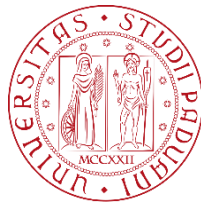


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**Master's degree in
Human Rights and Multi-level Governance**



DECOLONIZING TRANSITIONAL JUSTICE:
TOWARDS A DECOLONIAL FEMINIST PEACE
FOR COLOMBIA?

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Introduction

This research seeks to analyse the inclusion of Indigenous women's needs and perspectives in the definition and implementation of a specific kind of Transitional Justice mechanisms outlined in the 2016 Colombian Peace Accord, which is to say works and acts with restorative content (TOAR).

Multiple reasons lay behind the choice of this particular case study. This decision stems from the personal interest of the author for human rights, which is reflected in their academic background, and more specifically for two areas of this discipline, namely Transitional Justice and indigenous rights. Their more recent interest in the various declinations of the ecofeminist approach was an additional and important element that guided the selection of the case study. The case of post-agreement Colombia was selected because of its groundbreaking nature, as for the very first time in the history of Transitional Justice, not only were the TJ mechanisms introduced in the post-conflict Agreement explicitly endowed with a differential ethnic and gender focus, but the Final Agreement signed by the Colombian Government and the FARC-EP to put an end to the internal armed conflict in the country additionally introduced an unprecedented typology of TJ instrument inspired by a combination of retributive and restorative justice principles, which take the name of TOAR. The peculiarities characterising this case study were rendered even more interesting by the socio-political situation of the country, as notwithstanding the historic signature of the agreement between the Government and the FARC-EP which was aimed at putting an end to a fifty decades long and extremely complex conflict, the post-agreement context keeps on being unstable and dangerous for civil society leaders and human rights defenders, including several Indigenous women who are considered to be leading social and spiritual figures in their communities.

The aim of the present work is that of analysing the means through which the perspectives and needs of Indigenous women were encompassed in the design and implementation of TOAR. In order to do so, one of the objectives of this research is conducting a thorough examination of the procedures and means adopted by the JEP to ensure this inclusion and underscoring the positive advancements of the strategy that was

undertaken as well as the criticalities that emerged from it. Subsequently, the work focuses on the operational and perspective-oriented challenges that hinder the proper incorporation of Indigenous women's requests and necessities in the outlining and application of TOAR. A further objective of this thesis is to put forward suggestions on how the above-mentioned criticalities could be solved by providing an overview of strategies and good practices that could possibly be incorporated in the work of the JEP to strengthen the upholding of Indigenous women's rights, thereby contributing to the decolonisation of Transitional Justice practices in post-accord Colombia in line with decolonial feminist critique.

This research used a qualitative methodological approach based on the application of the Grounded Theory by Glaser and Strauss (1947). Constant comparison, the use of memos, and initial as well as intermediate coding allowed for the gathering of data and the progressive corroboration of evidence. Further information related to the methodology used in the research will be detailed in the corresponding section in chapter one.

The present work is articulated into five chapters. The first one introduces the case study and the pertinent literature review to present the origins and purpose of Transitional Justice and the decolonial feminist critique moved to it.

The second chapter offers a contextualisation of the socio-political and historical conditions that sparked the emergence of the Colombian internal conflict and the events that led to its escalation in the 1960s up until the signature of the Final Peace Agreement in 2016 between the Government and the FARC-EP.

As for the third chapter, it focuses on the analysis of the Final Agreement's overarching differential ethnic and gender-based focus as well as on the Transitional Justice mechanisms the agreement introduces. It specifically concentrates on the structure and prerogatives of the Integral System for Truth, Justice, Reparations and Non-Recurrence (SIVJRNR), on the role of the Special Jurisdiction for Peace (JEP) as well as on the aim and specificities of TOAR.

The fourth chapter presents an analysis of the measures that were concretely adopted by the JEP to embrace Indigenous women's perspectives and epistemologies in

the design and implementation processes of TOAR, and provides observations on the drawbacks and advantages connected to these means.

The fifth and final chapter advances some proposals of good practices and insights to solve the criticalities highlighted in the previous chapter and to further improve the incorporation of Indigenous women's perspectives and needs in TOAR, so as to ensure these acts truly contribute to rebuilding the Colombian social fabric.

This research has allowed for the analysis of the main criticalities arising from the implementation of innovative TJ mechanisms endowed with a differential and intersectional focus in the Colombian post-accord context, and has underscored what we think are valuable insights with respect to the adoption of good practices that if applied in similar contexts could spur the decolonisation of transitional justice in other post-conflict settings. For further and more in-depth information on the findings of this research, please refer to the conclusions of the thesis.

Chapter 1- Introducing Transitional Justice and the Decolonial Feminist theory.

1.1 Theoretical framework.

This chapter provides an overview of the theoretical framework and literature relevant to the case study. It especially focuses on the origins of transitional justice and on some of the most relevant scholarly debates in the field, including the decolonial feminist critique of transitional justice.

1.1.1 The origins of transitional justice.

Although there is no absolute consensus on Transitional Justice's genealogy, several scholars share the same views concerning the origins of this discipline. Teitel (2003) provides a useful three-phase paradigm that helps in identifying the significant milestones of the field's emergence. For the author, the origins of TJ date back to the Nuremberg trials, with a second evolutionary wave having taken place in the aftermath of the profound political and economic shifts brought by the Soviet Union collapse and the end of military rule in the geopolitical areas of Eastern Europe and Latin America in the late 1980s (Teitel 2003; Arthur 2009), which prompted the question of how the systematic political violence inflicted by military rule on victims should be addressed (Leebaw 2008). According to Teitel (2003) and McEvoy (2007), the third and contemporary phase would correspond to the mainstreaming and institutionalization of TJ in all post-conflict settings.

In fact, some scholars have come to define transitional justice as a "global project" due to the increasingly transnational dimension of the field (Nagy 2008). For one, Balint (2014) notes that transitional justice has become "*a dominant international framework for conceptualizing and pursuing redress for systematic violations of human rights, including military rule and civil war, genocide and widespread oppression*"¹.

¹ Balint, J. et al. (2014) "Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach" *The International Journal of Transitional Justice*, Vol. 8, p. 198.

Transitional Justice encompasses a series of institutional approaches and mechanisms which are meant to come to terms with legacies of past abuses and address policy choices adopted by newly installed regimes following the end of armed conflict and/or the downfall of authoritarian rule (Lykes and Van der Merwe 2019). Reparations to victims of human rights violations, international or national trials for prosecution of perpetrators of said violations, truth commissions or truth-seeking mechanisms to reveal the reality behind past crimes and the institutional reform are the instruments which are generally recognized as the four pillars of transitional justice (Miller 2008; Bickford 2004; UN 2010).

Former United Nations Secretary-General Kofi Annan provided the following definition of transitional justice in 2004:

*“The full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof”.*²

The liberal legal framework in which TJ first originated exerts a very strong hold on the nature, functioning and implementation of transitional justice mechanisms in post-conflict societies. First and foremost, transitional justice is based on the legal framework of international human rights law, rooted in international and criminal law with a specific focus on civil and political rights (Ní Aoláin and Rooney 2018; Arthur 2009; Balint 2014; Laplante 2008).

Moreover, transitional justice has gradually been encompassed in liberal peacebuilding programmes: as Miller (2008) and Waldorf (2012) note, TJ is usually associated to projects of economic and political liberalisation based on the instauration of electoral liberal democracy, free market economy and connected neoliberal reforms, the

² Annan, K. (2004) United Nations Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict Societies. UN Doc. S/2004/616, 24 August.

respect of the rule of law, and economic development with a view to ensure security, progress, and stability.

Thus, to a certain extent transitional justice can be defined as an inherently liberal western project which designates liberal democratic societies as the ultimate outcome of socioeconomic transformation (Balint 2014; Orford 2006).

Some encouraging developments towards the embracement of more holistic understandings of TJ that go beyond the imposition of dominant liberal peacebuilding frameworks have started taking shape over the last three decades. Since the mid-1990s, the transitional justice field witnessed the emergence of the “restorative justice” theory, opposed to the more traditional and liberal “retributive justice” grounded on the idea that perpetrators must be held accountable for their acts through punishment established by legal authority (McEvoy 2007).

In restorative justice theory, justice must work towards community-building through reparative processes that involve the community, the victim, and the perpetrator (Rosenblatt 2015). These reparations do not necessarily have to be achieved through prosecution as intended in the liberal criminal legal framework, but rather through dialogue and actions (Cuneen and Hoyle 2010). However, although this restorative justice approach constitutes an opportunity for challenging the centrality of top-down TJ projects by opening a door to peace and accountability conceptualizations other than the liberal one, it has so far failed at properly including grassroot-driven approaches designed by local communities (Gready and Robins 2014).

1.1.2 Relevant ongoing scholarly debates: Decolonising Transitional Justice.

Many scholars have criticised the excessively narrow and legalistic focus of Transitional Justice adopted in liberal peacebuilding operations to the detriment of other peace conceptualisations and worldviews. This section will give an overview of how the decolonial critique and its feminist declination can be applied to Transitional Justice mechanisms.

1.1.2.1 Applying the decolonial theory to the liberal Transitional Justice framework.

Decolonial studies are grounded on the idea that notwithstanding the end of colonial domination, colonialism still has pervasive effects in contemporary social, political, and economic relations in Latin America. Decolonial theorists such as Anibal Quijano (2000) and Walter D. Mignolo (2007) seek to challenge and deconstruct dominant Eurocentric perspectives that were inherited from the colonial past and have come to be regarded as ‘common sense’, and promote a paradigm shift toward the acknowledgement of alternative conceptual frameworks. In Quijano’s view, the “coloniality of power, knowledge and being” continues to shape present day economic, cultural, and social relations through the imposition of hierarchised categories based on gender, ethnicity, and race which were used to legitimize colonial domination. This narrative of western superiority was internalised by colonial subjects and is still profoundly embedded in contemporary Latin American societies, according to decolonial scholars.

For example, Stoler (2008) conceived the concept of “imperial debris” to designate debris of Spanish colonialism that continue to shape social life and the resulting inequalities even after the project of colonization has been formally abandoned. Scholars such as Rodriguez Iglesias (2019) and Miller (2008) believe that the top-down imposition of transitional justice’s liberal features contributes to the reaffirmation of the coloniality of power, knowledge, and being in contemporary Latin American society, as these western precepts are exported and transplanted into transitional societies with limited consideration of grass-root conceptualizations of peace³.

The narrow focus of Transitional Justice on liberal individualistic models of accountability ultimately hinders the resolution of deeply rooted social, cultural, and economic inequalities in post-conflict society. The consequence of this negligence, as observed by Van der Merwe (2009), is a superficial and therefore ineffective attempt of transitional justice mechanisms at redressing harms which are the direct consequence of underlying structural violence⁴ intrinsic to colonial power structures. The liberal legal

³ see also An-Na’im, A. A. (2013) “Editorial Note: From the Neocolonial “Transitional” to Indigenous Formations of Justice”, *The International Journal of Transitional Justice*, Vol. 7, N.2, pp. 197–204.

⁴ Farmer, P. (2003) defines structural violence as “*entrenched socioeconomic conditions that cause poverty exclusion and inequality*” in “Pathologies of Power: Health, Human Rights, and the New War on

framework's tendency to strictly focus on individualized violations of rights may also favour the "cherry picking" of victims who are allowed to become part of the narrative of reconciliation, while other victims are denied recognition and left aside when the governments estimates that their suffering is politically problematic (Humphrey 2002). Of course, this divisive approach undermines the creation of solidarity ties among victims and the reconstruction of the social tissue in transition contexts, while the focus on individual perpetrators shifts attention from the cultural and socioeconomic underpinnings of conflict and the underlying power structure having enabled the violations in the first place (Miller 2008; Van der Merwe 2009).

Applying decolonial theories to transitional justice would mean engaging in what Mignolo (2007) calls critical "border thinking" and "epistemic decolonization", which involves challenging the centrality of western liberal legal precepts in TJ to embrace other epistemologies and ways of life that may have been discredited and marginalised and may possibly bring important contributions to the process of upholding justice in contexts that underwent colonization. This, all while steering away from an excessive romanticisation of local narratives, as they too can be plagued with inner conflicting dynamics and risk being dominated by the views of local elites to the detriment of subaltern actors (Mac Ginty 2010, 2008; Rodriguez Iglesias 2019).

1.1.2.2 Decolonial feminist insights on peacebuilding and Transitional Justice.

The genealogy of the feminist presence in Transitional Justice processes is complex, multilayered, but, above all, still ongoing. For most of the XXth century gendered issues of violence, discrimination, and inequalities were often overlooked in peace agreements and negotiations from which transitional justice mechanisms emerged,

the Poor", Berkeley: University of California Press (2003). Farmer et al. (2006) in turn have explained structural violence as being social arrangements that are "*structural because they are embedded in the political and economic organization of our social world*" and "*violent because they cause injury to people*" Farmer et al. (2006) "Structural Violence and Clinical Medicine", *PLoS Medicine*, Vol. 3, N. 10, p.1686.

in contrast narrow gender schemes ended up being systematically reproduced⁵ (Lasota 2020; O'Rourke and Bell 2007). Feminist scholarship and advocacy strived to ensure proper inclusion of women in peace settlements, which started taking shape with the emergence of international soft law standards between the late 1990s and early 2000s⁶. The push of transnational feminist groups for the inclusion of women in peace agreements was rooted in the idea that equal participation of women is a right, that women's gender-specific experiences of conflict and subsequent emerging needs are better addressed if women's participation in peace processes is ensured (Kumar 2001; Joshi et al. 2015; Joshi and Quinn 2017) and that women play gender-specific roles in rebuilding the fabric of recovering societies and in fostering the local implementation and acceptance of peace agreements (True and Rivero-Morales 2019; Krause et al. 2018).

Nevertheless, women's decision-making potential continues to be neglected in international settings and provisions on women's inclusion in peacebuilding are hardly implemented (Lasota 2020; UN Women 2015). Even when women are included in peacebuilding processes, feminist scholars argue that the provisions aimed at addressing gender equality end up being too generalist and ultimately fail to challenge the hegemonic essentialist liberal narrative that sees women as vulnerable victims in need of protection (Bell 2015; Puechguirbal 2010). Ni Aolain (2006), for instance, notes that international attention has been almost exclusively focused on women's conflict-bound experience of sexual violence to the detriment of other gendered dimensions of violence that affect women both in and out of conflict situations, such as structurally embedded socioeconomic harms which underpin and enable gender-based violence in the first place. Scholars like Caprioli (2005) and Davies and True (2015) have highlighted the correlation between women's socioeconomic and political status and the probability of a re-ignition of civil war. Thus, according to O' Rourke and Bell (2007) addressing economic social and cultural inequalities experienced by women in post-conflict societies is a key step in

⁵ In major peace processes between 1990 and 2017 poor gender inclusion with only 8 per cent of female mediators and negotiator and 5 per cent of female witnesses and signatories according to United States Council on Foreign Relations (2018).

⁶ The Beijing Platform for action (1995), the 1997 Committee on the Elimination of All forms of Discrimination Against Women (CEDAW), and the UN Security Council Resolution 1325 (2000) on Women Peace and Security (WPS) agenda all advocated for full, equal and continuous participation of women in decision making including in each and every stage of peace processes operations.

achieving sustainable peace, a step which requires challenging at once the liberal definition of harms to be addressed by transitional justice mechanisms and the liberal economic development that usually takes over transitional contexts and systematically disregards local struggles for socioeconomic equality.

These premises explain why women's direct contribution is essential in the design and implementation of gender-informed and gender-sensitive TJ mechanisms that can foster sustainable peace. Disregarding women's participation in defining victimhood, the harms to be repaired and the benefits given by way of reparations in transitional justice could promote superficial and biased understandings of peace that may exclude relevant priorities for women, such as the respect and promotion of socio-economic rights, and thus seriously undermine the effectiveness of TJ mechanisms (O' Rourke and Bell 2007; Chinkin 2004).

In formerly colonized transitional societies, Indigenous women's role in TJ deserves even greater attention and consideration as it risks being constrained by dominant liberal legal conceptualizations of justice and peace. Adopting a decolonial feminist approach to TJ can prove particularly useful and insightful when examining the role of Indigenous women in transitional justice settings that may be influenced by colonial legacy.

Drawing on Quijano and Mignolo, Maria Lugones (2008) argues that with the "colonial matrix of power" came the transposition of a European understanding and categorisation of gender and sex, rooted in a bifurcation between male and female and layered with a racialised colonial understanding of this difference. This transposition was aimed at disrupting and replacing social patterns, conceptualizations of sexual and gender relations, and cosmological understandings that were pre-existing to Iberic colonialist invasion and therefore inherent in Indigenous communities. Subsequently, the categorisation of varied conceptualizations of sex, gender, and race in separable homogeneous categories *de facto* suppressed the intersectional dimension of individuality and thus enabled the disappearance of colonized raced women from political and theoretical considerations. Ni Aolain and Rooney (2007) and Gonzalez-Villamizar and Bueno-Hansen (2021) note that adopting an intersectional analytical lens while operating

in transitional justice contexts is crucial to better grasp the complex array of intertwining and multilayered discriminations experienced by women, and Indigenous women especially, in transitional societies that were subjected to colonial rule.

Building on the theoretical framework of decolonial feminism, which advocates for the abandonment of dominant western-centric epistemologies transposed by European colonisers, it is possible to try and analyse whether the design and implementation processes of TJ mechanisms effectively acknowledge and embrace Indigenous women's experiences of violence, peace, victimhood, of what should constitute harm and how it should be repaired. An array of feminist scholarly insights has been emerging in response to the need for a decolonial reframing of transitional justice mechanisms involving women and Indigenous women more specifically. Some of the propositions put forward increased attention to intersectionality (Ni Aolain and Rooney 2007) while other suggest adopting a transformative model of transitional justice with a holistic focus on the interdependence of rights and, subsequently, of structural and interpersonal violence suffered by women (Gready and Robins 2014; Lambourne and Rodriguez Carreon 2015). According to Gready and Robins (2014), reparations are the transitional justice instrument that can best vehicle meaningful socioeconomic impact provided that they adopt a transformative (not merely restorative) aim by acknowledging the structural underpinnings of conflict-bound harms. Transformative processes of reparations which put women at the centre of reparative measures' design and implementation in a non-exclusionary manner, based on their real concerns, needs and priorities are also discussed as an ambitious but potentially groundbreaking solution by former special rapporteur on violence against women Rashida Manjoo (2017).

As Laplante (2008) argues, sustainable peace can only be reached if the socioeconomic root causes of inequalities and subsequent violence are comprehensively addressed by TJ mechanisms, or the risk of violent uprising will remain relevant and persistent. Several cases exemplify how this trend is currently reinforcing: data on levels of criminal violence in post-conflict contexts such as South Africa, Guatemala, and Haiti corroborate the thesis according to which the number of killings and human rights abuses often grows with respect to the situation that preceded the conflict (Mani 2008). Miller

(2008) insightfully suggests the reconceptualization of transitional justice institutions from mere bridges between past and present to tools for conflict prevention considered that the perpetuity of non-eradicated structural violence not only enables a continuous cycle of violence and human rights abuses, but also irremediably hinders one of the ultimate aims of transitional justice itself as a future-oriented approach to the past: achieving sustainable peace.

1.2 Literature review.

This section of the chapter provides an overview of previous work having applied the decolonial feminist critique in the analysis of the 2016 Havana Peace Accord. It then focuses on the groundbreaking introduction of TOAR (Spanish acronym for Works, Actions and Activities with Restorative Content) among the retributive and reparative transitional justice measures imposed by the Peace Tribunal of the Special Jurisdiction for Peace and the inclusion of Indigenous women's perspective in the design and implementation process of this transitional justice mechanism.

1.2.1 Introduction to the case study of the Havana 2016 Peace Accord

The case of Colombia is a paradigmatic one in Transitional Justice for several reasons. The Peace Accord signed in La Havana in November 2016 after more than 50 years of conflict by the *Fuerzas Armadas Revolucionarias de Colombia- Ejército del Pueblo* (FARC-EP) and the Colombian government stands out for the importance it attributes to gender and ethnicity and for the introduction of a highly innovative set of TJ institutions. The Havana Peace Accord of 2016 is based on the ambitious project of ensuring sustainable peace through the integration of a gender and ethnic-based focus in its provisions and the issuance of transformative penalties aimed at rebuilding the social fabric of the country, in line with restorative justice theory. Given Colombia's colonial background, the relevant presence of ethnic people on its territories and the innovative nature of the provisions it introduces, the Havana Peace Accord of 2016 constitutes an unprecedented window of opportunity for the decolonization of Transitional Justice.

The agreement consists of six chapters tackling a corresponding number of fundamental themes. Transitional Justice mechanisms are addressed in Chapter 5 on victims, which establishes the creation of a comprehensive integral system of truth, justice, reparations, and non-repetition (SIVJRNR) seeking to include victims in the peace process using a gender and ethnic approach. The integral system of the 2016 Peace Agreement strengthens the reparation mechanisms that were put in place with the 2005 Justice and Peace Law⁷, the 2011 Victims and Land Restitution Law⁸ and the ensuing decree laws, which can be considered the first transitional justice texts of the peace process aimed at addressing the rights of victims of the Colombian armed conflict. The SIVJRNR is composed of 3 entities, namely the truth commission (CEV), the Special unit for missing and disappeared persons (UBPD), and the Special Jurisdiction for Peace (JEP).

The transversal gender-focus of the agreement is mainstreamed across its six chapters: women are recognized as legal subjects and political actors whose peculiar experience with conflict needs to be addressed by gender-sensitive institutions specifically created by the Accord, such as the sub-commission on gender, the women's truth and memory commission and working groups purposefully mandated to incorporate a gender perspective in the work of the mechanisms of the SIVJRNR (Gomez Correal 2021; Chalably 2018; Lasota 2020). Likewise, the perspectives of ethnic-territorial groups were included in the "Ethnic Chapter" of the agreement owing to the lobbying process of the Ethnic Commission for Peace and The Defence of Territorial Rights (Rodriguez Iglesias 2019; Bueno-Hansen and Gonzalez-Villamizar 2021). In the chapter, the parties explicitly recognize both the harms suffered by ethnic people historically and their rights to self-determination, to ancestral territory and to prior consultation and informed consent (Braconnier Moreno 2018; Wright et al. 2023). Most notably, the ethnic-focused approach was also incorporated in the CEV and the JEP (Izquierdo and Viaene 2018).

⁷ Law 975 of 2005 on Justice and Peace.

⁸ Law 1448 of 2011 on Victims and Land Restitution.

The recognition of peace conceptualizations and epistemologies that differ from the western mainstream through the recentring of gender and ethnicity in the Havana 2016 agreement appears to be overcoming, at least to some extent, the invisibilization of victims and the pervasiveness of the hegemonic liberal legal framework on which TJ is rooted, in line with the inputs of the decolonial feminist theory. However, the implementation of Peace Accord presents some shortcomings and challenges that may still be influenced by the colonial heritage of the country and as such deserve careful consideration (Wright et al 2023).

Bouvier (2016) and Chalably (2018) draw attention to the initial exclusion of women from the peacebuilding process, as only one woman participated in the first portion of the peace talks, reflecting unrecognition of the importance of women in peacebuilding. According to Chalably (2018). The later extension appears to have been made only to fit the international community's standards. The same can be said for ethnic people, who were excluded from peace negotiations for nearly 4 years and were finally included in the last few months leading to the formal signature of the agreement, only with respect to the sixth point of the document ratification modalities (Braconnier Moreno 2018).

The important achievement of transversally including a gender focus in the Agreement's provisions encountered the resistance of Colombian conservative society when winning "NO" campaigners in the 2016 referendum declared themselves against the Accord's "gender ideology" that allegedly promoted LBGT rights (Wright et al. 2023; Gomez Correal and Sanchez 2016). This decision led to renegotiation and reformulation of some gender rights-affirming clauses, to embrace more conservative liberal views of government and civil society negotiators who advocated for the introduction of general, unspecific references to, for example, "inalienable human rights" (Gomez Corréal 2021).

In addition to gender provisions having been reformulated, their proper implementation is lagging behind. Data issued by the Kroc Institute for International Peace Studies, which is an official monitor of the Peace Agreement's implementation, show that the implementation of previously non-initialised gender commitments only

increased by 2% in the 2020-2021 reporting period, while more than 50% of gender commitments show minimum implementation level and fully completed gender commitments remained at 12%⁹. Out of 130 measures focusing on gender perspective, as of 2022 only 51 were reported on in the governmental Framework Implementation Plan (Plan Macro Institucional, PMI) aimed at promoting and monitoring the agreement's implementation¹⁰. In any case, local and international monitoring bodies examining the implementation of gender-related measures notify the poor performance of the latter (Instituto Kroc et al. 2020; Iniciativa Barometro et al. 2019). The restrictive, universalistic interpretation of gender-sensitive measures (which has also signified abandoning an intersectional perspective when conceiving said measures) has hindered the implementation of 42% of provisions in 2019 (Gomez Correal 2021). Slow implementation of gender-focused provisions may be connected to inadequate funding for the project: notwithstanding the fact that gender commitments constitute 22% of the provisions adopted in the Accord, only 3% of the 2020-2021 funds of the National Budget for the Peace Accord was directed towards them¹¹.

Turning to the content of provisions, Yoshida and Cespedez Baez (2021) further note that the gender-based narrative mainstreamed in the Agreement mostly focuses on conflict-bound sexual violence, linked to a narrow interpretation of victimhood which depicts women as agentless vulnerable beings in need of protection. Scholars criticize the Agreement's lack of recognition of underlying socioeconomic inequalities and structural violence patterns that enable daily gender-based violence episodes in the first place (Lasota 2020; Acosta et al. 2018).

Furthermore, Lasota (2020) argues that although the agreement recognizes the need for a differential approach, it does not effectively adopt a proper intersectional perspective: as a matter of fact, the division between the ethnic and gender chapters complicates the process for ensuring that separate commitments made in these two areas are coordinated. To overcome this shortcoming, in 2017 the National commission of

⁹ Kielhold, A. and Fajardo, J. S. (2023) "Time is Running Out to Implement the Gender Approach in Colombia's Peace Accord". *Peace Accords Matrix Policy Brief*, N. 14. South Bend, Kroc Institute for International Peace Studies, Keough School for Global Affairs, University of Notre Dame, p. 2.

¹⁰ *Ivi* p.4.

¹¹ *Ibidem*.

Indigenous Women was purposefully created to monitor the implementation of the agreement and ensure that it incorporates Indigenous women's perspectives (Salamanca et al. 2017). Gomez Correal (2021) stresses the importance of incorporating decolonial, Indigenous and black feminist theories to the gender-based provisions of the Havana Peace Accord. According to the author, this would ensure that said provisions are not only centred on gender, but rather endowed with an intersectional and decolonial analytical focus which would contribute to the deconstruction of the Eurocentric, liberal, conservative nature of transitional processes hindering the achievement of transformational peace. Ensuring that an intersectional approach is adopted when implementing ethnic and gender-focused agreement provisions is crucial for the promotion and support of Indigenous women's rights, which were already hindered by the lack of direct inclusion and decision-making power of grassroots ethnic women activists in the agreement (Acosta et al. 2017).

Concerning the contextualisation of the conflict dynamics and the acknowledgment of the effects that underlying structural violence has had on Colombian society, Wright et al. (2023) note that neither the government, nor members of the FARC, nor the historical commission created with the specific purpose of reconstructing the dynamics the conflict originated from addressed the colonial roots of conflict, but rather reframed it as having recent origins in the cold war. The only direct reference is included in the ethnic chapter, although it also lacks clarity since it does not identify colonialism among the root causes of conflict but simply as a cause of ethnic people's distress.

Strikingly, Wright et al (2023) observe that land dispossession continues to be a central issue for sustainable peace in Colombia, the *fil rouge* uniting the colonial origins of the conflict and ongoing violent trends tied to neoliberal investments. The Conflict between the FARC-EP and the Colombian government has agrarian roots, as the FARC have long revindicated more access to land for the rural population (Wright et al. 2023). Slight improvement has been made in this perspective as land is still concentrated in the hands of powerful landowners, whose business cause internal displacement of civilians which affects women and ethnic people disproportionately (Yoshida and Cespedes Baez 2021, Rodriguez Iglesias 2019)¹². Indigenous and Afro-Colombian women are especially

¹² See also CNRR-GMH, (2010) «La tierra en disputa: Memorias de despojo y resistencia campesina

affected by land dispossession because of their spiritual and cultural bond with the ancestral lands they inhabit¹³. Attempts to reverse this trend by incorporating land reform in the first section of the agreement encountered strong opposition of landowners¹⁴, whose neoliberal interests are at the root of ongoing land-grabbing and extractivist projects in Colombia (Berman-Arévalo and Ojeda 2020). Because of this unresolved issue, violent episodes have resumed in rural areas of the country. The area of northern Cauca, where more than 40% of the population are ethnic people, has been particularly affected by violence and still is notwithstanding the signature of the agreement¹⁵. The deployment of military in the territory for security purposes once again underscores the government's failure to engage with the underlying roots of violence underpinned by neoliberal interests in the region (Velez-Torres et al. 2022). Velasquez et al (2020) argue that participatory processes connected to the 2016 agreement peace agenda ultimately constrained local participation and rather vehicled top-down, government-dominated perspectives turned to the promotion of state-led neoliberal projects in collusion with landowning elites. This dynamic is therefore hindering the structural transformation of power and embracement of alternative peace epistemologies envisioned in the 2016 agreement at the risk of further refuelling violent uprising.

While Piccone (2019) argues that the integral system may be “too slow and cumbersome” to avoid the re-ignition of conflict, and that the absence of elements like security sector reforms¹⁶ may contribute to hinder the Accord's progress towards

en la costa Caribe (1960-2010)», Ediciones Semana. Available at : https://www.centrodememoriahistorica.gov.co/descargas/informes2010/tierra_conflicto/la_tierra_en_%20disputa.pdf last accessed 19/12/2023.

¹³ On the disproportionate impact of displacement on Afro-Colombians, see Order 005 (2009) and Order 012 (2013), Corte Constitucional, Sala Especial de Seguimiento a la Sentencia T-025 de 2004, <http://www.corteconstitucional.gov.co/T025-04/AUTOS%202013/258.%20Auto%20012%20del%2004-02-2013%20Solicitud%20de%20informacion%20al.pdf> last accessed 19/12/2023.

