

Child recruitment and beyond: Prosecuting the broad spectrum of violence committed against recruited children within the former FARC-EP ranks

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Abstract

This article analyzes the main investigative and legal challenges addressed by the Acknowledgment Chamber of the Colombian Special Jurisdiction for Peace (SJP) in Case 07 on recruitment and use of children in the armed conflict. First, it presents a general background on the mandate of the SJP as a special system of justice – the outcome of

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the 2016 Final Peace Agreement reached between the Colombian government and the former FARC-EP guerrilla group. Second, it outlines how the investigative methodology used in Case 07 addressed challenges related to understanding child recruitment as a complex criminal phenomenon, the identification of those bearing the greatest responsibility, and the approach to the broad scale and scope of the victimization. Finally, the article addresses the main challenges faced by the Chamber in the legal qualification of the criminal patterns identified, and how it resolved three key issues: the determination of the age threshold under which child recruitment constitutes a war crime, the definitions of the international humanitarian law status of protections of individuals within an armed group, and the classification of different forms of gender-based violence as war crimes.

Keywords: Colombia, FARC-EP, Special Jurisdiction for Peace, armed conflict, child recruitment

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Background

The Chamber for Acknowledgment of Truth, Responsibility, and Determination of Facts and Conducts (Acknowledgment Chamber) of the Special Jurisdiction for Peace (SJP) investigates the most serious and representative crimes committed during the armed conflict in Colombia, for which amnesty is inapplicable due to their classification as international crimes.¹ It holds this mandate as part of the justice provisions contained in the 2016 Final Peace Agreement reached between the Colombian government and the former Revolutionary Armed Forces of Colombia – People’s Army (Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, FARC–EP) guerrilla group. The agreement establishes that the SJP must uphold victims’ rights to justice, offer truth to society, ensure legal certainty for alleged offenders (*comparecientes*) and contribute to enduring peace.² Additionally, the SJP operates under a core guiding paradigm of prospective and restorative justice, which seeks to re-establish societal relations, repair harm and guarantee the rights of future generations.³

Under this transitional justice framework and its broad mandate, the Acknowledgement Chamber follows a macro-case approach, investigating macro-criminal patterns instead of isolated individual facts or perpetrators.⁴ In addition, investigations are conducted through a dialogical process (*proceso dialógico*),⁵ as opposed to being conducted under the rules of the ordinary adversarial procedure. Under this process, victims and perpetrators converge to construct a narrative of what happened, with the mediation of the transitional judge, and the Chamber then issues an indictment establishing the criminal patterns in each macro-case

1 Legislative Act 01 of 2017, Art. 5; Law 1957 of 2019, Art. 79.

2 Government of Colombia and FARC-EP, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, 2016 (Final Peace Agreement), p. 143.

3 Law 1957 of 2019, Art. 4.

4 *Ibid.*, Art. 19.

5 Law 1922 of 2018, Arts 1, 27.

and finding those who bear the greatest responsibility.⁶ Those persons are called to acknowledge their criminal liability – if they do so, they are eligible for restorative sanctions rather than deprivation of liberty, but if they do not, they face traditional adversarial procedures and retributive sanctions. In this manner, the SJP provides for a special procedure in which, instead of *exclusively* ascertaining individual criminal liability, the judges turn to the understanding and reconstruction of the causes and effects of violence. Moreover, whilst the SJP applies international criminal law and international humanitarian law (IHL), it does so in the framework of restorative justice objectives. Thus, the judicial analysis must consider both sets of principles and mandates.

The Acknowledgement Chamber has undertaken this task by setting an investigative agenda of eleven macro-cases, covering different forms of violence committed by the former FARC-EP, State armed forces, and third-party civilians.⁷ These cases were opened following specific “selection and prioritization criteria” designed to target those most responsible for the most serious and representative crimes.⁸ Case 07 on recruitment and use of children in the armed conflict was opened in 2019, considering the serious and representative nature of these conducts and noting their severe and multiple impact on the rights of children, who are particularly vulnerable and are entitled to special protection from the State.⁹

This case has a national scope and seeks to understand *how* and *why* these crimes were committed by the FARC-EP. Moreover, the Chamber has established that it will investigate not only the recruitment and use of children, but also other forms of grave violence associated with life within the ranks that affected children’s lives and integrity.¹⁰

By Order 05 of 2024,¹¹ the Acknowledgement Chamber issued the first indictment in Case 07 against six former top commanders of the FARC-EP, who were part of the so-called Secretariat. In reaching this decision, the Chamber considered eighty-five reports submitted by victims, civil society organizations and State institutions,¹² the accounts of eighty-four former FARC-EP members involved as *comparecientes*, and the testimonies of 951 participating victims (60% female and 40% male), among other sources of information. These victims included

6 Law 1957 of 2019, Art. 79.

7 While the Final Peace Agreement and its implementing norms established the SJP’s competence over former FARC-EP members, the Public Force (comprising the Military Forces and the National Police) and civilian third parties, the Constitutional Court has ruled in Judgment C-674-2017 that civilian third parties may only appear before the SJP upon their voluntary request.

8 Law 1957 of 2019, Art. 19.

9 SJP, Acknowledgment Chamber, Order 029 of 2019, available at: https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-029_01-marzo-2019.pdf (all internet references were accessed in February 2025).

10 *Ibid.*, paras 5, 6, 8.

