

Assessing the Sociological Legitimacy of the Special Jurisdiction for Peace of Colombia



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1. Introduction

Since before its creation and up to the present day, the legitimacy of the Special Jurisdiction for Peace of Colombia has been contested and defended. On one side, former President Álvaro Uribe Vélez, well-known senator Paloma Valencia and their right-wing party Centro Democrático have represented the critiques of many sectors of the Colombian society against the Special Jurisdiction for Peace (or JEP, for its acronym in Spanish¹), the set of judicial institutions that investigates, adjudicates and sanctions war crimes and crimes against humanity committed during the internal armed conflict between the Colombian State and the guerrilla FARC-EP². As Andrei Gómez-Suárez has described, Uribe and his party Centro Democrático (CD) used the motto Peace without impunity (“Paz sin impunidad”) as an emotional mechanism to elicit anger and unfairness. In their opinion, the JEP is an example of a judicial mechanism that was tailored to the FARC-EP’s needs and that fostered impunity. It allows perpetrators of grave human rights violations to take office as congressmen. It disincentivises the use retributive justice that imprisons perpetrators in favour of restorative justice. In contrast, restorative justice fosters the dialogue between victims and perpetrators and proposes a type of reparation that goes beyond monetary means and entails restorative actions like the construction of roads or reforestation. Furthermore, the JEP equates crimes committed by Armed Forces agents to those committed by FARC-EP “terrorists”, and that treatment is unfair with the first, who only acted following their duty to defend the Colombian State and population (Infobae 2024; 2021). In short, in Uribe and his party’s view, the JEP was tailor-made to acquit the FARC-EP and seek revenge by incarcerating policemen, soldiers and civilians, imposing minimal and

¹ JEP means Jurisdicción Especial para la Paz.

² This acronym means Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo, and in English: Revolutionary Armed Forces of Colombia – People’s Army.

disproportional sanctions compared to the war crimes that occurred during the internal armed conflict.

These critiques are not minor, as former president Álvaro Uribe and his party, the CD, were the main campaigners against the 2016 Peace Agreement that ultimately created the JEP. In 2016, the government and the FARC-EP announced that they had reached an agreement that would be submitted to a referendum so the people could decide whether they approved or rejected the terms of the negotiation. The campaign for the NO was mainly conducted by Uribe and the CD and, as the manager of the NO campaign recognised, their goal was that people left their homes to vote out of anger (“apelamos a la indignación, queríamos que la gente saliera a votar berraca —de mal genio—”) (El Espectador 2020a). To do so, they consistently conveyed the emotional mechanism of “paz sin impunidad”. As a result, a slight majority of 50.21% rejected the Peace Agreement and, hence, the JEP.

Once the results were announced, hundreds of citizens gathered to express their support for the Peace process across the country. Every week, hundreds mobilised to pressure the parties and the NO campaign to renegotiate and find an alternative solution. In this context, President Santos declared the renegotiation of the Agreement for some weeks (BBC News Mundo 2016). The JEP was a central point of discussion. Although most of the changes proposed by the negotiators of the NO were adopted, the Parties of the Agreement (the Government and the FARC-EP) refused to accept the imprisonment of the individuals most responsible for human rights violations and the ban on the FARC members from having seats in Congress (El País 2016). Dissatisfied, Uribe Vélez and the CD did not support the approval of the Peace Agreement in Congress and they have been consistently opposing the JEP’s operation. They frequently argue that the Peace Agreement was rejected in the Plebiscite; therefore, the JEP is

illegitimate. Finally, the Government and the FARC-EP signed a new version of the Peace Agreement in November 2016 in the Teatro Colón in Bogotá. This version was approved by a vast majority in Congress, which in 2017 approved the constitutional amendments to put the Peace Agreement into place, among them the creation of the JEP (BBC Mundo 2016).

Although the Peace Agreement was ultimately approved, the CD has become one of the biggest parties in Colombia in recent decades. Just after the signature of the Peace Agreement, CD became the ruling party between 2018 and 2022: one of its members, Iván Duque, came into power as President, and it was the largest party in Congress. Moreover, though his popularity has been decreasing, former President Álvaro Uribe Vélez is still a popular public figure in Colombia. This would suggest that the opposition to the JEP has continued to thrive despite the change in governments, since Santos administration.

Recently, the JEP has been challenged by a new set of actors who previously supported it: the FARC-EP itself. They have claimed that the JEP has been going astray from their original design, it has not granted as many amnesties as it is obliged to by international law, and it has used more of a retributive approach than restorative. They even implied that the judicial insecurity that the former combatants have been facing has forced some of them to reintegrate into illegal armed groups, and that they might ignore the JEP's rulings were the JEP to continue this course of action.

Despite all this contention from the CD and the FARC-EP, it seems that the JEP has substantial legitimacy. As I will thoroughly describe in the following chapters, after many attempts at reform, the JEP structure remains unchanged and in the last year its personnel has increased. In fact, when it was necessary, many sectors of society and individuals mobilised to support the JEP's operation and structure. Moreover, the JEP has taken many contentious

decisions which have been complied by all the interested State institutions; most of the indicted FARC-EP and Armed Forces combatants have acknowledged their responsibility and have cooperated in providing truth and reparation, even in public hearings. Further, some symbols of the JEP have been adopted by social movements. For example, the number 6,402, the provisional estimation of “*falsos positivos*”, or extrajudicial killings of innocents committed by the Armed Forces to be presented as casualties, has been frequently used by MAFAPO (“Madres de Falsos Positivos”) to ask for the prosecution of the “most responsible” for ordering *falsos positivos* operations. Nowadays, even former President Álvaro Uribe Vélez does not deny the existence of “*falsos positivos*” during his government. Previously, he rejected that those crimes happened, but he reconsidered his opinion in light of several hearings of the JEP where former agents of the State acknowledged their responsibility in those criminal charges. Additionally, the UN Security Council, the Prosecutor of the International Criminal Court (ICC), and international organisations, like the European Union, have permanently supported the JEP. Lastly, the JEP is one of the judicial institutions, arguably even of the State itself, with the most favourable image and in which most of the people trust.

This ambivalence prompted the research question of this thesis: What explains the JEP’s legitimacy? Within this question are a set of concepts that require unpacking. I do so in the conceptual framework chapter. What follows is a discussion of the academic and empirical importance of the question.

Relevance of the topic

Studying the JEP's legitimacy is important since the JEP is arguably the biggest domestic attempt to create a jurisdiction and a system solely for adjudicating the crimes committed in an internal armed conflict. Its design was agreed by the Colombian Government and the FARC-EP, and it also one of its kind: it addresses grave human rights violations with a system of incentives that prioritises truth and reparation in exchange for lenient sentences. It favours restorative justice with the idea that this paradigm is more conducive to reconciliation and to a peaceful transition than retributive justice. In short, Karim Khan, the Prosecutor of the ICC has referred to the JEP as "a model for the world" (International Criminal Court 2021). Therefore, policymakers in other contexts where transitional justice should be applied could be inspired by the JEP's example, from its successes and failures. In that regard, this thesis contributes to better understanding when mechanisms like the JEP may face and survive challenges to their legitimacy and when they are likely to face setbacks.

Furthermore, legitimacy is essential to the success of the JEP. The academic literature has consistently shown that trust in courts and support for them ensure their independence and is also related to the citizens' acceptance of the rulings (Botero 2020; J. L. Gibson and Caldeira 2003; Easton 1975). Legitimacy is also necessary to protect the rights of minorities or marginalised communities and hand down rulings that may be unpopular. Thus, if courts do not have a reservoir of trust and support, they may not have incentives to make contentious decisions (Forero-Alba and Rodríguez-Raga 2022, 191).

As Botero points out, legitimacy, or in her words, trust, may be even more important for transitional courts and recently created courts (Botero 2020, 302). Transitional courts usually

operate in a polarised context, under the pressure of victims, political actors, and social organisations, among other actors. Besides that, they have ambitious objectives that usually involve the reconciliation of a society, providing truth of events that happened decades before their operation, and fostering the transition to a peace context. Because of all these reasons, usually transitional justice Courts have to rule on controversial and unpopular issues.

Specifically, in the JEP's case, legitimacy is very important to achieve its objectives. Legally, the JEP's main purposes are to: "satisfy the victims' right to justice, providing truth to the Colombian society, protecting the victims' rights, contributing to achieving a stable and lasting peace, and taking decisions that ensure judicial certainty to those who participated in grave human rights violations" (Congress of the Republic of Colombia 2017). If the JEP lacks legitimacy, its decisions might be disobeyed by the authorities, the victims or those sentenced. What is more, the JEP rulings could foster polarisation instead of enhancing "a stable and lasting peace". Unsatisfied groups might suggest that decisions should be overruled and that cases should be adjudicated again by a different tribunal, as some members of the FARC-EP proposed, in light of the JEP's failures and the negotiations of the Petro Government with organised armed groups (El Espectador 2024b).

An illegitimate JEP could not then provide legal certainty to those involved in grave human rights violations, and the victims' rights could be violated: suspected perpetrators would not cooperate with the JEP and much of the truth and reparations victims need could not be obtained, let alone the guarantees of non-recurrence in case the *comparecientes* commit crimes again. These scenarios are partially hypothetical because they have not completely occurred yet, but, as I have pointed out, some main actors like the former FARC-EP have started to express that the JEP has gone astray from what they signed and that they may disobey its rulings. This

reinforces the importance of studying the JEP's legitimacy now. Highlighting the tensions of the legitimacy and identifying the factors that affect it might be of use to judicial operators in the JEP and policymakers to adopt changes to improve legitimacy. Given its independence and autonomy, the JEP can organize its operation within the legal framework to improve legitimacy.

In terms of academic relevance, probing the JEP's legitimacy is important because studying the mass public attitudes regarding transitional justice judicial systems is an understudied area (Botero 2020, 302). Moreover, the creation of a new judicial system is a rare event, and there are few studies covering those initial years. This MPhil thesis endeavours to contribute to improve the understanding of these areas. To do so, I will draw on previous literature about the legitimacy of: 1) national courts (J. Gibson, Caldeira, and Baird 1998; J. L. Gibson and Caldeira 2003; Forero-Alba and Rodríguez-Raga 2022); 2) international courts (Allioui 2020; Voeten 2013; Shany 2014); 3) international transitional justice institutions (Kutnjak Ivković and Hagan 2017); and 4) the State in general (Beetham 2013; Coicaud 2002; Weber 2019), including the Latin American States.

Furthermore, the legitimacy of the JEP has been previously studied, especially in the first years of the JEP and usually addressing both the legal and sociological perspective (Maria del Pilar Bahamón and Harvey Danilo Suárez 2020; Gabriel Ignacio Gómez 2022; Iván Orozco Abad 2020; Valencia Valencia and Francés-Gómez 2018; Botero 2020; Mayans-Hermida, Holá, and Bijleveld 2023). However, this thesis is relevant because it is one of the few that focuses solely on studying systematically *sociological* legitimacy, a concept I develop in Chapter 3. Moreover, it is the first piece of literature to rely on fieldwork data, especially on a large number of interviews to study the JEP's legitimacy. Finally, apart from the seminal work by Botero

(2020), no other piece of literature has drawn on the literature abovementioned to study the JEP's case.

1.1 Thesis Overview

This thesis explains the JEP's sociological legitimacy. After describing the puzzle of the JEP's legitimacy, and the importance of studying this topic in Chapter 1, Chapter 2 defines the conceptual framework. It establishes the concepts I use to explain and gauge the JEP's sociological legitimacy, the factors that the literature has identified that erode or strengthen the legitimacy of a judicial institution, and the signs that may alert the presence or absence of such factors. Finally, it explains how I measure the JEP's sociological legitimacy by gauging the signs of the factors on a scale.

Chapter 3 explains the methods I use in this thesis. In Chapter 4, I present a relevant historical background to the JEP in order to better understand the development of such an institution. Chapter 5 carries out the analysis. It adapts the conceptual framework to the case of the JEP, thereby assessing its legitimacy. Finally, Chapter 6 provides some reflections on the findings and their implications for the future of the JEP and similar mechanisms in other contexts of massive human rights violations.

2. Data and methods

In essence, this thesis is a case study. It uses the case of the JEP to test what the literature has said about the construction of legitimacy in judicial institutions. I want to probe to what extent existing theories are useful to explain the JEP's sociological legitimacy. When they fail to explain a particular aspect, I will posit alternative explanations. By delving into how much the theory is applicable to the JEP, I endeavour to provide ideas about the construction of sociological legitimacy in systems of transitional justice.

2.1 Method: process-tracing

Being a case study, I chose to use process tracing as the method of analysis because it is the most suitable. It allows for: 1) understanding the middle steps in the construction of the outcome (sociological legitimacy); 2) using a wide variety of qualitative methods, such as interviews, social media analysis, and participant observation; and 3) testing theories about sociological legitimacy.

I adopt Bennet and Checkel's definition of process-tracing as "the analysis of evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or testing hypotheses about causal mechanisms that might causally explain the case" (Bennett and Checkel 2014, 7). This definition has two concepts which should be clarified: "case" and "within-case evidence". According to these scholars, a case is "an instance of a class of events" (Bennett and George 2005, 17). Such classes of events are delimited by political actors and social scientists. They define political categories and study them. In other words, cases are not given; they stem from the choice of using certain concepts. On this occasion, the case I

selected is the construction of sociological legitimacy at the JEP. As for the information I will use, or “within-case evidence”, it is the “evidence from within the temporal, spatial, or topical domain defined as a case” (Bennett and Checkel 2014, 8). This entails framing the case even further. Although the space and topical domain are clear (the sociological legitimacy of the Special Jurisdiction for Peace of Colombia), the temporal sphere must be clarified. I will research the construction of the sociological legitimacy of the JEP between 2016 — when the Peace Agreement with the FARC began to be discussed on the eve of the referendum — and May 2024, the most recent point of time to study.

In sum, this thesis will analyse interviews, polls, news and hearings, among other data, with the aim of testing the hypothesis about the causal mechanisms that explain the legitimacy of the JEP. The hypothesis is that the JEP responds to the same processes of construction of legitimacy of any judicial institution.

2.2 Data

I employ triangulation of sources to generate the data necessary to construct the JEP’s sociological legitimacy. Specifically, I will use: 1) the 43 interviews I conducted during fieldwork; 2) the participant observation of a hearing of acknowledgement of responsibility at Yopal between 18 and 20 September 2023; 3) relevant academic literature on the JEP; 4) social media; and 5) news and several opinion pieces.

Regarding the fieldwork I conducted, I tried to prioritize in-person meetings to foster a trustworthy environment that may encourage individuals to speak as freely as they wished. This is particularly important in Colombia, a country where people might refrain from talking about

issues that might be controversial, even if it is for educational purposes. Being vocal might entail some risks. Another reason I had to encourage in-person meetings is that they provide more opportunities to observe non-verbal language and, thus, have more data.

The period of fieldwork was between June and September 2023, when I conducted 43 semi-structured interviews in total. In most of them, the interviewee was in Bogotá (32), although 4 were in Medellín, 2 were in Oxford, one was in Pereira (Colombia), one was in Switzerland and one was in Virginia (United States). Most of the interviewees were in Bogotá because I sought to do elite interviews, namely, accessing individuals who might influence the JEP's operation or its perception by public opinion. In this point I followed one of the definitions Harvey described for individuals belonging to the elite as "those who hold important social networks, social capital and strategic positions within social structures because they are better able to exert influence" (Harvey 2011, 433) And, in a country as centralised as Colombia, most of the key actors in that regard live in the capital.

Nonetheless, because Colombia is a very diverse country in terms of territory, culture, and development, I sought to maintain a territorial perspective. Consequently, within the limits of funding and time, I attempted to include regional perspectives. I observed a hearing in Yopal, a city with more than 168,000 inhabitants in the northeastern area of Colombia close to the border with Venezuela, and I contacted victims and attorneys in Medellín and Putumayo. I also attempted to arrange the participation of a group of victims of sexual violence who live in Putumayo, an area in the Southwestern part of Colombia that is deeply affected by drug trafficking, paramilitaries, and lack of State presence. Despite having the option of participating anonymously and virtually, they refused to do so, due to the associated risks. This situation shows that insecurity is still a large concern in some areas of the country.

During the process of selecting and interviewing the participants, I followed the approved CUREC application. I selected some of the candidates using previous social networking I had built personally, either working at the JEP (2018-2020, 2021-2022) or as a Research Officer at the University of Essex (2020-2021). After interviewing an individual, I always asked whether they thought I could interview somebody else, and thus I recruited more participants through snowball sampling.

At the first moment of contact, I talked the potential participants through the research project. I underlined that the research project was for academic purposes only, participation was voluntary and non-paid, and they might opt out of the project at any time. I also sent them a consent form and an information sheet about the research project and the terms and conditions of participation. Before starting the interview, I made sure that participants signed the consent form. I also asked for their consent to record the interview. I did so when they agreed. These recordings are stored in my Nexus 365 Cloud account.

