The Special Jurisdiction for Peace and Restorative Justice: First Steps

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Abstract

Considering the different challenges that restorative justice entails in the context of transitional justice (TJ), the purpose of this article is to reflect on some of the main advances in the implementation of restorative justice mechanisms during the first years of the Special Jurisdiction for Peace (SJP). The main objective is to concentrate on some restorative aspects of the SJP's cases that demonstrate the potential and limitations of restorative scenarios in Colombia's TJ system. In this sense, this paper analyzes the challenges related to victims' participation in judicial macro-cases conducted by the Chamber of Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts (1.), the form and timing of participation in the voluntary statements before the Chamber (2.), the restorative dimensions of observation hearings during voluntary statements in macro-case 03 (3.), the restorative justice approach in territorial cases (4.), the first three indictments and their restorative reconstruction of harm (5.) and the "Guidelines on Restorative Sanctions and Reparative Works and Actions" (6.).

Introduction

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 (retributive) one and usually takes place through dialogue, actions and instances, which aim to restore the relations affected by the respective conflict (Cunneen/ Hoyle, 2010).

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 matters

included in the negotiation of the Final Peace Agreement.[1] In order to achieve the disarmament of the former Revolutionary Armed Forces of Colombia – People's Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, FARC-EP) and to build a stable peace, the Final Agreement opted for restorative sanctions for the gravest atrocities of the armed conflict. In this respect, those that contribute to detailed and exhaustive truth-telling, recognize their responsibility, and comply with victim reparation and non-recurrence will be sanctioned with restorative justice mechanisms, i.e., an alternative non-prison-based sanction that aims for social and political reintegration. The design and definition of these sanctions involves the participation of the most affected victims and communities, entailing a broad concept of sanctions compared to criminal law sanctions (punishment) within the ordinary criminal justice system.

Considering the above, it is not surprising that the Colombian case has become itself a reference for contemporary studies on the relation between criminology, transitional justice (TJ) and restorative justice (Moffett et al., 2019). More than two decades of discussions surrounding TJ in Colombia, including lessons learnt from the previous so-called "Justice and Peace Process"[2], allowed for the establishment of the Special Jurisdiction for Peace (Jurisdicción Especial para la Paz, JEP or SJP). From these previous experiences, it was clear from the outset that the SJP would have to overcome serious challenges to implement its ambitious restorative justice aims. These obstacles have been related to, for instance, the interaction between perpetrators and victims, often in the absence of psychosocial assistance, as well as the reparation of mass atrocities (Bueno, Parmentier/Weitekamp, 2016). It is important to mention in this context that restorative justice will not only be included in the sanctions imposed by the SJP. Rather, it generally aims to guide the different judicial procedures before the different Chambers of the SJP.

Considering the different challenges of restorative justice entailed in the TJ context, the purpose of this article is to reflect on some of the main advances in the implementation of restorative justice mechanisms during the first years of the SJP. I will primarily focus on some elements

1 "Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace", 24 November 2016. For a comprehensive assessment of the agreement, see McCoy, Subotic and Carlin (2021).

2 This TJ process, which is based on Law 975 of 2005 (known as the "Justice and Peace Law") forms part of the normative framework for the demobilization process of paramilitary groups. It started in 2002 and continues to be implemented to date.

that adequately show the potential and limitations of restorative justice elements implemented by the SJP. In this sense, this paper attempts to analyze the main advances and challenges related to victims' participation in judicial macro-cases conducted by the Chamber of Acknowledgement of Truth, Responsibility and Determination of Facts and Conducts (hereinafter, "Chamber of Acknowledgment" or SRVR[3]). Subsequently, it provides an analysis of the challenges regarding the participation of victims in the voluntary statements made by suspects before the Chamber and the progress made in the respective hearings. Finally, more specific restorative justice approaches in the macro-cases are discussed, focusing on progress in recognizing new subjects as victims, such as territories, and selecting them as cases before the SJP.

1. Challenges related to the participation of victims in proceedings before the Chamber of Acknowledgment

In principle, the Chamber of Acknowledgment is tasked with: i) gathering reports from institutions and civil society, ii) using these reports to prioritize cases, iii) legally recognizing as victims those who meet all the respective legal requirements, iv) summoning the perpetrators to provide voluntary statements regarding the reports presented, v) receiving the victims' perspectives on the voluntary statements, vi) considering the above, determining the patterns and policies associated with international crimes and attributing responsibility to the 'most responsible' perpetrators, vii) organizing public hearings between victims and perpetrators, the latter of which acknowledge responsibility for political violence, and viii) submitting decisions to the Tribunal for Peace with proposals of restorative sanctions. The Chamber also has the duty to (ix) propose the cases of non-acknowledgment of responsibility for an adversarial process, which can result in sanctions of up to 20 years under ordinary prison conditions.

In the first four years of operation, the Chamber of Acknowledgment has prioritized seven macro-cases that analyze thousands of atrocities related to patterns of violence committed during the Colombian armed conflict. This has included cases on kidnappings (Case 01, approximately 21396 crimes, 2600 recognized victims, 9000 former FARC members under investigation); recruitment of children (Case 07, approximately 18677

3 SRVR stands for the Spanish name: *Sala de Reconocimiento de Verdad, de Responsabilidad, y de Determinación de los Hechos y Conductas.*

crimes); extrajudicial executions (Case 03, approximately 6402 crimes, 2500 military officials processed, almost 1000 recognized victims and over 1000 judicial processes under the ordinary justice system); and the victimization of the political party *Unión Patriótica* [Patriotic Union] (Case 06). The Chamber has also prioritized three cases that focus on territorial conflict dynamics in specific areas, recognizing over 200,000 victims (Case 02 – Tumaco, Ricaurte, Barbacoas; Case 04 – Urabá; and Case 05 – Northern Cauca and South of Valle del Cauca).