11 SJP, Acknowledgment Chamber, Order 05 of 2024, available at: https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-005_09-octubre-2024.pdf.

12 Of these reports, twenty-eight focus primarily on gender-based violence, thirteen are from indigenous communities and five are from Afro-Colombian communities.

recruitment survivors¹³ (54%) and family members of recruited children who remain missing (46%). Additionally, five indigenous peoples – the Koreguaje, Bari, Sikuani, Hitnü and Cubeo – participated as collective victims, representing a total of 8,903 individuals.¹⁴ This extensive body of evidence was cross-referenced to present a comprehensive narrative of facts and impacts of the violence documented.

When defining the scope of Case 07, the Acknowledgment Chamber endorsed the Convention on the Rights of the Child's definition of a child as any person under 18 years of age. It further defined "children in ranks" as those individuals under the age of 18 who are part of an armed force or group "in any capacity . . . other than purely as family members".¹⁵ Although the Chamber acknowledged that Additional Protocols I and II to the Geneva Conventions of 1949 prohibit the incorporation of minors into armed groups only under the age of 15¹⁶ – and that the Rome Statute of the International Criminal Court (ICC) establishes a war crime related to the recruitment of children below that age¹⁷ – it determined that children under 18 were to be considered victims in this case. To support this position, the Chamber referred to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, which elevated the prohibition to include individuals under 18. The Chamber also highlighted domestic Colombian law, which criminalizes the recruitment of persons under 18, whether into legal or illegal armed forces.¹⁸

In 2021, the Acknowledgment Chamber established a preliminary dataset of facts for Case 07, revealing the overall scope of child recruitment by the FARC-EP. It identified that at least 18,677 children were recruited between 1971 and 2016,¹⁹ a figure more than three times higher than the 5,252 victims²⁰ documented by the Attorney General's Office within the ordinary criminal justice system. This higher figure was derived from cross-checking over 180,000 records contained in thirty-one datasets provided by State entities and victims' organizations. The Chamber found that these recruitments occurred throughout nearly the entire country and involved all FARC-EP territorial structures, known as *bloques*. The highest number of child

13 Although the victimizations analyzed were committed against children, due to the time elapsed since they left the armed group and the signing of the Peace Agreement, those participating as victims in Case 07 are now adults.

14 Order 05, above note 11.

15 Order 029, above note 9, para. 3.

16 Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 77(2); Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978) (AP II), Art. 4(3)(c).

17 Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002) (Rome Statute), Arts 8(2)(b)(xxvi), 8(2)(3)(vii).

18 Order 029, above note 9, paras 14–15.

19 SJP, Acknowledgment Chamber, Order 159 of 2021, para. 11, available at: https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-159_04-agosto-2021.pdf.

20 Order 029, above note 9, para. 46.

recruitments occurred between 1996 and 2016, prompting the Chamber to focus its investigation on this time frame.²¹

Against this background, the investigation of Case 07 ranges beyond establishing individual criminal responsibility to encompass a broad understanding of the macro-criminal patterns stemming from the recruitment and use of children by the FARC-EP, as well as the violence that these children suffered within the ranks. This requires a comprehensive factual examination and an in-depth analysis of the former guerrilla group's organizational dynamics, policies, lines of command, decision-making, execution and control. Considering this requirement, and the fact that the Chamber must also implement a dialogical and restorative approach, the Chamber developed an intricate investigative methodology, which is analyzed in the following section.

Innovative elements of the Case 07 investigative methodology

As previously mentioned, the SJP must ascertain the criminal liability of those with the greatest responsibility for international crimes and guarantee victims' rights, following a dialogical and restorative procedure which includes the application of restorative sanctions. A key objective of the SJP is also to provide truth to the victims and the entire Colombian society.²² In compliance with this mandate, the SJP must not only focus on establishing the traditional criminal law aspects of the investigation but must also offer a comprehensive understanding of the circumstances surrounding the violence and its impact on victims and their communities, with particular attention to the victims' gender and ethnicity.²³ Consequently, the investigative methodology of the macro-cases integrates innovative elements in order to achieve these objectives.

This section outlines key aspects of the methodology followed by the Acknowledgment Chamber in Case 07, seeking to address three main investigative challenges: (i) the understanding of child recruitment as a complex criminal phenomenon, (ii) the identification of those bearing the greatest responsibility for designing or implementing formal or *de facto* organizational policies, and (iii) the approach to the broad scale and scope of the victimization.

First, regarding the **understanding of child recruitment as a complex criminal phenomenon** (not limited to the moment of incorporation into the ranks), the Chamber focused on the contextual circumstances leading to its occurrence, the children's experiences during their time in the ranks, and the immediate and long-term impacts on their lives.

In documenting the entire recruitment process, the Acknowledgment Chamber established six scenarios for information-gathering and analysis,

21 Order 159, above note 19, paras 42–46.

22 Legislative Act 01 of 2017, Art. 5.

23 Law 1957 of 2019, Art. 38.

including the stages before, during and after the incorporation of victims into the guerrilla group's ranks:²⁴

- (i) the context preceding the recruitment, examining family vulnerabilities, communities' conditions, State presence or absence, and the dynamics of the guerrilla group and its interactions with victims;
- (ii) the recruitment process, detailing how children were targeted and integrated into the ranks;
- (iii) violence suffered by the victims within the ranks, including mistreatment during training, disciplinary actions, and harm suffered in military operations;
- (iv) family and communities' actions, such as resisting recruitment, searching for missing children and reporting to authorities, despite the associated risks;
- (v) experiences associated with leaving the armed group (whether through desertion or capture), focusing on motivations, conditions of departure and challenges of reintegration; and
- (vi) the impacts of recruitment, addressing immediate and long-term harm to victims and their families.

