

# NEWSLETTER NO 11. OBSERVATORY ON THE SJP

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## Colombian Commission of Jurists

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## Newsletter # 11. Prioritizing Cases and Situations in the Judicial Panel for Acknowledgment

This newsletter addresses the prioritization of cases and situations in the Judicial Panel for Acknowledgement of Truth and Responsibility and Determination of Facts and Conducts (hereinafter SRVR for its Spanish acronym) of the Special Jurisdiction for Peace (SJP). The first section will explain: i) what the prioritization carried out by the Judicial Panel for Acknowledgement consists of; ii) what are the opportunities for victims to participate in this process; and iii) how it differs from the selection process. The second section of this newsletter provides a general assessment of the prioritization carried out by the Judicial Panel for Acknowledgement.

### 1. Judicial Panel for Acknowledgement Prioritization Criteria

The prioritization and selection processes "are inherent in the instruments of transitional justice"<sup>1</sup>. On the one hand, **prioritization** is a process through which it is established the strategic order by which the investigation and judgment of a universe of facts and people<sup>2</sup> will be developed. To this end, a methodology and criteria for prioritization are applied, which make it possible to define the order in which cases and situations<sup>3</sup> will be heard and judged. As is well known, the number of crimes committed during the armed conflict that fall within the competence of the SJP is high, and it is necessary to use instruments to organize the work of knowledge and judgment. At the SJP, the methodology and criteria for prioritizing possible cases within its competence were established by its judges. In the case of the SRVR, these can be found in the [Criteria and Methodology Guidelines for Prioritizing Cases and Situations in the Judicial Panel for Acknowledgement of Truth and Responsibility and Determination of Facts and Conducts](#) issued on June 28, 2018.

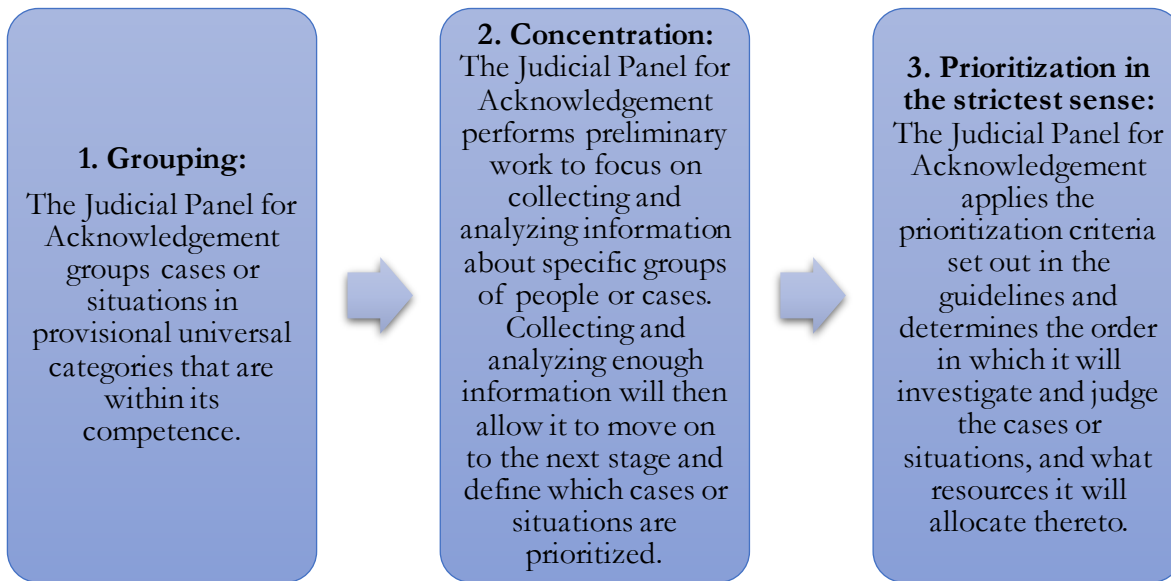
The prioritization process, according to the above-mentioned guidelines, has three stages:

<sup>1</sup> Political Constitution, transitory art. 66.