For the SRVR, the debates surrounding participation in these macro-cases address different scenarios and actors, such as the organizations that legally represent victims; the attorneys that defend the perpetrators; the inclusion of the perspective and voice of the victims; the communities involved and victimized; 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: Who participates? How do they participate? When do they participate? And, finally, what is the purpose of their participation?

A specific challenge arose concerning the participation of victims in the macro-cases selected: Is it possible to design victim participation in a similar way to that in ordinary judicial proceedings, 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? All these questions are related to what the literature has termed the "urge to blame", that is, the possible differences and hierarchies existing between groups of victims, the debate on the authenticity of their voice and the way it is presented, amongst other issues (McEvoy/ McConnachie, 2013).

So far, the SRVR has supported the participation of victims by drafting guidelines for report submission on conflict-related facts, as well as selection and prioritization criteria, and throughout the hearings in which various victims' organizations were heard. Once the macro-cases had been opened, the Chamber started recognizing victims as a party in the judicial process, granting them access to the macro-case files and allowing the submission of questions or requirements to be resolved during the voluntary statements, or subsequent procedural phases. The recognized victims can also participate in the voluntary statements and present observations on them, either in writing or during hearings scheduled for that purpose. When someone is recognized as a victim, they can provide observations, not just on their individual case, but also on the macro-case more generally. This is fundamental since the investigation conducted by the SJP

is based on the determination of macro-criminal patterns rather than individual cases. This approach to macro-criminal investigations led to the grouping of several cases with various similarities. Therefore, the scope of victims' participation is not strictly linked to a singular crime, but to a pattern of macro-victimization. In this sense, victims can provide observations on the determinations of facts and criminal conducts made by the Chamber and participate by proposing sanctions, as well as restorative and reparative activities.

Considering the challenges associated with the judicial management of macro-cases, it is important to mention some of the specificities of the victim recognition process. For example, as of May 2021, the SRVR had recognized over 1000 victims in Case 03 on *Killings and Forced Disappearances presented as Combat Casualties by State Agents*. Around 15 human rights organizations have taken part in Case 03, in various meetings organized by the SRVR. Moreover, inter-jurisdictional dialogues have been carried out when dealing with the accreditation of indigenous peoples. Several coordination meetings have been held with traditional authorities to assess the differentiated impact of violence against these communities.

1.1. When should encounters between victims and perpetrators occur?

An important debate arose in the first year of voluntary statements concerning victim participation. In the first 10 months of voluntary statements, victim participation during this stage was not planned. However, an appeal filed by victims' organizations marked a shift in the Chamber's view regarding victim participation in hearings involving perpetrators' statements. Below I will refer to an opinion I expressed in relation to this issue (JEP, 2019a). I agree in principle with the Chamber's decision, as it defends the way in which victim participation contributes to better restorative outcomes. However, it seemed important to specify in greater detail some of the challenges that make such participation more complex during the preliminary stage of voluntary statements. These challenges are best understood within the framework of restorative justice in a TJ process.

The Chamber identifies two types of risks regarding victim participation: i) on the one hand, given the direct engagement with perpetrators, victims may be affected by the perpetrators' statements on the events and on the victims' relatives, and ii) on the other hand, interventions on the part of victims' lawyers during voluntary statements may transform the scenario into an adversarial one. Eventually, this could eclipse the dialogical-restorative objectives of the process. Therefore, "the voluntary

statement is not the ideal scenario to carry out the first 'victim-perpetrator encounter' and, on the contrary, it is a useful space to measure and evaluate the restorative disposition of the perpetrators" (JEP, 2019b, p. 2).

Another important challenge concerns the risks involved in applying the monological approach of ordinary justice to the SJP scenario. In the ordinary criminal justice system, parties focus exclusively on litigation (both victims and perpetrators) and may not find a space for dialogue with one another (Cunneen/ Hoyle, 2010). In light of these issues, opening up interactions between perpetrators and victims at a very preliminary stage could misguide the restorative dialogue promoted by the SJP. The objective is to understand why a person engaged in egregious forms of political violence in order to comprehend the general context of violence. We always ask the perpetrators when their first involvement in this kind of political violence took place to understand the individual paths leading to specific crimes and to gain a general understanding of the criminal conduct. In this regard, the Chamber also analyzed the risks associated with victim-perpetrator encounters in the absence of psychosocial intervention, as well as several problems that arose in the 'Justice and Peace' proceedings in terms of re-victimization. To solve these challenges, the Chamber considered the principle of 'Do No Harm' (Bolivar/ Vásquez, 2017) by postponing the victim-perpetrator dialogue until later procedural stages.

The 'Do No Harm' approach emphasizes how certain interventions, despite being well-intended, can "exacerbate conflicts, generate dependencies, nullify people's capacities" (Bolivar/ Vásquez, 2017, p. 20), amongst other possible harms. In this approach, context plays a crucial role. It is argued that the intervention (although intended to be neutral) is determined, to a large extent, by the conditions in which it occurs – such as social meanings, personal histories, previous experiences in the ordinary justice system, and perceptions of harm.