Regarding the selection of the interviewees, I opted for selecting those who represented different key sectors of society and diverse ideologies, seeking a comprehensive understanding of the JEP's sociological legitimacy. Thus, out of the 43 interviewees: a) 12 individuals worked in the JEP either as directors of administrative offices or chief justices, and some had been Presidents of the JEP; b) 9 had actively participated in the JEP's proceedings either as victims or victims' attorneys; c) 7 were intellectuals that had studied and written extensively about the JEP, transitional justice, or the legitimacy of institutions in Colombia; d) 6 had openly criticised, defended or supported the JEP, including the former President Iván Duque and the former top-commander of the FARC-EP, Rodrigo Londoño Echeverri; e) 6 had followed the JEP as news journalists or cartoonists; f) 2 worked as key officers for the government, and g) one was an

essential international stakeholder. In other words, I covered different sectors of society related to the JEP: victims, intellectuals, politicians, JEP officials, international actors, and workers of the media industry. I also considered a gender perspective. Although less represented, 15 interviewees were women, whereas 28 were male.

As I was conducting fieldwork, the question of when to stop began to rise, similarly to what Bennett and Checkel have posited. According to them, a researcher should stop “when repetition occurs”(Bennett and Checkel 2014, 28); this means, when following one stream of evidence “becomes so repetitive that gathering more of that same kind of evidence has a low probability of revising their estimate of the likely accuracy of alternative explanations” (Bennett and Checkel 2014, 28). In other words, a researcher would have to stop looking for evidence when it is repetitive, and by doing so the chances of getting alternative explanations of the studied phenomenon are low. This occurred after I interviewed all the abovementioned individuals.

Apart from conducting interviews, I included a participant observation of a hearing that was held in Yopal from 18 to 20 September 2023. In this event, 21 members of the Armed Forces (among them one general), 1 agent of the State and 2 civilians acknowledged their responsibility for the killing and disappearance of 303 individuals who were presented as FARC casualties. I understood participant observation as “the process enabling researchers to learn about the activities of the people under study in the natural setting through observing and participating in those activities” (Kawulich 2005). Therefore, I paid close attention to the interactions between victims, perpetrators, and judges. I also registered the setting of the hearings — the objects the victims and the perpetrators used as symbols (candles, banners, restored vases, among others)

and the timing of the interventions. I was attentive to understanding how these elements contributed to building or eroding the JEP's legitimacy.

I also conducted media studies. I followed news related to the JEP in *El Espectador*, *La Silla Vacía*, and *Semana*. The first two are news outlets usually in favour of the Peace Agreement and the latter is arguably the most critical. To delve into the JEP critiques and veto actors, I systematically analysed the content related to the JEP on *Semana's* website. I reviewed 5,720 results from March 2018 to April 2024, searching for "JEP" using the *Semana* website's search engine.

2.3 Limitations

The data has two relevant limitations: the sample of the interviews is limited and not representative; and most of the data are qualitative. The quantitative data are opinion polls that assess favourable opinions of the JEP and trust in the JEP, proxies of the JEP's legitimacy (Invamer 2024; Rodríguez-Raga 2023). Given the time and funding limitations, conducting surveys on the topic was impossible.

In terms of the interviews, perpetrators, Afro-Colombians, indigenous people, members of the LGBT+ community, and inhabitants of regions outside of Bogotá are underrepresented. The main reason is the lack of time and economic resources. Further research should also explore the opinion of all these individuals: indigenous and afro-descendant communities were so deeply affected by the internal armed conflict that the Peace Agreement established that the JEP should have a gender and an ethnic approach. Following that mandate, the JEP opened the macro-cases 2, 4, 5, and 9. As I previously suggested, exploring the different perspectives across regions and

between urban and rural contexts is also essential to understanding the JEP's legitimacy in such a diverse country as Colombia.

Although those communities might not be represented in the interviews, I was mindful of the importance of considering their visions and opinions: when possible, I questioned the interviewees about the different perspectives individuals from the underrepresented communities might have. I also sought to find narratives of the underrepresented groups in the media.

As I stated before, the other limitation of the data is that most of it is qualitative rather than quantitative. This poses a challenge when it comes to trying to make generalizable assertions out of the analysis. How can I ascertain that the perceptions of the sample of people I interviewed represent the perceptions of a country of more than 50 million people? Certainly, it is not possible to make that assumption. However, the analysis of this thesis remains valid and valuable because the sources are substantial and conclusions may provide indications of the JEP's legitimacy and the relationship between Colombian society (or many of its sectors) and the JEP. Further research could probe those indications by conducting polls and quantitative analysis, as Gibson and Caldeira did for the case of the South African Constitutional Court (2003) or the US and European High Courts (1998).

To summarize, even though the sample of interviews is limited, I tried to offset such a limitation by asking interviewees about unrepresented groups and by looking for information on those constituencies' beliefs in the media. I did my best to use the available quantitative data. Further research might probe this thesis' conclusions by studying the perceptions of underrepresented communities and by analysing the available polls related to the JEP's legitimacy.

2.4 Ethics and ethical dilemmas

As I was preparing and conducting fieldwork, I asked myself to what extent I should disclose my previous working relationship with the JEP. I worked at the JEP between November 2018 and November 2020 and between August 2021 and August 2022. In a political context as sensitive as Colombia's, I wondered whether opponents to the JEP might mistrust me, preventing them from replying honestly, openly, and directly. After discussing that issue with my supervisor, I decided to disclose my previous affiliation to the JEP as a way to enhance trust and reaffirm that I understood the complexity of the JEP. Being empathetic and having deep knowledge of the JEP, I was more suited to understand their critiques. In general, I found that I could build trusting connections with the interviewees, regardless of my professional background.

Another issue that I tried to mitigate was security risks for myself and the interviewees. Following the risk assessment form, I met with all the interviewees in public places — coffee shops and restaurants — and when they were in other cities or it was difficult to meet in person, we talked via a meeting on Microsoft Teams that I organised from my University account to prevent any possible risk. I also stressed to the participants that they could talk anonymously.

3. Conceptual framework

Assessing and explaining the legitimacy of the JEP is definitively a complex task. This chapter will explain all the necessary concepts to execute this task. Drawing on the existing literature, I define the legitimacy of a transitional justice tribunal and select the factors that strengthen or erode such legitimacy. I then operationalise such factors by proposing some measures that would indicate the extent those factors work in the case of the JEP. Finally, I gauge those measures on a scale that describes the degree of the JEP's legitimacy in Colombian society.

3.1 The concept of legitimacy in the JEP's context

Etymologically, the word “legitimacy” comes from *lex* (law) and *timus* (belonging to), so it originally means “belonging to the law” (Pianigiani 1907). This primary definition shows that the term “legitimacy” is closely related to the law. But I seek to explore the term “legitimacy” beyond a legal aspect, and I use a sociological definition to verify whether the society acknowledges the legal authority of the JEP. Thus, I will define legitimacy as “the right a judicial institution has to make judicial decisions, according to some social perceptions and beliefs”.

This definition draws on Cohen et al.'s definition (2018, 4). They claimed that a legitimate power is “one that has ‘the right to rule’”. Thus, a legitimate court has a right to rule not in terms of governing a territory or a society, but in the sense that it has the social authority to hand down decisions, opinions, and judgements “which those normatively addressed must obey, or at least consider with due care” (Cohen et al. 2018, 4).

One implication of that definition is that individuals acknowledge social authority to the judicial institution itself, aside from valuing the Tribunal's decisions. Although this will be better

explained below, it constitutes the separation between diffuse support (a social group's loyalty to the judicial institution) and specific support (how satisfied a social group is regarding particular decisions).

Another implication is that to understand the legitimacy of a judicial institution, one must analyse whether the beliefs and values of a social group are consistent with its perception of the institution. Thus, the image of the institution, the symbols it uses (robes, language, setting of the press conferences, colours) , the framing of its decisions (Forero-Alba and Rodríguez-Raga 2022), and the exposure of the social group to these symbols are essential to understand its legitimacy (J. Gibson, Caldeira, and Baird 1998).

In particular, when it comes to the JEP's legitimacy, the values in question are primarily justice and peace. For a social group, the value of justice might be that the JEP should properly adjudicate and sanction the crimes committed during the internal armed conflict, and it should also guarantee the victims' rights to truth, reparation and non-repetition. However, the tension that compromises legitimacy is consolidated when opposing beliefs clash. On one hand, a social group might believe that the only way to have justice is by imprisoning someone responsible for their actions (Gomez-Suarez 2016). On the other hand, the JEP symbolises a belief that prioritises restorative justice by incentivising the dialogue between perpetrators and victims to find common ground in terms of truth and reparations. Furthermore, these actions aim to reconstruct social relationships and restore the victim's dignity, leaving imprisonment in a second place.

In terms of peace, there are also contrasting beliefs: on one side, a social group may think that peace should be attained when the good defeats the bad, in other words, when the State, defending the People, defeats the terrorists of the FARC. On the other hand, an alternative vision

may be that there are no winners. The Colombian Internal Armed Conflict is complex, it has many actors and, within that context, after several years of conversations, the Government and the FARC-EP signed a Peace Agreement to end their confrontation (Gomez-Suarez 2016). Furthermore, the Peace Agreement aimed to stop the direct armed confrontation, achieving negative peace — or the absence of personal violence — and to prevent the causes of the conflict — or fostering positive peace, overcoming structural violence, as Galtung posited (Galtung 1969, 51, 52). The first belief might be represented in Álvaro Uribe's critiques and the latter in the JEP.

This brief discussion on the different beliefs on peace and justice partially describes why I opted for a sociological definition of legitimacy, rather than legal. Most of the initial and consistent critiques of the JEP are moral. The campaign of the NO in the plebiscite emphasized that the JEP would mean impunity because the top commanders of the FARC-EP would not pay for their crimes and would end up serving as congressmen (Gomez-Suarez 2016). This can be summarised in the following photo, where the banner of the campaigners against the 2016 Peace Agreement says “No Impunity / No FARC in Congress”.

Image 1. Campaigners against the Peace Agreement in the context of the 2016 Plebiscite



Credit: EFE - Mauricio Dueñas Castañeda in El Espectador 2020b

In the JEP's early years and recently, many public figures have criticised the JEP, arguing incompatibilities with their conceptions of justice, peace and impartiality, rather than disagreeing on legal grounds. For instance, former Presidents Álvaro Uribe Vélez and Iván Duque, Paloma Valencia, a prestigious congresswoman of their party, and the journalist Maria Isabel Rueda argued that the JEP was designed to guarantee impunity to the FARC.

Another reason to choose sociological legitimacy over legal legitimacy to understand the JEP's authority is that the JEP already has legal legitimacy, but its operation is still contested. The JEP has legal legitimacy because a set of laws recognises its existence, regulates its procedures, and was approved by more demanding procedures in Congress, which means they

had reinforced political support³. Furthermore, the Constitutional Court, which reviews the constitutionality of laws and amendments, reviewed the creation of the JEP and the Statutory Law and ruled that they were constitutional, although it made some adjustments. For instance, the Constitutional Court ruled that civilians, be they public servants or not, should not be forced to be investigated by the JEP, but rather by their natural judge: the ordinary jurisdiction. Thus, a robust set of laws reviewed by the Constitutional Court regulates the JEP, which has been operating within that legal framework. The JEP's decisions have not been legally struck down by other legal institutions. In other words, undoubtedly, the JEP has legal legitimacy.

Now that legitimacy has been defined and contextualized to the JEP's case, it is essential to operationalise this definition and explain how to measure legitimacy for the JEP.

3.2 Operationalisation of the concept of legitimacy

Every judicial institution has a legitimacy capital that varies over time (Cohen et al. 2018, 5; Lupu 2013, 443). According to Cohen et al. (2018, 5), legitimacy can also be internal or external. It might address the opinions of the insiders — those who work within the institutional studied regime, like the clerks of the JEP, the victims' attorneys that participate in its operation, or the victims that are accredited — or it might concern the insights of the outsiders, of people beyond the institution. This study combines both views: it uses sources from insiders and outsiders to describe different perceptions of the JEP.

³ In total, there is one amendment to the Constitution and two Laws regulating the JEP: the Legislative Act 01 of 2017 (a constitutional amendment approved by Congress that creates the JEP); the Statutory Law 1957 of 2019 (that rules the JEP operation); and the Law of Procedures 1922 of 2019. The first two types of laws require more demanding processes to get approved. Thus, the success in passing those bills means that they achieved reinforced political approval in Congress.

Apart from the internal and external perspective, this MPhil thesis probes into the factors that might affect the JEP's legitimacy capital over time. I collected them after reviewing relevant literature about the legitimacy of judicial institutions, especially Gibson and Caldeira (1998; 2003, 9), Easton (1975), Shany (2014) and Botero (2020). In total, I identified five factors, and I operationalised them to study how they strengthened or eroded the JEP's legitimacy. The five factors are: diffuse support, specific support, obedience, salience, and the age of the institution. In the following sections, I will explain every factor. Then, in a table, I will propose signs that may show how a judicial institution's legitimacy is strengthening or eroding.

3.2.1 Diffuse and specific support

According to Botero (2020), who draws on Gibson and Caldeira (1998; 2003, 9) and Easton's work (1975), diffuse support is strongly associated with loyalty (even a loyal opposition), whereas specific support means the individuals' satisfaction with particular judicial decisions. When individuals are loyal to a judicial institution, they defend it, even when it makes decisions they disagree with. In other words, diffuse support and specific support are independent variables from each other. Over time, and by pleasing diverse constituencies, judicial institutions build a goodwill reservoir. This allows them to offset any negative reactions in the future. Thus, diffuse support can be measured in the willingness of individuals to accept contentious decisions, the reluctance to support fundamental changes to the institution, and signs of loyalty to the institution.

As for specific support, it can depend on the extent to which the decision corresponds to the individual's beliefs and values, as was argued before. Yet, there is another aspect that is

equally essential: framing. Framing is “the process by which a communication source [...] defines and constructs a political issue or public controversy” (Nelson, Clawson, and Oxley 1997, 567). This is essentially what judges do. By deciding on a public controversy, regardless of the scale, and by communicating the construction they made, they frame an issue. Consistent academic literature has pointed out that individuals are keener to support judicial decisions that are based on “scientific and legal” reasons, rather than on political reasons (Forero-Alba and Rodríguez-Raga 2022; Voeten 2013; J. Gibson, Caldeira, and Baird 1998, 345). In fact, judges can frame unpopular decisions so they seem as if they are the outcome of a legal obligation or system, rather than the result of a political decision. As Gibson et al. have stated: “Courts garner legitimacy from pleasing decisions but lose little or nothing from displeasing decisions, since they can transfer responsibility for unpopular decisions to the ‘law’” (J. Gibson, Caldeira, and Baird 1998, 354). Specifically, Forero-Alba and Rodríguez-Raga have stressed that the Colombian Constitutional Court translates specific support into diffuse support by successfully framing its rulings to convey a sense of neutrality, reasoning, and impartiality. In that framing process, scientific arguments are more effective than any other arguments, including normative ones (2022, 190).

In terms of operationalisation, specific support can be observed in salient cases of support to the JEP’s decisions, in the number of victims participating in the macro-cases (cases where thousands of facts are investigated to identify patterns of victimisation and the “most responsible” for executing them), the type of framing used in the decisions and their communication, and the perceived satisfaction in different social groups. By carrying out the interviews during fieldwork, I was able to identify that the satisfaction of different social groups

might also be affected by whether the JEP equally investigates the FARC-EP and the Armed Forces, as well as the speed in handing down decisions.

3.2.2 Salience

The salience of the judicial institution is the extent to which people understand how the institution operates, what its symbols are (robes, hearings, seals), and what its functions are. In terms of legitimacy, it is important in that “to know courts is to love them, because to know them is to be exposed to a series of legitimizing messages focused on the symbols of justice, judicial objectivity, and impartiality” (J. Gibson, Caldeira, and Baird 1998, 345). Thus, people who know how high courts operate are more exposed to the mythology that Courts decide using legal or scientific reasons, instead of political motivations (J. Gibson, Caldeira, and Baird 1998, 345).

Furthermore, the age of the Court is not necessarily related to the salience of it. Salience is more present in Courts that make decisions with public impact, rather than on arcane legal issues. As a result, the number of cases of mass attention, the exposure of legitimizing symbols, and the opportunities to reach audiences, such as public hearings, are measures of the salience of a Court.

3.2.3 Obedience

The obedience of decisions is an essential matter to the legitimacy of a judicial institution. Weber called this rulership — “the chance that specific (or all) commands will be met with obedience on the part of a specifiable group of persons” (2019, 134). If individuals and institutions decide not to enforce and comply with the rulings, the legitimacy of a Court is at

stake because, as Gibson et al. have pointed out, it does not have the power of the purse — it does not decide on its own budget — or the sword — the compliance of its decisions hinges on the government (1998, 343). In consequence, Courts rely on the goodwill of those branches and of society in general for the enforcement of their rulings and support.

To operationalise this element, I identify remarkable cases where the rulings of the JEP have not been fulfilled. I checked “remarkable cases” because they are the only ones identifiable through the media. Others are nearly impossible to trace with the available means to do this research.

3.2.4 Age

The age of a Tribunal can be relevant to the legitimacy of a judicial institution. Gibson et al. posited that diffuse support is achieved through the consistent results of a Court, namely, “the slow accretion of positive messages about courts and law” (J. Gibson, Caldeira, and Baird 1998, 345). Thus, according to them, older High courts tend to have more legitimacy than younger courts.

