



Security Council

Distr.: General
25 February 2021

Original: English

Letter dated 24 February 2021 from the Secretary-General addressed to the President of the Security Council

I write regarding the requested expansion of the mandate of the United Nations Verification Mission in Colombia to carry out the role envisioned for it under the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace between the Government of Colombia and the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP) with regard to the verification of compliance with restorative sentences of the Special Jurisdiction for Peace.

The letter from the President of Colombia of 13 January 2021 ([S/2021/147](#)) confirmed the request of the parties for this addition to the mandate. Your letter to me dated 30 January ([S/2021/100](#)) requested my detailed recommendations, which I shall provide below, on how this additional task would be carried out and any implications for the configuration of the Verification Mission.

Background

The Special Jurisdiction for Peace is the judicial component of the transitional justice system established under the Final Agreement to investigate, clarify, prosecute and sanction serious violations of human rights and serious breaches of international humanitarian law committed during the conflict of more than five decades between the Government of Colombia and the former FARC-EP.

The Special Jurisdiction for Peace forms part of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition, established under chapter 5 of the Agreement, entitled “Agreement on the victims of the conflict”. The two other entities of the Comprehensive System are the Commission for the Clarification of Truth, Coexistence and Non-Repetition and the Special Unit for the Search for Persons deemed Missing in the context of and due to the conflict.

In accordance with the terms of the Agreement, the Comprehensive System is founded on principles including the centrality of the rights of victims and realizing those rights, the importance of providing the full truth about what happened, and the acceptance of responsibility by all those who took part, directly or indirectly, in the conflict and were involved in one way or another in the aforementioned serious violations.

The Agreement further established that the Comprehensive System would place special emphasis on restorative and reparative measures and would seek to achieve justice not only through retributive measures. At the same time, the System is designed to guarantee the legal security of participants in the peace process and all those with recourse to justice measures under it, as an essential element of the transition to peace.



In the Agreement, it is also noted that the System is expected to contribute to laying the foundations for regaining trust, coexistence and real reconciliation among all Colombians. The Security Council's repeated expressions of support for the work of the Comprehensive System are a testament to the importance of its success for the overall success of the peace process.

The Security Council has now been requested to add to the mandate of the Mission the task of supporting the Special Jurisdiction for Peace in verifying compliance with restorative sentences imposed by the Special Jurisdiction. This reflects the significant advances in the work of the Special Jurisdiction since its creation three years ago as a new entity with unprecedented responsibilities in Colombia.

The Special Jurisdiction for Peace has opened seven "macro" cases, under the umbrella of which the aforementioned serious violations committed in the context of the armed conflict have been grouped by category of violation or by most affected region. Case No. 1 relates to the taking of hostages and the severe deprivation of the freedom of individuals by FARC-EP; case No. 2 to events in the Department of Nariño; case No. 3 to extrajudicial killings by agents of the State; case No. 4 to events in the Urabá region; case No. 5 to events in the Departments of Cauca and Valle del Cauca; case No. 6 to the victimization of members of Unión Patriótica; and case No. 7 to the recruitment and use of girls and boys in the armed conflict. The Special Jurisdiction has indicated that, across various cases, it is investigating racial and ethnic dimensions as well as conflict-related sexual violence.

As at January 2021, the Special Jurisdiction for Peace had registered 9,781 former FARC-EP members, as well as 2,807 individuals from the security forces, 126 individuals from other public entities and 12 private citizens who petitioned to be placed under its authority. It has also accredited approximately 324,589 victims, including a large number as part of collective accreditations of ethnic communities and victims of sexual violence.

A number of defendants have delivered their testimonies to the Special Jurisdiction, including members of the former FARC-EP and the security forces. Victims have participated in hearings and presented observations and will continue to avail of their rights under the process. The Special Jurisdiction has also received reports from State institutions and a wide range of stakeholders, including victims' associations.