From this perspective, a careful reading of the respective context is necessary to mitigate the risks of revictimization and of causing new harm. This highlights the importance of the measures adopted by the SJP to address these challenges. These include considering the consistency between the principles and the implementation of restorative justice practices; the analysis of stakeholders and parties involved; their responses to the measures adopted by the SJP; the contents of these measures; the interdisciplinarity of professionals chosen (such as those with experience in psychosocial interventions); and the recognition of the differential impacts of the process. The objective is to prevent the exacerbation of pre-existing conflicts or to avoid negative impact on local communities.

1.2. Avoiding revictimization: restorative encounters require adequate preparation

To understand the dialogical design of the voluntary statements before the SJP, it is crucial to consider the ways in which judicial processes had been previously developed in the ordinary justice system. It is alleged that intimidation, threats, manipulation, delays, amongst other strategies, tampered existing trust between parties in the ordinary justice system. In other cases, it is alleged that the development of the ordinary judicial process was manipulated or biased. Likewise, many victims argue they had never been listened to in the ordinary criminal justice system and that only now, through the submission of reports to the SJP or observations on voluntary statements, they are beginning to have a voice in these processes.

In this sense, specific efforts are required to work with the legal representation of perpetrators, who are encouraged to understand these transitional procedures differently from the way trials operate in the ordinary justice system. We must consider the centrality of victims' rights, as well as the importance of acknowledging the harms caused to individuals, families, and communities. Furthermore, we must adhere to the strict requirement of a complete and unambiguous recognition of truth (JEP, 2019a). In addition, restorative justice requires a constant dialogue with the community in tandem to voluntary statements. In this way, the Chamber can eventually coordinate its work with victims, perpetrators, and communities. It is crucial to harmonize these restorative processes with different forums of community participation, considering the specific harms caused to communities. These restorative processes are said to involve three actors: the victims, the aggressors, and the community (Rosenblatt 2015). At this stage, the community cannot be seen as "the audience" to which the actions carried out by the tribunal are presented, nor can it adopt a passive attitude; on the contrary, a restorative dialogue requires the intervention of the community in different forms, scenarios, and stages (Rosenblatt, 2015). Although the restorative process advocates for constant dialogue, this does not imply that this approach avoids conflict between victims and perpetrators. Disagreements are likely to arise during the process, even more so if one considers the gravity of the crimes prosecuted by the SJP. Therefore, restorative justice also has the objective of adopting measures to address these tensions, particularly through strategies in which victims and perpetrators can find forums for interaction and dialogue.

In light of this context and the adversarial approach adopted by the ordinary justice system which can intensify the lack of trust between victims and perpetrators, the dialogical perspective implemented by the

SJP must rebuild lost trust through several steps and focus on the restorative dimensions of these new processes. This is possible if victims and perpetrators are guaranteed separate spaces in which they can interact and become involved in this new judicial scenario. The measures established by the Chamber aim to address the above-mentioned challenges whilst considering the tensions inherent to this type of process (JEP, 2019a). These measures place an emphasis on preparing the parties to channel their own restorative agendas and give special value to their autonomy and freedom. The process of victim intervention also learned from the previous "Justice and Peace" experience with paramilitaries, particularly regarding the importance of psychological and legal support given before, during, and after judicial interventions and taking into account victims' expectations. Thus, the SRVR respects the way victims choose to participate, with a particular consideration of their experiences in the ordinary criminal justice system.

From a restorative perspective, not allowing the direct participation of victims in voluntary statements can be justified due to the difficulties involved in ensuring that dialogue between the parties, their advocates, and the community is preceded by conditions required by restorative justice. On the other hand, in the public hearings of acknowledgment of responsibility, there will be appropriate spaces for encounters and dialogue between victims and perpetrators. The first hearings will have taken place by the first semester of 2022. It is therefore beneficial to prevent the perpetrator from having face-to-face interaction with the victim which could undermine his or her engagement with a new justice system, such as the SJP, and his or her commitment to truth-seeking. This also explains why victims should not have to deal with a perpetrator who may not be sufficiently interested in contributing to the construction of truth and, instead, may disregard what has been established by the ordinary judicial system, thus leading to a scenario of re-victimization. Voluntary statements could also become a filter that would allow us to distinguish between perpetrators who are genuinely committed to truth-telling obligations and those who are not. In this way, victims could instead focus on interacting with perpetrators with a clear restorative intention.

There is also a risk involved in analyzing each stage of the process separately, rather than adopting an interconnected approach. Achieving the goals of truth-seeking and reconciliation requires a set of scenarios in which victims and perpetrators advance, step by step, towards a deeper interaction. From a restorative justice point of view, it is a mistake to consider each stage without considering what will occur in subsequent ones. The starting point is the autonomy of the parties and the opportu-

nity to listen and to be listened to, throughout the process. From this perspective, the Chamber must attempt to eliminate or, at least, reduce asymmetrical power relations between victims and perpetrators which may persist from the moment in which the crimes occurred until their prosecution. It is therefore necessary to establish differential ways of participating, considering the procedure at each stage.

With this in mind, it makes sense that direct dialogue between victims and perpetrators should begin gradually, with an initial minimum level of interaction, and proceed towards a later stage of deeper dialogue. This becomes particularly important considering the narratives adopted by perpetrators with regards to truth-telling. In previous experiences, such as the "Justice and Peace" process, there were debates between those who, on the one hand, considered it necessary to disqualify any denial of facts and responsibility and those who, on the other hand, defended the right of perpetrators to make unrestricted declarations, even if that involved discourses that were not only revictimizing, but that justified violence. It is important for the SJP to work around the narratives and discourses explaining the atrocities committed by perpetrators. The voluntary statements serve as a preliminary stage to listen, in the sincerest way, to the first version of the perpetrators' narrative. Then, after some initial restorative activities, the judge can arrange a meeting with the victims.

