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The Special Jurisdiction for Peace Hearings for the Acknowledgement *of Responsibility*

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Notwithstanding more profound theoretical considerations, restorative justice can be defined as an attempt at conflict resolution through comprehensive justice with a community-based reparative process that involves the community, the perpetrator, and the victim. This approach to conflict resolution differs from the traditional one (known as retributive justice). Usually, it occurs through dialogue, actions, and instances, which aim to restore the relations gravely damaged by the conflict.³

The incorporation of restorative justice practices in the prosecution and sanctioning of the most serious international crimes committed during the Colombian armed conflict was one of the most innovative aspects of the negotiation that led to the Final Peace Agreement in 2016.⁴ In this respect, those who contribute with the whole truth and reparation will be sentenced with restorative sanctions that promote social and political reintegration, with significant participation of the communities most affected.

More than two decades of discussions surrounding transitional justice in Colombia led to the establishment of the Special Jurisdiction for Peace (SJP) (Jurisdicción Especial para la Paz, JEP in English). This model draws lessons from the previous transitional justice mechanism designed to deal with paramilitary groups, called the “Justice and Peace Process”.⁵ Among lessons learnt, it is worth highlighting the various challenges associated with the interaction between perpetrators and victims, which often occurred without sufficient level of preparation, as well as other challenges related to the process of reparation for the mass atrocities that occurred.

Next, I would like to reflect on some of the main developments in restorative justice associated with the steps that preceded and accompanied the acknowledgement hearings held until 2022.⁶

¹ I would like to thank Melanie Haeri for her support in the English version of this document.

² Magistrate of the Chamber for the Acknowledgment of Truth, Responsibility, and Determination of Facts and Conducts of the Special Jurisdiction for Peace. In the first part of this document (intro and section 1), I took some ideas from Parra Vera (2022).

³ Cunneen and Hoyle (2010).

⁴ Parra (2022); Sarkin and Pereira (2023).

⁵ Orozco (2023).

⁶ Special Jurisdiction for Peace - SJP (2022); Special Jurisdiction for Peace - SJP (2022); Special Jurisdiction for Peace - SJP (2022).

1. The Acknowledgement Hearings and Victim Participation in Macro-cases.

Following a restorative approach, the Chamber of Acknowledgement of the SJP has promoted various steps to encourage victim participation.

First, the Chamber gathered reports from institutions and civil society, many of which were delivered during the hearings. During these hearings, victims were heard publicly for the first time, as they had not been heard in the ordinary justice system.

Second, these reports were used as tools (from the victims' perspective) to prioritise macro cases.

Third, it has been established that, in some cases, accreditation can be used as a procedural means for participation in macro cases. Additionally, a broad interpretation of accreditation has been made to include the “territory of the conflict” as a victim of international crimes committed.

Fourth, the reports are also transferred to the perpetrators so that they can provide their voluntary version of the violence that occurred. This allowed SJP magistrates to inquire when exactly the participant became involved in the commission of the violent acts. For example, in cases such as extrajudicial executions, known as “false positives”,⁷ these interviews made it possible to understand the circumstances in which some soldiers who had spent years in the military decided to get involved in the commission of murders within the context of this illegal phenomenon.

Fifth, the Chamber has received feedback from victims, often in public hearings, about what has been positive and lacking in the militaries’ voluntary statements. The victims expressed their opinions on what they believed could be improved after listening to the various voices of the actors participating in the process.

Sixth, the Chamber issues orders for the determination of facts and conduct, gathering patterns around what it has determined, specifying the macro damages and collective damages suffered, and charging the ‘most responsible’ for organized crime. The Chamber then follows a journey with the victims on one hand and, in a parallel but separate form, with the perpetrators.

Seventh, when the parties have taken restorative steps and recognised the charges ordered by the Chamber and the damages caused, the Chamber organises public hearings of acknowledgement of responsibility, where a restorative dialogue, a dialogic encounter, is promoted between victims and the participants.