<sup>2</sup> Constitutional Court, [sentence C-080 of 2018](#), M.S. Antonio Lizarazo Ocampo, paragraph 4.1.5.3

<sup>3</sup> For SRVR, situations "are defined in terms of temporal and territorial parameters," while cases "are defined in terms of personal parameters, associating individuals and groups of individuals with responsibility for SRVR plans, policies and competing macro-criminal patterns. This distinction is taken from: SJP (2018), *Criteria and Methodology for Prioritizing Cases and Situations*, para. 2, available at: <https://www.jep.gov.co/Documents/CriteriosYMetodologiaDePriorizacion.pdf>

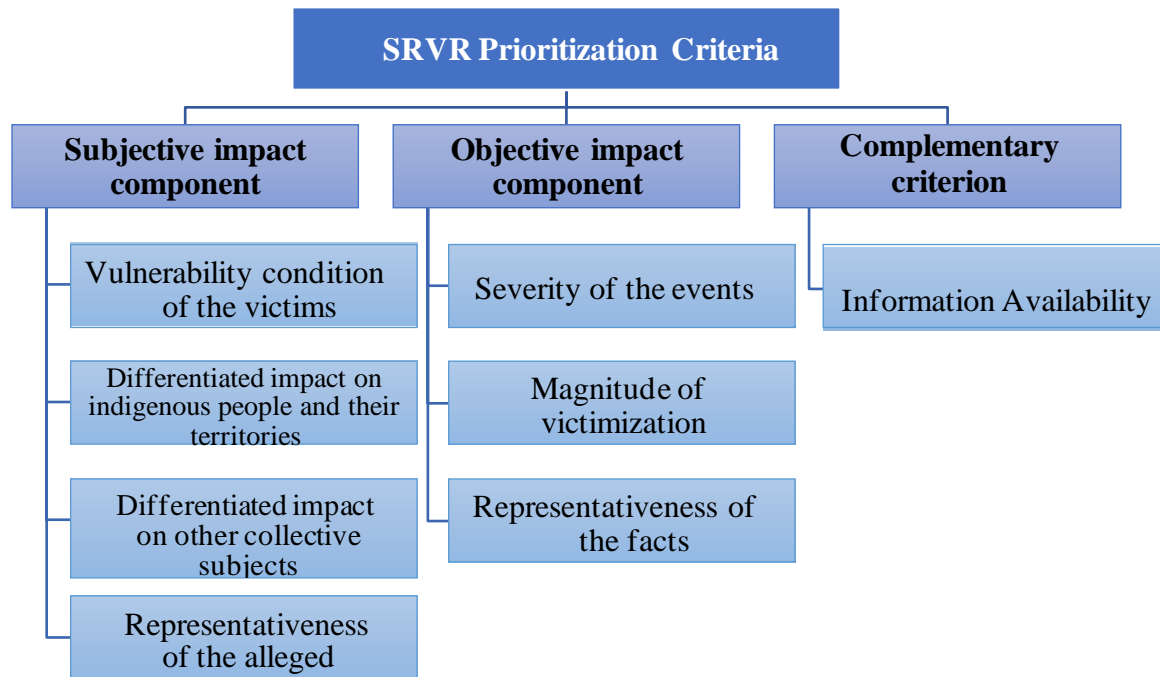
Graph 1. Stages of the Prioritization Process in the Recognition Panel



*(Own elaboration based on the [Criteria and Methodology Guidelines for Prioritizing Cases and Situations in the Judicial Panel for Acknowledgement of Truth and Responsibility and Determination of Facts and Conducts](#))*

The prioritization criteria that the Judicial Panel for Acknowledgement must apply in the prioritization in strict sense stage are shown in Graph 2. Each of the criteria has indicators or measurement elements that must be applied to the cases or situations being analyzed; these indicators can be consulted in the aforementioned [guidelines](#) (pp. 16-21).