Handling the narratives of perpetrators and victims is essential in the dialogic processes of restorative justice, which must be dynamic and relational. In these processes, each of the parties involved can modify their own narrative in response to that of others. The restorative dialogue does not pursue an unequivocal truth that silences other narratives; instead, it seeks the harmonization of a dialectic process involving a synthesis of conflicting narratives (Cunneen/ Hoyle, 2010). Restorative justice focuses "on the consequences of the crime for the victim" and on the possibility of finding "significative ways to hold the aggressor responsible" (Rosenblatt, 2014, p. 15). Therefore, a dialectical construction of various narratives that are structured around a gradual approach to dialogue between victim and perpetrator is crucial.

For now, adequate measures are required to prevent early victim participation from negatively affecting the later stages of the proceedings before the Chamber, where it will be necessary to ensure the centrality of victims' voices, either through hearings or through other mechanisms enabling observations on voluntary statements. Such mechanisms will seek a balance between the technical, legal, and procedural observations presented by victims' organizations, the contributions made by victims based on

their experiences, and the community. This is fundamental for restorative processes.

2. *Debates on the form and timing of participation in voluntary statements: tensions and hope*

In macro-case 03, justice rapporteurs Catalina Díaz, Alejandro Ramelli and this author have promoted the recognition of more than 1000 victims and more than 15 human rights organizations within three years (until June 2021). The participation of victims and institutions has involved the submission of over 35 reports on facts related to the macro-case, covering almost 6402 possible cases of extrajudicial executions. Victims have also participated in many of the 400 voluntary statements heard by the Chamber, either during the statements or later, by presenting observations on the statements (sometimes at hearings). Progress is also expected to be made regarding victims' participation in the hearings of acknowledgment of responsibility and in the proposals of alternative sanctions presented to the SJP's Tribunal for Peace.

In the aforementioned procedural stages, it has become evident that in many cases, the families of the victims have been forced to become "judicial investigators" of the crimes. Upon receiving their reports and observations, the Chamber has appreciated the efforts made by families to discover what happened to their loved ones. Their perspective and their voice have been reflected in the reports presented before the Chamber. Through almost 400 voluntary statements, macro-case 03 has surpassed the level of truth reached in the ordinary justice system, particularly through the identification of different patterns of criminality and the determination of facts and individuals that had never been investigated before. Although the justice rapporteurs have heard voluntary accounts that referred to individual cases that had already been investigated in the ordinary criminal justice system, these individuals have also mentioned issues that had never been analyzed before. Investigations in the context of macro-case 03 have also involved clustering and analyzing many cases that had previously been studied individually so that connections and patterns between them could be identified. This strategy has allowed the Chamber to successfully reconstruct past events. Victims have evaluated perpetrators' commitment to the truth and have identified gaps that remain, matters that are still pending and silences that cannot be accepted in this process, because they diminish their right to the truth and the perpetrators' commitment to the full establishment of the truth.

As mentioned before, interventions by legal representatives in voluntary statements were of particular importance in macro-case 03. In a press release, the SJP outlined highlights of the first voluntary statement made with the participation of victims, especially that of an Army Sergeant, who had been linked to various cases of extrajudicial executions. After hearing an initial account of what happened, the victim had the opportunity to submit questions through his attorney. When leaving the proceedings, the victim mentioned that it had been a privilege to be there:

> "I know there were many cases like my brother's and the fact that his case is being clarified gives me great pride. I am pleased to see that the story is being told in a different way, because they had dishonored his name. Even though it is hard, I am glad the truth is surfacing; I have been looking for it all my life" (JEP, 2019c, para. 5).

Similarly, the victim's attorney said:

> "We asked [the perpetrator] how he would repair the harms caused and he said he was willing to undertake restorative activities, as long as they did not pose a risk to his life. At the end of the proceedings, through his attorney, he asked us to let him know if other family members thought he could repair them in some way. That is how we are moving forward, using dialogue to explore different reparative possibilities".

In these proceedings, the SJP has sought to establish a balance between the victims' rights to the truth and achieving reparation for the harms suffered, and the due process guarantee for the perpetrator. Moreover, psychosocial support for the victim was provided before and during the proceedings to avoid any revictimization.

Despite these advances, it is important to note that the participation of victims in the voluntary statements has been marked by various difficult moments. Some victims have asked to speak directly to the perpetrators and have expressed their desire to communicate their anger or indignation. The task of the justices presiding over these judicial proceedings has been to explain prior to, and at times during, the proceedings why their voice is expected to be heard at a later stage in the process. Although denying victims' participation during these statements may be questioned, it is important to reiterate that any interaction between victim and perpetrator must be planned, properly organized and must allow sufficient time for individuals to process difficult feelings regarding the atrocities committed.

Moreover, the narratives detailed in voluntary statements cannot be assessed in isolation. Emphasis has been placed on the relationship be-

tween testimonies, and it is possible that some accounts are incomplete statements that must be cross-referenced with other statements. In any case, each victim is free to decide the approach with which they manage observations. However, the role of the SJP has been to instruct victims on the observation mechanism, in order to promote their participation. With the documentation and the information received in the case, the Chamber must assemble the complex puzzle of past events, whilst establishing corresponding accountability for the crimes committed.

In light of these challenges, victims and the organizations representing them have received psychosocial support. In some cases, this support has involved group work on victims' feelings and emotions in response to voluntary statements. On occasion, the victims have discussed the limits to judicial truth, the limitations of judicial processes, and the fact that some perpetrators do not tell the truth they were expecting. At other times, victims delved into facts they wanted to know and, as a group, go into specific details. Thus, what is finally presented as an observation is sometimes rather detailed and focused.

