised and discussed, including possible risks to their personal safety as the result of releasing the offender. In

³⁸⁴ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 65.

³⁸⁵ The Appeals Chamber created three levels of intensity (low, medium or high) according to the stage of the case. In this regard, see JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 86.

³⁸⁶ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 74. (Free translation)

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ JEP, *La JEP en cifras*, 8 de mayo de 2019.

Spanish version at: <https://www.jep.gov.co/Infografias/cifras-8-mayo.pdf>

³⁹⁰ IACHR. IACHR Monitors Progress and Challenges Concerning Colombia's One-Year-Old Special Jurisdiction for Peace. May 29, 2019.

English version available at: http://www.oas.org/en/iachr/media_center/PReleases/2019/130.asp

addition, as part of the proceedings, victims may request hearings to verify compliance with the conditionality regime.

It follows from the considerations set out above that the JEP must guarantee the same participation opportunities by victims in all its proceedings. It is clear that this implies logistical and operational challenges to guarantee participation by a large number of people, but this is an intrinsic element of transitional justice that must be handled properly. In particular, it should be noted that efficiency in the administration of justice, the rights of alleged perpetrators, and the principles that inform the JEP's actions, including the restorative justice approach and the dialogic construction of the truth,³⁹¹ cannot be fulfilled, if victims are not the center of all the JEP's proceedings and work.

Defining the right to participate

Thirdly, unless there is clarity about the specific parameters and purposes of victims' participation at each stage of the proceedings, and legal resources available to victims, it would be meaningless to say that ample participation by victims in the proceedings is guaranteed. Therefore, victims must have clear and complete information about the purpose of the hearings and other procedural opportunities in which they participate.³⁹² In that sense, among other things, victims need to know the stage of the proceedings where they can oppose having a crime considered under JEP's jurisdiction or object to an alleged perpetrator receiving one or more legal benefits. For example, at General Montoya Uribe's hearing to sign the minutes of submission, discussed previously in this document,³⁹³ the victims did not clearly understand what was going to be discussed at the hearing, and many expected to hear an admission of facts and responsibility.

In other words, the fact that victims know that they can participate is insufficient if the objective and purpose of their participation have not been established. Defining the purpose of victims' participation is as important as "when" and "how" they participate. Victims not only have the right to be heard but to present arguments and evidence that could influence the JEP's decisions. This is not possible unless they know the specific stages of the proceedings. This would not only make their participation more effective but would also contribute greatly to managing their expectations. Therefore, the JEP should produce a guide to participation to explain the objectives and purposes of the different stages of the proceedings.

Second category: actions to guarantee the right to reparation

One of the main differences between the JEP and the ordinary justice system is the type and content of sanctions it imposes. On this matter, Legislative Act 01 of 2017 establishes that the SIVJNR "will place special emphasis on restorative and reparation measures, and its intent is to achieve justice not only through retributive sanctions."³⁹⁴ In the same sense, the sanctions handed down by the JEP include the obligation to undertake restorative projects.³⁹⁵

³⁹¹ Law 1922 of 2018, article 1.

³⁹² The need for victims to be clear about the scope of their participation has apparently been recognized by the Appeals Chamber. In its first interpretative judgment, the Chamber suggested creating a document on the guiding principles and criteria for the exercise of victims' rights.

In this regard, see: JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 75 et seq.

³⁹³ See section B.2.3, "Case studies", in Chapter IV, "National Framework", in this report.

³⁹⁴ Transitory clause 1 of article 1. (Free translation.)

³⁹⁵ Law 1922 of 2018, articles 1, 27, 27 C, 27 D, 44 and 65.

In this context, it should be highlighted that the fact that the JEP's sanctions must have a restorative approach does not mean the JEP does not have the obligation to guarantee victims' right to full and effective reparation. As a consequence, the restorative component of the sanctions should be understood as the mechanism through which full and effective reparation will be made effective. This is so because it is part of the essence of the SIVJRNR³⁹⁶ that no person may receive legal benefits if they do not contribute to the reparation of the victims.³⁹⁷ In the same vein, the FARC-EP was made responsible as an organization, to provide proper reparation measures to victims.³⁹⁸

Additionally, full and effective reparation is not only an interpretive criterion for the JEP's work,³⁹⁹ but it is also a duty of the State. Regarding victims' rights before the JEP, this is a duty expressly recognized in Legislative Act 01 of 2017⁴⁰⁰ and Law 1957 of 2019.⁴⁰¹

Consequently, a proper interpretation of the JEP's regulations should lead the JEP to enact measures that contribute to full and effective reparation for victims, individually and collectively. However, considering that the JEP is not the only State entity⁴⁰² that has responsibilities for delivering reparations, this task should not fall to the JEP alone. Especially if it is considered that in the majority of cases, the JEP will not be able to order economic reparations.⁴⁰³

In consideration of the aforementioned, it is essential for the JEP to work jointly with the other public entities that have obligations on delivering reparation. Therefore, when establishing the reparation measures that the perpetrators must make, the JEP needs to have up-to-date information about whether the State is implementing reparation measures. This is so that the measures decreed will be complementary, when possible. Likewise, the JEP must also demand clarity about the FARC-EP's assets and how they are being used to repair victims.

On the other hand, given that the JEP's work includes determining responsibility and assessing the harm caused to the victims, it should take a leading role in reparations. In particular, the JEP should consider the possibility of making suggestions about the different kinds of reparation measures that other State entities should provide. Making suggestions might contribute to guaranteeing that all the reparation measures provided have the potential to have a positive impact on the lives of the victims and their families, in consideration of the damage that has been done and that the JEP has identified.

It should be emphasized that the above does not imply changes in the JEP's regulations. On the contrary, given that the regulations recognize and seek to guarantee victims' rights, the JEP must simply interpret the regulations in a manner that develops, deepens and implements properly, the principle of centrality of the victims in its proceedings. Likewise, the divisions created under the Executive Secretariat⁴⁰⁴ (the Victims' Assistance Department and Victims' representation Department) should be strengthened to effectively ensure that victims receive the necessary legal and psychosocial counselling and have access to fluid and constant communication with the JEP.

³⁹⁶ On this subject, see section A, "Comprehensive System of Truth, Justice, Reparation and Non-Repetition (SIVJRNR)", Chapter IV, "National Framework", in this report.

³⁹⁷ Law 1957 of 2019, article 20.

³⁹⁸ Law 1957 of 2019, articles 38 and 39. Similarly, see Decree Law 903 of 2017.

³⁹⁹ Law 1957 of 2019, article 7.

⁴⁰⁰ Legislative Act 01 of 2017, transitory clause 18 of article 1.

⁴⁰¹ Law 1957 of 2019, article 38.

⁴⁰² Regarding reparations, there are national entities, such as the Unit for the Victims' Assistance and Reparation (*Unidad para la Atención y Reparación Integral a la Víctimas*), and local ones, such as the Bogota High Council for Victims' Rights (*Alta Consejería para los Derechos de las Víctimas*).

⁴⁰³ On this subject, see section B.2.2, "Reparation to the victims", in Chapter IV, "National Framework", in this report.

⁴⁰⁴ JEP, Governing Authority, Agreement 036 of 2018, September 11, 2018.

In this task, the Participation Committee created by the JEP's Governing Body could play a significant role.⁴⁰⁵ Indeed, one of its functions is to promote victims' participation and implement the principle of centrality of the victims.⁴⁰⁶ To this end, the Committee may issue protocols, manuals, guidelines and non-binding opinions, as well as promote coordination with other entities.⁴⁰⁷ In this sense, it has the necessary tools to help overcome the current challenges in terms of participation.

Challenge 2. The role of reporting as a way for victims to participate in the JEP

The victims' organizations' reports presented before the Judicial Panel for Acknowledgement of Truth are considered to be one of the most important forms of participation in the JEP.⁴⁰⁸ Reporting is understood as an instrument that prompts the JEP into action⁴⁰⁹ and is "the ideal mechanism for the Panel to receive or expand its knowledge regarding facts that involve serious Human Rights violations or violations of international humanitarian law, committed within the framework of the armed conflict."⁴¹⁰

For this reason, the JEP has constantly invited victims to submit reports. Work has also been done to explain the reporting methodology to victims. As a result of the above, as of May 2019, the Judicial Panel for Acknowledgement of Truth had received 74 reports from victims' organizations.⁴¹¹

As has already been mentioned,⁴¹² several of these reports have been presented to the JEP at special events held in different parts of the country. On these occasions, presenting a report has often been very symbolic and has served to emphasize the victim's role in the JEP. Likewise, some of the reports submitted by victims have contributed to drawing attention to some crimes committed during the conflict that had received little investigation and prosecution by the ordinary justice system. Thus, for example, the Judicial Panel for Acknowledgement of Truth has received reports on sexual violence,⁴¹³ antipersonnel mines⁴¹⁴ and persecution of the LGBTQ community.⁴¹⁵

In spite of the above, the presentation of reports entails some challenges in terms of guaranteeing the victims' right to participate. On this subject, the most important challenge is the management of expectations, in particular in relation to reports about crimes that will not be prioritized by the Judicial Panel for Acknowledgement of Truth. For these cases, the JEP needs to design a procedure to offer a proper response to victims' organizations and avoid

⁴⁰⁵ JEP, Governing Authority, Agreement 009 of 2019, January 29, 2019.

⁴⁰⁶ Ibid. article 1.

⁴⁰⁷ Ibid. article 5.

⁴⁰⁸ On this point, see section B.2.1, "Reports by victims' organizations", in Chapter IV, "National Framework", in this report.

⁴⁰⁹ Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct, *Documento guía para la presentación de informes elaborados por organizaciones de víctimas, indígenas, negras, afrocolombianas, raizales, palenqueras, Rrom y de derechos humanos colombianas*, May 24, 2018, p. 13.