This is an important factor to consider because the JEP is one of its kind: it is a new jurisdiction, created from scratch and delivering transitional justice, with more favourable opinions than older judicial institutions. For example, according to the April 2024 Invamer poll (a poll on public opinion held consistently since 1994 and based on the Gallup Poll), the Supreme Court, the oldest of the Colombian High Courts, created in 1886, had the favourable opinion of 31% of the respondents, while 39% of the respondents had positive opinions on the JEP, which started its operation only in 2018.

3.2.5 Measurement of the legitimacy factors

Now that all five factors are explained, I will organise their signs in a table for the sake of clarity. To build the table I followed Pion-Berlin's example (1994). In 1994, he studied the variables that had made Argentina hold trials against human rights offenders, unlike Chile and Uruguay. He summarised his data in a table and gauged their importance to produce the outcome. Similarly, the following table summarizes the factors with their respective signs of strengthening and eroding legitimacy:

Table 1. Factors that strengthen or erode the JEP's legitimacy

Factors	Signs of legitimacy strengthening	Signs of legitimacy erosion	Rank of importance
Diffuse support	<ul style="list-style-type: none"> • Evidence of rejection to make fundamental changes to the JEP • Signs that the international community supports the JEP's operation and that it does not accept any fundamental change • Acceptance of contentious decisions • Trust in the JEP 	<ul style="list-style-type: none"> • Consensus to change the JEP among political actors, scholars, and experts • Reaction to changes in the budget allocated to the JEP • Resistance to contentious decisions • Mistrust in the JEP 	High importance
Specific support	<ul style="list-style-type: none"> • Framing of the JEP's decisions. • Number of victims participating in the macro-cases • Satisfaction across social groups • Speed in handing down decisions • Equity in investigations between Armed Forces and FARC 	<ul style="list-style-type: none"> • Victims dropping out of the JEP • Strong consistent critiques of the JEP • Salient cases of opposition to the JEP because of its decisions 	High importance
Obedience/ Rulership	<ul style="list-style-type: none"> • Obedience of its decisions • Reactions to the hearings of the JEP 	<ul style="list-style-type: none"> • Reluctance to fulfil the decisions 	High importance
Salience	<ul style="list-style-type: none"> • Understanding of the JEP, especially of restorative justice • Number of cases of mass attention • Exposure to legitimizing symbols 	<ul style="list-style-type: none"> • Number of people who do not understand the JEP and the purpose and means of restorative justice • Signs that individuals do not know of the JEP's existence 	High importance
Age of the institution	<ul style="list-style-type: none"> • Age of the JEP • Signs of increasing and decreasing support over time 	<ul style="list-style-type: none"> • Eroded authority because of the institution's age 	Medium - Low importance

These signs are useful to gauge whether the JEP's legitimacy is strengthening or eroding over time. As it was stated before, legitimacy capital is dynamic: it changes over time with every action of the system's actors — the JEP, victims, *comparecientes*⁴, Government. Those actions might trigger the signs of strength or erosion of the JEP's legitimacy, promoting a change in the JEP's legitimacy. Those who were previous supporters might become critics. This has recently occurred with the last living members of the FARC Secretariat, as I show below.

Moreover, these signs can also change not only over time but across social groups. As a result, different social groups may have different understandings of the JEP's legitimacy. However, this table and the following scale are of use because they provide a practical tool that effectively estimates the JEP's legitimacy and could weigh the legitimacy of any other judicial institution of transitional justice in other countries.

Yet, these signs by themselves are not enough to gauge the legitimacy of the JEP. It is necessary to measure and weigh them. To begin with, the JEP's legitimacy should not be gauged as a binary value — that the JEP is legitimate or the JEP is not legitimate. Rather, as the result of several factors, it should be estimated in degrees, considering that the factors have different weights according to their importance. The following scale is a tool that fulfils that goal. It integrates the different legitimacy factors and measures the extent to which they are present:

⁴ There is not a suitable concept in English for the term “compareciente”, which literally could mean “that who appears before the Court”. Throughout this thesis “compareciente” would refer to any defendant whose case is adjudicated by the JEP due to mandatory jurisdiction (members of the FARC-EP and Armed Forces) or because they filed the case voluntarily (a civilian, or a non-armed State agent).

Table 2. Scale of the JEP's sociological legitimacy

		Degree		
Item	Importance	1 - Low	2 - Medium	3 - High
Diffuse support	High	Individuals are willing to make fundamental changes to the JEP. Individuals do not accept contentious decisions. Individuals mistrust the JEP.	Most individuals are willing to make fundamental changes to the JEP. They accept contentious decisions. Individuals somewhat trust the JEP.	Most individuals are unwilling to make fundamental changes to the JEP. They accept contentious decisions. Individuals trust the JEP.
Specific support	High	Most individuals are dissatisfied with the JEP's decisions. Most individuals refuse restorative justice They have strong critiques to the decisions.	Most individuals are somewhat satisfied with the JEP's decisions. Most individuals somehow accept restorative justice Some have major critiques.	Most individuals are satisfied with the decisions. Most individuals accept restorative justice Some have minor critiques.
Obedience	High	Authorities and individuals do not obey any decision.	Authorities and individuals obey most decisions. Few cases of disobedience.	Authorities and individuals obey all decisions.
Salience	High	Most individuals have not heard of the JEP. The majority does not know how the JEP works (restorative justice, selective justice, systems of benefits, etc.)	Most individuals have heard of the JEP. They somewhat know how the JEP works (restorative justice, selective justice, systems of benefits, etc.)	Most individuals have heard of the JEP. They know how it works (restorative justice, selective justice, systems of benefits, etc.).
Age	Medium-Low	The age of the JEP at the moment of measurement		

This scale draws on Payne et al.'s accountability scale for cases of human rights violations committed by corporations (2020). They built a progressive scale to measure the extent of accountability of the cases of alleged corporate responsibility they had collected on a database. They ranged them in five categories: from no accountability (when State agencies and international governmental organizations had started to collect evidence) to very high accountability (when processes had final convictions or civil judgements). A similar procedure was followed by Shenk (2022). She proposed five stages of progress towards the implementation of *consultas populares*, a democratic mechanism whereby communities across Colombia used to vote to decide about extractivist projects in their territories. In the same vein, I propose a scale to measure the extent of the JEP's legitimacy by assessing the presence of the factors of diffuse support, specific support, obedience, salience, and age.

4. Historical background

In this chapter, I will briefly describe the historical context of the JEP for the issues that might be relevant for the JEP's sociological legitimacy. I will briefly explain the JEP's origins, its design and the selection of the chief justices and their staff.

4.1 The JEP's creation in context

Throughout many decades, unaccountable acts of violence have struck Colombia — massacres, acts of sexual violence, kidnappings, torture, and enforced disappearance, among others. Its effects have permeated collective consciousness and have entailed “a collective trauma that accumulates layers of experience, pain and resistance” (Truth Commission of Colombia 2022, 32). This trauma has been passing on from generation to generation in the form memories and silence, and ends up consolidating “the identity of a country that has tried many times to build a peace that has resulted in fragmented processes and new cycles of violence” (Truth Commission of Colombia 2022, 32). In other words, the internal armed conflict has remarkably impacted the identity of Colombians and the lives of millions.

Recently, it has been estimated that 9.7 million people have been victims in the context of the internal armed conflict (Unidad para la atención y reparación de las víctimas 2023). That means that roughly 1 out of 5 Colombians have suffered from victimisation and, certainly, the armed conflict between the Colombian State and the FARC-EP (1964-2016) deeply contributed to that process. The data of the crimes is revealing, as displayed in the table below:

Table 3. Selection of crimes committed by the FARC-EP and State Agents

	Total	Percentage attributed to the FARC-EP	Percentage attributed to the State Agents
Homicides	450,000	21 % (96,952)	12% (56,094)
Enforced disappearance	121,768	24% (29,410)	8% (9,359)
Kidnappings	50,770	40% (20,223)	X

Data: Truth Commission of Colombia, 2022

Although the data in the table only account for some crimes, it is enough to understand the titanic challenge the Colombian State has faced to ensure the accountability of those crimes. As the armed conflict was happening, the ordinary courts investigated, adjudicated, and punished many of these crimes on a case-by-case basis. Yet, their effectiveness was heavily criticised, and the rates of impunity were significantly high (Grupo de Memoria Histórica 2013, 197–99). In June 2004, the Office of the ICC Prosecutor decided to open preliminary examinations for crimes against humanity and war crimes in the context of the armed conflict between guerrillas, paramilitaries, and government forces. While acknowledging that Colombian authorities had carried out proceedings against different actors of the conflict, including individuals who might be considered most responsible for the crimes, the ICC Prosecutor observed that “there remained a number of gaps or shortfalls which indicated insufficient or incomplete activity in relation to certain categories of persons and certain categories of crimes” (International Criminal Court 2024).

In the context of the armed conflict with the FARC-EP, the JEP was conceived to respond to the two abovementioned situations: helping the Colombian society transition from an internal armed conflict scenario to peace, and ensuring the accountability of war crimes and crimes against humanity, as a proof that the Colombian State was honouring the international obligations it had acquired by signing the Statue of Rome that created the International Criminal Court. In consequence, the JEP's design corresponds to those efforts, and includes some of the opinions that representatives of the victims expressed during the peace negotiations in Cuba in 2015.

4.2 Main elements of the JEP's operation: macro-cases, restorative justice, incentives, and amnesties

The JEP is a form of selective justice in that it investigates patterns of criminalisation, identifying, trying, and sanctioning only those most responsible⁵ for war crimes, crimes against humanity, and other grave human rights violations. To strengthen its operation, the JEP prioritises restorative justice over retributive justice providing a system of incentives. The more a *compareciente* cooperates with the JEP by providing truth, acknowledging responsibility (if necessary), offering reparation and guaranteeing the non-recurrence of the crimes, the more lenient his or her sanction will be.

For example, in the most cooperative scenario, those who are “most responsible” for the patterns of victimisation, such as kidnappings or “*falsos positivos*”, might have a sanction between

⁵ Although there has been debate around definition of the concept of “most responsible” both in the academia and in international courts (Michalowski, Cruz Rodríguez, and Martínez Carrillo 2020, 12–14), for the purposes of this document, and paraphrasing Michalowski et al. 2020, the “most responsible” will be defined as the individual who had an essential role in the execution of the crimes, either as leader in a criminal structure or as a determinant participant in the design or formulation of a plan or policy of organized violence against civilian population.

5 to 8 years of restriction of liberty and the imposition of restorative actions agreed with the victims, such as constructing roads or schools in the affected communities. In the least cooperative scenario, the JEP might sentence a person to between 15 to 20 years of imprisonment.

Furthermore, as selective justice, the JEP does not seek to adjudicate every crime on a case-by-case basis. Rather, it has opened 11 macro-cases to focus on representative cases, patterns of victimisation to figure out plans or policies of organised violence. In them, the competent judicial authority of the JEP, the Panel of Acknowledgement of Truth Responsibility (PATR), consolidates patterns of victimisation and identifies those who are most responsible for them after cross-checking sources coming from various actors. The origin of those sources is summarised in the acronym in Spanish VACE (victims, academia, *comparecientes*, and *Estado* — State). The PATR communicates its findings by indicting those most responsible, who, in turn, must decide whether they accept the terms of the indictment.

When the individuals are indicted as “most responsible”, they can acknowledge their responsibility or not. If they acknowledge responsibility, the PATR hears the victims’ observations and decides whether the terms of the acknowledgement satisfy the victims’ rights. If they find that the criteria are met, they hold a restorative hearing between victims and *comparecientes*. After many sessions of psychosocial preparation for every group and between groups, in this Hearing for the Acknowledgement of Responsibility and Truth (HART), *comparecientes* confirm their responsibility for the crimes before the victims. In turn, the victims have the chance of facing the perpetrators and reacting to their statements.

After the hearing, the PATR mediates between both parties so they agree on some of the restorative measures. Then the PATR hands down “the resolution of conclusions”, where it communicates its findings, the extent to which *comparecientes* acknowledged the truth and the

proposed sanctions. Once this procedure is finished, the case is transferred to a superior Court, the Section of Acknowledgement of Responsibility and Truth. It verifies that the conditions are met, hears the victims and sets the sanctions to the most responsible. These sanctions, called *sanción propia*, consist of from 5 to 8 years of “restriction of liberty” —the JEP still has not defined the conditions of such a restriction, but it cannot entail imprisonment—, and the execution of restorative actions.

For those who do not acknowledge their responsibility, the proceedings are different and are similar to a case in an ordinary court. After the *compareciente*'s refusal to accept the indictment, the PATR sends the file to the Unit of Investigation and Accusation (UIA), the equivalent of the Attorney General's Office, which continues the investigation and, in case it finds grounds, accuses the individual before a superior instance of the PATR: the Section of Lack of Acknowledgement of Responsibility and Truth. Then, a trial begins. It is similar to those held in the ordinary jurisdiction. If the person is found guilty, he or she can have a sentence of 15-20 years in prison. If the person acknowledges his or her culpability before the sentence, the sentence is from 5 to 8 years of prison.

4.3 Proceedings for those who are not most responsible for patterns of victimisation

The proceeding for those who are not most responsible for patterns of victimisation is designed to be shorter and initially adjudicated in two panels, depending on the type of crime. On one hand, the Panel of Definition of Judicial Situations adjudicates the cases of those who allegedly committed serious human rights violations or breaks of international humanitarian law but are not considered as the most responsible for the crimes. The Panel verifies that individuals comply with a regime of conditionalities, namely, that they fulfil their duties of providing truth,

reparation and guarantees of non-recurrence to the victims. The scale of the requirements is smaller, and when *comparecientes* fulfil them, the Panel grants the closure of their case, which means that their judicial status is settled. This is crucial because thousands of former members of the FARC-EP, agents of the State and civilians who have been investigated or sentenced in the ordinary courts before the JEP was created need their legal situation clarified. Yet, as of May 2024, the Panel has not handed down a definitive ruling in any case.

In the Colombian legal system, amnesties only proceed for political crimes (e.g. rebellion — taking up arms against the State) and, following the Peace Agreement and international standards, the State should grant “the broadest possible amnesty”(Colombian Government and FARC-EP 2016). Consequently, just after the Peace Agreement was signed, the Colombian Government and ordinary courts granted thousands of amnesties in simple cases. However, many of those decisions were not communicated to around 9,600 of the beneficiaries at that time (Caracol Radio 2024). Only recently, the JEP centralised that data so that former members of the guerrilla had certainty of their situation (JEP Press Office 2024).

On the other hand, more complex cases of amnesties are adjudicated by the Panel of Amnesties and Pardons of the JEP. The Panel studies whether the connection of ordinary crimes to political crimes justifies the amnesty of the first. For example, they rule whether drug trafficking was related to financing the political cause of the guerrilla. The Panel studies such a connection and whether the case meets the criteria of international humanitarian law — proportionality, distinction, among others. In these cases, it has granted 660 amnesties as of December 2023 (JEP Press Office 2023a).

Understanding the JEP procedures is important because it contributes to assessing the sociopolitical implications of the decisions or the lack of decisions. In the cases of non-most-

responsible individuals they will have to meet a regime of conditionalities that is less strict than a *sanción propia*. Yet, as the JEP has not decided the first case, it is difficult to tell how it will work specifically.

4.4 The selection and progress in the macro-cases and their relation to the sociological legitimacy of the JEP

The selection and progress of the macro-cases may describe how the JEP has progressively tried to satisfy different constituencies — victims of the FARC-EP, of the Armed Forces, ethnic groups, women, LGBT+ communities. Furthermore, it also shows how the JEP has endeavoured to maintain equal treatment of the FARC-EP and the Armed Forces — there are 3 cases exclusively related to the FARC-EP, 3 related to the State forces or public authorities, and the 5 remaining cases involve both parties. Lastly, progress on the cases shows the JEP’s speed in handing down decisions, which might affect people’s satisfaction with the JEP’s operation.