On the differential impact on women, see Colombia's Constitutional Court Order T-025 (2004), Order 218 (2006) and Order 092 (2008). IBF-OIM, “Violencia intrafamiliar.”

¹⁴ See further Michael Albertus ‘Even with a new Colombian peace deal, what happens in the countryside?’ 13 November 2016. Available at: <https://www.washingtonpost.com/news/monkey-cage/wp/2016/11/13/even-with-a-newcolombian-peace-deal-what-happens-in-the-countryside-2/>

¹⁵ the murder rate in the PDET subregion Alto Patia increased by 4% in 2020, 3 times more than in the rest of Colombia (Congreso de la republica de Colombia 2021).

¹⁶ Human Rights Watch signalled President Duque's decision to promote military officers who are accused of extrajudicial killings and human rights abuses “Colombia: New Army Commanders Linked to

sustainable peace, Lasota (2020) remains sceptical that “TJ as a legal method gives a comprehensive answer to the highly political process of peacebuilding”. In referring to the 2016 Accord, Lasota argues that the TJ mechanisms that were adopted have limited capacity to address the root of socioeconomic inequalities and generate societal change because of their short lifespan and narrow focus on the conflict, and that even striving to include women in politics, peace talks, agreements will not suffice to erase underlying structural inequalities. She thus advises to consider other possible pathways, such as embracing the concept of transformative justice (Boesten 2010; Morris 2000).

Finally, Wright et al. (2023) agree that addressing persistent structural inequalities rooted in colonial projects is imperative to provide structural justice to those suffering those harms in the first place and ensuring peace sustainability. The authors go as far as to wonder to what extent we can talk about Colombia being a post-conflict scenario, because of the violent clashes which have rekindled following the signature of the Peace Accord and costed the lives of hundreds of social leaders and human rights defenders. Research shows that between 2016 and 2020, 322 social leaders were killed, the majority of whom were Indigenous leaders, community leaders and farmers¹⁷. As for former FARC members, according to the findings of the Investigation and Prosecution Unit of the JEP 220 cases of homicide were reported between the signing of the Peace Agreement and October 2020. We are thus confronted with a rising trend that goes against the objective of non-repetition and sustainable peace enshrined in the 2016 Peace Accord.

1.2.1.1 Introduction to the Special Jurisdiction for Peace (JEP) and the inclusion of Indigenous women’s perspective in its jurisprudence.

Killings,” *Human Rights Watch*, 27/02/2019, available at: <https://www.hrw.org/news/2019/02/27/colombia-new-army-commanders-linked-killings> last accessed 19/12/2023.

¹⁷ Instituto de Estudios para el Desarrollo y la Paz (Indepaz) (2020) ‘Lideres sociales y defensores de derechos humanos asesinados en 2020’, available at : <http://www.indepaz.org.co/lideres/>, last accessed 19/12/2023. See further UN Human Rights, Office of the High Commissioner, Report of the special rapporteur on the situation of human rights defenders in Colombia, A/HRC/43/51/ADD.1 (New York, 26 Dec. 2019).

The JEP is tasked with the investigation and prosecution of human rights offenders having committed violations during the conflict. The legal punishment of the perpetrators is established by the JEP's Peace Tribunal and consists of one out of three types of sanctions based on the defendants' level of cooperation with the system¹⁸. The most innovative aspect of this Transitional Justice system is the introduction of a special category of sanctions (*Sanciones Propias*, SP). The SP establish the eligibility for defendants who cooperate with the JEP to undertake social works referred to as TOAR¹⁹, which are aimed at social and political reintegration of the defendants and at repairing the harms they have caused to victims and the social tissue²⁰ and are defined in consultation with victims' representatives (Lemaitre 2020).

Alternatively, the defendant can undertake TOAR before a sanction is imposed by the Peace Tribunal on condition that the individual recognizes his/her responsibility and provides truthful testimony, although in this case the modalities for carrying out consultation with victims on the reparative nature of the sanction remain unclear, just like the means for establishing the proportionality between the gravity of the crime and the scope of the works (Sandoval Villalba et al. 2021).

It is worth noting that even directions for carrying out consultations with victims on the scope of SP projects, which are mandatory as per Law 1957 of 2019, remain vague and piecemeal²¹. In case the victims of violations are ethnic people, the guidelines of the JEP establish the obligation to coordinate with the Indigenous Special Jurisdiction²² or

¹⁸ JEP Statutory Law 1922 of 2018.

¹⁹ Spanish acronym which stands for "Works, Actions and Activities with Restorative Content".

²⁰ In the holistic understanding of reparations adopted in the Havana Peace Accord in compliance with Law 1448 of 2011, the TOAR are not aimed at repairing each and every human rights violation suffered by individuals. Rather, the focus is on compensation, rehabilitation, restitution and guarantees of non-repetition that can directly benefit the collectivity and subsequently the individual victims of the armed conflict. See Sandoval Villalba et al. (2021) "TOAR anticipados y Sanciones Propias (SP). Reflexión informada para la Jurisdicción Especial para la Paz", Bogotá: Editorial Dejusticia, pp. 18-19.

²¹ *Ivi* p.26.

²² JEP, Protocolo para la coordinación, articulación interjurisdiccional y diálogo intercultural entre la Jurisdicción Especial Indígena y la Jurisdicción Especial para la Paz, (2019) *Jurisdicción Especial para la Paz - Comisión Étnica, Comisión de la Verdad, Unidad de Búsqueda de Personas Dadas por Desaparecidas*, available at: <https://bit.ly/3ClIPkm>, last accessed 19/12/2023.

with the Proper Justice Systems of Black Communities²³ to determine the scope of reparations and to ensure the connected ethnic process of spiritual healing is respected.

Nevertheless, participatory processes are complicated by factors such as the location of the victims who may be residing far away from the place where the sessions are held and the number of collective victims associated with each case, which can be as high as a hundred thousand²⁴. The collectivisation of victim participation, which has proven necessary in dealing with macro-cases due to the limits of tribunal capacity (Van den Wyngaert 2011), risks hampering the meaningful participation of victims as it may entail the homogenisation and generalization of their needs (Vargas Trujillo 2022). Other significant challenges arise from the operationalization of TOAR in Territories inhabited by ethnic people which would entail working out a joint monitoring approach between the government and traditional Indigenous authorities.

Sandoval Villalba et al. (2021) underscore that when focusing on repairing collective harms, the TOAR need to adopt differentiated perspectives based on the context they intervene in, in line with article 18 of JEP statutory Law²⁵: gender-, ethnic-, territorial-based approaches that are inclusive of directly concerned victims are of utmost importance in defining not only the magnitude and nature of the damage TOAR are called to repair, but also suitable avenues for reparation and restoration of said harms. To make this possible, the JEP needs to specify and define participatory standards for victims as well as the exact timeframes and mechanisms for consultation, all while making sure that concerned individuals have realistic expectations of the reparative process and know how under what form they should best present their demands to ensure they are considered (Sandoval Villalba et al. 2021).

Notwithstanding these challenges, spurred by the recent opportunities for discussion and re-articulation on the meaning of peace in Colombian society afforded by

²³ JEP, Protocolo de el relacionamiento entre la JEP y los pueblos negros, afrocolombianos, raizal y palenquero, (2021), *Jurisdicción Especial para la Paz - Comisión Étnica*, available at: <https://bit.ly/3zhdg7Z>, last accessed 19/12/2023.

²⁴ JEP, “Informe Estadístico: Principales Estadísticas”, 2/07/2021, available at : <https://bit.ly/3hGC2sa>, last accessed 19/12/2023.

²⁵ Art. 18 JEP statutory Law 2018.

the adoption of the 2016 Accord, the JEP has been including a more intersectional perspective in its decisions. Since 2018, the JEP has repeatedly acknowledged Indigenous people's inextricable spiritual and cultural connection with ancestral lands, a bond which is gravely threatened by armed conflict and land dispossession that comes with liberal economic development (Rodríguez Iglesias 2019). What is more, the JEP's recognition of Indigenous women having special bond with territory in Indigenous cosmologies contributes to bridging the gender and ethnic dimensions mainstreamed in the Peace Accord. The most recent, groundbreaking evolution of the jurisprudence of the JEP consists in the recognition of territory as victim, both in itself and as an extension of Indigenous people's being, and of Indigenous women in particular.

In fact, following the legal precedent established by the Colombian High Courts in 2016 and 2018²⁶, in the preliminary judgments on the Katsa Su case of 2018²⁷ and on the Wiwa and Kankuamo case of 2021²⁸ the JEP recognized the territory as a legal subject who, as a victim of armed conflict, has the right to justice, truth and reparations in line with ethnic people's cosmologies. The concept of territory-as-victim would be bringing relevant contribution to the general advancement of Indigenous victims' rights as well, as in ethnic epistemologies the healing of the individual and the healing of the territory are intertwined (Huneeus and Rueda-Saiz 2021). This extremely important and unprecedented legal development brings another dimension of victimhood to the table by acknowledging the special intrinsic relationship linking ethnic people to the ancestral territory they inhabit and thus underscoring how these populations are disproportionately affected on a spiritual, cultural, social dimension by territorial damage (Yoshida and Céspedes-Baez 2021). What is more, the preliminary decision of the JEP in the Katsa Su case presented by the Indigenous Awa in 2018 has recognized not only the multidimensional nature of the harms inflicted on Indigenous people when their ancestral lands are damaged, but also the disproportional impact of the conflict on Indigenous

²⁶ See e.g. the Aratro River case, T-622/16 Constitutional Court of Colombia, Nov. 2016; and the Amazonía case, Corte Suprema de Justicia, Sala de Casación Civil, STC4360-2018, April 2018.

²⁷ Auto SRVBIT - No. 079, Caso 02, Bogotá D.C., 12 de Noviembre de 2019.

²⁸ Auto SRVR - No. 128, Caso 03, Bogotá D.C., 7 de Julio de 2021.

women²⁹. This was done in consideration of the Awa's cosmologies and beliefs, which consider women to be gatekeepers of ancestral knowledge and having an extremely important role in ensuring that the harmony between the human world and nature is respected (Yoshida and Cespedes Baez 2021). The court referenced intersectionality when mentioning the "woman-territory relationship" to explain the important cultural bond between nature and ethnic women³⁰.

These preliminary judgments not only mark further advancements in the recognition and acknowledgment of Indigenous epistemologies, but additionally establish legal precedents by challenging dominant liberal Eurocentric transitional justice perspective and underscoring the key role of Indigenous women in Indigenous cosmologies, included in relation to land. The jurisprudence of the JEP thus strengthens the legal ground for the effective inclusion and consultation of Indigenous women in relation to the definition of harms to be repaired and the scope of reparations to be carried out through TOAR, with a view to properly restore spiritual, social, cultural harmony in Indigenous communities and, subsequently, in Colombian society as a whole.

A growing body of research is developing concerning the effective inclusion of Indigenous women's perspective in the definition of harms, projects, and restoration in TOAR. In line with decolonial feminist theory, some of the following works have sought to challenge neoliberal western-centric peacebuilding frameworks by advocating for the incorporation of Indigenous women's viewpoint in TOAR through the use of insightful methodologies borrowing from anthropology and ethnography.

Garces-Amaya (2021) and Santamaria et al. (2023) provide an overview of, respectively, Indigenous Amazonian and Arhuaca and Wiwa women's conceptualizations of peace and conflict, and more specifically of the epistemic and relational ontology of "*cuerpo-territorio*" which considers the body and territory as complementary and indissoluble entities embedded in the Indigenous collective and spiritual dimensions.

²⁹ The 2011 Victims' Law first recognized the differential impact of said conflict on ethnic people and women and adopted specific emphasis on land restitution as a means of restoring justice for the forcibly displaced. See Braconnier Moreno (2018).

³⁰ See supra n.26.

Ancestral territories are the cradle of Indigenous spirituality and culture, and Indigenous women's bodies more specifically are considered an extension of the earth in Indigenous cosmologies (Cabnal 2010, 2018). As the authors underline, any act of structural violence against land is perceived as an aggression on Indigenous women and vice-versa, as it threatens the *cuero-territorio* complementarity as well as the cultural identity, the rights to autonomy and the rights to self-determination connected to it.

This explains why Indigenous women consider the body as the first territory of "defence" and why their healing process focuses on "recovering of the body's memory and politicization" (Santamaria et al. 2023).

Santamaria et al. (2023) reconstruct the collective memory of women with respect to their spiritual and territorial defence practices through the collaborative methodology of social mapping, which consists in indicating sacred sites of women and the ways in which the latter inhabit the territory to reveal the complexities of women-territory (interdependent) relationship. Santamaria et al. (2020) explore the use of body mapping and corporeal memory to identify the experiences of Indigenous women with a bottom-up, intersectional decolonial approach to TJ.

These methodologies represent an avenue for incorporating Indigenous women's standpoint when reviewing and determining the scope of collective harms, and for identifying possible reparation measures compatible with Indigenous women's spaces and methodologies of spiritual and physical healing³¹. Garces Amaya (2021) argues that de-centring liberal hegemonic understandings of healing and repairing through the effective adoption of the "Ethnic approach" advanced in the Peace Accord is the only way to ensure restorative justice measures such as TOAR have meaningful, profound and long-lasting reparative effects on Indigenous communities' spiritual, social and cultural balance and harmony and on the Colombian social tissue.

Remains to be ascertained whether the gender and ethnic focus mainstreamed in the Accord are being efficiently transposed in TJ mechanisms established by the JEP, and

³¹ Santamaria, A. et al. (2023), "To pay, heal, and repair Mother Earth in the Sierra Nevada de Santa Marta: Experiences of Indigenous women's reparation in the implementation of the Colombian Peace Accord", *International Review of Victimology*, Vol. 29, N.2, p.193.

most of all whether these programs will focus on Indigenous women's real priorities all while accounting for the heterogeneity of said priorities and perspectives.

Consequently, the purpose of this study is to adopt a decolonial feminist approach in the analysis of the 2016 Colombian Peace Accord and specifically of the design and implementation process of TOAR to research whether the modalities used to include Indigenous women's perspectives in this TJ mechanism adequately meet these women's various expectations and aspirations, in line with the gender and ethnic focus integrated in the 2016 peace agreement. This research will then explore methods that could possibly be used to further improve TOAR in their reparational dimension.

To explore this issue, I conducted a qualitative study based on the grounded theory framework (Glaser and Strauss 1967) and guided by the following questions.

- 1) What are the means through which the perspectives of Indigenous women are included in the definition of harms perpetrators need to repair and in the definition of reparations to be carried out as TOAR? Are these means endowed with an intersectional, gender and ethnic-oriented focus in line with the Accord's overarching differential approach?
- 2) Which are the challenges and benefits encountered in the application of said mechanisms with respect to the inclusion of Indigenous women's perspectives and conceptualizations?
- 3) How can these methods be improved to foster the respect and upholding of Indigenous women's rights and the subsequent restoration of Indigenous communities' and Colombian society's social tissue?

1.3 Methodology.

The present work follows a qualitative research method based on the principles of grounded theory (Glaser and Strauss 1967) and focuses on secondary data analysis of documentary materials. The research seeks to investigate whether the modalities and means which were employed to incorporate Indigenous women's perspectives within TOAR effectively reflect the peace, justice, victimhood, harms, and reparations

conceptualizations of Indigenous women in accordance with the gender and ethnic focus enshrined in the 2016 Havana peace agreement. The research then aims at exploring potential avenues for improving the inclusivity of TOAR concerning Indigenous women's perspectives in line with a decolonial feminist approach, and does so by examining the possible contribution that insightful interdisciplinary methods (drawing from anthropology, ethnography) could bring to the work of the JEP.

Data for this study were collected from second hand interviews conducted with indigenous women in the broader framework of ethnographic studies and investigations carried out by NGOs, official reports published by civil society organisations as well as experts in the legal sector, resolutions of the JEP, public hearings, and pertinent academic papers available in the literature that provide useful insight on the modalities employed for the design and implementation of TOAR. All the materials were selected based on whether they directly addressed the inclusion of Indigenous women's perspectives, expectations, and aspirations in relation to the promotion of their rights within the context of the 2016 Havana peace agreement.

The analysis started with a systematic review of the collected documents, from which emerged initial codes. These were created to identify key concepts related to the modalities employed in the design and implementation of TOAR, focusing on the inclusion of Indigenous women's perspectives: carrying out this first phase enabled the identification of patterns and discrepancies in the data, which were carefully noted down and recorded in specific memos along with emerging insights, decisions, and potential biases so as to document the whole analytical process and ensure transparency.

Following this, the codes were linked through Intermediate coding and grouped in categories and subcategories, which allowed for a deeper understanding of the interactions within the data, specifically focusing on the alignment between the modalities used by the JEP and Indigenous women's actual conceptualization of harms and reparations. In order to deal with the progressive introduction of additional data and documentary sources and maintain transparency in the process, new data was strategically selected through theoretical sampling and continuously compared with previously existing codes and categories by employing constant comparison.

This process contributed to the refinement and validation of emerging concepts, which were then integrated into existing categories through advanced coding, enabling the identification of core categories connected to the central theme of the inclusion of Indigenous women's perspectives. Among these, the identification of operational and perspective-oriented challenges such as the poor inter and intra-institutional coordination concerning the design and implementation of TOAR, the lack of proper monitoring and consultation mechanisms as well as the existence of structural and conceptual barriers spurred the articulation of a comprehensive understanding of whether Indigenous women's conceptualizations of peace, justice, victimhood, harms, and reparations are reflected and included in TOAR in compliance with the differential gender and ethnic approach mainstreamed in the 2016 Havana Peace Accord.

Chapter 2 - From the origins of the armed conflict in Colombia to peace negotiations and the Havana Peace Agreement of 2016.

In order to contextualize the research question that was presented in the first chapter, this section wishes to provide an overview of the origins of the Colombian armed conflict and its subsequent developments up until the 2016 Havana peace accord.

2.1 Defining the conflict: a series of debates.

A wide array of Colombian and international scholars has engaged in long-standing debates concerning the definition of the five decades long conflict: for instance, while De Zubiría (2015), Fajardo (2015) and others refer to it as “armed social conflict” thereby stressing the important causal link between social conflict connected to land use and political violence, Gutiérrez (2015) sees it as a “civil war” with different phases of varied intensity. Instead, Jorge Giraldo (2015) and Wills (2015) describe the conflict as outright “war” between the State and armed groups. It is worth noting that some political sectors, most notably the conservative party led by Álvaro Uribe Vélez, always denied the very existence of an internal conflict, and rather asserted that the country was involved in a fight against criminals who started being referred to as narco-terrorist following the 9/11/2001 terroristic attacks in the U.S. (Burnyeat 2019; De Zubiría 2015).

The notion that was finally adopted in the 2016 peace negotiations is that of “internal armed conflict”, which incorporates the following specificities of the Colombian conflict: its prolonged nature, its complexity, and its discontinuity (Jorge Giraldo 2015). As a matter of fact, although discontinuous in its intensity the Colombian armed conflict is generally recognized as one of the more long-lasting conflicts in the world³². It additionally involves a wide range of socio-political actors, which include the State in its national and local dimensions, guerrilla groups differing in their political-strategic orientation and paramilitary troops. The convolutedness of the conflict is further determined by the multidimensional and multifactorial nature of the violent clashes,

³² see Kreutz, J. and Nilsson, M. “Protracted conflicts: Issues or dynamics at stake?” (2010), *New Routes*, Vol. 15, N. 4, pp. 3-6.

which mostly happened and continue to happen at the local scale and are extremely dispersive from a territorial standpoint (Torrijos 2015; Pécaut 2015). Moreover, the enormous regional differences in the evolution, dynamics, and confrontational modalities of the conflict are influenced by the geographical complexity of the country, as this aspect enables the persistence of armed guerrilla groups and complicates the intervention of the State in terms of security (Montenegro 2008).

Although some authors argue the current internal armed conflict has originated from two different periods of violence, respectively having taken place between 1946 and 1964 and then from 1964 to present day (Jorge Giraldo 2015; Torrijos 2015), other scholars like Fajardo (2015), Molano (2015) and Javier Giraldo (2015) believe the roots of violence are to be found in issues concerning access to land experienced by the population in the 1920s, which would make the conflict much more ancient (Luna Enslava 2019; Pizarro Leongómez 2015). Adopting a broader, more extended viewpoint on the emergence of violence in Colombian society can foster a more comprehensive understanding of the situation that led to the 2016 Havana peace agreement, although some scholars point out that the similarities between the 1920s and today's conflict do not necessarily constitute a solid ground to retrace the origins of conflict back to the beginning of the XXth century. As a matter of fact, Pécaut (2015) and Gutiérrez (2015) consider that although the *Violencia* uprising sparked by the 1940s' change in political hegemony from liberal to conservative and the ongoing violent clashes in Colombia are organically connected, they differ for their underlying logics and motives: while the first one was mainly sparked by a change in political hegemony and moved by specific and circumscribed reasons connected to land use, the second one saw the emergence of insurgent groups fighting for ideological reasons which were presented and organized coherently and strategically.

Notwithstanding the important debates concerning the origins of the Colombian conflict, scholars generally agree that monocausal explanations do not suffice to elucidate the reasons behind the emergence of the clashes, and rather a complex web of factors experienced in a specific time conjuncture are at the root of this violent outburst (De Zubiría 2015). Thus, according to historians, the complex internal armed conflict that has

affected Colombia for the last 50 years originated from a combination of socio-economic issues which notably included the lack of access to land, as well as political exclusion and corruption (Luna Enslava 2019; Vargas Velásquez 2003; Pizarro Leongómez 2015). On the other hand, focusing not only on historical factors but even more on escalating factors that ultimately enable the perpetuity of violent clashes is of utmost importance, as their identification and elimination is instrumental in the achievement of sustainable peace in Colombia.

Vargas Velásquez (2003) argues that international Cold War dynamics and the subsequent ideological radicalization of young students and labour union leaders in the 1960s contributed to the emergence of organized guerrilla groups and therefore to the escalation of conflict.

Molano (2015), Pécaut (2015) and Jorge Giraldo (2015) observe that the 1980s-1990s favourable international economic conjuncture that allowed drug-trafficking in Colombia to prosper constituted a window of opportunity for armed *guerrilla* groups who had been mostly linked to the rural areas of the country that far, as it allowed them to get involved in business agreements with drug cartels and thus benefit from that increased economic support to strengthen their military presence. Another connected aspect that contributed to the aggravation of the conflict was the systematic abduction and extortion perpetrated against civilians at the hands of *guerrilla* and paramilitary groups, who committed such acts to secure revenues that would finance their military expansion (Pizarro Leongómez 2015).

Institutional fragility and power fragmentation further hindered the quest for peace and stability in Colombia: the incapability of the State to ensure public order and security due to low state expenditure on public institutions' support, security, and defence additionally contributed to the emergence of legal and illegal private security services especially at the local and rural level (Jorge Giraldo 2015). In addition to that, Gutiérrez (2015) and Pizarro Leongómez (2015) underscore that the increased local fragmentation and decentralization of political power and national economic resources of the 1980s and

1990s³³ spurred the collusion of political representatives with armed groups, who guaranteed protection and support of political leaders in exchange for political influence and economic contributions.

Notwithstanding various governmental attempts at reforming the Colombian agrarian sector over the decades³⁴, land kept on being concentrated mostly in the hands of powerful landowners and illegal armed groups who, through the disproportionate use of violent means, managed to take away cultivable crops from the rural and ethnic population (Gutiérrez 2015).

Finally, Jose Giraldo (2015) and Duncan (2015) draw attention to an often dismissed but nonetheless relevant dimension of conflict escalation, that is to say the circular nature of violence. As both authors note, violence worsens the socio-economic conditions of the population thus fuelling up discontent and divisions which ultimately lead to corruption and more violent clashes. Addressing the underlying roots of violent uprising proves once again imperative to prevent the radicalization and escalation of conflicts in Colombia and worldwide.

2.2 History of the Colombian internal armed conflict.

As Pizarro Leongómez (2015) observes, for the first decades of the XXth century Colombia experienced relative political calm and stability, the last civil war of the XIXth also known as “the war of a thousand days” (1899-1902) having ended in 1902.

However, at the end of 1940s Colombia underwent a new wave of violent clashes, historically referred to as *La Violencia*. The preconditions that enabled this violent outburst had been building up for the previous decade: due to the favourable international economic conjuncture of the mid 1920s, coffee crops’ profits had grown significantly thus encouraging the rural population to colonize wastelands in order to grow coffee plants (Luna Enslava 2019).

Powerful landowners felt threatened by this expansion, which intensified after the 1929 U.S. economic crisis as *campesinos* started demanding ownership of the land they

³³ The Constitutional Reform of 1986 established the direct election of mayors, while the 1991 Constitution established the direct elections of governors.

³⁴ Law 200 of 1936 on land regime, Law 135 of 1961 on the agrarian social reform.

had been working on in the form of leasing or sharecropping (Molano 2015). To deal with the conflict, Law 200 of 1963 was created establishing that the government itself would purchase some portions of land from landowners and re-sell them to *campesinos* so that they too could become regular owners (Molano 2015). Notwithstanding the promulgation of law 100 of 1944, which essentially erased the tenant's benefits introduced in 1936, the agrarian conflict turned into an armed one when private armed gangs started attacking *campesinos* who had taken legal possession of lands that previously belonged to powerful landowners (Pérez Martínez 2019). As Schuster (2010) observes, these slaughters increased with the 1946 change in political hegemony from liberal to conservative. In fact, the election of a new conservative Government resulted in localized but intense violent clashes in suburban areas, which encouraged liberal leader Jorge Eliecer Gaitán to publicly denounce and protest against the bloodbath that was occurring in rural areas of the country (Molano 2015).

The murder of Gaitán on April 9, 1948, orchestrated by conservatives to prevent liberals from returning to power, was a pivotal event which catalysed social tensions into the outburst of generalized violence across the country and resulted in the systematic elimination of liberal political opponents at the hands of State Armed Forces and gangsters (Luna Enslava 2019).

In response to these atrocities, liberal militants decided to self-organize and follow leader Guadalupe Salcedo in the foundation of the “liberal *guerrillas*”, which progressively emancipated themselves from liberal élites and ended up becoming fully-fledged independent armed groups (Pécaut 2015). Likewise, Communist *guerrillas* also emerged after the State adopted an anti-communist ideology with the support of the U.S. and declared the Communist Party illegal in 1948 (Pizarro Leongómez 1989). The period of intense violent confrontation between the State and the majority of *guerrilla* groups lasted until the end of the 1950s, as liberal *guerrillas* (unlike the communist ones) started to demobilize when Gustavo Rojas Pinilla was elected president following the military coup of 1953 (Pécaut 2015).

In 1957 the National Front (FN) coalition was established between the liberal and conservative parties with a view to restore peace and stability in the country after the

Violencia and Rojas Pinilla's military dictatorship: it was an unprecedented move which, according to Silva (1989), ultimately overcame the hegemonic alternance of parties by enabling sustainable and continued bipartisanship. The agreement established a four-year-based rotation of executive power between the two parties across a total time span of 16 years, as well as the strategic distribution of political influence and public positions between liberal and conservatives in different regions.

Authors such as Gutiérrez, Pécaut, Jorge Giraldo and Torrijos (2015) highlight that violent clashes declined between the mid-1960s and the 1980s owing to the experience of the FN. Not only was a lower homicide rate registered with respect to the *Violencia* period (Giraldo Ramirez 2015), but according to Wills (2015) democratic participation and socio-political mobilization in the public sphere increased as the FN decided to reinstate the Communist party thereby enabling the election of some of its members to perform public functions (Pécaut 2015).

However, these limited successes could not compensate for other relevant shortcomings of the FN experiment. During the FN period Colombian politics witnessed the advent of a clientelist and "captured" State, which started upholding the interests of specific political actors (De Zubiría 2015). Moreover, apart from the reintegration of the Communist party in the Government, the continuous exclusion of most political parties that were not part of the NF from political life and the subsequent restrictions on political participation fuelled discontent among political sectors and civil society, leading to a series of violent social protests which were brutally repressed by the government (Pizarro Leongómez 2015).

According to Pizarro Leongómez, the FN's failure at executing development programs as well as the agrarian and social reforms it had promised to undertake (Gutiérrez 2007; Palacios 2012) were the reasons behind the disillusionment of the population and the political system's drift towards clientelism.

More specifically, the attempts of the FN at reforming the agrarian sector through the introduction of law 135 of 1961³⁵ encountered the opposition of powerful landowners and the U.S.A., while the agrarian movement itself was debilitated from within by

³⁵ This law encompassed a wide array of dispositions aimed at designing a more equitable and socially just division of land to fight against unproductivity and inequalities in access to land. See the text of Law 135 of 1961.

irreconcilable internal hostilities among different leftist groups (Molano 2015). As Luna Enslava (2019) argues, the FN State policy lack of coherence and clarity concerning rural reform ended up enabling the further concentration of territories in the hands of powerful landlords to the detriment of sharecroppers and tenants' participation.

Notwithstanding the implementation of social reforms in the FN years, the Colombian population continued to experience severe poverty (Duncan 2015; Javier Giraldo 2015) while the scant investments made by the government on State Armed Forces opened the way to the privatization of security thus laying fertile ground for the re-ignition of violent clashes. The latter were spurred not only by the abovementioned internal factors, but also by external events that originated in the international politics arena. For one, the new counterinsurgency security doctrine of the U.S. based on the principle of "roll back", which was aimed at preventing the emergence of philo-communist governments by actively reversing the political orientation of socialist Latin American countries with all possible preventive means, including through the organization of *coups d'états* such as the one that struck Allende's government in Chile in 1973 (Pizarro Leongómez 2015; Luna Enslava 2019). The use of counterinsurgent preventive strategies by the State under U.S. pressure reinforced the leftist militant groups' perception that accessing power through democratic means was unsustainable in the long run, and that violent confrontation was necessary to affirm their political position (Pizarro Leongómez 2015). This thesis was further supported by Colombian intellectuals who, drawing from decolonial and Marxist theories, advocated for the use of violence to achieve long-term socio-political and economic change (Jorge Giraldo 2015).