In addition, in the light of the evolving security conditions for individuals under its jurisdiction and all other actors involved in its proceedings, the Special Jurisdiction has provided security and protection schemes to some defendants, victims and lawyers. It also ordered precautionary measures for some ethnic communities accredited as victims in its territorial macro-cases. Furthermore, it initiated an assessment of the security situation of former FARC-EP members, which resulted in the adoption, in August 2020, of a series of protective measures, which the Special Jurisdiction is keeping under review. A similar assessment is ongoing with respect to the security situation of members of the public security forces subject to proceedings of the Special Jurisdiction, their lawyers and human rights defenders representing victims in case No. 3.

On 26 January 2021, the Special Jurisdiction for Peace issued a first indictment against eight former high-ranking commanders of FARC-EP in case No. 1, and it is working on a second indictment in case No. 3, related to extrajudicial killings. As the Special Jurisdiction for Peace moves closer to handing down its first sentences, starting with case No. 1 and case No. 3, it is important to recall the sentencing framework established under the Final Agreement, whereby the sentences must realize the rights of the victims and consolidate peace, have the greatest restorative and reparative

function in relation to the harm caused and always correspond to the degree of acknowledgement of truth and responsibility. Specifically, it stipulates that individuals under the jurisdiction of the Special Jurisdiction whose acknowledgement of truth and responsibility has been exhaustive, complete and detailed shall be subject to restorative sentences of between five and eight years in duration (two to five years for those who did not play a determinant role in serious violations). Those who are judged to have acknowledged truth and responsibility only belatedly, or not at all, are subject to be sentenced, respectively, to between 5 and 8 years or 15 and 20 years in prison.

The restorative sentences, which are the only ones whose implementation would be subject to verification support by the Mission, have two components: (a) the “tasks, works or activities with reparatory and restorative content” that individuals should carry out as reparation to victims and conflict-affected communities, and (b) the restriction of freedoms and rights (entailing movement restrictions in a specifically defined geographical area during the period of the sentence).

As established in the Agreement and subsequent legislation, as well as the guidelines issued by the Special Jurisdiction for Peace in April 2020, the tasks, works or activities with reparatory and restorative content can be performed in both urban and rural settings and could include actions such as, but not limited to, the construction and repair of infrastructure, humanitarian demining, the provision of support for locating the remains of victims, environmental work to repair damage caused during the conflict, and rural and urban development projects. It is expected that most of those sentenced, while each receiving an individual restorative sentence, will be tasked with working both individually and collectively on restorative activities. In keeping with its guidelines, the Special Jurisdiction has indicated that it may allow individuals who have admitted responsibility to begin restorative activities before the issuance of their sentences.

Given the priority attached to realizing the rights of victims, the works of a reparatory nature established by the Special Jurisdiction for Peace are to be developed in consultation with victims and communities. It is further envisioned that activities that encompass reparations should complement government policies. This points to opportunities to link and ensure compatibility between the fulfilment of the sentences and other peace implementation activities in conflict-affected regions and communities, such as the socioeconomic reintegration of former combatants, voluntary crop substitution programmes and the implementation of provisions of the Agreement concerning comprehensive rural reform, such as the development programmes with a territorial focus.

Mission tasks

In the Final Agreement, the Mission’s role is envisaged as being the international component of a system of monitoring and verification for which the Special Jurisdiction for Peace has key responsibilities and is supported by other national entities. Over the past several months, and in anticipation of a formal request for an expansion of the mandate of the Verification Mission, my Special Representative for Colombia and Head of the United Nations Verification Mission in Colombia has engaged with the Government, the Special Jurisdiction for Peace, Fuerza Alternativa Revolucionaria del Común (FARC) and other actors as part of consultations on forging a common understanding of the contours of such a role. They all expressed the view that the Mission’s verification could help to build confidence in the transitional justice arrangements that are at the heart of the Final Agreement.

The concept that emerged from those consultations, which is reflected in the request to the Security Council, is of independent verification by the Mission that would support the ability of the Special Jurisdiction for Peace to ensure compliance

with and implementation of its restorative sentences. It would be focused on two key aspects for achieving the intended outcome, especially with regard to the provision of reparations to victims and communities. First, it would verify that those individuals who have received restorative sentences were complying with them. Second, it would verify that the Colombian State was establishing the necessary conditions for the implementation of these restorative sentences. The verification would be conducted in respect of all the categories of individuals with restorative sentences decided by the Special Jurisdiction, namely former members of FARC-EP, members of the security forces and State agents, and third-party individuals.