As of May 2024, the JEP has opened 11 macro-cases. Most of them involve the following crimes: enforced disappearance, kidnapping, torture, sexual violence, homicides, illegal use of landmines, enforced recruitment, forced displacement, illegal attacks against the civil population, and illegal attacks against the environment and the territory. However, the JEP’s investigation is conducted differently. Thus, there are three types of macro-cases: 1) national, regarding one type of crime or several crimes committed at a national level. 2) territorial, concerning the study of crimes under the jurisdiction of the JEP in a specific area that was heavily victimised. Due to the strong connection to the territory, the territorial cases usually involve the participation of “*resguardos indígenas*”, or indigenous territories in English, which are autonomous, independent, indigenous entities that rule their ancestral territory, and “*consejos comunitarios*”,

or community councils, similar institutions for afro descendants. Lastly, 3) umbrella cases are macro-cases that pertain to one actor and its relations with crimes that are not included in the national or territorial macro-cases. Below is a table that summarises the current macro-cases and their status:

Table 4. Macro-cases of the JEP

Case	1	2	3
Name	Taking of hostages and other serious deprivations of freedom	Tumaco, Ricaurte and Barbacoas	Falsos positivos
Opening date	July 4 2018	July 10 2018	July 17 2018
Level	National	Territorial	National
Actor	FARC-EP	FARC-EP and Armed Forces	Armed Forces
Facts investigated	Kidnappings and other crimes committed in the context of the kidnappings between 1993 and 2012	War crimes and crimes against humanity perpetrated against peasants, members of the LGBT+ community, afrodescendants, indigenous people and their territories in the municipalities of Tumaco, Ricaurte and Barbacoas, in Nariño, southwest Colombia	Extrajudicial killings and enforced disappearances presented as casualties amid combats.
Number of victims	21,396 fully identified victims of kidnapping	No data	6,402
Stage	7 former members of the Secretariat are being trailed by the Section for cases of Acknowledgement of Responsibility. On the regional level, the “most responsible” of the Comando Conjunto Central, Comando Conjunto Occidental - Bloque Occidental have been indicted.	15 former members of the FARC-EP have been indicted	Several members of the Armed Forces are on trial for the cases of Catatumbo, Casanare, after accepting their responsibility in the macro patterns of victimisation. A few are being investigated by the UIA. Indictments in Antioquia, Huila, Casanare, Norte de Santander. Ongoing investigation at a national level and in other regions
Victims accredited by the JEP	3,821	105,241 individuals. Most of them are members of 30 community councils, 84 indigenous territories and organisations of peasants and six organisations of victims	2,428

Source: JEP.gov.co, JEP Government Board 2024.

Table 5. Macro-cases of the JEP (continued)

Case	4	5	6	7
Name	Urabá	North of Cauca and South of Valle del Cauca	Unión Patriótica	Forced recruitment and use of children
Opening date	September 11 2018	November 16 2018	February 26 2019	March 1 2019
Level	Territorial	Territorial	National	National
Actor	Armed forces, FARC-EP, 9 civilians involved voluntarily	FARC-EP, Armed Forces	Armed Forces and Intelligence Forces	FARC-EP
Facts investigated	Serious human rights violations and breaches of the International Humanitarian Law in the Urabá region, northwest Colombia. Studies two periods: 1986-2002 and 2002-2016.	Grave human rights violations and breaches of the International Humanitarian Law in the region between the North of Cauca and South of Valle del Cauca, southwest Colombia. The studied period is between 1993 and 2016.	Crimes against members of that party motivated by the membership of the victim to the Union Patriótica party, a party created in the midst of the negotiations between the FARC and the Government in 1985	Forced recruitment and use of children committed by the FARC-EP, between 1996 and 2016
Number of victims	No data	365,967 identified victims across four regions of the country	Between 1984 and 2016: 4,616 victims of homicide 1,117 victims of enforced disappearance 2,217 victims of forced displacement	18,677 victims
Stage	Victims' comments to the <i>comparecientes</i> ' interviews.	Indictment to one armed structure of the former FARC-EP, indictment to the other structures pending and to the individuals of Armed Forces	Victims' comments to the <i>comparecientes</i> ' interviews.	Interviews of the <i>comparecientes</i>
Victims accredited by the JEP	46,709	Several organisations have been recognised as victims: 129 collective entities — 45 indigenous peoples, 67 communitarian councils and 8 victims' organisations. These entities represent more than 180,000 victims.	297 victims. Among them, four are collective: the Partido Unión Patriótica (UP), the Colombian Communist Party, the Union Sintramienergética, and the organisation Central Nacional Provienda (CENAPROV)	3,793

Source: JEP.gov.co, JEP Government Board 2024.

Table 6. Macro-cases of the JEP (continued)

Case	8	9	10	11
Name	Crimes committed by the Armed Forces and the paramilitaries	Crimes against ethnic peoples and their territories	Non-amniable crimes committed by the FARC-EP	Sexual violence
Opening date	August 30 2022	September 13 2022	July 15 2022	September 27 2023
Level	Umbrella	Umbrella	Umbrella	National
Actor	Armed Forces, Third parties	FARC-EP, Armed Forces	FARC-EP	FARC-EP, Armed Forces
Facts investigated	Serious human rights violations and breaches of international humanitarian law committed by the Armed Forces with participation of paramilitaries, other agents of the State, and civilians.	Crimes perpetrated by the FARC-EP or the Armed Forces, with the participation of paramilitaries or civilians against ethnic peoples and their territories.	Non-amniable crimes committed by the FARC-EP.	Sexual violence committed by the former FARC-EP or the Armed Forces
Number of victims	Provisional Universe of victims: 72,492	1,350,181 Provisional universe of victims with ethnic origin. 365,967 identified victims in four regions of the country	Provisional universe: 54,000 victims of forced displacement 50,100 victims of the illicit use of means of war, among them illegal land mines and explosives, attacks to protected individuals by International Humanitarian Law 48,000 victims of homicide 15,000 victims of enforced disappearance	35,178 victims of all the armed actors between 1957 and 2016.
Stage	Preparation	Preparation	Preparation	Preparation
Victims accredited by the JEP	No available data	No available data	169,400: probable universe of the victims who would be interested in participating in the process.	No available data

Source: JEP.gov.co, JEP Government Board 2024.

As the table shows, most of the cases are in the early stages, either in preparation, interviews or in the stage of the victims' comments to the *comparecientes*' interviews. The cases that have progressed the furthest are 1 and 3, where many *comparecientes* are on trial after duly acknowledging their responsibilities. Among them, there are the seven surviving members of the last Secretariat (the highest body of military command of the former FARC-EP), and two generals of the Army. Few members of the Army refused to accept the JEP's indictment. They are being investigated by the UIA and accused before the competent JEP Court. As of December 2023, the JEP had indicted 148 *comparecientes* as "most responsible" for war crimes and crimes against humanity. Out of them, 62 had acknowledged their responsibility, 79 were in preparation for accepting or refusing the indictment and 7 were facing an adversarial trial (JEP Press Office 2023a). Yet, as of 19 March 2024, the JEP had not sentenced anyone, nor had it waived the right to pursue criminal prosecution (Partido COMUNES [@ComunesCoL] 2024).

4.5 The selection of the chief justices, their staff and their effects on the JEP's operation and sociological legitimacy

The process of selection of the JEP's chief justices is related to the JEP's sociological legitimacy in that its transparency and representativeness may have fostered trust. But it also has prompted the *Uribismo*, namely Álvaro Uribe Vélez, his supporters and their party CD, to criticise that the chief justices are biased: allegedly they would have a leftist ideology and their connections with social organizations would prevent them from being impartial (Semana 2021a; 2023a). The academic background of many of the chief justices, their law education and their conceptions of the Law may also make them more prone to leave behind a formalistic positivist approach and make risky and innovative decisions. These factors have influenced the

accountability of human rights in other contexts, as González-Ocantos has thoroughly explained for the cases of Argentina, Perú, and México (2017).

The JEP chief justices were selected by a varied and independent Committee in a transparent process. The Committee was composed of delegates of the Supreme Court, the UN General Secretary, the Commission of the Colombian Universities, the Presidency of the European Court of Human Rights, and the International Center of Transitional Justice. Similarly, the chief justices had to meet certain criteria of representation. According to Santiago Pardo-Rodríguez, who conducted a mixed methods study on the selection process, the Selection Committee fostered transparency by using a digital mechanism that used an algorithm, allowing public comments about the candidates that could alert the Committee of hidden conflicts of interest, and holding public interviews (Rodríguez 2020). Thus, on 26 September 2017, the Committee chose a varied spectrum of magistrates. It prioritised lawyers who were not born in Bogotá, women, Afro-Colombians, and indigenous people. For the first time in the history of Colombia, most of the magistrates were women, and a quarter were indigenous or afro descendants.

Apart from the selection of the chief justices, the appointment and administrative design of the staff have impacted the JEP's operation. It has made it difficult to effectively deal with backlogs in the Panels, thus slowing the JEP's operations. In the first years of the JEP, most of the work had to be done by the Panels, whose personnel was lower in number and had less education and professional experience.

Thus, one of the first relevant issues that the JEP had to face was the staff—how many officers should every department in the JEP have? Who appoints them? How do the chief justices distribute the workforce in correspondence with the workload? Allegedly, Néstor Raul Correa,

the JEP's executive secretary, was proposing that the members of staff would constitute a common group that could be flexibly allocated to the chief justices according to their needs, as the Inter-American Court of Human Rights works. On the other hand, some of the chief justices were more inclined to adopt a system similar to the one Colombian high courts have, where every chief justice has an office with many officers that are appointed directly by him or her. In the end, the JEP opted for the second option (Uprimny 2018; Liévano 2024).

Hence, chief justices appointed the members of their offices, and the three Panels had less staff and staff of a lower hierarchy than the Sections, their superiors. However, so far, the Panels have had the great bulk of the JEP's workload, and they could not delegate some of their functions to their staff such as conducting interviews because they did not have the necessary rank to do so. In fact, until the first "*resolución de conclusiones*", where the PATR sent the first cases to the Sections, the staff had little work to do regarding their functions. To solve this problem, the chief justices used the mechanism of "mobility", whereby a chief justice and their whole office or particular officers are mobilised, or temporarily transferred, to other Sections or Panels that have a backlog of cases. A downside of this mechanism is that those transfers were not decided collectively by a higher authority, but they relied ultimately on the will of the chief justice, and sometimes they only entailed the occupation of a portion of their working hours, as an interviewee from the JEP commented ⁶.

Thus, in the first years of operation, the Panels faced most of the workload of the JEP, had to figure out the process of operation of their functions, with less personnel than the other sections, and without the possibility of asking for an increase in personnel due to the adverse

⁶ Interviewee 11, interview by author, Bogotá, 08/30/2023. From now on, the interviewees who only agreed to participate anonymously will be identified with a number. Otherwise, if they agreed that they would be identifiable, I will use their name, following their consent forms.

political environment during Duque's administration. This could partly explain the progress delays of the macro-cases. As I will later explain, this has an effect on the JEP's legitimacy: the slow pace of its functioning has frustrated the victims' expectations and even those of the former FARC-EP, undermining trust in the institution and challenging its effectiveness. Being a technical and niche issue, the reasons of that slow outcome are unknown to the majority of Colombians.

After Gustavo Petro was elected President, the JEP received approval to increase its personnel. And it has done so, creating more posts for "*magistrados auxiliares*", or auxiliary judges, the highest rank below a chief justice. This is expected to speed up the processes. Yet, the appointment process was not transparent and it is not clear that it is the most effective to clear the backlog of the Panels. Unlike the original selection process of the chief justices, the process of selecting 36 auxiliary judges was not public, nor was the selection criteria. Candidates did not hear from their applications or interviews, and most of the appointed professionals were already working in the institution (Liévano 2024; Paola Molano Ayala [@pmolanoayala] 2024b). Paola Molano, coordinator of the Transitional Justice area at the think-tank Dejusticia, criticised that the JEP did not argue why they opted to allocate the resources to the highest rank of lawyers, instead of hiring more lower-rank professionals. These processes might undermine the JEP's transparency and trustworthiness.

5. Legitimacy factors

In this chapter, I develop the conceptual framework described earlier. Using the definition of every one of the factors, I probe into the signs of strengthening or eroding legitimacy. In the last section, I gauge the different factors using the proposed scale to assess the JEP's legitimacy.

5.1 Diffuse support

5.1.1 Sociopolitical willingness to adopt fundamental changes to the JEP

Since its creation in 2017, the structure of the JEP has been significantly modified only by the Constitutional Court. In 2018, among other modifications, the Court ruled that civilians and agents of the State could not be forced to appear before the JEP because this violated their right to a natural judge, namely, to be investigated by the ordinary jurisdiction by default (Gutiérrez 2022, 76).

However, other actors have not been able to modify the JEP. Neither the Government nor Congress have been able to do so. From the JEP's creation, there has not been a massive group of citizens promoting changes or opposing its operation. Rather, when the JEP's structure has been potentially adjusted, intellectuals and hundreds of citizens have mobilised to support the JEP's operation, as I will explain later. In other words, since the creation of the JEP, a sociopolitical unwillingness to modify the JEP has seemed to prevail.

This can be observed in the institutional, political, and civil reaction to former President Iván Duque's objections to the JEP's by-laws. Between the formal beginning of the operations of the JEP and the enactment of its by-laws, one year and three months passed. During that time, the chief justices and their staff had to make legal interpretations to make judicial decisions.

Congress approved the by-laws of the JEP on November 28, 2017, and the Constitutional Court finished the study of constitutionality on December 19, 2018 (Constitutional Court of Colombia 2018). On March 11, 2019, President Duque presented six objections to such a Law. He asked for a more detailed regulation when it comes to the reparations, the competence of certifying the members of the FARC-EP, and the faculty of the JEP to prevent the extradition of someone under its jurisdiction. Furthermore, he argued that crimes against humanity should be prosecuted in any case (Ámbito Jurídico 2019).

Given that most of those concerns had already been clarified by the Constitutional Court, many sectors of the society perceived Duque's objections as unfair and as a veiled obstacle to implementing the Peace Agreement. Thus, following Duque's interventions, there were several mobilisations across Colombia and even in Paris supporting the JEP, and many intellectuals and public figures organised a campaign to support the JEP, under the hashtag #YoDefiendoLaJEP — #IDefendTheJEP— (BBC News Mundo 2019; Semana 2019b; 2019a). In the end, the House of Representatives rejected the objections, as well as the Senate. On May 30, 2019, the Constitutional Court ruled that the Senate had effectively rejected Duque's objections (BBC News Mundo 2019). As a result, it forced him to sign the Law on June 6, 2019. His attempt to modify the JEP's structure had failed.

In the following years Centro Democrático, Duque's party, tried to modify the JEP several times. Senator Paloma Valencia, one of the leading voices at the CD, proposed to create a special panel to try members of the Armed Forces. His attempt, as well as other CD's legislative initiatives to simply eliminate the JEP, have failed (Semana 2020a).

5.1.2 Support from other institutions to reinforce the JEP's operation or to protect it

Over time, the Attorney general of the International Criminal Court, the European Union, and the Security Council of the United Nations (UN) have consistently funded, supported, and approved the JEP. This support gives the JEP some institutional legitimacy that may translate into diffuse support.

For instance, Karim Khan, the Prosecutor of the International Criminal Court (ICC), closed the preliminary examination of the situation in Colombian because he observed that the Government, the domestic judicial institution, and especially the JEP have been progressing in the investigation and prosecution of Rome Statute crimes. As a result, he signed a cooperation agreement with the Colombian government for further complementarity between the two entities, maintaining the faculty to reconsider the situation of complementarity.

This agreement was the first of its kind in the history of the ICC and comprised commitments for both parties (International Criminal Court 2021). The Prosecutor's Office of the ICC announced its institutional support for Colombia's efforts on accountability. The Colombian Government committed to: 1) protecting, funding and supporting the structures that carry out accountability, including the JEP; 2) ensuring their independence; 3) safeguarding the security of prosecutorial and judicial personnel, and of those appearing before the different mechanisms; and 4) promoting cooperation among the different entities. In other words, this agreement internationally obliges the Colombian Government to fund, support, and maintain the JEP's operation. It may also be a sign of diffuse support from the ICC. In consequence, the ICC has communicated the opening of an office in the JEP's offices (JEP Press Office 2023c) and recently Colombia and the ICC confirmed a policy agreement to enhance the Colombian system of transitional justice and encourage Colombia to share its example with the world. In Khan's

words, “the criminal model of Colombia is an example for the international criminal system” (La Silla Vacía 2024).

Not only the ICC, but also the UN Security Council has strongly supported the JEP’s operation. In 2016, it established the UN Verification Mission to oversee the implementation of the Final Peace Agreement and, pertaining to the JEP, it contributes to the compliance of *comparecientes*’ restorative actions. Particularly, it verifies the compliance of the Proper Sanctions and it fosters coordination among institutions in a Mechanism of Verification of Proper Sanctions (UN Verification Mission and JEP 2022).

Furthermore, while considering Colombia’s sovereignty, the UN Council showed “vocal, consistent but measured support for the JEP during a crucial period when it was under attack”, namely when former President Duque objected to the by-laws of the JEP (Rebecca Brubaker 2020, 53). At that time, it underlined the importance of protecting the JEP’s legitimacy and independence without undermining the Government’s right to object, and allowed the Member States to express their concerns in that regard. For instance, the Netherlands stressed that it was of utmost importance to reduce legal uncertainty for former FARC-EP combatants to reduce their fear and provide access to transitional justice (Rebecca Brubaker 2020, 60). Several chief JEP justices confirmed that the international support was essential to put the JEP into place, especially in the first years⁷.

The EU and some of its members, like Sweden and Germany, have also actively funded the JEP’s operation. In 2020, the EU allocated 3.5 million euros to invest in strategic actions of the JEP (Semana 2020b). In the following years, it also hired many analysts to speed up the

⁷ Pedro Elías Díaz, interview by author, Bogotá, 08/02/2023. Óscar Parra Vera, interview by author, Oxford, 10/03/2024. Alejandro Ramelli, interview by author, Bogotá, 07/26/2023.

investigations of the macro-cases and provided economic support to some FARC-EP ex-members as their amnesties are pending (Ospina-Pedraza, Benavides-Vanegas, and Bonilla-Montenegro 2023).