The contemporary phase of the armed conflict is thus generally considered to have begun in 1964 with the consolidation of several independent *guerrilla* groups into larger entities such as The Revolutionary Armed Forces of Colombia - People's Army (FARC-EP), The National Liberation Army (ELN), the People's Liberation Army (EPL) and the establishment of a new "second generation" of *guerrilleros*³⁶ which, much like in the rest of Latin America, claimed and strived for revolutionary social change inspired by the

³⁶ Such as the 19th of April Movement (M-19) and the Workers Revolutionary Party of Colombia (PRT).

success of the Cuban armed revolution grounded on socialist ideals³⁷. Pizarro Leongómez (2015) draws a connection between the arrival of Fidel Castro in La Havana on January 7, 1959, and the social and student movements' uprising in Bogotá on the very same day, which were sparked by the *Movimiento Obrero y Estudiantil de 7 de Enero* (MOEAC, as "*Campesinado*" was later added to the name). As the author underscores, The MOEC was the first group that tried to replicate the Cuban experience and subsequently opened the way to the creation of other, more urban and nationalist *guerrilla* groups like M-19. However, a particularity inherent in the Colombian conflict which is rather uncommon in the Latin American context is that long-standing *guerrilla* groups had already emerged in the 1950s, so well before the triumph of the Cuban Revolution. This goes to show the unique nature of the Colombian armed conflict.

The expression of social and political tensions brought by the dissatisfaction and disillusionment of the population with the FN experience culminated with the Civic National Strike of 14 September 1977. The demonstration against unemployment was organized by the four united trade union centres, that is to say the Communications Workers Union (STC), the Union of Workers of Colombia (UTC), the Confederation of Colombian Workers (CTC) and the Democratic Union Alternative (CGT) and the repression by State Armed Forces was extremely brutal, leaving more than 20 people dead (Luna Enslava 2019).

On one hand, the 1977 strike fostered the reorganization and definitive emergence of *guerrilla* groups who saw this opportunity as a window to sociopolitical revolution, on the other hand the government reinforced the autonomy of the Military with the Security Statute of 1978 out of fear of violent social uprising (Pizarro Leongómez 2015). The Security Statute expanded military power disproportionately, as it authorized the Military Criminal Justice Board to try civilians for alleged crime against other civilians and the military (Wills 2015). The extremely violent practices and human rights abuses inflicted on dissidents under the Security Statute spurred civil society's change in perception of *guerrilleros*, who started to be seen as heroic victims of the violent State (Pizarro Leongómez 2015).

³⁷ FARC-EP, ELN and EPL were influenced by the revolution in the Soviet Union, in Cuba and in China respectively. Luna Enslava, E. (2019), "Colombian violent conflict: a historical perspective", *International Journal on World Peace*, Vol. 36, p. 60.

A step towards peace was taken in 1982 by newly instated President Belisario Betancur who repeatedly acknowledged the inequalities and injustices at the root of violent uprising in Colombia during his presidential campaign (Luna Enslava 2019). As Luna Enslava underscores, the presidential initiative of engaging in a dialogue with *guerrilla* groups resulted in the signature of a bilateral ceasefire as part of the so called “Uribe Agreement” of 1984 and in the creation of the new political movement Patriotic Union (UP), which encompassed representatives of the FARC-EP, M-19, ELP as well as members of other political parties and of civil society. In a couple of years, the UP managed to obtain a series of victories both at the central and local political level. In fact, the UP and the Communist Party not only secured a total of 14 seats in the Senate and the House of Representatives, but additionally won several municipalities and mayorships in the 1988 local elections (Luna Enslava 2019). The Uribe agreement and the UP were nonetheless largely threatened by political opponents who were worried by the *guerrilla* groups’ practices of extortions and kidnappings (Wills 2015; Pécaut 2015).

Thus, from the 1980s, apart from the above-mentioned attempt of the Betancur administration at fostering the cessation of hostilities, Colombia witnessed a reactivation of *guerrilla* groups (De Zubiría 2015) and the expansion of new socio-economic phenomena such as drug-trafficking and the engagement of paramilitary troops in the conflict (Fajardo 2015).

The favourable economic conditions of the 1980s and 90s bolstered the emergence and flourishing of Colombian drug cartels and criminal organizations, which drew government officials and *guerrillas* into business agreements based on corruption, violence and threat (Molano 2015; Jorge Giraldo 2015). The extraordinary gains made through drug-trafficking not only became a means for financing different actors who sought military strength and power, but also contributed to the permanent modification of conflict dynamics in Colombia at the time.

As a matter of fact, Duncan (2015) and Gutiérrez (2015) observe that the illegal economy brought substantial economic benefits to local realities and reinforced centrifuge tensions in the Colombian political system. It did so by strengthening the clientelist relations between local élites involved in drug-trafficking and illegal armed

groups who came to substitute State presence in rural and remote areas of the Country. This process spurred the empowerment of regional élites whose political weight and autonomy became more and more relevant and independent from the Government. Likewise, the growth in popularity and the increased enrolment of the rural population into illegal armed groups was fostered by said groups' involvement with the drug business, as in these organizations *cocaleros* could find protection and resistance against the State's attempt to eradicate drug-trafficking (Uribe López 2013; Jorge Giraldo 2015).

The initial cooperation between the *guerrillas* and drug traffickers came to an end when the exponential increase of kidnappings, robberies and extortions perpetrated by the *guerrillas* collided with the private interests of cartel members, who decided to create paramilitary groups to defend themselves. In particular, the private paramilitary group Death to Kidnappers (MAS) was created by the members of the Medellín Cartel in response to one of the drug traffickers' relatives being kidnapped by M-19 in 1981³⁸. Paramilitary groups were also founded by State Armed Forces officers who felt betrayed by the Uribe Agreement and were seeking to eradicate the communist threat from Colombian society with the support of right-wing political leaders (Wills 2015). Worried by the promising victories of UP in 1988 local elections, the paramilitary groups engaged in a systematic elimination of UP representatives and militants, killing almost 2500 of them and provoking the utter disillusionment of FARC-EP with democratic political means (Pécaut 2015).

Overall, homicide rates in Colombia grew exponentially across the two final decades of the XXth century making the country one of the most violent in the world: the number of civilians and combatants killed between 1980 and 1999 was of 1500 per year approximately, with a peak of 2000-2500 people per year reached in the last half of the 1990s³⁹.

³⁸ see "Muerte a secuestradores MAS: los orígenes del paramilitarismo," *Verdad Abierta*, 23/09/2011, available at: <https://verdadabierta.com/muerte-a-secuestradores-mas-los-origenes-del-paramilitarismo/> last accessed 2/01/2024.

³⁹ "Killings in combat 1958-2013" (2015) Observatorio Nacional de Memoria y Conflicto del CNHM and Uppsala Conflict Data Programme, Cf. the graph in Pizarro Leongómez, E. (2015) "Una lectura múltiple y pluralista de la historia", *Contribución al entendimiento del conflicto armado en Colombia. Comisión Histórica del Conflicto y sus Víctimas*, p. 30.

Colombian civil society's wish to put an end to the climate of terror, impunity and violence experienced during the 1980s spurred the request for a new Constitution that could substitute the 1886 one and introduce important institutional reforms. The unprecedented developments having occurred in the international political arena at the end of the previous decade most surely contributed to the creation of a favourable environment to discuss peace: as a matter of fact, the fall of the Berlin wall in 1989, the breakdown of the USSR in 1991, and the weakening of leftist *guerrilla* movements in the rest of Latin America put Colombian *guerrillas* in a difficult and potentially isolated position (Pécaut 2015). Thus, under the governments of Virgilio Barco and César Gaviria, Colombians voted for a National Constituent Assembly which would integrate former members of the M-19, ELP, Quintín Lame and PRT who agreed to demobilization.

The new Constitutional project aimed at strengthening Colombian democratic institutions by introducing more avenues for direct political participation and direct democratic elections, as well as limitations to the powers of the state of siege (Lemaitre 2012). Additionally, as Pécaut (2015) observes, special attention was devoted to the recognition of fundamental rights including those of cultural minorities, and measures aimed at decentralizing political power and reforming the judiciary were also created. The transformation of bipartisan political structures and the deepening of democracy were key elements in the eyes of the National Constituent Assembly to eradicate clientelism, violence, and authoritarianism and to improve socioeconomic conditions (Grabe 2004). However, authors like Álvarez (2015) underscore that the 1991 Constitution also laid fertile ground for the implementation of neoliberal economic policies, which did not benefit the Colombian population in the long run.

The neoliberal economic project initiated under the Gaviria presidency (1990-1994) increased socioeconomic inequalities and ended up reinforcing the privileges and businesses of powerful landowners and drug-trafficking networks (De Zubiría 2015; Molano 2015; Pécaut 2015). The situation worsened with the election of President Samper Pizano in 1994, which was contested by the opposition who argued the President was supported by the Cali drug cartel (Giraldo 2015). As Giraldo notes, these accusations sparked one of the most insidious legitimacy crises of the country, with the illegal armed

groups taking advantage of the general distrust in institutions to strengthen their strategies. What is more, the intensification of the internal armed conflict made it increasingly difficult for citizens to exercise their political rights in rural and central areas of Colombia (Rodríguez 2018).

However, peace negotiations between the State and the armed groups continued under the conservative government of Andrés Pastrana (1998-2002), who sought to eradicate the structural problem of drug-trafficking in Colombia through the inauguration of the “Plan Colombia”. To achieve this objective, the Pastrana administration rekindled diplomatic ties with the U.S.A. to obtain economic and military support in its fight against drug cartels, which were identified as the ultimate escalating factor of the conflict (Silva 2005). As Silva highlights, not only did the Pastrana Government envision a great deal of economic, military, judicial and structural reforms to be implemented with the “Plan Colombia” under the aegis of the U.S.A., but it was determined to get to the end of peace negotiations previously initiated with the FARC-EP. For this reason, the Pastrana administration established a demilitarized zone called “*zona de distension*” in the southern area of the country in which they hoped peace talks could be carried out safely (Rodríguez 2018). However, the FARC-EP took advantage of the Colombian Army’s withdrawal from the Caguán region in 1999 to reorganize, improve their combating skills and strengthen their illegal activities all while committing an increasingly high number of human rights violations (Ríos 2015). In those same final years of the 1990s, the emergence of the paramilitary group *Autodefensas Unidas de Colombia* (AUC) worsened the already precarious peace conditions in Colombia.

The increase in violent clashes hindered the peace project carried out by the Pastrana Administration, to the point that negotiations were interrupted in 2002 following the kidnapping of Senator Gechem Turbay. The “Plan Colombia” took a different turn under the right-wing presidency of Álvaro Uribe Vélez (2002-2010) who introduced the Democratic Security project, once again in collaboration with the U.S. and with the promise of defeating *guerrillas* once and for all. At the time, the U.S. foreign policy was deeply influenced by the terroristic attacks of 9/11/2001: the Bush administration embarked on a global fight against terrorism promising its support to political allies who

were combating against criminal groups. The Uribe administration leveraged this opportunity to gain external technical assistance and increase its popularity amid the terrorist-related social alarm (De Zubiría 2015). As underscored by De Zubiría, the Uribe administration seized the *momentum* represented by the launch of the global war on terror to obfuscate the socioeconomic and political causes of the Colombian conflict and to justify the suppression of “enemies” with the imperative need to ensure democratic security. To fulfil its objective of eliminating *guerrilla* fighters, the Uribe administration further reinforced the military training of Colombian soldiers with the support and expertise of U.S. army instructors and relied on U.S. intelligence to carry out precise attacks against *guerrillas* (Vega 2015). Governmental attempts at negotiating with paramilitary groups and *guerrillas* under the Uribe presidency led to the official demobilization of the AUC in 2006 and to the connected promulgation of Law 975 of 2005, which established reparations for victims of the paramilitary thus contributing to the outlining of an embryonic Transitional Justice structure in Colombia (Luna Enslava 2019). However, the Government’s negotiating efforts proved unsuccessful in fostering hostages exchange with FARC-EP in 2005, which in the end had to be carried out via military operations (Luna Enslava 2019). Overall, although the Democratic Security doctrine managed to downsize the number of *guerrilla* combatants and reduce their territorial presence, it did so at the cost of provoking grave human rights violations. The repeated and arbitrary killings between different *guerrilla* members who sought to take advantage of economic rewards promised by the State (Pérez 2010) and the illegal assassination of civilians at the hands of Colombian Armed Forces profoundly marked Colombian society (Rodríguez 2018). Concerning economic progress under Uribe’s presidency, Luna Enslava (2019) underscores that the astounding 5.5 percent yearly GDP growth experienced by the country had little effect on the overall living conditions of the Colombian population: socioeconomic inequalities persisted, proving that the government was not properly addressing the underlying roots of the conflict which still encompassed lack of access to land, political exclusion, poverty, and corruption.

A new phase of political negotiations with FARC-EP was inaugurated under the Santos presidency in 2010 with the support of the international community and of the

Colombian population⁴⁰. As opposed to his predecessor who referred to *guerrilla* movements as a terrorist threat, Santos acknowledged the existence of an internal armed conflict in Colombia and opened the way to proper peace negotiations with a specific political antagonist, namely the FARC-EP (Burnyeat 2019).

The new administration also took important steps towards the recognition of victims' rights and the implementation of transitional justice measures, including the promulgation of 2011 "Victims' Law" 1448 on reparations. Concerning international relations, Maldonado (2016) notes that Santos immediately understood the importance of rebuilding diplomatic ties with neighbouring countries such as Venezuela and Ecuador who were repeatedly accused of protecting and supporting *guerrilla* fighters during Uribe's presidential mandate. The Santos administration was successful in restoring mutual political trust between Colombia and its neighbours, to the point that Venezuela and Chile were designated "observer countries" in the forthcoming peace negotiations and mandated to clarify possible misunderstandings that might have arisen between the parties (Armengol 2013). Additionally, Colombia managed to further strengthen its political ties with Cuba by appointing it as host country and guarantor of the peace process, together with Norway: their duty was that of overseeing and ensuring the compliance of both parties with rules established during negotiations (Beittel 2013). Maldonado (2016) argues that these four countries' involvement in the Colombian peace talks was crucial in solving disputes and logistical issues over the whole course of the negotiation process, just like the oversight of other international actors such as the International Criminal Court and the European Union was extremely relevant in ensuring the stability of the negotiations.

Exploratory talks started in Cuba and Norway in 2012 and were initially carried out in secret for approximately six months before the official public peace talks properly began in November of the same year in La Havana (Rodríguez 2018). As Ríos et al. (2021) point out the parties had not yet agreed to a bilateral ceasefire at the time, thus violent clashes opposing the FARC-EP to the Colombian Armed Forces resumed between 2012 and 2014 with the risk of irremediably hindering peace negotiations, although the

⁴⁰ 82% of the Colombian population was in favor of peace talks at the end of 2012. See Rodríguez, S. M., (2018) "Colombia: a long journey to peace", *Routledge History of World Peace since 1750*, Routledge editions, p. 290.

parties managed to avoid this fate owing to the pressure and support of the international community.

Between 2013 and 2014 compromise was reached on several crucial points of the agenda namely land reform, the issue of drug-trafficking and matters related to political participation, while negotiations stalled with respect to victims-related issues and the official ratification of peace accords due to political pressures of the opposition (Rodríguez 2018). Most notably, the parties acknowledged that victims needed to be put at the centre of the peace process not only by affording them access to truth, guarantees of non-repetition and reparations, but by granting them direct participation in the peace process itself (Mendes 2020). Thus, in 2014 victims were invited to testify and express their opinions and feelings on peacebuilding and victims' rights: the responses that emerged from these accounts spurred important innovations that would later be integrated in the accord, such as the creation of a historical commission composed of 12 experts to address the historical roots of the conflict.

In 2014 and 2015 both the FARC-EP and the Government took important steps forward with respect to the conclusion of hostilities by declaring a definitive ceasefire. The U.S. Government appointed Bernard Aronson as Special Envoy for the Colombian Peace Process thereby reiterating its political role in the Colombian internal armed conflict and the subsequent peace negotiations. Finally, an agreement was reached between the parties in mid-2016, and on June 23 of the same year Santos and the top-leader of the FARC-EP Rodrigo Londoño agreed on a joint bilateral ceasefire that was signed in La Havana (Rodríguez 2018).

On September 26, 2016 representatives of the FARC-EP and the Colombian Government finally signed the definitive text of the agreement which encompassed six major themes: the promulgation of a comprehensive agrarian reform; the importance of political participation and citizens' involvement in matter of public interest; the definitive end of the conflict sanctioned by the signature of a bilateral ceasefire; a bilateral commitment to solve the issue of drug-trafficking and to acknowledge the role it had in the conflict; the creation of a comprehensive system of truth, justice, reparations and non-

repetition for the clarification of conflict dynamics and the recognition of victims and of perpetrators' responsibilities; the implementation of verification mechanisms designed to assess compliance of all parties with the commitments⁴¹.

However, as Rodríguez (2018) observes, at the time of the signature the text of the agreement had not yet been ratified by the Colombian population in the polls. Notwithstanding projections of a “yes” vote in the plebiscite, on October 2, 2016, the Agreement was rejected by the slim majority of the Colombian population (50.2%) following a referendum which was called for by the Constitutional Court (Basset 2018). This result was largely affected by the intense smear campaign carried out by the opposition and particularly by Uribe's Centro Democrático with the support of Pentecostal and Evangelical church leaders, who sought to undermine the agreement's legitimacy by accusing Santos of handing the country to FARC-EP and promoting the so-called “gender ideology” in favor of the LGBT community (Beltrán and Creely 2018). As Burnyeat (2019) underscores, the opposition claimed that the Agreement would threaten traditional family values by legalising abortion and encouraging homosexuality. Detractors led by Uribe additionally instilled the fear of “Castro-chavism” in Colombian citizens, arguing that Colombia would turn into a communist autocracy if the Agreement was approved (Gómez-Suárez 2016).

Following numerous civil society-organized peace demonstrations which included *Campamento por la Paz*, the Government and the FARC-EP agreed on the modification and adaptation of some of the Agreement's provisions and the amended text was signed by the parties on November 24, 2016, and subsequently ratified by Congress on November 30 of the same year. From that moment on, the FARC-EP started demobilizing and handing over their weapons and were subsequently transformed into a full-fledged political party with ten guaranteed seats in Congress (Rettberg et al. 2020).

However, Colombia continues to experience outbursts of generalised violence. Peace negotiations with the ELN were suspended after the guerrilla group carried out a deadly attack against a police academy in Bogotá in 2019, and the incessant and

⁴¹ See the agreement text, “Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace”, 24/11/2016.

indiscriminate killings of human rights defenders and former FARC combatants pose a serious threat to the implementation of the Peace Agreement and the consolidation of Peace in Colombia (Rettberg et al. 2020).

2.3 The role of women in the Colombian conflict and peace processes.

For over fifty years, women were deeply and directly involved in the Colombian internal armed conflict in a variety of ways. They were actively engaged not only on the field among those who fought, but also as activists and human rights advocates who continuously strived to build solid ground for peace, all while being disproportionately affected by the extreme violence of the clashes.

The armed conflict in Colombia is remembered for being one of the most long-lasting and deadliest internal wars in the western hemisphere: the various war tactics employed by all parties involved in the conflict had brutal and irreversible effects on civilians, who were profoundly impacted by human rights violations such as child recruitment, abductions, and homicides.

On top of this, women had to endure additional gender-based abuses, one of the most vicious being sexual violence: OXFAM reported that nearly 20% of women residing in areas controlled by armed groups suffered episode of sexual violence in the 2000s⁴². These violations were carried out with a view to forcibly recruit female fighters in the case of FARC-EP or used as a weapon of war to gain territorial control by paramilitary groups, who additionally abducted women to use them as sexual slaves or domestic help⁴³. The massive, enforced displacement of the rural population perpetrated by all armed groups over the decades exacerbated the pre-existing discrimination and gender-based violence already suffered by women, who were forced to move to slums where the lack of access to basic services made them more vulnerable to sexual violence and exploitation⁴⁴.

⁴² “La Violencia Sexual en Colombia: Primera Encuesta de Prevalencia” (2009), *Oxfam Intermón*.

⁴³ “Access to Justice for Women Victims of Violence in Mesoamerica” (2011) *Inter-American Commission on Human Rights, Organization for American States*.

⁴⁴ “Report 2016/2017-Colombia” (2017) *Amnesty International*, available at: <https://www.refworld.org/docid/58b0340d13.html>, accessed 2/01/2024.

Indigenous and Afro-Colombian women were (and still are) disproportionately affected by these practices (Herman 2008). In fact, illegal armed groups close to powerful landowners and criminals have used sexual violence to try and scare ethnic people away from their lands which have been granted constitutional autonomy with the Constitution of 1991 (Bouvier 2016). Likewise, enforced displacement has been perpetrated to weaken ethnic people's ties with their ancestral lands in order to benefit armed groups, preventing indigenous and afro-Colombian women from carrying out cultural rituals in the sacred territories they formerly inhabited⁴⁵. Ethnic women additionally face multiple layers of discrimination in the slums, where they often excluded from the educational system and from employment opportunities⁴⁶.

While gender-based violence was massively used against civilians, female fighters were not exempted from it either. Although most *guerrilla* groups revindicated their commitment to gender equality and were composed up to 40% of women (Mazurana 2013; Bouvier 2016), some among the latter testified that they were subjected to forced abortions, forced use of contraceptives, forced unions and rape by their comrades (Theidon 2009).

Apart from combat, the direct involvement of women in the internal armed conflict encompassed their mobilization for peace. Many women's civil society groups sought to put an end to violence by promoting meetings, dialogues and referendums ever since the 1990s, and while they were often excluded from the actual peace talks, their unwavering advocacy efforts to achieve a more sustainable and inclusive peace for the country were never defeated.

As senior advisor for peace processes at the U.S. Institute for Peace Virginia M. Bouvier (2016) underscores, women have seldom had relevant roles in peace processes in Colombia as part of negotiating teams. It was the case for dialogues conducted between the Gaviria government and *guerrilla* groups such as EPL and PRT in the years from 1990 to 1994, in which only one woman combatant was a signatory (Villarga Sarmiento

⁴⁵ *Ibidem.*

⁴⁶ *Ibidem.*

2009). Likewise, the visibility of women in the 2004 talks that led to AUC demobilization and in other exploratory dialogues carried out with the ELN was extremely reduced⁴⁷.

Peace negotiations in the country became slightly more inclusive from the beginning of the 2000s, also due to the passage of UNSC RES 1325 (2000) which urged states to foster women's participation in conflict resolution and peacebuilding.

During the 1998-2002 peace talks between FARC-EP and the Pastrana administration, Maria Emma Mejía and Ana Terese Bernal were selected by the Government respectively as one of the principal negotiators and as the coordinator to civil society input in peace talks (Bouvier 2016). The two strived to make peace processes more inclusive of women by organizing a public hearing on gender inequality and lack of women representation in the peace talks with FARC-EP on June 25, 2000, which was coordinated by noteworthy women's rights associations including the Association of Indigenous, Afro-Colombian and Peasant Women of Colombia (ANMUCIC)⁴⁸. Although these efforts were hindered by the ultimate failure of peace talks under the Pastrana administration, they laid fertile ground for further development of inclusive peace processes. As a matter of fact, more and more groups and organizations were created in support of women's inclusion in future peace talks, such as the Women's Initiative for Peace and the "1325 Coalition".

Even when not formally included in negotiations, women civil society groups and women organizations in Colombia have continuously worked towards the de-escalation of the conflict through a variety of means, including through the organization of massive national marches and campaigns in demand for peace⁴⁹. Bouvier underscores the important role of women's organizations such as *Ruta Pacífica de la Mujer* and *Asociación de Mujeres del Oriente Antioqueño/AMOR* in conflict mediation at the local

⁴⁷ "Informe de Monitoreo de la Resolución 1325 de ONU en Colombia" (2011) *Grupo de Trabajo de la Resolución 1325 en Colombia*.

⁴⁸ "Diagnóstico: mujer, paz y seguridad: Los movimientos de mujeres y paz en Colombia. Desde los años noventa hasta hoy," (2010), *Corporación SISMA Mujer y Mujeres en Zona de Conflicto (MZC)*, pp. 20-21.

⁴⁹ The ASFAMIPAZ and the IMP developed a campaign to pressure for humanitarian agreement among the parties which was called "Operation Siriri". See Bouvier, V. M., (2016) "Gender and the role of women in Colombia's Peace Process", *UN Women Background Paper, prepared for the United Nations Global Study on 15 Years of Implementation of UN Security Council Resolution 1325*, p. 18.

level in Colombia, especially concerning their ability to directly engage in negotiations with *guerrilla* fighters and paramilitary groups and successfully secure local ceasefires. Moreover, the author notes that such organizations unwaveringly supported the diplomatic efforts of female Senator Piedad Córdoba in establishing meaningful dialogues between the parties to the conflict under the Uribe administration, which were instrumental in laying the basis for the initiation of peace talks in 2012.

At the global level, women's groups strenuously pressured the international community to diplomatically engage with the Colombian Government and carry out investigations on women's rights in the country: most notably, they managed to obtain and secure visits by the Inter-American Commission on Human Rights (Villarán 2005), by the UN Special Rapporteur Radhika Coomaraswamy in 2001⁵⁰ and by the UN Secretary General's Special Representative on Sexual Violence in Conflict Margot Wallstrom in 2012⁵¹.

However, these efforts failed to secure satisfying results when it came to inviting women at the negotiating table. When official peace talks were initiated under Juan Manuel Santos' Presidency in 2012, barely any women were included among negotiators except for Tanja Nijmeijer on the FARC-EP's side⁵².

Nevertheless, women civil society groups and women organizations seized every opportunity they were afforded to participate in the determination of agenda items discussed at the Havana peace table by engaging in meaningful initiatives. According to Bouvier, working groups were launched in nine different regions of the country with the support of the Peace Commission of the House and Senate in Colombia and the UN. Female participation was strongly encouraged, to the point that the overall participation rate of women reached 40-50% and important contributions on the matters at stake in

⁵⁰ "UN Special Rapporteur to investigate violence against women in Colombia", 31/10/2001, available at: <https://www.ohchr.org/en/press-releases/2009/10/un-special-rapporteur-investigate-violence-against-women-colombia> , accessed 31/12/2023.

⁵¹ "IMPUNITY FOR CRIMES OF CONFLICT-RELATED SEXUAL VIOLENCE MUST NEVER BE AN OPTION", *Statement by the Special Representative of the Secretary-General on Sexual Violence in Conflict Margot Wallström*, 19/05/2012, available at: <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2012/07/SRSG-Statement-Colombia-19-May-2012.pdf> , accessed 31/12/2023.

⁵² "Tanja Nijmeijer: Dutch FARC-EP rebel at peace talks", *BBC news*, 31/01/2013, available at: <https://www.bbc.com/news/world-latin-america-21237362> , accessed 31/12/2023.

negotiations were made available to the parties with the help of UN Women. Women also participated in research initiatives and civil society forums on agrarian, victims and drug-trafficking-related issues launched by the negotiating parties with the support of the United Nations and the *Centro de Pensamiento y Seguimiento al Diálogo de Paz* of the National University of Colombia (Bouvier 2016).

In October 2013, nine Colombian women's organizations from a variety of backgrounds organized the National Summit of Women for Peace with the support of relevant international actors such as OXFAM, UN Women and diplomatic delegations from Norway, Spain, Switzerland, and Sweden. A total of 450 representatives provided advice on the accords that had already been agreed upon by both parties and reiterated Colombian women's wish for inclusion in the peace talks as well as the request that special attention be devoted to women's needs, experiences, and perspectives during the negotiations⁵³. The flow of information between regional networks of women's groups and their central headquarters that were involved in the project fostered the inclusion of multiple perspectives from women disseminated across the country, and allowed said inputs to be streamlined into key manageable proposals that were later sent to the negotiating parties in La Havana (Warren et al. 2017).

The relevance of such an unprecedented event, which was endorsed by the international community and unfolded right before the assessment of Colombia's compliance with treaty obligations to the CEDAW in October 2013, convinced the Government to finally nominate two women (namely Nigieria Rentería and María Paulina Riveros) as fully fledged plenipotentiary negotiators⁵⁴. Likewise, by the end of 2015 the FARC-EP negotiation team was composed by more than 40% of women, the first of whom was former Commander Victoria Sandino who joined the delegation in 2013⁵⁵.

In June 2014 the groundbreaking sub-commission on gender (GSC) was created on the initiative of Director of the Human Rights Office for the Ministry of Defence Elena

⁵³ "National Summit of Women for Peace Synthesis- Executive Summary" (2013) *National Summit of Women for Peace*.

⁵⁴ Volkhausen, T., "Santos appoints women as negotiators in Colombia peace talks", *Colombia Reports*, 26/11/2013, available at: <https://colombiareports.com/amp/first-two-women-appointed-negotiators-colombia-peace-talks/>, accessed 31/12/2023.

⁵⁵ Winstanley, L., "Women's Participation in the Colombian Peace Process", *Latin News- Latin American Regional Report*, 05/2018, available at: <https://www.abcolombia.org.uk/wp-content/uploads/2018/05/ABColumbia-LatinNews-Women-Participation-Peace-Process-.pdf>, accessed 31/12/2023.

Ambrosi, with the aim of ensuring that the agreements were endowed with an adequate gender focus and that they complied with the parties' commitment to address the needs of victims (Warren et al. 2017). The GSC was co-chaired by Riveros and Sandino, two representatives of the government and the FARC-EP respectively and was composed of six members from each negotiating team⁵⁶.

A further pivotal moment in the peace process was the invitation extended to victims' delegations by the peace table in 2014 to come to Cuba and provide testimonies on their experiences of the conflict. These meetings were held in two separate sessions, with the first one having taken place in the second half of the year and the second one between December 2014 and March 2015, under the aegis of UN Women, the National University, and the Sub-commission on gender respectively. While the first set of meetings had the objective of allowing victims and especially women, who made up 60% of the delegation, to give voice to their experiences (including the topic of sexual violence which had not been comprehensively addressed before in the talks) the second group of encounters focused on women and LGBTI representatives' role as peacebuilders and thus welcomed their insightful contributions and proposals to the talks (Bouvier 2019).

Following these exchanges, the negotiating parties started publicly acknowledging their responsibilities in the conflict and took further steps towards its full de-escalation, all while convening on the necessity of including a specific gender-differential approach in the agreement and a direct reference to victims' right to truth, justice, reparation, and non-repetition (Warren et al. 2017). Thus, the CSOs and GSC push for victim inclusion in the reviewing of the agenda items ultimately fostered the unprecedented mainstreaming of a specific gender focus throughout the accord text. However, it is worth noting that ethnic women were largely excluded from these initiatives, and many felt like their specific needs were not fully included in the agreement⁵⁷.