In addition, based on preliminary analysis of victims' testimonies, the Chamber prioritized the investigation of other forms of grave violence suffered within the ranks: (i) sexual and gender-based violence,²⁵ (ii) homicide, torture, and cruel treatment, and (iii) the situation of recruited children whose whereabouts remain unknown.²⁶

Furthermore, the Chamber systematically examined gender²⁷ and ethnic²⁸ perspectives in order to uncover the victims' differential characteristics and experiences and to determine if these factors motivated the crimes.²⁹ The Chamber seeks to identify the specific and aggravated damage suffered by women, LGBTI people and persons from ethnic backgrounds in the context of their recruitment.

24 SJP, Acknowledgment Chamber, Order SRVR-LRG-T-075-2022, 2022, available at: https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-LRG-T-075-2022_08-abril-2022.docx.

25 In 2022, an additional sub-line was introduced to address prejudice-based violence against recruited children with diverse sexual orientation and diverse gender identity or expression. See SJP, Acknowledgment Chamber, Order SRVR-LRG-T-032-2022, 2022, para. 34, available at: https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-LRG-T-032-2022_11-febrero-2022.docx.

26 Order 159, above note 19, paras 47–53.

27 To deepen understanding, the Chamber held ten gender-specific hearings involving 145 victims (92% female, 6% LGBTI), ensuring safety, confidentiality and psychosocial support. See Order 05, above note 11, para. 25.

28 The Chamber held hearings with five indigenous communities, showing due respect to their customs, languages and legal frameworks. See Order 05, above note 11, paras 1080–1081.

29 Order 029, above note 9, para. 9; Order SRVR-LRG-T-075-2022, above note 24; SJP, Acknowledgment Chamber, Order SRVR-LRG-T-292-2022, 2022, available at: https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-LRG-T-292-2022_09-diciembre-2022.pdf.

Using this complex fact-finding methodology, the Acknowledgment Chamber aims to help official institutions and society at large to recognize the scope of the violence, understand the factors driving child victimization and identify the most affected territories, populations and groups. This broad understanding will also guide the Chamber in designing effective restorative sanctions for those who acknowledge responsibility through the dialogical process. Additionally, in line with the SJP's commitment to prospective justice and sustainable peace, this approach offers a basis for public policy plans to prevent recurrence by addressing risk factors for recruitment and mitigating the long-term impacts of this victimization.

Second, regarding the **identification of those bearing the greatest responsibility for designing or implementing formal or *de facto* organizational policies**, the Acknowledgment Chamber established two lines of analysis: (i) the responsibility of those who designed, implemented and controlled policies – formal or *de facto* – related to recruitment and life within the ranks,³⁰ and (ii) the responsibility of those who executed these policies in the field.³¹ The Chamber prioritized the first line of responsibility, gathering voluntary hearings in 2020 from fifteen former members of the FARC-EP Secretariat and Central General Staff, the organization's highest decision-making bodies. Subsequently, sixty-nine mid-level guerrilla group members provided accounts under the second line of investigation,³² describing how the organization's policies were implemented in the territories under their effective command and how the decision-making, execution and control bodies functioned at a territorial level. This methodology has enabled the Chamber to understand how the FARC-EP's central guidelines were implemented in practice and to identify patterns in each structure's operation, leading to a better comprehension of the territorial dynamics of child recruitment by the group and advancing the clarification of the chain of command involved in such conduct.

Finally, in terms of the **investigative strategy to address the broad scale and scope of the victimization**, the Acknowledgment Chamber employs a pattern-based methodology, instead of focusing on isolated acts or perpetrators. The Chamber defines a criminal pattern as the “non-accidental repetition of crimes similar in their objectives, modes of commission, and victims' characteristics”.³³ These patterns can indicate policies, referring to “the set of plans and guidelines from the armed structure”,³⁴ whether explicit or *de facto*. To determine these patterns, the Chamber considers illustrative facts, which can “reveal repetition in

30 In terms of the former guerrilla group's policies on recruitment of children, the Chamber based its investigation on two hypotheses: (i) the FARC-EP recruited and used children aged 15–17 as part of its formal policy established during the Seventh National Guerrilla Conference in 1982, in which the FARC-EP set the official age range for incorporation of personnel at 15–30 years; (ii) the group also recruited children under 15, violating its own policy.

31 SJP, Acknowledgment Chamber, Order 226 of 2019, para. 4, available at: https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-IG-226_24-octubre-2019.pdf.

32 Order 159, above note 19.

33 SJP, Acknowledgment Chamber, Order 019 of 2021, para. 230.

34 *Ibid.*, para. 231.

objectives, modus operandi, victims' characteristics, places, and times of commission".³⁵ Determining these patterns and policies helps to "identify those most responsible, considering that they ordered the explicit or implicit policies guiding the armed organization's actions".³⁶

Under the macro-case approach, identifying criminal patterns and organizational policies is essential for explaining the crimes and determining responsibility. This method ensures broader access to the truth compared to focusing on individual acts.³⁷ Additionally, in a transitional context with limited resources where not all victims or facts reach the judicial system,³⁸ a pattern-based approach could help to facilitate a broader access to justice. By examining illustrative facts and their representative nature, the Acknowledgment Chamber can account for widespread violence. Thus, the SJP provides justice even to those victims not directly involved in the proceedings but affected by similar violence – although their individual cases are not investigated, they are addressed in the overarching patterns that encompass their suffering.

