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POLICY BRIEF

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Recommendations to JEP for addressing Harms Against LGBTQ people in Colombia

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Introduction

In 2023 Colombia's transitional justice process, the Special Jurisdiction for Peace (JEP) opened Macrocase 11. This national case marks an important opportunity to recognize gendered harms such as gender-based violence, sexual violence, and reproductive violence, including those related to sexual orientation and gender identity, that occurred during the Colombian armed conflict. We recognize Case 11 as a groundbreaking case not only for the LGBTQ (lesbian, gay, bisexual, transgender and queer) community in Colombia and Latin America, but also an extension of the growing commitment to queering transitional justice mechanisms and queer jurisprudence. Civil society organizations including The Alianza Cinco Claves (Five Keys Alliance) point to the need for a national case to address cases of sexual and reproductive violence, and violence based on the victim's sexual orientation and/or gender identity (SOGI). It is especially powerful to bring a feminist-informed gendered approach to these violences that recognizes gender as inclusive of not only women's experiences but the LGBTQ community too.

Informed by input by researchers and practitioners, we first provide an overview of how the Colombian conflict has impacted LGBTQ people, then speak about ways to address this violence. We recognize the importance of the significant achievements to-date by the Colombian truth commission to support LGBTQ people and conclude with four key recommendations to the JEP for implementing Case 11:

1) Undertake a normative audit of relevant laws,
2) A transparent process for reparations practices when working with civil society and community,
3) Holistic responses across all nine lines of reparations and
4) Ensure that violence against people with diverse SOGIESC is understood and taken seriously by ex-combatants.

Additionally, we provide recommended actions for implementing these four recommendations. We hope these prove as concrete and relevant recommendations to the broader work for ensuring peace in Colombia.

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The Centre for Gender in Politics serves the growing community of feminist scholars and activists in international studies who apply a gendered lens to understand challenges in global politics. Research conducted at the Centre investigates the centrality of gender, in intersection with other categories such as race, class, sexuality and ability, in shaping local, national and global dynamics.

Overview of how conflict has impacted LGBTQ people

Colombia's internal armed conflict deepened discrimination against members people with diverse sexual orientations, identities, and gender expressions (SOGIE). State security forces, guerrillas, and paramilitaries capitalized on the exclusion experienced by LGBTQ[1] individuals in Colombian society to gain legitimacy.[2] In doing so, these armed actors enforced a cisnormative and heteronormative order within the framework of their territorial and social control policies, punishing, correcting, or eliminating those whose bodies and ways of life did not conform to the norms they imposed.

This violence led to the further normalization of LGBTQ discrimination. This approach aims to address the deep-seated harms inflicted by discriminatory norms and ensure that LGBTQ individuals do not face additional obstacles to their dignity and happiness in everyday life. Therefore, it is crucial for transitional justice reparations to include processes of cultural transformation and socialization. To achieve this, it is vital to strengthen the gender perspective brought forward by feminist and LGBTQ civil society organizations, empowering these communities to actively participate in political matters that directly affect their communities.[3] To this end, restoring access to citizenship rights for LGBTQ individuals in rural areas is critical. This will ensure their voices are heard and their rights are upheld in all areas of civic engagement.

LGBTQ individuals who endured violence and persecution during the conflict hold hope that the transitional process will alleviate the poverty and precariousness exacerbated by the war. Consequently, their reparative expectations have focused on demanding free educational and employment opportunities that enable them to integrate fully into society, build a dignified future, and improve their quality of life and that of their families.

Furthermore, forced displacement without resources, opportunities, and state or social support due to widespread discrimination in the country forced them to disconnect from their territory. Therefore, LGBTQ victims also consider it particularly relevant for reparations to include strategies to guarantee the right to land restitution and adequate housing.

Addressing violence targeting people with diverse SOGIESC

Cases of prejudice-based violence against people with diverse SOGIE characteristics, as well as sexual violence, should both be recognized as forms of gender-based violence. These incidents share a critical characteristic in the context of transitional justice: providing reparations can be particularly challenging. This arises from the potentially revictimizing and risky nature of direct contact between perpetrators and victims, which is often inherent in reparative activities.