Graph 2. Judicial Panel for Acknowledgement Prioritization Criteria



(Own elaboration based on the [Criteria and Methodology Guidelines for Prioritizing Cases and Situations in the Judicial Panel for Acknowledgement of Truth and Responsibility and Determination of Facts and Conducts](#), p. 10-20)

**Victims can participate in the prioritization process.** [Article 27D](#) of Law 1922 of 2018 establishes that victims have the right to be heard in the prioritization and selection of cases, and that they may participate this prioritization by submitting observations through their organizations and providing evidence. The participation of victims in prioritization may take place, for example, through requests for prioritization of situations or cases, contributions towards the identification of the prioritization criteria with documentary or other elements and with observations on the prioritization decisions adopted by the Judicial Panel, for example by requesting their modification. All of these participatory activities must be accompanied by appropriate and knowledgeable responses from the SJP in order to address the victims' expectations and satisfy their rights.

Finally, it should be noted that the prioritization concept is different from that of selection. **Selection** is a process that seeks to determine both the facts and persons on which the criminal prosecution will be centered or those to whom it will be waived<sup>4</sup>. The difference is that, while prioritization is part of a process of ordering the work that will move to judgment, selection is a delimitation process of the action framework that, as a natural consequence, defines the concentration of criminal prosecution in certain cases

<sup>4</sup> Constitutional Court, [sentence C-080 of 2018](#), M.S. Antonio Lizarazo Ocampo, paragraph 4.1.5.3.

while leaving others beyond its scope. To this end, previously established selection criteria must also be applied, allowing efforts to be focused on “those most responsible for all crimes that take on the connotation of crimes against humanity, genocide, or war crimes”<sup>5</sup>. Selection was demarcated in [Ruling C-579 of 2013](#) (Reporting Judge Jorge Pretelt Chaljub), with regard to an intervention of unconstitutionality presented by the CCJ, providing the following interpretation parameters.

9.9.1. The essential pillar that imposes on the State the duty to respect, protect and guarantee the rights of society and of the victims, requires that all of them have, at least, the following guarantees (i) transparency of the selection and prioritization process; (ii) a serious, impartial, and effective investigation, carried out within a reasonable period of time and with their participation; (iii) the existence of a recourse to challenge the decision on the selection and prioritization of their case; (iv) specialized assistance; (v) the right to the truth, so that when a case has not been selected or prioritized, it is guaranteed through non-criminal and extrajudicial judicial mechanisms; (vi) the right to full reparations; and (vii) the right to know where the remains of their family members are located. (...)

9.9.3. As indicated in the Constitution, without prejudice to the duty to investigate and punish all serious violations of human rights and international humanitarian law, statutory law may determine selection criteria that will allow efforts to be focused on the criminal investigation of those most responsible for all crimes that acquire the connotation of crimes against humanity, genocide, or war crimes committed in a systematic manner, an objective within which, for the selection of cases, both the severity and representativeness of the cases will be taken into account. (...)

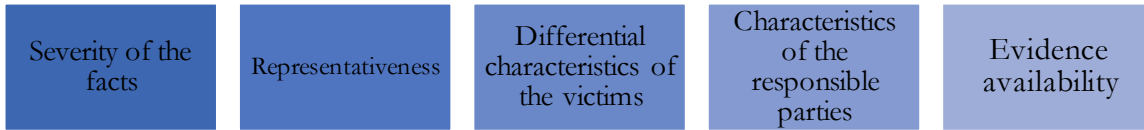
9.9.5. The articles of the Statutory Law must be respectful of the international commitments contemplated in the treaties that are part of the constitutionality block, with regard to the obligation to investigate, judge and, if necessary, sanction serious violations of human rights and international humanitarian law. (Bold and underlined outside the original text).