⁵⁶ Herbolzheimer, K., "Innovations in the Colombian peace process", *Report of the NOREF Norwegian peacebuilding resource center*, June 2016.

⁵⁷ Interviews with Julia Eva Cogollo Cabarcas, June 21, 2016; Teresa Cassiani, June 21, 2016; Angélica Ortiz, June 23, 2016 in Warren, R. et al. (2017) "Inclusive Justice: how women shape Transitional Justice in Tunisia and Colombia", *Georgetown Institute for Women, Peace and Security (GIWPS)*, p. 42.

Another unprecedented achievement for women's rights was made possible once again owing to women's groups' strenuous advocacy efforts. As already mentioned, the requests put forward in the 2013 National Summit of Women and Peace specifically focused on the acknowledgement of women's particular victimization during conflict and the need for comprehensive clarification of its root causes and effects. These demands, combined with Colombia's international obligations to address human rights violations, investigating, and punishing perpetrators and, satisfying victims' rights to truth, justice, reparations and guarantees of non-repetition in compliance with the Rome Statute of the ICC, were instrumental in the creation of a special Truth Commission that would focus on women's experiences of the conflict.

The Colombian Women's Truth and Memory Commission (TC) was the first of its kind to be created in Colombia stemming from an initiative carried out by the organization *Ruta Pacífica de las Mujeres* in collaboration with international truth commissions experts: as a matter of fact, not only this was the first ever independent Colombian TC to be led by a civil society women's organization, but it adopted explicitly feminist and collaborative methodologies in its comprehensive analysis of women's victimization during conflict and coping strategies used to address said victimization (Bouvier 2019). Moreover, as Bouvier underscores, the TC documented victims' demands for justice and reparations thereby providing helpful methodological insight for the development of a comprehensive national Transitional Justice strategy.

With their initiatives, women's organizations such as *Ruta Pacífica* therefore demanded and carved out an important role in peace negotiations for all Colombian women, especially with respect to discussions about the way in which their rights would have been satisfied, reparations for the harms they had suffered, and guarantees for non-repetition.

Victims who collaborated with the TC called for individual and collective reparations that could have transformational impacts in the psychological, social, economic, and educational dimensions of their life and contribute to mending their relationships with the State and their communities⁵⁸. In terms of collective measures,

⁵⁸ "La verdad de las mujeres. Víctimas del conflicto armado en Colombia - Resumen" (2013) *Comisión de Verdad y Memoria de Mujeres Colombianas, Ruta Pacífica de las Mujeres*, pp. 13-14.

many victims stressed the need for structural transformations that would address the historical roots of gender violence and discrimination which, they argued, would count for a guarantee of non-repetition it itself if combined with the formal acknowledgment of criminal responsibility by all perpetrators⁵⁹.

These are only some of the crucial contributions that emerged from the strenuous efforts of Colombian women CSOs and representatives, who continuously engaged in advocacy campaigns and dialogues with the negotiating parties notwithstanding their initial scarce consideration of women's rights and finally managed to obtain the incorporation of a differential gender approach in the Accord. These women's undertakings ultimately contributed not only to fostering the signature of the Havana Peace Agreement itself, but to fulfil (at least partially) the promise of a more sustainable and inclusive peace for Colombia and for Colombian women.

⁵⁹ “Aportes y recomendaciones de las mujeres del Putumayo, para la Subcomisión de Género en la Mesa de Conversaciones para la terminación del conflicto y la construcción de una paz estable y duradera en Colombia.” (2014), *Alianza Departamental “Tejedoras de Vida” del Putumayo*, p. 5.

Chapter 3 - The Colombian Peace Accord of 2016.

This chapter delves into the specificities of the 2016 Havana Peace Agreement by analyzing the provisions contained in its six chapters, with a specific focus on the gender and ethnic perspectives mainstreamed throughout the text of the accord.

3.1 Specificities and sections of the Agreement.

After the unfolding of successful peace negotiations between 2012 and 2016, the Colombian Government and the FARC-EP signed the “Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace” on August 24, 2016⁶⁰. That same year, following the negative majority response in the referendum of October 2, the parties to the conflict reached a compromise to further amend certain sections of the Accord in an attempt to meet the expectations of the Colombian population⁶¹. The approval of the Congress opened the way to the official adoption of the amended final text which had been signed on November 24, 2016⁶². As emphasized in the preamble of the Agreement, the document encompasses all the separate accords reached following the discussion on the six agenda items, which were outlined in the exploratory talks of 2012 and negotiated upon in the official peace talks conducted until 2016⁶³.

The 2016 Havana Peace Agreement is widely regarded by the international community as a precedent-setting example for the mainstreaming of a gender-based and ethnic-based approach throughout its text (Herbolzheimer 2016). As it was underscored in the previous chapter of this work, the negotiating parties promoted and designed mechanisms aimed at guaranteeing the expression and contribution of civil society members with respect to the elaboration of the agreement’s provisions. The unwavering advocacy efforts of Colombian civil society organizations managed to foster the adoption of this unprecedented approach,

⁶⁰ "Yes to peace: Colombia, FARC rebels reach historic deal to end 5-decade war", *CBC*, 24 August 2016, available at: <https://www.cbc.ca/news/world/farc-colombia-peace-accord-1.3734814>, last accessed 12/01/2024.

⁶¹ "Colombia referendum: Voters reject Farc peace deal", *BBC News*, 3 October 2016, available at: <https://www.bbc.com/news/world-latin-america-37537252>, last accessed 12/01/24.

⁶² "Colombia signs new peace deal with Farc", *BBC News*, 24 November 2016, available at: <https://www.bbc.com/news/world-latin-america-38096179>, last accessed 12/01/2024.

⁶³ preamble of the “Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace” signed on 24/11/2016.

especially in regard to women's organizations who revindicated greater inclusion of gender provisions in the Agreement⁶⁴.

Indigenous and Afro-Colombian representatives were ultimately included in the last phase of the negotiations (although with considerable delay) owing to their ability at designing a joint advocacy strategy for the inclusion and recognition of ethnic rights in the final text of the Agreement (Rojas 2023).

Overall, the Agreement encompasses six different macro-themes with their corresponding accords, namely: the Comprehensive Rural Reform; political participation; demobilization, ceasefire and reincorporation; drug-trafficking, consumption and production; victims' rights; and implementation and verification mechanisms.

1) Chapter one on the Comprehensive Rural reform (CRR) aims at achieving structural change in rural areas and guaranteeing the well-being and quality of life of the rural population: as a matter of fact, the parties to the agreement believe that comprehensive rural development projects constitute an unprecedented opportunity not only for reversing the effects of the conflict, but also for the definitive eradication of the issues connected to land access and ownership that historically contributed to the emergence of violent uprising⁶⁵.

The chapter underscores that for structural change to be transformational, measures adopted in the rural reform need to be aimed at promoting the equitable distribution of land among the rural population, and that special attention must be devoted to vulnerable and discriminated social groups such as rural women and ethnic communities⁶⁶. The full enjoyment of citizens' rights is another crucial objective of the CRR, which encompasses the eradication of poverty and hunger, political participation, and gender equality *inter alia* and must be attained through the implementation of specific plans and programmes that need to incorporate an ethnic-based and gender-based approach⁶⁷. Such undertakings include the creation of a "land fund" for the free distribution of land, of a comprehensive purchase subsidy for the facilitation of land purchase, and of a special purchase credit all with specific measures to facilitate rural women⁶⁸. Other measures aimed at overcoming poverty and inequality and enhancing the socioeconomic development of rural areas to reduce the gap with urban areas include the

⁶⁴ "Women take the reins to build peace in Colombia", *UN Women*, 28/05/2015, available at: <https://www.unwomen.org/en/news/stories/2015/5/women-build-peace-in-colombia>, last accessed 12/01/2024.

⁶⁵ Section 1 of the Final Agreement.

⁶⁶ *Ibidem*

⁶⁷ *Ibidem*

⁶⁸ Section 1.1.1; Section 1.1.2 of the Final Agreement.

implementation of Development Programmes with a Territorial-Based Focus (PDETs) and National Plans for Comprehensive Rural Reform⁶⁹.

2) The provisions encompassed in chapter two on political participation seek to ensure the strengthening of democratic institutions, inclusive political participation, political pluralism, guarantees for political participation and the outlawing of violent means to reach political objectives in an effort to consolidate peace in Colombia⁷⁰. The Government and the FARC-EP recognize that new and improved avenues for fostering political expression, participation and inclusion must be created in order to achieve sustainable peace, with specific safeguards for the participation of women and other excluded civil society members in the various areas of political life⁷¹.

Therefore, chapter two establishes a series of measures to guarantee the exercise of political opposition such as the Comprehensive Security System for the Exercise of Politics; new security guarantees for leaders of social movements and human rights defenders; and an array of mechanisms to foster the enhancement of democratic participation which encompass new guarantees for mobilization and peaceful protest⁷². The promotion of political participation is spurred by the introduction of specific provisions aimed at redefining the requirements for the constitution of political movements, reforming the electoral regime, and fostering the emergence of a democratic and participatory political culture that is particularly concerned with the inclusion of social groups who were disproportionately affected by the conflict (including women)⁷³.

3) Chapter three on demobilization, ceasefire and reincorporation enshrines multiple agreements on the definitive cessation of hostilities from both parties against each other and civilians, as well as provisions on the reincorporation of former FARC-EP members into civilian life, including its social, political and economic aspects⁷⁴. Additionally, the chapter incorporates measures aimed at fighting and repressing the remaining criminal organizations who target civilians as well as social or political movements⁷⁵. All said dispositions shall

⁶⁹ Section 1.2 ; Section 1.3 of the Final Agreement.

⁷⁰ Section 2 of the Final Agreement.

⁷¹ *Ibidem*.

⁷² Sections 2.1.2.1; 2.1.2.2; 2.2; 2.2.2 of the Final Agreement.

⁷³ 2.3.1.1; 2.3.4; 2.3.5 of the Final Agreement.

⁷⁴ Section 3.1 of the Final Agreement.

⁷⁵ *Ibidem*.

contribute to the emergence of a new social and political culture based on the respect of human rights, democratic values, and the abandonment of violent means to pursue political aims⁷⁶.

The Chapter details all relevant information concerning the content of the agreement on the Bilateral and Definitive Ceasefire and Cessation of Hostilities (BDCCH) and Laying down of arms (LA), including some dispositions related to the creation of a Monitoring and Verification Mechanism (MVM) and the setting up of specific Transitional Local Zones for Normalisation designed to foster the political and socioeconomic reincorporation of FARC combatants into civilian life⁷⁷. With respect to this last point, the negotiating parties agree that the successful gradual reincorporation of ex combatants in the political and social life of the country is critical for the restoration of Colombia's social fabric and the subsequent consolidation of national reconciliation and sustainable peace⁷⁸. Thus, the chapter establishes the transformation of FARC-EP into a legal political party after the formal laying down of arms is completed, as well as the setting up of initiatives, services and organizations destined for the collective socioeconomic reincorporation of former FARC-EP members which shall be monitored by the National Reincorporation Council (NRC)⁷⁹. In regards to the fight against criminal organizations responsible for the murder and attacks perpetrated against human rights defenders and/or members of social and political movements, Chapter 3 establishes the entering into function of the National Commission on Security Guarantees for the monitoring, contrasting and dismantling of armed criminal organizations, in collaboration with the Special Investigation Unit for the investigation, prosecution and indictment of said criminal networks⁸⁰. Moreover, the chapter introduces guarantees for the performance of public servants, guarantees against corruption, as well as other individual and collective security and protection measures such as the Comprehensive Security and Protection Programme for the Communities and Organisations across the Country's Territories⁸¹.

4) The agreement on the "Solution to the Illicit Drugs Problem" constitutes the core of chapter number four. In this section, the complex and multifaceted issues of drug consumption and drug-trafficking are addressed across three different paragraphs, every one of which promotes a new comprehensive, human rights-based and gender-based approach to tackle the

⁷⁶ *Ibidem*.

⁷⁷ Sections 3.1.1; 3.1.3; 3.1.4 of the Final Agreement.

⁷⁸ Section 3.2 of the Final Agreement.

⁷⁹ Sections 3.2.1 and 3.2.2 of the Final Agreement.

⁸⁰ Sections 3.4.3 and 3.4.4 of the Final Agreement.

⁸¹ Sections 3.4.6; 3.4.11; 3.4.8 of the Final Agreement.

use of crops for drug production, the use of said drugs and the connection between organized crime and drug-trafficking. The rationale behind the fight against drug problems in Colombia is that the elimination of corruption, illicit economy, and violence related to it will foster the construction of a stable and long-lasting peace in the country⁸². At the same time, both parties to the agreement acknowledge that the drug problem itself is connected to pre-existing inequality, poverty and institutional-related issues which need to be properly addressed in order to guarantee the eradication of drug-trafficking⁸³.

With respect to the first dimension of the issue, the agreement outlines the specificities of the National Comprehensive Programme for the Substitution of Crops Used for Illicit Purposes (PNIS): the participative dimension of the programme is aimed at ensuring inclusivity for all populations affected by crops used for illicit purposes, especially for *campesinos* whose subsistence depends on this type of agriculture⁸⁴. The PNIS will be integrated in the CRR and as such will need to respect specific gender-based and equity-based criteria, by taking into account the particular needs, characteristics and socioeconomic issues of Indigenous and Afro-Colombian communities, and of ethnic women especially⁸⁵. The aims of the PNIS include, *inter alia*, the closing of the agricultural frontier and the regeneration of ecosystems; the creation of alternative employment and productive opportunities through associative solidarity-based practices; the strengthening of institutional presence through infrastructure and service building; and the reinforcement of communities' organizational, management and monitoring capabilities⁸⁶. Important measures concerning the prevention of drug use are also incorporated in the chapter. Most notably, the National Programme for Comprehensive Intervention into Illicit Drug Use coordinates the work of all institutions competent in this area and encompasses measures aimed at rehabilitating and reintegrating drug users, all of which are endowed with a gender-based and equity-based approach⁸⁷. Lastly, the agreement seeks to address the juridical, economic and practical aspects connected to drug-trafficking by elaborating strategies to enable the effective prosecution of drug traffickers, as well as to prevent corruption and money laundering⁸⁸.

⁸² Section 4 of the Final Agreement.

⁸³ *Ibidem*.

⁸⁴ Section 4.1 of the Final Agreement.

⁸⁵ Section 4.1.1 of the Final Agreement.

⁸⁶ Section 4.1.2 of the Final Agreement.

⁸⁷ Sections 4.2.1 and 4.2.1.1 of the Final Agreement.

⁸⁸ Section 4.3 of the Final Agreement.

5) Since the beginning of peace talks, the Government and the FARC-EP sought to find a way to properly satisfy claims arising from the victims of the over 50 years-long internal armed conflict. This resulted in the creation of Chapter five on Victims, which is at the core of the 2016 Agreement and is grounded on the principles of historical clarification of the truth, acknowledgment of responsibility by perpetrators (including the parties to the conflict), victims' recognition and participation, and the realization of victims' rights⁸⁹. The wish to afford proper satisfaction of their human rights to victims resulted in the creation of the Comprehensive System for Truth, Justice, Reparations and Non-Recurrence (SIVJRNR).

The SIVJRNR encompasses five different types of judicial and extrajudicial mechanisms tasked with ensuring the investigation and sanctioning of human rights abuses and international humanitarian law infringements; the clarification of what happened during the conflict; the investigation on the disappearance of individuals and the provision of reparations of damages caused to collectivities and individuals⁹⁰. Namely, the Integral System includes the Truth, Coexistence and Non-Recurrence Commission (CEV), the Special Unit for the Search for Persons deemed as Missing in the context of and due to conflict (UBPD), the Special Jurisdiction for Peace (JEP), and the comprehensive reparation measures for peacebuilding purposes and guarantees of non-recurrence⁹¹. This section on victims' rights will be analysed more in depth in the upcoming paragraphs of this chapter.

6) Lastly, chapter six focuses on implementation and verification mechanisms and establishes the creation of a joint Government-FARC-EP "Commission for Monitoring, Promoting and Verifying the Implementation of the Final Agreement" (CSIVI)⁹². Once again, the adoption of a rights-based, equity-based and gender-based approach in the implementation process is described as a crucial step in securing a sustainable and inclusive peace for all⁹³.

The CSIVI is tasked with monitoring and assessing the parties' compliance with the Agreement, the correct implementation of provisions, and the resolution of possible arising disputes⁹⁴. Furthermore, it is supported by a Special Forum composed of women's organizations representatives mandated with ensuring that women's rights are respected in the

⁸⁹ Section 5 of the Final Agreement.

⁹⁰ Section 5.1 of the Final Agreement.

⁹¹ Section 5.1 (b) of the Final Agreement.

⁹² Section 6.1 (a) of the Final Agreement.

⁹³ Section 6 of the Final Agreement.

⁹⁴ Section 6.1.6 of the Final Agreement.

Agreement's implementation⁹⁵. The international verification component of the CSIVI, that is to say the United Nations Political Mission for Verification, has the duty to oversee and assess the reincorporation of the FARC-EP and the effective implementation of security guarantees, while technical aspects of the monitoring are entrusted to the Project of the Kroc institute for International peace studies of Notre dame University in the U.S.A⁹⁶. International accompaniment is provided with respect to provisions' implementation in the six key areas of the agreement and its most relevant subsections⁹⁷. The sixth chapter of the Agreement includes another groundbreaking feature, setting a precedent for other peace accords: a section entirely dedicated to the Ethnic Perspectives, in which the fundamental contribution of Indigenous and Afro-Colombian communities to peace and development in Colombia are recognized and the respect and promotion of ethnic people's rights are mainstreamed throughout the agreement's provisions⁹⁸.

3.1.1 The gender focus of the Agreement.

The 2016 Havana Peace Agreement incorporates a specific and differential gender focus, which is mainstreamed across the six macro areas of the accords. The advocacy efforts and former achievements of many Colombian women's organizations were instrumental in laying the ground for the unprecedented adoption of this approach by the negotiating parties. These include, *inter alia*, lobbying for the adoption of gender-responsive language and stronger guarantees for women's participation in public administration in the 1991 Constitution⁹⁹; advocating for the recognition of the conflict's disproportionate effect on women, which resulted in the promulgation of Auto 092 by the Constitutional Court in 2008 on governmental assistance and protection afforded to forcibly displaced women¹⁰⁰; and demanding the inclusion of special gender provisions in the 2011 Victims Law, which led to the creation of

⁹⁵ Section 6.1 (d) of the Final Agreement.

⁹⁶ Sections 6.3.3 and 6.3.2 of the Final Agreement.

⁹⁷ Section 6.4.2 of the Final Agreement.

⁹⁸ Section 6.2 of the Final Agreement.

⁹⁹ "Colombia's Constitution of 1991 with Amendments through 2013", *Oxford University Press*. available at: https://www.constituteproject.org/constitution/Colombia_2013.pdf?lang=en Last accessed 12/01/2024.

¹⁰⁰ Constitutional Court of Colombia, "Programa de la Prevención de la Violencia Sexual Sontra la Mujer Desplazada y la Atención Integral a sus Víctimas," Auto 92 (2008), available at: <http://www.corteconstitucional.gov.co/RELATORIA/Autos/2008/A092-08.htm> last accessed 12/01/2024.

the Victims Unit in charge of overseeing individual and collective reparations brought to conflict-bound harms¹⁰¹.

All these advocacy achievements ultimately constituted an array of solid precedents for the inclusion of a differential gender approach in the provisions arising out of Havana. However, this innovative choice by the negotiating parties sparked mixed reactions among Colombian civil society and political factions: the opposition's perceived excess of the alleged "gender ideology" in the agreement led to the "NO" victory in the October 2016 plebiscite and caused the ensuing amendment of some gender provisions throughout the chapters¹⁰².

Notwithstanding this compromise, the Havana peace agreement remains at the cutting edge of gender inclusion in peace accords worldwide. As a matter of fact, some of the achievements concerning the incorporation of a gender approach in all six chapters of the Havana agreement include the following.

First of all is the already mentioned unprecedented creation of a sub-commission on gender specifically mandated with ensuring that every agenda item addressed in the peace talks was endowed with an adequate focus on women's rights. The GSC acted as an entry point for the inclusion of women's rights and perspectives in each section of the accords by encouraging women's representatives and CSOs to put forward their contributions, propositions and recommendations on the content of the accord provisions (Warren et al. 2017).

In the first chapter of the agreement on the Comprehensive rural reform, women's contribution to rural economy and development as well as their productive and reproductive role are recognized, together with the subsequent imperative need to duly incorporate a gender-based approach in all dimensions of the rural reform if long-term structural transformation is to be achieved¹⁰³. The chapter then outlines specific measures aimed at fostering the professional and personal development of women, including the promotion of trainings, the creation of subsidy systems and the implementation of health and family related provisions¹⁰⁴.

Chapter number two on political participation introduces a variety of measures with the objective of ensuring women's participation and representation in the social and political

¹⁰¹ Domingo, P., Rocha Menocal, A. and Hinestroza, V. (2015) "Progress Despite Adversity: Women's Empowerment and Conflict Inside Colombia", *Overseas Development Institute*, p. 18.

¹⁰² "The Fear of the 'Gender Ideology': Erasing Sexual and Gender Minorities from the Colombian Peace Process", *Latin America Working Group*, 26/06/2019, available at: <https://www.lawg.org/the-fear-of-the-gender-ideology-erasing-sexual-and-gender-minorities-from-the-colombian-peace-process/> last accessed 12/01/2024.

¹⁰³ Section 1 of the Final Agreement.

¹⁰⁴ Sections 1.3.2.1 and 1.3.3.5 of the Final Agreement.

arenas of the country, including in the opposition¹⁰⁵. More specifically, several provisions enshrined in chapter two aim at promoting an inclusive and non-discriminatory culture of participation through the use of media and through the creation of a comprehensive security system that shields women from risks and threats connected to social and political representation¹⁰⁶.

Concerning the third point of the agreement on the termination of the conflict, a gender-based approach is adopted in the implementation of reincorporation processes with a particular focus on risks that specifically affect women's safety, freedom and integrity¹⁰⁷. In accordance with these premises, section three of the agreement establishes the appointment of a special unit for dismantling criminal organizations which will be additionally tasked with the investigation of grave criminal acts undertaken against women¹⁰⁸.

Chapter four on the solution to illicit drug problems recognizes the differential impact of criminal economies on women, as illicit networks are often guilty of perpetrating serious human rights violations such as human trafficking and sexual exploitation¹⁰⁹. In order to break this pattern, the agreement establishes that women must be involved both in special trainings on combating and preventing gender-based violence connected to the production and sale of illicit drugs, and in the outlining, implementation and supervision of the PNIS which contribute to the reconversion of rural economies and to agrarian development¹¹⁰.

The section dedicated to victims' rights is arguably the one encompassing the highest number of gender-specific provisions. Firstly, to ensure that the gender perspective was thoroughly incorporated in the work of the CEV, the accords established the creation of a task force on gender that would assist the Truth Commission in carrying out investigations, organizing and overseeing public hearings and establishing meaningful collaborations with women's and LGBTI CSOs¹¹¹. Secondly, The JEP was endowed with a differential focus on women and children's rights because of the disproportionate effects and repercussions that the internal armed conflict has on them¹¹². Accordingly, a set of special sanctions was included in the JEP with respect to crimes that specifically affect women and minors and a special Investigation and Prosecution Unit was created to handle evidence and inquiries connected to

¹⁰⁵ Sections 2 and 2.1.1.1 of the Final Agreement.

¹⁰⁶ Sections 2.2.3 and 2.1.2.1 (d) of the Final Agreement.

¹⁰⁷ Sections 3.2 and 3.4 of the Final Agreement.

¹⁰⁸ Section 3.4.4 of the Final Agreement.

¹⁰⁹ Preamble to the Final Agreement.

¹¹⁰ Sections 4.1.3; 4.1.2; 4.1.3 of the Final Agreement.

¹¹¹ Section 5.1.1.1.4 of the Final Agreement.

¹¹² Section 5.1.2.8 of the Final Agreement.

cases of sexual violence¹¹³. The reparations framework adopted by the JEP complies with UN guidelines on the necessity to incorporate not only a gender perspective when analysing the special suffering of women, but to spur their active and direct contribution in the implementation of the peace process¹¹⁴.

Lastly, the sixth chapter of the agreement on implementation and verification mechanisms once again reasserts the imperative need for cross-cutting differential action to be undertaken so as to guarantee equality in terms of gender access to the agreements' programmes¹¹⁵. With that aim, the Special Women's Forum for Gender Perspective on the Peace was created with the very aim of enhancing and fostering dialogue opportunities between representatives of CSOs (including local and national women's rights organizations) and the Commission for Monitoring, Promoting and Verifying the Implementation of the Final Agreement (CSIVI)¹¹⁶.

The definition of sexual violence as a non-amnestiable crime was another groundbreaking achievement of the Havana Peace Agreement, which was bolstered by women's CSOs' efforts and by the organization *Alianza de las Cico Claves* more specifically (Warren et al. 2017). As Warren et al. underscore, this group pushed for the inclusion and criminalization of sexual violence in the agreement by resorting to legal reasoning: it brought examples of previous International Criminal Court (ICC) and Inter-American Court of Human Rights (IACHR) overrulings of other neighbouring countries' amnesty laws that did not properly address and criminalize human rights violations such as sexual violence. The risk was that of having the international community overturn the peace agreement and nullify all the efforts and advancements that had been made that far. The cogency of the argument combined with the responsibilities bore by all negotiating parties to address conflict-related sexual violence opened the way to it becoming a central theme in the agreement, with several provisions referencing it. As a matter of fact, the decision to endow the JEP with a Special Investigation Unit composed of trained investigators tasked with examining sexual violence claims and the decision to afford better psychosocial support to victims of conflict-related sexual crimes were enshrined in the provisions of chapter 5 on victims. Likewise, it was

¹¹³ Sections 5.1.2 (I) and 5.1.2.67 of the Final Agreement.

¹¹⁴ *Ibidem*.

¹¹⁵ Section 6 of the Final Agreement.

¹¹⁶ Section 6.1(d) of the Final Agreement.

established that the CEV must respect specific guidelines when addressing cases of sexual violence, insomuch that it was provided with a special working group on gender¹¹⁷.

However, the decision to make conflict-bound sexual crimes a central element of the agreement has not been exempt from criticism. The possibility that an “excessive” focus on this matter overshadows issues like forced displacement and land restitution is a fear shared by many civil society representatives, as was reflected by internal contrasts among CSOs (Warren et al. 2017). Materially choosing one battle over the other would be especially detrimental to Afro-Colombian and Indigenous women, who were disproportionately affected both by forced displacement and sexual violence (Herman 2008). For this very same reason, Indigenous and Afro-Colombian women’s representatives were worried with respect to the proper inclusion of the multifaceted dimensions of ethnic women’s struggles in the accord’s provisions¹¹⁸, and a thorough analysis of the agreement text reveals that their concerns may have not been entirely groundless after all. In fact, although an important discussion space is dedicated to women’s access to land throughout the document thereby establishing a possible connection with ethnic women’s rights, the latter are not explicitly mentioned nor referenced in the agreement. In any case, as Warren et al (2017) observe, maintaining a unified front is an imperative condition for women’s organizations to achieve the proper inclusion of women’s perspectives and rights in the accords’ implementation.

3.1.2 The Ethnic focus of the Agreement.

The Chapter on Ethnic Perspectives was included among the last sections of the Havana Peace Agreement owing to the successful lobbying efforts of Colombian ethnic communities who, contrary to the representatives of women’s and LGBTI organizations, were only welcomed to the negotiating table in the last few months of the talks (Rojas 2023). As a result of strenuous advocacy actions undertaken by ethnic peoples’ representatives, on June 26, 2016, the Government and the FARC-EP received a delegation composed of members of the Indigenous, black and Rom communities of Colombia: the delay in creating inclusive opportunities for constructive dialogue with ethnic people only afforded them a very limited amount of time to negotiate the inclusion of ethnic rights in the agreement¹¹⁹. Notwithstanding

¹¹⁷ “Informe Conjunto de la Mesa de Conversaciones entre el Gobierno Nacional y las Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo,” *Presidencia de la República*, 4/06/2015.

¹¹⁸ Warren, R. et al (2017) “Inclusive Justice: How women shape Transitional Justice in Tunisia and Colombia”, *Georgetown Institute for Women, Peace and Security (GIWPS)*, p. 42.

¹¹⁹ “The Ethnic Chapter: confined to paper”, *Verdad Abierta, Friedrich Ebert Stiftung*, 11/2021, p. 4.

the late incorporation of Indigenous and Afro-Colombian perspectives in the document, the cross-cutting recognition and valorisation of ethnic rights in the agreement as well as in a dedicated chapter (although only four pages long) is an unparalleled achievement for ethnic people in the country, which contributes to setting a precedent for international peace-building and transitional justice processes (Fox 2022).

The aim of the Ethnic Chapter is that of mainstreaming an ethnic approach throughout the agreement while making sure that specific provisions addressing ethnic peoples' rights are also included in each and every section of the Accord. More specifically, the chapter acknowledges the contribution of ethnic people to sustainable peace and development in Colombia, recognizes that ethnic communities have historically experienced prolonged conditions of inequality and injustice and establishes that guarantees must be adopted to foster the full exercise of ethnic rights¹²⁰. Building on this last point, the chapter enshrines four principles that must guide the implementation of the Havana Peace Agreement, namely: the principle of consultation with free and prior informed consent, the right to cultural objection, the adoption of a cross-cutting gender, women, family and generation approach and the guarantee of non-regression¹²¹.

Concerning the first chapter on the Comprehensive Rural Reform, the agreement prescribes the adoption of an ethnic and cultural perspective in the implementation of land-related programmes, and the subsequent respect of legal conditions establishing the protection and collective ownership of ancestral land¹²². With respect to the Development Programmes with a Territorial-Based Focus (or PDETs), which are specifically planned to be carried out in ethnic territories, the section introduces the obligation to design a special consultation mechanism that will guarantee the incorporation of an ethnic perspective in all implementation phases¹²³. Specific provisions are additionally devoted to ensuring that ethnic peoples have equal access both to the Land Fund and to the creation of mechanisms aimed at resolving disputes possibly connected to land tenure, all in consideration of the special cultural and spiritual bond that Indigenous people and Afro-Colombians share with ancestral land¹²⁴.