To sum up, the international community's support has been essential to the JEP's legitimacy, especially when former President Duque objected to the Statutory Law, questioning both the legal and sociological legitimacy of the JEP. At that time, the UN Security Council's strategic support to the JEP's independence and autonomy acted as a boundary to the intentions of the Government. Later, in 2022, The ICC agreement formally and internationally obliged the Colombian Government to respect the JEP's independence and autonomy, and to properly fund it to avoid resuming the preliminary examinations. After such an agreement, no significant changes to the JEP have been consistently proposed. The EU's operational support has also helped the JEP to speed up its investigations.

5.1.3 Tolerance to contentious decisions

5.1.3.1 The Santrich Case

The Santrich case is a good example of how Colombian society and institutions reacted to arguably the most contentious decision the JEP has made. Seuxis Pausias Hernández Solarte “Jesús Santrich” was one of the most controversial members of the last Secretariat of the FARC-EP. On the day the peace negotiations were announced, in October 2012, he was asked whether the FARC-EP would provide remedies to the victims and he jocularly replied “quizás, quizás,

quizás” — “perhaps, perhaps, perhaps” — alluding to a very popular song⁸. This caused major distress and discontent among the victims (Semana 2021b).

Moreover, he never cooperated with the JEP. He was supposed to take office as a congressman but was never able to do so. Almost one month after the JEP started operating, on 10 April 2018, “Jesús Santrich” was captured following an Interpol request and put in preventive detention. The United States Justice Department argued that he was responsible for planning the trafficking of 10 tons of cocaine to the United States. In the macro-case on kidnappings, Julieta Lemaitre, the leading magistrate of the case, called him to hear his version about the crimes committed. But he never appeared before the court (El País 2018).

Hernández Solarte’s detention was very controversial and ended up putting intense pressure on the JEP and in the resignation of the Attorney General of the time, Nestor Humberto Martínez. The President of the time, Juan Manuel Santos, stated that if the crime was proved, he would not hesitate in extraditing “Santrich”. But first the JEP had to establish the date of the alleged crimes. If they were done before the signing of the Peace Agreement, Santrich could not be extradited; conversely, he could be extradited (Semana 2018).

The JEP requested evidence to rule. Even though videos of Santrich planning the operation were leaked to the Press, neither the American Justice Department nor the Attorney general’s Office of Colombia presented any proof of the crime. On May 16, 2019, the JEP ruled that “Santrich” shall not be extradited because there were no elements to establish the date of the alleged crimes. Since there were doubts on the date of the alleged crimes, he could not be extradited (JEP Press Office 2019a). Arguing that the JEP’s decision was breaching the

⁸ “Quizás, quizás, quizás” is a song written by Osvaldo Farrés in 1947 and famously interpreted by Trío Los Panchos. It is very popular in Colombian culture.

Colombian Law system, Néstor Humberto Martínez, Attorney General at that time, resigned (El País 2019).

This situation prompted institutional tension and eroded the JEP's image, but also proved that it could act as a veto player, ensuring its independence and autonomy (J. L. Gibson and Caldeira 2003). In spite of Martínez' allegations, the ruling was complied with and Santrich was released from jail. Yet, he was arrested again because the Attorney General's Office sought to prosecute him not according to an extradition request, but to Colombian Law. A few days later, and deciding with the available evidence, the Supreme Court ruled that Santrich should be released from jail because there was no risk of escape. Thus, Santrich took office as congressman on June 11, 2019.

In the following months, he disappeared and staged a video along with Luciano Marin Arango "Iván Márquez", chief negotiator of the FARC-EP in the negotiations for the Peace Agreement, and also compareciente before the JEP. They proclaimed the creation of the "Second Marquetalia", an armed resurrection of the FARC-EP, because, in their opinion, the Government breached its compromises as part of the Peace Agreement. In consequence, they were expelled from the JEP for taking up arms again, and their cases were returned to ordinary Courts. Santrich was killed by the Colombian Army on May 18 2021 (BBC News Mundo 2021). Nowadays, the Segunda Marquetalia is one of the organised armed groups that has been negotiating with the Petro Government for a peace deal.

In March 2023, the JEP filed a criminal complaint against some officers of the Attorney General's Office, after a forensic study of Guernica Chambers, an English law firm, established there were many irregularities in the case. Precisely, one of the motivations of the JEP to act was to clarify that episode, which had affected the JEP's image (JEP Press Office 2023b).

The Santrich case provides a concrete example of the JEP's ability to remain legitimate despite unpopular decisions. The decision was unpopular because Santrich was very unpopular in the public opinion; many of the most popular media in Colombia broadcast videos of him colluding in drug trafficking and the Attorney General resigned because of this event. Despite being a controversial ruling, the media coverage was somewhat favourable to the JEP, also showing the deficiencies the Government and the Attorney General made in the process of getting the evidence from the U.S. Justice Department.

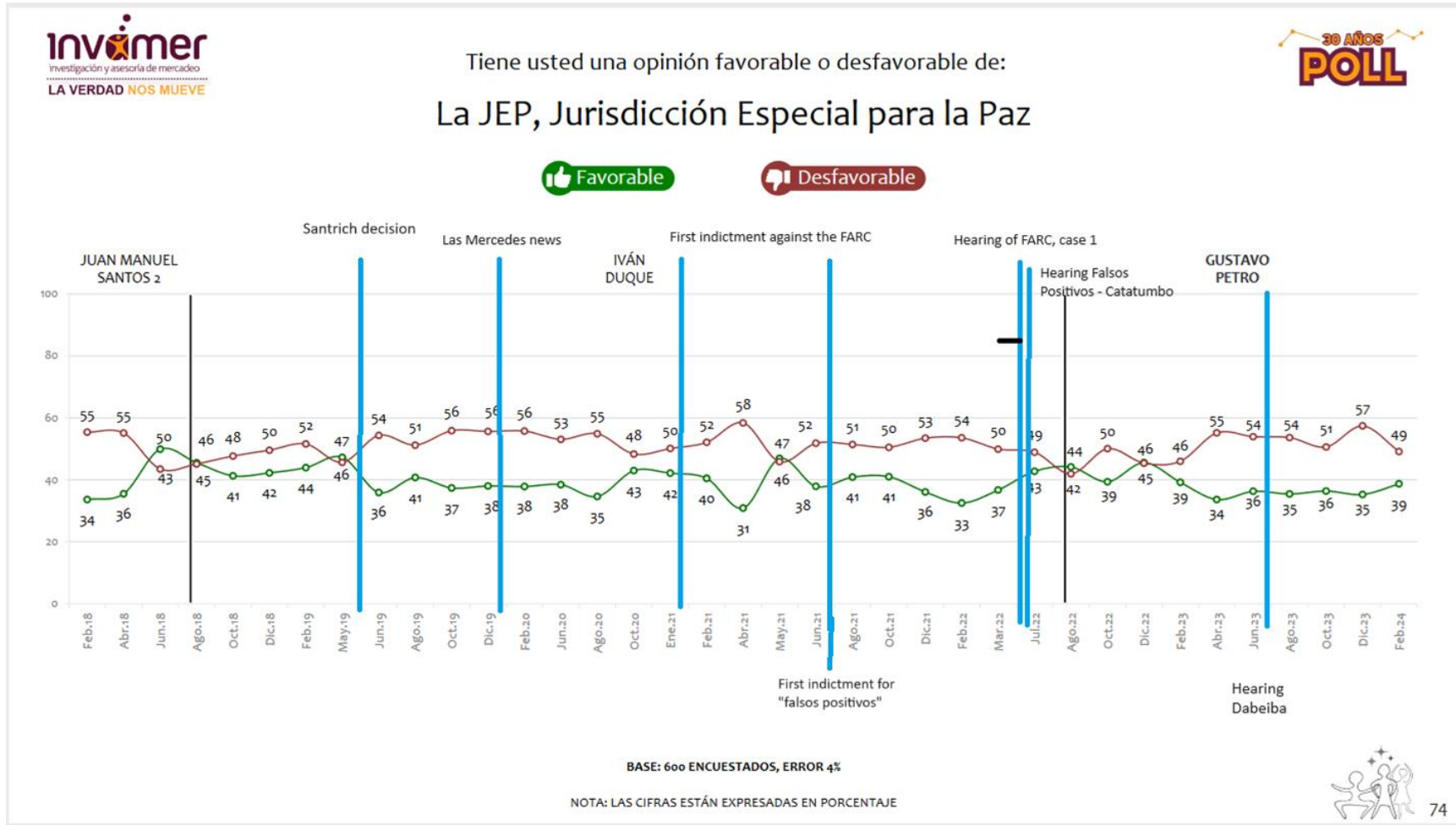
In fact, after sifting through the articles about the JEP in *Semana*, I found that its coverage regarding the Santrich process is somewhat favourable. *Semana* has been the most critical media of the JEP after Gabriel Gilinski, one of the richest men in Colombia, bought most of its shares in January 2019. At the beginning, in 2018, even before the change of editorial perspective, it was critical about the decision of the JEP to suspend the extradition. Interviewing many experts, it later reported on the case's progress, allowing the JEP and the Attorney General to present their point of view. When the JEP made its ruling, *Semana* did not directly criticise the decision.

It is also important to note that the JEP's decision to guarantee the non-extradition of Santrich was handed down while Congress was debating Duque's objections. Regardless of such a controversial decision, Congress refused to change the JEP's by-laws.

However, the fact that the JEP's legitimacy can withstand contentious decisions does not mean that it does not get eroded by them. Observing the *Invamer* Poll, a poll conducted every two months following Gallup poll surveys about public opinions regarding political leaders and institutions, it is possible to see that after the JEP took the Santrich case's final decision, favourable opinion dropped from 46% of the respondents to 36%. Does that mean that this

decision was the cause of the erosion of legitimacy? Not necessarily. In May 2019 Congress also rejected Duque's objections, which might also be a cause of such a drop. This example shows the difficulty in assessing diffuse support and the reaction to contentious decisions without further data. Thus, I opted also to identify substantial facts that could account for tolerance or intolerance to contentious rulings, such as mobilisations, disobedience to the decisions, and major reactions of the actors within the JEP's system. Since, as far as I could establish, none of them occurred, it is possible to say that, in general, Colombian society and institutions tolerated the suspension of Santrich's extradition.

Image 2. Favourable or unfavourable opinion regarding the JEP

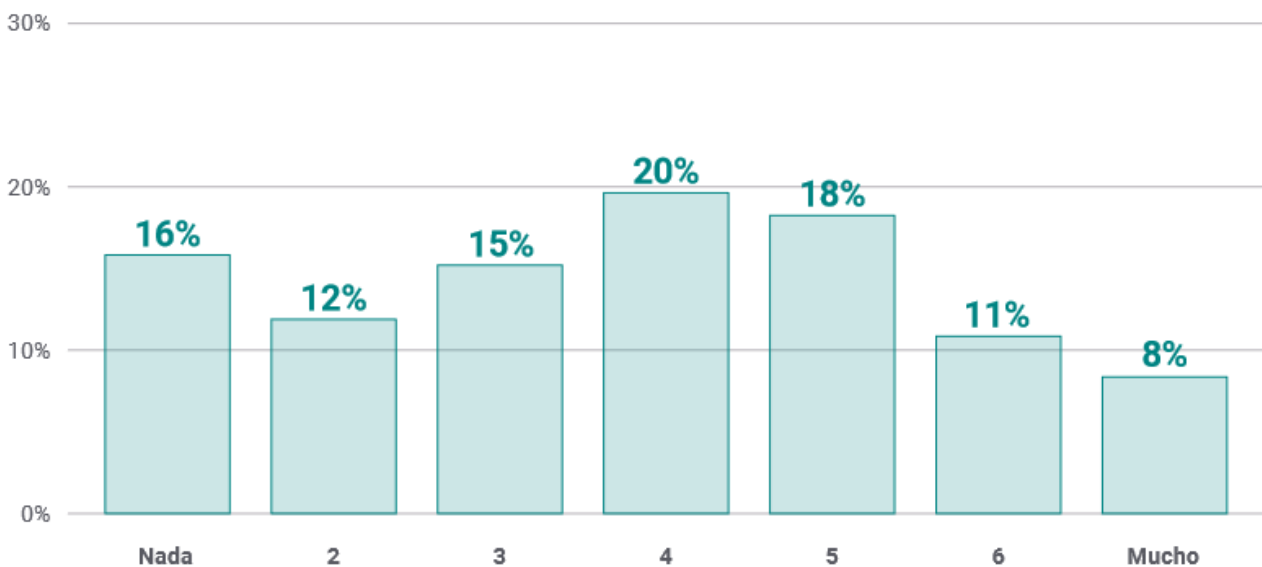


Source: Invamer, 2024

5.1.4 Trust and favourable opinion towards the JEP

The only survey that explicitly asked respondents about their trust towards the JEP has been the Democracy Report by the Americas Barometer in 2018 and 2023. The results are as follows:

Image 3. To what extent do you trust the JEP?



Fuente: LAPOP Lab, Barómetro de las Américas Colombia 2023

If we consider that only those who responded 5, 6 or 7 trust in the JEP, only 37% do so (Rodríguez-Raga 2023, 49). This is a reduction by 5% from 2018. In 2023, the most common response was neither trust nor mistrust the JEP (20%), and 43% mistrusted the JEP. In other words, the minority trust the JEP, but this could increase, bearing in mind that many people neither trust nor mistrust the JEP (20%, those who responded 4 in the survey). As the literature suggests, the proportion of those who trust the JEP is two times larger among those who understand the JEP's functioning than those who do not. Moreover, those who are more likely to

trust the JEP identify themselves as left-wing, live in rural areas and have a lower education level (2023, 49).

The data on the proportion of people who trust the JEP is consistent with the Invamer Poll of favourable opinion towards the JEP. As was pointed out above, by February 2024, 39% of the respondents had a favourable opinion versus 49%, showing similar indicators.

Despite facing a mostly unfavourable opinion, during its existence, the JEP is the second judicial institution with the most favourable image after the Constitutional Court — arguably the most powerful and prestigious judicial institution in Colombia. Between one month before the beginning of the JEP's operation, February 2018, and the most recent poll, February 2024, the favourable opinion regarding the JEP fluctuated between 31% of the total respondents (April 2021), and 50% (June 2018).

In contrast, the positive opinion related to the Attorney General's Office ranged from 22% (August 2021), to 47% (October 2018), and scored 34% in the last study. The measures related to the Supreme Court followed a similar trend: from 18%, in February 2022 to 40%, in August 2020, and in the last poll the favourable image was 31%, ten points lower than the JEP. As for the Constitutional Court, in the studied time frame, the favourable opinion reached the highest point in February 2019 (47%), plummeted to the lowest point in February 2022 (25%), and rose to 44% in the last poll (February 2024).

In other words, at least 1 out of 3 Colombians trust the JEP or have a favourable image of it. Trust is more present in rural areas, among people with lower educational level, and self-identified as left-wing. Though this number may seem small, compared to other judicial institutions, the JEP has the second most favourable opinion. As the literature has suggested,

increasing the salience and knowledge of the JEP can foster trust. Such an institution might find opportunities to do so, given that 20% of the people neither trust nor mistrust it.

5.2 Specific support

To understand the extent of social support for the JEP's rulings, it is essential to analyse the major factors that influence its support or rejection. As there was no guidance in the academic literature, I propose some elements that affect specific support in the JEP's case. I selected them after analysing the conducted interviews, news, and social media. These elements may contribute to the existing literature to assess the legitimacy of other transitional justice institutions. Thus, in this section, I will probe into: 1) the victims' satisfaction with some cases of the JEP; 2) the victims' participation; 3) the delays in handing down decisions; 4) the equal treatment in investigating, adjudicating and sanctioning both parties of the Peace Agreement; 5) the importance of reaching acceptance of restorative justice; and lastly, 6) cases of dissatisfaction with the JEP's decisions.

5.2.1 Victims' satisfaction in certain JEP cases

To assess the satisfaction of victims in the JEP's cases is nearly an impossible task. Thousands of victims are recognised in the JEP's proceedings, as is shown in the tables of the Historical Background section above, and they are heterogenous — they were victimised by different actors, come from different regions, and belong to different ethnic groups. However, I argue that it is possible to have an idea of the victims' satisfaction with some of the JEP's proceedings by analysing the interviews of victims of different actors, victims' attorneys,

intellectuals, and some of the JEP chief justices. I suggest that victims are more likely to be satisfied with the JEP's operation if the case provides new information or effectively benefits them.

Esneda Altamirán's case is one example of this⁹. She is one of the victims in the milestone case of Dabeiba, within the macro-case 3 for falsos positivos. Thanks to the interviews the JEP conducted in the macro-cases 3 for falsos positivos, many bodies of disappeared people were discovered in 2019 at Las Mercedes cemetery at Dabeiba, a municipality in the Urabá region. The body of John Arvy Cañas Cano, Esneda's nephew, was one of them. This process not only helped Esneda's family to recover Jhon Arvy's remains, but also changed Esneda's beliefs. She expressed that, before participating in the JEP, she was opposed to the Peace Agreement, she even voted against it in the referendum. In her opinion, she only reproduced what she heard in the streets and from her husband. She started participating in the JEP's preparatory meetings with suspicion. Progressively, as she received psychosocial attention, she trusted in the JEP more and more. Over time, she became one of the speakers of Dabeiba's Hearing for the Acknowledgement of Responsibility and Truth (HART), where eight former Army members accepted their responsibility for killing and disappearing 47 people between 2002 and 2006.