Finally, as **the eighth step**, the Chamber issues final resolutions that recommend restorative projects, which the victims endorse. These may be taken into account when selecting the restorative sanctions that will be imposed on the most responsible perpetrators.

In the first four years of operation, the Chamber of Acknowledgment has prioritised seven macro-cases that analyse thousands of atrocities related to patterns of violence committed during the Colombian armed conflict. This has included cases on kidnappings (Case 01, approximately 21,396 crimes, 2,600 recognised victims, 9,000 former FARC members under investigation); recruitment of children (Case 07, approximately 18,677 crimes); extrajudicial executions (Case 03, approximately 6,402 crimes, 2,500 military officials processed, almost 1,000 recognised victims and over 1,000 judicial processes under the ordinary justice

⁷ Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición (2022).

system); and the victimisation of the political party Unión Patriótica [Patriotic Union] (Case 06). The Chamber has also prioritised three cases focusing on territorial conflict dynamics in specific areas, recognising over 200,000 victims (Case 02 – Tumaco, Ricaurte, Barbacoas; Case 04 – Urabá; and Case 05 – Cauca /Valle).

A specific challenge arose concerning the participation of victims in the selected macro-cases: Is it possible to design victim participation similarly to that in ordinary judicial proceedings, which is conceived primarily for individual cases? What differences could be established in this regard? Should victim participation be identical in all the macro-cases, or could differences be justified based on the principle of non-comparability?

The debates surrounding participation in these macro cases address different scenarios that involve not only victims. There are also challenges regarding the involvement of the organisations that legally represent victims, the attorneys that defend the perpetrators, the inclusion of the perspective of the victims, the communities involved and victimised, the public officials and judges participating; the instances of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition; and the participation of society in general. From the above, four questions arise: 1) Who participates? 2) How do they participate? 3) When do they participate? 4) And, finally, what is the purpose of their participation?

2. The first acknowledgement hearings in 2022

Between 2021 and 2022, more than 50 military personnel, including two Generals and several Colonels, as well as seven former members of the Secretariat of the FARC, acknowledged their responsibility for crimes against humanity and war crimes charged by the Chamber of Acknowledgement of the SJP. Some admitted in public hearings that this happened after several years of encounters with their victims and recognition of the damage suffered by families and communities. These acknowledgements have been an essential achievement of the SJP to promote public dialogue around the atrocities committed.

General Paulino Coronado expressed the following:

“I express my feelings of apology for the great pain caused by the terrible acts committed (...), which led to the death of innocent people who were presented as combatants, leaving deep desolation among their loved ones, to whom I offer my absolute willingness to contribute to the clarification of the truth, as a means of redress” (JEP, 2021d).

A retired Major stated the following:

“I take responsibility for having contributed to the armed conflict instead of [sic] peace, as my duty as a public servant and a citizen demanded of me. I ASK FORGIVENESS to each citizen who was a victim of my actions, whom I recognize as dignified persons and subjects whose rights were violated. I commit to repairing them by providing the complete truth known to me about these murders.” (JEP, 2021d).

A dialogue process was initiated to prepare the public hearings of acknowledgement using these acknowledgements of responsibility initially presented in writing. Immediately, several challenges arose: How should these encounters be staged in order to involve society in these restorative encounters? How do we answer these questions regarding thousands of facts grouped in macro-cases with hundreds of former perpetrators and thousands of victims participating? How can these hearings provide a sense of justice in specific territories? At this point, it is worth noting that the SJP, in preparation for the hearings, referred to the most important international and comparative developments, particularly to the recent report of the United Nations Special Rapporteur on Transitional Justice, a report focused on the topic of public apologies.⁸ Hearings before the Inter-American Court of Human Rights also constitute another important contribution.⁹

