

Bulletin # 9. Gender Focus in the Special Jurisdiction for Peace

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The present bulletin deals with the legal framework for the application of the gender focus in the Special Jurisdiction for Peace (JEP - *Jurisdicción Especial para la Paz*). The focus on gender, equality and non-discrimination are principals rooted in the implementation of the Peace Agreement, that recognises that women, girls and the LGBTQ+ community suffered differentiated violence and impacts in the context of the armed conflict. In particular, the Agreement states that the JEP must take into consideration the special seriousness of violence committed against women and members of the LGBTI community and place an emphasis on their needs, responding to the disproportionate and differentiated impacts that they suffered in the context of the armed conflict.

In accordance with the provisions of the Peace Agreement, the JEP's implementation rules include measures aimed at guaranteeing the application of the gender focus. Highlighted amongst them are:

The application of the gender focus implies recognising that unequal gender relations were instrumentalised, exacerbated and accentuated in the context of the armed conflict, deepening the impact of violence committed against women, girls and LGBTI persons

The gender focus is a guiding principle of the JEP. The gender focus must be applied to all phases and procedures of the JEP¹. Its application guarantees real and effective equality, recognising that unequal gender relations were instrumentalised, exacerbated and accentuated in the context of the armed conflict, deepening the impact of violence committed against women, girls and the LGBTI community² who were affected in a unique and disproportionate manner³.

Application of the national and international legal framework on gender-based violence. In gender-based cases of violence, including sexual violence, the JEP must apply the provisions of the constitutional block, the [Rome Statute's Rules of Procedure and Practice](#), Laws [1257](#) (2008) and [1719](#) (2014)⁴. Additionally, it must apply constitutional and international norms that recognise women's rights⁵. These norms contain provisions and measures aimed at effectively guaranteeing the rights of the victims of gender-based violence, such as for example, the presumption of a close and adequate relationship, established by the Constitutional Court, between the armed conflict and acts of sexual violence⁶, or the provisions established by the Rome Statute's Rules of Procedure and Practice that guarantee the participation of victims of sexual violence, avoid their re-victimisation and prevent prejudice or gender-related stereotypes from affecting the practical evaluation of evidence⁷.

Identification of criminal motives relating to gender or gender identity. In the framework of investigation and litigation of codes of conduct, the JEP has an obligation to identify criminal motivations relating to gender or gender identity⁸.

To do this, it must implement investigation methods, contrasting socio-legal analysis aimed at identifying and obtaining information on elements pertinent to both context and conduct. These methodologies must permit the recognition of cases of gender-based violence, or violence motivated by prejudice related to sexual orientation or gender identity against women and LGBTI persons. Clarify the way in which these acts of violence were committed, identify the objectives pursued by the armed actors, and the impacts on the victims and communities of these acts of violence. Furthermore, the JEP's Investigation and Prosecution Unit has a special investigation team for cases of sexual violence, which must be comprised of people with experience and knowledge this type of violence and the differential impacts the armed conflict has had on women and LGBTI persons⁹.

The JEP must identify criminal acts of conduct related to gender or gender identity.

Adoption of reparation strategies with a gender focus. Strategies for reparation and restoration in the framework of the JEP must have a gender focus¹⁰. This implies that they must recognise the unique and differentiated suffering of women and LGBTI persons and, in cases of gender-based violence, that victims must be consulted on restorative projects that feature the appearing party. In this way, reparations must adopt a transformative focus that aims to end the situation of exclusion that generated or permitted victimisation, change unequal gender relations that were instrumentalised, exacerbated and accentuated in the context of the armed conflict¹¹ and; destroy machoistic stereotypes¹². This poses a particular challenge for the JEP, requiring it to promote the creation of restorative projects that aim to transform the situation of gender inequality (a structural issue in society) and, at the same time, can be developed by those responsible (for the crime) without affecting the rights of the victim.

Prioritisation and selection of cases of gender-based violence against women and the LGBTI persons. The JEP must concentrate criminal proceedings on persons who had decisive participation in serious and representative events in the context of the armed conflict, applying the criteria of selection¹³ and prioritisation¹⁴ established in the legal framework and in the guide to *Criteria and Methodology for Prioritising Cases and Situations in the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct*. Under these criteria, it is clear that the JEP must prioritise and select cases that have affected victims in vulnerable conditions or that require the adoption of differential protection measures because they have suffered patterns of historical, social and cultural discrimination related to gender, such as women and LGBTI persons. In the same way, in accordance with the principle of centrality of the victim, the JEP must recognise that human rights violations and violations of international humanitarian law are the most serious when targeted at women, girls and LGBTI persons, amongst other vulnerable groups¹⁵. In addition, the JEP should particularly analyse systematic patterns of criminality and of the magnitude of the victimisation of women, girls and LGBTI persons, as they develop their analysis for prioritisation and selection. In response to this, in several of the prioritised cases or situations, such as Cases 004 (Territorial situation of the Urabá region), 005 (Territorial situation of northern Cauca and southern Cauca Valley), 006 (Victimisation of members of the Patriotic Union by State agents) and 007 (Recruitment and use of children in armed conflict), the Judicial Panel for Acknowledgement of Truth, Responsibility and Determination of Facts and Conduct has taken into account gender-based violence or sexual violence against women, girls or LGBTI persons, in the framework of its analysis of prioritisation. However, the JEP has not opened a case specifically about gender-based violence, including sexual violence, reproductive violence and crimes

motivated by prejudices related to sexual orientation or gender identity of the victims committed in the context of the armed conflict.