⁴¹⁰ JEP, *La JEP reitera invitación a la Corporación Rosa Blanca para que presente informes de hechos victimizantes*, April 2, 2019. (Free translation)

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-reitera-invita%C3%B3n-a-la-Corporaci%C3%B3n-Rosa-Blanca-para-que-presente-sus-informes-sobre-hechos-victimizantes.aspx>

⁴¹¹ JEP, *La JEP en cifras*, May 8, 2019.

Spanish version available at: <https://www.jep.gov.co/Infografas/cifras-8-mayo.pdf>

⁴¹² See, among others, Strength 8: Opportunities for dialogue with victims and their associations, in this chapter.

⁴¹³ JEP, *La organización Sisma Mujer entrega dos informes sobre violencia sexual a la JEP*, April 24, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-organización-Sisma-Mujer-entrega-dos-informes-de-violencia-sexual-a-la-JEP.aspx>

⁴¹⁴ JEP, *La JEP recibe informe sobre minas antipersonal*, April 4, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-recibe-informe-sobre-minas-antipersonal-.aspx>

⁴¹⁵ JEP, *JEP recibe informes por parte del sector LGBTI*, July 30, 2018.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-recibe-informes-por-parte-del-sector-LGBTI.aspx>

defrauding victims' expectations concerning the JEP's work. This could include joint work with the CEV and the UBPD to reaffirm the interconnected nature of the system.

Additionally, it is important that victims understand that presenting a report is one of many opportunities for participation before the JEP. Put simply, the presentation of a report should not be considered as the main mechanism for participation or as an essential element for the Judicial Panel for Acknowledgement of Truth to receive information about serious human rights violations committed during the conflict. This is because the State has the obligation, under international law, to investigate these violations regardless of the victims' participation in the legal process.⁴¹⁶ Additionally, in accordance with international standards, the submission of reports should not impede the legitimate right of the victims, individually or collectively, to access and participate directly in the JEP's proceedings.

It should be clarified that the point made above does not mean that information provided by victims' organizations is not valuable. It means that it is crucial that the JEP conveys the message that it will act even if it does not receive information from victims. In other words, although the reports by victims' organizations are useful, clarifying victims' priorities and providing information and evidence, the reports are not essential for the Panel to investigate the most serious and representative cases committed in the context of the conflict. This is particularly important with regard to victims' organizations that have shown considerable reluctance to participate in the JEP by submitting reports.

In the same vein, the Judicial Panel for Acknowledgement of Truth must keep in mind its commitments regarding confidentiality and security measures for the information provided by victims. Importantly, this is an issue addressed in the Panel's guide for presenting reports.⁴¹⁷ Moreover, some reports have been presented in private because of concerns over the victims' safety.⁴¹⁸

In addition to that, confidentiality and safety of victims must be guaranteed throughout the proceedings before the Judicial Panel for Acknowledgement of Truth, even after the report has been presented. In that regard, the Judicial Panel must be especially careful with the information that it provides to alleged perpetrators, especially when the reports contain information related to criminal responsibility of persons over whom the JEP has no jurisdiction or who are not fulfilling their legal obligations to the JEP. In particular, when a victim's safety is at risk because of the information provided, the Panel should consider not handing over the full report, but rather only providing the information regarding the responsibility of the alleged perpetrator, in order to guarantee their right to defense and due process.

Challenge 3. Protective measures for victims

Protective measures are essential to materialize the principle of centrality of the victims and to guarantee access to the administration of justice. Victims will not participate in the JEP's

⁴¹⁶ See, among others, the following decisions by the Inter-American Court: Case of Arrom Suhurt et al. v. Paraguay, Merits, Judgment of May 13, 2019, Series C No. 377, para. 138; Case of Omeara Carrascal et al. v. Colombia, Merits, Reparations and Costs, Judgment of November 21, 2018, Series C No. 368, para. 212; Case of Anzualdo Castro v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of September 22, 2009, Series C No. 202, para. 65 and; Case of Kawas Fernández v. Honduras, Merits, Reparations and Costs, Judgment of April 3, 2009, Series C No. 196, para. 75.

⁴¹⁷ Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct, *Documento guía para la presentación de informes elaborados por organizaciones de víctimas, indígenas, negras, afrocolombianas, raizales, palenqueras, Rrom y de derechos humanos colombianas*, May 24, 2018, p. 19.

⁴¹⁸ JEP, Organizaciones afrocolombianas entregan informes a la JEP sobre graves violaciones a los Derechos humanos, May 22, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Organizaciones-afrocolombianas-entregan-informes-a-la-JEP-sobre-graves-violaciones-a-los-Derechos-humanos.aspx>

proceedings if they or their families' lives are at risk. Especially, considering the increase in the killing of human rights leaders and defenders, many of them victims of the conflict, since the Final Peace Agreement was signed.⁴¹⁹

In this context, it is essential for the success and legitimacy of the JEP that victims receive a quick and effective response when they report a risk situation. In particular, the mistakes that were made in Alfamir Castillo Bermúdez's case, analysed in the previous chapter⁴²⁰, should be avoided. In her case, protective measures were adopted too late and, as a consequence, Alfamir Castillo Bermúdez was the target of an assassination attempt. Furthermore, as of June 2019, the protection measures that the JEP ordered had not yet been implemented.

Thus, it is necessary to adopt corrective measures to ensure the protection of victims who participate in JEP's proceedings. In particular, considering that the JEP's justices and the Investigation and Prosecution Unit (UIA) have responsibilities in this area,⁴²¹ good internal coordination is essential. For this, the UIA should make these types of requests a priority and communicate the results to the justices promptly. At the same time, the JEP's justices must follow up on the requests they have submitted to the UIA in order to guarantee a timely response to victims.

Additionally, effective action must be undertaken to implement protection measures. As some protection measures depend on other State institutions, such as the National Protection Unit, the JEP must have effective communication and coordination channels with these entities. In the same way, it is required that the entities in charge of implementing these measures respond to the JEP's requests in a timely manner.

In conclusion, along with internal coordination between JEP's bodies, joint efforts must be made with the different State entities to guarantee safety for victims and their families. This is to ensure that victims may exercise their rights within the JEP, and also to realize the guarantee of non-repetition and the effective transition to peace.

Challenge 4. JEP training and publicizing decisions

Being the result of a negotiation process that had to reconcile a number of conflicting interests, the SIVJNR, and in particular the JEP, have considerable complexity. It is, therefore, necessary to carry out training workshops and other similar activities to explain, to victims and the general public, about the operation of the SIVJNR. People must understand what the System is and what it does in order to be able to embrace the SIVJNR and enable the JEP to become an essential transitional justice mechanism for peacebuilding and reconciliation. A lack of understanding about the system is conducive to polarization, media pressure and the creation of false expectations.

Although there have been efforts to explain the JEP's role as a court of justice,⁴²² many victims and the general public still do not understand the JEP's functions and its decisions. This is particularly true in remote rural areas and in places where no victims' organizations are present or operative. Furthermore, in some exceptional cases, this lack of knowledge has made some

⁴¹⁹ IACHR, Press Release 008/19, IACHR Completes Working Visit to Colombia to Assess Alarming Issue of Murders of Social Leaders and Human Rights Defenders, January 15, 2019.

⁴²⁰ In this regard, see section B.2.3, "Case studies", in chapter IV, "National Framework", in this report.

⁴²¹ Law 1922 of 2018, article 22 and Law 1957 of 2019, article 87.

⁴²² Along with the different training workshops and forums that the JEP has done, it is also worth highlighting several information videos available on the JEP's YouTube channel and educational material on the JEP website. In this regard see: <https://www.jep.gov.co/Paginas/victimas.aspx>

people vulnerable to individuals who falsely claim to be working for the JEP and then demand money to bring their cases to the Jurisdiction.⁴²³ Therefore, workshops about the JEP, and publicizing its decisions, should not merely continue but be stepped up.

As for the publicity of JEP's decisions, it should be recognized that the JEP has done a good job publicizing and explaining its high-profile decisions through press releases and press conferences.⁴²⁴ However, when it comes to consulting its decisions, it is essential that the JEP improves its case law database (*relatoria*), especially when compared with the database of the other Colombian High Courts.

In this respect, the JEP's database does not allow an efficient search of the JEP's case law using filters or keywords. Moreover, not all of the JEP's decisions have been uploaded on its database. As of June 2019, one case law bulletin was published in December 2018 and not all the documents from the permanent committees were available.⁴²⁵ As a consequence, access to all of the rulings and decisions is not easy, nor is it possible to review or analyse the precedents created by the Panels and Chambers. A full and organized case law database would improve the JEP's transparency and accountability to the public.

On the other hand, regarding training workshops, these should provide victims with clear information about the JEP's jurisdiction and the main functions of each of the JEP's bodies. In other words, training should not focus only on the presentation of reports, but also on other significant aspects of victims' participation, such as how to present a writ of amparo, protective measures, and the role of the chambers, particularly, regarding the imposition of sanctions.

Finally, training should also be done with the JEP's personnel. It is important they understand the scope of the JEP's mandate and the different internal interactions between the Panels, the Chambers, and the UIA. In the particular case of the justices, they should receive training on the role and challenges of judges in transitional justice courts.

Challenge 5. Consolidate the role of the JEP as the justice component of the Final Peace Agreement and encourage the voluntary acceptance of JEP's jurisdiction for those who do not fall under mandatory jurisdiction

One of the most important modifications to the original design for the JEP, as set out in the Final Peace Agreement, was that certain persons may submit to its jurisdiction voluntarily. Pursuant to a judgement by the Constitutional Court,⁴²⁶ civilians and State agents who are not members of the military forces can submit to the JEP voluntarily. As a consequence, since a group of people, who could play an important role in the armed conflict, are out of the JEP's jurisdiction, the JEP might not be able to offer victims a satisfactory response in terms of truth and accountability.