Based on this, Congress established in [Article 19 of](#) the Statutory Law 1957 of 2019, the following selection criteria:

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<sup>5</sup> Political Constitution, transitory art. 66

### Graph 3. SJP selection criteria



*(Own elaboration from the [art. 19 of the Statutory Law 1957 of 2019](#))*

[Article 19](#) of the Statutory Law 1957 of 2019 also establishes that criminal prosecution of people and acts that are not selected and do not constitute “crimes against humanity, genocide, or war crimes committed in a systematic manner, which may be attributed to those most responsible<sup>6</sup>” may be waived. The foregoing, respecting “the international commitments contemplated in the treaties that are part of the constitutional block, with respect to the obligation to investigate, judge, and, if applicable, punish serious violations of human rights and international humanitarian law<sup>7</sup>”. Likewise, in order for the waiver of criminal prosecution derived from the absence of selection to take place, the following requirements must be met: a) the effective contribution to the measures of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, especially towards the clarification of the truth; b) the compliance with the conditionality regime imposed by the Judicial Panel for Determination of Legal Situations (SDSJ for its Spanish acronym) or the SRVR; and c) the signing of the minutes of commitment of non-repetition and non-commission of new crimes.

## 2. Balance of the prioritization made by the Judicial Panel for Acknowledgement

So far, the SRVR has heard seven cases or situations: Illegal detentions of people by the FARC-EP (Case 001); Territorial situation of the municipalities of Ricaurte, Tumaco and Barbacoas in the department of Nariño (Case 002); Illegitimately perpetrated deaths presented as combat casualties by Agents of the State (Case 003)<sup>8</sup>; Territorial situation of the Uraba region (Case 004); Territorial situation of the north of Cauca and the south of Valle del Cauca (Case 005); Victimization of the Union Patriótica (UP) members by agents of the State (Case 006); and Recruitment and use of children in the armed conflict (Case 007). Below are some observations on the prioritization exercises carried out in these cases

### a) The prioritization methodology established by the Judicial Panel for Acknowledgement has not been applied in a clear, adequate and cohesive manner in all cases or situations

<sup>6</sup> Constitutional Court, [sentence C-080 of 2018](#), Reporting Judge Antonio Lizarazo Ocampo. Second ruling.

<sup>7</sup> Constitutional Court, [Ruling C- 579 of 2013](#), Reporting Judge Jorge Pretelt Chaljub, para. 9.9.5

<sup>8</sup> In the framework of Case 003, six territories or sub-cases have been prioritized: Catatumbo (Mobile Brigade No. 15 and Infantry Battalion Francisco de Paula Santander); Norte del Cesar (Artillery Battalion No. 2 "La Popa"); Casanare (Brigade 16), Antioquia (Artillery Battalion No. 4 "Jorge Eduardo Sánchez"); Meta (Infantry Battalion No. 21 "Battle of the Vargas Swamp"); Huila (Infantry Battalion No. 27 "Magdalena").

The SRVR has carried out in different ways the prioritization stages in the cases or situations about which it has raised awareness. Among the main differences are the following.

- *Grouping stage:*
  - In some cases or situations, it is stated that in the grouping stage, provisional universes of cases and situations have been established based on the available information provided by state entities and social organizations, without offering additional information on how this process was carried out or what results were obtained<sup>9</sup>.
  - In territorial situations, it is pointed out that the grouping stage is carried out from the territorial approach, which allows the construction of the situation of victimizing events<sup>10</sup> or the understanding of the territorial and contextual dynamics<sup>11</sup>. It should be borne in mind that the application of the territorial approach is cross-cutting and must be done in all prioritization exercises.
  - It is not clear what information is being analyzed to develop the grouping stage. Firstly, in order to group into provisional universal categories of cases and situations, it seems that the task of grouping requires progressively ordering and classifying the information available in general and not only that related to a type of event or a specific situation. In some cases, it is noted that the grouping was based on information sources referring exclusively to the case or situation being prioritized<sup>12</sup>, while in others it is pointed out that these sources are the basis of the concentration stage<sup>13</sup>.
  - In the grouping stage of Case 005, there are two particularities. On the one hand, a preliminary analysis of the competence factors of the Judicial Panel for Acknowledgement on the provisional constructed universes is presented<sup>14</sup>. Although this is because the facts that are grouped together must comply with the SRVR's competence factors, it is noted that the competence analysis ends up occurring in the concentration stage in cases such as Case 004<sup>15</sup>, while in others it simply does not take place. On the other hand, in Case 005 some criteria are analyzed for the grouping of facts into patterns, such as the passive and active subjects, the geostrategic and geoeconomic importance or the scale of the commission of the victimizing facts<sup>16</sup>. This not only includes addressing aspects related to the prioritization criteria but does not occur in other cases or situations

<sup>9</sup> SRVR, Order [002 of June 4, 2018](#), paras. 10 and 11, Case 001; Order [004 of July 10, 2018, para. 10](#), Case 002; Order [005 of July 17, 2018, para. 11](#), Case 003; Order [27 of February 26, 2019, para. 12](#), Case 006.