Effective participation of victims of gender-based violence from a gender perspective.

The JEP must recognise the importance of women's participation in all its actions and proceedings¹⁶ and take the necessary steps to guarantee that it is effective from a gender perspective. Additionally, victims of gender-based violence have the right not to have to face their aggressor¹⁷. To this end, the JEP must implement the necessary judicial and logistical measures (availability of space, effective means of communication *etc.*) to ensure that victims can participate effectively without confronting their aggressors and without impairing their rights.

Creation of a Gender Commission to ensure the effective implementation of the gender focus.

The JEP has a Gender Commission composed of six magistrates from the various sections and judicial panels. Their aim is to promote the effective implementation of the gender focus, gender equality and non-discrimination of LGBTI persons in the administration of justice. It also functions as an advisory body regarding violence against women and LGBTI persons¹⁸. The concepts that the Gender Commission develops in its consultation work must be in line with the constitutional and international legal framework concerning gender-based violence and the rights of women, girls and LGBTI persons.

The mainstreaming of the gender focus in all procedures is a fundamental part of the JEP's mandate. To ensure this, it has a broad legal framework, which includes both the standards mentioned above and the international norms and standards around the topic. However, the effective implementation of the gender focus in all of the JEP's operations poses challenges which it must respond to in an appropriate and timely manner. In this regard, it is worth noting that, on 20th February, women's and LGBTI organisations asked the JEP to prioritise a *national case of sexual and reproductive violence and other crimes motivated by the sexuality of the victims within the context of the armed conflict*, and asked the Inter-American Human Rights Commission to support this request at a hearing on Gender and the Peace Agreement in Colombia held on 5 March in Haiti¹⁹. As noted by the requesting organisations, the opening of this case would offer an opportunity "to send a strong public message, as Colombia must advance in the social and legal understanding"²⁰ of these forms of violence against women and LGBTI persons in the context of the armed conflict.

[1] Legislative Act 01 of 2017, transitory article 12, paragraph.

[2] Law 1922 of 2018, [article 1](#), section h.

[3] Law 1957 of 2019, [article 18](#).

[4] Law 1922 of 2018, article 72, paragraph; Law 1957 of 2019, [article 106](#).

[5] Law 1922 of 2018, article 1, paragraph.

[6] Constitutional Court, [Order \(Auto\) 009 of 2015](#). M.P. Luis Vargas Silva. Subsection VII.1.

[7] [The Rome Statute's Rules of Procedure and Practice](#). Rules 16.1.d., 17.b.iii, 70, 72, 86, 88, 112.4

[8] Law 1922 of 2018, article [11](#), numeral 8.

[9] Law 1957 of 2019, [article 106](#).

[10] Law 1957 of 2019, articles [9](#), paragraph 1, [18](#), [39](#), paragraph 1, and [141](#); Law 1922 of 2018, article [65](#).

[11] Law 1957 of 2019, article [13](#).

[12] Law 1922 of 2018, article 65.

[13] In accordance with article 19 of Law 1957 of 2019, the selection criteria are: the seriousness of the events, representivity, the differential characteristics of the victims, the characteristics of those responsible and the evidentiary availability.

[14] In accordance with the guide of Criteria and methodology of the prioritisation of cases and situations in the Truth Recognition Chamber, responsibility and determination of the events and conducts of the JEP, the criteria of prioritisation being: the vulnerability of the victims, the differentiated impact on ethnic groups and collective subjects, the magnitude of the victimisation, the seriousness of the events, the representativeness of the facts and the alleged perpetrators and the availability of information.

[15] Law 1957 of 2019, article 13.

[16] Law 1957 of 2019, articles 18, 39, paragraph 1; Law 1922 of 2018, article 27C.

[17] Law 1922 of 2018, articles 19 and 27D.

[18] Ruling of the JEP, articles 104 and 105.

[19] Interamerican Human Rights Commission. Session 175. Public audience 'Gender and Peace Agreement', Colombia. Puerto Príncipe, Haiti. 5th March 2020.

Available at: <https://vimeo.com/event/17301/videos/395780397>

[20] Corporación Humanas. (24th February 2020). Alianza Cinco Claves asks to open a case of sexual, reproductive violence and other crimes motivated by the sexuality of victims. Available at: https://www.humanas.org.co/alfa/10_446-La-Alianza-Cinco-Claves-pide-abrir-un-caso-de-violencia-sexual-reproductiva-y-otros-delitos-motivados-en-la-sexualidad-de-las-victimas.html