Regarding the voice of the perpetrators during voluntary statements, it is worth pointing out that some of them rely on the ways in which the ordinary justice system has dealt with these issues. This is shown, for instance, by the tendency to say or answer only what they are asked, limiting themselves to solely the facts. Some have even alluded to the "scripts" they had to follow in the ordinary justice system, in the context of the cover-up strategies that are currently under investigation. Consequently, victims have complained about re-victimization occurring during certain statements. In other voluntary statements, a debate has arisen about how perpetrators perceive the harm suffered by victims and compare it to the pain they themselves have suffered. Some victims have also considered this comparison to be re-victimizing.

Other perpetrators, in turn, have found in these statements an opportunity to provide an account of the heartbreaking implications that their involvement in these atrocities had for them. For those of us who have presided over these statements, a central question has been to inquire when the perpetrator first had any type of information or contact regarding these atrocities. We have investigated what was happening in their military and personal life at the time, to try to understand why the events occurred. Acts of political violence also transformed their lives, and we have noticed that in many cases, they had never been asked about it. In several cases, they have asked themselves these questions and the testimony provided sometimes allows the victims to see them in a different light as part of a larger context in which the violence committed is not the sole

focus. This provides a starting point for possible dialogue between victims and perpetrators.

3. *Restorative dimensions of observation hearings on voluntary statements in macro-case 03*

One of the challenges the SJP has faced is to creatively advance some of the restorative dimensions of these procedures. An example is the observation hearings on voluntary statements. In this regard, Law 1922 establishes when observations on the aforementioned statements can be submitted. However, the modality of these observations was not specified, and therefore, the judges who were rapporteurs in Case 03 provided an interpretation. This allowed observations to be carried out both orally and in writing. For the oral component, observation hearings were designed which aim to grant victims' voice an important space in the public sphere, including their version of the facts and the harms that were suffered. This is particularly important to ensure that victims' voices are first expressed in the public arena prior to the recognition hearing, in which perpetrators' voices will then play a significant role. In other words, the hearings are intended to give victims the very first public moment of the proceedings. This is consistent with a progressive, step-by-step approach to restorative justice in these macro-cases. In fact, the actors initiate their process separately (with perpetrators appearing before the SJP in the confidential and non-disclosed voluntary statements, and the victims presenting their reports and observations) until a later moment when they meet in the acknowledgment scenario. A crucial symbolic act is carried out during the observation hearings: the first public intervention is that of the victims and their reaction to the statements of the alleged perpetrators. This represents a change in the power relations that had existed in the past, giving a space to victims that they had never had before; a new opportunity to express themselves and to be heard.

At the same time, observation hearings have played an important role in the materialization of the territorial approach to Case 03. This case identified that extrajudicial executions had occurred in all departments of the country. However, when analyzing data on the multiple variables included in the reports, a concentration of alleged crimes in six departments of the country was observed. Therefore, the macro-case's first phase of analysis and voluntary statements focused on the military units with the largest number of individual cases. Moreover, the persons appearing before the SJP were those present in those specific departments. The victims' observa-

tions on the voluntary statements have brought to light specific dynamics of the armed conflict in their respective territories.

Through victims' observations, both in writing and during hearings, we have been able to observe different types of requests for the truth: the truth about facts beyond those discussed, the truth about other parties involved in these crimes, and the truth about those most responsible. These demands have also drawn our attention to the need for moral truth: the mothers of the victims and other relatives want to know if the perpetrators are still capable of compassion and humanity. In this respect, the victims hope that society will support them in their claims, so that they do not feel alone in their demands to know the truth about what happened to their loved ones. They expect compassion and humanity from the whole country as their pain has been stigmatized and devalued – not only by those directly responsible for the alleged crimes, but also by those who denounced them and somehow justified what happened to them.

3.1. The hearing with the Madres de Soacha

During the first observation hearing held on October 17, 2019, relatives of the victims of Soacha (Cundinamarca), who were illegitimately presented as having been killed in combat, made their observations on 31 voluntary statements given by the perpetrators responsible for at least 69 deaths in Catatumbo (Norte de Santander) between 2007 and 2008, including the extrajudicial executions of 15 young persons in Ocaña (Norte de Santander), who had been recruited in Soacha (JEP, 2019d). Justice rapporteurs stressed that the victims pointed out the gaps that remain, their unresolved questions about the truth, and the silence that cannot be tolerated in this process, since "they diminish the value of the right to truth and the perpetrators' commitment to full and detailed clarification, which the victims, and all of us, have trusted in" (JEP, 2019d).

3.2. The hearings with the Wiwa People and Kankuamo People

On November 14, 2019, in a private hearing, the indigenous Wiwa people submitted their observations on the voluntary statements provided. During the proceedings held in La Guajira, relatives of the victims and indigenous authorities submitted their observations on the accounts given by the alleged perpetrators. They had been involved in the death of a

14-year-old girl, and two other members of the Wiwa community, who had barely come of age when they were illegitimately presented as combat casualties by members of Artillery Battalion No. 2 La Popa, located in the city of Valledupar. The proceedings were carried out behind closed doors, as requested by the authorities of the Wiwa community and the relatives of those who were illegitimately presented as combat casualties. Following a harmonization exercise, as is customary for the Wiwa people, the victims and the Human Rights Commissioner for Indigenous Peoples intervened, referring to what was said by the alleged perpetrators. They recalled the pain caused to them and their community by the deaths of the three young victims and stressed the need for non-repetition of these crimes.