The first indictment of Case 07: Legal challenges in the qualification of crimes

In applying the above-mentioned methodology, the Acknowledgment Chamber found five criminal patterns, which amounted to different war crimes, and attributed liability to six former members of the FARC-EP Secretariat, considering that they had the greatest responsibility given their role in designing, implementing and controlling the criminal facts and policies. This section will analyse the main legal issues tackled by the Chamber in its first indictment within Case 07 and will examine how the conducts constituting the criminal patterns identified were classified as war crimes.

It should first be noted that the norms developing the 2016 Final Peace Agreement establish that the SJP will base the legal classification of the conducts under investigation on IHL, international human rights law (IHRL), international criminal law and Colombian domestic law.³⁹ Additionally, the SJP's legal framework, by invoking international law, specifies a list of conducts explicitly excluded from the possibility of amnesty due to their classification as international crimes. It refers generally to war crimes, crimes against humanity and genocide, as well as to some specific conducts – though encompassed within these categories – such as

35 *Ibid.*

36 *Ibid.*, para. 232.

37 *Ibid.*, paras 230–232. See also Francisco Gutiérrez-Sanín and Elisabeth Wood, "Cómo debemos entender el concepto de 'patrón de violencia política': Repertorio, objetivo, frecuencia y técnica", *Revista Estudios Sociojurídicos*, Vol. 22, No. 1, 2019, pp. 24–28.

38 Howard Varney and Michael Schwarz, "The Pitfalls of Post-Conflict Justice: Framing the Duty to Prosecute in the Aftermath of Violence", in Nelson Camilo Sánchez *et al.*, *Beyond the Binary: Securing Peace and Promoting Justice after Conflict*, Dejusticia, Bogotá, 2019, p. 75.

39 Legislative Act 01 of 2017, Art. 5; Law 1957 of 2019, Art. 23.

hostage-taking, torture, extrajudicial killings, enforced disappearance, sexual violence and child recruitment, in accordance with the Rome Statute.⁴⁰

Regarding the conducts investigated in Case 07, several legal challenges arose in the first indictment issued by the Chamber, including determining the age threshold under which child recruitment constitutes a war crime, defining the status of individuals within an armed group to be protected under IHL, and addressing the specificities of different forms of gender-based violence for their classification as war crimes. These challenges are explained in the following subsections below.

Challenge 1: Defining the age threshold for the legal qualification of the pattern of recruitment and use of children

While the FARC-EP's internal regulations, adopted in 1982, set the minimum recruitment age at 15 years, records indicate that this guideline was widely disregarded. Some former FARC-EP Secretariat members justified the 15-year age limit by referencing IHL,⁴¹ while others cited cultural perceptions in rural areas where children at that age were considered physically and mentally prepared for armed conflict.⁴² The Acknowledgement Chamber documented the recruitment of at least 9,870 children aged 15 to 17 and 5,691 children aged 14 or younger. Among the participating victims, 64% (518 victims) were recruited under the age of 15, while 34% (270 victims) were aged 15 to 17.⁴³ Victim accounts also revealed three prevalent methods of recruitment: threat or use of force (58%), deception (28%), and persuasion (15%).⁴⁴ These facts occurred in thirty-one of the country's thirty-two departments, involving all the structures of the former guerrilla group, and happened consistently throughout the analyzed period (1996–2016), demonstrating the massive scale and nationwide prevalence of these practices across the prioritized timeline for Case 07.⁴⁵

The Acknowledgement Chamber concluded that this recruitment pattern reflected a *de facto* policy which prioritized the incorporation of personnel based on their perceived suitability to serve the purposes of the organization, disregarding formal age considerations and resulting in the recruitment of children, including those under 15 years of age. According to the Chamber, five factors explain that policy: (i) the absence of an effective age verification mechanism despite the formal

40 Law 1820 of 2016, Art. 23.

41 SJP, Acknowledgement Chamber, Case 07, Hearings of Pablo Catatumbo Torres, 19 August 2020; Julián Gallo Cubillos, 3 September 2020; and Pastor Alape Lascarro, 24 August 2019, available at: www.youtube.com/watch?v=TY9YraNvf9c&list=PLbtgW3d3L4I3zj1nnExmLhDPP2_63yr&index=8.

42 SJP, Acknowledgement Chamber, Case 07, Hearing of Rodrigo Londoño, 8 September 2020. See also Geneva Academy of International Humanitarian Law and Human Rights, *From Words to Deeds: A Research Study of Armed Non-State Actors' Practice and Interpretation of International Humanitarian and Human Rights Norms: Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army, FARC-EP)*, Geneva, 2021, p. 27.

43 Order 05, above note 11, para. 218.

44 *Ibid.*, paras 413–414.