⁴²³ JEP, *La JEP advierte sobre nuevos casos de suplantaciones*, May 27, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-advierte-sobre-nuevos-casos-de-suplantaciones.aspx>

⁴²⁴ An example of this is the press release and press conference to explain the main points of the first instance decision on the application of the non-extradition guarantee on the case of Seuxis Paucias Hernández Solarte. It should also be noted that the press release on the JEP website includes the link to the text of the full decision and dissenting opinions. See: JEP, *La Sección de Revisión de la JEP aplica la garantía de no extradición a Seuxis Paucias Hernández*, May 15, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Comunicado-073-de-2019---Sobre-Seuxis-Paucias-Hernandez-Solarte.aspx>

⁴²⁵ JEP, Case law database.

Spanish version available at: <https://www.jep.gov.co/Paginas/Relatoria/Relator%C3%ADa.aspx>

⁴²⁶ Constitutional Court, Judgment C-674 of 2017.

It is within this context that the JEP has the challenge of encouraging these individuals to submit. Without a doubt, the legal benefits set forth in the JEP's regulations are an incentive. However, it is crucial that voluntary submission to the JEP is not seen as a form of impunity or a technique of sidestepping the sanctions of the ordinary justice system. On the contrary, the reason to encourage voluntary submission must be the fulfilment of victims' rights.

To this end, the JEP must consolidate its role as the court of justice for serious human rights violations and abuses committed during the Colombian conflict. This means that proceedings to determine truth and responsibility⁴²⁷ should provide victims with answers that they have not been able to get from the ordinary justice system, especially concerning crimes that have high levels of impunity.

In this area, the JEP has made progress. The JEP has adopted an approach that aims to achieve greater clarification than the ordinary justice system has been able to provide. In this regard, the work carried out by the Judicial Panel for Acknowledgement of Truth, through the opening of cases, should be highlighted. For instance, in Case 003, a JEP's justice has highlighted the fact that "many of the alleged perpetrators have acknowledged facts that have never been investigated by the ordinary justice system".⁴²⁸

Along the same lines, the Appeals Chamber has ruled that people who submit to the JEP must commit "to exceed the threshold of what is already established by the ordinary justice system."⁴²⁹ And, in the case of the alleged perpetrators who submit voluntarily to the JEP, the Chamber has ruled that, as a general rule, they must present a plan on contributions to the truth, reparation and non-repetition, from the moment they apply to submit to the JEP.⁴³⁰

Following in this vein, the JEP's first judgments on individual criminal responsibility, which must be handed down within a reasonable time⁴³¹, should reflect the discussed approach. This is because providing accountability for serious human rights violations can contribute that voluntary submission to the JEP is not focused on obtaining legal benefits.

In order to achieve this, the JEP must correctly apply its sanctions regime to guarantee the right to justice, reparation and guarantees of non-repetition.⁴³² This implies that, although the JEP exercises its functions with a restorative approach, it must comply with international law and standards concerning the punishment of those responsible for serious human rights violations. In this regard, it must be kept in mind that the JEP's sanctions might be controversial from a victims' rights point of view and the duty of the State to effectively sanction serious human rights violations, especially in cases related to crimes under international law. Certainly, light sentences that do not entail any time spent in custody may not only be offensive to the victims' right to justice but could even encourage impunity and future repetition of such crimes.

As a consequence, before applying *special or alternative sanctions*⁴³³, the JEP must carry out compare-and-contrast activities to verify the truth and responsibility accepted by alleged perpetrators. This is to ensure that the special legal benefits do not undermine victims' rights.

⁴²⁷ On these procedures, see Annex C.1, "Proceedings based on the determination of truth and responsibility", in this report.

⁴²⁸ JEP, *Audiencia Pública Coronel (r) Gabriel de Jesús Rincón Amado*, March 4, 2019. (Free translation)

Spanish version available at: <https://www.youtube.com/watch?v=r0EQ4-J3j4I&t=1272s>

⁴²⁹ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 216. (Free translation)

See also: JEP, Appeals Chamber, TP-SA 019 of August 21, 2018., para. 8.5

⁴³⁰ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 288 to 290, 293.

⁴³¹ In this regard, the deadlines for voluntary submission to the JEP, established in article 47 of Law 1922 of 2018, should be considered.

⁴³² On this point, see Annex B, "Sanctions regime and measures of extinction of criminal responsibility before the JEP", in this report.

⁴³³ On the sanctions imposed by the JEP, see Annex B, "Sanctions regime and measures of extinction of criminal responsibility before the JEP", in this report.

To sum up, along with the legal benefits, voluntary submissions should be encouraged due to the JEP's work in providing accountability for serious human violations. That voluntary submissions of civilians and State agents who are not members of the military forces are seen as a form of impunity or a technique of sidestepping the sanctions of the ordinary justice system should be avoided.

D. Conclusions

Victims of the Colombian armed conflict have waited for decades for their cases to be heard. The SIVJRN represents an opportunity to guarantee their rights. Certainly, the System was designed to give victims a central role. In particular, it should be noted that eligibility for the JEP's legal benefits comes on the condition of the effective realization of victims' rights. This is the recognition that peace and national reconciliation are not possible without satisfying the victims' rights to truth, justice and full and effective reparation.

In this sense, the JEP's work could become the cornerstone for the consolidation of peace in which victims are citizens whose rights are recognized and protected. Within a year and a half of beginning its work, the JEP has made significant strides in that direction. The Jurisdiction has shown its commitment to preventing serious human rights violations from going unpunished, and it has undertaken its activities recognizing the impact that the conflict has had on different sectors of society.

It is therefore essential that the JEP have the necessary tools to carry out its work, without interference from any branch of government. Although the JEP is facing challenges and still has a long way to go, it is a fundamental institution for the consolidation of peace in Colombia, as well as for the reconstruction of the social fabric that was destroyed by the internal armed conflict. Likewise, the JEP must make the necessary adjustments to fully guarantee victims' rights in its proceedings, in accordance with international standards. In particular, the JEP should take actions to:

1. Expand and strengthen opportunities for participation by victims in all of its proceedings.
2. Ensure that reports by victims' organizations are seen as one of several options for participation by victims. This is in order to ensure that there are no doubts about its *sua sponte* powers in cases of serious human rights violations for which no reports have been submitted.
3. Consolidate an approach that fulfills the right to justice and full and effective reparation for the victims. For this, it must consider case law developments and international standards.
4. Ensure the investigation and punishment of those responsible, according to international standards on the subject.
5. Guarantee the application of the differential approach.
6. Guarantee that its proceedings do not put the lives and personal safety of victims and their families at risk.
7. Promote training scenarios.
8. Ensure public access to all its decisions, by strengthening and improving its case law database.
9. Encourage voluntary submission through an approach that consolidates its role as a court of justice for serious human rights violations committed during the Colombian conflict.

At this point, it should be noted that the Jurisdiction can perform these actions under the current legal framework. The JEP's regulations allow it to protect and guarantee victims' rights without the need for legislative reforms. For these purposes, the JEP must apply its legal framework, through an integrative interpretation that allows it to fill in the gaps, questions or contradictions that arise.

In addition, it must be recognized that the tasks of peace and national reconciliation do not only fall to the JEP. For this reason, although the topic goes beyond the scope of this report, it should be mentioned the importance of beginning to implement other measures that were designed in the Final Peace Agreement. Among the measures that have not been implemented yet, it is relevant to mention the Special Transitory Circumscriptions for Peace, more commonly known as the "congressional seats for victims" (*curules para las víctimas*).

These Special Transitory Circumscriptions have a central role in the Final Peace Agreement. They aim to provide "better integration of areas particularly affected by the conflict, neglect and institutional weakness."⁴³⁴ The foregoing, in order to build "greater political representation and inclusion for these populations and their political, economic, social, cultural and environmental rights."⁴³⁵ In that regard, their implementation is necessary to achieve territorial peace.

Given their role in the consolidation of peace, the bill on these circumscriptions should be brought before Congress again and passed.⁴³⁶ The approval of the circumscriptions would be an acknowledgement that strengthening democracy, as an element in the transition to peace, enables the victims to be seen as citizens. It would counterbalance the political rights that were granted to the former FARC-EP members.

To conclude, the ICJ recognizes the progress in the implementation of the JEP as the justice component of the SIVJRN. However, the ICJ draws attention to the need for the JEP to take concrete actions to strengthen effective participation by the victims in its proceedings, as well as to guarantee their right to justice and full and effective reparation. At the same time, the ICJ considers it necessary to guarantee the judicial independence of the JEP from the influence of external factors, to ensure the proper exercise of its functions.

⁴³⁴ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016, p. 46. English version available at: <https://undocs.org/en/S/2017/272>

⁴³⁵ Ibid.

⁴³⁶ Without doubt, the debates on the bill will require the discussion of the adoption of measures for ensuring that the election of these circumscriptions are free and without any pressure. In this sense, the debates in Congress must be done from a perspective that recognizes the importance of strengthening basic State services in these parts of the country. Similarly, the Special Transitory Circumscriptions for Peace must be recognized as important for breaking patterns of vulnerability, marginalization and victimization.

VI. ANNEXES

A. Cases opened by the JEP

Pursuant to its mandate, the Judicial Panel for Acknowledgement of Truth⁴³⁷ has opened seven cases. Each case is focused on a widespread and serious crime committed during the conflict or on a specific locality of the Colombian territory that suffered high levels of violence:

Case No. 001⁴³⁸: Illegal retention of persons by the FARC-EP between 1993 and 2012.
Alleged perpetrators: 32 former FARC leaders.

Case No. 002⁴³⁹: Grave human rights situation in the municipalities of Tumaco, Ricaurte and Barbacoas (Department of Nariño) between 1990 and 2016.
Alleged perpetrators: former FARC members and members of the Military Forces.

Case No. 003⁴⁴⁰: Deaths illegitimately presented as casualties in combat by State agents ("False positives").
Alleged perpetrators: 1,910 members of the military forces.