The SRVR¹⁰ specified that the expected acknowledgement in these hearings had to be factual, legal, and restorative. The factual dimension of acknowledgement concerns the detailed contributions about the events they have participated in. The latter implies recognising the characteristics of such participation, the role played in the criminal organisation, and the contribution to realizing the criminal plan.¹¹ **The legal dimension of acknowledgement refers to recognizing the non-estimable nature of the crimes committed and accepting the mode of commission.** Recognizing that the so-called “false positives” were crimes against humanity is of exceptional value at this point because it emphasizes the systematic and widespread nature of the crimes. Finally, **the restorative dimension** demands that, from a transitional justice perspective, the participants assume their responsibility for the seriousness of the conduct committed, refrain from justifying them (which differs from explaining the context in which they occurred), recognize the damage caused, and express the desire to compensate and not to repeat the serious crimes committed.

The SRVR then supported a performance staging where emotions, places, symbols, and narratives acquire a significant role, as previously happened in other arenas.¹² Recent literature highlights the essential role of “spaces” in restorative justice. In the text “Restorative Spaces”, authors David Tait and Munzer Emad discuss how to give courts a “restorative” structure to become listening spaces within different judicial systems. They start from the premise that the space and its arrangement affect how the participants experience the process because they provide messages about the nature of justice and the authority of the State in the processes that take place.¹³ Thus, the spaces speak about the relationship

⁸ Salvioli (2019); McEvoy, Bryson and Placzek (2019).

⁹ An analysis of the restorative impact of these hearings can be seen in Beristain (2009).

¹⁰ In Spanish: Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas (SRVR) – JEP’s Acknowledgment Chamber in English.

¹¹ This contributes to the revelation of the truth about the circumstances of when, how, and where the participation occurred and the way in which the murders and forced disappearances were committed, their planning, and the way in which they were falsely presented as operational results.

¹² See the studies that have analyzed the Nuremberg Trials, or Claudia Hilb’s studies on the Trial of the Juntas of the Military Dictatorship in Argentina (Hilb, 2015).

¹³ Tait & Emad (2021) build upon criminologist Ervin Goffman’s work on communication and possible gestures of acknowledgement. Goffman also talks about how the behaviour of the participants and the way in which they handle the space is a sample of how they perceive and are affected by it. The authors also cite existing

between the State, judges, and justice, the State's history, or the role and importance of each person in the proceedings.

Consequently, for the SRVR, it was important to transform the adversarial space, a contentious and asymmetrical fight developed previously before the ordinary jurisdiction. Transitional justice aims to **construct a place** for a face-to-face **restorative dialogue**. This makes it important to assess where the victims will be located, when the victims enter, when the magistracy does, and what place the judicial authority occupies (inside or outside the circle). In short, how "**the third-party roles of the judge**" are concretised in these "spaces" becomes especially valuable.

It should be noted that to organize the first three acknowledgement hearings, several of the JSP's internal dependencies participated during the months of preparation: the Department for Attention to Victims, the Department for Differential Approaches, the Department for Territorial Management, the Autonomous Advisory and Defense System, the Communications Department, the Financial Sub-Directorate,¹⁴ the Physical Resources Sub-Directorate in Infrastructure (Advisory Office for Security and Protection), the International Cooperation Sub-Directorate, the Judicial Secretariat, and the Information Analysis Group (GRAI from its initials in Spanish).

From my experience as a magistrate who participated in the three 2022 hearings, I must say that there is always a feeling that more time is needed before the final push towards the public staging. The preparation time for these dialogues around atrocity **will never be enough**. For example, concerning the first hearing I led in Valledupar,¹⁵ regarding the recognition of responsibility by the 'most responsible' belonging to the La Popa Battalion, 26 preparatory meetings were held, four of them with defenders of the participants and 22 with judicial representatives of the victims, their psychosocial teams, and Authorities of the Kankuamo and Wiwa peoples.¹⁶ Additionally, there were 24 individual sessions and four group sessions with participants, three territorial meetings with victims in the city of Valledupar, one traditional meeting between ethnic authorities and victims of the Kankuamo people, one traditional meeting between the perpetrators and political and spiritual authorities in the sacred territory of Makumake, and one private meeting between victims and perpetrators. Furthermore, there were 12 individual meetings with participants, one meeting between victims and two of the perpetrators in the city of Valledupar, and two meetings with judicial representatives of victims and defenders.