45 *Ibid.*, para. 99.

age requirement; (ii) reliance on subjective judgements of physical fitness over compliance with age restrictions; (iii) lack of internal sanctions for recruiting underage individuals; (iv) internal messaging that normalized the practice, urging the growth of personnel or downplaying the seriousness of the recruitment of children; and (v) the retention of underage recruits within the organization, who actively served its purposes despite their recruitment violating internal regulations.⁴⁶

Regarding the legal qualification of this pattern, it must first be highlighted that when referring to child recruitment as a crime explicitly excluded from amnesty, Colombia's Amnesty Law specifies that this should be in accordance with the Rome Statute.⁴⁷ This generated a constitutional debate in Colombia because the Rome Statute establishes the recruitment of children under 15 years of age as a crime, while since 1997 the Colombian Criminal Code has defined as a crime the recruitment of persons under 18 years of age.⁴⁸ The Colombian Constitutional Court addressed this issue and considered that, despite the national prohibition, the exclusion of amnesty should be restricted to conducts that violate fundamental norms of international law to which amnesty cannot apply.⁴⁹ The Court then deemed the reference to the Rome Statute valid, noting that the age of 15 years specified therein aligns with the provisions of Additional Protocols I and II to the Geneva Conventions, applicable to both international and non-international armed conflicts.⁵⁰ Nevertheless, the Court noted that subsequent developments in international law had evolved this standard, consolidating States' commitment to eradicating the recruitment of persons under 18 years of age.⁵¹

On this point, the Court referred to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Optional Protocol). Article 3 of this instrument obligates States to refrain from forcibly recruiting individuals under the age of 18 into their armed forces and prohibits such individuals' participation in hostilities. Additionally, Article 4 stipulates that armed groups other than State forces should under no circumstances recruit persons under 18 years of age. Based on these provisions, the Court determined that, since the Optional Protocol's entry into force for Colombia on 25 June 2005, an international obligation has existed prohibiting the recruitment of individuals under 18 years of age. Consequently, the Court concluded that, from that date forward, all parties to the conflict – including non-State armed groups – were prohibited from recruiting individuals under 18, rather than only those under 15. As a result, such conduct is excluded from amnesty under international law.⁵²

46 *Ibid.*, paras 374–412.

47 Law 1820 of 2016, Art. 23.

48 Law 418 of 1997, Art. 13; Law 599 of 2000 (current Criminal Code), Art. 162.

49 Colombian Constitutional Court, Judgment C-007-2018, 2018, para. 465.

50 *Ibid.*

51 *Ibid.*, para. 482.

52 *Ibid.*, para. 449.

Building on the Constitutional Court's decision and the Acknowledgement Chamber's previous statements,⁵³ the indictment in Case 07 concluded that, while there is no specific war crime under international criminal law addressing the recruitment of persons under 18, such conduct is prohibited under international law.⁵⁴

It should be noted that the jurisprudence of the SJP has established two approaches to determining the existence of a war crime. First, if the crime is explicitly listed in the Rome Statute – as is the case with the recruitment of children under 15 years of age – then it can be applied directly as outlined in that instrument.⁵⁵ Second, if the conduct is not listed in the Rome Statute – as is the case with the recruitment of children under 18 years of age – then the SJP has adopted a methodology developed by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the *Tadić* case,⁵⁶ known as the *Tadić* test.

Based on those elements, the Acknowledgement Chamber first defined the configuration of the war crime of conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities, as stipulated in Article 8(2)(e)(vii) of the Rome Statute.⁵⁷ It then extended this configuration to include persons under 18 years of age as of 25 June 2005, by applying the *Tadić* test.

The *Tadić* test allows the identification of a war crime when four elements are satisfied: (i) there is a violation of a rule of IHL, (ii) that rule is conventional or customary, (iii) the violation is serious, and (iv) the serious violation is criminally punishable.⁵⁸ This approach allows that a conduct not explicitly defined in the Rome Statute, such as the recruitment of persons under 18, can still be considered as a war crime.

The Acknowledgement Chamber carefully analyzed the *Tadić* test's four criteria and found that regarding the first two elements, the Optional Protocol, which prohibits the recruitment of persons under 18, constitutes such a rule.⁵⁹ In addressing the nature of the norm, the Chamber examined whether the Optional Protocol could be classified as an IHL rule. While the Optional Protocol derives from an IHL treaty, questions about its classification arose during its negotiation. As highlighted in a 2009 report by the United Nations High Commissioner for Human Rights to the Human Rights Council, the negotiators explicitly defined Article 4 of the Optional Protocol as a human rights norm rather than a humanitarian law

53 SJP, Acknowledgment Chamber, Order 01 of 2023, para. 919; SJP, Acknowledgment Chamber, Order 03 of 2023, para. 1612.

54 Order 05, above note 11, para. 1425.

55 *Ibid.*, para. 1394.

56 *Ibid.*, para. 1395.

57 *Ibid.*, Chap. K.3.

58 ICTY, *Prosecutor v. Dusko Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, para. 94.

59 Order 05, above note 11, paras 1425–1429.

provision.⁶⁰ Despite this clarification, the Chamber concluded that the Optional Protocol constitutes a “mixed norm” of IHRL and IHL.⁶¹

This conclusion was grounded in the Optional Protocol’s dual purpose: regulating conduct in armed conflict and imposing obligations on both States and organized armed groups. The Acknowledgement Chamber emphasized that IHL aims to limit the humanitarian consequences of armed conflict and ensure the protection of those not participating in hostilities. The Optional Protocol aligns with this objective, as its provisions are designed to apply in both peacetime and armed conflict. The preamble of the Optional Protocol explicitly references IHL, condemning the targeting of children in armed conflict and attacks on schools, hospitals and other protected sites.⁶² Moreover, the International Committee of the Red Cross (ICRC) has recognized the Protocol as including both IHRL and IHL rules⁶³ and has incorporated the Protocol into its database of IHL instruments.