Building on its experience in carrying out its current mandate, the United Nations Verification Mission would verify progress and challenges with regard to compliance with and implementation of the restorative sentences in a constructive and proactive manner, in order to foster solutions to possible obstacles. The Mission's effort would be independent and impartial and would be carried out in coordination with relevant State entities and other stakeholders. The Mission would adopt a strategic approach to verification, drawing on its strengths and capacities. Accordingly, the Mission would focus its monitoring on overall trends in compliance and on select individual cases. The Verification Mission would not perform administrative or judicial functions, which are the responsibility of national entities.

This approach would be applicable to the two above-mentioned components of the restorative sentences: the tasks, works or activities with reparatory and restorative content, and the restriction of freedom and movement. The Mission could perform its role in supporting the verification of the tasks, works or activities with reparatory and restorative content by monitoring the progress on the work and activities aimed at providing reparations to victims and communities, which are expected to be organized as collective projects involving many sentenced individuals. With respect to the restriction of freedom and movement, I note that the Special Jurisdiction for Peace is developing a system that will provide for comprehensive monitoring of the locations of individuals who are serving sentences. The Mission's verification support for this aspect would thus draw on information provided by the Special Jurisdiction and other entities that are responsible for supporting it in implementing the movement and residency restrictions. The Mission could also conduct additional ad hoc verification activities, as appropriate.

The Mission's methodology would include visits to the locations where persons are serving restorative sentences, in order to obtain reliable information on their compliance, as well as constant engagement with all actors involved in the implementation and monitoring of the restorative measures adopted, including with a view to anticipating and addressing any obstacles. The objectives of the field visits from its regional and local hubs to areas where restorative activities are being implemented and where former combatants, members of the security forces, State agents or third-party individuals are housed could be, among others, to: (a) assess the progress of restorative activities under implementation; (b) maintain contact with the individuals serving restorative sentences and with the Government and other local authorities in those areas; and (c) liaise with victims and affected communities, including women, youth and ethnic communities that are to be the beneficiaries of reparations.

The Mission could engage systematically with the different actors and State entities that have responsibilities in the implementation of the restorative sentences and in their monitoring and verification. This includes, among others: (a) the Special Jurisdiction for Peace; (b) the individuals sentenced to perform restorative activities; (c) victims and their organizations and representatives; (d) State entities at the national and local levels performing coordination, monitoring or other activities related to the implementation of the restorative sentences; (e) indigenous,

Afro-Colombian and Roma authorities, with regard to sentences to be carried out on their territories or involving members of their communities; and (f) civil society organizations at the national and local levels. With respect to the responsibilities of State authorities, the Verification Mission would monitor the enabling conditions, such as budgetary support for the restorative projects, ensuring security for their implementation and providing appropriate and dignified living conditions for those sentenced to perform restorative work, in accordance with the Agreement.

The Mission would continue to integrate a gender and ethnic dimension into all its verification activities by promoting the meaningful participation of women, including women victims, and ethnic communities, taking into consideration the differential impact of the conflict and fostering conditions that allow for the gender-sensitive implementation of restorative sentences and a differentiated approach for ethnic communities. In cases related to gender-based violence, including sexual violence, restorative activities are to be aimed at challenging gender bias and promoting women's rights.

The Verification Mission has maintained close dialogue with the Special Jurisdiction for Peace since its establishment, contributing to a strong mutual understanding of their respective roles in the implementation of the Agreement. While maintaining full independence from the Special Jurisdiction, the Mission, in keeping with its role within a system of monitoring and verification of the restorative sentences of the Special Jurisdiction, would establish a protocol with the Special Jurisdiction in order to exchange information.

In carrying out this additional verification task, the Mission would continue to ensure coordination and complementarity with the United Nations country team, which follows and provides other kinds of support and assistance for the transitional justice process in Colombia, in particular with the Office of the United Nations High Commissioner for Human Rights, as envisioned in chapter 5 of the Final Agreement, regarding victims' rights. The engagement of the United Nations country team also includes the assistance that has been extended to the component entities of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition through the United Nations multi-partner trust fund for sustaining peace in Colombia as well as specific agreements with the Special Jurisdiction for Peace focused on extending advice and cooperation on matters such as ensuring the rights and participation of victims.