On January 21, 2020, in Atánquez, Valledupar, a hearing was held to submit observations regarding alleged crimes related to the executions of individuals belonging to the Kankuamo community. Alleged crimes attributed to members of the Artillery Battalion La Popa between 2002 and 2005 were analyzed. It is worth mentioning that this form of victim participation was held in a municipality where many of these serious crimes occurred.

The proceedings were a continuation of the intercultural and interjurisdictional dialogue with the indigenous authorities of the Kankuamo and Wiwa communities which began in 2018. The first courses of action were established then to promote and facilitate the participation of these communities. This was followed by a second interjurisdictional dialogue with victims and indigenous authorities of the Kankuamo community in 2019. Subsequently, the Chamber carried out discussions to reach a consensus with the Kankuamo authorities and their legal representatives, to establish a methodology for the analysis of voluntary statements, as well as for the submission of observations. Psycho-legal counseling was provided by the SJP for families during a review of the content of the voluntary statements presented. Psychosocial counseling helped ensure that victims' observations on the statements were presented in a way that mitigates the harm that may be caused from hearing detailed descriptions of the date, means, and place of the alleged crimes.

During the day prior to the proceedings, different units of the SJP worked separately with each family. They tried to encourage the families to develop their own reflections and reactions to what, so far, those involved in the alleged crimes against them have contributed to the truth. This facilitated the formulation of observations, since the families had first-hand experience with the alleged crimes. In this sense, having their voices heard during the judicial process allows for contrasting comparisons of contributions to truth and acknowledgment. The victims' observations

were formed based on answers to a number of questions, which included four issues: i) what the victims already knew about the alleged crimes, ii) what was new and could be considered by victims to be contributions to the truth, iii) the aspects with which they disagreed, either because they occurred differently from their perspective or because they are contrary to the truth, and iv) what still needs to be acknowledged; that is, remaining gaps for the victims and for the Kankuamo people which require greater detail and elaboration.

The proceedings began with a harmonization exercise in accordance with the customs and traditions of the Kankuamo community, which was conducted by the Kankuamo authorities (the Governing Council) and this author. Relatives of the victims, the Governing Council of the Kankuamo People, the Coordinator of the General Council of Elders, and the Coordinator of the Commission for Women, Family and Generation of the Kankuamo People intervened during the proceedings. These interventions aimed to reveal the number of ways in which the alleged crimes have impacted the Kankuamo community and the Kankuamo women. The proceedings continued with an intervention from the Colombian Psychosocial Collective (COPSICO), to present the findings of a psychosocial assessment of the victims that had been previously presented as part of a report to the Chamber. Likewise, the victims' legal representatives were heard, as well as the Office of the Inspector General of Colombia.

During the final part of the hearing, as justice rapporteur, this author presented some important precedents, such as the provisional measures maintained for several years by the Inter-American Court of Human Rights in relation to alleged crimes of extreme gravity and urgency associated with the victimization suffered by the Kankuamo community. In addition, it was stressed that the SJP was created as a result of the Kankuamo people's demand for justice for the grave crimes committed, as well as the many struggles experienced by various victims throughout the country. The SJP is therefore committed to placing victims at the center of its cases.

Several victims shared stories of the pain, profound harm and trauma that the executions had inflicted upon their families (many of which were left broken or had to flee the territory) and on the Kankuamo people. The presence of the victims and traditional authorities in the proceedings and the vehemence with which they demanded that the truth be known about those most responsible for the events, serve as an important reference point to contrast with what was said by individuals during voluntary statements. Additionally, the victims stressed the importance of ensuring non-recurrence of the crimes. The victims' observations reveal that they

were the ones who had to endure extremely painful conflict-related experiences.

It was also stressed during the hearings that one of the purposes of restorative justice is to shed light on events that left a deep mark on communities, taking into consideration accusations and suspicions of conflict-related illegal activities perpetrated against community members. One of the most important aspects of full and comprehensive truth is the recognition of victims and their pain, which implies acknowledging the effects on the Kankuamo people as collective rights holders. Therefore, the hearing was an opportunity to employ the voice of victims as a constituent element of the truth and thereby dismantle the impotence and rage caused by previous silencing. In addition, the Chamber made note of the allegations regarding the recurrent harms inflicted upon the cultural integrity of the Kankuamo people, and the denial of this cultural identity as part of the vulnerability and stigmatization to which they were subjected. During subsequent proceedings, dialogic activities conducive to healing, the vindication of victims' dignity, and the promotion of restorative spaces must be continued so that those who have a genuine willingness to contribute to a comprehensive and complete truth can engage in restorative actions and potential restorative sanctions.

4. The restorative justice approach in territorial cases

Territorial cases do not focus on a single criminal conduct or actor, but rather investigate serious crimes committed in a certain territory by both FARC, members of security forces and third parties (i.e., persons who were not part of armed groups but who contributed "directly or indirectly" to conflict-related crimes). In the territories the SJP prioritized as macro-cases, a high percentage of the population belongs to ethnic minority groups.

The restorative justice approach involves, amongst other aspects, the creation of spaces for dialogue that allow for acknowledgment and restoration throughout the judicial process. For example, several judicial proceedings have been carried out incorporating the principle of legal pluralism. This has led to the implementation of features such as the adoption of an ethnic and cultural approach to notification processes within these communities. This approach includes opportunities for SJP judges and indigenous authorities to meet and to announce decisions, in the context of horizontal dialogue and interjurisdictional coordination with the special indigenous jurisdiction. These dialogues are usually held in the presence of the community concerned.