Consequently, the Acknowledgement Chamber concluded that the prohibition on the recruitment of persons under 18 years of age constitutes a mixed norm of IHRL and IHL and that it has been a binding conventional IHL obligation applicable to parties in armed conflict in Colombia since 2005.

For the third element of the *Tadić* test, the Chamber emphasized the seriousness of the violation stemming from the harms inflicted on the rights of children through their recruitment into armed forces.⁶⁴ These harms included exposure to conditions incompatible with their age and the risks to their life, health, integrity and well-being from hostilities. Additionally, children were subjected to various forms of violence within the ranks, including sexual, reproductive and other gender-based violence, as well as homicide, torture and cruel, inhuman or degrading treatment.

Regarding the fourth element, the requirement of criminal sanction, the Acknowledgement Chamber faced greater challenges due to the lack of an internationally established criminal penalty for the recruitment of persons under 18. Although the Optional Protocol has been ratified by 173 States,⁶⁵ the Chamber identified only twenty-five countries, including Colombia, with domestic legislation criminalizing the recruitment of persons under 18, and only ten of these laws were in place by 2005.⁶⁶ Thus, the Chamber concluded that the criminalization element could not be derived from customary international law for that year and instead relied on Colombian domestic law.

The Chamber supported this approach with two key arguments. First, in the *Tadić* decision, the ICTY considered domestic law to establish that individuals

60 UN High Commissioner for Human Rights, *Outcome of the Expert Consultation on the Issue of Protecting the Human Rights of Civilians in Armed Conflict*, UN Doc. A_HRC_11_31-EN, 4 June 2009, para. 27.

61 Order 05, above note 11, para. 1427.

62 *Ibid.*

63 ICRC, *International Humanitarian Law, International Human Rights Law: Similarities and Differences*, Geneva, 2021, p. 2.

64 Order 05, above note 11, paras 1431–1432.

65 See the ICRC IHL Databases, available at: <https://ihl-databases.icrc.org/en/ihl-treaties/crc-opac-2000/state-parties?activeTab=default>.

66 Order 05, above note 11, paras 1433–1434.

in the former Yugoslavia and Bosnia-Herzegovina were aware that their actions were criminal under national law.⁶⁷ Second, the ICRC's Customary Law Study affirmed that, while war crimes typically derive from conventional or customary international law, States may define additional violations of IHL as war crimes within their domestic legal systems.⁶⁸ The Chamber argued that as long as the prohibition against recruiting persons under 18 exists under IHL, the requirement that such violations entail criminal responsibility can be satisfied through domestic law.⁶⁹

By combining international law for the prohibition and domestic law for the criminal sanction, the Acknowledgement Chamber concluded that since 25 June 2005, conscripting, enlisting or using persons under 18 constitutes a war crime. This innovative use of international and national law achieves justice for victims while upholding the principle of legality as a fundamental safeguard for defendants. The Chamber also advanced the development of international law by pushing the standard beyond the 15-year threshold established nearly fifty years ago in the 1977 Additional Protocols, backing the recognition of such conduct as a war crime against all children, defined as persons under 18 years of age.

Challenge 2: Determining the IHL protection status of individuals within an armed group

Given that Case 07 investigates not only recruitment and use of children but also other forms of grave violence occurring within the ranks, which could also constitute international crimes, the Acknowledgement Chamber addressed specific elements of these latter crimes. This included clarifying the status of victims when they are members of an armed group and the scope of international law in protecting members of those groups from violence committed by peers and commanders. International law does not have specific provisions concerning conduct within an armed group; however, the ICRC's 2016 Commentary on Article 3 common to the four Geneva Conventions (common Article 3) notes that this norm constitutes a minimum standard of protection that generates obligations even for conduct within the armed group itself.⁷⁰

International criminal jurisprudence has advanced significantly in addressing sexual violence within armed groups, particularly through the *Ntaganda* case before the ICC. In that case, the Court affirmed that the prohibition against sexual

67 ICTY, *Tadić*, above note 58, para. 135.

68 Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), p. 571, available at: <https://ihl-databases.icrc.org/en/customary-ihl/rules>.

69 Order 05, above note 11, para. 1438.

70 ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., Geneva, 2016, para. 547. Contrary to this idea, in 2009 the Special Court for Sierra Leone (SCSL) stated: "The Chamber is of the opinion that the law of armed conflict does not protect members of armed groups from acts of violence directed against them by their own forces." SCSL, *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao*, Judgment (Trial Chamber I), 2 March 2009, para. 1451.

violence is absolute and does not depend on the victim's status, meaning that sexual violence committed by members of an armed group against their own members can constitute war crimes.⁷¹ Building on this precedent, the Acknowledgement Chamber in Case 07 expanded the analysis to all forms of sexual and gender-based violence against recruited children. It addressed areas not fully developed in international jurisprudence, such as reproductive violence within the ranks – particularly forced contraception and abortions – and violence motivated by prejudice against children with diverse sexual orientation or gender identity and expression. The Chamber identified systematic criminal patterns of such conducts within the FARC-EP, underscoring their extensive nature.