A case of a FARC-EP victim is very different¹⁰. The FARC-EP kidnapped her father when she was 16 and later they killed him under circumstances that she does not feel have been clarified enough. She thinks that the *comparecientes* have not provided sufficient truth, and many of the other victims of their case are in a similar position; some of them dropped out of the JEP

⁹ Esneda Altamiranda, interview by author, Online, 08/10/2023

¹⁰ Interviewee 34, interview by author, Bogotá, 08/14/2023

because they felt unsatisfied. She accepts that the JEP helps to clarify the truth, but it is a slow process, and she feels that she could have more participation in processes before ordinary courts.

The stark difference could be explained by the fact that Esneda's case had not been prosecuted before and, thanks to the JEP, she could partially bring closure to the victimisation experience after her nephew's body was identified. In contrast, the victim of the second case has not been able to reach closure. She does not feel satisfied with the truth *comparecientes* have provided: the circumstances of her father's killing are still unclear. Moreover, her case was previously processed by the ordinary courts. In other words, as JEP chief justices Gustavo Salazar¹¹ and Alejandro Ramelli¹² suggested, the JEP strengthens its legitimacy when it can provide something new to society. The victims are more satisfied when the truth they receive helps them reach an emotional closure.

The cultural adoption of a provisional number of "*falsos positivos*" is another proof that the society is more satisfied with the JEP's rulings when they acquire new information. On February 12, 2021, the JEP provisionally established that 6,402 civilians had been illegally killed by the Armed Forces between 2002 and 2008. This number was significantly higher than previously reported. Thus, several victims' organisations, especially one of the first falsos positivos victims' organisations MAFAPO (Madres de Falsos Positivos de Soacha y Bogotá), have adopted such data to start a "Campaign for the Truth", put up posters with the number 6,402 and the question "¿Quién dio la orden? /Who gave the order [of the killings]" (Federico Rios [@federicorios] 2021). Moreover, during the Paro Nacional of 2021, a series of protests against the National Government that lasted several months, the outreach of such a number went beyond

¹¹ Gustavo Salazar, interview by author, Bogotá, 08/08/2023. Chief justice Salazar is the coordinator of the macro-case 6.

¹² Ramelli, interview. Chief justice Ramelli is the coordinator of the Dabeiba case.

the victims; protesters wrote “6,402 héroes” in the salient Monument of the Heroes in Bogotá as an act of rebellion. This was replicated in other places in Bogotá and Medellín (Mauricio Albarracín Caballero [@malbarracin] 2021; Justice for Colombia [@JFColombia] 2021). In other words, the number 6,402 became a symbol of discontent by displaying how the corruption in the Government had led to the death of thousands of young people.

It may seem that *falsos positivos* cases produce more legitimacy than cases involving the FARC-EP. Why has the number of people kidnapped by the FARC between 1993 and 2012 (21,396) not been as culturally adopted as 6,402 *falsos positivos*? Why in the cases of the two interviewees I exposed, the one who was victimised by the FARC-EP is less satisfied?

It could be that the number 6,402 had more resonance over the Colombian society because it unveils that the *falsos positivos* were more numerous than what was hitherto perceived, they were committed by the forces that should protect citizens, and for many sectors of the Colombian society this was unexpected. They were not a matter of a dozen young people who “no fueron a recoger café, iban con propósitos delincuenciales” when they were killed by the Armed Forces, as then President Uribe stated when he was asked about the first salient case of *falsos positivos*, where some young poor people from Soacha were found dead in Ocaña hundreds of kilometres away from their homes (AP News 2021).

Image 4. Mural from the Campaign "¿Quién dio la orden?". 2021.



Source: Federico Rios [@federicorios] 2021

In contrast, it was already known that the FARC-EP had massively kidnapped civilians. In fact, in the late 90s roads were less used due to the fear that families would be kidnapped. Besides, it was somehow expected, not justified, that a guerrilla carried out those crimes.

On the other hand, it may be the case that some victims of the Armed Forces could be more satisfied with the JEP's rulings because the truth they receive allows them to bring a closure to the trauma. In this stage of the investigations, the truth that the FARC-EP is providing might be less satisfying because, unlike Armed Forces, many of their members and even commanders were killed during the war; others betrayed the Peace Agreement. Moreover, the strategy of case 1 is from the top to the bottom of the guerrilla hierarchy. In the HART, victims

have only heard the versions of top commanders who usually do not know the details of their relatives' cases. Only recently a regional HART in Ibagué was held. In contrast, the *falsos positivos*' case is investigated from the bottom to the top of the military structure. Thus, in the HART, the Armed Forces agents and the civilians involved could provide more detailed truth. Perhaps the victims can feel more restored with those explanations.

5.2.2 Victims' participation in the JEP's proceedings

As I have stated before and is established in article 13 of the Statutory Law, the victims' rights and restoring the harm they have suffered are some the essential axes of the JEP's proceedings. As a result, the JEP has: 1) published a Handbook for integral victim's participation; 2) opened many territorial offices; 3) offered psychosocial assistance to the victims; 4) fostered victims' participation as much as possible in hearings, interviews, the opening of cases, and other procedural opportunities.

Many of the interviewees also agree that the participation of the victims in the processes is essential. If victims have adequate mechanisms, they might provide feedback to the judges about whether the operation of the system is meeting their needs and expectations. Judges can adapt their decisions and proceedings to satisfy such requests. If those expectations are met and the systems adapts, the immediate users of it might recognise more social authority on it to rule their conflicts, because it would have more resonance. As former President of the International Criminal Tribunal for Yugoslavia, Theodor Meron, said: "trials which are conducted in the area itself, close to the victims, close to the crimes, have a greater resonance for the victims than trials which are conducted 2000 miles away." (Theodor Meron 2003) Similarly, the closer the JEP transitional judge comes to the victims' needs, the greater resonance its rulings will have.

Moreover, the JEP's hearings tend to be held in the territory of victimisation — Dabeiba, Ocaña, Yopal — and this could influence its legitimacy, as I will analyse below.

For example, after being denied such rights, the victims were granted the opportunity to ask questions in the interviews to the former combatants at the PATR (JEP Press Office 2019b). As a result, the PATR began to offer space to “*demandas de verdad*”, requests from the victims to the presumed perpetrators. Some of them have helped the Panel find voids in the perpetrators' version, others have helped the victims bring closure to their traumas.

Despite the JEP's efforts to foster the victims' participation, Paola Molano, then coordinator of the area of Transitional Justice at the well-known think-tank Dejusticia, argued that, for the victims, their participation is not enough¹³. Some felt that they had more participation before ordinary courts, as in the FARC-EP victim's case I mentioned above. She has observed that victims might become more frustrated as the process advances. Thus, curbing expectations is essential. Furthermore, Daniel Vargas¹⁴ and Sebastián Escobar¹⁵, respective attorneys of the human rights organisations “Comisión Colombiana de Juristas” and “Colectivo de Abogados José Alvear Restrepo” at the moment of the interview, agreed that the JEP had curtailed the victims' participation through the Ruling of Interpretation 3 of 2022 (*Sentencia interpretativa 3 de 2022*) by preventing the victims from using legal means to attack the rulings. For instance, victims are not allowed to order an appeal to the indictments of those most responsible. The JEP based the decision on the principle of “strict temporality”, the

¹³ Paola Molano, interview by author, Online, 08/01/2023.

¹⁴ Daniel Vargas, interview by author, Online, 07/05/2023.

¹⁵ Sebastián Escobar, interview by author, Online, 09/04/2023.

acknowledgement that the JEP's operation is limited in time; hence, it must guide its actions to honour such a time frame.

Described also by one chief justice of the PATR¹⁶, situation consolidates a trade-off between the victims' participation and the JEP's speed in handing down decisions. The more the victims participate, the longer the JEP takes to rule on a case, which is important because it has a "strict temporality". Therefore, it must find a balance between those two principles.

5.2.3 Delays in handing down final rulings

The delays of the JEP in reaching definitive rulings were pointed out by most of the interviewees as one of the main factors that affect legitimacy. I posit the delays and not the speed in handing down decisions because quick decisions would not necessarily strengthen the JEP's legitimacy. The JEP might rule quickly on a case but rule in a controversial way. Rather, what erodes legitimacy are delays — deciding in a reasonable time.

The victims might perceive delays as a synonym of impunity. Some of them have been partly satisfied by the actions of the JEP — be they the interviews to the potential perpetrators, the restorative processes of acknowledgment of truth and responsibility, or another of the JEP's actions. Yet, many of the victims have assumed the costs of participating in the procedures and have not seen any sentence or closure of a case in the six years of the JEP's operation. As Santiago Rodríguez, the journalist who has covered the JEP for the last three years at La Silla Vacía, said, "five years and the JEP has not concluded anything"¹⁷. In fact, the data are quite

¹⁶ Interviewee 11, interview by author, Bogotá, 08/30/2023

¹⁷ Santiago Rodríguez, interview by author, Bogotá, 08/25/2023.

indicative: during its six years of operation, the JEP has not handed down any definitive rulings for those “most responsible” or non-most responsible, regardless of whether they were member of the FARC-EP, Armed Forces, Agents of the State or civilians. Wilson Ortiz¹⁸, attorney of Armed Forces *comparecientes* and victims points out: in the JEP, “no hay mucho resuelto. No hay implementación”.

Delays in handing down definitive decisions only extend relevant discussions, such as if the imposition of a *sanción propia* is consistent with exercising political rights such as being a congressman. Thus, for senator Paloma Valencia¹⁹, former President Iván Duque²⁰, and Sofía Gaviria²¹, former congresswoman, a victim of the FARC-EP and former director of the Unit for the Attention of the Victims, the fact that some members of the FARC-EP are in office as congressmen proves that the JEP fosters impunity. In their view, not only they are at liberty when they should be in jail as most responsible for grave human rights violations, but they are rewarded with seats in Congress.

What is more, in February 2024, all the members of the last Secretariat of the FARC-EP condemned the lack of definitive rulings as a proof that the JEP was going astray from its original purpose, as I will extensively explain below. For now, it is relevant to point out the specific critiques their party made to the JEP’s ineffectiveness and operation costs. On 18 April 2024 the party Comunes described in an extensive thread on Twitter that, according to a response to a freedom of information request they made, the JEP had not substituted any penal sanction to any agent of the conflict, nor had it waived the right to prosecute of non-most responsible, nor

¹⁸ Wilson Ortiz, interview by author, Online, 08/28/2023.

¹⁹ Paloma Valencia, interview by author, Online, 09/05/2023.

²⁰ Iván Duque, interview by author, Oxford, 02/07/2024.

²¹ Wilson Ortiz, interview.

had it sanctioned any “most responsible”. They claimed that “what we are asking is that those responsible are sanctioned soon because they have already acknowledged their responsibility. We ask the honouring of the letter and spirit of the Peace Agreement” (Partido COMUNES [ComunesCoL] 2024). They argued that the JEP was conceived as a closure Tribunal where the main actors of the internal armed conflict would appear to satisfy the victims’ right to the truth and justice. Yet, the JEP had become “a Tribunal that only adjudicates and investigates those who were insurgents and the medium ranks of the Army” (Partido COMUNES [ComunesCoL] 2024). They also stated that since its creation and until 31 December 2023 the JEP’s budget was 2 trillion pesos, which was a considerable amount of money. In other words, the most salient representatives of the FARC-EP and their party Comunes have begun to claim that the JEP is going astray from what they signed, and one of those reasons is that the JEP has been ineffective when it comes to offering legal certainty to the *comparecientes* and adjudicating the crimes of all actors. This is relevant because until then the ex-members of the FARC-EP have been one of the most consistent defenders of the JEP, but the dissatisfaction with the JEP’s rulings changed their perspective.

Internally, some JEP chief justices are aware that handing down definitive decisions in a reasonable time frame is essential to maintain the JEP’s legitimacy. One chief justice of the Appellate Section²², the JEP’s apex section, confirmed that promptness is essential to the JEP’s legitimacy. Oscar Parra²³ and Catalina Díaz²⁴, both chief justices at the PATR, agreed on that note and explained that, in their experience, the workload has not been effectively distributed: the Panels have been executing the main functions of the JEP and their personnel is less qualified

²² Interviewee 17, interview by author, Bogotá, 08/14/2023.

²³ Parra, interview.

²⁴ Catalina Díaz, interview by author, Bogotá, 08/30/2023.

and less numerous than that of the less busy Higher Sections, as described above. This workload ineffective distribution was also observed by Sebastián Escobar, victims' attorney²⁵, who stressed that the PATR had so many functions that it even had to make a proposal of the *sanciones propias*.

On the whole, the perception that the JEP is not meeting the essential goals of satisfying the victims' right to justice and the *comparecientes*' right to legal certainty is increasing. Whatever the cause, a slow pace in delivering definitive outcomes decisions has been increasingly prompting social dissatisfaction. Opponents, victims, and even the ex-FARC-EP, who previously defended the JEP, are unsatisfied with the lack of definitive decisions. The JEP might come to be perceived as an expensive inefficient Tribunal, and that might elicit discussions to change or eliminate the JEP; in other words, it might curtail the diffuse support. This is an example of how, in opposition to the main argument of the literature, in the JEP's case specific support might be connected to diffuse support in the medium term, as Sandra Botero suggested (2020).

5.2.4 Framing of the JEP's decisions

As I stated in the conceptual framework, if Forero-Alba and Rodríguez-Raga posited that Courts that framed decisions in legal and scientific arguments have more legitimacy and are more trustworthy (2022, 190), I argue that the JEP usually seeks to frame its written decisions in legal arguments, using its legal sources — national and international criminal law. Yet, the JEP uses the hearings, especially the Hearing for Acknowledgement of Truth and Responsibility

²⁵ Escobar, interview.

(HART), to frame its decisions in restorative terms. Furthermore, as Gonzalo Sánchez²⁶, director of the National Center for Historical Memory between 2011 and 2018, stated:

El déficit de sentencias fue compensado con los procesos de puesta en escena pública de los responsables, de sus confesiones, de sus responsabilidades y de sus interpelaciones, [...] que no son solamente de la institucionalidad, sino, en una audiencia, entran muchas cosas en juego: una vez que se pone en escena una de estas audiencias, están los jueces, están las víctimas, están los abogados de las partes, pero está la sociedad que escucha y observa, y está emitiendo juicios. La sociedad, antes que la JEP, es la propia sociedad la que está emitiendo juicios sobre el proceso mismo.

Sánchez points out the importance of public hearings to offset the lack of definitive rulings and to prompt judgements in society. In other words, this is an opportunity for the JEP to frame its rulings and showcase its processes. As I directly confirmed in the Yopal HART and as a digital spectator of the HART of the last Secretariat of the FARC-EP in June 2022 and of Ocaña in July 2022, the rulings of accepting or rejecting the *comparecientes*' acknowledgement of truth and responsibility of the indicted crimes are framed as a result of a thorough restorative process. This process consists of many preparatory sessions of psychosocial attention to victims and *comparecientes*; they can also hold private sessions prior to the hearing when both parties dialogue and perpetrators respond to the victims' claims. In the public hearing, *comparecientes* manifest their responsibility for the crimes, they acknowledge the judicial truth of the facts, a substantial number of them show remorse, and some have restorative actions towards the victims. For instance, in the Yopal HART, Mayor Gustavo Enrique Soto Bracamonte lit a large candle in front of the victims in memory of their loved ones, and Captain Jaime Rivera handed to the JEP the medal he had achieved thanks to the "*falsos positivos*" he presented. These actions

²⁶ Gonzalo Sánchez, interview by author, Bogotá, 07/25/2023.

took place within a frame of painted restored vases. As part of the JEP's psychosocial attention, the victims painted them as a symbol of the restoration of their dignity and as a means to process their grief. In the following image this restorative framing is presented:

Image 5. Captain Jaime Rivera returns medal in Yopal hearing



Source: El País 2023

The symbols, dialogues, and interactions build a narrative difficult to refute. As Santiago Rodríguez²⁷ suggests, the connection between the victims' and the perpetrators' versions demolishes any effort to deny such truth. This effect was thoroughly explained by Roberto Vidal, then President of the JEP²⁸:

²⁷ Rodríguez, interview.

²⁸ Roberto Vidal, interview by author, Bogotá, 08/09/2023.

En una audiencia pública [...] la verdad de las víctimas, confirmada por la confesión de los comparecientes, produce un nivel de verdad irrefutable en la sociedad, que mira que sectores que habían hecho negación permanente de algunas cuestiones (falsos positivos) [ceden]. Cuando tú te enfrentas con la pared argumentativa de unas víctimas, puestas en un lugar de dignificación política, frente a unos comparecientes que reconocen eso, cuando cruzas esas dos cosas, nosotros nos preguntamos: ¿y el juez qué puede decirle a esto? ¿es que quién le puede decir algo a eso? Ni los sectores políticos más opuestos, ni los más poderosos, todos se rinden ante esta verdad, pero también el juez. Tú te imaginas al juez diciendo: ‘¿yo no admito esa verdad?’