Such direct interactions during the transitional process must be carefully managed to safeguard the dignity and safety of victims, ensuring that efforts to redress past harms do not inflict further trauma. Hence, measures involving direct participation of perpetrators should be aimed at restoring the legitimate social position of LGBTQ individuals within their social environments, and through processes in which LGBTQ victims have control.[4] Meanwhile, psychosocial or medical, educational, employment-related, or other measures involving direct contact with the victims should be carried out by third parties (even if financed by the armed group).

Victims have expressed that acknowledgment of responsibility and clarification of the truth are essential components for their reparation process. However, it is exceedingly challenging to maintain confidence in the process due to the resurgence of conflict in the territories, rearming, and desertion of some former FARC-EP

[1] The data collected by Colombia's Truth Commission, while utilizing "LGBTIQ+", does not sufficiently represent intersex people or distinctly address experiences based on sex characteristics. Therefore, the term "LGBTQ" is used here to encompass all persons with non-normative sexual orientations, gender identities, and expressions. It is recognized that the term "LGBTQ" is predominantly Western and may not encapsulate all cultural expressions of gender and sexuality globally.

[2] Colombia Diversa (2020) Orders of Prejudice: Systemic Crimes Committed Against LGBT People in the Colombian Armed Conflict,https://colombiadiversa.org/colombiadiversa2016/wp-content/uploads/2020/07/english-version-Orders-Of-Prejudice.pdf

[3] The opening of a national case on sexual and reproductive violence, and violence based on the victim's sexual orientation and gender identity is a necessary and urgent measure for transitional justice with a gender perspective, Cinco Claves: https://www.sismamujer.org/wp-content/uploads/2021/10/The-opening-of-a-national-case-of-sexual-and-reproductive-violence.pdf

[4] For more about specific reparations for LGBTI Rights in Latin American transitional justice systems see: Pascha Bueno-Hansen, The Emerging LGBTI Rights Challenge to Transitional Justice in Latin America, International Journal of Transitional Justice, Volume 12, Issue 1, March 2018, Pages 126–145, https://doi.org/10.1093/ijtj/ijx031

members who continue to discriminate against them.[5] Furthermore, it is concerning that in cases of prejudice-based violence against LGBTQ people, acknowledgment of responsibility has not been fruitful thus far, and there have been limited sanctions for the perpetrators. In this regard, it is urgent for LGBTQ victims to create strategies for non-repetition through anticipatory reparations.

Milestones of achievements to-date of existing work by the truth commission

It is essential that the JEP actively considers the findings and insights of the now-defunct Colombian Truth, Coexistence, and Non-Recurrence Commission. Despite the conclusion of the Commission's formal mandate, the work it undertook continues to be a cornerstone of the tripartite transitional justice system. In fact, the Colombian Truth Commission is the first transitional justice body in the world to comprehensively acknowledge and analyze the forms of violence, impacts, resistance, and coping experienced by LGBTQ+ people in an armed conflict. The JEP should continue this groundbreaking work, building on its own international precedent of levying gender persecution charges for war crimes and crimes against humanity committed against LGBTQ+ people and communities.[6]

Civil society significantly influenced the methodological and operational approach of the Colombian Truth Commission, incorporating insights from diverse groups including women's and LGBTQ+ organizations, along with gender-focused academics. This collaboration was coordinated through a Technical Assistance Table, which facilitated ongoing dialogue and strategic input, enriching the Commission's initiatives. Although the Table was not consultative—meaning it did not seek consensus on decisions—it effectively integrated specialized knowledge into the Commission's actions. This model of engagement, focused on dialogue, should be considered by the JEP to enhance its reparative processes with valuable civil society contributions.

In crafting reparations and determining sanctions, the JEP should diligently consult pages 569 to 580 of "*Mi cuerpo es la verdad*," the Gender Volume of the Commission's landmark report.[7] These pages specifically outline recommendations focused on addressing the unique challenges and injustices endured by LGBTQ+ communities during the conflict. The recommendations are aimed at ensuring access to justice and preserving the memory of LGBTQ+ individuals, creating conditions of substantive equality for LGBTQ+ persons, and promoting and achieving peaceful coexistence.