Case No. 004⁴⁴¹: Grave human rights situation in Urabá region between 1986 and 2016.
Alleged perpetrators: former FARC members and members of the military forces.

Case No. 005⁴⁴²: Grave human rights situation in northern Cauca and southern Valle del Cauca between 1993 and 2016.
Alleged perpetrators: former FARC members and members of the military forces.

Case No. 006⁴⁴³: Victimization of members of the Patriotic Union (UP).
Alleged perpetrators: State agents.

Case No. 007⁴⁴⁴: Recruitment and use of children in the armed conflict between 1971 and 2016.
Alleged perpetrators: former FARC members.

B. Sanctions regime and measures of extinction of criminal responsibility before the JEP

All crimes are not given the same legal treatment inside the JEP. On the contrary, the JEP's regulations establish at least three main instruments: grant amnesties or pardons, stay criminal proceedings, and impose sanctions.

⁴³⁷ The Judicial Panel for Acknowledgement of Truth is considered the gateway to the JEP because its function is to decide whether crimes are within the jurisdiction of the JEP. Likewise, before the Panel, those responsible for human rights violations make the first acknowledgement of truth and responsibility, the veracity and completeness of which is evaluated by the Panel. In terms of the Panel's proceedings, see Annex C.1, "Proceedings based on the determination of truth and responsibility", in this report.

⁴³⁸ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 002 of July 4, 2018.

⁴³⁹ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 004 of July 10, 2018.

⁴⁴⁰ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 005 of July 17, 2018.

⁴⁴¹ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 040 of September 11, 2018.

⁴⁴² JEP, Judicial Panel for Acknowledgement of Truth, Ruling 078 of November 8, 2018.

⁴⁴³ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 027 of February 25, 2019.

⁴⁴⁴ JEP, Judicial Panel for Acknowledgement of Truth, Ruling 029 of March 1, 2019.

First, **amnesties and pardons** are for members of the FARC-EP and civilians. They are governed by the principle of granting *the broadest possible amnesty*.⁴⁴⁵ To this effect, it was decided that amnesty would apply not only to political crimes such as rebellion, sedition and attempted coups, but also crimes that were committed in connection with political crimes in the pursuit of rebellion. In that sense crimes such as the illegal use of uniforms and badges, threats, arson, disturbance in collective or official public transport service, and carrying or possession of firearms, are eligible for amnesty.⁴⁴⁶

Second, **stay of criminal proceedings** was designed for State agents since they cannot be eligible for amnesties or pardons.⁴⁴⁷ The aim of this instrument is to guarantee State agents a “differentiated, symmetrical, equitable, balanced, and simultaneous criminal treatment”⁴⁴⁸ (*tratamiento penal especial diferenciado, simétrico, equitativo, equilibrado y simultáneo*) comparable to the criminal treatment applied to civilians and members of the FARC-EP. In general terms, this instrument applies to crimes that do not constitute serious violations of human rights or military crimes. In this regard, article 46 of Law 1820 of 2016 establishes the following:

“[stay of criminal proceedings] does not apply when it comes to:

1. Crimes against humanity, genocide, war crimes, hostage-taking or other serious deprivation of liberty, torture, extrajudicial killings, enforced disappearance, rape and other forms of sexual violence, child abduction, forced displacement, in addition to the recruitment of minors, in accordance with the provisions of the Rome Statute.
2. Crimes that were not committed because of, occasioned by, or in direct or indirect relationship with the armed conflict.
3. Crimes against the service, discipline, interests of the military forces, the honor and security of the military forces, as contemplated in the Military Criminal Code.”⁴⁴⁹

Also worthy of note here is the fact that amnesties and pardons and stay of criminal proceedings share two essential elements. On the one hand, they cannot be granted in cases of serious human rights violations. On the other hand, the main effect of both is to terminate criminal proceedings, and to suspend criminal sanctions and accessory penalties.⁴⁵⁰

Third, **sanctions** are applied in cases where neither amnesty nor stay of criminal proceedings is possible. The sanctions handed down by the JEP are essentially decided based on the acknowledgment of truth and responsibility. There are three kinds of sanctions:⁴⁵¹

1. **Special sanctions** (*Sanciones propias*). These are non-custodial sanctions that are imposed when the person who has submitted to the SIVJNR has made a complete and comprehensive acknowledgement of truth and responsibility. These sanctions have a length of between five to eight years.

⁴⁴⁵ Law 1820 of 2016, article 8 and Law 1957 of 2019, article 40. These, in turn, are based on what is established in article 6.5. of Protocol II Additional to the Geneva Conventions of 1949.

⁴⁴⁶ For crimes eligible for amnesty, see: Law 1820 of 2016, articles 2, 3, 8, 15, 16 and 23. See also Annex D, “Amnesty, pardon, and stay of criminal proceedings”, in this report.

⁴⁴⁷ Law 1820 of 2016, article 9.

⁴⁴⁸ Ibid.

⁴⁴⁹ The concept of a crime against humanity is not defined as a crime in Colombian criminal legislation. However, Colombian High Courts have used the category of a “crime against humanity” to override the statute of limitations in specific cases. See, among others: Colombian Constitutional Court, Judgment C-317 of 2002.

Additionally, the rule on the recruitment of minors established by the Constitutional Court in Judgment C-674 of 2016, should be highlighted. The Court set out that the crimes of recruitment of minors, committed until June 25, 2005, are not eligible for amnesty when the victim was a person under 15. After June 25, 2005, there could be no amnesty when the victim was under 18.

⁴⁵⁰ On the subject, see Annex D, “Amnesty, pardon, and stay of criminal proceedings”, in this report.

⁴⁵¹ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, November 24, 2016, para. 60, 61, 62 and list under Point 5.1.2; Legislative Act 01 of 2017, transitory clause 13 of article 1 and; Law 1957 of 2019, articles 125 et seq.

These sanctions consist of restrictions on freedom of movement and/or residence. They also include participation in programs for: construction and reparation of infrastructure in rural or urban areas; access to drinking water and construction of sanitation systems; effective reparation for displaced *campesinos*; environmental protection in reserve areas; waste disposal in rural areas; improvements to electric connectivity and communications in agricultural areas; substitution of illicit crops; environmental recovery in areas affected by illicit crops; road construction and improvements to be able to bring to market the agricultural products grown to replace illicit crops; and the clearing and eradication of explosive devices from the conflict, such as unexploded ordnance, antipersonnel mines and improvised explosive devices.⁴⁵²

- 2. Alternative sanctions** (*sanciones alternativas*). These are imposed when the person who has submitted to the SIVJNR has made a complete and comprehensive acknowledgement of truth and responsibility, but not at the beginning of the proceedings. In other words, the person made a late acknowledgement of truth and responsibility. When the crimes constitute "very serious infractions," the sanctions have a minimum duration of five years and a maximum duration of eight years. For other criminal acts, the sanctions have a minimum duration of two years and a maximum duration of five years. These sanctions imply effective deprivation of liberty (custodial sentences).
- 3. Ordinary sanctions** (*Sanciones ordinarias*). These are imposed when there is no acknowledgement of truth and responsibility or an acknowledgment is incomplete. The sanctions involve prison time of a minimum of 15 years and a maximum of 20 years, the latter for "very serious infractions".

It should be highlighted that the JEP's ordinary sanctions is different from the sanctions for serious human rights violations defined as crimes under ordinary criminal law. The sanctions of the criminal law system are much stiffer for several crimes, as the following examples demonstrate: genocide, 30 to 40 years of prison time;⁴⁵³ homicide of a person protected under international humanitarian law, 30 to 40 years of prison time; aggravated homicide (through terrorism, or the killing of a public servant, journalist, justice of the peace, union, political or religious leader) 25 to 40 years of prison time;⁴⁵⁴ enforced disappearance, 20 to 30 years of prison time;⁴⁵⁵ kidnapping for ransom, 18 to 28 years of prison time;⁴⁵⁶ acts of terrorism (indiscriminate or excessive attacks or that target the civilian population, retaliations, threats of violence or actions whose main purpose is to terrorize), 15 to 25 years of prison time;⁴⁵⁷ and hostage-taking, 20 to 30 years of prison time.⁴⁵⁸

Given the above, the JEP's ordinary sanctions are controversial. In that regard, it has been argued that one of the key principles of the Final Peace Agreement and its regulations is that perpetrators can only receive JEP's legal benefits on the condition of fully acknowledging the truth and responsibility. Therefore, it is not coherent that those who do not comply with this essential requirement can receive sanctions that are lighter

⁴⁵² Concerning these programs, in Judgment C-080 of 2018, the Constitutional Court established the following conditions: "The special sanctions also have a retributive component, since the restorative project must be executed in compliance with precise conditions concerning time, place of residence, delimitation of territorial spaces and definition of outings in pursuit of other activities derived from compliance with the Final Agreement, including participation in politics." (Free translation)

⁴⁵³ Colombian Criminal Code, article 101.

⁴⁵⁴ Colombian Criminal Code, article 104.

⁴⁵⁵ Colombian Criminal Code, article 165.