In Cases 02 and 05 the Chamber of Acknowledgment established that two territories of the indigenous Awa and Nasa communities, Katsa Su and Cxhab Wala Kile, could be recognized as victims of the armed conflict. In this regard, the Chamber noted that:

> "The acknowledgment that a territory can be a victim is essential for understanding the process of victim identification […] the internal armed conflict in Colombia affected the territory in its geographical, cultural, cosmogonic, social, organizational, environmental, and productive dimensions, amongst others, therefore […] a unique element in the process of identifying indigenous victims is recognizing the territory as a victim" (JEP, 2019e).

Both territories were therefore considered to be a living organism and "inseparable from the people who inhabit it". The restorative scope of these decisions, the decisive role of the territorial approach and the cosmovision of ethnic peoples will be further examined in subsequent procedural stages. This particular worldview will be key to accurately identifying the specific harms suffered by Colombia's ethnic communities in the context of the war.

5. *The first three indictments in 2021 and their restorative reconstruction of the harm*

In 2021, the SJP issued its first three indictments in macro-case 01 and macro-case 03. Macro-case 01 on *Hostage-taking and other Severe Deprivations of Liberty by the FARC-EP* has promoted the implementation of restorative justice in two ways in particular: i) the acknowledgment of victims as "experts" based on the analysis of the harm inflicted, and ii) the acknowledgment of the harm caused by those persons appearing before the SJP during the voluntary statements (Lemaitre/ Rondón 2020).

Regarding the victim-centered approach and victim participation, Case 01 has focused on the need to recognize the harm caused based on the voices, expectations, and experiences of the victims involved. In this sense, extensive work has been undertaken regarding the "characterization of the harm" through the creation of spaces for victims where they have the opportunity to construct a narrative of their experience.

On the other hand, Case 01 adopts a specific methodological strategy regarding voluntary statements of those appearing before the SJP. This aims to ensure that the accounts given do not only constitute verifiable information about the alleged crimes, but also that the acknowledgment

of the crimes reflects the full scope of the harm inflicted upon victims. Accordingly, the implementation of this methodology aims to produce information that has not been revealed before, neither in ordinary justice processes nor in other non-judicial scenarios. This information relates to the methods or practices used in the context of kidnapping, the explicit acceptance of the victims' accounts, as well as a description of the alleged perpetrators' reactions to these accounts.

On January 26, 2021, the Chamber of Acknowledgement issued order No. 19 of 2021 (JEP, 2021a). In said decision, the Chamber determined the facts and conducts that might be attributed to members of the FARC-EP Secretariat in the context of Case 01. The Chamber decided that there is sufficient evidence to determine that the FARC-EP carried out large-scale deprivations of liberty, and identified the following practices and patterns: i) deprivation of liberty of civilians with a view to financing their activities, by means of demanding monetary payment for their release, ii) deprivation of liberty of civilians and members of the security forces in order to exchange them for imprisoned guerrilla members, iii) deprivation of liberty of civilians as a means to achieve social and territorial control, and iv) conducts carried out during the deprivations of liberty which violated human dignity and caused serious harm to victims and their family members. This order played a special role in naming the atrocity. While the ordinary justice system focused on the criminal prosecution of kidnapping, the SJP as a TJ-mechanism gave visibility to the victims' voices regarding their suffering and the ways in which mistreatment during captivity destroyed their dignity. All the guerrilla members accused accepted the indictment and expressed their acknowledgment of responsibility.

Moreover, in 2021, the Chamber of Acknowledgement emitted two decisions within the framework of Case 03, in which members of the armed forces were charged with war crimes and crimes against humanity. In these decisions, one of the central issues was the harm caused to the victims based on the different findings obtained by comparing and contrasting evidentiary material. In the sub-case of Norte de Santander, the Chamber determined that parents, companions, and family members in general suffered from serious harm as a result of these crimes. Moral, emotional and material harm was caused, such as intense pain due to the loss of relatives, a decrease in family assets and a negative impact on life plans, amongst others. In the case of the Costa Caribe sub-case it was determined that, of the 127 cases, 12 were members of two ethnic groups: the Wiwa and the Kankuamo communities. Of these, 3 were young Wiwa, including a 13-year-old girl who was pregnant, and nine Kankuamo men (JEP, 2021c).

In its indictment No. 128 of 2021, the Chamber identified that the Wiwa and Kankuamo indigenous peoples suffered serious, differential and disproportionate harm with a multidimensional nature (JEP, 2021c). This impacted their way of life and way of seeing the world, as well as the inseparable and reciprocal relationship that they have with their territory. Likewise, it was determined that the territory should be recognized as a victim in the sense attributed to it by the indigenous communities; that is, as an interlocutor and a subject of rights entitled to consultation, welfare and reparation measures.

The recognition of the territory as a victim allowed to identify each territory as a unique subject with distinctive features and cultural meaning, as well as the acknowledgement of its intrinsic relationship with the people who inhabit it. This is a big step forward in terms of TJ, as it determines that the territory is a subject susceptible of harm, and therefore requires reparation. It also illustrates post-conflict effects that would otherwise be ignored, such as the deep consequences of the conflict beyond individual harm, as well as those of new economies that infiltrate ancestral territories and disrupt existing economies and collective forms of association (Huneeus/ Rueda 2021). This includes the harm inflicted on the spiritual life of a community when its territory is compromised.