For instance, one of the recommendations issued by the Commission is the establishment of at least two memory museums dedicated to the experiences of LGBTQ+ individuals affected by the armed conflict. These museums are envisioned not only as spaces to reclaim and embrace the narratives, memories, and life stories of LGBTQ+ victims but also as platforms for public education and social engagement. It is suggested that one museum be situated in a region heavily impacted by the conflict, and another in the capital city. This initiative forms part of a broader strategy to implement social pedagogy programs. In line with this, the JEP can actively work towards fulfilling these recommendations within its reparations process. By doing so, the JEP would significantly contribute to better synergizing with the Integral System for Peace and ensure that the historical injustices faced by LGBTQ+ communities are acknowledged and addressed in meaningful and transformative ways.

4 Key Recommendations

The Integrated System of transitional justice has, thus far, been world-leading in terms of inclusion of LGBTQ victims and organizations, yet without concrete steps to continue this collaboration in peacebuilding[8] through the process of implementation, the needs of victims for holistic processes of reparations run the risk of going unmet, as has been the case in many previous transitional processes. We therefore see Case 11[9] as an opportunity to revisit this aspect of the

[5] Thylin, Theresia. 2020. "Violence, Toleration, or Inclusion? Exploring Variation in the Experiences of LGBT Combatants in Colombia." Sexualities 23 (3): 445-64.

[6] Colombia's Peace Tribunal Breaks New Ground on LGBTQ Persecution:https://outrightinternational.org/insights/colombias-peace-tribunal-breaks-new-ground-lgbtq-persecution

[7] "Mi cuerpo es la verdad." https://www.comisiondelaverdad.co/mi-cuerpo-es-la-verdad (2022:572)

[8] Aportes a las agendas de las organizaciones y activismos LGBTI en la construcción de paz, CPAZ (2022): https://www.instituto-capaz.org/en/aportes-del-activismo-lgbti-en-la-construccion-de-paz-nuevo-policy-brief-capaz/

[9] Transiciones justas en clave restaurativa. Medidas y sanciones restaurativas en casos de violencias basadas en género y violencias por prejuicio, con énfasis en la Jurisdicción Especial para la Paz. Ministerio de Justicia y del Derecho, Dirección de Justicia Transicional, 2023: https://www.minjusticia.gov.co/programas-co/justicia-transicional/Documents/Transiciones%20Justas.pdf

transitional process and present the following four key recommendations for addressing previous as well as ongoing harms against LGBTQ people.

1. Undertake a normative audit of relevant laws.

To ensure meaningful and effective transitional justice outcomes, the JEP should seek to address the systemic discrimination of LGBTQ people embedded (directly/indirectly) in the legal system in Colombia. It is important to recognise that laws and regulations may pose barriers and structural inequalities that could prevent the consistent encouragement and compliance with applicable international norms and full consideration of authoritative standards pertaining to the rights of LGBTQ people.

Regular audits would ensure that domestic laws align with a queer approach to transitional justice. This should not be assumed but put to rigorous and regular analysis to ensure the JEP continues to lay the foundations for transformative justice for LQBTQ people. The audit should include an identification and analysis of gaps in the current domestic laws, alignment with international and regional human rights norms, and recommendations for specific legislative action. As the UN Secretary-General Guidance Note states, 'compliance with norms and providing redress for human rights violations and abuses are central to reaffirming victims as rights holders and addressing their problems, which include various forms of marginalization.'[10] Therefore, in planning and implementing reparations and other transitional justice outcomes, a normative audit would lay the groundwork for implementation that would inform future political and legal responses.

Suggested Action: The JEP supports establishing a working group that will undertake a normative audit to identify laws and legal regulations that would misalign with promoting and protecting the rights of LGBTQ people considering Case 11.