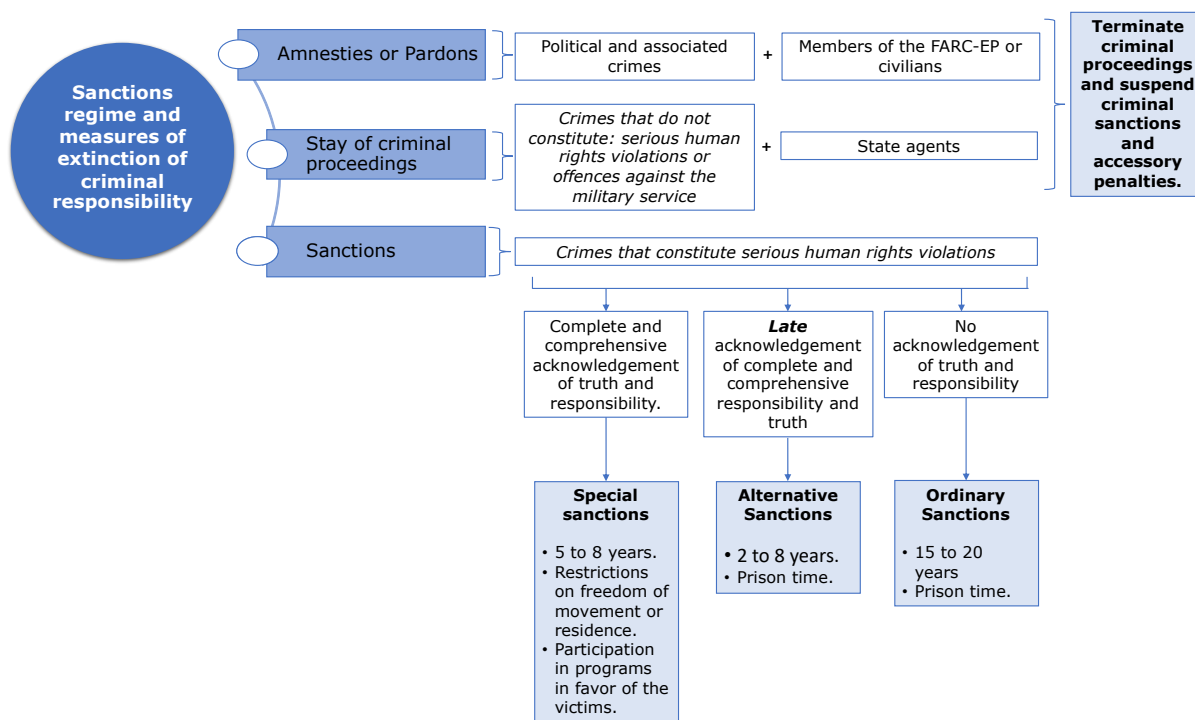
⁴⁵⁶ Colombian Criminal Code, article 169.

⁴⁵⁷ Colombian Criminal Code, article 144.

⁴⁵⁸ Colombian Criminal Code, article 148.

than those of the ordinary criminal justice system. In that sense, it was created benefits for those who do not contribute to the truth and do not admit their responsibility.

Finally, it should be noted that the JEP’s sanctions also apply to persons who have previously been convicted by the ordinary military or criminal courts, if the crimes fall within the JEP’s jurisdiction. In those cases, the JEP’s sanction replaces the earlier sentence. In addition, being sanctioned by the JEP does not prevent those persons convicted to exercise their political rights.⁴⁵⁹



Graph 1. Source: own elaboration.

C. Proceedings before the JEP

To fulfill its functions, the JEP has several proceedings. In particular, there are two kinds of proceedings that should be highlighted: (i) the proceedings based on the determination of truth and responsibility, and (ii) the proceedings for granting release to alleged perpetrators.

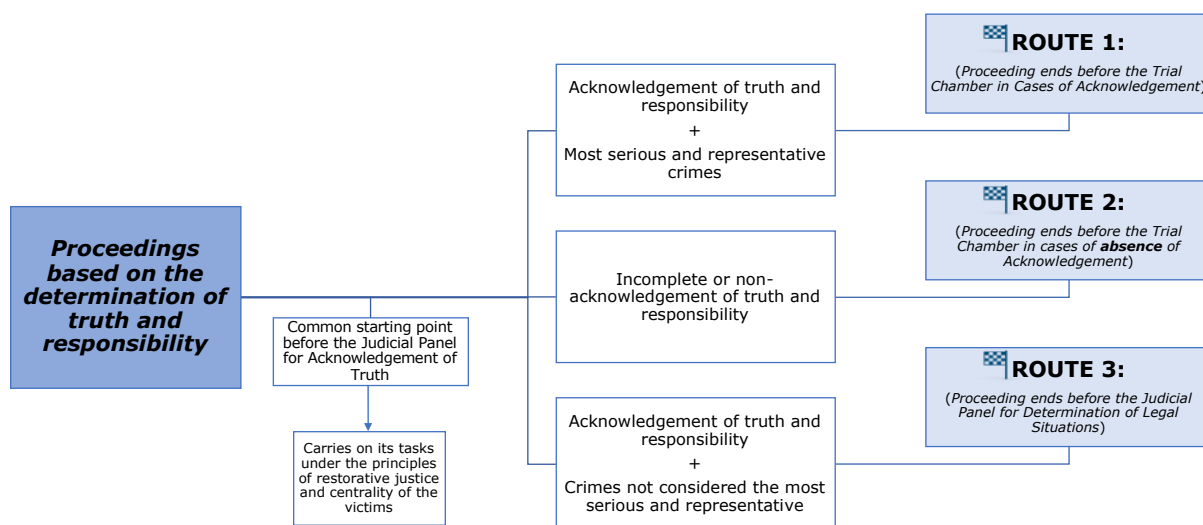
A description of the proceedings mentioned is featured below. The description is made according to the regulations governing the subject and how they have been implemented to date. In this sense, given the recent implementation of the JEP, it is possible that some modifications will be made to the proceedings in the future.

C.1. Proceedings based on the determination of truth and responsibility

These proceedings are used in crimes where neither amnesty nor stay of criminal proceedings is possible. In other words, crimes that constitute serious human rights violations. For these crimes, there are three main proceedings or routes. The proceeding adopted depends on the recognition of truth and responsibility, as well as the nature of the crimes. All proceedings begin in the Judicial Panel for Acknowledgement of Truth, before which, people who submit to the

⁴⁵⁹ Legislative Act 01 of 2017, transitory clause 20 of article 1.

SIVJRR contribute to the truth.⁴⁶⁰ Then, the proceeding can finalize before the Trial Chamber in Cases of Acknowledgement (route one), before the Trial Chamber in Cases of Absence of Acknowledgement (route two), or before the Judicial Panel for Determination of Legal Situations (route three).



Graph 2. Source: own elaboration.

Route one

In the first place, it should be remembered that the Judicial Panel for Acknowledgement of Truth is the gateway to the JEP. The Panel's functions include not only receiving statements for the alleged perpetrators but also evaluating its truthfulness and completeness. To do so, this Panel also **receives reports from state institutions and victims' organizations**⁴⁶¹ on the facts and conducts over the JEP's jurisdiction. Likewise, the Panel receives the judicial case files and the sentences issued by the ordinary justice system that are related to crimes over the JEP's jurisdiction.

Based on the information received, and applying the prioritization criteria, the Judicial Panel for Acknowledgement of Truth decides how to order the cases and situations. This enables the Judicial Panel for Acknowledgement of Truth to open **cases**⁴⁶² on widespread and serious crime committed during the conflict or on a specific locality of the Colombian territory that suffered high levels of violence.⁴⁶³

Within each case, the Panel begins a stage of "recognition of truth, responsibility and determination of facts and actions" (*reconocimiento de verdad, de responsabilidad y*

⁴⁶⁰ Transitory clause 5 of article 1 of Legislative Act 01 of 2017 defines providing the full truth in the following terms: "where it is available, giving an exhaustive and detailed account of actions and the circumstances in which they were committed, as well as necessary and sufficient information to be able to assign responsibilities, and thus ensure that the victims' rights to reparation and guarantees of non-repetition are realized. The duty to provide the truth does not imply the obligation to admit responsibility. Anyone who fraudulently provides false information, or breaches any of the conditions of the System, will lose special legal treatment." (Free translation).

Along the same line, see article 20 of Law 1957 of 2019.

⁴⁶¹ On the reception of reports by victims' organizations, see subsection B.2.1, "Reports by victims' organizations", in Chapter IV.

⁴⁶² For a list of the cases opened by the Panel, see Annex A, "Cases opened by the JEP", in this report.

⁴⁶³ Opening cases as a way to manage the information received is not expressly established in the JEP's regulations. However, legal grounds may be found in the provisions of paragraph t of article 79 of Law 1957 of 2019 that determines that it is the function of the Judicial Panel for Acknowledgement of Truth to "have ample powers to organise its work, form working committees, set priorities, combine similar cases and establish the sequence in which it will address them, as well as to adopt selection and decongestion criteria."

In this regard, see, for example, Ruling 002 of July 4, 2018, through which, the Judicial Panel for Acknowledgement of Truth opened case 001.

determinación de hechos y conductas). To this end, the Panel notifies people allegedly responsible for the crimes of the case (alleged perpetrators of the case) and provides them with the information that serves as the grounds for the case.⁴⁶⁴ The Panel also hands over the information to the Office of the Inspector General.

Simultaneously, the Panel summons the alleged perpetrators to **voluntary statements hearings** so that they may give their account of the facts and crimes of the case.⁴⁶⁵ At these hearings, the alleged perpetrators might: (i) acknowledge the truth; (ii) admit responsibility, which will be considered a confession; (iii) deny the facts or their responsibility; (iv) deny that the facts were related to the conflict; (v) provide documents and; (vi) invoke their right to non-self-incrimination in accordance with criminal law. If it is considered that the information provided is incomplete, the Panel may require an additional statement.

Voluntary statements hearings are carried out based on an agenda previously defined by the Panel. The agenda ensures that during the hearing the individual and collective perspectives of truth are considered. Additionally, since the agenda has been defined ahead of time, the person giving the statement can arrive prepared for the hearing and provide documentation they find pertinent.

In the current design, voluntary statements hearings are closed-door,⁴⁶⁶ with only the summoned person, his lawyer and a representative of the Office of the Inspector General⁴⁶⁷ present. Victims are not allowed to be present for reasons of confidentiality and to prevent their revictimization.⁴⁶⁸ Accredited victims are given recordings of the hearing, so that they can make comments and observations and provide the evidence they consider necessary.