Special measures to guarantee the full and effective inclusion of ethnic people's representatives in participatory planning forums and other mechanisms overseeing the

¹²⁰ Section 6.2 of the Final Agreement.

¹²¹ Sections 6.2.2 and 6.2.3 of the Final Agreement.

¹²² Section 6.2.3 (a) of the Final Agreement.

¹²³ *Ibidem*.

¹²⁴ *Ibidem*.

implementation of the agreement are also prescribed in relation to section two of the agreement on political participation¹²⁵.

Likewise, the incorporation of the cultural and ethnic perspectives in all security programmes detailed in section 3.4 and the strengthening of ethnic traditional security systems such as the *Guardia Indígena* and the *Guardia Cimarrona* are also set forth among the provisions of the Ethnic Chapter¹²⁶.

On the subject of the illicit drugs problem, the Chapter establishes that Indigenous and Afro-Colombian communities will be thoroughly consulted and included in the design and implementation of both the Programmes for Demining and Clearance and the National Comprehensive Programmes for the Substitution of Crops Used for Illicit Purposes (PNIS), with the objective of ensuring the respect of ancestral ethnic traditions on the use of land¹²⁷.

Concerning chapter five, the agreement states that the features and competencies of the SIVJRNR need to be outlined with the utmost consideration for the expertise and jurisdiction of Indigenous and Afro-Colombian traditional authorities, in compliance with international legal standards and regulations¹²⁸. The Ethnic chapter once again prescribes the adoption of an ethnic approach in the design process of all the judicial and non-judicial mechanisms encompassed in the Integral System, which may entail carrying out direct consultations with ethnic people's representatives if deemed necessary¹²⁹. An important achievement in this respect was the nomination of eight ethnic magistrates in the JEP for a total of four Indigenous and four Afro-Colombians, with half of them being women¹³⁰. Most importantly, the Agreement establishes the creation of some special mechanisms with the aim of fostering coordination between the JEP, the Special Indigenous Jurisdiction, and the Afro-Colombian ancestral authorities in compliance with article 246 of the Colombian Constitution¹³¹. With respect to the reintegration of demobilized ethnic individuals, the chapter outlines the setting up of special reincorporation programmes combined with educational strategies on the prevention against ethnic and racial discrimination of ex-combatants¹³².

¹²⁵ Section 6.2.3 (b) of the Final Agreement.

¹²⁶ Section 6.2.3 (c) of the Final Agreement.

¹²⁷ Section 6.2.3 (d) of the Final Agreement.

¹²⁸ Section 6.2.3 (e) of the Final Agreement.

¹²⁹ *Ibidem*.

¹³⁰ “Estos son los perfiles de los 38 magistrados de la Jurisdicción Especial para la paz”, *El País*, 26/09/2017, available at: <https://www.elpais.com.co/proceso-de-paz/estos-son-los-perfiles-de-los-38-magistrados-de-la-jurisdiccion-especial-para-la-paz.html> last accessed 13/01/2024.

¹³¹ *Ibidem*.

¹³² *Ibidem*.

Finally, chapter six establishes the creation of an independent Special High-Level Forum with Ethnic Peoples (IEANPE) tasked with advising the Commission for Monitoring, Promoting and Verifying the Implementation of the Final Agreement (CSIVI)¹³³. Additionally, the Agreement text stresses that previous accords on budgetary matters signed between the National Government and Ethnic People which are included in the National Development Plan shall be kept separated from the fundings necessary to the implementation of the 2016 Accord provisions¹³⁴.

Notwithstanding the noteworthy achievements in terms of ethnic people's rights inclusion in the Agreement, even the groundbreaking chapter on Ethnic Perspectives misses the opportunity to make direct and explicit references to Indigenous women's rights. The time constraints imposed on ethnic representatives to include their perspectives in the final text of the accord explain at least to some extent why the Indigenous and Afro-Colombian delegations only managed (or chose) to incorporate a more general ethnic focus in the chapter. Thus, ethnic and women's rights are not dealt with in a transversal manner, but rather addressed in separate sections of the document as if they did not overlap. However, given the disproportionate effects that the conflict has had on ethnic women and the particular roles that the latter hold in their communities, the adoption of a more intersectional approach could have ensured the formal inclusion of explicit guarantees for the promotion and protection of ethnic women's specific rights in the final text of the accord.

3.2 The Integral system of Truth, Justice, Reparation and Non-Repetition (SIVJRNR).

The SIVJRNR is mandated with ensuring that conflict-bound human rights violations are repaired through the coordination of services related both to victims' assistance and to the prosecution of perpetrators¹³⁵. It is made up of a variety of judicial and non-judicial mechanisms endowed with different objectives and specific focuses, namely the Commission for the Clarification of Truth, Coexistence and Non-Recurrence (CEV), The Special Unit for the Search for Persons deemed as Missing in the context of and due to the conflict (UBPD), The Special Jurisdiction for Peace (JEP), The Comprehensive Reparation Measures for Peacebuilding, and The Guarantees of Non-Recurrence¹³⁶.

¹³³ Section 6.2.3 (f) of the Final Agreement.

¹³⁴ *Ibidem*.

¹³⁵ Section 5.1 (a) of the Final Agreement.

¹³⁶ Section 5.1 (b) of the Final Agreement.

1) The **Commission for the Clarification of Truth, Coexistence and Non-Recurrence (CEV)** is an independent, extrajudicial mechanism tasked with the temporal reconstruction of truth concerning the events related to the conflict and the human rights violations connected to such events¹³⁷. The Commission was entrusted with a 3 year-long mandate¹³⁸, and composed of 11 commissioners nominated by the Mechanism for the selection of magistrates of the JEP in the respect of specific selection criteria that include regional representation and gender equality¹³⁹. The CEV worked in close collaboration with the JEP to determine the extent, gravity and nature of the violations that occurred during the armed confrontation¹⁴⁰. Its work was grounded on three pillars, namely clarification, recognition of victims and responsibilities, and promoting peaceful coexistence and mutual respect among Colombian citizens¹⁴¹. The agreement establishes that the CEV must adopt a differential approach in learning about the different impacts of the conflict on women, youth, ethnic people and other vulnerable social groups¹⁴². Therefore, a gender-based approach was mainstreamed in the work of the CEV through the creation of a working group on gender, while victim participation was ensured by the organization of public hearings at the local, regional and national level¹⁴³. Finally, after the publication of the Commission's final Report in 2022, the Monitoring Committee on the Implementation and Follow-up of the Commission's Recommendations (composed of victims' representatives and human rights organizations) was tasked with ensuring that the implementation process of CEV's recommendations actually respect the territorial, gender, and intersectional perspective¹⁴⁴.

2) The **Special Unit for the Search for Persons deemed as Missing in the context of and due to the conflict (UBPD)** is a transitory, extrajudicial, and humanitarian mechanism tasked with the direction and coordination of strategies aimed at localizing and identifying victims or remains of victims who disappeared during the conflict¹⁴⁵. The agreement establishes the collaboration of victims' and human rights organizations with the UBPD, as

¹³⁷ Section 5.1.1.1 of the Final Agreement.

¹³⁸ Section 5.1.1.1.7 of the Final Agreement.

¹³⁹ Section 5.1.1.1.5 of the Final Agreement.

¹⁴⁰ Section 5.1.2 (III) 55 of the Final Agreement.

¹⁴¹ Section 5.1.1.1 of the Final Agreement.

¹⁴² *Ibidem*.

¹⁴³ Sections 5.1.1.1.1 and 5.1.1.1.4 of the Final Agreement.

¹⁴⁴ Section 5.1.1.1.10 of the Final Agreement.

¹⁴⁵ Section 5.1.1.2 of the Final Agreement.

well as the support of the National Search Commission for the Disappeared and other specialist institutions. Moreover, forensic reports and material evidence collected by the UBPD may be requested by the JEP or other competent bodies dealing with the reconstruction of crimes and acts related to the conflict¹⁴⁶.

3) The **Comprehensive Reparation Measures for Peacebuilding** are measures aimed at fostering reparations of harms to victims and collectivities affected by the conflict. They include acts of early acknowledgment of collective responsibility¹⁴⁷; concrete contributions to reparations for instance through the engagement in search for disappeared people or infrastructure rebuilding programmes¹⁴⁸; individual measures and programmes for psychosocial rehabilitation¹⁴⁹; Land Restitution Measures¹⁵⁰; and collective reparations plans and/or development programmes with a territorial-based focus¹⁵¹.

4) The **Guarantees of Non-Recurrence** consist of the coordinated implementation of measures and mechanisms enshrined in the Final Agreement, especially those included in the SIVJRNR, and the non-recurrence measures described in Chapter 3. The implementation of such provisions is aimed at preventing the emergence of new human rights violations, encouraging the acknowledgment of responsibility by all parties to the conflict, and promoting peaceful coexistence for all Colombian citizens¹⁵². The fight against impunity led by the JEP, the ascertainment of the truth enabled by the final report of the CEV, and the measures for reparations enshrined in the agreement all contribute to the promotion of peaceful coexistence through the restoration of trust between citizens, in institutions and in democratic values.

5) The **Special Jurisdiction for Peace (JEP)** is the justice component of the Integral System tasked with the investigation, prosecution and sanction of grave human rights and international humanitarian law violations committed in the internal armed conflict¹⁵³. The JEP has a 10 year-long mandate that can be extended for an additional 5 years, and is composed of three Judicial Panels, an Investigation and Prosecution Unit and a Peace Tribunal that work in

¹⁴⁶ *Ibidem*.

¹⁴⁷ Section 5.1.3.1 of the Final Agreement.

¹⁴⁸ Section 5.1.3.2 of the Final Agreement.

¹⁴⁹ Section 5.1.3.4 of the Final Agreement.

¹⁵⁰ Section 5.1.3.6 of the Final Agreement.

¹⁵¹ Sections 5.1.3.3.1 and 5.1.3.3.2 of the Final Agreement.

¹⁵² Section 5.1.4 of the Final Agreement.

¹⁵³ Section 5.1.2 (I) 2 of the Final Agreement.

close collaboration with human rights CSOs, victims' representatives and the Office of the Attorney General¹⁵⁴. The JEP goes to strengthen the work initiated by the Government with Law 975 of 2005 and Law 1448 of 2011, which outlined a somewhat fragmented transitional justice process carried out under a joint cooperation with the Office of the Attorney General, the Victims Unit, The Ombudsman's Office and the Ministry of Justice (Warren et al 2017).

The gender and ethnic perspective were incorporated in the JEP through the creation of a special investigation unit on sexual crimes¹⁵⁵ and the introduction of a specific provision regulating the interaction between the mechanisms of the JEP and ethnic judicial authorities¹⁵⁶. More specifically, point 73 of Chapter number five establishes that the Colombian State shall consult with the Indigenous people with respect to the modalities through which the decisions adopted by the Indigenous judicial system on crimes connected to the armed conflict can be transferred to the JEP, unless the jurisdiction of the JEP is already expressly recognized.

3.2.1 The Composition of the Special Jurisdiction for Peace.

As mentioned, the Special Jurisdiction for Peace (JEP) is composed of the Judicial Panel for the Acknowledgement of Truth, Responsibility and the Determination of Facts and Conducts (SRVR); The Judicial Panel for Amnesty and Pardon (SAI); The Judicial Panel for Determination of Legal Situations (SDSJ); The Investigation and Prosecution Unit and the Peace Tribunal.

a. The **Judicial Panel for the Acknowledgement of Truth, Responsibility and the Determination of Facts and Conducts (SRVR)** is the entry point to the JEP, it collects testimonies and determines whether the conducts under examination fall within the jurisdiction of the JEP¹⁵⁷. Once the competency is ascertained, the SRVR remits each case to the corresponding Judicial Panels or Tribunal. As Rettberg et al. (2020) note, the SRVR has another fundamental role in the peace process and, more specifically, in the implementation of transitional justice mechanisms in the Colombian context. As a matter of fact, the JEP has decided to prioritize macro cases that are emblematic of the most recurrent and gravest Human Rights violations that occurred in the conflict rather than engaging in an extensive pursuit of

¹⁵⁴ Section 5.1.2 (I) 9 of the Final Agreement.

¹⁵⁵ Section 5.1.2 (III) 67 of the Final Agreement.

¹⁵⁶ Section 5.1.2 (III) 73 of the Final Agreement.

¹⁵⁷ Section 5.1.2 (III) 48 (a) of the Final Agreement.

all the crimes that were perpetrated in that timeframe¹⁵⁸. The SRVR was in fact mandated with carrying out eleven macro-cases on said human rights violations, with the aim of identifying the individuals responsible for the gravest crimes and have them tried by the Peace Tribunal.

b. The **Judicial Panel for Amnesty and Pardon (SAI)** has the duty to apply amnesty or pardon to crimes that are eligible for one or the other¹⁵⁹. In any case, The SAI cannot under any circumstance grant amnesty for crimes contained in the Rome Statute of the International Criminal Court (ICC), which include crimes against humanity, kidnapping, torture, extrajudicial killing, enforced disappearance, forced displacement and other grave war crimes¹⁶⁰.

c. The **Judicial Panel for Determination of Legal Situations (SDSJ)** is tasked with dealing with situations that do not fall under the other Judicial Panels' jurisdictions, that is to say it is mandated with determining when the crimes under scrutiny were not committed in relation to the armed conflict or, in case they were, when their gravity and/or responsibility of the individual in committing them were negligible¹⁶¹. In the first case, the SDSJ shall refer the case to the ordinary criminal jurisdiction, whereas in the second case it can decide to not move forward with prosecution thereby shielding the defendant from ordinary prosecution as well¹⁶².

d. The **Investigation and Prosecution Unit** is tasked with satisfying victims' rights to justice when there is no formal acknowledgment of responsibility for a crime committed in relation to the internal armed conflict, be it individual or shared¹⁶³. Thus, the mandate of the Unit is that of investigating and, when suitable, prosecuting individuals through the Peace Tribunal¹⁶⁴. These investigations are carried out with the support and expertise of the legal professionals working in the Unit, which additionally include two special investigation teams: a technical forensic investigation team and a special investigation team for cases of sexual

¹⁵⁸ See Rettberg, A. et al. (2020) "Taking Stock of Gender Equality in Colombia: an Overview", *Unianandes*, p.111, table 16.

¹⁵⁹ Section 5.1.2 (III) 49 of the Final Agreement.

¹⁶⁰ Appendix I, Part II, Chapter I, Article 22, paragraph (a).

¹⁶¹ Section 5.1.2 (III) 50 (a).

¹⁶² Section 5.1.2 (III) 50 of the Final Agreement.

¹⁶³ Section 5.1.2 (III) 51 of the Final Agreement.

¹⁶⁴ *Ibidem*

violence, who benefit from international support and technical assistance and are formed according to criteria of equitable geographic, gender and ethnic representation¹⁶⁵.

e. The **Peace Tribunal** has jurisdiction on crimes connected to the conflict that cannot be granted amnesty by the SAI. The jurisdiction of the different Chambers of the Tribunal carrying out the examination of the crime, as well as the nature and the severity of sanctions ordered by said Chambers will vary according to the prior acknowledgment of responsibility by the defendant, the gravity of the sanctioned act and the accused's level of cooperation with the JEP¹⁶⁶.

3.2.1.1 The Peace Tribunal and the TOAR.

The Peace Tribunal comprises twenty Colombian Magistrates and four foreign jurists who are highly qualified in human rights, conflict resolution, and humanitarian law and reflect the ethnic and gender diversity of the country¹⁶⁷. A total of 6 Magistrates is distributed in each of the four Chambers, namely the First Instance Chamber in Cases of Acknowledgement of Truth and Responsibility, the First Instance Chamber in Cases of Absence of Acknowledgement of Truth and Responsibilities, a Review Chamber, and an Appeals Chamber¹⁶⁸.

The central feature of the JEP is that the sanctions imposed by the Peace Tribunal must be aimed at satisfying victims' rights and re-establishing peace¹⁶⁹. The accord establishes that all sanctions shall be transmitted to the CEV to foster its work in the historical reconstruction of the conflict¹⁷⁰ and that the verdict of the Peace Tribunal cannot under any circumstance be invalidated by any other organism apart from the Peace Tribunal itself¹⁷¹.

The JEP may impose three different types of sanctions, namely special, alternative or ordinary sanctions depending on the case. If the accused recognizes their responsibility and provides full and truthful testimony before the SRVR prior to the beginning of the judicial

¹⁶⁵ Section 5.1.2 (III) 67 of the Final Agreement.

¹⁶⁶ Sections 5.1.2 (III) 60 and 61 of the Final Agreement.

¹⁶⁷ Section 5.1.2 (III) 65 of the Final Agreement.

¹⁶⁸ Section 5.1.2 (III) 52 of the Final Agreement.

¹⁶⁹ Section 5.1.2 (III) 60 of the Final Agreement.

¹⁷⁰ Section 5.1.2 (III) 55 of the Final Agreement.

¹⁷¹ Section 5.1.2 (III) 56 of the Final Agreement.

examination, they will be brought to the First Instance Chamber of the Peace Tribunal in Cases of Acknowledgement of Truth and Responsibility which will verify and establish the correspondence between the recognized conduct, the perpetrator and the proposed sanction advanced by the SRVR¹⁷². Once the correspondence is ascertained, the Chamber will impose a corresponding “propia” sanction from the list of sanctions established by the agreement¹⁷³. *Sanciones Propias* (SP) can range from a minimum of 5 years to a maximum of 8 and possess both restorative and retributive features in line with UN guidelines, as they oblige the sentenced to perform social works to repair the damages caused to the community during the conflict rather than sentencing the perpetrator to imprisonment¹⁷⁴. To ensure the proper development of such initiatives and the defendant’s compliance with the sanction imposed by the JEP, the SP may entail the effective restriction of the accused’s personal freedom of movement or residence and will impose the monitoring of a supervision mechanism¹⁷⁵.

In the event that the defendant does not acknowledge full responsibility for the crime nor provide full and truthful testimony, they will be brought to the Peace Tribunal’s Chamber in Cases of Absence of Acknowledgment of Truth and Responsibility and undergo a full criminal trial. The type of sanction ordered by the competent Section depends on whether the defendant recognizes responsibility and tells the truth before the verdict is given: in case they do, the Tribunal will impose an “alternative” sanction that will consist of 5 to 8 years of imprisonment depending on the gravity of the crime, the degree of acknowledgment of truth and responsibility and the extent of the defendant’s collaboration with the JEP¹⁷⁶. However, if the accused is found guilty by the Section without having confessed to their crimes, they will be charged with 15 to 20 years of imprisonment as per “ordinary” sanctions¹⁷⁷.

In cases where imprisonment is imposed, reductions with respect to the retributive deprivation of liberty can be contemplated by the Peace Tribunal provided that the convicted person agrees to their social rehabilitation through the undertaking of work, training or studying¹⁷⁸. In all cases, all individuals who are found guilty by the Peace Tribunal must provide guarantees of non-recurrence regardless of the type of sanction they incur in¹⁷⁹.

¹⁷² Section 5.1.2 (III) 53 (a) of the Final Agreement.

¹⁷³ Section 5.1.2 (III) 53 (b) of the Final Agreement.

¹⁷⁴ Section 5.1.2 (III) 60 of the Final Agreement.

¹⁷⁵ *Ibidem*.

¹⁷⁶ Sections 5.1.2 (III) 54 (c) and 60 of the Final Agreement.

¹⁷⁷ Sections 5.1.2 (III) 54 (b) and 60 of the Final Agreement.

¹⁷⁸ Section 5.1.2 (III) 60 of the Final Agreement.

¹⁷⁹ Section 5.1.2 (III) 60 and list of sanctions (I) of the Final Agreement.

The Review Chamber is tasked with the review of rulings already heard by other jurisdictional bodies and with the resolution of conflicts of jurisdiction that may arise between Chambers or between Chambers and the Prosecution Unit, while the Appeals Chamber has the faculty to decide on rulings passed by the JEP's First Instance Chambers¹⁸⁰.

As mentioned, sanctions imposed by the JEP must have a restorative impact for the community, contribute to repairing victims' harms, and be proportional to the defendant's degree of sincerity and collaboration with the judiciary¹⁸¹. Out of the three types of sanctions established by the Peace Tribunal, the most innovative and relevant to this study is the special sanctions or *Sanciones Propias* imposing Works, Actions and Activities with Restorative Content (TOAR) to be carried out by the convicted. This approach stems from an unprecedented take on reparations in transitional justice: those who have caused harm are the ones who need to repair it.

The defendants who recognize their responsibility before the SRVR may present a detailed collective or individual project of work or activities (which can alternatively be created by said Judicial Panel if the defendants do not come up with one themselves) that needs to be inherently reparative and restorative and should be defined by taking into account the victims' perspective¹⁸². To this aim, each project shall set up a mechanism of consultation with representatives of victims living near the area where the project is supposed to be undertaken, to ascertain whether they oppose the project or have any remark that they wish to express to the Tribunal¹⁸³.

The SRVR must approve and supervise the discussion mechanism and the Tribunal will be able to take independent and final decisions on such projects and possible remarks advanced by victims' representatives. The project's unfolding and the respect of the dispositions imposed by the Chamber, including the possible restrictions to personal liberty of the convicted person, will be supervised by the Tribunal with the help of other monitoring organisms such as the component of a specific UN political mission for verification and the OHCHR in Colombia¹⁸⁴.

The chapter sets out some examples of TOAR that may be undertaken by convicted individuals on the condition that said projects respect the ethnic and cultural tradition of the communities they should be implemented in. Examples encompassed in the agreement include (but are not limited to) the participation in/implementation of: reparation programmes for

¹⁸⁰ Section 5.1.2 (III) 52 and 58 of the Final Agreement.

¹⁸¹ Section 5.1.2 (III) 60 of the Final Agreement.

¹⁸² Section 5.1.2 (III) and List of sanctions (I) of the Final Agreement.

¹⁸³ *Ibidem*.

¹⁸⁴ Section 5.1.2 (III) 62 of the Final Agreement.

displaced rural people; infrastructure building and repair programmes in rural and urban areas; environmental protection programmes for Forest Reserve Areas; rural and urban development programmes; environmental recovery programmes for crops used for illicit purposes; programmes to clear and dispose of explosive remnants or anti-personnel mines.

This overview on the peculiarities associated with the Transitional Justice mechanisms enshrined in the 2016 Agreement provides us with the insights and knowledge necessary to undertake a more in-depth analysis of TOAR in the upcoming chapter of this work. As anticipated, this examination will be carried out with a view to delve into the modalities adopted to ensure the inclusion of Indigenous women's perspectives and needs in the definition both of harms to be repaired and of the specific means through which such reparations should be carried out by Works, Actions and Activities with Restorative Content.

Chapter 4 - Shortcomings and challenges in the advancement of indigenous women's rights in nowadays Colombia.

This chapter focuses on identifying the means adopted by the JEP to include indigenous women's perspectives both in the definition of harm inflicted during the internal armed conflict and in the design of reparative measures to contribute to mending such harm.

4.1 Why is including Indigenous women in Colombian TJ important?

As previously highlighted over the course of this research, to really achieve sustainable peace, transitional justice needs to break apart from the liberal legal framework and open to other perspectives, epistemologies, and conceptualizations of peace. Undertaking a process of decolonization of TJ will prevent that top-down western peacebuilding projects are forced upon populations without considering their real priorities and needs, as oftentimes these impositions result in superficial attempts at dealing with past atrocities without truly addressing the economic, social, and cultural root causes that enable and foster violent episodes in the first place.

Women in general have specific roles in society and in contributing to the restoration of the social fabric following violence and conflict (True and Morales 2019; Krause et al. 2018). This is all the truer when considering the role of Indigenous women in their respective communities. They are often considered to be the gatekeepers of spiritual knowledge that fosters communication with ancestors and nature. Their special connection with ancestral lands and nature is extremely profound, insomuch that land is considered an extension of their being and, as such, any harm or offence perpetrated to the detriment of nature affects Indigenous women as well. Indigenous people are generally disproportionately affected by forced displacement connected to conflict, in which land access is a central element in Colombia (Wright et al. 2023), and neoliberal economic projects aimed at "revitalising" the country's economy. Indigenous women, as we already saw, additionally are victims of sexual violence and abuses which are frequently aimed at scaring them away from their lands and preventing them from carrying out their rituals in such settings. Thus, Ethnic women endured and still endure

the combined effects of such violations, which arguably have deeper cultural and spiritual implications than those experienced by the non-ethnic Colombian population.

(Yoshida and Cespedes Baez 2021; Rodriguez Iglesias 2019)

For all of these reasons, indigenous women's needs and perspectives imperatively need to be included and addressed by transitional justice mechanisms when defining what harm is, how it affected them, and what actions could contribute to its repair, and this inclusion needs to go beyond a biased, superficial, western-centric approach that mostly considers indigenous women as agentless victims who exclusively endure conflict-bound sexual violence (Bell 2015; Puechguirbal 2010; Ni Aolain 2006; Yoshida and Cespedez-Baez 2021).

4.1.1 The inclusion of an Ethnic perspective in the SIVJRNR.

The Colombian peace Agreement, although with several shortcomings, has bolstered appreciable and important steps towards the decolonization of transitional justice.

For one, the special measures and programs for land reform and restitution in the first chapter recognize the special role of women in rural economies and the special bond of ethnic people with their lands. The same can be said for the SIVJRNR which is endowed with an ethnic and gender-specific focus in all of its five components, most notably with respect to: the composition of the JEP itself, which includes several indigenous and afro-Colombian magistrates such as Kankaumo Magistrate Ana Manuela Ochoa and Arhuaco Magistrate Belkis Izquierdo Torres; the inclusion of a special investigation unit on sexual violence in the JEP; the adoption of specific provisions establishing the cooperation between the JEP and Indigenous and Afro-Colombian judicial and/or traditional authorities; the CEV and its working group on gender.

The intersectional focus on gender and ethnicity incorporated in the Integral System, together with the Colombian High Courts' acknowledgement of the special bond between indigenous people and ancestral lands (recognized by the Courts as a rights-holder) constitute other steps forward in the progressive decolonization of Colombian transitional justice, as they open to epistemologies other than the western one. Apart from

agreement-bound provisions, the jurisprudence of the JEP itself contributes to the decolonization of transitional justice in Colombia. The JEP's recognition of Indigenous women's special bond with ancestral territories (Katsa Su 2018) contributes to bridging the ethnic and gender dimensions encompassed in the peace agreement and recognizing another dimension of victimhood inherent in indigenous conceptualizations of life, namely nature as a dimension of the indigenous being. Indigenous women's knowledge and practices connected to the ability of living in harmony with nature, which stem from the abovementioned spiritual link connecting indigenous women to the ancestral lands they inhabit, are key feminist solutions to conflict prevention (Yoshida and Céspedes-Baez 2021). The decolonial developments incorporated in the Peace Agreement, including in the creation of the JEP, which is transforming the legal panorama with its decisions, are thus laying the grounds for the recognition and recentring of indigenous women's important role in peacebuilding at the heart of Colombian transitional justice.

Lastly, the JEP has adopted, in compliance with UN directives and standards, a combination of retributive and restorative TJ measures to address and contribute to repairing conflict-related harms, which are defined by *Sanciones Propias* issued by the Peace Tribunal.

4.1.1.1 The Ethnic perspective incorporated in the JEP.

The most direct way through which the JEP incorporated a differential ethnic focus in its work was through the opening of macro case number nine on "crimes committed against Ethnic People and Territories because of, taking advantage of, in direct or direct relation with the Colombian armed conflict". This case, which was opened with Auto 105 of September 7, 2022, following requests and pressures by civil society members, specifically focuses on crimes perpetrated against Ethnic people and the ancestral lands they inhabit, thereby dedicating an unprecedented attention to Indigenous peoples' experiences, perspectives and testimonies on the violations that were committed to their detriment during the Colombian armed conflict.

More generally, the guidelines of the JEP impose coordination with the Indigenous Special Jurisdiction whenever the victims or perpetrators of violations are

Indigenous to determine which judicial organism has jurisdiction over the case, the scope of reparations and to ensure the latter encompass a connected spiritual healing process¹⁸⁵.

In 2019 the Ethnic Commission of the JEP undertook a process of prior consultation on the functioning of TJ mechanisms with the Indigenous peoples of Colombia and spurred the creation of normative and methodological mechanisms that could guarantee constant horizontal cooperation as well as interjurisdictional and territorial coordination between Indigenous Juridical authorities¹⁸⁶ (Braconnier Moreno 2019). One of the challenges faced by the JEP is precisely that of addressing the enormous juridical diversity constituted by each Ethnic People's juridical traditions and engaging with such diversity in a constructive and respectful manner. The JEP does so by abiding by specific norms and provisions contained in the Statutory Law of 2019 which establish how the JEP should relate to Ethnic people's traditional authorities.

With respect to cases of competency of the JEP in which victims or defendants are of Ethnic descent, the JEP has adopted different coordination protocols jointly with Indigenous, Afro-Colombian and Rom jurisdictions¹⁸⁷.

According to the content of these instruments, a notification with Ethnic relevance must be issued when an ex-combatant of the FARC is of Ethnic descent¹⁸⁸. Subsequently, dialogues and intercultural hearings with interpreters and symbolic rituals must be carried out between the magistrates of the JEP and local traditional authorities to assess which judicial authority is competent on the matter (Braconnier Moreno and Romero 2023). In case Indigenous authorities delegate their competency to the JEP, they are invited to

¹⁸⁵ Section 6.2.3 (e) of the Final Agreement. In general, the jurisdiction of Colombian ordinary Justice or Indigenous Justice on a criminal case involving Indigenous individuals is determined according to specific guidelines. Sentence C-463 of 2014 of the Colombian Constitutional Court offers valuable insights and explanations on the subject: The exclusive competency of the Special Indigenous Jurisdiction may be valid, according to the circumstances, when the criminal act in question was committed on indigenous land, concerns an Indigenous victim and/or perpetrator, the Indigenous community actively manifests its will to carry out the judicial proceedings, and the concerned juridical good exclusively pertains to the Indigenous community. See Sentence C-463-2014 of the Colombian Constitutional Court, available at: <https://www.corteconstitucional.gov.co/relatoria/2014/C-463-14.htm> last accessed 23/02/2024.

