



## **STATEMENT ABOUT THE OBLIGATIONS OF THE SPECIAL JURISDICTION FOR PEACE (JEP) ON INVESTIGATING SEXUAL VIOLENCE MOTIVATED BY SEXUAL ORIENTATION, GENDER IDENTITY, OR GENDER EXPRESSION DURING COLOMBIA'S INTERNAL ARMED CONFLICT**

We, the organizations listed above, reaffirm our commitment to defending the rights of victims of sexual violence.<sup>1</sup> As such, we publish this statement warning about the serious repercussions with decisions made by the Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz*, JEP) about prioritizing macro cases and investigation methodologies for crimes that were recognized under Colombia's 2016 peace accord. There are victims who have suffered impunity and negligence in the prosecution of their cases, both in the ordinary and transitional justice systems.

We reiterate (i) the need for the JEP to prioritize a national level macro case to investigate sexual violence that occurred during the internal armed conflict, in accordance with how the matter was incorporated in the peace accord; (ii) that national and international recognition be given to the fact that opening this macro case is a measure to ensure access to justice, including the right to full reparations for all victims<sup>2</sup> and the guarantee of non-repetition; (iii) that the JEP must maintain the standards of human rights, international criminal law, and international humanitarian law, and recognize the presumption of connection between the internal armed conflict and sexual violence established in constitutional jurisprudence.<sup>3</sup>

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<sup>1</sup> The reference to sexual violence includes reproductive violence and other forms of sexual violence motivated by the victims' sexuality and gender identity of the victims.

<sup>2</sup> OHCHR, Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Human Rights Violations and Serious Violations of International Humanitarian Law, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>

<sup>3</sup> See judgments C-291 of 2007, C-914 of 2010, C-253A of 2012, C-781 of 2012, C-084 of 2016, C-080 of 2018 of the Colombian Constitutional Court. Auto 009 of 2015.

## **1. The opening of the national case of sexual violence is a right of the victims.**

The peace accord and the norms that regulate the functioning of the JEP incorporate a gender-based focus that see sexual violence as an autonomous crime with no concessions. These obligations, together with the principle of centering victims, commit the JEP to prioritize the rights of all victims of sexual violence, in particular women and LGBT+ persons. The opening of a national macro case makes visible, in an autonomous and specialized manner, the way in which discrimination affects rights to sexual liberty, integrity, and autonomy of the victims; the case is essential to materialize the approach of centralizing victims, which should guide the actions of the JEP.

The materialization of this centrality and approach is necessary for the implementation of the peace accord and for reconciliation: the stories of sexual violence victims are evidence of the denial of justice and contribute to a better understanding of the internal armed conflict, allowing for the identification of effective reparation strategies and preventative strategies. The prioritized, autonomous, and specialized research on these types of violence exemplify the effort to overcome the institutional and social undervaluation of these crimes – to make visible *machista* practices in the judicial systems that hinder access to justice and even re-victimize the persons. The opening of this macro case, as was done for other serious crimes, is necessary to guarantee the right to truth for all victims of the internal armed conflict, the investigation and prosecution of those responsible for these crimes against international law, and above all the assurance of equal access to justice for the victims who have submitted more than 45 reports to the JEP.

Colombia has an international obligation to act with due diligence to prevent, investigate, and prosecute sexual violence perpetrated by both state and non-state armed actors and to provide reparations to victims. The obligation to document, investigate, and prosecute these crimes, particularly against women and girls, and to adopt a gender-sensitive analysis of major international crimes has taken root and become increasingly ingrained in the culture of international justice. This is due to a confluence of different factors, including the efforts of civil society and victims, the reporting of sexual violence committed in other contexts, such as in the Balkan conflict and during the Rwandan genocide, the writing and advocacy of jurists, the contributions to jurisprudence made by judges and lawyers in international and hybrid criminal tribunals, the emphasis on accountability for SGBV by UN entities including the UN Women and the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, and globally-recognized individuals such as Nadia Murad and Dr. Denis Mukwege (winners of the 2018 Nobel Peace Prize). With this increased attention, there is also a new focus paid to sexual and gender-based violence crimes committed against men and boys in the context of armed conflict, and thus a need to apply intersectionality in collecting and analyzing information and evidence to establish criminal accountability.