When the alleged perpetrators make an acknowledgement of the truth and responsibility at the hearings, which the Panel considers complete and truthful, the Panel convenes a **public acknowledgement hearing** (*audiencia pública de reconocimiento*). Accredited victims may attend the hearing. Furthermore, within 15 days of the hearing, victims may make their observations and proposals for restorative measures to be carried out by the alleged perpetrators.⁴⁶⁹

At this point, it is important to highlight that the Judicial Panel for Acknowledgement of Truth compares and verifies the information received, as well as the admission of responsibility, during the different stages of the proceeding. In order to do so, the Panel may request information from public and private entities and international organizations. It may also order the examination of evidence.⁴⁷⁰ In addition, victims' accreditation takes place throughout the process.⁴⁷¹

⁴⁶⁴ As this information may include reports submitted by victims' organizations, the Judicial Panel for Acknowledgement of Truth decides on a case-by-case basis if it is necessary to implement measures to protect the information and the victims.

⁴⁶⁵ Law 1922 of 2018, article 27A.

⁴⁶⁶ On this point, it should be noted that recently, in case 003, the Judicial Panel for Acknowledgement of Truth decided to allow the victims and their representatives to attend voluntary statements hearings.

On this subject, see: JEP, *Víctimas podrán participar en versiones de la Sala de Reconocimiento de la JEP*, June 6, 2019. Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/V%C3%ADctimas-podr%C3%A1n-participar-en-versiones-de-la-Sala-de-Reconocimiento-de-la-JEP.aspx>

⁴⁶⁷ According to article 277 of the Colombian Constitution, the Office of the Inspector General has, among others, the following functions (i) "protect human rights and ensure their effectiveness" and (ii) "intervene in legal proceedings before the judicial or administrative authorities when it becomes necessary to defend the legal order, public assets, or fundamental rights and guarantees".

In addition, transitory clause 12 of article 1 of Legislative Act 1 of 2017 determines that the Office of the Inspector General is in charge of "the defense of the fundamental rights of victims in the proceedings before the Special Jurisdiction for Peace." (Free translation).

⁴⁶⁸ On this subject, see: JEP, *avanza proceso de acreditación de víctimas en el caso 001*.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Avanza-proceso-de-acreditaci%C3%B3n-de-v%C3%ADctimas-en-el-caso-001-.aspx>

⁴⁶⁹ Law 1922 of 2018, article 27D.

⁴⁷⁰ JEP. Judicial Panel for Acknowledgement of Truth, Ruling 27 of February 26, 2019, through which it asks for examination in Case 006.

⁴⁷¹ On this subject, see: JEP, *avanza proceso de acreditación de víctimas en el caso 001*.

After the public hearings stage, the Judicial Panel for Acknowledgement of Truth presents concluding resolutions (*resoluciones de conclusiones*) to the Trial Chamber in cases of Acknowledgement. In these resolutions, the Panel specifies (i) the most serious and representative crimes, (ii) the individuals responsible, (iii) the definition of the conducts according to criminal law and, (iv) the proposal for a reparative sanction that contemplates the restorative measures to be undertaken by the persons whose responsibility has been established in the resolutions.⁴⁷²

In this sense, it is the Trial Chamber in cases of Acknowledgement and not the Judicial Panel for Acknowledgement of Truth, which imposes sanctions to persons whose responsibility has been established in the resolutions. To this end, the Chamber verifies the information in each resolution and imposes the appropriate sanctions. The Chamber will hand down non-custodial sanctions of up to eight years (the JEP's special sanctions).⁴⁷³

Additionally, it should also be noted that the Judicial Panel for Acknowledgement of Truth must ensure that the proceeding is undertaken in the light of the principles of restorative justice and centrality of the victims. This implies the Panel's duty to "promote the dialogic construction of the truth between the parties and other people who intervene in the proceeding, to achieve harmonization, and individual, collective, and territorial healing".⁴⁷⁴

Route two and three

Not all the facts and allegations that the Judicial Panel for Acknowledgement of Truth investigates will be included in the concluding resolutions. Indeed, since the Panel's mandate is to focus on the most serious and representative allegations⁴⁷⁵, and it also is possible that the alleged perpetrators might not acknowledge responsibility or their Acknowledgement is incomplete, two other proceedings or routes were designed to cover these situations.

On the one hand, when the Panel considers it appropriate, it may refer a case to the Investigation and Prosecution Unit. The referral happens when the Panel determines that the acknowledgement of truth and responsibility was not complete or if the person does not admit responsibility. Once the Unit receives the case, it decides whether to begin trial proceedings before the Trial Chamber in Cases of Absence of acknowledgement.⁴⁷⁶ If the person is found guilty, the Chamber will hand down sanctions of up to 20 years (the JEP's alternative and ordinary sanctions).⁴⁷⁷

On the other hand, the Judicial Panel for Acknowledgement of Truth may refer cases to the Judicial Panel for Determination of Legal Situations. The referral happens when a person has acknowledged their responsibility, but they will not be included in the concluding resolutions, since the Judicial Panel for Acknowledgement of Truth determined that their conduct was not the most serious and representative.⁴⁷⁸ In these cases, the Judicial Panel for Determination of Legal Situations will resolve their legal situation.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Avanza-proceso-de-acreditaci%C3%B3n-de-v%C3%ADctimas-en-el-caso-001-.aspx>

⁴⁷² Law 1957 of 2019, article 79 (m).

⁴⁷³ On this subject, see Annex B, "Sanctions regime and measures of extinction of criminal responsibility before the JEP", in this report.

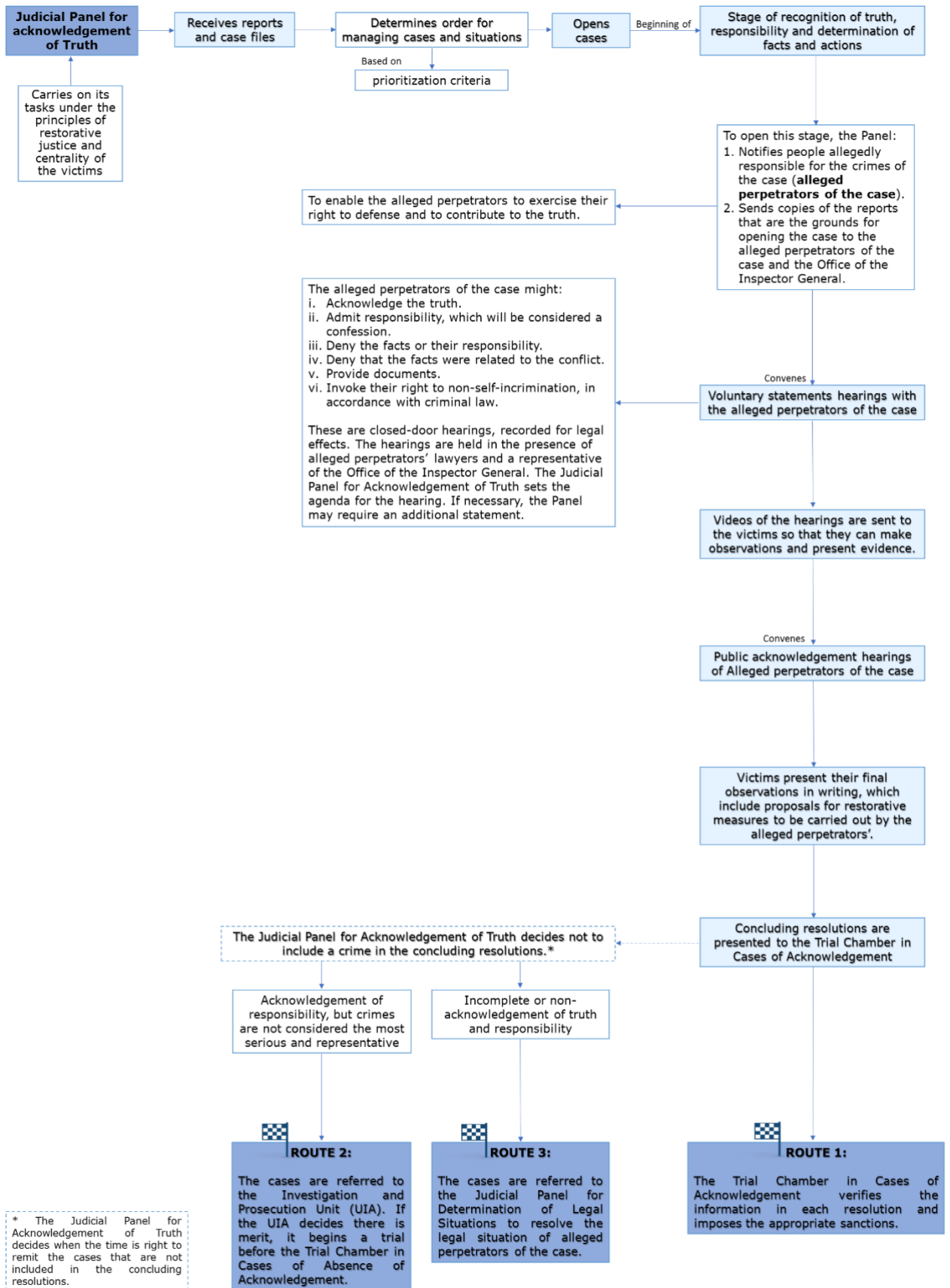
⁴⁷⁴ Law 1922 of 2018, article 27. (Free translation.)

⁴⁷⁵ Law 1957 of 2019, article 79 (o).

⁴⁷⁶ Law 1957 of 2019, letters (n), (q), (r) and (s) of article 79 and article 80.

⁴⁷⁷ On this subject, see Annex B, "Sanctions regime and measures of extinction of criminal responsibility before the JEP", in this report.

⁴⁷⁸ Law 1957 of 2019, article 79 (o). Law 1957 of 2019, article 79 (p).



Graph 3. Source: own elaboration.