Therefore, I am confident that the sum of United Nations system-wide support would help to strengthen the effectiveness of the transitional justice process. My reporting on the Mission's additional verification activities could be contained in my quarterly reports to the Security Council, assessing overall progress and developments in select cases and describing efforts supported by the Mission to overcome challenges and obstacles.

Implications for the configuration of the Mission

To accelerate preparations, the Mission intends to put in place advanced capacity at Mission headquarters, ahead of the issuance by the Special Jurisdiction for Peace of restorative sentences, so as to ensure adequate engagement with the Special Jurisdiction, State entities and other relevant actors to refine the verification tasks and deepen coordination arrangements. Some early verification activities may be needed, especially in the light of the possible initiation of restorative works by indicted individuals prior to the issuance of final sentences. I note with appreciation how during previous phases of the Colombian peace process, the Mission benefited from the Council providing lead time that enabled it to be ready for full mandate implementation as soon as required.

At Mission headquarters, an area focusing on this newly mandated task should have appropriately staffed and dedicated capacity. Its functions would be to liaise closely with the Special Jurisdiction for Peace, State entities and other relevant actors at the national level; provide guidance to local and regional field staff in their implementation of verification tasks in coordination with existing Mission structures; analyse and report on the implementation of the mandated tasks; ensure the quality of the verification and ensure the provision of appropriate feedback; and provide high-level and other ancillary support to the Mission's leadership.

In addition to the establishment of this dedicated capacity, other Mission components may also be in need of some reinforcement, such as in operational and administrative support. The Mission would have to increase its outreach and public information efforts to explain its responsibilities under this new mandate. There would be no required change in the authorized strength of the unarmed international observers, who will continue to play their important role within the Mission.

With respect to the deeper field configuration outside Bogotá, the Mission conducts verification under its existing mandate through a presence in 11 regional offices and 20 local offices, including hub offices, in former conflict areas where former FARC-EP members are undergoing their reintegration process. While this situates the Mission already within or in proximity to a majority of areas where its verification in relation to restorative sentences is assessed as likely to be required, mobility from fixed locations would remain critical, and the required deployment would be evaluated over time and as the Special Jurisdiction for Peace progressively issues its restorative sentences.

Within regional offices, current staffing would require some strengthening in order to be able to engage with State institutions involved in tasks related to the implementation of restorative sentences, and to be able to support local Mission teams that currently verify Final Agreement provisions on reintegration and security guarantees, especially in areas where a significant number of restorative activities are expected. The Mission would, when considering resource requirements, assess whether additional air assets would be required for increased mobility.

Conclusions

Based on the preceding analysis, I recommend that the Security Council respond positively to the request conveyed by the Government of Colombia and authorize the addition of this task to the mandate of the United Nations Verification Mission.

While it would undoubtedly be a challenging new task in a complex environment, the Mission is well positioned to assume it, drawing on its presence and established ability to help to build trust through its verification activities. This would be a strategic opportunity to provide further support to the peace process, in which the United Nations has already invested deeply, in particular by strengthening transitional justice processes in Colombia and thus contributing to the realization of victims' rights to truth, justice, reparation and non-repetition.

The Special Jurisdiction for Peace is a critical guarantee in that regard to victims, whose rights must remain at the centre of this process, as well as to those actors of the conflict under its jurisdiction, including those who laid down arms under a peace agreement rooted in a system of transitional justice. The integrity and success of the peace process, which has been an inspiration to the world, depends on this central element in the process.

I should like to acknowledge the commitment of the parties reflected in this request, as well as the confidence placed by them and the Special Jurisdiction for Peace in the ability of the United Nations to further contribute to the consolidation of

peace through the addition of this task to the mandate of the Verification Mission, as envisioned in the Agreement.

Upon the decision of the Council, the Mission would initiate the necessary preparations. The requirements referred to herein would be kept under review, and I would keep the Council fully informed of these preparations and the eventual results of the verification in the context of the reporting requirement that the Council has already established for the Verification Mission.

I should be grateful if you would bring the present letter to the attention of the members of the Security Council.

(Signed) António **Guterres**