The opening of a national macro-case for sexual violence will ensure the centrality of victims and the conditions for an adequate investigation. Treating sexual violence at the same level as kidnapping and extrajudicial executions is an important contribution to overcoming the

undervaluing of this crime in the different judicial systems. Additionally, it makes it possible to identify and judge the patterns of these crimes at the national and territorial level and make visible the fact that discrimination and *machismo* are structural causes of certain practices in the internal armed conflict. Qualifying sexual violence as "mild" attitudes of discrimination or of "only" mistreatment, undermines the seriousness of the consequences that it has had on the lives of thousands of victims. The JEP must investigate the causes of these crimes, in particular, violence committed against persons perceived as "undesirable" by armed actors and society. While sexual and gender-based violence may have occurred alongside other crimes such as forced displacement and torture, among others, it is necessary for the JEP to recognize that it is an autonomous crime, as was recognized by the signatories of the peace accord, in order to determine those who are responsible as well as define appropriate reparation measures.

Given the historical and very high level of impunity for these crimes, along with the low level of acknowledgment by those responsible, the JEP has a responsibility to generate conditions to overcome these barriers and guarantee their rights to truth, justice, and reparation. Civil society and victims have insisted that this is an urgent measure for the satisfaction of victims' rights<sup>4</sup>, as opening the macro-case would improve their situation. The peace accord and the laws that develop it gave the JEP instruments to investigate sexual violence.

## **2. The JEP must apply international standards to investigate these crimes**

On several occasions the United Nations has recognized that "armed actors may resort to sexual violence for a variety of reasons, including to weaken and gain control of a civilian population, to inflict terror and intimidation, or to punish, destroy, or retaliate against a particular group, to establish control over a territory as a form of socialization and group bonding among perpetrators, as an incentive for recruitment, or to generate income (e.g., sexual slavery).<sup>5</sup> The National Center for Historical Memory recognized in its report, *La Guerra Inscrita en el Cuerpo* (The War Inscribed in the Body, 2017), that sexual violence committed in the internal armed conflict was not an occasional or unconnected practice of power, but on the contrary: it was a practical strategy that contributes to the moral and psychological defeat of the populations, reaffirming the territorial dominance of the armed groups.

The JEP must presume the connection between the internal armed conflict and sexual violence in constitutional jurisprudence. Auto 009 of 2015 of the Constitutional Court establishes that acts of sexual violence have a close and sufficient relationship with the internal armed conflict when they

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<sup>4</sup> Five Keys Alliance. A national case of sexual violence, reproductive violence and other crimes motivated by the victim's sexuality: a necessary and urgent measure. p. 4. (2021) . Available at: <https://colombiadiversa.org/eng/blogs/cinco-claves-insiste-a-la-jepabrir-el-caso-nacional-de-violencia-sexual-violencia-reproductiva-y-violencia-motivada-en-lasexualidad-de-las-victimas-para-mujeres-ninas-y-personas-lgbt/>

<sup>5</sup> United Nations, Handbook on preventing and responding to sexual violence in the context of armed conflict, 2020. Available at: <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/2020.08-UN-CRSV-Handbook.pdf>

are committed in a place where there was a presence of armed actors or war activities.<sup>6</sup> Failure to recognize this connection is to ignore the fundamental role played by *machismo* and the control over bodies seen as "inferior," "sick," or "exploitable" in the internal armed conflict. This, in turn, is a failure to fulfill the promise of having the victims at the center of the JEP's focus by paying careful attention to the ways in which ideas, beliefs, and social narratives about gender have and continue to affect them.

Signed,

Abaad MENA  
All Survivors Project  
Colombia Diversa  
Corporación Caribe Afirmativo  
Corporación Humanas Colombia  
Corporación Sisma Mujer  
Red de Mujeres Víctima y Profesionales  
Red Nacional de Mujeres  
Washington Office on Latin America  
Women's Initiative for Gender Justice

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<sup>6</sup> Five Keys Alliance. Connection between sexual violence and the armed conflict: a call for non-retrogression in the Special Jurisdiction for Peace. (2020). Available at: [https://humanas.org.co/wp-content/uploads/2020/10/19.-Final\\_cinco\\_claves.pdf](https://humanas.org.co/wp-content/uploads/2020/10/19.-Final_cinco_claves.pdf)