C.2. Proceedings for granting release to alleged perpetrators

In consideration that some people who submit to the JEP were imprisoned - due to they were being investigated or convicted by the ordinary justice system or military courts - the JEP's regulations established special proceedings for granting their release⁴⁷⁹. These proceedings are independent of the proceedings to determine the truth and responsibility. They have different times and stages. The aim of the proceedings for granting release is to grant provisional benefits to alleged perpetrators until their legal status is defined definitively.

There are two types of release:

- 1. Conditional release from custody (*Libertad condicionada*):** it is a type of release designed for former FARC-EP's combatants, civilians and state agents who are not members of the Military Forces. It applies to:
 - i. Persons imprisoned for crimes that are not eligible for amnesty and pardon, and who have been imprisoned for at least five years for those crimes.
 - ii. Persons imprisoned for crimes eligible for amnesty and pardon.

- 2. Provisional, conditional, and early release from custody (*Libertad transitoria, condicionada y anticipada*):** it is a type of release designed for members of the military forces. It applies to:
 - i. Persons imprisoned for crimes that are not eligible for a stay of criminal proceedings, and who have been imprisoned for at least five years for those crimes.
 - ii. Persons imprisoned for crimes eligible for a stay of criminal proceedings.

Additionally, members of the military forces who do not meet the conditions for provisional, conditional, and early release from custody may ask to be transferred and held in a military or police facility, provided that they express their intention to submit to the JEP.

Depending on the person requesting the benefit, either the Judicial Panel for Determination of Legal Situations or the Judicial Panel for Amnesty or Pardon will be in charge of the case.⁴⁸⁰ To determine the eligibility of granting the release, the respective Panel must initiate a proceeding to verify compliance with the requirements. In all cases, the person is required to sign a minutes of submission (*acta de sometimiento*) to receive the benefit.⁴⁸¹ The contents of the minutes are established in article 36 of Law 1820 of 2016 in the following terms⁴⁸²:

"The minutes of submission signed by the person being released shall contain the commitment to submit and be available to the Special Jurisdiction for Peace, the obligation to report any change of residence to the Special Jurisdiction for Peace and not leave the country without prior authorization from the Special Jurisdiction for Peace". (emphasis added)

It should be stressed that although it is not explicitly stated in the regulations, the signature of a minute of submission entails the duty to contribute to the satisfaction of the victims' rights. Indeed, one of the central elements of the JEP and the SIVJRN is that the legal benefits offered

⁴⁷⁹ Law 1820 of 2016, articles 34 et seq.

⁴⁸⁰ In this regard, see section B.1, "JEP's Structure", in Chapter IV, "National Framework", in this report.

⁴⁸¹ Law 1820 of 2016, articles 35, 36 and 52.

⁴⁸² Free translation.

are conditional. Specifically, it is not possible to obtain and maintain the JEP's legal benefits without undertaking actions that guarantee victims' rights and contribute to national reconciliation.⁴⁸³ On this point, the Constitutional Court has stressed that the minutes of submission are:

"(...) a relevant instrument in the formalization of the intention to submit to the Special Jurisdiction for Peace, with the consequences that this implies, that is, principally and from the perspective of victims and society, to assume the commitments established as conditions for receiving [the JEP's legal] benefits (...) the signing of the minutes to grant the benefits of Law 1820 of 2016 presupposes, from the beginning, being subject to commitments that determine their granting, as well as being subject to the satisfaction of the rights of the victims and society."⁴⁸⁴ (emphasis added)

In spite of the above, the signature of the minutes of submission does not imply that specific actions in favor of victims' rights have to be carried on before receiving the conditional release from custody or the provisional, conditional, and early release from custody. This is because to be released, it is not necessary that the person has already provided truth and acknowledged their responsibility. As already noted, that happens during other proceedings: the proceedings for the determination of truth and responsibility.

Finally, it is also important to mention that the content and verification of the commitments made, as well as, victims' participation in these proceedings, have not been consistent. For instance, while some of the alleged perpetrators have been required to provide a great deal of detail regarding the commitments they make (a contribution program),⁴⁸⁵ others have only been required to sign a generic commitment to contribute to victims' rights.⁴⁸⁶

C.2.1. Case law on proceedings for granting release to alleged perpetrators

Recently, the JEP's Appeals Chamber, acting as a chamber of last resort, established several rules that affect the proceedings for granting temporary legal benefits, including the proceedings for granting release.

First, although it is not a *sine qua non* requirement to receive benefits,⁴⁸⁷ the Appeals Chamber determined that the Judicial Panels are authorized to require a plan to contribute to the truth, reparation and non-repetition,⁴⁸⁸ that is, a clear and concrete plan with a timeline on how the person will contribute to satisfying victims' rights.⁴⁸⁹ The plan must contain elements that will enable it to be enforceable later in the proceedings where the person's legal situation is defined definitively.⁴⁹⁰

The discretionary authority to require a plan has one exception: people who can submit to the JEP voluntarily and face criminal charges before the ordinary justice system. Under this

⁴⁸³ Constitutional Court, Judgment C-007 of 2018.

⁴⁸⁴ Ibid. (Free translation)

⁴⁸⁵ That was the case of former congressman David Char Navas. On this subject, see: JEP, *Por su compromiso con la verdad, JEP acepta sometimiento de David Char Navas*, April 20, 2019.

Spanish version available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Por-su-compromiso-con-la-verdad,-JEP-acepta-sometimiento-de-David-Char-Navas.aspx>

⁴⁸⁶ This was the case of General Montoya Uribe analysed previously. In this regard, see section B.2.3, "Case studies", in Chapter IV, "National Framework", in this report.

⁴⁸⁷ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, paras. 298 to 300.

⁴⁸⁸ JEP, Appeals Chamber, TP-SA 019 of August 21, 2018.

⁴⁸⁹ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, paras. 282 to 300.

⁴⁹⁰ Ibid. para. 174.

circumstance, the presentation of the plan is mandatory in order to receive temporary benefits.⁴⁹¹

Second, the Appeals Chamber has also determined that the Judicial Panel for Determination of Legal Situations can decide if it conducts a preliminary evaluation of the proposed plan, in matters within its competence.⁴⁹² In these cases, victims and the Office of the Inspector General are authorized to present their observations.⁴⁹³ When victims or the Office of the Inspector General do not agree with the proposed commitments, the Panel must inform the alleged perpetrator of this fact in order to decide whether to reformulate their commitments.⁴⁹⁴

Finally, the Appeals Chamber has clarified victims' faculties in the proceedings for granting release to alleged perpetrators.⁴⁹⁵ In its case law, it has established that victims may participate from the moment the corresponding Panel opens the proceeding.⁴⁹⁶ This participation is limited to the presentation of petitions and written memoranda in relation to (i) the Panel's decision to open the proceeding, (ii) the JEP's authority to grant release as a provisional benefit and, (iii) the Panel's decision on granting release.⁴⁹⁷ In addition, when it is not possible to notify some victims about the case, they are represented, *ex officio*, by the Office of the Inspector General, the JEP's Autonomous System for Legal Advice and Defense, and exceptionally, by civil society organizations.⁴⁹⁸

D. Amnesty, pardon, and stay of criminal proceedings

The Final Peace Agreement,⁴⁹⁹ Legislative Act 01 of 2017, and Law 1820 of 2016, established provisions on amnesty and pardon for FARC-EP's members and civilians. For state agents, the regulations established the provision to stay of criminal proceedings. The consequences and legal effects of each measure are as follows:

Measure	Legal consequences and effects
Amnesty and pardon	<ul style="list-style-type: none"> • Terminate criminal proceedings and suspend criminal sanctions and accessory penalties. • Remove the legal obligation to provide compensation for the crime. • Terminate legal actions to ask for compensation. • Do not affect asset forfeiture proceedings to expropriate illegally acquired assets. • Do not exempt the perpetrator from the duty to contribute, individually or collectively, to the clarification of the truth. • The decision becomes <i>res judicata</i> and may only be reviewed by the Tribunal for Peace.
Stay of criminal proceedings	<ul style="list-style-type: none"> • Terminates criminal proceedings and sanctions, as well as proceedings to ask for compensation for damages deriving from the punishable conduct.

⁴⁹¹ Ibid. para. 303.

⁴⁹² Ibid. para. 239 and 287.

⁴⁹³ Ibid. para. 174, 210 and 239.

⁴⁹⁴ Ibid. para. 210.

⁴⁹⁵ This jurisprudential development was necessary because the different laws that regulate this subject are contradictory and some did not allow victims to participate until after the decision was adopted by the respective Panel.

⁴⁹⁶ Law 1922 of 2018, article 48. Similarly, see: JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para, 99; and Judgment C-007 of 2018 of the Constitutional Court.

⁴⁹⁷ JEP, Appeals Chamber, Interpretive Judgment of April 3, 2019, TP-SA-SENIT 1 of 2019, para. 100.

⁴⁹⁸ Ibid. para. 102.

⁴⁹⁹ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace, point 5.1.2, and Annex: Law on amnesty, pardons and special criminal treatment, in the same Agreement.