¹⁸⁶ Chapter 15 of the general regulations of the JEP and Protocol 1 of 2019 on the coordination between the JEP and the Indigenous Special jurisdiction, adopted by the Ethnic Commission of the JEP.

¹⁸⁷ Respectively, protocol of June 5, 2019; Protocol of February 9, 2021 and *lineamientos* of July 31, 2021.

¹⁸⁸ Protocol 1 of 2019 of the JEP.

participate in every step of the judicial process as special consultants also known as *intervenientes especiales*.

With respect to hearings, the Differential Focus Department of the Executive Secretariat of the JEP is tasked with implementing positive measures to ensure the attendance and involvement of all social groups and especially those who encounter difficulties that may prevent them from participating in hearings, such as language barriers, disabilities, or logistic barriers. For instance, a contextual interpreter for indigenous leaders is often necessary, and needs to be pre-emptively trained by JEP staff as their role consists in translating words and concepts that may not even exist in Indigenous traditional languages¹⁸⁹. In general, public hearings are designed to ensure that information is equally shared and available to Indigenous judicial authorities and technical support is provided to them, such as interpreters who are chosen by Ethnic people themselves and approved by the JEP¹⁹⁰.

The JEP adopts the classic retributive logic of transitional justice by investigating and punishing the perpetrators holding the biggest responsibility for crimes and human rights violations inflicted on the Colombian population during the internal armed conflict. At the same time, it prioritises the victims' right to truth and, above all, the reconstruction of the Colombian social fabric and the possibility of ensuring peaceful coexistence between all members of society, including former parties to the conflict, rather than focusing on condemning all those responsible for conflict-bound harm.

Braconnier Moreno and Romero (2023) underscore how the restorative dimension integrated in the work of the JEP is inspired by other juridical cultures such as the Indigenous and Afro-Colombian ones, which have for objective that of focusing on societal reparations when human rights violations are perpetrated: this embracement lays

¹⁸⁹ “Lo que debes saber acerca de los enfoques diferenciales en la JEP”, Episode n.7 of the “*Por fin lo sabemos*” Podcast in collaboration between the JEP and Radio Nacional de Colombia. Interview with Chief of the differential focus department of the executive secretariat of the JEP Eliana Antonio. Available at: <https://open.spotify.com/episode/5BHGnbyOFc8FXQCIHcrVaU?si=5639f309699d4512> last accessed 31/01/2024.

¹⁹⁰ Magistrada Belkis Florentina Izquierdo Torres “Intervención: Mecanismo de expertos sobre los derechos de los Pueblos Indígenas”, *Sala de reconocimiento de Verdad, de responsabilidad y de Determinación de los Hechos y Conductas*, p.4. Available at: <https://www.ohchr.org/sites/default/files/2022-01/BelkisIzquierdo.pdf> last accessed 23/02/2024.

the premises for “normative circulation” (Champeil-Desplats 2019) between the JEP and other justices such as the *Derecho Propio Indigena*, the *Derecho Mayor* or the *Ley Natural* depending on the Indigenous group, and the subsequent legal enrichment and development of restorative justice processes in Colombia.

The Ethnic Commission of the JEP, composed by 8 Indigenous and Afro-Colombian Magistrates with Ethnic origins among which are Magistrates Belkis Florentina Izquierdo, Ana Manuela Ochoa and José Miller Hormiga, has sought to incorporate innovative normative strategies in the JEP based on the cosmologies and epistemologies inherent in their native Ethnic communities, as reiterated by Arhuaco Magistrate Belkis Florentina Izquierdo. Magistrate Izquierdo highlights that all truth, harmonisation and reconciliation-seeking logics, principles and rationales pertaining to ethnic people’s juridical systems which could overall contribute to the reinforcement of the Colombian social tissue and territory have been incorporated in the restorative practices adopted by the JEP¹⁹¹. For instance, Afro-Colombian Magistrate Ana Manuela Ochoa of the Kankuamo people suggested the use of rosemary in hearings of the JEP, as this aromatic plant is believed to help in the vehiculation of words in ethnic epistemologies: all individuals wishing to orally intervene during the judicial process were requested to hold a branch of the herb and pass it on to others¹⁹². Another practice that was adopted by Ethnic magistrates is that of asking Indigenous territorial and/or spiritual entities for permission before opening hearings: during the public hearing on macro case 3 on *falsos positivos* Magistrate Oscar Parra, of Indigenous descent, referenced this custom that is extremely important in indigenous cosmovisions such as the Nasa one, according to which peace cannot be achieved if the territory and ancestral lands do not undergo a harmonisation process¹⁹³.

More generally, non-Ethnic JEP Magistrates have also started incorporating Ethnic practices in the judicial proceedings they oversee, insomuch that numerous hearings which concerned victims and/or perpetrators of Indigenous or Afro-Colombian

¹⁹¹Ivi, p. 2.

¹⁹² Hearing to ensure the existence of conditions to impose SP on defendants in Bogotá, February 7, 2023. Available at: <https://www.youtube.com/watch?v=jmTMzNYPyFM&t=2213s> last accessed 31/01/2024.

¹⁹³ Hearing on victims’ observations on macro case 03 in San Juan del Cesar, March 23, 2023 Available at: <https://www.youtube.com/watch?v=4D-YG-8kbgc&t=5041s> last accessed 31/01/2024.

descent were accompanied by harmonising rituals carried out by savants or ancestral healers¹⁹⁴. One example is the adoption of a horizontal relation between the victims, the defendant, and the judges of the JEP in the judicial proceedings carried out by the latter, as in many ethnic cosmovisions traditional judges act as mediators between the victim, the community and spiritual entities in so-called “dialogical hearings”¹⁹⁵. The participation of the whole Indigenous community in these traditional events is crucial, as its members act as witnesses of the harms perpetrated, and therefore may actively contribute to the definition and determination of the appropriate sanctions (or better said “remedy”) to be imposed on the perpetrator of the crime (or “disharmony”) so that the whole community can be “re-harmonised”¹⁹⁶. In compliance with the principle of victims’ centrality that is inherent in Ethnic communities, the victims and their representatives are encouraged by the JEP to express their perspectives through various means and mechanisms, so as to ensure that the hearing and the judicial proceedings carried out by the JEP can incorporate a restorative dimension.

What is more, not only has the JEP adopted symbolic and ritual practices during and before the hearings, but it has started to incorporate Ethnic juridical concepts in its jurisprudence, such as the already mentioned recognition of ancestral territories as rights-holders and victims of the internal armed conflict in macro cases with territorial implications. The most noteworthy examples are the recognition of the *Katsa Su* or *Gran Territorio Awà* of the Awà people and the Eperara Ejua of the Eperara Siapidaara people in case number two on the territorial situation of Ricaurte, Tumaco and Barbacoas in the department of Nariño¹⁹⁷. The adoption of a similar perspective embedded in Ethnic cosmovisions can provide the Magistrates of the JEP with important insight on possible

¹⁹⁴ For example, see territorial hearing on precautionary measure on the Indigenous reservation of San Lorenzo (Caldas) in San Lorenzo, on December 4, 2023 available at: [https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-avanza-en-estudio-de-medidas-cautelares-en-el-resguardo-ind%C3%ADgena-de-San-Lorenzo-\(Caldas\).aspx](https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-avanza-en-estudio-de-medidas-cautelares-en-el-resguardo-ind%C3%ADgena-de-San-Lorenzo-(Caldas).aspx) and

https://www.youtube.com/watch?v=sK0AS4zqUU&ab_channel=JEPColombia last accessed 31/01/2024.

¹⁹⁵ Braconnier Moreno, L. and Patricia Romero, E. (2023) “La justicia transicional-restaurativa en Colombia a la luz de culturas jurídicas basadas en el cuidado y la sanación”, *Revista Doctrina Distrital*, Vol. 3, N°. 1, p.234.

¹⁹⁶ *Ibidem*.

¹⁹⁷ Magistrada Belkis Florentina Izquierdo Torres “Intervención: Mecanismo de expertos sobre los derechos de los Pueblos Indígenas”, *Sala de reconocimiento de Verdad, de responsabilidad y de Determinación de los Hechos y Conductas*, p. 4 .

reparational projects and initiatives that could be undertaken by perpetrators having caused damage to the environment as part of the SP¹⁹⁸.

As already stated, the ultimate endpoint of ancestral “dialogical hearing” practices embedded in Ethnic cosmologies is not that of punishing, but rather that of repairing and mending the social and spiritual balance of the community which of course encompasses both the victim and the perpetrator. The objective is that the latter can be successfully reintegrated in society by carrying out activities that are inherently reparational for the whole community and, when needed, for the territory said community inhabits. Moreover, the sanction imposed in the Indigenous equivalent of judicial proceedings usually enshrines a spiritual dimension, as perpetrators often have to undertake spiritual reflection in sacred places or under the guidance of knowledgeable spiritual guides¹⁹⁹. The considerations expressed by Indigenous and Afro-Colombian victims of macro case 5 with respect to the sanctions that could be imposed on perpetrators identified by the JEP further corroborate the idea that sanctions and reparations overlap in indigenous cosmologies²⁰⁰.

4.2 The inclusion of Indigenous women’s perspectives and needs in the design of works and activities with restorative content.

Article 141 of the Statutory Law of the JEP encompasses a list of TOAR that can be imposed on accused persons by the Judicial Panels or presented by the individuals themselves²⁰¹. However, this list is not exhaustive as other works, actions and activities with restorative content can be outlined through dialogues and consultancy which involve both the defendants and the victims and occur during private meeting sessions organised

¹⁹⁸ Diplomado “Intercambio de saberes entre la JEP y las Autoridades Indígenas en el Cauca” (2019) in coordination with the Ethnic Commission of the JEP and the Universidad Autónoma Indígena Intercultural, session carried out in Kokonuko (Cauca), on August 29, 2019 pursued by the author Laetitia Braconnier Moreno as part of her PhD investigation on juridical pluralism in Transitional Justice.

¹⁹⁹ *Ibidem*.

²⁰⁰ See Vargas Trujillo, J. et al. (2021) “Construyendo la san(a)ción propia: primeros hallazgos y recomendaciones para la imposición de sanciones restaurativas en el caso 005 de la JEP” *Instituto CAPAZ*, policy brief 8-2021.

In any case, the JEP is not mandated with the provision of material compensation to victims, unlike the Unidad de las Víctimas established by law 2011, and it rather focuses on symbolic compensation.

²⁰¹ Art. 141 of Law 1957 of 2019.

by the JEP (Braconnier Moreno and Romero 2023). In any case, the TOAR must be defined all while taking into account the differential expectations and considerations of victims on which kind of action can be actually considered reparational, in line with article 18 of the JEP Statutory Law²⁰².

As mentioned in the previous chapter, a detailed TOAR project including obligations, objectives, procedural steps and the place and timeframe of the project's unfolding must be either presented by the accused to the SRVR or formulated by the SRVR itself in the framework of the SP²⁰³. Alternatively, the accused can undertake TOAR before the SP is imposed, in which case they must refer to the Executive Secretariat of the JEP so that it can certify and assess the proper unfolding of the project, and so that the latter can be accounted for and examined by the Chamber for Acknowledgment of the Peace Tribunal²⁰⁴. If the TOAR are undertaken in advance, the Executive Secretariat is responsible for ensuring that the victims are properly included in consultation processes²⁰⁵. In case Proper Sanctions are imposed, the project ultimately needs to be revised and approved by the Chamber for Acknowledgement of Truth and Responsibility of the Peace Tribunal within the following six months and supervised in its formal application by the SRVR²⁰⁶. In both cases, the victims have the right to express their opinions and observations on the projects before their approval by the competent organisms²⁰⁷, and regardless of that it is mandatory for the project to include consultation mechanisms that enable representatives of victims residing in such territories (including indigenous authorities in case said activities are expected to be carried out in Indigenous territories which are autonomous as per 1991 Constitution²⁰⁸) to express their opinion and assess that they do not oppose the implementation of the projects²⁰⁹. Victims and their representatives are additionally encouraged to participate in verification hearings to

²⁰² Art. 18 of Law 1957 of 2019.

²⁰³ Law 1957 of 2019 art. 141 (5)

²⁰⁴ Chamber for the Acknowledgement of Truth and Responsibility of the Peace Tribunal, Lineamientos en materia de sanción propia y TOAR; Law 1957 of 2019, art. 139 and 140.

²⁰⁵ *Ibidem*.

²⁰⁶ Law 1957 of 2019, art. 141; Law 1922 of 2018, art.30.

²⁰⁷ Law 1922 of 2018, art. Art. 27D (6).

²⁰⁸ Law 1957 of 2019, art. 141; Chamber for the Acknowledgement of Truth and Responsibility of the Peace Tribunal, Lineamientos en materia de sanción propia y TOAR, p.11.

²⁰⁹ Law 1957 of 2019, art. 141.

establish the defendant's compliance with the conditionality regime and express their opinion on said process²¹⁰. In the 20 days that follow the verification hearing, the Chamber for Acknowledgement declares its decision which encompasses the specificities, modalities, and conditions of the TOAR contained in the SP²¹¹. Following that, The Chamber for Acknowledgement will verify the respect and completion of the SP with the support of the UN verification mission and other organs, such as the Ministry of Defence²¹² or Ethnic Traditional Authorities in case the TOARS are conducted in ancestral territories²¹³.

With respect to victims' inclusion, the JEP must guarantee the effective participation of victims in the application of measures for the dialogic construction of truth established in article 27 of Law 1922 of 2018; in the hearings held before the SRVR; in the design and definition of the projects of SP to be imposed on the accused and presented to the Peace Tribunal²¹⁴.

To have the right to integrally participate in a specific macro case and be regarded as special interveners, victims need to undergo a specific accreditation process. This process is detailed in a dedicated Manual on victims' accreditation before the JEP, the "Manual de participación de las víctimas en los procedimientos ante la JEP" which is, however, hardly consulted or applied in practice according to Torres-Acosta et al. (2022). As underscored in the guidelines provided by the JEP, individuals need to manifest their will to participate in the processes in quality of victims of a crime; to provide proof of the harm they suffered (which can be done by being inscribed in the victims' register, presenting record of written statements or through other legal proof); and lastly to provide testimony of the victimising events while specifying the time and place in which they occurred²¹⁵.

²¹⁰ Law 1922 of 2018, art. 30.

²¹¹ *Ibidem*.

²¹² Law 1957 of 2019, art. 135, 136, 137.

²¹³ Law 1957 of 2019, art. 135.

²¹⁴ "10 datos clave sobre las Sanciones Propias y los TOAR en la JEP: en qué momento participan las víctimas en los TOAR?" Comunicado 062, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/10-datos-clave-sobre-las-Sanciones-Propias-y-los-Toar-en-la-JEP.aspx> last accessed 1/02/2024.

²¹⁵ "Manual de participación de las víctimas en los procedimientos ante la JEP" (2020) JEP, p. 80; "La participación de las víctimas en el SIVJRNR", Ministerio de Justicia del Gobierno Nacional de Colombia y Fundación Panamericana para el desarrollo (FUPAD), Vol. 2, p. 27.

Once the Judicial Panel for Acknowledgment establishes the facts, the perpetrators who are responsible for it, and identifies the victims connected with the facts through the emission of the *auto de* determination of acts and conducts, accredited victims participate in the work of the SRVR by presenting reports on the violations and harms they suffered during the conflict²¹⁶.

Victims can advance observations, questions, and demands for truth with respect to the voluntary testimony of the defendants, which are then translated and made known to the SRVR to provide a more complete picture of the case the Judicial Panel is tasked with analysing²¹⁷. Accredited victims then assist in public hearings of recognition of responsibility and express their observations and opinions on the version of the events provided by the defendant, so that the SRVR can account for their perspective when presenting the Resolution of Conclusions²¹⁸. Most importantly, the victims and their representatives can present their proposals concerning the activities with restorative content that the accused will need to undertake to repair the damages they caused during the conflict²¹⁹.

The centrality of victims' reparations in the approach of the JEP is shown by the array of meetings which are conceived and designed in order to prepare victims and perpetrators for the actual public hearing associated with each macro case, which are based on the idea of dialogic construction of truth.

As underscored by Chief of the Restorative Justice Office of the JEP Ariel Sanchez Meertens, once a macro case is opened and victims are accredited starts a five to nine months timespan during which the parties (both the victims and accused) are prepared and instructed on the cooperative aspects of meeting and facing discussions with one another in public hearings²²⁰. One of the JEP's tasks is that of acting as a sort of messenger in helping the parties to communicate through letters, videos, and other means

²¹⁶Ivi , pp. 174 and 175.

²¹⁷ *Ibidem*.

²¹⁸ *Ibidem*.

²¹⁹ *Ibidem*.

²²⁰ "Así transforma la justicia restaurativa de la JEP" Episode n. 9 of the "*Por fin lo sabemos*" Podcast in collaboration between the JEP and Radio Nacional de Colombia. Interview with Chief of the Restorative Justice Office of the JEP Ariel Sanchez Meertens, available at: <https://open.spotify.com/episode/0S2paAjkkGsjoncQazZtTo?si=9e1d655958664bfc> last accessed 2/02/2024.

until they feel emotionally, juridically and socially prepared enough to meet privately and dialogue on the events and harms they are involved with before the official public hearings take place²²¹. These “restorative pre-meetings” are carried out with the support of a specialised interdisciplinary team composed of an anthropologist, several psychologists, cultural mediators and social workers both internal and external to the JEP and coordinated by the JEP’s executive Secretariat²²². Chief Sanchez Meertens notes that restorations are not conceived in the same way by all civil society members, especially when Ethnic peoples: In case the victims and/or the accused are of Ethnic descent, they need psycho-spiritual support in addition to psycho-social support²²³. Thus, as it happened in macro cases involving facts which had occurred in Indigenous and Afro-Colombian territories such as case two in Nariño and case five in Cauca, every dialogical interrelation between the parties is preceded by a harmonisation process and a consultation process with Ethnic authorities, the spirit of Ethnic ancestors and the ancestral territories inhabited by Ethnic people²²⁴. As Laguado and Braconnier (2022) underscore, this multifaceted approach acknowledges the human and social dimension of conflict, whose harms cannot be repaired solely by regular retributive justice.

The JEP then attempts to achieve an agreement with victims on the sanctions to be imposed on the perpetrators by holding victims’ observational hearings, which are public hearings designed to ensure that accredited victims and their communities can express their observations, recommendations and perspectives on the testimonies provided by the defendants, although the final decision on the SP is taken by the Peace Tribunal (Braconnier Moreno and Romero 2023). These hearings have proven extremely useful both for the victims and the JEP, as they can contribute to the early reparation of victims’ rights while providing the JEP with additional useful elements and insights to decide on the SP to be imposed in the macro cases.

For instance, on March 3, 2023, more than 130 accredited victims were able to express their considerations and opinions before the SRVR on the testimonies provided

²²¹ *Ibidem*.

²²² See Braconnier Moreno, L. and Patricia Romero, E. (2023) “La justicia transicional-restaurativa ... cit. p.240.

²²³ See “Así transforma la justicia restaurativa de la JEP” Episode n. 9... op. Cit.

²²⁴ *Ibidem*.

by 104 defendants accused of extrajudicial killings and enforced disappearance in macro case three on *falsos positivos*²²⁵. In these hearings the Indigenous Wayúu people and the Wiwa people of the Sierra Nevada de Santa Marta were able to intervene on the matter along with other family members of the victims so that their suffering and the harms they have been subjected to could be acknowledged both by the public and the JEP²²⁶.

Victims' observational hearings were additionally held to gather the observations of victims and victims' representatives on the three macro cases the SRVR announced it would open on February 18, 2022²²⁷. The macro cases in question are cases number eight, nine and ten, which focus respectively on crimes committed by public forces or by individuals connected to State agents, crimes committed against Ethnic people and territories, and crimes committed by the former FARC-EP and, unlike the previous seven cases, they were not defined according to the type of criminal conduct but rather based on the identity of the accused or of the victim²²⁸. Between February 22, 2022 and March 10, 2022 Seven hearings in total were held: this constituted an important opportunity for JEP Magistrates to listen to the observations of victims and their perspectives on which aspects of the cases should deserve increased attention²²⁹. For instance, Representatives of Collective Corporation Justicia Mujer expressed their worries concerning the decision to address sexual violence crimes in separate cases depending on the affiliation of the actor who committed it, as they argued that could disrupt the attempt at analysing the systematic nature of this violent pattern²³⁰. In total, more than 650 accredited victims and

²²⁵ “JEP convoca tres audiencias de observaciones de victimas sobre falsos positivos en la Costa Caribe”, Comunicado 016 de 2023, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Jep-convoca-tres-audiencias-de-observaciones-de-v%C3%A1ctimas-sobre-falsos-positivos-en-la-costa-caribe.aspx> last accessed 2/02/2024.

²²⁶ *Ibidem*.

²²⁷ “Iniciaron audiencias de observaciones de las victimas sobre priorizacion de nuevosa casos de la JEP”, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Iniciaron-audiencias-de-observaciones-de-las-victimias-sobre-priorizacion-de-nuevos-casos-de-la-JEP.aspx> last accessed 2/02/2024.

²²⁸ “La JEP reitera su decision indeclinable de abrir tres nuevos casos”, Comunicado 012 a la opinion publica, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-JEP-reitera-su-decisi%C3%B3n-indeclinable-de-abrir-tres-nuevos-casos.aspx> last accessed 2/02/2024.

²²⁹ “La Sala de Reconocimineto cierra el ciclo de audiencias publicas de observaciones de victimas a los nuevos macrocasos”, comunicado 019 de 2022, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/La-Sala-de-Reconocimiento-cierra-el-ciclo-de-audiencias-publicas-de-observaciones-de-victimias-a-los-nuevos-macrocasos.aspx> last accessed 2/02/2024.

²³⁰ « Informe de la Comision de Comisión de Participación a la Sala de Reconocimiento de Verdad, Responsabilidad y Determinación de los Hechos y Conductas (SRVR) Balance general de las observaciones de las víctimas presentadas en las audiencias públicas de priorización de casos de la SRVR y mediante el formulario de observaciones escritas », JEP (2022), p. 63.

victims' organisations participated in the cycle of hearings and submitted more than 458 reports and documents that would contribute with important information for factual reconstruction of the cases²³¹. Notably, these observational hearings constituted avenues for the victims to advance requests with respect to the opening of macro cases on sexual violence, enforced disappearance and forced displacement, and ultimately led to the JEP's decision to open macro case eleven on gender-based violence, which encompasses sexual and reproductive violence²³².

The comprehensive inclusion of victims in every step of the JEP's judicial proceedings, including in the determination of the SP, is an unprecedented achievement for transitional justice as it seeks to incorporate the principles of reconciliation and mutual understanding and forgiveness in line with Indigenous epistemologies, rather than merely focusing on punishment. The preparational encounters can possess an inherent restorative dimension themselves, while part of the sanction is represented by the very act of providing truthful testimony before the public as the perpetrator will need to face the reaction and humiliation brought by their own confession (Braconnier Moreno and Romero 2023).

Victims' observational hearings (which, as mentioned, are a key step in enabling victims' input to be considered in the definition of TOAR) are additionally endowed with a specific gender and ethnic focus, as highlighted by the Chief of the Differential Focus Department of the Executive Secretariat of the JEP Eliana Antonio. Antonio argues that in order to fulfil Indigenous Women who are victims of sexual violence's wish of being able to testify in a welcoming environment in which they can feel at ease and that respects their cultural and spiritual practices, the JEP has started holding hearings near natural water sources which in Indigenous cosmologies are believed to emanate feminine energy and carry pain away²³³. Moreover, Antonio underscores that, following their testimony in hearings, Indigenous women connect with their cultural and spiritual practices by

²³¹ See supra 34.

²³² "La JEP abre macro caso 11, que investiga violencia basada en genero, incluyendo violencia sexual y reproductiva y crímenes cometidos por prejuicio", Comunicado 112, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/-la-jep-abre-macrocaso-11-que-investiga-la-violencia-basada-en-genero-incluyendo-violencia-sexual-y-reproductiva-y-crimenes.aspx> last accessed 2/02/2024.

²³³ See "Lo que debes saber acerca de los enfoques diferenciales en la JEP", Episode n.7 of the ... op. Cit.

engaging in healing and harmonising rituals involving water, which are carried out in the very same spaces in which the hearings of the JEP take place. These practices help Ethnic women to move past harm and pain towards a process of personal reconstruction, which in Ethnic cultures also entails a collective dimension as the individual is an inextricable component of the community, in line with the differential Women, Family and Generation (WFG) focus adopted in the Ethnic Chapter of the Agreement²³⁴. Thus, according to Ethnic conceptualisations, harm perpetrated on individuals, and on Indigenous women more specifically, is simultaneously perpetrated on indigenous communities and can have profound social and cultural consequences.

The example provided by Chief Eliana Antonio concerning water sources represents an opportunity for women to express and heal their identity in all its dimensions, the gender one and the ethnic one, thereby relieving Indigenous women from having to choose between one of the two. Antonio additionally stresses that certain Ethnic cultural practices need to be accounted for when designing and preparing the hearing. For example, Indigenous women traditionally cannot discuss sexual violence with someone younger than them, therefore the JEP needs to ensure that the magistrates as well as the persons accompanying the ethnic woman are younger in age to respect her cultural and spiritual heritage and beliefs.

Arhuaco Magistrate Belkis Izquierdo underscores that the Ethnic and Gender Commissions of the JEP have been working towards the adoption and incorporation of the WFG focus on an effort to combat the invisibilization of Indigenous women and the structural harms they are subjected to²³⁵. As she argues, the adoption of this focus guides the JEP in understanding and embracing Indigenous women's cosmovisions and perspectives: "*the WFG focus represents a right to feel, think and act from one's own being as woman, which (...)* enables the interrelation with family and community life to ensure that future generations can be free from violence"²³⁶.

On September 6, 2022, Afro-Colombian Magistrate Ana Manuela Ochoa, Arhuaca Magistrate and President of the SRVR Belkis Izquierdo, and Indigenous Magistrate José Miller Hormiga (all belonging to the Ethnic Commission of the JEP)

²³⁴ *Ibidem*.

²³⁵ See Magistrada Belkis Florentina Izquierdo Torres "Intervención: Mecanismo... cit., p.3.

²³⁶ Ivi p. 3-4.

moderated a discussion forum organised by the JEP on “the role of the Indigenous woman in restorative processes”, in connection to the yearly recurrence of the International Day of the Indigenous women²³⁷. Leidy Pacheco Villareal from the Pastos people was invited to discuss the restorative practices adopted by Indigenous women and the WFG focus with the Magistrates of the JEP. Here, all three magistrates as well as the Indigenous leader reiterated the inherent restorative nature of some ancestral Indigenous practices based on interconnectivity, non-recurrence, forgiveness, and respect (Ochoa and Villareal). An important point was made concerning the dimension of healing in Indigenous cultures: the healing of both the individual’s spiritual component but also of the territory, which is considered to be part of the Indigenous being in Ethnic cultures. As magistrate Hormiga underscored, healing practices allow for the restoration and maintenance of balance and the preservation of harmony. Head of the restorative Justice Office of the JEP Ariel Sánchez Meertens, for his part, argued that the adoption of the WFG focus by the JEP “opened the possibility of understanding justice as part of the policy of territorial care, emotional care and care of the future”.

The effort of the JEP in promoting and mainstreaming the WFG focus is additionally reflected in the creation of specific communication material addressed to the Colombian population as a whole. The youtube video “*Mujer, Familia y Generación*” uploaded on the JEP’s Youtube channel explains how the WFG enables the recognition of the indigenous woman as a key political actor in the cultural, spiritual, and physical survival of their respective communities in all generational dimensions, which include future generations²³⁸. The role of Indigenous women is highlighted as central in their communities, as these women are endowed with special traditional abilities that enable them to perform healing practices in sacred spaces and to preserve and pass on ancestral traditions so that their communities can heal and remain harmonised. Finally, the JEP reasserts its wish to highlight, strengthen, protect, and valorise the centrality of Indigenous women’s role as sociopolitical vehicles of peace, harmony and reconciliation

²³⁷ “JEP destaca el rol de las mujeres indígenas en la justicia restaurativa” press release of 6/09/2022, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-destaca-rol-mujeres-indigenas-justicia-restaurativa.aspx> last accessed 31/01/2024.

²³⁸ Youtube video “*Mujer, Familia y Generación*” from the series “*Nuestra JEP, étnica-racial*” presented by the youtube Channel of the JEP Colombia, episode 5, 10/06/2024 available at: https://www.youtube.com/watch?v=96lckwwz1bU&ab_channel=JEPColombia, last accessed 31/01/2024.

both in their communities and in the Colombian society as a whole, and engages to uphold these women's rights to truth, reparations, non-recurrence and justice in compliance with the differential approach mainstreamed in the Final Peace Agreement²³⁹.

4.2.2 The Restorative System of the JEP.

Projects with restorative content have already been carried out by the Government since the signature of the Final Agreement and before the entering into function of the JEP. Among these are the bio-expedition project²⁴⁰ in Anorí, Antioquia which was conducted between July 17 and 31 of 2018 and the demining project carried out in Briceño, Antioquia and in Mesetas²⁴¹, although it is not clear whether they qualify as pilot projects or anticipated TOAR.

On October 21, 2022, the JEP announced its first resolution of conclusions (RC) in macro case 03 on *falsos positivos*: The RC encompasses both the recognition of responsibility and progress in the clarification of what happened, as well as the TOAR proposed by the defendants in the frame of the SP and the observations made by victims on said projects²⁴². Concerning macro case 03, the SRVR presented seven provisional projects which included actions aimed at preserving the memory and the recognition of the victims and supporting their family members. So far, however, the official TOAR projects connected with the first RCs had not been announced nor implemented yet, thereby raising doubts among the Colombian population on the actual nature and scope of these reparational activities.

²³⁹ *Ibidem*.

²⁴⁰ The project involved victims, communities and signatories of the Accord who were supported by the PNUD, EAFIT University and other institutions. It entailed carrying out scientific investigations and explorations in the woods of Anorí which were formerly controlled by FARC, with ex-FARC members having the role of supporting the investigations with their competencies and knowledge of the area. 14 new species of plants and animals were discovered during the project.