Additionally, the Acknowledgement Chamber extended its analysis to other forms of violence within the ranks, including mistreatment, torture, homicides, and unfair trials and executions. These acts occurred in contexts such as military training, participation in combat, daily assigned tasks and the enforcement of disciplinary regimes. The Chamber determined that these actions align with the conducts prohibited under Article 8(2)(c) of the Rome Statute, which defines war crimes as serious breaches of common Article 3. Common Article 3 protects persons not actively participating in hostilities, including those rendered *hors de combat* due to injury, illness, detention or any other reason.

Crucially, the Acknowledgement Chamber held that common Article 3 applies to intra-rank violence, as noted by the ICRC, establishing that children within the ranks may be considered *hors de combat* regarding such acts. The Chamber reasoned that individuals in an armed group are not in combat against their fellow members but against external adversaries⁷² – therefore, intra-rank violence is subject to the protections of common Article 3, bringing such acts within the scope of Article 8(2)(c) of the Rome Statute. This interpretation expands the application of international criminal law to protect individuals within armed groups from internal abuses.

Challenge 3: Legal qualification of the patterns of mistreatment, torture, killings, and unfair trials and executions of recruited children

Regarding the intra-rank life of recruited children, the Acknowledgement Chamber found that the FARC-EP implemented a policy to regulate daily life, emphasizing discipline and order under the principle of “command and obey.”⁷³ This created an environment of coercion where children were subjected to various forms of violence. Victim accounts and other evidence revealed that children endured mistreatment, torture, killings, and trials without judicial guarantees. Among the participating victims, fifty reported torture and cruel treatment within the ranks, sixty-nine witnessed or experienced war councils against persons under 18 years old – some

71 ICC, *Prosecutor v. Bosco Ntaganda*, Judgment on the Appeal of Mr Ntaganda against the “Second Decision on the Defence’s Challenge to the Jurisdiction of the Court in Respect of Counts 6 and 9” (Appeals Chamber), 15 June 2017, para. 51.

72 Order 05, above note 11, para. 1478.

73 *Ibid.*, para. 510.

resulting in execution – and 155 recounted homicides of people under that age, both with and without council decisions.⁷⁴ These abuses occurred during military training, daily life within the ranks and participation in military operations, and under the disciplinary regime, particularly through revolutionary war councils, which imposed severe punishments, including execution by firing squad. The Chamber concluded that such violence was systematic, occurring across all structures of the guerrilla group and sustained over time.⁷⁵

The Acknowledgement Chamber determined that the coercive environment created by the policy regulating intra-rank life subjected recruited children to various forms of violence. The Chamber determined that said conducts constitute the war crimes of cruel treatment, torture and homicide under Article 8(2)(c)(i) of the Rome Statute. Additionally, it identified the war crime of passing sentences and carrying out executions without prior judgment by a regularly constituted court that affords all judicial guarantees generally recognized as indispensable, under Article 8(2)(c)(iv).⁷⁶

Challenge 4: Legal qualification of the pattern of reproductive violence committed against recruited girls

This pattern, along with the two that follow, was established under the line on gender-based violence associated with recruitment. The Acknowledgement Chamber examined the coercive environment referenced in the previous pattern, highlighting how it was exacerbated by the gender norms imposed by the FARC-EP, where girls, women, and individuals with diverse sexual orientations or gender identities suffered specific forms of violence.⁷⁷ Central to this pattern was the group's contraception policy, aimed at preventing parenthood within the ranks to ensure operational continuity and control.

The Acknowledgement Chamber found that at least 24% of recruited girls were subjected to forced contraception, while 19% of accredited women experienced forced abortions.⁷⁸ Additionally, in some cases, victims suffered the death or forced separation of their newborns. This violence was consolidated through formal directives issued by the FARC-EP's leadership, which established a birth control policy enforced and controlled by the Secretariat. In practice, this policy tacitly prohibited maternity and paternity, resulting in systemic reproductive violence against girls and women. These practices completely deprived victims of autonomy over their bodies and decisions, with procedures conducted in inadequate health conditions, causing profound physical and emotional harm. This pattern of violence, systematically

74 *Ibid.*, para. 513.

75 *Ibid.*, Chap. D.

76 *Ibid.*, Chap. K.8.

77 *Ibid.*, paras 699–707.

78 *Ibid.*, para. 708.

applied across time, underscores the extent to which the organization subordinated individual rights to its operational priorities.⁷⁹

For the Acknowledgement Chamber, this pattern included acts of forced contraception, forced abortions, and, in some cases, the death or forced separation of newborns. Since no specific war crime directly addresses this type of reproductive violence, the Chamber classified these acts under existing categories of war crimes. Forced contraception was classified as an outrage upon personal dignity under Article 8(2)(c)(ii) of the Rome Statute.⁸⁰ When forced contraception caused grave suffering and was driven by discriminatory intent against girls, it was further classified as torture under Article 8(2)(c)(i).⁸¹ Forced abortions, along with the death or separation of newborns, were also classified as torture, while the death of newborns was categorized as homicide (Article 8(2)(c)(i)).⁸²

Challenge 5: Legal qualification of the pattern of sexual violence committed against recruited children

The Acknowledgement Chamber determined that, despite formal guidelines prohibiting sexual violence within the FARC-EP, no mechanisms for prevention, reporting or effective punishment of sexual violence were in place. Among the participating victims, 135 men and women reported sexual violence within the ranks, with 35% of participating women being subjected to such violence.⁸³ Participants reported that this violence was generally perpetrated by their superiors within the guerrilla group and that no effective mechanisms existed to report and punish such acts. Similarly, some of the defendants admitted being aware of these incidents but did not indicate that they were addressed through effective or exemplary punishment. This led the Chamber to conclude that such practices were tacitly permitted by commanders, including those at the Secretariat level, who were aware of the violence but failed to implement measures to prevent or adequately address or sanction it.