Regarding this hearing in Valledupar, it is worth highlighting its importance for the Kankuamo people.¹⁷ The participants underwent **psychosocial preparation with spiritual and political authorities** in the Kankuamo sacred territory (Makúmake was chosen for these

literature on restorative spaces in healthcare and education, where it has been proven that nature, the absence of sound, art, colours, and smells, can impact the experience of individuals who engage in these processes.

¹⁴ The economic costs of these hearings, particularly in the field, are an important aspect to assess and ponder in future research, considering the challenges of scarce resources faced by the SJP.

¹⁵ Valledupar is a city and municipality located in the department of Cesar, North-East of Colombia.

¹⁶ On Both the Kankuamo and Wiwa people you can read OCHA (2024).

¹⁷ For a definition of Kankuamo people, you can read Special Jurisdiction for Peace – SPJ (2020)

purposes). For the traditional authorities, it was important to develop a process of “spiritual cleansing”, considering the blood of the people and of the territory that had been shed.

This special preparation component was important for the participants to become aware of the specific damages to the Kankuamo and Wiwa Peoples and the meaning of what was determined in Ruling No. 128/2021,¹⁸ regarding the territory as a victim of the events. The ethnic authorities’ capacity and willingness to listen and dialogue were fundamental to carrying out the meetings, “framing” the expectations of the victims, and warning of the emotional burden that this process entails. In addition, they constituted an initial framework for the work of differential approaches and the disproportionate impact of violence against women and against a Wiwa girl who was murdered, Nohemí Pacheco. The intersectionality analysis was made visible in the hearing.

For some of the perpetrators participating in the preparation of the process, hearing firsthand the magnitude of the harm caused to their victims or the victims’ families completely transformed their view of what happened. In this sense, **the voice of the victims had a transformative role that opened the path for acknowledgement.**¹⁹ In previous legal proceedings (in the ordinary jurisdiction), the participants had not even seen the victims, much less had they heard them. On the other hand, as a magistrate who had initially examined the voluntary statements of those participants, it was incredibly impactful to see the change between an almost total denial in some of the first statements contrasted with acknowledgements that came as a result of the impact of the dialogue with the victims.²⁰

Notwithstanding the above elements, **several challenges associated with victims’ participation** must continue to be assessed and pondered in future hearings.

First, various perspectives exist on the scope of these hearings among different victims and the legal organisations that represent them. Even within the same family, there are several views on how to approach these restorative justice processes, with some family members in favour of participating and others against it.²¹ Additionally, there is a debate about the extent and scope of preparatory activities and the final moments of the public staging of the hearing.

¹⁸ Chamber for the Acknowledgment of Truth, Responsibility, and Determination of Facts and Conducts. Special Jurisdiction of Peace (JEP in Spanish). *Ruling No. 128/2021*.

¹⁹ On this impact of encounters between victims and perpetrators, see Batchelor (2023).

²⁰ For a detailed example, see the analysis by a news website (Rodríguez, 2023) of the change in the statements by lieutenant Carlos Lora.

²¹ An example of the transformation by a victim of the FARC’s guerrilla, considering the impact of the hearing of acknowledgement, can be seen in the testimony of Oswaldo Diaz’s sister. Diaz was kidnaped and assassinated by the FARC <https://twitter.com/LaVictoriaEsa/status/1534238706130997250>. Her sister never agreed with the Peace Accords. He voted "NO" in the plebiscite and said that he was never going to forgive the FARC’s guerrilla for the harm they had caused. After the hearing, she said to her family that she was in tears and grateful for the repair that came from the hearing. Among other aspects, she highlighted: i) the opportunity to confront their perpetrators, ii) making clear and forceful requests about the victim’s remains and his dignity, and iii) empathizing, even if it seemed impossible, with the perpetrators. Seeing them as human beings who feel and who are willing to change history by taking responsibility for their actions and acting with determination for peace.