²⁴¹ Ortiz Fonnegra, M. I. "Las obras con las que exintegrantes de las FARC en la JEP buscan reparar a sus víctimas", *El Tiempo*, 6/06/2023, available at: <https://www.eltiempo.com/justicia/jep-colombia/jep-las-obras-con-que-exfarc-buscan-reparar-a-sus-victimas-775085> last accessed 31/01/2024.

²⁴² "La JEP expidió su primera Resolución de Conclusiones: los 11 imputados por 'falsos positivos' en el Catatumbo son elegibles para que el Tribunal para la Paz les imponga sanciones propias", *JEP*, Comunicado 088 de 2022, available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/jep-resolucion-conclusiones-imputados-falsos-positivos-catatumbo-sanciones-propias.aspx#:~:text=088%20DE%202022-.La%20JEP%20expidi%C3%B3%20su%20primera%20Resoluci%C3%B3n%20de%20Conclusiones%3A%20los%2011.Paz%20les%20imponga%20sanciones%20propias> last accessed 31/01/2024.

The perplexities connected to the design and implementation process of TOAR are expected to be clarified with the entering into function of the Restorative System of the JEP starting from January 2024. The system is designed to oversee and ensure the implementation of TOAR, which are set to begin in the first month of 2024 after a three-year-long design process²⁴³. JEP's President Magistrate Roberto Vidal recently announced that the TOAR will be developed along seven different project lines which will include: actions against anti-personnel mines; actions for the promotion of the environment, nature and territory; actions for the promotion of rural and urban infrastructures; memorialisation and symbolic reparations; differential harms and macro victimisation; education, alphabetisation and capacity-building; search for persons deemed as missing²⁴⁴. According to El Tiempo, in June 2023 the JEP had already received more than 200 requests for certification of TOAR, 181 of which had been certified by the Executive Secretariat of the JEP²⁴⁵. At the time, the article reported that roughly 2.595 individuals (including former FARC-EP combatants, members of the National Armed Forces and of paramilitary groups) had requested to undertake TOAR before the Peace Tribunal. In December 2023, Magistrate Roberto Vidal underscored that over the course of the last five years 90% of the accused recognized their responsibilities before the JEP, which granted them access to projects that contribute to the restoration and reparation of victims' rights instead of imposing detention²⁴⁶. This data goes to show the positive outcomes that the restorative approach adopted by the JEP in carrying out its mandate has so far generated. Vidal delivered an exclusive interview in episode 20 of the JEP's podcast programme "*Por fin lo sabemos*" on December 28, 2023, in which he described the first three TOAR projects that are expected to be launched starting from January 2024.

The first project announced by the JEP will be conducted in four municipalities of Antioquia starting from January of 2024 and will focus on carrying out demining and

²⁴³ "En 2024 la JEP pondrà en marcha el Sistema Restaurativo", 29/12/2023, available on the website of the JEP at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/-en-2024-la-jep-pondra-en-marcha-el-sistema-restaurativo.aspx> last accessed 31/01/2024.

²⁴⁴ *Ibidem*.

²⁴⁵ Ortiz Fonnegra, M. I. "Las obras con las... op. Cit.

²⁴⁶ "Lo que debes saber del sistema restaurativo de la JEP", Episode n. 20 of the "*Por fin lo sabemos*" Podcast in collaboration between the JEP and Radio Nacional de Colombia. Interview with President of the JEP Magistrate Roberto Vidal, available at: <https://open.spotify.com/episode/7KoCP7aL4Ml4JUqKXrVFim?si=1adb78a243ee41d5> last accessed 2/02/2024.

educational activities on risks connected to anti-personnel mines. This is an example of project which seeks to raise awareness among the Colombian population with respect to the dangers and threats that anti-personnel mines pose to personal safety, and simultaneously aims at making ex-combatants physically remove all remaining devices to both eliminate the risks connected to their presence and contribute to repairing the harms perpetrators have caused to civilians by freeing them and the territories they inhabit from the presence of said mechanisms²⁴⁷.

Project number two is deeply connected to the decisions of the JEP in which the territory was recognized as a victim of armed conflict in line with Indigenous cosmologies, and aims at repairing the harms that the conflict has caused to the environment, nature and territories in Colombia. The first section of the project will be launched in Bogotá, in the south-eastern border of the municipality as the majority of victims and accused come from the capital. It will encompass the reconstruction of the territory in an area that is densely populated by victims, which will become a park to contribute to the well-being of the population and of the territory itself²⁴⁸.

The third project will take place in the southern area of Colombia at the border with Ecuador and will more specifically concern three municipalities of the department of Nariño which are characterised by the extremely relevant presence of Ethnic inhabitants and as such constitute the focus of macro case number two analysed by the JEP among its most important territorial cases²⁴⁹. The project will consist in the creation of a memorial house for the Indigenous people of the area who purposefully requested it: as stated by Magistrate Roberto Vidal, Ethnic people not only suffered the enormous and disproportionate costs of violence during the internal armed conflict, but the spiritual balance of their territories and thus of their communities was gravely harmed and violated. That is why Ethnic peoples themselves requested that perpetrators would engage in the construction of a memorial, a sort of sanctuary that could contribute to spiritually repairing the harms brought on these ancestral lands²⁵⁰.

²⁴⁷ *Ibidem*.

²⁴⁸ *Ibidem*.

²⁴⁹ *Ibidem*.

²⁵⁰ *Ibidem*.

Although very few Ethnic TOAR were designed and implemented so far (Santamaria et al. 2023), the second and third project presented by Magistrate Vidal would appear, at least on paper, to be aligning with the principles inherent in the Woman, Family and Generation focus adopted by the JEP owing to the efforts of the Ethnic magistrates that are part of it. Indeed, the prioritisation of reparational activities that would benefit the territory and natural areas of Colombia and the spiritual harmonisation of ancestral Ethnic lands goes to show the willingness of the JEP in meeting conceptualisations enshrined in Indigenous epistemologies, such as the territorial dimension of harm that is progressively being recognized in the jurisprudence of the JEP (Santamaria et al. 2023). The profound spiritual and cultural ties connecting Indigenous women to territoriality, symbolically represented by the association between their reproductive system and natural elements such as water sources (Carianil et al. 2020), explain why this interconnected spiritual and physical dimension of healing must be respected and accounted for in JEP's proceedings and in TOAR for harm inflicted on indigenous women and/or on indigenous territories to truly be repaired (Santamaria et. al 2023). The second and third reparative projects encompassed in the Restorative System of the JEP seem to be taking promising steps in the unprecedented direction of creating spaces for healing and peaceful coexistence according to the conceptualisations of Indigenous cultures. In line with this, Kankuamo Magistrate Ana Manuela Ochoa has observed that Indigenous women involved in the judicial proceedings of the JEP frequently ask for the creation houses or healing spaces where they can meet and talk about what happened to them, spaces where they can do rituals, sit, and weave together (Santamaria et al. 2023). The creation of shared spaces such as these ones is extremely important in Ethnic epistemologies, as it enables Indigenous women to find harmony and to heal themselves both in their personal and territorial dimension, all while healing their respective communities, which are often guided by feminine figures who are holders of ancestral knowledge.

The efforts demonstrated by the JEP in embracing and incorporating Indigenous cosmologies in the design process of TOAR are certainly encouraging, nevertheless some perplexities still need to be tackled.

Journalist Ortiz Fonnegra highlights that several victims have criticised the excessive lightness of SP imposed on the perpetrators, while other estimate that the TOAR imposed by the JEP will fail short of integrally repairing the damage caused to the conflict²⁵¹. Critiques on the modalities and the extent of victims' inclusion in the definition of TOAR and in the effective monitoring of said works are among the ones most frequently advanced by victims' organisations, together with the suspicion connected to the dangers of homogenization concerning collective representation in macro cases (Van den Wyngaert 2011, Vargas Trujillo 2022). For instance, Sandoval Villalba et al. (2021) underscore the lack of clarity in connection to victims' participation and input in the definition of the content of anticipated TOAR not imposed through SP, as well as victims' contribution in the executive and monitoring procedures of these measures. The same can be said, to a certain extent, for SP, as the JEP has not clarified which are the exact means and procedures for victims' consultation with respect to TOAR imposed by SP, which are mandatory as per Law 1957 of 2019 and Law 1922 of 2018²⁵². The authors further underline that the JEP has given puzzling information concerning the possibility for victims and victims' organisations of advancing proposals for TOAR in their reports and written contributions, insomuch that many of them did not include them in their submissions²⁵³. In any case, even when the victims have the opportunity of advancing said observations, this may not constitute a participatory avenue that is sufficiently inclusive of the differential focus mainstreamed in the agreement and in the legislation²⁵⁴. An additional critical dimension of victims' inclusion is represented by the difficulties encountered by victims with respect to accreditation procedures before the JEP, which have prevented many victims from participating in hearings and macro cases (Sandoval Villalba et al. 2021).

A Governmental report of the Consejo Nacional de Política Económica y Social (CONPES) from 2022 has underscored the very weak inter-institutional articulation of mechanisms for the implementation of SP and other measures with restorative content: the document highlights the need for wider, stronger and more comprehensive

²⁵¹ See Ortiz Fonnegra, M. I. "Las obras con las...op. Cit.

²⁵² Sandoval Villalba, C. et al. (2021) "TOAR anticipados y Sanciones Propias (SP). Reflexión informada para la Jurisdicción Especial para la Paz", *Editorial Dejusticia*, p. 24-25.

²⁵³ Ivi p.26.

²⁵⁴ Law 1957 of 2019 art.141 inc.6; Law 1922 of 2018 art. 65.

coordination between the JEP and competent Governmental agencies, especially the Executive branch of the Government, so that information concerning decision making, planning, implementation and monitoring with respect to SP can circulate efficiently between both institutions thereby guaranteeing the improved operative functioning and articulation of the Restorative system²⁵⁵.

Furthermore, as Law 1957 of 2019 does not mandate any State organism with the specific duty of managing and defining the parameters for coordination between the JEP and the Government with respect to the implementation of SP and anticipated TOAR, there is a high risk that the lack of intra-State institutional coordination may hinder the proper development of measures with restorative content²⁵⁶. Finally, the poor articulation between the JEP, competent State organisms and civil society members such as companies, local governments and other similar organisms prevents the joint outlining of programs and projects for the efficient implementation of SP and TOAR, as the involvement of the private sector could spur the reconstruction of the Colombian social fabric by impulsing and development models with social reintegration as part of the array of measures with restorative content imposed by the JEP²⁵⁷.

For their part, the Magistrates of the JEP argue that repairing each and every harm that may have arisen from the conflict would be extremely complicated to say the least, not only because of the disproportionate nature and gravity of human rights violations and physical destruction caused by all the parties involved, but also due to the limited mandate of the JEP and other transitional justice mechanisms²⁵⁸. According to the president of the JEP, the ultimate endpoint of this transitional justice system is not solely represented by the imposition of a legal decision and punishment on the accused, but rather by the unfolding of the process itself: as Vidal argues, “The sanctions are not reparations, they are contributions to reparations, they are part of a bigger process”²⁵⁹. The Magistrate underscores that victims’ participation in hearings is a crucial dimension

²⁵⁵ “Lineamientos de política para implementar el arreglo institucional del estado para la ejecución de los componentes de las sanciones propias y medidas de contribución a la reparación” (2022) Documento CONPES 4094, p. 30-31.

²⁵⁶ Ivi p. 32-33.

²⁵⁷ Ivi p. 34-36.

²⁵⁸ “Lo que debes saber del sistema restaurativo de la JEP”, Episode n. 20 of the “*Por fin lo sabemos*”... op. Cit.

²⁵⁹ Ortiz Fonnegra, M. I. “Las obras con las...op. Cit.

of the reparative process, as it not only enables the official public recognition and dignification of victims and of their respective experiences before the whole nation, but simultaneously is an avenue for the acknowledgment of violations that the accused perpetrated during the conflict and the responsibilities connected to it, which were systematically denied or downplayed for a long time. This perspective was corroborated by a series of interviews with victims, which demonstrated that although some of them do not feel like any TOAR can fully repair the harms they have suffered, they are relieved and feel at peace knowing that the former perpetrators are contributing to finally uncovering the truth by cooperating with the JEP²⁶⁰.

All in all, the unprecedented advancements made by the JEP in the incorporation of Indigenous women's perspectives and needs in the design of observational hearings, pre-hearing meetings, and TOAR projects are undoubtedly appreciable: however, it is safe to say that these are only the first steps on a long way ahead toward the full recognition and inclusion of these women's differential perspectives from an intersectional and disaggregated standpoint. The following chapter will provide a more in-depth analysis of the means and strategies through which these perspectives could be acknowledged, addressed, and incorporated in the design of TOAR projects.

²⁶⁰ *Ibidem*.

Chapter 5- Recommendations for the inclusion of Indigenous women's needs and perspectives in TOAR. Towards a decolonial feminist peace for Colombia?

This chapter discusses the shortcomings associated with the inclusion of Indigenous women's needs and perspectives in TOAR and provides recommendations on the means and mechanisms which could be adopted to further decolonise transitional justice in post-agreement Colombia and foster the country's achievement of a decolonial feminist peace.

5.1 Challenges with respect to the effective inclusion of Indigenous women's perspective and needs in TOAR.

As we delved into the examination of drawbacks and advantages with respect to Indigenous women's inclusion in the design and implementation of TOAR in the previous chapters of this research, two distinct but interrelated categories of challenges emerged. These are 1) operational challenges and 2) perspective-oriented challenges. The first set of challenges applies indiscriminately to all categories of victims, but their resolution is a *sine qua non* condition for the effective inclusion of Indigenous women's needs and perspectives in TOAR, while the second set specifically applies to Indigenous women. The first group of challenges notably includes:

1a) the issue of defining mandatory consultation mechanisms on TOAR with victims to ensure they do not oppose the projects, especially concerning anticipated TOAR;

1b) the definition of the necessary verification mechanisms to monitor the completion and proper unfolding of TOAR, which need to be designed in coordination with Indigenous authorities when TOAR are implemented on Indigenous lands;

1c) the weak and piecemeal inter-institutional and intra-institutional coordination on TOAR implementation between the competent governmental agencies and the JEP, in between state agencies, and between the Government, the JEP and third actors which may cause problematic operational overlaps and hinder relevant opportunities for the implementation of efficient TOAR; and lastly,

1d) the articulation of TOAR with other significant institutional projects such as the PDETs established in the Final Agreement.

With respect to the second group of challenges, the main ones would be:

2a) overcoming the dangers of homogenisation connected to collective representation of Indigenous women in macro cases and to the subsequent definition of SP corresponding to the harms examined in the cases;

2b) overcoming a limited conceptualisation of victimhood that merely focuses on sexual violence as a weapon of war and considers Indigenous women to be agentless, as this misconception can hinder the identification of effective restorative actions for these women;

2c) removing structural barriers that impede the empowerment of indigenous women and rather perpetuate patriarchal social structures both within and outside indigenous communities.

5.2 Recommendations on operational challenges.

Sandoval Villalba et al. (2021) suggest that the JEP should prioritise the design of proper and detailed mechanisms that would ensure victims' participation in the definition of TOAR, and anticipated TOAR in particular. In this respect, the authors argue that the Executive Secretariat of the JEP should make public the means, mechanisms and deadlines for the implementation and certification of anticipated TOAR, with a focus on the modalities and deadlines regulating victims' consultation and participation²⁶¹.

For what is of verification mechanisms, the Colombian Jurists Commission asserts that in addition to the already existing missions for verification, the JEP must create a direct verification mechanism on TOAR for victims, which would enable them to assess the defendant's compliance with the project and whether the latter actually contributes to the restoration of their rights²⁶². This suggestion is furthermore supported

²⁶¹ Sandoval Villalba, C. et al. (2021) "TOAR anticipados y Sanciones Propias (SP). Reflexión informada para la Jurisdicción Especial para la Paz", *Editorial Dejusticia*, p. 51.

²⁶² Ospina, J. et al. (2018) "Desafíos y oportunidades del SIVJRN: las víctimas en el centro del acuerdo", Cooperación Alemana, GIZ, Comisión Colombiana de Juristas, p.33. available at: https://www.coljuristas.org/documentos/tmp/desafios_y_oportunidades_del_sivjrn.pdf last accessed 14/02/2024.

by Sandoval Villalba et al. (2021) who argue that the UN Verification Mission which is already in place should consider coordinating with the Victims' Unit with respect to the scope and outcome of TOAR in terms of reparations²⁶³, with the Agency for Reintegration and Normalisation so as to assess the effects of SP and their implementation on the lives of defendants and, lastly, with Indigenous leaders and traditional authorities in case TOAR are implemented in Indigenous communities or ancestral territories, so that Indigenous authorities can assess that TOAR are carried out in compliance with and in respect of Ethnic principles and traditions.

The lack of inter and intra institutional articulation on TOAR implementation and monitoring has been discussed in the 2022 report issued by the Consejo Nacional de Política Económica y Social (CONPES). The national experts who worked on the document underscore that efficient intra and inter institutional coordination is necessary in order to ensure TOAR are effectively carried out in compliance with victims' expectations and needs, and that removing structural barriers to the satisfaction of victims' rights is imperative if TJ mechanisms are expected to achieve the ultimate objective of peaceful societal reconstruction²⁶⁴. The Ministry for Stabilisation and Consolidation (CPEC) was thus tasked with designing and implementing an articulation strategy that will enable the JEP, competent governmental institutions and third-party actors to efficiently collaborate on the definition of TOAR projects²⁶⁵.

Another important point on institutional coordination was raised by Ethnic victims of macro case 5 on Northern Cauca who were interviewed²⁶⁶ by a team composed of researchers from Gottingen University/Instituto CAPAZ, the Institute for Intercultural studies of the *Pontificia Universidad Javeriana* de Cali and from the *Centro Guernica para la Justicia Internacional* in collaboration with the *Mesa Técnica Institucional* y

²⁶³ The Victims' Unit was purposefully created by the Colombian government to oversee and manage material reparations to victims of the Colombian armed conflict. The JEP has no jurisdiction whatsoever on material reparations.

²⁶⁴ "Lineamientos de política para implementar el arreglo institucional del estado para la ejecución de los componentes de las sanciones propias y medidas de contribución a la reparación" (2022) Documento CONPES 4094, p. 49.

²⁶⁵ *Ibidem*.

²⁶⁶ The team carried out interviews with 13 victims' representatives, eight institutional actors and five legal representatives of victims, as well as five focus groups with roughly a hundred members of ethnic and rural communities involved in case 5.

Social de Diálogo (MTP)²⁶⁷. The victims highlighted the lack of coordination between the JEP and local authorities, which was corroborated by consultations with local municipalities²⁶⁸. This absence of operative coordination, which of course also affects local Indigenous authorities, deeply hinders the very objective of TOAR implementation, as local institutions inevitably fail to bolster these projects and to include them in the broader context of their development plans²⁶⁹. It is therefore desirable that a solution is found that contributes to reinforcing the coordination between the JEP and local authorities with respect to TOAR implementation.

The issue of poor institutional articulation does not only apply to the relations defined between the JEP, local authorities and the Colombian government, but additionally affects coordination with other institutional development projects. Sandoval Villalba et al. (2021) urge the CPEC to mandate a specific governmental authority with the task of managing operational coordination with the JEP for institutional projects and public development policies encompassed in different sections of the Final Agreement, such as PDETs. As a matter of fact, PDETs were designed to focus on territorial reconstruction, which emerges as a central dimension of restoration in Indigenous women's cosmologies. Ethnic communities interviewed by Instituto CAPAZ underscored the importance of land access, land restitution and collective ownership of land in the broader context of integral reparations: this is a crucial point on which almost all victims agreed unanimously and thereby needs to be considered and examined attentively²⁷⁰. Although the JEP has no jurisdiction on land restitution, Vargas Trujillo et al. (2021) suggest this aspect could be tackled in connection to the *Reforma Rural Integral*, and/or special attention could be directed towards the design and implementation of land rehabilitation focused TOAR. However, it should be kept in mind that critics were raised with respect to the long-term sustainability of PDETs and to the possibility that they actually incorporate a differential approach²⁷¹.

²⁶⁷ Vargas Trujillo, J. et al. (2021) "Construyendo la san(a)ción propia: primeros hallazgos y recomendaciones para la imposición de sanciones restaurativas en el caso 005 de la JEP", Instituto CAPAZ, Policy brief 8-2021, pp.11-12.

²⁶⁸ *Ibidem*.

²⁶⁹ *Ibidem*.

²⁷⁰ *Ivi p. 7*.

²⁷¹ Garavito, C. "Los PDET están divorciados del Acuerdo de Paz": los reclamos de las comunidades", El Espectador, 24/11/2020, available at: <https://www.elspectador.com/colombia-20/paz-y-memoria/los->

In any case, a similar kind of articulation, as argued by the authors, would foster social reconstruction by enabling mutual strengthening and complementarity of these projects' restorative dimension in accordance with the perspectives advanced by the victims (Sandoval Villalba et al. 2021). Likewise, Vargas Trujillo et al. (2021) underscored the opportunity of thoroughly articulating TOAR with other institutional projects such as the processes overseen by the *Agencia para la Reincorporación y Normalización*, to increase coherence and coordination between different restorative approaches.

When interviewed by the Instituto CAPAZ researchers, Indigenous victims of Northern Cauca stressed the importance of combining or incorporating relevant elements of their own restorative and reparative traditions with TOAR: among these, they outlined healing rituals performed by women as well as the different life plans or safeguard plans elaborated by Indigenous communities²⁷². One option to facilitate this process would be the recollection and mapping of TOAR propositions advanced by victims which would then be compiled and coordinated with existing proposals thought out by the JEP or with institutional projects included in the Final Agreement, provided that the latter are compatible with the victims' wishes and taking into account the feasibility of the requests (Sandoval Villalba et al. 2021; Vargas Trujillo et al. 2021).

Naturally, reinforcing inter-project coordination should not entail under any circumstance the integral substitution of TOAR projects with other initiatives, as each and every one of these projects is endowed with an entirely different budget and logistics as well as an essentially different purpose.

5.3 Recommendations to solve perspective-oriented challenges.

Concerning the design and implementation of TOAR, one crucial aspect of fostering and achieving Indigenous women's inclusion in these processes is accounting for the disaggregated perspectives that they may put forward with respect to the violation suffered and the diverse needs and restorative acts they associate with it, as these women

[pdet-estan-divorciados-del-acuerdo-de-paz-los-reclamos-de-las-comunidades-article/](#) last accessed 14/02/2024.

²⁷² Indigenous life plans are strategic and collective planification instruments used by Indigenous communities to represent and visualise the future life of their communities in their own terms. They are recognized by the Ministry for the Interior of the Colombian Government.

do not constitute a homogeneous social group. Although some operative limitations such as the JEP's obligated choice to select a restricted number of macro cases must be accounted for, Sandoval Villalba et al. (2021) stress that particular attention should be paid to the specificities characterising each and every one of the situations analysed during the proceedings. Accounting for the particularities of each macro case will prevent the homogenisation of the latter and ensure adequate restorative measures are specifically identified according to the context²⁷³. This careful analysis should be carried out adopting an intersectional focus in line with the Final Agreement's prescriptions, as additionally underscored by several Ethnic victims' organisations during the victims' observational hearings conducted between February 21, 2022, and March 10, 2022, by the SRVR. As a matter of fact, during the Ethnic hearing in Cali the AINI women of the river Naya as well as the *Red Mariposas de Alas Nuevas Construyendo Futuro* reiterated that in order for the JEP to effectively contribute to mending conflict-bound harm, it should ensure an intersectional approach is adopted in dealing with each and every step of the macro cases: as they argue, only by adopting a similar perspective the JEP can fully assess the entity of the damage caused to Ethnic women during the conflict and address the systemic inequalities that lay beneath the more superficial and evident manifestation of unequal structural dynamics that affect racialized women disproportionately²⁷⁴.

In order to effectively contribute to social reconstruction, the JEP should conduct an in depth-disaggregated analysis on what victims (in this case, Indigenous women) perceive to be restorative, so that they can ensure these different perspectives are effectively incorporated and encompassed in SP and the connected TOAR. In fact, during the proceedings some victims expressed their preferences for public policy measures to be implemented rather than symbolic acts, others found truth-telling and collective projects to be more reparational to them, while some refused any kind of restorative act²⁷⁵.

With a view to incorporating Indigenous women's disaggregated perspectives on harm definition and restorative acts in TOAR's definition and implementation processes, the JEP could draw powerful insight from existing qualitative research on the topic,

²⁷³ Sandoval Villalba, C. et al. (2021) "TOAR anticipados ... cit., p.53.

²⁷⁴ "Informe de la Comision de Participacion a la Sala de Reconocimiento de Verdad Responsabilidad y Determinación de los Hechos y Conductas (SRVR)" (2022), *JEP*, pp.80-81.

²⁷⁵ Sandoval Villalba, C. et al. (2021) "TOAR anticipados ...cit., p. 51-52.

provided that they are endowed with a differential focus and grounded in decolonial intersectional methodologies. Some particularly fitting examples of said methodologies are collaborative social mapping, body mapping and corporeal memory, which were applied in various research by Santamaria et al. (2023; 2020; 2019) on Indigenous women's groups in Colombia. Social mapping is a collaborative methodology which can vary according to the relation that a social group establishes with its territory and is aimed at reconstructing the complex territorial relationship through which women experience life and spirituality in their ancestral lands. Through the collective identification of Indigenous women's sacred sites and the connected territorial and spiritual defence practices adopted by them, social mapping helps designating not only the source of territorial damage to ancestral lands, but the claims that Indigenous women make with respect to corresponding reparations that would need to be implemented in order to contribute to mending such harms (Santamaria et al. 2023)²⁷⁶. Similarly, body mapping and corporeal memory are used to represent and analyse the complex internal emotions and sensations that Indigenous women experience in relation to violence and conflict, also in connection with their spiritual and physical bond with ancestral lands which materialises in the *cuero-territorio* approach (Cabnal 2017).

Santamaria et al. (2020) underscore that these ethnographic methods and activities should be adopted while keeping in mind the importance that traditional means of expression such as oral expression and rituality have in Indigenous women's cosmologies. The development of informal learning settings grounded in participatory action research models that allow for democratic, horizontal, collaborative, and mutual learning between participants (Ortiz and Borja 2008) such as the *diplomados interculturales* organised by the authors are particularly fit for this purpose²⁷⁷.

The research conducted by Santamaria et al. (2019, 2020, 2023) gives powerful insights on the identification of Wiwa, Eperara, Uitoto, Awà, Ticuna and Arhuaco Indigenous women's core experiences in the conflict and on their expectations and

²⁷⁶ Santamaría et al. (2023) "To pay, heal and repair Mother Earth in the Sierra Nevada de Santa Marta: experiences of indigenous women's reparation in the implementation of the Colombian Peace Accord", *International Review of Victimology*, Vol. 29, N.2, pp. 180.

²⁷⁷ Santamaría et al. (2020) "Decolonial Sketches and Intercultural Approaches to Truth: Corporeal Experiences and Testimonies of Indigenous Women in Colombia" *International Journal of Transitional Justice*, Vol. 14, pp. 60.

perspectives on reparations²⁷⁸. Notwithstanding the disaggregated nature of the analysis conducted on different groups of Indigenous women's reparative ontologies, the findings connected to these investigations present common elements which could provide useful guidelines for the integration and outlining of acts and works with reparational content imposed by the JEP.

What emerged following careful reflection on some amazonian Indigenous women's perception of the victim-perpetrator dichotomy through the use of body mapping was the lability of this dualism, which appeared evident when analysed from a micro-narrative perspective. The boundaries between these two dimensions became blurred when the participants revealed their personal experiences and the persistent ambivalence, they felt towards the necessity of choosing between joining armed groups or distancing themselves from them (Santamaria et al. 2020). As Theidon (2004) and Shaw (2010) underscore, local conflict patterns were extremely complex from a social standpoint as they developed among neighbours and Indigenous women were sometimes confronted with the obligation of joining one armed faction or the other to ensure their own safety. This is what emerged from some of the Indigenous women's testimony and artwork on their choice to join FARC at a young age in the Caribbean region²⁷⁹. For some of them who were confronted with the brutality of seeing their communities being slaughtered, joining the armed forces was a symbol of empowerment and a means to be

²⁷⁸ The methodologies through which Indigenous women engaged in the intercultural diploma courses included the use of creative and artistic intercultural tools such as social and body mapping (participatory or not), family trees, self-portraits only to mention some. The 2023 research was conducted between 2019 and 2021 as part of an intercultural diploma program launched by the Intercultural School of Indigenous Diplomacy (EIDI) and the URINTERCULTURAL Centre of the Universidad del Rosario. Through a close collaboration process, EIDI and a total of roughly 75 Wiwa and Arhuaco Indigenous women jointly designed the diploma courses. The 2020 research by Santamaria et al. instead focuses on the areas of the Caribbean and the Amazonia, in which the authors engaged in participatory action research in the Miriti Parana reserve in the Amazon department and the Sierra Nevada de Santa Marta with 36 indigenous amazonian women as well as traditional and spiritual Indigenous leaders pertaining to the 10 local communities and 25 Indigenous and non-indigenous women ex-combatants. The research from 2019 is based on five different workshops which were carried out in various villages of the Amazonian region (Inirida, Florencia, Araracuara, Leticia and Narino) across three years from 2016 to 2019, gathering a total of 320 Indigenous women participants from several Indigenous groups including the Awà, Uitoto, Ticuna and Eperara. During the research special attention was paid to possible tensions arising from the exchange between Indigenous ontologies and Western academic epistemologies and investigation methods, although the exercise was jointly outlined by all parties thereby suppressing any kind of hierarchical knowledge-creating dynamic.

²⁷⁹ Interviews with Maria Galindo, Tierra Grata, January 2018 and Helena, Tierra Grata, January 2018 See Santamaria et al. (2020) "Decolonial Sketches...cit., p.66.

afforded protection by the armed groups they pertained to, at least to some extent. These considerations allow us to better understand the moral ambivalence of the victim-perpetrator dichotomy and to question the very notion of victimhood in the view of some Indigenous women's groups: they should not be seen as agentless victims, but as individuals who actively interacted with the conflict through various means, from the act of joining armed groups to other traditional ancestral resistance practices carried out in line with the role of knowledgeable social leading feminine figures in Indigenous cosmologies.