The confirmation of the victims’ truth by the perpetrators builds an “argumentative wall”, which is very difficult to deny. Thus, hearings are framing spaces to reinforce and dignify the victims’ truth. For example, after the Dabeiba HART, former President Álvaro Uribe Vélez, in office at the time when most of the “*falsos positivos*” were perpetrated, had to accept the existence of such crimes, after denying them for more than a decade. He claimed that members of the Armed Forces lied to him, that such crimes tainted his security policy, and that “any of these crimes is serious regardless of their number or the cases of false accusations” (Álvaro Uribe Vélez [@AlvaroUribeVel] 2023). In Gustavo Salazar²⁹’s and Alejandro Ramelli³⁰’s opinion, both JEP chief justices and respective coordinators of the case of Unión Patriótica and Dabeiba, this hearing also changed the narrative of *falsos positivos*. The latter, coordinator of the hearing, affirmed that threats and attacks against himself and his teams were significantly reduced after the hearing.

Furthermore, in these scenarios, some victims, even if they do not participate directly in the hearings, might feel represented. Since the JEP will not address all the cases of the internal

²⁹ Salazar, interview.

³⁰ Ramelli, interview.

armed conflict, hearings become symbols where the victims and non-victims could relate to the stories and restorative processes.

5.2.5 Equal treatment in investigating, adjudicating, and sanctioning members of the FARC-EP and the Armed Forces

The satisfaction with the JEP's decisions partly hinges on equal treatment between the FARC-EP and the Armed Forces. For Rodrigo Londoño³¹, before known as “Timochenko”, the last chief commander of the FARC-EP, this is essential to avoid “trading blame”, namely prosecuting only one party of the internal armed conflict. On the other political side, Álvaro Uribe Vélez has consistently criticised that the JEP equally treats the Armed Forces to terrorists like the FARC-EP. Similarly, Paloma Valencia³² argued that Armed Forces members should have a special Panel with expert judges in International Humanitarian Law. For the first, equality is a sign that the JEP is fair; for the latter, it is proof that it is skewed.

The legislation and the JEP operation sought to resolve these tensions. In an agreed transition like the one in Colombia, symmetry gives trust to the actors that the judicial system will not be used against them. Legally, the Armed Forces agents have a guarantee that they would have the same treatment as the FARC-EP former combatants. For example, if they are not “most responsible”, both former *guerrilleros* and State agents can ask the JEP to waive the prosecution of their crimes after fulfilling a regime of conditionalities to satisfy the victims' rights.

³¹ Rodrigo Londoño Echeverri, interview by author, Bogotá, 08/16/2023.

³² Valencia, interview.

In its operation, the JEP has also tried to equally investigate and prosecute the Armed Forces and the FARC-EP. As stated in the previous chapter, the PATR opened 3 cases exclusively related to the FARC-EP, 3 related to the State forces or public authorities, and 5 cases involving both parties. The first HART against FARC-EP and Armed Forces were held only two months apart: the first hearing on “*falsos positivos*” was in April 2022 and the one on kidnappings by the FARC-EP in June 2022.

5.2.6 Acceptance of restorative justice

Restorative justice is one of the most controversial elements of the JEP. As Sebastián Escobar³³ pointed out, it entails a large change of the punitive paradigm. Until the signing of the Peace Agreement, Colombia had had a retributive justice that mostly sanctioned crimes with jail. Punishment was associated with suffering. In the Colombian society, it is common to hear the expression: “que se pudran en la cárcel”. In contrast, the JEP preferably applies restorative justice. As I extensively described in the previous section, that entails a dialogue between the parties, a process of clarifying the truth, providing restorative measures and dignifying the victims, and, when these conditions are met, the JEP imposes more lenient sanctions that do not involve imprisonment. Certainly, this new paradigm clashes with the retributive one and may seem unfair and disproportional to the crimes committed. Therefore, the acceptance or resistance to restorative justice in the JEP impacts societal satisfaction with the JEP’s rulings. The more people accept restorative justice, the more they will support the JEP’s decisions, and vice versa.

³³ Escobar, interview

The acceptance of restorative justice requires that the JEP convinces the citizens that restorative justice is a valid type of justice and that it is fair. Many interviewees discussed this challenge. María Isabel Ortiz³⁴, the journalist that covers the JEP for El Tiempo, the most read newspaper in Colombia, said that “la justicia restaurativa es difícil de vender [to be accepted as an acceptable option]”; a member of an international organisation that supports the JEP pointed out that the social knowledge of *sanciones propias* is a pedagogical challenge. In fact, Gonzalo Sánchez³⁵, who worked since its origin and for over a decade in the public Center in charge of the Historical Memory, observed that the institutions “no se venden solas”. And then he asked himself: “¿cuál es la narrativa de la JEP?”. This means that the JEP must actively achieve the acceptance of restorative justice. Its existence per se does not entail prestige or the acceptance of its rulings. In its operation, the JEP builds a narrative and must convince society that restorative justice is an effective justice, as Sebastián Escobar stated³⁶.

Hence, the authority of the JEP hinges partly on the acceptance of society, and especially of the victims, of the pertinence of restorative justice to overcome the crimes committed in the internal armed conflict. Some of the advantages have begun to become visible in the hearings. As Roberto Vidal suggested, the combination of the versions of the victims and the guerrilleros constitutes a “truth wall” difficult to break or contradict. But it is still uncertain how the restorative actions would work. Six years have passed since the JEP’s creation, but the JEP has not showcased a clear example of *sanciones propias*. Recently, the system of restorative actions started to work in Bogotá (El País España 2024). In the project *Siembras de Vida*, the most responsible of “*falsos positivos*”, like Gustavo Soto Bracamonte, will plant trees to restore the

³⁴ María Isabel Ortiz, interview by author, Bogotá, 09/06/2023.

³⁵ Gonzalo Sánchez, interview by author, Bogotá, 07/25/2023.

³⁶ Escobar, interview

forest around Usme, an area that was heavily affected by the internal armed conflict. The JEP coordinated this project after receiving many suggestions from victims' organisations and *comparecientes*. Previously, the *comparecientes* had voluntarily carried out “*Trabajos, Obras o Actividades con contenido Reparador o Restaurativo*” (TOAR) — for instance, former members of the FARC-EP had participated in a de-mining project at Briceño (Antioquia) or Mesetas (Meta) or in a botanical expedition at Anorí (Antioquia) (JEP Press Office 2020). These TOAR were conducted voluntarily by the *comparecientes* as an anticipated element of the sanctions. But *Siembras de Vida* has been the first project implemented by the JEP.

Some interviewees were mindful that the JEP should persuade society that restorative justice is fair and is not impunity. For example, Óscar Parra underlined the importance of framing the rulings to convince that they are proportional to the crimes committed³⁷. He and Ariel Sánchez, then director of the JEP Restorative Justice Department,³⁸ stressed that restorative justice is not only about the sanctions but also about the process. Interested sectors, like victims and society in general, may find more satisfaction in observing the *comparecientes* genuinely ask for forgiveness, show remorse, and effectively compromise with the non-recurrence of the crimes, than seeing them in jail. Only putting into place restorative justice and showing these processes might foster or undermine the acceptance of restorative justice, paraphrasing Gonzalo Sanchez's idea —“las instituciones no se venden solas”, “la justicia restaurativa no se vende sola”. It is necessary to convince society about its effectiveness.

In fact, the most recent survey of the Americas Barometer shows that most people (57%) are neither in favour nor against the fact that those responsible of crimes committed in the

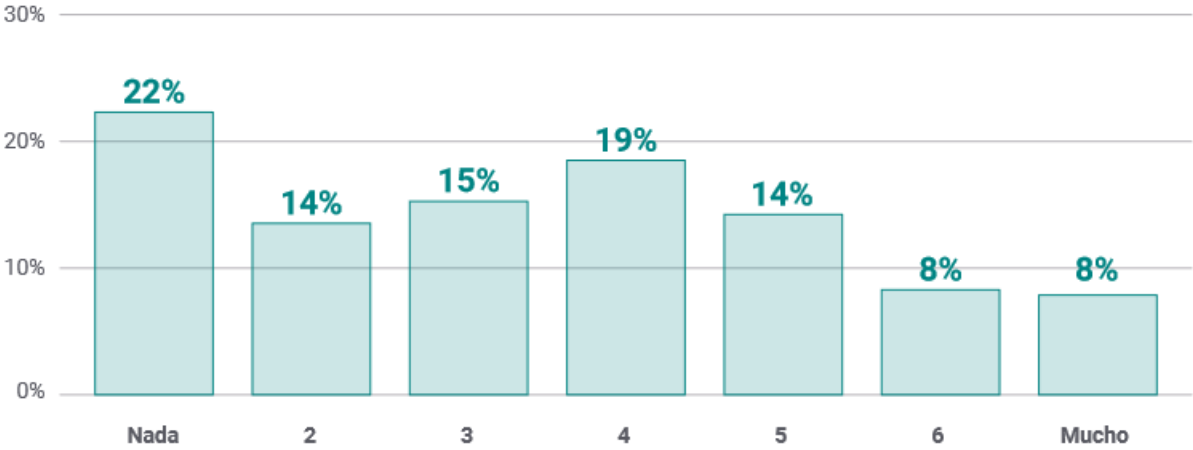
³⁷ Parra, interview.

³⁸ Ariel Sánchez, interview by author, Bogotá, 08/03/2023.

internal armed conflict are punished with sentences that do not involve imprisonment, if they confess their actions and contribute to clarifying the truth (Rodríguez-Raga 2023, 51–53). But when respondents were presented a concrete case, 52% were against it. On a scale from 1 (no support whatsoever) to 7 (full support), the extent of support ranged from 1 (22%), 2 (14%), 3 (15%), 4 (19%), 5 (14%), 6 (8%) to 7 (8%). Therefore, it seems that Colombians neither support nor refuse the idea of restorative justice, but they reject a case of it when it is applied. As a result, the JEP is still finding resistance to the idea of restorative justice.

Image 6. Support to a concrete restorative justice case in the JEP

Imagine que la JEP está estudiando un caso en que el soldado Carlos Soto confesó haber cometido homicidio. El tribunal determinó que Soto era culpable y decidió que cumpliría una pena reducida con detención domiciliaria, dedicándose a retirar minas antipersonales. ¿Por favor dígame hasta qué punto apoya usted o no esta decisión?



Fuente: LAPOP Lab, Barómetro de las Américas Colombia 2023

5.2.7 Salient cases of dissatisfaction with the JEP’s rulings: the claim of the Last FARC-EP Secretariat that the JEP derailed

As I have extensively argued in this MPhil thesis, the JEP has had strong opponents, especially from the right. But recently salient figures of the former FARC-EP, among them Rodrigo Londoño Echeverry, the ex-top commander of the FARC, have also argued that the JEP

“*se descarriló*”. This shows a substantial dissatisfaction with the JEP’s rulings that might undermine the diffuse support of one party of the Peace Agreement. It may also mean that the top figures of the FARC-EP might have reduced specific support towards the JEP, and this could affect their trust and loyalty towards the system.

In February 2024, the only seven living members of the Secretariat of the FARC-EP (its top structure of command) asked President Petro for a meeting to discuss that the JEP was going astray from the original design they agreed upon. Hence, in their opinion, the JEP was breaking the Peace Agreement, and, as a result, they suggested the creation of another Tribunal of closure, one that would include all the actors of violence in Colombia. They also said that they would be forced not to comply with any ruling if the JEP kept operating in that way. Furthermore, they implied that, facing judicial insecurity caused by the delays of the JEP, many of the rank-and-file members had been forced to join the existing organised armed groups (La Silla Vacía [@lasillavacia] 2024).

Their complaints were essentially based on four arguments. First, the amnesties guerrilla members were supposed to benefit from had not been granted or were taking a long time to be processed. Out of 4,485 requested amnesties, only 688 were granted; the rest were denied, breaching the principle of international law that, after an armed conflict, States should offer “the widest amnesty possible” to combatants. Former guerrilleros lived, then, in a situation of judicial insecurity, distrusted the JEP and had difficulties reincorporating into the civilian life. Second, as combatants of the medium ranks were being investigated in case 1, among others, the JEP was unnecessarily deviating from its original task: clarifying representative cases. Third, in their opinion, the concept of “manifest desertion” — when the JEP promptly expels individuals from

its jurisdiction, after confirming that they have taken up the arms again by a strikingly evident proof, like it did with “Santrich” — was a violation to the right of due process. Fourth, the JEP’s intention of handing down several “*resolución de conclusiones*”, instead of a unique one, dishonoured the Peace Agreement and the principle of legality. In a few words, this means that the FARC-EP members could face many sanctions corresponding to as many “*resolución de conclusiones*” (indictments) as they would get indicted for, instead of serving only one sanction for the only “*resolución de conclusiones*” concerning all the crimes they claim they had agreed upon.

Unsurprisingly, the letter prompted an intense reaction among the JEP, intellectuals and even the victims. A couple of days after the letter was published, the JEP issued a press release that stressed that any submitted individual should comply with the JEP’s rulings, and those who refrained from doing so would lose their benefits and their cases would be resumed in the ordinary Tribunals (Semana 2024a).

Weeks later, the JEP organised an event to inaugurate a digital platform that collects all the granted amnesties, regardless of whether they were decided by the Government, the ordinary jurisdiction or the JEP. This unified database would foster judicial certainty among the former members of the FARC-EP, who would know if they have been granted an amnesty. Yet, in his speech, Rodrigo Londoño Echeverri “Timochenko” insisted that their cases should be definitively resolved (Rodrigo Londoño 2024).

In several interviews, Roberto Vidal, the president of the JEP and spokesperson, defended the JEP’s work (Semana 2024b). He mentioned that the FARC-EP’s claims were politically motivated and, since the JEP was a judicial institution, it would not respond for political actions; it would only operate in judicial terms. The former members of the FARC-EP had legal actions

to contest the judicial decisions and the JEP would duly process them, guaranteeing independence, justice, and balance. He specified that the unresolved amnesties were complex to decide, due to the particularities of each case. He also emphatically rejected the idea of another Tribunal of closure.

Alluding to the letter, Yesid Reyes, one of the designers of the JEP appointed by former President Santos, pointed out that the JEP has been misinterpreting the rules of their Statutes (Yesid Reyes 2024). It has been clarifying many cases, providing as much truth as possible but, in his opinion, that was not its initial purpose. The Truth Commission was in charge of explaining the truth of what happened in the internal armed conflict, whereas the JEP had to adjudicate and sanction the “most responsible” of that conflict. Thus, the Truth Commission was maximalist, while the JEP was essentially minimalist. By seeking to expand its scope, the JEP would get distracted from its main purpose, and might not accomplish it. So, he recommended opening the dialogue to find a common interpretation of the Peace Agreement to find consensus on the JEP’s operation.

Paola Molano acknowledged that the former members of the FARC-EP were partially right, but they were still bound to fulfil the JEP’s ruling as one of the parties of the Peace Agreement (2024a). She mentioned that the JEP’s delays in handing down rulings were unjustified: it had not decided a single sentence neither for the FARC-EP former combatants, nor the agents of the Armed Forces. In her opinion, Vidal’s position was unacceptable in that he should point out when the definitive rulings were going to be decided. This would mean meeting the main objective of the JEP and fulfilling the victims’ expectations. Transitions are a window of opportunity, and as time passes, the outcomes of a transitional justice mechanism progressively lose their relevance.

On their side, some of the FARC-EP victims who participate in the JEP's proceedings have started to ask the FARC-EP to comply with the rulings. They also recognise the importance of the JEP's work and the positive results of the proceedings (El Espectador 2024a).

As can be observed, the delays in handing down definitive rulings, the thoroughness with which the JEP has been doing its job, and its intention of handing down several sentences according to the crimes the FARC-EP members committed have been causing unconformities within the FARC-EP. In turn, they have been testing the political support of finding an alternative Tribunal for the accountability of their crimes; they have suggested refraining from recognising the rulings of the JEP. Some experts on the JEP have also pointed out the slowness of the JEP's proceedings, while the JEP defends its job. However, it seems that its legitimacy begins to be contested by the top commanders of the FARC-EP. Thus, specific support can affect the diffuse support of an essential actor, salient members of the FARC-EP who argue that they speak as signatories of the Peace Agreement.

5.3 Discussion between specific support and diffuse support

The recent critiques from the last FARC-EP Secretariat prompt a question relevant to the academic literature: to what extent does the satisfaction with the decisions of the JEP, or the lack of decisions affect diffuse support? According to Easton, specific and diffuse support are completely disconnected in older, established courts (Easton 1975). Diffuse support offsets the negative effects of an unpopular decision. Gibson et al. posited that this might not be the case for recently established institutions. Diffuse support can be low when specific support is high because the Court has not had enough time to build a "goodwill reservoir" (1998, 344). The nature of the relation between diffuse and specific support is strongly associated with "whether

people already have established attitudes toward the institution or whether the institution is relatively unknown” (J. Gibson, Caldeira, and Baird 1998, 345). At the same time, only consistent dissatisfaction can undermine the levels of diffuse support, even if they are scarce. In 2020, Botero pointed out that, as any new Court, the JEP lacks a goodwill reservoir and, as any transitional justice mechanism, it addresses controversial and unpopular topics. As a result, “we might expect that, over the medium term, specific rulings could negatively influence institutional support for this court” (2020, 303).