<sup>10</sup> SRVR, Order [004 of July 10, 2018](#), para. 10, Case 002.

<sup>11</sup> SRVR, Order [040 of November 11, 2008](#), para. 12, Case 004; [Order 078 of November 8, 2018](#), para. 9, Case 005.

<sup>12</sup> SRVR, Order [040 of November 11, 2008](#), para. 14, Case 004; [Order 078 of November 8, 2018, para. 12](#), Case 005; Order [27 of February 26, 2019, para. 12](#), Case 006.

<sup>13</sup> SRVR, [Order 002 of June 4, 2018, Case 001](#), para. 12; [Order 005 of July 17, 2018, para. 13](#), Case 003; Order [004 of July 10, 2018](#), par. 12, Case 002.

<sup>14</sup> SRVR, Order [078 of November 8, 2018](#), para. 13 and following, Case 005.

<sup>15</sup> SRVR, Order [040 of November 11, 2008](#), para. 17, Case 004.

<sup>16</sup> SRVR, Order [078 of November 8, 2018](#), para. 13 and following, Case 005.

that are prioritized.

- *Concentration stage:*

- In the majority of cases or situations, it is indicated that the concentration stage is carried out on previously grouped cases or situations on which there is information that allows the identification of crime patterns and presumed perpetrators<sup>17</sup>. This makes it possible to understand that these are the assumptions on which the decisions to prioritize are based, assumptions that the concentration stage seeks to reach, which were not clearly established in the methodological [guidelines for prioritization](#).
- In addition to patterns and presumed perpetrators, in some cases or situations the information analysis also made it possible to identify the purposes for which the crimes were being committed, their temporal milestones<sup>18</sup>, the functioning of the armed groups and their relationship with other groups and communities<sup>19</sup>, and the principal behaviors committed by the armed actors<sup>20</sup>. In this regard, the depth and level of analysis varies from one case or situation to another.
- In several cases or situations, priority criteria seem to be applied in the concentration stage<sup>21</sup>.
- In Case 004 it is stated that the concentration is made from the articulation of territorial, ethnic and gender approaches<sup>22</sup>. Although this does not imply that they are not used in other cases, it is worth noting that the application of these approaches should be mainstreamed throughout the prioritization process.
  - *The prioritization stage in the strictest sense:*
  - Case 001 references that the prioritization stage is carried out in the strict sense, without applying of the prioritization criteria<sup>23</sup>.
  - In some cases or situations, it is said that the prioritization criteria<sup>24</sup> have been met or fulfilled. It would not seem correct to refer to the fact that the prioritization criteria are met in a particular case or situation. The prioritization criteria, with their respective

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<sup>17</sup> SRVR, Order [002 of June 4, 2018, para. 11](#), Case 001; Auto [004 of July 10, 2018, para. 11](#), Case 002; Auto [005 of July 17, 2018, para. 12](#), Case 003; Auto [040 of November 11, 2008, para. 16](#), Case 004; Order [078 of November 8, 2018, para. 15](#), Case 005.

<sup>18</sup> SRVR, Order [002 of June 4, 2018, Case 001 par. 13 and 14](#); Order [004 of July 10, 2018, para. 12](#), Case 002; Order [040 of November 11, 2008, para. 18](#), Case 004; Order [27 of February 26, 2019, paras. 13, 15 and 16](#), Case 006.

<sup>19</sup> SRVR, [Order 005 of July 17, 2018, par. 14-16](#), Case 003; [Order 27 of February 26, 2019, par. 16-22](#), Case 006.

<sup>20</sup> SRVR, [Order 078 of November 8, 2018, par. 15](#) (numbers 1-9), Case 005.