Second, due to the scale and magnitude of the cases and sub-cases, various criteria were established to select spokespersons participating in the public hearing. In the framework of Macro Case 01, the Group of Analysis of Information of the SJP was responsible for selecting particularly representative victims amongst three thousand accredited victims. The latter had to be done considering the patterns analysed at the hearing. Some victims filed writs of protection (Tutela) because they had not been selected to participate in the hearing or because they did not feel represented by the patterns that were the object of the public staging. However, the Tribunal for Peace upheld the Acknowledgement Chamber's decisions. In the case of the hearing about the La Popa Battalion, some consensus was reached on the victims who would speak.

Third, another issue we faced in the Valledupar hearing is the differences between the victims who participated in the entire prior process of preparation for the hearings and those who arrived in the final stages of the process or even during the hearing itself. In Valledupar,²² we had to start dialogues from scratch (from the basics of transitional justice and the SJP) with victims who came forward when they found out about the hearing on the news. The psychosocial needs are different depending on the type of preparation used to understand each step of the hearing. Some of the victims who arrived during the hearing intervened from the audience, expressing disagreement with some of the moments of acknowledgement.

Fourth, there is a challenge in relation to the **tensions between victims and perpetrators** during the hearing. Some of these tensions were previously addressed in moments of private preparation, which is why important clashes occurred during these prior moments. In the public hearing, some levels of empathy arise, but moments of distance, rejection, or anger remain.

In relation to this issue, there is a debate about the participation of victims' legal representatives in these restorative hearings. From a certain point of view, this participation is rejected under the idea that the encounter should be between victims and perpetrators with the only intervention of the magistracy in relation to said restorative dialogues. However, the Valledupar hearing considered the previous experience in Bogotá with the extension of the recognition carried out by General Paulino Coronado, where legal representatives of the victims intervened to strengthen the type of dialogue that was being generated. In light of this advance, a spokeswoman for the legal organisations representing the victims intervened in the Valledupar hearing. They criticised some of the narratives of the perpetrators that differentiated between victims. The language used by one of the perpetrators to describe a particularly atrocious fact was also criticised. At this point, it should be noted that one of the challenges of these restorative justice hearings is that they involve narratives that are difficult to control beforehand. They are not "scripted" spaces, as they are called for spontaneity and sincerity. Notwithstanding this, and as I highlighted in my intervention at the end of the hearing, we will continue to advance in the type of intervention from the magistracy that allows us to avoid harmful actions. Likewise, the prior preparation dialogues will be

²² Special Jurisdiction for Peace - SJP (2022).

fundamental to identify if there are expositions of atrocity that may not necessarily be associated with the victim's right to truth.

Lastly, given all these elements I have mentioned, it is unsurprising that these hearings involve various **psychosocial challenges**. Hence, the importance of the articulation between the SJP's psychosocial teams and the psychosocial teams of organisations of victims and those of perpetrators. The SJP should not disregard this type of work and should articulate it with the psychosocial strategy promoted by some of its dependencies. The DUNA Foundation (in the Ocaña²³ hearing) and the International Center for Transitional Justice Foundation (in the kidnapping hearing) played an essential role in restorative mediation and **pedagogy associated with individual staging** for people involved in these atrocities. In these acknowledgements, the role of language was crucial, the express rejection of the crimes, without euphemisms and without justifications for what happened.

Regarding the **emotional challenges and risks**, it is also important to note that the SJP does not seek to impose on victims a supposed duty to forgive perpetrators in these hearings. That is a personal decision that is up to each person's conscience. Nor is it intended to judge the anger and pain many victims evoke during the hearing. These feelings also say a lot to society and are part of the restorative dialogue being fostered. Hence, there is also an emotional overload for all of us who intervene institutionally from the SJP, so it is crucial to work on taking care of ourselves, our offices, and our teams. Identifying emotional fatigue is the first step in facing it correctly.