In other words, the JEP was created with a goodwill reservoir deeply related to the “established attitudes towards the institution”, that is, mostly, the support or rejection of the 2016 Peace Agreement. Over time, the JEP has been able to build a reservoir on its own by crystallising the satisfaction or dissatisfaction with its rulings, hearings, symbols, ceremonies. Yet, in the medium term, prolonged dissatisfaction with the JEP’s rulings might erode diffuse support because the JEP might be perceived as an ineffective institution.

According to Shany, the effectiveness of an organisation can be measured by identifying: 1) the organization’s goals, 2) the desired outcome and 3) “the time frame over which it is reasonable to expect that some or all of these goals could be met” (2014, 14). Thus, in the JEP’s case, the goals are “satisfying the victims’ right to justice, providing truth to the Colombian society, protecting the victims’ rights, contributing to achieving a stable and lasting peace, and taking decisions that ensure judicial certainty to those who participated in grave human rights violations” (Congress of the Republic of Colombia 2017). The desired outcome is that those goals are met; the time frame to fulfil them is initially 10 years, which can be extended two times by 5 years, for a total of 20 years. However, it is reasonable to expect that the JEP’s objectives might be achieved to some extent at this point, after six years of operation have passed.

According to the 2023 Americas Barometer reports' findings only 29% of the respondents stated that the JEP had satisfied the victims' rights to truth, reparation, and justice (Rodríguez-Raga 2023, 53). In contrast, 49% of the respondents said that the JEP had failed to meet those goals, while 23% said that the JEP had achieved those goals to some extent.

As I have discussed above, the JEP has been able to provide truth to the Colombian society to some extent, through the macro-cases and the HART, while protecting the victims' rights, contributing to build a stable and lasting peace. Yet the delays in handing down definitive rulings question its capacity to meet two of its main goals: 1) providing justice to the victims; and 2) guaranteeing legal certainty to the *comparecientes*. To summarize, the JEP's ineffectiveness to provide justice and guarantee legal certainty erodes specific support because it creates dissatisfaction towards the scarcity of rulings in those terms, and when such a dissatisfaction is consistent, it undermines diffuse support, as the FARC-EP's case shows.

At least three of the interviewees who worked in the JEP were mindful of this. In their view, they all claimed that the JEP's legitimacy hinges on its rulings and, most of all, on "getting the work done"³⁹. One of them boldly argued that those who get the work done are hard to get rid of; conversely, those who do not get their job done are easily eradicated. At the time of the interviews, this was a major concern among the JEP interviewees: five years had passed out of the 10 of initial duration, and it did not seem likely that the JEP was going to finalise its operation in such a period. Some interviewees were in favour of asking for a mandate extension, others were against it. Be it as it may, a little over seven months later, the last FARC-EP Secretariat published its letter strongly criticising the JEP's lack of definitive rulings.

³⁹ Interviewee 17, interview by author. Bogotá, 08/14/2023. Interviewee 9, interview by author. Bogotá, 07/26/2023. Interviewee 20, interview by author. 08/25/2023

Other interviewees expressed their concerns about the extent to which the JEP's rulings were able to guarantee the non-recurrence of the crimes and contribute to the Colombian transition. For example, Eduardo Pizarro Leóngomez⁴⁰, a scholar expert on transitions, underlined that the JEP's context is very particular: citing the title of a book by Rodrigo Uprimny et al. (2006), the JEP's was a case of "justicia transicional sin transición". This entails challenges because the JEP operation might disappoint the societal expectations, when not curbed to the particular scenario. Unlike the Argentine case, where a Tribunal adjudicated the cases after the dictatorship had ended, the JEP is adjudicating crimes while the Colombian internal armed conflict is still happening.

It could be argued that the FARC-EP demobilised and the JEP is contributing to that transition. But even in those cases, "Jesús Santrich" and "Iván Márquez", among others, were signatories of the Peace Agreement, later were deserters and founded a new armed group, the "Segunda Marquetalia", arguing that the State had betrayed them. As was explained above, the JEP ruled in favour of "Jesús Santrich", after which he became a deserter. Hence, some people might perceive that the JEP has not been helping to contribute to the Colombian transition and that might put the JEP's ability to contribute to the transition in doubt.

In conclusion, in the JEP's case, dissatisfaction with rulings or the lack of definitive decisions might affect societal loyalty to the JEP in the medium term. Unlike ordinary high Courts, the JEP has a limited time of existence where it is expected to accomplish its objectives — guaranteeing the victims' rights to justice, truth, reparation, and non-recurrence; providing legal certainty to the *comparecientes*; and establishing judicial truth for the Colombian society. If

⁴⁰ Eduardo Pizarro Leóngomez, interview by author, Bogotá, 07/10/2023.

it is perceived that during the period of existence, the JEP has not been able to accomplish those goals, the diffuse support for it might decrease, as happened in the case of the extinct FARC-EP.

5.4 Saliency

The Americas Barometer 2023 report established that less than 1 out of 3 Colombians understood the JEP's functioning (29%). Although it may still seem like a large challenge, doing pedagogy about the JEP's operation might be of use: the same report describes that the proportion of those who trust in the JEP doubles among those who know its functioning compared to those that ignore it. This could explain the JEP's communicative efforts.

For being a young Court, the JEP is salient because it deals with controversial issues, the media has extensive coverage of the JEP's operations, many of its most important hearings have been televised, and all of them are broadcast through YouTube. As a result, in a short period for a Court, the JEP has exposed Colombian society to its legitimising symbols, some of which have been explained above in the Section 5.2.4.

Unlike other Colombian Courts, the JEP has been executing a communication strategy through many means, as Hernando Salazar, then Director of Communications at the JEP, pointed out⁴¹. The JEP has been one of the first Colombian Courts to use TikTok, the only one that records all its hearings on YouTube and has extensive interaction on Twitter and Facebook. It also has a podcast and a radio program "Por fin lo sabemos", produced by Radio Nacional Colombia, the public radio company. Communication is perceived as a pedagogical space to teach about the JEP's design.

⁴¹ Hernando Salazar, interview by author, Bogotá, 08/11/2023.

Yet, the fact that the JEP might achieve some salience does not mean that its role, decisions, and proceedings are understood and validated. Santiago Rodríguez⁴² and María Isabel Ortiz⁴³, who respectively covered the JEP for *La Silla Vacía* and *El Tiempo*, describe this fact in terms like “la paz no es sexy”, “la paz no es lo más taquillero [Peace is not the most viral topic]”. News explaining the JEP’s symbols is less read than political scandals. In other words, social groups might be exposed to legitimising symbols but that does not mean they will become interested in the JEP’s operation. On the other hand, it is possible that the fact that the JEP remains outside the scandals could feed its legitimacy.

5.5 Obedience

In general, the JEP decisions have been enforced. The best example of the JEP judicial authority is the compliance of the “Santrich” decision. It imposed a significant challenge due to pressure from the US Justice Department and the resignation of the Attorney General. Yet, the ruling was complied with, and “Santrich” was released from jail.

In other cases, the JEP has ordered house arrest for the public servants in charge of implementing measures to protect cemeteries that could contain disappeared people's remains. In December 2023, the Governor of the Department of Valle del Cauca, Clara Luz Roldán, complied with two days of house arrest for not honouring the compromises to protect areas where the JEP could potentially find remains of disappeared people. Neither she nor anyone from her government attended the hearings at the allocated time to intervene regarding this issue. As she was complying the decision, she strongly criticized it: “Quiero anunciar que el día de mañana

⁴² Rodríguez, interview.

⁴³ Ortiz, interview.

cumpliré el fallo proferido por la JEP. Qué ironía, cuánto criminal libre porque se acoge a la JEP, nombrados gestores de paz, sin un día de cárcel ni reparación a sus víctimas” (Semana 2023b). Similarly, in June 2023, Robinson Manosalva, mayor of the municipality of Aguachica, served two days of house arrest for failing to safeguard the *Cementerio de los Pobres* of his town (Semana 2023c). As a sign of protest, he posted a video saying:

Son como maricas, para esto están los delincuentes, los bandidos, los corruptos, una cosa es que me den una medida cautelar por no desenterrar un poco de huevones que tienen más de 50 años de estar enterrados, muertos, que tienen familia, por orden de unos hp guerrilleros llamados magistrados

After this message, the JEP ordered the criminal and administrative investigation of Manosalva for insulting the victims and the chief justices. The tone of both messages, but especially the last one, indicates that disobedience of the JEP’s rulings is used as a political means to defy the JEP’s social authority and ultimately the idea of peace it symbolises. In short, although in general the rulings are complied with, the existence of cases as the ones I pointed out mean that the JEP social legitimacy might be at stake daily. Politicians could disobey the JEP’s rulings to activate emotional devices against what the JEP might symbolise in their discourse: impunity, biased decisions in favour of *guerrilleros*, unreasonable liberty for criminals without proper reparation to the victims.

5.6 Age

Age and time are essential elements to the JEP. The JEP is a recent Court with a limited time of existence for accomplishing its goals. Therefore, the JEP must be effective. In the initial stages, it did not have a goodwill reservoir to rely on, but rather the societal perception came

from the support or rejection of the Peace Agreement. Furthermore, as Sebastián Escobar suggested⁴⁴, the JEP did not have the burden of impunity of ordinary tribunals.

As time has passed, Colombian society has been able to do a running tally of the transitional justice decisions. Based on that, perceptions have changed. Most of the interviewees agreed that the JEP has increased its sociological legitimacy over time, and some argued that the Petro administration has been a period where the JEP has financial support to increase its staff and operations. Time is also limited for a transitional justice system. Hence, the older a transitional justice tribunal, the greater the expectations of accomplishing its goals. Contrary to the existing literature, in the JEP's case, as times passes, the decisions might increasingly affect the societal loyalty, especially if they are definitive. Certainly, the upcoming imposition of *sanciones propias* will be a landmark moment that will test the JEP's sociological legitimacy. As Paola Molano tweeted: “No se nos olvide que la JEP existe en función de la transición, no como un fin en sí misma. Así que entre más tiempo pase, sus resultados son menos relevantes ante la sociedad, pues la transición es una ventana de oportunidad chiquita que se está cerrando progresivamente.” As the JEP becomes older, its outcomes might become less relevant, given that transitions are windows of opportunity. Furthermore, as times passes, society expects more positive effects from the decisions taken in the past; it expects signs of the transition.

5.7 Scale

Having described the JEP legitimacy factors, it is important to estimate them in the scale I previously proposed above. Diffuse support is high because, over time, most individuals have

⁴⁴ Escobar, interview.

not been willing to make fundamental changes to the JEP, and contentious decisions are accepted. The Constitutional Court and Congress, as well as international organisations like the ICC and the UN Security Council, have supported the JEP. Individuals somewhat trust in the JEP.

In terms of specific support, some social groups have expressed major critiques —the FARC-EP, the *uribismo*. The latter did so in the initial years and lately it has been less vocal, even accepting the existence of “*falsos positivos*” and deflecting the responsibility to those members of the Armed Forces who committed the crimes. The first have criticised the lack of definitive rulings of *sanciones propias*, amnesties and a unique indictment. Victims have expressed minor concerns especially regarding their participation, although there has not been a massive drop out of the JEP’s proceedings. In absence of definitive rulings, hearings have become the landmark spaces to frame the JEP’s outcomes, to explain their logic and to educate the population about the ideas of restorative justice. The JEP has been trying to treat and prosecute both the FARC-EP and the Armed Forces equally. The idea of restorative justice is somewhat accepted, but it is more refused when it is applied to a concrete case. This highlights that the JEP’s framing of *sanciones propias*, the application of restorative justice to specific scenarios, is going to be essential to the acceptance of restorative justice.

In short, most social groups are somewhat satisfied with the JEP’s outcomes, while some have major critiques, and restorative justice is somewhat accepted. Therefore, specific support is medium and might tend to pass to low, depending on the speed in handing down definitive rulings and the framing of *sanciones propias* and other restorative actions.

As for obedience, in general, the JEP’s rulings are complied with, even when they are held against someone who disobeyed a previous order. Yet, as I showed with some examples,

there are cases of disobedience and critiques to the JEP that could be used as emotional devices to justify disobedience. As a result, obedience tends from medium to high.

Following Americas Barometer data, salience of the JEP is low. Less than 30% of Colombians understand the JEP's operation. However, given the media exposure and the cases the JEP adjudicates, it is possible that citizens know about the existence of the JEP but they might not understand its inner workings.

Taking into account the previous components, the JEP has a medium level of legitimacy that is explained by the levels of the different components of legitimacy. It could increase or decrease depending on the most pressing issues at the moment —the lack of salience and definitive rulings, the efficacy of the *sanciones propias*, the satisfaction of the victims regarding their participation, and the major critiques coming from an essential actor (the top public figures of those who belonged to the FARC-EP). In other words, how the JEP deals with these pressing matters will directly contribute to the variation of its legitimacy.

6. Conclusions

In this MPhil thesis, I addressed the question of the sociological legitimacy of the JEP. This issue is important because the literature on the legitimacy of transitional justice legal systems is scarce and maintaining legitimacy is essential to accomplish the JEP's goals. First, I argued in favour of studying sociological legitimacy, beyond a normative approach, since the critiques against the JEP are usually moral and concern emotions, and the legal legitimacy of the JEP is not contested. Then, I endeavoured to provide a method to study sociological legitimacy as a contribution to the academic literature and the JEP itself. A framework serves to highlight the flaws in operation, successes, and failures. It condenses what might be perceived in day-to-day operations.

Using a range of sources, I sought to probe whether the factors of legitimacy that academic literature for High Courts posited were useful to understand the JEP's sociological legitimacy. I selected the most recurrent factors of legitimacy in the existing literature and, given that the academic literature had scarcely explained ways to operationalise them, I proposed some signs of erosion or strengthening of such factors and a scale to gauge them. Certainly, there are limitations on this research project: the time and budget available were insufficient to carry out surveys, which could make more generalisable assumptions. Yet, with the available sources, I convey an idea of the JEP's sociological legitimacy, being as rigorous as possible with the information in hand.

This is the main reason for the focus on a historical background, to help the reader understand the issues that may affect the sociological legitimacy of the JEP nowadays. In the last section before the conclusion, I tested the theoretical framework with the development of a transitional justice jurisdiction that has been operating for more than 6 years, with around 1,000-

1,300 employees and pursuing ambitious goals. This has been happening in a complex political context, where the internal armed conflict has not stopped and the vestiges of war are still latent. In general, the JEP's sociological legitimacy has increased over time, as I described in the diffuse support section, especially regarding the frustrated attempts to modify its structure. Thanks to medium levels of diffuse support, obedience, salience and to a lesser extent specific support, the JEP's sociological legitimacy is at a medium level that could drop lower. This explains its capacity to make contentious decisions, maintain its structure, increase its personnel, and hand down decisions that are enforced, but also the increasing critiques to its effectiveness.

Three main issues are significantly eroding the JEP's sociological legitimacy: 1) the lack of definitive rulings on all levels — both for “most responsible” *comparecientes* and non-“most responsible” *comparecientes*. If the JEP does not hand down definitive decisions, it will not meet the expectations of justice from the victims and society, and of legal certainty from the *comparecientes*. It might be perceived as an ineffective court. 2) The victims' participation has been criticised. This is precisely a trade-off between the participation of victims and the principle of strict temporality — the more victims participate, the slower the process might be, and vice versa. Nonetheless, the JEP should look for ways of addressing the victims' concerns while speeding up processes. 3) The JEP's functioning is still unknown to most Colombians. This prevents them from increasing their trust in the JEP and accepting the JEP's restorative justice paradigm.

The JEP's case can also underpin peacebuilding in other areas of the world that are experiencing armed conflicts. Policymakers and stakeholders of future and existing transitional justice courts could learn from the JEP's case that pedagogy is essential to ensure trust from society, especially for a new court that attempts to implement restorative justice and change the

punitive paradigm. If people understand the court's functioning, they will be more likely to support and defend it. Moreover, support from national and international institutions is essential. The endorsement of High Courts, Congress, the ICC, and UN agencies to a transitional justice court makes changes in its structure less likely to happen. Victims' participation is also a necessary condition to ensure their support. This, along with the support of national and international institutions, heavily strengthens the legitimacy of a transitional justice tribunal.

Having an effective administrative design might be equally important. This is essential to achieve effectiveness, by promptly handing down definitive rulings and preventing delays that hamper loyalty and trust. The framing of the rulings also plays an important role: word choice, argumentation, and the legal sources used are fields where transitional justice courts defend their independence and convince audiences of their authority. Hearings are opportunities where the court educates on its operation, justifies its existence, argues its benefits, showcases its processes and, foremost, reinforces its symbols. The JEP's case may show that there is nothing more legitimising than getting the work done (and communicating it).

Effectively advancing the transition to peace in Colombia is not an easy task. Past decades of violence still affect the present situation. Present armed conflicts perpetuate violence, while transitional justice institutions try to contribute to healing the wounds that the armed conflict between the Government and the FARC-EP inflicted. This MPhil thesis helps to understand how the JEP is perceived by Colombian society and how various factors can contribute to its legitimacy. In doing so, it will hopefully contribute to building peace in Colombia and support other peace processes around the world.

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