<sup>21</sup> SRVR, Order [002 of June 4, 2018, Case 001 par. 11](#); Order [040 of November 11, 2008, par. 16](#) (sections c, d and e), Case 004; [Order 078 of November 8, 2018, par. 15](#) (numerals 1-9), Case 005.

<sup>22</sup> SRVR, [Order 040 of November 11, 2008, par. 16](#), Case 004.

<sup>23</sup> SRVR, [Order 002 of June 4, 2018, par. 15](#), Case 001.

<sup>24</sup> SRVR, Order [004 of July 10, 2018, par. 13](#), Case 002; Order [005 of July 17, 2018, par. 18](#), Case 003; Order [040 of November 11, 2008, par. 23](#), Case 004; Order [27 of February 26, 2019, para. 24](#), Case 006.



indicators, must be applied in the analysis of cases or situations to determine which ones must be investigated and prosecuted first. In other words, the objective of the prioritization stage cannot be to determine whether the criteria are met as a checklist, but rather to apply the criteria and determine from the measurement and comparison of the indicators in different cases and situations the order in which they should be prioritized.

- In some cases or situations, the application of the differentiated impact criterion on indigenous people and their territories is included within the differentiated impact criterion on collective subjects<sup>25</sup>, even when these criteria are different.

Case 007 was not included in the above-mentioned observations because the methodology applied was totally different. Initially, a general characterization of recruitment and associated behaviors was made. Then, the SRVR competence factors were analyzed to determine if the SRVR could know about the characterized facts. Subsequently, the prioritization of the facts was addressed, without offering information on the grouping and concentration stages, pointing out that this was done in accordance with the provisions of the constitutional jurisprudence on the matter and the analysis of the prioritization criteria with respect to the case. After that, the facts associated with the recruitment were provisionally grouped according to three specific categories. Finally, a series of methodological objectives related to the collection and analysis of information on the case were established<sup>26</sup>.

Based on the above, it can be concluded that the Judicial Panel for Acknowledgement has reinterpreted and distantly addressed the content of the methodology established in the prioritization guidelines. This situation impacts the participation expectations and guarantees of the victims in so far as it does not provide clarity to the prioritization process. Once the methodology has been defined it should be addressed or, if necessary, adjusted according to the experiences that are being generated.

**b) The prioritization exercises have not been carried out by comparing some cases or situations with others**

This observation was pointed out by the SRVR judge Iván González in his vote explanations regarding Orders [27 of February 26, 2019](#) and [29 of March 1, 2019](#), by means of which the SRVR took on Cases 006 and 007 respectively. The magistrate warned that the SRVR cannot carry out prioritization without first identifying, at least preliminarily, what its real workload is; that is, it cannot define what to investigate first if it has not classified and organized the number of investigations it must attend to.

Hence, SRVR ended up applying the prioritization criteria in the abstract and not in a comparative manner, as established by the selfsame prioritization methodology [guidelines](#). This opens the door to questions about why certain cases or situations must be prioritized

<sup>25</sup> SRVR, [Order 004 of July 10, 2018](#), par. 13, Case 002; [Order 005 of July 17, 2018](#), par. 18 (section b), Case 003.

<sup>26</sup> SRVR, Order [29 of March 1, 2019](#).

over others, or about the continuity of prioritization, as well as efforts to address the magnitude of cases or situations that fall under the competence of the SJP.

**c) Victims' opportunities for participation are limited and they lack uniform access thereto**

Although Law 1922 of 2018 provided for the victims' participation in the prioritization of cases, the victims' incidence in these processes has been limited. As noted, victims' participation in the prioritization can occur before the SRVR accepts to hear the case through the submission of reports (oral, written, or mixed) and requests for prioritization of cases or situations under advocacy strategies, such as a national case of sexual and/or reproductive violence or other crimes motivated on the victims' sexuality committed within the framework of the armed conflict<sup>27</sup>, a national case of forced disappearance in the context of the armed conflict<sup>28</sup>, a situation involving the effects of the armed conflict in Meta<sup>29</sup>, a national case of corruption in the context of the armed conflict<sup>30</sup>, and a sub-case involving acts committed in Arauca in the context of Case 003<sup>31</sup>. Conditions for participation can also be established after the SRVR has made its observations, evidence and additional information available on the prioritization cases. For example, the request to expand the territorial situation in Case 005, from which the SRVR added other municipalities<sup>32</sup>. This implies that the prioritization exercise should be progressive and dynamic, as established in the prioritization methodology [guidelines](#).