Similarly, the information gathered through investigations conducted by Santamaria et al. (2019) corroborates the findings according to which victimhood is a complex multifaceted concept that encompasses more than one aspect and cannot be oversimplified. The lifelong experiences detailed by Indigenous pan-amazonian women are tainted with different, interwoven episodes and forms of violence, both individual and collective, which on one hand stem from colonial practices and on the other hand emerged with the advent of the neoliberal economic model adopted by the Colombian government, such as sexual tourism and human trafficking²⁸⁰. These types of violent practices have been exacerbated by the unstable political situation caused by the internal armed conflict in Colombia, which has additionally contributed to the increased invisibilisation of these women's experience with domestic and inter-community violence²⁸¹. By focusing on the wide array of intertwined resistance and healing practices adopted by these women in response to said violence, Santamaria et al. open a window on possible means and mechanisms that the JEP should consider incorporating in TOAR to achieve societal transformation and peace.

Santamaria et al. (2020) argue that notwithstanding the incorporation and mainstreaming of a differential ethnic and gender focus throughout the agreement, the role of Indigenous women in TJ was disregarded by both the CEV and the JEP during their first months of operationality. As underscored by the authors, the JEP (like many institutions before it) has struggled at accounting for reparational ontologies in line with Indigenous women's knowledge, actions, and activities due to the fact that it has mostly concentrated on establishing meaningful relations with Indigenous male leaders

²⁸⁰ Santamaria et al. (2019) "Kaleidoscopes of violence against indigenous women (VAIW) in Colombia: the experiences of Pan-Amazonian women", *Gender, Place & Culture*, Vol. 26, N.2, p. 243-244.

²⁸¹ *Ibidem*.

(Santamaria et al. 2023). By primarily addressing male traditional leaders in the articulation of TJ mechanisms, the JEP has been repeatedly criticised for being complicit in perpetuating Indigenous male authorities' predominance over women, as forms of Indigenous organisational violence stemming from ancestral patriarchal dynamics are well-rooted in some indigenous communities and constitute the breeding ground for gender-based violence, both in its physical and political dimensions (Santamaria et al. 2019). Testimonies of Indigenous women from various backgrounds confirm that spiritual practices are oftentimes used by male leaders to constrict and dissuade Indigenous women from taking on political and community leadership roles and from empowering themselves²⁸².

For instance, in Amazonian Indigenous epistemologies, just like in other cultures around the world, secrecy around the subject of violence is used as a protective and defensive strategy against external threats (Shaw et al. 2010; Ross 2003). This applies to the case of amazonian women who are still currently threatened by the presence of FARC dissidents and other illegal armed groups in their area of residence but is also linked to cultural reasons. As a matter of fact, Santamaria et al (2020) stress that in Amazonian Indigenous culture women who speak up about violence must comply with specific instructions given by Indigenous spiritual authorities, who are usually male, when they talk about being victims of violent acts. Therefore, their opportunities for expressing their testimonies and views on the harms they suffered are limited inside of their own communities, just like they are limited by TJ institutions who chose not to prioritise that specific area and therefore failed to bridge local justice practices and TJ traditions with mainstream institutionalised TJ mechanisms²⁸³. This is why the safe space for expression created through participatory action research which allowed these women to freely discuss issues related to violence was particularly useful to gain insight into their perspectives on conflict related as well as structural harms and TJ²⁸⁴.

Over the last couple of years, the JEP has taken encouraging steps towards the acknowledgment of feminine Indigenous ontologies of reparation with the adoption of the WFG focus and the development of a jurisdiction inspired by Indigenous cosmovisions and principles, which both recognize the territory as a living entity and an

²⁸² *Ibidem*.

²⁸³ Santamaría et al. (2020) "Decolonial Sketches... cit., p. 77.

²⁸⁴ *Ibidem*.

extension of Indigenous communities. However, important work remains to be done to tear down the obstacles impeding the full embracement of different Indigenous women's groups' perspectives on restorative ontologies in a disaggregated and intersectional manner, which is the only way to ensure that these views can be efficiently transposed into TOAR's design, implementation and monitoring processes.

What emerges from the ethnographic work carried out by Santamaria et al. (2019; 2020) is a recollection of resistance and healing practices adopted by Indigenous women to oppose violence stemming both from within and from outside their communities. The authors focus on Indigenous women's key roles as social leaders who have traditionally promoted resistance "from below", and whose invaluable ancestral knowledge and agency have allowed them to work towards the healing and restoration of their communities (Santamaria et al. 2020).

These resistance and healing practices can differ depending on the sphere they emerge from, be it the intimate and personal sphere or the collective and public one. For instance, some Indigenous women felt empowered by their family ties and support, others found comfort in the spiritual strength of elder women, while others found dealt with violence and pain through traditional practices such as chants and rituals that contributed to closing the circle of suffering and enabled women to connect with their ancestors and spiritual guides²⁸⁵, and finally some found the strength to oppose violence in their will to become politically empowered²⁸⁶.

While these mechanisms are all essentially rooted in the Indigenous traditions and cosmologies which attribute fundamental importance to Indigenous women as community leaders, gatekeepers of ancestral knowledge and carriers of special bonds with Indigenous lands and traditions, they simultaneously are unique in their very own ways. Therefore, it is crucial that the JEP strengthens this articulated array of restorative practices either by incorporating them in TOAR or by designing works with restorative content that contribute to upholding these pre-existing mechanisms.

²⁸⁵ Santamaria et al. (2019) "Kaleidoscopes of violence...op. Cit., Interview with Fanny Kuiru, Bogotá, December 2018.

²⁸⁶ Santamaria et al. (2019) "Kaleidoscopes of violence...op. Cit.

First off, it is imperative that the JEP identifies actions that are reparative both from a territorial and spiritual standpoint, in line with the principle of inextricable interconnectivity between Indigenous women and Mother Earth that was already recognized by the JEP. For these women, reparations can never be complete until these two dimensions are jointly addressed. At the same time, addressing these aspects requires fully acknowledging and recognizing Indigenous women's abilities and role as healers of the territory and of the community, in connection with their special women-nature bond and with their social leadership roles inside the groups they pertain to. Santamaria et al. (2023) underscore how Arhuaco and Wiwa women's reparative ontologies converge with respect to the centrality of spirituality, healing of the territory and healing of women's bodies as well as the need for reinforcing and empowering the roles and organisational process of Indigenous women involved in political and spiritual action within their communities. It is only by recognizing, acknowledging, and spurring the latter that Indigenous women will be empowered enough to ensure their communities are healed and ready to move on from the harms of the conflict²⁸⁷. On another note, amazonian Indigenous women from the area of Miriti who participated in the workshop organised by Santamaria et al. (2020) collectively highlighted a request for increased access to education, which in their perspective could contribute to repairing and transforming the local educational context that was further hindered by the conflict. As the authors underscore, the observations put forward by these Indigenous women open a window on the structural inequalities and violence permeating their daily lives in a transversal manner, thereby suggesting the need for transformative interventions to be undertaken in the broader context of post-conflict TJ mechanisms²⁸⁸. In any case, upholding Indigenous women's roles and abilities will require undertaking profoundly transformative actions aimed at deconstructing and reconstructing structural inequalities and injustices that have so far impeded the full enjoyment of Indigenous women's rights and contribute not only to the rebuilding of the Colombian social fabric but to the creation of a juster and fairer society altogether.

²⁸⁷ Santamaría et al. (2023) "To pay, heal and repair... cit., p.193.

²⁸⁸ Santamaría et al. (2020) "Decolonial Sketches...cit., p.77.

All in all, these findings give powerful insight into Indigenous women's experiences of violence and provide the JEP with starting points for reflection on how to better include these women's perspectives on resistance and healing in the design and implementation of TOAR from an intersectional differential standpoint. The knowledge that Indigenous women shared with researchers can be conceived as something close to an explanatory guide on which are the acts and processes that Indigenous women identify as restorative and reparative, and which are the structural conditions that should be addressed by the JEP and worked upon with perpetrators to enable truly transformative change both in Colombian society and in Indigenous communities, so that Indigenous women can be increasingly empowered and free from discrimination and injustices. Reflecting on the structural obstacles faced by Indigenous women even in their own societies, on their notion of victimhood and the nuances that this concept can assume, on the ancestral healing rituals employed by these women, on the diversity and heterogeneity of experiences within the Indigenous women's group all are important aspects that the JEP should try and address when designing and implementing TOAR.

5.2.1 Indigenous women's suggestions on TOAR.

In consideration of all the elements that were introduced in the previous sections of this chapter, this paragraph provides an overview of concrete examples of TOAR put forward by Indigenous Arhuaco, Wiwa, Eperara, Uitoto, Awà and Ticuna women that constitute invaluable input for the work of the JEP.

From an operative point of view, Ethnic victims interviewed by Instituto CAPAZ researchers suggested that transversal pedagogic initiatives aimed at explaining the nature and objective of TOAR both to victims and perpetrators should be carried out since the design and definition phase of the projects with restorative content and throughout all phases of the judicial proceedings, so that societal participation is bolstered and the process is as inclusive as possible²⁸⁹. Most importantly, Indigenous victims stressed the importance that these processes are articulated together with Indigenous authorities as well as victims' representatives, and endowed with a differential ethnic, territorial and

²⁸⁹ Vargas Trujillo, J. et al. (2021) "Construyendo la san(a)ción propia...cit., p.11.

gender focus: this last point in particular is of crucial importance as the adoption of an intersectional and differential perspective would prevent the homogenisation of Indigenous ontologies, traditions and principles which differ from one case to another depending on which Indigenous group is considered (Vargas Trujillo et al. 2021). In fact, it is of utmost importance for Indigenous victims that perpetrators who are undertaking TOAR in ancestral territories and/or in connection to harm they may have caused to individuals of Indigenous descent are properly informed and lectured on the traditions and cosmologies that pertain to these people's traditions²⁹⁰.

With respect to the content of the SP and therefore the definition of connected TOAR, Indigenous victims of macro case 5 underscore the importance that some correspondence is established between the harm caused and the action with restorative content imposed on the perpetrator with respect to the nature and gravity of the violation perpetrated (Vargas Trujillo et al. 2021). For example, a violation implying territorial harm should be repaired with a type of work or action that is aimed at restoring territorial integrity and healing ancestral lands, and a perpetrator higher in charge in its former faction and/or bearing greater responsibility should be condemned to undertaking TOAR that are proportional in scope and aim to their level of responsibility²⁹¹. The importance of establishing a correspondence between harms caused and TOAR is an aspect that is further highlighted by Sandoval et al. (2021), who argue that the causality link between violation and harms inflicted on victims, the action of the perpetrator and the activity with restorative content to be undertaken is complex to be proven, and as such case-specific evaluations are required to ensure who is going to be repaired and how, and which victims can participate in designing activities with restorative content.

Moreover, Indigenous people stressed the importance of properly characterising territorial and collective damage inflicted on ancestral land and on the collectivity, and suggested that the JEP could take inspiration from the mechanisms adopted by the *Unidad para la Atencion y Reparacion Integral a las Victimas* (UARIV) and the *Planes de Vida* autonomously elaborated by Indigenous groups to get some insights on the acts that would be considered reparative and restorative with respect to the above mentioned violations

²⁹⁰ Ivi p.12.

²⁹¹ Ivi p.8-9.

in Indigenous cosmologies²⁹². The women who participated in thematic workshops organised by *Ruta de las Mujeres* on SP and TOAR between October 2020 and May 2021 all conceived TOAR as projects encompassing two distinct levels, an individual one contributing to the restoration of the women and a collective one contributing to societal restoration. In line with the findings stated above, what emerged from the workshops is that according to Indigenous women TOAR imposed on perpetrators of sexual violence should include actions that are directly related to victims and the type of harm they suffered, such as dialogues with victims on the topic, the acts of locating direct perpetrator or contribution to investigations and acts of clarification.²⁹³

Likewise, Sandoval Villalba et al. (2021) suggest defining core objectives for SP imposed with respect to each macro case, so that TOAR are associated with the specific violation perpetrated by the accused during the conflict and the JEP can ensure there is a logical connection and guideline between victims' requests and expectations on restorative actions and the conduct of the defendant. In doing so, the authors underscore that the Sala de Definición de Situaciones Jurídicas (SDSJ) suggested grouping all projects presented by different defendants but sharing similar characteristics, such as the nature of the violation for which they are being prosecuted, as the magistrates believe that creating some kind of "macro" TOAR could maximise the impact and scope of the project thereby spurring the achievement of TOAR's restorative aim²⁹⁴.

5.2.1.1 Examples of possible TOAR proposed by Indigenous women.

In 2022, The Commission for Participation of the JEP²⁹⁵ issued a report collecting the testimonies, remarks and requests advanced by 539 victims' organisations on the

²⁹² *Ibidem*.

²⁹³ Coll Agudelo, A. and Valderrama Ladeutt, L. (2022) "Aportes a la JEP frente a Justicia Restaurativa, enfoque de derechos de las mujeres y sanciones a graves violaciones a derechos humanos de las mujeres", *Ruta Pacífica de las Mujeres* p.34.

²⁹⁴ Sandoval Villalba, C. et al. (2021) "TOAR anticipados...op. Cit.

²⁹⁵ The commission for participation of the JEP was created with the Acuerdo del organo de gobierno (AOG) 009 of 2019. It comprises eleven permanent members representing all the organs of the JEP, its presidency, its executive secretariat, etc. and is endowed with the duty to promote the principle of victims' centrality and of effectiveness of restorative justice.

public victims' observational hearings conducted between February 21, 2022 and March 10, 2022, which was then presented to the SRVR²⁹⁶.

Over the course of the hearings, Indigenous women representatives reiterated the importance of the spiritual and physical connection linking women to their ancestral territories as knowledge gatekeepers, spiritual leaders and caretakers and the profound devastation brought by the armed conflict in this sense²⁹⁷. The women of the Sol Naciente Indigenous Council, for instance, requested that the JEP focus on the territorial harms brought by conflicting parties which ultimately gravely hindered the rights and traditions of Indigenous communities with respect to their profoundly symbiotic relation, and that it issues corresponding sanctions to the responsible perpetrators²⁹⁸. Likewise, during the San José del Guaviare hearing the women of the Awà and Siona Indigenous peoples underscored that some aspects which deserve careful consideration on the side of the JEP include the need to carry out demining projects on ancestral territories as well as providing guarantees against forced displacement and socio economic and cultural marginalisation of indigenous communities²⁹⁹. As a matter of fact, Awà women argue that the above-mentioned practices were adopted, among other strategies, to prevent Indigenous people from accessing justice thereby increasing their invisibilisation and perpetrating a cultural and physical extermination of Indigenous groups. The explicit recognition of said exterminatory practices has been identified among the contributions that Indigenous Awà women consider necessary to move towards the partial reparation of conflict-bound harm³⁰⁰.

²⁹⁶ The JEP convened a total of nine public proceedings on victims' observations: six public hearings carried out in Medellín, Valledupar, Cali, Villavicencio and Bogotá between February 21 and March 10; two hearings in the alternate Ethnic Chambers in Valledupar and Cali held on February 28 and March 3 respectively, and one Ethnic audience in San José del Guaviare on February 25, 2022.

In order to ensure that the highest number of victims could participate in the proceedings, the Commission for Participation and its partners adopted a mixed participative methodology and a detailed and thorough communication and outreach strategy so that victims could be duly informed on the decisions of the JEP and instructed on the means and mechanisms for participation in the observational hearings, as well as on the importance of the latter. Owing to the measures implemented by the commission and its partners, the report states that the territorial representation in the hearings was extremely close to 100% (The Methodology was established with the Auto 007 of January 19, 2022 and Auto 023 of February 16, 2022).

²⁹⁷ "Informe de la Comisión de Participación a la Sala de Reconocimiento de Verdad Responsabilidad y Determinación de los Hechos y Conductas (SRVR)" (2022), *JEP*, pp 81.

²⁹⁸ *Ivi* p.82.

²⁹⁹ *Ibidem*.

³⁰⁰ "Informe de la Comisión de Participación a la Sala...cit., p.84.

The observations advanced by Indigenous women of the Cauca region in the workshops held and organised by Ruta de las Mujeres on SP to be imposed on perpetrators that are guilty of sexual and gender-based violence all converged on several focal points. With respect to sexual violence and kidnappings, women asked for public apologies and psychological support to be guaranteed, and restorative work to be focused on the creation of communal centers for the support of victims and memorials with symbolic commemorative value, while with respect to forced displacement, women additionally requested the integral restitution of land and properties that belonged to the forcibly displaced³⁰¹.

Indigenous women additionally provided the authors with concrete examples of works and acts with restorative content that they would have wanted to see implemented on their ancestral lands. These included the construction of a centre for historical memory of the territory in which cultural workshops on Indigenous traditions could be carried out³⁰²; the construction of schools teaching ancestral traditions and knowledge to Indigenous children and the construction of a rehabilitation centre for women victims of sexual and gender-based violence³⁰³; the planting of Indigenous trees to spur the spiritual and cultural reconnection of individuals with Mother Earth and raise awareness on multiculturalism and interculturality³⁰⁴. Researchers from Instituto CAPAZ who investigated Indigenous victims' participation in case 5 of the JEP on Northern Cauca and their expectations concerning the content of the SP as well as their participation in the definition of TOAR underscored that Rural and Ethnic victims advanced a wide array of proposals concerning activities and works with restorative content that encompass both a symbolic and more tangible/practical dimension: among these were the construction of memorial sites, the launch of economic local projects, infrastructure building, and reforestation projects.

Likewise, Indigenous women who participated in Ruta de las Mujeres' workshops put forward comments and requests for TOAR design and implementation which included

³⁰¹ Coll Agudelo, A. and Valderrama Ladeutt, L. (2022) "Aportes a la JEP...cit., p. 30-31.

³⁰² Woman from the Santander de Quilichao workshop, 2022, see Coll Agudelo, A. and Valderrama Ladeutt, L. (2022) "Aportes a la JEP...cit., p. 32.

³⁰³ Woman from the Miranda workshop 2022, *Ibidem*.

³⁰⁴ Woman in the workshop in Silvia, Cauca 2022, *Ibidem*.

the harmonisation of territories and ancestral lands that were directly harmed by the internal armed conflict; works and acts based on the care of land and on the recognition and upholding of ancestral Indigenous knowledge and traditions; guaranteeing the implementation and development of rural development programs included in the agreement; restorative dialogue process between victims and perpetrators; constant psychosocial support afforded to individuals according to the specificities of their culture or community; free and full access to education for women and their children³⁰⁵.

Other important considerations highlighted in the SRVR report refer to food sovereignty and are therefore linked to land use and Indigenous people's traditional connection with it. In particular, the aerial spraying of coca crops established among the measures adopted to fight the spread and exploitation of illicit crops has been reported to damage Indigenous plantations which are used by these communities for self-subsistence purposes³⁰⁶. The JEP should then consider imposing TOAR that contribute to strengthening and revitalising the integrity of Indigenous people's territories in line with Indigenous cosmologies and the principles encompassed in the WFG focus. The same kind of work with restorative content would contribute to mending the spiritual wounds inflicted on Indigenous women who were victims of sexual violence during the internal armed conflict, in accordance with the ontology of *cuerpo-territorio*.

Positive developments in this sense came with Resolution of Conclusions (RC) number 2 of 2022 and RC number 3 of 2022 which specifically detailed the characteristics of TOAR that were proposed by perpetrators in connection to macro cases one and three respectively³⁰⁷. In the first case, after careful examination of propositions advanced by a group of three perpetrators and victims' observations on the latter, three different TOAR were outlined as part of a broader project called "Suma-Paz: Reconocimiento del medio ambiente como víctima" aimed at restoring the environment in the area of Sumapaz and promoting environmental education³⁰⁸. Similarly, four other TOAR on environmental

³⁰⁵ Coll Agudelo, A. and Valderrama Ladeutt, L. (2022) "Aportes a la JEP...cit., p. 33.

³⁰⁶ "Informe de la Comisión de Participación a la Sala de Reconocimiento...cit., p.84.

³⁰⁷ Macro-case one concerns kidnappings and liberty deprivation perpetrated at the hands of FARC-EP whereas macro-case three concerns civilians who were object of killings and enforced disappearances and then illegally presented as combatants by State Armed Forces.

³⁰⁸ Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, Resolución de Conclusiones N. 2 de 2022, Caso N. 1 "Toma de rehenes, graves privaciones de la libertad y otros crímenes concurrentes cometidos por las FARC-EP", Resolución de conclusiones

restoration were encompassed in the project “Accion Integral Contra Minas” (AICMA) proposed by four perpetrators, which would have the purpose of carrying out awareness-raising activities and demining expeditions to ensure concerned territories are freed from antipersonnel mines and can be safely enjoyed by the population, thereby contributing to the restoration of the country’s social tissue³⁰⁹. Although victims’ organisations underscored the perceived lack of correlation between the harm caused by the perpetrators under investigation in case one and the TOAR proposed to mend said harm, victims and their representatives also argued that the projects could be repurposed in connection to other macro cases as they do indeed possess an inherent restorative dimension which aligns with the needs and perspectives advanced by victims of the conflict, especially including Indigenous women³¹⁰.

With respect to the Resolution of Conclusions on case three, seven perpetrators advanced the proposal of carrying out a joint TOAR named “Resguardo de la Memoria Histórica Pueblo Indígena víctimas del conflicto armado colombiano Cesar y Caribe colombiano”, which would be aimed at restoring the historical memory connected to the victims killed by the battalion of “La Popa” between 2003 and 2005 and presenting the sufferings that Indigenous people historically had to endure during the conflict³¹¹. The project would consist in dedicating a Memorial House to reconstructing the memory of victims through the development different activities, such as the realisation of podcast, street art, photographs, documents, and audio-visual elements in which victims and perpetrators could express their emotions with respect to the crimes that were committed³¹². The Memorial House would additionally have the function of hosting commemorative activities and awareness-raising, educational exchanges on restorative good practices and approaches, to foster the inclusion and acknowledgment of peace

respecto de los comparecientes individualizados en el Auto N. 19 de 2021 del último Secretariado de las FARC-EP, November 24, 2022, pp. 186-187.

³⁰⁹ Ivi p. 183-185.

³¹⁰ Ivi p. 193 (558) -194 (559).

³¹¹ Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, Resolución de Conclusiones N. 3 de 2022, Caso N.3, “Asesinatos y desapariciones forzadas ilegítimamente presentados como bajas en combate por agentes del Estado”- Subcaso Costa Caribe. Adoptar Resolución de Conclusiones respecto de los hechos y conductas ocurridas entre enero de 2002 y julio de 2005 atribuibles a algunos integrantes del Batallón de Artillería No.2 “La Popa”, December 7, 2022, p.192.

³¹² *Ibidem*.

epistemologies that differ from the mainstream, and these activities could be additionally proposed and directly held in Indigenous territories as suggested by victims' organisations³¹³. Carrying out such acts with restorative content would actively contribute to the valorisation of Indigenous people's experiences, perspectives and conceptualisations of harms and healing, in line with Indigenous women's perspectives and requests for reparations. Likewise, another TOAR proposition on valorisation and recollection of ancestral memory was advanced by defendant Yeris Andrés Gómez Coronel, who submitted the project "Tras las huellas de la memoria" which is grounded on the embracement and upholding of ancestral Wiwa and Kankuamo traditions on memorial preservation through concrete acts and contributions of the defendant towards the requests and needs of the concerned Indigenous community³¹⁴. Moreover, the second half of the project titled "Del hombre a la tierra" encompasses the development of environmental requalification programs in ancestral territories, which would be carried out at the hands of a group of perpetrators to ensure that said lands can recover their integrity following the damages inflicted by the internal armed conflict and Indigenous people can fully recover the enjoyment of their ancestral traditions connected to land use³¹⁵.

As Vargas Trujillo et al. (2021) highlight, most of the projects that were suggested by Indigenous women and perpetrators could be articulated so as to create more comprehensive and multifaceted projects that simultaneously address structural, spiritual, cultural and infrastructural issues. For instance, the building of a memorial house is an infrastructural project which potentially brings numerous avenues for societal reconciliation if conceived as a home to socioeconomic projects that could benefit the community, such as awareness-raising campaigns for young people against their enrolment in illegal armed groups and local economic projects involving disadvantaged or excluded individuals³¹⁶.

³¹³ *Ibidem*.

³¹⁴ *Ivi* p. 195.

³¹⁵ *Ibidem*.

³¹⁶ Vargas Trujillo, J. et al. (2021) "Construyendo la san(a)ción propia...cit., p.8.

Whatever the case, TOAR concerning Indigenous victims and/or perpetrators should include and prioritise the traditional ancestral practices and methodologies for spiritual healing, and they should do so in an empowering, inclusive bottom-up manner: this means that for Indigenous women to truly feel like TOAR contribute to repairing the harms they suffered because of the conflict, these very same women will need to be first-handedly involved in these works with reparative content thereby integrating role of indigenous women as peacebuilders, guardians of life and gatekeepers of ancestral knowledge and memory in TOAR (Santamaria et al. 2023).

In order for this to be achieved, Santamaria et al. (2023) suggest defining said works in close consultation with female Indigenous authorities who are recognized as decision-making leaders in their communities with respect to reparations, acknowledging the spiritual importance of natural elements and sacred sites in Indigenous cultures, and strengthen interjurisdictional coordination and dialogue between the JEP and the Special Indigenous Jurisdiction and other Indigenous authorities.

Finally, the authors propose an array of possible works and activities with restorative content based on the findings of the research, which would include: strengthening women-led processes and assemblies; supporting Indigenous women in carrying out harmonising and spiritual healing rituals as well as memory-centred activities; contributing to the requalification of natural areas and ancestral lands through different projects such as reforestation, decontamination of water sources, preservation of animal and vegetal species, demining activities and infrastructure building³¹⁷.

Other authors such as Acosta (2018) put forward the suggestion of fostering and supporting the inclusion of indigenous women in local administration of indigenous justice, as well as the creation of an Indigenous women tribunal for sexual violence that could incorporate the perspectives on the matter from indigenous women.

Strengthening and supporting Indigenous women's role in their communities is all the more important in light of the ongoing unstable and threatening situation in which human rights defenders and social leaders have come to find themselves after the signature of the Agreement: in particular, representatives of victims' organisations have reported numerous cases in which female community leaders have been exposed to risks

³¹⁷ Santamaría et al. (2023) "To pay, heal and repair...", p.191-194.

and perils³¹⁸. This condition especially applies to Indigenous women as they fill in important roles connected to knowledge, spirituality, and tradition in their respective communities. In line with previously stated recommendations, TOAR should incorporate avenues for strengthening these women's traditional roles through institutional support, while other projects should be grounded on deconstructing discriminatory patterns and structural inequalities so that meaningful steps towards social cohesion and peaceful coexistence in Colombia can be taken.

³¹⁸ "Informe de la Comision de Participacion a la Sala de Reconocimiento,...cit., p. 94-95.

Conclusions

This research had the purpose of analysing the shortcomings and improvements connected to the inclusion of Indigenous women's perspectives and needs in the definition and implementation of innovative TJ mechanisms outlined in the 2016 Colombian Peace Agreement, namely works and acts with restorative content (TOAR).

The present work had the objective of answering the following research questions:

- 1) What are the means through which the perspectives of Indigenous women are included in the definition of harms perpetrators need to repair and in the definition of reparations to be carried out as TOAR? Are these means endowed with an intersectional, gender and ethnic-oriented focus in line with the Accord's overarching differential approach?
- 2) Which are the challenges and benefits encountered in the application of said mechanisms with respect to the inclusion of Indigenous women's perspectives and conceptualizations?
- 3) How can these methods be improved to foster the respect and upholding of Indigenous women's rights and the subsequent restoration of Indigenous communities' and Colombian society's social tissue?

To answer these queries, a qualitative analysis was conducted by applying grounded methodology to the examination of official NGO and legal reports, resolutions of the JEP, academic texts, interviews, and official documents which were pertinent to the research area of Indigenous women's inclusion in the design and implementation process of TOAR.

The present research showed that, although encouraging steps forward with respect to the adoption of a differential ethnic and gender focus in the design and outline of TOAR were taken by the JEP, several operative and perspective-oriented criticalities remain to be tackled to further spur the inclusion of indigenous women's rights and perspectives. Among these, the clear definition of mandatory consultation and verification mechanisms on TOAR that include Indigenous women; the need to foster the emergence of functional intra and inter-institutional articulation on TOAR implementation and definition; as well as the necessity of avoiding homogenisation; overcoming narrow and western-centric

conceptualisation of harm; and removing structural inequalities emerged as the main aspects which need to be addressed in order to ensure Indigenous women are properly and efficiently included in the outlining and execution of TOAR.

This research underscored the necessity that the JEP adopts specific means and practices which would contribute to solving these criticalities. Throughout the analysis of secondary data and materials, the application of the grounded theory allowed us to highlight several strategies and good practices that would provide valuable input for the work of the JEP in the design and implementation process of TOAR and would be functional to the resolution of the previously cited issues. According to the findings of the present work, one of the crucial aspects the JEP should be tackling is spurring its coordination with other institutions as well as victims' organisations (especially Indigenous traditional ones) with respect to TOAR's implementation and monitoring. Secondly, the JEP should be directly referencing in-depth, disaggregated qualitative ethnographic research on Indigenous women's perspectives on violence, harm, healing and restoration to grasp a more complete and complex picture of these women's needs. Undertaking these steps would be necessary to ensure the different views of Indigenous women are duly and efficiently transposed in the design and implementation phase of TOAR, and that the latter are truly endowed with a restorative dimension in line with said women's epistemologies and conceptualisations of healing and societal reparations. Ensuring these conditions are respected will contribute to preventing the top-down imposition of western Transitional Justice rhetoric or epistemologies on Indigenous communities and therefore simultaneously contribute to fostering the feminist decolonisation process of TJ in post-agreement Colombia.

Hopefully, although the author is aware of her own condition and of the potential biases she may have internalised as a white woman coming from a privileged European background, this research can constitute a helpful contribution to further studies on the decolonisation of Transitional Justice in line with decolonial feminist critiques. Considering the limitation of this work to the case study of post-agreement Colombia, the present research cannot provide a full, comprehensive analysis on the subject of TJ's feminist decolonisation, which is why it would be desirable that other aspects of this area

of research that were only partially analysed in this work are explored through additional in-depth studies.

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