2. Transparent process for reparations working with civil society and community.

Transparent, consistent partnership between civil society, community organizations and those responsible for implementing the recommendations for Case 11 is vital. Much as the CEV held regular meetings with the Mesa Tecnica[11] [12], throughout its workings, a similar body should be formed, with wide representation from both LGBTQ and feminist organizations, to support in the development of policy and procedures aimed at reparations for LGBTQ communities and individuals.

Suggested Action: The JEP establish a working group with transparent practices to assure a diverse group of LGBTQ community members and individuals are active in moving forward reparations following Case 11.

3. Holistic responses across all nine lines of reparations.

When combating the entrenched, systemic discrimination faced by the LGBTQ community in Colombia and identified within the final report of the Truth Commission, multiple lines of response are needed to achieve reparations.

Reparations cover nine focal areas, legal and psychosocial support, infrastructure, environment and territorial concerns, the search for the disappeared, guaranteeing human rights, education measures, and processes of memorialisation. Policy development for reparations must be holistic and cover all these areas to adequately address the structures of prejudice that give rise to violence against SOGIE both during and after conflict. This holistic understanding must also be embedded in the JEP's approach to intersectionality.[13]

Suggested Action: Rather than addressing one line of reparations and then the next, it is important for JEP initiatives to recognize how all these lines of reparations are intertwined and address each issue in relation to the other.

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[10] The United Nations Secretary General adopted his Guidance Note on Transitional Justice: A Strategic Tool for People, Prevention and Peace in June 2023: https://www.ohchr.org/en/documents/tools-and-resources/guidance-note-secretary-general-transitional-justice-strategic-tool

[11] Encuentro Mesa de Asistencia Técnica del Grupo de Trabajo de Género de la Comisión: https://www.youtube.com/watch?v=bno7GXmOBaU

[12] Sistematización del proceso de esclarecimiento de la verdad con mujeres y personas LGBTIQ+. La experiencia del Grupo de Trabajo de Género de la Comisión de la Verdad de Colombia (2018 - 2022) https://www.comisiondelaverdad.co/sistematizacion-del-proceso-de-esclarecimiento-de-la-verdad-con-mujeres-y-personas-lgbtiq-la

[13] Juliana González Villamizar, Pascha Bueno-Hansen, The Promise and Perils of Mainstreaming Intersectionality in the Colombian Peace Process, International Journal of Transitional Justice, Volume 15, Issue 3, November 2021, Pages 553–575, https://doi.org/10.1093/ijtj/ijab026

For example, trans rights also relate to memorialisation about violence against trans people as well as education about trans lives.

4. Ensure that SOGIESC violence is understood and taken seriously by ex-combatants.

Key to the reintegration of ex-combatants and the development of a more just society is addressing the significant role that paramilitaries, guerrillas, and the armed forces played in entrenching the structures of discrimination and violence against sexual and gender minorities.

It is of vital importance that education and capacitation programmes are developed to educate ex-combatants on the nature of such violence, the role that armed groups played in this violence, and their role in repairing the harms caused. This goes beyond training programs and should be developed in collaboration with a diversity of women's and LGBTQ groups, while being supported as a part of public policy.

Suggested Action: The JEP can support integrating education about LGBTQ people and continuing harms of social prejudice against LGBITQ communities into public policy efforts. The implementation of Colombia's first Women, Peace and Security National Action Plan[14] offers a meaningful entry point for addressing this issue moving forward as a concern of national peace and security with local implementation. This is also an opportunity to support queer and trans leaders in bringing forward this educational effort.[15]

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[14] Colombia's first Women, Peace and Security National Action Plan is expected to be public by late 2024. Read more: https://colombiadiversa.org/blogs/estamos-muy-cerca-de-lograr-un-plan-de-accion-de-la-agenda-de-mujeres-paz-y-seguridad/;https://www.elespectador.com/colombia-20/paz-y-memoria/plan-de-accion-de-colombia-para-la-resolucion-1325-sobre-mujeres-paz-y-seguridad/

[15] Hagen, J.J., Ranawana, A., Ramón, M.S.P., Mercier, N.,Beltrán,L., and Parra, V. (2023). Queering Women, Peace and Security: A Practice-Based Toolkit. https://bit.ly/44WOkT6.