This shows that there is a need for SRVR to strengthen opportunities for effective participation of victims in the prioritization processes, for example, based on scenarios of transparency and accountability for these processes. Another mechanism for this could be the opening of public prioritization processes, receptive to victims' participation. However, given that not all victims have the resources to develop advocacy strategies for opening cases, it is necessary for the SRVR to apply the prioritization methodology it defines even if it has to be adjusted. Thus, beyond the participation of victims in the prioritization processes, the

<sup>27</sup> Corporación Humanas, (February 24, 2020), *Five Keys Alliance asks to open a case of sexual and reproductive violence and other crimes motivated by the sexuality of the victims*, available at: [https://www.humanas.org.co/alfa/10\\_446\\_La-Alianza-Cinco-Claves-pide-abrir-un-caso-de-violencia-sexual--reproductiva-y-otros-delitos-motivados-en-la-sexualidad-de-las-victimas.html](https://www.humanas.org.co/alfa/10_446_La-Alianza-Cinco-Claves-pide-abrir-un-caso-de-violencia-sexual--reproductiva-y-otros-delitos-motivados-en-la-sexualidad-de-las-victimas.html)

<sup>28</sup> *El Espectador* (November 13, 2019), "Organizaciones piden a la JEP que abra caso de desaparición forzada", available at: <https://www.elespectador.com/colombia2020/justicia/desaparecidos/organizaciones-piden-la-jep-que-abra-caso-de-desaparicion-forzada-articulo-890669>

<sup>29</sup> *El Espectador* (July 31, 2019), "JEP Asked to Open Case to Investigate Violence in Meta," Available at: <https://www.elespectador.com/colombia2020/justicia/jep/piden-la-jep-abrir-caso-para-investigar-la-violencia-en-el-meta-articulo-873813>

<sup>30</sup> Ospina, J, (September 28, 2018), "Justicia transicional y lucha contra la corrupción", *El Espectador*, available at: <https://www.elespectador.com/colombia2020/opinion/justicia-transicional-y-lucha-contra-la-corrupcion-columna-859161>

<sup>31</sup> Colombian Commission of Jurists (October 23, 2019) *Human rights organizations deliver to the JEP a report on extrajudicial executions in Arauca*. Available at: <https://www.coljuristas.org/nuestro-quehacer/item.php?id=260>

<sup>32</sup> SRVR, [Order 032 of March 12, 2019](#).

SRVR has the obligation to apply the methodology in a way that makes it clear to all victims why some cases are prioritized over others at a given time, which demands both an increase in the rigor with which the prioritization exercises are carried out, in accordance with the defined methodology, and an increase in the transparency of the information that is being compared in order to prioritize some cases or situations over others.

Likewise, it is important that from the moments and spaces in which the participation of the victims in the prioritization assumptions materializes, the SRVR offers conditions and spaces of preparation for the following stages. In this way, victims and the organizations that represent them can contribute in a broader way to the comparison process that the SRVR carries out from the participation in the hearings of voluntary statements and the presentation of observations to the same.

In short, it is necessary for SRVR to strengthen efforts in the adequate implementation of the prioritization methodology. At this time, the SJP has an important amount of information provided by state entities, social organizations and victims, and also resulting from the investigations carried out by its Investigation and Prosecution Unit and has an Information Analysis Group that has been operating for two years. It is important that the prioritization exercises demonstrate a rigorous and comprehensive analysis of information in order to satisfy the rights of the victims. Finally, it is also important that the SJP prepares the conditions for addressing the interests and expectations of the victims in the selection process derived from the of conclusion resolutions that will be issued.