The Chamber found that this pattern included rape, sexual slavery, forced unions, forced nudity and other violent sexual acts, which occurred systematically across various territories and throughout the period analyzed. However, in the first indictment of the case, the Chamber concluded that while the evidence established the systematic nature of these acts, it was insufficient to affirm that this pattern resulted from a formal or *de facto* policy of the FARC-EP.⁸⁴

The conducts reflecting this pattern were classified by the Chamber as war crimes, including rape, sexual slavery and other forms of sexual violence constituting serious violations of common Article 3, pursuant to Article 8(2)(e)(vi) of the Rome Statute. Under the latter classification, the Chamber included acts such as forced

79 *Ibid.*, Chap. E.2.

80 *Ibid.*, Chap. K.6.

81 *Ibid.*, Chap. K.7.2.

82 *Ibid.*, Chap. K.7.3.

83 *Ibid.*, para. 622.

84 *Ibid.*, Chap. E.3.

nudity, sexual touching, and harassment. The Chamber also classified some of these conducts as torture, under Article 8(2)(c)(i) of the Rome Statute.⁸⁵

Challenge 6: Legal qualification of the pattern of violence based on prejudice against children with diverse sexual orientation, gender identity or gender expression

The Acknowledgement Chamber identified a pattern of prejudice-based violence within the FARC-EP ranks targeting children with diverse sexual orientation, gender identity or expression. This pattern expressed a range of violent practices, including death threats, sanctions, corrective sexual violence and other forms of mistreatment that inflicted severe suffering on victims. It also included the enforced concealment of sexual orientation or gender identity, further exacerbating the harm.⁸⁶

These acts occurred systematically across various territories and guerrilla blocs and derived from what the Chamber identified as a *de facto* policy prohibiting individuals with diverse sexual orientation, gender identity or expression from joining the ranks. This policy, promoted and validated by the organization's high command, created an environment where violent practices aimed at excluding and punishing individuals for their sexual orientation or gender identity were organizationally legitimized.⁸⁷

With regard to this pattern, the Chamber identified war crimes, including rape and sexual slavery, under Article 8(2)(e)(vi) of the Rome Statute, for acts such as corrective sexual violence and similar practices. Additionally, the Chamber classified as torture (Article 8(2)(c)(i)) the enforced concealment of sexual orientation or gender identity, where children were compelled to suppress their identity under the threat of severe punishment, including the death penalty.

Conclusions

The SJP, as designed in the 2016 Final Peace Agreement, is an innovative judicial system, bringing both challenges and opportunities to the investigation of conflict-related international crimes in Colombia. Its unique nature, combining restorative and criminal law principles, puts this system in a privileged position. It aims to advance the understanding of why such grave violence was committed and who bears the greatest responsibility, while also contributing to non-repetition and the consolidation of the political transition by offering restorative sanctions as alternatives to traditional punitive justice.

In the first indictment in Case 07, the Acknowledgement Chamber addressed both factual and legal questions related to the recruitment and use of

85 *Ibid.*, Chap. K.5.

86 *Ibid.*, para. 623.

87 *Ibid.*, Chap. E.4.

children by armed groups. This comprehensive investigation sought to deliver justice to victims, including those who did not participate in the process but whose suffering is encompassed within the identified criminal patterns. By examining recruitment within six analytical scenarios – covering moments before, during, and after victimization – the Chamber provided a holistic narrative of these crimes. This approach not only elucidates how and why these violations occurred but also strengthens victims' right to restoration and fosters non-repetition. By transcending the mere establishment of crime elements or individual cases, the Chamber enabled a more impactful understanding of the facts and broader societal access to truth. Furthermore, the findings offer critical insights for public policy measures aimed at non-repetition.

Notably, the Chamber advanced the development of international law by pushing for the recognition of child recruitment as a war crime when committed against individuals under 18 years of age and by categorizing the broad spectrum of violence against recruited children within armed groups as war crimes. This affirmation reinforces the idea that international law protects individuals within armed groups from violence inflicted by their own group.

Throughout this process, the Acknowledgement Chamber prioritized victims' experiences, with particular attention to gender and ethnic considerations, employing specific methodologies to ensure that their voices were central to the investigation. This commitment reflects the dialogical and restorative principles underpinning the SJP's mandate. Moreover, the Chamber's approach in Case 07 recognizes child recruitment as a macro-criminal phenomenon, for which a pattern-based prosecution strategy is employed. The Chamber also scrutinized the FARC-EP's organizational decision-making, execution and control mechanisms that enabled child recruitment to reach such a great scale and scope, attributing individual responsibilities at the highest levels of the structure. By thoroughly analyzing the explicit and implicit policies that facilitated these crimes, the Chamber has made significant contributions to transitional justice and societal reconciliation, advancing accountability, truth and justice in Colombia.