Finally, it is important to highlight that the hearings revealed various **challenges in the scale** of the cases. While the kidnapping hearing was a discussion around a macro criminal investigation from "top-down", focusing on those who gave the orders, the extrajudicial execution hearings have been progressing from "bottom-up", with soldiers, non-commissioned officers, and officers who had command at the battalion or brigade level admitting their responsibility. At this stage of the case, we have not yet evaluated the Division Commanders or the Army itself. The impact of these two work scenarios is as follows: in the first scenario, there are fewer specific manifestations regarding the direct events, which affects the demands for truth. In the second scenario, criticism was expressed by the victims regarding high-ranking officers who were not involved in the accountability process. Therefore, some victims consider there were "half-truths" or even "possible cover-ups by superiors".

It is important to highlight that the mega-cases involve thousands of crimes. Considering this, the SJP analyses the facts in the framework of patterns using emblematic cases. This methodological approach offers another tension for the hearings related to the challenges between acknowledgement associated with patterns and acknowledgement **associated with specific cases**. Some crimes analysed in the hearings are not directly linked to a specific 'most responsible'. Our consideration was not to exclude this type of case since we wanted

²³ For a further analysis of this hearing, see the *Ethnographic analysis of the first public hearing for recognition in the transitional justice system in Colombia, on the known "false positives"* by Braconnier Moreno & Laguado Endemann on Olarte Delgado & Gutiérrez Quevedo (2022).

to highlight the role of these ‘most responsible’ in macro-criminal patterns. What we always aimed to do was to help understand that all cases were representative of the patterns and the phenomenon. However, the high number of expectations around how, when and where the cases are individually considered continues to be difficult.

The **security challenge** for victims and participants in these public proceedings is also a significant issue. Risk assessments have been carried out at all times, and each expression of concern has been promptly evaluated by the risk analysis group of the SJP's Investigation and Prosecution Unit.

3. Final Consideration on the Role of the Judge

Based on all the above, I present some lines of provisional balance in light of what happened in the three hearings. First, we have expressed our independence and impartiality from the magistracy, but without avoiding demonstrations of empathy and recognition that are crucial in this type of restorative dialogue. We have assumed the challenges of these acknowledgement hearings before judges and their differences with the acknowledgements made before the Truth Commission. We have made visible a "Thirdness of the Judge in the Acknowledgment Hearing,"²⁴ so that the intervention of the magistracy can be restorative in handling moments of anger and dissatisfaction of the victims, as well as moments of recognition and encounter. We have tried to avoid re-victimisation and/or the humiliation or destruction of the former perpetrator. Likewise, from the magistracy, we have promoted judicial reactions with empathy to the victims who intervene; that is a judicial role of listening and amplifying those voices to make hundreds of victims who are reflected in that pain and that harm visible. With these actions, we have tried to reverse the asymmetry of power previously presented in ordinary judicial proceedings.

At various times during the hearings, we recognised the courage and struggle of many years on the part of the victims. Many victims and their lawyers have been threatened and have faced various aggressions and the weight of impunity over the years. However, we also highlight the courage of those who publicly recognised these atrocities without ambiguity or euphemisms. This acknowledgement that we seek must have a role in reintegrating those involved in these atrocities.

These hearings have, therefore, been an important step in the progressive advancement of Restorative Justice in the SJP. They have impacted the denialism that has historically existed around the systematic nature of extrajudicial executions and, therefore, the great importance of the media dissemination that these acknowledgements have had. They constitute a prelude to the important steps associated with future restorative sanctions. The hearings have also been a decisive step in the SJP's commitment to implementing the Peace Agreements.

²⁴ I am particularly grateful with Lina Rondón, consultant at the ICTJ, for this idea. I have also been evaluating this "thirdness" concept through my dialogues and learning processes with Ariel Sánchez, María Andrea Marroquín, Marcela García, and Diana Ávila, among other officials at the SJP, as we prepared for the Valledupar hearing.

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