	<ul style="list-style-type: none"> • Annuls or terminates disciplinary, administrative, or fiscal proceedings and sanctions. • Prevent new charges from being brought for the allegation. • Removes the legal obligation to provide compensation for the crime. • Criminal records are expunged from the databases. • Terminates legal actions to ask for compensation. • Does not exempt the perpetrator from the duty to contribute, individually or collectively, to the clarification of the truth. • The decision becomes <i>res judicata</i> and may only be reviewed by the Tribunal for Peace.
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Additionally, the legislation contains the list of crimes to which these measures apply and the crimes that are not eligible:

D.1. Eligibility for amnesty or pardon

Factor	Final Peace Agreement	Law 1820 of 2016	Law 1957 of 2019
Subject-matter	<ul style="list-style-type: none"> • Political crimes (rebellion, sedition and attempted coups). • Crimes related to political crimes committed in pursuit of the rebellion. • Peaceful protests, the defense of human rights, and leading civil society groups. 	<ul style="list-style-type: none"> • Political crimes in which the victim was the State and the constitutional regime, and that were not perpetrated for personal gain. • Crimes in connection with political crimes, when specifically associated with pursuit of rebellion and that were committed during the armed conflict, or were meant to facilitate, support, finance or conceal the rebellion, and were not perpetrated for personal gain or for a third party's benefit. • Other crimes in connection with political crimes, according to the criteria for association established by law. • Actions committed in the context of public disturbances or the exercise of social protest. 	<ul style="list-style-type: none"> • Political crimes and associated crimes.
Personal	<ul style="list-style-type: none"> • Rebels from organizations that have signed a final peace agreement, 	<ul style="list-style-type: none"> • Members of an armed rebel group that has signed a peace agreement. 	<ul style="list-style-type: none"> • Members of an organization that has signed a peace agreement.

	<p>whose names are on a verified list previously provided by the rebel group.</p> <ul style="list-style-type: none"> • Persons who have been accused or convicted of political or associated crimes. 	<ul style="list-style-type: none"> • Members of the FARC-EP, included in the group's list of members, and who have been verified, whether or not these persons have been investigated, prosecuted or convicted for belonging to the FARC-EP. • Citizens and foreigners who were members or collaborated with the FARC-EP, and have been investigated, prosecuted or convicted, as perpetrators or participants in crimes or attempted crimes. • Persons convicted of political or associated crimes, when the conviction indicated that the person belonged to the FARC-EP. • Persons who have been investigated, prosecuted or convicted of political and associated crimes, when it can be deduced from the judicial, fiscal and disciplinary investigations, or from judicial orders, or other evidence, that they were investigated or prosecuted because of alleged membership or collaboration with the FARC-EP. • Persons who have been criminally prosecuted for the crimes of: personal injury resulting in less than 30 days of medical leave; damage to private property; disturbance in collective or official public transport service; obstruction to roads affecting public order; firing a weapon; use or release of dangerous objects or substances; violence against 	<ul style="list-style-type: none"> • Persons formally accused or convicted of political or associated crimes.
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		<p>public servants; disruption of official acts and attempted coups.</p> <p>It is also necessary that the crimes were committed in relation to the exercise of the right to protest or internal disturbances.</p> <ul style="list-style-type: none"> • Persons prosecuted or convicted of political or associated crimes who are accused of belonging to or collaborating with the FARC-EP, without having been recognized as members of the FARC-EP. 	
Temporal		<ul style="list-style-type: none"> • Crimes committed before the Final Peace Agreement entered into force and during the process of laying down arms. 	

D.2. Eligibility for stay of criminal proceedings and other mechanisms for State agents

Factor	Final Peace Agreement	Law 1820 of 2016	Law 1957 of 2019
Subject-matter	<ul style="list-style-type: none"> • Punishable conduct committed within the context and during the internal armed conflict and without the aim of personal gain, or in the event of such gain, without this being the main motive for the criminal conduct. 	<ul style="list-style-type: none"> • Punishable conduct resulting from, occasioned by or in direct or indirect relationship with the armed conflict. 	<ul style="list-style-type: none"> • Punishable conduct resulting from, occasioned by or in direct or indirect relationship with the armed conflict.

D.3. Crimes not eligible for amnesty or pardon and special regime for State agents

Topic	Final Peace Agreement	Law 1820 of 2016	Law 1957 of 2019
Excluded from amnesty and pardons	<ul style="list-style-type: none"> • Serious violations of international humanitarian law and war crimes. This is any violation of 	<ul style="list-style-type: none"> • Crimes against humanity. • Genocide. • War crimes. 	<ul style="list-style-type: none"> • Crimes against humanity. • Genocide. • War crimes.

(Guerrillas and civilians)	<p>international humanitarian law committed systematically or as part of a plan or policy.</p> <ul style="list-style-type: none"> • Crimes against humanity. • Genocide. • Hostage-taking and other serious deprivations of liberty. • Torture. • Extrajudicial executions. • Enforced disappearance. • Rape and other forms of sexual violence. • Child abduction. • Forced displacement. • Recruitment of minors.⁵⁰⁰ • Ordinary crimes not related to rebellion. • Financing or collaborating with paramilitary groups, or with any actor in the conflict, when they were not the result of coercion. This refers to people who actively or decisively participated in committing crimes falling within the sphere of competence of the JEP, unless they were previously convicted by the justice system for those same actions. 	<ul style="list-style-type: none"> • Hostage-taking and other serious deprivations of liberty. • Torture. • Extrajudicial executions. • Enforced disappearance. • Rape and other forms of sexual violence. • Child abduction. • Forced displacement. • Recruitment of minors. • Crimes committed with ferocity, barbarism or other equivalent, when they have been defined as such in the conviction. • Ordinary crimes not related to rebellion. 	<ul style="list-style-type: none"> • Hostage-taking and other serious deprivations of liberty. • Torture. • Extrajudicial executions. • Enforced disappearance. • Rape and other forms of sexual violence. • Child abduction. • Forced displacement. • Recruitment of minors. • Crimes committed with ferocity, barbarism or other equivalent, when so they have been defined as such in the conviction. • Ordinary crimes not related to rebellion.
Excluded from waiver of criminal prosecution and other mechanisms	<ul style="list-style-type: none"> • War crimes. • Crimes against humanity. • Genocide. • Hostage-taking and other serious deprivations of liberty. • Torture. 	<ul style="list-style-type: none"> • Crimes against humanity. • Genocide. • War crimes. • Hostage-taking and other serious deprivations of liberty. • Torture. 	<ul style="list-style-type: none"> • Crimes against humanity. • Genocide. • War crimes. • Hostage-taking and other serious deprivations of liberty.

⁵⁰⁰ The Constitutional Court in Judgment C-674 of 2016 established that the crimes of recruitment of minors, committed until June 25, 2005, are not eligible for amnesty when the victim was a person under 15. After June 25, 2005, there could be no amnesty when the victim was under 18.

(State agents)	<ul style="list-style-type: none"> • Extrajudicial executions. • Enforced disappearance. • Rape and other forms of sexual violence. • Child abduction. • Forced displacement. • Recruitment of minors. 	<ul style="list-style-type: none"> • Extrajudicial executions. • Enforced disappearance. • Rape and other forms of sexual violence. • Child abduction. • Forced displacement. • Recruitment of minors. • Crimes that were not committed because of, occasioned by, or in direct or indirect relationship with the armed conflict. • Crimes against the service, discipline, interests of the Military Forces, the honor and security of the Military Forces, as contemplated in the Military Criminal Code. 	<ul style="list-style-type: none"> • Torture. • Extrajudicial executions. • Enforced disappearance. • Rape and other forms of sexual violence. • Child abduction. • Forced displacement. • Recruitment of minors. • Crimes that were not committed because of, occasioned by, or in direct or indirect relationship with the armed conflict. • Crimes against the service, discipline, interests of the Military Forces, the honor and security of the Military Forces, as contemplated in the Military Criminal Code.
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E. Functions and interrelationship between the components of the SIVJNR

Entity	Law	Subject matter
UBPD and CEV	Law 1820 of 2016	<ul style="list-style-type: none"> • The JEP may require those who apply for JEP's benefits to appear before the UBPD and/or the CEV (articles 14, 31, 35 and 50). • Loss of JEP's benefits for those who have applied, or who have obtained benefits, if they refuse "repeatedly and unjustifiably" to go before the UBPD and are required to do so at the request of the Tribunal for Peace (articles 31, 35 and 50).
UBPD	Decree 589 of 2017	<ul style="list-style-type: none"> • The UBPD's humanitarian work does not replace or preclude investigations by the JEP (article 3). • The UBPD's personnel is not required to testify in judicial proceedings and are exempt from the obligation to report crimes discovered through work performed for the UBPD (article 19). • The JEP may request statements from: (i) the UBPD's experts who have produced the forensic technical reports, in order to give their expert opinion and; (ii) the UBPD's personnel who have participated in the collection of material evidence pertaining to a body (article 19).

		<ul style="list-style-type: none"> • The UBPD must submit the technical-forensic reports requested by the JEP (article 5). • The UBPD shall transmit to the JEP, the elements associated with the body as part of the evidence (articles 3 and 10). • Information collected by the UBPD may not be used in order to attribute responsibility in legal proceedings, nor may it be used as evidence (article 3). • The UBPD may ask “the Revision of Sentences Chamber to grant legal authorization to enter places of residence or domicile (...) in cases where there is no express consent from the owner or the holder of the asset, or by whomsoever has an interest as one who is affected by the procedure (...)”⁵⁰¹(article 9). • The UBPD is authorized to establish “the necessary cooperation protocols with the corresponding judicial authorities,”⁵⁰² which includes the JEP (article 5).
CEV	Decree 588 of 2017	<ul style="list-style-type: none"> • The CEV must “inform the JEP about the participation in the CEV by persons subject to the JEP’s jurisdiction”⁵⁰³ (article 13). • Information collected or produced by the CEV may not be used for the purpose of attributing responsibility in legal proceedings, may not be used as evidence, may not be transferred to judicial authorities, and they may not request it (article 4).

⁵⁰¹ Free translation.

⁵⁰² Free translation.

⁵⁰³ Free translation.

Commission Members

March 2019 (for an updated list, please visit www.icj.org/commission)

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Vice-Presidents:

Prof. Carlos Ayala, Venezuela

Justice Radmila Dragicevic-Dicic, Serbia

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Prof. Rodrigo Uprimny Yepes, Colombia



**International
Commission
of Jurists**

P.O. Box 91
Rue des Bains 33
CH 1211 Geneva 8
Switzerland

t +41 22 979 38 00

f +41 22 979 38 01

www.icj.org