All this should be taken into account when determining the ways in which reparations for the harms caused should be approached, in order to effectively reestablish the relationships between the indigenous community and their territory. The environmental damage caused by human actions should also be considered, as well as the different measures required to repair the territory identified as a victim of the armed conflict.

One of the greatest achievements of the JEP is related to the acknowledgment of responsibility of a General for these events. 22 army officials, that is, the majority of those accused in the indictments, acknowledged their responsibility. General Paulino Coronado expressed these remarks:

> "I present my feelings of forgiveness for the great pain caused by the execrable acts committed […], which led to the deaths of innocent people who were marked as combatants, leaving deep desolation among their loved ones. To them I offer my absolute willingness to contribute to the clarification of the truth, as a means of redress", "My acknowledgement is also a call to leaders and all those who have held positions of command and power in our country to reflect on what they failed to do or allowed to happen by endorsing, probably in good faith and overconfidence, those disastrous actions that are now fully known and accepted by the perpetrators" (JEP, 2021d).

Another retired major expressed:

> "I take responsibility for having contributed to the armed conflict instead of 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 recognise as dignified persons and subjects whose rights were violated, and I commit myself to redress them by providing the complete truth known to me about these murders" (JEP, 2021d).

Taking into account these acknowledgments of responsibility, a public hearing is being organized so that the acknowledgment is framed in public restorative encounters with the victims. By the beginning of 2022, the preparatory meetings and the private meetings that precede this public moment have begun.

6. *The "Guidelines on Restorative Sanctions and Reparative Works and Actions" of the Section for the Acknowledgment*

On April 14, 2020, the Section for the Acknowledgment of Truth and Responsibility of the Tribunal for Peace[4] established guiding criteria for the implementation of restorative sanctions and 'restorative and reparative activities and actions' (TOARS).[5] Restorative sanctions were one of the cornerstones of the Final Agreement, based on restorative justice theories, and aimed at imposing sanctions on those who acknowledge their responsibility and contribute to comprehensive truth from the outset. These sanctions are not limited to punishment, but rather contribute to the reconstruction of social ties and the reparation of victims. Thus, restorative sanctions are made up of two components: one restorative, the TOARS, and the other retributive, which consists of restricting the rights and freedoms of those sanctioned. Those who bear the greatest responsibility must serve a sentence ranging from 2 to 8 years depending on their participation in the respective crimes. Considering that these sentences will not be served in prisons, a special monitoring and verification mechanism will be created. The mechanism involves the United Nations Verification Mission and the Colombian government, both of which will monitor compliance with the sanctions. Finally, the Section for the Acknowledgment of Truth and Responsibility of the SJP will verify their judicial enforcement.

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4 Spanish name: *Sección de Reconocimiento de Verdad y de Responsabilidad.*
5 In Spanish, *'Trabajos, Obras y Actividades con contenido Reparador-Restaurador'.*

As for the TOARS, these are activities articulated within existing public policies created for this purpose. To this end, the SJP has been working with the Mayor's Office of Bogotá and the Governor's Office of Magdalena to design the first public policies. The Statutory Law of the SJP provides some examples but does not go into detail on the scope of possible activities that can be carried out. For example, it mentions the possibility of building tertiary roads, demining, eradicating illicit crops, and reconstructing infrastructure affected by the armed conflict. Persons who appear before the SJP and who choose to complete TOARS before a sanction is imposed may do so. This could then have an impact on reducing their eventual sanction. Effective victim participation must be ensured and the impact on victims as a result of the conflict must be addressed. Furthermore, TOARS should not have any negative effects on victims or communities and must contribute to the restoration of social cohesion and a social transformation that leads to the termination of conflict. TOARS must also seek to reintegrate the perpetrator into society. It is expected that by the second half of 2022, the Tribunal for Peace will impose the first restorative sanctions on individuals. The effective implementation of these sanctions will be crucial to the legitimacy of the SJP.

7. *Final considerations*

Throughout the multiple scenarios described in this paper, the SJP was faced with the fact that many of the victims had not previously had a chance to be heard in open court. These victims expressed their appreciation of this opportunity. The judges, whilst acknowledging the pain caused by remembering the alleged crimes, stressed on several occasions the importance of victims' contribution to creating a narrative of past atrocities.

Given the sheer number of crimes and victims, there is a great risk of creating expectations that the SJP cannot meet. As mentioned previously, although the SJP has accomplished important advances in building restorative justice processes with victims, communities and perpetrators, important challenges remain. Despite efforts, the Chamber of Acknowledgement needs to continue the search for strategies that allow victims to trust the judicial system as well as to fulfill the Colombian State's obligation regarding truth, justice, reparation, and non-recurrence of the committed crimes. At the same time, revictimization must be avoided and due process guarantees respected. Ultimately, the Final Agreement mandates the Chamber to demand detailed and exhaustive truth-telling, recognition

of responsibility, compliance with victim reparation and non-repetition of the violence.

Likewise, unveiling the various patterns of socio-political violence underlying the macro-cases represents a great challenge. More specifically, progress is needed in terms of determining more precisely the harms that have occurred to individuals, families and communities which is difficult in a scenario that aims for macro-criminal investigations rather than a case-by-case approach. In this framework, victim participation raises many challenges which are being addressed by the Chamber of Acknowledgement as the process unfolds. It is imperative to continue promoting paths towards a comprehensive and complete truth, which is a prerequisite for the adequate recognition of victims, their pain, and the harms they have suffered. The voice of victims serves as a fundamental element for the construction of truth and for vindicating their struggle against impunity and for justice; a struggle on which, in fact, the Peace Agreement is predicated upon.

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